

SECTION 1

A GUIDE TO CASE FILE BUILDING

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SECTION 1

A GUIDE TO CASE FILE BUILDING

1.1 INTRODUCTION

- 1.1.1 This first section of the Manual of Guidance gives a guide to the main aspects of preparing a case file. The more specific details of completing the MG forms can be found in Section 3.
- 1.1.2 The police and the CPS share a common goal – the successful prosecution of persons who have committed offences in circumstances where the public interest requires a prosecution. It is the responsibility of the police to investigate offences, and the responsibility of the Crown Prosecution Service (CPS) to prosecute people who are charged as a result of police investigations. The CPS will determine the charge in all but minor or routine offence cases (see Table 2 in Section 1). This has been shown to reduce the number of cases discontinued at court, and to increase the number of early guilty pleas.
- 1.1.3 Where the police consider that there is sufficient evidence to charge a suspect with any offence, not being an indictable only offence, and determine that it is in the public interest instead to administer a caution (not being a conditional caution), or to administer a reprimand or final warning in the case of a youth, the police may issue that caution, reprimand or final warning as appropriate, without further reference to a Crown Prosecutor.
- 1.1.4 All reports and files sent to the CPS for prosecution must be prepared and submitted in accordance with this manual. It sets out common standards for the preparation of case files, their content and format.
- 1.1.5 This manual applies to all cases, whether the defendant is charged or summonsed, except those dealt with under Section 12 of the Magistrates' Courts Act 1980¹ (as amended by the Magistrates' Courts (Procedure) Act 1998).

1.2 THE GOVERNMENT PROTECTED MARKING SCHEME

- 1.2.1 The national forms used to prepare a case file are numbered and have the prefix 'MG'. All MG forms carry a Government Protected Marking Scheme header. The scheme assists the police and CPS in complying with the Data Protection Act 1998 and ensures that all agencies, which share information, handle it according to the same security classification.
- 1.2.2 The scheme categorises material into four classes, namely 'Restricted', 'Confidential', 'Secret' and 'Top Secret'.
- 1.2.3 MG forms carry the protective headings 'Restricted' and/or 'Confidential'.
- 1.2.4 **Restricted information:** material falls into this category if accidental or deliberate compromise of the material would be likely to cause substantial distress to individuals; prejudice the investigation; facilitate the commission of crime; breach undertakings to maintain confidence of information provided by third parties; or breach data protection restrictions. For example, information supplied to police by a witness in confidence (home address details) or police briefing material.
- 1.2.5 **Confidential information:** material falls into this category if it would prejudice individual security or liberty; impede the investigation or facilitate the commission of serious crime. For example, material regarding covert operations/observation points or information supplied by a covert

¹The procedure for allowing defendants to plead guilty by post. It applies to proceedings in an adult magistrates' court for summary offences carrying no more than 3 months' imprisonment. It also applies to summons cases for youths 16-17 years old.

human intelligence source (which does not reveal his/her identity). Material that would reveal the identity of a source/undercover officer would be classed as 'Secret'.

- 1.2.6 It is up to the person completing the form to decide what the correct classification should be and delete the heading which does not apply. For further details see the Joint Operational Instructions for the Disclosure of Unused Material (JOPI) Appendix B.

1.3 UNIQUE REFERENCE NUMBER ("URN")

- 1.3.1 A URN must be allocated to a case file at the earliest opportunity to allow tracking and monitoring of the case where possible. This process should start at the CPS pre-charge advice stage where the URN will be recorded on the **MG3/3A**.

- 1.3.2 When completing a case file the URN must be entered on all MG forms.

- 1.3.3 A URN is divided into 4 discrete elements:

1	2	3	4
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- 1. Force PNC Code (01 - Met) comprising 2 digits
- 2. BCU, Division/Sub Division (AA, BA etc.) comprising 2 letters
- 3. Numeric identifier (02389 etc.) to a maximum of 5 digits
- 4. Year (03, 04 etc.) comprising 2 digits

Example

01	AT	00642	04
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- 1.3.4 Allocating a URN for case files involving multiple offences and/or offenders will need to be closely monitored to avoid duplication. Specific guidance on when and how these case files should be numbered is contained at 4.5 of Section 4. This includes obtaining guidance from the CPS regarding the splitting or merging of case files.

1.4 ARREST SUMMONS NUMBER ("ASN")

- 1.4.1 The ASN is the number agreed between a Police Force and PNC to identify an individual defendant in a case linked to one or more offences. The offences are identified by standard CJS Offence Codes provided through PNLD (the Police National Legal Database) and are allocated a specific sequence number against the ASN.

- 1.4.2 The combination of an ASN, an offence code and its sequence number against the ASN is a Criminal Prosecution Reference (CPR), held by Police Force systems and PNC, and used as the basis for tracking the progress and result of a prosecution, not only within the Police Service but increasingly across the CJS, as systems are joined up through the CJS Exchange. It is therefore important that this information is entered specifically on an **MG4** Charge Sheet, **MG1** and **MGFSP** together with the matching URN.

- 1.4.3 As well as helping to track prosecutions, the provision of this information will enable improved resulting quality and timeliness, and support the collection of management information.

1.5 GUIDELINES FOR FILE BUILDING

1.5.1 An investigator must gather together the documents acquired during the investigation of an offence from the outset. The case file is built from those documents, whether they contain evidence or not. It is not necessary to have someone in custody before starting to build the case file. All reasonable lines of enquiry must be followed, not only those that appear to point to a certain person being responsible.

1.5.2 THE CHARGING DECISION

1.5.3 Under the Criminal Justice Act 2003, responsibility for determining the charge, in all but minor and straightforward cases, passes from the police to the CPS. As a result of this legislation, PACE has been amended to allow the DPP to issue guidance to custody officers on how they should deal with changes in the charging procedure (Appendix A). For guidance on which offences must be referred to the CPS for a charging decision – see Table 2 of Section 1.

1.5.4 Where the investigator considers there is sufficient evidence to charge, the case should be referred to the CPS Duty Prosecutor or custody officer, as appropriate, for a charging decision. Where the Duty Prosecutor cannot make a decision immediately, the custody officer may bail the suspect and can impose conditions on bail.

1.5.5 If the custody officer is making the charging decision and considers there is insufficient evidence to charge, s/he may bail the suspect pending further enquiries.

1.5.6 Conditions cannot be imposed on bail pre-charge where the Duty Prosecutor or custody officer considers there is insufficient evidence to charge at that time.

1.5.7 The Duty Prosecutor can also give advice on the strengths/weaknesses of evidence in the case and whether it is in the public interest to proceed. By identifying at the earliest opportunity cases that are not likely to proceed, time can be saved, as there will be no requirement for a file to be prepared for court. Actions may be identified that may turn evidentially weak cases into viable investigations or prosecutions.

1.5.8 An out-of-hours CPS advice service will be available through the 'CPS Direct' telephone service []* once your Area is on the statutory scheme.

1.5.9 Forms **MG3** (Report to Crown Prosecutor for a Charging Decision), and **MG3A** (Further Report to Crown Prosecutor for a Charging Decision), are used to obtain advice or a charging decision from the Duty Prosecutor. These forms **MUST NOT** be given to the defence or any third party under any circumstances as they contain information on the strengths and weaknesses of the case. The forms are also subject to legal privilege between police and CPS only.

1.5.10 Other forms and documents are required in addition to the **MG3** to produce a pre-charge report for a charging decision. The forms required differ depending on which type of report is being prepared. There is no requirement for the forms to be typed for pre-charge reports, but they must be legible.

1.5.11 Once a charging decision has been made, the Expedited or Evidential Reports form the basis of the case file for the first hearing in court – see Figure 1 in Section 1.

1.5.12 The first hearing of a case will usually take place in a magistrates' court.

1.5.13 There are two types of initial hearing – the Early First Hearing (EFH) and the Early Administrative Hearing (EAH).

1.5.14 An EFH is held for cases where a guilty plea is likely from the defendant and the case can be dealt with at the first hearing.

1.5.15 The EAH is held where the defendant is likely to contest the case and plead not guilty, or where

*Complete locally once known.

an 'indictable only' offence has been charged (regardless of the plea). An indictable only offence is one which, if committed by an adult, must be "sent"² to the Crown Court. The EAH is for the CPS and defence lawyer to review the case and plan for the trial.

1.6 PRE-CHARGE EXPEDITED AND EVIDENTIAL REPORTS

1.6.1 There are two types of pre-charge report:

- (i) Pre-charge Expedited Report (for a likely guilty plea in magistrates' court)
- (ii) Pre-charge Evidential Report (for a likely not guilty plea and/or the case will be heard in the Crown Court)

A guilty plea is more likely if the suspect has clearly admitted the offence during interview, or there is compelling evidence such as CCTV evidence where the offender is clearly identified.

1.6.2 The content of the report must be sufficient to allow the CPS to review the case against the evidential and public interest tests in the Code for Crown Prosecutors:

- The Code requires that there must be enough evidence to provide a realistic prospect of conviction against each defendant on each charge (evidence will come from the statements of witnesses, admissions made by the accused when interviewed, and exhibits), and
- It must be in the public interest before the case can proceed.

1.6.3 If there is any background information, which is considered useful for the Prosecutor to know, include it in the file on form **MG6** – Case File Information, e.g. particularly in Domestic Violence cases.

1.6.4 PRE-CHARGE EXPEDITED REPORT CONTENTS (Straightforward and guilty plea cases)

The following documents must be included:

- **MG3** – Report to Crown Prosecutor
- **MG11(s)** – Witness statement or Index notes³ (if offence is witnessed by more than one officer and up to four, use the statement of one officer and summarise the others)
- **MG15** – Record of interview, can be a verbal summary or Short Descriptive Note of admissions (SDN can be on officer's statement)
- Phoenix print of suspect(s) previous convictions/cautions/reprimands/final warnings.

If there is any other information that may be relevant, include it on form **MG6** – Case File Information.

1.6.5 PRE-CHARGE EVIDENTIAL REPORT CONTENTS (Contested/Crown Court cases)

The following documents must be included:

- **MG3** – Report to Crown Prosecutor – suggest charges
- **MG5** – Case summary (unless the statements cover all elements of the case)
- **MG6** – Case file information
- **MG11**- Key witness statement(s), or Index notes (if offence is witnessed by police use the statement of one officer and summarise the others)
- **MG12** – Exhibit list
- **MG15** – Interview record – Short Descriptive Note (SDN)/Record of Taped Interview (ROTI)/ Record of Visually Recorded Interview (ROVI). SDN can be on **MG5**, **MG11** or **MG15**
- Crime Report and Incident Log

² Under Sec 51 Crime and Disorder Act 1998, a case involving indictable only offences will be 'sent' i.e. forwarded to the Crown Court for trial. The initial hearing at the magistrates' court is for case management purposes.

³ If evidence is visually recorded (in the case of vulnerable witnesses).

- Unused material likely to undermine the case. Include pre-cons of key prosecution witnesses (Disclosure schedules are not required at this stage)
 - Copies of key documentary exhibits
 - Phoenix print of suspect(s) pre-cons/cautions/reprimands/final warnings.
- 1.6.6 If there is any other information that may be relevant, include it on form **MG6** – Case File Information.
- 1.6.7 If the Duty Prosecutor or custody officer cannot make a charging decision, form **MG3** will be completed specifying further action to progress the case.
- 1.6.8 Once further action has been carried out, the report should be re-submitted with form **MG3A** (Further Report to Crown Prosecutor) completed and attached for a charging decision.

1.7 CONDITIONAL BAIL – MG4A

1.7.1 Decisions on bail are made by the custody officer. Decisions to charge need to be made in accordance with the DPP's guidance. Where there is sufficient evidence to charge, the custody officer will need to decide whether to:

- release without charge on bail for the Duty Prosecutor to make a charging decision
- release without charge on bail (but not for the purpose of a charging decision, e.g. to consider a restorative justice disposal)
- charge
- release without charge.

1.7.2 Pre-charge bail conditions can only be applied where a suspect is bailed pending a charging decision by the CPS.

1.7.3 If the investigator believes that it is necessary to impose conditions for the reasons below, he/she should make representations to the custody officer. Conditions can only be imposed if there are substantial grounds for believing that person may:

- **Fail to surrender** – previous conviction for absconding, defendant has no fixed abode, the defendant has indicated he/she will not appear;
- **Commit offences on bail (current and previous)** – offence committed on bail (details of charges, bail dates and conditions should be given), the 'lifestyle' of the defendant is such that it is likely offending will continue, e.g. a drug habit;
- **Obstruct the course of justice and/or interfere with witnesses** – the defendant has threatened to interfere with witnesses (or has a history of such behaviour) or will hinder the recovery of property, and/or;
- **For the person's safety** – there is a real threat of revenge from the victim's family, or friends etc., or the person is suicidal, a drug addict or suffering from mental disorder;
- **If a child or young person⁴, for that person's own welfare or own interests** – the defendant has threatened self-harm, or is being coerced by older youths/adults to commit crime or does not have a stable family background.

1.7.4 Form **MG4A** is used to record bail conditions.

1.7.5 BREACH OF PRE-CHARGE CONDITIONAL BAIL

1.7.6 Where a defendant has been arrested for an actual breach of pre-charge bail conditions, the custody officer has the option of releasing the defendant on bail, with or without conditions, or by referring to a Duty Prosecutor for a charging decision to enable an application for a remand in custody to be made.

1.7.7 Custody officers need to be alert to the fact that a decision not to prosecute may already have been taken and notified to the police. Therefore, all cases in which a remand in custody is

⁴ Under 17 years.

considered should be brought to the attention of the Duty Prosecutor who will decide whether the detained person may be charged with the original offence.

1.7.8 Where a decision is taken to charge the offender with the original offence and seek a remand in custody, the original pre-charge Expedited, or Evidential Report should be made available to the Prosecutor at court. If this is not possible, as much information as possible should appear on the **MG8**.

1.7.9 The following forms will be required in numerical order:

- **MG7** – Application for Remand in Custody
- **MG8** – Breach of bail conditions form
- **MG11** – Copies of any witness statements and other evidence relating to the breach
- Copies of any record of interview/SDN relating to the breach – **MG11/MG15**
- Phoenix print of previous cautions/reprimands/final warnings.

1.7.10 Breaching bail conditions pre-charge is not an offence. Failure to surrender to bail gives rise to a new offence for which the custody officer will make a charging decision. In failing to surrender cases where this is the only offence charged, the type of file prepared will depend on whether a 'guilty' or 'not guilty' plea is likely. See Table 1 in Section 1.

1.7.11 'BREACH OF BAIL' FILE CONTENTS – POST CHARGE

1.7.12 The following forms will be required by the CPS for a breach hearing where a remand in custody is sought:

- **MG3** – Report to Crown Prosecutor for charging decision
- **MG4** – Charge Sheet (if charged)
- **MG7** – Remand application
- **MG8** – Breach of bail conditions
- **MG11** – Copies of any witness statements (originals if possible) and other evidence relating to the breach
- Copies of any record of interview/SDN relating to the breach – **MG5/MG11/MG15** (as appropriate)
- Phoenix print of previous convictions/cautions/reprimands/final warnings.

1.7.13 To support the application for a remand in custody, include as much information on the **MG7** as there is which shows the extent to which the defendant has breached his/her bail conditions. For example, if a defendant has breached a curfew, include details of the number of times police called at the address and found he/she was not in.

1.7.14 If an original file is available, this should accompany the above documents.

1.7.15 The defendant must be put before the court within 24 hours of arrest.

1.8 POST-CHARGE EXPEDITED FILE (straightforward and guilty plea cases)

1.8.1 The Expedited Report will become the 'Expedited File' for the Early First Hearing.

1.8.2 An Expedited File will also be submitted for those cases that are initiated by summons.

1.8.3 All witness statements, whether 'key' or not, should be forwarded to the CPS with the file in the following order:

- Victim/main witness
- Non-police witness
- Expert witness

- Other police officer(s) in the chronological order they witnessed events
- Officer in the case (OIC).

1.8.4 CONTENTS

The following documents must be included in numerical order:

- **MG1** – File front sheet
- **MG4** – Charge Sheet
- **MG5** – Summary (unless the statements cover all elements of the case)
- **MG6** – Case File Information (if there is information for the Investigator to record)
- **MG10** – Witness non-availability (PYO only)
- **MG11** Key witness statement(s) or Index (if visually recorded)
- SDN – may be written on **MG15**, **MG5** or **MG11** of officer
- Phoenix print of suspect pre-cons/cautions/reprimands/final warnings.

Where they are applicable, include the following:

- **MG2** – Initial witness assessment
- **MG3** – Report to Crown Prosecutor
- **MG3A** – Further Report to Crown Prosecutor
- **MG4A** – Conditional bail form
- **MG4B** – Request to vary police conditional bail
- **MG4C** – Security/Surety
- **MG7** – Remand application
- **MG8** – Breach of bail conditions
- **MG11** – Other witness statements already taken
- **MG13** – Application for order on conviction
- **MG18** – Offences taken into consideration (TIC)
- **MG19** – Compensation form (plus supporting documents)
- Copy of documentary exhibits/photos
- Police racist/Domestic Violence Incident Reports, including Crime Reports.

1.8.5 Further upgrading will not be required if the case is disposed of at the first court appearance. If a defendant decides to enter a 'not-guilty' plea at court, or elects to have the case heard at Crown Court, prepare a Full File.

1.9 POST-CHARGE EVIDENTIAL FILE (contested 'not guilty' and Crown Court cases)

1.9.1 All statements that have been taken from witnesses, whether 'key' or not, should be forwarded to the CPS with the file.

1.9.2 The Evidential Report will be upgraded to the Evidential File for the EAH. A Full File will be prepared where a 'not guilty' plea is entered at the first hearing and the case is proceeding to trial, or where a case is to proceed to the Crown Court.

1.9.3 Key witness statements should appear on the file in the following order:

- Victim/main witness
- Non-police witness
- Expert witness
- Other police officer(s) in the chronological order they witnessed events
- Officer in the case (OIC).

1.9.4 CONTENTS

The following documents must be included in numerical order:

- **MG1** – File front sheet
- **MG3** – Report to Crown Prosecutor
- **MG4** – Charge sheet
- **MG5** – Case file summary (unless **MG11(s)** cover all elements of case)
- **MG6** – Case file information (if there is information for the investigator to record)
- **MG10** – Witness non-availability
- **MG11** – Key witness statement(s) or Index (if visually recorded)
- **MG12** – Exhibit list
- **MG15** – Interview record – Short Descriptive Note/Record of Taped Interview/Record of Visually Recorded Interview (SDN can be on **MG5**, officer's **MG11** or **MG15**)
- Copies of documentary exhibits/photos
- Phoenix print of previous convictions (suspect pre-cons, cautions, reprimands, final warnings).

Where they are applicable, include the following:

- **MG2** – Initial witness assessment
- **MG3A** – Further report to Crown Prosecutor
- **MG4A/B/C** – Bail/surety/security forms
- **MG7** – Remand application
- **MG8** – Breach of bail conditions
- **MG11** – Other witness statements already taken
- **MG13** – Application for order on conviction
- **MG18** – Offences taken into consideration (TIC)
- **MG19** – Compensation form plus supporting documents
- Police racist/Domestic Violence Incident Reports, including Crime Reports.

1.9.5 Further upgrading will be necessary where it is clear that the case will be heard in the Crown Court, or a not-guilty plea is likely. A Full File should be prepared and submitted as soon as possible.

1.10 UPGRADE TO A FULL FILE

1.10.1 Where there is a change of plea from 'guilty' to 'not guilty' at an EFH or after the EAH, the file must be upgraded to a Full File for trial and must be typed.

1.10.2 The additional forms that must be added to the Evidential File are as follows:

- **MG6B** – Police officer's disciplinary record (if applicable)
- **MG6C** – Schedule of Non-sensitive unused material
- **MG6D** – Schedule of Sensitive material
- **MG6E** – Disclosure Officer's Report
- **MG9** – Witness list
- **MG10** – Updated availability
- **MG11** – All other statements
- Custody record.

Where applicable, include the following:

- **MG2** – Initial witness assessment
- Phoenix prints (witness pre-cons, cautions, reprimands, final warnings).

1.11 REMAND IN CUSTODY and MG7

1.11.1 After charge, a custody officer has to make a decision on whether to grant bail, or whether there are reasons why bail should not be granted. If there are reasons why bail should not be granted, then the investigator should be seeking a remand in custody at the first court hearing.

1.11.2 The investigator is responsible for ensuring that the custody officer has all the relevant information in order to make a decision on whether grounds exist to refuse bail.

- 1.11.3 If the detainee is kept in police custody after charge to be brought before the court, the court can either remand in custody following the first hearing or release on bail. If police are seeking a remand in custody, the investigator must complete form **MG7**. Details should also be included of any conditions that would be appropriate for conditional bail if the court does not remand the defendant in custody.
- 1.11.4 If a remand to secure local authority accommodation for a child or young person under 17 years is sought, see 1.11.11 below.
- 1.11.5 The **MG7** must be as detailed as possible. It must contain details of any substantial grounds that support the request for a remand in custody or the imposition of bail conditions and also how much time is required to prepare the case file. Failure to provide sufficient information may lead to a refusal to impose conditions, remand in custody, or lead to adjournments for shorter periods than are required. In setting out information in the appropriate detail it may be necessary to continue on Form **MG(c)**.
- 1.11.6 Confidential information must not be included on the **MG7**. Use the **MG6** for this purpose. If any information undermines the prosecution case, or assists the defence in their bail application, forms **MG6C** and **E** must be prepared. See notes 34 and 35 (R v DPP, ex parte LEE) on **MG6** in Section 3.

1.11.7 **GROUND TO SEEK A REMAND IN CUSTODY**

Where police are seeking to oppose the grant of bail from the court, there must be substantial grounds to believe the objection is relevant, unless the offence charged is one specified as being one where the presumption is against bail⁵. Otherwise, there must be sufficient evidence to support the objection on the grounds that the defendant will:

- **Fail to surrender** – previous conviction for absconding, defendant has no fixed abode, the defendant has indicated he/she will not appear;
- **Commit offences on bail (current and previous)** – present offence committed on bail (details of charges, bail dates and conditions should be given), the ‘lifestyle’ of the defendant is such that it is likely offending will continue, e.g. a drug habit;
- **Obstruct the course of justice and/or interfere with witnesses** – the defendant has threatened to interfere with witnesses (or has a history of such behaviour) or will hinder the recovery of property, and/or;
- **For the person’s safety** – there is a real threat of revenge from the victim’s family, or friends etc., or the person is suicidal, a drug addict or suffering from mental disorder;
- **If a child or young person⁶, for that person’s own welfare or own interests** – the defendant has threatened self-harm, or is being coerced by older youths/adults to commit crime or does not have a stable family background.

1.11.8 **REMAND ON CONDITIONAL BAIL**

1.11.9 In order to be prepared for those occasions when the court may not remand in custody but grants bail, consider including bail conditions on the **MG7** that the **CPS** can ask the court to impose. Conditions can only be imposed on bail by the court if they are necessary to prevent the person from:

- Failing to surrender to custody
- Committing further offences whilst on bail
- Interfering with witnesses or obstructing the course of justice.

1.11.10 The type of bail conditions that can be imposed post-charge can also be considered when asking the court for bail conditions, namely a requirement:

⁵ Criminal Justice & Public Order Act 1994, as amended, states that where a person is charged with murder, attempted murder, manslaughter, rape or attempted rape, if they have already been convicted of any of these, they will not be granted bail.

⁶ Under 17 years.

- To live and sleep at a specified address
- To notify police of any change of address
- To report to a police station (daily, weekly, or other period)
- Not to enter a certain area or building (it is sensible to state the road boundaries for the area and include a map where possible)
- Not to contact (directly or indirectly) the victim and/or any prosecution witness
- To surrender his/her passport
- To observe a curfew between set times (consider the 'doorstep condition' where the defendant must appear at the door when required by police)
- A condition of residence at a bail hostel
- Electronic monitoring of a child or young person.

The last two conditions can only be imposed by a court.

1.11.11 REMANDS TO SECURE LOCAL AUTHORITY ACCOMMODATION FOR YOUNG OFFENDERS

1.11.12 If a remand in custody is sought from the court for a child or young person, this will only be to local authority accommodation unless certain criteria regarding the seriousness of their offending apply:

- The young offender is charged with or has been convicted of a sexual or violent⁷ offence or an offence punishable (for an adult) with 14 years' imprisonment; or
- The defendant is charged with or convicted of one or more imprisonable offences, which together with any other imprisonable offences of which s/he has been convicted amount (or would if s/he were convicted of the offences charged) to a recent history of repeatedly committing imprisonable offences while remanded on bail or to local authority accommodation; and, in either case, the court is also of the opinion that only remanding them to local authority accommodation with a security requirement would be adequate:
 - to protect the public from serious harm from the offender, or
 - to prevent the commission of imprisonable offences by the offender.

In order to impose a security requirement on a young offender's remand there must be a risk of the young offender either failing to surrender, or committing offences on bail, and in every case the court must be satisfied that it is in the young offender's own welfare or interests.

1.12 THE 'KEY' WITNESS

1.12.1 A 'key witness' statement is defined as:

'... a statement which is required to prove an element of the offence(s) charged.'

It is therefore the statement that provides the points to prove the offence against the defendant. It is not however, necessary that this should all be in one statement.

1.12.2 THE POLICE OFFICER AS A 'KEY' WITNESS

Where a police officer's evidence is confined only to arrest, interview and/or charge but provides no evidence of any elements of the offence charged, this is not a key witness statement unless it is a breach of bail. Where the officer can give evidence of an element of an offence, e.g. as an eyewitness or victim, the statement, which is 'key', should include all of the officer's involvement in the case, i.e. arrest, interview. Corroborative statements are those that simply support the evidence of another officer/victim, and are not 'key' statements.

1.12.3 'KEY' WITNESS(ES) IN REMAND CASES

The Expedited File must include previous convictions/cautions of prosecution witnesses who

⁷ Violent offence – an offence which leads, is intended or is likely to lead to a person's death, or to physical injury, including arson. It does not include offences which lead to psychological harm.

have provided 'key' witness statements in a case where a file is submitted for a remand in custody or where the person has been bailed initially and a remand in custody is now sought. If a 'key' witness statement has been made by a police officer, form **MG6B** should be included if applicable. If none of the prosecution witnesses has previous convictions/cautions this should be recorded on the case file.

1.13 INTERVIEW NOTES – SHORT DESCRIPTIVE NOTE (SDN)

If an audio or visually recorded interview has been conducted, an SDN should be prepared for the Evidential or Expedited Report.

1.13.1 WHAT IS AN SDN?

An SDN is a brief account of what was said by the defendant in an interview. Direct speech should not be included and it is not necessary to note the tape counter times or use the 'person speaking' column if form **MG15** is used.

The SDN is not an exhibit, therefore the Exhibit box on the **MG15** does not require completion.

1.13.2 FORMAT

The SDN can be recorded on one of three forms, depending on the circumstances:

- **MG5** – where a case summary is necessary on the file, the SDN may be included on this form. The start and end times of the interview must be included, or
- **MG11** – where a police officer has written a 'key' witness statement, or
- **MG15** – in all other cases.

1.13.3 WHAT MUST AN SDN CONTAIN?

- Admissions, which prove 'the elements of the offence'. It is not sufficient to say 'the defendant fully admitted the offence'
- The defendant's version where there is a dispute about events and any explanation for committing the offence
- Any mitigating circumstances given
- Anything said by the defendant in relation to aggravating factors – pre-meditation, admission of prior knowledge of vulnerability of the victim, lack of remorse shown.

1.14 INTERVIEW NOTES – RECORD OF TAPED INTERVIEW (ROTI) OR VISUALLY RECORDED INTERVIEW (ROVI)

1.14.1 Where recorded interviews apply:

- ROTIs or ROVIs will be prepared in Evidential File cases
- Form **MG15** must be used
- ROTIs or ROVIs will be produced as an exhibit by the person transcribing the tape
- When direct speech is referred to in the ROTI, the identity of the speaker and the tape counter time must be noted in the margin
- If handwritten, must be legible.

1.14.2 CONTENT

This can be divided into three parts:

1. Information required in the administration sections of the **MG15** form, e.g. the time, date and duration of the interview. This section must be fully completed.
2. Specific information to be included in the main body of the text includes (where relevant):

- That a caution was given (this need not be written out in full as the wording is prescribed)
 - That the suspect was reminded of their entitlement to free legal advice
 - Any significant statement or silence by the suspect
 - Use of any special warnings and responses given
 - Details of any offences to be taken into consideration (TIC).
3. Information which covers the elements of the offence and mitigating factors:
- All admissions made to the offence(s) under investigation and questions and answers leading to the admission – write these out in the words used by the suspect
 - Statements or questions about possible defences, alibis, assertions that others were involved, ambiguous/qualified admissions, any questions asked by the suspect and answers dealing with the issues of bail and/or alternative pleas/charges
 - Responses regarding aggravating factors and/or mitigating circumstances can be summarised in the third person
 - Where reported, i.e. third party speech is used, the time of salient points, such as mitigating circumstances or aggravating features, must be noted in the margin.

1.15 THE DISCLOSURE PROCESS

1.15.1 For a more comprehensive CPS/Police guide to unused material see the Joint Operational Instructions for the Disclosure of Unused Material (the 'JOPI'), Appendix B. Disclosure is the process of informing the defence of any unused material, which has been recorded or retained by the police and not disclosed with the evidence. Not everything that is revealed to the CPS will be disclosed to the defence. Generally, a Prosecutor's duty to disclose unused material⁸ to the defence is triggered by:

- A 'not guilty' plea in the magistrates' court, or
- A committal, indictable only case, or on transfer of a case for trial to the Crown Court.

There are two stages, primary and secondary disclosure. The disclosure process is a statutory duty under the Criminal Procedure and Investigations Act 1996 including Codes of Practice (CPIA). There is also a Common Law duty on the prosecutor to disclose material before the duty arises under the Act, where it is significant, e.g. a victim's previous convictions or information that might affect a bail decision. There is also a duty on the police to provide the CPS with information that may mitigate the seriousness of an offence.

Primary disclosure – the CPS provides the defence with any material which might undermine the prosecution case (unless it is not in the public interest to do so and a court order not to disclose is sought).

Secondary disclosure – this is made after the accused has provided the prosecutor with a defence statement. It is disclosure of material that might reasonably be expected to assist the accused's defence as set out in the defence statement.

All of the unused material is revealed to the prosecutor by way of schedules on forms **MG6B, C, D, and E** (see below). There is an agreement between the CPS and ACPO that crime reports and incident logs will be revealed to the CPS as a matter of routine.

1.15.2 Police responsibilities – when and how must unused material be recorded?

- Information must be recorded at the time it is obtained/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 (e.g. 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.

⁸ Unused Material - Relevant material obtained or generated during the course of a criminal investigation but which is not being used as evidence must be *retained* and *recorded* by police.

Photocopies are acceptable. Details of relevant phone calls concerning a case must also be recorded.

1.15.3 DISCLOSURE 'ROLES'

The CPIA places duties on police as there are three distinct roles:

1. **The Investigator** – has a duty to retain material gathered or generated, and the recording of that material and other information
2. **The Officer in Charge of an investigation** – has a duty to gather together all recorded and retained records and other material
3. **The Disclosure Officer** – the person responsible for:
 - Examining the material retained during the investigation,
 - Revealing material to the prosecutor on **MG6C**, **MG6D** & **MG6E** schedules, and
 - Certifying where necessary that action has been taken in accordance with the requirements of the CPIA Code of Practice.

These roles involve different functions, although they may be performed by three different people, or by a single person (who may be a police officer or a member of police staff).

1.15.4 DISCLOSURE FORMS

There are four disclosure forms:

1. **MG6B** – This gives details of the discipline record (if any) of any police officer/member of police staff that is involved in the case. It also includes Penalty Notices for offences other than minor traffic ones. If no officer has a disciplinary consideration (or conviction) there is no need to put the form on the file. An entry must be made on the **MG6** form bringing this to the attention of the CPS.
2. **MG6C** – The Schedule of Non-sensitive Material will be disclosed to the defence. Any material described on the **MG6C** which passes the disclosure test may also be disclosed to the defence. Material that must be listed on the schedule covers almost all material⁹ recorded, retained or generated during the course of an investigation.

If an item of unused material contains both sensitive and non-sensitive material, it must be listed on the **MG6C** as being an 'edited version' or 'edited' e.g. a pocket notebook entry containing both the personal details of a witness and the circumstances of the arrest. Block out the sensitive part (witness details) on a copy of the original with a dark marker pen (never white correcting fluid). The original must never be marked. Do not list the unedited version on the **MG6D**.

3. **MG6D** – The Schedule of Sensitive Material will not be disclosed to the defence because it is not in the public interest to do so. You must state the reason why the item should not be disclosed to the defence. For example, details that identify an observation post must not be disclosed to the defence.

If there is no sensitive material in a case, endorse form **MG6D** to that effect and submit it with the **MG6C** and **MG6E**.

Where you think you have material that is very sensitive, such as information from a covert human intelligence source (CHIS), make contact with the Duty Prosecutor who will refer you, as necessary, to the appropriate person.

⁹ The exception – material seized during the course of a major investigation, which has not been examined due to its lack of immediate and apparent relevance to the investigation. It falls outside the CPIA and is not 'unused material' but its existence must be recorded on form MG11 with the appropriate caption.

4. **MG6E** – Disclosure Officer’s Report. This should contain any information which might undermine the prosecution case, or which is required to be supplied under Paragraph 7.3 of the CPIA 1996¹⁰. If any material does undermine the case, it must be declared on this form. This is an obligation placed upon the investigator by the Act.

On the **MG6E**, the following information must be brought to the attention of the CPS¹¹:

- Material which contains a first description of an offender (Para 7.3 CPIA Code of Practice), or
- Material which might undermine the prosecution case.

The disclosure officer must record on the form the following:

- Whether the undermining or descriptive information was originally listed on the **MG6C** or **MG6D**
- The original item number from the **MG6C** or **D**
- Briefly, the reason for it being recorded on the **MG6E**, e.g. ‘*Contains first description of suspect*’, or ‘*May cast doubt on reliability of witness*’
- At the top of the form delete the reason for listing the material that does not apply
- Line through the statements in the certification at the bottom of the form that do not apply, and sign and date to indicate that the Code has been complied with.

This **MG6E** also has a certificate that must be signed by the disclosure officer declaring that they have examined and revealed all the material in accordance with the CPIA Code of Practice.

1.15.5 WHEN TO INCLUDE A SCHEDULE?

Whenever the police submit a Full File of evidence to the CPS it must include the schedules that list any unused material. The disclosure officer is responsible for preparing the schedules, which must contain a description of each item. The description must be sufficiently detailed and contain sufficient information to enable the prosecutor to make an informed decision as to whether or not the item meets the tests for disclosure.

1.15.6 DESCRIBING THE MATERIAL

Both the **MG6C** and **MG6D** schedules must describe the material in a detailed and accurate way so that:

- It is obvious to anyone reading the form what the item is,
- A decision can be taken as to whether that item should be disclosed to the defence or not.

¹⁰ Sec 7.3 relates to any record of the first description of a suspect given to the police by a potential witness, information provided by an accused person which indicates an explanation for the offence with which he has been charged, any material casting doubt on the reliability of a confession, or any material casting doubt on the reliability of a witness.

¹¹ CPS is obliged to disclose this material to the defence under ‘primary disclosure’.

Table 1
Content of Expedited and Evidential Charging Decision Reports and Case Files

STRAIGHTFORWARD AND 'GUILTY PLEA' CASES

CONTESTED OR CROWN COURT CASES

Pre-charge Expedited Report For charging decision – to Duty Prosecutor	Post-charge Expedited File For EFH court hearing
<p>MG 3 – Report to Crown Prosecutor (for offences where CPS decide charge)</p> <p>MG 11(s)* – Key witness statement(s) or Index (if visually recorded) (if witnessed by police, use MG11 of one officer)</p> <p>MG 15 – SDN or verbal summary of admissions. (SDN can be written on officer's MG11)</p> <p>Phoenix print (suspect pre-cons, cautions, etc.)</p> <p>Once a charging decision has been made, the 'Pre-charge Expedited Report' becomes the 'Post-charge Expedited File' for court.</p> <p>Further Upgrading? Not required if the case is disposed of at the first court appearance. If a 'not-guilty' plea is entered or the defendant elects Crown Court, prepare a Full File.</p> <p>*Include details of pre-cons for witnesses who have provided 'Key' MG11s if case involves a remand in custody</p>	<p>MG 1 – File front sheet</p> <p>MG 4 – Charge sheet</p> <p>MG 5 – Case file summary (unless the statements cover all elements of the case)</p> <p>MG 6 – Case file information (if there is information for the investigator to record)</p> <p>MG10 – Witness non-availability (PYO only)</p> <p>MG 11(s)* Key witness statement(s) or Index (if visually recorded)</p> <p>SDN – may be written on MG15, MG5 or MG11 of officer</p> <p>Phoenix print (suspect pre-cons, cautions, etc.)</p> <p>Where applicable, include the following:</p> <p>MG 2 – Initial witness assessment</p> <p>MG 3 – Report to Crown Prosecutor (for offences where CPS decide charge)</p> <p>MG 3A – Further report to Crown Prosecutor</p> <p>MG 4A – Conditional bail form</p> <p>MG 4B – Request to vary police conditional bail</p> <p>MG 4C – Surety/Security</p> <p>MG 7 – Remand application</p> <p>MG 8 – Breach of bail conditions</p> <p>MG 11 – Other witness statements already taken</p> <p>MG 13 – Application for order on conviction</p> <p>MG 18 – Offences taken into consideration (TIC)</p> <p>MG 19 – Compensation form (plus supporting documents)</p> <p>Copy of documentary exhibits/photos</p> <p>Police racist incident form/crime report (in racist incident cases)</p>

Pre-charge Evidential Report For charging decision – to custody officer or Duty Prosecutor	Post-charge Evidential File For EAH court hearing	Upgrade to Full File For Crown Court or contested cases
<p>MG 3 – Report to Crown Prosecutor (suggest charges)</p> <p>MG 5 – Case summary (unless the statements cover all elements of the case)</p> <p>MG 6 – Case file information</p> <p>MG 11(s) – Key witness statement(s) or Index (if visually recorded). If witnessed by police, use MG11 of one officer, summarise evidence of others</p> <p>MG12 – Exhibits list</p> <p>MG15 – Interview record: SDN / ROTI / ROVI (SDN can be on MG5, officer's MG11 or MG15)</p> <p>Crime report and incident log</p> <p>Any unused material which might undermine the case (disclosure schedules are not required at this stage)</p> <p>Copies of Key documentary exhibits</p> <p>Phoenix print (suspect pre-cons, cautions, etc.)</p> <p>Once a charging decision has been made, the 'Pre-charge Evidential Report' becomes the 'Post-charge Evidential File' for court.</p> <p>Further Upgrading? Where it is clear that the case will be heard in the Crown Court, or a not-guilty plea is likely, a Full File should be prepared and submitted with the MG3.</p>	<p>MG 1 – File front sheet</p> <p>MG 3 – Report to Crown Prosecutor</p> <p>MG 4 – Charge sheet</p> <p>MG 5 – Case file summary (unless MG11(s) cover all elements of case)</p> <p>MG 6 – Case file information (if there is information for the investigator to record)</p> <p>MG 10 – Witness non-availability</p> <p>MG 11(s) – Key witness statement(s) or Index (if visually recorded)</p> <p>MG 12 – Exhibits list</p> <p>Copies of Key exhibits/photos</p> <p>MG 15 – Interview record – SDN / ROTI / ROVI (SDN can be on MG5, officer's MG11 or MG15)</p> <p>Phoenix print (suspect pre-cons, cautions, etc.)</p> <p>Where they are applicable, include the following:</p> <p>MG 2 – Initial witness assessment</p> <p>MG 3A – Further report to Crown Prosecutor</p> <p>MG 4A/B/C – Bail/surety/security</p> <p>MG 7 – Remand application</p> <p>MG 11 – Other witness statements already taken</p> <p>MG 13 – Application for order on conviction</p> <p>MG 18 – Offences TIC</p> <p>MG 19 – Compensation form plus supporting documents</p> <p>Police racist incident form/crime report (in racist incident cases)</p>	<p>MG 6C – Schedule of Non-sensitive unused material</p> <p>MG 6D – Schedule of sensitive material</p> <p>MG 6E – Disclosure officer's report</p> <p>MG 9 – Witness list</p> <p>MG 11 – All other statements</p> <p>Custody record</p> <p>Where applicable, include the following:</p> <p>MG 2 – Initial witness assessment</p> <p>MG 6B – police officer's disciplinary record</p> <p>Phoenix print (witness pre-cons, cautions, etc. see the JOP)</p>

**GUIDANCE TO POLICE OFFICERS AND CROWN PROSECUTORS
IN RESPECT OF MAKING CHARGING DECISION**

DETAILS OF CHARGING DECISION MAKING

A Police may decide on charge:	B Crown Prosecutors must decide on charge:
<p>All cases suitable for early disposal as a guilty plea in the magistrates court, BUT NOT:</p> <ul style="list-style-type: none"> • Section 20 OAP 1861 Wounding or GBH • Section 47 OAP 1861 Assault • Violent Disorder – Section 2 – Public Order Act 1986 • Affray – Section 3 – Public Order Act 1986 • Offences of Deception and Handling Stolen Goods – Theft Act 1968 & 1978 <p>The police may also charge:</p> <ul style="list-style-type: none"> • Offences contrary to the Bail Act 1976 • Offences contrary to sections 4 or 5 of the Public Order Act 1986 • Town Police Clauses Act 1847 • Metropolitan Police Act 1839 • Vagrancy Act 1824 • Street Offences Act 1959 • Drunkenness in a Public Place – Section 91 of the Criminal Justice Act 1967 • Section 12 of the Licensing Act 1872 • Any offence under any bye-law or any summary offence punishable on conviction with a term of imprisonment of 3 months or less, [<i>unless separate arrangements are published by the Director of Public Prosecutions for dealing with these offences (i.e. Pilot Criminal Justice Centres)</i>] <p>All motoring cases EXCEPT:</p> <ul style="list-style-type: none"> • Cases involving a death. • Allegations of dangerous driving. • Offences of being in charge of a motor vehicle whilst unfit where the statutory defence may be raised. • Allegations of the unlawful taking or aggravated taking of a motor vehicle (unless suitable for disposal as an early guilty plea in the magistrates' court). 	<p>Any either way offence not suitable for early disposal in the magistrates' court as a guilty plea (i.e. all contested Crown Court and magistrates' court cases initially listed for an Early Administrative Hearing).</p> <ul style="list-style-type: none"> • Any summary offence not referred to under column A. • Those motoring cases excluded from police charging in column A. • Those cases suitable for early disposal as a guilty plea in the magistrates court but excluded from police charging in column A. • Any offences under the Sexual Offences Act 2003 committed by or upon any person under the age of 18. • Any offence involving any racial, religious or homophobic aggravation. • Any other offence linked with terrorist activity. • Offences under any of the Official Secrets Acts • Offences under the Anti-Terrorism, Crime and Security Act 2001. • Offences under the Explosive Substances Act 1883. • Offences under the Terrorism Act 2000. • Any offence triable on indictment due to the surrounding circumstances or previous convictions of offender. • All offences triable on indictment only. • Any offence requiring the consent of the Attorney General, Solicitor General or Director of Public Prosecutions.

PROSECUTION FILES

Figure 1

