



CPS

**Public Consultation Exercise
on The Code for Crown Prosecutors**

Issued by

The Director of Public Prosecutions

Summary of Responses

February 2010

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1. 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, and it provides guidance to prosecutors on the general principles to be applied by them when making decisions about prosecutions.
- 1.2 The Code was last revised in 2004 and is being updated in order to take into account changes in law and practice, as well as the merger between the Crown Prosecution Service and the Revenue and Customs Prosecutions Office which took place in January 2010.
- 1.3 A public consultation exercise on a new draft version of the Code was launched by the DPP on 18 October 2009; it ran until 11 January 2010. The consultation exercise provided stakeholders and members of the public with an opportunity to comment on the proposed changes and to suggest any further amendments that they would like to see to the final version of the Code.
- 1.4 In particular, the consultation exercise sought views, by way of a questionnaire, on the clarity of the following sections of the draft Code:
 - the role of the CPS;
 - the evidential stage of the Full Code Test;
 - the public interest factors that tend in favour of prosecution;
 - the public interest factors that tend against prosecution;
 - out-of-court and other disposals and alternatives to prosecution that are available.
- 1.5 In addition, the CPS sought views about whether there were any other sections of the Code that should be expanded.
- 1.6 Responses to the consultation exercise were submitted in a variety of ways, including completed questionnaires and letters, in both electronic and hard copy format.
- 1.7 A list of respondents to the consultation is at **Annex A**.
- 1.8 The CPS has carefully considered all the responses and, as a result, a number of significant changes to the draft version of the Code issued for consultation have been made. These changes are reflected in the sixth (2010) edition of the Code, which is published alongside this summary of responses.
- 1.9 The CPS will publish an Equality and Diversity Impact Assessment in July 2010. Information about the Equality and Diversity Impact Assessment process is contained at **Annex B**.

1.10 The CPS wishes to thank those who responded to the consultation exercise. We recognise the time and effort that was involved in preparing the responses and believe the Code has been improved as a result.

1.11 Further copies of this summary and the published Code can be obtained by contacting:

CPS Communication Division
Rose Court
Southwark Bridge
London SE1 9HF

1.12 Copies may also be obtained by e-mail from: publicity.branch@cps.gsi.gov.uk

1.13 A copy is also available on the CPS website: www.cps.gov.uk

2. Summary of the consultation exercise

- 2.1 As part of the public consultation exercise, respondents were invited to answer seven questions. Although the consultation period closed on 11 January 2010, a number of responses were received after this date. All responses received prior to 21 January 2010 have been included in the summary of responses.
- 2.2 In total, the CPS received 85 responses. The respondents were divided into the following categories set out in Table 1.

Table 1: Table of respondent categories

RESPONDENTS		
Category of Respondents	Number	Percentage of Total
Police/Law Enforcement Agencies	15	18%
Public Authorities and Other Government Departments	12	14%
CPS (internal CPS responses)	9	11%
Judiciary/Magistracy	8	9%
Academics or Academic Institutions	8	9%
Overseas Prosecuting Authorities	7	8%
CPS Community Involvement Panels and Hate Crime Scrutiny Panels	6	7%
Third Sector Organisations	6	7%
Barristers/Solicitors/Legal Executives	5	6%
Members of the Public	4	5%
Local Criminal Justice Boards	3	4%
Media	2	2%
TOTAL	85	100%

2.3 Not every respondent answered each question in the consultation document. Table 2 below shows the total number of responses to each question and the percentage which that represents of the total number of respondents.

Table 2: Total number of responses

RESPONSES TO EACH QUESTION AS A PERCENTAGE OF ALL RESPONDENTS		
Question	Number of responses received	Percentage of total number of respondents
1	67	79%
2	66	78%
3	68	80%
4	66	78%
5	64	75%
6	66	78%
7	75	88%

2.4 Every response has been considered by the CPS Code Consultation Team and the detailed analysis of those responses follows.

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

- 3.1 There were 67 responses to this question. The majority of the responses were positive overall: 38 agreed that the role of the CPS was clearly explained.
- 3.2 A number of respondents commented that the Code needed to define more clearly the role of the prosecutor and explain the difference in the functions of the CPS and the police. One respondent thought that the Code should explicitly state that it is the role of the police to manage and supervise investigations, not the CPS. Another respondent pointed out that the Code failed to identify the range of investigators that send cases to the CPS as well as the types of prosecutions that the CPS undertakes.
- 3.3 One respondent suggested that the Code should emphasise that the decision to prosecute is a serious step and that fair and objective decision-making is essential to maintaining public confidence.
- 3.4 Another respondent questioned why the prosecutor needed to have all of the information to make an informed decision.
- 3.5 A number of respondents suggested stylistic changes to improve the clarity of the language and of the document itself. These suggested changes included:
- beginning each section on a separate page;
 - ensuring consistent use of the words: “should” and “must”;
 - using the terms “suspect”, “defendant” and “offender” as appropriate throughout the document; and
 - replacing the word “charge” with “prosecution”, to help police officers to realise that the Code also applies to summons cases.
- 3.6 Two respondents suggested that the Code was now so complex that a second simplified version should be created for members of the public.
- 3.7 One respondent said that the Code should refer to the requirement for prosecutors to comply with the policy statements issued by the DPP.
- 3.8 Two respondents thought that the Code should address the question of proportionality and relevance in respect of evidence requested by prosecutors from investigators. Another respondent suggested that prosecutors should be required to take into account cost implications when considering the need for further information to help to reach a decision about prosecution. The issue of the reasonableness of prosecutors’ requests for evidence or information was also raised by respondents in response to Question 2.

- 3.9 One respondent made a number of suggestions regarding amending the Code to make specific reference to the special measures available at court designed to help people with disabilities.
- 3.10 Another thought a glossary of legal terms would be helpful.
- 3.11 One respondent raised the question of how prosecutors should approach cases where there was no realistic prospect of conviction but there was a realistic prospect of obtaining an ancillary order, such as a restraining order, following an acquittal.
- 3.12 Several respondents felt that the requirement in paragraph 2.3 for prosecutors to promote race, disability or gender equality was confusing and may seem to the lay reader incompatible with the duty to be fair and objective contained in paragraph 2.2. Another respondent thought that the factors set out in paragraph 2.2 (and again repeated in paragraph 4.16j) should be listed in alphabetical order to avoid any suggestion of prioritisation.
- 3.13 One respondent pointed out that paragraph 3.4 needed to be reworded more accurately to set out the relationship between unfair and oppressive prosecutions and the legal doctrine of abuse of process.
- 3.14 One respondent felt that sections 1, 2 and 3 needed to be redrafted to clarify the legal status of the Code and its purpose.

CPS Response

- 3.15 As a result of the consultation responses, a number of changes have been made to sections 1, 2 and 3.
- 3.16 Many of the stylistic changes suggested by the respondents have been adopted.
- 3.17 The **Introduction** has been redrafted to:
- set out the legal status of the Code and its purpose;
 - define more clearly the role of the prosecutor;
 - describe the range of investigators that send cases to the CPS; and
 - emphasise the independence of prosecutors from investigators.
- 3.18 The **General Principles** section has been redrafted to:
- emphasise that the decision to prosecute is a serious step;
 - explain that fair and effective prosecution is essential to the maintenance of law and order;
 - state explicitly that prosecutors must comply with the policies issued on behalf of the DPP;

- reflect accurately our statutory obligations regarding equality and then our non-statutory obligations: we do not consider that the slightly revised order implies any sense of prioritisation; and
- remove the last sentence of paragraph 2.3.

3.19 The **Decision Whether to Prosecute** section has been redrafted to:

- explain more clearly the review process;
- explain more clearly the role of prosecutors in providing guidance and advice during investigations; and
- set out more accurately the relationship between unfair and oppressive prosecutions and the legal doctrine of abuse of process.

3.20 However, after careful consideration, we do not accept that the Code is overly complex or that it would benefit from the addition of a glossary of terms. We have sought to ensure the Code is as understandable as possible, within the context that it has to remain a working document that is relevant to all prosecutors. We believe the Code achieves this balance.

3.21 As part of our determination to ensure that as many people as possible are able to understand the role, purpose and work of the CPS, we intend to publish an “Easy-Read” leaflet about the Code in due course.

3.22 We have also considered the suggestion that the Code should make more specific reference to the needs of victims and witnesses with disabilities. We believe that these issues are already currently covered by the CPS Policy for Prosecuting Cases of Disability Hate Crime and other CPS policies, which should be read in conjunction with the Code. We have inserted a new statement in the Code on the need for all prosecutors to comply with the policies of the prosecution service issued on behalf of the DPP (paragraph 2.6 of the revised Code).

3.23 We do not accept the suggestion that prosecutions should begin without all the essential information being available, and then, if necessary be adjourned for further information to be obtained. Other than in the circumstances which give rise to the application of the Threshold Test (section 5 of the revised Code), we consider that prosecutors must ensure that they have all the information that they need in order to make informed decisions about the case – including whether there is sufficient evidence at the outset for proceedings to be started.

3.24 We also consider that the mounting of a prosecution where the Full Code Test is not met with a view to securing a restraining order on acquittal would not be using the relevant legislation in the way that Parliament intended it to be used. We have therefore not made any reference to this in the revised Code.

3.25 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout these sections of the Code to

avoid any ambiguity or concern that respondents identified in the original wording.

- 3.26 All other suggestions have been carefully considered but have not been accepted.

4. Question 2: Is the evidential stage of the Full Code Test explained clearly enough?

- 4.1 There were 66 responses to this question, of which 33 responses agreed that the evidential stage of the Full Code Test was clearly explained.
- 4.2 One respondent thought that the prosecutor should liaise with the defence solicitor at an early stage in order to gain information on the defence that is to be put forward at court.
- 4.3 Two respondents commented that paragraph 4.4 was lacking in clarity, logical order and structure.
- 4.4 Another respondent thought that the section should emphasise that the evidential stage should not be weakened by the fact that the case was a serious one. The same respondent also made several suggestions about how the wording in paragraph 4.4 could be made more clear and accurate.
- 4.5 Several respondents thought that paragraph 4.4 should be amended to reflect that requests for further evidence should be reasonable, taking into account financial and resource implications.
- 4.6 One respondent suggested that the section needed to be expanded to include types of evidence that the prosecutor should consider, such as hearsay evidence and evidence of bad character.
- 4.7 One respondent thought that, in assessing the credibility of the witness, the prosecutor must be careful not to usurp the function of the court.
- 4.8 Several respondents said that paragraph 4.5 was unclear, and that the term “appropriate cases” needed to be defined.
- 4.9 One respondent pointed out that paragraph 5.5 of the 2004 edition of the Code stated that: *“Crown Prosecutors should not ignore evidence because they are not sure that evidence can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.”* The respondent thought that this statement was valuable and should be retained.

CPS Response

- 4.10 As a result of the consultation responses, this section has been restructured and extensively redrafted. In particular:
 - paragraph 4.4 (paragraph 4.7 of the revised Code) has been extended to include new types of evidence that the prosecutor should consider, such as hearsay evidence and evidence of bad character;

- a more logical approach to the questions in paragraph 4.4 (paragraph 4.7 of the revised Code) has been adopted and they have been divided back into the two categories which are used in the 2004 edition of the Code, namely: *Can the evidence be used at court?* and *Is the evidence reliable?*;
- the suggestions how the wording of the questions in paragraph 4.4 could be made more clear and accurate have been adopted. In particular, there has been a return to the language of the 2004 edition of the Code;
- the section now includes the requirement of reasonableness in respect of prosecution requests for further evidence;
- we have confirmed that evidence and information submitted on behalf of a suspect via the police can be considered to help to inform a prosecution decision (paragraph 3.3 of the revised Code);
- the section on pre-trial witness interviews has been redrafted to make it clear that prosecutors should consider conducting such an interview: *"where it would be helpful in assessing the reliability of a witness' evidence or in better understanding complex evidence"* (paragraph 4.8 of the revised Code). We think that this will assist in helping to clarify what we mean by "appropriate cases" for the use of pre-trial interviews with witnesses, although individual decisions will need to be considered on a case-by-case basis; and
- the wording in paragraph 5.5 of the 2004 edition of the Code has been restored in the new version of the Code (paragraph 4.9 of the revised Code).

- 4.11 We have also considered the suggestion that, in considering the credibility and reliability of a witness, the prosecutor should not usurp the function of the court. However, in order for a prosecutor to undertake his or her work effectively, it is essential that he or she assesses the credibility and reliability of the evidence that each witness is likely to give. This is necessary before a decision regarding the evidential stage of the Full Code Test can be taken. It is therefore an integral part of the prosecutor's role to make such judgments in deciding whether or not to start a prosecution.
- 4.12 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout this section of the Code to avoid any ambiguity or concern that respondents identified in the original wording.
- 4.13 All other suggestions have been carefully considered but have not been accepted.

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

- 5.1 There were 68 responses to this question, of which 33 responses agreed that the public interest factors tending in favour of prosecution were clearly explained.
- 5.2 One respondent welcomed the emphasis on "locally identified priorities"; another queried how the prosecutor would know what impact the defendant's actions had had on the community.
- 5.3 Several respondents suggested that the categories of person "serving the public" referred to in paragraph 4.12d should be expanded.
- 5.4 Two respondents thought that paragraph 4.12g should be amended to include vulnerable people as well as children.
- 5.5 One respondent suggested that paragraph 4.12l should be amended to reflect that the marked difference in age between an offender and a victim could be either physical or mental.
- 5.6 One respondent suggested that being involved in organised crime should be a public interest factor in favour of prosecution, as should the fact that the offence, although not serious in itself, was committed to facilitate more serious offending.

CPS Response

- 5.7 Paragraphs 4.12m and 4.12n have been removed on the basis that the rationale behind them is already captured in paragraph 4.12o (paragraph 4.16r of the revised Code). Separate guidance, in particular in respect of the "Community Prosecutor" approach, which is currently being tested in a number of pathfinder areas, and which will be finalised later in 2010, will help provide detailed clarification around the identification of local priorities.
- 5.8 The categories of persons serving the public in paragraph 4.12d (paragraph 4.16d of the revised Code) have been expanded to include: *"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"*.
- 5.9 Paragraph 4.12l (paragraph 4.16l of the revised Code) has been amended to: *"there was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this."* The suggested incorporation of language capturing the mental age difference between the suspect and the victim has not been adopted because the CPS considers that paragraph 4.12l of the consultation document (paragraph 4.16m of the revised Code) adequately captures the issue.

- 5.10 A further factor tending in favour of prosecution has been added to the new Code: *"the offence was committed in order to facilitate more serious offending"* (paragraph 4.16i of the revised Code).
- 5.11 We considered whether reasonable belief that a suspect is involved in organised crime should be a factor tending in favour of prosecution, but have decided that such "belief" should not be the basis for prosecutorial decision-making and that cases that were prosecuted based on such a factor would be likely to create difficulties in the way in which they would be presented at court.
- 5.12 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout this section of the Code to avoid any ambiguity or concern that respondents identified in the original wording.
- 5.13 All other suggestions have been carefully considered but have not been accepted.

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

- 6.1 There were 66 responses to this question, of which 28 responses agreed that the public interest factors tending against prosecution were clearly explained.
- 6.2 One respondent thought that it should always be in the public interest to bring a prosecution if the evidential stage were satisfied.
- 6.3 Several respondents commented that the term “nominal penalty” in paragraph 4.13a should be more clearly defined.
- 6.4 One respondent thought that the meaning of paragraph 4.13b was unclear. Another felt that the factors set out in this paragraph were inappropriate for a prosecutor to take into account.
- 6.5 One respondent suggested that an additional exception should be added to the list in paragraph 4.13h to cover situations where new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified.
- 6.6 Paragraph 4.13l attracted criticism. Several respondents questioned the distinction between a suspect being “promised” that he would not be prosecuted, and being “informed” that proceedings would not be brought against him.
- 6.7 A number of respondents expressed concern about paragraph 4.13n. In particular, it was suggested that the paragraph could be misinterpreted so that the more extreme and abhorrent a suspect’s views were, the less likely it would be that he or she would be prosecuted.
- 6.8 One respondent suggested that paragraph 4.13o should be amended to make it clear that the fact that the defendant was elderly should not, in itself, be a factor against prosecution.

CPS Response

- 6.9 Paragraph 4.13b has been extensively redrafted in the new edition of the Code, in order to provide greater clarity and accuracy. The first bullet point has been removed and the third is set out in paragraph 4.17c of the revised Code.
- 6.10 A further exception has been added to the list in paragraph 4.13h (paragraph 4.17h of the revised Code) to cover situations where new investigative techniques have been used to re-examine previously unsolved crimes, and as a result a suspect has been identified.
- 6.11 Paragraph 4.13l and paragraph 4.13n have been removed.

- 6.12 Reference to the defendant being elderly has been removed from paragraph 4.13o.
- 6.13 We do not accept the comments that a prosecution must always follow if the evidential stage of the Full Code Test is passed. Prosecutorial discretion, as set out in the classic statement of Sir Hartley Shawcross (and repeated again at paragraph 4.10 of the revised Code), is essential in a fair society that seeks to deliver justice.
- 6.14 We also feel that it would be unduly restrictive to attempt to define a “nominal penalty” as this will vary from case to case and from defendant to defendant.
- 6.15 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout this section of the Code to avoid any ambiguity or concern that respondents identified in the original wording.
- 6.16 All other suggestions have been carefully considered but have not been accepted.

7. Question 5: Is the public interest stage of the Full Code Test explained clearly enough?

- 7.1 There were 64 responses to this question, of which 29 respondents felt that the public interest stage of the Full Code Test had been clearly explained.
- 7.2 Paragraph 4.10 attracted the most comment, with one respondent pointing out that it was not clear how and in what circumstances the concept of “proportionality” might operate. Other respondents questioned whether proportionality was, in reality, simply a public interest factor, or whether it was a new “third stage” of the Full Code Test. One respondent commented that the Code failed to make clear what were “the very limited circumstances” in which proportionality should be taken into account.
- 7.3 One respondent felt that the obligations of the CPS in relation to victims should be made clearer. Although paragraph 4.15 states that victims should be told about decisions which make a significant difference to cases in which they are involved, the Code fails to make clear that the CPS has a statutory duty to keep victims informed within a specific time frame as stated in the Code of Practice for Victims of Crime.
- 7.4 Paragraph 4.14 attracted a number of comments. One person thought that the tone was overly negative, and gave the impression that the CPS did not care about victims. Several respondents said that the word “unfortunately” in the last sentence was superfluous. Other respondents suggested that there were other circumstances in which the CPS should take into account the views of the victim’s family, such as when the victim is a child, or is mentally incapacitated.
- 7.5 The new discretion, in exceptional circumstances, to apply the public interest stage before the evidential stage of the Full Code Test, was generally welcomed. However, several respondents thought that paragraphs 4.16 and 4.17 should contain examples of when this might be appropriate.
- 7.6 One respondent expressed concern that the decisions made by the CPS are based solely on the representations made by the police and that there is no facility for the CPS to be informed of defence requests for investigative work to be carried out.
- 7.7 Another respondent felt that the offences that required the consent of the DPP should be listed along with a fuller explanation.
- 7.8 One respondent suggested that it would be helpful to make an explicit reference to freedom of expression and open justice as being factors which tended against prosecution.
- 7.9 Two respondents suggested further guidance should be given to ensure that the age of the defendant is given sufficient weight within the list of common public interest factors against prosecution.

- 7.10 One respondent thought that the requirement for the prosecutor to be sure that there are public interest factors tending against prosecution which outweigh those in favour (in the absence of some other disposal being appropriate) appears to create a high threshold that may undermine the general discretion to prosecute. It was felt that this may affect youths where although the offence may be serious there may be compelling and mitigating factors for complete diversion from criminal sanctions.

CPS Response

- 7.11 Because of the concerns expressed, paragraph 4.10 has been removed from the revised Code.
- 7.12 Paragraph 4.14 (paragraph 4.18 of the revised Code) has been redrafted. It now states at the beginning that: *“[i]n 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.”* We have also expanded the categories of case where the views of the victim’s family should be taken into account to include those where the victim is a child, or an adult who lacks capacity as defined by the Mental Capacity Act 2005.
- 7.13 A section has been added to the new Code that makes it clear that, when deciding whether to prosecute: *“[a]lthough the prosecutor primarily considers the evidence and information supplied by the investigator, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the investigator, prior to charge, to help inform the prosecutor’s decision”* (paragraph 3.3 of the published Code).
- 7.14 The section on Youths (section 8 of the revised Code) has been expanded in order to set out some of the aims and principles that underpin the youth justice system and to make clear when the public interest will require a prosecution rather than an out-of-court disposal. It forms a separate section in the revised Code, reverting to the approach adopted in the fifth edition.
- 7.15 We considered the suggestion that the Code should contain more information on our duties to victims and witnesses. However, we decided that this was appropriately covered in paragraph 4.15, and that further detail should be confined to the Code of Practice for Victims of Crime and the relevant CPS policies with which prosecutors are obliged to comply. The relevant text appears in paragraphs 4.18-20 of the revised Code.
- 7.16 We do not consider it appropriate to list all the offences for which the DPP’s consent is required or to set out the relevant consent procedures; it would make the document too long and would require updates as new laws requiring the DPP’s (or the Director of Revenue & Customs Prosecutions’) consent are introduced or if new procedures were to be adopted.

- 7.17 The sections relating to consent cases and when the public interest can be applied without the evidence gathering being complete have been revised and moved to more appropriate places in the Code (paragraphs 3.7 and 4.2-3 respectively of the revised Code).
- 7.18 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout this section of the Code to avoid any ambiguity or concern that respondents identified in the original wording.
- 7.19 All other suggestions have been carefully considered but have not been accepted.

8. Question 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?

- 8.1 There were 66 responses to this question, of which 27 responses agreed that the section was set out in an understandable way and explained clearly what disposals and alternatives to prosecution are available.
- 8.2 Nine respondents felt that the section was weak and/or misleading. However the general response to this question indicated that more detail should be provided on both simple cautions and conditional cautions. In particular:
- what they are;
 - in what circumstances they can be offered and at what stage; and
 - whether they can be offered by the police, the CPS or both.
- 8.3 One respondent commented that it should be made clear that the prosecutor will take into account the views of the victim when deciding to use a conditional caution as a means of disposal.
- 8.4 A number of respondents thought this section could be clearer in explaining the difference between a simple caution and a conditional caution.
- 8.5 It was generally felt that the terminology used should be consistent, such as either “out-of-court disposal” or “diversion”. The use of different terms that apparently mean the same thing was thought to be misleading and confusing.
- 8.6 Some respondents questioned the inclusion of the reference to Civil Recovery Orders and Serious Crime Prevention Orders on the basis that they are not really alternatives to prosecution. Further, it was felt that, if these terms were to be included in the Code, they should be clearly explained in more detail. Other respondents asked why there was not any mention of Penalty Notices for Disorder.
- 8.7 One respondent suggested that a decision to terminate a prosecution should not be made until it is certain that an appropriate alternative disposal will or has occurred, and another thought that the prosecutor has some responsibility for ensuring that all ancillary orders are considered in advance of any sentencing hearing.
- 8.8 Another respondent stated that this section was written for lawyers and as a public document it needed to be looked at by the Crystal Mark Plain English Organisation.
- 8.9 A number of respondents suggested that there was a need for greater clarity regarding the relationship between the public interest and the decision to deal with a case by way of an out-of-court disposal.

CPS Response

- 8.10 The section on out-of-court disposals has been substantially redrafted and expanded to clarify the nature of cautions and conditional cautions and to explain the consequences for the offender. The section has also been updated in the light of developments in the law that have taken place since the consultation document was published. We have decided that this section of the revised Code should focus on those out-of-court disposals with which prosecutors are most usually involved.
- 8.11 The section now makes clear that the offer of a caution or a conditional caution is an alternative to prosecution. The text also makes clear what should happen in the event that a caution or a conditional caution is not accepted or the terms of the conditional caution are not fully complied with by the offender.
- 8.12 The police role in issuing Penalty Notices for Disorder is now set out.
- 8.13 We accept that the references to Civil Recovery Orders and Serious Crime Prevention Orders do not help members of the public to understand our role in the use of out-of-court disposals and the reference to them has been deleted.
- 8.14 In addition, we have linked the appropriateness of out-of-court disposals back to the lists of public interest factors and at paragraph 4.16b of the revised Code we make it clear that it is a factor tending in favour of prosecution if: “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”, whilst it is a factor tending against prosecution if: “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”.
- 8.15 The section on “The prosecutor’s role in sentencing” has been re-instated. The new paragraph 11.4 makes it clear that: “[i]t 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”.
- 8.16 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout this section of the Code to avoid any ambiguity or concern that respondents identified in the original wording.
- 8.17 All other suggestions have been carefully considered but have not been accepted.

9. Question 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?

- 9.1 There were 75 responses to this question and a number of suggestions for further inclusions in the Code.
- 9.2 Two respondents stated that they would like to see a clearer definition of the Threshold Test. In particular, they felt that the term “reasonable suspicion” should be defined and that it should specify what is meant by “reasonably practicable”. One respondent felt that the Threshold Test had outlived its usefulness and ran the risk of undermining the CPS’ commitment to “accurate charging” embodied in statutory charging.
- 9.3 A number of respondents felt that the Code should make clearer the CPS’ commitment to victims and witnesses, especially those who are required to attend court. It was also suggested that the views of the victim should be the CPS’ first consideration.
- 9.4 One respondent suggested that the section on “Youths” should contain an explicit reference for the need to have regard to the overarching aims of the youth justice system.
- 9.5 It was thought that the section on cases which required the DPP’s Consent was not clear.
- 9.6 A number of respondents felt that the sections on: “Accepting Guilty Pleas” and: “The Prosecutor’s Role in Sentencing” which had been removed from this draft of the Code should be reintroduced, as these contained relevant information for prosecutors, victims and witnesses.
- 9.7 One respondent felt there should be a separate section or a cross-reference to the DPP’s “Instructions on Unjustified Court Reporting Restrictions”.
- 9.8 One respondent thought that a section on co-operation with other prosecutors from other countries would be useful and that there should be a section on mutual legal assistance in criminal matters.
- 9.9 It was felt that the section on “Venue” was not clearly explained. Reference was made to the 2004 edition of the Code where venue was better explained under “Mode of Trial”. It was suggested that this section be reintroduced into the new edition of the Code. It was also suggested that the use of technology in giving evidence should be mentioned, such as the use of video links.
- 9.10 A section on professional ethics was suggested as being a useful addition to the Code. One respondent thought it would be useful to have a section which records the obligation of prosecutors to comply with court orders.

- 9.11 A glossary or “jargon busting” page was suggested as being very useful for members of the public. Links to other related documents, such as guidelines covering a prosecutor’s role in court proceedings, trials, disclosure and sentence, were also recommended by a number of respondents.
- 9.12 One respondent suggested that a diagram showing the process followed by the police and the CPS in order to establish whether it is appropriate to prosecute should be incorporated into the Code.
- 9.13 One respondent made the point that one of the reasons to reconsider a decision not to prosecute should be where an inquest has found that a prosecution should be brought.

CPS Response

- 9.14 We consider that the current section on the “Threshold Test” provides sufficient clarity on the overarching principles involved; the Director’s Guidance on Charging supplements the Code and provides further detailed guidance.
- 9.15 We have inserted a reference to the Code of Practice for Victims of Crime in recognition of this important document which prosecutors must follow.
- 9.16 The section on “Youths” has been expanded and makes clear that prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people.
- 9.17 The paragraphs relating to cases requiring the consent of the DPP have been clarified and consolidated into a single paragraph in the section on “The Decision Whether to Prosecute” (paragraph 3.7 of the revised Code).
- 9.18 As a result of the consultation responses, the sections on “Accepting Guilty Pleas” and “The Prosecutor’s Role in Sentencing” have been restored (sections 10 and 11 of the revised Code).
- 9.19 We do not consider that reference to separate guidance on court reporting restrictions should be made in the Code, which is aimed at providing overarching guidance on how prosecution decisions are reached. Such guidance already exists and is separate from the Code.
- 9.20 The Code does contain information about how the prosecution service co-operates with other jurisdictions to facilitate enquiries and prosecutions both in England and Wales and abroad (paragraph 1.6 of the revised Code).
- 9.21 The section on “Venue” has been redrafted for greater clarity and accuracy, and is now under the heading “Mode of Trial”.
- 9.22 In the section on: “Reconsidering a Prosecution Decision” a further reason to reconsider has been added, namely, where there is a: *“case 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” (paragraph 12.2 of the revised Code).

- 9.23 It was not considered necessary to insert a section on professional ethics into the Code as this is dealt with in the DPP’s “Statement of Ethical Principles for the Public Prosecutor” which was published in 2009, and which should be read in conjunction with the Code. This is available on the CPS website.
- 9.24 We also consider that the request for a glossary of terms and a flow chart to assist members of the public would detract from the Code itself and in particular, we do not believe that the insertion of diagrams would be consistent with the scope and purpose of the Code.
- 9.25 In the light of more detailed comments received, the CPS has also amended the wording in certain paragraphs throughout the Code to avoid any ambiguity or concern that respondents identified in the original wording.
- 9.26 All other suggestions have been carefully considered but have not been accepted.

10. Next Steps

- 10.1 The CPS has carefully considered all the responses to the draft Code issued for public consultation and has now made significant changes to the text.
- 10.2 These changes, as summarised in this document, are now contained in the sixth edition of the Code, which is published alongside this Summary of Responses.
- 10.3 The sixth edition of the Code replaces the 2004 edition of the Code.

ANNEX A

LIST OF RESPONDENTS

1. Members of the Public

Clive Barker
Pat Barker
Neville Benson
Mr P Westrip

2. Police and Law Enforcement Agencies

Association of Chief Police Officers (ACPO)
Avon and Somerset Constabulary
Counter Terrorism and Serious Crime Directorate, City of London Police.
Force Crime & Justice Police HQ, Surrey Police
Lancashire Constabulary
Local Policing Improvement Branch, Greater Manchester Police
North Wales Police (Two separate responses)
Northamptonshire Police
Police Federation of England and Wales
Public Protection Unit Police Headquarters, Hindlip, Worcester
Serious Organised Crime Agency
Suffolk Constabulary
West Mercia Police
West Yorkshire Police

3. Local Criminal Justice Boards (LCJBs)

Durham LCJB
Northumbria LCJB
West Mercia LCJB

4. Overseas Prosecuting Authorities

Bureau of External Affairs, Security and Development, Quebec, Canada
General Prosecutor's Office of Slovak Republic
Government of Alberta, Prosecution Service, Canada
Polish National Prosecutor's Office
Prosecutor General's Office, Germany
Prosecutor General's Office, Portugal
Public Prosecution Service, Nova Scotia

5. CPS and Staff groups

Ian Brownlee
Colin Chapman
David Evans
Lisa Hennessey
Pascale Jones
Joey Kwong
Chris Lewis
Sue Walker
FDA/CPS Professional Issues Sub Committee

6. CPS Community Involvement Panels and Hate Crime Scrutiny Panels

CPS Cumbria – Community Involvement Panel
CPS Greater Manchester – Disability Hate Crime Panel
CPS Lancashire – Community Involvement Panel
CPS Norfolk – Hate Crime Scrutiny Panel, Norfolk
CPS South West Group – Community Involvement Panel
CPS Wales – North Wales Community Involvement Panel

7. Judiciary/Magistracy

Rt Hon Lord Justice Leveson (Senior Presiding Judge for England and Wales at time of response)
The Magistrates' Association
The National Bench Chairmen's Forum
Nicholas Moss J.P.
Marvyn Slater J.P.
Andrew Turek J.P.
Bexley Magistrates' Court
The Justices' Clerks' Society

8. Academics and Academic Institutions

Holborn College
Northumbria Law School, Northumbria University
Nottingham Trent University
School of Law, Southampton Solent University
The City Law School, City University London
University College London
University of Cambridge
University of Portsmouth

9. Public Authorities and Other Government Departments

Department for Business, Innovation and Skills
Department for Work & Pensions, Department of Health (Legal Group, Prosecutions Policy)
Health & Safety Executive
Her Majesty's Crown Prosecution Service Inspectorate
Legal Services Commission
Legal Services Department, Welsh Assembly Government
NHS Business Services Authority, Counter Fraud and Security Management
Office for Criminal Justice Reform (OCJR)
Prison Officers' Association
Rail Safety and Standards Board
Trading Standards Service, Devon County Council
Youth Justice Board

10. Barristers/Solicitors/Legal Executives

Criminal Bar Association
Criminal Law Committee, The Law Society
Criminal Law Solicitors' Association
Institute of Legal Executives
South Eastern Circuit Committee of the Bar

11. Media

Media Lawyers Association
The Newspaper Society

12. Third Sector Organisations

Neighbourhood Watch, Derbyshire
Victim Support
Rights of Women
Safer Wales
Wiltshire Independent Advisory Group
The Howard League for Penal Reform

ANNEX B

EQUALITY AND DIVERSITY IMPACT ASSESSMENT

The CPS currently monitors the application of the Code for adverse impact on defendants and victims and witnesses in relation to equality and diversity factors in a number of ways.

As part of our Equality and Diversity Impact Assessment procedure, evidence arising from these activities was considered and taken into account during the pre-consultation phase of the development of the revised Code.

The responses to the consultation and the analysis of existing CPS evidence did not identify any evidence of adverse impact as a result of the revisions to the Code.

However, areas for improvements to CPS monitoring systems have been identified.

The action plan to improve monitoring will be consulted on and published in the full Equality and Diversity Impact Assessment report by July 2010.

Any future evidence of adverse impact will be fully addressed.

This is a public document.

**To view or download an electronic copy of this document,
please visit our website:**

www.cps.gov.uk

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