

COMPANIES ACT 2006, SECTION 508

GUIDANCE FOR REGULATORY AND PROSECUTING AUTHORITIES IN ENGLAND, WALES AND NORTHERN IRELAND

OFFENCES IN CONNECTION WITH AUDITORS' REPORTS (SECTION 507)

1. This guidance is issued by the Secretary of State for Business, Innovation and Skills under section 508 of the Companies Act 2006, with the consent of the Attorney General. The purpose of the power in section 508 to issue guidance is to assist regulatory and prosecuting authorities in cases where it appears that an offence under section 507 may have taken place and where the same behaviour could come within the scope of the investigation powers (under paragraph 15 or 24 of Schedule 10 to the Act) of the authorities that supervise or regulate auditors.
2. This guidance is intended to assist prosecutors in applying the relevant prosecutorial code and, where appropriate in particular, to make a decision whether prosecution, disciplinary action or other diversion is appropriate.
3. When considering the evidence and the public interest, prosecutors will apply the relevant prosecutorial code ("the Code")¹ issued by the Director of Public Prosecutions, England and Wales, under section 10 of the Prosecution of Offences Act 1985 or by the Director of Public Prosecutions, Northern Ireland under s37 Justice (Northern Ireland) Act 2002. Each prosecutorial code gives guidance on the general principles to be applied when making decisions about prosecution. The prosecutorial codes have two stages. The first is the evidential stage where the evidence is considered. The second stage is the public

¹ <http://www.cps.gov.uk/publications/docs/code2004english.pdf>,

http://www.ppsni.gov.uk/Site/1/Documents/Publications/Code_for_Prosecutors_Revised_2008.pdf

interest stage, where the prosecutor considers if a prosecution is needed in the public interest.

4. The audit report to which the offence refers is provided as part of a statutory function defined in the Companies Act 2006. The offence reflects the importance of auditors' reports on company accounts. The Act also includes extensive provisions about the regulation and supervision of auditors. Audit is a regulated profession, and every auditor is subject to the disciplines of his or her recognised supervisory body (RSB) and potentially of the Accountancy & Actuarial Discipline Board (AADB) of the Financial Reporting Council (FRC). There is a further background note on the BIS website². The sanctions available to the disciplinary bodies include unlimited fines and withdrawal of audit practice certificates.

The Evidential Stage

5. In considering whether the evidence provided meets the evidential test of the appropriate code for an offence under section 507, prosecutors should give particular consideration to evidence relating to the state of mind of the person concerned. The offence is committed by someone who "knowingly or recklessly causes [an audit report] to include any matter that is misleading, false or deceptive in a material particular" or to omit statements required about certain types of problems with the accounts.
6. In considering evidence in relation to this offence, prosecutors will want to familiarise themselves with the statutory role of the auditor under the Companies Acts and the applicable procedures and standards. In relation to the audit in question, the following factors will be relevant:
 - The way in which the audit was planned and conducted
 - Where more than one individual auditor was involved, the structure and management of the audit team

² <http://www.berr.gov.uk/files/file54459.pdf>

- The nature of the company whose accounts were being audited, and the way in which the auditor worked with its management and staff.

The Public Interest Stage

7. The decision whether to prosecute a case should always take into account the range of remedies that are available to regulators under the professional disciplinary system and consider whether those remedies are sufficient to meet the public interest.
8. Where the evidence of the offence concerns recklessness and the evidential test is met by relying on inference only, it is highly unlikely for a prosecution to be appropriate where the public interest may be met by diversion to disciplinary action on the part of regulators.
9. If there is, or is likely to be available, evidence to meet the evidential test, the following are some of the considerations that may be relevant to the decision on whether it is in the public interest to prosecute:
 - any history of similar conduct and/or regulatory sanctions applied in the past,
 - the pervasiveness of the offending behaviour including the complicity in or approval of the wrongdoing by others
 - the use of the audit report to facilitate any other criminal offences,
 - the effect the misconduct had on any persons who relied on the audit report and the numbers of those persons,
 - any financial loss or harm suffered, or risk thereof, as a result of the audit report,
 - the extent of remedial actions and by whom it has been taken including systems for compliance that have been put in place.