



House of Commons  
Justice Committee

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**The Crown Prosecution  
Service: Gatekeeper of the  
Criminal Justice System:  
Government Response to  
the Committee's Ninth  
Report of Session 2008–09**

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**Second Special Report of Session 2009–10**

*Ordered by the House of Commons  
to be printed 12 January 2010*

## The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

### Current membership

Rt Hon Sir Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)  
David Heath MP (*Liberal Democrat, Somerton and Frome*)  
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### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/justicecom](http://www.parliament.uk/justicecom)

### Committee staff

The current staff of the Committee are Fergus Reid (Clerk); Dr Sarah Thatcher (Second Clerk); Gemma Buckland (Committee Specialist); Hannah Stewart (Committee Legal Specialist); Ana Ferreira (Senior Committee Assistant); Sonia Draper (Committee Assistant); Henry Ayi-Hyde (Committee Support Assistant); and Jessica Bridges-Palmer (Committee Media Officer).

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## Special Report

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1. The Justice Committee published its Ninth Report of Session 2008-09, *the Crown Prosecution Service: gatekeeper of the criminal justice system*, on 6th of August 2009 (HC 186).
2. We received a response from the Government on 6th January 2010.
3. We made the following comments about the performance of the Attorney General's Office in this regard in our report of our work in Session 2008-09:

"...we wish to record our dissatisfaction with the timeliness of replies to our reports from the Attorney General's Office. We reported on certain provisions within the draft Constitutional Renewal Bill in June 2008 but did not receive a substantive response until July 2009, more than 12 months later. We recognise that some Government responses to select committee reports are sensibly deferred if they relate to major initiatives or proposals which are being finalised within a reasonable timeframe. However, in this instance we see no case for delaying a substantive response for over a year.

As an isolated incident this might not have drawn comment but our concerns have been exacerbated by another delay; this time in the Attorney General's response to our report on the work of the Crown Prosecution Service, published in August 2009, to which a reply was not received until 6 January 2010. Moreover, in the intervening period the Attorney General asked us to hold a pre-appointment hearing for a new HM Chief Inspector of the CPS, a task we are prevented from undertaking as effectively as we would wish without the Government's response to our report in this area. The absence of a Government response also reduces the value of debate on a report in the Chamber or Westminster Hall and makes it more difficult to secure time on the floor of the House to follow-up these important issues. The Attorney General should bear in mind that, by long-standing convention, government departments have agreed that replies to select committee reports should be made within two months of publication. The performance of the Attorney General's Office in replying to our reports has been poor and has hindered our work."<sup>1</sup>

4. We welcome the thorough response we have now received from the Government to our conclusions and recommendations on the Crown Prosecution Service. That response, and a letter from the Solicitor General relating to its submission, are appended below.

## Appendix 1

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### Letter to the Chairman of the Committee from the Solicitor General

I am writing to you, in the Attorney General's absence abroad, to send you the Government's Response to the Committee's report on the CPS, "The CPS; Gatekeeper of the Criminal Justice System".

As the Attorney General said when she wrote to you in November to explain why our Response was delayed, we very much welcomed the thoughtful and comprehensive nature of your Inquiry. Like you, we believe that the prosecutor plays a pivotal (and often under acknowledged) role in the Criminal Justice System and has, potentially, a greater role to play in the future.

Whilst I very much regret that it was not possible to send the Response to you before now, I hope that you will agree that the document reflects a substantial number of very recent developments. In consequence, an earlier version would have been incomplete and therefore potentially misleading. My officials have sought to keep the Committee informed during this time.

The Attorney General, the Director of Public Prosecutions and I share a commitment to the delivery of consistent and high quality prosecution services to the public, and are proud of the improvements which have been made to date. There remain a number of challenges to the CPS, and to the delivery of effective prosecution services as a whole. The Committee's careful consideration is of value to the Government and to the services themselves as they continue to enhance their performance.

*Vera Baird QC MP*  
*Solicitor General*

*5 January 2010*

## Appendix 2

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### Government response to the Justice Committee Report: The Crown Prosecution Service: gatekeeper of the criminal justice system

The Government very much welcomes the Justice Select Committee's Report: *The Crown Prosecution Service: Gatekeeper of the Criminal Justice System*<sup>2</sup> and is very grateful to the Committee and all those who gave evidence to the Committee. The Committee's findings about the increasing importance and wider contribution of the prosecutors to the delivery of criminal justice are in step with our strategy to deliver much more effective, outward-facing, responsive public prosecution services, which is being led by the Attorney General and the Directors of the prosecuting departments.

There were some key developments in this direction during the course of the Committee's inquiry:

- the decision in April 2009 to merge the CPS with the Revenue and Customs Prosecutions Office to create a more flexible and resilient service, better placed to deal with serious organised crime;
- a revised Prosecutors Convention, signed by 16 prosecuting authorities in April 2009<sup>3</sup>;
- Attorney General's Guidance on Plea Discussions in Cases of Serious or Complex Fraud in March 2009<sup>4</sup>;
- the launch of a community prosecutor approach;
- joint CJS inspectorates' thematic reports on Statutory Charging<sup>5</sup> and on victims and witnesses<sup>6</sup>
- publication of a report on the CPS' progress in implementing its Capability Review<sup>7</sup>
- publication of a Protocol setting out the relationship between the Attorney General and prosecuting departments to safeguard independence and ensure accountability, in July 2009<sup>8</sup>; and
- the publication in July 2009 by the Director of Public Prosecutions (DPP) of *Setting the Standard: a new vision for the delivery of a public prosecution service.*<sup>9</sup>

And since the publication of the Committee's report there have been further developments:

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2 House of Commons Justice Committee, *The Crown Prosecution Service: Gatekeeper of the Criminal Justice System* Ninth Report of Session 2008–09

3 Prosecutors' Convention, April 2009

4 Attorney General's Guidelines on Plea Discussions in cases of serious or complex fraud, issued 18th March 2009

5 Criminal Justice Joint Inspection (HMCPSI, HMIC), *The joint thematic review of the new charging arrangements*, November 2008

6 Criminal Justice Joint Inspection, *Report of a Joint Thematic Review - Victim And Witness Experiences In The Criminal Justice System*, May 2009

7 Cabinet Office Civil Service Capability Reviews *Crown Prosecution Service: Progress and next steps* July 2009

8 Protocol between the Attorney General and the Prosecuting Departments, July 2009.

9 *The Public Prosecution Service – Setting the Standard*, July 2009

- revised Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's role in Sentencing
- an HMCPSI review of the quality of advocacy<sup>10</sup>
- a public consultation on the Code for Crown Prosecutors, with a closing date of 11 January<sup>11</sup>
- announcement of progress with the Modernising Charging programme, including a decision to expand the CPS model to a 24/7 national service and to pilot a redefinition of which offences the police can charge without reference to the CPS
- publication by the DPP for comments of draft Core Quality Standards, to apply to key areas of prosecution services from April 2010;<sup>12</sup>
- in November 2009, publication by the DPP of a Statement of Ethical Principles that underpin and guide the work of public prosecutors;
- a peer review of HMCPSI ;
- publication of a report by the Victims Champion, Sara Payne<sup>13</sup>; and
- a Government announcement of a review of out of court disposals..

The Attorney General and the DPP share a commitment to the delivery of consistent and high quality prosecutions services to the public, and are proud of the improvements which have been made to date. There remain a number of challenges to the CPS, and to the delivery of effective prosecution services as a whole, and the Committee's careful consideration is of value to the Government and to the services themselves as they continue to enhance their performance.

## Response to the recommendations and conclusions of the Committee

### *Recommendation 1:*

**The prosecution plays a pivotal role in the criminal justice system. This role has become too important to continue to be vulnerable to piecemeal amendment in response to events. We expect the Attorney General and the Director of Public Prosecutions to show clear leadership in defining the role of the prosecutor in the criminal justice system. Specific changes to the operation of the prosecution system should be made in the light of an awareness of how they affect and contribute to this clear role and to the criminal justice system as a whole. (Paragraph 7)**

### *Recommendation 2:*

**The aims and purposes of the Crown Prosecution Service need to be clear and it also needs to be clear how they relate to the overarching aims and purposes of the criminal justice system as a whole. We fear that the Crown Prosecution Service is sometimes defined by what it is not or by its relationship to other organisations,**

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10 HMCPSI Report of the thematic review of the quality of prosecution advocacy and case presentation, July 2009

11 CPS The Code for Crown Prosecutors: A Consultation Document, October 2009

12 CPS Core Quality Standards, issued by the Director of Public Prosecution, November 2009

13 'Redefining Justice', the report of the Victims' Champion, Sara Payne, December 2009

**rather than its own aims and purposes, of by clarity about its role within the criminal justice system. (Paragraph 8)**

The Government welcomes and accepts these recommendations. The Government's vision for the Criminal Justice System (CJS) and key strategies for reforming the delivery of justice were set out in the Criminal Justice Strategic Plan (2008-11)<sup>14</sup>. The CJS is responsible for the Justice for All Public Service Agreement (PSA 24) and contributes to and supports the Make Communities Safer PSA (PSA 23) which puts local needs at the heart of the CJS and commits the Government to reducing crime and re-offending.

The CPS' principal Departmental Strategic Objective is:

To bring offenders to justice, improve services to victims and witnesses and promote confidence, by applying the Code for Crown Prosecutors<sup>15</sup>, adopting a proportionate approach to determine which offenders should be charged and which should be diverted from court, and by firm and fair presentation of cases in court

To support this objective, prosecutors undertake a wider set of functions now than in the past:

- engaging with communities to inform their work and address their concerns;
- advising and assisting the police and other investigators pre-charge;
- addressing offending and using out of court disposals where appropriate;
- deciding the charge in all but the most routine cases;
- taking the view of victims into account;
- taking decisions independently;
- recovering assets from criminals;
- ensuring that witnesses are able to give their best evidence;
- presenting their own cases in court; and
- helping the court to pass an appropriate sentence.

This wider, outward-facing role ensures that prosecutors lead and add value to the governing structures of the criminal justice system. The Attorney General chairs the Law Officers' Departments' Strategic Board involving the Directors, which oversees strategic direction, improved practice and value for money. There is close collaboration between the Attorney General's Office (AGO), the Ministry of Justice and the Home Office via the trilateral Office for Criminal Justice Reform (OCJR). The CPS plays a pro active role in identifying issues and solutions, bringing a valuable combination of the strategic and the practitioner's view to the table. The Attorney General and DPP are members of the National Criminal Justice Board (NCJB), which oversees the overall operation of the criminal justice system in England and Wales, and which works with the 42 Local Criminal Justice Boards (LCJBs), which include Chief Crown Prosecutors and other senior prosecutors. Through the structure of the NCJB and LCJBs, the CPS works with its

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14 The CJ System Strategic Plan (2008 – 2011) a local say in delivering justice. HMSO Cm 7247

15 CPS The Code for Crown Prosecutors, 2004

partners to agree and implement joint actions to address key criminal justice issues, such as public confidence and victim and witness care, in support of PSAs 23 and 24.

The family of prosecutors is wider than those directly superintended by the Attorney General, which are the CPS/RCPO and the Serious Fraud Office. It includes all Government Legal Service (GLS) prosecutors over whom the Attorney General has oversight. There are increasingly close links across all those prosecutors centred on the Whitehall Prosecutors Group particularly in sharing common guidance and best practice on the Government Legal Service's LION website. There are also non-Government prosecutors such as the Financial Services Authority.

The AGO is seeking to forge greater links between these prosecutors, the CPS and other CJS agencies, and the Law Officers meet regularly with GLS and non-Government prosecutors to discuss current issues and identify key themes and lessons learned.

### *Recommendation 3:*

**The CPS needs to take a bold and robust approach as the independent prosecutor. Part of that role is challenging the police to do better. The CPS is not a minor partner in the criminal justice system. (Paragraph 30)**

The Government agrees that the CPS is a leading partner in the criminal justice system, playing a pivotal part in major criminal justice initiatives as well as in day to day delivery of effective justice services.

The Government recognises that challenging and assisting the police and other investigators to do better is an essential element of the independent prosecutor's role. This has always been a fundamental part of the Prosecution Team ethos, whereby the police and CPS work closely together to ensure successful prosecutions. In 2005, the police and CPS jointly implemented Prosecution Team Performance Management (PTPM), which provides a suite of measurements which can be used to track local performance. This supports discussions between the police and CPS locally and enables remedial action to be identified and undertaken to improve local performance.

The CPS has now issued for consultation a set of publicly facing Core Quality Standards which cover the major aspects of the prosecutor's work: from protecting the public to advising investigators; through to defining the standards of the service in respect of every aspect of the prosecutor's role in court; and from supporting victims and witnesses to dealing with complaints. The standards will be supported by a set of minimum service delivery requirements so that the public will be able to assess if prosecutors are achieving the core standards. The standards will be underpinned by the Statement of Ethical Values recently published by the DPP. The statement was drawn up in discussion with the Bar, the Law Society and the Institute of Legal Executives and is consistent with the Codes of Conduct of professional regulators. It lays down the standards of conduct and practice expected of every prosecutor.

As part of the assessment work, the CPS and the police are developing a set of joint service standards that will govern the provision of Statutory Charging. A jointly agreed standard will ensure that both the police and prosecutors will be aware of the standards required of them to provide a high quality, timely and effective charging decision and case file, and they will be able to challenge each other if the standard is not achieved.

#### *Recommendation 4:*

**There is much to commend in the collaborative approach being taken by the police and the CPS, which helps to raise overall standards through understanding the challenges and expertise of other agencies. While such arrangements are working well we do not see the need for the CPS to have powers such as those of the Procurator Fiscal to direct the police. The debate about whether the CPS should have such powers has to be seen in the light of increasing development of joined up working between the police and the CPS at earlier stages of an investigation. In theory this could raise a question over the way in which the CPS will be expected—at a later stage—to make an independent decision about whether or not to prosecute but in practice it seems better to have that relationship throughout an investigation as long as both sides are clear that joint working must not blur the distinction between the police responsibility to investigate, and the CPS responsibility to take the decision about prosecution and to manage any subsequent process. Oversight of this relationship is clearly a matter for the inspection and scrutiny processes. (Paragraph 31)**

#### *Recommendation 5:*

**We heard strong support on grounds of principle for the charging decision to rest with the prosecutor. We also heard concerns that the arrangements for statutory charging had resulted in delays. Nevertheless, these considerations did not lead us to a conclusion that statutory charging should be wholly or partly abandoned. There is clearly willingness on behalf of the CPS and the police to resolve what are significant practical problems. (Paragraph 32)**

#### *Recommendation 6:*

**CPS Direct provides a telephone and IT based "remote" service, which appears to be well regarded by its users and we hope that it can contribute to the consistency and ease of access to legal advice provided for the police. However, this service should not be assumed to be a substitute for local engagement and should operate within the context of a good working relationship and mutual understanding between the police and the CPS at a local level. (Paragraph 33)**

The Government welcomes the Committee's careful reflections on the current Statutory Charging arrangements and the Committee's observations on the success of CPS Direct.

The introduction of Statutory Charging has led to significant benefits, including:

- a substantial increase in the volume of Crown Court and more serious either-way magistrates court cases charged and convicted
- an increase in the guilty plea rate
- a reduction in the discontinuance rate; and
- a reduction in the number of cases resulting in a decision to take No Further Action.

Statutory charging has been a catalyst for an effective partnership between the police and the CPS and has led to the development of the Prosecution Team ethos. The relationship between the investigator and the prosecutor has matured into a close, robust and professional one that is an increasingly important aspect of justice.

Recent reports, particularly the HMIC/HMCPSI *Joint Thematic Review of the New Charging Arrangements*<sup>16</sup> have acknowledged these improvements, whilst also making a number of recommendations to improve investigators' access to prosecutors, to speed up the decision making process and to reduce the number of bail-backs. HMCPSI also reported on the strength of the out of hours charging service provided by CPS Direct.

In 2008-09 CPS and the Association of Chief Police Officers (ACPO) through the National Prosecution Team introduced a joint programme of work called "Modernising Charging" which has tested a number of models for improving the way the system works.

Based on the work so far, the CPS and ACPO recently announced that the CPS Direct model will now be expanded to deliver a 24/7 national service whereby investigators can obtain instant access by phone to charging advice from prosecutors, for the less complex cases. This will free up resources to make it quicker and easier for investigators to secure face-to-face advice for the more complex cases, within the kind of enhanced local relationships commended by the Committee.

The CPS and ACPO are developing new national joint charging measures and service standards, which will complement the Core Quality Standards; and will work together on enhanced IT capability. Additionally, they have agreed to test the return of certain less complex categories of offence to the police to charge. This will be done during 2010 in a limited number of pilot sites, and carefully evaluated.

#### *Recommendation 7:*

**The decision as to what offence an individual is charged with is pivotal, with significant implications for the rest of their journey through the criminal justice system. It also goes to the heart of what that system is trying to achieve; we are not trying to maximise conviction rates, we are trying to maximise convictions of guilty people for the crime they have committed. While perceptions of both under- and over-charging may be inevitable, they are nonetheless damaging to public confidence. The Attorney General should consider what evidence is required to monitor the extent of under- and over-charging, and how this data could be best collected. (Paragraph 44)**

#### *Recommendation 8:*

**An effective and ongoing evaluation of the extent to which under- and over-charging happens is important not least because of what it tells us about whether plea bargaining is happening. Expanding the use of plea bargaining would have significant consequences and in our opinion needs the utmost care and consideration. We must not drift towards a situation where it is commonplace without discussing whether it is desirable and, if so, what safeguards must be put in place for defendants, victims and the public. (Paragraph 45)**

The Government agrees with the Committee that it is important to have safeguards in the system to prevent under-charging or over-charging and believes there are significant such safeguards in place.

The Government understands the term "plea bargaining" to describe a formal, regulated process that exists, most notably, in the United States, permitting the prosecutor and the

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<sup>16</sup> Criminal Justice Joint Inspection (HMCPSI, HMIC), The joint thematic review of the new charging arrangements, November 2008

defence to reach an agreement on the charges to which the defendant will plead guilty, together with a recommendation to the court as to the appropriate sentence or sentencing range. With the very limited exception of plea discussions in serious fraud cases, which are covered by the Attorney General's Guidelines on Plea Discussions in Cases of Serious or Complex Fraud (May 2009), an analogous process does not exist in England and Wales. However, prosecutors do have the discretion to discuss the level of charge with the defence, and alter the charge if appropriate, subject to the proper application of the Code for Crown Prosecutors.

Section 7 of the current Code for Crown Prosecutors states that prosecutors should select charges which reflect the seriousness and extent of the offending, give the court adequate powers to sentence and impose post-conviction orders, and enable the case to be presented in a clear and simple way. It goes on to say that "this means that Crown Prosecutors may not always choose or continue with the most serious charge where there is a choice". Paragraph 7.2 makes it clear that prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never proceed with a more serious charge in order to encourage a defendant to plead guilty to a less serious one.

In addition, section 10 of the Code for Crown Prosecutors, and the Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in Sentencing give prosecutors clear guidance on the exercise of their functions. These Guidelines were recently revised, on the recommendation of HMCPSI.

It is set out in the The Statement of Ethical Principles that prosecutors have a basic obligation to act in accordance with the Code for Crown Prosecutors and to have due regard to any Guidelines issued by the Attorney General.

The CPS has mechanisms in place to manage and monitor performance and the quality of decision making. This is done under joint arrangements which allow the CPS and police to track two broad areas of performance:

- the volume of cases being submitted for a charging decision, subdivided into the proportion that are charged, referred back for further investigation by the police, or where it is decided that no further action is required; and
- the results of charged cases, subdivided into the types of successful and unsuccessful outcomes.

This is supported by the Casework Quality Assurance (CQA) process in the CPS which provides data on a monthly basis on four key performance groups: Case Preparation; Code Decisions/Policy/Charging Standards; Disclosure; and Victims & Witnesses, which will be revised and further strengthened to support the introduction of Core Quality Standards.

Additionally, charging decisions taken by the CPS are subject to independent inspection. As referred to above, a recent joint thematic review of Statutory Charging arrangements by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI)<sup>17</sup> found that good quality final charging decisions are being made by prosecutors and that the arrangements enable weaker cases to be discontinued at an earlier stage in the process. This is supported by the performance data in relation to Statutory Charging, whereby the volume of cases and the guilty plea rate

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17 Criminal Justice Joint Inspection (HMCPSI, HMIC), The joint thematic review of the new charging arrangements, November 2008

has risen, against a decline in the overall discontinuance rate and unsuccessful outcomes at court.

The Attorney General will consider with the DPP regular reports on the monitoring of charging decisions, as part of the routine exercise of her superintendence, and if further assurance is needed, may ask HMCPSI to undertake an additional review, subject to the overall prioritisation of key issues for inspection in 2010-11.

*Recommendation 9:*

**Conditional cautions are part of a significant change to how the criminal justice system operates, making a material difference to the process by which the state punishes people. The fact that prosecutors can now recommend that an individual be conditionally cautioned, and a prosecution suspended subject to the fulfilment of particular conditions, represents a significant change to the prosecutor's role. On the other hand if such decisions prevent an individual being drawn further into the criminal justice system, and therefore succeed in reducing the likelihood that they will re-offend, that is in the interests of potential victims and society as a whole, as well as having a benefit to the individual. Such decisions can therefore contribute to the responsibility of the CPS to reduce re-offending. (Paragraph 58)**

*Recommendation 10:*

**However, the growth in the number of out-of-court disposals represents a fundamental change to our concept of a criminal justice system and raises a number of concerns about consistency and transparency in the application of punishment. Different patterns of fines may simply reflect local priorities and be argued to be a feature of community engagement. However, we believe the use of these disposals requires systematic scrutiny, and we recommend that as a first step they should be the subject of a multi-inspectorate review. The Attorney General should assemble a comprehensive map of the offences and relevant penalties in operation across England and Wales to assist this scrutiny. (Paragraph 59)**

The Government welcomes the Committee's attention to this issue, and announced on 14<sup>th</sup> December a review of out-of-court disposals - such as cautions and on-the-spot fines – which are intended to tackle low-level offending and anti-social behaviour that is of concern to local communities but not serious enough to merit prosecution. These disposals allow punishment to be administered swiftly, proportionately and effectively, forcing offenders to face-up to the consequences of their actions without sending low-level offending to court, but some concerns have been raised about how they may be applied across the country.

The review will examine the way in which the police service and CPS use out-of-court disposals.

The review will consider:

- How the number of out-of-court disposals used by the police and CPS has changed in recent years as crime has fallen and convictions have remained stable;
- the reasons for variation between areas in how many of these disposals they administer and whether they are used consistently;
- whether criminal justice agencies are complying with guidance on the use of out-of-court disposals, including whether they are being inappropriately used for

serious offences and whether persistent offenders are repeatedly receiving out-of-court disposals;

- the extent to which out-of-court disposals are complied with by offenders and how effectively they are enforced;
- evidence on the effectiveness of out-of-court disposals, including their effect on re-offending and on promoting public confidence and victim satisfaction.

The review will be led by the Office for Criminal Justice Reform (OCJR) and will report jointly to the Ministry of Justice, Home Office and Attorney General's Office. CJS Ministers will make a statement to Parliament in March 2010 on emerging findings and the focus for the next phase of the review, including any further work required to improve the compliance of criminal justice agencies with legislation and guidance and to consider possible changes to the out-of-court disposals framework to improve transparency and confidence in the criminal justice system.

#### *Recommendation 11:*

**The development of CPS advocacy cannot simply be seen as the next logical step in how the CPS should develop: it has wider implications for the criminal justice system and will lead to a very different organisation from that which was originally set up. (Paragraph 76)**

#### *Recommendation 12:*

While the representatives of the Criminal Bar Association clearly saw this issue in terms of the interest of their members, we recognise that the consequences of CPS advocacy on the future provision and quality of legal services as a whole require attention. The idea of advocates moving more freely between employed and self-employed work is an attractive one, not least because it would preserve the benefits of experience of both prosecution and defence work, which probably produces better advocates. (Paragraph 77)

#### *Recommendation 13:*

**We do not dismiss the anecdotal concerns raised from a number of quarters about the quality of CPS advocates and the systems for their deployment, such as allegations that complex cases are dumped on self-employed barristers at short notice, but regard this as evidence of a need for better case management by the CPS, rather than providing a general argument against CPS advocacy. We welcome the Chief Inspector's reports into CPS advocacy and case preparation and the evidence this provides for developing the quality of CPS advocacy and ensuring effective systems across the CPS to support this, and we look forward to considering the responses of the CPS and the Bar. (Paragraph 78)**

The development of CPS advocacy and assuring the highest quality of the advocacy in prosecutions on behalf of the public, whether it is delivered by CPS employees or by external advocates, is a key part of the strategy to develop a modern public prosecution service.

The development of high quality advocacy is being supported through the introduction of a national quality assessment regime for both internal and external advocates. This is an advocacy assessment process which is supported by specific training in conjunction with the CPS Leadership and Learning team enabling the process to monitor, assess and, where necessary, improve the quality of advocacy. The training focuses on areas for improvement

and equips advocates with the requisite skills to prosecute cases in court competently and effectively.

The experience of trial advocacy enhances and improves other prosecutorial functions, such as the provision of high quality charging decisions and effective case preparation and management, as undertaking these functions effectively all contribute to the successful prosecution in court of any case.

In addition to improving the service the CPS provides, improving the quality of, and the opportunity for, in-house advocacy helps to make the CPS an employer of choice for high quality experienced advocates, as demonstrated by the appointment of the first CPS in-house lawyer to the rank of Queen's Counsel earlier this year. By enabling staff to appear in a greater range of cases in all courts, the Advocacy Strategy not only increases job satisfaction but also assists with the recruitment and retention of both legal and paralegal staff.

The CPS is looking carefully at quality assurance, deployment models for in-house advocates, and case management in terms of preparation and progression.

The Government recognises the value of, and encourages, free movement of advocates between the CPS and the self-employed sector. In her role as Head of the Bar the Attorney General is promoting and supporting a "One Bar" approach. She is particularly keen to ensure that there are opportunities for the Young Bar, and that the Bar is a more diverse community, in which there are opportunities for people with talent, regardless of their background. The CPS has already recruited a significant number of experienced advocates from private solicitors' practices and the self-employed Bar, and, conversely, a number of prosecutors have left the CPS to join the self-employed sector. The CPS remains committed to a constructive dialogue with the Bar and a desire to achieve the 'One Bar' approach. In order to facilitate free movement, the CPS is working to establish common quality standards for in-house and external advocates. The emphasis is on the need for quality advocacy from all those with rights of audience. Furthermore, the CPS is working with the Legal Services Commission, as both organisations develop quality assurance schemes, to ensure that the assessment mechanisms and standards used in both will be compatible and recognised by the other.

In co-operation with the Bar and solicitors in private practice, the CPS intends to establish career paths which historically have been difficult or even impossible. We hope, for example, that advocates will be able to spend periods of time at the self-employed Bar or private practice and in the CPS.

The Government and the CPS welcomed HMCPSI's recent report into advocacy and case preparation in the CPS<sup>18</sup>, and the recognition that significant progress has been made in developing CPS in-house advocacy. In response, an action plan has been prepared by the CPS to take forward the recommendations, ranging from further training, clarification of roles to increased effectiveness of case management systems.

The deployment of a cadre of internal advocacy assessors throughout England and Wales, supplemented by independent external assessors, from September 2009, will serve to promote improvements in quality amongst both in-house and external advocates.

Furthermore, a system is in place to ensure that advocates are allocated cases commensurate with their skills and experience. In 2008, a progression framework which categorises Crown Advocates into one of four levels according to their position on the

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18 HMCPSI, Report of the thematic review of the quality of prosecution advocacy and case presentation, July 2009

prosecutor structure and identifies the expected range of work for each level was implemented in all CPS Areas. The framework will not only continue to inform appropriate deployment of Crown Advocates by CPS Areas but will also assure the public of the standard of in-house advocacy provided by public prosecutors.

In addition, further case management improvements are envisaged as steps are taken to extend the benefits of the CPS' Optimum Business Model from the magistrates' courts to the Crown Court. This framework of tested structures, roles and processes will not only provide an effective case preparation and progression system for the CPS but will also drive operational improvements.

In recognising the importance of making charging decisions of the highest quality, the CPS has also worked to ensure that the "cradle to grave" principle is achieved where possible in the most serious and complex cases. In the CPS Central Casework Divisions and Complex Casework Units which deal with the most serious and complex cases, file ownership by one prosecutor from charge to disposal will produce even higher standards of decision making and case preparation through earlier case analysis and a more consistent approach.

#### *Recommendation 14:*

**Telling a victim that their views are central to the criminal justice system, or that the prosecutor is their champion, is a damaging misrepresentation of reality. Expectations have been raised that will inevitably be disappointed. Furthermore, the criminal justice system is set up to represent the public rather than individuals, and there are good reasons for this. The CPS's role as independent arbiter of decisions about prosecution is critical. Explaining this role clearly to victims such that their expectations are managed realistically, rather than raised then disappointed, is vital. (Paragraph 83)**

#### *Recommendation 15:*

**Victims want to be treated as people, which often does not happen in a criminal justice system that is driven by process. We are pleased that the CPS has risen to this challenge by developing good policies for engaging with victims and witnesses. Delivering these consistently on the ground continues to require a major effort. (Paragraph 94)**

The Government is strongly committed to better treatment of victims of crime and anti-social behaviour. The Victims Champion, Sara Payne, was appointed in January 2009 and recently reported, recognising the improvements which have been made over the last 12 years but raising a number of recommendations and challenges to make the whole system respond better. This requires system-wide commitment and change, in which the prosecutors will continue to make a significant contribution.

The Prosecutors' Pledge<sup>19</sup>, initially published in 2006, sets out four main principles guiding the prosecutors' work with victims:

- Taking account of the victim's experience and, where appropriate, their views, in charging and plea acceptance.
- Ensuring victims understand what is happening throughout a case and communicating with them at every stage of the process.

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19 CPS Public Policy Statement on the Delivery of Services to Victims: The Prosecutors' Pledge, updated 23/01/08

- Supporting victims in court by explaining the procedure and process.
- Championing victims in the trial process by protecting them from unwarranted or unreasonable attacks on their character; challenging any attacks on the victim's character in defence mitigation; and, where appropriate, on conviction applying for compensation on the victim's behalf.

The CPS has always been very clear that it does not act for victims or their families as solicitors do for their clients, but when considering whether it is in the public interest to proceed with a prosecution, prosecutors have in mind the principles articulated in the prosecutors' pledge. Therefore, although the CPS is not the victim's advocate, and it prosecutes on behalf of the public, supporting and encouraging the effective participation of victims at all stages of the criminal justice process is fundamental to the role and purpose of a modern public prosecution service. It is a core element of the CPS' vision to enable, encourage and support the effective participation of victims and witnesses at all stages in the criminal justice process.

The Government welcomes the Committee's comments about how the CPS has produced good policies for engaging with victims and witnesses. When developing and revising its policies, the CPS takes into account the views and advice of front-line prosecutors and consults with the voluntary sector and interest groups to ensure the policy is evidence based, practical, effective and capable of being delivered. Recent examples include the new Public Policy Statements published by the CPS in respect of victims and witnesses with mental health issues<sup>20</sup> and victims with learning disabilities<sup>21</sup>.

The CPS' delivery of services to victims is an important part of the Core Quality Standards<sup>22</sup>, which includes the following commitments:

“Standard 8: We will assess the needs of victims and witnesses, keep them informed about the progress of their case and help them give their best evidence; and

Standard 9: We will explain our decisions to victims when we stop cases or substantially alter the charge.”

### **Recommendation 16:**

**The lack of a consistent, effective and readily understood complaints handling system has been a serious weakness of the CPS. We welcome the CPS's recognition of the need, and commitment, to take action to ensure that the system is more open and transparent. We believe that it should provide a valuable mechanism for the CPS to learn more about the service that its various clients and stakeholders would like provided, as well as giving a proper response to complainants. (Paragraph 98)**

To give effect to the commitment to a complaints system which will meet the best modern standards the CPS has undertaken a review of current policy and guidance; has developed a revised approach to capturing feedback; improving website information and accessibility generally; refining options for local responsibility for monitoring and governance; the design of an Information Technology database to assist national and local analysis of complaints and the issues raised; and the development of related service-wide training.

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20 CPS: Supporting Victims and Witnesses with mental health issues, July 2009

21 CPS: Supporting victims and witnesses with a learning disability, July 2009

22 CPS Core Quality Standards, issued by the Director of Public Prosecution, November 2009

The Core Quality Standards<sup>23</sup> include a commitment that “We will deal promptly and openly with complaints about our decisions and the service we provide.”

***Recommendation 17:***

**Special measures are a crucial part of the criminal justice system which should enable a witness to give the best evidence they are capable of giving. We are concerned by the evidence that individuals are not being identified as being suitable for special measures, or that delivery failures mean they do not receive them once their need has been identified. We are also concerned at the suggestion that the CPS may be reluctant to recognise that people with mental health problems can be credible witnesses at all. The CPS is not the only agency with a role to play in identifying those who need special measures but it is a key agency and should be alert at the charging stage to what people need. The CPS could also work with the police to ensure that they are identifying individuals for special measures effectively. We look forward to hearing more about the CPS's work to improve its identification of those cases where the need for special measures was not recognised. (Paragraph 103)**

As identified, the CPS has a vital role to play in helping to identify those who need special measures and applying to the courts to grant special measures for particular witnesses. The primary responsibility is that of police but the CPS takes its role very seriously, and it has been carrying out work to improve the use of special measures and compliance with Achieving Best Evidence, in particular, focusing on the early identification of witnesses who would benefit from special measures and the incidence of early special measures meetings.

On 12 November 2009 the Coroners and Justice Act 2009 received Royal Assent. Among other things, it provides for the extension of special measures such as live video links and screens around the witness box, so vulnerable and intimidated witnesses give their best evidence during criminal proceedings. It also re-enacts the provisions of the Criminal Evidence (Witness Anonymity) Act 2008 so that the courts may continue to grant anonymity to vulnerable or intimidated witnesses where this is consistent with a defendant's right to a fair trial.

The CPS and other criminal justice agencies have been working closely with the NPJA to develop a guidance document for police officers in relation to vulnerable and intimidated witnesses. The guidance is designed to assist the police through a number of processes that will afford a vulnerable or intimidated witness equal access to the criminal justice system. The guidance has been designed as a practical document, and is not intended to be overly prescriptive. Its aim is to heighten the awareness of police officers and police staff to the issues in order to lay the foundations for identifying those eligible for special measures and thus to facilitate a better quality of service for vulnerable and intimidated witnesses.

In August the CPS published new Public Policy Statements for victims and witnesses with mental health issues and learning disabilities. These policies have been developed with the support and help of its criminal justice partners, the voluntary sector, and relevant interest groups including individuals with mental health issues or learning disabilities. The policies include important sections on what victims and witnesses should expect in respect of special measures, and how the process works. They are intended to ensure that victims and witnesses with mental health issues or a learning disability have access to justice,

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23 CPS Core Quality Standards, issued by the Director of Public Prosecution, November 2009

*Recommendation 18:*

**Inconsistency in CPS delivery was a clear theme in the evidence we received and must be tackled. Failures to define clearly the role of the prosecutor, and the pressures pushing and pulling it in different directions, militate against priorities for consistent delivery. The definition of a clear role should include the CPS's contribution to the overall aims and delivery of an effective criminal justice system. The development of community prosecutors is a further fundamental change to what we expect from prosecutors in the criminal justice system, raising questions about what kind of local discretion is desirable and beneficial to the public interest. The Attorney General should make a clear statement of how local responsiveness can be made compatible with the demands of natural justice for system-wide consistency. (Paragraph 114)**

Flexibility and local responsiveness have always been important aspects of the CPS' design and purpose, but this local responsiveness must be seen within the context of a national service, led by the DPP under the statutory superintendence of the Attorney General, which is subject to national policies and standards. The growing importance of the role of the public prosecutor within the criminal justice system means that this issue has become more important in recent years.

The CPS is confident in its role as a modern public prosecutor. The Core Quality Standards will ensure that that public is able to identify the Prosecutor's role clearly. They set out how the key to a dynamic and responsive public prosecution service is the development of Core Quality Standards, which explain clearly what is expected of a public service, committed to delivering criminal justice to the highest possible quality to the communities which it serves. These Standards will support the implementation of a "national service, locally delivered" and introduce greater consistency and improved efficiency.

*Recommendation 19:*

**We were surprised that it was only through the recent review of the Attorney General's role that the Attorney came to the conclusion that different prosecuting agencies could learn a lot from each other. There seems to be much good work already undertaken by organisations talking to each other about matters of common interest and we welcome the interest the Attorney General is now taking in this work. There is much the Law Officers could do to guide and provide better support to such discussions and, in doing so, ensure consistency of approach across different prosecutors. We emphasise that it is not only those prosecuting agencies superintended by the Attorney which have an interest in how prosecuting policy is developed. (Paragraph 134)**

*Recommendation 20:*

**We believe that the role of the Chief Inspector of the CPS could successfully be extended so that he can inspect other agencies conducting prosecution. We would also like to see the CPS, as the principal prosecutor and owner of the Code for Crown Prosecutors, demonstrating leadership within the wider prosecutorial family. The public interest test may invoke different considerations in different circumstances, but choices about prosecution across different agencies should be consistent and transparent. (Paragraph 135)**

### *Recommendation 21:*

**We have not come to the conclusion that England and Wales should move towards the Scottish model of a single prosecuting authority. We believe that there are more pressing priorities for CPS management than such a major change, but, given the diverse structure of prosecuting authorities, we regard co-ordination and the sharing of best practice as essential. (Paragraph 136)**

The Government agrees with the Committee's observations about the value of coordination and sharing best practice among prosecutors. As Government Minister responsible for prosecution, since 2007 the current Attorney General has been leading significantly increased activity to encourage and support prosecutors, whether subject to her statutory superintendence or not, to share and develop common approaches to common problems

The Attorney's relationship with the superintended prosecutors is set out in the Protocol which was published in July 2009. Structures have been put in place to ensure her departments work closely together on matters of common concern, maximise efficiency and value for money, and share their knowledge and experience.

The Attorney chairs joint meetings with investigators and prosecutors: including the Serious Organised Crime Agency, the police service, UK Border Agency, HMRC, DWP, BIS, CPS/RCPO, SFO, National Fraud Authority and others, to identify trends in crime, overlaps and tensions, and the implications for operational planning and delivery.

In support of her "general superintendence" the Attorney addresses legal and prosecutorial questions, and sponsors common approaches to sharing expertise, guidance and training, for example through the shared Prosecutors' Action Zone on the GLS website, LION and through regular meetings with prosecutors.

A revised Prosecutors' Convention, which encourages prosecutors to coordinate their interests, share knowledge and develop an agreed prosecution strategy with, wherever possible, one prosecutor in the lead and a single joint prosecution, was signed in April 2009.

A recent example of coordination is the preparation of the Ancillary Orders Toolkit for prosecutors<sup>24</sup>, which was published in October 2009, and was the result of joint work by the CPS, RCPO, and the Serious Fraud Office. It was launched to the Whitehall prosecutors by the Attorney General at their annual conference on 14<sup>th</sup> October. The Ancillary Orders Toolkit provides prosecutors with a guide to the wide range of ancillary orders and other types of orders available, and will support all prosecutors in the tackling and reduction of crime and the protection of the public.

The Code for Crown Prosecutors also provides consistency across the different public prosecutors in England and Wales. The Director of Public Prosecutions is required by law to issue a Code for Crown Prosecutors which is applied by the Director of the SFO and, by law, the Director of the RCPO. The Code is also used by prosecutors in other departments and agencies as a framework for making the prosecution decision. The draft Code for Crown Prosecutors<sup>25</sup>, which was published for public consultation in October, has been revised to reflect its use by the wider prosecutorial family, and in particular, the public interest factors in the draft Code have been updated and widened to reflect the Code's wider usage.

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24 CPS, RCPO, SFO Ancillary Orders & Powers Prosecutors' Toolkit, October 2009

25 CPS The Code for Crown Prosecutors: A Consultation Document, October 2009

Additionally, conversations have begun between the CPS and Whitehall prosecutors about the potential application to them of the Core Quality Standards.

As identified by the Committee, HMCPSI has a particular contribution to make to the identification and promulgation of good practice across the wider prosecutorial landscape, as well as in the CPS/RCPO. The Serious Fraud Office and the Service Prosecutions Authority have already invited inspection, and the Attorney General will encourage other prosecutors to do likewise, and will assess with the Chief Inspector which thematic issues for prosecutors may benefit from a wider assessment in future. The Government welcomes the recent Peer Review of HMCPSI, carried out by Dr Michael Maguire and agrees with its conclusions. The question of whether to extend the remit of the Inspectorate more formally, that is, in legislation, will be kept under review.