

## THE ROLE OF THE PROSECUTOR IN POLICE INVESTIGATIONS

1. The Director's Handbook stated at the relevant time:-

“In respect of cases reportable by the Chief Constable to the Director it is the function of the Chief Constable and members of the police force to investigate alleged or suspected offences and to furnish relevant facts and information to the Director. It is the function of the Director with a view to the initiation or continuation of criminal proceedings, to consider the facts and information brought to his notice by the Chief Constable, and where the Director thinks proper to initiate, undertake and carry on criminal proceedings.

The broad and important principle is that investigation is for the Chief Constable, not for the Director. The Director may request an investigation, and he may draw attention to particular aspects of an investigation which will be important for the purposes of a prosecution. The conduct of an investigation is however for the Chief Constable and the Director cannot control the manner in which an investigation is conducted by police.

Involvement of members of the Director's staff in investigations would lessen or appear to lessen the capacity of the Director and his staff to form the properly impartial judgment which is required in the decision whether or not to prosecute. Public confidence in the independence of the Director and the impartiality of decisions taken by him or by staff of his Department will best be created and maintained by preserving and emphasising the clear separation of the functions of the Chief Constable and the Director. Staff must at all times preserve and be seen to preserve their independence of the police as of other agencies which might be thought to influence their decisions. The relationship between police and prosecuting authority must be and be seen to be a professional one.”

2. Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972 provides:

“It shall be the duty of the Chief Constable, from time to time, to furnish to the Director facts and information with respect to -

- (a) indictable offences alleged to have been committed against the law of Northern Ireland;
- (b) such other alleged offences as the Director may specify;

and at the request of the Director, to ascertain and furnish to the Director information regarding any matter which may appear to the Director to require investigation on the ground that it may involve an offence against the law of Northern Ireland or information which may appear to the Director to be necessary for the discharge of his functions under this Order.”

3. On 28 July 1978 the Director wrote to the Assistant Chief Constable (Crime) of the Royal Ulster Constabulary:-

“It is clearly in the interests of everyone, but particularly police and the prosecuting authority, that investigations which are undertaken by the police should be directed towards relevant issues and matters. Accordingly, if there is any doubt as to what issues and matters are the relevant ones then police should, at or near the outset of their investigations, consult with the Director’s Office. Consultation with the Director’s Office should therefore be arranged at an early stage in any case in which the issues are not clear or there is any room for substantial doubt as to the course which the investigation ought to pursue”.

4. The RUC Code, section 31 para 5 provided at the relevant time:-

“(1) In complex or obscure investigations where the issues are not clear or there is doubt as to the course the investigation ought to pursue the person in charge of a case should at an early stage of his enquiries arrange (via RUC HQ) for consultation with the Office of the Director of Public Prosecutions.

(2) This instruction applies to all cases where a conference with the Director's Office would assist in reducing or eliminating unnecessary police enquiries."

5. The Director's Handbook also stated:-

"What must be noted is that the arrangements for police to consult staff in the Director's Office exist for any case in which the issues are not clear or there is any room for substantial doubt as to the course which a police investigation ought to pursue. The purpose is to reduce or eliminate the possibility of unnecessary police enquiries being undertaken ....."

6. The Review of the Criminal Justice System in Northern Ireland published in 2000 recommended that the investigative functions should remain the responsibility of the police and not be subject to external supervision. It stated:-

"Against the background of Northern Ireland, having a prosecution service that is objective in its approach and able to take full account of the rights of the suspect in accordance with human rights norms might not easily sit with it being given a supervisory or participatory role in investigations. We share the view of the MacDermott Working Party that introduced the Scottish model of prosecutorial supervision of investigation into a very different criminal justice system and culture would constitute a fundamental change, which is not necessary and might well not work or produce the desired outcomes.

We recommend that the investigative function should remain the responsibility of the police and not be subject to external supervision .....

On the basis of submissions made to us, it was apparent that some saw a role for the prosecutor in ensuring a full and rigorous investigation of all cases no matter what the circumstances or who might be involved. As noted above, Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972 already places a duty on the Chief Constable to respond to a request from the DPP for information on any

matter requiring investigation on the ground that it may involve a criminal offence and to provide the DPP with any information necessary for the discharge of his functions. We recommend that the powers contained in Article 6(3) of the Prosecution of Offences (Northern Ireland) Order 1972 be retained and that the head of the prosecution service should make clear publicly the service's ability and determination to prompt an investigation by the police of facts that come into its possession, if these appear to constitute allegations of the commission of a criminal offence, and to request further information from the police to assist it in coming to a decision on whether or not to prosecute.

This last recommendation would underline the central point that, while it is no part of the prosecutor's function to supervise investigations, it is the prosecutor's concern to prosecute crime and when allegations of criminal offences come into his or her domain, the prosecutor has a duty to see that such allegations are investigated."

7. The Justice Oversight Commissioner reported in his Sixth Report:-

"The Review Group gave careful thought to the question whether the Prosecution Service should have a supervisory role in relation to police investigation. The Group decided in principle that it should not and in Recommendation 18 the Review states: We recommend that the investigative function should remain the responsibility of the police and not be subject to external supervision [para 4.130]. The principle of Recommendation 18 has been accepted and recognised in practice ....

Article 6(3) relates to the duty on the Chief Constable to respond to a request for information from the Director of Public Prosecutions on matters involving possible prosecution. As was noted in the Second Report the powers contained in Article 6(3) were retained but they were replicated by section 35(5) of the Justice (Northern Ireland) Act 2002. Most of the Prosecution of Offences (Northern Ireland) Order 1972 was subsequently repealed, including Article 6(3). The position is now regulated by section 35 of the Justice (Northern Ireland)

Act 2002 which was commenced on 13 June 2005 by the Justice (Northern Ireland) Act 2002 (Commencement No 9 and Transitional Provisions) Order 2005. As was noted in the Fourth Report, paragraphs 3.1.4 and 3.1.5 of the Prosecution Service's Code of Practice contain a sufficiently clear public statement of the service's ability and determination to prompt an investigation and paragraph 3.1.3 refers to their requesting further information in order to take a fully informed prosecution decision.....”

8. The present position is contained in section 31(5) of the Justice (Northern Ireland) Act 2002. This provides:

“The Director must give to police forces such advice as appears to him appropriate on matters relating to the prosecution of offences.”

A number of points arise. Firstly, it was considered necessary to take statutory provision . That provision was drafted in terms which limited it to “the prosecution of offences”. This is consistent with the traditional stance which prosecutors have adopted.

9. In summary, the position at the relevant time is as follows:

- The Chief Constable is responsible for the investigation and reporting of offences
- The Director is responsible for the prosecution of offences
- The separation of responsibility is an over-arching precept that has existed since the creation of the Department of Public Prosecutions in 1972.
- The Director will consult with police to help police avoid making unnecessary enquiries or point police to obtaining information or following lines of inquiry which is necessary to take a fully informed prosecution decision.

- None of these steps can be characterised as involvement in or directing or supervising a police investigation
- The Director does not have executive authority over police officers
- Involvement of the Director in police investigations would not assist public confidence in his independence or in the impartiality of his decisions

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