

**Crown Office & Procurator Fiscal Service & UK  
Border Agency  
Joint Protocol for the submission, processing and  
monitoring of Prosecution Reports for  
immigration offences**

**2009**

## **Introduction**

1. This Protocol is agreed between Crown Office and Procurator Fiscal Service (COPFS) and the UK Border Agency (UKBA) to set out the framework for effective liaison, communication and co-operation in the investigation and prosecution of immigration and associated crime.
2. The objective of the introduction of the Protocol is to improve the effectiveness of our partnership in dealing with immigration offences and ensure we meet the high standards deserved and expected by the public.
3. This Protocol supplements the document 'Reports to the Procurator Fiscal – a Guide for Specialist Agencies and deals specifically with UKBA cases. Cases of difficulty in the application of this Protocol can be referred in the first instance to the Area or District Procurator Fiscal and the Immigration Criminal Investigation lead for UKBA in Scotland to deal with or ultimately to the Crown Office Policy Division for resolution.

## **Submission and Processing of Reports**

### Investigation Phase

4. It is the role of UKBA to investigate and report potential offences in accordance with the law and its enforcement policy. Potential offences may come to light reactively or as UKBA goes about its normal proactive enforcement and compliance work.
5. If it appears to UKBA that a potential offence may meet the criteria for prosecution then it will make further enquiries in accordance with its internal practices and procedures and prepare a Prosecution Report recommending prosecution for submission to the Procurator Fiscal.

### Reporting Phase

6. The UKBA will aim to submit 90% of reports to the Procurator Fiscal within 6 (3)<sup>1</sup> months of the date of the incident to ensure there are no undue delays in its investigations and reporting. It is recognised that technically complex investigations, especially those requiring specialist evidence may take longer.
7. Any difficulties about reporting in any particular case should be discussed as early as possible with the local Procurator Fiscal and the reason for any delay explained.

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<sup>1</sup> Timescales shown in brackets relate to offences carrying a 6 month statutory time bar

8. The UKBA will prepare its report in accordance with the Guide for Specialist Reporting Agencies.
9. The UKBA will also prepare and make available to the Procurator Fiscal visual aids to help the understanding of the court – e.g. sketches, videos, etc, where appropriate.
10. The UKBA will submit reports via the Specialist Reporting Agencies Website (SRAWEB) in the agreed format. Any productions should be sent upon request to the relevant Procurator Fiscal Office with a covering letter from the reporting officer (RO).

#### Case Progress Liaison Phase

11. Once the case has been marked SRAWEB will electronically notify UKBA of the marking decision. This notification will contain the Procurator Fiscal's reference number which should be quoted in any communication with the Procurator Fiscal Office.
12. All UKBA enquiries about the progress of the case should be directed to the Procurator Fiscal to whom the case has been allocated (if applicable) and contain the Procurator Fiscal's reference number. If any further information is required from UKBA, this will be directed to the RO, who will arrange to provide it as soon as practicable.
13. Within the body of the report, the RO will have the opportunity to indicate the views of UKBA about the offence and any such comments will be available to the Procurator Fiscal who marks the case.
14. Where the Procurator Fiscal decides to take no proceedings or to deal with the case other than by a prosecution, the RO will be advised orally or in writing, with details of any reasons that the Procurator Fiscal is able to disclose. No intimation of a decision not to proceed will be made by UKBA to an accused without the written consent of the Procurator Fiscal.
15. The Procurator Fiscal will give notice to the RO of the calling dates so that the UKBA reporting officer may attend pre-trial diets for information and to assist the Procurator Fiscal in court where reasonably practicable. The RO should make him/herself known to the Procurator Fiscal in court if attending any pre-trial diets so that any issues concerning his/her presence in court can be discussed with the defence.
16. The outcome of the initial calling of the case will be intimated to the RO as soon as practicable, and , in any event, within 5 working days, together with the date of any further hearing set for the case and a brief explanation, where appropriate, of the nature of that hearing (e.g. debate, or intermediate diet and trial diet).

17. Where the case has been allocated to another depute for advance notice preparation (for trial or debate) then the details of that individual, and a contact telephone number, will be communicated to the RO with a request for a pre-trial case conference where appropriate/necessary.
18. Where UKBA staff is cited to attend at court, they should immediately contact the PF Office if there are any problems of availability. Where their attendance is subsequently not needed (e.g. change of plea) they will be promptly informed by the PF Office.
19. Where the charges submitted by UKBA are to be substantially changed or the Procurator Fiscal is considering a plea adjustment that will result in not guilty pleas being accepted to charges, the Procurator Fiscal should discuss this with the RO where practicable. Ultimately, it is for the Procurator Fiscal to decide on the appropriate charges in any given case and whether any plea offered is acceptable.
20. The outcomes of all callings of the case, including the final disposal, will be intimated to the RO as soon as practicable, and in any event within 14 days.
21. Where there is a possibility of any Crown appeal following the conclusion of a case, bearing in mind the Crown have four weeks to lodge an appeal against sentence, UKBA should make immediate representations to the Procurator Fiscal, which can then be taken into account by the Appeals Unit and Crown Counsel when considering the merits of an appeal.
22. In significant cases, or at the request of either party, a post-disposal assessment meeting may be called to learn lessons for the future.

#### Calling to Court Phase

23. When the case has been allocated to a depute for advance notice preparation (for trial or debate) then s/he may contact the RO to discuss the case:
  - To obtain assistance in understanding the legislation, any complex issues and the productions
  - The use of visual aids to help explain the case in court;
  - How UKBA officers may assist the Procurator Fiscal in court including a suitable person to provide advice and assistance to the Procurator Fiscal during the trial.
24. The specialist reporting agencies guide explains the various court procedures and at what stages UKBA officers might support the Procurator Fiscal in court.

#### **Disclosure**

25. Pre-submission, UKBA can disclose to the accused or potential accused or their representative the stage of progress of the investigation, without reference to the Procurator Fiscal. Pre-submission, in no circumstances will UKBA disclose details of evidence to the accused or potential accused or their representative.
26. Once a report has been submitted to the Procurator Fiscal, all questions of disclosure in prosecutions or potential prosecutions are matters for the Crown. Where UKBA reporting officers are asked to disclose anything to an accused or potential accused or their representative, the enquirer should be advised to contact the Procurator Fiscal. The disclosure regime places duties squarely on the Procurator Fiscal and the Crown rather than on reporting agencies and if the Procurator Fiscal is in difficulty s/he will take Crown Counsel's instructions.
27. Broadly stated, the Procurator Fiscal's duty is to disclose evidence to the defence that may support the defence case or undermine the Crown case.

Norman McFadyen CBE  
Crown Agent  
Crown Office & Procurator Fiscal Service

Phil Taylor  
Regional Director  
UK Border Agency  
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