

# CPS Direct

## Good Practice Guide CONTENTS

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# **(A) Practical Guidance for telephone-based advice work on CPS Direct**

## **1. Taking calls**

The Solidus system allows a limited time (20 seconds) in which to answer a call before it is routed to another lawyer. It is important to answer calls whenever possible (if you will be unable to take a call Solidus provides a number of 'Not Ready' reasons including casework, wrap up, comfort break and meal break – for full details refer to the latest Solidus User's Guide).

The system is designed to send calls to the Prosecutor who has been free for the greatest length of time. That means, if a call comes to you, that you are the least busy person at that point. Missing the call will result in that call having to be taken by a Prosecutor who is busier, or has had less time between calls than you. When this happens, noticeable inequities in workload can build up. The caller will also be kept waiting for a greater length of time.

The success of CPS Direct is measured, in part, on our timeliness in answering calls and maintaining a low level of 'abandoned' calls (this refers to calls where an officer waits longer than 60 seconds before connection, and hangs up).

Elsewhere in this Manual you will find guidance that will help you decide when it is appropriate to produce an MG3, and to help you decide whether a call should properly be handled by CPSD or whether the case should be referred to local CPS. Many of these issues are far from straightforward, but wherever possible you should try to make each call *effective* in the sense that it concludes the officer's dealings with CPSD on that case. Some common complaints received are that:

- CPSD Prosecutors are too ready to pass cases back to the daytime scheme rather than make a decision;
- Prosecutors asking officers to carry out further basic tasks with a view to calling CPSD again when those tasks have been completed (in circumstances where with a little more patience and determination these concerns might have been addressed in the one phone call).

In the very great majority of instances these complaints are without foundation, and reflect poor preparation on the part of the Police. However, we are satisfied that there have been instances where we have been too ready to turn officers away.

As with everything legal, handling calls at CPSD is a question of balance and judgement, but by consciously trying to make each call effective we should be able to deliver a better service.

Once you have decided that you are able to deal with a call and have identified the MG3 in the CPSD In box you should activate the red flag alongside the email to alert everyone else that the call is being dealt with.

## 1.1 A note about sales calls

Although your CPSD line is a dedicated line and will automatically be made ex-directory, it is in all other respects a normal BT line. You are therefore likely, from time to time, to receive sales calls, particularly those where the number is generated automatically by a computer, or the occasional wrong number. If your CPSD number is close to a similar number in your district, it is possible that you will receive more such calls than usual.

If, for whatever reason, the volume of unsolicited calls you receive is unacceptable, or hampering your work while on shift, call the telephony helpdesk for assistance. The number can be changed, if necessary, to reduce such problems.

## 2. Keeping a call log

The contact details for the officer are the most important pieces of information to get first. Phone calls can get cut off for all sorts of reasons.

- *NB mobile telephones are not secure. It is acceptable to take a mobile number for contact purposes, but the officer should then be able to indicate a landline number where he is so that the advice can continue.*

It is of course equally important that officers know to whom they are speaking and as a matter of good practice you should always give your name as the first part of your conversation with the officer.

We are required to keep a running log of all calls received, recording in each case the following information:

- The date and time when the call started and the time of the call ending
- Officer's name and rank (it is a good idea to record the contact telephone number as well at this stage)
- Station
- Force
- Suspect's name
- Offence
- A brief summary of your decision or advice.
- Not essential but as you will be asking these questions in the screening process, it is worth noting whether the custody officer has made a determination that the Threshold Test is passed, and the Custody Officer's views on bail or custody after charge.

Some calls will be short and not involve the full advice process. You may not get all of the above information. If this is the case, record whatever information was gathered.

There is an electronic (database) version of the call log which records entries automatically and can be accessed by the Central Support Team to answer any queries arising. It is not mandatory to use this but it has the advantage that you do not need to be involved in retrieving that information.

Alternatively you can keep your call log as a Word document (a blank template can be found on KIM) or you can keep a handwritten note. In either case you should keep your records for at least 3 months.

### 3. Completing the MG3

All forces are being encouraged to email the MG3, with the police part completed, to a central mailbox that can be access by all CPS Direct Prosecutors. The mail address is [cpsdirect@cps.gsi.gov.uk](mailto:cpsdirect@cps.gsi.gov.uk)

To gain access to the CPS Direct mailbox, see the IT guide on KIM. Some forces have agreed to email the MG3 in all cases. These forces are indicated in the **Statutory Areas table** in at the end of this document (but please be alert for any updates to this table, which will be circulated whenever an Area moves to mandatory emailing). Officers from these Force Areas are obliged to email MG3s and this is a protocol that should be insisted upon unless technical difficulties render it impossible. No other Force Areas have agreed to this protocol as yet, but it is always worth asking individual officers whether they are able to email the MG3. Some will have the technical know-how, others will not, but any email should always be sent through the secure PNN system. The facility to email an MG3 speeds up the advice process considerably, there is less duplication of work, advices are received more reliably and speedily and the quality of the information provided is usually more focused.

Until such time as all forces are signed up to using an electronic MG3, we have to be ready to create our own electronic MG3 from scratch, including the police outline of the case. **Note** however that, even where an electronic MG3 has not been created, the officer may well have completed an electronic MG5 summary of the case – it is always worth asking. The officer may be able to email this document or copy and paste it into the body of an email to allow you to do likewise. This may also be the case where the officer has scanned in the MG3 to send electronically with the evidence.

Where an electronic MG3 has been provided, it will nevertheless be necessary to transfer the information in Part 1 (the police part) into the standard CPS Direct MG3 so that a consistent quality product is produced by us. Larger sections, such as the outline of circumstances, can best be transferred by copying and pasting.

The CPS Direct MG3 should be opened by going to the START menu on your computer and selecting 'New Office Document' at the top of that menu. Alternatively double click on the 'New Office Document' icon on your desktop to get to the same point. From here select **Structured MG3.dot** by double clicking on it to open the MG3 document.

A full user guide for the structured MG3 is contained on KIM, and you should refer to this in the event that you have any difficulty using the document.

### 3.1 The Unique Reference Number (URN)

The URN is the basic identifier for each case, and CPS have agreed with ACPO that URNs will form the foundation for the management of criminal cases by the prosecution team. The management information system on COMPASS is a powerful tool that can produce a huge range of data in a wide variety of different ways. The police find very useful any information that helps them manage the performance of each Basic Command Unit (BCU). The URN provides the identifier for each BCU and so the URN is a critical component for the police.

It is often the case at CPSD that we are told that it is not possible to provide a URN for an out of hours consultation. We have been assured by ACPO that this is incorrect, and the police are taking steps to ensure that every case has a URN at the earliest stage of a consultation with the CPS (guidance on this point will be found in the Statutory Charging Resource Pack). However, it will take quite some time for the message to filter through. For now, it is good practice to always ask officers to confirm whether there is a URN – if nothing else, this will serve as a prompt for the number to be provided.

Currently the Force Areas required to provide a URN in all cases (as agreed between CPS and the police) are shown in the **Statutory Areas table** at the end of this document (but please be alert for any updates to this table, which will be circulated whenever an Area moves to mandatory provision of the URN). Even if the URN cannot be provided, the CPSD MG3 will require at least the first 2 digits, the Force Code Identifier, to be included. Refer to the Statutory Areas table at the end of this document which lists the Force Code Identifier for all Forces.

If an officer from any of the mandatory Forces says it is not possible to provide the URN, ask him/her to double check with the custody officer. If no URN can be obtained, endorse the MG3 to the effect that a URN was requested but could not be provided. In BTP cases you should at least enter the Force Identifier number (93) in the first part of the URN box to ensure that Areas can easily identify it as a BTP case. The following are **BTP URNs** for the whole of the UK:

London CJU -	Norwich to Bournemouth including London	<b>93LT</b>
Newcastle AJU -	Leeds and all of North Eastern Area	<b>93CI</b>
Liverpool AJU -	Liverpool and North Western Area	<b>93EO</b>
Bristol AJU -	Western Area including Bristol	<b>93GA</b>
Birmingham AJU -	Western Area including Birmingham Area	<b>93ZF</b>

### 3.2 Suspect details – ethnic code

Make sure that the appropriate self-defined ethnic code is entered for each suspect (the police will sometimes use a different 'IC' code by mistake or leave it blank). 'N/S' ('not stated') should be inserted whenever the code has not been established.

### **3.3 The Material Provided**

This section of the MG3 should accurately reflect what the Prosecutor has seen, regardless of what the officer's MG3 shows.

The material will be provided by fax or by email. Many areas now have access to scanning machines and will send all of the evidence in this way. The officer should always be asked if this is a possibility as this is a quicker option than using a FAX machine. Where the officer is able to send photographs as email attachments, Prosecutors will need to be aware and advise the officer that there is a 5MB (Megabyte) limit to the size of individual emails allowed through the system. This will probably mean that no more than 2 photographs can be attached to an email. If there are more than these, they should be sent in batches of 2.

Where photographs are received by email, the following practice should be adopted:

1. The officer should provide all images with an exhibit number. The image should be listed on the MG3, together with its exhibit number, as part of the material provided.
2. When the review is complete, the Prosecutor will send only the completed MG3 to the officer, Area and CPS Direct Advices, boxes (see para.10) and not attach the images.
3. In most cases it should be possible to open the images for viewing and then to close them again at the conclusion of the case without needing to save the images in a document folder.
4. If the images have been saved in a document folder for any reason, they should be deleted at the end of the Prosecutor's shift, just as any faxed material is shredded (unless an appeal is anticipated or any other need to hold the images for reference).

### **3.4 The Outline**

Without going into unnecessary detail, this should set out the essential facts.

For example a dwelling house burglary should set out:

- The time of entry, if known
- The manner of entry (whether force used)
- Whether the house was occupied at the time
- Property taken and value, if known
- Evidence pointing to the suspect
- What was said in interview
- Previous convictions; in particular any dwellinghouse burglaries relevant to minimum sentence provisions.

In a similar vein:

- Drug offences should set out the quantity of the drug, what forensic confirmation is available, circumstances in which it was found and how it is connected to the suspect. If supply or intent to supply alleged, what evidence exists for this over and above quantity (observations, dealer lists, evidence of preparing individual wraps at home etc),
- Dangerous driving should set out the salient points of dangerous driving (speed, red lights, junctions, collisions or near collisions, failing to stop for police), overall distance driven, time of day, number of other road users and whether they were directly endangered,

- Public order offences should set out the specific threats or actions of individuals and the evidence to identify them, the numbers involved and whether other members of public were present (children, elderly), time and place, use of weapons.

As a guiding principle, think of how the case should be presented to an efficient District Judge, one who would prefer brevity to drama, and who is looking for the essential facts to be considered for trial or sentencing (mitigating or aggravating features). Any point you would wish to put before the DJ should be contained in the outline.

Additionally, any undermining factors, such as witness' previous convictions, should be noted.

- *Tip from an experienced Prosecutor:*

*"On identification issues I always ask, 'if I didn't know the suspect before and I am looking at the video/still, can I clearly tell it is him?'"*

When getting an outline, be careful to note what is available in statement or other evidential form at this stage. Officers will often be keen to pass on what witnesses can potentially say having only had a brief conversation with them (This may be an indication that enquiries are not complete and the suspect should be bailed for an evidential report, unless the interim Threshold Test is to be applied).

### **3.5 The Charging Decision/Advice**

Whilst CMS is not being used to record CPS Direct charging decisions, the format of the Charging Decision/Advice needs to be set out in order to comply with the standard CMS headings. The Charging Decision/Advice section of the CPS Direct MG3 has been devised with these requirements in mind. The headings set out in the CPS Direct MG3 should be adhered to in all cases. Guidance on completion under each heading of this section follows:

#### **CMS Monitoring Flags**

Any CMS flagging reminders should be placed in this section. There is a tick box provided for each. For example, any case charged as s.1 rape, s.5 rape of a child, or s.30 sexual activity with a person with mental disorder (or attempts, conspiracy or incitement of these) need to be flagged as rape on CMS. DIP trigger offences should be noted (they are basically the main Theft act offences (including TWOC), Fraud Act offences and possession and supply of drugs).

Particularly where the Domestic Violence and Rape flags are selected, make sure you use the TAB key to move away. This will enable the form to set up the appropriate prompts in the decision area.

#### **Evidential test applied and reason**

A drop down menu gives the following options:

- Full code Test
- Threshold Test
- Early Consultation
- Investigative Advice

Where your decision is for no prosecution (NFA) or to bail for further enquiries, you are advised to select 'Investigative Advice' at this point, but to specify the test you have used in the 'Issues' area provide on the form. The reason for this is that, if full code or threshold test are selected here, then the form will require selections under subsequent headings that do not apply to NFA or bail advices.

## **Evidential Criteria**

The options from the drop down menu here are

- Undecided
- Yes
- No

You can choose 'undecided' if you are bailing for further investigation, but otherwise choose yes or no. The reasoning and justification for your decision should be set out in the expanding box to the right of this, in particular

- the main points of evidence supporting the decision,
- reflections on any undermining evidence (e.g. lacking credibility, implausible, disproved by other evidence),
- any witness convictions seen and your views on them, or a note that you have been told there are no such convictions (this could be important to record in the event of convictions coming to light later and the case being reconsidered),
- any charging standard applied to determine the level of charge,
- any policy documents that have been considered (e.g. domestic violence),
- any reasons for preferring the specified charge rather than an alternative
- comment on whether bad character provisions are potentially relevant, to flag up the possible need for notice to be given in the event of the case proceeding to Crown Court or for trial in the Magistrates,
- if Threshold Test applied, what further supporting evidence is anticipated and, a note that the decision will be subject to final review, and a target date for that review.

Whilst the use of autotext can save time, remember that all cases have to be considered individually, so use it sparingly and only when it is fully appropriate to the circumstances. The same consideration would apply under all headings.

## **Public Interest**

The same three drop down options appear here (undecided, yes and no). Specify all public interest criteria applying to the case, as listed under para 4.16 or 4.17 of the Code for Crown Prosecutors. It is not enough to have a simple assertion that PI criteria are 'met'.

## **MOT**

The options here are

- Undecided
- SST
- NSST

Set out your views of mode of trial with a clear recommendation, or an indication that the case is Summary Only or Indictable Only. Where a case is summary only, you will nevertheless need to select 'SST' from the drop down menu.

Where the case is triable either way, reference must be made to the Magistrates Court Sentencing Guidelines outlining, if relevant, what level of activity is involved, any aggravating or mitigating features, and what starting point and/or range of sentencing is indicated by the Guideline.

- It is important to make a clear review endorsement on the MG3 to show the case is Indictable Only, especially where it becomes so because of the operation of statutory provisions:
  - Minimum 3 years for a third domestic burglary (s.111 PCC(S)A 2000)
  - Minimum 7 years for a third class A drug trafficking offence (s.110 PCC(S)A 2000)
  - Minimum 5 years for certain offences under s.5(1) and 5(1A) of the Firearms Act 1968 (s.51A FA 1968) – note that these offences also need to be flagged on CMS.

Without this clear endorsement there is a danger of such cases being missed and the court not being guided to deal with the case appropriately.

- In the case of Youths, there will need to be a clear file endorsement as to Mode of Trial for any offence that has the potential to be a 'grave crime'. Associate Prosecutors can only deal with the case where the prosecution is not going to represent that the matter should be committed to the Crown Court and it is clear that the Youth Court would have no hesitation in accepting jurisdiction.

## **ECHR**

The options are undecided, yes and no. You should select 'YES' when all ECHR issues are satisfactorily covered (i.e. there are no issues). Specify any Human Rights Act provisions or case law applying or give an indication that no issues are apparent, to show that due consideration has been given to the matter.

## **CHARGE/PLEA ISSUE**

Acceptability of pleas to some offences or to alternative offences – Where it is obvious that the case is one where the suspect is likely to offer pleas to some, but not all, of the offences, or to offer a plea on a factual basis that is at variance with some of the evidence, the MG3 should be endorsed with advice as to the acceptability of pleas or the basis upon which a plea can be accepted.

## **WITNESS/VICTIM ISSUES (including Victim Personal Statement)**

Specify whether any special measures are to be sought or any other victim issues (e.g. you may wish to recommend that a victim of domestic violence has the continued support of a domestic violence trained officer or Independent DV Advocate).

The Prosecutor **must** in all cases ask the Police Officer to confirm that the No witness No Justice scheme has been complied with and that the relevant parts on the rear of the MG11 and, where appropriate, the MG2 have been completed. The MG2 form should be completed by the Police in every case where there are vulnerable or intimidated witnesses including children. This should then be faxed along with the case papers.

Where the relevant parts of the MG11 and the MG2 have not been completed, the Police Officer should be advised to attend to this within 24 hours. An instruction to this effect should be included on the MG3 action plan.

Even where special measures are not sought, the witness may have other issues such as **disability, ill-health or infirmity through old age**. Any issue touching upon the ability of the witness to attend court and give evidence effectively should be noted under this heading so that the Witness Care Team can be made aware and make appropriate arrangements.

If the victim has not been given the opportunity to make a **Victim Personal Statement**, then this should be noted here together with a suitable action point to ensure that the officer complies with this requirement.

Also recorded here should be any consideration given to a **pre-trial witness interview**. In such cases bear in mind the following:

- Pre Trial witness interviews are appropriate where there are concerns over a witness's reliability, as oppose to credibility – e.g. you may have an honest witness who you feel is mistaken or confused. Alternatively you may have a witness who has convictions and whose evidence presents reliability issues. However, the convictions in themselves may not necessarily present a reliability issue requiring an interview.
- Any case is suitable for PTWI. Though usually considered for serious cases, there may be occasions when they will be appropriate in less serious cases, particularly if the issues are complex. This is a judgement call which you will need to make, depending on the circumstances of the case, but remember a referral simply brings case to the attention of the Area expert; it does not automatically result in a meeting taking place. It is important that interviews are considered in all cases which could benefit from an interview being held.
- Rape and serious sexual offences attract most interviews. While an interview is by no means automatic in such cases and should only be held where there is a good reason to do so you must always indicate on the MG3 for a rape or serious sexual offence that you have considered the issue together with your recommendation.
- In all cases in which an interview is being considered, care should be taken not to present witnesses who are already likely to be vulnerable and intimidated etc. with what could be seen as another hurdle to get through prior to trial, unless the interview is likely to assist the pre charge decision or prosecution.

Where you consider that an interview is necessary, you should endorse the MG3 with the witness's details together with your reasons for deciding that an interview is required and ensure that the relevant CMS monitoring box is marked. Alert the Area administrative staff to this when sending the MG3 to the CPSD Area mail box. A copy must also be sent to the CPSD Manager with responsibility for monitoring usage.

Once in Area, the case will be referred to the Area Coordinator who will then make the final decision.

Where possible, the interviews should be carried out before charge. Suspects should be bailed pending this assessment, unless it is a threshold test case.

## **UNUSED MATERIAL**

The CPIA did not replace the Common Law Duty of Disclosure, which requires Prosecutors to act in the interests of justice and with fairness in the particular circumstances of the case. In appropriate cases, disclosure of material should be made after the commencement of proceedings but before the duty arises under the Act.

When applying the Threshold Test case Prosecutors should consider disclosure where the following apply:

- Where the material is likely to affect a bail application
- Material to assist in an application to stay proceedings as an abuse of process.
- Material which would assist the Defendants arguments at committal. ( sect 51 hearing)
- Material to help the Defendant to prepare for trial where early disclosure is likely to assist in this.

When applying the full Code Test Prosecutors should, so far as is possible, anticipate Disclosure issues under CPIA, although it is unlikely that the Disclosure forms will be available. Prosecutors should ask the Police to identify unused material, in particular identifying material which undermines the prosecution case or is likely to assist the Defence.

## **INSTRUCTIONS TO COURT PROSECUTOR**

Additional instructions should be placed here. Specifically for Associate Prosecutors, unless already covered under the points above, these instructions should include bail – to enable an Associate Prosecutor to conduct a case where a remand application for an adult is to be made, instructions have to be endorsed on the MG3. This will apply even if the Full Code Test is to be applied. The instructions should be:

- i) Whether a bail application should be opposed
- ii) The relevant objections to bail
- iii) The grounds relevant to each objection
- iv) What conditions of bail would be acceptable.
- v) Whether in the case of bail being granted an appeal should be considered

The CPS Direct MG3 also provides a drop down menu to indicate whether or not oral notice of a bail **appeal** is considered appropriate in the event of bail being granted, and space to make comments on this issue (note: you should not say that an appeal is 'authorised' as this is a matter for the Area as the following note explains). The Bail (Amendment) Act 1993 applies to any offence punishable with imprisonment where the prosecutor has opposed bail. The right of appeal under BAA should only be used in cases of grave concern where there are substantial grounds under Bail Act 1976 which would allow the Court to refuse bail. The Prosecutor considering whether an appeal is appropriate should apply an overarching test of whether there is a serious risk of harm to any member of the public or any other significant risk of harm to any member of the public or any other significant public interest ground. Areas have their own procedures for authorising the continuance of an appeal once oral notification has been given in court – the CPSD instruction should only deal with giving an indication as to whether the oral notification is given in court – thereafter it becomes a matter for the Area to deal with the appropriate authority.

Many courts now go to trial listing at the first hearing. Wherever possible this section should also contain instructions to the Court prosecutor as to which witnesses should be called to give live evidence, which should be agreed S9 and who tendered. There may also be evidence which can be agreed by S10 admission eg the nature of drugs. It should also contain instructions as to any applications to be made eg to admit hearsay evidence or where special measures will be required. There is no requirement to give instructions where the Threshold Test has been authorised and there are clearly many more police enquiries to be completed.

Instructions should also be given in this section in respect of any applications for ancillary orders which should be made following on from conviction and in the event of an acquittal whether the Court should be invited to consider a Restraining Order under S12 Domestic Violence Crime and Victims Act 2004.

## **DECISION**

For each suspect listed at the beginning of the document, there will be a separate decision area to record your decision for each suspect in turn. A drop down menu will allow you to record the basic category of your decision (see guidance below on the correct use of MG3 CMS codes). Having made your selection, always use the TAB key to move away from this area so that the MG3 form can then set up the remaining fields for completion (e.g. where you have selected no prosecution – evidential or public interest, the box below will be set up with the appropriate NFA codes. Where you have selected conditional caution, the drop down box will have P22 shown and the boxes lower down will be set up to record things relevant to a conditional caution).

If the advice is to bail for an evidential report, a return bail date should be agreed and entered in the appropriate box. Where the decision is to **charge**, it is very important that the charge be specified in as much detail as is necessary to remove all possibility of misunderstanding or misinterpretation. For example, the police have been known to put the wrong charge where the instructions were not sufficiently clear

- An instruction to charge 'harassment' resulted in the officer putting a s.5 POA charge instead of a charge under the Protection from Harassment Act
- An instruction to charge 'burglary' resulted in the officer putting a charge of s.9(1)(a) burglary with intent, rather than the s.9(1)(b) charge that the Prosecutor intended

You should therefore:

- Specify the correct CCCJS code for the proposed offence (by reference to PNLD or the CPSD list of PNLD codes. There should be no gaps between the letters and numbers of the code eg CJ88116 is correct, CJ 88116 is not.
- Specify the nature of the charge with sufficient wording and, if necessary, the section and subsection of the Act
  - In harassment cases, specify the acts alleged to amount to harassment, preferably setting out the wording to be used in that section of the charge
  - In deception cases, specify the nature of the deception, again preferably setting out the wording to be used
  - In dangerous driving cases, specify the roads
  - For aggravated vehicle taking, specify the aggravating feature
- Specify the date of the offence in the On/From box. If the offence runs between dates then specify the end date in the 'To' box.
- If there is an identified Victim specify the surname here and again use TAB. A further series of boxes will then allow you to enter more detail including whether the victim is vulnerable, intimidated and/or an eye witness in the case.

### MG3 CMS codes

Guidance on the correct use of the codes has been issued; however, there is common confusion between codes A and B, where charging advice is given, and codes H and J, where further enquiries are required. The following is regarded as the correct interpretation:

**Codes A and B:** Some confusion is caused here by the guidance itself, which does not specifically deal with Full Code Test expedited file cases (para 7.2(ii)). However, one major purpose of the code is to indicate to the police what kind of file will be required for the **first** hearing. The golden rule is therefore:

- Use code A only for those cases where you have applied the Full Code Test on an **evidential report** and the case is to be contested or is destined for the Crown Court.
- Use code B in every case where you have advised on an **expedited report**. This is not only custody threshold cases, but also paragraph 7.2(ii), admitted, suitable for summary sentencing, mandatory consultation. In custody threshold cases, this remains true even if a not guilty plea is expected, as a full file upgrade will be requested by local CPS for subsequent hearings (NB this does not prevent you from specifying further work to be done in the investigation).

**Codes H and J:** the golden rule is whether you consider the Threshold Test to be passed or not.

- Use code H where the Threshold Test is **passed** but further work is required to complete the evidential file before a charging decision can be made.
- Use code J where the Threshold Test is **not passed** but further enquiries may enable a charge to be brought.

### Further Action Agreed

It should not be considered sufficient simply to ask for a 'full file'. Specific steps should be indicated in this section (e.g. witness statements required, identification procedures, forensic enquiries), prioritised and with individual action dates. Further action should always be set out in this section and not simply incorporated into the discussion of evidential criteria, where they are likely to be missed by the officer (and CPS staff).

If the advice is to bail for an evidential report, a return bail date should be agreed, if possible, and entered in the appropriate box, and a charging review/action date set in advance of that. This assists Areas to set reminder dates within Compass. Where the threshold test has been applied for charging in a custody case, a charging review/action date should be set for the full code test review.

In immigration cases (see [Immigration](#) section, para.23 below) remember to include service of the form IM3 (notice in relation to deportation) as an action point.

In addition to setting individual action dates, you should also set an overall action plan date.

### **DPP Consent**

Four options are provided in a drop down menu:

- Not Required
- No decision
- Not given
- Given.

Where DPP consent has been granted by you in making your charging decision, you should complete a DPP Consent form and attach this along with the MG3 to the email going to the Area and CPS Direct Advices mailbox. Also send copies of these to the Lead Shift Manager.

### **3.6 Victim's Code of Practice**

The Victim's Code of Practice imposes obligations upon the CPS and the police to notify victims of certain decisions. The one that will affect our work is the obligation to notify the victim of a decision to take no further action. The obligation will be upon the police officer to do this. The police officer also has a responsibility to notify a victim where a suspect is charged. Our MG3 contains a reminder to the officer.

When the officer contacts the victim to explain a decision to take no further action, the nature of the explanation given will inevitably be founded upon the contents of the MG3, and the reasons you have recorded there for deciding that there should be no further action. You should bear this in mind when completing the MG3, particularly in the level of detail provided to explain your decision.

You will also need to note specifically if there are comments there that should remain confidential and not be recounted to the victim in any explanation given by the police.

### **3.7 General**

CPS Direct are subject to the Casework Quality Assurance Scheme. A quality assurance questionnaire is posted on the shared drive. All MG3s will be measured against this standard.

Use the spell-check function before completing and sending an MG3 but proof read as well. The spelling check will not pick up properly spelt words that do not make sense in the context. Uncorrected errors detract from the professionalism of the advice.

Avoid the use of acronyms and abbreviations. They are not universally understood. Use of the auto-correct features in Word will allow you to substitute full words for common abbreviations and can be tailored to your own preferences (*In Word, go to the **Tools** menu and select **Autocorrect** where you will see the options to replace any abbreviation or common misspelling with your chosen text*).

## **4. Call Handling Practice**

### **4.1 Dealing with calls – general**

After completing a call, the Solidus system will place you at the end of a queue of all Prosecutors who are not on a call at that time. Calls will first be routed to Prosecutors who are higher in that queue and this may allow time for your administrative tasks on the previous call to be performed. However, you cannot guarantee having any time before the next call, so if you have administrative work to do in relation to the call you are about to finish, you should use the Solidus system to make yourself 'Not Ready' for calls until you have finished the necessary work. The best time to do this to ensure no immediate follow-on call, is before you end your current call.

At the end of an incoming call you will automatically be prompted to enter a call qualification code via your computer screen. You will not receive another call until you have entered this code. However, you should not delay entering the code simply to avoid the next call. If you need further time to complete any tasks, then you still have the opportunity at that stage to make yourself 'Not Ready' before entering the call qualification code. Once all administrative tasks have been completed, make yourself 'Ready' for the next call.

The basic rule for entering 'Not Ready' reasons is that you should enter the 'Wrap Up' reason for any time needed at the end of the consultation, and the 'Casework' reason for any time needed during the consultation.

### **4.2 Dealing with the average call – maintaining contact**

When contact with an officer is broken it can often be time-consuming to re-establish contact and sometimes may not be possible at all. For this reason it is regarded as good practice to maintain contact in the average call until a decision has been made and verbally communicated to the officer.

- Unless it is absolutely impossible, maintain contact with the officer throughout the advice process, including
  - when the officer goes to the fax machine to send evidence (fax transmissions will frequently fail and further contact will be needed to ensure that all documents are received successfully).
  - considering the statements and other material you receive (some dialogue about the evidence is likely to be needed).
  - any time you need to look up the law.
- Make your decision and communicate it to the officer before completing the call.
- We have to be sensitive to the fact that the officer's time is being taken up by the consultation process, so mitigate this by
  - Keeping the officer informed of what is happening at your end.
  - Keeping the officer engaged in the process.

- Giving the officer the opportunity to put the phone on 'hands-free' or 'speaker' so that the officer can get on with other things and will hear if you call.
  - Suggesting, as an alternative, that the officer return to the phone at an agreed time.
  - General conversation and some humour! A little rapport can go a long way.
- Once your decision has been verbally communicated, contact may be broken at that stage, but keep in mind that the CPS Direct target is to deliver the written MG3 within 15 minutes of the call ending. When you are ready to break the call, inform the officer that if he has not received the MG3 within 15 minutes, he should fax you on the number you have given him. Alternatively he can ring in again and any Prosecutor should be able either to transfer the call back to you, or to access your advice in the CPSPDirect Advices mailbox. Use the Solidus desktop system to make yourself 'Not Ready' (selecting the 'Wrap Up' option when prompted for a reason) in order to complete and send the MG3.
  - Some Prosecutors may choose to maintain contact until the MG3 has been completed and delivered. This is acceptable provided the officer is willing to keep the line open for this reason (the officer does not have to wait on the phone, but can be told to return at an agreed time). Where this option is chosen there will be no need, at the end of the call, for any 'Wrap Up' period. Enter the call qualification when prompted to do so and you will then be ready to receive the next call.

#### **4.3 Dealing with longer calls – breaking contact**

It may be necessary to treat larger cases, which are likely to last an hour or more, differently. In these cases it may well be appropriate to break contact with the officer for substantial reading or research. In order to do this you will need to seek the permission of the Lead Shift Manager to make yourself 'Not Ready' on the Solidus system in order to complete the consultation without having to field other calls in between. The Lead Shift Manager will need to know some basic details about the case in order to assess whether this is appropriate (the Manager has to consider the needs of the shift generally in addition to the particular case). You are likely to be asked what type of case it is, what the issues are, and how many pages of evidence (as opposed to other material, e.g. convictions) you have to consider. For these reasons it is not generally appropriate to seek casework time until you have at least received the faxed papers (in practice the unreliability of fax transmissions means that it is generally desirable to maintain contact during transmission in any event).

Usually a Manager's permission can be obtained by email, by putting the officer on hold and using Solidus to make an intervening call to the Manager, or by using the Solidus messaging facility to get an urgent 'Help' message to the Manager, so it should not be necessary to break contact with the officer in order to get permission. If the Lead Shift Manager is not free, another Manager is likely to be available. Copy all shift Managers into any email. In exceptional circumstances it may not be possible to consult and you will have to make an executive decision to go 'Not Ready' for the casework reason. Always inform the Manager that you have done so in such circumstances.

Once you have permission:

- Make sure you have a contact number for the officer, (a mobile number is useful in such cases as it usually makes contact easier and leaves the officer free to work)
- You may then break contact in order to work on the case.
- On the Solidus desktop make yourself 'Not Ready' for calls, selecting the 'Casework' option when prompted for a reason.
- Clarification and discussion can be dealt with by one or more shorter calls back to the officer (outgoing calls should still be made through the Solidus system and these can be made even though you may be marked 'Not Ready' at that time).
- Keep the Manager informed of your progress on the case, especially if it is taking longer than you expected. It is good practice to give the Manager a quick update by email every half hour. The Manager is likely to make the enquiry in the absence of such updates.
- Once the completed MG3 has been provided to the officer, let the Lead Shift Manager know that you are ready for further calls. If there are aspects of the case or your decision that you feel the Manager will need to know, it would be a good idea to call the Manager before making yourself 'Ready' on in order to have this discussion.
- Once the Manager has been informed, use the Solidus desktop to make yourself 'Ready' for the next call.

#### **4.4 Seeking a second opinion or other casework assistance**

One or more managers will generally be 'logged off' during the shift, i.e. not taking calls from the police.

The lead manager's introductory email to the shift will have an attachment listing the types of case that need to be referred to a manager. The types of case are apt to vary over time, so always read the distribution document with care and consult where appropriate.

Outside of these categories, you may feel that you need a second opinion on a case you are dealing with. One of the functions of the manager, and the reason he or she will be logged off, is to be available for discussions of this type. If you need a second opinion, you can put the officer on hold in order to make a new outgoing call to a Manager through Solidus. The officer should not be left on hold for a long time. If you feel that a longer discussion is needed, break contact with the officer (make sure you get a contact number first) and then contact the manager through the Solidus system. It would be advisable to send an email (or Solidus 'Help' message) to the manager(s) first to make sure that a manager is available and ready to discuss the case with you (although the Solidus call making facility will show you whether the Manager is engaged on a call or not, the Manager may well be involved in other tasks). It is also helpful to the manager if you indicate whether the police e mailed MG3 is in the CPSD In Box and at what time so that the manager can familiarise him or herself with the case before the discussion

Occasionally it is appropriate to contact colleagues on shift generally for casework queries. You may need specific legal information, such as a recent decided case or change in the law. However, it is not appropriate to seek email opinions (a 'straw poll') on sufficiency of evidence or the correct charge for your particular case. These are matters where detailed discussion will be necessary and a manager should be involved. If you do wish to contact colleagues for this purpose, use email. Do not use the Solidus messaging or 'Help' facility, which is not secure and should not be used for casework discussion of any kind.

#### **4.5 Return Calls from officers where a colleague has previously advised**

Occasionally, when a Duty Prosecutor has provided advice and an action plan, an officer may call back to seek a new decision on the basis of further information or evidence. If the original Duty Prosecutor is still on shift, it will generally be preferable for that person to deal with the case again. However, it is quite possible that the original Duty Prosecutor will be tied up on another call and not available for some time.

The best practice for dealing with a return call of this nature is first to check that the Duty Prosecutor is still on shift (the distribution list or the rota can be consulted for this, or the Solidus call making facility will show who is still logged on the system at that time). **Do not break contact with the officer yet.**

If the original Prosecutor is free, use the Solidus call transfer facility to call the Prosecutor and put the officer through to him or her. If he or she is not free, then use the Solidus messaging facility to send a message to that Prosecutor to see if he/she will available to take the call fairly soon.

If the Prosecutor is not free, **or you do not receive a response within a few minutes**, then, unless the original MG3 is not clear or the case is unusually complex, it is better that you deal with the case afresh rather than send the officer away for what might be an unreasonable wait. You may provide a new MG3 or an edited version of the original. If you decide to edit the original, do so in such a way that there is a clear audit trail of both decisions and of the further evidence/information provided.

When posting the MG3 to the CPSD Advices box and to the Area, include the words 'AMENDED ADVICE', or similar, in the body of the email so that all parties are aware. Additionally, send a copy of the MG3 to the original Prosecutor for information, and to the Lead Shift Manager (who may wish to take up any liaison issues with the police force concerned).

#### **4.6 What to do when you have no working fax machine**

Where a Duty Prosecutor is without a working fax they should log onto their shift as normal letting the Lead Shift Manager know of the problem.

When receiving a call additional screening questions should be asked to ascertain the complexity of the case and whether or not the officer is able to send scanned documents. Where scanning is not available and the case is simple e.g. Domestic S39 assault or theft from a store then the Prosecutor should ask the officer to read the statements and other documents to him/her.

In cases of some complexity, e.g. where there are several descriptions to be compared, the Prosecutor should explain the position to the officer and then make arrangements to transfer the call to another available Prosecutor. Use the Solidus messaging facility to send a message to Prosecutors who are 'Ready' and not on a call (there are filters that can be used to select only these). Once you have an available Prosecutor who is willing to take the call, use the Solidus call transfer facility to put the officer through to him or her.

The Prosecutor should make every effort to make as many calls effective as possible but it remains at the discretion of the Lead Shift Manager to allow the Prosecutor log off early where there is sufficient cover.

## **5. What happens when all Prosecutors are engaged on a call?**

When all prosecutors are engaged on a call, further calls will queue within the Solidus system. Eventually officers will be offered the option to have a callback. The officer will enter a direct dial phone number and put the phone down. Whether the officer chooses to wait or opts for the callback, his or her place in the queue will be preserved. When you make yourself 'Ready' for the next call in these circumstances, the call of the longest waiting officer will be put through.

The Solidus 'Service Group Statistics' display, if you have it opened on your screen, will indicate how long the officer has been in the queue. It would be courteous, when taking the call, to apologise to the officer for the wait.

When the queued call is one where the officer has requested a callback, you will not get an immediate call, but will instead see a message on your screen inviting you to make the callback by dialling the officer's number. You simply need to click on the 'dial' option on screen to do this (refer to the latest Solidus User's Guide for more information). Your phone will ring first; pick it up and you will then hear an outgoing call being made to the officer's number. You will not know the name of the officer who has requested the callback and there is also the possibility that a different officer will answer the telephone. Give your name and explain that you are a CPS Direct Prosecutor making a callback to an officer who has left this number (the Solidus display will help you to say approximately how long ago the callback request was made). Hopefully it will be the correct officer or one who has received a message and knows how to get the correct officer back to the phone. When you have the correct officer, again it would be courteous to apologise for the wait.

There may be occasions when the correct officer for the callback cannot be established. There will be no alternative in these circumstances but to apologise to the answering officer and ask him/her, if the identity of the original caller is discovered, to get the original caller to call in again. Hopefully such occasions will be rare once the police are used to the callback system.

## 6. Protocols for particular types of case

### 6.1 Rape and Sexual Assault

CPS Direct is to be seen as an **emergency service only** for offences of rape and serious sexual offences involving adults or children.

Cases of rape and serious sexual assault should be dealt with by a CPS Direct Rape Charging Lawyer. Provided the police use the Solidus system correctly, the calls should automatically be routed to a rape specialist, but it is still possible that the other categories above will be routed to a non-rape specialist at first. However, **all Duty Prosecutors can undertake initial screening** to ascertain whether a case can be dealt with and a charging decision given by a CPS Direct Rape Charging Lawyer or alternatively whether the case should be dealt with by an Area Rape Specialist. If the case passes the threshold test and a charging decision is required, the call needs to be referred to a CPS Direct Rape Charging Lawyer to deal with.

In all cases, the first consideration should be what evidential test falls to be applied to the evidence. As an emergency service, CPS Direct Rape Charging Lawyers should only be making charging decisions in those cases where (a) the suspect represents a **significant bail risk**, (b) there is **key evidence outstanding**, and (3) it is appropriate to apply the **threshold test**.

Core Quality Standard 4: We will oppose bail for defendants where appropriate taking particular account of the risk posed to victims and the public. Prosecutors need to be proactive to make sure that every effort is made to protect vulnerable victims or witnesses. In a DV case, prosecutors must ask whether a risk assessment has been done. Enquiries should also be made about whether there has been referral to a MARAC (multi-agency risk assessment conference). In some cases there may be input from those in the Force who specialise in the management of potentially dangerous persons (PDPs) and sexual and violent offenders under MAPPA. S25 Criminal Justice and Public Order Act 1994 – bail can only be granted in ‘exceptional circumstances’ to defendants charged with rape/attempted rape, if they have previous convictions for rape, attempted rape, murder, attempted murder or manslaughter. Bail appeals need to be dealt with in all cases.

Any case where the **full code test** falls to be applied should be referred back to the Area Rape Specialist to deal with.

Any case where the Rape Charging Lawyer is thinking of authorising charge/authorising a caution/ or considering taking no further action **MUST** be referred to the Shift Manager to discuss the appropriateness of departing from CPSD Rape Policy.

A decision to take no further action can only be taken with the involvement of the Shift Manager. The normal course of action will be for such cases to be bailed to Area. However, there may be exceptional cases which fall to be dealt with during the course of the shift. The Shift Manager will decide whether the case is exceptional and will then nominate a second Rape Charging Lawyer to consider the evidence. If the second Rape Charging Lawyer agrees that the case should be NFA'd, the Shift Manager will need to be involved before the MG3 is released to the police. A full explanation for departing from normal CPS Direct Rape Policy should be included in the MG3.

All MG3s **MUST** include an action referring the case back to the Area Rape Specialist within three working days.

## **PTWI needs to be addressed in all cases.**

Whether the automated MG3 is used or the MG3 is generated on CMS, cases must be correctly flagged. 'Identified Victim' is to be flagged in all cases. 'Vul/int Victim' is to be flagged in all cases. 'PTWI' is to be flagged if PTWI is likely to be appropriate.

Comprehensive guidance on rape and sexual assault cases can be found on KIM. In particular DPs should open and use the CPSD rape aide-memoire (which contains links to the CPS Rape Manual) and refer to all relevant issues from the Advice/ Review Checklist. In particular, issues of consent/capacity and evidential/conclusive presumptions must be dealt with. The recommendation is that this should be set out in terms of strengths and weaknesses.

On completion of a rape advice, in addition to sending a copy to the CPSDirect Advices mailbox, a copy will need to be sent to the CPSDirect Rape Advices mailbox so that the Rape Coordinator can easily track and review them.

## **6.2 False allegations of rape/PCOJ**

This relates to any case where the police are seeking a charge of perverting the course of justice following a retraction in a rape case, as well as any allegation of rape in which consideration is given to prosecution the complainant for perverting the course of justice. These cases MUST be drawn to the attention of the Shift Manager before making the decision. Once completed, the MG3 needs to be forwarded to the Shift Manager for inclusion in the Shift Report and for the Shift Manager to forward to the PLA.

Prosecutors must be aware of **Gateway SPD/LG/22/2011 Publication of final Legal Guidance on Perverting the Course of Justice – charging in cases involving rape and/or domestic violence**.

Prosecutors must refer to the Director's Principal Legal Advisor all cases in which perverting the course of justice, or an alternative offence such as wasting police time, is being considered following retraction of a rape allegation. To ensure a consistent approach to these sensitive offences, the PLA will oversee charging decisions and provide advice where appropriate. Referrals to the PLA must be through Heads of Complex Casework Units or Chief Crown Prosecutors and comprise the following: (1) a synopsis of the evidence prepared by the reviewing lawyer, including an outline of the relevant legal considerations to the facts of the case; (2) a copy of the MG3 and (3) endorsement of the proposed course of action from the CCU Head or CCP through whom the referral to the PLA is being made. This guidance applies to all cases referred to the CPS by the police including those which are not thought to pass the full code test (before any decision to charge or take no further action is communicated to the police).

**It is anticipated that relatively few cases of this nature will come to CPS Direct, principally because the suspect will tend to be bailable. As with cases of rape and serious sexual assaults, we should only be charging if the suspect represents a significant bail risk. It is anticipated therefore that these cases will be bailed to Area.**

### 6.3 Rape Settings on Solidus

The Solidus settings work as follows:

'4' is the setting for all DPs being mentored

'3' is the standard setting for all DPs

'2' is the setting DPs are reduced to if they have hit their target (see below)

'1' is the setting used by the managers and those DPs who have made charging decisions in 12 rape cases

DPs have a target to complete 6 rape MG3s per year (this does not include sexual assault/child abuse – only rape). To assist them achieve this target the settings are re-set to '3' twice a year (on the 1<sup>st</sup> April and 1<sup>st</sup> October). The Performance Team monitor the numbers of MG3s each DP has done from the rape spreadsheet, changing the Solidus settings as and when required. If DPs forget to send their advices to the rape mailbox, their MG3s will not appear on the spreadsheet and will therefore not be counted.

### 6.4 Media Interest Cases

For any case considered likely to attract media interest the media interest box on the MG3 must be ticked. On the electronic call log, use the tick box provided to indicate a media interest case.

Additionally, notify the Lead Shift Manager of the case attaching a copy of the MG3. The Shift Manager will then send a copy to the media contact for the area in question.

**As a matter of good practice, a media interest should be noted whenever a Murder charge is authorised.**

### 6.5 Fatal Road Traffic Cases

In any fatal road traffic case where a Prosecutor proposes not to charge Causing Death by Dangerous Driving **must** be referred to a Manager **before** the advice is finalised.

The new offences of causing death by careless/inconsiderate driving, and causing death by unlicensed, uninsured or disqualified drivers are now in force. The policy for the time being is that the Chief Crown Prosecutor for the Area concerned should approve both the charging decision and the Mode of trial representations.

CPS Direct is not in a position to delay a charging decision purely for this purpose, so for cases falling to be dealt with out of hours, the following policy is to be applied:

Prior to making decision the Duty Prosecutor should consult the Lead Shift Manager. The Lead Shift Manager should consult either the CPS Direct Unit Head or CCP.

The MG3 action plan should include a requirement that Area refer the case to their CCP immediately.

The action plan should also contain a request for an Accident Investigator's Report which is always required and unlikely to be available at the charging stage.

It is anticipated that there will be relatively few cases of this nature that come to CPS Direct, principally because such borderline cases are more likely to require a full accident investigator's report and by their nature are less likely to require a decision out of hours.

Whatever decision is made, you must forward a copy of any MG3 involving a fatal road traffic case to the Lead Shift Manager for inclusion in the Shift Report (as for any case involving death).

## **6.6 London Serious Casework Cases**

Where there has been involvement of the London Serious Casework Sector in a case, but the final charging decision falls to CPSD, a protocol exists ; briefly, this protocol states:

Sector Lawyers should take all reasonable steps to retain responsibility for the charging decision in their cases.

Where this is not possible, the sector lawyer should provide the police with a written report (in Word for later attachment to the MG3) confirming the up to date position and the advice so far given. The MG3 (including the sector lawyer's update) will be emailed to CPS Direct. The officer will give details of the sector lawyer's name.

## **6.7 Cases requiring HQ notification**

We are required to notify HQ of 2 types of cases:

- All charges where the offence will be under the Explosive Substances Act which must be referred to Counter Terrorism Division even where it is not believed that the offence is linked to terrorism
- Cases involving the transmission of sexually acquired infection

If you have one of these cases on shift, please notify the Lead Shift Manager, with a copy of the MG3 – the Lead Shift Manager will deal with the notification.

## **6.8 'Area Sensitive' Cases generally**

If you take a call involving an 'Area Sensitive' case, you should *always* contact a Manager for advice as to how to handle it. An 'Area Sensitive' case is one that would clearly present handling difficulties if prosecuted within the Area concerned. This may include, for example:

- Cases involving police officers. CPS general guidance is that CCPs, CPS London Sector Directors and the Head of division in the Special Crime Division have personal accountability in connection with allegations of any criminal matter against persons serving with the police and are directly responsible for the delegation of the handling of such cases. Therefore if a case involving any person serving with the police whether or not a full police officer comes to CPSD where the suspect is bailable he should be bailed for local consideration of the case in accordance with this guidance. Where it is proposed to detain the suspect after charge the matter should be discussed with a manager and the decision emailed to the appropriate responsible person in area by the manager.

- Cases involving any other prominent members of the local CJS (Magistrates, Judges etc)

This list is not exhaustive. Use your own judgement on whether the case is likely to cause an issue for the Area. If in any doubt, always contact a Manager.

## 6.9 Cases involving CPS Personnel as victim or suspect

These cases are obviously sensitive and no-one would want to assist in the case becoming common knowledge within the victim's office in what must be a difficult time for a victim or a potentially prejudicial time for an unconvicted suspect. The following procedure should therefore be adopted:

- The completed MG3 advice can be sent to the Police and to the CPS Direct advices mailbox as usual
- The MG3 will **not** be sent to the Area mailbox- the Duty Prosecutor completing the advice will instead send it to the Lead Shift Manager
- The Lead Shift Manager will mention the existence of the case in the shift report but without mentioning names given what can sometimes be a wider circulation of the report
- The Lead Shift Manager will send the completed MG3 to the ABM for the Area concerned.

## 7. Post-call procedure

1. Save the file on computer under a new name (*go to **File – Save as***) preferably by reference to the date, suspect name, station, Area (eg 27-5-09 Bloggs Weetwood West Yorks).
2. Email the completed MG3 to the officer or print and fax it if this is not possible. **Note** that some Prosecutors will have the facility to send a fax via email. To do so, start a new email. In the address line type the officer's fax number (including STD code, no spaces) followed by: @fax.pnn.police.uk  
Add the MG3 as an attachment (you will need to give the document a file name first and save it – see point 2 below). In the subject heading of the email type the suspect's name, station and force. Then **Send** the email. You will receive an email reply in due course confirming that the fax has been delivered. By clicking on **File – Save as** you can save this delivery receipt along with the MG3.
3. Use the SEND facility on the CPSD MG3 (structured MG3) to generate an email with the document and an 'XML' file attached. Address this email to the relevant Area CPSD mailbox and the CPSDirect Advices mailbox (both addresses in the same email; you can also copy in the officer at this stage if not already done). The subject line of the email will include automatically generated material by the SEND function which must remain but you should add other data to show date, suspect name, station and Area (eg 27-5-09 Bloggs Weetwood West Yorks). **Note** that each London station has its own CPS mailbox (e.g. Battersea MG3s should be posted to Battersea Charging). A list of the London mailboxes can be found on the shared drive. Rape advices must also be sent to the CPSD Rape Advices box and advices

for conditional cautions to the CPSD Conditional Caution box in addition to the normal boxes.

4. Every care must be taken not to send an email to an insecure address. E mails sending MG3s may only be sent to an email address which is a gsi, pnn or CJSM address. Where the MG3 is to be sent by e fax the address is @fax.pnn.police.uk

### **7.1 Where to send advices for London Homicides and Serious Casework:**

- **Attempted Murders:**  
If the case has been investigated by the Specialist Crime Directorate then it should be sent to the 'CCC Charging' mailbox. In all other cases the advice should simply go to the local CC.
- **Homicides:**  
These should all be sent to the 'CCC Charging' mailbox.
- **Serious Casework Sector (SCS) Cases:**  
Where the officer tells you that there has already been involvement in the case from the SCS - these should be sent to the 'SCS Charging' mailbox.

If it is a homicide AND an SCS case - it goes to 'CCC Charging' AND 'SCS Charging'.

### **7.2 Where to send advices for BTP cases:**

- All advices on BTP cases in the **Metropolitan and City of London police Force Areas** go to the "**BTP-London Charging**" mailbox that you will find on the global address list.
- All advices on BTP cases **originating outside London** should go to the **local CPS Area** eg call on BTP case from Manchester goes to CPS Greater Manchester.

**Of course, all BTP advices should still be copied to the officers seeking advice and to the CPSDirect Advices mailbox.**

To ensure that Areas outside London are able to recognise BTP cases and distinguish them from purely local ones, it is essential to use a BTP URN. This will begin with the BTP force identifier of **93**. In the event that a BTP officer is unable to provide a URN (perhaps because of computer access problems), please ensure that you include at least the force identifier in the first part of the URN box on the MG3. See section 3.1 for further details on BTP URNs.

## **(B) Applying the Director's Guidance**

### **8. Managing Calls: "Our Bedside Manner"**

The DG provides that where a suspect is suitable for bail and the offence will be denied or is destined for Crown Court we should make a charging decision based upon an evidential report. In other cases an expedited report will suffice.

Expedited reports should include: MG3, MG11s, SDN or ROTI and phoenix print. Once the charging decision has been made, the pre charge expedited report becomes the post charge expedited file for court, which is then expected to contain the case summary, dates to avoid, MG6 and a number of other documents.

Evidential reports should include the MG3, MG5 case summary, MG6 case file information, MG11s (key statements), exhibits list, SDN/ROTI, crime report and incident log, unused material that might undermine the prosecution case, key documentary exhibits and phoenix print.

In the past some Prosecutors have insisted on very strict application of these requirements, for example turning officers away if there is no exhibits list or ROTI or a statement from a purely peripheral witness.

While having the letter of the law on its side, this approach risks alienating the very police officers with whom we should be working in partnership. It also has the potential to place an undue burden on Area colleagues.

The correct approach is to insist on what is necessary to make the decision, leaving pure formalities to be dealt with to an agreed timescale. The element of trust in the CPSD/police relationship is key to the successful delivery of out of hours charging advice. We should:

- Speak with callers pleasantly and courteously, even if not reciprocated;
- fully discuss cases with officers and make it clear that their experience and knowledge of the case are useful to us;
- not insist unnecessarily upon absolute compliance with file preparation standards when all that is missing is a non-essential statement or administrative document;
- Wherever it is possible to rectify any minor deficiencies quickly, deal effectively with the call there and then.

#### **8.1 Emailed MG3s and scanned evidence– turning officers away**

Emailed MG3s is an area where being too ready to turn officers away can have a disproportionate impact on the officer seeking a decision as well as impacting unfairly on our own colleagues.

Where the officer comes from a Force that has agreed to compulsory emailing of the MG3 but that officer has either failed to complete an MG3 at all, or has done so by hand rather than electronically, then it is right in most cases that the officer should be turned away until an electronic MG3 has been prepared (and preferably emailed in advance of the return call). But even here some flexibility is desirable. The officer may, for example, have PACE clock issues and may already have prepared a full electronic MG5 summary of the case. A DP might, in those circumstances, agree to complete the MG3 because the most substantial part can be copied and pasted from the MG5.

In all other cases it would not be reasonable to turn the officer away, in particular:

- Where the officer has prepared the MG3 but not yet emailed. For the time it takes to send and receive the email the DP can wait on the phone. Any email delays might be overcome by using the several email addresses available to the DP. If this does not resolve the matter, the DP can ask the officer to copy and paste the outline into the body of an email and send this instead. Sometimes this will circumvent the delay because there is no longer an attachment to the email.
- Where there are email delays that cannot be overcome by the use of alternative email addresses or methods above, this is something out of the officer's control. The DP should prepare the MG3 rather than turn the officer away.
- Where the MG3 has been emailed but not in Word form, the officer should be asked to send it again in Word form. Often the officer will understand the problem and be able to do as asked. Sometimes further guidance might be needed (tell the officer to open the file, go to file – save as – in the dialogue box look in the 'Save as type' drop down menu to find the option of saving as a 'Word' document, then re-send the 'Word' file as an attachment). There will be times when the officer is unable to resolve it, either due to the system or to his/her own lack of knowledge. Even in a compulsory area it is not appropriate to turn the officer away until it can be resolved. In a daytime charging situation this might be reasonable, but at the hours we operate the officer is unlikely to have any technical support or colleague to call upon. Again, the bottom line is that we should prepare an MG3 from scratch if all else fails – getting the officer to copy and paste the outline into an email might help.
- In Areas that have not agreed to compulsory email, an inability or failure to email will never be a reason to turn the officer away.

Many areas now have access to scanners which will enable the officer to send all or the majority of evidence electronically. Where officers have access then they should be encouraged to use that means. Some areas have made the use of scanners compulsory. Where you take a call from one of the compulsory areas then the guidelines referred to above apply.

A list at the end of this guide tells you which areas have access to scanners and which make use of them compulsory

## **9. Assessing Eligibility for Advice**

It is important to establish as early as possible in the call whether the officer's case is one eligible for CPS Direct advice. This includes calls taken and callbacks made. It is a waste of your time and the officer's time to get deeply into a call only to find that the officer should have been politely refused advice from the outset.

### **9.1 The starting point**

1. The Custody Officer (or suitable supervisor/evidential review officer if such arrangements are in place) must first determine that the Threshold Test is passed (the test is set out in para 3.10). This requirement is set out in para 1 of the guidance, reiterated in para 3.1, and further underlined by para 8.4: *Where, in any case, it appears that there is manifestly no evidence and the Threshold Test is not met in respect of a*

*detained person, the Custody Officer need not refer the case to a Crown Prosecutor before releasing that person, whether on bail or otherwise.*

2. Note that where the officer is from the British Transport Police the Custody Officer must still determine whether or not the Threshold test is passed however there is no requirement for the officer to take the case to a gatekeeper or ERO operating in the host force. The officer may have immediate access to a duty prosecutor
  
3. However, many officers are not familiar with the concept of the Threshold Test. To ensure that the officer is aware of what he is being asked on this point, plain English and flexibility will be required. Useful ways of clarifying the question might be: *Have you discussed the evidence with the Custody Officer? Is the Custody officer satisfied that there is a reasonable suspicion, sufficient for a charge to be considered in this case? Or, is the Custody Officer happy that there is enough evidence to consider a charge in this case?*
  
4. There should be an indication from the Custody Officer of whether or not it is appropriate for the suspect to be released on bail after charge. Para 4.1 makes it clear that this remains a decision exclusively for the Custody Officer (though they may seek advice about it), so it is not enough to have all the material that the CO would use to make his decision or to know what the officer intends to ask the CO to do. But note that the Prosecutor must agree that an application to withhold bail can properly be made at court before the Threshold Test can be used for a charging decision.

It is vital to know the Custody Officer's view on bail in order to assess what material the police should provide before a charging decision can be made and to determine which evidential test should be applied by the Duty Prosecutor.

## **9.2 Who determines the charge?**

Where the Threshold Test is met, the Duty Prosecutor should decide the charge in:

1. All indictable only cases
2. All mandatory cases (whether contested or not) listed in Annex A to the Guidance (NB domestic violence has been added to the list by the second edition of the Guidance).
3. Any either way offence (whether contested or not) that appears unsuitable for sentencing in the Magistrate's Court.
4. Any contested either way offence.
5. Any contested summary offence excluded from police charging under para 3.3 (NB Driving whilst disqualified has been added to these exclusions by the second edition where there has been no admission in a PACE interview to both the driving and the disqualification).

The police may determine the charge in:

1. Any either way or summary offence where it appears to the Custody Officer that a guilty plea is likely and that the case is suitable for sentencing in the Magistrates' Court, subject to the exceptions in Annex A (transitional arrangements, para 3.2(iii))
2. Cases covered by para 3.3 (whether contested or not) i.e. RTOs (subject to exceptions), and minor summary offences carrying 3 months or less (NB this includes vehicle

interference but does not include criminal damage under £5,000 which remains an either way offence triable only summarily)

### **9.3 The Director's Guidance sets out 3 types of report requirements:**

1. Crown Court and contested cases suitable for bail – evidential report (para 7.2(i)), Full Code Test applies.
2. All other cases where bail is appropriate – expedited report (para 7(2)(ii)), Full Code Test applies.
3. All cases where Custody Officer has determined that a remand in custody should be sought and the Prosecutor agrees that an application to withhold bail can properly be made at court – expedited report (para 7(3)), Threshold Test applies.

The file requirements are set out in the Director's Guidance but reference to the Manual of Guidance is also useful. See the list at the end of this document for further assistance.

### **9.4 Early Consultation**

The Guidance allows for early consultation in any case. However, early consultation with CPS Direct requires that the case is considered by the Custody Officer who must be satisfied that the need for advice is immediate and that delay may prejudice the investigation.

### **9.5 Suggested screening questions:**

1. Is the suspect in custody?
2. What offence is being considered?
3. Is the offence denied?
4. Does the custody officer (or gatekeeper) think there is enough evidence to justify a charge?
5. Does the custody officer intend to bail or detain after charge?

These 5 questions are enough to elicit:

- a) whether CPS Direct should be involved,
  - b) whether charging advice is required under the Director's Guidance,
  - c) which evidential test is to be applied, and
  - d) what evidence/material should be provided in order to make the decision.
4. Where appropriate, do you have an evidential report? (Or an expedited report, MG7 etc, as the case may be, referring to the lists in Appendix 2). *More probing ways to elicit this might be:*
- Does the officer have all key witness statements and a written record of interview?
  - Are there any other enquiries still to be made?

- *Are there any witness statements still to be obtained?*
- *Are there witnesses still to be seen on either side? (Bearing in mind need to assess undermining material)*
- *Have any potential witnesses been named in statements or in interview who have not yet been seen?*

See the [flowchart](#) and [lists](#) at the end of this document for further assistance.

**Note** that the purpose of screening questions is to identify eligible cases early in the call in order to avoid wasted time on **both** sides. It will not save the officer's time if he is sent away unnecessarily or without full information. Try to assist and guide the officer through the screening process. Some shortcomings can be remedied without breaking the call, e.g. the Custody Officer may be close by and able to confirm his views on the Threshold Test and bail. Where an officer has to be sent away, take the time to ask **all** questions and inform him of **all** requirements, so that any return call will be an effective one.

Even if all requirements are satisfied, there will still be occasions when it is appropriate to refuse advice:

- Most police forces already have contact details for senior members of the local CPS and, where possible, they should still be contacted in exceptionally sensitive or serious cases.
- CPS Casework Directorate will continue to provide out of hours contact in terrorist cases. Alternative arrangements will also be made for extradition cases, so that these cases are not referred to CPS Direct.
- If the assessment of video evidence is crucial to the case, it will be appropriate to refer the case to local CPS unless a remand in custody is justifiably sought.

## **10. Paragraph 3.2(iii) Directors Guidance - transitional arrangements and police charging.**

To assist Custody Officers in determining whether a guilty plea is likely the following notes should be considered:-

1. The decision whether a guilty plea is likely is one for the Custody Officer, and is a matter of judgement based on the strength of the evidence and any knowledge of the suspect's inclination to plead guilty to the offence.
2. A full admission in interview will be the clearest indication of a likely guilty plea.
3. Where there is no interview, or no comment in interview, then the Custody Officer may look for some other indicator that the suspect will plead guilty.
4. These other indicators may include, but are not limited to:-
  - comments made by the suspect when arrested or whilst in custody
  - remarks made by the suspect's legal representative.
  - The fact that the entire incident is recorded on CCTV

5. Custody Officers making charging decisions under paragraph 5(iii) of the Director's Guidance must have regard to the Full Code Test in the Code for Crown Prosecutors (paragraph 13 Director's Guidance).
6. The Director's Guidance (Streamlined Process) now provides that, where there has been no comment in interview a custody officer is entitled to anticipate a guilty plea where there is good quality evidence (a police officer, reliable independent witness or CCTV) of the commission of the offence and identification of the offender.

## 11. Immigration Cases

A separate edition of the Director's Guidance has been issued in relation to Immigration cases.

The main differences and points to note are:

- A Custody Officer need not necessarily be involved in deciding whether the Threshold Test has been passed - para 1.1 indicates that the decision may be made by an Immigration Officer, or by a Custody Officer, or conceivably by both. We will need to amend our screening questions to suit this different arrangement.
- Every 'immigration case' must be referred to a Crown Prosecutor for charge without exception, whether admitted or denied.
- For all potential referrals to CPS Direct for out of hours advice, immigration investigators **must** refer the case to more experienced officers for consent to refer, a procedure that mirrors the effective gateway arrangements operated in some Constabularies.
- If you receive a call from a Customs Officer then that call should be referred to the CPS/RCPO lawyer
- A call from an UKBA officer asking for a charge under CEMA should also be referred to the CPS/RCPO lawyer
- Where a call is received from a police officer asking for a charge under CEMA then advice should be given even if the UKBA or a Customs Officer is also involved in the investigation. However you cannot finalise the advice without referring it to one of the managers on shift as only they have the authority to institute proceedings
- NB this only applies to offences under CEMA and not eg conspiracies to import prohibited items
- The first tier appeal is to the Chief Immigration Officer, who is of equivalent rank to a Police Inspector. The second tier of appeal is to an Immigration Inspector, who is the Immigration Service equivalent of a Police Superintendent. All Immigration Units will have an Inspector who will be on duty during out of hours time.
- A comprehensive guide to immigration offences and points to prove can be found in the Legal Guidance section of the intranet and guidance can also be found on the CPS Direct shared drive.
- Remember that Prosecutors should identify at the earliest opportunity cases in which deportation may be appropriate. The prospect of deportation may be a factor that a court should take into account when considering whether or not to grant bail. A Form IM3 (notification in relation to deportation) should be served upon appropriate persons by the police (or Immigration Officer) at least 7 days before any recommendation for deportation. You should always therefore explore the question of deportation with the referring officer and **include service of the IM3 in your action plan.**

## 12. Mixed Threshold and Full Code Test Cases

You will occasionally get multiple suspect cases where the custody officer seeks to remand some suspects but regards others as suitable for bail. The Director's Guidance does not specifically indicate how to deal with this situation. However, both the Director's Guidance, paragraph 3.9, and the Director's Explanatory Guidance, paragraph 8, make it clear that the Threshold Test can only be applied to a suspect 'where it is determined that it would not be appropriate for the person to be released on bail after charge' (see [paragraph 29.2](#) below for a full list of requirements for applying the Threshold Test).

If there are connected suspects who are suitable for bail, you will have to consider firstly whether it is possible to apply the Full Code Test to make a charging decision for them (this may be possible if there are no significant outstanding enquiries relating to these individuals). If this is not possible, then there will be no alternative but to bail. Although it may cause some problems for the police in having some suspects in a case on bail while others have been charged and are in custody, it is only a management problem and the police will have to apply the same priority and some increased resources to preparing the case against **all** to avoid unnecessary delay.

## 13. When should an MG3 be completed by the duty lawyer: "if in doubt, fill it out"

The simple rule of thumb is noted in the above subtitle; *if in doubt, fill it out*.

It would be counter-productive to complete an MG3 for the police on non-effective calls. However, balanced against this we have to be aware that Custody Officers have rightly been warned of the potentially serious consequences of charging without written authority where the case comes within the Director's Guidance. Where the case comes close to the borderline, the police are bound to err on the side of caution and ring CPS Direct for charging authority. Verbal accounts without seeing evidence or an MG3, though, are not acceptable. Any MG3 should accurately reflect the material actually seen. MG3s which have been e-mailed to us should be amended as appropriate.

The distinction you are urged to draw is essentially this: where the police are quite sure of the kind of case they have, but ring CPS Direct in ignorance of the Director's Guidance on the matter, you can legitimately inform the officer verbally of the Director's Guidance requirements and tell the officer that authorisation or advice is not required for this particular case. Where, on the other hand, the police are aware of the Director's Guidance but are not sure of their case, then you are effectively giving them legal advice and should do so in writing on an MG3.

As a rule of thumb, if you haven't established that it is a non-effective call within the first few screening questions, you should be producing an MG3.

For example, an officer says at the screening stage, 'He's been arrested for ABH but it's really a common assault'. If he then goes on to say that admissions have been made (and the case does not fall within any of the mandatory categories), he can properly be told, 'If you and the custody sergeant are both satisfied that it is a common assault and that you have a full admission, then you can go ahead and charge without formal advice'. On the other hand, if the officer presents the admitted case as a genuine ABH but, on hearing the facts, you feel satisfied that common assault is the appropriate level of charge, then you are providing legal advice and should do so by way of an MG3. It would not be right in this case to say, 'This is a common assault, so you don't need my advice'.

A second example: an officer says at the screening stage, 'I've got statements from two witnesses but there are another two I haven't been able to see yet'. If it is a bail case requiring an evidential report, the officer can properly be told to bail until the evidential report is complete. On the other hand, if the officer initially tells you that his enquiries are complete, but on getting into the facts it becomes clear to you that there are lines of enquiry that need to be pursued further, then you are providing legal advice on the case and should do so by way of an MG3.

Finally, in admitted cases, always be aware of the sentencing aspect. Custody officers are not well versed in sentencing practice and may be in genuine ignorance of whether summary sentencing is appropriate. If the police are looking to us for guidance on this, an MG3 should be produced and not simply verbal advice.

#### **14. Do you have an evidential report? Common issues**

The following remarks are intended to apply only to cases where bail is appropriate and an evidential report is required before a charging decision can be made.

##### **14.1 Interview record**

There should always be a written record of interview for an evidential report. The Director's Guidance allows a prosecutor the discretion to accept a verbal report of the interview for an expedited report, but appears not to allow this for the evidential report. The written record can be on an MG15 (SDN/ROTI/record of visually recorded interview (ROVI)), or, provided it includes detail at least equivalent to an SDN, a written summary may be accepted on the MG3 or an MG5, or MG11. The Duty Prosecutor however has discretion to call for a more detailed record of interview if this is needed to make a charging decision.

##### **14.2 Medical evidence**

Police will rarely have medical evidence available at the time of a CPS Direct consultation. The following guidelines are suggested:

- If the victim has not sought medical attention at the consultation stage, then in most cases it would be pointless to seek medical evidence.
- For visible bruising or grazing, even if medical attention has been sought by the victim, an officer's evidence or photographic confirmation should suffice.
- If the victim claims to have broken bones or other internal injury that only a doctor could confirm, then medical evidence should be sought before a charging decision, especially if this is likely to affect the level of charge.
- Some injuries may be so serious that medical confirmation is only a formality. These are likely to be cases where a remand and Threshold Test is appropriate, but if the suspect is regarded as suitable for bail, it may not be necessary to obtain medical evidence before charge.

In general, if there is reason to doubt the nature of the injury and this would make a difference to the level of charge, then bail for medical evidence to be obtained. In other cases, consider making a charging decision without it.

### 14.3 Forensic evidence

In many cases forensic evidence will be 'key' because it will be relevant to a contested issue in the case. However there will also be cases where forensic checks will only serve to confirm a matter already covered by reliable witnesses, or by reliable admissions in interview, to the extent that it is unlikely to be an issue in the case. Where this is so, charging advice need not await the result of forensic examination.

Where forensic evidence is key, the transmission evidence needed to complete the picture will rarely be key, unless there is some reason, from the available statements and other information, to believe that this has not been properly managed by the police and may give rise to problems at court.

There are guidelines on particular types of forensic evidence that are summarised below:

- Drugs  
Covered by Home Office Circulars 40/1998 and 10/2005  
Positive field tests acceptable for **morphine, heroin, amphetamine** and **cocaine** and experienced officer acceptable for **cannabis** where the following additional criteria apply:
  - Suspect admits possession and nature of substance (without field result being presented to him)
  - Suspect admits possession for personal use only
  - Small quantity consistent with personal use.

Under the Streamlined Process (see para 32 below) a field test is acceptable even for a full code test unless the issue of the identification of the drug has specifically been raised in interview or its nature is unknown. In such cases a field test is acceptable and instructions should be given to the Court Prosecutor listing a trial to seek a S10 admission as to the nature of the substance. This guidance applies to simple possession cases only

In all other Full Code Test cases forensic evidence is required (though not relevant to evidential report consideration, a positive field test, or officer's identification for cannabis, is always sufficient for a Threshold Test decision).

- DNA  
A suspect may be charged on the basis of a DNA intelligence match, derived from the scene of the crime, and a sample of DNA kept on the National Database providing there is some further supporting evidence (see below). Although a charge can be authorised, the police should be advised to take an evidential sample from the suspect and submit immediately for forensic comparison. A 'first stage abbreviated' statement should be requested from the forensic science service.

Note that for a **Full Code Test** the written match report should be available. In **threshold test** cases it will still be usual for the written report to be provided, but a verbal confirmation of the match can be accepted **provided** that the officer sets out clearly **on the MG3** the nature of the information that has been provided.

Originally in 1995 the technique used to obtain the DNA profile was a process called **SGM** (Second Generation Multiplex) and this recorded six sites on the DNA strand. In 1999 this process was enhanced and replaced by **SGM+**, which records 10 sites on the DNA strand and provides a far greater discrimination factor thus making it much more unique to the individual. Anything less than an SGM+ (profile) to SGM+ (crime stain) match should always be treated with extreme caution and in the absence of strong supporting evidence which overall provides a compelling case, should not be relied upon when making a charging decision. The same note of caution applies to partial profiles. An SGM sample type can be upgraded to SGM+ and so:

**Where the suspect is bailable** advice should be given to bail before charge in order for the sample to be upgraded.

**Where the Threshold Test falls to be applied** the Prosecutor will need to assess the strength of the supporting evidence when concluding whether or not the further evidence (SGM+) is likely to allow the case to meet the full code evidential test – ie that it will remain a positive match.

In any case where the sample is SGM only or pre-1996, the police will need to take a further evidential sample **while the suspect is still in custody**. Failure to do so may lead to there being insufficient proof of a match.

In relation to **supporting** evidence, paragraph 5.2 of the 'Guidance on DNA Charging' states:

"DNA profiling is not a fool proof science, particularly where very small or otherwise deficient crime samples are available for testing. In *R V Ronald Lashley* (2000) Unreported, the Court of Appeal quashed a conviction based solely on DNA evidence. In that case the defendant had been convicted of robbery on the basis of DNA evidence linking him to the scene of the robbery. The DNA profile would have matched the profile of 7 to 10 other males in the United Kingdom. There was no other evidence against the appellant who had given a no comment interview and declined to give evidence. The Court of Appeal held that the significance of the DNA evidence depended crucially upon what else is known about the suspect. Had there been other evidence (for example, evidence that he lived near the scene of the robbery or had been in the vicinity at the relevant time) then the case might have been compelling. As it was, the DNA evidence placed the appellant among a group of individuals, any one of whom might have been responsible for the offence."

In the light of the above, prosecutors must look for other evidence to support the DNA – does the suspect live in the same locality? Does he match the description of the offender if there is one? Does he have previous convictions for strikingly similar offences? Such evidence can render fanciful any suggestion that it could have been someone else.

- Fingerprints

Subject to the probative value of the location of the fingerprint at the crime scene, prosecutors can authorise charge on the basis of a match between the fingermarks recovered from the crime scene and the suspect's fingerprints held on the National Fingerprint Database. When an officer is notified of a fingerprint match, the suspect identified will be arrested and fingerprinted [under powers contained in section 61 PACE 1984] using live scan. The suspect's identity will be verified by comparing the prints taken on arrest with the prints held on the database. The verification will be entered on the custody record.

When authorising a charge on the basis of a match report, a request should be made in the action plan on the MG3 for a s.9 statement with the **proviso** that it need only be taken forward in the absence of a guilty plea at Court.

## 15. CCTV and Video Evidence

The overriding principle is that a Prosecutor should view CCTV evidence that shows an offence being committed or is the principle means by which the identity of the offender is established. However, it is recognised that, in a remote charging situation, it is not technically possible (with current facilities) to do this. Guidance has been issued that allows for charging without sight of video evidence but on the basis of an officer's written summary of that video evidence provided certain conditions are met:

- The summary must be a written account prepared by an officer who has seen the video
- The images must be of sufficient quality to clearly identify the suspect (where identity is in issue)
- Where practicable, the video should have been shown to the suspect in interview and any response recorded.

The guidance goes on to say that the Prosecutor must make a judgement on whether it is appropriate to rely on that summary for making a charging decision taking into account:

- Whether the video along with witnesses or other evidence provides a continuous account of the alleged offence
- Whether the video is consistent with the other evidence
- Whether the suspect has put forward a defence that requires an interpretation of the video evidence, and
- Whether the suspect has put forward as a defence actions that are not referred to in the written summary.

A written summary can and should be accepted unless a Prosecutor concludes that a charging decision cannot properly be made without viewing the material. Where a remand is justifiably sought then there is no alternative but to charge on the basis of the written summary, but it is permissible to apply the threshold test in such circumstances.

In any case (bail or custody) where a charging decision has been made the prosecutor should note on the MG3 that the video has not been viewed and include an action for an Area Prosecutor to view the video evidence as soon as possible and assess it against the written summary provided, to determine whether it is appropriate to proceed on the basis of the original decision.

In bail cases it may not be appropriate to make a charging decision without sight of the video in certain types of case. For public order disturbances in the street it can be difficult to assess the correct level of charge or the extent of an individual's involvement based on a written description. A viewing of the video is likely to be more appropriate here.

Note also that the guidance specifically does not apply to evidence obtained from witnesses during an ABE video recorded interview. Particularly in cases of rape or serious sexual assault where bail is appropriate and where the evidence of the victim (child or adult) has been recorded on video, it is preferable to bail to allow a local Rape Specialist to assess the strength of the evidence.

## **16 Is the Threshold Test passed (in custody cases)? – Common issues**

### **16.1 What is the Threshold Test?**

The application of the Threshold Test allows a suspect to be charged with an offence even though the evidential file is not complete. The Threshold Test may only be applied where the prosecutor is satisfied that all the following four conditions are met:

a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and

b) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and

c) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and

d) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case an application to withhold bail may properly be made.

The Threshold Test should only be applied where further evidence can be anticipated. Para 3.9 says: Where the information specified in para 7.2 (an Evidential Report) is available at the time that the initial Report to Crown Prosecutor is made, the Full Code Test will be applied. Therefore, if no other significant evidence is anticipated, the Full Code Test should be applied even in a custody case (but see the remarks in [para 30](#) below about possible lines of enquiry for domestic violence in particular).

## 16.2 When can the Threshold Test be applied for charging?

The Director's Explanatory Guidance on the application of the Threshold Test says:

To make it perfectly clear, prosecutors should, wherever possible, always seek to apply the Full Code Test when considering the charging of a case. The Threshold Test is **not** an interim stage to be reached in every case. It is a temporary test *which may only be applied* when:

- The available evidence establishes at least reasonable suspicion that the suspect has committed the offence under consideration, but
- The evidence to allow consideration of the Full Code Test is not yet available, and
- Steps are being or are about to be taken to obtain that evidence and there is a likelihood of it becoming available in a reasonable time.
- The evidence will have a significant impact on the case (there must in practice be a likelihood that the evidence will be sufficient for the case to meet the Full Code Test).
- The Custody Officer has decided it would be appropriate to detain the suspect in custody after charge until the next court hearing, and
- An application to withhold bail *can properly be made at court* by a prosecutor.
- The seriousness of the offence under consideration warrants it

When presented with a potential remand case therefore, the first question to consider is whether there is a reasonable expectation of further significant evidence being obtained. If there is no such expectation, then the Full Code Test must be applied to the case. Three options would then follow (Explanatory Guidance para. 10):

a) Charge

b) NFA

c) Bail (with or without conditions), if you feel that there is some merit in speculative enquiries before a final decision is made (or for example in a rape case where the second opinion of a rape specialist must be sought before a decision to NFA).

If there is scope to apply the Threshold Test because further significant evidence can be anticipated, then consider whether an application to oppose bail can properly be made at court. The Director's Explanatory Guidance makes clear that an MG7 should be provided to enable you to consider this. An MG7 should therefore be insisted upon in all such cases but **note**: in the usual expectation that we will try to ensure each call is effective it should not be a reason to turn away a caller because no MG7 has been completed – in almost every case there ought to be ample time whilst the evidence is being reviewed for the officer to complete an MG7 and have the Custody Sergeant confirm that the contents effectively set out his reasons for determining that bail should be withheld after charge.

In the same way that a Prosecutor would not make a decision to apply to withhold bail at Court without having read the file, a final decision as to whether such an application could be sustained should not be made until the available evidence (and MG7) has been received and considered. If you conclude that an application to withhold bail could not be sustained, the Explanatory Guidance also says that the Prosecutor must discuss this with the Custody Officer before reaching a final decision.

If this remains your decision and the case does not meet the Full Code Test, the suspect may not be charged though the Custody Officer may still release the suspect on pre-charge bail (including the imposition of conditions) under section 37 when further evidence is to be gathered to meet the Full Code Test to allow a later referral for a charging decision

Only if you agree that bail can be properly opposed can you then authorise charge on the basis of the Threshold Test (and fix a review date for the Full Code Test). If you decide that bail cannot properly be opposed then you must apply the Full Code Test.

The Director's Explanatory Guidance, when setting out the Prosecutor's approach says that a Prosecutor 'must assess whether an application to withhold bail can **properly be made** at court'. The Guidance also phrases this approach as a question of whether an application to withhold bail can be **sustained** at court. Elsewhere the Guidance says that 'no reasonable Prosecutor on discovering the police proposals for the prisoner post charge could properly close his mind to how the case will in fact be handled by the CPS after charge'.

Note that in the above phrases there is no reference to how the court is likely to decide. In deciding whether a remand can be 'properly made' or 'sustained' at court, the likely decision of the court is a factor but not the only factor to be considered. The case may be so serious that the protection of the public may make an application 'proper' even though the specific objections might be regarded as tenuous in other circumstances. At the other end of the scale a relatively minor offence, if committed while on bail for a similar offence, might make an application 'sustainable' even if you think the court is likely to give the accused a second chance. Public protection and public confidence can, in some circumstances, make it proper for the Prosecution to take a certain stand and put the final decision in the hands of the court.

Your reasoning for applying the Threshold Test or not, as the case may be, must be fully set out in the advice section of the MG3. A suggested way of setting this out is:

*The intention is to hold the suspect in custody and a charging decision applying the Threshold Test has been requested. The grounds for this are (state reasons). In these circumstances an application to withhold bail at Court could be sustained and accordingly I have applied the Threshold Test to the case*

Or

*I am not satisfied that an application to withhold bail at Court could be sustained in this case. The reasons for this are (state reasons). I have therefore applied the Full Code Test to the case.*

It should be remembered that bail remains the exclusive domain of the Custody Officer, whilst the domain of the Prosecutor is the charging decision, including which test to apply when making that decision. The lack of a CPS charging authority will inevitably restrict the Custody Officer's options regarding how long a suspect may be detained, but it is important that Prosecutors maintain that distinction and do not suggest that they are **overruling** the Custody Officer in relation to bail.

Where the Full Code Test is applied to a custody case but there is no prospect of bail being withheld at Court, this will not affect the making of the charging decision. However the Explanatory Guidance states:

“No reasonable Prosecutor on discovering the police proposals for the prisoner post charge could properly close his mind to how the case will in fact be handled by the CPS after charge.”

Therefore in these circumstances you should make **observation** that you have been advised that it is intended to hold the suspect in custody for Court, but that in your view there are no prospects of an application to withhold bail being granted, giving reasons. Then proceed to advise and authorise charge as appropriate.

### 16.3 Drugs

Full forensic confirmation is sometimes available through fast-track arrangements, but not always. A positive field test should be available for **morphine, heroin, amphetamine** and **cocaine** or an experienced officer for **cannabis**. However, it is not unknown for the police to offer reasons why this is not available at the threshold stage:

1. It is not practicable to arrange in the time left available on the custody time clock (this may be due to failure to arrange fast-track analysis, lack of a testing kit, lack of qualified officer, or time of night), or
2. Testing would compromise or endanger other forensic tests, such as ninhydrin testing for fingerprints or comparison of wraps, unless the process was left to a forensic scientist.

Faced with this situation, bear in mind that the Home Office guidance suggests that if there is no approved testing kit, the police will need to obtain a fast-track laboratory analysis. They may otherwise lay themselves open to claims of wrongful detention if a remand is based upon the results from a non-Home Office approved kit which are found to be unreliable. If this warning is appropriate for a non-approved testing kit, how much more should it apply to charging without any type of test being made? The same warning about claims of wrongful detention or remand must apply equally to the CPS if we authorise the charge.

At the stage of consultation, there may no longer be time to conduct tests, but this does not mean we should forego requirements that could have been accommodated had the case been properly managed from the outset.

Under the Streamlined Process (see para 32 below) a field test is acceptable even for a full code test unless the issue of the identification of the drug has specifically been raised in interview or its nature is unknown. In such cases a field test is acceptable and instructions should be given to the Court Prosecutor listing a trial to seek a S10 admission as to the nature of the substance.

## 17. Domestic Violence – Lines of Enquiry

In all cases involving domestic violence the CPSD domestic violence MG3 or insert template should be used to set out the charging decision. This contains important prompts about appropriate lines of enquiry and other evidential issues to be considered in all such cases. In addition, the National Centre for Policing Excellence, Centrex, published *Guidance on Investigating Domestic Violence* in 2004. This booklet contains a checklist of lines of enquiry set out below. Section 4 of the booklet should be read for further details.

The booklet says that ‘officers should follow these potential lines of enquiry’:

- History of the relationship
- Previous violent incidents including those with prior partners, e.g. records of previous calls to the police
- Incidents of sexual violence not previously disclosed
- Incidents that have been witnessed by children
- Incidents witnessed by other family members, friends, colleagues
- House-to-house enquiries
- Incidents that have occurred outside the home or in public
- Previous threats made to the victim, children, family members or friends
- Child contact agreements or disputes
- Civil injunctions
- Medical information that may constitute evidence
- Evidence of social isolation (this might, for example, include lack of contact between the victim and their family, friends, neighbours or schools, officers might also ascertain whether medical appointments have not been made, kept or if the suspect has accompanied the victim to medical appointments)
- Evidence held by other agencies such as housing services, social services, education, probation and medical professionals
- Evidence held from any data source on previous victims.

Historical disclosures: the booklet also adds ‘at any point during the enquiry a historical disclosure of serious violence might be made. This should be accurately recorded and brought to the attention of a senior officer for consideration for either a separate investigation or for supporting the current prosecution.

## 18. Conditional Cautions

The procedure for Conditional Cautioning for ADULT offenders is covered by the [Director's Guidance on Conditional Cautioning 6<sup>th</sup> Edition](#) which came into effect on 26<sup>th</sup> January 2010 and revised the previous provisions.

This guidance also provided for the imposition of financial penalties for adults to be imposed in 5 Pilot Areas in England they are:

Cambridgeshire  
Humberside  
Hampshire  
Merseyside  
Norfolk.

The financial penalty bands are outlined below in Annexe B below- full guidance is available on the SD in the CC folder.

The following is a guide to CPS Direct procedure in such matters.

### The Referral to CPS Direct

It is expected that all these cases will be short. Each case will be relatively minor and straightforward the suspect has to be 18 or over in the case of an Adult CC and it is crucial that their has been victim consultation regarding the proposed disposal.

The essence of the decision will be a public interest one in deciding whether to prosecute or authorise a conditional caution. The case should be dealt with entirely on a verbal report from the police officer, and the advice will be given in a brief MG3. It will be assumed that if an officer has called then the BCU has been authorised to impose conditional cautions – it will not be for CPS Direct lawyers to make individual geographical checks.

The police will suggest appropriate conditions – CPS Direct lawyers will not be expected to have knowledge of diversion schemes available in different parts of the country although details of these are kept in area folders in the CC folder on the SD.

### The Material

- The police are only required to submit an MG5 to the CPS to obtain a conditional cautioning decision.
- Contact will be made by telephone
- **The police can provide the information above orally** to the prosecutor over the telephone – this is the expected method with CPS Direct. The police will then be required subsequently to submit the papers to the local CPS for reconciliation within 72 hours: this requirement will be reinforced by a standard action on the MG3
- CPSD prosecutors must ensure the Prosecutors Word Authority is included in the body of the MG3 (see template wording for Youths and Adults on SD)
- The Police are NOT required to provide an MG3

### The Decision

The responsibility of the Crown Prosecutor is to provide a decision on an MG3

To reach that decision the following will need to be considered:

Police officers and Crown Prosecutors should work together adopting a problem solving approach to ensure that a Conditional Caution is considered wherever it is permitted and appropriate.

### **Factors which will determine if a Conditional Caution should be offered**

- a. The offence is one specified in **Annex A**, and **(Note Hate Crime still excluded which includes DV and restrictions on offences where fines can be imposed- see Annex A)**
- b. During interview, the offender has admitted the offence or made no comment or no interview has taken place, and
- c. The Police consider that instead of charging the offence, a Conditional Caution with suitable conditions may provide reparation to the victim or community; be effective in modifying offending behaviour; or provide an appropriate penalty, in which case

**the offender should not be charged.** The case should be referred to a Crown Prosecutor who will determine whether a Conditional Caution is appropriate or whether the offender should be charged.

If the decision cannot be made immediately then the police have the power to bail the suspect – this should normally be for no more than **72 hours**.

#### The Conditions:

Initially the police should propose appropriate conditions  
Annex B sets out a guide to conditions and levels of compensation for personal injury as well as the scale of fines for the Pilot Areas for punitive penalties both Youth and Adult. Unpaid reparative work in the local community should not exceed 20 hours. Financial penalties may be imposed alone or with other conditions but if the aim of the CC is rehabilitative that conditions should be the priority.  
Generally conditions should not last longer than 16 weeks from the date of the offence.

#### Enforcement

Constable can arrest for failure to comply: custody officer ascertains whether reasonable excuse (formal investigation not required:– can either release offender to comply with conditions or refer to Crown Prosecutor:

Prosecutor will decide to leave the caution to run, extend, or vary conditions, or prosecute for original offence. If the police are unable to provide sufficient information concerning compliance then the suspect can be bailed for further enquiries. If the police are unable to provide sufficient information regarding the original offending then the suspect can be bailed so that the referral papers can be reviewed:

#### CPS Direct Procedure

The preferred method of communication will be for the police to provide us with an oral report – if there is written material available the prosecutor can ask for it to be emailed or faxed, although the expectation is that this will be in exceptional cases only.

An emailed MG5/14 can be incorporated into the MG3.

The decision should be recorded on an MG3 and then sent to the officer and Area as usual – the CPS Direct copy will be sent to the usual advice box, ensuring that the word “caution” appears in the subject heading. **In addition to the usual mailboxes**, the advice should also be sent to the special conditional cautions mailbox that has been set up: CPSDirect Advices CC@cps.gsi.gov.uk

## Youths

The **Directors Guidance on Youth Conditional Cautions 1<sup>st</sup> Edition** came into effect on 26<sup>th</sup> January 2010. This also provides for the imposition of Youth Conditional Cautions in the 5 pilot areas outlined above.

### **Factors which will determine if a youth should be referred for a Youth Conditional Caution**

- 3.3 Where the Custody Officer is considering whether to charge a youth and establishes that:
- d. the youth is aged 16 or 17<sup>1</sup>, and
  - e. the offence is one specified in **Annex A**, and
  - f. during interview, the youth has admitted the offence or made no comment or no interview has taken place, and
  - g. the youth has no previous convictions, and
  - h. a reprimand and/or warning has previously been administered or is not considered appropriate due to the circumstances of the case,

**the youth may not be charged.** The case should be referred to a Crown Prosecutor who will determine whether a Youth Conditional Caution is appropriate or whether the youth should be charged. Where the Crown Prosecutor considers the youth may be suitable for a Youth Conditional Caution, the police will refer the youth to the YOT for assessment.

The role of the YOT is pivotal in the decision whether to impose a Youth Conditional Caution and the procedure outlined in the guidance and available on the SD should be followed.

When considering a financial penalty for a Youth the following should be borne in mind:

#### **Offering a financial penalty condition**

A financial penalty can only be imposed in accordance with the scales set out in **Annex B** to this Guidance **but only for those offences contained in an Order made under section 66C of the Act**. These are the offences set out in **Annex A (but excluding those marked \*)**. Ordinarily, the standard penalty should be offered. Where however, the Crown Prosecutor is satisfied that there is substantial mitigation for the commission of the offence or the youth is in receipt of state benefit (such as income support or job seeker's allowance) as their main or only source of income, the mitigated penalty in the table in **Annex B** may be imposed instead. Where the means of the youth indicate that it may not be possible to include reparative conditions and a financial penalty, the reparative conditions should take priority

## ANNEX A: OFFENCES THAT MAY BE CONDITIONALLY CAUTIONED

The following specific offences may be considered for diversion by way of a Conditional Caution:

### SUMMARY ONLY OFFENCES

Any **summary only offence**, including:

- Common assault (level 5)
- Assaulting a police officer (level 5)
- Section 4 and 4A Public Order Act 1986 (level 5)
- Unlawful taking of a motor vehicle (level 5)
- Interference with vehicles (level 4)
- Section 5 Public Order Act 1986 (level 3)
- Obstructing a police officer (level 3)
- Drunk and disorderly (level 3)
- Simple drunk (level 1)
- Loitering or soliciting for the purposes of prostitution (level 2 or level 3 if previous conviction)\*

**but excluding** any offence under the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 excepting the forgery of documents offence listed below.

### EITHER WAY OFFENCES AND ATTEMPTS TO COMMIT THESE OFFENCES

The following offences **triable either way** specified in the **Theft Act 1968**:

- Theft
- Removal of articles from places open to the public
- Abstracting electricity
- False accounting
- Handling stolen goods
- Going equipped for stealing etc

The following offence **triable either way** specified in the **Theft Act 1978**:

- Making off without payment

The following offences **triable either way** specified in the **Fraud Act 2006**

- Making a false representation
- Failing to disclose information
- Fraud by abuse of position
- Possession of articles for use in frauds
- Making or supply articles for use in frauds
- Obtaining services dishonestly

The following offences **triable either way** specified in the **Criminal Damage Act 1971**

- Destroying or damaging property
- Threats to destroy or damage property
- Possessing anything with intent to destroy or damage property

The following offence **triable either way** specified in the **Misuse of Drugs Act 1971\***

Possession of any class of drug (consistent with personal use)

The following offence triable either way specified in the **Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988** ←

Forgery of documents (including offences involving use of driving licence and insurance with intent to deceive)

The following offence triable either way specified in the **Vehicle Excise and Registration Act 1994 -**

Forgery and Fraud (including fraudulent use of excise licence)

**NOTE: Indictable only offences and Hate Crimes** All indictable only offences or those classified as hate crime, including any racially or religiously aggravated offence, any offences involving homophobic or transphobic aggravation, disability hate crime and domestic violence are excluded from consideration and may not be conditionally cautioned.

**NOTE 2: No financial penalty condition** may be imposed for loitering or soliciting for the purposes of prostitution, possession of any class of drug or an offence under the Road Traffic Act or Road Traffic Offenders Act 1998 (except ← )

## ANNEX B: GUIDANCE FOR THE SELECTION OF APPROPRIATE CONDITIONS

REPARATIVE	REHABILITATIVE	PUNITIVE
<p><b>To make good the loss sustained by the victim or community and to repair relationships:</b> e.g.</p> <ul style="list-style-type: none"> <li>to pay compensation, or to make payment to an appropriate local charitable or community fund</li> <li>to personally repair or make good the damage</li> <li>to undertake unpaid work not exceeding 20 hours</li> <li>to write a letter of apology</li> <li>to participate in restorative justice mediation</li> </ul>	<p><b>To stop or modify offending behaviour, or help reintegrate the offender into society:</b> e.g.</p> <ul style="list-style-type: none"> <li>not to commit further offences for a defined period of time</li> <li>to attend a referral programme specifically related to the nature of the offending behaviour</li> </ul>	<p><b>To punish where there are no other appropriate conditions or those conditions do not provide an appropriate and proportionate response to offending behaviour, specifically:</b></p> <ul style="list-style-type: none"> <li>to pay a financial penalty</li> </ul>
<p>A restrictive condition may be included with any of the above where to do so would assist in the achievement of one of the above objectives provided it is appropriate and proportionate to the offending behaviour and subsists for a reasonable period of time, e.g. not to approach a named victim, or specified property, or geographical location or specified event.</p>		

### FINANCIAL PENALTY CONDITIONS BANDING [Only applicable in the pilot Areas]

Penalty Band	Standard Penalty	Mitigated Penalty	Offence Scales
<b>A</b>	<b>50</b>	<b>40</b>	<b>Summary only Level 1 - 3</b>
<b>B</b>	<b>100</b>	<b>50</b>	<b>S5 Public Order Act and Summary only Level 4</b>
<b>C</b>	<b>150</b>	<b>100</b>	<b>Summary only Level 5, &amp; either way offences, including criminal damage</b>

The Standard Penalty scale will apply unless the Crown Prosecutor is satisfied that there is substantial mitigation or the offender is in receipt of state benefit as his main or only source of income

### COMPENSATION FOR PERSONAL INJURIES

Type of injury	Description	Award
Graze	Depending on size	Up to £75
Bruise	Depending on size	Up to £100
Black eye		Up to £125
Minor cut - no permanent scar	Depending on size and whether stitched	£100 to £200
Sprain	Depending on loss of mobility	£100 to £200

## 19. Director's Guidance Streamlined Process

The purpose of this Guidance is to reduce the taking of statements in guilty plea cases, and to achieve a proportionate file build to allow the case to proceed properly at the first hearing in the Magistrates' Court. It is **not** intended that this Guidance should override the evidential and expedited report requirements set out in the Director's Guidance for pre-charge decision making. It **is** intended instead to specify the contents of the file that the police will be required to produce for the first hearing in the Magistrates' Court and what Advance Information they will be expected to prepare for the defence.

The Streamlined Process Guidance emphasises that file preparation should be proportionate to the needs of each case, and that investigators and Duty Prosecutors will ordinarily make investigative and charging decisions on the information provided by the MG3 and **key evidence**, together with any unused material which exists that may undermine the prosecution or assist the defence. The Duty Prosecutor should not insist on a trial ready file at the pre-charge decision stage.

**Key evidence** is defined as evidence which either alone (*e.g. the evidence of one witness*) or taken together with other evidence (*e.g. a number of witness each of whom provide some key evidence and any key exhibits*) establishes every element of the offence to be proved and that the person charged committed the offence with the necessary criminal intent.

**Key witnesses** are defined as those which provide the key (witness) evidence in a case.

It is stressed that where numerous witnesses provide **differing** evidence of the same events, then statements should be taken from all. There is an element of potential conflict with The Director's Guidance on Charging – however our reliance should remain on the Charging Guidance, with recognition that proportionality will always be a factor that the Prosecutor will consider. As an extreme example, if an assault occurs on a football field we would not expect the police to take statements from every spectator. As a more usual example of an assault case, where the suspect maintains self-defence and two out of three witness statements have already been taken which suggest that the suspect was the aggressor that **may** be sufficient to apply the Full Code Test and charge, but otherwise if the two witnesses were family members of the complainant and the third witness is wholly independent. A judgement has to be made dependent on the issues in each case.

Whilst it is not intended that the DGSP should override the Director's Guidance on charging, it nevertheless deals, at Annex C, with some specific types of evidence, again with prime reference to what should be provided for the first hearing in the Magistrates' Court:

- **Identification:** Where not admitted, evidence to prove identity is 'key', but if identification procedures are required then full reasons justifying this must be noted on the MG3.
- **Fingerprints and Scientific Evidence:** DNA match report and supporting evidence will suffice for a charging decision and First Hearing File. Similarly a fingerprint report, together with details of location and position, and of any other prints found.
- **Drugs:** It will be sufficient to charge a possession only offence where a controlled substance is identified through a field test kit – scientific evidence will only be obtained where the analysis is challenged: this mirrors the current piloting in London of

'Evidential Drug Identification Testing' and removes the requirement for forensic examination of drugs pre-charge (the Guidance appears to refer to all drugs offences, but it has been confirmed that the intention is simple possession cases only).

- Medical Evidence: No doctor's statement will be required for common assault, and will only be required for ABH where the suspect does not accept the nature of the injury and it can only be proved by interpretation of X rays etc.
- Visually recorded evidence: should be shown to suspect in interview – if suspect admits the offence and his part as shown in the recording, no further copy will be made unless the prosecutor deems it essential for the sentencing of the case.

## **20. Post Charge Authorisation**

The Emergency Charging Arrangements are covered by Paragraph 3.12 of the Director's Guidance, the key points of which are as follows:

- The Police must intend an application for a remand in custody;
- It proves impossible to consult with a Crown Prosecutor before the expiry of a PACE time limit;
- The Custody Officer may proceed to charge, but only with an Inspector's authority;
- The Duty Inspector must indicate that authority by noting both the custody record and MG3;
- Thereafter, the case must be referred to a Crown Prosecutor as soon as practicable for authority to proceed.

### **20.1 How to deal with an 'Emergency' Situation.**

There is no hard and fast rule on what constitutes an emergency. CPS Direct has in the past suffered some significant breakdowns in service, but they have not effectively lasted more than 2 hours. Unless a detainee is right up against the custody clock, it is unlikely that a 2 hour delay would be sufficient to invoke the emergency charging arrangements.

Something approaching a 4 hour delay would start to look more like an emergency, principally on the basis that if we have not restored our service within 4 hours, then it is probably serious and the Police should proceed to charge.

The more usual type of 'emergency' encountered on shift is that the police are running out of time on the PACE clock due to difficulties in the investigation. If enquiries are on-going, an extension of custody on a Superintendent's authority may be granted (but note this cannot be granted for the consultation process alone). Even if there has been an extension however, the police will often find themselves with insufficient time to complete the consultation process.

Officers should make all reasonable efforts to secure charging authority in accordance with the Director's Guidance *but* ultimately it is their decision (with an Inspector's authority) to charge under the emergency provision.

Where an officer calls before expiry of the PACE clock but with limited time remaining, the Prosecutor will need to make an assessment of whether there will be sufficient time to complete the consultation. If the assessment is that there will be insufficient time, the officer should be alerted to this at the earliest stage so that the Duty Inspector can be informed. However, it is not necessary in such circumstances to break the call. A consultation will have to take place at some stage and the earlier the better. Therefore, even if the PACE clock is due to expire, the Prosecutor should continue to receive and consider the MG3 and evidence in the normal way. If it is possible to give written authority within the PACE clock, then do so. If it is possible to give verbal authority within the PACE clock, it is permissible to do this and follow it up with the completed MG3 as soon as possible (provided the police confirm that the charge was put before expiry of the PACE clock).

Dealing with the case in this manner will, at the very least, allow for some guidance to be given or for the Duty Inspector to consult before authorising the emergency charge, and be more likely to make the right decision as a result. It also has the advantage that post charge authorisation can be given very quickly and without the need for a second call. But caution must be exercised not to give authorisation unless the police confirm that a charge was put before the PACE clock expired.

Where post charge authorisation is sought, the key is to note on the MG3 the officer's reasons as to why the emergency provision was invoked and to refer the MG3 to a Lead Shift Manager once completed. It will be then for the Lead Shift Manager to decide whether the Police decision to use the emergency arrangements was such that the matter should be referred to the liaison D for that Area to take up at a local level.

What the Prosecutor should not do is commence the completion of an MG3 where a suspect's PACE clock has expired, as clearly we would then be complicit in the unlawful detention.

Also, if the time has expired and the suspect would be bailed after charge and the police have no MG3 authorising charge, then the emergency provisions would not apply and the suspect should, in those circumstances be reported for summons.

It is important that the correct position is explained to the police in order to avoid the situation of a dangerous offender being released unnecessarily.

## **20.2 Post charge authorisation; the test to apply**

Any such case should be a custody case and therefore, unless the case already meets the Full Code Test, the Threshold Test will apply. If the Threshold Test has been passed, then the MG3 should be noted accordingly and the case handled in the usual way. However, if the Threshold Test is not passed then the Prosecutor must take immediate steps to discontinue. The bottom line is that cases that should not have resulted in charge must be identified quickly and terminated.

In these particular circumstances, in accordance with section 23(4) of the Prosecution of Offences Act 1985, the proceedings come to an end with effect from the giving of the notice to the accused.

Therefore once the notice has been given the police have no authority to detain the accused. This has implications for any appeal procedure, as we would not be in a position to deal with an appeal once the notice has been issued. This point should therefore be explained to the officer **prior** to issuing the notice of discontinuance, in order to enable an appeal to be considered if this is the intention.

In the general course of events a section 23 discontinuance notice should be prepared using forms available on the Intranet, and thereafter;

- Emailed to the CPS Area together with the initiating MG3, with explanatory comments in the body of the email;
- Ideally, emailed to the Police but failing that it should be faxed. This is one occasion when the Prosecutor *must* ensure that the fax has been received before terminating the call – any delay on our part has the potential to unduly and unlawfully extend a defendant's stay in custody. Please treat any post-charge authorisation as a matter of urgency.

Where the Prosecutor disagrees with the charge put, but considers that an alternative is appropriate, they should authorise the alternative charge and instruct the officer to put that whilst the suspect is in custody. They should then include a note to the Prosecutor at Court indicating that the original charge should be withdrawn.

Please ensure that any such incident is reported to the Lead Shift Manager for inclusion in the Shift Report. It is anticipated that this will occur only rarely.

## **21. Charging after expiry of PACE clock**

On a number of occasions cases have been referred to a duty Prosecutor where the PACE clock has expired. The police have asked if they can invoke the emergency provisions or if they can charge on the strength of an authority already provided in an MG3 before the clock had expired.

In summary, where, after the expiry of the PACE clock, the police invoke the emergency provisions or charge on the strength of an MG3 previously obtained, there is a period of unlawful detention from the expiry of the clock until the charge is put. The period of detention after the charge is lawful, as is the charge itself. The police can be advised accordingly.

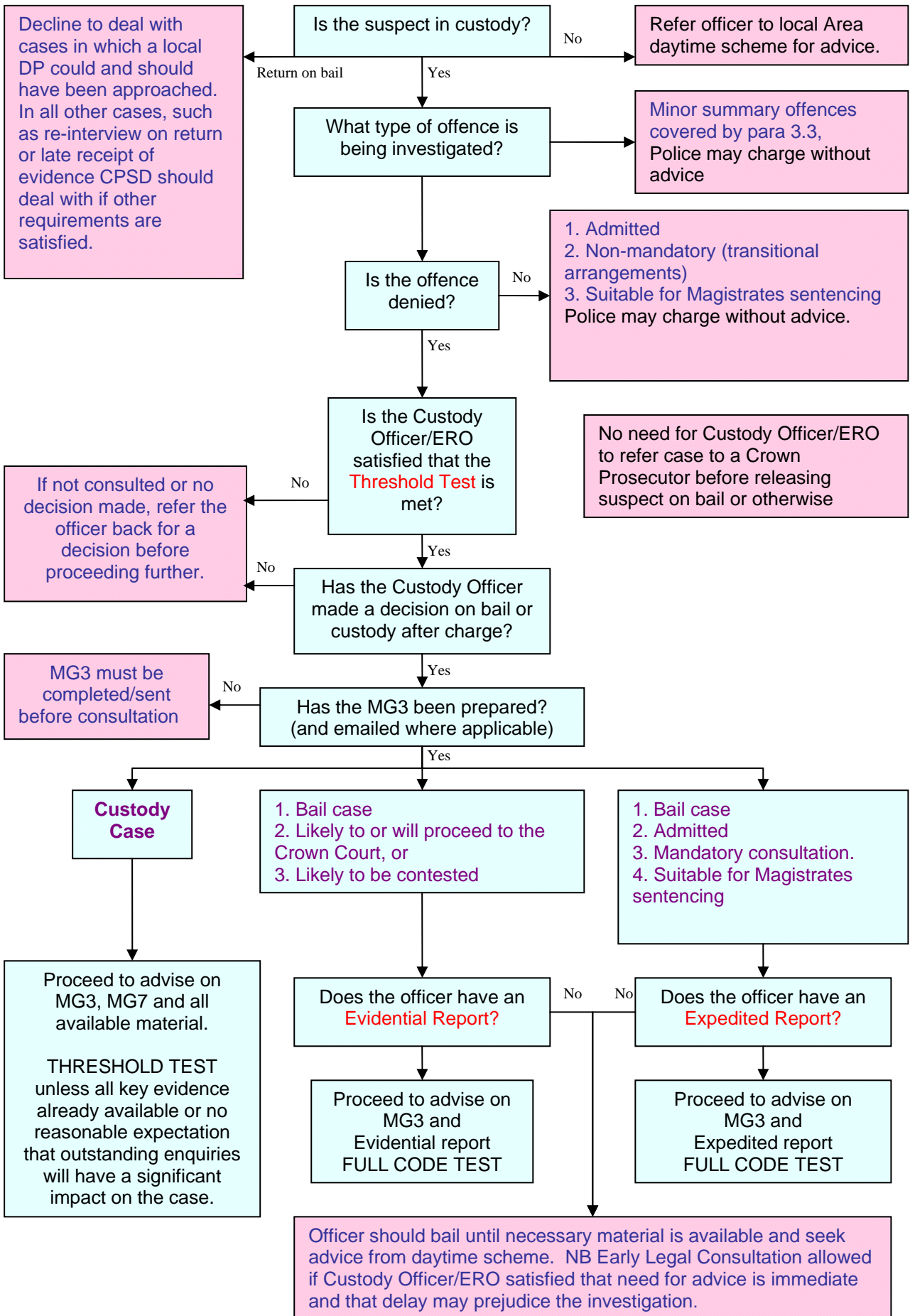
What the Prosecutor should not do is commence the completion of an MG3 where a suspect's PACE clock has expired and he has not been charged under the emergency regulations as clearly we would then be complicit in the unlawful detention. If the time has expired and the suspect would be bailed after charge and the police have no MG3 authorising charge, then the emergency provisions would not apply and the suspect should, in those circumstances, be reported for summons. Where however a charge has been preferred after the expiry of the PACE clock and the police come to us for post charge ratification the advice should be given. Not to do so could mean that a defendant was held in custody on a charge for which there was no evidence.

Where the suspect is lawfully held on another matter e.g. on a no bail warrant we can also proceed to charge because we could not in those circumstances be complicit in any unlawful detention.

It is important that the correct position is explained to the police in order to avoid the situation of a dangerous offender being released unnecessarily.

Again, any instance of this nature should be reported to the Lead Shift Manager for inclusion in the Shift Report.

**Appendix 1. Flowchart for consultations on charge**



## Appendix 2. File Requirements for a charging decision

In any case where the custody officer has determined that the suspect should be held for court (with a view to a remand in custody being sought), an expedited report is required for a charging decision to be made.

### In custody cases, an expedited report should contain:

- **MG3** – Report to Crown Prosecutor, accompanied by
- **MG7**
- Sufficient material presently available and brief details of any previous convictions or cautions of the suspect to allow the Threshold Test to be applied.

In all cases destined for the Crown Court (indictable only or NSST) or likely to be contested in the Magistrates' Court, where the suspect is suitable for bail, an evidential report is required before a charging decision can be made.

### For an evidential report CPS Direct will require as a minimum:

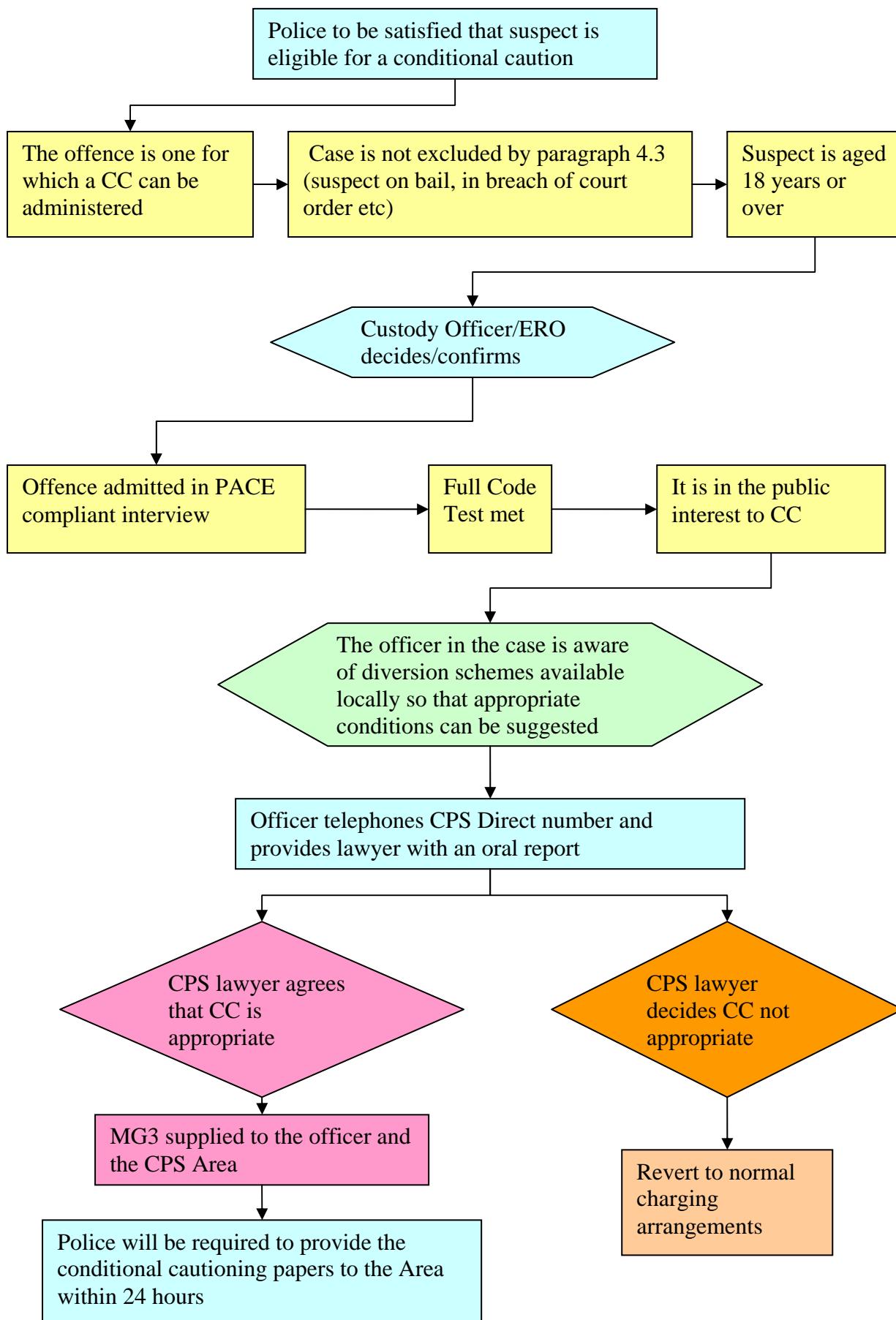
- **MG3** – Report to Crown Prosecutor
- **MG11** – Key witness statement(s) or index notes (An officer's report book (IRB in London) will only be accepted as a statement if it is 'captioned', i.e. it contains the signed CJA declaration to make it admissible in a court)
- **MG15 (or equivalent) – written** interview record – MG15 can be SDN/ROTI/record of visually recorded interview (ROVI). Provided that the written summary includes detail at least equivalent to an SDN, the written summary may be accepted on the MG3 or an MG5, or MG11. The Duty Prosecutor reserves the right to call for a more detailed record of interview if this is needed to make a charging decision.
- A written description of any CCTV or video evidence (on the MG3, MG5 or MG11).
- Unused material likely to undermine the case, including precons of key witnesses, crime report, incident log and initial descriptions
- Copies of key documentary exhibits
- Previous convictions or cautions (reprimands/final warnings) of the suspect.

In all other cases where the suspect is suitable for bail (admitted offences suitable for sentencing in the Magistrates' Court on which the Duty Prosecutor must decide on charge), an expedited report is required before a charging decision can be made.

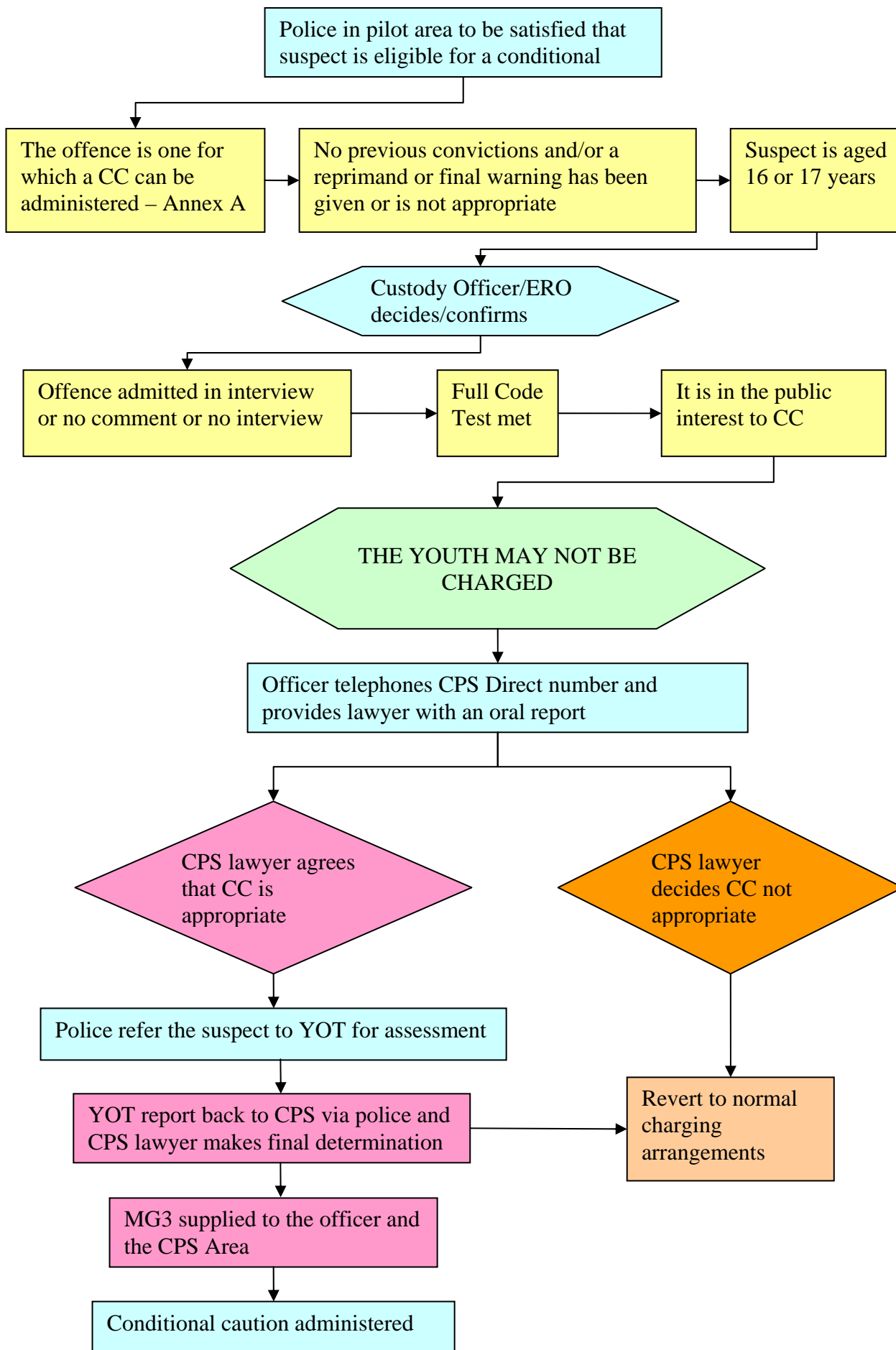
### An expedited report must include:

- **MG3** – Report to Crown Prosecutor
- **MG11(s)** – Witness statements or index notes (If offence is witnessed by more than one officer and up to four, the statement of one officer and a summary of the others will be acceptable. A non-captioned notebook or IRB can be accepted)
- **MG15** – Record of interview (a verbal summary or SDN may be sufficient subject to the Duty Prosecutor's discretion)
- Previous convictions or cautions (reprimands/final warnings) of the suspect.

**Appendix 3. Flowchart for consultations on adult conditional caution**



**Appendix 4. Flowchart for consultations on youth conditional caution**



## Compulsory email and scanning areas and liaison managers

### FORCE/AREA

Force/Area	Force Code	Compulsory URN	Compulsory email	Access to Scanners *	Liaison Manager
Avon & Somerset	52			✓ C	N Crabb
Bedfordshire	40	✓	✓	✓	L Cassidy
BTP	93	✓			T Wallington
Cambridgeshire	35	✓	✓	✓	N Creasy
Cheshire	07	✓		✓	R Evans
Cleveland	17	✓	✓		A Taylor
Cumbria	03	✓			T Wallington
Derbyshire	30	✓	✓	✓ C	J Wilkes
Dorset	55	✓	✓		N Creasy
Devon & Cornwall	50	✓	✓	✓ C	N Crabb
Durham	11	✓	✓		A Taylor
Dyfed Powys	63	✓	✓	Not for CPSD	H Reeve
Essex	42	✓	✓	✓ C	N Creasy
Gloucestershire	53	✓		✓ C	N Crabb
Greater Manchester	06	✓		✓	T Wallington
Gwent	61	✓	✓	✓ C	H Reeve
Hampshire & IOW	44	✓	✓	✓	N Creasy
Hertfordshire	41		✓	✓	L Cassidy
Humberside	16	✓		✓ C	F Inglis
Kent	46	✓	✓	✓	S Judge
Lancashire	04			✓	T Wallington
Leicestershire	33	✓	✓	✓ C	J Wilkes
Lincolnshire	32	✓	✓	✓ C	J Wilkes
London (Metropolitan)	01	✓	✓		P Swain
Merseyside	05	✓	✓	✓	R Evans
Norfolk	36	✓	✓	✓	N Creasy
North Wales	60	✓	✓	✓ C	H Reeve
North Yorkshire	12	✓		✓ C	F Inglis
Northamptonshire	34	✓	✓	✓ C	J Wilkes
Northumbria	10	✓	✓		A Taylor
Nottinghamshire	31	✓	✓	✓ C	J Wilkes
South Wales	62	✓		✓ C	H Reeve
South Yorkshire	14	✓	✓	✓ C	F Inglis
Staffordshire	21		✓	✓	G Curl
Suffolk	37		✓	✓ C	N Creasy
Surrey	45	✓	✓	✓ C	S Judge
Sussex	47	✓	✓	✓ C	S Judge
Thames Valley	43	✓		✓	L Cassidy
Warwickshire	23	✓		✓	G Curl
West Mercia **	22			✓	G Curl
West Midlands (Encourage provision of URN)	20			✓	G Curl
West Yorkshire	13	✓	✓	✓ C	F Inglis
Wiltshire	54	✓			Creasy
MoD Police***	24				T Wallington
UKBA****					T Wallington

\* Note:- 'C' means use of Scanners is compulsory.

\*\* Note :- West Mercia incorporates Herefordshire, Shropshire and Worcestershire.

\*\*\* Note:- MoD Police will use facilities of whichever Area they are calling from.

\*\*\*\* Note:- UKBA/Immigration officers will use facilities of whichever Area they are calling from