



**CPS**

# The Code for Crown Prosecutors: Consultation Document

Issued by  
The Director of Public Prosecutions

October 2009

## **CODE FOR CROWN PROSECUTORS – CONSULTATION DOCUMENT**

The Crown Prosecution Service and the Revenue and Customs Prosecutions Office merged in January 2010 to form the principal public prosecution service for England and Wales. That service is headed by the Director of Public Prosecutions [DPP] who exercises his function independently, subject to the superintendence of the Attorney General who is accountable to Parliament for the work of the service.

The prosecution service is a national organisation consisting of a number of Specialist Casework Divisions based in Headquarters, 42 geographical Areas and CPS Direct. The Specialist Casework Divisions deal with the service's most complex or sensitive cases. Each geographical Area is headed by a Chief Crown Prosecutor and corresponds to a single police force area, with one for London. CPS Direct is the national out-of-hours service that provides advice about any appropriate charges on behalf of the 42 Areas in England and Wales.

The DPP is responsible for issuing a Code for Crown Prosecutors [the Code] under section 10 of the Prosecution of Offences Act 1985. This is the sixth edition of the Code and replaces all earlier versions.

In this Code, the term "prosecutor" is used to describe members of the prosecution service who are designated as Crown Prosecutors; prosecutors who are members of the Revenue and Customs Prosecutions Office; and Associate Prosecutors who are designated under section 7A of the Prosecution of Offences Act 1985 and who exercise their powers in accordance with the current instructions issued by the DPP.

The Code helps the prosecution service to play its part in making sure that justice is done. It contains information that is important to investigators and others who work in the criminal justice service and to the general public. Investigators should apply the provisions of this Code whenever they are responsible for deciding whether to charge a person with an offence.

Although the prosecution service works closely with investigators, it is independent of them. The independence of prosecutors is of fundamental constitutional importance.

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.

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## **1 INTRODUCTION**

- 1.1 The Code is one of two published and publicly available documents that explain the purpose and work of the public prosecution service. The other is the Core Quality Standards booklet. Only the Code is issued by law.
- 1.2 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.
- 1.3 The Code and the Core Quality Standards booklet are available from any of the contact points listed on the back cover of this booklet.
- 1.4 The Code sets out the general principles to be applied when making decisions about prosecutions. Effective prosecution is essential to the maintenance of law and order and casework decisions taken with fairness, impartiality and integrity help deliver justice for victims, witnesses, defendants and the public.
- 1.5 The Code also explains the work which prosecutors must undertake in addition to the decision whether to prosecute.

## **2 GENERAL PRINCIPLES**

- 2.1 Although each case must be considered on its own facts, there are general principles that apply to the way in which prosecutors must approach every case.
- 2.2 Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, disability, gender, age, religious beliefs, political views, the sexual orientation, or gender identity of the suspect, victim or witness influence their decisions. They must not 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.
- 2.3 The prosecution service is a public authority for the purposes of the Race Relations Act 1976 (as amended), the Disability Discrimination Act (as amended) 1995 and the Equality Act 2006. Prosecutors must have due regard to the need to promote race, disability and gender equality when taking prosecution decisions.
- 2.4 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 Act, at each stage of a case. Prosecutors must also have due regard to any guidelines issued by the Attorney General.

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## 3 THE DECISION WHETHER TO PROSECUTE

- 3.1 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 investigators about lines of inquiry, evidential requirements and assistance in any pre-charge procedures throughout the investigative and prosecuting process.
- 3.2 Prosecutors should identify and, where possible, rectify evidential weaknesses but stop swiftly cases that cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution.
- 3.3 Prosecutors decide whether a person should be charged with a criminal offence, and, if so, what that offence should be, in the more serious or complex cases. Prosecutors make these decisions in accordance with this Code and the DPP's Guidance on Charging. The police apply the same principles in deciding whether to charge a person in those cases for which they are responsible. The decision whether to continue a prosecution rests with the prosecutor.
- 3.4 Prosecutors must make sure that they do not allow a prosecution to start or continue where to do so would be likely to be seen by the courts as oppressive or as an abuse of the process of the court; or if it would otherwise be unfair to do so.
- 3.5 Prosecutors should only start or continue with a prosecution when the case has passed both stages of the Full Code Test. The exception is when the Threshold Test may be applied where it is proposed to keep the suspect in custody after charge, but the evidence required to apply the Full Code Test is not yet available.
- 3.6 The review of cases is a continuing process and prosecutors must take account of any change of circumstances.

1. Is the role of the Crown Prosecution Service explained clearly enough in sections 1, 2 and 3? Please answer at the end of this document.

## 4 THE FULL CODE TEST

- 4.1 The Full Code Test has two stages: the evidential stage followed by the public interest stage. Subject to paragraphs 4.16-17 below, the evidential stage must be considered before the public interest stage. If the case does not pass the evidential stage, it must not go ahead no matter how important or serious it may be.

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## THE EVIDENTIAL STAGE

- 4.2 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 it is likely to affect the prospects of conviction.
- 4.3 A realistic prospect of conviction is an objective test based solely upon the prosecutor's assessment of the evidence and any information that they have about the defence that might be put forward by the defendant. 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 separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt.
- 4.4 When deciding whether there is enough evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it is reliable. In particular, they will need to consider the following issues.
- a Is there any further evidence that could be obtained that would support the integrity of evidence already obtained?
  - b Are there concerns over the accuracy or credibility of a witness? Is there further evidence which the investigator should be asked to find which may support or undermine the account of the witness?
  - c 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 or level of understanding?
  - d 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?
  - e Is the identification of the defendant likely to be questioned? Is the evidence about their identity strong enough?
  - f Does the witness have any motive that may affect their attitude to the case, or a relevant previous conviction?
  - g Is it likely that the evidence will be excluded because of the way in which it was gathered?
- 4.5 In appropriate cases, prosecutors should consider conducting a pre-trial interview with the witness to help to assess their reliability.

2. Is the evidential stage of the Full Code test explained clearly enough? Please answer at the end of this document.

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## THE PUBLIC INTEREST STAGE

- 4.6 It has never been the rule in England and Wales that suspected criminal offences must automatically be prosecuted. Where there is sufficient evidence, prosecutors must go on to consider whether a prosecution is needed in the public interest.
- 4.7 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 it appears more appropriate in all the circumstances of the case to impose an out-of-court disposal on the person (see section 7 below). The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be needed in the public interest.
- 4.8 Deciding on 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.
- 4.9 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 in favour of a prosecution' into a 'factor against prosecution'.
- 4.10 Prosecutors will, in most cases, prosecute where the two stages of the Full Code Test are met without any weight being given to any other factor. However, in certain very limited situations, it is right to take into account whether a prosecution is a proportionate response to the specific offending when deciding the most appropriate course of action. However, this should always be balanced against the seriousness of the offence and the loss or harm sustained in the case.
- 4.11 Some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The lists are not exhaustive. The factors that apply will depend on the facts in each case.

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

- 4.12 A prosecution is likely to be needed if:
- a a conviction is likely to result in a significant sentence;
  - b a conviction is likely to result in a confiscation or any other order;

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- c a weapon was used or violence was threatened during the commission of the offence;
- d the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
- 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 victim of the offence was in a vulnerable situation that had been exploited, had been put in considerable fear, or suffered personal attack, damage or disturbance;
- i there is an element of corruption of the victim in the way the offence was committed;
- j the offence was motivated by any form of discrimination against the victim's ethnic or national origin, age, disability, gender, religion or belief, political views, sexual orientation, or gender identity or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- k there is a marked difference in the ages of the defendant and the victim;
- l there is a marked difference in the level of understanding of the defendant and the victim;
- m the offence, although not serious in itself, is widespread in the area where it was committed;
- n a community, be that either geographical, or of common characteristics, or of shared interests, has expressed concern about the prevalence of the offence;
- o a prosecution would have a significant positive impact on maintaining community confidence;
- p the defendant was in a position of authority or trust;
- q the defendant was a ringleader or an organiser of the offence;
- r the offence has resulted in serious financial loss to an individual, corporate body or society;

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- s the defendant's previous convictions or cautions are relevant to the present offence;
- t the defendant is alleged to have committed the offence while under an order of the court;
- u there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

3. Are the public interest factors that tend in favour of prosecution explained clearly enough? Please answer at the end of this document.

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

4.13 A prosecution is less likely to be needed if:

- a the court is likely to impose a nominal penalty;
- b the defendant:
  - is already 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 or the defendant withdraws consent to have an offence taken into consideration during sentencing;
  - has already been given an appropriate out-of-court disposal for the offence which remains in place or which has been satisfactorily discharged;
  - has already been subject to any appropriate regulatory, punitive or relevant civil penalty proceedings which remain in place or which have been satisfactorily discharged;
- c the offence was committed as a result of a genuine mistake or misunderstanding;
- d the actions of the defendant, although sufficient to come within the definition of the crime, were of minor importance or of little influence in the overall commission of the offence;
- e the defendant could not personally obtain or assist another to obtain any advantage or gain from committing the offence;
- f the actions of the defendant did not influence others to commit an offence or influence their behaviour generally;
- g 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;

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- h 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.
- i 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 and the views of the victim about the effect of a prosecution on their physical or mental health;
- j the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation);
- k a prosecution might interfere with the investigation or prosecution of another criminal offence;
- l a prosecution would undermine a promise made to the defendant [either by the investigator or the prosecutor] that he or she would not be prosecuted, although this does not include any case where the investigator or prosecutor has only informed the defendant that proceedings will not be brought or continued against him;
- m details may be made public that could harm sources of information, international relations or national security;
- n any court proceedings would provide the defendant with a further opportunity to express views which could appear in reports of court proceedings and cause further alarm or distress to recognisable sections of society;
- o 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. 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.

4. Are the public interest factors that tend against prosecution explained clearly enough? Please answer at the end of this document.

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## **The views of the victims or their families**

- 4.14 The prosecution service does not act for victims or their families in the same way as solicitors act for their clients. However, when considering the public interest, prosecutors should take into account the consequences for the victim of whether to prosecute, and any views expressed by the victim or the victim's family where the victim has unfortunately died.
- 4.15 Victims must be told about decisions to drop or alter the charges which make a significant difference to the case in which they are involved. Prosecutors should follow any agreed procedures.

## **Applying the public interest stage when the evidence gathering is not finalised**

- 4.16 In the vast majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed and all the available evidence collected. 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.
- 4.17 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 earlier in this section.

## **Cases that require the consent of the Director of Public Prosecutions to prosecute**

- 4.18 Some offences require the DPP to consent to prosecution before proceedings can be brought. In such cases, the two stages of the Full Code Test are applied in the same way as in any other case.
- 4.19 Factors taken into account in deciding whether a prosecution is needed in the public interest also determine whether or not the DPP will consent to a prosecution. If a prosecution is needed in the public interest applying the Code for Crown Prosecutors, the DPP will consent to a prosecution; otherwise consent will not be given.

**5. Is the public interest stage of the Full Code Test explained clearly enough? Please answer at the end of this document.**

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### **5 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 a decision regarding charge has to be made.
- 5.2 In such cases, it may be necessary to detain a suspect in custody when the investigation is incomplete and the Full Code Test cannot be applied. In such cases, prosecutors may apply the Threshold Test.
- 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 pre-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.
- 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.

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- 5.8 If this part of the Threshold Test is satisfied, the prosecutor should proceed to the second part of the Threshold Test. This requires the prosecutor to 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.
- 5.9 The further evidence must be identifiable and not merely speculative.
- 5.10 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.
- 5.11 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.
- 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 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.

## **6 SELECTION OF CHARGES**

- 6.1 Prosecutors should select charges which:
- a reflect the seriousness and extent of the offending;
  - 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.

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- 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 change in circumstances as the case progresses after charge.

### **7 OUT-OF-COURT DISPOSALS**

- 7.1 There are a number of out-of-court disposals or alternatives to prosecution which are available to the investigator and/or the prosecutor. These range from a simple caution and a Conditional Caution to a Civil Recovery Order or a Serious Crime Prevention Order. Prosecutors must ensure that all suspects and their criminal behaviour are dealt with in the most effective and appropriate way.
- 7.2 Once a decision is taken that some action is necessary in the public interest to deal with the suspect's criminal behaviour, the prosecutor should consider whether there is a suitable out-of-court disposal or alternative to prosecution that is appropriate to the suspect's circumstances, the offence and the community in which the offending took place.

#### **ADULTS**

- 7.3 Out-of-court disposals for adults which the prosecutor is able to impose include a simple caution and a conditional caution (both of which can be considered only when the offending is admitted).

#### **Simple caution**

- 7.4 A simple caution is used to deal with those who commit less serious offences. A simple caution should only be given if there is sufficient evidence to prosecute; if the suspect admits the offence; if the public interest justifies it; and if it is in accordance with Home Office guidelines. If the suspect refuses to accept the caution, a prosecutor may review the case again to decide whether a prosecution is needed.

#### **Conditional caution**

- 7.5 A conditional caution requires the suspect to comply with certain conditions aimed at rehabilitation or reparation. Prosecutors may offer conditional cautions where they consider that it is in the interests of the suspect, victim and community to do so.
- 7.6 Prosecutors must be satisfied that there is sufficient evidence for a realistic prospect of conviction and that the public interest would justify a prosecution should the offer of a conditional caution be refused or the offender fail to comply with the agreed conditions of the caution.

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- 7.7 Prosecutors must follow the Code of Practice and the DPP's Guidance on Conditional Cautioning.

6. Is the section on out-of-court disposals set out in an understandable way, and does it explain clearly what disposals and alternatives to prosecution are available? Please answer at the end of this document.

### **YOUTHS**

- 7.8 Prosecutors should 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 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice. As a result, prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However, 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.
- 7.9 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 youth does not admit committing the offence. Reprimands and final warnings 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, unless there are public interest factors against prosecution.

## **8 VENUE**

- 8.1 Prosecutors apply the current guidelines for magistrates when advising the court 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' courts. But prosecutors should consider the effect of any likely delay if a case is sent to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

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## 9 RE-STARTING A PROSECUTION

- 9.1 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 impose an out-of-court disposal or when it will re-start the prosecution, particularly if the case is serious.
- 9.2 These reasons include:
- a rare cases where a new look at the original decision shows that it was not supportable 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; and
  - c cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.
- 9.3 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.

7. Is there any other section of the Code for Crown Prosecutors that you think should be expanded, and, if so, what do you think should be included? Please answer at the end of this document.

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**RESPONSE SHEET**

Please complete the following information.

<b>Manner of preferred address: Mr/Mrs/Ms</b>	
<b>First Name</b>	
<b>Family Name</b>	
<b>Any organisation you represent</b>	
<b>Postal Mailing Address</b>	
<b>Contact telephone number</b>	
<b>E-mail Address</b>	

Please answer the consultation questions in the boxes below.

1. Is the role of the Crown Prosecution Service explained clearly enough in sections 1, 2 and 3?

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2. Is the evidential stage of the Full Code test explained clearly enough?

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3. Are the public interest factors that tend in favour of prosecution explained clearly enough?

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4. Are the public interest factors that tend against prosecution explained clearly enough?

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7. Is there any other section of the Code for Crown Prosecutors that you think should be expanded, and, if so, what do you think should be included?

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