



Director's Guidance on Charging
Sixth edition

Effective from 31 December 2020

Director's Guidance on Charging (6th Edition)

Issued by the Director of Public Prosecutions under the provisions of section 37A of the Police and Criminal Evidence Act 1984

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Published

2020

1. Introduction

1.1 This Guidance is issued by the Director of Public Prosecutions (the DPP) under the provisions of section 37A of the Police and Criminal Evidence Act 1984 (PACE). It sets out the arrangements prescribed by the Director of Public Prosecutions for charging decisions; the information to be sent when a charging decision is sought; the other material required to support a prosecution; and the joint working framework for police officers and prosecutors during the investigation and prosecution of criminal cases. It replaces all earlier editions.

1.2 In particular, this Guidance sets out:

- the arrangements for dealing with persons where there is sufficient evidence to charge;
- the offences that the police are authorised to charge and those where the decision must be made by prosecutors;
- how and when advice should be sought from a prosecutor;
- the circumstances in which some out of court disposals may be given;
- the evidence and other information required for (i) a charging decision and (ii) the effective management and prosecution of cases at court;
- the approach to be taken to the resolution and performance management of joint casework issues.

1.3 Police officers and prosecutors must comply with this Guidance to ensure that charging and other prosecution decisions are both fair and consistent, and comply fully with PACE,¹ the PACE Codes of Practice,² and the Code for Crown Prosecutors (“the Code”).³ Failure to follow this Guidance may risk cases failing and decisions being subject to legal challenge.

1.4 Whilst this guidance is issued by the DPP specifically for police use, its provisions apply equally to other investigators whose cases are prosecuted by the CPS. For this reason, references to “a police officer” or “the police” should be interpreted as applying equally to other investigators. Investigators must take this Guidance into account when handling individual cases. Organisations must also take this Guidance into account when establishing operational arrangements with the CPS.

1.5 Separate arrangements may be in place to cover charging or case management of cases within the remit of the CPS Central Casework Divisions. Where such agreements are put in place, those may be followed instead of the guidance in this document.

¹ Police and Criminal Evidence Act 1984

² <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

³ Issued pursuant to the Prosecution of Offences Act 1985

2. Context

2.1 This edition of the Director’s Guidance recognises the significant changes in the way that cases are investigated, charged, and prosecuted since the last edition was published in 2013.

2.2 In particular the Director’s Guidance reflects:

- the provisions of the 8th Edition of the Code for Crown Prosecutors published in October 2018;⁴
- the basis upon which cases are expected to proceed in court, following the implementation of the judicially led initiatives in both the magistrates’ court (Transforming Summary Justice) and the Crown Court (Better Case Management);
- the changes introduced to the legislative framework for granting bail, including the increased use of “release under investigation”;
- the Attorney General’s Guidelines on Disclosure 2020 and the Revised CPIA Code of Practice;
- the requirement to promote public confidence by enhancing best practice in relation to the discharge of disclosure obligations under the Criminal Procedure and Investigations Act 1996 (CPIA) and at common law;
- the digital landscape in which the police and the CPS, and the broader Criminal Justice System, increasingly operate;
- the transition from the Manual of Guidance to the new business rules and processes that will be required by the Digital Case File.

2.3 This Guidance also reflects, and seeks to embed, the overarching principles set out in Sir Brian Leveson’s review of Efficiency in Criminal Proceedings,⁵ namely:

- Getting it Right First Time
- Case Ownership
- Duty of Engagement
- Consistent Judicial Case Management

2.4 This Guidance may be amended to reflect future changes in practice, legislation, and other guidance.

⁴ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

⁵ <https://www.judiciary.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>

3. Responsibilities

3.1 The police are responsible for:

- pursuing all reasonable lines of inquiry to ensure the evidence and any other material and information required to make a charging decision is obtained as soon as possible;
- diverting, charging, and referring cases to prosecutors as authorised and directed by this Guidance;
- recording the rationale for their decisions to deal with a case by way of an out of court disposal or charge;
- identifying cases that are appropriate for an out of court disposal as early as possible;
- taking “no further action” in cases that cannot meet the appropriate evidential standard, without referral to a prosecutor;
- assessing whether cases meet the relevant criteria for referral to the CPS for a charging decision, including whether the Full Code or Threshold Test, as set out in the Code, is met on the available evidence and circumstances of the case;
- referring specific case types for early advice;
- completing and submitting pre-charge reports and prosecution case information as directed by this Guidance and in accordance with the National File Standard;
- taking account of other Policies and Guidance in accordance with the Code⁶;
- ensuring that only relevant personal and sensitive information which is necessary for a charging decision is provided, noting the obligations imposed by the Data Protection Act 2018;
- providing unused material schedules to the prosecutor at the point of the referral for a charging decision in the circumstances prescribed by the Attorney General’s Guidelines on Disclosure 2020 (AG’s Guidelines on Disclosure) and the Revised CPIA Code of Practice⁷;
- ensuring that all lines of inquiry which have been pursued are communicated to the prosecutor at the time of the referral of the case for early advice or a charging decision;
- ensuring that outstanding lines of inquiry, including those which may undermine the prosecution case, or are capable of assisting the defence, are revealed to the prosecutor at the time of the referral of the case for early advice or a charging decision, and during the course of any subsequent prosecution;
- ensuring any potentially disclosable material and material presumed to be disclosable⁸ is revealed to the prosecutor at the time of referral of the case for early advice or a charging decision, together with an explanation of why the officer considers the material is, or is not, disclosable;
- considering asset recovery in every case in which a suspect has benefitted from criminal conduct;⁹
- complying with action plans and providing any further evidence, material, or other information within agreed time periods;
- complying with the decision of the prosecutor to charge, caution, obtain additional material or information or take no action, with appropriate expedition, unless the case is escalated for review. The police will notify the prosecutor if the case cannot so proceed, explaining why;
- using the digital interface for communication between the CPS and police where available and used by the force.¹⁰

⁶ Code paragraph 2.10

⁷ Paragraphs 70-74 of the AG’s Guidelines on Disclosure 2020

⁸ Paragraphs 70 and 87-91 of the AG’s Guidelines 2020 on Disclosure and paragraph 6.6 of the Revised CPIA Code of Practice

⁹ Annex 7 – Proceeds of Crime – restraint, confiscation and enforcement

¹⁰ This includes referring cases for a charging decision; submitting case material; appeals and recording conversations.

3.2 Prosecutors are responsible for:

- making charging decisions and providing advice and guidance in accordance with the Code and this Guidance, and within agreed time periods;
- recording their charging decisions and advice, including the rationale for the decision, and sharing them with the police;¹¹
- identifying cases that are appropriate for an out of court disposal as early as possible;
- stopping cases quickly which do not meet the evidential stage of the Full Code Test and cannot be strengthened by further investigation;
- creating shared action plans that are both proportionate and necessary, with agreed timescales for the completion of any work. There must be a justification for each action linked to an issue in the case – evidential; case progression or sentence;¹²
- managing disclosure in accordance with the common law and statutory frameworks;
- considering asset recovery in every case in which a suspect has benefitted from criminal conduct.¹³

¹¹ All decision making, including those relating to appeals, and conversations should be recorded on the CPS core case management application (e.g. CMS or Common Platform).

¹² See paragraph 4.27

¹³ See Annex 7 – Proceeds of Crime – restraint, confiscation and enforcement

4. The Charging Process

4.1 A police decision maker¹⁴ must review the available evidence, disclosable material, and any other relevant material or information, and assess whether there is sufficient evidence to meet the appropriate Code Test (Full Code or Threshold).¹⁵

4.2 If the police decision maker considers that there is sufficient evidence to pass the evidential stage, and prosecution is in the public interest, the appropriate Code Test will be met, and the case can proceed to a charging decision.¹⁶

4.3 The police are authorised to make a decision:

- to take no further action in all cases, including those which have been referred for Prosecution Advice/Early Advice, if the evidential stage of the Code Test is not met, and the police conclude that the case cannot be strengthened by further investigation;¹⁷
- to charge or take no further action on either evidential or public interest grounds in respect of any offence they have authority to charge as set out in Annex 1.

The police can decide to administer an out of court disposal without reference to a prosecutor, unless specifically precluded from doing so by any Director's Guidance or if there are statutory restrictions on the circumstances in which an out of court disposals may be used. The statutory restrictions are greater the more serious the offence.¹⁸

4.4 Where a case is required to be referred to the CPS and the evidential stage of the Code Test is met; the police are not authorised to take no further action on public interest grounds.¹⁹ Such cases must be referred to a prosecutor to determine whether a suspect should be charged or, in exceptional circumstances, whether it is appropriate to take no further action on public interest grounds.²⁰

4.5 Where the suspect is detained in police custody and the appropriate Test is met

- the police decision maker will inform the custody officer who will be responsible for deciding whether a suspect in custody should be charged;
- where the case is one that must be referred to a prosecutor, the custody officer will decide whether the suspect should be detained in custody, released on bail, or otherwise released, to facilitate a referral for a charging decision;²¹

¹⁴ The investigator in charge of the case or other person nominated to make the determination

¹⁵ See Part 3

¹⁶ See paragraph 4.4

¹⁷ This includes those cases where the police decide to stop an investigation early in accordance with the principles in Paragraph 4.25. If at that stage the evidential stage of the Code test is not met, the police have authority to take no further action in all cases. See also Paragraph 3.3 of the Code.

¹⁸ See S.17 Criminal Justice and Courts Act 2015

¹⁹ The referral to the CPS must include the rationale for the assessment that the evidential stage of the Code test is met; and the rationale for the assessment that the public interest stage of the Code test is not met.

²⁰ The decision to take no further action on public interest grounds will be made by a Senior Crown Prosecutor (SCP). These cases should be referred to CPS Areas in accordance with existing charging arrangements. Separate arrangements apply in CPSD. See also The Code 4.4 and 4.5 which provides for a proportionate approach where it is clear that the public interest does not require a prosecution.

²¹ S.37(7) Police and Criminal Evidence Act 1984

- the custody officer must take account of this Guidance when making that decision,²² including the factors that may influence the timing of a prosecutor’s decision;²³
- in all cases where a charging decision is required while the suspect remains in custody, consideration must be given to the timing of the referral to the CPS, to ensure the referral is made expeditiously;
- the custody officer must also take account of any relevant NPCC guidance on the use of pre-charge bail.

4.6 Where the suspect is not detained in police custody and has been released on bail or otherwise released, and the Full Code Test is met

- the police decision maker will arrange for the suspect to be charged; or
- if the case is one that must be referred to a prosecutor, the case shall be so referred.

4.7 Prosecutors and police decision makers will ensure they select charges²⁴ which

- reflect the seriousness and extent of the offending;
- give the court adequate powers to sentence and impose appropriate post-conviction orders;
- enable the case to be presented in a clear and simple way; and
- allow a confiscation order to be made in appropriate cases where a defendant has benefitted from criminal conduct.²⁵

Police Charging

4.8 Where the police are authorised to charge in accordance with this Guidance, and proceed to do so, they will **record**

- the rationale for charging, both evidential and public interest, including an assessment of any defence or explanation offered by the suspect;
- the basis for treating an either-way case as an anticipated guilty plea suitable for sentence in a magistrates’ court;
- their specific assurance that they have considered the impact of potentially disclosable material on the decision to charge, including any unexamined material or material that could be obtained through further reasonable lines of inquiry.²⁶

Prosecutor’s review of police charged cases

4.9 The CPS will review all police charged cases prior to the first hearing in accordance with their duty under the Code. The review will be proportionate to the specific facts of the case and the prosecutor’s view of the anticipated plea.

4.10 An offence charged by the police in circumstances not permitted by this Guidance may amount to a breach of PACE. The decision may be subject to legal challenge and may give rise to civil liability, especially if a suspect has been detained in custody.

²² S.37A(3) Police and Criminal Evidence Act 1984

²³ See 5.8-5.11

²⁴ The Code paragraph 6.1

²⁵ Annex 7 Proceeds of Crime – restraint, confiscation and enforcement. Officers and prosecutors must refer to the CPS asset recovery strategy and any SLA in force at the relevant time.

²⁶ See Attorney General’s Review of Disclosure 2018, recommendation 3B

4.11 Where, on review, it appears that the police have charged a case in breach of this Guidance, the prosecutor must decide if the evidence and material available at that time meets the Full Code Test or Threshold Test. Where it does, the prosecutor may continue with the prosecution and must **record** the basis for that conclusion.

4.12 Where a case charged by the police in breach of this Guidance does not meet the Full Code Test or Threshold Test, the prosecutor must promptly make inquiries with the police²⁷ to determine whether there is other material which, if made available, would mean the Code Test was met and would allow the case to continue. Where that is not the case, the prosecution should be discontinued. If further evidence is obtained following discontinuance, and the appropriate Code Test is met, the case can be referred to a prosecutor for a charging decision. Prosecutors must follow this Guidance when dealing with cases which have been charged by the police in breach of this Guidance. Failure to do so may give rise to civil liability.

4.13 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 and in accordance with paragraph 7 of the Code, decides that it is more appropriate to proceed by way of an out of court disposal, the prosecutor must comply with the Victims' Code²⁸ before authorising the police to issue the out of court disposal.

CPS Charging

4.14 Where the case must be referred to a prosecutor for a charging decision, the referral will be made in accordance with the arrangements set out in **Annex 2**.

4.15 Where the offences under consideration for charging include an offence which must be referred to a prosecutor under this Guidance, all related offences which the police ordinarily have authority to charge must also be referred.²⁹

The request for a charging decision

4.16 The **request** for a charging decision must provide the **required material and information** on first submission to enable prosecutors to take decisions promptly. Failure to do so may cause the referral to be rejected or cause delay.

4.17 The **request** must set out the rationale for the **assessment** that

- both the evidential and public interest stages of the **Full Code Test**³⁰ are met;³¹ or

²⁷ There may be cases where it is obvious that the sufficiency of evidence stage of the Code Test will never be met. In these cases attempts should be made to communicate with the police, however, ultimately the prosecutor will have to stop the prosecution. A request to adjourn a police charged case because the FCT is not met is only appropriate if there is an expectation that further material or information is either currently in police possession or will be available in a specified timescale which will mean the sufficiency of evidence stage of the Full Code Test is met.

²⁸ [The Code of Practice for Victims of Crime](#)

²⁹ Offences are related if they arise out of circumstances which are the same as, or connected with, those offences which have to be referred to the CPS for a charging decision, or form part of a series of offending of the same or similar offences.

³⁰ See Part 5

³¹ See the Code 4.4 and 4.5. See also paragraph 4.3; 4.4 and Annex 1 – Any case which has to be referred to the CPS for a charging decision, cannot be NFA'd by the police on public interest grounds. These cases must be referred to a prosecutor with a rationale for the assessment that the evidential stage of the Full Code Test is met and why a prosecution is not in the public interest. See also the Code paragraphs 4.4 and 4.5

- each of the 5 conditions of the Threshold Test are met.³²

4.18 The **request** must include information as to the state of the investigation, including

- the reasonable lines of inquiry that have already been conducted and the results of those inquiries;
- the reasonable lines of inquiry which remain outstanding³³ together with an objective assessment of the likely impact of those inquiries on the decision to charge. This should include a timescale for the completion of each inquiry; and
- any lines of inquiry which will not be pursued and a rationale for the decision.

This information will be proportionate to the issues in the case and the complexity of the case.³⁴

4.19 The **request** must be accompanied by the material set out in **Annex 3**.

4.20 The **request** must include the supporting information set out in **Annex 4**.³⁵

4.21 The **request** must provide specific assurance that

- it is submitted in compliance with this Guidance;
- there has been consideration of the impact of potentially disclosable material on the decision to charge, including any unexamined material, or material that could be obtained through further reasonable lines of inquiry. Officers will assess the potential impact of unexamined material by considering the facts of the case and the available material and information about known issues.

Prosecutor's assessment

4.22 In making charging decisions, prosecutors will assess the evidential material and other information provided by the police in accordance with this Guidance.

4.23 When assessing the evidence, and deciding whether there is sufficient evidence to prosecute in accordance with the Code, prosecutors (or police decision makers in police charged cases) must consider whether there is any other material or information which might affect this decision, by either strengthening the prosecution case or by undermining it.³⁶

4.24 Specific consideration should be given to the existence and potential impact of any other material or information, not immediately available, that is:

- in police possession and has been examined (whether scheduled or not);
- in police possession but has not yet been examined;
- not in police possession but may be obtained through further investigation.

which provide for a proportionate approach where it is clear that the public interest does not require a prosecution.

³² See Part 6

³³ Paragraphs 5.9 and 5.10

³⁴ Paragraph 75 of the AGs Guidelines Disclosure

³⁵ To be sent via digital message or, in default, by using forms MG3/MG6

³⁶ The Code 4.8

4.25 Prosecutors will be proactive in identifying and, where possible, seeking to rectify evidential weaknesses, 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.

Record of prosecutor's decision

4.26 Prosecutors will **record** their charging decision and share it with the police in accordance with agreed timescales.³⁷ Prosecutors will explain the rationale for their decision. The explanation will be proportionate to the strength of the evidence and the issues in the case.

4.27 Where appropriate, prosecutors will set out any further actions they require the police to take in a **shared action plan** where these will (i) facilitate a final decision (ii) strengthen the case where a decision to prosecute has been made, or (iii) enhance case progression. They will also set out the rationale for any such actions.

4.28 Prosecutors will also **record**, as part of their charging decision, a specific assurance that they have considered the impact of potentially disclosable material on the decision to charge, including any unexamined material or material that could be obtained through further reasonable lines of inquiry.

Effect of the prosecutor's decision

4.29 In a case that has been referred to a prosecutor for a charging decision, where the decision of the prosecutor is to charge; an out of court disposal; obtain additional material or information; or take no further action, the police will comply with that decision, with appropriate expedition, unless the case is escalated for review.³⁸ The police will notify the prosecutor if the case cannot so proceed, explaining why.

4.30 Where the prosecutor or police decision maker notifies a custody officer that there is insufficient 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 an out of court disposal in respect of an offence, the custody officer will provide the person with a notice in writing to that effect.³⁹ That notice will also specify that a prosecution may be brought if further evidence or information comes to light, or a review of the original decision shows that it was wrong.

Appeals against a charging decision

4.31 An officer of the rank of Inspector⁴⁰ or above can appeal any decision⁴¹ made by a prosecutor following the referral of a case. This appeal should be made to a District Crown Prosecutor⁴² and must comply with the following procedure:

- the Inspector (or officer of a higher rank) must consider the relevant case material, and the rationale for the prosecutors' decision, before initiating the escalation process;

³⁷ These are set out in a Service Level agreement between the CPS and the police.

³⁸ S.37B(6) Police and Criminal Evidence Act 1984

³⁹ S.37B(5) Police and Criminal Evidence Act 1984

⁴⁰ An OIC cannot appeal e.g. if the OIC is an Inspector, the decision to appeal must be escalated to a more senior officer.⁴¹ This includes an appeal against the charges authorised, a decision to NFA, or to set a pre-charge action plan with or without charge.

⁴¹ This includes an appeal against the charges authorised, a decision to NFA, or to set a pre-charge action plan with or without charge.

⁴² Separate arrangements will apply in CPS Direct (CPSD).

- the grounds for the appeal must be **recorded** and explain why the Inspector (or officer of higher rank) believes that the prosecutors' decision is wrong by reference to the specific facts of the case and the sufficiency of evidence under the Full Code Test or Threshold Test;
- if the suspect is in custody and the intention is to detain the suspect after charge, the appeal must be made before the expiry of the PACE clock (custody time limit);
- if the appeal is against some but not all charges authorised, consideration should be given to charging the offences which are not being appealed to stop the PACE clock. The appeal itself does not stop the PACE clock;
- if the suspect is in custody and the intention is to bail the suspect after charge, consideration should be given either to appealing during the PACE clock or, if appropriate, releasing the suspect (either under investigation or on bail) and appealing expeditiously within any agreed timescales.⁴³

4.32 The CPS will respond expeditiously to all appeals and in any event within any agreed timescales by:

- conducting an independent review of the evidence and other material in accordance with the Code;
- **recording** and sharing the decision with the Inspector.

4.33 If this initial review does not resolve the issues the appeal can be escalated, in the terms set out above, by an officer of rank of Chief Inspector or above, to a Senior District Crown Prosecutor.⁴⁴ Notice of the appeal should be given to the Assistant Chief Constable with responsibility for Criminal Justice and to the Deputy Chief Crown Prosecutor for advisory purposes.⁴⁵

4.34 Where an Inspector decides to abandon an appeal before it has been considered, that decision will be **recorded** and communicated by the Inspector to the CPS as soon as possible.

Police charging where a prosecutor's authority cannot be obtained before the expiry of a PACE time limit (Emergency Charging)

4.35 Officers must anticipate PACE custody time limits (PACE clock) and the need to seek a charging decision in good time. In rare cases an officer of the rank of Inspector or above may authorise the charging of an offence which must ordinarily be referred to a prosecutor, provided that such authority is given in accordance with this Guidance. The following conditions apply:

- the continued detention of the suspect after charge must be justified. Emergency charging cannot be used if the suspect will be released after charge;
- consideration must have been given to continuing the investigation while the suspect is in custody using a PACE clock extension or warrant of further detention;
- the emergency charging decision must be referred **immediately** to a prosecutor for consideration of ratification of the offence charged and for a charging decision in respect of any other offences;
- if the suspect faces a number of charges, the officer will not charge all available offences but will identify a holding charge;

⁴³ The timescales will be set out in a national or local Service Level Agreement (SLA).

⁴⁴ See footnote 42

⁴⁵ Local agreement may provide further specification of these arrangements. The officer is responsible for notifying the Assistant Chief Constable; the prosecutor is responsible for notifying the Deputy Chief Crown Prosecutor. Separate arrangements will apply in CPSD.

- the officer must specify whether the decision was made under the Full Code Test or the Threshold Test.⁴⁶ The rationale for that decision must be **recorded** and communicated to the prosecutor;
- the referral will explain when the PACE clock expired, when the suspect was charged, and why it was not possible to obtain a charging decision before the expiry of the PACE clock;
- a prosecutor will notify the police immediately if they are unable to ratify the charging decision;⁴⁷
- where the police have been so notified, they will decide whether to release the suspect or to continue their detention for the purposes of either supplying further material or information in support of the original decision to charge, or to request that the prosecutor's decision is escalated for review. The police should have planned for this, and should be in a position to communicate their decision to the prosecutor immediately;
- where the police have not provided any further material or information that impacts the decision and have not escalated the decision for further review, the prosecutor will issue notices of discontinuance and the suspect will be released from custody;
- where the police escalate the decision not to ratify, it will be further reviewed by a District Crown Prosecutor;⁴⁸
- where the District Crown Prosecutor also declines to ratify on further review, the District Crown Prosecutor will issue notices of discontinuance and the suspect will be released from custody.⁴⁹

⁴⁶ See the requirements in part 6, especially paragraph 6.3, which must be strictly adhered to.

⁴⁷ The prosecutor may authorise alternative charges to those charged by the police.

⁴⁸ Separate arrangements will apply in CPSD.

⁴⁹ The decision of the District Crown Prosecutor can be appealed in accordance with the escalation principles in Paragraph 4.33. This escalation must comply with Paragraph 4.35.

5. Applying the Full Code Test

5.1 Prosecutors and police decision makers must be familiar with the full terms of both the evidential and public interest stages of the Full Code Test as set out in the Code.⁵⁰

The evidential stage

5.2 They must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, based on an objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. They should consider whether the evidence is admissible, credible, and reliable. They must also consider whether there is any other material or information that might affect the sufficiency of evidence.

5.3 The Code clarifies that a realistic prospect of conviction means *“an objective, impartial and reasonable jury, bench of magistrates or a judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.”*⁵¹ Prosecutors and police decision makers must therefore be in a position to explain why it *“is more likely than not”* that the court will convict.

5.4 Cases that do not pass the evidential stage must not proceed, no matter how serious or sensitive. But even where the evidential stage is met, a prosecution does not automatically take place as the public interest stage must also be considered.

The public interest stage

5.5 A prosecution will usually take place unless the prosecutor, or where appropriate the police decision maker,⁵² is satisfied that there are public interest factors tending against prosecution which outweigh those in favour. This includes considering whether the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by way of an out of court disposal rather than a prosecution.⁵³

5.6 Prosecutors, or where appropriate the police decision maker, should consider each of the questions set out in paragraphs 4.14 (a) to (g) of the Code to determine the relevant public interest factors for and against prosecution. These factors, together with any public interest factors set out in any further relevant guidance or policy issued by the DPP, should enable prosecutors and police decision makers to form an overall assessment of the public interest.

5.7 In most cases they should only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute. However, there will be cases where it is clear, prior to reviewing all the evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.⁵⁴

5.8 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the

⁵⁰ The Code 4.1 – 4.14

⁵¹ The Code 4.7

⁵² The offences listed in Annex 1 Paragraph 2 must be referred to the CPS for a decision to charge or NFA on public interest grounds. See the Code Paragraphs 4.4 and 4.5.

⁵³ See part 8

⁵⁴ The Code 4.4 and 4.5

public interest. If prosecutors do not have sufficient information to make such a decision, the investigation should continue and a decision made later in accordance with the Full Code Test.

The timing of charging decisions

5.9 The Code not only sets out what the Full Code Test is but also the point at which it should be applied, namely

*“(a) when all outstanding reasonable lines of inquiry have been pursued; or
(b) prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.”⁵⁵*

5.10 This provision supports decision making at the right time, based on a proportionate investigation, so that a charging decision may be

- taken, despite there being outstanding inquiries, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test; or
- deferred, where the prosecutor cannot be satisfied that there is a realistic prospect of conviction until the results of reasonable lines of inquiry are considered.

5.11 The timing of each charging decision will depend on the type and circumstances of the case. The following are relevant factors in assessing whether the decision should be taken or deferred:

- the relative strength of the prosecution case based on the available evidence and material, and whether it could be strengthened or weakened in a material way;
- any likely defence, and the extent to which it needs to be explored further;
- the nature, extent, potential length, and likely impact of the lines of inquiry that are being, or could be, pursued;
- the nature, extent, and scale of the evidence or material not yet examined or still to be recovered, and the likely impact on the Code test;
- the proportionality of delaying a charging decision, having regard to the seriousness of the offending and the alleged culpability of the suspect, the alleged harm to the victim, and the likelihood that victims and witnesses will remain supportive of a prosecution in the event of delay;
- the impact that delaying charge may have on any wider investigation;
- the likelihood of a defence application to stay proceedings on the grounds of delay;
- the anticipated plea;
- any statutory time limits.

5.12 The existence of unrecovered or unexamined material does not necessarily mean that a charging decision cannot be taken immediately, or that the decision should be not to charge. A charging decision need only be deferred if it is considered that any such material may undermine or assist to such an extent that it could affect the assessment that there is a realistic prospect of conviction. If further material is not provided as requested, this may impact on the charging decision.⁵⁶

5.13 Where an immediate charging decision cannot be made on the Full Code Test because of the potential impact of outstanding inquiries, in limited circumstances, the Threshold Test may be applied

⁵⁵ The Code 4.3

⁵⁶ See also paragraphs 9.9 and 9.10

to charge a suspect.

6. Applying the Threshold Test⁵⁷

6.1 The Threshold Test is intended to apply to a very limited range of cases where the Full Code Test cannot be met but the overall seriousness or circumstances of the case justify the making of an immediate charging decision, and there are substantial grounds to object to bail.

6.2 The police must always endeavour to conclude all reasonable lines of inquiry during a suspect's period of detention⁵⁸ so that the Full Code Test can be applied. But where they cannot, and the suspect would present a substantial bail risk, consideration can be given to whether the conditions of the Threshold Test are met.

6.3 Prosecutors and police decision makers must be familiar with the five conditions that have to be met before a charging decision is made on the Threshold Test.⁵⁹

6.4 There must be a rigorous examination of all five conditions of the Threshold Test. The **request for a charging decision** must provide sufficient information to enable a prosecutor to be satisfied that each of them is met.

The five conditions of the Threshold Test

6.5 The five conditions⁶⁰ and supporting principles set out in the Code are repeated below, and must be adhered to.

6.6 First condition - There are reasonable grounds to suspect that the person to be charged has committed the offence.

- Prosecutors must be satisfied, on an objective assessment of the evidence, that there are reasonable grounds to suspect that the person to be charged has committed the offence. The assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely.
- In determining whether there are reasonable grounds to suspect, prosecutors must consider all of the material or information available, whether in evidential format or otherwise.
- Prosecutors must be satisfied that the material to be relied on at this stage is capable of being:
 - put into an admissible format for presentation in court;
 - reliable; and
 - credible.

6.7 Second condition - Further evidence can be obtained to provide a realistic prospect of conviction.

- Prosecutors must be satisfied that there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time, so that when all the evidence is considered together, including material which may point away

⁵⁷ See paragraph 5.13

⁵⁸ Consideration must be given to using a PACE clock extension or Warrant of Further Detention to ensure reasonable lines of inquiry are concluded prior to referring the case for a charging decision

⁵⁹ The Code 5.1 – 5.11

⁶⁰ The Code paragraphs 5.3 – 5.10

from as well as towards a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

- The likely further evidence must be identifiable and not merely speculative.
- In reaching this decision prosecutors must consider:
 - the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
 - the charges that all the evidence will support;
 - the reasons why the evidence is not already available;
 - the time required to obtain the further evidence, including whether it could be obtained within any available detention period; and
 - whether the delay in applying the Full Code Test is reasonable in all the circumstances.

6.8 Third condition - The seriousness or the circumstances of the case justifies the making of an immediate charging decision.

- The seriousness and the circumstances of the case should be assessed in relation to the alleged offending and should be linked to the level of risk created by granting bail.

6.9 Fourth condition - There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.

- This determination must be based on a proper risk assessment, which reveals that the suspect is not suitable to be bailed, even with substantial conditions. For example, a dangerous suspect who poses a serious risk of harm to a particular person or the public, or a suspect who poses a serious risk of absconding or interfering with witnesses. Prosecutors should not accept, without careful inquiry, any unjustified or unsupported assertions about risk if release on bail were to take place.

6.10 Fifth condition - It is in the public interest to charge the suspect.

- Prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

Consequences if all five conditions of the Threshold Test are not met

6.11 If any condition of the Threshold Test is not met, the Threshold Test cannot be applied and the suspect cannot be charged. If there is no prospect of the case ever meeting the evidential stage of the Full Code Test, it must be the subject of no further action. If there are further reasonable lines of inquiry the police must then decide whether to:

- detain the suspect to allow the case to be investigated further;
- release the suspect under investigation or on bail.

Police use of the Threshold Test/restrictions on the use of the Threshold Test

6.12 The Threshold Test must only be applied where the seriousness or the circumstances of the case justify the making of an immediate charging decision. Such cases are usually charged by a prosecutor.

6.13 There are restrictions on the police use of the Threshold Test:

- the Threshold Test cannot be used to charge a summary only, non-imprisonable offence;
- where the Threshold Test is used to charge a summary only imprisonable offence, the police will **record** how each of the five conditions are met. This will enable the prosecutor to review whether the application of the Threshold Test is appropriate before the first hearing;
- the Threshold Test cannot be used for either way offences that are suitable for sentence in the magistrates' court and where a guilty plea is anticipated as the requirements of the Full Code Test should have been met in those circumstances.

Application of the Threshold Test where there is more than one offender

6.14 Where the charges under consideration involve more than one offender and the prosecution would seek to have them tried together, if the prosecutor (or police decision maker) determines that it is appropriate to apply the Threshold Test to one or more of those offenders, it will be applied to all offenders charged with the joint or related offences, provided conditions⁶¹ one, two and five of the Threshold Test are met for those other offenders.

Review of the Threshold Test

6.15 The application of the Threshold Test must be kept under review. The following approach must be adopted in all Threshold Test cases:

- the identified additional material or information must be recorded in a **shared action plan** containing an agreed timetable;
- prosecutors must be proactive in securing all additional material from the police;
- the police must advise the prosecutor immediately if any part of the timetable is unlikely to be met or if the further material or information means the Threshold Test should no longer be applied;
- prosecutors must assess the material and information regularly to ensure the charge remains appropriate and that continued objection to bail is justified;
- the Full Code Test must be applied as soon as the anticipated further evidence or material is received. In Crown Court cases, its application must be considered before formal service of the prosecution case.

⁶¹ The evidential conditions of the Threshold Test

7. Prosecution advice

7.1 Prosecutors may advise the police and other investigators about

- possible reasonable lines of inquiry;
- potential charges;
- evidential requirements;
- pre-charge procedures;
- disclosure management;
- asset recovery, including the overall financial strategy;⁶²
- the overall investigation strategy, including whether to refine or narrow the scope of the criminal conduct and the number of suspects under investigation;⁶³
- legal elements of offences.

7.2 Advice may be sought before a charging decision is requested or may be given as part of the charging process. Where advice is given prior to a request for a charging decision it is regarded as “early advice”. Any later consultation and advice, beyond the charging stage, takes place as part of the continuous engagement process that is expected between the police and the prosecutor in an ongoing prosecution.

7.3 Investigators must consider seeking early advice in serious, sensitive, or complex cases. Cases involving a death, rape, or other serious sexual offence should always be considered for early referral, particularly once a suspect has been identified and it appears that continuing the investigation will provide evidence upon which a charging decision may be made. Cases where the preservation of assets through “Restraint” may be required should be referred to CPS POC⁶⁴ for prosecution advice as soon as the issues arise.

7.4 Guidance may be issued from time to time as to the specific case types where the provision of early advice is recommended. **Annex 6** describes the current expectation. Early advice in such cases will allow aspects of the inquiry to be more focused. Failing to seek early advice may impact the ability of the prosecutor to make an immediate, effective charging decision through the absence of important material or information.

7.5 The timing of the request for early advice is a matter for the investigating officer. It should usually follow a police supervisory review at the point of the investigation where the key evidence⁶⁵ is understood, even if not fully developed, and the issues in the case have been identified. It is impossible to be prescriptive about when this stage will be reached as it will vary from case to case.

7.6 All requests for early advice should be subject to a police supervisory procedure that provides assurance that

- the advice is necessary;
- the timing is appropriate;
- the relevant supporting material is supplied; and
- there is potential for the Full Code Test to be met, based on the evidence obtained thus far.

⁶² Annex 7 - Proceeds of Crime – restraint, confiscation and enforcement

⁶³ The Code 3.2

⁶⁴ CPS Proceeds of Crime

⁶⁵ See Annex 3 for definition of key evidence

7.7 Investigators and supervisors should have regard to any specific protocols relating to the referral of cases to CPS Central Casework Divisions which may make specific provision about the timing of requests for early advice and the material to be supplied.

7.8 Where a case is referred for early advice, the police should submit a **formal request for advice**. All referrals must be submitted through the digital interface between the police and CPS, where available and used by the police. The police must supply the following minimum information:

- Unique Reference Number (URN);
- factual summary;
- the lines of inquiry completed, ongoing, or contemplated;
- the anticipated results of any ongoing and contemplated inquiries, and their timescales;
- the issues already identified in the case, including any explanation provided by the suspect;
- the specific matters upon which advice is sought;
- any evidential material that is available that will facilitate the provision of the relevant advice e.g. ABE interview, note of suspect interview;
- any potentially disclosable material.

7.9 Requests for early advice must be distinguished from requests for a charging decision where the scope of the material required will be greater:

- prosecutors will assess all requests for prosecution advice to determine whether CPS advice is necessary, and whether the timing is appropriate. A prosecutor's decision to reject a request will be recorded and communicated to the police. A police officer of the rank of Inspector or above can appeal that rejection in accordance with the appeals process.⁶⁶
- it is not a prerequisite for the provision of advice that all the available material should be provided, but rather that there is sufficient material provided for prosecutors to understand the known facts and issues so that they may provide advice that is relevant and meaningful to the investigation. However, a prosecutor may determine that specific further information or evidential material is required before advice can be given. The prosecutor will **record**, as part of their advice, their reasons for any such request and share them with the police. A prosecutor may also determine that not all the information detailed in paragraph 7.8 is required.

7.10 Prosecutors will **record** and share their advice with the police supported, where appropriate, by a **shared action plan**.⁶⁷

7.11 Where, following early advice and further investigation, the police are of the opinion that there is no realistic prospect of conviction on evidential grounds, the police will inform the CPS of this decision. The responsibility for the decision to take no further action on evidential grounds will lie with the police.⁶⁸ If the evidential stage is met in respect of an offence which must be referred to the CPS for a charging decision, the case must be so referred even if the police propose taking no further action on public interest grounds⁶⁹.

⁶⁶ Paragraphs 4.31 – 4.34

⁶⁷ The advice may include a decision to NFA or it may identify further actions in a shared action plan. The decision will be sent via the digital interface between the CPS and police.

⁶⁸ The timing of the decision to NFA is one for the police. It is for the police to determine what further inquiries will be undertaken and the impact they have on the Code Test. See also Part 4 paragraphs 4.1 – 4.4.

⁶⁹ See paragraphs 4.1-4.4 and the Code 4.4 and 4.5.

7.12 Where, following early advice and further investigation, the police are of the opinion that the Code Test is not met for the prosecution of any offence where a prosecutor's authority would be required, but is met for an offence which can otherwise be charged by the police under this Guidance, the police may make that decision. If any case involves a death, the police will ensure that the background circumstances are fully referenced in the summary provided to the prosecutor for the first hearing and, where appropriate, arrangements are made to ensure that the suspect cannot plead guilty by post.

8. Out-of-court disposals

Principles

8.1 Even if the evidential stage of the Full Code Test can be met, an out-of-court disposal may only take the place of a prosecution if it is in the public interest and it is an appropriate response.⁷⁰ What is appropriate in the circumstances of each case will depend on the seriousness of the offence, its impact, the antecedents of the offender, and the likely outcome if the case proceeded to court.⁷¹

8.2 Formal methods of disposal falling short of prosecution may still represent a form of entry into the Criminal Justice System which would be recorded on PNC. Consideration must therefore be given to whether a more informal response is more appropriate.

8.3 All relevant Codes of Practice, Guidance, legislation and Policies must be considered when reaching a decision whether or not to proceed with an out of court disposal.

Responsibilities and restrictions

8.4 Police and prosecutors share responsibility for dealing with out-of-court disposals. Whether an offender is suitable for such an outcome is an operational decision for the police and/or the CPS, based on the specific circumstances of the individual case.

8.5 In cases that are referred to a prosecutor for a charging decision, the CPS may decide that it is appropriate for the case to be dealt with by an out-of-court disposal.

8.6 The police can decide that an out-of-court disposal is an appropriate and proportionate response without reference to a prosecutor, unless they are specifically precluded from doing so by any Directors' Guidance/Directors' Guidance on cautioning or if there are statutory restrictions on the circumstances in which cautions may be used. The statutory restrictions are greater the more serious the offence.⁷²

8.7 Where a police decision maker decides that an indictable only offence should be dealt with by means of an out-of-court disposal, the case must be referred to a prosecutor to determine whether there is sufficient evidence for a realistic prospect of conviction and that it is in the public interest to deal with the case in this way.

8.8 A prosecutor will only confirm that this is an appropriate outcome in exceptional circumstances. The decision by a prosecutor to authorise an out-of-court disposal for an indictable only offence must be approved by a Deputy or Chief Crown Prosecutor. A record must be made of the basis, both evidential and public interest, for the decision.

Other factors

8.9 A caution or conditional caution will require that the person admits guilt. This is in addition to the requirement that the evidential stage of the Code test is met. More informal resolutions require that responsibility is acknowledged.

8.10 Where an out-of-court disposal is considered appropriate, the views of the victim should be

⁷⁰ The Code 7.1

⁷¹ See paragraphs 5.4 – 5.7

⁷² See S.17 Criminal Justice and Courts Act 2015

obtained and taken into account.⁷³ Although important, a victim's view may not be the deciding factor. It is a matter for the decision maker in the light of all the circumstances of the case.

8.11 If a prosecutor decides that a person shall be dealt with by way of an out-of-court disposal, the person shall be dealt with accordingly unless the case is escalated for review.⁷⁴

8.12 When considering out-of-court disposals prosecutors should include consideration of non-conviction-based asset recovery powers including:

- provision for payment of compensation to victims in out-of-court disposals;
- cash, money in a bank or building society account or listed asset seizure and forfeiture (which needs to be referred to a law enforcement authority);
- civil recovery.

⁷³ The Code of Practice for Victims of Crime paragraph 2.7 (The Victim's Code)

⁷⁴ S.37B(6) Police and Criminal Evidence Act 1984

9. Material and Information required for charging and prosecution: The National File Standard

Charging

9.1 The **request** for a charging decision must be submitted through the digital interface between the police and CPS, where available and used by the police.⁷⁵

9.2 The **request** for a charging decision must be supported by the provision of

- the material set out in **Annex 3**; and
- the information set out in **Annex 4**.

The National File Standard

9.3 The material and information required for charging form part of the National File Standard (NFS). The NFS also specifies the material required for the subsequent management of the case at initial hearing(s), and for any trial, dependent on venue and case type. The requirements for each stage are set out in tabular form at **Annex 5**.

9.4 The concept of a “file” has changed in the digital era where evidence is gathered incrementally over a longer period and can often be viewed remotely. The focus of the NFS is not therefore on the creation and delivery of a discrete physical file, but on the material and information required for each of the key stages of the case. It aims to provide the prosecutor, the defence, and the court with the material and supporting information that is both necessary and proportionate for charging, case management, and an effective prosecution.

9.5 The material and information that will usually be required for early advice are described at part 7.

9.6 Where material or information has been submitted in support of a request for advice, or a charging decision e.g. key statements or exhibits, it need not usually be resubmitted at any further stage in the case unless the content has to be updated e.g. the factual summary.

9.7 Serious and complex cases may require additional material and information. Those requirements can usually be identified if early advice is sought. An immediate charging decision is also more likely if the additional material or information is available when the decision is requested. Specialist CPS Casework Divisions and the police may agree national protocols on any additional material that should be supplied routinely at different stages of particular case types.

Compliance

9.8 The NFS allows police officers to understand the prosecutor’s requirements. Compliance with the NFS should allow charging decisions to be taken without the need for requests for further information or discussions between the police and a prosecutor, unless the case is complex. Where a further requirement is set beyond the NFS, the prosecutor must provide a reason for the request.

9.9 **Annex 7** contains further guidance on specific types of evidence where the material or information supplied is commonly found to be insufficient for charging purposes or for any subsequent prosecution and have been identified as such in File Quality Assurance (FQA) assessments.

⁷⁵ At the time of publication some forces do not use the interface 24/7.

9.10 Neither the police nor the CPS can sustain inefficient charging arrangements where the terms of the NFS are not adhered to. Failure to supply the correct material and information for a charging decision may result in the prosecutor being unable to apply the Code and refusing to charge immediately, or at all.⁷⁶

⁷⁶ The Code 3.3

10. Post Charge: case management, progression, and review

10.1 After a defendant has been charged it is essential that the case is managed, progressed, and reviewed effectively.

- Case management is the framework that identifies the case material, information, and actions required to support the case and ensure the court process is efficient;
- Case progression is the process for ensuring that such case material and information is available, actions are taken, and directions complied with, at the right time;
- Case review is the continuous duty on the prosecutor to ensure compliance with the Code and other obligations, including disclosure.

Case management

10.2 The national framework for the efficient management of cases in both the Crown Court (BCM) and magistrates' court (TSJ) is now established. It is reflected in the relevant parts of the Criminal Procedure Rules and the Criminal Practice Direction which prescribe the evidential material and other information that the court expects to be available at the key stages of the case. This Guidance reflects and supports the court's case management framework.

10.3 The court will actively manage each case.⁷⁷ It will do so by identifying the issues in the case and by making directions, e.g. for the service of further material, with timelines for compliance. The prosecution and the defence must assist the court in the exercise of its case management function.⁷⁸ Police officers (investigating officers, disclosure officers, decision makers, and supervisors) and prosecutors should be familiar with the case management framework in both the magistrates' court and the Crown Court.

10.4 Prosecutors will also ensure that the court and the defence are provided with sufficient information about reasonable lines of inquiry, and disclosure generally, to enable the case to be managed effectively and efficiently.

Case Progression

10.5 Effective prosecution depends on the right material being available, and the required actions being taken, at the right time. This is particularly so at the outset of a case.⁷⁹ Failure to adhere to the principle of "getting it right first time" causes delay and, frequently, unsatisfactory outcomes. In order to ensure that cases are ready to progress at each stage, police forces and CPS Areas must establish effective arrangements for case progression, with individual responsibilities and accountability clearly identified. Case progression activity should be monitored and managed proactively by both the police and the CPS.

10.6 At most stages of the case a **shared action plan** with timetable will underpin effective case progression. It will record the key activities with related deadlines, and reflect the extent of progression. Discharge of the following critical responsibilities will also help to ensure effectiveness.

The police and prosecutors have a joint responsibility to ensure:

- compliance with court directions or orders within the relevant timescales;

⁷⁷ Crim.PR 3.2(1)

⁷⁸ Crim.PR 3.3(1)(a).

⁷⁹ This is the first of the "Leveson principles" for Efficiency in Criminal Proceedings.

- shared action plans are kept under continuous review and managed proactively;
- escalation arrangements are used appropriately and consistently;
- consistent application of this Guidance.

Police officers have a specific responsibility to:

- comply with the National File Standard;
- provide any additional material or information requested on time;
- inform the prosecutor when any deadline is at risk of being missed.

Prosecutors have a specific responsibility to:

- identify any additional evidence or information likely to be required as early as possible;
- ensure that requests are both proportionate and necessary in all cases;
- provide the rationale for the request (where it goes beyond mere NFS compliance);
- ensure requests to the police are intimated promptly to allow maximum time for compliance.

Witness issues

10.7 Experience shows that the way in which witness issues are handled significantly impacts the effectiveness of case progression. Failure to secure the continuing support of witnesses, and ultimately their attendance at court (including complainants), is the principal reason for cases failing. Information about their willingness to attend court, or any concerns they may have about giving evidence, will not only inform what action could be taken to secure their co-operation (e.g. through special measures) but also what other steps may need to be taken should that not be forthcoming, including halting the case or securing their evidence through other means, such as the hearsay provisions.

10.8 It is essential that any difficulties with witness participation are communicated to the prosecutor as soon as they are known. It is equally essential that prosecutors identify any witness issues at the earliest possible stage of the case. There is no advantage to be gained by not being proactive in sharing and addressing these issues, only a risk that justice may be delayed or denied. The same principles apply where witnesses (including complainants) remain co-operative but have issues that may affect their participation, or where they have any further information to provide. Local procedures, including arrangements involving Witness Care Units, should be robust and clear and should be understood and followed by both police officers and prosecutors.

Custody Time Limits

10.9 Custody Time Limits are set at the preliminary stages of a case to ensure that it is progressed expeditiously and to avoid defendants remaining in custody for an excessive period. Custody cases need to be monitored and prioritised as failure to do so may result in a defendant being released from custody. Any failure to progress such cases should be escalated in accordance with local arrangements.⁸⁰ Effective joint case progression of custody cases will ensure that the public are protected and defendants are not released from custody through any act or default of the police or prosecutor.

⁸⁰ See paragraphs 10.12 – 10.14

Case review

10.10 The Code⁸¹ establishes the concept that a prosecutor's review responsibilities are continuous, applying throughout the life of a case. The evidential and public interest basis upon which a decision to prosecute is taken may change for a variety of reasons, including the availability or otherwise of evidence arising from the investigation, any view expressed by the complainant, or the receipt of material or information from the defence. Such a change should precipitate a further review.

10.11 It is essential that the police communicate any change in circumstances to the prosecutor as soon as it is known as it may mean the relevant Code Test is no longer met. Further information may also mean that the case is strengthened. Prosecutors must act upon this information as soon as possible, whether upon receipt from the police, the complainant, the defence, or any other source. Failure to progress cases in this way may mean that they proceed without the benefit of material that may strengthen them, that they are prolonged unnecessarily when they should be stopped, or that the court's expectations around case progression are not met.

Resolution of case issues and escalation

10.12 Failing to comply with a request from a prosecutor may place the prosecution in breach of a court direction and imperil the progress or outcome of the case. It is essential that case progression issues between the police and the prosecutor are resolved quickly through an agreed process.

10.13 If any matter requiring a post-charge decision or other action is disputed, or is not completed within an indicative timescale, the police or prosecutor may ask for the issue to be reviewed in accordance with national principles and local arrangements.⁸² Any such review should take place as soon as possible. If the review cannot resolve the issue(s), it may be further escalated in accordance with the local arrangements. A separate process applies for appeals against charging decisions.⁸³

10.14 The following general principles are to be applied:

- escalation must be **recorded** and should explain the rationale for the decision to escalate;
- local escalation policy should involve a minimum of two stages;
- local escalation policy should define the level of decision making required at each stage, and the level of managerial awareness;
- at least seven days should be given for the final stage of escalation unless the relevant timescale for the case does not permit that, in which case the reason must be **recorded** and shared;
- timescales for any required action should be consistent with the relevant periods set by TSJ and BCM;
- no notice of proposed discontinuance should be served immediately in any case (except minor traffic and other offences with no victim) before the period allowed for escalation has passed, unless the relevant timescale for the case does not permit that.

⁸¹ The Code 3.6

⁸² As concluded by the relevant Chief Crown Prosecutor and Chief Constable

⁸³ See paragraph 4.31

Monitoring

10.15 The CPS and the police will monitor compliance with this guidance through jointly agreed performance management arrangements. These must include regular consideration of national and local charging performance; issues and data.

10.16 Any police requests for clarification on any part of this Guidance should be directed initially through the NPCC Criminal Justice portfolio. Any CPS issues should be directed to the Directors of Legal Services Team.

Effective date

10.17 This Guidance is effective from 31 December 2020.

10.18 The DPP may amend parts of this Guidance prior to the publication of any further edition but will only do so after consultation with the NPCC Criminal Justice portfolio.

Annex 1 THE DIVISION OF CHARGING RESPONSIBILITY

Police Charging Decisions

1. The police may charge:

- (i) Any summary only offence,⁸⁴ irrespective of plea;
- (ii) Any offence of retail theft (shoplifting) or attempted retail theft, irrespective of plea, provided it is suitable for sentence in the magistrates' court; and
- (iii) Any either way offence anticipated as a guilty plea and suitable for sentence in magistrates' court;

Provided that this is not:

- a case requiring the consent to prosecute of the DPP or Law Officer;⁸⁵
- a case involving a death;
- connected with terrorist activity or official secrets;
- classified as Hate Crime or Domestic Abuse under CPS Policies;
- a case of harassment or stalking;
- 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.

CPS charging decisions

2. Prosecutors will make charging decisions in all cases not allocated to the police.

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

Determining whether a Guilty Plea may be anticipated

4. A guilty plea may be anticipated where the suspect:

- Has been interviewed and
 - has made a clear and unambiguous admission to the offence and has offered no explanation that is capable of being used as a defence; or
 - has not made a clear and unambiguous admission of guilt but has offered no explanation that is capable of being used as a defence and either (i) the commission of the offence

⁸⁴ This includes allegations of criminal damage (Criminal Damage Act 1971, s.1(1) where the value of the loss or damage is under £5000 (Magistrates Courts Act 1980 section 22 and Schedule 2)

⁸⁵ If the evidential stage is met in respect of any Annex 1 paragraph 2 offence the case must be referred to the CPS for a charging decision. The police must record their assessment of why the evidential stage is met and also why a prosecution is, or is not, in the public interest. The CPS is responsible for making the charging decision in all Annex 1 paragraph 2 cases. See also paragraph 4.3

and the identification of the offender can be wholly established by police witnesses, or
(ii) there is clear visually recorded evidence of the offence being committed and of the suspect being the offender.

- Has not been interviewed but either:
 - the commission of the offence and the identification of the offender can be wholly established by police witnesses; or
 - there is clear visually recorded evidence of the offence being committed and of the suspect being the offender.

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

5. An either way case may be considered suitable for sentence in a magistrates' court unless the overall circumstances of the offence make it likely that the court will decide that a sentence in excess of six months' imprisonment is appropriate. The police will use this criterion to determine whether the police or CPS is responsible for making the charging decision in relation to a youth offender.

6. The police must indicate whether or not a s.70 POCA committal should be sought in order to obtain a confiscation order, even if the offences charged are summary only offences. These cases are not suitable for sentence in the magistrates' court.

7. Further guidance on the approach to be taken to the assessment of sentence is available through the Sentencing Council's website.

Annex 2 CHARGING REFERRALS

Principles

1. Where a case must be referred to a prosecutor for a charging decision,⁸⁶ the referral will be made in accordance with this Guidance and any national arrangements in place at the date of the referral, including the extent to which any new national charging model is in force in the relevant police force area, and as set out in any relevant Service Level Agreement (SLA) on charging between the CPS and the Police.
2. No referral should be made unless the Full Code Test or Threshold Test is met.⁸⁷
3. All referrals must be submitted through the digital interface between the police and CPS where available and used by the police.⁸⁸

⁸⁶ See paragraph 4.4 and Annex 1.

⁸⁷ See paragraph 4.1, Part 7 and Annex 6 for Prosecution Advice/Early Advice.

⁸⁸ At the time of publication some forces do not use the interface 24/7.

Annex 3 MATERIAL REQUIRED FOR A CHARGING DECISION

The **request** for a charging decision must be submitted through the digital interface between the police and CPS, where available and used by the police,⁸⁹ and supported by the following **material**, where appropriate, in any form indicated in the **National File Standard** (Annex 5).

Evidential material

- statements of all of the key witnesses in the case
- key exhibits, including audio-visual material, medical, and forensic reports; court orders etc.
- Crime/CRIS report
- any interview record, where not fully covered in the factual summary
- Checklists including those relevant to cases involving e.g. Domestic Abuse, Harassment and Stalking, Hate Crime, Youths
- Risk Assessments including those relevant to cases involving e.g. Domestic Abuse
- record of previous convictions of the suspect(s) and key prosecution witness(es) (including any out of court disposals and any relevant foreign conviction orders)
- victim personal statement/impact statement for business/community impact statement, where available

Material related to disclosure⁹⁰

- Where a Not Guilty Plea is anticipated and either the referral is made for a charging decision on the Full Code Test or a file is submitted to the CPS after the police have authorised charge in accordance with DG6 on the Full Code Test;
 - schedules of unused material;
 - copies of relevant potentially disclosable material and the rationale for reaching that conclusion;
 - copies of material presumed to be disclosable⁹¹ and an explanation of whether, or not, it is considered to satisfy the test for prosecution disclosure, and in either case an explanation for the reasons for reaching that conclusion;

In all other cases the disclosure officer must provide the schedules as soon as possible after a not guilty plea has either been indicated or entered.⁹²

Where a Not Guilty Plea is anticipated and the referral is made for a charging decision on the Full Code Test and it has not been feasible to provide the unused material schedules to the prosecutor at the same time as seeking a charging decision e.g. because the arrest was not planned and the suspect cannot be bailed; or the referral is on the Threshold Test:

- information about any material identified as potentially undermining the prosecution case or assisting the defence case, in addition to the investigators' rationale for that

⁸⁹ At the time of publication some forces do not use the interface 24/7.

⁹⁰ Special arrangements may have to be made for the prosecutor to view highly sensitive material for the purposes of a charging decision.

⁹¹ This is a reference to the rebuttable presumption in the AG's Guidelines on Disclosure 2020.

⁹² Paragraphs 71 – 74 of the AGs Guidelines on Disclosure 2020

- assessment;⁹³
- copies of any such potentially disclosable material where available;

Key Evidence

1. It is essential that police officers and prosecutors understand the importance of “key evidence” as it describes the basic material upon which the prosecution will rely for the following purposes:

- a charging decision;
- case management;
- the effective prosecution of the case.

2. A proper understanding of the meaning and scope of key evidence will enable officers to determine, with greater accuracy, which statements and exhibits should be submitted in support of a charging decision, or as part of the information required for the initial court hearing. This will ensure a proportionate approach and reduce the potential for requests for additional material.

3. Key evidence is the evidence to be relied upon by the prosecution to establish the elements of the offence to be proved, including the identity of the offender and any relevant state of mind, together with any other evidence that can further strengthen the case by contradicting or otherwise undermining any explanation raised by the suspect.

4. Key evidence includes the statements of:

- civilian witnesses whose evidence may have a bearing on the case to be proved;
- police Officers who have witnessed any aspect of the offence;
- expert witnesses⁹⁴ e.g. medical witnesses, forensic scientists.

5. The following classes of statements are not routinely considered to be “key” and are not required to be provided unless it can be anticipated that such evidence will be challenged, or where they have been specifically requested by a prosecutor:

- procedural statements, including those dealing with arrest or detention;
- statements exhibiting items whose provenance is unlikely to be in dispute;
- continuity evidence.

6. Multiple witnesses are frequently available who provide similar accounts of the same events, or part of an event. Where that occurs,

- if they merely replicate the account of a key witness in its entirety, such statements need not be provided (and are non-key);⁹⁵ but
- if they differ in a material respect, statements should be provided in respect of each such witness (key).

⁹³ This includes sensitive material and highly sensitive material. Officers may have to make special arrangements for the prosecutor to view sensitive or highly sensitive material for the purposes of a charging decision.

⁹⁴ See Annex 7 for further guidance in relation to evidence presented in an SFR and when a statement from a forensic scientist will be needed.

⁹⁵ See Annex 3 paragraph 7 below for further guidance.

7. It is essential, however, that the role of all “non-key” witnesses, particularly civilians, is specified adequately in the case summary so that a prosecutor (and the defence and the court) can understand their relevance. Failure to do so may result in their statements being required.

8. Key evidence may also include other material, such as

- audio-visual material (e.g. CCTV; body-worn video; 999 calls; still photographs) where it demonstrates the commission of the offence or has other evidential value;
- streamlined forensic reports;
- medical reports;
- other documents or forms e.g. drink-drive procedure forms, that will be relied upon.⁹⁶

9. The following approach should be taken to audio-visual material⁹⁷ where it is identified as key evidence:

Audio-visual material can be made available to the CPS pre-charge

If audio-visual material can be made available to the CPS at the pre-charge stage:

- the relevant extracts of the audio-visual material must be made available to the CPS; and
- an officer who has viewed the audio-visual material must provide a summary⁹⁸ of the recording including the counter times for the evidential sections. Where a number of individuals are involved in an incident, this summary should identify them and explain their roles.

Audio-visual material cannot be made available to the CPS pre-charge

If audio-visual material cannot be made available to the CPS at the pre-charge stage then an officer who has viewed the audio-visual material must provide a statement⁹⁹ which:

- confirms whether the recorded material captures all or part of an incident;
- clearly identifies the relevant section of any audio-visual evidence by reference to start and finish points;
- describes who and what is seen, including the relevant actions of all relevant individuals;
- describes the evidential significance of the material including what, if any, aspects undermine the prosecution case or assist the defence;
- explains the basis upon which the suspect can be identified from the recording, including what clothing was worn;
- confirms whether the material was shown to the suspect in interview and any response recorded or noted, if known; and
- confirms the quality of the recording including, where relevant, that the images displayed are of sufficient quality to clearly identify the suspect.

⁹⁶ The breathalyser printout is required for an anticipated guilty plea and the full form is required for an anticipated not guilty plea.

⁹⁷ The provision of audio-visual material must comply with the terms of national and local SLAs.

⁹⁸ This should include a description of any parts which either undermine the prosecution case or might assist the defence case.

⁹⁹ In form MG11

10. Prosecutors must always **record** the rationale for requiring the submission of “non-key” evidence. Requests for “all statements” or a “full file” should never be made. All requests for additional material should identify not only which specific material is required, but also the reasons why.

11. Police officers and prosecutors should understand that:

- key evidence should invariably be available at the point of charge, except in cases where the Threshold Test is being applied;
- it may come from one source (e.g. a complainant) or, more usually, from multiple sources, including exhibits;
- the police must make the initial assessment of what evidence is likely to be relied upon, or “used”, to prove the case, and what will be “unused”. The final decision as to what will be used or unused will be for the prosecutor;
- for the purpose of decision making (charge or review), key evidence must always be considered alongside any other information that may have a bearing on the evidential or public interest test and, in particular, any unused material which may undermine the prosecution case or assist the defence.

Annex 4 INFORMATION REQUIRED FOR CHARGING DECISION

The **request** for a charging decision must be submitted through the digital interface between the police and CPS where available and used by the force, supported by the following **information**, where appropriate, in any form indicated in the **National File Standard** (Annex 5):

The suspect(s)¹⁰⁰

- Personal details:
 - name
 - date of birth
 - gender
 - ethnicity and nationality
- the main language spoken and any relevant dialect, if an interpreter is required;
- any indication that the suspect(s) has a mental health¹⁰¹ issue that may impact on the decision making or handling of the case;
- in respect of each, the date and time of their arrest;
- in respect of each, their status: custody, bail, or otherwise;
- the information in support of any remand application;
- any current or pending proceedings;
- any previous similar offending relevant to proof of the offence;
- any orders to be sought on conviction.¹⁰²

The offence(s)

- case type: state whether it is considered e.g. Domestic Abuse or Hate Crime (Racist incident/Disability Hate Crime/Homophobic/Transphobic etc);
- the proposed charge(s);
- Statutory Time Limits for any of the proposed charges;
- consents relevant to any proposed charges e.g. A-G's Consent; DPP's Consent.
- factual summary;¹⁰³
- the identified or likely issues in the case;
- the current understanding of the defence case, including any explanation offered by the suspect, whether in formal interview, defence statement or otherwise;¹⁰⁴
- if the suspect was interviewed, details of the questions asked relevant to the points to prove and identified issues in the case, including the suspect's response (including no comment)¹⁰⁵
- if the suspect was not interviewed, details of the reasons for that decision;
- an analysis of the strengths and weaknesses of the case;
- the anticipated plea and the rationale for that view;
- confirmation of whether a s.70 POCA committal should be sought in order to obtain a confiscation order, even if there are only summary only offences.

¹⁰⁰ This information should be provided in every case where confirmed by a suspect.

¹⁰¹ Police officers and prosecutors must ensure they have the material and information necessary to assess the impact of a suspect's mental health conditions and disorders on the decision to prosecute.

¹⁰² This should include draft terms which have been discussed with the victim, where available.

¹⁰³ See current CPS Best Practice Guidance on of Factual Summary.

¹⁰⁴ This is not a summary of the interview; it is the officer's assessment of the issues raised by the suspect.

¹⁰⁵ The questions and answers should be in direct speech and not paraphrased.

The investigation

- the reasonable lines of inquiry already conducted, including those that may assist the defence,¹⁰⁶ and the results of those inquiries;
- the lines of inquiry which will not be pursued and the rationale for that decision;
- any reasonable lines of inquiry which remain outstanding, together with timescales for completion of those inquiries and an objective assessment of the likely impact of those inquiries on the decision to charge, taking into account the facts of the case, the available material and information and the known issues; the current status of the PACE clock and its impact on the investigation;¹⁰⁷
- an explanation for any delay between the offence date, commencement of the investigation and the referral to the CPS;
- the status of any linked offenders:
 - pending arrest/interview;
 - charged, and if so, their status, including court dates;
 - dealt with by Out of Court Disposal;
 - subject to no action; and
 - any account or explanation relevant to the suspect's conduct.
- the status of any linked investigation;
- whether any sources of information require protecting;¹⁰⁸
- details of any action taken, and timetable set in relation to asset recovery; their financial strategy and contact details for the relevant Financial Investigation Unit.

Material subject to examination

The following types of evidential material have been, or may be, subject to examination:

- mobile communication devices
- social media accounts
- audio-visual evidence
- third party material

Where that is the case, the following information is required:

- the purpose of any examination and its potential impact;
- why examination of the device, account, or material is deemed reasonable;
- whether any relevant consent has been obtained;¹⁰⁹
- the examination strategy which will include parameters of examination of CCTV, ANPR (geographical and time) and use of cell site;
- where appropriate, the extent of any download or copying, including key word setting or date/time parameters;
- if the device or material was returned without examination, or the account not further examined, why this was appropriate; and
- whether the suspect or their representative have been asked for/provided key word searches.

¹⁰⁶ Paragraphs 74, 94 and 97 of the AGs Guidelines on Disclosure

¹⁰⁷ This information is needed in all cases where the suspect is in custody.

¹⁰⁸ The Code paragraph 4.14 (g). Officers are responsible for determining how this sensitive information is communicated to the CPS.

¹⁰⁹ Annex 7 Part 3

Outstanding evidence

The following types of evidential material may not be immediately available for charging purposes:

- audio-visual
- bad character
- communications
- forensic
- identification
- medical

Where such evidence or any other witness statements or exhibits are outstanding, the following information is required:

- the nature of the outstanding material;
- any target date by which it will be available;
- any issues that may affect its availability within that timeframe or at all.

Further guidance is provided on each of the specific classes of evidence at **Annex 7**.

Victims and witnesses¹¹⁰

- whether any victim or witness has failed to engage with or support the investigation and
 - has refused to provide a statement;
 - will not support a prosecution;
 - may not attend court for other reasons; and
 - if so, their relevance to the case.
- where there is a repeat victim,¹¹¹ a summary of the circumstances of any previous incidents;
- where any victim or witness is vulnerable or intimidated,
 - the basis of eligibility for special measure; and
 - a special measures assessment, including any meeting requirement.
- other supporting and/or protective measures proposed for any victims or witnesses who are not eligible for special measures
- where the main language spoken is other than English,
 - any interpretation requirement;
- any relevant dialect
- whether a Victim Personal Statement (VPS/ISB/CIS) has been offered and:
 - has been taken or is yet to be taken;
 - is to be read out;
 - is to be read out by the victim;
 - has been declined by the victim.

Other considerations

- any matters of local or public interest;
- any other confidential information;
- any views of the investigating officer;

¹¹⁰ The personal details of victims and witnesses will be sent directly to CMS via a digital message.

¹¹¹ A repeat victim in this context means a victim of the same offender. This applies to all types of offences and is not limited to e.g. Domestic Abuse and Hate Crimes.

- any other issues on which the decision of the prosecutor is sought.

Code Test

- the reasons why both the evidential and public interest stages of the Full Code Test¹¹² are met; or
- how each of the 5 conditions of the Threshold Test is met.¹¹³

Compliance and assurance

- the referral has been subject to quality assurance and that the material and information is submitted in compliance with this guidance;
- there has been consideration of the impact of potentially disclosable material on the decision to charge, including any unexamined material, or material that could be obtained through further reasonable lines of inquiry.

Contact details

- name, location, e-mail and contact telephone number for the officer in the case.

¹¹² See part 5

¹¹³ See part 6

Annex 5

National File Standard

All material and information must be sent to the CPS via the digital interface between the police and CPS, unless this is not available, and not re-submitted unless requested by CPS

Charging Referral	<u>GAP</u> Initial Hearing Police Charged	<u>NGAP</u> Initial Hearing Police Charged (including custody cases)	<u>GAP</u> Initial Hearing CPS Charged	<u>NGAP</u> Initial Hearing CPS Charged	<u>Crown Court</u> cases Initial Hearing CPS Charged	Post Initial Hearing GAP cases where a NG plea was entered	Post Initial Hearing NGAP cases	Post Initial Hearing Crown Court cases
<p>Information Provided digitally or MG3/MG6</p> <ul style="list-style-type: none"> • The suspect • Remand application (MG7) • The offence(s), including the factual summary • The investigation • Details of outstanding evidence/ reasonable lines of inquiry • Victims and witnesses • Any other considerations e.g. bad character / special measures information • Code Test compliance, certification and contact details <p>See Annex 4 for further guidance</p>	<p>Charge details Provided digitally or MG4</p> <p>Information Provided digitally (or via MG5/MG6)</p> <ul style="list-style-type: none"> • The suspect • Remand application (MG7) • The offence(s), including the <u>factual summary</u> • Orders to be sought and terms • Details of applications e.g. compensation • Copies of existing court orders e.g. non-molestation/restraining order/Sexual Offences Prevention Orders (SOPOs) • Confiscation orders • Code Test compliance, certification, and contact details <p>See Annex 4 for further guidance</p>	<p>Charge details Provided digitally or MG4</p> <p>Information To be provided digitally (or via MG5/MG6/MG2)</p> <ul style="list-style-type: none"> • The suspect • Remand application (MG7) • The offence(s), including the <u>factual summary</u> • The investigation including outstanding evidence and reasonable lines of inquiry • Information about Victims and witnesses/MG9 • Any special measures assessment (MG2) • Witness availability (MG10) • Orders to be sought and terms • Details of applications e.g. compensation • Copies of existing court orders e.g. non-molestation / restraining; SOPO; confiscation • Any other considerations e.g. bad character • Code Test compliance, certification, and officer contact details <p>See Annex 4 for guidance</p>	<p>Charge details Provided digitally or MG4</p> <p>Updated information (via MG5/MG6) on</p> <ul style="list-style-type: none"> • The offence(s) • The <u>factual summary</u> • <u>Remand application</u> (MG7) • Orders to be sought and terms • Details of applications e.g. compensation (MG19) • Copies of existing court orders e.g. non-molestation/restraining; SOPO; confiscation • Any other considerations e.g. bad character (MG16) 	<p>Charge details Provided digitally or MG4</p> <p>Updated information (via MG5/MG6/MG2) on</p> <ul style="list-style-type: none"> • The offence(s) • The <u>factual summary</u> • <u>Remand application</u> (MG7) • The investigation including details of outstanding evidence/reasonable lines of inquiry • Victims and Witnesses information (MG9), including witness availability (MG10) • Any special measures assessment/MG2 • Orders to be sought and terms e.g. compensation (MG19) • Any other considerations e.g. bad character (MG16) 	<p>Charge details Provided digitally or MG4</p> <p>Updated information (via MG5/MG6/MG2) on</p> <ul style="list-style-type: none"> • The offence(s) • The <u>factual summary</u> • <u>Remand application</u> (MG7) • The investigation including details of outstanding evidence / reasonable lines of inquiry • Victims and Witnesses (MG9) • Witness availability (MG10) • Any special measures assessment (MG2) • Orders to be sought and terms • Any other considerations e.g. bad character (MG16) 	<p>Outstanding information digitally or MG6</p> <p>Further Information</p> <ul style="list-style-type: none"> • The investigation • The investigation including details of outstanding evidence and reasonable lines of inquiry • Victims and witness details and issues (MG9) • Any special measures assessment/MG2 • Witness availability/MG10 • Orders to be sought and terms including compensation (MG19) • Details of applications e.g. compensation • Copies of existing court orders e.g. non-molestation/restraining; SOPO; Confiscation • Any other considerations e.g. bad character (MG16) 	<p>Outstanding Information digitally or MG6</p> <p>Identified in any prior submission or action plan</p> <p>Any further information</p> <p>Identified prior to or at the Initial Hearing as being necessary for trial</p>	<p>Outstanding Information digitally or MG6</p> <p>Identified in any prior submission or action plan</p> <p>Any further information</p> <p>Identified prior to or at the Initial Hearing or prior to or at PTPH as being necessary for plea, case management, or trial</p>

Annex 5

National File Standard

All material and information must be sent to the CPS via the digital interface between the police and CPS, unless this is not available, and not re-submitted unless requested by CPS

Charging Referral	GAP Initial Hearing Police Charged	NGAP Initial Hearing Police Charged (including custody cases)	GAP Initial Hearing CPS Charged	NGAP Initial Hearing CPS Charged	Crown Court cases Initial Hearing CPS Charged	Post Initial Hearing GAP cases where a NG plea was entered	Post Initial Hearing NGAP cases	Post Initial Hearing Crown Court cases
<p>The following material</p> <ul style="list-style-type: none"> • Key evidence (including MG11s; reports and exhibits) • Interview record/MG15 (where available) • Crime/CRIS report • Relevant checklists • Record of previous convictions/PNC • VPS/ISB/CIS where applicable, <p>See Annex 3 for further guidance</p>	<p>The following material</p> <ul style="list-style-type: none"> • Key statement (MG11s)/exhibits, and reports if necessary to explain or supplement the factual summary or where viewing may impact on sentence • Interview record (MG15) (where available) • Record of previous convictions/PNC • VPS/ISB/CIS where applicable 	<p>The following material</p> <ul style="list-style-type: none"> • Key evidence including key statements/MG11s; exhibits • Interview record (MG15) (where available) • Relevant checklists • Record of previous convictions/PNC • VPS/ISB/CIS where applicable 	<p>The following material</p> <ul style="list-style-type: none"> • Key evidence including MG11s; reports; exhibits; • Interview record (MG15) (where available) • Relevant checklists • Record of previous convictions/PNC • VPS/ISB/CIS¹ where applicable 	<p>Outstanding material identified in any prior submission or action plan</p> <ul style="list-style-type: none"> • Interview Record (MG15) (where available) 	<p>Outstanding material identified in any prior submission or action plan</p> <ul style="list-style-type: none"> • Interview Record (MG15) (where available) 	<p>Any further material identified as being necessary for trial</p>	<p>Any further material identified as being necessary for trial</p> <p>Outstanding material identified in any prior submission or action plan</p>	<p>Outstanding material identified in any prior submission or action plan</p> <p>Any further material Identified prior to or at the Initial Hearing or prior to or at PTPH as being necessary for plea, case management, or trial</p>
<ul style="list-style-type: none"> • Disclosure Schedules and copies of material assessed as meeting the test for disclosure or material presumed to be disclosable.² 	<ul style="list-style-type: none"> • Any material or information which may impact on case presentation/sentence – the material may either undermine the prosecution case or assist the defence case. 	<ul style="list-style-type: none"> • Disclosure Schedules • Any material meeting the disclosure test • Material “presumed to be disclosable” <p>Note: The reference to Disclosure Schedules refer to the processes agreed nationally for dealing with disclosure issues.</p>	<ul style="list-style-type: none"> • Any material meeting the disclosure test 	<ul style="list-style-type: none"> • Disclosure Schedules • Any material meeting the disclosure test • Material “presumed to be disclosable” 	<ul style="list-style-type: none"> • Disclosure Schedules • Copies of relevant disclosable material • Material “presumed to be disclosable” 	<ul style="list-style-type: none"> • Disclosure Schedules • Copies of relevant disclosable material. • Material “presumed to be disclosable” 	<ul style="list-style-type: none"> • Disclosure Schedules • Copies of relevant disclosable material • Material “presumed to be disclosable” 	<ul style="list-style-type: none"> • Disclosure Schedules • Copies of relevant disclosable material • Material presumed to be disclosable. <p>Note: relevant timescale must be confirmed by the prosecutor at the point of charge</p>

¹ Or a VPS/ISB/CIS was declined

² In accordance with the Attorney General’s Guidelines on Disclosure 2020 in anticipated not guilty plea cases referred for a Full Code Test (FCT) decision officers must provide information about, and copies of, material assessed as meeting the test for disclosure and material presumed to be disclosable. Where it has not been feasible to provide schedules (in FCT cases) and all anticipated not guilty plea Threshold Test referrals, officers must provided information about material identified as potentially disclosable, including the rationale for that assessment and copies of any such disclosable material where available.

Annex 6 CASE TYPES WHERE EARLY ADVICE IS RECOMMENDED

1. The provision of early advice is strongly recommended in the following specific case types:

- a death;
- rape or other serious sexual offences;¹¹⁴
- modern Slavery and Human Trafficking including cases involving exploitation where charges under the Modern Slavery Act 2015 are under consideration e.g. in the context of “county lines” supply of controlled drugs;
- investigation of an institution with multiple victims and/or suspects;
- where the issues or scale of material make it likely that a prosecutor’s review would be significantly over 90 minutes;
- multiple suspects so that consideration is likely to be significantly over 90 minutes;
- A Memorandum of Understanding requires early consultation (e.g. Joint MOU on undercover operatives);
- requests for International Letters of Request, European Investigation Orders and other Mutual Legal Assistance;
- extensive volumes of electronic data, multi-media evidence, or third-party material;
- large scale fraud;
- major police operations including public disorder, public protests, or other civil events;
- cases where the preservation of assets through “Restraint” may be required, should be referred to CPS POC regardless of case type, size or complexity.

These are all cases which must be referred to the relevant CPS Area or Casework Division for a charging decision. It is imperative that the relevant CPS Area or Casework Division is contacted to discuss referral arrangements for all these case types, particularly if an immediate charging decision is needed and early advice was not obtained.

2. Depending on the issues in the following types of cases early advice may not be required but it is important that the relevant CPS Area or Casework Division is contacted to discuss referral arrangements, particularly if an immediate charging decision is needed and early advice was not obtained:

- vulnerable victims who may require the support of intermediaries;
- a significantly complex legal element;
- highly sensitive cases including Social Media cases that must be referred to CPS HQ;¹¹⁵
- cases where witnesses are eligible for the special measure under Section 28 YJCEA 1999, involving early visually recorded cross-examination in the Crown Court.

3. The police must consult with local CPS Areas to agree the management of charging decisions arising from any pre-planned operation or demonstration. Local CPS Areas are responsible for co-ordinating and making the charging decisions in relation to these cases irrespective of when the cases are ready for a charging decision. This is the case unless the Chief Crown Prosecutor for CPS Direct and the Chief Crown Prosecutor for the relevant CPS Area has reached a formal agreement to depart from this arrangement.

¹¹⁴ Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape

¹¹⁵ See CPS guidance on social media offences: <https://www.cps.gov.uk/legal-guidance/social-media-guidelines-prosecuting-cases-involving-communications-sent-social-media>

4. CPS Central Casework Divisions may agree further classes of cases where early advice will be routinely obtained.

Annex 7 THEMATIC GUIDANCE

Part 1: Audio-visual evidence¹¹⁶

Principles

1. This guidance applies to audio-visual evidence which may include:

- audio recordings, such as a call to an emergency service provider;
- video recordings, such as CCTV, body worn video, or digital camera recordings;
- photographs or images, including those recovered from cameras or extracted from other digital devices or recordings.

2. Audio-visual evidence may be an important consideration in a charging decision and can ensure both a fair and effective prosecution. Its relevance and potential use should be understood from the early stage of an investigation.

3. A recording or image may:

- capture the entirety of an incident or part it;
- identify a suspect, or record a suspect's involvement in an incident;
- capture other evidence relevant to an issue in the case;
- demonstrate the gravity of offending more effectively than a witness statement;
- contain an account of a victim, witness, or suspect;
- contain material which undermines the prosecution case or assists the defence.

4. This guidance is intended to support decision making. It is not a definitive guide to all aspects of handling such material, or its different types and uses. Prosecutors and police decision makers need to view each case on its merits and, where appropriate, consider more detailed guidance on specific evidence types such as body worn video,¹¹⁷ visually recorded interviews,¹¹⁸ or indecent images.

Assessment

5. Before taking decisions to prosecute, prosecutors and police decision makers should review any relevant audio-visual material to assess whether it is likely to be “key evidence”¹¹⁹ and used as part of the case or be unused and potentially disclosable.

6. The assessment should cover any relevant conduct of the suspect(s) and witnesses, and any other impact it may have, as well as the visual or audio quality of the material. It should be considered alongside the other relevant evidence to assess its overall effect on the conduct of the case and its likely impact on the prospect of conviction.

7. Where audio-visual evidence is assessed as being “key evidence”, it should ordinarily be made

¹¹⁶ The provision of audio-visual material must comply with national and local SLAs.

¹¹⁷ https://www.college.police.uk/News/archive/2014aug/Documents/Body_worn_video_guidance.pdf

¹¹⁸ [http://library.college.police.uk/docs/appref/NPCC-\(2015\)-Guidance-Visually-Recorded-Interviews%203rd%20Edition.pdf](http://library.college.police.uk/docs/appref/NPCC-(2015)-Guidance-Visually-Recorded-Interviews%203rd%20Edition.pdf)

¹¹⁹ See Annex 3 for definition of key evidence and the requirements relating to audio-visual material.

available to the prosecutor for the purpose of charging or prosecution. The relevant section of any audio-visual evidence should be clearly identified and extracted from any longer recording.

Charging

8. In all Full Code Test cases, the key evidence should be available at the point of charge. Where audio-visual evidence forms part of that key evidence, because it is required to prove an element of the offence, or to rebut an issue or a defence raised, it should be made available to the prosecutor when referring a case for a charging decision, either by direct supply of the material or through a link. Police and prosecutors should be aware of any local arrangements that facilitate remote access and viewing.

9. Audio-visual material can be made available to the CPS pre-charge

If audio-visual material can be made available to the CPS at the pre-charge stage:

- the relevant extracts of the audio-visual material must be made available to the CPS; and
- an officer who has viewed the audio-visual material must provide a summary¹²⁰ of the recording including the counter times for the evidential sections. Where a number of individuals are involved in an incident, this summary should identify them and explain their roles.

10. Audio-visual material cannot be made available to the CPS pre-charge

If audio-visual material cannot be made available to the CPS as part of the charging referral process, the police must explain the reason why. In exceptional circumstances¹²¹ it may be possible to proceed without viewing the actual evidence where a police witness who has viewed the material can provide a statement which:

- confirms whether the recorded material captures all or part of an incident;
- clearly identifies the relevant section of any audio-visual evidence by reference to start and finish points;
- describes who and what is seen, including the relevant actions of all relevant individuals;
- describes the evidential significance of the material including what, if any, aspects undermine the prosecution case or assist the defence;
- explains the basis upon which the suspect can be identified from the recording, including what clothing was worn;
- confirms whether the material was shown to the suspect in interview and any response recorded or noted, if known; and
- confirms the quality of the recording including, where relevant, that the images displayed are of sufficient quality to clearly identify the suspect.

11. The prosecutor or police decision maker may then exercise judgement as to whether to proceed based on that statement, taking into account whether:

¹²⁰ This should include a description of any parts which either undermine the prosecution case or might assist the defence case.

¹²¹ It is anticipated that exceptional circumstances will only be found where there are technical issues preventing the transfer of the audio-visual evidence to the CPS and an immediate charging decision is required.

- it is consistent with other available evidence;
- together with other evidence, it provides a continuous account of the alleged offence;
- the account put forward by the suspect in interview may require further interpretation of the material.

12. The prosecutor will set out, within the **record** of their charging decision, their rationale for proceeding without viewing the audio-visual evidence material. They will also set an **action** that the material must be available and reviewed within seven days of charge.

Material for First Hearing

13. In so far as it has not already been supplied as part of the charging process, audio-visual evidence should be supplied to the prosecutor before the first hearing where it is “key evidence” in anticipated not guilty plea (NGAP) magistrates’ court cases and in all Crown Court cases. It should also be provided in all anticipated guilty plea cases where it is either the only evidence or the content will have an impact on sentence.

14. In anticipated not guilty plea cases in the magistrates’ court and prospective Crown Court cases, “CCTV” must be provided to the court and the defence as part of the prosecution’s initial details of its case¹²² where it would be relied upon at trial and has been “identified as being of importance for the purpose of plea or initial case management.” This requirement should be taken to apply to similar types of video recordings such as body worn video, as well as “CCTV”.¹²³

15. In short, audio-visual should be available for the first hearing where it is key evidence in a contested case or a Crown Court case, or for a guilty plea where viewing may enable the court to understand the circumstances more fully or assist it in the determination of sentence. Such material is part of the first hearing requirement of the National File Standard.

16. The factual summary required for charging or the first hearing, whether within the MG5 or otherwise, must also reference the audio-visual evidence and, in particular:

- content: what it establishes;
- account/explanation: of the suspect/defendant at the time of arrest/interview/charge;
- provenance: its source (e.g. BWV, mobile device); who recovered it, and who will produce it;
- logistics: any issues in relation to viewing, sharing, or copying the material.

Unused material

17. Once it is determined that audio-visual evidence is “key evidence” and will be used as part of the prosecution case, consideration must be given to any other available material generated by that line of inquiry, or from any other source. If relevant, it should be classified as unused and assessed to determine whether it meets the disclosure test. In all such cases, the description of the material within the unused schedule must be sufficient for the prosecutor to understand its content and significance. Where it meets the disclosure test, it must be supplied to the prosecutor.

¹²² Criminal Practice Direction 3A.12

¹²³ The police are responsible for ensuring personal and sensitive information is not disclosed to the CPS unless required for a charging decision, noting responsibilities under the Data Protection Act 2018.

Part 2: Bad character

1. The admissibility of “Bad character evidence” is governed by a statutory framework.¹²⁴ The legal requirements are detailed and require careful consideration in each case. This guidance is intended to support decision making but it is not a definitive guide. Prosecutors and police officers should be familiar with the broad legal requirements and refer to more detailed guidance on current law and policy where necessary.¹²⁵

Key principles

2. “Bad character evidence” is defined as evidence of a person’s misconduct or of a disposition towards misconduct on his part, other than evidence which:

- has to do with the alleged facts of the offence with which the defendant is charged; or
- Is evidence of misconduct in connection with the investigation or prosecution of that offence.¹²⁶

3. Some offences cannot be proved without the admission of evidence of misconduct e.g. driving while disqualified¹²⁷, or possession of a firearm having previously been convicted of an offence resulting in a relevant term of imprisonment.¹²⁸ These matters are to do with the facts of the alleged offence as they are essential elements of it. Similarly, evidence of e.g. telling lies in interview, or the intimidation of witnesses (where not subject to a separate charge) would be regarded as potential misconduct in the course of the investigation or prosecution.

4. If the evidence of a person’s disposition towards misconduct “has to do” with the alleged facts of an offence, the statutory provisions for the admissibility of bad character evidence do not apply. A decision therefore has to be taken as to whether such evidence can be adduced as part of the Crown’s case (because it is to do with the alleged facts of the offence or the related investigation or prosecution) or whether it is necessary for an application for the admission of bad character evidence through one of the statutory “gateways” (see below).¹²⁹

5. Where there is doubt about whether evidence is “to do with the alleged facts of the offence”, it may be appropriate for an application to be made in any event for the evidence to be adduced through one of the statutory gateways, either as “important explanatory evidence” or “evidence relevant to an important matter in issue between the prosecution and the defendant”.

6. Where the provisions do apply, it will be necessary to specify the relevant misconduct. Misconduct is the “commission of an offence or other reprehensible behaviour.”¹³⁰

Roles and responsibilities

7. The police and prosecutors have a joint responsibility to consider bad character in every case.

8. Police officers have a specific responsibility to:

¹²⁴ Criminal Justice Act 2003 s.98 -112.

¹²⁵ See CPS Guidance - <https://www.cps.gov.uk/legal-guidance/bad-character-evidence>

¹²⁶ Criminal Justice Act s.98

¹²⁷ Road Traffic Act 1988 s.103

¹²⁸ Firearms Act 1968 s.21

¹²⁹ Criminal Justice Act 2003 s.111.

¹³⁰ Criminal Justice Act 2003 s.112

- identify information and material relevant to a bad character application;
- provide such material, including any additional material or information identified by the prosecutor, in sufficient time to ensure a bad character application can be made in a timely manner.

9. The prosecution have a specific responsibility to:

- identify any additional evidence or information likely to be required to support a bad character application, as early as possible;
- provide the rationale for the request;
- make fully reasoned, timely bad character applications in accordance with Part 21 of the Criminal Procedure Rules that satisfy the statutory requirements.

Legal framework

10. In short, evidence of the defendant's bad character is admissible if one of the following seven situations applies (commonly referred to as gateways):

- all parties to the proceedings agree to the evidence being admissible;
- the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross examination and intended to elicit it;
- it is important explanatory evidence;¹³¹
- it is relevant to an important matter in issue between the defendant and the prosecution;
- it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;
- it is evidence to correct a false impression given by the defendant; or
- the defendant has made an attack on another person's character.

11. There are further detailed explanatory provisions on the gateways, including what is "important explanatory evidence",¹³² and establishing a propensity (frequently an issue between the parties),¹³³ as well as significant case law on how those provisions are to be applied. There are also safeguards that prevent such evidence being admitted in certain circumstances where it may have an adverse effect on the fairness of the proceedings.¹³⁴

12. Bad character evidence of non-defendants¹³⁵ is admissible if:

- it is important explanatory evidence;
- it has substantial probative value in relation to a matter which:
 - is a matter in issue in the proceedings; and
 - is of substantial importance in the context of the case as a whole; or

¹³¹ Evidence is important explanatory evidence if, without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case and its value for understanding the case as a whole is substantial.

¹³² Criminal Justice Act 2003, s.102

¹³³ Criminal Justice Act 2003 s.103

¹³⁴ Criminal Justice Act 2003, s.101 (3)

¹³⁵ This section applies to both witnesses and those not called to give evidence except where the issue is one of credibility as the credibility of a non-witness will never be a matter in issue. The section also covers those who are deceased.

- all parties to the proceedings agree to the evidence being admissible.

Information and material requirements

13. Relevant bad character may add material value to a prosecution case. Prosecutors must ensure, however, that there is a clear rationale for the decision to use such evidence, in particular where it is said to be “important explanatory evidence” or be clearly “relevant to an important issue” in the case between the parties. It may be necessary to adopt a selective approach where there is a significant amount of such material. Prosecutors should avoid making a trial unnecessarily complex or complicating the issues that the court will have to decide.

14. Potential bad character evidence should be brought to the prosecutor’s attention as early as possible and, where practical, the material should be available prior to charge. If it is not available at charge, it must be obtained promptly as a prosecutor who wants to introduce bad character evidence must serve notice on the court and defendant not more than

- 28 days after the defendant pleads not guilty, in a magistrates’ court; or
- 14 days after the defendant pleads not guilty, in the Crown Court.

15. The relevant material and information to establish “a disposition towards misconduct” (the commission of an offence or other reprehensible behaviour) is likely to fall into one of the following categories:

Previous convictions:¹³⁶ Proof of the conviction,¹³⁷ plus any more detailed information available on:

- the MO
- the plea/basis of plea
- any concurrent charges
- any defence used
- and summary¹³⁸/key statements/details of admissions

Other disposals: where they involve acceptance of responsibility, including

- cautions
- other warnings
- informal resolutions

Other allegations of criminality: may include

- previous allegations
- incident reports (particularly in domestic abuse cases);
- any outstanding investigations
- previous acquittals or discontinuances

Other reprehensible behaviour: may include

- a pattern of excessive drinking
- use of illegal drugs;
- membership of, or association with, a violent gang

¹³⁶ Spent convictions should only be referred to exceptionally.

¹³⁷ Police and Criminal Evidence 1984 s.74

¹³⁸ e.g. in MG3

Part 3: Communication Evidence

Principles

1. Communication evidence includes communications between

- a complainant and a suspect;
- complainants and/or suspects and third parties, including witnesses;
- individuals subject to an investigation.

2. Communications evidence will typically be in digital form and may be derived from an electronic device, mobile or otherwise, from social media, or any other platform or operating system capable of capturing digital communication data. The location, time, method and frequency of communication may be as relevant as the identity of the sender/receiver and its content. It may take the form of:

- telephone call data;
- conventional texts/group messaging/VoIP/email data;
- notes, contacts, and audio-visual material, photographs, stored digitally.

3. The significance of communication evidence must be understood and assessed at the point of recovery, or potential recovery. The sources, where seized, and any material recovered must be handled correctly. Failure to do so may impact on the admissibility of the evidence.

4. This guidance is intended to support decision making in the context of a potential prosecution. It is not a definitive guide to all aspects of handling communications material, or how it may be used. Prosecutors and police decision makers must assess each case and, where appropriate, consider more detailed guidance, in particular, the current guidance on reasonable lines of inquiry and disclosure relevant to communications.¹³⁹

Investigation

5. In conducting an investigation, a police investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.¹⁴⁰

6. Police officers, and prosecutors, must be alert to the importance of communication evidence so that relevant devices are seized and examined, in the most appropriate way, at an early stage in the investigation. They must also consider whether evidence on social media sites should be preserved. They should be aware, in general terms of:

- the opportunities presented by the examination of a device;
- the different levels of examination available; and
- The limitations and boundaries of any examination, including the implications of using one examination method over another if further work may be required in the future.

¹³⁹ <https://www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence> and Annex A to the AG's Guidelines on Disclosure 2020

¹⁴⁰ CPIA Code of Practice 2015 paragraph 3.5

7. The extent to which any material must be recovered, and the extent of any examination, are operational matters for the police. A prosecutor should be consulted, if appropriate. Early advice is recommended where there is a significant volume of devices or bulk data.¹⁴¹

8. Decisions on recovery and examination will be informed by:

- an assessment of the facts of a particular case;
- the offence under investigation;
- the issues raised, and any potential defence (as these may assist in determining what amounts to a reasonable line of inquiry);
- asking the suspect and / or complainant whether there might be communication material which may have a bearing on the case.

9. The extent and manner of the examination should be proportionate to the issues in the case. In some cases the whole of a relevant download should be considered, even if deleted. The scope of any investigation of communication material should only be confined if it is not considered to be a reasonable line of inquiry. The investigation should not necessarily be limited to messages between particular individuals such as the victim and any suspect, and between suspects, as there may be communication with third parties which may have an impact on the case.

10. It is for the police investigator to extract the evidential material, obtaining such authorities and using such specialist assistance as required. The police must also consider the further steps needed to review the extracted material including:

- using different search methodologies and parameters e.g. keywords, individuals, specific telephone numbers and dates;
- the final sift and identification of evidence that it may prove useful to submit in evidence;
- how such material can best be served and ultimately presented in evidence;
- how material that is not of evidential value is to be treated in accordance with the relevant disclosure regime.

Charging

11. Communication evidence can be vital to a charging decision. It may provide evidence which either supports the prosecution case or undermines it.

12. Where communication evidence is key evidence needed to establish the evidential stage of either the Full Code or Threshold Test, the relevant material must be available when referring the case for a charging decision. This may typically include an analytical report, supporting statements, and relevant exhibits.

13. In addition, unless already included in a report or statement, the following information must be included in the referral for a charging decision:

- the purpose of any examination and its potential impact;
- why examination of the device, account, or material is deemed reasonable;
- whether any relevant consent has been obtained;
- the examination strategy which will include parameters of examination of CCTV, ANPR (geographical and time) and use of cell site;

¹⁴¹ See also part 7 of this guidance.

- where appropriate, the extent of any download or copying, including key word setting or date/time parameters;
- if the device or material was returned without examination, or the account not further examined, why this was appropriate.

This information is needed not only to assist with the charging decision, but also to enable the prosecution to apprise the court of its disclosure strategy in due course, if required.

14. Police officers and prosecutors must assess the potential impact of communication evidence, in both Full Code and Threshold Test cases, before a charging decision is sought or made, taking into account the requirements set out in Annex 4 of this Guidance. Where the nature and extent of evidence is yet to be determined, the following information is required as part of the referral:

- the nature of the outstanding material;
- any target date by which it will be available;
- any issues that may affect its availability within that timeframe or at all.

Post-charge

15. In all custody cases, a proactive approach is required in relation to any outstanding lines of inquiry and the supply to the prosecutor of the relevant material. Any delay in providing communication evidence (and the ensuing delay on the ability of the defence to potentially commission their own analysis) is likely to have adverse impact on any application to extend the Custody Time Limit.

Unused material

16. If the examination reveals material relevant to the investigation of the case but which is not considered likely to form part of the prosecution case, then its existence must be revealed to the prosecutor when a request is made for a charging decision.¹⁴² This may include:

- information about the existence of any relevant devices, the extent of any examination, and any downloads;
- specific material which might be capable of undermining the prosecution case or assisting the defence.

17. If any communications material needs to be disclosed then officers will ensure they comply with their obligations under the Data Protection Act 2018 by including only personal and sensitive information which either forms evidence in the case or meets the test for prosecution disclosure.

18. Disclosure is an ongoing process and the impact of communication evidence must be kept under review during the life of a case.

¹⁴² This information may not be available in Threshold Test cases.

Part 4: Forensic evidence

Principles

1. Forensic evidence is evidence obtained by scientific methods. The significance of forensic evidence in any case will depend on its specific facts and the other available evidence.
2. In all Full Code Test cases prosecutors must assess the likely impact of any potential forensic evidence before the charging decision is made.
3. In Threshold Test cases prosecutors and police officers must make an informed decision about the likely impact of any potential forensic evidence on the sufficiency of evidence test under the Full Code Test before authorising charge.
4. The Criminal Procedure Rules¹⁴³ encourage an incremental and proportionate approach to the service of forensic evidence.

Streamlined Forensic Reports (SFR)

5. Most forensic evidence is now produced initially in the form of an SFR¹⁴⁴ and may cover:
 - finger mark identifications (database & case work)
 - data recovery/digital download
 - DNA profiles (database & case work)
 - drugs
 - footwear
 - marks and traces
 - firearms
 - toxicology
6. In any case in which material evidence against a suspect involves any such type of forensic evidence, a stage 1 SFR will suffice for that aspect of the case for the purposes of making a charging decision and for the first hearing in the magistrates' court.
7. An SFR is neither evidence nor an exhibit. It is a *summary* of the forensic evidence that is served on the defence for the purposes of advising them of the nature of the evidence and securing an admission of its contents. The SFR should be reviewed by the investigator and prosecutor to ensure it establishes the issues in sufficient detail (when read in conjunction with the other evidence) to enable the defence to make such an admission.
8. The following further points should be noted in connection with SFRs:
 - the information sent to the prosecutor should provide the relevant contextual information such as the location and position of the recovered evidence analysed and its significance.
 - the prosecutor must also be informed about any other findings, including DNA or fingerprints, which do not relate to the suspect, and whether these have been attributed to another individual, and if so, whether they have been eliminated from the inquiry and why.

¹⁴³ CrimPR 19.3

¹⁴⁴ Most police forces now deliver forensic evidence in SFR form (MG22). Some complex forensic analysis may not be suitable for SFR.

- experience of SFR has shown that crime scene/exhibit photography greatly assists prosecutors in making charging decisions, and the courts in managing cases. These should accompany the SFR.

9. If the contents of the stage 1 SFR are not admitted, the court may issue directions for a stage 2 SFR, and as to its contents, as part of its case management function. Any further work so required will be notified to the investigating officer who will in turn notify the forensic science provider of the contested issues. The stage 1 SFR should indicate the time required to complete a stage 2 report, if required, so that the court may allow a realistic timeframe for the further work. That period will also be determined by the nature and extent of any issue in dispute.

10. A full evidential statement detailing the analysis will only be required if the case proceeds to trial and aspects of the SFR are challenged by the defence, or if the issues are complex and an SFR is inappropriate.

Controlled substances

11. 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 that identification is challenged will it be necessary for further scientific evidence be obtained after charge.¹⁴⁵ Police officers and prosecutors must have regard to the most recent guidance to confirm the circumstances in which this form of identification is admissible. The use of this method of identification should be confirmed in the summary.

Case progression

12. SFRs should be available for charging purposes and as part of the Initial Details of the Prosecution Case (IDPC) that the prosecution are required to serve on the defence and the court in advance of the first hearing. Any delay in providing the SFR may adversely affect case management, including the prospect of a guilty plea, or agreement of the evidence.

13. It is critical that, with all types of forensic evidence, the prosecution is aware of its existence and also its status i.e. the stage which the forensic examination and the preparation of any reports have reached. In all custody cases proactivity is required as any delay in providing forensic evidence is likely to have adverse consequences for an application to extend the time limit.

Unused material

14. Scientific support departments should follow procedures and working practices which ensure compliance with the requirements of the CPIA Code of Practice. Accurate and full records must be kept of all scene examinations, including all lifts and marks and the details of any items retained as potential exhibits. The records must be made available to the disclosure officer.

15. Disclosure issues may arise where the forensic analysis of some marks and lifts are negative, point away from the suspect, or point towards another individual. This information must be communicated to the prosecutor as soon as it is available.

¹⁴⁵ Regard must be had to Home Office Circular 015/2012 for the circumstances in which a drug testing kit identification and cannabis identification can be used.

Part 5: Identification evidence

Principles

1. This guidance applies to cases where the identification of an offender is an issue and the identification is based on either a visual identification by a witness (Part A) or identification via visual media¹⁴⁶ (Part B).
2. This guidance is intended to support decision making. It is not a definitive guide. Prosecutors and police officers must be familiar with the current law and policy in relation to identification. Code D¹⁴⁷ of the Police and Criminal Evidence Act 1984 (“PACE”) sets out the procedures by which police should obtain evidence to prove or disprove the suspect’s identity as the person involved in a crime. A significant and substantial breach of Code D may result in identification evidence being excluded by the court.
3. Identification evidence may include¹⁴⁸ the following:
 - recognition by a witness who knows the suspect;
 - a witness who recognises the suspect as someone they remember seeing before, but do not know their name;
 - recognition of a suspect from video recorded evidence of an incident which captures an incident;
 - identification of a suspect via social media;¹⁴⁹
 - a description of a suspect which may include their height, build, age, ethnicity, facial features, distinctive marks including tattoos.

Assessment

4. Before taking decisions to prosecute, prosecutors and police decision makers must assess the available evidence including any defence or explanation raised by the suspect and any other information to determine whether identification is an issue in the case.
5. The fact that a suspect does not answer questions in interview does not mean that identification does not still have to be proved or that it is an issue. An identification procedure should take place¹⁵⁰ if a dispute as to identity may reasonably be anticipated unless it would serve no useful purpose.
6. Identification evidence may be an important consideration in a charging decision. Where the identity of the offender is an issue in the case, evidence will be needed to prove this key element. Identification issues should be addressed at an early stage of an investigation.

¹⁴⁶ This includes, but is not limited to CCTV; BWV; recording on a phone/tablet.

¹⁴⁷ Police officers and prosecutors must refer to PACE Code D and comply with the procedures in all cases where identification is an issue.

¹⁴⁸ This is not a definitive list.

¹⁴⁹ In 2014, a [joint CPS/Police document](#) was produced by the National Visual and Voice Identification Strategy Group (NVVIS). This provides guidance of procedures to be followed where there has been an initial identification from social media.

¹⁵⁰ PACE 1984, Code D

Charging

7. In all Threshold Test cases the PACE clock¹⁵¹ time period should be used to resolve any identification issues. An explanation must be provided where this is not possible. Failure to address identification issues promptly may mean that a charging decision has to be deferred or cannot be made at all.
8. In all Full Code Test¹⁵² cases, the key evidence must be available at the point of charge, including identification evidence where it is in dispute.

Part A – A suspect disputes being the person identified by a witness

9. This part applies when an eye-witness has seen the offender committing the crime or in other circumstances which tend to prove or disprove that person's involvement in the crime.

Evidential requirements

10. Statements (or video recorded interviews) relevant to the identification, or the circumstances in which it was made, must be provided as part of the charging referral, in addition to the other key evidence in the case. They should contain the information required by The Turnbull Guidelines.¹⁵³ This is necessary so that the prosecutor can make a proper assessment of the case.
11. In every case the police should provide the following information as part of the referral:
 - details of any first descriptions of the suspect;
 - confirmation as to whether or not the witness's' description matches that of the suspect and whether there is any material discrepancy between the description given and the actual appearance of the accused;
 - confirmation of how long has elapsed between the original observation and any subsequent identification, with an explanation provided for any delay;
 - information about where the suspect lives; his association with the area where the offence was committed, and any other information that may establish a nexus between the suspect and where the offence took place;
 - confirmation as to whether the identification has been put to the suspect in interview, and details of any response recorded.
12. Where the identification is based on recognition, the witness statement should include a detailed account of:
 - how long the witness has known the suspect;
 - how the witness knows the suspect e.g. the nature of their relationship;
 - how often the witness has seen the suspect and in what circumstances;
 - when the witness last saw the suspect;
 - whether the suspect's appearance has changed since they last saw them, and if so, how;
 - how the suspect's name is known to the witness.

¹⁵¹ Including any PACE clock extension or warrant of further detention

¹⁵² DG6 Part 5

¹⁵³ www.cps.gov.uk – The Turnbull Guidelines

13. If a victim or witness identifies a suspect via a street identification¹⁵⁴, the referral must include the following at the stage at which the identity of the suspect was not known:

- details of the first description of the suspect;
- statements from the identifying witnesses and the officers dealing with the initial identification.

14. Where photographs¹⁵⁵ are shown to identification witnesses at the stage at which the identity of the suspect is not known, the referral must include the following:

- a record of the showing of the photographs to identification witnesses including anything said by the witness about any identification;
- statements¹⁵⁶ from the officers who conducted the procedure, detailing their rationale for adopting the procedure; how the photographs were selected and what was said to the identification witnesses before; during and after the procedure.

15. Where a victim or witness identifies a suspect via social media, prior to a formal identification or even prior to police involvement, additional information¹⁵⁷ is needed to understand the impact this may have on the assessment as to whether there is sufficient evidence to meet the Code test. Police officers and prosecutors must refer to the most recent guidance in this area to ensure the correct issues are addressed.¹⁵⁸

16. The additional information regarding the circumstances of the identification via social media must be made available to the prosecutor for the purposes of a charging decision. This will usually be included in the statement of the identifying witness, supplemented if necessary by police statements or further information submitted as part of the referral. It is also important that police officers keep proper records of the steps taken when investigating such an informal identification. Copies of the social media image(s) seen by the witness should be included as part of the referral.

Identification procedure

17. A record of all decisions about holding an identification procedure¹⁵⁹ should be provided with all referrals for charging decisions.

18. In all cases where an identification procedure¹⁶⁰ has taken place, the referral must include:

- statements from the identification witnesses dealing with the identification procedure;
- statements from the officer/member of police staff conducting the viewings with the witnesses;
- the contemporaneous record of the conduct of the identification procedure to include anything said by the witness about the identification (e.g. any expressions of doubt) and anything said by the witness about the conduct of the procedure;

¹⁵⁴ D3.2 Code D PACE deals with the procedure for a "street identification"

¹⁵⁵ PACE Code D 3.3 and Annex E

¹⁵⁶ Or a formal record

¹⁵⁷ This information is needed in addition to the information detailed in paragraph 8.

¹⁵⁸ Please refer to 2014 ACPO Guidance Internet Social Media and Identification Procedures -

<http://library.college.police.uk/docs/APPREF/NVVIS-Guidance-on-Internet-Social-Media-and-Identification-Procedures.pdf>; PACE Code D 3.12 (i).

¹⁵⁹ <https://www.cps.gov.uk/legal-guidance/identification>

¹⁶⁰ PACE Code D 3.14- 3.16

- a record¹⁶¹ of (i) whether the defendant, solicitor, friend or appropriate adult was given the opportunity to see a complete set of the images before it was shown to any witness¹⁶²; (ii) any representations made and how these were dealt with; (iii) whether the suspect's solicitor was given, if practicable, the opportunity to attend the video identification on behalf of the suspect and any representations and decisions made in this regard.¹⁶³

19. Where appropriate the following must also be included:

- non-co-operation identification procedure – a record of the reasons for the decision to make arrangements for a non-co-operation identification procedure where the suspect is not available¹⁶⁴;
- the record of the reasons for the decision to use an existing image of the suspect in circumstances where the appearance of the suspect has significantly changed since the occasion when the witness claims to have seen the suspect¹⁶⁵;
- the record of the action taken to deal with the fact that the suspect has unusual physical feature/characteristics and the record of requests by witness to view image(s) without concealment/replication.¹⁶⁶

20. Where the decision is made not to conduct any form of formal identification procedure in any case where identification is disputed, a record must be made of the rationale for that decision.

Part B – A suspect disputes being the person on an image/footage

21. This part applies where an image of the offender is captured on any visual medium, including footage of the offender committing the crime, or footage of the offender in other circumstances which tend to prove or disprove their involvement in the crime.

22. The referral must include the following

- A copy of the relevant image;
- A copy of the visual recording from which the still image was made;
- Where appropriate it must also include:
 - statements ¹⁶⁷ from police officers who are not eye-witnesses viewing the image for the purposes of recognising the offender; and a copy of any record on which such a statement is based;
 - details of the extent to which any image(s) have been shown to the public through national and local media.¹⁶⁸ To include details of whether any witness has stated after an identification that they have seen such an image;¹⁶⁹
 - any facial mapping/imagery evidence; if this is not yet available that should be confirmed in the referral with details of the anticipated timescales for completing this inquiry; and any indication given by the technical expert about the likely outcome.

¹⁶¹ For the purposes of this section a record can be provided in statement form (MG11), on a form provided for the purpose, or on another document which may be suitable for inclusion as part of the prosecution evidence.

¹⁶² Code D Annex A Paragraph 7

¹⁶³ PACE Code D Annex A Paragraph 9

¹⁶⁴ PACE Code D Paragraph 3.21

¹⁶⁵ PACE Code D Paragraph 3.5(a)

¹⁶⁶ Pace Code D Annex A Paragraph 2A

¹⁶⁷ PACE Code D 3.34-3.37

¹⁶⁸ PACE Code D 3.38-3.41

¹⁶⁹ PACE Code D Paragraph 3.40

Undermining material

23. Irrespective of the method of identification, it is vital that any material that may be capable of undermining the identification evidence is made available to the prosecutor at the point of referral for a charging decision or, where appropriate, is taken into account by the police decision maker in police charged cases. This will include any inconsistent accounts provided by the identifying witness, any accounts by other persons, visual recordings, or other information which may be capable of casting doubt on the identification of that witness, or impact on their reliability and credibility.

Disclosure

24. All information and material relating to the identification of a suspect and any identification procedures should be retained and recorded so that it can either be served as evidence in the case or assessed to determine if it meets the disclosure test under CPIA.

Part 6: Medical evidence

Principles

1. Medical evidence can be vital in establishing:

- an essential element of an offence
- the extent of injuries
- corroboration of an allegation

2. Victims or eye-witnesses can describe symptoms and injuries. Medical evidence is a term used in this guidance to refer to the evidence of a medically qualified person who is able to provide admissible information outside the knowledge of magistrates, a judge, bench, or jury. It may be in the form of statements, reports, or medical notes.¹⁷⁰

3. This guidance is intended to support decision making. It is not a definitive guide. Prosecutors and Police decision makers need to consider each case on its merits and any offence specific guidance.

4. Prosecutors and police officers must ensure that if medical evidence is needed it is requested early in the investigation. They must have regard to specific guidance, protocols, and memorandums of understanding relating to obtaining medical evidence, in particular, the national agreement with the NHS, and the NPCC with the College of Emergency Medicine Best Practice Guidance.

Is medical evidence required?

Battery/common assault (CJA 1988, s.39)

5. Medical evidence is not required to explain visually obvious, non-complex injuries e.g. bruising; bumps; soreness; reddening. This will cover the majority of offences of common assault. In such cases, the evidence of an eyewitness who is assessed as being reliable, or clear definition photographs accompanied by descriptions of the extent of the injuries, will suffice.

6. As a matter of best practice, a permanent visual record¹⁷¹ should be made of any visible injury. Where this is not possible, it must be fully and clearly described in a witness statement. The provenance of any visual record must be clear i.e. when it was created, by whom, and where.

Actual Bodily Harm (OAPA 1861 s.47)

7. Medical evidence will be required to prove an offence of assault occasioning actual bodily harm where the injury¹⁷² can only be established through the interpretation of medical records or X-rays (e.g. a fracture or sub-cutaneous wound) and the extent of the injuries is not accepted by the suspect in interview. Otherwise, the extent of any injury can be covered by witness observation and visual record.

Grievous Bodily Harm, Wounding (OAPA 1861 s.20, OAPA 1861 s.18) or attempt murder

¹⁷⁰ Medical notes should be redacted of sensitive material not relevant to the investigation.

¹⁷¹ This includes body worn video

¹⁷² This includes psychiatric injury

8. These cases are likely to involve the victim receiving medical treatment. Medical evidence will invariably be needed to establish the extent of the injuries that will be sufficient to justify these charges. This is likely to require the interpretation of medical records, X-rays, or other forms of imaging. The full extent of injuries in these cases is more easily presented to the court through a medical report or the relevant medical notes.

9. There may be rare occasions when the circumstances of the offence, the manner of infliction of the injuries, and the extent of the visible injuries mean the offence may be prosecuted without medical evidence. This approach should be carefully considered in any case where a victim does not support a prosecution and does not consent to release of their medical records, but the evidential and public interest stages of the Code test are capable of being met.

Timing of obtaining medical evidence

10. Medical evidence should be requested as soon as practicable. It is essential that local protocols¹⁷³ are followed and timescales adhered to.

11. Whether medical evidence is needed for a charging decision will depend on the particular facts of the case, the offence under investigation (see above), the nature and extent of any admissions,¹⁷⁴ and whether the case is charged on the Full Code Test or the Threshold Test.

12. In all Full Code Test cases, key evidence will be available at the point of charge. Where medical evidence is required to prove an element of the offence, or rebut an issue or defence raised, an appropriate medical report or medical notes must be provided to the prosecutor for a charging decision.

13. In all Threshold Test cases, where it has not been possible to obtain a medical report or copy of the medical notes during the suspect's detention, the police will provide a full description of the injuries sustained and as much additional information as possible e.g. the current status of the victim, the treatment plan, and any available prognosis for recovery. This information must be from a medical practitioner. The timescale for securing a full medical report and the relevant medical notes must be agreed in the relevant joint action plan that will support any Threshold Test decision.

14. In order to support case management, the prosecution must give an indication of any medical or other expert evidence that it is likely to adduce, in relation to a victim or the defendant, in every anticipated not guilty plea case in the magistrates' court and in all Crown Court cases, in advance of the first hearing in the magistrates' court.¹⁷⁵ In order to support compliance with this requirement, an indication of any likely medical evidence should be provided at the charging stage, if the actual evidence is not yet available.

Victim consent

15. Consent¹⁷⁶ must be informed and given freely. The victim needs to understand why a medical report, or medical records, is needed and the use to which it may be put. The victim may:

- decline consent if he or she so wishes, and undue pressure should not be brought to bear;

¹⁷³ See national agreement

¹⁷⁴ E.g. the issue is consent in a rape allegation

¹⁷⁵ Criminal Practice Direction 3A.12

¹⁷⁶ Consent is an on-going issue which should be reviewed throughout a case.

- give informed consent, allowing the police access to their medical records or request a medical report and serve the records or report as additional evidence or unused material, as appropriate;
- give qualified consent, allowing the medical report to be disclosed to the police and prosecutor but not to the defence.

Unused material

16. If the victim of an assault has sought medical treatment, this information must be recorded and revealed to the prosecutor unless a statement from the medical practitioner already forms part of the prosecution case. When statements are taken from medical practitioners, a copy of any supporting medical notes should be obtained and scheduled (if unused).

Part 7: Proceeds of Crime – restraint, confiscation and enforcement

Principles

1. A key part of the CPS strategy is to remove the proceeds of crime from offenders

2. Police are responsible for

- obtaining evidence and providing an assessment of the value of how much a suspect has obtained from criminal conduct (whether by the suspect obtaining property of any kind or a financial advantage);
- obtaining evidence and providing an initial assessment of any assets held by or on behalf of the suspect if any are known;
- considering whether preservation of assets through “restraint” may be necessary. Potential restraint cases should be referred to CPS POC as soon as the issue arises and without waiting for an early prosecution advice or charging file;
- considering whether non-conviction based asset recovery options may be more appropriate in a given case (such as forfeiture of a bank or building society account or listed asset(s), cash forfeiture or civil recovery).¹⁷⁷ Potential civil recovery cases should be referred to the relevant RART and/or CPS POC as soon as the issue arises and without waiting for an early prosecution advice or charging file;
- preparing a financial strategy (in appropriate cases);
- indicating with a charging file whether an application for confiscation should be considered by the prosecutor;
- setting out within a charging file details of any action taken and timetable set in relation to asset recovery. This should include contact details for the relevant Financial Investigation Unit.

3. Prosecutors are responsible for

- considering asset recovery in every case in which a suspect has benefitted from criminal conduct (whether by the obtaining property or a financial advantage) and advise that a financial investigation be considered;
- where restraint of assets may be required the case should be referred to CPS POC regardless of how serious or complex the case is, as soon as the issue arises and without waiting for an early prosecution advice or charging file. Restraint may be sought at any time after an investigation starts, including after conviction;
- selecting charges that comply with paragraph 6.1 of the Code for Crown Prosecutors (which includes selecting charges which allow a confiscation order to be made in appropriate cases, where a defendant has benefitted from criminal conduct);
- including within an action plan any further actions they require the police to take which will enhance the financial strategy in appropriate cases (or a request that such a financial strategy be developed). They will also set out the rationale for any such actions;
- advising on asset recovery, including the overall financial strategy;
- cases where the preservation of assets through “restraint” may be required should be referred to CPS POC as soon as the issue arises and without waiting for an early prosecution/investigative advice or charging file.

¹⁷⁷ In January 2018 the AG issued The Proceeds of Crime Act 2002 (POCA) Guidance under section 2A.

4. Out-of-court disposals

When considering out-of-court disposals, prosecutors should include consideration of non-conviction based asset recovery powers. These include:

- provision for payment of compensation or restitution being made to victims in out of court disposals;
- cash, money in a bank or building society account, or listed asset seizure and forfeiture (which needs to be referred to a law enforcement authority). The police should be advised to contact a police financial investigator for advice. Alternatively, CPS POC can advise the prosecutor;
- civil recovery under Part 5 Proceeds of Crime Act 2002. Potential civil recovery cases should be referred to the relevant RART and/or CPS POC as soon as the issue arises and without waiting for an early prosecution advice or charging file.

5. When assessing whether the case is suitable for sentence in a magistrates' court

- prosecutors should note that if a suspect has obtained property or a financial advantage from criminal conduct any case may be committed to the crown court so that it may consider whether to make a confiscation order (section 70 POCA) regardless of seriousness; and
- the police must indicate in the file whether, or not, a s.70 POCA committal should be sought in order to obtain a confiscation order, even if there are only summary only offences.

6. Points for prosecutors to consider in all cases, before and after charge

- if there has been a financial benefit (whether by the obtaining property or a financial advantage) or a criminal lifestyle (the criteria for criminal lifestyle are set out in s.75 POCA, which is reproduced below) then consider confiscation and financial investigation;
- it is generally in the public interest to seek confiscation where there has been a financial benefit or a criminal lifestyle (or both);
- is there a financial investigator? Should there be one?
- is a restraint required to preserve assets? Potential restraint cases should be referred to CPS POC as soon as the issue arises and without waiting for an early prosecution advice or charging file;
- note that even if a person gives money or other property away or sells it, it may be recoverable from a third party. Section 77 POCA defines "tainted gifts";
- the role played by each defendant – this is likely to affect their benefit for confiscation
- the duration of each defendant's involvement in the criminal enterprise – this is likely to affect their benefit for confiscation;
- what each defendant obtained, including if any benefit was jointly obtained, applying the correct legal analysis;
- whether it is appropriate to select charges that "trigger" the lifestyle assumptions at confiscation (section 75 POCA criteria and schedule 2 POCA offences);
- it is generally appropriate to pursue lifestyle assumptions if the statutory criteria are met by the charges, even if that means that the benefit substantially exceeds the benefit from the instant offending;
- confiscation instructions for the advocate e.g. seeking a section 70 POCA committal or applying for confiscation and setting the timetable for the confiscation proceedings;

- when instructing the court advocate, the prosecutor must emphasise the fact that accepting a basis of plea or a plea to different or only some of the charges might have an adverse impact on confiscation. The prosecutor should set out which pleas are acceptable;
- communicating with the financial investigator to provide regular updates on the progress of the prosecution;
- it is not good practice for confiscations to be settled with any promises or statements that particular assets will not be pursued at the point of confiscation or at a later date (as confiscation orders are made against an individual and not against specified assets). Confiscation orders can be reconsidered by the courts at a later date and potentially increased if assets have increased in value or if new assets have been acquired.

Cases where reconsideration under sections 19-26 POCA 2002 is requested should be referred to CPS POC.

7. Lifestyle Provisions

Police officers and prosecutors must consider the Proceeds of Crime Act 2002, sections 6, 10 and 75, in addition to Schedule 2 when assessing lifestyle provisions in any case.

