

Code for Crown Prosecutors

The Crown Prosecution Service is a public service for England and Wales headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General. The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

The Director of Public Prosecutions is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be applied when making decisions about prosecutions. This is the fourth edition of the Code and replaces all earlier versions. For the purposes of this Code, 'Crown Prosecutor' includes members of staff in the Crown Prosecution Service who are designated by the Director of Public Prosecutions under section 7A of the Act and are exercising powers under that section.

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1. Introduction

1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved – victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.

1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should take account of the Code when they are deciding whether to charge a person with an offence.

1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.

2. General Principles

2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.

2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.

2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

3. Review

3.1 Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges, to change the charges, or sometimes to stop the case.

3.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.

4 Code Tests

4.1 There are two stages in the decision to prosecute. The first stage is **the evidential test**. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.

4.2 This second stage is **the public interest test**. The Crown Prosecution Service will only start or continue with a prosecution when the case has passed both tests. The evidential test is explained in section 5 and the public interest test is explained in section 6.

5 The Evidential Test

5.1 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

5.2 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

5.3 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

Can the evidence be used in court?

a Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

Is the evidence reliable?

b Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

c What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

d If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

e Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

f Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.4 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

6 The Public Interest Test

6.1 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

6.2 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

6.3 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution.

6.4 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

a a conviction is likely to result in a significant sentence;

b a weapon was used or violence was threatened during the commission of the offence;

c the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);

d the defendant was in a position of authority or trust;

e the evidence shows that the defendant was a ringleader or an organiser of the offence;

f there is evidence that the offence was premeditated;

g there is evidence that the offence was carried out by a group;

h the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;

i the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;

j there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;

k the defendant's previous convictions or cautions are relevant to the present offence;

l the defendant is alleged to have committed the offence whilst under an order of the court;

m there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or

n the offence, although not serious in itself, is widespread in the area where it was committed.

Some common public interest factors against prosecution

6.5 A prosecution is less likely to be needed if:

a the court is likely to impose a nominal penalty;

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;

c the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);

d the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

e there has been a long delay between the offence taking place and the date of the trial, unless:

- the offence is serious;
- the delay has been caused in part by the defendant;
- the offence has only recently come to light; or
- the complexity of the offence has meant that there has been a long investigation;

f a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

g the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

h the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or

i details may be made public that could harm sources of information, international relations or national security;

6.6 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

6.7 The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim's family.

6.8 It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

Youths

6.9 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.

6.10 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

Police Cautions

6.11 These are only for adults. The police make the decision to caution an offender in accordance with Home Office guidelines.

6.12 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. This will include a police caution. Again the Home Office guidelines should be applied. Where it is felt that a caution is appropriate, Crown Prosecutors must inform the police so that they can caution the suspect. If the caution is not administered because the suspect refuses to accept it or the police do not wish to offer it, then the Crown Prosecutor may review the case again.

7 Charges

7.1 Crown Prosecutors should select charges which:

- a** reflect the seriousness of the offending;
- b** give the court adequate sentencing powers; and
- c** enable the case to be presented in a clear and simple way.

This means that Crown Prosecutors may not always continue with the most serious charge where there is a choice. Further, Crown Prosecutors should not continue with more charges than are necessary.

7.2 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7.3 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

8 Mode of Trial

8.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. (See the 'National Mode of Trial Guidelines' issued by the Lord Chief Justice.) Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

9 Accepting Guilty Pleas

9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

9.2 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.

9.3 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

10 Re-starting a Prosecution

10.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.

10.2 These reasons include:

- a** rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;
- b** cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and
- c** cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

The Code is a public document. It is available on the CPS Website:

Further copies may be obtained from:

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