



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

Executive Summary

July 2009



## **Introduction**

The review set out to evaluate the quality of prosecution advocacy and 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.

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.

The last comprehensive thematic inspection of prosecution advocacy was carried out by HMCPSI in 2000. 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 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 CPS advocacy strategy**

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.

Aware of this background HMCPSI 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 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.

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.

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.

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 the 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.

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.

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.

In short whilst significant progress has been made in developing in-house advocacy, the overall quality has suffered in some respects.

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.

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.

### Overall results

During the review we made 367 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.

<i>Overall quality of advocacy – Crown Court and magistrates' courts</i>										
<b>Score</b>	<b>Crown advocates</b>		<b>Crown prosecutors</b>		<b>Associate prosecutors</b>		<b>External prosecutors</b>		<b>All advocates</b>	
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>

The table shows that in two thirds of cases the advocates were fully competent, including very good, when prosecuting. A quarter of advocates were lacklustre and only 7.9% were less than competent, including very poor.

No advocates were assessed as outstanding overall which may be due to the nature of the observations undertaken, 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.

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.

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%).

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.

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.

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).

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.

### **Advocacy in the Crown Court**

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.

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.

There is a significant difference between the level and nature of the skills required to conduct non-trial hearings effectively and trial advocacy. 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.

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.

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.

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.

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.

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.

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.

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**

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.

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).

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.

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.

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**

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.

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.

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.

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.

The CPS is moving away from case 'ownership', particularly in relation to magistrates' courts' work, following the introduction and implementation of the optimum business model. When properly resourced this system is effective in progressing cases, which assists the advocate in court.

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.

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**

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.

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 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.

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.

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 preparation with the need to increase in-house deployment of advocates.

### **Training and development**

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.

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.

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.

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**

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.

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.

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.

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 Chief Crown Prosecutor 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 a little more mixed.

The relationship between the CPS and Bar has been affected by 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.

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**

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 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 its impact of and on other initiatives.

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.

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.

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.

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.

## Conclusions

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 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

### **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).

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- 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).

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- 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).
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- 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).

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- 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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The full text of this report may be obtained from the Corporate Services Group at HMCPs Inspectorate (telephone 020 7210 1197) and is also available online at [www.hmcp.si.gov.uk](http://www.hmcp.si.gov.uk).