



The Code

for Crown Prosecutors

January 2013

Table of Contents

Introduction	2
General Principles	3
The Decision Whether to Prosecute	4
The Full Code Test.....	6
The Evidential Stage.....	6
The Public Interest Stage.....	7
The Threshold Test	11
When the Threshold Test may be applied	11
The first part of the Threshold Test – is there reasonable suspicion?.....	11
The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction?	12
Reviewing the Threshold Test	12
Selection of Charges	13
Out-of-Court Disposals.....	14
Mode of Trial	15
Venue for trial in cases involving youths	15
Accepting Guilty Pleas	16
Reconsidering a Prosecution Decision.....	17

Introduction

- 1.1 The Code for Crown Prosecutors (the Code) is issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985. This is the seventh edition of the Code and replaces all earlier versions.
- 1.2 The DPP is the head of the Crown Prosecution Service (CPS), which is the principal public prosecution service for England and Wales. The DPP operates independently, under the superintendence of the Attorney General who is accountable to Parliament for the work of the CPS.
- 1.3 The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. The Code is issued primarily for prosecutors in the CPS, but other prosecutors follow the Code either through convention or because they are required to do so by law.
- 1.4 In this Code, the term “suspect” is used to describe a person who is not yet the subject of formal criminal proceedings; the term “defendant” is used to describe a person who has been charged or summonsed; and the term “offender” is used to describe a person who has admitted his or her guilt to a police officer or other investigator or prosecutor, or who has been found guilty in a court of law.

General Principles

- 2.1 The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.
- 2.2 It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with.
- 2.3 Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.
- 2.4 Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.5 The CPS is a public authority for the purposes of current, relevant equality legislation. Prosecutors are bound by the duties set out in this legislation.
- 2.6 Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General; with the Criminal Procedure Rules currently in force; and have regard to the obligations arising from international conventions. They must follow the policies and guidance of the CPS issued on behalf of the DPP and available for the public to view on the CPS website at www.cps.gov.uk

The Decision Whether to Prosecute

- 3.1 In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence and, if so, what that offence should be. They make their decisions in accordance with this Code and the DPP's Guidance on Charging. The police apply the same principles in deciding whether to start criminal proceedings against a person in those cases for which they are responsible.
- 3.2 The police and other investigators are responsible for conducting enquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation. Prosecutors often advise the police and other investigators about possible lines of inquiry and evidential requirements, and assist with pre-charge procedures. In large scale investigations the prosecutor may be asked to advise on the overall investigation strategy, including decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. This is to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However, prosecutors cannot direct the police or other investigators.
- 3.3 Prosecutors should identify and, where possible, seek to rectify evidential weaknesses, but, subject to the Threshold Test (see section 5), they should swiftly stop cases which do not meet the evidential stage of the Full Code Test (see section 4) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution (see section 4). Although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help inform the prosecutor's decision.
- 3.4 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test (see section 4). The exception is when the Threshold Test (see section 5) may be applied where it is proposed to apply to the court to keep the suspect in custody after charge, and the evidence required to apply the Full Code Test is not yet available.
- 3.5 Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.
- 3.6 Prosecutors review every case they receive from the police or other investigators. Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops, including what becomes known of the defence case. Wherever possible, they should talk to the investigator when thinking about changing the charges or

stopping the case. Prosecutors and investigators work closely together, but the final responsibility for the decision whether or not a case should go ahead rests with the CPS.

- 3.7 Parliament has decided that a limited number of offences should only be taken to court with the agreement of the DPP. These are called consent cases. In such cases the DPP, or prosecutors acting on his or her behalf, apply the Code in deciding whether to give consent to a prosecution. There are also certain offences that should only be taken to court with the consent of the Attorney General. Prosecutors must follow current guidance when referring any such cases to the Attorney General. Additionally, the Attorney General will be kept informed of certain cases as part of his or her superintendence of the CPS and accountability to Parliament for its actions.

The Full Code Test

- 4.1 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 4.2 In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.
- 4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.

The Evidential Stage

- 4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.
- 4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence

be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- a) the likelihood of that evidence being held as inadmissible by the court;
and
- b) the importance of that evidence in relation to the evidence as a whole.

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

The Public Interest Stage

- 4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
- 4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.
- 4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
- 4.11 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.

4.12 Prosecutors should consider each of the following questions:

a) **How serious is the offence committed?**

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

b) **What is the level of culpability of the suspect?**

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

c) **What are the circumstances of and the harm caused to the victim?**

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views.

However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

e) What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

f) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)

- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

The Threshold Test

- 5.1 The Threshold Test may only be applied where the suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody unless charged.

When the Threshold Test may be applied

- 5.2 Prosecutors must determine whether the following conditions are met:
- a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
 - c) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and
 - d) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
 - e) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.
- 5.3 Where any of the above conditions is not met, the Threshold Test cannot be applied and the suspect cannot be charged. The custody officer must determine whether the person may continue to be detained or be released on bail, with or without conditions.
- 5.4 There are two parts to the evidential consideration of the Threshold Test.

The first part of the Threshold Test – is there reasonable suspicion?

- 5.5 Prosecutors must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
- 5.6 In determining this, prosecutors must consider the evidence then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:
- a) it is relevant; and
 - b) it is capable of being put into an admissible format for presentation in court; and
 - c) it would be used in the case.
- 5.7 If satisfied on this the prosecutor should then consider the second part of the Threshold Test.

The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction?

- 5.8 Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
- 5.9 The further evidence must be identifiable and not merely speculative.
- 5.10 In reaching this decision prosecutors must consider:
- a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
 - b) the charges that all the evidence will support;
 - c) the reasons why the evidence is not already available;
 - d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.
- 5.11 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

Reviewing the Threshold Test

- 5.12 A decision to charge under the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as is reasonably practicable and in any event before the expiry of any applicable custody time limit.

Selection of Charges

- 6.1 Prosecutors should select charges which:
- a) reflect the seriousness and extent of the offending supported by the evidence;
 - b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
 - c) enable the case to be presented in a clear and simple way.
- 6.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.
- 6.3 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.
- 6.4 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.
- 6.5 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

Out-of-Court Disposals

- 7.1 An out-of-court disposal may take the place of a prosecution in court if it is an appropriate response to the offender and/or the seriousness and consequences of the offending.
- 7.2 Prosecutors must follow any relevant guidance when asked to advise on or authorise a simple caution, a conditional caution, any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. They should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest would be properly served by such a disposal.

Mode of Trial

- 8.1 Prosecutors must have regard to the current guidelines on sentencing and allocation when making submissions to the magistrates' court about where the defendant should be tried.
- 8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' court. But prosecutors should consider the effect of any likely delay if a case is sent to the Crown Court, and the possible effect on any victim or witness if the case is delayed.

Venue for trial in cases involving youths

- 8.3 Prosecutors must bear in mind that youths should be tried in the youth court wherever possible. It is the court which is best designed to meet their specific needs. A trial of a youth in the Crown Court should be reserved for the most serious cases or where the interests of justice require a youth to be jointly tried with an adult.

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.
- 9.2 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. Prosecutors must never accept a guilty plea just because it is convenient.
- 9.3 In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.
- 9.4 It must be made clear to the court on what basis any plea is advanced and accepted. 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.
- 9.5 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 at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review, in consultation with the police or other investigators wherever possible.
- 9.6 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, prosecutors must also bear in mind the fact that ancillary orders can be made with some offences but not with others.

Reconsidering a Prosecution Decision

10.1 People should be able to rely on decisions taken by the CPS. Normally, if the CPS tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are reasons why the CPS will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

10.2 These reasons include:

- a) cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- 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 prosecutor will tell the defendant that the prosecution may well start again;
- c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later; and
- d) cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.

This document is available electronically from the CPS website at www.cps.gov.uk

Further copies of The Code for Crown Prosecutors and information about alternative languages and formats are available from the CPS.

Please send an email to publicity.branch@cps.gsi.gov.uk or by writing to:

CPS Communication Division
Rose Court
2 Southwark Bridge
London, SE1 9HS

The Code for Crown Prosecutors
7th Edition, January 2013
© Crown Copyright