



# The Attorney General Falkland Islands

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# The Attorney General's Code for Prosecutors

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The Law and Regulation Directorate  
The Attorney General's Chambers

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## Introduction

1. The Code for Crown Prosecutors (“the Code”) is issued by the Attorney General under section 72 of the Constitution as Head of the Prosecution Service.
2. In the Falkland Islands control of criminal prosecutions is the sole responsibility of the Attorney General who undertakes this role independent from the Falkland Islands Government.
3. The Attorney General delegates the authority to prosecute to Crown Counsel who act as prosecutors, make prosecution decisions and have conduct of criminal proceedings on the Attorney General's behalf.
4. The purpose of the Code is to give guidance to prosecutors on the general principles to be applied when making prosecution decisions, to ensure that prosecution decisions are only ever made after an objective analysis of the evidence and relevant public interest factors.
5. The Code adopts and promotes high ethical standards, and incorporates the standards of the International Association of Prosecutors, of which the Falkland Islands is a member.
6. Prosecutors are bound by the Standards of Conduct set out in Annex 1 of this Code and to the Standards of Professional Responsibility of the International Association of Prosecutors, set out at Annex 2.

# General Principles

1. In this Code:
  - (a) the term “**suspect**” is used to describe a person who is not yet the subject of formal criminal proceedings;
  - (b) the term “**defendant**” is used to describe a person who has been charged or summonsed to appear in court; and
  - (c) the term “**offender**” is used to describe a person who has been convicted of a criminal offence.
  - (d) the term “**victim**” is used to describe a person against whom an offence has been committed or the complainant in a case being considered or prosecuted.
2. It is not the function of the Attorney General, or prosecutors acting on the Attorney General's behalf, to decide whether a person is guilty or not of a criminal offence. Determining guilt or innocence is the role of the court. Prosecutors decide whether it is appropriate to present charges for the criminal courts to consider.
3. A decision to present charges is not an indication of guilt. Similarly, a decision not to present charges does not necessarily mean that an individual has not been the victim of a crime. It is not for prosecutors to make that ultimate determination. Such decisions are wholly for the criminal courts to determine.
4. The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.
5. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with.
6. Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.

7. Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
  
8. Prosecutors must apply the principles of the Protection of the Fundamental Rights and Freedoms of the Individual as set out in the Constitution of the Falkland Islands at each stage of a case. Prosecutors must also comply with all guidelines and policies issued by the Attorney General and with the policies and guidance published by the Criminal Justice Council and have regard to the obligations arising from international conventions.

## The Decision to Prosecute

1. In all cases prosecutors ultimately decide whether a person should be charged with a criminal offence and, if so, what that offence should be. Prosecutors make their decisions in accordance with this Code.
2. The police and other investigators are responsible for conducting enquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation.
3. Prosecutors often advise the police and other investigators about possible lines of inquiry and evidential requirements, and assist with pre-charge procedures. In large scale investigations the prosecutor may be asked to advise on the overall investigation strategy, including decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. This is to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However, prosecutors cannot direct the police or other investigators.
4. Prosecutors should identify and, where possible, seek to rectify evidential weaknesses, but, subject to the Threshold Test (see below), they should swiftly stop cases which do not meet the evidential stage of the Full Code Test (see below) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution.
5. Although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help inform the prosecutor's decision.
6. Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test. The exception is when the Threshold Test may be applied where it is proposed to apply to the court to keep the suspect in custody after charge, and the evidence required to apply the Full Code Test is not yet available.
7. Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process. Prosecutors review every case they receive from the police or other investigators. Review is a continuing process and prosecutors must take account of any change in circumstances that occur as the case develops, including what becomes known of the defence case.

8. Wherever possible, prosecutors should talk to the investigator when thinking about changing the charges or stopping the case. Prosecutors and investigators work closely together, but the final responsibility for the decision as to whether or not a case should go ahead rests with prosecutors, as does the conduct of the proceedings as a whole and decisions that relate to those proceedings.
9. A number of offences require the agreement of the Attorney General prior to proceedings being commenced. In such cases the Attorney General will decide whether to give consent to a prosecution. Prosecutors must refer any such cases to the Attorney General.
10. Additionally, the Attorney General has superintendence of prosecutions as a whole and will be kept informed of prosecutions in order to ensure that there is transparency and accountability in respect of the actions of prosecutors.

## The Full Code Test

1. The Full Code Test has two stages:

### Stage One - the evidential stage

*followed by*

### Stage Two - the public interest stage

2. In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However, there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.
3. Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.

### The Evidential Stage

4. Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
5. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable bench of Justices of the Peace, Judge hearing a case alone, or jury properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
6. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty. In order for the evidential test to be met a prosecutor must be satisfied that a court is more likely than not to find a person guilty.



7. When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

**a) Can the evidence be used in court?**

8. Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess the likelihood of that evidence being held as inadmissible by the court and the importance of that evidence in relation to the evidence as a whole.

**b) Is the evidence reliable?**

9. Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

**c) Is the evidence credible?**

10. Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

### **The Public Interest Stage**

11. In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
12. It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will take place where the prosecutor is satisfied that there are public interest factors in favour of prosecution which outweigh those tending against prosecution. In some cases, the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
13. When deciding the public interest, prosecutors consider the questions set out below at a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any other public interest factors set out in relevant guidance issued by the Attorney General, should enable prosecutors to form an overall assessment of the public interest.
14. The questions identified below are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
15. It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors tending against prosecution are matters of mitigation that can be put to the court for consideration when sentence is passed.

16. Prosecutors should consider each of the following questions:

**a) How serious is the offence committed?**

17. The more serious the offence, the more likely it is that a prosecution is required. When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

**b) What is the level of culpability of the suspect?**

18. The greater the suspect's level of culpability, the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

19. Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

**c) What are the circumstances of and the harm caused to the victim?**

20. The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim or the offence is committed in the domestic setting. A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

21. Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

22. In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

23. Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views.
24. However, the prosecutor does not act for victims or their families in the same way as legal practitioners act for their clients. The views of victims or their families are extremely important and are treated as such but they are not determinative and prosecutors must independently form an overall view of the public interest.

#### **d) Was the suspect under the age of 18 at the time of the offence?**

25. The criminal justice system treats children and youths differently from adults and significant weight must be attached to the age of the suspect if they are a child or youth under 18. The best interests and welfare of the child or youth must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.
26. As a starting point, the younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

#### **e) What is the impact on the community?**

27. The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

#### **f) Is prosecution a proportionate response?**

28. Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the financial cost to the Government and the wider criminal justice system, especially where it could be regarded as having an excessive impact on the public purse when weighed against any likely penalty, is a relevant consideration.

29. Prosecutors must not decide the public interest on the basis of this factor alone. It is essential that all due regard is given to the public interest factors identified when considering the other questions in paragraphs a) to g), but cost can be a relevant factor when making an overall assessment of the public interest.
30. Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

**g) Do sources of information require protecting?**

31. In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

## The Threshold Test

1. In limited circumstances, where the Full Code Test is not met, the Threshold Test may be applied to charge a suspect. The seriousness or circumstances of the case must justify the making of an immediate charging decision, and there must be substantial grounds to object to bail.

### The five conditions of the Threshold Test

2. There must be a rigorous examination of the five conditions of the Threshold Test, to ensure that it is only applied when necessary and that cases are not charged prematurely. All five conditions must be met before the Threshold Test can be applied. Where any of the conditions are not met, there is no need to consider any of the other conditions, as the Threshold Test cannot be applied and the suspect cannot be charged.

#### **First condition - There are reasonable grounds to suspect that the person to be charged has committed the offence**

3. Prosecutors must be satisfied, on an objective assessment of the evidence, that there are reasonable grounds to suspect that the person to be charged has committed the offence. The assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely.
4. In determining whether there are reasonable grounds to suspect, prosecutors must consider all of the material or information available, whether in evidential format or otherwise. Prosecutors must be satisfied that the material to be relied on at this stage is capable of being:
  - (a) put into an admissible format for presentation in court;
  - (b) reliable; and
  - (c) credible.

#### **Second condition - Further evidence can be obtained to provide a realistic prospect of conviction**

5. Prosecutors must be satisfied that there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time, so that when all the evidence is considered together, including material which may point away from as well as towards a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

6. The likely further evidence must be identifiable and not merely speculative. In reaching this decision prosecutors must consider:
  - (a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
  - (b) the charges that all the evidence will support;
  - (c) the reasons why the evidence is not already available;
  - (d) the time required to obtain the further evidence, including whether it could be obtained within any available detention period;
  - (e) whether the delay in applying the Full Code Test is reasonable in all the circumstances.

**Third condition - The seriousness or the circumstances of the case justifies the making of an immediate charging decision**

7. The seriousness and the circumstances of the case should be assessed in relation to the alleged offending and should be linked to the level of risk created by granting bail.

**Fourth condition - There are continuing substantial grounds to object to bail in and in all the circumstances of the case it is proper to do so**

8. This determination must be based on a proper risk assessment, which reveals that the suspect is not suitable to be bailed, even with substantial conditions. For example, a dangerous suspect who poses a serious risk of harm to a particular person or the public, or a suspect who poses a serious risk of absconding or interfering with witnesses. Prosecutors should not accept, without careful enquiry, any unjustified or unsupported assertions about risk if release on bail were to take place.

**Fifth condition - It is in the public interest to charge the suspect**

9. Prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

**Reviewing the Threshold Test**

10. A decision to charge under the Threshold Test must be kept under review. The prosecutor should be proactive to secure from the police the identified outstanding evidence or other material in accordance with an agreed timetable. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as the anticipated further evidence or material is received and, in any event, in Crown Court cases, usually before the formal service of the prosecution case.

## Selection of Charges

1. Prosecutors should select charges which:
  - (a) reflect the seriousness and extent of the offending supported by the evidence;
  - (b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
  - (c) enable the case to be presented in a clear and simple way.
2. This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.
3. Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
4. Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.
5. Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

## Out-of-Court Disposals

1. An out-of-court disposal may take the place of a prosecution in court if it is an appropriate response to the offender and/or the seriousness and consequences of the offending.
2. Prosecutors must follow any relevant guidance when asked to advise on or authorise a simple caution, a conditional caution, any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. They should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest would be properly served by such a disposal.



## Accepting Guilty Pleas

1. Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.
2. Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient.
3. In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor and it is not a requirement that the views of victims or witnesses are obtained prior to a decision being made.
4. It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.
5. Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review, in consultation with the police or other investigators wherever possible.
6. Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a certain type of sentence. When pleas are offered, prosecutors must also bear in mind the fact that ancillary orders can be made with some offences but not with others.

# Reconsidering a Prosecution Decision

## Fundamental principles

1. Victims of crime and the public have a legitimate expectation that those who commit offences will be brought to justice.
2. This expectation and the rights of victims cannot be overridden by a suspect's belief that they will not be prosecuted, including where the suspect has been told that there will not be a prosecution or where a prosecution has been stopped.
3. These rights and expectations need to be balanced so that they are fair to all parties. Accordingly, in appropriate circumstances the Prosecution Service may:
  - (a) Overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal; or
  - (b) Restart a prosecution.
4. The statutory right of the prosecution to institute or re-institute proceedings is qualified by two important protections to ensure that there is no injustice done:
  - (a) The right of the defendant to revive proceedings in cases where a notice of discontinuance has been issued during the preliminary stage; and
  - (b) The court's power to stay any proceedings that it views as an abuse of the court's process.

## Proceedings that may not be reinstated

5. The prosecution cannot reinstitute proceedings in the following situations:
  - (a) Where the defendant has been acquitted (unless the case meets the 'new and compelling evidence' criteria set out in Part 32 of the Criminal Procedure and Evidence Ordinance 2014); or
  - (b) Where the case has been dismissed (unless a voluntary bill of indictment is preferred); or
  - (c) Where the offence is subject to a statutory time limit that has expired.

## Examples

6. The following is a non-exhaustive list of example situations where cases have been discontinued and later reinstated:
  - (a) Cases where a further review of the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
  - (b) Cases which are stopped so that further anticipated evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;
  - (c) Cases which are not prosecuted or are stopped because of a lack of evidence but where more significant evidence is discovered later; and
  - (d) Cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.

## Wrong decisions

7. In cases where the original decision may have been wrong, the review is twofold:
  - (a) Was the decision not to prosecute wrong?
  - (b) If so, should a prosecution now be brought in order to maintain confidence in the criminal justice system?

### *Was the decision not to prosecute wrong?*

8. The issue on review is not whether the decision not to prosecute was unreasonable, but whether it was wrong.
9. It is expected that in the majority of cases where the review decides that the evidential and public interest tests are met, the conclusion reached will be that the original decision was wrong. However, this will not always be the case, as a decision is not necessarily wrong simply because the review disagrees with it.
10. The review should allow a margin of individual prosecutorial discretion when determining whether a decision was wrong, as it is understandable that two prosecutors might differ, particularly when making difficult decisions on complex evidence or on the public interest.

11. Accordingly, there will be some cases where the review concludes that, although the review disagrees with the original decision, it is not wrong. It is expected that in such cases the original decision will have been thoroughly considered, the prosecutor will have addressed all relevant issues and come to a well-reasoned and justifiable decision.
12. When considering the basis upon which the original decision could be described as 'wrong', the review should determine whether any of the following non-exhaustive list of factors had a significant impact on the decision (either on its own or in combination with other factors):
  - (a) A misinterpretation of the evidence.  
*For example:*  
*A failure to consider relevant evidence, or an erroneous decision to consider irrelevant evidence.*  
*Disproportionate weight attributed to factors such as: victim or witness credibility; initial reluctance of the victim to report the allegation; potential defences not actually raised by the suspect; or the inability of the prosecution to completely rebut the account of the suspect.*
  - (b) An incorrect application of the law.
  - (c) An incorrect application of the public interest stage.  
*For example:*  
*Disproportionate weight attributed to one or more public interest factors tending against prosecution; or insufficient weight attributed to one or more public interest factors tending in favour of prosecution.*
  - (d) A failure to consider, or a decision to not follow, relevant CPS policy that cannot be properly justified.

***Should a prosecution now be brought in order to maintain confidence in the criminal justice system?***

13. If it is determined that the case meets evidential and public interest test and the original decision not to prosecute was wrong, prosecutors must then consider whether a prosecution should be brought in order to maintain public confidence.
14. Prosecutors should consider whether it is highly likely that a court will rule that a prosecution is an abuse of its process.
15. If it is not highly likely that a court will rule that a prosecution is an abuse of its process, a prosecution should be brought, in order to maintain confidence in the criminal justice system.

## Abuse of Process

16. Prosecutors should not start or continue a prosecution where their view is that it is highly likely that a court will rule that a prosecution is an abuse of its process, and stay the proceedings. It will be only in the most exceptional case that a prosecutor will validly come to this view.
17. In the context of reconsidering a prosecution decision, and breach of an undertaking not to prosecute, the proposed prosecution must be an affront to justice in order for it to amount to an abuse of process, and this will be rare.
18. It is not likely to constitute an abuse of process to proceed with a prosecution unless:
  - (a) There has been an unequivocal representation by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted; and
  - (b) The defendant has acted on that representation to his detriment.
  - (c) Even then, if facts come to light which were not known when the representation was made, these may justify proceeding with the prosecution despite the representation.

## Authority to Prosecute

1. Some offences may only be prosecuted with the prior consent of the Attorney General. The size of the jurisdiction means that the consent is given by the Attorney General personally, following a case review with the lead prosecutor.
2. A requirement for the consent of any person to a prosecution does not prevent the arrest of a person for any offence, or the remand in custody or on bail of a person charged with any offence.
3. Where consent to prosecute is required it will usually be noted in writing on the charging decision issued.

# Annex One

## Standards of Behaviour

### STANDARDS OF BEHAVIOUR FOR PROSECUTORS

The primary duty of a prosecutor is to uphold the professionalism and independence of the Prosecution Service of the Falkland Islands

Prosecutors delivering the Primary Duty demonstrate the following behavioral standards, recognising that what they do and the way they do it can often be as important to public confidence in justice and the rule of law as the decisions they make:

#### **Integrity**

Prosecutors must:

- fulfil their duties and obligations responsibly.
- always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings.
- carry out their fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently).
- deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of their ability.
- keep accurate official records and handle information as openly as possible within the legal framework.
- comply with the law and uphold the administration of justice and respect for the rule of law.
- be mindful of their duties as an officer of the court, to present matters and act in a manner which demonstrates full regard to those duties.

Prosecutors must not:

- misuse their official position, for example by using information acquired in the course of their official duties to further their private interests or those of others.
- accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgement or integrity.
- disclose official information without authority (this duty continues to apply after they leave the employ of the Prosecution Service).

#### **Honesty and Fairness**

Prosecutors must:

- set out the facts and relevant issues truthfully, and correct any errors or omissions as soon as possible.
- use resources only for the authorised public purposes for which they are provided.

- carry out their responsibilities in a way that is fair, just and equitable.
- demonstrate a clear commitment to equality and diversity.

Prosecutors must not:

- deceive or knowingly mislead the Governor, Legislative Assembly or Executive Council or others.
- be influenced by improper pressures from others or the prospect of personal gain (or create the impression that they might be so influenced).
- act in a way that unjustifiably favours or discriminates against particular individuals or interests (and they must take steps to avoid any perception of such discrimination).

## **Objectivity and Independence**

Prosecutors must:

- provide information and advice, including advice to the Governor, Legislative Assembly and Executive Council, on the basis of the evidence, and accurately present the options and facts.
- take decisions on the merits of the case.
- take due account of expert and professional advice.

Prosecutors must not:

- ignore inconvenient facts or relevant considerations when providing advice or making decisions.
- frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions.

## **Political Impartiality**

Prosecutors must:

- serve the Falkland Islands Government, whatever its political persuasion, to the best of their ability in a way which maintains political impartiality and is in line with the requirements of the Code for Prosecutors, no matter what their own political beliefs are.
- act in a way which deserves and retains the confidence of the Governor, Legislative Assembly and Executive Council, while at the same time ensuring that they will be able to establish the same relationship with those whom they may be required to serve in some future government.
- comply with any restrictions that have been laid down on their political activities.

Prosecutors must not:

- act in a way that is determined by personal political considerations, or use official resources for personal political purposes.
- allow their personal political views to determine any advice they give or their actions.



## Annex Two

# International Association of Prosecutors Standards

### **International Association of Prosecutors Standards of Professional Responsibility and Statement of the essential duties and rights of Prosecutors.**

WHEREAS the objects of the International Association of Prosecutors are set out in Article 2.3 of its Constitution and include the promotion of fair, effective, impartial and efficient prosecution of criminal offences, and the promotion of high standards and principles in the administration of criminal justice;

WHEREAS the United Nations, at its Eighth Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba in 1990, adopted Guidelines on the Role of Prosecutors;

WHEREAS the community of nations has declared the rights and freedoms of all persons in the United Nations Universal Declaration of Human Rights and subsequent international covenants, conventions and other instruments;

WHEREAS the public need to have confidence in the integrity of the criminal justice system;

WHEREAS all prosecutors play a crucial role in the administration of criminal justice;

WHEREAS the degree of involvement, if any, of prosecutors at the investigative stage varies from one jurisdiction to another;

WHEREAS the exercise of prosecutorial discretion is a grave and serious responsibility;

AND WHEREAS such exercise 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;

THEREFORE the International Association of Prosecutors adopts the following as a statement of standards of professional conduct for all prosecutors and of their essential duties and rights:

#### **Professional Conduct**

Prosecutors shall:

- at all times maintain the honour and dignity of their profession;
- always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- at all times exercise the highest standards of integrity and care;
- keep themselves well-informed and abreast of relevant legal developments;
- strive to be, and to be seen to be, consistent, independent and impartial;

- always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- always serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights.

## **Independence**

The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

## **Impartiality**

Prosecutors shall perform their duties without fear, favour or prejudice.

In particular they shall:

- carry out their functions impartially;
- remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest; act with objectivity;
- have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

## **Role in criminal proceedings**

Prosecutors shall perform their duties fairly, consistently and expeditiously.

Prosecutors shall perform an active role in criminal proceedings as follows:

- where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;
- when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
- when giving advice, they will take care to remain impartial and objective;
- in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;

- throughout the course of the proceedings, the case will be firmly but fairly prosecuted, and not beyond what is indicated by the evidence;
- when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

Prosecutors shall, furthermore:

- preserve professional confidentiality;
- in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights;
- and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;
- safeguard the rights of the accused in co-operation with the court and other relevant agencies;
- disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;
- examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
- refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;
- seek to ensure that appropriate action is taken against those responsible for using such methods;
- in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

### **Co-operation**

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

- co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally;
- and render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

### **Empowerment**

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

- to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
- together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;

- to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;
- to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
- to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
- 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;
- to objective evaluation and decisions in disciplinary hearings;
- to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status;
- and to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

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