

CAJ's submission no. S383

CAJ's Submission to the Public Prosecution Service Community Outreach Strategy and making a Complaint about the PPS

April 2012

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

CAJ's Submission to the Public Prosecution Service (PPS) Joint Consultation on the Community Outreach Strategy and Making a Complaint about the PPS, April 2012

Committee on the Administration of Justice ('CAJ')

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

The Public Prosecution Service (PPS) has invited comment in relation to its draft Community Outreach Strategy 2012 – 2014 and its guidance on 'Making a Complaint about the Public Prosecution Service'. In this submission, CAJ will outline international human rights standards relevant to the proposed documents and provide comment on their content.

PPS Community Outreach Strategy 2012 – 2014

Summary:

- The purpose of this document is to define an outreach strategy for the PPS. The aim of the strategy is to increase public confidence in the independence, fairness and effectiveness of the PPS;
- International standards and human rights principles emphasise the role of prosecutors in ensuring the administration of justice and the effectiveness of the criminal justice system. The need for the public to have confidence in the criminal justice system is clearly articulated. The need for the public to be informed of how the prosecution service is organized, what its policies are and the criteria by which it takes prosecutorial decisions is also recognised;
- The expertise and experience of prosecutors can form a valuable voice in public debate on the law, the administration of justice and the promotion and protection of human rights. CAJ believes that the desire identified within the Criminal Justice Review for a prosecution service that more openly and proactively communicates with the public remains;
- CAJ think that the reference that international standards make to the expertise and experience of prosecutors informing public debate on the law, the administration of justice and the promotion and protection of human rights, could be recognised as part of the objectives of this strategy;

- Whilst it is clear that this draft strategy contains a number of encouraging statements, CAJ considers that the vital issue will be how it is implemented in practice.

Background:

The consultation paper states that the purpose of this document is to define an outreach strategy for the PPS as it seeks to achieve the vision of being recognised as providing the people of Northern Ireland with a first class prosecution service. The strategy defines community outreach as the process by which the PPS and the people of Northern Ireland interact and the way in which the PPS will engage at a local level with the community and relevant statutory and non-statutory agencies (p.4). The aim of the strategy is to increase public confidence in the independence, fairness and effectiveness of the PPS (p. 5). The strategy's objectives are to:

- increase the community's awareness and understanding of the role of the PPS as part of the overall criminal justice system;
- to help inform the community generally about criminal justice processes;
- to provide information about the operation of the PPS, such as the Test for Prosecution and the criteria used in making prosecutorial decisions;
- to assist with developing the community's understanding of alternatives to prosecution, such as diversionary options.

International Standards and Human Rights Principles:

In considering the content and focus of this strategy, CAJ will have regard to a number of international and regional human rights standards. These relate both to the role of prosecutors in general and more specifically to their interaction with the public.

The Council of Europe (CoE) *Recommendation on the Role of Public Prosecution within the Criminal Justice System* recommends that governments of member states base their legislation and practices concerning the role of public prosecution on the principles contained within it. The Recommendation defines public prosecutors as:

[...]public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.¹

¹ Council of Europe, Committee of Ministers Recommendation Rec (2000) 19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System (Adopted by the Committee of Ministers on 6th October 2000 at the 724th meeting of the Ministers' Deputies), para. 1.

The Recommendation appears to envisage prosecutors actively taking part in public debate and discussion of legal matters where it reminds states that they should:

[...]take measures to ensure that public prosecutors have an effective right to freedom of expression, belief, association and assembly. In particular they should have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights[...]²

The Recommendation describes how states should organize their prosecuting authorities in a hierarchical fashion, create guidelines for the implementation of crime policy, and define general principles and criteria to refer to when taking decisions in individual cases. The Recommendation makes it clear that:

The public must be informed of the above-mentioned organisation, guidelines, principles and criteria; they shall be communicated to any person on request.³

These objectives are to be seen as a mechanism for:

[...]promoting fair, consistent and efficient activity of public prosecutors[...]⁴

The United Nations (UN) has also produced *Guidelines on the Role of Prosecutors*. These acknowledge that prosecutors play a crucial role in the administration of justice. The Guidelines state that they are:

[...]formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general.

The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis[...]⁵

² As above, para. 6.

³ As above, para. 36(c).

⁴ As above, para. 36(a).

⁵ United Nations Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27th August to 7th September 1990, U.N. Doc. A/CONF.144/28/Rev.I at 189 (1990).

Like the CoE *Recommendation on the Role of Public Prosecution within the Criminal Justice System*, the Guidelines discuss prosecutors taking part in public debate and discussion of legal matters as part of their freedom of expression, belief, association and assembly.⁶

The International Association of Prosecutors (IAP), of which the PPS is a member, has also set out *Standards of Professional Responsibility*, that serve as an international benchmark for the conduct of individual prosecutors and of prosecution services.⁷ They were adopted by a Resolution of the UN in 2008 that requested that member states take the IAP Standards into consideration when reviewing or developing their own standards.⁸

The IAP Standards acknowledge that the public need to have confidence in the integrity of the criminal justice system and that all prosecutors play a crucial role in the administration of criminal justice. They state that the exercise of prosecutorial discretion is a grave and serious responsibility and that the exercise of this discretion:

[...]should be as open as possible consistent with personal rights, sensitive to the need not to re-victimise victims and should be conducted in an objective and impartial manner [...]⁹

The IAP Standards also advise that as part of their professional conduct, prosecutors shall:

[...]strive to be, and to be seen to be, consistent, independent and impartial;¹⁰

In discussing these international standards the Criminal Justice Review comments that whilst they engage in:

[...]highlighting the importance of independence, that does not imply isolation or detachment from the rest of society or other criminal justice agencies.¹¹

From examining these various human rights standards, a number of common themes emerge. It is clear that prosecutors are defined as public authorities acting on behalf of society and in the public interest. Their role in ensuring the administration of justice and the effectiveness of the criminal justice system is emphasized. The need for the public to have confidence in the criminal justice system is clearly articulated. It is implicit within all

⁶ As above, Guideline 8.

⁷ International Association of Prosecutors, 'Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors' (1999).

⁸ United Nations Commission on Crime Prevention and Criminal Justice Resolution 'Strengthening the rule of law through improved integrity and capacity of prosecution services' Vienna, 14th April to 18th April 2008, U.N. Doc. E/CN.15/2008/L.10/Rev.2.

⁹ As above.

¹⁰ As above, art. 1.

¹¹ Review of the Criminal Justice System in Northern Ireland, Criminal Justice Review Group, March 2000, p. 53.

these themes that the functions of prosecuting authorities must therefore be clear and widely understood by the public. Public confidence can only grow when prosecutors are seen to be exercising their discretion in an open, consistent, independent, objective and impartial manner.

The need for the public to be informed of how the prosecution service is organized, what its policies are and the criteria by which it takes prosecutorial decisions must also be recognised. The expertise and experience of prosecutors can form a valuable voice in public debate on the law, the administration of justice and the promotion and protection of human rights. Prosecutors should be encouraged to exercise their freedom of expression, belief, association and assembly in this way.

Criminal Justice Review recommendations and subsequent process:

In our submission to the Criminal Justice Review,¹² CAJ recommended that a mechanism be established to increase local accountability of the prosecution service to the community. We recommended a two-way exchange of views, to ensure that the prosecution service is aware of community feeling on particular issues.

The Review, which was established in June 1998, recognised the general desire that existed at that time to see a prosecution service that was more open and proactive in communicating with the public.¹³ CAJ believes that this desire remains and that the need to be open and proactive in communicating with the public should be seen as an ongoing obligation. The benefits of such engagement with the public in increasing understanding and confidence are clear.

The Review recommended the publication of an annual report, a code of practice outlining the factors to be taken into account in applying the evidential and public interest tests on whether to prosecute, and a code of ethics, based in part on the standards set out in UN Guidelines. It is also recommended that the prosecution service publish good practice guidelines on such matters as the treatment of witnesses and that it refer to them in its annual report. The Review considered that:

Publications of the sort outlined above, together with a programme of outreach, would in our view remove much of the mystery in the process which was apparent to us during the public consultations that we carried out. We also believe that a policy of transparency and openness would enhance public confidence and the quality of work satisfaction for those in the service.

¹² CAJ's submission no. S078 'Submission to the Criminal Justice Review' November 1998.

¹³ As above, p. 68.

Greater public understanding of the way in which the prosecution system works, achieved through a policy of transparency and openness as outlined above, should have a significant impact in confidence building terms.¹⁴

It is notable that the Review was of the opinion that concerns surrounding the giving of reasons for prosecutorial decisions could be less of an issue if the public had a greater understanding of the prosecution service. The Review recommended the establishment of local offices as an aid to the task of interfacing with local communities.¹⁵ As part of CAJ's response to the Review report and recommendations, we argued that this recommendation was unduly limited and maintained that a specific mechanism should be put in place to allow the communication of relevant concerns.¹⁶

CAJ responded to the draft PPS Community Outreach Strategy that was sent to us in 2004. In our response we welcomed the view taken that in order to provide tailored outreach services, there was a need to identify specific target audiences. We suggested that the most effective way to do so was by referencing s. 75 of the Northern Ireland Act 1998. We agreed with the assessment that there are a number of factors which determine public confidence in the criminal justice system and that these factors can vary from a regional to local level. CAJ asserted that issues such as independence and fairness would be of crucial importance, particularly in light of the decisions of the DPP in relation to cases such as the death of Nora McCabe.¹⁷

Decisions not to prosecute in cases such as this had resulted in a lack of confidence in prosecutorial authorities. CAJ also pointed to the backdrop of approximately 370 killings directly involving state forces, of which approximately 10% had resulted in prosecutions. CAJ drew attention to the need to reach out to the LGBT community and to recognize the issue of female alienation from the criminal justice system. We argued that community outreach would only be successful where it was accompanied by a willingness to reveal and discuss issues such as employment monitoring figures and work force composition.¹⁸

¹⁴ As above, p. 96.

¹⁵ As above, p. 98.

¹⁶ CAJ's submission no. S101 'CAJ's Response to the Report of the Criminal Justice Review' August 2000 p. 21.

¹⁷ Nora McCabe died on 9th July 1981 from injuries sustained as a result of being hit by a plastic bullet the previous day in Belfast. At her inquest, RUC officers denied firing plastic bullets at the location of the incident. Subsequently television footage contradicted the RUC officers evidence. Despite this, no prosecutions were taken against any RUC officer for the killing of Nora McCabe or for perjury at the inquest.

¹⁸ CAJ's submission no. S153 'Response To The Public Prosecution Service For Northern Ireland - Community Outreach Strategy' September 2004, p. 2.

CAJ is aware that the PPS does publish an annual report and a code for prosecutors, which includes a code of ethics. These documents are available to the public on the PPS website (www.ppsni.gov.uk). However, we consider the programme of outreach, referred to above by the Review to also be vital.

Comments on Community Outreach Strategy 2012 – 2014

CAJ will now provide comment on the draft community outreach strategy. Firstly, CAJ notes that a section is provided explaining what the functions of the PPS are (p. 3). CAJ thinks that this section could be clearer and more accessible. For example, instead of using language like ‘taking decisions as to prosecution in cases investigated by the police’, this could be simplified to explain how following a police investigation, the PPS decide whether to prosecute a case through the courts, that the PPS then conducts the prosecution, or instructs a barrister to do so, and that the prosecution is not taken on behalf of a victim, but is taken in the public interest. It could also be explained that decisions as to whether to prosecute a case before the courts are taken by referring to the Code for Prosecutors.¹⁹ A brief explanation of how the evidential and public interest tests are applied may then be appropriate. CAJ thinks that a clear explanation of the functions of the prosecution service is necessary to ensure consistency with the CoE *Recommendation on the Role of Public Prosecution within the Criminal Justice System*, which highlights the need to inform the public of the work of the prosecution service.

The Criminal Justice Inspection Northern Ireland (CJINI) have recently acknowledged that PPS staff are conscious of the need to take into account the views of victims, whilst not being seen to act as an advocate for individual victims. CJINI believed that:[...]some criticism of the PPS can stem from a lack of understanding as to its role in relation to the victims of crime.²⁰

CAJ believe that it is vital therefore that the role and functions of the PPS are understood and clearly articulated at every opportunity.

As we have outlined above, the strategy defines community outreach as the process by which the PPS and the people of Northern Ireland interact and the way in which the PPS will engage at a local level with the community and relevant statutory and non-statutory agencies (p.4). The aim of the strategy is to increase public confidence in the independence, fairness and effectiveness of the PPS (p. 5). CAJ agrees with this aim and the various objectives outlined (p. 5).

¹⁹ Public Prosecution Service for Northern Ireland ‘Code for Prosecutors’ 2008.

²⁰ ‘The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland’ Criminal Justice Inspection Northern Ireland, December 2011, para. 3.6.

We further note that the strategy aims to support the achievement of strategic objectives contained in the PPS Corporate Plan 2011 – 2014 and that it complements the PPS Communication Strategy (p. 3). As we have outlined above, the international standards in relation to prosecutors identify them as having a vital role in ensuring the administration of justice and the effectiveness of the criminal justice system. They also emphasise the need for the public to have confidence in the criminal justice system. It is therefore important that the functions of prosecuting authorities must therefore be clear and widely understood by the public. CAJ notes the aim of the strategy and the objectives relating to increasing the community's awareness and understanding of the role of the PPS in this regard.

The CoE Recommendation also refers to the need for the public to be informed of how the prosecution service is organized, what its policies are and the criteria by which it takes prosecutorial decisions. We note the objective to provide information about the operation of the PPS here, such as the Test for Prosecution and the criteria used in making prosecutorial decisions here.

However, CAJ think that the reference the international standards make to the expertise and experience of prosecutors informing public debate on the law, the administration of justice and the promotion and protection of human rights could be recognised as part of the objectives of this strategy. Prosecutors should be encouraged to exercise their freedom of expression, belief, association and assembly in this way. We note the recent appearance by the Director of Public Prosecutions, Barra McGrory QC, before the Committee for Justice at the Northern Ireland Assembly as a positive example of prosecutors engaging in debate around criminal justice issues.²¹ The strategy discusses having meetings with local communities, which will include listening to the concerns of local communities about criminal justice processes and matters (p. 9). Such meetings could be used as a vehicle to encourage prosecutors to engage in public discussion and debate.

CAJ welcomes the recognition that in order for the strategy to be effective, it must recognize the diverse people and groups within the community, including the categories listed under s. 75 of the Northern Ireland Act 1998 (p. 6). As we said in our response to the draft PPS Community Outreach Strategy in 2004, this is the most effective way to identify target groups. CAJ appreciates the reference to the PPS listening to and considering the views and concerns of voluntary sector organizations, and the acknowledgement of the challenge function these groups can provide (p. 8). CAJ also welcomes the commitment displayed within the strategy to initiate meetings, rather than holding in response to requests (p. 10).

²¹ Northern Ireland Assembly, Committee for Justice, Official Report (Hansard) 'Tommy English Murder Trial: Director of Public Prosecutions' 22nd March 2012.

Whilst it is clear that this draft strategy contains a number of encouraging statements, CAJ considers that the vital issue will be how it is implemented in practice. We note that the strategy makes reference to the need for it to be achievable, stating on p. 5 that:

The strategy must be realistic and deliverable. It must be a strategy which enables community outreach within the financial and staff resources available to the PPS.

The draft strategy also describes how implementation may have significant resource implications for the PPS. The strategy states that a key principle of implementing the strategy is for all staff to have responsibility to participate in community outreach as required (p. 12). The strategy places responsibility for delivery on the Director and Deputy Director, the Management Board and Senior Management Group, Regional Prosecutors and Assistant Directors within their own region or section (p. 13 – 14). We also note that participation in community outreach will be included in the performance agreements for all staff at Assistant Director level and above (p. 12). CAJ would seek clarity as whether this will also include Regional Prosecutors and why other members of PPS staff, such as senior public prosecutors or public prosecutors, will not appear to be subject to such performance agreements, despite their inclusion as being part of delivering the strategy (p. 14).

Whilst CAJ acknowledges the resource implications behind implementation of the strategy, we would encourage the PPS to consider the viability of creating specific

posts both centrally, sectionally and regionally to engage solely in community outreach. The PPS has previously informed CAJ that between September 2010 and October 2011, they engaged in 1560 hours of community engagement, including preparation time and attendance time. This was equivalent to 215 days. Whilst this sounds initially impressive, it must be viewed through the prism of the PPS employing 576 staff as of 31st March 2011, and 215 days being around the equivalent of one full time post. Of these 576 staff, 12 were employed as Senior Assistant Directors or Assistant Director, 59 as Senior Public Prosecutor and equivalent grades, 128 as Public Prosecutor and equivalent grades and 249 as Administrative Officer or Administrative Assistants,²² all of whom are identified as having a role to play in delivery of the present draft strategy (p. 13 – 14). It may be that the work load these staff already have means that more effective community engagement could be achieved through individual post holders working in conjunction with PPS staff already in place.

CAJ notes that the draft strategy specifically discusses how progress against the strategy will be monitored, which we welcome (p. 15 – 16). We also note the list of key milestones that the strategy states the PPS will ‘seek to achieve’ (p. 17). CAJ would urge that these

²² Public Prosecution Service for Northern Ireland ‘Annual Report & Resource Accounts 2010 – 2011’ p. 33 – 34.

milestones be seen as the minimum target for achievement, rather than the maximum of what can potentially be achieved.

Amongst these milestones are commitments to publish an update of outreach activity on the PPS website quarterly and to participate annually in the Northern Ireland Omnibus Survey in order to gauge public awareness of the PPS (p. 18 – 19). We note the commitment to deliver a minimum of six outreach events within each PPS region on an annual basis, at least three of which should involve local communities and at least three should involve statutory bodies, agencies and other organizations (p. 18). CAJ would request more detail in relation to these proposed events. We note that the strategy suggests potential contact points between the PPS and local communities as including local elected representatives, church leaders, industry and commerce leaders, District Policing Partnerships, resident groups, representative section 75 groups, youth groups, schools and voluntary organizations (p. 10). Is it envisaged that events will be held individually with each of these contacts, or is the PPS proposing a series of forum style events in each of its regions? The strategy names potential statutory bodies, agencies and organizations that the PPS could interact with as including the PSNI, NI Courts and Tribunals Service, Youth Justice Agency, Probation Service, NI Departments and investigative agencies, representative groups such as Women’s Aid and other voluntary sector organizations. CAJ would question whether community outreach is actually the appropriate forum for communicating with some of these statutory bodies, such as the PSNI and NI Courts and Tribunals Service, given that the PPS presumably already has relationships with them.

CAJ agrees with the strategy’s conclusion that the conduct of prosecutions in an independent, fair and effective manner will be the key factor in determining the level of public confidence (p. 20 – 21). We note that the strategy discusses increasing levels of transparency and public accountability (p. 21). The importance of this latter point is clear from the IAP Standards, which state that it is not enough that prosecutors strive to be consistent, independent and impartial. They must also be seen to be so. This will require a willingness and commitment on the part of the PPS and it’s staff to explain, discuss and debate matters surrounding their policies, how prosecution decisions are reached, how the PPS is structured and the composition of its work force. The PPS can also play a vital role in contributing to public debate on the law, the administration of justice and the protection and promotion of human rights.

Making a Complaint about the Public Prosecution Service

Summary:

- The consultation document states that this is intended to provide a comprehensive guide for potential complainants about the service provided by the PPS;
- International standards and human rights principles advise how prosecutors enjoy the right to a fair hearing when charged with a disciplinary offence and decisions taken in this context must be subject to independent review;
- CAJ notes that while guidance relating to complaints was last published in 2007, the version that is currently available on the PPS website was published in June 2005. This booklet does not appear to be available in any other languages, or in alternative formats, such as child accessible version on the PPS website;
- CAJ thinks that the section in both documents outlining the functions of the PPS could be clearer and more accessible;
- In terms of the speed with which the PPS will make a response to a complaint, CAJ notes that this target has been revised since the previous complaints booklet was published in 2007. CAJ would request clarity as to why this period has been increased;
- CAJ notes the booklet contains a section outlining the PPS policy on unacceptable actions or behaviour by complainants. CAJ agrees that prosecutors are entitled to protection from intimidation, hindrance, harassment or improper interference. However CAJ would have concerns that by displaying this policy prominently within the complaints booklet, this could discourage potential complainants from coming forward in the first instance;
- CAJ would suggest that more detail be provided in relation to sections of the booklet in relation to reviews of prosecutorial decisions and the giving of further reasons for a decision.

Background:

The consultation document states that this is intended to provide a comprehensive guide for potential complainants about the service provided by the PPS. The consultation document says that this guide includes a clear definition of matters that are dealt with as complaints, the means by which complaints can be made, the timescales for response and the avenues for appeal. The new guidance follows from a review of the complaint handling process. CAJ is familiar with the previous guidance published in 2007.

International Standards and Human Rights Principles:

The UN *Guidelines on the Role of Prosecutors* state that prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.²³ Prosecutors shall perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.²⁴ The Guidelines go on to state that:

Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.²⁵

The Guidelines also provide that disciplinary proceedings shall guarantee an objective evaluation and decision, be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the Guidelines themselves.²⁶

The Guidelines also place a duty on prosecutors to ensure that they are complied with. The Guidelines state that:

Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.²⁷

Prosecutors who have reason to believe that a violation of the Guidelines has occurred, or is about to occur, are under a duty to report the matter.²⁸

The CoE *Recommendation on the Role of Public Prosecution within the Criminal Justice System* advises that states ensure that public prosecutors are bound by codes of conduct, and that breaches of such codes lead to appropriate sanctions. It also recommends that the performance of public prosecutors should be subject to regular internal review.²⁹ Similar to the UN *Guidelines on the Role of Prosecutors*, it is recommended that disciplinary proceedings against public prosecutors are governed by law, should guarantee a fair and

²³ As above, Guideline 3.

²⁴ As above, Guideline 12.

²⁵ As above, Guideline 21.

²⁶ As above, Guideline 22.

²⁷ As above, Guideline 23.

²⁸ As above, Guideline 24.

²⁹ As above, para. 35.

objective evaluation and decision and that this should be subject to independent and impartial review.³⁰

The IAP *Standards of Professional Responsibility* state that prosecutors shall at all times maintain the honour and dignity of their profession, conduct themselves professionally, in accordance with the law and the rules and ethics of their profession and at all times exercise the highest standards of integrity and care. They should also respect, protect and uphold the universal concept of human dignity and human rights.³¹ Under the IAP Standards prosecutors are also entitled to:

[...]expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;³²

Prosecutors are also entitled under the IAP Standards to objective evaluation and decisions in disciplinary hearings.³³

These instruments also refer to the need to protect prosecutors from undue interference or harassment in their work. The UN *Guidelines on the Role of Prosecutors* advise that:

States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.³⁴

The IAP *Standards of Professional Responsibility* echo this.³⁵ The IAP has also issued a *Declaration On Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families*.³⁶ This Declaration draws upon and expands on the *Standards of Professional Responsibility* and states that:

Where public prosecutors or their families are subjected to violence or threats of violence, or are harassed, stalked, intimidated or coerced in any manner, or subjected to any form of inappropriate surveillance, states shall ensure

- (i) that such incidents are fully investigated,
- (ii) that the prosecutor is informed concerning the outcome of the investigations,
- (iii) that steps are taken to prevent any recurrence of the incidents and, where

³⁰ As above, para. 5(a).

³¹ As above, art. 1.

³² As above, art. 6.

³³ As above, art. 6.

³⁴ As above, Guideline 4.

³⁵ As above, art. 6.

³⁶ International Association of Prosecutors, 'Declaration On Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families' (2008).

- appropriate, to bring criminal charges, and,
- (iv) that the prosecutor and his or her family receive any necessary counselling or psychological support.³⁷

These human rights instruments share a number of common principles. They advise of the need for prosecutors to act fairly and consistently, upholding the honour and dignity of their profession. They must have high standards of integrity and care. Where they are charged with a disciplinary offence, these must be based on lawful regulations and be processed expeditiously and fairly. Prosecutors enjoy the right to a fair hearing and decisions taken in this context must be subject to independent review. It is also clear that prosecutors should be protected from undue interference or harassment in their work, as well from violence, threats, intimidation or coercion.

Criminal Justice Review recommendations and subsequent process:

In our submission to the Criminal Justice Review, CAJ recommended the establishment of an effective complaints system, so that violations of the code for prosecutors could be investigated and if necessary punished.³⁸ The Review noted the desire for a prosecution service that was more answerable to the public and the calls for a clear, accessible and open complaints procedure, with an independent element.³⁹ The Review stated that:

The handling of complaints is an essential part of effective accountability mechanisms. Details of complaints procedures for the prosecution service should be publicly available and included in the service's annual report, along with an account of the handling of complaints throughout the year. Given the increased role of the prosecution service, there may be a greater volume of complaints and we recommend that an independent element be introduced into the procedures where the complainant is not satisfied with the initial response and where the complaint is not about the exercise of prosecutorial discretion. The Criminal Justice Inspectorate should audit the operation of the prosecution service's complaints procedures on a regular basis.⁴⁰

In CAJ's response to the Review's report and recommendations, we welcomed this recommendation, but expressed concerns at how the independent element of the complaints process would not apply when the complaint related to the exercise of prosecutorial discretion.⁴¹

³⁷ As above, art. 8.

³⁸ As above.

³⁹ As above, p. 68.

⁴⁰ As above, p. 97.

⁴¹ As above, p. 19.

During the period when the recommendations of the Review were being taken forward, CAJ did not accept the proposition that a complaint can be said to be independently assessed if the assessor is a member of staff of the agency concerned, albeit unconnected to the complainant. We were encouraged however by the complaints mechanism being developed by the prosecution service which intended to utilise an independent figure to ensure fairness of procedure and encourage more people with valid complaints to come forward.⁴² CAJ noted that the independent figure was proposed to assume responsibility for dealing with complaints at the final stage in the process. We expressed the hope that the steps prior to this would be equally transparent and independent. We also urged that each complainant be entitled and encouraged to pursue their complaint to the final level.⁴³

Subsequently an Independent Assessor for the PPS was appointed on 13th June 2005, to coincide with the launch of the PPS.

Comments on Making a Complaint about the Public Prosecution Service

Before providing comment on the draft booklet relating to complaints, CAJ wishes to make a number of general points in relation to the availability and accessibility of information relating to complaints. The PPS has previously provided CAJ with a booklet outlining how to make a complaint about the PPS. This was published in 2007. However the version that is currently available on the PPS website was published in June 2005.⁴⁴ This booklet does not appear to be available in any other languages, or in alternative formats, such as child accessible version on the PPS website. CAJ would encourage a holistic approach to considering the accessibility of the complaints handling process, with the accessibility of the process being considered at every stage. The letter that accompanies this consultation outlines how a review of the PPS' complaint handling mechanisms highlighted the need for a more accessible process.

In relation to the draft booklet itself, CAJ would question why at p. 2 of the booklet, having made a clear distinction between a complaint and a request for reasons for a decision or for a review of a decision, this section does not go on and explain what the difference is between these. It would be clearer and more expedient for a person, who may be unsure as to whether their concern is a complaint, request for reasons for a decision, or a request for a review of a decision, if the difference between these was highlighted at the beginning of the booklet, rather than towards the end (p. 11 – 12).

⁴² CAJ's submission no. S146 'Commentary On The Updated Implementation Plan For The Criminal Justice Review And The Criminal Justice Oversight Commissioner' September 2003, p. 8.

⁴³ As above, p. 12.

⁴⁴ Available at

http://www.ppsni.gov.uk/SiteDocuments/Publications/Making_a_complaint_about_the_PPSv1.pdf. Last viewed 18th April 2012

CAJ notes that a section is provided explaining what the functions of the PPS are (p. 2). We would echo the comments we have made above in relation to the Community Outreach Strategy in relation to this section needing to be clearer and more accessible, as it is worded in the same way.

In defining what a complaint is (p. 3), the booklet states that this excludes:

Any failure to adhere to the PPS Code for Prosecutors or Code of Ethics, *that is, which does not relate to a prosecutorial decision.*

CAJ would suggest that the booklet clearly explain what a prosecutorial decision is at this point, as an individual may not understand the difference between this and a complaint. Examples could perhaps be provided here of what is and is not a prosecutorial decision. We would also suggest that the phrase 'someone acting on behalf of the PPS' be explained as meaning, for example, a barrister instructed by the PPS.

In relation to how a complaint can be made (p. 5), CAJ would request clarification of whether the Community Liaison Team (CLT) deals with complaints when they do not relate to services provided by the PPS for cases before the Magistrates' and Youth Court. CAJ understands that CLT's only provide services for victims and witnesses involved in proceedings before these courts. They do not provide services to victims and witnesses whose cases proceed to the Crown Court, Court of Appeal or to the High Court for a bail application, which we understand are still provided by the PSNI's Investigating Officer.

In terms of the speed with which the PPS will make a response to a complaint, CAJ notes that this target has been revised since the previous complaints booklet was published in 2007. In the 2007 version, the PPS state that they will acknowledge receipt of a written complaint within 5 working days and will normally seek to make a full response within 15 working days. If this is not possible, the complainant is meant to be informed within 15 working days as to why a response has been delayed and what the revised target for making a response is.

The current version being consulted on extends the period for responding to a complaint from 15 to 20 days. CAJ would request clarity as to why this period has been increased. Increasing the period within which a complaint should be processed appears to run contrary to the spirit of the UN *Guidelines on the Role of Prosecutors* and the IAP *Standards of Professional Responsibility*, both of which emphasise the need for complaints against prosecutors to be processed expeditiously.

The section of the booklet that sets out what a person can do if they are dissatisfied with how a complaint has been dealt with (p. 7 – 8) mentions how a complaint can be brought

directly to PPS Headquarters from the outset. It may be more useful to include this information under the section dealing with how a complaint can be made (p. 4 – 5), so that the complainant is presented with a clear choice early in the booklet as to whom they wish the complaint to be dealt with by.

CAJ notes the reference made within the document to the possibility of complainants referring their complaints to the Independent Assessor (p. 8 – 9). This is similar to the section on the role of the Independent Assessor included in the 2007 booklet. However, it is emphasized here that the Independent Assessor does not investigate complaints that are primarily prosecutorial in nature. Again, CAJ would suggest that the booklet clearly explain what a prosecutorial decision is before this, as an individual may not understand the difference between this and a complaint. We also think it should be emphasized here that the Independent Assessor is fully

independent of the PPS, which is included in the section on the Independent Assessor in the 2007 booklet. CAJ notes that in relation to the investigation of complaints by the Independent Assessor, the booklet states (p. 9):

The PPS will permit the Independent Assessor access to the correspondence relating to your complaint and will seek to meet his requests in full as he investigates your concerns.

The 2007 booklet instead refers to the independent assessor having access to ‘files’ rather than correspondence. CAJ would request clarification as to whether this new form of words means that in effect the Independent Assessor will have less access to materials relating to complaints than under previous complaint handling policies. CAJ would be concerned if this were the case, as it would have the potential to stifle the requirement under the UN Guidelines and the CoE Recommendation that decisions made in relation to complaints are subject to independent review.

CAJ notes that in a further change from the 2007 booklet, a new section has been added outlining the PPS policy on unacceptable actions or behaviour by complainants (p. 9 – 10). This outlines how the PPS does not view actions or behaviour as unacceptable simply because a complainant is assertive or determined. It does state that the actions or behaviour of complainants who are angry, persistent or demanding can result on unreasonable demands on the PPS or unacceptable behaviour towards PPS staff.

The PPS groups define some of this behaviour as aggressive or abusive behaviour, unreasonable demands for information, demands relating to the scale of service that can be provided, the making of numerous approaches, or unreasonable persistence. It does note that there a relatively few complainants whose actions or behaviour will be considered unacceptable in this way. The PPS outlines how it could restrict complainant contact in

these circumstances, whilst still allowing a complaint to be completed. A person subject to these restrictions can appeal that decision.

CAJ accepts that prosecutors are entitled to protection from intimidation, hindrance, harassment or improper interference, as the UN Guidelines make clear. We also agree with the standards set in the IAP *Declaration On Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families* that steps should be taken to prevent any recurrence of incidents. As an organization that has always been firmly opposed to the use of violence, CAJ would condemn anyone engaging in aggressive or violent behaviour towards PPS staff or those instructed by the PPS.

However CAJ would have concerns that by displaying this policy prominently within the complaints booklet, this could discourage potential complainants from coming forward in the first instance. If the behaviour of a complainant becomes aggressive or violent, then CAJ has no objection to this policy being employed and the complainant being made aware of it at this point.

We appreciate from the booklet that the PPS management of these actions or behaviour will depend on their nature or extent, and that only in very extreme situations will the PPS inform a complainant that no further correspondence or contact will be accepted. However, we would argue that this policy on unacceptable actions or behaviour by complainants should effectively be held in reserve, to be used where it is required, rather than being highlighted to all potential complainants.

CAJ notes that in comparison with the 2007 booklet, the section outlining how a person can ask about prosecutorial decisions has become more detailed, which we welcome (p. 11). This section outlines how any person who is affected by a prosecutorial decision, including a decision not to prosecute, may request that a review be carried out. CAJ welcomes this clarification, which is not included in the section on reviewing prosecution decisions included in the Code for Prosecutors.

However, we would suggest that the process by which reviews are conducted be more clearly explained. The booklet states:

When requesting a review, a person may be able to provide further evidence or information which has not previously been taken into account. In such a case the public prosecutor who made the original prosecutorial decision will carry out the review taking into account the additional evidence or information. However if no new evidence or information is provided the review will be conducted by a different public prosecutor to the person who made the original decision. The public prosecutor

conducting the review will decide whether the original decision should stand or whether a fresh decision is required. In either event the person requesting the review will be informed.

This section does not clearly explain that in circumstances where further information or evidence is provided, the prosecutor who took the original decision will firstly decide whether the new evidence or information provides a proper basis to change the original decision. If this is the case, the prosecutor who took the initial prosecution decision applies the test for prosecution and reaches a fresh decision in the case. If they do not think that there is a proper basis to change the decision, the case is referred to a separate prosecutor who conducts a review of the decision.

This process is more clearly explained in the PPS Policy for Prosecuting Cases of Rape⁴⁵ and in the Code for Prosecutors⁴⁶ and CAJ would suggest that a clearer and more accurate outline is necessary here also. A potential complainant may only view this booklet and may not be aware of other PPS policies or the Code for Prosecutors.

Similarly, CAJ would suggest that more detail be provided in relation to the giving for reasons for decisions not to prosecute (p. 12). We welcome that a specific section has been included in the booklet on this issue, in comparison with the 2007 booklet. The draft booklet outlines how in all cases where it does not prosecute, the PPS provides reasons for its decisions in general terms. In a range of more serious cases, the PPS goes further and provides more detailed reasons. Firstly, CAJ would suggest that the rationale behind why reasons are given in general terms be clearly explained, as well as what it means to give reasons in general terms. This is already done in other PPS policies, such as the PPS Policy for Prosecuting Cases of Rape.⁴⁷ Secondly, CAJ would suggest CAJ would suggest that it may be beneficial to provide examples of some of these more serious offences for illustrative purposes. CAJ understands that these serious offences include offences where death or serious injury has been caused, sexual offences, domestic burglaries hate crimes, or any offence that does not fall under these categories where the victim is considered to be vulnerable.

As we have outlined above, providing detailed and clear information to the public in relation to the process by which prosecutorial decisions can be reviewed and more detailed reasons for decisions provided, is consistent with the CoE Recommendation in this regard.

⁴⁵ Public Prosecution Service for Northern Ireland 'Policy for Prosecuting Cases of Rape' December 2010, p. 17.

⁴⁶ As above, p. 21 – 23.

⁴⁷ As above, p. 16.

CAJ also notes that in a further change to the 2007 booklet, details are provided outlining how after complaint case is completed, a follow-up questionnaire will be provided to the complainants asking for feedback on how their complaint was handled (p. 12). We welcome the PPS commitment to monitor this process in a way that is confidential and ensures the anonymity of participants. This furthers compliance with the PPS' duties under s. 75 of the Northern Ireland Act 1998.

Committee on the Administration of Justice

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