



**RESPONSE OF THE CRIMINAL BAR ASSOCIATION  
TO THE CONSULTATION OF THE CPS ON AMENDING  
THE CODE FOR CROWN PROSECUTORS**

1. The Criminal Bar Association has been invited to respond to the CPS consultation on an amended Code for Crown Prosecutors. The previous version of the Code dates back to April 2004 and changes have been made to reflect, amongst other things, the introduction of pre-trial witness interviews.
2. Overall the CBA ["CBA"] is in favour of the proposed changes subject to the more specific comments below

**Is the role of the Crown Prosecution Service explained clearly enough?**

3. In general the role of the CPS is explained clearly however when describing the service provided by CPS Direct it may assist to explicitly state that this is a service dealing with all 42 areas. It is felt that the wording found on the CPS Direct website, namely "CPS Direct is the national out of hours service that provides charging advice on behalf of the 42 Crown Prosecution Service Areas in England and Wales" is preferable to the current final sentence of the second paragraph of the draft Code namely, "CPS direct is a virtual Area which provides charging decision and advice outside office hours."

**Pre-Trial Interview**

4. The consultation paper does not specifically address the changes to the Code produced by the insertion of Pre-Trial Interviews. The CBA however wishes to make the following comments:

5. Paragraph 5.5 of the April 2004 version of the Code included the phrase "But they should look closely at it when deciding if there is a realistic prospect of conviction" which has been omitted from the new draft to make way for the reference to pre-trial interview with witnesses. The CBA are of the view that the deleted phrase should be reinserted, with the reference to pre-trial interviews following on from it.
6. It remains important that all evidence is properly considered and evaluated when applying the evidential test. Whilst pre-trial interviews may assist in certain cases, namely where the credibility or reliability of the witness is in question, there remain other types of evidence which Crown Prosecutors may be unsure about in terms of reliability or admissibility. These issues may be very important when properly assessing whether there is a "realistic prospect of conviction" and it is for those reasons that the CBA wish to retain the omitted sentence.

**Is it clear how the public interest may be applied when not all the evidence has yet been gathered?**

7. The CBA feels that the drafting of paragraph 5.14 is currently ambiguous, in particular the phrase "the test set out in this section should be applied". The CBA suggests that this is replaced with "the Full Code Test should be applied".
8. The purpose of paragraphs 5.14-5.17 is presumably to enable a Crown Prosecutor to stop a case, before the cost of a full investigation is incurred, if it is clear that it will not be in the public interest to proceed with the case. Paragraph 5.16 requires the Crown Prosecutor to "only take such a decision when they have all the information available regarding public interest factors". It is felt that this is too broadly drafted. Just as there are cases when it takes time for all the evidence to be gathered, it is too onerous to expect all the information regarding public interest factors to be available. There may be situations where one piece of information, (for example the Defendant being in a permanent vegetative state) which enables the Crown Prosecutor to correctly make a decision about whether it is in the public interest to proceed without the necessity of waiting for all information regarding public interest to be gathered.
9. The following draft is suggested "Crown Prosecutors should only take such a decision when it is clear that it is not in the public interest for the case to continue and where the Crown

Prosecutor is confident that no further information will alter that decision whether that information relates to the case as a whole or more specifically to the public interest considerations.”

**Is the Threshold Test explained in sufficient detail, and in an understandable way?**

10. Paragraph 6.11 states that the Crown Prosecutors “must go on to consider the public interest stage of the Full Code Test based on the information available at the time”. The CBA feels that the term “consider” is ambiguous and should be replaced with “apply”. Alternatively further guidance needs to be provided as to how the Crown Prosecutor should do approach the issue of public interest when applying the Threshold test.

**Is the prosecutor’s role in sentencing clearly explained; if not, what amendments would you make?**

11. The CBA agree that it is appropriate to expand this part of the code, to reflect the prosecution’s right to appeal sentence and the consequential change in emphasis of the role of the prosecutor in sentencing matters. The CBA suggests that, logically, the order of paragraphs might be 11.1, 11.2, 11.5, 11.4 and 11.3. There may be an issue as to whether “any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).”, is still required in paragraph 11.1, given the proposed inclusion of what, at present, is paragraph 11.4, although advice as to available orders is not the same as making an application for such an order and the availability and appropriateness of an order can have an impact on sentence.

**Is there any section of the Code for Crown Prosecutors that you think should be expanded, and if so what should be included?**

12. In addition to the suggestion made under the heading **Pre-Trial Interview**, above, the CBA suggest that Paragraph 6.10 D) might be clarified by the substitution of “any consequential delay” for “it”.

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