

4.7 Deputy S.M. Wickenden of St. Helier of the Attorney General regarding the considerations applied when deciding to bring a charge against a person naked in their own home who could be seen by a member of the general public: [1(574)]

What considerations apply in deciding to bring a charge against a person naked in their own home who can be seen by a member of the general public?

Mr. R.J. MacRae, H.M. Attorney General:

A person who is naked in their own home does not generally commit an offence when they can be seen by members of the general public. However, when a naked person performs a sexual act, either alone or with others, and does so in the knowledge that members of public can see him or them, or where they are reckless as to whether members of the public can see them, then that could amount to a criminal offence. The conduct could amount to indecent exposure or other offences. The decision to prosecute, charge someone, is a serious step. Centeniers apply the Code to Prosecute which is published to ensure they make fair and consistent decisions about prosecutions.

[10:45]

Each case is different and must be considered on its own facts, but the same test applies to every criminal case. There are 2 stages in the decision: the first is the evidential test; the second is the public interest test. The Centenier will only start or continue a prosecution when both tests are passed. The evidential test is satisfied when the Centenier believes there is sufficient evidence to provide a realistic prospect of conviction. This is an objective test and means that the Magistrate, jury or Jurats must be more likely to convict than not on the evidence produced. Once the evidential test is passed, the public interest is considered in each and every case. In all serious cases there will be a prosecution.

The Bailiff:

There is a 90-second rule, Attorney, that applies to you as well.

The Attorney General:

Well apparently it does, Sir, yes. [Laughter]

The Bailiff:

Before we have any supplementaries, can I indicate from the Chair that it is not appropriate for the Attorney to be asked questions about a particular prosecution or a particular case and I will disallow them because that is the nature of the independence of the prosecutor. A supplementary, Deputy Wickenden? No? Deputy Hilton I have next.

Deputy J.A. Hilton:

I think my question probably breaches the rule.

The Bailiff:

I suspected it might do. [Laughter] Is Deputy Higgins ready?

4.7.1 Deputy M.R. Higgins:

Yes, mine is a generic question. The Attorney General has just told us the Centeniers apply both the public interest test and the evidential test. Now he and I are both aware of the fact that this does not always happen, or at least it has not happened in one case that we have been discussing. What checks does he do to ensure that they do apply both tests before bringing a prosecution to, let us say, Magistrate's Court?

The Attorney General:

Well, firstly, all Centeniers are trained, both by the police in relation to matters that concern policing but by lawyers in my department in relation to the conduct of cases in the Magistrate's Court and that includes training in relation to the code test. In relation to any concerns regarding decisions made by Centeniers, complaints are made to me and I am entitled to overrule decisions to prosecute or not as the case may be if a Centenier has not acted in accordance with his discretion.

4.7.2 Deputy M.R. Higgins:

A supplementary? What actions does the Attorney General take to ensure that they do carry out both tests? Because people, I believe, have been convicted in the past where it has not taken place and you may not find about the complaints until much later.

The Attorney General:

Well I have given an answer. I cannot improve on the answer I gave moments ago.

4.7.3 Deputy S.M. Wickenden:

I would ask the Attorney General if he believes that to charge a member of the public that has been reported for being visibly naked in their own home as a first offence would fail the public interest test for charging?

The Attorney General:

It would depend on the facts of the case.