



## **Interview Protocol between the National Police Chiefs Council, Crown Prosecution Service, Law Society, the Criminal Law Solicitors' Association and the London Criminal Courts Solicitors' Association**

### **Purpose of guidance**

1. This guidance is intended to assist investigators and prosecutors in deciding whether suspects should be interviewed as part of a police investigation during the Covid-19 pandemic. This guidance will be reviewed monthly as from 1 April 2020 and is intended for use only during the period of the Coronavirus crisis.

### **Introduction**

2. The Covid-19 outbreak presents an unprecedented challenge for the Criminal Justice System in England and Wales.
3. The spread of Covid-19 and its effect on the numbers of police officers, prosecutors and defence solicitors available for work will require careful consideration of what new offences are brought into the system and how those offences are investigated by the police and progressed through the CJS.

### **Police interviews; a reasonable line of enquiry**

4. The Criminal Procedure and Investigations Act 1996 provides that investigators must pursue all reasonable lines of enquiry, including those which point towards and away from the suspect. In most cases "reasonable lines of enquiry" will require an interview.
5. An interview is generally a reasonable line of enquiry because without it:
  - The suspect does not have a proper opportunity to provide a full account;
  - Common defences including self-defence and reasonable excuse are not addressed;
  - A guilty plea may be anticipated wrongly and anticipating plea generally is more difficult;
  - The opportunity to draw an adverse inference from silence is lost;
  - Without admissions in interview, points to prove have to be addressed through other evidence increasing the burden on investigators;
  - The opportunity to address potential defences by further investigation, and to investigate reasonable lines of enquiry which point away from the suspect, are lost.

However, it is recognised that for public health reasons interviews may need to be postponed or even dispensed with. If there is a genuine and pressing need for an interview with all parties present it must be carried out in accordance with government advice on precautionary behaviour, including social distancing.

### **Police interviews with suspects during the Coronavirus crisis**

6. Government guidance on social-distancing will affect police interviews with suspects; whether in custody or elsewhere. Interviews with suspects may involve the presence of non-police staff including solicitors, legal representatives, appropriate adults and

interpreters. In the case of children and vulnerable adults, the physical presence of an appropriate adult is always required for interview, save for urgent interviews in accordance with Code C 11.18. If the attendance of an appropriate adult is required then that will need to be taken in to account when an interview is being considered; in the circumstances created by the Coronavirus crisis it may not be possible to conduct an interview with a suspect and their appropriate adult (where one is required), and the alternatives set out in **Annex A** and **Annex B** should be considered.

7. It is acknowledged that the Coronavirus crisis involves the application of PACE Code C in circumstances which are unlikely to have previously been anticipated. The signatories to this Protocol accept that remote interviews by video and audio link are not within the current letter of the Code of Practice, but in the present circumstances of the Coronavirus pandemic they are within the spirit of recent amendments to criminal procedure, law and evidence in the Coronavirus Act 2020. Therefore, we take the view that they are a fair, reasonable and proportionate option to be made available to a suspect who has the benefit of legal advice and who having been fully informed and advised and together with their appropriate adult (where one is required) consents to a remote interview. This enables the rights and interests of detained persons to be protected during the unprecedented circumstances of the Coronavirus crisis.
8. Special care should be taken in deciding whether, and how, an interview of a child or vulnerable adult should proceed. Where legal representation in interview is to be provided remotely the custody officer (or interviewing officer when the suspect is not in custody) should comply with the principles contained in PACE Code C 12.9A. This includes considering, on a case by case basis, whether a suspect's ability to communicate confidently and effectively for the purpose of the interview is likely to be adversely affected, undermined or limited without the physical presence of a legal advisor. This assessment must be made in consultation with the legal advisor and appropriate adult (where one is required).
9. The police will have their own guidance about the steps they take to ensure the health and safety of officers, and the suspects and witnesses they deal with. The police have a duty to ensure that all reasonably practicable steps are taken to protect visitors to the custody suite, including legal representatives, from infection with Covid-19. This includes issuing Personal Protection Equipment (PPE) where appropriate, and instructions for its use, even where the detainee is not symptomatic.
10. Legal advice for suspects should take place whenever possible over the telephone (for legal advice) and by video link for interviews with suspects. This may depend on the police facilities and devices available. Any existing facilities for links used for interpreters or for remote interviewing by police officers should be considered for use by police officers and defence representatives.
11. In some circumstances a video link will not be possible and the parties involved may be able to facilitate an interview with a legal representative attending via audio link. In these circumstances, and where all parties agree, the informed consent of the suspect together with their appropriate adult (where one is required) should be obtained and endorsed on the custody record. Where an interview proceeds with any party attending via audio link, this interview should be visually recorded by the police.
12. When it is not possible to arrange a suspect interview as above then the issues below should be considered. When a suspect cannot be interviewed consideration

should also be given to the use of the steps set out in **Annex B** for a written statement under caution from a suspect in response to a list of questions provided by the interviewing officer.

13. In police premises that are equipped with secure interview rooms with screens that allow for social distancing; those rooms should be utilised for consultations and interviews (using either fixed or portable recording devices approved for interviews).

### **Interim CPS charging protocol - Covid-19 crisis response (Annex C)**

14. The CPS and the police have already published an interim charging protocol as part of the Covid-19 response. The interim protocol sets out how cases should be managed by identifying three categories of cases:

- IMMEDIATE - CUSTODY AND ALL COVID-19 RELATED CASES (Level A)
- HIGH PRIORITY CASES – NON-CUSTODY BAIL CASES (Level B)
- OTHER CASES – RELEASED UNDER INVESTIGATION OR NO ARREST REQUIRED (Level C )

The assessment of the need for an immediate interview must have regard to this three tier categorisation.

### **Interviews and Level C cases under the CPS interim charging protocol**

15. For Level C cases in which suitable arrangements for an interview cannot be made immediately then suspects should be bailed or released under investigation to allow for an interview at a later date unless:
  - cases are simple and the other evidence is overwhelming; and
  - there is insufficient time for an interview within the six month statutory time limit.

### **Interviews and Level A and B cases under the CPS interim charging protocol**

16. Level A and B cases - the process set out in the flow chart at **Annex A** is to be used to identify the cases in which an interview should take place and how that should take place. The options are set out as follows in order of preference:

**1. Completely virtual interview** – all parties except for the appropriate adult (where one is required) who must be present, dial in to a Custody Laptop with OIC in interview room recording and suspect in VC room.

**2. Partial virtual interview** – OIC and Interviewee and appropriate adult (where one is required) in interview room, legal representative appears via a video link or by audio link. Any interview with a legal representative attending by audio link should be visually recorded.

**3. All parties physically required due to the serious nature of the case or because the suspect and appropriate adult do not consent to a completely or partial virtual interview** – all persons will be issued with the appropriate PPE and given instructions on how to use this.



4. Save for the circumstances set out at the top of **Annex A**, a charge without interview should only be considered in exceptional circumstances when the options above are unavailable. Before this takes place consideration should also be given to the use of the steps set out in **Annex B** for a written statement under caution from a suspect in response to a list of questions provided by the interviewing officer.

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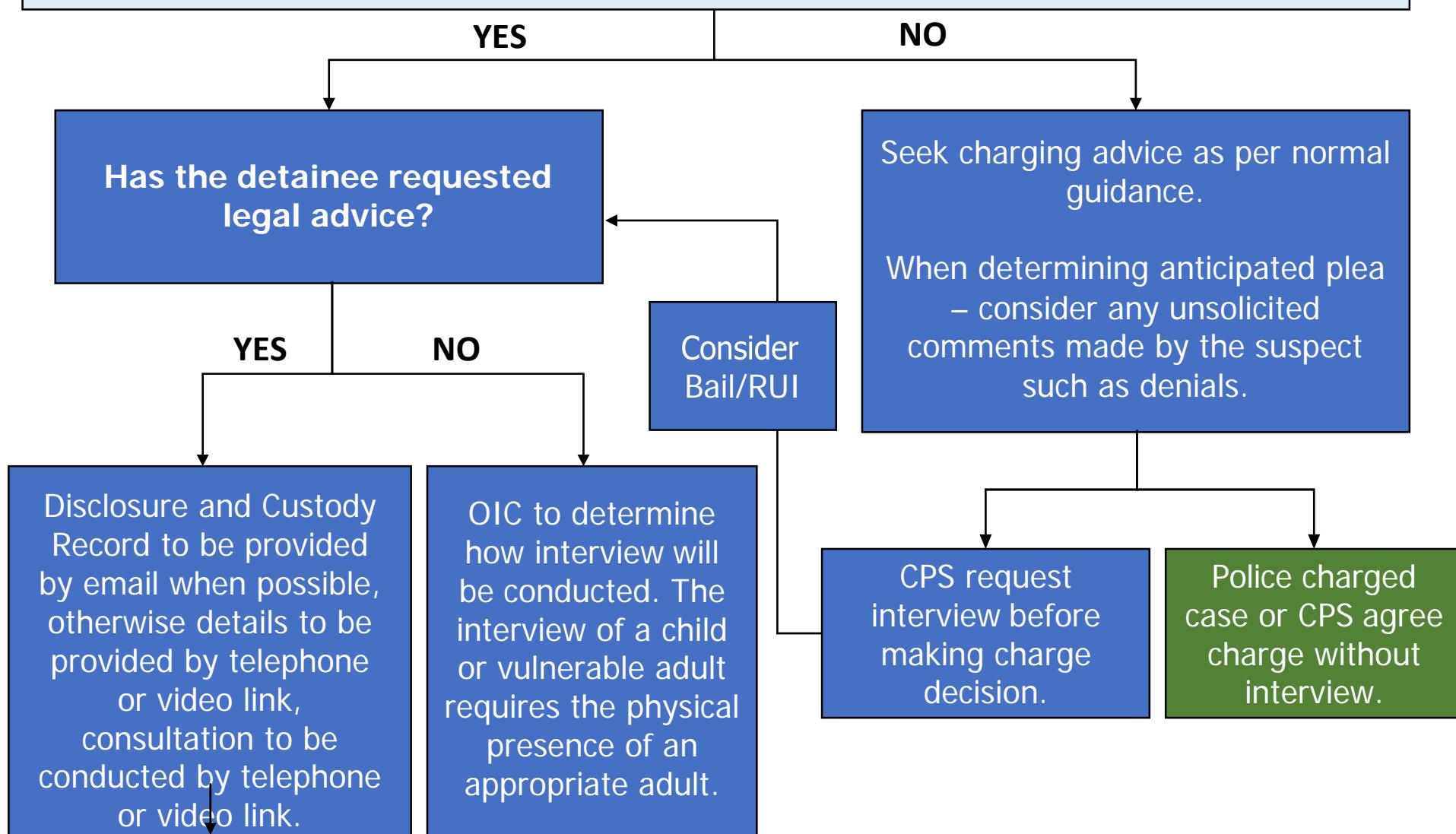
## Annex A

### Does the suspect need to be interviewed now?

#### Custody Officer's decision - Interviews will not be required when:

- There is credible and reliable evidence to prove the identity of the suspect; **and**
- There is credible and reliable evidence covering each point to prove for the offence and negating any defence that can reasonably be anticipated; **and**
- **The offence is:**
  - Summary only; or
  - A simple offence against the state (possessing weapons/drugs, public order); or
  - Drink or drug driving; or
  - Shoplifting (regardless of value)
  - Criminal damage under £5000

**This does not affect the need to seek CPS advice in anticipated not guilty plea cases.**



#### Options:

1. **Completely virtual interview** – all parties except for the AA (where one is required) who must be present dial in to a Custody Laptop with OIC in interview room recording and suspect in VC room.
2. **Partial virtual interview** – OIC and Interviewee and AA where required in interview room, Legal representative appears via a video link or by audio link. Any interview with a legal representative attending by audio link must be video recorded
3. **All parties physically required due to severity or because the suspect and AA does not consent to a completely or partial virtual interview** – all persons will be issued with the appropriate PPE and given instructions on how to use this.
4. A charge without interview should only be considered in exceptional circumstances when the options above are unavailable. Before this takes place consideration should also be given to the use of the steps set out in Annex B for a written statement under caution from a suspect.

# Written Statements under Caution

