



## PNLD Criminal Law Conference



### The Code for Crown Prosecutors – 'Getting the Threshold Test Right'

**Helen Sanderson**

*Head of Central Legal Training, Crown Prosecution Service*

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Crown Prosecution Service  
Delivering justice



The Code for Crown Prosecutor  
“Getting the Threshold Test Right”

## The Code

### The New Code

- Came into force in October 2018
- Made changes to when the Full Code Test should be applied
- Introduced 5 conditions which must be met before the Threshold Test can be applied

## When should the FCT be applied?

### 4.3

- a) when all outstanding reasonable lines of inquiry have been pursued; or
- b) prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of, or against a prosecution.

## The Threshold Test

### 5.1

“In limited circumstances, where the Full Code Test is not met, the Threshold Test may be applied to charge a suspect. The seriousness or circumstances of the case must justify the making of an immediate charging decision, and there must be substantial grounds to object to bail”

## Threshold Test – The 5 conditions

There are reasonable grounds to suspect that the person to be charged has committed the offence

Further evidence can be obtained to provide a realistic prospect of conviction

The seriousness or the circumstances of the case justifies the making of an immediate charging decision

There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances it is proper to do so

It is in the public interest to charge the suspect

## The Threshold Test

### 5.2

“There must be a rigorous examination of the five conditions of the Threshold Test, to ensure that it is only applied when necessary and that cases are not charged prematurely. All five conditions must be met before the Threshold Test can be applied. Where any of the conditions are not met, there is no need to consider any of the other conditions, as the Threshold Test cannot be applied and the suspect cannot be charged”

## Threshold Test – First Condition

There are reasonable grounds to suspect that the person to be charged has committed the offence.



## Threshold Test – Second Condition

Further evidence can be obtained to provide a realistic prospect of conviction.

## Threshold Test – Third Condition

The seriousness or circumstances of the case justifies the making of an immediate charging decision.

## Threshold Test – Fourth Condition

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.

## Threshold Test – Fifth Condition

It is in the public interest to charge the suspect.

## Reviewing Threshold Test Cases

### 5.11

A decision to charge under the Threshold Test must be kept under review

Any Questions?



Thank you

Helen Sanderson  
Head of Central Legal Training

[helen.sanderson@cps.gov.uk](mailto:helen.sanderson@cps.gov.uk)