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Response to	Consultation on The Code for Crown Prosecutors 2018
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Who we are

The Magistrates Association (MA) is the independent membership body for the magistracy. We work to promote the sound administration of the law, including by supporting our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the magistracy, the courts and the broader justice system. With 15,000 members across England and Wales, we are a unique source of independent insight and information on the magistracy.

Questions for Consultation

In advance of its finalisation and implementation, we would welcome your views on four specific questions regarding the revised Code:

Question 1: Do you agree that when deciding whether there is sufficient evidence to prosecute, prosecutors should consider whether there is any other material that may affect the sufficiency of evidence?

Although this is clearly a decision for prosecutors, we agree that the suggested addition will be a useful step in the process which ensures material that has not been examined or that might be available through further investigation is being fully considered in a timely manner.

It might be useful for there to be clarification as to what “other material” may be, other than further evidence.

Question 2: Do you have any views on the revised Threshold Test?

It is not clear why under 5.8, the requirement for prosecutors to consider what “charges that all the evidence will support” when assessing what further evidence may be gathered has been removed.

It might also be helpful for there to be reference to the criteria that should be used by prosecutors in assessing the seriousness of the case.

We do, however, acknowledge the welcome addition reminding prosecutors that not just that the decision to charge must be kept under review, but that they must be proactive in seeking additional evidence or material from the police.

Question 3: Prosecutors are required to consider a suspect's / defendant's proceeds of crime when deciding whether to charge [4.14.b], when selecting charges [6.1.c], when making submissions on court venue [8.3] and when a defendant offers a plea [9.2]. Do you have any observations on these requirements?

We can see the benefits of this additional step for prosecutors to ensure the charges and venue are appropriate in order for the necessary confiscation and other court orders to be available on conviction.

Question 4: Do you have any further comments on the proposed revisions to the Code? Any comments that you have outside these questions are also welcome.

We note the change in definition for “offender” and believe the amendment is much clearer.

Similarly, the inclusion of a paragraph stating the importance of prosecutors being independent as the first General Principle is to be welcomed.

We welcome the inclusion of a reference that consideration must be made as to whether there are any differences in approach required where the law differs in England and Wales. Although justice is not a devolved issue, it is true that the Welsh Government is able to legislate on certain matters that will impact on prosecution decisions.

We also welcome the updated language, such as replacing “mode of trial” with “court venue” as we believe this simplification will ensure greater understanding and transparency for all. Similarly, using the term “children and young people” instead of “youths” is in line with current practice amongst other agencies and stakeholders.

In relation to the Public Interest Stage, we are not sure whether the addition of requiring prosecutors to consider “The likely sentence in the event of a conviction” when deciding the seriousness of the offence is helpful. It may be that the intention is to consider any minimum sanctions set by parliament, as well as possible sentencing ranges in order to judge seriousness of offence but it seems to be unrealistic for a prosecutor to be able to appropriately judge a likely sentence without access to the full range of information needed for such a decision. If aiming for uniformity of approach, then the Code should adopt the definition of seriousness as set out in S143 of the Criminal Justice Act 2003.

On considering likely culpability of a suspect, we suggest it may be helpful to include reference of the Liaison and Diversion scheme (and comparator in Wales) which could be used to provide relevant information about a suspect’s mental health or learning disabilities which may impact on culpability.

We welcome the inclusion that in considering whether to bring a prosecution, any lower culpability due to a suspect being compelled, coerced or exploited will be taken into account.

There is also welcome clarification in relation to hate crime, so any situation where discrimination or prejudice is involved will be considered more seriously.

In relation to the point that prosecutors should consider any likely adverse effect on a victim’s physical or mental health if a prosecution was taken forward, we welcome the balancing of this with reminder of measures available to support victims, and the possibility of taking a prosecution forward without

the participation of a victim. We believe this is particularly important in relation to domestic abuse cases and those involving particularly young and vulnerable victims.

We support the insertion of a reminder that young adults will continue to mature into their mid-twenties, so the maturity of a defendant should not only be considered in relation to those under 18 year of age. However, we would point out that including this bullet point under the heading, “Was the suspect under the age of 18 at the time of the offence?” risks people answering “no” and then not reading the bullet points under the heading. This will mean they are not therefore considering maturity for young adults.

We welcome the inclusion of the reminder that a Community Impact Statement can be sought to assess the impact on a community.

We welcome the addition of the victim’s right to review CPS decisions – this will ensure greater transparency and therefore confidence in CPS decisions.