



Home Office

Evidence in criminal investigations

This guidance is based on the [Criminal Justice Act 2003](#) and the [Police and Criminal Evidence Act 1984](#).

Evidence in criminal investigations

About this guidance

<p>Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This guidance tells criminal investigators in immigration enforcement about evidence and how they must deal with it during their investigation.</p> <p>The guidance contains information on the following:</p> <ul style="list-style-type: none">• a definition of evidence• classifications and forms of evidence• admissibility• exclusions, including hearsay• evidence of bad character, and• disclosure and retaining evidence. <p>Changes to this guidance – This page tells you what has changed since the previous version of this guidance.</p> <p>Contact – This page tells you who to contact for help with a specific case if your manager can't answer your question.</p> <p>Information owner - This page tells you about this version of the guidance and who owns it.</p>	<p>Related links</p> <p>Changes to this guidance</p> <p>Contact</p> <p>Information owner</p>
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This guidance is based on the Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984

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Changes to this guidance

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This page lists changes to the 'Evidence in criminal investigations' guidance, with the most recent at the top.

Date of the change	Details of the change
24 February 2014	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
21 August 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
	For previous changes to this guidance you will find all earlier versions in the archive. See related link: Evidence - archive.

Related links

See also
[Contact](#)

[Information owner](#)

Links to staff intranet removed

Evidence in criminal investigations

Definition of evidence

<p>About this guidance Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This section tells criminal investigators in immigration enforcement a definition of evidence.</p> <p>If you look up a definition of ‘evidence’ you will find many variations, but they all basically say evidence:</p> <ul style="list-style-type: none">• is information given to the court and the jury to help them decide if a crime has been committed or not, and• tends to prove the truth or probability of truth about a fact put before the court and jury. <p>In court, items of evidence are referred to as ‘material’.</p> <p>There are national occupational standards for investigators dealing with evidence. You must follow this guidance to help you to meet those standards. For more information, see related links:</p> <ul style="list-style-type: none">• 06. Package store and transport evidence, and• 26. Present evidence in court.	<p>In this section Admissibility of evidence</p> <p>Related links Links to staff intranet removed</p>
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Admissibility of evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement when evidence is admissible (allowed to be used) in court and when it can be excluded.</p> <p>You can only present evidence in court:</p> <ul style="list-style-type: none">• if it has been produced by a witness in the form of a statement, and• under oath. <p>For more information on witness statements, see related link.</p> <p>There are strict rules that govern whether a piece of evidence is admissible in court. To make sure it is a fair trial, the court can decide whether:</p> <ul style="list-style-type: none">• a piece of evidence is admissible, or• to exclude it. <p>The court has the power to exclude evidence, even though it may be admissible, if they feel it is too prejudicial (unfairly biased against the defendant). The court also has extra powers to do with evidence obtained by confession. The court's power to exclude evidence comes largely from:</p> <ul style="list-style-type: none">• section 78 of the Police and Criminal Evidence (PACE) Act 1984• common law, and• section 76(2) of PACE, in relation to confessions. <p>Depending on where you are working you must follow the provisions on admissibility in line with:</p> <ul style="list-style-type: none">• PACE (England and Wales), and• Police and Criminal Evidence (Northern Ireland) Order 1989.	<p>In this section Hearsay</p> <p>Evidence of bad character: the seven gateways</p> <p>Links to staff intranet removed</p> <p>External links Police and Criminal Evidence (PACE) Act 1984 Police and Criminal Evidence (Northern Ireland) Order 1989 Criminal Justice Act 2003</p>
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The admissibility of bad character and hearsay evidence is outlined in the Criminal Justice Act 2003. For more information on the act, hearsay and bad character evidence, see related links.

For evidence to be acceptable it must be:

Probative	It : <ul style="list-style-type: none"> • must have value to the case • must be credible, and • can be excluded if it has low probative value.
Not prejudicial	It: <ul style="list-style-type: none"> • must be factual and impartial, and • can be excluded if the court feels it is too prejudicial towards the defendant.
Relevant	It must: <ul style="list-style-type: none"> • make the matter that requires proof more or less probable, and • help to prove the guilt or innocence of the defendant.
Accurate	You must: <ul style="list-style-type: none"> • describe facts given in court as accurately as possible to assist the court in deciding what is true, and • remember, how you present your evidence can affect how the court views your evidence.
Coherent	You must present your evidence in court in a way that: <ul style="list-style-type: none"> • makes sense to the court, and • is easy to understand, which is often: <ul style="list-style-type: none"> ○ chronological (in the order it happened), and ○ in full detail.
Provable	Your case must be capable of proof, unless the law provides

otherwise, for example it may sometimes allow an assumption to be made.

The ‘res gestae’ rule

The ‘res gestae’ rule allows an event to be put into context. If an event is described on its own without the surrounding circumstances then it may not make sense, so it is for the judge to decide whether:

- the court allows a witness to state facts with reasonable fullness and in context so that they make sense, and
- to use this rule to allow evidence, even though it may:
 - not be probative, and
 - be hearsay.

For more information on the admissibility of evidence and court, see related links:

- Police and Criminal Evidence (PACE) Act 1984
- Police and Criminal Evidence (Northern Ireland) Order 1989.

This guidance is based on the Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984

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Classifications of evidence

<p>About this guidance Definition of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This section tells criminal investigators in immigration enforcement about the different classes of evidence they may come across when conducting an investigation.</p> <p>The classes of evidence you are likely to come across are:</p> <ul style="list-style-type: none">• direct evidence• circumstantial evidence• primary and secondary evidence• forensic evidence, and• expert evidence.	<p>In this section Direct evidence Circumstantial evidence Primary, secondary and forensic evidence Expert evidence</p>
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Direct evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about direct evidence and how it can be used in court.</p> <p>Direct evidence is evidence that is known personally to the witness because they have:</p> <ul style="list-style-type: none">• personal experience through their senses, for example something they personally:<ul style="list-style-type: none">○ saw○ heard, or○ touched. <p>When hearing direct evidence the court and the jury:</p> <ul style="list-style-type: none">• must be able to reach a decision on the information given alone, and• are not required to make any assumptions about facts before them. <p>The only thing the court and jury have to consider is, if they believe the person giving the evidence or not.</p>	<p>In this section Circumstantial evidence Primary, secondary and forensic evidence Expert evidence</p>
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Circumstantial evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about circumstantial evidence and how it can be used in court.</p> <p>Circumstantial evidence allows a conclusion to be drawn from a set of circumstances or information. To do this the court and the jury must:</p> <ul style="list-style-type: none">• accept the evidence before them, and• reach a conclusion from it, for example:<ul style="list-style-type: none">○ the defendant is accused of theft from an art shop, and○ a witness saw the defendant running from the art shop holding a painting. <p>What the witness saw is direct evidence. The conclusion that the defendant committed the theft based on what the witness saw is circumstantial evidence.</p> <p>Circumstantial evidence is not necessarily weaker than direct evidence if there are number of circumstances that together can lead the court or a jury to a guilty verdict. R v Exall (1866) states that:</p> <p>‘One strand of a cord might be insufficient to sustain the weight, but three stranded together may be quite sufficient of strength. Thus, it may be circumstantial evidence – there may be a combination of circumstances no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilty, that is, with as much certainty as human affairs can require or admit of’.</p> <p>This means that, even though you may only have circumstantial evidence, if there is enough of it, then altogether, it may be enough to prove guilt.</p>	<p>In this section Direct evidence Primary, secondary and forensic evidence Expert evidence</p>
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Primary, secondary and forensic evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about primary, secondary and forensic evidence.</p> <p>Definition of primary evidence Primary evidence is:</p> <ul style="list-style-type: none">• an original document, or• a statement about its contents. <p>Primary evidence is usually required to prove the contents of a document.</p> <p>Definition of secondary evidence Secondary evidence is:</p> <ul style="list-style-type: none">• a copy of a document, or• verbal evidence about its contents. <p>Forensic evidence In some cases you may decide to request forensic tests to be done on pieces of evidence, for example:</p> <ul style="list-style-type: none">• substance analysis, or• facial mapping. <p>With forensic evidence:</p> <ul style="list-style-type: none">• It is carried out by forensic experts.• You can give the results as evidence in court.• It is subject to the same standards of admissibility as for any other class of evidence.	<p>In this section Direct evidence Circumstantial evidence Expert evidence Related links Links to staff intranet removed</p>
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	For more information on forensics, see related link: Forensics .	
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Expert evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about using expert evidence in trials.</p> <p>The ruling in <i>Folkes v Chadd</i> (1782), allowed the use of expert evidence in areas where the jury had no knowledge or experience:</p> <ul style="list-style-type: none">• ‘On certain matters, such as those of science or art, upon which the court itself cannot form an opinion, special study, skill or experience being required for the purpose, ‘expert’ witnesses may give evidence of their opinion.’ <p>This means in cases where members of the court do not have knowledge or experience of a subject, then an expert can be used to explain it to them.</p> <p>The ruling in <i>R v Turner</i> (1975), however, has had the effect of excluding some expert evidence on the grounds it is within the knowledge and experience of the jury and that expert opinion could be misleading:</p> <ul style="list-style-type: none">• ‘Opinions from knowledgeable persons about a man’s personality and mental make-up play a part in many human judgments ... An expert’s opinion is admissible to furnish the court with scientific information which is likely to be outside the experience of a judge or jury.• If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves; but there is a danger that they may think it does’. <p>This means expert evidence can be used because it relates to a subject that is not within the knowledge of the average person on the judge or jury. There is, however, a danger that expert evidence can be misleading because the average person:</p>	<p>In this section Direct evidence Circumstantial evidence Primary, secondary and forensic evidence</p>
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- may not understand any scientific language used by the expert
- may believe the expert simply because they are an expert, without considering if they are right or wrong, and
- in some cases the jury may be able to make their own judgment without the help of an expert witness, in which case the expert witness is not necessary.

You must bear this in mind when you use or give expert evidence.

Expert evidence can be given by a person competent to comment on a particular subject.

This does not necessarily mean a person with qualifications.

The important thing is:

- what the expert witness knows, not how they got that expertise or knowledge.

Expert evidence now covers much wider areas of expertise. As an investigator working for the Home Office, and depending on your area of knowledge and experience, it is possible you may be considered eligible to give expert evidence, for example, you:

- could be highly trained in forgery, or
- know a lot about the:
 - immigration acts, or
 - Customs and Excise Management Act.

Evidence in criminal investigations

Forms of evidence in court

<p>About this guidance Definition of evidence Classifications of evidence Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This section tells criminal investigators in immigration enforcement the different formats for presenting evidence in court.</p> <p>You can give evidence in court in various formats, for example:</p> <ul style="list-style-type: none">• testimony• real evidence• hearsay• confession• documentary evidence, and• business documents and schedules. <p>There are rules and guidelines that you must follow for each form of evidence.</p>	<p>In this section</p> <p>Testimony and real evidence</p> <p>Hearsay</p> <p>Evidence of bad character: the seven gateways</p> <p>Evidence of bad character: gateways (d) and (g)</p> <p>Confession: admissibility</p> <p>Confession: oppression, unreliability and unfair evidence</p> <p>Documentary evidence, business documents and schedules</p>
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Testimony and real evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about presenting a testimony and real evidence in court.</p> <p>Testimony Your testimony is the evidence you give in court:</p> <ul style="list-style-type: none">• It can only be given under oath or affirmation:<ul style="list-style-type: none">○ you promise that you will tell the truth without having to swear on a holy book if you are not religious.• When you give your evidence you are asking the court to believe you are telling the truth.• How you present yourself in court may affect whether the court believes you or not. <p>Real evidence Real evidence is any physical material from which members of the court and jury could draw a conclusion using their five senses, for example:</p> <ul style="list-style-type: none">• a knife or gun• a document• audio tapes• DVD or film, or• photographs.	<p>In this section Hearsay</p> <p>Evidence of bad character: the seven gateways</p> <p>Evidence of bad character: gateways (d) and (g)</p> <p>Confession: admissibility</p> <p>Confession: oppression, unreliability and unfair evidence</p> <p>Documentary evidence, business documents and schedules</p>
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Hearsay

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about hearsay and the restrictions on using it as evidence in court.</p> <p>Chapter 2 of the Criminal Justice Act (CJA) 2003 tells you that hearsay is ‘a statement not made in oral proceedings’. This means it is a statement that has not been given in court. It is effectively second hand evidence, for example something:</p> <ul style="list-style-type: none">• you have overheard• someone has told you, or• someone has written. <p>In hearsay you are asking the court to believe:</p> <ul style="list-style-type: none">• you are telling the truth, and• the person who told you or whom you overheard was also telling the truth. <p>It is the second assumption which means that hearsay is generally not admissible in court.</p> <p>Chapter 2, sections 114 (1), (2), and (3), of the CJA, tells you when hearsay evidence is admissible. There is an explanation of these sections below, but to see the exact wording of the act, see related link: Criminal Justice Act 2003.</p> <p>Section 114(1) This section permits a statement made outside of the court proceedings to be admitted as evidence as long as the statement is allowed under:</p> <ul style="list-style-type: none">• chapter 2 of the CJA• another statute of law, or• common law, in line with section 118 of the CJA.	<p>In this section Testimony and real evidence Evidence of bad character: the seven gateways Evidence of bad character: gateways (d) and (g) Confession: admissibility Confession: oppression, unreliability and unfair evidence Documentary evidence, business documents and schedules External links Criminal Justice Act 2003</p>
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In addition:

- all parties involved in the court proceedings must agree it can be admitted, and
- the court must be satisfied it is in the interests of justice for it to be admitted.

Section 114(2)

When deciding if it is in the interests of justice to admit a statement made outside of the court proceedings, the court must consider these and any other factors it feels are relevant:

- the probative (valuable and credible) value of the statement, assuming it is true:
 - in relation to an issue being heard as part of the court proceedings, and
 - how valuable the statement is in helping to understand other evidence in the case
- what other evidence has been, or could be given, about the issue
- how important the issue or evidence is in the case as a whole
- the circumstances in which the statement was made
- if the person making the statements appears to be reliable
- if the evidence of how the statement was made is reliable
- whether verbal evidence about the issue can be given, and if not why not
- what difficulties there might be in challenging the statement, and
- how prejudicial those difficulties would be to the party facing the statement.

Section 114(3)

Chapter 2 of the CJA does not affect the exclusion of a statement for any other reason except that it was not made verbally during the court proceedings.

If a piece of evidence is considered as hearsay it is possible a hearing will be held to decide if that evidence is admissible or not.

Evidence in criminal investigations

Evidence of bad character: the seven gateways

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about evidence of bad character, when and how you introduce it in court.</p> <p>Evidence of bad character comes under chapter 2 of the Criminal Justice Act (CJA) 2003. Section 98(1) of the act defines evidence of bad character as:</p> <ul style="list-style-type: none"> • evidence of, or a tendency towards, misconduct, other than evidence which is: <ul style="list-style-type: none"> ○ to do with the alleged facts of the offence with which the defendant is charged, or ○ evidence of misconduct in connection with the investigation or prosecution of that offence. <p>In practice this means the prosecution can introduce evidence which does not relate to the offence being tried if it relates to other or past misconduct, for example:</p> <ul style="list-style-type: none"> • a disposition or tendency towards misconduct • previous convictions • other charges being tried concurrently (at the same time) • offences the defendant was charged with, but: <ul style="list-style-type: none"> ○ was not prosecuted for, or ○ for which they were acquitted. <p>If this evidence is very old, however, it may not be admissible unless it is for the same offence the defendant is currently charged with.</p> <p>Defendant’s bad character Section 101(1) of the CJA states that in criminal proceedings, evidence of the defendant’s bad character is admissible if it meets one or more of the following provisions. These are often referred to as the ‘seven gateways’ through which bad character evidence can be introduced:</p> <table border="1" data-bbox="448 1372 1769 1418"> <tr> <td data-bbox="448 1372 1120 1418">101(1)(a): all parties to the proceedings</td> <td data-bbox="1120 1372 1769 1418">This means the defence and the</td> </tr> </table>	101(1)(a): all parties to the proceedings	This means the defence and the	<p>In this section Testimony and real evidence Hearsay Evidence of bad character: gateways (d) and (g) Confession: admissibility Confession: oppression, unreliability and unfair evidence Documentary evidence, business documents and schedules External links Criminal Justice Act 2003</p>
101(1)(a): all parties to the proceedings	This means the defence and the			

	<p>agree to the evidence being admissible.</p>	<p>prosecution have both agreed to the evidence being used.</p>	
<p>101(1)(b): the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it.</p>	<p>This allows the defendant to introduce their own bad character if they feel it would be helpful to them, for example:</p> <ul style="list-style-type: none"> • they might be facing a serious charge but have convictions for only minor offences previously, or • they may give an alibi of being in prison when the offence was committed. <p>This may happen in cases where judicial credit can be given (time off for an early guilty plea, for which the judge has guidelines to follow).</p>		
<p>101(1)(c): it is important explanatory evidence.</p>	<p>This is bad character evidence that helps to explain other evidence. Without it the court or jury would find it hard or even impossible to understand other evidence and put it into context.</p>		
<p>101(1)(d): it is relevant to an important matter in issue between the defendant and the prosecution.</p>	<p>This introduces evidence that the defendant should not be believed. It must be relevant, show a tendency to commit offences, and be substantial. It relates to a propensity (tendency) to:</p> <ul style="list-style-type: none"> • commit further offences • be untruthful, or • reprehensible behaviour. <p>For more information, see related link: Evidence of bad character: gateways (d)</p>		

	<p>101(1)(e): it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant.</p> <p>101(1)(f): it is evidence to correct a false impression given by the defendant.</p> <p>101(1)(g): the defendant has made an attack on another person's character.</p>	<p>and (g).</p> <p>This is part of the courtroom process where there is more than one defendant (essentially, one blaming the other). The evidence must be probative and in relation to a matter under issue. It:</p> <ul style="list-style-type: none"> • can only be introduced by a co-defendant • must be relevant • must have substantial probative value, and • cannot be excluded once it has been introduced. <p>Bad character evidence can be introduced to correct a misleading impression given by the defendant. For example, the way they have dressed could be misleading.</p> <p>This means if the defendant attacks the character of either a witness or victim then their own character can be questioned. For more information, see related link: Evidence of bad character: gateways (d) and (g).</p>	
<p>You introduce bad character evidence during the 'challenge' phase of interview. As an investigator you are only likely to use gateways (d) and (g). The prosecution and defence teams use the other gateways.</p> <p>For more information, see related link: Evidence of bad character: gateways (d) and (g).</p> <p>Bad character of a person other than the defendant Section 100 of the CJA states that evidence of bad character about a person who is not the defendant can be admitted if:</p>			

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| | <ul style="list-style-type: none">• it is important explanatory evidence• has substantial probative value regarding a matter:<ul style="list-style-type: none">○ in issue during the proceedings, and○ is of substantial importance in the context of the case as a whole, or• all parties involved agree to it being admitted. | |
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For the exact wording in the act, see related link: [Criminal Justice Act 2003](#).

Evidence in criminal investigations

Evidence of bad character: gateways (d) and (g)

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement more about introducing bad character evidence using gateways (d) and (g).</p> <p>Gateway (d) You can use this gateway to show evidence of previous misconduct, relevant to the case, should be admitted so the court has all available information on which to make its decision about guilt or innocence. This evidence needs to show a propensity (tendency) to:</p> <ul style="list-style-type: none">• commit further offences, for example:<ul style="list-style-type: none">○ a history of violent behaviour○ a conviction for a similar offence, or○ an offence in the same category as determined by the Secretary of State, which are offences under the theft act, or any sexual offence on a person under sixteen years of age• be untruthful, which allows the prosecution to show the defendant is a liar, which includes evidence concerning:<ul style="list-style-type: none">○ convictions for perjury○ deception○ perverting the course of justice○ fraud○ offences of dishonesty, and○ if the defendant has ever pleaded not guilty, but has been found guilty, then they are regarded as untruthful, or• show reprehensible behaviour, which is:<ul style="list-style-type: none">○ bad behaviour that is open to criticism, and○ which would not be expected from the normal, average person. <p>Gateway (g) If a defendant attacks the character of a witness or victim in one of the following three ways, then their own character becomes admissible and can be questioned in court:</p>	<p>In this section Testimony and real evidence Hearsay Evidence of bad character: the seven gateways Confession: admissibility Confession: oppression, unreliability and unfair evidence Documentary evidence, business documents and schedules</p>
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	<ul style="list-style-type: none">• the defendant introduces evidence that attacks the character of another person• the defendant or their legal representative asks questions in cross examination that are likely to, or do, result in such evidence, or• in interview, at charge or when being told they are to be prosecuted, the defendant indicates another person's bad character, and:<ul style="list-style-type: none">○ if this happens it is important you record it in a taped interview if possible, as part of your investigation.	
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Evidence in criminal investigations

Confession: admissibility

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This page tells criminal investigators in immigration enforcement about confessions and the restrictions on using them as evidence in court.

A confession is a statement made out of court and therefore falls under the hearsay rules. Section 82 of the Police and Criminal Evidence Act (PACE) 1984 states:

- ‘confession’, includes any statement wholly or partly adverse to the person who made it, whether made:
 - to a person in authority or not, and
 - in words or otherwise.

The court is concerned with the reliability of any confession. Before admitting a confession as evidence the court will consider whether it was obtained:

- by oppression
- in circumstances that would make it unreliable, or
- unfairly.

For more detail on these, see related link: Confession: oppression, unreliability and unfair evidence.

When a confession is admissible or must be excluded

PACE tells you when a confession can be admitted or when it must be excluded.

The wording in the Police and Criminal Evidence (Northern Ireland) Order 1989 is almost identical, but the section numbers are different (see PACE NI below).

Section	What it allows or prohibits	What the section means
PACE 76(1)	Confession can be admitted	These sections mean a confession can be admitted as long as it is:

In this section

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External links

[Police and Criminal Evidence \(PACE\) Act 1984](#)

[Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)

	PACE NI 74(1)		<ul style="list-style-type: none"> • relevant to the offences the defendant has been charged with, and • the court has not excluded it for any reason. 	
	PACE 76(2) PACE NI 74(2)	Confession must be excluded	<p>These sections mean if a confession was:</p> <ul style="list-style-type: none"> • obtained through oppression, or • is deemed unreliable by the court <p>then it must be excluded, unless the prosecution can prove beyond reasonable doubt:</p> <ul style="list-style-type: none"> • it was not obtained by oppression, and • is not unreliable. 	
	PACE 78 PACE NI 76(1)	Confession must be excluded	<p>These sections mean the court can exclude evidence which it believes will lead to the trial being so unfair that it cannot be admitted.</p>	
<p>For more information and the exact wording of the acts, see related links:</p> <ul style="list-style-type: none"> • Police and Criminal Evidence (PACE) Act 1984 • Police and Criminal Evidence (Northern Ireland) Order 1989 • Confession: oppression, unreliability and unfairness. 				

Evidence in criminal investigations

Confession: oppression, unreliability and unfair evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page gives criminal investigators in immigration enforcement more detail about confessions that have been obtained through oppression, are unreliable or unfair.</p> <p>Oppression Oppression includes:</p> <ul style="list-style-type: none">• torture• inhuman or degrading treatment, and• the use or threat of violence. <p>Confessions obtained through oppression are inadmissible. There must be a link between the oppression and the confession for it to be excluded for this reason. For example, a person only makes a confession because they were threatened with physical violence if they did not.</p> <p>A confession made before oppressive treatment took place was not obtained under oppression and cannot be excluded for this reason (although it may still be excluded for other reasons).</p> <p>If oppression has taken place, any confession obtained properly at a later date may also be excluded, because it could be concluded the oppressive treatment led the person to confess later on.</p> <p>There is little legislation that defines what oppressive treatment is so it is largely based on case law. Some examples of where the court decided oppression had taken place, are:</p> <ul style="list-style-type: none">• bullying behaviour and aggressive interviewing• where detention is deemed by the court to be unlawful• telling a suspect you have an identification or evidence that does not exist, or• a confession given where the suspect was not given access to a solicitor.	<p>In this section Testimony and real evidence</p> <p>Hearsay</p> <p>Evidence of bad character: the seven gateways</p> <p>Evidence of bad character: gateways (d) and (g)</p> <p>Confession: admissibility</p> <p>Documentary evidence, business documents and schedules</p> <p>External links Police and Criminal Evidence (PACE) Act 1984 Police and Criminal Evidence (Northern Ireland) Order 1989</p>
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Unreliability

When deciding if a confession is reliable the court considers what the circumstances actually were when the person made the confession, not what the circumstances were believed to be. The prosecution must show beyond reasonable doubt that the confession was reliable. It is not for the defendant to prove that it was unreliable.

You must consider whether a confession was made because of something that was said or done to the suspect.

Examples of when a confession could be considered unreliable are:

- failure to give the caution or to ask if they want a solicitor
- medical condition (whether the interviewing officer was aware of it or not)
- the offer of an inducement such as being granted bail, or
- the threat of being kept in custody until an admission has been made.

Unfair evidence

The court can exclude evidence it feels will have such an adverse effect on the fairness of the proceedings it cannot be admitted. This applies to all forms of evidence, not just confession. Examples of evidence obtained unfairly are:

- failure to inform the suspect of their rights in custody or the interview
- 'off the record' interviews
- failure to provide an interpreter if one is needed, or
- evidence obtained unlawfully, for example:
 - evidence obtained without a search warrant when one was required.

Confession obtained under these or other unfair circumstances would not be admissible.

For more detailed information on the exclusion of confessions, including oppression and unreliability, see related links:

- Police and Criminal Evidence (PACE) Act 1984, and

This guidance is based on the Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984

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| | <ul style="list-style-type: none">• Police and Criminal Evidence (Northern Ireland) Order 1989. | |
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Documentary evidence, business documents and schedules

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about using documentary evidence, business documents and schedules, as evidence.</p> <p>Documentary evidence</p> <p>A document is something that has writing or an inscription on it that communicates information to the reader. As well as a paper document it could include, for example:</p> <ul style="list-style-type: none">• film• tape, or• computer records. <p>For more information on digitally stored material, see related link: Supplementary Attorney General's guidelines on disclosure of digitally stored material.</p> <p>Documentary evidence is any document produced for inspection by the court as evidence of its contents.</p> <p>Documentary evidence must be:</p> <ul style="list-style-type: none">• produced by a witness who must state the significance of the document (because the document itself can't speak and explain), and• accompanied by testimony. <p>This is sometimes referred to as 'speaking to the document'.</p> <p>If the writing or inscription on the document was not written by the witness producing the document as evidence, it may be considered as hearsay.</p> <p>For more information on hearsay, see related link.</p> <p>It may also be necessary to distinguish between the production of a document:</p>	<p>In this section</p> <p>Testimony and real evidence</p> <p>Hearsay</p> <p>Evidence of bad character: the seven gateways</p> <p>Evidence of bad character: gateways (d) and (g)</p> <p>Confession: admissibility</p> <p>Confession: oppression, unreliability and unfair evidence</p> <p>External links</p> <p>Criminal Justice Act 2003</p> <p>Supplementary Attorney General's guidelines on disclosure of digitally stored material</p> <p>Police and Criminal</p>
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- to show the document itself exists, and
- for the evidential value of the information it contains.

In some circumstances a statement contained in a document may be admissible even though the person who made the statement is not in court. This will be for the court to decide.

You do not necessarily have to produce the original document. The Criminal Justice Act 2003 states:

- 'Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either:
 - the document, or
 - (whether or not the document exists) a copy of the document or the material part of it, authenticated in whatever way the court may approve'.

For more information on documents see section 117 of related link: Criminal Justice Act 2003.

Business documents

A statement in a business document is admissible as evidence of fact, if:

- the document was created or received by the person producing it, in the course of:
 - trade
 - business
 - profession
 - other occupation
 - being paid or unpaid, and
- the information was supplied by a person who had, or may reasonably be expected to have had, personal knowledge of the matter in hand, and:
 - this person may or may not be the person making the statement.

You cannot use this provision to admit a confession made by an accused person that would

[Evidence \(PACE\) Act 1984](#)

[Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)

not be admissible under the Police and Criminal Evidence (PACE) Act 1984 or PACE (Northern Ireland) Order 1989.

For more information, see related links:

- Police and Criminal Evidence Act (PACE) 1984, and
- Police and Criminal Evidence (Northern Ireland) Order 1989.

Schedules

A schedule is a list of evidence you can prepare, based on the information you have gathered during your investigation. For example, you may have gathered a large number of bank statements. You can prepare a schedule containing:

- a selected number of statements
- a description of what they contain, and
- any other information you decide is relevant.

You must give the schedule an exhibit reference and produce it in a witness statement so it can be presented in court.

The use of schedules, in some circumstances, allows you to:

- tell the court about a large number of similar items without having to actually show them all, and therefore
- reduces court time.

If you are thinking about using a schedule because you have large amounts of similar material it is a good idea to discuss this with the Crown Prosecution Service (CPS) lawyer to make sure they agree this is the best course of action.

Evidence in criminal investigations

Chain of evidence

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This section tells criminal investigators in immigration enforcement what the chain of evidence is and how to maintain it.

The 'chain of evidence' refers to the handling of evidence from the moment it is found and seized, right through the prosecution process. It provides an audit trail showing where that evidence has been at all times. You need to be able to show how the evidence was seized, including:

- where it was found
- where it was seized
- the time of seizure
- the date it was seized
- who it was seized by, and
- what was done with it after it was seized.

For all evidence you seize, you must:

- seal it in a tamper evident bag or any other bag provided for that purpose, and
- follow all procedures for:
 - recording the seizure, and
 - completing the sections on the evidence bag.

You must then:

- store the evidence as soon as possible in a secure property store, and
- make a detailed record of:
 - exactly what evidence was stored, and
 - when it was stored.

For more information, see related link: [Property control and storage](#).

In this section

[Why you need to show the chain of evidence](#)

Related links

Links to staff intranet removed

	<p>You must record in the property book, and complete the continuation section on the tamper evident bag, if you:</p> <ul style="list-style-type: none">• remove a piece of evidence• open it for any reason• hand it to somebody else, or• take a piece of evidence into your possession. <p>When sending pieces of evidence to other people or offices rather than just handing them over in person, you must:</p> <ul style="list-style-type: none">• consider the security of the evidence, and• make sure the chain of evidence is maintained. <p>You may also decide to record your actions on the 'record of investigation' relating to your case.</p>	
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Why you need to show the chain of evidence

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This page tells criminal investigators in immigration enforcement the reason why they need to be able to show the chain of evidence.

It is important for you to be able to show the chain of evidence because:

- it maintains the integrity of the evidence
- there can be no dispute over how the evidence has been handled, and
- you can easily refute allegations that the evidence has been tampered with or changed in any way.

By maintaining the chain of evidence you create the best chance for that evidence to have the desired impact in court.

If you do not handle evidence correctly:

- you may have to explain this in court
- your evidence may be excluded
- the defence may try to have your evidence discredited
- the prosecution may not be willing to take your case forward
- you may lose your case
- there will be a financial cost to the government if the case collapses, and
- the reputation of the Home Office may be damaged.

Evidence in criminal investigations

Charging decisions and disclosure of evidence

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Retaining evidence</p>	<p>This page tells criminal investigators in immigration enforcement about charging decisions and their obligations to disclose evidence.</p> <p>The decision to charge The decision to charge will be largely based on what evidence there is against the suspect.</p> <p>In some cases the custody sergeant can take the decision whether to charge a suspect. For more information, see related link: Director's guidance on charging 2011.</p> <p>In the majority of cases, and in all serious cases, however, this decision is made by the Crown Prosecution Service (CPS) and you will need to refer your case to a CPS lawyer and tell them about your case and the evidence you have. When the CPS lawyer makes the decision, they will apply either the:</p> <ul style="list-style-type: none">• full code test, or• threshold test. <p>They apply the full code test wherever possible and it consists of the:</p> <ul style="list-style-type: none">• evidential stage, and• public interest stage. <p>They use the threshold test in cases where:</p> <ul style="list-style-type: none">• there is a substantial bail risk, and• not all the evidence is available at the time when the suspect must be released from custody unless charged. <p>For more information on the decision to charge, the threshold test and the full code test, see related link: CPS: The code for Crown prosecutors.</p>	<p>Related links Links to staff intranet removed</p> <p>External links CPS: The code for Crown prosecutors</p> <p>Director's guidance on charging 2011</p>
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	<p>Disclosure of evidence</p> <p>In any prosecution case the defence are entitled to be provided with material relating to the charges made so the defendant can have a fair trial.</p> <p>Once the custody sergeant has charged a suspect with an offence, you must give the defence 'advanced' information. This is material that will assist them in deciding whether to plead guilty or not guilty. This usually includes copies of:</p> <ul style="list-style-type: none">• statements, and• exhibits. <p>As the case progresses the defence are entitled to various material and information that will assist them in presenting their case.</p> <p>For full details on disclosure (including sensitive material), your obligations under disclosure rules, and the consequences of not following these rules, see related link: Disclosure.</p>	
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Evidence in criminal investigations

Retaining evidence

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This page tells criminal investigators in immigration enforcement about what evidence they must keep and how long they must keep it for.

How long you must keep evidence depends what stage your investigation is at.

Retention periods are stated in the:

- Criminal Investigations and Procedures Act (CPIA) 1996 (section 23(1), Code of Practice (section 5), and
- CPIA for Northern Ireland, Code of Practice (section 5).

This is for evidence seized under powers in the Police and Criminal Evidence Act 1984 or the Police and Criminal Order (Northern Ireland) Act 1989. Evidence seized under these powers will apply largely to border crime teams.

But, inland crime teams, where evidence is seized under powers contained in the immigration acts, must also follow these guidelines.

You can keep copies of material if the original is:

- perishable, or
- returned to the owner.

If you have not kept a piece of evidence because it was not relevant, but it becomes relevant at a later time, you must take steps to try and obtain it and keep it so the court can inspect it if required.

Evidence you must retain

Section 5 of the relevant CPIA code of practice specifies the evidence you must keep.

You have a duty to keep relevant evidence, and evidence that falls into the following

External links
[Criminal Procedure and Investigations Act 1996](#)

[Criminal Procedure and Investigations Act 1996, Section 23 \(1\), Code of practice](#)

[Criminal Procedures and Investigations Act 1996 Code of Practice for Northern Ireland](#)

categories in particular:

- crime reports, for example:
 - crime report forms
 - relevant parts of incident books, or
 - officers' notebooks
- custody records
- records from tapes of telephone calls (such as 999 calls) that give a description of the alleged offence or offender
- final versions of witness statements, including:
 - drafts if the content is different, and
 - any exhibits mentioned
- interview records with actual or potential suspects and witnesses:
 - DVD
 - audio tape, and
 - written records
- communications between investigating officers and experts, for example forensic experts
- records of a first description of a suspect where the witness claims to be able to identify or describe the suspect
- material that may satisfy the test for prosecution disclosure, for example:
 - an explanation for the offence provided by the suspect
 - any material that casts doubt on the reliability of a confession, and
 - any material casting doubt on the reliability of a prosecution witness.

This list is the same for the UK and Northern Ireland.

Lengths of retention

State of case	Time material to be kept
Yet to make the charging decision	Keep until the Crown Prosecution Service (CPS) has made the decision and then as below.
Case in progress	Keep at least until the case has been dealt with, for example the person is:

This guidance is based on the Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984

		<ul style="list-style-type: none"> • convicted • acquitted, or • the prosecutor decides not to proceed with the case. 	
	Court imposes a custodial sentence or hospital order	Keep until the person is: <ul style="list-style-type: none"> • released from custody, or • discharged from hospital. 	
	In all other cases	Keep six months from the date of conviction.	
	Person released from custody or discharged from hospital earlier than six months from date of conviction	Keep at least six months from date of conviction.	
	Appeal in progress at the end of one of these periods or application being considered by the Criminal Cases Review Commission	Keep until the: <ul style="list-style-type: none"> • appeal is determined • commission decides not to refer the application to the court of appeal, or • court of appeal determines the appeal following the referral. 	

This guidance is based on the Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984

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Contact

<p>About this guidance Definition of evidence Classifications of evidence Forms of evidence in court Chain of evidence Charging decisions and disclosure of evidence Retaining evidence</p>	<p>This page explains who to contact if you need more help with a question about evidence in criminal investigations.</p> <p>If you have read this guidance and still need more help, you must first ask your line manager. If you need further help you may contact:</p> <div data-bbox="465 501 1769 865" style="border: 2px solid red; padding: 10px;"><p style="text-align: center;">Restricted – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p><p style="text-align: center;">Restricted – do not disclose – end of section</p></div> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the criminal investigation operational guidance team, using the related link, who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the related link: Email: Modernised guidance team.</p>	<p>In this section Changes to this guidance Information owner</p> <p>Links to staff intranet removed</p>
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This page tells you about this version of the 'Evidence in criminal investigations' guidance, and who owns it.

Version	3.0
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Cleared by director	Official – sensitive: information removed
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In this section
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