

**GUIDANCE FOR HANDLING
CRIMINAL CASES WITH
CONCURRENT JURISDICTION
BETWEEN THE UNITED KINGDOM
AND THE UNITED STATES OF
AMERICA**

GUIDANCE FOR HANDLING CRIMINAL CASES WITH CONCURRENT JURISDICTION ¹ BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

1. Investigation and prosecution agencies in the United Kingdom and the United States of America are committed to working together to combat crime. It is appreciated that there is a need to enhance the exchange of information in criminal cases involving concurrent jurisdiction. Early contact between prosecutors, after discussing the cases with investigators, is intended to enable them to agree on strategies for the handling of criminal investigations and proceedings in particular cases. Such liaison will help to avoid potential difficulties later in the case. In particular, early contact will be valuable in cases which are already the subject of proceedings in the other jurisdiction.
2. This document provides guidance for addressing the most serious, sensitive or complex criminal cases where it is apparent to prosecutors that there are issues to be decided that arise from concurrent jurisdiction. In deciding whether contact should be made with the other country regarding such a case, the prosecutor should apply the following test: does it appear that there is a real possibility that a prosecutor in the other country may have an interest in prosecuting the case? Such a case would usually have significant links with the other country.
3. As a matter of fundamental principle any decision on issues arising from concurrent jurisdiction should be and be seen to be fair and objective. Each case is unique and should be considered on its own facts and

¹ In this context, a case with concurrent jurisdiction means a case which has the potential to be prosecuted in both the UK and the US.

merits.

4. This guidance follows a step-by-step approach to determining issues arising in cases with concurrent jurisdiction. Firstly, there should be early sharing of information between prosecutors in the jurisdictions with an interest in the case. Second, prosecutors should consult on cases and the issues arising from concurrent jurisdiction. Third, where prosecutors in the jurisdictions with an interest in the case have been unable to reach agreement on issues arising from concurrent jurisdiction, the offices of their Attorneys General or Lord Advocate, as appropriate, should take the lead with the aim of resolving those issues.

Information

5. In the most serious, sensitive or complex cases where issues of concurrent jurisdiction arise, investigators and prosecutors, in the UK and US, should consult closely together from the outset of investigations, consistent with the procedures established by their agencies. Each jurisdiction intends to make its best efforts to ensure that there are arrangements in place requiring investigators, in such cases, to draw issues arising from concurrent jurisdiction to the immediate attention of prosecutors. The aim of such a co-operative approach is to agree to a co-ordinated strategy in relation to the particular case that respects the individual jurisdictions but recognises the benefits of co-operation in these areas.
6. Whenever a prosecutor handling such a case in the US becomes aware of issues arising from concurrent jurisdiction with the UK, he or she should contact the Office of International Affairs (OIA) in the Department of Justice, Washington, DC, except in those cases referred to at paragraph 9.

In turn, with the exception of cases in which the US prosecutor already has established contact with a UK prosecutor, the OIA will then contact the liaison lawyer at the appropriate UK prosecution agency to inform him or her of the case. [Annex A gives contact details for these prosecuting authorities, which will be updated from time to time, together with a general indication of the areas of responsibility of each authority.] The OIA should make initial contact with the Attorney General's Office in London if there is any doubt about which of the prosecuting authorities in England, Wales or Northern Ireland is likely to have an interest in the case.

7. It will be the responsibility of the liaison lawyer in England, Wales or Northern Ireland to draw the US case to the attention of a prosecutor in their department and the contact lawyer in the Attorney General's Office in London. In Scotland, the liaison lawyer at the International Co-operation Unit in Crown Office will have responsibility for informing the appropriate Area Procurator Fiscal of the case.
8. Similarly, whenever a UK prosecutor handling a serious, sensitive or complex case in the UK becomes aware of issues arising from concurrent jurisdiction with the US, he or she should inform the appropriate UK headquarters liaison lawyer of the case. Except in those cases referred to in paragraph 9, the headquarters liaison lawyer should contact the OIA in Washington. OIA should in turn liaise with any prosecuting agency in the United States that is likely to have an interest in the case, consistent with the procedures established by that agency, unless the UK prosecutor is already in contact with that agency. The headquarters liaison lawyer in England, Wales or Northern Ireland should also ensure that the contact lawyer at the Attorney General's Office in London is informed of the case.

9. In particularly sensitive cases, involving for example classified information, it may be appropriate for the sharing of information and the consultation to take place between the heads of prosecuting divisions in the UK and US or between the offices of the Attorneys General or Lord Advocate as appropriate.
10. Discussions between UK and US prosecutors should take place with the aim of developing a case strategy on issues arising from concurrent jurisdiction. The information shared between the UK and US should include the facts of the case, key evidence, representations on jurisdictional issues, and, as appropriate, any other consideration which will enable the prosecutors to develop a case strategy and resolve issues arising from concurrent jurisdiction.
11. The information shared in accordance with this guidance is provided in order that prosecutors in the UK and US may reach decisions on issues arising from concurrent jurisdiction. The information should not be disclosed to other countries without permission of the originating state.

Consultation

12. The procedure set out in this guidance is intended to preserve and strengthen existing channels of communication between prosecutors in the UK and US. This guidance is intended to enable each country's prosecutors to consult closely together on issues arising from concurrent jurisdiction and ensure, where appropriate, that each Attorney General and the Lord Advocate are consulted on such issues.
13. This guidance does not create any rights on the part of a third party to

object to or otherwise seek review of a decision by UK or US authorities regarding the investigation or prosecution of a case or issues related thereto.

14. The aim of consultation, having shared the information set out at paragraph 10, will be to enable each country's prosecutors to decide on the issues arising from concurrent jurisdiction through bi-lateral discussion, including, but not limited to:
 - a. where and how investigations may be most effectively pursued;
 - b. where and how prosecutions should be initiated, continued or discontinued; or
 - c. whether and how aspects of the case should be pursued in the different jurisdictions

It is of course for the prosecuting authority, having applied the guidance, to decide that a case should properly be prosecuted in its country, where that is in accordance with the law and the public interest.

The rôle of the offices of the Attorneys General and Lord Advocate

15. In England, Wales and Northern Ireland the Attorney General is the Minister with superintendence of the main prosecution departments, namely the Crown Prosecution Service, Serious Fraud Office, Revenue and Customs Prosecution Service and the Public Prosecution Service of Northern Ireland. In the United States of America, the Attorney General, as the chief federal law enforcement official, acts through the Assistant Attorneys General in the National Security and the Criminal Divisions, the Director of the Federal Bureau of Investigation, and the 94 United States

Attorneys in their separate judicial districts, among others, in the investigation and prosecution of violations of federal criminal laws throughout the United States. In Scotland, the Lord Advocate is the Ministerial Head of the Crown Office and Procurator Fiscal Service, and the head of the system of criminal prosecution. The Lord Advocate has responsibility for the direction of investigations into alleged criminal conduct, and through the appointment of procurators fiscal, for the conduct of all prosecutions in Scotland.

16. The offices of the Attorneys General and Lord Advocate should provide such additional domestic guidance to their own agencies and prosecutors as may be necessary to ensure that their offices are advised at an early stage of serious, sensitive, or complex cases involving issues arising from concurrent jurisdiction.
17. Early contact with the offices of the Attorneys General or Lord Advocate, as appropriate, is intended to ensure that the Attorneys General, or Lord Advocate, can be consulted on these cases before final decisions are taken by the prosecutors on issues arising from concurrent jurisdiction. In such cases it may be necessary for the offices of the Attorneys General or Lord Advocate to make early contact to discuss issues arising from concurrent jurisdiction.

Monitoring

18. The offices of the Attorneys General and Lord Advocate intend to review the implementation of this guidance on an annual basis.

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The Rt Hon the Lord Goldsmith QC
Her Majesty's Attorney General

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Alberto R. Gonzales
Attorney General of the
United States of America

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The Rt Hon Elish Angiolini QC
Her Majesty's Advocate

Dated this day of January 2007

Annex A

UNITED KINGDOM

Crown Prosecution Service

The CPS is the department responsible for prosecuting the majority of criminal cases investigated by the police, the Serious Organised Crime Agency and Her Majesty's Revenue & Customs in England and Wales.

The CPS Headquarters liaison lawyers are:

Karen Jones and Denise Bradshaw

CPS Headquarters

Rose Court, 2 Southwark Bridge

London SE1 9HS

telephone: + 44 (0) 20 3357 [0693 / 0264] respectively,

email: karen.jones@cps.gsi.gov.uk

denise.bradshaw@cps.gsi.gov.uk

Serious Fraud Office

The SFO both investigates and prosecutes serious and complex fraud, generally meaning cases where the loss or potential loss is at least £1 million, there is a significant international dimension or the case is likely to raise widespread public concern.

The SFO liaison lawyer is:

Rosemary Donnabella
Serious Fraud Office
Elm House, 10-16 Elm Street
London WC1X 0BJ
telephone: + 44 (0) 20 7239 7486
email: rosemary.donnabella@sfo.gsi.gov.uk and policy@sfo.gsi.gov.uk

Public Prosecution Service of Northern Ireland

The PPSNI is the prosecuting authority in respect of all criminal cases investigated by the police in Northern Ireland.

The PPSNI liaison lawyer is:

Ms Pamela Atchinson
Belfast Chambers, 93 Chichester Street
Belfast, BT1 3JR
telephone: + 44 (0) 28 90 897193
email: Pamela.Atchinson@ppsni.gsi.gov.uk

Crown Office and Procurator Fiscal Service

The COPFS is the department responsible for all criminal prosecutions in Scotland.

The contact lawyer for the Lord Advocate and for the Crown Office and Procurator Fiscal Service is:

Kate Frame

International Co-operation Unit
Crown Office
25 Chambers Street
Edinburgh, EH1 1LA
telephone: + 44 (0)131 243 8139
email: kate.frame@copfs.gsi.gov.uk

Attorney General's Office, London

The contact lawyer at the Attorney General's Office in London are:

David Woodings and Sarah Goom
Attorney General's Office
20 Victoria Street
London SW1H 0NF
telephone: + 44 (0)20 7271 [2503 / 2479] respectively
email david.woodings@attorneygeneral.gsi.gov.uk
sarah.goom@attorneygeneral.gsi.gov.uk.

UNITED STATES

Office of International Affairs

The Office of International Affairs (OIA) of the Department of Justice is the Central Authority of the United States for international matters. The contacts at the OIA are Mary Ellen Warlow, Director, 1301 New York Avenue, Washington, DC 20530, telephone 202 515 0008, email molly.warlow@usdoj.gov, or Mary Troland, Department of Justice Attaché, U.S. Embassy London, (011)(44)(0)20 7894 0710, email TrolandMB@state.gov.

Assistant Attorney General, National Security Division

For purposes of paragraph 9 of the Guidance, with regard to particularly sensitive cases involving terrorism or national security matters, the head of the prosecuting division in the United States Department of Justice is: Assistant Attorney General Kenneth Wainstein, U. S. Department of Justice, National Security Division, 10th and Constitution Avenues NW, Washington, DC, 20530, telephone 202 514 1057, email Kenneth.Wainstein@crm.usdoj.gov.

Assistant Attorney General, Criminal Division

For purposes of paragraph 9 of the Guidance, with regard to particularly sensitive cases involving all other criminal matters, the head of the prosecuting division in the United States Department of Justice is: Assistant Attorney General Alice Fisher, U. S. Department of Justice, Criminal Division, 10th and Constitution Avenues NW, Washington, DC, 20530, telephone 202 514 7200, email Alice.Fisher@crm.usdoj.gov.

Attorney General's Office, Washington, D.C.

The point of contact at the U.S. Attorney General's Office is Matthew Friedrich, Counsel to the Attorney General, U. S. Department of Justice, 10th and Constitution Avenues NW, Washington, DC, 20530, telephone 202 616 2372, email Matthew.Friedrich2@usdoj.gov.