

PRESS RELEASE

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HMCPSI REPORT ON ITS THEMATIC REVIEW OF THE QUALITY OF PROSECUTION ADVOCACY AND CASE PRESENTATION

HMCPSI REPORT ON ITS AUDIT OF THE INSTRUCTION OF PROSECUTION ADVOCATES IN THE CROWN COURT AND PAYMENT OF COUNSEL BY THE CROWN PROSECUTION SERVICE

HM Crown Prosecution Service Inspectorate (HMCPSI) has today published its report of a thematic review of the quality of prosecution advocacy and case presentation. The review was informed by an audit conducted contemporaneously relating to the instruction of prosecution advocates in the Crown Court and the payment of counsel by the CPS. The report of that audit is also published today.

Inspectors assessed cases conducted by both internal and external advocates. They found that in two-thirds of cases, the advocates were fully competent, including some very good, when prosecuting. A quarter of advocates were lacklustre. Only 7.9% were less than competent, including some very poor.

Although the majority of prosecution advocates were fully competent overall in the Crown Court, there were differences in quality between crown advocates and counsel across the different types of hearings. In non contested hearings, a greater majority of Crown advocates were fully competent in comparison to counsel, and for the most part they are delivering a sound quality of service. In contrast, counsel perform better in trial hearings and across all individual aspects of trial advocacy in the Crown Court apart from the closing speech. In-house trial advocacy needs further development and the quality of cross-examination by crown advocates needs particular attention for further development.

In the magistrates' courts, the presentation of non trial cases was generally sound. There were a relatively high proportion of very good assessments of associate prosecutors (non lawyers designated after special training to undertake advocacy) although heavy lists were proving challenging to some. The standard of trial advocacy by crown prosecutors needs to improve in the light of the number of less than competent assessments.

The review looked at the full range of advocacy and case presentation undertaken on behalf of the Crown Prosecution Service without regard to whether it was sourced internally or from counsel. However, the results were analysed within the context of the CPS advocacy strategy, adopted in June 2004, whereby the Service should routinely conduct its own high quality advocacy in all courts and across the full range of cases. In taking this forward the CPS has sought progressively to undertake more of its own advocacy in the Crown Court. Other key findings in the report include:

- The CPS has made considerable progress against its goal of increasing the quantity of court work undertaken by in-house advocates. This has increased year on year and the CPS is now achieving its existing financial targets and objectives;
- Less progress has been made against the stated aim to provide "high quality advocacy in all courts". The CPS has made it a priority to address this. The quality of advocacy was variable as regards both in-house and external advocates;
- Trial advocacy is in need of particular attention for CPS prosecutors in both the Crown Court and the magistrates' courts;
- The quality of advocates, especially in the Crown Court, has been affected by weaknesses in case preparation and progression which have been exacerbated by the new strategy;
- Nevertheless, the CPS has the capacity over a period of time to assume responsibility for the presentation of a substantial proportion of its Crown Court casework and has created a platform

from which it can aspire to a wider range of higher quality advocacy in the generality of cases.

- The use of in-house advocates had improved consistency of witness care at court;
- The strategy has the potential for significant softer benefits, some in the longer term, through developing the skills and abilities and breadth of work of crown prosecutors so providing a more attractive career within the CPS. It also provides opportunities for case ownership and accountability, as well as according with most of the criminal justice systems around the world.

Introducing the report, Stephen Wooler, HM Chief Inspector of the Crown Prosecution Service Inspectorate, said:

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

Further overarching conclusions included:

- There is a need to improve the quality of instructions for advocates – whether in-house or counsel.
- Introduction of a quality target for advocacy is a progressive move but needs underpinning with actions to drive up quality, particularly in relation to trial advocacy. This will involve further training, development and improved mentoring.
- The introduction of advocacy assessors is evidence of the change of approach.
- Inspectors were reassured that a more collaborative and less combative approach was beginning to emerge between the CPS, the Bar and the judiciary, although this still needs further development.

Inspectors commented that the review was one of the most important but also the most sensitive undertaken by the Inspectorate. The Chief Inspector further commented:

“I believe that the fact of this review has itself been a strong catalyst for improvement. Whilst this report contains some tough messages for the CPS, it is right to emphasise that many competent Crown advocates are only slowly gaining the recognition they deserve, and there remains some deep seated opposition to the very concept of employed barristers or in-house prosecutors undertaking advocacy in the Crown Court at all. Whilst I welcome the more collaborative and less competitive approach further development is still needed.”

This press release is accompanied by a copy of the executive summary. The full report can be accessed by journalists through the embargoed section of the HMCPSI website at <http://www.hmcp.si.gov.uk> using the details provided in the accompanying email

For further information please contact Andreas Harding on 020 7210 1143 or 07901 856 348.

Notes for editors

1. HM Crown Prosecution Service Inspectorate is an independent statutory body established by the Crown Prosecution Service Inspectorate Act 2000, which came into force on 1 October 2000. The Chief Inspector is appointed by, and reports to, the Attorney General.

2. The nature of HMCPSI's work has developed to reflect the ten principles for public service inspection promulgated in 2003 by the Office for Public Service Reform. These envisage (amongst other things) a move away from cyclical inspection according to a standardised framework to an inspection regime based on risk assessment, with the inspection resources being focussed where performance is perceived to be weaker. The fundamental purposes of inspection remain unchanged- to drive improvement and spread good practice.

3. The aim of the review was to evaluate the quality of prosecution advocacy and the performance of the Crown Prosecution Service (CPS) in delivering high quality presentation of cases in court. The basic aim can be divided into underpinning objectives, namely:

- to assess the performance of CPS areas in presenting the full range of cases effectively in the Crown Court and the magistrates' courts;
- to assess the quality of advocacy by –
 - crown prosecutors, crown advocates and prosecuting counsel in the Crown Court;
 - associate prosecutors, crown prosecutors and agents in the magistrates' courts;
- to assess ancillary aspects of case handling and case progression at court;
- to assess the quality assurance of advocacy by the CPS;
- to assess the local management of the deployment of advocates in CPS areas;
- to assess the implementation of the CPS advocacy strategy in the CPS areas and consider if it is providing value for money; and
- to identify good practice.

4. A separate, but linked audit of performance relating to the preparation and delivery of instructions to advocates in the Crown Court and the payment of counsel was undertaken by HMCPSI; some of the work from the audit informed this thematic review.

5. Traditionally, litigants were represented in the higher courts by the self-employed Bar, which existed primarily for this purpose. The CPS played the traditional role of the instructing solicitor. During the 1990's rights of audience were gradually extended to the point where CPS employed lawyers were entitled to appear in the Crown Court from 1999. Initially the CPS took a cautious and gradual approach to increasing numbers of higher courts advocates (HCAs). However, in June 2004 a formal documented advocacy strategy was launched by the CPS which stipulates that it should routinely conduct its own high quality advocacy in all courts and across the full range of cases. This involved an increase in the volume of Crown Court work undertaken by in-house advocates. This new approach would inevitably reduce the amount of work available to the self-employed Bar, and it was inherently unlikely that the Bar would welcome it.

6. Currently the CPS aims for crown advocates to undertake a minimum of 25% of the value of the generality of cases that are dealt with under what is known as the graduated fee scheme (GFS). This means that members of the self employed Bar (we will refer to them simply as counsel) will undertake the remaining work.

The advocacy review

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

advocates to assist the courts in the administration of justice

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

9. During the review we made 367 advocacy assessments from observations in the Crown Court, the magistrates' courts and the youth court; 113 of these were trial hearings. The findings are detailed in the executive summary and the report.

The audit

10. HMCPSI's audit work measures the compliance by the CPS against existing standards and guidance rather than making judgements upon decision-making and presentation as in the thematic review. The audit team's role is to assess quickly performance or compliance across the Service of different topics or aspects of work.

11. The selection of a prosecution advocate to take on the conduct of a case in the Crown Court is as important as thorough case preparation. They are under an obligation not only to present the case in court but also to provide the CPS with advice on any legal issues and on any further work the advocate believes to be necessary. If the person selected does not have the correct level of experience there may be serious consequences in regard to the progress of the case and its outcome.

12. As part of the selection and instruction process the CPS provides the advocate with a brief which should include the evidence, an analysis of issues in the case and other vital documents. The standard of the brief is important as it is the only information that the advocate holds on the case. The quality of instructions to counsel has been an element of inspection for many years and has often been noted as a concern in area reports. It is also important that the brief is provided in good time for the advocate to be able to prepare thoroughly for the court hearing.

13. The timely payment of counsel for work carried out in respect of Crown Court cases is an aspect of performance that is regularly scrutinised by the CPS using its own performance measures and internal audits. There are guidelines for arrangements to pay counsel and areas have systems in place to ensure that they comply with them. This audit examined the systems against the guidelines.