

Response to the Questionnaire on principles of public prosecution as regards juvenile justice.

1. In your country, do public prosecutors have the duty to apply a general policy concerning juvenile justice? To do so, do they follow specific guidelines?

In Scotland the decision on whether to prosecute is within the discretion of the public prosecutor (in most cases the Procurators Fiscal). Guidance and policy in terms of the decision making process in respect of deciding whether to prosecute is not enshrined in any legislation but rather is contained in guidance issued by the Law Officers and other officials in the Crown Office and Procurator Fiscal Service. When considering whether to prosecute the prosecutor must be satisfied that there is sufficient admissible evidence in the case and that a prosecution would be in the public interest.

In Scotland the age of criminal responsibility is set at eight years old, no child under this age can be guilty of any offence.¹

Where a child is under the age of sixteen years, there is a presumption in favour of such cases being dealt with by the Children's Reporter² and criminal proceedings should only be taken where there are compelling reasons in the public interest to do so.

There are various alternatives to prosecution which may also be applicable in each individual case based on the circumstances.³

2. Does your country's criminal justice system provide for specialised public prosecutors for juveniles, entrusted with the implementation of specific laws and procedures?

Do public prosecutors form, together with specialised judges for juveniles, a specialised entity within the court where, for instance, a general policy for juvenile justice is defined or discussed?

There are no specialised public prosecutors in Scotland who deal exclusively with juvenile offenders, although many individual prosecutors may build up a certain level of expertise over time.

The development of policy on how juveniles are dealt with in the criminal justice system is achieved through a variety of routes – it may be through government or parliamentary action, for instance via legislation, or for more incremental reforms this may be achieved through policy decisions by criminal justice partners, including the public prosecutors.

¹ Under Section 41 of the Criminal Procedure (Scotland) Act 1995. However the Criminal Justice and Licensing (Scotland) Bill, which is currently progressing through the Scottish Parliament will seek to raise the age of criminal responsibility to twelve years old, in line with the rest of the United Kingdom.

² Further information can be found on the Children's Reporter system and how it operates in Scotland on their website - <http://www.scra.gov.uk/>

³ Further information on the criteria on which decisions whether to prosecute are made can be found in the Prosecution Code for Scotland - <http://www.copfs.gov.uk/Resource/Doc/13423/0000034.pdf>

In Scotland, if a juvenile is to appear in court as an accused, legislation dictates that the court should sit in a room which is not, in ordinary circumstances, a court room.⁴

Additionally, a pilot scheme was recently run in the Lanarkshire area of Scotland where specialist 'Youth Courts' were established for offenders aged 16 and 17 years old. These were seen as a transitional option between the Children's Reporter stage and attendance in a full adult court.⁵

3. If yes, how are public prosecutors educated, selected and trained?

As mentioned before, there are no specialist prosecutors in this area. However thorough guidance is provided to all public prosecutors and general advocacy training is provided, with specific guidance and support in developing the skills necessary to deal with cases involving child accused.

Additionally training is provided to prosecutors on how children should be treated as vulnerable witnesses in the court process, which can be adapted when dealing with children as an accused.

4. As regards victims of offences, can the public prosecutor apply specific procedures and means, in particular to collect testimonies? Moreover, are they free to choose ways of prosecuting or are their powers sometimes limited by the law, for instance as regards the choice of alternatives to prosecution or of the prison sentence requested for juveniles already condemned or second offenders? Does the law specify according to the juvenile concerned between these prosecution choices, for prison, for some types of sentences?

In relation to collecting testimonies, the police will take statements from all relevant witnesses in the case. Should further information be necessary, Scots law provides for witnesses to be precognosed (interviewed by someone from the prosecution service or the defence) to ascertain further details.

With regards to prosecutorial decisions, discretion and issues to be considered, the current position is outlined above, in answer to question 1, and further details can be obtained by referring to the Prosecution Code for Scotland.

In Scotland, certain offences, such as murder, carry mandatory prison sentences. However consideration is taken into the individual circumstances of the case and the age and status of the accused. There are various options for imprisonment, such as within a Young Offenders Institute.

5. What is the specific role of the public prosecutors in custody before a court hearing, during the hearing and in the detention after the conviction, in cases involving juveniles?

Where the child has been apprehended by the police and it is intended to submit a report to the public prosecutor, the police may, detain the individual in custody,

⁴ Criminal Procedure (Scotland) Act 1995, section 142(1)

⁵ Further details and an evaluation on the success of the pilot can be obtained by reading the review report - <http://www.scotland.gov.uk/Resource/Doc/129603/0030896.pdf>

liberate the individual unconditionally, or place conditions on such liberation (to which the parent/guardian of the individual must agree.)

Where the child is detained, the child must be kept in a place of safety other than a police station until they can be brought to court, unless there are extraordinary circumstances preventing them from doing so.

Under Article 37(b) of the United Nations Convention on the Rights of the Child, detention or imprisonment of a child should only be used as a measure of last resort and for the shortest possible time. Accordingly, after the first court appearance, a child should not be detained pending trial unless there are compelling reasons for doing so.

Where the child is to be detained and is under the age of 14 and has not been certified as unruly, they should be detained in secure local authority accommodation.

6. What is the role played by public prosecutors in the partnership with local social and administrative agencies working in the field of juvenile delinquency?

This will vary on a local and national level. The sole purpose of the Crown Office and Procurator Fiscal Service is to act as the public prosecution service for Scotland. In this role, nationally, the Service will interact with, and be consulted by, the national government and agencies.

Similarly, at a local level, district and area Procurators Fiscal will meet regularly with local authorities and agencies in respect of juvenile delinquency.

7. In practice, what is the role played by the public prosecutors in the coordination and cooperation of the main actors involved in the investigation process?

As stated above, it is the role of the public prosecutor in Scotland to decide whether to prosecute, whether there is sufficient evidence in the case and if a prosecution would be in the public interest. Additionally, the public prosecutor may direct the police investigation to gather all relevant information that is required for any prosecution. The public prosecutor is a main actor in this investigation process.

Furthermore, in more serious cases, public prosecution staff may take a more active role in the investigation, by precognosing witnesses and evaluating the strength of the case.

II Civil justice system and administrative proceedings:

8. What is the role of public prosecutors as regards access to justice for juveniles? Please specify between juveniles in danger as regards their education, the living conditions, etc., for whom a judicial protection is needed and juveniles who are victims of offences and who claim for compensation.

It should be said from the outset, that the majority of issues relating to civil justice and protection of juveniles are the responsibility of local authorities, through the

social work departments. The procurator fiscal will only become involved where there is the suggestion of criminal conduct, such as neglect or mistreatment of the child, or where the child has been a victim of some other crime.

In Scotland, the public prosecutor has a duty throughout the course of criminal court proceedings, under the Vulnerable Witnesses (Scotland) Act 2004, to ensure that the needs of the child are sufficiently met. Various measures are available to make the process less intimidating and stressful, the child may be able to give evidence through video link or behind screens, and may be accompanied by an appropriate adult.

In terms of compensation, the public prosecutor does not have a role to play in deciding upon this. Claims for compensation are dealt with by the Criminal Injuries Compensation Authority.⁶

9. In your country, are there situations affecting juveniles where public prosecutors can initiate ex-officio investigations?

If it is suspected that the juvenile may be subject to abuse, mistreatment or neglect then the police may carry out an investigation, either on their own initiative through a complaint made or through the suggestion of the local authority social work department. The police may then report this to the procurator fiscal, who would decide on how and whether to proceed with a prosecution, as outlined above.

10. What is the specific role of public prosecutors in applying protective and educative measures towards juveniles? Within the framework, are public prosecutors in relations with other instances or bodies such as, for instance, community homes, schools and how are their contacts with these bodies organised?

While the Crown Office and Procurator Fiscal Service have close relationships with all criminal justice partners, including the local authority social work department and Children's Reporter, the public prosecutor does not have a specific role or duty in this area in Scotland.

11. What is the role of the public prosecutor in child abduction cases by one parent and other family related cases?

In such cases the Procurator Fiscal will be involved if it is likely that a prosecution will arise in such cases. Otherwise the public prosecutor has no role or remit in this area.

12. What is the role of prosecutor in cases such as placement of juveniles in the name of their self protection or placement of children pending expulsion or any other case?

In Scotland, the public prosecutor does not have a direct role to play in this area. If however any conduct arises which is criminal in nature, such as neglect of the child etc., the local procurator fiscal will, on information provided by the police, consider whether a prosecution is necessary or possible.

⁶ The various criteria and how to apply is set out on their website - <http://www.cica.gov.uk/>