

APPENDIX 16

The role of the Crown Prosecution Service

A guide produced by members of the Crown Prosecution Service

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1 INTRODUCTION

The Crown Prosecution Service (CPS) is the principal public prosecuting authority for England and Wales and is headed by the Director of Public Prosecutions (DPP).

The CPS is a national organisation consisting of 42 Areas.

Although the CPS works closely with the police, it is independent of them.

The CPS co-operates with the investigating and prosecuting agencies of other jurisdictions.

The DPP is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be applied when making decisions about prosecutions. The fifth edition of *The Code for Crown Prosecutors* (the Code) was issued in November 2004 and replaces all earlier versions. The Code is a public document and is available on the CPS website: <http://www.cps.gov.uk/>.

2 THE DECISION TO PROSECUTE

The Criminal Justice Act 2003 introduced changes in the law which mean that Crown Prosecutors rather than police officers are now responsible for making the decision to charge a person with a criminal offence in all but the most minor and straightforward of cases. *The Director's Guidance on Charging* (Second Edition, January 2005) (The Director's Guidance) is guidance issued by the DPP to police officers and Crown Prosecutors under section 37A of the Police and Criminal Evidence Act 1984 (as amended by the Criminal Justice Act 2003) on how and by whom charging decisions should be made.

The Director's Guidance states that 'offences classified as domestic violence' must always be referred to a Crown Prosecutor for early consultation and charging decisions, whether admitted or not.

Since this change in the law, in order to facilitate efficient and effective early consultations and make charging decisions, Crown Prosecutors have been deployed as 'Duty Prosecutors' at police stations for such hours as are agreed locally. This service is complemented by a centrally managed out of

hours duty prosecutor arrangement ('CPS Direct') to ensure a continuous 24 hour service.

Crown Prosecutors (and police officers) make decisions to charge in accordance with the Code and the Director's Guidance using either the Full Code Test or the Threshold Test. The Threshold Test applies where the case is one in which 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. Where a Crown Prosecutor makes a charging decision in accordance with the Threshold Test, the case must be reviewed in accordance with the Full Code Test as soon as reasonably practicable, taking into account the progress of the investigation.

The police are responsible for investigating criminal offences but Crown Prosecutors should provide guidance and advice to investigators throughout the investigative and prosecuting process. This may include lines of inquiry, evidential requirements and assistance in any pre-charge procedures. Crown Prosecutors will be proactive in identifying and, where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.

The Full Code Test has two stages. The Crown Prosecutor must first be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. If the evidential test is passed it must then be decided whether a prosecution is needed in the public interest. The Code gives examples of common public interest factors both for and against prosecution.

The Threshold Test requires Crown Prosecutors to decide whether there is at least a reasonable suspicion that the suspect has committed an offence, and if there is, whether it is in the public interest to charge the suspect. This Test is applied to those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the Full Code Test is not yet available. The Full Code Test must be applied as soon as reasonably practicable.

The CPS leaflet entitled *Prosecutions – The decision to prosecute* explains how prosecution decisions are reached.

The CPS leaflet *Domestic Violence – How prosecution decisions are reached* provides additional information about cases involving domestic violence.

3 VICTIMS OF CRIME

Final responsibility for the decision as to whether or not to proceed with a prosecution rests with the CPS.

The CPS prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. For this reason, although the interests of the victim are important, they cannot be the final consideration when deciding whether or not to prosecute.

However, when considering the public interest, Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute and any views expressed by the victim or the victim's family.

Sometimes Crown Prosecutors make decisions to either drop or substantially alter charges. When they do this they must inform the victim in writing of the decision and the reasons for it.

In certain categories of case, namely deaths, sexual offences, child abuse cases, racially or religiously aggravated offences and homophobic crimes, a

meeting will always be offered to the victim or the victim's family by the prosecutor who has dropped or substantially altered a charge. The prosecutor retains the discretion to offer meetings in other categories of case.

Where a decision not to charge a suspect is taken during a face-to-face consultation between the investigating officer and a Duty Prosecutor, the responsibility for notifying the victim remains with the police. However, where that decision is taken following the submission of a full file or evidential report to the CPS, which is considered in the absence of the investigator, the Crown Prosecutor will provide a written explanation to the victim. A written explanation will also be given where, having been provided with an explanation by the police, a victim requires further information.

4 POLICY FOR PROSECUTING CASES OF DOMESTIC VIOLENCE

In 2004 the Government agreed a definition of domestic violence to replace the various definitions used by government departments and other agencies. The CPS uses that definition which is:

'any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality'

The CPS *Policy for Prosecuting Cases of Domestic Violence* (February 2005) is available on the CPS website.

When the CPS is deciding whether to prosecute cases of domestic violence the safety of the victim, children and any other person at risk will be a priority.

Domestic violence co-ordinators

The CPS has a network of Domestic Violence Co-ordinators (DVCs). Each of the CPS Areas has a DVC who is a prosecutor with experience and expertise in handling cases of domestic violence. DVCs have close links with police domestic violence units and local organizations that provide advocacy and support to victims and witnesses. They also help to implement the national policy, address problems and identify and share good practice. They take part in multi-agency meetings and training whilst also providing assistance to colleagues and being involved in the qualitative monitoring of domestic violence prosecutions.

What happens where there are civil proceedings?

Prosecutors recognize that criminal and civil law may need to be used in conjunction. Where there are concurrent criminal and civil proceedings (and prosecutors will need to make enquiries to see if this is the case), prosecutors will work to ensure that the courts have appropriate information to enable them to make consistent orders that prioritise the safety of victims and children. The CPS also acknowledges that some victims may not wish the criminal route to be engaged at all, preferring to make use of civil remedies or other safety and support mechanisms.

When reviewing files, prosecutors will ask the police to provide information about any relevant civil proceedings past, current or pending

Prosecutors should be aware of the options open to victims or other agencies under civil procedures (and, in this regard are referred to *Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions*, Department for Constitutional Affairs, February 2003) so that a holistic approach can be taken in safeguarding and supporting victims.

The CPS recognises that there are complex policy and legal issues regarding the use within criminal proceedings of evidence arising from civil proceedings – particularly family court proceedings, which are generally held in chambers. However, prosecutors will not be deterred from making appropriate use of information about civil proceedings in the course of their review or prosecution of cases of domestic violence. For example, the fact that a non-molestation injunction was issued/breached is likely to be relevant to review and bail decisions. Breach of a non-molestation order will be a criminal offence when new provisions contained in the Domestic Violence, Crime and Victims Act 2004 are implemented.

In any event, the CPS would always welcome contact from solicitors who represent in civil/family proceedings clients who are facing criminal proceedings (whether as defendant or victim). In some cases criminal and civil law remedies may need to be used in conjunction. It is therefore very important that solicitors are aware of the current status of any criminal proceedings, any orders made (particularly with regard to bail conditions) and consider how those proceedings might affect the civil/family proceedings and vice versa. Crown Prosecutors who are aware of civil/family proceedings can similarly take into account the nature of those proceedings and any existing orders when reviewing the case and making representations at court, whether at a hearing to consider bail or other type of hearing.

The availability of civil proceedings does not diminish a defendant's criminal behaviour and is not therefore a reason, in itself, to discontinue.

What happens when the victim withdraws support for a prosecution?

Sometimes victims will ask the police not to proceed any further with the case and say that they no longer wish to give evidence. This does not mean that the case will automatically be stopped. As a general rule, the CPS will prosecute cases where there is sufficient evidence and it is in the public interest to do so.

When this happens prosecutors have to find out why before they can decide what action to take. This may involve requesting an adjournment of the court proceedings to investigate the facts and decide the best course of action.

The CPS policy document contains further information about what steps will be taken when the victim withdraws support for a prosecution and what happens when a decision is taken to continue with a prosecution against the victim's wishes.

Helping victims and witnesses to give evidence

The help that is available to victims and witnesses generally includes:

- provision of interpreters when required
- payment of reasonable witness expenses

- in certain circumstances, special measures directions (for example for use of screens or a live link by the witness) made under the Youth Justice and Criminal Evidence Act 1999
- in certain types of cases, reporting restrictions imposed under section 46 of the Youth Justice and Criminal Evidence Act 1999
- a court Witness Service, which is provided by Victim Support. Also, in some areas, specialist domestic violence support organisations can arrange pre-court familiarisation visits and work alongside the CPS/police Witness Care Units

Inter-agency working

Responsible information-sharing plays a key role in enabling organisations and professionals to protect victims of domestic violence and their children and to save lives. Casework, advocacy, conducting risk assessments and providing general support and protection may all require information about individuals to be shared with other agencies. In February 2005 the Association of Chief Police Officers (ACPO) published guidance called *Identifying, Assessing and Managing Risk in the context of Policing Domestic Violence*. The Home Office has published information and advice for practitioners who work with victims of domestic violence (*Safety and Justice: sharing personal information in the context of domestic violence – an overview*) which can be accessed on its website www.homeoffice.gov.uk/rds. A national CPS/ACPO/Social Services Protocol exists and a police/family court protocol is currently being piloted in the North West and London.

5 BAIL

In deciding whether to oppose bail, prosecutors will examine the circumstances of the defendant and the alleged offence to see whether there are substantial grounds for believing that the defendant, if granted bail, would

- commit an offence whilst on bail
- interfere with prosecution witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person
- fail to surrender to custody (at court in future)

It is also possible for the prosecution to argue that the defendant should be kept in custody for his or her own protection.

Where there are substantial grounds for believing that the events mentioned above might occur but these concerns can adequately be addressed by the imposition of bail conditions, the court, after hearing representations from the prosecution and the defence, may release the defendant on conditional bail. The court may impose any condition which appears to be necessary to address the concerns and which is workable and proportionate.

The CPS is committed to working with the police, courts and support agencies to make sure that the victim or witness is promptly informed of bail conditions and any change to the bail conditions or custody status of the defendant. (The duties of agencies to provide information to victims of crime on such matters as charging, bail and sentencing decisions will be reinforced with the introduction of a statutory Victims' Code of Practice under the

Domestic Violence, Crime and Victims Act 2004.) A solicitor representing in civil/family proceedings a client who is a witness or a defendant in criminal proceedings can always contact the CPS office dealing with the case to confirm the bail position and the stage that the criminal proceedings have reached.

If the defendant breaches bail conditions, the police can arrest the defendant and the court can remand the defendant in custody. New criminal offences may have been committed (and sometimes breaches of civil orders may have occurred) in addition to the bail conditions being breached and any new offence will be reviewed and a decision made whether to prosecute. Where no new criminal offence has been committed, an alleged breach of a civil order may be relevant for the prosecutor in deciding whether to oppose bail.

Where there is a condition not to contact a witness, it does not matter if the witness has agreed to or initiated any contact with the defendant. It is the defendant who is the subject of bail conditions.

6 SENTENCING

Crown Prosecutors should draw the sentencing court's attention to, amongst other things:

- any victim personal statement
- where appropriate, evidence of the impact of the offending on a community
- any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).

Crown Prosecutors should also 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.

The Anti-Social Behaviour Act 2003 allows prosecutors, following a conviction for any criminal offence, to ask the court to make the defendant the subject of an anti-social behaviour order (known as a 'bolt-on ASBO'); or the court can itself take the view that such an order is necessary. This might be appropriate, for example, in a domestic violence context, where it was clear that the abuser's behaviour had an effect upon neighbours and the community as well as the immediate victim. (An ASBO cannot be used to protect anyone who lives in the same household as the person who is the subject of the order.)

The Protection from Harassment Act 1997 gives the court power to impose a restraining order, in addition to any other penalty, upon conviction for an offence under section 2 or section 4. This may be particularly appropriate in a domestic violence context.

The Domestic Violence, Crime and Victims Act 2004 contains provisions (not yet in force) which allow courts to impose restraining orders upon conviction or upon acquittal of any offence.

The Criminal Justice Act 2003 aims to provide a sentencing framework which is clearer and more flexible than before. Amongst the first provisions to be implemented in April 2005 were those which allow courts to impose longer sentences on 'dangerous offenders' who are convicted of violent or sexual offences.