

CODE OF CONDUCT FOR PROSECUTORS

PUNJAB CRIMINAL PROSECUTION SERVICE

1. Introduction

- 1.1 The Code of Conduct for Prosecutors (the Code) is issued by the Prosecutor General under section 17 of the Criminal Prosecution Service Act, 2006 (the Act) with the prior approval of the Government.
- 1.2 This edition is the latest version of the Code and replaces all earlier versions.
- 1.3 The Code is binding on all prosecutors working under the control of the Prosecutor General and must be applied by them while taking prosecution decisions.
- 1.4 In addition to and subject to the provisions of the Act and the Code, Prosecutors must also comply with any guidance issued by the Prosecutor General under section 10(1) of the CPS Act, 2006.
- 1.5 In this Code, the term
 - a) 'CPS' means the Punjab Criminal Prosecution Service
 - b) 'Suspect' is used to describe a person who is not yet the subject of formal criminal proceedings
 - c) 'Accused' is used to describe a person who has been charged.

2. Coordination and cooperation with the police

- 2.1. Prosecutors must cooperate and coordinate with the police to ensure fair and just prosecutions.
- 2.2. Coordination and cooperation means and entails advice and guidance to the police regarding possible lines of enquiry, evidential requirements and pre-charge procedures. It is meant to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However prosecutors cannot direct the police or other investigators except in accordance with section 4.

3. General Principles of Prosecution

- 3.1 The decision to prosecute is a serious step that affects suspects, victims, witnesses and the public at large and must be taken with the utmost care and caution
- 3.2 Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction. Acting in the interest of justice means that Prosecutors must acquaint themselves with the facts and circumstances of the case and work to ensure that the right person is prosecuted for the right offence and no one else.
- 3.3 Prosecutors must also ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are met. Prosecutors must also consider whether trial is the best solution.
- 3.4 Prosecutors must perform their duties in an open and fair manner and not let their personal views regarding race, ethnicity, religion, sect, gender, age, national origin, political affiliation, social status and/or education influence their decisions. Similarly Prosecutors must not be affected by improper or undue pressure from any source.
- 3.5 A prosecutor must be equivocal and clearly communicate his decision including the grounds thereof

4. Prosecutorial Decisions

- 4.1 A decision to prosecute is taken when a prosecutor finds a case is fit for trial against one or more suspects. A decision to start a prosecution is the same as a decision to prosecute
- 4.2 A decision not to prosecute is taken when a prosecutor finds that a case is not fit for trial against one or more suspects. A decision to decline a prosecution is the same as a decision not to prosecute
- 4.3 A decision to continue with a prosecution is taken when a prosecutor declines a request for withdrawal or decides not to withdraw a prosecution.
- 4.4 A decision to withdraw a prosecution is taken when the Prosecutor or

Government decides that the requirements of the Full Code Test are no more met and files an application for withdrawal in the Court.

- 4.5 A decision to terminate a prosecution under section 10(3)(f) is taken when the Prosecutor General or a prosecutor specially authorized by him informs the Court on behalf of the Government that Prosecutionshall not prosecute the accused upon the charge
- 4.6 A decision to appeal is taken when a Prosecutor or the Government, after consideration of relevant facts, directs the filing of an appeal or files an appeal
- 4.7 A decision to file a revisionfor enhancement of sentence is taken when after review of the facts and circumstances of the case, the prosecutor or government decides that the quantum and type of sentence is not commensurate with the gravity of the offence, and files an application for enhancement of sentence

When should a prosecution decision be taken?

- 4.8 A decision to prosecute or not to prosecute must be taken when a review of the police case has been finalized.
- 4.9 A decision to withdraw a prosecution must be taken when a case in court fails to continue to fulfill the requirements of the Full Code Test
- 4.10 Prosecutors should identify and, where possible, seek to rectify evidential weaknesses, but, subject to the Threshold Test (see section 6), they should decline to prosecute cases which do not meet the Full Code Evidential Test (see section 5A) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution (see section 5B). Although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help inform the prosecutor's decision.
- 4.11 Prosecutors review every case they receive from the police or other investigators. Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops,

including what becomes known of the defence case. Wherever possible, they should talk to the investigator when thinking about changing the charges or declining a prosecution. Prosecutors and investigators work closely together, but the final responsibility for the decision whether to prosecute or not rest with the CPS.

- 4.12 Prosecutors may only take a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test
- 4.13 A prosecutor cannot be directed to take a decision with a pre-determined outcome

Enquiries and Directions

- 4.14 A prosecutor may lawfully direct a police officer to rectify evidential weaknesses at any stage of the investigation
- 4.15 A prosecutor must direct the police to ensure forensic analysis of items collected
- 4.16 A prosecutor may direct the police
 - a) to collect additional evidence
 - b) to follow a line of enquiry
 - c) to provide additional information about the collection of evidence
 - d) to provide additional information about the circumstances of a witness
 - e) to explain why a key witness was not examined
 - f) to explain why testimony of a key witness was not recorded early on
- 4.17 In accordance with the law or the requirements of fair trial, the Prosecutor shall seek to ensure that all necessary and reasonable enquiries are made and the responses taken into account while taking prosecution decisions.
- 4.18 A prosecutor must never direct the police to alter evidence. A prosecutor may not direct the Police to alter a finding although the Police may do so if as a result of the clarifications sought they find differently.

5. The Full Code Test

- 5.1 The Full Code Test comprises of two tests applied one after the other. These tests are the Evidential Test and the Public Interest Test.
- 5.2 The Full Code Evidential test must be applied when the investigation is complete and no key evidence remains to be collected. The Public Interest test should be applied when a case clears the Full Code Evidential Test. Exceptions to this rule is cases in which public interest is clear and no amount of evidence will override the public interest.
- 5.3 A case, which does not pass the evidential stage, must not proceed, no matter how serious or sensitive it may be.

5A. The Evidential Test

- 5.4 **The Test:** That on an objective assessment of the evidence, including the impact of any defence or any other information that the suspect has put forward or which he might rely upon, the Prosecutor comes to the conclusion that a magistrates or judge hearing a case is more likely than not to convict the accused on the charge. This is a different test from the one that the criminal courts themselves apply, which is that the court must be sure beyond a shadow of doubt that the accused is guilty.
- 5.5 **When to apply the Test?** The Test must be applied
 - a) When a prosecutor receives a police report for assessment
 - b) When investigation against a particular suspect is substantially complete and the prosecutor is satisfied that the broad extent of criminality has been determined
 - c) When in the opinion of the Prosecutor an event has occurred during judicial proceedings that weakens the case of the prosecution, and
 - d) When a lawful direction is issued to review the case to determine whether the case still complies with the Full Code Test
 - e) When an accused submits an application under section 265-K or section 249-A of the Code of criminal procedure
- 5.6 **Factors to be taken into consideration:** When applying the Evidential test the Prosecutor must keep in mind the following factors:
 - a) Can the evidence be relied upon?

In determining the reliability of evidence the prosecutor must bear in mind the process of collection of evidence and the credibility of witnesses. Any violations of the legally acceptable or mandated process of collection/recording may lead to its becoming unreliable. Witnesses may be unreliable because of various factors such as old age, inability to remember past events, relationship with the victims and/or the complainant; any likely motives for the commission of perjury, such as financial gain, duress, past history of witnesses, lack of requisite knowledge or experience etc. However the prosecutor must not deem evidence collected by police to be inadmissible and/or tainted unless its unreliability is clear and obvious.

b) Is the evidence sufficient?

Evidence must be present on all counts and sufficient to bring home the point. For instance if the same event has been seen by a large number of witnesses a lesser level of scrutiny may suffice. However single witnesses must pass a higher level of scrutiny. Similarly the prosecutor must ensure that the requisite tests have been conducted on physical evidence.

c) The defence perspective

When a line of defence is adopted or is open to be adopted by a suspect or accused, the Prosecutor should also consider it, and in an objective manner. In other words, a line of defence or potential line of defence should be reasonably taken into account by the Prosecutor on the basis of available evidence.

5.7 In the institution of criminal proceedings, prosecutors will only proceed when a case is well founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence; throughout the course of proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence.

5B. The Public Interest Test

5.8 In every case where there is sufficient evidence to justify a prosecution a prosecutor must go on to consider whether a prosecution is required in the public interest.

5.9 **The Test:** The test requires that in the assessment of the prosecutor

public interest factors tending against the prosecution outweigh the factors tending in favor of it. All prosecutions are in the public interest unless there are factors in exercise that require a prosecution may not be made.

5.10 When deciding the public interest the prosecutors should consider each of the questions set out below so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the Prosecutor General, should enable prosecutors to form an overall assessment of the public interest. The questions identified are not exhaustive, and all the questions may not be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

5.11 In deciding the public interest the prosecutors must take into account the views of the victims however this is not the determining factor. The CPS does not act for victims or their families in the same way as lawyers act for their clients, and prosecutors must form an overall view of the public interest.

5.12 **The Factors:** While applying the Public Interest Test the Prosecutor must keep in mind the following factors and considerations:

a) How serious is the offence?

The more serious the offence the more likely it is that a prosecution is required. Seriousness can be determined from the following factors:

- The extent of harm or loss caused to a person
- The grievousness of injuries caused
- The number of victims
- The age of the victim
- The commission of a sexual crime in the presence of the victims family
- The extent of premeditation
- The offence involves an act of terrorism
- The offence intended to cause a miscarriage of justice
- Cruelty in the commission of the offence
- The offence is part of organized crime
- The defenselessness of the victim
- The likelihood of the offence continuing and offender repeating the offence if not convicted
- Offence is of a nature that a conviction will result in a significant

sentence

- Prosecution would have a significant impact in terms of deterrence of crime and/or boosting the community's confidence in the rule of law
- The offence targeted public officials in the performance of their duties

b) The extent of culpability of the offender?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

c) The circumstances of the Victim?

The circumstances of the victim may make a prosecution more likely. Thus where a victim is targeted because of his or her religion, sect, ethnicity, gender and/or economic or social vulnerability, it is more likely that a prosecution is required. Also the greater the vulnerability of the victim, the more likely it is that a prosecution is required.

d) The age and circumstances of the offender

The age and circumstances of the offender may make a prosecution less likely. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public

e) The impact of the offence on the community

The greater the adverse impact of the offence on the community, the more likely it is that a prosecution is required.

f) The remorse shown by the offender or actions taken by him to undo the wrong

Where the offender has shown remorse and taken actions to undo the wrong a prosecution is less likely.

g) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The cost of the Government and the wider criminal justice system is excessive when weighed against any likely penalty. Prosecutors should, however, not decide the public interest on this factor alone

- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

6. The Threshold Test

6.1 The Threshold Test may only be applied where all the evidence is not available and a decision is required to be made regarding detention or the start of a prosecution

6.2 When the Threshold Test may be applied?

- a) The Threshold test may be applied when police seek custody of a suspect for investigation purposes or a bail risk is present and there is insufficient evidence available to apply the Full Code Test; and
- b) When the evidence is substantially but not wholly complete and the seriousness or the circumstances of the case require the taking of a prosecution decision

6.3 There are two parts to the evidential consideration of the Threshold Test

a) **The first part of the Threshold Test – is there reasonable ground?** Prosecutors must be satisfied that there is at least a reasonable ground that the person to be charged has committed the offence. In determining this, prosecutors must consider the evidence then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:

- i) it is relevant; and
- ii) it is capable of being put into an admissible format for presentation in court; and
- iii) it would be used in the case.

b) **The second part of the Threshold Test – Will further evidence provide a realistic prospect of conviction?** Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is

capable of establishing a realistic prospect of conviction in accordance with the Full Code Test. The further evidence must be identifiable and not merely speculative. In reaching this decision prosecutors must consider:

- i) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
- ii) the charges that all the evidence will support;
- iii) the reasons why the evidence is not already available;
- iv) the time required to obtain the further evidence, and
- v) Whether any consequential delay is reasonable in all the circumstances?

6.4 The threshold test must not be used to take a decision to start a prosecution where evidence on which the criminality of the suspect hinges is in the process of forensic analysis.

6.5 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

6.6 A decision in pursuance of the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the decision is still appropriate. The Full Code Test must be applied as soon as is reasonably practicable.

7. Selection of Charges

7.1 Prosecutors should select charges which:

- a) reflect the seriousness and extent of the offending supported by the evidence;
- b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
- c) enable the case to be presented in a clear and simple way. This means that prosecutors may not always choose or continue with the most serious charge

7.2 Prosecutors should not change the charge simply because of the decision made by the court during pre-trial proceedings

8. Mode of Trial

- 8.1 Where the circumstances of the Case require a higher sentence than the court can impose, the Prosecutor must immediately apply for the case to be transferred to the court, which can impose the requisite sentence.
- 8.2 Speed must never be the only reason for asking for a case to remain in the magistrates' court. But prosecutors should consider the effect of any likely delay if a case is sent to the Sessions Court, and the possible effect on any victim or witness if the case is delayed.

9. Accepting Guilty Pleas

- 9.1 In rare cases accused persons may want to plead guilty under a misperception regarding the nature of the offence or because they want to shield someone. In such situations the prosecutor must stress the court to order a trial to determine the truth.

10. Selection of witnesses

- 10.1 While the Police prepare the calendar of witnesses, the Prosecutor determines the actual selection. This means that the Prosecutor has the final say in the matter of selection of witnesses. While selecting witnesses the Prosecutor should be guided by the following factors
 - a) Whether a witness can speak to the facts necessary to prove the prosecutors case?
 - b) Whether a witness is competent to provide evidence?
 - c) Is the proposed witness credible, reliable and natural?
 - d) Is the proposed evidence admissible and material to the case?
 - e) The impact of the evidence on the witness.

11. Seeking sentences

- 11.1 Prosecutors must only seek a sentence that is commensurate with the facts and circumstances of the case.

12. Filing of Appeals or revisions

- 12.1 The Prosecutor should only recommend an appeal or revision after

considering the following factors

- a) Merits of the Judgment
- b) Likelihood of success of appeal or revision, and
- c) Public Interest

12.2 An appeal or revision against the sentence must be filed where the sentence does not correctly reflect the gravity of the offence or where the court has not taken into account the relevant aggravating and mitigating factors.

13. Disclosure

13.1 In order to ensure fair trial the prosecutor must make adequate disclosure to the defence. The rule regarding disclosure is that full disclosure should be made of all material held by the Prosecution including the police that may weaken the case of the prosecution or strengthens that of the defence.

14. Tender of Pardon

14.1 A pardon should only be considered by a Prosecutor where the offence is of a serious nature, there are overwhelming reasons for the prosecution to go ahead and there is a great need for and high value attached to the approver's evidence.

14.2 A prosecutor may initiate the process of grant of tender of pardon on his own or on the request of the concerned police officer or on the order of the court.

14.3 An offer of pardon must contain the specific actions required on the part of the accomplice to whom the offer is being made.

14.4 A tender of pardon must be in writing and signed by the District Public Prosecutor.