



Attorney  
General's  
Office



# Framework agreement between the Law Officers and the Director of Public Prosecutions

**13 March 2019**

## Overview

1. This framework agreement is made between the Attorney General and Solicitor General (the Law Officers) and the Director of Public Prosecutions (the Director). It replaces the protocol between the Attorney General and the Prosecuting Departments, including the Crown Prosecution Service (CPS), signed in July 2009.
2. This agreement sets out the main points of the relationship which the Law Officers and the Director expect to conduct, in the discharge of their respective functions in relation to the CPS. This relationship is an essential component of the governance and therefore of the standing and success of the CPS. It is entered into in a spirit of mutual understanding, respect and support for the functions engaged on each part, and of commitment to the organisation, its work, and the contribution it is expected to make to justice, the rule of law, and economic wellbeing in England and Wales.
3. In particular this agreement sets out the understanding and expectations of the Law Officers and the Director about:
  - their respective roles and responsibilities, and the relationship between them;
  - the governance structures put in place to support those roles and responsibilities;
  - how the CPS's strategic direction and objectives are developed and set; and
  - the principles behind the day-to-day ways of working they expect to see between officials in the CPS and the AGO in support of their relationship and functions.
4. This agreement is not intended to be an exhaustive statement of the relevant legal functions of the Law Officers or of the Director. Its operation will be reviewed by the Law Officers and the Director at intervals of not more than three years. It will also be reviewed following the appointment of any new Director or Attorney General.

## The Crown Prosecution Service

5. The CPS was created and given its functions and powers by the Prosecution of Offences Act 1985 (the Act); it exercises those functions on behalf of the Crown. It is a non-ministerial department (NMD) headed by the Director of Public Prosecutions<sup>1</sup>. It also forms one of the 'Law Officers' Departments'<sup>2</sup>, and as

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<sup>1</sup> Guidance on NMDs is set out in the Public Bodies Handbook: <https://www.gov.uk/government/publications/classification-of-public-bodies-information-and-guidance>; and the Arm's Length Body Code of Good Practice: <https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>

such constitutes a public arm's length body sponsored by the Attorney General's Office (AGO).

6. The CPS is the principal public prosecuting authority for England and Wales and constitutes a central part of the UK criminal justice system. Its role in that system is to take independent decisions on individual cases referred to it by the police and other criminal investigation authorities, based on the evidence available and the public interest in pursuing prosecution. Where a decision is taken to prosecute, the CPS undertakes prosecution by exercising its functions, in accordance with the law, with a view to preserving and enhancing public confidence in the criminal justice system. It also pursues criminals for recovery of unlawful financial gains.

## **Appointments**

7. The Director is appointed by the Attorney General, as set out in s2(1) of the Act. The role is equivalent to Permanent Secretary grade within the Civil Service and the process subject to the relevant Civil Service appointment rules.
8. The AGO manages the appointments process in partnership with the Cabinet Office and Civil Service Commission. The CPS funds all costs in relation to the recruitment of the Director. The appointment and conditions of service of the Director are set out in a Memorandum of Understanding between AGO, CPS and the Cabinet Office.
9. The Director is responsible for the appointment of CPS staff. The Director appoints senior staff<sup>3</sup> in consultation with the Law Officers, including as to the processes of appointment.
10. The Director is responsible for appointing a suitable number of (but at least four) CPS Non-Executive Board Members (NEBMs) with skills appropriate to the CPS's business needs through fair and transparent competition and in line with Civil Service rules and guidance on such appointments. Appointments are made in consultation with the Law Officers, including as to the processes of appointment. The Director-General or Director of the AGO will be included in the appointment panel.

## **Roles and Responsibilities**

11. The Director is a statutory office holder operating within the provisions of the Act. The Director and all staff of the CPS are subject to the Civil Service Code.
12. The Director's statutory functions are exercised subject to the statutory superintendence of the Attorney General, as set out in the Act. The Solicitor

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<sup>2</sup> The Serious Fraud Office; Government Legal Department and HM Crown Prosecution Service Inspectorate

<sup>3</sup> Chief Executive Officer

General may undertake functions of the Attorney General in accordance with the Law Officers Act 1997.

13. The Director is responsible for deciding which cases the CPS should prosecute. The Director exercises independence in individual casework decisions.
14. The Director is responsible for, and bound by, the Code for Crown Prosecutors. The Code gives guidance to prosecutors on then general principles to be applied when making decisions about prosecutions.
15. The Director is required by law to issue the Code for Crown Prosecutors and consults the Attorney General and the Director of the Serious Fraud Office about any proposed changes to the Code. This is followed by wider consultation with other prosecutors, and by public consultation.
16. The Director is the Accounting Officer (AO) for the CPS. The Director appoints the Chief Executive as an additional AO.
17. The Law Officers, supported by the AGO, exercise their sponsorship and statutory superintendence functions as set out in this Framework and in accordance with government guidance. The Director-General of the AGO is the Senior AGO Sponsor for the CPS.
18. The Attorney General supports and holds the Director to account for the running of the CPS and the discharge of the CPS's functions. The Director:
  - engages with the AGO on the preparation of the CPS's Corporate Plans in order to deliver the CPS's strategic aims and priorities;
  - keeps the AGO informed of progress in delivering those plans and the deployment of resources to do so;
  - provides the AGO with timely forecasts and management information relating to budgetary and other financial matters;
  - works with the AGO on the preparation for spending reviews; and
  - keeps the AGO informed about cases which are of significant public interest, may impact on wider government priorities, or have implications for the development of the law.
19. The Law Officers are accountable to Parliament for the exercise of their sponsorship and superintendence functions. This includes answering Parliamentary Questions, questions from Select Committees, and correspondence from Members of Parliament about the CPS. The Director ensures that the CPS supports the Law Officers in fulfilling this duty. Where a Parliamentary Select Committee or other Parliamentary Group seeks evidence directly from the Director, the Attorney General and the Director will consult one another about how best to meet the requirements of the Committee.
20. The Law Officers are responsible for safeguarding the independence of CPS prosecutors in taking individual prosecution decisions, in accordance with this agreement.

21. The Director is a civil servant. The Cabinet Manual states that civil servants are ultimately accountable to the Head of the Civil Service/Cabinet Secretary. The Cabinet Secretary is responsible for the management of the overall Civil Service appraisal process.
22. The NEBMs carry out an important advisory and challenge role both to the Director and to the Law Officers. They provide advice and bring an external perspective to the CPS's business by sitting on the departmental board. They may also provide feedback on the Director's performance to the AGO and the Law Officers and to the Cabinet Secretary. The NEBMs meet with the Law Officers regularly and at least twice a year. They do not have 'executive' decision-making powers.

## **Governance and Accountability**

### The Ministerial Strategic Board

23. The Attorney General and the Director will, with the other members of the Ministerial Strategic Board (MSB) endorse the strategic direction of the CPS. The MSB is chaired by the Attorney General or the Solicitor General. A secretariat is provided by the AGO. Its membership comprises:
  - the Law Officers
  - the Director
  - the Director-General of the AGO
  - the Chief Executive of the CPS
  - an appropriate NEBM of the CPS
24. The Chief Inspector of HMCPsi will attend by invitation as required. The Director of the AGO will undertake the role of Board Secretary.
25. The MSB's overarching aim is to oversee the strategic direction for the CPS and jointly hold the CPS to account for the delivery of its strategic objectives.
26. The terms of reference of the MSB are set from time to time by the Law Officers for ratification by the MSB and must include responsibility for:
  - supporting the roles and responsibilities of the Law Officers and the Director, and the work of the CPS and the AGO in supporting them;
  - endorsing and overseeing the strategic direction of the CPS via an agreed multi-year Strategic Plan which will align with wider government strategies;
  - providing context for the CPS about wider government and justice system policies and priorities;
  - agreeing the CPS' priorities for engaging with other government departments, law enforcement agencies, the wider criminal justice system and international partners;
  - agreeing and supporting policy development where it impacts on wider government priorities;

- agreeing and supporting an overarching strategy for the Director and the CPS on their approach to public and media engagement, and a Memorandum of Understanding on ways of working between the CPS and AGO; and
- approving the CPS business plan, endorsing the Director's annual report to the Attorney General under s.9(1) of the Act (to be laid before parliament by the Attorney General under s.9(2)), and reviewing the budget and financial management, performance, efficiency, effectiveness and reputation of the CPS in year.

27. The MSB meets three times a year.

### The CPS Board

28. The CPS Board (the Board) is chaired by the Director and meets eight times a year. Its membership includes senior members of staff across operational, legal and corporate functions and all NEBMs of the CPS. The Director-General or Director of the AGO may be invited to observe meetings of the Board.
29. The membership and conduct of the Board are the responsibility of the Director. Members of the Board must comply at all times with the Code of Conduct for Board Members of Public Bodies and with the rules relating to the use of public funds and to conflicts of interest<sup>4</sup>.
30. The Board's overarching aim is to provide strategic leadership to the CPS, ensuring the effective delivery of the CPS's strategic and operational objectives; and to advise the MSB on strategic priorities. It plays a key role in ensuring that the CPS is equipped to provide a professional, efficient and high quality service.

### Financial Accountability and Audit

31. The AGO negotiates the CPS's budget with HM Treasury, in partnership with the Director and Chief Executive, as part of the Spending Review process. The CPS will negotiate the annual Main and Supplementary Estimates in consultation with the AGO. The CPS has its own estimate and the Director and the CPS Board determine the CPS's approach on corporate and financial matters, in accordance with applicable guidance and with the Director's responsibilities as AO.
32. The CPS is responsible for seeking Parliament's consent to spend or commit resources through the Estimates process. Any adjustments to the CPS's baseline will be settled through the standard Supplementary Estimates process (once annually). During the year, the CPS is expected to operate within the control totals framework for resource, capital, annual managed expenditure (AME) and for its net cash requirement. HM Treasury will monitor the CPS's in-year budget spend through its monthly Online System for Central Accounting and Reporting (OSCAR) returns. The AME pension budget sits with the CPS.

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<sup>4</sup> <https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies>;  
<https://www.gov.uk/government/publications/managing-public-money>

33. Any requests for budget exchange into the following financial year will be coordinated by the CPS in the discussions with HM Treasury, consulting with the AGO throughout the process.
34. As agreed between the CPS, AGO and HM Treasury, the CPS may apply for additional funding from the DEL Reserve fund. This funding is provided by HM Treasury directly to the CPS as part of its supplementary funding. Access to the reserve will be considered by Treasury ministers in exceptional circumstances, on a case-by-case basis.
35. As AO, the Director is personally responsible for safeguarding public funds; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of the CPS. The Director ensures that CPS governance is at all times in accordance with Managing Public Money guidance. In particular, the Director must:
- sign the accounts, and ensure proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Law Officers or by HM Treasury;
  - prepare and sign a governance statement covering corporate governance, risk management and oversight of any local responsibilities, for inclusion in the annual report and accounts; and
  - act in accordance with this agreement, Managing Public Money and other instructions and guidance issued from time to time by the AGO, HM Treasury or the Cabinet Office relating to financial management.
36. The Director is accountable to the parliamentary Public Accounts Committee for the CPS's stewardship of public funds.
37. Within the governance structures set out in this agreement, the Director must:
- ensure that the Law Officers are able to review CPS spend in-year;
  - keep the AGO informed of all significant financial discussions with HM Treasury or Cabinet Office; and
  - ensure that AGO are informed if the CPS plans to seek HM Treasury approval for payments which: fall outside their delegated authorities; or raise novel or contentious issues; or could set a potentially expensive precedent or cause repercussions for other public sector organisations.

Personal injury payments and payments associated with personnel matters may not be included for data protection reasons or reasons of confidentiality.

38. The CPS must establish and maintain arrangements for internal audit. The internal audit service must have a right of access to all documents, including in any cases where services are contracted out. The CPS will:
- inform the AGO of its audit strategy, periodic audit plans and annual audit report;

- keep a written record of any fraud or theft suffered by the CPS, and produce an annual report on fraud and theft to be shared with the AGO; and
  - notify the Treasury and AGO of any unusual or major incidents as soon as possible.
39. The CPS publishes an annual report of its activities together with its audited accounts after the end of each financial year. The annual report and accounts must comply with all relevant legal obligations and any directions from the Law Officers, including the Treasury's *Financial Reporting Manual*<sup>5</sup> (FreM); outline main activities and performance during the previous financial year and set out forward plans in summary form; and cover any corporate, subsidiary or joint ventures under its control. The CPS must provide the AGO its finalised (audited) accounts in a timely manner.
40. The Comptroller & Auditor General (C&AG) audits the CPS's annual accounts and lays them before Parliament, together with its report. The C&AG:
- consults the CPS on whether the National Audit Office (NAO) or a commercial auditor should undertake the audit on his behalf;
  - is entitled to obtain relevant documents and information, including any held by another person in receipt of payments or grants from the CPS; and
  - may provide government departments and other relevant bodies with Regulatory Compliance Reports and other reports relating to the CPS where these have been properly requested at the commencement of the audit.

### The AGO

41. The AGO supports the performance of this agreement by:
- advising the Law Officers about their powers, duties and responsibilities in relation to the CPS and supporting the discharge of their relevant functions;
  - supporting the performance, accountability and independence of the Director, and advising the Director about the policy, strategic and legislative framework relevant to the CPS;
  - advising other government departments about CPS policy and objectives, and ensuring these are considered as part of wider policy development;
  - advising the Law Officers and other government departments on budgetary matters relating to the CPS; and
  - advising the Law Officers and the Director on media activities relevant to the CPS.

### HM Crown Prosecution Service Inspectorate (HMCPIS)

42. The Attorney General may invite HMCPIS to support him in the discharge of his functions by undertaking inspections of the CPS in relation to any of its

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<sup>5</sup> <https://www.gov.uk/government/publications/government-financial-reporting-manual-2018-to-2019>



operational or corporate functions<sup>6</sup>. The commissioning of and response to HMCPSI reports on the CPS will be considered by the MSB.

### Ombudsman

43. The CPS receives and handles correspondence and complaints from members of the public in accordance with clear procedures which must be published on the CPS website. This includes Victim's Right to Review Scheme procedures. Where the complainant is not satisfied with the CPS response and the complaint relates to the Code of Practice for Victims of Crime, the complainant may complain to their MP who may refer the matter to the Parliamentary and Health Services Ombudsman. If the complaint concerns the personal conduct of the Director, complainants must be notified that they may be referred to the Attorney General. In those instances, the CPS ensures that the Attorney General is provided with all relevant information.
44. The Attorney General may commission the Independent Assessor of Complaints to undertake investigations on behalf of the AGO or the CPS. Where such investigations fall outside usual IAC practice, specific terms of reference for the review will be prepared.

### **Casework**

45. The CPS is independent in making decisions whether or not to prosecute a case. Those decisions are the responsibility of the Director, who may delegate authority to appropriate staff within the CPS. The Attorney General is responsible for safeguarding the independent decision making of the CPS.
46. The decision whether or not to prosecute and, if so, for what offence, or whether to seek another measure (such as civil recovery of the proceeds of crime, a deferred prosecution agreement or out of court disposal), is a quasi-judicial function of the Director which requires evaluation of the strength of the evidence. It is also a judgment about whether a prosecution is in the public interest. The CPS must take such decisions in a fair and impartial way, acting at all times in accordance with the highest ethical and professional standards and in the best interests of justice. This is central to the maintenance of a just, democratic and fair society based on scrupulous adherence to the rule of law.
47. The CPS takes casework decisions and conducts individual cases applying the law, and the framework of principles set out in the Code for Crown Prosecutors, together with any relevant published guidance issued by the Director, or the Attorney General.
48. Other than as set out in this agreement, the Law Officers do not participate in CPS casework decisions.

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<sup>6</sup> HMCPSI has a statutory role as set out in the Crown Prosecution Service Inspectorate Act 2000, giving them the power to inspect the CPS.

### Attorney General's consent to prosecute

49. For a small number of specific offences, Parliament has made statutory provision for the Attorney General's consent to be legally required before a prosecution is brought in individual cases.
50. It is a constitutional principle that when taking a decision whether to consent to a prosecution, the Attorney General acts quasi-judicially and independently of government, applying well established prosecution principles of evidential sufficiency and public interest. The Attorney General has regard to, but is not limited by, the public interest factors set out in the Code for Crown Prosecutors.
51. Where consent has been given and a prosecution is commenced, the prosecutor keeps the AGO informed of its progress. Where practicable, the prosecutor consults the Attorney General if the prosecutor is contemplating either dropping the case on public interest grounds, or accepting pleas. If the case can no longer proceed for evidential reasons which emerge after a prosecution is started, the prosecutor informs the Attorney General of the decision as soon as it is taken.

### Attorney General's directions where necessary to safeguard national security

52. Exceptionally, and only where in the Attorney General's opinion it is necessary to do so for the purposes of safeguarding national security, the Attorney General will consider the exercise of their power to issue a direction that a prosecution is not started or not continued.
53. The offences most likely to give rise to the exercise of this function are those which require the Attorney General's consent to prosecution in any event. If national security considerations emerge during such a prosecution, or in cases which do not require consent, the Director must inform the Attorney General as soon as this becomes evident.
54. The Attorney General consults the Director before contemplating issuing a direction.
55. The Attorney General reports any such direction to Parliament, in so far as that is itself compatible with the public interest in national security.

### Representations on the Public Interest

56. The Code for Crown Prosecutors sets out the general public interest considerations which are relevant to prosecution decisions. In a few very exceptional cases the Director (or the Attorney General in a consent case) may consider that it is desirable to be informed in doing so by consulting within government about the relevant public interest considerations as part of that decision making process. The Director may raise such a case with the Attorney General, and the Attorney General may advise on whether it is in the public interest to seek wider ministerial representations in a public interest consultation

exercise<sup>7</sup>; in a consent case, the Attorney General may decide to seek such representations of his own motion.

57. The purpose of the exercise is confined to identifying particular public interest considerations which may be relevant to the prosecution decision. The relevance and weight to be given to such considerations, and the eventual prosecution decision, are matters for the prosecutor.
58. The Attorney General ensures that these public interest consultation exercises are conducted with propriety; that consultees are informed that the decision is for the prosecutor alone; and that the wider Ministerial representations tending to any particular conclusion are probed appropriately.

### Statutory superintendence

59. The Attorney General's responsibilities for superintendence and accountability to Parliament imply a limited engagement with some individual CPS cases set out at paragraph 60 which do not require consent to prosecute. This is a function which the Law Officers exercise quasi-judicially and must carry out in the public interest.
60. The Director alerts the Law Officers to any case which:
  - he considers is particularly sensitive;
  - has potential precedent-setting implications for prosecution or criminal justice policy or practice; or
  - reveals systemic issues for the framework of the law, or the operation of the criminal justice system.
61. The Director may alert the Law Officers via senior officials within the AGO and/or through regular meetings with the Law Officers.
62. The Director may seek guidance from the AGO as to whether any case ought to be drawn to the attention of the Law Officers for these or any other reasons. The Law Officers may ask for information about the case, or to be kept informed of developments. The decisions in these cases remain for the Director.
63. The Law Officers may ask for information about any case in order to perform another Law Officer function, such as considering potential contempt of court, making references on a point of law, or deciding whether to refer an unduly lenient sentence. These do not involve consultation on any prosecution decision by the CPS.
64. Subject to paragraph 67 below, the Director may raise any case with the Law Officers for advice or discussion to assist the Law Officers in providing public or parliamentary assurance that a decision has been carefully and properly taken.

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<sup>7</sup> sometimes referred to as a Shawcross exercise

65. The Attorney General may be called upon to help prosecutors to resolve cases where they have not reached agreement, for example where prosecutors have overlapping remits over the same case or adopt different approaches to the same legal question or where there is concurrent jurisdiction.
66. The Attorney General's assistance may be sought by the CPS in an individual case to ensure that processes of securing evidence or disclosure of material by another government department run smoothly, where such processes are in the interests of ensuring a fair trial.
67. Unless for any reason a decision is required from the Attorney General by law (such as in a consent case), the Law Officers will never be consulted or otherwise engaged on any case which:
- relates to a Member of Parliament (including Peers) or minister;
  - relates to a political party or the conduct of elections; or
  - gives rise to any question of personal or professional conflict of interest for the Law Officer.
68. The AGO may assist the CPS in identifying such cases, and provide any relevant context or advice which is agreed to be proper. The AGO does not advise on prosecution decisions.

#### Wider collaboration

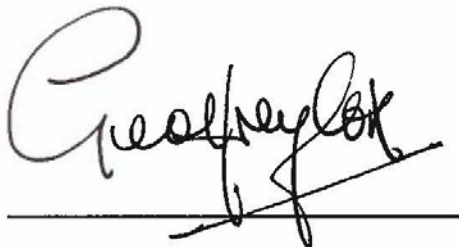
69. The CPS will collaborate between agencies and Departments on wider strategic and operational priorities. The Law Officers expect the CPS to work with the SFO, National Crime Agency, police, HMRC, wider criminal justice agencies and international networks where appropriate. These partnerships will be underpinned by agreements or Memoranda of Understanding. The AGO will be kept informed of these arrangements. Where operational activity (nationally and internationally) may impact on wider government policy, the CPS will consult the AGO and agree strategic engagement plans.

### **Prosecution Policy and Guidance**


70. The Attorney General has ministerial responsibility at Cabinet level for government policy in relation to prosecution functions. The Law Officers' ministerial responsibilities include ensuring that the functions of the CPS are understood and taken account of in the development of government policy more generally.
71. The Director supports the Law Officers in the exercise of this function by providing information and advice, and ensuring that the knowledge and expertise of prosecutors are made available to those developing Government policy.
72. The Director ensures that, consistently with maintaining proper independence in taking prosecution decisions, policies and guidance adopted by CPS are

consistent with and give due effect to relevant government policy. The AGO supports this role.


73. The Director may promulgate guidance or principles about the conduct of casework. These should be reviewed on the appointment of a new Director, or to reflect changes in government priorities for criminal justice, and at least every 3 years. The Director ensures that the Law Officers are asked for their views in a timely way about any proposed statement of prosecution policy or guidance which raises difficult or sensitive questions of law or public policy. The Director accords particular weight to the Attorney General's views where difficult questions arise in balancing competing public interest considerations in prosecution guidance.
74. The Director must consult the Attorney General about any guidance on matters in which the Law Officers exercise special public interest functions, for example in relation to contempt of court, public interest immunity, unduly lenient sentences, consent cases or victims' right to review.
75. The Attorney General may issue guidance on cross cutting legal issues, practice or policy to ensure consistency of approach across public prosecution or government legal functions. The Attorney General consults the Director before issuing any guidance affecting the CPS.



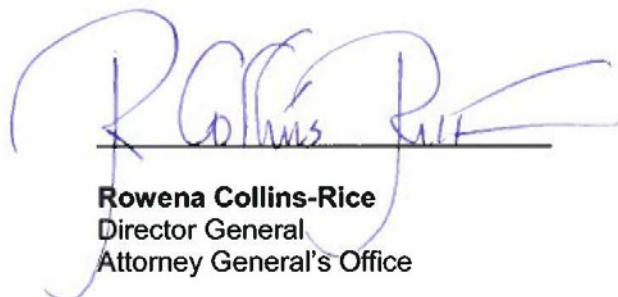
**Rt Hon Geoffrey Cox QC MP**  
Attorney General



**Max Hill QC**  
Director of Public Prosecutions



**Robert Buckland QC MP**  
Solicitor General



**Rowena Collins-Rice**  
Director General  
Attorney General's Office