



Joint Interim 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
Version 4 – October 2021

This Protocol applies to all detainees in police custody

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 has been reviewed regularly since 1st April 2020 and will continue to be kept under review as it is only intended for use during the period of the Covid-19 pandemic
2. This latest guidance is the next phase of an aspiration to withdraw this protocol as national restrictions are eased, recognising that its withdrawal can only be achieved and maintained while prevailing conditions remain safe to do so.
3. In line with the national easing of lockdown restrictions ('step 4' of the Government roadmap occurring on the 19th July 2021) this protocol reflects the wider return to business as usual and supports the return of all parties to police stations. The anticipation is that suspect interviews will be completed 'in-person' by all parties when police meet the expectations expressed in this protocol (page 3). If police meet the expectations as expressed below, then legal advice will be expected to be provided in person at a police station and in interview.
4. The position will remain under review, and in the event the Government announces changes to the roadmap, and/or imposes or advises further restrictions or precautions be taken, this protocol will be reviewed against those changes.
5. With effect from the date of this protocol, the aim is that the default position should be that advice is provided by legal representatives in person as the country strives to return to normality. This protocol allows for remote advice in much more limited circumstances as set out below. These circumstances are detailed in the expectations section of the protocol.

Introduction

6. The Covid-19 outbreak presented an unprecedented challenge for the Criminal Justice System in England and Wales.
7. The spread of Covid-19 and its effect on the numbers of police officers, prosecutors and defence solicitors available for work has required 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.
8. This protocol (version 4) replaces all previous versions of the protocol and is effective from the **4th October 2021** in England and Wales.

Police interviews; a reasonable line of enquiry

9. 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.
10. 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 and the use of PPE as per current guidance as provided by the NPCC and Operation Talla.

Police interviews with suspects during the Coronavirus crisis

11. Government guidance and Covid control measures will affect police interviews with suspects; whether in custody or elsewhere. Interviews with suspects will often involve the presence of non-police staff including solicitors, legal representatives and interpreters.
12. 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 in exceptional cases while remote interviews by video and audio link are not within the current letter of the Code of Practice, 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 detainees who have the benefit of legal advice and who, having been fully informed and advised, consent to a remote interview. This enables the rights and interests of detained persons to be protected during the unprecedented circumstances of the Coronavirus crisis.
13. 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 essential 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.
14. Legal advice for suspects should take place at a police station while this protocol continues to operate, and in accordance with PACE code C. In the exceptional cases where remote advice is provided, this can be 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.
15. 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 is required**. Where an interview proceeds with any party attending via audio link, this interview should be visually recorded by the police.
16. 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.

17. 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).

Expectations

18. If the elements of this section are met, then it is expected that legal advice for interviews will be provided in person at a police station in line with PACE Code C.
19. All those who work and attend a police custody suite can expect continued enhanced cleaning regimes and infection control measures.
20. Police will have considered if an interview is required now (annex A).
21. Police will have considered if a written statement under caution is appropriate (annex B).
22. Police and all who work in the custody environment, including visitors, will be expected to follow the current national PPE Guidance (provided by NPCC Operation Talla) subject to medical exemptions. PPE will be provided to all who attend a custody suite free of charge. In situations where social distancing cannot be achieved, such as in a smaller interview room, police will be able to demonstrate how this risk has been addressed (for example, via a formal risk assessment or consideration to remove the number of officers in the interview to allow more social distancing).

Exceptions to providing legal advice in person

23. This protocol remains in place to keep all who work and attend custody safe. It is accepted that in the following circumstances the use of remote advice should be used for a detainee:
 - a. Exception 1 – the detainee is confirmed or believed to be Covid positive. It is ultimately the responsibility of the Custody Officer, (who is responsible for the welfare and health & safety for all who attend the custody suite) to make a judgement having considered all of the available information including any defence representations, and to record the decision and reasons (including any information made available to them) on the Custody Record.
 - b. Exception 2 – the detainee exercises their right to speak to a named legal representative/firm or Duty Solicitor (where the Duty Solicitor is unable to make alternative arrangements for another representative to attend) and the legal representative/Duty Solicitor is confirmed Covid positive or is self-isolating as per government advice. In this situation the informed consent of the suspect is required to accept the advice of this legal representative by remote means, rather than seek a different representative who can attend the police station in person.
 - c. Exception 3 – some other exceptional reason applies where, in consultation with all relevant parties (legal representative and appropriate adult if required) it is the belief of the Custody Officer, (who is responsible for the welfare and health & safety for all who attend the custody suite) that due to those exceptional reasons it would not be practical, possible, or desirable for an in person attendance by the legal advisor in that individual case to safely take place, having regard to any relevant health or safety issues arising, or likely to arise. Where this is the case, remote advice should be used where the suspect also consents. If the legal representative raises this exception and the Custody Officer disagrees, then the legal representative can appeal this decision with an officer not below the rank



of Superintendent. This should be, unless not possible in the circumstances, by way of simultaneous representations by both the Custody Officer and legal representative so that both parties have the opportunity to hear and respond to the other's representations. Once a decision has been made and any appeal heard, then the Custody Officer is to record the decision and reasons (including any information made available to them) on the Custody Record.

- d. Exception 4 – where in consultation with all relevant parties (legal representative and appropriate adult if required) the Custody Officer, (who is responsible for the welfare and health & safety for all who attend the custody suite) agrees that the police in the individual case concerned are unable to meet their obligations set out in paras 19-22 above. If the legal representative raises this exception and the Custody Officer disagrees, then the legal representative can appeal this decision with an officer not below the rank of Superintendent. This should be, unless not possible in the circumstances, by way of simultaneous representations by both the Custody Officer and legal representative so that both parties have the opportunity to hear and respond to the other's representations. Once a decision has been made and any appeal heard, then the Custody Officer is to record the decision and reasons (including any information made available to them) on the Custody Record.

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

24. 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

25. 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 timelimit.

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

26. 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 dial in to a Custody Laptop with OIC in interview room recording and suspect in VC room.
2. **Partial virtual interview** – OIC and Interviewee 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 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. 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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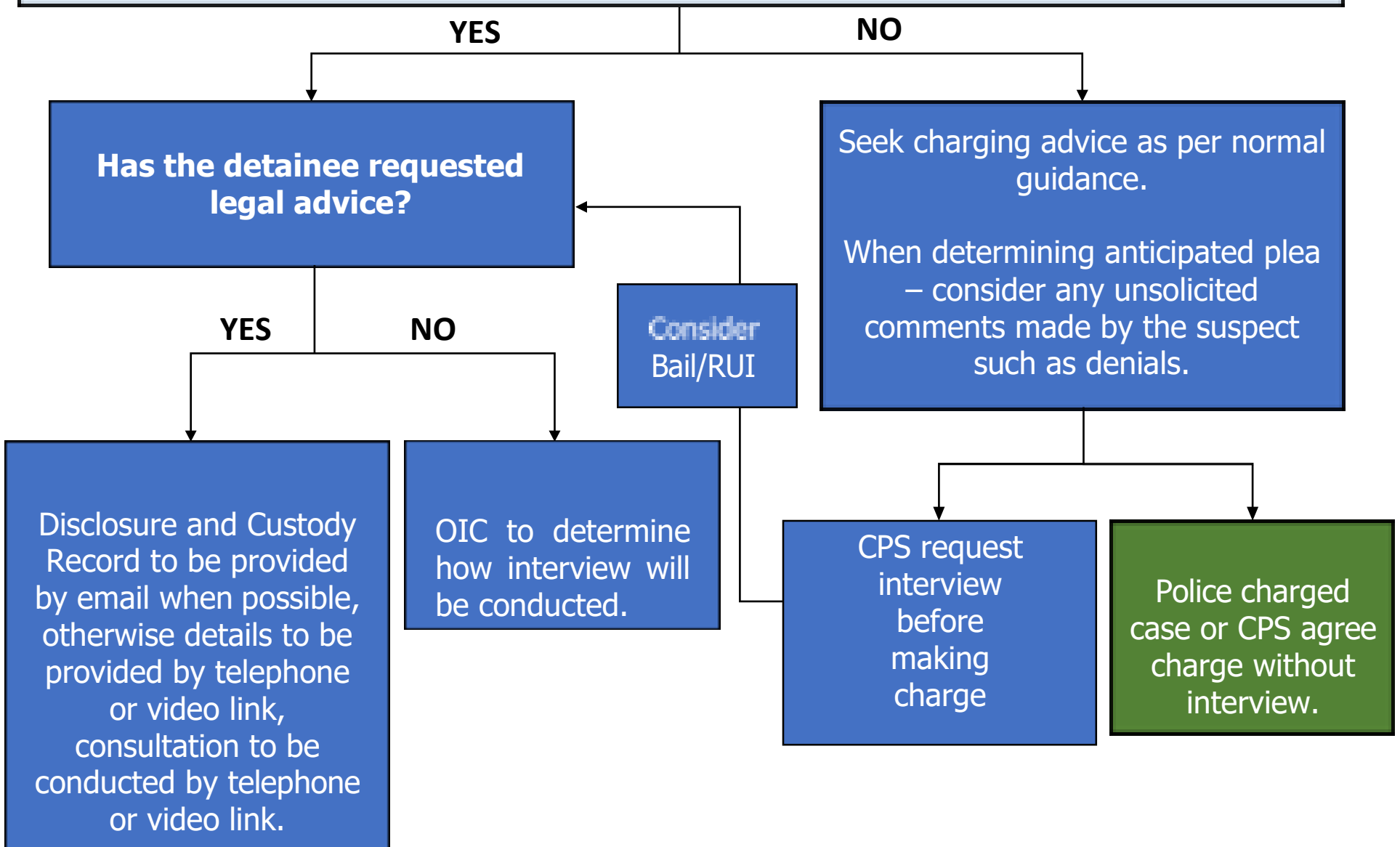
Annex A

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 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 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 video recorded
3. **All parties physically required due to severity or because the suspect 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.

