

THE DEPARTMENT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

BY

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The Director of Public Prosecutions is definitely not the Public Prosecutor. This rather bald statement illustrates some important facts which are worthy of consideration with regard to the system of the institution and conduct of criminal proceedings in England and Wales. In Scotland and, I believe, in many foreign countries the right to institute and carry on criminal proceedings is confined to the State. In Scotland, broadly speaking, all criminal proceedings come under the control of the Lord Advocate. No person is allowed to institute a prosecution privately without special leave being given to that effect.

In England, on the other hand, the right to institute proceedings is not confined by any such rules, save in respect of certain specific offences, e.g., murder and other offences in which the consent of a Law Officer is required or the Director of Public Prosecutions is clothed by Statute with the sole duty of prosecuting. I can give a simple illustration of the position in England and Wales by stating that in a hypothetical case of forgery, in which a private person has been defrauded, it is open to that person himself to lay an information and to instruct solicitors and counsel to carry through a prosecution, even to the extent of their appearing in the Court of Criminal Appeal in the event of there being an appeal against conviction. Alternatively, in the same case, a Chief Constable might direct one of his officers to lay the information, should the case appear to warrant his intervention, and carry through the case as a "police prosecution", a term which is colloquially applied to cases so conducted. In the further alternative, the Director of Public Prosecutions might, upon representations being made to him of the gravity and difficulty of the case, institute a prosecution, the information in the case being laid in his name. This instance affords a rough illustration of the system prevailing in England and Wales as to the responsibility for criminal proceedings.

Before the year 1879, cases of exceptional gravity or of great public importance were normally reported by the police authority concerned to the Home Office, and that office tendered advice to the police or, in an appropriate case, the Treasury Solicitor

was requested by the Secretary of State to undertake the prosecution. Without going into any further detailed history, it was decided in 1879 to create the office of Director of Public Prosecutions, and this office was created by the Prosecution of Offences Act, 1879. That Act imposed upon the Director, under the superintendence of the Attorney-General, the duty to institute, undertake and carry on such criminal proceedings as might for the time being be prescribed by regulations under the Act, or, in a special case, be directed by the Attorney-General. The Act imposed a further duty upon the Director to give advice to Chief Officers of Police, Clerks to Justices, and other persons in accordance with the proposed regulations. The Act contemplated the possibility of a Secretary of State appointing assistants, not exceeding six in number, for the purpose of the proper execution of his duties by the Director. The regulations under that Act also authorized the Director to assist prosecutors or the police authority responsible for the prosecution, to incur special costs in the preparation of scientific evidence, plans, models, extra fees to counsel, etc.

It appeared from these regulations that if the Director instituted, undertook or carried on criminal proceedings, he was to instruct the Treasury Solicitor, subject in certain cases to the possibility of his instructing a local agent. Whether or not the true intention of the Act was carried out, it is clear, historically speaking, that the first Director of Public Prosecutions, Sir John Blosset Maule, Q.C., only acted in a consultative capacity. In other words, he considered cases referred to him and gave advice upon such cases, but where he came to the conclusion that the case was one proper for prosecution he passed the papers over to the Treasury Solicitor with his written opinion or comments upon it.

In fact, only one assistant to the Director was appointed under that Act, and the office was, of necessity, a small one because it undertook only advisory work, but was not responsible for any actual conduct of cases in the police courts or at the courts of trial.

In 1883 the then Home Secretary, Sir William Harcourt, appointed a Committee "to inquire into the present action and position of the Director of Public Prosecutions and to suggest such further requirements, if any, as they may think expedient". Following the report of that Committee, the Prosecution of Offences Act, 1884, was passed, which revoked the appointments made under the Act of 1879 and merged the duties of the Director of Public Prosecutions with those of the Treasury

Solicitor. No doubt for the purpose of giving the Director greater control over criminal proceedings, section 3 of the Act of 1884 provided for returns of indictable offences to be made by all Chief Officers of Police in England to the Director. This latter provision, for some reason of which I am not aware, seems to have become obsolete in quite a short time and it now is rather left to the discretion of Chief Constables to communicate with the Director in cases of difficulty, apart from those which by regulation must come to the Department.

Under the Acts of 1879 and 1884 two sets of regulations were made. These provided for the character of the criminal offences in respect of which the Director should institute, undertake and carry on proceedings, and also dealt with the returns which, as above mentioned, appear to have become obsolete. The main regulations have remained unaltered to the present day and have provided for the responsibility of the Director as to the following matters:—

- (a) Where the offence is punishable by death.
- (b) Where the offence is of a class the prosecution of which has hitherto been undertaken by the Treasury Solicitor.
- (c) Where an Order in that behalf is given to the Director by the Secretary of State from the Attorney-General, or
- (d) Where it appears to the Director that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest, and that owing to the importance or difficulty of the case or to other circumstances, the action of the Director is necessary to secure the due prosecution of the offender.

Under the regulations there is a general provision to the effect that the action of the Director is in all matters to be subject to the direction of the Attorney-General.

From 1884 to 1908 the two Treasury Solicitors in succession, Sir Augustus Stephenson and Lord Desart, filled the office and performed the duties of Director of Public Prosecutions.

It seems that the growth of the work by 1908 necessitated the creation of a separate department, and in that year the Prosecution of Offences Act, 1908, was passed, which created a separate office, held in turn by Sir Charles Matthews until 1920, by Sir Archibald Bodkin until 1930, and thereafter by myself. The Act provided for the appointment by the Secretary of State of such number of Assistant Directors as the Treasury might

sanction and it gave to such Assistant Directors power to do any act or thing which the Director may be required or authorized to do in pursuance of any statutory duty. The Act is interesting in giving statutory recognition to the right of any private person to institute or carry on criminal proceedings, but it gave to the Director the right at any stage of such proceedings to intervene and take over the conduct of them.

The Department, as at present constituted on its professional side, consists of the Director, two Assistant Directors, and fourteen professional officers in various grades. The Director must be a barrister or solicitor of not less than ten years' standing; an Assistant Director must be a barrister or solicitor of not less than seven years' standing; and, by present Civil Service arrangements, all the rest of the professional officers must be qualified either as barristers or solicitors. The office is also staffed with a clerical staff of officers attached to the registry and of shorthand writers and copyists, together with other messengers and staff appropriate to a Department of this character.

It is not easy to give a very concise description of the work which comes to the Department. Partly by Statute and partly by custom the duties of the office have grown considerably since 1908. Broadly speaking, however, the work may be classified as follows:—

- (a) Murder cases.
- (b) Prosecutions for coinage offences.
- (c) A number of cases referred by the Board of Trade, *e.g.*, bankruptcy offences and company frauds, and cases referred by a member of other departments, *e.g.*, the Ministry of Pensions and the War Office, who have no legal staff for the purposes of conducting prosecutions.
- (d) A large number of cases which come within the category of sub-paragraph (d) of the Regulations of 1886 referred to the Department by Police Authorities, societies such as the Law Society, Legal Tribunals and numerous private applicants.
- (e) A number of requests by police authorities, Clerks to Justices and, occasionally by coroners for advice on questions of criminal law, and there may be included in this category cases for opinion submitted by Government Departments, especially the Home Office.

- (f) Cases of habitual criminals, for in respect of a charge for this offence the consent of the Director is necessary.
- (g) A number of incest cases, because if the Director does not prosecute or authorise the prosecution in such cases, the fiat of the Attorney-General must be obtained.
- (h) Sexual offences against children and young persons, pursuant to a Home Office recommendation to police authorities.
- (i) The conduct of cases for the respondent in criminal appeals, either where the original prosecution had been undertaken by the Department or where the prosecutor does not propose to defend the appeal.
- (j) Certain duties under the Statutes relating to corrupt practices at municipal or parliamentary elections.

In addition to this rather rough classification of the duties, I ought to mention a duty which originally arose under section 5 of the Act of 1879, which provides for a report to the Director of any case in which a prosecution in its police court stage is withdrawn or is not proceeded with within a reasonable time. In such cases the Director does not, as is usually supposed, consent to the withdrawal of a prosecution, but if he is satisfied that some circumstance, *e.g.*, improper conduct, has arisen in connection with the proposed withdrawal, he can intervene and carry on the prosecution under his statutory powers.

Under most of the sub-heads above mentioned the scope of the work of the Department is more or less defined, but on any references under sub-head (d) it will be appreciated that a supervisory discretion has to be exercised upon the question of whether the Director's intervention is or is not warranted. It is rather under this sub-head that the point of the first sentence is best illustrated and understood.

It would be impossible in the scope of this article to give an account by way of illustration of the various problems submitted to the Department. It may, however, be stated with regard to private applicants that a fairly large section of the public seems notionally to invest the Director with quite remarkable powers of intervention and advice. Complaints range from allegations as to lost wills and unsatisfactory administration of estates, to such matters as the settlement of a dispute with a local authority as to the liability for drainage expenses. Complaints as to "purgery", often quaintly so termed, are, naturally, not uncommon. The victims of "bucket shops"

frequently invite help. It can, however, be stated that each complaint is separately registered and receives individual consideration.

It should be appreciated that, broadly speaking, the Department is not concerned with the investigation of crime. It is essentially a Department devoted to the duty of presenting cases by way of prosecution in the police courts, with the subsequent burden of the appropriate instruction of counsel in cases committed for trial. During the consideration of police reports it, of course, sometimes happens that directions for further investigation are given by the Director or his staff, and this is particularly true in matters where technical evidence may be required, *e.g.*, of a medico-legal kind or on such questions as may require examination by an expert accountant or some scientific witness.

A large proportion of the proceedings dealt with by way of summary jurisdiction or by way of preliminary hearing under the Indictable Offences Act, 1848, is conducted by the professional members of the staff. This is particularly true in the Metropolitan area, although in country cases it is sometimes necessary to appoint agents to act for the Department both at the police courts and at the courts of trial.

So far as counsel are concerned, there exists at the Central Criminal Court a panel of six Treasury Counsel, appointed by the Attorney-General, and these counsel are instructed by the Director to conduct his cases at that court. On the other hand, in the country, whether at Assizes or at Quarter Sessions, the nomination of counsel to conduct the Department's prosecutions is entirely in the hands of the Attorney-General.

From this review of the work of the Department it will be seen that, either owing to the original references of cases or to the assistance of the police in making further inquiries for the Director, very close contact is, in practice, established between the Department and police officers. Normally speaking, all statements of potential witnesses are taken for the Department by police officers whether or not the original reference comes from a police authority. In London the connection between the Department and the Commissioners of the Metropolitan Police and the City of London Police is very close. A large proportion of the work in London is devoted to cases originating from reports from the Metropolitan Police, either submitted for consideration or as requiring the conduct of the case after an arrest.

I am glad to emphasize the very friendly relations which exist between the police officers concerned and myself and my staff. From experience of personal interviews, I am often struck with the ability shown by these officers in matters where a knowledge of the world, business transactions and, above all, the law of criminal evidence is requisite.

Although in correspondence the Commissioners and I are mutually "obedient servants", a great deal of writing is saved by the use of the telephone and still more, in important cases, by personal discussions, in which I may single out those which I have had from time to time with my old friends Sir Trevor Bigham and Mr. Norman Kendal.

In conclusion, the reader may well comment on the rather unscientific demarcation of the duties of the Department. Like many institutions in this country, its growth has been based as much upon custom and practice as upon statutes and rules. On the other hand, I hope I am not unduly optimistic in stating that it seems to work. And, if this statement be accepted, its justification is based on the loyalty of my staff.

ADDENDUM

The foregoing article originally appeared in Volume 2 of the *Metropolitan Police College Journal* and was published in the spring of 1936. Its republication in present circumstances has the full approval of the Commissioner of the Metropolitan Police.

Apart from the many problems created by war legislation and, in particular, by the Defence (General) Regulations of 1939 (hereinafter called the Regulations), the article in its original form is still properly descriptive of the scope of the duties of the Director of Public Prosecutions and of the character of the work falling to be dealt with by his Department.

It is thought that some additional observations as to the effect of war legislation upon the work of the Department may be of interest and this Addendum, therefore, includes in a summarized form the general provisions of the Regulations which have affected and largely increased the work of the Department.

The broad scheme of the Regulations, in so far as criminal offences were to come in question for contraventions of their provisions, was to put the responsibility of trying such offences upon the civil courts, viz., courts of summary jurisdiction, quarter sessions, and assizes. In part, the new provisions as to jurisdiction and trial differed from those of the D.O.R.A. Regulations in

force in the last Great War, for the latter contemplated at least the more serious offences committed by civilians as amenable to the jurisdiction of courts martial.

The right to prosecute for offences against the Regulations or against Orders made thereunder was limited by Regulation 93 to police authorities and to the Director who might himself institute proceedings or consent to some prosecutor, other than a police authority, to take proceedings. The foregoing limitation was largely encroached upon by the Third Schedule to the Regulations which came into force on the 4th of December 1940, whereby a number of authorities including Government Departments and local authorities were enabled to institute or consent to the institution of proceedings under particular Regulations and under Orders made thereunder.

Notwithstanding the fact that owing to the very great number of Orders made under the Regulations it became necessary for practical purposes for Departments, such as the Board of Trade, the Ministry of Food, and the Ministry of Supply, to adopt responsibility for prosecutions, particularly where cases could be dealt with summarily under Regulations or Orders made thereunder which were controlled by such Departments, it has fallen to the Director to be responsible for prosecutions under these latter Regulations where the cases have involved graver offences against the war effort.

Offences against the following Regulations have been the subject of direct responsibility on the part of the Department for the purposes either of prosecution, or of the authorizing of a prosecution, or of advice:—

- 1 A. —Interference with persons in His Majesty's service.
- 1 B. —Forcing safeguards.
- 2 A. —Acts done with intent to assist the enemy, which may on conviction involve penal servitude for life.
- 2 B. —Sabotage.
3. —The safeguarding of information, offences against which are sometimes colloquially summarized as involving careless talk.
- 4 & —Communication with enemy agents, and communication with persons in enemy territory.
- 4 A.
- 39 A. —Seducing persons from duty and causing disaffection.
- 39 AA.—Maiming, etc., to evade service under the National Service Acts.

56 A. —Control of building operations and breaches of the licensing system enforced by the Ministry of Works.

The passing of the Treachery Act, 1940, which involved a sentence of death to be passed upon spies and others who contravened the provisions of this Act, has necessitated all cases under this Act being dealt with in the Director's Department.

Cases of fraud, or attempted fraud, in connection with claims made upon the War Damage Commission are also dealt with in the Department.

In addition to prosecutions under the main Regulations the Director's Department has assumed sole responsibility for prosecutions for contraventions of the Defence (Finance) Regulations.

There are specific provisions in the Regulations involving the consent of the Director to any proceedings whether or not instituted by the police in certain cases; for instance, the Director must consent:—

- (a) To committals for trial to quarter sessions for looting under Regulation 38 A.
- (b) To proceedings under Regulation 39A mentioned above.
- (c) To proceedings under Regulation 39BA (publication of disturbing reports).
- (d) To certain modes of trial in connection with offences relating to controlled articles under Regulation 55.
- (e) To proceedings under Regulation 80A for failure to give information within the terms of that Regulation.

In addition to these provisions as to consent the Director has been placed in the same position as the Attorney-General in respect of consents to proceedings under the Official Secrets Acts, the Geneva Convention Acts, and the Newspapers etc. Repeal Act, 1869.

The foregoing résumé of many of the provisions of war legislation will indicate the greatly increased burden of work falling upon the Department during the last four years and, in addition to the actual duties of prosecuting, very numerous problems have been submitted to the Director for his advice on the construction of the Regulations, and, indeed, on the advisability of proceedings in particular cases. These problems have in the main been submitted by Government Departments and by police authorities.