



PUBLIC PROSECUTION SERVICE

FOR NORTHERN IRELAND

STANDARDS OF ADVOCACY

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1. Advocacy is central to our work as prosecutors and the very highest standards of advocacy are essential. In these standards the term “prosecution advocate” means: Public Prosecutors, who are Barristers or Solicitors employed by the Public Prosecution Service (PPS) who have been designated by the Director of Public Prosecutions for Northern Ireland to act in that role; and Barristers who are members of the Bar of Northern Ireland who have been instructed by the PPS to act as prosecuting counsel in any individual case.

STANDARDS OF ADVOCACY

2. These are the standards expected of everyone who prosecutes on behalf of the PPS.
3. The standards are not exhaustive but rather provide general guidance for Prosecution Advocates. Prosecution Advocates should ensure that they are aware of the policies and authorities underpinning these standards and how to access the relevant background material if more detailed information is required.
4. Paramount to the standard of conduct required of Prosecution Advocates is that they must always act in the interests of justice. It is not the duty of Prosecution Advocates to obtain a conviction by any means at their command. The Prosecution Advocate’s duty is to prosecute to the full extent of their abilities within the law and rules of evidence and procedure.
5. Prosecution Advocates 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 Prosecution Advocate of which the Prosecution Advocate is aware that authority must be brought to the Court’s attention.
6. Prosecution Advocates must have regard to the comments of the court in R -v- Gonez [1999].

“.....it is the role of prosecuting counsel throughout a trial as indeed before it to act as a minister for justice. It is incumbent upon him or her not to be betrayed by personal feelings in relation to the prosecution. It is incumbent on counsel prosecuting not to seek to excite the emotions of a jury. It is for prosecuting counsel not to inflame the minds of a jury A final speech should as a matter of form, as it seems to us, be a calm exposition of the relevant evidence, so far as it is relevant to give such an exposition and an equally calm invitation to draw appropriate inferences from that evidence.”

A. PROFESSIONAL ETHICS

7. The following is required:

- 7.1 Prosecution Advocates should comply with the requirements of the Code of Conduct of their professional body whether the Bar Council of Northern Ireland or the Incorporated Law Society of Northern Ireland.
- 7.2 Prosecution Advocates must comply with the PPS’s Code for Prosecutors, including the requirement to keep cases under continuing review, and the PPS’s Code of Ethics.
- 7.3 Prosecution Advocates must be familiar with the professional duties of both prosecution and defence advocates.
- 7.4 Prosecution Advocates must possess a sound knowledge of the rules of court and should ensure that they comply with them.
- 7.5 Prosecution Advocates must comply with the Human Rights Act.
- 7.6 Prosecution Advocates must comply with the prosecution’s obligations and duties in relation to disclosure.
- 7.7 Prosecution Advocates must conduct any prosecution in a robust, firm and fair manner.
- 7.8 Prosecution Advocates must never mislead the court. All factual information eg reasons for previous adjournments,

details of previous bail applications, reasons for delay, must be entirely clear and unambiguous.

- 7.9 Prosecution Advocates must comply with the PPS's Equality and Diversity Policy and be sensitive to equality and diversity issues in practice.

B. VICTIMS AND WITNESSES

8. Prosecution Advocates should comply with the PPS's Victims and Witnesses' Policy and all other relevant policies and procedures, for example the policies in relation to Domestic Abuse and Hate Crime.

- 8.1 Prosecution Advocates must comply with the obligations under section 75 of the Northern Ireland Act 1998 as set out in the PPS's Equality Scheme and be sensitive to equality and diversity issues in practice.

9. Where appropriate Prosecution Advocates should consult with witnesses and if necessary, prepare to make application for special measures or witness protection.

10. Where a number of witnesses are to be called to give evidence the Prosecution Advocate should prepare and circulate a running order so that witnesses do not have to wait unnecessarily at court.

11. The Prosecution Advocate should introduce him/herself to victims and witnesses before they give evidence. They should do what they reasonably can to put all witnesses, particularly nervous or vulnerable witnesses, at ease and explain to them court procedures and any particular court facilities such as separate waiting areas as may be available. The Prosecution Advocate should be aware of the services offered by Victim Support NI and the NSPCC and where available direct victims and witnesses to these agencies.

12. In the course of the trial the prosecutor should challenge any defence cross-examination of witnesses which is irrelevant or not permissible.

C. PLANNING AND PREPARATION

13. Proper planning and preparation are vital to effective advocacy.

Pre-trial

14. Prosecution Advocates should:

- 14.1 Ensure that they are fully prepared for trial and comply with any relevant practice directions.
- 14.2 Read the case papers thoroughly and, where necessary, direct proofs.
- 14.3 Consider whether all Directions have been complied with and, if not, seek to ensure compliance.
- 14.4 Ensure that the counts on the Indictment are correct, accurately reflect the prosecution case and do not require amendment.
- 14.5 Anticipate and prepare for likely defences.
- 14.6 If necessary, have an introductory, meeting with the PPS court-work support officer and the PSNI investigating officer.
- 14.7 Ensure that any additional evidence is directed/served.
- 14.8 Where reliance is to be placed on evidence such as videos or audio tapes the Prosecution Advocate should ensure that no quality issue arises. The Prosecution Advocate should confirm that any necessary technical equipment will be available in the court room and ensure that it is functioning correctly before use.
- 14.9 Discharge any obligation on the prosecution in relation to disclosure and ensure that the prosecution's duty of disclosure is kept under review.
- 14.10 Any PII issues should be discussed with the directing officer.
- 14.11 Ensure witnesses are available. If additional witnesses are required take steps to ensure that they are requested to attend.
- 14.12 Consider whether it may be appropriate to seek any rulings or directions from the court in relation to any particular issue.

- 14.13 Prepare any additional or new applications in relation to hearsay and/or bad character.
- 14.14 Comply with any ruling ie instruct law clerk in case to arrange for the service of expert reports and skeleton arguments and disclosure.
- 14.15 Prepare a skeleton argument where required. Skeleton arguments should fully set out the issues under consideration and contain details of all relevant authorities whether favourable or unfavourable to the prosecution argument. Ensure that sufficient copies of any skeleton argument or documentary exhibit etc. are available for the court and the defence.
- 14.16 Inform the court of any legal source to be relied upon and provide sufficient copies for the court and the defence.
- 14.17 Where necessary, discuss the case with the defence advocate. Where issues have not already been clarified the prosecution advocate should seek to narrow and agree the trial issues and agree evidence.

D. COURT ETIQUETTE

15. Prosecution Advocates must always be aware that they are instructed by the PPS and that inappropriate dress, language or behaviour has the potential to damage public confidence in the PPS and bring the organisation into disrepute.
16. Prosecution Advocates should:
 - 16.1 Be professional and courteous at all times.
 - 16.2 Use the correct form of address for the judge and defence advocate.
 - 16.3 Address the court clearly using language appropriate to the intended audience, whether witnesses, jurors, or judges.
 - 16.4 Be logical and succinct in arguments and submissions.

- 16.5 Refrain from speaking or writing when the oath or affirmation is being taken or when the defendant is being arraigned.

E. BAIL

17. Prosecution Advocates should:

- 17.1 Ensure that they have accurate, up-to-date information with regard to the facts and if bail is to be opposed, the basis upon which it is to be opposed.
- 17.2 Ensure that they obtain the facts of any relevant previous bail applications and, if possible, the facts of any relevant previous convictions.
- 17.3 Be familiar with the legal requirements in relation to objecting to bail including in relation to youths.
- 17.4 Be prepared to cross-examine defence witnesses if necessary.
- 17.5 Be prepared to deal with any issues of disclosure arising.
- 17.6 Inform the PPS of any conditions of bail which are imposed or observations which are required to be brought to the Director's attention.
- 17.7 Be aware of the provisions of section 10 of the Justice (Northern Ireland) Act 2004 in relation to the prosecution's right to appeal bail granted in the Magistrates' Court and ensure that where appeal is appropriate, oral notice of Appeal is given to the Magistrates' Court at the conclusion of the proceedings in which bail is granted and before the release from custody of the person concerned and that Notice of Appeal is lodged within the statutory two hour period.
- 17.8 Where bail is appealed the reasons for so doing should be endorsed on the case papers.
- 17.9 Be familiar with the law surrounding breach of bail and be prepared to seek an arrest warrant where appropriate.

F. PLEAS

18. The defence may on occasion approach the Prosecution Service with an offer to plead guilty to only some of the charges that they are facing, or to a lesser charge or charges, with the remaining charges not being proceeded with. The Prosecution Advocate is under a duty to consider any such formal offer from the defence. This does not constitute “plea bargaining”.
19. “Plea bargaining” has no place in the practice or procedures of the PPS. The term is frequently, and indeed generally, liable to be understood as implying the seeking of some improper or at least questionable arrangement between the prosecution and the defence. Both the term and what it implies are therefore objectionable. There must be no such improper or questionable arrangement and no practice is permissible which reasonably suggests that there may be.
20. The acceptance by the PPS of such a plea offer from the defence must be consistent with the evidence and information available at the time and meet the requirements of justice. The following may be relevant factors:-
 - i. whether the court can properly sentence the defendant for his or her criminality;
 - ii. any relevant information concerning the defendant’s previous convictions and likelihood of re-offending; and
 - iii. the proper interests of victims and witnesses.
21. In no circumstances may the Prosecution Advocate accept an offer to plead guilty to an offence in respect of which the defendant otherwise asserts his or her innocence.
22. Prosecuting counsel instructed by the PPS must not accept a plea offer without the authority of the PPS and must at all times act in accordance with the decisions of the PPS
 - 22.1 PPS Prosecution Advocates must have regard to their level of authorisation.

- 22.2 If there is a significant factual dispute, where appropriate efforts must be made by the Prosecution Advocate to ensure that the basis of a plea should be recorded in writing and signed by both the prosecution and defence advocates.
- 22.3 If any proposed basis of plea is not agreed by the prosecution or there are factual issues that the defence do not accept, prosecutors should consider whether such factual issues are likely to bear upon the level of sentence and ought accordingly to be raised with the court so that it can consider whether to hold a Newton Hearing.
- 22.4 Prosecution Advocates should challenge assertions which are unfair or which run contrary to the prosecution's case. If the defence persist with the assertions, and if appropriate, the court should be invited to hold a Newton Hearing into the issue. Prosecution Advocates should also bear in mind the power of the court under sections 58 – 61 of the Criminal Procedure and Investigations Act 1996 to preclude publication of certain derogatory assertions made against individuals in certain circumstances.
- 22.5 Where a basis of plea is agreed this should be recorded on the PPS brief.

G. YOUTH COURT

- 23. Prosecution Advocates should familiarise themselves with the relevant legislation and provisions in relation to youth matters and should pay particular attention to the law and practice in relation to bail and sentencing options for youths.

H. TRIAL

- 24. An Opening Speech should:
 - 24.1 Be planned and structured.
 - 24.2 Identify the issues and deal with anticipated (but not fanciful) defences.
 - 24.3 If appropriate to the forum deal with the burden and standard of proof.

- 24.4 Not overstate the prosecution case.
- 25. Examination in Chief should:
 - 25.1 Be conducted in accordance with the rules of evidence.
 - 25.2 Be planned and structured.
 - 25.3 Demonstrate appropriate use of questions eg non leading – unless by agreement.
- 26. Re-examination should:
 - 26.1 Only be used when appropriate, asking questions arising out of cross examination.
- 27. Cross Examination should:
 - 27.1 Be planned and focused on the issues.
 - 27.2 Use leading questions effectively.
 - 27.3 Put the prosecution case.
- 28. A Closing Speech should:
 - 28.1 Always be made where appropriate.
 - 28.2 Summarise the relevant evidence and why the Prosecution say the defendant is guilty of the offence;
 - 28.3 Be the focus of all the preparation before and during the trial.

I. PROSECUTION APPEALS

- 29. Prosecution Advocates should be aware of the Prosecution's right to appeal certain rulings of the trial Judge and in particular should be fully familiar with the provisions of Part IV of the Criminal Justice (Northern Ireland) Order 2004. These provisions set out the rules and procedure for pursuing an appeal where a Judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.

30. To avoid unduly delaying the trial process Prosecution Advocates must alert the appropriate Regional Prosecutor or Assistant Director in advance of any ruling which is reasonably anticipated will relate to the continuation of proceedings in respect of one or more offences in the indictment. This will enable instructions to issue at an early stage as to whether an appeal against the ruling should be instigated.

J. SENTENCING

31. Sentencing is a matter for the court. Prosecution Advocates must not approbate expressly or impliedly the sentence to be imposed by the court.
32. Prosecution Advocates should not attempt by advocacy to influence the court with regard to sentence. If, however, a defendant is unrepresented it is proper to inform the court of any mitigating circumstances about which counsel is instructed.
33. At the sentencing hearing the prosecutor should challenge any assertion by the defence which is not supported by the evidence, particularly where such an assertion adversely reflects upon the honesty or integrity of a witness or injured party.
34. Prosecution Advocates should be in a position to assist the court, if required, as to any statutory provisions relevant to the offence of the defendant and to any relevant guidelines as to sentence laid down by the Court of Appeal. In particular, prosecution advocates must be in a position to assist the court in its assessment of the dangerousness of an offender pursuant to the Criminal Justice (Northern Ireland) Order 2008.
35. Prosecution Advocates should bring such matters as are referred to above to the attention of the court if in the opinion of the prosecutor the court has erred. The Prosecution Advocate's attention is drawn to the decision in Attorney General's Reference No 8 of 2004 (Dawson) in which the Lord Chief Justice stated:

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

36. Prosecution Advocates are reminded of the provisions of section 36 of the Criminal Justice Act 1988 whereby the Director of Public Prosecutions may seek leave from the Court of Appeal to review a sentence as being unduly lenient. In every case where a prosecutor considers that there are grounds upon which it could be reasonably argued that the sentence imposed is or may be unduly lenient the prosecutor should report the case immediately to the Public Prosecution Service.
37. The attention of Prosecution Advocates is specifically drawn to the duties of the prosecution in respect of Article 14(c) of the Criminal Justice (Northern Ireland) Order 1994, namely the power of the court to make a compensation order. As the injured party has no locus to make an application in respect of compensation, the Prosecution Advocate is asked to consider whether the facts and circumstances warrant an application to the court to make a compensation order. If the Prosecution Advocate considers that such an application should be made, the relevant proofs including any additional evidence that may be necessary to prove the injured party's personal injury, loss or damage should be sought.
38. The attention of Prosecution Advocates is specifically drawn to the rules of practice governing discussions in Chambers as propounded by the Court of Appeal in the reference to Her Majesty's Attorney General for Northern Ireland (No. 1 of 2005) Bernard Philip Mary Rooney and others for the guidance of sentencers in courts at all levels.
39. The attention of Prosecution Advocates is also specifically drawn to the Attorney General's guidelines on the role of Prosecution Advocates in discussions in chambers on pleas and sentencing.
40. 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.
41. Prosecution Advocates 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.

K CONFISCATION

42. If so instructed it is also the Prosecution Advocate's duty to deal with any questions of compensation, forfeiture, confiscation or restitution which may arise. In particular, after conviction and prior to sentencing in the Crown Court the Prosecution Advocate should make any necessary application for postponement of confiscation proceedings which are to be brought under the Proceeds of Crime (Northern Ireland) Order 1996 or the Proceeds of Crime Act 2002.
43. If so instructed, after conviction and prior to sentencing in the Magistrates' Court the Prosecution Advocate should make any necessary application under section 218 of the Proceeds of Crime Act 2002 for committal to the Crown Court with a view to a confiscation order being made under the Act.

L. APPLYING PPS POLICIES

44. Prosecution Advocates must prosecute all cases in accordance with relevant published PPS policies. Particular regard should be had to policies in relation to Victims and Witnesses. Prosecution Advocates must familiarise themselves with all such policies and undertake such training as is required.