



Prosecutions: The decision to prosecute

This document explains how prosecution decisions are reached

CPS

Introduction

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. It 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 CPS.

Background

Before the CPS was formed in 1986, the police decided whether to take cases to court. Today, the CPS decides whether or not to prosecute people in court. However, the police still investigate the alleged offence. In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence, and, if so, what the offence should be. In those cases where the police determine the charge, they apply the same principles. We decide whether or not to prosecute by applying the Code for Crown Prosecutors and any relevant policies to the facts of the particular case.

The Code for Crown Prosecutors

The Code for Crown Prosecutors (the Code) is a public document that sets out the basic principles prosecutors should follow when they make decisions on cases. The Code sits alongside the Core Quality Standards booklet, and the two documents together let the public know what prosecutors do, including 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. You can view copies of both documents on the CPS website at www.cps.gov.uk.

Although each case is unique and must be considered on its own facts and merits, there are certain general principles that apply to the way in which prosecutors must approach every case. They 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.

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

The decision whether to prosecute

Each case the prosecution service receives from the police is reviewed to make sure that it is right to proceed with a prosecution. In more serious or complex cases, prosecutors are responsible for deciding whether a person should be charged with a criminal offence, and if so, what that offence should be.

When deciding whether a case should be prosecuted in the courts, prosecutors consider the alternatives to prosecution in appropriate circumstances. This includes a simple or conditional caution for adults or, for youths, a reprimand, warning or conditional caution. When we receive a file from the police, a prosecutor will read the papers and decide whether or not there is enough evidence against the defendant and whether a prosecution is required in the public interest. Because circumstances can change, the prosecutor keeps the case under continual review. If the prosecutor is thinking of changing the charges or

stopping the case, he or she will contact the police wherever possible. This gives the police the chance to provide more information that may affect the decision.

Although the police and the CPS work closely together, we are completely independent of each other and the final responsibility for the decision as to whether or not to proceed with an offence that has been charged rests with the prosecution service.

Prosecutors have to ask themselves the following two questions when they are making their decisions

Is there enough evidence against the defendant?

There must be enough evidence to provide a 'realistic prospect of conviction' against the defendant. A realistic prospect of conviction is an objective test. It means that a 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 alleged charge. This is a different test from the one that the criminal courts must apply. Magistrates or a jury should only convict the defendant if they are sure that they are guilty.

When deciding whether there is enough evidence to prosecute, prosecutors must consider whether the evidence can be used in court and whether it is reliable. This means that they must assess the quality of the evidence from all witnesses before reaching a decision. 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. A decision to drop a case does not mean that the prosecutor has decided to believe one witness and not believe another. If there is not a realistic prospect of conviction, the case must not go ahead, no matter how serious or sensitive it may be. If there is a realistic prospect of conviction, the prosecutor will ask the next question.

Is a prosecution required in the public interest?

It has never been the rule in this country that every criminal offence must automatically be prosecuted. For this reason, in each case, the prosecutor must consider whether a prosecution is required in the public interest. 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.

The public interest factors that can affect the decision to prosecute vary from case to case. 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. On the other hand, a prosecution is less likely to be required if, for example, a court would be likely to impose a nominal penalty or the loss or harm connected with the offence was minor and the result of a single incident.

Victims of crime

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 some cases, prosecutors should take into account any views expressed by the victim's family. But 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.

The Threshold Test

There are some cases in which it would not be appropriate to release a person on bail after charge, but where the evidence to establish whether there is a 'realistic prospect of conviction' is not yet available. For example, medical or other expert evidence may not have been obtained in the limited time available before charge. In these cases, prosecutors apply the Threshold Test. To apply this test, there must be reasonable grounds for believing: that further evidence will become available in a reasonable period of time; that the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and that there are grounds to object to bail.

Selection of charges

When they are reviewing a case, prosecutors must always consider whether the charges against the defendant are correct. They have to make sure that the charges reflect the seriousness and extent of the offending and give the court sufficient sentencing powers. It is just as important that the choice and number of charges allow the case to be explained to the court in a clear and simple way. This means that from time to time a prosecutor may alter the charge against the defendant if there is one that fits the circumstances of the offence better.

Out-of-court disposals

Prosecutors may offer a conditional caution where this would be a proportionate response to the seriousness and the consequences of the offending. 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.

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. In all other cases, prosecutors may direct that a simple caution be offered 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. The acceptance of a conditional caution, simple caution or other out-of-court disposal which is complied with takes the place of a prosecution. If the offer of an out-of-court disposal is refused, a prosecution must follow the original offence. If the terms of any other out-of-court disposals are not complied with, prosecutors will reconsider the public interest and decide whether to charge the offender. Usually, a prosecution should be brought for the original offence.

Youths

For the purposes of the criminal law, a youth is a person under 18 years of age. Prosecutors must have regard to the principle 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. However, 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. 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.

Reprimands, final warnings and conditional cautions are intended to prevent re-offending and the fact that a further offence has occurred indicates that those previous disposals have not been effective. The public interest will usually require a prosecution in such cases.

Accepting guilty pleas

Sometimes a defendant may want to plead guilty to some but not all of the charges, or to a different, possibly less serious, offence. Prosecutors should only agree to this if they think the court is able to pass a sentence that matched the seriousness of the offending. What prosecutors cannot do is ask the judge or the magistrates to pass a particular type of sentence. In deciding whether the pleas offered are acceptable, prosecutors should ensure that the interests 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.

Reconsidering a prosecution decision

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. These reasons may include where a new look at the original decision shows that it was wrong and a prosecution is needed to maintain confidence in the criminal justice systems; or because more evidence becomes available later.

Victim Supportline

If you need more help or support you can telephone the Victim Supportline on 0845 30 30 900. This is run by Victim Support, an independent charity whose trained staff and volunteers provide emotional support, information and practical help for people affected by crime. The Victim Supportline is a local number and an essential point of contact for anyone who has suffered the effects of crime, regardless of whether a crime has been reported.

Staff can explain the free and confidential services available through Victim Support and put you in touch with their local Victim Support Scheme or Witness Service or other organisation if necessary.

Complaints

We aim to deal with complaints sensitively, fairly and in confidence. Details of our complaints procedure can be found on the CPS website www.cps.gov.uk

Contacts

The criminal justice system is made up of a number of agencies. They include the following, listed with contact details which may be useful if you are seeking any further information.

The Home Office

Tel: 020 7035 4848

Website: www.homeoffice.gov.uk

Email: public.enquiries@homeoffice.gsi.gov.uk

The Ministry of Justice

Tel: 020 3334 3555

Website: www.justice.gov.uk/

Email: general.queries@justice.gsi.gov.uk

The Court Service

Tel: 020 7210 2269

Website: www.courtservice.gov.uk

The Association of Chief Police Officers (ACPO)

Tel: 020 7227 3434

Website: www.acpo.police.uk

Email: info@acpo.police.uk

National Office of Victim Support

Tel: 0845 30 30 900

Website: www.victimsupport.org.uk

National Association for the Care and Resettlement of Offenders (NACRO)

Tel: 020 7582 6500

Website: www.nacro.org.uk

Youth Justice Board

Tel: 020 3372 8000

Website: www.youth-justice-board.gov.uk

Email: enquiries@yjb.gov.uk

CPS enquiries

For general information about the CPS and advice on who to contact, please contact CPS enquiries. The unit cannot give legal advice, but maybe able to offer you practical information. You can provide formal feedback or details of any complaints through our website.

Tel: 020 3357 0899

Email: enquiries@cps.gsi.gov.uk

For information about the CPS, and to view or download an electronic copy of this document, please visit our website at www.cps.gov.uk or contact your local CPS office.

CPS Policy Directorate

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