Introduction to Code of Conduct for Crown Prosecutors
## Version History

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AIMS OF COURSE

1. To discuss the purpose of the Code
   - Discuss the roles of a prosecutor.
     - Why did you become a prosecutor?
     - Who do you work for?
     - What skills do you need as a prosecutor?
     - Why does a prosecutor need to consider issues such as ethics and fairness?
   - To discuss the principles by which you make your decisions.
     - What do you consider when you are considering whether to proceed with a prosecution?
     - What do you base your decision on?
     - Have your decisions ever been challenged?
     - How do you justify your decisions?
     - Would it assist you if the public/defendant/court knew the framework by which you made your decisions?
   - To establish relationship with the police investigators
     - Separate and distinct role – but interdependent
     - Advise the police on admissibility of evidence, appropriate charges, present state of the law
     - Secure better results
     - Streamline processes

2. Apply the Code by discussing the case study of Daniel Blade
   - Evidential Stage - Realistic prospect of conviction
   - Why is it needed?
• Is the same test applied for all matters?
• How is it applied to the facts of the case study
• Can the evidence be used in Court?
• Is the explanation by the defendant credible?
• Is the witness evidence credible?
• Is there evidence the police need to obtain?
• Is it right that if further evidence comes to light or the original decision was wrong, the decision not to charge is reviewed
• If Evidential Stage satisfied – how are charges selected
  - Do you proceed with an offence that gives the court a greater sentencing power?
  - What factors do you take into account to decide the most appropriate charge?
  - What do you consider if the facts change?

3. Once the evidential stage is passed – consider the case study of Lindsay Parker second test

• Public Interest Stage
  - Why have a public interest stage?
  - Do you think it is fair to prosecute all persons where there the evidential stage is satisfied?
  - How do you assess the public interest?
  - What are the benefits of having a public interest test?
  - How do you decide the public interest of prosecuting a young offender?
• Consider the case study would you decide to prosecute
  
  - What factors are for/against prosecution
  - How do you determine if in the public interest if factors both for and against public interest


• Why should witness and victim care be in the Code?
• What are the hurdles to ensuring witness attendance?
• What solutions are there to ensuring witness attendance?

5. Bail

• Why is it important to have reference to bail in the Code?
• What considerations are important if applying for bail on appeal?

6. Acceptance of guilty pleas

• What should you consider when the defendant offers pleas to some but not all charges?
• Why is a basis of plea from the defendant important?

7. Role of the Prosecutor in the sentencing process

• What is the role of the Prosecutor?
• Is a Newton Hearing appropriate

8. Proceeds of Crime

• Have you considered restraint?
• Have you considered confiscation?
• Do you liaise with the FIA on all lifestyle offences and acquisitive offences?

9. Appeals

• What should you do when you receive notice of an appeal?
• How do you decide if you should appeal a sentence?

10. Dealing with the Media

• Do you have situations when you don’t know what to say to the press?
• Have you had concerns about what the press have reported you have said?
COURSE OBJECTIVES

The course objectives are as follows:

By the end of the course, delegates will:

1. Know the purpose of the Code.

2. Be aware of the principles by which a prosecutor makes their decisions in compliance with the Code

3. Have improved knowledge of how to review, analyse and present cases in pursuance of the Code
SUMMARY OF PROGRAMME

09:00  Welcome; Domestics
09:10  Introductions; Aims & Objectives
09:25  Purpose of the Code
10:30  Consider the case study of Daniel Blade
10:45  Break
11:00  Apply the Evidential Stage
11:45  Consider the Public Interest Stage
12:30  Lunch
13:30  Witness and Victim Care
14:00  Bail
14:30  Acceptance of pleas
15:00  Break
15:15  Role of the Prosecutor in sentencing
15:45  Prosecutor and Proceeds of Crime
16:00  Appeals
16:30  Dealing with the media
17:00  Review; Reflect; Close
DETAILED PROGRAMME

Introduction

Explain to the delegates what a Code is and an essential tool for justice.

- Article 73(2) of Constitution confirms that DPP: "shall have power in any case in which he considers it desirable so to do....to institute and undertake criminal proceedings against any person before any court of law (other than a court-martial) in respect of any offence alleged to have been committed by that person"

- Therefore when exercising these duties on behalf of the public on whether or not to institute a prosecution – the Code ensures there is consistent decision making and make the public aware of how the system of public prosecutions operates TRANSPARENCY FUNDAMENTAL CONCEPT for a fair and effective criminal justice system (see Para A 8, page 3).

- Complies with UN Guidelines on the Role of the Prosecutor and the International Association of Prosecutors Standards (1999).

The decision to prosecute is important and should be taken after full consideration of the evidence and surrounding circumstances. The Code therefore provides a guideline for prosecutors to discharge their duty with professionalism, skill and vision.
1. Purpose of the Code

METHODOLOGY

Roles of the Prosecutor

Working as a plenary group ask delegates why there is a need for a Code –
Start by asking the delegates to imagine that they are explaining their role as a
prosecutor to an unqualified person on a street.

What do they think the role of the prosecutor is? What skills do they need?
Who does a prosecutor work for?

Go around the group and ask for examples, marking these on the flipchart if
one is present.

It will be useful to consider the issues of openness and transparency against a
backdrop of being independent and incorruptible.

Specific answers:

- Advocate
- Representing prosecuting agency to outside community
- Identifying and meeting needs of victims and witnesses
- Provide an efficient and effective service as an officer of the court
- Contributing to an improved Criminal Justice System.
The word sought at this stage is **Justice**

How is that achieved?

Also ask the group to consider these questions.

(Ensure that the italicised points are covered)

- **How do we get justice?**
  - *Answer: Based on the facts of each case*

- **Where do we start?**
  - *Answer: Understanding the facts and ensuring as prosecutors we make the right decisions applying the Code so those we are doing justice for have confidence in the prosecutor*
Ask the group for whom we are doing justice. Ensure that all of the following are included:

- Victim
- Public / Community
- Defendant
- Witness

Refer to code – securing justice is at the forefront of the role of the prosecutor and is the aim of the prosecutor’s role and the foundation of his ethics – see Code at Para B (pages 3 - 5):

Discuss Principles of making decisions

Ask the group how they make their decisions at present – do they always apply the same test consistently

The words sought are fairness to victims and defendants, careful evaluation of the evidence and impartial.

Refer to the Code:

- Making the right decision to prosecute – wrong decision undermines public confidence – little margin for error – see Para B 5, page 3

- Ensure that the charge laid is the correct charge – see Para B 3, page 3

- Receive all information from the police – see Para B 5, page 4

- Place before the court relevant evidence of the alleged crime – see Para B 6, page 4
• Continuing review of the case – see Para B 9, page 5

• Evidential Stage:
  - See Para D, pages 6-7 – ask if already apply this test
  - Such a test ensures that prosecutor is satisfied that case will pass sufficiency test
  - Then less challenge
  - Provides transparency and justification of decision to all so fair, impartial and objective
  - Code assists with matters to be taken into consideration – review these with delegates to determine if would assist with decision making process – see Para D 1, pages 6-7

• Public Interest Stage

  - In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)
  - There may be very good reasons why a prosecution should not proceed despite there being sufficient evidence
  - Each case considered on its own facts see Para E, page 8
  - Ask the group to consider some common features for and against prosecution – Code will assist with common public interest factors for (Para F, pages 9-10) and against (see Para G, pages 10-11)
  - Take into account the views of the victim (see Para H, page 12) – in appropriate cases (see Para J 1, page 14)
  - Consider test applying to a young offender (see Para K, page 15)
Working with the investigator/Police

- Code confirms that the Police and any other investigators must work closely together but final responsibility to proceed lies with the prosecutor.

- Liaise with police – partnership (see Para B 4, page 3)
  - Working with police from an early stage helps to focus and direct the case and avoid delay.
  - Ensuring all lines of enquiry have been pursued.
  - Ensuring best evidence obtained.
  - Building professional relationships between agencies.

- Determine whether charge is correct (see list at Para B 4, page 4).

- Assess evidence – weed out weak cases/strengthen weak cases.

- Making decisions in a timely manner so as to ensure best use of resources.

2. Application of the Code – Evidential Stage

**METHODOLOGY**

Daniel Blade

As a group discuss the use of the Code and the Evidential Stage
In this case no RPOC.

Remembering the role and ethics of the prosecutor (see Para B 8, page 5 re fairness) stress not the duty of the prosecutor to obtain a conviction at all costs – must present a case on the basis of evidence which is cogent and credible - this is supplemented by B 7, page 5 – on the facts the identification of the suspect is likely to be questioned as only his car has possibly been identified (see Para D 1 (ii) (d), page 7) – the witnesses were
in drink therefore are there concerns about their reliability (see Para D 1 (ii) (c), page 7)?

Is the evidence that the community believes on hearsay that DB has committed the offence admissible (see Para D 1 (ii) (a)) – is this evidence which can be used in court? The Prosecutor must only bring a charge for good cause and not simply because DB may have committed an offence or even probably has – see Para B 7, page 5 and Para D (i), page 6)

The prosecutor must be impartial, fair and objective and not be guided by outside influences (see Para B 1, page 3) – therefore must not be guided by outside pressure of the local community losing business – the fact that he has a previous conviction for a knife attack does this show a propensity for violence or has he been rehabilitated by prison?

Remembering that a wrong decision to prosecute has the potential to undermine the criminal process (see A 8, page 3)

Is there further evidence that could be obtained from any other witnesses, DNA, fingerprints (see Para B 9, page 5)?

Case conference with the police requesting further investigation (see Para B 4, page 3)

What if no further evidence is obtained and DB is not charged. But 6 months after your decision an eye witness comes forward who was too scared to give a statement originally stating she saw DB come out of the bar with blood on his hands saying, “got him!”

See Para I 3 (iii), page 13 – this is significant evidence and supports the evidence of his car being seen by the two other witnesses – motive is established and you may be able to use the evidence of his previous conviction – therefore now a RPOC.

IF TIME what happens if CCTV evidence is produced just before the trial that shows a struggle between DB and JB – and JB attacked DB with a knife and DB punches JB. JB falls over and lands on the knife.
Apply RPOC of murder/manslaughter – consider the most appropriate charge which reflects the seriousness (see Para L 1 (i), page 16) – enable the case to be presented in a clear and simple way (see Para L 1 (iii), page 16)

May decide that RPOC of manslaughter on basis did not intend to cause serious harm and now best way to present case.

3. Application of the Code - Public Interest Stage

**METHODODOLOGY**

Lindsay Parker

As a group discuss the use of the Code and the Evidential Stage

Consider with the delegates case study of Lindsay Parker and public interest stage.

RPOC satisfied and evidence does cause any concern.

However is it in the public interest – apology (see Para G 7, page 11); no loss as can not opened and injury to security guard minimal (see Para G 3, page 10); suffering from serious ill health and unlikely to be repeated (see Para G 6, page 11); and court likely to only impose a nominal penalty (see Para G 1, page 10).

However the offence was committed against a person serving the public (see Para F 4, page 9); the suspect does have a previous conviction (see Para F 14, page 10) – is the previous conviction relevant as so old? Should this type of behaviour be tolerated even by a 70 year old?

As Para E 3, page 8 states it is not a matter of adding up the number of factors on each side – must decide on the facts and circumstances of the case. It is quite possible that one factor may outweigh a number of other factors.
On the facts of this case – there is unlikely to be a repetition as the suspect is in ill health. Furthermore any penalty is likely to be nominal by the court. The previous conviction is so old that not relevant.

However what if the conviction was in the last two years – more likely that offence will be repeated (see Para F 15, page 10)

What if LP was a local councillor – is she in a position of trust? Should she be treated differently to any other suspect? She didn’t take advantage of this position (Para F 5, page 9) therefore should she be treated the same as any other person - remembering the ethics and role of a prosecutor and the decision making process – the Code therefore allows the prosecutor to justify this decision so as not to undermine the criminal justice system.

4. Witness and Victim Care

METHODOLOGY

Again, in plenary, discuss witness and victim care and how to ensure the attendance of witnesses and victims in court.

The key issue to draw out in this session is why witnesses or victims do not attend hearings and how that can be addressed. You will aim to instil a sense of empathy in prosecutors. How would they like to be treated if they were a witness? Despite the vast array of measures taken in the UK to ensure victim and witness care and the special measures available to us, we are still not able to ensure that all of our witnesses attend court.

It is also be important in this session to discuss issues of equality and fairness, treating all witnesses and victims with dignity and respect – this is also consistent with the purpose of the Prosecution Witness Charter

The Code ensures that the prosecutor is aware of their responsibilities to witnesses and victims

• Keeping witnesses and victims informed of the progress of a case – see Para J 10, page 15 and Para 9, page 5 of the PWC
• Are witnesses and victims aware of what will happen in court – see Para B 2, page 14 also see Para 11, page 6 of the PWC where a single point of contact will be given and an assessment of a witnesses needs including if use of the video link is appropriate (see Para 23, page 9 of the PWC)

• Giving priority to witnesses involving child witnesses and vulnerable witnesses (Para 13, page 7 of the PWC) – see definition of vulnerable witnesses at page 14 of PWC

• Victims of sexual offences who are minors should be contacted at the earliest opportunity (Para J 4, page 14)

• Prosecutors should give support to witnesses especially those who are victims of sexual abuse and relatives of deceased persons (Para J 7, page 14)

• Court Visit (Para 16, page 7 of the PWC)

• Are witnesses and victims aware of what will happen if they are asked to give evidence/cross examined (see PWC paras 25 and 26, pages 9-11)

• Notice of trial date (Para 14, page 7 of the PWC)

• Were witnesses/victims made aware of the outcome of a case (see Para 27, page 11 of the PWC)

• If a guilty plea is accepted, is this explained to the witness/victim – see 17.2

• Protection of witnesses/victims who have been threatened or feel intimidated (see Para 8, page 5 and Para 18, page 8 of the PWC)
5. Bail

Bail consideration important in compliance with the Constitution

_Article 3(3) – (5) Protection of Right to Personal Liberty_

(3) Any person who is arrested or detained-

a) for the purpose of bringing him before a court in execution of the order of a court; or

b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3)(b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.

Therefore need to ensure that trial with a reasonable period of time – (see Para R 2, page 21 re adjournments); calling of relevant witnesses (see Para R 4, page 21); and trial ready (see Para R 5, pages 21-22)

Necessary to include in Code so that defendants know that prosecutors applying fair guidelines when applying for a remand in custody.
6. Acceptance of Guilty Pleas

**METHODOLOGY**

Ask the delegates to consider that Lindsay Parker is charged and offers a guilty plea to the theft **and not** the assault – how would you decide if acceptable.

Consider the public interest (see Para E 2, page 8). The offence is aggravated and more serious as an assault on a person serving the public (see Para F 4, page 9) – therefore the offer is not acceptable.

If Lindsay Parker then decides to plead guilty to both the assault and theft you should seek a basis of plea (see Para M 5, page 17).

You need to know if she accepts that she intentionally hit the security guard or was reckless – may need a Newton Hearing (see Para M 5, page 17 and Para S 4 (ii) page 24)

The Code assists the prosecutor to ensure that a just result is achieved reflecting the seriousness of the criminality.

7. Role of the Prosecutor in the Sentencing Process

**METHODOLOGY**

Ask the delegates to consider that Lindsay Parker has stated that she recklessly hit the security guard as she struggled to get away with the back of her hand as she was unsure who had grabbed her. The security guard will give evidence that Lindsay Parker turned around to face him and intentionally punched him in the cheek to get away.

The Code outlines the role of the prosecutor remembering the general duty in the administration of justice (see Para S 1, page 23)
If the court decides a Newton Hearing is necessary (see Para S 4 (ii), page 24) the prosecutor is prepared for this.

When the court proceeds to sentence the prosecutor is in a position to perform the responsibilities.

Therefore the prosecutor must be prepared and have access to all relevant matters (see Para S 4 (i) – (x), pages 24-25). For example in this case knowledge of the facts of the antecedents (if recent) (see Para S 3, page 23)

Proper preparation can ensure the court arrives at the just result which can prevent unnecessary appeals – See the Plea and Sentence document at page 411-412 of the Guide to Investigation and Prosecution of Serious Organised Crime

8. Proceeds of Crime

Remember always to be aware of – especially in drug matters and acquisitive crime (Para T, page 26)

9. Appeals

METHODODOLOGY

Discuss with the group what they do when they receive a notice of appeal against conviction.

Do they respond – how? (See Para U 3, page 26)

Consider LP – sentenced to a fine of $20EC

What do you consider to determine sentence unduly lenient? See Para U Appeal Against Sentence pages 28 - 29
10. Dealing with the Media

**METHODOLOGY**

Discuss with the group their relationship with the media.

Remember the media help the public to understand the criminal justice system and that public confidence in the administration of justice requires accurate reporting (see Para V 1, page 29)

In the Daniel Blade case study, ask the group to consider that he is not charged with murder despite the media pressure to charge reflecting public opinion – how do you deal with this.

You have clear guidelines by which you reached your decision not to charge as defined in the evidential stage of the Code.

The Code is a public document and the DPP can issue a public statement confirming this is the agreed standard by which decisions to prosecute are made. The decision can then be explained by the DPP so that the media and the public are aware that there was not a realistic prospect of conviction.

This transparency of a decision that is fair, objective and based on a sound legal basis will maintain confidence in the prosecutor’s decision.

**END of WORKSHOP**

Draw to a conclusion the principles of how important and skilful the role of the prosecutor is. The need for clear ethics, appropriate decision making, application of the law, good working relationship with the Police and fairness to the suspect, defendant, witnesses and victims.

All these roles are detailed in the guidelines which ensure parameters that the public and parties to the criminal justice system understand so that prosecutions are conducted clearly and as a result justifiably.