



Public
Prosecution
Service

Independent
Fair
Effective

BACKGROUND BRIEFING PAPER ON PPS DECISION TO SET ASIDE 15 MAGISTRATES' COURT CONVICTIONS

Overview

It has been identified that in 2009 offences under section 52 (indecent assault on a female), section 62 (indecent assault on a male) of the Offences Against the Person Act 1861 and section 5(1) of the Criminal Law Amendment Act 1885 (unlawful carnal knowledge of a girl under 17) were unintentionally removed from the list of cases that could be prosecuted in the Magistrates' Court. This meant that from that point onwards these offences could only be prosecuted in the Crown Court.

As this change was inadvertent it was not highlighted to any of the agencies or practitioners in the criminal justice system, including the Public Prosecution Service (PPS). It has been established that a total of 15 defendants were prosecuted and convicted in the Magistrates' Court since 2009 for these offences despite that Court having no power to hear these cases. These cases involved a total of 17 victims and related to incidents that occurred between 1973 and 2009.

The PPS carefully considered the legal status of these convictions and concluded that the convictions against the 15 defendants are not valid. In these circumstances it is appropriate for the PPS to bring an application to have them rescinded. If the convictions are rescinded it will not amount to an acquittal and it will remain possible for the PPS to bring fresh proceedings in the Crown Court. Consideration is presently being given to whether there is evidence available to do this and whether such proceedings would be in the public interest. In the meantime we have sought to contact the 17 victims and 15 defendants in these cases to update them as to what has happened.

How did this happen?

At the time of each conviction, it was understood by all parties involved that this offence could be prosecuted in either the Magistrates' Court or the Crown Court. In these cases, the prosecution, the Court and the defendants were all content that it was appropriate to prosecute in the Magistrates' Court, and consented to the cases proceeding in that Court.

It subsequently came to the attention of the PPS that legislation introduced in 2009, which involved a significant reform of the criminal law relating to sexual offences, inadvertently introduced a technical change which meant that cases under section 52 and section 62 of the Offences Against the Person Act 1861, and section 5(1) of the Criminal Law Amendment Act 1885, could no longer be prosecuted in the Magistrates' Court. The change involved the

removal of these cases from a schedule to a further piece of legislation that governs Magistrates' Court procedure¹.

As a result of this, the offences became ones that could only be prosecuted in the Crown Court, which generally deals with more serious offences in front of a judge and jury. The PPS have been advised by the Department of Justice that this outcome was unintentional and the cases were removed from the schedule in error. This error was not identified by any of the parties involved in each of these cases as they progressed through the Courts to conviction.

Action taken to address this issue

Upon identification of this issue, the PPS sought legal advice in relation to its impact on the validity of the convictions in the affected cases. Having received that advice, the conclusion was that the Magistrates' Court did not have jurisdiction (i.e. the legal power) to deal with these cases and that any convictions were therefore not valid. This is not, however, the same as the cases being dismissed or the defendants being acquitted and the PPS may still be able to take fresh prosecutions in the Crown Court.

In recognition of the cross cutting nature of this issue, we have worked together with our criminal justice partners to identify the scale of the problem and the actions needed to address it.

We have also made significant efforts to minimise the shock and upset to those affected.

These steps have included:

- Engagement with victims' organisations Victim Support NI and Nexus NI to take advice on ensuring all communication was done in a sensitive and respectful way;
- Working with the same two organisations to ensure that immediate support and counselling will be available to the victims in these cases should they need it;
- Extensive work with the PSNI to track down victim contact details and current whereabouts in advance;
- Provision of advance notice to victims where possible to ensure the letter was delivered in a way designed to minimise distress;
- Arranging delivery of letters to all those affected with a detailed explanation of how the situation arose and the steps we are now proposing to take.

¹ These offences were repealed by the Sexual Offences (Northern Ireland) Order 2008. They still applied, however, to offences that occurred before 2nd February 2009. The offences had previously been listed on the Schedule 2 of the Magistrates' Court (Northern Ireland) Order 1981 as offences that could be prosecuted in the Magistrates' Court with the consent of the defendant. The 2008 Order inadvertently removed them from that schedule.

The PPS is also arranging to have the cases listed before the Magistrates' Court in order to have the convictions formally set aside. This means the convictions will be removed from the court record as if they had not occurred. We are preparing to do this shortly.

Decision regarding a fresh prosecution

Once the earlier convictions are rescinded the PPS can consider bringing fresh prosecutions.

Decisions as to prosecution are taken by applying the Test for Prosecution which is set out in our Code for Prosecutors available at www.ppsni.gov.uk. The Test is in two parts and requires that:

- Firstly, we are satisfied that there is sufficient evidence to provide a reasonable prospect of a conviction. This is called the **Evidential Test**.
- Secondly, we have to decide whether a prosecution is in the public interest. This is called the **Public Interest Test**.

It is only where the Evidential Test is satisfied that we move on to apply the Public Interest Test. It is not the case that all cases where there is sufficient evidence end up in a prosecution. A prosecution must also be in the public interest and there are a number of factors we must consider when addressing this question.

A number of enquiries are presently being made in order to inform any subsequent application of the Test for Prosecution. An important consideration in this regard will be the views of the individual victims. The PPS will be endeavouring to complete this process as expeditiously as possible in order to minimise any continuing distress and uncertainty for all those impacted by these events.

ENDS