

Criminal Law Solicitors' Association

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CLSA response to:

Public consultation on the Code for Crown Prosecutors

Question 1: Do you have any views on the text on bias at paragraph 2.8?

We encourage the additional text to focus issues on bias. We note that it may be helpful to specify that bias can be present in perceptions of defendants, victims and crimes. We suggest something like:

'Bias can apply to the Defendant, the Victim or the offence itself.'

Question 2: Do you have any views on the clarification of the timing of a charging decision and the appropriate use of action plans at paragraphs 4.3-4.4?

No, this seems sensible.

Question 3: Do you agree that prosecutors should take into account any views provided by the victim, their circumstances and any risk to them, when making a charging decision? (paragraph 4.18, Question 1, bullet 1)

We feel that caution is needed here. The current code clear sets out that the circumstances of the victim ought to be taken into account. The amendment at consultation question 1 makes it clear that avoiding bias in decision making is, rightly, of the utmost importance.

The 'circumstances' of the victim should naturally include the impact of the offence; risk assessment etc.

We endorse the clarification in bullet point "[T]he CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest."

However, by explicitly including in the code that prosecutors should take into account "any views provided by the victim" is at risk of blurring this line.

There will be a significant number of cases where a victim feels entitled to 'see the defendant get what they deserve' which, for them, is a court appearance. Specifically requiring prosecutors in every case to consider the victim's views would:

a) Delay decision making – both pre-charge and at court when representation are made to deal with something out of court or review the public interest.
b) Put undue pressure on Crown Prosecutors to toe the line between being a public prosecuting body and provide explanation for every decision to victims.

Question 4: In cases charged under the Threshold Test, do you agree with bringing forward the deadline for the application of the Full Code Test to before the indictment is lodged? (paragraph 6.11)

We support this inclusion and feel that this will could the number of ineffective PTPH's.

Addressing the Crown Court backlog – Selection of charges

- In line with recent amendments to CPS guidance, we are encouraging prosecutors to consider whether offending is more suitably dealt with in the magistrates' court than the

Crown Court, providing that the charge reflects the seriousness of the offence and gives the court sufficient sentencing powers. Revisions have been made to the section on The Selection of Charges, so that prosecutors may consider deterrent effect, cost and delay when selecting charges.

Question 5: Do you have any views on the approach or the text at paragraph 7.2, which allows prosecutors to consider deterrent effect, cost and delay when selecting charges?

No views.

Question 6: Do you have any views on the inclusion of text, or on any of the specific text, on non-prosecution powers and proceedings in the Code? (paragraphs 1.4, 2.5, 3.1, 4.5, 4.7 and 4.13)

1.4 – no

2.5 – no

3.1 – no

4.5 – no

4.7 – no

4.13 - no

Question 7: Do you have any other views on the draft Code?

We often find difficulties when it comes to public interest in charging decisions made by the police, with no prosecution input until the case first comes before the Court, and this could be ensured by a simple line 'In police charged cases, the public interest test will be considered prior to the first court appearance'.

It would also be helpful to remind prosecutors in the alternatives to prosecution for the option of restraining order on acquittal.

Regarding 'Where a suspect was under 18 at the time of the offence but will be 18 or over by the date of any conviction and sentence, and so sentenced as an adult, prosecutors should consider whether a prosecution may lead to an unjust outcome, particularly where there will be a long period between the offence and any sentence.' We would suggest including 'This may result in offences which are more serious and typically not suitable for an out of court disposal being considered for out of court disposals.