

# Summary of Revisions to the PPS Code for Prosecutors (May 2023)

## 1. Introduction

An updated Code for Prosecutors has now been published by the Public Prosecution Service, replacing the previous version released in **July 2016**.

The purpose of this document is to highlight the main changes within the Code (by Chapter) and provide relevant background information, where applicable.

## 2. Amendments by Chapter

### Chapter 1: Introduction

No changes.

### Chapter 2: Public Prosecution Service

This includes a number of minor changes, including updated information on the PPS's structure (**paragraph 2.5**) and a statement of the Service's Purpose and Values (**paragraphs 2.13 to 2.15**).

### Chapter 3: Relationship with the Investigator

#### ***Prosecutorial Advice***

At **paragraph 3.4**, additional information has been provided in respect of prosecutorial advice. In addition to the existing examples of where such advice may be appropriate (e.g. regarding the quality and admissibility of evidence), the following has been added:

*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.*

At **paragraph 3.6**, clarification has been provided in respect of advice on investigative matters and the role of PSNI's in-house legal advisors:

*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.*

## **Chapter 4: Prosecution Decisions**

### ***Public Interest Test***

Point (xiv) of the considerations for prosecution (Public Interest Test – see page 19), which deals with cases involving exploitation, has been expanded to specifically reference child sexual exploitation:

*(xiv) where there is any element of exploitation by the defendant, including child sexual exploitation;*

There have also been a number of changes to the considerations *against* prosecution. Point (v) now states that where there has been a long delay between the offence and the likely date of trial, this must be assessed in light of all relevant circumstances (see page 20):

*(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;*

Point (vii) has been amended to focus on the potential vulnerability of the suspect by virtue of their age. The paragraph also reflects the statutory aims of the youth justice system and the need to consider the best interests of the child (see page 20):

*(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;*

A new criterion has also been added at (viii) to address the potential that the suspect is a victim of child sexual exploitation or human trafficking (see page 21):

(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).*

### **Alternatives to Prosecution**

A number of changes have been made to the guidance in respect of Alternatives to Prosecution. These include:

- A number of revisions in the 'step down' periods for diversionary disposals. Cautions now remain on a person's criminal record for a period of 2 years for a young person and 6 years for an adult (previously 2.5 years and 5 years respectively), while a youth conference will remain on a youth's criminal record for a period of 2 years (previously 2.5 years). These step down periods, agreed with the Police Service of Northern Ireland and the Department of Justice, are amended to align with Access NI filtering timescales, as specified in the Police Act 1997 (**paragraphs 4.29 to 4.34**).
- A new section has been added to deal with the admission of guilt by offenders in cases involving diversion (**paragraphs 4.35 to 4.38**).
- Guidance has been added to clarify that information concerning a diversionary disposal may be disclosed by other agencies for an indefinite period of time (i.e. even after the relevant step down period has elapsed). 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 may be disclosed on that check where it relates to a 'specified' offence (**paragraphs 4.39 to 4.42**).

### **Disclosure**

At **paragraph 4.56**, there is a reference to the revised Guidelines on Disclosure issued by the Attorney General for England and Wales and the extent to which it may be applied in Northern Ireland:

*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.*

## ***Mental Health / Unfitness to be Tried***

**Paragraph 4.60** (Mental Health Issues – previously 4.56) has been amended to reflect research on suspects / offenders and the prevalence of mental disorders.

At **paragraph 4.61** (Unfitness to be Tried), additional information has been provided in respect of a ‘trial of the facts’, which applies in circumstances where a defendant in the Crown Court is determined to be unfit to plead:

*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.*

## ***Reviews / Giving of Reasons***

At **paragraph 4.65**, a number of changes have been made to the guidance in respect of PPS procedures for the review of a decision not to prosecute. These include:

- Where a request for a review is made by or on behalf of a victim the request will now 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. The previous time limit was three months.
- A target of eight weeks will now apply to the completion of reviews and the communication of the decision in writing to the victim. In cases where it is not possible to provide a decision within this timeframe, for example in more complex cases, the victim should be notified accordingly.

At **paragraphs 4.67 and 4.68** additional information has been included in respect of the review process, and the steps to be followed where a review is being undertaken by a prosecutor (other than the original decision-maker) and further enquiries yield fresh evidence or information.

At **paragraphs 4.70 to 4.74**, the procedures for the giving of reasons have been set out in greater detail. Where detailed reasons are given, paragraph 4.72 clarifies that 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.

## ***Private Prosecutions***

**Paragraphs 4.75 to 4.78** provide greater detail in respect of the Director's powers under section 31(4) of the Justice (Northern Ireland) Act 2002 to take over the conduct of a private prosecution. A number of criteria are set out as a guide to the circumstances where a decision is taken to either continue the prosecution or to discontinue or stop it.

Several examples are provided of where a private prosecution should be stopped, such as where the prosecution interferes with the investigation of another criminal offence or the prosecution of another criminal charge, or the defendant has already been given a diversionary disposal.

## **Chapter 5: Conduct of Prosecutions**

At **paragraph 5.23**, the attention of prosecutors is drawn to the Attorney General's guidelines on the acceptance of pleas (November 2012) and the prosecutor's role in the sentencing exercise.

**Paragraph 5.27** (Unduly Lenient Sentences) is amended to reflect the increase in scope of the ULS provisions in Northern Ireland.

## **Chapter 6: Victims and Witnesses**

At **paragraph 6.20**, a reference has now been included to the Witness Charter, launched in 2017.

## **Chapter 7: Code of Ethics**

No changes.