



### Offences Taken into Consideration

Policy owners	Norfolk and Suffolk DCCs
Policy holder	Norfolk and Suffolk Heads of Safeguarding and Investigations
Author	DCI Investigations

### Approved by

Legal Services	Pending
Policy owner	05.04.18
JJNCC	27.03.18

**Note:** By signing the above you are authorising the policy for publication and are accepting responsibility for the policy on behalf of the Chief Constables

Publication date	06.04.2018
Review date	27.03.2021
APP checked	March 2018
College of Policing Code of Ethics checked	March 2018

**Note:** Please send the original Policy with both signatures on it to the Norfolk CPU for the audit trail

## Index

1. Introduction.....	3
2. Benefits .....	3
3. Ethical Considerations.....	4
4. Subsequently Denied TICs.....	5
Code for Crown Prosecutors .....	6
5. General Principles .....	6
Mode of Trial .....	7
Sufficiency of Evidence for TICs.....	7
Domestic Violence Offences .....	8
6. Priority Prolific Offenders (PPOs) and Integrated Offender Management (IOM).....	8
7. Restorative Justice .....	8
8. Conditional Cautions .....	9
9. Dangerousness .....	9
10. Proceeds of Crime Act (POCA) .....	9
11. Obtaining Admissions.....	9
On booking in at the police station .....	10
Pre-interview briefing.....	10
PACE interview .....	10
Form of wording when formally putting charges and TICs to an accused ....	11
12. Role of Police/Prosecutors in Charging.....	11
Information to be given to the Court .....	14
TIC Schedule not Available .....	14
TICs between Conviction and Sentence .....	15
Compensation .....	15
Notifying Outcome to Police .....	16
Notifying Outcome to Victims .....	16
Offences Admitted Post-Sentence .....	16
Acquittal .....	16
13. The Impact of R v Miles.....	16
14. Scrutiny Arrangements.....	17

## Legal Basis

### *Legislation/Law specific to the subject of this policy document*

<b>Section</b>	<b>Act (title and year)</b>
	Police and Criminal Evidence Act 1984
	Criminal Justice Act 1991
	Human Rights Act 1998
	Crime (Sentencing) Act 1997
	Police (Conduct) Regulations 1999
	Common Law

### *Other legislation/law which you must check this document against (required by law)*

#### **Act (title and year)**

[Human Rights Act 1998 \(in particular A.14 – Prohibition of discrimination\)](#)

[Equality Act 2010](#)

<a href="#">Crime and Disorder Act 1998</a>
<a href="#">Health and Safety at Work etc. Act 1974 and associated Regulations</a>
<a href="#">General Data Protection Regulation (GDPR) and Data Protection Act 2018</a>
<a href="#">Freedom Of Information Act 2000</a>
<a href="#">The Civil Contingencies Act 2004</a>

## 1. Introduction

- 1.1 There is no statutory basis to 'Taken in to Consideration' (TIC) practice. Although court room procedures may be "*well established and recognised practice*" the collection, use of and priority given to TICs amongst Criminal Justice Agencies varies widely.
- 1.2 There are two distinct aspects to be addressed: the obtaining of the admission and how it is proposed to deal with any subsequent denials.
- 1.3 The collection of evidence for TICs and presentation at court can be time-consuming but, given the potential benefits for all concerned, the effective use of such resources is considered to be worthwhile.
- 1.4 The TIC process is not the subject of a specific item of legislation. However, the use of TICs can only take place within the boundaries set or implied by various pieces of law such as the Police and Criminal Evidence (PACE) Act, European Convention of Human Rights (ECHR), Human Rights Act (UK), all of which may have significant relevance to the use of TICs, depending on the circumstances. More specifically, in accordance with Section 120 of the Coroners and Justice Act 2009, the Sentencing Council issued 'Offences Taken into Consideration and Totality: Definitive Guideline' which must be adhered to. This policy has been cross-referenced with the Sentencing Guidelines to ensure there are no inconsistencies. Furthermore, this policy will be reviewed to ensure it remains consistent and relevant should the Sentencing Guidelines be amended in future.
- 1.5 The TIC process is a very well established and understood concept and in a general sense is welcomed by the Courts. If used appropriately and in the interests of justice there should be no resistance to the use of TICs within any part of the Criminal Justice System (CJS).
- 1.6 If the defendant does participate in the TIC process, the TIC Unit may, in appropriate cases, provide a statement to the Court setting out the circumstances in which the defendant admitted their responsibility.

## 2. Benefits

- 2.1 Appropriate use of TICs offers significant benefits to criminal justice agencies, both operationally and in terms of bringing offences to justice and increasing victim and public confidence.

## 2.2 Benefits include the following:

- The **victim** has an opportunity to claim compensation in respect of an offence admitted by the defendant, detected and acknowledged by the criminal justice system. There is less uncertainty, and earlier resolution of the case. Additionally, the victim also receives peace of mind that the offence has been detected;
- The **court** has a fuller and more accurate picture of the offending and is able to sentence more appropriately;
- There is the potential for savings as offences can be dealt with promptly without additional court hearings;
- The **defendant** receives credit for early admission of guilt; a lesser sentence than had they been charged with a substantive offence;
- Possibly tailored sentencing and rehabilitative programmes and ability to “clear the slate” to avoid the risk of subsequent prosecution for those offences;
- The **police** gain valuable intelligence; increase detected offences rates; record a fuller picture of offending for possible use in future cases or to support applications for restrictive orders. There is a more efficient and effective use of resources.
- The **prosecution** has a fuller and more accurate picture of the offender’s criminal history when considering the public interest test, bail decisions, bad character, dangerousness, what information to give the court etc.;
- **Resources** are used efficiently; and the public’s confidence in the criminal justice system is improved.

2.3 As part of a wider, cross-CJS drive to re-invigorate the appropriate use of TICs, this Prosecution Team Guidance has been drawn up to provide a framework intended to help police and prosecutors maximise opportunities for defendants to admit to additional offences, not just at the police station, but at court, where it really matters.

## 3. Ethical Considerations

3.1 The principles embodied in the Code of Ethics will always underpin the use of TICs. TICs will only be pursued where it is proportionate and just. The aim will be to deal with TICs as part of the overall picture of offending and within the context of the defendant’s circumstances and willingness to change. The Constabularies’ approach will be transparent and fair and will withstand scrutiny. The Constabularies will present information to the CPS in a fair and accurate manner enabling them to decide the most appropriate mix of substantive charges and TICs.

3.2 TICs will be approached with the utmost care in respect of vulnerable defendants or those with learning or language limitations or where English is not the first language. Likewise, at all times best practice around

diversity issues will always be followed. Where the defendant is a juvenile, the Youth Offending Service in the relevant area will be informed. It is entirely legitimate to explore the potential for TICs in a very wide variety of circumstances but an assessment of the defendant's needs and level of understanding must be carried out and care must be taken. Fairness and justice for crime victims and defendants will be guiding principles.

- 3.3 When speaking to defendants it is essential that they are made aware of the ethical principles behind the TIC policy. Reference should also be made to the Sentencing Guidelines and a firm assurance must be given that inducements or incentives will never be offered or implied. Defendants must be informed that, within the parameters allowed by the Sentencing Guidelines, overall sentencing will always remain at the discretion of the Court. Police interaction with defendants considering TICs will be fully documented. In regard to the treatment, processing, transportation and interviewing of defendants the highest ethical standards will be observed and all relevant legislation will be complied with.

#### **4. Subsequently Denied TICs**

- 4.1 Historically, although there was often some incentive for defendants to admit TICs at the police station (increased chance of bail etc.), there was little incentive to confirm those admissions at court – particularly if the defence/defendant could be fairly sure the prosecution team was unlikely to make the necessary effort to pursue outstanding offences listed on the TIC schedule. This unsatisfactory situation was further aggravated by recording systems.
- 4.2 “Offences brought to justice” is a key CJS target. If a TIC were admitted at the police station but subsequently denied at court, it was still counted as an offence brought to justice even though the defendant had not been dealt with in respect of that offence and the victim could not be awarded compensation by the court.
- 4.3 A change of policy and practice was required across the criminal justice system to ensure the clear benefits of TICs were secured.
- 4.4 As such, previously admitted TICs which are subsequently denied in court are now robustly followed up with a view to prosecuting outstanding offences.
- 4.5 Where, in court, a defendant rejects previously admitted TICs, the CPS file should be clearly marked and immediate consideration given to prosecuting the now denied offences, as previously agreed with the police. The defendant can be invited, in court, to give a reason for their denial of the previously admitted offences. Any explanation given should be taken into account by the prosecutor when deciding whether or not to proceed with charges.

- 4.6 Where possible, the prosecutor should immediately inform the court and defendant that the prosecution intends to proceed on the relevant denied offences and, if in the Magistrates' courts, be in a position to lay the information/charges there and then.
- 4.7 Sentencing on the substantive offences should not be delayed to await the outcome on the new offence(s). However, the new file should be fully endorsed to record the context in which the decision to prosecute was made so that, in the event of sentencing on the new offence(s), the court can be properly apprised and sentence appropriately, reflecting the lack of credit for any guilty plea and the denial in court of a previously admitted TIC.
- 4.8 Whichever course is adopted, the police must be notified and consulted as appropriate.
- 4.9 If a decision is made not to prosecute a denied TIC offence, the police should notify the victim, especially because the court will not be empowered to make a compensation order.

#### Code for Crown Prosecutors

4.10 The change in policy is reflected in paragraphs 5.10 and 10.4 of the 2004 Code for Crown Prosecutors.

4.11 Paragraph 5.10 states:

*“A prosecution is less likely to be needed if: ... b) the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution or the defendant withdraws consent to have an offence taken into consideration during sentencing.”*

4.12 Paragraph 10.4 states:

*“Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence in court, Crown Prosecutors will consider whether a prosecution is required for that offence. Crown Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review.”*

4.13 When applying the public interest test, it is appropriate to consider long term strategy, for example, in the case of a Prolific and Priority Offender (PPO).

## **5. General Principles**

5.1 The general principles regarding the number and weighting of charges/TICs remain unchanged, that is:

The charges should reflect the seriousness and extent of the offending, give the court adequate powers to sentence and impose post-conviction orders, and enable the case to be presented in a clear and simple way. The way the charges are structured should enable the case to be presented in a clear and simple way.

- 5.2 As the defendant is not charged with or convicted of the TIC offences and the court's powers of sentence are limited to the maximum for the substantive offences of which the offender has been convicted, the balance of charges and TICs must enable the court to sentence appropriately.
- 5.3 If the TIC offences are inappropriately weighted in seriousness and/or quantity then sentencing cannot properly reflect the level of offending and the outcome would be unjust.
- 5.4 A guiding principle is that the most serious offence(s) will be charged. Other similar offences of the same or lesser seriousness could be suitable for TICs.
- 5.5 When asking a Court to consider TICs the jurisdiction and sentencing power of the Court in question must be considered. This is particularly so for matters to be heard in the Magistrates Court, where the offences charged and proposed as TICs must be suitable for summary trial.

#### Mode of Trial

- 5.6 TICs must not be allowed to take the otherwise SST (suitable for summary trial) substantive charges beyond the Magistrates courts' jurisdiction and if it appears that this would be the effect, the balance of charges to TICs should be altered so that the substantive charges would, by themselves, be not suitable for summary trial).

#### Sufficiency of Evidence for TICs

- 5.7 The evidential test for a crime to be counted as a TIC is set out in the Home Office Counting Rules on Detections:

*“there must be sufficient evidence to charge the suspect with the crime”. This is generally interpreted as an admission, corroborated by a crime report and material fact, such as forensic evidence linking offender and offence, or detail which the offender could not have known otherwise.*

- 5.8 The resources necessary to obtain the evidence should be proportionate to the benefits of an admitted TIC; a full file is therefore not required to support a TIC and in most cases a corroborated admission is sufficient. In cases such as dwelling burglaries, Victim Personal Statements should still be provided together with enough information for the prosecutor to give victim impact information to the court, and to seek compensation for the victim in appropriate cases. Aggravating features should also be made

clear so that the prosecutor can give sufficient sentencing information to the judge to effective sentencing to take place. A copy of the schedules should be typed, clearly and sequentially numbered, and provide an appropriate level of detail as set out above. The typed copies should be served at least seven days in advance of the hearing to allow for proper and efficient case preparation by the prosecutor.

### Domestic Violence Offences

5.9 Sections 17-21 Domestic Violence, Crime and Victims Act 2004 introduced new procedures for multiple offending. In relevant cases prosecutors will need to consider whether to draft a Two Part indictment rather than TIC offences.

## **6. Priority Prolific Offenders (PPOs) and Integrated Offender Management (IOM)**

6.1 PPOs are responsible for a disproportionate amount of crime, particularly volume crime. They are obvious targets for proactive investigation and action. Effective use of TICs, which will require liaison between investigators and prosecutors on a case by case basis, is vital to any long term PPO strategy.

6.2 Those identified as being responsible for disproportionately large volumes of offences and/or harm in their communities. Those so identified are subject to active targeting by a multi-agency team (180) with the key aim of reducing or eliminating their offending behaviour.

6.3 Broadly speaking, the targeting is under one of two strands: either “catch and convict” – aiming to ensure that PPOs who continue to offend are swiftly detected, caught and appropriately sentenced – or, “rehabilitate and resettle” – providing supportive interventions for PPOs genuinely wanting to reform, by helping them to overcome their key criminogenic needs (most likely to be help with settled accommodation and with drug treatment).

6.4 Many co-operative PPOs view admitting TICs as a helpful motivator to their rehabilitation, allowing them to ‘wipe the slate clean’. For others, however, what they see as the threat of TICs may reduce their motivation to co-operate with the programme; close liaison between investigators and prosecutors is therefore essential.

## **7. Restorative Justice**

7.1 An indication from a defendant that they may accept TICs forms part of a picture. It is a strong indicator that the defendant may have a desire to make a fresh start and they may be likely to demonstrate a willingness to change. In these cases the potential for Restorative Justice (RJ) should be considered and, if appropriate, a referral should be made to the RJ Team. RJ can bring tremendous benefits to victims and defendants. In the right circumstances, its use may go hand in hand with TICs.

## 8. Conditional Cautions

- 8.1 It is not appropriate to use offences taken into consideration when a Conditional Caution has been administered.

## 9. Dangerousness

- 9.1 These provisions will need to be taken into account when considering whether to charge or TIC. This is particularly important where the offence to be TIC'd is a specified offence but none of the offences for which the defendant is to be sentenced is a specified offence. In such cases, the defendant would escape the possibility of a public protection sentence being imposed, which would otherwise fall to be considered by the court had the offence been charged as a substantive offence.
- 9.2 Such cases are likely to be rare, but it is important that prosecutors are aware of the possibility.

## 10. Proceeds of Crime Act (POCA)

- 10.1 If the offender does not have a criminal lifestyle (as defined in the Act), the court must determine the benefit of their "particular criminal conduct". Section 76(3) permits the Crown Court to include TICs when making this determination. If they do have a criminal lifestyle, the court must determine their benefit from "their general criminal conduct", which includes TICs.
- 10.2 It is the responsibility of the Officer in Charge (OIC) to pursue compensation in appropriate cases and include details in the file summary the available means/assets of the suspect to assist in this recovery. Dialogue should then take place between Prosecutor and OIC to identify appropriate cases.

## 11. Obtaining Admissions

- 11.1 In tandem with robust prosecution of subsequently denied TICs, offenders must be encouraged and given every opportunity to make the admissions in the first place – particularly those highly recidivist offenders who often refuse to co-operate with the investigative process.
- 11.2 Using posters/notices/leaflets, agreed forms of wording and the MG18, numerous such opportunities exist, for example: when booking in at the police station; the PACE interview; at court before conviction; and at court after conviction but before sentence.
- 11.3 It is perfectly acceptable to draw a suspect's attention to TIC procedures orally, through posters, by notices, etc., for example, indicating that advances in DNA and fingerprinting may lead to re-arrest if forensic links are found. Care must be taken, however, to ensure that no inducements are made explicitly or implicitly. For example: bail should not be offered in return for admissions; no assurances should be given that any admissions

will be treated as TICs or that sentences for the substantive offence will be reduced. In all cases a statement will be prepared by the officer outlining the circumstances of the TICs offered and will form part of the original file to be served on both the CPS and defence.

#### On booking in at the police station

11.4 The suspect should be served with TIC Notice (1) at the same time as being given the usual Notice of rights and entitlements.

#### Pre-interview briefing

11.5 The suspect's legal representative should be informed that the suspect has been given the TIC notice and that it is intended to raise the topic in the course of the interview. Sufficient disclosure should be given to the suspect's legal representative in respect of both the primary offence(s) and the potential TIC offence(s) to enable appropriate legal advice to be given.

#### PACE interview

11.6 Best practice is for the substantive (primary) offence part of the interview to be conducted before discussion of TICs.

11.7 Having dealt with the substantive offence(s), the interviewing officer should then explain the TIC procedure clearly to the suspect. For example:

*“Before the interview, you were given a Notice explaining the TIC procedure. You have admitted responsibility for the offence(s) of [x] for which you may be charged. This is your opportunity for a clean sheet and to admit responsibility now, for any other offences you have committed. If these are similar to the offence(s) you are charged with, it may be possible, depending on all the circumstances, to have these crimes taken into consideration when you appear at court, rather than charge you with them. I must remind you that you are still under arrest and that the caution I gave you earlier still applies. You are still also entitled to legal advice. Do you wish to admit any other offences at this stage? Do you have anything else you wish to say?”*

11.8 Where TICs are to be discussed as part of a separate interview, the suspect must still be cautioned so that evidence of any admissions made will be admissible at court, should those offences later be the subject of charges.

11.9 All TICs must satisfy the CPS evidential test and all interviews must be conducted in accordance with PACE. Wherever possible all interviews should be recorded.

11.10 In respect of “drive rounds” and contemporaneous notes made, it is best practice for the suspect to endorse these notes at the time and on

completion of the “drive round” to further interview the suspect on tape, producing and exhibiting these notes within the interview.

- 11.11 Suspects must be made aware that there may not be the opportunity for prison visits and that, if additional evidence comes to light linking them with further offences that they did not take the opportunity to admit, they may well be charged.
- 11.12 This procedure must form part of a formal interview and thus be audio or visually recorded, as should any comments or admissions that follow in relation to other offences.

#### Form of wording when formally putting charges and TICs to an accused

- 11.13 The police officer charging should say:

*“On the information currently available, it appears appropriate to charge you with [x] and have [y] taken into consideration at sentencing. If you accept the offences to be taken into consideration now, but refuse them later in the proceedings, you may be prosecuted for those offences. Do you understand?”*

Once the form MG18 has been fully completed, the suspect should be invited to sign it.

- 11.14 The suspect will be invited to sign the following caption on the front of the MG18 to ensure they are fully aware of the consequences if they withdraw their admissions:

“Important: If you withdraw your admissions to these additional offences that you wish the court to take into consideration, those offences may result in further prosecution(s)”.

- 11.15 The suspect should be invited to make comments in respect of the TICs and this must be recorded on the front of the MG18 and signed. Points to consider – motivation, remorse and acceptance of TICs
- 11.16 If appropriate the suspect’s solicitor should be invited to endorse the MG18.

## **12. Role of Police/Prosecutors in Charging**

- 12.1 Under the Director’s Guidance on Charging, police officers can decide on charges in cases suitable for early disposal as a guilty plea in the Magistrates’ courts. They retain, however, discretion to refer any such case to the Duty Prosecutor including cases where the defendant admits further offences.
- 12.2 Officers should consider, with or without pre-charge advice from a prosecutor, which offences should be charged and which offered as TICs. Officers should refer to the Code for Crown Prosecutors. In selecting

charges and TICs, the officer should seek to reflect the totality of the offending in terms of seriousness and extent.

- 12.3 Compensation details (MG19) will need to be available to the court. It is the responsibility of the OIC to ensure compensation is sought wherever possible and details of compensation in respect of TICs must be included in the file summary.
- 12.4 Victim personal statements should be made available and, if obtained, included in typed TIC schedule.
- 12.5 Any aggravating features should also be listed and need to be included on the typed schedule.
- 12.6 It is helpful if a short descriptive note (SDN) on an MG15 shows CPS/defence that admissions have been made to each listed TIC offence and the number of each TIC (taken from the schedule) is marked in the margin against each admission.
- 12.7 Where there are possible TICs, investigators and prosecutors should, at the earliest opportunity, discuss and agree the strategy to investigate and prosecute the case – particularly where PPOs are involved. The strategy should include the availability/appropriateness of TICs and which of those offences should be pursued if subsequently denied.
- 12.8 In order to maximise opportunities for suspects to admit TICs, police officers should:
- Ensure the suspect has been handed and has read a TIC notice;
  - Gather all available evidence for the primary offence;
  - Check all available information sources to establish what other offences the suspect may have committed;
  - Ensure all forensic opportunities have been taken in respect of all offences and check results, where available;
  - Plan for the interview. Be prepared to discuss any other offences with the suspect;
  - Make full use of custody time. Carry out all reasonable lines of enquiry; and
  - Provide sufficient disclosure to the suspect's legal representative to enable appropriate legal advice to be given.
- 12.9 Supervisors will submit the file via Athena, thereby generating an action for the authorised Designated Decision Maker to check the evidential quality in order to ensure that all TICs meet the threshold test as we all as full compliance with the Home Office Auditors in respect of detections.
- 12.10 Home Office Counting Rules state "In exceptional circumstances crimes can also be counted as detections once there is a PACE compliant

admission and the offender, having previously failed or declined to sign the TIC acceptance form (MG18), whilst at court during sentencing asks for the offence(s) to be taken into consideration by the court and the DDM is satisfied that there is additional information connecting the person to the crime. In these circumstances it is preferable for the TIC acceptance form to be signed during the proceedings; where for any reason this doesn't happen the force must prove the offence(s) were taken into consideration by the court, before claiming the detection.

12.11 In order to maximise opportunities for defendants to admit TICs, prosecutors should:

- Ask the OIC to liaise with YOT and seek their assistance in youth cases;
- Ask the OIC to liaise with PPO leads and seek their assistance in PPO cases;
- Consider the appropriateness of any TICs submitted;
- Advise on other potential TICs';
- Provide early advice to the police on evidence required;
- Agree with the police which offences are to be charged, TIC'd, pursued if not accepted, pursued if accepted but subsequently denied; and
- Ensure compensation details will be available at court.

12.12 Forensic evidence is extremely valuable in supporting the TIC process, both as corroborative evidence for admitted TICs and to discover new offences that could be offered as TICs.

12.13 When advising clients on making admissions to TICs, the defence will obviously consider (amongst other factors) whether the proposed TIC offence(s) are likely to be proceeded with in the event of being either denied from the outset or admitted but then subsequently denied in court. The likelihood of proceeding will, of course, depend on the circumstances of each case. Factors might include, for example:

- The strength of the evidence available;
- The seriousness of the offence;
- The number of TICs.

12.14 To assist this process the typed TIC schedule must contain a detailed summary of the following:

- Offence – Act and Section.
- Stolen – Type of Property.
- Damage – How caused and cost.

- Aggravating Features, i.e. Threat /Weapons/on bail.
- Notes – Admission PACE compliant/I/V ref number.
- Supporting evidence – Analytical, intel, CCTV Forensic.
- Victim Personal Statement – Has VPS been obtained?

12.15 A prosecution team's reputation for careful preparatory work and robust follow-up enforcement will affect the advice legal representatives give to their clients – as will a reputation for poor groundwork and/or lack of follow up.

#### Information to be given to the Court

12.16 The prosecutor must:

- Hand in two copies of the MG18 TIC schedule and statement;
- Hand in MG19 compensation forms; and
- Outline the relevant facts and information, including any Victim Personal Statement and any aggravating or mitigating features of the offence.

12.17 The defendant should be invited by the court to admit the offences personally rather than through his legal representatives.

12.18 The list of TICs need not be read out in full. It is sufficient if the court confirms with the defendant that they have signed the list; that it contains the precise number of offences; that they agree they committed those particular offences; and that they wish for them to be taken into consideration when sentence is passed for the substantive offence(s).

12.19 Although the list need not be read out in full, it is important that the prosecution outlines, in sufficient detail, the relevant facts and information regarding any particular TIC – for example, it may suffice to state that four criminal damage TICs all related to allotment greenhouses and to submit the individual victims' claims for compensation. Or, it may be appropriate to inform the court that the offences were committed whilst on bail and against vulnerable victims. Or that the defendant volunteered the information and admitted the TICs at the earliest opportunity. Or that there was in fact forensic evidence that first connected him to the offences etc.

#### TIC Schedule not Available

12.20 Where evidence of additional offences comes to light after charge, it is important that the police provide a TIC schedule as early as possible, preferably before the first court hearing. This should form one schedule only, and in the event that further admissions are made, an amended schedule in numerical chronological order should be submitted to replace the original schedule.

12.21 Where this is not possible, prosecutors should request a short adjournment or a remand in police custody to enable the police to interview the offender and for the additional offences to be considered properly – particularly if the defendant is a known prolific offender. It is appropriate, where necessary, for a prosecutor to set out for the court, the potential benefits of TICs for all concerned – including the victim.

#### TICs between Conviction and Sentence

12.22 During the adjournment for pre-sentence reports between conviction and sentence, the investigating officer should, where appropriate, interview the defendant to establish whether they admit further offences. As a professional courtesy, if the prosecutor at court is aware that the police intend to interview the defendant during the forthcoming adjournment, they will inform the defendant's legal representative at court accordingly. If the defendant does admit further offences, the usual consideration will then need to be given to whether charges and/or TICs are appropriate. If the court has already given an indication of sentence, this will affect the prosecutor's decision. It is the responsibility of the OIC to ensure that the prosecutor is fully appraised in these circumstances.

#### Compensation

12.23 The court is required, pursuant to the Powers of Criminal Courts (Sentencing) Act 2000 section 130(1) to consider the question of compensation in respect of offences being taken into consideration; relevant sections of the MG18 and MG19 must therefore be fully completed.

12.24 In the Magistrates' Courts, the total sum of a compensation order is limited under section 131 of the Act to £5,000 per offence in respect of which the offender has been formally convicted.

12.25 Compensation orders in respect of TIC offences cannot therefore exceed those limits. For example, if the defendant is convicted of one offence and there are five TICs, the total compensation awarded cannot exceed £5,000. If the defendant is convicted of two offences and there are 10 TICs, the total compensation awarded cannot exceed £10,000.

12.26 There are no such limits in the Crown Court.

12.27 If a confiscation order is made against the defendant under the Proceeds of Crime Act 2002, victims may be compensated using money derived from the confiscated sum. If it is clear that there would otherwise be insufficient means to compensate the victim, the court must order the shortfall to be paid from the confiscated sum. Victims of TIC offences are included in these provisions.

### Notifying Outcome to Police

12.28 The court will notify the police which TICs have been accepted / rejected, by returning one copy of the signed and annotated MG18 TIC schedule. A copy of which must be returned to the OIC.

12.29 The CPS will inform the police, via the MG3, of the decision whether or not to prosecute the rejected TICs.

### Notifying Outcome to Victims

12.30 Whilst clearly it is vital that defendants understand the TIC process there will also be a strong focus on victims. It is important that the principles behind the TIC process are fully explained to victims. Every effort will be made to ensure that victims are given a full update; they must be informed that their crime has been detected by means of a TIC and what that means in practice. The views of victims will always be considered and contact with victims will be recorded on the relevant crime report.

### Offences Admitted Post-Sentence

12.31 Where further offences are admitted post sentence, the Home Office Counting Rules set out the circumstances in which a serving prisoner can be interviewed – for example, to gather intelligence or where an offender admits responsibility for a previously recorded crime where forensic evidence exists, which links the offender to that crime. Evidence of further offences needs to be sufficient to charge, aside from any admission or evidence gained during interview.

12.32 If further corroborative evidence is obtained, the Prosecution Team will need to consider whether to charge or not. TICs would only be appropriate in such circumstances if attached to fresh charges, so that the court could consider both penalty and compensation issues.

### Acquittal

12.33 If the defendant is acquitted of the substantive offence, the prosecution should consider charging some/all of the TICs as substantive offences. Where it is thought appropriate to proceed with new charges and where the defendant pleads guilty to those new charges, the court should be informed that the defendant had made early, voluntary admissions to those charges.

## **13. The Impact of R v Miles**

13.1 The appeal focused on the proper weight and relevance to be attached to TICs when sentencing.

13.2 The court made it clear that the defendant in that case was entitled to the maximum discount because of the early nature of his plea and the “almost immediate co-operation” with the police.

13.3 The court also said:

*“When assessing the significance of TICs, as they are called, of course the court is likely to attach weight to the demonstrable fact that the offender has assisted the police, particularly if they are enabled to clear up offences which might not otherwise be brought to justice.”*

And:

*“As in so many aspects of sentencing, of course, the way in which the court deals with the offences to be taken into consideration depends on context. In some cases the offences taken into consideration will end up by adding nothing or nothing very much to the sentence which the court would otherwise impose. On the other hand, offences taken into consideration may aggravate the sentence and lead to a substantial increase in it. For example, the offences may show a pattern of criminal activity which suggests careful planning or deliberate rather than casual involvement in a crime. They may show an offence or offences committed on bail, after an earlier arrest. They may show a return to crime immediately after an offender has been before the court and given a chance that, by committing the crime, he has immediately rejected.”*

13.4 Given that the Court of Appeal has so clearly confirmed the relevance of TICs in the sentencing process, and given the recognised benefits of TICs to victims, defendants, police, prosecution and the criminal justice system generally, the effective and efficient use of TICs should be proactively considered by investigators and prosecutors in every case and especially in PPO cases.

## 14. Scrutiny Arrangements

14.1 Norfolk and Suffolk Constabularies and the Crown Prosecution Service remain committed to be transparent in the use of TICs and other out of court disposals and to ensure that data and case file information where appropriate is available to the Efficiency and Effectiveness sub-group of the Criminal Justice Board to scrutinise and discuss, ensuring that public confidence is high in this area of work, and to satisfy criminal justice agencies that TIC procedures and protocols are being followed correctly.

14.2 The use of TICs will be subject to rigorous and continuous scrutiny. TIC detections will be quality checked and audited by a Detective Inspector (Dedicated Decision Maker). Further quality checks will be made by the Force Crime Registrar.