

Interview Protocol between National Police Chiefs' Council, Crown Prosecution Service, The Law Society, Criminal Law Solicitors' Association and 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 Covid-19 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 Covid-19 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. 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 Covid-19 crisis it may not be possible to conduct an interview with a suspect and an appropriate adult, and the alternatives set out in **Annex A** and **Annex B** should be considered.

7. It is acknowledged that the Covid-19 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 the practices and procedures contained here amount to a reasonable interpretation of the law to enable the rights and interests of detained persons to be protected during the unprecedented circumstances of the Covid-19 crisis.
8. 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.
9. 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.
10. 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.
11. 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)

12. 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

13. 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

14. 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 Rep appears via a video link.

3. All parties physically required due to the serious nature of the case – 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.



Greg McGill
Crown Prosecution
Service



DCC Nev Kemp
National Police
Chiefs' Council



Ian Kelcey and Richard Atkinson
The Law Society



Bill Waddington
Criminal Law
Solicitors'
Association



Kerry Hudson
London Criminal
Courts Solicitors'
Association

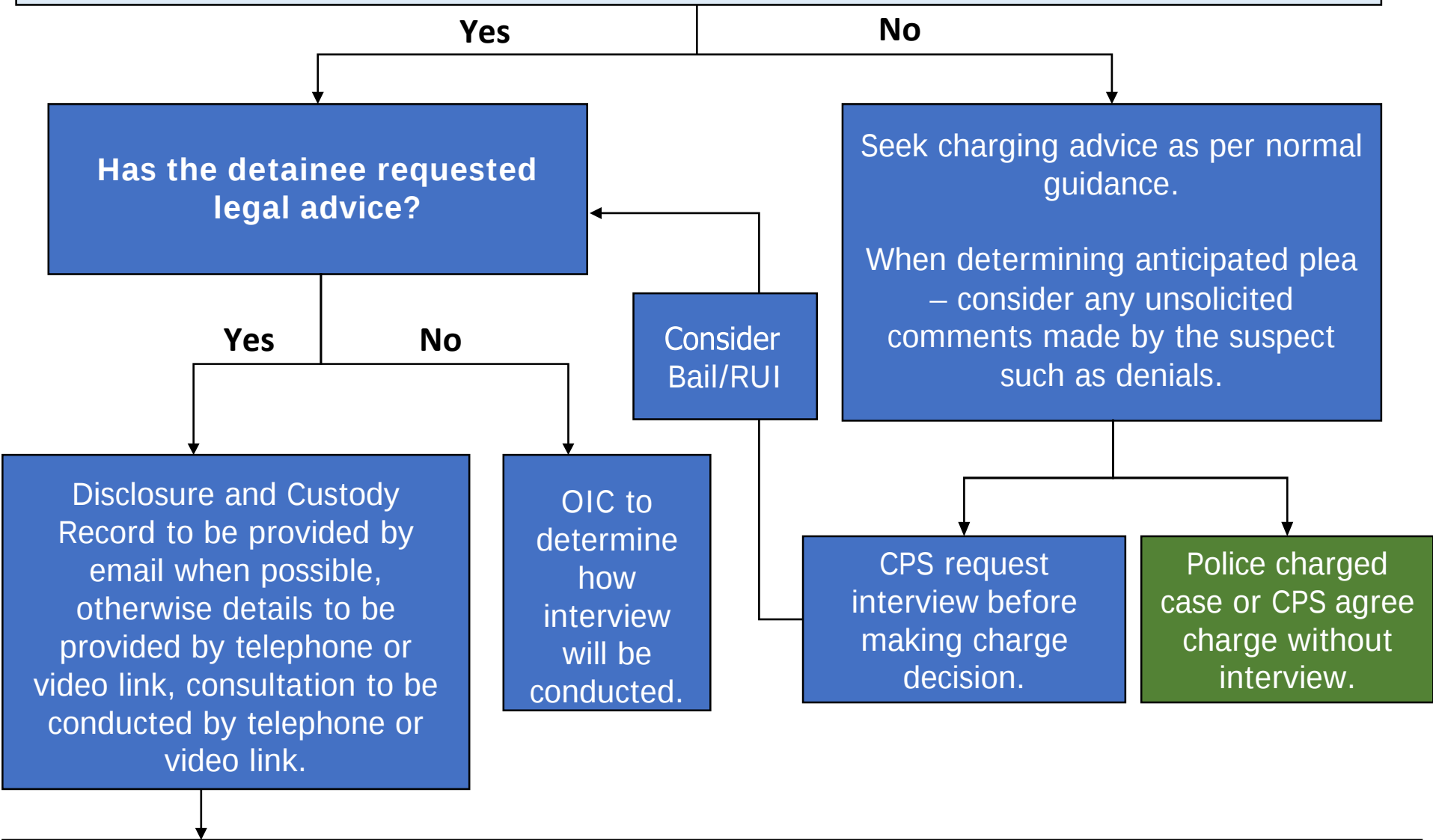
Annex A

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.

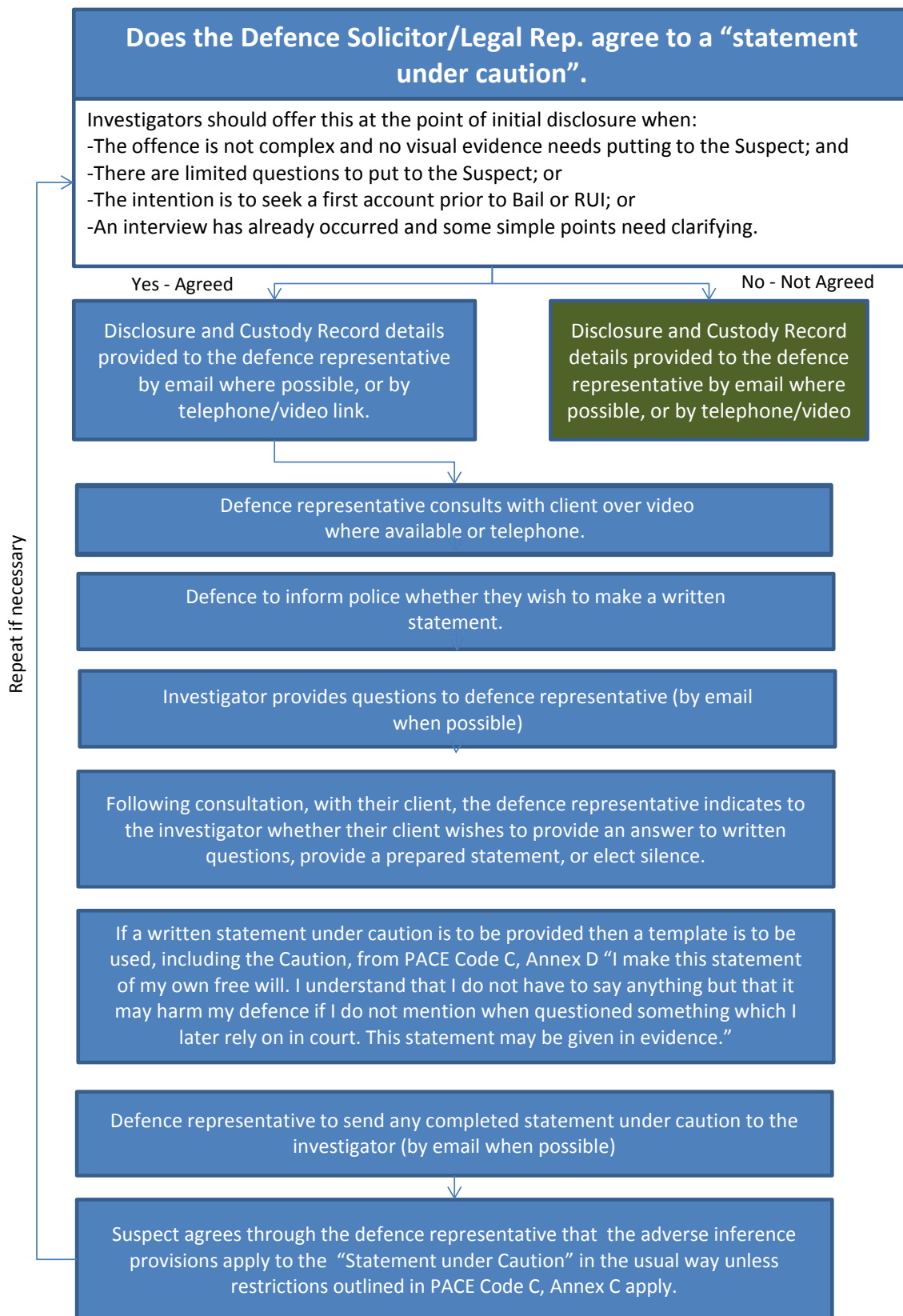


Options:

1. **Completely virtual interview** – all parties 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 Rep appears via a video link.
3. **All parties physically required due to severity** – 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 in response to a list of questions provided by the interviewing officer.

Annex B

Written Statements under Caution



Annex C

CPS interim charging protocol (signed by CPS and NPCC only).