



Statement of General Guidelines
for Prosecutors



Director of Public Prosecutions

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Foreword

The Annual Reports of the Office of the Director of Public Prosecutions for 1998 and 1999 have previously published information about the work of the Director and his Office and the principles underlying prosecution decisions.

This Statement of General Guidelines for Prosecutors aims to set out in general terms principles which should guide the initiation and conduct of prosecutions in Ireland. It is intended to give general guidance to prosecutors so that a fair, reasoned, and consistent policy underlies the prosecution process.

Article 30 of the Constitution of Ireland provides that crimes shall be prosecuted in the name of the People. I believe that making this statement available will contribute to an increased understanding of the prosecution process by the citizens on whose behalf prosecutions are brought.

The statement is also available on the Office website which can be accessed at www.dppireland.ie

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October 2001

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Introduction

1. Introduction

- 1.1 Fair and effective prosecution is essential to a properly functioning criminal justice system and to the maintenance of law and order. The individuals involved in a crime – the victim, the accused, and the witnesses – as well as society as a whole have an interest in the decision whether to prosecute and for what offence, and in the outcome of the prosecution.
- 1.2 Every case is unique and must be considered on its own merits. For this reason there is no simple formula which can be applied to give a simple answer to the questions the prosecutor has to face. But there are general principles which should underlie the approach to prosecution, even though the individual facts of each case will require the prosecutor to use judgement and discretion in their application.
- 1.3 The aim of this "Statement of General Guidelines for Prosecutors" is to set out in general terms principles which should guide the initiation and conduct of prosecutions in Ireland. It is not intended to override any more specific directions which may exist in relation to any particular matter. It is intended to give general guidance to prosecutors on the factors to be taken into account at the different stages of a prosecution, so that a fair, reasoned and consistent policy underlies the prosecution process.
- 1.4 This Statement is not intended to and does not lay down any rule of law. Rules of law are made by the Oireachtas and the courts. To the extent that there are existing rules of law which govern prosecution policy the Statement is intended to reflect those rules. The Statement is not issued pursuant to any statutory duty or power.

- 1.5 In the Statement the term "a prosecutor" is used to mean all or any of the following, depending on the context in which the word is used: the Director and his officers, the solicitors and legal technical staff who provide a solicitor service to the Director, the local State Solicitors who do likewise in the areas outside Dublin, counsel who act for the Director on a case to case basis, and members of the Garda Síochána prosecuting on the Director's behalf. Solicitors and barristers are subject to the professional standards of their respective professions, and the Statement is not intended to, nor could it, substitute for or detract from those standards. Insofar as it applies to prosecutors who act for, though are not employed by, the Director, it is intended to set out the standards and conduct which the Director expects of those who act on his behalf.
- 1.6 The application of the principles set out in the Statement does not and cannot bind the Director to follow any particular course in any individual case and does not fetter the Director of Public Prosecutions, his officers, agents or counsel in the proper exercise of any discretion conferred on any of them to consider any particular case or set of circumstances on its own merits.
- 1.7 The Statement does not purport to deal with all questions which can arise in the prosecution process nor with every aspect of the role of the prosecutor in their determination. The Statement is intended as a working document which will require in the light of circumstances to be adjusted or elaborated. Accordingly, it will be kept under review and revised from time to time. The Statement sets out policies and guidelines intended to operate from the date of its publication. It does not necessarily reflect policies which operated in the past.



The Prosecution System in Ireland

2. The Prosecution System in Ireland

2.1 The prosecution system in Ireland is not described or set out fully in any one document. It is grounded in the Constitution of Ireland, 1937, and in statute law, notably the Prosecution of Offences Act, 1974, which established the office of Director of Public Prosecutions. The prosecution system in Ireland has grown from common law roots and many important practices and rules in Ireland have their basis in common law, that is, judge-made law.

2.2 Article 30.3 of the Constitution of Ireland provides as follows:

"All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose."

2.3 Section 9(2) of the Criminal Justice (Administration) Act, 1924, conferred on the Attorney General the power to conduct all prosecutions in any court of summary jurisdiction except those which were prosecuted by a Minister, Department of State or other person authorised by law.

2.4 The Prosecution of Offences Act, 1974, established the Director of Public Prosecutions as an officer authorised in accordance with law to act for the purpose of prosecuting in the name of the People as provided for in Article 30.3 of the Constitution. Section 3(1) of the 1974 Act provides as follows:

"Subject to the provisions of this Act, the Director shall perform all the functions capable of being performed in relation to criminal matters and in relation to election petitions and referendum petitions by the Attorney General immediately before the commencement of this section and references to the Attorney General in any statute or statutory instrument"

in force immediately before such commencement shall be construed accordingly."

The 1974 Act thereby conferred on the Director of Public Prosecutions the function of prosecuting both on indictment and summarily.

- 2.5 Section 2 (5) of the 1974 Act provides that the Director shall be independent in the performance of his functions. Section 6 of the Act underscores that independence by making it unlawful for persons other than defendants or complainants in criminal proceedings, or persons likely to be defendants, or their legal or medical advisers, members of their family or social workers, to communicate with the Director or his officers for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.
- 2.6 The Office of the Director of Public Prosecutions is a small one consisting of the Director and a small number of professional officers, both barristers and solicitors, whose principal function is to make decisions in relation to the initiation or continuation of criminal prosecutions and to give directions regarding the conduct of criminal proceedings. The work of appearing for the Director in court is carried out either by the full-time solicitors in the criminal divisions of the Chief State Solicitor's Office, which at the time of writing are under the control of the Attorney General but which are shortly to become part of the Director's Office, or by the State Solicitors, who work on contract with the Attorney General in the areas of the State outside Dublin. The conduct of trials on indictment is handled by counsel practising at the bar who are engaged to represent the Director on a case-to-case basis.
- 2.7 Almost all summary prosecutions brought in the District Court are brought in the name of the Director. In practice the great majority are brought by officers of the Garda Síochána without specific reference to the Director's Office except in cases where the Garda Síochána are required to seek a direction from the Director (see paragraph 6.4 and 12.3 below) or where for some other reason they seek instructions. When the Garda Síochána prosecute in the Director's name they act in accordance with general directions which are issued from time to time by the Garda Commissioner following consultation with the Director. Nevertheless, the Garda Síochána are under the operational control of the Commissioner and not the Director.

- 2.8 The Director of Public Prosecutions has overall responsibility for the bringing of prosecutions but does not have administrative control over all aspects of the prosecution system. The report of the Public Prosecution System Study Group, chaired by the former Secretary to the Government, Mr. Dermot Nally, recommended the transfer of the criminal divisions in the Chief State Solicitor's Office and responsibility for the local State Solicitors to the Director. The Government has approved these recommendations and work on implementing them is ongoing. The Nally Group recommended that there be no change in the system of employing counsel to conduct cases heard on indictment.
- 2.9 Except for certain duties which arise under the Garda Síochána (Complaints) Act, 1986, where an investigation is being carried out into an alleged offence by a member of the Garda Síochána, the Director of Public Prosecutions has no investigative function. In the Irish criminal justice system the investigation of criminal offences is the function of the Garda Síochána. In addition there are specialised investigating authorities in relation to certain particular categories of crime, for example the Competition Authority in relation to offences against the Competition Acts, the investigation branch of the Revenue Commissioners in relation to revenue offences, and the Health and Safety Authority in relation to offences relating to safety and welfare at work. A new office of Director of Corporate Enforcement is being set up to deal with offences against company law. Complaints of criminal conduct made to the Director cannot be investigated by him but are transmitted to the Garda Commissioner or to one of the other investigation authorities to take the appropriate decisions and action. While the Director has no investigative function, he and his Office co-operate regularly with the Garda Síochána and the other investigating agencies during the course of criminal investigations, particularly in furnishing relevant legal and prosecutorial advice. The relationship between prosecutors and investigators is dealt with more fully in Chapter 6 below.



The General Duty of the Prosecutor

3. The General Duty of the Prosecutor

- 3.1 The prosecutor has a duty to act honestly, fairly, impartially and objectively.
- 3.2 The prosecutor should at all times respect the fundamental right of all human persons to be held equal before the law, and should abstain from any wrongful discrimination.
- 3.3 The prosecutor has a duty to respect, protect and uphold the universal concept of human dignity and human rights.
- 3.4 The prosecutor should at all times uphold the rule of law, the integrity of the criminal justice system and the right to a fair trial.
- 3.5 The prosecutor should remain unaffected by individual or sectional interests and public or media pressures having regard only to the public interest.
- 3.6 These fundamental duties should inform all aspects of the prosecutor's work, including decisions whether to prosecute or withdraw charges, bring appeals, decisions concerning the choice of charge and the conduct of the prosecutor in court.



The Decision whether to Prosecute

4. The Decision whether to Prosecute

- 4.1 The decision to prosecute or not to prosecute is of great importance. It can have the most far-reaching consequences for an individual. Even where an accused person is acquitted, the consequences resulting from a prosecution can include loss of reputation, disruption of personal relations, loss of employment and financial expense, in addition to the anxiety and trauma caused by being charged with a criminal offence. For victims and their families, a decision not to prosecute can be distressing. The victim, having made what is often a very difficult and occasionally traumatic decision to report a crime, may feel rejected and disbelieved.
- 4.2 It is therefore essential that the prosecution decision receives careful consideration. But, despite its important consequences for the individuals concerned, the decision is one which the prosecutor must make as objectively as possible.
- 4.3 Because of the importance of the prosecution decision and the need for objectivity the State has reserved to itself the right to prosecute in all except minor cases. In practice, almost all criminal prosecutions are brought by an arm of the State. In Ireland, by virtue of Article 30 of the Constitution of Ireland and of the Prosecution of Offences Act, 1974, all crimes and offences other than those prosecuted in courts of summary jurisdiction are brought in the name of the People and at the suit of the Director of Public Prosecutions, except for a very limited category of offences still prosecuted at the suit of the Attorney General. In the case of indictable offences brought at the suit of the Director, the decision to prosecute or not to prosecute is taken by the Director personally or by an officer of the Director who is authorised to take such a decision. The situation in relation to summary offences is set out in Chapter 12 below.

The Public Interest

- 4.4 As in other common law systems, a fundamental consideration when deciding whether to prosecute is whether to do so would be in the public interest. A prosecution should be initiated or continued, subject to the available evidence disclosing a prima facie case, if it is in the public interest, and not otherwise.
- 4.5 There are many factors which may have to be considered in deciding whether a prosecution is in the public interest. Often the public interest will be clear but in some cases there will be public interest factors both for and against prosecution.
- 4.6 There is a clear public interest in ensuring that crime is prosecuted and that the wrongdoer is convicted and punished. It follows from this that it will generally be in the public interest to prosecute a crime where there is sufficient evidence to justify doing so, unless there is some countervailing public interest reason not to prosecute. In practice, the prosecutor approaches each case first by asking whether the evidence is sufficiently strong to justify prosecuting. If the answer to that question is "no" then a prosecution will not be pursued. If the answer is "yes" then before deciding to prosecute the prosecutor will ask whether the public interest favours a prosecution or if there is any public interest reason not to prosecute.

The Strength of the Evidence

- 4.7 A decision not to prosecute because the evidence is not sufficiently strong could be considered as an aspect of the consideration of the "public interest". It can be said that it is not in the public interest to use public resources on a prosecution case which has no reasonable prospect of success. Furthermore, if there was a very high rate of prosecutions resulting in acquittals this could undermine public confidence in the criminal justice system.
- 4.8 A prosecution should not be instituted unless there is a prima facie case against the accused. By this is meant that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused. The evidence must be such that a jury, properly instructed on the relevant law, could conclude beyond a reasonable doubt that the accused was guilty of the offence charged.
- 4.9 In addition to being satisfied that a bare prima facie case exists, the prosecutor should not lay a charge where there is no reasonable prospect of securing a conviction before a reasonable jury or a judge in cases heard without a jury. The question of what is meant by a reasonable prospect of conviction is not capable of being answered by a precise mathematical formula. It is not the practice to operate a rule under which conviction would have to be regarded as

more probable than acquittal. But it is clear that a prosecution should not be brought where the likelihood of a conviction is effectively non-existent. Where the likelihood of conviction is low, other factors, including the seriousness of the offence, may come into play in deciding whether to prosecute.

4.10 In evaluating the prospects of a conviction, the prosecutor has to assess the admissibility, sufficiency and strength of the evidence which will be presented at the trial. This involves going beyond a superficial decision as to whether a statement, or a group of statements, amounts to a prima facie case. The prosecutor must consider whether witnesses appear to be reliable and credible. Accusations of criminal wrongdoing can be unreliable for all sorts of reasons. They can be unfounded or inaccurate without being deliberately manufactured. They may be the result of human error or they can be made maliciously. Statements cannot therefore simply be accepted at face value and acted upon without considering their credibility. In evaluating the prospects of a conviction the prosecutor must remember that the onus is on the prosecution to satisfy the jury of the guilt of the accused beyond a reasonable doubt. This burden, which is higher than mere probability, must be borne in mind in considering whether to prosecute.

4.11 It is not intended here, even if it were possible, to set out all the factors which the prosecutor must consider in evaluating the admissibility and strength of evidence. Each case is unique, and the variety of human experience and behaviour so great as to make a comprehensive list of all possible considerations which could arise impossible. Questions which arise may include the following:

- a. Are there grounds for believing that evidence may be excluded, bearing in mind the principles of admissibility under the Constitution of Ireland, at common law and under statute? For example, has confession evidence been properly obtained? Has evidence obtained as a result of search or seizure been properly obtained?
- b. If the case depends in whole or in part on admissions by the suspected person, are there grounds for believing that the admissions may not be reliable considering all the circumstances of the case including the age, intelligence, mental state and apparent understanding of the suspect? Are the admissions consistent with what can be objectively proved? Is there any reason why the suspect would make a false confession?
- c. Does it appear that a witness is exaggerating, or has a faulty memory, or is either hostile or friendly to the accused, or may be unreliable in some other way? Did a witness have the opportunity to observe what he or she claims to have seen?

- d. Has a witness been consistent in his or her evidence? Does the evidence tally with the behaviour of the witness?
- e. Does a witness have a motive for telling an untruth or less than the whole truth?
- f. Could the reliability of evidence be affected by physical or mental illness or infirmity?
- g. What sort of impression is a witness likely to make? How is the witness likely to stand up to cross-examination?
- h. If there is conflict between witnesses, does it go beyond what might be considered normal and hence materially weaken the case?
- i. If, on the other hand, there is a lack of conflict between witnesses, is there anything which causes suspicion that a false story may have been concocted?
- j. Are all the necessary witnesses available to give evidence, including any who may be abroad? In the case of witnesses who are abroad, the possibility of obtaining the evidence through a live television link, pursuant to section 28 of the Criminal Evidence Act, 1992, or by means of the issue of a letter of request, under the Criminal Justice Act, 1994, should be considered.
- k. Are all the necessary witnesses competent to give evidence? If so, are they compellable? If competent but not compellable, have they indicated their willingness to testify?
- l. Where child witnesses are involved, are they likely to be able to give sworn evidence or evidence in accordance with the criteria in section 27 of the Criminal Evidence Act, 1992? How is the experience of a trial likely to affect them? In cases of sexual offences or offences involving violence, should children's evidence be presented by way of television link in accordance with section 13 of the Act?
- m. In relation to mentally handicapped witnesses, are they capable of giving an intelligible account of events which are relevant to the proceedings so as to enable their evidence to be given pursuant to section 27 of the Criminal Evidence Act, 1992?
- n. If identification is likely to be an issue, how cogent and reliable is the evidence of those who claim to identify the accused?

- o. Where there might otherwise be doubts concerning a particular piece of evidence, is there any independent evidence to support it?
- 4.12 In assessing the evidence, the prosecutor should also have regard to any defences which are plainly open to, or have been indicated by, the accused.
- 4.13 The assessment of the evidence not only has to be made initially but needs to be reviewed at every stage of the proceedings. The investigator will be expected to express views on the evidence when referring the case to the prosecution authorities. The solicitor dealing with the case should likewise express any views he or she may have formed. The primary decision to charge will be made by the Director or one of his officers when the file is referred to the Director's Office. At this stage the Director or his officer may request further investigative work from the investigating authorities. A decision not to charge may not be final, particularly when the reason is a simple insufficiency of evidence. To postpone the bringing of proceedings due to lack of available evidence may be preferable to having proceedings fail because they are brought prematurely. When papers are sent to counsel he or she is also expected to consider the sufficiency of the evidence, as it is desirable that any problems in this regard be addressed as early as possible.

Is there a Public Interest Reason not to Prosecute?

- 4.14 Once the Director or his officer dealing with the case is satisfied that there is sufficient evidence to justify the institution or continuance of a prosecution, the next consideration is whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences for which there is sufficient evidence must be prosecuted.
- 4.15 The factors which may properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. As already stated the interest in seeing the wrongdoer convicted and punished and crime punished is itself a public interest consideration. The more serious the offence, and the stronger the evidence to support it, the less likely that some other factor will outweigh that interest. The first factor to consider in assessing where the public interest lies is, therefore, the seriousness of the alleged offence and whether there are any aggravating or mitigating factors.
- 4.16 The following aggravating factors, which are not intended to be exhaustive, tend to increase the seriousness of the offence and if present will tend to increase the likelihood that the public interest requires a prosecution:

- a. where a conviction is likely to result in a significant penalty;
- b. if the accused was in a position of authority or trust and the offence is an abuse of that position;
- c. where the accused was a ringleader or an organiser of the offence;
- d. where the offence was premeditated;
- e. where the offence was carried out by a group;
- f. where the offence was carried out pursuant to a plan in pursuit of organised crime;
- g. where the victim of the offence has been put in fear, or suffered personal attack, damage or disturbance. The more vulnerable the victim the greater the aggravation;
- h. where there is a marked difference between the actual or mental ages of the accused and the victim and the accused took advantage of this;
- i. if there is any element of corruption;
- j. where the accused has previous convictions or cautions which are relevant to the present offence;
- k. if the accused is alleged to have committed the offence whilst on bail, on probation, or subject to a suspended sentence or an order binding the accused to keep the peace and be of good behaviour, or released on licence from a prison or a place of detention;
- l. 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.

4.17 On the other hand, the following mitigating factors, if present, tend to reduce the seriousness of the offence and hence the likelihood of a prosecution being required in the public interest:

- a. if the court is likely to impose a very small or nominal penalty;
- b. 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 judgement;

- c. where the offence is a first offence, if it is not of a serious nature and is unlikely to be repeated.

4.18 In addition to factors affecting the seriousness of an offence, other matters which may arise when considering whether the public interest requires a prosecution may include the following:

- a. where the offender is either very young or elderly or suffering from significant mental or physical ill health or disability. In such cases, however, other factors tending to indicate that the offence is serious or that there is a risk of the offence being repeated must be taken into account. In the case of young offenders the use of the Juvenile Diversion Programme should be considered. (Details of the programme are set out in Appendix 1 of this Statement);
- b. the availability and efficacy of any alternatives to prosecution;
- c. the prevalence of offences of the nature of that alleged and the need for deterrence, both generally and in relation to the particular circumstances of the offender;
- d. whether the consequences of a prosecution or a conviction would be disproportionately harsh or oppressive in the particular circumstances of the offender;
- e. the attitude of the victim or the family of a victim of the alleged offence to a prosecution;
- f. the likely effect on the victim or the family of a victim of a decision to prosecute, or not to prosecute;
- g. whether the likely length and expense of a trial would be disproportionate having regard to the seriousness of the alleged offence and the strength of the evidence;
- h. whether the offender is willing to co-operate in the investigation or prosecution of other offenders, or has already done so;
- i. if a sentence has already been imposed on the offender in relation to another matter whether it is likely that an additional penalty would be imposed;
- j. whether an offender who has admitted the offence has shown genuine remorse and a willingness to make amends.

- 4.19 The prosecutor should, in any case where there has been a long delay since the offence was committed, consider in the light of the case-law of the courts whether that delay is such that the case should not proceed. It is not the purpose of this paragraph to attempt to summarise the considerable volume of case-law which now exists in relation to this matter, but among the considerations which may be relevant and which the prosecutor should bear in mind are the following:
- a. whether any delay was caused or contributed to by the alleged offender;
 - b. whether the fact of the offence or of the alleged offender's responsibility for it has recently come to light;
 - c. where any delay was caused or contributed to by a long investigation, whether the length of the investigation was reasonable in the circumstances;
 - d. where the victim has delayed in reporting the offence, the age of the victim both when the offence was committed and when it was reported;
 - e. whether the alleged offender exercised a dominant position over the victim;
 - f. whether there is actual prejudice caused to the alleged offender by reason of any delay or lapse of time.
- 4.20 The relevance of these, and other factors, and the weight to be attached to them, will depend on the particular circumstances of each case.
- 4.21 Where there are mitigating factors present in a particular case, the prosecutor should consider whether these are factors which should be taken into account by the sentencing court in the event of a conviction rather than factors which should lead to a decision not to prosecute. Nevertheless, where the alleged offence is not so serious as plainly to require prosecution, the prosecutor should consider whether the public interest requires a prosecution.
- 4.22 The prosecutor is precluded, by virtue of section 6 of the Prosecution of Offences Act, 1974, or section 2(4) of the Criminal Justice Act, 1993 from considering certain unlawful communications when considering a decision to prosecute or to seek a review of sentence on the grounds of *undue* leniency. A copy of the sections concerned is set out in Appendix 2.



The Choice of Charge

5. The Choice of Charge

- 5.1 The choice of charge is an important function that is generally within the exclusive domain of the prosecutor.
- 5.2 In many cases the evidence will disclose a number of possible offences. Care should be taken to ensure that the charge or charges adequately reflect the seriousness of the criminal conduct for which there is evidence and will provide the court with an appropriate basis for sentence. In the ordinary course the charge or charges laid will be the most serious disclosed by the evidence. But there is no legal obligation to lay the most serious charge. Similar considerations apply to the choice of charge as relate to the decision to prosecute itself, as elaborated in Chapter 4, and there may be circumstances which justify preferring a lesser charge than the evidence would support.
- 5.3 The prosecutor must not "over-charge", that is to say, charges more serious than are justified by the evidence should not be preferred with the intention of encouraging the defendant to plead guilty to a lesser charge. The prosecutor should prefer only charges which are justified by the facts as then known. In particular, the question of whether in a homicide case the appropriate charge is one of murder or manslaughter has to be given the most careful consideration.
- 5.4 Where possible the prosecutor should avoid preferring too many charges arising out of the same set of facts. Ideally the prosecutor should aim to select a single charge which adequately reflects the nature and extent of the criminal conduct but in any event the number of charges should be kept as low as is possible having regard to the principles already referred to.

- 5.5 Conspiracy charges are generally not appropriate where the conduct in question amounts to a substantive offence and there is sufficient reliable evidence to support a charge for that offence. But there are occasions when to bring a conspiracy charge is the only adequate and appropriate response on the available evidence. Where it is proposed to lay or proceed with conspiracy charges jointly against a number of accused, the prosecutor should be aware of the risk of the trial becoming unduly complex or lengthy.
- 5.6 In deciding on the appropriate charge the Director or his officers should consider the views of the Garda Síochána, the solicitor, and counsel if instructed. In summary prosecutions the choice of charge will in most cases be made by a Garda officer, who should act in accordance with these general guidelines and in accordance with such directions as are issued from time to time by the Commissioner on the advice of the Director. Questions relating to the respective role of the Garda Síochána and the Director are dealt with in greater detail in Chapter 6.



The Prosecutor and the Investigator

6. The Prosecutor and the Investigator

- 6.1 As a general rule requests for advice from the Director of Public Prosecutions by the Garda Síochána or other investigators should be made in writing. This includes advice in relation to:
- a. what criminal charges are open, including:
 - i. whether there is sufficient evidence to support a charge;
 - ii. the admissibility of evidence;
 - iii. the most appropriate charge in the circumstances;
 - b. the present state of the law;
 - c. whether a matter should be disposed of summarily or on indictment;
 - d. advice in relation to cases stated or judicial review;
 - e. advice in relation to the disclosure of evidence.
- 6.2 The decision whether to seek advice in relation to the appropriate charges before charging is primarily one for the investigator. However, in relation to cases of homicide, sexual offences, fatal road traffic cases, cases under the Official Secrets Act, cases where it is proposed to ask the Director to direct a trial in the Special Criminal Court under sections 45 to 47 of the Offences Against the State Act, 1939, cases involving explosive substances, and cases involving corruption, a charge should not be brought without the specific directions of the Office of the Director of Public Prosecutions being obtained.

- 6.3 Where a charge has been preferred without the directions of the Director's Office, and the case is proceeding on indictment, directions should be sought prior to any sending forward for trial.
- 6.4 The following matters must be referred by the Garda Síochána to the Director's Office for advice and, where appropriate, for instructions in accordance with detailed instructions which have been issued by the Commissioner of the Garda Síochána to members of the force:
- a. any case in which it is proposed to seek the accused's extradition;
 - b. whether or not an accomplice should be granted immunity;
 - c. whether a case should be stated or a judicial review sought;
 - d. certain cases involving allegations against members of the Garda Síochána;
 - e. any case in which the Director's sanction or approval is required for the commencement of proceedings (see paragraph 12.3 below);
 - f. any case involving a novel or important point of law or involving a question of law where there is no recent Irish precedent;
 - g. matters of particular sensitivity or unusual public interest, such as allegations of corruption or misconduct by public officials.



The Role of the Prosecutor in Court

7. The Role of the Prosecutor in Court

- 7.1 The role of the prosecutor is frequently misunderstood. The public, victims and witnesses may have expectations as to how the prosecutor should perform his or her functions which cannot be met.
- 7.2 The aim of the prosecutor is to ensure that a just verdict is reached at the end of the trial process and not to strive for a conviction at all costs. Unless the prosecution has satisfied the judge or jury of the accused's guilt beyond all reasonable doubt the appropriate verdict is one of "not guilty".
- 7.3 The duty of the prosecutor to strive for a just verdict does not mean that the prosecutor ought not to prosecute the case vigorously. It is the prosecutor's duty to present the case fairly, but also skilfully and firmly, to seek to have the whole of the relevant and admissible evidence placed before the court, and to assist the court with submissions which are appropriate to the facts.
- 7.4 A prosecutor must not argue 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.
- 7.5 A prosecutor should call, as part of the prosecution case, all credible, relevant and admissible evidence unless:
 - a. the defence consents to the evidence not being adduced;
 - b. a particular matter has been established by the calling of other evidence and there is no prejudice to the accused in not calling a particular witness;
 - c. a witness is unavailable.

- 7.6 The prosecutor is not obliged to call evidence he or she does not consider to be credible, reliable and trustworthy: *The State (Director of Public Prosecutions) -v- District Justice McMenamin*, (High Court, Barron J., 23 March 1996). The statement of a witness it is not intended to call for the prosecution should not be included in the Book of Evidence. In the event that the prosecutor decides not to call a witness whose statement is contained in the Book of Evidence the defence should be informed as soon as reasonably practicable and where possible and if the defence so requests arrangements should be made to have the witness in court for the defence to use as part of its case.
- 7.7 Cross-examination of an accused as to credit or motive must be fairly conducted. Material put to an accused must be considered on reasonable grounds to be accurate and its use justified in the circumstances of the trial.
- 7.8 Under the Constitution and under the Prosecution of Offences Act, 1974, the Director of Public Prosecutions is authorised to commence and pursue prosecutions in the name of the People of Ireland. A crime is an offence against the People, against the whole of society, of which the particular victim is a part. In the criminal process it is the People who come to court to seek justice. A criminal trial is a contest between the People and the accused, and not between the victim and the accused. This does not, however, mean that the victim is to be left without access to such assistance and advice as the prosecuting lawyers representing the People may properly afford him or her. The obligations of prosecuting solicitors and counsel towards victims are set out more fully in Chapter 11 below.

The Prosecutor's Role in the Sentencing Process

- 7.9 When appearing at a hearing in relation to sentence the prosecutor has the following duties:
- a. to ensure that the court has before it all available evidence relevant to sentencing, whether or not that evidence is favourable to an accused person;
 - b. in particular, to ensure that the court has before it all available relevant evidence and appropriate submissions concerning the impact of the offence on its victim, in accordance with the provisions of section 5 of the Criminal Justice Act, 1993, in respect of offences to which that provision applies;
 - c. in addition, to ensure that the court has before it all available relevant evidence concerning the accused's circumstances, background, history,

and previous convictions, if any, as well as any available evidence relevant to the circumstances in which the offence was committed which is likely to assist the court in determining the appropriate sentence;

- d. to ensure that the court is aware of the range of sentencing options available to it;
- e. to refer the court to any relevant authority or legislation that may assist in determining the appropriate sentence;
- f. to assist the court to avoid making any appealable error, and to draw the court's attention to any error of fact or law which the court may make when passing sentence.

7.10 The prosecutor must make himself and, if necessary, the court aware of any legal limitations on sentence. The prosecutor must be aware of what the maximum sentence is, and whether the court has jurisdiction to impose any particular sentence. It is also the prosecutor's duty to deal with any questions of forfeiture, compensation or restitution which may arise.

7.11 Where there is a significant difference between the factual basis on which an accused pleads guilty and the case contended for by the prosecution, there is an adversarial role for the prosecution to seek to establish the facts upon which the court should base its sentence.

7.12 When the defence advances matters in mitigation which the prosecution can prove to be wrong, and which if accepted are likely to lead the court to proceed on a wrong basis, the prosecutor should first inform the defence that mitigation is not accepted. If the defence persists in the matter it is the prosecutor's duty to invite the court to put the defence on proof of the disputed matter and if necessary to hear prosecution evidence in rebuttal.

7.13 Where the accused pleads guilty, it is the prosecutor's duty to ensure that the facts which are then placed before the court support each and every ingredient of the charges laid which are necessary to provide a sufficiently comprehensive factual basis for sentencing.

7.14 The prosecutor must not seek to persuade the court to impose an improper sentence nor should a sentence of a particular magnitude be advocated.

7.15 If the court seeks the views of the Director of Public Prosecutions as to whether he considers that a custodial sentence is required, the prosecutor should not express his or her own views in relation to the matter but rather the views of

the Director. If the court seeks the Director's views counsel should offer to seek instructions on the question. It should be made clear to the Court that in order to give instructions in such a case the Director would require sight of all relevant material before the Court, including all reports and transcripts of relevant evidence, and adequate time to give a properly considered view.

A background image of a statue of Lady Justice, blindfolded and holding scales of justice, with a sword in her right hand. The statue is set against a blurred background of a building and other figures.

Disclosure

8. Disclosure

- 8.1 The prosecution is obliged to disclose to the defence all relevant evidence which is within its possession. A person charged with a criminal offence has a right to be furnished, firstly, with details of the prosecution evidence that is to be used at the trial, and secondly, with evidence in the prosecution's possession which the prosecution does not intend to use if that evidence could be relevant or could assist the defence. The extent of the duty to disclose is determined by concepts of constitutional justice, natural justice, fair procedures and due process of law as well as by statutory principles. Article 38.1 of the Constitution of Ireland guarantees the right to trial in due course of law; such a trial must afford the accused an effective opportunity to meet the prosecution case. The European Convention on Human Rights guarantees the accused's right to a fair hearing and "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him". The precise scope of the duty to disclose differs as between cases which are triable summarily in the District Court and those triable on indictment.

Summary Prosecutions

- 8.2 The scope of the duty of disclosure in summary prosecutions has been defined by the Supreme Court in *D.P.P. -v- Gary Doyle* [1994] 2 IR 286. In the light of that judgement the following principles should be observed by the prosecution:
- a. there is no general duty on the prosecution in a summary case to furnish in advance the statements of intended witnesses whether or not there is a request for them from the defence;

- b. the test to be applied by a court on an application by the defence to be furnished pre-trial with the statements on which the prosecution case will proceed is whether "in the interests of justice on the facts of the particular case" this should be done (*Doyle's case*, at p 301). The requirements of justice must be considered in relation to the seriousness of the charge and the consequences for the accused. Very minor cases may not require that statements be furnished. Complexity of the case is also a factor. Amongst the matters which the Supreme Court in *Doyle* identified as possibly relevant to the court's decision were
- " (a) *the seriousness of the charge;*
- (b) *the importance of the statements or documents;*
- (c) *the fact that the accused has already been adequately informed of the nature and substance of the accusation;*
- (d) *the likelihood that there is no risk of injustice in failing to furnish the statements or documents in issue to the accused.*"
- (*Doyle's case*, at p. 302);
- c. in making a decision whether to furnish statements the prosecutor should have regard to the principles set out in *Doyle's case* and referred to above;
- d. a request for statements made by the defence should be considered in the context of the witnesses whom it is proposed to call at the trial and whether the *Doyle* principles require disclosure. It is primarily a matter for the defence, when requesting statements in summary cases, to advance the reason or reasons why the accused considers that statements should be furnished. If the defence does not advance any or any adequate reason for disclosure, and the case does not appear to be one where the *Doyle* principles require disclosure, then they need not be furnished without an order of the court;
- e. if there is some reason arising from the particular circumstances of a case why advance disclosure of the details of the case, whether by furnishing statements or otherwise, is necessary in the interest of justice, this should be done with or without a request;
- f. statements or information not intended to be tendered at a summary trial should be furnished to the defence where it is necessary in the interest of justice. This should be done with or without a request. This includes statements or information which, even if the prosecutor does not regard them as reliable, might reasonably be regarded as of assistance to the defence;

- g. while the *Doyle* case arose from indictable offences which were being dealt with summarily, the principles set out in that case are applicable to all offences being tried summarily.

Prosecutions on Indictment

8.3 Where an offence is to be disposed of by trial on indictment the prosecution has a statutory duty pursuant to section 4B and 4C of the Criminal Procedure Act, 1967, as inserted by section 9 of the Criminal Justice Act, 1999, to furnish the accused with certain materials setting out the evidence intended to be adduced against the accused. The documents provided under section 4B are usually referred to collectively as the Book of Evidence. This essentially comprises the evidence which the prosecution intends to adduce at the trial. The following documents should be included in the Book of Evidence:

- a. a statement of the charges against the accused;
- b. a copy of any sworn information in writing upon which the proceedings were initiated;
- c. a list of the witnesses whom it is proposed to call at the trial;
- d. a statement of the evidence that is expected to be given by each of them;
- e. a copy of any document containing information which is proposed to be given in evidence by virtue of Part II of the Criminal Evidence Act, 1992;
- f. where appropriate, a copy of a certificate pursuant to section 6 (1) of the Criminal Evidence Act, 1992; and
- g. a list of exhibits (if any).

Pursuant to section 4C of the 1967 Act, as inserted by section 9 of the Criminal Justice Act, 1999, if the prosecutor proposes to call further evidence or additional witnesses or evidence has been taken on deposition, the prosecutor should serve the accused and furnish the court with the applicable following documents:

- a. a list of any further witnesses the prosecutor proposes to call at trial;
- b. a statement of the evidence that is expected to be given by witnesses whose name appears on the list of further witnesses;
- c. the statement of any further evidence there is expected to be given by any witness whose name appears on the list already served under section 4B (1)(c);

- d. any notice of intention to give information contained in a document in evidence under section 7 (1)(b) of the Criminal Evidence Act, 1992, together with the document;
- e. where appropriate, a copy of a certificate under section 6 (1) of the Criminal Evidence Act, 1992;
- f. a copy of any deposition taken;
- g. a list of further exhibits.

8.4 There may also be other material of an evidentiary nature which the prosecution has decided not to use at trial. The constitutional right to a trial in due course of law and to fair procedures found in Articles 38.1 and 40.3 of the Constitution of Ireland places a duty on the prosecution to disclose to the defence all relevant evidence which is within its possession. The limits of this duty are not precisely delineated and depend upon the circumstances of each case. Further, the duty to disclose is an ongoing one and turns upon matters which are in issue at any time.

8.5 In the ordinary course disclosure of evidence should be made, without a request, if the evidence is relevant. In this regard relevant evidence includes information which may reasonably be regarded as providing a lead to other information that might assist the accused in either attacking the prosecution case or making a positive case of its own. The following information should ordinarily be disclosed if relevant:

- a. information not in statement form of which the prosecution is aware whether intended to be used by the prosecution or not and whether considered reliable or not;
- b. documents whether or not their authenticity can be established;
- c. in the case of material not in the possession or procurement of the prosecution but of which it is aware the existence of that material should be disclosed;
- d. information regarding proposed prosecution witnesses which might reasonably be considered relevant to their credibility, such as criminal convictions, relationship with a victim or another witness or any possible personal interest in the outcome of a case;

- e. statements not included in the Book of Evidence which could be of assistance to the defence;
- f. the unedited version of statements prepared for inclusion in the Book of Evidence;
- g. items not included in the list of exhibits in the Book of Evidence which could reasonably be of assistance to the defence;
- h. sworn information and warrants where relevant;
- i. particulars of the accused's prior convictions;
- j. any prior inconsistent statements of witnesses whom the prosecution intend to call to give evidence;
- k. copies of all electronically or mechanically recorded statements obtained from the accused;
- l. copies of any photographs, plans, documents or other representations that might be tendered by the prosecution at trial or which, even though not intended to be so tendered, might reasonably be relevant to the defence;
- m. where the prosecutor declines to call a witness whose statement is contained in the Book of Evidence, the defence should be given details of any material or statements which may be relevant and if requested the prosecution should make the witness available for the defence to call (see paragraph 7.6).

Limitations on the Duty to Disclose

- 8.6 The prosecution is under no obligation to disclose irrelevant material to the defence. However, as a general guideline if it is reasonably possible that something is relevant and if there is no other obstacle to disclosure the balance is in favour of disclosure.
- 8.7 The prosecution is not obliged to disclose a confidential statement made by a Garda informant where such statement would identify the informant.
- 8.8 The prosecution is not obliged to disclose the identity of a potential witness who has assisted the Gardaí without intending to be a witness and the prosecution has agreed not to call the person where such disclosure would place that person in peril.

- 8.9 In deciding whether to disclose material the prosecutor must also have regard to any other issues of the public interest which might arise. In such cases, however, the defence should be informed that material has been withheld on such grounds so as to enable the accused to seek a court ruling on the matter.
- 8.10 The privileges or exemptions outlined at 8.7, 8.8 and 8.9 are subject to the "innocence at stake" exception where the disclosure of the material concerned or of the identity of the informant or witness is necessary or right because the evidence in question if believed could show the innocence of the accused. If the prosecution is nonetheless unable to disclose the material concerned then it may be necessary to discontinue the prosecution.

The Timing of Disclosure

- 8.11 As a general rule disclosure should be made sufficiently in advance of the trial to enable the accused to consider the material disclosed. It may prove the most practical arrangement to have any material required to be disclosed compiled at the same time the Book of Evidence is prepared and in such a case there is no reason not to make disclosure at this early stage despite the absence of any legal requirement to do so.



Pre-trial Discussions Concerning Pleas

9. Pre-trial Discussions Concerning Pleas

- 9.1 Occasionally, the defence approach the prosecution seeking to discuss the charges to be proceeded with. Such an approach usually takes the form of the accused offering to plead guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account by the sentencing judge without proceeding to conviction.
- 9.2 These guidelines have earlier referred to the care that must be taken in choosing the charge or charges to be laid. Nevertheless, circumstances can change. New facts relevant to the offence, the accused, the victim or witnesses can come to light. Evidence may no longer be available. In some cases a different view of the case may be taken on further consideration.
- 9.3 Agreements as to charge or charges and plea must be consistent with the requirements of justice. A proposal from the defence to offer a plea to some charges or to a lesser charge or charges should not be entertained by the prosecution unless:
 - a. the charge or charges which the defence indicate the accused will plead guilty to are appropriate having regard to the nature of the criminal conduct of the accused and the likely outcome of the case;
and
 - b. there is evidence to support the charges.
- 9.4 Any decision whether or not to agree to a proposal advanced by the defence should take into account all the circumstances of the case and in particular the following considerations when they are relevant:

- a. whether the penalty that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the accused is already serving a term of imprisonment) would be appropriate for the criminal conduct involved;
 - b. the desirability of prompt and certain resolution of the case;
 - c. the accused's background, history and previous convictions, if any;
 - d. the strength of the prosecution case;
 - e. the likelihood of adverse consequences to witnesses if the case is not disposed of on a plea, including the impact on a witness of having to give evidence;
 - f. the need to avoid delay in the resolution of other pending cases;
 - g. whether the accused is willing to co-operate in the investigation or prosecution of others, or the extent to which the accused has already done so;
 - h. in the case of offences against the person and other serious offences, the views of the victim or of others significantly affected;
 - i. the views of the investigating member of the Garda Síochána.
- 9.5 In no circumstances should the prosecution entertain a proposal to plead guilty to a charge in respect of which the accused maintains his or her innocence.
- 9.6 In indictable cases or in summary cases where the consent of the Director to a prosecution is required any proposal to accept a plea to a lesser number of charges or to lesser charges than those preferred must always be referred to an officer of the Director of Public Prosecutions for a decision.
- 9.7 Prosecution counsel should in no circumstances participate in or attend any private discussion between defence counsel and a trial judge concerning the penalty which might be imposed on a defendant in the event of a plea of guilty to any or all of the counts. In the view of the Director, such a procedure, in the absence of any legislation authorising it, is of doubtful conformity with the requirement of Article 34.1 of the Constitution of Ireland that justice should be administered in public except in such special and limited cases as may be prescribed by law. The Supreme Court, in the case of *The People -v- Heeney* (unreported, 5 April 2001) has expressed the view that such a procedure is undesirable and has approved its discontinuance by the Director.

- 9.8 There may exceptionally be circumstances in which it is desired by both the prosecution and the defence, in the interests of justice, to intimate certain matters to a trial judge in private. For example, there could be matters which if revealed in public could create a risk to the life or personal safety of a defendant or some other person. In such a case counsel for the Director should seek and obtain specific instructions to mention the matter to the judge in chambers.



Prosecution Appeals and Sentence Reviews

10. Prosecution Appeals and Sentence Reviews

- 10.1 The prosecution has no right of appeal against an acquittal.
- 10.2 The prosecution has the following powers to appeal or seek a review of certain decisions of a trial court:
 - a. sentence reviews under section 2 of the Criminal Justice Act, 1993. The Director may apply to the Court of Criminal Appeal for review of a sentence imposed by a court on conviction of a person following trial on indictment where it appears to the Director that the sentence was unduly lenient. This provision does not apply to convictions in courts of summary jurisdiction;
 - b. under section 34 of the Criminal Procedure Act, 1967, where, on a question of law, a verdict in favour of an accused person is found by direction of a trial judge, the Director may refer the question of law to the Supreme Court for determination. A reference under section 34 is without prejudice to the verdict in favour of the accused. References under section 34 arise very rarely. It should be noted that the section covers a limited class of legal rulings against the prosecution. For example, section 34 does not entitle the Director to refer a question of law which leads to the exclusion of evidence, which in turn fatally weakens the prosecution case. Nor does it cover a misdirection of law by a trial judge to a jury which falls short of an express direction to find a verdict in favour of the accused;
 - c. section 29 of the Courts of Justice Act, 1924, provides for an appeal from a decision of the Court of Criminal Appeal to the Supreme Court where the Court, the Director or the Attorney General certifies that the decision involves a point of law of exceptional public importance and that it is

desirable in the public interest that an appeal should be taken to the Supreme Court. This procedure cannot be used to restore a conviction which the Court of Criminal Appeal has overturned in exercise of its appellate jurisdiction;

- d. judicial review lies to the High Court against the orders of courts of local and limited jurisdiction (in practice this means trial courts other than the Central Criminal Court) where those courts act in excess of jurisdiction. This remedy is not a general right of appeal. It does not lie to correct errors made within jurisdiction. It does not lie to overrule findings of fact. Among the orders which may be sought are orders seeking to compel a court under a duty to act to do so; seeking to prohibit a court from embarking on an incorrect course of action; or quashing a decision of a court made in excess of its jurisdiction. Once a jury trial is embarked upon the High Court is reluctant to intervene by way of judicial review;
- e. under section 52 of the Courts (Supplemental Provisions) Act, 1961, the prosecution as well as the defence may request the District Court to refer any question of law arising in the proceedings to the High Court for determination. This is known as a "consultative case stated". A similar provision permits of consultative cases stated from the Circuit Court to the Supreme Court;
- f. by section 2 of the Summary Jurisdiction Act 1857, as amended and extended, any party, including the prosecution, may, following determination of proceedings by the District Court, if dissatisfied with the determination as being erroneous on a point of law, seek to appeal to the High Court by way of case stated. The appeal is not a re-hearing but is confined to the point of law at issue.

Under Order 102, rule 15, of the District Court Rules, 1997, the judge of the District Court may not refuse to state a case where the case stated is sought by or under the direction of the Director of Public Prosecutions. This provision was held unconstitutional in *Fitzgerald -v- Ireland*, unreported, High Court, Kearns J., 4 May 2001. This decision is under appeal to the Supreme Court.

- 10.3 The accused has a full right of appeal by way of a complete re-hearing from the District Court to the Circuit Court, and a right of appeal based on a transcript of the evidence against conviction or sentence from the Circuit Court, the Special Criminal Court or the Central Criminal Court to the Court of Criminal Appeal. In some cases the defendant may further appeal from the Court of Criminal Appeal to the Supreme Court. The defendant may also seek a judicial review or to have a case stated.

- 10.4 It is the duty of any prosecutor appearing on behalf of the Director who is of opinion that a court has erred in law and that one of the remedies referred to in paragraphs 10.2 (b)(c)(d)(e) or (f) may be available to the Director so to advise the Director as soon as possible.

Sentence Reviews under Section 2 of the Criminal Justice Act, 1993.

- 10.5 The Court of Criminal Appeal has held that in relation to sentence reviews the onus lies on the Director to show that the sentence is not merely lenient but unduly so. In such a review, great weight is attached to the trial judge's reasons for imposing the sentence. Since the finding must be one of undue leniency, nothing but a substantial departure from what would be regarded as the appropriate sentence would justify the intervention of the Court in order to increase the sentence: *DPP -v- Byrne* (1995) 1 ILRM. There must have been an error of principle by the sentencing court to justify altering the sentence: *DPP -v- Redmond*, Court of Criminal Appeal, 21 December 2000.
- 10.6 It is therefore inappropriate to seek a sentence review because of a mere disagreement with the severity of the sentence imposed. It is necessary that there be a substantial departure from the accepted range of appropriate sentences for the offence committed in the circumstances of the case, including the specific elements relating to the offender, or an error of principle in the way in which the trial judge approached sentencing.
- 10.7 In order to ensure the effective and consistent application of the Director's power to seek a sentence review it is important that the solicitor and counsel representing the Director in all cases heard on indictment which result in conviction and sentence indicate when reporting to the Director whether, in their opinion, the sentence passed was unduly lenient. If either solicitor or counsel take the view that the sentence was unduly lenient or thinks the question is one which the Director ought properly consider, the Director's Office should be contacted at once.
- 10.8 As the Court of Criminal Appeal has held that great weight should be attached to the trial judge's reasons in passing sentence, it is therefore important that the Director is fully aware of those reasons when deciding whether to seek a sentence review. The solicitor dealing with the case should seek a transcript on becoming aware that the question of a review is being actively considered. In all cases counsel for the prosecution should take a careful note of the trial judge's reasoning for the sentence.



The Rights of Victims

11. The Rights of Victims

11.1 The Director of Public Prosecutions has given the following undertakings in relation to victims of crime:

- a. to have regard to any views expressed by victims of crime when making decisions in specific cases whether or not to prosecute;
- b. to examine any request from a victim of crime for a review of a decision not to prosecute and in appropriate cases to have an internal review of the decision carried out by an officer other than the one who first made the decision. In the light of the judgement of the High Court in *Eviston -v- DPP* (High Court, Kearns J., 26 January 2001) this procedure can now be operated only in a limited class of case. The case is under appeal to the Supreme Court;
- c. to seek a review of sentences which he considers unduly lenient in accordance with the provisions of section 2 of the Criminal Justice Act, 1993 (see chapter 10).

11.2 When the Director of Public Prosecutions decides not to prosecute in a particular case, the reasons for the decision are given to the State Solicitor and the investigating Garda. It is the Director's policy not to disclose this information publicly. The policy may be justified on a number of grounds. If reasons are given in any case they must be given in all. In many cases the giving of reasons publicly would be tantamount to stigmatising a person as a criminal without there having been a trial. This policy has been upheld by the Supreme Court in *H -v- Director of Public Prosecutions* [1994] 2 I.R. 589 at p. 603 as follows:

"The stance taken by the Director of Public Prosecutions is that he should not, in general, give reasons in any individual case as to why he has not

brought a prosecution because if he does so in one case he must be expected to do so in all cases. I would uphold this position as being a correct one."

This policy has also been supported by the Select Committee on Crime, Lawlessness and Vandalism (15th Report, PI 4703 at paragraph 3.7).

- 11.3 The solicitor handling a criminal prosecution has the following responsibilities towards the victims of crime:
- a. to work with the Garda Síochána to ensure that the victim is kept fully informed of developments in relation to the prosecution of perpetrators of offences, especially those of a violent or sexual nature;
 - b. at the victim's request, to facilitate a pre-trial meeting between the victim and the solicitor and counsel dealing with the case to discuss the case. The purpose of such a meeting is to explain the trial process to the victim and answer any questions he or she may have. Solicitor and counsel do not discuss evidence with witnesses in advance of a case.
- 11.4 The solicitor and counsel dealing with the prosecution should endeavour at all times to treat a victim of crime with the utmost consideration and respect. While the victim is entitled to have his or her views heard and considered, the victim is not entitled to give instructions to the solicitor or counsel for the prosecution concerning the conduct of the trial. The victim should be dealt with in a sympathetic, constructive and reassuring manner and with due regard to his or her personal situation, rights and dignity. The solicitor should, so far as possible, explain to the victim, or have counsel explain, the court processes and procedures. They should seek to protect the victim's interests as best they can consistently with their duty to the court and their duty to conduct the prosecution on behalf of the People.
- 11.5 Any complaints by a victim concerning the manner in which he or she has been treated should be addressed to the Director of Public Prosecutions.
- 11.6 The Garda Síochána have given a number of commitments to victims of crime, including the following:
- a. to ensure that the victim is kept informed about the progress of the investigation, including whether a suspect is charged or cautioned;
 - b. to tell the victim whether the accused is in custody or on bail and the conditions attached to the bail;

- c. to inform the victim of the time, date and location of the court hearing of the charges against the accused;
- d. to explain the prosecution process involved and, if the victim is likely to be called as a witness, the help available from Victim Support;
- e. to explain the circumstances where a judge may ask for a Victim Impact Statement and arrange for its completion;
- f. to inform the victim of the final outcome of the trial;
- g. in cases involving serious trauma to a victim or family, to inform the victim of the imminent release of the offender, when the Gardaí have been notified of such release.



Summary Offences

12. Summary Offences

- 12.1 The majority of cases dealt with in the District Court are commenced by the Garda Síochána without reference to the Director. They are specifically authorised so to do, subject to some exceptions (referred to in paragraph 6.2 and 6.4 above). The type of cases dealt with in this way cover the majority of Road Traffic offences such as careless or drunken driving but would also include minor larcenies, assaults or acts affecting public order or the peace.
- 12.2 In certain cases or category of offences the Director has issued either particular or general advices to the Garda Síochána and where applicable the Garda Síochána must comply with those advices. It is not proposed in this Statement to set out those advices which are not intended to be superseded by this Statement.
- 12.3 The Garda Síochána are not authorised to commence prosecutions in the Director's name without prior directions in the following categories of cases:
- a. homicides and road traffic accidents which have resulted in a fatality or caused serious bodily harm;
 - b. offences of a sexual nature;
 - c. cases under the Official Secrets Act;
 - d. cases of corruption;
 - e. cases which it is proposed should be dealt with in the Special Criminal Court.
- 12.4 In addition the Garda Síochána have been advised that they should seek prior directions in all cases where it is considered that the prosecution will ultimately be dealt with on indictment, where the prosecution involves some novel or important question of law, where the case is without recent Irish precedent or where the matter has aroused unusual public interest.

- 12.5 The Garda Síochána are in any other case free to seek the directions of the Director even in a case of a summary nature.
- 12.6 Arrangements are in place to ensure that a member of the Director's staff is contactable outside office hours to deal with urgent cases.
- 12.7 The Garda Síochána in deciding whether to prosecute and in presenting cases in court on the Director's behalf are expected to comply with the duties of prosecutors set out in this Statement.
- 12.8 A person aggrieved at a decision taken to prosecute in the Director's name or a person concerned at a decision not to prosecute in a particular case is entitled to ask the Director to consider the matter. The statutory time limit for the commencement of summary proceedings, which in most cases is six months, may affect the latter situation.

Election Between Trial on Indictment and Summary Trial and Consent to Summary Disposal

- 12.9 Apart from deciding on the appropriate charge or charges it is also necessary, other than in relation to summary offences, for the prosecutor to consider whether the prosecution should take place in the District Court or on indictment. Three possible types of case can arise.
- 12.10 Where the legislature has created offences which may be tried either summarily or on indictment without giving the accused an option in the choice of venue, then the decision on venue is for the prosecutor. Should the prosecutor's decision be to prosecute summarily that decision is subject to the Judge of the District Court being satisfied that the offence is a minor one.
- 12.11 The second type of case consists of those in which the accused has an option of being tried in the District Court or on indictment. In these cases the accused's option for summary trial is subject both to the Judge's agreement that the offence is a minor one fit to be tried summarily and to the prosecutor's consent and the prosecutor must decide whether it is appropriate to give that consent. These cases include "scheduled offences" within the meaning of the Criminal Justice Act, 1951, as well as some other statutory offences.
- 12.12 A final category of cases calling for the prosecutor's consideration relates to cases that can be dealt with under section 13 of the Criminal Procedure Act of 1967. This section deals with indictable offences which may be disposed of in the District Court on a plea of guilty.

12.13 In deciding whether to elect for or consent to summary disposal, whether on a plea of guilty or otherwise, the main factor to be taken into account is whether the sentencing options open to the District Court would be adequate to deal with the alleged conduct complained of having regard to all the circumstances of the case and in particular the seriousness of the offence. In this regard the Director has in relation to certain types of offences given to members of the Garda Síochána and other prosecution agencies a general consent or election to have such offences dealt with in the District Court without the necessity of first contacting his Office or submitting a completed investigation file. Examples of cases falling into this category are burglary in an unoccupied dwelling house or possession of controlled drugs for personal use. Even in those types of cases however, the Garda Síochána should seek directions where the particular facts of the case, such as the multiplicity of such offences or the previous record of an accused or other aggravating circumstances might suggest that the sentencing options available in the District Court would be inadequate.

A background image of a statue of Lady Justice, blindfolded and holding scales, set against a blurred background of a building and people.

Appendix 1

The Juvenile Diversion Programme

The following is an extract from the Garda Síochána Policy Document in respect of Juvenile Offenders:

Introduction

Following a review of Force policy in respect of Juvenile Offenders, a National Juvenile Office has been established. It forms part of the Community Relations Section, Harcourt Square.

The National Juvenile Office will be responsible for monitoring and coordinating all matters relating to juveniles, on a National basis. It will supervise and oversee the disposal of all cases involving juvenile offenders.

1. Juvenile Offenders

It is recognised that delay in the entry of a young person into the formal criminal justice system may help to prevent entry into that system altogether.

Prosecution of a juvenile is not a step to be taken without full consideration. The public interest and the interest of the juvenile concerned may be better served by having the matter dealt with under the provisions of the Garda Juvenile Liaison Officer Scheme.

The caution and supervision of juvenile offenders represents a form of entry into the criminal justice system.

It is therefore important that the issue of a caution be a formal procedure which takes full account of the consequences for the individual concerned and that it takes place only where strict criteria are fully met.

The danger of the inappropriate use of cautioning should be borne in mind, especially repeat cautioning, which might undermine the credibility of the Force and indeed the law itself.

2. Disposal of Cases Involving Juvenile Offenders:

Crimes/Offences involving juvenile offenders will be disposed of in one of two ways:

- A. Prosecution
- B. Diversion Programme

A. Prosecution

Juvenile Offenders **WILL NOT** be prosecuted, unless:

- i. the juvenile has been convicted previously.

A juvenile who has been convicted previously may, nevertheless, be considered for caution.

The following factors must be taken into consideration in arriving at the appropriateness of the action:

- degree of offence;
- degree of first offence and relationship in character to latest offence;
- time lapse between offences;
- age and attitude of offender;
- attitude of offender's parent(s)/guardian
- attitude of injured party;
- recommendations of the detecting member, the Member in Charge and the Juvenile Liaison Officer;
- recommendations of the District Officer; and
- all other circumstances surrounding the offence including local and other factors.

OR

- ii. where the conditions for diversion (as set out at paragraph B) have not been met.

In these cases, the detecting member will prepare a file, outlining the condition(s) which has (have) not been met, for further consideration by the National Juvenile Office.

OR

- iii. where the nature of the crime is such that a prosecution is required.

Juveniles involved in the following offences which require the consent of the Director of Public Prosecutions for disposal, will not be included in the Diversion Programme, except on the direction of the Director.

Abduction	Perjury	Murder
Abortion	Possession of Firearm with Intent to Endanger Life, etc	Rape and Related Offences
Arson		Aggravated Burglary
Buggery	Use of Firearm to Resist Arrest or Aid Escape	Assaults resulting in Serious Bodily Harm
Child Abandonment		
Child Stealing	Carrying Firearm with Criminal Intent	Robbery
Cruelty to Child or Young Person	Use of Firearm in Unauthorised Taking	Dangerous Driving Causing Death
Concealment of Birth		
Explosive Offences	Membership of or Recruiting for or Inviting others to join an Unlawful Organisation	Aiding, Abetting, Attempting or Conspiring to Commit any of the above Listed Offence.
False Imprisonment (Kidnap)		
Manslaughter		

In any of the above cases where a caution is to be considered, the file will be forwarded through the National Juvenile Office to the Director of Public Prosecutions, otherwise, normal prosecution policy will apply.

OR

- iv. in exceptional circumstances, or where it is not possible to ascertain the juvenile's name and address, a prosecution may be commenced by preferring a charge and an adjournment sought to allow for the preparation of a file.

B. Diversion Programme

The Diversion Programme available involves the inclusion of the juvenile offender in the Garda Síochána Juvenile Liaison Officer Scheme. This allows for the juvenile offender to be diverted from the formal Criminal Justice System by way of an official Caution and the placing of the juvenile under the supervision of a Garda Juvenile Liaison Officer.

The conditions for inclusion into a Garda Juvenile Liaison Officer Scheme are that the offender:

- a. is under 18 years of age;
 - b. admits to the offence(s);
 - c. has not been cautioned previously or having been cautioned, the circumstances are such that it would be deemed appropriate to administer a further caution;
- and
- d. parent(s)/guardian agree to co-operate with the Gardaí by accepting any help or advice about the juvenile's future, or in the circumstances pertaining to the particular case, where the parent(s)/ guardian fail to co-operate, the juvenile deserves the opportunity of availing of the benefits of the Scheme.

While the consent of the injured party is not a condition for inclusion of a juvenile offender into the Diversion Programme, their views should be ascertained and given due consideration.

Juvenile Offenders who are admitted into the Scheme will be dealt with in one of two ways:

- i. FORMAL CAUTION
 - ii. INFORMAL CAUTION.
- i. Formal Caution

This will be appropriate in cases where a juvenile is made amenable for:

- a serious crime or offence and the administering of an INFORMAL CAUTION is not appropriate; or
- a less serious crime or offence but has already been included in the Scheme by way of INFORMAL CAUTION and the Juvenile Liaison Officer for the area where the juvenile resides deems it appropriate that a Formal Caution be given.

The FORMAL CAUTION will, as the title suggests, be a formal procedure and should take place in a Garda Station. The caution will be administered by the District Officer for the area where the offender resides.

The following must be present at the Caution:

- the offender;
- the offender's parent(s)/ guardian;
- the Juvenile Liaison Officer; and
- the Cautioning Officer.

The parent(s)/guardian will be issued with the leaflet "Information to parent/guardian of a child who has been cautioned" by the Juvenile Liaison Officer at the termination of the Caution.

ii. Informal Caution

This will be appropriate in cases where juveniles are involved in minor Crimes and Summary Offences.

The INFORMAL CAUTION will be given by the local Juvenile Liaison Officer in the presence of the juvenile's parent(s)/ guardian.

The parent(s)/guardian will be issued with the leaflet "Information to the parent/guardian of a child who has been cautioned" by the Juvenile Liaison officer at the termination of the Caution.

When a decision is to be made for a Formal or Informal Caution, the following will be considered when deciding on the seriousness of the crime/offence;

- degree of harm/suffering caused to any person;
- the value of property stolen/damaged;
- the willfulness with which the crime/offence was committed;
- record of previous Caution(s);
- degree of offence;
- degree of first offence and relationship in character to latest offence;
- time lapse between offences;
- age and attitude of offender;
- attitude of offender's parent(s)/guardian;

- attitude of injured party;
- recommendations of the detecting member, the Member in Charge and the Juvenile Liaison Officer;
- recommendations of the District Officer; and
- all other circumstances surrounding the offence including local and other factors.

3. Supervision

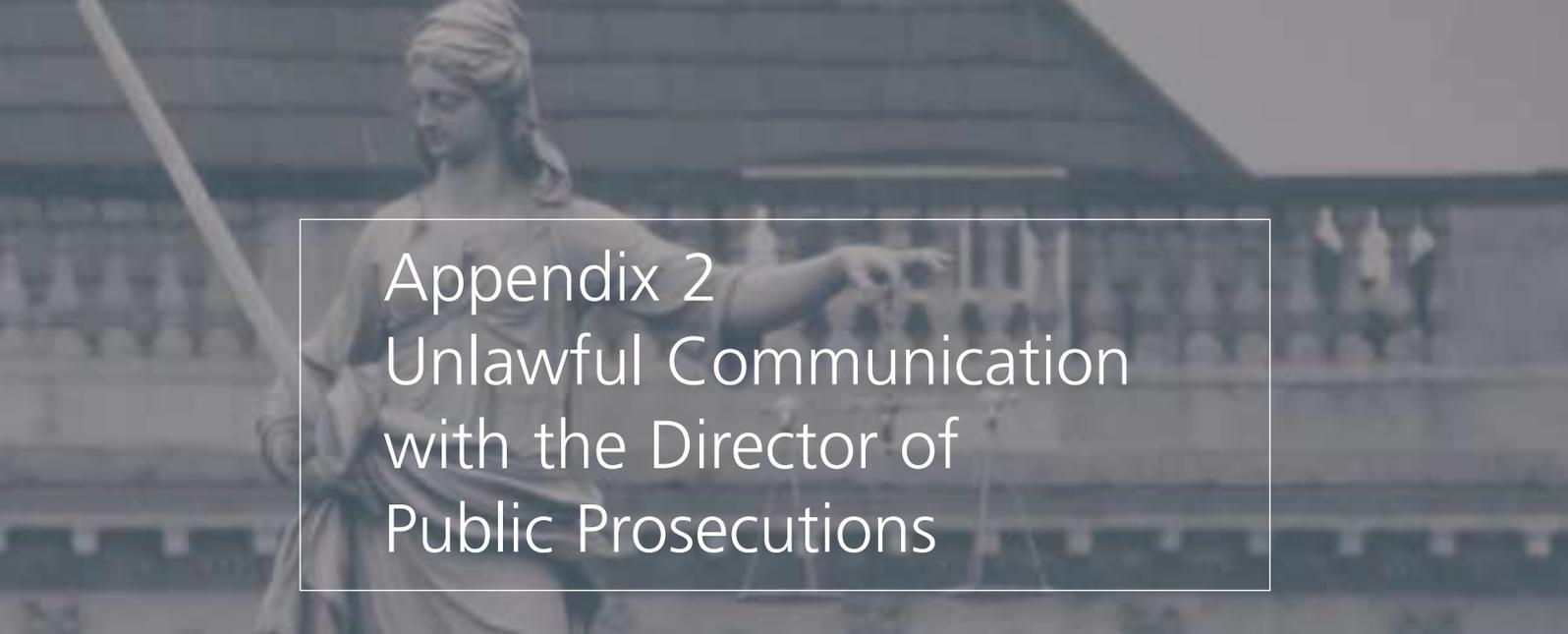
Following a Formal Caution, the duration of supervision will be for 12 months.

However, if circumstances are such that the Juvenile Liaison Officer considers that the duration of supervision should be for a greater or lesser period than 12 months, a report, indicating reasons for such recommendations, should be submitted to the National Juvenile Office.

In cases where the child is the subject of an Informal Caution, no further supervision will be required as a rule. In some few cases, the Juvenile Liaison Officer may consider a short supervisory period appropriate and should report accordingly.

Supervision will be categorised into two types:

- A. intensive - this will apply to high risk cases i.e. serious crime, persistent offenders, lack of parental support and control, etc. and will take place on a weekly to monthly basis as considered appropriate;
- B. regular - this will apply to less serious cases where the juvenile has not previously received a Formal Caution and it is considered that this type of supervision is adequate. The supervision will take place on a two to three monthly basis.

A background image of a statue of Lady Justice, blindfolded and holding a scale, set against a blurred outdoor scene.

Appendix 2 Unlawful Communication with the Director of Public Prosecutions

The text of section 6 of the Prosecution of Offences Act, 1974, and section 2(4) of the Criminal Justice Act, 1993, are set out for ease of reference:

Prosecution of Offences Act, 1974

6. (1) (a) Subject to the provisions of this section it shall not be lawful to communicate with the Attorney General or an officer of the Attorney General, the Director or an officer of the Director, the Acting Director, a member of the Garda Síochána or a solicitor who acts on behalf of the Attorney General in his official capacity or the Director in his official capacity, for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.
- (b) If a person referred to in paragraph (a) of this subsection becomes of opinion that a communication is in breach of that paragraph, it shall be the duty of the person not to entertain the communication further.
- (2) (a) This section does not apply to—
- (i) communications made by a person who is a defendant or a complainant in criminal proceedings or believes that he is likely to be a defendant in criminal proceedings, or
 - (ii) communications made by a person involved in the matter either personally or as legal or medical adviser to a person involved in the matter or as a social worker or a member of the family of a person involved in the matter.

(b) In this subsection "member of the family" means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, a person who is the subject of, or in whose favour there is made, an adoption order under the Adoption Acts, 1952 and 1964.

Criminal Justice Act, 1993

2. (4) Section 6 of the Prosecution of Offences Act, 1974 (which prohibits certain communications in relation to criminal proceedings), shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this section as it applies to such communications made for the purpose of making a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

