



Immigration  
Enforcement

## Evidence in criminal investigations

This guidance is based on the Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984

**Version 5.0**

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# About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about evidence and how they must deal with it during their investigation.

The guidance contains information on:

- a definition of evidence
- classifications and forms of evidence
- admissibility
- exclusions, including hearsay
- evidence of bad character
- disclosure and retaining evidence

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: [Vulnerable people and children](#).

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the General Data Protection Regulation (GDPR) and the complementary Law Enforcement Directive (LED) domestic legislation via the Data Protection Act 2018 see: [Data protection changes \(GDPR and Data Protection Act 2018\)](#)

## Contacts

If you have any questions about the guidance and your line manager cannot help you or you think that the guidance has factual errors then email the CFI Operational Guidance Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **06 July 2020**

## Changes from last version of this guidance

- minor housekeeping
- updated links

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# Definition of evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the definition of evidence.

If you look up a definition of 'evidence' you will find many variations, but they all basically say evidence:

- is information given to the court and the jury to help them decide if a crime has been committed or not
- tends to prove the truth or probability of truth about a fact put before the court and jury

In court, items of evidence are referred to as 'material'.

There are national occupational standards for investigators dealing with evidence.

You must follow this guidance to help you to meet those standards.

## Definition of an exhibit

An exhibit is a document or other item shown to a witness and referred to by the witness in evidence. See: [CPS Definition of Exhibits](#).

In accordance with common law it is within the power of, and is the duty of, constables to retain for use in court things which may be evidence of crime, and which have come into possession of constables without wrong on their part. (R v Lushington quote from [CPS website](#)).

Under the Code of Practice issued under [Part 2 of the Criminal Procedure and Investigations Act 1996](#), any police officer investigating alleged crimes has a duty to record and retain material which may be relevant to the investigation.

As a general rule, the courts entrust the prosecution with the exhibits pending trial and after committal. The duty of the prosecution is:

- to take proper care to preserve the exhibits, safe from loss or damage
- to co-operate with the defence in order to allow them reasonable access to the exhibits for the purpose of inspection and examination
- to produce the exhibits at trial

The police, immigration enforcement and other law enforcement agencies will retain all original exhibits unless it is absolutely essential for the Crown Prosecution Service to accept them.

For further information see:

- [Criminal Justice Act 2003](#)

- [CPS Definition of Exhibits](#)

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# Admissibility of evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about when evidence is admissible (allowed to be used) in court and when it can be excluded.

You can only present evidence in court if it:

- has been produced by a witness in the form of a statement
- is under oath

For more information on witness statements, see [Witness Statements in Civil Procedure Rules Part 32](#).

There are strict rules that govern whether a piece of evidence is admissible in court. To make sure it is a fair trial, the court can decide whether:

- a piece of evidence is admissible
- to exclude it

The court has the power to exclude evidence, even though it may be admissible, if they feel it is too prejudicial (unfairly biased against the defendant). The court also has extra powers to do with evidence obtained by confession. The court's power to exclude evidence comes largely from:

- [Sec 78 of PACE](#)
- common law
- [Sec 76\(2\) of PACE](#), in relation to confessions

Depending on where you are working you must follow the provisions on admissibility in line with:

- [PACE England and Wales](#)
- [PACE Northern Ireland Order 1989](#)

The admissibility of bad character and hearsay evidence is outlined in Chapter 1 of the [Criminal Justice Act 2003](#)

For evidence to be acceptable it must meet all the criteria in this table:

Criteria	Definition
Probative	It: <ul style="list-style-type: none"><li>• must have value to the case</li><li>• must be credible</li></ul>

Criteria	Definition
	<ul style="list-style-type: none"> <li>• can be excluded if it has low probative value</li> </ul>
Not prejudicial	<p>It:</p> <ul style="list-style-type: none"> <li>• must be factual and impartial</li> <li>• can be excluded if the court feels it is too prejudicial towards the defendant</li> </ul>
Relevant	<p>It must:</p> <ul style="list-style-type: none"> <li>• make the matter that requires proof more or less probable</li> <li>• help to prove the guilt and innocence of the defendant</li> </ul>
Accurate	<p>It describes facts given in court as accurately as possible to assist the court in deciding what is true. Remember, how you present your evidence can affect how the court views your evidence</p>
Coherent	<p>You must present your evidence in court in a way that:</p> <ul style="list-style-type: none"> <li>• makes sense to the court</li> <li>• is easy to understand, which is often: <ul style="list-style-type: none"> <li>○ chronological (in the order it happened)</li> <li>○ in full detail</li> </ul> </li> </ul>
Provable	<p>Your case must be capable of proof, unless the law provides otherwise, for example it may sometimes allow an assumption to be made.</p>

## The 'res gestae' rule

The 'res gestae' (things done) rule allows an event to be put into context. If an event is described on its own without the surrounding circumstances then it may not make sense, so it is for the judge to decide whether:

- the court allows a witness to state facts with reasonable fullness and in context so that they make sense
- to use this rule to allow evidence, even though it may:
  - not be probative
  - be hearsay

For more information on 'res gestae' and the admissibility of evidence in court, see:

- [College of Policing guidance for 'res gestae'](#)
- [PACE England and Wales](#)
- [PACE Northern Ireland Order 1989](#)

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# Classifications of evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the different classes of evidence they may come across when conducting an investigation.

The classes of evidence you are likely to come across are:

- direct evidence
- circumstantial evidence
- primary and secondary evidence
- forensic evidence
- expert evidence

For details of the above, see:

- [College of Policing guidance for Circumstantial Evidence](#)
- [CPS guidance for Exhibits](#)
- [College of Policing guidance for Forensics](#)
- [CPS guidance for Expert Evidence](#)

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# Direct evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about direct evidence and how it can be used in court.

Direct evidence is evidence that is known personally to the witness because they have:

- personal experience through their senses, for example something they personally:
  - saw
  - heard
  - touched

When hearing direct evidence, the court and the jury:

- must be able to reach a decision on the information given alone
- are not required to make any assumptions about facts before them

The only thing the court and jury have to consider is, if they believe the person giving the evidence or not.

For further information see: [CPS guidance for Prosecution Witnesses](#)

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# Circumstantial evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about circumstantial evidence and how it can be used in court.

Circumstantial evidence allows a conclusion to be drawn from a set of circumstances or information. To do this the court and the jury must:

- accept the evidence before them
- reach a conclusion from it, for example:
  - the defendant is accused of theft from an art shop
  - a witness saw the defendant running from the art shop holding a painting

What the witness saw is direct evidence. The conclusion that the defendant committed the theft based on what the witness saw is circumstantial evidence.

Circumstantial evidence is not necessarily weaker than direct evidence if there are number of circumstances that together can lead the court or a jury to a guilty verdict. R v Exall (1866) states that:

‘One strand of a cord might be insufficient to sustain the weight, but three stranded together may be quite sufficient of strength. Thus, it may be circumstantial evidence – there may be a combination of circumstances no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilty, that is, with as much certainty as human affairs can require or admit of’.

This means that, even though you may only have circumstantial evidence, if there is enough of it, then altogether, it may be enough to prove guilt.

For further information see: [College of Policing guidance for Circumstantial Evidence](#).

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# Primary, secondary and forensic evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about primary, secondary and forensic evidence.

## Definition of primary evidence

Primary evidence is:

- an original document
- a statement about its contents

Primary evidence is usually required to prove the contents of a document.

## Definition of secondary evidence

Secondary evidence is:

- a copy of a document
- verbal evidence about its contents.

## Forensic evidence

In some cases, you may decide to request forensic tests to be done on pieces of evidence, for example:

- substance analysis
- facial mapping

With forensic evidence:

- it is carried out by forensic experts
- you can give the results as evidence in court
- it is subject to the same standards of admissibility as for any other class of evidence

For more information on forensics, see:

- [CPS guidance for Exhibits](#)
- [College of Policing guidance for Forensics](#)

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# Expert evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about using expert evidence in trials.

The ruling in *Folkes v Chadd* (1782), allowed the use of expert evidence in areas where the jury had no knowledge or experience:

- on certain matters, such as those of science or art, upon which the court itself cannot form an opinion, special study, skill or experience being required for the purpose, 'expert' witnesses may give evidence of their opinion.'

This means in cases where members of the court do not have knowledge or experience of a subject, then an expert can be used to explain it to them.

The ruling in *R v Turner* (1975), however, has had the effect of excluding some expert evidence on the grounds it is within the knowledge and experience of the jury and that expert opinion could be misleading:

- opinions from knowledgeable persons about a man's personality and mental make-up play a part in many human judgments - an expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience of a judge or jury
- if on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary: in such a case if it is given dressed up in scientific jargon it may make judgment more difficult - the fact that an expert witness has impressive scientific qualifications does not by that fact alone make their opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does'

This means expert evidence can be used because it relates to a subject that is not within the knowledge of the average person on the judge or jury. There is, however, a danger that expert evidence can be misleading because the average person:

- may not understand any scientific language used by the expert
- may believe the expert simply because they are an expert, without considering if they are right or wrong

In some cases, the jury may be able to make their own judgment without the help of an expert witness, in which case the expert witness is not necessary.

You must bear this in mind when you use or give expert evidence. Expert evidence can be given by a person competent to comment on a particular subject. This does not necessarily mean a person with qualifications.

The important thing is:

- what the expert witness knows, not how they got that expertise or knowledge

Expert evidence now covers much wider areas of expertise. As an investigator working for the Home Office, and depending on your area of knowledge and experience, it is possible you may be considered eligible to give expert evidence, for example, you:

- could be trained to a high level in forgery detection
- may have extensive knowledge about the:
  - immigration acts
  - pace order

For further information see: [CPS guidance for Expert Evidence](#)

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# Forms of evidence in court

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the different formats for presenting evidence in court.

You can give evidence in court in various formats, for example:

- testimony
- real evidence
- [hearsay](#)
- [confessions \(hearsay\)](#)
- documentary evidence
- business documents and schedules

There are rules and guidelines that you must follow for each form of evidence.

For more information see:

- [CPS guidance for Exhibits](#)
- [CPS guidance for Hearsay](#)

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# Testimony and real evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about presenting a testimony and real evidence in court.

## Testimony

Your testimony is the evidence you give in court:

- it can only be given under oath or affirmation:
  - you promise that you will tell the truth without having to swear on a holy book if you are not religious
- when you give your evidence, you are asking the court to believe you are telling the truth
- how you present yourself in court may affect whether the court believes you or not

## Real evidence

Real evidence is any physical material from which members of the court and jury could draw a conclusion using their five senses, for example:

- a knife or gun
- a document
- audio tapes
- DVD or film
- photographs

For more information see:

- [CPS guidance to Witness Competence and Compellability](#)
- [CPS guidance for Exhibits](#)

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# Hearsay

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about hearsay and the restrictions on using it as evidence in court.

[Chapter 2 of the Criminal Justice Act 2003](#) tells you that hearsay is ‘a statement not made in oral proceedings’. This means it is a statement that has not been given in court. It is effectively second-hand evidence, for example something:

- you have overheard
- someone has told you
- someone has written

In hearsay you are asking the court to believe:

- you are telling the truth
- the person who told you or whom you overheard was also telling the truth

It is the second assumption which means that hearsay is generally not admissible in court.

Chapter 2, sections 114 (1), (2), and (3), of the [Criminal Justice Act 2003](#), tells you when hearsay evidence is admissible.

[Sec 114](#) permits a statement made outside of the court proceedings to be admitted as evidence as long as the statement is allowed under:

- [Chapter 2 of the Criminal Justice Act 2003](#)
- another statute of law
- common law, in line with [Sec 118 of the Criminal Justice Act 2003](#)

In addition:

- all parties involved in the court proceedings must agree it can be admitted
- the court must be satisfied it is in the interests of justice for it to be admitted

Section [Sec 114](#) (2) states that when deciding if it is in the interests of justice to admit a statement made outside of the court proceedings, the court must consider these and any other factors it feels are relevant such as:

- the probative (valuable and credible) value of the statement, assuming it is true:
  - in relation to an issue being heard as part of the court proceedings
  - how valuable the statement is in helping to understand other evidence in the case
- what other evidence has been, or could be given, about the issue
- how important the issue or evidence is in the case as a whole
- the circumstances in which the statement was made

- if the person making the statements appears to be reliable
- if the evidence of how the statement was made is reliable
- whether verbal evidence about the issue can be given, and if not why not
- what difficulties there might be in challenging the statement
- how prejudicial those difficulties would be to the party facing the statement

[Sec 114](#) (3) Chapter 2 of the CJA does not affect the exclusion of a statement for any other reason except that it was not made verbally during the court proceedings.

If a piece of evidence is considered as hearsay it is possible a hearing will be held to decide if that evidence is admissible or not.

For further information see: [CPS guidance for Hearsay](#).

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# Evidence of bad character: the seven gateways

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about evidence of bad character, when and how you introduce it in court.

Evidence of bad character comes under [Chapter 1 of the Criminal Justice Act 2003](#). [Sec 98\(1\) of the CJA 2003](#) defines evidence of bad character as:

- evidence of, or a tendency towards, misconduct, other than evidence which is:
  - to do with the alleged facts of the offence with which the defendant is charged
  - evidence of misconduct in connection with the investigation or prosecution of that offence

In practice this means the prosecution can introduce evidence which does not relate to the offence being tried if it relates to other or past misconduct, for example:

- a disposition or tendency towards misconduct
- previous convictions
- other charges being tried concurrently (at the same time)
- offences the defendant was charged with, but:
  - was not prosecuted for
  - for which they were acquitted

If this evidence is very old, however, it may not be admissible unless it is for the same offence the defendant is currently charged with.

## Defendant's bad character

[Sec 101\(1\) of the Criminal Justice Act 2003](#) states that in criminal proceedings, evidence of the defendant's bad character is admissible if it meets one or more of the following provisions. These are often referred to as the [seven gateways](#) through which bad character evidence can be introduced:

Evidence of bad character	Explanation
101(1)(a): all parties to the proceedings agree to the evidence being admissible.	This means the defence and the prosecution have both agreed to the evidence being used.
101(1)(b): the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it.	This allows the defendant to introduce their own bad character if they feel it would be helpful to them, for example: <ul style="list-style-type: none"><li>• they might be facing a serious charge but have convictions for only minor offences previously</li></ul>

Evidence of bad character	Explanation
	<ul style="list-style-type: none"> <li>they may give an alibi of being in prison when the offence was committed</li> </ul> <p>This may happen in cases where judicial credit can be given (time off for an early guilty plea, for which the judge has guidelines to follow).</p>
101(1)(c): it is important explanatory evidence.	This is bad character evidence that helps to explain other evidence. Without it the court or jury would find it hard or even impossible to understand other evidence and put it into context.
101(1)(d): it is relevant to an important matter in issue between the defendant and the prosecution.	<p>This introduces evidence that the defendant should not be believed. It must be relevant, show a tendency to commit offences, and be substantial. It relates to a propensity (tendency) to:</p> <ul style="list-style-type: none"> <li>commit further offences</li> <li>be untruthful</li> <li>reprehensible behaviour</li> </ul> <p>For more information, see: <a href="#">Evidence of bad character: gateways (d)</a></p>
101(1)(e): it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant	<p>This is part of the courtroom process where there is more than one defendant (essentially, one blaming the other). The evidence must be probative and in relation to a matter under issue. It:</p> <ul style="list-style-type: none"> <li>can only be introduced by a co-defendant</li> <li>must be relevant</li> <li>must have substantial probative value</li> <li>cannot be excluded once it has been introduced</li> </ul>
101(1)(f): it is evidence to correct a false impression given by the defendant	Bad character evidence can be introduced to correct a misleading impression given by the defendant. For example, the way they have dressed could be misleading.
101(1)(g): the defendant has made an attack on another person's character	This means if the defendant attacks the character of either a witness or victim then their own character can be questioned. For more information, see:

Evidence of bad character	Explanation
	<a href="#">Evidence of bad character: gateways (d) and (g).</a>

You introduce bad character evidence during the ‘challenge’ phase of interview. As an investigator you are only likely to use gateways (d) and (g). The prosecution and defence teams use the other gateways.

Bad character of a person other than the defendant Section 100 of the CJA states that evidence of bad character about a person who is not the defendant can be admitted if:

- it is important with explanatory evidence that
- it has substantial probative value regarding a matter:
  - in issue during the proceedings
  - is of substantial importance in the context of the case as a whole
- all parties involved agree to it being admitted

For more information, see:

- [CPS Guidance for Bad Character Evidence](#)
- [Criminal Justice Act 2003 Part 11](#)

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# Evidence of bad character: gateways (d) and (g)

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about introducing bad character evidence using gateways (d) and (g).

## Gateway (d)

You can use this gateway to show evidence of previous misconduct, relevant to the case, evidence should be admitted so the court has all available information on which to make its decision about guilt or innocence. This evidence needs to show a propensity (tendency) to:

- commit further offences, for example:
  - a history of violent behaviour
  - a conviction for a similar offence, or ○ an offence in the same category as determined by the Secretary of State, which are offences under the theft act, or any sexual offence on a person under sixteen years of age
- be untruthful, which allows the prosecution to show the defendant is a liar, which includes evidence concerning:
  - convictions for perjury
  - deception
  - perverting the course of justice
  - fraud
  - offences of dishonesty
  - if the defendant has ever pleaded not guilty, but has been found guilty, then they are regarded as untruthful
- show reprehensible behaviour, which:
  - is bad behaviour that is open to criticism
  - would not be expected from the normal, average person

## Gateway (g)

If a defendant attacks the character of a witness or victim in one of the following 3 ways, then their own character becomes admissible and can be questioned in court:

- the defendant introduces evidence that attacks the character of another person
- the defendant or their legal representative asks questions in cross examination that are likely to, or do, result in such evidence
- in interview, at charge or when being told they are to be prosecuted, the defendant indicates another person's bad character:
  - if this happens it is important you record it in a taped interview if possible, as part of your investigation

For further information see: [Section 101 Criminal Justice Act 2003](#)

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# Confession: admissibility

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about confessions and the restrictions on using them as evidence in court.

A confession is a statement made out of court and therefore falls under the hearsay rules. [Sec 82 of the Police and Criminal Evidence Act \(PACE\) 1984](#) states:

- 'confession', includes any statement wholly or partly adverse to the person who made it, whether made:
  - to a person in authority or not
  - in words or otherwise

The court is concerned with the reliability of any confession. Before admitting a confession as evidence, the court will consider whether it was obtained:

- by oppression
- in circumstances that would make it unreliable
- unfairly

For more detail on these, see: [Hearsay \(confessions\)](#).

When a confession is admissible or must be excluded PACE tells you when a confession can be admitted or when it must be excluded.

For further information see:

- [Evidence in Criminal Proceedings: PACE Northern Ireland Order 1989](#)
- [Criminal Justice \(Evidence\) \(Northern Ireland\) Order 2004](#)

For more information and the exact wording of the acts, see:

- [Sec 76 PACE England and Wales 1984](#)
- [Sec 78 PACE England and Wales 1984](#)
- [Evidence in Criminal Proceedings: PACE Northern Ireland Order 1989](#)

Section	What it allows or prohibits	What the section means
PACE 76(1) PACE NI 74(1)	Confession can be admitted	These sections mean a confession can be admitted so long as: <ul style="list-style-type: none"><li>• It is relevant to the offences the defendant has been charged with</li></ul>

Section	What it allows or prohibits	What the section means
		<ul style="list-style-type: none"> <li>the court has not excluded it for any reason</li> </ul>
PACE 76(2)  PACE NI 74(2)	Confession must be excluded	These sections mean if a confession: <ul style="list-style-type: none"> <li>was obtained through oppression</li> <li>is deemed unreliable by the court</li> </ul> Then it must be excluded, unless the prosecution can prove beyond reasonable doubt that: <ul style="list-style-type: none"> <li>it was not obtained by oppression</li> <li>it is not unreliable</li> </ul>
PACE 78  PACE NI 76(1)	Confession must be excluded	These sections mean the court can exclude evidence which it believes will lead to the trial being so unfair that it cannot be admitted.

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# Confession: oppression, unreliability and unfair evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about confessions that have been obtained through oppression, are unreliable or unfair.

## Oppression

Oppression includes:

- torture
- inhuman or degrading treatment
- the use or threat of violence

Confessions obtained through oppression are inadmissible. There must be a link between the oppression and the confession for it to be excluded for this reason. For example, a person only makes a confession because they were threatened with physical violence if they did not.

A confession made before oppressive treatment took place was not obtained under oppression and cannot be excluded for this reason (although it may still be excluded for other reasons).

If oppression has taken place, any confession obtained properly at a later date may also be excluded, because it could be concluded the oppressive treatment led the person to confess later on.

There is minimal legislation available that defines what oppressive treatment is, so it is largely based on case law. Some examples of where the court decided oppression had taken place, are:

- bullying behaviour and aggressive interviewing
- where detention is deemed by the court to be unlawful
- telling a suspect you have an identification or evidence that does not exist
- a confession given where the suspect was not given access to a solicitor

For further information see: [Hearsay \(confessions\)](#)

## Unreliability

When deciding if a confession is reliable the court considers what the circumstances actually were when the person made the confession, not what the circumstances were believed to be. The prosecution must show beyond reasonable doubt that the confession was reliable. It is not for the defendant to prove that it was unreliable.

You must consider whether a confession was made because of something that was said or done to the suspect.

Examples of when a confession could be considered unreliable are:

- failure to give the caution or to ask if they want a solicitor
- medical condition (whether the interviewing officer was aware of it or not)
- the offer of an inducement such as being granted bail
- the threat of being kept in custody until an admission has been made

## Unfair evidence

The court can exclude evidence it feels will have such an adverse effect on the fairness of the proceedings it cannot be admitted. This applies to all forms of evidence, not just confession. Examples of evidence obtained unfairly are:

- failure to inform the suspect of their rights in custody or the interview
- 'off the record' interviews
- failure to provide an interpreter if one is needed
- evidence obtained unlawfully, for example:
  - evidence obtained without a search warrant when one was required

Confession obtained under these or other unfair circumstances would not be admissible.

For more detailed information on the exclusion of confessions, including oppression and unreliability, see:

- [Hearsay \(confessions\)](#)
- [PACE England and Wales 1984 Sec 76](#)
- [Evidence in Criminal Proceedings: PACE Northern Ireland Order 1989](#)

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# Documentary evidence, business documents and schedules

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about using documentary evidence, business documents and schedules, as evidence.

## Documentary evidence

A document is something that has writing or an inscription on it that communicates information to the reader. As well as a paper document it could include, for example:

- film
- tape
- computer records

Documentary evidence is any document produced for inspection by the court as evidence of its contents.

Documentary evidence must be:

- produced by a witness who must state the significance of the document (because the document itself can't speak and explain)
- accompanied by testimony

This is sometimes referred to as 'speaking to the document'.

If the writing or inscription on the document was not written by the witness producing the document as evidence, it may be considered as hearsay.

For more information on see:

- [CPS guidance for Exhibits](#)
- [CPS guidance for Disclosure](#)
- [CPS guidance for Hearsay](#)

It may also be necessary to distinguish between the production of a document:

- to show the document itself exists
- for the evidential value of the information it contains

In some circumstances a statement contained in a document may be admissible even though the person who made the statement is not in court. This will be for the court to decide.

You do not necessarily have to produce the original document.

[Section 117 of the Criminal Justice Act 2003](#) states:

- 'Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either:
  - the document
  - (whether or not the document exists) a copy of the document or the material part of it, authenticated in whatever way the court may approve'

## Business documents

A statement in a business document is admissible as evidence of fact, if:

- the document was created or received by the person producing it, in the course of:
  - trade
  - business
  - profession
  - other occupation
  - being paid or unpaid
- the information was supplied by a person who had, or may reasonably be expected to have had, personal knowledge of the matter in hand:
  - this person may or may not be the person making the statement

You cannot use this provision to admit a confession made by an accused person that would not be admissible under [Sec 76 Police and Criminal Evidence \(PACE\) Act 1984](#) or [The Police and Criminal Evidence \(PACE\) Order \(Northern Ireland\) 1989](#).

For more information see: [CPS guidance for Exhibits](#)

## Schedules

A schedule is a list of evidence you can prepare, based on the information you have gathered during your investigation. For example, you may have gathered a large number of bank statements. You can prepare a schedule containing:

- a selected number of statements
- a description of what they contain
- any other information you decide is relevant

You must give the schedule an exhibit reference and produce it in a witness statement so it can be presented in court.

The use of schedules, in some circumstances, allows you to tell the court about a large number of similar items without having to actually show them all, and therefore reduces court time.

If you are thinking about using a schedule because you have large amounts of similar material it is a good idea to discuss this with the Crown Prosecution Service (CPS) lawyer to make sure they agree this is the best course of action.

For further information see: [CPS guidance for Disclosure](#).

## **Related content**

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# Chain of evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what the chain of evidence is and how to maintain it.

The 'chain of evidence' refers to the handling of evidence from the moment it is found and seized, right through the prosecution process. It provides an audit trail showing where that evidence has been at all times. You need to be able to show how the evidence was seized or produced, including:

- where it was found
- where it was seized or produced
- the time it was seized or produced
- the date it was seized or produced
- who it was seized or produced by
- what happened to the exhibit after it was seized or produced

See: Notebooks, Day Books and Decision Logs.

For all evidence you seize or produce, you must:

- seal it in a tamper evident bag or any other bag provided for that purpose
- follow all procedures for:
  - recording the seizure
  - completing the sections on the evidence bag

See: Tamper evident bags

You must then:

- store the evidence as soon as possible in a secure property store
- make a detailed record of:
  - exactly what evidence was stored
  - when it was stored

You must record in the property book and in your Pocket Notebook, and complete the continuation section on the tamper evident bag, if you:

- remove a piece of evidence
- open it for any reason
- hand it to somebody else
- take a piece of evidence into your possession

When sending pieces of evidence to other people or offices rather than just handing them over in person, you must:

- consider the security of the evidence

- make sure the chain of evidence is maintained

You must also record any property movement on the Clue material register when property is transferred in and out of the Property Store or transferred from one officer or location to another.

For more information, see: Property Control and Storage

### **Related content**

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# Why you need to show the chain of evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the reason why they need to be able to show the chain of evidence.

It is important for you to be able to show the chain of evidence because:

- it maintains the integrity of the evidence
- there can be no dispute over how the evidence has been handled
- you can easily refute allegations that the evidence has been tampered with or changed in any way

By maintaining the chain of evidence, you create the best chance for that evidence to have the desired impact in court.

If you do not handle evidence correctly:

- you may have to explain this in court
- your evidence may be excluded
- the defence may try to have your evidence discredited
- the prosecution may not be willing to take your case forward
- you may lose your case
- there will be a financial cost to the government if the case collapses
- the reputation of the Home Office may be damaged

For more information, see: Property Control and Storage

## **Related content**

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# Charging decisions and disclosure of evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about charging decisions and their obligations to disclose evidence.

## The decision to charge

The decision to charge will be largely based on what evidence there is against the suspect.

In some cases, the custody sergeant can take the decision whether to charge a suspect.

In the majority of cases and in all serious cases, the decision to charge a suspect is made by the Crown Prosecution Service (CPS) and you will need to refer your case to a CPS lawyer and tell them about your case and the evidence you have. When the CPS lawyer makes the decision, they will apply either the:

- full code test
- threshold test

They apply the full code test wherever possible and it consists of the:

- evidential stage
- public interest stage

They use the threshold test in cases where:

- there is a substantial bail risk
- not all the evidence is available at the time when the suspect must be released from custody unless charged

For more information on the decision to charge, the threshold test and the full code test, see:

- [CPS guidance for Charging](#)
- [CPS Code for Crown Prosecutors](#)

## Disclosure of evidence

In any prosecution case the defence are entitled to be provided with material relating to the charges made so the defendant can have a fair trial.

Once the custody sergeant has charged a suspect with an offence, you must give the defence 'advanced' information. This is material that will assist them in deciding whether to plead guilty or not guilty. This usually includes copies of:

- statements
- exhibits

As the case progresses the defence are entitled to various material and information that will assist them in presenting their case.

For full details on disclosure (including sensitive material), your obligations under disclosure rules, and the consequences of not following these rules, see:

- Disclosure Guidance
- [CPS guidance for Disclosure](#)

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# Retaining evidence

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about what evidence they must keep and how long they must keep it for.

How long you must keep evidence depends what stage your investigation is at.

Retention periods are stated in the:

- [Criminal Procedures and Investigations Act \(CPIA\) 1996 \(Sec 5\)](#)
- [PACE Code B Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)
- [PACE Codes of Practice \(Northern Ireland\)](#)

This is for evidence seized under powers in the Police and Criminal Evidence Act 1984 or the Police and Criminal Evidence (Northern Ireland) Order 1989.

Where evidence is seized under powers contained in the immigration acts, you must also follow these guidelines.

You can keep copies of material if the original is:

- perishable
- returned to the owner

If you have not kept a piece of evidence because it was not relevant, but it becomes relevant at a later time, you must take steps to try and obtain it and keep it so the court can inspect it if required.

For further information see:

- [Sec 23\(1\) Criminal Procedures and Investigations Act \(CPIA\) 1996, Code of Practice \(section 5\)](#)
- [PACE Codes of Practice \(Northern Ireland\)](#)
- Property Forfeiture and Disposal

You have a duty to keep relevant evidence, and evidence that falls into the following categories in particular:

- crime reports, for example:
  - crime report forms
  - relevant parts of incident books
  - officers' notebooks
- custody records
- records from tapes of telephone calls (such as 999 calls) that give a description of the alleged offence or offender
- final versions of witness statements, including:
  - drafts if the content is different

- any exhibits mentioned
- interview records with actual or potential suspects and witnesses:
  - DVD
  - audio tape
  - written records
- communications between investigating officers and experts, for example forensic experts
- records of a first description of a suspect where the witness claims to be able to identify or describe the suspect
- material that may satisfy the test for prosecution disclosure, for example:
  - an explanation for the offence provided by the suspect
  - any material that casts doubt on the reliability of a confession, and any material casting doubt on the reliability of a prosecution witness

This list is the same for the whole of the UK.

For further information see: Property Forfeiture and Disposal

## Lengths of retention

State of case	Time material to be kept
Yet to make the charging decision	Keep until the Crown Prosecution Service (CPS) has made the decision and then as below.
Case in progress	Keep at least until the case has been dealt with, for example the person is: <ul style="list-style-type: none"> <li>● convicted</li> <li>● acquitted</li> <li>● the prosecutor decides not to proceed with the case</li> </ul>
Court imposes a custodial sentence or hospital order	Keep until the person is: <ul style="list-style-type: none"> <li>● released from custody</li> <li>● discharged from hospital</li> </ul>
In all other cases	Keep 6 months from the date of conviction
Person released from custody or discharged from hospital earlier than 6 months from date of conviction	Keep at least 6 months from date of conviction
Appeal in progress at the end of one of these periods or application being considered by the Criminal Cases Review Commission	Keep until the: <ul style="list-style-type: none"> <li>● appeal is determined</li> <li>● commission decides not to refer the application to the court of appeal</li> <li>● court of appeal determines the appeal following the referral</li> </ul>

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