



Home Office

## **GUIDANCE**

# **Implementing Section 176 of the Anti-social Behaviour, Crime and Policing Act 2014: Low-value shoplifting**

Guidance for police in England and Wales

First publication: June 2014

## Introduction

1. This guidance, produced by the Home Office, is primarily for the police, but will also be of interest to retailers, the Crown Prosecution Service (CPS), Magistracy, Her Majesty's Courts and Tribunal Service and criminal defence lawyers. It sets out how the legislation should be implemented, and what factors should be taken into account when making decisions on how to proceed with individual cases.
2. It should be viewed in conjunction with the Guidance on Simple Cautions for Adult Offenders published by the Ministry of Justice on 14 November 2013, the Director's Guidance on Conditional Cautions (7th Edition - April 2013), the Sentencing Council guidelines on Theft and Burglary in a building other than dwelling, which includes theft from a shop, and the Code of Practice for Victims of Crime published by the Ministry of Justice in October 2013.

<https://www.gov.uk/government/publications/out-of-court-disposals>

<http://www.justice.gov.uk/out-of-court-disposals>

[http://www.cps.gov.uk/publications/directors\\_guidance/adult\\_conditional\\_cautions.html](http://www.cps.gov.uk/publications/directors_guidance/adult_conditional_cautions.html)

<http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm>

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

## Aims and purpose of the shop theft provisions

3. The aims of the shop theft provisions are:
  - i. to enable cases of theft from a shop of goods with a value of £200 or less to be subject to more efficient procedures if the defendant is likely to plead guilty. Such cases will no longer be sent to the Crown Court for trial (unless the defendant elects) or sent for sentence; and
  - ii. to enable this offence to be added to those offences that can be dealt with as specified proceedings which the police can prosecute directly without the involvement of the CPS.

## Overview

4. Shop theft imposes significant costs on communities, businesses and the economy: over 80,000 cases of theft from a shop come before the courts each year. These provisions are intended to ensure such cases are dealt with as swiftly and efficiently as possible as well as building on an ongoing programme of work to reform criminal justice procedures.
5. Section 176 of the Anti-Social Behaviour, Crime and Policing Act makes theft from a shop, of goods worth £200 or less (retail value), a summary-only offence, while preserving the right of defendants to elect to be tried by judge and jury in the Crown Court. This new provision does not apply to cases involving multiple offences in which the total of the stolen goods adds up to more than £200.

6. A threshold set at £200 has been introduced because it captures the vast majority of the cases currently heard in the magistrates' courts, as well as 80% of the much smaller number of cases (1,185 in 2011) that go to the Crown Court. Research for the Sentencing Advisory Panel in 2006 showed that 90% of cases of shop theft involved property worth under £200.
7. These changes do not affect the maximum penalty that can be imposed for shop theft. Magistrates have a range of sentencing powers up to a maximum of 6 months imprisonment, and are able to impose appropriate sentences for shoplifting, including for repeat offending.
8. The legislation also makes provision to ensure that certain powers under the Police and Criminal Evidence Act 1984 (PACE), which only apply to indictable offences, will continue to be available in cases of summary-only shop theft. These include the powers of a constable to enter and search premises for the purposes of evidence gathering or to arrest a suspected individual, powers of a justice of the peace to issue warrants to enter and search premises, and powers for shop security staff to make a "citizen's arrest". The provision also makes analogous changes to Service law to ensure that powers of investigation are similarly preserved.
9. These changes will ensure that the police and other responsible bodies retain the ability to investigate and pursue individuals suspected of stealing goods, of any value, from shops.
10. Secondary legislation which came into force on 9 June 2014 has added this new offence to the list of offences set out in the Prosecution of Offences Act 1985 (Specified Proceedings) Order 1999, enabling the police to prosecute offences if they are uncontested by the defendant, rather than referring them to the CPS.

## **Guidance on the application of the low value shop theft provisions**

### Appropriate circumstances

11. All offences of shop theft of goods worth £200 or less will be considered summary-only and can be considered for police-led prosecution, providing a guilty plea is indicated. However, regard should be given as to how suitable the defendants and/or circumstances are for police-led prosecution via specified proceedings, which is a postal process that involves either the courts issuing a court summons or a postal charge and requisition. It therefore does not require the defendant to attend court in person providing they enter a guilty plea by post.
12. Police officers are entitled to charge and bail an individual to appear in court, to be dealt with in person where they deem it appropriate e.g. prolific shoplifters or where there are other aggravating factors present. In these circumstances, the offences remain the responsibility of the CPS to prosecute even if a guilty plea is likely.
13. The decision tree at Annex A sets out the circumstances as to when police led prosecutions for this offence are suitable.
14. A more detailed list of circumstances in which police-led prosecutions are not appropriate for this offence can be found at Annex B. This is an extract from the Memorandum of Understanding between the police and CPS developed in 2012.
15. In all circumstances, police officers should consider consulting business owners / store managers about whether they have experienced difficulties with an offender in the past. The victims' views should also be taken into account, for example by giving them the opportunity to make a victim personal statement to explain the impact of any shop theft. Local Business Crime Reduction Partnerships may also be able to provide useful information to help ascertain whether the 'guilty plea by post' procedure would be a suitable way to deal with the offender.

### Multiple offences

16. Cases where an individual is charged on the same occasion with two or more offences of low-value shoplifting, and the value of the stolen goods adds up to more than £200, will not be covered by this legislation. They will be considered as either-way offences and may be sent to the Crown Court for trial or sentence. Therefore, any such cases must be referred to the CPS to prosecute.
17. 'Charged on the same occasion' means appearing before a magistrates' court to answer those charges. Where offences occur separately, the relevant point to consider whether the £200 value is exceeded is not necessarily when the police are charging the suspect, it is when that accused person appears or is brought before a magistrates' court. This includes where their case is brought to court following a guilty plea by post.

Example:

An individual is charged with shop theft of goods worth less than £200 and the postal charge and requisition issued. Before they receive the postal charge and requisition, the individual commits another offence of shop theft under £200. However, the total retail value of the goods stolen exceeds £200 so the case can no longer be dealt with as a police-led prosecution. The case should be referred to the CPS at the earliest opportunity so the defendant can answer both charges at the same time.

Repeat offenders

18. A defendant can still be considered under these provisions where they have already received, in respect of shop theft, a:
- i. Simple caution;
  - ii. Conditional caution; or
  - iii. Penalty Notice for Disorder (PND).
19. It is expected that defendants already in receipt of an out-of-court disposal for shop theft, including a PND, will be prosecuted, and repeat offenders should be prosecuted unless there are exceptional circumstances. However, it is for police forces to decide whether to allow offenders who have previously received out-of court disposals for shop theft to enter a guilty plea by post. Consideration should be given to the number, frequency and severity of any previous out-of-court disposals, as well as whether the individual's history and behaviour means they are likely to face a custodial sentence, community sentence or diversion into treatment (see later sections). In addition to formal sanctions, retailers can be a valuable source of information on the offending history of an individual.
20. If a repeat offender's previous convictions make a police-led prosecution unsuitable, then the case should be referred to the CPS for prosecution.

Custodial sentences

21. The 'guilty plea by post' procedure will not be suitable where a custodial sentence is likely as the individual will be required to attend court in such circumstances.

Community sentences

22. The 'guilty plea by post' procedure will not be suitable where a community penalty is likely.

Reparation and diversion into treatment

23. In cases where it appears that the offending behaviour is linked to an underlying problem, there may be a need for reparation or diversion into treatment. For example:
- addiction to drugs, alcohol or gambling;
  - debt problems;

- involvement in an abusive relationship;
- learning disabilities; or
- health (including mental health) issues.

24. In such circumstances, the 'guilty plea by post' procedure will not be appropriate as defendants will need to appear in court for the magistrates to consider the most suitable penalty.

#### Cases commenced by charge by a police officer in a custody suite

25. Cases commenced by charge by a police officer in a police station are outside the scope of the 'guilty plea by post' procedure, and should therefore be referred to the CPS for prosecution.

#### Aggravating factors

26. The 'guilty plea by post' procedure will not be appropriate in cases involving aggravating factors such as:

- i. violence (including abusive behaviour, threats of violence and intimidation);
- ii. hate crime;
- iii. possession of illegal drugs; or
- iv. possession of a weapon.

27. In cases involving aggravating factors, even if the defendant indicates an intention to enter a guilty plea, the case should be referred to the CPS for prosecution.

28. The 'guilty plea by post' procedure will not be appropriate in cases where the perpetrator is subject to a banning order at the time of the offence, as the individual will have breached a court order and should appear back before the court.

29. However, where the individual has breached conditions of police bail or a town centre partnership bar, it will be for the police to decide whether or not the 'guilty plea by post' procedure should be used or whether it would be more suitable to refer the case to the CPS for prosecution.

30. In these circumstances, it will be particularly important to take the experience of the victims into account and to adhere to the Code of Practice for Victims of Crime which sets out that victims are entitled to be informed of a decision to prosecute the suspect, or issue an out of court disposal and provided with an explanation of the decision.

#### Going equipped / intent

31. Where the shop theft has been committed with evidence of planning or premeditation, such as through the use of equipment e.g. a foil-lined bag, the case should be referred to the CPS for prosecution.
32. Section 25 of the Theft Act 1968 makes it an offence to: knowingly possess an article for use in the course of or in connection with theft/ burglary. The possession of the article must occur before the commission of the offence.

#### Organised crime

33. Where there is an indication that the theft has been perpetrated by a member of a serious organised crime gang, or an individual known to be associated with organised crime activity of any kind, the case should be referred to the CPS for prosecution. Organised crime includes organised acquisitive crime, drug trafficking, human trafficking, and organised illegal immigration, high value fraud and other financial crimes, counterfeiting and cyber crime, including fraud and child sexual exploitation. It is important to liaise with the retailers as they often hold information about organised gangs and offenders who are known to be operating within one.

#### Simultaneous offences

34. The 'guilty plea by post' procedure will not be appropriate in cases where a more serious offence is attached, such as an either-way or indictable-only offence.
35. However, where two or more specified offences have been committed simultaneously, such as criminal damage under the value of £5,000 and shop theft of goods under the value of £200, it will be for the police to decide whether or not the 'guilty plea by post' procedure should be used as both are suitable for the police to lead the prosecution.
36. In cases where the criminal damage is not minor or incidental, even if within the above thresholds, the case should be referred to the CPS for prosecution.

#### Assisting and Encouraging Crime

37. The offence of low-level shoplifting as defined in the provision for this purpose includes secondary offences such as aiding and abetting. Therefore, in cases where an individual is found to be aiding, abetting, counselling or procuring the commission of low-value shoplifting, these provisions can still be utilised. It will be for the police to decide whether the 'guilty plea by post' procedure will be suitable for such offences.

#### Youth offenders

38. Only cases involving individuals over the age of 16 can be considered under these provisions. However, we advise that all cases involving individuals under the age of 18 should be referred to the CPS for prosecution, due to the additional considerations required in such cases.

### Represented guilty pleas

39. There are occasions where defendants plead guilty by post but then appear in court with legal representation. In such situations, the police prosecutor (court presentation officer) should treat it in the same way as a straightforward guilty plea by post hearing i.e. as if the defendant was not present. However, if the defendant changes their plea in court the case must be referred to the CPS to prosecute.

### Useful links

Code of Practice for Victims of Crime:

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

Guidance on Victim Personal Statements:

<https://www.gov.uk/government/publications/victim-personal-statement>

Code for Crown Prosecutions: The Full Code Test:

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/codetest.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html)

CPS guidance on Offences to be taken into consideration:

[http://www.cps.gov.uk/legal/l\\_to\\_o/offences\\_to\\_be\\_taken\\_into\\_consideration\\_guidance\\_\(tics\)/](http://www.cps.gov.uk/legal/l_to_o/offences_to_be_taken_into_consideration_guidance_(tics)/)

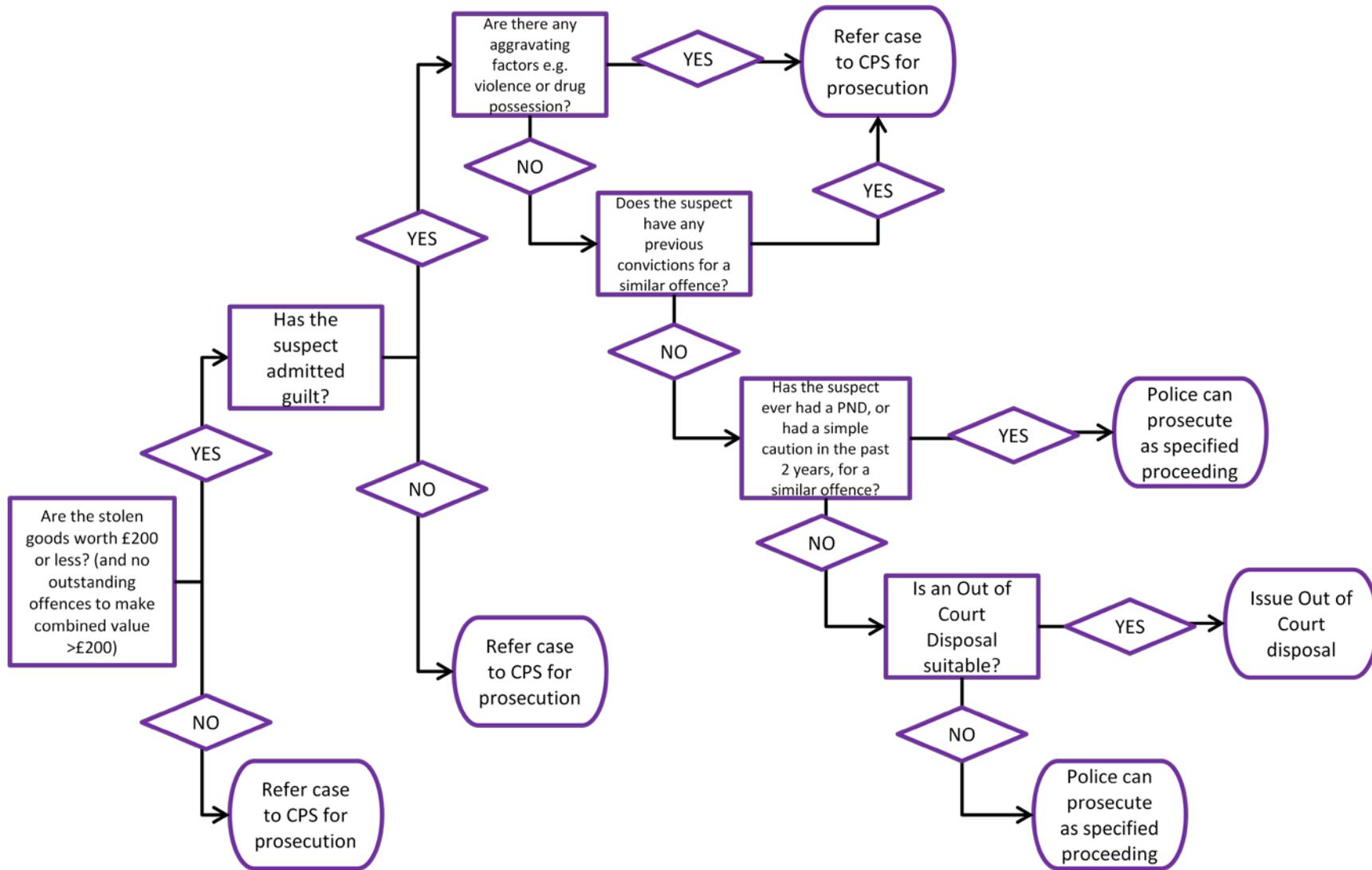
CPS guidance on youth offenders:

[http://www.cps.gov.uk/legal/v\\_to\\_z/youth\\_offenders/](http://www.cps.gov.uk/legal/v_to_z/youth_offenders/)

Community Safety Accreditation Scheme:

<https://www.gov.uk/government/publications/community-safety-accreditation-scheme-powers>

**Annex A: Application of the low value shop theft provisions – Decision Tree**



## **Annex B:**

### **Specified Proceedings: Memorandum of Understanding between police and CPS**

The police shall not undertake the conduct of specified proceedings in:

- circumstances where the defendant appears at court accused of specified and non-specified offences that arise out of the same set of circumstances;
- cases that fall within the DPP's guidance on charging 2011 - 5th Edition and any subsequently revised arrangements. This includes any specified offence in a domestic violence or hate crime context;
- cases heard in a youth court where the defendant is aged 16 or 17 years of age. (Legislation precludes offences from being specified where the accused is under 16 years old);
- cases where the defendant has been charged and refused bail; or
- cases where the defendant is subject of police or court imposed conditional bail.

In addition, the police shall not undertake the conduct of specified proceedings in cases that involve complex or sensitive issues which, the police believe, necessitates prosecution by CPS. This list is not intended to be exhaustive:

- Any specified offence that involves police officers or immediate family as either the victim or defendant.
- Any specified offence where a youth is a co-accused with an adult charged to an adult court.
- Any specified offence whereby the offender is subject of a pre-sentence report.
- Any specified offence where previous convictions indicate that the defendant is the subject of a conditional sentence.
- Any specified offence where the defendant is deemed to be a repeat offender.
- Any circumstance involving multiple specified offences and or multiple offenders.
- Any specified offence whereby medical or psychiatric reports are sought.