

# Charging and case preparation

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First published 23 October 2013 Updated 26 January 2022

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13 mins read

The prosecution process generally begins from the point when a crime is reported to the police. Evidence is then gathered to establish what actually happened and who was involved, and statements are taken from witnesses to support the evidence.

Following evidence-gathering, the two key stages prior to the first hearing are the decision to charge and the prosecution process. If a person is charged with a crime, they are either remanded in custody or released on bail before going to a court.

This module describes the relationship between police and the Crown Prosecution Service (CPS) and highlights the key touch points where the two work together.

## Decision to charge

In a criminal case, if there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, a decision to charge is made. Depending on the type and seriousness of the offence committed, this decision is made by the police service or the Crown Prosecution Service (CPS).

For further information see [CPS \(2012\) CPS Guidance on: Joint Enterprise Charging Decisions](#).

## Referral to the CPS for pre-charge advice

For charging advice on serious, complex and contested cases, prosecutors and police officers can meet at an agreed venue. For less serious charging decisions, CPS lawyers listen to police officers' accounts over the telephone (CPS Daytime Direct or [CPS Direct](#)) or via a secure digital service after the arrest of a suspect(s). They then decide whether there is sufficient evidence to charge a person and what that charge should be.

The CPS may require further evidence to be obtained before a charging decision can be made, or to strengthen the case to secure a successful outcome. The prosecutor will advise the police officer of the further material required. This advice will also bring an early conclusion to those cases that cannot be strengthened by further evidence.

For further information see:

- [Director's Guidance on Charging 2020, 6th Edition, ss5-7](#)
- [Pre-charge referral process to the CPS](#)
- [Protocol between the Association of Chief Police Officers, the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service to expedite cases involving witnesses under 10 years \(2015\)](#)

## Charging process

[The Code for Crown Prosecutors](#) advises that any charging decisions should:

- reflect the seriousness of the offending
- give the court adequate sentencing powers as well as powers to impose appropriate post-conviction orders
- enable the case to be presented in a clear and simple way

The process provides:

- improved accessibility through CPS Daytime Direct or [CPS Direct](#), providing police officers with instant access to CPS lawyers via phone and/or secure digital service when seeking advice and authorisation on less serious charging decisions
- realignment of the [Director of Public Prosecutions \(2020\) The Director's Guidance on Charging – 6th Edition](#), which details additional offences and categories that the police are able to charge, without reference to the CPS
- current file standards can be found at Annex 5 to the 'Director's Guidance on Charging – Sixth Addition'

## Police charge cases

[CPS guidance](#) outlines the division of charging responsibilities between the police and CPS.

## Charging of youths

Cases involving young people are usually only charged by the police or referred to the CPS for prosecution if they have already received one or more out-of-court disposals, the offence is serious, or the youth has not admitted the offence and, therefore, specific out-of-court disposals cannot be given or are not appropriate.

Youth out-of-court disposals are intended to prevent reoffending, but further offending indicates that attempts to divert the youth from the court system have failed. It is usually in the public interest to prosecute in such cases, unless there are clear public interest factors against prosecution. Where there is sufficient evidence to provide a realistic prospect of conviction, careful consideration should be given to the public interest test and the [CPS legal guidance on youth offenders](#).

Prosecutors should consult [The Director's Guidance on Charging](#) and relevant [Ministry of Justice Codes of Practice](#) to assess offence seriousness, and [Youth Justice Board \(2013\) Youth Out-of-Court Disposals, Guide for Police and Youth Offending Services](#) to determine whether the public interest is satisfied by diversion.

## Full Code Test

This is a two-stage test which must be applied each time a charging decision is made, whether it is made by the police or the CPS – the evidential stage and the public interest stage. The evidential stage must be met before the public interest stage can be considered. For a full explanation of the evidential and public interest stages, see [The Code for Crown Prosecutors: The Full Code Test](#).

### Evidential stage

Prosecutors and police decision makers must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each suspect on each charge. This means considering the evidence as a whole, including the impact of any likely defence or information put forward by the suspect, and asking the question, is it more likely that a court or jury would convict the defendant of the charge after hearing this evidence, or that they would acquit them?

If the decision-maker's assessment is that the court would be more likely than not to convict the person of the charge, the evidential test has been met and they can move on to consider the public interest stage.

If the evidential test is not met, the charge cannot proceed, no matter how serious or sensitive it may be.

## Public interest stage

In cases which pass the evidential stage, the decision maker must go on to consider the public interest stage. They must balance factors for and against prosecution carefully and fairly, decide how important each factor is in the circumstances of the case and make an overall assessment. Each case is unique and must be considered on its own facts and merits.

Public interest factors that can affect the decision to prosecute include:

- seriousness of the offence
- suspect's level of culpability
- circumstances of and harm caused to the victim
- if the suspect is under 18 at the time of the offence
- impact on the community
- whether prosecution is a proportionate response, for example, is a nominal penalty likely?
- whether sources of information or national security could be harmed

A prosecution should usually take place, unless there are public interest factors tending against prosecution which outweigh those tending in favour. Sometimes an out-of-court-disposal may serve the public interest better than prosecution. In other cases, although public interest factors against prosecution may exist, it may still be appropriate to prosecute and put those factors before the court as relevant mitigation on sentence.

## Threshold Test

Where a suspect who is in police custody presents a substantial bail risk if released, but not all of the evidence in the case is yet available, a preliminary assessment of the evidence may be made under the Threshold Test. This allows the police to charge the suspect and bring them before a court in custody without applying the Full Code Test.

There are strict criteria for applying the Threshold Test. All of the following conditions must be met.

- Insufficient evidence is currently available to apply the evidential stage of the Full Code Test.

- There are reasonable grounds to believe that further evidence will become available within a reasonable period.
- The seriousness or circumstances of the case justify making an immediate charging decision.
- There are substantial grounds under the Bail Act 1976 to detain the suspect in custody after charge and an application to withhold bail can properly be made at court by a prosecutor.

If any of these conditions are not met, the Threshold Test cannot be applied or the suspect charged.

When considering the evidence under the Threshold Test, the decision maker must ask:

- is there a reasonable suspicion that the suspect has committed the offence?

The evidence currently available must be relevant and capable of being put into admissible format for presentation in court, and would be used in the case.

- Can further evidence be gathered to provide a realistic prospect of conviction?

There must be reasonable grounds to believe that further investigation will provide additional identifiable (not merely speculative) evidence within a reasonable period of time. The evidence as a whole should then be capable of meeting the Full Code Test, that is to provide a realistic prospect of conviction.

If both parts of the Threshold Test are met, the public interest stage of the Full Code Test should be considered, based on the information available at the time.

Prosecutors must keep any decision to charge under the Threshold Test under review. They should regularly assess the evidence gathered to ensure the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as reasonably practicable and, in any event, before any custody time limits expire. The charging decision should be recorded on the [MG3/3A forms](#).

The Threshold Test is not a shortcut to obtaining a charging decision to place offenders before a court quickly. If a suspect is deemed suitable to be released on bail, the investigation should be completed and the Full Code Test applied.

## CPS advice

The police may seek CPS advice throughout the investigating and prosecuting process. This includes assistance in any pre-charge procedures.

Early consultations need not be restricted to cases that pass the [Threshold Test](#), or where there is already an identifiable suspect. They may take place in any case where the early involvement of a prosecutor would assist in gathering relevant evidence. A brief written record of the consultation should be made.

Prior to CPS referral, investigators must ensure that the key evidence required to make decisions in the cases is obtained, and that all reasonable lines of enquiry have been pursued.

## Summoning

A summons secures the appearance of a defendant before a magistrates' court. The police provide information or a prosecutor presents information which alleges a crime before a magistrate, resulting in a summons being issued.

This requires the accused to attend court on a specified day to answer the allegations in the information. Traditionally, a summons may be presented to the accused by post or by handing it to him or her.

## Postal requisitions and postal charging

Postal requisitioning may be used to completely replace the summons process, ending the requirement to lay information before the court to issue a summons. Postal charging replaces the charging process in appropriate cases, that is where the person is released on unconditional police bail awaiting a charging decision.

For further information see the [Criminal Justice Act 2003 s 29](#) and [s 30](#).

## Prosecution

In all aspects of managing offenders, officers should be familiar with the requirement to consult CPS prosecutors to obtain early legal advice and decisions on charges.

## Preparing a file of evidence

Once a court date is agreed and a case is to proceed, the prosecution file for the first hearing must be created proportionately to the requirements of that hearing, while at the same time providing the prosecutor with sufficient information to be able to conclude the case if the plea is guilty. It must also enable the prosecutor to conduct an effective plea and case management hearing to identify the contested issues if a not guilty plea is entered. The only exception to this requirement is where the charging decision has been made applying the [Threshold Test](#).

For further information see:

- [Director of Public Prosecutions \(2020\) The Director's Guidance on Charging – 6th Edition](#)
- [complete list of MG forms](#)

## National file standard

The national file standard (NFS) provides for a staged and proportionate approach to the preparation of case files. It specifies the material required for the first hearing and identifies how the file is to be developed at appropriate stages throughout the life of the case.

The NFS provides the prosecutor, the defence and the court with information proportionate and necessary to progress the case. The standard should continue to be used to develop the file should it be required to proceed to summary trial, committal or sending to the crown court for jury trial.

## Disclosure

Disclosure refers to providing the defence with copies of, or access to, any material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, and which has not previously been disclosed. The police must retain and record any unused material, that is material that may be relevant to the investigation that has been retained but does not form part of the case for the prosecution against the accused.

The disclosure process is a statutory duty under the [Criminal Procedure and Investigations Act 1996 \(CPIA\)](#) and its code of practice. There is also a common law duty on the prosecutor to disclose material before the duty arises under the Act where it is significant, for example a victim's previous convictions or information that might affect a bail decision. The police also have a duty to provide the CPS with information that may mitigate the seriousness of an offence. The investigator

must inform the prosecutor as early as possible of any material that weakens the case against the accused.

The CPIA sets out distinct roles relating to disclosure which impose different duties on the police, including those of the investigator, officer in charge and disclosure officer.

For further information see:

- [CPS Disclosure Manual \(revised 2018\)](#)
- [Third party disclosure – Road traffic collisions](#)
- [Attorney General's Guidance on Disclosure](#)
- [Joint Protocol on Third Party Material](#)

## **Circumstances for disclosure**

Not everything that is revealed to the CPS is disclosed to the defence. Generally, a prosecutor's duty to disclose unused material to the defence is triggered by:

- a not guilty plea in the magistrates' court
- a committal, for example the service of evidence in an indictable only case sent to the crown court or on transfer of a case for trial to the crown court

The duty of disclosure continues for as long as proceedings remain, whether at first instance or on [appeals against conviction and/or sentence](#).

All unused material is revealed to the prosecutor on schedules (see [CPS Disclosure Manual \(revised 2018\)](#) for full details). The Attorney General's Guidelines on Disclosure (2020) set out a number of documents that are presumed to be disclosable – the presumption is rebuttable. In addition, a broad spectrum of other material will also form part of disclosure.

## **Recording disclosure material**

Information must be recorded at the time it is obtained or seized, or as soon as is practicable after that. Material must be recorded in a durable or retrievable form. If it is not practicable to retain the original record, for example because it forms part of a larger record which is to be destroyed, the information must be transferred accurately to a durable and easily retrievable form. Photocopies are acceptable. Details of relevant phone calls concerning a case must also be recorded.



For further information see the [APP on Information management](#).

## Information sharing

Effective policing relies on the police service to communicate and share information with a wide range of partners. These include criminal justice partners and, for example:

- adult and children's social care services
- mental health agencies which provide patients with escorted or unescorted leave into the community
- healthcare bodies
- voluntary sector agencies

For further information see:

- [Making a Difference: Reducing Bureaucracy and Red Tape in the Criminal Justice System, s 4.4](#)
- [the APP on Information sharing agreements](#)

## Performance monitoring

Joint performance standards for the management of the charging process enable the police and CPS to monitor and actively manage the quality and volume of cases that are referred for prosecution. The Association of Chief Police Officers (ACPO) and the CPS have developed the joint performance standards, which outline charging standards for different crime types.

For further information see [Making a Difference: Reducing Bureaucracy and Red Tape in the Criminal Justice System, s 4.4](#).

## Cross-jurisdictional prosecutions

Cases that are not solely confined to the jurisdiction of England and Wales may require a cross-jurisdictional prosecution. Where a substantial number of the activities constituting a crime take place in England and Wales, the courts of England and Wales have jurisdiction unless it can be argued that the conduct ought to be dealt with by the courts of another country. See [European investigations](#).

# Tags

Case management