



HM Government

# **Note on the investigation and prosecution of crimes of universal jurisdiction**



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## Introduction and context

1. The United Kingdom is committed to upholding international law and holding those who commit the most serious crimes accountable for their actions. It is UK Government policy that the United Kingdom should not provide a safe haven for war criminals or those who commit other serious violations of international law. We are committed to ending impunity for such crimes, and will encourage action to be taken to bring such individuals to justice wherever possible, within the rule of law and depending on the sufficiency of the available evidence.
2. Applying universal jurisdiction in our national law in respect of certain offences reflects this policy and enables us to meet our international obligations in this regard, including those under the Geneva Conventions, the UN Convention against Torture and other counter-terrorism Conventions.
3. Our approach to the small number of offences for which there is universal jurisdiction is designed to make sure that those suspected or accused of such offences are investigated, and charged and tried if appropriate, in a way that is fair and impartial at every stage.
4. The UK approach to universal jurisdiction is not unusual. Many other countries prosecute cases under universal jurisdiction, although the manner in which such jurisdiction is exercised inevitably varies in accordance with local constitutional and legal frameworks.

## Concept of universal jurisdiction in UK law

5. The UK is divided into three separate legal jurisdictions: England and Wales; Scotland; and Northern Ireland. While most of this paper focuses on arrangements in England and Wales, there are separate sections on Scotland (paragraphs 27-31) and Northern Ireland (paragraphs 32-41) below.
6. The jurisdiction of the courts in the UK to try crimes is premised on a presumption of territoriality, unless there is express statutory provision to the contrary. The law makes a distinction between assuming jurisdiction over UK nationals who have either committed offences abroad or who are the victims of offences committed abroad (active and passive personality jurisdiction respectively), and over foreign nationals who have committed offences abroad. Offending by the latter is embraced by the concept of universal jurisdiction (i.e. jurisdiction to try a crime irrespective of where it was committed and the nationality of the accused). Such jurisdiction has been adopted in the case of certain heinous crimes to accord with customary international law and to comply with the UK's international obligations as set out in various treaties.
7. The jurisdiction to investigate and try an individual for a particular offence may be held by a variety of different states or authorities. These might include the state in which the crimes were allegedly committed; an international tribunal; and/or a state which has custody of the individual and has the jurisdiction under its national law to prosecute the case.
8. The presumption in favour of territoriality reflects the widely held view that in most cases criminal offences are best investigated and prosecuted under local laws in the country in which the alleged offences have taken place because generally that is where the victims of the crime and the wronged community are most likely to be located and where the evidence is most likely to be found. The UK is committed to help other countries to prosecute offences that take place

within their territory or within their jurisdiction. Hence, the UK has arrangements to provide mutual legal assistance to other countries and, unlike a number of its extradition partners, permits the surrender of its own nationals subject to statutory safeguards.

9. In addition to extradition arrangements with its regular extradition partners, the UK has important international obligations to the international tribunals, as well as under a range of UN Conventions (torture, hijacking etc). The UK stands ready to consider extradition requests and may also consider requests from countries with which it has no extradition arrangements. All requests are considered in accordance with the statutory bars set out in our domestic legal system.

## **When will an investigation in England and Wales take place?**

10. Crimes of universal jurisdiction can be reported to the police in the same way as any other offence. Regardless of the route by which the presence of a suspected war criminal in the UK comes to light, the same standards of evidence and independence of process will apply in respect of any investigation, arrest or prosecution.
11. The operational responsibility for deciding whether to commence or pursue a criminal investigation falls to the police, who exercise their discretion and responsibility to investigate independently of the executive.
12. The war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) is responsible for the investigation of all allegations of war crimes, crimes against humanity, genocide and torture. Any allegations received by other police forces will be referred to SO15 for investigation. This ensures that all cases are dealt with by appropriately trained specialist officers, and there is no scope for local discretion or variation in practice on such sensitive cases.
13. The Crown Prosecution Service, Special Crime and Counter Terrorism Division (SCCTD) has responsibility for prosecuting any such crimes. The Crown Prosecution Service also takes decisions independently of the Government.
14. While maintaining their operational independence, both the Metropolitan Police and the Crown Prosecution Service will, where appropriate, liaise with the Foreign and Commonwealth Office for advice on diplomatic handling.

## **Decision to investigate**

15. SO15 and SCCTD have agreed guidelines in relation to the investigation and prosecution of allegations of war crimes, crimes against humanity, genocide and torture in order to enable the process for investigations, arrests and prosecutions to be conducted in an orderly and transparent way. These guidelines can be found at [Annex A](#) and include clear instructions on the criteria that SO15 are to consider and the role of the SCCTD in providing advice through the process.

16. There may be occasions during a police investigation when SO15 conclude that an arrest is necessary and appropriate in order to progress an investigation. All decisions in relation to arrests are operational decisions taken by the police independently of Government. In taking these decisions, SO15 must comply with all normal arrest protocols.

## Decisions in respect of private arrest warrants

17. There may be circumstances in which a private prosecutor wishes to make an arrest without involving the police and seeks a private arrest warrant. Section 1(4A) of the Magistrates' Courts Act 1980 provides that the consent of the Director of Public Prosecutions is required before an arrest warrant is issued for crimes such as grave breaches of the Geneva Convention, torture and hostage taking. In effect this means that an application will not be made without the Director of Public Prosecutions first indicating his or her consent. Separate guidance has been published in relation to applications for the consent of the Director of Public Prosecutions. This separate guidance is attached at [Annex B](#) and should be followed when there is an imminent prospect of a suspect arriving in England or Wales.

## Decision to prosecute

18. Any decision to prosecute offences of universal jurisdiction in England and Wales is governed by the same principles that apply to any other prosecution. These are set out in the Code for Crown Prosecutors which can also be found on the [CPS website](#). A prosecution will not be justified unless both the evidential and public interest stages of the Code are satisfied.
19. At the evidential stage prosecutors must be satisfied that there is evidence which is **sufficient, admissible, reliable and credible** in accordance with the rules of the criminal courts of England and Wales or which is capable of being put into such a format within a relatively short period of time to provide a realistic prospect of conviction for each of the charges. All the relevant facts must be proved with cogent admissible evidence. The court cannot take such facts as read or assume them or rely on open source internet material.
20. As with all criminal trials, the burden of proof will be on the prosecution to satisfy the jury so that they are sure of the defendant's guilt. Prosecutors must consider what the defence case may be and how it is likely to affect the prospects of conviction.
21. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
22. In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest. When conducting the public interest test, prosecutors in England and Wales must consider each of the questions set out in paragraphs 4.12 (a) to (g) of the Code.

23. If there is sufficient admissible, reliable and credible evidence of these crimes it is highly likely that a prosecution would be in the public interest

## Role of the Attorney General

24. Many offences of universal jurisdiction require the consent of the Attorney General before proceedings can be instituted. It is a constitutional principle that when taking a decision whether or not to grant consent, the Attorney General acts independently of government, again applying well established prosecution principles of evidential sufficiency and public interest. Each case will be considered on its own facts and the surrounding circumstances.
25. Whilst the Attorney General takes these decisions independently of Government, he or she may consult relevant Government Ministers and seek their representations on matters relevant to the public interest as part of the decision-making process (known as a Shawcross exercise).
26. The Attorney General can consider a broad range of public interest issues including international relations and national security. Ultimately, however, the weight to be given to any particular public interest factor is a matter for the Attorney General to decide on a case-by-case basis. There may be compelling factors in favour of bringing a prosecution, particularly given that international crimes such as torture are of the utmost seriousness.

## Scotland

27. Scotland is a separate legal system within the UK, protected by the Act of Union 1707. It has its own court system and distinctive criminal law and procedure. The prosecution service in Scotland, the Crown Office and Procurator Fiscal Service (COPFS) is entirely separate from the prosecution system in England & Wales or Northern Ireland. It is headed by the Lord Advocate. The independence of the Lord Advocate as head of the Scottish prosecution system is guaranteed by s.48(5) of the Scotland Act 1998 which provides that “any decision...shall continue to be taken by him independently of any other person.” The Lord Advocate also has a statutory responsibility to conduct extradition proceedings in Scotland; and COPFS is the central authority in Scotland for mutual legal assistance.
28. At common law, Scottish courts have long recognised the concept of universal jurisdiction in relation to crimes such as piracy. Scotland also has universal jurisdiction by virtue of a number of UK statutes enacted prior to the coming into force of the Scotland Act 1998. Criminal investigations and prosecutorial decisions are governed by Scots criminal procedure. There have been very few criminal investigations of war crimes in Scotland. A summary of the key differences between Scottish procedure and that relating to the rest of the UK – including the scope of private prosecutions - in so far as it relates to the investigation and prosecution of war crimes is provided below.
29. There is a single police force in Scotland – the Police Service of Scotland (PSoS) – and much work has been done since its establishment to ensure consistency of practice by police officers across Scotland. In addition, police officers in Scotland are required to comply with instructions and directions with respect to criminal investigations issued by the Lord Advocate or

Procurators Fiscal. If an allegation of war crimes were to be made against any individual in Scotland, or anticipated as visiting Scotland, the Specialist Case Division of PSoS would seek direction and guidance from the Specialist Casework Division of COPFS.

30. The Lord Advocate has not issued specific guidance in relation to the investigation of war crimes. Prosecutors are required to comply with the Scottish Prosecution Code. Criminal proceedings should be initiated only where there is sufficient evidence and there is a public interest in doing so. In any case of war crime, prosecutors would be obliged to report the circumstances to the Lord Advocate or one of his deputies for authority to initiate criminal proceedings.
31. Private prosecutions are extremely rare in Scotland. There were two in the course of the 20<sup>th</sup> century. A private prosecution may not proceed without the concurrence of the Lord Advocate or the authority of the High Court Justiciary.

## Northern Ireland

32. The arrangements for the devolution of powers to Northern Ireland are laid down in the Northern Ireland Act 1998, the Northern Ireland (St Andrews Agreement) Acts 2006 and 2007, and the Northern Ireland Act 2009. The Northern Ireland Act 1998 makes clear that the Northern Ireland Assembly and Northern Ireland Executive can deal with any “transferred matter”, that is to say, any matter which is not an “excepted or reserved matter”. Excepted matters, in respect of which transfer of responsibility from Westminster to the devolved institutions is unlikely, include national security. Reserved matters, which remain within the legislative competence of Westminster but may be transferred to the Northern Ireland Assembly if these receive both the “*cross community support*” of the Assembly and the approval of the Secretary of State for Northern Ireland, include civil defence. Criminal justice and policing in Northern Ireland were reserved matters until responsibility was transferred to the Department of Justice within the Northern Ireland Executive on 12 April 2010. This politically significant step ultimately followed on from the Criminal Justice Review in Northern Ireland which was a key provision of the Good Friday or Belfast Agreement. The Justice (Northern Ireland) Act 2002 also stemmed from the Criminal Justice Review and introduced key changes to the criminal justice system including the creation of a new Public Prosecution Service for NI.
33. Northern Ireland is a common law jurisdiction and whilst much of its law derives from the same sources as in England & Wales, there are differences in law and procedure. There is a single police force in Northern Ireland – the Police Service of Northern Ireland (PSNI). The Public Prosecution Service (PPS) is the principal prosecuting authority for Northern Ireland. As in England & Wales, the operational responsibility for deciding whether to commence or pursue a criminal investigation falls to the police who exercise their discretion and responsibility to investigate independently of the Executive. In Northern Ireland, however, a power is vested in the Director of Public Prosecutions (“the Director”) by virtue of section 35(5) of the Justice (Northern Ireland) Act 2002 to require the Chief Constable of the Police Service of Northern Ireland to ascertain and give to him information about any matter appearing to need investigation on the ground that it may involve an offence committed against the law of Northern Ireland. The Director can therefore require the PSNI to commence an investigation into a particular matter but the police will retain complete operational independence in terms of how it undertakes the investigation.



34. There is a statutory obligation, pursuant to section 31(5) of the Justice (Northern Ireland) Act 2002, on the Director to provide prosecutorial advice to investigators at any stage of an investigation in connection with the prosecution of offences. This may include advice regarding the quality and admissibility of evidence or the evidence required to support the prosecution of a person for a particular offence.
35. The Director exercises his functions independently of investigators and Government. Prior to devolution of justice responsibilities in 2010, the Attorney General for England & Wales exercised a role of superintendence towards the DPP in Northern Ireland which meant that the former retained the power to direct prosecutions. Section 22 of the Justice (Northern Ireland) Act 2002, which established a new post of Attorney General for Northern Ireland (AG NI), was enacted upon devolution of justice. The relationship between the AG NI and the Director is a consultative one only, and the AG NI does not hold the Director to account or retain the power to direct prosecutions.
36. There are a number of offences for which a Public Prosecutor must seek the consent of the Director prior to commencing or continuing a prosecution. This legislative requirement is to ensure that cases of a particular nature are considered at the appropriate level. Examples of offences which require the Director's consent to prosecution include certain offences under the Terrorism Acts 2000 and 2006. Since 2010, the Director has assumed most of the consent powers previously exercised by the Attorney General for England & Wales in respect of Northern Ireland and insofar as most domestic terrorism is concerned within Northern Ireland, the Director is the sole prosecuting authority (unlike the position regarding the DPP of England & Wales).
37. If it appears to the Director that certain offences were committed outside the United Kingdom or for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, his consent may only be given with the permission of the Advocate General for NI (who is the Attorney General for England & Wales). Relevant provisions are section 117 of the Terrorism Act 2000 and section 19 of the Terrorism Act 2006. In addition, Schedule 7 of the Justice (Northern Ireland) Act 2002 sets out the limited consent powers which are retained by the Advocate General for Northern Ireland. These offences are primarily concerned with national security issues and international relations and include, for example, offences set out in the Genocide Act 1969 and the Chemical Weapons Act 1996.
38. The Test for Prosecution in Northern Ireland differs slightly from the Full Code Test applied by the Crown Prosecution Service (CPS) in England & Wales. In Northern Ireland, the Test for Prosecution is met if (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and (ii) prosecution is required in the public interest – the Public Interest Test. Public Prosecutors must adhere at all times to the obligations set out in the Code for Prosecutors.
39. There have been no criminal investigations of war crimes in Northern Ireland and accordingly the PPS has not issued specific guidance with regard to the prosecution of such crimes. If an allegation of war crimes were to be made against an individual in Northern Ireland, or anticipated as visiting Northern Ireland, the Serious Crime Branch of PSNI would seek prosecutorial advice from the Central Casework Section of the PPS. This section deals with cases of particular complexity and sensitivity including those where issues of appropriate venue or concurrent jurisdiction are likely to arise or a substantial amount of evidence may need to be obtained through mutual legal assistance. The Test for Prosecution applies in all cases and would do so in the event of a war crimes file being received by the PPS.
40. The PPS may exercise its powers under section 31(4) of the Justice (Northern Ireland) Act 2002 to take over private prosecutions. As a general rule the PPS will only take over a private prosecution or a prosecution initiated by a prosecuting authority established by Act of

Parliament when there is a particular need to do so on behalf of the public. If that need does not arise, the prosecutor (non PPS) will be allowed to carry on with the case. If the PPS takes over such a prosecution, the case must be reviewed in accordance with the Code for Prosecutors and the Test for Prosecution applied. If both the Evidential and Public Interest Tests are satisfied, the PPS will continue the prosecution. As a general rule, the PPS will take over such a prosecution and discontinue it where it is satisfied that: (a) the Test for Prosecution has not been met; or (b) the public interest factors tending against prosecution outweigh those factors tending in favour; or (c) the prosecution is likely to damage the interests of justice.

41. The PPS in exercising its functions will ensure that it complies with the binding obligations of international law ratified by the UK (so long as these do not conflict with domestic law). It will comply also with the Convention rights incorporated into domestic law by the Human Rights Act 1998, the UN Declaration of Basic Principles of Justice for Victims of Crime (and Abuse of Power), relevant EU Directives and Conventions and relevant case law. These commitments apply to the rights of victims, witnesses and accused persons.

## Immunity of state officials from criminal jurisdiction

42. There are two types of immunity:
- (a) personal immunity: this is an absolute immunity that applies to key figures involved in the conduct of international relations, and applies in respect of both their official acts and their private acts for so long as they hold the relevant office.
  - (b) official act immunity: this is an immunity which potentially applies to all State officials but only in relation to their official acts, and it applies both during their period in office and after they have left office.

## Categories of persons enjoying personal immunity

**(a) Heads of State, Heads of Government and Ministers of Foreign Affairs, and potentially other very senior members of Governments (e.g. Defence Ministers, Foreign Trade Ministers)**

43. In international law very senior figures with responsibility for foreign relations of a State – e.g. *Heads of State, Heads of Government and Ministers of Foreign Affairs, and potentially other very senior members of Governments (e.g. Defence Ministers, Foreign Trade Ministers)* – enjoy full personal immunity from criminal jurisdiction and all forms of arrest and detention. The immunity applies whether they are visiting on an official or a private visit, and whether or not their acts under examination were done in an official or a private capacity. This immunity applies to these individuals for as long as they hold the relevant office (but not afterwards).
44. In UK law the immunities of a Head of State are reflected in s.20 of the State Immunity Act 1978. Similar immunities are also granted to “members of his family forming part of his household”: this is limited to spouses and dependent children (there is judicial authority from the Court of Appeal to this effect).
45. The immunity of other office holders in these categories is given effect in UK law via the common law. There is some UK judicial practice that has extended such immunity to a visiting Defence Minister, and visiting Minister of Foreign Trade.

## (b) Diplomats

46. As is well known, diplomats enjoy absolute immunity from criminal jurisdiction and freedom from arrest and detention in the receiving State, during the period of their posting to the receiving State. This is set out in the Vienna Convention on Diplomatic Relations (VCDR), and it applies in respect of both their official and their private acts. Under the VCDR the “members of the family of a diplomatic agent forming part of his household” enjoy similar immunities (this applies to spouse/partner and dependent children).
47. There are no exceptions to immunity from criminal jurisdiction, but where the UK authorities wished to prosecute a diplomat in the UK for a serious crime, we would seek a waiver from his/her sending State. If the sending State did not waive immunity we would expel the diplomat.
48. In UK law the VCDR is given effect through the Diplomatic Privileges Act 1964.

## (c) Special Missions

49. In customary international law, members of a special mission enjoy immunity including immunity from criminal jurisdiction and freedom from arrest and detention. “Special mission” is defined in international law as a temporary mission, representing a State, which is sent by one State to another with the consent of the latter, in order to carry out official business – meaning government-to-government business or attendance at a ceremonial occasion such as a Royal Wedding or Funeral.
50. The immunity from criminal jurisdiction is full, and there are no exceptions. Immunity only lasts for as long as is necessary to carry out the official business, but can extend to a day either side of official business to allow for journeys to and from the UK (i.e. it would not subsist throughout a mixed visit constituted of an official aspect followed by a private aspect or vice versa).
51. A High Court judgment from August 2016 confirmed that customary international law on special mission immunity is given effect in England via the common law. At an administrative level, the FCO has relied on another High Court judgment (dating from July 2011) to set in place a procedure for deciding whether or not to provide advance consent to an official visit as a special mission (see Written Ministerial Statement of 4 March 2013: <http://www.parliament.uk/documents/commons-vote-office/March-2013/4-3-13/6.FCO-Special-Mission-Immunity.pdf>).
52. Ultimately, however, the legal question of whether any member of a special mission is entitled to immunity in a particular case is always a matter for the Courts.

## Official act immunity

53. Official act immunity can be claimed by potentially all State officials and former State officials for acts done by them in their official capacity. However, there may be exceptions to it, the most important of which is the House of Lords finding in the *Pinochet* case that official act immunity cannot extend to a former head of State who is accused of official torture and who is a national of a State Party to the UN Convention Against Torture (by becoming parties to the Convention States impliedly waive official act immunity in this respect).
54. There may be other exceptions, for example where a crime is committed by a State official in an official act on the territory of State wishing to prosecute, but there is limited case law on these issues.
55. Official act immunity is given effect in UK law *primarily* through the common law.

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56. Where one or more of these immunities applies the individuals are protected from prosecution for the duration of the immunity; this includes immunity from crimes under universal jurisdiction, except in relation to torture in the circumstances outlined in paragraph [53]. Ultimately, however, whether any individual is entitled to immunity is always a matter for the Courts.

## Annex A: War crimes / crimes against humanity referral guidelines

The following guidance applies in respects of investigations by the Metropolitan Police and is available on the CPS website at

[https://www.cps.gov.uk/publications/agencies/war\\_crimes.html](https://www.cps.gov.uk/publications/agencies/war_crimes.html)

### Introduction

The war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) is responsible for the investigation of all allegations of war crimes, crimes against humanity, genocide and torture. It has the specialist skills to conduct an investigation or to decide that an investigation is not feasible. It is well placed to evaluate the process of obtaining the necessary evidence from abroad, the prospects of being able to protect witnesses and to secure their evidence at trial. The Counter Terrorism Division (CTD) of the Crown Prosecution Service, Special Crime and Counter Terrorism Division, has responsibility for prosecuting any such crimes.

SO15 and CTD have agreed the following guidelines in regard to the investigation and prosecution of allegations of war crimes, crimes against humanity, genocide and torture in order to enable the process for investigations, arrests and prosecutions to be conducted in an orderly and transparent way. These guidelines will be followed when there is a referral to SO15 to investigate a suspect/suspects.

Separate guidance has been published in relation to applications for the consent of the Director of Public Prosecutions for the issue of a private arrest warrant for a named suspect for grave breaches of the Geneva Conventions, hostage-taking and torture in accordance with Section 1(4A) of the Magistrates' Court Act 1980. This separate guidance is to be followed when there is an imminent prospect of a suspect arriving in this jurisdiction.

Where evidence has been collated by a private prosecutor in anticipation of making an application for an arrest warrant, this is best referred to SO15 in accordance with these Referral Guidelines as SO15 is the most appropriate body to carry out complex investigations of this type.

It is anticipated that applications for DPP consent for the making of an application for an arrest will only be made when there is no ongoing SO15 scoping exercise or investigation because where there is an ongoing scoping exercise or investigation any decision to arrest or interview will be made by SO15 after the benefit of a full investigation and full review of the evidence by CTD in accordance with the Code for Crown Prosecutors. Any such arrest will be in accordance with the Police and Criminal Evidence Act 1984 which means that a suspect can be interviewed about potential involvement prior to charge and searches can take place in order to maximise the potential evidence available.

If a suspect, who has already been referred to SO15 in accordance with these Referral Guidelines, is known to be coming into this jurisdiction before the police have completed their investigative scoping as per Sections A to C of the Guidelines, it is not anticipated that a private prosecutor will make a separate application for the consent of the DPP to make an application for a private arrest warrant. Such an application would be premature as without the completion of a proper criminal investigation it is unlikely that the DPP could make a fully informed judgement on the sufficiency of evidence stage of the Code Test. In these circumstances it is anticipated that the procedure as set out in these Referral Guidelines will continue and any decision to arrest or interview will be made by SO15 with consideration to operational issues and after a review by CTD in accordance with the Code for Crown Prosecutors.

This is an internal document and as such does not give rise to any legal rights. It is subject to revision based upon continuing experience. It is published to ensure clarity and transparency in how SO15 and CTD deal with such referrals.

## A. Scoping Exercise

The crime of genocide, crimes against humanity and war crimes present a range of challenges for investigators. Their factual complexity leads to unique challenges for investigators, many of which are exacerbated by the fact that investigations to collect evidence, familiarise themselves with crime scenes, or conduct witness interviews may often need to be conducted outside this jurisdiction.

As a result when a referral is received, the SO15 investigative team will need to conduct a scoping exercise in order to make an informed decision whether to conduct an investigation. SO15 will, where appropriate, consult with partner agencies during this process. All operational scoping decisions will be made by SO15 and will not necessarily be shared with the referral body.

Referrals can be made to: [SO15Mailbox.WarCrimesunit@met.pnn.police.uk](mailto:SO15Mailbox.WarCrimesunit@met.pnn.police.uk).

The scoping exercise will include the following:

### 1. Identifiable suspect

1.1. Is the suspect named or identifiable?

1.2. If not, is there a realistic prospect of identifying the suspect?

1.3. Will this identification require enquiries in the UK?

1.4. Will this identification require enquiries in the country where alleged crime/s took place?

1.5. If so, will this country provide mutual legal assistance in relation to identifying the suspect, either formally or informally?

1.6. If not, are there any other reasonable means of obtaining evidence of identification?

1.7. If not, then it will not be possible to identify the suspect and so an effective investigation cannot at this stage be carried out.

1.8. If the country will provide mutual legal assistance in relation to identification, can SO15 carry out a safe and effective investigation in that country? Factors which may not allow a safe and effective investigation will include:

- the country being involved in armed conflict
- the country being politically unstable
- risk of harm to victims or witnesses

1.9. If a safe and effective investigation in that country cannot at this stage be carried out then it will not be possible to identify the suspect.

**2. What is the nationality and location of the named and identifiable suspect?**

***For crimes other than grave breaches of the Geneva Conventions, torture or hostage taking:***

- 2.1. Is the named/identifiable suspect a UK national?
- 2.2. If so, is the suspect UK national present in the UK?
- 2.3. If not, in which country is the suspect UK national?
- 2.4. Is this a country from which the UK can extradite?
- 2.5. If not the investigation will be suspended until there is a reasonable prospect of the suspect returning to the UK voluntarily.
- 2.6. If the named/identifiable suspect is not a UK national, is he/she a UK resident as defined in S67A International Criminal Court Act 2001 as amended by S70(4) Coroners and Justice Act 2009?

***For crimes of grave breaches of the Geneva Conventions, torture or hostage taking (for which UK has universal jurisdiction)***

- 2.7. Is the suspect present in the UK?
- 2.8. Is there a reasonable prospect of the suspect coming to the UK?
- 2.9. If not, then SO15 will refer to the Special Cases Department of the National Security Directorate of the Home Office for potential future immigration action, taking into account victim and witness safety issues

**3. Identification of victims/witnesses where suspect is named/identifiable and either a UK national/resident/present or likely to be present in the UK**

- 3.1. Are the victims/witnesses named or identifiable?
- 3.2. If so, are they in the UK or abroad?
- 3.3. If abroad, are they in a country which will provide mutual legal assistance?
- 3.4. If they are in a country which will not provide mutual legal assistance, can they be interviewed in a third country, taking into account victim and witness safety issues?
- 3.5. If they are in a country which will not provide mutual legal assistance and an investigation is deemed to be impracticable, then SO15 will refer to the Special Cases Department of the National Security Directorate of the Home Office for potential future immigration action, taking into account victim and witness safety issues.
- 3.6. If the victims/witnesses are not named or identifiable, is there a realistic prospect of identifying them?
- 3.7. Will this identification require enquiries in the UK?
- 3.8. Will this identification require reasonable enquiries to be made in the country where alleged crime/s took place?

**3.9.** If so, will this country provide mutual legal assistance?

**3.10.** If so, can SO15 carry out a safe and effective investigation?

**3.11.** If not, are there any other reasonable means of obtaining evidence of identification?

**3.12.** If not, then SO15 will refer the case to the Special Cases Department of the National Security Directorate of the Home Office for potential future immigration action, taking into account victim and witness safety issues.

#### **4. Consultation with International Criminal Court and ad hoc tribunals**

**4.1.** Are there any outstanding investigations in relation to the suspect?

**4.2.** Are there any outstanding investigations in relation to any witness?

#### **5. Complaints in other jurisdictions**

**5.1.** The party making the complaint should be asked whether they have made a complaint about the suspect in any other jurisdiction.

**5.2.** If so, has an investigation taken place or is there an effective ongoing investigation?

## **B. Referral to CPS by SO15 for early investigative advice**

**1.** In some cases SO15 may need to engage with CTD whilst at the scoping stage of their investigation.

**2.** The officer in the case should refer the case to the Deputy Head of SCCTD setting areas where CTD preliminary advice is sought. This may include:

- Jurisdiction;
- Potential immunity;
- Potential offences.

**3.** The Deputy Head of SCCTD will allocate a specialist prosecutor who will provide early investigative advice. The prosecutor should be pro-active in identifying and bringing to an early conclusion those cases which have evidential deficiencies that cannot be strengthened by further investigation and supporting the viable investigations which will ultimately result in a prosecution. However, advice given at this stage is provided to inform decision making by the police; it is not to be regarded as a prosecutorial decision.

**4.** There may be situations where, for operational reasons, the Senior Investigating Officer (SIO) decides that an arrest should be made prior to receiving CTD early investigative advice as envisaged above.

## **C. Final investigative scoping**

**1.** SO15 will decide whether a safe and proportionate investigation is feasible.

**2.** Although issues of immunity do not preclude investigations into allegations against persons still in office, irrespective of their function, for the purpose of prosecution, this may be a factor that SO15 will take into account when considering whether it is proportionate to conduct an effective investigation.



3. If SO15 decides to take on the investigation in a case referred by a private individual, lawyer or organisation, the individual/organisation will be informed that SO15 are willing to take on the investigation. From that point all investigative decisions and the decision whether or not to arrest a suspect will be made by SO15 and any decision on prosecution will be made independently by CTD in accordance with the Code for Crown Prosecutors. A copy of this Code can be found on the CPS website at [www.cps.gov.uk](http://www.cps.gov.uk).
4. If such an investigation is not possible SO15 will inform the victim/s of this decision and the reasons for it as soon as reasonably practicable in accordance with the Victim's Code. Any private individual, lawyer or individual who has submitted evidence on behalf of the victims will also be informed in writing.
5. If appropriate SO15 should refer the allegation to the Special Cases Department of the National Security Directorate of the Home Office for potential immigration action and inform them of the reasons why a safe and proportionate investigation is not feasible.

#### **D. Referral to CTD for consideration of prosecution**

1. On completion of any investigation SO15 will submit a file of evidence to CTD. This should be in electronic format wherever possible.
2. The Deputy Head of SCCTD will allocate this to a specialist prosecutor who will review it in accordance with the Code for Crown Prosecutors.
3. The Full Code Test has two stages: an evidential stage followed by a public interest stage.
4. At the evidential stage prosecutors must be satisfied that there is sufficient **admissible, reliable and credible** evidence in accordance with the rules of the criminal courts of England and Wales or capable of being put into such a format within a relatively short period of time to provide a realistic prospect of conviction for each of the charges. All the relevant facts must be proved with cogent admissible evidence. The court cannot take such facts as read or assume them or rely on open source internet material.
5. The burden of proof will be on the prosecution to satisfy the jury so that they are sure of the defendant's guilt. Prosecutors must consider what the defence case may be and how it is likely to affect the prospects of conviction.
6. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
7. In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
8. When deciding the public interest, prosecutors must consider each of the questions set out in paragraphs 4.12 (a) to (g) of the Code
9. If there is sufficient evidence of these crimes it is highly likely that a prosecution would be in the public interest.
10. The Attorney General would then be asked to consent to the prosecution.

## E. Duties of disclosure

1. The police and the CPS have duties under statute and common law in relation to the disclosure of unused material. This is material which may be relevant to the investigation but does not form part of the prosecution case against the accused.
2. It is important that any private individual, lawyer or organisation that refers a case to SO15 or CTD records and retains relevant material obtained or generated by them during their investigation.
3. Relevant material is any material that appears to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances unless it is incapable of having any impact upon the case.
4. Examples of relevant material includes any rough drafts of statements from victims, notes of telephone conversations with witnesses, medical notes, legal documents, e-mails, case notes etc.
5. The prosecution is under a duty to disclose to the defence any unused material that undermines their case or assists the defence case. Generally, material which can reasonably be considered capable of undermining the prosecution case against the accused or assisting the defence case will include anything that tends to show a fact inconsistent with the elements of the case that must be proved by the prosecution.
6. Examples include:
  - any information which casts doubt on the reliability of a prosecution witness or on the accuracy of any prosecution evidence
  - any motives for the making of false allegations by a prosecution witness
  - any material which may have a bearing on the admissibility of any prosecution evidence
  - the fact that a witness has sought, been offered or received a reward
  - any material that might go to the credibility of a prosecution witness
  - information that a person other than the accused was or might have been responsible or which points to another person whether charged or not (including a co-accused) having involvement in the commission of the offence.
7. In every case the police will appoint a Disclosure Officer who will need to confirm with any individual or organisation which refers a case for investigation whether they hold any such material and whether they are prepared to supply it to the police or allow the police to inspect it.
8. If such material is not provided or disclosed to the Disclosure Officer it is likely that a prosecution may fail.

## Annex B: Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with Section 1(4a) of the Magistrates Courts Act 1980

The following guidance applies in respects of applications for a private arrest warrant and is available on the CPS website at:

[https://www.cps.gov.uk/publications/agencies/war\\_crimes.html](https://www.cps.gov.uk/publications/agencies/war_crimes.html)

### Introduction

**The war crimes team of the Metropolitan Police Counter Terrorism Command (SO15) is responsible for the investigation of all allegations of war crimes, crimes against humanity, genocide and torture. It has the specialist skills to conduct an investigation or to decide that an investigation is not feasible. It is well placed to evaluate the process of obtaining the necessary evidence from abroad, the prospects of being able to protect witnesses and to secure their evidence at trial.** The Counter Terrorism Division (CTD) of the Crown Prosecution Service, Special Crime and Counter Terrorism Division, has responsibility for prosecuting any such crimes.

This guidance is to be followed when there is an imminent prospect of a suspect arriving in this jurisdiction and a private prosecutor wants to apply for a private arrest warrant.

Where evidence has been collated by a private prosecutor in anticipation of making a future application for an arrest warrant, it is preferable that this should be referred to SO15 in accordance with the SO15/CTD Referral Guidelines as SO15 is the most appropriate body to carry out complex investigations of this type.

**On this basis it is anticipated that applications for DPP consent for the making of an application for an arrest will be made when there is no ongoing SO15 scoping exercise or investigation because where there is an ongoing scoping exercise or investigation any decision to arrest or interview will be made by SO15 after the benefit of a full investigation and full review of the evidence by CTD in accordance with the Code for Crown Prosecutors.**

Any such arrest will be in accordance with the Police and Criminal Evidence Act 1984 which means that a suspect can be interviewed about potential involvement prior to charge and searches can take place in order to maximise the potential evidence available.

**If a suspect, who has already been referred to SO15 in accordance with these Referral Guidelines, is known to be coming into this jurisdiction before the police have completed their investigative scoping as per Sections A to C of the Guidelines, it is not anticipated that a private prosecutor will make a separate application for the consent of the DPP to make an application for a private arrest warrant. Such an application would be premature as without the completion of a proper criminal investigation it is unlikely that the DPP could make a fully informed judgement on the sufficiency of evidence stage of the Code Test.** In these circumstances it is anticipated that the procedure as set out in the SO15/CTD Referral Guidelines will continue and any decision to arrest or interview will take place by SO15 with consideration to operational issues and after a review by CTD in accordance with the Code for Crown Prosecutors.

This document is intended to be a living document that can be amended and updated in the light of continuing experience. It will be reviewed every six months.

## Guidance

1. Information for the issue of an arrest warrant can be laid before a justice of the peace by any individual with a grievance or by his counsel or solicitor.
2. **Section 153 of the Police and Social Responsibility Act 2011 amended section 1 of the Magistrates' Courts Act 1980 by inserting a new subsection (4A) which provides as follows: "Where a person who is not a public prosecutor lays an information before a justice of the peace in respect of an offence to which this subsection applies, no warrant shall be issued under this section without the consent of the Director of Public Prosecutions."**
3. This section applies to offences under section 1 of the Geneva Conventions Act 1957 (grave breaches of Geneva conventions), offences under section 1 of the Taking of Hostages Act 1982 (hostage-taking) and offences under section 134 of the Criminal Justice Act 1988 (torture).
4. Applications for these warrants are made to a District Judge at Westminster Magistrates' Court.
5. **A District Judge will only hear an application if there is recent DPP consent.** In these circumstances an application for DPP consent for the making of an application for a private arrest warrant should only be applied for when there is a reasonable belief that a suspect will be entering this jurisdiction within 14 days of the application. It is essential that the prosecutor is given sufficient time in which to read and review the request.
6. Any application for the consent of the DPP for the making of an application for a private arrest warrant for a particular suspect should be submitted to the Counter Terrorism Division (CTD) of the Special Crime and Counter Terrorism Division of the Crown Prosecution Service.
7. Each application should contain:
  - a request for the DPP to consent to an application for an arrest warrant;
  - full details of the suspect;
  - details of when he/she is arriving into the jurisdiction and by what means;
  - details of his/her position of authority and the nature of his/her visit;
  - details of the charges for which DPP consent is sought;
  - **sufficient admissible and reliable and credible evidence in accordance with the rules of the criminal courts of England and Wales or capable of being put into such a format within a relatively short period of time to provide a realistic prospect of conviction for each of the charges;**
  - where possible an analysis of the evidence setting out which evidence supports which charges;
  - where known, any unused material which might undermine the prosecution case or assist the defence.
  - details of any other complaints made by the complainant about the suspect in other jurisdictions, and, if there are any such complaints, the details of the investigating/prosecuting body.
8. All evidence should, wherever possible, be submitted to CTD in paper and electronic format at least 48 hours in advance of any anticipated application.

9. The CTD specialist prosecutor will then consider the evidence that has been collated by the private individual, lawyer or organisation in accordance with the Code for Crown Prosecutors.<sup>1</sup>
10. During the review of the evidence the CTD specialist prosecutor will, wherever possible, provide the private individual, lawyer or organisation with a timescale for his/her decision-making. Where the material is particularly voluminous and the prosecutor believes that there is insufficient time for the papers to be read and reviewed, the applicant will be given a reasonable deadline by which the review can take place.
11. In an exceptional case, where there is the need for an emergency application for an arrest warrant, the CTD specialist prosecutor will consider the case based upon the material submitted as there will be no opportunity to rectify or materially improve the evidence at that stage.
12. If there is insufficient evidence to satisfy the evidential stage of the Full Code Test, the CTD specialist prosecutor will consider the principles set out in the Threshold Test. This may only be applied where the suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody unless charged.

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<sup>1</sup> “The Evidential Stage

**4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.**

4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor’s objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

- Can the evidence be used in court?  
Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:
  - a) the likelihood of that evidence being held as inadmissible by the court; and
  - b) the importance of that evidence in relation to the evidence as a whole.
- Is the evidence reliable?  
Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.
- Is the evidence credible?  
Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.”

13. The conditions for applying the Threshold Test are contained in paragraphs 5.2 - 5.12 of the Code.<sup>2</sup>
14. The first part of the Threshold Test requires the prosecutor to be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
15. If so satisfied the prosecutor must also be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further identifiable evidence, with a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
16. If the Threshold test is satisfied the CTD specialist prosecutor will provide written guidance to the private individual, lawyer or organisation as to what evidence is required to bring the evidence to the standard required to satisfy the Full Code Test.

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<sup>2</sup> "The first part of the Threshold Test – is there reasonable suspicion?"

5.5 Prosecutors must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.

5.6 In determining this, prosecutors must consider the evidence then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:

- a) it is relevant; and
- b) it is capable of being put into an admissible format for presentation in court; and
- c) it would be used in the case.

5.7 If satisfied on this the prosecutor should then consider the second part of the Threshold Test.

The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction?

5.8 Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

5.9 The further evidence must be identifiable and not merely speculative.

5.10 In reaching this decision prosecutors must consider:

- a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
- b) the charges that all the evidence will support;
- c) the reasons why the evidence is not already available;
- d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.

5.11 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

Reviewing the Threshold Test

5.12 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 continued objection to bail is justified. The Full Code Test must be applied as soon as is reasonably practicable and in any event before the expiry of any applicable custody time limit."

17. In relation to the public interest stage the DPP will consider the public interest factors in favour and against granting consent including the more common public interest factors set out in the Code.<sup>3</sup> The DPP will consult the Attorney General in the usual way.

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<sup>3</sup> “The Public Interest Stage

4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.

4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

4.11 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

4.12 Prosecutors should consider each of the following questions:

a) How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect’s culpability and the harm to the victim by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

The greater the suspect’s level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect’s level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect’s age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim’s ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim’s family.

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Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim’s health it may make a prosecution less likely, taking into account the victim’s views.

18. If there is sufficient evidence and it is in the public interest the DPP will grant consent for the application for the issue of a warrant.
19. The consent function for the issue of a warrant will be exercised by the DPP personally or the Head of Special Crime and Counter Terrorism Division (SCCTD) or the Deputy Head of SCCTD.
20. If the DPP grants consent for the issue of a warrant this will be recorded or otherwise evidenced in writing and be provided to the person applying for the arrest warrant.
21. The CTD specialist prosecutor will also inform Westminster Magistrates' Court and SO15 war crimes team as members of that team will attend court in order to execute any warrant granted.
22. If the DPP grants consent and the application for a warrant is granted, in accordance with CPS published policy on private prosecutions, the CPS will then consider taking over the prosecution. If the CPS takes over the private prosecution it will be dealt with by a specialist prosecutor in CTD.
23. **Where the evidential and public interest stages in the Code test are not satisfied, the DPP cannot consent to an application for a warrant.**
24. In these circumstances the complainant, lawyer or organisation will be informed of this in writing.

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However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

e) What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

f) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)

Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review."



**Note on the investigation and prosecution of crimes of universal jurisdiction**

25. If consent is refused on evidential grounds the CTD specialist prosecutor will provide written guidance to a private individual, solicitor or organisation suggesting further lines of enquiry or ways in which information can be turned into admissible evidence. Where time is of the essence the prosecutor will provide oral guidance which will be followed by written guidance.
26. If consent is refused on evidential grounds the CTD specialist prosecutor may also suggest that the private individual, solicitor or organisation refer the evidence to SO15 as the most appropriate body to conduct an investigation.
27. If the private individual, solicitor or organisation does then refer the matter to SO15 this will allow SO15 to conduct their scoping exercises as per Section A and C of the published Referral Guidelines which should then be followed.
28. It may be that after either granting or refusing consent the DPP will issue a public statement.