



Llywodraeth Cymru
Welsh Government

GUIDANCE

The Welsh Government prosecution code

The code gives guidance to prosecutors on the principles to be applied when making decisions about Welsh Government prosecutions.

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Preface

1. The Welsh Government Prosecution Code (the “Code”) gives guidance to prosecutors on the principles to be applied when making decisions about Welsh Government prosecutions.
2. The decision to prosecute is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Every prosecution has serious implications for all those involved, including witnesses and defendants. This code is intended to ensure that fair and consistent decisions about prosecutions are made. This code is issued by the Counsel General.
3. The Counsel General, by virtue of section 45 of the Government of Wales Act 2006 (the “Act”) is a member of the Welsh Government. Section 67 of

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the Act enables the Counsel General to commence prosecutions in his or her own right. There may be occasions where the power to commence a prosecution is reserved to the Welsh Ministers. In those instances, prosecutions will be commenced in the name of the Welsh Ministers. Reference in this code to a “Welsh Government prosecution” is a reference to a prosecution being considered for commencement or one which is commenced pursuant to a Counsel General or Welsh Ministers function.

4. In this code, the term “suspect” is used to describe a person or body of persons corporate or unincorporate which is not yet the subject of formal criminal proceedings; the term “defendant” is used to describe a person or body of persons corporate or unincorporate which is the subject of formal criminal proceedings; and the term “offender” is used to describe a person or body of persons corporate or unincorporate which has admitted their guilt to an investigator or prosecutor, or they have been found guilty in a court of law.
5. Reference in this code to “prosecutor” or “prosecutors” is a reference to lawyers who provide advice and representation in relation to Welsh Government prosecutions. The terms “investigator” or “investigators” is used to describe Welsh Government officials or agents who investigate alleged criminal offences in the course of their duties.
6. In certain cases the Director of Public Prosecutions (the “DPP”) may decide to take over the conduct of a Welsh Government prosecution or the DPP may institute proceedings in relation to offences where the Counsel General or the Welsh Ministers also have prosecution functions. In these instances the Code for Crown Prosecutors will apply.

General prosecution principles

7. Prosecutors must ensure that each case is considered on its own facts and that the law is properly applied in all cases and that all relevant evidence is put before the court.
8. Prosecutors must not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court’s process.
9. In considering whether to commence a prosecution, prosecutors must be

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fair, independent and objective. Prosecutors must not let any personal views about the characteristics of the suspect, victim or any witness influence their decisions. In considering whether to commence a prosecution, prosecutors must not be affected by improper or undue pressure from any source, be it from within or outside the Welsh Government. Prosecutors must comply with current and relevant equalities legislation.

10. Prosecutors must apply the provisions of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with the Criminal Procedure Rules currently in force and have due regard to the requirements of the United Nations Convention on the Rights of the Child (The Rights of Children and Young Persons (Wales) Measure 2011 makes provision for and in connection with giving further effect in Wales to the rights and obligations set out in the United Nations Convention on the Rights of the Child).

The prosecution test

11. A prosecution must not be commenced unless the case has passed both stages of the Prosecution Test. The 2 stages are: (i) the sufficient evidence stage, followed by (ii) the public interest stage.

Sufficient evidence stage

12. Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect for each offence under consideration. Prosecutors must anticipate defence arguments and how they may affect the prospect of conviction. Any case which does not pass the sufficient evidence stage must not proceed any further, no matter how serious or sensitive it may be.
13. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, taking into account any defence already put forward or which might be put forward by the suspect. It means that a 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 offence alleged.

14. When deciding whether there is sufficient evidence to prosecute, prosecutors must consider the following factors:
 - a. The admissibility of the evidence in court. Prosecutors must consider whether or not all of the evidence is likely to be admissible. If some evidence is likely to be excluded by the court, prosecutors must consider whether enough evidence exists which is admissible for a realistic prospect of conviction.
 - b. Whether the evidence is reliable. Prosecutors must consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.
 - c. Whether the evidence is credible. Prosecutors must consider whether there are any reasons to doubt the credibility of the evidence.

Public interest stage

15. The public interest must be considered in each case where there is sufficient evidence to provide a realistic prospect of conviction. Prosecutors must balance factors for and against prosecution carefully and fairly.
16. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by way of Simple Caution rather than bringing a prosecution.
17. When deciding the public interest, prosecutors should consider the following factors:
 - a. The seriousness of the offence – the more serious the offence the more likely it is that a prosecution is required.
 - b. The circumstances of the offence – the extent to which the offending was premeditated and/ or planned. Whether the commission of the offence has continued despite all efforts made to ensure compliance through, for example, other enforcement tools including regulatory interventions and civil penalties.
 - c. The circumstances of the suspect – this includes whether the suspect is, or was at the time of the offence, suffering from any significant mental or

physical ill health. In some circumstances this may mean that it is less likely that a prosecution is required.

- d. Whether the suspect has any previous criminal convictions.
 - e. The age of the suspect at the time of the offence – the criminal justice system treats a person under the age of 18 differently from adults. Therefore significant weight must be attached to the age of the suspect if they are under 18. The best interests and welfare of a person under the age of 18 are paramount. Prosecutors must have regard to the obligations arising under the United Nations Convention on the Rights of the Child (the “UNCRC”) and the Rights of Children and Young Persons (Wales) Measure 2011 which gives further effect in Wales to the rights and obligations set out in the UNCRC.
 - f. The circumstances of the victim (in cases where there is an identifiable victim) – the greater the vulnerability of the victim, the more likely it is that a prosecution is required.
 - g. The impact of the offending on the environment – the greater the impact of the offending on the environment, the more likely it is that a prosecution is required.
 - h. The impact of the offending on the community – the greater the impact of the offending on the community, the more likely it is that a prosecution is required.
 - i. Prosecutors should consider whether there is an element of danger to the health or safety of the public.
 - j. Prosecutors should also consider whether a prosecution is proportionate to the likely outcome, and in so doing the cost to the Welsh Government and the wider criminal justice system. However, prosecutors should not decide the public interest on this basis of cost alone.
 - k. Prosecutors should consider whether proceeding with a prosecution could harm sources of information, international relations or national security.
18. The factors listed above provide guidance to prosecutors when determining whether or not it is in the public interest to commence or continue with a prosecution. This list is not exhaustive, and not all the public interest factors will be relevant to every case. The weight to be attached to each of the public interest factors will also vary according to the facts and merits of each case.

Selection of offences

19. Prosecutors must select offences which:
 - a. reflect the seriousness and extent of the offending
 - b. give the court adequate powers to sentence and impose appropriate postconviction orders, and
 - c. enable the case to be presented in a clear and simple way.
20. Prosecutors must not proceed with more offences than are necessary just to encourage a defendant to plead guilty to a few. In the same way prosecutors must not proceed with a more serious offence in order to encourage a defendant to plead guilty to a less serious one.

Simple cautions

21. A simple caution is a serious matter. It is an admission by the offender that they have committed an offence. A simple caution may be administered in place of a prosecution in court if it is an appropriate response to the seriousness and consequences of the offending. Prosecutors must follow any relevant guidance when asked to advise on or authorise a simple caution (**Simple cautions: guidance for police and prosecutors** on GOV.UK). Prosecutors must be satisfied that there is a clear admission of guilt which provides a realistic prospect of conviction, and that the public interest would be properly served by such a disposal.

Venue for trial

22. Prosecutors must have regard to the allocation guidelines and any relevant and up to date sentencing guidelines when making submissions to the magistrates' court about where the defendant should be tried.
23. Prosecutors must bear in mind that a person under the age of 18 should be tried in the youth court wherever possible. It is the court which is best designed to meet their specific needs. A trial of a person under the age of 18 in the Crown Court should be reserved for the most serious cases or where the interests of justice require that they be jointly tried with an adult.

Accepting guilty pleas

24. There may be occasions where defendants want to plead guilty to some, but not all, of the offences. Alternatively, they may want to plead guilty to a different, possibly less serious offence because they are admitting only part of the crime.
25. Prosecutors must only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient to do so.
26. In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests of the victim, or in appropriate cases the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.
27. It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the offences but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

Revisiting the decision to prosecute

28. There may be cases where a prosecutor believes it is necessary to overturn a decision not to prosecute or to deal with a case by way of a simple caution or when it is appropriate to restart a prosecution, particularly if the case is serious.
29. This may occur where a further review of the original decision shows that it was wrong and in order for the public to maintain confidence in the prosecution process, a prosecution should be brought despite the earlier decision.
30. There may be occasions where a case has been stopped, but further evidence has come to light and after a review of the evidence a prosecutor decides that the prosecution test has been passed.

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