

**ATTORNEY GENERAL'S GUIDELINES
ON THE ACCEPTANCE OF PLEAS AND THE PROSECUTOR'S ROLE IN THE
SENTENCING EXERCISE**

A FOREWORD

- A1. Prosecutors have an important role in protecting the victim's interests in the criminal justice process, not least in the acceptance of pleas and the sentencing exercise. The basis of plea, particularly in a case that is not contested, is the vehicle through which the victim's voice is heard. Factual inaccuracies in pleas in mitigation cause distress and offence to victims, the families of victims and witnesses. This can take many forms but may be most acutely felt when the victim is dead and the family hears inaccurate assertions about the victim's character or lifestyle. Prosecution advocates are reminded that they are required to adhere to the standards set out in the Victim's Charter, which places the needs of the victim at the heart of the criminal justice process, and that they will be subject to a similar obligation in respect of the Code of Practice for Victims of Crime when it comes into force.
- A2. The principle of fairness is central to the administration of justice. The implementation of Human Rights Act 1998 in October 2000 incorporated into domestic law the principle of fairness to the accused articulated in the European Convention on Human Rights. Accuracy and reasonableness of plea plays an important part in ensuring fairness both to the accused and to the victim.
- A3. The Attorney General's Guidelines on the Acceptance of Pleas issued on December 7, 2000 highlighted the importance of transparency in the conduct of justice. The basis of plea agreed by the parties in a criminal trial is central to the sentencing process. An illogical or unsupported basis of plea can lead to the passing of an unduly lenient sentence and has a consequential effect where consideration arises as to whether to refer the sentence to the Court of Appeal under section 36 of the Criminal Justice Act 1988.
- A4. These Guidelines, which expand upon and now replace the Guidelines issued on the 7 December 2000, give guidance on how prosecutors should meet these objectives of protection of victims' interests and of securing fairness and transparency in the process. They take into account the guidance issued by the Court of Appeal (Criminal) Division in R –v- Beswick [1996] 1 Cr.App.R. 343, R –v- Tolera [1999] 1 Cr.App.R. 25 and R v Underwood [2005] 1 Cr.App.R 178. They complement the Bar Council Guidance on Written Standards for the Conduct of Professional Work issued with the 7th edition of the Code of

Conduct for the Bar of England and Wales and the Law Society's Professional Conduct Rules. When considering the acceptance of a guilty plea prosecution advocates are also reminded of the need to apply "The Farquharson Guidelines on The Role and Responsibilities of the Prosecution Advocate".

- A5. The Guidelines should be followed by all prosecutors and those persons designated under section 7 of the Prosecution of Offences Act 1985 (designated caseworkers) and apply to prosecutions conducted in England and Wales.

B GENERAL PRINCIPLES

- B1. Justice in this jurisdiction, save in the most exceptional circumstances, is conducted in public. This includes the acceptance of pleas by the prosecution and sentencing.
- B2. The Code for Crown Prosecutors governs the prosecutor's decision-making prior to the commencement of the trial hearing and sets out the circumstances in which pleas to a reduced number of charges, or less serious charges, can be accepted.
- B3. When a case is listed for trial and the prosecution form the view that the appropriate course is to accept a plea before the proceedings commence or continue, or to offer no evidence on the indictment or any part of it, the prosecution should whenever practicable speak to the victim or the victim's family, so that the position can be explained. The views of the victim or the family may assist in informing the prosecutor's decision as to whether it is the public interest, as defined by the Code for Crown Prosecutors, to accept or reject the plea. The victim or victim's family should then be kept informed and decisions explained once they are made at court.
- B4. The appropriate disposal of a criminal case after conviction is as much a part of the criminal justice process as the trial of guilt or innocence. The prosecution advocate represents the public interest, and should be ready to assist the court to reach its decision as to the appropriate sentence. This will include drawing the court's attention to:
- any victim personal statement or other information available to the prosecution advocate as to the impact of the offence on the victim;
 - where appropriate, to any evidence of the impact of the offending on a community;
 - any statutory provisions relevant to the offender and the offences under consideration;

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- any relevant sentencing guidelines and guideline cases; and
- the aggravating and mitigating factors of the offence under consideration;

The prosecution advocate may also offer assistance to the court by making submissions, in the light of all these factors, as to the appropriate sentencing range.

In all cases, it is the prosecution advocate's duty to apply for appropriate ancillary orders, such as anti-social behaviour orders and confiscation orders. When considering which ancillary orders to apply for, prosecution advocates must always have regard to the victim's needs, including the question of his or her future protection.

C. THE BASIS OF PLEA

- C1. The basis of a guilty plea must not be agreed on a misleading or untrue set of facts and must take proper account of the victim's interests. An illogical or insupportable basis of plea will inevitably result in the imposition of an inappropriate sentence and is capable of damaging public confidence in the criminal justice system.
- C2. When the defendant indicates an acceptable plea, the defence advocate should reduce the basis of the plea to writing. This should be done in all cases save for those in which the issue is simple or where the defendant has indicated that the guilty plea has been or will be tendered on the basis of the prosecution case.
- C3. The written basis of plea must be considered with great care, taking account of the position of any other relevant defendant where appropriate. The prosecution should not lend itself to any agreement whereby a case is presented to the sentencing judge on a misleading or untrue set of facts or on a basis that is detrimental to the victim's interests. There will be cases where a defendant seeks to mitigate on the basis of assertions of fact which are outside the scope of the prosecution's knowledge. A typical example concerns the defendant's state of mind. If a defendant wishes to be sentenced on this basis, the prosecution advocate should invite the judge not to accept the defendant's version unless he or she gives evidence on oath to be tested in cross-examination.
- C4. The prosecution advocate should show the prosecuting authority any written record relating to the plea and agree with them the basis on which the case will

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be opened to the court.

- C5. It is the responsibility of the prosecution advocate thereafter to ensure that the defence advocate is aware of the basis on which the plea is accepted by the prosecution and the way in which the prosecution case will be opened to the court.
- C6. In all cases, to ensure clarity before the court the prosecution advocate should consider committing to writing the aggravating and mitigating factors that will form the opening of the prosecution case. Equally, the defence advocate should consider reducing to writing the mitigating factors relied upon on behalf of the accused. Where the issues are complex or there is scope for misunderstanding the prosecution advocate must commit to writing the aggravating and mitigating factors that will form the opening of the prosecution case. The basis of plea document is intended to deal only with the circumstances of the offence. Personal mitigation should not appear in it.
- C7. When the prosecution advocate has agreed the written basis of plea submitted by the defence advocate, he or she should endorse the document accordingly. If the prosecution advocate takes issue with all or part of the written basis of plea, he or she should set out in writing what is accepted and what is rejected or not accepted. Where there is a dispute about a particular fact which the defence advocate believes to be effectively immaterial to the sentencing decision, the difference should be recorded so that the judge can make up his or her own mind. The signed original document should be made available to the trial judge and thereafter lodged with the court papers, as it will form part of the record of the hearing.
- C8. Where a defendant declines to admit an offence that he or she previously indicated should be taken into consideration, the prosecution advocate should indicate to the defence advocate and the court that, subject to further review, the offence may now form the basis of a new prosecution.
- C9. Where the basis of plea cannot be agreed and the discrepancy between the two accounts is such as to have a potentially significant effect on the level of sentence, it is the duty of the defence advocate so to inform the court before the sentencing process begins. There remains an overriding duty on the prosecution advocate to ensure that the sentencing judge is made aware of the discrepancy and of the consideration which must be given to the holding of a Newton hearing to resolve the issue. The court should be told where a derogatory reference to a victim, witness or third party is not accepted, even though there may be no effect on sentence.
- C10. Whenever an agreement as to the basis of plea is made between the prosecution and defence, any such agreement will be subject to the approval of

the trial judge, who may of his or her own motion disregard the agreement and direct that a Newton hearing should be held to determine the proper basis on which sentence should be passed.

D. SENTENCE INDICATIONS

- D1. Only in the Crown Court may sentence indications be sought. Advocates there are reminded that indications as to sentence should not be sought from the trial judge unless issues between the prosecution and defence have been addressed and resolved. Therefore, in difficult or complicated cases, no less than seven days notice in writing of an intention to seek an indication should normally be given to the prosecution and the court. When deciding whether the circumstances of a case require such notice to be given, defence advocates are reminded that prosecutors should not agree a basis of plea unless and until the necessary consultation has taken place first with the victim and/or the victim's family and second, in the case of an independent prosecution advocate, with the prosecuting authority.
- D2. If there is no final agreement about the plea to the indictment, or the basis of plea, and the defence nevertheless proceeds to seek an indication of sentence, which the judge appears minded to give, the prosecution advocate should remind him or her of the guidance given in *R v Goodyear (Karl)* [2005] EWCA 888 that normally speaking an indication of sentence should not be given until the basis of the plea has been agreed or the judge has concluded that he or she can properly deal with the case without the need for a trial of the issue.
- D3. If an indication is sought, the prosecution advocate should normally enquire whether the judge is in possession of or has access to all the evidence relied on by the prosecution, including any victim personal statement, as well as any information about relevant previous convictions recorded against the defendant.
- D4. Before the judge gives the indication, the prosecution advocate should draw the judge's attention to any minimum or mandatory statutory sentencing requirements. Where the prosecution advocate would be expected to offer the judge assistance with relevant guideline cases or the views of the Sentencing Guidelines Council, he or she should invite the judge to allow them to do so. Where it applies, the prosecution advocate should remind the judge that the position of the Attorney General to refer any sentencing decision as unduly lenient is unaffected. In any event, the prosecution advocate should not say anything which may create the impression that the sentence indication has the support or approval of the Crown.

E. PLEAS IN MITIGATION

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- E1. The prosecution advocate must challenge any assertion by the defence in mitigation which is derogatory to a person's character, (for instance, because it suggests that his or her conduct is or has been criminal, immoral or improper) and which is either false or irrelevant to proper sentencing considerations. If the defence advocate persists in that assertion, the prosecution advocate should invite the court to consider holding a Newton hearing to determine the issue.
- E2. The defence advocate must not submit in mitigation anything that is derogatory to a person's character without giving advance notice in writing so as to afford the prosecution advocate the opportunity to consider their position under paragraph E1. When the prosecution advocate is so notified they must take all reasonable steps to establish whether the assertions are true. Reasonable steps will include seeking the views of the victim. This will involve seeking the views of the victim's family if the victim is deceased, and the victim's parents or legal guardian where the victim is a child. Reasonable steps may also include seeking the views of the police or other law enforcement authority, as appropriate. An assertion which is derogatory to a person's character will rarely amount to mitigation unless it has a causal connection to the circumstances of the offence or is otherwise relevant to proper sentencing considerations.
- E3. Where notice has not been given in accordance with paragraph E2, the prosecution advocate must not acquiesce in permitting mitigation which is derogatory to a person's character. In such circumstances, the prosecution advocate should draw the attention of the court to the failure to give advance notice and seek time, and if necessary, an adjournment to investigate the assertion in the same way as if proper notice had been given. Where, in the opinion of the prosecution advocate, there are substantial grounds for believing that such an assertion is false or irrelevant to sentence, he or she should inform the court of their opinion and invite the court to consider making an order under section 58(8) of the Criminal Procedure and Investigations Act 1996, preventing publication of the assertion.
- E4. Where the prosecution advocate considers that the assertion is, if true, relevant to sentence, or the court has so indicated, he or she should seek time, and if necessary an adjournment, to establish whether the assertion is true. If the matter cannot be resolved to the satisfaction of the parties, the prosecution advocate should invite the court to consider holding a Newton hearing to determine the issue.

HER MAJESTY'S ATTORNEY GENERAL

Dated this day of October 2005

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