

IN THE EAST LONDON CORONER'S COURT

**IN THE MATTER OF THE INQUESTS INTO THE DEATHS OF ANTHONY WALGATE,
GABRIEL KOVARI, DANIEL WHITWORTH AND JACK TAYLOR**

WITNESS STATEMENT OF LIZ DIFFER

I, Liz Differ of the Metropolitan Police Service, New Scotland Yard, Victoria Embankment, London, SW1A 2JL, will say as follows

1. I am a Detective Inspector ("DI") within the Metropolitan Police Service ("MPS").
2. I make this statement to assist Her Honour Judge Sarah Munro QC in the Inquests of Anthony Walgate, Gabriel Kovari, Daniel Whitworth and Jack Taylor.
3. I have been asked to provide a statement explaining the relationship between the police and the CPS. This includes:-
 - (i) The relationship and working dynamic between the MPS and CPS in the submission of evidence.
 - (ii) Seeking early advice.
 - (iii) Charging through to final MG3 authorising charges.
4. The statement will be split into four chapters:-
 - Chapter 1 - Policy Documents
 - Chapter 2 - Supporting I.T. Applications
 - Chapter 3 - The Charging process
 - Chapter 4 - Operational Arrangements

Chapter 1 – Policy Documents and Guidance Documents

5. The relationship between the police and the Crown Prosecution Service (CPS), and the roles and responsibilities of the police and prosecutors during 2014 and 2015 is set out in the following four documents, (A-F):
 - A. Director of Public Prosecutions' (DPP) 'Guidance on Charging' (published in May 2013 and still in force). This covers:

- i. How the Police should deal with a person where there is sufficient evidence to charge or where a person has been arrested again having been released on bail awaiting a charging decision by a prosecutor;
 - ii. The offences that can be charged by the police and those where the decision must be made by prosecutors;
 - iii. How and when Early Investigative Advice is to be sought from a prosecutor
 - iv. The evidence and information needed for a charging decision to be made and for the prosecutions of cases at court;
 - v. The circumstances where a person may be given a simple caution for an indictable only offence, or a conditional caution.
- B. The Code for Crown Prosecutors (7th Edition, published January 2013, replaced by 8th Edition in October 2018). This gives guidance to prosecutors (both in the CPS and the police) on the general principles to be applied when making decisions about prosecutions. The document is widely available for police decision makers to refer to on the police intranet and is publicly available on the CPS website and is used in the training of review officers. Decision makers are encouraged to read, digest and refer to it when making charging decisions alongside other policy and guidance documents.
- C. Attorney Generals Guidelines on Disclosure (published December 2013 and still in force). These guidelines concern disclosure and the application of the Criminal Procedure and Investigations Act 1996 (CPIA).
- D. Disclosure Manual (published 2005, replaced in 2018). These instructions explain how the police and the CPS have agreed to fulfil their duties to disclose 'unused material' to the defence and in accordance with legislation, rule and procedure.
- E. Manual of Guidance for the Preparation of Case Files. This manual has been prepared for use by police officers, police staff and CPS prosecutors concerned with the preparation, processing and submission of prosecution files. Every effort has been made to ensure that this manual uses straight forward language and that it reflects current CJS processes. In support of the Director's Guidance on Charging, this manual introduces the concept of a "National File Standard" (NFS) and outlines the process for obtaining a charge decision from both police and CPS. It is meant to be read in conjunction with the DPP guidance and the Code for crown prosecutors to assist understanding rather than to replace.
- F. Gravity Factor Matrix for Adults. This was designed by The Association of Chief Police Officers in April 2013 to assist in making cautioning/charging decisions for adults.

Chapter 2 - Supporting I.T Applications

- 6. COPA (Case Overview and Preparation Application) is an MPS web-based application. Officers and supervisors use it to gather and store information for charge decisions, prepare cases for first and subsequent court hearings and to manage memos and requests from the CPS.
- 7. COPA links directly to the CPS Case Management System (CMS) and the courts system for magistrates (Libra).

8. COPA was initially implemented in 2014 as a case preparation tool, allowing officers to build case files electronically, but without interface to the CPS. The default communication with the CPS was through email and telephone calls. Following a pilot from summer 2014, in May 2015 COPA was mandated across the MPS for all pre-charge and first hearing files.
9. COPA was used to prepare the evidence for a pre-charge decision. If this involved a CPS authority the case material and MG3 was downloaded from the COPA case and e-mailed to CPS who manually created the case on CMS.
10. On 23rd November 2015 COPA TWIF (Two way Interface) went live. COPA was used to store custody records, case preparation and pre-charge submissions and to communicate directly with the CPS.
11. This was in place for all MPS units across London except Serious & Organised Crime - Homicide teams use HOLMES (Home Office Large Major Enquiry System). Case material would be downloaded from HOLMES and uploaded to a shared file for the CPS to download, although COPA is used for initial charging decisions.
12. COPA is an intuitive application and assists officers and decision makers to build the case file correctly. Using decision trees (a series of questions which then determine an outcome) COPA will inform an officer if a case is to be charged by the police, or to be referred to the CPS. Such questions will include; is the offence summary only, indictable or triable either way? Is the case likely to be heard in Crown Court, does the case involve any terror offences? Is the offence religiously or racially motivated, for example? COPA will automatically determine the appropriate charging authority for the officer to ensure the correct submission but is entirely reliant on the information it is given.
13. COPA will automatically determine the type of case file that is to be built as a result and will mandate the correct forms for the file type for the officer. Guilty Anticipated Plea (GAP) or Not Guilty Anticipated Plea (NGAP) and whether the case will be heard at Magistrates Court or Crown Court.

Chapter 3 - The charging process.

14. As set out in the 'Guidance on Charging', the police may charge:
 - (i) Any Summary Only offence;
 - (ii) Any offence of retail theft;
 - (iii) Any either way offence anticipated as a guilty plea and suitable for sentence in a Magistrates' Court Provided that this is not:
 - a case requiring the consent to prosecute of the DPP or Law Officer;
 - a case involving a death;
 - connected with terrorist activity or official secrets;
 - classified as Hate Crime or Domestic Violence under CPS Policies;
 - an offence of Violent Disorder or Affray;
 - causing Grievous Bodily Harm or Wounding, or Actual Bodily Harm;

- a Sexual Offences Act offence committed by or upon a person under 18;
 - An offence under the Licensing Act 2003.
15. In any other case, the charging decision will be made by CPS Prosecutors following a referral by the police. In a case where any offences under consideration for charging include an offence which must be referred to a prosecutor under the DPP's Guidance on Charging mentioned above, all related offences in the case must be referred to a CPS prosecutor for a charging decision.
 16. An officer can approach the CPS for advice on charging at any time during the investigation, either for early advice on a case, or for a charge decision to be made, but must ensure the Full Code Test or Threshold test are met (see 22. vi and vii)
 17. When a case is to be referred to the CPS by the police, the Officer in the case (OIC) will complete a form 'MG3' (used to lay out the detail of the case for the prosecutor). The MG3 form contains:
 - Details of the crime report;
 - Details of the suspect in the case and the content of any interviews held;
 - Details of the victims, witnesses and officers involved in the investigation and their evidential statements;
 - The facts of the case and the lines of enquiry that have been followed;
 - Any exhibits that can be used in evidence including CCTV;
 - Strengths and weaknesses in the case;
 - The charges sought and why;
 - Any public interest and human rights considerations.
 18. The OIC will send the charge request using the MG3 to a Police Dedicated Decision Maker (DDM), usually the rank of Sergeant. The DDM will assess the case, review the evidence, consider the charges and make two decisions:
 - Does the case meet the threshold in terms of evidential standard?
 - Can the police make the charge decision or must the case be referred to the CPS to consider the charges?
 19. If the case can be assessed and charged by police, the DDM must review the case and authorise the charge, or send the case back to the OIC to complete further investigation
 20. If the case is referred to the CPS, the prosecutor will consider the case in accordance with the Code for Crown Prosecutors and either:
 - Charge;
 - Given no authority to charge and the OIC advised to take no further action;
 - Send back to the OIC to conduct further investigation to ensure all reasonable lines of enquiry have been followed.

21. If the prosecutor authorises the charges, the case is built by the OIC adhering to the National File Standards (NFS) and prepared for the first hearing at court.

Chapter 4 - Operational Arrangements

22. The operational arrangements for police are set out in the 'Guidance on Charging' as follows.

- (i) The police duty to investigate offences:

All reasonable lines of enquiry should be pursued to ensure that any evidence or material likely to undermine the prosecution case or assist the defence is provided to the prosecutor and taken into account during any referral for investigative advice or charging.

- (ii) Police duty to assess evidence before charging or referral:

Where a police decision maker considers there may be sufficient evidence to charge they will assess the key evidence to ensure the appropriate Test can be met before proceeding to charge or referring the case to a prosecutor. If the Test is not met and the case cannot be strengthened by further investigation the police will take no further action unless the decision requires the assessment of complex evidence or legal issues.

- (iii) The requirement on police to refer cases to prosecutors:

If following assessment a police decision maker considers there is sufficient evidence to charge a suspect and the case is one which this Guidance requires to be referred to a prosecutor to determine whether the suspect is to be charged the case shall be so referred.

- (iv) Prosecutors' duty to assess the evidence provided by the police:

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

- (v) Early Investigative Advice (EIA) (see further below):

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.

Specific cases involving a death, rape or other serious sexual offence should always be referred to an Area prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail.

Where a case is referred to CPS at an early stage the prosecutor may determine the information to be provided by the police, the stage at which the evidence will be reviewed and the test to be applied, and this may be in

accordance with specific protocols including those relating to cases dealt with by CPS Central Casework Divisions or Group Complex Casework Units.

- (vi) The Full Code Test: This is the test applied by a prosecutor when considering any charging decision. That is (a) there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, and (b) the prosecution is required in the public interest. The Guidance provides:

Cases should not be charged by the police or referred to prosecutors unless this standard can be met or unless the making of a charging decision in accordance with the Threshold Test is justified. This means the case must be capable, through the gathering of further evidence of meeting the Full Code Test realistic prospect of conviction evidential standard.

- (vii) The Threshold Test:

Prosecutors will apply the Full Code Test unless the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.

The Threshold Test may be used to charge a suspect who may justifiably be detained in custody to allow evidence to be gathered to meet the Full Code Test realistic prospect of conviction evidential standard.

23. The Threshold test is set out in the Code for Crown Prosecutors (paragraph 5.2). It can only be applied where all of the following conditions met:
- There is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
 - There are reasonable grounds for believing that further evidence will become available within a reasonable period; and
 - The seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
 - There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.

Early investigative advice

24. The Police may seek CPS advice at any stage of an investigation. If this is done prior to requesting a decision on whether or not to charge, this is called Early Investigative Advice. This advice can be sought in any case but it is encouraged in more complex investigations to ensure an evidence-based, partnered approach to the prosecution is taken from the outset.
25. As set out in the 'Guidance on Charging' and the National File Standard, where early investigative advice is being sought, the police will compile and submit a pre-charge report using COPA. This will include the MG3 form, the key evidence in the case, any relevant exhibits, CCTV and forensic reports, the DV check list and DASH form (in domestic violence cases), a PNC print of the suspect and key witnesses, and any material which may undermine the prosecution case or assist the defence.
26. The prosecutor may assess evidence already gathered, or the benefits of other evidence yet to be obtained and how likely it is that it will have any bearing on the case. They may

assess digital evidence such as phone records and provide advice on whether any further downloads should be obtained.

27. On occasion, a CPS prosecutor may consider that a case referred to the CPS may require further evidence to be obtained before a charge decision can be made. In such circumstances the prosecutor will advise the officer of the further material required in order to obtain a charging decision.
28. The prosecutor may advise on the legal or evidential effect of any particular operational procedure, whether the activity has taken place or is merely proposed. The prosecutor must not advise on the appropriateness or the efficacy of any operational matter.
29. CPS advice on appropriate subjects will often affect police operations. But the decision on how to implement the CPS advice (if it is accepted) is a matter entirely for the police.
30. Advice concerning police operational matters should be confined to:
 - indicating the nature of the evidence required
 - commenting on the likely effect of actual or proposed activity on a prosecution
 - identifying legal or evidential elements which need to be addressed
 - advising on the admissibility of evidence obtained / likely to be obtained
 - highlighting any public interest considerations which may affect any eventual prosecution
31. The CPS should not advise the police on issues concerning:
 - operational matters
 - questions of civil law
 - cases which are not properly referable under the Director's Guidance on Charging, which should be dealt with by police supervisors
 - the grant of licenses (liquor, gaming, firearms etc)
 - internal disciplinary matters
 - matters relating to traffic control (parking restrictions, PSV licensing etc)

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

Signature

Date 03/09/2020

Liz Differ

Date: 03/09/2020