



CPS

# The Code

for Crown Prosecutors

February 2010

This booklet is available in:

এই লিফলেটটি বাংলায় পাওয়া যাবে (Bengali)

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## Introduction

- 1.1 The Crown Prosecution Service (CPS) is the principal public prosecution service for England and Wales. In January 2010, it merged with the Revenue and Customs Prosecutions Office (RCPO). The service is headed by the Director of Public Prosecutions (DPP) who is also the Director of Revenue and Customs Prosecutions. The DPP exercises his functions independently, subject to the superintendence of the Attorney General who is accountable to Parliament for the work of the prosecution service.
- 1.2 The DPP is responsible for issuing the Code for Crown Prosecutors (the Code) under section 10 of the Prosecution of Offences Act 1985. The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. This is the sixth edition of the Code and replaces all earlier versions.
- 1.3 In this Code, the term “prosecutors” is used to describe members of the prosecution service who are designated as Crown Prosecutors; prosecutors who are members of the RCPO; Associate Prosecutors who are designated under section 7A of the Prosecution of Offences Act 1985 and who exercise their powers in accordance with the instructions issued by the DPP; and other members of the RCPO who are designated by the DPP in his capacity as the Director of the Revenue and Customs Prosecutions under section 39 of the Commissioners for Revenue and Customs Act 2005.
- 1.4 In this Code, the expression “police or other investigators” is used to describe members of all those investigative agencies, including the Serious Organised Crime Agency and the UK Border Agency, who prepare and present cases to the prosecution service.

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- 1.5 Although the prosecution service works closely with the police and other investigators, it is independent of them. The independence of prosecutors is of fundamental constitutional importance.
- 1.6 The prosecution service co-operates with the investigating and prosecuting agencies of other jurisdictions to facilitate enquiries and prosecutions both in England and Wales and abroad.
- 1.7 In accordance with section 36(2) of the Commissioners for Revenue and Customs Act 2005, prosecutors from the RCPO who are acting in that capacity must have regard to the Code for Crown Prosecutors issued by the DPP.
- 1.8 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.
- 1.9 The Code is one of two key published and publicly available documents that explain the purpose and work of the prosecution service. The second is the Core Quality Standards booklet. Only the Code is issued by law.
- 1.10 Together, they let the public know what prosecutors do; how they take their decisions; and the level of service that the prosecution service is committed to providing in every key aspect of its work.
- 1.11 The Code and the Core Quality Standards booklet are available from the contact points listed on the back cover of this booklet.

## General Principles

- 2.1 The decision to prosecute or to offer an individual an out-of-court disposal is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. 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 deliver justice for victims, witnesses, defendants and the public.
- 2.2 It is the duty of prosecutors to review, to advise on and to prosecute cases or to offer an appropriate out-of-court disposal to the offender. Prosecutors must ensure 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.
- 2.3 Although each case must be considered on its own facts and on its own merits, there are general principles that apply to the way in which prosecutors must approach 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 prosecution service is a public authority for the purposes of current, relevant equality legislation. Prosecutors are bound by the duties set out in this legislation.

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- 2.6 The prosecution service is also a public authority for the purposes of the Human Rights Act 1998. Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General and with the policies of the prosecution service issued on behalf of the DPP. They must also comply with the Criminal Procedure Rules currently in force.

## 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 charge or summons a person in those cases for which they are responsible.
- 3.2 The police and other investigators are responsible for conducting enquiries into an allegation that a crime may have been committed. Every case that prosecutors receive from the police or other investigators is reviewed. Prosecutors must ensure that they have all the information they need to make an informed decision about how best to deal with the case. This will often involve prosecutors providing guidance and advice to the police and other investigators about lines of inquiry, evidential requirements, and assistance in any pre-charge procedures throughout the investigative and prosecuting process. 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 the prosecutor primarily considers 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 to inform the prosecutor's decision.

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- 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 must make sure that they do not allow a prosecution to start or continue where to do so would be seen by the courts as oppressive or unfair so as to amount to an abuse of the process of the court.
- 3.6 Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops. Wherever possible, they should talk to the investigator first if they are 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 prosecution service.
- 3.7 Parliament has decided that a limited number of very serious or sensitive 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 behalf apply the Code in deciding whether to give consent to a prosecution.



## **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 the vast majority of 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 rare 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.
- 4.4 Prosecutors must follow any guidance issued by the DPP to ensure that decisions in these cases are appropriate and correct.

## **The Evidential Stage**

- 4.5 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.
- 4.6 A realistic prospect of conviction is an objective test based solely upon the prosecutor's assessment of the evidence and any information that he or she has about the defence that might be

put forward by the suspect. 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.

- 4.7 When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it 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. In particular, prosecutors will need to consider the following issues.

**Can the evidence be used in court?**

- a) Is it likely that the evidence will be excluded by the court? There are legal rules that 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 obtained?
- b) Is the evidence hearsay? If so, is the court likely to allow it to be presented under any of the exceptions which permit such evidence to be given in court?
- c) Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?

**Is the evidence reliable?**

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

- e) Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect's level of understanding?
  - f) Is the identification of the suspect likely to be questioned? Is the evidence of his or her identity strong enough? Have the appropriate identification procedures been carried out? If not, why not? Will any failure to hold the appropriate identification procedures lead to the evidence of identification being excluded?
  - g) Are there concerns over the accuracy, reliability or credibility of the evidence of any witness?
  - h) Is there further evidence which the police or other investigators should reasonably be asked to find which may support or undermine the account of the witness?
  - i) Does any witness have any motive that may affect his or her attitude to the case?
  - j) Does any witness have a relevant previous conviction or out-of-court disposal which may affect his or her credibility?
  - k) Is there any further evidence that could be obtained that would support the integrity of evidence already obtained?
- 4.8 Where it is considered that it would be helpful in assessing the reliability of a witness' evidence or in better understanding complex evidence, an appropriately trained and authorised prosecutor should conduct a pre-trial interview with the witness in accordance with the relevant Code of Practice.
- 4.9 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.

## **The Public Interest Stage**

- 4.10 In 1951, Sir Hartley Shawcross, who was then Attorney General, made the classic statement on public interest: "[i]t 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". He added that there should be a prosecution: "wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest" (House of Commons Debates, Volume 483, 29 January 1951). This approach has been endorsed by Attorneys General ever since.
- 4.11 Accordingly, where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.12 A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal (see section 7). The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest.
- 4.13 Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one 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 for those factors to be put to the court for consideration when sentence is passed.

- 4.14 The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction. For example, just because the offence was not "carried out by a group" does not transform the "factor tending in favour of a prosecution" into a "factor tending against prosecution".
- 4.15 Some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

**Some common public interest factors tending in favour of prosecution**

- 4.16 A prosecution is more likely to be required if:
- a) a conviction is likely to result in a significant sentence;
  - b) a conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a conditional caution;
  - c) the offence involved the use of a weapon or the threat of violence;
  - d) the offence was committed against a person serving the public (for example, a member of the emergency services; a police or prison officer; a health or social welfare professional; or a provider of public transport);

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- e) the offence was premeditated;
- f) the offence was carried out by a group;
- g) the offence was committed in the presence of, or in close proximity to, a child;
- h) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- i) the offence was committed in order to facilitate more serious offending;
- j) the victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- k) there was an element of corruption of the victim in the way the offence was committed;
- l) there was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;
- m) there was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this;
- n) the suspect was in a position of authority or trust and he or she took advantage of this;
- o) the suspect was a ringleader or an organiser of the offence;

- p) the suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence;
- q) the suspect is alleged to have committed the offence in breach of an order of the court;
- r) a prosecution would have a significant positive impact on maintaining community confidence;
- s) there are grounds for believing that the offence is likely to be continued or repeated.

**Some common public interest factors tending against prosecution**

- 4.17 A prosecution is less likely to be required if:
- a) the court is likely to impose a nominal penalty;
  - b) the seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies (see section 7);
  - c) the suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved;
  - d) the offence was committed as a result of a genuine mistake or misunderstanding;

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- e) 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;
- f) 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 wholly or in part by the suspect;
  - the offence has only recently come to light;
  - the complexity of the offence has meant that there has been a long investigation; or
  - new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified.
- g) 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 and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- h) the suspect played a minor role in the commission of the offence;
- i) the suspect has put right the loss or harm that was caused (but a suspect must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained);
- j) the suspect 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. Prosecutors apply Home Office guidelines about how to deal with mentally disordered offenders and must



balance a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons;

- k) a prosecution may require details to be made public that could harm sources of information, international relations or national security.

**The views of victims or their families**

- 4.18 In deciding whether a prosecution is required in the public interest, prosecutors should take into account any views expressed by the victim regarding the impact that the offence has had. In appropriate cases, for example, a case of homicide or where the victim is a child or an adult who lacks capacity as defined by the Mental Capacity Act 2005, prosecutors should take into account any views expressed by the victim's family.
- 4.19 However, the prosecution service 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.
- 4.20 Where prosecutors have a responsibility to explain their decision to the victim, for example, when they stop a case or substantially alter the charge in a case, they must comply with the Code of Practice for Victims of Crime and all relevant CPS Guidance. Prosecutors must follow any agreed procedures, including abiding by any time period within which such decisions should be notified to the victim.

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## The Threshold Test

- 5.1 Prosecutors will apply the Full Code Test wherever possible. However, there will be cases where the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.
- 5.2 In such cases, prosecutors may apply the Threshold Test in order to make a charging decision.

### When the Threshold Test may be applied

- 5.3 The Threshold Test may only be applied where the prosecutor is satisfied that all the following four conditions are met:
- a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
  - b) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and
  - c) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
  - d) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case an application to withhold bail may properly be made.
- 5.4 Where any of the above conditions is not met, the Threshold Test cannot be applied and the suspect cannot be charged. Such cases must be referred back to the custody officer who will determine whether the person may continue to be detained or released on bail, with or without conditions.

- 5.5 There are two parts to the evidential consideration of the Threshold Test.

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

- 5.6 First, the prosecutor must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.

- 5.7 In determining whether reasonable suspicion exists, the prosecutor must consider the evidence which is currently 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.

- 5.8 If this part of the Threshold Test is satisfied, the prosecutor should proceed to the second part of the Threshold Test.

**The second part of the Threshold Test – will there be a realistic prospect of conviction?**

- 5.9 Secondly, the prosecutor 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 taken together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

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- 5.10 The further evidence must be identifiable and not merely speculative.
- 5.11 In reaching a decision under this second part of the Threshold Test, the prosecutor 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.
- 5.12 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**

- 5.13 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 the granting of 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 or extended 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 The prosecution service is responsible for deciding whether to offer an offender a conditional caution in certain cases. In such cases, the Full Code Test must be met. Prosecutors will offer a conditional caution where it is a proportionate response to the seriousness and the consequences of the offending and where the conditions offered meet the aims of rehabilitation, reparation or punishment within the terms of the Criminal Justice Act 2003.
- 7.2 A conditional caution is not a criminal conviction but it forms part of the offender's criminal record and may be cited in court in any subsequent proceedings. It may also be taken into consideration by prosecutors if the offender re-offends. Prosecutors may offer a conditional caution where, having taken into account the views of the victim, they consider that it is in the interests of the suspect, victim or community to do so.
- 7.3 Prosecutors must follow the relevant Code of Practice and the DPP's Guidance on Conditional Cautioning when deciding whether to offer an offender a conditional caution.
- 7.4 The offer of a conditional caution which is accepted and complied with takes the place of a prosecution. If the offer of a conditional caution is refused or the suspect does not make the required admission of guilt to the person who seeks to administer the conditional caution, a prosecution must follow for the original offence. If the terms of the conditional caution are not complied with, the prosecutor will reconsider the public interest and decide whether to charge the offender. Usually, a prosecution should be brought for the original offence.
- 7.5 Only prosecutors can decide whether to authorise the offer of a simple caution to an offender for an offence that may only be heard in the Crown Court. The occasions when this will be an appropriate disposal will be exceptional.

- 7.6 In all other cases, prosecutors may direct that a simple caution be offered in accordance with CPS and Home Office Guidance, or suggest, for example, the issue of a Penalty Notice for Disorder. The issue of a Penalty Notice for Disorder is, however, a decision for the police.
- 7.7 Prosecutors must be satisfied that the Full Code Test is met and that there is a clear admission of guilt by the offender in any case in which they authorise or direct a simple caution to be offered by the police.
- 7.8 The acceptance of a simple caution or other out-of-court disposal which is complied with takes the place of a prosecution. If the offer of a simple caution is refused, a prosecution must follow for the original offence. If any other out-of-court disposal is not accepted, prosecutors will apply the Full Code Test, upon receipt of the case from the police or other investigators, and decide whether to prosecute the offender.

## Youths

- 8.1 For the purposes of the criminal law, a youth is a person under 18 years of age.
- 8.2 Prosecutors must bear in mind in all cases involving youths that the United Kingdom is a signatory to the United Nations 1989 Convention on the Rights of the Child and the United Nations 1985 Standard Minimum Rules for the Administration of Juvenile Justice. In addition, 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 consider the interests of the youth when deciding whether it is in the public interest to prosecute.
- 8.3 Prosecutors should not avoid a decision to prosecute simply because of the suspect's age. The seriousness of the offence or the youth's past behaviour is very important.
- 8.4 Cases involving youths are usually only referred to the prosecution service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither is appropriate or the child or young person does not admit committing the offence.
- 8.5 Reprimands, final warnings and conditional cautions (see section 7) are intended to prevent re-offending and the fact that a further offence has occurred may indicate that those previous disposals have not been effective. The public interest will usually require a prosecution in such cases.



## **Mode of Trial**

- 9.1 Prosecutors must have regard to the current Magistrates' Court Sentencing Guidelines and the relevant Practice Direction when making submissions to the court about where the defendant should be tried.
- 9.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But prosecutors should consider the effect of any likely delay if a case is committed or 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**

- 9.3 Generally, 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

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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.

- 10.6 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 also must bear in mind the fact that ancillary orders can be made with some offences but not with others.
- 10.7 Prosecutors must comply with the "Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise" which set out in greater detail the extent of prosecutors' duties and role in the acceptance of guilty pleas.

## **The Prosecutor's Role in Sentencing**

- 11.1 Sentencing is a decision for the court, but prosecutors have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence by drawing the court's attention to the following factors:
- a) any aggravating or mitigating factors disclosed by the prosecution case;
  - b) any Victim Personal Statement;
  - c) where appropriate, evidence of the impact of the offending on a community;
  - d) any statutory provisions, sentencing guidelines, or guideline cases which may assist; and
  - e) any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).
- 11.2 Prosecutors may also offer assistance to the court by making submissions, in the light of all the above factors, as to the sentencing range within which the current offence falls.
- 11.3 In all complex cases or where there is the potential for misunderstanding, the prosecutor must set out in writing the aggravating and mitigating factors that he or she will outline when informing the court of the case in the sentencing hearing. In all other cases, this approach should be considered and undertaken if it will be of benefit to the court or the public to understand the case.

- 11.4 It is the duty of the prosecutor to apply for compensation and ancillary orders, such as anti-social behaviour orders and confiscation orders, in all appropriate cases. When considering which ancillary orders to apply for, the prosecutor must always have regard to the victim's needs, including the question of their future protection.
- 11.5 Prosecutors should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.
- 11.6 Prosecutors must comply with the "Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise" which set out in greater detail the extent of prosecutors' duties and role in the sentencing process.

## Reconsidering a Prosecution Decision

- 12.1 People should be able to rely on decisions taken by the prosecution service. Normally, if the prosecution service 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 special reasons why the prosecution service 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.
- 12.2 These reasons include:
- a) rare 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.
- 12.3 There may also be exceptional cases in which, following an acquittal of a serious offence, a prosecutor may, with the written consent of the DPP, apply to the Court of Appeal for an order quashing the acquittal and requiring the defendant to be retried.

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