

## **Interim CPS Charging Protocol – Covid-19 crisis response**

1. The Covid-19 outbreak presents an unprecedented crisis for the Criminal Justice System in the UK. Courts are currently unable to start any new jury or summary trials and most current trials have had to be stopped because of problems over the attendance of victims, witnesses, defendants, advocates and jurors.
2. Government guidance on social-distancing makes it apparent that the courts cannot operate as they have been ahead of the crisis. The Senior Presiding Judge has set out guidelines governing health and safety which must be in place in the Crown Courts, ahead of them operating normally. The same principles must apply to the Magistrates' Courts. There is not currently a working digital solution to enable the consistent operation of a virtual court, although the CPS and other Criminal Justice partners continue to work through very recent legislative changes. These will allow some audio or video-enabled processes to be conducted outside of criminal trials.
3. It follows that there must be careful consideration of what new offences are fed into the system and how those offences are progressed. This interim protocol sets out how cases should be managed by the police and the CPS by identifying three categories of cases:
  - A. IMMEDIATE - CUSTODY AND ALL COVID-19 RELATED CASES**
  - B. HIGH PRIORITY CASES – NON-CUSTODY BAIL CASES**
  - C. OTHER CASES – RELEASED UNDER INVESTIGATION OR NO ARREST REQUIRED**
4. Below is an explanation of how these cases might be categorised and tables with case type examples and explanations for why these types fit into a particular priority category.
  - A. IMMEDIATE - CUSTODY AND ALL COVID-19 RELATED CASES**
5. Immediate cases are defined as those where the police or other investigators are seeking a charging decision followed by a remand in custody (whether under an application of the Full Code Test or the Threshold Test) or the case is COVID-19 related offence, whether or not a remand in custody is required. For Threshold Test (TT) decisions all five of the TT conditions must be met (these are set out below in Annex A). Police will access CPS pre-charge advice in accordance with current arrangements but will only seek to obtain an immediate charging decision for cases where the withholding of bail is properly justified or the case requires CPS authority to charge and is a Covid-19 related case. During office hours any case under paragraph 29 of Director's Guidance 5 (DG5) (set out in Annex B) should be referred to local CPS Areas. CPS Central Casework Divisions will continue to provide advice according to existing arrangements with relevant investigative bodies. For all other immediate decisions the police will access CPSD advice in the usual way.
6. Where a decision to charge has been made on an Immediate case, it should be anticipated that the defendant will be placed before the next available court, for an application to remand them in custody (although this may not apply with all Covid-19 related cases). There is a general presumption in favour of bail, for a defendant, unless exceptions under the Bail Act are met. Investigators must therefore consider carefully, in each case, whether the Bail Act exceptions are met and make relevant representations to the CPS when submitting a file

to them. In the current Covid-19 circumstances, it is essential that the CPS charging lawyers are focussed first on genuinely Immediate cases.

7. A person may only be denied bail if there are substantial grounds for believing that any of the exceptions in Schedule 1 of the Bail Act 1976 are made out; for instance, substantial grounds for believing that the defendant would fail to surrender to custody, commit further offences on bail, interfere with witnesses or obstruct the course of justice. The seriousness of the offence and likely sentence are also important considerations, particularly at a time when offences may take some time to progress through the system. The strength of the evidence is also a key component of applying to withhold bail.
8. The table below sets out some examples of case types likely to require immediate charging decisions, as Immediate cases. This is not an exhaustive list but is intended to assist investigators and lawyers with correctly identifying possible Immediate cases. Decisions should however be made based on the offence, the risks posed by the offender, and risk to the victim/public, not just the offence itself. Cases where a defendant has previously been charged and bailed by investigators may become Immediate, where the defendant goes on to commit further serious offences.
9. Wherever possible, the remand hearing will be conducted by a CPS lawyer working remotely, in accordance with the Coronavirus Bill, where digital technology permits.
10. All Covid-19 related cases will be dealt with as Immediate cases for the purpose of obtaining a charging decision, whether they are custody or subsequently on bail.

CASE TYPE Egs.	BAIL ACT CONSIDERATIONS	PRIORITY CONSIDERATIONS
Homicides	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses No automatic right to bail – murder	Seriousness of offences
High risk domestic abuse	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses	Protect vulnerable victims and deter future offending
Serious violence eg. Section 18	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses	Protect victims and deter future offending
Robbery and aggravated burglary	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses	Protect victims and deter future offending  Public confidence
Very serious public disorder eg. Violent disorder	Seriousness of offence and likely sentence Risk of further offending	Protect public  Public confidence

Covid-19 dishonesty offences against vulnerable victims	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses	Protect vulnerable victims and deter future offending
Terrorist Act offences	Seriousness of offence and likely sentence Risk of further offending No automatic right to bail	Seriousness of offences  Protect public
Serious assaults and any COVID 19 related on emergency workers	Seriousness of offence and likely sentence Risk of further offending	Protect front-line workers  Public confidence
Serious sexual offences and abuse of children	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses	Protect vulnerable victims and deter future offending
Intelligence-led interventions against OCGs eg. drugs, people-trafficking, gangs, county lines, those carrying knives risk of homicide	Seriousness of offence and likely sentence Risk of further offending Interfere with witnesses Fail to surrender	Public confidence
Other Covid-19 related offending eg. fraud	Seriousness of offence and likely sentence Risk of further offending	Protect vulnerable victims and deter future offending
Offending on bail of high priority and other cases	Risk of further offending	Public confidence

**B. HIGH PRIORITY CASES – NON-CUSTODY BAIL CASES**

11. High Priority Cases are still serious cases which require bail conditions under the Bail Act, primarily to prevent further offending and protect the public. They are not cases which necessarily require the defendant to be remanded in custody, following a charging decision. As such these cases will not be submitted to CPS while the offender is in custody they will be dealt with by the out of custody process. However, they are cases where the CPS will prioritise the making of charging decisions, ranked behind those requiring immediate action.
12. The table below provides some examples of the type of cases which might be defined as High Priority. Decisions should however be made based on the offence, the risks posed by the offender, and risk to the victim/public, not just the offence itself; as such, this is not an exhaustive list.

13. Once a CPS charging decision has been taken in these cases, the police should charge with a **long court bail date; 28 days for GAP cases and 56 days for NGAP cases, from the date of charge**. This will hopefully allow the current crisis to have passed and thereafter enable a structured timetable for future hearings. The dates may be moved back, in the event that the crisis prevents a full resumption of hearings or a workable digital solution to conduct them remotely.
14. **The long bail date does not prevent discussion between CPS reviewing lawyers and defence practitioners in the intervening period; to agree pleas, identify cases which will require a contested trial and to narrow down the trial issues, so that cases can be dealt with expeditiously once matters appear in court. For those cases where a trial is anticipated in the Crown Court, trial counsel may be instructed early to begin trial preparations. Early preparation may enable much more effective first hearings once cases do appear in court.**

CASE TYPE Egs.	PRIORITY CONSIDERATIONS
Other Domestic Abuse	Protect victims and prevent witness interference and future offending with bail conditions
Other RASSO	Protect victims and prevent witness interference and future offending with bail conditions
Other Hate Crime	Protect victims and prevent future offending with bail conditions
Less serious assaults on emergency workers - other than COVID 19 related	Protect victims and prevent future offending with bail conditions
Other serious violence	Protect victims and prevent future offending with bail conditions
Other Terrorism-related offences, Officials Secrets Act and Incitement	Unless National Security considerations mean that bail conditions are insufficient.
Gross negligence manslaughter and misconduct in a public office	Public confidence
Other drug supply / cultivation	Prevent future offending with bail conditions and maintain public confidence
Other serious offences of dishonesty with identifiable victims	Protect victims and prevent future offending with bail conditions
Road traffic fatality cases	Requires lengthy investigation with expert evidence, family bereavement
Dangerous driving	Prevent future offending with bail conditions and maintain public confidence
Serious public disorder eg. Affray	Prevent future offending with bail conditions and maintain public confidence

Youth Court cases	Avoid long delays in dealing with Youth Justice
Cases involving vulnerable witnesses (as defined by section 16 Youth Justice and Criminal Evidence Act 1999.	Avoid long delays for children and vulnerable adults.

**C. OTHER CASES – RELEASED UNDER INVESTIGATION OR NO ARREST REQUIRED**

15. Other cases are not necessarily cases which lack serious consideration. They are lower priority during the Covid-19 crisis, simply because of the assumptions being made around the likely delays and backlogs in work.
16. These cases broadly fall into two categories. First, the large, complex investigations which have been investigated for some time. Preparation on these cases can continue and litigation work can be conducted with defence representatives ahead of charge which will shorten the process post-charge. In the case of complex fraud, cases can be transferred directly to the Crown Court by the giving of a notice under s.51B CDA 1998. Given the likely backlogs in the Crown Courts, following delay to so many existing trials, delaying the start of proceedings in these cases makes sense, until a wider listing plan is in place. It may be that a virtual specialist fraud court could be set up to manage cases and prepare a longer listing plan.
17. Secondly, cases of a less serious nature. Examples of these offences are listed below. The summary-only offences have statutory time limits of six months attached to them and proceedings therefore need to be commenced by the police, either of their own volition or following CPS advice, within that period. It is not proposed that these offences are simply ignored but they need to be managed alongside the wider pipeline. **They should be listed, either through postal requisition or summons 84 days after the issue of proceedings.** In the case of road traffic offences, that would be once an indication of plea had been made. This longer pipeline would allow issues to be resolved and some of the cases to be weeded out, on evidential or PI grounds, ahead of a trial listing; so that the courts do not become unnecessarily clogged up with trials.

CASE TYPE egs.	PRIORITY CONSIDERATIONS
Serious fraud	Requires lengthy investigation and consideration of disclosure ahead of charging decision. Suspects generally released under investigation or interviewed as volunteers.  Likely to clog up the court system if charged and actioned at this stage.
Large SOC investigations where suspects RUI	Requires lengthy investigation and consideration of disclosure ahead of charging decision. Suspects generally released under investigation or interviewed as volunteers.

	Likely to clog up the court system if charged and actioned at this stage.
Benefit fraud	Work can continue to prepare cases with a view to issuing proceedings using postal requisitions.  PI considerations may need to be re-applied ahead of issuing proceedings.
Common Assault (except DA)	Statutory time limits apply
Criminal Damage (low value)	Statutory time limits apply
Other public order offences eg. s.4 and 5 POA 1986	Statutory time limits apply
Road traffic offences outside of fatalities and dangerous driving	Statutory time limits apply
Low-value dishonesty offences	Low-value but may have to move into a higher bracket where repeat offences. Eg. bail conditions imposed.

**Annex A – Threshold Test**

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

**Second condition** - Further evidence can be obtained within a reasonable period of time to provide a realistic prospect of conviction.

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

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

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

## **Annex B- DG5 paragraph 29**

### **29. Area consultations**

Consultations with Area prosecutors will take place in the most serious, sensitive and complex cases. These include:

- any case involving a death;
- rape and serious sexual offences;
- child abuse;
- large scale or long term fraud;
- cases with substantial or complex video or audio key evidence;
- cases expected to take substantially longer than 90 minutes in consultation;
- any other cases agreed with the CPS.

Area consultations will be facilitated by a local CPS Area specific point of contact.

Early contact should take place to agree whether the consultation will be provided in writing, by telephone or face to face and what material is to be submitted to the prosecutor providing the advice or the charging decision.

Such consultations should take place without delay and the police should be informed when the written advice or decision will be provided.