

National Digital and Physical Evidence Retention Guidance

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Produced by the NPCC Digital and Physical Evidence Group (DPEG) – Linked to the NPCC
Records Management Working Group (RMWG)

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V5-0	01/02/2021	Kelly Scully	Publication of final version.
V5-1	28/02/2021	Kelly Scully	Correction of typo on 6.5.5 and in flow chart of Appendix C ahead of publication on Knowledge Hub.

The latest approved version of this document supersedes all other versions, upon receipt of the latest approved version all other versions should be destroyed, unless specifically stated that previous version (s) are to remain extant. If any doubt, please contact the document Author.

Acknowledgements

On behalf of the NPCC led Digital and Physical Evidence Group (DPEG), the following forces provided significant insight and expertise, which shaped the subsequent model and guidance, contained within this document. With thanks to Devon and Cornwall (D&C), Merseyside (MP), Metropolitan Police Service (MPS), Nottinghamshire (NP), Sussex (SX), Thames Valley (TVP), West Midlands (WMP). They all supported this work by releasing resources to create the sub-group and/or provided material for use. This guidance was prepared by [Kelly Scully](#) from Thames Valley Police.

Dedication

We would like to dedicate this work to Jez Edwards formerly of West Midlands Police. Jez was one of the sub-group members prior to his premature death and we hope that his input can be part of his legacy to policing.

Participation

The forces and organisations who actively engaged in this piece of work by attending meetings or returning data were:

Bedfordshire	Leicestershire
Cambridgeshire	Merseyside
Cheshire	Metropolitan Police
City Of London	National Crime Agency
Cleveland	Norfolk
College Of Policing	North Wales
Cumbria	North Yorkshire
Derbyshire	Northamptonshire
Devon & Cornwall	Northumbria
Dorset	Nottinghamshire
Durham	Police Scotland
Essex	Police Service of Northern Ireland
Forensic Capability Network	South Yorkshire
Gloucestershire	Suffolk
Hampshire	Surrey
Hertfordshire	Sussex
Home Office	Thames Valley
Home Office Border Force	Transforming Forensics Programme
Home Office Immigration Service	West Midlands
Kent	West Yorkshire
Lancashire	

In addition to the above, key resources from across the Information Management community within policing were engaged through targeted conversations and meetings organised by the College of Policing.

1. Introduction

- 1.1. Nationally there are weaknesses in the review and retention of both seized, recovered (includes police generated) evidence. In the main, this is due to a lack of national guidance to support forces. Whilst local policies exist, gaps in the policies or limited resources to manage retention are overshadowed by the constant volume of new material received and generated on a daily basis. This means that the focus is often on dealing with the incoming items rather than the review of those already held. This combined with the fact that physical evidence needs to be accommodated within limited and often specialist physical storage facilities (e.g. freezers, firearms cabinets etc.) within shrinking police estates. Buildings are often offered up to make savings across the service and this creates a mounting business case to simplify and standardise the review and retention of material to ensure only those items that are genuinely required are retained.
- 1.2. There are a vast number of legislative sources that determine the management and retention of evidence and for the officers being asked to make decisions on the review and retention process, this can be difficult, even for the most experienced the rules are complex. This is compounded further by a lack of understanding as to the difference between records which are managed under Management of Police Information (MoPI) and physical evidence which is principally managed under The Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984 (PACE.) These have converged in some forces leading to over retention of evidence, which incurs unnecessary additional storage costs, as well as putting them at risk in terms of issues such as the Data Protection Act 2018 and the Human Rights Act 1998. Clarity on the difference between these two areas of business is provided within this paper.
- 1.3. Finally, the growth in digital evidence has already begun to present policing with other concerns such as cost and confusion over virtual evidence being mistaken for data and thus treated as records. Digital evidence is a burgeoning area of activity for policing and is likely to increase exponentially with the advances being made in technology where large volume inexpensive digital storage is now available to the public on a range of devices. The review and retention of material and the subsequent evidence recovered (both used and unused) risks significant costs for policing as well as the long term risks linked to data obsolescence where these items need to be retained for significant periods of time. It has therefore never been more important to provide pragmatic guidance to policing regarding the review and retention.
- 1.4. This document seeks to provide guidance on the retention of both physical and digital evidence, which will provide policing with a framework to support a comprehensive physical and digital storage strategy.

2. Purpose

- 2.1. The purpose of this review is to address the issues surrounding forces review and retention arrangements for all physical and digital evidence. This is

material that has already been assessed as relevant (see Appendix A) for the purposes of an investigation.

- 2.2. The research and recommendations this review presents allows forces to follow the legislative requirements consistently and also provide a clear strategy and recommendations for the review and retention of evidence materials linked to crimes shown as 'undetected'. The term 'undetected' has been defined in Section 6.4.
- 2.3. Furthermore this guidance recognises that there are gaps in the legislation and therefore it provides a framework to enable Forces to adopt a risk-based model that meets all requirements whether they be judicial or operational.

3. Exclusions

This paper covers a wide range of legislation and guidance but it is also important to clarify what has been ruled as out of scope for this work.

- 3.1. It does not provide guidance on the assessment of material gathered during the course of an investigation or its subsequent disclosure. This is covered by the changes made to the CPIA Code of Practice and Attorney General's Guidelines for Disclosure which came into effect at 00:01 on 31 December 2020.
- 3.2. The retention of records and information are covered by the MoPI Authorised Professional Practice (APP). The management of records under MoPI is about the management of the risk posed by individuals and the need to retain appropriate records/information so that this risk can be managed. This is distinct from the retention of evidence, which is necessary for the prosecution of an offender and to safeguard the outcome in terms of the criminal justice process. Records and information are therefore excluded from this Guidance as they are subject to their own review and retention timescales and associated guidance under MoPI. That said the records to identify evidence fall under MoPI in terms of their review and retention.
- 3.3. The guidance regarding the management of material under the Human Tissue Act 2004, which is included within the NPCC Guidance Regarding the Storage, Retention and Destruction of Records, and Materials that have been seized for Forensic Examination (referred to in this guidance now as NPCC Forensic Guidance).
- 3.4. The management of biometric data which is covered by PACE as amended by the Protection of Freedom Act (POFA) 2012.
- 3.5. The retention of material used for intelligence purposes, which is managed under MoPI as a record/information.
- 3.6. The management and retention of material held by Forensic Service Providers as well as those samples generated at a Sexual Assault Referral Centre (SARC) by self-referrals i.e. where a complaint has not yet been formally made to the police.

3.7. The management of seized cash is not included in this work. It is subject to review by a different sub-group of the NPCC DPEG.

3.8. One of the key themes delivered as part of this paper outlines a desire to move away from a 'just in case' retention culture. This is extremely important to ensure that we have met all of our legal obligations however it is worth recognising that there are sometimes requests for retention of material that fall outside of the legal framework provided in this paper the investigation of crime. The main example to consider is the retention of material for the investigation of a complaint either by a forces Professional Standards Department or by the IOPC. It will be a matter of policy for forces to determine the processes and associated retention timescales having taken into account all of the legal obligations. It has therefore been excluded from this guidance.

4. Governance

4.1. This review and subsequent guidance created has been completed by a sub group under the direction and control of the NPCC Digital and Physical Evidence Group (DPEG). The DPEG has formal links to the NPCC Records Management Working Group (RMWG) chaired by CC Lee Freeman which in turn feeds into the NPCC Information Management and Operational Requirements Coordination Committee (IMORCC) chaired by Commander Ian Dyson. This paper was submitted to IMORCC in November 2020 where it was approved for publication.

4.2. This guidance makes up one of the key 'bubbles' within policing regarding the retention of material. There are then sub pieces of work that are supplementary to this main evidence retention guidance. They are all forensic work streams and they may not apply to every force.



¹ - *NPCC Guidance Regarding the Storage, Retention and Destruction of Records, and Materials that have been seized for Forensic Examination*

4.3. This document has been developed as national guidance and takes into account best practice provided during the review and consultation phases. It

is expected to be a 'live document' whereby it will be subject to regular review and updates to respond to the needs of policing.

- 4.4. Whilst compliance with this guidance is not mandated or expected immediately, it is worth remembering that it is linked to legislation already in place and therefore forces should look to use this document to help map the appropriate retention pathways.
- 4.5. It is anticipated that the detailed work which has taken place to develop this guidance, means that it will prove to be essential reading and reference material for forces seeking to understand how to manage the review and retention of evidence efficiently, effectively and economically.

5. Method

- 5.1. A national "State of the Nation" (SON) review was undertaken by the DPEG which involved the completion of a comprehensive questionnaire by all forces involved in the group on the cradle to grave lifecycle of evidence. The results of the SON review allowed the group to understand the various issues experienced and provided data to generate a number of key work packages. One of the most significant areas of concern was review and retention and the "Legacy" issues around volume of evidence held by policing, the causes and the need to explore solutions which would create consistency in terms of how policing carry out review and retention for evidence in the future. The management of legacy evidence will be covered as Part II to this work in line with the sub groups Terms of Reference.
- 5.2. A dedicated review and retention subgroup was therefore established with volunteer members from Devon and Cornwall (D&C), Merseyside (MP), Metropolitan Police Service (MPS), Sussex (SX), Thames Valley (TVP) and the West Midlands (WMP). The review and retention subgroup used material submitted by forces as best practice to create a draft model that could be used by all of policing. During the period the National Flowchart was being drafted this was presented and discussed at a number of the nationally attended DPEG meetings.
- 5.3. In addition to the above material, the review and retention subgroup considered work undertaken by the Metropolitan Police Service (MPS) which had investigated a number of options for how to review their evidence and in particular, how they could apply these principles for the retention of evidence for 'undetected' cases. As part of their processes, the MPS had constructed a Diamond Group, which was chaired by an Assistant Commissioner with representation from CPS London, MPS Legal Services, MPS Head of Criminal, MPS Communications, and MPS Training Department. Once senior sign off was provided by the Diamond Group the MPS conducted a pilot and have subsequently rolled out their model. The MPS presented their plans and results at the conclusion of their pilot to the DPEG membership. The results of that pilot and the learning obtained as a result helped to create the structure for Strand 2 of the national proposed guidance

- 5.4. All of the necessary legislative sources were researched alongside a number of other key documents published that had an impact on the content of this model and guidance, the detail of this is included further in the paper at Appendix B.
- 5.5. As part of the research, the legislation relevant to retention has been mapped together with best practice and organisational learning allowing for the creation of a credible product for use within policing. This guidance also provides much needed consistency for evidence review and retention as well as proposing options for policing to consider linking this model with crime management systems locally to assist in the automation of triggers on decisions for specific types of crime. Automation is being explored as an alternative to the traditional approach of the Officer in the Case (OIC) for an investigation having to carry out manual reviews, which are both time consuming and inconsistent (being reliant on the individual's detailed knowledge of the complex legislation involved).
- 5.6. One of the most contentious issues discussed as part of this review was how to define whether material should be managed as a record/information, exhibits or evidence. Nationally there have been differing views, which are now being complicated further due to the vast increase in the volume of digital evidence being seized. For the purpose of this guidance, we have defined each of the terms used throughout. The resulting definitions outlined below are what have been agreed following lengthy consultation and discussion with the College of Policing and DPEG. The definitions will follow below.
- 5.7. During the consultation phase there was concern raised as to whether or not there is a difference between police produced exhibits and those seized/recovered elsewhere. The NPCC Forensic Guidance assists in this regard, it does not make a differentiation between that has been generated by forces, sometimes known as 'Police Generated' instead classifying all materials within its guidance as falling within CPIA. Specifically, it details that in relation to the materials they can be the following;
- 5.7.1. Seized items (physical or digital),
 - 5.7.2. Native and copies of analogue and digital still and moving images,
 - 5.7.3. Submitted items,
 - 5.7.4. Recovered materials. This covers materials recovered from a submitted item. Examples would include debris, trace materials, swabs or samples for extraction,
 - 5.7.5. Generated materials. This covers materials generated by a Forensic Service Provider (FSP), Examples include slide mounted fibres, scanning electron microscope stubs, paint sections, mark impressions, copies of digital media, files, and artefacts and DNA extracts.

6. Definitions

- 6.1. The clarity within the NPCC Forensic Guidance provided assistance with the creation of the definition of evidence as opposed to records/information. The

following definitions have been extensively discussed and agreed with a number of key Evidence and Information Management leads:

Evidence

6.2. The term evidence is a general term, which refers to any physical property or digital data/media downloaded/recovered which could potentially form part of the evidence of a criminal offence and which may become a court exhibit in any judicial proceedings. For example this could include downloads from mobile phones, body worn video footage, CCTV etc. Throughout this paper, this definition applies to both digital and physical evidence.

Record/Information

6.3. In contrast, a 'record' is the information that allows you to identify People, Objects, Locations and Events (known with the acronym POLE under information management). To illustrate, in the case of physical exhibits, the record would be a property register and/or continuity data that form part of the audit trail detailing information such as who seized the item (people), what the item was (object), where the item was recovered from (location) and in relation to which investigation (event). With digital exhibits, this metadata would provide information on the digital exhibits stored.

6.4. Metadata in this context refers to the information recorded to identify the file itself, it does not refer to the metadata within the digital file e.g. a jpeg photo likely contains metadata that records when the photo was taken, if it was edited, GPS information etc. This metadata is wrapped up with the image data and cannot be easily separated and forms part of the provenance of the exhibit. Both metadata and image data combine to form a single piece of evidence.

Undetected cases

6.5. For offences where there is no conviction the evidence should still be retained specifically;

6.5.1. Until a decision is made that investigation is complete;

6.5.2. If the crime is of a serious nature and has not been detected but there is a possibility that the investigation may be reviewed in the future;

6.5.3. In order to establish the lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence;

6.5.4. If there is a known suspect or DNA/Fingerprint identification outstanding AND it will still be in the public interest to prosecute;

6.5.5. In the event of an acquittal for a Qualifying Offence.

Relevant Material

6.6. An explanation of 'relevant material' has been included in Appendix A for information purposes only.

7. Other retention considerations

Common Law

- 7.1. In addition to the legislation mentioned above, often it can be appropriate to retain evidence under common law. The following helps determine that in more detail;
- 7.1.1. The police must have reasonable grounds for believing that a crime has been committed;
 - 7.1.2. They must have reasonable grounds for believing that the article seized was either the fruit of the crime or the instrument by which it was committed or was material evidence to prove its commission;
 - 7.1.3. The police must have reasonable grounds to believe that the person in possession of the article had committed the crime or was implicated in it;
 - 7.1.4. The police must not keep the article or prevent its removal for any longer than is reasonable necessary to complete their investigation or preserve it for evidence;
 - 7.1.5. The lawfulness of the conduct of the police must be judged at the time and not by what happens afterwards.

Court Orders

- 7.2. Under Part 3.6 within Sentencing law in England and Wales (refers to legislation in force at time of writing) reference is made to deprivation and forfeiture orders. The timescale for retaining property once a court order has been drawn is 6 months. This allows an appeal to be lodged and heard. However, destruction 'orders' are not covered by the same legislation and can be determined by the Chief Constable under the Police (Property) Regulations 1997 and are normally recorded as part of force policy. For the purposes of this guidance, it is recommended that forces align the orders discussed in this section of the guidance as it provides consistency however with a caveat that if the retention is likely to cause undue logistical and/or financial burden that this can be reviewed for the case in question.

Serious - special category cases

- 7.3. Evidential property coming into police possession in relation to an investigation into serious offences punishable by a maximum of life imprisonment, to which Section 75 of the Criminal Justice Act 2003 applies and listed as a qualifying offence in Schedule 5 to that Act, may be retained indefinitely however the appropriate authority must be gained (see below):

- Murder
- Attempted murder
- Soliciting murder
- Manslaughter
- Kidnapping
- Serious sexual assaults

- Unlawful importation of Class A drug
- Unlawful exportation of Class A drug
- Fraudulent evasion in respect of Class A drug
- Producing or being concerned in production of Class A drug
- Arson endangering life
- Causing explosion likely to endanger life or property
- Intent or conspiracy to cause explosion likely to endanger life or property
- Genocide
- Grave breaches of the Geneva Conventions
- Directing terrorist organisation
- Hostage-taking
- Conspiracy – As per the offences listed above

Retention of material for Coronial proceedings

7.4. Whilst the guidance provided in this document refers to ‘criminal offences’ it is recognised that there is a frequent need to retain material on behalf of the coroner. This guidance therefore should be considered as covering cases of this nature where appropriate.

Retention of material for civil cases

7.5. It is fairly common for some cases to be connected to civil proceedings, particularly in traffic related offences. The burden of proof within the civil courts is not the same as the criminal court and is based on the balance of probability. Therefore, it is not a requirement to prove beyond reasonable doubt in order to prove guilt or innocence. Due to this difference, it is not necessary to retain the physical evidence but instead the reports, records and other documentary material which is relevant to the case.

Retention of evidence for Suspended Sentences

7.6. Suspended sentences function in a very particular way. The power to impose a suspended sentence applies only in circumstances where the offender has committed an offence, or offences, with sufficient seriousness to impose a sentence of imprisonment or detention in a young offender institution (“custodial sentences”). Further, it can only apply to cases where the custodial sentence imposed in the Crown Court is 12 months or less, or in the Magistrates’ Court is 6 months or less. A suspended sentence cannot be imposed in relation to custodial sentences of less than 14 days. Sentences imposing a detention and training order cannot be suspended. If the court decides that a suspended sentence is appropriate, the period for which a sentence is suspended must be more than six months but no more than two years. During this period, the offender will be ordered to comply with rehabilitative/reparative requirements as part of the suspended sentence. If, during the suspension period, the offender (a) breaches any requirements under the sentence, or (b) commits another offence, the court must do one of three things:

7.6.1. Order that the suspended custodial sentence should take effect;

- 7.6.2. Order that the suspended custodial sentence should take effect, but for a shorter period than was originally imposed;
- 7.6.3. Amend the requirements under the suspended sentence to make them more onerous.

7.7. The presumption in all cases will be that the custodial sentence will take effect.

7.8. There is a provision in section 189 of the Criminal Justice Act 2003 (which creates suspended sentences) that stipulates that any suspended sentence should be treated as a sentence of imprisonment in relation to all other legislation. As such, suspended sentences must be treated, for the purposes of evidence management, the same way as sentences of imprisonment. The most relevant provision of the CPIA 1996 Code of Practice. Paragraph 5.9, which provides that, following conviction, all relevant material, must be retained where a custodial sentence has been imposed for at least six months after conviction or, if later, until the time the offender is released from custody. A suspended sentence is a custodial sentence (under section 189 of the 2003 Act) but, in reality, the custodial element of it may never actually take effect. Therefore relevant material should be retained either:

7.9. Until the end of the suspension period of the sentence, if the custodial sentence never takes effect (which we know will never be longer than 2 years from sentencing), or;

7.10. Until the offender is released from custody if the custodial sentence does take effect, (which we know will be a maximum of three years after sentencing as a sum of the maximum custodial sentence plus the maximum suspension period).

8. Review and Retention Guidance

8.1. There are two strands to the guidance, which will be described in more detail below.

Strand 1 – Cases going through to prosecution

8.2. The first strand navigates through the current legislation and pays due regard to the guidance already mentioned and is for all of those cases whereby it has been possible to identify and conclude a case, whether that be through the criminal justice process or detection other than by way of a prosecution e.g. caution.

8.3. Appendix C (split down further in Appendices D-F) shows two colour groups, the Green Boxes are for Strand 1 with Strand 2 (explained below) highlighted in Amber. Strand one (green boxes) takes the user through a set of questions to help them to determine how long evidence should be retained. At the cessation of the timescale, the evidence can be released for disposal or authorised for return in line with the organisations return processes. This is different to Strand 2 whereby the review and retention timescale may not necessarily mean disposal.

8.4. Strand 1 was the most difficult to determine as part of this model, however the structure provided now allows forces to use this to create interactive tools and/or training material. For example, Thames Valley Police have used the data to design a tool using PowerPoint for operational officers.

Strand 2 - Where a case cannot yet be progressed

8.5. The second strand relates to all of those cases where it has not yet been possible to secure a conviction, identify or trace an offender or the investigation is subject to specialist legislation/direction.

8.6. The investigations within Strand 2 are, anecdotally, the cases that tend to create the biggest backlogs due to the uncertainty regarding potential future prosecutions as well as where force policies and priorities historically may have been different. It is clear from the research and consultation done as part of this review that this has led to inconsistent approaches and in some cases an extremely risk averse workforce seeking to retain evidence 'just in case'.

8.7. Retaining material in this way creates an evidence management system that is not sustainable. It presents a big challenge to policing, as storage (both physical and digital) is expensive.

8.8. Forces either have procured or are working towards the procurement of Digital Evidence Management Systems (DEMS), which will be used to store material as well as share evidence digitally with the courts, defence and CPS. In some forces, these systems will also take advantage of the storage that is on offer. The guidance given here for Strand 2 enables the implementation of DEMS solutions with review and retention rules embedded to manage storage requirements efficiently and effectively.

8.9. As previously mentioned, this review determined that there are differing appetites for risk. Historically this has been with good reason as what may have been a priority in one force area, may be something that would not be treated in the same way in other forces. The historic resourcing picture was also found to have an impact on the way some forces dealt with the relationship between review and retention, with some favouring lengthier retention periods purely to help manage the review process more smoothly with the resources available.

8.10. Using the work done by the Metropolitan Police Service to pilot a model for 'undetected' crimes based on risk they had assessed for their organisation and subsequent lengthy discussions with DPEG evidence leads from other forces it was found that a number of others already had systems in place similar to that used by the MPS. What differed though was that there was no national consistency and this therefore places individual policing at greater or lesser risk from an external perspective depending on their risk appetite.

8.11. MoPI National Guidance was first established in 2005 because of the Bichard Enquiry. MoPI was built on the principles of risk management, balancing likelihood, proportionality and necessity to retain police information against the impact of the loss of this on the risk posed by offenders to the public. Whilst

this Evidence Review and Retention Guidance does not cover the review and retention of records, it was felt that the MoPI Groupings 1, 2 and 3 closely aligned to the work done by the MPS and other Forces, it was therefore logical to link this to create the categories to be used here. Whilst the MoPI Groupings for the severity of the offender and offence are considered in this model, **the same timescales do not apply** as MoPI retention periods far exceed those set out in legislation and/or could cause an unmanageable schedule of retention.

8.12. The review group considered whether or not it was appropriate to determine retention timescales for those cases that fall into Strand 2. Given the diverse make up of forces which impacts in a number of ways, it was agreed that this guidance would give some indicative timescales based on the discussions held but that it would be left to forces to determine following a local review whether or not the timescales provided are appropriate.

8.13. In addition to the categories created using the MoPI groupings, there are times whereby there may be another mandated retention period applied such as the Public Inquiries Act. A moratorium could be put in place, which directs forces in relation to the retention of all evidence and/or records type of cases. Current examples include the Independent Inquiry into Child Sex Abuse and the Undercover Policing Inquiry.

8.14. Within Strand 2 the retention model categories are the following;

- Public Inquiries Act
- Major Crime
- Serious Crime
- Volume Crime

8.15. Major Crime and Serious Crime Categories (referred to as b and c here) are typically those offences where it would still be within the public interest to prosecute a number of years after the original offence was committed given their potential severity, however these cases must be kept in view and reviewed regularly. At times, it could be that the offender is known but is still at large, keeping the evidence, is therefore extremely important to ensure that the investigation is not compromised and the organisation is able to ensure that any offender can be brought to justice when located or where further information is received.

8.16. The crime types that fall into the Volume Crime Category (d) is where most discussion took place within the DPEG. Some forces wanted to consider some offences as serious crimes whereas some felt the same offences could be managed as volume crimes within their force and therefore would be managed differently. It was this discussion that led to the model being developed as it has been and to be clear, it is important to note that this categorisation decision relates to where the offences would fall in the retention model and not their official MoPI or legal classification.

8.17. The Volume Crime Category (d) is also very different to the others in that when the retention timescale expires on this group of offences, the evidence

can be destroyed. It does not necessarily require a further review. A number of forces already use 'retain and release' instruction on their evidence reviews allowing officers to make a decision on how to manage the retention of the evidence whilst the case is still fresh in their mind.

- 8.18. Continuing with Category (d) there are arguments for authorising the disposal at the point the case is closed on the crime system and during the review, some found 6 months made sense as it manages some of the risk but with a built in tolerance level. There were other views for this being 12 months as the statute of limitation on the prosecution of the majority of offences contained within the Volume Crime category. This is another reason why it is important for forces in implementing this guidance to understand which offences they wish to go into which categories, again remembering that the MoPI groupings are the recommendation provided as part of this review. Regardless and on balance, the recommended time limit we have provided is 6 months for volume crime.

9. Practical application and automation

Professional Judgement

- 9.1. The review team discussed those cases whereby an officer may, in light of all of the circumstances presented at that time, feel that it is necessary to retain the evidence for longer than is determined via legislation or policy. In doing so, they would be using their professional judgement and making best use of the Risk Principles laid out in the Risk APP.
- 9.2. Whilst there is no legal penalty for retaining evidence for longer than is necessary (there will still be IOPC investigations, legal claims etc.) it was felt important that the use of professional judgement should be articulated. Examples of the sort of scenarios included escalating behaviour, evidence of bad character or aggravating factors. Withholding an article likely to cause harm (e.g. knife, samurai sword, firearm etc.) from someone who is suspected of having mental health issues could potentially be justified where the force policy supports it. In fact, all of these could provide a rationale to retain the evidence above and beyond the retention timescales applied in the guidance however only if supported by a force policy decision and in doing so would need to ensure that the owners' rights were considered and complied with (Human Rights Act 1998, Legal title etc.).
- 9.3. As with other sections of this guidance, it was recognised that this is not a concept that all forces would support however as policing evolves, flexibility to do the right thing, for the right reasons in all of the circumstances presented at the time aligned with the APP.

Conducting reviews

- 9.4. Another key issue to consider when managing evidence retention is how it can be applied practically in the course of daily policing. As demonstrated above the retention review is clearly a complex area, which needs a simplified approach for a retention, return or disposal decision to be made.

- 9.5. Within CPIA, the retention of evidence has to be constantly reviewed whilst it is in police possession. However, when to make the final decision is not included in statute. Some forces ensure that the Officer in the case (OIC) is responsible for making this decision as outlined in CPIA Section 23(i) 3.4 however; some have the evidence management teams make the decision on the OICs behalf. The latter brings with it significant risk as it would be almost impossible for evidence management staff to keep up with the volume of reviews given the increasing evidence received into the department and this is just the physical evidence.
- 9.6. How often reviews should be conducted is not outlined anywhere and indeed some Forces have found it necessary to switch off functionality that tasks an officer to review their outstanding evidence citing uncontrollable volumes as the reason for that. Other forces have persevered and continued using reviews with varying timescales. Thames Valley Police uses 90 day reviews following research that showed that 94.4% of its cases had the national offence and outcome codes (further information follows below) applied within that initial 90 day window (filed on the crime system). That said they still have a backlog of unanswered reviews that require addressing. Understanding how forces could potentially use automation for both physical and digital evidence reviews will be important work for the group to monitor over the next few months and years.

10. Automating retention timescales

- 10.1. The increasing demand on the front line, the public demand for policing visibility within the community and a desire to use modern technology to reduce bureaucracy are all prevalent in forces nationally. Several forces are therefore considering how the review and retention process for evidence could be streamlined and automated. The below will outline how forces could consider using automated retention timescales for both Strands of the guidance.

Strand 1 – Cases going through to prosecution

- 10.2. The biggest issue with setting timescales for cases that go through the criminal justice process is that they are all different and can have a multitude of rules that accompany them. For example, we have already covered how complex a suspended sentence could be but you could have multiple offenders involved in the same case given different sentences. The success of any automation will also rely on the Courts providing the necessary data in a way that could be ingested into a Forces Crime and Property System and for that data to be consistent enough to trigger the relevant action required. Forces are already reporting changes in the way that courts provide information. For example, some are refusing to draw full Court Orders for destruction or confiscation further work will be undertaken by the sub group to explore with forces and the courts.

Strand 2 – Where a case cannot yet be progressed

10.3. Each crime recorded has a number of different national codes applied to it, whether that be to identify the offence type for force or national requirements (e.g. PNLD, Home Office, CJS or MoPI Review Codes)¹ and a national outcome code sometimes referred to as the ‘filing code’ (Appendix G). These are standard regardless of the crime recording system the force uses.

Examples provided here of other National codes applied to cases but these are not used in this work.

10.4. There are over 14,000 separate offence codes, which would make mapping them to assist with review and retention quite a daunting prospect. The offence codes are already mapped to MoPI and the NCRS and nationally maintained however, it could be quite difficult to maintain from a retention timescale perspective. So, using the Home Office stats code (there are still just short of 1300 of them) alongside the Outcome Code, whilst still generating a long list (over 45,000), it is possible to use the guidance to produce a retention schedule for those shown in amber (Strand 2 of the model).

10.5. As part of this review, the mapping of the Home Office Stats Code and Outcome Code has been done and can be used by forces to link in with existing crime recording systems. This process can also be adopted for digital evidence before legacy data builds up.

10.6. Most DEMS suppliers will offer a bespoke service to allow forces to determine how long to keep digital evidence. Using the matrix which has been created for this purpose as part of this guidance, forces can adopt a consistent approach linked to this national guidance thereby ensuring consistency between the differently held materials defined by CPIA

10.7. Of course, there may still need to be caveats applied in order to take into account any external factors the force want to consider. For example, you may want to ask a series of questions prior to filing the case on the system that relate specifically to the management of the evidence such as return authority, specialist disposal information.

11. Flexibility and future proofing

11.3. As time moves on, crime is expected evolve further. We just need to look at how things have changed technology wise in the last decade and the impact that has had on digital evidence to know that this is a growing area of concern.

11.4. With all of this in mind, the working group wanted to ensure that the guidance being created allowed it to evolve organically in line with any changes on the horizon. The sub group will therefore be keeping a watching brief on all matters that may affect this guidance. Further tools such as an ‘Impact Assessment Calculator’, Interactive tools and FAQs will be investigated following sign off.

12. Further information

12.3. Below are the review team representatives that led on this work for the DPEG and can be contacted for further information where indicated.

- Anna Bridgman, Devon and Cornwall Police
- Amie Peplow, Leicestershire Police
- Kelly Scully, Thames Valley Police
- Saima Khan, West Midlands Police

Appendix A – Relevant Material

Material may be relevant to an investigation if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case.

The decision as to relevance requires an exercise of judgment and, although some material may plainly be relevant or non-relevant, ultimately this requires a decision by the disclosure officer or investigator.

Full details of the changes within the Attorney Generals Guidance can be found here:

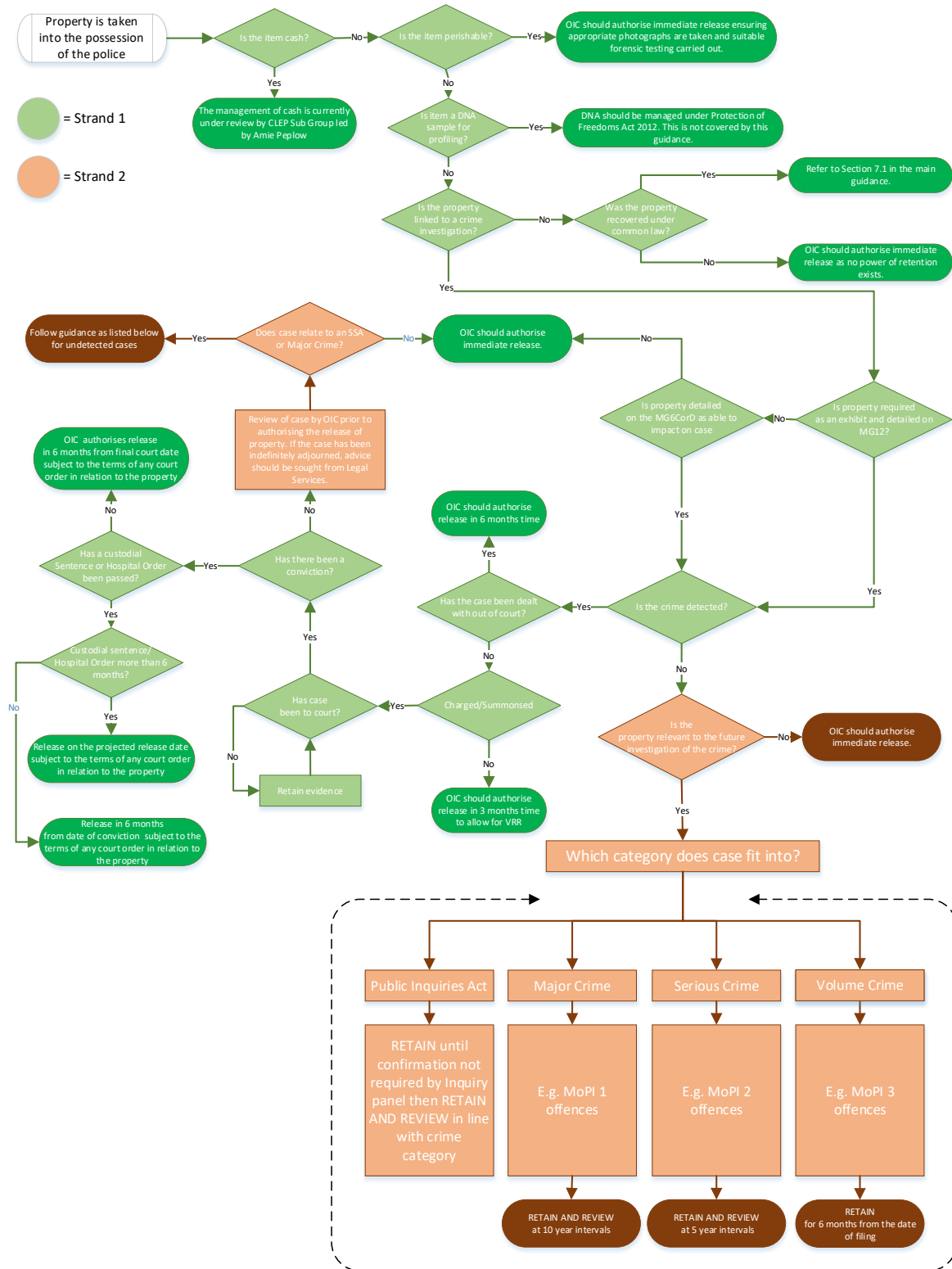
[Attorney General s Guidelines 2020 FINAL Effective 31Dec2020.pdf \(publishing.service.gov.uk\)](#)

Appendix B - Research – Legislation/Guidance

The following legislative/guidance sources were reviewed in order to create this guidance;

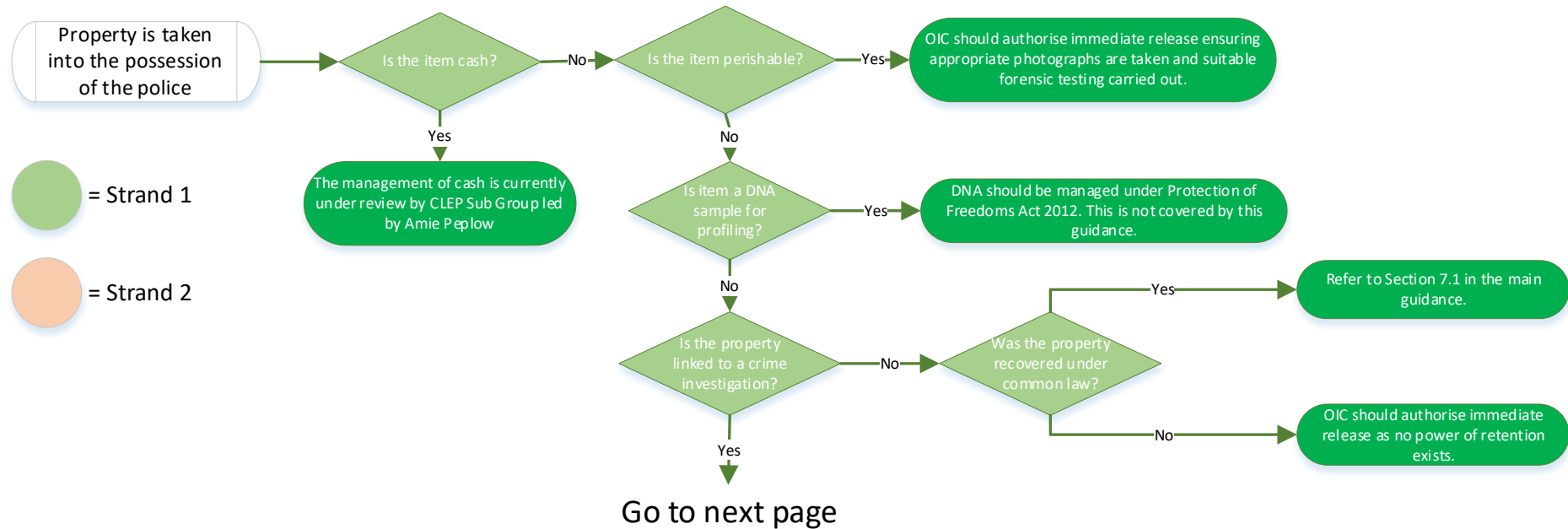
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Criminal Procedure and Investigations Act (Code of Practice) Order 2015
- Police and Criminal Evidence Act 1984
- Criminal Justice Act 2003
- Police Reform and Social Responsibility Act 2011
- Police Act 1996
- Victims Code (Victims Right to Review)
- Criminal Cases Review Commission (CCRC) under the Criminal Appeals Act 1995
- Management of Police Information Authorised Professional Practice MoPI
- Protection of Freedoms Act 2012
- The Powers of Criminal Courts (Sentencing) Act 2000
- The Police (Property) Act 1897
- The Police (Property) Regulations 1997
- Proceeds of Crime Act 2002
- Torts (Interference with Goods) Act 1977
- Public Inquiries Act 2005
- Protection of Freedoms Act 2012
- Common Law
- NPCC Guidance Regarding the Storage, Retention and Destruction of Records, and Materials that have been seized for Forensic Examination.

Appendix C- Retention of Evidence Held within Policing Full Guidance

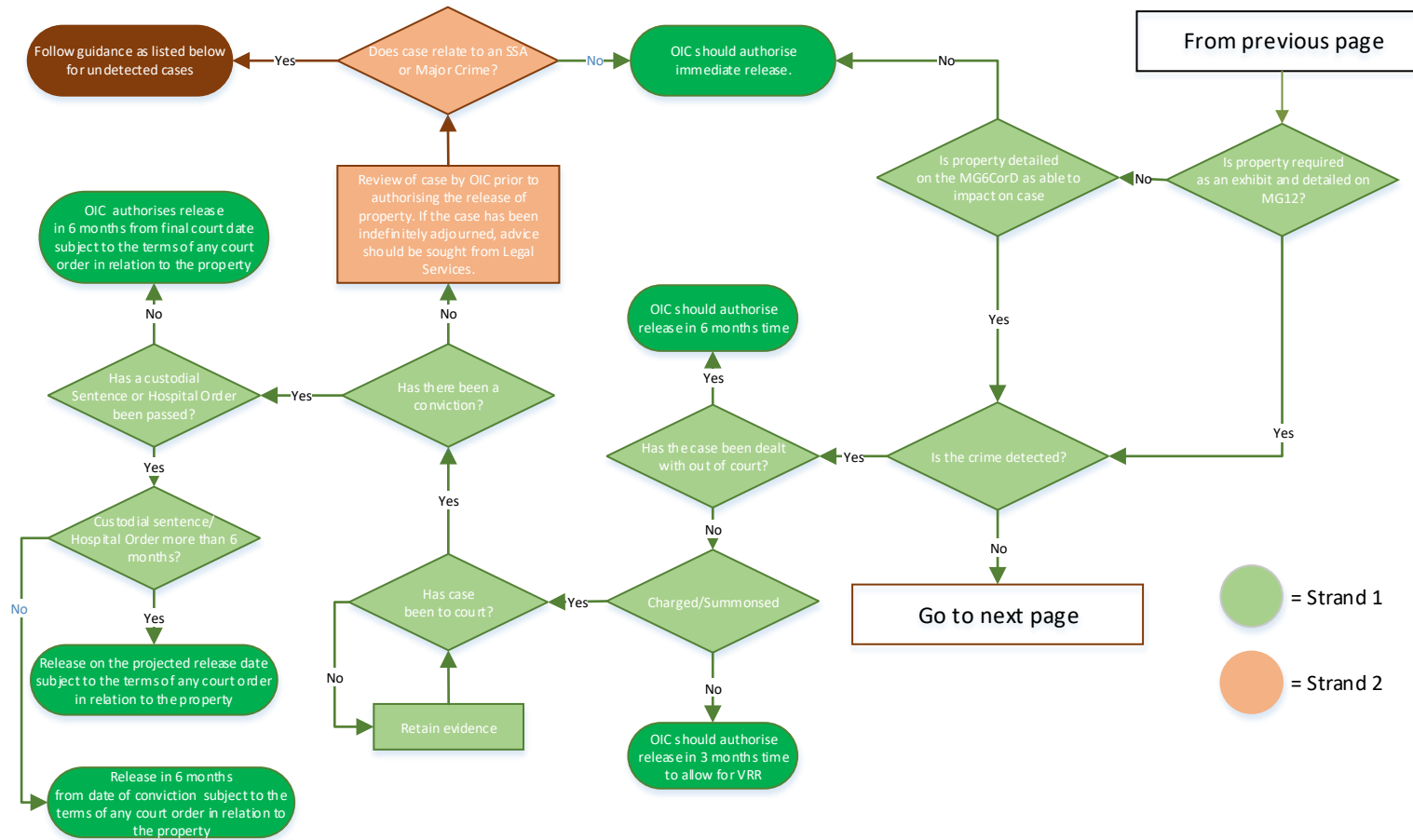


IMPORTANT NOTE: Please refer to the 'Management of Physical and Digital Evidence Retention and Review National Guidance' to understand the context as to why MoPI is referred to above and the timescales quoted in this section.

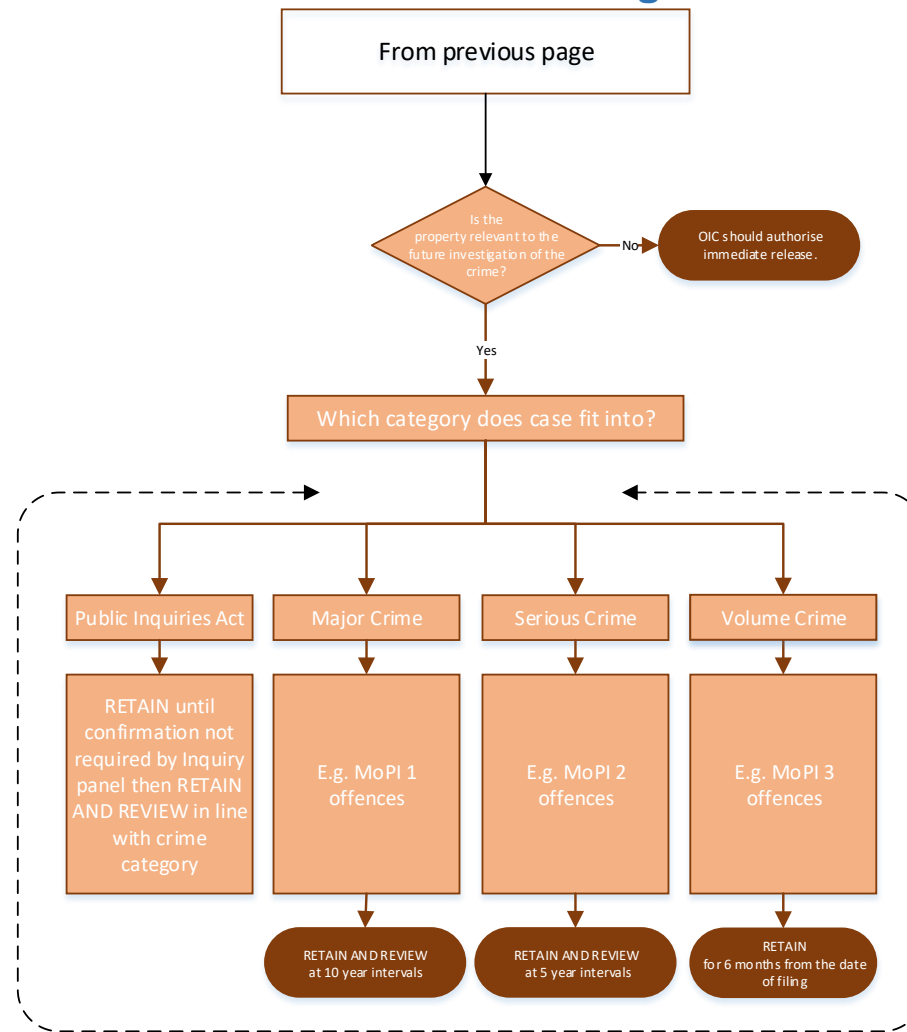
Appendix D - Retention of Evidence Held within Policing Environment (Part A)



Appendix E - Retention of Evidence Held within Policing Environment (Part B)



Appendix F - Retention of Evidence Held within Policing Environment (Part C)



IMPORTANT NOTE: Please refer to the 'Management of Physical and Digital Evidence Retention and Review National Guidance' to understand the context as to why MoPI is referred to above and the timescales quoted in this section.

Appendix G – Filing/Outcome codes

Outcome	Outcome description
1/1A	Charge/Summoned
2/2A	Caution – youths
3/3A	Caution – adults
4	Taken into consideration
5	The offender has died (all offences). There must be sufficient evidence to charge, had the offender not died
6	Penalty Notices for Disorder
7	Cannabis warning
8	Community resolution ARD/YRD
9	Prosecution not in the public interest (CPS) (all offences)
10	Formal action against the offender is not in the public interest (police)
11	Prosecution prevented – Named suspect identified but is below the age of criminal responsibility
12	Prosecution prevented – Named suspect identified but is too ill (physical or mental health) to prosecute
13	Prosecution prevented – Named suspect identified but victim or key witness is dead or too ill to give evidence
14	Evidential difficulties victim based – Named suspect not identified: The crime is confirmed but the victim either declines or is unable to support further police investigation to identify the offender
15	Named suspect identified: victim supports police action but evidential difficulties prevent further action
16	Named suspect identified: evidential difficulties prevent further action; victim does not support (or has withdrawn support from) police action
17	Prosecution time limit expired: Suspect identified but prosecution time limit has expired
18	Investigation complete: No suspect identified. Crime investigated as far as reasonably possible – Case closed pending further investigate opportunities becoming available
20	Further action resulting from the crime will be undertaken by another body/agency- CSC, Schools etc.
21	Further investigation, resulting from the crime report, which could provide evidence sufficient to support formal action being taken against the named suspect, is not in the public interest – police decision