

SUMMARY OF CONSULTATION RESPONSES

The PPS's Consultation on the Code for Prosecutors issued on 19 May 2015 for a period of 12 weeks and was due to close 14 August however the consultation was extended to the 4 September 2015. The aim of the consultation was to seek a wide range of views to inform the new Code for Prosecutors.

Responses were received from:

Attorney General for Northern Ireland;
Bar Council, The Bar of Northern Ireland;
Professional Conduct Committee, The Bar of Northern Ireland;
Police Service of Northern Ireland;
Police Federation for Northern Ireland;
Superintendents' Association of Northern Ireland;
Victim Support NI;
Reducing Offending Directorate, Department of Justice.

The Advocate General for Northern Ireland was consulted on the revised Code as per the Justice Act (NI) 2002 and was content.

A number of comments were also considered from PPS staff. Issues highlighted included the scope and approach to requests for review, the ongoing review of prosecution decisions, cost as a public interest factor and minor typographical errors.

All comments raised were taken fully into consideration.

We have provided feedback to each consultee and a summary of the main points raised are set out below.

Advocate General for NI		
	Comment	PPS Response
1.	Paragraph 4.52 - the Advocate General's Guidelines on Disclosure 2005 and 2011 have been superseded by Guidelines issued in 2013.	Comments accepted. Guidelines updated.

Attorney General for NI		
	Comment	PPS Response
1.	<p>Para 1.5 of the draft Code, which sets out the duties of prosecutors, includes, as one of these duties, the phrase “<i>and to bring offenders to justice wherever possible</i>”.</p> <p>This wording might be considered to sit uncomfortably with the requirement to apply a public interest test as part of the test for prosecution. This phrase should, I suggest, be expressly qualified by reference to the public interest test.</p>	<p>Accepted. The phrase “<i>and to bring offenders to justice wherever possible</i>” has been removed from paragraph 1.5.</p>
2.	<p>Para 1.10 of the draft code states that the PPS, in exercising its functions, will “<i>ensure that it complies with the binding obligations of international law ratified by the UK, including the principles of the European Convention on Human Rights set out in the Human Rights Act 1998</i>”. It is not, I think entirely correct to say that the 1998 Act sets out the ‘principles’ of the ECHR and international law yields to domestic law in a dualist system such as ours.</p> <p>Perhaps this section of the Code should be modified to read, “<i>The PPS in exercising its functions will ensure that it complies with the binding obligations of international law ratified by the UK, (so long as these do not conflict with domestic law). It will comply also with the Convention rights incorporated into domestic law by the Human Rights Act 1998....</i>”</p>	<p>Accepted. The wording in respect of international obligations of the PPS has been adopted.</p>
3.	<p>Prosecution Decision</p> <p>Para 4.13 states, for what I think is the first time, that cost is a relevant factor when making an overall assessment of the public interest in relation to any given case, although this is quite properly qualified by saying that the public interest should not be decided by reference to cost alone. It would, I think, be proper however to state in the Code, that, where cost has been a</p>	<p>Comments accepted.</p> <p>Where cost is a relevant factor this will be explained to the victim (para 4.14 (xii)).</p>

	relevant factor in, for example, a decision not to prosecute, this should be disclosed and explained when given reasons for the decision.	
4.	<p>Review of Prosecution Decisions</p> <p>Para 4.5 - This amends the section in the previous Code and sets out those situations where a Review will be carried out. This is stated as:</p> <p><i>“Where new or additional evidence or information becomes available which is capable of having a bearing on a decision to prosecute or not to prosecute, the prosecution decision will be reviewed. A decision to prosecute will also be reviewed where there is a specific request for a review by or on behalf of a victim involved in the case.”</i></p> <p>Although the Victims Directive is not mentioned in the new Code, this provision would appear to be designed to reflect the requirement in Article 11 of the Victims Directive to have the right to a review of a decision not to prosecute. It remains to be seen whether or not a requirement in Guidance would be sufficient to comply with the Directive’s requirement that the procedural rules for a review shall be determined by national law.</p>	Comments noted.
5.	I note that the list of persons who can request a review is included at Para 4.64 of the Code. This appears to reflect Para 4.59 in that it appears to be restricted to victims (or in appropriate cases family members) and those who are acting on behalf of the victim in a representative capacity, such as a legal representative or an elected representative, family member, guardian etc. This does not appear to me to cater for the situation where the PPS is asked to review a decision by someone who is not representing the victim / family. For example, on a number of occasions, I have asked you to review no prosecution decisions made in relation to deaths which	Comments accepted. The list of persons who can now request a review has been amended to include the Attorney General, investigators, and to include cases where the findings of an inquest are relevant.

	<p>have been brought to my attention in the context of my obligations under section 14 of the Coroners Act (NI) 1959. Such requests (and requests by the PSNI who may have a valid interest in requesting a review) would not appear to fall within the scope of the Code, as currently drafted.</p>	
6.	<p>I am pleased to note that the amendments to the draft Code appear to broadly give effect to paragraph 33 of the section 8 guidance which said that the <i>“PPS should review no prosecution decisions when representations are made seeking such a review.”</i> I note that the right of the victim to a review of a prosecution / no prosecution decision is made subject to the requirement, in paragraph 4.63 that the request be made in writing three months of their having been informed of the decision of no prosecution. While it is, I think, very much in the interests of legal certainty that the right to request a review should not be entirely open ended, the effect of paragraphs 4.62 and 4.63, taken together with 4.60(ii) would appear to me to be that no further review will be carried out in the absence of additional evidence or information becoming available. I wonder if this is perhaps unduly restrictive and perhaps it might be appropriate to indicate that a further review may be considered where this is justified by exceptional circumstances.</p>	<p>Comments accepted. An exceptional circumstances clause to qualify the 3 month time limit has been added.</p>
7.	<p>Paragraphs 4.63 to 4.65 substantially change the position from what was contained in the previous Code. These provisions now state that the policy of the PPS is to give victims reasons in all cases where a decision is made not to prosecute. It sets out that there is a two tier approach: in a wide range of cases which might be classed as more serious cases, detailed reasons will be given for a decision not to prosecute and a meeting will be offered. Where detailed reasons are given the PPS will consider what information may be provided to the Victim balancing the interests of all parties together with any other considerations which seem material to</p>	<p>Comments accepted. The current practice is that all victims, including those who receive the shorter reasons letter are made aware of the right to seek a review as well as further information. A requirement that all victims should receive a notification that the three month period within which requests for review should be made will only run from the date of receipt of the full reasons letter when requested, has been added to the Code.</p>

	<p>the facts and circumstances of the case.</p> <p>In other cases reasons will be given in general terms (i.e. insufficient evidence to afford a reasonable prospect of a conviction or not in the public interest to prosecute.)</p> <p>It seems to me that the Victims Directive does not differentiate between victims in more serious and less serious cases. There is an obligation imposed by Article 11(3) of the Victims Directive to notify victims <i>“without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute on request.”</i></p> <p>This is all the more important as the intention of the draft Code is to limit the right to review to a three month period. In such circumstances, in order to comply with the Victims Directive it should, I think, as a minimum requirement be stated explicitly in the Code that persons who are given reasons in general terms explaining a decision <u>not to prosecute</u> will be informed, at the time that those reasons are given, of their right to request more detailed reasons. Indeed, I am not at all clear that even this would fully comply with the Victims Directive which requires not only that the victim be informed of their right to receive such information but that they receive sufficient information to decide whether to request a review. While I appreciate that the experience in this jurisdiction is that the vast majority of victims in less serious cases do not pursue reviews, the Victims Directive does not differentiate between categories as the draft guidance does.</p>	
8.	<p>Paragraph 5.13 – I note that 5.13 of the draft Code amends the previous version by adding, after the section in which it sets out that the proper interests of victims and witnesses are a relevant factor to take into account when deciding to accept a plea to a lesser offence, the following: <i>“Prosecutors should ensure that where possible the views</i></p>	<p>Comments noted. The PPS has retained the wording of the consultation draft.</p>

	<p><i>of the victim or his/her family are taken into account when deciding whether to accept the guilty plea.”</i></p> <p>While I welcome the obligation to take into account the views of victims in deciding whether to accept a plea to a lesser offence, it is I think important to note that this is also an area where the Victims Directive may impose additional requirements. I would draw attention to the fact that the European Commission Guidance relating to the transposition and implementation of the Directive would appear to indicate that a decision to accept a plea to a lesser charge should also be the subject of the right to a review. This guidance states that “<i>a decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges <u>or</u> discontinue proceedings.</i>” While the Commission guidance may one day have to yield to a definitive CJEU interpretation I think it is now prudent to have regard to it.</p> <p>The Commission’s view is that the right to information under Article 6 and under Article 11(3), and the right to a review under Article 11(2), of the Directive apply equally to those situations where the prosecutor decides to accept a plea to a lesser offence.</p> <p>In the circumstances, the draft Code should state that, in addition to taking the views of victims into account, the PPS will provide a victim, in such circumstances, with sufficient reasons for the decision in order to enable a victim to decide whether to exercise his or her right to a review of the decision.</p>	
9.	<p>Two matters occur to me with regard to the sentencing section of the draft code:</p> <p>Firstly, the 2008 Code at paragraph 5.5.10 placed a duty on a prosecutor “<i>to seek to establish the facts upon which the court should base its sentence</i>”, in circumstances where there is a significant difference between the factual basis on which a defendant pleads guilty and the case</p>	<p>Accepted. These paragraphs have now been included within the revised Code at paragraphs 5.25 and 5.26.</p>

	<p>contended for by the prosecution. This appears to be missing from the sentencing section of the draft Code.</p> <p>Secondly, paragraph 5.5.11 of the 2008 Code dealt with “Newton Hearings” by placing a duty on the prosecutor to challenge any assertion made by the defence in mitigation which is “inaccurate, misleading or derogatory.” It provided that if the defence persisted in such an assertion, then the court should be invited to hear evidence to determine the facts and sentence accordingly. Again, this requirement would appear to me to be missing from the relevant section of the draft Code.</p>	
10.	<p>I note and welcome paragraphs 6.4 to 6.5 of the draft Code which deal with the joint PPS/PSNI Victim and Witness Care Units. This represents a good example of interagency co-operation covered by paragraph 43 of the Guidance issued to the PPS under section 8 of the Justice (NI) Act 2004.</p>	<p>We appreciate the welcome you have given in your letter to other changes in the Code particularly those in respect of the Victim and Witness Care Unit and Victim Personal Statements.</p>
11.	<p>Victim Personal Statement</p> <p>I note and welcome the acknowledgement in the draft Code that <i>“since 31 December 2013 the PPS will notify victims of their right to complete such a statement (i.e. a Victim Personal Statement) and work with the courts and police to make the statement available to the court.”</i></p> <p>This is consistent with Article 10 of the Victims Directive which imposes an obligation on Member States to ensure that victims may be heard during criminal proceedings and may provide evidence. By their nature, Victim Personal Statements relate to the post conviction phase of criminal proceedings. I note that wording of Article 10 of the Victims Directive does not appear to confine the right of a victim to be heard to that part of the criminal proceedings. If this is indeed what is intended, this would represent a radical</p>	<p>As at 10 above.</p>

	change to our criminal justice system. However, the Court of Justice of the European Union will, in due course, no doubt provide clarity as to the extent of the right afforded by Article 10.	
12.	<p>Special Measures</p> <p>Paragraph 6.8 of the draft Code says that, where a case involves a vulnerable or intimidated witness, prosecutors <u>must</u> apply for special measures to assist them to give their best evidence at court. This appears to me to be rather overstating the duty. There may well be cases where a witness wishes to give their evidence in open court and under normal court conditions and feels that to do so will be a more effective means of giving their evidence. In such cases prosecutors should not be obliged to make a special measures application, contrary to the wishes of such witnesses.</p> <p>In this regard I note that the duty imposed by Article 23 of the Victims Directive is to make measures available to witnesses with specific protection needs, not to ensure that evidence is given under such conditions. This is also consistent with Article 22 of the Directive which imposes the duty to ensure that victims receive a timely and individual assessment.</p>	Accepted. The requirement that a prosecutor <i>must</i> apply for special measures has been amended to <i>must consider whether it is appropriate to apply for special measures</i> .

Bar Council, The Bar of Northern Ireland

	Comment	PPS Response
--	----------------	---------------------

1.	<p>The PPS has also made alterations around the considerations under the public interest test by adding:</p> <p>4.13 In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim and the impact of the offence on a victim and, in appropriate cases, their family, where such views are available. However PPS does not represent</p>	Comments noted. The PPS has retained the wording of the consultation draft.
----	---	---

	<p>victims or their families in the same way as solicitors act for their clients. It is the duty of Public Prosecutors to form an overall view of the public interest.</p> <p>The Bar Council recognises the important and valuable role which victims play in the prosecution process. However, we would express concerns that allowing such wide scope for the views expressed by victims into account could lead to undue pressure on the independence and robustness of the decisions being made in the public interest. The PPS must be mindful that victims or their families cannot expect to direct the prosecution case or unduly influence the decision making process.</p>	
2.	<p>The Bar Council also highlights the addition to the Code around the cost of a prosecution as a relevant factor under the public interest test:</p> <p>4.14 The Public Prosecutor should also consider whether prosecution is proportionate to the likely outcome. Cost is a relevant factor when making an overall assessment of the public interest, but the public interest for or against a prosecution should not be decided on the basis of cost alone. In relation to cost the Public Prosecutor should have regard to whether the cost to the PPS and the wider criminal justice system could be regarded as disproportionate when weighed against any likely penalty.</p> <p>The Bar Council recognises that the PPS has a limited budget and we take the view that in certain circumstances, cost maybe taken into account when determining the public interest test. However, the Bar stresses that cost cannot be a determining factor for the Public Prosecutor in determining an overall assessment of whether the public interest requires prosecution through the Courts.</p>	<p>This paragraph has been removed and a new bullet point has been added to 4.14 (xii):</p> <p>“where the cost to the PPS and the wider criminal justice system could be regarded as disproportionate when weighed against any likely penalty. However the public interest for or against a prosecution should not be decided on the basis of cost alone. Where cost is a relevant factor in a decision not to prosecute this will be explained when reasons are given for the decision.”</p>
3.	<p>The new Code also contains additions to those who can request a review of a</p>	<p>Comments noted. PPS has revised the scope of persons who</p>

	<p>decision of no prosecution:</p> <p>4.67 The following persons can request a review of a decision of no prosecution:</p> <ul style="list-style-type: none"> • a victim in the case; • the family of a victim who is deceased as a result of the alleged criminal act; • the parents or guardian of a victim who is under 18; • the family or representative of a victim who is incapacitated through disability or injury; • the legal representative of a victim in the case; • elected representatives or other professionals who are acting on behalf of a victim in the case; • businesses represented by a single point of contact. <p>The Bar Council expresses concern at the expansion in the categories of persons who can request a review of a decision of no prosecution. In the 2008 Code a review was limited to a “specific request” being “made by, typically a victim, involved in the case” (4.11.2). We believe that the addition of six new categories will lead to the number of requests for review increasing exponentially. The PPS should consider revising the scope of this.</p>	<p>can request a review. Paragraph 4.60 of the revised Code refers.</p>
<p>4.</p>	<p>The Bar highlights the addition of provisions around the circumstances in which prosecutors should bring to the court’s attention the appropriate sentencing range in a case and where, in the context of an assessment of the dangerousness of a defendant, they should express the prosecution’s view as to whether the defendant poses a significant risk to members of the public:</p> <p><i>5.22 Although prosecutors should not advocate a particular sentence, they must be in a position to assist the court as to any statutory provisions relevant to the offence and to any relevant guidelines as to sentence laid down by the Court of Appeal. In this context it is appropriate for the</i></p>	<p>Comments noted. The words “give the Court the prosecution’s view as to whether ..” have been amended to “ensure the court has available all relevant material and is aware of all relevant facts to enable to determine whether...”.</p>

prosecutor to indicate the sentencing range appropriate to the facts of the case in line with relevant authorities. The prosecutor's attention is also 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".

The Prosecutor should also draw the court's attention to any expert evidence or specialist reports in relation to relevant matters, such as where a defendant has a mental health issue. The Prosecutor must also be able to assist the court in relation to the provisions of the Criminal Justice (Northern Ireland) Order 2008 which relate to the assessment of the dangerousness of a defendant. In these cases a prosecution advocate should give the Court the prosecution's view as to whether the defendant poses a significant risk to members of the public of serious harm.

The Bar Council has particular concerns as to whether it is appropriate for prosecution counsel to advise the trial judge in relation to the dangerousness of a defendant as contained in 5.22 above. The Bar considers that this provision represents a direct conflict with the Bar of Northern Ireland Code of Conduct at 19.9(a) which states: "in relation to sentencing the prosecuting barrister: a) should not attempt by advocacy to influence the trial judge".

Counsel's duty has always been to inform the Court of the statutory sentencing range and the relevant authorities that serve to inform the Court as to where, on the appropriate scale, any case is likely to fall having regard to aggravating and mitigating

factors. Meanwhile the issue of dangerousness is determined by the Court on the basis of evidence that establishes to the Court that a particular defendant presents a significant risk of serious harm. It is prosecuting counsel's duty to identify to the Court the evidence that informs the Court as to whether that threshold is met. Prosecuting Counsel may also seek to evaluate the quality of that evidence and point to strengths or weaknesses in any opinion expressed by a witness.

Paragraph 5.22 in the new Code suggests that Prosecuting Counsel should articulate the subjective opinion of the PPS as to its preferred outcome. This could create a significant risk if, for example, a view is taken by the PPS that is against the weight of the evidence. Consequently, the new Code for Prosecutors fails to recognise that Counsel's duty is to identify to the Court the evidence, including the strengths and weaknesses of that evidence in relation to the issue of whether a particular Defendant is dangerous. However, it is not Counsel's duty to call upon the Court personally or to seek to influence the Court by expressing the subjective view of the PPS as to where that balance lies. The PPS or any counsel instructed on its behalf should not call expressly for a particular sentence or state that a particular defendant is dangerous as this must be a decision for the judge.

Furthermore, Paragraph 5.22 appears to conflict with the earlier provision in 5.20 which states that "sentencing is a matter for the court. Prosecutors must not approbate expressly or impliedly the sentence to be imposed by the court". The new Code requires the prosecutor to effectively advocate that the defendant be found dangerous which means that the prosecutor is ultimately promoting a discretionary life sentence, an indeterminate custodial sentence or an extended custodial sentence as the only appropriate methods of disposal for the court.

<p>The Bar Council notes that there is no provision around advising the trial judge on the dangerousness of a defendant in The Code for Crown Prosecutors issued by the Crown Prosecution Service in England and Wales. Given the considerations outlined above, we consider that paragraph 5.22 should be removed.</p> <p>In addition, the Bar Council is also mindful of the duty contained in the Bar's Code of Conduct at 19.10 that "the prosecuting barrister should read and follow the current Code for Prosecutors issued by the Public Prosecution Service". The conflict between the two codes must be resolved and the PPS should engage with the Professional Conduct Committee to ensure that the new Code for Prosecutors can be reconciled with the Bar's own Code of Conduct.</p>	
--	--

Professional Conduct Committee, The Bar of Northern Ireland

Comment	PPS Response
----------------	---------------------

<p>1. Section 5.22 contained in the revised Code represent a potential conflict with the Bar of Northern Ireland's Code of Conduct.</p> <p>Section 5.22 makes provision for prosecution counsel to advise a trial judge in relation to the dangerousness of a defendant. This requirement represents a potential conflict with the Bar's Code of Conduct at 19.9(a) which states: <i>"in relation to sentencing the prosecuting barrister: a) should not attempt by advocacy to influence the trial judge"</i>.</p> <p>Furthermore, the Bar's Code of Conduct contains a duty at 19.10 that <i>"the prosecuting barrister should read and follow the current Code for Prosecutors issued by the Public Prosecution Service"</i> which also represents a difficulty given the new direction in Section 5.22.</p> <p>The Professional Conduct Committee would welcome engagement with the PPS in order</p>	<p>Comments noted. The words "give the Court the prosecution's view as to whether.." have been amended to "ensure the court has available all relevant material and is aware of all relevant facts to enable to determine whether...".</p>
--	--

	to ensure that the potential conflict between the two codes is resolved and to enable the new Code for Prosecutors to be compatible with the Bar's Code of Conduct.	
Police Service of Northern Ireland		
	Comment	PPS Response
1.	Section 4 of the Code considers prosecution decisions. Paragraph 4.62 explains that a victim may request a review of a decision not to prosecute and further paragraphs detail the criteria to be applied when such a request is received and who exactly may avail of this facility. This is a limited but sensible facility that can further public confidence in the criminal justice system. It is my view that there may be benefit in giving consideration to the same facility being extended to police, who have an intimate knowledge of the alleged offence and may be in a position to address any issues that influenced a decision not to prosecute at first instance. I am aware that PPS will currently consider such petitions from police and welcome that, but it may benefit from being on a more formal basis.	Comments accepted. PPS has revised the scope of persons who can request a review. Paragraph 4.60 of the revised Code refers.
2.	As well as employing its own staff to prosecute PPS also at times employs independent lawyers to prosecute on its behalf. It is desirable that all prosecutors should work to the standards in the Code and as such it is my view that the Code should apply to all persons prosecuting, whether as employees of PPS or when acting on its behalf.	Comments noted. The Code also applies to Counsel instructed by or on behalf of the Director to conduct any criminal proceedings.
3.	Whilst the Code offers only general guidance it is important that the detail of processes between PSNI and PPS in the prosecution process is established, and work in this area is ongoing.	Noted and accepted.

Police Federation for Northern Ireland		
	Comment	PPS Response
1.	We have examined the document and note its content with no adverse comments to make at this time.	Comments noted.
The Superintendents' Association of Northern Ireland		
	Comment	PPS Response
1.	No comments to raise on the matter.	Noted.
Victim Support NI		
	Comment	PPS Response
1.	VSNI notes that the format and language used in the code would not meet the plain English standard and this may preclude individuals from effectively challenging when the code is not met. Therefore, VSNI would prefer a shorter and more user friendly version being made available to the public, if required.	Comments noted. Useful contacts added to the electronic version of the Code.
2.	VSNI would also like to see the insertion of links to relevant guidance, including relevant documents that would assist witnesses and to make greater allowance for those with disabilities and where English is not their first language. And also, the insertion of a link to the Victims Charter, at appropriate places throughout the Code.	As above.
3.	VSNI notes that throughout the code there is considerable room for the use of an individual's discretion and interpretation of the code by prosecutors. VSNI understands the necessity for such discretion and flexibility when dealing with complex matters, but would be concerned that this level of discretion without guidance particularly in decision making does not provide a consistent approach to the application of the law.	Comments noted. The PPS are happy to engage further with VSNI on this issue.

4.	<p>Public Interest Test</p> <p>Para 4.13 refers to prosecutors taking into account “<i>the views expressed by the victim and the impact of the offence on a victim and in, appropriate cases their family, where such views are available</i>”. VSNI would be keen to understand the mechanism that would permit the views of victims being elicited prior to the decision to prosecute and would be keen to ensure this process can be followed by victims as appropriate.</p> <p>Para 4.13 then goes on to say that the victims views are not the paramount concern with para 4.14 referring to the proportionality and finally to the cost being a relevant factor. VSNI welcomes the reference to proportionality, we agree with the view that cost should not be the main consideration influencing decision making. VSNI believes this is one of a range of factors that should be taken into account when forming an overall view. Proportionality should be about ensuring that prosecutors and the police are prioritising the right cases to prosecute from the start, and doing so in the most effective way. A common sense approach should help ensure the right cases are brought before the courts, and those that shouldn't be prosecuted are not introduced to the system, only to later be withdrawn. With that in mind, VSNI would be keen to understand what weight that is given to each of these important factors throughout the decision making process?</p>	Comments noted. The PPS are happy to engage further with VSNI on this issue.
5.	<p>Considerations against prosecution</p> <p>Para 4.16 (ii) <i>where the loss of harm can be described as minor and was the result of a single incident, particularly if it is caused by an error of judgement or a genuine mistake;</i></p> <p>- VSNI suggest that the effect on a victim in these circumstances may still be grave and a Victim could be left without any redress in these circumstances, and would suggest that the views of the victim are given proper weight and similar consideration.</p>	Comments noted. Dealt with elsewhere within the Code.
6.	<p>Alternatives to Prosecution</p> <p>Para 4.29 refers to decision to dispose of a</p>	Comments noted. Dealt with sufficiently by other aspects of the

	<p>case by an alternative to prosecution. VSNI would suggest that some reference to any decisions to follow this route are required to meet the relevant guidance and that the appropriate evidential standard for the specific disposal is met including a clear admission of guilt and that the public interest would be properly served by such a disposal.</p>	<p>Code and Guidelines for Diversion.</p>
<p>7.</p>	<p>Review of Prosecution Decisions VSNI welcomes the inclusion of a mechanism for victims to review a decision not to prosecute. However, VSNI would like to see the mechanism and framework for dealing with such requests much more robust and include an obligation to properly and clearly explain decisions and outcomes of such a review, to the individual seeking the review. VSNI would suggest that there is some merit to seeking a more independent approach to reviews, in appropriate cases. This would go some way to reassure the public and increase confidence in the PPS and the CJS. Also the inclusion of some time frames around the responses from the PPS would be helpful and should be included.</p> <p>VSNI notes that many such reviews result in the complaint procedure being invoked and that the lines between a review and a complaint are often blurred. VSNI would like to see a clear pathway for approaching a review that is distinct from the complaint process, and that any complaint should be dealt with separately after the outcome of a review</p>	<p>Comments noted. This section has been redrafted in light of feedback from consultees.</p>
<p>8.</p>	<p>Giving of Reasons The last sentence of Para 4.70, giving of reasons provides that the responsibility to seek further explanations rests with the victim, it is VSNI opinion that this responsibility should remain with the PPS as the decision maker, with as much information being provided to a victim as soon as possible within the constraints of privacy and the public interest.</p>	<p>Comments noted. 4.70 (4.69 in the revised Code) states “All victims are entitled to receive more detailed reasons for the decision taken and will be advised of that entitlement when general reasons are provided. All victims will also be informed of their right to seek a review when notified of the decision not to prosecute whether they receive detailed or general</p>

		<p>reasons. It may be that the provision of detailed reasons will assist a victim deciding whether they wish to pursue a review. Where detailed reasons are given the requirement to seek a review within 3 months will only run from the date of receipt of the detailed reasons letter.”</p>
9.	<p>Role of the Prosecutor in Court In para 5.5 the prosecutor has an obligation to challenge allegations about victims and witnesses made by defence in the absence of any supporting evidence. VSNI would like to see a more robust and proactive approach taken by prosecutors to properly fulfilling this obligation with the appropriate guidance provided to all prosecutors. This would provide prosecutors the confidence to effectively challenge such behaviour as appropriate.</p>	<p>Comments noted. Dealt within Code and Advocacy Standards.</p>
10.	<p>Accepting Guilty Pleas to lesser offences Para 5.13 (d) refers to the views of victims or family as appropriate being taken in to consideration where possible. VSNI understand that the final decision lies with the prosecutor and should continue to do so, especially as often the reasons can be technical. However, it is VSNI’s opinion that in all cases the reasons for such a decision should be properly and cleared communicated to the victim, and prosecutors should strive to ensure that this is clearly communicated in advance of any agreement being made.</p>	<p>Comments noted. The PPS complies with the Victim Charter obligations and strives to discuss reasons for such a decision with victims of all cases however it is not always possible to do so.</p>
11.	<p>VSNI welcomes the approach taken by the PPS to provide the public with guidance as to what may be expected from them. However, VSNI is of the opinion that the extent and level of discretion available to prosecutors does not provide consistent law and may weaken the public’s level of confidence in a fair, impartial and effective prosecuting authority.</p>	<p>Comments noted. The PPS are happy to engage further with VSNI on this issue.</p>

Reducing Offending Policy Unit, Department of Justice

	Comment	PPS Response
1.	<p>Para 1.13 – defines a ‘child’ or ‘young person’ as under 18. Do we need both, or should the document simply refer to child the whole way through for consistency with legislation? Whilst we understand that the term ‘young person’ is commonly used to refer to an older teenager (14-17), the term does not exist in criminal justice legislation, where all under 18s are defined as children (S53(6) of the Justice (NI) Act 2002).</p>	<p>Comments noted. We have retained the wording of the consultation draft as both terms serve a useful purpose.</p>
2.	<p>Para 4.25 – the final sentence currently reads <i>“The Public Prosecutor, in cases concerning child defendants, must be mindful of the statutory presumption in favour of the grant of bail pursuant to Article 12 of the Criminal Justice (Children)(Northern Ireland) Order 1998 and must ensure that any bail terms sought are relevant and proportionate and consistent with the duty <u>to have regard to welfare of the child in accordance with Section 53 of the Justice (Northern Ireland) Act 2002.</u>”</i></p> <p>The revision to Section 53 of the 2002 Act which introduces the best interests principle will have received Royal Assent by the time this consultation is completed. Therefore if it is possible to request a change, I think it would be preferable for the Code to reflect the revised wording, along the lines of:</p> <p><i>“...relevant and proportionate and consistent with the duty <u>to have the best interests of the child as a primary consideration in accordance with Section 53 of the Justice (Northern Ireland) Act 2002.</u>”</i></p>	<p>Comments accepted. The words <i>“to have regard to welfare of the child”</i> have been amended to <i>“<u>to have the best interests of the child as a primary consideration</u>”</i>.</p>
3.	<p>Para 4.33 – states that a Youth Conference can be considered where a young person is under 18 <i>at the time of the offence</i>. To be strictly accurate, Youth Conferences can be considered (along with other disposals) if <u>proceedings</u> were started against a child</p>	<p>Accepted. Para 4.33 amended accordingly.</p>

	before they turned 18. If a child becomes an adult i.e. turns 18 before being arrested/charged/reported then a YC cannot be considered; the age at the time of offence is not relevant.	
--	---	--

The PPS would like to thank all those who responded for their comments.

Ciaran McQuillan
Assistant Director
Fraud and Departmental Section