

Miss D. H. Sharpling
Chief Crown Prosecutor



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COPY

27 March 1998

Dear Sir

OBSCENE PUBLICATIONS ACTS 1959 & 1964

RE : ROBERT MAPPLETHORPE

Thank you for your letter dated 6 March 1998 addressed to the Director of Public Prosecutions.

It may be of assistance if I explain the role of the Crown Prosecution Service ("CPS"). Each case which the police send to the CPS is reviewed by a Crown Prosecutor. The case is carefully considered to make sure it meets the tests set out in the Code for Crown Prosecutors, which is issued under Section 10 of the Prosecution of Offences Act 1985.

The CPS applies the Code so that it can make fair and consistent decisions about prosecutions. There are two stages in the decision to prosecute. The first stage is the evidential test. The Crown Prosecutor must be satisfied that there is enough evidence to provide a "realistic prospect of conviction". He must consider objectively whether the evidence can be used and is reliable. The Crown Prosecutor must also consider what the defence case may be and how it is likely to affect the prosecution case. A "realistic prospect of conviction" means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does pass the evidential test, the Crown Prosecutor must then consider the second stage test to decide if a prosecution is needed in the public interest. In cases of any seriousness, a prosecution will usually take place, unless there are public interest factors tending against prosecution which will clearly outweigh those tending in favour. The CPS will only start or continue a prosecution where the case has passed both tests.

In this case, a full file of evidence has not yet been received from the West Midlands Police. The book was initially referred to the Crown Prosecution Service, Central Casework by the West Midlands Police for preliminary advice. Upon receipt of the full file by the CPS, the matter will be considered in accordance with the principles set out above.

Yours faithfully,

R E Glenister

R E Glenister
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