

# Protocol between the Attorney General and the Prosecuting Departments

July 2009

## 1. Scope

1.1. This protocol sets out how the Attorney General and the Directors of the prosecuting departments, (which are the Crown Prosecution Service (CPS), the Serious Fraud Office (SFO), and the Revenue and Customs Prosecutions Office (RCPO)), (“the Directors”) exercise their functions in relation to each other. It covers:

- General responsibilities
- Strategy, planning and performance
- Responsibility for prosecution decisions
- Development of policy
- Dealing with the media
- Dealing with complaints

1.2. Details of the Directors’ statutory responsibilities may be found in the relevant legislation.<sup>1</sup> In accordance with the Law Officers Act 1997, any function of the Attorney General under this protocol may be performed by the Solicitor General.

## 2. General responsibilities

2.1. The Attorney General and the Solicitor General (the “Law Officers”) are government Ministers, Law Officers of the Crown and senior practising lawyers. They may act as advocates for the Crown. The Attorney General is not a member of the Cabinet but may attend when his or her responsibilities are on the agenda.

2.2. The Directors exercise their statutory functions subject to the superintendence of the Attorney General.

2.3. The Attorney General is accountable to Parliament for his or her functions in relation to prosecutions and for the work of the Directors and the prosecuting departments, including answering Parliamentary Questions and correspondence from Members of Parliament. The Directors ensure that their Departments support the Attorney General in fulfilling this duty.

2.4. The Attorney General is responsible for safeguarding the independence of prosecutors in taking prosecution

<sup>1</sup> Prosecution of Offences Act 1985; Criminal Justice Act 1987; Commissioners for Revenue and Customs Act 2005.

decisions.<sup>2</sup>

2.5 The Director of Public Prosecutions (DPP) is required by law to issue a Code for Crown Prosecutors, which is applied also by the Director of the SFO and, by law, by the Director of the RCPO. The Code gives guidance on general principles to be applied in determining whether proceedings for an offence should be instituted or discontinued and which charges should be preferred. The DPP consults the Attorney General and the other Directors about any proposed changes to the Code. The provisions of the Code and any changes are required to be included in the DPP's annual report (see 3.4 below) which is laid before Parliament.

2.6 The Attorney General, acting in the capacity of a Law Officer, independently of government, may issue guidance to prosecutors on the conduct of their functions, after consulting the relevant Director(s).

2.7 The Directors and their staff are civil servants of the Crown and are subject to the Civil Service Code.

2.8 When a Parliamentary Select Committee or other Parliamentary Group seeks evidence from the Attorney General and/or the Directors about the work of the prosecuting departments, the Attorney General and the relevant Director(s) will consult one another about how best to meet the requirements of the Committee.

### **3. Strategy, planning and performance**

3.1 The Attorney General receives the budget for the prosecuting departments and in conjunction with the Directors, sets their strategic direction.

3.2 The Directors agree their high level objectives with the Attorney General in line with the strategic direction.

3.3. The Directors are Accounting Officers. They draw up business plans for their Departments, having due regard to the strategic direction and high level objectives agreed. They organise their Departments in the most effective and efficient way in order to deliver their objectives.

<sup>2</sup> In this protocol references to "prosecutors" are references to the Directors and prosecutors in their departments.

3.4 The Directors are required to report annually on the discharge of their functions, and the Attorney General lays these reports before Parliament. The Directors agree mechanisms for reporting periodically during the year to the Attorney General on their progress against plan and budget, and their performance.

3.5 The Attorney General reports to Parliament annually on his or her actions and those of his or her Office.

3.6 There is a Strategic Board, chaired by the Attorney General and including the Directors, which, among other things, oversees strategy, reviews and monitors financial management and performance, oversees the development and delivery of Spending Review submissions, encourages joint work where appropriate, and identifies and pursues opportunities to achieve maximum efficiency and effectiveness.

## **4. Responsibility for prosecution decisions**

4.1. The decision whether or not to prosecute, (or in the case of the SFO, to investigate and prosecute) and, if so, for what offence, or whether to use an out of court disposal, is a quasi-judicial function which requires the evaluation of the strength of the evidence and also a judgment about whether an investigation and/or prosecution is needed in the public interest. Prosecutors take such decisions in a fair and impartial way, acting at all times in accordance with the highest ethical standards and in the best interests of justice. In this way, prosecutors are central to the maintenance of a just, democratic and fair society based on a scrupulous adherence to the rule of law.

4.2. Prosecutors exercise their powers regarding the institution and conduct of proceedings under the direction of their Director. They take casework decisions and conduct individual cases applying the law and the framework of principles set out in the Code for Crown Prosecutors, together with any supplementary guidance

issued by the Directors, or the Attorney General. The Attorney General is not informed of, nor has any involvement in, the conduct of the vast majority of individual cases around the country.

4.3. Other than in the exceptional cases described in 4(a) below, decisions to prosecute or not to prosecute are taken entirely by the prosecutors. The Attorney General will not seek to give a direction in an individual case save very exceptionally where necessary to safeguard national security (4(b)).

#### **4(a) Attorney General's consent to prosecute**

4(a)1. For certain offences Parliament has decided that the Attorney General's consent is needed to bring a prosecution.

4(a)2. It is a constitutional principle that when taking a decision whether to consent to a prosecution, the Attorney General acts independently of government, applying well established prosecution principles of evidential sufficiency and public interest.

4(a)3. Where the prosecutor considers that there is sufficient evidence to prosecute for one of these offences and that a prosecution is or may be in the public interest, the prosecutor seeks the Attorney General's consent to bring a prosecution. That decision is taken by the Attorney General.

4(a)4. Once a prosecution is commenced in one of these cases, the prosecutor keeps the Attorney General informed of its progress and whenever practicable, consults the Attorney General if the prosecutor is contemplating either dropping the case on public interest grounds, or accepting pleas.

4(a)5. If the case can no longer proceed for evidential reasons which emerge after a prosecution is started, the prosecutor informs the Attorney General of the decision as soon as it is taken.

#### **4(b) Directions necessary to safeguard national security**

4(b)1. The one exceptional category of

case in which the Attorney General will consider the possibility that she or he may direct that a prosecution is not started or not continued (or, in the case of the SFO, that an investigation is not to take place or not to continue) is where the Attorney General is satisfied that it is necessary to do so for the purpose of safeguarding national security

4(b)2. The offences most likely to give rise to national security considerations require the Attorney General's consent to a prosecution. But if national security considerations emerge partway through a case or investigation, or in cases which do not require consent, the Director will inform the Attorney General as soon as this becomes evident.

4(b)3. Before considering the possibility that he or she may direct in this way, which will only be in the most exceptional cases, the Attorney General will consult the relevant Director. The possibility of direction does not prevent the Director from taking a decision not to start or continue a prosecution or SFO investigation on national security grounds.

4(b)4. If any such direction were made the Attorney General would make a report to Parliament, so far as was compatible with national security.

#### **4(c) Cases on which the Attorney General will not be consulted**

4(c) Unless for any reason a decision is required from the Attorney General by law (such as in a consent case) and subject to paragraph 4(d)5, the Attorney General will not be consulted in:

- Prosecution decisions relating to Members of Parliament (including Peers) or Ministers;
- Prosecution decisions in cases relating to political parties or the conduct of elections; or
- Any case in which the relevant Law Officer considers that he or she has a personal or professional conflict of interest in accordance with the relevant professional Codes.

#### **4(d) Superintendence of casework**

4(d)1. As set out at the opening of this section, the Attorney General will have no involvement in the vast majority of cases. And as at 2.4 above, the Attorney General is responsible for safeguarding the independence of prosecutors taking decisions whether or not to prosecute in individual cases.

4(d)2. The Attorney General's responsibilities for superintendence and accountability to Parliament mean that he or she, acting in the wider public interest, needs occasionally to engage with a Director about a case because it:

- is particularly sensitive; and/or
- has implications for prosecution or criminal justice policy or practice; and/or
- reveals some systemic issues for the framework of the law, or the operation of the criminal justice system.

4(d)3. In these circumstances the Attorney General will be alerted to a case by the Director at the earliest opportunity, or may call for information about a case, or will discuss the case with the Director. The Director will keep the Attorney General informed as significant developments occur. The Attorney General may express any concerns. The decision in these cases remains the Director's.

4(d)4. Directors may raise with the Attorney General for advice or discussion any cases, except those at 4(c) above, at any time. Consultation and discussion between the Director and the Attorney General ensures that the Attorney General can provide public or Parliamentary assurance, as necessary, that all relevant considerations have been taken into account.

4(d)5. The Attorney General may additionally ask for information about an individual case in order to perform another of the Attorney's functions, such as considering potential contempt of court, making references on a point of law, or deciding whether to refer an unduly lenient sentence. This does not involve

consultation on any prosecution decision by the Director.

4(d)6. The Attorney General may be called upon to help prosecutors to resolve cases where they have not reached agreement, for example where prosecutors have overlapping remits over the same case or adopt different approaches to the same legal question or where there is concurrent jurisdiction.

4(d)7. The Attorney General's assistance may be needed to secure evidence or disclosure of material by another Government Department which is needed to ensure a fair trial.

#### **4(e) Seeking Ministerial Representations on the Public Interest**

4(e)1. The Code for Crown Prosecutors sets out the general public interest considerations which are relevant to prosecution decisions.

4(e)2. In a few very exceptional cases the

prosecutor, whether the Attorney General or the Directors, may conclude that it is appropriate to consult relevant Government Ministers as part of the decision making process. In such a case the Attorney General may seek Ministerial representations in a public interest consultation exercise.

4(e)3. The purpose of the exercise is confined to identifying particular public interest considerations which are relevant to the prosecution decision of the Attorney General or the Director. The weight to be given to such representation is a matter for the Director or the Attorney General. Ministers are not able to dictate what the decision ought to be. The responsibility for the eventual decision rests with the Attorney General or with the Director, depending on the case.

4(e)4. The Attorney General ensures that public interest consultation exercises are conducted with propriety, that Ministers who are consulted are informed that the decision is for the Director or the Attorney General alone; and that where such considerations are said to point away from prosecution, the Attorney General and the



Director will probe rigorously the representations made where, and as far as, it appears to them appropriate to do so.

## **5. Development of policy**

5.1. The Attorney General is the Government Minister responsible for prosecution. As such, he or she is responsible, with the Directors, for ensuring that in the development of Government policy, due account is taken of the role of the prosecutors, of the impact of policy proposals on prosecution, (or in the case of the SFO, on investigation and prosecution) and of the contribution which prosecutors can make.

5.2. In their support of the Attorney General in the exercise of this function, the Directors provide the Attorney General with information and advice, and ensure that the knowledge and expertise of prosecutors are made available to those developing Government policy. The Attorney General seeks to keep the Directors informed of developing Government policy so that they are able to

give their best advice.

5.3. The Directors are responsible for ensuring that, where appropriate, policies and guidance adopted by their Departments are consistent with and give due effect to relevant Government policy. This does not affect the independence of prosecutors in taking prosecution decisions, which must always be free from any party political or other improper influence.

5.4. The Attorney General is not consulted about the generality of prosecutors' guidance, but is consulted and informed in a timely way about any proposed statement of guidance which raises difficult or sensitive questions of law or public policy.

5.5. The Attorney General is consulted about guidance on matters in which the Attorney General exercises functions by law or as part of the wider constitutional role. Examples may include contempt of court, public interest immunity, unduly lenient sentences and consent cases.

5.6. The Directors co-ordinate their approach to, and their guidance on, cross-

cutting legal, practice or policy guidance to ensure consistency of approach. The Attorney General oversees and coordinates legal and practice issues, both domestic and international, which cross over departments and affect all prosecutors. To ensure consistency of practice across prosecutors generally the Attorney General may issue guidelines.

5.7. Given the Attorney General's public interest role, the Attorney General's views are accorded particular weight on difficult questions of balancing competing public interest considerations in prosecution guidance.

## **6. Dealings with the press and other media**

6. Recognising that the media have a legitimate interest, on behalf of the public, in the Prosecuting Departments and their activities, the Attorney and the Directors make available appropriate information about them. The relevant Director(s) and their departments and the Attorney General's Office co-operate closely on

media-handling issues, including the appropriate approach to briefing the media, or making any other public comment, on any particular issue.

## **7. Dealing with complaints**

7. Without prejudice to the responsibilities and public and parliamentary accountabilities for decisions set out in section 4, there are specific arrangements for dealing with complaints from individuals:

- Each Director has a procedure for dealing with complaints about the way in which particular cases have been dealt with by their Department.
- Where a complaint is not satisfactorily resolved by the relevant Director's Department, the complainant is notified that they may refer the matter to the Attorney General.
- The Director ensures that the Attorney General is provided with all

relevant information regarding the complaint and the case to which it refers.

- The Attorney General is able, but is not required in every case, to commission an independent review of the way in which the complaint has been handled.

## **Attorney General's Office**

**July 2009**

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