

THE DIRECTOR'S GUIDANCE ON CHARGING

The Prosecution Team



**Guidance to Police Officers and Crown Prosecutors Issued by the
Director of Public Prosecution under S37A of the Police and
Criminal Evidence Act 1984**

4th Edition: January 2011
(Revised arrangements)

The Director's Guidance on Charging 2011

1. INTRODUCTION

This revised Guidance is issued under the provisions of section 37A of the Police and Criminal Evidence Act 1984 (PACE) and sets out arrangements prescribed by the Director of Public Prosecutions for the joint working of police officers and prosecutors during the investigation and prosecution of criminal cases. It incorporates the Streamlined Process Guidance and replaces all earlier editions.

In particular, this Guidance sets out:

- how the police should deal with a person where there is sufficient evidence to charge or where a person has been arrested again having been released on bail awaiting a charging decision by a prosecutor;
- the offences that can be charged by the police and those where the decision must be made by prosecutors;
- how and when early investigative advice is to be sought from a prosecutor;
- the evidence and information needed for a charging decision to be made and for the prosecution of cases at court;
- the circumstances when a person may be given a simple caution for an indictable only offence, or a conditional caution.

Police officers and prosecutors must comply with this Guidance to ensure that charging and other prosecution decisions are fair and consistent and fully comply with PACE, the PACE Codes of Practice and the Code for Crown Prosecutors.

2. Responsibilities of police officers and prosecutors

The police are responsible for:

- diverting, charging and referring cases as directed by this Guidance;
- assessing cases before referral to ensure the Full Code or Threshold Test can be met on the available evidence as appropriate to the circumstances of the case;
- taking "no further action" in any case that cannot meet the appropriate evidential standard, without referral to a prosecutor;
- referring specific cases involving a death, rape or serious sexual offence for early advice;

- completing pre-charge reports and prosecution files as directed by this Guidance and in accordance with the National File Standard;
- completing action plans and providing key evidence within agreed time periods;
- ensuring that any unused material which undermines the prosecution case or is capable of assisting the defence is revealed to the prosecutor at the time of referral of the case for investigative advice or a charging decision;
- ensuring that cases appropriate for an out of court disposal are identified as early as possible and dealt with prior to charge;

Prosecutors will be responsible for:

- making charging decisions and providing advice and guidance in cases specified by this Guidance;
- deciding whether it is appropriate to apply the Threshold Test in the circumstances of the case;
- Recording decisions on the MG3 and MG3a;
- ensuring pre-charge action plans only require the gathering of key evidence and contain agreed timescales for the completion of any work;
- ensuring that cases appropriate for an out of court disposal are identified prior to charge, and in police charged cases prior to the first hearing.

OPERATIONAL ARRANGEMENTS

3 Police duty to investigate offences

The police will undertake effective early investigations to ensure that the key evidence required to make informed decisions in cases is obtained as soon as possible.

All reasonable lines of enquiry should be pursued to ensure that any evidence or material likely to undermine the prosecution case or assist the defence is provided to the prosecutor and taken into account during any referral for investigative advice or charging.

This will enable relevant key evidence to be obtained, permitting the building of a proportionate file. Compliance with the rigorous case management regime under the Criminal Procedure Rules requires key evidence to have been provided to the prosecutor prior to the first hearing unless the charging decision has been taken applying the Threshold Test.

4 Police duty to assess evidence before charging or referral

Where a police decision maker considers there may be sufficient evidence to charge they will assess the key evidence to ensure the appropriate Test can be met before proceeding to charge or referring the case to a prosecutor. If the Test is not met and the case cannot be strengthened by further investigation the police will take no further action.

Where the police proceed to charge in accordance with this Guidance they will assess the case to determine:

- the evidence which supports the charge;
- the justification for treating the case as an anticipated guilty plea suitable for sentence in a magistrate's court (where that is a requirement);
- the reason why the public interest requires prosecution rather than any other disposal.

Where the police proceed to charge a summary only offence where the suspect has put forward a specific defence or denied the offence in interview the police decision maker will record the reason for doing so on an MG6 and provide a copy to the CPS with the file for the first hearing in the case.

5 Requirement on police to refer cases to prosecutors

If following assessment a police decision maker considers there is sufficient evidence to charge a suspect and the case is one which this Guidance requires to be referred to a prosecutor to determine whether the suspect is to be charged the case shall be so referred. The custody officer will determine whether the suspect should be detained in custody or released on bail to facilitate that referral. The police will then authorise the case to be referred in accordance with this Guidance at the earliest practical opportunity.

6 Prosecutors' duty to assess the evidence provided by the police

In making charging decisions and providing early advice, prosecutors will assess the evidential material provided in accordance with this Guidance. Prosecutors will be proactive in identifying, and where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation or where the public interest clearly does not require a prosecution.

7 Early investigative advice

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.

Specific cases involving a death, rape or other serious sexual offence should always be referred to a local Area prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail.

Where a case is referred to CPS at an early stage the prosecutor may determine the information to be provided by the police, the stage at which the evidence will be reviewed and the test to be applied, and this may be in accordance with specific protocols including those relating to cases dealt with by CPS Central Casework Divisions or Group Complex Casework Units.

8 Requirement in all cases to meet the Full Code Test

Police decision makers have an important role in identifying and stopping cases where the Full Code Test (set out in the Code for Crown Prosecutors) cannot be met. Cases should not be charged by the police or referred to prosecutors unless this standard can be met or unless the making of a charging decision in accordance with the Threshold Test is justified. This means the case must be capable, through the gathering of further evidence, of reaching the Full Code Test standard.

The police should take decisions to no further action cases before referral unless the decision requires the assessment of complex evidence or legal issues.

9 Application of the Public Interest stage in all cases

Once the evidential stage is met, the Public Interest must be considered before any decision to charge is taken. Where the nature or circumstances of the offence indicate that only a nominal penalty is likely to be imposed by the court, the public interest will require careful consideration. A suspect should not be charged where the public interest in the case can be met by an appropriate out of court disposal.

Where the police make the charging decision, they should also consider the public interest in the case. Where the case has to be referred to the CPS, the public interest judgement must be made by a prosecutor.

10 Diversion from prosecution – dealing with cases out of court

When considering the Public Interest in any case, an important early consideration will be whether the case can be appropriately dealt with out of court.

What is appropriate in the circumstances of each individual case will depend on the seriousness of the offence, the results of the offending behaviour, the antecedents of the offender and the likely outcome at court, particularly where it may be a nominal penalty.

Where an out of court disposal offers an outcome appropriate to the circumstances of the case, it should be considered. Wherever possible, the views of the victim should be obtained and taken into account.

In any case in which the police consider that a conditional caution may be an appropriate outcome, the case must be referred to a prosecutor. This requires completion of an MG5 summary containing proposed conditions and details of any previous convictions. In cases that are referred to a prosecutor for a charging decision, the police may recommend the case is dealt with by a conditional caution if that is considered appropriate.

11 Concluding investigations early on Public Interest grounds

Generally, public interest decisions should not be taken until sufficient key evidence has been obtained to meet the evidential standard. However, there will be cases where it is clear at an early stage that the public interest does not (and will not) require a prosecution. In these rare instances, the police or prosecutors may make an early public interest decision that the case should not proceed further.

12 The Threshold Test

Prosecutors will apply the Full Code Test unless the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she

must be released from custody unless charged.

The Threshold Test may be used to charge a suspect who may justifiably be detained in custody to allow evidence to be gathered to meet the Full Code Test realistic prospect of conviction evidential standard.

13 The Four Requirements to use of the Threshold Test

The Threshold Test may only be applied where the prosecutor is satisfied that all the following four requirements 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 be properly made.

Custody officers are responsible for making the initial determination whether the suspect is to be retained in custody following charge. Once that decision is made, the case may be referred to a prosecutor who will determine in all the circumstances whether the Threshold Test may be applied and is met.

The decision as to whether a remand in custody is to be sought at court lies solely with the prosecutor.

To ensure this is a fully informed decision, the police should provide all material relevant to the objections to bail which has been considered by the custody officer. This should be done by completing a detailed form MG7.

14 Action where the Four Requirements are not met

Where any of the above preconditions are not met, the Threshold Test cannot be applied and the suspect cannot be charged. The case must then be referred back to the custody officer who will determine whether the person may continue to be detained or be released on bail, with or without conditions.

15 Application of the Threshold Test Evidential Stage

Once the prosecutor has determined that the Threshold Test may be applied, consideration must be given to the evidential and public interest stages.

There are two parts to the evidential consideration:

- First, the prosecutor must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence. In determining this, the prosecutor must consider the evidence which is then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:

- a) it is relevant, **and**

- b) it is capable of being put into admissible format for presentation at court, **and**
 - c) it would be used in the case.
- Secondly, once the first part of the Test is met, the prosecutor must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence within a reasonable period of time so that all the evidence taken together is capable of establishing a realistic prospect of conviction. In determining this, the prosecutor must consider:
 - a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
 - b) the charges that all the evidence will support;
 - c) the reasons why the evidence is not already available;
 - d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.

The further evidence must be identifiable and not merely speculative.

If both parts of the evidential stage of the Threshold Test are satisfied, prosecutors must then apply the public interest stage based on the information available at that time.

16 Action where the Evidential Stage of the Threshold Test is not met

Where the prosecutor is not satisfied on either part of the evidential stage, the suspect cannot be charged. The case must then be referred back to the custody officer who will determine whether the suspect may continue to be detained or released on bail or whether the case should be concluded with no further action.

17 Full Code review of cases charged in accordance with the Threshold Test

A decision to charge under the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the charge is still appropriate and that the continued objection to bail is justified. The Full Code Test must be applied as soon as is reasonably practical and in any event before any contested hearing and at the very latest before the expiry of any applicable custody time limit or extended custody time limit.

Cases must not proceed to trial unless both stages of the Full Code Test are met. In any case charged in accordance with the Threshold Test, a prosecutor will undertake a Full Code Test review prior to any trial hearing and before the expiry of any custody time limit. A full record of this review will be made on the case file.

18 Restrictions on the use of the Threshold Test

Where the police charge either way offences as anticipated guilty pleas suitable for sentence in the magistrates' court, the requirements of the Full Code Test should always be met. In such circumstances, use of the Threshold Test, even where it is considered appropriate to detain the suspect in custody, is unnecessary.

The Threshold Test may **not be used to charge a summary only offence that does not carry imprisonment**. Where it is used by the police to charge an imprisonable summary only offence the police will record how the Threshold Test requirements are met and how the evidential stage is satisfied. This will be recorded on an MG6 and provided to the CPS with the file for the first hearing.

THE DIVISION OF CHARGING RESPONSIBILITY

19 Police Charging Decisions

The police may charge any Summary Only offence (including criminal damage where the value of the loss or damage is less than £5000) irrespective of plea and any either way offence **anticipated as a guilty plea** and **suitable for sentence in a magistrates' court**, provided it is not:

- a case requiring the consent to prosecute of the DPP or Law Officer;
- a case involving a death;
- connected with terrorist activity or official secrets;
- classified as Hate Crime or Domestic Violence under CPS Policies;
- an offence of Violent Disorder or Affray;
- causing Grievous Bodily Harm or Wounding, or Actual Bodily Harm;
- a Sexual Offences Act offence committed by or upon a person under 18;
- an offence under the Licensing Act 2003

20 CPS Charging Decisions

Prosecutors will make charging decisions in all Indictable Only cases, any either way offence not suitable for sentence in a magistrates' court or not anticipated as a guilty plea, and the offences specified in the proviso above.

In a case where any offences under consideration for charging by the police include any offence which must be referred to a prosecutor under this Guidance then all offences in the case will be referred to a prosecutor to consider which should be charged

21 Determining whether a Guilty Plea may be anticipated

A guilty plea may be anticipated where either:

- the suspect has made a clear and unambiguous admission to the offence and has said nothing that could be used as a defence, **or**
- the suspect has made no admission but has not denied the offence or otherwise indicated it will be contested and the commission of the offence and identification of the offender can be established by reliable evidence or the suspect can be seen clearly committing the offence on a good quality visual recording

22 Assessing whether the case is suitable for sentence in a magistrates' court

A case may be considered suitable for sentence in a magistrates' court **unless**:

- the loss or damage relating to the charge is more than £5000 or would exceed that sum if more than one offence is charged (or taken into consideration), **or**
- the overall circumstances of the offence are so serious that the court may decide that a sentence of more than six months imprisonment justifies sending the case to the crown court, **or**
- the offence has been committed whilst the suspect was subject to a Crown Court order then in force

23 Use of Simple Cautions in Indictable Only cases

Where a police decision maker considers that any Indictable Only offence may be appropriately dealt with by means of a simple caution the case must be referred to a prosecutor to determine whether there is sufficient evidence for there to be a realistic prospect of conviction and that it is in the public interest to deal with the case by way of a simple caution.

A prosecutor will only confirm that that is an appropriate outcome in exceptional circumstances and where it fully meets the justice of the case. Such decisions are invariably sensitive and should be referred by a prosecutor to the relevant CPS manager for confirmation prior to notifying the police. A careful note of the reasons for the decision must be made on the MG3.

24 Police charging where a prosecutor's authority cannot be obtained before the expiry of a PACE time limit

A Police Inspector may authorise the charging of an offence referable to prosecutors in accordance with this Guidance where the continued detention of the suspect after charge is justified and where it will not be possible to obtain a prosecutor's authority to charge before the expiry of any relevant PACE time limit applicable to the suspect.

The police should anticipate the PACE custody time limits and seek a charging decision in good time.

The police may apply the Threshold Test when charging under this provision.

Any cases charged under this provision must be referred to a prosecutor as soon as possible following charge and not later than the time proposed for the first appearance before a magistrates' court.

25 Prosecutor's review of police charged cases

The CPS will review all police charged cases prior to the first hearing in accordance with their duty under the Code for Crown Prosecutors.

Cases will only proceed where the appropriate Test is met on the evidence and information available. Cases will also be reviewed to assess whether the Public Interest requires a prosecution or whether an out of court disposal is more appropriate.

Where it appears that the police have charged a case not permitted by this Guidance, the reviewing prosecutor must consider whether the evidence and material available at that time fully meets the Threshold Test or Full Code Test relevant to the circumstances of the case. Where it does the prosecutor will continue with the prosecution and record the reason on an MG3 or with the case review.

Where it does not meet the appropriate Test, the prosecutor should immediately enquire if there is any other material available which has not been provided which may allow the case to continue. Where that is not the case, the prosecution should be discontinued pending the gathering of further evidence and the referral of the case to a prosecutor to make a charging decision.

Where the police have charged a suspect but a prosecutor, acting under Section 10 of the Prosecution of Offences Act 1985 or Section 37B PACE notifies a custody officer that it is more appropriate to proceed by way of a simple or conditional caution, reprimand or final warning, the custody officer will ensure that the suspect is given a caution, reprimand or final warning as appropriate.

26 Consequences of police charging offences not in accordance with this Guidance

An offence charged by the police in circumstances not permitted by this Guidance may amount to a breach of PACE. The decision may be challenged at court and could be subject to judicial review proceedings. It may give rise to liability under the civil law, especially if a suspect has been detained in custody.

Where a prosecutor having identified that the police have incorrectly charged a case does not proceed in accordance with this Guidance, the CPS may be in breach of PACE and may become subject to civil liability.

27 Management review of charging decisions and actions

If the police or a prosecutor disagrees with any decision or action proposed following referral of a case the case can be escalated to the first line of management, which for this purpose will be the Detective Chief Inspector or District Crown Prosecutor, for a review and resolution of outstanding issues. This review should take place as soon as possible. If this review cannot resolve the issues, the case should be referred to the BCU Commander and Chief Crown Prosecutor or someone nominated on their behalf.

28 Police compliance with decisions made by prosecutors

Where in a case that has been referred to a prosecutor for a charging decision the decision of the prosecutor is to charge, caution, obtain additional evidence, or take no action, the police will proceed in that way unless the case is escalated for management review.

29 Custody officer to provide written notice to suspect on release without charge

Where the prosecutor notifies a custody officer that there is not sufficient evidence to charge the person with an offence or that there is sufficient evidence but the public interest does not require the person to be charged or given a caution in respect of an offence, the custody officer will provide the person with a notice in writing to that effect. That notice will also specify whether or not any future prosecution may be brought if further evidence or information comes to light.

30 Information required for investigative advice and charging decisions

Where a case is being referred to the prosecutor for investigative advice or guidance, the police will provide the material and evidence then available and relevant to the aspect of the case on which the guidance is sought.

The police should identify the issues on which guidance is sought, and in more complex cases, this should be done by the completion of a case report or MG3.

The advice or decision of the prosecutor will be set out in an MG3 and an action plan will precisely specify any further work with an agreed date for completion.

Where a case is to be referred for a charging decision, the police will compile a pre-charge report comprising:

- MG3 (The summary of the facts of the case may be provided on an MG 5) which will also contain any confidential information, the views of the investigating officer and identify any issues on which the decision of the prosecutor is sought;
- the key evidence in the case;
- any relevant exhibits, CCTV, and forensic reports;
- PNC print of suspect and key prosecution witnesses previous convictions (including any out of court disposals);
- any material that has been identified at that stage which may undermine the prosecution case or assist the defence.

In cases where the suspect has made a full admission during interview the specific admissions made will be included in the case summary. This should be accompanied by such key evidence as is required to set out the circumstances of the commission of the offence.

Where an investigator considers that although questions have been answered by the suspect, overall the interview is of no evidential value, no record of interview need be provided.

In cases where the suspect has made no comment to all questions asked no record of interview is required.

31 Key evidence

Key evidence is that evidence which either alone (the evidence of one witness) or taken together with other evidence (further witnesses or exhibits) establishes the elements of the offence to be proved and that the person to be charged committed the offence with any necessary criminal intent.

Where numerous witness statements provide differing evidence relating to the same events, MG11 witness statements should be provided in respect of each witness.

Corroborative statements or continuity evidence should not be provided unless already contained within the statement of a key witness. Other evidence supporting or repetitive of key witnesses is not required with the MG3.

32 Practical arrangements for the referral of cases

In order to ensure a speedy and responsive charging service, referral arrangements for all but the most serious and complex cases will be by telephone.

The police will submit pre-charge reports and key evidence across the electronic exchange, by direct input, secure e-mail, or fax. The police will then telephone to consult with a CPS prosecutor.

During weekday day time hours (9-5pm) calls will route to the local CPS Group Daytime Direct service. Outside these hours, the referral will be to CPS Direct.

33 Face to face consultations

Face to face consultations will take place in the most serious, sensitive and complex cases. These include;

- any case involving a death;
- rape and serious sexual offences;
- child abuse;
- large scale or long term fraud;
- cases with substantial or complex video or audio key evidence;
- cases expected to take longer than 90 minutes in consultation;
- any other cases agreed with the CPS locally.

Face to face consultations will be facilitated by a local CPS specific point of contact or via the Group Daytime Charging Manager. Such consultations should take place without delay and the police should be informed when the written advice or decision will be provided. An early telephone consultation should take place to confirm that a face to face consultation is necessary and to confirm what written material is to be submitted in advance.

34 Written advice files

The submission of a written advice file must only take place in exceptional circumstances including where there are lengthy ABE interviews with witnesses or complex or lengthy documentary exhibits to be considered.

Arrangements for submission of written files should be facilitated by the police contacting the Group Charging Manager or specialist unit prior to submission of any information.

35 Delaying charging and releasing persons suitable for bail

Where the evidence required for referral of the case to a prosecutor is not available custody officers will release those suitable for bail (with or without conditions as appropriate) to allow the referral of the case in accordance with this Guidance.

The period of bail should allow for the completion of the investigation and the referral of the case to a prosecutor. Wherever possible referrals for charging decisions where

suspects have been released on bail should be made during normal weekday office hours.

Where a person released on bail is subsequently arrested having broken a condition of bail or for failing to surrender to the police station and a custody officer concludes that the person should be detained in custody for early appearance before a court, the custody officer will refer the case to a prosecutor to determine whether the person is to be charged.

36 Information required for prosecution – the National File Standard

Once a case is charged and is to proceed to court, the prosecution file for the first hearing must be proportionate to the requirements of that hearing whilst at the same time providing the prosecutor with sufficient information to be able to conclude the case if the plea is guilty. It must also enable the prosecutor to conduct an effective case management hearing if a not guilty plea is entered. The only exception to this requirement is where the charging decision has been made applying the Threshold Test.

The National File Standard (*which is based on the Streamlined Process*) provides for a staged and proportionate approach to the preparation of case files. It specifies the material required for the first hearing and identifies how the file is to be developed at appropriate stages throughout the life of the case. It will provide the prosecutor, the defence and the court with information proportionate and necessary to progress the case. It will be developed, as necessary, to provide sufficient further information to proceed to summary trial, committal or sending to the Crown Court for jury trial.

The case management regime provided by the Criminal Procedure Rules requires the court to identify, once a not guilty plea is entered, the precise details of the real issues in dispute in the case. This will allow for the further proportionate development of the case in preparation for the trial hearing. Operation of effective case management hearings is dependent upon inclusion of the core material within the file for the first hearing which will allow the prosecutor to complete the Case Management Form as required. Unnecessary file build and unnecessary adjournments in cases can be avoided by the strict adherence to this standard.

The provisions of the National File Standard are set out in Annex A, together with additional notes relating to specific types of evidence in Annex B. The MG3 & MG5 shall be in the form set out in Annex D & E, unless the information is provided by direct input into CMS.

37 Performance Monitoring - ACPO/CPS Joint Charging Standards & Delivery Measure

The operation of local arrangements for the referral of cases as above will be in accordance with the agreed ACPO/CPS Joint Charging Standards and Delivery Measures and local managers will use the information provided by the delivery measures and Prosecution Team Performance Management data to assess the efficiency and effectiveness of local operation.

38 Implementation

This Guidance will come in to effect in the CPS Groups and police force Areas as specified below.

Keir Starmer QC
Director of Public Prosecutions
21st January 2011

Group	Date of coming in to effect	Authorisation of Director of Public Prosecutions
<i>East Midlands</i>		
Derbyshire		
Leicestershire		
Lincolnshire		
Northamptonshire		
Nottinghamshire		
<i>Eastern</i>		
Cambridgeshire		
Essex		
Norfolk		
Suffolk		
<i>Mersey/Cheshire</i>		
Cheshire		
Merseyside		
<i>North East</i>		
Cleveland		
Durham		
Northumbria		
<i>North West</i>		
Greater Manchester		
Cumbria		
Lancashire		
<i>South East</i>		
Kent		
Surrey		
Sussex		
<i>South West</i>		
Avon & Somerset		
Devon & Cornwall		
Gloucestershire		
<i>Thames & Chiltern</i>		
Bedfordshire		
Hertfordshire		
Thames Valley		
<i>Wales/Cymru</i>		
Dyfed Powys		
Gwent		
North Wales		
South Wales		
<i>Wessex</i>		
Dorset		
Hampshire & The Isle of White		
Wiltshire		
<i>West Midlands</i>		
Staffordshire		
Warwickshire		
West Mercia		
West Midlands		
<i>Yorkshire & Humberside</i>		
Humberside		
North Yorkshire		
South Yorkshire		
West Yorkshire		

London		
Westminster		
Sutton		
City		
Southwark		
Lambeth		
Camden		
Islington		
Newham		
Greenwich		
Lewisham		
Bexley		
Hackney		
Tower Hamlets		
Barking and Dagenham		
Bromley		
Croydon		
Havering		
Waltham Forest		
Redbridge		
Kensington and Chelsea		
Hounslow		
Richmond		
Kingston		
Wandsworth		
Hammersmith and Fulham		
Merton		
Ealing		
Hillingdon/Heathrow		
Brent		
Barnet		
Haringey		
Enfield		
Harrow		

Contents of Charging Reports and the National File Standard

ANTICIPATED <u>GUILTY</u> PLEA CASES		ANTICIPATED <u>NOT GUILTY</u> PLEA CASES		CONTESTED and IO CASES
<p><u>1A - Pre-charge Report</u> For charging decision - to Police Supervisor or CPS Prosecutor</p>	<p>1B - Post-charge National File Standard <u>1st Court Hearing</u></p>	<p>2A - Pre-charge Report For charging decision - to Police Supervisor or CPS Prosecutor</p>	<p>2B - Post-charge National File Standard 1st Court Hearing</p>	<p>3A - Upgrade File Magistrates' Court trial or committal or sending to Crown Court for trial</p>
<p>MUST INCLUDE:</p> <p>MG3 - Report to Crown Prosecutor</p> <p>MG3A - Further Report to Crown Prosecutor</p> <p>PNC print of suspect and key prosecution witnesses pre-cons to include simple cautions, conditional cautions, RFW, PND etc.</p> <p>Include any material that may undermine the prosecution case or assist the defence.</p> <p>Disclosure schedules are NOT required at this stage</p> <p>IF APPLICABLE, INCLUDE:</p> <p>MG11(s) - Key witness statement(s) or ROVI (if visually recorded)</p> <p>MGDD A/B - Drink/Drive forms</p> <p>Other key evidence: CCTV (copy only when it is sole evidence to be relied upon, otherwise a summary of the relevant extract identifying the offender and/or offence should be provided), medical or forensic reports, photographs, documentary exhibits etc.</p> <p>Other relevant material: Domestic Violence/Hate Crime incident reports etc.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Once a charging decision has been made, the 'Pre-charge Report' becomes the 'Post-charge National File Standard' for 1st hearing at Magistrates' Court.</p> </div>	<p>MUST INCLUDE IN ADDITION to Pre Charge Report:</p> <p>MG4 - Charge Sheet</p> <p>MG5 - Police Report</p> <p>MG9 - List of Witnesses</p> <p>MG10 - Witness non-availability</p> <p>IF APPLICABLE, INCLUDE:</p> <p>MG2 - Special Measures Assessment</p> <p>MG4A/B/C - Bail Sheet Conditional/Vary/Security/Surety</p> <p>MG7 - Remand Application</p> <p>MG8 - Breach of bail conditions</p> <p>MG11(s) - All <u>key</u> witness statement(s) or ROVI (if visually recorded)</p> <p>MG15 - Interview Record (Only to be compiled in serious or complex cases)</p> <p>MG17 - POCA Review</p> <p>MG18 - Offences TIC</p> <p>Compensation documentation e.g. estimates or invoices.</p> <p><i>If Not Guilty plea is entered or case sent to Crown Court for trial commence proportionate upgrade according to the 'real issues' in the case as identified at the Case Management Hearing as at 3A.</i></p>	<p>MUST INCLUDE:</p> <p>MG3 - Report to Crown Prosecutor</p> <p>MG3A - Further Report to Crown Prosecutor</p> <p>MG11(s)- Key witness statement(s) or ROVI (if visually recorded)</p> <p>PNC print of suspect and key prosecution witnesses pre-cons to include simple cautions, conditional cautions, RFW, PND etc.</p> <p>Include any material that undermines prosecution case or assists the defence case.</p> <p>Disclosure schedules are NOT required at this stage</p> <p>IF APPLICABLE, INCLUDE:</p> <p>MGDD A/B - Drink/Drive forms</p> <p>Other key evidence: CCTV (copy only when it is sole evidence to be relied upon), medical or forensic reports, photographs, documentary exhibits etc.</p> <p>Other relevant material: Domestic Violence/Hate Crime incident reports etc.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Once a charging decision has been made, the 'Pre-charge Report' becomes the 'Post-charge National File Standard' for 1st Hearing at Magistrates' Court.</p> </div>	<p>MUST INCLUDE IN ADDITION to Pre Charge Report</p> <p>MG4 - Charge Sheet</p> <p>MG5 - Police Report</p> <p>MG9 - List of Witnesses</p> <p>MG10 - Witness non-availability</p> <p>MG11(s) - Key witness statement(s) or ROVI (if visually recorded)</p> <p>IF APPLICABLE, INCLUDE:</p> <p>MG2 - Special Measures Assessment</p> <p>MG4A/B/C - Bail Conditional/Vary/Security/Surety</p> <p>MG7 - Remand Application</p> <p>MG8 - Breach of bail conditions</p> <p>MG15 - Interview Record (Only to be compiled in serious or complex cases)</p> <p>MG16 - Bad Character/Dangerous Offender</p> <p>MG17 - POCA Review</p> <p>MG18 - Offences TIC</p> <p>MG21/21A - Forensic Submissions</p> <p><i>If Not Guilty plea is entered or case sent to Crown Court for trial commence proportionate upgrade according to the 'real issues' in the case as identified at the Case Management Hearing as at 3A.</i></p>	<p>MUST INCLUDE IN ADDITION to the Post-charge National File Standard</p> <p>Magistrates Court Trial:</p> <p>MG6C - Schedule of Non-sensitive unused material</p> <p>MG6D - Schedule of sensitive material</p> <p>MG6E - Disclosure Officer's report</p> <p>IF APPLICABLE, INCLUDE:</p> <p>MG2 - Special Measure Assessment</p> <p>MG6B - Police Officer's Disciplinary record</p> <p>MG11 - Other relevant <u>key</u> statements</p> <p>MG12 - Exhibits List</p> <p>MG15 - Interview Record (Only to be compiled when relied upon and summary on MG5 is deemed insufficient for trial)</p> <p>MG19 - Compensation form plus supporting documents</p> <p>MG21/21A - Forensic Submissions</p> <p>Plus for Crown Court Trial:</p> <p>MG11- All statements including corroborative, continuity etc.</p> <p>MG15 - Interview Record</p> <p style="text-align: right;">Version Jan 2011</p>

Annex A

Additional Notes: Specific Evidential Points

1. Identification evidence

Where identity is not admitted, sufficient evidence to prove this will be a key element of the prosecution case. Although silence during interview does not challenge an allegation of involvement, it does not remove the necessity for proper identification by the prosecution where this is not admitted.

However, supervisors or Evidence Review Officers and prosecutors should ensure that identity procedures triggered by paragraphs 3.12 and 3.13 of PACE Code of Practice D are undertaken only when justified and necessary. Full reasons for requesting identification procedures should be noted on the MG3.

2. Identification through scientific evidence

In any case in which material evidence against a person consists of a DNA or fingerprint or other forensic analysis, confirmation of the match report, accompanied by other supporting evidence in the case, or positive fingerprint identification will suffice for the purposes of making a charging decision and for the magistrates' court initial hearing.

Preliminary information on finger print lifts must indicate the location and position of any identified finger prints and their significance. Also notice should be given of any other fingerprints lifted and not belonging to the suspect; whether these have been identified and if so, whether the persons concerned have been eliminated from the enquiry. **A full evidential statement detailing the analysis will only be required if the case proceeds to trial and aspects of the report are challenged by the defence.**

Where a controlled substance has been identified through the use of a drug testing kit or in the case of cannabis by an experienced police officer, only where the identification is challenged will further scientific evidence be obtained after charge. The use of this equipment should be mentioned in the summary.

3. Dealing with medical evidence

Subject to the following paragraph, in any case involving an allegation of assault (whether common assault or occasioning actual bodily harm) which is suitable for sentencing in a magistrates' court, evidence of a medical practitioner will not be required.

In the case of an offence of assault occasioning actual bodily harm (Section 47 Offences against the Person Act 1861) a medical statement will only be required where the injuries can only be proved through the interpretation of medical records or X rays by a medical practitioner. Such a statement will only be required where, during interview, the suspect does not accept the nature and extent of injuries caused.

Otherwise good reliable eye-witness evidence or good quality photographs accompanied by descriptions of the extent of the injuries will suffice for other summary assault cases.

However, where the victim of an assault has sought medical attention, this must be revealed to the prosecutor unless a statement from the medical practitioner forms part of the prosecution case. When medical statements are taken, a copy of any medical notes should be obtained.

4. Summaries of Visually Recorded Evidence

Generally there is no substitute for the prosecutor viewing the CCTV recording or photograph, as many times as is necessary, in order that an assessment can be made of the evidence it provides; the conduct of the suspect(s); the visual quality of the recording; and any interpretation that is necessary (e.g. is it likely that a claim of self defence could be sustained). The prosecutor will also have to consider the images viewed alongside other relevant evidence not recorded on camera; its overall effect on the conduct of the case and its likely impact on a jury or justices.

Due to current technical limitations, it is not always possible to view the visually recorded evidence during the initial period of detention and this can cause delay in cases that are otherwise ready to charge and could proceed to court to be dealt with the next day or for an application to remand into custody.

Where it is not practicable for the relevant evidence contained in a visual recording to be viewed the prosecutor may consider accepting a summary of what can be seen on a visual recording if satisfied that:

- the summary is a factual account that has been prepared by an officer who has viewed the recorded material;
- the images displayed are of sufficient quality to clearly identify the suspect;
- where practicable, the visually recorded material was shown to the suspect in interview and any response recorded;

The prosecutor must then exercise judgement taking the following factors in to account:-

- does the recorded material (based on the summary provided) taken together with any witness statements obtained provide a continuous account of the alleged offence?
- is the recorded material consistent with other evidence available?
- has the suspect put forward a defence which requires an interpretation of the recorded material?
- has the suspect put forward, as a defence, actions that are not referred to in the summary?

The summary provided should be accepted unless the prosecutor concludes the charging decision cannot properly be made without viewing the material.

The summary should be provided in report form on the MG3 or on a separate report attached to the MG3 and should be a clear factual account of what can be observed, specifying the actions of the suspect and any relevant reaction of others present. It should provide a clear description of the suspect including clothes worn.

It should also include a clear reference point for the start and end of the relevant parts of the recording and indicate the extent to which other parts of the recorded material have been viewed. The prosecutor making the charging decision will make a note on the MG3 that the visual evidence has not been viewed prior to the making of the charging decision.

5. Prepared defence statements at police interviews

Prepared statements not providing any kind of admission are not capable of forming part of the prosecution case and should not be recorded in the summary or form part of the prosecution's case presentation. However, the fact one was made should be mentioned in the summary. A copy of any statement provided by the defence should be retained (as unused material) for the purposes of cross examination in the event of an alternative explanation being offered at trial.

6. Drugs Intervention Programme (testing on arrest or charge)

Although it is not strictly 'evidence', the DIP test results provide useful information which may assist the court in deciding whether to grant bail, with or without conditions, and in establishing the level of the report required for sentencing purposes. It is not necessary to attach the Form DT2 but the Police Report must indicate if a test was performed, if the offence is a trigger offence and the result. It should also state the nature of the drug indicated in a positive test.