



Code for Prosecutors

PUBLIC
PROSECUTION
SERVICE

Building a Service
for the Future

Code for Prosecutors

Including a Code of Ethics

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Introduction

1.1 CODE FOR PROSECUTORS

1.1 This Code is issued pursuant to the statutory duty placed on the Public Prosecution Service by section 37 of the Justice (Northern Ireland) Act 2002. The guidelines and general principles detailed in this document apply from the date of publication of this Code.

1.1.2 In this Code, the term “prosecutor” means:

1. Public Prosecutors employed by the Public Prosecution Service who have been designated by the Director of Public Prosecutions for Northern Ireland to act in that role; and
2. Barristers who are members of the Bar of Northern Ireland who have been instructed by the Public Prosecution Service to act as prosecuting counsel in any individual case.

1.2 PURPOSE OF THIS CODE

1.2.1 The purpose of this Code is to:

- i. Give guidance on the general principles to be applied in determining, in any case:
 - whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should be continued or discontinued, and
 - what charges should be preferred.
- ii. Provide general guidelines for the conduct of criminal prosecutions; and
- iii. Define the standards of conduct and practice that the Public Prosecution Service expects from prosecutors including those barristers and solicitors to whom the Director assigns the institution or conduct of criminal proceedings.

1.2.2 To enable this Code to be understood in its proper context an overview of the role of the Public Prosecution Service in the criminal justice system in Northern Ireland is provided (see Chapter 2).

1.2.3 This Code is not intended to be a detailed manual of instructions for prosecutors or a comprehensive guide to the policies and procedures of the Public Prosecution Service. Further, this Code does not lay down any rule of law. While this Code outlines the approach to decision taking that the Public Prosecution Service has adopted, every case must be considered individually having regard to its own facts and circumstances.

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Public Prosecution Service

2.1 FUNCTIONS OF THE PUBLIC PROSECUTION SERVICE

- 2.1.1 The Public Prosecution Service (herein after referred to as the 'Prosecution Service') is established by the Justice (Northern Ireland) Act 2002. The Prosecution Service is headed by the Director of Public Prosecutions for Northern Ireland. There is also a Deputy Director of Public Prosecutions who has all the powers of the Director but must exercise them subject to his direction and control. Both of these posts are public appointments made by the Attorney General for Northern Ireland.
- 2.1.2 The Director must take over the conduct of all criminal proceedings which are instituted in Northern Ireland on behalf of any police force (whether by a member of that force or any other person).
- 2.1.3 In this context, "police force" means:
- a) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
 - b) the Ministry of Defence Police;
 - c) any body of constables appointed under Article 19 of the Airports (Northern Ireland) Order 1994; or
 - d) any body of special constables appointed in Northern Ireland under section 79 of the Harbours, Docks, and Piers Clauses Act 1847 or section 57 of the Civil Aviation Act 1982.
- 2.1.4 The Prosecution Service also makes prosecution decisions and conducts prosecutions on behalf of a number of Government bodies, for example: the Driver and Vehicle Testing Agency; the Department of Social Development and the Environment and Heritage Service. The Police Ombudsman for Northern Ireland also submits files to the Prosecution Service for a prosecution decision where an investigation report indicates that a criminal offence may have been committed by a member of a police force (as defined above).

2.1.5 Any person, including other investigatory organisations and individual members of the public, other than the Director may:

- a) institute criminal proceedings, or
- b) conduct criminal proceedings to which the Director's duty to conduct proceedings does not apply.

2.1.6 However, the Director may at any stage take over the conduct of any such criminal proceedings other than those commenced by the Serious Fraud Office.

2.1.7 The functions of the Director shall be exercised by him independently of any other person.

2.1.8 It is an offence, under the Justice (Northern Ireland) Act 2004, for a person to seek to influence a prosecutor, with the intention of perverting the course of justice, in any decision as to whether to institute or continue criminal proceedings.

2.2 AIM OF THE PROSECUTION SERVICE

2.2.1 The aim of the Prosecution Service is:

To provide the people of Northern Ireland with an independent fair and effective prosecution service.

Independence

The Prosecution Service will be wholly independent from both police and government, its decisions will be based on an impartial and professional assessment of the available evidence and the public interest.

Fairness

All actions will be undertaken with complete impartiality, to the highest ethical and professional standards. All persons, including those accused of offences, will be treated fairly. All victims and witnesses will be treated with respect and sensitivity.

Effectiveness

All prosecution decisions will be taken and every prosecution conducted in an effective and efficient manner. We will provide value for money, while delivering a timely and quality service.

2.3 STRUCTURE

- 2.3.1 In addition to the Director and the Deputy Director, the Prosecution Service is comprised of Public Prosecutors and administrative staff.
- 2.3.2 Public Prosecutors are individual members of staff of the Prosecution Service who have been designated by the Director to act on his behalf in the conduct of criminal proceedings including exercising the right of audience in these criminal proceedings.
- 2.3.3 Public Prosecutors must be:
- a) a member of the Bar of Northern Ireland, or
 - b) a solicitor of the Supreme Court;
- 2.3.4 The Prosecution Service is a regionally based organisation. There are to be four regions each coterminous with one or more regions each coterminous with one or more court divisions. Each of the four regions is headed by an Assistant Director who is accountable to the Director.
- 2.3.5 Each Assistant Director has overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in the region with the exception of those files that are considered by prosecutors in Headquarters (for example, files requiring specialist prosecutors such as complex fraud cases and complaint investigation files submitted by the Police Ombudsman for Northern Ireland).



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Relationship with the Investigator

3.1 ROLE OF THE INVESTIGATOR

- 3.1.1 It is the responsibility of the investigator to investigate an allegation that a criminal offence has been committed, to gather evidence in relation to that allegation and to present that evidence to the prosecutor. The Police Service of Northern Ireland is the main investigative body which the Prosecution Service deals with, although as noted above other bodies may submit files to the Prosecution Service. Investigation is not the responsibility of the Prosecution Service.
- 3.1.2 Investigators submit cases in two ways to the Prosecution Service - by charging a person or by submitting a report on a person to the Prosecution Service.
- 3.1.3 The Prosecution Service assumes full responsibility for tracking the progress of the case from the point of charge or receipt of a report from the investigator. On receipt of a case from an investigator the Prosecution Service may request further investigation into any particular matter where it considers that additional information is required in order to take a fully informed prosecution decision.
- 3.1.4 In addition, the Prosecution Service may require the Police Service of Northern Ireland to investigate any matter that comes to its attention where it believes that a criminal offence may have been committed. Examples where such a request may be made include:
- Matters brought directly to the attention of the Director alleging that a criminal offence has taken place;
 - Matters arising from a consideration of evidence by a Public Prosecutor which indicates that other criminal offences may have occurred (in addition to those reported by Police); and
 - Matters brought to the attention of the Director by the Courts or the Coroner which have arisen during the course of their proceedings.
- 3.1.5 The Prosecution Service is determined that all cases brought to its attention are properly investigated. If the Prosecution Service is not satisfied that police have properly investigated any case it may refer the matter to the Police Ombudsman.

3.2 PROSECUTORIAL ADVICE

- 3.2.1 Prosecutorial advice is guidance provided by the Prosecution Service to investigators. The provision of advice from the Prosecution Service to investigators (primarily the Police Service of Northern Ireland) is limited to the prosecution of offences, such as the quality and admissibility of evidence, the evidence needed to support the prosecution of a person for a particular offence or whether the assets of a person under investigation should be made subject of a High Court Restraint Order.
- 3.2.2 In accordance with the provisions of the Justice (Northern Ireland) Act 2002, advice on any prosecutorial issue may be requested by the investigator at any stage of an investigation.
- 3.2.3 Pre-Charge advice is a specific example of prosecutorial advice which occurs when advice is sought by police about the specific charges, if any, which should be preferred against any person suspected of committing a criminal offence.

3.3 REFERRALS TO THE POLICE OMBUDSMAN

- 3.3.1 The Prosecution Service will refer to the Police Ombudsman for Northern Ireland, for investigation, any case, which is not already the subject of a complaint, where a police officer:

- may have committed a criminal offence; or
- may, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings

unless it appears to the Director that the Ombudsman is already aware of the matter.

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Prosecution Decisions

4.1 THE TEST FOR PROSECUTION

4.1.1 Prosecutions are initiated or continued by the Prosecution Service only where it is satisfied that the Test for Prosecution is met. The Test for Prosecution is met if:

- i. the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
- ii. prosecution is required in the public interest – the Public Interest Test.

4.1.2 Each aspect of the test must be separately considered and passed before a decision to prosecute can be taken. The Evidential Test must be passed before the Public Interest Test is considered. The Public Prosecutor must analyse and evaluate all of the evidence and information submitted in a thorough and critical manner.

4.1.3 In applying the Test for Prosecution the Public Prosecutor must adhere to those obligations set out in the Code of Ethics of the Prosecution Service for Northern Ireland (see Section 7).

4.2 THE EVIDENTIAL TEST

4.2.1 Public Prosecutors determine whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge.

4.2.2 A reasonable prospect of conviction exists if, in relation to an *identifiable individual*, there is *credible evidence* which the *prosecution can adduce* before a court upon which evidence *an impartial jury (or other tribunal)*, properly directed in accordance with the law, may reasonably be expected to find proved *beyond reasonable doubt* the *commission of a criminal offence* by the individual who is prosecuted.

4.2.3 It is necessary that each element of this definition is fully examined when considering the evidential test for each particular case.

Element	Description
identifiable individual	There will often be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. Prosecution can only take place where the evidence sufficiently identifies a particular person responsible. Where no such person can be identified, there can be no prosecution.
credible evidence	This means evidence which is capable of belief. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. It may be that a witness is likely to be so discredited that no court could safely act on his / her evidence. In such a case it may be concluded that there is no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably act on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account. Public Prosecutors must therefore make an assessment of the quality of the evidence. Where there are substantial concerns as to the credibility of essential evidence, criminal proceedings may not be proper as the evidential test may not be capable of being met. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as cogent as it first appears. Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they must look closely at it when deciding if there is a reasonable prospect of conviction.

Element	Description
evidence which the prosecution can adduce	Only evidence which is available and legally admissible can be taken into account in reaching a prosecution decision. There are technical legal rules concerning whether or not particular types and pieces of evidence are admissible in court. For example, a court may refuse to admit evidence that has been obtained improperly, irregularly or unlawfully. If evidence is inadmissible then that evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction. Public Prosecutors must therefore seek to anticipate whether it likely that evidence will be admitted or excluded by the court. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, Public Prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.
an impartial jury (or other tribunal)	The test is not whether a particular jury or a particular judge or magistrate will convict. If such a test was adopted then prosecution might depend upon an assessment of how different juries in different parts of the country reacted or different judges reacted. This would be wrong. The test must be how an impartial jury or judge is likely to conclude.
may reasonably be expected to find	It is impossible to know with absolute certainty whether or not a conviction will be obtained in a particular case. What is required by the evidential test is that there is a reasonable prospect of a conviction on the evidence. The weighing of evidence is not a mathematical science but rather a matter of judgement for the prosecutor.

Element	Description
beyond reasonable doubt	The evidence available to the prosecutor must be sufficient to reach the high standard required by the criminal courts. It is necessary for the prosecution to establish its case beyond reasonable doubt.
commission of a criminal offence	This requires that regard is had to the law in order to identify what offence or offences may have been committed and to consider the evidence against each of the ingredients which establish the particular offence.

4.3 THE PUBLIC INTEREST TEST

- 4.3.1 Once a Public Prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public interest requires prosecution. It is not the rule that all offences for which there is sufficient evidence must be prosecuted – prosecutors must exercise their discretion as to whether a prosecution is required in the public interest.
- 4.3.2 In 1951 Sir Hartley Shawcross QC MP, the then Attorney General, made the following statement to Parliament in relation to prosecutorial discretion.

"It has never been the rule in this country...that suspected criminal offences must automatically be subject of prosecution"

- 4.3.3 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances the serious nature of the case will make the presumption a very strong one. However, there are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest.

For example, Public Prosecutors should positively consider the appropriateness of a diversionary option (particularly if the defendant is a youth).

- 4.3.4 The following section lists some Public Interest Considerations for prosecution which may be relevant and require to be considered by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

Public Interest Considerations for prosecution

- i. the seriousness of the offence i.e. where a conviction is likely to result in a significant penalty including any confiscation order or disqualification;
- ii. where the defendant was in a position of authority or trust and the offence is an abuse of that position;
- iii. where the defendant was a ringleader or an organiser of the offence;
- iv. where the offence was premeditated;
- v. where the offence was carried out by a group;
- vi. where the offence was carried out pursuant to a plan in pursuit of organised crime;
- vii. where the offence was motivated by hostility against a person because of their race, ethnicity, sexual orientation, disability, religion, political beliefs, age or the like;
- viii. where the offence is prevalent;
- ix. where the offence has resulted in serious financial loss to an individual, corporate person or society;
- x. where the offence was committed against a person serving the public, for example a Doctor, Nurse, member of the Ambulance Service, member of the Fire Service or a member of Police Service;
- xi. where the victim of the offence, or their family, has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim the greater the aggravation;
- xii. where there is a marked difference between the actual or mental ages of the defendant and the victim and the defendant took advantage of this;
- xiii. where there is any element of corruption;
- xiv. where the defendant has previous convictions or cautions which are relevant;
- xv. where the defendant is alleged to have committed the offence whilst on bail, on

probation, or subject to a suspended sentence or an order binding the defendant to keep the peace, or released on licence from a prison or a place of detention or otherwise subject to a court order;

- xvi. where there are grounds for believing that the offence is likely to be continued or repeated, for example, where there is a history of recurring conduct.

4.3.5 The following section lists some Public Interest Considerations against prosecution which may be relevant and required to be considered by a prosecutor when determining where the public interest lies in any particular case. The following list is illustrative only.

Public Interest Considerations against prosecution

- i. where the court is likely to impose a very small or nominal penalty;
- ii. where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;
- iii. where the offence is not of a serious nature and is unlikely to be repeated;
- iv. where there has been long passage of time between an offence taking place and the likely date of trial unless:
 - the offence is serious;
 - delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has resulted in a lengthy investigation.
- v. where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness, particularly where they have been put in fear;
- vi. where the defendant is elderly;
- vii. where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health;
- viii. where the defendant has put right the loss or harm that was caused (although defendants must not be able to avoid prosecution simply because they pay compensation);
- ix. where the recovery of the proceeds of crime can more effectively be pursued by civil

action brought by the Assets Recovery Agency;

- x. where details may be made public that could harm sources of information, international relations or national security.

4.3.6 These considerations are not comprehensive or exhaustive – the public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case. In each case where the Evidential Test has been passed, the prosecutor will weigh the relevant public interest factors that are applicable. The prosecutor will determine whether or not the public interest requires prosecution.

4.3.7 While the prosecutor primarily will weigh the evidence and information reported in the investigation file to assist his consideration of the public interest, other appropriate sources of information may also be used including those agencies (for example, Social Services) who are currently dealing with the defendant. The defendant, or persons acting on behalf of the defendant, may also submit evidence and information to the Prosecution Service for consideration.

4.4 REVIEW OF CHARGES

4.4.1 It is for the prosecutor to determine the charge that is presented to the court.

4.4.2 Where the police have charged a person then, prior to his first appearance at the Magistrates' Court, those charges will be reviewed by a prosecutor to determine whether the charges preferred by the police should be presented to court or whether;

- any of the charges should be amended (i.e. where the details of the charge are incorrect);
- other charges should be added (where additional charges are supported by the evidence); or
- some or all charges should be withdrawn (where the existing charges are not supported by the evidence).

4.4.3 The prosecutor will consider these issues based on the evidence and information

presented in support of the police charge. If the police investigation is complete at the time of charge then the prosecutor should apply the Test for Prosecution (see Section 4.1 above). If the police investigation is on-going at the time of charge then the prosecutor should apply the following test:

Whether on the evidence and information available before him at that time there is a reasonable expectation that the Test for Prosecution will be met.

- 4.4.4 If all charges are withdrawn by the Public Prosecutor prior to a charged person's first court appearance then that person need not appear in court. Their name and any other information that may reasonably be considered to lead to their identity being revealed will not be made public by the Prosecution Service.
- 4.4.5 Where a charged person has been detained in police custody prior to their first court appearance, the Public Prosecutor must, in addition to considering the charges to be presented to the court, also consider any continuing need to remand that person in custody. The Public Prosecutor will only request that the court remands a charged person in custody where it is determined (having given due consideration of the nature and gravity of the alleged offence and any relevant criminal history of the defendant) that there is a risk of:
- the charged person absconding;
 - the charged person interfering with witnesses or the course of justice;
 - the charged person committing further offences; or
 - a threat to the preservation of public order (by the defendant or others).
- 4.4.6 Where it is the police view that a remand in custody should be sought then the Public Prosecutor should consider whether there are any bail conditions which could sufficiently counter the risks identified by them in relation to the grounds identified above.
- 4.4.7 Where the Magistrates' Court grants bail contrary to representations made to it by a prosecutor, the Prosecution Service may appeal against the grant of bail. This appeal

will be heard by the High Court. On receipt from the prosecution of notice of its intention to appeal a decision to grant bail, the Magistrates' Court shall remand the person concerned in custody.

4.5 NO PROSECUTION

- 4.5.1 If the Public Prosecutor decides that in any case being considered that there is insufficient evidence or that it is not in the public interest to prosecute, a decision for No Prosecution will be taken.
- 4.5.2 A decision of 'No Prosecution' does not preclude any further consideration of a case by the Prosecution Service, if new and additional evidence becomes available or a review of the original decision is required.

4.6 DIVERSIONARY OPTIONS

- 4.6.1 If the Test for Prosecution is met, the Public Prosecutor must decide the most appropriate way of disposing of the case other than by prosecution at court. The diversionary options available to the prosecutor are:

Informed Warning

The Public Prosecutor may require Police to administer an Informed Warning to the defendant. An Informed Warning is a formal reprimand by Police and, although not a conviction, is recorded on a person's criminal record for a period of 12 months.

Caution

The Public Prosecutor may require Police to administer a Caution to the defendant. A Caution is a formal reprimand by Police and, although not a conviction, is recorded on a person's criminal record for a period of 30 months for youths and 5 years for adults.

Youth Conference

Where the defendant is a youth, the Public Prosecutor may consider a diversionary youth conference as an alternative to prosecution in court. This type of restorative conference may involve a number of parties including the defendant, the victim and Police. A plan will be produced by this conference – this plan must be approved

by the Prosecutor. A Youth Conference is a formal process and, although not a conviction, is recorded on a person's criminal record for a period of 30 months.

- 4.6.2 These diversionary options are only available to prosecutors if the defendant admits to the prosecutor that he committed the offence and agrees to accept and participate in the diversionary option. Admissions of guilt must be based on an informed decision by the defendant.
- 4.6.3 If the Police are unable to administer an informed warning or a caution (e.g. the defendant cannot be contacted or does not turn up for an appointment with Police), then the case will be referred back to the Prosecution Service for further consideration.
- 4.6.4 Similarly, if a Youth Conference plan cannot be agreed or is not approved by a Public Prosecutor, the case will be referred back to the Prosecution Service which may direct a prosecution. Even if a Public Prosecutor decides to prosecute a youth in court, the Court may, however, consider that the option of Youth Conference is an appropriate disposal of the case on conviction.
- 4.6.5 The Public Prosecutor will consider the appropriateness of the available disposal options in regard to each defendant separately. Depending on the facts of each case, it may be appropriate for different disposals to be applied to separate defendants within the same case. For example, in a case with three defendants, one defendant may be prosecuted, a second defendant who is a youth may take part in a Youth Conference and it may be decided not to prosecute a third defendant.

4.7 CHOICE OF OFFENCES

- 4.7.1 The choice of offences for which a defendant is to be prosecuted is an important function for the prosecutor.
- 4.7.2 In many cases the evidence will establish a number of possible offences. Care must be taken to ensure that the offence or offences to be prosecuted adequately reflect the seriousness of the criminal conduct for which there is evidence and which will provide the court with an appropriate basis for sentence. The prosecutor will consider selecting offences to be prosecuted which will enable the case to

be presented in a clear and simple way. Generally, the Prosecution Service will prosecute for the most serious offences which are supported by the evidence.

- 4.7.3 The prosecutor should not proceed with more offences to be prosecuted than are necessary in order to encourage a defendant to plead guilty to a few. In the same way, the prosecutor should not proceed with a more serious offence, which is not supported by the evidence, so as to influence a defendant to plead guilty to a lesser offence.

4.8 MODE OF TRIAL

- 4.8.1 As a general observation, summary offences relate to less serious criminal behaviour and are tried in the Magistrates' Court before a Resident Magistrate. Indictable offences relate to more serious criminal behaviour and are tried at the Crown Court before a judge and jury.

- 4.8.2 However, there are a number of offences which may be tried at either the Magistrates' or Crown Courts, for example: theft; assault occasioning actual bodily harm, etc. For these offences, on taking a decision to prosecute, the Public Prosecutor must also decide whether this prosecution should be tried in the Magistrates' Court or the Crown Court. In making this decision the prosecutor will consider whether the Magistrates' Court is the appropriate venue in that it has sufficient sentencing powers in relation to the gravity of the offence.

4.9 CONSENTS

- 4.9.1 There are a number of offences for which a Public Prosecutor must seek the consent of the Director or the Attorney General for Northern Ireland prior to continuing a prosecution. The requirement for consents for specific offences is determined by Parliament and is to ensure that cases of a particular nature are considered at the appropriate level.
- 4.9.2 The consent of the Director is required, where it is decided to prosecute, for the continuation of criminal proceedings for certain offences contrary to a range of legislation including, for example:

- a) Terrorism Act 2000 (certain offences);
- b) Criminal Law Act (Northern Ireland) 1967;
- c) Prison Act (Northern Ireland) 1953;
- d) Child Abduction (Northern Ireland) Order 1985; and
- e) Punishment of Incest Act 1908.

4.9.3 There are a number of offences for which a Public Prosecutor must seek the consent of the Attorney General prior to initiating a prosecution. These offences are primarily concerned with national security issues and international relations. The Attorney General's consent is required for the institution or conduct of criminal proceedings for certain offences (under individual sections of the relevant legislation) including, for example:

- a) Official Secrets Acts 1911, 1989;
- b) Marine, &c., Broadcasting (Offences) Act 1967;
- c) Genocide Act 1969;
- d) Biological Weapons Act 1974;
- e) Criminal Jurisdiction Act 1975;
- f) Internationally Protected Persons Act 1978;
- g) Nuclear Material (Offences) Act 1983;
- h) Criminal Justice Act 1988;
- i) Iraq and Kuwait (United Nations Sanctions) Order 1990;
- j) Chemical Weapons Act 1996;
- k) Terrorism Act 2000 (certain offences); and
- l) Anti-Terrorism, Crime and Security Act 2001.

4.9.4 In Northern Ireland, under the Terrorism Act 2000, there are a number of offences which are classified as 'scheduled' and as such will generally be heard by a judge sitting in the Crown Court without a jury. These offences may be 'de-scheduled' which allows for trial by a judge and jury. De-scheduling is a matter for the Attorney General for Northern Ireland. The Attorney General will consider the de-scheduling of a case based on an assessment of the facts and information supplied by Police through the Prosecution Service.

4.10 DISCLOSURE

- 4.10.1 Disclosure is the provision of prosecution material which is not used by the Prosecution Service in the presentation of its case. The prosecutor's duty to disclose unused material to the defence is set out in Part I of the Criminal Procedures and Investigations Act 1996 (the Act) recently amended by the Criminal Justice Act 2003. The Act also sets out the mechanisms by which disclosure should take place.
- 4.10.2 The scheme set out in the Act is designed to ensure that there is fair disclosure of material which may be relevant to an investigation and which does not form part of the prosecution case. Disclosure under the Act should assist the defendant in the timely preparation and presentation of their case and assist the court to focus on all the relevant issues in the trial. Disclosure which does not meet these objectives risks preventing a fair trial.
- 4.10.3 The Attorney General's revised Guidelines on Disclosure, published in 2005, build upon the existing law to ensure that the legislation is operated more effectively, consistently and fairly. These guidelines, if properly applied, will contribute to ensuring that the disclosure regime operates effectively, fairly and justly which is vitally important to the integrity of the criminal justice system. The full guidelines are available on the web site of the Legal Secretariat to the Law Officers (www.lso.gov.uk).
- 4.10.4 Prosecutors must do all that they can to facilitate proper disclosure, as part of their general and personal professional responsibility to act fairly and impartially, in the interests of justice and in accordance with the law. Prosecutors must also be alert to the need to provide advice on an individual case basis to disclosure officers, within those organisations that submit investigation files, on disclosure issues and to advise on disclosure procedure generally to ensure that disclosure obligations are met.
- 4.10.5 In deciding what material should be disclosed (at any stage of the proceedings) prosecutors should resolve any doubt they may have in favour of disclosure. Relevant material containing sensitive information will be placed before the court for issues of disclosure to be determined.

- 4.10.6 If prosecutors conclude that a fair trial cannot take place because of an inability to disclose which cannot be remedied, they must not continue with the case.

4.11 REVIEW OF PROSECUTION DECISIONS

- 4.11.1 People should be able to rely on decisions taken by the Prosecution Service. Normally, if the Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again.
- 4.11.2 However, there may be reasons why the Prosecution Service will review a prosecution decision, for example, where new evidence or information becomes available or a specific request is made by a person, typically a victim, involved in the case. It is impossible to be prescriptive of the cases in which a review will be undertaken and a flexible approach is required.
- 4.11.3 Where a review is to be conducted the following approach is to be taken:
1. If no additional evidence or information is provided in or connected with the request to review the original decision, the case will be considered by a Public Prosecutor other than the Public Prosecutor who initially took the decision now under review.

That Public Prosecutor conducting this review will consider the evidence and information reported in the investigation file, together with the decision which has been reached. There are two potential outcomes of such a review:

- i. If the Public Prosecutor who considers these materials concludes that the decision was within the range of decisions that a reasonable prosecutor could take in the circumstances, then the initial decision will stand and the request for review dealt with on that basis.

As a general rule, a decision will fall within the range of decisions that a reasonable prosecutor could take if there has been:

- no error of law;
- no failure to take into account relevant considerations;
- no evidence of taking into account irrelevant factors; and
- no indication of bad faith or other improper motive.

- ii. If the Public Prosecutor who considers these materials concludes that the original decision was not within the range of decisions that could reasonably be taken in the circumstances, then that prosecutor will apply the Test for Prosecution and reach a fresh decision in the case. This may require further enquiries being made by police in pursuance of section 35(5) of the Justice (Northern Ireland) Act 2002 or the obtaining and considering the advice of counsel or, in appropriate cases, arranging to consult with witnesses.

2. If there is additional evidence and information provided in or connected with a request to review a decision as to prosecution, the case will be reconsidered by the Public Prosecutor who initially took the decision now under review with a view to deciding whether or not all the evidence and information now available provides a proper basis to change the original decision.

That Public Prosecutor conducting this review will consider the evidence and information reported in the original investigation file, the decision which was reached and the additional evidence and information provided. There are two potential outcomes of such a review:

- i. If the Public Prosecutor who considers these materials concludes that there is a sufficient basis for changing the original decision, then that prosecutor will apply the Test for Prosecution and reach a fresh decision in the case. This may require further enquiries being made by police in pursuance of section 35(5) of the Justice (Northern Ireland) Act 2002 or the obtaining and considering the advice of counsel or, in appropriate cases, arranging to consult with witnesses.

- ii. If the Public Prosecutor concludes that there is no sufficient basis for changing the original decision having regard to any new materials now available then the case will be referred to another Public Prosecutor who will conduct a review of the decision.

4.11.4 Where a review of the prosecution decision has already been carried out, by a Public Prosecutor other than the Public Prosecutor who took the original decision, and no new evidence or information is provided by a request to review a prosecution decision then normally no further review will be commenced.

4.12 GIVING OF REASONS

4.12.1 The giving of reasons for not prosecuting is a complex issue. In many cases the reason for not prosecuting is a technical one (for example, the unavailability of a particular proof which is essential to establish the case). A balance needs to be struck between the proper interest of victims and witnesses and other concerns, including but not limited to, damage to the reputation or other injustice to an individual, the danger of infringing upon the presumption of innocence or other human rights and the risk of jeopardizing the safety of individuals.

4.12.2 The policy of the Prosecution Service is to give reasons for decisions for no prosecution in all cases albeit in the most general terms. For example, in a case in which there is a technical defect, such as the unavailability of evidence to prove a essential aspect of the case, the Prosecution Service would normally indicate that it has concluded that there was insufficient evidence to afford a reasonable prospect of a conviction. In a case in which the evidence was sufficient but the decision was taken not to prosecute, for example, given the age and infirmity of the prospective defendant, the reason given would be that it was not in the public interest to prosecute.

4.12.3 The propriety of applying this general policy is examined and reviewed in every case where a request for the provision of detailed reasons is made. In such cases, the Prosecution Service will consider what further information may reasonably be given balanced against the factors which militate against providing detailed reasons together with any other considerations which seem material to the particular facts and circumstances of the case.

4.12.4 However, the Prosecution Service recognises that there may be cases arising in the future, which it would expect to be exceptional in nature, where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. Subject to compelling grounds for not giving reasons, including duties under the Human Rights Act 1998, the Prosecution Service accepts that in such cases it will be in the public interest to reassure a concerned public, including the families of victims, that the rule of law has been respected by the provision of a reasonable explanation. The Prosecution Service will reach a decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case.

5

Conduct of Prosecutions

5.1 ROLE OF PROSECUTORS IN COURT

5.1.1 The Prosecution Service is an independent prosecuting authority which is required to have regard to the public interest. In doing so it will have regard to the particular interests or concerns of any individual involved in the case.

5.1.2 The Prosecution Service serves the public in that it acts in the public interest. However, while it does have responsibilities to victims (see Chapter 6), it is not the legal representative for victims of crime nor does it act as their legal adviser. Similarly the prosecutor does not represent the police.

5.1.3 Prosecutors must always act in the interests of justice. It is not the duty of prosecutors to obtain a conviction by any means at their command. The prosecutor's duty is to prosecute to the full extent of their abilities within the law and rules of evidence and procedure.

5.1.4 The role of the prosecutor in court is to ensure that:

- he/she assists the court on all matters of law and practice applicable to the case;
- only credible and relevant evidence is put before the Court;
- the defence case is properly and fairly challenged and that cross examination of a defendant, or witnesses for the defence will be fairly conducted;
- duties of disclosure are fully complied with;
- relevant information on the effect of the offence on the victim is brought to the attention of the court; and
- the principles of the European Convention on Human Rights are applied in accordance with the Human Rights Act 1998 and relevant authorities.

5.1.5 A prosecutor must not advance any proposition of fact that is not an accurate and fair interpretation of the evidence or knowingly advance any proposition of law that does not accurately represent the law. If there is contrary authority to the propositions of law being put to the court by the prosecutor, of which the prosecutor is aware, that authority must be brought to the court's attention.

- 5.1.6 The prosecutor will challenge allegations about victims and witnesses made by the defence in absence of any supporting evidence.

5.2 COURT COVERAGE

- 5.2.1 Normally prosecutions in the Magistrates' and Youth Courts, and appeals at the County Court, are conducted by Public Prosecutors. Independent counsel prosecute on behalf of the Prosecution Service in these courts as necessary (for example, because of the unavailability of Public Prosecutors or the particular nature of a case).
- 5.2.2 Prosecutors in Magistrates', Youth and County Courts are generally accompanied by another member of staff from the Prosecution Service who provides administrative support before, during and after court.
- 5.2.3 Generally, independent counsel represent the Prosecution Service at the Crown Court, High Court and the Court of Appeal. These counsel are fully briefed by the Prosecution Service prior to any court hearing and are normally accompanied in court by a member of support staff from the Prosecution Service.

5.3 ACCEPTING GUILTY PLEAS TO LESSER OFFENCES

- 5.3.1 Decisions to prosecute, including the specific offences to be prosecuted, are taken by the Prosecution Service in accordance with the Test for Prosecution to which all Public Prosecutors must adhere. Such decisions are taken after a careful assessment of all the evidence and information reported, including any obvious or likely defence and the requirements of the public interest.
- 5.3.2 The general principle is that the decision to prosecute, and the offences to be prosecuted, should not be altered, unless there is a proper reason, once they have been taken and formally issued by the Prosecution Service.
- 5.3.3 The defence may on occasion approach the Prosecution Service with an offer to plead guilty to only some of the charges that they are facing, or to a lesser charge or charges, with the remaining charges not being proceeded with.

- 5.3.4 While the prosecutor is under a duty to consider any such formal offer from the defence, “plea bargaining” has no place in the practice or procedures of the Prosecution Service. The term is frequently, and indeed generally, liable to be understood as implying the seeking of some improper or at least questionable arrangement between the prosecution and the defence. Both the term and what it implies are therefore objectionable. There must be no such improper or questionable arrangement and no practice is permissible which reasonably suggests that there may be.
- 5.3.5 The acceptance by the Prosecution Service of such an offer from the defence must be consistent with the evidence and information available at the time and meet the requirements of justice. The following may be relevant factors:
- a) whether the court can properly sentence the defendant for his or her criminality;
 - b) any relevant information concerning the defendant’s previous convictions and likelihood of reoffending; and
 - c) the proper interests of victims and witnesses.
- 5.3.6 In no circumstances may the prosecution accept an offer to plead guilty to an offence in respect of which the defendant otherwise asserts his or her innocence.
- 5.3.7 Counsel instructed to prosecute in accordance with decisions taken by the Prosecution Service may not depart from such decisions without receiving specific instructions to do so.

5.4 PROCEEDS OF CRIME

- 5.4.1 Following conviction, the Prosecution Service will apply, in appropriate cases, for a confiscation order under the relevant Proceeds of Crime legislation.
- 5.4.2 Where it is necessary to prevent the dissipation of assets which may go to the satisfaction of a confiscation order, the Prosecution Service will apply at an early stage for a restraint order preventing the disposal of such assets.

- 5.4.3 Where a confiscation order is not satisfied voluntarily, the Prosecution Service will apply for the appointment of a receiver to realise assets and apply the proceeds to the payment of the confiscation order. Where appropriate the Prosecution Service will apply for an order for compensation to be paid to a victim of crime out of monies recovered as a result of a confiscation order.

5.5 SENTENCING

- 5.5.1 Sentencing is a matter for the court. Prosecutors must not approbate expressly or impliedly the sentence to be imposed by the court.
- 5.5.2 Prosecutors should not attempt by advocacy to influence the court with regard to sentence. If, however, a defendant is unrepresented it is proper to inform the court of any mitigating circumstances about which counsel is instructed.
- 5.5.3 Prosecutors should be in a position to assist the court, if required, as to any statutory provisions relevant to the offence of the defendant and to any relevant guidelines as to sentence laid down by the Court of Appeal.
- 5.5.4 Prosecutors should bring such matters as are referred to above to the attention of the court if in the opinion of the prosecutor the court has erred. The prosecutor's attention is drawn to the decision in Attorney General's Reference No 8 of 2004 (Dawson) in which the Lord Chief Justice stated:

"Where an indication is given by a trial judge as to the level of sentencing and that indication is one which prosecuting counsel considers to be inappropriate, or would have been considered to be inappropriate if he had applied his mind to it, he should invite the attention of the court to any relevant authorities".

- 5.5.5 Prosecutors are reminded of the provisions of section 36 of the Criminal Justice Act 1988 whereby the Attorney General may seek leave from the Court of Appeal to review a sentence as being unduly lenient. In every case where a prosecutor considers that the sentence imposed is or may be unduly lenient the prosecutor should report the case immediately to the Public Prosecution Service.

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- 5.5.6 Prosecutors are reminded of the provisions of section 15 of the Criminal Appeal (Northern Ireland) Act 1980 whereby the Attorney General may refer a point of law for the consideration and opinion of the Court of Appeal. In every case when a prosecutor considers that there is or may be a point of law which the Attorney General may wish to refer to the Court of Appeal, the prosecutor should report the case immediately to the Public Prosecution Service.
- 5.5.7 The attention of prosecutors is specifically drawn to the duties of the prosecution in respect of Article 14(c) of the Criminal Justice (Northern Ireland) Order 1994, namely the power of the court to make a compensation order. As the injured party has no locus to make an application in respect of compensation, the prosecutor is asked to consider whether the facts and circumstances warrant an application to the court to make a compensation order. If the prosecutor considers that such an application should be made, the relevant proofs including any additional evidence that may be necessary to prove the injured party's personal injury, loss or damage should be sought.
- 5.5.8 The attention of prosecutors is specifically drawn to the rules of practice governing discussions in chambers, as propounded by the Court of Appeal in reference by Her Majesty's Attorney General for Northern Ireland (No 3 of 2000) (Gerard James Rogan) for the guidance of sentencers in courts at all levels.
- 5.5.9 The attention of prosecutors is specifically drawn to the Attorney General's guidelines on the role of prosecuting counsel in discussions in chambers on pleas and sentencing.
- 5.5.10 It is also the prosecutor's duty to deal with any questions of compensation, forfeiture, confiscation or restitution which may arise.
- 5.5.11 Where there is a significant difference between the factual basis on which a defendant pleads guilty and the case contended for by the prosecution, the prosecution should seek to establish the facts upon which the court should base its sentence.

- 5.5.12 Prosecutors should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.

5.6 APPEALS

- 5.6.1 The Attorney General may appeal to the Court of Appeal on a point of law following acquittal on indictment in the Crown Court. However, the defendant is and remains acquitted irrespective of the outcome of such an appeal. Appeals from the Crown Court will be heard in the Court of Appeal.
- 5.6.2 The Prosecution Service may appeal to the Court of Appeal any decision of the Crown Court to make a confiscation order or any decision of the Crown Court not to make a confiscation order. Also the Prosecution Service may appeal certain rulings by the Crown Court in relation to a trial on indictment, for example, a ruling that there is no case for a defendant to answer.
- 5.6.3 The Prosecution Service may appeal on a point of law any decision of the Magistrates' Court by requesting that the case is 'stated' by the Magistrate. Such appeals from the Magistrates' Court will be heard in the Court of Appeal.
- 5.6.4 The Prosecution Service may seek leave to appeal any decision of the Court of Appeal to the House of Lords if it is certified that a point of law of general public importance exists.

5.7 UNDULY LENIENT SENTENCES

- 5.7.1 The Criminal Justice Act 1988 gives the Attorney General the power to apply for leave to refer a sentence he considers unduly lenient to the Court of Appeal. This Act restricts the use of that power to certain of the more serious offences tried and sentenced in the Crown Court. The Attorney General may not appeal any sentence imposed at the Magistrates' Court on the grounds that it was unduly lenient.

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- 5.7.2 The Court of Appeal has held that an unduly lenient sentence is one that falls outside the range of sentence that a judge, taking into consideration all relevant factors, and having regard to sentencing guidance, could reasonably consider appropriate. Sentencing is not a straightforward matter. Every case is different and the sentence appropriate to any case must depend on the particular circumstances of that case. A judge, in sentencing a defendant, takes into account any guidance given by the Court of Appeal, identifies any features that aggravate the offence and any features that mitigate the offence. The judge then decides on a sentence that reflects the need to punish, to deter others, to protect the public and to rehabilitate the defendant.
- 5.7.3 The Prosecution Service may bring a case to the attention of the Attorney General in order that he may consider if whether to appeal on the grounds that the sentence imposed was unduly lenient.
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6

Victims & Witnesses

6.1 PROSECUTION DECISIONS

- 6.1.1 Although the evidence in respect of a particular criminal offence may be sufficient to provide a reasonable prospect of conviction, the Prosecution Service has also to decide whether prosecution is required in the public interest. In this regard, the proper interests of the victim or witness will be taken into account along with other relevant factors to determine whether or not prosecution is required.

6.2 SERVICES

- 6.2.1 The Prosecution Service is committed to delivering a comprehensive set of services to victims and witness, from the point that the Prosecution Service assumes responsibility for a case until the case is disposed of. The range of services to be provided to victims and witnesses include:

Information Provision

Delivery of information at key milestones in the progress of a case, for example, prosecutorial disposal decision, notification of any major changes to the case, etc.;

Court Attendance

Arranging and providing information in support of attendance of the victims and witnesses at court, for example ensuring witness availability; and

Support Services

Providing specialist support services to victims and witnesses as the case progresses through partnerships with Victim Support and the NSPCC, for example to those persons who are vulnerable, intimidated or have particular requirements.

- 6.2.2 The prosecutor will fully carry out his responsibility under Article 14(c) of the Criminal Justice (Northern Ireland) Order 1994 to make representations regarding compensation for the victim where it is appropriate. These representations will relate to both of the consideration of the appropriateness of compensation but also the quantum if the court decides to award compensation.

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- 6.2.3 These services are detailed in the Prosecution Service's revised Victims and Witness Policy document.
- 6.2.4 The Prosecution Service will work in partnership with other criminal justice organisations (for example Police Service, Court Service, etc.) and voluntary sector bodies to ensure that these services are delivered in a timely manner to an acceptable level of quality.
- 6.2.5 The Prosecution Service will also provide appropriate mechanisms and processes to allow victims and witnesses to make complaints about the level and quality of services provided by the Prosecution Service.
- 6.2.6 For complaints not relating to the exercise of prosecutorial discretion, there will be an independent external body to which the complaint may direct the complaint if they are not satisfied by the response they have received from the Prosecution Service.

6.3 SPECIAL MEASURES

- 6.3.1 Prosecutors must apply for special measures to assist vulnerable or intimidated witnesses to give evidence as required.
- 6.3.2 The Criminal Evidence Order (Northern Ireland) 1999 provides the following range of special measures:
- Screens in court;
 - Evidence by live video link;
 - Evidence in private (clearing the court in sexual cases or where there has been or may be intimidation);
 - Removal of wigs and gowns;
 - Video recorded evidence in chief; and
 - Aids to communication (available to vulnerable witnesses only).

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- 6.3.3 Intermediaries and communication aids are available only for 'vulnerable' witnesses. Other services such as video recorded cross-examination or re-examination and examination of witness through an intermediary may be introduced in the future.
- 6.3.4 The court will make a 'special measures' direction on application of a party or of its own motion where it considers that a measure or measures would be likely to improve the quality of evidence given by the witness.
- 6.3.5 The Criminal Evidence Order (Northern Ireland) 1999 makes special provisions for child witnesses. It creates three categories of child witness:
- a) Children giving evidence in a sexual offence case;
 - b) Children giving evidence in a case involving an offence of violence, abduction or neglect; and
 - c) Children giving evidence in all other cases.
- 6.3.6 Children in categories a) and b) are 'in need of special protection' and benefit from strong presumptions about how they will give evidence. Children 'in need of special protection' will have a video recorded statement admitted as their evidence in chief (if one exists).
- 6.3.7 Children in category c) - all other children - will have a video recorded statement admitted as their evidence in chief (if there is one) and will give further evidence or be cross-examined via a live TV link.

7

Code of Ethics

7.1 PURPOSE

7.1.1 This Code of Ethics lays down the standards of conduct and practice for prosecutors working for, or on behalf of, the Prosecution Service for Northern Ireland.

7.1.2 The development of this Code of Ethics has been guided by:

- Guidelines for the role of prosecutors – Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana between 27th August and 7th September 1990;
- Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (1999) - International Association of Prosecutors; and
- Council of Europe Recommendation 19 (2000) on the Role of the Public Prosecution in the Criminal Justice System.

7.1.3 The Northern Ireland Civil Service (NICS) Code of Ethics sets out the framework within which all Northern Ireland Civil Servants work and the values which they are expected to uphold, in accordance with procedures laid down in the Northern Ireland Civil Service Pay and Conditions of Service. Public Prosecutors, as members of the Northern Ireland Civil Service, are obliged to act in accordance with the NICS Code of Ethics.

7.1.4 Further, Public Prosecutors must either be a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland. As such each Public Prosecutor is obliged to act in accordance with the standards set by their respective professional body.

7.2 LEGAL OBLIGATIONS

7.2.1 In considering cases and conducting prosecutions, prosecutors, must at all times, act in accordance with the law of Northern Ireland and any legal guidance provided by the Attorney General for Northern Ireland and by the Director of Public Prosecutions for Northern Ireland.

- 7.2.2 In addition, the prosecutor must, at all times, act in a way which is compatible with the Human Rights Act 1998, the European Convention on Human Rights and all other relevant international conventions and declarations.

7.3 PROFESSIONAL CONDUCT

- 7.3.1 Prosecutors must, at all times, act in accordance with the Code as issued by the Director of Public Prosecutions and the policies and procedures of the Prosecution Service.

- 7.3.2 Prosecutors must not participate in, or seek to influence, the taking of a prosecution decision in regard to any case where:

- a) they have, or are likely to have, a financial or personal interest; or
- b) where they may be called as a witness; or
- c) where it could reasonably be considered that they have a potential conflict of interest.

- 7.3.3 Prosecutors must report to the appropriate authorities any attempt to influence their decision, with the intention of perverting the course of justice, which is an offence under the Justice (Northern Ireland) Act 2004.

- 7.3.4 Prosecutors must, at all times, adhere to the highest professional standards. Prosecutors shall:

- a) at all times maintain the honour and dignity of their profession;
- b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- c) at all times exercise the highest standards of integrity and care;
- d) keep themselves well-informed and abreast of relevant legal developments;
- e) strive to be, and to be seen to be, consistent, independent, fair and impartial;

- f) have regard to a defendant's right to a fair trial and in particular ensure that evidence favourable to the defendant is disclosed in accordance with the law and the requirements of a fair trial;
- g) always serve and protect the public interest;
- h) respect, protect and uphold the universal concept of human dignity and human rights.

7.3.5 In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

- a) fully discharge their duties to the courts, the legal profession, defence solicitors and counsel, the police and any government agencies, whether nationally or internationally;
- b) render mutual legal assistance to the Prosecution Services and colleagues of other jurisdictions, in accordance with law and in a spirit of mutual co-operation; and
- c) fulfil their responsibilities to victims and witnesses.

7.3.6 The use of prosecutorial discretion should be exercised independently and be free from any interference. Prosecutors will maintain absolute fairness and impartiality at all times. Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- a) carry out their functions impartially;
- b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest.
- c) act independently and with objectivity;
- d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the defendant;
- e) in accordance with the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed in accordance with law and practice, whether that points towards the guilt or the innocence of the defendant; and
- f) assist the court to reach a just verdict.

7.3.7 Prosecutors shall perform their duties fairly, consistently and expeditiously. They shall perform an active role in criminal proceedings as follows:

- a) when giving advice, they will remain impartial and objective;
- b) in the institution and continuance of criminal proceedings, they will proceed only when a case passes the Test for Prosecutorial (as set out in this Code). Prosecutors will not initiate or continue with a prosecution in circumstances where the Test for Prosecution is not met.
- c) throughout the course of the proceedings, the case will be fairly and firmly prosecuted and not beyond what is indicated by the evidence;
- d) preserve professional confidentiality;
- e) in accordance with the requirements of a fair trial, consider the views, legitimate interests, privacy and concerns of victims and witnesses, when their personal interests are, or might be, affected and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority or court, where that is available;
- f) have regard to the rights of the defendant;
- g) disclose to the defendant relevant evidence and material in accordance with the law and practice and the requirements of a fair trial;
- h) examine evidence to ascertain if it has been lawfully obtained;
- i) decline to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute inhuman or degrading treatment;
- j) seek to ensure that appropriate action is taken against those responsible for using such methods;
- k) refer all instances where a police officer may have committed a criminal offence or acted in a manner which would justify disciplinary proceedings to the Police Ombudsman for Northern Ireland;
- l) in accordance with the law, the requirements of a fair trial and the guidance contained within this Code, give due consideration to disposals other than prosecution including, for example, by the administration of a caution or in cases involving youth defendants the opportunity to take part in a Youth Conference.

7.4 PRIVATE CONDUCT

- 7.4.1 Prosecutors must not compromise the actual, or the reasonably perceived, integrity, impartiality, fairness or independence of the Prosecution Service by activities in their private life.
- 7.4.2 Prosecutors should respect and obey the law at all times.
- 7.4.3 Prosecutors may not belong to any organisation, which by way of its policies or actions, is clearly committed to acting contrary to the law or to the interests of the criminal justice system.
- 7.4.4 Prosecutors must not take part in any political or other public activity which is contrary to the law or which compromises, or might be seen to compromise, their integrity, impartiality, fairness or independence. They should conduct themselves in such a way as to retain public confidence in their professional conduct.
- 7.4.5 Prosecutors must not attempt to frustrate or influence government policy, decisions or activities by unauthorised, improper or premature disclosure of any information that has been acquired through their employment in the Prosecution Service.
- 7.4.6 Prosecutors must not use any information to which they have had access during the course of their employment to further their own private interests or those of others. They must not accept any gifts, prizes, benefits, inducements or hospitality from a third party which may be seen to compromise their integrity, impartiality, fairness or independence.

7.5 BREACHES OF THE CODE OF ETHICS

- 7.5.1 Public Prosecutors will be given comprehensive training in the application of the principles, guidelines and standards outlined in this Code for Prosecutors (including the Code of Ethics). Any queries in relation to the Code or the requirement for further guidance, including consideration of any areas of potential conflict, should be brought immediately to the prosecutor's line

manager or, if more appropriate, directly to the Director of Public Prosecutions for Northern Ireland.

7.5.2 Failure by Public Prosecutors to adhere to the Northern Ireland Civil Service Code of Ethics or to this Code may result in disciplinary proceedings.

7.5.3 Failure by independent counsel instructed by the Prosecution Service to adhere to this Code of Ethics may result in the Prosecution Service not availing of the services of that particular counsel in the future. Where appropriate any breaches of this Code of Ethics by independent counsel will be referred to the appropriate professional body for its consideration. Any queries by independent counsel in relation to this Code or the requirement for further guidance in respect of areas of potential conflict should be brought to the attention of the Director of Public Prosecutions for Northern Ireland.

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