

Raymond Kitson,
Department of the Director of Public Prosecutions,
Belfast Chambers,
93 Chichester St,
Belfast,
BT1 3JR.

26th May 2005

Re: Public Prosecution Service Code for Prosecutors

Dear Mr Kitson,

As you may know, the Committee on the Administration of Justice (CAJ) has been active in the criminal justice field for many years, and in more recent times has monitored closely the implementation of the recommendations of the Criminal Justice Review. To that end, we provided a commentary to the DPP on the original draft Code for Prosecutors in July 2004. We are pleased to see that the revised Code incorporated a number of our recommendations and we believe that the new version is a much clearer and stronger document.

There were a number of recommendations we made which were not incorporated, and rather than reiterate all these in detail, I refer you back to our original commentary (attached for convenience). However, there are a number of areas which are of sufficient importance that we feel it is worth repeating our concerns, as follows:

Para 3.31 **Referrals to the Police Ombudsman:** although the language in this section has been changed from having a requirement to refer to “will refer”, CAJ feels this is still not sufficiently strong to cover the duty which the Prosecution Service is under. Perhaps “*must refer*” would be a more appropriate phraseology to use so as to more accurately reflect the intention of the Criminal Justice Review.

Section 4.3 This section on the **public interest test** remains largely unchanged and as such, CAJ is deeply disappointed that the opportunity has not been seized by the Prosecution Service to tighten up this aspect of its decision-making process. At the very least, we feel strongly that a

standard of reasonableness should be applied in deciding the public interest balance so that an accepted form of legal objectivity can enter the equation. In addition, guidance on how the prosecutor should proceed to balance the various public interest factors at work, and on “national security” would do much both to assist prosecutors and assure the public at large that decisions are in fact fair and impartial.

Section 4.9 Again, CAJ is disappointed that the section on **consents** does not give more guidance on situations where consent is denied, the grounds on which this could happen and any review/appeal mechanism. This omission unfortunately leaves the reader with the impression of an opaque procedure. This is particularly regrettable given the focus in the Criminal Justice Review on transparency in the Service (of which the publication of this Code was a central part). We would therefore urge the Department to reconsider its position on this issue, or provide reasons why it feels this is not necessary.

Section 4.11 While the policy of **giving reasons** has moved slightly to one of ‘when asked and in the most general terms’, as opposed to refraining, CAJ believes this approach is still insufficient and is in direct contradiction to both the spirit and actual recommendations of the Criminal Justice Review. The Review was very clear that the presumption should shift towards the giving of reasons where appropriate, and in detail. However, in this Code, and indeed in its actions, the Service maintains its practice of refraining from giving reasons other than in the most general terms, and as an exception rather than a rule. This is highly disappointing, and since it goes to the heart of the transparency of the Prosecution Service calls into question the Service’s actual commitment to change. CAJ intends to highlight this failure with the Justice Oversight Commissioner and other interested bodies in the international arena.

Para 6.26 CAJ welcomes the inclusion of details of **complaints mechanisms** as we recommended. However, this section highlights the overall problem of prosecutorial discretion, which is directly linked to the points made above. Without a more open and transparent policy on giving of reasons, consent, the public interest test etc, and the lack of a complaints procedure in relation to the exercise of prosecutorial discretion, the abiding impression is one of secrecy and lack of accountability within the system, a problem which led to a lack of confidence and trust in the prosecutorial function. If the Prosecution Service is serious about embracing change and building confidence, it must use opportunities such as this to properly open itself up to public scrutiny and accountability.

Section 7.2 CAJ is disappointed that the reference to the **UN Convention on the Rights of the Child** has been dropped from this section. The best interests of the child must be of paramount importance, particularly where the possibility of criminal conviction and detention are concerned. We would therefore urge that this reference be reinstated.

We hope you have found these comments useful. I noted your comment by e-mail that the Service does not necessarily agree with all recommendations made to it. It would be rather surprising if it did! The purpose of consultation, however, is to ensure that a range of perspectives and expertises can be brought to bear on the policy making process, and CAJ feels a particular responsibility to engage constructively in the process given the centrality placed on human rights in the Criminal Justice Review. While we would not expect the Service to take on board all of our recommendations, we believe that our ideas are in complete conformity with the proposals arising from the Criminal Justice Review; in adopting the recommendations above, the Service would be acting in line with the vision of the Review which sought the highest possible standards in Northern Ireland's criminal justice system..

We look forward to receiving the final Code in the near future.

Yours sincerely,

Aideen Gilmore
Research & Policy Officer