



HM Crown Prosecution  
Service Inspectorate

# Follow up report of the thematic review of the quality of prosecution advocacy and case presentation

March 2012





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## HM Chief Inspector's foreword

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The importance of following up inspections cannot be overstated. The purpose of this inspection was to follow-up progress against our original report into the thematic review of the quality of prosecution advocacy and case preparation.

I have not only examined the progress made against each of the original recommendations and aspects for improvement in the original 2009 thematic review, but also examined the CPS's advocacy strategy itself to assess whether it has achieved the stated aims.

The commitment to deliver quality advocacy has been demonstrated at the highest level by the Director of Public Prosecutions and his Principal Legal Advisor through their involvement in the development of in-house advocates and the observations they have conducted in the Crown Court across the country.

Whilst this follow-up inspection identified good practice, the inspectors found that the effective implementation of the advocacy strategy is being hindered by two factors, namely: the over supply of crown advocates that has arisen as a result of an almost open access policy to the crown advocate grade; and the local approaches to allocating work which appear to be based on the pursuit of the maximum amount of savings in counsel fees, rather than achieving and developing good quality advocacy. Neither seem consistent with the strategic intent to develop a rounded cadre of skilled, quality, in-house advocates.

The development of units of full-time crown advocates in the newly enlarged CPS Areas, has the potential to overcome some of the long standing working practices that have traditionally accompanied allocation of work to the self-employed Bar. Unfortunately, currently some CPS in-house practices mirror these to the detriment

of the quality of the work undertaken. A best practice operating model should be identified in order to better deploy crown advocates. A greater central steer is needed over how to achieve the optimum value for money offered by the strategy without compromising quality.

Progress has been slow in achieving improvements in quality although substantial net savings for the CPS have been achieved across the five years of the operation the strategy. There have been other successes namely: the introduction of the comprehensive national advocacy quality monitoring scheme; reduced criticism from the judiciary and the Bar, where there seems to be far more acceptance of the strategy; the move towards quality assurance for all criminal advocates; and the agreement to introduce a panel system for prosecution counsel. Importantly, in the magistrates' courts, the strategy has been largely successful. The continued deployment of associate prosecutors has achieved savings with no adverse affect on quality and they are well regarded. Following on from the review HMCPSI was invited to visit CPS West Midlands to assess what the CPS nationally believed to be a model of good practice. The good practice identified in West Midlands together with the positive aspects detailed above form a solid basis for implementing the advocacy strategy which develops the right number of confident, rounded, good quality advocates.

I am grateful for the co-operation and assistance of the CPS Areas and I would particularly like to thank the associate inspectors who assisted with the review.



Michael Fuller QPM  
HM Chief Inspector of the Crown Prosecution Service





# 1 Executive summary

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1.1 This follow-up review examines the progress made by the Crown Prosecution Service (CPS) in taking forward its advocacy strategy since Her Majesty's Crown Prosecution Service Inspectorate's (HMCPIS) last thematic review published in 2009. Fieldwork undertaken prior to June 2011 was used to assess progress against the recommendations made in 2009 and the current strength of the strategy, in particular in terms of the quality of the advocacy undertaken in-house and the efficiencies it provides. It also examines its continuing fitness for purpose in the light of the changing environment. Since the 2009 report, the CPS has been required to make continuing reductions in expenditure, and the Comprehensive Spending Review requires a 25% reduction in expenditure across a four year period 2011-2015.

## Key findings

### The strategy in the Crown Court

1.2 Since the 2009 review, at the highest strategic level, there has been commitment to focusing on quality, away from the previous emphasis on undertaking volume work where the highest levels of savings could be achieved. Additional training has been delivered and a programme of advocacy assessments has been established to assess and report on the quality of the advocates' performance in the Crown Court.

1.3 The aim of senior managers has not been reflected at local level, where Area managers have largely continued to focus, in the allocation of work to in-house crown advocates, on fee savings in Crown Court cases.

1.4 There have been both elements of improvement and decline in the quality of advocacy since 2009 based on the advocates

observed during the fieldwork. The basic competence of in-house advocates appearing regularly has improved as their exposure to Crown Court practice has increased, and there has been some improvement in crown advocate ability in discrete areas of trial advocacy. In particular, crown advocates have become better at conducting cross-examination, and there is now less criticism of individual crown advocates from the judiciary and the Bar. However, opportunities are still missed and there are failures to challenge clearly inadmissible and prejudicial evidence. A number of advocates still have an over reliance on case notes and there is a continuing lack of confidence amongst some crown advocates.

1.5 Crown advocates are not managing to develop their experience of trial advocacy in part due to the limited opportunities available, the high levels of cracked trials on the day in the cases allocated to them and the volume of non-contested work they undertake. Although nationally the numbers of trials undertaken by crown advocates has increased, this increase has been proportionately less than the increase in the volume of non-contested work undertaken. Despite the amount of non-contested work undertaken, the review found a decline in the quality of crown advocate performance since 2009 and an improvement in that of self-employed counsel, particularly at the higher level.

1.6 The importance of effective preparation, which enables the advocate to present the case clearly and deal with the issues that might realistically be anticipated, is often hindered by local deployment practices, and remains a weakness. Of the crown advocates observed

they were less likely to be prepared for both non-contested hearings and trials than they were in 2009; the levels of preparedness among crown advocates was highly variable. The more 'technical' elements of case preparation also need improvement.

**1.7** The performance of advocates was adversely affected by inadequacies in case progression prior to court; this needs to be addressed as a matter of urgency.

**1.8** Shortcomings in case progression are exacerbated by a lack of advocate continuity. Crown advocates are rarely instructed to prosecute a case they have previously reviewed; cases allocated to crown advocates are frequently 'returned', with little consideration of the effect on the thoroughness of preparation and unnecessary duplication of work. Late allocation of work to both crown advocates and counsel, and allocation practices, including control of returned briefs, needs to be improved.

#### **The advocacy strategy in the magistrates' courts**

**1.9** In the magistrates' courts, a larger proportion of crown prosecutors overall were found to be competent than in 2009, although cross-examination techniques and the use of closing speeches still need to be addressed; these remain outstanding from the 2009 review. Inadequate case progression in the office was found to disrupt both individual cases and the business of the court. Associate prosecutors continue to perform well and are generally highly regarded. The quality of their advocacy differs little from a lawyer with similar experience and they demonstrated a high level of motivation and enthusiasm, a good understanding of the cases, and effective preparation.

#### **Efficiency and value for money**

**1.10** The CPS has increased crown advocate deployment in the Crown Court and has made significant savings in counsel fees as a result. However, not all are properly deployed as crown advocates, despite receiving the uplift in salary, and there remain significant variations in the proportion of crown advocacy work undertaken. CPS Areas continue to have more crown advocates than they need to support the business and a further reduction in numbers is necessary. This had not been sufficiently addressed since the 2009 review, although since the fieldwork there has been some encouraging progress and work is ongoing. Additionally, in most CPS Areas, 20% of the crown advocates are achieving approximately 80% of the savings; the value for money offered, particularly by the cadre of full-time crown advocates, needs to be revisited.

**1.11** In the magistrates' courts the CPS has continued to expand the use of its in-house staff to cover magistrates' courts sessions. This has been achieved through a reduction in office time for crown prosecutors, more effective use of associate prosecutors, improvements in listing arrangements and a reduction in the numbers of court sessions. This delivers clear financial benefits and in some Areas is improving the quality of advocacy; however, the reduction in office time has risks in relation to the preparation of cases.

**1.12** This report has established that the advocacy strategy has delivered net savings of approximately £26 million across the last five years. It has delivered value for money in the magistrates' courts although in the Crown Court savings have been achieved, but more needs to be done to ensure that deployment practices enable the strategy to offer better value for money.

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## Conclusions

**1.13** Progress has been slow in addressing the recommendations and aspects for improvement in the 2009 report. Only two of the 22 issues have been achieved fully and substantial progress made on one other. Seventeen issues are subject to limited or no progress, although it is recognised some of the original issues now are of lesser significance. The CPS should take stock and review its advocacy strategy and in order to determine what it seeks to achieve, in the light of the many changes that have occurred since the strategy was first implemented.

**1.14** The revised strategy must clearly articulate expectations about the work that CPS advocates should undertake in-house, how many are needed to do it, and the standard expected. The strategy must be supported by an analysis of the costs and the benefits of such an approach, and outline agreed best deployment practices.

**1.15** Deployment and supporting administrative practices, including arrangements for the allocation of work and preparation, should not be left for decision solely at the local level but need a central steer and guidance. Any in-house model must seek to overcome some of the previous difficulties experienced in working with the self-employed Bar, including late return of briefs, lack of continuity of advocate, and an absence of preparation time, which are now mirrored by in-house practices. Only with increased central strategic direction and an agreed basis of operation in the Crown Court will the advocacy strategy, which has at its heart both quality and efficiency gains, be achieved. The CPS's aspiration to be able routinely to conduct its own high quality

advocacy in all courts, and across the full range of cases, is realistic and achievable. However, this is dependant on: the focus on quality being sustained; advocacy experience being developed; the best deployment model being in place; and the effective and efficient deployment of staff.

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## Recommendations to the CPS

- 1 Expectations and working practices should be made clear and significantly improved including:
    - i arrangements for the allocation of work and returned briefs;
    - ii arrangements and expectations for preparation, including the use and availability of IT for preparation out of the office;
    - iii the role of the crown advocate clerk; and
    - iv arrangements for paralegal coverage at court (paragraph 5.25).

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  - 2 The CPS should review the purpose of its advocacy strategy and articulate it clearly, in particular:
    - i set out expectations for quality of advocacy and case presentation;
    - ii establish effective support and oversight of the strategy at national level; and
    - iii ensure that progress is made on the grading system applied to crown advocates to bring it into line with the Bar grading system and converge to a unified system (outstanding from the 2009 review) (paragraph 7.33).
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- 3 The CPS should define a preferred operating model for its Crown Court advocacy units which exemplifies best practice and in which it:
- i determines numbers to meet the business need;
  - ii sets expectations for crown advocate deployment, in particular its full-time cadre;
  - iii ensures deployment practices represent value for money; and
  - iv re-examines arrangements for progression and determines a succession strategy (paragraph 7.33).
- 
- 4 To ensure it has a clear understanding of the value for money offered by its advocacy strategy the CPS should:
- i take steps immediately to ensure advocacy data is consistently and properly recorded in all Areas and units particularly in relation to preparation and travelling time; and
  - ii re-examine the method for calculating the net savings generated and the value for money offered by full-time crown advocates (paragraph 7.33).
- 
- 5 The CPS should review its approach to training and development to ensure:
- i there is an evaluation of the impact on the quality of advocacy following the delivery of training and development opportunities;
  - ii the mentoring of crown advocates is embedded and best use is made of the principal and senior crown advocates in the mentoring role;
  - iii that a system of learning and development for crown advocates is introduced where they can observe others in court, reflect and complete learning logs and development plans, and where appropriate adopt a buddy system to facilitate development;
  - iv there is appropriate training of crown advocate clerks for a common approach and contingency cover; and
  - v the delivery of the magistrates' courts advocacy training programme (paragraph 8.20).
- 
- Good practice**
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- 1 In one Area the advocacy assessor has developed a reference document for advocates to help improve individual performance; this has been disseminated locally and passed on to individuals at national level (paragraph 6.9).
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- 2 Joint local training with chambers in relation to cross-examination skills and speeches (paragraph 8.14).
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## 2 Introduction

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### Background

2.1 The CPS began to refocus its attention on in-house advocacy as early as 1998 when legislation was introduced that enabled:

- the creation of a class of non-legally qualified staff who were permitted to present a limited range of cases in the magistrates' courts; and
- the creation of an extension to the rights of audience of solicitors and barristers which enabled CPS staff to present cases in the Crown Court for the first time.

2.2 In the early days a cautious approach was taken as staff undertook the relevant training and qualification; numbers undertaking these new roles were comparatively low. Gradual progress was made with most Crown Court advocacy undertaken in less complex work. The CPS approach changed in 2006 when a five year strategy was implemented, aimed at ensuring that the CPS became 'an organisation that routinely conducts its own high quality advocacy in all courts efficiently and effectively'. Targets were introduced for the level of deployment and the savings, in terms of fees paid to counsel, to be achieved.

2.3 This led to a significant growth in the level of in-house advocacy in both courts, and particularly so in Crown Court work. HMCPSP undertook a thematic review in 2009 to assess the progress against the strategy. The findings indicated that the organisation had made significant progress in the volume of work undertaken, but that there were still significant concerns over the quality of advocacy.

2.4 At the time of the fieldwork it had been two years since the Inspectorate undertook the thematic review of the quality of prosecution advocacy and case presentation.<sup>1</sup> At that time it was recognised by CPS senior managers that a fresh approach was needed to the advocacy strategy. The intention was to take time to consolidate the expansion of the crown advocate cadre with a change of emphasis from the volume of work undertaken to quality of work delivered through management action, quality assurance and training. HMCPSP has undertaken this follow-up review to assess progress and the action taken to address the recommendations and aspects for improvement in the 2009 report.

2.5 Over the two years following the original thematic review the number of crown advocates remained fairly constant although there was an increase in the numbers of principal and senior crown advocates who for the most part joined the CPS from the Bar. The CPS now has two Queen's Counsel<sup>2</sup> who took silk whilst employed by the Service. However, many CPS Areas still have more crown advocates than they require to fully align with the business need and following the fieldwork an initiative was launched enabling crown advocates to revert to the crown prosecutor cadre; at the time of publication this scheme had re-opened.

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<sup>1</sup> Published in July 2009.

<sup>2</sup> The Director of Public Prosecutions and the Principal Legal Advisor are also Queen's Counsel.

	Mar 09	Mar 10	Mar 11	Dec 11
Crown advocates	736.9	757.0	755.3	632.0
Crown prosecutors <sup>3</sup>	1,556.3	1,528.2	1,440.0	1,445.9
Associate prosecutors	415.8	431.5	417.5	400.6

**2.6** There has been a reduction in the number of crown prosecutors in post. The table above shows the number of advocates in each role across the CPS Areas (excluding CPS Headquarters).

**2.7** In the Crown Court at the time of the fieldwork in 2011 the CPS was undertaking work that amounted to more than 25% of the total spend on Graduated Fees Scheme advocacy and the level of savings has continued to grow significantly.

**2.8** In the magistrates' courts the role of appearing in non-contested hearings has shifted from crown prosecutors to associate prosecutors, to the extent that around 32% of magistrates' courts hearings are conducted by associate prosecutors and 58% by crown prosecutors. The remaining courts are prosecuted by agents although this has reduced over time and that trend has continued.

**2.9** In the two years since the last inspection the CPS has invested in the advocacy assessment programme, which commenced in October 2009 in the Crown Court and magistrates' courts. This was a necessary step whilst work was ongoing at national level to agree a joint scheme for the assessment of all criminal advocates, which commenced at the start of 2012.

**2.10** The new panel system for prosecution advocates will commence in February 2012; this is an opportunity to work towards a unified system.

### **Crown Court advocacy**

**2.11** Prosecution advocacy in the Crown Court is currently carried out by self-employed barristers in private practice (counsel), or by crown advocates employed by the CPS. The introduction of the new CPS advocate panel system will enable solicitor higher court advocates in private practice to apply for inclusion on the panels to prosecute in the Crown Court as well.

**2.12** There are four levels of advocate grading for self-employed barristers, not including Queen's Counsel, which are set according to general ability, or specialism. Level 1 is the starting point for prosecution advocacy in the magistrates' courts and the Crown Court.

**2.13** In July 2008, the CPS implemented a progression framework for its crown advocates, which also includes four levels characterising skill and experience, to provide a clearer career path. The levels within the two grading systems do not coincide exactly.

<sup>3</sup> This represents the total of senior crown prosecutors (grade C2) and crown prosecutors (C1).

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## Magistrates' courts advocacy

**2.14** CPS advocates in the magistrates' courts fall into three main categories. Crown prosecutors, as qualified solicitors or barristers, have full rights of audience in the lower courts as do the solicitors and self-employed barristers who act as CPS agents. In-house associate prosecutors have more limited rights of audience which were extended in 2008 to cover most types of non-trial hearing, including committals. In February 2009 the powers were extended again to cover a limited range of contested trial work, conducted by associate prosecutor level two (AP2); this was subject to a pilot project in selected CPS Areas at the time of the thematic review<sup>4</sup> and was rolled out nationally in October 2010.

## CPS structure

**2.15** At the start of the inspection the CPS comprised of 13 geographical Groups, each of which contained one or more of the 42 geographical CPS Areas (aligned to police force boundaries).

**2.16** In the early stages of the inspection the CPS announced that the national structure was to be revised with effect from 1 April 2011. The Group structure of 13 was replaced by 13 CPS Areas, each headed by a Chief Crown Prosecutor. The geographical boundaries of the new Areas remain unchanged from those of the previous Groups and incorporate the previous 42 Areas. In this report we refer to Areas in the post-1 April structure. This inspection focused on the work undertaken by the then 42 CPS Areas and did not assess the work of the specialist Headquarters central casework divisions.

**2.17** Since the previous review there have been two significant changes that will have had some impact on the approach to advocacy. Budget reductions have been in place since 2009-10, and these have recently become more challenging; the Comprehensive Spending Review requires a 25% reduction in spend by the end of 2014-15. In addition, in 2010 the CPS decided to implement the Optimum Business Model scheme, previously restricted to magistrates' courts cases, to the majority of Crown Court cases. This requires a significant change to case progression systems and processes, and reduces the level of individual case ownership.

## Methodology and the assessment of advocacy

**2.18** The methodology used in this thematic review is detailed at Annex A.

**2.19** HMCPSP has assessed the performance of advocates against a scoring framework. Eight aspects make up the Inspectorate overall advocacy assessment score: professional ethics; planning and preparation; applying CPS policies; written advocacy; the case in court; preparation for trial; trial advocacy; and the advocate in court. These align with the CPS national standards of advocacy. Inspectors only graded relevant aspects during individual assessments.

**2.20** Overall advocacy performance is graded as follows:

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

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<sup>4</sup> The pathfinder Areas for AP2s were CPS West Yorkshire, CPS London, and CPS Hampshire (and as part of the pathfinder in CPS Hampshire, one AP2 was appointed in CPS Dorset).

**2.21** We regard grades 1-3 as being fully competent. Although the grade of 3- represents a competent performance, it is below average in some respects, lacklustre or lacking in presence. Grades 4 and 5 are unsatisfactory and clearly less than competent. We did not see any advocacy that was graded as outstanding (1) and have therefore left this grade out of the graphs in the chapters. An explanatory note to the assessments can be found at Annex B.

**2.22** During the course of the follow-up inspectors observed 180 advocates comprising 77 crown advocates, 33 crown prosecutors, 24 associate prosecutors, and 46 external prosecutors, conduct a total of 198 hearings. Despite being a follow-up inspectors were able to assess more than half the number of observations in the original review although the opportunity to observe some aspects of advocacy was limited and caution should be exercised when comparing the figures in percentage terms. The comparison data can be found at Annex C.

**2.23** Observed cases used in the report reflect actual events seen during the course of this review.

**2.24** An explanation of the way fee savings are calculated is at Annex D.

### **The inspection team**

**2.25** The team consisted of HMCPPI legal and business management inspectors and a number of associate inspectors including a retired Crown Court judge, two CPS Group Advocacy Assessors and the CPS Training Principal. Two of the associate inspectors assisted in the original thematic review in 2009.

**2.26** The team had access to all the assessments carried out by the CPS's advocacy assessors in the four CPS Groups visited during the fieldwork. The grade given for an advocate for the particular type of advocacy during the inspection, either contested or non-contested, was compared with the grade given by the assessor for the same type of work. This provided an understanding of the level of consistency between the inspection team and the CPS assessments, and for the most part these aligned.

### **Good practice review in CPS West Midlands**

**2.27** Following on from the review of advocacy and case presentation during 2011, HMCPPI was invited to visit CPS West Midlands to assess what the CPS nationally believed to be a model of good practice. The Area had been awarded runner up in the 'Innovation and Efficiency' category in the CPS National Staff Awards 2011.

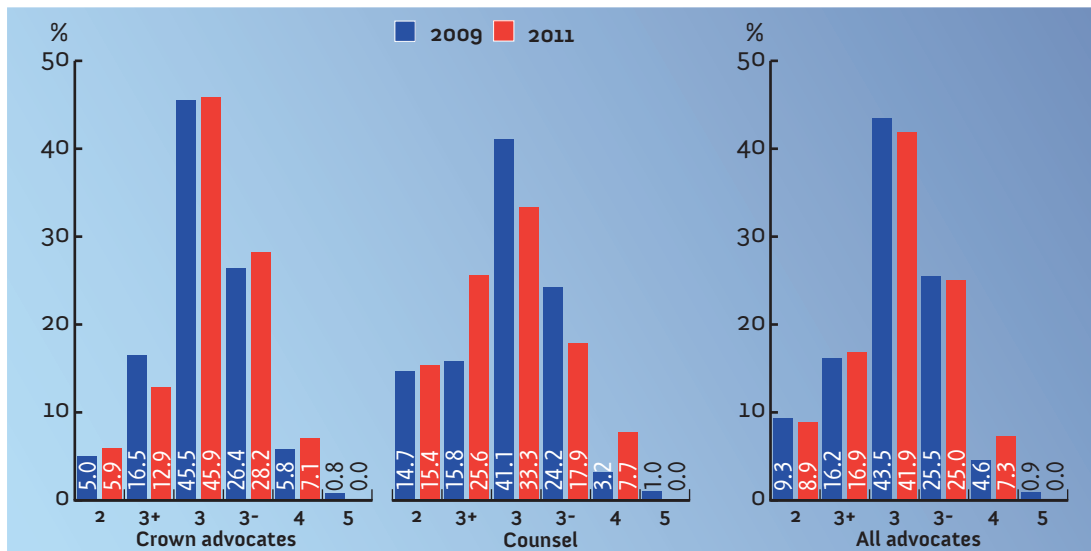
**2.28** The main aim of the evaluation was to establish whether the implementation of the advocacy strategy locally constituted an operating model for a Crown Court advocacy unit which exemplifies best practice. In addition, it was necessary to assess whether the underpinning processes were effective. Inspectors evaluated the CPS West Midlands model against a number of expectations that were determined by the recommendations in this report.

**2.29** A description of the model, the key findings and conclusions of this work can be found at Annex G.



# Section 1: The quality of advocacy

## 3 The quality of Crown Court advocacy



### Overall standard of Crown Court advocacy

**3.1** Observations carried out during this review indicate that, taking into account the performance of both CPS crown advocates and counsel there has been little change in the overall quality of advocacy in the Crown Court. However, in contrast with the previous review, no advocates received an assessment of 5 (very poor)<sup>5</sup> and some have become better over time, leading to less criticism of individuals from the judiciary and the Bar.

**3.2** The basic competence of in-house advocates appearing regularly has improved, as their exposure to Crown Court practice and procedure has increased. However, the gap in quality between the crown advocates and self-employed counsel, particularly at the higher level, has widened since the 2009 review and the difference in quality between the two was more noticeable in a greater number of cases than previously. At times in-house advocacy tended to be less persuasive, lacking elements

of presence and confidence in both presentation and argument; this accords with general feedback received from the judiciary.

**3.3** There has been an overall decline in the performance of in-house advocates dealing with non-contested hearings, primarily plea and case management hearing (PCMH) courts; this is explained by the increase in the number of cases a crown advocate is required to present, late instructions to prosecute and a reduction in the amount of available preparation time. Preparation is key to effective advocacy.

**3.4** There has been some improvement in crown advocate ability in relation to discrete areas of trial work. Following the 2009 recommendations, the CPS has directed considerable resources to improving trial performance through the training and the advocacy quality management programme. Observations indicated that crown advocates had become better at conducting cross-examination. However, these pockets of improvement have not, as yet, translated into a significant increase in quality overall.

<sup>5</sup> It is recognised that there is a variance in numbers of those observed of 30.8% less crown advocates and 59.0% less counsel between 2009 and 2011.

**3.5** There has been a marginal decline compared with 2009 in relation to all advocates in the Crown Court being familiar with CPS victim and witness care<sup>6</sup> obligations. There were some examples of good victim and witness care at court, but equally there were instances where the advocate failed to adhere to the Victims' Charter and best practice, or where the crown advocate failed to progress a case at court, or inappropriately cited a CPS policy.

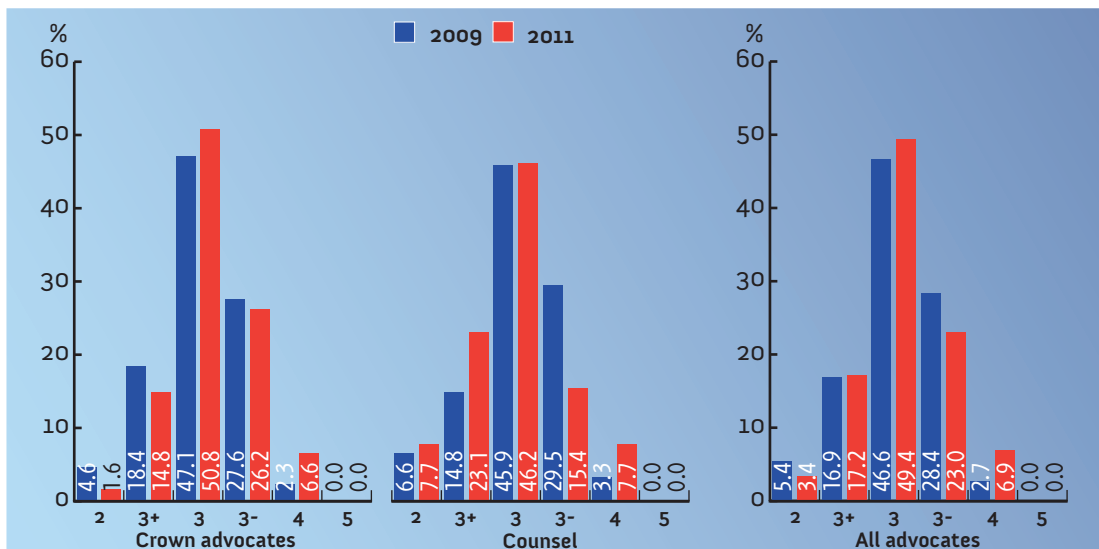
**Non-contested hearings**

**3.6** It is recognised that different skill sets are required to conduct a trial and a non-contested hearing effectively. This difference was highlighted in the thematic review conducted in 2009 when crown advocates performed better than counsel in non-contested hearings. The most noticeable aspect to emerge from this follow-up review is the overall decline in the quality of crown advocates, with counsel performing a little better in non-contested cases, thereby reversing the position in 2009, as shown in the graph below.

**3.7** Crown advocates were not especially adept at identifying what information a court was likely to require at the hearing or anticipating what questions a prosecutor might reasonably be expected to answer. This was particularly relevant to the prosecutor's role in sentencing and too frequently inspectors observed the crown advocate fail to be of any real assistance in the sentencing process, leaving all such matters to a dialogue between defence counsel and the judge. This contrasts

*Observed case*  
 The advocate requested an adjournment to consider a suitable guilty plea to an assault charge because the victim had to be consulted in accordance with the Victims' Charter. The case was adjourned and the judge remarked about the cost; the advocate could have made a phone call to resolve the issue.

<sup>6</sup> The Prosecutors' Pledge; Code for Victims of Crime; Standard for Communication between Victims, Witnesses and the Prosecuting Advocate.



with instances where the court had requested assistance and the crown advocate was immediately able to refer the judge to the appropriate legal text and sentencing guidelines.

**3.8** Performance of crown advocates needs improvement in respect of plea acceptance and basis of plea. The acceptance of inappropriate pleas was an area of concern for the CPS which resulted in the compulsory training for all prosecutors to ensure that the disposal of cases is carried out more consistently and effectively. The training was due to be completed by 31 March 2011 which coincided with the fieldwork; the improvement anticipated was not readily apparent, particularly in relation to recording the basis of plea.

*Observed case*

A poor endorsement by a crown advocate at the guilty plea hearing left the subsequent crown advocate in a difficult situation. The file stated a plea was acceptable to wounding (section 20)<sup>7</sup> but no basis was endorsed on or included in the file. At the sentencing hearing the defence stated that the plea had been put forward on the basis that the complainant's version was completely untrue. This was obviously unacceptable and had to be adjourned for a Newton hearing.

<sup>7</sup> Offences Against the Person Act 1861.

## **Trial advocacy**

**3.9** In 2009, crown advocates' trial skills were found wanting. In particular the quality of cross-examination needed to be improved and feedback from stakeholders was that many crown advocates had not yet acquired the skills for contentious work and displayed weakness in presenting legal argument.

**3.10** Inspectors found that some crown advocates have improved aspects of their trial skills over the last two years, including improvement at conducting cross-examination, as their experience and exposure to the Crown Court has increased. Overall, however, progress since 2009 has been slower than might have been expected. The CPS training, mentoring and master classes that have been put in place since the last inspection are valuable learning tools, but are not a substitute for the experience of being in court regularly conducting trials.

**3.11** Crown advocates are not managing to develop their trial advocacy through putting experience into practice in part due to the high levels of cracked trials in the cases allocated to them. The average number of effective trials completed by a crown advocates is less than four a year. Whilst the overall volume of cases undertaken by crown advocates has increased since the last review, the proportion of trials undertaken has increased at a slower rate than the proportionate increases in non-contested cases. Limited trial advocacy results in limited trial experience and curtails the ability to develop or improve by exposure to the art. In this review, inspectors observed that opportunities were still missed during cross-examination and speeches. There were also failures to challenge clearly inadmissible and prejudicial evidence.

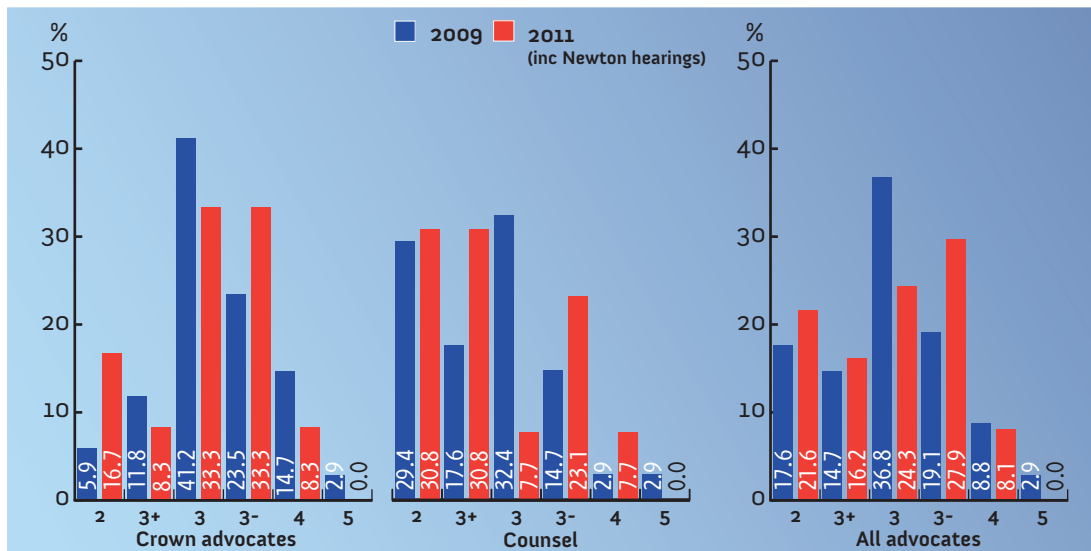
Junior counsel appearing in the Crown Court for two years was regularly conducting trials and had appeared in two trials during the week observed; the first for the defence and the second for the prosecution. In an adjoining court the crown advocate had been appearing in the Crown Court for five to six years and during that time had conducted 20 trials in total.

A crown advocate told us that 80% of trials listed to prosecute in the Crown Court were not effective and for the most part cracked thereby only enabling experience of contested advocacy in five to six trials a year.

**3.12** A number of crown advocates still have an over reliance on case notes. This can have a negative impact on the conduct of a trial and the advocacy can become pedestrian when it need not be. The reliance on notes can result in a tendency to read to the court rather than engage with it during narrative advocacy, and when questioning witnesses it can lead to a disjointed account with details overlooked. The lack of confidence was also demonstrated in the failure to apply to use the memory refreshing provisions, which should be second nature to experienced trial advocates, to bring the witness back to proof or as a foundation where there may be an application to declare a witness hostile.

**3.13** The opportunities to maximise exposure to more challenging advocacy in the magistrates' courts or contested appeals in the Crown Court are not always taken as a means of development, as these cases can attract, under the CPS system of calculation, a lower or no value fee savings. Some crown advocates perceive that the approach is driven by cost savings rather than development of a cadre of advocates to prosecute across the full range of cases in all courts; this was confirmed from the range of evidence obtained during the follow-up.

**3.14** The graph opposite shows the comparative performance levels in 2009 and 2011 for crown advocates and counsel in trial advocacy: none were assessed as very poor (grade 5) and an improved proportion of each was graded as very good and above average in many respects (grade 2). Amongst crown advocates a greater proportion were assessed as below average in some respects (grade 3-) than previously; amongst self-employed counsel a greater proportion than previously was assessed as above average (3+).



### Preparation by the advocate

**3.15** Effective preparation for trial is important in every case, but the level of preparedness observed was highly variable. Area systems for allocating work to advocates can have a significant impact on the time available for preparation.

**3.16** The thematic review emphasised the necessity for effective preparation to support sound advocacy in court, enabling the advocate to present the case in the clearest way and deal with all the issues that might realistically be anticipated. The importance of preparation as the foundation of good advocacy has not been acted upon by advocates universally and remains a weakness.

**3.17** Observation data shows that, overall, in 2011 crown advocates were less likely to be prepared for a non-contested hearing and trials than they were in 2009 whereas counsel are better prepared in 2011 than before.

**3.18** In-house performance had improved in some aspects in particular in the ability to determine the nature of a defence, identify relevant issues and liaise appropriately with the defence advocate prior to trial.

**3.19** The performance of crown advocates needs significant improvement in relation to some of the more ‘technical’ elements of case preparation: legal submissions are not always timely or supported by reasoned oral argument; and the advocates do not regularly make appropriate use of formal admissions.<sup>8</sup> The performance in this regard, which was not good in 2009, has declined markedly by 2011.

<sup>8</sup> Under section 10 of the Criminal Justice Act 1967.

*Two contrasting observations*

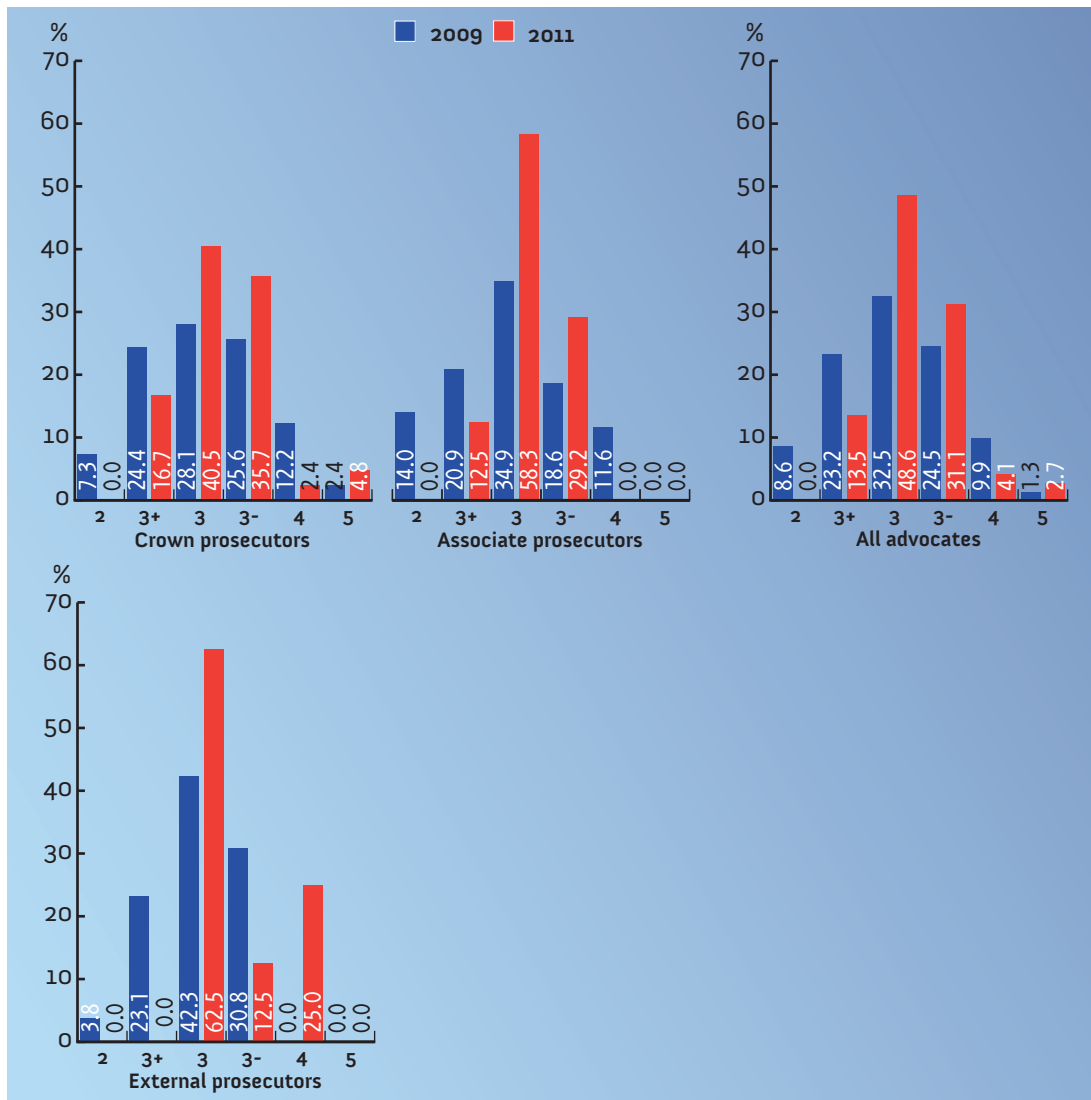
A crown advocate presented a drugs conspiracy case for sentence arising out of a lengthy police operation. He took his time to explain the history of the case and the individual roles of the defendants. The advocate was fully prepared, he was conscious that the judge was able to follow him and he was effective with the key facts.

An otherwise competent crown advocate was let down by a silly 'slip' in opening, necessitating the jury being discharged. The chances of this occurring are increased with the need for last minute preparation, leaving little time to focus calmly on the case.

**3.21** The reasons for the improvement in the performance of counsel are not clear. It was always thought that as the volume of work undertaken by external counsel decreased there would be an improvement in the quality of service delivered as a consequence of heightened competition.

**3.20** In the Crown Court the continued focus on financial savings has resulted in late instruction of crown advocates who do not for the most part have the tools to prepare cases out of the office, and late instructions to self-employed counsel who do not have time to remedy poor preparation. Over half the crown advocates canvassed stated that there was insufficient preparation time. Feedback suggested that there is a growing expectation that they will prepare for court in their own time and conduct themselves more like the Bar in terms of working hours, practice and culture. If the CPS advocacy strategy is to be successful, expectations and working practices need to be made clear and supporting systems put in place to ensure they are sustainable. The systems which are, or need to be, in place to support and enable good quality advocacy are set out at Chapter 5.

## 4 The quality of magistrates' court advocacy



### Overall standard of magistrates' courts advocacy

4.1 There was a mixed picture in terms of quality in the magistrates' courts. The proportion of all advocates graded as not competent (grades 4 and 5) has decreased; however, the proportion of advocates graded as 2 and 3+, has also decreased reducing the percentage of advocates graded as fully competent.<sup>9</sup>

4.2 Weaknesses in advocacy varied but three common themes emerged;

- The quality of cross-examination still needs improvement; the level of competency varied widely.
- Advocates are failing to prepare properly in non-contested advocacy and are not presenting the case engagingly or making proper use of tone and pace.

9 Scoring 3 or above.

- There were significant differences across the Areas when comparing the quality of prosecution advocacy with the quality of the defence. Overall, it is more likely that where there is an obvious difference in performance, the quality of the defence advocate is better.

**4.3** In the magistrates' courts feedback from Bench Chairs indicated that there has been some improvement in performance and in particular where the advocates prosecuting had undertaken crown advocate training. In contrast, most court staff felt little improvement had taken place since the thematic review. The associate prosecutors were generally highly thought of, even when compared with crown prosecutors. In turn, crown prosecutors' performance was considered generally better than that of agents.

### **Crown prosecutors**

**4.4** Our findings revealed a more restricted range of grades for crown prosecutors than during the 2009 review. In 2011 grades ranged from above average (3+) to very poor (5); no advocates were graded as very good (2). At times it was noticeable that some crown prosecutors were not confident in presenting the case in court, but demonstrated other skills such as victim and witness care; there was a small improvement in performance in relation to the care of victims and witnesses at court by crown prosecutors.

The crown prosecutor engaged fully with a reluctant victim in an allegation involving domestic violence. The prosecutor ensured that CPS policies were adhered to and also explained the position fully to the victim who felt she did not have a voice. In another trial the witnesses to a neighbour dispute were grateful to be spoken to about the case and their views considered.

### **Associate prosecutors**

**4.5** Associate prosecutors are generally well respected. Overall there has been an improvement in quality, with no associate prosecutor being scored as not competent, although quality at the top end has dipped slightly. If the following issues were addressed this could raise those from below average in some respects (grade 3-) to fully competent.

- the better use of sentencing guidelines to bolster mode of trial representations;
- ensuring that the custody time limit protocol is not overlooked;
- using a brief summary instead of opening facts in full where an adjournment for reports is inevitable;
- better understanding and clarification about the prosecutor's role in determining bail post-conviction; and
- better understanding and clarification on the provisions relied upon to commit for sentence.



**4.6** At the time of this review a pilot was underway in two Areas to deploy associate prosecutors in the Youth Court, following the Director of Public Prosecutions' (DPP) decision to extend instructions to include grave crime and youth remands. This may provide opportunities for more effective utilisation. We received positive feedback on the associate prosecutors deployed in the Youth Court. The results of the pilot were formally assessed in June 2011. Following final agreements in relation to training the extension will be rolled out nationally.

**4.7** A smaller proportion of associate prosecutors were assessed as good (grade 3+) than in 2009. Overall the level of work they are undertaking is appropriate; some of the keen and enthusiastic advocates are probably capable of presenting more complex cases. The quality of their advocacy differs little from a lawyer with similar experience but the limitations on the work they are able to conduct can disrupt court workings and is at times inefficient. They demonstrated a high level of motivation and enthusiasm, a good understanding of the cases, effective preparation, and also dealt well with unrepresented defendants. However, in relation to associate prosecutors level 2 (AP2s), observations indicated that too many contested or potentially contested cases in the list affected the ability to prepare cases properly.

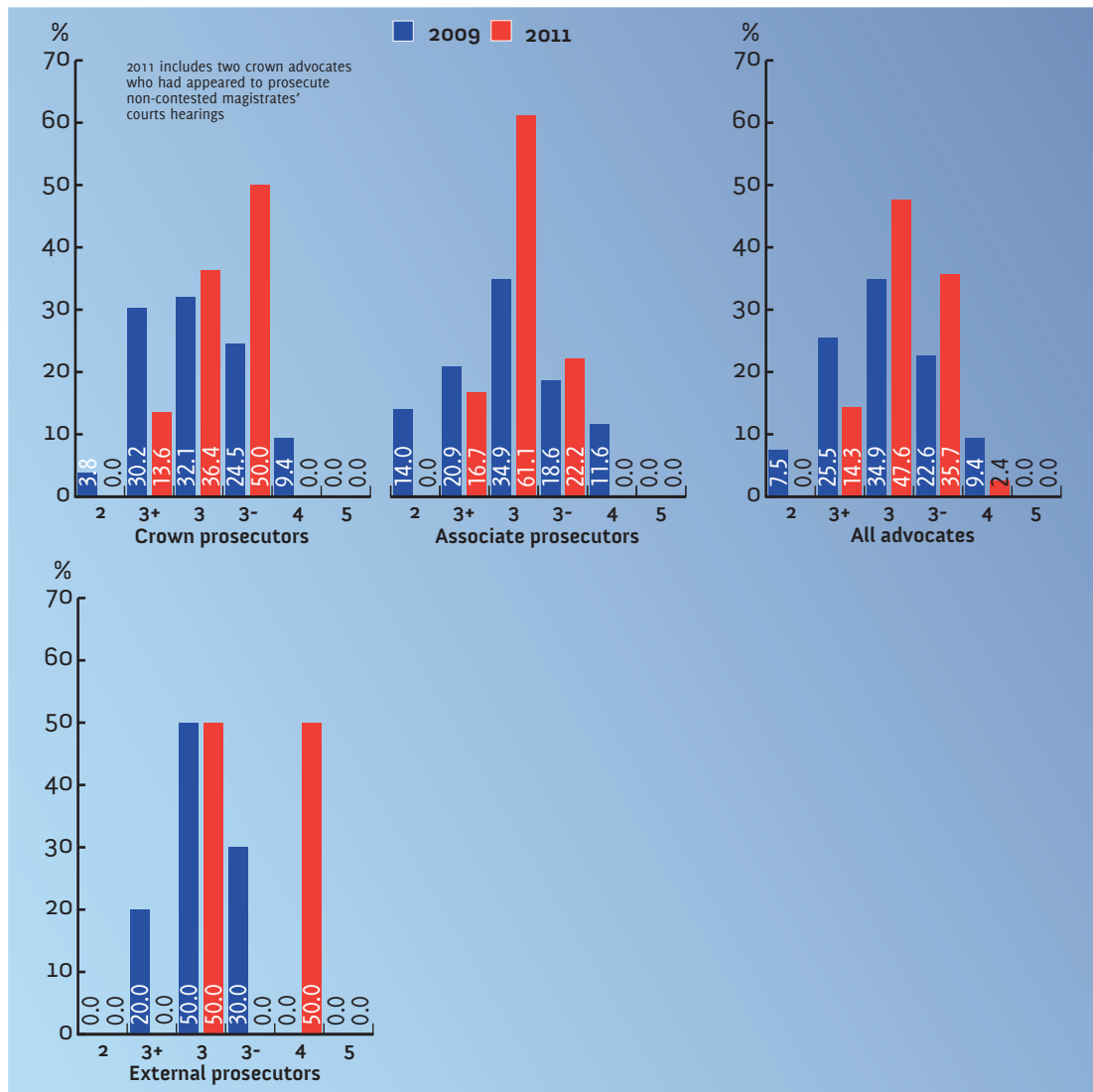
### **External agents**

**4.8** Very few external agents were observed; this reflects the reduction in their usage and the high in-house court coverage by the CPS. Some Areas used few or no agents and made limited use of the junior Bar. The implications which flow from this are discussed at 8.21. Despite only eight agents being observed, two were assessed as not competent (grade 4).

**4.9** In some Areas agents continue to be instructed for contested hearings. These are often the more challenging cases but not all had the appropriate skills to handle sensitive cases.

#### *Observed case*

A youth defendant faced a trial relating to a sexual offence involving a 14 year old girl. Despite the sensitivity of the case the CPS instructed a local agent to conduct the trial in the Youth Court but the agent had not had any specific CPS training relating to sexual offences. During the trial the agent failed to object to the defence advocate making statements rather than asking questions and there was also a failure by the prosecutor to ensure that easily understood questions were put to the child. The defence made a submission of no case to answer, the agent gave a very limited response and the application was successful.



### **Non-contested advocacy**

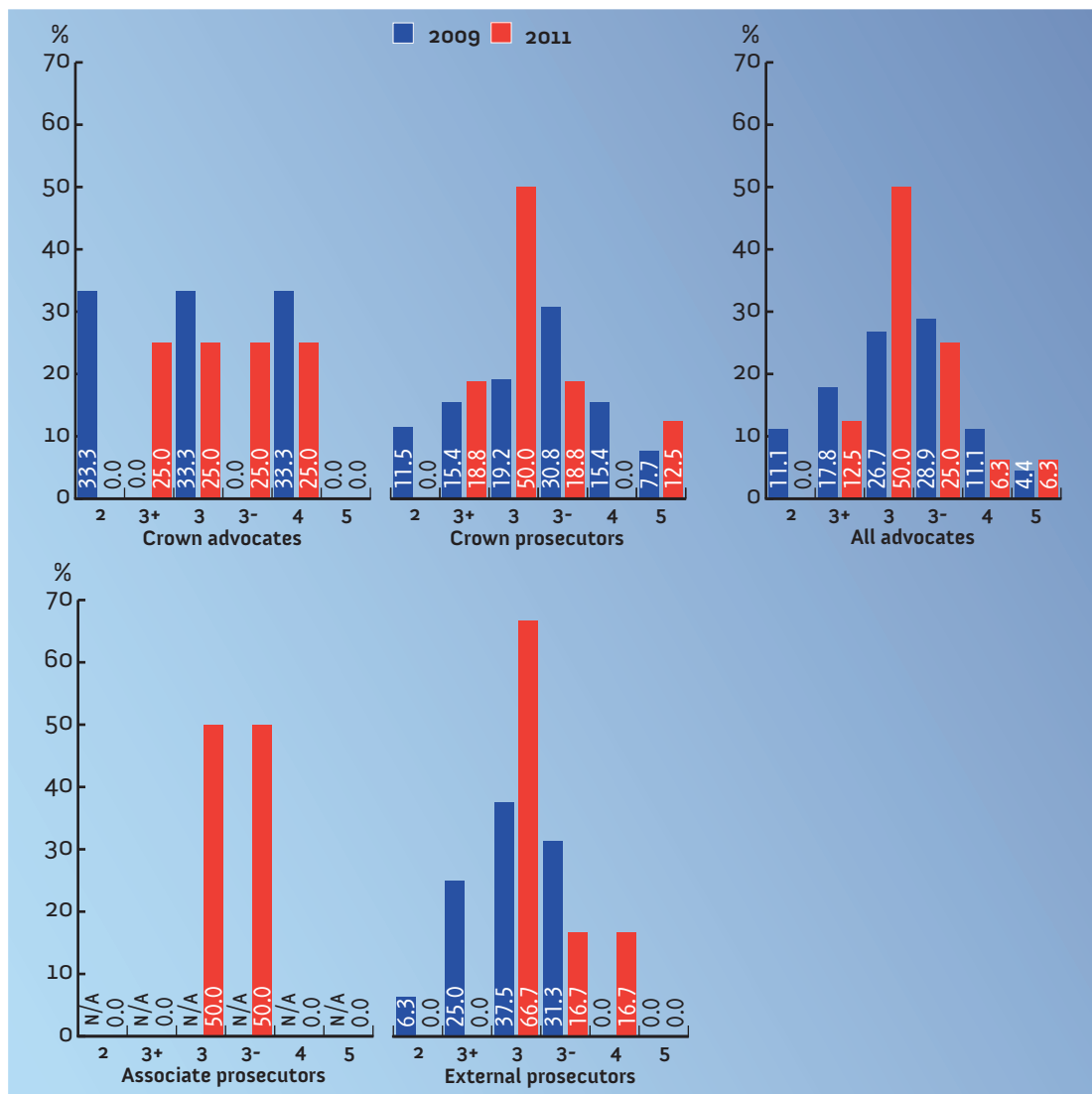
**4.10** All CPS in-house advocates were assessed as competent for non-contested work. However, over a third of advocates, and 50% of crown prosecutors, had a key aspect of their advocacy which required attention (grade 3-).

**4.11** Preparation and presentational style are the key areas requiring attention. Whilst the advocate can influence the way they present cases the level of preparation requires management support and sensible deployment practices.

**4.12** There is still over reliance on police summaries even where it is clear that the advocate is familiar with the case and can respond to queries. This dependence was apparent from the language used which recited familiar police terminology. Many advocates need to present more engagingly, have better eye contact and varied intonation to prevent the presentation becoming dull.

**4.13** All advocates dealt with sentencing issues appropriately. However, as in the Crown Court, there are still weaknesses in relation to the acceptance of pleas. These were highlighted in the last report which resulted in the compulsory training course for all prosecutors. It was not always apparent that the training had been undertaken or put into practice.

**4.14** In some CPS Areas, written advocacy and legal submissions need further work; legal submissions are not always timely or supported by reasoned oral argument. Training has been available since September 2009 to assist with presenting legal submissions for both bad character evidence and hearsay evidence in practice. Area managers should ensure this training is undertaken.



### Trial advocacy

**4.15** Overall there has been an improvement in trial advocacy in the magistrates' courts with a smaller proportion of advocates graded as not competent (4 and 5). However, a smaller proportion of advocates were assessed as good (3+) and none as very good (2).

**4.16** We observed many instances, and in one Area it was the normal practice, where prosecutors received the file at court on the

morning of the trial and/or were covering courts on consecutive days. In some units there was no effective system to allow the preparation of cases in advance. This is a high risk strategy and the risk becomes apparent where there is a more challenging contested hearing, for example, a trial due to last more than one day, with many witnesses and video interviews involving children, which is not infrequent in the Youth Court. It is difficult to prepare for such a case for even the most able advocate

and the absence of time to prepare could be detrimental to the case and has the potential to undermine public confidence.

**4.17** Although Areas may consider consecutive days in court to be an effective means of deploying staff, the consequence is that considerable court time can be wasted at the start of the trial to ensure the advocate is properly prepared. This impacts on other agencies and does not deliver overall efficiency or represent value for money. In several observations cases were not ready to proceed at 10am. In consequence, trials had to be adjourned part-heard so requiring an additional trial fixture, or ran into the afternoon requiring the court to provide another court room for other business, a bench, a legal advisor, and had implications for the prosecution and the defence. On a number of occasions, if the trial had started promptly it would have been completed in the allotted time. In one case the advocate arrived in the trial court at 10.10am which was due to sit at 10am, the trial started at 11.30am when some but not all the necessary work had been completed.

**4.18** Two themes that continue to need addressing remain outstanding from the earlier review; these are improvement of cross-examination and use of closing speeches. Better preparation is still required in developing the case theory for cross-examination but preparation time is consistently squeezed. The magistrates' courts advocacy training programme, once completed, needs to address this aspect.

*Observed case*

During cross-examination the senior crown prosecutor used the phrase 'I put it to you' frequently. By the end, he had become repetitive and argumentative. The cross-examination was not pursued chronologically or followed in any logical order; it appeared to be questions picked at random. Improperly framed questions encouraged the defendant to repeat the evidence-in-chief. The cross-examination of the two defence witnesses was equally weak and the advocate annoyed one of them unnecessarily, when he could have drawn out some positive points for the prosecution case. Instead he succeeded in allowing the witness to adduce positive evidence in favour of the defendant.

**4.19** The closing speech was not available to prosecutors at the time of the thematic review and led to the recommendation for its introduction. The prosecution now have the opportunity to make a closing speech, but some advocates fail to do so, particularly where it is needed to address inconsistencies. There is a lack of appreciation of the impact a closing speech can have on a case despite the training available.<sup>10</sup> In the survey responses only 54.5% of CPS unit managers thought that the closing speech was being used effectively, 18.2% did not know whether or not it was used.

<sup>10</sup> A module for the Prosecution College has been available for all prosecutors from May 2011.

*Observed cases*

The prosecutor provided a clear opening speech and highlighted that there was only one real issue to determine, which was whether the defendant was acting in self defence. An effective closing speech was also used. The defendant was convicted after trial and committed for sentence at the Crown Court.

In contrast: the prosecutor presented a limited opening which was fairly poor. He was able to elicit most relevant facts in examination-in-chief from the complainant. The prosecutor did not have a case theory and cross-examination did not explore the inconsistencies of the interview or a number of strong points that should have been made. The prosecutor failed to make a closing speech (it was reported to inspectors that he never did so), although he rose after the defence speech to address the bench on the law and defences available. The defendant was acquitted.

**4.20** There has been some joint work with the magistrates' courts on listing patterns across most Areas. However, listing can remain a barrier to the delivery of high quality advocacy. The multiple listing of trials can present a risk in terms of the advocate being able to prepare fully and the ability to present cases effectively in court, when those trials go ahead. The courts in many Areas are reluctant to reduce this practice due to the high cracked trial rates. If this occurs it can lead to courts not being productively employed, and can render the in-depth preparation by the advocate unnecessary.

**Preparation by the advocate**

**4.21** The need to prepare effectively is equally important in the magistrates' courts, enabling the advocate to present the case in the clearest way and deal with all the issues that might realistically be anticipated.

*Observed case*

A senior crown prosecutor working on the magistrate's court case progression team read a sensitive domestic violence case involving children giving evidence against their mother. The children were to give evidence by way of a video interview. The prosecutor asked for the case to be allocated to him prior to the trial and was therefore able to prepare fully. At court he presented the case knowledgeably and with confidence and dealt well with all of the prosecution witnesses. The defendant was convicted.

**4.22** The expectation of covering courts across consecutive days, with little preparation time, continues and has in many instances increased from two or three days a week to five; this in turn is exacerbated in some units by the expectation that advocates will receive the files on the morning of the court to maximise deployment of staff. It was also reported that there is an expectation that staff will work in their own time to prepare for court. Of the 160 survey respondents<sup>11</sup> 53.8% of all respondents were of the view that there was insufficient time allowed for preparation (66.7% of associate prosecutors and 50.0% of unit managers).

<sup>11</sup> Unit heads, crown advocates, crown prosecutors and associate prosecutors.

## 5 Aspects supporting quality advocacy

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### Office based case progression

5.1 The advocate is dependent on the effectiveness of case progression systems in the office to ensure cases can progress at court effectively.

5.2 There were signs that the Optimum Business Model (OBM) for magistrates' courts cases was having a positive impact in preparing trials in some of the Areas visited. However, since its introduction to Crown Court casework concern has grown about the effectiveness of the system, leaving cases inadequately prepared and, as a consequence, the advocate exposed. OBM dispenses with individual case ownership for all but the most serious and complex cases; the lack of accountability can affect the quality of case preparation. During the fieldwork in many instances the advocate was not only preparing the case for court but undertaking case progression functions as well.

#### *Observed cases*

On the morning of trial, the defence advocate submitted that because the section 9 statements<sup>12</sup> had not been served more than seven days before the hearing they could not be read to the court. The prosecution advocate made an application to adjourn the trial but failed to mention in the submission that at the very first hearing the defence had already agreed that a number of witness statements could be read to the court; this was recorded on the case management form. The adjournment was refused and the prosecutor offered no evidence. The court asked for the case to be listed for a wasted costs hearing.

In another case: a pre-charge lawyer initially authorised a charge for careless driving. The same lawyer subsequently authorised a charge of dangerous driving and at the first court hearing this was amended to dangerous driving by the CPS. The initial trial date was vacated. The defence served an expert's report on the prosecution over two months prior to the trial; this was not acted upon. On the morning of the trial the advocate showed the defence report to the police expert. The officer was of the view that the standard of driving was careless and a plea was accepted to careless driving. Five witnesses were sent home; three police officers and two civilians had attended for the trial.

In another case: an allegation of domestic violence was made in relation to an incident in October 2010. Initially the CPS refused authority to charge on the basis that there was insufficient evidence. The police appealed and the defendant was charged. The initial trial was listed in December 2010 but on that date, the hearing was adjourned. The case was relisted for trial at the end of March 2011 and only on the morning of trial did the prosecutor decide that an additional charge should be put relating to a new complainant. A submission of no case to answer was made by the defence which was successful; the magistrates concluded that there was no evidence upon which a court could convict the defendant of either charge. The case was dismissed and an order for costs out of central funds was made.

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12 Under the Criminal Justice Act 1967.

**5.3** Case progression practices in Crown Court units and the role of the Crown Court case progression lawyer vary considerably. In some Areas there was a clear distinction between the role of the reviewing lawyer in the OBM unit and the crown advocate at court whereas in other Areas crown advocates were deferring issues to the reviewing lawyer when they ought to be taking decisions themselves in court; this was raised in the 2009 report. Some crown advocates felt that the processes often led to duplication of the work by lawyers or conversely that the file was not trial ready when it reached the crown advocate.

**5.4** Weak case progression has a direct impact on the trial. During the review in 2009 inspectors saw numerous examples of the case proceeding without having been fully prepared by the CPS. In some instances, an advocate would have had sufficient time to remedy the omission, but the increased proportion of advocates instructed late, both in-house and counsel, increases the problem. There continue to be concerns about the failure to comply with orders made at the plea and case management hearing (PCMH); this was particularly noticeable in relation to disclosure of unused material and bad character applications. Inspectors observed a number of instances where applications that should have been made could not because the information to remedy the defect could not be addressed in the time available. In some cases, the advocate was unable to provide the court with up-to-date papers or copies of important documents, such as photographs, to assist the court in sentencing.

*Observed cases*

A crown advocate whilst opening the case referred to a photograph and asked the judge if he had a copy. The judge informed the advocate that he did not and the advocate offered to pass a copy to the judge, but was then unable to locate it. The judge did not see the photograph.

Lack of case preparation and progression put the prosecutor at a disadvantage and as a result, some of the legal arguments went against the prosecution; the hearsay and bad character applications were unsuccessful. The case was continually interrupted to deal with outstanding issues such as disclosure of unused material which lengthened the trial unnecessarily and prevented the jury getting a clear run at the evidence.

**5.5** Ineffective case progression is exacerbated by a lack of advocate continuity; crown advocates are rarely instructed to prosecute a case that they had previously reviewed and sometimes receive cases where the previous advocate has not taken the necessary steps to ensure it is trial ready. However, 83% of crown advocates surveyed indicated that there was good quality of endorsements from the previous advocate.



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## Indictments and instructions

**5.6** The 2009 review highlighted the need to improve the quality of indictments, at that time 11% had errors that not been picked up prior to lodging. The files examined during inspections<sup>13</sup> from 2009 until the time of the fieldwork in 2011 revealed that indictment quality had declined, although there have been some signs of improvement in more recent Inspectorate work. The late allocation of cases to crown advocates and a lack of access to tools to prepare cases out of the office make improvement more difficult.

**5.7** The quality of instructions to the advocate (briefs) has still not improved since the original thematic review. The majority did not contain any analysis of the legal issues and where appropriate, instructions about the acceptability of pleas, there were no apparent systems to monitor the quality of briefs, and this position has not changed. From the responses to our survey, unit managers believe action has been taken to improve the quality of indictments and instructions, but this is not borne out by inspection.

## Returned instructions to the advocate

**5.8** The original CPS/Bar Framework committed the CPS to endeavouring to identify cases that are likely to be contested and selecting the trial advocate as early as practicable, where possible this should be at least 14 days before the PCMH to ensure advisory work and case preparation can be undertaken. Where self-employed counsel

is instructed they should conduct the PCMH wherever possible. These key principles are only adhered to in the most serious and complex cases. The thematic report recommended that the framework be reviewed but to date no progress has been made. There is an opportunity to do so with the introduction of the advocate panel system, ensuring any framework or agreement is relevant, that it details the expectations for service delivery for all parties and is monitored for non-adherence.

**5.9** Historically the Bar were criticised for the high level of return of cases and the rate was monitored by the CPS. The CPS ceased monitoring the rate and has never done so for in-house returns between crown advocates. The attitude to returns between crown advocates was that it was not a matter for concern because it had no cost implications. During the fieldwork it was apparent that the level of late returns is now even higher than before because cases are not allocated to a named crown advocate and the advocate is only named (in-house or external counsel) at the stage of returning the case. There is little consideration about the effect on the thoroughness of preparation and the unnecessary duplication of work. There needs to be greater management control of case allocation including returned cases.

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<sup>13</sup> Inspectors did not examine a file sample as part of the follow-up review but relied on evidence captured from inspection activity in CPS Mersey-Cheshire and CPS Yorkshire and Humberside Groups and CPS Nottinghamshire, CPS South Wales, CPS Surrey and CPS London Areas.

*Observed cases*

In a trial where a crown advocate had attended the PCMH on 11 January 2011, the brief was returned to counsel on 17 March for a trial listed on 21 March. No action had been taken to ensure the case was truly 'trial ready' in the intervening period. Counsel remedied many outstanding features on the morning of the trial, but the information necessary for the bad character application had not been sought. Counsel was not able to remedy this defect so the application could not be made.

In another case: a crown advocate who had prosecuted the case at the PCMH was not expecting to conduct the trial, until it was returned the night before the listing after the other allocated trial cracked. Unused material that undermined the prosecution case had not been served despite being available at the PCMH. There was no consideration of the need to draft an additional count until the morning of trial; this was apparent from the defence case. A guilty plea was entered to the new count.

**5.10** There is a perception at the Bar that when the CPS know that a trial is likely to be effective but where it is not trial ready or is a case with more challenging elements, it is sent out to chambers. We observed such cases, although the reasons for returning some cases to counsel cannot be fully known. In these circumstances it is often too late for remedial work to be undertaken properly and the case presented is not as strong as it could be. There are also missed opportunities for crown advocates to tackle trickier cases.

**The role of the crown advocate clerk**

**5.11** The crown advocate clerk is pivotal to the effective deployment of crown advocates, ensuring they undertake appropriate work. Yet, despite this, the role is not standardised nationally and there continue to be disparities between the responsibilities of staff in these roles. In some Areas the clerk has full responsibility for allocation, whereas in others the unit manager allocates the cases and the clerk attends the listing meetings and updates the diaries. In addition, cover is limited and there is little in-house training available should others need to step in. The role of the crown advocate clerk is an area of risk for the CPS in relation to business continuity. Almost all the clerks spoken to commented that their primary objective is to maximise the level of savings made.

**The allocation of work to crown advocates**

**5.12** The way work is allocated to crown advocates can have a significant impact on their ability to present cases efficiently and effectively, and deliver quality advocacy; there is a strong link between allocation of work, deployment and value for money, which is dealt with later in the report.

**5.13** The type of work being undertaken by crown advocates is now split more evenly between contested and non-contested work. Whilst managers felt there are effective systems in place to allocate appropriate work, there are still a number of crown advocates who are concerned they are being allocated work beyond their capabilities. There is a clear emphasis on work being allocated to deliver savings with less consideration of the need for advocate development. A table showing the full breakdown of work is at Annex D.

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**5.14** Areas had different approaches to allocating between crown advocates, albeit there were some common issues:

- in most sites only a small percentage of work was allocated with any consideration of continuity of advocate. Where this occurred it was usually the more complex cases, and particularly those with fixed trial dates;
- for the most part, Areas were attempting to cover a high proportion of PCMHs in-house often only allocating work on the day before the hearing. This was particularly true where the Crown Court was located at more than one court centre and it was not known until the afternoon before the hearing at which location individual cases are to be heard;
- those with less experience were often restricted to non-contested hearings, particularly PCMHs. This reduces the likelihood of continuity of advocate in any case; and
- allocation of a significant amount of the more straight forward trial work is also often done late.

*Observed case*

The crown advocate was instructed late because the case was a late return from another crown advocate. The crown advocate had not therefore covered the case at the PCMH. Preparation had to be done the previous afternoon and at home. Prior to going into court, the crown advocate had to deal with unresolved disclosure issues raised by the defence. In addition, a bad character application had not been made in compliance with plea and case management directions. Poor case progression therefore was not assisted by the late instruction of the court advocate.

(This seemed to be a regular occurrence: crown advocates are only allocated 'nominally' to cases which are then moved around as required in order to maximise availability.)

**5.15** There have been challenges in allocating sufficient work to principal crown advocates nationally. This was due in part to Area based staff not being aware of their availability or holding the view that the work could be done locally by the Area's senior crown advocates or counsel who were known to them. The CPS were also concerned that principal crown advocates were not being utilised as much as they could be and recent instructions have been circulated to identify additional work for those advocates. It is important that they are utilised effectively both on a financial basis and also to facilitate possible advancement to Queen's Counsel in the future.

**5.16** Most Areas had at least one senior crown advocate in post, they are allocated sufficient cases to fully utilise their time in terms of deployment. The majority are also used by Areas to provide training and specialist advice to help develop colleagues. There was evidence that some senior crown advocates were allocated an unreasonable amount of cases; this seemed to be the result of those allocating the work not appreciating that more serious casework usually needs longer to prepare, particularly when the case was not trial ready on receipt. Much of their work, by its nature required additional work because they were dealing with complex multi-defendant cases. Whilst it was accepted that the senior crown advocates often work outside of their contracted hours to prepare their cases, care needs to be taken to ensure that their work load is not unsustainable, leading to delays or a drop in quality.

**5.17** Some of the Areas were making good use of the national electronic diary system for allocation of work to crown advocates; this was introduced in October 2010. There are some clear benefits to using a national system and anyone who needs to know what work has been allocated to an advocate can access the diary. However, there are a number of matters that still need to be resolved and not all Areas are keen on adopting the diary system. Many entries on the system were inaccurate and had not been updated.

### **Paralegal support at court**

**5.18** At the time of the 2009 thematic review the provision of caseworker support was variable and many Areas that were understaffed were awaiting the outcome of the paralegal review<sup>14</sup> before recruiting staff to fulfil the support role. The new paralegal structure is now in place which has led to changes in roles and grades of staff, but when combined with budget reductions this has meant less CPS administrative support for advocates at court across the board. Of staff surveyed 63.6% felt that there was inadequate paralegal support at court.

**5.19** The use made of paralegal officers and assistants varies and paralegal staff have indicated that their roles lack clarity. In some Areas paralegal staff are spread thinly, with some taking notes for crown advocates and not counsel, whereas others do the opposite. In one Area, support was not available in the plea and case management court because there was an expectation that the crown advocates would fully endorse the file with all relevant orders in addition to their brief; this has risks in a busy court.

**5.20** There is some tension where leading counsel and crown advocates are now undertaking administrative tasks such as updating of logs, coding fees and savings as well as photocopying; this can interrupt court proceedings, may not represent value for money and at times can be inappropriate. There is also a concern about the tension caused for paralegal staff, whilst being used to provide valued witness care at court as a consequence they are not available to ensure that files are properly endorsed.

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<sup>14</sup> A CPS review looking at the role and responsibilities of paralegal assistants and the more senior paralegal officers. Crown Court caseworkers have traditionally been equivalent to the paralegal officer post.

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## Facilities and equipment

5.21 Accommodation and the available technical support at court continue to be variable. The security of CPS accommodation was mainly satisfactory. Some CPS rooms at the Crown Court lacked space for the paralegal staff.

5.22 This shortage of space was exacerbated where crown advocates continued to use the CPS room in preference to the robing room. The 2009 review highlighted the need to encourage all crown advocates to use the robing rooms at court; this was to assist the development of crown advocates rather than any issues in relation to limited CPS accommodation at court. There has been some improvement but less than 75% of crown advocates surveyed used the robing room at court, and it is clear that a significant number are still reluctant despite encouragement from others. Crown advocates need to continue to be encouraged to use the robing room as an accepted part of the culture of higher courts advocacy.

5.23 The thematic review highlighted the need for up-to-date text books in court for any appearance. Many crown advocates did not have access to copies, leaving them vulnerable in court when legal points arose. The move to a cadre of full-time crown advocates has meant that those appearing in the Crown Court have the appropriate texts. Inspectors did not observe any crown advocate in court without a copy of Archbold: Criminal Pleadings and Practice, and 91% of unit heads canvassed felt that sufficient legal texts are available.

5.24 However, the position has worsened in the magistrates' courts where there was an absence of legal texts, and where they were available, many were considerably out-of-date putting the advocate at a disadvantage. In one Area there was no IT available for use by prosecutors who had to rely on out-of-date legal texts and legal guidance.

5.25 There is limited availability of laptops for use by crown advocates for preparation to be undertaken outside of office hours. In-house advocates are at a considerable disadvantage, in contrast to the Bar, in terms of not having the tools to facilitate preparation at home, the evening before an appearance, for example to draft an opening note or admissions.<sup>15</sup> One advocate observed had purchased an IT tablet to undertake such work outside the office. Although he should be commended for his conscientious approach, it is in fact a breach of the departmental IT security policy.

### *Observed case*

A regular solicitor agent attends court very early in order to prepare cases for trial that are received on the day of trial. The agent is equipped with a laptop and printer enabling access to and hard copies of any legal texts required. This contrasts sharply with the usual facilities available for prosecutors.

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<sup>15</sup> There are plans to improve the availability of laptops through the Transforming Through Technology (T3) project which is now underway.

### **Recommendation**

Expectations and working practices should be made clear and significantly improved including:

- i arrangements for the allocation of work and returned briefs;
- ii arrangements and expectations for preparation, including the use and availability of IT for preparation out of the office;
- iii the role of the crown advocate clerk; and
- iv arrangements for paralegal coverage at court.

## 6 Assuring the quality of advocacy

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### The advocacy assessment programme

**6.1** The CPS has shown a commitment to the assessment of quality, particularly for crown advocates and associate prosecutors. The formal advocacy assessment programme, commenced in October 2009. It was necessary to fill the void whilst work was ongoing at national level to agree a joint scheme for all publicly funded advocates. The work undertaken by the internal and external assessors is comprehensive, in-depth and of good quality.

**6.2** In addition to the formal national assessment scheme the DPP and Principal Legal Advisor have made a number of unannounced visits to the Crown Court to observe the quality of advocacy and service delivery.

**6.3** During 2010-11 over £1.4 million was allocated to quality assessment activity. A total of 1,027 assessments were conducted, the majority of which were of crown advocates and the process delivers an in-depth assessment of an advocate's level of performance. The CPS has undertaken to continue funding the advocacy assessment scheme at a reduced level of £800,000, despite the financial pressures on the budget following the Comprehensive Spending Review.

**6.4** Most CPS Groups utilised dedicated internal advocacy assessors who had undertaken the majority of the assessments. The assessors were required to complete the City Law School training. External assessors were used for a minimum of 10% of assessments. A number of parallel assessments were undertaken by the internal and external assessors to ensure consistency of assessment and in almost all cases the grading and commentaries were in accord.

**6.5** During 2010-11 assessments were targeted on crown advocates and associate prosecutors with any shortfall on numbers being made up from crown prosecutors, in particular where performance issues had been raised. Assessors were required to observe sufficient advocacy of a type that enabled them to provide a meaningful assessment of the advocate's performance for their required level. Internal assessors expressed concerns about the numbers of cases which did not proceed. At times they had to assess advocates and types of hearing which differed considerably from that which they had planned in order to help achieve the target numbers, rather than dedicating their time to what they deemed to be quality assessments. Inspectors' observations in trial advocacy were also hampered by a number of cases not proceeding as listed.

**6.6** Of the 1,027 assessments during 2010-11, 33 (3.2%) advocates were found to be less than competent. Our own observations found 7.1% of all in-house advocates and 7.1% of all advocates seen to be less than competent.<sup>16</sup> Internal assessors give advance notice that they are assessing individuals which ought to ensure that the advocates have undertaken the appropriate preparation ahead of the monitoring exercise. This approach differs to the inspection methodology, and is reflected in our judgements about the level of preparation undertaken by some of the advocates observed, which in turn will have impacted on the ultimate assessment scores.

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<sup>16</sup> To validate our own observations we have undertaken a comparison of those assessments sent to us by the Groups who participated in the fieldwork against the assessments undertaken during the follow-up and for the most part reflected a consistency of assessment grades.

**6.7** During 2011-12 and 2012-13 the CPS will adopt a more targeted approach to the assessment of advocates<sup>17</sup> and all advocates will be assessed at least once within a five year period. Assessment will be based on the risk posed by identified individuals, but should also take account of the specific categories where weaknesses exist, which potentially pose the greatest risk. Higher priority should be attached to assessments of trials that reflect the true quality of advocacy from in-house lawyers, whilst targeting risk in non-contested work in the manner currently proposed.

### Learning from experience

**6.8** Copies of assessments produced by the assessors are provided to the individual advocate and the relevant unit manager and, in some Areas, to the Chief Crown Prosecutor. The instances where assessors were approached for further information or were given feedback on action taken as a result of their assessment, especially where performance was poor, were few; this is of particular concern. Inspectors observed a small number of advocates during the original review who were not competent and no noticeable improvement was observed during the follow-up review. Assessors indicated that they had rarely been approached to identify trends or areas for improvement which might have proved useful for training purposes. However, since the fieldwork it is understood that these links have now been strengthened.

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<sup>17</sup> A targeted approach prioritised where: performance issues are raised in relation to advocacy by managers, the judiciary or complaint; where an advocate wants to pass through the breakpoint or otherwise be upgraded; or where an advocate is newly qualified.

**6.9** Although there are some examples of good work, the approach to driving improvement locally is variable.

### Good practice

In one Area the advocacy assessor has developed a reference document for advocates to help improve individual performance; this has been disseminated locally and passed on to individuals at national level.

**6.10** At a national level, following the disbanding of the advocacy team, there is no focal point for issues arising out of the assessments or for collating and disseminating good practice; this piecemeal approach does not support the commitment to quality which is at the heart of the current stated CPS approach. There has been, and continues to be, considerable investment in quality assurance but it is unclear what has actually been achieved and quality assessment has not been used to develop individuals effectively over the longer term.

### Data recording

**6.11** There are some flaws with the electronic system for recording assessments. Advocates cannot be categorised properly which means it does not lend itself to analysis by advocate type. There are some obvious recording inaccuracies in some categories of data. Inspectors cannot be certain about the accuracy of the recording which inhibits performance management.



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### **Grading and joint assessment of advocates**

**6.12** There has been no progress in bringing the grading system applied to crown advocates into line with that for the Bar to a unified structure; this was a recommendation in the 2009 report. The new panel system for prosecution advocates from the referral Bar, to commence in February 2012, is an opportunity to work towards a unified scheme to give confidence to external stakeholders of a consistent and transparent system. The joint quality assurance scheme for criminal advocates<sup>18</sup> is expected to become operational in April 2012.

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<sup>18</sup> The Bar Standards Board, ILEX Professional Standards and the Solicitors Regulation Authority established the Joint Advocacy Group to take forward the development of a quality assurance scheme for criminal advocates.



# Section 2: Strategy and governance

## 7 The advocacy strategy

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### Context

7.1 The original CPS advocacy strategy was driven centrally; it was primarily based around deployment and savings targets and there was limited emphasis on assuring quality. Whilst the overarching aim included reference to 'high quality advocacy' it is not clear how this was defined or how it was to be measured. The strategic position has now changed. Since 2010-11 there have been no nationally imposed financial targets for advocacy, although there is an overriding target on budget compliance, and in the last two years there has been a stronger focus on, and commitment to, quality.

7.2 Whilst the original strategy has not been formally reviewed and reissued, CPS senior managers consider that crown advocate deployment has become 'business as usual' and is undergoing a period of consolidation, which will mainly take place at Area level. The central advocacy strategy team was disbanded and decisions about how best to implement the advocacy strategy have been devolved to Areas. The lack of clear national direction brings some risks; Areas are now responsible for developing their own local approach to advocacy, but there is wide variation. The CPS is undergoing significant change and a carefully considered national advocacy strategy must form an integral part of their planning process.

7.3 There is no national oversight and guidance to enable the advocacy strategy to develop further. A better steer from CPS Headquarters is necessary to achieve consistency in the approaches taken by Areas, and to ensure that the advocacy strategy is not left to drift as other issues take priority.

Although there are nominated national leads for crown advocates and associate prosecutors, both have significant other duties.

7.4 The thematic review in 2009 was critical of the unchecked approach to the growth in crown advocate numbers and how their deployment had been allowed to develop. Efforts have been made through the prosecutor structure review to address some of these issues. Some headway was made in restricting the access to training for new candidates, and this has limited the growth in the overall crown advocate cadre.

7.5 An initiative was launched enabling those crown advocates who wished to revert to the crown prosecutor cadre, without the loss of previous guarantees, to do so by the end of June 2011. The information indicated that 117 crown advocates expressed an interest and 71<sup>19</sup> reverted; this scheme re-opened in January 2012. This, alongside recent CPS restructuring plans and the introduction of a voluntary exit scheme, should assist in better alignment of the level of crown advocates in post with the business need. However, most Areas visited still considered that they have more crown advocates than they require. Inspectors would like to have seen more progress on this crucial aspect of the strategy whilst acknowledging the sensitivity of some of the issues involved.

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<sup>19</sup> As at 6 July 2011.

### **Benefits realisation**

**7.6** The aim of the advocacy strategy was to transform the CPS into a service that routinely conducts its own high quality advocacy across the full range of cases. It was looking to achieve a number of benefits as part of the strategy:

#### **a) Increased associate prosecutor deployment in the magistrates' courts**

**7.7** On the whole, the CPS is making good use of associate prosecutors currently in post, and deployment has continued to grow as a percentage of overall court work. National deployment by associate prosecutors has increased from 24.5% in 2008-09 to 30.9% in the last financial year.<sup>20</sup> When the utilisation of associate prosecutors at level two (introduced during 2009-10) is included, the coverage increases to 32.3%. This level of deployment would equate to a saving of approximately £4 million in 2010-11, based on the original efficiency plan savings figures, with no negative impact on quality.

**7.8** There is scope for more effective deployment in some Areas. Currently the proportion of magistrates' courts sessions undertaken by associate prosecutors in Areas ranges from around 24% to 54%. Improvement may require changes to staffing profiles. In some Areas associate prosecutors are undertaking the expected number of court sessions per week individually but, the numbers employed restricts the volume of work associate prosecutors can do overall.

**7.9** There are mixed perceptions of the AP2 scheme that allows trained associate prosecutors to cover a wider range of hearings including some trials for non-imprisonable offences. Their deployment depends on the level of additional potential work that they can cover in a given Area and the ability to agree appropriate listing practices with the court. At present those prosecuting traffic work are proving particularly effective as specialists. However, court closures, and a possible reduction in road traffic work, may affect the use that is made of all associate prosecutors.

**7.10** There have been difficulties in listing suitable work for AP2s; nationally there does not appear to be much enthusiasm for AP2s outside the pilot Areas and decisions as to whether to proceed with this initiative are being left to the Areas to decide as part of their workforce deployment plans. There are cost implications for the introduction of AP2s, which include increased salary and the significant commitment to training. Some pilot locations have found it difficult to calculate the most appropriate level of AP2 resource to suit their business need.

**7.11** The CPS needs to consider how to maximise the potential benefits from deployment of associate prosecutors. This may require adjustments to staff profiles as and when opportunities arise. Whilst solid progress has been made, there is still scope for significant improvement over time. There are some barriers to extensive growth which include existing lawyer staffing levels and some concerns from the magistracy about the flow of business, but there is still potential for better utilisation by most Areas. Listing practices will have a significant impact on the best use of prosecutors.

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<sup>20</sup> CPS data can be found at Annex D.

	Total magistrates' court sessions	Total staff court sessions	Total sessions covered by CPS %	Total agent court sessions	Covered by agents %
2008-09	380,540	324,449	85.3%	56,091	14.7%
2009-10	357,966	304,761	85.1%	53,205	14.9%
2010-11	335,549	303,023	90.3%	32,526	9.7%

**b) Increased in-house coverage of magistrates' courts hearings**

**7.12** The CPS has continued to expand the use of its in-house staff to cover magistrates' courts sessions, despite a drop in crown prosecutors. In 2010-11 the CPS met the target<sup>21</sup> of handling 90% of magistrates' courts sessions in-house for the first time since the launch of the strategy. Again, there is wide variation across the Areas with performance ranging from 100% in-house coverage to 73%.

**7.13** Expansion has been achieved through:

- more effective use of associate prosecutors aided by improvements in listing patterns;
- the introduction of a wider remit of work that can be covered by associate prosecutors who have undertaken additional training;
- fewer office days for lawyers; and
- reductions in the number of court sessions that need to be covered.

**7.14** This delivers clear financial benefits and, in some Areas, is improving the quality of advocacy provided. However, in some instances the increase in court coverage, combined with other commitments has led to a reduction in the time available to prepare cases for court, and particularly in the abstraction of lawyers from case progression teams; this clearly carries some risk. It has also contributed to the challenges faced by Areas in deciding the most effective overall deployment practices to cover all the Areas' commitments. The ongoing programme of court closures presents both risks and opportunities to the CPS for effective deployment at court; engagement with court staff is required to ensure that the optimum benefits are achieved from the changes.

<sup>21</sup> CPS data can be found at Annex D.

Financial year to	Total CA sessions	Total CA hours	Average CA hours per session	CA cost (£)	Counsel fees saved (ex VAT) (£)	Counsel fee savings net of full costs (£)
Mar 09	56,464	316,043.74	5.60	16,151,858.32	23,592,796.42	7,440,938.10
Mar 10	61,684	351,698.53	5.70	18,552,315.17	27,833,588.47	9,281,273.30
Mar 11	63,505	371,201.27	5.85	19,938,544.93	31,743,619.64	11,805,074.71

**c) Counsel fees savings through crown advocate deployment**

**7.15** The CPS has increased crown advocate deployment in the Crown Court and has made significant savings in counsel fees as a result. At the national level the CPS has met and exceeded its target of undertaking work which amounts to 25% of the total spend on graduated fees to counsel in the Crown Court.

**7.16** Despite the perception that the growth in the work has slowed down, in 2010-11 crown advocates made savings of £31.74 million (excluding VAT). This sum represents what would have been paid to counsel had a crown advocate not prosecuted the cases. This is an increase of 14% over the previous year and is a realistic appraisal of the gross savings made.

**7.17** The cost of providing the service in-house, for the same cases, has been calculated by the CPS as £19.94 million. This takes account of actual salary costs based on the time recorded by crown advocates for preparing and presenting the cases with an additional 10.5% uplift to cover corporate costs. The net saving of £11.8 million is an increase of 27% on savings in the previous year, although the increase in time devoted to crown advocate work was only 5.5%. This indicates that the CPS is being more successful in targeting work that attracts better savings.

**7.18** However, the calculation does not take account of the increased salary levels of crown advocates which applies even when they are not undertaking Crown Court advocacy. There are crown advocates who are not performing any advocacy functions yet are receiving the uplift in salary; this has not been factored into the costs savings analysis. In one Area six crown advocates had undertaken no Crown Court advocacy at all in 2010-11 despite being paid on the higher salary scale. A number of crown advocates are undertaking a significant amount of crown prosecutor work, including a combination of magistrates' courts advocacy (non-complex trial advocacy), or are allocated to case progression units, and review work, whilst being paid as crown advocates. There are limited systems in place at Area level to capture how crown advocates have been deployed when not undertaking crown advocate work.

**7.19** There are a number of elements that affect the accuracy of some of the figures used to calculate savings. Crown advocates are required to record travelling and preparation time. However the way both are accounted for and recorded is inconsistent between CPS Areas. The recording of preparation time can have a significant impact on net savings: generally, the lower the preparation time the higher the savings made. If preparation time increases,

the savings are reduced. The recording of preparation time appeared to be low; this was apparent across most Areas, thereby increasing fee savings.

**7.20** Savings are calculated in the same way whether the crown advocate works in the role full-time or not. However, where the crown advocate is in the role full-time, a more realistic indication of the net savings achieved would be gained by setting the total cost of the individual's salary, with the corporate uplift, against the equivalent cost of self-employed counsel for the cases they have dealt with. If savings are approached in this way the level of net savings is less.

**7.21** Where Areas have indicated that they have dedicated full-time crown advocates we have examined what proportion of their full-time hours have been utilised on crown advocacy work and considered the results both in terms of deployment and the savings achieved. The table at Annex E gives an example of 30 crown advocates from five Areas who work full-time on advocacy and therefore have the

capacity to be utilised for 1,400 hours<sup>22</sup> per year. There is a significant difference in how much time is spent on crown advocacy work, which for the first six months of 2011 ranged from 36.3% to 120.4%. Only seven of the 30 advocates spent 80% or more of their time undertaking advocacy; 14 spent less than 70% of their working time undertaking their full-time role.

**7.22** The total fees saved net of costs by the 30 full-time crown advocates, based on CPS current calculation methods, during the first six months of 2011 was £467,570.72. The fees saved calculated on the (minimum) CPS annual salary cost of the crown advocate plus the enhancement of 10.5% is £89,115.96, a difference of £378,454.76. Three individual examples of the difference in net position are given below.

<sup>22</sup> The civil service average of 210 days availability multiplied by 7 deployable hours per day, less abstractions such as training equates to 1,400 deployable hours per year. (The CPS calculation uses 210 days at 7.5 deployable hours per day.)

Advocate	Percentage of time spent on CA work	Counsel fees saving (£)	Cost of CA time on prep and presentation of cases plus 10.5% uplift (current CPS method) (£)	Net saving - CPS calculation (£)	Full salary cost of CA plus 10.5% uplift (6 months) (£)	Net saving - HM/CPSI calculation (£)	Difference in net position (£)
	a	b	c	d (b-c)	e	f (b-e)	g (diff. between d and f)
10	120.4%	39,506.54	49,601.82	-10,095.28	39,225.29	281.25	10,376.53
11	76.6%	27,787.62	30,456.56	-2,668.94	39,225.29	-11,437.67	-8,768.73
30	36.3%	31,420.26	12,152.09	19,268.17	39,225.29	-7,805.03	-27,073.20

**7.23** Annex E suggests that a number of full-time crown advocates are under utilised. While figures cannot be regarded as entirely accurate because of inconsistencies in the approach to time recording (and inspectors observed that some crown advocates were apparently fully utilised), the extent to which full-time crown advocates are fully deployed in the role appears to be highly variable, more so than can be properly attributed to local external factors.

**7.24** The variations in deployment levels and the difference in overall net savings have implications for the CPS in defining its future strategy, if a full cost approach is taken nationally to be implemented locally.

**7.25** In most Areas, 20% of the crown advocates are making approximately 80% of the net savings. Areas were of the opinion that they had more crown advocates than were needed for the level of work that could reasonably be undertaken; this has added to poor utilisation. There were a number of crown advocates who were undertaking limited or no Crown Court work per year (even allowing for those who work in specialist CPS roles). It is likely that the CPS could achieve the same level of net savings, however calculated, with significantly less crown advocates.

**7.26** The CPS recognises that the increase in the number of crown advocates was not controlled and was excessive for the business needs. Nevertheless the number of crown advocates has remained fairly constant in the two years prior to the fieldwork, and there has been some increase in the numbers of principal and senior crown advocates. Numbers in the casework divisions have risen by 35%. The CPS has since slowed down growth by limiting

access to the training, and sought to reduce numbers by encouraging reversion to the crown prosecutor grade and following the fieldwork introducing a formal scheme for reversion. In addition, crown advocates cannot now progress to level 3 without undergoing a more rigorous selection process.

**7.27** Much more needs to be done to ensure a coherent strategy is in the place for the coming years. The CPS needs to determine numbers and set expectations for the deployment of its full-time crown advocate cadre, and others, which ensures their usage represents value for money, and allows them to develop into good quality advocates who can perform and handle cases well in court. In order to make a true assessment of the cost and benefits of the strategy, work needs to be done to ensure:

- preparation time and other recording necessary to assess savings is consistently counted and recorded;
- crown advocate utilisation figures are regularly analysed (this analysis is not currently undertaken); and
- the approach to assessing the savings and determining the value for money offered by the full-time cadre is reviewed.

**7.28** The Service must also determine the flow of advocates needed for succession planning and how that should be managed.



### **Operating models**

**7.29** The CPS review of the operating models for Crown Court advocacy deployment found it difficult to pinpoint an ideal model. In reality, there are many models although there are some consistent elements.

**7.30** Three of four Groups visited, have set up dedicated teams of crown advocates to undertake Crown Court work. The remaining Group is also looking to establish dedicated teams as part of its advocacy strategy. Whilst some Areas state that their crown advocates are dedicated, full-time advocates it is clear that some are still performing other functions. Selection procedures for the dedicated full-time crown advocate cadre have not been systematic or designed to ensure the most able are selected. More recent fieldwork was able to identify elements of good practice in the operation of the model in CPS West Midlands; full details are provided at Annex G.

**7.31** A deployment model based on a full-time cadre provides the opportunity to develop crown advocates with regular experience and practice and should enable more contested advocacy to be undertaken. However, any operating model that is implemented also needs to allow those crown advocates who are not full-time to undertake sufficient advocacy to maintain their skills and provide a pool of candidates for succession to the full-time cadre.

### **The net savings arising from the advocacy strategy**

**7.32** In assessing the effect and success of the advocacy strategy we have sought to quantify the savings that have been achieved across the five years, from April 2006 to March 2011, of the strategy's operation. We have taken into account the effect on costs of changes to the staffing mix that have arisen since the 2005-06 baseline, modernisation fund monies, the cost of the central Headquarters strategy team (now disbanded) and training costs. Against that we have set savings arising from the reduction in the use of agents in the magistrates' courts, and the total counsel fee savings, excluding VAT, which have arisen based on what it would have cost the CPS had they outsourced the cases. The figures are set out in detail in Annex F. The net savings of the strategy so far amount to around £26 million.

**7.33** Greater attention to the numbers of crown advocates and more efficient deployment would have enabled this figure to be greater. The CPS must now clearly articulate expectations about the work crown advocates should undertake, the numbers needed to support that, and the standard to which the work should be undertaken. Deployment practices and supporting administrative practices must be revised and developed with central direction and input, and be supported by analysis. Better practices will ensure the CPS has the opportunity to improve the cost effectiveness of its strategy and improve quality.

### Recommendation

The CPS should review the purpose of its advocacy strategy and articulate it clearly, in particular:

- i set out expectations for quality of advocacy and case presentation;
- ii establish effective support and oversight of the strategy at national level; and
- iii ensure that progress is made on the grading system applied to crown advocates to bring it into line with the Bar grading system and converge to a unified system (outstanding from the 2009 review).

### Recommendation

The CPS should define a preferred operating model for its Crown Court advocacy units which exemplifies best practice and in which it:

- i determines numbers to meet the business need;
- ii sets expectations for crown advocate deployment, in particular its full-time cadre;
- iii ensures deployment practices represent value for money; and
- iv re-examines arrangements for progression and determines a succession strategy.

### Recommendation

To ensure it has a clear understanding of the value for money offered by its advocacy strategy the CPS should:

- i take steps immediately to ensure advocacy data is consistently and properly recorded in all Areas and units particularly in relation to preparation and travelling time; and
- ii re-examine the method for calculating the net savings generated and the value for money offered by full-time crown advocates.

### Other benefits

**7.34** The CPS has fared less well against its aims of improved witness care at court, the opportunity to conduct more ‘cradle to grave’ prosecutions with improved decision-making, and promoting the CPS as an employer of choice. Whilst much of this was found to be the case in the review in 2009, there was less evidence in 2011 that these benefits had accrued.

**7.35** Observations in this inspection have indicated there has been a marginal decline in the service to victims and witnesses at court; a contributory factor is likely to be the reduced level of paralegal support available in the Crown Court. There is little evidence of lessons learned at court feeding into decision-making at the outset of a case. Improved trial outcomes were also an expected benefit. Since the last review trial effectiveness has remained stable in the magistrates’ courts but has seen a decline in the Crown Court. Finally, despite the successes in attracting staff from the Bar at a senior level, the budgetary constraints and the need to control the number of crown advocates, mean that it will be difficult to advance the potential for Crown Court advocacy in any recruitment exercise in the near future.

**7.36** At the time of the 2009 thematic review there were tensions in the relationships with the Bar and the judiciary. This has improved at both national and local level. There is now less criticism from the judiciary than in 2009, which may reflect the acceptance of the deployment of crown advocates in the Crown Court, although there are still reservations about the quality of advocacy. The DPP meets regularly with the Senior Presiding Judge for England and Wales enabling discussion about the CPS national approach to advocacy as well as receiving feedback from observations in court. At Area level there are regular formal meetings with the Resident Judge where feedback is given on the quality of advocacy at court, although there is little discussion about the local approach to the strategy for advocacy.

**7.37** The DPP has re-invigorated liaison with the Bar Council; meetings now take place on a regular basis. The meetings have so far proved effective in improving relationships and been a catalyst for some joint initiatives. In the main relationships with the Circuits and the local Bar have improved.



## 8 Training and development<sup>23</sup>

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### Crown Court

**8.1** At the time of the 2009 thematic review the approach to the advocacy strategy was changing, moving away from building the necessary capacity, which was already exceeding business needs, to embedding the development of the in-house advocates. Plans were in place for enhanced training and development of crown advocates. However, there was no mechanism to assess the success of the training and development programme and the training resource was not matched to the business needs of developing up to 1,000 crown advocates. However, with the recent reduction in the number of crown advocates the opportunities for development training should increase.

### Qualification

**8.2** The CPS recognised that it needed to manage the number of staff who qualify as crown advocates thereby properly matching the available work with the number of staff, and ensuring appropriate deployment. The previous arrangements which allowed for open access to the crown advocate training were not sustainable for its future strategy. To ensure that those part-trained or who had registered in 2009 were given the opportunity to qualify, and in response to concerns from the departmental trade unions (DTUs), the CPS agreed to an extension of the window for training until April 2011.

**8.3** The CPS has indicated that opportunities for prosecutors to qualify as crown advocate will in future be based on a business case. Recruitment and selection for the training will be on the basis of fair and open competition. The CPS will be consulting with the DTUs over the identified resourcing levels as part of their ongoing dialogue.

**8.4** Crown advocacy training for 2010-11 saw a total of 28 courses run to accommodate 248 delegates, with some delegates attending more than one of the courses. The total cost of the courses was £249,300 with only 45 delegates passing the final course. The overall failure rate for all the courses was 71%. The failure rate starkly indicates the inappropriateness of the open access approach and the costs; this has failed to deliver value for money.

**8.5** A revised strategy needs to be put in place for the selection and training of crown advocates, which will ensure that the right prosecutors are selected, and consequently allows for appropriate succession planning.

**8.6** Since the thematic review there have been some adaptations to the crown advocacy training courses (stages 1a and 1b non-jury advocacy and stage 2 jury advocacy) although none of these have been major. The training is delivered in such a way to ensure that the candidates reach the relevant standard to pass the course. Observations during the fieldwork revealed that training is not understood by some as the minimum standard that must be attained, instead it is seen as the only or most appropriate way to present a case. The consequence is formulaic, mechanical advocacy which is dull, lacklustre and repetitive. Crown

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<sup>23</sup> The thematic review details at length the profile and nature of the training of prosecutors at all levels and the training administered at the Bar.

advocates need to realise the course provides the foundation to acquire the minimum standard which can then be built upon rather than fully equipping for court. Training needs to be followed up with relevant experience before the skills are allowed to wither. The support given locally to developing an advocate following qualification is still lacking and will continue to be so whilst the continued focus of those allocating cases prioritises the financial considerations.

### **Development**

**8.7** A considerable amount of time and resource has been invested in trying to develop the crown advocates to address the recommendations in the report; this includes some very positive work. However, not all crown advocates have benefitted from this and it has not always delivered the desired outcomes of improved quality. There has not been any assessment by the CPS of the various elements of training and development delivered and its impact in terms of embedding in-house advocacy and driving up quality.

**8.8** A national master class specifically for crown advocates was delivered as directed by the Principal Legal Advisor, involving her personal attendance or that of the DPP. Seventeen classes ran across all regions at a cost of £93,960. Around 290 delegates attended the master class, making the individual cost around £324. Feedback was mainly positive, although the uptake was sometimes lower than expected. There was no assessment of the impact on quality. In the current financial climate the CPS consider it will be difficult to run further events.

**8.9** Ongoing training is mixed. Some Areas have used local trainers, specialists and senior crown advocates, and in one Area the advocacy assessor has run limited localised master classes. Additional training materials for trial advocacy have been developed centrally for delivery locally but there are limited opportunities to put the learning into practice when a high proportion of trials crack. In other Areas training was limited. Over 68% of crown advocates who responded to the survey stated that they had received additional training since the thematic review; unit managers in their responses felt they would benefit from more. Of the crown advocates canvassed 35.7% suggested that they did not have sufficient support and, more worryingly, 10.5% felt that they did not have sufficient skills for the role.

**8.10** There are some positive examples of developmental training, such as funding for crown advocates to attend the Keble College residential advocacy course, but this is expensive and unlikely to continue with the current financial constraints. Some advocacy assessors have also dedicated time both in and outside work time to assist crown advocates looking to attend the national courses or those looking to pass through the breakpoint.<sup>24</sup>

**8.11** The CPS has introduced a more formal mentoring process under which the principal and senior crown advocates mentor some of the crown advocates. Mentoring has not been successful in many Areas and not led to the culture it aspired to create. Other work undertaken by principal and senior crown advocates has been more successful; there are many positive examples of training being delivered locally.

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<sup>24</sup> Through grading for crown advocates from level 2 to level 3.

**8.12** The CPS is trying to develop advocates who can progress and conduct high quality advocacy in all courts, and across the full range of cases. The key area of development for any advocate is regularly conducting trial advocacy and learning from the experience of doing so. However, crown advocates are not conducting sufficient trial work and therefore do not put the learning into practice. Training will not deliver the required level of improvement without practical experience.

A crown advocate is instructed to deal with a floating trial relating to burglary of a garage. The matter was listed for 10am. Apart from the case being called in for a brief review with the judge in the early morning and the advocate subsequently attending a short session in chambers for a Goodyear direction, the crown advocate spent the entire day waiting at court.

One crown advocate reports that only four trials allocated to him had been effective in the past 12 months.

Another reported that whilst they have prepared over 70 trials in the last five years as a crown advocate, only 17 have been effective.

**8.14** There is also scope for crown advocates to participate more in courses run by the Bar Council and Criminal Bar Association. At a strategic level the CPS is working hard to foster good relationships which it is hoped would include joint training opportunities. To date this work is moving slowly at a national level. There are examples of local joint training; this is positive work that should be encouraged.

**8.13** There is scope for more self development by individuals. Crown advocates do not have the opportunities of the junior Bar to watch other practitioners for considerable periods during pupillage or participate in the advocacy training delivered by the Inns of Court, but there are possibilities that are not maximised. There were many occasions where the crown advocates were waiting to be called into court, sometimes for long periods of time. Inspectors were not made aware of and did not observe many crown advocates using these times to observe trials or counsel of higher grades in the same court building and reflect on the quality of advocacy observed.

### Good practice

Joint local training with chambers in relation to cross-examination skills and speeches.

### The magistrates' courts

**8.15** A programme for magistrates' courts advocacy is being developed during the current financial year; until recently training of crown advocates and associate prosecutors had been the priority. The advocacy development programme for crown prosecutors to through grade to senior crown prosecutors has been adapted and rebranded. A core trial skills programme has been developed and was rolled out during September 2010, although communication about this could have been better to ensure and encourage take up locally.

The advocacy master class for the magistrates' courts has yet to be revisited to assess whether it is still fit for purpose. Other relevant training to improve the quality of advocacy is also available but no measures are in place to assess the impact on quality. Survey responses received revealed that 71.4% of senior crown prosecutors canvassed had not received training since the last report.

**8.16** The training of agents from the junior Bar is more systematic and regulated than the CPS; however, the junior Bar like crown advocates in contested cases is suffering now from inexperience and they are not all developing as quickly as they should. The effect of reduced agent usage in the magistrates' courts and the limited work at levels 1 and 2 in the Crown Court is beginning to show in terms of the quality delivered.

**8.17** In contrast, there has been additional associate prosecutor training. Of those canvassed 64.3% had received training. Positive comments were received about the quality.

**8.18** The associate prosecutor level 2 (AP2) training course involves two weeks formal training interspersed with eight weeks of structured court observations locally. The numbers are far smaller than those attending the crown advocate training, but the gap between the two types of training in terms of preparation and support outside the formal training course is vast. The difference in approach is apparent in terms of outcomes; there have been no failures on the AP2 course, which emphasises the importance of an effective pre-selection procedure with motivated applicants.

**8.19** Work to accredit associate prosecutors and the relevant courses by ILEX, the governing body, was still outstanding when the national advocacy team was disbanded. The quality assurance mechanism was being finalised at the time of the fieldwork and accreditation for the AP2 course has now been agreed.

**8.20** The CPS is probably the leader in paralegal training; despite this there has been no consideration of the opportunities to be a training provider across other Government departments.

### Recommendation

The CPS should review its approach to training and development to ensure:

- i there is an evaluation of the impact on the quality of advocacy following the delivery of training and development opportunities;
- ii the mentoring of crown advocates is embedded and best use is made of the principal and senior crown advocates in the mentoring role;
- iii that a system of learning and development for crown advocates is introduced where they can observe others in court, reflect and complete learning logs and development plans, and where appropriate adopt a buddy system to facilitate development;
- iv there is appropriate training of crown advocate clerks for a common approach and contingency cover; and
- v the delivery of the magistrates' courts advocacy training programme.



### **Development and the Bar**

**8.21** There is a risk for the future that failing to provide opportunities for the development of the junior criminal Bar will impact on CPS in the long term as well as the Bar. There needs to be planned succession for the Bar to develop to the highest levels and deliver the service that the CPS will require in the future. Locally there are limited agreements with the Bar on the coverage of work. Currently in some Areas the Circuits are struggling to obtain level 1 work for the junior Bar. This is causing some tension and the near blanket coverage of low level prosecution work by in-house CPS advocates appears to have impacted on the quality of advocacy delivered by the junior Bar. In addition, the pool undertaking criminal work at the lower end, which is also being squeezed by the defence, is reducing in size as is the number of pupillages available. It is hoped that the resolution lies in the panel system yet to be introduced, although the CPS needs to consider the consequences of ensuring there is work for the panel advocates at levels 1 and 2 much of which is currently largely covered by in-house advocates.



## 9 Conclusions

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**9.1** The CPS must now review its advocacy strategy and determine what it seeks to achieve from it, in the light of the many changes that have occurred since the strategy was first implemented. Not least among these are the restructuring of the Service which took place in April 2011 and the reduction in funding. As far as advocacy in the Crown Court is concerned, the CPS will need to consider how any strategy should sit in the light of the approach to overall deployment across a range of commitments, the introduction of the advocate panel scheme and the revisions to be agreed in the operation of the Graduated Fees Scheme.

**9.2** Lessons, both positive and negative, are there to be learned from the implementation and operation of the strategy so far. In the magistrates' courts this has been largely successful. In the Crown Court there are weaknesses in management practices, operational processes and quality which mean that although the strategy has been successful in bringing about savings, it has been less successful in terms of efficiency and in the levels of improved performance achieved by its advocates.

**9.3** In order to overcome these issues, the CPS's revised strategy must articulate clearly: expectations about the work that CPS advocates should undertake in-house; how many crown advocates are needed; and the standard to which the work should be done. This will need to be supported by an analysis of the costs and benefits, and agreed deployment practices. We believe the CPS's aspiration to routinely conduct its own high quality advocacy is realistic and achievable but it is dependant on the best model being implemented, and the most effective and efficient use of staff.

**9.4** This review has found that advocates in the Crown Court are not developing their skills and experience sufficiently to enable them to become good trial advocates; this is because the bulk of their work has involved non-trial advocacy to ensure that sufficient savings are made. The CPS must be clear about whether it is in fact still seeking to have a cadre of crown advocates that can undertake the full range of trial advocacy, or not. If this is their wish, a formal approach to developing advocates is needed and should be consistently applied across the country.

**9.5** Deployment and supporting administrative practices, including arrangements for the allocation of work and preparation, are both in need of substantial improvement, and cannot simply be left for decision at the local level; they need central direction and input. We have concluded that only with central direction and an agreed basis of operation in the Crown Court will an advocacy strategy, which has at its heart the pursuit of both efficiency gains and high quality, be achieved.

**9.6** In the magistrates' courts, the increase in the use of associate prosecutors has been successful. But a decision needs to be made, as part of any strategy, whether the use of associate prosecutors with the power to conduct contested trials is to be pursued. If it is an efficient way to proceed, then it is something that the CPS should seek to adopt nationally rather than leave it to be determined locally.

9.7 Our review has shown that true and significant savings have been made by the CPS in the pursuing its advocacy strategy. Greater savings could have been made had the strategy been implemented more efficiently. Clearer expectations now need to be set about the quality and standards expected. Advocacy is a core skill and high quality presentation in court is central to the business of CPS. Within the CPS strategy, in-house advocates need to be given a fair opportunity to develop their skills and competence in order to achieve the levels of service the CPS is expounding. There should therefore be a revitalised emphasis on developing quality on the ground.

# Section 3: Follow-up findings

## 10 Progress against the recommendations and aspects for improvement

Recommendation	Rating as at June 2011
<p>1 Trial advocacy for crown advocates needs to be substantially improved, in particular in relation to cross examination – Crown Court (paragraph 4.36).</p>	<p><b>Limited progress.</b>                      Whilst some advocates have improved in specific aspects of advocacy, there has for the most part been little improvement in overall trial advocacy. There has been some improvement in cross-examination although more remains to be done. The CPS has invested in trying to develop crown advocates since the last review and positive initiatives, such as the national master class for crown advocates, are to be commended. However, the day to day CPS operational practices have not supported these higher level ambitions. The classroom learning has to be supported with practical experience of regular trial advocacy if a significant improvement is to be achieved.</p>
<p>2 The role of the junior prosecution advocate is clarified (paragraph 4.45).</p>	<p><b>No progress.</b>                      There has been no clarification as to the role of the junior advocate since the 2009 report.</p>
<p>3 Trial advocacy for prosecutors needs to be substantially improved, in particular in relation to cross examination – magistrates’ court (paragraph 5.42).</p>	<p><b>Limited progress.</b>                      Whilst there has been a reduction in the proportion of advocates graded as not competent, overall there is still a need to improve trial advocacy. There has been a decline in performance by prosecutors in relation to cross-examination which is disappointing.                       Advocacy training has given a higher priority to Crown Court work but it is anticipated that more focus will be given to magistrates’ courts work in 2011-12.</p>
<p>4 The CPS, in conjunction with the Criminal Procedure 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).</p>	<p><b>Achieved.</b>                      The Criminal Procedure Rules 2010 now allows the prosecution to make a closing speech.                       Inspectors found that whilst some prosecutors were observed making closing speeches, there could be a lack of appreciation of the impact of a closing speech, as despite the opportunity being available, a number of prosecutors failed to take advantage of the change to procedure.</p>

Recommendation	Rating as at June 2011
<p>5 There needs to be greater clarity of the roles and division of work between the crown advocate and reviewing lawyer (paragraph 6.14).</p>	<p><b>Operational changes have occurred, limited progress.</b></p> <p>Since the 2009 report the CPS has moved away from case ownership, except in the most serious and complex cases, and has adopted a new office based case preparation system, the Optimum Business Model for dealing with case preparation. As a consequence, the concept of a named reviewing lawyer dealing with crown court cases from charge to trial has less significance. Those lawyers undertaking work on the Crown Court OBM are providing a different function from those crown advocates attending at court. However, there remain issues in some Areas where crown advocates have to refer decisions back to the lawyer who happens to be allocated to the OBM on the particular day. In other Areas the crown advocate is responsible for making the decision.</p>
<p>6 Case progression systems need to be more effective and consistent (paragraph 6.18).</p>	<p><b>Under review.</b></p> <p>As noted above, the CPS has adopted a new office based case preparation system (OBM) for Crown Court work but Areas are at different stages of development of the scheme.</p> <p>Our observations revealed that there were examples of cases which had received adequate office preparation but there were also examples of poorly prepared cases. For example, inspectors found advocates attempting to remedy the defects in the office based preparation on the morning of the trial or at court, or taking the view that despite the file having gone through the OBM process, that the initial charge was not sustainable and as a consequence accepting offers of pleas from the defence or discontinuing cases.</p> <p>It has not been possible to undertake a full evaluation of the new case progression system during this follow-up report. The Inspectorate intends to prepare a report on the effectiveness of the OBM system during the current financial year.</p>

Recommendation	Rating as at June 2011
<p>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).</p>	<p><b>Limited progress.</b>                      Since the 2009 report the CPS has changed the system of support that it offers advocates at the Crown Court as a consequence of the paralegal review. The observations revealed a variable approach being adopted in a number of locations. Whilst some advocates had the benefit of support from a paralegal officer or assistant, a number did not. It was noticeable that in some courts where advocates were conducting a trial without support there were delays whilst administrative tasks were being undertaken.</p>
<p>8 The role of the crown advocate clerk needs greater definition and consistency. Training and guidance for the role needs to be provided (paragraph 7.33).</p>	<p><b>No progress.</b>                      There is no formal training for crown advocate clerks therefore no progress has been made against this element of the recommendation from the thematic review. The CPS has not produced a national job description for the role to assist in providing greater consistency and definition.</p>
<p>9 The CPS and Bar should review the existing CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court (paragraph 7.45).</p>	<p><b>No progress.</b>                      There has been no progress in reviewing the existing CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court. Many of the key principles contained within the document are still not complied with at an operational level. The panel arrangements being introduced provide an opportunity for progress.</p>
<p>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).</p>	<p><b>No progress.</b>                      There has been no progress in bringing into line the grading system applied to crown advocates with the Bar grading system and converging to a unified system.                       It is hoped that the new panel system for prosecution advocates from the referral Bar (which commenced at the start of 2012) will provide an opportunity to work towards a unified system to give confidence to external stakeholders of a consistent and transparent system.</p>

Recommendation	Rating as at June 2011
<p>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).</p>	<p><b>Limited progress.</b></p> <p>There are different systems of work allocation but overall the Areas have struggled to develop a holistic approach to staffing which provides high quality advocacy in an efficient manner. Attempts are being made to reduce crown advocate numbers (see below) to fit the business need but improvements still need to be made. There are some recent and ongoing initiatives that offer both opportunities and threats to staffing and deployment strategies.</p>
<p>12 In taking forward the Prosecutor Structure Project the CPS ensures that:</p> <ul style="list-style-type: none"> <li>• crown advocates are not paid additional monies unless they undertake an acceptable level of Crown Court advocacy;</li> <li>• there is an improvement in the level of suitably experienced or prepared candidates for training courses; and</li> <li>• the number and grade of crown advocates is commensurate with the needs of the business (paragraph 10.40).</li> </ul>	<p><b>Limited progress.</b></p> <p>Whilst the CPS has now made it clear that it needs to manage the number of staff who become crown advocates in order to properly match the available work, there are currently more staff in post than can be reasonably deployed. As a consequence, a significant number of lawyers were still doing considerable amounts of work that did not require the crown advocate qualification and yet being paid additional monies. This does not represent value for money.</p> <p>There has been no improvement and candidates are often still poorly prepared for the courses undertaken. The failure rate of 71% is unacceptable.</p> <p>The CPS is currently attempting to align the number of crown advocates to the business need. Restricting the availability of training for qualification has successfully limited the growth in the crown advocate cadre. A recent scheme that offers crown advocates the ability to revert back to senior crown prosecutor grade has led to a reduction. In addition, the CPS has also offered an early voluntary release scheme to staff in different areas of the country. Whilst the latter scheme is part of the CPS response to the Comprehensive Spending Review, it may reduce the number of crown advocates further. However, the impact of these schemes cannot be evaluated fully until these processes have been completed, but early indications suggest progress is being made.</p>



Aspects for improvement	Rating as at June 2011
<p>1 The quality of indictments needs to be improved (paragraph 6.16).</p>	<p><b>No progress.</b>                      Inspectors did not examine a file sample as part of the follow-up review but relied on evidence captured elsewhere. The CPS files examined during HMCPSI inspections since the 2009 report up to the time of the fieldwork revealed that 17.5% of the indictments were not drafted correctly. This compares to 11.1% of indictments examined as part of the 2009 report; performance has declined. There have been signs of improvement which have been captured in more recent Inspectorate work.</p>
<p>2 The quality of instructions to the advocate needs improvement (paragraph 6.19).</p>	<p><b>No progress.</b>                      Inspectors did not examine a file sample as part of the follow-up review but relied on evidence captured elsewhere. The CPS files examined during HMCPSI inspections since the 2009 report up to the time of the fieldwork revealed that the quality of the briefs has been assessed as, 20.6% poor, with 41.9% fair, 35.15% good and only 2.4% excellent. This is similar to the assessment in the 2009 report that indicated the quality of instructions to advocates were weak and still are.</p>
<p>3 Ensuring prosecution advocates have sufficient time to prepare effectively by providing sufficient time and papers available in advance (paragraph 6.28).</p>	<p><b>No progress.</b>                      The working practices of the CPS at operational level can inhibit sufficient time for preparation for court. In the magistrates' court, some senior crown prosecutors have been rostered to specific tasks every day of the week and as a consequence they have little or no preparation time. The situation is a little better for associate prosecutors, some of whom have time specifically set aside for preparing courts.</p>
<p>4 The CPS should work with HM Courts Service to address any inappropriate listing of magistrates' courts trials (paragraph 6.29).</p>	<p><b>Ongoing.</b>                      CPS Areas continue to work with HM Courts Service (now HM Courts and Tribunals Service) to deal with inappropriate listings. The greater use of associate prosecutors (APs) has required the courts to ensure that only 'AP appropriate' work be listed in certain courts.                       The Court Closure programme presents opportunities and risks that can be managed through effective joint working.</p>

Aspects for improvement	Rating as at June 2011
<p>5 The introduction of a system to monitor and manage the allocation of cases and work required to be undertaken (paragraph 6.37).</p>	<p><b>Limited progress.</b> There are different systems of work allocation for advocates in existence across the country; however, there is no evidence of an evaluation of the effectiveness of these processes (see below).</p>
<p>6 All advocates should have relevant practitioner text books when prosecuting in the Crown Court (Archbold and Sentencing Guidelines) (paragraph 6.50).</p>	<p><b>Achieved.</b> All crown advocates observed by inspectors had a copy of Archbold: Criminal Pleadings and Practice.</p>
<p>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).</p>	<p><b>Limited progress.</b> The focus of deployment in most Areas was still the desire to maximise the counsel fees saved. In some Areas this has resulted in more effective selection of cases to deliver savings. However, there was limited consideration of quality including development needs and skills, or the impact of deployment practices on other aspects of work.</p>
<p>8 The need to assure quality comprehensively across all types of case presentation undertaken by all advocates (paragraph 8.42).</p>	<p><b>Substantially achieved.</b> The formalised advocacy assessment programme commenced in October 2009 and on the whole is commendable. The assessments are of a high standard and represent a substantial investment in the quality assurance of advocates. There is, however, a need to quality assure advocates regardless of their type and so greater focus on the magistrates' courts is desirable. There is a need to use more effectively the information gathered during assessments in order to drive up quality.</p>
<p>9 All crown advocates should be encouraged to use the robing rooms at court (paragraph 9.38).</p>	<p><b>Limited progress.</b> There has been some improvement but only 72.7% of crown advocates surveyed used the robing room at court and it was clear from observations undertaken by inspectors that a significant number are still reluctant to use the facilities.</p>

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Aspects for improvement	Rating as at June 2011
<p>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).</p>	<p><b>Limited progress.</b></p> <p>There are different systems for allocation to advocates in existence across the country; the CPS has struggled to produce an effective system that balances the various competing needs.</p> <p>Inspectors found inaccuracies in recording preparation time which does not assist in the development and implementation of an effective work management system.</p>



# Annexes

## A Methodology

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### Fieldwork

The inspection team visited four (then) CPS Groups and 11 Areas within these Groups, three of which had been visited during the original thematic review.

Advocacy observations were undertaken in each of the Crown Court centres in the Areas and in a significant number of magistrates' courts. Interviews were undertaken with staff in the Areas and CPS Headquarters, and questionnaires were sent to relevant frontline staff. External stakeholders were consulted at national and local level with a combination of interviews and survey questionnaires. A list of individuals who assisted us in this review can be found at Annex H. We also supplemented our evidence with that from other recent inspection activity.<sup>25</sup>

### Observations in court

The advocacy was assessed and graded as follows:

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

We regard grades 1-3 as being fully competent. Although grade of 3- is regarded as competent, it is below average in some respects, lacklustre or lacking in presence. Grades 4 and 5 are unsatisfactory and clearly less than competent. An explanatory note to the assessments can be found at Annex B.

A comparison was made between the 2009 and the 2011 findings which captured the direction of travel. A detailed comparison of the observations undertaken in 2009 and 2011 in the Crown Court and the magistrates' courts can be found at Annex C.

We did not see any advocacy that was graded as outstanding (1) and have left this grade out of the tables in the chapters.

### Management information and data

The main purpose of the follow-up has been to ascertain the quality of the advocacy observed and the direction of travel since the review. It was also necessary to examine the value for money aspects of the approach to deployment of prosecution advocates in the criminal courts because this is inextricably linked with quality. Management information and data was analysed to assist with this aspect, including: caseloads; court sessions; costs; and targets for deployment of crown advocates, associate prosecutors and in-house advocates.

See Annex D for the national CPS advocacy data and Annex E for HMCPSI example calculations of fee savings against full salary cost for full-time advocates compared to the CPS calculation against hourly rates.

The glossary can be found at Annex I.

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<sup>25</sup> File data from inspections or follow-up inspections of CPS Mersey-Cheshire and CPS Yorkshire and Humberside Groups and CPS Nottinghamshire, CPS South Wales, CPS Surrey and CPS London Areas.

## B Explanatory note on advocacy assessments

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### General principles applied to the advocacy assessments

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

Notification of the inspection period was given in advance, but no restrictions or set requirements were imposed and the Areas were free to choose which advocates would be deployed during the inspection process. During the fieldwork period advocates selected for assessment were chosen at random, applying the following guidance criteria:

- 1 Observations would include both magistrates' courts and Crown Court advocacy also, where possible and appropriate, the Youth Court would be observed.
- 2 Both in-house prosecutors and agents instructed to prosecute would be assessed.
- 3 The selection of advocates to be seen would be with a view to ensuring that:
  - A spread of work, both contested and non-contested hearings, was observed.
  - An acceptable balance was struck between in-house prosecutors and agents instructed by an Area, albeit with the following proviso: in light of the findings and recommendations set out in the previous review particular emphasis was placed upon ensuring that as many of an Area's crown advocate cadre as possible were seen prosecuting in contested matters.

- Where time and circumstances permitted the same prosecutor could be observed conducting both trial and non-trial work, be that in either the magistrates' court or Crown Court.
- Some duplication of assessment for the same prosecutor in relation to the same class of advocacy, that is trial and non-trial work, would be undertaken to ensure consistency across the inspectors observing the advocacy and where an inspector felt that they had not seen sufficient advocacy to form a definitive assessment, in which case a further observation might be carried out by another inspector and a verification score determined.

### Composition of assessment forms

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

The forms were compiled in real time, in court, by hand. Thereafter those for each Area were collated electronically and individual and overall assessment values were compiled.

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## Verification of assessments

Raw data was subjected to a verification process in order to remove anomalous results, some duplication and ensure consistency. The following criteria were applied:

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

### Example

If advocate A was assessed prosecuting a summary trial on Monday and a magistrates' court remand list on Wednesday then two scores would be retained for them on the database. Similarly if advocate B was assessed prosecuting a jury trial in the Crown Court on Tuesday and a PCMH list on Thursday then they would also have two scores on the database. If advocate A was also seen prosecuting a CJSSS list in the magistrates' court on Friday the two non-trial assessments (remand and CJSSS lists) would be moderated into a single score. If, however, advocate C had completed all the advocacy attributed to both advocates A and B in this example advocate C would have a total of four separate scores. One each for the summary trial, jury trial and PCMH and one moderated assessment for the magistrates' court remand and CJSSS hearings.

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

## Assessment scoring and values

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

- A Professional ethics
- B Planning and preparation
- C Applying CPS policies
- D Written advocacy
- E The case in court
- F Preparation for trial
- G Trial advocacy
- H The advocate in court

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

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

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

3 Not known – the extent to which the percentage ratios of Yes and No answers may be subject to error.

4 Not applicable – the proportion of assessments excluded from the calculation of the ratio between Yes and No. This is, therefore, determinative of the sample size upon which the Yes and No percentages are based. The lower the value the greater the number of assessments included in the Yes and No percentages.

#### **Compilation of charts and tables**

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

- 1 Yes – the percentage of Yes returns expressed as a proportion of all Yes, No and Not known answers to a question. Not applicable answers have been excluded from the ratio.
- 2 No – the percentage of No returns expressed as a proportion of all Yes, No and Not known answers to a question. Not applicable answers have been excluded from the ratio.



**Inspection summary: all Areas inspected and assessments<sup>26</sup> undertaken**

Group	Area	Dates between (2011)	Venue	Number of assessments	Number of trials
Yorkshire and Humberside	West Yorkshire	28 February - 04 April	CC MC/YC	28 12	4 4
	Humberside	07-11 March	CC MC/YC	15 11	4 3
	Hampshire	28 February - 04 March	CC MC/YC	12 5	3 2
Wessex	Dorset	07-11 March	CC MC/YC	12 5	4 2
	Wiltshire	15-17 March	CC MC/YC	4 6	2 3
	Northumbria	21-25 March	CC MC/YC	20 9	5 4
North East	Durham	21-30 March	CC MC/YC	4 8	0 3
	Cleveland	28 March - 01 April	CC MC/YC	12 5	3 2
	Kent	22-25 March	CC MC/YC	7 4	4 1
South East	Surrey	28 March - 06 April	CC MC/YC	4 0	3 0
	Sussex	28 March - 01 April	CC MC/YC	3 4	2 3
	London	09 February - 05 May	CC MC/YC	3 5	3 5
<b>Total assessments</b>				<b>198 (100%)</b>	<b>69 (34.8%)</b>

	Venue	Number of assessments	Number of contested advocacy observations
Total assessments for all Areas combined	Crown Court	133	37
	Magistrates' court	79	37
Total scored assessments for all Areas combined	Crown Court	124	36
	Magistrates' court	74	32
Total discounted assessments for all Areas combined	Crown Court	9	1
	Magistrates' court	5	1

<sup>26</sup> A total of 216 observations were conducted, 198 of which were included in the final scoring assessments. Eighteen of the 216 observations were excluded as incomplete or duplicate assessments.

## C Comparison of data 2009 and 2011

### Scores

2, 3+, 3 Performance was assessed **competent** overall and in all key aspects

3- Performance was assessed **competent** overall but with a key aspect(s) needing attention

4, 5 Performance was assessed **not competent**

2011 performance improved ↑ declined ↓ static →

### Crown Court

Score	Crown advocates				Counsel				All advocates				
	2009		2011		2009		2011		2009		2011		
	No	%	No	%	No	%	No	%	No	%	No	%	
<b>Overall standard</b>													
2	6	5.0	5	5.9	14	14.7	6	15.4	20	9.3	11	8.9	↓
3+	20	16.5	11	12.9	15	15.8	10	25.6	35	16.2	21	16.9	
3	55	45.5	39	45.9	39	41.1	13	33.3	94	43.5	52	41.9	
3-	32	26.4	24	28.2	23	24.2	7	17.9	55	25.5	31	25.0	
4	7	5.8	6	7.1	3	3.2	3	7.7	10	4.6	9	7.3	
5	1	0.8	0	0.0	1	1.0	0	0.0	2	0.9	0	0.0	↑
<b>Total</b>	<b>121</b>	<b>100</b>	<b>85</b>	<b>100</b>	<b>95</b>	<b>100</b>	<b>39</b>	<b>100</b>	<b>216</b>	<b>100</b>	<b>124</b>	<b>100</b>	-
<b>Non-contested advocacy</b>													
2	4	4.6	1	1.6	4	6.6	2	7.7	8	5.4	3	3.4	↓
3+	16	18.4	9	14.8	9	14.8	6	23.1	25	16.9	15	17.2	
3	41	47.1	31	50.8	28	45.9	12	46.2	69	46.6	43	49.4	
3-	24	27.6	16	26.2	18	29.5	4	15.4	42	28.4	20	23.0	
4	2	2.3	4	6.6	2	3.3	2	7.7	4	2.7	6	6.9	
5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	→
<b>Total</b>	<b>87</b>	<b>100</b>	<b>61</b>	<b>100</b>	<b>61</b>	<b>100</b>	<b>26</b>	<b>100</b>	<b>148</b>	<b>100</b>	<b>87</b>	<b>100</b>	-
<b>Trial advocacy<sup>27</sup></b>													
2	2	5.9	4	16.7	10	29.4	4	30.8	12	17.6	8	21.6	↑
3+	4	11.8	2	8.3	6	17.6	4	30.8	10	14.7	6	16.2	
3	14	41.2	8	33.3	11	32.4	1	7.7	25	36.8	9	24.3	
3-	8	23.5	8	33.3	5	14.7	3	23.1	13	19.1	11	29.7	
4	5	14.7	2	8.3	1	2.9	1	7.7	6	8.8	3	8.1	
5	1	2.9	0	0.0	1	2.9	0	0.0	2	2.9	0	0.0	↑
<b>Total</b>	<b>34</b>	<b>100</b>	<b>24</b>	<b>100</b>	<b>34</b>	<b>100</b>	<b>13</b>	<b>100</b>	<b>68</b>	<b>100</b>	<b>37</b>	<b>100</b>	-

<sup>27</sup> 2011 figures include Newton hearings.

## Magistrates' courts

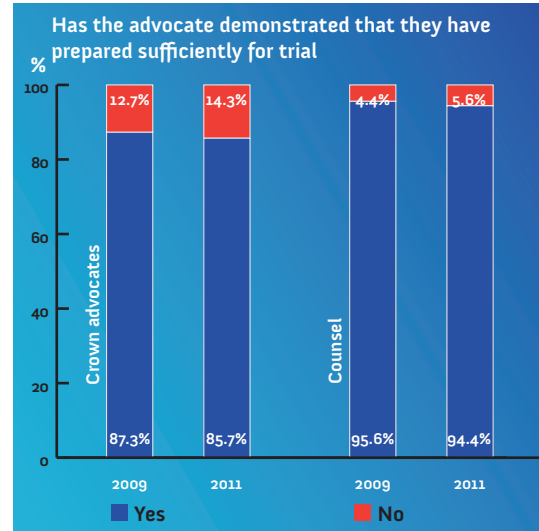
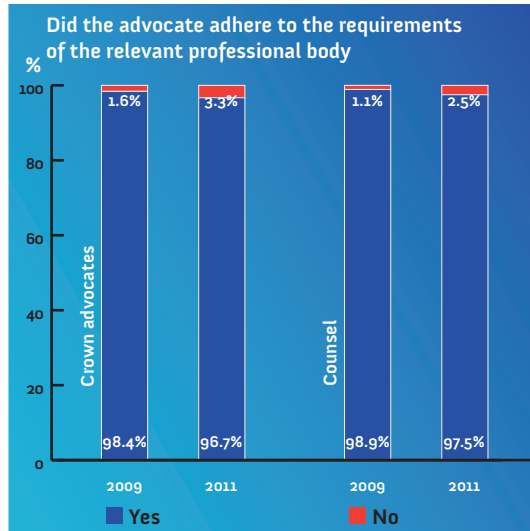
Score	Crown prosecutors				Associate prosecutors				External prosecutors				All advocates				
	2009		2011		2009		2011		2009		2011		2009		2011		
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	
<b>Overall standard</b>																	
2	6	7.3	0	0.0	6	14.0	0	0.0	1	3.8	0	0.0	13	8.6	0	0.0	↓
3+	20	24.4	7	16.7	9	20.9	3	12.5	6	23.1	0	0.0	35	23.2	10	13.5	
3	23	28.1	17	40.5	15	34.9	14	58.3	11	42.3	5	62.5	49	32.5	36	48.6	
3-	21	25.6	15	35.7	8	18.6	7	29.2	8	30.8	1	12.5	37	24.5	23	31.1	
4	10	12.2	1	2.4	5	11.6	0	0.0	0	0.0	2	25.0	15	9.9	3	4.1	
5	2	2.4	2	4.8	0	0.0	0	0.0	0	0.0	0	0.0	2	1.3	2	2.7	↓
<b>Total</b>	<b>82</b>	<b>100</b>	<b>42</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>24</b>	<b>100</b>	<b>26</b>	<b>100</b>	<b>8</b>	<b>100</b>	<b>151</b>	<b>100</b>	<b>74</b>	<b>100</b>	-
<b>Non-contested advocacy<sup>28</sup></b>																	
2	2	3.8	0	0.0	6	14.0	0	0.0	0	0.0	0	0.0	8	7.5	0	0.0	↓
3+	16	30.2	3	13.6	9	20.9	3	16.7	2	20.0	0	0.0	27	25.5	6	14.3	
3	17	32.1	8	36.4	15	34.9	11	61.1	5	50.0	1	50.0	37	34.9	20	47.6	
3-	13	24.5	11	50.0	8	18.6	4	22.2	3	30.0	0	0.0	24	22.6	15	35.7	
4	5	9.4	0	0.0	5	11.6	0	0.0	0	0.0	1	50.0	10	9.4	1	2.4	
5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	→
<b>Total</b>	<b>53</b>	<b>100</b>	<b>22</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>18</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>106</b>	<b>100</b>	<b>42</b>	<b>100</b>	-

Score	Crown advocates				Crown prosecutors				Associate prosecutors				External prosecutors				All advocates			
	2009		2011		2009		2011		2009		2011		2009		2011		2009		2011	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
2	1	33.3	0	0.0	3	11.5	0	0.0	N/A	0	0.0	1	6.3	0	0.0	5	11.1	0	0.0	↓
3+	0	0.0	1	25.0	4	15.4	3	18.8	N/A	0	0.0	4	25.0	0	0.0	8	17.8	4	12.5	
3	1	33.3	1	25.0	5	19.2	8	50.0	N/A	3	50.0	6	37.5	4	66.7	12	26.7	16	50.0	
3-	0	0.0	1	25.0	8	30.8	3	18.8	N/A	3	50.0	5	31.3	1	16.7	13	28.9	8	25.0	
4	1	33.3	1	25.0	4	15.4	0	0.0	N/A	0	0.0	0	0.0	1	16.7	5	11.1	2	6.3	
5	0	0.0	0	0.0	2	7.7	2	12.5	N/A	0	0.0	0	0.0	0	0.0	2	4.4	2	6.3	↓
<b>Total</b>	<b>3</b>	<b>100</b>	<b>4</b>	<b>100</b>	<b>26</b>	<b>100</b>	<b>16</b>	<b>100</b>	<b>N/A</b>	<b>6</b>	<b>100</b>	<b>16</b>	<b>100</b>	<b>6</b>	<b>100</b>	<b>45</b>	<b>100</b>	<b>32</b>	<b>100</b>	-

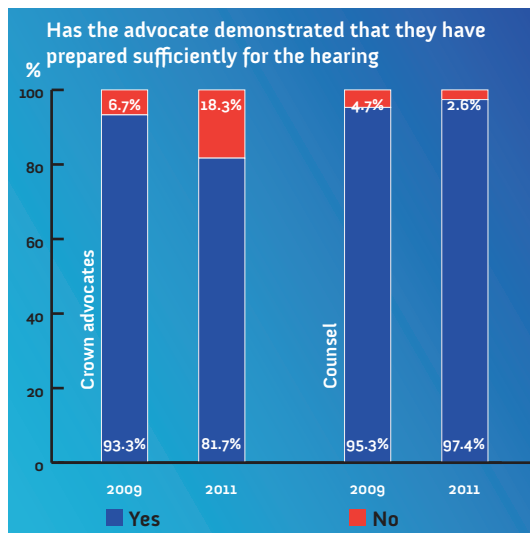
28 Including two crown advocates who appeared to prosecute non-contested magistrates' courts hearings.

## Crown Court comparisons

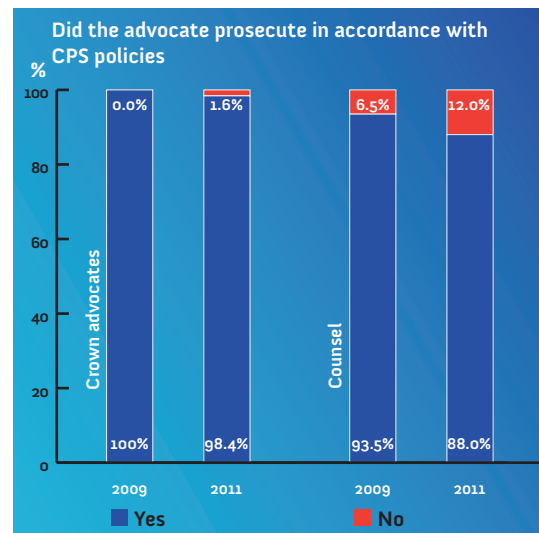
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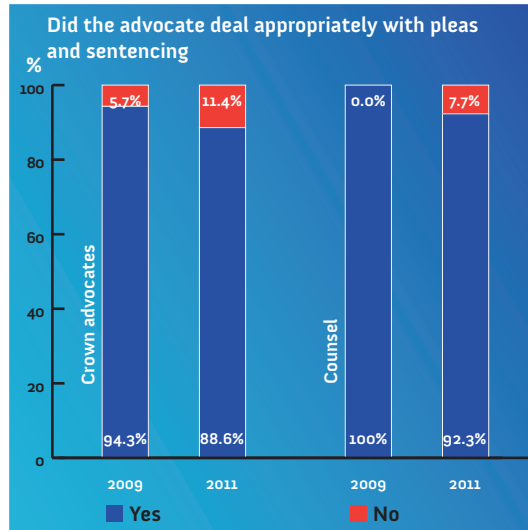
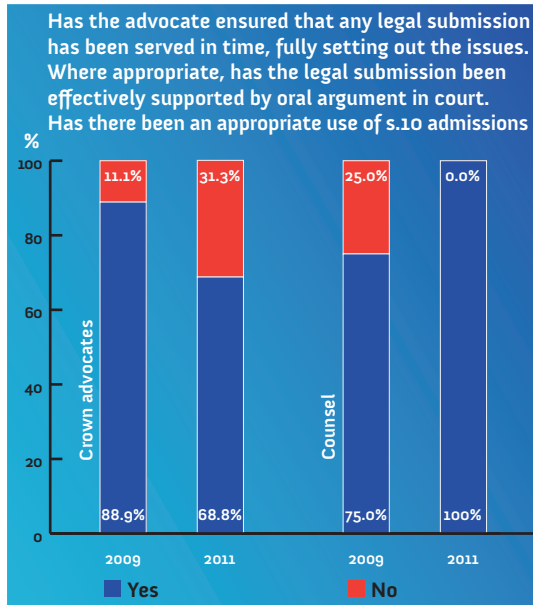
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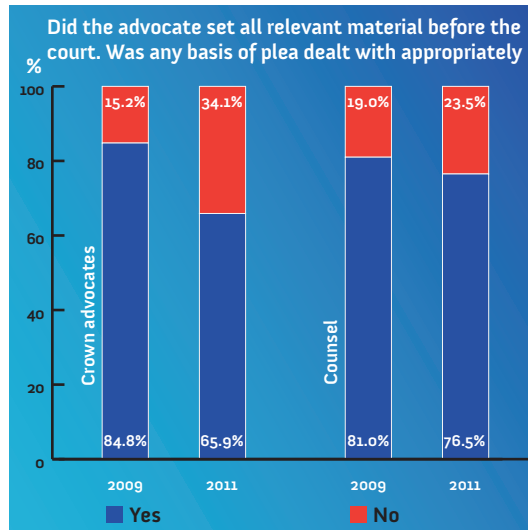
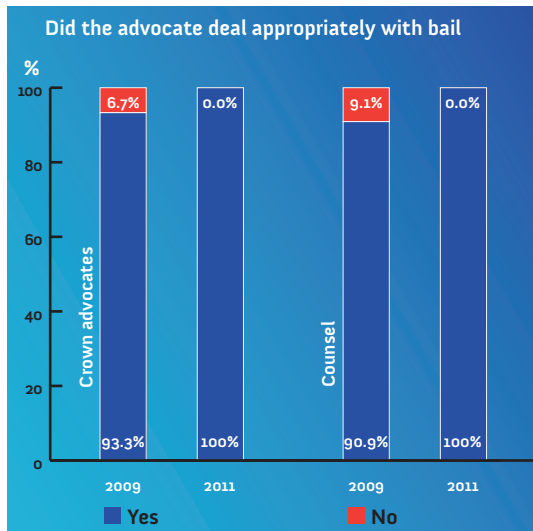
### Applying CPS policies



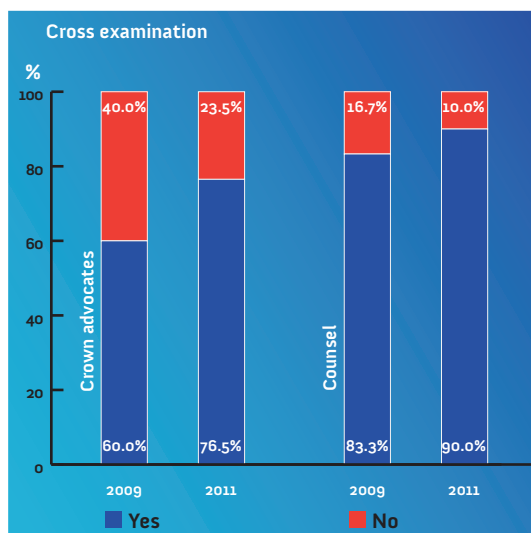
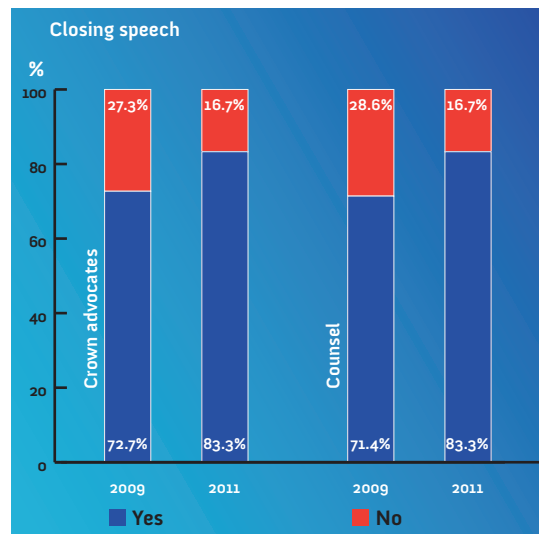
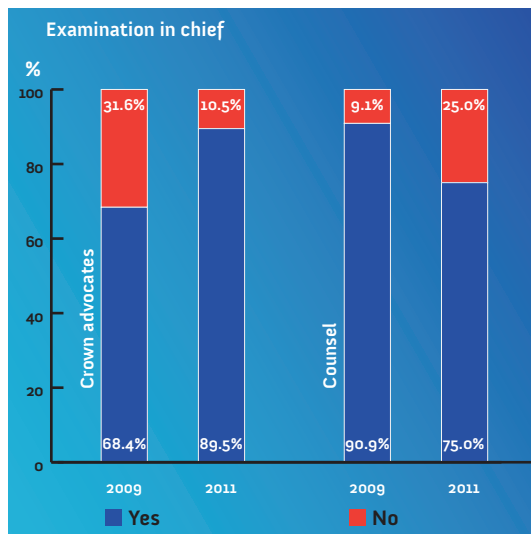
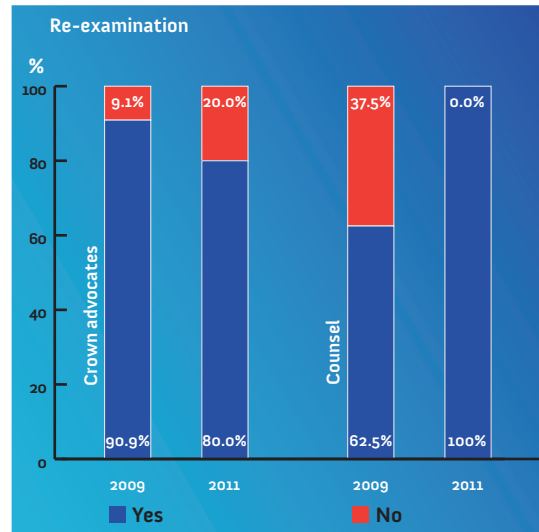
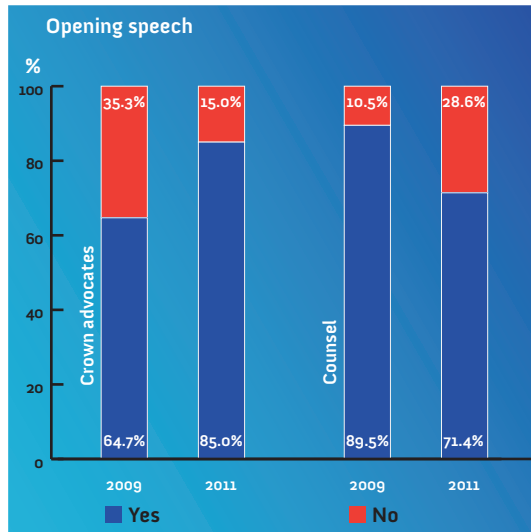
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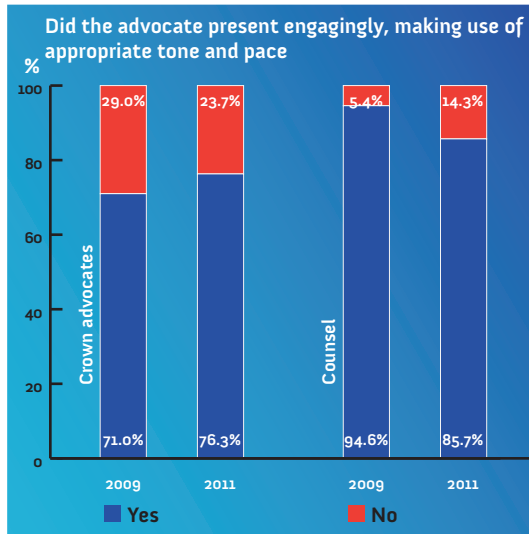
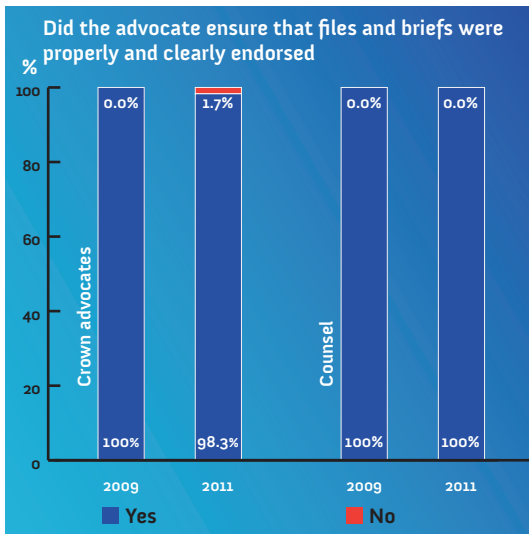
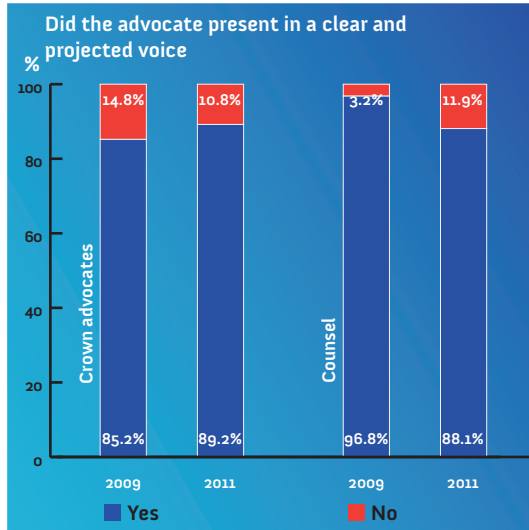
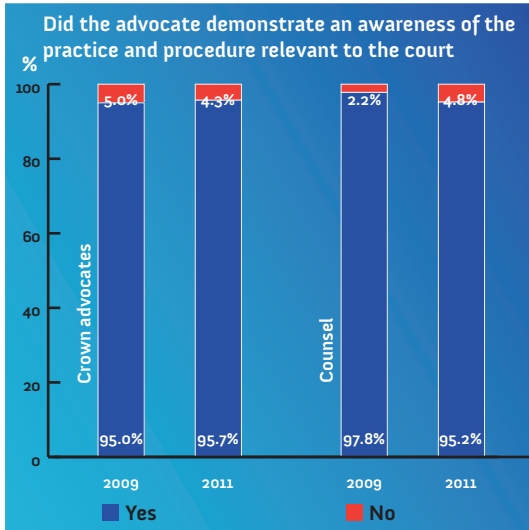
**Non-contested hearings**

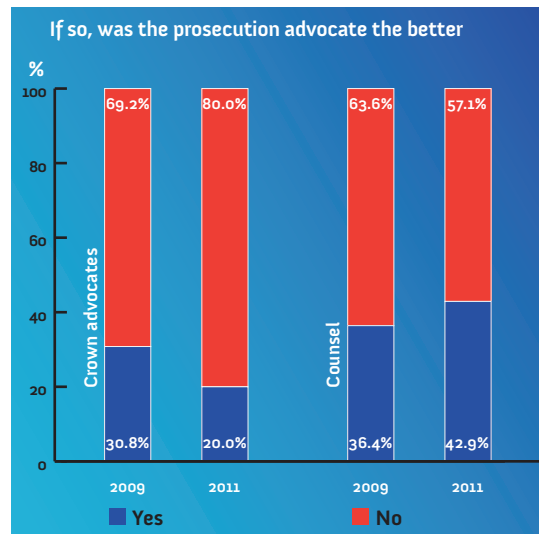
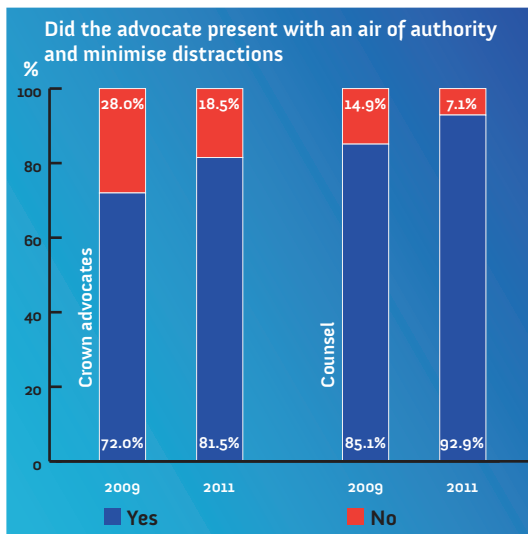
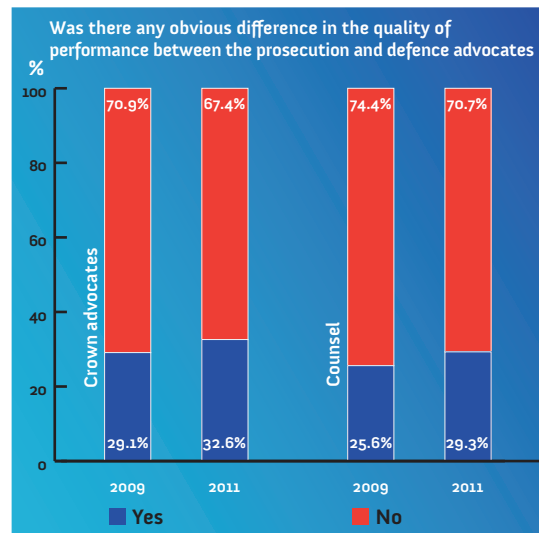
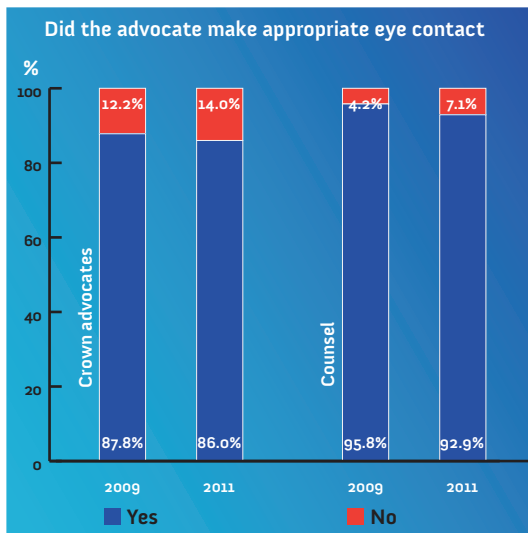


**Trial advocacy**



**The advocate in court**

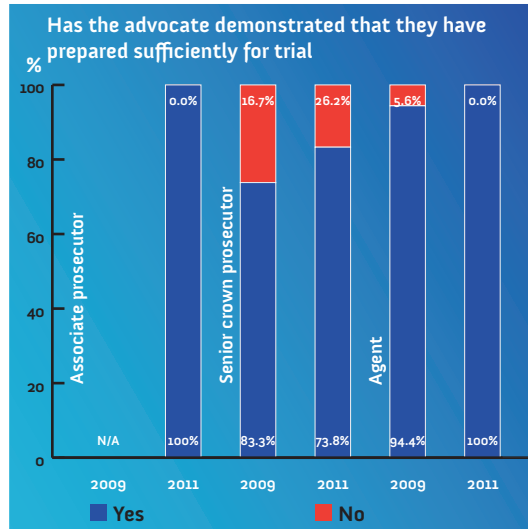
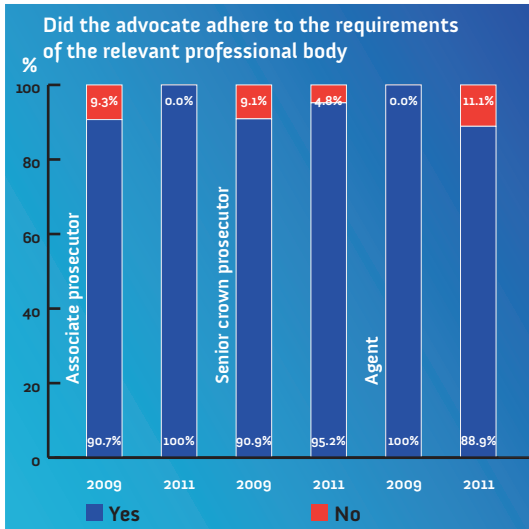




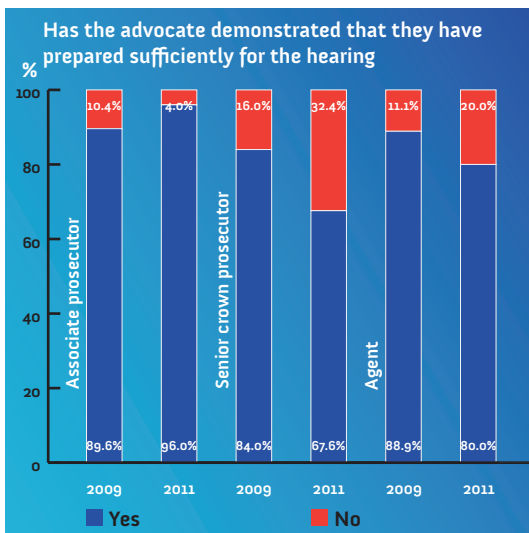


## Magistrates' courts comparisons

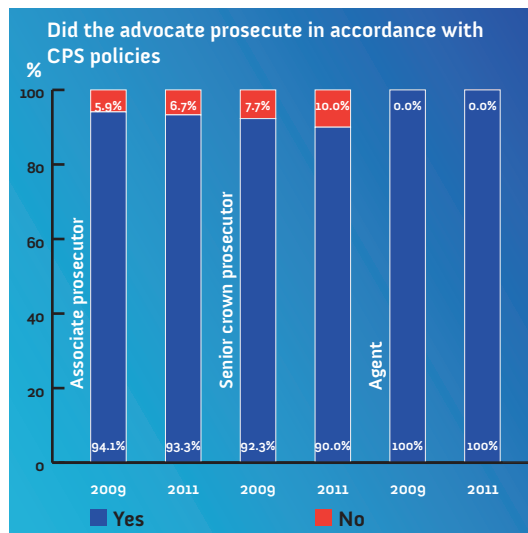
### Ethics



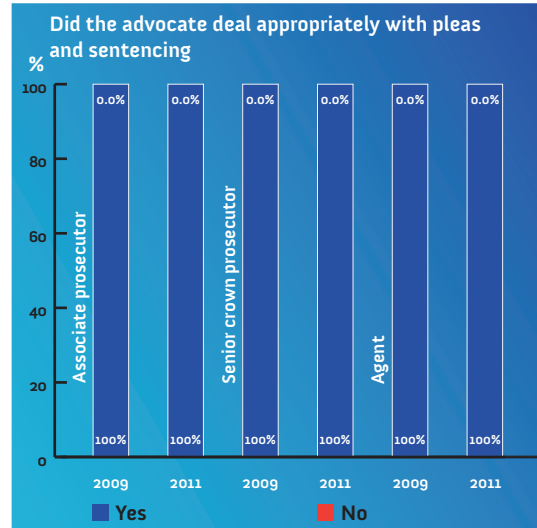
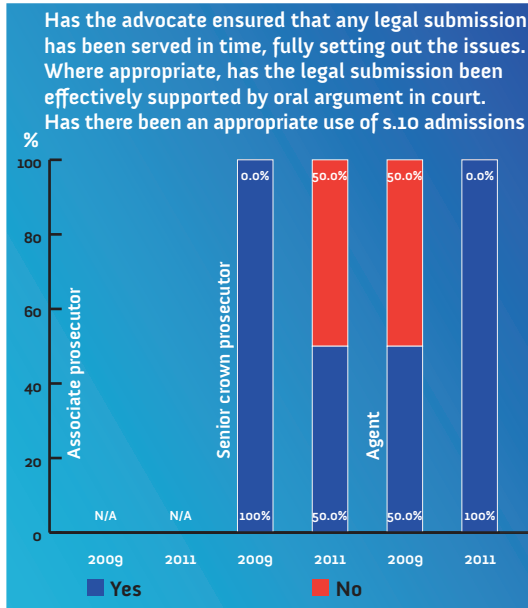
### Planning and preparation



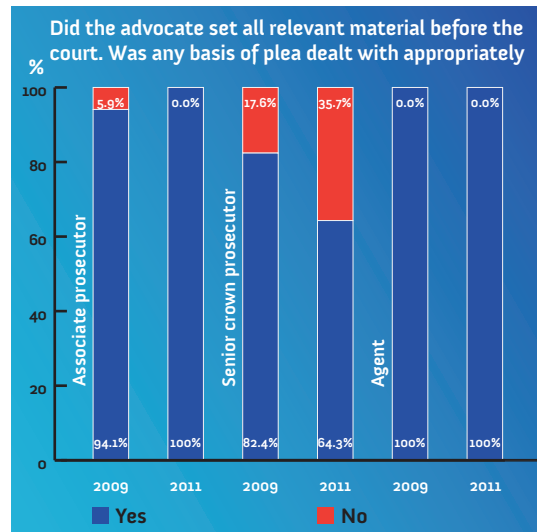
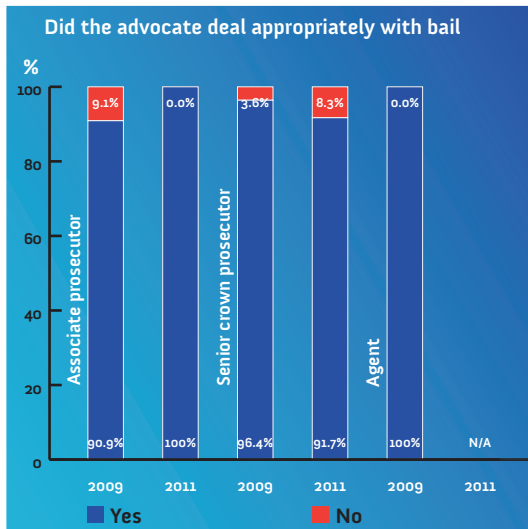
### Applying CPS policies



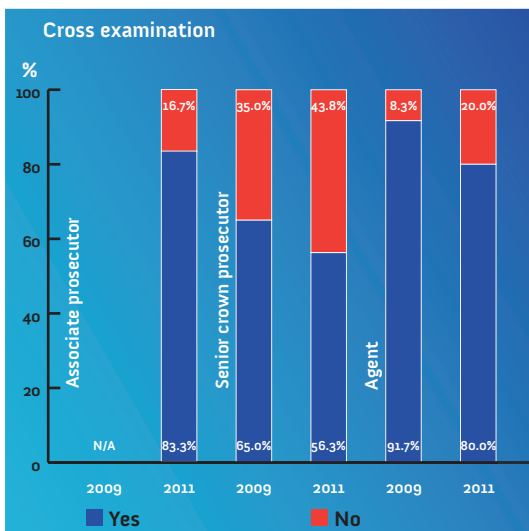
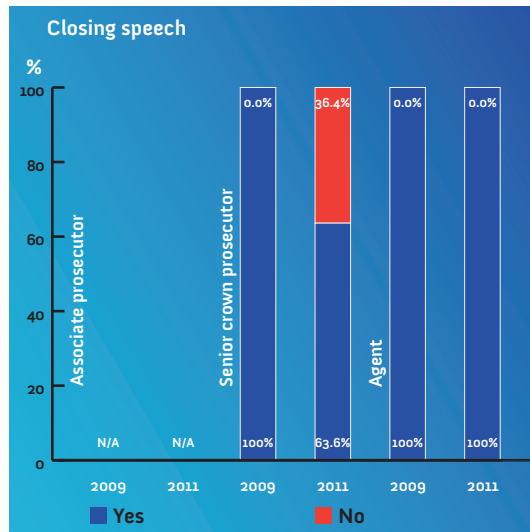
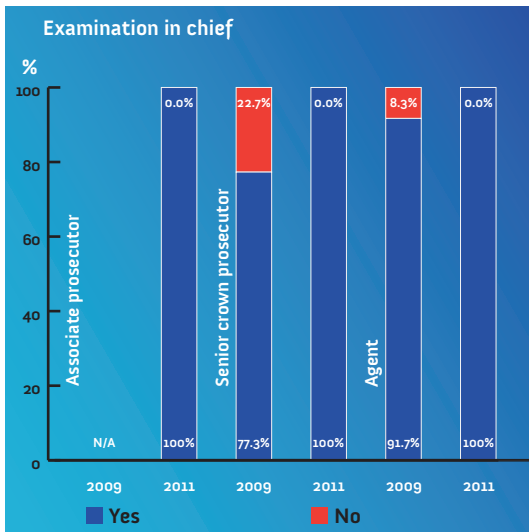
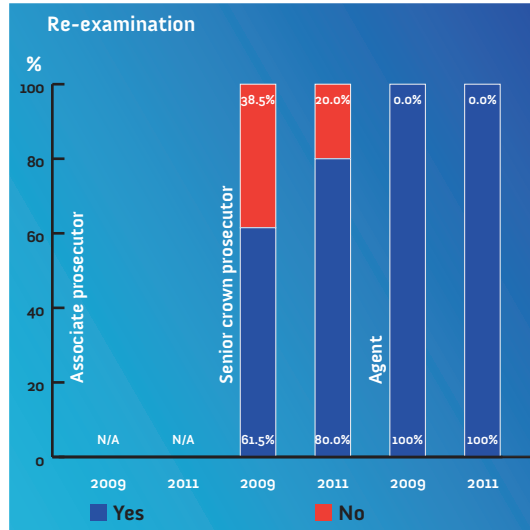
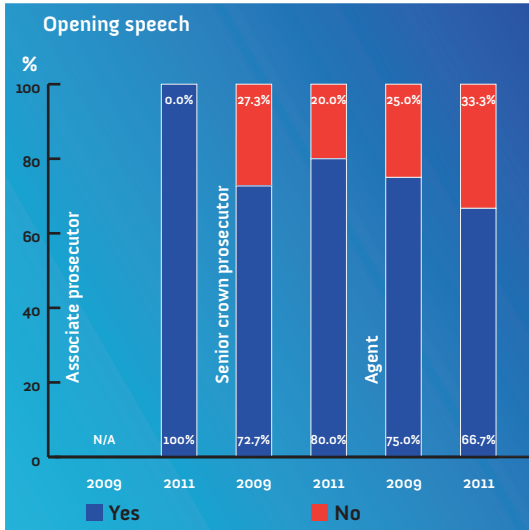
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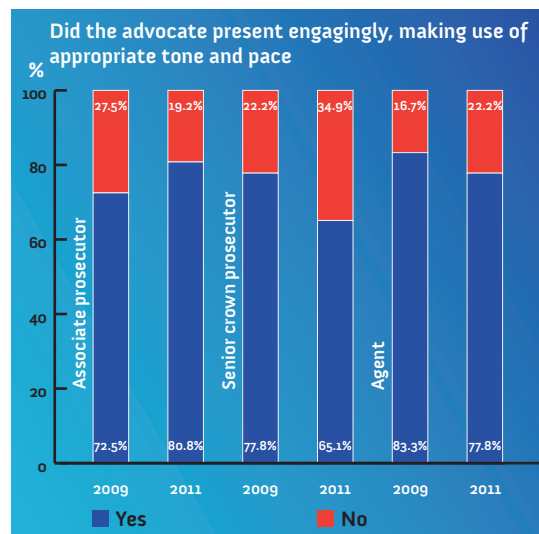
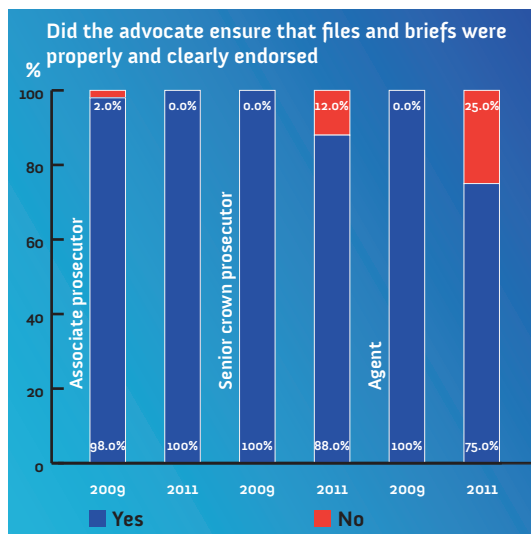
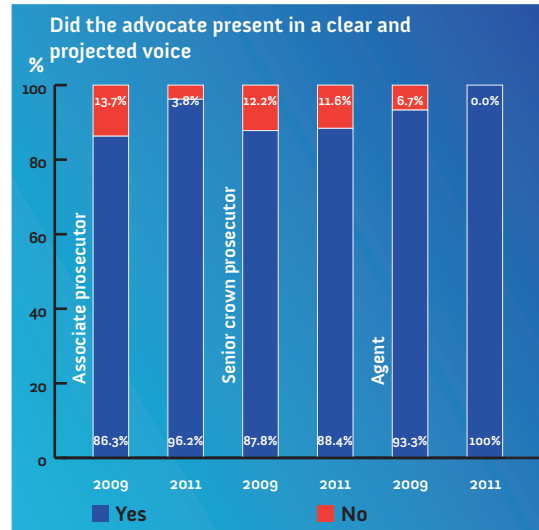
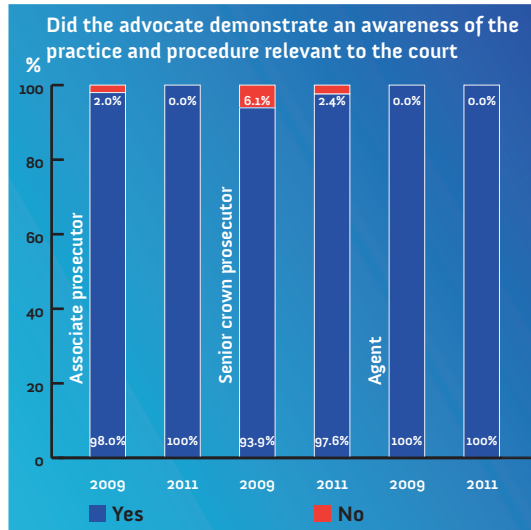
**Non-contested hearings**

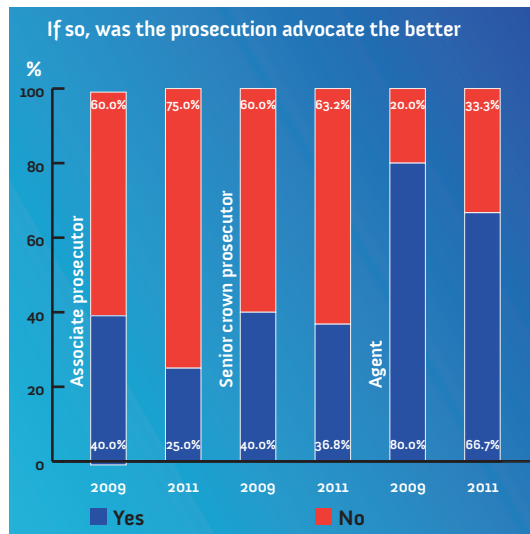
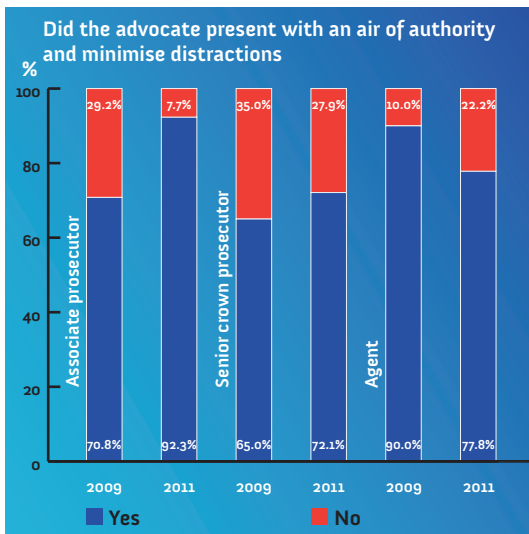
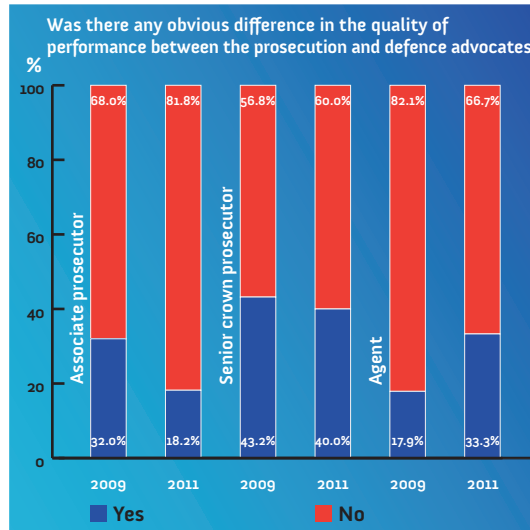
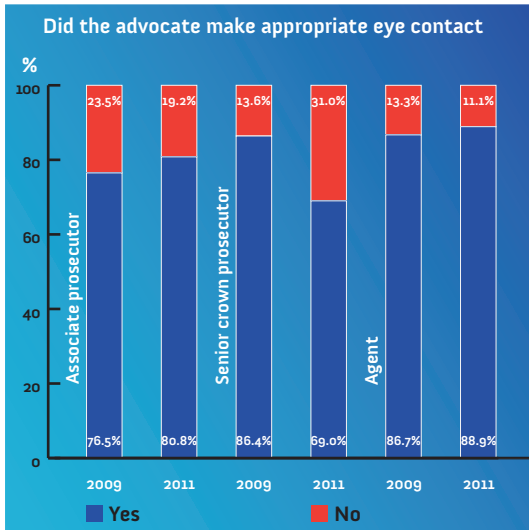


**Trial advocacy**



**The advocate in court**





## D National CPS advocacy data (all Areas)

### Crown Court

#### Sessions and fee savings

	2009	2010	1st quarter of 2011
Total HCA sessions covered	61,363	62,151	17,143
Total HCA hours	342,940	366,628	98,970
Average HCA hours per session	6.0	5.9	5.8
Total HCA salary cost	16,505,586	17,428,381	4,904,734
Total HCA full cost	18,228,395	19,247,047	5,416,853
Average HCA salary cost per session	269.00	280.40	286.11
Counsel fees saved (ex VAT)	26,695,947	30,779,060	8,728,606
Counsel fees savings net of salary costs	10,190,362	13,350,679	3,823,872
Counsel fees savings net of full costs	8,467,553	11,532,014	3,311,752

#### Fee savings: explanatory note

The majority of cases currently prosecuted by the independent Bar in the Crown Court are paid for using the Graduated Fees Scheme (GFS) counsel fees guidance. A small number of cases where the time estimate for trial exceeds 40 days, or where more than two trial advocates are instructed, are excluded from the GFS and are dealt with under the Very High Cost Case (VHCC) fee scheme.

Where Crown Court work is undertaken by a CPS crown advocate CPS advocacy costs are calculated using actual salary costs of the advocate plus 10.5% uplift for corporate costs, this figure is then multiplied by the time spent on preparing and presenting the case. Under the GFS different fees are paid for different types of work, and fees are not related to the total length of time it takes an advocate to complete the work required. Total fees savings are calculated by subtracting the CPS costs from what the GFS cost would have been, had an external advocate being used to prosecute the case.

This means that in some particular types of hearings where the time to undertake the work required is reduced, the savings against costs are often increased. For example, in the Crown Court, the fees that can be claimed when a defendant pleads guilty on the morning of the trial are in fact higher than they would have been had the trial lasted five days. It is therefore to the CPS's financial advantage to allocate an in-house advocate to a hearing where it is believed that the defendant is likely to plead guilty at the door of the court.

In relation to non-contested hearings, a plea and case management hearing attracts a higher fee than other non-contested work and the nature of the work means that a number of cases can be undertaken on the same day. This high volume of work would attract significant fees which are higher than the fee for a short trial.

**Hearings**

Number of defendants by hearing type	2009	2010	1st quarter of 2011
Appeal against sentence	2,589	2,219	539
Appeal against conviction	1,414	1,426	306
Committal for sentence	13,648	13,260	3,666
Application or mention	33,958	35,934	9,350
Plea and case management hearing	65,198	70,091	18,388
Guilty plea	6,202	7,703	2,370
Newton hearing	1,097	1,174	366
Trial (as sole advocate)	9,273	9,766	2,840
Trial part-heard (as sole advocate)	5,539	5,814	1,628
Trial (with leader)	794	926	172
Trial part-heard (with leader)	2,544	3,901	1,111
Trial (leading)	96	173	41
Trial part-heard (leading)	575	448	121
For sentence/proceeds of crime hearing	36,028	38,938	10,516
Other	3,069	3,964	1,076
<b>Total</b>	<b>182,024</b>	<b>195,737</b>	<b>52,490</b>

**Number of advocates at March 2011**

Group	Area	Principal crown advocate	Senior crown advocate	Crown advocate	Total advocates
Yorkshire and Humberside	West Yorkshire	1.0	-	31.9	32.9
	Humberside	-	1.0	12.6	13.6
Wessex	Hampshire & IOW	1.0	1.0	21.6	23.6
	Dorset	-	-	12.0	12.0
	Wiltshire	-	-	9.2	9.2
North East	Northumbria	-	1.0	30.0	31.0
	Cleveland	-	-	9.8	9.8
	Durham	-	1.0	10.4	11.4
South East	Kent	-	1.0	15.8	16.8
	Sussex	-	-	20.4	20.4
	Surrey	-	-	10.5	10.5
<b>National</b>		<b>7.0</b>	<b>32.9</b>	<b>715.4</b>	<b>755.3</b>

**Crown Court effectiveness 12 months to 31 March 2011**

<b>Group</b>	<b>Area</b>	<b>Cracked</b>	<b>Effective</b>	<b>Ineffective</b>
Yorkshire and Humberside	West Yorkshire	57.4%	30.3%	12.3%
	Humberside	59.4%	30.2%	10.4%
Wessex	Hampshire & IOW	41.1%	45.9%	13.1%
	Dorset	33.6%	59.5%	6.9%
	Wiltshire	40.7%	50.0%	9.3%
North East	Northumbria	63.0%	24.5%	12.5%
	Cleveland	53.4%	32.2%	14.4%
	Durham	58.4%	24.9%	16.7%
South East	Kent	33.1%	52.8%	14.1%
	Sussex	37.5%	44.6%	17.9%
	Surrey	35.4%	45.8%	18.8%
<b>National</b>		<b>42.1%</b>	<b>44.4%</b>	<b>13.5%</b>



**Crown advocate activity by hearing type 2010**

Group	Area	Appeal against sentence	Appeal against conviction	Committal for sentence	Application or mention (including s.51 hearings and bench warrants)	Plea and case management hearing	Guilty plea	Newton hearing	Trial (as sole advocate)	Trial part-heard (as sole advocate)	Trial (with leader)	Trial part-heard (with leader)	Trial (leading)	Trial part-heard (leading)	For sentence/proceeds of crime hearing	Other	Total
Yorkshire and Humberside	West Yorkshire	6	3	219	1,649	2,786	135	57	278	134	354	440	-	-	1,824	29	7,914
	Humberside	6	4	283	986	1,319	277	26	318	122	1	2	-	-	994	18	4,356
Wessex	Hampshire & IOW	63	39	365	877	1,814	68	46	443	478	67	1,024	11	184	1,108	70	6,657
	Dorset	80	111	302	489	916	79	18	235	173	39	271	-	-	651	28	3,392
North East	Wiltshire	36	45	99	490	638	38	20	207	119	-	-	-	-	466	34	2,192
	Northumbria	221	-	661	1,272	2,441	126	26	362	7	1	-	-	-	1,727	11	6,855
South East	Cleveland	39	20	182	678	745	24	22	264	41	6	22	1	7	562	-	2,613
	Durham	44	14	179	538	848	21	21	143	55	6	31	-	-	615	12	2,527
Sussex	Kent	62	28	397	1,357	1,232	119	17	225	168	4	105	-	-	784	158	4,656
	Surrey	60	61	205	354	975	25	14	227	233	14	139	-	-	469	-	2,776
<b>National</b>		<b>2,219</b>	<b>1,426</b>	<b>13,260</b>	<b>35,934</b>	<b>70,091</b>	<b>7,703</b>	<b>1,174</b>	<b>9,766</b>	<b>5,814</b>	<b>926</b>	<b>3,901</b>	<b>173</b>	<b>448</b>	<b>38,938</b>	<b>3,964</b>	<b>195,737</b>

**Magistrates' courts****In-house advocacy**

Group	Area	Target	2009-10	2010-11
Yorkshire and Humberside	West Yorkshire	90%	81.7%	89.8%
	Humberside	90%	87.9%	98.9%
Wessex	Hampshire & IOW	90%	100%	100%
	Dorset	90%	83.5%	98.1%
	Wiltshire	90%	90.1%	72.8%
North East	Northumbria	90%	93.1%	93.2%
	Cleveland	90%	79.8%	81.8%
	Durham	90%	88.1%	95.1%
South East	Kent	90%	88.1%	92.5%
	Sussex	90%	85.0%	94.8%
	Surrey	90%	81.3%	87.7%
<b>National</b>		<b>90%</b>	<b>85.2%</b>	<b>90.3%</b>

**Associate prosecutor sessions**

Group	Area	Target	2009-10	2010-11
Yorkshire and Humberside	West Yorkshire	25%	37.5%	53.7%
	Humberside	25%	33.0%	32.7%
Wessex	Hampshire & IOW	25%	28.6%	27.6%
	Dorset	25%	37.6%	39.5%
	Wiltshire	25%	26.7%	28.9%
North East	Northumbria	25%	24.6%	29.3%
	Cleveland	25%	24.9%	25.7%
	Durham	25%	29.9%	36.1%
South East	Kent	25%	23.3%	27.8%
	Sussex	25%	28.4%	30.0%
	Surrey	25%	26.4%	23.7%
<b>National</b>		<b>25%</b>	<b>28.2%</b>	<b>32.3%</b>

## E Sample of 30 crown advocates' counsel fees savings from January to June 2011

Total CA sessions covered	Total CA hours	% of time spent on preparation and presentation of cases	Inspectorate column <sup>29</sup>	Average CA hours per session	Cost of CPS CA time on preparation and presentation of cases plus 10.5% uplift (£)	Counsel fees savings (excluding VAT) (£)	Counsel fees savings less cost of CPS CA time on preparation and presentation of cases (£)	Counsel fees less salary cost of CA plus 10.5% uplift (six months) Inspectorate column <sup>30</sup> (£)	Difference in net position (£)
1	82.00	411.60	58.8%	5.02	21,340.98	49,285.40	27,944.42	10,060.11	-17,884.31
2	88.00	493.27	70.5%	5.61	26,555.49	48,850.53	22,295.04	9,625.24	-12,669.80
3	63.00	463.20	66.2%	7.35	24,536.20	36,285.07	11,748.87	-2,940.22	-14,689.09
4	75.00	577.25	82.5%	7.70	30,669.30	36,924.58	6,255.28	-2,300.71	-8,555.99
5	64.00	505.78	72.3%	7.90	26,988.45	28,672.58	1,684.13	-10,552.71	-12,236.84
6	52.00	328.58	46.9%	6.32	17,614.62	22,431.88	4,817.26	-16,793.41	-21,610.67
7	83.00	538.58	76.9%	6.49	30,594.60	48,434.01	17,839.41	9,208.72	-8,630.69
8	85.00	701.42	100.2%	8.25	39,918.09	85,906.97	45,988.88	46,681.68	692.80
9	93.00	350.33	50.0%	3.77	21,152.48	41,530.83	20,378.35	2,305.54	-18,072.81
10	67.00	842.87	120.4%	12.58	49,601.82	39,506.54	-10,095.28	281.25	10,376.53
11	80.00	535.85	76.6%	6.70	30,456.56	27,787.62	-2,668.94	-11,437.67	-8,768.73
12	88.00	393.82	56.3%	4.48	22,228.56	38,441.85	16,213.29	-783.44	-16,996.73
13	63.00	445.25	63.6%	7.07	25,209.56	23,848.58	-1,360.98	-15,376.71	-14,015.73
14	98.00	444.67	63.5%	4.54	25,126.55	40,425.90	15,299.35	1,200.61	-14,098.74
15	69.00	426.92	61.0%	6.19	21,803.71	32,197.89	10,394.18	-7,027.40	-17,421.58
16	77.00	536.42	76.6%	6.97	26,953.12	37,321.41	10,368.29	-1,903.88	-12,272.17
17	63.00	565.63	80.8%	8.98	27,261.59	40,094.16	12,832.57	868.87	-11,963.70
18	80.00	409.80	58.5%	5.12	20,208.81	37,916.27	17,707.46	-1,309.02	-19,016.48
19	71.00	517.75	74.0%	7.29	23,555.88	36,788.26	13,232.38	-2,437.03	-15,669.41
20	77.00	664.33	94.9%	8.63	33,548.77	42,586.57	9,037.80	3,361.28	-5,676.52
21	57.00	544.18	77.7%	9.55	26,358.05	38,523.19	12,165.14	-702.10	-12,867.24
22	89.00	447.23	63.9%	5.03	23,251.81	47,434.02	24,182.21	8,208.73	-15,973.48
23	72.00	475.42	67.9%	6.60	22,890.68	31,592.84	8,702.16	-7,632.45	-16,334.61
24	77.00	422.00	60.3%	5.48	19,396.77	62,034.14	42,637.37	22,808.85	-19,828.52
25	85.00	621.90	88.8%	7.32	32,834.75	67,424.50	34,589.75	28,199.21	-6,390.54
26	64.00	755.35	107.9%	11.80	40,455.78	45,364.89	4,909.11	6,139.60	1,230.49
27	81.00	351.63	50.2%	4.34	18,632.62	69,307.06	50,674.44	30,081.77	-20,592.67
28	71.00	541.42	77.3%	7.63	28,895.72	39,366.72	10,471.00	141.43	-10,329.57
29	70.00	528.50	75.5%	7.55	28,110.53	38,170.14	10,059.61	-1,055.15	-11,114.76
30	50.00	254.08	36.3%	5.08	12,152.09	31,420.26	19,268.17	-7,805.03	-27,073.20
<b>Total</b>							<b>467,570.72</b>	<b>89,115.96</b>	<b>-378,454.76</b>

29 For the purposes of calculation in the Inspectorate column “% of time spent on CA work” we have assumed 1,400 deployable hours (this has been divided in half as the table only covers six months of the year). Figures in red are up to 70.0%, amber 70.1%-79.9% and green 80.0%+.

30 For the purposes of calculation in the Inspectorate column “Counsel savings less cost of advocate” we have used half of the CPS national minimum salary cost £70,996 plus 10.5% CPS enhancement (London cost would have been £78,474 plus 10.5% enhancement).

## F Key costs and savings

**£114.96 million**

The cumulative cost during April 2006 to March 2011 to the public for the introduction of the advocacy strategy within the CPS.

### **£105.81 million**

#### **Cost effect of changes in workforce mix**

This figure includes the staffing changes made since the 2005-06 baseline of all crown advocates (including principal and senior crown advocates); crown prosecutors and associate prosecutors in the CPS; it does not include admin roles such as crown advocate clerks.

This figure is based on the CPS's own data of staffing levels and average salary costs.

### **£4.40 million**

#### **Modernisation fund**

The CPS was granted funds to implement amongst other things the AP2 role and advocacy quality assessment programme, a cost to the public of almost £4.4 million.

### **£1.89 million**

#### **Advocacy strategy team**

There was a central Headquarters team in place to drive the advocacy strategy programme.

**£140.84 million**

The cumulative savings made during April 2006 to March 2011 from the introduction of the advocacy strategy within the CPS.

### **£2.86 million**

#### **Training costs**

There was £2.76 million allocated for specific training of crown advocates.

Additionally a number of master classes have been held at a cost of £94,000.

£660,000 for the dedicated training of APs is already included in the modernisation fund cost above.

This figure does not include other costs such as ILEX.

### **£30.69 million**

#### **Savings on agent usage**

The CPS has made significant savings on payment of agents' fees.

Not all these savings are attributable to the advocacy scheme; however there is no way to distinguish what percentage of the savings are solely as a result of the advocacy strategy.

The two primary reasons for the bulk of the savings are the increased deployment of APs and a reduction of court sessions in the magistrates' court.

### **£110.15 million**

#### **Total counsel fees savings (ex VAT)**

The calculations for counsel fees savings are based on what it would have cost the CPS had they outsourced the cases.

## **G Effective deployment and working practices and working practices for crown advocacy**

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### **Section 1: CPS West Midlands advocacy strategy**

#### **The model**

CPS West Midlands has established a strategy for Crown Court advocacy across the Area; however, its implementation is only firmly in place in the Birmingham office, which incorporates Wolverhampton and Coventry. The Area has clear aims to extend its application across the other units and the Northern Sector, which encompasses the units in Stoke-on-Trent and Stafford and is planned to be included by February 2012. The timetable for its application across the remaining units in West Mercia is, as yet, unclear.

To help apply the strategy effectively the Area has the required number of advocates in line with current deployment requirements to carry out advocacy across the Area. It has been more fortunate than other Areas because it did not have an excessive number of crown advocates in post at the outset in order to fulfil the new approach in the advocacy strategy. However, it has successfully managed to reduce the original number; this has been achieved through encouragement of some advocates to revert back from being a crown advocate to the crown prosecutor grade prior to and during the national formal scheme, the appointment of a number of managers from the crown advocate cadre, some have taken up the voluntary early release scheme and in a limited number of cases crown advocates have been removed through management of their performance.

The Area strategy recognises the differing expectations between advocates at the various levels of their development and has set fee savings targets accordingly and all crown advocates are expected to develop trial

advocacy. In the first year following entry into level 2, each crown advocate is required to conduct non-contested work and simple trials which will allow them to achieve at least 65% of their full salary cost. In the second year the nature of work conducted aims to include trials increasing in complexity, length and number of defendants; this will allow them to achieve at least 85% to 95% of their full salary costs but it is also recognised that the more frequent conduct of trials appropriate to this grade and level of experience can result in a small reduction in their earning capacity in comparison to the figures attainable when regularly conducting PCMHs. By the third year the work conducted by advocates at level 2 will allow them to achieve full salary on costs plus 10%.

The strategy also clearly identifies that there is a developmental expectation that each level 2 advocate will move through the breakpoint within three and a half years of entry into the crown advocate grade and has set expectations accordingly. Crown advocates at level 3 must be given work of such volume and category to allow them to achieve a minimum of full salary cost plus 10% to 20% depending on how recently they have moved through the breakpoint and how close they are to attaining level 4 senior crown advocate status. They have a target of attaining minimum savings equivalent to full salary cost plus 30% to 40%. This approach is continued for individuals who hold principal crown advocate status when it is expected that the earning capacity will easily exceed their personal salaries by over 100%. It clearly recognises the developmental needs of individuals as they progress through their advocacy career and aligns suitable savings targets to help drive their progress.

The strategy clearly takes account of full salary costs in its expectations which are assigned to a unit level rather than to individual advocates. This approach is facilitated by the establishment of a ring-fenced cadre of dedicated full-time crown advocates. It successfully creates an environment not solely driven by savings but gives appropriate regard to the needs of staff development and progress. It also provides financial headroom for this to be achieved by the senior and principal crown advocates to enable 'loss leader' work to be carried out to develop junior advocates and help create an environment where investment is made now so that savings can be maximised over the medium to longer term.

The model in place helps advocates achieve their financial targets at the same time as developing their experience through effective linking and liaison between the level D managers responsible for development and the clerk allocating the workload between the advocates. The developmental needs of the Area's advocates are assessed through individual performance reviews which are then accommodated where possible by the clerk upon work allocation. This developmental process has been enhanced through good liaison between the CPS and the local judiciary so that feedback is sought from them to help inform individual development plans. In Birmingham open and candid feedback was provided by the judiciary for crown advocates undertaking their first three trials.

Each crown advocate has a dedicated and tailored individual development programme which is also in line with the overall business needs. This approach recognises the individual personal needs such as confidence building for trial advocacy, for example, complex trials in the Youth Court and the magistrates' courts and simple contested work, such as appeals, in the Crown Court. The programmes are designed to stretch and develop advocacy skills through the types and numbers of cases undertaken. The principal and senior crown advocates carry out a mentoring role with more junior members of the cadre; this combined with e-learning and opportunities to observe trial advocacy are used to develop crown advocates and provide opportunities for them to be assessed and receive feedback via the advocacy assessment process.

The Area has established an effective clerking process to help maximise deployment; there is recognition that the role of the clerk is pivotal and needs to be ring-fenced. The Birmingham office has a central clerking function in place which fully utilises the electronic crown advocate diary to maximise deployment of advocates across its courts. The diary captures all crown advocacy work in addition to non-advocacy commitments and is used to maximise the opportunities for personal development, together with the careful selection of high net worth cases. This clerking role is supported by Crown Court team managers to ensure that all crown advocates have varied and wide exposure to trial advocacy. The utilisation of advocates in Birmingham is greatly aided by the fixed listing system adopted by the local court centre. This in turn assists the clerk assigned to that court to allocate briefs effectively and thereby provide realistic preparation time, reduce duplication of work by crown advocates and ensure continuity of advocates for trial courts.

Crown advocates across the CPS West Midlands Area are not universally accurately recording all time spent on advocacy work despite a clear steer from senior management to do so. The proportion of time recorded for advocacy was reviewed for the dedicated crown advocate cadre across three separate time periods; the financial year 2010-11, 12 months to November 2011 and the financial year to November 2011. Across all three periods there has been an improvement in the proportion of time recorded by advocates as spent on advocacy from 58% to 66%. However, there are still stark differences between individual advocates; some advocates indicated 138% of time allocated to crown advocate work whereas others were as low as 25%. Without accurate recording of time appropriate performance management of productivity of the cadre will not be fully effective; there are also welfare issues for those recording significantly higher allocated time.

It is unclear how the CPS West Midlands advocacy strategy will fully address succession needs for the future. The West Midlands model has ring-fenced all crown advocates with an expectation that all will progress at a given rate. There are risks that this will not provide advocates at all levels of development in the future, particularly at the lower level, and it has no further crown advocate resource at lesser levels of development to bring into the unit to meet future requirements.

#### **Key findings**

- 1 There are key environmental conditions that need to be established to enable the operating model and working practices to be implemented and applied elsewhere (detailed at section 2).
- 2 There are elements of good practice in the CPS West Midlands advocacy strategy such as the defined number of ring-fenced crown advocates, a clear expectation that all crown advocates will develop trial advocacy and expectations for deployment and financial savings at each crown advocate grade (detailed at section 3).
- 3 The West Midlands model was not an Area-wide model at the time of our visit but restricted to the Birmingham, Wolverhampton and Coventry crown advocacy unit. As yet it is unclear how this can be extended to encompass the other units in the Area into the centralised model.
- 4 There are elements of good practice in the operation of the model at the Birmingham unit and the clerking arrangements, supported by some sound processes such as the ring-fenced central clerking function, effective use of the crown advocate diary and early allocation of work and instructions enabling deployment of advocates in the unit to be maximised (detailed at section 4).
- 5 The model takes account of full salary costs for the whole unit allowing for loss leader work to be undertaken for development of crown advocates with a view to delivering quality whilst maximising savings over the medium to longer term. However, advocacy data needs to be consistently and properly recorded for all crown advocates.

### **Conclusion**

CPS West Midlands has in place a sound advocacy strategy which includes clear expectations for its dedicated cadre of crown advocates. The implementation is working well in Birmingham but has yet to be fully applied across the Area. The implementation of this strategy is helping it to deliver an improving value for money advocacy service through effective deployment of a cadre of experienced crown advocates able to deliver quality work.

The Area's model clearly has a number of elements and processes that represent good practice, these are scheduled below. The ability to transfer this model elsewhere is dependent upon a series of environmental conditions, not all of which are within the gift of a CPS Area to influence.

### **Section 2: Generic environmental conditions required**

It is clear that for a similar approach to be implemented in other Areas a number of environmental factors need to be achieved or in place.

- There is a clear need for the acceptance at senior level that the effective development of less experienced crown advocates will have a negative impact on Graduated Fees Scheme savings. Ensuring that advocates have suitable trial experience will necessitate a move away from more lucrative non-contested work. The ability of an Area to create the financial headroom to allow loss leader work to be undertaken and develop junior advocates will also be influenced by the mix of principal and senior crown advocates compared with its less experienced crown advocates.
- Areas need to have the right number of advocates. The ability of an Area to reduce the number of advocates to correspond to the level required is clearly limited despite the use of the reversion scheme, voluntary early retirement and close performance management. Hybrid models will not produce as much clarity as seen in the West Midlands but Areas may have to consider different or adapted models to accommodate hybrid advocates who can rotate into crown advocate units for a given period to maintain skills but can also be deployed elsewhere. This adaption would allow for more planned succession of the cadre as current members develop over time.



- The geography of an Area can be a severely limiting factor on the ability to effectively deploy and develop a crown advocate cadre. Areas that have court centres with high throughputs in close proximity to each other and the local CPS offices will benefit most from a centralised clerking approach and will reap the most benefits of a well developed experienced and flexible cadre that is delivering a quality service and good savings. There will be greater opportunities for less urban localities with the move to digitalisation.
- The mix of courts within an Area and their differing approaches to listing will also have an impact on the ability to maximise crown advocate deployment. Where local courts adopt a fixed list approach this adds an increased level of certainty which can be capitalised upon by the Area clerking function, allowing for early preparation by advocates, reducing duplication and late returns. Where the warned list system operates Areas may have to allocate and prioritise a set number of warned list trials to crown advocates to maximise deployment and occupy other time with non-contested work.

### **Section 3: Good practice**

- Top level commitment to the deployment of a full-time cadre of advocates, focussed on the delivery of quality work coupled with the understanding that savings may be reduced at the outset in the pursuit of quality and savings in the longer term.
- Separation of the financial and development role at the lower level allows crown advocate managers to concentrate on individual development and the quality of advocacy whilst the senior clerk is able to concentrate on maximising deployment and potential fee savings.
- Commitment to manage the performance of the advocacy cadre and ensure that it performs effectively at a level in line with that required to fulfil the role across the Area.
- Clear developmental targets are set giving the opportunity and expectation that each crown advocate will pass through the breakpoint within a given period. These need to be aligned to achievable but challenging savings targets as crown advocates progress.
- The advocacy strategy recognises and accommodates the need to build in financial savings headroom to deal with a savings loss in development stages through the effective utilisation of advocates at principal and senior level. This is facilitated by the setting of unit not individual savings targets thereby letting less experienced advocates at lower levels focus on development.

- The strategy includes a solid commitment to training and development supported by a programme of development for confidence building in trial advocacy.
- The approach for the development of the junior role is defined internally following a discussion of the expectations with the local judiciary.
- There is a clearly defined role for decision-making at various stages between the reviewing lawyer and the crown advocate; this is applied consistently across the Area and incorporates some empowerment of the crown advocates.
- There is one controlling mind of the crown advocate diary, namely the senior clerk supported by a ring-fenced group of clerks for designated courts and where necessary at satellite/annex offices. The senior clerk is empowered with support from the crown advocate managers.
- Ongoing and effective liaison with court listing officers, in practice attendance at listing meetings, including the daily listing meetings and weekly fixture listings; this gives an equal footing with the Bar on listing of cases.

#### **Section 4: Good practice processes**

The model needs to be underpinned with sound processes; a number of the processes observed in CPS West Midlands constituted good practice.

- Full utilisation of the electronic advocacy diary system.
- Up-to-date electronic list is maintained of contact details for crown advocates enabling direct contact at court; this is password protected.
- Out-of-hours contact with the clerking team is available.
- Travel and costs are minimised by the clerking team utilising an up-to-date list of advocates' home locations in order to achieve a balance between convenience for the advocate and the need to experience different court centres and tribunals for development.
- Proactive clerking enables the identification of cases that are likely to crack to be discussed with the defence for listing prior to the fixed trial date; this minimises the likelihood of an ineffective trial through cracking on the day.
- The preparation of briefs and summary of allegations is undertaken early (prior to committal); this allows for early review by the crown advocate, discussion with the reviewing lawyer and remedial work to be undertaken. Dip sampling of instructions to counsel and allegation outlines is undertaken by managers to assure quality.

- There is an expectation that an initial advice on receipt of the brief<sup>31</sup> will be completed by crown advocates; this is e-mailed to the lawyer, paralegal officer and the level D manager ensuring remedial action can be taken at an early stage.
- A snapshot audit of late returned briefs has been undertaken in order to reduce the level of late returns; this included returns in-house and externally.
- An audit of fee savings was undertaken to ensure there was no over or under claiming by crown advocates.
- Crown advocate savings are calculated by the fees clerks who deal with invoices from counsel. To ensure the accuracy of fees savings, there is use of the crown advocate logs, the case management system, the Crown Court system (Exhibit) and queries are answered by the individual advocate.
- Crown advocate profiles/CVs are maintained and updated so that work commensurate to experience and competency can be allocated.
- An agreement with the Complex Casework Unit is in place to maximise instruction of crown advocates for development into more complex work whilst achieving fee savings; this requires identification of appropriate work and profiles of the crown advocates to demonstrate suitability for selection.
- Crown advocate training in Birmingham incorporates regular presentations after court by crown advocates on a rotating basis to cascade learning.
- A collegiate approach has been developed to enable crown advocates to learn from each other, mentoring and trial advocacy training has been delivered by more experienced advocates, in addition to the training developed nationally. Local master classes have been held as well as joint training with local chambers.
- Crown advocates are members of the local Circuit.

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<sup>31</sup> The Bar standard.

## H Individuals and representatives of local criminal justice agencies who assisted in our review

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### **Crown Court**

Mr Justice Nicol, Lewes Crown Court  
HHJ Ambrose, Swindon Crown Court  
HHJ Benson, Bradford Crown Court  
HHJ Brown DL, Honorary Recorder  
of Brighton and Hove  
HHJ Carey, Maidstone Crown Court  
HHJ Collier QC, Honorary Recorder of Leeds  
HHJ Critchlow DL, Honorary Recorder of Guildford  
HHJ Cutler CBE, Honorary Recorder of Winchester  
HHJ Faulks, Newcastle Crown Court  
HHJ Field, Swindon Crown Court  
HHJ Fox QC, Honorary Recorder of Middlesbrough  
HHJ Hetherington, Portsmouth Crown Court  
HHJ Hope, Honorary Recorder of Southampton  
HHJ Jarvis, Dorchester Crown Court  
HHJ Mettyear, Honorary Recorder  
of Hull and East Riding  
HHJ Milford QC, Newcastle Crown Court  
HHJ Prince, Honorary Recorder of Durham  
HHJ Stewart QC, The Recorder of Bradford  
HHJ Tremberg, Grimsby Crown Court  
HHJ Wiggs, Bournemouth Crown Court  
Ms S Graham, Court Manager, Wiltshire  
Mrs D Haley, Court Manager,  
Bradford Combined Court Centre  
Ms L Hallam, Crown Court Manager/Listing Officer,  
Great Grimsby Combined Court Centre  
Ms K King, Crown Court Business Manager,  
Swindon Combined Court Centre  
Mr A Marshall, Court Manager, West Yorkshire  
Ms S Wright, Business Manager,  
Southampton Crown Court  
Ms T Butler, Deputy List Officer, Kent  
Mr P Golding, Acting Criminal Listing/  
Case Progression Officer, Humberside  
Mr M Goodman, Daily Listing Officer,  
Teesside Combined Court Centre  
Mr R Gregg, List Officer, Guildford Crown Court

Ms L Nugent, Listing Officer,  
Newcastle-upon-Tyne Combined Court Centre  
Ms J Smith, Divisional Manager Listing,  
West Yorkshire  
Ms A Etherington, Criminal Court Clerk, Humberside  
Ms C Vayro, Criminal Court Clerk, Humberside  
Ms H Wright, Crown Court Clerk, Hampshire & IOW  
Mrs A Besson, Case Progression Officer, Humberside  
Mrs P Boughton, Case Progression Officer,  
Southampton Crown Court  
Ms H Davies, Case Progression Officer,  
West Yorkshire  
Ms S Jennings, Case Progression Officer,  
Hampshire & IOW  
Ms S Smith, Court Clerk/Case Progression Officer,  
Hampshire & IOW  
Ms S Couzens, Administrative Officer, Surrey

### **Magistrates' courts**

District Judge Arnold, Portsmouth Magistrates' Court  
District Judge Bouch, Bradford Magistrates' Court  
District Judge Curtis, Grimsby Magistrates' Court  
District Judge Earl,  
Newcastle-upon-Tyne Magistrates' Court  
District Judge Elsey, Sunderland &  
Houghton Le Spring Magistrates' Courts  
District Judge Gillibrand,  
Basingstoke Magistrates' Court  
District Judge House,  
Bournemouth Magistrates' Court  
District Judge Kelly, Maidstone Magistrates' Courts  
District Judge Mallon, Dewsbury Magistrates' Court  
District Judge Morgan, Southampton &  
New Forest Magistrates' Court  
District Judge Nicholls, Brighton Magistrates' Court  
District Judge Rutherford,  
Kingston-upon-Hull Magistrates' Court  
Mrs M Hill JP, Bench Chair, New Forest LJA  
Ms J Rees JP, Bench Chair, Hampshire & IOW  
Mr H Riley JP, Bench Chair, SW Surrey LJA

Mr M Sutton JP, Bench Chair, Wiltshire  
Dr L Whewell JP, Bench Chair, Leeds LJA  
Ms L Fletcher, Deputy Justice's Clerk,  
Northumbria  
Mr J Batchelor, Legal Adviser,  
Swindon Magistrates' Court  
Ms J Wood, Court Manager, West Yorkshire  
Ms N Linley, Case Progression Officer,  
West Yorkshire  
Ms A England, Listing and Case Progression  
Manager, Hampshire & IOW  
Ms D Gibson, Listing Officer, Cleveland  
Ms L Hatfield, Listing Officer,  
Grimsby Magistrates' Court  
Ms V Jackson, Listing Manager/  
Senior Case Progression Officer, Durham  
Mrs C Lightowler, Lead Listing and Case Progression  
Officer, Bradford Magistrates' Court  
Ms E Sugden, Listings Officer,  
Bradford Magistrates' Court  
Ms C Paton, Listing Officer, Sunderland &  
Houghton Le Spring Magistrates' Courts

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

Mr S Brown QC, Leader of the North Eastern Circuit  
Mr N Hilliard QC, Leader of the South Eastern Circuit  
Mr N Lickley QC, Leader of the Western Circuit  
Mr C Kinch QC, Criminal Bar Association  
Mr P Lodder QC, Chairman, the Bar Council  
Mr K Khalil QC  
Mr A Hiddleston  
Ms K Hammond, BPP Professional Education

**Law Society/Solicitors Association of Higher Court  
Advocates (SACHA)**

Mr S Durno, Policy Officer, Law Society  
Mr I Kelcey, Chair Criminal Law Committee,  
Law Society  
Mr M Stubbs, Director of Legal Policy,  
Law Society  
Ms F Page, SACHA

**Associate inspectors**

His Honour I McKintosh  
Mr D Mackay, Group Advocacy Assessor,  
CPS Eastern  
Ms B Johnson, Group Advocacy Assessor,  
CPS London  
Mr M McKay-Smith, Training Principal,  
CPS Leadership and Learning

## I Glossary

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### **Advocacy quality management scheme**

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

### **Advocacy strategy**

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

### **Agent prosecutor**

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

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

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

### **Associate prosecutor**

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

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

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

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

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

### **Cracked trial**

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

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

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

### **Crown advocate**

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

### **Crown Court**

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

### **Crown prosecutor**

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

### **Graduated Fees Scheme (GFS)**

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

### **Higher rights of audience**

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

### **Inns of Court**

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

### **Institute of Legal Executives (ILEX)**

The professional body which represents trainee and practising legal executives. Regulates associate prosecutors.

### **Magistrates' courts**

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

### **Newton hearing**

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

### **Optimum Business Model (OBM)**

The magistrates' courts and the Crown Court case progression system. This involves the transfer of responsibility for individual cases from individual staff members to a team with rolling membership. Each member performs set functions.

**Paralegal review**

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

**Pathfinder pilots**

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

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

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

**Principal crown advocate**

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

**Prosecutors' Pledge**

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

**Senior crown advocate**

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

**Senior crown prosecutor**

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





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