

People with a mental illness
or mental disability

Tell us what you think
about our new guide for
Prosecutors.



**EasyRead version of:
Mental Health Conditions
and Disorders: Legal Guidance.**



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Some words are in **bold**. There is a list of what they mean on the last page.



1. What this paper is about

The **Crown Prosecution Service (CPS)** wrote this paper. We work in England and Wales.



We decide if someone should go to court when the police or other organisation think they have done a crime.



We decide what crime the person should be **charged** with.



We get the information together that a court uses to decide if the person did the crime or not.



This **Guide** will help **prosecutors** understand when the person has a mental illness or mental disability.



This means someone with:

- a mental illness covered by the **Mental Health Act**



- a learning disability



- a learning difficulty



- autism spectrum disorder



- a brain injury



- **dementia.**

2. What we believe



Mental illness and disability affect everyone differently.



Prosecutors need to understand how this affects the way a person behaves and what they understand. They look at whether this made the person to do the crime.



It is important to check whether the person is **fit to plead** (get involved in the court case) before deciding whether to **prosecute** or not.



Prosecutors use the **Code Test** to think about:

1. Whether there is enough evidence to prosecute. The person's mental health is part of what they think about.



If it is in the **public interest** to go to court.
Prosecutors think about:

- How serious the crime is.



- What the risk is of the person doing another crime and causing harm.



- The effect of the prosecution on the person they think did the crime (**suspect**).



If the person does not go to court, there are other ways to deal with the suspect and keep other people safe.



3. The Mental Health Act

Prosecutors need to understand the **Mental Health Act** when they decide about someone with a mental illness or mental disability.



This law says how to keep the person or other people safe and make sure they have treatment they need.



The person can be:

- **Sectioned** or held in hospital for **assessment** for up to 28 days to keep them or other people safe.



- **Sectioned** or held in hospital for up to 6 months to have treatment they can only get in hospital.



- A voluntary patient and choose to go into hospital.



- Discharged or allowed to leave hospital.



- Given a **Community Treatment Order** when they leave hospital. This means they must have treatment at home or can be made to go back to hospital.



- Have a **guardian** who makes sure they have treatment at home instead of going into hospital.

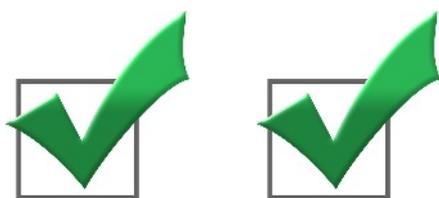


Prosecutors need to know if someone is being treated under the **Mental Health Act** before they decide whether to **prosecute** or not.



4. Deciding whether to prosecute

Question 1 asks about this part of the paper.



The **CPS** must only start or carry on with a **prosecution** if it passes the 2 parts of the **Code Test**.

Part 1. Evidence



The **evidence** or information about how the person was involved:

- Is there enough **evidence** to prove the crime?
- Can the **evidence** be used in court?





- Does the **prosecutor** believe and trust the **evidence**?



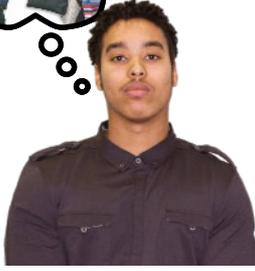
- Is there anything that might affect the **evidence**?



- Did they understand what they were doing?



- Did they want it to happen, or did they understand any risks or how it could affect other people?



Prosecutors need enough evidence to prove the **suspect**:

- Wanted the crime to happen, or understood that it might happen.



- Carried out the crime.



They can ask experts what they think. **Prosecutors** decide whether to use this **evidence** and how useful it will be in court.

The **prosecutor** must also think about:

A confession or what the person says

- Can the prosecutor trust this?





- Will other people believe it?



- Did the police stick to the law about interviews and asking questions?



Whether they were defending themselves

- Did the **suspect** believe they needed to fight back to protect themselves or someone else?



- How hard did they fight back – was this ok or too much?



Whether someone or something made them do it

- Did this happen because of their mental health or mental disability?



Whether the suspect completely lost control

- Did their mental health or medication affect them and mean they did not know what they were doing?



- Did the **suspect** know they would lose control?



- Could they have stopped this happening?



Prosecutors decide if there is enough **evidence**. They then think about whether the **suspect** is fit to plead and whether the court might use a special **verdict**.



Whether the suspect is fit to plead

- Can they cope with the trial and understand what is happening?

Whether the court might use a special verdict

If a judge decides the **suspect** lost control completely they can:



- Find them **guilty** of manslaughter instead of murder



- Find them **not guilty** because they are **insane**.

Being **insane** means the suspect has an illness of the mind that means:



- They did not know what they were doing.
- They did not know that they were breaking the law.

If the court decides on a **special verdict**, the **suspect** must:



- Be sent to hospital under the **Mental Health Act**.



- Treated and looked after in the community under the **Mental Health Act**.



- Sent home from court free.



If the **suspect** is not fit to plead, the court will decide if they could be treated under the **Mental Health Act**.

Question 2 asks about this part of the paper.

Part 2. Public Interest

Whether it is in the **public interest** to charge the **suspect**:



- If the CPS prosecute the crime is this good for the public or the rest of society?



- Could they deal with it in a better way without going to court?



Prosecutors think about:

- Whether the **suspect's** mental health affected what they did.



- Whether they have done anything like this before.



- How serious the crime was.



- If the **suspect** might do more serious crimes if they are not punished for this.



- How the crime affected the **victim** and whether the courts need to keep other people safe.



- How the **suspect** would feel about going to court.



The **prosecutor** must let people know what they do:

- It is important to look at what the person did and write down what the CPS decides.



- Many **victims** want to hear the **evidence** in court and say how the crime affected them.



- The public must trust the **criminal justice system** and know a court will decide if a person is **guilty** or **not guilty**. Even if their mental health affected what they did.

5. Dealing with cases without going to court

Question 3 asks about this part of the paper.



The **CPS** can deal with a crime without going to court. This is called **diversion**.



The **Liaison and Diversion Service** can help the **prosecutor** by:

- Finding out if a **suspect** needs extra support because of a mental illness or mental disability.



- Finding out what treatment or support they need.



- Supporting them to get health and social care services.



- Writing reports about the **suspect's** mental health needs to help the CPS decide about the case.



Prosecutors look at different ways to give the **victim** justice and punish the **suspect** or help them get back to normal life:



- **Caution.** If the person says they are guilty of the crime they can agree to a formal warning. The crime is written down and can be used against them if they do the same thing again.



- **Conditional caution.** This type of caution has rules about what the person must do. So, they might have to agree to training or treatment. If they break these rules they can be charged with the crime.



The **Liaison and Diversion Service** can support the person. But a **suspect** must not be cautioned if they cannot understand what it means or make their own decision to agree to it.



If the **CPS** decides that it is not right to prosecute or give a caution they will decide that no action should be taken.

6. Holding the suspect in hospital



If the **CPS** decides to **prosecute**, the court can ask to **remand** (or hold) the suspect in hospital for:



- A report on their mental health that can only be done in hospital.



- Treatment that will help them be fit to go to court later.



If the suspect is already being treated in hospital under the **Mental Health Act**, the **prosecutor** must tell the court how long they are being held for. This is so the court understands where the person is while the court case is going on.



7. Going to Court

Question 4 asks about this part of the paper.



Fitness to plead

Prosecutors must think about if a person is **fit to plead**.



This means finding out whether they could understand what happens in court and get involved in the trial.



The **CPS** can ask this at any time before the **suspect** is asked to give **evidence** in the court case.



If the CPS think a suspect is not **fit to plead**, a judge looks at **evidence** from at least 2 doctors to see if the person can:



- Understand what is happening in court.



- Decide whether to say they are guilty or innocent.



- Know they can ask to change a member of the **jury** who they think might not treat them fairly.



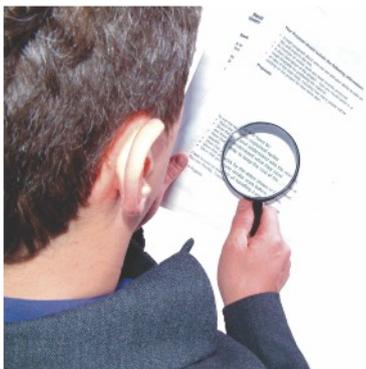
- Tell their lawyer what they want them to say or do.



- Understand and give **evidence**.



If the person is **fit to plead** then the case can go to trial.



If they are not **fit to plead** the court will look at the **evidence**.



If the court decides the person did the crime they can ask for more **evidence** from doctors to decide on a sentence or treatment. They will look at whether they could be treated under the **Mental Health Act**.



Not guilty

If the court decides the person did not do the crime, they say they are not guilty.



Supporting the suspect to be involved

The judge can think about any changes to help the **suspect** get involved in court.

These could include:



- **Reasonable adjustments**

The law says public organisations must make changes to give everyone the same chance to be involved and get justice. For example, support with communication.



- **Video link**

Anyone over 18 with a mental illness or mental disability can give **evidence** over video instead of going to court. The court must say why they think this will help the person.



- **Intermediary**

An **intermediary** is an independent person who can help the **suspect** get ready for trial and be involved in court. Courts do not have to give **suspects** support from an **intermediary**.

8. Sentencing



The **sentence** is the punishment a court gives someone when they decide they are **guilty** of a crime.



The **prosecutor** helps the court decide the right sentence by telling them about:

- The **suspect's** mental health at the time of the crime.



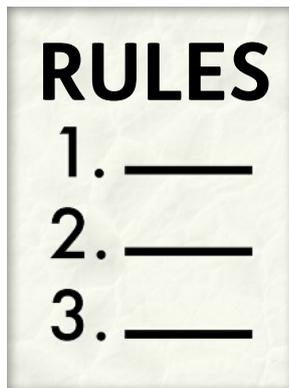
- Guides for **sentencing**.



- Anything that might have affected the person or made them do the crime.



- How the crime affected the **victim**.



- Any legal rules about the **suspect** and the crime.



Before a court can send someone they think has a mental illness or mental disability to prison or hospital, they must get a report from a doctor.



They use this information to help them decide whether treatment could help the person who did the crime. They also think about how to keep other people safe.



The court will:

- Think about whether it is the right thing to keep the person in hospital.



- Decide the best way to do this.



- Remember that it is important for people to be punished for a crime.



- Think about how much the person's mental health made them behave the way they did.



- Explain why they have decided to give this sentence.



There are rules about how courts can ask for reports to help them decide about treatment.



Different courts can use different parts of the **Mental Health Act** to hold or treat a person they think has a mental illness or mental disability.



A magistrates' court or youth court can order someone to be treated under the **Mental Health Act** without **convicting** them of a crime.

9. How to tell us what you think about this guide



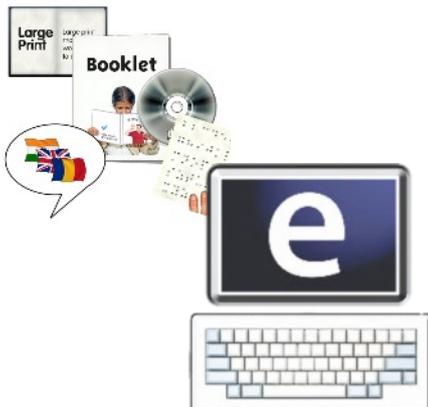
Please tell us what you think before the end of **May 2019**



Write to us:
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London, SW1H 9EA



Email us:
MH.Consultation@cps.gov.uk



If you would like this information in a different format or would like to find out more, please contact us:

Email: **enquiries@cps.gov.uk**



10. The Questions

Question 1.



This asks about information on pages 9 - 16.



Does the Guide cover everything that **prosecutors** need to think about when a **suspect** has a mental illness or mental disability?

Yes

No

I do not know



Is there anything else they need to think about?

Please tell us what this is:



Question 2.

This asks about information on pages 17 - 19.



Does the Guide cover everything that **prosecutors** need to think about when they decide if it is in the **public interest** to take a case to court?

Yes

No

I do not know



Is there anything else they need to think about?

Please tell us what this is:



Question 3.

This asks about information on pages 20 - 22.



The part in the Guide about **dealing with cases without going to court** is new. Does it cover everything that **prosecutors** need to think about?

Yes

No

I do not know



Is there anything else they need to think about?

Please tell us what this is:



Question 4.

This asks about information on pages 24 - 28.



Does the Guide clearly explain about what it means to be **fit to plead**?

Yes

No

I do not know

Question 5.



Is there anything else you would like to say about this new Guide?

Please tell us what this is:

11. What the words mean

Assessment

Deciding what support a person needs or how their health or disability affects them.

Case

A crime that the police are looking into.

Caution

When someone who is guilty has a formal warning from the police. The crime is written down and can be used against them if they do the same thing again.

Charge

When the police or CPS say that they think a person did a crime.

Code

A set of rules that tells people how to do something.

Confession

When a person says that they did the crime.

Convict

When a court finds that a person did a crime.

Community Treatment Order

When a court says someone must have treatment at home or can be made to go back to hospital.

Criminal Justice System

The police, courts, probation service and prisons.

Crown Prosecution Service (CPS)

The organisation that decides whether someone should go to court after the police have looked into a crime. They decide which crime to charge the person with and get the information together to take the person to court.

Dementia

A disease of the brain that can affect the way you think, understand and remember things.

Diversion

When the CPS deal with a crime without going to court.

Evidence

Facts and information that prove whether something has happened.

Fit to plead

Whether the suspect can cope with the trial and understand what is happening in court.

Guilty

A person is guilty if they did a crime.

Guardian

The person or organisation who makes sure someone has treatment at home instead of going into hospital.

Insane

Having an illness of the mind that means you do not know what you are doing or that it is wrong.

Investigate

Look into a crime and try to find all the facts about what happened.

Jury

A group of people who decide if a person did a crime or not.

Liaison and Diversion Service

A service that supports a suspect if the CPS decides not to take the case to court.

Mental Health Act

A law about treatment and care for people with a mental illness or mental disability.

Not guilty

A person is not guilty if they did not do a crime.

Prosecutor

Prosecutors work for the CPS. They decide what crime to charge someone with and get the information together to take the person to court.

Public interest

Good for the public or the rest of society.

Remand

When a suspect is held in prison or hospital while the court gets reports or more evidence.

Sectioned

When someone is held or treated in hospital under the Mental Health Act.

Sentence

The punishment a court gives someone when they decide they are guilty of a crime.

Suspect

A person the police think might be guilty of a crime.

Verdict

The decision a court or a jury makes about whether a person did a crime.

Victim

Someone who is harmed, injured or killed because of a crime.



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