



Prosecution Code

Issued by Her Majesty's Attorney General for the Isle of Man

Introduction

1. The fair and effective prosecution of an individual, whether a person or body corporate, is essential to the maintenance of law and order. So, the decision to charge is a serious step as even in minor cases a prosecution can have serious implications for all involved; the victim, witnesses and for the defendant. Prosecutors are accordingly required to apply the Code to ensure that they make fair and consistent decisions.
2. The statutory responsibility for all criminal prosecutions in the Isle of Man rests with H.M. Attorney General who has engaged a Director of Prosecutions with a team of experienced prosecuting lawyers to assist and advise the Attorney and to whom the Attorney has delegated the application of this Code.
3. The Code contains important information for all those who work in the Criminal Justice System and for the general public. It helps Prosecutors on behalf of the Attorney to play their part in ensuring that justice is achieved.

General Principles

4. Each case must be considered on its own. There are, however, general principles which will apply in all cases.
 5. The duty of the Prosecutor is to make sure that the right person is prosecuted for the right offence and that all relevant facts are given to the Court.
 6. Prosecutors must be fair, independent and objective. They must never let their personal views of the ethnic, or national origin, sex, religious beliefs, political views or sexual preference of the offender, victim or any witness, influence their decisions. They must not be affected by improper or undue pressure from any source, including Government.
1. Any legal advice contained in this communication may be subject to Attorney General's privilege, in which case neither the fact of consultation nor the opinion or advice given may be disclosed outside Government without the express consent of the Attorney General.
 2. Whilst the legal advice privilege attaching to this communication is always ultimately the privilege of the recipient, the contents are not to be forwarded or quoted in whole or in part without the express consent of the sender.

The Code Tests

7. There are two stages in any decision to prosecute. The first stage is the **Evidential Test**. If the case does not pass the Evidential Test a prosecution will not go ahead, no matter how important or serious it may otherwise be. If the case does pass the Evidential Test the Prosecutor must then separately decide if a prosecution is warranted in the public interest.
8. The second stage is, therefore, the **Public Interest Test**. The Prosecutor will only start or continue a prosecution when a case has passed both tests. The Evidential Test and the Public Interest Test are explained below.

The Evidential Test

9. Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge. They must also consider what the defence case may be and how that is likely to affect the evidence in a Prosecution case.
10. A realistic prospect of conviction is an objective Test. It means that the Judge or a Jury, properly directed in accordance with the Law is, on the basis of the evidence, more likely than not to convict the defendant of the charge alleged.
11. When deciding whether there is sufficient evidence to prosecute, Prosecutors must consider whether the evidence can be used and is reliable. There will be cases in which the evidence does not give any cause for concern. There will, however, also be cases in which the evidence may not be as strong as it first appears. Prosecutors must ask themselves the following questions:-

Can the evidence be used in Court?

12. Is it likely the evidence will be excluded by the Court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence to ensure a realistic prospect of conviction?
13. Whenever Prosecutors have concerns over the possible exclusion of evidence or the sufficiency of the admissible evidence, Prosecutors will always seek a second opinion from another Prosecutor before reaching a decision.

Is the evidence reliable?

- a. Is it likely that a confession is unreliable because (for example) of the defendant's age, intelligence or lack of understanding?
- b. Is there material which might affect the credibility of the witness? For example, does the witness have any dubious motive that may affect his or her attitude to the case or a relevant previous conviction?

- c. If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

The Public Interest Test

14. The public interest must be considered in every case where there is enough evidence to provide a realistic prospect of conviction. In cases of any seriousness, a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. The Attorney may from time to time issue policies and guidance to Prosecutors which will be published as to how the Prosecutors must deal with specific offences with which policies the Prosecutors must comply.
15. Prosecutors in making any prosecution decision must balance factors for and against prosecution carefully, fairly and consistently. Public interest factors which could affect a decision to prosecute can often depend on the seriousness of the offence or the circumstances of the offender.
16. Some factors - including any published policy issued by the Attorney - may emphasize the requirement to prosecute, but other factors or published policies may suggest that another course of action would be better followed. The following lists some common public interest factors (both for and against prosecution) which are not exhaustive. The factors which may apply or not will depend on the facts in each case.

Some common Public Interest Factors in Favour of Prosecution

17. The more serious the offence the more likely it is that a prosecution will be required in the public interest. A prosecution is probable if:
 - a. A conviction is likely to result in a significant sentence.
 - b. A weapon was used or violence was threatened during the commission of the offence.
 - c. The offence was committed against a person serving the Public (for example a Police Officer, Prison Officer or Nurse).
 - d. The defendant was in a position of authority or trust.
 - e. The evidence shows that the defendant was a ringleader or an organiser of the offence.
 - f. There is evidence that the offence was premeditated.
 - g. There is evidence that the offence was carried out by a group.
 - h. The victim of the offence was vulnerable, has been put in considerable fear or suffered personal attack, damage or disturbance.
 - i. The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, personal views or sexual preference.
 - j. There is a marked difference between the actual or mental ages of the defendant and the victim or there is an element of corruption.

- k. The defendant's previous convictions or cautions are relevant to the present offence.
- l. The defendant is alleged to have committed the offence whilst under an Order of the Court.
- m. There are grounds for believing that the offence is likely to be continued or repeated.
- n. The offence, although not serious in itself, is widespread
- o. The offence has resulted in substantial financial loss.

Some Common Public Interest Factors against Prosecution

18. A prosecution is less likely to be needed if:
- a. The Court is likely to impose a very small or nominal penalty.
 - b. The offence was committed as a result of genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
 - c. 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).
 - d. There has been a long delay between the offence taking place and the date of the trial, unless:
 - i. The offence is serious.
 - ii. The delay has been caused in part by the defendant.
 - iii. The offence has only recently come to light.
 - iv. The complexity of the offence has meant that there has been a long investigation.
 - e. The prosecution is likely to have a very bad effect on the victim's physical or mental health (always bearing in mind the seriousness of the offence).
 - f. 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 prosecuting a defendant who is suffering from significant mental or physical ill health with a need to safeguard the general public.
 - g. The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they can pay compensation).
 - h. Details may be made public which could harm sources of information, International relations or National security.
 - i. The defendant is already serving a lengthy custodial sentence and little more may be gained by further prosecution.
 - j. The Defendant has been, or will be, subject to appropriate Regulatory action or Civil proceedings which adequately address the offending.
19. Deciding the question of public interest is not simply a matter of adding up the number of factors for and against prosecution. Prosecutors must decide how important each factor is in the circumstances of each case and go on to make their overall assessment. Prosecutors before final determination of the public interest test consult with another Prosecutor to obtain their opinion.

20. In the event that following any review of the prosecution decision Prosecutors reach a different conclusion as to the Evidential Test or Public Interest Test and so whether there is a reasonable prospect of conviction if a charge is made, then the case must be referred to the Attorney for his own final determination.

The Relationship Between the Victim and the Public Interest

21. Prosecutors always act in the public interest and not just in the interest of any one individual. Prosecutors must always consider and think very carefully about the interests of the victim and the views expressed by the victim, and the impact that the offending has had upon them. If the victim is a child or a person unable to speak for themselves, it may often be necessary to take into account the views of the victim's family or other persons responsible for care of the victim. The views of the victims must be taken into account at all stages, including considering whether or not it is in the public interest to commence a prosecution, discontinue a prosecution or to agree to certain pleas. The interests of the victim are always an important factor when considering where the public interest lies.

Young Offenders

22. Prosecutors must consider the interests of youth when deciding whether it is in the public interest to prosecute. The stigma of a conviction can cause very serious harm to the prospects of a young offender or a young adult. The Prosecutor must have regard to the fact that young offenders can on occasion be diverted from entry into the Criminal Justice System without the need for a Court appearance. The younger the child, the less likely it is that prosecution would be in the public interest. However, the seriousness of the offence or the offender's past behaviour may make prosecution necessary.

The Threshold Test – Charging in Special Circumstances

23. In exceptional circumstances, the normal evidential test may not be capable of being met because not all the required evidence is available immediately, but there is a substantial risk the suspect may abscond or commit further serious offences. Therefore, if it is proposed that it is in the public interest to charge the suspect, an application will be made to the court to keep a suspect in custody (or to seek substantial conditions imposed on bail) and where the following conditions are met, the suspect may be charged even though the evidential test is not met at that point in time.
24. The conditions are:
- a. the evidence required to apply the Evidential Test is not yet available but is reasonably believed to exist;
 - b. it can be obtained within a reasonable time;
 - c. the seriousness or the circumstances of the case justify making an immediate charging decision;
 - d. there are continuing substantial grounds to object to bail; and

- e. in all the circumstances of the case an application to withhold bail may properly be made.

Charges

25. Prosecutors (when asked to advise) must select charges which:
 - a. Reflect the seriousness of the offending.
 - b. Give the Court adequate sentencing powers.
 - c. Enable the case to be presented in a clear and simple way.

Power of the Attorney General to Overrule a Prosecutors' Decision

26. As the Attorney General is the ultimate authority in respect of all prosecutions on the Island, he has the power to overrule a Prosecutor's decision not to prosecute. Prosecutors must inform a complainant when they have decided not to charge a defendant of this possibility.
27. Similarly, the Attorney General may direct a Prosecutor not to proceed with a prosecution which has been commenced.

Conclusion

28. This Prosecution Code is designed to make sure that everyone knows the principles which Prosecutors apply when carrying out their work. Prosecutors must take account of the principles of this Code when they are deciding whether to charge a defendant with an offence or not.
29. By applying the same principles, Prosecutors are helping the Criminal Justice System to treat victims fairly and prosecute the defendants fairly and effectively.



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John L.M. Quinn

H.M. Acting Attorney General