

# **THE PROSECUTORS' CONVENTION 2009**

## **PURPOSE OF THE PROSECUTORS' CONVENTION**

- 1.1** The Prosecutors' Convention sets out the responsibilities of prosecutors where a suspect's conduct could be dealt with by criminal or civil/regulatory sanctions and/or where more than one prosecuting authority and investigating body share the power to take some action.
- 1.2** In such cases, depending on the extent to which more than one authority is pursuing or wishes to pursue an investigation, decisions will have to be taken about whether and how investigations should proceed and as to the choice of criminal charges or civil or regulatory sanction.
- 1.3** The aim is to ensure that cases are conducted in a way that is just and which best serves the overall public interest, so that the public can have confidence in the outcome. Through the Convention Prosecuting Authorities commit themselves to:
- **Actively managing the interface with other prosecutors and investigators from the earliest possible stage;**
  - **Working together in a co-ordinated manner to ensure that decisions in individual cases are taken promptly and that they serve the overall public interest, having regard to the nature and seriousness of the harm and offences alleged; and**
  - **Enforcing the law in a fair and effective way.**

## **THE PROSECUTORS' RESPONSIBILITIES ARE TO**

- 2.1** Consider the nature of the conduct being investigated and to identify as early as possible any interests shared with another investigative authority, prosecutor or regulatory body. Prosecutors are likely to be advising from an early stage in an investigation and are in a good position to identify any links that have not already been made.
- 2.2** Establish the nature or scope of any overlapping interest in the case and any relevant criteria for decisions. The aim is to make an informed decision about the most appropriate means of proceeding in the public interest.
- 2.3** Establish effective lines of communication from an early stage as the best way to secure co-ordination.

2.4.1 Work together to develop an agreed case management strategy; and to co-ordinate decisions:

- Check whether there is an existing operational MOU or case plan between the relevant agencies. Consider drawing up such an MOU for the individual case once the case strategy is agreed.
- Where investigations are proceeding at different rates, prosecutors should advise on the modification of investigation plans to improve the prospects of co-ordinated decisions and efficiency; and to ensure that significant decisions are taken with due regard to the potential impact on any other investigation or prosecution.
- Where prosecution is or may be needed in the public interest, to ensure that the right charges are brought and that the right prosecuting authority or prosecuting authorities proceed in a way that best reflects the nature and seriousness of the offences.
- Where action falling short of prosecution by one or more authorities may be considered more appropriate, applying established policies and principles, prosecutors will encourage agreement about which civil or regulatory orders or sanctions are warranted and who is best placed to pursue them.
- Prosecutors will ensure that jointly conducted or related criminal proceedings are pursued fairly, complying with disclosure (including third party disclosure) obligations and ensuring that specialist advice is obtained where this could improve the conduct or presentation of the case; and
- Prosecutors will work with colleagues to co-ordinate the announcement of decisions to individuals and to the public.

## **FACTORS FOR EARLY CONSIDERATION**

3.1 Subject to the application of more detailed case management protocols (such as those referred to in section 4) preliminary discussions should focus on the following as a minimum:

- The nature and focus of any parallel interest in the conduct under investigation; the powers and sanctions that may be applicable and any decision making criteria;
- The stage that any investigation or investigations have reached;
- Whether any investigation or prosecution could or should be jointly conducted. If a joint investigation is not possible, the question will be how best to co-ordinate related investigations and prosecutions;

- Which agency is best placed to take lead responsibility for any prosecution? This may depend on a variety of factors including the nature of the most serious offences and where the most relevant expertise lies;
- The timing of any proceedings;
- Mechanisms for preserving and sharing evidence and information; and any relevant gateways or legal provisions;
- The need for specialist or expert prosecutors' advice;
- Arrangements for the service of evidence and the retention and disclosure of unused material to ensure that disclosure obligations are fulfilled, subject to any legal constraints; and
- Any other aspect of case management that is relevant in the particular case.
- In circumstances where prosecution by more than one authority cannot be avoided or where an investigation results in a joint or related prosecution, the agencies involved should co-ordinate the communication of their decisions to individual suspects and any victims; as well as co-ordinating any public announcements about prosecution decisions, preferably by way of a joint press statement.

## **EFFECTIVE OPERATION OF THE CONVENTION**

4.1 The Head of each Prosecuting Authority or Team will be, or will name, the Prosecutors' Convention Senior Responsible Officer for that authority. The Prosecutors' Convention SRO will be responsible for:

- Providing the initial point of contact for inter agency co-ordination purposes;
- Ensuring that there is an identified and accountable line of effective communication between each agency, to include regular structured contacts and oversight of the case management strategy.
- Monitoring the way in which the Convention is given effect.
- Taking prompt action to resolve any difficulties or disagreements that arise as to how the case should be best be approached. The expectation is that problems will be resolved by the prosecuting authorities, where necessary at the level of the Head of the relevant authorities. The Attorney General's Office is available to assist by giving guidance where this would be helpful.

4.2 The Prosecutors' Convention SRO will ensure that prosecutors are aware of the Convention; that they have easy access to it; and will give any advice and guidance they may need from the SRO in individual cases.

4.3 The SROs will be responsible for ensuring that their authorities and prosecutors as a whole learn from experience in conducting individual cases and use it to inform and improve future case handling, whether a case illustrates the benefits of good practice or whether problems have been faced and overcome.

4.4 Where they consider it advantageous or desirable, prosecuting authorities (including investigators and others) may develop separate protocols to deal with specific areas of overlap in working practice, outlining in more detail how the aims, objectives and principles of the Convention are to be fulfilled in that context.

4.5 Existing supplementary protocols include:

- Work-Related Deaths Protocol (Crown Prosecution Service, Office of Rail Regulation, British Transport Police, ACPO, Health and Safety Executive, Local Government Association)
- Guidelines on the Investigation of Cases of Interest or Concern to the Financial Services Authority or other Prosecuting Authorities and Investigating Agencies (FSA, Serious Fraud Office, Department for Business, Enterprise and Regulatory Reform, CPS, ACPO, Crown Office, DPP (NI), ACPO Scotland).
- Third party disclosure protocol (CPS, Revenue and Customs Prosecutions Office, SFO, ACPO and Her Majesty's Revenue and Customs).
- Arrangements between civilian and military prosecuting and investigating authorities governing how they will work together, decide issues of jurisdiction and where necessary decide how an allegation will be investigated. Some of these protocols are currently being revised in the light of legislative change.

4.6 Signatories will encourage associated prosecuting authorities and investigators to abide by the spirit of this Convention.

## **PARTIES**

5.1 The parties to this Convention are those prosecuting authorities who have adopted it by signing the attached schedule.

## **Schedule to the Prosecutors' Convention**

1. Attorney General's Office
2. Civil Aviation Authority
3. Crown Prosecution Service
4. Department for Business, Enterprise and Regulatory Reform
5. Department for the Environment, Food and Rural Affairs
6. Department for Work and Pensions
7. Environment Agency
8. Financial Services Authority
9. Food Standards Agency
10. Gambling Commission
11. Health and Safety Executive
12. Maritime and Coastguard Agency
13. Office of Fair Trading
14. Office of Rail Regulation
15. Revenue and Customs Prosecutions Office
16. Serious Fraud Office
17. Service Prosecuting Authority