

## **A GUIDE TO PRIVATE PROSECUTION PROCEDURE IN ENGLAND AND WALES**

1. A member of the public can bring a private prosecution for any offence, unless the offence is one for which the consent of the Attorney General (AG) or the Director of Public Prosecutions (DPP) is required before a prosecution can take place. S.6(1) of the PROSECUTION OF OFFENCES ACT 1985 (POA).
2. The private prosecution is commenced by laying an 'information' at, followed by the issue of a warrant by, a magistrate's court. Rule 7.2 of the Criminal Procedure Rules (Crim.PR).

### **LAYING AN INFORMATION**

3. Before a warrant can be issued an information must be laid at a magistrate's court. R.7.2(2) Crim.PR.
4. The information may be laid before a magistrate or a magistrate's clerk. This must be done in writing. R.7.2(2) Crim.PR.
5. A written information is 'laid' as soon as it is received in the clerk's office, even if it is not considered by a clerk or a magistrate until later (*R v. Manchester Stipendiary Magistrate ex p. Hill* [1983] 1 AC 238). No standard form has to be used; all that matters is that the document sent to the magistrate's court contains the essential elements of an information. *R v. Kennet Justices ex p Humphrey and Wyatt* [1993] Crim. LR 787.
6. The written information must contain statement of the offence that:
  - a. Describes the offence in ordinary language. R.7.3(1)(a)(i) Crim.PR.
  - b. Identifies any legislation that creates it. R.7.3(1)(a)(ii) Crim.PR.
  - c. Contains such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant

7. More than one incident of the commission of the offence may be included in the allegation if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission. R.7.3(2) Crim.PR.

### **ISSUING A WARRANT**

8. Once an information has been laid, a magistrate or clerk may then issue a warrant.
9. In deciding whether or not to issue a warrant, the magistrate or clerk should ensure that:
  - a. an offence known to law is alleged;
  - b. it is not out of time;
  - c. the court has jurisdiction;
  - d. the informant has the necessary authority to prosecute (*R. v. Gateshead Justices ex p Tesco Stores Ltd.* [1981] QB 470 at 478).
10. There is no obligation upon a magistrate or clerk to make any inquiries before issuing a warrant. A warrant may be issued without giving the parties an opportunity to make representations and without a hearing. R.7.4(1) Crim.PR.

### **TRANSFER TO THE CROWN COURT**

11. In respect of anyone appearing before the magistrate's court on an indictable only defence, the magistrate's court must immediately transfer the case to the Crown Court. S.51(1) CRIME AND DISORDER ACT 1998.

### **THE DPP**

12. With respect to certain qualifying offences committed outside of the U.K. a magistrate may not issue a warrant without the consent of the DPP. S.4(A) to s.4(D) MAGISTRATES COURT ACT 1980 (MCA).
13. In addition, and further to POA s.6(1), the AG or the DPP (as head of the Crown Prosecution Service [CPS] and under the general or special

directions of the AG) is always entitled to take over the conduct of the private prosecution at any stage of the proceedings. POA s.6(2).

14. Once the DPP has taken over the conduct of the proceedings, he is free to discontinue them if he thinks it would be appropriate to do so. POA s.23-24.
15. The private prosecutor is under no duty to inform the CPS that a private prosecution has commenced. However, the CPS may become aware of a private prosecution by way of one of the following:
  - a. where the Private Prosecutor requests that the CPS take over the prosecution;
  - b. where the defendant asks the CPS to take over the prosecution;
  - c. where a justices clerk refers a private prosecution to the CPS under section 7(4) of the POA, because the prosecution has been withdrawn or unduly delayed and there does not appear to be any good reason for the withdrawal or the delay;
  - d. where a judge sends a report to the CPS;
  - e. where the CPS learns of the private prosecution in another way, e.g. from a press report
16. Upon learning of a private prosecution, and if it so chooses, the CPS is entitled to request a full set of papers from the private prosecutor and the defendant/s. While the private prosecutor is obliged to comply with this request, the defendant is not.
17. Upon review of the case papers, the CPS may take over and continue with a private prosecution if it is demonstrated that
  - a. the evidential sufficiency stage of the Full Code Test is met (i.e. can the evidence be used in court, is it reliable and is it sufficient to provide a realistic prospect of conviction); and
  - b. the public interest stage of the Full Code Test is met; and
  - c. there is a particular need for the CPS to take over the prosecution.

18. All three elements must be satisfied before the CPS can take over and continue with the prosecution.
19. Conversely, the CPS may take over and stop a private prosecution if, upon having reviewed the case papers, it has been demonstrated that:
  - a. the evidential sufficiency stage of the Full Code Test is not met; or
  - b. the public interest stage of the Full Code Test is not met; or
  - c. even if the Full Code Test is met, where there is a particular need to do so because the prosecution is likely to damage the interests of justice, e.g.:
    - i. the prosecution interferes with another criminal offence;
    - ii. the prosecution interferes with the prosecution of another criminal charge; or
    - iii. the prosecution is vexatious (within the meaning of s.42 Supreme Court Act 1981, as amended by section s.24 POA), or malicious.
20. Where there is more than one charge, this policy should be applied to each charge individually. *R. v. PP, ex p. Duckenfield; R. Same, ex p. Murray; R. v. South Yorkshire Police Authority and anor, ex p. Chief Constable of the South Yorkshire Police; R. v. Same, ex p. Duckenfield* [2000] W.L.R. 55, DC.