



# Warning Letters

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## Related Resources

- a. [Prosecution Policy of the Commonwealth](#), in particular paragraphs 2.8 to 2.18

## Decision to send a warning letter

1. The *Prosecution Policy of the Commonwealth* provides that once a prosecutor is satisfied that sufficient evidence exists to establish a prima facie case and a reasonable prospect of conviction, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued (see paragraph 2.8). It is not the rule that all offences brought to the attention of the authorities must be prosecuted.
2. A warning letter, being a formal warning from the CDPP to the person about his or her alleged conduct, may be an effective alternative to prosecution in an appropriate case.<sup>1</sup> The *Prosecution Policy of the Commonwealth* sets out a non-exhaustive list of factors which may arise for consideration in determining whether the public interest requires a prosecution (see paragraph 2.10). This list of factors includes availability and efficacy of any alternatives to prosecution (paragraph 2.10(j)).
3. As noted in paragraph 2.9 of the Policy “generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.” A warning letter is likely to be inappropriate in a case involving serious offending. However, a warning letter may be a suitable and effective alternative to prosecution in a matter involving more minor offending where, for example, the alleged offending is out of character and committed by a person with no relevant criminal history. All of the factors set out in the *Prosecution Policy of the Commonwealth* which go to the question of whether the public interest requires a prosecution may also be relevant to the question of whether it is appropriate to send a warning letter as an alternative to prosecution (see paragraph 2.10). The *Prosecution Policy of the Commonwealth* also identifies further specific public interest factors to consider when assessing whether it is in the public interest to prosecute a juvenile, including the availability of alternatives such as a caution, and their efficacy (see paragraph 2.16(c)).

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<sup>1</sup> This extends to breach matters where a warning letter in an appropriate case may be an effective means of achieving compliance with orders.

4. In determining whether to issue a warning letter the availability of any diversionary schemes that may be available should be considered.
5. It is not a pre-requisite to the use of a warning letter that the person must have made admissions to the alleged criminal conduct. The use of a warning letter is open provided the prosecutor is of the view that there is a prima facie case and reasonable prospects of conviction. There is also no requirement that a prosecutor must send a warning letter in every case in which he or she decides that a prosecution would not be in the public interest. The sending of a warning letter in many such cases may indeed be quite inappropriate. There is a discretion to be exercised by prosecutors when considering the use of a warning letter having regard to the provable facts and the whole of the surrounding circumstances and having applied the *Prosecution Policy of the Commonwealth*. Such a discretion should not be exercised without prior consultation with the referring agency and without first having sought the views of any victim.

### Who makes the decision to send the warning letter

6. In accordance with paragraph 2.21 of the CDPP Decision Making Matrix (DMM), the decision whether or not to send a warning letter is a matter for a Branch Head. However, the decision must be made by the Practice Group Leader in the circumstances listed in the DMM, including matters that are high profile or sensitive or where the decision to send a warning letter may be contentious.

### The content of warning letters

7. A template warning letter can be found on the Word ribbon under 'National', 'Correspondence to members of the public'.
8. Warning letters should:
  - a. state that the CDPP has received a brief of evidence;
  - b. identify the alleged conduct with sufficient information to allow the recipient to identify the incident;
  - c. state that the CDPP has decided there is sufficient evidence to prosecute for a nominated offence, and refer to the maximum penalty; and
  - d. state that it has been decided not to prosecute the offence in the public interest and, where appropriate, highlight any key reason or reasons for this assessment.
9. Warning letters should **not**:
  - a. assert that the recipient has committed an offence; or
  - b. make any claims in relation to taking the warning letter into account if there is a subsequent referral. To communicate the outcome of the CDPP's assessment is what constitutes the warning and is the purpose of the letter.
10. Warning letters should be in plain English and should avoid the use of legalese.

### How should the warning letter be sent?

11. In circumstances where the case officer is confident that the person is likely to receive the warning letter if it is sent to his or her residential address ordinary mail will suffice. There may be circumstances where, in order to ensure the person receives the warning letter, personal service will be appropriate.

### Copy of warning letter to referring agency

12. Where a prosecutor makes a decision not to prosecute on public interest grounds and decides to send a warning letter, the CDPP must send a copy of the warning letter to the referring agency.

## Warning letters sent by referring agency

13. The CDPP recognises that rather than refer a brief of evidence to the CDPP for assessment of possible prosecution action, referring agencies may themselves decide to send a warning letter in accordance with that agency's internal policies. The use of warning letters by a referring agency is a matter for that agency.

## Prosecuting in a subsequent matter after a warning letter

14. If the CDPP subsequently receives a referral against a person who has previously been sent a warning letter for earlier alleged conduct, the fact that a warning letter was sent previously may be a relevant consideration in accordance with the *Prosecution Policy of the Commonwealth* in assessing whether prosecution for the subsequent conduct is in the public interest.

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1.1	March 2023	Julia Lukas	Revision and conversion to National Legal Direction of old Guidelines and Directions Manual Chapter dated February 2014