

Prosecution Team Guidance

Offences to be taken into consideration



May 2007

TAKE INTO CONSIDERATION

Your **7** opportunities to encourage admissions

**THE EARLIER
THE BETTER**

Victim

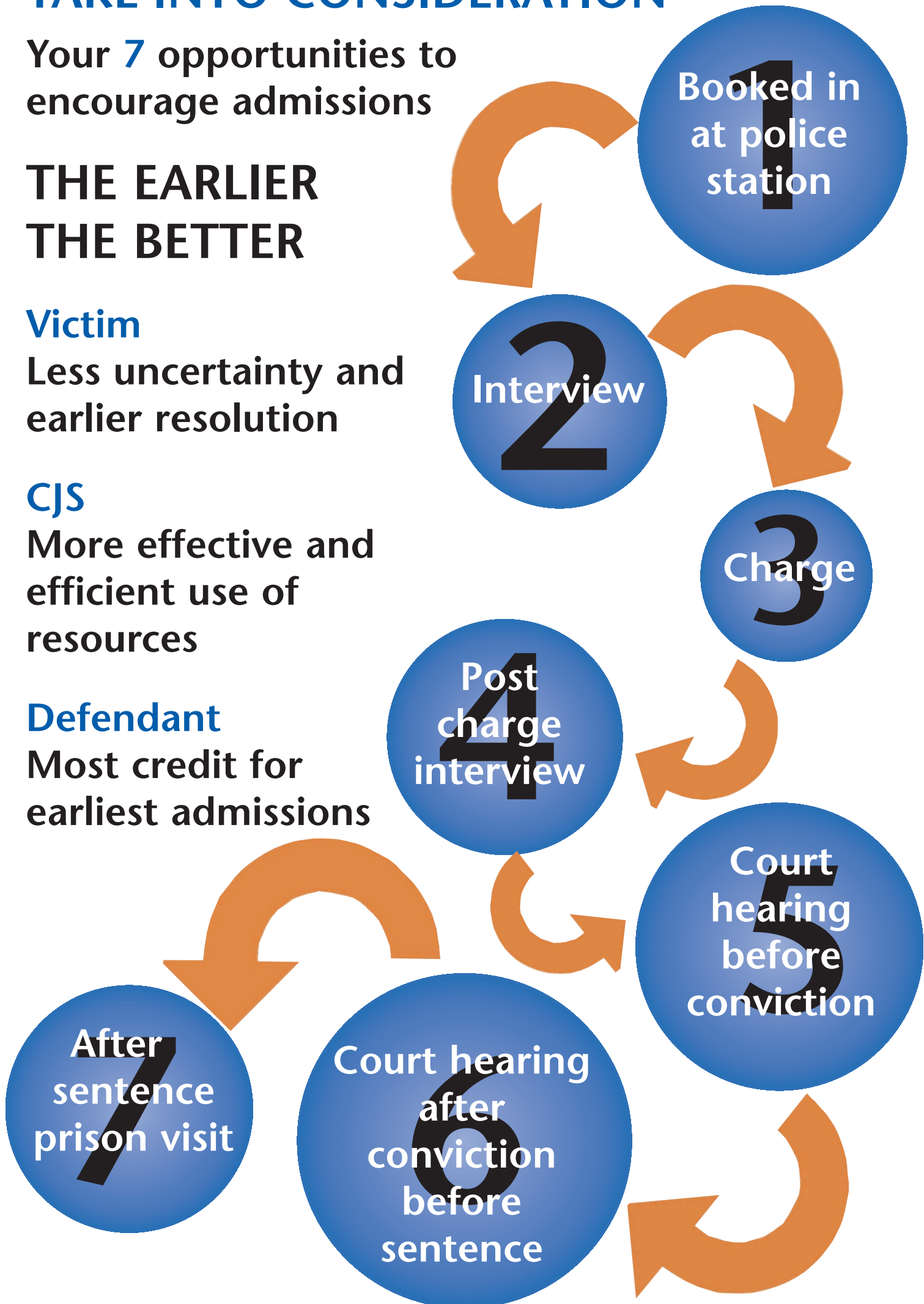
Less uncertainty and earlier resolution

CJS

More effective and efficient use of resources

Defendant

Most credit for earliest admissions



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As part of a wider, cross-CJS drive to re-invigorate the appropriate use of TICs, this Prosecution Team Guidance has been drawn up to provide a national framework intended to help police and prosecutors maximise opportunities for defendants to admit to additional offences, not just at the police station, but at court, where it really matters.

1. INTRODUCTION

A defendant may ask a court passing sentence to take into consideration other offences of a similar nature in accordance with a well established and recognised practice"

[Archbold 2006 5-107. See also generally Archbold 2007 5-107 et seq.]

- 1.1 There is no statutory basis to TIC practice. Although court room procedures may be "*well established and recognised practice*" the collection, use of and priority given to TICs amongst Criminal Justice Agencies varies widely (from 4% of all offences brought to justice in one area to 28% in another, according to one recent study¹).
- 1.2 There are two distinct aspects to be addressed: the obtaining of the admission and how it is proposed to deal with any subsequent denials.
- 1.3 The collection of evidence for TICs and presentation at court can be time-consuming but, given the potential benefits for all concerned, the effective use of such resources is considered to be worthwhile.

2. BENEFITS

- 2.1 Appropriate use of TICs offers significant benefits to criminal justice agencies, both operationally and in terms of the PSA targets of bringing offences to justice and increasing victim and public confidence. Benefits include the following:
 - the **victim** has an opportunity to claim compensation in respect of an offence admitted by the defendant, detected and acknowledged by the criminal justice system;
 - the **court** has a fuller and more accurate picture of the offending and is able to sentence more appropriately; there is the potential for savings too as offences can be dealt with promptly without additional court hearings;
 - the **defendant** receives credit for early admission of guilt; a lesser sentence than had he been charged with a substantive offence; possibly tailored sentencing and rehabilitative programmes and is able to "clear the slate" to avoid the risk of subsequent prosecution for those offences;
 - the **police** gain valuable intelligence; increase detected offences rates; record a fuller picture of offending for possible use in future cases or to support applications for CR/ASBOs or other restrictive orders;
 - the **prosecution** has a fuller and more accurate picture of the offender's criminal history when considering the public interest test, bail decisions, bad character, dangerousness, what information to give the court etc;
 - **resources** are used efficiently; and the public's confidence in the criminal justice system is improved.

¹OCJR Review of TICs 2005 — http://www.cjsonline.gov.uk/secure/localboards/document/2005-05-24_TICs_review_v%200.11.doc

3. REVISED POLICY

3.1 Previously admitted TICs which are subsequently denied in court will now be robustly followed up with a view to prosecuting outstanding offences.

3.2 Background

Although there was often some incentive for defendants to admit TICs at the police station (increased chance of bail etc), there was little incentive to confirm those admissions at court – particularly if the defence/defendant could be fairly sure the prosecution team was unlikely to make the necessary effort to pursue outstanding offences listed on the TIC schedule.

3.3 This unsatisfactory situation was further aggravated by recording systems. *“Offences brought to justice”* is a key CJS target. If a TIC were admitted at the police station but subsequently denied at court, it was still counted as an offence brought to justice even though the defendant had not been dealt with in respect of that offence and the victim could not be awarded compensation by the court.

3.4 A change of policy and practice was obviously required across the criminal justice system if the clear benefits of TICs were to be secured.

3.5 Work began at national level to develop a system for recording court admitted TICs, which would reflect more accurately those offences actually “brought to justice”. Work on the necessary cross-CJS IT systems is now in progress. From the prosecution team perspective, key areas to be addressed included maximising the defendant’s opportunities for admitting offences and ensuring robust follow up where previously admitted TICs are subsequently denied in court.

3.6 Code for Crown Prosecutors

The change in policy is reflected in paragraphs 5.10 and 10.4 of the 2004 Code for Crown Prosecutors. Paragraph 5.10 states:

“A prosecution is less likely to be needed if: ... b) the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing.”

Paragraph 10.4 states:

“Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence in court, Crown Prosecutors will consider whether a prosecution is required for that offence. Crown Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review.”

3.7 When applying the public interest test, it is appropriate to consider long term strategy, for example, in the case of a Prolific and Priority Offender (PPO).

4. CHARGE OR TIC?

4.1 General principles

The general principles regarding the number and weighting of charges/TICs remain unchanged, that is: the charges should reflect the seriousness and extent of the offending, give the court adequate powers to sentence and impose post-conviction orders, and enable the case to be presented in a clear and simple way².

4.2 As the defendant is not charged with or convicted of the TIC offences and the court's powers of sentence are limited to the maximum for the substantive offences of which the offender has been convicted, the balance of charges and TICs must enable the court to sentence appropriately.

4.3 Mode of Trial/allocation

TICs must not be allowed to take the otherwise SST (suitable for summary trial) substantive charges beyond the magistrates' courts' jurisdiction and if it appears that this would be the effect, the balance of charges to TICs should be altered so that the substantive charges would, by themselves, be NSST (not suitable for summary trial).

4.4 It will be even more important that this approach is adopted once Allocation procedures are introduced (possibly in 2007), as TICs are not likely to be a relevant factor in the court's Allocation decision and it may no longer be open to the magistrates to commit for sentence, except where a finding of dangerousness is made or following a guilty plea.

4.5 Sufficiency of evidence for TICs

The evidential test for a crime to be counted as a TIC is set out in the Home Office Counting Rules on Detections: "*there must be sufficient evidence to charge the suspect with the crime*". This is generally interpreted as an admission, corroborated by a crime report and material fact, such as forensic evidence linking offender and offence, or detail which the offender could not have known otherwise.

4.6 The resources necessary to obtain the evidence should be proportionate to the benefits of an admitted TIC; a full file is therefore not required to support a TIC and in most cases a corroborated admission is sufficient.

4.7 If the policy of robustly prosecuting subsequently denied TICs is to have any success however, it will be important that the defendant understands that the prosecution is in a position to proceed with a prosecution in such cases. The prosecution team will therefore need to give some careful thought, from the outset, to the feasibility of acquiring sufficient evidence to meet the full Code test (realistic prospect of conviction), should the need arise.

²Sections 17-21 Domestic Violence, Crime and Victims Act 2004 introduced new procedures for multiple offending. In relevant cases prosecutors will need to consider whether to draft a Two Part indictment rather than TIC offences.

5. PROLIFIC AND PRIORITY OFFENDERS (PPOs)

- 5.1 PPOs are responsible for a disproportionate amount of crime, particularly volume crime. They are obvious targets for proactive investigation and action. Effective use of TICs, which will require liaison between investigators and prosecutors on a case by case basis, is vital to any long term PPO strategy.
- 5.2 Each Crime and Disorder Reduction Partnership has identified between 15 and 20 prolific offenders (likely to be more in major urban areas) who are responsible for disproportionately large volumes of offences and/or harm in their communities. Those so identified are subject to active targeting by a multi-agency team with the key aim of reducing or eliminating their offending behaviour.
- 5.3 Broadly speaking, the targeting is under one of two strands: either “catch and convict” – aiming to ensure that PPOs who continue to offend are swiftly detected, caught and appropriately sentenced – or, “rehabilitate and resettle” – providing supportive interventions for PPOs genuinely wanting to reform, by helping them to overcome their key criminogenic needs (most likely to be help with settled accommodation and with drug treatment).
- 5.4 Many co-operative PPOs view admitting TICs as a helpful motivator to their rehabilitation, allowing them to wipe the slate clean. For others, however, what they see as the threat of TICs may reduce their motivation to co-operate with the programme; close liaison between investigators and prosecutors is therefore essential.

6. CONDITIONAL CAUTIONS

- 6.1 Under section 22 of the Criminal Justice Act 2003, prosecutors can give a Conditional Caution to a person aged over 18. This is a form of pre-court diversion: see Section 8 of the 2004 Code for Crown Prosecutors
- 6.2 An offender may be Conditionally Cautioned for more than one offence on the same cautioning occasion. Generally, it will be appropriate to offer a single Conditional Caution for the totality of the offending rather than prefer individual Conditional Cautions for each offence. The more offences committed, the less likely it will be that the case remains suitable for a pre-court disposal, even if, individually, the cases would be suitable for a Conditional Caution. However, where the totality of the offending does not cause the case to become so serious that a prosecution must follow, the offer of a Conditional Caution may still be appropriate.
- 6.3 Since the Conditional Cautioning process does not allow for the preparation of a normal TIC schedule, it is important to ensure that the possibility of including a condition to pay compensation covers all the victims affected by the individual's offending. The extent to which compensation can be included as a reparative condition is always subject to the proportionality principle.

7. DANGEROUSNESS (Chapter 5 Criminal Justice Act 2003)

- 7.1 These provisions will need to be taken into account when considering whether to charge or TIC. This is particularly important where the offence to be TIC'd is a specified offence but none of the offences for which the defendant is to be sentenced is a specified offence. In such cases, the defendant would escape the possibility of a public protection sentence being imposed, which would otherwise fall to be considered by the court had the offence been charged as a substantive offence. Such cases are likely to be rare, but it is important that prosecutors are aware of the possibility.

8. PROCEEDS OF CRIME ACT 2002

- 8.1 If the offender does not have a criminal lifestyle (as defined in the Act), the court must determine the benefit of his “particular criminal conduct”. Section 76(3) permits the Crown Court to include TICs when making this determination. If he does have a criminal lifestyle, the court must determine his benefit from “his general criminal conduct”, which includes TICs.

9. OBTAINING ADMISSIONS — stages at which TICs can be offered and how

- 9.1 In tandem with robust prosecution of subsequently denied TICs, offenders must be encouraged and given every opportunity to make the admissions in the first place – particularly those highly recidivist offenders who often refuse to co-operate with the investigative process.
- 9.2 Using Posters/notices/leaflets, agreed forms of wording and the MG18, numerous such opportunities exist, for example: when booking in at the police station; the PACE interview; at court before conviction; and at court after conviction but before sentence.

POLICE STATION

Key factors: Clarity and incentive, not inducement

- 9.3 It is perfectly acceptable to draw a suspect’s attention to TIC procedures orally, through posters, by notices, etc. for example, indicating that advances in DNA and fingerprinting may lead to re-arrest if forensic links are found. Care must be taken, however, to ensure that no inducements are made explicitly or implicitly. For example: bail should not be offered in return for admissions; no assurances should be given that any admissions will be treated as TICs or that sentences for the substantive offence will be reduced.
- 9.4 **On booking in at the police station**
- The suspect should be served with TIC Notice (1) (see Appendix A) at the same time as being given the usual Notice of rights and entitlements.
- 9.5 **Pre-interview briefing**
- The suspect’s legal representative should be informed that the suspect has been given the TIC notice and that it is intended to raise the topic in the course of the interview. Sufficient disclosure should be given to the suspect’s legal representative in respect of both the primary offence(s) and the potential TIC offence(s) to enable appropriate legal advice to be given.
- 9.6 **PACE interview**
- Best practice is for the substantive (primary) offence part of the interview to be conducted before discussion of TICs.
- 9.7 Having dealt with the substantive offence(s), the interviewing officer should then explain the TIC procedure clearly to the suspect. For example:

“Before the interview, you were given a Notice explaining the TIC procedure. You have admitted responsibility for the offence(s) of [x] for which you may be charged. This is your opportunity for a clean sheet and to admit responsibility now, for any other offences you have committed. If these are similar to the offence(s) you are charged with, it may be possible, depending on all the circumstances, to have these crimes taken into consideration when you appear at court, rather than charge you with them. I must remind you that you are still under arrest and that the caution I gave you earlier still applies. You are still entitled to legal advice. Do you wish to admit any other offences at this stage? Do you have anything else you wish to say?”

- 9.8 Where TICs are to be discussed as part of a separate interview, the suspect must still be cautioned so that evidence of any admissions made will be admissible at court, should those offences later be the subject of charges.
- 9.9 Suspects must be made aware that there may not be the opportunity for prison visits and that, if additional evidence comes to light linking them with further offences that they did not take the opportunity to admit, they may well be charged.
- 9.10 This procedure **must** form part of a formal interview and thus be audio or visually recorded, as should any comments or admissions that follow in relation to other offences.

9.11 **Form of wording when formally putting charges and TICs to an accused**

The police officer charging should say: *“on the information currently available, it appears appropriate to charge you with [x] and have [y] taken into consideration at sentencing. If you accept the offences to be taken into consideration now, but refuse them later in the proceedings, you may be prosecuted for those offences. Do you understand?”* (Appendix B)

- 9.12 Once the form MG18 has been fully completed, the suspect should be invited to sign it.

9.13 **Role of police/prosecutors in charging**

Under the Director’s Guidance on Charging, police officers can decide on charges in cases suitable for early disposal as a guilty plea in the magistrates’ courts. They retain, however, discretion to refer any such case to the Duty Prosecutor including cases where the defendant admits further offences.

- 9.14 Officers should consider, with or without pre-charge advice from a prosecutor, which offences should be charged and which offered as TICs. Officers should refer to the Code for Crown Prosecutors. In selecting charges and TICs, the officer should seek to reflect the totality of the offending in terms of seriousness and extent. Compensation details (MG19) will need to be available to the court.
- 9.15 It is helpful if a short descriptive note (SDN) on a MG15 shows CPS/defence that admissions have been made to each listed TIC offence and the number of each TIC (taken from the schedule) is marked in the margin against each admission.
- 9.16 Where there are possible TICs, investigators and prosecutors should, at the earliest opportunity, discuss and agree the strategy to investigate and prosecute the case – particularly where PPOs are involved. The strategy should include the availability/appropriateness of TICs and which of those offences should be pursued if subsequently denied.
- 9.18 In order to maximise opportunities for suspects to admit TICs, police officers should:
- ensure the suspect has been handed and has read a TIC notice;
 - gather all available evidence for the primary offence;
 - check all available information sources to establish what other offences the suspect may have committed;
 - ensure all forensic opportunities have been taken in respect of all offences and check results, where available;
 - plan for the interview. Be prepared to discuss any other offences with the suspect;
 - make full use of custody time. Carry out all reasonable lines of enquiry; and
 - provide sufficient disclosure to the suspect’s legal representative to enable appropriate legal advice to be given.

- 9.18 In order to maximise opportunities for defendants to admit TICs, prosecutors should:
- ask the OIC to liaise with YOT and seek their assistance in youth cases;
 - ask the OIC to liaise with PPO leads and seek their assistance in PPO cases;
 - consider the appropriateness of any TICs submitted;
 - advise on other potential TICs;
 - provide early advice to the police on evidence required;
 - agree with the police which offences are to be charged, TIC'd, pursued if not accepted, pursued if accepted but subsequently denied; and
 - ensure compensation details will be available at court.
- 9.19 Forensic evidence is extremely valuable in supporting the TIC process, both as corroborative evidence for admitted TICs and to discover new offences that could be offered as TICs.
- 9.20 When advising clients on making admissions to TICs, the defence will obviously consider (amongst other factors) whether the proposed TIC offence(s) are likely to be proceeded with in the event of being either denied from the outset or admitted but then subsequently denied in court. The likelihood of proceeding will, of course, depend on the circumstances of each case. Factors might include, for example: the strength of the evidence available; the seriousness of the offence; the number of TICs.
- 9.21 A prosecution team's reputation for careful preparatory work and robust follow-up enforcement will affect the advice legal representatives give to their clients – as will a reputation for poor groundwork and/or lack of follow up.

COURT

9.22 Information to be given to the court

The prosecutor must:

- hand in two copies of the MG 18 TIC schedule and statement;
- hand in MG 19 compensation forms; and
- outline the relevant facts and information.

- 9.23 The defendant should be invited by the court to admit the offences personally rather than through his legal representatives.
- 9.24 The list of TICs need not be read out in full. It is sufficient if the court confirms with the defendant that he has signed the list; that it contains the precise number of offences; that he agrees he committed those particular offences; and that he wishes them to be taken into consideration when sentence is passed for the substantive offence(s).
- 9.25 Although the list need not be read out in full, it is important that the prosecution outlines, in sufficient detail, the relevant facts and information regarding any particular TIC – for example, it may suffice to state that four criminal damage TICs all related to allotment greenhouses and to submit the individual victims' claims for compensation. Or, it may be appropriate to inform the court that the offences were committed whilst on bail and against vulnerable victims. Or that the defendant volunteered the information and admitted the TICs at the earliest opportunity. Or that there was in fact forensic evidence that first connected him to the offences etc.

9.26 TIC schedule not available

Where evidence of additional offences comes to light after charge, it is important that the police provide a TIC schedule as early as possible, preferably before the first court hearing.

9.27 Where this is not possible, prosecutors should request a short adjournment or a remand in police custody to enable the police to interview the offender and for the additional offences to be considered properly – particularly if the defendant is a known prolific offender. It is appropriate, where necessary, for a prosecutor to set out for the court, the potential benefits of TICs for all concerned – including the victim.

9.28 **TICs not accepted by defendant in court**

See below at paragraph 10.

9.29 **TICs between conviction and sentence**

During the adjournment for pre-sentence reports between conviction and sentence, the investigating officer should, where appropriate, interview the defendant to establish whether s/he admits further offences. As a professional courtesy, if the prosecutor at court is aware that the police intend to interview the defendant during the forthcoming adjournment, s/he will inform the defendant's legal representative at court accordingly. If the defendant does admit further offences, the usual consideration will then need to be given to whether charges and/or TICs are appropriate. If the court has already given an indication of sentence, this will affect the prosecutor's decision.

9.30 **Compensation**

The court is required, pursuant to the Powers of Criminal Courts (Sentencing) Act 2000 section 130(1), to consider the question of compensation in respect of offences being taken into consideration; relevant sections of the MG18 and MG19 must therefore be fully completed.

9.31 In the magistrates' courts, the total sum of a compensation order is limited under section 131 of the Act to (currently) £5,000 per offence in respect of which the offender has been formally convicted. Compensation orders in respect of TIC offences cannot therefore exceed those limits. For example, if the defendant is convicted of 1 offence and there are 5 TICs, the total compensation awarded cannot exceed £5,000. If the defendant is convicted of 2 offences and there are 10 TICs, the total compensation awarded cannot exceed £10,000.

9.32 There are no such limits in the Crown Court.

9.33 If a confiscation order is made against the defendant under the Proceeds of Crime Act 2002, victims may be compensated using money derived from the confiscated sum. If it is clear that there would otherwise be insufficient means to compensate the victim, the court must order the shortfall to be paid from the confiscated sum. Victims of TIC offences are included in these provisions.

POST COURT

9.34 **Notifying outcome to police**

The court will notify the police which TICs have been accepted/rejected, by returning one copy of the signed and annotated MG18 TIC schedule.

9.35 The CPS will inform the police, via the MG3, of the decision whether or not to prosecute the rejected TICs.

9.36 **Notifying outcome to victims**

The police will notify victims of the outcome of the proceedings.

9.37 Local protocols may be thought desirable to outline how and when these responsibilities are to be discharged by each agency.

9.38 **Offences admitted post sentence**

Where further offences are admitted post sentence, the Home Office Counting Rules set out the circumstances in which a serving prisoner can be interviewed – for example, to gather intelligence or where an offender admits responsibility for a previously recorded crime where forensic evidence exists, which links the offender to that crime. Evidence of further offences needs to be sufficient to charge, aside from any admission or evidence gained during interview.

9.39 If further corroborative evidence is obtained, the Prosecution Team will need to consider whether to charge or not. TICs would only be appropriate in such circumstances if attached to fresh charges, so that the court could consider both penalty and compensation issues.

9.40 **Acquittal**

If the defendant is acquitted of the substantive offence, the prosecution should consider charging some/all of the TICs as substantive offences. Where it is thought appropriate to proceed with new charges and where the defendant pleads guilty to those new charges, the court should be informed that the defendant had made early, voluntary admissions to those charges.

10. SUBSEQUENTLY DENIED TICs

10.1 Where, in court, a defendant rejects previously admitted TICs, the CPS file should be clearly marked and immediate consideration given to prosecuting the now denied offences, as previously agreed with the police. The defendant can be invited, in court, to give a reason for his denial of the previously admitted offences. Any explanation given should be taken into account by the prosecutor when deciding whether or not to proceed with charges.

10.2 Where possible, the prosecutor should immediately inform the court and defendant that the prosecution intends to proceed on the relevant denied offences and, if in the magistrates' courts, be in a position to lay the informations there and then.

10.3 Sentencing on the substantive offences should not be delayed to await the outcome on the new offence(s). However, the new file should be fully endorsed to record the context in which the decision to prosecute was made so that, in the event of sentencing on the new offence(s), the court can be properly apprised and sentence appropriately, reflecting the lack of credit for any guilty plea and the denial in court of a previously admitted TIC.

10.4 Whichever course is adopted, the police must be notified and consulted as appropriate.

10.5 If a decision is made not to prosecute a denied TIC offence, the police should notify the victim, especially because the court will not be empowered to make a compensation order.

11. R v Miles [2006] EWCA Crim 256 — relevance of TICs in sentencing

11.1 The appeal focused on the proper weight and relevance to be attached to TICs when sentencing. The full judgment of the Court of Appeal is attached at Appendix D.

11.2 The court made it clear that the defendant in that case was entitled to the maximum discount because of the early nature of his plea and the "*almost immediate co-operation*" with the police.

The court also said:

“When assessing the significance of TICs, as they are called, of course the court is likely to attach weight to the demonstrable fact that the offender has assisted the police, particularly if they are enabled to clear up offences which might not otherwise be brought to justice.”

And

“As in so many aspects of sentencing, of course, the way in which the court deals with the offences to be taken into consideration depends on context. In some cases the offences taken into consideration will end up by adding nothing or nothing very much to the sentence which the court would otherwise impose. On the other hand, offences taken into consideration may aggravate the sentence and lead to a substantial increase in it. For example, the offences may show a pattern of criminal activity which suggests careful planning or deliberate rather than casual involvement in a crime. They may show an offence or offences committed on bail, after an earlier arrest. They may show a return to crime immediately after an offender has been before the court and given a chance that, by committing the crime, he has immediately rejected.”

Given that the Court of Appeal has so clearly confirmed the relevance of TICs in the sentencing process, and given the recognised benefits of TICs to victims, defendants, police, prosecution and criminal justice system generally, the effective and efficient use of TICs should be proactively considered by investigators and prosecutors in every case and especially in PPO cases.

APPENDIX A

OFFENCES TAKEN INTO CONSIDERATION NOTICE TO DETAINED PERSONS (1) [pre-interview]

When you are charged with an offence you can ask the court for similar offences to be taken into consideration. This may allow you to clear up your crimes without further charges being made, giving you the chance to start life with a “clean sheet”.

You are to be interviewed about the offence for which you have been arrested. If you committed this offence and admit it then, at the end of the interview, you will be invited to admit responsibility for any similar offences committed by you.

Depending on all the circumstances, these offences may then be taken into consideration by the court.

If you decide not to take this chance and sufficient evidence of your involvement is found at a later date through, for example, DNA, fingerprints or any other evidence, then you can expect to be charged and prosecuted for these additional offences.

You may wish to discuss this Notice with your legal representative.

APPENDIX A

OFFENCES TAKEN INTO CONSIDERATION NOTICE TO DETAINED PERSONS (2)

Before the interview you were given a Notice explaining the TIC procedure.

You have admitted responsibility for the offence(s) of

for which you may be charged.

This is your opportunity for a clean sheet and to admit responsibility now for any other offences you have committed.

If these are similar to the offence(s) you are charged with it may be possible, depending on all the circumstances, to have these crimes Taken Into Consideration when you appear at court, rather than charge you with them.

You are still under arrest and the caution you were given earlier still applies. You are still also entitled to legal advice. Do you wish to admit any other offences at this stage? Do you have anything else you wish to say?

APPENDIX B

OFFENCES TAKEN INTO CONSIDERATION

FORM OF WORDING FOR INVITING THE SUSPECT TO SIGN THE MG18 AND WARNING OF POTENTIAL CONSEQUENCES OF SUBSEQUENT DENIAL

On the information currently available, it appears appropriate to charge you with

.....

and to have

.....

.....

Taken into consideration at sentencing.

If you accept the offences to be taken into consideration now, but refuse them later in the proceedings, you may be charged with and prosecuted for those offences. Do you understand?

OFFENCES TAKEN INTO CONSIDERATION

URN [] [] [] []

Station: _____ Date: _____

To (Surname): _____ Forename(s): _____

Memorandum for the information of the Accused

Charged / indicted offence(s) _____

For hearing / trial at _____ on _____

- 1. The attached schedule gives particulars of _____ offences, which you have admitted committing but have not been charged with.
2. If you plead guilty or are found guilty of any offence(s) with which you have been charged you can, before any sentence is passed, admit all or any of the offence(s) in the attached schedule, and ask the court to take them into consideration.
3. If you withdraw your admissions to these additional offences that you wish the court to take into consideration, those offence(s) may result in further prosecution(s).
4. If you wish to volunteer any further information concerning any of these other offences you may do so in writing, either at the bottom of this form or in a separate letter. If you prefer, you may ask a police officer to take any statement you may wish to give.
5. Please sign all the sheets in the schedule containing the offences to be taken into consideration and immediately below the last offence recorded. Then sign the receipt below, and keep for your information the copy of this document.

Receipt to be signed by the accused

I have received a copy of this document. Signature: _____

Date: _____ In the presence of: _____

Statement the accused may wish to volunteer

Multiple horizontal lines for writing a statement.

Date: _____ Signature: _____

In the presence of: _____

Page No: _____ of _____

SCHEDULE OF OFFENCES TAKEN INTO CONSIDERATION

URN	
-----	--

Name of accused (Surname) _____ Forename(s) _____
 A/S No. _____

No.	Crime Ref No.	Place committed	Date of offence	Details of offence(s) For EACH offence: <ul style="list-style-type: none"> • record PNLD offence code • relevant factors — voluntary admission, vulnerable victim, etc. • if compensation is required attach MG19 	Name of victim	Property (a) Value (b) Recovered (c) Damaged	COURT USE ONLY Accepted at court? 'Y' or 'N'
Signature of accused _____							

Rule off any remaining space after the last TIC has been entered, and invite the accused to sign beneath the final entry (repeat process where there is more than one sheet).

B. Other financial loss	
<p>Relates to other expenses. For example:</p> <ul style="list-style-type: none"> • Loss of earnings — if you had to take unpaid time off work due to injuries sustained • Taxi fares — due to being without your car as a result of a traffic collision / criminal damage • Travelling expenses — incurred by having to visit hospital / specialists as a result of injuries sustained <p>It is important that you provide documentary evidence to support your claim. This means copies of receipts, estimates or bills should be provided wherever possible.</p>	<p><i>Details of other financial loss or expenses incurred as a result of the offence</i></p>
<p>Description of item(s)</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <p style="text-align: right;">Total</p>	<p>Amount:</p>

C. Personal injury (Also include injury sustained as a result of a road traffic collision)

Relates to injuries sustained as the result of an assault or traffic collision. It is important that you also fill in page 4 of this form, as we will need to obtain medical evidence on your behalf. Please continue on a separate page if the space provided is not sufficient. In serious injury cases, where you may suffer long-term effects, please keep the case clerk informed of your condition as the case progresses.

The police cannot obtain medical evidence on your behalf unless you have authorised us to do so. You **MUST** complete and sign a form giving us authority to ask for details of your medical condition to be disclosed. We can then contact the hospital, your GP or dentist and ask them to provide a statement detailing your injuries and treatment. The police officer in charge may have already asked you to complete a form. If not, please contact the case clerk as soon as possible.

Nature of injuries:

Details of medical treatment received (please also complete)

Have you fully recovered? Yes No If 'No', describe continuing ill effects:

D. Road traffic collision / damage

Relates to traffic collisions only. It is important that you provide us with details of your insurance company so we can liaise with them during the prosecution. A copy of this bill / estimate regarding damage MUST be attached.

Description of damage:

Cost of repair: _____ Written estimate / bill attached? Yes No

Name and address of your insurance company:

E. Insurance details

It is important that you tell us of any claims you have already made or intend to make via your car / home / medical insurance. Please ensure that a copy of your claim form and / or the company's reply is attached to this form.

Loss of 'no claims bonus'? Yes No If 'yes', please give amount: _____

Excess on policy? Yes No If 'yes', please give amount: _____

Confirmatory letter from insurance company attached? Yes No

Signed: _____ **Date:** _____

Personal details of claimant

Name: _____

Address: _____

Home telephone: _____ Business: _____

Email address: _____

Details of doctor / dentist (personal injury cases ONLY)**1. Did you attend Accident and Emergency as a result of your injuries?**Yes No If 'yes', please confirm:

Hospital: _____

Date of attendance: _____

Doctor's name if known: _____

2. Were you referred to a specialist / other department?Yes No If 'yes', please confirm:

Hospital: _____

Date(s) of attendance(s): _____

Doctor / dentist's name if known or department: _____

3. Have you seen your GP / dentist in relation to those injuries?Yes No If 'yes', please confirm:

GP / dentist's name: _____

Surgery address: _____

Date of attendance: _____

APPENDIX D

Neutral Citation Number: [2006] EWCA Crim 256
IN THE COURT OF APPEAL
CRIMINAL DIVISION

No: 200600012/A8

Royal Courts of Justice
Strand
London, WC2

Wednesday, 1st February 2006

B E F O R E:

SIR IGOR JUDGE

(PRESIDENT OF THE QUEEN'S BENCH DIVISION)

MR JUSTICE NELSON

SIR DOUGLAS BROWN

R E G I N A

-v-

GARY DEAN MILES

Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

MR W PAYNTER appeared on behalf of the APPELLANT

J U D G M E N T
(As Approved by the Court)

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1. SIR IGOR JUDGE: Gary Miles was born in June 1985. Before the matters with which we are concerned, there were some 15 or 16 previous court appearances between November 1998 and September 2004, for a total in excess of 24 offences. Unsurprisingly he was regarded as a prolific offender. On 10th November 2005, before magistrates, he admitted an offence of burglary. He was committed for sentence by the magistrates to the Crown Court. He appeared on 9th December at Isleworth Crown Court before Her Honour Judge Dangor. He was sentenced to 3 years' detention in a young offender institution, the judge taking into consideration, as she was asked, six further offences. The judge further ordered that 29 days already spent in custody on remand should count towards sentence. This application for leave to appeal against sentence has been referred to the Full Court by the Registrar.
2. The facts are very simple. At about 7 o'clock in the evening on 14th October 2005, staff at Lewis Pharmacy in Ealing left the premises locked and secured. When they came to the store on the morning of 15th October, they discovered that the front window had been smashed and the store burgled. Property taken included perfume, aftershave and some electrical items and the value of the goods stolen was estimated to be between £300 and £500. The scene was examined by the police. A fingerprint was found; it was the appellant's fingerprint.
3. He was arrested on 9th November. After an initial denial, when charged that very day, he admitted this burglary. He also indicated, in interview, that he had committed another five non-residential burglaries and a theft and he said that at the time of these offences, he was, as the saying goes "on drugs". In due course, not only did he plead guilty at the very earliest available opportunity, he also invited the court to take these additional offences into consideration when sentencing him.
4. The value of the property taken in the offences which the appellant asked the court to take into consideration, came to something just over £850 and the total damage consequent on those offences was almost exactly the same amount.
5. What an analysis of the list of offences reveals is that all the offences were committed in October 2005, in the period immediately around the time when the burglary at the Lewis Pharmacy in Ealing took place.
6. We have sufficiently referred to the appellant's previous record. It is in truth a very bad record indeed. The reason why he is committing offences of dishonesty is that he is determined, or was determined to fund his drug misuse. He started on drugs, hard drugs, heroin and crack cocaine at a very early age, about 12 years old. He has been using them ever since.
7. According to the pre-sentence report, a letter was sent to the writer from the Substance Misuse Service at Wormwood Scrubs Prison, where the appellant was then on remand. That letter states that on 8th November 2005, that is immediately before his arrest for these offences, the appellant had completed a 12 day detoxification programme for illicit drug use and had returned a negative drug test. That may sound a very minor modest level of improvement but it is, in the context of this young man's misuse of drugs, significant. Because of the drugs he had become addicted to, all his education was disrupted. In the end he left school before the statutory leaving age, without any academic qualifications of any kind. In fact, however, despite those disadvantages he is literate and numerate.
8. The judge had in mind that she was dealing with a young man with a dreadful record for crime, and also that he had made some progress in relation to the misuse of drugs. She recognised that the improvement was to be encouraged, and said that she would take into account what she described as fairly early guilty plea. Having reflected on those matters she concluded that the appropriate sentence was 3 years' detention.
9. Three submissions are advanced to us in support of the appeal. The first perhaps needs a little attention. It is suggested that the judge attached more weight than she should done to offences taken into consideration. The papers referred to various sentencing decisions of this Court, of which the most well known in the context of burglary is Mclnerney.
10. In relation to offences taken into consideration, we have these observations: the sentence is intended to reflect a defendant's overall criminality. Offences cannot be taken into consideration without the express agreement of the offender. That is an essential prerequisite. The offender is pleading guilty to

the offences. If they are to be taken into account (and the court is not obliged to take them into account) they have relevance to the overall criminality. When assessing the significance of TICs, as they are called, of course the court is likely to attach weight to the demonstrable fact that the offender has assisted the police, particularly if they are enabled to clear up offences which might not otherwise be brought to justice. It is also true that cooperative behaviour of that kind will often provide its own very early indication of guilt, and usually means that no further proceedings at all need be started. They may also serve to demonstrate a genuine determination by the offender (and we deliberately use the colloquialism) to wipe the slate clean, so that when he emerges from whatever sentence is imposed on him, he can put his past completely behind him, without having worry or concern that offences may be revealed as that he is then returned to court.

11. As in so many aspects of sentencing, of course, the way in which the court deals with offences to be taken into consideration depends on context. In some cases the offences taken into consideration will end up by adding nothing or nothing very much to the sentence which the court would otherwise impose. On the other hand, offences taken into consideration may aggravate the sentence and lead to a substantial increase in it. For example, the offences may show a pattern of criminal activity which suggests careful planning or deliberate rather than casual involvement in a crime. They may show an offence or offences committed on bail, after an earlier arrest. They may show a return to crime immediately after the offender has been before the court and given a chance that, by committing the crime, he has immediately rejected. There are many situations where similar issues may arise. One advantage to the defendant, of course, is that if once an offence is taken into consideration, there is no likely risk of any further prosecution for it. If, on the other hand, it is not, that risk remains. In short, offences taken into consideration are indeed taken into consideration. They are not ignored or expunged or disregarded.
12. The judge in this case took the offences into consideration. She was right to do so. She did so because she was requested to do so. The question for us to consider is not whether she attached too much weight to the offences taken into consideration but whether, looking at the overall criminality of this offender, the sentence imposed was manifestly excessive.
13. We are troubled in this case that the judge perhaps insufficiently recognised the early nature of the plea and the almost immediate co-operation by the appellant with the police. He was entitled to the maximum discount for that aspect of his behaviour. We also recognise that when taking into account the remaining offences and indeed considering the facts of the substantive offence, these were, albeit serious offences, unsophisticated burglaries of non-residential premises. The judge considered these various matters and was influenced, as we are, by the fact there was evidence in the papers to suggest that this young man was making some effort to control his addiction to drugs. If that can be achieved, there is no reason why he should not eventually become properly rehabilitated. We have taken the view that the sentence was excessive in all the circumstances and that there should be a reduction. We shall accordingly reduce the sentence from one of 3 years' Detention to one of 2 years' detention. To that extent this appeal will be allowed.
14. Stand up, will you? I hope you are able to follow that. How old are you now 21 — still 20. You have a long way to go. You have been given this reduced sentence, and the judge reduced your sentence because she believed, and we believe that you really are making an effort in relation to drugs. You can throw your life away if you want. We cannot stop you. There is plenty about you. You could make a future for yourself. I meant it when I said you could rehabilitate yourself. It is not going to be fun doing it in the young offender institution or in prison, but your future is in your own hands. You could make something of yourself. Very well, off you go.

PROSECUTION TEAM GUIDANCE:

TICs

Offences to
be taken into
consideration

