



## **GUIDANCE ON DNA CHARGING**

Including National Tripartite Protocol, Local FSP Protocol templates, Staged Reporting procedure, new MGFSP form.

### **Annex titles:**

- Annex 1        [Prosecution Team Introductory Letter](#)
- Annex 2        [Guidance on DNA Charging](#)
- Annex 3        [ACPO DNA Guidance](#)
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- Annex 6        [Current Charging Practice Flow Diagram](#)
- Annex 7        Revision of HOC 16/95 - to be available shortly
- Annex 8        [New Charging Practice Flow Diagram](#)
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## ANNEX 1



50 Ludgate Hill, London EC4M 7EX

To: Chief Crown Prosecutors  
Commissioners/Chief Constables in England and Wales  
Local Criminal Justice Boards

16<sup>th</sup> July 2004

Dear Colleague,

Prosecution Team Handling of Forensic Evidence within Charging

The Association of Chief Police Officers, The Crown Prosecution Service and The Forensic Science Service have for some time been working together to improve the contribution that forensic evidence can make to successful prosecutions. Each of the agencies have recognised the need to change established working practices to improve overall levels of efficiency and effectiveness. This work has been undertaken against a backdrop of the performance improvement culture introduced by Local Criminal Justice Boards and changes to the law that will see charging decisions, in other than straightforward and guilty plea cases, moving from the Police to Crown Prosecutors.

This policy guidance note introduces a number of key changes that will bring about many of the improvements sought by implementing closer and more cooperative working arrangements between each of the agencies. The main features are:

- clarification of when, and in what circumstances, DNA match reports (and fingerprint confirmation) will be sufficient to charge;
- national and local tripartite arrangements between forensic science service providers, the Police and the Crown Prosecution Service;
- a new MGFSP form and process that sets out clearly the evidential requirements of the case.

Home Office Circular 16/1995, in particular paragraph 23, is in the process of being updated to reflect these changes and will be published in the immediate future.

The changes outlined in this letter can only be achieved by focusing on effective communication between Police Investigators, Crown Prosecutors, the scientific support unit and scenes of crime officers at an early stage in the investigative process to agree the evidential requirements in the case. Such communication will lead to improved preparation and management of cases proceeding towards contested hearings and non-viable cases being stopped at an earlier stage. This will result in significant savings to each of the agencies, in particular police forensic budgets. It will also allow the Crown Prosecutors, Police Investigators, scientific support unit and scenes of crime officers, operating as a prosecution team to specify early on in the prosecution, with greater precision, the forensic requirements of the case. These benefits will in turn provide further opportunities to improve the overall timeliness and quality of forensic evidence. Above all, it will help in meeting the key PSA targets and provide a better service to victims and witnesses.

Attached to this paper are a number of key documents and templates as follows:

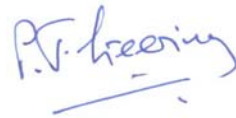
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- a copy of the National Tripartite Protocol between The Forensic Science Service, the Association of Chief Police Officers and the Crown Prosecution Service;
  - a 'tripartite protocol template' for local use;
  - ACPO and CPS Guidance to Police Officers and Crown Prosecutors concerning DNA (and fingerprint) match reports;
  - match report flow chart diagrams and an illustration of the match report process;
  - a process map setting out two staged forensic reporting procedures with accompanying worked examples;
  - the new MG (FSP) and guidance notes.

Chief Crown Prosecutors and ACPO officers, with responsibility for forensic evidence and procedures, are invited to consider these documents and to engage with those who supply their forensic services to agree how the working practices introduced by this paper can be implemented locally.

Yours sincerely



Martin Baker  
Deputy Chief Constable  
**Gloucestershire Constabulary**  
**On behalf of The Association of Chief Police Officers**



Philip Geering  
Director, Policy  
**Crown Prosecution Service**  
**On behalf of The Crown  
Prosecution Service**

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## ANNEX 2

**To:** Director, Casework; Chief Crown Prosecutors; Sector Directors (London); Heads of HQ Divisions

**From:** Philip Geering, Director, Policy Directorate

**cc:** DPP; Chief Executive, Director BDD; ABMs

**Action:** Distribute to all lawyers, caseworkers and DCWs

**Action Required by:** Immediate

**Date issued:** 16 July 2004

**Standard Subject:** Criminal Casework, Forensic Science - DNA

**Summary:** This bulletin provides guidance on:

- a) charging on the basis of DNA intelligence match report where there is other supporting evidence;
- b) FSS National & FSP Local Tripartite Protocols;
- c) New MGFSP Form and guidance;
- d) Staged reporting procedure.

The revised policy will mean that from 1<sup>st</sup> August 2004 a suspect may now be charged on the basis of a DNA intelligence match, derived from the scene of the crime, and a sample of DNA kept on the National Database providing there is some further supporting evidence.

Guidance is also included about the new staged reporting procedure, 'two stage reporting'.

### 1. Introduction

1.1 The purpose of this minute is to give advance notice of a forthcoming change in the charging policy for offenders on the basis of an intelligence match on the National DNA Database; to provide details of the National and Local FSS tripartite protocols and to explain the purpose of the new MGFSP form (part of a series of forms contained in the Manual of Guidance (MOG)), 2004/2005; and to explain the two stage reporting procedure.

### 2. Background

2.1 The National DNA Database was created by the Criminal Justice and Public Order Act 1994. By a series of legislative enactments, the number of DNA profiles held on the database has been increased and it is now possible for the police speculatively to search the Database<sup>1</sup>.

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<sup>1</sup> See sections 63 and 64 of the Police and Criminal Evidence Act 1984 as amended by the Criminal Justice and Police Act 2001.

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2.2 The Criminal Justice Act 2003 contains provisions that extend the circumstances in which a non-intimate sample can be taken without consent from a person in police detention. These provisions came into force on 5<sup>th</sup> April 2004<sup>2</sup>. The DNA profiles extracted from the non-intimate samples will be added to the DNA profiles already held on the National DNA Database and checked for matches with DNA taken from scenes of crime<sup>3</sup>. As a consequence, the National DNA Database will contain more information with the chance of a 'speculative hit' being correspondingly increased.

2.3 The combined effect of the changes made by the 2003 Act is that the CPS will increasingly be asked by the police to advise on whether a suspect should be charged on the basis of a match between a profile from DNA found at the crime scene (SGM+)<sup>4</sup>, and a DNA profile on the Database (SGM or SGM +), following a speculative search.

### 3. Current Position

3.1 The current policy agreed in 1995 by the CPS, the FSS, the Home Office and the Association of Chief Police Officers ('ACPO') is that a suspect should not be charged on the basis of a DNA intelligence match derived from a 'speculative hit'.

3.2 The current practice of not charging suspects on the basis of DNA intelligence matches is outlined in [Annex 6](#). This practice has a number of drawbacks. First, it involves delay between the initial arrest and the decision to charge. Second, it depends upon the suspect's co-operation in answering police bail. Third, it involves the release from custody of persons who may, on good grounds, have been suspected of posing a grave risk to public safety. With CPS now assuming responsibility for charging in a majority of cases, and with the expanded use of the National DNA Database, the new policy change is designed to overcome some of these failings, whilst at the same time maximising the opportunity to bring more offences to justice.

3.3 As a result the current policy will change with effect from 1<sup>st</sup> August 2004. The new policy will mean that a **suspect may now be charged on the basis of a DNA intelligence match, derived from the scene of the crime, and a sample of DNA kept on the National Database providing there is some further supporting evidence. This new policy is outlined at [Annex 8](#).**

3.4 The Home Office Circular 16/95, FSS guidance to lawyers on DNA evidence will be amended to reflect this policy to take effect in due course.

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<sup>2</sup> SI 2004 / 829.

<sup>3</sup> See section 10 of the 2003 Act

<sup>4</sup> Second Generation Multiplex – Plus (SGM+). The current DNA profiling system (introduced 1998) examines 10 DNA areas (loci), and the amelogenin sex test. Six of the DNA areas are common to the preceding system, Second Generation Multiplex (SGM). The two systems are therefore compatible, with the current system offering an improved discriminating power.

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- 3.5 The new ACPO guidance can be found at [Annex 3](#).
- 3.6 The standard to be applied in reaching a charging decision will be the full test under the Code for Crown Prosecutors<sup>5</sup>.
- 3.7 The Code for Crown Prosecutors is currently under review and further guidance will be given when this is settled.
- 3.8 Linked to this policy change are a number of related issues concerning the interviewing of suspects and the conduct of criminal investigations.

#### **4 The New Policy**

- 4.1 Charging On The Basis Of a National DNA Database Intelligence Match plus some other Supporting Evidence
- 4.2 In this context<sup>6</sup>, the ordinary meaning of evidence is information which can be put before a court<sup>7</sup>. However this should not be considered in the technical sense of information which is in admissible form. It is not difficult to envisage circumstances whereby 'evidence' which is technically inadmissible (eg; without more), or not yet in admissible form, may properly provide the basis for a charge.
- 4.3 For example, a custody officer (or Crown Prosecutor) may have in his possession unsigned witness statements. Where there is no reason to believe that the statements do not properly reflect the evidence the witnesses intend to give in court, the custody officer (or Crown Prosecutor) may nevertheless charge the suspect. In this example, the custody officer (or Crown Prosecutor) believes in good faith that the omission to sign the statements is a technical oversight.
- 4.4 Another example might arise in the following circumstances. D is arrested on suspicion of committing a robbery. D stands on an identification parade and is identified by victim (V). V is too distressed to provide a witness statement and the Inspector who conducted the parade falls ill. The Custody Officer (or Crown Prosecutor) believes in good faith that the obtaining of the 'evidence' is a mere formality. There is no principled reason to prevent D from being charged with the offence.
- 4.5 The approach is also consistent with the practical realities which surround a decision to charge a suspect with a criminal offence. It is for the Crown Prosecutor to evaluate whether there is 'evidence'. It is not for the reviewing prosecutor to resolve all the

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<sup>5</sup> As well as paragraph 12.1 of the DPP's Guidance issued (17<sup>th</sup> May 2004) in pursuance of section 37(A)(1)(a) PACE (as amended).

<sup>6</sup> ie; as contained in the Code for Crown Prosecutors, Code C, PACE, 1984 and The Director's Guidance.

<sup>7</sup> R v. Osbourne, [1973] QB 678

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potential issues of admissibility at the point of charge, which might arise in any subsequent trial. For example, the decision to charge may be taken on the basis of a disputed confession.

4.6 It will now be sufficient for the custody officer (or Crown Prosecutor) to proceed to charge when in possession of:

- (a) a statement or information (not necessarily in a s9 CJA, 1967 format) from the scenes of crime officer detailing the discovery of DNA at the scene of the crime; and
- (b) a statement or written confirmation from a responsible person detailing the intelligence match between the DNA found at the scene of the crime and the DNA profile of the suspect<sup>8</sup> held on the Database; and
- (c) any further supporting evidence, the precise nature of which will be determined on a case specific basis.

4.7 In this context it is also necessary to take into account the nature of the evidence which will be available to the prosecution. The DNA profile on the Database will contain the sample identification number, the subject's full name, sex, date of birth and ethnic appearance; and details of the police force, station code and the officer responsible for taking the sample. There is no reason to believe that an evidential sample, taken from the accused at the time of his arrest will not confirm the DNA intelligence match. The formality of proving the match between the evidential sample and the crime stain should not impede the process of charging the accused.

## **5 Defendant Cannot Be Charged Solely On The Basis Of DNA Evidence**

5.1 It is recognised that DNA profiling is not a foolproof science, particularly where very small or otherwise deficient crime samples are available for testing. In such circumstances the reliability of the DNA will depend upon the accuracy of the testing, the measurement involved and the profile matches. Whilst this will not necessarily provide proof of guilt, they will have a measurable statistical significance that may point strongly to guilt.

5.2 In *R v. Ronald Lashley* (2000) (unreported), the Court of Appeal quashed a conviction based solely on DNA evidence. In that case the appellant had been convicted of robbery on the basis of DNA evidence linking him to the scene of a robbery. The DNA profile would have matched the profile of seven to ten other males in the United Kingdom. There was no other evidence against the appellant who had given a no

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<sup>8</sup> Prior to release on bail / remand, a DNA 2 sample will be taken from the defendant.

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comment interview and declined to give evidence. The Court of Appeal held that the significance of the DNA evidence depended crucially upon what else is known about the suspect. Had there been other evidence (for example, evidence to show that he lived near the scene of the robbery or had been in the vicinity at the relevant time) then the case might have been compelling. As it was, the DNA evidence placed the appellant among a group of individuals, any one of whom might have been responsible for the offence.

- 5.3 The importance of the decision in Lashley, supra is that it shows that DNA evidence will ordinarily fall to be assessed alongside other evidence. For example, it might be expected that four or five men in the United Kingdom have similar DNA profiles to that found at the scene of the crime; but if the suspect lives in the same locality as the victim, matches the description of the offender, and has previous convictions for strikingly similar offences, then the odds against the DNA match being mere coincidence would be very high. On the other hand, evidence derived from DNA profiling may be contradicted by an alibi or by other non-scientific defence evidence.
- 5.4 In the light of this, a suspect should not be charged solely on the basis of a match between his DNA profile and a DNA profile found at the scene of the crime, unless there are compelling reasons to do so. It is imperative that under the change in policy, the speculative DNA evidence will need to be evaluated with at least some other supporting evidence in the case.

## 6 **Questioning / Interviewing**

- 6.1 Lawyers will be familiar with the Codes of Practice on questioning suspects<sup>9</sup>; charging of detained persons<sup>10</sup> and the circumstances in which a re-interview following charge is permissible<sup>11</sup>.

## 7 **The Conduct Of Interview**

- 7.1 The policy change means that, following a positive speculative search, the suspect will be arrested, interviewed and charged (assuming there is some other evidence indicative of guilt). There may be potential arguments about whether the interview will be admissible at the Trial. The difficulty arises because the basis of the arrest (a reasonable suspicion arising from a speculative search) and the basis for any interview depends upon the existence of the suspect's DNA on the National Database. Prior to the expansion of the National DNA Database (see below), it was thought that if such a fact was put before a jury, they may make assumptions to the defendant's detriment.

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<sup>9</sup> Paragraph 11, Code C, PACE.

<sup>10</sup> Paragraph 16, Code C, PACE

<sup>11</sup> Paragraph 16.5, Code C, PACE.



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- 7.2 However, the force of such an argument is undermined by section 82 of the Criminal Justice and Police Act 2001 which amends section 64 of PACE. As originally enacted, section 64 of PACE contained a clear legal obligation to destroy fingerprints and samples taken from an individual if that individual was later acquitted of the offence in respect of which they were taken, or when the decision was later made not to prosecute the individual for that offence. Section 82 removed the obligation to destroy such samples and replaced it with a rule to the effect that fingerprints and samples, retained in such circumstances, can be used for purposes related to the prevention and detection of crime, the investigation of an offence or the conduct of a prosecution. Moreover, section 64 of PACE, as amended, deals with the case where an individual who is not a suspect provides fingerprints or samples voluntarily for the purposes of elimination from a police enquiry. If the individual consents in writing the fingerprints or DNA profile obtained from the sample may be entered on the relevant database.
- 7.3 The upshot of these provisions is that it does not necessarily follow that a person whose DNA profile is on the Database, is a person with previous convictions. A further point is that a perceptive juror might in any event realise that the defendants' DNA was on the Database irrespective of whether a speculative hit or an evidential match formed the basis of the interview; the question of how the suspect came to be arrested in the first place would remain unanswered.
- 7.4 A similar situation arises in cases involving fingerprints. For example, the crime scene is examined and incriminating fingerprints are found. The fingerprints are found to match those of D who is arrested, interviewed and charged. The interview is conducted on the basis that fingerprints found at the scene match the fingerprints of the accused. This does not in itself render the interview inadmissible.
- 7.5 Lawyers involved in pre-charge advice may wish to draw to the Investigating Officer's attention the following matters:
- (i) The suspect may be asked to account for the fact that DNA matching his DNA has been found at the crime scene;
  - (ii) It is not necessary to refer to the fact that the suspect's DNA profile was obtained from a speculative hit (even if such references were to be made it could in appropriate cases be the subject of editing);
  - (iii) The importance of the interview is not to invite the suspect to contest the reliability of the DNA evidence, rather, it is to obtain details of his whereabouts on the day in question, and elicit any other relevant information (for example, did he know the victim, did he have any connection with the victim or had he ever been to the scene of the crime).

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7.6 The manner of conducting an interview based on a speculative hit is largely a matter of common sense. There is no basis for such an interview being excluded merely because the interviewing officers refer to a DNA profile from the crime scene matching a profile from the accused<sup>12</sup>. In any event, it is what the accused has to say about his suspected involvement in the crime that matters. There is no reason to conclude that the suspect's account of his movements or other relevant matters would necessarily be inadmissible in any subsequent criminal trial.

### Re Interview

7.7 An issue which arises from the change in practice is whether the investigating police officers may re-interview<sup>13</sup> the suspect when the results of the evidential sample are obtained.

7.8 The Code makes it clear that the starting assumption is that the suspect will not ordinarily be interviewed following charge. The ordinary rule is subject to an exception when '*information has come to light*' since the detainee was charged. The result of the analysis of the evidential sample is clearly capable of being information which has come to light following charge, even though it merely confirms the result of the speculative search. The interests of justice may well require that the suspect should be given the opportunity to comment upon the result of the analysis. It is this analysis which will form part of the prosecution case and confirmation of the results of the speculative search is clearly capable of amounting to a significant new fact which calls for comment.

7.9 Where there is an expectation that the suspect will be re-interviewed, someone released on bail pre-charge should not be released under S37(7)(a) PACE (as amended), but under S34(5), in which case pre-charge bail conditions are not permissible.

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<sup>12</sup> Current ACPO guidance is not to disclose forensic evidence unless interviewing officer is satisfied that to do so is appropriate.

<sup>13</sup> Code C. Paragraph 11.6 provides that an interview must cease when the officer in charge of the investigation:

- "(a) *Is satisfied that all questions relevant to obtaining accurate and reliable information about the offence have been put to the suspect;*
- (b) *has taken account of any other available evidence;*
- (c) *reasonably believes there is sufficient evidence to provide a realistic prospect of conviction."*

Paragraph 16.5 provides:

*"A detainee may not be interviewed about an offence after they have been charged with, or informed they may be prosecuted for it, unless the interview is necessary:*

- *To prevent or minimise harm or loss to some other person, or the public*
- *To clear up an ambiguity in a previous answer or statement*
- *In the interests of justice for the detainee to have put to them, and have an opportunity to comment on, information concerning the offence which has come to light since they were charged or informed they might be prosecuted...*

*Before any such interview, the interviewer shall*

- (a) *caution the detainee...*

*remind the detainee about their right to legal advice."*

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7.10 In summary the approach to interviews, conducted with suspects on the basis of a speculative DNA intelligence match, should be to obtain information from the accused concerning the crime in question. This should involve seeking an explanation of his movements at the relevant time; his knowledge of the victim or premises; whether he had had any contact with the victim or premises and any other relevant matters. In other words, the fact that there has been a DNA intelligence match provides no more than the basis upon which the interview comes to be conducted<sup>14</sup>. There is no reason why the interview should be overly concerned with the fact that there has been a DNA match as this will be an established fact at the trial. The accused should, of course, be given an opportunity to explain the presence of a DNA profile matching his being found at the scene of the crime.

## **8 The Use of Speculative DNA Intelligence Matches**

8.1 Section 82 of the Criminal Justice and Police Act, 2001 restricts the use of fingerprints and samples “*except for the purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.*” These words are clearly wide enough to cover the gathering of evidence for use in any legal proceedings and there is no legal impediment to the use of information derived from the Database as evidence.

8.2 It is to be noted, however, that the new system still depends upon the use of an evidential sample taken from the accused at the time of his arrest.

## **9 The Director’s Guidance**

9.1 The Director’s Guidance specifies, among other things, what information must be known to a Crown Prosecutor to enable a charging decision to be made.

9.2 As noted above, the result of a DNA intelligence match following a speculative search of the Database would provide a basis for charging a suspect (providing that some other supporting evidence is also available).

9.3 The Director’s Guidance provides that ‘Crown Prosecutors will examine and assess the evidence available before reaching a decision [to charge]’ . The use of the word ‘evidence’ suggests that the Crown Prosecutor is to have regard to that material which is capable of being presented to a court. However, for reasons set out above, the result of a speculative search of the Database (which will be available to the Crown Prosecutor in writing), is capable of amounting to ‘evidence’ within the meaning of the Guidance. The fact that the actual evidence at the trial will be the result of the analysis of the evidential sample does not alter the position.

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<sup>14</sup> Which the interviewing officer will disclose at an appropriate stage of the interview.

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9.4 Moreover, a decision to prosecute is not generally amenable to judicial review<sup>15</sup>. Assuming that the decision to prosecute is made in good faith the accused person's remedy for any deficiency in the evidence will be available in the trial process (either by way of a submission of no case to answer before the magistrates' Court or by way of an application to dismiss the charge in the Crown Court).

## **10 The Interim Match Report**

10.1 Linked to the issue concerning the Director's Guidance is the question of whether an interim match report (see example at [Annex 11](#)) statement will be sufficient to allow a prosecutor to prefer a charge in accordance with the test laid down in the Guidance.

10.2 It should be clear from what is set out above that the question of whether DNA evidence fulfils the evidential requirement does not and will not depend upon whether it is in the form of a DNA intelligence match as opposed to an evidential match, but rather whether a prosecution should be brought solely on the basis of DNA evidence. **The question of whether there is sufficient evidence to charge will depend upon all the circumstances of each individual case.**

## **11 Conclusions**

11.1 In conclusion:

- (i) From 1<sup>st</sup> August 2004, the result of a DNA intelligence match may properly form the basis of a decision to charge a suspect so long as there is some other supporting evidence
- (ii) A suspect should not ordinarily be charged solely on the basis of a match between his own profile and a DNA profile found at the scene of the crime.
- (iii) There is no reason to exclude an interview conducted solely on the basis of a DNA intelligence match.
- (iv) The defendant can be re-interviewed on receipt of an evidential match by virtue of Code C.
- (v) The Director's Guidance is consistent with the policy change outlined above.

The question of whether there is sufficient evidence to charge will depend upon all the circumstances of each individual case.

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<sup>15</sup> *R v. Director of Public Prosecutions, Ex parte Kebilene* [2000] 2 AC 326.

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## **12. Staged Reporting Process – A Walk Through**

- 12.1 [Annex 9](#) provides a step by step guide to putting the new policy into practice.
- 12.2 [Annex 13](#) provides a flow chart to illustrate the process.
- 12.3 [Annex 12](#) is a draft letter to accompany advance information served on the defence.
- 12.4 [Annex 10](#) is a sample MGFSP form with the accompanying guidance at [Annex 10a](#).

## **13. National Tripartite Protocol agreement and Local Tripartite Templates**

- 13.1 In January 2004, national representatives of ACPO, CPS and The Forensic Science Service signed the National Tripartite agreement. A copy of the agreement can be found at [Annex 4](#). It sets out an understanding of the way in which the Forensic Science Service will provide scientific support to the investigative and prosecution functions of the Police and CPS.
- 13.2 At [Annex 5](#) there is a template for Areas to draw up local agreements with their preferred Forensic Science provider. This has been provided electronically to assist with inserting local contact numbers, names and addresses.
- 13.3 Alongside this, at [Annex 5a](#) is a detailed set of appendices to the Local template. These set out the fine detail of the processes that may be adopted, subject to local needs and resources.

## **14 Other Forensic Areas**

- 14.1 The National Protocol is designed to cover all forensic areas, [Annex 4](#).
- 14.2 Some of the principles regarding DNA intelligence matches and staged reporting explained in this new policy, can be extended to other forensic areas. The National protocol and Local templates explain the processes and partnership working opportunities that can be extended to other forensic areas. For example, using a fingerprint intelligence match with a suspect as the basis for arrest, then subject to the existence of other supporting evidence, a charge can be based on that match plus the supporting evidence.
- 14.3 Further illustrations are provided at [Annex 11a](#).
- 14.4 Extending the principles and processes to other forensic areas should be considered and carefully examined on an individual case basis.
- 14.5 However, we commend the effective use of the process structure and communication strategies detailed in the local protocol templates, and accompanying appendices.

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**15    Training**

- 15.1    Until appropriate training is available, it is advisable that Areas liaise with the police and ensure that lawyers and investigating officers have access to an officer with significant knowledge and experience of forensic matters (eg; a Scene of Crime Officer). In addition support should be sought from the local FSP or FSS nationally.

**16    Enquiries**

- 16.1    Areas are requested to contact Karen Squibb-Williams at Policy Directorate if any cases issues raised in this minute are the subject of Appeal to the Court of Appeal or the Divisional Court and in particular if further difficulties are encountered.
- 16.2    If there are any matters arising from this minute that cannot be resolved through line management please contact Karen Squibb-Williams, Policy Adviser, Policy Directorate, on 020 7776 5127

PHILIP GEERING

16<sup>th</sup> July 2004



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## **ACPO GUIDANCE ON CHARGING & EVIDENTIAL STANDARDS FOR DNA MATCHES**

**Guidance issued by the  
National DNA Database Board Operations Group**

**16th July 2004**

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## ACPO GUIDANCE ON CHARGING & EVIDENTIAL STANDARDS FOR DNA MATCHES

1. This guidance is provided to assist operational police officers in charging procedures when dealing with DNA Intelligence Matches and to outline the practical evidential requirements throughout the prosecution process. It should be read in conjunction with the “**ACPO DNA Best Practice Manual**” produced by the National DNA Database Board and available via the ACPO Intranet.
2. The National DNA Database (NDNAD) was created by the Criminal Justice and Public Order Act 1994 and went live on 5 April 1995. It currently holds approximately 2.5 million Criminal Justice profiles (CJ Samples). These have in the main been obtained from people arrested and charged with criminal offences but may also include samples from volunteers who have elected to have their profiles added to the database e.g. registered sex offenders, subjects of mass screens etc. Each sample is held against a unique barcode identifier.
3. Prior to 2001, almost all of the samples held on the NDNAD were derived from people who had been arrested, charged and convicted of a recordable offence.
4. Section 82 of the Criminal Justice and Police Act, 2001 became legislation on 11 May 2001 and amended Section 64 of the Police and Criminal Evidence Act 1984. Effectively, from that date it became lawful for the police to retain DNA CJ Samples from people who were acquitted of the offence for which the sample was taken. (Incidentally, the same legislation also applies to fingerprints).
5. More recently, the Criminal Justice Act 2003 became permissive legislation on 5 April 2004 and amended Sections 61 & 63 of the Police and Criminal Evidence Act 1984. From this date, the powers were extended for the taking and retention of DNA CJ samples (and fingerprints) from all people arrested for a recordable offence and detained at a police station.
6. The NDNAD also holds DNA profiles obtained from crime stains recovered by Scenes of Crime officers during their routine examination of crime scenes. Again each Crime Stain profile is held on the database by a unique barcode identifier.
7. The NDNAD routinely searches against itself to match crime stains to crime stains (Scene to Scene matches) and to match crime stains to CJ samples (CJ to Scene matches). This is commonly known as ‘speculative searching’
8. Originally in 1995, the technique used to obtain the DNA profile from both CJ Samples and Crime Stains was a process called SGM (Second Generation Multiplex). In 1999 this process was enhanced and replaced by SGM+, which effectively analysed more of the DNA present and provided a far greater discrimination factor thus making it much more unique to an individual.
9. It should be noted that the NDNAD does contain a mixture of both the older SGM and more recent SGM+ profiles in both the collections of CJ Samples and Crime Stains. It is possible therefore that as the database searches for matches it could match SGM to SGM, SGM+ to SGM, SGM to SGM+, or SGM+ to SGM+.



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10. When two profiles match on the NDNAD, the system automatically produces a "Match Report" which is then reported to the force(s) that own the respective profiles. For example, if a CJ sample taken from an offender in West Midlands Police is matched against a Crime Stain obtained by South Yorkshire Police. A match report would be sent to each force. These are known as 'Speculative Matches' and at this point are regarded as intelligence matches rather than evidential matches.
  11. The match report when received by the police includes the unique sample identifier (barcode), the sample type (SGM or SGM+) the subject's full name, sex, date of birth, ethnic appearance, police force owning the sample including the station code and the name of the officer responsible for taking the sample. More importantly it will also state the sample type
  12. The match report will also hold details of the crime stain it has matched against including the unique sample identifier (barcode), the offence type, the force owning the crime stain including station code, the crime reference number and the sample type (SGM or SGM+).
  13. By examining the match report it can be identified what sort of match has been obtained e.g. SGM+ to SGM+. It is also important to note whether each of the profiles is a full profile or a partial profile. The presence of a full SGM+ to a full SGM+ match would provide the strongest evidential link in terms of match probability confidence. As such anything less than a full SGM+ to SGM+ match should always be treated with extreme caution by an investigating officer and will require a much greater degree of corroborative evidence prior to a decision to charge. Where a match involves an SGM element it should be considered for upgrade to SGM+ in discussion with Scientific Support departments before taking action.
  14. Generally upon receipt of the match report and after any necessary profiling upgrade (i.e. SGM upgraded to SGM+), the receiving force would produce an intelligence report and send it to an officer for investigation. As a result, the suspect would generally be arrested and interviewed.
  15. The Golden rule has always been that no person will be charged on the strength of a DNA 'match report' only and that no charges will be brought without some form of further supporting evidence. Previously, it was always necessary to obtain a DNA 2 (evidential sample) from the suspect whilst in police detention and to submit this to a forensic provider for evidential conversion prior to charge. This usually involved releasing the suspect on bail whilst the evidential conversion analysis was undertaken.
  16. However, recent changes to CPS Policy now allow for charging on a DNA 'match report' before evidential conversion **PROVIDING: There is some further supporting evidence.**
  17. In accordance with the new CPS Policy the agreed process and sequence of events should be as follows: -
    - As a result of the match report intelligence, the suspect is arrested, further enquiries such as house search etc conducted and interviewed; assuming this produces supporting evidence (e.g.; admissions, stolen goods etc). The Investigating Officer discusses the quality of evidence, and the basis of any decision to charge with the Duty Prosecutor, and then the matter can

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progress to charge. These discussions and the charging decision are recorded on the form MG3.

- In relation to the interview, the recent policy change may produce a potential argument about whether the interview is admissible at a future trial. The perceived difficulty arises because the basis of the arrest (a reasonable suspicion arising from a DNA match report) and the basis for the interview depend on the existence of the suspect's DNA on the National DNA Database. It could be argued that the interview may infer that the suspect has previous convictions by virtue of the presence of his DNA profile on the database. However, this inference is now significantly reduced due to the recent legislative changes; a person's profile can now be held on the database for a variety of reasons, other than a previously conviction (i.e. acquitted, arrested, volunteer etc). In effect the question of a perceptive juror would in fact remain unanswered.
- The interview process itself should seek to explore the following matters: -
  - i) i) The suspect may be asked to account for the fact that his/her DNA appears to have been found at the crime scene.
  - ii) ii) It is not necessary to refer to the DNA match report linking the suspect to the scene (even if such references were to be made it could in appropriate cases be subject to editing at court).
  - iii) iii) The importance of the interview is not to invite the suspect to contest the reliability of the DNA evidence. Rather, it is to obtain details of the suspect's whereabouts on the day in question, and to elicit any other relevant information (for example, did he know the victim, did he/she have any connection with the victim or had he/she ever been to the scene of the crime).
- **N.B. Always** obtain a DNA 2 evidential sample from the suspect prior to bail/ remand. Store the sample in a secure freezer ensuring that continuity can be proved at a later date. This sample may well be required to be submitted later in the following procedures.
- Following interview and in appropriate cases discussion with a CPS Lawyer, a decision to charge is made and the suspect is charged and bailed or remanded to a court date then Advance Information, along with a standard letter to the defence, is provided to the defendant. This will include a copy of the preliminary DNA match report.
- At court, one of two processes follow: -
  - iv) Defendant enters a guilty plea and the matter proceeds to sentence.

In which case, no further investigative or forensic work is required.

However, if:

- v) Defendant enters a Not Guilty plea or No Indication of plea, then the following procedure should be followed:
  - A full file is requested, but at this stage all that is required from the Forensic Service Provider is a First Stage abbreviated statement confirming the DNA match. This is requested by completing the form MGFSP. The Investigating Officer should make the First Stage abbreviated statement request by entering this in Section 11 of the MGFSP form, tick the DNA box in

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Section 12, and include the NDNAD match report. (A five day service is envisaged for a simple matter, and 14 days for a complex<sup>16</sup> matter.)

- The full file is then received, containing the DNA match confirmation (First Stage abbreviated statement) in Section 9 CJA, 1967 format. This further evidence is served on the defence. Taking account of the anticipated changes<sup>17</sup> in the regime of defence statements under the CJA, 2003, any one of three potential scenarios arise:

#### SCENARIO 1:

The defence do not dispute the forensic evidence, nor do they wish to raise any issues regarding the continuity of the forensic evidence. All the forensic evidence is accepted and agreed. The reviewing Lawyer should, under this scenario consider drafting Section 10 CJA, 1967 admissions for the defence to agree. If the defence agree the forensic evidence in its entirety, under s10 CA, 1967, the matter will proceed to trial and no further forensic evidence will be necessary.

#### SCENARIO 2:

The defence accept the forensic evidence, but not the Forensic Examination Record (FER) or continuity evidence. At this point the reviewing Lawyer should consider the provisions of ss24, 26 CJA, 1988. Consideration should also be given to whether the particular issues in the case are such that a Full Evaluative statement should be sought at this stage.

- i) If the answer to either is yes, then proceed accordingly.
- ii) If the answer to both of these considerations is 'no', then complete a further MGFSP form requesting the FER and continuity evidence (up to this stage) from the FSP. This is done by completing the 'further requirements, post-plea' box at the bottom of section 13 of the form, and agreeing a date for delivery of the evidence with the FSP. When the CPS receives this they will serve the FER and continuity evidence on the defence and seek Section 10 CJA, 1967 admissions<sup>18</sup>.
- iii) If admissions obtained, rely on First Statement + admissions and proceed to trial.
- iv) If not obtained, go to Scenario 3 below.

#### SCENARIO 3:

Where the defence dispute the forensic evidence, FER and continuity, then a Full Evaluative statement, FER and continuity statements must be requested on an MGFSP form. Delivery timescales must be agreed with the FSP.

18. Note that by the time Scenario 3 above is reached the defence are obliged to have disclosed the basis of their defence for Crown Court cases. (It is anticipated that a similar obligation will come into effect for cases dealt with in the magistrates court in April 2005, see CJA 2003 provisions).

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<sup>16</sup> Where the requirement is complex, eg; a partial SGM+ crime stain to SGM CJ reference sample, a full evaluative secondary statement will be provided, rather than a first stage abbreviated statement.

<sup>17</sup> No date has been agreed, but it is likely to be around April 2005.

<sup>18</sup> R v Jackson [1996] 2 Cr. App. R 420

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19. **This is a simplified illustration of the process in relation to the forensic evidence. Every case will involve a range of issues, and specific time limits, that could well impact upon the process outlined here and adjustments will need to be made locally.**

20. The DNA Operations Group will keep this guidance updated advice and assistance should initially be sought through local Chief Crown Prosecutors who have access to the full CPS policy.

**Stuart Hyde, ACC Chair ACPO DNA Operations Group**

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## ANNEX 4

# Joint Protocol between the Police, Crown Prosecution Service and the Forensic Science Service for the provision of forensic science

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## 1. Aims

The aims of this Protocol are:

- 1.1. To establish agreed processes that will enable the Crown Prosecution Service (CPS), the Police and the Forensic Science Service (FSS) to set and agree timeliness requirements which are realistic, helpful to the Criminal Justice System (CJS) and support Government aims within the White Paper - "Justice for All" and the Public Service Agreements focussed on:
  - bringing more offences to justice
  - meeting the needs of victims and witnesses
  - safeguarding the rights of defendants
  - reducing delay and improving value for money
  - improving public confidence in the CJS
- 1.2. To maximise the contribution of forensic science to the case through improved communications between the Police, the FSS and the CPS, utilising efficient processes, and roles within each of the Agencies in accordance with agreements made under this Protocol.
- 1.3. To set a framework within which processes and roles will be defined which are necessary to deliver the improved communications strategy.
- 1.4. To ensure that the processes developed fully encompass the requirements of the revised charging arrangements and introduce a staged reporting process incorporating first stage reports that provide sufficient information upon which to make charging decisions and further evaluative reports, following plea and direction hearings in the Crown Court (or pre-trial review hearings in the Magistrates Court) that includes all the information necessary for the trial process, including issues raised by the defence in the defence statement.

## 2. Objective

The objective of this Protocol is to establish standard operating arrangements for the exchange of good quality and timely information between the Police, FSS and CPS, in order that:

- 2.1. The relevant issue(s) in each case is identified by the Police and CPS and understood by the FSS.
- 2.2. The forensic evidence addresses this issue(s) together with the relative alternatives.
- 2.3. The resulting information, first stage reports or evidential statements provided by the FSS is available for use within agreed timescales in accordance with the requirements and needs of each specific case.
- 2.4. There is consistent use of agreed processes, including expedient use of resources to deliver an equitable service to the CJS.

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### **3. Scope of the Protocol**

- 3.1. This Protocol provides for the establishment of procedures, including roles and responsibilities, necessary to ensure the appropriate exchange of accurate information relevant to the progression of the case.
- 3.2. Specific procedures and supporting mechanisms necessary for effective implementation which will be included as annexes to local Protocols.
- 3.3. This Protocol also establishes a joint commitment to develop and support the training and implementation programme required to successfully deliver the effective and efficient exchange of information across the Agencies.
- 3.4. This Protocol provides for the introduction of a system to collect management information relating to the effectiveness of the developed processes together with a means of disseminating data to appropriate managers within the Agencies. Such management information will be used to drive and improve performance of the Agencies within the scope of this Protocol.
- 3.5. This Protocol establishes an ongoing process to ensure further improvements in working arrangements are recognised and fully implemented.

### **4. The duration, amendment, additions and withdrawal provisions of the Protocol**

- 4.1. Unless specified this Protocol and the local Protocols replace all previous Tripartite Protocols and associated local service level agreements, including the service levels and obligations (if any) agreed between signatories to the document.
- 4.2. This Protocol will take effect from the date contained in the agreement and will continue in force until terminated.
- 4.3. Resolution of disagreements with or amendment of this Protocol (including amending this Protocol under paragraph 4.4 below) will be made by agreement between signatories to this Protocol.
- 4.4. This Protocol may be amended with the consent of all the participating agencies at any time.
- 4.5. Notwithstanding the provisions of 4.4, this Protocol will be subject to periodic review at least annually.

### **5. Communications**

- 5.1. A detailed communications strategy will establish the mechanisms for effective and efficient communication between the Agencies both nationally and locally. A framework for inter-agency communication including the required audit trail will be provided as an annex to local Protocols.
- 5.2. Effective communication using the most expedient method e.g. secure email, facsimile or telephone will ensure timely delivery of services, particularly at each of the following key stages in the investigative or CJS process:

#### **5.2.1 Before Charge** – where a scientific examination is required.

Any request should accord with investigative need and/or the strategy agreed between CPS Prosecutor and Police Investigator. It is essential that the FSS Case Manager is consulted to ensure that the results to assist the investigation and/or the charging decision will be available.

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**5.2.2 After Charge – Remanded in custody**  
Early discussion between an FSS Case Manager, CPS Prosecutor and Police Investigator is essential to agree a timetable in accordance with the requirements of each specific case in the criminal justice system.

**5.2.3 After Charge – Remanded on bail**  
Continuing consultation between the Police Investigator, CPS Prosecutor and the FSS Case Manager is essential. This will ensure that the FSS service delivery schedule for each case will meet the known key dates in the Criminal Justice System process. Where FSS delivery to key dates in a specific case is identified as at risk, a revised timetable agreed between the Police Investigator, CPS Prosecutor and the FSS Case Manager (in consultation with the Court's Case Progression Officer) must be brought to the attention of the court. The reasons for the change to the timetable must also be provided to the court.

**5.2.4 Pre-trial (post Plea and Directions Hearing)**  
Early consultation prior to setting of court dates is essential where further scientific examination or evaluation is required. Consideration should also be given to witness availability prior to setting a date for trial.

CPS Prosecutors and Police Investigators should jointly review cases following plea and direction hearings in the Crown Court (or pre-trial review hearings in the magistrates Court) and provide the FSS Case Manager with the evidential requirements of the case including any issues raised by the defence. CPS Prosecutor may also wish to discuss with the FSS how evidence could best be presented.

**5.2.5 Post Trial**  
Feedback on the effectiveness of the statement, report and where appropriate oral evidence to the outcome of the case should be provided to the FSS. The agreed mechanism for feedback will form part of the nationally agreed communications strategy.

5.3. To facilitate the effective and efficient exchange of information and the provision of advice there must be appropriate accessibility to each of the agencies. Local Protocols will specify out of hours arrangements.

5.4. The Police and CPS will inform the FSS of any local or national initiative that might impact on the demand for FSS services. Prior warning of local initiatives should be discussed with the FSS (Account Manager). National initiatives should be brought to the attention of the Director of Customer Relations (or their nominated FSS representative) or an FSS Account Manager at the earliest possible stage of planning.

5.5. The FSS will provide early warning of operational or scientific issues which could unavoidably affect the timeliness of service delivery.

## **6. Agreed priority of examination**

6.1. The Police and/or CPS will indicate the priority of work, in accordance with the guidelines set out in the Prosecution Team Manual of Guidance for the preparation, processing and submission of casefiles (MoG) The FSS will offer advice and guidance regarding priority of such submissions.

6.2. Early contact with the FSS is desirable in all instances and is essential in pre-charge submissions and post-charge cases where there is a remand in custody.

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- 6.3. Prior to commencing the examination, the FSS will seek to develop a forensic examination strategy in consultation with the Police and/or CPS. The forensic examination strategy will identify the issue[s] in the case and establish the agreed priority and timescale for the delivery of the results.
  - 6.4. Priority for persistent young offender cases will be in accordance with current Government Targets.

## **7. Monitoring, evaluation and improvement**

- 7.1. This Protocol provides for the establishment of further national and local monitoring arrangements to ensure that the provisions within this Protocol and local Protocols are met and used to improve performance where required.
- 7.2. Arrangements for monitoring against this Protocol may be made by exception.
- 7.3. Notwithstanding the above, provision should be made for appropriate periodical review of the performance of each agency under the agreement, both nationally and locally.
- 7.4. This Protocol provides for the identification and dissemination of good practice both nationally and locally.
- 7.5. This Protocol provides for the development of an implementation plan to ensure consistent uptake of the joint training programme and agreed processes.



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## **8. Signatories**

### **On behalf of the Police**

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David Coleman  
Chief Constable  
ACPO Portfolio Holder for Forensic Science

### **On behalf of the Crown Prosecution Service**

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Ken Macdonald QC  
Director of Public Prosecutions  
Crown Prosecution Service

### **On behalf of The Forensic Science Service**

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Dr Dave Werrett  
Chief Executive  
The Forensic Science Service

This national Protocol for the supply of forensic science services to the Police and the Crown Prosecution Service by the Forensic Science Service is effective from January 2004.

## Local Tripartite Protocol

This local Tripartite Protocol describes how **XXX Police, XXX Crown Prosecution Service and the XXX Forensic Science Provider (FSP), will work together in partnership as a prosecution team to establish standard operating arrangements for the exchange of good quality and timely information.**

The aim of this document is to set out proposals as to how **XXX Police, XXX Crown Prosecution Service and the XXX FSP** can best work together to meet the requirements of the criminal justice system process in accord with the principles of the national Tripartite Protocol.

### **1. It is envisaged that this approach will provide a structured approach for:**

- a. Processes to set and agree timeliness requirements which are realistic, helpful to the CJS and support "Justice for All" and the Public Service Agreements
- b. Improved communications utilising efficient processes to maximise the contribution of the forensic science intervention in the case
- c. the role identification, role definitions and support (eg training) necessary to deliver to the improved communications strategy
- d. the development of processes which fully encompass the requirements of the charging programme. These processes will enable the provision of sufficient information upon which charging decisions can be made and provide further evaluative reports as required.

This approach requires a prioritisation system which supports these requirements. The submission classification arrangements are provided in appendix 1 and apply from ***insert date***.

### **2. Through this Protocol XXX Police, XXX Crown Prosecution Service and the XXX FSP make a commitment to work together jointly to:**

- a. develop and implement a communications strategy to establish the mechanisms necessary for efficient and effective communication between the agencies. Specific mechanisms are required:
  - **Before charge.** Any request for scientific examination should accord with investigative need and/or the strategy agreed between the CPS Prosecutor and Police Investigator. It is essential that Forensic Submissions and or the FSP Case Manager is consulted before submission to ensure information to assist the charging decision will be available.
  - **After charge, remand in custody.** Early discussions with the Investigator, Prosecutor, Forensic Submissions and FSP are essential to agree a meaningful timetable for each specific case in accord with the requirements of the criminal justice system process.
  - **After charge, remanded on bail.** Consultation between the Investigator, Prosecutor, Forensic Submissions and the FSP Case Manager is essential to ensure that:
    1. the FSP service delivery schedule for each case will meet the known key date in the criminal justice system process or alternatively
    2. identify at the earliest opportunity cases where meeting the key date is a potential cause for concern.

Where agreed FSP delivery dates in the case are identified as at risk, a revised timetable agreed between the Investigator, Prosecutor and FSP, in consultation with the Police Investigator, must be brought to the attention of the court, together with the appropriate reason.

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- **Pre trial (post plea and directions hearing).** Early consultation prior to setting of court dates is essential where further scientific examination or evaluation is required. CPS Lawyers and Police Investigators should jointly review cases following plea and direction hearings and provide the FSP with the evidential requirements of the case, including any issues raised or are likely to be by the defence.

The mechanisms, role definitions and responsibilities necessary for efficient and effective communication are set out in appendix 4.

- b. identify the requirements for the provision of forensic science advice out of hours in accord with the requirements of the charging programme and where necessary establish the mechanisms necessary to deliver to the requirement.

Appendix 4 sets out the local requirements, the processes and roles to ensure that the appropriate advice is available.

- c. develop a training, awareness and implementation plan to support the communications strategy. Agree a co-ordinated and consistent delivery of the training package within each of the agencies to underpin the agreed communications processes.
- d. provide for a system to collect management information in relation to the effectiveness of the developed processes to drive and improve performance, including the identification and dissemination of good practice. Management information will comprise a series of measures, agreed locally. The measures are specified in appendix 6.
- e. establish an on-going process of monitoring to ensure further improvements in working arrangements are identified, disseminated and implemented. The frequency of monitoring arrangements/meetings is specified in appendix 6.

### **3. Monitoring and Review:**

This protocol will be subject to annual revision however during the first year of the agreement a review after six months is anticipated. Performance measures will include:

- a. Performance against priority classifications in accordance with appendix 1
- b. Compliance with local communications mechanisms in appendix 4. Measures may be reported by exception or by reference to specific data.
- c. Review of out of hours demand and services provided.
- d. Identification of good practice for local dissemination and when appropriate for such good practice to be brought to national attention.
- e. Review of training and awareness, delivered to support those with roles and responsibilities which directly impact on performance against criteria specified in the Protocol. Assessment of the benefits realised following delivery of training should be considered. In addition assessment of training needs for the future should also form part of the review.

These measures and monitors and the frequency of reporting are set out in Appendix 6

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#### 4. Appendices:

1. Timeliness Definitions
2. Key Stages in the CJS for the Prioritisation of Forensic Work
3. Defining the Forensic Requirement
4. Specialist Advice, Communications processes, Out of hours advice, roles and responsibilities
5. Submissions Guidance and Timeliness
6. Measures and Monitors, (Measures, Monitors and frequency of reporting to be agreed)
7. Glossary of Terms

#### 5. Signatories:

This Tripartite Protocol for the supply of forensic science services to the (insert name) Police and the (insert name) Crown Prosecution Service by the (insert name) [FSP] is effective from ... ..(Insert date)...

<b>Name</b>	Insert name
<b>Job Title</b>	<b>Assistant Chief Constable</b>
<b>Organisation</b>	<b>XXX Police</b>
Date	_____
Signature	_____

<b>Name</b>	Insert name
<b>Job Title</b>	<b>Chief Crown Prosecutor</b>
<b>Organisation</b>	<b>XXX Crown Prosecution Service</b>
Date	_____
Signature	_____

<b>Name</b>	Insert name
<b>Job Title</b>	<b>[General] Manager</b>
<b>Organisation</b>	<b>XXX Forensic Science Provider</b>
Date	_____
Signature	_____

## FSP Appendices providing guidance on processes to be agreed in local protocols

### APPENDIX 1 - Timeliness Definitions

There is no direct comparison with previous prioritisation requirements or classifications. The prioritisation classification below support the requirements of the charging programme charging arrangements:

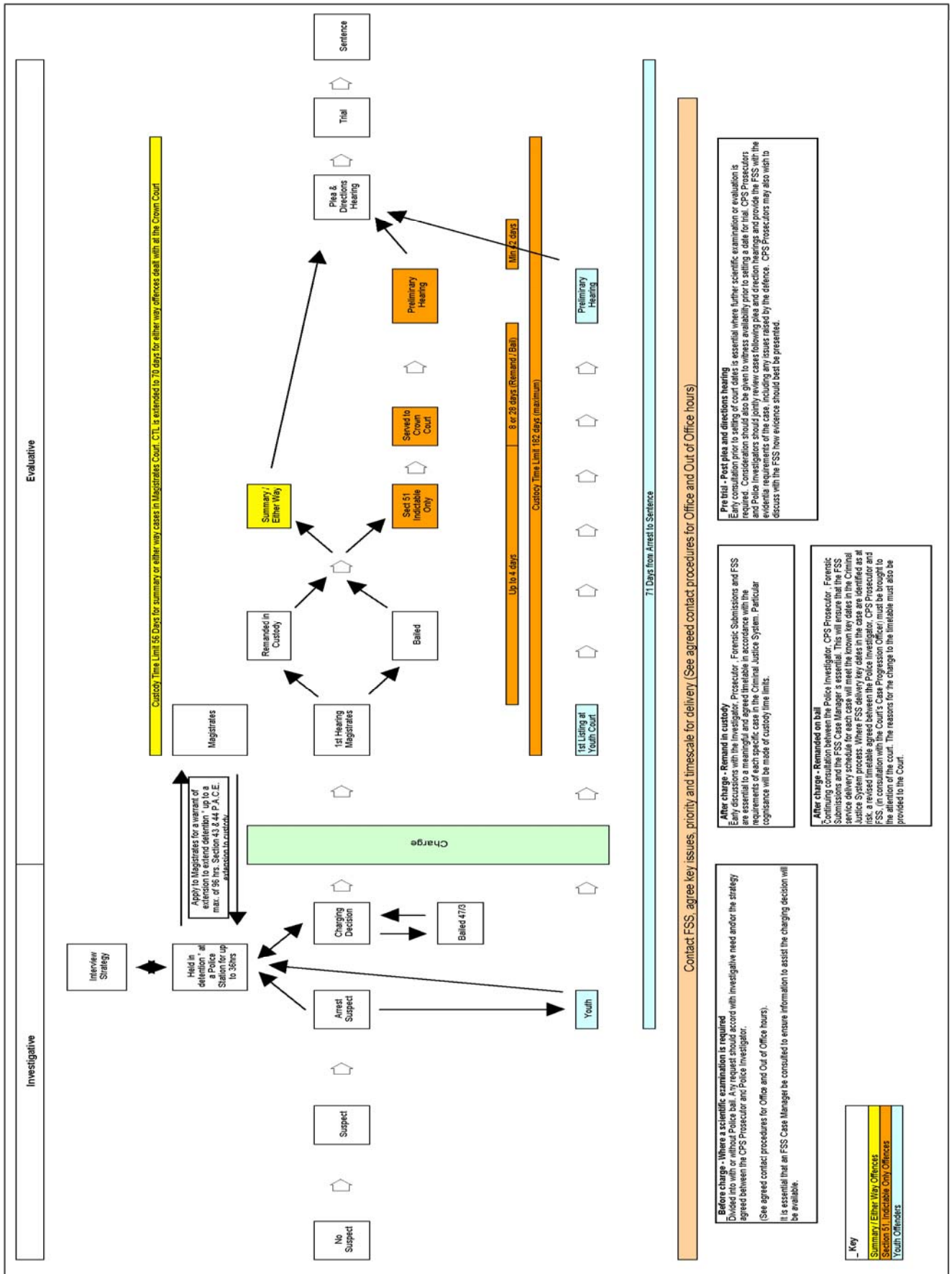
Priority Class	Dispatch Dates
URGENT	As <b>agreed</b> on submission
NO SUSPECT	Negotiable to meet investigative need
<b>SUSPECT NOT CHARGED:</b>	
Suspect held in custody	Negotiable within legislative limits, but fixed once agreed
Suspect remanded on bail	Negotiable to inform the bail date, but fixed once <b>agreed</b> **
<b>SUSPECT CHARGED:</b>	
Pre PDH or pre trial review	Negotiable, but fixed once <b>agreed</b> **
Post plea	To meet <b>agreed</b> pre-trial date Negotiable, but fixed once agreed**

\*\* 21 days where suspect is a PYO if requested and authorised.

The urgent prioritisation category would *normally* only be applicable in **before - charge submissions**, to meet investigative needs. However when the timescale demanded in a specific submission is such that no other course of action other than immediate/urgent examination is required to meet a specific date, regardless of whether the case is before or after charge. The categorisation of the priority of the submission is facilitated by fully completion of the MGFSP submission form.

# APPENDIX 2 Key Stages in the CJS for the Prioritisation of Forensic Work

## Key Stages in the CJS for Prioritisation of Forensic Work



### APPENDIX 3 Defining the Forensic Requirement

The CPS Prosecutor and Police Investigator should agree what are the **lines of investigation** and/or the **evidential points** to prove (e.g. whether or not sexual intercourse occurred between the suspect and complainant). These issues should reflect any advice obtained from Forensic Submissions and where appropriate the Forensic Scientist. The Police Investigator should complete an MGFSP submission form detailing these requirements at the earliest opportunity.

The following guidance should be used to determine whether the forensic requirement maybe considered as complex.

**Please note, the example protocol arrangements given below are for submissions to the Forensic Science Service (FSS). Specific advice concerning forensic submissions to other forensic service providers will need to be defined.**

#### Definition of Complex Case

**The following definitions and examples are designed to assist you in determining whether your case maybe considered as complex. These cannot cover all eventualities, therefore if you are unsure as to whether your case maybe classed as complex, please contact the FSS laboratory for advice and to agree an appropriate Dispatch Date. (see Appendix 4)**

Your case will be considered as complex when it involves one or more of the following:

1. The agreed forensic strategy involves the scheduling of a number of different strands of work at different times in the case
2. The case size is significant with respect to a high number of exhibits, suspects or victims
3. There are multiple submissions in the case
4. It is an undetected major crime case / a series of undetected crimes
5. There is no clear forensic question to be addressed and the strategy is subject to change
6. The requirement in the case is for specialist examinations which may involve multiple FSS laboratories
7. The forensic question asked can not be answered by the skills / information that the FSS routinely provide

For complex cases it is possible that the forensic question / strategy will not be completed within the timescales stated in the "General Submissions Guidance". Therefore it will necessary for you to contact the laboratory to agree appropriate timescales for the entire case and individual pieces of work within the case.

The following are typical examples of simple and complex cases:

Simple Requirement	Complex Requirement
Confirmation of a match on the National DNA Database where there is one scene and one suspect and both profiles are SGM+	Confirmation of a match on the National DNA Database where there are multiple scenes and one or more of these profiles is partial or requires upgrading to SGM+
Footwear marks from a scene to be compared with a pair of shoes	Footwear marks from a scene to be compared with a pair of shoes. If this is unsuccessful examination of a second pair of shoes for glass that is attributable to the scene.
Examination of vaginal swabs/clothing for semen and comparison of the DNA profile obtained from semen to a suspect's DNA profile	Examination of vaginal swabs/clothing for semen. If none found, examination of clothing for damage
Examination of a suspect's clothing for a victim's blood, where there is only one suspect and one victim	Examination of suspect's clothing for victim's blood, where there are multiple victims/suspects and/or more than one person has bled
Identification of a controlled substance	Identification of a controlled substance and comparison of packaging and/or DNA
Identification of a commonly abused drug, in a body fluid	Identification and confirmation of an unknown drug in a body fluid

**APPENDIX 4 Specialist Advice, Communication processes, roles and responsibilities -**

The CPS Prosecutor and Police Investigator should then use the following guidance to agree an appropriate forensic strategy and Dispatch Date(s) for the forensic requirement(s).

**Agreed Contact Procedures During and Out of Office Hours**

	<b>During Office Hours (<i>Insert days and times</i>)</b> <b>Forensic Submissions:</b> <b>Tel: Insert number Fax: insert number</b>	<u>Out of Office Hours</u>
<b>Simple Cases</b>	See "General Submissions Guidance" for examples of turnaround times. Please ensure you include submissions time and your in force administrative turnaround time when setting bail dates. If you require further advice please contact: <b>insert contact</b> e.g. Divisional Crime Scene Investigators or Forensic Submissions. If necessary, they will pass any further queries onto the FSP.	See" General Submissions Guidance" for examples of turnaround times. Please ensure you include submissions time and your in force administrative turnaround time when setting bail dates.  If you require further advice please contact FSP First Point of Contact on <b>insert number</b>
<b>Complex Cases *</b>	<b>Please contact Divisional Crime Scene Investigators or Forensic Submissions. If necessary, they will pass any further queries onto the FSP.</b>  If further assistance is required contact the FSP on <b>insert number</b> to agree a Dispatch Date for the work required.	Please contact FSP First Point of Contact on <b>insert number</b> , to agree a Dispatch Date for the work required.

**Please Note:**

( *the requirements here may vary depending on the particular FSP* )

- In all instances an MGFSP must be completed.
- Appropriate authorisation from **insert contact for XXX** e.g. Forensic Submissions is still required prior to submission of exhibits to the FSP.
- Forensic Submissions Office hours are **insert days and times**
- In cases where you require a specific Dispatch Date to inform the bail date or preliminary hearing, contact the FSP to agree an appropriate Dispatch Date prior to submission of exhibits to the laboratory.
- A copy of the MGFSP form is also required by the FSP pre-submission, to allow for pre-assessment of the case, to respond to your requirements and provide Dispatch Date information. Completed forms should be faxed to **insert number** FAO the scientist concerned
- The Dispatch Date will be dependent on submitting authorised casework to the laboratory within the agreed timescales discussed with the FSP

**FSP - First Point of Contact Out of Hours Service:**

***insert number***



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**Insert guidance, for example:** (When you call this number the answering service advisor will ask you to provide your Name, Force Name, Contact Number, Alternative Contact Number (e.g. Force Control Room) and Message. The First Point of Contact should normally respond to your message within 30 minutes)

**\* Please see "Definition of a Complex Case" (Appendix 3)**

## Roles and Responsibilities

### Role Definitions

Specify role definitions and responsibilities. This will include FSS roles as well as Police and CPS staff. It is vital that it is recognised that the action/inaction by one party will usually impact on others. It is important therefore that responsibilities are clearly defined.

### Police Investigator

The officer in the case responsible for jointly building the prosecution file in consultation with the Duty Prosecutor

### Exhibits Officer

Responsible for the collation and security of exhibits, and the submission of exhibits to the FSP.

### Senior Investigating Officer

The officer in major investigations who oversees the investigation.

### Forensic Submissions Officer

Responsible for the assessment and authorisation of forensic submissions.

### Duty Prosecutor

Any Prosecutor deployed to give pre-charge advice whether by area or CPS Direct.

### FSP Case Manager

Forensic Scientist responsible for managing the case and who will be the primary point of contact with regards to any further advice or queries concerning the case.

FSP First Point of Contact - Out of hours point of contact **insert number**

Forensic Scientist co-ordinator (or other arrangements) for out of hours advice and scene attendance.

FSP Day to day Contact - During normal office hours (**insert hours**) **insert number**

A dedicated switchboard who will direct calls to the appropriate individual to deal with any enquiries.

Include a directory for each charging centre which will include, for example, the Prosecution Team contact details and custody contact details.

### **Forensic Submissions, Scientific Services contact details:**

Name: Forensic Submissions – **insert name**  
Telephone **insert number**  
Fax: **insert number**  
Email: **insert email address or consider mailbox**

### **Forensic Service Provider Contact Details:**

During Office Hours (Mon – Fri 08.30 to 17.00)

Name: **name of FSP**  
Telephone **insert number**  
Fax: **insert number**  
Email: **Insert email address or mailbox**

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Out of Office Hours

Name: First Point of Contact  
Telephone: ***insert number***  
Fax: ***insert number*** or as directed  
Email: ***insert email address or mailbox***

**Inputs required:**

Outline details of the evidence on the MGFSP (as per CPS advice as per MG3)  
Transpose circumstances of the case as known at that time onto the MGFSP  
Items taken and their availability.  
Proposed date of submission  
Indication of the period of bail preferred

**Points for negotiation/agreement:**

Forensic strategy for the case  
Authorisation for the examination of the items necessary to deliver to the forensic strategy  
Date for submission  
Delivery and format of results

**Outputs Required:**

Agreed forensic strategy  
Agreed date for submission  
Agreed dispatch date and format of results

## APPENDIX 5 Submissions Guidance, Timeliness

### General Submissions Guidance

Please agree an appropriate bail date that will allow each of the following elements of the forensic service to be delivered. When agreeing the forensic strategy consider what evidence is required to support the process at that stage. A factual evidential report, for example, may be sufficient for charging and could be made available in a shorter timescale. Any queries should be directed to Forensic Submissions, or the FSP if outside normal office hours.

**If you have a requirement for fast tracking please contact Forensic Submissions (out of Office Hours contact FSS at the earliest opportunity)**

Service and Description	Completion of the MGFSP and preparation of the submission	Average Time for authorisation by XXX Forensic Submissions during Office Hours. (Adjustments may need to be made in times of high demand)	Target time for submission of exhibits to laboratory	FSP Turnaround time (days) from date of submission unless otherwise stated	Time for statements or reports to reach OIC (days)	Total turnaround time (days)
	Provide details of reporting requirements					If Urgent contact <i>Insert details</i> (Out of Office Hours contact FSP)

### Volume Crimestain DNA - No Suspect

DNA Analysis of a Standard crimestain sample (Crimestain Intelligence sample)

Premium I - 48 hour DNA Analysis (Crimestain Intelligence sample)

### DNA Match Confirmations - Suspect Not Charged

Simple \* (120 hr) DNA Match Confirmation (Crimestain Intelligence sample)

Complex (14 days) DNA Match Confirmation (Crimestain Intelligence sample)

24 hr DNA Match Confirmation (Crimestain Intelligence sample)

### Urgent Casework Evidential DNA - Suspect Not Charged

Premium I - 48 hour DNA Analysis

Premium II - 5 day DNA Analysis

### Drugs Offences

Possession of Controlled Drugs

Supply of Controlled Drugs

Production of Controlled Drugs

Urgent Identification. (e.g. TP Operation)

### Violent Crime including Casework Evidential DNA - Suspect Not Charged / Suspect Charged

Major Crime, Att Murder, Suspicious Death, Toxicology, Multiple Offences, New Operations

Other violent crime

### Volume Crime including Casework Evidential DNA - Suspect Not Charged / Suspect Charged

Multiple Offences  
Volume crime

### Traffic / Toxicology - Suspect Not Charged / Suspect Charged

Traffic Fatal / Non Fatal  
Driving after Consuming Drugs

Alcohol Technical Defences  
Driving After Alcohol Consumption

Criminal Toxicology (For known substances)

Criminal Toxicology (For unknown substances)

#### Please note:

These are general guidelines for simple cases involving 1 or 2 evidence types. See 'Definitions of a Complex Case'. If there are several evidence types and a large number of exhibits, the forensic strategy and turnaround time will need to be discussed and agreed in line with the requirements of the case. If at a later date further submissions or requirements are requested it may be necessary to modify the agreed FSP Dispatch Date to allow sufficient time to complete the work. Please refer to the definitions and examples of complex requirements and contact the FSP if necessary to agree Dispatch Dates for work.

Please ensure all appropriate information and exhibits are made available for submission. Delays could be caused if submissions are incomplete

\*This time is dependent on postal services and internal systems within XXX. Urgent reports or statements can be faxed if necessary.

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## APPENDIX 6 Measures and Monitors

Monitoring should comprise not only FSP service delivery performance but also a review of how well the communication channels have been used by all parties to the agreement. It has yet to be established how we monitor the latter but this is vital to the successful implementation of the agreement. Indeed in order to satisfy objectives of the national protocol which refers to, “standard operating arrangements” and “consistent use of agreed processes to deliver equitable services” performance measures throughout the supply chain will be necessary.

Include:

### Service Delivery

Dispatch dates met  
Dispatch dates met by classification  
Proportion of orders necessitating urgent examination  
Proportion of re-negotiated dispatch dates  
Average and 95% TRT by classification  
Proportion of child/vulnerable witness and cases involving a PYO or youth

### Communications channels

Arrest to submission (date of arrest is on the new MGFSP)  
Pre submission advice (in terms of the proportion of submissions with pre-agreed dispatch dates)  
Level of out of hours advice provided.

### Process

We are considering the following measures:

Completion of the MGFSP and preparation of the submission  
Average time for authorisation for **XXX** Forensic Submissions  
Time for submission of exhibits to the laboratory  
FSP TRT from date of submission  
Time for statements / reports to reach OIC

### Reporting

Management reporting quarterly

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## APPENDIX 7 Glossary of Terms

Authority - urgent submissions	This is in addition to the authorisation required for payment and should conform to your force protocol.
Budgetary Authority	This is in addition to authorisation for urgent/critical work and must comply with your force Protocol. Unauthorised submissions cannot be accepted.
CJA	Criminal Justice Act
Dispatch Date	The latest date by which the necessary results will be available to the Police Investigator and dispatched from the FSP.
Key Date	A specific date in the investigative or criminal justice process, such as a bail date, plea and direction hearing or trial date.
MGFSP	Submission form for the submission of work for scientific examination
NDNAD	National DNA Database.
Force Protocol	A manual agreed between your force and the FSS specifying submission and contact details. Includes details of the local Tripartite Protocol and any other service level or contractual agreement.
Forensic Service Provider (FSP):	The Agency or organisation providing forensic services.
Laboratory Reference numbers:	Relate to the case. Format specific to the FSP.
Pre-Order	The mechanism by which the FSP is informed of an imminent urgent submission or the mechanism by which the FSP provides case assessment and dispatch date guidance prior to the submission of the case. Urgent, pre-charge (prior to setting bail) and post charge (in custody) submissions must be pre-ordered.
Priority – Urgent	Relates to specific examination(s) required to assist the investigation. The results of such examinations will be available as soon as practically possible.
SGM+	Second Generation Multiplex Plus. The current DNA profiling system (introduced in 1999). This system and its predecessor, the SGM system, are compatible.

**THE CURRENT SYSTEM**

**DNA SAMPLE FOUND AT SCENE OF CRIME**



**SAMPLE IS ANALYSED AND MATCHED TO A SAMPLE ON DNA DATABASE**



**DEFENDANT ARRESTED – EVIDENTIAL SAMPLE TAKEN**



**DEFENDANT BAILED PENDING ANALYSIS OF EVIDENTIAL SAMPLE**



**MATCH BETWEEN EVIDENTIAL SAMPLE AND SAMPLE AT SCENE**



**DEFENDANT RETURNS TO ANSWER POLICE BAIL – INTERVIEWED REGARDING THE DNA EVIDENCE**



**DEFENDANT CHARGED AND REMANDED IN CUSTODY OR BAILED AS APPROPRIATE**

THE NEW SYSTEM

DNA SAMPLE FOUND AT SCENE OF CRIME



SAMPLE IS ANALYSED AND MATCHED TO A SAMPLE ON DNA DATABASE



DEFENDANT ARRESTED – EVIDENTIAL SAMPLE TAKEN & INTERVIEWED



IN ADDITION TO DNA SAMPLE MATCH, FURTHER SUPPORTING EVIDENCE OBTAINED



DEFENDANT CHARGED AND REMANDED IN CUSTODY OR BAILED AS APPROPRIATE



MATCH BETWEEN EVIDENTIAL SAMPLE AND SAMPLE AT SCENE TAKES PLACE IF  
DNA EVIDENCE IN ISSUE

**FSP STAGED REPORTING PROCESS**

**1. The Process – an illustration:**

1.1 The NDNAD provides the police with a 'match report'; see [Annex 11](#) example. Ideally this will be SGM+<sup>19</sup> to SGM+, but could be a partial SGM+ (crime stain) to SGM (CJ reference sample) **depending on the quality of supporting evidence.**

1.2 As a result of the match report intelligence, the suspect is arrested, further enquiries may be conducted, (such as house search) and interviewed; assuming this produces supporting evidence (eg; admissions, stolen goods) and the Investigating Officer discusses the quality of evidence and the basis of any decision to charge with the Duty Prosecutor, then the matter can progress. These discussions and the decision are recorded on the form MG3.

1.3 A decision to charge is made; the suspect is bailed<sup>20</sup> / remanded to a court date<sup>21</sup>, and Advance Information, along with a standard letter to the defence, is provided to the defendant. This will include a copy of the preliminary DNA match report.

1.4 At court, one of two processes follow;

- a) Defendant enters a guilty plea and the matter proceeds to sentence. In which case no further investigative or forensic work is required.

However, if:

- b) Defendant enters a Not Guilty plea or No Indication of plea, the following procedure should be followed:

1.5 A full file is requested, but at this stage all that is required from the Forensic Service Provider is a First Stage abbreviated statement confirming the DNA match. This is requested by completing the form MGFSP, see [Annex 10](#) and [Annex 10a](#) which provides a completed example. The First Stage abbreviated statement request should be made by entering this in Section 11 of the MGFSP form, ticking the DNA box in Section 12, and including the NDNAD match report. A five day service is

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<sup>19</sup> Second Generation Multiplex – Plus (SGM+). The current DNA profiling system (introduced 1998) examines 10 DNA areas (loci), and the amelogenin sex test. Six of the DNA areas are common to the preceding system, Second Generation Multiplex (SGM). The two systems are therefore compatible, with the current system offering an improved discriminating power.

<sup>20</sup> Where there is an expectation that the suspect will be re-interviewed, someone released on bail pre-charge should not be released under S37(7)(a) PACE (as amended), but under S34(5), in which case pre-charge bail conditions are not permissible.

<sup>21</sup> Officers should be advised to take an evidential DNA sample from the defendant prior to release.



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envisaged for a simple matter. (Note: 14 days is envisaged for a complex<sup>22</sup> matter – see page 31, Local Tripartite Protocol appendices for explanation.)

- 1.6 The full file is then received, containing the DNA match confirmation (First Stage abbreviated statement) in a Section 9 CJA, 1967 format (see example at Annex [...]). This further evidence is served on the defence. Taking account of the anticipated changes<sup>23</sup> in the regime of defence statements under the CJA, 2003, any one of three potential scenarios arise:

SCENARIO 1:

- 1.6.1 The defence do not dispute the forensic evidence, nor do they wish to raise any issues regarding the continuity of the forensic evidence. All the forensic evidence is accepted and agreed. The Reviewing Lawyer should, under this scenario consider drafting Section 10 CJA, 1967 admissions for the defence to agree. If the defence agree the forensic evidence in its entirety, under s10 CJA, 1967, the matter will proceed to trial and no further forensic evidence will be necessary.

SCENARIO 2:

- 1.6.2 The defence accept the forensic evidence, but not the Forensic Examination Record (FER) or continuity evidence. At this point the reviewing lawyer should consider the provisions of ss24, 26 CJA, 1988. Consideration should also be given to whether the particular issues in the case are such that a Full Evaluative statement should be sought at this stage.

- 1.6.2.1 If the answer to either is yes, then proceed accordingly.

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<sup>22</sup> Where the requirement is complex, eg; a partial SGM+ crime stain to SGM CJ reference sample, a full evaluative secondary statement will be provided, rather than a first stage abbreviated statement.

<sup>23</sup> No date has been agreed, but it is likely to be around April 2005.

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1.6.2.2 If the answer to both of these considerations is 'no', then complete a further MGFSP form requesting the FER and continuity evidence from the FSP (this will be continuity evidence up to the actual stage reached by the FSP). This is done by completing the 'further requirements, post-plea' box at the bottom of section 13 of the form, and agreeing a date for delivery of the evidence with the FSP.

On receipt, serve the FER and continuity evidence on the defence and seek Section 10 CJA, 1967 admissions<sup>24</sup>.

- a. if admissions obtained, rely on First Statement + admissions and proceed to trial.
- b. if not obtained, go to 1.7 below.

### SCENARIO 3:

1.7 Where the defence dispute the forensic evidence, FER and continuity, then a Full Evaluative statement, FER and continuity statements (to include the further stage reached by the FSP) must be requested on an MGFSP form. Delivery timescales must be agreed with the FSP.

1.8 Note that by the time stage 1.7 above is reached the defence are obliged to have disclosed the basis of their defence (for cases proceeding in the Crown Court. For cases remaining in the magistrates court, see CJA 2003 provisions).

1.9 **This is a simplified illustration of the process in relation to the forensic evidence. Every case will involve a range of issues, and specific time limits, that could well impact upon the process outlined here and adjustments will need to be made locally.**

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<sup>24</sup> R v Jackson [1996] 2 Cr. App. R 420

**RESTRICTED (when complete)**

MG FSP

**SUBMISSION OF CASE FOR SCIENTIFIC EXAMINATION**

<p><b>1. Police Crime Reference Number:</b> .....</p> <p><b>2. Phoenix A/S Number(s) (if known):</b> .....</p> <p><b>3. URN:</b> .....</p>	<p><b>4. Laboratory Reference Number:</b></p> <p style="text-align: right;">(FSP Use Only)</p>
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**5. Submission History**

If there is **no suspect**, contact the Forensic Service Provider **before** completing section 5. **Do not complete section 13.**

Is this a **new submission**  or  a **further submission** to previously submitted work

Has the work been discussed with any representative at the Laboratory? Yes  No  If 'Yes', who and when:  
.....

If this is a further submission or being submitted following a **pre-order**, please provide any related Police or Laboratory reference numbers: .....

**6. Contact Details** Submitting Force: ..... Officer in the case:  
..... Division/Area: ..... Tel: (inc. mobile): ..... Police Station: .....  
Facsimile: ..... Force/Station Code: .....  
..... E-mail: ..... **Contact other than the OIC:** Name: ..... Rank/Job Title: ..... Tel: (inc. mobile): ..... Fax: ..... E-mail: .....  
**Contact in CPS:** Name: ..... Location: ..... Tel: (inc. mobile): ..... Fax: .....  
..... E-mail: .....

**7. Priority.** The priority for this work is assessed as: (see Manual of Guidance) If the work is **URGENT** have you provided the relevant information in sections 5, 10, 11 and 13? Which of the following priority criteria apply? (Ensure the relevant information is provided in Section 13) Persistent Offender **Or** Child Witness is involved? Youth Offender? Child is a victim of a violent or sexual crime? Persistent Young Offender? CPS have requested prioritisation (attach copy of the request)? **Supervisory authority for submission as:** Name & Rank/Job Title: ..... Signature: .....

**8. Budgetary Authority for Submission:** Authorised by: .....  
Rank/Job Title: ..... Date/Authorisation Stamp

2004/05 (1)

*If for any reason the circumstances in this case change or the case is discontinued and the forensic evidence is no longer required then the FSP should be immediately informed by facsimile or e-mail*

**RESTRICTED (when complete)**

MG FSP

URN

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Laboratory Ref No: .....

**9. Details of Subjects**

Subject's full name: ..... M / F  
D. O. B: ..... Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable)  
Occupation: ..... \*Ethnicity code: .....

Subject's full name: ..... M / F  
D. O. B: ..... Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable)  
Occupation: ..... \*Ethnicity code: .....

Subject's full name: ..... M / F  
D. O. B: ..... Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable)  
Occupation: ..... \*Ethnicity code: .....

Subject's full name: ..... M / F  
D. O. B: ..... Deceased / Victim / Witness / Suspect / Subject for Elimination (delete as applicable)  
Occupation: ..... \*Ethnicity code: .....

\*16 Point Ethnic Classification System.

**10. Circumstances of Incident(s)**

Date: ..... Time: ..... Offence: .....

State briefly:

a) What took place:

.....  
.....  
.....

b) What account (if any) has been given by the suspect(s):

.....  
.....  
.....

c) Add any other information you may consider relevant (refer to 'Critical Success Factor Form' where appropriate):

.....  
.....  
.....

..... Continue on separate sheet if necessary.

*If for any reason the circumstances in this case change or the case is discontinued and the forensic evidence is no longer required then the FSP should be immediately informed by facsimile or e-mail*

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**RESTRICTED (when complete)**

**11. What are the points to prove?**

What are the **lines of investigation** and/or the **evidential points to prove** (e.g. whether or not sexual intercourse occurred between the suspect and complainant, whether or not the suspect is the person who broke the window). These issues should reflect the advice, the case strategy and the decisions that have been agreed between the investigator, prosecutor and, where appropriate, the forensic scientist.

.....

.....

.....

.....

.....

.....

**12. Additional Information**

If you are submitting any additional information please indicate what this is by either checking the relevant box(es) below or by describing the nature and relevance of the material:

- |                      |                          |                               |                          |
|----------------------|--------------------------|-------------------------------|--------------------------|
| Sexual Offences Form | <input type="checkbox"/> | Scene Examiner's Report       | <input type="checkbox"/> |
| NFFID Form           | <input type="checkbox"/> | Photographs/Visual records    | <input type="checkbox"/> |
| Firearms Safety Form | <input type="checkbox"/> | Plans                         | <input type="checkbox"/> |
| Toxicology Form      | <input type="checkbox"/> | Witness/Victim's Statements   | <input type="checkbox"/> |
| DNA Match Report     | <input type="checkbox"/> | Critical Success Factor Forms | <input type="checkbox"/> |

Other (please specify):

.....

.....

Further information/Comment (including details of any discussions/agreements with laboratory, see section 5):

.....

.....

.....

.....

***If for any reason the circumstances in this case change or the case is discontinued and the forensic evidence is no longer required then the FSP should be immediately informed by facsimile or e-mail***

**RESTRICTED (when complete)**

MG FSP

URN

Laboratory Ref No: .....

**13. KEY DATES FOR CASE MANAGEMENT (Complete one sheet per suspect)**

Suspect full name: ..... Date of arrest: .....

Do you want the suspect reference DNA profile loaded onto the National DNA Database? YES/NO

**SUSPECT NOT CHARGED AND NOT ON POLICE BAIL**

URGENT work required prior to charging

**Date agreed for dispatch of urgent work after discussion with the FSP:**

**SUSPECT NOT CHARGED AND ON POLICE BAIL**

Bail Date: .....

**Date agreed with the FSP by which the necessary results to assist the charging decision will be despatched:**

On the basis that the items for examination are received at the FSP Laboratory by:   
(To be completed by the FSP ONLY)

**SUSPECT CHARGED AND IN CUSTODY**

Cases to be heard at Crown Court

*These cases must be pre-ordered by forwarding the MGFSP form to the FSP as soon as possible and not later than 2 days after the first appearance at magistrate's court. The FSP will provide, within 2 days of receipt of the pre-order; a guaranteed dispatch date for the results, based on the given item submission date. This date will be used by the CPS to offer an appropriate date to the Crown Court at the preliminary hearing.*

Date first appeared at Magistrates Court: .....

Date MGFSP forwarded to FSP: .....

Date of preliminary hearing at Crown Court: .....

Date of Committal proceedings: .....

**Guaranteed Date by which agreed results will be dispatched**   
(To be completed by the FSP ONLY)

NB. This date can only be guaranteed if the items for examination are submitted to the FSP Laboratory by:   
(To be completed by the FSP ONLY)

**SUSPECT CHARGED AND BAILED**

*There is no pre-ordering requirement for these cases but consultation with the FSP is essential to ensure key dates can be met. Early submission of the items is also essential to ensure the offered date can be met.*

Date fixed for Plea and Directions hearing: .....

Other key date (e.g. Trial Date): .....

**Dispatch Date offered by the FSP:**   
(To be completed by the FSP ONLY)

**FURTHER REQUIREMENTS POST PLEA** (CPS/FSP Use Only)

**Date agreed between the Prosecutor and the FSP by which any additional examinations and/or evaluative reports will be dispatched:**

*If for any reason the circumstances in this case change or the case is discontinued and the forensic evidence is no longer required then the FSP should be immediately informed by facsimile or e-mail*

**RESTRICTED (when complete)**

MG FSS B

Page ..... of .....

**ITEMS FOR SCIENTIFIC EXAMINATION (Complete in triplicate)**

*All items must be properly packaged and labelled to preserve the integrity of the evidence*  
(The exhibit number and description given below must correspond with the exhibit label)

Lab Reference Number:..... URN:..... .....
-----------------------------------------------------

Serial No.	Exhibit No.	Exhibit Bag No.	Description of Item(s)	This item relates to: (subject or location recovered from)	Date and timefound/taken	Name of person seizing item

*Continue overleaf if necessary*

Any known health and safety risks e.g. Aids, Hepatitis, Scabies etc must be stated – the notification should be provided as part of the description of the item to which it applies, fuller details being supplied on a separate sheet if appropriate. NB Sharp/hazardous items must be appropriately packaged and labelled. For advice on these matters contact any member of Scientific Support.

<b>Method of delivery:</b> By Hand      Couriers      Registered/Recorded Post:  Seal numbers: ..... ..... ..... <b>Name of person delivering</b> (block letters): .....
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(FSP use only)  <b>Person receiving at Laboratory</b>  Print Name: ..... Signature: ..... Date: .....	<table border="1" style="width: 100%; height: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: middle;">                     Laboratory Date Stamp                 </td> </tr> </table>	Laboratory Date Stamp
Laboratory Date Stamp		

Indicate here if the SIO/Exhibits Officer needs to be contacted prior to the return of any exhibits to the force

Lab Reference Number:..... URN:.....
--------------------------------------------

**ITEMS FOR SCIENTIFIC EXAMINATION – Continuation sheet**

Serial No.	Exhibit No.	Exhibit Bag No.	Description of Item(s)	This item relates to: (Subject or location recovered from)	Date and timefound/taken	Name of person seizing item

<b>Method of delivery:</b> By Hand      Couriers      Registered/Recorded Post:  Seal numbers: ..... ..... ..... <b>Name of person delivering</b> (block letters): ..... Rank/Job Title: ..... Signature:
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(FSP use only)  <b>Person receiving at Laboratory</b>  Print Name: ..... Signature: ..... Date: .....	<table border="1" style="width: 100%; height: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: middle;">                     Laboratory Date Stamp                 </td> </tr> </table>	Laboratory Date Stamp
Laboratory Date Stamp		

Indicate here if the SIO/Exhibits Officer needs to be contacted prior to the return of any exhibits to the force



# MG FSP – SUBMISSION OF WORK FOR SCIENTIFIC EXAMINATION GUIDANCE NOTES

## 1. INTRODUCTION

- 1.1. The following notes are intended to aid completion of the revised laboratory submission forms. It is to enable the Forensic Science Provider (FSP) to process samples in the most efficient way to maximise the contribution of forensic science to the case.
- 1.2. It is vitally important that completion of the forms and submission of the samples is conducted expeditiously and, in any event, soon after the capture or harvest of such samples. This will allow for optimum results by the FSP without any degradation to the sample(s) submitted.
- 1.3. Due cognisance needs to be taken by all officers of the joint protocol between Police, CPS and Forensic Science Service when submitting samples for examination. The protocol encompasses the new charging arrangements and the development of a staged reporting process. This introduces first stage reports that provide sufficient information upon which to make charging decisions, followed by further evaluative reports, after plea and directions (PDH) in the Crown Court (pre trial review in the Magistrates' Court). It includes all the information necessary for the trial process, plus issues which may be raised by the defence statement.
- 1.4. The forms should be fully completed in triplicate and all copies should accompany the laboratory submission.

## 2. GUIDANCE BY SECTION

2.1. The sections below correspond directly with those on the **MG FSP**:

### **Sections 1 – 4 (Reference Numbers)**

**1. Police Crime Reference Number:** Specify Crime Report Number(s);

**2. Phoenix A/S Number(s):** An Arrest/Summons Number is person specific and is therefore required for each suspect. Number(s) must correspond with Section 9. An Arrest Summons number is a requirement to load the DNA profile from the suspect(s) reference sample to the National DNA Database. See section 13. Where there are multiple suspects and the DNA profile from more than one suspect is required to be loaded, provide the relevant AS numbers at Section 12 Additional Information. For further guidance see 1.4 of Section 1 of the Manual;

**3. URN:** (Unique Reference Number) relates to the Police Case File Number and must be recorded on each page to ensure continuity. For further guidance see 1.3 of Section 1 of the Manual;

**4. Laboratory Reference Number:** To be left clear for FSP to insert its own numbering and bar coding.

### **Section 5 (Submission History)**

- The submission of samples is important at any time but particularly so where samples are submitted at different times throughout the course of an investigation. This section provides the opportunity to ensure that all samples relating to a single case are linked together using the reference numbers alluded to in Sections 1 – 4 above.
- Where there is NO SUSPECT, the work is likely to be urgent and early contact with the FSP

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should be a consideration, especially where the case is complex.

- If any aspect of the work is URGENT, it is advisable to contact the FSP prior to submission to agree a time/date for the submission of items and the dispatch of results.

### **Section 6 (Contact Details)**

- In the event of any queries relating to the submissions a definitive contact point needs to be identified. In the case of the police this may not necessarily relate to the Officer in the Case (OIC) but may relate to a Police Investigator, dedicated case builder or person directly assisting the OIC.
- The CPS contact point will be the Reviewing Lawyer particularly in pre charge advice cases.

### **Section 7 (Priority)**

This section relates to the timescales within which the FSP will complete its examinations and subsequently affect the delivery dates of results. The priority ratings recorded in the two boxes should correspond with Section 13. Where there is No Suspect, enter "No Suspect" in the boxes provided.

- **No Suspect** Indicate where there is an URGENT aspect to the submission. Do not complete section 13.
- **Before charge – Where a scientific examination is required**

Use "Suspect Not Charged – Not on Police Bail" or Suspect not Charged – on Police Bail". Divided into with or without police bail. Any request should accord with investigative needs and/or the strategy agreed between the CPS Prosecutor and Police Investigator. It is essential that an FSP Case Manager be consulted to ensure that information to assist the charging decision will be available.
- **After charge – Remand in custody**

Use "Suspect Charged and in custody" Early discussions with the Investigator, Prosecutor and FSP are essential to a meaningful and agreed timetable in accordance with the requirements of each specific case in the Criminal Justice System. Particular regard will be paid to custody time limits.
- **After charge – Remanded on bail**

Use "Suspect Charged and bailed" Continuing consultation between the Police Investigator, CPS Prosecutor and the FSP Case Manager is essential. This will ensure that the FSP service delivery schedule for each case will meet the known key dates in the Criminal Justice System process. Where FSP delivery key dates in the case are identified to be at risk, a revised timetable agreed between the Police Investigator, CPS Prosecutor and FSP (in consultation with the court's Case Progression Officer) must be brought to the attention of the court. The reasons for the change to the timetable must also be provided to the court.
- **Pre trial – Post plea and directions hearing**

Use "Further Requirements Post Plea" Early consultation prior to setting of court dates is essential where further scientific examination or evaluation is required. Consideration should also be given to witness availability prior to setting a date for trial. CPS Prosecutors and Police Investigators should jointly review cases following plea and direction hearings and provide the FSP with the evidential requirements of the case, including any issues raised by the defence. CPS Prosecutors may also wish to discuss with the FSP how evidence might best be presented.

### **Section 8 (Budgetary Authority for Submission)**

- In addition to a supervisory authority, as in Section 7, a separate signatory is required for mandatory authorisation and should comply with any Force Protocol. Unauthorised submissions

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will not be accepted by the FSP.

### **Section 9 (Details of Subjects)**

- Suspect details must correspond with the Arrest/Summons Number recorded at Section 2.
- The FSP will also need to be notified of relevant cases involving Persistent Young Offenders (PYO) or Persistent Offenders (PO). This will affect the timescales for submission of samples and delivery of results owing to the nationally agreed targets set for completion of such cases.

### **Section 10 (Circumstances of Incident)**

- This section provides the opportunity for the OIC or Police Investigator to communicate the surrounding circumstances and MO of the offence to which the samples relate and will be similar to those contained on the crime report. This section should be completed in conjunction with information contained in the following Section 11.

### **Section 11 (What are the points to prove?)**

- Discussions and decisions agreed between the Police Investigator, CPS Prosecutor and FSP regarding the specific issues that are required to prove the case should be recorded, e.g. whether sexual intercourse has occurred.
- Please read additional investigative notes and question listed on annotated version of the form. In particular relevant details of pre charge advice. Do not attach a copy of the MG3 that is strictly a communication between the Police and CPS.

### **Section 12 (Additional Information)**

- Any information that is relevant to the case and may assist the FSP with examination of the submitted samples will be of benefit. Therefore please include any such additional information according to the tick boxes.
- In particular, the Critical Success Factors Form adds specific information upon which the FSS will rely according to the type of offence and samples submitted.

### **Section 13 (Key Dates for Case Management)**

- Each of the five tick boxes will correspond with the priority ratings as explained in Section 7.
- Early consultation with the FSP will determine the appropriate timescales for progression of the respective case. It will also link with the target timescales recorded on the **MG6** for obtaining the necessary evidence.


## **3. ITEMS FOR SCIENTIFIC EXAMINATION**

- 3.1. The exhibit numbers recorded must correspond to those on the exhibit label.
- 3.2. It is important to record full details, including the date and time that these exhibits taken, together with any identifying numbers on the packaging materials, such as drugs bags or exhibit bag numbers.
- 3.3. Items should be packaged to nationally agreed packing guidelines, to ensure that the integrity and continuity of the evidence is preserved.
- 3.4. Further information can be obtained from your Force Forensic Investigations Department, Crime Scene Investigator or from the FSS Scenes of Crime Handbook.

## **4. HEALTH & SAFETY RISKS**

- 4.1. Sharp and hazardous items must be packaged to protect handlers and marked with the appropriate hazard label, e.g. biohazard labels.

**ANNEX 11**

HITS_REPORTS_(REF)_(NO) (DATE) (TIME) Page	NATIONAL DNA DATABASE MATCH REPORT		
Date of Issue	Match Report Reference	Linked Series Report ID	Status Of Match
For Police use only (COMMENTS)			
<p>Subject link CJ The following linked series of matches has been identified from the National DNA Database. This information is provided for intelligence purposes only.</p> <p>If required for use in evidence, another sample must first be obtained from the named individual(s) and analysed to confirm the matches.</p> <p>Before considering use of the information in evidence, you will also need to ensure that when the intelligence match was obtained the DNA record of the relevant named individual was legally held on the Database, in accordance with the Criminal Justice and Police Act 2001 and the Criminal Justice and Public Order Act 1994. If it was not legally held the information obtained from the evidential sample may be ruled inadmissible.</p> <p>The barcode, arrest summons number and DOB in this report should be checked against the PNC records and the PNC record amended where necessary.</p> <p>If further information is required, please contact the DNA Database Enquiry Centre on 0121 606 2950</p>			
<p>Unverified Subject Match- awaiting validation</p> <p>The work that is normally carried out to validate the match is not yet complete and this limitation must be taken into account. Another match report will be provided as soon as this work is complete.</p> <p><u>This caveat relates to the Following Barcodes with in this match</u></p>			

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HITS\_REPORTS\_(REF)\_(NO)  
(DATE) (TIME)  
Page

NATIONAL DNA DATABASE



### **Subject to Subject**

Please check your records and inform us whether the samples from the named individuals can be shown to have originated from the same person or a related individual. This will help us to identify duplicate sample records held on the National DNA Database and the PNC and to identify aliases.

This caveat related to the following barcodes within this match

### **Potential Upgrade CJ/Reference Sample**

Where a CJ sample or reference sample profile is shown in this report to have been analysed using the SGN method, it is recommended that these samples be reanalysed using the SGM plus in order to minimise the risk that any match is adventitious.

**This caveat relates to the following barcodes within this match:**

### **Potential Upgrades Scene**

Where the scene of crime sample profiles are shown in this report to have been analysed using the SGM method, the match probability can be improved by upgrading the analysis to SGM plus. If you wish to pursue this option you should notify the relevant laboratory.

**This caveat relates to the following barcodes within this match:**

HITS\_REPORTS\_(REF)\_(NO)  
 (DATE) (TIME)  
 Page

NATIONAL DNA DATABASE



01-Barcode 02-Profile 03-Test Type	04-Analysis Verification Status 05-Sample Class 06-Sample Type	07-Supplier 08-Proc Lab 09-Lab Name	10-Lab Phone 11-Force Name 12-Station	16-Subject Name 17-Police Ref. 18-Lab Ref	19-Exhibit No 20-Offence Type 21- Last Reported
------------------------------------------	----------------------------------------------------------------------	-------------------------------------------	---------------------------------------------	-------------------------------------------------	-------------------------------------------------------

01	90086613	01	90951486	01	89100799
02	FULL	02	FULL	02	FULL
03	SGM	03	SGM	03	SGM+
04	N/A	04	N	04	N/A
05	Suspect Control from RCCJ recordable offences	05	Suspect control from RCCJ recordable offences	05	Unsolved crime stain
06	Buccal cells	06	Buccal cells	06	Bloodstain
07	Forensic Science Service	07	Forensic Science Service	07	Forensic Science Service
08	U	08	M	08	E
09		09		09	
10		10		10	
11	AVON AND SOMERSET	11	AVON AND SOMERSET	11	AVON AND SOMERSET
12	MW	12	JW	12	**
13		13		13	
14	95/0000/00/618108C	14	98/0000/00/793335N	14	
15	OTHER : AN	15	OTHER: AN	15	
16	25-JUL-1972	16	25-JUL-1972	16	
17		17		17	RH/0740/01
18		18		18	D/2001/3968
19		19		19	8140AMS3
20		20		20	07V Other burglary
21	04-DEC-2001	21	04-DEC-2001	21	04-DEC-2001

## FIRST STAGE ABBREVIATED STATEMENTS

The examples provided below, showing first stage abbreviated statements, have been provided by the Forensic Science Service. Actual formatting and style may vary depending on the particular forensic service providers performing the forensic examinations.

***The illustrative text, in the following examples will have been preceded by a header providing information detailing : the police and laboratory reference numbers ; the name, age, occupation and address of the witness, and ; a signed and dated section 9 CJA witness declaration.***

### **Example 1 - DNA Match Confirmation Statement**

**Suspect:** [suspect's name]

A full DNA profile has been obtained from the reference sample ([affidavit number]) taken from [suspect's name]. This profile has been compared with the full DNA profile previously obtained from the following:

**Laboratory Reference:** [number]      **Police Reference:** [number]

Cigarette end ([affidavit number]) recovered from a burglary at [address]

#### **Results of analysis**

The DNA profile obtained from the sample provided by [suspect's name] has been found to match the profile obtained from the crime scene exhibit listed above.

A statement that considers the relevance of the above result given the issues outlined in Appendix 1 can be requested by contacting the Confirmation Reporting Team on telephone xxxx xxx xxxx, fax xxxx xxx xxxx or email [DNAHelpdeskPriority@xxx.org.uk](mailto:DNAHelpdeskPriority@xxx.org.uk), quoting the Laboratory reference number(s) above. The target for production of this statement is less than 14 days from request. An additional charge will be incurred on an hourly basis.

#### **Appendix 1**

Any assessment of the weight of evidence associated with this DNA match will depend on the issues that will be in dispute in this case. If, for example, the source of the DNA is an issue, then it will be necessary to consider the probability of a match between two different individuals. This probability depends on how closely the two individuals are related:

- The probability that two unrelated people would have matching full DNA profiles is of the order one in a billion.
- The probability that two full siblings would share the same profile, on the other hand, is of the order one in 10,000.
- A pair of identical twins will almost certainly share the same profile.

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It follows that a match between two profiles should not, by itself, be taken as conclusive evidence that the profiles relate to the same person.

If there are close relatives of the suspect who might themselves be considered alternative sources for the DNA then the most satisfactory course is always to take samples from them for DNA analysis and comparison.

If, on the other hand, the issue is not about the source of the DNA but is more concerned with alleged activities and how the DNA was deposited, then factors other than the match probability need to be considered before an evaluation can be offered.

Any explanations offered by the defendant are an essential element in a robust evaluation of the weight of evidence. These should be conveyed to the reporting scientist as soon as is practical to enable the scientist to provide an evaluation.

It is also essential that the scientific findings relating to the DNA be viewed within the context of any other evidence in the case, such as geography, opportunity and alibi.

### **Example 2– Unlawful Sexual Intercourse – first statement**

The following is a summary of my findings in relation to the examinations carried out in this case.

#### **Information received**

I understand it is alleged that on the 9 February 2003 Jane Y along with her friend visited Joe X and his friend at Joe X's house. I understand that Joe X invited Jane Y upstairs to his room to have sex and that she agreed this. I further understand that they lay down on his bed and started undressing each other. I am aware that Joe X put a condom on his penis and they proceeded to have sex. Jane Y does not know where he put the condom afterwards. I understand that Miss Y was a virgin before this incident and has not had contact with a condom before.

I understand that several condoms were recovered from a bin in Joe X's bedroom. The condom found nearest the top of the bin has been recovered for examination. I understand that a bloodstained tissue and a tampon were also found in the bin, but were thought to be unconnected to this particular incident.

**I have read the witness statements of Jane Y, dated [date] and Joe X, dated [date]. I understand that Mr X made a no further comment at interview.**

#### **Purpose**

I have been asked to examine the condom from the bin in Joe X bedroom for semen that could have originated from him and for any blood or other biological material that could have originated from Jane Y.

In the absence of a version of events from Joe X, I have carried out my examination to determine whether the scientific findings fit with the view that Mr X has had vaginal intercourse with Jane Y using the condom submitted. These findings can be re-evaluated if and when more information is forthcoming.



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### **Examination and results**

DNA profiles were obtained from the reference mouth swabs from Joe X (ABC/7) and Jane Y (XYZ/4) and they were different from each other.

### **EFG/2 Condom**

This condom contained a visible fluid and was received knotted at one end.

The condom was examined as it was received. There was no visible bloodstaining on the condom.

The liquid from the inside of the condom was removed and was found to contain semen. The inside surface was swabbed and no blood was detected on this swab. The DNA profile obtained from the semen matched that of Joe X.

The outside surface of the condom was swabbed. A chemical reaction indicating the possible presence of blood was detected on this swab. This swab was sampled and submitted for DNA profiling. The DNA profile obtained indicated the presence of DNA from more than one person and could be explained by a combination of biological material from Joe X and Jane Y.

### **The issue of whether or not Joe X had vaginal intercourse with Jane Y using the condom submitted**

Semen has been found on the inside of the condom that could have originated from Joe X and biological material has been found on the outside of the condom that could have originated from both Joe X and Jane Y. These findings fit with Jane Y's version of events.

I understand that Joe X has made no comment at interview.

There may be other explanations for my findings and indeed, a full evaluation of the weight of these findings can only be completed if and when a clear defence position is made available to me.

### **Example 3 – Drugs – first statement**

#### **Receipt of Item**

From the records to which I have access I can say that on [date] , the following item was received in a sealed package at the [name of laboratory] , from the [police force]. My examination was conducted with the aid of assistant(s). Full details can be provided if required.

#### **Results of Examination**

Item KEH/2 included 0.176 gram of substance, which contains cocaine.

#### **Legal Classification**

Cocaine is a Class A controlled drug subject to the provisions of the Misuse of Drugs Act 1971. A purity value for the cocaine in this material has not been obtained but the analysis clearly shows that it was above 0.1%.

**DRAFT PRO FORMA LETTER TO GO TO DEFENCE WITH THE SERVICE OF FORENSIC EVIDENCE**

Dear

R V

I am writing to inform you that the Prosecution propose to rely on the following forensic evidence in this case:

Contained in the advance information is the forensic information. You will note that the evidence, at this stage is not in an admissible format. However, the purpose of this letter is to ask you, as the defence representative in the case, to assess the forensic evidence, along with the other evidence served on you, and inform the Crown within the next        days, whether:

- a) your client is likely to challenge the nature of the forensic evidence
- b) if so, please specify what those challenges are
- c) alternatively, confirm that the forensic evidence in this case is not going to be challenged and that you would be prepared to make a S.10 admission to that effect, in due course.

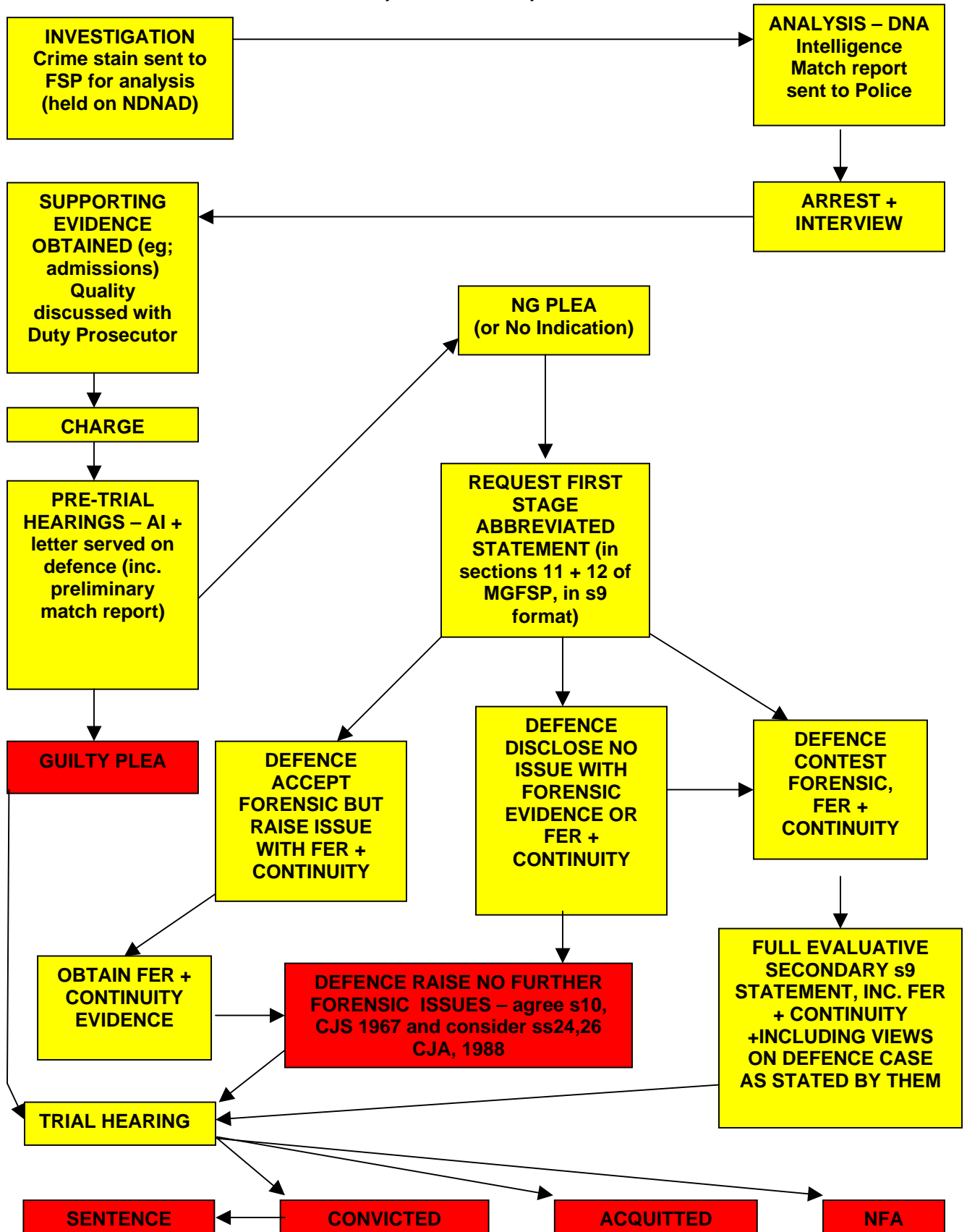
The reason we are asking for this early indication is so that both sides are ready to deal with issues in good time and to avoid trials collapsing at the last moment.

As you know, part of the Effective Trial Management programme will, in due course ask the defence to engage even more proactively with the prosecution and the court to ensure that all trials are ready to be heard on the day that they are listed. There is a duty imposed on each of the agencies within the criminal justice system to proactively manage this process. The early identification of issues in cases involving forensic evidence will enable the case to be disposed of without delay, and would ensure that victims maintain their confidence in the system, and assist defendants in having their cases heard expeditiously but fairly.

I hope you are able to assist in this process by complying with our request. If for some reason you are not able to do so, then please let me know the reason. The case may then have to be listed for mention for the court to give appropriate directions.

**STAGED REPORTING PROCESS MAP**

CPS Policy Directorate, July 2004



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# The Prosecution Team



CPS Policy Directorate, July 2004