



**Attorney
General's
Office**



Protocol between the Law Officers and the Service Prosecuting Authority

23 January 2024

Overview

1. This protocol is made between the Attorney General and Solicitor General (the Law Officers of England & Wales), the Director General of the Attorney General's Office, and the Director of Service Prosecutions (the Director), who is head of the Service Prosecuting Authority (SPA).
2. This protocol 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 SPA. This relationship is an essential component of governance, and 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 the operational effectiveness of His Majesty's Armed Forces.
3. In particular this protocol 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 arrangements supporting that relationship; and
 - the principles behind day-to-day ways of working they expect to see between officials in the SPA and the Attorney General's Office (AGO) in support of their relationship and functions.
4. This protocol is not intended to be an exhaustive statement of the relevant legal functions of the Law Officers and the Director. Its operation will be regularly 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 a new Director.

The Service Prosecuting Authority

5. The SPA (the Director and their appointed prosecuting officers) was created and given its functions and powers by the Armed Forces Act 2006 (the Act)¹. It formed on 1 January 2009 following the incorporation of the Navy Prosecuting Authority, Army Prosecuting Authority and Royal Air Force Prosecuting Authority. It is headed by the Director of Service Prosecutions. The SPA and Director act under the general superintendence of the Attorney General and remain fully independent of the military Chain of Command.
6. The SPA is the principal prosecuting authority within the Service Justice System (SJS) and is responsible for the prosecution of all service offences before the Service Courts, including the Court Martial. Service offences comprise both

¹ <https://www.legislation.gov.uk/ukpga/2006/52/contents>

disciplinary and criminal conduct offences and can be committed by persons subject to service law (including members of the regular UK Armed Forces) and civilians subject to service discipline.

7. The SJS has a universal jurisdiction. The SPA provides for the independent, fair and efficient consideration of cases referred to it by the service police or the chain of command and makes charging decisions based on the sufficiency of evidence and the public (including the service) interest. Where a decision is taken to prosecute, the SPA undertakes prosecution by exercising its functions, in accordance with the law, with a view to preserving and enhancing confidence in the SJS. It acts as a respondent in the Summary Appeal Court and appears for the prosecution in the Court Martial Appeal Court.

Independence

8. The independence of the SPA in the exercise of its prosecutorial functions and powers is of fundamental importance. The SPA is fully independent of the Military Chain of Command and the Director is not answerable to the Secretary of State for Defence in respect of his decision making relating to prosecutions. The Director is a Statutory Officer Holder².
9. Whilst the Ministry of Defence (MoD) is the sponsoring Government department for the SPA, the Law Officers also support and protect the operational independence of the Director in exercising prosecutorial functions and powers in accordance with this protocol. Further, where the time limit for charging certain individuals or certain offences has been exceeded, the Director must seek consent³ from the Law Officers before bringing charges.

Appointments

10. The Director is appointed by His Majesty the King, as provided by section 364 of the Act. The MoD is responsible for the Director recruitment and appointment process. The role is equivalent to a two-star grade within the Armed Forces and the process is subject to the relevant Civil Service appointment rules. The Director shall hold and vacate office in accordance with the terms of his appointment.
11. The Director has a statutory power to appoint prosecuting officers to help discharge the Director's duties. Through a process of delegation, a prosecuting officer may, unless the Director otherwise directs, exercise any function of the Director⁴.

² <https://www.legislation.gov.uk/ukpga/2006/52/section/364>

³ <https://www.legislation.gov.uk/ukpga/2006/52/part/2/chapter/2/crossheading/time-limits-for-offences-other-than-reserve-forces-act-offences>

⁴ <https://www.legislation.gov.uk/ukpga/2006/52/section/365>

Roles and Responsibilities

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12. The Director is subject to the ethical standards of the seven principles of public life, known as the Nolan Principles⁵ and the Civil Service Code⁶. SPA staff who are Civil Servants are also subject to the Nolan Principles and Civil Service Code.
13. The Director, assisted by the prosecuting officers, is responsible for conducting the following main areas of casework:
- providing advice to, and consulting with, the service police on their investigations into alleged service offences;
 - making charging decisions in respect of cases referred to the SPA by the service police and commanding officers;
 - preparing and presenting cases in the service courts, including the Court Martial, the Summary Appeal Court, the Service Civilian Court and the Court Martial Appeal Court;
 - conducting reviews under the SPA's Victims' Right to Review (VRR) Policy.
14. The Director keeps the AGO informed of all matters relevant to the exercise of the Law Officers' superintendence functions.

Attorney General's Office

15. The Law Officers, supported by the AGO, exercise their superintendence functions as set out in this Protocol and in accordance with government guidance. The Law Officers support and hold to account the Director in the discharge of the SPA's casework functions in accordance with this Protocol.
16. The AGO supports the performance of this agreement by:
- advising the Law Officers about their powers, duties and responsibilities in relation to the SPA and supporting the discharge of their relevant functions;
 - supporting the independence of the Director, and consulting the Director about the policy, strategic and legislative framework relevant to the SPA;
 - supporting the performance and accountability of the Director through the Service Justice Board and the Service Justice Executive Group; and
 - offering the Director the opportunity to consult, when required, other government departments about SPA policy and objectives, ensuring these are considered as part of wider policy development.

⁵ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

⁶ <https://www.gov.uk/government/publications/civil-service-code>

17. The Secretary of State for Defence is accountable to Parliament for the performance of the Service Justice System. This includes answering Parliamentary Questions, correspondence from Members of Parliament and questions from Select Committees. Day to day oversight of SPA is delegated to the Parliamentary Under Secretary of State (Minister for Defence People, Veterans and Service Families).

Governance and Accountability

18. The Law Officers meet regularly, at least twice a year, with the Director to discuss areas of mutual interest and opportunity regarding the service justice system, in addition to discussing issues affecting SPA management and operations.
19. The AGO will seek regular input from the SPA, Ministry of Justice and other government departments at official level on areas of mutual development, benefit, and concern for the SJS, and wider discussion for the Law Officers and Director.
20. The governance and sponsorship of the SPA as a public body falls under the People Function of the MOD and is subject to MOD processes and controls. The Chief of Defence People (CDP) is the senior sponsor. The main governance bodies for the SJS – of which the SPA is a key component – are the Service Justice Board and the Service Justice Executive Group.
21. The SPA's budget is negotiated by the MOD as part of its budget with HM Treasury, as part of the Spending Review process.

Inspections

22. The purpose of His Majesty's Crown Prosecution Service Inspectorate (HMCPSI) inspections is to provide independently assessed evidence about the operation, efficiency, and effectiveness of the Crown Prosecution Service (CPS), the Serious Fraud Office (SFO), and other public prosecution organisations by invitation only, which includes the SPA.
23. The MOD maintains strategic oversight of the development of the SPA's inspection programme. The Director is responsible for determining – in conjunction HMCPSI – which inspections to undertake and how to undertake them, and exercises independence as to the content of inspection reports. The Law Officers should have appropriate advance sight of all inspection reports before publication.
24. HMCPSI inspections operate to:

- assist the Law Officers in the exercise of their superintendence and the MOD in its sponsorship functions in relation to the public prosecutors;
- assist the Directors of the SPA, CPS, SFO and other prosecuting officers in the exercise of their functions; and
- provide assurance to Parliament and the public about the operation of public prosecution organisations.

Casework

25. The SPA operates independently when deciding whether or not to bring charges in a particular case. Those decisions are the responsibility of the Director, who may delegate authority to prosecuting officers to carry out this function.
26. The decision whether to bring a charge and, if so, for what offence, is a function of the Director and must be taken on well-established principles of evidential sufficiency and the public – including the Service – interest.
27. The SPA 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.
28. The SPA takes casework decisions and conducts individual cases applying the law, and the framework of principles set out in the Code for Crown Prosecutors, the Manual for Service Prosecutors, CPS Policy and Guidance – save where there is a service reason for departing from it – together with any relevant published guidance issued by the Director, or the Attorney General.
29. Other than as provided for by this protocol, the Law Officers do not participate in SPA casework decisions. The Director may wish to notify the Law Officers of casework of a sensitive nature.

Attorney General's Consent to Prosecute

30. Subject to the requirement for the Director to seek consent from the Law Officers under s.61(2) of the Act, or s.5(2) of the Overseas Operations (Service Personnel and Veterans) Act 2021, where the time limit for charging certain individuals or certain offences has been exceeded, no enactment requiring the consent of the Attorney General in connection with any proceedings has effect in relation to proceedings under the Act for a service offence. This is in accordance with s.326 of the Act.

31. 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.
32. 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 the prosecution has started, the prosecutor informs the Attorney General of the decision as soon as it is taken.

External Communications

33. The SPA is independent in terms of its press releases and communications policy in relation to prosecuting decisions. It has access to independent media handling advice, if required, which reflects its own specific interests.