



The Crown Prosecution Service  
**National Standards of Advocacy**

## National Standards of Advocacy



Advocacy is central to our work as prosecutors. CPS advocates now appear in all courts and across the full range of cases. This is as it should be. But whether it is one of our own lawyers or Associate Prosecutors, or a member of the private Bar representing the Crown, the very highest standards of advocacy are essential.

These new and updated National Standards of Advocacy clearly set out what we expect from all prosecution advocates. By adhering to them we shall serve the public and uphold justice.

A handwritten signature in black ink, reading "Ken Macdonald QC". The signature is written in a cursive, flowing style.

**Ken Macdonald QC**  
Director of Public Prosecutions

## **The CPS National Standards of Advocacy**

These are the standards expected of everyone who prosecutes on behalf of the Crown Prosecution Service.

The standards are not meant to be exhaustive but rather to act as prompts for prosecution advocates. Prosecution advocates should always ensure that they are aware of the policies and authorities underpinning these standards and how to access the relevant background material.

Paramount to the standard of conduct required of prosecution advocates is that they act, and are seen to act, fearlessly, in a manner that supports a transparent system that brings offenders to justice, respects the rights of defendants, and protects the innocent. They should act in accordance with the Criminal Procedure Rules and the overriding objective to deal with cases justly.

### PROFESSIONAL ETHICS

The following is required:

- Advocates should always adhere to the requirements of their professional body contained in the Code of Conduct of the Bar of England and Wales, the Solicitor's Code of Conduct or the ILEX Code of Conduct.
- Advocates should be familiar with the professional duties of both prosecution and defence advocates.
- Advocates should adhere to any other professional codes or ethical statements that apply to them.
- Advocates should possess a sound knowledge of the Criminal Procedure Rules and should ensure that they adhere to them.
- Advocates should conduct any prosecution in a robust, firm, and fair manner. The prosecution advocate should take the lead in addressing the court.
- Advocates must never mislead the court. All factual information (e.g. reasons for previous adjournments, details of previous applications, reasons for delay) must be entirely clear and unambiguous.
- Advocates should prosecute a case fairly and independently and in accordance with the overriding objective of the Criminal Procedure Rules.
- Advocates should comply with the Instructions to Prosecution Advocates and any case specific instructions.
- Advocates should comply with the Code for Crown Prosecutors including the requirement to keep cases under continuing review.
- Advocates should comply with the Human Rights Act.
- Advocates should comply with the Farquharson Guidelines on 'The Role and Responsibilities of the Prosecution Advocate.'
- Advocates should comply with other published CPS policies and procedures, particularly the Code of Practice for Victims of Crime and the Prosecutor's Pledge.
- Advocates should have an understanding of equality and diversity issues in practice, including the CPS Equality and Diversity Policy and, for external advocates, the CPS Equality and Diversity Expectations Statement for the Bar.

### PLANNING AND PREPARATION

Proper planning and preparation are vital to effective presentation.

Prior to each hearing an advocate should:

- Read the papers and any endorsements on the file or backsheet.
- Ensure that they know what the next listing is for and what outcome the prosecution will be seeking.
- Consider whether it may be appropriate to seek any rulings or directions from the court in relation to any particular issue.
- Consider whether all Directions have been complied with and, if not, seek to ensure compliance.
- Consider any Plea and Sentence Document and ensure that relevant sentencing guidelines and case law are available for the court.
- Where relevant, ensure that skeleton arguments are prepared and that sufficient copies of any authorities are available for the court and the defence.
- Consider whether Custody Time Limits apply and whether any application for an extension will need to be made.

In addition to the above, prior to trial an advocate should:

- Become fully familiar with the case, the offences, the facts, the issues to be tried and relevant law and procedure.
- Ensure that where reliance is to be placed on material such as photographs or videos these are viewed and considered in advance of the hearing and that sufficient copies are available for the hearing. Where necessary the advocate should confirm that any necessary technical equipment will be available in the court room and check that it is functioning correctly before use.
- Ensure that the charges or counts on the indictment are correct, accurately reflect the prosecution case and do not require amendment.
- Review the witnesses that have been required to attend and in the event that further witnesses are required, take steps to ensure that such witnesses are warned. In cases of witness difficulty consider whether the case should be listed for mention and if necessary an application made to break the fixture.

## National Standards of Advocacy

---

- Ensure that the needs of victims and witnesses have been considered and that all relevant applications have been made.
- Take steps to ensure that any outstanding applications are made and consider whether it might be appropriate to seek any pre-trial rulings.
- Ensure that all Disclosure obligations have been complied with.
- Consider the scope for any agreed facts being reduced to written admissions.

### WRITTEN ADVOCACY

Advocates should:

- Ensure that all written notices or applications for orders or directions or any skeleton arguments and admissions are prepared and submitted within any time period laid down by the Court or under the Criminal Procedure Rules. Applications for the extension of any time limits should be made where appropriate.
- Ensure that skeleton arguments fully set out the issues under consideration and contain details of all relevant authorities whether favourable or unfavourable to the prosecution argument. Copies of relevant authorities should be supplied along with the skeleton argument and in accordance with any time period laid down.
- Ensure that where it is appropriate to reduce any of the evidence to admissions this is done in sufficient time to allow the defence to consider them.

### ADVOCACY IN COURT

#### General

Advocates should:

- Be aware of the practice and procedure relevant to the court in which they are appearing including the correct forms of address for the judge or magistrates.
- Dress appropriately for the court.
- Be courteous to others in the court.
- Address the court clearly and appropriately using language appropriate to the intended audience, whether jurors, magistrates or judges.
- Not speak or write when any oath is being taken or when the defendant is being arraigned.

- Ensure that files and briefs are properly and clearly endorsed with the outcome of the hearing and any necessary further action.
- If appearing in the magistrates' court, ensure that they are familiar with relevant sentencing guidelines so as to be able to make representations as to the appropriate venue for trial in 'either-way' cases.
- If appearing in the youth court familiarise themselves with the procedure relevant to that court including in relation to bail, the court's sentencing powers, grave crimes and dangerous offenders.

### **Bail**

Advocates should:

- Ensure they have sufficient information to oppose bail where appropriate and that such information is up to date. They should obtain where possible the facts of any relevant previous convictions.
- Note any conditions of bail which are imposed.
- Be familiar with the legal requirements in relation to objecting to bail including in relation to youths.
- If opposing bail in the magistrates' court, be aware of the provisions of the Bail (Amendment) Act and the procedure for appealing the grant of bail in appropriate circumstances.
- Be familiar with the law surrounding breach of bail and how to deal with breaches in court.

### **Guilty Pleas and Sentencing**

- Advocates should be aware of and apply the provisions of The Attorney-General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise 2005, as amended.
- Advocates should ensure that the court is made aware of any motivation for an offence which may be seen as an aggravating feature.
- Advocates should ensure that all relevant material is set before the court including where possible the facts of any relevant previous convictions. Where a basis of plea is agreed this should be written down and a copy placed on the brief and CPS file.
- Advocates should ensure that any Victim Personal Statement is placed before the sentencing court.

## National Standards of Advocacy

---

- Advocates should be aware of ancillary orders available at sentence and draft and apply for such orders where appropriate. Advocates should also consider the availability of orders under the Proceeds of Crime Act.
- Advocates should be prepared to assist the court in the sentencing exercise in accordance with the Attorney-General's Guidelines.
- Advocates should challenge assertions which are unfair or which run contrary to the Crown's case. If the defence persist with the assertions, and if appropriate, the court should be invited to hold a Newton Hearing into the issue. Advocates should also bear in mind the power of the court to preclude publication of certain derogatory assertions made against individuals in certain circumstances.
- If any proposed basis of plea is not agreed by the prosecution and there are factual issues that the defence do not accept, advocates should consider whether such factual issues are likely to bear upon the level of sentence and ought accordingly to be raised with the court so that it can consider whether to hold a Newton Hearing.
- If it becomes clear that there has been a defect in the sentence imposed by the court, advocates should consider inviting the court to use the 'slip rule' to have it corrected if time permits.

### Trial Issues

- Advocates should ensure that they are fully prepared for the trial that they are to prosecute (see Planning and Preparation above).
- Where a number of witnesses are to be called to give evidence the advocate should prepare and circulate a running order of witnesses so that witnesses do not have to wait unnecessarily at court.
- Advocates should introduce themselves to victims and witnesses before they give evidence. They should do what they reasonably can to put all witnesses, particularly nervous or vulnerable witnesses, at ease and explain court procedures.
- Prior to trial the advocate should, where possible, discuss the case with the defence advocate if one is instructed. Where issues have not already been clarified the prosecution advocate should seek to determine:
  - Whether there are any outstanding issues so far as the defence are concerned.
  - Whether there are any issues which are agreed and upon which a witness can be led in evidence or which can be reduced to written admissions.
  - The nature of the defence and the issues in the case.
- 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, the prosecution advocate should, where practicable, speak to the victim or the victim's family so that the position can be explained.

- Any agreement as to the basis of any plea should be recorded in writing and signed by both advocates.

### **The Trial**

- An Opening Speech should:
  - Be planned and structured.
  - Identify the issues and deal with anticipated (but not fanciful) defences.
  - If appropriate to the forum deal with the burden and standard of proof.
  - Not overstate the prosecution case.
- Examination in Chief should:
  - Be conducted in accordance with the rules of evidence.
  - Be planned and structured.
  - Demonstrate appropriate use of questions e.g. non leading – unless by agreement.
- Re-examination should:
  - Only be used when appropriate, asking questions arising out of cross examination.
- Cross Examination should:
  - Be planned and focused on the issues.
  - Use leading questions effectively.
  - Put the prosecution case.
- A Closing Speech should:
  - Always be made where appropriate
  - Summarise the relevant evidence and why the Prosecution say the defendant is guilty of the offence.
  - Be the focus of all the preparation before and during the trial.
- Sentencing
  - The guidance in the Section 'Guilty Pleas and Sentencing' above should be followed so far as relevant.

### **APPLYING CPS POLICIES**

- Advocates must prosecute all cases in accordance with relevant published CPS Policies. Particular regard should be had to policies in relation to Victims and Witnesses particularly the Prosecutor's Pledge, the Code of Practice for Victims of Crime and the Standard for Communication between Victims, Witnesses and the Prosecuting Advocate.