



NORTHERN  
I R E L A N D  
HUMAN  
RIGHTS  
COMMISSION

**The Public Prosecution Service for Northern Ireland:  
Code for Prosecutors (Draft)**

**Response of the Northern Ireland Human Rights Commission,  
29 June 2004**

- 1 The Northern Ireland Human Rights Commission welcomes the preparation of the draft Code for Prosecutors and is grateful for the opportunity to submit comments. The Commission is a statutory body with responsibility for promoting understanding and awareness of the importance of human rights and in doing so strives to ensure that the UK's international human rights obligations are fully adhered to throughout the public sector.
- 2 The Commission's initial comments on the draft are that it is reasonably comprehensive, it does cover most of the topics to an appropriate level of detail, the layout and language of the paper are acceptable and other formats, such as Braille and summaries in Chinese and Irish, should be considered.
- 3 There are, however, a number of relatively minor points which the Commission would like to draw to the attention of the Public Prosecution Service.
- 4 We would suggest that throughout the document the name given to the new service being created should be consistently used, namely the Public Prosecution Service.
- 5 In para 1.2.3 it is not made clear exactly where the overview of the role of the Public Prosecution Service begins in the consultation document. Moreover throughout the document it would help if there were cross-references to the relevant paragraph numbers.
- 6 In para 2.3.6 reference is made to files which will be considered by prosecutors in headquarters, but no indication is given as to which files these will be. Some indication of the criteria to be used when selecting files for consideration by prosecutors at headquarters would be useful.

- 7 In para 4.3.2 reference is made to a statement in Parliament by Sir Hartley Shawcross, but the quotation supplied does not in fact appear to relate to the public interest as claimed. Perhaps a more apposite quotation could be introduced at this point?
- 8 In para 4.4.4 reference is made to publicity in cases where charges are withdrawn before a person's first court appearance, but there does not appear to be any further reference in the consultation document to publicity in other cases. Some explanation of when publicity will be given by the Public Prosecution Service would be helpful.
- 9 At para 4.5.2 reference is made to a decision of "No Prosecution". Then, in para 4.12.2, reference is made to a *nolle prosequi*. Some explanation of the distinction between these two kinds of decision would be helpful in either paragraph.
- 10 In para 4.6.1 it would assist the general reader if the legislative basis for the various diversionary options available to the prosecutor was supplied, either in the text itself or in a footnote. In point iii in para 4.6.1 reference is made to the fact that a Youth Conference can take place only if the defendant agrees to participate, but this reference appears to be unnecessary given the more general statement on this point in the immediately following paragraph (4.6.2).
- 11 In para 4.7.3 the word "more" seems to have been omitted before the word offences in the first line. (There are, unfortunately, several typographical errors of this kind throughout the document.)
- 12 In para 4.8.2 reference is made to the prosecutor considering a number of factors when deciding if the prosecution should take place in the Magistrates' Court or the Crown Court, but only one such factor is exemplified. It would assist the reader if one or more other factors which are normally taken into account were also illustrated.
- 13 Para 4.9.3 refers to the "de-scheduling" process. Again, it would be helpful if a slightly fuller explanation could be supplied of exactly how this de-scheduling process works in practice. It would also help if some indication could be given as to whether a decision by the Advocate General on de-scheduling can be challenged.
- 14 In para 4.10.2 one example is given of a ground on which a decision by the Public Prosecution Service may be reviewed, namely when new evidence becomes available. Again the reader would benefit from having one or two other examples supplied.
- 15 In para 4.11.3 reference is made to the exceptional cases where the Public Prosecution may give reasons for not prosecuting. The Director of Public Prosecutions is aware that the Human Rights Commission would prefer reasons to be given in many more cases than those designated as "exceptional" under this paragraph. We believe that the public interest requires an explanation for decisions not to prosecute in many more situations other than where death is, or may have been, occasioned by the conduct of agents of the State.

- 16 In para 5.2.3 reference is made to where a disclosure officer may not be appointed as such if a conflict of interest may arise. The example given (namely if the disclosure officer is the victim of the alleged crime) seems an extremely unlikely one. Perhaps a more realistic example of a situation where an individual must not serve as a disclosure officer could be supplied?
- 17 In para 5.2.6 reference is made to paragraphs 6.9 and 8.1 of “the Code”, but it is not clear which Code is being referred to here.
- 18 In paras 5.3.7 and 5.4.3 the terms “prosecutors” and “prosecution advocate” are both used. This could be confusing to readers and we suggest that the paragraph is clarified in this respect.
- 19 In paras 5.3.9 and 5.5.1 reference is made to situations where prosecutors must not continue with the case. Does this mean that a decision of “No Prosecution” or a *nolle prosequi* will be issued, or is there a third type of decision which would cover this kind of situation? This should be clarified.
- 20 In para 5.4.5, in place of the words “will cease”, it may be better to use the phrase “must not occur”.
- 21 In para 5.6.5 reference is made to “paragraphs 30 to 32 above”, but it is not clear what this refers to.
- 22 In para 6.1.2, in the third line, the crucial word “not” appears to have been omitted.
- 23 In para 6.1.3, in the second line, the phrase “ministers of justice” is used. This seems strange, and perhaps the phrase “administrators of justice” would be preferable?
- 24 In para 6.3.1, after the first sentence, perhaps a cross-reference to section 4 of the Code could be inserted?
- 25 Para 6.3.2 may, we submit, be better located within section 4 of the Code.
- 26 In para 6.3.3, in the penultimate line, the word “either” is not followed by “or”.
- 27 In para 6.3.5, does the public interest play a role in situations where the defence offer a plea to lesser charges? If so, reference should be made to this at this point. The same factor may need to be considered in relation to what is said in para 6.3.6.
- 28 What is said about a bargain or agreement with the defendant or any person on his or her behalf in para 6.3.9 sits uneasily, in our view, with what is said at the start of para 6.3.6 concerning proposals put forward by the defence. It would be better, we submit, if the Code made it absolutely clear, if this indeed is the position, that no discussions whatsoever should take place concerning plea bargaining. This is

- 29 In para 6.4.1, where reference is made to the need for the court to have before it all available evidence relevant to sentencing, may it be useful to refer to the Causeway Project? This is also a point which may be worth considering in relation to other paragraphs of the Code.
- 30 Para 6.4.7 seems to overlap with what is said in para 6.4.2. Perhaps these could be consolidated?
- 31 Para 6.5.2 deals with appeals on a point of law following acquittal in the Crown Court, but there does not appear to be any reference in the document to appeals by way of case stated in the Magistrates' Court or to appeals from the Court of Appeal to the House of Lords. It would be helpful if the full range of possible appeals could be covered in the Code.
- 32 Paras 7.1.1 and 7.1.2 seem to overlap. Again, perhaps these could be consolidated?
- 33 In para 7.2.2 there is a reference to the Public Prosecution Service's revised Victims and Witness Policy, but it may be more appropriate, in our opinion, for this to be appended to the Code. This is also the kind of document which could usefully be placed on the Public Prosecution Service's website.
- 34 In para 7.2.4 it may be useful to insert a cross-reference to the Public Prosecution Service's policy on "Handling of Complaints not relating to the Exercise of Prosecutorial Discretion".
- 35 Para 7.3.6 refers, in line four, to "the future" and "legislative change". It may be preferable for the Code to refer only to the *present* position. Any future changes can be provided for in subsequent editions of the Code.
- 36 In para 8.3.3 reference should perhaps be included to the position of victims and witnesses.
- 37 It is not immediately apparent where the difference lies between, on the one hand, para 8.3.4 and, on the other, paras 8.3.5 and 8.3.6. Some consideration might be given to rewording these three paragraphs.
- 38 In para 8.4 of the Code it may now be appropriate to refer to section 7 of the Justice (NI) Act 2004, which makes it an offence to influence a prosecutor.
- 39 Para 8.5, in line three, refers to "your" line manager. The use of the second person in this context seems out of place.