



The Attorney General Falkland Islands

AGG3

The Attorney General's Guidance on Charging

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1. Introduction

1. The purpose of this document is to set out Guidance as to the procedure to be followed when the Royal Falkland Islands Police are seeking the authority of the Attorney General to charge a person with a criminal offence.
2. In particular, this Guidance sets out:
 - (a) how the police should deal with a person where there is sufficient evidence to charge or where a person has been arrested again having been released on bail awaiting a charging decision by a prosecutor;
 - (b) how and when early investigative advice is to be sought from a prosecutor;
 - (c) the evidence and information needed for a charging decision to be made and for the prosecution of cases at court;
 - (d) the circumstances when a person may be given a simple caution for an indictable only offence, or a conditional caution.
3. Police officers and prosecutors must comply with this Guidance to ensure that charging and other prosecution decisions are fair and consistent.

2. Responsibilities

Police Responsibilities

4. The police are responsible for:
 - (a) referring cases to prosecutors as directed by this Guidance;
 - (b) assessing cases before referral to ensure the Full Code or Threshold Test can be met on the available evidence as appropriate to the circumstances of the case;
 - (c) referring specific cases involving a death, rape or serious sexual offending for early investigative advice;
 - (d) completing pre-charge reports and compiling prosecution files in accordance with AGG15 - The Attorney General's Guidance on File Standards.
 - (e) agreeing action plans and providing key evidence within agreed time periods;
 - (f) ensuring that any unused material which undermines the prosecution case or is capable of assisting the defence case is revealed to the prosecutor at the time of referral of the case for investigative advice or a charging decision;
 - (g) ensuring that cases appropriate for an out of court disposal are identified as early as possible;

Prosecution Responsibilities

5. Prosecutors are responsible for:
 - (a) making all charging decisions and providing advice and guidance;
 - (b) deciding whether it is appropriate to apply the Threshold Test in any case referred for a charging decision;
 - (c) ensuring pre-charge action plans only require the gathering of key evidence and contain agreed timescales for the completion of any work;
 - (d) ensuring that cases appropriate for an out of court disposal are identified prior to charge.

3. Operational Arrangements

Police duty to investigate

1. The police will undertake effective early investigations to ensure that the key evidence required to make informed decisions in cases is obtained as soon as possible. All reasonable lines of enquiry should be pursued to ensure that any evidence or material likely to undermine the prosecution case or assist the defence is provided to the prosecutor and taken into account during any referral for investigative advice or charging.
2. This will enable relevant key evidence to be obtained, permitting the building of a proportionate file. Compliance with the criminal justice case management regime requires all key evidence to have been provided to the prosecutor prior to the first hearing unless the charging decision has been taken applying the Threshold Test. This enables the court to make the maximum level of progress and reduces the need for adjournments and delays.

Requirement on police to refer cases to prosecutors

3. Police Officers are required to submit cases to prosecutors for charging decisions to be made. Case files must be submitted in accordance with the Attorney General's File Standard. The case file will include Form MG3 which will contain a short overview of the evidence and the reasons why the Police Officer believes that there is sufficient/insufficient evidence to charge and why a prosecution would be/not be in the public interest.
4. Police should not refer cases that are obviously incapable of meeting the evidential test. For example where it is obvious that the alleged behaviour is not a criminal offence known to law.
5. In all other cases where there is an allegation of criminal behaviour a case will need to be referred to a prosecutor for a charging decision to be made. Police officers do not have authority to make charging decisions and so cannot close matters formally without a referral. In some cases it will be obvious that the evidential test is not met but a formal determination can only be made by a prosecutor so a referral must still be made.
6. The requirement to refer a case for charging decisions in all but the most obvious of cases should not result in unnecessary file preparation work. Where it is obvious that a case is unlikely to meet the threshold for charging police officers should liaise with prosecutors who will give guidance on the material that they need to consider in order to reach a charging decision. In some cases all that will be required for a formal decision to be made is a completed Form MG3.

Use of cautions

7. Where a police officer considers that any offence may be appropriately dealt with by means of a simple or conditional caution the case must be referred to a prosecutor to determine whether there is sufficient evidence for there to be a realistic prospect of conviction and that it is in the public interest to deal with the case by way of a caution. See AGG10 – The Attorney General's Guidance on Conditional Cautioning.

Investigative advice

8. Where a case is being referred to a prosecutor for investigative advice or guidance, the police will provide the material and evidence then available and relevant to the aspect of the case on which the guidance is sought. The police should identify the issues on which guidance is sought. This should be done by the completion of Form MG3 and a case file.
9. The advice or decision of the prosecutor will be set out in an MG3 and an action plan will precisely specify any further work with an agreed date for completion. Where a case is to be referred for a charging decision, the police will compile and submit a pre-charge report comprising:

Form MG3 – this should contain everything the prosecutor needs to make a charging decision. Details of the offence, witness accounts, an assessment of the strengths/weaknesses of the case, any issues arising from disclosure, possible lines of defence etc. The MG3 should be used to contain any confidential information, the views of the investigating officer and the assessment of the police; it will identify any issues on which the decision of the prosecutor is sought. The MG3 is not a disclosable document.

Form MG5 – containing a summary of the circumstances of the offence. This document is often disclosed to the defence in advance of the first hearing and should be a concise and balanced summary of the case. Where witness statements and copies of exhibits are provided and can be served on the defence an MG5 is not required. If there is any doubt about the need for an MG5 then the view of a prosecutor should be sought.

Form MG6B – Giving details of any police officer's disciplinary record. The prosecutor will need to know if any officer has been disciplined in order to assess whether this will have an adverse impact on the case and therefore affect the charging decision. For example if the disciplinary action was as a result of an adverse inference being made by the Court regarding that officer's honesty, and the current case is one where the officer is the sole witness. The MG6B form should be placed in an envelope by the officer completing it, sealed, signed and addressed to the prosecutor; there is no reason why any other officer including the officer in the case (if different) needs to see it. This must be sent to the Prosecutor who relies upon the honesty of officers to know about disciplinary matters.

Forms MG6C, MG6D and MG6E – All the disclosure forms should be commenced at the beginning of a criminal investigation. The prosecutor will want sight of these forms when making a charging decision, even if incomplete, especially where the police are in possession of material that undermines the case. It is never too early to start the MG6 forms and in simple cases there is no reason why the MG6 forms should not be included in the file when the case is referred. Where there is any doubt as to the correct handling of unused material the prosecutor will request the MG6 forms before making a charging decision.

Form MG9 – Witness list.

Form MG11's – These are the witness statements in the case. All key witness statements should be provided to the prosecutor when a charging decision is requested.

Form MG12 – Exhibit list.

Form MG15 – If a full transcript of the suspect's police interview is available then this should be provided. If there is a good reason why a full transcript cannot be submitted then a fair and balanced summary is acceptable with the full transcript to follow as soon as is reasonably practical thereafter.

Prepared statement by the defendant if applicable.

Exhibits – Copies of any relevant exhibits, CCTV, and forensic reports.

Domestic abuse checklist – A domestic abuse check list and risk assessment in domestic abuse related cases;

Previous convictions – Print of suspect and key prosecution witnesses previous convictions (including any out of court disposals);

Key evidence

10. Key evidence is that evidence which either alone (the evidence of one witness) or taken together with other evidence (further witnesses or exhibits) establishes the elements of the offence to be proved and that the person to be charged committed the offence with any necessary criminal intent. All available MG11's should be included in the submitted file.

Early consultation with a prosecutor

11. Early consultation with a prosecutor **must** take place in the most serious, sensitive and complex cases. These include;
 - (a) any case involving a death;
 - (b) rape and serious sexual offences;
 - (c) child abuse;
 - (d) large scale or long term fraud;
 - (e) cases with substantial or complex video or audio key evidence;
 - (f) any other cases agreed with the prosecutor.

12. Such consultations should take place without delay and the police and the prosecutor will agree an action plan with clear time frames for completion of work and provision of written advice.

4. Charging Responsibility

13. Prosecutors make charging decisions in all cases. The police and other investigating authorities do not have the power to authorise charges.

Prosecutors' duty to assess the evidence

14. In making charging decisions and providing early advice, prosecutors will assess the evidential material provided in accordance with this Guidance. Prosecutors will be proactive in identifying and, where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation or where the public interest clearly does not require a prosecution.

Early investigative advice

15. Prosecutors will provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.
16. Specific cases involving a death, rape or other serious sexual offence should always be referred to a prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made.
17. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 2 working days where released on bail. Where a case is referred at an early stage the prosecutor may determine the information to be provided by the police, the stage at which the evidence will be reviewed and the test to be applied.

Diversion from prosecution

18. When considering the Public Interest in any case, consideration will be given as to whether the matter can be appropriately dealt with out of court. What is appropriate in the circumstances of each individual case will depend on the seriousness of the offence, the results of the offending behaviour, the antecedents of the offender and the likely outcome at court.
19. Where an out of court disposal offers an outcome appropriate to the circumstances of the case, it should be considered and any relevant guidance taken into account.

20. When cases are referred to a prosecutor for a charging decision, the prosecutor may decide that the case is dealt with by a simple caution or a conditional caution if that is considered appropriate. A simple caution or a conditional caution can only be authorised by a prosecutor.

Concluding investigations early on Public Interest grounds

21. Generally, Public Interest decisions should not be taken until sufficient key evidence has been obtained to meet the evidential standard. However, there will be cases where it is clear at an early stage that the Public Interest does not (and will not) require a prosecution. In these rare instances, prosecutors may make an early Public Interest decision that the case should not proceed further.

5. The Threshold Test

22. Prosecutors will apply the Full Code Test unless the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged. The Threshold Test may be used to charge a suspect who may justifiably be detained in custody to allow evidence to be gathered to meet the Full Code Test.
23. In any case where the charges under consideration involve a number of offenders which the prosecution would seek to have tried together and the prosecutor determines that it is appropriate to apply the Threshold Test in respect of one or more of those offenders it shall be applied to all offenders to be charged with the joint or related offences.

Action where the Evidential Stage of the Threshold Test is not met

24. Where the prosecutor is not satisfied on either part of the evidential stage, the suspect cannot be charged. The case must then be referred back to the custody officer who will determine whether the suspect may continue to be detained or released on bail where further evidence can be obtained. Where the prosecutor has indicated that the evidential test is not met and there is no further evidence that can be obtained that will satisfy the evidential test then the investigation will come to an end and the suspect will be released.

Full Code review of cases charged on the Threshold Test

25. A decision to charge under the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the charge is still appropriate and that the continued objection to bail is justified. The Full Code Test must be applied as soon as is reasonably practical and in any event before any contested hearing and at the very latest before the expiry of any applicable custody time limit or extended custody time limit.
26. Cases must not proceed to trial unless both stages of the Full Code Test are met. In any case charged in accordance with the Threshold Test, a prosecutor will undertake a Full Code Test review prior to any trial hearing and before the expiry of any custody time limit. A full record of this review will be made on the case file.

Restrictions on the use of the Threshold Test

27. In cases where there is an anticipated guilty plea suitable for sentence at the first court hearing the requirements of the Full Code Test should always be met. In such circumstances, use of the Threshold Test, even where it is considered appropriate to detain the suspect in custody, is unnecessary. The Threshold Test may not be used to charge a summary offence that does not carry imprisonment.

6. Review of Charging Decisions

28. If the police or a prosecutor disagrees with any decision or action proposed following referral of a case the case can be escalated to the first line of management, which for this purpose will be an Inspector or the Head of Legal Services, for a review and resolution of outstanding issues.
29. This review should take place as soon as possible. If this review cannot resolve the issues, the case should be referred to the Chief of Police and the Attorney General.

7. Compliance with Decisions

Where in a case that has been referred to a prosecutor for a charging decision the decision of the prosecutor is to charge, caution, obtain additional evidence, or take no action, the police **must** proceed in that way unless the case is escalated for management review.

8. Notice to Suspects

30. Where the prosecutor notifies a police officer that there is not sufficient evidence to charge a person with an offence or that there is sufficient evidence but the public interest does not require the person to be charged, or given a caution in respect of an offence, the officer will provide the person with a notice in writing to that effect.
31. That notice **must** also specify that a prosecution may be brought if further evidence or information comes to light.

Document Control

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