

Criminal Litigation

Answers to questions

1. In law, when should the police/CPS charge a suspect with a criminal offence? Who makes the decision and what factors do they consider?

The custody officer in conjunction with the CPS has a duty to determine whether there is sufficient evidence to charge the suspect with the offence for which he has been arrested. If there is s 37(7) PACE requires that the suspect is charged. He should be cautioned and given a charge sheet. If there is insufficient evidence to charge, the suspect should be released.

Note : The police can release on bail pending further enquiries – s47(3)(b). This can be subject to conditions.

The police can also release on bail while a file is considered by the CPS as regards the charge – s37B.

The police charge on minor matters – ie summary offences where it is anticipated the suspect will plead guilty. Otherwise, the case will be passed to the CPS.

The test as to whether to charge is:

Is there sufficient evidence to provide a realistic prospect of conviction?

AND

Is it in the public interest to charge?

[The Code for Crown Prosecutors](#) states that the question of public interest should be approached in the following way;

“a. How serious is the offence committed?”

- The more serious the offence, the more likely it is that a prosecution is required.
- When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect’s culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required.
- Culpability is likely to be determined by:
 - i. the suspect's level of involvement;
 - ii. the extent to which the offending was premeditated and/or planned;
 - iii. the extent to which the suspect has benefitted from criminal conduct;
 - iv. whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;
 - v. whether the offending was or is likely to be continued, repeated or escalated;
 - vi. the suspect's age and maturity (see paragraph d below).
- A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.
- Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

- The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required.
- This includes where a position of trust or authority exists between the suspect and victim.
- A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.
- It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated

hostility towards the victim, based on any of those characteristics.

- Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.
- Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.
- However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) What was the suspect's age and maturity at the time of the offence?

- The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18.
- The best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.
- Prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.
- Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.
- As a starting point, the younger the suspect, the less likely it is that a prosecution is required.
- However, there may be circumstances which mean that, notwithstanding the fact that the suspect is under 18 or lacks maturity, a prosecution is in the public interest. These include where:
 - i. the offence committed is serious;
 - ii. the suspect's past record suggests that there are no suitable alternatives to prosecution; and

- iii. the absence of an admission means that out-of-court disposals that might have addressed the offending behaviour are not available.

e) What is the impact on the community?

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required.
- The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.
- Evidence of impact on a community may be obtained by way of a Community Impact Statement.

f) Is prosecution a proportionate response?

- In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:
 - i. The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.14 a) to g), but cost can be a relevant factor when making an overall assessment of the public interest.
 - ii. Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

- In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, ongoing investigations, international relations or national security. It is essential that such cases are kept under continuing review.”

A caution might be more appropriate (see below)

2. Are there any other ways of disposing a case instead of charging a suspect? Outline the implications for your client of these different disposals.

There are a number of ways a suspect may be diverted from formal criminal proceedings. Some of these are discussed above.

The police may decide that a caution rather than a charge/prosecution is appropriate:

Simple caution– the police always have the power to caution a suspect. The decision is often taken in conjunction with the CPS. An important pre-condition is that the suspect must have admitted his guilt. Guidance as to when a caution is appropriate is contained in Home Office Circulars. Usually used with the elderly, infirm or mentally ill.

A caution does not constitute a conviction but records are kept and the caution may be cited in future cases if he re-offends. It does not prevent the possibility of future prosecution.

In order for a caution to be administered there must be;

- a) Sufficient evidence to justify a conviction
- b) Clear and reliable evidence of a voluntary admission by the offender.
- c) Consent from the offender, having been made aware that any caution may be mentioned if he or she is convicted of another offence.

Considering whether a caution may be offered may be a key consideration in deciding whether or not to answer questions and admit an offence in interview. Your client should be aware that if a caution is refused he or she may be tried or convicted of an offence. Your client should also be aware that the caution might have an impact on their future (for example they may have to disclose it for certain job applications).

Conditional Caution– appropriate where the prosecutor considers there is sufficient evidence for a prosecution but it is in the interests of the suspect, victim and community to require the suspect to comply with specified conditions aimed at his rehabilitation. A factor in selecting a conditional caution is whether the specified conditions will be an appropriate and effective way of

dealing with an offender's behaviour or making reparation for the effects of the offence on the victim/community. E.g. attendance at an anger management course. If the defendant fails to comply with the conditions he or she may be arrested and prosecuted for the original offence (with the admission that the defendant signed at the outset being admissible in evidence).

The advantage for the police is that a caution avoids a waste of police time and money and amounts to a 'solved' crime for the purpose of criminal statistics. However, it isn't the same as a conviction. No penalties can be imposed e.g. compensation for the victim.

The advantage to the defendant is that he does not have to go to court avoiding publicity and no penalties can be imposed.

Informal warnings

In some circumstances where the conduct where the behaviour complained of is minor, the police may opt to give an informal warning which does not appear on the defendant's record.

Fixed penalty notice

These are a means of disposing of minor offences (especially driving offences) without prosecution. The defendant is given a written notice and must pay a penalty. If a defendant disputes the notice they will be tried in the magistrates court.

3. Following charge, what other decisions must be taken by the police regarding your client's immediate future?

A decision must be taken to grant bail or remand your client into custody.

The custody officer must decide whether to grant bail or to remand into custody to the next Magistrates' Court sitting. Under s38 PACE - right to bail unless there are reasonable grounds to believe the accused will abscond, commit further offences, cause injury/damage, or interfere with justice. If the custody officer is considering remanding into custody because they are concerned about one of the grounds above they should first consider whether conditions attached to bail may meet their concern.

4. What representations can you make, and to whom, following an adverse decision by the police at 3?

Representations can be made to the custody officer reminding the officer of the criteria for the grant of bail. Representations can also be made in relation to onerous conditions attached to bail.

5. In which court will the client appear post-charge? When will he/she appear there?

The Magistrates' Court. If in custody, normally the next working day following charge at the police station ('the earliest practicable opportunity') s46(2) PACE.

If granted bail by the police then normally within 1-2 weeks - s47(3A) PACE.

6. What will happen at that hearing?

What occurs is largely dependent on the classification of the offences charged and the plea. Having been charged with an offence your client's first appearance will either be before a remand court, an early administrative hearing court (for a not guilty plea) or an early first hearing court (simple guilty plea). CJSSS requires, as far as possible, that substantive steps are taken at this first hearing – eg sentencing on a straight forward guilty plea; set down for summary trial/issue directions on NG plea or (provided disclosure given by the prosecution) plea and mode of trial/allocation in an either way matter.

The court will also deal with matters such as remand, the granting of bail and representation orders.

7. If your client has been remanded into custody when at the first appearance, when will they next come before the court?

If granted bail, a date will be set for the next hearing by the magistrates. If remanded in custody, the defendant must be brought back before the court within 8 days of the **first** appearance. Thereafter, subject to certain conditions, the court can remand for up to 28 days.