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Task: Explain the role of a crown prosecutor and identify the tests used when making charging decisions?

In England and Wales, the criminal justice system is a complicated web of interwoven functions and responsibilities that work together to ensure that the Law is enforced, justice is served, and the rights of its citizens are protected. At the centre of this system is the crown prosecutor who is a qualified solicitor or barrister who acts as an impartial arbiter responsible for reviewing and advising about every prosecution case and who oversees the fraught confluence between the police, defendants, victims, and the courts as referred to under s2.1 of the Full Code Test. This essay intends to explain the role of a crown prosecutor and identify the tests they use when making charging decisions.

The Crown Prosecution service (CPS) was established in 1986 under 'The Prosecution of Offences Act 1985' and is an independent authority under the direction of the Director of Public Prosecutions. The DPP must be a solicitor or barrister who has at least 10 years' experience who is the head of the CPS who works independently, under the superintendence of the Attorney General and is accountable to Parliament for the CPS's work. The DPP have employees who are known as the crown prosecutors. The Crown Prosecution make independent decisions to prosecute criminal cases that the police or other investigating authorities have investigated in England and Wales following the general framework set out in 'The Code for Crown Prosecutors' issued by the DPP under section 10 of the Prosecution of Offences Act 1985. It is their duty to decide whether to prosecute most alleged criminal offences or not and to ensure that the right person is convicted for the correct offence and to ensure the offender is brought to justice and it is served whenever possible as referred to in s2.5. It is not for them to decide whether the person is guilty of a criminal offence but to assess whether it is appropriate to present charges to be considered by the criminal court as mentioned in s2.2.

The Crown Prosecutor is a qualified solicitor or barrister who follows the code framework set out by the Crown Prosecution service to formally review a case that they have taken over from the police or an alternative investigating agency. This review is a continuous process, and the prosecutor must consider any changes in the circumstances as the case develops. They will consider whether to charge or dismiss prosecution in every case including indictable only and either way offences that are not suitable for sentencing in magistrates' courts due to the likeliness of the sentencing occurring more than 6 months imprisonment or if a guilty plea could not be anticipated because the defendant has not pleaded guilty or there is insufficient evidence for the police to charge the defendant as mentioned in s4.

Everyone who is not involved in the prosecution's decision-making process is excluded from the Crown Prosecutor's work environment. They need to be fair, impartial, and honest to secure justice for all when always taking a decision, as mentioned in s2.1, and they must make sure they are free from any political influence or affected by any form of influence or pressure from any other sources, such as personal beliefs.

The Crown Prosecutor is responsible for ensuring that the law has been correctly applied in all situations, that all pertinent evidence has been given to the court, and that all disclosure duties have been met. The Crown Prosecutor must consider each case's unique facts and merits while also applying the general principles of the Code and making sure that the European Convention on Human Rights' principles have been applied in accordance with the Human Rights Act of 1998, which is mentioned in Section 2.10, at each stage of the case.

The Crown Prosecutor uses 2 tests to establish this, the Full code and threshold test to consider whether to continue with the alleged offence and whether to prosecute or to abandon it. They will start or continue with a prosecution when confident both elements of the full code test have passed in the case. There are instances where the threshold test can be used to prosecute the suspect even though the full code test was unsuccessful. This will occur when the case or circumstances surrounding it are serious enough to warrant an immediate charge and significant enough justification to deny a bail application.

The Full Code Test is a two-stage test that is described in s4.2 of the Code for Crown Prosecutors, this is made up of the evidential test and the public interest test. When deciding the first element of the full code test, 'the Evidential stage' referred to under s4.6-4.8, the Crown Prosecutor will assess if there is sufficient evidence to charge for an offence and must consider whether the evidence is trustworthy, accurate and its integrity is undeniable. Whether the evidence can be utilised in court and if it provides a realistic prospect of conviction and that there is no defence or material that has not been thoroughly investigated that may render the evidence inadmissible and weaken the case against the accused. They must be completely satisfied that each defendant will be found guilty based on the available evidence.

The second element referred to in s4.9 to 4.14, is when the Prosecutor will consider if it is the public's interest to bring the case before the courts for prosecution or propose an out of court disposal by considering the seriousness of the offence committed, the circumstances of it, the offenders' circumstances, and the circumstances of any victims in the case or to drop it completely. A prosecution will only be dropped if it is determined that there are more compelling reasons not to pursue it, such as the possibility that the evidence would remain insufficient even after additional investigation or that doing so would not serve the public interest.

The full code test will only be used when all reasonable avenues of enquiry has been exhausted or when prior to the conclusion of the investigation, the prosecutor is confident that the application of the full code test would not be impacted by any new evidence, whether it is favourable or adverse to the prosecution. The prosecutor will tell the investigating office in writing of their decision following the application of the Full code test. If they decide that no charges should be filed and no warning should be issued, the custody officer will then be required to inform the suspect in writing of this decision.

The threshold test described in S5 is the second test the Crown Prosecutor uses. The threshold test is occasionally used in situations where the full code test was not satisfied to charge a suspect. This is applicable when the nature of the crime or the surrounding circumstances make it appropriate to decide to charge someone immediately and deny them bail for compelling reasons.

The threshold test is made up of 5 elements that the prosecutor must carefully evaluate to ensure that this test is only applied, when necessary, as mentioned in s5.5 to s5.11. Before this test can be applied all 5 requirements must be met. This test cannot be used, and the suspect cannot be accused of the offence if even one requirement is not met. The first requirement the Crown Prosecutor will have to consider is if they are entirely satisfied that there are reasonable grounds to suspect that the individual committed an offence after considering any suggested defences. The second is whether any additional evidence could be obtained to provide a realistic prospect of a conviction quickly. This is on the theory that any additional information will make it capable of establishing a realistic prospect of conviction based on the full code test. The third is determining

the seriousness of the situation or the circumstances that would lead to an immediate charge and decrease the likelihood that bail will be granted. The fourth is if there are any continuing reasonable grounds to refuse bail been granted in accordance with the Bail Act 1976 and under all the circumstances of the case it is necessary to do so due to the individual not suitable for bail even with substantial conditions i.e., a dangerous suspect who poses a significant risk to the public. The last thing they need to consider is if the suspect been charged is in the public's interest. Any decision to charge under the threshold test will remain under review.

In conclusion, since 1986, a Crown Prosecutor's responsibility has been to evaluate all relevant facts in line with the full code test and threshold test, abiding by the crown prosecution services code to initiate a prosecution in a case or to close it without taking any further action. They must act independently while working, without letting any outside factors clouding their judgement. They guarantee that justice will be done and that the proper individual will be found guilty of the offence. The selection of charges will be representative of the seriousness and extent of the offence and the case will be presented in a clear and basic manner to understand as according to s6. That the public's interest in the prosecution will be considered at all stages and that if any stages of the tests cannot be established then a prosecution will not go ahead.

References:

Hannibal, M. and Mountford, L. (2021) *Criminal Litigation*. Pp134-144, Oxford, England. Oxford University Press. 17th edn

The code for Crown Prosecutors available at: [Code-for-Crown-Prosecutors-October-2018.pdf \(cps.gov.uk\)](https://www.cps.gov.uk/code-for-crown-prosecutors-october-2018.pdf) (accessed: 24th July 2023)