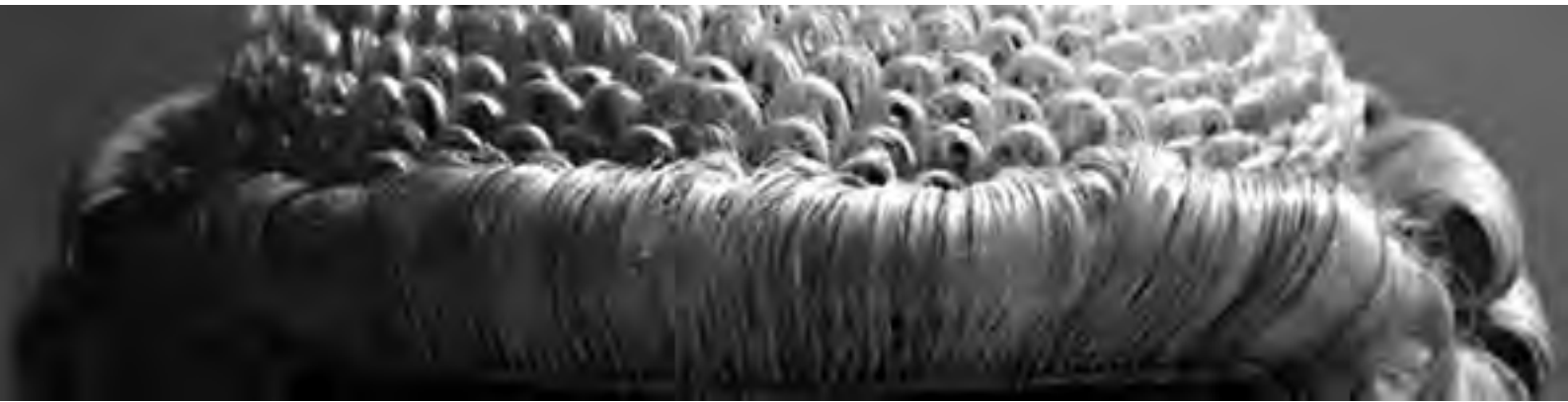




# **Report of the thematic review of the quality of prosecution advocacy and case presentation**

July 2009





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## **ABBREVIATIONS**

CCP	Chief crown prosecutor
CJSSS	Criminal Justice: Simple, Speedy, Summary
CPS	Crown Prosecution Service
DCW	Designated caseworker
DPP	Director of Public Prosecutions
GFS	Graduated fee scheme
HCA	Higher courts advocate
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
ILEX	Institute of Legal Executives
MG3	Charging form completed by police and charging prosecutor
OBM	Optimum business model
PCMH	Plea and case management hearing

# CONTENTS

<b>HM Chief Inspector’s foreword</b> .....	<b>1</b>
<b>1 Introduction and overview</b> .....	<b>3</b>
Purpose and scope of the review.....	3
The advocacy strategy.....	3
The inspection team.....	4
Summary of findings.....	4
<i>Overview</i> .....	4
Overall results.....	5
Key findings.....	6
<i>Advocacy in the Crown Court</i> .....	6
<i>Advocacy in the magistrates’ courts</i> .....	8
<i>Aspects that support good advocacy</i> .....	9
<i>Deployment</i> .....	10
Training and development.....	11
Planning and partnerships.....	11
Value for money.....	12
The way ahead.....	13
Recommendations to the CPS nationally and/or locally.....	13
Aspects for improvement.....	14
Good practice.....	14
Strengths.....	15
<b>2 The role of the advocate and the CPS advocacy strategy</b> .....	<b>17</b>
The role of the advocate.....	17
<i>A right of audience</i> .....	18
The advent of higher courts advocacy.....	19
The CPS advocacy strategy – November 2004.....	19
The CPS advocacy strategy – 2007 and 2008.....	19
Other initiatives.....	20
<b>3 Methodology</b> .....	<b>21</b>
Fieldwork and observation in court.....	21
Management information and data.....	22
The inspection team.....	22
The structure of the report.....	23
Acknowledgements.....	23
<b>4 Case presentation in the Crown Court</b> .....	<b>25</b>
Prosecuting advocates in the Crown Court.....	25
Overall standard of case presentation.....	25
Quality of case presentation in non-contested hearings.....	26
Quality of presentation in cases for sentence.....	27
Quality of trial advocacy.....	28
<i>Opening speeches</i> .....	30
<i>Examination-in-chief</i> .....	30
<i>Cross-examination</i> .....	30

	<i>Re-examination</i> .....	31
	<i>Closing speeches</i> .....	32
	<i>Legal submissions</i> .....	32
	<i>Trial advocacy of crown advocates</i> .....	32
	<i>Timeliness and quality of decision-making at court</i> .....	33
	Ancillary orders.....	34
	Serious, complex and sensitive cases.....	34
	The role of the junior advocate.....	35
	Cultural issues.....	36
<b>5</b>	<b>Case presentation in the magistrates' courts</b> .....	<b>37</b>
	Prosecuting advocates in the magistrates' courts.....	37
	Overall standard of case presentation.....	37
	<i>General standard of performance</i> .....	37
	Crown prosecutors.....	40
	Associate prosecutors.....	40
	Agents.....	41
	Quality of non-trial advocacy.....	42
	<i>Presentational style</i> .....	42
	<i>Sentencing and basis of plea</i> .....	44
	<i>Ancillary applications</i> .....	44
	<i>Quality of trial advocacy</i> .....	45
	<i>The trial</i> .....	46
	Specialist and sensitive cases.....	48
<b>6</b>	<b>Aspects that support good advocacy</b> .....	<b>49</b>
	Background.....	49
	Office based case preparation in the magistrates' courts.....	50
	Office based case preparation in the Crown Court.....	51
	<i>The role of the crown advocate</i> .....	51
	<i>Office based case progression systems</i> .....	51
	<i>Instructions to the advocate</i> .....	53
	Preparation for the hearing.....	53
	<i>Preparation for uncontested hearings in the magistrates' court</i> .....	53
	<i>Preparation by the advocate for the trial in the magistrates' court</i> .....	54
	<i>Preparation for uncontested hearings in the Crown Court</i> .....	55
	<i>Preparation by the advocate for the trial in the Crown Court</i> .....	56
	The Bar standard and returns.....	56
	Victims and witness care and CPS policies.....	57
	Facilities and support at court.....	57
	<i>The Crown Court</i> .....	57
	<i>The magistrates' court</i> .....	59
<b>7</b>	<b>Deployment</b> .....	<b>61</b>
	Background.....	61
	Outcomes and targets.....	61
	<i>Crown advocates</i> .....	61
	<i>Associate prosecutors</i> .....	62
	<i>In-house coverage</i> .....	63
	<i>Data integrity</i> .....	64

	Staff deployment .....	64
	<i>Deploying crown advocates</i> .....	64
	<i>Deployment to the magistrates' courts</i> .....	66
	Selection of advocates .....	66
	<i>The CPS/Bar Framework</i> .....	67
	<i>Selecting the right advocate</i> .....	68
	Court listing .....	69
<b>8</b>	<b>Training and development</b> .....	<b>71</b>
	Context: the advocacy strategy .....	71
	The magistrates' courts .....	71
	<i>Profile and training of associate prosecutors</i> .....	72
	<i>Profile and training of crown prosecutors</i> .....	73
	<i>Profile and training of agents</i> .....	74
	The Crown Court .....	74
	<i>Profile and recruitment of crown advocates</i> .....	74
	<i>National training and assessment of aspiring crown advocates</i> .....	75
	<i>Local support for and follow-up to national training and assessment</i> .....	77
	Quality assurance of advocacy .....	79
	Grading of advocates .....	80
<b>9</b>	<b>Planning and partnerships</b> .....	<b>83</b>
	Planning: Crown Court .....	83
	<i>Associate prosecutors and crown prosecutors</i> .....	84
	Relationships with the magistrates' courts and the police .....	85
	Relationship with the judiciary and the Crown Court .....	85
	Relationship with the Bar .....	86
	<i>General</i> .....	86
	<i>National liaison</i> .....	87
	<i>Local liaison</i> .....	87
<b>10</b>	<b>Value for money</b> .....	<b>89</b>
	General .....	89
	Realising the benefits of the advocacy strategy .....	89
	<i>Financial benefits</i> .....	89
	<i>Softer benefits</i> .....	92
	<i>The revised prosecutor structure</i> .....	92
<b>11</b>	<b>Analysis and conclusions</b> .....	<b>95</b>
	The quality of prosecution advocacy .....	95
	The case preparation, case building and foreseeing of problems by the reviewing lawyer .....	97
	and caseworker .....	
	Allocation of cases and the impact of targets .....	98
	Training and development .....	99
	Quality assurance of advocacy .....	99
	Support at court .....	99
	Value for money .....	100
	Conclusions .....	102

**Annexes**

A	Chronology of CPS advocacy strategy.....	103
B	Explanatory note to advocacy assessments.....	105
C	Summary of the thematic review of advocacy and case presentation, February 2000.....	109
D	Anatomy of a trial.....	112
E	National CPS advocacy data (all areas).....	113
F	Examples of comparative costs of cases.....	114
G	Individuals and local representatives of criminal justice organisations who assisted in our review...	117
H	The inspection team.....	120
I	Glossary.....	121

## HM CHIEF INSPECTOR'S FOREWORD

This thematic review of advocacy and case presentation was undoubtedly one of the most important and also the most sensitive which HM Crown Prosecution Service Inspectorate has undertaken. It was inevitable that the decision by the Crown Prosecution Service (CPS) that it would progressively undertake more of its own advocacy in the Crown Court would prove contentious, particularly in relation to the Bar. As one senior practitioner put it:

“The CPS is the main client of the Bar; and also its main competitor”.

Whilst some of the issues arising might in one sense be regarded as commercial it seemed not only appropriate but necessary to carry out a thorough and impartial review, particularly in the light of the serious concerns being expressed by some of the judiciary. My approach was to develop a broad based inspection team which included my own experienced inspectors together with circuit judge, barrister and solicitor associate inspectors and senior advocates from the CPS itself who have been responsible for developing and delivering advocacy training.

The remit for the team was clear and well defined: to assess the quality of advocacy and case presentation, without regard to whether it was sourced internally or from counsel, by focusing on whether the service delivered was of the requisite quality for the proper and fair administration of justice.

I was pleased with the level of consistency of assessments across this team. The report confirms that the CPS has the capacity over a period of time to assume responsibility for the presentation of a substantial proportion of its Crown Court casework. Although this has been regarded as a radical step there is, so far as I have been able to ascertain, no jurisdiction outside England and Wales where public prosecutors have had such restricted access to the criminal courts as was historically the case. This report also contains some tough messages about the need for strengthening its capacity for trial advocacy as well as the preparation and progression of its casework - a pre-requisite of sound presentation in court.

The CPS has made considerable progress against its objective of increasing the quantity of court work undertaken by in-house advocates. However the Service has now reached a watershed for the implementation of its advocacy strategy and needs to consolidate this expansion with a change of emphasis from quantity to quality. Action taken in the next phase of the strategy needs to ensure that all prosecutors have the right skills to deliver a quality service, while ensuring there is enough resource for the other core work to be done. This includes the all important case preparation.

These findings make the commitment by the Director of Public Prosecutions to enhance emphasis on the quality of advocacy and consistency of standards across the Service both timely and welcome. In particular introduction of a quality target is a more progressive move but needs underpinning with actions to drive up quality, particularly as regards trial advocacy in both the Crown Court and magistrates' courts. The Service must eliminate any less than competent or very poor advocacy, from whatever source, and raise the significant proportion of lacklustre advocacy to the level the courts and public expect. In this context the introduction of advocacy assessors also is a further manifestation of the change of approach.

I believe that the fact of this review has itself been a strong catalyst for improvement. This, together with the greater emphasis on quality, has strengthened the CPS position and it is reassuring that a more collaborative and less combative approach is beginning to emerge between the CPS, Bar and the judiciary, although this still needs further development. In particular the CPS, whilst not having any duty to provide a particular level of work to the Bar, now recognises the need to work with the Bar and use its expertise where appropriate. In order to increase the credibility of its advocacy strategy the CPS needs to be open and transparent as to the cost of cases and the nature of savings being made which support the value for money aspects of the strategy.

# 1 INTRODUCTION AND OVERVIEW

## **Purpose and scope of the review**

- 1.1 The aim of the review was to evaluate the quality of prosecution advocacy and the performance of the Crown Prosecution Service (CPS) in delivering high quality presentation of cases in court. The basic aim can be divided into underpinning objectives, namely:
- Assess performance of CPS areas in presenting the full range of cases effectively in the Crown Court and the magistrates' courts.
  - Assess quality of advocacy by crown prosecutors, crown advocates and prosecuting counsel in the Crown Court and associate prosecutors, crown prosecutors and agents in the magistrates' courts.
  - Assess ancillary aspects of case handling and case progression at court.
  - Assess quality assurance of advocacy by the CPS.
  - Assess local management of the deployment of advocates in CPS areas.
  - Assess implementation of the CPS advocacy strategy in the areas and consider if it is providing value for money.
  - Identify good practice.
- 1.2 The separate, but linked, audit of the instruction of prosecution advocates in the Crown Court and the payment of counsel by the CPS (published at the same time as this report) was undertaken by HMCPSI and some of the work from the audit informed this review.
- 1.3 The last comprehensive thematic inspection of prosecution advocacy was carried out by HMCPSI in 2000 (summary at annex C). This was only one year after rights of audience had been granted to CPS employed lawyers in the Crown Court and designated caseworkers (now associate prosecutors) in the magistrates' courts. Since then the CPS advocacy strategy (chronology at annex A) has developed significantly, entailing a marked increase in the volume of work undertaken by crown advocates and associate prosecutors. Simultaneously there has been significant concern expressed from different quarters over the quality of CPS instructed advocates, especially in the Crown Court. Whilst the Inspectorate has continued to observe and assess advocacy as one of many aspects of CPS performance throughout two cycles of inspections since 2002, and more recently as part of the area effectiveness inspections which took place in 2006-07, it was therefore felt necessary to carry out a major detailed review of the quality of prosecution advocacy in England and Wales at this point in time.

## **The advocacy strategy**

- 1.4 Traditionally litigants were represented in the higher courts by the self employed Bar, which existed primarily for this purpose, with the CPS playing the traditional role of instructing solicitor. During the 1990s rights of audience were gradually extended to the point where, from 1999, CPS employed lawyers were entitled to appear in the Crown Court. Initially the CPS took a cautious and gradual approach to increasing numbers of higher courts advocates (HCAs). However in June 2004 a formal documented advocacy strategy was launched to increase the volume of Crown Court work undertaken by in-house advocates significantly. This new approach would inevitably reduce the amount of work available to the self employed Bar and it was inherently unlikely that the Bar would welcome it.

- 1.5 Aware of this background HMCPSP has sought to get behind the various interests that have existed on all sides into the bedrock of objective assessment and data analysis, in order to assess accurately the quality of service provided by advocates instructed by the CPS. In this sense the Inspectorate remains focussed on the ultimate issue in this sphere, which is the ability of prosecution advocates to assist the courts in the administration of justice.

### **The inspection team**

- 1.6 This objective informed selection of the 19 members of the inspection team (membership at annex H) which had to be broad based in terms of background, skill and experience. The team was finely balanced between barristers (seven) and solicitors (seven), internal inspectors (11) and external associate inspectors (eight). Of the 11 internal inspectors, six had no previous connection with the CPS. The associate inspectors comprised four CPS advocates, including two chief crown prosecutors (CCPs), and four retired circuit judges. Throughout the fieldwork process moderation exercises were carried out internally to maximise accuracy and consistency and iron out any differences of approach. All major findings and judgments were quality assured internally then considered by the inspection reference group, which included a high court judge, circuit judge, Queen's Counsel, senior solicitor, principal crown advocate and CCP among others. As a result we are confident that the judgments are accurate, objective and worthy of the confidence of the public, as well as all parties involved in the delivery of criminal justice.

### **Summary of findings**

#### *Overview*

- 1.7 The CPS has made considerable progress against its goal of increasing the quantity of court work undertaken by in-house advocates. The number of cases handled in-house has increased year on year since the advocacy strategy was implemented and, for the most part, the CPS is now achieving its existing financial targets and objectives. There are, however, considerable variations across the 42 areas.
- 1.8 Less progress has been made against the stated aim to provide high quality advocates in all courts. Our observations confirmed that the quality of advocacy was variable, both with in-house and external advocates, with a number of very good people and a small number who were very poor. Whilst overall the substantial majority were fully competent or better, there is a significant group where further improvement is needed. Trial advocacy is in need of particular attention for CPS prosecutors. Quality, especially in the Crown Court, has been affected by weaknesses in case preparation and progression which have been exacerbated by the new strategy.
- 1.9 Insufficient focus was given to quality issues in the early days of the strategy, but there is encouraging evidence of a change of approach in more recent months. The introduction of a more robust quality assurance system, together with enhanced training and development packages, offers cause for some optimism about future progress.
- 1.10 The increased use of in-house resources delivers financial savings for the CPS but there is a need to ensure that deployment practices are balanced and take account of broader issues, including quality and impact on other aspects of casework. Some areas had developed inappropriate or ill-conceived practices in attempting to meet targets and comply with budgets. Increased use of associate prosecutors has freed up time for lawyers to be deployed to other tasks including Crown Court work. There are few contested cases where a developing crown advocate will make significant savings on an individual case, particularly if preparation time is not managed carefully. The high level of savings recorded by the CPS is made up of large numbers of small individual savings combined with significant amounts on a small number of more complex cases.

- 1.11 In seeking to accelerate implementation of the advocacy strategy changes were made to remuneration and selection processes for crown advocates. These were causing difficulties for a number of areas in terms of training, deployment and budget compliance. Senior managers are aware of the problems and taking steps to try and address them.
- 1.12 There have been tensions between the CPS and Bar, and with some members of the judiciary, over implementation of the strategy. Liaison between the parties was not always effective, particularly in its early years. It is encouraging that a more collaborative and less combative approach is beginning to emerge.
- 1.13 In short whilst significant progress has been made in developing in-house advocacy, the overall quality has suffered in some respects.

### Overall results

- 1.14 During the review we made 367<sup>1</sup> advocacy assessments from observations in the Crown Court, magistrates' courts and youth court, 113 of which were trial hearings. The findings are detailed in the table below and the methodology used for the collation and analysis of advocacy observation data is at annex B.

#### *Overall quality of advocacy – Crown Court and magistrates' courts*

Score	Crown advocates		Crown prosecutors		Associate prosecutors		External prosecutors		All advocates	
Very good	7	5.6%	5	6.3%	6	14.0%	15	12.4%	33	9.0%
Above average	21	16.9%	19	24.1%	9	20.9%	21	17.4%	70	19.1%
Fully competent	56	45.2%	22	27.8%	15	34.9%	50	41.3%	143	39.0%
Lacklustre	31	25.0%	22	27.8%	8	18.6%	31	25.6%	92	25.1%
Less than competent	8	6.5%	9	11.4%	5	11.6%	3	2.5%	25	6.8%
Very poor	1	0.8%	2	2.5%	0	0%	1	0.8%	4	1.1%
<b>Total</b>	<b>124</b>	<b>100%</b>	<b>79</b>	<b>100%</b>	<b>43</b>	<b>100%</b>	<b>121</b>	<b>100%</b>	<b>367</b>	<b>100%</b>

- 1.15 The table shows that in two thirds of cases the advocates were fully competent overall when prosecuting. A quarter of advocates were lacklustre. Only 7.9% were less than competent or very poor; 25 of whom were in-house advocates and four were counsel.
- 1.16 No advocates were assessed as outstanding overall which may be due to the nature of the observations undertaken,<sup>2</sup> the limited occasions where it is possible to observe truly sparkling advocacy or, as some externals commented, a general decline in criminal advocacy by both prosecution and defence.

1 Although there were 367 scored assessments more observations were undertaken. Some of these were of the same advocate and have been moderated to a single overall score. The individual aspects on the questionnaire of the duplicate observations remain valid and so have not been moderated, which leads to some data exceeded the 367 scored assessments.

2 We observed a selection of cases that were listed during our time on-site in the eight areas. We did not target the most complex cases which would afford better opportunities for prosecutors to display outstanding advocacy and often saw short trials in order to observe the entire trial from the time the jury was sworn to the verdict.

- 1.17 The overall advocacy assessments included consideration where relevant of professional ethics; planning and preparation; applying CPS policies; written advocacy; the case in court; preparation for trial; trial advocacy; and the advocate in court. These are based on the national standards of advocacy published by the CPS.
- 1.18 The overwhelming majority of advocates were competent or better in upholding the standards of professional ethics (91.0%), applying CPS policies (94.5%) and to a lesser extent in the quality of written advocacy (86.0%). The majority of advocates were competent or above in their planning and preparation (78.0%), preparation for trial (80.1%) and handling of the case in court (76.8%).
- 1.19 The findings were less good in relation to the two remaining aspects, the advocate (presenting) in court (68.2%) and in trial advocacy (63.2%). Substantial issues that undermined the quality of advocacy were lack of awareness of gaps or weaknesses in evidence, poor or unfocused cross-examination, poor legal argument, inaccurate statement of facts or ancillary information and inappropriate acceptance of pleas of guilty to lesser offences or basis of pleas that reduce the gravity of the offence.
- 1.20 Good advocacy assists the court in arriving at a just decision; poor advocacy can mislead the court and when lacklustre is unimpressive to those to whom each case is extremely important. Significant weaknesses demonstrated in court in relation to style were the inability of the advocate to present with an air of authority, failing to make use of appropriate tone and pace and the inability to present engagingly. Other factors that impacted but were less significant were the inability to present in a clear and projected voice; failing to make appropriate eye contact; failing to minimise distractions such as paper shuffling and specific mannerisms; and failing to use, where appropriate, simple and concise language. To a far lesser extent we observed examples of advocates dressed inappropriately for court; being discourteous to others in court; and a lack of awareness of the practice and procedure relevant to the court in which they are appearing, including failing to use the correct form of address for the judge or magistrate.
- 1.21 The differences in our findings on the ground between self employed counsel and crown advocates were not so striking as much of the feedback and comments we received had led us to expect. At this stage of development of CPS in-house advocacy there is much that is sound, but some that is weak and drawing substantial criticism. Counsel on the whole have higher skill levels, in particular in trial advocacy. Fewer less competent counsel are being allocated cases because of the proportion undertaken by crown advocates (nationally about 21% of the generality of cases in the Crown Court by value).
- 1.22 Crown advocates, with some exceptions, are providing competent quality non-trial advocacy. The exceptions flow from lower standards of case preparation, in the office and by the advocate, and in some instances too ready an acceptance of an inappropriate basis of plea of guilty. In addition the move into the Crown Court has reduced the availability of more experienced crown prosecutors to conduct trial advocacy in the magistrates' courts and these standards must be addressed.

## **Key findings**

### *Advocacy in the Crown Court*

- 1.23 Although the majority of prosecution advocates were fully competent overall in the Crown Court there was a difference in quality between crown advocates and counsel across the different types of hearing. In non-contested hearings a greater majority of crown advocates were fully

competent in comparison to counsel and for the most part they are delivering a sound quality of service. In contrast, counsel performed better in trial hearings and across all individual aspects of trial advocacy apart from the closing speech. In-house trial advocacy needs further development and the quality of cross-examination of crown advocates, which was found wanting, needs particular attention for further development.

- 1.24 There were 216 scored observations in the Crown Court and in the majority of these advocates were fully competent overall when prosecuting. However there were 55 who were lacklustre in their presentation and placed too much reliance on a prepared note or police summary. A significant number adopted a style that was more appropriate to the magistrates' courts. Counsel presented cases with an air of authority and in a more positive manner on a greater number of occasions than crown advocates. This is not surprising in view of the fact that there are greater numbers of more experienced counsel at this early stage of the advocacy strategy.
- 1.25 There is a significant difference between the level and nature of the skills required to conduct non-trial hearings effectively and trial advocacy (see annex D the anatomy of a trial). Style, presentational skills and experience are less essential to achieve a satisfactory result in a non-contested hearing, where preparation is crucial. However in jury trials such attributes can make a difference and additional skills are required, including witness handling and speeches to the jury which do not arise in most other types of hearing.
- 1.26 In non-contested hearings such as plea and case management (PCMH) and sentence hearings, advocates were fully competent in the majority of cases, with crown advocates performing slightly better than counsel. Crown advocates generally present non-contested work to a reasonable standard, which was supported by much of the feedback from stakeholders. In the more serious cases where counsel was instructed these cases were generally prepared thoroughly because they were less likely to be returned to new counsel due to the reduction in flow of work to chambers. In contrast where the less serious cases were sent to counsel for PCMHs the performance of many was below what could be expected, particularly in an environment where there is competition for work. Counsel on occasions appeared ill prepared and a few even showed indifference towards the case. The proposition, therefore, that the nature of competition in the self employed Bar will inevitably lead to high standards across the board is not always made out. It certainly provides for a higher proportion of very good advocates but does not eliminate weaknesses at the other end of the scale.
- 1.27 The general finding was that of the 68 jury trials we observed the prosecution advocate was fully competent in the majority of cases and nearly a fifth of all advocates were very good. However two were very poor indeed; one was counsel and the other a crown advocate.
- 1.28 We observed counsel and crown advocates in the same number of trials, 34 each, and found counsel fully competent in a greater number of cases than crown advocates. As the strategy moves forward, with greater emphasis on quality, it is clear that trial advocacy needs to be developed for crown advocates.
- 1.29 The component parts of a jury trial were assessed as part of the overall observation. We found a higher percentage of opening speeches presented by counsel were properly planned and structured, identifying relevant issues and reasonably foreseeable defences, compared with crown advocates. The same was true for the counsel conducting examination-in-chief and cross-examination - they tended to be more structured in their approach.

- 1.30 Some crown advocates were particularly weak at cross-examination. It was often unstructured, lacked a theory of the case and frequently amounted to little more than 'putting' the case. The quality could be improved significantly if more consideration was given to exploring any inconsistencies given in evidence or interview and understanding how to make key points with the most dramatic effect that the jury will understand. At this stage of the strategy many crown advocates are relatively inexperienced in trial advocacy but over time, as more experience is gained and with additional training and personal development such court craft can be honed, in particular the ability to deal with more astute defence advocates.
- 1.31 In contrast a higher proportion of crown advocates than counsel used re-examination effectively and only when necessary. There were similar proportions of crown advocates and counsel presenting properly planned and structured closing speeches.
- 1.32 Many competent crown advocates are only slowly gaining the recognition they deserve and there remains some deep seated opposition to the very concept of either employed barristers or, in particular, in-house prosecutors undertaking advocacy in the Crown Court at all. This is of course a feature of the English and Welsh criminal justice system that is largely not mirrored elsewhere in the world.

*Advocacy in the magistrates' courts*

- 1.33 The presentation of non-trial cases was generally sound. There were a relatively high proportion of very good assessments of associate prosecutors, although heavy lists were proving challenging to some. The standard of trial advocacy by crown prosecutors needs to improve in light of the number of less than competent assessments.
- 1.34 CPS advocates in the magistrates' courts fall into three main categories. The in-house crown prosecutors who are qualified solicitors or barristers and have full rights of audience in the lower courts, as do the self employed solicitors and barristers who act as agents for the Service. There are also in-house associate prosecutors who have more limited rights of audience, although these were extended in 2008 to cover most types of non-trial hearing and again in February 2009 to cover a limited range of contested trial work (although the latter is subject to a limited number of pilot areas at present).
- 1.35 There were 151 scored assessments of magistrates' courts' advocacy and in the majority of cases they were fully competent. However the biggest criticism from inspectors was the reliance on the police summary or other documentation in court which limited eye contact and caused the advocate to look down, thereby preventing the speech from projecting to everybody in the court room. There was also a degree of informality of approach in some courts which appeared to lead to the prosecution advocates displaying inappropriate casualness.
- 1.36 The quality of magistrates' courts' advocacy differs significantly between non-contested and trial work. According to inspectors' observations the vast majority of advocates were at least fully competent in non-trial hearings but this figure reduces in relation to trial advocacy. Trials are generally more challenging than non-contested hearings in that they require a much broader range of skills and court craft. Therefore the less skilled advocates are more likely to be found wanting in a contested hearing.

- 1.37 In non-contested hearings the performance of in-house advocates was similar to that of agents and there was little difference between the performance of crown and associate prosecutors. In trial advocacy the difference was more stark with slightly less than half of crown prosecutors assessed as fully competent in comparison to two thirds of agents. The two very poor advocates were both crown prosecutors. It was noticeable that many agents were conducting the trials enabling the junior Bar to hone their trial skills, this was at the expense of crown prosecutors where development was required and many of whom wish to progress to advocacy in the Crown Court. The absence of closing speeches in magistrates' courts' trials does not assist the smooth presentation of cases. The inclusion of a speech in the trial would improve the focus of prosecutors and provide greater structure for the presentation of the case.

*Aspects that support good advocacy*

- 1.38 The facilities at court are far from ideal in terms of computers, technical and administrative support. Some rooms are better than others but in the majority there is a shortage of space with the facilities at the magistrates' courts sometimes being better than the Crown Court. The issue of shortage of space is compounded when crown advocates use the facilities instead of the robing room. In the past they sensed hostility from some elements of the Bar, much of which has subsided, however the reticence of some crown advocates continues in terms of using these facilities.
- 1.39 Effective preparation is essential for sound advocacy performance. This includes the sound review and preparation of the case in the CPS office and, subsequently, that done by the advocate in advance of the hearing. For the most part advocates had prepared for the hearing in court by reading the available papers and file endorsements. However it was observed all too frequently that the advocate in court did not have up to date records of previous convictions to assist the court at sentencing, bail applications or applications for bad character, and at other times information was missing from the file. More thorough preparation and prior consideration of the range and types of information likely to be required would have allowed these cases to progress more smoothly.
- 1.40 Equally more time in preparation considering the theory of the case could pay dividends in terms of trial advocacy. One factor may be that the amount of time devoted to preparing the case for court impacts significantly on the value for money achieved by the CPS; an increase in preparation time quickly erodes any economies made.
- 1.41 The quality of case preparation in the office, file organisation and instructions to counsel can impact greatly on the quality of advocacy. The latter is an area that needs improvement if the instructions are to be of use to the advocate in preparation and presenting the case in court. The quality of indictments also needs to be improved. The indictment and the counts therein are key to the prosecution case and poor drafting can have serious adverse consequences, in addition to giving the impression that the prosecution case has been poorly prepared.
- 1.42 The CPS is moving away from case 'ownership', particularly in relation to magistrates' courts' work, by the introduction and implementation of the optimum business model (OBM). When properly resourced this system is effective in progressing cases, which assists the advocate in court.

- 1.43 Most CPS areas were having some difficulty in maintaining the quality and timeliness of Crown Court case preparation, which is having a knock on impact on the effectiveness of the advocate in court. Most areas have also started to move away from case ownership in the less complex Crown Court cases, although there is no national standard of approach yet. Whilst there is scope to improve case ownership, there are some positive examples of this being successfully undertaken in some serious casework.
- 1.44 The provision of caseworker support to advocates in the Crown Court was variable with some areas providing good coverage and others far less, which has led to court time being lost or cases postponed because a caseworker was not available. Areas need to ensure a balance is struck between there being sufficient cover at court, provided this does not come at the expense of resource available for case preparation, and progression in the office which is vital for the effective presentation of cases at court.

#### *Deployment*

- 1.45 The CPS has made significant progress against its goal of increasing in-house advocacy in the magistrates and Crown Court but as they have sought to increase levels of court work undertaken some inappropriate or ill-conceived deployment practices have developed. For example the absence of prosecutor continuity; use of insufficiently experienced crown advocates as juniors in complex/serious cases or the use of inexperienced prosecutors in inappropriate cases; and deployment of prosecutors in unsuitable back to back courts. In most areas attainment of the advocacy targets introduced from 2005 and budget compliance have been the key drivers of local deployment practices, whereas a more balanced approach taking full account of quality issues should have been adopted.
- 1.46 There are variable approaches to allocating advocates in the Crown Court. Some areas keep significant amounts of work in-house in the early stages, although this may change after PCMH. This often conflicts with the agreed Framework of Principles for Prosecution Advocates in the Crown Court (CPS/Bar Framework) between the CPS and Bar as to instructing the trial advocate before the PCMH in cases likely to be contested. Overall CPS advocates covered 61% of PCMHs in 2008. This is not unreasonable based on casework outcomes, although this rate ranged from 26% to 96% across the areas. Care needs to be taken to ensure that the attractive fee savings achievable do not influence selection inappropriately.
- 1.47 Crown advocate clerking is a key function in the allocation of Crown Court cases. There is currently wide variance in the grade undertaking the role and how the function is managed and no national guidance on the level of skills and experience required. This role needs to be developed and strengthened.
- 1.48 In the magistrates' courts overall prosecutor deployment is now given greater attention which has contributed to the better use of in-house resources. Increased in-house coverage has enabled better targeting when agents need to be used. However some areas have struggled to balance the competing demands to provide high quality case progression and case preparation with the need to increase in-house deployment of advocates.

### **Training and development**

- 1.49 Whilst a lot of positive work has taken place on crown advocate training, the CPS now needs to refocus on specific aspects of advocacy and bolster the level of support and mentoring available to in-house prosecutors, particularly for trial advocacy. We are aware that work is currently underway to improve the training and support for advocates.
- 1.50 The associate prosecutor foundation course training has been more effective, although associate prosecutors have been less complimentary about the subsequent training in relation to the extension of powers in 2008.
- 1.51 The annual crown advocate and associate prosecutor conferences are helpful and effective, providing opportunities to share views, consider new developments and disseminate any good practice.
- 1.52 Historically CPS managers have taken a risk based approach to in-house advocacy quality assurance with the focus on newer advocates, or those where there were known concerns. We discovered during the review that this does not always capture excellent or poor performance and that systems to record feedback and compile intelligence need to be tightened. In contrast some areas have had advocacy assessors for some time and they are well regarded by the judiciary and colleagues alike, partly because they are a clear expression of the CPS commitment to quality.

### **Planning and partnerships**

- 1.53 A formal business case was developed for the advocacy strategy and has been updated on a regular basis. Much of the activity is coordinated via the advocacy strategy programme team who also coordinate the provision of performance data on a quarterly basis. The programme team has provided significant support and encouragement to areas including road shows, annual conferences and pathfinder projects.
- 1.54 At both national and local level planning would have benefited from greater attention to the dependencies between the advocacy strategy and other work streams and initiatives. A more holistic approach to resource management is required; this may be assisted by the workforce capacity planning project currently under development.
- 1.55 A significant effort has been made to support crown advocates and associate prosecutors as part of the advocacy strategy. However crown prosecutors have received much less attention which has led to some dissatisfaction, with many of them feeling uncertainty over the future of the role; this requires clarification. The senior management team of the CPS are aware of and attempting to address these issues now.
- 1.56 Some areas have found it difficult to liaise effectively with the judiciary in the past, however there has been a change of approach at national level and regular formal liaison meetings between the Resident Judge and CCP are now held in all areas. Relationships are generally positive with representatives of the magistrates' courts service, although some are more effective than others and feedback from police officers was little more mixed.
- 1.57 The relationship between the CPS and Bar has been affected by the implementation of the strategy. There are regular meetings at national level where matters of concern can be raised and the opportunity provided to correct any misunderstandings. There are significant differences in the effectiveness of liaison between areas and the local Bar.

- 1.58 The CPS also meets with representatives of the defence through various inter-agency groups that have been established. At the strategic level there is growing liaison and cooperation with the Legal Services Commission, particularly in relation to developing a consistent process for assessing the quality of both defence and prosecution advocates. The CPS have committed to a process where there could be convergence to a common system.

### **Value for money**

- 1.59 The system for calculating overall counsel fee savings demonstrates that the CPS does save money when compared directly to the cost of providing counsel for those same cases. The overall value for money assumes that for periods of time when crown advocates are not in court then they are gainfully employed on other activity. Additionally the amount of preparation time actually spent on the case by the crown advocate will have a significant bearing on the relative costs. It is difficult to make a fully accurate assessment of the strategy's value for money as it is not easy to disaggregate the impact of and on other initiatives.
- 1.60 In most areas there was limited understanding of performance and data other than high level targets, with value for money considerations tending to be limited to counsel fees saved. A broader assessment of value would be more helpful and would inform decision-making on the deployment strategy.
- 1.61 The advocacy strategy has delivered savings on counsel's fees nationally and has been an important factor in enabling some areas to remain within budget. However more effective management of deployment and preparation time could have led to greater efficiencies. The strategy has made a significant contribution towards the overall CPS efficiency savings target - £22.9 million in three years from 2004-05 - although this figure does not take account of a few minor costs.
- 1.62 As part of the plans to deliver a step change in levels of deployment a decision was taken to introduce an enhanced remuneration package for HCAs and filters on the application process were removed. The full repercussions of these decisions were not considered adequately and have led to some significant challenges for areas and the Service as a whole. The enhanced pay deal for crown advocates under the revised prosecutor structure has created a demand for places that may not be sustainable and the removal of any filter on crown advocate applications has contributed to a significant increase in failure rates on the relevant courses.
- 1.63 The number and levels of crown advocates should be matched with the business need. Some prosecutors who have been assimilated to the crown advocate role are doing little or no Crown Court advocacy. The overhead costs of training and enhanced salaries are significant. Work is already in hand to address this under the auspices of the prosecutor structure project.
- 1.64 There are also a number of 'softer' benefits as a result of the advocacy strategy. It has contributed to making the CPS a more attractive employer with better career progression paths, as exemplified by the appointment of the first CPS in-house Queen's Counsel. Most areas considered that they received a better service from the counsel they instruct in contested cases, with a reduction in late returns, and areas can more often instruct and retain their counsel of choice.

- 1.65 There was a consensus view that the increased use of in-house advocates had improved consistency of victim and witness care at court and many staff thought that the advocacy strategy was having a positive impact on charging.

### **The way ahead**

- 1.66 The strategy is moving into an era where there is greater sensitivity and attention to quality which was propounded by Keir Starmer QC at the start of his tenure as Director of Public Prosecutions (DPP). CPS managers recognise that a fresh approach is needed.
- 1.67 The Service needs time to consolidate the expansion of CPS advocacy. In addition a major concentration on quality standards is needed to raise a significant proportion of lacklustre advocacy to the level the courts and public expect and to eradicate less competent advocacy.
- 1.68 Quality assurance, management action and enhanced training, where possible with higher levels of mutual cooperation within the professions, are necessary to address the weaknesses we found and to raise the overall standards of prosecution advocacy to fully competent and higher levels.
- 1.69 The move to focus on quality is reflected in current planning including significant development of national training for crown advocates and associate and crown prosecutors, and the implementation of a quality based target rather than only a financial one. The advocacy quality management strategy's advocacy assessment pathfinder exercise, which commenced broadly contemporaneously with our review, has been completed and the findings were under review at the time of publication. Plans are also in place for enhanced training and development of crown advocates in relation to advocacy performance. These projects will need to be assessed carefully in the future.

### **Recommendations to the CPS nationally and/or locally**

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- 1 Trial advocacy for crown advocates needs to be substantially improved, in particular in relation to cross-examination (paragraph 4.36).
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- 2 The role of the junior prosecution advocate is clarified (paragraph 4.45).
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- 3 Trial advocacy for crown prosecutors needs to be substantially improved, in particular in relation to cross-examination (paragraph 5.42).
- 
- 4 The CPS, in conjunction with the Criminal Procedures Rules working group, to consider the introduction of a closing speech by the prosecution in the magistrates' court in appropriate cases, to drive improvement in the quality of advocacy and case presentation (paragraph 5.44).
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- 5 There needs to be greater clarity of the roles and division of work between the crown advocate and reviewing lawyer (paragraph 6.14).
- 
- 6 Case progression systems need to be more effective and consistent (paragraph 6.18).
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- 7 Adequate support should be provided to advocates in the Crown Court by caseworkers with the appropriate level of skill and knowledge of the cases (paragraph 6.49).
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- 8 The role of crown advocate clerk needs greater definition and consistency. Training and guidance for the role needs to be provided (paragraph 7.33).
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- 9 The CPS and Bar should review the existing CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court (paragraph 7.45).
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- 10 A grading system should be applied to crown advocates to bring it into line with the Bar grading system and converge to a unified system (paragraph 8.46).
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- 11 Areas need to develop a more holistic approach to staffing and deployment strategies that take account of the changing profile of their work as well as budgets (paragraph 9.8).
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- 12 In taking forward the Prosecutor Structure Project the CPS ensures that:
- crown advocates are not paid additional monies unless they undertake an acceptable level of Crown Court advocacy;
  - there is an improvement in the level of suitably experienced or prepared candidates for training courses; and
  - the number and grade of crown advocates is commensurate with the needs of the business (paragraph 10.40).
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### **Aspects for improvement**

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- 1 The quality of indictments needs to be improved (paragraph 6.16).
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- 2 The quality of instructions to the advocate needs improvement (paragraph 6.19).
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- 3 Ensuring prosecution advocates have sufficient time to prepare effectively by providing sufficient time and papers available in advance (paragraph 6.28).
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- 4 The CPS should work with HM Courts Service to address any inappropriate listing of magistrates' courts' trials (paragraph 6.29).
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- 5 The introduction of a system to monitor and manage the allocation of cases and work required to be undertaken (paragraph 6.37).
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- 6 All advocates should have relevant practitioner text books when prosecuting in the Crown Court (Archbold and Sentencing Guidelines) (paragraph 6.50).
- 
- 7 Area managers need to ensure that deployment practices take account of all relevant factors including the provision of high quality advocacy and financial considerations (paragraph 7.26).
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- 8 The need to assure quality comprehensively across all types of case presentation undertaken by all advocates (paragraph 8.42).
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- 9 All crown advocates should be encouraged to use the robing rooms at court (paragraph 9.38).
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- 10 Managers need to develop proportionate systems to assure themselves that preparation time is commensurate with the experience of the advocate; proportionate to the complexity of the case; and recorded accurately (paragraph 10.15).
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### **Good practice**

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- 1 CPS Hertfordshire has produced good quality desk instructions, training and guidance which has led to better quality instructions to the advocate (paragraph 6.20).
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- 2 The Snaresbrook unit (CPS London) keeps a detailed profile for the work undertaken by each crown advocate (paragraph 7.46).
- 
- 3 Supplemental master class training in CPS Greater Manchester which is also available to other areas on-line (paragraph 8.35).
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- 4 The CPS Greater Manchester advocacy assessor actively seeks the views of the judiciary at all courts within the area and reports back on action taken (paragraph 8.41).
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### **Strengths**

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- 1 The original foundation course for designated caseworker training (paragraph 8.7).
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- 2 The core of CPS crown advocacy trainers are highly thought of and committed to crown advocacy training (paragraph 8.23).
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## 2 THE ROLE OF THE ADVOCATE AND THE CPS ADVOCACY STRATEGY

### The role of the advocate

- 2.1 Since the roles of barristers and solicitors became more defined in the late 19th century the two parts of the profession have generally occupied separate ground; one providing advocacy services and the other advice, albeit with some overlap. Both are subject to codes of professional conduct and both have a relationship which is heavily regulated by their spheres of expertise and, until recently, rights of audience. This contrasts with the position in many other jurisdictions where the advisor and advocate are one and the same. In her 2008 report on the Serious Fraud Office, Jessica De Grazia highlighted the potential benefits of combining the two roles in fraud prosecution based on the American model. These include the benefits in terms of efficiency and effectiveness in maintaining a 'cradle to grave' approach. Certainly this tends to promote consistency in development and execution of case strategy, however it also removes the need for consensus between professionals each of whom has responsibility for certain aspects of the case. In England and Wales unification of the professions has been resisted, although the dividing line between the traditional solicitor versus barrister roles has become less and less clear in recent years.
- 2.2 The Bar is an umbrella association, membership of which is granted on application to those of suitable character who pass the academic stage of training to become a barrister (the Bar Vocational Course (BVC) replaced Bar Finals in 1989) including those bound for the CPS as pupils, or later in their careers. Certain other routes of access are no longer generally available. The Bar Council and Bar Standards Board (a statutory body) have general responsibility for regulation and discipline, with various subsidiary and free standing bodies also playing a role. One of these is the Advocacy Training Council, formed in 2004 following the Dutton report, which also recommended standardisation of the basic contents and structure of the BVC. Since then the Council has been a central provider of expertise and consistency to the Inns of Court and Circuits.
- 2.3 Bar membership can be divided in a number of ways, for example between criminal and civil practitioners on the one hand, or Queen's Counsel and junior barristers on the other. Significantly it can also be divided between those who are bound by a contract of employment and those who are self employed. The latter are most commonly members of sets of chambers, which are associations of individuals who share services, not partnerships or limited companies. The services usually include accommodation and a clerk or practice manager who organises chambers business and allocates work between barristers.
- 2.4 A characteristic of the English Bar is that it applies the 'cab rank' rule which requires that barristers cannot turn a case down unless certain criteria apply. Equally once a brief has been taken it can only be returned in accordance with clearly laid out criteria. This is central to the principle of independence which is discussed below.
- 2.5 It is an important principle that barristers (and solicitors) must provide objective and impartial advice and representation. It is often said that they must operate "without fear or favour". Where undue pressure, however legitimate, threatens to undermine the independence of a barrister's approach a conflict of interest arises which must be resolved before the work can continue. This is an absolute rule. However whilst it bites on the work that a barrister does, it does not require that barristers should be remunerated in a particular way. Therefore those who are employed by

a service contract are bound by the terms of the contract as well as the conduct rules, subject to any conflict arising which must be settled in favour of the latter. Likewise self employed barristers might be said to be dependant on the CPS, a particular firm of solicitors or a local authority, if this is their main source of work. As long as the barrister is able to maintain independence of judgment their professional standing remains unaffected.

- 2.6 The employment of barristers reduces the scope for direct competition between them as it is likely that appropriate cases will be allocated to an in-house barrister before a self employed one. The Bar has contended that it is the element of competition between individuals which has ensured quality in the past and this factor has been raised many times in the debate over whether employed barristers should have the same rights of audience as the self employed Bar. The CPS as a public body needs to ensure and demonstrate that alternative measures are equally or more effective. So far as HMCPSI have been able to ascertain there is no other jurisdiction in the world where public prosecutors have such restricted rights of audience before the criminal courts as was previously the case in England and Wales.

#### *A right of audience*

- 2.7 When the CPS first came into being in 1986 a crown prosecutor's right of audience was largely limited to the magistrates' courts. The possibility of extending those rights had been considered by Parliament during the passage of the Prosecution of Offences Act (1985) which conferred a wide discretion on the Lord Chancellor. However opposition to the idea had been strong with the then Lord Chancellor, Lord Hailsham, speaking in committee stage and in response offering fulsome assurances as to how he would exercise his discretion: "If I thought that any action of mine, as Lord Chancellor, would be undermining the separate position of the Bar, I should be very deeply disturbed indeed. I am a barrister, the son of a barrister, and the father of two barristers. I remain devoted to my own branch of the profession". For him, the issue was one of independence.
- 2.8 In the absence of any exercise of powers under the 1985 Act no 'employed' barrister, or any solicitor for that matter, had the right to conduct public proceedings in the Crown Court. In 1988 the whole issue of rights of audience came under review in the Green Paper Work and Organisation of the Legal Profession, which included a proposal that crown prosecutors should have an unrestricted right to appear in the Crown Court. The recommendation was not adopted at the time but the topic was revisited on a number of subsequent occasions. On 1 January 1991, as a result of the provisions of the Courts and Legal Services Act 1990, solicitors in private practice gained the right to appear before the higher courts of England and Wales without being a member of the Bar, subject to individual authorisation by the Law Society (now the Solicitors' Regulation Authority). In November 1992 the then DPP, Dame Barbara Mills QC, appearing before the All Party Home Affairs Select Committee, stated that she had been 'affronted' by the loss of her rights of audience in the Crown Court on joining the Service. Then in February 1997 limited higher rights of audience were granted for solicitors employed by the CPS and in 1999 employed barristers were granted the same rights as their self employed colleagues in private practice. They were known as higher courts advocates.

### **The advent of higher courts advocacy**

2.9 Under the then DPP Sir David Calvert-Smith QC, the first HCAs began to appear in the Crown Court. The Service was aware that opposition to the concept of employed advocates still existed and that the main argument deployed against the idea was that the CPS would not be able to match the self employed Bar for quality. In addition they were said to lack independence. It was decided that all prospective HCAs should be required to undergo specific advocacy training, over and above that required for the higher rights qualification by the Bar Council and Law Society, to ensure that CPS HCAs had an appropriate level of competence. The DPP himself took the course. This original approach to getting prosecutors into the Crown Court had a clear focus on quality and a similar approach was also taken in relation to the training of designated caseworkers (DCWs) who were to present cases in the magistrates' courts.

### **The CPS advocacy strategy – November 2004**

2.10 From 1999 a cautious approach was taken. There were limited numbers of staff in these roles and work undertaken was at the less serious end of the spectrum. The rate of growth was comparatively slow until a step change in June 2004 when the CPS Board approved the advocacy strategy vision of the new DPP. Sir Ken MacDonald QC wanted the CPS to become “an organisation that routinely conducts its own high quality advocacy in all courts, efficiently and effectively”. One of the key early objectives was to increase the volume of work undertaken by in-house advocates. The desire to gain a significant presence in the Crown Court was reflected in the nature of targets introduced in 2005 which were quantity rather than quality-based.

2.11 To this extent the strategy has been successful in that nearly 1,000 employed advocates now appear in the Crown Court, some on a regular basis. However it is acknowledged by the Service that the focus now needs to shift from quantity to quality which is borne out in inspectors' observations, particularly in Crown Court trials. The gap between the requirements of magistrates' courts' advocacy and the skills required in the Crown Court is wide. The main approach to bridging that gap has been through a nationally delivered training programme which has developed over time. At the Bar advocacy training has been standardised since 2004, however it is accepted that the main learning vehicle is still personal mentoring, practise and the benefit of practical experience, gained during pupillage and after.

### **The CPS advocacy strategy – 2007 and 2008**

2.12 On 1 April 2007 the CPS introduced a different prosecutor structure which created three new gradations for the advocacy orientated prosecutor, previously referred to as HCAs: crown advocates, senior crown advocates and principal crown advocates. Along with the change in name this implemented a more attractive pay structure.

2.13 In addition to the extension of rights of audience for solicitors and barristers employed by the CPS, on 1 October 1998 legislation was introduced creating a class of non-legally qualified CPS staff who were permitted to present a limited range of cases in the magistrates' courts, mostly involving straightforward guilty pleas. These individuals were titled designated caseworkers and, originally selected from within the cadre of experienced law clerks, appointed after successfully completing a CPS training programme. In 2008 DCWs were renamed associate prosecutors. Their rights of audience (known as powers) have been extended subsequently so that they are now entitled to represent the CPS in most types of non-contested magistrates' courts' hearing including, since February 2009, certain types of summary trial where the offence does not carry a sentence of imprisonment. It is envisaged that by May 2011 they will be regulated by a body accredited under the Legal Services Act 2007.

**Other initiatives**

2.14 Since the crown prosecutor has been expected to provide charging advice and appear in the Crown Court the time and opportunity to appear in the magistrates' courts, as well as for office based duties, has reduced accordingly despite an increase in their numbers overall. A shift in the way the CPS runs its business was required. The most visible aspect of this was the exercise of extension of associate prosecutors' rights of audience in 2008. Also there is the move away from case ownership in volume crime cases in 2008, facilitated by the implementation of the OBM and Criminal Justice: Simple, Speedy, Summary (CJSSS) for case progression and preparation in the magistrates' courts and the OBM in the Crown Court in some areas. The initiatives are intended to provide efficient case preparation and progression systems for the magistrates' courts.

### 3 METHODOLOGY

#### Fieldwork and observation in court

- 3.1 The inspection team visited eight CPS areas. They were selected according to numbers of HCAs, crown advocates and associate prosecutors with a greater emphasis on those with heavy usage, but to include some with low usage for comparison of deployment and value for money issues. This included areas with all sizes of caseload, one in Wales and a cross-section of north and south, including the two pathfinder sites in Hertfordshire and Hampshire and the Isle of Wight.

CPS area	Higher courts advocates (as at 1.10.07)	Associate prosecutors (as at 1.10.07)
Avon and Somerset	37	9
South Wales	27	7
Hampshire and the Isle of Wight (Lead CCP for higher court advocacy) (Pilot HCA site)	35	13
Hertfordshire (Pilot HCA site)	16	7
Greater Manchester	42	32
London - North (Crown Advocate Unit at Snaresbrook Crown Court)	31	20
London - South	53	24
Humberside	14	8
West Yorkshire (Lead CCP for associate prosecutors)	50	22

- 3.2 Advocacy observations were undertaken in each of the eight in the Crown Court and magistrates' courts and interviews undertaken with staff in the areas, from CPS Headquarters and external stakeholders - the judiciary in the Crown Court and Crown Court staff, District Judges and magistrates' courts' staff and the Witness Service. A list of individuals who assisted us in this review can be found at annex G.
- 3.3 Views in relation to presentation of cases at court from questionnaires<sup>3</sup> submitted by criminal justice agencies and observations<sup>4</sup> from other Inspectorate work were also considered. The team attended the crown advocate training courses (stage 1, parts 1a and 1b and stage 2) and the national CPS crown advocate and associate prosecutor conferences (both October 2008).
- 3.4 File examination was undertaken of the cases observed at court and a further 80 files have been examined against set questionnaires as part of this review and the audit.

3 The overall performance assessments of the 42 CPS areas undertaken during 2007; questionnaires considered were those received from the Crown Court, magistrates' courts and police.

4 The second thematic review of CPS decision-making, conduct and prosecution of cases arising from road traffic offences involving fatalities, published November 2008 and the report on Special Crime Division, published January 2009.

3.5 The advocacy observations were assessed using the following criteria:

- 1 outstanding;
- 2 very good, above average in many respects;
- 3+ above average in some respects;
- 3 competent in all respects;
- 3- below average in some respects, lacking in presence or lacklustre;
- 4 less than competent in many respects;
- 5 very poor indeed, entirely unacceptable.

3.6 We will generally refer to grades 1-3 as being fully competent and 3- as below average in some respects or as lacklustre or lacking in presence. Grades 4 and 5 are unsatisfactory and clearly less than competent. We did not go to the Central Criminal Court (Old Bailey) or observe terrorist or specific difficult murder trials. We therefore had less opportunity to see the outstanding advocacy that does exist across the country in a small number of cases and have left this out of the tables in the chapters.

3.7 There are eight component aspects that made up the overall advocacy assessment score detailed above. These are: professional ethics; planning and preparation; applying CPS policies; written advocacy; the case in court; preparation for trial; trial advocacy; and the advocate in court. These align with the Service's own national standards of advocacy. Only relevant aspects were graded during individual assessments.

3.8 It should be noted that despite the time devoted by the inspection team to court observations, the number of observations in some aspects of the advocacy is quite low and caution should be exercised when comparing these figures in percentage terms.

### **Management information and data**

3.9 The main purpose of the review has been to ascertain the quality of the advocacy observed. However it is also necessary to comment on development of the advocacy strategy and the effectiveness of its implementation at local level, because the two are inextricably linked.

3.10 Therefore a considerable amount of management information and data was analysed, including:

- plans;
- minutes of meetings;
- caseloads;
- court sessions;
- costs;
- targets for deployment of HCAs, associate prosecutors and in-house advocates; and
- evidence collected from other Inspectorate work.

See annex E for national CPS advocacy data.

### **The inspection team**

3.11 The inspection team consisted of HMCPSI legal and business management inspectors and a number of associate inspectors, four retired Crown Court judges and four crown advocacy trainers, including two CCPs. The review was informed by a reference group drawn from the judiciary, Bar, solicitors and the CPS which met at key phases in the process (a list of members is at annex H).

### **The structure of the report**

- 3.12 In order to present the findings in a cohesive and logical way the report puts the advocacy observations and findings in the magistrates and Crown Court at the outset followed by the casework aspects that support advocacy, then the more managerial and operational issues such as deployment, planning, liaison and financial considerations. All in turn have an impact on the quality of advocacy and case presentation.
- 3.13 Chapter 1 provides an introduction and overview of the CPS advocacy strategy and how it has evolved in recent times. Chapter 2 provides a background to the role of the advocate and a summary of findings detailing recommendations, aspects for improvement and any strengths or good practice. Chapter 3 details the methodology employed during this review. Chapter 4 assesses quality of advocacy and case presentation in the Crown Court and chapter 5 with these aspects in the magistrates' courts. Chapter 6 discusses aspects that support advocacy at court, including case preparation and progression. Chapter 7 assesses the deployment of resources; chapter 8 training and development and chapter 9 considers the planning arrangements within the Service to deliver the advocacy strategy and liaison arrangements with criminal justice partners. Chapter 10 examines the costs and benefits of the advocacy strategy and other financial considerations and chapter 11 analyses linkages and draws together our findings.
- 3.14 Throughout the report there are case studies demonstrating aspects of advocacy that inspectors observed or views of criminal justice partners. These reflect positive practices currently in operation or aspects where improvement is required. The latter need to be considered by CPS Leadership and Learning to ensure that they are addressed.
- 3.15 In addition a number of recommendations designed to address key concerns are identified along with aspects for improvement. The report also identifies good practice that appeared to be working well and which is worthy of consideration by other areas.

### **Acknowledgements**

- 3.16 The Chief Inspector and review team are grateful for the cooperation, support and assistance of all those in the CPS areas with whom they came into contact throughout the inspection, from preparation of material for the team's consideration to arrangements for the fieldwork and participation in the interviews and observations.
- 3.17 The Chief Inspector sends particular thanks to the associate inspectors and the members of the reference group who assisted with this review (see paragraph 1.6 above).



## 4 CASE PRESENTATION IN THE CROWN COURT

### Prosecuting advocates in the Crown Court

- 4.1 Prosecution advocacy in the Crown Court is carried out by barristers in private practice (referred to hereafter as counsel), or by crown advocates employed by the CPS.
- 4.2 Crown advocates, previously known in the CPS as HCAs, are the in-house lawyers entitled by professional qualification and CPS designation to appear in the Crown Court. Following implementation of the CPS advocacy strategy in 2004 an increasing proportion of crown advocates (including senior and principal crown advocates) have been recruited direct from the self employed Bar. The majority of crown advocates originally practised as crown prosecutors; some have practised within the CPS from qualification and a few started as trainees within the Service. A small number are solicitors drawn from private practice and many of the latter, but certainly not all, have significant advocacy experience.
- 4.3 Inspectors noted a significant difference between the level and nature of the skills required to conduct a trial and a non-trial hearing effectively. Put at its simplest style, presentational skills and experience are less essential, though certainly desirable, to achieve a satisfactory result in a non-contested hearing. However in jury trials where the guilt or innocence of the defendant is decided such attributes can make a difference. In addition there are specific skills which include witness handling, dealing with complex legal argument and jury speeches which do not arise in most other types of hearing.

### Overall standard of case presentation

- 4.4 Although the majority of prosecution advocates were fully competent overall in the Crown Court, there was a difference in quality between crown advocates and counsel across the different types of hearing. In non-contested hearings, for example sentencing or PCMHs, a greater majority of crown advocates were fully competent in comparison to counsel and for the most part they are delivering a sound quality of service. In contrast counsel performed better in trial hearings and across all individual aspects of trial advocacy apart from the closing speech. In-house trial advocacy needs further development generally and the quality of cross-examination by crown advocates particularly needs improvement.

#### *Overall quality of advocacy – Crown Court*

Score	Crown advocates		Counsel		All advocates	
Very good	6	5.0%	14	14.7%	20	9.3%
Above average	20	16.5%	15	15.8%	35	16.2%
Fully competent	55	45.5%	39	41.1%	94	43.5%
Lacklustre	32	26.4%	23	24.2%	55	25.5%
Less than competent	7	5.8%	3	3.2%	10	4.6%
Very poor	1	0.8%	1	1.0%	2	0.9%
<b>Total</b>	<b>121</b>	<b>100%</b>	<b>95</b>	<b>100%</b>	<b>216</b>	<b>100%</b>

- 4.5 In the Crown Court there were 216 scored assessments, 68 of which were trials. The general finding was that in the large majority of cases, 149 (69.0%), advocates were fully competent overall when prosecuting. Twenty of these (9.3%) were very good. There were ten occasions where the prosecutor's advocacy was assessed to be significantly below the standard required and two where it was very poor; one was counsel and the other a crown advocate. There were 55 advocates assessed as lacklustre. The greatest flaws were the style of presentation and placing too much reliance on reading from either a prepared note or a police summary which had not always been checked against the case papers. There are adverse consequences of providing the judge with inaccurate information, however inadvertently, it is not always fully appreciated that this can cause long lasting personal damage to individual reputations.
- 4.6 A significant number did not adapt their advocacy to meet the expectations of the audience; the style used in the magistrates' courts is not always appropriate in the Crown Court. The forms of address were not always fitting, for example the term "you" instead of "your honour" or referring to the judge as "sir". There were also examples whereby the prosecution advocate omitted to introduce their opponent or used inappropriate terminology. The defence were equally culpable in this regard.
- 4.7 Counsel presented cases with an air of authority on a greater number of occasions than the crown advocates we observed (93.8% in comparison to 69.6%). Similarly counsel presented cases in a positive manner more frequently (96.9% compared with 87.0%). Examples of presentational style which were less positive were hesitant delivery, punctuated with "errs" or pauses, a pedestrian and monotone approach and some mannerisms which distracted from the advocacy.

### Quality of case presentation in non-contested hearings

#### *Quality of advocacy in non-trial cases – Crown Court*

Score	Crown advocates		Counsel		All advocates	
Very good	4	4.6%	4	6.6%	8	5.4%
Above average	16	18.4%	9	14.8%	25	16.9%
Fully competent	41	47.1%	28	45.9%	69	46.6%
Lacklustre	24	27.6%	18	29.5%	42	28.4%
Less than competent	2	2.3%	2	3.3%	4	2.7%
Very poor	0	0%	0	0%	0	0%
<b>Total</b>	<b>87</b>	<b>100%</b>	<b>61</b>	<b>100%</b>	<b>148</b>	<b>100%</b>

- 4.8 The table shows that in non-contested hearings the general finding was in more than two thirds of cases advocates were competent overall when prosecuting. Prosecution advocates were competent or better in a higher majority of cases in the individual performance aspects of planning and preparation (77.7%), handling the case in court (75.7%) and performance of the advocate in court (70.6%).

- 4.9 The table shows that crown advocates performed better than counsel in non-contested hearings. Sometimes advocates are more suited to a particular type of hearing, whilst some are very good at case management others have skills that work well in front of a jury. One advocate's style may work well with a jury but be too informal or colloquial for a judge. Whatever the category of case it is essential that the prosecution advocate has all the key information at their disposal and does not have to go through the papers in court to find information which should have been readily available.
- 4.10 In the more serious cases where the brief is sent to counsel it is now less likely to be returned late due to the reduction in work sent to chambers and, as a consequence, is likely to be prepared thoroughly. In contrast in less serious cases sent to counsel for PCMH the performance of many was below what could be expected in light of the reduction in caseload. There were instances where they appeared ill prepared and on occasions uninterested in the case. This is somewhat contrary to the outcome expected in an environment where competition is fierce.

#### **Quality of presentation in cases for sentence**

- 4.11 There are some issues in relation to the preparation of cases listed for sentence, particularly on procedure and the law on dangerousness, firearms and youths. Further training should overcome this and provides an opportunity for joint working with the Bar in an area where a common training need is apparent.

The prosecutor was unaware of sentencing guidelines for the offence issued by the Sentencing Guidelines Council. In answer to the judge's question he said there were none. There were recent guidelines contained in the Archbold supplement, which defence counsel supplied.

- 4.12 In general crown advocates or case reviewers are not preparing plea and sentence forms which detail information relevant to sentencing and the sentencing guidelines, or the instructions contain an extract from Archbold.<sup>5</sup> The court requires information relevant to the circumstances of the particular case. In addition some advocates are omitting to highlight the aggravating and mitigating features relevant for the sentencing exercise.
- 4.13 The more complicated the case becomes the more likely it is that the inexperienced advocate will encounter difficulties, for example where there are numerous linked cases for sentence with schedules of offences to be taken into consideration. Often there appeared to be a lack of preparation in the more complicated cases which may have been due to its late allocation and subsequent limitations on preparation time available.
- 4.14 There were some examples of failing to present simple cases clearly by including too much detail despite overt hints from the judge. This may be due to the over reliance on the police summary or a prepared opening note. There are also weaknesses in the handling of antecedents.

<sup>5</sup> Archbold; Criminal Pleading, Evidence and Practice (Sweet and Maxwell).

The defendant’s criminal record was stated in far too much detail. All the offences back to the old juvenile ones were recited ignoring the judge’s invitation to “take the record very shortly” because he had read it.

In another area the crown advocate handed the judge his own copy of the antecedents then said he was unable to contribute to the proceedings as he had handed up his only copy. There was no effort to read the document first or recall some salient facts or a brief summary of the record.

- 4.15 We observed occasions where the prosecution advocate was insufficiently resolute in cases for sentence which resulted in an inappropriate basis of plea being agreed and the case being presented in a manner which was inconsistent with the evidence. We also observed a failure to consider the consequence of accepting a basis of plea for one or more defendants in multi-defendant cases where there is frequently a knock on effect and can lead to problems for the eventual sentencing judge. In one area, referring to the crown advocates, it was said “They are too ready to accept lesser pleas when standing firm would gain a result”. Some of these skills come with experience and being alert to defence tactics and improvements can also be made through additional training. In one area we were told that the instruction in relation to a basis of plea was that it should not be untenable but there is no specific training on this issue. In contrast we also observed examples where the crown advocate was robust and properly did not accept a plea on a basis submitted by the defence.

**Quality of trial advocacy**

Score	Crown advocates		Counsel		All advocates	
Very good	2	5.9%	10	29.4%	12	17.6%
Above average	4	11.8%	6	17.6%	10	14.7%
Fully competent	14	41.2%	11	32.4%	25	36.8%
Lacklustre	8	23.5%	5	14.7%	13	19.1%
Less than competent	5	14.7%	1	2.9%	6	8.8%
Very poor	1	2.9%	1	2.9%	2	2.9%
<b>Total</b>	<b>34</b>	<b>100%</b>	<b>34</b>	<b>100%</b>	<b>68</b>	<b>100%</b>

- 4.16 In jury trials the general finding was that 69.1% of prosecution advocates were fully competent when prosecuting, including 12 (17.6%) who were very good, and 13 (22.8%) who were lacklustre or lacked presence.

*An example of very good advocacy*

She had sufficient gravitas, looked the part and had the respect of the court. Her opening speech was clear, the right pace and volume and covered what was needed succinctly. In examination-in-chief she was very confident and courteous and did not re-examine where it was not necessary. Her cross-examination demonstrated that she had a theory of the case and explored it with the defendant and the two defence witnesses. There were some points of clarification and the rest was pertinent and succinct. The closing speech covered the applicable law, was short and relevant and explained why the defence of reasonable excuse should be rejected.

4.17 Eight advocates were less than competent in many respects and of these two were very poor.

*An example of very poor advocacy*

There is a direct link between the poor advocacy and the acquittal for an allegation of causing grievous bodily harm (section 18, Offences Against the Person Act 1861). The main issues include inappropriate comment in opening; giving evidence on at least two occasions; guessing in the jury submission; failure to do the basics, for example failure to exhibit the video and closed circuit television evidence properly; failure to correct the judge on inaccurate directions about statements that were read (section 9, Criminal Justice Act 1967) and agreed admissions (section 10, Criminal Justice Act 1967); inflexibility; failure to argue the admissibility of the bad character application properly (this was a critical failure); lack of trial theory, focus and strategy; lack of courtesy and respect towards the judge on two occasions; the tendency to argue with his opponent while seated and in front of the jury; the failure to amend the indictment; and the failure to cross-examine the defendant effectively on important areas.

- 4.18 Out of the eight individual aspects that comprise the overall assessment trial advocacy was competent in 63.2% of cases and the advocate in court in jury trials in 66.7%.
- 4.19 Crown advocates and senior or principal crown advocates were observed conducting 34 jury trials, the same number as for counsel. Overall counsel performed better than the crown advocates (79.4% of counsel were fully competent or better compared with 58.8% of crown advocates). This is not necessarily surprising due to the fact that many crown advocates are still relatively inexperienced in Crown Court trial advocacy in comparison to the counterparts at the private Bar.
- 4.20 Concerns were highlighted by external interviewees in some areas over the inappropriate cracking of trials (accepting a plea or dropping the case on the day the case is fixed for trial) by crown advocates due to pressure placed on them by the defence, the reluctance to prosecute a trial or, on occasions, fear of a particular trial judge. This was borne out by a few instances in our observations.
- 4.21 The perception of several stakeholders was that some crown advocates had little appetite for contested trials which could be compounded by a listing in front of a judge who was known to be intolerant of in-house advocates. In one area we received evidence that crown advocates were inclined to return briefs to the Bar as soon as they became aware that a matter was listed in front of one particular judge for trial.

### *Opening speeches*

- 4.22 “When the defendant is given in charge to the jury, counsel for the prosecution opens the case to the jury, outlining the evidence upon which the prosecution rely and explaining the nature of the charge(s) to the jury” (Archbold from Sweet and Maxwell: 4–268). The generally accepted approach is that the prosecution should not address the law beyond reminding the jury of the burden and standard of proof, save in cases of real complexity and difficulty where counsel believes, and the trial judge agrees, that the jury may be assisted by a brief and well focussed submission.
- 4.23 Of the 34 opening speeches a higher percentage presented by counsel were properly planned and structured and relevant to the tribunal, identifying the issues and dealing with any reasonably foreseeable defences, compared with the crown advocates (89.5% of counsel in comparison to 60% of crown advocates were fully competent or better).

The opening speech by the crown advocate was good; it was clear and simple, got straight to the point of the case and engaged the jury.

### *Examination-in-chief*

- 4.24 “The purpose of examination-in-chief is to adduce by the putting of proper questions which are not in leading form, relevant and admissible evidence which supports the contentions of the party who calls the witness ...” (Archbold from Sweet and Maxwell: 8–68).
- 4.25 Of the 39 observations of examination-in-chief a higher percentage presented by counsel were properly planned and structured and conducted in accordance with the rules of evidence compared with the crown advocates (90.9% of counsel in comparison to 53.8% of crown advocates were fully competent or better). This level of performance of crown advocates is an area that needs to be addressed by the Service.

In examination-in-chief counsel used almost exclusively leading questions saying before the jury “I will be stopped if I stray onto disputed territory”.

### *Cross-examination*

- 4.26 “Questions put in cross-examination must be either relevant and pertinent to the matter in issue, or calculated to attack the witness’s title or credit...” (Archbold from Sweet and Maxwell: 8–112). “In cross-examining a witness, counsel may ask leading questions; that is he may ask questions which suggest what the answer should be. Questions should not be put in such a manner as to be in the nature of invitations to argument rather than elicit answers to matters of fact, which is the true purpose of cross-examination...” (Archbold from Sweet and Maxwell: 8–116). “An advocate must not in the course of cross-examination state matters of fact or opinion, or say what someone else has said or is expected to say... Similarly, cross-examination must not be used for making comments, which should be confined to speeches...” (Archbold from Sweet and Maxwell: 8–116).
- 4.27 Of the 25 cross-examination observations it was properly planned and focussed on the relevant issues in a higher percentage of cases undertaken by counsel in comparison to crown advocates (83.3% of counsel in comparison to 60% of crown advocates were fully competent or better).

During cross-examination of the defence witness counsel makes good points and successfully exposed the witness's lack of credibility by cross-examination against documents and other evidence; this is all done with brevity.

During cross-examination of the defence witness prosecuting counsel strays into hearsay and is criticised by the defence and the judge for this.

- 4.28 Cross-examination was a particular weakness for some crown advocates. It was often unstructured, there appeared to be no theory of the case and frequently it was little more than putting the prosecution case. The quality could be improved considerably if more thought was given to exploring inconsistencies in the evidence or during the interview of the defendant and how to make points with most dramatic effect that the jury will understand, for example putting previous convictions in an effective way.

The cross-examination by the crown advocate was unstructured and apparently unfocussed on the issues in the case. The judge directed her attention to an issue raised in interview, but she failed to cross-examine on the point having said that she would; apparently she does not understand the point. Her lack of skill and 'know how' is characterised by an unstructured cross-examination on the witness's previous convictions; this confused the jury and missed an opportunity to undermine the defence.

#### *Re-examination*

- 4.29 "There is a right, in re-examination, to ask all questions which may be proper to draw forth an explanation of the sense and meaning of the expressions used by the witness in cross-examination, if they be in themselves doubtful, and also, of the motive, by which the witness was induced to use those expressions; but there is no right to go further and to introduce matter new in itself ... Leading questions should not be asked in re-examination ..." (Archbold from Sweet and Maxwell: 8-247).
- 4.30 Of the 25 observations of re-examination it was used effectively and only when necessary in a higher proportion of cases by crown advocates compared with counsel (62.5% of counsel in comparison to 88.9% of crown advocates were fully competent or better). There were examples where re-examination was undertaken which was otiose and at times undermining to the prosecution case.

Counsel re-examined every prosecution witness, using this as a tool to cover ground missed during examination-in-chief rather than addressing issues raised in cross-examination. In relation to one witness the re-examination served to undermine the prosecution case.

Counsel got the names of some of the witnesses wrong and was pulled up by the judge for leading in re-examination.

### *Closing speeches*

- 4.31 Of the 17 closing speeches they were properly planned and structured and relevant to the tribunal in a similar proportion of cases presented by crown advocates compared with counsel (71.4% of counsel in comparison to 70.0% of crown advocates were fully competent or better). The five less good speeches were unfocussed or even rambling without any structure which could be remedied by thorough preparation and greater clarity about the case theory.

The closing speech for the prosecution was very clearly articulated; it clarified the points on identification for the jury.

The closing speech was outstanding; the weaknesses in the prosecution case were put into context and presented to the jury fairly, but positively.

### *Legal submissions*

- 4.32 The ability to make effective, succinct submissions was not always apparent, for example we observed misconceived applications which were badly prepared and criticised by the judge. In contrast we also saw prosecution advocates responding to defence submissions of no case to answer in a structured manner which was effective.

There was a defence submission of no case to answer. The crown advocate anticipated the submission and had obviously prepared for it over the lunch adjournment. He dealt with all the points made by the defence and was able to respond easily to those raised by the judge.

### *Trial advocacy of crown advocates*

- 4.33 The inspection team had concerns about the quality of trial advocacy of some crown advocates including some of those at level 3.<sup>6</sup> The quality of examination-in-chief needs to be improved and in particular the weaknesses demonstrated in cross-examination need to be addressed. The inability to test the defence case in cross-examination other than to put the Crown's case, indicating a lack of experience and demonstrating the absence of a theory about the case, demonstrates the latter point. We also observed examples of poor presentation of closed circuit television (CCTV) evidence, the inability to put previous convictions to the defendant or witness for the greatest impact, missing obvious points in cross-examination and the failure to take explicit hints from the bench.
- 4.34 There were mixed views from members of the judiciary about the quality of trial advocacy of crown advocates. We were told that "there are some promising crown advocates, who simply lack trial experience and will hopefully improve" and "... there had been 'clear' improvement in the crown advocates and there were some very able ones in the unit who just lacked experience but certainly had the ability to be very good advocates ...". In contrast we were also told "when cases go to trial, crown advocates, who were CPS lawyers, generally conduct them competently, but not more than that. There is a lack of "persuasive advocacy" of the kind which used to be deployed on behalf of the prosecution before the new system came into being".

<sup>6</sup> See paragraph 8.45-8.46 for grading of crown advocates.

The crown advocate was observed dealing with her first trial. She had a very good manner, with good tone, pace and eye contact. Her opening speech and cross-examination of the defendant were poor, although her closing speech was better. She had not considered the issues before trial and was unable to answer the defence arguments properly. She did not bring Archbold into court for the trial and in particular for addressing the judge in relation to his summing up. However she dealt with the victim and the witness effectively and with consideration, meeting them before court and keeping them informed.

- 4.35 There were examples of crown advocates being outgunned by defence advocates due to their inexperience. Court craft comes with experience and the ability to handle the more astute defence advocates was sometimes lacking. There were examples where admissions were used or statements read instead of calling witnesses to breathe life into the evidence and the case, and portray a picture to the jury. Dealing with evidence in this way is quicker and often far easier but it showed a failure to appreciate why the defence had agreed such a course tactically.
- 4.36 The inspection team observed a handful of examples where there were acquittals which correlated to the poor performance of the advocate. Equally there were examples of acquittals where the advocate was very good, however on balance these were not unreasonable on the evidence heard during the course of the trial.

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## RECOMMENDATION

Trial advocacy for crown advocates needs to be substantially improved, in particular in relation to cross-examination.

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- 4.37 The majority of areas felt that they are able to recruit good people from the Bar now, although some were encountering difficulties attracting senior crown advocates. Nevertheless not all those joining from the Bar had good practices and high reputations locally.

### *Timeliness and quality of decision-making at court*

- 4.38 Caseworkers and crown advocates commented that the use of advocates who are also the reviewing lawyers has made the whole process more efficient. Crown advocates can make decisions which counsel are not able to do, which is a clear benefit of the strategy. However this principle was not applied in all areas. In one there was a protocol where the crown advocate was required to speak to the reviewing lawyer or unit head before a basis of plea could be taken, counts on the indictment amended or a case discontinued at court. In other areas there was reference to a specialist or unit head where the relevant policy required it and in certain other cases as well. In one area it was commented that only a minority of crown advocates would take decisions on cases and counsel were better at giving answers and more willing to speak to someone about a decision in the case.
- 4.39 Some crown advocates need to be more astute when seeking time at court to refer the case to another lawyer. It can be undermining to stand in court and explain that a decision cannot be made without reference to the reviewing lawyer, against the perceived benefit of having advocates in court who are accountable. Others may use some of the time allowed to consult with the victim, to inform the decision-making and to seek the views of the reviewing lawyer. Some crown advocates need to be more assured about the position the crown is taking.

When the defendant failed to attend the crown advocate said it was a matter for the court rather than pinning the prosecution colours to the mast as to what the view actually was in terms of whether a warrant for breach of bail was sought.

### **Ancillary orders**

- 4.40 Some crown advocates (and counsel) dealt with ancillary orders appropriately such as seeking an order for destruction in a drugs case and setting out the timetable where a proceeds of crime application was required in cases involving supply of drugs. Some areas dealt with such applications in-house where it was felt there was more expertise and instructed counsel with appropriate expertise only in specific cases. Many counsel were reluctant to undertake the confiscation aspect of the case due to the low level of remuneration for the work. Other crown advocates were poor at thinking in advance what was required for a hearing in terms of ancillary orders, for example at confiscation hearings, or were inexperienced in this field.
- 4.41 Timeliness was poor in relation to applications for bad character and hearsay; it was the exception if applications were timely. The information necessary to make such applications was not always available, for example the absence of the most up to date previous convictions of defendants. Template applications were not filled in fully and the quality was variable, with many being particularly poor. Last minute applications for special measures and bad character were delaying trials on a regular basis and the former left victims and witnesses in a state of uncertainty.

### **Serious, complex and sensitive cases**

- 4.42 Where experienced specialist counsel was instructed the advocacy was invariably of high quality. In the areas visited there are reservations about the ability and calibre of most crown advocates prosecuting certain cases without further training and experience. However there are examples of fields of expertise where the quality of in-house advocacy was to a high standard.

There was an experienced prosecution counsel who opened the case succinctly and dealt with witnesses via the achieving best evidence<sup>7</sup> recordings and live in court effectively. Questions were formulated very well and the prosecutor was more impressive than defence counsel who, on one occasion, lost impact in cross-examination by asking one too many questions having already established favourable evidence.

- 4.43 Advocacy observations were undertaken in HMCPSI's thematic review of road traffic offences involving fatalities (published November 2008). The two counsel seen were found to be very good and two crown advocates were also very good. During this review the quality of advocacy in such cases was not always as impressive.

7 Achieving best evidence: good practice for obtaining visually recorded evidence from child and vulnerable and intimidated witnesses.

In a sensitive PCMH (death by dangerous driving) the crown advocate presented well and complied with CPS policy, but her submission lacked structure. She had not considered in advance whether a Newton hearing<sup>8</sup> would be appropriate in light of the basis of plea, which had rightly not been accepted. This made the crown advocate appear unskilled in front of the victim's family who had attended court.

### **The role of the junior advocate**

4.44 There is a perception held by some stakeholders, across all areas visited, that in cases requiring two prosecution counsel it was all but impossible to obtain authority for a junior to be instructed who was not a crown advocate. We saw several cases with two counsel that contradicted this perception, although there was undoubtedly a preference for in-house juniors. This approach did not always take account of their ability to deal effectively with issues when the leader is not available or indisposed. In each area we were given examples of a case where the crown advocate junior had been unable to take over aspects of the case when their leader was unavailable. There has been a reduction in the number of crown advocates undertaking the junior role, from 1,150 in 2007-08 to 983 in 2008-09, against the background of an increasing Crown Court caseload. This may help dispel the perception. Areas need to ensure that only crown advocates of appropriate skills and experience are selected as the junior advocate and that selection is not driven by the need to maximise higher court advocacy savings.

The crown advocate was prosecuting a case as junior counsel. The defence listed the case in order to make a bail application which was to be heard in the absence of the leading counsel for the prosecution. The CPS instructed junior counsel to prosecute the application.

4.45 We were told of differing expectations from the Bar and in-house advocates about the role of the junior. Even allowing for differences of approach amongst senior practitioners there is a substantial mismatch which needs clarifying in the context of prosecution work. The role of defence junior is the subject of discussion.<sup>9</sup> The CPS and Bar could usefully agree guidelines to ensure that crown advocates or counsel instructed as a prosecution junior in a case are clear what is expected from them. This would provide clarification of the expectations upon the junior in terms of case preparation including disclosure, drafting of submissions and the opening speech and the amount of court advocacy required.

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## **RECOMMENDATION**

The role of the junior prosecution advocate is clarified.

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8 Where a guilty plea is entered but either the prosecution or court do not accept the basis of plea. The factual basis of the plea is resolved by calling evidence resulting in a judicial finding of fact.

9 The Crimeline HCA Conference in April 2009 had a session titled "How not to be a straw junior – expectations from the front row" to be led by an experienced criminal silk.

### Cultural issues

- 4.46 There are cultural differences which will naturally arise between the self employed Bar and employed crown advocates within the CPS. A perception held by many stakeholders is that there is a 'nine to five' culture in the Service which is not compatible with the role of a Crown Court advocate and the flexibility required. The Bar also stress that competition for work encourages the development of the skills necessary to enable a practice to be built. We were told that "there are some atrocious counsel practicing...The difference, however, is that there is a fiscal mechanism to control poor advocates at the Bar – they eventually do not get briefed. ... not convinced that poor crown advocates would, similarly, not be briefed in-house as the pressure is to use crown advocates and maximise returns ... target driven prosecutions make this inevitable." This view was not restricted to one stakeholder.
- 4.47 The CPS stress that professionalism of lawyers has the like effect of competition. Many crown advocates accepted the additional hours were necessary to undertake the role and this reflected the additional pay they received to as a result of assimilation into that grade. One of the crown advocates said he was currently doing 35 hours work a week above his contracted hours. However not all crown advocates had this approach and felt work beyond the conditioned hours was onerous.

A crown advocate was prosecuting at trial for possession of drugs with intent to supply. She wanted to adjourn the case at 3.30pm so that she could prepare her closing speech overnight.

- 4.48 The Department for Constitutional Affairs commissioned extensive consultation including the public, judges and practitioners in the courts. The Lord Chief Justice considered this and also undertook consultation and issued practice directions. Consequently in the Crown Court barristers, whether counsel or crown advocates, wear wigs and gowns. Solicitors with higher rights of audience are not required to wear wigs but may do so. The CPS pays for its barrister crown advocates' wigs but not for the solicitor advocates. The feedback from court staff indicated that the lack of wigs for some advocates does affect the perceptions of certain jurors. There is no definitive research as to the impact this has on members of the jury. Issues put forward in the consultation responses and comments included the current court working dress was authoritative, traditional and distinguishes the wearer, and that issues of respect and levelling were important so that both sides are seen as the same without rank or advantage.
- 4.49 Just as a set of chambers has a clerk with responsibility for managing its barristers' work, so CPS areas are increasingly moving towards a similar system whereby dedicated crown advocate clerks allocate cases and hearings. They are the point of contact for Crown Court list officers and should have an active role in liaising with the Crown Court and barristers' clerks in relation to listing and allocation issues. This role is relatively new and its development is considered in chapter 7.

## 5 CASE PRESENTATION IN THE MAGISTRATES' COURTS

### Prosecuting advocates in the magistrates' courts

- 5.1 CPS advocates in the magistrates' courts fall into three main categories. Crown prosecutors, as qualified solicitors or barristers, have full rights of audience in the lower courts as do the self employed solicitors and barristers who act as CPS agents. In-house associate prosecutors have more limited rights of audience which were extended in 2008 to cover most types of non-trial hearing, including committals. In February 2009 they were extended again to cover a limited range of contested trial work which has been the subject of a pathfinder project in selected CPS areas.
- 5.2 Increasingly the role of appearing in non-contested hearings has shifted from crown prosecutors to associate prosecutors, to the extent that about 60% of magistrates' courts' hearings were conducted by crown prosecutors, 25% by associate prosecutors and 15% by agents in 2008-09. The proportion of hearings involving associate prosecutors is likely to increase further as they begin to exercise their rights to appear in the less serious magistrates' courts' trials.
- 5.3 The quality of magistrates' courts' advocacy differs significantly between non-contested and trial work. According to inspectors' observations 67.9% of advocates were at least fully competent in non-trial hearings, but this figure reduces to 55.6% in relation to trials. This highlights an important issue, namely that trials are generally more challenging than non-contested hearings in that they require a broader range of skills and court craft. Therefore the less skilled advocates are more likely to be found wanting in a contested hearing.

### Overall standard of case presentation

#### *General standard of performance*

<i>Overall quality of advocacy - magistrates' courts</i>									
Score	Crown prosecutors		Associate prosecutors		Agents		All advocates		
Very good	6	7.3%	6	14.0%	1	3.8%	13	8.6%	
Above average	20	24.4%	9	20.9%	6	23.1%	35	23.2%	
Fully competent	23	28.1%	15	34.9%	11	42.3%	49	32.5%	
Lacklustre	21	25.6%	8	18.6%	8	30.8%	37	24.5%	
Less than competent	10	12.2%	5	11.6%	0	0%	15	9.9%	
Very poor	2	2.4%	0	0%	0	0%	2	1.3%	
<b>Total</b>	<b>82</b>	<b>100%</b>	<b>43</b>	<b>100%</b>	<b>26</b>	<b>100%</b>	<b>151</b>	<b>100%</b>	

- 5.4 Inspectors made 151 scored assessments of advocates in the magistrates' courts. In the majority of cases (64.2%) advocates were fully competent overall<sup>10</sup> and of these 13 (8.6%) were very good.

<sup>10</sup> There are eight aspects of advocacy scored individually that contribute to the overall assessment.

The advocate was graded very good overall because he is confident, audible and speaks from memory rather than reading from the file. He was professional and business like and has the confidence of the court.

The advocate was graded very good overall because she had good pace when addressing the bench, was clear and confident and knew the files; she was properly prepared. She comes across as robust and not to be messed with by the defence in or out of court. It was good to see her respond when the defence make a submission that is not acceptable to the prosecution.

The advocate was graded as above average and in some respects almost very good. There was excellent presentation and projection and he was very well prepared. He presents concisely and effectively; there is no reading and he understands the law and procedure. It may be significant that this associate prosecutor spent seven years in the Crown Court as a caseworker. The only criticism is that he got over confident and gave his own opinion that the victim's injuries were consistent with a kick, when there was no medical evidence of such.

In all cases the senior crown prosecutor delivered well constructed submissions with a clear projected voice and good use of pace; she was robust and fair.

The senior crown prosecutor is a natural advocate who prepares carefully, understands the law, evidence and procedure, understand that cross-examination is more than 'putting the case', is exemplary in compliance with the Victims' Code of Practice and No Witness No Justice, and generally puts herself in the position of the bench when deciding her case strategy.

- 5.5 In 37 of the observations (24.5%) the advocacy was lacklustre. This group requires some improvement to ensure an average level of competence in all respects and appropriate presence, which could be met through training or performance management.
- 5.6 There were 17 occasions (11.2%) where the overall advocacy was assessed to be significantly below the standard required. Fifteen were less than competent in many respects and two of them were very poor indeed. One of these was a senior crown prosecutor and the other an inexperienced crown prosecutor, both of whom were appearing in magistrates' courts' trials.

*The advocate was graded as very poor*

In the magistrates' court the senior crown prosecutor arrived as the session started. It was apparent he had not prepared the files; he was uninterested and discourteous to the court. During the first trial he introduced himself to the young victim for the first time on the live television link. He was unaware that the victim had special needs – this information was imparted to one of the inspectors by the victim's mother who had not been given the opportunity to meet the advocate beforehand.

*Examples of where the advocate was graded less than competent include*

The presentation skills of the associate prosecutor are weak; she reads statements rather than summarising, is unclear on her ethical position and allows the court to misinterpret her words on two occasions.

The senior crown prosecutor was softly spoken and barely audible from the side of the court. He did not prepare the files sufficiently to notice serious errors (in the papers) and he misinformed the court.

The senior crown prosecutor was disrespectful to the court. He did not comply with No Witness No Justice principles or the Victims' Code of Practice. He did not read the pre-charge advice before accepting a plea to an alternative charge and he lacked a proactive approach or demeanour.

- 5.7 Some general themes relevant to advocacy in the magistrates' courts arose from inspectors' observations in all the areas visited and these provide useful context to the more specific points which follow.
- 5.8 There has been a noticeable decrease in formality in the magistrates' courts over recent years. This is best characterised by a more relaxed attitude to courtroom etiquette, including a less courteous and deferential attitude to the bench. Specific examples include drinking coffee in court, remaining seated when addressing the bench, turning away from the bench without leave, and unexplained absence from the court when the case is called on. The practice of asking permission for time to speak to witnesses or to make a phone call to locate a missing file is often ignored and advocates do not always apologise for their absence on returning to court. We also saw an example where the advocate was not in court when it sat at 1.45pm, he had not been previously released and did not turn up until 2.10pm. It is right to say that the bench only came back at 1.45pm to retire, but the prosecutor should have been present to assist with any queries. Rather surprisingly the bench did not take exception.
- 5.9 Whilst most advocates were well presented inspectors noted some instances where their personal appearance, manner or behaviour detracted from a sound overall performance and others where it confirmed a lack of professionalism in less effective performances. Some advocates were a little shabby or unkempt in appearance and there were the odd instances of inappropriate dress. In specific cases this undermined the authority of the advocate in the eyes of the court and overall it contributes to a decline in formality.
- 5.10 Inspectors noted that cases are not always allocated to advocates of appropriate skills, seniority and specialism. Line managers should be aware of the competences of their prosecutors and agents and allocate them appropriately to ensure that cases are presented effectively in court.
- 5.11 Inspectors formed the general impression that some court lists were considerably lighter than in previous years due to a decrease in caseload. Whilst there has been some reduction in the number of court rooms in use on any given day, some appeared under used. There is still room for greater efficiency so that advocates can be released to attend to alternative duties, or agent usage can be reduced.

- 5.12 Inspectors found the quality of defence advocacy to be very mixed. Even so overall it is still often better than that demonstrated by less experienced prosecution advocates. In areas where defence advocacy is weaker, stakeholders are concerned that prosecution advocates are not always challenged effectively by defence advocates. This can encourage complacency and hinder the drive for improvement.

### **Crown prosecutors**

- 5.13 Having expressed the view that the quality of prosecution advocacy in the magistrates' courts was declining, several external stakeholders state that this has been caused by the better prosecutors becoming crown advocates presenting cases in the Crown Court and that they have been replaced by the less experienced prosecutors and associate prosecutors who have yet to develop their skills fully. This was not fully borne out by inspectors' observations, in that there were some very experienced and competent prosecutors who had chosen not to take the crown advocacy route and retain a varied mixture of magistrates' courts' advocacy, attendance at charging centres and working on the OBM case progression unit (see chapter 6). Their advocacy skills were therefore still available for use in the magistrates' courts.
- 5.14 Inspectors found numerous examples of good advocacy by senior crown prosecutors. Equally there were some prosecutors who appeared complacent and lacking in commitment (see examples in paragraph 5.6). Some could benefit from better preparation and in some instances further training.

### **Associate prosecutors**

- 5.15 Associate prosecutors are held in high regard in the CPS and the feedback from external stakeholders was positive, varying from "generally competent" to "excellent". Inspectors observed some very impressive associate prosecutors who demonstrated good personal presentation, a business like approach, thorough preparation and appropriate style of advocacy. In one area we were told that the best associate prosecutors are better than many senior crown prosecutors. We observed that some of the cases presented by associate prosecutors were complicated and in demanding lists of considerable size.
- 5.16 Overall, similar to our assessments of all advocates 69.8% were fully competent in all respects and six of the associate prosecutors (14.0%) were very good. Five were lacking in presence or lacklustre. Of greater concern are the 11.6% who were assessed as less than competent in many respects. They have significant weaknesses which range from lack of legal and ethical knowledge, to lack of confidence in court.

In a case involving a gun-point armed robbery of a foreign exchange dealer, where the defendant was produced in custody for his first appearance in court, the lack of an MG3 combined with lack of experience and knowledge of the associate prosecutor meant that she could not say which charges related to the gun and which to the ammunition. Also the prosecutor did not understand the roles of the parties, locations or the different amounts of cash involved. She had not read the file but did not ask for time to do so. This allowed the District Judge to undermine her and the whole prosecution case and the defence lawyer to take advantage.

The associate prosecutor gave an undertaking to the court (to serve some papers within two days) without understanding its meaning or implications. He did not note it on the file.

- 5.17 Some associate prosecutors covered demanding back to back courts. Some lost the allocated office day through additional court coverage, leaving limited time in the office to prepare in advance and others had to return to the office after court and take files home to prepare. Ensuring associate prosecutors are not abstracted too often from allocated office time might drive up performance.
- 5.18 Many associate prosecutors were busier than crown prosecutors in court presenting some heavy overnight remand lists, particularly in urban areas (but crown prosecutors might have to take over cases transferred with little notice if their trial courts went short). Inspectors were told that in general associate prosecutors were improving through the experience gained and were more enthusiastic about resolving issues than some crown prosecutors, for example locating missing files and obtaining missing information through additional enquiries from court.

The greatest challenge for the associate prosecutor was that there were 37 cases in the list, although this was unusual. In any event they had allowed sufficient time to prepare and were able to present cases and set trial dates effectively.

- 5.19 Legal trainees are sometimes used to cover courts listed for associate prosecutors as part of their training. In general there was little evidence of senior crown advocates covering such lists except where numbers of associate prosecutors had been abstracted for training on trial advocacy.

### **Agents**

- 5.20 Twenty six agents were observed including members of the junior Bar, regular solicitors of considerable experience and past employees of the Service. The agents we observed were fully competent in 70.0% (seven cases) of non-trial observations and fully competent in 68.8% (11) of trial observations. A few were lacklustre but none less than competent in many respects. We received variable feedback on the agents which did not necessarily depend upon their experience, seniority or whether they were barristers or solicitors.

Counsel was very confident, polished, had an air of authority and the ability to think on his feet. The advocate looked the part and spoke fluently with the ability to summarise succinctly for the court rather than verbatim reading.

Counsel had a lacklustre presence. He asked leading questions during examination-in-chief and spoke into his chest while looking at papers, and when questioning witnesses; he also rocked as he spoke. The strategy and content are satisfactory and he successfully undermines the defence case.

- 5.21 Agent usage was high at the time of the 2002-04 area inspection cycle. In some areas they conducted more than 50% of court sessions and this was an aspect of concern. At the time the perception was that agents were covering a significant number of trials, particularly the more awkward or difficult ones, at the expense of developing the trial skills of crown prosecutors.

5.22 During the course of the current review we observed that agents were instructed in a higher proportion of trials than non-contested hearings. Some of the most difficult lists we observed were trial courts which were undertaken by agents. This allows the junior Bar in particular an opportunity to hone trial advocacy skills, but at the expense of crown prosecutors.

**Quality of non-trial advocacy**

5.23 The table below shows that the majority of advocates were fully competent overall, but more than one in five magistrates’ courts’ advocates were lacklustre or lacking in presence. This group requires some improvement to secure the confidence of the courts and public.

5.24 Other observation data demonstrates that a greater proportion of prosecution advocates were fully competent in relation to the separate tasks of planning and preparation (82.5%), handling of the case in court (79.8%) and their presentation in court (77.6%).

*Quality of non-trial advocacy - magistrates’ courts*

Score	Crown prosecutors		Associate prosecutors		Agents		All advocates	
Very good	2	3.8%	6	14.0%	0	0%	8	7.5%
Above average	16	30.2%	9	20.9%	2	20.0%	27	25.5%
Fully competent	17	32.1%	15	34.9%	5	50.0%	37	34.9%
Lacklustre	13	24.5%	8	18.6%	3	30.0%	24	22.6%
Less than competent	5	9.4%	5	11.6%	0	0%	10	9.4%
Very poor	0	0%	0	0%	0	0%	0	0%
<b>Total</b>	<b>53</b>	<b>100%</b>	<b>43</b>	<b>100%</b>	<b>10</b>	<b>100%</b>	<b>106</b>	<b>100%</b>

*Presentational style*

5.25 Specific style issues which resulted in the scoring of lacklustre or lacking in presence were identified by inspectors. In addition to the over reliance on police summaries, some prosecution advocates were hesitant and some had distracting verbal mannerisms. Others presented in a style that became a tedious monologue, being unable to distil the crucial facts to give a crisp succinct presentation.

She has a clear idea of etiquette and is professional to a fault. Her only presentational flaws are a tendency to speak too fast and to gesture quickly with her hands. Therefore she comes across as slightly anxious and this detracts from her court presence. It might also be mistaken as an over eagerness to please, which might give undue confidence to an opponent.

It was clear that the advocate was competent in that hearings were presented to a standard which allowed the session to flow, without the court being misled or any unnecessary adjournments. However the advocate lacked authority and robustness in court. He appeared relatively noncommittal and lacked a robust bearing. This gave the impression that he

was simply 'swimming with the tide' in order to get through the list with as little incident as possible. Also he was unable to deal with some matters of detail which should have been on the file.

The advocate presents adequately and is generally competent but has a slightly unkempt appearance and manner. He says "erm" ten times per minute, on average.

- 5.26 Most non-trial hearings in the magistrates' courts involve presentation of the facts and history of the case by the prosecution advocate. The approach should be tailored to the nature of the hearing so that there may be a subtle difference in presentation depending on whether the case is listed for bail application, mode of trial, committal or pre-trial review. In most cases this was done appropriately with the prosecution advocate demonstrating the ability to deliver the essential points with style and authority.

The advocate was observed in an overnight remand court. There was a large list where she had assimilated all the relevant issues in each case. Each case was presented clearly, with very good tone and pace and appropriate detail was given. The advocate was in control of her cases and it was easy to follow what was wanted in each case. There was good handling of mode of trial and clear applications for remands in custody. She was proactive in ensuring that cases progress.

The advocate was graded above average overall because he had a professional bearing and was able to carry the bench with him by using an engaging style and skilful use of concise language. He had a clear understanding of his ethical position and was scrupulous in checking his facts.

- 5.27 Inspectors noted a tendency by some prosecution advocates to rely on and read from the police summary when dealing with mode of trial, bail and sentence. It is difficult to read a document in an engaging manner and many advocates become monotonous when doing so. Also advocates tend to lean over to read from the documents which are invariably placed on the bench in front of them, as lecterns are not generally available. This posture reduces further their ability to engage with the bench by limiting eye contact and preventing them from projecting their voices. In turn this makes it harder for the bench, defendant and the public to understand fully what is happening in court.

- 5.28 Over reliance on police summaries can result in advocates referring to irrelevant matters included on the summary, which causes delay and can be unfairly prejudicial on the defendant. It can also lead to the inappropriate use of police rather than plain English. Inspectors heard advocates recite terminology such as "the suspect exited the store..." or "...to await police arrival...". Overall this approach hinders crisp, succinct case presentation.

The advocate in the youth court read the entire police summaries which prolonged the hearings and gave her a halting manner.

- 5.29 Inspectors noted that sometimes the presentation of facts could have been more structured. Reliance on reading from the file resulted in much duplication and detracted from the presentation, making it less punchy than it otherwise would have been.

*Sentencing and basis of plea*

- 5.30 A written basis of plea is now quite commonly offered before the entry of a guilty plea. However some amount to little more than mitigation and others contained information which is outside the factual knowledge of the prosecution. Inspectors found that these were not always examined with a critical eye by the prosecutor. For example inspectors observed a crown prosecutor accept a written basis which painted the complainant as the aggressor and which omitted the worst of the violence, without reference to the evidence or the complainant herself. We also saw an associate prosecutor accept a basis of plea which amounted to an equivocal plea.

In a domestic violence case involving an allegation of common assault where, according to the victim's statement, the defendant grabbed her neck with both hands so she could hardly breathe, pressing her windpipe with both thumbs – "he would not let go". He then threw her on the bed. She got up and he "punched me once, hard to the face". The basis accepted by the crown prosecutor was that the victim was the aggressor and that the defendant was provoked to strike her with the heel of his hand in the eye. The case was opened on this basis so that the court was unaware of the strangling and was therefore unable to hold a Newton hearing of its own motion. There was no note that the victim was consulted about this. The case could not be monitored effectively because a copy of the basis of plea was not retained on the CPS file.

- 5.31 In contrast inspectors observed a case where the defence had offered a written basis of plea both by letter and formal notice on the day the plea was entered. This was robustly rejected by the CPS advocate who declined to allow the defence to persuade him to dilute the case. Advocates should be able to assist the court about any sentencing guidelines. In practice this is not commonly done in the magistrates' courts, but we did observe examples.

In dealing with a guilty plea for theft of cash from employer the advocate had discussed the sentencing guidelines in advance with the defence and referred to them in presenting the case, dealing with aggravating and mitigating features.

- 5.32 In order to assist the court in the sentencing exercise the prosecution advocate needs to know the contents of any pre-sentence report. The reports are usually copied for prosecutors but not all are read. Inspectors noted that when advocates are under pressure this is the document most likely to go unread and one advocate said that it was not his practice to read them.

*Ancillary applications*

- 5.33 Most crown prosecutors were reported as being well prepared to deal with orders ancillary to sentence such as banning orders and confiscation. Similarly where cases required skeleton arguments these were reported to be very good normally. In contrast applications for hearsay, bad character and special measures were less good and timeliness was a recurring issue.

*Quality of trial advocacy*

5.34 Inspectors observed and scored 45 summary trials (in full or part) and the table below sets out the data relating to overall performance. It shows that the majority of advocates were fully competent overall, however more than one in four magistrates' courts' trial advocates are lacklustre or lacking in presence.

Score	Crown advocates		Crown prosecutors		Agents		All advocates	
Very good	1	33.3%	3	11.5%	1	6.3%	5	11.1%
Above average	0	0%	4	15.4%	4	25.0%	8	17.8%
Fully competent	1	33.3%	5	19.2%	6	37.5%	12	26.7%
Lacklustre	0	0%	8	30.8%	5	31.3%	13	28.9%
Less than competent	1	33.3%	4	15.4%	0	0%	5	11.1%
Very poor	0	0%	2	7.7%	0	0%	2	4.4%
<b>Total</b>	<b>3</b>	<b>100%</b>	<b>26</b>	<b>100%</b>	<b>16</b>	<b>100%</b>	<b>45</b>	<b>100%</b>

5.35 Other observation data demonstrates that a greater proportion of prosecution advocates were fully competent in relation to the separate aspects of preparation for trial (75.9%) and presenting as the advocate in court (65.6%). Trial advocacy<sup>11</sup> itself was fully competent or better in only 54.4%.

5.36 Inspectors observed some good examples of trial advocacy in the magistrates' courts by all types of advocate, both in-house and agents.

The trial was listed before lay justices and featured an offence involving technical road traffic legislation. The opening had been properly planned and structured, identifying the relevant issues of fact and law. The prosecution evidence was read in its entirety. In conducting the cross-examination the senior crown prosecutor made effective use of questioning techniques and demonstrated an ability to focus upon and draw out the weaknesses in the defence arguments.

Experienced counsel does an effective job with police witnesses during examination-in-chief and in reading agreed evidence. Her cross-examination of the defendant is well thought out, using questioning techniques to elicit evidence that the defendant is giving an untruthful account.

5.37 Agent usage has reduced from 29.8% of sessions in 2003-04 to 14.4% in 2008-09 but they tend to be used more often as trial advocates, particularly in the less 'attractive' cases. The reduction in usage has enabled more discerning selection of agents and this has driven up quality. It has also allowed more effective provision of CPS office experience for agents through a structured induction process. There were examples of very junior barristers (sometimes undertaking their second six month pupillages) prosecuting multiple trial lists competently.

<sup>11</sup> One of the seven sub-categories on which all advocates were graded, when relevant, relates specifically to trial advocacy.

- 5.38 This may indicate that crown prosecutors lack the time or confidence to deal with the more challenging trials. The knock on effect is that some crown advocates did not have a regular diet of trial advocacy in the magistrates' courts before they progressed. As a consequence the aspect of crown advocacy requiring most development is trial advocacy, in particular cross-examination, a skill which is transferable between the magistrates' courts and Crown Court.
- 5.39 The fact that many of the more experienced crown prosecutors have now progressed to become crown advocates means that there are some, but certainly not all, less experienced prosecutors left to fill their place as magistrates' courts' advocates. Overall inspectors observed in the magistrates' courts that the main weaknesses of some crown prosecutors as trial advocates included the lack of a case theory, short comings in cross-examination and legal submissions.

#### *The trial*

- 5.40 The opening speech was frequently a cursory address on the charge and number of witnesses to be called and seldom encompassed how the prosecution put the case. Inspectors observed instances where the advocate was actively encouraged to limit the opening speech, which inhibited their effectiveness in presenting a case theory.
- 5.41 Inspectors saw considerable variation in performance relating to examination-in-chief. One crown prosecutor handled a domestic violence complainant skilfully by using notes made previously, which were adaptable when the victim deviated from her statement. The advocate scrupulously avoided leading questions on matters in issue. In contrast another advocate was observed asking leading questions inappropriately, whilst looking down at the papers, using minimal eye contact and rocking, which was distracting for the witnesses. Some of these problems could be addressed through more thorough preparation and others through a greater awareness of personal advocacy style.
- 5.42 Inspectors noted that cross-examination skills varied considerably. On occasions the advocate failed to ask an obvious question without good reason. Often they would take the defendant (or defence witness) through their evidence and then, at the end, put it to them that they were lying, without asking any questions aimed at undermining the account given. Inspectors observed instances where there was a failure to question defendants on issues raised in interview, particularly where it differed from the evidence given in the witness box, and where the common and incorrect technique<sup>12</sup> of starting each question with "I suggest to you.." or "I put it to you..." was employed. This style of cross-examination complies with the basic requirement that the prosecution case is put to the defendant, however it is unlikely to expose any untruths or inaccuracies. Some advocates were more astute asking sets of questions designed to lead up to the 'killer' question. This is an area that is very susceptible to training, as discussed in chapter 8, and some advocates appeared to need refresher training.

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<sup>12</sup> Archbold from Sweet and Maxwell; 8-116.

Counsel suffers from lack of preparation or aptitude and appears to lack focus, probably because his case theory is confused to the extent of incoherence. This causes him to repeat his best points too many times to the extent where the bench appear irritated by it. It severely hampers his cross-examination. The advocate appears to be interviewing rather than cross-examining the witness; he interrupts her frequently, giving the impression that he is railroading her. He invites the witness to speculate outside her knowledge and goes on far too long.

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### **RECOMMENDATION**

Trial advocacy for crown prosecutors needs to be substantially improved, in particular in relation to cross-examination.

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- 5.43 Re-examination is often not necessary and most prosecutors properly exercised caution before asking any questions of clarification, however some asked questions where the outcome was likely to undermine the prosecution case. We observed a few instances of re-examination being used effectively, for example a case where it was appropriate and necessary to clarify the state of the victim's consciousness in order to destroy most of the work done by the defence advocate during cross-examination.
- 5.44 The absence of a prosecution closing speech in the magistrates' courts reduces the need for the prosecution advocate to prepare a clear coherent case theory, which in turn would assist a more focused cross-examination. Some prosecutors are able to 'signpost' issues and make points during cross-examination in an attempt to overcome the absence of a speech, although this can amount to comment and become therefore technically an inappropriate form of questioning. The lack of a prosecution closing speech prevents the prosecution advocate from addressing the bench on issues arising from the evidence given from the witness box. New issues arise frequently and cannot always be predicted. It follows that they cannot always be captured in the opening speech. We are aware that this has been considered in the past but it merits further review, particularly in the more complex and serious cases in the youth and magistrates' courts. This review should consider whether a change in legislation or court rules is required.

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### **RECOMMENDATION**

The CPS, in conjunction with the Criminal Procedures Rules working group, to consider the introduction of a closing speech by the prosecution in the magistrates' court in appropriate cases, to drive improvement in the quality of advocacy and case presentation.

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- 5.45 Inspectors observed that some prosecution advocates were unable to deal with points of law effectively. In one case the crown prosecutor mounted a mis-conceived argument on admissibility because he misunderstood the evidential rules relating to hearsay. In another the advocate struggled to rebut a defence submission that there had been an abuse of the process of the court. In a third case, which is characteristic of a number of others, the prosecutor made a weak

and inadequate response to a poor but successful defence submission of no case to answer. In this case the advocates misunderstood the status of the evidence and the relevant law, which was the subject of this argument. For this reason legal argument was based on a false premise.

- 5.46 Criminal justice partners report that witness care by prosecution advocates is adequate and that in-house advocates perform better than agents on the whole. However inspectors observed a number of occasions where the advocate had not checked the presence of all witnesses until immediately before the trial started. On one occasion the court legal adviser telephoned to check because the advocate had omitted to do so. Sometimes advocates are unable to meet the witnesses in person before the trial because the Witness Service room is geographically distant, or difficult for the advocate in court to get to.

### **Specialist and sensitive cases**

- 5.47 Inspectors found compliance with CPS policies to be good. Of 172 relevant advocacy observations there was compliance in 166 (96.5%). Prosecutors tended to be alive to policy issues arising in cases involving domestic violence and hate crime and appropriate training had taken place. However there were some notable exceptions, as detailed by some of the case studies.
- 5.48 Associate prosecutors are used in the specialist domestic violence courts which do not deal with trials and, where necessary, are able to make appropriate reference to specialist lawyers for decisions.
- 5.49 There are dedicated teams or experienced youth prosecutors in most youth courts and inspectors received positive feedback on performance. Agents were used but this was usually for youth trials.
- 5.50 Advocacy performance in certain specialist cases such as fatal road traffic offences is often satisfactory, or more often to a high professional standard, because experienced advocates (either in-house or agents) are used. Usually these cases are prosecuted proactively and sensitively in the magistrates' courts. In the fatal road traffic thematic review a number of advocacy observations were undertaken; four crown prosecutors were found to be very good and one was competent overall. One agent was competent overall, however one was found to be somewhat below what would be expected of a fully competent prosecutor, as was the only associate prosecutor seen.

## 6 ASPECTS THAT SUPPORT GOOD ADVOCACY

### Background

- 6.1 Effective preparation is essential for sound advocacy performance. The advocate must prepare in advance of the hearing so that they are able to put the case in the clearest way and deal with all issues that might realistically arise. This is partially dependant on the amount of time the advocate has to prepare and the state of the case when they start preparing. Inspectors were told by an experienced stakeholder that an advocate of average ability could handle a case satisfactorily if well prepared and a good one could produce an excellent performance if well prepared; our findings supported this. These sentiments are applicable to all advocates and this highlights the importance of preparation as the foundation of good advocacy. We were told that preparation was often the weak link.
- 6.2 Necessary preparation time can be reduced by circumstances. Inspectors observed instances where the business needs of the Service had prevented thorough preparation for court, for example where prosecutors were covering back to back trial courts with little preparation time. Also cases are often transferred between courts on the day to assist adjoining court rooms and the prosecutor receiving the files often had only a short time to prepare the cases. Inspectors noted occasions where cases were transferred out of a court without reference to the prosecutor. In these instances it is possible for particular issues within the knowledge of the original prosecutor to be overlooked by the new one who inherits the case.
- 6.3 The quality of case progression, file organisation and instructions to the advocate are all relevant. For these the advocate is dependant on the effectiveness of case preparation and progression systems undertaken in the office by a separate reviewing lawyer or caseworker.
- 6.4 The statutory charging scheme now requires large numbers of prosecutors to spend a significant proportion of their time providing charging advice and decisions. The advocacy strategy involves increased usage of in-house lawyers in the Crown Court. Therefore in 2007-09 the CPS introduced changes to the systems for office based magistrates' courts' case progression, partly to free up prosecutor time for these other duties. The main thrust of the change was the move away from individual case ownership by the introduction and implementation of the optimum business model (sometimes known as the "pod" system), which is explained below. Simultaneously the CPS and police have piloted a streamlined process for the preparation of cases for first hearing in the magistrates' courts where a guilty plea is expected and the case is likely to conclude in the magistrates' court, although this has yet to be rolled out to all areas.
- 6.5 With the intent to be more efficient and resilient than the previous system, streamlined process and the optimum business model (OBM) together represent a sea change in the CPS approach to case progression in the magistrates' courts. They also align with the recent implementation of Criminal Justice: Simple, Speedy, Summary (CJSSS) on the joint case progression landscape in the magistrates' courts.
- 6.6 Subsequently most CPS areas have also started to move away from case ownership in the less complex Crown Court cases although there does not appear to be a national pattern in the approach yet. The introduction of the OBM for Crown Court work is more problematic, particularly because there is a lack of clarity as to when responsibility for case preparation and progression moves from the reviewing lawyer on the OBM team to the advocate, whether in-house or counsel.

### **Office based case preparation in the magistrates' courts**

- 6.7 In certain types of uncontested case the CPS, in conjunction with HM Courts Service and the police, has introduced a streamlined process which involves the preparation of a reduced file containing only what are considered to be key statements and essential documents. This is then used by the advocate to present the case if the anticipated guilty plea materialises. If the charge is unexpectedly disputed at court the case usually enters the CJSSS system where a trial date should be set within six weeks and directions should be dealt with immediately after plea. In many areas where the streamlined process is in place it works relatively well, although some advocates told inspectors that there is sometimes insufficient detail on the file to deal with queries from the court after a plea of not guilty and that they find themselves at a disadvantage.
- 6.8 In contested cases the CPS has moved away from case ownership and adopted the OBM, in that all but the most complex or sensitive cases in the magistrates' courts are now prepared by a group of staff (pod) containing a case progression manager, lawyer and an administrative assistant. An associate prosecutor often provides support to the core team. Lawyers and associate prosecutors rotate onto the pod for set periods which are regulated locally. The work of progressing a case towards trial is parcelled into separate processes which are carried out by the separate members of the pod on any given day.
- 6.9 When staffed adequately the OBM has improved case progression in magistrates' courts' cases in that many are prepared to a sufficient standard and fewer are allowed to 'drift'. It is also a more efficient use of scarce resources and magistrates' courts' advocates are more likely to have their cases fully prepared than previously. However one area had yet to implement CJSSS fully at the time of the inspection and in some others many contested cases were still listed for pre-trial review to ensure action is taken.
- 6.10 Inspectors noted that staffing levels on the pod fluctuated at almost all sites and that in some there were no staff at all on the pod on any given day, because all the available lawyers and associate prosecutors were either in the charging station or appearing in court. The pod was usually the least resilient system in terms of abstraction when resources are limited. This lack of resource would reduce the effectiveness of any case progression system with potentially adverse implications when the cases affected came to court.
- 6.11 There were many instances where information was not available on the file although it might reasonably be expected to become relevant during the course of the hearing. The prime example is a set of updated previous convictions.

*Feedback from staff included*

"The optimum business model is having a positive effect on the advocacy strategy as advocates feel better prepared in court."

The caseworker in charge of the running of the pod said that the morale of the lawyers in the office had improved because cases were being properly prepared in their absence and they didn't have to chase up urgent enquiries when they returned from court. The pod process was also freeing up lawyers for the advocacy in court.

"Staff who are rostered to the pod should be ring fenced; the main cause of any problems is unplanned absence."

- 6.12 A main criticism levelled by advocates in the magistrates' courts is that lack of continuity (for example deployment to the pod on a daily or ad hoc basis) requires lawyers to read the whole file every time they appear at court, or take a turn on the pod. Along with some members of the judiciary they told inspectors that a lack of personal accountability could impact on the quality of work. There are cases that would benefit from ownership, although it may not be necessary for the majority of straight forward ones. It remains vital that each and every case is given the appropriate care and attention to which the public is entitled.

### **Office based case preparation in the Crown Court**

#### *The role of the crown advocate*

- 6.13 Traditionally Crown Court trials have been prepared within the trials unit or combined unit in the local CPS area. Counsel would have been instructed immediately after committal and a caseworker would progress the case, with legal decisions made by a reviewing lawyer. Implementation of the advocacy strategy has led to an increasing proportion of cases being allocated to crown advocates after committal. In some areas they take the role of reviewing lawyer and in others they do not. Sometimes the crown advocate is allocated at committal, following the PCMH or shortly before the trial.
- 6.14 In some areas the reviewing lawyer drops out of the picture when the crown advocate is allocated. This can cause problems if the crown advocate is in court on other cases while the trial is being prepared. In other areas the reviewing lawyer retains overall control of the case after allocation to a crown advocate. This can cause tension between the two when there is disagreement, which is most likely when the crown advocate is required to gain the authority of the reviewing lawyer before taking important decisions such as whether to accept alternative pleas. These variable practices in terms of ownership of cases once the crown advocate becomes involved therefore need to be ironed out.

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### **RECOMMENDATION**

There needs to be greater clarity of the roles and division of work between the crown advocate and reviewing lawyer.

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#### *Office based case progression systems*

- 6.15 Cases which are prepared by specialist units or the group complex casework units are generally in good order by the trial date and criminal justice partners recognise this. The picture varies, as do the systems employed across the areas, in relation to the majority of cases which are dealt with in trials or combined units. Most areas are having some difficulty in maintaining the quality and timeliness of case preparation in the Crown Court. The time specifically set aside for review and case preparation varies by area but has generally reduced for reasons not all directly connected with the advocacy strategy, for example the increase in Crown Court caseload in recent years. As with magistrates' courts' work some areas are also moving away from ownership in the less complex Crown Court cases and adopting an OBM type approach to progression. As in the magistrates' courts lack of personal accountability can affect the quality of preparation work.

- 6.16 This is well characterised by the weakness of indictments in many cases. There are no apparent effective systems to monitor the quality of indictments for the PCMH, although this improves by the time of trial listing. In 63 relevant cases in the file sample seven had errors that had not been picked up prior to lodging the indictment and seven were altered following the acceptance of pleas. HM Courts Service reported increased problems with indictments over the last two years which is beginning to be onerous for the court. Also inspectors observed many PCMH lists where the majority of cases required some amendment to the indictment, sometimes because a lack of attention to dates, names and places, and sometimes because the indictment was legally flawed.

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**Aspect for improvement**

The quality of indictments needs to be improved.

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- 6.17 The main impact of weak case progression is at the trial. Even where papers are available to the advocate in good time for the hearing it is often too late to remedy shortcomings in case progression. Inspectors saw numerous examples of the case proceeding without having been fully prepared by the CPS when the advocate lacked sufficient time to remedy the omission.

In a serious assault trial errors in a written application for bad character to be adduced had to be dealt with in court rather than by filing an amended paper application. The matter was not argued fully by an advocate who was not totally prepared. The application was unsuccessful and the defendant was subsequently acquitted. In the same case the CPS had not viewed the CCTV evidence in advance of the trial and the advocate was taken unawares when it turned up immediately before the trial.

- 6.18 In some cases where the advocate was not properly prepared for the hearing, this was because the files at court had out of date papers. In the magistrates and Crown Court inspectors observed advocates unable to provide the court with a recent record of the defendant's previous convictions to assist at sentencing or with bad character applications. In some cases linked files were not available at court, requiring an adjournment which would otherwise have been unnecessary. In a Crown Court hearing inspectors saw the prosecution advocate attempt to assist the court from memory with no file or papers at all. On another occasion an experienced crown advocate was unaware that he was responsible for a case until summoned from another court room.

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**RECOMMENDATION**

Case progression systems need to be more effective and consistent.

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### *Instructions to the advocate*

6.19 Instructions to the advocate (known as briefs) are the covering documents sent to them in advance of the hearing, along with the file or case papers. They need to be clear to ensure the advocate is informed on all relevant issues and reflect the nature of the relationship between the advocate and those instructing him. The overall quality of instructions was found to be weak. Of the 74 relevant briefs examined in the file sample, 55 comprised mostly standard paragraphs with little or no information tailored to the case, although 29 had some details added. Only 19 briefs (26%) had a clear section with both some analysis of legal issues and, if appropriate, instructions on the acceptability of pleas. Fewer than half provided details where further work was outstanding and none contained information on victim and witness needs or other applications where it should have been provided. There are no apparent effective systems to monitor the quality of briefs.

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#### **Aspect for improvement**

The quality of instructions to the advocate needs improvement.

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6.20 In one area the quality of briefs was significantly better. A unit head and crown advocate have reviewed the brief template and developed it, including good practice observed in another area.

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#### **Good practice**

CPS Hertfordshire has produced good quality desk instructions, training and guidance which has led to better quality instructions to the advocate.

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### **Preparation for the hearing**

6.21 Notwithstanding the quality of the brief inspectors found that in the majority of cases the advocate was adequately prepared and generally ready to deal with the issues likely to arise at the hearing. In trials, of 169 relevant observations the advocate was familiar with the case, offences, facts, issues to be tried and relevant law and procedure on 147 (87%) occasions. Where they had not prepared fully this was often due to a lack of time or insufficient case progression.

### *Preparation for uncontested hearings in the magistrates' court*

6.22 Overall advocates are prepared adequately for most non-contested hearings. Inspectors found planning and preparation for non-contested hearings to be of at least average competence in 82.5% of cases.

6.23 The overwhelming majority of advocates emphasised to inspectors the need for professionalism and to prepare cases at home the night before, during lunch breaks, or prior to court in the morning. Inspectors saw examples of associate prosecutors who had worked overnight to prepare useful summaries for presentation to the court.

6.24 If a trial court goes short because of a guilty plea cases are transferred in to make best use of court time. However frequent changes to the listing of cases can mean that preparation by an advocate is wasted if the cases are transferred to another advocate at the last minute.

- 6.25 There were occasions where an agent's court finished prematurely and they would take over from an in-house prosecutor, releasing them to undertake other work. This was understandable but limited preparation time available to read files that were taken on.
- 6.26 There were fewer incidents of missing or absent files at court than noted in previous inspections, although the problem has not been eradicated completely.
- 6.27 In addition to these problems, which sometimes prevent conscientious advocates from preparing properly, a small minority were reported as taking a minimalist approach to preparation in the first place. This is unacceptable. The instances where advocates were not well prepared ranged from failure to look at papers at all through to an omission to check them for errors.
- 6.28 Inspectors observed examples of cases where there appeared to be a lack of preparation by the advocate. These included the first hearing of a child pornography case where the experienced prosecutor failed to notice in advance that descriptions of the images were not sufficiently clear to enable the court to assess gravity. In a separate case inspectors saw a prosecutor unwittingly give a misleading answer to a question about the history of proceedings without having checked the file.

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**Aspect for improvement**

Ensuring prosecution advocates have sufficient time to prepare effectively by providing sufficient time and papers available in advance.

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*Preparation by the advocate for the trial in the magistrates' court*

- 6.29 It was noticeable that the better performing advocates attended in good time to speak to the clerk and defence solicitors; the less good tended to arrive later. When poorer performers arrived early inspectors noted that they performed better. However sometimes advocates are given too much work to prepare it all properly. On a number of occasions inspectors saw prosecution advocates appearing in courts where more than ten trials were listed. In one instance experienced counsel was instructed to appear in six summary trials, all listed at 10am in the same court room. Three of these were domestic violence cases where the complainants had been summonsed and two had attended. Five of the files had been delivered to chambers on the previous day but statements were still being faxed to the court on the morning. The agent told inspectors that this was not an unusual situation.

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**Aspect for improvement**

The CPS should work with HM Courts Service to address any inappropriate listing of magistrates' courts' trials.

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- 6.30 We observed many occasions where agents were collecting multiple trial files from the CPS at 9am on the day of trial; most were pragmatic and thought this was sufficient time for experienced agents. However there were instances where courts could not start because the advocate was

preparing the case listed, for example the agent who received two trials at 10.30am when the court started sitting at 10am. He told us that the previous day he prosecuted four trials but only received instructions at 9.30am. Another example was the agent who was instructed to prosecute four domestic violence trials, all listed in the same court. Three complainants attended, all on summonses. Three files were received the night before but one was received that morning so the court did not start until 11.35am.

Counsel told us that they often get files in the morning for trial which can be a problem if there are child witnesses and videos as the transcripts are not very good and there is no opportunity to view the ABE tapes (video recordings of evidence-in-chief).

- 6.31 Even when there is more time summary trial preparation is not always thorough. Inspectors observed a harassment case where the advocate, an experienced senior crown prosecutor, had not spotted that the charge had been amended to include additional dates. This led to the case not being put fully and contributed to it being dismissed at the conclusion of the prosecution case. A lack of time for trial preparation often results in deficient legal analysis and familiarity with the evidence itself, particularly the defendant's police interview, and therefore a lack of case theory.
- 6.32 Inspectors also observed some examples of excellent summary trial preparation including a domestic violence case where the prosecutor had gone to great lengths to plan each section of questioning and legal submission in advance. This contributed significantly to the successful outcome.

*Preparation for uncontested hearings in the Crown Court*

- 6.33 Preparation is vital to effective case presentation, any shortcomings in the art of advocacy can be mitigated where thorough preparation and knowledge of the case enables the advocate to present the case effectively. The planning and preparation for non-contested hearings was of at least average competence overall in 77.7% of cases. However there were instances where it was apparent that the advocate had not read the papers or was not able to avail the court with information that could reasonably have been anticipated and enquiries should have been made. Training is a vital component but can only develop an advocate so far, any further development will then be based on the experience of presenting cases in court. Feedback from some staff included one crown advocate who indicated that the CPS expected crown advocates to behave as would counsel and pick things up without any allocated preparation time or at the last minute. Another crown advocate said in interview that she did not have sufficient time to prepare for court. She undertook a variety of work including some advocacy in the Crown Court and explained that most of her preparation for court was happening at home out of work hours, partly due to court listing practices and partly due to her other duties.
- 6.34 Inspectors observed some crown advocates and counsel making good use of the available material, such as video clips in a dangerous driving case to assist the court in sentencing. Of 95 relevant advocacy observations the advocate considered relevant material, such as photographs and videos, on 78 (82%) occasions and ensured sufficient copies were available for the hearing. This leaves a significant proportion where relevant material was not available for the court.

*Preparation by the advocate for the trial in the Crown Court*

- 6.35 Preparation for trial was competent overall in 79.8% of cases and, of 99 relevant advocacy observations, the advocate ensured that all relevant disclosure issues were dealt with on 91 (92%) occasions.

Although there was poor case preparation there was good preparation for trial by the advocate. Late continuing disclosure was identified by them and steps taken to deal with issues likely to be raised. He had distilled all the relevant information onto a document that he provided both to the defence and the judge.

**The Bar standard and returns**

- 6.36 It is rare for crown advocates to provide an initial advice on receipt of the brief as per the expectations in the CPS/Bar Framework. This would enable the reviewing lawyer to understand what work was required and reasons behind it. A benefit of this would be to inform and improve charging decisions and progression on future cases and also ensure the reviewing lawyer was fully informed if the advocate has to refer the case back for a decision. There were many instances where the allocated advocate made contact with the police officer in the case without reference to the appointed reviewing lawyer.
- 6.37 Returns between crown advocates are not subject to sufficient management control. The attitude to returns between crown advocates was that this is not really a matter of concern because it had no cost implications, without considering how it might impact on the thoroughness of preparation, consistency of approach and reduction in duplication of work.

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**Aspect for improvement**

The introduction of a system to monitor and manage the allocation of cases and work required to be undertaken.

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- 6.38 In the sample of 80 files we found there were more returns from crown advocates than counsel; this was also the perception in a number of areas visited. It was believed to be mainly due to the reduced volume of work sent to counsel and partly due to the CPS retaining more cases in-house in the early stages, but also the number of returns from counsel is no longer recorded in all areas. However some were still recording and using this data in meetings with chambers.
- 6.39 In the sample of 80, 40 files had been returned before the PCMH, trial or appeal. Thirteen cases were returned more than once and one appeal against conviction had been returned five times involving six different advocates. Most returns were prior to trial; the majority (21) were from a crown advocate to counsel, 13 were between crown advocates and nine between counsel, although eight of these were within the same set of chambers. There was only one occasion where a case was returned from counsel to a crown advocate. The CPS conducts periodic reviews of late returns of brief (ie within seven days of the trial date). The latest survey, for the week of 23 March 2009, indicated that counsel returned a higher percentage of briefs than crown advocates (34% against 26%). All returns from counsel were to the Bar and 31 of the 50 crown advocates' returns were also to the Bar.

- 6.40 There was a perception held by many stakeholders that late briefing of the junior Bar was prevalent, with them being sent late instructions in problematic cases with little prospect of remedial work being done, or cases which have previously received judicial criticism.
- 6.41 In the sample reasons for returns had not been recorded on the file except if counsel had returned the brief. One area did record the number and reasons why cases were sent out to counsel on return from a crown advocate.
- 6.42 In none of the returned cases was it possible to establish who had accepted or authorised the return as there was no endorsement on the file. There was no evidence there had been any consultation between advocates in any of the files where the brief had been returned.

### **Victim and witness care and CPS policies**

- 6.43 Compliance with CPS policies was good, occurring in 166 (96.5%) out of 172 relevant advocacy observations. (The handling of complex and sensitive cases is dealt with further in chapters 4 and 5). The general impression is that there has been some improvement in the overall care of victims and witnesses with the increased use of in-house resources, however this was not always the case.

The crown advocate accepted pleas in a case listed for trial. The basis of plea included offering no evidence in relation to one complainant who was assaulted. When the judge enquired whether this particular complainant had been spoken to, the crown advocate responded that this had not happened but would be done before the complainant left the building.

- 6.44 Advocates were familiar with all the CPS obligations in respect of victim and witness care<sup>13</sup> in 105 (96.3%) of the 109 relevant observations.
- 6.45 Advocates introduced themselves to victims and witnesses before they gave evidence in 66 (92.9%) of the 71 observations and spoke to the victim or victim's family, explaining the reasons when the decision was taken not to proceed to trial in 20 (83.3%) of the 24 relevant occasions. However the timeliness of applications for special measures was poor and the quality of the applications needs to be improved.

### **Facilities and support at court**

#### *The Crown Court*

- 6.46 Facilities at court are far from ideal in terms of IT and technical and administrative support. The CPS room often lacks space to undertake meaningful work. Some rooms are better than others but in the majority there is a shortage of space. Facilities at the magistrates' courts were sometimes better.

13 The Prosecutor's Pledge, Code for Victims of Crime, Standard for Communication between Victims, Witnesses and the Prosecuting Advocate.

- 6.47 The provision of caseworker support was variable. Some areas have better support at court with a caseworker available in court for non-contested hearings, two support staff available in court for a larger list and provision of support for the advocate during a trial until the end of the prosecution case, which is relatively good support coverage. In contrast in one area crown advocates reported that on occasions they may not even have a caseworker when prosecuting a PCMH list and in another the caseworkers generally covered between three and six courts each. There were also examples where court time has been lost or cases postponed because a caseworker was not available. This level of support needs to be improved. Caseworkers provided support on their own cases in only the most serious or complex ones.
- 6.48 Some areas were under staffed and awaiting the outcome of the paralegal review<sup>14</sup> before recruiting staff to fulfil this support role. All areas need to ensure that there is adequate support at court to provide a service to the prosecution advocate, so enabling the smooth presentation of cases and minimising reputational damage to the Service with the judiciary. It is said that there is a need to balance support at court with ensuring prior case preparation in the office. We did not find significant evidence of the latter; overall the extent to which advocates are unsupported at court is a real weakness for the CPS.
- 6.49 The approach to support provided to counsel and in-house advocates also varied. In one area caseworkers thought that they needed to provide more support for crown advocates than counsel because crown advocates are less familiar with court protocol. In another they generally provided more coverage to external counsel than in-house advocates because the latter were expected to know more about the case and where to find information if they needed it.

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## RECOMMENDATION

Adequate support should be provided to advocates in the Crown Court by caseworkers with the appropriate level of skill and knowledge of the cases.

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- 6.50 All advocates need up to date text books in court for any appearance, particularly as the criminal law becomes more complex. They are required for trials and frequently during a sentencing exercise. Full time advocates tended to have copies whereas not all crown advocates undertaking some advocacy (sometimes referred to as 'hybrid' advocates) did. We were only aware of one area that provided a copy of Archbold to all crown advocates. They believed it was necessary to provide the tools to undertake the task and demonstrated a commitment to the judiciary in whose courts the advocates appeared; this is to be commended.

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## Aspect for improvement

All advocates should have relevant practitioner text books when prosecuting in the Crown Court (Archbold and Sentencing Guidelines).

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<sup>14</sup> A CPS review which is looking at the role, responsibilities and working practices of level A2 paralegal assistants and level B1 (more senior) paralegal officers who support the lawyers both in and out of court. Crown Court caseworkers have usually been B1s.

*The magistrates' courts*

- 6.51 There were adequate facilities at most magistrates' courts with access to photocopiers, computer terminals and fax machines, although we are aware from other inspection activity that this is not always the case. In some locations, Portsmouth and Leeds for example, the CPS office is so close that no facilities have been deemed necessary in the court building. This can work effectively where the advocates are available in the building in good time for the defence and partner agencies are content that prosecutors use their facilities when required. There were some complaints that legal texts in the CPS rooms were out of date.
- 6.52 At some courts there was administrative support available which assisted the court's smooth running, helped to locate missing files and allowed queries to be followed up. At other courts associate prosecutors and agents stated that they were not always able to contact a lawyer in court or at the CPS office during court hours, which could lead to delays and in some instances unnecessary adjournments.



## 7 DEPLOYMENT

### Background

- 7.1 Higher courts advocates (HCAs; now known as crown advocates) and designated caseworkers (DCWs; now known as associate prosecutors) have been in post since 1998. In the early days there were limited numbers of staff in these roles and the range and seriousness of work undertaken was also limited. Whilst these expanded over time the rate of growth was comparatively slow.
- 7.2 In June 2004 the CPS Board approved the advocacy strategy to support the DPP's vision that the CPS should become "an organisation that routinely conducts its own high quality advocacy in all courts, efficiently and effectively". An advocacy strategy programme team was created in December 2004 to manage and support delivery of the stated advocacy aims. One of the key early objectives was to increase the volume of work undertaken by in-house advocates.
- 7.3 At that time the CPS was already monitoring the amount of in-house advocacy undertaken by different types of prosecutors although there were no formal targets for deployment. Targets were introduced in April 2005 for the percentage of court sessions undertaken by DCWs and counsel fees saved by HCAs. A target for overall in-house coverage in the magistrates' courts was subsequently introduced. These are monitored as part of the national quarterly performance review programme.
- 7.4 Originally HCA targets covered a five year strategy but this was accelerated in December 2006 in order to develop staff, drive up the level of work undertaken and maximise financial savings.
- 7.5 The type of cases that can be handled by associate prosecutors has been changed by legislation granting extension to their powers. Not only has this facilitated increased usage, but has also smoothed the flow of cases through the court as they are now able to deal with issues that previously required lawyer input.

### Outcomes and targets

- 7.6 Significant progress has been made against all three key deployment targets, although the rate varies considerably by area and some outcomes have fallen short.

#### *Crown advocates*

- 7.7 Crown advocate deployment has increased across the board, as has the type of work undertaken. To put this in context the table below shows the figures for the past five years for the 42 areas.

	2004-05	2005-06	2006-07	2007-08	2008-09
No of sessions	7,433	15,967	28,375	43,942	56,519
Total HCA hours	36,679	75,270	147,137	248,851	316,302
Counsel fees saved	£1.7 million	£4.7 million	£9.6 million	£17.1 million	£23.6 million
% of graduated fees	n/a	6%	11%	16.4%	21.3%

- 7.8 In terms of simple growth in the volume of work undertaken the strategy has been successful. We comment elsewhere in the report on the strategy's impact on quality and other aspects of casework handling.
- 7.9 The type of work undertaken has also changed, particularly in the last two years. In the early days of the strategy only a very limited amount of contested work was covered by crown advocates. This is not surprising as it takes time to develop the skills and, to some extent, the confidence to take on trials. In 2005-06, the first full year of the strategy, crown advocates acted as sole prosecution advocate in cases relating to 845 defendants listed for trial and as junior counsel in cases relating to a further 110 defendants. In 2008-09 the numbers had increased to 8,401 and 983 respectively; they have also started to take the role of lead counsel in some cases. A table showing the full breakdown of work undertaken is included in annex E.
- 7.10 Area targets have been based on achieving growth in the percentage of advocacy undertaken by crown advocates. The formula expresses the value of counsel fees saved by crown advocates as a percentage of the total amount paid to counsel under the graduated fee scheme (GFS) added to the amount saved by crown advocates. This is then translated into an actual cash saving based on the previous year's spend. The original aim was for all areas to reach a minimum target of 25% over time. As targets are based on the previous year's spend but reported against the current year's outturn, changes to caseload and overall spend can affect how the data looks. For example in 2008-09 the CPS exceeded its cash savings target by 10% although this translated to only 21.3% of total spend.
- 7.11 The system for funding crown advocate deployment provides areas with money up front based on the anticipated level of counsel fee savings to be achieved. Areas are given 90% of the savings with 10% retained centrally which was a cause of frustration to some of them. The funding is adjusted retrospectively (up or down) to take account of actual savings achieved. Until the current financial year a notional corresponding adjustment to prosecution costs was made, although in reality the actual area prosecution costs budget was not changed. This created a perverse incentive in that areas could earn additional money for deployment without a reduction in prosecution costs. Some have relied on this additional funding to balance their budgets and it has encouraged some inappropriate deployment practices; we give some examples of this in paragraphs 7.23-7.25. The process has been changed in 2008-09 and is now more realistic.
- 7.12 While significant reductions in counsel fee expenditure have been made by deploying crown advocates the overall spend on prosecution advocacy has not reduced by as much as anticipated, partly due to an increasing caseload. In recent months the CPS has begun to pay more attention to this issue looking at spend in relation to caseload.
- 7.13 The Service has done well nationally in meeting its target although there is considerable variation at area level. Performance against the percentage of total GFS figure ranged from 13% in London to 46% in Dorset.

#### *Associate prosecutors*

- 7.14 The percentage of sessions handled by associate prosecutors has grown steadily year on year, rising from 10.7% in 2005-06 to 24.8% in 2008-09 (see table below). Despite the improvement over time the CPS fell short of its targets for associate prosecutor deployment in 2005-06 and 2006-07. The situation has now changed and targets have been achieved in the past two years

There are a number of factors that have contributed to this, namely:

- the extension of powers;
- growth in the number of associate prosecutors; and
- reductions in overall number of court sessions.

	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>
Target AP sessions	11.6%	17.2%	20.0%	22.6%
Achieved AP sessions	10.7%	14.7%	20.4%	24.8%

- 7.15 Further expansion is achievable with the latest extension to powers, although the additional potential is comparatively small. Whilst there is still scope for considerable growth in overall associate prosecutor coverage in a few areas, others are operating close to capacity with the current staffing and listing practices.
- 7.16 Areas have generally worked proactively with HM Courts Service to agree listing patterns that facilitate effective use of associate prosecutors. This has contributed towards the CPS exceeding its national target (22.6%) of sessions to be undertaken by them in 2008-09, achieving 24.8%. Again there is wide variation in performance across the country, ranging from 11% in Dyfed Powys to 35.7% in Humberside. Those with lower figures tend to be areas with a number of small rural courts.
- 7.17 The number of cases handled in individual courts varies considerably. Some have set comparatively modest quotas for the number of cases, whereas others were more challenging. For example London courts tended to have 40-50 cases whereas some others often had around 20. Reducing the overall number of court sittings would assist in driving greater efficiency.

#### *In-house coverage*

- 7.18 The level of agents used to prosecute on behalf of the CPS in the magistrates' courts has reduced consistently in recent years. In-house coverage has improved from 73.1% in 2004-05 to 85.6% in 2008-09 (see table below). These figures fall short of the targets set for the past two financial years. Performance ranges from 70% in South Yorkshire to 100% in Hampshire and the Isle of Wight.

	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>
Target in-house cover	n/a	87.0%	88.3%
Achieved in-house cover	80.4%	84.2%	85.6%

- 7.19 Some areas are finding it difficult to balance the various demands of business with prosecutor deployment to court with only 14 of the 42 meeting their individual target for the year. A key contributory factor has been the proportion of time devoted to Crown Court advocacy. As the cadre of crown advocates has grown, so they spend less time prosecuting in the magistrates' courts. Whilst the increase in associate prosecutor deployment can help, it does not fully compensate for the time 'lost' to training and deploying prosecutors to the Crown Court.

### *Data integrity*

- 7.20 While the data for all advocacy strategy targets and measures relies on accurate completion of logs and forms by area staff, we were satisfied that at national level it represents an acceptably accurate picture of the work undertaken in terms of sessions and fee savings. There are isolated examples of inaccuracy at individual and specific case level. For example a crown advocate in London was showing attendance at court based on the system of half day sessions used in the magistrates' courts rather than the correct way of calculating Crown Court sessions and some crown advocates were not distinguishing properly between trials and part-heard hearings. The CPS conducts data quality audits on a regular basis including checks on fee saving calculations. Those examined indicate similar findings to the inspectors', that is that most of the entries are correct most of the time.
- 7.21 There is a question as to whether all areas record the preparation time attributable to each case in the same way. There is such a big difference between them it suggests different interpretations of the guidelines exist (see paragraphs 10.14-10.15).

### **Staff deployment**

- 7.22 The majority of managers stated that the advent of formal targets had acted as a catalyst for increasing levels of deployment. The situation was affected by the implementation of the prosecutor structure in 2007 that gave substantial pay increases to a large number of crown advocates. The combination of management oversight and budget pressures led to areas deploying in a less than ideal fashion in some instances. A further complicating factor was the decision to enable all prosecutors with the appropriate rights of audience to put themselves forward for crown advocate status. Areas were concerned that they were at risk of having supply outweighing demand with more crown advocates than the business required for the level and type of work available. With the additional salaries involved this caused additional financial pressures (see chapter 10 for further comment).

### *Deploying crown advocates*

- 7.23 Most of the areas visited accepted that in attempting to meet targets and budgets they may have pushed some advocates into situations that required skills and experience beyond their capability. Some managers also deployed staff in such a way as to militate against proper preparation for court, for example excessive back to back courts and charging centre commitments for crown advocates who retain magistrates' courts' responsibilities. These issues will have contributed to the negative perceptions of some of the judiciary and Bar that were evident in 2007 and 2008 as they will have seen some advocates who were, through no fault of their own, out of their depth or ill prepared. This was a high risk approach that had a short term detrimental affect on relationships with other agencies and was also a cause for concern for prosecutors.
- 7.24 In some areas deployment of crown advocates had been based almost exclusively on the potential counsel fee savings that could be attained with relatively little regard to the limitations through experience or expertise of the advocate. For example a crown advocate's first experience as a junior involved a complex multi-defendant serious case that he would not have been able to deal with in the absence of leading counsel.
- 7.25 Whilst recognising that areas need to seek value for money from advocate deployment, this must be supported by a sensible approach to quality and justice. Similarly expecting a single advocate to handle more than six PCMHs in a day, as has been the situation in some areas, is unlikely to be productive. Most areas have now introduced limits.

- 7.26 As managers have become more experienced in deployment the situation has improved, although inappropriate deployment clearly still happens. Some of our ratings given to advocates reflect the fact that they were not sufficiently skilled for the courts they were undertaking. This was particularly an issue for contested cases.

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**Aspect for improvement**

Area managers need to ensure that deployment practices take account of all relevant factors including the provision of high quality advocacy and financial considerations.

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- 7.27 Structures for delivering crown advocate deployment vary but most have a core team supported by a hybrid role (crown advocates who do mixed charging advice, case preparation and advocacy in all courts). Most areas are finding it more difficult to use this hybrid role effectively and tend to deploy them in PCMHs.
- 7.28 In seven of the eight areas visited the decision regarding initial allocation to a crown advocate or counsel is taken by the crown advocate clerk while in the remaining area vetting is undertaken by the lawyer manager. Recording information on allocation of cases to crown advocates or counsel is limited with the reason why a case was sent to counsel recorded in only one area.
- 7.29 In some areas crown advocate clerks were allocating most cases for trial to the crown advocates, in others the unit head had more involvement and greater liaison with the clerk.
- 7.30 The majority of areas had undertaken some basic planning to assess the financial implications of crown advocate deployment. This usually consisted of models showing alternative types of work to be undertaken, with the associated costs. For the most part these plans focused on PCMH and trial cover. Plans led to formal deployment targets in some of the areas, for example one trial per week for full time crown advocates, whereas in others it just increased the focus on savings.
- 7.31 Crown advocate clerks' main function is to decide if individual hearings/cases are to be retained in-house or passed to counsel. They are usually responsible for deciding to whom the work should be allocated if it is handled by a crown advocate.
- 7.32 All areas had different systems for monitoring and controlling allocation ranging from manual systems at unit level to IT based systems at area level. All areas commented that there was a need for a more sophisticated electronic system. This has been recognised nationally and there was some allocation from the external Modernisation Fund to enable development of an electronic diary.
- 7.33 Crown advocate clerking is a key function and there is wide variance in the grade allocated to the role and how the function is managed. There is no national guidance on the level of skills and experience required for the post, no guide as to how the system should be set up and no formal training available. Inspectors saw examples where clerks were adding significant value with sensible deployment practices and proactive involvement in listing arrangements with the courts. However it was more frequent for there to be a lack of clarity over the role with some being ineffective as a result. In the bigger locations inspectors saw both ends of the spectrum within the same area.

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## RECOMMENDATION

The role of crown advocate clerk needs greater definition and consistency. Training and guidance for the role needs to be provided.

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### *Deployment to the magistrates' courts*

- 7.34 In the magistrates' courts prosecutors frequently commented on the lack of time available for preparation, particularly for trials. Whilst there are some slight variations of approach most areas plan their rosters using a priority system - courts comes first, followed by charging centres and finally the case preparation (OBM) pod. Some had systems for dedicated office time whereas others did not. Most had set deployment targets at six or seven sessions per working week for associate prosecutors and from six to eight sessions for crown prosecutors (usually including court and charging centre cover). Whilst there was a perception in the sites visited that these were at least met and often exceeded, data suggests that this is not necessarily the case at national level. There is, however, wide variation between areas.
- 7.35 As with crown advocates there are some occasions whereby prosecutors are allocated cases beyond their current capability. Whilst individuals may have worked at the CPS for some time it does not necessarily mean that they have significant advocacy experience, particularly for trials. This is improving with the increased in-house coverage now undertaken but managers will want to ensure that, in the short term at least, extra care is taken to assure that rosters take proper account of prosecutors' capabilities. We observed one inexperienced crown prosecutor conducting her first trial, which involved an application to provide screens for a vulnerable victim and an application to admit the defendant's bad character.
- 7.36 In one area the use of agents is prohibited with none at all in the past two years. Whilst supporting the general principle of reducing to a minimum the use of agents, a complete ban is unlikely to serve the best interests of justice. Indeed we saw an example whereby unexpected absence led to a number of prosecutors handling cases in court other than those for which they had prepared. This was done in order to avoid using an agent.
- 7.37 When areas struggled to deploy staff at the desired levels it was almost always the pod team that would not have its full complement. Whilst understanding why this happens, it did have a detrimental effect on advocacy as case preparation suffered. Only one of the pods visited during the inspection was fully staffed and we received many comments on the levels of abstraction from agreed staffing levels.
- 7.38 Overall prosecutor deployment is now given greater attention and this has contributed to the better use of in-house resources. Managers need to keep deployment under regular review to ensure that a balanced approach is maintained, taking account of the interests of justice, staff development and welfare, targets and the overall quality of case handling.

### **Selection of advocates**

- 7.39 In the magistrates' courts increased in-house coverage has enabled better selection when agents need to be used. Historically when agent usage was high it was not uncommon to be provided with very junior counsel to prosecute on behalf of the CPS. This often attracted criticism from the courts but we received less negative feedback on agent usage during this inspection. Much of the non-contested work is now handled by associate prosecutors and when agents are used it

tends to be for trials. Areas consider that they are now more able to get their agent of choice which has led to better advocates representing the CPS. Our observations, though based on a small sample, supported this. Agents were the only group of advocates that attracted no ratings of less than competent or poor.

*The CPS/Bar Framework*

7.40 The approach to selecting advocates for Crown Court cases varied across the areas. A Framework of Principles has been agreed with the Bar which states that where a case is to be contested and will be allocated to counsel at some point, this should happen by the PCMH to enable continuity to the trial. This has been honoured in the breach in the past. Whilst all areas could give examples of appropriate early allocation to counsel, most had developed a 'wait and see' system with final decisions made late in the process. In some areas trial counsel is routinely not identified until 14 days after the PCMH. This is too late and often defeats the purpose of the hearing.

7.41 In 2007 and 2008 even if counsel was allocated at an early stage, it was not uncommon for the trial to be conducted by somebody else. It is accepted that this is inevitable to some degree, particularly for cases in the warned list or 'floaters'.<sup>15</sup> This situation had changed in more recent times as the level of work allocated to counsel has reduced and it is now less likely that counsel will return a case at a late stage. Our observations at court indicated that counsel at PCMHs were not always well prepared and were not necessarily trial counsel.

7.42 There was a widespread perception among the Bar and judiciary that the CPS has undertaken too many PCMHs when a not guilty plea is expected and there is no likelihood of the trial being handled in-house. Whilst this undoubtedly happens sometimes national data suggests that the overall level of PCMH cover is not inappropriate, albeit it may be questionable in a few individual areas. The CPS covered 61% of all PCMHs in 2008-09 which, when set against the Crown Court outcomes for that year, does not seem unreasonable.<sup>16</sup>

7.43 Although the overall level of PCMH cover may be appropriate there are issues over continuity when the case is handled by crown advocates. Some areas base their initial allocation on the availability of a crown advocate to cover the case at the first hearing and if the matter goes to trial it is likely to be reallocated to a different crown advocate or be briefed out to counsel. The perceived need for maximum deployment of crown advocates contributes to the late allocation of cases in some areas and the non-adherence to the CPS/Bar Framework.

7.44 In 2006-07 and 2007-08 the level of cases returned late by counsel, contrary to the Framework, was considerable. This has happened less often in the past year, although trial counsel does not always cover the PCMH. There is limited continuity in a large number of cases although a greater amount was apparent in the most serious cases sent to counsel. (Areas tend not to note returns between crown advocates).

7.45 It is clear that there has been non-adherence to the Framework by both parties. It was drafted some time ago when crown advocate deployment was in the early stages of development. The number of significant changes that have occurred since then suggest that it needs to be revisited to reflect today's reality.

15 Cases listed for trial that are not allocated a court until one becomes available as a result of, for example, the fixed trial being ineffective or resulting in a guilty plea. In some areas they are known as 'backers' or backing trials.

16 Of the 103,416 cases finalised in 2008-09, 12.8% were discontinued, 73.2% were guilty pleas and the remaining 14% went to full trial.

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## RECOMMENDATION

The CPS and Bar should review the existing CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court.

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### *Selecting the right advocate*

- 7.46 In July 2008 the CPS implemented a progression framework including four levels to characterise the skill and experience of its own crown advocates, provide a clearer career path and facilitate appropriate deployment practices. Each crown advocate should have been allocated a grade that indicated the range of work which they were suitable for deployment in. At the time of the inspection four of the sites had not completed the formal allocation of grades, although they all had some ideas about the level of expertise and experience of crown advocates. Only one of the areas visited had a detailed breakdown on the type of work undertaken by each. This assists with allocation of work, development of the advocate and any future recruitment exercise.

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### **Good practice**

The Snaresbrook unit (CPS London) keeps a detailed profile for the work undertaken by each crown advocate.

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- 7.47 At the present time the CPS has a limited number of advocates who can undertake the more serious and complex casework trials. The practice of keeping so many cases in-house in the hope that an advocate with relevant skill will be available at the time of trial carries some risk. In some instances this leads to late returns and in others advocates with insufficient skill and experience have been deployed. The CPS is in the process of expanding its cadre of senior crown advocates and that will reduce the risk of current practices in the longer term. In the meantime managers need to take more care in planning cover for complex cases.
- 7.48 Most areas were content that systems for selecting counsel from chambers were sound, giving them sufficient scope to engage counsel of suitable experience and expertise. A benefit of the reduction in work given to counsel has been that CPS staff feel they are more likely to get their counsel of choice in contested or more serious cases than previously, resulting in better performance. Comments included: "There is a sense that counsel have improved lately ... we get less returns and are getting better quality advocates. ... They seem to be better now at liaison with victims and witnesses."
- 7.49 Historically there have been formal systems to monitor the distribution of work to counsel to ensure that the system is fair and equitable. Many areas no longer record the number of cases allocated to particular counsel. Managers will wish to consider whether there is risk to this approach on equality and diversity grounds and whether it inhibits the contribution of the CPS at the Joint Advocate Selection Committee<sup>17</sup> meetings.

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17 A joint committee comprising senior barristers from the local circuit and representatives for the corresponding CPS areas. The committee is responsible for grading counsel for prosecution work on a scale of 1-4 of increasing seniority which reflects the seriousness of casework that they are instructed to prosecute.

### **Court listing**

- 7.50 The cooperation between HM Courts Service and the CPS on listing has improved but further opportunities exist. Most areas visited had successfully negotiated associate prosecutor friendly listing, although there are still some logistical challenges when there are small rural courts with low numbers of cases. We have commented in paragraph 6.29 about the listing of trials in the magistrates' courts.
- 7.51 Listing in the Crown Court still presents some difficulties, although most areas consider that progress has been made. There are clearly some challenges in trying to satisfy the wishes of all stakeholders. The consistently high level of cracked trials (approximately 40%) in the Crown Court does not help in this respect. Late changes to the Crown Court list may lead to crown advocate clerks not allocating cases to an advocate until the day before the first hearing. This impacts adversely on preparation time and late tasks that need to be undertaken by all parties to ensure the case is ready for the PCMH.
- 7.52 There is no magic fix to listing (which is a judicial function) but areas will want to ensure that they take all practical and proportionate steps in conjunction with the courts to find the best possible local solution. The relationship between the crown advocate unit and Crown Court listing officer needs developing in a number of areas. Some areas have representation at listing meetings attended by the Bar clerks whereas others negotiate separately with the listing office. It is encouraging that some of the CPS crown advocate clerks are now liaising more effectively with the courts and defence on listing issues.



## 8 TRAINING AND DEVELOPMENT

### **Context: the advocacy strategy**

- 8.1 The CPS advocacy strategy amounted to a step change in the volume of in-house Crown Court advocacy and a large proportion of its employed legal professionals had to move up to the next level in short order, with large numbers of senior crown prosecutors becoming HCAs (now crown advocates) over a short period. At the same time a significant number of caseworkers became DCWs (now associate prosecutors), to back-fill for the crown prosecutors who had moved to the Crown Court.
- 8.2 The Service was acutely aware of the need to provide an assurance to the public, over and above that arising from compliance with the requirement of the relevant professional bodies, that its HCAs were fit to practice in the Crown Court. This approach dates back to the initial drive towards the use of in-house advocates by Sir David Calvert-Smith QC when he was DPP, when the first training courses were designed for HCAs who had already attained higher rights of audience from their professional body. It is also written into the 2004 advocacy strategy, which refers to the need for “high quality advocacy”.
- 8.3 Therefore in addition to the necessary capacity, the national training programme had to include the flexibility to provide a whole training package for each individual candidate, taking into account their widely differing training needs. This variation in needs has come into even sharper focus since the numbers of experienced advocates recruited direct from the Bar has increased.
- 8.4 To this extent the advocacy strategy could only succeed in its quality aspirations with a linked and integrated training and development programme which would train more than 1,000 legal professionals over a few years, at a time when substantial national training programmes were also being designed and delivered on other themes, most notably statutory charging. Therefore the development strategy needed to be underpinned by an accurate assessment of the numbers of crown advocates and associate prosecutors needed to meet the business need, combined with an assessment of the available training capacity, which might need to be adjusted. It was recognised that an integrated system of national and local training, along with local development and support strategies, was required. This has been partially achieved but CPS managers accept that significant gaps remain. The matching of training resource to business need has been less successful since the crown advocate training was made accessible to all with higher rights of audience.

### **The magistrates’ courts**

- 8.5 CPS advocates in the magistrates’ courts fall into three main categories. As qualified solicitors or barristers in-house prosecutors have full rights of audience in the lower courts, as do the solicitors and self employed barristers who act as CPS agents. In-house associate prosecutors have more limited rights of audience, which were extended in 2008 to cover most types of non-trial hearing including committals and applications for remand in custody. In February 2009 they were extended again to cover a limited range of contested trial work which has been the subject of a pathfinder project in some CPS areas. Under certain circumstances legal trainees undertaking in-house pupillages can appear in the magistrates’ courts during their second six months.

*Profile and training of associate prosecutors*

- 8.6 Associate prosecutors are generally recruited from the ranks of CPS caseworkers or law clerks. In addition to invaluable experience watching Crown Court advocates and preparing cases for trial, a significant number also have law degrees or other legal qualifications. Since 2008 they have been members of the Institute of Legal Executives (ILEX) and as such they are bound by the ILEX code of conduct, as well as the CPS national standards of advocacy.
- 8.7 All prospective associate prosecutors (not all of whom are eventually designated) attend the nationally delivered foundation course which now covers all aspects of associate prosecutor work except trial advocacy. They also undertake pre-course reading and preparation, an advocacy course and a matrix of observation before being recommended for designation. The original course had a good reputation with candidates, trainers and external stakeholders alike because it turned out competent advocates who were able to present cases effectively. This is reflected in previous Inspectorate reports and the observations during this inspection, which found that the quality of advocacy demonstrated by associate prosecutors is competent or very good in 64.7% of cases. This is tempered by the finding that five out of 43 associate prosecutors (11.6%) were less than competent in many respects and that action needs to be taken to reduce this figure (see chapter 6).

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**Strength**

The original foundation course for designated caseworker training.

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- 8.8 Associate prosecutors have been less complimentary about the training which was intended to equip them to use the extended powers granted in July 2008. More than 400 were trained by local areas to a national brief by the end of the same year. It was felt by many that the course was heavily weighted in favour of theory with little opportunity to practice submissions, or deal with detailed scenarios. Some felt that it was too short and had a “rushed” feel to it. As a result some of the less experienced associate prosecutors found it difficult to absorb the content effectively and this has affected their confidence.
- 8.9 Whilst many associate prosecutors derive know how and confidence from significant Crown Court or casework experience, as well as some years of advocacy as DCWs, others lack experience and need further support to help them deal effectively with the more challenging issues which can arise, including the need to understand issues around domestic violence, child protection and complex/serious casework. Some also need additional guidance on more basic matters such as court terminology and procedure. A number of areas now provide mentoring and support to help consolidate and build on training, however in those where continuing support is limited we saw some associate prosecutors struggle to deal with difficult cases and issues effectively. The 2009-10 workforce development plan includes a new set of associate prosecutor ‘master classes’ where some of these issues can be addressed on a rolling basis, but areas need to ensure that training, mentoring and support is available at a local level for associate prosecutors who find the going tough.
- 8.10 From January to March 2009 the CPS provided national training for experienced associate prosecutors in pathfinder areas wishing to appear in contested trials. It involves two weeks of formal training, interspersed with eight weeks of structured court observation locally. The

structure and content of the course appear to be sound and inspectors have received positive feedback from some associate prosecutors who were mid-way through it at the time of the inspection. Since March 2009 CPS managers have been carrying out a review of the training so that national roll out can be designed and delivered in due course.

*Profile and training of crown prosecutors*

- 8.11 CPS crown prosecutors are solicitors or barristers from a range of professional backgrounds. Some have extensive experience in private practice either as solicitors or at the Bar. Others have practised within the CPS from qualification and a few started as legal trainees within the Service. Of these, a handful have qualified as barristers having completed the in-house pupillage. This differs slightly from the training of solicitors, but depends largely on their own training needs and the role of their supervisor within the Service. A four week placement in chambers is recommended by the Bar Standards Board, but is not mandatory. There is no strict national guidance on the ground to be covered so, for example, it is possible - though unlikely - to complete pupillage without having observed a Crown Court trial. All have completed training in accordance with the rules set down by their respective professional bodies.
- 8.12 The CPS runs a three day national induction course for all newly recruited prosecutors. This includes an element of basic advocacy which has reduced in recent years and contains no training in trial advocacy. Following completion of this course new prosecutors are then allocated places by local managers on the advocacy development programme which is locally delivered to a national brief. This includes some basic trial advocacy but attendance is not mandatory for all and there is no central involvement in course delivery to ensure consistency and quality across the areas. Overall the intensity and quality of training for crown prosecutors appears to have diluted in recent years as the focus has shifted to developing training for associate prosecutors and crown advocates.
- 8.13 The picture is less positive in relation to training for trial advocacy. Since many of the more experienced and skilled prosecutors have moved on to the Crown Court, those who remain are less experienced and therefore more dependant on effective training to achieve a suitable standard of quality, which is sometimes lacking at present.
- 8.14 They often lack the experience or skill to compare favourably with more seasoned opponents, although the quality of some defence advocacy was also poor. In some cases domestic violence trials are prosecuted by lawyers with no specialist training in handling vulnerable witnesses. This lack of experience is accepted by CPS managers who have sought to breathe life into national advocacy training for crown prosecutors by developing a national advocacy master class, to include training on “situational advocacy in the context of a complex magistrates’ court case”, with the desired outcome of the “enhanced ability to conduct magistrates’ court trials and deal with ancillary matters”. This has been incorporated into the workforce development plan for 2009-10 but had yet to be implemented at the time of the inspection.
- 8.15 Overall, to date there is very little opportunity for lawyers to watch and learn from colleagues or agents presenting trials. Some areas seek to provide informal mentoring and support for new advocates, but success levels vary. In some instances the more senior lawyers who act as mentors are not fully skilled trial advocates themselves and sometimes mentors are not replaced when they move on. Therefore weaknesses in case theory and strategy, cross-examination and legal submissions go unaddressed in the main. This affects outcomes even in domestic violence

and other sensitive casework areas. Further it does little to narrow the span between magistrates' courts and Crown Court advocacy, which is referred to below. The new element of trial advocacy training included in the 2009-10 workforce development plan should be implemented effectively and expanded to provide improved training and mentoring for magistrates' courts' trial advocacy.

#### *Profile and training of agents*

- 8.16 The quality of trial advocacy among agents, many of whom are junior barristers, was observed to be significantly better than that of in-house prosecutors with none being less than competent. Areas considered that this might be due to the reduced reliance on agents, which allows a more considered selection of self employed barristers and solicitors, so that quality and outcomes improve as a result. One novice pupil barrister who was seen by different inspectors on a number of occasions was seen to perform competently in cases involving domestic violence and contempt of court.
- 8.17 Solicitors, including those who intend to work for the CPS, must complete the post graduate Legal Practice Course (LPC) at an academic institution and a training contract (normally two years) with an accredited firm or legal organisation such as the CPS, before qualification. The LPC includes an element of basic advocacy, some of which might relate to criminal work depending on the provider and options taken. During the training contract a trainee solicitor must complete the professional skills course which also includes an element of advocacy (currently 18 hours). Again this needs not be criminal advocacy. Post-qualification solicitors are not required to take any further advocacy training although this might form part of the individual's continuing professional development programme.
- 8.18 Historically there has been no formal requirement for advocacy training at the Bar. However since 2004 pupil barristers (including those who have been offered pupillage at the CPS) have been required to do at least 12 fifteen minute sessions of advocacy training in the bar vocational course. For those who go into a self employed pupillage this is followed by 12 hours advocacy training under the aegis of their Inn or Circuit, during the first six months of pupillage, before they have the right to appear in the magistrates' courts. Pupils employed by the CPS are required to do this as well as the training set out at paragraph 8.12 above. The contents and performance criteria of the 12 hours training are fixed and its quality is assured by the Bar Advocacy Training Council. The "Hampel method" is used which requires candidates to perform as advocates in a simulated courtroom environment. Advocacy trainers, who are highly experienced practitioners trained in advocacy teaching, observe the performance and use six prescribed steps - including demonstration by themselves - to identify and address specific issues. The ratio of student to trainer cannot be higher than 6:2. Whilst it is accepted that all CPS employed barristers and pupils called since 1989 will have completed the Bar Vocational Course (BVC) externally there is a contrast between the new systematic and regulated approach taken by the Bar, with the less rigid approaches taken by the self employed Bar post-BVC and the CPS in training its magistrates' courts' advocates. This also has a knock on effect on the training of crown advocates, which is dealt with below.

### **The Crown Court**

#### *Profile and recruitment of crown advocates*

- 8.19 Crown advocates are the in-house lawyers who are entitled by professional qualification and CPS designation to appear in the Crown Court.

- 8.20 The majority are still appointed from within the CPS having originally practiced as crown prosecutors. They must attend a nationally delivered set of courses and assessments before they are allowed to appear in the Crown Court beyond the preliminary hearing stage<sup>18</sup> which is likely to be their only previous Crown Court experience. With the variety of professional backgrounds and differing levels of advocacy training and magistrates' courts' experience, they do not have a common set of training needs. To this extent the CPS is at a disadvantage compared with the Bar where most students are starting from a common baseline involving academic achievement, but little professional or advocacy experience. Nonetheless the CPS must produce advocates of equivalent skill and ability.
- 8.21 Following implementation of the advocacy strategy in 2004 an increasing proportion of crown advocates have been recruited locally from all levels of the self employed Bar. Those who can demonstrate substantial recent Crown Court advocacy experience can be designated crown advocate without any formal additional training. In itself this carries some risks in that not all recruits from the self employed Bar are as skilled as they might be. Therefore the Service will need to look at ways of quality assuring advocates recruited locally. This gap had been identified and there are plans to introduce national training courses and assessment aimed at crown advocates who are well beyond basic training, although they had not been implemented at the time of publication.

*National training and assessment of aspiring crown advocates*

- 8.22 The CPS most recently over hauled its national in-house training arrangements in 2007, extending the total number of days training and assessment from five to eight and expanding the scheme from two to three separate courses by separating stage 1 (non-jury advocacy) into two parts, 1a and 1b. Part 1a lasts two days covering case analysis and preparing the candidates to appear in preliminary hearings. Part 1b lasts three days and covers all types of Crown Court hearing beyond preliminary hearings which do not involve a jury. Stage 2, which remains largely unchanged, lasts three days and concentrates on Crown Court jury trials. Each individual course is expected to be preceded by individual preparation and followed up by individual review and practice locally, although this is not always achieved.
- 8.23 The courses are presented by a combination of in-house trainers and external assessors selected by an independent academic provider. Inspectors observed the courses and found the in-house trainers, who are all practising crown advocates, have a sound approach to the work in that they prepare and understand the material well and present the courses ably. They also demonstrate serious commitment to providing the best training possible under current circumstances.

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**Strength**

The core of CPS crown advocacy trainers are highly thought of and committed to crown advocacy training.

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<sup>18</sup> Under limited circumstances prosecutors are entitled to appear in the Crown Court after the preliminary hearing stage, for example chambers' bail applications.

- 8.24 There is a clear need for crown advocates to be quality assured before they are designated at any level. The natural place for such assurance is at the conclusion of each stage of the nationally provided training. However this can affect the time available for training and the atmosphere of the courses. One full day is taken up by the assessment process on each course so the time available for advocacy training is in fact five days overall, out of the eight notionally available. The time left for skills training is reduced accordingly. In light of the financial rewards at stake for candidates the culmination and focus of each course tends to be the assessment which follows and this affects the approach taken by some candidates. Whilst the trainers take a broad approach to the subtle task of training advocates, inspectors noted that some candidates appear more interested in passing the assessment than on honing the all round skills necessary to succeed in the Crown Court. The trainers reported that some candidates are less receptive to the training as a result and this affects their subsequent performance in the Crown Court.
- 8.25 Before 2007 access to the course was filtered by a selection process. Since then there has been no formal pre-selection process for entry onto the 1a course, in particular, or any guidance on when candidates should 'self select' for any of the courses. This, combined with the significant financial incentives to some individuals of passing the course, tends to encourage applications from all quarters including some who lack the appropriate experience, skill or motivation. Whilst it is expected that all candidates will have undergone some recent in-house advocacy training on area and that they will have had the opportunity to observe some Crown Court advocacy in advance, few actually achieve this and many therefore start from a distinct disadvantage. In the view of trainers and inspectors magistrates' courts' advocacy experience is no substitute for this preparation, especially when the quality of trial advocacy in the magistrates' courts is as weak as it is. All these factors have combined since 2007 to reduce the pass rate on the 1a course to about 50%. In turn the high failure rate feeds rumours among staff that this course is a selection process in itself and that their time is being wasted in turning up to attend. It is perhaps surprising that many applicants do not appear to consider that they should prepare and gain experience in their own time through their professional associations.
- 8.26 The lack of selection, as well as the lack of individual aptitude and preparation on the part of some applicants, has impacted on the content of the course itself. It has been designed to allow considerable training time to be spent on preliminary matters such as court dress, basic case analysis and legal training. This leaves no time for matters such as skeleton arguments to be addressed at all, although they are part of the equivalent training at the Bar. The stage 2 jury course is something of a 'crammer' with five minute mock assessments on the four components: opening and closing speeches, examination-in-chief and cross-examination. The nature of the course envisages a degree of experience but we found examples of a delegate attending not having seen a jury trial and another who had never worked in a trials unit or prepared a case for committal. There is little skills training on offer and the courses do not address the more subtle aspects of advocacy such as trial strategy, legal argument or witness handling in sensitive cases.
- 8.27 Overall most of the training time is spent in trainer led discussions, private preparation and observing other candidates practising advocacy. Therefore the time available for any given candidate to practise advocacy and court craft is reduced accordingly and appears less than that required in the compulsory advocacy training attended by pupil and junior barristers of equivalent experience. Also teaching resources are more stretched than they are in the training courses administered at the Bar. The CPS courses have a student to trainer ratio of about 8:2, as opposed to the 6:2 limit prescribed by the Bar Advocacy Training Council. Further the CPS also

uses the less intensive NITA training model than that employed by the Bar, where the six stage Hampel method involves actual demonstration by the trainer. It is felt that demonstration by the trainer can shift the focus away from the student.

- 8.28 Whilst these do not necessarily reduce the effectiveness of crown advocates in most non-contested hearings where style and presentation are less essential, though certainly desirable, it is felt by some in-house trainers and external assessors that too much valuable one to one time is spent focussing on the very basics of advocacy technique, rather than polishing existing skills. In turn this affects performance in jury trials where such attributes can make a difference. This coincides entirely with views expressed by some members of the judiciary and inspectors' observations of jury trials, all of which are discussed in chapter 4. Also some crown advocates told inspectors that they felt the need for more training in witness handling and trial advocacy generally.
- 8.29 CPS senior managers are aware that there is room for improvement in relation to formal advocacy training. The approach to selection and assessment is being considered actively, while the design and content of the courses are under review by some capable managers who are also crown advocates. The trainers themselves are keen to remove factors which currently limit the capability of the training so that it can be turned from a grounding in basic advocacy into a master class. In general terms it may be that training could be made more effective by closer simulation of the Crown Court experience, for example changing the layout of the seminar room to reflect the rows of the courtroom, remaining fully robed and maintaining court room etiquette throughout the course would help candidates get used to the feel of the Crown Court before they appear for the first time. The introduction of a defence advocate may also assist the creation of realism, as has been recognised by the Advocacy Training Council and the Revenue and Customs Prosecutions Office in its advocacy training programme. There needs to be additional training to develop cross-examination skills and improve the overall quality of trial advocacy in the Crown Court. This should include effective delivery of the advocacy related elements of the 2009-10 workforce development plan as part of the response to the recommendation at paragraph 4.36.

*Local support for and follow-up to national training and assessment*

- 8.30 The long term effectiveness of the formal training and assessment process is partially dependant on linked development and support strategies. With this in mind the CPS holds annual conferences for associate prosecutors and crown advocates which involve a useful training element and are successful in promoting morale. They provide the opportunity to share views, consider new developments and disseminate any good practice. One area has their own crown advocate and associate prosecutor training days which has been extended to another area in the CPS group.
- 8.31 Advocates also have a professional duty to develop themselves and this is all the more necessary where resources are stretched and formal training is pitched at a basic level. Some are more assiduous than others, therefore areas need to have support systems in place so that candidates can prepare for the training and maximise the benefits on return.
- 8.32 In most areas candidates for the national courses are unable to prepare fully. On the courses observed by inspectors most said that they had not had the opportunity to observe Crown Court proceedings in preparation. Candidates from one area said that it was local policy that they could not attend the Crown Court unless they were appearing as an advocate. This made it impossible for crown prosecutors preparing for the 1a course to observe a preliminary hearing as part of their duties but they could, of course, have done so in their own time. Inspectors were also told by a crown advocate that he had conducted his first Crown Court trial before he had ever observed one.

- 8.33 The approach to development of crown advocates after completion of the nationally delivered courses is weak in most areas. In some they are asked to deal with large PCMH lists the week after completion of the part 1b course. The extent of this problem has prompted the trainers to warn candidates about taking on too much and to develop strategies for controlling their own development. Another crown advocate said that he had not undergone any formal advocacy training since he had qualified as a HCA in 1999. Trainers told inspectors that there is insufficient follow-up to the national course in most areas so that training experience is sometimes allowed to wither. In some areas there is insufficient Crown Court work for newly qualified crown advocates to do when there are already crown advocates in the pipeline ahead of them. Again this removes the opportunity for advocates to capitalise on their training when it is still fresh.
- 8.34 The implementation of pre-training selection according to the business need would help relieve this pressure, but most areas need to do more to support and develop nascent crown advocates immediately before and after their attendance at the courses. Training is an expensive resource and line managers need to address these shortcomings in the areas. The national crown advocacy classroom training needs to be supplemented by a structured development and mentoring programme at area level to support the action in response to our recommendation at paragraph 4.36.
- 8.35 A culture of learning from each other is beginning to develop in some areas but it is far short of the ideal in most. In some crown advocates liaise informally so that lessons can be learned from colleagues' experience in a similar way to counsel's chambers. On a more formal level some areas have good systems for ensuring that crown advocates are able to share the benefit of experience and learn from more experienced colleagues. In West Yorkshire they were actively encouraged to spend a week in court observing trials in January 2008. In Greater Manchester the recruitment of senior crown advocates from the Bar has made it possible to hold regular master classes to build on the national training and provide effective development. There is a set expectation that the senior crown advocates will undertake a formal mentoring role. These objectives are readily achievable across most areas, especially those which have a central advocacy unit.

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**Good practice**

Supplemental master class training in CPS Greater Manchester which is also available to other areas on-line.

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- 8.36 Inspectors' observations showed that one of the clearest shortcomings was the ability to cross-examine effectively. The judiciary and advocates themselves cited cross-examination as a main area of weakness and many crown advocates wanted further training on this aspect. The training and mentoring should be such as to obviate the need for instances of judges telling crown advocates in court not to ask certain types of question including comment. The ability to think about a trial tactically and strategically, as well to ask the right question at the right time, are skills that need to be nurtured individually. This involves a degree of further formal training but also close monitoring and mentoring locally. Senior managers are aware of the need for such training to help develop crown advocates. This is reflected in the development of a nationally delivered master class and courses on rape and serious sexual offences and appellate advocacy, which is included in the workforce development plan 2009-10.

- 8.37 We are aware that the Criminal Bar Association, which is open to members of the Bar whether self employed or employed, runs impressive advocacy training events at weekends. We would encourage crown advocates to take advantage of these as part of their own professional development.

### **Quality assurance of advocacy**

- 8.38 Historically CPS managers have taken a risk based approach to in-house advocacy quality assurance, where the focus has been on newer advocates or those where there were known concerns. To a degree this system is always dependant on the willingness of colleagues and other court users to provide robust feedback, whether positive or negative, and the ability of the CPS to act on it. This differs from court to court and from area to area and can therefore lack reliability. Whilst some members of the judiciary are keen to provide feedback because they feel that the local CPS takes it seriously and acts on it promptly, others were unable to say whether their (written) feedback had been acted on at all. A few members of the judiciary deem it inappropriate to comment on the performance of any individual advocate for ethical reasons and there has been limited usage of the formal complaints scheme set up to enable the Bar to comment on crown advocate performance.
- 8.39 As a result CPS managers cannot always rely on others to alert them to excellent or poor performance. Inspectors observed less than competent performances by crown advocates and associate prosecutors who had not been subject to any meaningful monitoring because line managers were unaware of any problem. Equally, a crown prosecutor who conducted a domestic violence trial to a very good standard told inspectors that she had not been monitored and would not apply to be a crown advocate because she felt she was not good enough. Therefore CPS areas need to tighten systems for encouraging and recording feedback and compiling intelligence.
- 8.40 Areas need to ensure that managers are equipped with the skills and experience necessary to appraise the advocacy performance of their staff and that they have the time to do the job properly. They are not necessarily equipped to do what can be a specialist task, especially when providing feedback to advocates who are in the middle range of performance. In some areas this has been achieved by appointment of a specialist assessor, independently trained and monitored, who makes an assessment then provides constructive feedback to the advocate. The assessor also reports to the line manager so that performance can be fed into the appraisal process. It is suggested the advocacy assessor should be the second line, directed to deal with issues noted by line managers.
- 8.41 Some areas have had advocacy assessors for some time and they are well regarded by the judiciary and colleagues alike, partly because they are a clear expression of CPS interest in quality. In Greater Manchester the assessor actively seeks the views of court users, including the judiciary, when visiting a court centre and reports back on the action taken.

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### **Good practice**

The CPS Greater Manchester advocacy assessor actively seeks the views of the judiciary at all courts within the area and reports back on action taken.

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- 8.42 As part of the increased profile of quality in the advocacy strategy, central resources have now been made available from the Modernisation Fund to implement a quality assurance programme through an advocacy monitoring scheme. A pathfinder project has been undertaken visiting the same eight areas as the inspection team. Subject to a positive evaluation the scheme will be rolled out nationally in 2009-10. Already the level of monitoring has improved but systems need to be developed in every area to ensure that the advocate is monitored under appropriate conditions, so that problems are not missed. For example inspectors observed a trial advocate whose performance was “less than competent in many respects”. The advocate had been seen by the local advocacy assessor undertaking non-trial work in the Crown Court and was rated as being satisfactory or higher, a finding that we would support from our observations of non-trial work. Another advocate was recently assessed in a committal for sentence hearing, then observed by inspectors making errors in a serious assault trial.

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**Aspect for improvement**

The need to assure quality comprehensively across all types of case presentation undertaken by all advocates.

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- 8.43 It takes time to observe an advocate’s performance in each aspect but this needs to be done to ensure that quality improves overall. Where this is achieved the results are encouraging. During the fieldwork inspectors saw evidence of improved performance following monitoring of a crown advocate by an in-house assessor. The advocate who had been assessed as less than competent in many respects by the in-house assessor and then given feedback and guidance on future development was assessed as “above average in some respects” and complimented by the judge when subsequently observed by inspectors.
- 8.44 By making central funding available for local advocacy assessors CPS managers are demonstrating the will to improve quality assurance of in-house advocates. They are also aware that this can be very resource intensive and that effective systems need to be devised to make the process as efficient and consistent as possible. Managers also recognise that the prime objective is to identify those advocates who need urgent support and training so that action can be taken without delay.

**Grading of advocates**

- 8.45 The CPS has a key role in identifying and grading all self employed barristers whom it instructs regularly, to assist areas in the selection of suitable counsel in Crown Court cases. To this end the CPS chairs and administers the Joint Advocate Selection Committees which sit on each Circuit to consider applications to the list of approved counsel and applications for upgrading within it. There are four levels of advocate, not including Queen’s Counsel, which are set according to general ability or specialism. Applications are supported by evidence of relevant skills and experience which is cross-checked, although advocates are rarely formally assessed in court for this purpose.
- 8.46 In July 2008 the CPS implemented a progression framework including four levels to characterise the skill and experience of its own crown advocates, to provide a clearer career path. Unfortunately the levels within the two grading systems do not coincide exactly, although the current DPP has made a commitment to work with the Bar and Legal Services Commission to ensure that nothing is

done to undermine future attempts to create a unified grading system.<sup>19</sup> The non-aligned approach taken to date has led to unnecessary confusion, considerable criticism from external stakeholders and has hindered consistency of case allocation. Assignment of advocates to levels was undertaken locally by CCPs. Our assessments did not support a number of the level 3 designations. A unified grading system is therefore necessary, as envisaged by the DPP, and should be applied to internal and external advocates alike within an assessment system which, if feasible, has an external element. This would lend transparency and give confidence to partners and the public.

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## **RECOMMENDATION**

A grading system should be applied to crown advocates to bring it into line with the Bar grading system and converge to a unified system.

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<sup>19</sup> The CPS has improved links with the Legal Services Commission with the long term aim of converging towards a universal quality assurance scheme.



## 9 PLANNING AND PARTNERSHIPS

### Planning: Crown Court

- 9.1 A formal business case was developed for the advocacy strategy and has been updated on a regular basis. It encompasses four main themes: the strategic, economic and financial cases and management (governance) of the strategy. A benefits realisation plan was developed to run alongside the business case and progress against the anticipated benefits is monitored regularly.
- 9.2 Following agreement of the strategy by the CPS Board in June 2004 pathfinder sites were set up in Hampshire and the Isle of Wight and Hertfordshire to pilot the increased deployment of HCAs including processes, documentation and some data collection on performance. After evaluation of the pilots it was subsequently agreed that the strategy was workable and plans were put in place for a national roll out.
- 9.3 The advocacy strategy programme team was formed in December 2004 to coordinate much of the activity and has since provided significant support and encouragement to areas and assisted them in local implementation. In the early days a series of road shows were held to increase the knowledge of areas with regard to HCA deployment. The team have also provided documented guidance to areas and developed national protocols, frameworks and systems with other stakeholders.
- 9.4 Support has continued with further road shows, annual conferences and pathfinder projects. The team also coordinates provision of performance data on a quarterly basis.
- 9.5 Whilst the programme team has provided generally good levels of support over the last five years, it and the programme board have tended to concentrate on the advocacy strategy in isolation without necessarily taking full account of the impact on other aspects of work. This has been particularly true since the decision to accelerate the programme was taken in 2007. The drive to increase deployment is reflective of the strategy's key objective in its early stages. There was relatively little focus on quality issues in the early years of roll out and the risk relating to quality of advocacy was not given sufficient attention. It is encouraging that there has been a change of approach from 2008. This will be critical in the future as the debate is now less about whether crown advocates should exist but rather how well they perform.
- 9.6 Whilst the programme team provided support and guidance it was left to the areas themselves as to how they implemented the strategy locally. There are quite detailed local advocacy strategies in some areas, whereas others have just a few lines in overall business plans, most of which simply focused on the deployment targets. Since 2005-06 the areas have been held more accountable for delivering improved deployment. This was primarily achieved through setting targets that are monitored as part of the quarterly national performance management regime.
- 9.7 Even those with more detailed plans tended to focus on targets. This was usually achieved by modelling the various types and levels of work that would need to be undertaken to achieve them. This sometimes translated into more formal deployment strategies that identified any resource issues and risks. There was a distinct lack of focus on quality in the early stages with slight improvement in more recent times. The proposal to supplement or replace current fiscal targets with a quality measure is to be welcomed.

- 9.8 At local level links to other initiatives were not always clear, although most areas could give some examples of dependencies and impacts. Most areas have focused strongly on the attainment of key deployment targets, even when they know it may have a detrimental effect on other aspects of case management. Case progression and preparation have tended to suffer as the level of court coverage has grown. Few areas have a clear overall staffing strategy which takes full account of the advocacy strategy and changing environment in which the CPS operates. Some of the larger areas such as Greater Manchester have a more systematic approach to planning optimum staff deployment. Changes to the systems for delivering pre-charge decisions to the police and the agreement of the paralegal review give areas an opportunity to re-appraise local strategy. Work is underway at a national level on formulating a workforce deployment strategy, but this is not yet fully developed.

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### **RECOMMENDATION**

Areas need to develop a more holistic approach to staffing and deployment strategies that take account of the changing profile of their work as well as budgets.

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- 9.9 As part of the plans to deliver a step change in the levels of deployment a decision was taken to introduce an enhanced remuneration package for higher courts advocates and filters on the application process were removed. The full repercussions of these decisions were not considered adequately and have led to some significant challenges for areas and the Service as a whole. Most of the difficulties that have ensued were foreseeable (see chapter 10).
- 9.10 Senior managers have recognised the problems with this approach and are seeking to address them although inspectors do not consider that this will be an easy task. Discussions with the trade unions had commenced towards the end of this review.
- 9.11 There has been a high level of engagement and consultation with the trade unions over implementation of the advocacy strategy. Whilst there have been some difficulties along the way discussions have generally been positive and collaborative. There will be some challenges ahead as the CPS looks to review current policies and practices.
- 9.12 There has been regular liaison with external stakeholders although its effectiveness varies. In some instances an earlier start to formal discussions might have been beneficial. There has been a long established CPS/Bar Liaison Group which meets twice yearly, where there is a full and frank exchanges of views. In March 2006 the Advocacy Liaison Group was formed as the key interface with the Bar; this has been more effective.

#### *Associate prosecutors and crown prosecutors*

- 9.13 The level of planning to support designated caseworker/associate prosecutor deployment has been good. Some good work was undertaken in terms of consultation and subsequent negotiation and implementation of extensions to their powers in 2007 and 2008. The ongoing pathfinder project to enable associate prosecutors to handle some contested cases has been supported by thorough planning and training.

- 9.14 A significant effort has been made to support crown advocates and associate prosecutors as part of the advocacy strategy. Crown prosecutors, still by far the largest category of prosecutor, have received much less attention leading to some dissatisfaction among this group. Many felt concern over the future of their role as associate prosecutors are taking on an increasing proportion of work in the magistrates' courts and there is a drive towards increasing the number of crown advocates. On a more positive note a significant number of crown prosecutors have welcomed the development opportunities that now exist.

#### **Relationships with the magistrates' courts and the police**

- 9.15 Relationships are generally positive with representatives of the magistrates' courts service, although some are more effective than others. Proactive joint working has contributed to listing patterns that enable efficient use of associate prosecutors in most areas.
- 9.16 Area managers regularly meet with HM Courts Service staff at bilateral and multi-agency formal meetings. Many areas also have relationships that encourage ad hoc informal liaison which is often the means by which feedback on the quality of advocacy, good and weak, is given.
- 9.17 Overall the courts are supportive of the increased usage of associate prosecutors, particularly in more recent times as their skills have been developed and honed. Most courts are also pleased at the reduction in agent usage on the grounds that quality has improved as a result. There is less disruption for courts with the greater use of in-house advocates.
- 9.18 Feedback from police officers has been a little more mixed. In some areas it is considered that the increased level of crown advocate deployment has reduced the level of experience of duty prosecutors at charging centres. The deterioration in case progression in Crown Court cases has meant that the police often get late or duplicate requests for information. In most areas there is regular liaison between the CPS and police at multiple levels at which such issues can be discussed.

#### **Relationship with the judiciary and the Crown Court**

- 9.19 Historically some CPS areas have found it difficult to liaise effectively with the judiciary. In some instances this was due to the reluctance of the judiciary on the grounds that it might appear to compromise independence and fairness. There has been a change of approach at national level and in November 2007 a protocol was signed that specifically provides for regular formal liaison meetings between the Resident Judge and CCP in all areas. This is a significant change of approach in some areas and is to be welcomed. Some, such as Greater Manchester, already had well developed systems for liaison with the judiciary with regular formal and informal discussions.
- 9.20 There are also meetings at lower levels particularly with case progression officers and through court user group meetings, although these vary in frequency and effectiveness across the areas.
- 9.21 During 2006 and 2007 there was some criticism from the judiciary over the crown advocate deployment policy and quality of in-house advocates provided. Whilst there are clearly still some concerns the levels appear to be reducing, although this varies from area to area. In one area there had been a fundamental breakdown of the relationship between the CPS and the local judiciary that was mainly attributable to the way the advocacy strategy had been implemented locally. Considerable efforts have been made by the new CCP to restore the confidence of the judiciary and relationships are now significantly better.

- 9.22 There are different approaches across the Circuits with regard to the provision of feedback on prosecution advocate performance. Some judges are comfortable to provide information whereas others do not feel it is appropriate. Where feedback is given this is often done verbally. We were concerned that in some areas we were provided with evidence of poor advocate performance that had not been shared with local CPS managers.
- 9.23 Where feedback has been provided there was evidence in most, but not all, areas that it had been treated appropriately and had often led to remedial work. In extreme cases crown advocates were no longer deployed until remedial training had been provided. Whilst the level of advocate monitoring by CPS staff will improve in the future it is desirable that this be supported by constructive feedback from the judiciary. Hopefully the more open liaison arrangements between the Circuits and CPS will encourage this.
- 9.24 In some cases feedback is immediate as it takes place in open court, sometimes borne out of frustration over the quality of advocacy or case preparation. In some instances feedback could have been given more constructively. This has damaged the confidence of some individual crown advocates and raised concerns of others as to how they will be treated. Positive liaison and responsiveness to feedback that is now in place could have avoided much of this.
- 9.25 Overall some members of the judiciary still have concerns over the quality of some crown advocates, and to a lesser extent some counsel, and about the levels of case preparation. It is fair to say that they also have similar concerns over some defence advocates.

## **Relationship with the Bar**

### *General*

- 9.26 The relationship between the CPS and Bar has been affected by implementation of the advocacy strategy. As the level of in-house advocacy has grown towards the 25% target so the amount of work allocated to the Bar has diminished, although to some extent increases in caseload in the Crown Court meant the overall amount of business did not reduce that much. For many years the CPS has been the Bar's biggest customer, but in more recent times it has also become their biggest competitor. The Bar is also being affected by similar issues with defence work where solicitor advocates are now being more widely deployed. The CPS drive to reduce the usage of agents in the magistrates' courts has further reduced the flow of work to the Bar.
- 9.27 Not surprisingly this has caused some concern, particularly in respect of the future of the junior Bar who would traditionally have handled much of the work now covered by in-house prosecutors. There has been less impact so far upon more senior counsel as much of the serious and complex work is still given to the Bar. The ongoing recruitment of senior and principal crown advocates is likely to affect this in the future although changes will be gradual. A typical observation from the Bar/judiciary concerned the development of the very junior Bar. "There is a danger in the future that there will not be any suitably experienced counsel. We do not now get many young members of the Bar; a lot of talented people are not being used or developed which is in the long term storing up problems."
- 9.28 It should be borne in mind that the primary responsibility of the CPS is to ensure that it provides high quality advocates to the courts, whilst ensuring value for money. Providing those criteria are met it is immaterial whether advocacy is sourced internally or from counsel. It is not the role or responsibility of the CPS to guarantee work to all members of the self employed Bar.

- 9.29 Nonetheless the CPS has throughout the development of its advocacy strategy acknowledged that the Bar still has an important role to play in the provision of prosecution advocacy. To put this in context the original plan called for gradual increases in deployment with the aim of handling a minimum of 25% of the cost of advocacy in-house by 2011. In the last financial year this was on target and a figure of 21.3% achieved. This does not include the costs of running the most serious and high cost cases which are accounted for separately and most of this work is still assigned to counsel.
- 9.30 Tensions have run high in the past but there were encouraging signs that both the CPS and Bar were taking a more conciliatory approach and they are in discussion as to how the problem raised in paragraph 9.27 can be addressed. Commitment has recently been given by the CPS to re-examine its framework for grading in-house advocates to better align it with the system used for assessing counsel used by the Bar.

#### *National liaison*

- 9.31 A national Advocacy Liaison Group with representation from the CPS and Bar was formed with the first meeting held in March 2006. They meet regularly and there is a full and frank exchange of views on matters of concern. An earlier start to these arrangements would have been advisable. This has provided a forum for focused discussion in addition to the CPS/Bar Liaison Group that has been in place for many years to deal with issues of strategic interest. Whilst there are sometimes tensions in the meetings it is important that there is a forum at which either party can raise issues of importance to them. There are indications of a more conciliatory approach in recent times.
- 9.32 The meetings are also an opportunity to correct any misunderstandings that arise. The CPS often provides data that is helpful in ensuring everyone has a fuller understanding of what is actually happening (which is not always the same as perceptions). For example there was a perception that all CPS areas were keeping almost all PCMH work in-house, whereas the CPS was able to demonstrate the reality was that nationally just over 60% is retained, although a few areas do exceed this significantly.
- 9.33 Concerns over the quality of some CPS advocacy have been raised at these meetings, albeit much of the feedback was not specific. Processes have been put in place for a more systematic approach to complaint handling with multiple tiers of response. There has been limited uptake of the formal system and no complaints have reached the higher point of escalation.

#### *Local liaison*

- 9.34 There are significant differences in the effectiveness of liaison between CPS areas and the local Bar. All areas have some form of liaison meetings (sometimes jointly with other areas) although their frequency and the issues discussed vary. Where there is effective liaison it reduces negativity. The relationship seemed to be constructive in most of the areas visited, but not all. There was an example of relationships being significantly improved following a change of approach by the CPS. Conversely in one of the areas visited there is still some hostility based on a lack of trust and a perceived lack of openness on the part of the CPS.
- 9.35 In addition to standard liaison meetings the CPS and Circuits meet at least annually at the Joint Advocate Selection Committee meetings at which consideration is given to the appointment and grading of counsel; occasionally the meetings are merged.

- 9.36 Two areas were about to embark on a trial of shared pupillages to develop advocates and drive up quality although details and payment had not yet been finalised. Another area not part of this review is undertaking a similar exercise.
- 9.37 There are currently two Circuits who do not allow employed barristers, including crown advocates, to be members. In one case this would require a change of constitution which is unlikely to be achievable. This position will not assist in developing a positive relationship and it is recognised by senior members of other Circuits.
- 9.38 We observed many crown advocates who, despite encouragement from trainers on the crown advocacy course and line managers, were reluctant to use the advocates' robing room on the basis that they would be unwelcome in what would be the preserve of self employed counsel.

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**Aspect for improvement**

All crown advocates should be encouraged to use the robing rooms at court.

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- 9.39 Overall there is still a need to strengthen relationships with the Bar. CPS areas can do more to achieve this by more regular liaison with local chambers; greater transparency on advocacy plans and the costs attached; and either consistently adhering to, or amending, the CPS/Bar Framework.
- 9.40 The Bar could assist by providing detailed and constructive feedback in appropriate circumstances.

## 10 VALUE FOR MONEY

### General

- 10.1 It is difficult to make a fully accurate assessment of the value for money of the way the strategy has been implemented as it is not easy to disaggregate the impact of and on other initiatives. Data is available on issues such as training costs, recruitment, the pathfinder project, national advocacy team and new advocacy quality monitoring scheme, and these are accounted for within the updated business case. Whilst the CPS savings figures do not take account of every single cost it is clear that the advocacy strategy does deliver significant financial savings.
- 10.2 Value for money is not just about counsel fee savings and this is recognised within the overarching strategy and business case. Additional hard and soft benefits were identified and progress against these has been tracked. Whilst some are less easy to quantify they do nevertheless indicate an appreciation of the non-financial aspects of value for money considerations.
- 10.3 The increased use of associate prosecutors does help reduce costs but, moreover, it frees up lawyer time to undertake more serious and complex casework. Reducing the use of agents will also have benefits providing areas are able to redeploy the freed up lawyer resource effectively.
- 10.4 Most additional costs have been absorbed within existing budgets, although the CPS has recently received in excess of £4 million (over three years) from the Modernisation Fund. Almost all of the additional money will be used to implement a national advocacy monitoring scheme.
- 10.5 In most areas there was limited understanding of performance and/or data other than high level targets and value for money considerations tended to be limited to counsel fees saved. A broader assessment of value such as quality and impact on other strands of work would be more helpful and inform decision-making on deployment strategy. We have commented in chapter 7 about the impact of financial benefits on deployment strategies in some areas.

### Realising the benefits of the advocacy strategy

- 10.6 The advocacy strategy and the business case clearly identify a range of benefits that are expected to be realised, which are not all financial.

#### *Financial benefits*

- 10.7 As part of the Spending Review 2004 agreement the CPS committed to significant efficiency savings and the advocacy strategy was one of the primary means through which savings were to be delivered. Such savings do not always represent a reduction in expenditure. They commonly comprise a reduction in the increased expenditure which would otherwise have arisen. Using HM Treasury reporting systems the CPS recorded savings in excess of £20 million in the first three full years of the strategy. This is significantly above the target although it does not take account of all the costs of implementing the strategy.
- 10.8 The updated business case takes account of most of the strategy's additional costs such as the programme team and new funding for the advocacy quality assessment monitoring programme. The business case projects that by March 2011 the strategy will have made a net cumulative saving of £38.6 million over a period of six years. The figures are sufficiently accurate to indicate that the advocacy programme does deliver savings in financial terms.

- 10.9 It was anticipated that as the level of crown advocate usage increased so there would be a commensurate reduction in the overall spend on counsel fees. This proved not to be the case in the early years, although this was mainly attributable to changes in Crown Court caseload which has increased during the life of the strategy. The average for the last four years is 5.9% higher than the baseline year of 2004-05. The CPS is now paying greater attention to overall prosecution costs.
- 10.10 To put this in context savings achieved by the CPS as a result of crown advocate deployment have risen from £17 per case in 2005-06 to £83 in 2008-09 (these figures are averages). The rate of growth in savings has slowed a little in 2008-09 as the impact of the new prosecutor structure takes effect.
- 10.11 Some figures quoted by the CPS include VAT on the counsel fees saved whereas others do not. VAT is included in the efficiency savings claimed but not in the targets or figures produced by the advocacy strategy programme team.
- 10.12 The CPS method of calculating crown advocate 'cost' is robust and based on actual salaries with allowances for additional expenses such as recruitment, training etc. Based on recent data the hourly cost of a crown advocate is £49 nationally and £54 in London, with senior crown advocate rates at £60 and £64 respectively. Similar figures for CCPs and principal crown advocates are £90 and £110. This demonstrates the potential impact of preparation time on overall cost although clearly it is important that the advocate is adequately prepared.
- 10.13 This may be illustrated by reference to a case when the fee payable to a junior counsel appearing alone in a three day trial for a single defendant charged with an offence of assault occasioning actual bodily harm would be £974.33 (including VAT) assuming 12 witnesses and 60 pages of evidence. Based on the average hourly rates attributed to crown advocate usage set out above, the CPS would break even provided the case did not occupy the crown advocate for more than approximately 20 hours including time for preparation, travel and presentation at court. If a more senior crown advocate was deployed the break even point would be reached sooner.
- 10.14 There is wide variation among the areas as to the level of time recorded for preparation for hearings/trials. Whilst some differences are to be expected based on the level of experience of crown advocates and type of cases handled, the disparity is stark for some areas. If advocates take and record a long time to prepare cases this will outweigh the fee savings and the case will cost more. In one area counsel fee savings of approximately £730,000 were recorded in 2008-09 but this resulted in a net saving of just £5,000. By way of contrast another area recorded fee savings of £265,000 with a net saving of £193,000.
- 10.15 Some areas allocate time for preparation whereas others make no formal allowance. One set a notional target that no more than one hour should be devoted to preparing for a PCMH and up to one day for a trial. If an advocate takes the maximum time then it is unlikely the sessions will be cost effective. There is wide variation in terms of the management of preparation time, which if better controlled might lead to increased financial savings.

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**Aspect for improvement**

Managers need to develop proportionate systems to assure themselves that preparation time is commensurate with the experience of the advocate; proportionate to the complexity of the case; and recorded accurately.

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- 10.16 The CPS does not have any consistent structure or arrangements for analysing the time spent by crown advocates dealing with individual cases. It is not therefore possible to predict with certainty in specific situations whether the cost of in-house advocacy is greater or less than instructing counsel. There are too many variables to make an accurate projection of savings on an individual case possible, but by way of illustration we show a few examples of comparative costs based on cases handled by the areas visited (see also annex F).
- 10.17 *Example 1:* a two day trial for an offence of assault occasioning actual bodily harm would have attracted a fee of £636.46 had it been handled by a junior counsel. The combined time at court and in preparation recorded by the crown advocate who handled the case was 19.67 hours. At the average hourly crown advocate rate of £48.82 this equates to a 'cost' of £960.29.
- 10.18 *Example 2:* a five day trial for a serious sexual assault would have attracted a counsel fee of £2,392.40. The case was handled by a crown advocate who recorded 55.17 hours either at court or in preparation which equated to a cost of £2,693.40.
- 10.19 *Example 3:* a cracked trial in a case involving possession of firearms would have attracted a counsel fee of £366.07. The cost of using a crown advocate was £209.93 based on a total of 4.30 hours devoted to the case.
- 10.20 *Example 4:* a crown advocate handled a variety of PCMHs, committals for sentence and sentence hearings during a single day. The total counsel fee would have been £695.27 whereas based on a total crown advocate involvement of 6.67 hours the total cost to the CPS was £325.63.
- 10.21 *Example 5:* a senior crown advocate acted as a junior to a QC in a three week murder trial. Had the junior role gone to counsel it would have attracted a fee of £17,145.82. It involved 128.33 hours of court and preparation time which equates to a cost of £7,658.93.
- 10.22 *Example 6:* a two day trial for an offence of causing grievous bodily harm would have attracted a fee of £884.42 for counsel. The case was handled by a crown advocate and involved 16.00 hours of court and preparation time, which translates to £781.12.
- 10.23 *Example 7:* a three day trial for sexual assault would entail a counsel fee of £1,569.42. It was handled by a crown advocate with a combined court and preparation time of 24.00 hours. This equates to a cost of £1,171.68.
- 10.24 *Example 8:* a two day trial for an offence of assault occasioning actual bodily harm would entail a counsel fee of £633.42. It would have required 18.00 hours of crown advocate time at a cost of £878.76.
- 10.25 Limited attention is paid to this issue of individual case cost comparisons at present and areas whose costs exceed savings are required by the advocacy strategy programme team to give an explanation, although this affects very few areas. As a result of a review one area made a significant adjustment (over £70,000) due to mis-recording. The CPS data is helpful in identifying possible discrepancies but historically the level of scrutiny and analysis has been low.

10.26 The advocacy strategy has delivered financial savings nationally and has been an important factor in enabling some areas to remain within budget. The CPS does save money when compared with the cost of instructing counsel for those same cases. The calculation assumes that for periods of time when crown advocates are not in court they are gainfully employed on other activity, which may not always be the case.

*Softer benefits*

10.27 There is less empirical evidence of the level of achievement attributable to the advocacy strategy against the non-financial benefits identified in the business case. Whilst measures such as community confidence are considered there is currently no way to assess whether any change in performance is attributable to the strategy. Similarly it was anticipated that the strategy would have a positive effect on pre-charge decision outcomes. Whilst there has been improvement it is not possible to attribute this directly to advocacy. At the highest level it is worth noting that overall performance results for the CPS are improving year on year.

10.28 There are a number of softer benefits as a result of the advocacy strategy, some of which could be extremely valuable in the future. First and foremost is the fact that the range of roles now available makes the CPS a much more attractive prospective employer. Whilst there is some regional variation the Service has been successful in recruiting a significant number of people from the Bar. There were already signs that the new recruits were beginning to share their knowledge and experience with existing CPS staff and this augers well for the long term development of staff.

10.29 Most areas considered that the reduction in work allocated to counsel had led to them getting a better service in the cases they did handle. Late returns have reduced and areas can more often instruct their counsel of choice.

10.30 Many staff thought that the strategy was having a positive impact on charging, although a few noted that more experienced lawyers were now not available for advice as they were in court more often. Better quality charging decisions tend to be made by those advocates gaining experience in the Crown Court.

10.31 There was a consensus view that the increased use of in-house advocates had improved consistency of victim and witness care at court. Whilst there are still variations between individual advocates, whether internal or instructed, it was generally accepted that crown advocates are more consistent and accountable when it comes to witness care.

10.32 These 'softer' and ancillary benefits are important in themselves and for the improvement of the Service in the longer term. They can properly be assessed in terms of cost effectiveness over and beyond any savings in counsel's fees. They need to be a clear part of considered evaluation and decision-making as to the use of crown advocates.

*The revised prosecutor structure*

10.33 At the time the strategy was designed there were already a number of HCAs in post and they received a salary uplift of £1,500 per year in recognition of their additional responsibilities. There was an application process whereby candidates were subject to a form of vetting by CCPs before they were put forward for the appropriate training.

- 10.34 In order to accelerate rolling out the advocacy strategy and in recognition of the new responsibilities, the new role of crown advocate was created with its own enhanced pay scales. When moving to the new pay scales crown advocates surrendered the existing uplift they were already receiving. For senior crown prosecutors at the top of the scale the pay differential was not necessarily significant, but for a wide range of prosecutors the new arrangements offer a financial incentive and a small number at the lower end of the pay scale who were able to qualify as crown advocates were rewarded with a substantial increase. Unsurprisingly this created significant interest among prosecutors and there was a big demand for places on the required training scheme. In a similar vein unit heads were uncomfortable with the fact that the big jump in salaries for a small number of crown advocates meant that they were earning less than the staff they managed. The senior management team of the CPS are aware of and attempting to address these issues now.
- 10.35 To that end the policy was successful as the number of prosecutors qualified as crown advocates has continued to increase. In 2008-09 training was provided for an additional 200 places and it is anticipated that there will be a further 175 in 2009-10. Whilst most crown advocates are clearly satisfied with the new arrangements there are some drawbacks to the scheme.
- 10.36 The cost of assimilating staff into the new structure in 2007 was approximately £1.8 million and, when combined with progression payments net of any savings accrued, this accounted for 1.7% of the entire CPS pay settlement. This was a significant proportion of the overall settlement for a comparatively small percentage of staff.
- 10.37 At the time the revised structure was introduced agreement was reached with the union that the filtering process would be removed and a joint communication was issued stating that all prosecutors with the appropriate exemptions or rights of audience could become crown advocates within a 'reasonable time'. Therefore at the present time there is virtually no limit on the number of crown advocates that can be appointed. The only impediment at the moment is the availability of training courses.
- 10.38 This has created a situation whereby demand for places exceeds the levels that areas feel they need and has created challenges in terms of effective deployment. Some areas are already at the point whereby they have crown advocates on enhanced pay scales who do little or, in a few cases no, Crown Court advocacy. This clearly does not represent good value for money and has caused resentment among colleagues in a few places. In some areas managers are finding it necessary to dilute the work of existing crown advocates in order to accommodate the newer intake. This is partly because they do not at the present time have sufficiently skilled staff to take on the more challenging trials work; hopefully this will change over time.
- 10.39 Whilst prosecutors undertaking the crown advocacy training are supposed to do self development work prior to attending the formal courses, our experience was that this frequently does not happen. When combined with the lack of any filter on applications this has led to prosecutors turning up who are ill prepared for the training. As a consequence the overall failure rate on courses is now around 50% which is unacceptably high. Not only is this a waste of money but can also mean that more suitable candidates cannot get on to courses due to demand.
- 10.40 Senior managers are aware of these issues and are looking to find a solution through the Prosecutor Structure Project. This is critical for the future of the organisation.

### **RECOMMENDATION**

In taking forward the Prosecutor Structure Project the CPS ensures that:

- crown advocates are not paid additional monies unless they undertake an acceptable level of Crown Court advocacy;
  - there is an improvement in the level of suitably experienced or prepared candidates for training courses; and
  - the number and grade of crown advocates is commensurate with the needs of the business.
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## 11 ANALYSIS AND CONCLUSIONS

11.1 The advocacy strategy implemented by the CPS has, in essence, been to expand the range of advocacy undertaken in the higher courts (primarily the Crown Court) by in-house barristers and solicitors with higher courts rights of audience, and to expand the range of case presentation undertaken in the magistrates' courts by associate prosecutors (formerly known as designated caseworkers) who are not qualified barristers or solicitors. The challenge has been to achieve this at the same time as providing consistently good quality prosecution advocacy across all courts and all types of hearings and avoiding adverse impacts on other aspects of service delivery to which it is inextricably linked, as well as providing better value for money. In this chapter we analyse the different aspects of our findings and draw out the strands and inter-linking features which support them.

### **The quality of prosecution advocacy**

11.2 Quality of the presentation of a case depends on a number of factors including:

- The investigation and gathering of evidence by the police officer in the case.
- The quality of advice and decision-making at the pre-charge stage by the crown prosecutor.
- Case preparation, building and progression by the reviewing lawyer and caseworker (including the preparation of a brief for the advocate).
- Preparation undertaken by the advocate.
- The skill and expertise of the advocate.

11.3 Whilst this review primarily considers the last three features the final quality of case presentation depends upon all of the aspects. This review does not consider factors at the start of the chain but does examine the links between the advocacy strategy and standards of case preparation within the CPS.

11.4 The starting point is that there was no halcyon day when all advocacy in the criminal courts was delivered to a universally high standard. There has always been a significant variation in the performance equally as regards counsel, CPS staff and agents. Inspectors over the years have routinely received criticisms of advocacy and so we did not start with exaggerated expectations. On the contrary much of the prior feedback we had received suggested that the quality of advocacy had been diluted across the spectrum. However we did not set out to assess that assertion merely to study the present position, direction of travel, how the advocacy strategy has been implemented and any impact that it may have had. We therefore considered the quality of case presentation and preparation by the advocate irrespective of whether they were self employed counsel or a crown advocate in the Crown Court, or a crown prosecutor, associate prosecutor or agent in the magistrates' courts. Inspectors were alert to issues of proportionality and the nature of the hearing.

11.5 The overall findings were that standards of advocacy across all courts and all types of hearings were broadly similar and the substantial majority were fully competent or better. A small but significant number were less than competent, a very small number poor and the remainder lacklustre. This leaves no room for complacency and both the interests of justice and the sums invested in criminal justice give rise to justifiable expectation that standards should be uniformly high. Within this broad analysis there are some key messages upon which action must be taken.

- 11.6 First and foremost the CPS has created a platform on which it can aspire to a wider range of high quality advocacy in the generality of cases.
- 11.7 Secondly across the board there continues to be a small proportion of advocates who are less than competent and a few very poor ones. We accept there will always be those having an 'off' day but lack of competence across the range of features of advocacy must be picked up and give rise to either remedial training and monitoring or non-usage. The Service's response to feedback from other court users and now from its own monitoring must address this positively and transparently.
- 11.8 Thirdly there is a significant proportion of advocates, both in-house and counsel, who we rate as lacklustre. This also covers lack of presence in court and minor issues of competence. Whilst not undermining presentation of the prosecution case as a whole, these seriously affect the perceptions of others about the CPS.
- 11.9 The second and third points above led us to conclude that the more measured criticisms we came across from many members of the judiciary and self employed Bar were justified as to the quality of CPS advocates. On the other hand there were still a very small proportion of external advocates, the majority of whom were from the Bar, who were less than competent or in particular were similar to the lacklustre in-house CPS prosecutors. The proposition, therefore, that the nature of competition in the self employed Bar will inevitably lead to high standards across the board is not always made out. It certainly provides for a higher proportion of very good advocates but does not eliminate weaknesses at the other end of the scale.
- 11.10 The analysis of our assessments shows a pattern which is more subtle than we had expected. Crown advocates as a whole displayed higher standards of competency in respect of non-contested hearings, but with significant weaknesses in relation to trial advocacy. This related to some aspects of the presentation of evidence and to cross-examination of defendants and witnesses. We identified three possible causes: the relative lack of Crown Court experience; depth and quality of the training provided or taken up by them; and areas being driven by targets to allocate cases to crown advocates beyond their experience and expertise. We recognise only too well that particular skills and expertise cannot be gained in a short timescale. This needs to be reflected within the advocacy strategy and by managers and crown advocates themselves. The Service needs to be more willing to recognise the present limitation on the skills and experience of some and that a significant number have not had the lengthy or recent grounding in Crown Court cases gained through periods of observing a pupil master in action and through gradually undertaking work in the Crown Court with the ability to see and learn from others.
- 11.11 Many competent crown advocates are only slowly gaining the recognition they deserve and there remains some deep seated opposition to the very concept of either employed barristers or, in particular, in-house prosecutors undertaking advocacy in the Crown Court at all. This is of course a feature of the English and Welsh criminal justice system that is largely not mirrored elsewhere in the world. It is not the role of the Inspectorate to examine the merits of government policy on rights of audience but we hope that the empirical evidence gathered can inform objective evaluation and possibly flag up the scope for improving its implementation.

- 11.12 Advocacy arrangements in the magistrates' courts have been affected by many changes and quality is very mixed. Overall the associate prosecutor cadre is well regarded by the magistracy and, indeed, inspectors observed a higher proportion of very good advocacy by associate prosecutors than by other in-house prosecutors. Even so there are significant levels of lacklustre or less than competent advocacy by associate prosecutors. To a degree this is as a result of the rapidity with which their remit has been expanded and their undertaking more substantial lists of non-trial cases. Such lists may involve serious and complex cases that have been reviewed by a crown prosecutor at the pre-charge stage but still involve issues over bail and the way in which the prosecution puts its case. In addition cases considered by police custody officers to be uncontested and so charged by police may not necessarily have been reviewed thoroughly by a crown prosecutor. The weight of these court sessions was often heavier than those undertaken in other court rooms by crown prosecutors. The Service will need to concentrate on reinforcing the skills and competencies of some associate prosecutors so that they are able to handle the size and nature of court sessions allocated to them and continue to enhance the reputation and standing of associate prosecutors.
- 11.13 Trial advocacy in the magistrates' courts is an aspect of CPS performance which also needs to be strengthened. There appears to be a direct correlation between the movement of skilled crown prosecutors into the ranks of crown advocates and the reduction in the quality of trial advocacy in the magistrates' courts. Inspectors observed some strikingly poor case presentation and cross-examination in trials in the magistrates' courts conducted by crown prosecutors. It is important for managers to identify those skilled and able crown prosecutors who continue to see their role in the magistrates' courts and to give them appropriate support.
- 11.14 There are common themes with the situation in both the magistrates and Crown Court where the problematic aspects are those which have been outside the main focus of training and where there has been pressure for rapid deployment without necessarily full consideration of the risks involved.

#### **The case preparation, case building and foreseeing of problems by the reviewing lawyer and caseworker**

- 11.15 The cradle to grave principle which accompanied the 2004 advocacy strategy (and featured extensively in recruitment advertising) is rarely applied. In most Crown Court cases a duty prosecutor provided advice and a charging decision to police. Frequently a different lawyer reviews the case at the point it moves into the Crown Court and a caseworker prepares instructions to counsel. A crown advocate, or sometimes counsel, is instructed for the PCMH and frequently a different crown advocate or counsel is then allocated if the case goes for trial. It is rare for a crown advocate to have made the initial charging decision and to retain conduct of the case through its various stages to the point of presenting it at trial.
- 11.16 It is axiomatic that sound preparation is essential for good quality advocacy and as such it indicates a professional approach. In the past high levels of returned instructions have often reduced the advocate's available preparation time to a minimum. This is why there has always been a drive to reduce the number of returned briefs and why systems for the allocation of cases should ensure that the advocate receives the case papers in good time for the hearing. The amount of time required depends on the nature of case and level of advocate. Current arrangements tend not to create the necessary opportunities and it is ironic that the proportion of returns is now higher within the CPS despite the trend towards later allocation.

- 11.17 There is a need for the CPS to develop ways of managing its casework which support effective progression. It is not easy for a crown advocate who is routinely conducting cases in court to handle the ongoing care and conduct of numerous other cases all proceeding towards trial. The current system used by most CPS areas is to place crown advocates in a discrete unit similar to a set of counsel's chambers. This has the merit of being similar to the existing familiar system and providing a second view of the case, but continues the inefficiencies of multiple considerations of cases and blurs responsibilities.
- 11.18 The CPS was achieving high levels of in-house coverage of the magistrates' courts and increasing levels of coverage of Crown Court cases. The latter amounted to about 21% of graduated fee scheme (ie in cost terms the generality) cases across the country, but this masked substantial variations in that some areas were exceeding 40% coverage. Standards of case preparation were variable with poor quality instructions to the advocate and examples at court of cases not being ready to proceed

#### **Allocation of cases and the impact of targets**

- 11.19 Cases vary in seriousness and complexity and should be allocated to an advocate with the appropriate skill, expertise and experience. In most but not all Circuits there is a grading system for counsel which assists in identifying the level of expertise, skill and experience of individual counsel. The system is not perfect, but overall provides a reasonably secure guide. The relatively new system the CPS adopted for assigning levels to crown advocates is in our view much less secure and does not permit direct comparison, something which one would expect when the Service is positively encouraging migration by counsel into the CPS. Both the system and levels assigned to some individuals will need to be revisited. It is a positive step that the CPS is considering a move towards a unified system for internal and external advocates. HMCPSI has also facilitated discussions between the CPS and Legal Services Commission with a view to securing as much commonality as possible in standards and assessment across all aspects of publicly funded criminal work – something we know the senior judiciary would welcome.
- 11.20 The system of allocation in magistrates' courts' cases relies more on personal knowledge about in-house staff or regular agents. Nevertheless we came across instances of inexperienced crown prosecutors undertaking quite difficult trials and associate prosecutors handling heavy lists of plea and remand cases. A number of areas were still allocating many of their trials to agents. This in many instances provided better quality advocacy, although it reduces the development of crown prosecutors.
- 11.21 There is evidence that the targets for in-house magistrates' courts' sessions and savings of counsel's fees to be achieved have driven some aspects of case allocation. This may lie behind the practice of instructing trial counsel only after a not guilty plea at a PCMH presented by a crown advocate even where it is reasonably foreseeable that the case was to be contested. The over burdening of crown advocates with too many PCMH cases appears to have ceased but some areas remain inclined to allocate complex cases to insufficiently experienced in-house staff, either to increase usage or make higher levels of savings.

### **Training and development**

- 11.22 The CPS has achieved significant success in devising such a sizeable training and development programme for crown advocates and associate prosecutors. However it is recognised as generic in nature and needs to be more focused on individual needs, overall quality and trial advocacy skills. It adopts a different technique in some ways to that provided by the Bar and in some aspects is less intensive, albeit the latter has itself been the subject of a relatively recent review and ongoing improvement. We identified the good work and commitment of the trainers but the courses themselves are no substitute for experience gained over a number of years in the Crown Court, starting at a basic level and learning from peers.
- 11.23 There is scope for more self development by individuals or participation in courses run within the Bar and Criminal Bar Association. Crown advocates need to be self reliant and resilient in development of their skills and abilities, as is the case for any professional lawyer. The CPS at the strategic level needs to work on fostering better relationships and a good outcome would be the development of joint training opportunities. Recruitment of members of the Bar to become crown advocates should help in breaking down some of the previous barriers. Certainly the expertise of some recruits is having a beneficial effect in sharing experiences with existing crown advocates and raising standards. The development of local master classes or involvement of senior external counsel in training sessions were beacons to which other areas should aspire.

### **Quality assurance of advocacy**

- 11.24 The CPS did not identify the quality of advocacy as being a risk in its advocacy strategy. Perhaps as a result there was no national system developed for monitoring or assuring its quality in the Crown Court. This perpetuates a long standing weakness we have found and commented on in area inspections. There was also reluctance in the early days of the strategy to accept adverse feedback from the judiciary or criminal practitioners. The more recent formal liaison arrangements between CCPs and resident judges is a very positive step. At the time of our fieldwork the CPS itself was developing a pilot system of quality assurance to be undertaken in the same areas that we visited. This is now the subject of development across the country. If consistent and comprehensive it should help development of individuals, realistic re-assessment of some levels assigned to individuals and facilitate much better level of understanding between the CPS and the Bar and judiciary.

### **Support at court**

- 11.25 The issue of provision of support to advocates in the Crown Court has been a long running saga with significant variations occurring around the country. Within CPS offices in general a caseworker (sometimes known as a law clerk or B1 caseworker) is assigned to each case and undertakes some of the preparation. In more serious or complex cases that caseworker will attend court, either throughout or at least for the prosecution case, in support of the advocate. In less serious cases a different caseworker with no knowledge of the case may be assigned and, indeed, sometimes rotate each day. In some areas caseworkers have to cover up to six court rooms. Others have developed a system of providing a caseworker if telephoned from the court room. This reflects both budgetary constraints and the diminishing aspiration to case ownership within the Service. Differing views remain as to the level of expertise and knowledge required by the support to the advocate as to whether this is essentially purely administrative, for instance providing appropriate copies and being a go-between from the advocate to witnesses or police officers, or whether there is an element of instruction of the advocate by a knowledgeable and experienced caseworker. A CPS review is seeking to address these issues together with the level of expertise required. In our view there are two cardinal requirements to be met: the first is that

the advocate should at all times have appropriate administrative support so that they can focus on the conduct of the case without the need to interrupt the proceedings for the sort of administrative purposes mentioned. Secondly the CPS must have a level of representation in the proceedings such that decisions can be quickly taken or facilitated and the Service is aware of what is taking place, otherwise it cannot be properly regarded as conducting the proceedings. This may point to a legitimate distinction between cases conducted by a CPS advocate and counsel. In the former case the advocate may also serve that representational role.

### **Value for money**

- 11.26 It is essential when assessing the financial consequences of the new advocacy arrangements to distinguish between savings in counsel and/or agents' fees, efficiency savings, cost effectiveness and value for money.
- 11.27 It is a relatively simple task to calculate what a case would have cost if undertaken by an external advocate because such fees are usually comprehensive and the fixed scales cover all preparation, travel and any time spent waiting. By contrast the costs of employed advocates are linked directly to the time occupied by case preparation, in court or dealing with ancillary matters. In reality some types of cases are cost effective in-house whilst others are not. Some types of cases, whilst not of themselves cost effective, could justifiably be undertaken as part of the development of skills. CPS managers are developing a feel for those where in-house advocacy is helpful. That has benefits at least in the short term but there are signs that the Bar itself may be less interested in some of the less lucrative work.
- 11.28 The relationship between cost effectiveness and value for money is also complex; cheapest is not always best. The evidence shows that in a number of certain types of cases (mainly the contested ones) quality has suffered. The issue arises as to whether that is a necessary price for the long term gains which may flow from having a substantial cadre of experienced in-house advocates for the Crown Court – something which may bring other softer benefits such as prosecutors with more rounded and in-depth experience and better job satisfaction, with the attendant ability to attract good recruits.
- 11.29 The complexity of these factors militates strongly against any rush to judgement or any entrenched positions which might point to Crown Court advocacy being exclusively external (as it was historically) or purely internal.
- 11.30 The CPS has made considerable financial savings in counsel fees through its increased use of advocates in the Crown Court and it is clear that the increased coverage of magistrates' courts' sessions by in-house staff has also saved on payments to agents. Associate prosecutors are also a less costly resource than qualified lawyers in the crown prosecutor grade. Where these changes in deployment deliver the same quality of advocacy at the same or lower cost this is clearly value for money; to a very large extent this applies to the use of associate prosecutors. However there are some disadvantages which can overturn some of the benefits, at least in the shorter term. These include a reduction in expertise and numbers of caseworkers responsible for Crown Court preparation, the consequent weakness we have found in quality of instructions to counsel and the CPS's inability to provide comprehensive coverage by way of support to the advocate in the Crown Court.

- 11.31 In relation to crown advocates the strategy has resulted in substantial savings of fees as calculated by the CPS, in excess of £20 million in the first three full years, rising to £38.6 million by March 2011. This appears to have been made by large numbers of small individual amounts combined with the significant savings on a small number of more complex cases. The saving in any particular case will substantially depend on how effectively a crown advocate's out of court time can be deployed and the amount of preparation required in the case which is undertaken within conditioned hours.
- 11.32 In terms of developing the individual it is necessary for crown advocates to begin with minor hearings and cases and progress gradually through to short trials before undertaking longer ones. In the same way that we have been critical of cases being too readily allocated on the basis of savings to be achieved, we would be critical if allocation of cases between crown advocates and counsel was undertaken purely on a perceived cost effective basis without consideration of the factors of development and individual expertise.
- 11.33 Whilst the CPS does not have any duty to provide any particular level of work to the Bar, nevertheless the Service recognises the need to work with the Bar and use its expertise where appropriate. The CPS needs to be open and transparent as to the cost of cases and nature of savings being made which support the value for money aspects of its advocacy strategy.
- 11.34 The increased overall in-house court coverage and use of associate prosecutors, combined with the increased ability to manage fees through the graduated fee scheme and high cost cases systems, have contributed substantially to the Service's ability to deliver efficiency savings sought by HM Treasury.
- 11.35 It is recognised that the softer benefits of developing these skills and abilities and breadth of work of crown prosecutors provides a more attractive career within the CPS and opportunities for case ownership and accountability, as well as according with most of the criminal justice systems around the world. The Bar itself relies upon internal competition as being a healthy means of driving up standards and eliminating poor performers through non-usage. There is no reason why the use of in-house advocates should be regarded as either wrong in principle or in some way aimed at leading to the destruction of the junior Bar.
- 11.36 In driving forward the advocacy strategy and providing a pool of crown advocates the CPS has found itself with too many crown prosecutors seeking to move through the selection process and, indeed, in some areas there are too many existing crown advocates to provide full value for money. As expertise develops it may be that the so called hybrid crown advocate can more readily mix pre-charge decision-making, case preparation and advocacy. In the early stages, however, very regular Crown Court advocacy of an incremental nature is necessary to develop the appropriate skills. We understand that the CPS is taking action to address this potential surplus of crown advocates in its Prosecutor Structure Project as to its needs and the role of prosecutors. Nevertheless this issue, together with the large pay increases brought about by senior crown prosecutors at the lower end of the scale achieving assimilation to the crown advocate grade, were issues that could and should have been foreseen. These do not affect the individual case savings, but must provide additional overheads which impact on the CPS budget generally. The softer benefits are providing a better career structure and opportunities for both existing staff and recruits from the Bar and these need to be enhanced rather than morale being adversely affected by raised expectations not being fulfilled.

## Conclusions

11.37 From this analysis, we draw the following overarching conclusions:

- The CPS has made considerable progress against its objective of increasing the quantity of court work undertaken by in-house advocates. The Service has now reached a watershed for implementation of the strategy and needs to consolidate this expansion with a change of emphasis from quantity to quality.
- The quality of advocacy, especially in the Crown Court, has been affected by weaknesses in case preparation and progression that have developed as the advocacy strategy has accelerated. The next phase of the strategy needs to ensure that all prosecutors have the right skills to deliver a quality service, whilst ensuring there is enough resource for the other core work to be done.
- The introduction of a quality target is a progressive move but needs underpinning with actions to drive up quality, in particular of trial advocacy in the Crown Court and magistrates' courts. This needs to be addressed through further training, development and improved mentoring and, where appropriate, robust performance management. The Service has to develop the significant proportion of lacklustre advocates to a fully satisfactory level, and to eradicate very poor and less competent advocacy by in-house and external advocates.
- The introduction of advocacy assessors is evidence of the change of approach, although the CPS needs to ensure that when fully operational nationally they capture what is necessary to drive the essential improvements in standards.
- The consolidation of work undertaken in the first phase of the strategy and the new approach to quality will be important. In addition the recently launched Prosecutor Structure Project, must ensure that it addresses the financial consequences of the present pay arrangements and numbers of crown advocates in order that the current strategy remains viable.
- It is reassuring that a more collaborative and less combative approach is beginning to emerge between the CPS, Bar and the judiciary, although this still needs further development.
- It is positive that the CPS recognises a fresh approach is needed and has already taken steps to address some of these issues, with work underway to ensure action is taken to address the recommendations and aspects for improvement highlighted in this report. The proposed strands of work will need to be assessed carefully in the future.

## **ANNEX A: CHRONOLOGY OF CPS ADVOCACY STRATEGY**

June 2004	<p>CPS Board approves the CPS advocacy strategy.</p> <p>HCA pathfinders set up in Hampshire and the Isle of Wight and Hertfordshire.</p>
December 2004	<p>Advocacy strategy programme created. Its aim, over a three year period, is to make the CPS a Service “that routinely conducts its own high quality advocacy in all courts, efficiently and effectively”.</p>
January–February 2005	<p>First series of road shows explaining the strategy.</p>
April 2005	<p>Avon and Somerset crown advocate pathfinder established to test direct recruitment of experienced advocates from the self employed Bar to undertake the full range of non-contested work and short trials.</p>
October 2005	<p>HCA and DCW conferences.</p>
November 2005	<p>Making It Happen roadshows. Attended by CCPs and senior area managers.</p>
January 2006	<p>DCW powers extended allowing them to conduct bail applications and case management hearings (PTRs).</p>
March 2006	<p>First meeting of the CPS Bar Advocacy Liaison Group.</p>
April 2006	<p>Area HCA targets set in five bands - 8%, 12%, 16%, 20% and 24% of total area GFS advocacy value, with the overarching aim of the Service reaching savings equating to 25% of GFS advocacy value by the end of 2010-11. Individual and DCW targets agreed based on capacity. In-house magistrates’ courts’ coverage introduced as a ‘shadow’ target.</p>
October 2006	<p>HCA and DCW conferences.</p>
November 2006	<p>CPS/Bar Advocacy Liaison Group Framework of Principles for Prosecution Advocates in the Crown Court published.</p>
January 2007	<p>CPS London recruits three specialist rape advocates.</p>
February 2007	<p>CCPs attend advocacy seminars in London focusing on implementing the extended strategy.</p> <p>HCA data audits conducted in six areas focusing on data quality.</p> <p>External consultant commissioned to conduct the advocacy equality and impact assessment. Review of HCA selection and training arrangements.</p>

May 2007	Recruitment process for specialist rape advocates in West Yorkshire and Hampshire and the Isle of Wight.
June 2007	Extension of DCW powers introduced as a clause within the Criminal Justice and Immigration Bill.
October 2007	Launch of Sentencing Manual.
November 2007	Protocol for liaison between CPS areas and resident judges issued.  HCA and DCW conferences.  CPS FDA Prosecutor Structure Statement of Principles on selection and training of HCAs circulated.
January 2008	CPS announces that it is working with the Institute of Legal Executives to create a new level of membership for DCWs.
February 2008	Advocacy road shows delivered in London, Bristol, Manchester and Leeds.  Invitation to suitably qualified crown advocates to seek sponsorship for appointment as QC.
March 2008	Findings and actions from the advocacy EIA circulated to all areas.
April 2008	One member of staff receives QC sponsorship.
May 2008	HCA progression framework issued to CPS areas.  Criminal Justice and Immigration Act receives Royal Assent – extension of associate prosecutor powers.  Designated caseworkers renamed associate prosecutors to recognise their achievements and new status.
July 2008	HCA progression framework fully implemented in all CPS areas.  Implementation of extended associate prosecutor powers, allowing them to deal with a wider range of non-contested work in the magistrates' courts.
September 2008	Advocacy assessors pathfinder.

## **ANNEX B: EXPLANATORY NOTE TO ADVOCACY ASSESSMENTS**

### **General principles applied to the advocacy assessments**

All of the advocacy assessments conducted by the inspection team were undertaken by fully qualified legal professionals; either solicitors, barristers or recently retired judges with a wealth of experience conducting criminal proceedings.

Each of the sample areas was carefully chosen to be generally representative of the prosecution landscape in England and Wales as a whole. Notification of the inspection period was given in advance, but no restrictions or set requirements were imposed and the areas were free to choose which advocates would be deployed during the inspection process.

During the active inspection period advocates selected for assessment were chosen at random, applying the following guidance criteria:

- 1 Observations would include both magistrates' courts and Crown Court advocacy also, where possible and appropriate, the youth court would be observed.
- 2 Both in-house prosecutors and agents instructed to prosecute would be assessed.
- 3 The selection of advocates to be seen would be with a view to ensuring that:
  - A spread of work, both contested and non-contested hearings, was observed.
  - An acceptable balance was struck between in-house prosecutors and agents instructed by an area, albeit with the following proviso: in light of the Service's current advocacy strategy and vision particular emphasis was placed upon ensuring that as many of an area's crown advocate cadre were seen as possible.
  - Where an area regularly instructed a particular agent or set of chambers every attempt was made to observe that agent or a member of those chambers.
  - Where time and circumstances permitted the same prosecutor could be observed conducting both trial and non-trial work, be that in either the magistrates' court or Crown Court.
  - Duplication of assessment for the same prosecutor in relation to the same class of advocacy, that is trial and non-trial work, would be kept at a minimum save for in circumstances where an inspector felt that they had not seen sufficient advocacy to form a definitive assessment, in which case a further observation might be carried out by another inspector and a verification score determined.

### **Composition of assessment forms**

Inspectors carrying out an assessment were required to complete an advocacy assessment form in relation to each separate observation exercise, notwithstanding that freehand notes could also be taken in order to assist with compilation. The form comprised two parts, firstly a series of set questions about the advocacy under assessment and, secondly, required the assessor to make a qualitative judgement in relation to the advocacy. The set questions were brigaded into discrete categories reflecting the composition and nature of the advocacy and the assessor was required to provide a discrete score for each relevant category observed. Finally the assessor produced an overall score which fairly reflected the quality of the advocacy observed throughout the whole of the assessment period.

The forms were compiled in real time, in court, by hand. Thereafter those for each area were collated and converted into an electronic database from which the individual and overall assessment values were compiled.

### **Verification of assessments**

Following completion of the on-site phase the database entries were compounded into a combined spreadsheet. The raw data was subjected to a verification process in order to remove anomalous results, some duplication and ensure consistency. The following criteria were applied:

- 1 Where an individual advocate had been assessed more than once those multiple scores would be retained separately as full entries within the database if, and only if:
  - the advocate had been assessed no more than once for each hearing type (trial or non-trial); or
  - they had been assessed no more than once for each venue category (youth, magistrates or Crown Court).

#### *Example*

If advocate A was assessed prosecuting a summary trial on Monday and a magistrates' court remand list on Wednesday then two scores would be retained for them on the database. Similarly if advocate B was assessed prosecuting a jury trial in the Crown Court on Tuesday and a PCMH list on Thursday then they would also have two scores on the database.

If advocate A was also seen prosecuting a CJSSS list in the magistrates' court on Friday the two non-trial assessments (remand and CJSSS lists) would be moderated into a single score.

If, however, advocate C had completed all the advocacy attributed to both advocates A and B in this example advocate C would have a total of four separate scores. One each for the summary trial, jury trial and PCMH and one moderated assessment for the magistrates' court remand and CJSSS hearings.

- 2 Where one or more assessments required verification this was achieved by either:
  - assimilation – where there was no discord between the assessment scores the multiple entries were composited into a single one; or
  - moderation – where there was disparity in the overall scores the assessment notes would be reviewed and a score arrived at which fairly reflected the totality of the advocacy observed on the relevant occasions.
- 3 Only the 'scoring' part of the advocacy assessment, the qualitative judgement contained in the second section of the form, was subject to verification. Multiple entries of the non-qualitative, first section were retained on the database since they remain valid, irrespective of any multiple prosecutor observations.

### **Assessment scoring and values**

Both the questionnaire and scoring sections of the assessment forms were subdivided into eight criteria designed to capture the essential ingredients comprising the national standards of advocacy:

- A Professional ethics
- B Planning and preparation
- C Applying CPS policies

- D Written advocacy
- E The case in court
- F Preparation for trial
- G Trial advocacy
- H The advocate in court

Not all elements were necessarily present to the same degree, or at all, during each observation as certain forensic skills and abilities were either more or less relevant, depending upon the nature of the hearing.

The specific questions asked on the first section of the assessment form provided an option to record one of four possible answers, to be selected as indicated below:

- 1 Yes – where there was evidence to justify a positive answer to the question.
- 2 No – where there was evidence to justify a negative answer to the question.
- 3 Not known – where there was no, or insufficient, evidence to justify either a positive or a negative answer and the advocacy under observation was sufficiently relevant to the question to provide an answer.
- 4 Not applicable – where there was no, or insufficient, evidence to justify either a positive or a negative answer because the advocacy under observation was not sufficiently relevant to the question to provide an answer.

### Compilation of charts and tables

The above evaluations have been taken into account when compiling the tables and charts for the questionnaire section of the assessment form. They have been formulated to reflect the following values:

- 1 Yes – the percentage of Yes returns expressed as a proportion of all Yes, No and Not known answers to a question. Not applicable answers have been excluded from the ratio.
- 2 No – the percentage of No returns expressed as a proportion of all Yes, No and Not known answers to a question. Not applicable answers have been excluded from the ratio.
- 3 Not known – the extent to which the percentage ratios of Yes and No answers may be subject to error.
- 4 Not applicable – the proportion of assessments excluded from the calculation of the ratio between Yes and No. This is, therefore, determinative of the sample size upon which the Yes and No percentages are based. The lower the value the greater the number of assessments included in the Yes and No percentages.

Inspection summary: all areas inspected and assessments undertaken

Area	Dates	Venue	Number of assessments	Number of trials
1 Hampshire and the Isle of Wight	6-11 Oct 2008	Mags/Youth court	22	10
		Crown Court	33	11
2 Greater Manchester	3-14 Nov 2008	Mags/Youth court	16	3
		Crown Court	39	7
3 Hertfordshire	3-14 Nov 2008	Mags/Youth court	14	5
		Crown Court	33	8

Thematic review of the quality of prosecution advocacy and case presentation

4	Humberside	17-28 Nov 2008	Mags/Youth court	19	2
			Crown Court	34	6
5	South Wales	17-28 Nov 2008	Mags/Youth court	16	5
			Crown Court	28	8
6	London	1-12 Dec 2008	Mags/Youth court	26	4
			Crown Court	51	13
7	West Yorkshire	12-23 Jan 2009	Mags/Youth court	31	12
			Crown Court	30	10
8	Avon and Somerset	12-23 Jan 2009	Mags/Youth court	18	6
			Crown Court	14	11

<b>Area</b>	<b>Dates</b>	<b>Venue</b>	<b>Number of assessments</b>	<b>Number of trials</b>
A Total assessments for all areas combined	6 Oct 2008- 23 Jan 2009	Mags/Youth court	162	47
		Crown Court	264	74
B Total scored assessments for all areas combined	6 Oct 2008- 23 Jan 2009	Mags/Youth court	158	44
		Crown Court	249	70
C Total discounted assessments for all areas combined	6 Oct 2008- 23 Jan 2009	Mags/Youth court	4	3
		Crown Court	15	4

## **ANNEX C: SUMMARY OF THE THEMATIC REVIEW OF ADVOCACY AND CASE PRESENTATION, FEBRUARY 2000**

### **Scope of the review**

The review involved 12 CPS offices with interviews across a range of CPS staff and managers and 126 members of the judiciary, local representatives of criminal justice agencies and criminal practitioners. It was based upon observing 190 advocates: 106 advocates in the magistrates' courts, 84 advocates in the Crown Court, 80 counsel and four HCAs.

It did not include DCWs and a greater time observing in court would have brought substantial benefits.

### **Magistrates' courts**

#### *Presentation*

- The majority of the 93 advocates that we saw were perfectly competent – only five failed to reach the required standard.
- We found that the most impressive advocates demonstrated above all an air of authority, of quiet, assured confidence, control and being in command of the proceedings which undoubtedly came from the detailed knowledge they had of their cases, demonstrating clear evidence of thorough preparation.
- We observed and assessed the prosecutor's presentation of the facts in 410 cases in the magistrates' courts. In 396 (96.6%) we considered that the court was given an accurate and fair representation of the facts.

#### *Trials*

- Opening speeches were made in 11 of the 13 summary trials observed but less than half showed evidence of preparation.
- Examination-in-chief was observed in 13 out of 14 trials. It was generally good save for the bad habit of letting police officers read unprompted from their notebooks; failure to match the form of question to the witness and the use of legal jargon; and the handling of young witnesses.
- Cross-examination was weaker than examination-in-chief and evidence of pre-prepared outline was only observed in three out of 11 trials.
- Submissions were dealt with competently.
- Ancillary applications were variable.

#### *Sensitive and aggravated cases*

- Youth cases were satisfactory in all areas.
- Domestic violence was generally treated with sensitivity but the guidance was not always followed.
- Child witnesses were generally treated well.

#### *Agents*

- The CPS were instructing fewer agents than in the past.
- Ten CPS agents were observed and all were considered competent advocates. They tended to be used to prosecute trials rather than lists.
- There was no national agents training material.
- Very little monitoring of agents took place.

## **Crown Court**

### *Presentation*

- Eighty four advocates were observed in the Crown Court: 80 counsel and four HCAs.
- Performance was overall satisfactory but seven advocates were disappointingly poor.
- Problems caused by untidy files were exacerbated by the greater volume of paperwork in the Crown Court and made worse by caseworkers covering more than one courtroom.

### *Plea and direction hearings*

- Prosecution advocates were able to deal sufficiently with the judge's questions in 35 out of 44 (80%) PDH cases observed. The common failing of the hearings to progress cases was felt to be where trial counsel did not attend. In 20% of the cases observed counsel was under prepared for the hearing. Amendments to the indictment were felt to be common at the PDH stage.
- Some areas block booked counsel to attend PDH courts as a value for money measure. Most of the judges to whom we spoke expressed themselves to be happy with the level of preparedness of prosecuting advocates at these hearings.

### *Trials*

- HMCPSP were only able to see a small number of Crown Court trials – those that were observed were handled competently. A number of judges expressed the view that they felt prosecution advocates were often less experienced than their defence counterparts, to the detriment of the case result. The reason for this was put forward to be the result in the disparity between prosecution and defence fees.

### *Bail applications*

- Some members of the judiciary expressed the view that these were handled better by CPS prosecutors than counsel.

### *Higher courts advocates*

- At the time of the inspection only CPS solicitors could gain higher rights. Employed barristers were not admitted into the scheme as no Bar Council agreement had been reached at that stage.
- HCAs were dealing with PDHs, committals for sentence, appeals against conviction and sentence, and bail applications (where higher rights were not required).
- The HCAs spoken to stated they had found their training very demanding, but rewarding.
- The judicial view from all areas visited was supportive of HCAs appearing in the Crown Court especially as they could be used to take decisions on cases there and then without delay.

### *Sensitive and aggravated cases*

- There was a mixed response from the judiciary over whether prosecution advocates were less able than defence in rape and serious sexual assault cases. No rape cases were observed during the inspection.

## **Other headline issues**

- The lack of proper advocacy monitoring both in the magistrates and Crown Court for in-house lawyers, agents and counsel.
- Poor file management, particularly in the Crown Court, and the lack of clear and full endorsements.

- CPS lawyers' lack of familiarity with Crown Court work which impaired the effective contribution to serious casework. There was a lack of ownership of Crown Court decision-making.
- There were failings by other agencies: listing (particularly in the magistrates' courts) which significantly impaired the efficient and effective allocation of prosecutor resources to court presentation work, delivery of late and/or incomplete files by the police, and failures by the police to deal adequately - or at all - with prosecution requests.
- There was scope for increased and more structured advocacy training.
- Greater heed needed to be taken of the need for prosecutors to have sufficient time and facilities to prepare adequately for court.

## **ANNEX D: ANATOMY OF A TRIAL**

The basic components and order of a criminal trial in England and Wales are as follows:

- Jury sworn (Crown Court only).
- Prosecution opening speech.
- Prosecution evidence.
- Defence evidence (including the defendant, although this is not mandatory).
- Prosecution closing speech (Crown Court only).
- Defence closing speech.
- Judge sums up (Crown Court only).
- Jury retires (Crown Court only).
- Verdict.

### **Evidence**

Evidence can be called by both parties and can be in a number of forms:

- Witnesses who give 'live' evidence from the witness box.
  - Evidence-in-chief by the advocate calling the witness (non-leading questions).
  - Cross examination by the opposing advocate (leading questions).
  - Re-examination by the advocate calling the witness (matters arising out of cross examination).
- Evidence of witnesses agreed by both parties, which is read to the court by the advocate calling the evidence.
- Written admissions which are read to the court by the advocate calling the evidence.

Witnesses are able to exhibit other evidence such as documents and items which then become evidence in the case, for example a transcript of the defendant's police interview.

Advocates may not give evidence.

### **Speeches**

Speeches made by advocates to the jury are not evidence; they are oral arguments which the jury may or may not wish to take into account and certain rules apply.

### **Legal argument**

The purpose of legal argument is to obtain a ruling from the judge or bench, generally in relation to law or procedure. Legal argument takes place in the absence of the jury in the Crown Court but can occur at any point in the trial, subject to the discretion of the court.

Submissions are usually made by both parties with the one seeking the ruling going first. Sometimes advocates will submit written skeleton arguments in advance which provide a summary of their points.

In the Crown Court legal submissions often relate to the admissibility of evidence before it is heard by the jury. If the judge needs to hear the evidence or make a finding of fact before deciding the law they can do so in the absence of the jury, according to the normal rules of evidence. This can take the form of a 'mini-trial' in the absence of the jury known as a *voire dire*. In the magistrates' courts such argument usually takes place at the conclusion of the trial, after the evidence has been heard.

At the conclusion of the prosecution case the defence advocate sometimes makes a submission of no case to answer. Again the prosecution advocate has the right to respond. If the defence is successful the case ends in relation to the charge in question. Sometimes this leads to the case ending at this point.

**ANNEX E: NATIONAL CPS ADVOCACY DATA (ALL AREAS)**

<b>Financial year to</b>	<b>March 06</b>	<b>March 07</b>	<b>March 08</b>	<b>March 09</b>
Total HCA sessions covered	15,967	28,375	43,942	56,519
Total HCA hours	75,270	147,138	248,852	316,303
Average HCA hours per session	4.71	5.19	5.66	5.60
Total HCA salary cost	£3,032,701	£6,022,130	£10,545,660	£14,640,020
Total HCA full cost	£3,348,269	£6,649,377	£11,643,599	£16,167,141
Average HCA salary cost per session	£189.94	£212.23	£239.99	£259.03
Counsel fees saved (ex VAT)	£4,720,296	£9,617,949	£17,086,064	£23,615,109
Counsel fees savings net of salary costs	£1,687,594	£3,595,819	£6,540,404	£8,975,089
Counsel fees savings net of full costs	£1,372,027	£2,968,572	£5,442,465	£7,447,968
<b>Number of defendants by hearing type</b>				
Appeal against sentence	1,594	2,100	2,607	2,764
Appeal against conviction	553	917	1,344	1,470
Committal for sentence	7,491	10,283	13,062	14,992
Application or mention	14,830	20,833	25,079	31,308
Plea and case management hearings	13,792	30,036	46,911	57,080
Guilty plea	1,338	2,953	5,076	5,952
Newton hearing	147	373	632	973
Trial (as sole advocate)	845	2,644	5,522	8,401
Trial part-heard (as sole advocate)	227	866	2,153	4,072
Trial (with leader)	110	228	1,150	983
Trial part-heard (with leader)	129	302	1,275	1,991
Trial (leading)	-	-	-	435
Trial part-heard (leading)	-	-	-	761
For sentence/proceeds of crime hearing	5,230	11,734	22,557	32,924
Other	1,140	2,401	4,574	2,935
<b>Total</b>	<b>47,528</b>	<b>85,769</b>	<b>131,995</b>	<b>167,094</b>

## ANNEX F: EXAMPLES OF COMPARATIVE COSTS OF CASES

### Scenario 1: 2 day trial, actual bodily harm

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			417.44
Refresher (1-40 days)	1	136.00	136.00
		<b>Sub total</b>	<b>553.44</b>
		VAT	83.02
		<b>Grand total</b>	<b>636.46</b>

CA hours

Description	CA national
Court hours* claimed	11.67
Prep hours claimed	8.00
<b>Total hours claimed</b>	<b>19.67</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>960.29</b>

### Scenario 2: 5 day trial, serious sexual assault

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			1,496.35
Refresher (1-40 days)	4	146.00	584.00
		<b>Sub total</b>	<b>2,080.35</b>
		VAT	312.05
		<b>Grand total</b>	<b>2,392.40</b>

CA hours

Description	CA national
Court hours* claimed	41.67
Prep hours claimed	13.50
<b>Total hours claimed</b>	<b>55.17</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>2,693.40</b>

### Scenario 3: Cracked trial, possessing a firearm

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			318.32
Refresher (1-40 days)	0	146.00	0
		<b>Sub total</b>	<b>318.32</b>
		VAT	47.75
		<b>Grand total</b>	<b>366.07</b>

CA hours

Description	CA national
Court hours* claimed	3.80
Prep hours claimed	0.50
<b>Total hours claimed</b>	<b>4.30</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>209.93</b>

\* Court hours may include some travel time

**Scenario 4: list of PCMHs, sentences**

Counsel fee savings claimed

Description	Number	Rate	Amount
PCMH	2	100.00	200.00
PCMH (guilty plea)	1	218.58	218.58
Committal for sentence	3	46.50	139.50
Sentence	1	46.50	46.50
Total fee			604.58
		<b>Sub total</b>	<b>604.58</b>
		VAT	90.69
		<b>Grand total</b>	<b>695.27</b>

CA hours

Description	CA national
Court hours* claimed	3.00
Prep hours claimed	3.67
<b>Total hours claimed</b>	<b>6.67</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>325.63</b>

**Scenario 5: SCA acting as a junior in a 3 week murder trial**

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			11,082.41
Refresher (1-40 days)	14	259.00	3,626.00
Conferences	20	10.05	201.00
		<b>Sub total</b>	<b>14,909.41</b>
		VAT	2,236.41
		<b>Grand total</b>	<b>17,145.82</b>

SCA hours

Description	SCA national
Court hours* claimed	80.33
Prep hours claimed	48.00
<b>Total hours claimed</b>	<b>128.33</b>
Average hourly prosecutor cost by grade (SCA)	59.68
<b>SCA cost (based on hours claimed)</b>	<b>7,658.93</b>

**Scenario 6: 2 day trial, grievous bodily harm**

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			545.86
Refresher (1-40 days)	1	136.00	136.00
Tapes	8	10.90	87.20
		<b>Sub total</b>	<b>769.06</b>
		VAT	115.36
		<b>Grand total</b>	<b>884.42</b>

CA hours

Description	CA national
Court hours* claimed	12.00
Prep hours claimed	4.00
<b>Total hours claimed</b>	<b>16.00</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>781.12</b>

\* Court hours may include some travel time

**Scenario 7: 3 day trial, sexual assault of a child**

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			898.31
Refresher (1-40 days)	2	146.00	292.00
Tapes	16	10.90	174.40
		<b>Sub total</b>	1,364.71
		VAT	204.71
		<b>Grand total</b>	<b>1,569.42</b>

CA hours

Description	CA national
Court hours* claimed	13.00
Prep hours claimed	11.00
<b>Total hours claimed</b>	<b>24.00</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>1,171.68</b>

**Scenario 8: 2 day trial, actual bodily harm**

Counsel fee savings claimed

Description	Number	Rate	Amount
Brief and uplift fee			393.00
Refresher (1-40 days)	1	136.00	136.00
Tapes	2	10.90	21.80
		<b>Sub total</b>	550.80
		VAT	82.62
		<b>Grand total</b>	<b>633.42</b>

CA hours

Description	CA national
Court hours* claimed	12.00
Prep hours claimed	6.00
<b>Total hours claimed</b>	<b>18.00</b>
Average hourly prosecutor cost by grade	48.82
<b>CA cost (based on hours claimed)</b>	<b>878.76</b>

\* Court hours may include some travel time

## **ANNEX G: INDIVIDUALS AND LOCAL REPRESENTATIVES OF CRIMINAL JUSTICE ORGANISATIONS WHO ASSISTED IN OUR REVIEW**

### **Crown Court**

His Honour Judge Baker QC, St Albans Crown Court  
His Honour Judge Barnett, Winchester Crown Court  
His Honour Judge Bevan QC, Luton Crown Court  
His Honour Judge Boggis QC, Southampton Crown Court  
His Honour Judge Bright QC, Luton Crown Court  
His Honour Judge Burford QC, Southampton Crown Court  
His Honour Judge Cooke QC, The Recorder of Cardiff  
His Honour Judge Curran, Cardiff Crown Court  
His Honour Judge Diehl QC, Swansea Crown Court  
His Honour Judge Foster, Luton Crown Court  
His Honour Judge Foley, Bristol Crown Court  
His Honour Judge Globe QC, Liverpool Crown Court  
His Honour Judge Gullick, The Recorder of Bradford  
His Honour Judge Gilbert QC, Honorary Recorder of Manchester  
His Honour Judge Hope, Southampton Crown Court  
His Honour Judge Lakin, Manchester Crown Court, Minshull Street  
His Honour Judge MacRae, Croydon Crown Court  
His Honour Judge McKinnon, Croydon Crown Court  
His Honour Judge Mettyear, Honorary Recorder of Hull  
His Honour Judge Morris, Honorary Recorder of Bolton  
His Honour Judge O'Malley, Taunton Crown Court  
His Honour Judge Radford, Snaresbrook Crown Court  
His Honour Judge Ralls QC, Southampton Crown Court  
His Honour Judge Reddihough, Grimsby Crown Court  
His Honour Judge Thorn QC, Hull Crown Court  
His Honour Judge Tremberg, Hull Crown Court  
His Honour Judge Waller, Croydon Crown Court

Mrs S Addison, Crown Court Manager, St Albans Crown Court  
Ms P Bray, Crown Court Manager, Southampton Crown Court  
Mrs K Barker, Crown Court Manager, Taunton Crown Court  
Mrs P Bergin, Crown Court Manager, Manchester Crown Court  
Mr W Ghosh, Crown Court Manager, Winchester Crown Court  
Mrs L Hallam, Crown Court Manager, Grimsby Crown Court  
Mr S Hill, Crown Court Manager, Snaresbrook Crown Court  
Mr I Jordan, Crown Court Manager, Manchester Crown Court (Minshull Street)  
Mr A Marshall, Crown Court Manager, Bradford Crown Court  
Mrs C McKee, Crown Court Manager, Leeds Crown Court  
Mrs E Miller, Crown Court Manager, Portsmouth Crown Court  
Mrs L Vincent, Crown Court Manager, Swansea Crown Court  
Mrs S Wright, Crown Court Manager, Southampton Crown Court

Mrs J Carmichael, Listing Officer, St Albans Crown Court  
Mr A Conboy, Listing Officer, Leeds Crown Court  
Mrs S Connolly, Listing Officer, Snaresbrook Crown Court  
Miss C Herd, Listing Officer, Bolton Crown Court  
Mr G Cousins, Listing Officer, Hull Crown Court  
Mrs A Kenyon, Listing Officer, Bradford Crown Court  
Mrs S Lovesey, Listing Officer, Croydon Crown Court  
Ms L Prince, Listing Officer, Manchester Crown Court (Crown Square)  
Mrs V Watson, Office Manager, Bradford Crown Court  
Ms S Whittaker, Deputy Case Progression Manager, Manchester Crown Court (Crown Square)  
Mrs S Gafney, Case Progression, Snaresbrook Crown Court  
Mrs E Leather, Jury Officer, Bolton Crown Court  
Mr S Heath, Court Clerk, Manchester Crown Court (Crown Square)

### **Magistrates' courts**

District Judge Arnold, Portsmouth Magistrates' Court  
District Judge Comyns, Thames Magistrates' Court  
District Judge Crabtree, Luton Magistrates' Court  
District Judge Curtis, Grimsby Magistrates' Court  
District Judge Dawson, Stratford Magistrates' Court  
District Judge Morgan, Southampton Magistrates' Court  
District Judge Parsons, Bristol Magistrates' Court  
District Judge Read, Thames Magistrates' Court  
District Judge Rose, Thames Magistrates' Court  
District Judge Rutherford, Hull Magistrates' Court

Mr G Brooker JP, Chair of the Bench, Central Hertfordshire  
Mr R Bates JP, Chair of the Bench, East Hertfordshire  
Mrs J Barnes JP, West Hampshire Local Justice  
Mr C Bell JP, New Forest Bench Chair  
Dr C Bird JP, Chair of the Bench, Southampton  
Mr J Crosthwaite-Eyre JP, Southampton Magistrates' Court  
Mrs M Darg JP, Chair of the Bench, North Somerset Magistrates' Court  
Mrs M Grundy JP, Deputy Chairman, West Hertfordshire  
Ms M Heller JP, West Hampshire Local Justice  
Mrs M Hill JP, Deputy Chair of the Bench, Southampton  
Mr R Kingdom JP, Beverley Magistrates' Court  
Mr R Macey JP, Chair of the Bench, Taunton Magistrates' Court  
Mr R McCarthy JP, Deputy Chairman, West Hertfordshire  
Mrs C Morris JP, Beverley Magistrates' Court  
Mr P Palfrey JP, Bench Chair for West Hertfordshire  
Mr L Sharman JP, Chair of the Bench, East Hertfordshire  
Mr A Turnbull JP, Chair of the Bench, Bath Magistrates' Court  
Mr C Vertigans JP, Beverley Magistrates' Court

Mrs K Allister, Listing Officer, North & East Hertfordshire, HMCS  
Ms C Baldock, Listing Officer, Watford Magistrates' Court  
Mrs S Gadd, Bench Legal Manager, North & East Hertfordshire, HMCS  
Ms J Hardy, Court Manager, Manchester City Magistrates' Court

Mrs Y Mckenna-Young, Lead Court Manager, North & East Hertfordshire, HMCS  
Miss K Wicks, Court Manager, North & East Hertfordshire, HMCS  
Mr J Black, Clerk to the Justices, Portsmouth Magistrates' Court  
Mr P Fellingham, Clerk to the Justices, North & East Hertfordshire, HMCS  
Ms C Murray, Deputy Clerk to the Justices, Southampton Magistrates' Court  
Mr P Sherlock, Clerk to the Justices, Bradford Magistrates' Court  
Ms J Ershad, Legal Adviser, Thames Magistrates' Court  
Mrs A Bate, Progression Officer, North & East Hertfordshire, HMCS  
Mrs S Burnett, Court Support Manager, North & East Hertfordshire, HMCS  
Mrs N Alexander, Court Support Manager, North & East Hertfordshire, HMCS  
Mrs T Cruse, Court Support Manager, North & East Hertfordshire, HMCS  
Ms H Jones, Court Support Manager, North & East Hertfordshire, HMCS  
Ms R Sharp, Legal Adviser, Beverley Magistrates' Court

**Circuits of England and Wales/Criminal Bar Association/Bar Council**

Mr W Roddick QC, Leader of the Wales and Chester Circuit  
Mr S Bourne-Arton QC, Leader of the North East Circuit  
Mr D Spens QC, Leader of South Eastern Circuit  
Mr R Tolson QC, Leader of the Western Circuit

Mr T Little  
Mr P Lodder QC  
Miss S O'Neill QC  
Ms S Perry

**Witness Service**

Mr K Andrews, Witness Service Manager, Grimsby Crown Court  
Mr C Atkins, Witness Service Manager, Hull Magistrates' Court  
Mr B Belstone, Witness Service Manager, Portsmouth Crown Court  
Mrs J Dean, Witness Service Manager, Barry Magistrates' Court  
Miss S Ellis, Witness Service Manager, Snaresbrook Crown Court  
Ms J Hart, Witness Service Manager, Leeds Crown Court  
Mrs J Hattersley, Leeds Magistrates' Court  
Mr B Howe, Witness Service Manager, Hull Crown Court  
Mr T Holmes, Witness Service Manager, Grimsby Magistrates' Court  
Ms K James, Witness Service Manager, Manchester Crown Court (Crown Square)  
Mrs J Jones, Witness Service Manager, Cardiff Crown Court  
Ms M Luke, Leeds Magistrates' Court  
Mr B Mills, Witness Service Manager, Manchester City Magistrates' Court  
Ms S Mills, Witness Service Manager, Bolton Crown Court  
Mrs R Murray, Witness Service Manager, Manchester Crown Court (Minshull Street)  
Mrs F de Pencier, Witness Service Manager, St Albans Crown Court  
Mrs L Somersall, Witness Service Manager, Croydon Crown Court  
Ms S Van Den Bos, Witness Service Manager, Scunthorpe Magistrates' Court

**Victim Support**

Mrs S Lloyd, Victim Support, Avondale, Bristol

## **ANNEX H: THE INSPECTION TEAM**

### **HMCPST**

Stephen Wooler, HM Chief Inspector  
Jerry Hyde, HM Deputy Chief Inspector  
Di Hurlley, HM Inspector (legal)  
Tony Barnard, HM Inspector (legal)  
Katey Rushmore, HM Inspector (legal)  
John Sheehan, HM Inspector (legal)  
Derek Gibbs, HM Inspector (business management)  
Deborah King, temporary HM Assistant Inspector (business management)  
Stephanie McMullan, HM Assistant Inspector (business management)  
James Morton, HM Assistant Inspector (business management)  
Julie Walker, HM Assistant Inspector (business management)

### **Associate inspectors**

His Honour Richard Cole DL  
His Honour Trevor Kent-Jones  
His Honour Ian McKintosh  
His Honour John Samuels  
Tracy Easton, Chief Crown Prosecutor, CPS Devon and Cornwall  
Charles Ingham, Chief Crown Prosecutor, CPS Hertfordshire  
Martin McKay-Smith, crown advocate, CPS Greater Manchester  
Mike Stephenson, crown advocate, CPS Merseyside

### **Reference group**

Stephen Wooler, HM Chief Inspector  
Jerry Hyde, HM Deputy Chief Inspector  
Di Hurlley, HM Inspector (legal)  
Derek Gibbs, HM Inspector (business management)  
  
The Honourable Mr Justice Calvert-Smith, Presiding Judge of the South Eastern Circuit  
His Honour Judge Goymer, Southwark Crown Court  
Charles Ingham, Chief Crown Prosecutor, CPS Hertfordshire  
Ian Kelcey, solicitor, Chair of the Law Society's Criminal Law Committee  
Joanna Korner, QC  
Sue Patten, Director, Criminal Law, Attorney General's Office  
Tanya Woolls, principal crown advocate, CPS

## ANNEX I: GLOSSARY

### **Achieving best evidence in criminal proceedings**

Good practice guidance on interviewing witnesses and using special measures in order to enable them to give their best evidence in criminal proceedings.

### **Advocacy Liaison Group**

The joint committee in which the CPS and self employed Bar raise matters of concern and mutual interest affecting advocacy in the Crown Court including training, service delivery and agreement of good practice.

### **Advocacy quality management strategy**

The developing strategy for improving advocacy quality, including enhanced advocacy monitoring and the implementation of a quality target.

### **Advocacy strategy**

The documented CPS strategy, formally implemented in 2004, for increased use of in-house lawyers in the crown court and associate prosecutors in the magistrates' courts.

### **Advocacy Training Council**

The only standing pan-Bar committee, pursuing and promoting excellence in advocacy by providing advice, support and encouragement to the four Inns of Court, Circuits and the specialist Bar Associations.

### **Agent prosecutor**

Solicitor or counsel not directly employed, but instructed by, the CPS as an advocate to represent the prosecution in the magistrates' courts or Crown Court.

### **Archbold: Criminal Pleadings and Practice**

The standard text used by practitioners and the judiciary in relation to law and procedure in the Crown Court. Blackstones Criminal Practice is the main alternative text.

### **Associate prosecutor**

Formerly known as *designated caseworkers*. In-house associate prosecutors are not qualified solicitors or barristers, but they have received training to enable them to present cases within their limited rights of audience in the magistrates' courts. These rights were extended in 2008 to cover most types of non-trial hearing, including committals and applications for remand in custody. In January 2009 they were extended again to cover a limited range of contested trial work, which has been the subject of a pathfinder project in some CPS areas.

### **Bar Standards Board**

Established in January 2006 this is the independent regulatory board of the Bar Council, responsible for regulating barristers in England and Wales. The equivalent body for solicitors is the *Solicitors' Regulation Authority*.

### **Bar vocational course**

The mandatory post graduate course which precedes call to the Bar. Also known as Bar school, the course is the second stage of legal education for the Bar. As such it is the vocational stage of training; the first is the academic stage (law or non-law degree followed by the common professional examination) and the third is the practical stage, known as pupillage.

### **Case progression framework**

The adult criminal case management framework is the guide relating to case progression in the magistrates' courts and Crown Court. It is based upon the criminal procedure rules.

### **Casework quality assurance**

The system by which CPS managers assess the quality of casework. Data is accumulated and analysed centrally to identify trends.

### **Circuits of England and Wales**

England and Wales is divided into six regions (South Eastern, Western, Wales and Chester, Northern, North Eastern, and Midland) known as Circuits, for the administration of justice. They form the basis for administration of the Bar providing services to members, including representation at the Bar Council through the Circuit Leader, a nominated barrister.

### **Code of Practice for Victims of Crime**

Published in October 2005 the Code sets out the services victims can expect to receive from the criminal justice system.

### **Court user group**

Meetings of practitioners and other agencies who regularly use a court house. Membership and constitution differs from court to court.

### **CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court (CPS/Bar Framework)**

Owned by the *Advocacy Liaison Group* and endorsed by the Attorney General, the framework is a high level view of the respective objectives of the CPS and the self employed Bar in relation to Crown Court advocacy and the standards expected of both, which are summarised in 11 key principles.

### **CPS/Bar Liaison Group**

Also known as the *Advocacy Liaison Group*.

### **Cracked trial**

On the trial date the defendant offers acceptable pleas or the prosecution offers no evidence before any live evidence is actually heard in court. A cracked trial requires no further trial time.

### **Crown advocate**

Crown advocates, previously known as *higher courts advocates (HCAs)*, are the in-house CPS lawyers who are entitled by professional qualification and CPS designation to appear in the Crown Court.

### **Crown prosecutor**

The generic term for qualified lawyers in the CPS. Also the entry grade for such lawyers who will normally progress to become senior crown prosecutors. Entitled to represent the CPS in the magistrates' courts in all types of case and the Crown Court in a limited number of circumstances.

### **Criminal Justice: Simple, Speedy, Summary (CJSSS)**

Initiative introducing more efficient ways of working by all parts of the criminal justice system, together with the judiciary, so that cases brought to the magistrates' courts are dealt with faster. In particular it aims to reduce the number of hearings in a case and the time from charge to case completion.

### **Crown Court**

The Crown Court is based at 77 centres across England and Wales. It deals with the more serious criminal cases and appeals from the magistrates' courts.

### **Designated caseworker (DCW)**

Now known as an *associate prosecutor*.

### **Discontinued and dropped cases**

The dropping of a case by the CPS in the magistrates' courts or Crown Court without any evidence being called whether by written notice, withdrawal or offering of no evidence at court.

### **Graduated fee scheme (GFS)**

The system by which barristers are paid for representing the CPS in all but the most complex cases in the Crown Court.

### **HM Courts Service**

An executive agency of the Ministry of Justice. Provides administrative support for the courts including the magistrates and Crown Court.

### **Higher courts advocate (HCA)**

Now known as *crown advocate*.

### **Higher rights of audience**

A lawyer with the technical right to appear in the higher courts, which includes the Crown Court and Court of Appeal (Criminal Division). The right is conferred by the *Bar Standards Board* for barristers and *Solicitors Regulatory Authority* for solicitors. Once granted higher rights CPS lawyers must be designated crown advocate in order to appear regularly in the Crown Court.

### **Inns of Court**

All barristers are members of one of the four Inns of Court in London. The Inns alone have the power to call a student to the Bar. They provide educational support and have a role in administering the disciplinary tribunals to deal with the more serious complaints against barristers.

### **Institute of Legal Executives**

The professional body which represents trainee and practising legal executives. Regulates associate prosecutors, although they are not full members.

### **Intimidated witnesses**

See *vulnerable or intimidated witnesses*.

### **Law Society**

The representative body for solicitors, equivalent to the Bar Council for barristers. Lost its regulatory role to the *Solicitors' Regulatory Authority* in 2006.

### **Legal Services Commission**

Runs the Legal Aid scheme in England and Wales and remunerates solicitors and assigned counsel for work done under the scheme. Does not represent lawyers.

### **Magistrates' courts**

Virtually all criminal cases start in the magistrates' courts and 95% are dealt with entirely there. The defendant facing more serious charges may be sent or committed to the Crown Court on the direction of the court or because the defendant elects Crown Court trial (in either way cases). If a defendant appeals against a decision of the magistrates this will be heard in the Crown Court. Decisions are made either by a District Judge or a bench of lay magistrates.

### **MG3**

A charging report form initially completed by the police to request a charging decision, then completed by the CPS prosecutor to record the decision or other investigative advice.

### **Modernisation Fund**

External funding available for modernisation projects, such as the advocacy pathfinder project.

### **Newton hearing**

Trial of fact to ascertain the level of guilt following entry of a guilty plea. The normal rules of evidence apply. In the Crown Court the judge tries the case without a jury.

### **No case to answer**

The court has a duty to consider whether, at its conclusion, the prosecution case is strong enough for the trial to proceed. A defence submission of no case to answer should be allowed when there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury properly directed could convict. If for example an essential element of the offence is missing or the prosecution case has been so undermined by cross-examination that no tribunal properly directed could convict, then there is said to be no case to answer and the jury (or bench) is directed to enter a verdict of not guilty.

### **Offences taken into consideration**

The defendant may ask the court to take into account one or more other offences to which they have admitted (by signing a schedule) when passing sentence against them in relation to another offence for which they have been formally convicted. The sentence must then take into consideration those other offences and it is not generally open to the Crown to take subsequent criminal proceedings against the defendant in relation to them. This is colloquially known as a 'clear up'.

### **Optimum business model (OBM)**

The magistrates' courts' case progression system piloted and implemented nationally by the CPS in 2008. It involves the transfer of responsibility for individual cases from individual staff members to a team with rolling membership. Each member performs set functions.

### **Paralegal Review**

As recommended by the 2007 Capability Review of the CPS by the Cabinet Office, the review of the role of its legal support staff was conducted by the CPS in 2008. The roles have been redefined which will impact on the availability and grade of those providing support available to advocates in the Crown Court.

### **Pathfinder pilots**

Eight CPS areas were designated pathfinder pilot areas in late 2008. This involved the allocation of central funding for advocacy monitoring and other projects, including the training of associate prosecutors to conduct summary trials under their extended powers.

### **Plea and case management hearing (PCMH)**

A PCMH takes place in every Crown Court case and is often the first hearing in that court after committal or sending in indictable only cases. Its purpose is twofold: to take a plea from the defendant and to ensure that all necessary steps have been taken in preparation for trial or sentence and that sufficient information has been provided for a trial date or sentencing hearing to be arranged.

### **Pre-sentence report**

A report prepared by the probation service for adults and youth offending team for youths to provide the sentencing court with relevant background information on the offender and recommendation(s) in relation to sentencing options.

### **Principal crown advocate**

A level 4 crown advocate who is able and authorised to represent (and lead for) the Crown in the most serious and complex cases, save those where Queen's Counsel is instructed.

### **Prosecutor's Pledge**

The policy that governs prosecutors' duty to take account of the needs and wishes of the victim. For example this includes informing the victim when a guilty plea to a lesser offence has been accepted and consulting with the victim on this when practicable.

### **Quarterly performance review**

A documented review of CPS area performance against key performance indicators, which sometimes includes a meeting between the CCP and DPP.

### **Revenue and Customs Prosecutions Office**

Independent government department which prosecutes cases in England and Wales investigated by HM Revenue and Customs and some by the Serious and Organised Crime Agency. It is due to merge with the CPS in 2010.

### **Senior crown advocate**

A level 4 crown advocate who is able and authorised to represent (and lead for) the Crown in the more serious and complex cases, save those where a principle crown advocate or Queen's Counsel is instructed.

### **Senior crown prosecutor**

The grade above crown prosecutor. Entitled to represent the CPS in the magistrates' courts in all types of case and the Crown Court in a limited number of circumstances.

### **Solicitors Regulation Authority**

A statutory body created out of the *Law Society* in 2006 to provide independent regulation of solicitors in England and Wales.

### **Spending Review 2004**

The annual government review of public spending in 2004.

### **Standard for Communications between Victims, Witnesses and the Prosecution Advocate**

A joint CPS/Bar document setting out the expectations for prosecution advocates in relation to communicating with victims and prosecution witnesses, including the duty to consult and liaise at every stage of the process.

### **Statutory charging**

The regime and system by which the CPS provides pre-charge decisions to the police under section 37(A), Police and Criminal Evidence Act 1984.

### **Streamlined process**

The process by which a limited number of documents, including key statements, is provided to the CPS by the police at the beginning of a prosecution which is deemed likely to end in a guilty plea in the magistrates' court.

### **Vulnerable or intimidated witnesses**

The Youth and Criminal Evidence Act 1999 defines "vulnerable" witnesses as being children and young people under 17 years of age and those who suffer from a physical or mental incapacity. "Intimidated" witnesses are those who are in fear or distress about giving evidence which may reduce the quality of that evidence – for example victims of sexual offences.

### **Witness Service**

The Witness Service is part of Victim Support and it helps victims, witnesses, their families and friends when attending any of the criminal courts in England and Wales. This includes facilitating pre-trial visits for witnesses, so that they are familiar with the court room and the roles of the various people in court before they give their evidence, support on the day of the trial and accompanying the witness into the court room when they give their evidence and when the offender is sentenced (if agreed by the judge or magistrate). They also provide additional support to vulnerable and intimidated witnesses.



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HM Crown Prosecution Service Inspectorate

London Office:

26 – 28 Old Queen Street

London SW1H 9HP

Tel. 020 7210 1197

Fax. 020 7210 1186

York Office:

United House, Piccadilly

York, North Yorkshire, YO1 9PQ

Tel. 01904 54 5490

Fax. 01904 54 5492

Website:

[www.hmcpai.gov.uk](http://www.hmcpai.gov.uk)

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