



**Public  
Prosecution  
Service**

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Independent  
Fair  
Effective

# Code for Prosecutors

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# 1. Introduction

## Code for Prosecutors

- 1.1 This Code for Prosecutors, which includes a Code of Ethics, is issued by the Director of Public Prosecutions for Northern Ireland (the Director) under the statutory duty placed on him by section 37 of the Justice (Northern Ireland) Act 2002. The guidelines and general principles detailed in this Code apply from the date of its publication. This edition of the Code replaces all previous editions.
- 1.2 The Director is the head of the Public Prosecution Service (PPS) and exercises his functions independently of investigators and Government. The Director has a consultative relationship with the Attorney General for Northern Ireland and in relation to reserved matters with the Advocate General for Northern Ireland.
- 1.3 In this Code, the term “prosecutor” means:
- (i) A Public Prosecutor employed by the PPS who has been designated by the Director of Public Prosecutions for Northern Ireland to act in that role; and
  - (ii) A barrister who is a member of the Bar of Northern Ireland or from any other jurisdiction who is eligible to practice in Northern Ireland who has been instructed by or on behalf of the Director to conduct any criminal proceedings.

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## Duties of the Prosecutor

- 1.4 A decision whether or not to prosecute or to divert an offender from prosecution through an alternative to prosecution is a serious decision that affects suspects, victims, witnesses and the wider public and must be taken with the utmost care. It is a quasi-judicial function.
- 1.5 It is the duty of prosecutors to ensure that the right person is prosecuted for the right offence. Prosecutors must ensure that all decisions are independent, fair, impartial and taken with integrity. It is their duty to ensure that the law is correctly applied, that all relevant admissible evidence is presented to the court and that a fair trial takes place, which will include ensuring that their duties to safeguard the rights of the defendant are complied with.

- 1.6 Although each case must be considered individually, there are general principles that apply in every case. Prosecutors must be fair, independent and impartial. They must not allow any personal views about gender, age, disability, religion or belief, ethnic or national origin, political views, sexual orientation of the suspect, victim or a witness to improperly influence their decision. They must not be influenced by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

## The Purpose of this Code

- 1.7 The purpose of this Code is to:

- (i) give guidance on the general principles to be applied in deciding 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 selected;
- (ii) provide general guidelines for the conduct of criminal prosecutions;
- (iii) define the standards of conduct and practice that the PPS expects from prosecutors, whether they are Public Prosecutors or barristers to whom the Director assigns the conduct of criminal proceedings.

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- 1.8 This Code serves a dual purpose of:

- (i) providing a Code for Prosecutors; and
- (ii) informing the public about the way in which prosecutors take decisions and the standards to which they are expected to adhere. It is not intended to be a detailed manual of instructions for prosecutors nor a comprehensive guide to the policies and procedures of the PPS. Further, this Code does not lay down any rule of law. It outlines the approach to decision taking that the PPS has adopted; every case must be considered individually having regard to its own facts and circumstances.

## Standards Applied

- 1.9 In preparing this Code, the Director has been guided by the general principles of the Guidelines on the Role of Prosecutors adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana 27th August - 7th September 1990) and the International Association of Prosecutors.
- 1.10 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, the UN Declaration of Basic Principles of Justice for Victims of Crime (and Abuse of Power), relevant EU Directives and Conventions and relevant case law. These commitments apply to the rights of victims, witnesses and accused persons.
- 1.11 Prosecutors will also have regard to any legal guidance provided by the Director of Public Prosecutions for Northern Ireland and the Attorney General for Northern Ireland, including Human Rights Guidance issued under Section 8 of the Justice (Northern Ireland) Act 2004.

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## Context

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

## Definitions

- 1.13 In this Code, the term “suspect” is used to describe a person who is not yet the subject of formal criminal proceedings; the term “defendant” is used to describe a person who has been charged with a criminal offence or summoned to attend court in answer to a charge; the term “offender” is used to describe a person who has admitted guilt to the commission of an offence, or who has been found guilty by a judge or jury. A “child” or “young person” is a person under 18 years of age.

## 2. Public Prosecution Service (PPS)

### Organisational Structure

2.1 The PPS was established by the Justice (Northern Ireland) Act 2002. The PPS 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 or her direction and control. Both of these posts are public appointments made by the Attorney General for Northern Ireland.

2.2 In addition to the Director and the Deputy Director, the PPS is comprised of Public Prosecutors and administrative staff.

2.3 Public Prosecutors are individual members of staff of the PPS who have been designated as such by the Director and delegated to act on his behalf in the conduct of criminal proceedings including exercising the right of audience in those criminal proceedings.

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2.4 A Public Prosecutor must be:

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- (i) a member of the Bar of Northern Ireland, or
- (ii) a solicitor of the Court of Judicature for Northern Ireland.

2.5 The PPS is a regionally based organisation. There are two regions, Belfast and Eastern Region and Western and Southern Region, each of which is headed by an Assistant Director (AD). The AD is responsible for working with the courts and the police to provide a high quality prosecution service in their area. The regions deal with a wide range of cases, from the less serious summary cases, which are heard in the Magistrates' Courts, through to more serious indictable cases which are heard in the Crown Court.

In addition there are four legal sections, based in PPS Headquarters, which are also headed at AD level. These sections are as follows:

- The Serious Crime Unit deals with a range of the most serious offences including murder, manslaughter, rape and serious sexual offences, human trafficking, prostitution and related offences.



- Central Casework Section deals with some of the most high profile and difficult cases in Northern Ireland, including files relating to terrorism and organised crime.
- Fraud and Departmental Section deals with serious and complex fraud files submitted by the police, as well as files from public bodies.
- High Court and International Section deals with a range of specialist legal matters, including High Court bail applications, restraint and confiscation orders, extradition, international letters of request, judicial reviews, appeals to the Court of Appeal and cases referred by the Criminal Cases Review Commission.

Corporate Services provides the PPS with a variety of professional, technical and other support services, including Policy and Information, the Victim and Witness Care Unit, Information Technology, Resource Management, Finance and Fees, Communications, Strategic Improvement, Business Assurance and Property Management.

## Functions of the PPS

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2.6 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).

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2.7 In this context, “police force” means:

- (i) the Police Service of Northern Ireland (PSNI);
- (ii) the Ministry of Defence Police;
- (iii) any body of constables appointed under Article 19 of the Airports (Northern Ireland) Order 1994; or
- (iv) 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.

2.8 The PPS also takes prosecution decisions and conducts prosecutions on behalf of a number of government bodies including, for example, HM Revenue and Customs and the Northern Ireland Environment Agency. The Police Ombudsman for Northern Ireland also submits files to the PPS 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).

- 2.9 Persons 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.
- 2.10 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.
- 2.11 The functions of the Director shall be exercised by him or her independently of any other person.
- 2.12 It is an offence, contrary to section 32A of the Justice (Northern Ireland) Act 2002, 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.

## Statement of Purpose and Values

### Our Purpose

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- 2.13 We will provide an independent, fair and effective prosecution service for the people of Northern Ireland. We will act impartially and in the interests of justice at all times, applying the highest professional standards and treating everyone fairly and with respect.
- 2.14 We are at the heart of the criminal justice system and will work with partners to build a safer community in which we respect the law and each other. We will strive to deliver a modern, innovative and transparent service that shows compassion and understanding towards victims of crime while meeting our obligation to ensure fairness to all.

## Our Values

2.15 Our values are as follows:

### **Independence and Integrity**

We will maintain our independence and act at all times with integrity, fairness and impartiality. We will seek to deliver justice in every case in accordance with the law, respecting the human rights of all persons.

### **Openness and Honesty**

We will communicate openly and honestly, in accordance with our professional duties. We will set clear standards about the service the public can expect from us.

### **Respect**

We will respect each other, our colleagues and the public we serve, showing courtesy, sensitivity and understanding.

### **Excellence**

We will make the best use of our people and resources, seeking to achieve excellence in everything we do.

### **Partnership**

We will work in partnership within the criminal justice system to better serve the community.

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## 3. Relationship with the Investigator

### Role of the Investigator

- 3.1 Investigation is not the responsibility of the PPS. The PSNI is the principal investigative body which submits files to the PPS. 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 PPS will take all appropriate steps to ensure that all cases submitted for its consideration are properly investigated.
- 3.2 Investigators may submit files in one of two ways:
- (i) by charging a person, or
  - (ii) by submitting a report on a person.
- 3.3 The PPS assumes full responsibility for tracking the progress of the case from the point of charge or receipt of a report from the investigator. The PPS may request further investigation where it considers that additional evidence or information is required in order to take a fully informed prosecution decision.

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### Prosecutorial Advice

- 3.4 In accordance with section 31(5) of the Justice (Northern Ireland) Act 2002, the PPS will provide prosecutorial advice to investigators at any stage of an investigation in connection with the prosecution of offences. This may include, for example, advice regarding the quality and admissibility of evidence; what evidence should be submitted with a file 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 restraint order. It may also include guidance to police officers on what constitutes a reasonable line of enquiry and the proper approach to fulfilling their disclosure obligations. However, the PPS does not direct investigations conducted by police or other agencies.
- 3.5 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.

- 3.6 The PPS does not provide prosecutorial advice on investigative matters, for example the lawfulness of a proposed arrest or search, although the consequence for any prosecution of an unlawful exercise of such powers is a matter upon which prosecutorial advice might properly be sought. PSNI have their own Legal Services Branch from whom advice on investigative matters should be obtained.

### Referrals to the Police Ombudsman

- 3.7 The PPS will refer to the Police Ombudsman for Northern Ireland for investigation any case which is not already the subject of a complaint, where a serving 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.

### The Role of Forensic Science Northern Ireland

- 3.8 While staff at Forensic Science Northern Ireland (FSNI) are not investigators, police in the course of an investigation may submit to FSNI samples or exhibits recovered from a crime scene or other location or from a victim, suspect or other person for examination and/or analysis.

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- 3.9 Where the PPS concludes that evidence of a specified examination or analysis is necessary to take an informed decision as to prosecution, police may be requested to obtain a report from FSNI.
- 3.10 Forensic scientists from FSNI carry out examinations and analyses according to accredited procedures. In compiling reports and giving evidence they act independently of police and the PPS. The evidence of a forensic scientist will commonly include observations based upon examination and analysis and a conclusion expressed as the opinion of an independent expert.
- 3.11 FSNI scientists are available to discuss the evidential value of their examinations and analyses and to provide advice to a prosecutor prior to the start of these examinations, as examinations progress or after a statement of evidence has been produced for court.

### The Role of other Expert Witnesses

- 3.12 The foregoing paragraphs apply equally, with necessary modifications, to any other expert witness such as a medical consultant, forensic accountant or State Pathologist.

## 4. Prosecution Decisions

### The Test for Prosecution

- 4.1 Prosecutions are initiated or continued by the PPS 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 presented 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.
- 4.2 This is a two stage test and each stage of the test must be considered separately and passed before a decision to prosecute can be taken. The Evidential Test must be passed first before the Public Interest Test is considered. If this is also passed, the Test for Prosecution is met. The tests are set out in detail at paragraph 4.7 et seq.
- 4.3 In applying the Test for Prosecution the Public Prosecutor must analyse and evaluate all of the evidence and information submitted by police in a thorough and critical manner and adhere to those obligations set out in this Code.
- 4.4 In the vast majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. If prosecutors do not have sufficient information to take such a decision, they should identify evidential weaknesses and request that the investigator, where possible, provide additional evidence to enable a fully informed decision as to prosecution to be taken.
- 4.5 Prosecutors also have a general duty to keep prosecution decisions under consideration and take into account any change in circumstances that occurs as the case proceeds. Where new information or evidence becomes available it should be considered along with all the existing information and evidence in the case and the Test for Prosecution applied. Where this occurs and the Test for Prosecution is no longer met the particular charge or charges or indeed the whole case should not proceed.

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- 4.6 There may be exceptional cases where it is clear, prior to the completion of an investigation, that the public interest will not require a prosecution, in which case a Public Prosecutor may decide that the Test for Prosecution will not be met and the case should not proceed further. Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. Any such decision must be approved by the relevant Assistant Director.

### The Evidential Test

- 4.7 Public Prosecutors decide whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge.
- 4.8 A reasonable prospect of conviction exists if, in relation to an identifiable suspect, there is credible evidence which the prosecution can present to a court and upon which an impartial jury (or other tribunal), properly directed in accordance with the law, could reasonably be expected to find proved beyond reasonable doubt that that suspect had committed a criminal offence. This is different to the test which the court will apply, which is deciding whether the offence is proved beyond reasonable doubt i.e. it must be sure that the defendant is guilty before it can convict.
- 4.9 It is necessary that each element of this definition is fully examined when considering the Evidential Test for each particular offence (see below). The Public Prosecutor must also take into account what the defence case may be and whether it would affect the prospect of conviction. If a case does not pass the Evidential Test, it cannot proceed, no matter how serious or sensitive it may be.

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Element	Description
<b>Identifiable Individual</b>	<p>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.</p>
<b>Credible Evidence</b>	<p>This means evidence which is capable of belief.</p> <p>Prosecutors must have regard to all available evidence and reach a considered assessment as to its credibility and reliability. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. Where there are substantial concerns as to the credibility, or reliability of essential evidence, the Evidential Test may not be capable of being met.</p> <p>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.</p> <p>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.</p> <p>If, however, it is decided 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.</p>

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Element	Description
<b>Evidence which the Prosecution can adduce</b>	<p>Only evidence which is available and admissible can be taken into account in reaching a prosecution decision.</p> <p>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 where to do so would have an adverse effect on the fairness of the proceedings. If evidence is inadmissible then that evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction.</p> <p>Public Prosecutors must therefore consider whether there is a reasonable prospect that evidence will be admitted by the court and if admitted, the weight that a court is likely to attach to it.</p> <p>For example, evidence may be excluded because of the way in which it was gathered. If there is no reasonable prospect of a court admitting certain evidence Public Prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.</p>
<b>An impartial jury (or other tribunal)</b>	<p>The test is not whether a particular jury or a particular judge will convict. If such a test was adopted then prosecution might depend upon an assessment of how different juries in different parts of the jurisdiction or different judges might react. This would be wrong. The test is based upon the conclusion reached by an impartial jury or judge.</p>
<b>May reasonably be expected to find</b>	<p>It is impossible to know with absolute certainty whether or not a conviction will be obtained in a particular case. The Evidential Test requires that there is a reasonable prospect of a conviction on the evidence. The weighing of evidence is not an exact science but rather a matter of judgment for the prosecutor.</p>

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Element	Description
<b>Beyond Reasonable Doubt</b>	The evidence available must be sufficient to reach the high standard in a criminal trial, namely beyond reasonable doubt.
<b>Commission of a criminal offence</b>	A prosecution can only proceed in respect of conduct which constitutes a breach of the criminal law in this jurisdiction.

## The Public Interest Test

4.10 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 through the courts. 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. The granting of such a discretion to the prosecutor is consistent with the prosecution process in similar legal jurisdictions. In taking decisions as to prosecution the prosecutor is taking decisions for the benefit of society as a whole.

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4.11 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, a court based outcome is not required in the public interest. For example, Public Prosecutors should positively consider the appropriateness of prosecuting by way of a diversionary disposal, particularly where the defendant is a young person or a vulnerable adult (See Alternatives to Prosecution paragraph 4.27).

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4.12 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 the PPS does not represent 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.

4.13 The following sections list some public interest considerations for and against prosecution which may be relevant in an individual case and should be considered by a prosecutor. This list is not exhaustive. The factors identified as relevant and the weight to be attached to any individual factor may vary in each case and one factor in favour of prosecution may outweigh several factors against.

### Considerations for Prosecution

- (i) the seriousness of the offence i.e. where a conviction is likely to result in a significant sentence or other penalty including any confiscation order or disqualification;
- (ii) where the suspect was in a position of authority or trust and the offence is an abuse of that position;
- (iii) where the suspect 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 involved the possession or use of a firearm, imitation firearm or other weapon such as a knife;
- (viii) where the offence was motivated by hostility against a person because of their gender, race, ethnicity, sexual orientation, disability, religion or belief, political beliefs, age or similar;
- (ix) where the offence is prevalent either generally or within a particular community;
- (x) where the offence has resulted in serious financial loss to an individual, corporation or society;
- (xi) here the offence was committed against a person serving the public, for example a doctor, nurse, member of the Northern Ireland Ambulance Service, member of the Northern Ireland Fire and Rescue Service or a member of the Police Service of Northern Ireland;
- (xii) 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;
- (xiii) where there is a marked difference between the actual or mental ages of the suspect and the victim and the suspect took advantage of this;
- (xiv) where there is any element of exploitation by the defendant, including child sexual exploitation;
- (xv) where there is any element of corruption;
- (xvi) where the suspect has previous convictions or alternative disposals to prosecution which are relevant;

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- (xvii) where the suspect is alleged to have committed the offence whilst on bail, on probation, or subject to a suspended sentence or an order binding the suspect to keep the peace, or released on licence from a prison or a place of detention or otherwise subject to a court order;
- (xviii) 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 or where the seriousness of the conduct has escalated.

4.14 The following section lists some considerations against prosecution which may be relevant and require to be considered by a prosecutor when determining where the Public Interest lies in any particular case. Again, this list is illustrative only.

### 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 judgment or a genuine mistake;
- (iii) where the offence is not of a serious nature and is unlikely to be repeated;
- (iv) where the offender has no previous criminal record e.g. a clear driving record;
- (v) where there has been a long passage of time between an offence taking place and the likely date of trial. The weight to be attached to any delay, however, must always be assessed in light of other relevant circumstances including the seriousness of the offence, the reasons for the delay and the complexity of the investigation;
- (vi) 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;
- (vii) where the suspect is vulnerable by virtue of their age. It should be noted that where the suspect is a child or a young person, Prosecutors must have regard to the statutory aims of the youth justice system. The principal aim of the youth justice system is to protect the public by preventing offending by children. However all bodies must have the best interests of children as a primary consideration, and must also have regard to the welfare of the child or young person, including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending;

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- (viii) where there is evidence that the suspect was a victim of child sexual exploitation or human trafficking and the offending was linked to or arose from the exploitation or trafficking (in circumstances where any relevant statutory defence is not made out).
- (ix) where the suspect suffers at the time of the offence or trial from significant mental or physical ill-health. Public Prosecutors must balance a suspect's mental or physical ill-health with the need to safeguard the public or those providing services on behalf of the public;
- (x) where the suspect has put right the loss or harm that was caused, recognising that a suspect must not be able to avoid prosecution simply because they pay compensation;
- (xi) where the recovery of the proceeds of crime can more effectively be pursued by civil action including action for civil recovery under the Proceeds of Crime Act 2002;
- (xii) where details may be made public that could harm sources of information, international relations or national security;
- (xiii) 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.

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- 4.15 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, subject to paragraph 4.6. The prosecutor will determine whether or not the public interest requires prosecution.
- 4.16 While the prosecutor primarily will weigh the evidence and information reported in the investigation file to assist his consideration of the public interest, where available, the views of the victim will also be taken into account.

- 4.17 Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether prosecution nonetheless should go ahead and for those factors to be put to the court for consideration when sentence is passed.

### Initial Consideration of Charges

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

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

- (i) any of the charges should be amended (i.e. where the details of the charge are incorrect);
- (ii) other charges should be added (where additional charges are supported by the evidence); or
- (iii) some or all charges should be withdrawn (where the existing charges are not supported by the evidence or the public interest requires that the case be reported or disposed of by diversion).

- 4.20 A Public 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 Charge Test:

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

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- 4.21 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 PPS.
- 4.22 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, having given due consideration to the nature and gravity of the alleged offence and any relevant criminal history of the defendant, he or she determines that there is a risk of:
- (i) the charged person absconding;
  - (ii) the charged person interfering with witnesses or the course of justice;
  - (iii) the charged person committing further offences; or
  - (iv) a threat to the preservation of public order (by the defendant or others).

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- 4.23 Where it is the police view that a remand in custody should be sought then the Public Prosecutor should consider in consultation with police whether there are any bail conditions which could sufficiently counter the risks identified by them in relation to the grounds identified above. 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 to have the best interests of the child as a primary consideration in accordance with Section 53 of the Justice (Northern Ireland) Act 2002.
- 4.24 Where the Magistrates' Court grants bail contrary to representations made to it by a prosecutor, the PPS may appeal against the grant of bail to the High Court. On receipt from the prosecution of Notice of Intention to appeal a decision to grant bail, the Magistrates' Court shall remand the person concerned in custody.

## No Prosecution

- 4.25 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.
- 4.26 A decision of no prosecution does not preclude any further consideration of a case by the PPS, if new or additional evidence becomes available or a review of the original decision is required.

## Alternatives to Prosecution

- 4.27 If the Evidential Test is met, the Public Prosecutor may decide that it is in the public interest to dispose of the case by an alternative to prosecution at court, known as a diversionary disposal. This may be by virtue of age, a previous clear record or one of a range of other factors such as the offender's mental health.
- 4.28 The diversionary disposals available to the Prosecutor are set out below.

## Adult Cautions and Restorative Youth Cautions

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- 4.29 A Public Prosecutor may require police to administer a caution to the offender as an alternative to prosecution at court. 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 2 years for a young person and 6 years for an adult. In the case of a young person, the aim of the caution is restorative and is to provide an opportunity for the offender to meet the victim (who will have been invited) and affected members of the community. Cautions for young persons are referred to as 'restorative cautions'.

## Informed Warning

- 4.30 A Public Prosecutor may require police to administer an informed warning to the offender as an alternative to prosecution at court. 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 1 year. This period is the same for both adults and young persons (that is, a person under 18 years of age).



## **Diversionary Youth Conference**

- 4.31 Where the offender is a young person at the time of the decision for diversion, a Public Prosecutor may consider a diversionary youth conference as an alternative to prosecution at court. This type of restorative conference involves a number of parties, and as a minimum requirement must include the offender, a police officer, an appropriate adult for the offender and a youth conference co-ordinator. The victim is entitled, although not obliged to attend, as is a legal representative of the offender. A plan will be produced by this conference which must be approved by the Public Prosecutor. A youth conference is a formal process and although not a conviction, is recorded on a youth's criminal record for a period of 2 years.

## **National Driver Alertness Course (formerly the Driver Improvement Scheme)**

- 4.32 A Public Prosecutor may offer the offender the opportunity to attend a National Driver Alertness Course as an alternative to prosecution for an offence of careless driving or inconsiderate driving, provided that the driving in question did not result in serious injury or death and that no other offences were committed at the same time.

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- 4.33 In order to be eligible for a disposal under the National Driver Alertness Course, the driver must not have attended a retraining course within the previous 3 years. Information in respect of the National Driver Alertness Course is not recorded on an individual's criminal record.

## **Community Based Restorative Justice**

- 4.34 A Public Prosecutor may inform police that a case is suitable to be dealt with by way of an accredited community based restorative justice scheme where it has been referred in accordance with the agreed Protocol. A community based restorative justice scheme disposal will be recorded on the individual's criminal record for a period of 2 years for a young person and 6 years for an adult.

## Use of Diversion: Offender's Admission of Guilt

- 4.35 With the exception of the National Driver Alertness Course (where an admission of guilt is not a prerequisite for entry onto the course), the general principle is that the offender must admit the offence in order for a diversion to be directed. The admission must be clear and reliable for the restorative process to be effective. This admission can be made in the course of a formal police interview or at any stage up until trial. The admission can be made to police or to a prosecutor, either by the offender in person or through his or her solicitor.
- 4.36 The attitude of the offender will be a crucial factor as he/she will have admitted the offence which will make diversion possible. In addition to the admission, it is also relevant if he/she has made an immediate or early admission of guilt, expressed remorse or offered restitution. In exceptional circumstances, it may be appropriate to direct a diversionary disposal where the offender has made limited or partial admissions and where there are cogent public interest considerations in favour of diversion.
- 4.37 There may be occasions where there is not a specific admission recorded by police or no formal proof of an admission, but yet it is appropriate to direct diversion subject to an admission. This situation can occur when an offender has not yet had the opportunity to formally admit the offence (for example, if there was no interview after caution or if the offence directed was not actually put to the offender). In such a situation, if the prosecutor considers from the information received that the offender would willingly admit to the offence were he/she given the opportunity, then diversion can be directed. Where this occurs the prosecutor should indicate to police that the diversion cannot be administered unless the offender fully admits the offence. The prosecutor should also advise police clearly that if the admission is not forthcoming the matter must be returned to the PPS without delay and a prosecution will follow.
- 4.38 If police have made enquiries to no avail (for example, the offender has moved address and his attitude cannot be assessed), a prosecutor can issue a summons and mark clearly on the file that if the accused admits his guilt a caution may be offered and the summons withdrawn.

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## Recording of Diversions on Criminal Records

- 4.39 As outlined above, PPS diversionary disposals (with the exception of the National Driver Alertness Course) are recorded on an individual's criminal record, via the Criminal Records Viewer (CRV). A record can also be kept on police databases, and if any offence is 'recordable', on the Police National Computer (PNC).
- 4.40 Offenders accepting a diversion should be aware that information about the disposal can be disclosed by other agencies for an indefinite period of time. For example, if an offender applies to work or volunteer in a position that requires a Standard or Enhanced criminal record check via Access NI, the diversion can be disclosed on that check where it relates to a 'specified' offence, such as affray and violent or sexual crimes. For further information, please refer to [www.nidirect.gov.uk/articles/information-disclosed-about-you](http://www.nidirect.gov.uk/articles/information-disclosed-about-you).
- 4.41 It should be noted that the Public Prosecutor, in taking a prosecutorial decision, can examine the full offending history of the individual, including any 'exhausted' diversions (e.g. an adult caution administered more than six years ago). Such details may be presented to the court where it is considered to be relevant to the case. However in the event of a conviction, details of exhausted diversions will not normally be presented to the court for the purposes of sentencing.
- 4.42 Further guidance on diversionary disposals is available in the PPS document 'Guidelines for the Use of Diversionary Disposals'.

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## Choice of Offences

- 4.43 The choice of offences in respect of which a defendant is to be prosecuted is an important function of the Public Prosecutor.
- 4.44 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 in respect of which the Test for Prosecution is met, that they provide the court with an appropriate basis for sentencing an offender and that they enable the case to be presented in a clear and effective manner.

- 4.45 The Public Prosecutor should not prosecute more offences than are necessary in order to encourage a defendant to plead guilty to some. 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. Prosecutors are not permitted to “plea bargain”. [See paragraphs 5.9 to 5.16 below].
- 4.46 A Public Prosecutor must take account of any relevant change in circumstances as the case progresses and keep the charges under review.

### Mode of Trial

- 4.47 In general terms, summary offences relate to less serious criminal behaviour and are tried in the Magistrates’ Court before a District Judge. Indictable offences relate to more serious criminal behaviour and are tried at the Crown Court before a judge and jury or by a judge sitting alone.
- 4.48 However, there are a number of hybrid offences which may be prosecuted at either the Magistrates’ or Crown Courts, such as arson and criminal damage. For these offences, having taken a decision to prosecute, the Public Prosecutor must also decide whether this prosecution should proceed in the Magistrates’ Court or the Crown Court. In making this decision the prosecutor will consider whether the Magistrates’ Court has sufficient sentencing powers to reflect the gravity of the offence. This is without prejudice to the right of the defence to opt for trial by jury in respect of certain other offences, such as theft.
- 4.49 In relation to young persons, they should be tried in the Youth Court where possible. Trial of a young person in the Crown Court must be reserved for the most serious cases or where the interests of justice require a young person to be jointly tried with an adult.

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## Non-Jury Trial

4.50 In Northern Ireland, under the Justice and Security (Northern Ireland) Act 2007 the Director of Public Prosecutions may issue a certificate that any trial on indictment of the defendant (and of any person committed for trial with the defendant) is to be conducted without a jury, if he suspects that any of the conditions set out in section 1 of the Act is met and he or she is satisfied that, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

## Consents

4.51 There are a number of offences for which a Public Prosecutor must seek the consent of the Director or the Advocate General prior to commencing or continuing a prosecution.

4.52 The requirement for consents for specific offences is determined by the legislature and is to ensure that cases of a particular nature are considered at the appropriate level. Examples of offences which require the Director's consent to prosecution are corporate manslaughter and certain offences under the Terrorism Acts 2000 and 2006. There are a number of offences for which a Public Prosecutor must seek the consent of the Advocate General to a prosecution. These offences are primarily concerned with national security and international relations and include, for example, offences contrary to the Official Secrets Act 1989.

4.53 There are other cases where the delegated authority given by the Director under the Justice (Northern Ireland) Act 2002 to Public Prosecutors allow those prosecutors to initiate proceedings in the Director's name.

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## Disclosure

- 4.54 Proper disclosure of unused material, made through a rigorous and carefully considered application of the law, remains a crucial part of a fair trial and essential to avoiding miscarriages of justice. The prosecutor's duty of disclosure to the defence is set out in Part I of the Criminal Procedure and Investigations Act 1996 (the Act) as amended by the Criminal Justice Act 2003. The test requires the prosecutor to disclose to the defence all material not already disclosed which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused. The Act also sets out the mechanisms by which disclosure should take place.
- 4.55 The scheme set out in the Act is designed to ensure that there is fair disclosure of material which may be relevant to a trial 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 his case and assist the court to focus on all the relevant issues in the trial.
- 4.56 The Attorney General for England and Wales issued revised Guidelines on Disclosure in May 2022. These Guidelines are intended to apply in England and Wales and there are certain practices that do not apply in this jurisdiction, for example the rebuttable presumption in favour of disclosure of certain types of materials. However, many of the general principles outlined therein remain applicable and, 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.
- 4.57 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.

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- 4.58 In deciding what material should be disclosed prosecutors should resolve any doubt in favour of disclosure. Sensitive information will, in appropriate cases, be placed before the court for issues of disclosure to be determined.
- 4.59 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.

## Mental Health Issues

- 4.60 The mental health of a defendant, victim or witness must also be taken into account and their needs addressed as they engage with the criminal justice system. Research indicates that a significant proportion of suspects have a mental disorder. For example, a recent study indicated that nearly two-thirds of those arrested by police had, or previously had, a mental health issue identified by a Custody Sergeant (NIAO, 2019). In practice, mental health issues are of considerable, and sometimes crucial, importance. They can feature in the context of the decision as to prosecution and also when the court is determining criminal responsibility or considering the appropriate sentence.

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## Unfitness to be Tried

- 4.61 The current law relating to the procedures and disposals regarding fitness to be tried is governed by the Mental Health (Northern Ireland) Order 1986 and relevant authorities. Article 6 of the European Convention on Human Rights and other relevant authorities also apply. The current law is that the accused will be deemed unfit to be tried if he or she is unable to do any of the following:
- instruct a lawyer;
  - understand the charges;
  - decide whether to plead guilty or not to the offences;
  - understand the course of the proceedings;
  - exercise the right to challenge a juror;
  - give evidence in their own defence.

If a defendant in the Crown Court is determined to be unfit to plead by a Judge, then a jury subsequently must determine whether he did the act or omission which is charged against him as an offence. This is known as a 'trial of the facts'. If the jury find that he did not do the act or omission, then he is acquitted. If the jury find that he did the act or omission, then the sentencing options available are a hospital order, a guardianship order, a treatment and supervision order, or an absolute discharge.

- 4.62 The PPS will normally become aware of a mental health issue affecting an accused from information provided to it by the PSNI or by the defence. While the PPS has a role in ensuring that issues relating to the mental health of a defendant are taken into account as appropriate and disclosed as required, the issue will normally be raised by the defence. In any case where a mental health issue is identified promptly consideration must be given to whether it is necessary to obtain relevant expert evidence.

### Review of Decisions Not to Prosecute

- 4.63 The public should be able to rely on decisions as to prosecution taken by the PPS. Generally, if the PPS tells a suspect or a defendant that there will not be a prosecution, or that the prosecution has stopped, that is the end of the matter and the case will not start again.

- 4.64 However, there may be reasons why the PPS will review a decision not to prosecute, for example, where we are asked to do so by a victim or where new evidence or information becomes available. Other situations in which a review may be conducted are where a request is received from the investigating agency that submitted the case to PPS, where the findings of an inquest are relevant to a previous decision not to prosecute, or where the Director is asked to consider a review of a previous no prosecution decision by the Attorney General.

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4.65 Where a request for a review is made by or on behalf of a victim the request will normally only be considered if it is made in writing within one month of the victim having been informed of the decision. Only in exceptional circumstances will the PPS undertake a review if the request is received outside this time limit. Victims will be notified of the one month time limit for requesting a review when they are provided with notification of, and reasons for, the decision not to prosecute. The PPS will, wherever possible, complete the review and communicate the decision to the victim in writing within eight weeks. In cases where it is not possible to provide a decision within this timeframe, for example in more complex cases, the victim will be notified accordingly.

4.66 Where a review is to be conducted the following approach is to be taken:

- (i) If no additional evidence or information is provided in connection with the request to review the original decision, the case will be considered by a Public Prosecutor other than the Public Prosecutor who took that decision. Having considered the available evidence and information the reviewing prosecutor will apply the Test for Prosecution and take a new decision, the rationale for which must be recorded in writing. That decision may be to allow the original no prosecution decision to stand or that a prosecution should now be taken (or that the matter is dealt with by way of a diversionary disposal).
- (ii) Where new or additional evidence or information is provided in connection with a request for a review of a decision not to prosecute, the review will be carried out by the Public Prosecutor who took the original decision. The Public Prosecutor will consider all the evidence and information now available and will apply the Test for Prosecution and take a new decision. There are two possible outcomes of such a review:
  - (a) It is concluded that the Test for Prosecution is now met and criminal proceedings are commenced (or the matter is dealt with by way of a diversionary disposal); or
  - (b) It is concluded that the Test for Prosecution remains not met. In this situation the case will be referred to another Public Prosecutor who will conduct a review of the decision in accordance with paragraph 4.66(i).

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4.67 When conducting any review it is open to the Public Prosecutor to take additional steps to assist with the review such as requiring further enquiries to be made by the investigator, consulting with witnesses, or obtaining the advice of counsel. Further evidence or information obtained as a result of such steps will not result in the case reverting to the Public Prosecutor who took the original decision. It is only when new evidence or information is provided in connection with the initial request for review that the matter is considered by the original prosecutor. This approach to reviews was upheld by the Divisional Court in the case of McCord [2019] NIQB 116.

4.68 Where a review of the decision not to prosecute has already been carried out by a Public Prosecutor other than the Public Prosecutor who took the original decision then normally no further review will be undertaken. If further information is provided, or further representations are made, after the review is completed, these will be considered by the Public Prosecutor who conducted the review in order to determine whether they provide a proper basis to further review the decision. Any further review at that stage should be undertaken by that same Public Prosecutor.

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4.69 The review process set out above does not apply to decisions to prosecute. A defendant who is being prosecuted can ask that the PPS give consideration to stopping a case or dealing with the offence by way of a diversionary disposal. However, any such request will be considered as part of the duty of the PPS to keep all decisions to prosecute under continuing review. If no new or additional information is provided then there will normally be no basis upon which to reconsider the original decision to prosecute. If new or additional information is provided this will be considered by the Public Prosecutor who took the original decision. If that prosecutor concludes that the decision to prosecute should stand then that will be the end of the matter and the case will not be passed to a second Public Prosecutor to apply the Test for Prosecution and take a new decision.

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## Giving of Reasons

4.70 The giving of reasons to victims for not prosecuting is an important and sometimes complex issue. Following a decision not to prosecute, a victim is entitled to be notified in writing of the reasons why this decision was taken, how further information about the decision can be accessed and how a review of the decision can be requested if the victim is dissatisfied. The PPS gives reasons in all cases where a decision not to prosecute is taken.

4.71 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 interests of victims 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 jeopardising the safety of individuals.

4.72 A two tier approach applies: In a wide range of cases which might be classed as more serious due to the nature of the offence or where the victim may be regarded as vulnerable, detailed written reasons will automatically be given for the decision not to prosecute. The PPS will consider what information about the decision may be provided to the victim, balancing the interests of all parties together with any other considerations which are material to the particular facts and circumstances of the case. Where detailed reasons are given, the victim will also be provided with contact details to request a telephone call or a meeting for a further explanation of the reasons, if required.

4.73 In all other cases general reasons are given. For example, where the available evidence does not allow the Prosecution to establish an essential element of the offence the PPS will indicate that there was insufficient evidence to afford a reasonable prospect of a conviction. Another example would be a case in which the evidence was sufficient but the decision was taken not to prosecute given particular medical circumstances of the prospective defendant. Here the reason given would be that it was not in the public interest to prosecute.

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- 4.74 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 reasons. It may be that the provision of detailed reasons will assist a victim to decide whether they wish to pursue a review. As outlined at paragraph 4.65, where detailed reasons are given, unless there are exceptional circumstances, a review will only be dealt with if it is made within one month from the date of the receipt of the detailed reasons letter.

## Private Prosecutions

- 4.75 A private prosecution may be initiated by a private individual or a prosecuting authority established by an Act of Parliament.
- 4.76 The PPS may exercise the Director's powers under section 31(4) of the Justice (Northern Ireland) Act 2002 to take over the conduct of a private prosecution, either to continue the prosecution or to discontinue or stop it. As a general rule, the PPS will take over and continue with a prosecution where, upon review of the papers in a case:

- (a) the evidential test is met; and
- (b) the public interest test is met; and
- (c) there is a particular need for the PPS to take over the prosecution.

- 4.77 The particular need may arise because:

- the offence is serious;
- there are detailed disclosure issues to resolve;
- the prosecution requires the disclosure of highly sensitive material;
- the conduct of the prosecution involves applications for special measures or for witness anonymity; or
- the prosecution is being used as a device to enable the individual bringing the private prosecution to pursue a personal agenda against the defendant.

The above list is not exhaustive and all relevant factors must be weighed in order to determine whether there is a particular need for the PPS to take over the prosecution.

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4.78 A private prosecution should be taken over and stopped if, upon review of the papers, either the Evidential or Public Interest Test for Prosecution is not met. There may be factors which would be damaging to the interests of justice if the private prosecution was not discontinued. Examples may include the following:

- cases where the prosecution interferes with the investigation of another criminal offence or the prosecution of another criminal charge;
- cases where it can be said that the prosecution is vexatious;
- cases where the prosecuting authorities (including the police, the PPS or any other public prosecutor) have promised the defendant that he will not be prosecuted at all: *Turner v DPP* (1979) 68 Cr App R 70. This does not include cases where the prosecuting authorities have merely informed the defendant that they will not be bringing or continuing proceedings;
- cases where the defendant has already been given a diversionary disposal that was appropriate having regard to all the circumstances of the case.

## 5. Conduct of Prosecutions

### Role of Prosecutors in Court

- 5.1 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.
- 5.2 The PPS is an independent prosecuting authority which serves the public in that it is required to have regard to the public interest. It will have regard to the interests or concerns of any individual involved in the case, particularly the victim. 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 or any other investigating agencies.
- 5.3 The overall role of the prosecutor in court is to prosecute firmly and fairly. In doing so the prosecutor will ensure that:
- he/she assists the court on all matters of law and practice applicable to the case;
  - all credible and relevant evidence is put before the court;
  - the defence case is properly and fairly challenged and cross examination of a defendant, or witnesses for the defence is 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
  - he/she complies with the Convention rights incorporated into domestic law by the Human Rights Act 1998.
- 5.4 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.

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- 5.5 The prosecutor will challenge allegations about victims and witnesses made by the defence in the absence of any supporting evidence.
- 5.6 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.
- 5.7 Prosecutors should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persists 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.
- 5.8 Additionally prosecutors must at all times comply with the Codes of Conduct issued by their relevant professional body.

### Accepting Guilty Pleas to Lesser Offences

- 5.9 Decisions to prosecute, including which offences to prosecute, are taken by the PPS 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.
- 5.10 The general principle is that the decision to prosecute and the offences to be prosecuted, once they have been taken and formally issued by the PPS, should not be altered unless there is a proper reason.
- 5.11 The defendant may on occasion want to plead guilty to some, but not all, of the charges or may offer a guilty plea to different, possibly less serious charges than those presented to the court.
- 5.12 While the prosecutor is under a duty to consider any such formal offer from the defence, prosecutors are not permitted to “plea bargain”. The term is generally understood as implying the seeking of some “deal” between the prosecution and the defence. This practice is not acceptable and prosecutors must not enter into any improper or questionable arrangement which suggests that it is taking place.

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- 5.13 The acceptance by the PPS of a “plea offer” from the defence must be consistent with the evidence and information available at the time and meet the requirements of justice. Relevant considerations will include:
- (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;
  - (c) that the basis on which a plea is advanced and accepted is made clear to the court;
  - (d) the proper interests of victims and witnesses. Prosecutors should ensure that where possible the views of the victim or his / her family are taken into account when deciding whether to accept the guilty plea. Where possible, the prosecutor should explain the reasons for that decision. However, the final decision is one for the prosecutor alone.
- 5.14 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.

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- 5.15 Particular care must be taken when considering an offer to plead guilty which would enable the defendant to avoid the imposition of a mandatory minimum sentence. Prosecutors must also bear in mind which offences enable an ancillary order to be made, for example confiscation orders.
- 5.16 Counsel instructed to prosecute in accordance with decisions taken by the PPS must not depart from their instructions without express authority from the PPS to do so.

## Proceeds of Crime

- 5.17 Following conviction, the PPS will apply, in appropriate cases, for a confiscation order under the relevant Proceeds of Crime Act 2002.
- 5.18 Where it is necessary to prevent the dissipation of assets which may go to the satisfaction of a confiscation order, the PPS will apply at an early stage for a restraint order preventing the disposal of such assets.



- 5.19 Where a confiscation order is not satisfied voluntarily, the PPS may take enforcement action, including the appointment of a receiver to realise assets and apply the proceeds to the payment of the confiscation order. Where appropriate the PPS 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.

## Sentencing

- 5.20 Sentencing is a matter for the court. Prosecutors must not approbate expressly or impliedly the sentence to be imposed by the court.
- 5.21 Prosecutors must not attempt 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.
- 5.22 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 the sentence laid down by the Court of Appeal. In this context it is appropriate for the 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 ensure the court has available all relevant material and is aware of all relevant facts to enable it to determine whether the defendant poses a significant risk to members of the public of serious harm.

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- 5.23 In a “Rooney” hearing the prosecutor will not approbate any particular sentence and will present the prosecution case at its height. The attention of prosecutors is also drawn to the Attorney General’s guidelines on the acceptance of pleas and the prosecutor’s role in the sentencing exercise (published in November 2012).
- 5.24 The prosecutor will apply for any such ancillary orders, as may be appropriate in the circumstances of a particular case. Such ancillary orders include Serious Crime Prevention Orders and orders in relation to compensation, forfeiture and confiscation.
- 5.25 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.
- 5.26 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.

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## Unduly Lenient Sentences

- 5.27 The Criminal Justice Act 1988 (as amended) gives the Director of Public Prosecutions the power to apply for leave to refer a sentence that he considers to be unduly lenient to the Court of Appeal. This Act restricts the use of that power to certain offences tried and sentenced in the Crown Court.
- 5.28 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.

## Appeals

- 5.29 Appeals from the Crown Court are heard in the Court of Appeal.
- 5.30 The Director of Public Prosecutions 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.
- 5.31 The PPS 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 PPS 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.
- 5.32 The PPS may appeal on a point of law any decision of the Magistrates' Court by requesting that the case is 'stated' by the District Judge. Such appeals from the Magistrates' Court will be heard in the Court of Appeal.
- 5.33 The PPS may seek leave to appeal any decision of the Court of Appeal to the Supreme Court if it is certified that a point of law of general public importance exists.

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## 6. Victims and Witnesses

### Meeting the Needs of Victims and Witnesses

- 6.1 The PPS recognises the damaging effects of crime and the additional trauma that may be caused by engaging with the criminal justice process. The PPS also recognises the need for a partnership approach to ensure that victims and witnesses are given accurate and timely case-progression information and that victims and witnesses are listened to regarding their particular circumstances and needs.
- 6.2 This is particularly important when dealing with a person with particular needs, for example a child or a person with communication difficulties. Additional assistance may be required when communicating decisions and information to them and in supporting them when giving evidence at court.
- 6.3 The PPS will always try to make its prosecutor available to consult with victims and witnesses. This provides an important service to victims and witnesses and gives the prosecutor a chance to meet with them and to answer any questions the victim or witness may have. In doing so the prosecutor will have to ensure that he or she discharges any disclosure duties that arise and does nothing that would interfere with the witness's evidence in court.

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### Services

- 6.4 The PPS is committed to delivering a comprehensive set of services to victims and witnesses, from receipt of a charge or report file by the PPS until the case is concluded. In 2012, the PPS as part of a joint initiative with PSNI launched the Victim and Witness Care Unit (VWCU) which is now fully operational.
- 6.5 The aim of the VWCU is to improve the experience of victims in the Criminal Justice System by:

- providing a single contact point for a victim or witness and by keeping them informed at key stages about case progression, by their preferred mode of communication and tailored to their needs;
- providing an enhanced service based on a three stage witness needs assessment at key stages of the case to ensure that a victim's or witness's particular needs are met; for example where they require an interpreter at court, or where they have a physical disability and require the provision of special access arrangements to the courtroom;
- reducing delay by avoiding unnecessary adjournments, by providing witnesses with more support and information, ensuring that they attend court voluntarily;
- arranging for additional support services prior to and during hearing where required in partnership with Victim Support NI (VSNI) and National Society for the Prevention of Cruelty to Children (NSPCC).

## Victim Personal Statement

6.6 A 'Victim Personal Statement' refers to a statement made by a victim, setting out in their own words the effect of the crime on them as opposed to the Victim Impact Report prepared by a professional on request from the court. It is only used upon conviction and prior to sentencing, to assist the judge. Since 31st December 2013 the PPS will notify victims of their right to complete such a statement and work with the courts and police to make the statement available to the court.

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## Victim Impact Report

6.7 Victim Impact Reports prepared by experts, for example a psychiatrist or psychologist, will be sought where the court wishes to know what the clinical impact of a crime has been on a victim or the next of kin of a victim. Again this is only used upon conviction and prior to sentencing to assist the judge and would typically involve the expert meeting with the victim or next of kin before drafting their report.

6.8 These services are set out in detail in the PPS's Victims and Witness Policy document.

6.9 The PPS 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 PPS. Detailed information is set out in the PPS's Policy on Making a Complaint.

## Special Measures

6.10 Where a case involves a witness who is 'vulnerable' and/or 'intimidated', prosecutors must consider whether it is appropriate to apply for special measures to assist them to give their best evidence at court, where there is a sufficient basis to do so.

6.11 The Criminal Evidence (Northern Ireland) Order 1999 regards someone as a 'vulnerable witness' if they:

- are under 18 years of age at the time of the hearing of the application for special measures; or
- the quality of their evidence is likely to be reduced because of a 'mental disorder', a 'significant impairment of intelligence and social functioning' and/or a 'physical disability' or a 'physical disorder'.

6.12 The Order allows someone to be treated as an 'intimidated witness' if the quality of their evidence is likely to be reduced because of their fear or distress about giving evidence at court. When deciding whether a witness is intimidated, the court must take into account different factors including:

- the nature and alleged circumstances of the offence;
- the age of the witness;
- if relevant - social, cultural and ethnic background of the witness, and/or their domestic and employment circumstances and/or any religious beliefs or political opinions held;
- any behaviour towards the witness by the accused and/or members of their family or associates and/or anyone who is likely to be an accused or a witness in proceedings;
- any views expressed by the witness.

6.13 The legislation 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;
- aids to communication (available to vulnerable witnesses only);
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- intermediaries (to assist witnesses and defendants with communication needs).

6.14 The court will make a 'special measures' direction on application of a party or of its own motion where it is satisfied that the witness is eligible and that a measure or measures would be likely to maximise the quality of evidence given by the witness.

## Anonymity

6.15 Separate provision is made by the Coroners and Justice Act 2009 for a witness to be granted a Witness Anonymity Order to enable them to give evidence anonymously where the court is satisfied:

- (i) that this is necessary to protect the safety of the witness or another person or to prevent any serious damage to property, or to prevent "real harm to the public interest";
- (ii) that it is consistent with the fair trial of the defendant; and
- (iii) that it is in the interests of justice for the witness to give evidence and that the witness would either not give evidence if the order were not made or there would be real harm to the public interest if the witness were to give evidence without the order being made.

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6.16 All of these three conditions must be met before an application can be made to the court for an order.

6.17 Further measures to assist victims and witnesses are published on the PPS website.

## Particular Needs

6.18 The PPS will make reasonable adjustments to support people with particular needs as they engage with the prosecution process, for example PPS can assist by making information accessible, and can produce letters and leaflets in 'easy read' format upon request.

## Interagency Working

- 6.19 The PPS is an active member of a wide range of interagency groups established to ensure that service provision across the Criminal Justice System is of a high standard. This work continues in a wide range of areas including for example improving services for victims and witnesses of crime, reducing avoidable delay, reviewing the law relating to mental health, ensuring the effective prosecution of hate crime, domestic violence, sexual offences, road traffic offences and a wide range of other offences.

## Victim and Witness Charters

- 6.20 The PPS is committed to delivering the entitlements contained within the Victim Charter (launched in January 2015) and the Witness Charter (launched in March 2017).



## 7. Code of Ethics

### Purpose

- 7.1 This Code of Ethics lays down the standards of conduct and practice for prosecutors working for, or on behalf of, the PPS.
- 7.2 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.

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- 7.3 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 NICS, are obliged to act in accordance with the NICS Code of Ethics.
- 7.4 Further, Public Prosecutors must either be a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland. As such all prosecutors are obliged to act in accordance with the standards set by their respective professional body. Counsel are required to act in accordance with their Terms of Engagement and to comply with particular instructions to counsel in any individual case.

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### Legal Obligations

- 7.5 In considering cases and conducting prosecutions prosecutors must, at all times, act in accordance with the law of Northern Ireland. In addition prosecutors must have regard to any legal guidance provided by the Director of Public Prosecutions for Northern Ireland and the Attorney General for Northern Ireland, including Human Rights Guidance issued under Section 8 of the Justice (Northern Ireland) Act 2004.

- 7.6 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 binding obligations of international law ratified by the UK.

## Professional Conduct

- 7.7 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 PPS.
- 7.8 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.
- 7.9 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.
- 7.10 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;

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- (g) always serve and protect the public interest;
- (h) respect, protect and uphold the universal concept of human dignity and human rights.

7.11 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.

7.12 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:

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- (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.

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7.13 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 meets the Test for Prosecution. 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. They will 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) in 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, refer the case to them;
- (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.

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## Private Conduct

- 7.14 Prosecutors must not compromise the actual, or the reasonably perceived, integrity, impartiality, fairness or independence of the PPS by activities in their private life.
- 7.15 Prosecutors should respect and obey the law at all times.
- 7.16 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.
- 7.17 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.
- 7.18 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 PPS.
- 7.19 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.

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## Breaches of The Code of Ethics

- 7.20 Prosecutors must bring to the attention of the Director of Public Prosecutions for Northern Ireland any actual or suspected breach of the Code of Ethics.
- 7.21 Prosecutors must bring to the attention of the Director of Public Prosecutions for Northern Ireland any criminal prosecutions initiated against them, the imposition of any fixed penalty including penalty points, the administration of an informed warning or caution, or equivalent.

- 7.22 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.
- 7.23 Failure by Public Prosecutors to adhere to the Northern Ireland Civil Service Code of Ethics or to this Code may result in disciplinary proceedings potentially leading to suspension or dismissal.
- 7.24 Failure by independent counsel instructed by the PPS to adhere to this Code of Ethics and their Terms of Engagement may result in the PPS 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 and breaches of the Terms of Engagement will be dealt with under the arrangements set out in that document. 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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## Useful Contacts

Independent Assessor of Complaints for the Public Prosecution Service  
[Independent.assessor@ppsni.gov.uk](mailto:Independent.assessor@ppsni.gov.uk)

The Office of the Attorney General for Northern Ireland  
<https://www.attorneygeneralni.gov.uk/>

The Police Service of Northern Ireland  
<https://www.psnipolice.uk/>

Department of Justice for Northern Ireland  
<https://www.justice-ni.gov.uk/>

Northern Ireland Courts and Tribunal Service  
<https://www.justice-ni.gov.uk/topics/courts-and-tribunals>

Police Ombudsman for Northern Ireland  
<https://www.policeombudsman.org/>

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Youth Justice Agency  
<https://www.justice-ni.gov.uk/topics/youth-justice>

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The Bar of Northern Ireland  
<http://www.barofni.com/>

The Law Society of Northern Ireland  
<https://www.lawsoc-ni.org/>

Victim Support NI  
<http://www.victimsupportni.co.uk/what-we-do>

Women's Aid NI  
<http://www.womensaidni.org/>

NSPCC  
<https://www.nspcc.org.uk/>

**For further information about the PPS, please contact:**

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This document can be made available in a range of alternative formats on request (contact details as above).

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