



CAPITA

Policy for

TV Licensing Prosecutions

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# Policy For TV Licence Prosecutions

## 1 Purpose

- 1.1 The purpose of this policy is to set out the factors to be considered in determining in any TV Licensing case whether criminal proceedings should be instituted or reported to the appropriate authority as the case may be.
- 1.2 The prosecution process, and how prosecution can be avoided, is outlined in the TV Licensing Prosecution Code. The [TV Licensing Prosecution Code](#) (not to be confused with the distinct Code for Crown Prosecutors referenced in section 4 below) can be found on the TV Licensing website. The code contains information on the prosecution processes in England and Wales (which may be different in other jurisdictions in which TV Licensing operates). It also describes how a person<sup>1</sup> can avoid prosecution and this information applies to all jurisdictions. Further details can be found in section 8 below.

## 2 Scope

The document sets out the policy to be followed by Capita staff involved in TV Licensing prosecutions as agreed with the BBC and covers prosecution for the following offences within the UK or as applicable in the Isle of Man and the Channel Islands:

- 2.1 *Installing or using a television receiver without a licence contrary to Section 363(2) and (4) of the Communications Act 2003.*
- 2.2 *Possessing or being in control of a television receiver and intending to install or use it without a licence contrary to Section 363(3) (a) and (4) of the Communications Act 2003.*
- 2.3 *Being in possession or control of a television receiver, knowing or having reasonable cause to believe that another person intended to install or use the receiver without a licence contrary to Section 363(3)(b) and (4) of the Communications Act 2003.*
- 2.4 *Intentional obstruction of the execution of a Search Warrant issued under Section 366 of the Communications Act 2003, contrary to Section 366(8)(a) and (9) of the Communications Act 2003.*
- 2.5 *Failure or refusal, without reasonable cause, to give assistance that the person was under a duty to give to a person authorised to execute a Search Warrant granted under Section 366 of the Communications Act 2003 by a Magistrates' Court, contrary to Section 366(8)(b) and (9) of the Communications Act 2003.*

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<sup>1</sup> Where the term 'Person' is used throughout this policy it includes a business operating in any form.

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## **3 Responsibility**

- 3.1 The BBC has responsibility for enforcing payment of the licence fee in the United Kingdom, the Isle of Man and the Channel Islands. Capita is contracted to investigate and prosecute the offences referred to in section 2 above, within these jurisdictions, in accordance with this prosecution policy.
- 3.2 It is the responsibility of the CAPITA Field Enforcement Team to investigate whether a criminal offence may have been committed, to gather evidence in relation to any suspected offences and to present that evidence to the prosecutor.
- 3.3 The responsibility for the decision to prosecute or to report to a third party for prosecution within CAPITA is that of the prosecutor. The prosecutor makes prosecution/reporting decisions and may conduct prosecutions. The prosecutor must also be one or more of the following:
- a) a member of the operational support team. i.e. a court administrator or the operational support team manager engaged in Crown Court appeals, search warrant, detection, high profile and commercial investigations,
  - b) a member of the prosecution team. i.e. a court administrator, case handler or prosecution manager engaged in the investigation of unlicensed use at domestic properties,
  - c) a court presenter or court presenter manager who may prosecute TV Licensing cases in the Magistrate's Courts of England, Wales and Northern Ireland, or
  - d) a member of the legal team who may engage in any of the above activities.
- 3.4 No individual may prosecute or make a decision on whether or not to prosecute a case where they are directly involved in gathering the evidence or where the person concerned is personally known to them.

## **4 The Code for Crown Prosecutors**

- 4.1 The basic principles within this policy are based on those contained within the Code for Crown Prosecutors but the evidential requirements of each jurisdiction must be taken into account when making the decision to prosecute or report to the authorities.
- 4.2 Prosecutors must be fair, independent and objective. They must not let personal views about ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity of a person being considered for prosecution or witness influence their decision but must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 4.3 Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Human Rights Act 1998 at each stage of a case and comply with the Criminal Procedure Rules in force.

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## **5 The Decision to Prosecute**

- 5.1 The criteria set out below will apply to TV Licensing's decision on whether a case should be prosecuted in England, Wales, Northern Ireland or the Isle of Man. The criteria will equally apply to the decision to refer a case to the Procurator Fiscal in Scotland or the Police in the Channel Islands, who then decide whether or not to prosecute.
- 5.2 Each case will be treated on its own merits
- 5.3 There are two stages in the decision to prosecute.
  - 5.3.1 The first stage is the evidential test (set out in para 6 below). If the case does not pass the evidential test it cannot go ahead, no matter how important or serious it may be.
  - 5.3.2 The second stage is the public interest test (set out in para 7 below). If the case does pass the evidential test, the prosecutor must decide if a prosecution is needed in the public interest.
- 5.4 The prosecutor will only start or continue a prosecution when the case has passed both tests and will swiftly stop cases without delay which do not meet the evidential test or where the public interest clearly does not require a prosecution.
- 5.5 Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and will undertake a continuing process of review taking into account any changes in circumstances that occur as the case develops.
- 5.6 The person to be considered for prosecution in the case of residential premises is an appropriate adult who resides at the address, or the landlord or other person responsible for the licensing of a television receiver at the premises.
- 5.7 In the case of non-domestic addresses the person to be considered for prosecution may be an organisation or corporate body, a senior officer or director of a corporate body, or an owner, partner or trustee of an un-incorporated body.

## **6 The Evidential Test**

- 6.1 The prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the person. This is an objective test based on the prosecutor's assessment of the evidence and any information that they have about the defence that might be put forward by the person.
  - 6.1.1 In England and Wales this means that an objective, impartial and reasonable magistrate or bench of magistrates or judge, properly directed and acting in accordance with the law is more likely than not to convict the defendant of the charge alleged.
  - 6.1.2 In Northern Ireland this means that an impartial tribunal properly directed in accordance with the law, may reasonably be expected to find a case proved beyond reasonable doubt. This test will also be applied to the decision to prosecute in respect of any offence committed in the Isle of Man or the Channel Isles.

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- 6.2 In Scotland before proceedings can be instituted the Procurator Fiscal will need to be satisfied that there is sufficient admissible evidence to justify commencing proceedings. In general, for there to be sufficient evidence there must be corroboration, that is evidence from at least two separate sources to establish the essential facts of the case, i.e. that the crime was committed; and that the accused was the perpetrator. The prosecutor must be satisfied that these matters can be proved beyond reasonable doubt.
- 6.3 When deciding whether there is sufficient evidence to prosecute, the prosecutor must consider the admissibility, reliability and credibility of the evidence.

## **7 The Public Interest Test**

- 7.1 Where there is sufficient evidence to justify a prosecution the prosecutor must go on to consider whether a prosecution is required in the public interest. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution (see section 8).
- 7.2 When deciding the public interest, the prosecutor should consider:
- that a person guilty of the offence is liable to a fine not exceeding level 3 on the standard scale (with the exception of the offence of obstructing a search warrant for which a fine not exceeding level 5 may be imposed).
  - the culpability of the person suspected of committing the offence,
  - the harm caused,
  - the wider impact on licence fee payers, and
  - the proportionality of the prospective prosecution/disposal,
- so as to identify and determine the relevant public interest factors.
- 7.3 Each case must be considered on its own facts and its own merits and decisions must be documented. It is quite possible that one public interest factor alone may outweigh a number of factors which tend in the opposite direction. The prosecutor must decide the importance of each factor in the circumstances of each case and go on to make an overall assessment of the public interest. Although there may be public interest factors tending against prosecution the prosecutor should consider whether nonetheless the prosecution should go ahead and whether those factors should be put to the court for consideration when sentence is passed.
- 7.4 The following list of factors for and against prosecution is provided to assist the prosecutor in addressing the questions raised in 7.2 above. It is particularly relevant to TV Licensing cases but is not exhaustive and is intended to guide rather than limit the prosecutor when conducting their assessment. The weight to be attached to each of the questions, and the factors identified, will vary according to the facts and merits of each case.

7.4.1 Some common public interest factors tending in favour of prosecution:

- (a) The person has previously been warned or prosecuted for an offence referred to within paragraph 2 of this policy.

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- (b) A search warrant had to be obtained to gather evidence.
- (c) A colour television receiver is being used when a black and white licence is held.
- (d) There is evidence to suggest that the person has deliberately defaulted on payments for an instalment licence.
- (e) A television receiver is being used for licensable activity<sup>2</sup> when TV Licensing has previously been informed by the person that a licence is not required at the premises.
- (f) The person has proactively informed TV Licensing, or has stated publically, that they are or intend to use a television receiver for licensable activity, or has publically encouraged others to do so.
- (g) There is a need to deter further offending
- (h) There is an increased level of culpability of the suspected offender.

### 7.4.2 Some common public interest factors tending against prosecution:

- (a) A timely and appropriately dated licence was purchased following interview
- (b) The court is likely to impose a nominal penalty
- (c) The offence was committed as a result of a genuine mistake or misunderstanding
- (d) The person is under the age of 18
- (e) The person is or was at the time of the offence
  - (i) suffering from significant mental or physical ill health, or
  - (ii) considered vulnerable due to their personal circumstances (which may include physical or mental ill health, learning difficulties, domestic hostility or abuse, or exceptional and severe financial hardship),  
unless there is a real possibility that the offence might be repeated.
- (f) The person is eligible for a concessionary TV licence
- (g) The person is a genuine visitor.
- (h) There is evidence to show the landlord is responsible for the television receiver or the television licence at the premises
- (i) The offence can be appropriately dealt with by utilising an out of court disposal.

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<sup>2</sup> Information on what constitutes licensable activity can be found on the TV Licensing website at <http://www.tvlicensing.co.uk/check-if-you-need-one> and is defined in the No Licence Needed Policy published at <http://www.tvlicensing.co.uk/about/foi-policies-AB17>

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## 8 Out of Court Disposal

- 8.1 If there is sufficient evidence, and it is in the public interest to do so, then a case may be authorised for prosecution. However, having regard to all the circumstances of the case, where it is an appropriate and proportionate response, in the first instance a prosecutor may offer a warning (on condition of payment of the licence fee) as an alternative to prosecution.
- 8.2 A warning will not usually be offered where any of the public interest factors in favour of prosecution apply (see section 7.3.1)
- 8.3 If a warning is offered, this will be confirmed in writing and the person can avoid prosecution by complying with one of the following conditions:
- a) Pay the licence fee in full, OR
  - b) Set up a payment scheme and pay the minimum amounts shown in the TV Licensing Prosecution Code<sup>3</sup> within the time periods specified.
- 8.4 If a warning is offered and the conditions are not met then the prosecutor will reconsider the public interest and the prosecution will proceed to the next stage where the only way for a person to avoid prosecution is to pay for a licence in full in the following time period:
- a) If a summons is issued, payment must be made at least two working days before the case comes to court.
  - b) If a Single Justice Procedure Notice has been issued, payment must be made within 21 days of the date of the Notice.
- 8.5 Note that In Scotland and the Channel Islands the decision whether or not to proceed with a prosecution, once a matter has been reported by TV Licensing, lies with the prosecuting authority and not TV Licensing.

### Notes

- (i) In situations 7.3.2 (h) – (i) evidence will be gathered with a view to prosecution of the person responsible for providing a television receiver and/or the licence.
- (ii) Before any prosecution action is considered, the Prosecutor must be satisfied that, at all times, defendants have had sufficient prior warning and opportunity to respond to any communications.

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<sup>3</sup> The TV Licensing Prosecution Code is available on the TV Licensing website at <http://www.tvlicensing.co.uk/about/foi-policies-AB17>