

Nudity in Public - Guidance on handling cases of Naturism

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Introduction

Naturism is used to describe the activities of persons who espouse nudity as part of their lifestyle. Whilst many naturists will restrict their activities to specially designated areas and/or places where there is a tradition of naked activity, such as nudist beaches, others may wish to enjoy nudity more widely.

In the case of naturism a balance needs to be struck between the naturist's right to freedom of expression and the right of the wider public to be protected from harassment, alarm and distress.

Recommended approach to naturism

Although every case should be considered according to its own facts and merits in accordance with the Code for Crown Prosecutors a consistent approach to naturism should be adopted to maintain public confidence in the CPS. Where none of the features exist that would bring behaviour within the ambit of one of the offences set out in the section on Other offences that might involve nudity below, the recommended approach to naturism should be as follows.

In the absence of any sexual context and in relation to nudity where the person has no intention to cause alarm or distress it will normally be appropriate to take no action unless members of the public were actually caused harassment, alarm or distress (as opposed to considering the likelihood of this).

In this case such conduct should be regarded as at most amounting to an offence under [section 5 of the Public Order Act 1986 \(POA\)](#) . Regard needs to be had to the question of whether a prosecution is in the public interest.

Evidential considerations

In order to breach section 5 POA a person needs to have used threatening or abusive words or disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress. Section 5 POA is summary only and a non-imprisonable offence.

When deciding whether a case passes the evidential stage of the Full Code Test, prosecutors should consider whether the behaviour can be described as 'disorderly' (rather than threatening or abusive). This is because the behaviour in question will often not appear to cross the threshold for being 'threatening' or 'abusive'.

Given that someone conducting their business naked in public is acting in a way that does not conform to the normal standards of society that require people to be clothed in public, 'disorderly' would appear to most aptly describe this behaviour.

Public Interest considerations

A prosecution will not automatically follow where a case passes the evidential stage of the Full Code Test. Careful consideration of the public interest will be required in such a case.

[The Code for Crown Prosecutors](#) (8th edition) requires prosecutors to consider the following questions:

1. How serious is the offence committed?
2. What is the level of culpability of the suspect?
3. What are the circumstances of and the harm caused to the victim?
4. What was the suspect's age and maturity at the time of the offence?
5. What is the impact on the community?
6. Is prosecution a proportionate response?
7. Do sources of information require protecting?

In reviewing a section 5 POA case involving nudity the following factors may be relevant:

1. On a scale of seriousness this offence is at the lower end, a factor making prosecution less likely to be required.
2. Whether the offending is premeditated and likely to be repeated, and whether the suspect has previous convictions for similar conduct.
3. Victims or witnesses with vulnerabilities might include children (and their carers) who are faced with the suspect's genitals and bottom in close proximity. Any views expressed by victims or witnesses on the impact the offence has had are important, in particular whether they have felt harassment, alarm or distress. However prosecutors need to form an overall view of the public interest and to consider whether any harm caused to victims is likely to be short-lived and minimal in the absence of specific evidence to the contrary.
4. Any impact on the local community, the extent and whether or not it is likely to be transitory.
5. Whether prosecution may be disproportionate to any eventual penalty, given that the offence is summary only and non-imprisonable.

Other offences that might involve nudity

Exposure contrary to section 66 of the Sexual Offences Act 2003

[Section 66 Sexual Offences Act 2003](#) requires a person to intentionally expose their genitals and intend that someone will see them and be caused alarm or distress. It is triable either way. Depending on the age of the defendant and the sentence that is imposed, an offender may be subject to the notification provisions (the sex offender register).

The need to prove that the person exposed their genitals intending that someone will see them and be caused alarm or distress means that a naturist whose intention is limited to

going about his or her lawful business naked will not be guilty of this offence.

Outraging public decency

At common law it is an offence to do in public any act of a lewd, obscene or disgusting nature which outrages public decency. If conduct falls within the scope of a statutory offence, such as exposure contrary to section 66 of the Sexual Offences Act 2003 (see above) it is better practice to charge that offence unless, exceptionally, the offence merits a higher penalty than that available in relation to the statutory offence. Outraging public decency is triable either way and there is no maximum penalty.

The requirement for the behaviour to 'outrage' public decency was said by Lord Simon in *Kneller (Publishing, Printing and promotions) Ltd v DPP* to: "*go considerably beyond the susceptibilities of, or even shocking, reasonable people*".

The circumstances surrounding the conduct will need to be carefully considered. Section 66 SOA is available and normally to be preferred where it is done with the intention to cause alarm and distress.

Nudity in public alone with no aggravating features is very unlikely to amount to this (or any other) offence.

Public nuisance

At common law it is an offence to (a) do an act not warranted by law; (b) omit to discharge a legal duty if the effect of the omission is to endanger life, health, property, morals, of comfort of the public, or to obstruct the public in the exercise of enjoyment of rights common to all Her Majesty's subjects.

The House of Lords in [Rimmington \[2006\] 1 AC 459](#) made it clear that this offence should not ordinarily be used where there is a statutory offence covering the relevant conduct.

Nudity in public alone with no aggravating features is very unlikely to amount to this (or any other) offence.

Criminal Behaviour Order

A Criminal Behaviour Order (CBO) is available on conviction for any criminal offence in any criminal court. A CBO may be an appropriate response to any type of offending and is not limited to "low level" anti-social behaviour. The police or local authority may request the CPS to apply for a CBO. The court may make a CBO against an offender only on the application of the prosecution.

The decision to apply for a CBO should only be taken after careful consideration due to the risk, following the making of the order, of an early and repeated breach resulting in prosecution and ultimately imprisonment. It is questionable whether such an outcome is proportionate either in terms of the cost to the CJS or the penalty incurred. In cases involving nudity in public a CBO should therefore be regarded as a last resort.

Guidance on CBO can be found here: [Criminal Behaviour Orders](#)