

GUIDELINES TO REPLACE ALL PREVIOUS GUIDELINES

(14 November 2003)

GUIDELINE TO ALL STAFF OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS ACTING ON MY BEHALF, AND TO POLICE

ISSUED BY THE DIRECTOR OF PUBLIC PROSECUTIONS UNDER SECTION 11(1)(a)(i) OF THE *DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984*

These are guidelines not directions. They are designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency in the administration of criminal justice.

The Director of Public Prosecutions represents the community. The community's interest is that the guilty be brought to justice and that the innocent not be wrongly convicted.

1. DUTY TO BE FAIR

The duty of a prosecutor is to act fairly and impartially, to assist the court to arrive at the truth.

- a prosecutor has the duty of ensuring that the prosecution case is presented properly and with fairness to the accused;
- a prosecutor is entitled to firmly and vigorously urge the Crown view about a particular issue and to test and, if necessary, to attack the view put forward on behalf of the accused; however, this must be done temperately and with restraint;
- a prosecutor must never seek to persuade a jury to a point of view by introducing prejudice or emotion;
- a prosecutor must not advance any argument that does not carry weight in his or her own mind or try to shut out any legal evidence that would be important to the interests of the person accused;
- a prosecutor must inform the Court of authorities or trial directions appropriate to the case, even where unfavourable to the prosecution; and
- a prosecutor must offer all evidence relevant to the Crown case during the presentation of the Crown case. The Crown cannot split its case.

2. FAIRNESS TO THE COMMUNITY

The prosecution also has a right to be treated fairly. It must maintain that right in the interests of justice. This may mean, for example, that an adjournment must be sought when insufficient notice is given of alibi evidence, representations by an unavailable person or expert evidence to be called by the defence.

3. EXPEDITION

A fundamental obligation of the prosecution is to assist in the timely and efficient administration of justice.

- cases should be prepared for hearing as quickly as possible;
- indictments should be finalised as quickly as possible;
- indictments should be published to the defence as soon as possible;
- any amendment to an indictment should be made known to the defence as soon as possible;
- as far as practicable, adjournment of any trial should be avoided by prompt attention to the form of the indictment, the availability of witnesses and any other matter which may cause delay; and
- any application by ODPP for adjournment must be approved by the relevant Legal Practice Manager, the Director or Deputy Director.

4. THE DECISION TO PROSECUTE

The prosecution process should be initiated or continued wherever it appears to be in the public interest. That is the prosecution policy of the prosecuting authorities in this country and in England and Wales. If it is not in the interests of the public that a prosecution should be initiated or continued then it should not be pursued. The scarce resources available for prosecution should be used to pursue, with appropriate vigour, cases worthy of prosecution and not wasted pursuing inappropriate cases.

It is a two tiered test:

- (i) is there sufficient evidence?; and
- (ii) does the public interest require a prosecution?

(i) Sufficient Evidence

- A prima facie case is necessary but not enough.
- A prosecution should not proceed if there is no reasonable prospect of conviction before a reasonable jury (or Magistrate).

A decision by a Magistrate to commit a defendant for trial does not absolve the prosecution from its responsibility to independently evaluate the evidence. The test for the Magistrate is limited to whether there is a bare prima facie case. The prosecutor must go further to assess the quality and persuasive strength of the evidence as it is likely to be at trial.

The following matters need to be carefully considered bearing in mind that guilt has to be established beyond reasonable doubt:-

- (a) the availability, competence and compellability of witnesses and their likely impression on the Court;
- (b) any conflicting statements by a material witness;
- (c) the admissibility of evidence, including any alleged confession;
- (d) any lines of defence which are plainly open; and
- (e) any other factors relevant to the merits of the Crown case.

(ii) **Public Interest Criteria**

If there is sufficient reliable evidence of an offence, the issue is whether discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

Discretionary factors may include:-

- (a) the level of seriousness or triviality of the alleged offence, or whether or not it is of a 'technical' nature only;
- (b) the existence of any mitigating or aggravating circumstances;
- (c) the youth, age, physical or mental health or special infirmity of the alleged offender or a necessary witness;
- (d) the alleged offender's antecedents and background, including culture and ability to understand the English language;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the alleged offender in connection with the offence;
- (g) whether or not the prosecution would be perceived as counter-productive to the interests of justice;
- (h) the availability and efficacy of any alternatives to prosecution;

- (i) the prevalence of the alleged offence and the need for deterrence, either personal or general;
- (j) whether or not the alleged offence is of minimal public concern;
- (k) any entitlement or liability of a victim or other person to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (l) the attitude of the victim of the alleged offence to a prosecution;
- (m) the likely length and expense of a trial;
- (n) whether or not the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- (o) the likely outcome in the event of a conviction considering the sentencing options available to the Court;
- (p) whether the alleged offender elected to be tried on indictment rather than be dealt with summarily;
- (q) whether or not a sentence has already been imposed on the offender which adequately reflects the criminality of the episode;
- (r) whether or not the alleged offender has already been sentenced for a series of other offences and what likelihood there is of an additional penalty, having regard to the totality principle;
- (s) the necessity to maintain public confidence in the Parliament and the Courts; and
- (t) the effect on public order and morale.

The relevance of discretionary factors will depend upon the individual circumstances of each case.

The more serious the offence, the more likely that the public interest will require a prosecution.

Indeed, the proper decision in most cases will be to proceed with the prosecution if there is sufficient evidence. Mitigating factors can then be put to the Court at sentence.

(iii) **Impartiality**

A decision to prosecute or not to prosecute must be based upon the evidence, the law and these guidelines. It must never be influenced by:-

- (a) race, religion, sex, national origin or political views;

- (b) personal feelings of the prosecutor concerning the offender or the victim;
- (c) possible political advantage or disadvantage to the government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution.

5. THE DECISION TO PROSECUTE PARTICULAR CASES

Generally, the case lawyer should at least read the depositions and the witness statements and examine important exhibits before a decision whether or not to indict, and upon what charges, is made.

Where the case lawyer has prosecuted the committal hearing, it will generally not be necessary to wait for the delivery of the depositions before preparing a draft indictment. Unless the matter is complex or borderline, the case lawyer will often be able to rely upon his or her assessment of the committal evidence and its impact upon the Crown case without delaying matters for the delivery of the transcript.

(i) Child Offenders

Special considerations apply to child offenders. Under the principles of the Juvenile Justice Act 1992 a prosecution is a last resort.

- The welfare of the child and rehabilitation should be carefully considered;
- Ordinarily the public interest will not require the prosecution of a child who is a first offender where the offence is minor;
- The seriousness of the offence or serial offending will generally require a prosecution;
- Driving offences that endanger the lives of the child and other members of the community should be viewed seriously.

The public interest factors should be considered with particular attention to:

- (a) the seriousness of the alleged offence;
- (b) the age, apparent maturity and mental capacity of the child (including the need, in the case of children under the age of 14, to prove that they knew that what they were doing was seriously wrong and was deserving of punishment);
- (c) the available alternatives to prosecution, and their efficacy;