



**Public
Prosecution
Service**

Independent
Fair
Effective

Policy for Prosecuting Sexual Offences

February 2022 – draft for consultation

**PLEASE NOTE THAT THIS POLICY DOCUMENT
CONTAINS REFERENCE TO SEXUAL OFFENCES
AND DESCRIPTIONS OF INTIMATE AND SENSITIVE
MATTERS THAT SOME READERS MAY FIND
DISTRESSING**

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1. Introduction

- 1.1 Sexual offences including rape are amongst the most serious crimes that the criminal system has to deal with. The Public Prosecution Service (PPS) recognises the huge impact that sexual offences can have on victims, their families and wider society. We acknowledge the courage that it takes for victims to speak out about such offences. We are committed to ensuring that victims are treated with dignity and respect. We understand that victims are often very deeply traumatised by their experiences. This PPS Policy for Prosecuting Sexual Offences provides guidance to the public about how we make these decisions and the assistance given to victims and witnesses in these difficult cases.
- 1.2 The PPS is committed to dealing with such offences in a fair, effective, sensitive and compassionate manner and without avoidable delay in order to minimise any adverse impact that the process may have on victims and witnesses.
- 1.3 Although each case must be considered individually, there are general principles that apply in every case. Prosecutors must be fair, independent and impartial. They must not allow any personal views about gender, age, disability, religion or belief, ethnic or national origin, political views or sexual orientation of the suspect, victim or a witness to improperly influence their decision. They must not be influenced 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.
- 1.4 The PPS, in exercising its functions, will ensure that it complies with the binding obligations of international law ratified by the UK, (so long as these do not conflict with domestic law). It will comply also with the Convention rights incorporated into domestic law by the Human Rights Act 1998, the UN Declaration of Basic Principles of Justice for Victims of Crime (and Abuse of Power), relevant EU Directives and Conventions and relevant case law. These commitments apply not just to the rights of victims, witnesses but to accused persons also.
- 1.5 Prosecutors will have regard to the [Victim Charter](#) which sets out the entitlements and services that victims of crime in Northern Ireland can expect to receive from all service providers within the criminal justice system. In general terms, the Charter provides victims with an entitlement to be treated fairly, professionally, and with dignity and respect; to be understood and to understand in their first language, if necessary; to be updated at key stages

and given relevant information; to have their needs considered by service providers; to be told about available support and the opportunity to bring someone with them to give moral support; to apply to Compensation Services for compensation if they were a victim of a crime of violence; to ask for a court familiarisation visit and to be kept separate from the accused as much as possible at court; to have the opportunity to tell the court how the crime has harmed them by means of a Victim Personal Statement; to ask to be told how the offender's sentence will be managed and to let service providers know if they are unhappy with any aspect of the service provided to them.

- 1.6 Prosecutors will also follow legal guidance provided by the Director of Public Prosecutions for Northern Ireland and the Attorney General for Northern Ireland from time to time, including [Human Rights Guidance issued under Section 8 of the Justice \(Northern Ireland\) Act 2004](#).

The Role of the Public Prosecution Service

- 1.7 The PPS is the principal prosecuting authority in Northern Ireland. The PPS has two basic statutory functions – to decide whether to prosecute and where we do prosecute to take the cases to court. We also provide prosecutorial advice to police when requested. We make prosecution decisions in cases investigated by the police in Northern Ireland. We also consider cases investigated by other statutory authorities, such as HM Revenue and Customs. We provide an independent, fair and effective prosecution service for the people of Northern Ireland. We act impartially and in the interests of justice at all times, applying the highest professional standards and treating everyone fairly and with respect.
- 1.8 The Serious Crime Unit deals with a range of the most serious offences including murder, manslaughter, rape and other serious sexual offences, modern slavery, human trafficking and related offences. This dedicated team is uniquely placed to understand the issues that such cases present, and to deal sensitively with victims. The unit is led by an Assistant Director and has a specialist team of Senior Public Prosecutors, Public Prosecutors and a Detective Sergeant from the PSNI who acts as the dedicated PSNI/ PPS Liaison Officer for the unit. The unit is based in PPS Headquarters in Belfast. You can read more about the [wider role](#) and [structure](#) of the PPS on our website.
- 1.9 The police are responsible for investigating sexual crime and for gathering the evidence and reporting the matter to the PPS. It is then for the PPS to decide whether a prosecution should be initiated by applying the Test for Prosecution (which is explained in section 5). Prosecutors may also provide prosecutorial advice to police, for example around what constitutes a reasonable line of enquiry.

- 1.10 Decisions in cases involving serious sexual offences are taken by Senior Public Prosecutors who are qualified lawyers of appropriate seniority and experience.
- 1.11 The PPS may also instruct barristers in independent practice, who are also known as Counsel, to advise and to prosecute cases at court on its behalf. The PPS will ensure that any barrister instructed in a case involving a sexual offence is experienced and skilled in the conduct of these cases and every effort will be made for the same barrister to deal with the case throughout the trial process.
- 1.12 Further information about the PPS, decision-making and how prosecutions are conducted can be found in the [PPS Code for Prosecutors](#).
- 1.13 The PPS is also working with the Gillen Review Implementation Team to give effect to the recommendations made in the [Report into the law and procedures in serious sexual offences in Northern Ireland](#) delivered by Sir John Gillen in April 2019. These recommendations aim to address issues such as the under-reporting of sexual crime, the length of the trial process and to educate the public on the impact of sexual crime.

2. Sexual offences

- 2.1 There are a range of crimes that can be considered sexual offences such as rape, other forms of sexual assault, child sexual abuse or grooming, and crimes that exploit others for a sexual purpose, whether in person or online.
- 2.2 Most sexual offences are set out in [The Sexual Offences \(Northern Ireland\) Order 2008](#) and include, for example, rape, assault by penetration, sexual assault and causing a person to engage in sexual activity. The order also covers offences specifically against children, situations where offences take place as a result of an abuse of a position of trust, and offences which take place within a family. Some of the most common offences can be found at Annex 2.
- 2.3 A basic question that needs to be answered in all sexual offence cases is whether the activity is sexual. Article 4 of the Order states that penetration, touching or any other activity is sexual if a reasonable person would consider that its nature is sexual or because of the circumstances or the purpose of the perpetrator, or both, it is sexual.

Consent

- 2.4 Consent is a fundamental issue in rape and sexual assault cases because the prosecution is required to prove to the court that the victim did not consent and that the suspect did not have a reasonable belief that the victim was consenting.
- 2.5 Consent is defined in article 3 of the [Sexual offences \(Northern Ireland\) Order 2008](#). A person consents if he or she agrees by choice, and has the freedom and capacity to make that choice. The essence of this definition is the agreement by choice. The law does not require the victim to have resisted physically. Consent to sexual activity may be given to one sort of activity but not another. Consent can be withdrawn at any time during sexual activity.
- 2.6 Whilst the question of whether the victim consented is for a jury to decide, the prosecutor will take into account evidence of all the circumstances surrounding the offence in deciding whether the Test for Prosecution is met (see section 5).

- 2.7 The defendant must show that his or her belief in consent was reasonable. In deciding whether the belief of the defendant was reasonable, a jury must have regard to all the circumstances, including any steps he or she has taken to ascertain whether the victim has consented. In certain circumstances, it is presumed that the victim did not consent to sexual activity and the defendant did not reasonably believe that the victim consented, unless he or she can show otherwise. Examples of circumstances where the presumption applies are where the victim was unconscious, drugged, abducted or subject to threats or fear of serious harm.
- 2.8 When it comes to other offences, such as assaults committed against children, there is no requirement for the prosecution to prove an absence of consent. Where the victim is under the age of 13, it is only necessary to prove that the act itself took place and the age of the alleged victim. If the victim is between 13 and 15 then the prosecution must also prove that the defendant did not reasonably believe that the victim was 16 or over.”

Non-Recent Offences

- 2.9 Offences which took place before The Sexual Offences (Northern Ireland) Order 2008 came into force on 2 February 2009 are referred to as ‘non-recent’ offences. In some cases received by the PPS there can be a substantial period of time between the date of the alleged offence and the date of the first complaint. This can often arise in cases of child sexual abuse where it is not until many years have elapsed that the victim has the necessary confidence to report the abuse. Some of these offences may also have taken place in religious or educational institutions or in domestic settings. We understand that there can be many reasons why a victim will delay making a complaint and we have extensive experience of dealing with cases of this nature. There can sometimes be particular difficulties associated with prosecuting non-recent cases owing to the passage of time, such as the loss of potential witnesses, records and other potentially supportive documentation. Whilst the absence of such evidence can in certain circumstances present significant difficulties in establishing that the Test for Prosecution is met, the passage of time does not prevent the effective prosecution of sexual offences and charges under the legislation in force at the relevant time can be brought. Victims should never feel that they have left it too late to come forward and report a crime.

Sexual Offences Myths and Stereotypes

- 2.10 Sexual offences are some of the most complex offences the PPS and the wider criminal justice system deals with. Despite many positive changes in society regarding attitudes towards sexual crime, we recognise that some misconceptions, myths and stereotypes surrounding sexual offences remain. Our specialist prosecutors are trained to recognise and challenge these myths and stereotypes, which have no place in our decision making. We will also

robustly challenge such attitudes in the courtroom and in any other place and will ensure our prosecutors and counsel are aware of the need to do so. The PPS believes that there is no typical rape or sexual assault, no typical offender or typical victim. Sexual crime can take place in almost any circumstance. Although it is most commonly perpetrated, although not exclusively, by men against women, it can happen between a variety of people across all communities and victims react in different ways.

2.11 Examples of such myths include:

- Sexual crime is always violent or involves physical force;
- Sexual crime occurs between strangers;
- If the victim did not scream, fight or get injured, it was not an offence;
- Sex workers cannot be raped or sexually assaulted;
- A victim cannot be raped or sexually assaulted by their spouse or partner;
- If a victim had previously consented to sexual activity with the accused then the victim must also have consented on this occasion;
- If a particular culture condones the activity then it is not an offence;
- Only gay men rape or sexually assault other men / only gay men are raped or sexually assaulted;
- A victim can provoke a sexual offence by their dress or behaviour;
- If the victim sent sexual images or messages prior to meeting the accused, then he/she was also consenting to sexual activity;
- If a victim met the accused on a particular dating application then consent to sexual activity is implied;
- False allegations of sexual crimes are rife;
- Victims allege that they have been the victim of a sexual offence when they regret a sexual encounter or want revenge.

These are all false and prosecutors will challenge these misconceptions wherever they arise.

Domestic Abuse

2.12 The PPS recognises that many sexual offences are committed in a domestic or familial setting and may occur alongside domestic violence and abuse. The PPS takes cases involving domestic violence and abuse extremely seriously. We work with our partners and stakeholders to continuously improve the way in which these cases are dealt with in the criminal justice system, and the experience of victims. Where a case involves allegations of serious sexual offences and domestic violence, all matters will be dealt by the Serious Crime Unit.

Young Victims and Offenders

- 2.13 Sexual offences cases involving children and young people, either as victims or suspects, are often some of the most distressing cases we deal. They present their own challenges in addition to those that come with other type of sexual offences. Given the age and vulnerability of both young victims and suspects, we have duties and responsibilities to all parties. The PPS also recognises that young people who offend may themselves have been victims of abuse.
- 2.14 [The Sexual Offences \(Northern Ireland\) Order 2008](#) protects all children from engaging in sexual activity at an early age irrespective of whether or not a person under 16 may have the necessary understanding of sexual activity to give ostensible consent. The public interest, however, may not always require prosecution of children who engage in sexual activity and who are of the same age or similar age and understanding, provided that the activity is 'consensual' and that there are no aggravating features such as coercion, exploitation or threatening activity. In cases of this nature, resolution may be best achieved by providing education for the child and providing them with and their families with access to advisory and counselling services.
- 2.15 When sexual crimes are alleged to have been committed by young people, prosecutors are required to balance the strong public interest factors in favour of prosecution of such crimes with our obligations to consider the best interests of the child who has been accused of this type of offending. The Code for Prosecutors upholds the best interests and welfare of children and young people and considers their welfare in determining whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.
- 2.16 The PPS is also aware of the increase in the incidence of sexual communication (sometimes called 'sexting') and the sharing of sexual images among and between young people and will not seek to criminalise this behaviour in circumstances where there is ostensible consent and no aggravating features are present. It may, however, be necessary for prosecutors to work closely with the police to seek relevant information from other agencies, such as social services, before reaching a decision in these cases. Referrals may also be made to the Youth Justice Agency who can provide education and support to young people engaged in these activities.
- 2.17 Further information about the prosecution of young people can be found in the [PPS's Guidelines for the Prosecution of Young People](#).

Child Sexual Exploitation

- 2.18 The PPS recognises a form of childhood sexual abuse known as Child Sexual Exploitation which occurs when a young person is encouraged or forced to take part in sexual activity in exchange for presents, money, alcohol or for attention.
- 2.19 Offenders who commit Child Sexual Exploitation often groom their victims to gain their trust and it can, therefore, be some time before a child may become that they have been or are being exploited in this way.
- 2.20 We are aware that Child Sexual Exploitation can happen to children from all backgrounds and communities, to both boys and girls and that it can happen in person or online.
- 2.21 The PPS is engaged with government departments and with other criminal justice agencies to help to identify children who are at risk or have been subjected to Child Sexual Exploitation and we share a role in discharging the government's obligation to protect children from sexual harm.
- 2.22 The PPS also seeks to reflect how factors related to Child Sexual Exploitation and grooming can affect prosecution decisions.

3. How we make prosecution decisions

The Test for Prosecution

- 3.1 It is the responsibility of the police to investigate alleged offences and to gather evidence about what has occurred. When the police have obtained evidence that an identifiable individual may have committed an offence, they send a file to the PPS to decide whether or not to prosecute and for what offences. These are often difficult decisions for which the PPS is solely responsible.
- 3.2 A prosecutor will then carefully consider the evidence contained in the investigation file and decide whether that evidence is sufficient to provide a reasonable prospect of conviction and, if it is, whether prosecution is in the public interest. This is known as the Test for Prosecution. In some cases, the prosecutor will wish to consult with the victim before taking a decision or may seek the advice of experienced counsel. It is important to remember that the PPS is not the legal advisor of the victims of crime nor does it act as their legal advisor; it is an independent prosecuting authority which is required to have regard to the overall public interest. Victims can seek the support of VSNI and through them the Sexual Offence Legal Advisors (who can be contacted by emailing Sola@victimsupportni.org.uk) if they wish to get their own advice, or they can approach a solicitor.
- 3.3 Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. This is a two stage test as follows:-
- i. the Evidential Test; the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction; and
 - ii. the Public Interest Test; prosecution is required in the public interest.
- 3.4 The Public Prosecutor must analyse and evaluate all of the material submitted in a thorough and critical manner. The Evidential Test must be passed before the Public Interest Test can be considered. Each of these Tests must be

separately considered and passed before a decision to prosecute can be taken. The PPS cannot take a case to court simply 'to let the court decide' or 'to let a victim have their day in court'. Prosecutors must be satisfied the Test for Prosecution is met and if it is not they must issue a decision of no prosecution no matter how disappointing this will be for a victim.

The Evidential Test

- 3.5 Public prosecutors determine whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge.
- 3.6 A reasonable prospect of conviction exists if, in relation to an identifiable suspect, there is credible evidence which the prosecution can present to a court and upon which an impartial jury (or other tribunal), properly directed in accordance with the law, could reasonably be expected to find proved beyond reasonable doubt that the suspect had committed a criminal offence. This is different to the test which the court will apply, which is deciding whether the offence is proved beyond reasonable doubt i.e. it must be sure that the defendant is guilty before it can convict. It is necessary that each element of this definition is fully examined when considering the evidential test for each particular case. Further details in respect of the terms used in this paragraph are included at Annex 2.
- 3.7 Police will gather all available evidence and report the case to the PPS. The Public Prosecutor will consider the evidence carefully and make a decision as quickly as possible. The PPS will also try to make sure that cases progress through the court without unnecessary delay.

Applying the Evidential Test to Sexual Offences

- 3.8 In many instances, sexual offences take place in circumstances where the victim is the only person who can provide direct evidence of what took place. Unless the defendant pleads guilty, the victim will usually have to give evidence in court. Where there is conflicting evidence or inconsistencies in evidence, the prosecutor has a duty to assess the credibility and reliability of the victim's evidence. This will always be done in a careful and sensitive way, using all the information available to the prosecutor and it may give rise to disclosure issues (see paragraph 6 below).
- 3.9 During their investigation, police will always look for corroboration or supporting evidence, particularly any medical or scientific evidence, but it is not essential and a prosecution can still go ahead without it.
- 3.10 A case may not be able to proceed, not because the prosecutor does not believe the victim, but because an assessment of the strength of all the

available evidence leads to the conclusion that there is not a reasonable prospect of conviction and, therefore, the Test for Prosecution is not met. A decision not to prosecute or not proceed with a case should not be seen by a victim as a judgement on their truthfulness but as simply the application of the Test.

The Public Interest Test

- 3.11 If a case does pass the Evidential Test, the Public Prosecutor must decide if a prosecution is required in the public interest.
- 3.12 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration in each individual case. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. An example of this is contained in paragraph 4 above in relation to incidents involving young victims and offenders.
- 3.13 When considering the Public Interest Test, one of the factors Public Prosecutors should always take into account is the consequences for the victim of the decision whether or not to prosecute and any views expressed by the victim.
- 3.14 If the evidential test is passed, whilst each case must be considered on its own merits and particular circumstances, sexual offences are considered so serious that prosecution will generally be required in the public interest.

Reasons for No Prosecution decisions

- 3.15 We understand how disappointing it can be for a victim to be told that after careful consideration, we have taken a decision not to prosecute. We make every effort to ensure that communication with victims and witnesses in cases of sexual violence is timely, sensitive and clear. In every case involving sexual offences, where a decision has been taken not to prosecute, the prosecutor will write to the victim explaining in detail the reasons for their decision. The prosecutor will also invite the victim to request a telephone conversation or a meeting with them for further explanation to be provided if the victim considers that this would be helpful. We will always try to explain our reasons for a no prosecution decision in a compassionate, sensitive and easily understood manner.

The burden and standard of proof

- 3.16 If a case passes the Evidential and Public Interest Tests and proceeds to trial, it is for the prosecution to prove the case beyond a reasonable doubt. This means the jury must be sure, or firmly convinced, of the defendant's guilt.
- 3.17 This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Victims should not assume that a defendant has been acquitted because their evidence has not been believed.
- 3.18 You can find more information on the Test for Prosecution in the [PPS Code for Prosecutors](#) on our website.

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4. Disclosure

- 4.1 Disclosure is the name given to the legal duty on the prosecution to provide the defence representatives with certain material gathered during the police investigation. This material is part of the evidence relied on by the prosecution. The prosecution must do this even though it can make it more difficult to prove the case. Broadly speaking, there is a duty to disclose to the defence any material that might undermine the prosecution case or assist the defence case. It is also important to note that this material may include evidence that we can use to help with a prosecution so it is important that it is considered when relevant. Such material may include information held by third parties such as health professionals or social services and can include medical records and counselling notes. Digital data such as mobile telephone messages or social media exchanges may also include material that needs to be disclosed. We recognise the individual's right to privacy and we work closely with the police to ensure that access to any personal information is proportionate. Prosecutors can assist the police with what would constitute a reasonable line of enquiry in respect of such material.
- 4.2 Police will usually request a victim's consent to the release of these documents during the investigation stage. The victim should be invited to sign a form of consent which will explain the purpose for which the material is sought and how it will be handled upon receipt. The victim is not required to consent to the release of the material but, if they do not consent and there is a prosecution, the defence may later apply to the court for access to it. If consent is not forthcoming, then this may be a relevant factor in deciding whether the Test for Prosecution is met. The victim is entitled to make representations to the court to take into consideration in making its ruling and can seek the assistance of a SOLA or a solicitor to do so.
- 4.3 If material is obtained by the police, it will initially be shared with the PPS only. In the event of a prosecution the prosecutor will apply the disclosure test to the material. Material will not be handed over to the defence automatically and only those parts of the material as may reasonably be considered capable of undermining the prosecution case or assisting the defence case will fall to be disclosed to the defence. In reaching any disclosure decisions the complainant's privacy rights will be taken into consideration. Further

information on the subject of disclosure is contained in [Case Management in the Crown Court, Practice Direction 2/2019](#).

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5. Consultation with victims

- 5.1 In some cases involving sexual offences, the prosecutor may seek to consult with the victim before taking a decision. A barrister, sometimes called Counsel, who has been instructed by the PPS, may also be present and these consultations will be organised and conducted in a professional manner with sensitivity, courtesy and understanding.
- 5.2 The consultation will be held, where possible, in a properly equipped consultation room and at a time and venue taking into account the comfort and convenience of the victim or witness. Where circumstances require these consultations can be conducted remotely by video link or by telephone.
- 5.3 A police officer will usually remain present throughout the consultation.
- 5.4 The prosecutor will consider whether or not it is appropriate for a parent or guardian to accompany a child witness. This will depend on the circumstances of the case, including an assessment of whether the child is likely to feel supported or inhibited in the presence of a parent and whether the parent is also likely to be a witness in the case.
- 5.5 A victim or witness may wish to have a relative or friend who is not involved in the proceedings present with them for support.
- 5.6 A victim or witness may also request to have a legal advisor or victim's advocate present during the consultation to advise them.
- 5.7 If possible and where it will not impact on any future evidence a victim or witness may give the legal or evidential difficulties will be explained to the victim or witness and the prosecutor will inform them that they will be advised in writing as to whether a prosecution will be brought and an indication given as to when this is likely to take place.
- 5.8 If a prosecution is brought, the prosecutor at court will normally consult with the victim or witness before the trial. Where possible this will take place before the day of trial.

6. The views and interests of the victim

- 6.1 The PPS is aware of the very significant impact a sexual offence can have on victims, and we are committed to ensuring that the interests of victims are considered at every stage of the criminal process. This commitment, and the support available, is set out in detail in our [Victim and Witness Policy](#).
- 6.2 The PPS prosecute cases on behalf of the public at large and not just in the interests of any particular individual. However, the public prosecutor will always give careful consideration to the views and interests of the victim when deciding where the public interest lies.
- 6.3 The views and interests of the victim are very important but they must be considered along with the interests of wider society including the risks to other individuals when taking a decision as to prosecution. The victim's views are not the deciding factor on whether a case proceeds or not and that decision is one solely for the prosecutor.
- 6.4 Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint or, where he/she has made a statement, indicate that they no longer wish to give evidence. We understand that there can be many reasons why a victim may choose not to proceed. The PPS, together with PSNI, will seek to explore these reasons with the victim and consider whether there are any measures or arrangements available (see section 12) which would encourage to victim to remain engaged in the process and to give evidence. In circumstances where the victim does not wish to give evidence, it may be possible to proceed with the case in their absence. In exceptional cases it may be appropriate to request a witness summons to require the attendance of a victim.

Keeping Victims Informed

- 6.5 The Victim and Witness Care Unit (VWCU) aims to improve the experience of victims and witnesses. It provides victims and witnesses with a single point of contact from when an investigation or charge file is submitted to the PPS through to and including the outcome of any court proceedings.

6.6 The VWCU will contact a victim once their case is received by the PPS and will keep them informed at key stages as the case progresses. These may include the following matters:-

- if a defendant is granted bail or their bail conditions are changed;
- when a Prosecutor takes a decision in their case;
- notifying or updating a victim about key court hearings;
- notifying the victim of the result of the case and any the sentence imposed on the defendant;
- notifying the victim if there is an appeal and the outcome of the appeal and
- providing a victim with information about making a Victim Personal Statement.

6.7 The VWCU can also refer victims to specialist organisations for additional support. Referral can be made to Victim Support NI, the Sexual Offence Legal Advisors (SOLA) or NSPCC as appropriate. These organisations can provide emotional and practical support and information. Contact details for some Northern Ireland support/advice organisations can also be found at Annex 5.

7. Review of decisions

- 7.1 Victims should always be confident that their case has been thoroughly considered even where they do not agree with the decision made. We will listen carefully to victims and witnesses, and explain our decision making. Victims can also ask for a review of a decision not to prosecute in appropriate cases. The approach taken in these circumstances is set out fully in the [PPS Code for Prosecutors](#) but is summarised below.
- 7.2 If no additional evidence is provided connected to the request for a review the case will be considered by a prosecutor other than the prosecutor who initially took the decision now under review. The prosecutor conducting the review will consider the evidence and information reported in the police investigation file and will apply the Test for Prosecution and take a new decision. The rationale for this decision will be recorded in writing. The decision may be to allow the original no prosecution decision to stand or that a prosecution should now be taken (or that the matter is dealt with by way of a diversionary disposal).
- 7.3 If additional evidence is provided in connection with the request for a review of the decision not to prosecute, the case will be reconsidered by the prosecutor who initially took the decision. The prosecutor will consider all the evidence and information now available and will apply the Test for Prosecution and take a new decision. There are two possible outcomes of such a review:-
- (a) it is concluded that the Test for Prosecution is now met and criminal proceedings are commenced (or the matter is dealt with by way of a diversionary disposal); or
 - (b) it is concluded that the Test for Prosecution remains not met. In this situation the case will be referred to another Public Prosecutor who will conduct a review of the decision.

8. Avoiding unnecessary delay

- 8.1 The time it takes for criminal cases, and in particular serious sexual offences, to travel through the system is one of the most concerning matters criminal justice organisations face today. We are aware of the impact that unnecessary delay can have on victims and we are committed to continually working with our partners to improve the progress of cases through the criminal justice system.
- 8.2 Cases involving serious sexual offences will generally be prosecuted in the Crown Court. They will begin in the Magistrates' Court and then be transferred to the Crown Court by a process referred to as committal. This process can take time but the Department of Justice is currently undertaking a reform of the committal procedure to reduce this delay. Where a defendant pleads not guilty, which they are entitled to and which often occurs in serious sexual offences, the case will need to be listed for trial and witness invited to attend.
- 8.3 Where possible, the PPS will make sure that cases involving sexual offences are not delayed without good reason and we will do our best to ensure that the victim is kept informed of the reason for any significant delay in the proceedings. All cases involving a young person will be prioritised and dealt with as quickly as possible, to minimise avoidable delay throughout the process. However the nature of serious sexual offences is such that preparing the papers for court to the required high standard takes time and the evidence in these cases is often very extensive.
- 8.4 There is a special protocol in place to expedite cases involving serious sexual offences against children under the age of 13. This protocol is currently in place in Belfast and expansion of this protocol is under review.
- 8.5 Often decisions about the progress of a case may be taken at court. Victims will be informed about those decisions by the prosecutor when they are at court. If they are not at court, they will be informed as soon as possible afterwards either by the PPS or by the police.
- 8.6 A case proceeding to trial may be adjourned for a variety of reasons, including the unavailability of a prosecution witness. Even where there has been a guilty plea the court may require reports to help them sentence and there may be further adjournments required.

- 8.7 Adjournments may also be sought by the defence for a variety of reasons including the unavailability of their witnesses and or for further time to prepare their case. Obtaining expert reports can be particularly time consuming and these are often features of serious sexual offences. Whilst prosecutors may raise objections to adjournment requests, the decision on any adjournment is ultimately a matter solely for the District Judge (Magistrates' Courts) or Judge (Crown Court) who will seek to be fair to all parties when making decisions about adjournments.
- 8.8 The PPS appreciates that delay in decisions as to prosecution or in cases proceeding at court can add to the distress of a victim. We want to ensure that all victims understand the reasons for any delay and are fully informed and supported to participate in the trial process. We would encourage any victim with concerns about progress in their case to make this known, either directly to PPS, to the investigating officer or via your advocate or any support organisation you may be engaging with.

9. Dealing with the case at court

- 9.1 We understand that when a case comes to court it can be a particularly anxious period for a victim, especially with the prospect of giving evidence. We have measures in place to make this a more comfortable process. The PPS is committed to ensuring prosecutors have the right skills to prosecute sexual offences cases effectively, including the ability to deal sensitively with victims and witnesses.
- 9.2 Where possible, the prosecutor will try to speak to victims and witnesses before they give evidence and try to put witnesses who may be nervous at ease.
- 9.3 If a suspect has been charged by police with a sexual offence, the police will take the decision as to whether it is appropriate to release the suspect on police bail to attend a court hearing within a short period of time. Police may also, however, decide to keep the defendant in custody so that he/she may appear at the next available Magistrates court, (usually the next day), for a remand hearing. At the hearing the defendant is entitled to make an application to be released from custody on bail.
- 9.4 The District Judge (Magistrates Courts) will decide whether bail is appropriate after he/she has heard representations from both the prosecution and the defence. In order to enable the prosecutor to make representations to the court, police will have provided relevant evidence and information to the prosecutor.
- 9.5 In most trials where the defendant pleads not guilty, the defendant's legal team will challenge the victim's account of the allegations. This is normal and is allowed in law. The defence have a duty to act in the best interests of their client and to challenge the victim about his or her account.
- 9.6 There are, however, rules about inappropriate cross-examination and particularly about questioning a victim about his or her previous sexual conduct or behaviour. This type of questioning can only take place with the permission of the judge. The PPS will ensure that the prosecutor is proactive in objecting to such questioning where it is considered to be inappropriate. If the defence seek to introduce such evidence or questioning and the judge considers that its real purpose is to undermine the victim, then it should not be allowed.

- 9.7 The prosecutor will also object to allegations about the character or demeanor of the victim which are irrelevant to the issues in the case. There are specific legal principles to govern the introduction of evidence of a victim's previous sexual conduct and the prosecutor will ensure that these are applied correctly.
- 9.8 The defence may on occasion approach the PPS with an offer to plead guilty to only some of the charges that they are facing, or to a lesser charge or charges, with the remaining charges not to be proceeded with. Whilst 'plea bargaining' has no place in the practice or procedures of the PPS, in some cases the prosecutor may consider accepting a guilty plea from the defendant to a different charge. This might arise, for example, because the victim no longer wishes to proceed, or because new evidence has come to light. However, the general principle is that the decision to prosecute, and the offences to be prosecuted, should not be altered unless there is proper reason to do so which is consistent with the evidence and the information available at the time and meets the requirements of justice.
- 9.9 Except in the most exceptional circumstances, the acceptance of alternative pleas should be transparent with the prosecution able to explain their reasons for accepting the pleas in open court.
- 9.10 When considering whether to accept a plea of guilty to a different, and possibly less serious charge, the PPS will, take the proper interests of victims/witnesses into account as required under the Victim Charter. Further information on this topic is contained in the [PPS Code for Prosecutors](#).

10. Helping victims and witnesses to give evidence

Special measures

10.1 Giving evidence can be a particularly traumatic experience for victims of sexual crime. Some victims, quite understandably, find it difficult to give evidence in the view of the defendant. The PPS can apply for special measures to make the experience more comfortable and to support the victim to give their best evidence.

- Examples of special measures include:-
- Giving evidence by a pre-recorded video interview;
- A live video link to enable the witness to give evidence from a separate room;
- Screening the victim from the defendant;
- Giving evidence in private, with the court cleared of the public.

10.2 There are also special measures available to assist vulnerable witnesses, such as the use of aids to communication, and to assist witnesses with communication needs such as Registered Intermediaries.

10.3 A victim of sexual offences is automatically presumed to be eligible to apply for the assistance of special measures unless the court is informed that he or she does not require this. The judge makes the decision about whether special measures will be allowed. The court will only allow a special measure where it considers that the measure would be likely to improve the quality of evidence given by the victim/witness.

10.4 The PPS will discuss with police what special measures might assist the victim or witnesses to give evidence in court, and then, if appropriate, make an application to the court to grant these. The views of the victim and witnesses are taken into account. Ideally, early decisions should be taken about special measures to assist victims and witnesses. However, circumstances might change and it is always possible to apply at any stage of the proceedings. If necessary, a meeting can be arranged with the victim or witnesses to discuss what special measures would be appropriate. In cases involving sexual crime a victim's evidence will often be video-recorded and this will automatically be played in court unless the court considers that it is not in the interests of justice for this to be done.

- 10.5 The PPS will ensure that victims and witnesses are made aware that they can change their minds about special measures. In some cases, victims may initially state that they do not require special measures but when the trial approaches, they may decide that they do. In these circumstances it will be for the court to decide if special measures should be granted.
- 10.6 You can read more about [special measures](#), and [services for vulnerable or intimidated witnesses](#) on the PPS website.

Protection from cross-examination by the accused in person

- 10.7 The law provides that a defendant may not cross examine, in person, a victim of a sexual offence.
- 10.8 In appropriate cases the prosecution may also make an application to the court requesting that the court give a direction prohibiting the defendant from cross-examining a witness in person.

Anonymity

- 10.9 Many victims and witnesses are concerned about their safety and fear that personal details or information about them might become public knowledge and place them at risk of further attack or harassment.
- 10.10 Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the name of their accuser. Most criminal proceedings are held in public, and information about the identity of the witness will become a matter of public record.
- 10.11 All victims of sexual offences are, however, entitled as a matter of law to anonymity for life even if their name has been given in court. This applies from the moment they make an allegation that they are the victim of a sexual offence. Anonymity may also be granted to a defendant for the protection of a victim where, for example in a familial case, a victim's identity might be revealed by publication of the defendant's name together with the charges against him/her.
- 10.12 Addresses of witnesses are not disclosed to the defendant and, unless already known (for example, where an offence is committed by a neighbour) or if required for evidential purposes, will not be mentioned in the court proceedings.
- 10.13 Only in certain exceptional circumstances may a court allow witnesses not to give their name in open court.

Interpreter provision

10.14 In our increasingly diverse community we recognise there will be victims and witnesses for whom English is not their first language. In these cases the PPS will seek advice from police as to the victims and witnesses' ability to give and understand oral evidence in English or whether the witness requires the use of an interpreter. The PPS will try to ensure that the interpreter engaged is familiar with the particular dialect or regional variation of the foreign language which the witness uses.

10.15 The PPS will arrange for the provision of English or Irish sign-language interpreters for witnesses who are deaf or hard of hearing.

Witness Service and Young Witness Service

10.16 There are two witness support schemes available in courthouses in Northern Ireland: one for adult witnesses (the Witness Service) provided by Victim Support NI; and one for younger witnesses under the age of 18 (the Young Witness Service), provided by NSPCC. Victim Support Northern Ireland (VSNI) and the NSPCC aim to support victims and prosecution witnesses before, during and after the experience of attending court to give evidence.

10.17 The aim of the Witness Service is to support victims and prosecution witnesses, along with their families and friends to deal with attending court and giving evidence. The Witness Service normally contact the victim or witness before the court hearing to offer its services. Trained volunteers offer confidential services free of charge. For further information about witness services available please refer to [The Partnership Protocol: NICTS, VSNI and NSPCC](#).

10.18 Further information about meetings with vulnerable or intimidated witnesses and services provided to victims and witnesses at court is also contained in The PPS [Victim and Witness Policy](#).

Additional Support for victims during a trial

10.19 The PPS recognises that some victims will find it very difficult to give evidence and may need further practical and emotional support.

10.20 If a victim would find it helpful to bring a friend or close relative with them for moral support at each stage of the process then they are very much encouraged to do so. However, nobody known to the victim is allowed to be present during the recording of an interview, or in the live link room if they are also giving evidence during the trial.

- 10.21 Specialist agencies can also provide support and advice at any stage of the victim's experience. Contact details for some support agencies are given at Annex 4.
- 10.22 Sometimes victims find that counselling is particularly helpful to them as they seek to move forward in their lives following their experience. If a victim feels that they would benefit from counselling then they are encouraged to engage with a trained counsellor. We understand that victims can be reluctant to have counselling during the criminal process for fear that their notes and records may be requested by defence representatives. Whilst these notes and records may be requested, this should not deter victims from attending counselling if they feel that it is of benefit to them as we recognise that bringing the perpetrator to justice is only part of a victim's journey to recovery.
- 10.23 The Department of Justice along with criminal justice organisations and stakeholders are currently piloting the use of Remote Evidence Centres to allow victims and witnesses to give their evidence away from the court building to reduce the risk of meeting the defendant or his or her supporters and reduce the anxiety of giving evidence. The PPS are working closely with colleagues across the criminal justice system on this pilot.

11. Sentencing

- 11.1 If the defendant is convicted of a sexual offence or pleads guilty, the judge will decide the sentence. In some cases, the sentence handed down by the judge may not always be what the victim had hoped for. There are guidelines issued by the Court of Appeal for judges when sentencing defendants convicted of sexual offences.¹
- 11.2 The PPS will make sure that the court has all the information it needs to sentence appropriately including any relevant information contained in a Victim Personal Statement or Victim Impact Report which may have been requested by the court. A Victim Personal Statement is a statement made by a victim, setting out in their own words the effect that the crime has had upon them, while a Victim Impact Report is a report prepared by a professional, such as psychiatrist or psychologist, at the request of the court
- 11.3 The prosecution has a duty to assist the judge with the law and guidelines on sentencing including any ancillary orders that may be available to the court.
- 11.4 Upon conviction or following a guilty plea, the defendant is entitled to enter a plea in mitigation of sentence. This may include information about previous good character or other factors the defendant wishes to be considered before a sentence is imposed. Ultimately these issues are for the judge to consider as part of his/her decision on sentencing. However, the prosecutor will be alert to mitigation that attempts to detract from the character of a prosecution witness, and will challenge anything misleading, untrue or unfair.
- 11.5 In addition to imposing a sentence, where the court is satisfied that it is necessary for the purpose of protecting the public or any particular members of the public from serious harm by the offender, the judge may also impose an order or orders on the defendant. These are referred to as ancillary orders. In cases involving sexual crime, the PPS may apply to the court for an ancillary order such as a Sexual Offences Prevention Order, a Serious Crime Prevention Order and/or a Restraining Order which aim to protect the victim and to prevent future re-offending by the defendant.
- 11.6 Where a defendant has been convicted of a certain sexual offence or offences he or she will also automatically be required to notify police about personal information such as a change of address, plans for foreign travel or where

¹ The case of *R v Lukaz Kubik* [2016] NICA3 which involved the offence of rape contrary to Article 5(1) of the Sexual Offences (NI) Order 2008 affirmed the continued application of Sentencing Advisory Panel's 2002 Guidelines.

they may be residing in a property where children are also resident. Because police hold details of those convicted of a relevant sexual offence in a database for the protection of the public, these notification requirements are sometimes referred to as 'signing the sex offenders register'.

- 11.7 The Criminal Justice Act 1988 (as amended) gives the Director of Public Prosecutions the power, in relation to certain serious sexual offences, to seek leave to refer a sentence to the Court of Appeal for review if he considers it to be unduly lenient. An unduly lenient sentence is one which falls outside the range of sentences that a judge, taking into account all relevant facts, including guidance on sentencing from the Court of Appeal, could reasonably consider to be appropriate. It is only if the sentence falls entirely outside the range of sentences that could reasonably be considered appropriate that it can be considered unduly lenient. A sentence can only be referred within 28 days of being handed down at court. It is, therefore, important that if a victim or their representative considers there is basis for an unduly lenient sentence to be considered that this is brought to the attention of the PPS at the earliest opportunity.
- 11.8 The Court of Appeal decides whether the sentence is unduly lenient and, if it is, whether to increase the sentence.
- 11.9 The PPS VWCU will keep victims informed of any appeals by the defence against conviction and/or sentence.

12. Conclusion

- 12.1 We want victims to have the confidence to report their experiences to police and engage with the criminal justice system, and we continually work to improve our approach to these cases. We are committed to prosecuting sexual offences robustly and fairly where the Test for Prosecution is met, and to working with our criminal justice partners and other stakeholders to improve the experience of victims as cases move through the system.
- 12.2 The PPS recognises and welcomes the valuable advice, emotional support and practical help and information that may be offered to victims and witnesses by support agencies and victim representative groups. We will continue to work closely with the voluntary and community sectors to help develop best practice and ensure victims are supported
- 12.3 The PPS will also continue to work with its colleagues in the criminal justice system to ensure that services are delivered in a timely manner and to an acceptable standard.
- 12.4 The PPS has published this document to help victims of sexual offences, their families and the wider public to understand the work of the PPS, how decisions are made and the different stages of the prosecution process.
- 12.5 The PPS will review this policy regularly so that it reflects current law and practice.
- 12.6 The PPS welcomes any comments and observations that help us to do this.

Annex 1: List of Consultees

Police Service for Northern Ireland

NI Courts Service

Law Society

Bar Council

The Lady Chief Justice's Office

Her Majesty's Chief Inspector

Presiding County Court Judge

Presiding District Judge (Magistrates' Courts)

Justice Minister

Criminal Justice Inspectorate

Youth Justice Agency

Youth Conference Service

Equality Commission for NI

Northern Ireland Human Rights Commission

Probation Board for NI

Juvenile Justice Board

Civil Service Commissioners for NI

The Northern Ireland Commissioner for Victims and Survivors

The Commissioner for Survivors of Childhood Institutional Abuse

Victim Support NI

Barnardos

Citizen's Advice Bureau Northern Ireland

Serious Sexual offences Crisis and Sexual Abuse Centre

Relate Northern Ireland

Samaritans

Survivors of Trauma

NEXUS

Women's Aid Federation NI

Men's Advisory Project

Men to Men

Putting Children First National Society for the Prevention of Cruelty to Children

Coalition on Sexual Orientation (CoSo)

NI Gay Rights Association

Gay and Lesbian Youth NI

Disability Action

MENCAP NI Association for Mental Health

The Cedar Foundation

Royal National Institute for the Deaf NI

Royal National Institute for the Blind NI

Gingerbread NI

Carers National Assoc NI

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Annex 2: Sample Offences

A sample of offences contained in The Sexual Offences (Northern Ireland) Order 2008 is summarised below:-

Article 5 – Rape. A person (A) commits an offence if he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis in circumstances in which B does not consent to the penetration and A does not reasonably believe that B consents.

Article 6 - Assault by penetration. A person (A) commits an offence if he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else, the penetration is sexual, B does not consent to the penetration, and A does not reasonably believe that B consents.

Article 7 - Sexual assault. A person (A) commits an offence if he intentionally touches another person (B), the touching is sexual, B does not consent to the touching, and A does not reasonably believe that B consents.

Article 8 - Causing a person to engage in sexual activity without consent. A person (A) commits an offence if he intentionally causes another person (B) to engage in an activity, the activity is sexual, B does not consent to engaging in the activity, and A does not reasonably believe that B consents.

Article 12 - Rape of a child under 13.

Article 13 - Assault of a child under 13 by penetration.

Article 14 - Sexual assault of a child under 13.

Article 23 - Abuse of position of trust: sexual activity with a child.

Article 24 - Abuse of position of trust: causing or inciting a child to engage in sexual activity.

Article 32 - Sexual activity with a child family member where the accused is over 18 and the activity involves penetration.

Article 43 - Sexual activity with a person with a mental disorder impeding choice where the activity involves penetration.

Article 44 - Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity where the activity involves penetration.

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Annex 3: PPS contact details

PPS Offices

Public Prosecution Service (Headquarters)

Belfast Chambers

93 Chichester Street

Belfast BT1 3JR

Tel: 02890 897102

Email: info@ppsni.gsi.gov.uk www.ppsni.gov.uk

Victim and Witness Care Unit Belfast

Belfast Chambers

93 Chichester Street

Belfast BT1 3JR

Tel: 02890 264690

SMS (Deaf/Hard of Hearing): 078 2511 8389

Email: vwcubelfast@ppsni.gov.uk

Victim and Witness Care Unit Foyle

Foyle Chambers

35 Limavady Road

Londonderry BT47 6LP

Tel: 02871 340632

SMS (Deaf/Hard of Hearing): 078 2511 8416

Email: vwcufoyle@ppsni.gov.uk

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Annex 4: Explanation of terms used in respect of the evidential test

Identifiable individual

There will often be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. Prosecution can only take place where the evidence sufficiently identifies a particular person responsible. Where no such person can be identified, there can be no prosecution.

Credible evidence

This means evidence which is capable of belief. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. It may be that a witness is likely to be so discredited that no court could safely act on his/her evidence. In such a case it may be concluded that there is no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably act on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account.

Public Prosecutors must therefore make an assessment of the quality of the evidence. Where there are substantial concerns as to the credibility of essential evidence, criminal proceedings may not be proper as the Evidential Test may not be capable of being met. There will be many cases in which the evidence does not give any cause for concern. There will also be cases in which the evidence may not be as cogent as it first appears.

Evidence which the prosecution can adduce

Only evidence which is available and legally admissible prosecution can adduce can be taken into account in reaching a prosecution decision.

There are technical legal rules concerning whether or not particular types and pieces of evidence are admissible in court. For example, a court may refuse to admit evidence that has been obtained improperly, irregularly or unlawfully. If evidence is inadmissible then that evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction.

Public Prosecutors must therefore seek to anticipate whether it likely that evidence will be admitted or excluded by the court. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, Public Prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.

An impartial jury (or other tribunal)

The test is not whether a particular jury or a particular judge or magistrate will convict. If such a test was adopted then prosecution might depend upon an assessment of how different juries in different parts of the country reacted or different judges reacted. This would be wrong. The test must be how an impartial jury or judge is likely to conclude.

May reasonably expected to find

It is impossible to know with absolute certainty whether or not a conviction will be obtained in a particular case. What is required by the evidential test is that there is a reasonable prospect of a conviction on the evidence. The weighing of evidence is not a mathematical science but rather a matter of judgement for the prosecutor.

Beyond reasonable doubt

The evidence available to the prosecutor must be sufficient to reach the high standard required by the criminal courts. It is necessary for the prosecution to establish its case beyond reasonable doubt.

Commission of a criminal offence

This requires that regard is had to the law in order to identify what offence or offences may have been committed and to consider the evidence against each of the ingredients which establish the particular offence.

Annex 5: Support services available for victims.

(List currently being updated and will be completed after consultation).

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The PPS website provides more detailed information about the Service and various published reports and policy documents are available to download as PDF files. It also contains links to other criminal justice agency websites.



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