

HM CROWN PROSECUTION SERVICE INSPECTORATE

REVIEW OF THE ADVICE, CONDUCT AND PROSECUTION BY THE CROWN PROSECUTION SERVICE OF ROAD TRAFFIC OFFENCES INVOLVING FATALITIES IN ENGLAND AND WALES

EXECUTIVE SUMMARY

Introduction and background

1. Her Majesty's Crown Prosecution Service Inspectorate has carried out a review of the advice, conduct and prosecution by the Crown Prosecution Service (CPS) of road traffic offences involving fatalities in England and Wales.
2. Although the number of deaths on the road has fallen substantially over the past two decades, there remains widespread concern at the level of deaths and serious injuries and, consequently, there is substantial interest in how the criminal justice system as a whole, and the CPS in particular, deals with these cases.
3. The purpose of this review was to examine:
 - * the quality of all aspects of case management and presentation in both the magistrates' courts and in the Crown Court;
 - * the quality of decision-making both in cases which the CPS are asked to advise on the merits of a prosecution, and in cases which are prosecuted, and the selection of charges in the latter; and
 - * the extent, adequacy and consistency of communications and assistance provided by the CPS to relatives of the deceased and witnesses in the case, and, where appropriate, the level of liaison with other criminal justice agencies.

Overview

4. The CPS recognises that cases involving fatalities are by their nature particularly sensitive and may, accordingly, require an appropriately higher standard of care and attention than that afforded to cases in general.
5. The standard of case management was higher overall in many respects than that which we have found when examining cases generally in our Area inspections. The higher standard of instructions to counsel and the lower level of return of instructions by counsel are examples. Nevertheless there are particular issues that we have identified that require improvement.

6. Casework decision-making was generally sound, although there was some evidence of inconsistency of approach particularly in relation to the level of charge in those cases where there was a prosecution. This related mainly to cases where a lesser charge such as careless driving was preferred rather than causing death by dangerous driving. We found that the quality of decision-making (and other aspects of case management) could be enhanced by the availability in each CPS Area of prosecutors with specialist training in these types of offence.
7. The criminal justice system has made considerable progress in improving the standard of care and service provided to victims' relatives, and the CPS has contributed to this. The CPS Direct Communication with Victims initiative is a significant step in continuing this improvement. However, there are a number of aspects relating to the care of victims' relatives that need to be addressed if the CPS as a whole is to achieve their confidence.
8. Our inspection revealed two examples of good practice in CPS Areas, but also revealed that there are some aspects of performance that require further work to improve the quality of case management, decision-making and the service provided to victims' relatives.

Methodology

9. Inspectors examined 164 cases drawn from ten CPS Areas. Of these, 48 related to cases where summary offences had been prosecuted in the magistrates' courts, and 51 to cases prosecuted in the Crown Court. The remaining 65 examined related to cases where the CPS had advised the police that criminal proceedings were not appropriate. The data from the file examination was analysed, and this provided a resource to the review.
10. Inspectors interviewed key CPS and police personnel, and also interviewed, or received submissions from, representatives of other criminal justice agencies, special interest organisations and groups, and individual members of the public.

Main findings of the review

Case management

11. Both the police and the CPS identify road traffic cases involving fatalities, and the files are flagged in an effort to ensure that these cases are handled appropriately. Inspectors found that the effectiveness of the flagging varied between Areas, and this can have an impact on aspects of case management.
12. Inspectors also considered that case management, as well as decision-making, could be improved by the availability of specialist prosecutors, which we have already commented upon in paragraph 6. We envisage that such prosecutors would not necessarily deal with every such case in their Area, but would maintain an overview of the relevant cases, offer practical advice and assistance, and, where appropriate, provide a second opinion. This approach would also assist the CPS in achieving a greater degree of consistency.

13. Such prosecutors can also improve liaison between the CPS and the police, ranging from simply providing a first point of contact for police officers dealing with road traffic fatality cases, through to providing training for the police. This is seen as a contribution to improving the overall performance of both the police and the CPS in relation to these cases.
14. Some prosecutors were not aware of issues relating to the timing of inquests, and recent guidance has since been given to CPS staff as a whole. Nevertheless, the CPS needs to ensure that all prosecutors and caseworkers who deal with road traffic fatality cases are aware of, and follow wherever practicable, the guidance given. Inspectors considered there was scope for improved liaison between prosecutors and coroners generally.

Advice before prosecution

15. Some CPS Areas already make prosecutors available to the police to give early advice in serious or complex road traffic fatality cases. Inspectors commend this.
16. The timeliness of the responses to written requests for advice from the police was better than inspectors have found in relation to cases generally in their Area inspections. Nevertheless, in view of the sensitivity of road traffic fatality cases, this is capable of improvement.
17. Similarly, prosecutors need to ensure, where it is necessary to ask for more information from the police before advice can be given, that this is dealt with in a timely manner. Timeliness is particularly important where summary proceedings are appropriate because of the provisions relating to statutory time limits on the commencement of such proceedings.
18. To support the drive for better timeliness in relation to advice, local Area managers need to review their systems for monitoring timeliness to ensure that they are effective.

Decision-making

19. The inspectors considered the offences available in relation to road traffic fatality cases, which range from manslaughter and causing death by dangerous driving through to careless driving and other traffic offences that are only triable summarily. In fact, there were no cases in the file sample that were prosecuted as manslaughter, and we did not find any that would have merited such a charge.
20. Crown Prosecutors had properly applied the tests in the Code for Crown Prosecutors (the Code) in the large majority of cases.
21. In the 65 cases examined where the CPS had advised that criminal proceedings were not appropriate, it was found that the Code tests had been properly applied in all but one of them. In that instance, the only viable charge was a summary offence.
22. Similarly, in only one of the 99 cases where a prosecution was advised was the decision to proceed incorrect. In that case, the decision was in fact re-reviewed by the CPS prosecutor who took steps to discontinue the case before the first hearing.

23. There was, therefore, a high standard of decision-making overall, but inspectors found that an inappropriate level of offence had been selected by the reviewing prosecutor in six cases. In each case, the reviewing prosecutor had advised proceeding on the summary offence of careless driving rather than a more serious offence, in most cases the offence of causing death by dangerous driving (although in one, the original decision was later reviewed, and the case proceeded in the Crown Court).
24. The standard of decision-making in this small but significant number of cases needs to improve. Analysis of all the cases examined showed that there was a lower acquittal rate in the Crown Court for road traffic fatality cases (usually involving allegations of causing death by dangerous driving) than for cases generally, which supports the contention that there are not any specific difficulties in prosecuting these cases or obtaining convictions in front of juries, as inspectors have found in relation to some other categories of offence.
25. There is, on the part of some prosecutors, a cautious approach to prosecution, and outcomes in the Crown Court tend to support the view that there has been a change of attitude which has made jurors more inclined to convict of the more serious offence. The Director of Public Prosecutions has already indicated that guidance will be updated to reflect this.
26. Clearly, the quality of review needs to be monitored by Chief Crown Prosecutors, and inspectors consider that there are a number of additional factors that could be addressed to assist in bringing about an overall improvement.
27. The availability of specialist prosecutors to provide a second opinion on review decisions is one such issue that we have already mentioned. Consideration should also be given to whether the Driving Offences Charging Standard, agreed with the police, needs reviewing, particularly in relation to the guidance it gives on dangerous driving.

Presentation in the magistrates' court

28. Road traffic fatality cases prosecuted in the magistrates' courts do not reflect the fact of the death in the offence, and in practice it therefore falls to the CPS to ensure that such cases are properly identified, so that they are appropriately prepared and presented.
29. Most road traffic fatality cases dealt with in magistrates' courts are presented by CPS prosecutors. They may be in a better position to ensure that these cases are properly prepared than agents instructed to act on behalf of the CPS, particularly if the case is to be adjourned or where the defendant enters a plea of guilty.
30. Nevertheless, the inspectors found that there was still a need to ensure that all CPS prosecutors presenting these cases are in possession of the relevant papers in sufficient time to ensure that they can be properly prepared to present the case. This equally applies to agents when they are instructed to present road traffic fatality cases.
31. In many Areas there is liaison with magistrates' courts' staff to ensure that road traffic fatality cases are listed in courtrooms where CPS prosecutors are presenting cases, and the inspectors consider this to be good practice.

Presentation in the Crown Court

32. It is important that counsel with appropriate experience and expertise are instructed to prosecute cases as sensitive as road traffic fatality cases in the Crown Court. Inspectors found that a higher proportion of counsel originally instructed to appear on behalf of the CPS appeared in trials in the Crown Court than in cases generally.
33. The inspectors also found that the quality of the instructions to counsel were overall of a higher standard than those encountered during Area inspections in relation to cases generally. Nevertheless the standard was variable and prosecutors and caseworkers will want to ensure that every effort is made to maintain and improve upon the standard of instructions being given to counsel in relation to this particularly sensitive and important category of case.

Victims' relatives and witnesses

34. All criminal justice agencies are working to improve the service to victims and witnesses, and a number of initiatives are taking this forward. These include the introduction of the Victim Personal Statement scheme and the current consideration of a new Victims' Charter.
35. Inspectors found that the CPS has committed itself to improving its service to victims and witnesses generally, and to victims' relatives in fatality cases. Its commitment is stated in its public Statement on the Treatment of Victims and Witnesses.
36. It, too, is involved in a new initiative, Direct Communication with Victims, which is designed, amongst other things, to substantially improve communication between the CPS and the relatives of victims in road traffic fatality cases.
37. Much good work has already been completed by the CPS to improve the quality and timeliness of written communications, and the value and effectiveness of meetings with victims' relatives. Many staff have received training to assist them in carrying out their commitments in these respects.
38. Nevertheless, inspectors found that there are aspects which need to be addressed by CPS staff at all levels if the CPS is to meet its aspirations in relation to victims, victims' relatives and witnesses. These range from issues that are relatively simple to resolve without any significant commitment of resources, such as prosecutors and caseworkers introducing themselves to victims' relatives at court, or ensuring that discussions about sensitive cases are conducted in an appropriate and professional manner, through to more complex issues, such as the identification and training of staff who have to deal with victims' relatives.
39. Some of the issues relating to the treatment of victims' relatives apply to all prosecutors, whether members of the CPS, or agents or counsel instructed on behalf of the CPS.

Good practice and commendations

40. Inspectors identified two practices that may be regarded as good practice:
- * making prosecutors available for early consultation in complex and serious road traffic fatality cases, as a means of assisting the police to give added focus and structure to their investigations, whilst at the same time providing prosecutors with knowledge about the circumstance and issues in the case to help deal quickly with any subsequent request for advice; and
 - * liaison with magistrates' courts' listing staff with a view to arranging for summary road traffic cases involving fatalities to be listed in courtrooms where CPS advocates are prosecuting.
41. The inspectors commended the following aspects of CPS performance:
- * the identification of those staff who are likely to be the first point of contact with victims and victims' relatives, and the provision of training to administrative staff for dealing with telephone enquiries from victims' relatives;
 - * the steps taken to improve timeliness in relation to communication with victims and their relatives, whether through the Direct Communication with Victims initiative or otherwise; and
 - * the CPS and individual CPS staff concerned, having taken on board criticisms about meetings with victims' relatives, for taking steps to improve them.

Recommendations and suggestions

42. The inspectors made 17 recommendations identifying those aspects of performance where improvement was a priority. These related to:
- * identifying and flagging road traffic fatality files effectively;
 - * nominating appropriately experienced prosecutors to be available for consultation, and to receive specialist training;
 - * ensuring that all prosecutors are aware of guidance given in relation to the timing of inquests and summary criminal proceedings;
 - * provision of advice to the police within agreed time guidelines;
 - * requesting further information, where this is needed before advice can be given, in a timely manner;
 - * effective monitoring of the timeliness of advice;
 - * keeping records of road traffic fatality cases where manslaughter is prosecuted, and appropriate analysis of those records;

- * monitoring the quality of review decisions;
 - * providing revised guidance to CPS prosecutors and caseworkers in relation to road traffic fatality cases, and reviewing the Driving Offences Charging Standard;
 - * ensuring that Crown Prosecutors are in possession of road traffic fatality files for court in good time;
 - * ensuring that agents, when instructed in road traffic fatality cases, are in possession of the files for court in good time;
 - * introducing prosecutors and caseworkers to victims' relatives at court;
 - * identifying and training CPS staff who deal with victims' relatives and witnesses in sensitive cases;
 - * ensuring that letters to victims and victims' relatives are of appropriate quality;
 - * ensuring that victims' relatives are, where appropriate, aware of the availability of meetings with the CPS;
 - * improving the arrangements and conduct of meetings with victims' relatives; and
 - * informing victims' relatives about the use of any Victim Personal Statement.
43. The inspectors also suggested action to be taken as a lower priority on the following:
- * reviewing the systems for monitoring case progression, to ensure that cases in the magistrates' courts are listed in courtrooms where CPS prosecutors are presenting cases;
 - * ensuring that discussions about road traffic fatality cases are conducted in an appropriate manner;
 - * ensuring that letters issued under the Direct Communication with Victims initiative to victims' relatives are issued within CPS time guidelines; and
 - * confirming with the police that victims' relatives are aware of the opportunity to make a Victim Personal Statement.
44. The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197).