

PROVICTIMS

THE ROLE OF THE PUBLIC PROSECUTION
IN THE PROMOTION OF VICTIMS' RIGHTS



VICTIMS' RIGHTS AND THE PUBLIC PROSECUTION SERVICE: 10 QUESTIONS AND ANSWERS



Irish Council for
Civil Liberties



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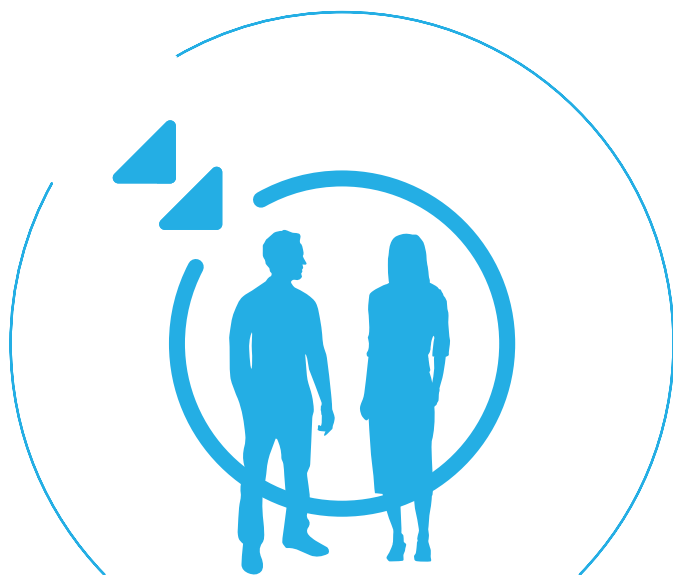
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SUMMARY OF VICTIMS' RIGHTS

1 **WHO IS A VICTIM OF CRIME?**

A victim of crime is someone who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence.

A victim of crime is still entitled to rights even if they are or have been accused or convicted of a separate criminal offence or if their immigration status is uncertain.

The family members of a person whose death was directly caused by a criminal offence are also considered victims of crime.



2 **WHAT SHOULD I DO IF I AM A VICTIM OF CRIME?**

If you were or are a victim of crime, you should report it to An Garda Síochána. The victim of a crime has a number of rights, like information, compensation and protection. A victim does not have to make a complaint in order to be entitled to these rights.

In criminal proceedings, (when a case is investigated and goes to court) the victim is almost always asked to participate as a witness. This is because their direct knowledge of what happened will usually assist the investigation and may contribute to obtaining a guilty verdict in the trial.

A victim who wishes to claim compensation against the person accused of the crime, **(the accused)**, due to the harm caused by the crime may also take part in separate Court proceedings, known as civil proceedings. This is not a trial about guilt but rather the Court determines what compensation is appropriate for losses caused by the crime. The victim needs to file a claim for compensation and submit evidence of the losses caused.

3 **WHAT ARE MY RIGHTS AS A VICTIM?**

If you are the victim of a crime, you have a number of rights. These rights come from a number of sources, including a European Union law known as the 'Victims Directive'.¹ This EU wide law was brought into Irish law through the 'Victims of Crime Act'.² There are a wide range of rights for victims listed in this Act. Some of those rights are listed below:

Right to be treated with dignity and respect

Every victim has the right to be treated with dignity and respect, whatever their gender, race, religious beliefs, ethnic origin, sexual orientation, age, nationality, disability, economic circumstances, marital or family status or if they are a member of the Traveller community.

Right to protection

Every victim is entitled to an individual assessment of what special protection measures they might need. Where the victim is a child, they

1- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

2- The Criminal Justice (Victims of Crime) Act 2017.

are assumed to be entitled to protection measures. The Gardaí must take the best interests of a child into account in this assessment.

If a victim needs special protection they can then access special protection measures. For example, a victim of gender based violence should be interviewed by someone of the same sex. Or, in certain circumstances, victims can be allowed to give evidence in Court through video link or with a screen. Other special measures may include excluding the public from the court room and sometimes certain questions can be excluded where they relate to the victim's private life and are not relevant.

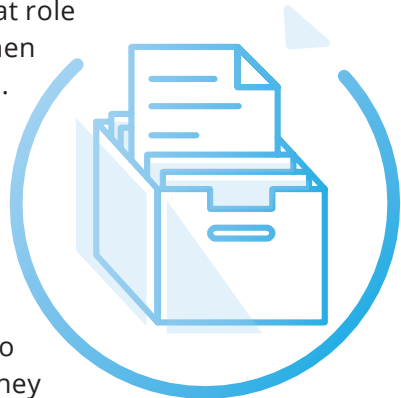
Right to be accompanied

Victims can bring someone with them when they meet with Gardaí to make their complaint and give their statements. If the Gardaí have concerns about the safety of the victim, the investigation or the fairness of a trial, they may ask that the victim choose a different person to accompany them.

Right to Information

Victims have the right to information in simple, accessible language when they first contact the Gardaí or the Garda Ombudsman. This includes information about: victim support services, how to make a complaint about a crime, what role the victim plays during a trial and when a victim can access Garda protection.

Victims are entitled to information about the place and time of the trial, what crime the offender has been charged with, final judgments in a trial and significant developments in an investigation. If the victim wishes to know how the case is progressing, they



should contact the police officer in charge of the investigation, provide the case number and request an update. However, this information may not be provided if it could interfere with an investigation, risk the fairness of a trial or put someone in danger. If a victim feels they should have been given more information they should inform the relevant victims' support services.

A Garda Family Liaison Officer will be assigned to the family of a victim of murder, fatal road traffic collision or kidnapping and will be responsible for liaising with the family throughout the investigation. The Family Liaison Officer will provide timely and accurate information on the progress of the Garda investigation. They will also provide contact details of victim support organisations which are available to support victims and/or their families. For further information about this, you should contact your local Garda Victim Service Office.

Victims are also entitled to a copy of any statement they make, including a victim impact statement.

Right to be heard

If you are the victim of a crime, and the defendant is convicted of the crime, you are entitled to make a Victim Impact Statement. This is a description in your own words of the effect that the crime has had on you. You may, for example, have suffered a physical injury or you may be affected emotionally or psychologically. You may also set out any financial losses that you have suffered. The purpose of the statement is to allow the judge to understand the impact that the crime has had on you. This will be taken into account when sentencing is carried out.

You may also raise concerns about bail (whether an accused should be put in prison to wait for his trial or be let out), in particular you can raise concerns if you are worried about what the accused person might do to you or your family if they are let out on bail.

Rights if there is a decision not to prosecute the accused

A victim should be informed of the decision not to prosecute someone. They should be informed of their right to a summary of the reasons for the decision not to prosecute. They should also be told of their right to request a review of the decision not to prosecute and how to do so. This request should generally be made within 28 days of the day the victim is first told of the decision but this may be extended if there is a good reason. (See Q. 10 for further information).

Restorative Justice

Victims can access a process called 'restorative justice' where a victim and offender are supported in finding ways to resolve issues together if it's in the interest of the victim. Both victim and offender must consent to participating in the process and the victim can withdraw their consent at any time.

Compensation

As a victim of crime, you may be entitled to compensation for what has happened to you. This must be done within two years of the incident with some exceptions. A child can claim from the date they turn 18 or an adult can make a claim for them before that date.

There are two main ways to get compensation for a crime that takes place in Ireland. These are by court order or under the Scheme of Compensation for Personal Injuries Criminally Inflicted. In some cases, the court may decide that an offender must pay compensation to you. This may be one of several conditions that the court has imposed on the offender so that he or she can avoid a prison sentence. The court may ask the Probation Service to supervise the payment of the compensation.

If you are injured as a result of a crime, you may be eligible for compensation under the Scheme of Compensation for Personal Injuries Criminally Inflicted. This scheme is funded by the Department of Justice

and Equality and administered by the Criminal Injuries Compensation Tribunal. You may also be entitled to compensation for medical and out of pocket expenses, including loss of earnings, which are incurred directly as a result of the crime.

To make a claim, the crime must have been reported to the Gardaí. An application must be made to the tribunal as soon as possible but not later than three months after the incident. The tribunal has discretion under the scheme to extend this time limit in circumstances where the applicant can show that the reason for the delay in submitting the application justifies exceptional treatment of the application. You should contact the Criminal Injuries Compensation Tribunal and ask for an application form.

Other Rights

Victims also have all of the other rights protected by the Irish Constitution. Key among them is the right to privacy. Measures should be taken to protect a victim's right to privacy, including images of the victim and their family.

WHAT DO THE GARDAÍ DO WHEN SOMEONE REPORTS A CRIME?

4 **WHAT HAPPENS DURING THE INVESTIGATION OF A CRIME?**

Once a crime is reported or the complaint filed, the Gardaí will start an investigation. They will investigate whether there was a crime, who may have committed it and they will gather evidence for the trial.

When a victim reports a crime to the Garda Síochána, they take a witness statement from the victim. A witness statement is a written record of the complaint. You will sign the witness statement. The Gardaí will then investigate the crime.

If you are the victim of the crime you should subsequently receive a letter in the mail from the Garda Superintendent giving you the name of the investigating Garda, the PULSE (computer) number of the crime, the telephone number of the Garda Station, and the number of Crime Victims Helpline (116 006).

During the investigation stage, Gardaí will gather all available evidence, such as CCTV, fingerprints or DNA and a file will be prepared in serious cases and submitted to the office of the Director of Public Prosecutions (DPP). See below (Q. 6) for more information on the DPP.

Depending on the investigation, the suspect may be arrested. The Gardaí will keep you informed at the various stages of the investigation and trial process and will let you know, for example, if the



accused is in custody or on bail and any conditions that are attached to the bail, the time and location of any court hearings and they will explain the criminal process to you.

The victim should cooperate with the authorities whenever requested to do so and inform them about anything that could be helpful for the investigation.

If property is taken from you as part of the investigation, it should be returned to you without delay whenever possible. However, sometimes your property will have to be used as evidence in a criminal trial. If this happens, you may not be able to get this property back until the court case ends.

After giving evidence to the police, it is normal for some time to go by before receiving information on the progress of the case. The investigation stage may last from a few weeks to several months, depending on the amount of evidence to be gathered and the complexity of the investigation. It may even be necessary for the authorities to talk to the victim more than once during the investigation. However, interviews and medical examinations should be kept to a minimum and only done when necessary for the investigation.

5 **WHAT IS THE PURPOSE OF A WITNESS STATEMENT?**

When you make a complaint, the investigating Garda will ask you to make a statement which they will write down and ask you to sign.

The Gardaí will ask you to provide as much information as possible about the offence. It is often useful to write out an account of what happened as soon as possible after the incident while it is completely

fresh in your memory. You should describe any injuries suffered in the incident or as a result of the crime.

The Gardaí will also ask you if you have any concerns about your or your family's safety so that appropriate advice can be provided. You will be asked to provide your full address and contact details to allow the Gardaí to keep you up to date with any progress in the investigation. You should also keep the Gardaí up to date with any further losses or damage that you have noticed or if you are suffering any further injury caused by the crime. You should inform the Garda of any photographs that were taken of your injuries and provide copies of these. You are able to amend or add to your statement. So if you forgot to say something in your original statement, you should contact the investigating Garda as soon as possible and ask to make a further statement.



Any statement that you give to the Gardaí is confidential. Therefore it can only be seen by you, the investigating Garda team, the prosecution team, by the accused person and by the legal representatives for the accused person. You are entitled to a copy of your statement and may request one from the investigating Garda or the Garda Superintendent. You are not entitled to see witness statements provided by other witnesses.

A statement given by a witness to a member of the Garda is not evidence in the subsequent criminal trial of an accused. This means you will usually have to give evidence in court and not just rely on your written statement. You may then be asked questions by the lawyer representing the accused.

However, the lawyers and judge in court will see your witness statement and if there is a big difference between what you have said in your written statement and what you say in court, the lawyer for the accused may say that you are lying. A jury can request to see your written statement too.

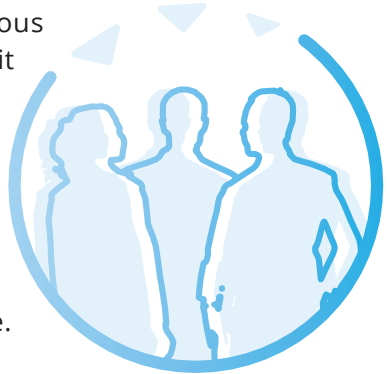
THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

6 **WHAT IS THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)?**

The **Office of the Director of Public Prosecutions (DPP)** is the body that decides whether or not to charge people for committing crimes and take them to court for a trial. This is known as a decision whether or not to 'prosecute' someone who is accused of a crime.

The DPP is a state body but it is separate from the Government.

The DPP is in charge of prosecuting serious cases that are heard by a jury in the Circuit Criminal Court or the Central Criminal Court. Minor cases are currently prosecuted in the District Court by lawyers representing the DPP or by members of the Gardaí. The DPP gives general direction and advice in these cases and can give specific direction to the Gardaí if a Garda requests assistance.

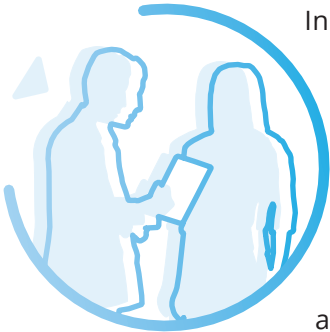


The DPP does not give legal advice to members of the public. If you have a legal question, you should talk to your solicitor or contact the Free Legal Advice Centre (FLAC) at **1890 350 250 or 01-8745690**.

7 WHAT ROLE DOES THE DPP PLAY IN CRIMINAL PROCEEDINGS?

When a complaint that a crime has been committed is made to the Gardaí, an investigation will be carried out. The Gardaí will gather all the evidence and, in cases of serious crime, a file will be sent to the DPP. The DPP will then carefully assess the evidence gathered and decide whether there is enough evidence to charge the accused with a crime and take them to court for a trial. The DPP will also take into account whether the prosecution is in the public interest.

Once the prosecution begins, the Office of the DPP is responsible for presenting the case in court. Unlike some other European countries, the DPP does not play any role in investigating crimes. This is the role of the Gardaí.



In cases of serious crime, a lawyer (usually a barrister) acting on behalf of the DPP will prosecute the case in court. During the trial, the DPP and its lawyers must prove that the accused committed the crime beyond reasonable doubt. In order to do this, the lawyers for the DPP will present evidence gathered from witnesses, expert witnesses and documents, etc.

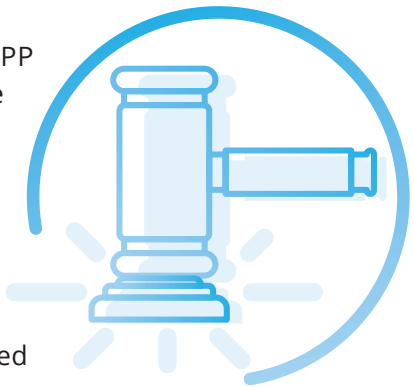
A case may sometimes be heard in the Special Criminal Court if it involves paramilitary, subversive and organised crimes. This court sits with 3 judges and no jury and some special rules on evidence apply.

The DPP can appeal a court decision to acquit a defendant (find them not guilty) in limited circumstances and may also appeal to a higher court to ask for a more severe sentence.

HOW DOES THE DPP DECIDE WHETHER TO PROSECUTE SOMEONE?

The DPP will take a number of things into account when deciding to prosecute someone for a crime. They need to make sure there is enough evidence to make a strong case that the accused is guilty. The judge or jury who will hear the case must be sure that the accused is guilty. It is not enough for them to believe that the accused is probably guilty. Therefore, it will often be helpful if there is independent evidence that supports what the victim says. This evidence could include, for example, fingerprint or DNA evidence or evidence from an independent witness. However it is important to note that just because there is no other evidence does not necessarily mean that there will be no prosecution. Independent evidence simply makes a case stronger than a case that is based on the word of one person against another.

The most common reason why the DPP might decide not to prosecute a case is due to a lack of evidence. If there is not enough evidence to convince a judge and jury that someone is guilty, the prosecution won't succeed. It is not enough that the court may believe the victim's account. The test is whether all of the evidence can show that an accused is guilty beyond a reasonable doubt.



If the DPP decides there is not enough evidence to take the accused to court, then the case will be closed. Unfortunately, not all cases are solved. Sometimes it may not be possible to find out who committed the crime or there is not enough evidence for the DPP to take the case to court.

In a small number of cases, even though the evidence may be strong, a decision may be made not to prosecute the accused for other reasons.

These include, for example:

- if the offender is under 18 years of age and can be supervised by the Gardaí under the Juvenile Diversion Programme rather than prosecuted;
- if an adult can be given a warning under the Adult Cautioning Scheme for certain minor offences rather than prosecuted;
- if there is some other good reason not to prosecute, for example, if the offender is terminally ill.

The decision of the DPP on whether to prosecute somebody is an important one. The DPP does not prosecute a case on behalf of a person but instead on behalf of the public. The DPP must balance the rights of the victim, the rights of the accused as well as the public interest in seeing a criminal conviction. The DPP will always take into account the consequences for the victim of deciding whether to prosecute and will also consider the views of the victim or the victim's family. However, the victim's views and interests will not be the only concern when deciding whether to prosecute.

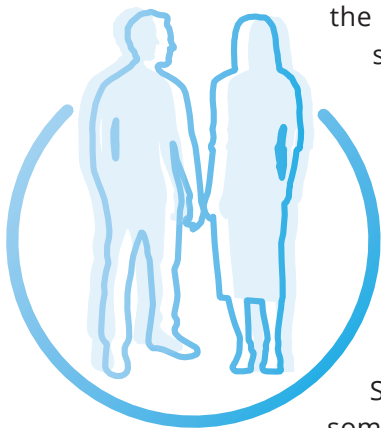
If a victim of a crime is unhappy with a decision not to prosecute someone, they are entitled to seek a review of that decision (see q. 10 for more details).

9 **CAN THE VICTIM BE ACCOMPANIED?**

Unless it is against the victims' interests or the fairness of the investigation or trial, the victim can be accompanied at each stage of the process by a person of their choice. The aim is to ensure a victim has emotional and practical support.

You are entitled to bring someone with you to the Garda Station when you report the crime, and also when you make a formal written statement about what happened to you. You may also be accompanied whilst any forensic medical examinations are carried out. However,

the Gardaí can ask you to choose a different support person or legal representative if they think it is better for you or if they think the person you have chosen could interfere with the investigation.

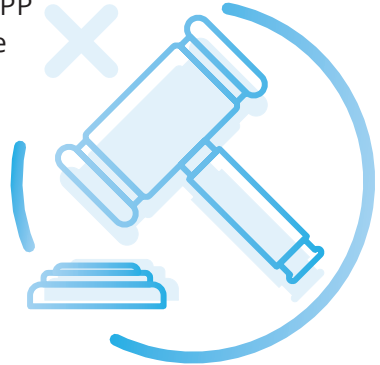


There are also services provided at a trial. You can be accompanied by a person of your choice during the trial if you wish to attend. You may also contact Victim Support at Court (V-SAC) which provides someone to accompany victims of crime, their

families and witnesses in trials involving major criminal offences. They also provide information on the court setting including pre-trial visits where there is an opportunity to visit the court beforehand and learn about court procedures.

10 **WHAT CAN THE VICTIM DO IF HE/SHE DOES NOT AGREE WITH THE DECISION OF THE DPP?**

If at the end of the inquiry stage the DPP considers that there is not enough evidence to send the accused to trial, the case is closed. When several crimes are involved, it may happen that the defendant is only charged with some of them and the rest of the case is closed.



Summary of Reasons

If you are a victim of a crime, a family member of a victim in a case where someone has died or a solicitor acting on behalf of either, you are entitled to request a summary of the reasons for the decision not to prosecute. However, you can only ask about decisions not to prosecute made on or after 16 November 2015, or in fatal cases where the death occurred on or after 22 October 2008.

If you wish to request a summary of reasons not to prosecute, you must complete a **'Request for Reasons Form'**. This form is found on the DPPs website at www.dppireland.ie. The form is also available at your local garda station. You must send the form to the Victims Liaison Unit at the Office of the Director of Public Prosecutions, Infirmary Road, Dublin 7 within 28 days of the date you are told of the decision not to prosecute. The Victims Liaison Unit can be contacted by phone during business hours at **(01) 858 8444**. In some cases the DPP may extend this time limit, but only if there is a good reason and it is in the interests of justice.

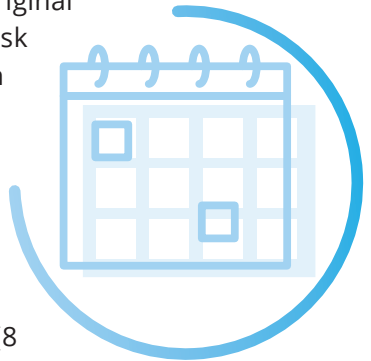


The DPP will not give reasons for the decision not to prosecute in all cases. If the decision not to prosecute was made by the Gardaí, which may arise in circumstances when it is a less serious crime, a victim can ask the Gardaí for a summary of reasons for the decision.

The DPP cannot give reasons for decisions in cases where the suspect is dealt with under the Garda Síochána Adult Caution Scheme or the Juvenile Diversion Programme. Also, the DPP is unable to give reasons for a decision not to prosecute if giving the information would interfere with an ongoing criminal investigation, prejudice a future court case, put someone's safety at risk, or put the security of the State at risk.

Right to Ask for a Review of the Decision not to prosecute

If you are a victim, or a family member of a deceased victim, and you are not satisfied with the reasons for the decision not to prosecute, you are entitled to ask for a review. The review will be carried out by a lawyer who was not involved in making the original decision. You should write to the DPP and ask for a review within 28 days of the date on the letter telling you of the reason for not prosecuting your case. You should send your letter to the Victims Liaison Unit. Even if you did not ask for a reason for the DPP's decision, you can still ask for a review of the decision. In this case, you should write to the DPP and ask for a review within 56 days (8 weeks) of the date you were told of the decision not to prosecute. In some cases the DPP may extend these time limits, but only if there is a good reason and it is in the interests of justice.



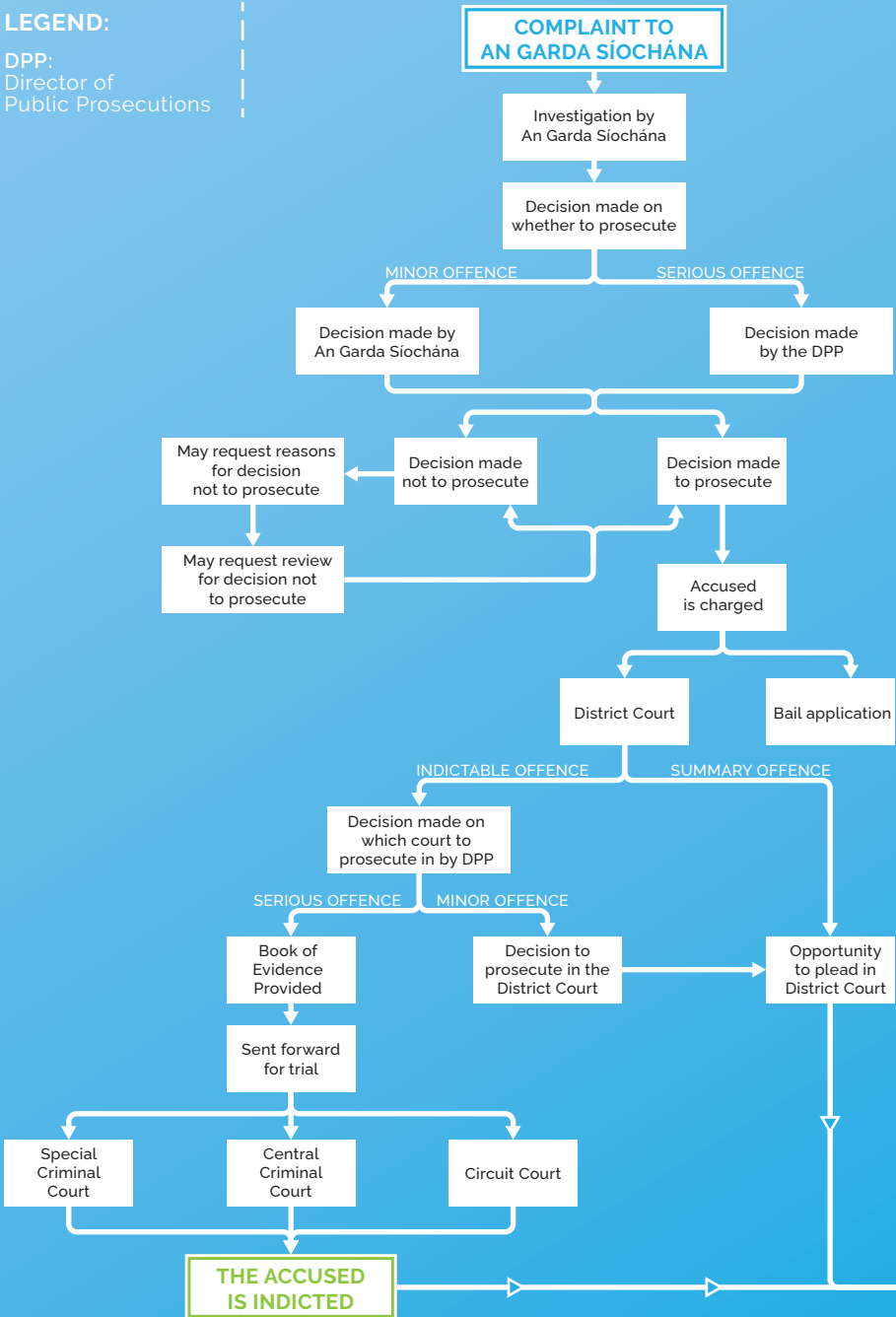
Complaints

If you think that the DPP has not respected your rights or are unhappy with the services provided by the Office, you can make a complaint in writing and send it by post to The Director of Public Prosecutions, Infirmity Road, Dublin 7. There is a separate mechanism if you are unhappy with a decision not to prosecute. You are entitled to appeal if you are not satisfied with the way that your complaint was dealt with. The Deputy Director will deal with your appeal.



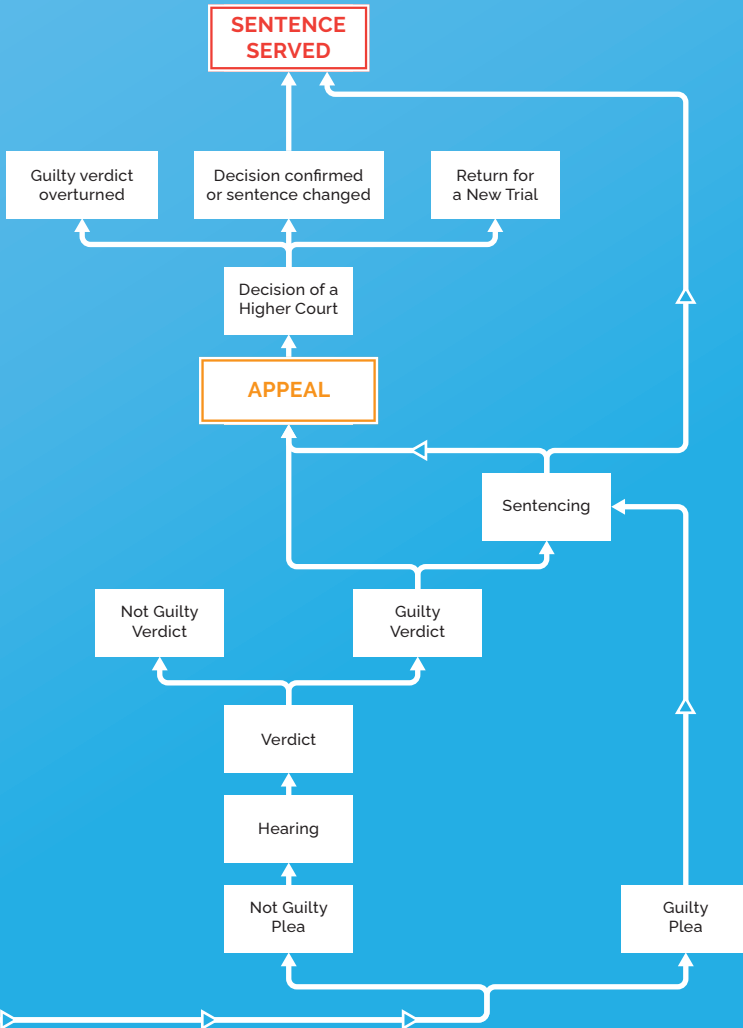
LEGEND:

DPP:
Director of
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CRIMINAL PROCEEDINGS

FLOWCHART



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