

**A REPORT ON THE THEMATIC REVIEW OF THE ADVICE, CONDUCT AND
PROSECUTION BY THE CROWN PROSECUTION SERVICE OF ROAD TRAFFIC
OFFENCES INVOLVING FATALITIES IN ENGLAND AND WALES**

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INTRODUCTION

The basis of the review

- 1.1 Her Majesty's Chief Inspector of the Crown Prosecution Service decided to undertake this review of how the Crown Prosecution Service (CPS) deals with cases involving road traffic accident fatalities, following consultation with the Director of Public Prosecutions (DPP), and with the agreement of the Law Officers.
- 1.2 Although the number of people killed on the roads in England, Scotland and Wales has fallen over the past two decades (3,409 people were killed in 2000, 38.9% below the 1981-85 averages), there remains widespread concern about the number of deaths and serious injuries on the roads. There is therefore substantial interest in the way in which the criminal justice system as a whole, and the CPS in particular, handles these types of case.
- 1.3 This review is concerned with the standard of advice provided to police, and the prosecution of road traffic offences involving fatalities by the CPS, which is responsible for the prosecution of all police cases in England and Wales. We examined a substantial sample of cases drawn from ten CPS Areas where there were prosecutions arising from road traffic incidents and where there had been a fatality, regardless of the charge that was prosecuted. Additionally we have examined cases submitted by the police to the CPS for advice on whether or not to prosecute an offence, regardless of whether any criminal proceedings were actually proceeded with by the CPS. The only exception to this was cases where murder had been charged, as that offence gives rise to issues which are outside the remit of this review, even where, for example, a motor car is used as the 'weapon' to cause the death.
- 1.4 The span of offences has therefore been wide. They ranged from manslaughter through to summary road traffic offences, such as speeding or breach of regulations relating to vehicle condition, the common factor being that there was death involved. Some cases gave rise to no criminal proceedings.
- 1.5 We refer to those cases that fell within the remit of this review as 'cases involving road traffic fatalities' or 'road traffic fatality cases' throughout this report. This phraseology is for ease of reference only, to distinguish them from other types of criminal offence which may result in deaths. It is not an indication that these offences should be treated with less sensitivity or care than other types of case.
- 1.6 Although the focus of the review has been upon the standard of performance of the CPS, many other issues were raised with us, particularly by victims' relatives or the organisations that provide them with support and representation. In many instances, they adopted what might be described as a holistic view of the prosecution of these offences, seeing it as a component part of a determined move towards greater road safety, with the consequent reduction in death and injury on the roads.
- 1.7 This approach led to many associated issues being raised. Some of the issues are far-reaching and challenge fundamental or constitutional practices. They range from comments on the adequacy of sentencing in road traffic fatality cases, through proposals for a presumption of guilt to be introduced in cases, for

example, involving vulnerable road users, through to concerns about the appropriateness of an adversarial legal system as compared with some inquisitorially based European models.

- 1.8 These wider issues may be the basis for debate elsewhere, but because of their nature, many fall outside the scope of this review.
- 1.9 Within the remit of this review, we have focused on the performance of the CPS. We have tried to identify those aspects that are dealt with well, which may provide assistance to other CPS Areas, and those aspects that are capable of improvement.
- 1.10 The aim of any review is to improve the performance of the CPS, in this instance in its dealings with road traffic fatality cases. This includes the manner in which such cases are prosecuted, as well as the better care and treatment of victims' relatives and witnesses.
- 1.11 The review did not specifically cover those road traffic cases that resulted in injuries, albeit extremely serious injuries. This was the cause of some adverse comment by some of those who assisted us in the review. Nevertheless, there have been issues raised in this review that apply equally to injury or fatality cases, and both types of cases may benefit from the observations made. This is particularly so in relation to the interface between the CPS and victims' relatives or, in serious injury cases, the victims themselves.

Methodology

- 1.12 The review commenced in October 2001.
- 1.13 One practical difficulty faced by the review was that the number of road traffic

fatality cases dealt with by the CPS is relatively low when compared with its overall workload. We endeavoured to contact individuals therefore, whether within or outside the CPS, who have built up particular experience and expertise in dealing with these types of case. We were anxious that we should be able to identify such people to avoid the risk of basing our findings on anecdotal evidence, rather than information drawn from a more in-depth knowledge of the issues.

- 1.14 When dealing with issues relating to case management and decision-making, we were able to speak to a number of police officers who were responsible for dealing regularly with road traffic fatality cases, and were able to provide us with considerable assistance in relation to the performance of the CPS in these spheres.
- 1.15 We were also greatly assisted by information provided by coroners, either individually or through the Coroners' Society of England and Wales.
- 1.16 We interviewed a number of CPS staff, both from Areas and from CPS Headquarters, who had particular experience in these cases or aspects of these cases. They provided us with a considerable amount of information.
- 1.17 In addition to the interviews, we also obtained and examined a sample of 164 files relating to road traffic fatality cases. The files related to cases that were finalised during the year ending 30 September 2001. These files were obtained from ten CPS Areas. The sample consisted of three categories of case:
 - 48 cases that had been dealt with in the magistrates' courts; and
 - 51 cases that had been dealt with in the Crown Court.
- 65 cases that had been submitted by the police to the CPS for advice, and in which the CPS had advised that no criminal proceedings should be commenced;

- 1.18 The CPS does not maintain offence-based records of cases. The CPS were therefore not able to identify relevant cases easily, and often the police or coroners' records had to be used. We requested all of the cases from each of the three categories (up to a maximum of ten in each category) from ten CPS Areas.
- 1.19 In addition to the main casework issues, the review was also concerned with the standard of service provided by the CPS to other people involved in these cases, particularly the relatives of victims. One of our recommendations aimed at ensuring a consistently high standard of service is the development of specialisation on the part of prosecutors. This is a similar approach to that which we have taken in relation to cases of rape and cases of racially aggravated crime. We are conscious that the CPS, in considering such recommendations, also sees a need to avoid a degree of specialisation that could cause fragmentation of prosecution arrangements. It is therefore important to make it clear that the development of specialist skills does not require that all cases of a particular kind should be handled by a limited cadre of prosecutors; rather, there should be in each Area sufficient prosecutors with specialist training who can keep 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.

- 1.20 We were greatly assisted in this review by a number of organisations that have particular responsibility for dealing with victims and witnesses, including Victim Support and RoadPeace, as well as others.
- 1.21 The Chief Inspector would like to thank all of those people, whether CPS staff or representatives of other criminal justice agencies or other interested organisations, who assisted in the review.
- 1.22 A number of individuals provided us with details of their own experiences as relatives of victims who had been killed or victims who had received serious injuries as a result of road traffic incidents. We met and spoke to some of the individuals; others submitted their views and information in writing. We would particularly like to thank all of the individuals involved for the time and effort they were prepared to devote to assisting the progress of the review.

CONCLUSIONS, GOOD PRACTICE, COMMENDATIONS, RECOMMENDATIONS AND SUGGESTIONS

Conclusions

- 2.1 There is an awareness throughout the criminal justice system of the sensitivity involved in road traffic fatality cases, and an acceptance that the support and care provided to victims' relatives needs to be improved. The criminal justice system's handling of these issues is coming under increasing scrutiny from individual members of the public and from organisations representing them. The CPS, as a key partner in the system, has recognised that it has an increasingly proactive role to play. In this review we have tried to assess how successful the CPS is in this respect.
- 2.2 For the CPS, there are two main aspects relating to its dealings with road traffic fatality cases: the manner in which it deals with the case itself, whether by way of advice to the police or by prosecution of the appropriate criminal offences and the way in which it deals with the victims' relatives.
- 2.3 Many CPS Areas have taken steps to improve the handling of these cases. This includes the nomination of particular prosecutors to deal with these types of case to facilitate the opportunity to build up greater expertise, and systems to monitor the standard of advice being given. We found that this has resulted in a high standard of decision-making in the large majority of cases. We found the vast majority of decisions not to prosecute for any criminal offence to be sound, and the overall attrition rates of cases that were prosecuted were low. Once prosecutions

were commenced, they were properly and robustly pursued.

- 2.4 Against this, we found a small, but significant, proportion of cases where the standard of decision-making needed to be improved. This was so, even though these cases are usually, if not always, reviewed or monitored by very experienced prosecutors. Despite the relatively small number of cases involved, these can have a disproportionately high negative impact upon the ability of the CPS to secure and maintain public confidence in its handling of these cases.
- 2.5 The cases involved the selection of the lesser offence of driving without due care and attention, rather than one of causing death by dangerous driving. The factors that may have led to this include misapplication of the law and the guidance in the charging standard on driving offences agreed between the CPS and the police nationally, and not appreciating that juries have a greater propensity to convict for the more serious offence than was once believed to be the case. We have recommended a two tier decision-making process, and the nomination of one or more Area lawyers with suitable experience supplemented by specialist training. The DPP has decided that further guidance will be provided to prosecutors in the near future. These steps need to be taken swiftly to ensure that this decision-making is universally good.
- 2.6 There is a general recognition, which we endorse, that it is appropriate for CPS prosecutors rather than agents to present road traffic fatality cases (regardless of the charge) in the magistrates' courts. In cases that are prosecuted in the Crown Court, we found that the standard of instructions to counsel was higher, and

rate of brief returns (ie, the counsel originally instructed subsequently being unavailable to prosecute the case) was lower than in relation to cases generally. We welcome these findings.

2.7 We have raised issues about the standard of file management generally, and pointed to aspects that are capable of improvement. It is important that these issues are not neglected, as good decision-making needs to be supported by high quality file management, to ensure that cases are properly and effectively carried forward in a timely manner. We have commented on timeliness on a number of issues including the need for prompt delivery of case papers to agents instructed to prosecute cases in the magistrates' courts and in relation to the provision of advice. This latter aspect has to be balanced against the complexity of the issues to be considered in many cases, but, nevertheless, care needs to be taken to avoid unnecessary delay, which might in some cases, for example, lead to complications in relation to statutory time limits on criminal proceedings.

2.8 The issue of the standard of service provided to victims' relatives has been a contentious one. We have considered the criticism that has been expressed to us by many individuals and organisations representing them, and sought to assess whether the steps currently being taken by the CPS are sufficient to deal with all the issues raised.

2.9 Direct Communication with Victims (DCV) is clearly an initiative that should greatly assist the CPS to improve its service to victims' relatives, but we have drawn attention to some facets of the scheme that need to be properly supervised and monitored to ensure that it is successful.

2.10 We have made recommendations on issues which, although they may seem minor, can have a great impact on the perception of the victims' relatives. These include the approach of prosecutors and caseworkers at court towards them. Such issues do not require great initiatives or even, in some cases, extensive training. A greater awareness by prosecutors and caseworkers of the position of the relatives would create a more positive perception of the CPS.

2.11 We have identified those practices that might be described as 'good practice' in that, if adopted by other Areas, they would lead to improvement in performance in those Areas, and we have made commendations where we feel it is appropriate to acknowledge the performance of particular aspects of the CPS's work.

2.12 In an effort to improve performance, where we have identified shortcomings or specific aspects of practice that need to be improved, we have made recommendations or suggestions. The distinction between recommendations and suggestions lies in the degree of priority that the Inspectorate considers should attach to its proposals. Those meriting highest priority form the basis of recommendations.

Good practice

2.13 We draw attention to the following as matters of good practice:

1. 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 (paragraph 4.5);

2. 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 (paragraph 6.14).

Commendations

2.14 We make the following commendations in relation to aspects of the CPS and individual CPS Areas' performance:

1. those Areas that, having recognised those staff who are likely to be the first point of contact with victims and victims' relatives, have provided training to administrative staff for dealing with telephone enquiries from victims' relatives (paragraph 7.40);
2. those Areas that are taking active steps to improve timeliness in relation to communication with victims and their relatives, whether through the DCV initiative or otherwise (paragraph 7.66);
3. the CPS and individual CPS staff concerned, having taken on board criticisms about meetings with victims' relatives, for taking steps to improve them (paragraph 7.82).

Recommendations

2.15 We recommend that:

Case management

1. CCPs review the method of 'flagging' fatal road traffic offences cases, to facilitate easier identification (paragraph 3.15);
2. CCPs nominate one or more lawyers with suitable experience to specialise in road traffic fatality and other

serious road traffic cases to be available for consultation; such lawyers should receive appropriate specialist training (paragraph 3.24);

3. CCPs ensure that prosecutors are aware of the guidance given in relation to the timing of inquests in cases involving summary criminal proceedings and take steps to ensure that summary proceedings involving road traffic fatality cases are not dealt with until the relevant inquest has been held (paragraph 3.38);

Advice

4. prosecutors provide advice in road traffic fatality cases within the CPS time guidelines wherever practicable (in all but the most substantial cases) (paragraph 4.21);
5. prosecutors ensure that where further information is needed from the police before advice can be given, any such requests are made as soon as practicable, and in any event within 14 days of the receipt of the original request for advice (paragraph 4.26);
6. Unit Heads review the effectiveness of the systems used to monitor the timeliness of advice to ensure that requests for advice are dealt with in a timely manner (paragraph 4.29);

Decision-making

7. the Director, Policy records all road traffic fatality cases that are prosecuted for an offence of manslaughter, and that such records are properly analysed so that any lessons can be learned (paragraph 5.29);

8. CCPs and Unit Heads monitor the quality of review decisions in all road traffic fatality cases, to ensure that:

- all relevant issues in the case are properly considered;
- cases proceed on the correct level of charge; and
- any training needs on the part of prosecutors are identified and addressed (paragraph 5.72);

9. the Director, Policy issues revised guidance in relation to road traffic fatality cases and reviews the driving offences charging standard, particularly in relation to dangerous driving, and if amendment is appropriate, enters into negotiation with ACPO to agree necessary amendments (paragraph 5.80);

Presentation in court

10. CCPs ensure that prosecutors are in possession of road traffic fatality files in sufficient time to enable them to prepare the case for presentation in court properly (paragraph 6.11);

11. CCPs ensure that where agents are instructed to prosecute road traffic offences involving fatalities in the magistrates' courts, files (or copies of papers) are sent to the agents sufficiently in advance of the hearing to facilitate effective case preparation (paragraph 6.24);

Victims' relatives and witnesses

12. prosecutors and caseworkers introduce themselves to witnesses and victims' relatives at court, and provide appropriate and useful information, in

fulfilment of the commitment of the CPS (paragraph 7.23);

13. CCPs and CPS staff at all levels should regularly take steps to:

- identify staff who deal with victims' relatives and witnesses in sensitive cases such as road traffic cases involving fatalities;
- evaluate whether those staff are properly equipped with the skills and experience required to deal with their duties; and
- ensure that appropriate training or any other assistance is provided (paragraph 7.43);

14. CCPs ensure that systems are in place to ensure that the quality of letters informing victims and victims' relatives of decisions to discontinue cases or to alter substantially the charge are supervised, to encompass typographical and factual errors, as well as the overall content of the letter (paragraph 7.60);

15. CCPs ensure that in all road traffic fatality cases, appropriate victims' relatives are informed that they may meet the reviewing prosecutor to receive an explanation of the reasons for a decision to discontinue the case, or to alter substantially the charge, in accordance with the CPS's Statement on the Treatment of Victims and Witnesses (paragraph 7.70);

16. all staff arranging meetings with victims' relatives should ensure that:

- arrangements for the meetings are in accordance with advice set out in the guide to DCV;

- CPS staff make all efforts to explain the decision(s) made, and the reasons for them in as helpful and informative a manner as possible; and
- the meetings are properly evaluated to consider whether any improvements can be made for the benefit of future meetings (paragraph 7.79);

17. prosecutors ensure that victims' relatives are informed about how their Victim Personal Statement (VPS) will be used in court, and, where appropriate, are given an explanation as to why a particular course has been adopted (paragraph 7.100).

Suggestions

2.16 We suggest that:

Presentation in court

1. CCPs review their systems for monitoring the progress and listing of road traffic cases involving fatalities, to ensure that they can arrange for cases to be listed in courtrooms where CPS advocates are prosecuting (paragraph 6.15);

Victims' relatives and witnesses

2. prosecutors and caseworkers ensure that discussions about road traffic fatality cases, whether with other prosecutors, caseworkers, or defence advocates, are undertaken in circumstances which do not undermine the expectations of professionalism of members of the CPS and those instructed to appear on behalf of the CPS (paragraph 7.34);

3. CCPs ensure that letters informing victims' relatives of decisions to discontinue cases or to alter substantially the charge are issued within the CPS time guidelines (paragraph 7.64);

4. prosecutors and caseworkers dealing with road traffic fatality cases confirm with the police that the victim's relatives have been made aware of the opportunity to make a VPS (paragraph 7.97).

CASE MANAGEMENT

Introduction

- 3.1 The CPS recognises that files relating to cases involving fatalities require particular care and attention because of their seriousness and sensitivity. It is important that the cases in question are readily distinguishable from other types of file, and that each Area has systems in place to ensure that prosecutors and caseworkers with appropriate skills and expertise are allocated to deal with these cases.
- 3.2 It is also important that there are appropriate and adequate systems and agreements in place with other agencies, particularly the police, to facilitate good file management practices.

Identification of files

The need for identification

- 3.3 Cases involving road traffic fatalities need to be properly identified by the CPS to ensure that the appropriate care and attention that such sensitive cases require, is properly afforded to them. This is particularly so in relation to summary offences, such as driving without due care and attention, where the fatality is not reflected in the charge or summons. We therefore examined files that were received to ascertain (a) whether CPS staff had actually identified the cases as involving fatalities and (b) whether the CPS file had been effectively marked so that anyone dealing with the file would immediately be made aware of the case's sensitivity.
- 3.4 It is apparent from the file sample and other evidence received during the course of the review that the police for their part do identify those road traffic cases that

relate to offences involving fatalities. Police files usually have distinctive coloured front-sheets, so that the files can be easily visually identified. In any event, the majority of files are forwarded in the first instance to the CPS for advice, and the fact that a fatality is involved is readily apparent from the letter or minute requesting the advice.

- 3.5 This information is noted by CPS staff, and all of the files in our sample had been appropriately identified by the CPS as involving a fatality. Having satisfied ourselves that CPS staff were actually identifying these types of case, we sought assurance that the files were marked appropriately.

The issues

- 3.6 CPS practice, with very few exceptions, is that case papers are placed into a white file jacket, common to all CPS Areas. The papers placed in the file jacket will include the police file, however distinctively the police may have marked it.
- 3.7 Although the designs of the file jackets currently being used are under review, it is not anticipated that different coloured jackets for different categories of case will be introduced across the whole of the CPS. The file jackets have been designed to ensure that all necessary information is recorded, and remains readily available to other prosecutors who deal with the files. The use of a 'common' jacket design is desirable so that all prosecutors are familiar with its layout. Additionally, where there is transfer of cases between Areas, the prosecutors in the receiving Area will be familiar with the jacket layout, and readily able to glean the information they need as quickly and efficiently as possible.

3.8 The disadvantage, however, to using a single jacket design of the same colour is that any flagging by the police, by way of distinctively coloured front-sheets or other devices, is lost once the file is placed into a CPS jacket. If the CPS, therefore, want to continue to be able readily to identify the file as being sensitive, some exterior mark has to be devised.

What inspectors found

3.9 All of the Areas from which we received files use some visual means to identify the sensitivity of the case, although the effectiveness varied from Area to Area. Most files we saw had been marked with a coloured sticker. Some Areas place prominent coloured stickers or coloured tape on the spine of the file jacket, whilst some marked the front of the file with a coloured sticker or mark. Although each of these methods distinguishes the files in question, if the front of the file is used for a sticker or mark, this can be hidden in the event of other files being placed on top. The distinguishing mark will be hidden and, therefore, its use as a visual aid is negated.

3.10 A number of Areas merely marked the file by writing in ballpoint pen, sometimes red but often black or blue. What was actually written varied between Areas but was usually a single word or list of initials, such as 'Death', 'Fatality' or 'RTF' (for road traffic fatality).

3.11 We fully appreciate that anyone reading the file will be able to see readily what had been written, and will be alerted to the sensitive nature of the contents. However, many CPS staff will deal administratively with files without the necessity to read them, and there is a very real risk that if the device used to mark the file is not adequately prominent, it will be missed.

3.12 We accept that a file can be dealt with properly and effectively, even if it is not distinctively marked, but the lack of some form of visual identification increases the risk that the sensitivity of the issues in the file can be overlooked.

3.13 Where, for example, advice files are stored on a shelf waiting to be dealt with, unless the sensitive files are easily and readily identifiable there is a very real possibility that they will not receive priority. (We deal more fully with the issue of timeliness of dealing with requests for advice later in this report.) There is also the increased possibility that the prosecution of the cases may be hindered if the files are not marked properly.

3.14 We saw one file involving an allegation of careless driving resulting in the death of a road user, which had been marked in pen to identify it as a sensitive case. The marking was not particularly prominent, and the significance of the case appeared to have been overlooked. The defendant had pleaded guilty at the first hearing, and the case adjourned for sentence. At the sentencing hearing the file was listed amongst a number of other road traffic offences of a much less serious nature. It appears that the file was not recognised earlier as one that might require more attention than the others listed in the same court and as a result was only passed to the prosecutor on the morning of the hearing. The prosecutor was put under unnecessary pressure in having to assimilate all of the information in the case in order to ensure that all the relevant facts and issues were drawn to the attention of the court. There may have been other factors that caused this file to be treated as one of a batch of 'ordinary' road traffic files, but the lack of effective 'flagging' undoubtedly contributed to this.

3.15 We recommend that CCPs review the method of 'flagging' fatal road traffic offences cases, to facilitate easier identification.

Allocation of files

3.16 We found that all of the Areas that we examined had systems for ensuring that the road traffic fatality files were allocated to experienced prosecutors. There are, however, different systems for allocating the files to prosecutors for advice, review and conduct.

3.17 They are either retained by a senior prosecutor, (and that can be a Chief Crown Prosecutor (CCP), Special Casework Lawyer, Branch Crown Prosecutor or Unit Head, depending on the Area), or allocated to ensure that the prosecutor dealing with the case has sufficient experience and expertise.

3.18 In a number of Areas the CCP dealt with these cases. We were told by one of the CCPs that this was because these cases were, in his view, of such sensitivity that they merit being dealt with at the highest level within the CPS.

3.19 In many Areas where until recently the CCP has dealt with these cases, they are now being delegated down to Unit Heads or other senior prosecutors. This is on the basis that the CCPs are confident that sufficient expertise has been accumulated within the Area to enable this to occur. But, even where the review is carried out without input from the CCP, each of the relevant Areas still required categories of case to be referred to the CCP. These would include cases, for example, where the reviewer disagreed with suggestions by the police as to the level of charge.

3.20 In one Area, a specific prosecutor was nominated to deal with the review of all road traffic fatality cases, thus ensuring consistency of decision-making across the Area and, at the same time, building up the experience in these types of cases by the individual, as well as facilitating better communication between the CPS and the police. It was evident from the files that we examined from the Area in question, that other prosecutors did on occasion review road traffic fatality cases as well as taking responsibility for managing and conducting these cases. This is a sensible practice to ensure that opportunities to increase the experience of the Area as a whole are properly utilised.

3.21 In other Areas it was felt by the Area managers that it was not practicable to have an individual prosecutor nominated, and road traffic fatality cases were distributed amongst prosecutors, although it is unusual for these cases to be dealt with by a prosecutor less than a Unit Head.

3.22 These differences are not necessarily a cause for concern if the individuals are sufficiently experienced. We noted that every Area had safeguards in place to monitor the consistency and quality of decision-making. Nevertheless, we have concerns about some of the review decisions in a small number of cases, and so we cannot provide full assurance that the systems always work properly. Where there is a failing, it is in the actual decision-making process, rather than a defect in the systems relating to allocation and monitoring.

3.23 However, our concerns lead us to conclude that these cases should be reviewed and conducted by lawyers with suitable experience supplemented by

specialist training. The CPS will need to consider any resource implications inherent in this proposal and, in our view, Areas may initially only have one, but should endeavour to have perhaps two, in each Trial Unit. The specialised lawyer should be available for consultation and to assist in advice and review in any serious road traffic case.

3.24 We recommend that CCPs nominate one or more lawyers with suitable experience to specialise in road traffic fatality and other serious road traffic cases to be available for consultation; such lawyers should receive appropriate specialist training.

Liaison with police

3.25 Many Areas have developed specific arrangements with the police for dealing with road traffic fatality cases. These practices cover the content of the file, what type of cases, and in what circumstances, cases should be submitted for pre-charge advice, and systems for communicating information to the police, whether for their own use or for passing on to witnesses or victim's relatives.

3.26 Increasingly, steps are being taken to formalise these agreements by the introduction of written service level agreements. In most cases, the service level agreements apply to a particular aspect of case handling, rather than being confined to road traffic fatality cases. The agreements may relate to the submission of files for advice or to the care and treatment of witnesses and victims, but they frequently contain references to road traffic fatality cases, where these require consideration over and above that afforded to other types of case. We were made aware of a number of such agreements being prepared whilst the review was taking place.

3.27 To facilitate better understanding between the CPS and the police of their roles and obligations when dealing with road traffic fatalities, some prosecutors have taken on particular responsibility for providing guidance on these cases. This responsibility ranges from being a first point of contact for the police through to preparing and providing training to police officers in dealing with road traffic fatality cases.

3.28 Representatives of the police in those Areas where this was happening were highly supportive of this approach, and confirmed to us that, in their view, it contributed to improving the overall performance of both the police and the CPS in relation to these cases.

3.29 We consider that improving liaison between the CPS and the police, through the provision of training and guidance to the police in relation to road traffic fatality cases, can only be beneficial, and we **commend** those Areas, and the prosecutors concerned, who have undertaken this.

Criminal proceedings and inquests

3.30 In road traffic fatality cases dealt with in the criminal courts, there will also be a coroner's inquest held in relation to the same proceedings. The practice and procedures in inquests are mainly governed by the Coroners Act 1988 as amended, and by rules made under the Act, supplemented by case law. In order to avoid the defendant being placed in double jeopardy, and minimise the risk of conflict between the two jurisdictions, there are guidelines relating to the timing of proceedings.

3.31 In cases where a person has been charged with murder, manslaughter, infanticide,

an offence under section 1, Suicide Act 1961, or causing death by dangerous driving, the inquest will be adjourned until after the criminal proceedings have been concluded. There is statutory provision under section 16, Coroners Act 1988, enabling the DPP (and by virtue of the Prosecution of Offences Act 1985 this may be exercised by any Crown Prosecutor) to request an adjournment of the inquest where there are criminal proceedings which are to be committed to the Crown Court for disposal. In practice coroners are made aware of the proceedings by the magistrates' clerks or the police, and in cases we noted were themselves alert to the issue, in that they awaited the decision by the CPS as to whether the case was to proceed, and, if so in relation to which offence, before proceeding with the inquest. We did not note any applications by Crown Prosecutors for adjournments in the file sample, and were not made aware of any having been made.

3.32 In other cases where the fact of death is not included in the offence, for example, summary proceedings for careless driving, the inquest will usually be completed before they have been concluded. In the case of *Re Beresford ([1952] 36 Cr App R 1)*, approved in *DPP v Smith ([2000] RTR 36)*, it was stated to be good practice that where summary criminal proceedings are initiated the criminal case should not proceed until after the inquest has been concluded.

3.33 Frequently, where there is to be prosecution for careless driving or some other summary offence, victims' relatives or the organisations representing them are particularly anxious that the guidance given in *Re Beresford* is followed. This enables them to observe the inquest, and often gives them the opportunity to

observe the evidence that is available. We were told that this gives them a better opportunity to either challenge the original CPS decision in relation to the summary criminal proceedings, or alternatively to appreciate why the summary proceedings are appropriate and to accept the decision.

3.34 We were told by coroners and organisations that the CPS does not always ensure that the guidance in *Re Beresford* is followed, and that summary proceedings are, on occasion, concluded before the inquest has been held. We identified a number of cases in which this had occurred or which were proceeding on that basis.

3.35 To the victims' relatives, it appeared that CPS staff were not aware of the case law relating to this issue, and this was the cause of the guidance not being followed. On the other hand, the prosecutors we spoke to were aware of the principles involved in the guidance. The lack of observance of the guidelines in road traffic fatality cases, for whatever reason, was a cause of considerable concern to victims' relatives. This may be occurring more as a result of lack of active case management, rather than a lack of knowledge, but it supports our conclusion that these cases should be handled by experienced prosecutors, supported by a designated prosecutor with specialist training who would be familiar with practice and case law.

3.36 The information or charge must be laid within six months of the offence if it is a purely summary offence (e.g. driving without due care and attention). Thereafter, the case is within the jurisdiction and control of the magistrates' court. It is incumbent on the prosecutor to seek an adjournment and to bring the case

law to the attention of the court. The decision to adjourn to await the conclusion of the inquest is one for the magistrates' court.

- 3.37 During the course of this review, CPS Headquarters' Policy Directorate issued guidance on the application of *DPP v Smith in inform* (21 June 2002), a weekly guide issued to all members of the CPS. This is a welcome step, but it is essential that CPS prosecutors are aware of this guidance and apply it in all appropriate cases. It is clear from evidence that we have received since this guidance was given, that there are prosecutors who are still not aware of the practice approved by the Court of Appeal.
- 3.38 We recommend that CCPs ensure that prosecutors are aware of the guidance given in relation to the timing of inquests in cases involving summary criminal proceedings and take steps to ensure that summary proceedings involving road traffic fatality cases are not dealt with until the relevant inquest has been held.**
- 3.39 Whether the inquest has to be adjourned or can proceed, dependent on the nature of the criminal proceedings, it is important that the decision as to which offence should be prosecuted, if any, is taken as soon as practicable. This will enable the inquest to be opened and adjourned, or concluded (depending on the decision taken), promptly.
- 3.40 There were no cases in our sample where late decision-making had led to difficulties with the inquest, but we were told that this could be an issue. It is clear that where, for whatever reason, a decision is delayed, the coroner should be kept informed of the situation, and there would be a benefit from appropriate

liaison between the CPS and the coroner, whether directly or otherwise.

Liaison with coroners

- 3.41 We were not made aware of any formal means of communication between the CPS and coroners and their staff in any of the CPS Areas, although both agencies did on occasion deal with issues that were of mutual concern such as the timing of inquests or CPS decisions. These matters appear to be dealt with on an ad hoc basis.
- 3.42 It was unusual for CPS representatives to attend inquests or for the CPS to receive a report from the police about pertinent issues raised during an inquest. We fully appreciate that it would be unnecessary for the CPS to attend every inquest, but there may be value in attendance in particular cases. For instance, assessment of speed or descriptions of bad driving may be given more graphically by witnesses in person, than in statement form.
- 3.43 There are cases where a finely balanced decision has to be made by the reviewing prosecutor as to whether criminal proceedings should be commenced or continued against a potential defendant, or as to the level of charge. It is important that every effort is made to ensure that the correct decision is made.
- 3.44 There are cases where the decision will be influenced by an assessment of the manner in which the evidence is likely to be presented in court. The number of such cases is likely to be limited, and attendance by CPS staff at the relevant inquests would not make excessive demands on an Area's resources. Prosecutors should therefore consider whether there is a benefit to be obtained from attendance at the inquest where the

evidence in issue is likely to be presented to the coroner's court. If such attendance is not necessary or appropriate, nevertheless, a more pro-active approach to the police for information as to how the issues were dealt with at the inquest might well be of benefit.

- 3.45 There are likely to be advantages for both the CPS and the coroners in seeking to establish closer liaison generally. There can, for example, be a tension between the time needed by the police to investigate the offence properly and for the CPS to reach a proper decision, and the natural desire to conclude the inquest as soon as practicable if there is no criminality or if the offence is one of careless driving or other summary offence.
- 3.46 We were pleased to note that in one Area, the CCP has given guidance to his prosecutors advising them to ensure that the coroner is informed of any circumstances that might delay a decision being made. This open approach is more likely to ensure a co-operative working relationship between the CPS and the coroners.

ADVICE BEFORE PROSECUTION

Introduction

- 4.1 The majority of files in relation to road traffic fatality cases are submitted to the CPS for pre-charge advice because of their sensitivity. As a result, the initial review decision is, in practice, the advice decision in the majority of these cases. We deal with the quality of all decision-making, whether in connection with advice, initial review or continuing review, in the following chapter.
- 4.2 In this chapter, we look at the appropriateness of requests for advice, as well as the presentation and timeliness of the advice given.

Early advice

- 4.3 In the more complex cases it has become the practice for prosecutors in many Areas to be involved at a very early stage of the police investigation. Their role at this stage is not to supervise the investigation, which is a matter entirely for the police, but they are available to be consulted and give guidance on issues which might arise or which might require additional evidence. Both the police and the prosecutors considered this early consultation was mutually beneficial, as it helped the police to structure their investigation, whilst at the same time giving the prosecutor a good knowledge of the circumstances and issues in the case.
- 4.4 We were told that this was particularly helpful to the prosecutors when a written request for advice was subsequently received, as they were able to direct their minds readily to the issues in the case.
- 4.5 We consider it **good practice** for prosecutors to be made available to

provide early advice 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 circumstances and issues in the case to facilitate dealing with any subsequent request for advice.

Appropriateness of requests for advice

- 4.6 The majority of road traffic fatality cases are submitted by the police to the CPS for pre-charge advice irrespective of whether a service level agreement so requires. We endorse this approach.
- 4.7 The police will normally complete their investigation before making the request for advice. The CPS prosecutor who deals with the advice request therefore has all of the available evidence, and is in the best position to make a proper decision.
- 4.8 The files often contain complex evidence, particularly in relation to the work undertaken by the collision investigation officers as well as authorised vehicle examiners and forensic scientists.
- 4.9 In many Areas it has also been agreed with the police that those cases where there is no other party other than the victim involved, and therefore there is no prospect of criminal proceedings ensuing, should not be submitted to the CPS for advice. The police are perfectly able to make the decision and the submission of such files is unnecessary. This approach seems sensible but was not universally followed.
- 4.10 We found two such cases in our sample where there was no other person, other than the deceased, involved in the incident. This is not a major problem but

Area managers in those Areas where this occurs will want to ensure that only appropriate requests for advice are made. In doing so they will need to avoid discouraging police from seeking CPS advice in appropriate cases.

Presentation of advice to the police

4.11 We were impressed with the general high standard of the presentation of advice given to the police in road traffic fatality cases. The majority of the letters or memoranda to the police fully set out the reasoning behind the advice, and were well reasoned and comprehensive.

4.12 It is the general practice for these advices to be typed, although we did see examples where the advice was hand-written. These, too, were well reasoned and comprehensive, although in two cases more effort with legibility would have conveyed a more professional image.

Timeliness of advice

4.13 We have already referred to the fact that the police usually submit full files for advice in road traffic fatality cases at the conclusion of their investigations. In our experience this is not always the practice in respect of requests for advice relating to other types of offences.

4.14 Although the reviewing prosecutor has the benefit of more information than might be available in other cases, the preparation of the full file means, in practice, that there is often a considerable time lapse between the commission of the alleged offence and the submission of the request for advice.

4.15 We found instances in our file sample where this time lapse amounted to over four months, and we were told by both

CPS and police representatives that this is not exceptional because of the nature and complexity of the cases.

4.16 Proceedings for summary offences, with a few exceptions, have to be commenced within six months of the date of the commission of the offence. If the decision is taken by the CPS to advise prosecuting a summary traffic offence (or if others are contemplating commencing a private prosecution for such an offence if the CPS advise the police that no offences should be prosecuted), there may be little time left within which to commence the proceedings.

4.17 It is therefore imperative that requests for advice are dealt with in a timely manner, and wherever possible within the CPS time guidelines. The guidelines are that requests for advice should be dealt with within 14 days of receipt of a file with sufficient information upon which to make a decision. These guidelines apply to all requests for advice, regardless of the offences involved, save for the most substantial cases.

4.18 In the 46 of the 65 advice cases where we were able to ascertain timeliness, the advice was given within 14 days in 27 cases (58.7%). This is higher than our overall finding in the Area inspection cycle covering the period from which the files had been taken, which was 51.5% of cases.

4.19 We accept that when dealing with road traffic fatality cases, it can be difficult to deal with requests for advice in the agreed timescales. This is because of the size and complexity of some of the files, and the other pressures on the time of Crown Prosecutors. Nevertheless, the nature and sensitivity of the cases involved, together with the pressures arising from the

statutory time limits on the prosecution of summary offences, mean that in many of these cases timeliness is of the essence.

4.20 The actual time taken to deal with the advice request ranged from one day to 59 days, with the average time for all advice requests being 21.4 days. For those cases where the advice was late, the average was 27.3 days. This is a situation that needs to be improved.

4.21 We recommend that prosecutors provide advice in road traffic fatality cases within the CPS time guidelines wherever practicable (in all but the most substantial cases).

4.22 We also found that in three cases, the files had not been allocated to a prosecutor for seven days or more. Area managers will want to ensure that such files are allocated as soon as practicable, as any delay will make it difficult for compliance with the overall time guidelines.

Timeliness of requests for further information

4.23 In eight of the files in our sample (12.3%), the prosecutor had to seek more information from the police before a proper decision could be made.

4.24 Advice was subsequently given within 14 days of receipt of the additional information in all but one of these cases. However, in only five cases had the additional information been requested within 14 days of the receipt of the original request (and in two of those the request for further information had been made on the fourteenth day).

4.25 Whilst the additional information was properly requested, it can be seen from the following table that when the periods are added together, they exceed 14 days in all but two cases:

No	Time between receipt of file and request for further information	Time between receipt of additional information and advice being given	Time between receipt of additional information and advice being given
1	7 days	1 day	8 days
2	8 days	1 day	9 days
3	11 days	10 days	21 days
4	14 days	11 days	25 days
5	14 days	27 days	41 days
6	16 days	7 days	23 days
7	31 days	12 days	43 days
8	42 days	10 days	52 days

4.26 We recommend that prosecutors ensure that where further information is needed from the police before advice can be given, any such requests are made as soon as practicable, and in any event within 14 days of the receipt of the original request for advice.

Monitoring the timeliness of advice

4.27 Most Areas have systems that record the timeliness of advice, but we have commented on the effectiveness of these systems in individual reports and, where appropriate, made recommendations or suggestions to improve them.

4.28 At present these systems are not sufficiently rigorous to ensure the provision of timely advice either generally or in relation to road traffic fatality cases. The systems need to be reviewed, with a view to identifying any weaknesses or failings in the systems that may lead to a lack of timeliness.

4.29 We recommend that Unit Heads review the effectiveness of the systems used to monitor the timeliness of advice to ensure that requests for advice are dealt with in a timely manner.

Advice on mode of prosecution

4.30 There are cases where there is only sufficient evidence to bring proceedings for a summary road traffic offence, which does not expressly refer to the fact of the death on the face of the charge, examples being charges of careless driving, speeding or failing to comply with traffic signals.

4.31 In the ordinary course of events where no death is involved, the police will frequently commence proceedings in relation to these types of offence using a

procedure under section 12, Magistrates' Courts Act 1980, whereby the defendant is able to enter a written guilty plea, without the need for attendance at court.

4.32 The CPS, in its guidance to prosecutors, makes it clear that cases involving deaths must always be treated with sensitivity and care, and the police should be advised not to commence proceedings using the section 12 procedure. Even though as a matter of law the death is not reflected in the charge itself, it is felt right that these cases should be presented fully to the court with the defendant present. We concur with this view, as did those prosecutors and representatives of the police with whom we spoke.

4.33 However, a few examples were cited to us when proceedings had been commenced under the section 12 procedure. Such cases are not usually presented by CPS prosecutors (unless there is a not guilty plea entered) and the CPS may not be aware of, or involved in, the proceedings.

4.34 In the file sample we saw examples of advice where the prosecutor had made it clear that the section 12 procedure was inappropriate, and there were no cases where it had been used.

4.35 In cases where CPS prosecutors give advice on the proceedings, which is in the majority of cases involving deaths, they should continue to give specific advice to the police that the section 12 procedure should not be used. Equally, in the event of CPS prosecutors becoming aware of any such cases, they should ensure that there is urgent liaison with the police and/or the courts, so that wherever possible arrangements can be made to have the defendant attend the court, and have the proceedings continue in the conventional manner.

DECISION-MAKING

Introduction

5.1 We examined the quality and timeliness of the decision-making at various stages in the progress of cases within our file sample.

5.2 Prosecutors are required to take all such decisions in accordance with the principles set out in the Code for Crown Prosecutors (the Code) promulgated by the DPP under section 10, Prosecution of Offences Act 1985. The most fundamental aspect of the Code is the twin criteria for the institution or continuation of proceedings: first, there must be sufficient evidence to afford a realistic prospect of conviction; secondly, the circumstances must be such that a prosecution would be in the public interest.

5.3 The decision whether to institute proceedings rests, other than in exceptional circumstances, with police albeit they may seek advice from the CPS before taking the decisions, and we found that this is often the case in road traffic fatality cases. Following the institution of proceedings, the police submit a file to the CPS (if they have not already done so) that should be subject to initial review to see whether it should be accepted for prosecution. Where a case proceeds, it must be subject to continuous review. The evidential position or surrounding circumstances may change during the life of any case and the CPS must respond quickly and positively to review the case again and reassess it.

5.4 Assessing the quality of legal decision-making is difficult. Decisions frequently turn on legal or evidential issues that are essentially matters of professional judgement. It frequently occurs that

different lawyers do, for perfectly proper reasons, take different views in relation to the same case. Our assessment in relation to quality of decision-making therefore considers whether the decision taken was one that was properly open to a reasonable prosecutor having regard to the principles set out in the Code and other relevant guidance. A statement that we disagree with a decision therefore means that we consider it was wrong in principle; we do not disagree merely because inspectors would have come to a different conclusion. Against this background, we set out our findings.

5.5 Before commenting on the quality of decision-making by CPS prosecutors in relation to road traffic cases where there is a death involved, we consider the range of offences, as these clearly have an impact on the charges available. This can also affect the level of charge in many of the cases falling within the remit of the review.

5.6 We also deal specifically with our findings from the file sample and, where relevant, from other files and sources which have been available to us during the review.

Range of offences and charges available

5.7 The range of offences that could lead to a road traffic fatality is large. They range from the most serious indictable only offences of manslaughter and death by dangerous driving to purely summary offences relating to the construction and use of vehicles, such as defective brakes, failing to set a handbrake or speeding. (We have already indicated in the introduction to this report that the offence of murder, even where a motor vehicle or driving is involved in the offence, does not fall within the remit of this review.)

5.8 Although wide-ranging, the charges available fall into two distinct categories, namely those where the fatality is reflected in the charge itself, and those where it is not.

5.9 The charges where the death is reflected in the charge are set out in the following table, together with the statutory provisions creating the offence, a brief definition and the maximum penalty currently available¹:

Charge mode of trial, and creating provision	Brief definition	Maximum penalty
Manslaughter (indictable only) Contrary to common law	Causing death by a breach of a duty of care owed to the victim which was grossly negligent (<i>Adomako [1995] 1 AC 171</i>)	Life imprisonment and/or a fine. Obligatory disqualification for 2 years and endorsement. Mandatory re-testing by way of extended driving test.
Causing death by dangerous driving (indictable only) Contrary to Section 1, Road Traffic Act 1988	Causing the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place.	10 years' imprisonment and/or a fine. Obligatory disqualification for 2 years and endorsement. Mandatory re-testing by way of extended driving test.
Causing death by careless driving when under the influence of drink or drugs (indictable only) Contrary to Section 3A, Road Traffic Act 1988	Causing the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention or without reasonable consideration for other persons using the road or place, and (a) he is, at the time when he is driving, unfit to drive through drink or drugs, or (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, or (c) he is within 18 hours after that time required to provide a specimen (of breath, blood or urine) but without reasonable excuse fails to provide it.	10 years' imprisonment and/or a fine. Obligatory disqualification for 2 years and endorsement. Mandatory re-testing by way of extended driving test.
Aggravated vehicle-taking where death results (either way) Contrary to Section 12A, Theft Act 1968	Without having the consent of the owner or other lawful authority, he takes a mechanically propelled vehicle for his own use or, knowing that any mechanically propelled vehicle has been taken without such authority, drives it or allows himself to be carried in or on it; and it is proved that at any time after the vehicle was unlawfully taken and before it was recovered, any person's death was caused in certain specified circumstances.	5 years' imprisonment and/or a fine. Obligatory disqualification for 12 months and endorsement.

5.10 The potential charges available that do not reflect the death in the statement of offence are varied. Dangerous driving is probably the most serious; that is triable either way, but the majority of other offences most commonly appropriate are purely summary offences, such as careless driving, excess speed and failure to comply with traffic signs.

5.11 Prosecutors should always strive to ensure that cases proceed on the correct charges enabling the proper gravity of the case to be presented to the courts, and the selection of charge is possibly more significant when dealing with road traffic fatality cases than with most other criminal cases because of the wide divergence between penalties available in respect of offences of causing death by dangerous driving and in summary offences of careless driving.

5.12 The main (although not exclusive) aspects of concern in the selection of charges relate to the perceived preference to charge death by dangerous driving rather than manslaughter, and the use of careless driving rather than causing death by dangerous driving. These concerns have been voiced by the relatives of victims, and groups representing them, and have been shared by some practitioners and academics.

Selection of appropriate charge

Manslaughter or causing death by dangerous driving

5.13 Until 1957, there was not a statutory offence specifically relating to causing death by driving, and prosecutors had only the common law charge of manslaughter available to them. It is generally accepted that there were difficulties in securing convictions on this

charge, as it was perceived that juries, and to some extent members of the judiciary, felt that such a charge, which was only one step removed from murder, was too draconian to deal with what some might view as 'driver error'.

5.14 This led to the creation of the offence of causing death by dangerous driving (which at that time had a maximum penalty of two years' imprisonment). This offence changed in nature over the years, as did the penalty available. Under section 1, Road Traffic Act 1988, the offence was one of causing death by reckless driving; this was subsequently amended, by the Road Traffic Act 1991, to the current offence of causing death by dangerous driving.

5.15 There is some opinion that manslaughter should be the 'first choice' of prosecutors when selecting a charge where it would be possible to charge an offence of death by dangerous driving.

5.16 The argument in support of this contention is mainly twofold. Firstly, there has been a change in the way in which road traffic fatalities are viewed, both by the courts and the public at large, and that convictions for manslaughter are now more likely to follow than they were nearly half a century ago. Secondly, because the offence carries a potentially greater penalty, it both better reflects the gravity of the offence and also provides the courts with a wider range of penalties.

5.17 It is also contended that because manslaughter is more readily acknowledged as a homicide than causing death by dangerous driving, greater resources would be made available by the police in relation to the investigation of the offence. Except where the standard of the investigation impacts on the quality of the

¹ The penalties for road traffic offences have been the subject of a review by the Home Office, although the results and recommendations from that review were not available at the time that this report was written.

- prosecution of any subsequent offences, this is an issue beyond the remit of this review.
- 5.18 The guidance provided by the CPS restricts the use of manslaughter to a relatively small number of cases at the upper end of the scale of seriousness. This is on the basis of the judgment in *R v Pimm ([1994] RTR 391)* where it was stated that the risk of death must be very high. We will examine the issues that prosecutors would have to consider when dealing with the selection of this charge.
- 5.19 We received considerable evidence suggesting that the climate of opinion in relation to these offences has changed and this is reflected not least by the increased penalties available to the courts when dealing with death by dangerous driving. However, there are other factors that have to be taken into account when selecting the most appropriate charge.
- 5.20 When the main specific offence was causing death by reckless driving there was authority to suggest that where a manslaughter charge arose out of a road traffic incident (usually referred to as ‘motor manslaughter’) the test of culpability was recklessness rather than gross negligence, which applied to other types of manslaughter (*Seymour [1983] 2 AC 493*). On that basis, the two offences had, to a significant extent, become indistinguishable, although in practice there were relatively few prosecutions for motor manslaughter.
- 5.21 When section 1, Road Traffic Act 1988 was amended to create an offence of causing death by dangerous driving, it also introduced a statutory definition of what amounted to ‘dangerous driving’. This was an objective test – a person is to be regarded as driving dangerously if (a) the way he drives falls far below what would be expected of a competent and careful driver, and (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous (*Section 2A, Road Traffic Act 1988*).
- 5.22 Subsequently the House of Lords determined that the gross negligence test should be applied to all manslaughter charges and there should be no separate test for motor manslaughter: it was acknowledged that this may lead to cases of involuntary motor manslaughter becoming ‘rare’ (*Adamoko [1995] 1 AC 171, per Lord Mackay at p.187*) Prosecutors when deciding whether the appropriate charge is manslaughter must therefore consider whether there is sufficient evidence to prove gross negligence on the part of the alleged offender.
- 5.23 When undertaking this exercise, where the evidence is such that either offence could be made out, prosecutors also have to consider two other issues that may influence the selection of charge.
- 5.24 Death by dangerous driving is not an alternative verdict to a charge of manslaughter; if the jury do not find that there is sufficient evidence to convict of manslaughter, they cannot substitute a verdict of guilty to an offence of causing death by dangerous driving, even if they thought the evidence was sufficient to prove such a charge. Furthermore, it is not open to the prosecutor to include both charges on the indictment as it is not permissible to allow a trial to proceed on two separate counts, where one relates to a statutory offence and the other to a common law offence (*Adamoko [1995] 1 AC 171, per Lord Roskill at p.507.*)
- 5.25 Secondly, consideration has to be given to whether it is appropriate to proceed with a common law offence when there is a specific statutory offence available.
- 5.26 The CPS provides guidance to prosecutors (over and above issues of law contained in legal textbooks and similar sources) in the driving offences charging standard. This charging standard has been agreed nationally with the police. (The full text is at Annex 1).
- 5.27 The guidance provided is succinct. It states that a manslaughter charge will very rarely be appropriate in road traffic fatality cases because of the existence of the statutory offences, and gives two sets of circumstances where such a charge should be considered, namely where the vehicle has been used as a instrument of attack or to cause fright, and where a constituent of the statutory offence is missing, for example, the incident did not occur on a road or other public place, or the vehicle was not mechanically propelled. In the light of the sensitivity of these cases, the Director, Policy will want to keep the guidance under review to ensure that it is adequate.
- 5.28 There were no cases in the file sample in which manslaughter was prosecuted or was appropriate. However no records are kept by CPS Directorates of road traffic fatality cases resulting in a prosecution for manslaughter. We consider that it will be helpful if such records are maintained so that Policy Directorate can analyse the number of cases considered for prosecution as ‘motor’ manslaughter and learn from the outcomes of those that are so prosecuted. Such information is needed to ensure that future guidance is soundly based.
- 5.29 We recommend that the Director, Policy records all road traffic fatality cases that are prosecuted for an offence of manslaughter, and that such records are properly analysed so that any lessons can be learned.**
- 5.30 We found in the file sample that some prosecutors demonstrated that they were aware of the issue of manslaughter as a potential charge. In one case, considerable thought had been given to such a charge, and the case had been referred to the Casework Directorate in CPS Headquarters for guidance. The decision was ultimately made that the correct charge to proceed upon was one of death by dangerous driving. The reasons behind the decision were properly recorded on the file.
- 5.31 We were also aware of another case, outside the sample, which was proceeding on a charge of manslaughter. The charge related to the employer, rather than the driver, and the statutory offence was not available to the prosecution.
- 5.32 In the majority of cases there was no reference to manslaughter and we were therefore unable to ascertain whether it had been considered, although we did not find any cases where it would have been the appropriate charge.
- Causing death by dangerous driving or careless driving***
- 5.33 In practice, the majority of road traffic cases involving a fatality involve a charge of either causing death by dangerous driving or driving without due care and attention. This was clearly borne out in our sample. Forty-two of the 51 cases (87.5%) prosecuted in the Crown Court included a count of causing death by dangerous driving, and 47 of the 48 cases

(97.9%) prosecuted in the magistrates' courts included a charge of careless driving. It is apparent, therefore, that the issue which many prosecutors face when dealing with a road traffic fatality case is whether the driving was careless or dangerous.

5.34 We have already referred to the importance of prosecutors selecting the correct charge when prosecuting any offence, to enable the full gravity of the case to be properly presented to the court. Because of the different penalties and mode of trial attached to careless driving and causing death by dangerous driving, it is difficult to think of an area of law where the consequences of the decision are of greater importance to both the relatives of the victim and to the defendant.

5.35 Where a charge of causing death by dangerous driving is prosecuted, the case will be tried in the Crown Court and, in the event of a conviction, there is a strong likelihood that a substantial custodial sentence will be imposed, as well as a mandatory disqualification from driving.

5.36 If careless driving is prosecuted, the matter will be dealt in a magistrates' court, and in the event of a conviction, only a financial penalty can be imposed. Disqualification is discretionary.

5.37 The decision as to the charge should be based on the evidence available, and it would be improper for cases to proceed on a more serious charge only because of the serious consequences of the driving, or in order to encourage a guilty plea to the lesser offence.

5.38 The difference between careless and dangerous driving is one of degree. A person drives carelessly if the standard of

driving falls below the standard of a reasonable, prudent, competent and experienced driver, whereas the driving is dangerous if the driving falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous. Because the issue therefore revolves around whether the standard of driving was below or far below the level of the competent and careful driver, there is a fine dividing line. The decisions made are often closely scrutinised and the subject of criticism by various bodies.

5.39 Because of the objective test now applied to dangerous driving, the offence is easier to prove than it was when recklessness on the part of the driver had to be proved. If a conviction is not obtained for that offence, a conviction for careless driving can still follow as an alternative verdict. These considerations might lead a prosecutor to select a charge of causing death by dangerous driving more readily.

5.40 Conversely, it has been contended that, on occasions, prosecutors prosecute a charge of careless driving because this avoids the extra costs involved in Crown Court proceedings, and removes the possibility of criticism in the Crown Court for bringing inappropriate cases.

5.41 In examining the file sample, we were mindful of these criticisms, and looked to see whether or not there was any support for them.

Charges and outcomes in the file sample

5.42 Before dealing with our specific findings in relation to decision-making, we set out

in the following table the charges selected and the eventual outcome in respect of those cases which resulted in proceedings:

CROWN COURT CASES							
Charge	Total	Guilty plea	Guilty plea to lesser offence	Contested trials			No evidence offered/withdrawn
				Conviction	Conviction (alternative offence)	Acquitted	
Death by dangerous driving	42 (82.4%)	30 (58.8%)	2 (3.9%)	6 (11.8%)	1 (2%)	2 (3.9%)	1 (2%)
Death by careless driving with excess alcohol	3 (5.9%)	3 (5.9%)					
Aggravated taking of motor vehicle with death	4 (7.8%)	4 (7.8%)					
Other charges	2 (3.9%)	2 (3.9%)					
Crown Court Total	51 (100%)	39 (76.5%)	2 (3.9%)	6 (11.8%)	1 (2%)	2 (3.9%)	1 (2%)
MAGISTRATES' COURTS CASES							
Careless driving	47 (97.9%)	39 (81.3%)		5 (10.4%)		2 (4.2%)	1 (2.1%)
Dangerous load	1 (2%)	1 (2.1%)					
Magistrates' court Total	48 (100%)	48 (83.4%)		5 (10.4%)		2 (4.2%)	1 (2.1%)

5.43 One of the acquittals in the Crown Court was a judge directed acquittal; the judge did not allow the case to proceed after the conclusion of the prosecution evidence because the evidence was unsafe. This had resulted from prosecution witnesses giving evidence that differed in significant respects from the statements they had made to the police. Until that point, it was proper to have proceeded with the case.

Decisions not to prosecute

5.44 The overall conviction rate in the Crown Court for the main indictable offence was 88.3%, with an acquittal rate in contested trials of 33.3%. The first figure appears similar to the national average for all offences (88.2%) for the same period, but the national figure also includes those cases where there was a conviction on an alternative offence. The acquittal rate is significantly better than the national average (43.2%), although the figures from our sample have to be treated with

caution because of the small number of cases involved. Nevertheless, these findings tend to support the proposition that there are no specific difficulties in prosecuting these cases or obtaining convictions in front of juries.

- 5.45 We examined 65 advice files where the advice had been given to the police that it was not appropriate to proceed with any criminal charges. In those cases, we looked at both the application of the evidential test and, where appropriate, the public interest test.

The evidential test

- 5.46 We considered a total of 65 such cases, and found that the evidential Code test had been correctly applied in 64 of them (98.5%). In the one case that was an exception, the reviewing prosecutor had failed to place sufficient weight on the evidence available, and there was sufficient evidence to proceed, albeit in respect of a summary motoring offence.
- 5.47 This standard of decision-making is comparable with that which we have found when examining cases during CPS Area inspections, but has to be balanced against our findings when we consider the application of the Code tests in those cases that resulted in criminal proceedings. We deal with this aspect later in this chapter.

The public interest test

- 5.48 The public interest test is applied when the prosecutor has concluded that there is sufficient evidence to proceed. The prosecutor should then, and only then, proceed to consider this second limb of the Code test.
- 5.49 The public interest test only fell to be considered in two cases. In one it was

correctly applied, but we were surprised to find in the other that the reviewing prosecutor had declined to deal with the public interest aspect on the basis that the police had not specifically asked for this. In our experience, both in this review and in our inspections of CPS Areas, it is usual for the police to ask for a decision on whether or not criminal proceedings should be commenced (as happened in this case), and a decision is made after applying both Code tests. In the case we examined, the reviewing prosecutor indicated that, should the police wish the public interest test to be considered, the file should be resubmitted to the CPS for advice on that specific point and further information would be required. We would have expected the prosecutor to ask for the information and to advise on the issue.

- 5.50 The charging standard provides guidance to ensure that the most appropriate charge is selected, in the light of the evidence that can be proved, at the earliest possible opportunity. It sets out examples of circumstances where it might not be in the public interest to proceed with a prosecution, even though there was sufficient evidence to provide a realistic prospect of a conviction. The guidance specifically refers to the special considerations that apply to cases where there is a family or other close personal relationship between the deceased and the accused driver. These are often referred to as “nearest and dearest” cases.
- 5.51 In a case outside the sample that was drawn to our attention, a prosecution of causing death by dangerous driving was not advised on the basis that the driver was related to the deceased. It was accepted by the reviewing prosecutor that because of this, there was a “nearest and dearest” relationship between the parties.

It subsequently transpired that although there was a blood relationship, it was not a close personal relationship, and the public interest in prosecuting cases involving deaths might have outweighed the potential desirability of not prosecuting in that particular case.

- 5.52 It is clear from correspondence which we have seen, that the reviewing prosecutor accepted that more information about the relationship should have been obtained before making the decision as to whether to not to prosecute.
- 5.53 We were only made aware of one such case, and the prosecutors involved have had the opportunity to learn from their experience.
- 5.54 In these circumstances, we do not feel that it is necessary to make any recommendation or suggestion in relation to dealing with “nearest and dearest” issues. Nevertheless, prosecutors will want to ensure that all appropriate information is available to them before important decisions in respect of these serious and sensitive cases are made.

Decisions to prosecute

- 5.55 We agreed with the decision to prosecute in all but one of the 99 prosecution cases we examined, although we considered that an inappropriate level of offence had been selected by the reviewing prosecutor in a further six of these cases. Again, we considered the application of the Code tests in relation to these cases.

The evidential test

- 5.56 In applying the evidential Code test, the prosecutor has, of necessity, to decide on the appropriate charge so that an assessment can be made as to whether there is sufficient evidence.

- 5.57 We found that in the initial review stage, the evidential Code test had been properly applied in 92 of the 99 cases (92.9%). This is, in our experience in Area inspections, toward the lower end of performance. Across the 42 CPS Areas, the evidential Code test has been applied correctly in 98.3% of cases, although the range is between 91.5% and 100%.

- 5.58 We found in the large majority of cases there was good decision-making, through from advice to continuing review. Appropriate decisions were being made in relation to proceeding with charges of causing death by dangerous driving, and the cases were thereafter prosecuted robustly.

- 5.59 We did not find evidence to support the contention that these charges were allowed to proceed to the Crown Court, for example, as ‘an easy option’. As the earlier table shows, nine cases involving counts of causing death by dangerous driving were the subject of contested trials. In six cases the defendants were convicted; in one case the defendant was acquitted of the substantive count, but convicted of careless driving as an alternative verdict; and in two cases the defendants were acquitted on all charges (one of them on the direction of the judge). On the evidence that was available, the prosecution was right to have proceeded on the initial charge in all three cases that resulted in acquittals.

- 5.60 In two of the seven cases in which the Code tests had not been applied properly, the initial review decision was changed during the course of further review, and the Code tests were correctly applied, albeit at a late stage.

- 5.61 One related to a case where a decision was made to prosecute the driver for careless driving. There was insufficient evidence to establish that the standard of

driving was such that it could be described as careless. The case was revisited, and the initial review decision was reversed. As a result, the case was discontinued before the first hearing date. The initial error was therefore quickly rectified, although the expectations of the victim's relatives may have been unrealistically raised. This was the only case in our sample where the decision to proceed was inappropriate.

5.62 In the second case where the initial review decision was changed, the decision to proceed in the magistrates' court only on a charge of careless driving was challenged by the victim's relatives. After further consideration, the case was submitted to independent counsel for advice on the appropriate charge, and advice was given that the appropriate charge would be causing death by dangerous driving. In the Crown Court there was a trial, the defendant was convicted, and received a custodial sentence. In this case, the correct charge was dealt with, but not until after there had been an effective challenge by the relatives.

Concerns about level of charge

5.63 The concern in that case and in the remaining six cases where the Code tests had not been properly applied related to the level of charge that was selected.

5.64 The cases fell broadly into two categories – those where there was an apparently intentional course of driving which in all the circumstances amounted to dangerous driving, and those where there was such substantial, gross or total inattention which caused the driving to be dangerous. In each case in each category, insufficient consideration had been given to the factors that indicated that the driving

involved was dangerous, leading to the selection of a charge or charges that did not fully reflect the gravity of the case.

5.65 As an example of the first category, in a case where a driver was travelling at 50 mph and collided with a pedestrian in the road, the decision was made that this amounted to careless driving. The reviewer had failed to give proper consideration and weight to other factors that caused this driving to be dangerous. This was a busy area (albeit in the early hours of the morning), with numerous pedestrians, many of whom had clearly been drinking, walking on the pavement and into the road; the driver himself described the conditions as 'horrendous' and was familiar with the road and the situation.

5.66 As an example of a case in the second category, the evidence of road conditions and the mechanical condition of the defendant's vehicle were considered with some care, but the fact that the defendant had only had 2¹ / 2 hours sleep in the past 25 hours and admitted that he had fallen asleep at the wheel having experienced the warning signs of this, did not appear to have been properly considered.

5.67 "Fatigue/nodding off" is cited as a factor that might explain the driver's course of action in the driving offences charging standard in a paragraph dealing with the offence of careless driving. Nevertheless, the standard goes on to state that such conduct might account for a driver's action, such as veering across a road, and in these cases, it is necessary to go beyond the explanation for the driving and consider whether the particular facts of the case warrant a charge of careless or dangerous driving and whether the inattention was substantial, gross or total, albeit for a short time.

5.68 The failure to apply the Code test correctly may therefore have resulted from an inappropriate application of the charging standard, or may result from individual prosecutors not keeping abreast of changes in the criminal justice system and its approach to these types of offences, whereby there is a broader interpretation and acceptance by juries of what amounts to dangerous driving.

5.69 Our findings indicate that decision-making is capable of improvement.

5.70 It may be advantageous for Area managers to consider the current systems in place for reviewing files. In one Area, the decisions were made by Unit Heads, but then checked by the CCP. The checking process was a meaningful review, with the opportunity for proper discussion, rather than merely a 'rubber stamp' exercise. We examined one case where a Unit Head had recommended prosecution for driving without due care and attention, but after further review by the CCP, it was agreed that the appropriate charge was causing death by dangerous driving. The case resulted in a trial in the Crown Court, and the defendant was convicted. Area managers may feel that their Area would benefit from a similar 'second opinion' review system.

5.71 In any event, whatever system is used by the Areas, the number of cases dealt with by individual Areas is not substantial, and effective monitoring is a viable proposition. This would help to ensure that the correct decisions are made, early remedial action in individual cases can be taken, and any training needs on the part of individual prosecutors are identified.

5.72 We recommend that CCPs and Unit Heads monitor the quality of review decisions in all road traffic fatality cases, to ensure that:

- **all relevant issues in the case are properly considered;**
- **cases proceed on the correct level of charge; and**
- **any training needs on the part of prosecutors are identified and addressed.**

5.73 We found a further case in the sample where the correct decision had been taken in relation to the substantive charge arising out of the fatality (which on this occasion was careless driving), but proper consideration did not appear to have been given to the standard of the defendant's driving when he drove away from the scene of the incident. If such consideration had been given, a further, more serious, charge may have been added to those against the defendant, albeit relating to his driving after the death.

5.74 Again, if our above recommendation is followed this would help to ensure that all cases proceed on all of the appropriate charges.

5.75 It appears from our consideration of these cases that some prosecutors do not, perhaps, fully appreciate how offences involving road traffic fatalities are being currently interpreted and dealt with by the courts across England and Wales. They did not properly consider and weigh the various factors that fell to be considered on an objective, reasonable basis, and may have been too influenced by one or two outcomes locally in the past.

5.76 Part of the difficulty may be that each individual Area deals with a relatively small number of such cases and does not necessarily have a specialist prosecutor as we have recommended earlier in this report. The opportunity to keep fully abreast of developments in this relatively narrow field of the law is therefore less than in some other aspects. We have already referred to the perceived change of attitude generally towards these types of offence, which is supported to some extent by our findings in relation to the conviction rates.

5.77 This is an issue that is being addressed by the DPP, who anticipates providing guidance on this particular aspect in the near future.

5.78 We are aware that CPS Areas were asked to comment on the driving offences charging standard about three years ago, and a further review was carried out by CPS Headquarters' Policy Directorate in 2002. It was not felt that any amendment to the charging standard was required. In the light of the small, but significant number of cases where incorrect decisions are being made, particularly in relation to what amounts to dangerous driving, this is an issue that needs reconsideration. The Director, Policy will want to consider whether the guidance should be supplementary to the charging standard, or whether the standard itself requires clarification and amendment. We have already referred to the issue of driver fatigue being in a section dealing primarily with careless driving in the charging standard, and this might lead some prosecutors to the conclusion that where a driver falls asleep, careless driving will be the appropriate charge.

5.79 A report commissioned by the Road Safety Division of the Department for

Transport, Local Government and the Regions, "Dangerous Driving and the Law"² also suggests that, whilst making it clear that it would be inappropriate to remove the discretion to make decisions according to the merits of the case, greater clarity is required in the charging standard in describing the level of inattention which would amount to dangerous driving.

5.80 We recommend that the Director, Policy issues revised guidance in relation to road traffic fatality cases and reviews the driving offences charging standard, particularly in relation to dangerous driving, and if amendment is appropriate, enters into negotiation with ACPO to agree necessary amendments.

The public interest test

5.81 We found that the public interest Code test had been properly applied in all the cases that resulted in prosecutions in the sample.

Consistency of decision-making and investigation

5.82 As we have already discussed, the selection of the appropriate charge can be a particularly difficult exercise for a reviewing prosecutor when dealing with road traffic fatality cases. In 1996, the CPS and the police together agreed a driving offences charging standard, the purpose of which is to make sure that the most appropriate charge is selected, in the light of the facts established by the evidence, at the earliest possible opportunity.

5.83 In practice, the charging standard provides a useful tool to aid consistency of charging, and is generally well

accepted by prosecutors and police alike, although there had been some review over the past six years. It has not been altered since it was introduced, although there has been some review over the past six years.

5.84 A concern was expressed to us that although recognising the charging standard as a useful tool, it remains a guide and so can still be applied by different prosecutors in different ways, which can lead to inconsistent decision-making. Police officers who attend Crown Court centres that received cases from more than one CPS Area considered that it was discernible that, on occasions, cases based on very similar facts are dealt with by different charges by different CPS Areas. There is some support for this from our file examination - we have already commented on the different emphasis placed upon issues by some prosecutors leading to inappropriate decision-making.

5.85 We consider that the nomination of specialist prosecutors as we have suggested, who could communicate with each other about particular cases of note in this field, is probably more likely to introduce a more robust and improved system to ensure consistency of interpretation and decision-making, supported by the up-dated guidance and regular training seminars.

5.86 In the past, there may have been occasions when review was not helped by the different standard of police investigation into these types of cases. To address this, ACPO introduced in 2001 the Road Death Investigation Manual for Police, and this is designed to enable the whole police service to work to a consistent standard of investigation. The document is available publicly³, and

ACPO have indicated in it that they are happy to be held accountable to it. The standardisation of investigation will undoubtedly assist in achieving consistency of decision-making.

² The report can be viewed on the Internet at www.roads.dft.gov.uk/roadsafety/research26/01.htm. It was published on 7 February 2002

³ The document can be viewed on the internet at www.acpo.police.uk/policies/ba_road_death_manual.pdf

PRESENTATION IN COURT**Introduction**

- 6.1 The relatively small number of cases involving road traffic fatalities which are dealt with by the CPS, compared with the overall number of cases prosecuted, meant that it was very difficult to undertake any structured appraisal of the presentation of these cases in the courts.
- 6.2 Instead, we sought information from other sources, including representatives of the CPS, as well as other agencies and organisations, about issues that contributed to the standard of presentation.
- 6.3 We have had to balance some of the views of the performance of prosecution advocates against some natural misunderstandings about the role of the prosecuting advocate when compared with that of the defence advocate. Many victims' relatives have never had any contact with the criminal justice system prior to these proceedings, and they can be disturbed by what they perceive to be an imbalance between the performance of the prosecuting and the defence advocates.
- 6.4 There are fundamental differences between their roles: the defence advocate is specifically instructed to represent the defendant, whereas the prosecuting advocate has duties and responsibilities that have been described as more akin to a minister of justice. The prosecutor must be firm and fair, in particular ensuring that the full facts and circumstances are presented to the court, and that the defence case is rigorously tested.
- 6.5 The impartial position of the prosecutor is a situation that is criticised by a number of people who spoke or made written submissions to us, particularly, but not

exclusively, victims' relatives and families. Many told us that their perception was that the victim had no representative in the proceedings, leading to the victims' relatives feeling estranged and excluded from the proceedings. The reality is that the prosecutor represents the public interest, which takes into account the very important interest of the victim and his or her relatives, but goes rather wider.

- 6.6 The rules covering the conduct of prosecuting advocates exist to reduce the risk of miscarriages of justice, and have to be adhered to by CPS prosecutors and those advocates instructed to appear on behalf of the CPS. We comment on their performance on that basis. Whilst we acknowledge and recognise the different role of the prosecutor, this can never be a ground for justifying poor performance in relation to case preparation or presentation. In particular, the prosecutor must show consideration for the needs of all parties in the case, and ensure that they are properly prepared to deal with the cases in court.

Selection of prosecutors in the magistrates' courts

- 6.7 We received differing views about the standard of prosecutors in these cases in the magistrates' courts, although much of the criticism was directed at the performance of agents used by the CPS. This was not necessarily a comment on their advocacy abilities, but because of the lack of time available to them to prepare the case.

Use of CPS prosecutors

- 6.8 In our view, wherever possible, a CPS prosecutor with sufficient experience and skills should be used to deal with road

- traffic fatality cases in the magistrates' courts, ideally the prosecutor responsible for reviewing the case. Such advocates would have greater access to the file prior to the hearing, and therefore more opportunity to prepare the case properly and effectively.
- 6.9 We are pleased to note that efforts are made by many Areas to achieve this. In some of the cases in our file sample, the reviewing prosecutor had prosecuted the case in court.
- 6.10 In one case in our file sample, the prosecutor had only been given the papers on the morning of the court, and clearly felt that insufficient time had been provided to enable the case to be prepared. Some of the people we interviewed cited examples from their own experience of instances where files relating to road traffic fatalities were not given to the prosecutor in sufficient time for the cases to be properly prepared. It is open to the prosecutor in such circumstances to make an application for additional time, particularly in view of the sensitive nature of these offences, but courts may be less sympathetic to such applications where the problem arises through a failure on the part of the CPS to get the papers to the advocate in good time.
- 6.11 We recommend that CCPs ensure that prosecutors are in possession of road traffic fatality files in sufficient time to enable them to prepare the case for presentation in court properly.**
- 6.12 In some instances where a road traffic fatality case is likely to be listed in a court where an agent is instructed, CPS staff will liaise with the magistrates' court listing officer, with a view to having the case moved to a courtroom where a CPS advocate is being used.
- 6.13 This is a practice that can substantially enhance the ability of the CPS as a whole to present these cases effectively, and accords with the commitment of the CPS in its Statement on the Treatment of Victims and Witnesses which, at paragraph 3.9, states that the CPS will ask the courts to pay particular attention to the listing of cases involving fatalities. The Statement appears in full at Annex 2.
- 6.14 It is accepted **good practice** to liaise with magistrates' courts listing staff with a view to arranging for summary road traffic fatality cases to be listed in courtrooms where CPS advocates are prosecuting.
- 6.15 We suggest that CCPs review their systems for monitoring the progress and listing of road traffic cases involving fatalities, to ensure that they can arrange for cases to be listed in courtrooms where CPS advocates are prosecuting.**
- 6.16 The onus must be on the CPS to make the request. This is simply because when dealing with summary offences, such as careless driving, speeding or mechanical defects, the fact that a fatality is involved will not be clear on the face of the charge, and thus not readily identifiable by the magistrates' courts staff.
- 6.17 This reinforces the need for the CPS to ensure that they are able to readily identify these cases through effective 'flagging', which was the subject of a recommendation earlier in this report. CCPs may, of course, seek to agree with police that they flag such summonses.
- 6.18 We are aware that there are occasions when cases have not been listed in appropriate court lists. We accept that where this happens it is through oversight

rather than any reluctance to liaise with the court, but the effect on the presentation of the case – and the possible adverse effect on the perception of the competence of the CPS – is the same.

Instructing agents

- 6.19 We have commented that, wherever possible, CPS advocates should be used to prosecute summary cases that involve fatalities, but this may not always be possible for a number of reasons. In those circumstances, it is essential that steps be taken to ensure that the agents are properly instructed in a timely manner.
- 6.20 We found during the Thematic Review of Advocacy and Case Presentation (No 1/00, published February 2000) (the 'advocacy review'), that case files are routinely delivered the night before, and in some Area inspections we have observed files being delivered on the morning of the court.
- 6.21 In our thematic review, we commented 'late delivery of files, will, inevitably, affect the time available for case preparation', and it follows that this will affect the standard of presentation. We made a suggestion that where agents were instructed in difficult or complex trials, the prosecution papers should be sent to the agents sufficiently in advance of the hearing to facilitate effective case preparation.
- 6.22 In this review, we would include road traffic fatality cases as a category of case where the papers must, if agents are to be instructed, be sent in sufficient time. As we have already stated earlier in this report, it is the practice for full files to be submitted by the police, which means that the files are larger than many other types of file, with a considerable amount of

information to be absorbed if the case is to be effectively presented.

- 6.23 In a road traffic fatality case in the magistrates' court, the charge will be a summary matter, such as careless driving. Nevertheless the issues which have to be brought to the attention of the court need to be dealt with in appropriate detail and with the same care and sensitivity as those more serious charges being dealt with in the Crown Court.
- 6.24 We recommend that CCPs ensure that where agents are instructed to prosecute road traffic offences involving fatalities in the magistrates' courts, files (or copies of papers) are sent to the agents sufficiently in advance of the hearing to facilitate effective case preparation.**

Selection of advocates in the Crown Court

- 6.25 We were told by CPS staff that counsel with appropriate experience and expertise to deal with road traffic cases involving fatalities in the Crown Court are instructed. This was view that was generally shared by police representatives where they felt able to comment.
- 6.26 However, the counsel originally selected is not always available to attend. This can result in a different counsel being passed the brief at a late stage. This is generally referred to as a returned brief. If this occurs at a late stage, it increases the risk of there not being a counsel of sufficient experience or expertise available and reduces the time available for preparation of the case. The more complex, serious or sensitive the case, the more desirable that returned briefs are avoided.
- 6.27 In the advocacy review, we found that the counsel originally instructed only

prosecuted a trial in 50% of cases. In this current review, there were nine Crown Court cases where there were trials, in seven of which (77.8%) the original counsel appeared.

6.28 With such a small sample, the findings need to be treated with caution, but these figures are encouraging and support for the premise put to us that counsel in these sensitive cases do make efforts to retain the brief.

6.29 There was a consensus that the majority of counsel instructed prosecute cases satisfactorily. However, examples were given to us where the impression gained by those watching the proceedings was that the prosecuting advocate was ill-prepared, and the advocate's performance compared unfavourably with the defence advocate. We stress that we found no other evidence to support this, but this is an issue of which CPS managers should be aware.

6.30 We have recommended that the CCPs and other Area managers should effectively monitor the performance of counsel in our advocacy review, as well as in a number of Area inspection reports. This is important in road traffic fatality cases, and Area managers will want to satisfy themselves that their Area's systems are sufficiently robust and effective to ensure that only counsel with appropriate experience and skills are used to prosecute these cases.

Instructions to counsel

6.31 To enable an advocate to prosecute cases effectively on behalf of the CPS, it is important that they receive proper instructions, particularly in relation to the issues in the case and the views of the reviewing prosecutor.

6.32 We found that in 42 of the 48 cases (87.5%) where there were instructions to counsel on the file, the instructions contained an appropriate summary of the case, which satisfactorily dealt with the issues in the case. This is significantly better than the standard that we have found in our cycle of Area inspections (56.4%).

6.33 Appropriate instructions were given about the acceptability of alternative pleas in 19 out of 28 relevant cases (67.9%), which, again, is better than the standard we have found in Area inspections (33.8%).

6.34 We were pleased to find that the majority of instructions to counsel were of a relatively high standard, with some examples being outstanding. However, balanced against this, we did find a small number where the quality of instructions was such that they added no value to the prosecution process, and would have provided little, if any, assistance to counsel in the preparation and presentation of the case.

6.35 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

Introduction

7.1 The treatment of victims, victims' relatives and witnesses is increasingly a key issue for agencies throughout the criminal justice system, including the CPS. This was endorsed in the 'Justice for All'⁴ Government white paper issued in July 2002 which, among other things, sets out a number of measures to be taken to improve the support and care provided to victims, including specialised support for road incident victims and their families.

7.2 The Victim's Charter (the 'Charter'), issued in 1990, was subject to considerable revision in 1996. The revised Charter set out 27 standards of service that victims of crime should expect. The Charter applies to all individual victims of theft, burglary, criminal damage, arson, assault, domestic violence, racial harassment, sexual crimes and homicide. It also applies to the parents or carers of child victims of any of these offences, and to the relatives or close friends of homicide victims, although it does not encompass road traffic incidents.

7.3 Amendments to the Charter are currently being considered. A consultative document, 'A Review of the Victim's Charter'⁵, was issued in February 2001. This raised, amongst many other issues, the question as to whether the Charter should specifically include this category where the road traffic incident results in death or serious injury. The consultation period of the review process ended on 15 June 2001, and at the time of publication of this report, the new Victims' Charter is awaited.

7.4 Criminal justice agencies, including the CPS, have continued to introduce improvements to the standard of service afforded to victims and victims' relatives in all cases, including road traffic fatality cases.

7.5 The CPS issued in 1993 a Statement on the Treatment of Victims and Witnesses, in which it makes a public declaration of its principles contained in its Statement of Purpose and Aims – "We will show sensitivity and understanding towards victims and witnesses."

7.6 In support of this, the CPS has, amongst other things, extended its commitment to meet victims and victims' relatives to explain decisions, and is introducing a scheme for direct communication with victims. Under this initiative, the CPS assumes responsibility from the police for communicating to the victim any decision to drop or alter the charge substantially.

7.7 In cases involving a death, the CPS had for sometime been offering the family a meeting with a senior CPS lawyer who would explain the reasons for his or her decision. Nevertheless, the initiative for direct communication with victims gives the CPS the opportunity to improve the standard of service provided in these circumstances, through more structured training and increased openness.

7.8 We have received submissions from many individuals who have lost loved ones as a result of road traffic incidents. The majority of these, though not all, have been critical of the way that they were treated by the system as a whole and, in many cases, by the CPS in particular. In many of the cases referred to us, some of the steps mentioned above had been taken but, nevertheless, they raised issues that need to be addressed.

⁴ Issued jointly by the Lord Chancellor, the Home Secretary and the Attorney General, and published by TSO (The Stationery Office).

⁵ Issued jointly by the Attorney General, the Lord Chancellor and the Home Secretary, and published by the Home Office Communication Directorate.

7.9 It is against this background of positive steps being taken by the CPS and the criminal justice system generally, but with the continued existence of a significant level of criticism, that we have examined the level and standard of service afforded to victims, victims' relatives and witnesses in road traffic fatality cases.

Dealings with relatives of victims and witnesses in court by CPS prosecutors and caseworkers

7.10 CPS prosecutors and caseworkers are committed in principle to providing assistance both to relatives of victims and witnesses at court. They should always try to help at court by giving appropriate and useful information, although their other duties may constrain the extent to which this is possible.⁶

7.11 As we have already commented, the majority of victims' relatives and witnesses are unfamiliar with criminal procedures. They will often be apprehensive, nervous and distressed, and this will be aggravated by their lack of knowledge as to what to expect.

7.12 The prosecutors and caseworkers can have a beneficial impact on their perception of not only the CPS but also the criminal justice system as a whole by taking what, on the face of it, amounts to a few simple steps.

7.13 Whilst it is not appropriate for CPS staff to discuss full details of the case that is pending or the evidence relating to it, the needs of the victims' relatives and the witnesses can often be met, we were told, to a large extent by simply being introduced to the prosecutor. This is not only a simple courtesy, but gives them the opportunity to raise any queries about the

practical conduct of the proceedings with the prosecutor.

7.14 There are often other persons available to assist with many of the issues that will be a cause of concern to the victims' relatives and witnesses. In the Crown Court and now in magistrates' courts there are representatives of the Witness Service who can, and do, provide an invaluable service. There may also be police officers in the case, ushers or other court users who are able to provide assistance.

7.15 Nevertheless, there are some issues that only the prosecutor might be able to deal with, particularly in relation to the timing of the case and when witnesses are likely to be called. We were also told that, in any event, it can be of assistance and comfort to be introduced to the prosecutor who will conduct the case in which they have an interest.

7.16 We were told of numerous instances where, despite the demands of other work that needed to be undertaken, very real efforts were made by CPS staff to make contact with the relatives of victims and witnesses at court, and provide whatever support was appropriate. This information came not only from representatives of Victim Support and the Witness Service, but also from witnesses and victims' relatives themselves. It is clear that where the effort is made, it is generally greatly appreciated.

7.17 Unfortunately, we were also made aware of instances where victims' relatives and witnesses, despite the sensitivities involved in these cases, were left to be dealt with by other agencies, or were not given that level of service which the CPS aspires to achieve.

7.18 It was accepted by many that this was a result, to some extent, of the workload of the CPS staff attending the courts. However, there were also suggestions that there was a lack of effort or will on the part of some individual CPS staff, whilst others found it difficult to deal with this issue.

7.19 The beneficial impact of a meaningful, even though short, meeting between victims' relatives or witnesses and the CPS should not be under-estimated. We were told of a number of instances where there had been a failure on the part of CPS staff to meet victims' relatives, and this led to them feeling alienated and isolated from the proceedings, and affected their views of the overall proceedings.

7.20 We could not help but compare the response of many victims' relatives to the treatment afforded to them by the CPS with that of their response to their treatment by the police. In a number of cases reported to us, the relatives were extremely critical of CPS representatives for what was seen as aloofness, lack of concern and insensitivity. This is a worrying issue that the Inspectorate has already identified during Area inspections. HMCPSI's Annual Report 2000-01⁷ makes the comment that there is a need to challenge the behaviours of a minority of prosecutors who continue to resist any involvement with victims and witnesses.

7.21 In contrast, the police were often seen in a much more positive light, on some occasions the service being provided by them being described as 'wonderful'. Frequently, there had been considerable efforts by the police and individual police officers to provide valuable and valued support to the relatives, but at times the main distinction between the CPS and the

police was that the police had been seen to be ready to speak to the relatives and give what support they could.

7.22 In those cases where CPS staff had been seen to be making active efforts to introduce themselves to the relatives and provide other appropriate support, the response from victims' relatives was usually much more positive. In Area inspections at the Crown Court, lay inspectors speak to witnesses and are sometimes told that they have not spoken to a member of the CPS. Other evidence reveals that they have, and it shows a need for CPS caseworkers to be completely clear in identifying themselves and their role.

7.23 We recommend that prosecutors and caseworkers introduce themselves to witnesses and victims' relatives at court, and provide appropriate and useful information, in fulfilment of the commitment of the CPS.

Dealings with victims' relatives and witnesses in court by prosecutors instructed on behalf of the CPS

7.24 The prosecuting advocate in the Crown Court may be a CPS prosecutor (a Higher Court Advocate) but is usually counsel. Although independent of the CPS, counsel are still expected to meet the same standards of service in relation to victims' relatives and witnesses as is expected of CPS staff.

7.25 Historically, the Code of Conduct for the Bar of England and Wales, which governs the conduct of members of the independent Bar, placed restrictions on the contact between barristers and witnesses. In 1994, however, this Code was amended so that there is no longer any rule in any case (including contested

⁶ Paragraph 2.5, Statement on the Treatment of Victims and Witnesses

⁷ The Report of HM Chief Inspector of the Crown Prosecution Service for 2000/2001, published by the Stationery Office in May 2001. The full text of the report can be found at www.hmcp.si.gov.uk.

cases in the Crown Court) which prevents barristers from having contact with witnesses whom they may expect to call and examine in chief, with a view to introducing themselves to the witnesses, explaining court procedure (and in particular the procedure for giving evidence), and answering any questions on procedure which the witnesses may have. (Rule 6.1.3, Code of Conduct for the Bar of England and Wales.) There are no restrictions in the Code relating to contact with victims' relatives who are not witnesses in the case. The Criminal Bar Association has positively encouraged counsel to take these basic steps to assist victims, relatives and witnesses through such difficult occasions.

- 7.26 In many cases, counsel meet victims' relatives and witnesses, often without prompting, seeing this as part of their duty as a representative of the prosecution. However, we were told that there are still occasions when prosecutors in the Crown Court do not introduce themselves, or do so only when prompted by specific requests initiated by the victims' relatives or the witnesses themselves, often through the Witness Service.
- 7.27 It is not acceptable that any prosecutors are unjustifiably reluctant to meet with victims' relatives or witnesses, as this puts the efforts being made by the CPS to improve the standard of service provided in this respect in jeopardy.
- 7.28 Area managers must consider, where there is such an omission on the part of advocates instructed by them, whether it would be appropriate for further and better guidance to be given so that they are clearly aware of the CPS's commitment in this respect, and the expectations placed on them. Additionally,

CPS caseworkers should always initiate a meeting between counsel and the relatives of the victim at court.

Expectations of the conduct of members of the prosecution team

- 7.29 In the majority of cases, we found that prosecutors and caseworkers conducted themselves in a manner that was professional and appropriate, and displayed a proper awareness of the needs of the victims' relatives and witnesses, and of how their behaviour and conduct could affect them.
- 7.30 Unfortunately, some concerns were expressed to us about the lack of sensitivity shown on some occasions by prosecutors or members of the prosecution team. We were given a number of examples to illustrate how this can have a very distressing effect on the victims' relatives in particular, and have a significantly detrimental effect on their perception of the professionalism of the CPS and its agents.
- 7.31 In some cases it amounted to no more than perhaps a thoughtless comment made directly to a victim's relative. One example given to us was a prosecutor expressing surprise to the parents of a child who had been killed in a road traffic incident that they had attended court to observe proceedings that were to be adjourned. This in many other types of case might be seen as a totally innocuous comment, but when directed at people who may still be in the process of having to come to terms with their grief and loss, it can give the impression, whether justified or not, that the prosecutor is not that bothered about those particular proceedings, and cannot understand why the relatives should be.
- 7.32 In other cases it may be the conduct of the prosecution team members in the

courtroom before the court actually commences. Although the court may not be formally sitting, members of the public, including victims' relatives, can be in the courtroom, and observing what is happening. In many instances, the prosecutors and the defence advocates will be well known to each other, and will deal with each other in a far less formal or adversarial manner than when they are addressing the court. Great care needs to be taken to ensure that this lack of formality is not misinterpreted as casualness, leading to a lack of confidence in the professionalism of the prosecutor, and thus in the conduct of the case as a whole.

- 7.33 We were also given an example where a barrister and a caseworker were discussing in the hearing of the victim's father the removal of photographs of the deceased from the jury bundles because of their explicit and distressing nature. It was perfectly proper to consider removing the photographs, but such discussion should have taken place in private and not in circumstances where others, particularly victims' relatives, might be in a position to overhear, and thus be caused unnecessary distress.
- 7.34 We suggest that prosecutors and caseworkers ensure that discussions about road traffic fatality cases, whether with other prosecutors, caseworkers, or defence advocates, are undertaken in circumstances which do not undermine the expectations of professionalism of members of the CPS and those instructed to appear on behalf of the CPS.**
- 7.35 There have been instances where victims' relatives, or representatives of organisations acting on their behalf, have made complaints about the conduct of CPS staff

when dealing with them. Any complaint about a failure to display appropriate sensitivity or civility is a matter of concern.

- 7.36 The individual complaints fall to be dealt with by the CPS complaints procedure, but there are circumstances, for example when dealing with members of the public on the telephone, when the member of CPS staff may not fully appreciate the impact that their response will have, or who simply do not have the appropriate training or experience to deal properly and adequately with the issues being raised.
- 7.37 We received comment from more than one source that some individual CPS staff who were placed in this position would have benefited from displaying what were described to us as 'better people or listening skills'. This is an important issue for the CPS and for the staff involved. Many of the staff who communicate with victims' relatives or witnesses, whether at court, in the office, by post or on the telephone, might well, through lack of experience or expertise, have training needs which have not been properly identified or considered.
- 7.38 The first step is to identify staff who may communicate with victims' relatives or witnesses, and then to identify if there are any steps that can be taken to assist them in undertaking their duties. When identifying the staff concerned, managers need to be aware, for example, that often the first point of contact between a victim's relative and the CPS will be by telephone, and the member of staff dealing with the calls initially may have little or limited experience in dealing with people in these circumstances. Nevertheless their response can have a significant impact on the relative's overall view of the CPS.

7.39 Identifying and dealing with any such needs would contribute to improving the overall standard of service provided by the CPS and at the same time help to develop staff by giving them a better ability and more confidence to deal with sensitive situations. Some CPS Areas, particularly those involved in the DCV initiative, have recognised this, and implemented training for administrative staff to enable them to deal more effectively with victims' relatives' enquiries over the telephone.

7.40 We **commend** those Areas that, having recognised those staff who are likely to be the first point of contact with victims and victims' relatives, have provided training to administrative staff for dealing with telephone enquiries from them.

7.41 The issue is not, in our view, solely the responsibility of CPS managers; individual members of staff should accept their responsibility to assist in this process. It is to the mutual advantage of themselves, and the CPS as a whole, for them to be prepared to identify any aspects of expertise in which they feel they would benefit from the provision of training or other assistance. These should then be communicated to their managers so that they can consider what steps might be appropriately taken to resolve the issues. The communication between staff and managers can be informal or formal, so long as it is effective.

7.42 On a formal basis, the CPS already has a personal appraisal system which, when properly used, provides the opportunity for staff and their managers to discuss issues just such as these, at regular intervals. Personal Development Plans are devised and agreed, and clearly these should include what steps will be taken to enhance the skills and experience of the individual staff in any particular sphere of activity.

7.43 We recommend that CCPs and CPS staff at all levels should regularly take steps to:

- **identify staff who deal with victims' relatives and witnesses in sensitive cases such as road traffic cases involving fatalities;**
- **evaluate whether those staff are properly equipped with the skills and experience required to deal with their duties; and**
- **ensure that appropriate training or any other assistance is provided.**

Communicating with victims' relatives

7.44 It has been the responsibility of the police to notify victims' relatives and witnesses of developments in the case. Much of the information would originate from the CPS, who would be responsible for passing it to the police, to enable them to inform the victims' relatives and witnesses.

7.45 There was evidence in many of the files examined, and in many of the submissions made to us by members of the public, of efforts made by CPS staff to ensure that victims' relatives in road traffic cases were kept fully informed of developments in the relevant cases through this arrangement.

7.46 It is unfortunate that in a small number of cases, victims' relatives were not aware of the arrangements, and having only been contacted by the police, were critical of the CPS for not bothering to contact them or keep them up to date.

7.47 In addition to notifying the victims' relatives of hearing dates and the general progress of the case, the police were also responsible for informing them of any

decision to drop or alter the charge substantially. Since 1996, cases involving a death, including road traffic fatality cases, have been an exception to this usual procedure. In those cases, although the police remained responsible for keeping the family informed, the family would be offered a meeting with a senior CPS lawyer who would explain the reasons for the decision.

Direct Communication with Victims initiative

7.48 The CPS has introduced an initiative that fundamentally alters the extent to which the CPS communicates with victims – Direct Communication with Victims (DCV). This was piloted in seven CPS Areas, and it is planned that all CPS Areas will implement the initiative by October 2002.

7.49 To help with the assessment of the original pilots, independent consultants carried out a Victim Satisfaction Survey during February and March 2001. In April 2001, CPS Policy Directorate issued an internal evaluation report. The report made a number of recommendations that were designed to assist with the national implementation of the initiative, and to improve the standard of service provided.

7.50 The findings of the consultants' report and the recommendations in the evaluation report have been incorporated in a guide to communication with victims that is now available to all CPS staff. For the purposes of this initiative, a victim is defined as a person who has complained of the commission of an offence against them or their property, and this includes, amongst others, bereaved relatives or partners in road traffic fatality cases.

7.51 Under the initiative, the CPS assumes responsibility for communicating to victims decisions to drop or to alter the charge substantially. It will also give an explanation of the reasons behind the decision, providing the victim with as much detail as can properly be given. In addition to writing to the victim with an explanation, in certain categories of case, including cases involving a death, a meeting will also be offered to the victim's family. Although the scheme does not apply to cases when the decision is made on a file submitted by the police for pre-charge advice, we saw such cases where the CCP had agreed to meet relatives to explain the reasons for the original decision, where this was a contentious issue.

7.52 The initiative is in line with recommendations contained in the Review of the Crown Prosecution Service by Sir Iain Glidewell (published June 1998) and The Stephen Lawrence Inquiry Report by Sir William Macpherson of Cluny (published February 1999). The approach to it has been a positive one, with a lot of effort, resources and enthusiasm being applied by the staff and managers in the Areas involved in piloting the scheme and by the Headquarters staff involved in defining and implementing it.

7.53 Extensive training of CPS staff is being undertaken, with a view to full implementation across England and Wales by October 2002⁸. A three-day training course for all lawyers covers the knowledge and skills required to explain decisions to victims, and includes drafting letters and meetings with victims. In addition, a programme of one-day workshops is being prepared to supplement the DCV training entitled "The Victim's Perspective." A part of the

workshop focuses on dealing with bereaved families and is delivered by representatives from the national charity, Support After Murder and Manslaughter. The workshop is designed to support not only DCV, but also a range of other victim/witness care initiatives.

- 7.54 The scheme is seen as a positive step towards improving the standard of care afforded to victims and their relatives, and at the same time increasing the accountability of the CPS. It may also lead to a better recognition of the role of the CPS within the criminal justice system, and at the same time a realistic awareness of its limitations.

Letters to victims' relatives

Quality

- 7.55 The main method of the CPS providing information is by letter, and comprehensive guidance on the use and appropriateness of the letters is found in the guide. We have had the opportunity, during this review and Area inspections, to see examples of letters that have been sent to victims or their relatives. We have also spoken, during the course of this review, to victims' relatives who have been the recipients of such letters.
- 7.56 Some of the earlier letters we saw contained legal terminology or jargon that was not explained, and the recipients may well have had difficulty in understanding the explanation that was being given. Recipients told us that in some the overall tone was impersonal, if not officious. This could cause considerable distress particularly when the letter was sent in cases involving a death. The CPS through the Victim Satisfaction Survey and the evaluation report on DCV is aware of this issue.

- 7.57 The training given and the guide issued to CPS staff in respect of DCV gives considerable guidance on the writing and style of these letters, and what should be contained in them. In addition, each of the pilot Areas implemented systems to monitor the quality of the letters being sent.

- 7.58 We were told that as a result of this, and feedback to CPS staff, the standard of letters is improving, and this was reflected in some of the later letters that we saw. There is also the added factor that staff are building up more experience and expertise in this relatively new field of activity for the CPS, and this, too, should contribute to an overall improvement in the quality of letters.

- 7.59 The quality of the letter is obviously mainly affected by the content and how this is conveyed, but mistakes, whether typographical or factual, can also have an adverse effect. The CPS is entrusted to make important decisions on behalf of the public in important cases, and there is an expectation that it will carry out this role in a professional manner. Obvious typing errors can detract from this, as can factual errors. As an extreme example, we saw one case where in letters to the same relatives of a victim, the victim was referred to as the brother in one letter, and as the husband in another (in fact, the victim was the relatives' son). In circumstances such as these, it becomes increasingly difficult for the CPS staff involved to maintain the confidence of others.

- 7.60 We recommend that CCPs ensure that systems are in place to ensure that the quality of letters informing victims and victims' relatives of decisions to discontinue cases or to alter substantially the charge are supervised, to encompass typographical and**

factual errors, as well as the overall content of the letter.

Timeliness

- 7.61 The CPS has set itself a target of issuing a letter within five working days from the day on which the decision to stop the case or to alter substantially the charge is made. In some instances, concern about the length of time between the commencement of the proceedings and receipt of information about the case, was expressed by victims' relatives and organisations representing them. The timing can be an extremely important issue.

- 7.62 Victims' relatives naturally find it very distressing to learn through, for example, the press or even simply the local 'grapevine' of important decisions affecting the conduct that the case in which they have an interest, before they have been given any information. We were told in one case that the victim's relatives were informed by the defendant's solicitor. The distress in some instances becomes anger at the CPS and the criminal justice system as a whole, and negates all of the positive efforts that are otherwise being made. The risk of this occurring can be minimised by ensuring that letters are sent out as soon as possible after the relevant decision has been made.

- 7.63 There have been considerable improvements in the overall timeliness since the introduction of a 'tracker' system using the CPS IT system. The average time has fallen from highs of between 15 and nine days, and is now six days. As the scheme extends across the whole of the CPS it is important that efforts are made to meet the time guidelines for the reasons we have given.

- 7.64 We suggest that CCPs ensure that letters informing victims' relatives of decisions to discontinue cases or to alter substantially the charge are issued within the CPS time guidelines.**

- 7.65 At the same time, we also wish to acknowledge efforts made in some Areas to improve their timeliness. In one of the pilot Areas we visited, consultants had reviewed this issue, and their findings led to a number of steps being taken to improve performance, including the designation of a specific member of staff to co-ordinate and monitor timeliness. In other Areas not involved in the pilot, we have seen cases where positive efforts were made to ensure that, through the police, important decisions were communicated to victims' relatives before any other parties.

- 7.66 We **commend** those Areas that are taking active steps to improve timeliness in relation to communication with victims, whether through the DCV initiative or otherwise.

Meetings with victims' relatives

- 7.67 As a consequence of the Victim's Charter, the CPS had committed itself to offering meetings to explain decisions to victims' relatives in cases where there had been a death, and this aspect has been reinforced by the new DVC initiative. Whether there were effective means of making victims' relatives aware of the possibility of a meeting with the CPS varied from Area to Area.

- 7.68 In some Areas, prosecutors were notifying the police that they were willing to meet with the victims' relatives to provide an explanation for their decisions, and gave the police points of contact to pass on to the relatives, should they wish

to avail themselves of the offer. In other Areas, letters to the police informing them of decisions were silent on the issue of possible meetings.

7.69 Victims' relatives and organisations representing them informed us that although meetings had been taking place prior to the initiative, the CPS had not always been proactive in offering such a meeting, and in some cases meetings had only taken place following requests from the victims' relatives.

7.70 We recommend that CCPs ensure that in all road traffic fatality cases, appropriate victims' relatives are informed that they may meet the reviewing prosecutor to receive an explanation of the reasons for a decision to discontinue the case, or to alter substantially the charge, in accordance with the CPS's Statement on the Treatment of Victims and Witnesses.

7.71 Since the introduction of DCV, the number of meetings has been increasing, but we received differing views on the value of the meetings and the manner in which they had been conducted.

7.72 Some had a positive effect by providing clear information about why a particular decision had been made, even though the decision was a disappointment to the relatives. We received a number of positive comments from victims' relatives or their representatives about the CPS staff involved in the interview. Appreciation was expressed about the time that the staff had been prepared to spend on the case, and for the informative and understanding way in which they had conducted themselves during the meeting.

7.73 In some cases, however, relatives were extremely critical of the process, ranging from the physical arrangements for the meeting through to the attitude of the CPS staff conducting the meeting. More than one such meeting was described to us as being conducted in an adversarial manner, with the CPS representative adopting an 'arrogant', 'unfeeling' or 'unnecessarily secretive' approach. Needless to say, these meetings were not found to be helpful by the victims' relatives, and one was described as having a 'negative effect on the grieving process'.

7.74 In some instances, the physical factors relating to the meeting were criticised. The CPS reception area or the route to the room where the meeting was to be held, if through untidy offices or storage rooms, had an adverse effect on the proceedings. In one case we were told that the visit to the CPS office 'portrayed the chaotic muddle in which they work'.

7.75 Lay inspectors who have assisted us in CPS Area inspections have expressed concern that some offices are not best prepared to receive visits from victims or their relatives. Perhaps because this is a relatively new concept in practice, some CPS managers have given only limited thought to the impact this might have on such visits. Area managers will want to assure themselves that, given the resources available, the premises in which meetings will be held are properly prepared to an acceptable standard.

7.76 The layout of the meeting room was also an issue raised by victims' relatives. Some were not conducive to a helpful and informative meeting, with inappropriate seating arrangements or use of desks or tables. There is comprehensive advice in the guide to DCV on issues such as the

layout of the room and the facilities to be offered. We have been told of some more recent meetings where these guidelines have been followed, and the overall assessment of the meeting was more favourable.

7.77 Where there has been criticism relating to meetings, whether about the attitude of the CPS staff, seating arrangements or any other aspect, this often appears to have arisen from lack of experience and appropriate skills on the part of CPS staff.

7.78 One of the advantages of the DCV initiative is that staff will be in a position to build up experience and expertise. This, together with the additional training proposed, will provide the opportunity for real improvements to be made to the process, provided that there is proper evaluation of each meeting. Such evaluation should be used to identify any good points or any aspects that should be improved for the benefit of future meetings. This is particularly important at this time, when the number of meetings is likely to increase.

7.79 We recommend that all staff arranging meetings with victims' relatives should ensure that:

- **arrangements for the meetings are in accordance with advice set out in the guide to DCV;**
- **CPS staff make all efforts to explain the decision(s) made, and the reasons for them in as helpful and informative a manner as possible; and**
- **the meetings are properly evaluated to consider whether any improvements can be made for the benefit of future meetings.**

7.80 Victims' relatives are likely to find the meetings difficult when taking place to explain a decision to discontinue or reduce a charge. We were told because of the immense stress that the relatives are under, they did not always feel that they were able to properly convey their views or understand fully what was being explained to them. Equally, some felt that they did not have sufficient confidence because of various understandable factors, to bring this out in the meeting.

7.81 Because of these concerns, and following a meeting between the Law Officers and senior representatives of RoadPeace and the CPS, the CPS has agreed that where there are meetings arising out of cases involving road traffic fatality cases, victims' relatives will be informed that they may be accompanied by a representative of RoadPeace.

7.82 We have set out some of the criticisms relating to these meetings, and have made recommendations to improve them where appropriate. It is also appropriate that we acknowledge that the CPS as a whole, and many individual members of staff, recognise that these are capable of improvement, and are making efforts to achieve this. The opportunity of including RoadPeace members, where agreed by the victims' relatives, was accepted as being a step in the right direction. We **commend** the CPS and individual CPS staff concerned, having taken on board criticisms about meetings with victims' relatives, for taking steps to improve them.

Timing of meetings

7.83 The purpose of the meetings is to explain the reasons for the decision made by the CPS and in most circumstances, under the guidance given in relation to the DCV

initiative, such meetings will not take place until after the conclusion of the case. However, there can be exceptions in cases where it thought to be appropriate to have the meetings at an earlier stage, and road traffic cases involving fatalities can often fall into this category.

7.84 In the majority of these cases, provided the meeting is properly recorded, holding the meeting before the conclusion of the case is not a cause for concern as the victims' relatives are not usually also witnesses in the case. This removes the possibility of allegations that the meetings could be used to 'rehearse' evidence.

7.85 Clearly, this will be a more significant factor where the victim's relatives are likely to be called as prosecution witnesses, for example, in cases where they were in a car with the victim or were walking together at the time of the incident.

7.86 If it is decided that a meeting in these circumstances should still take place before the conclusion of the case, the CPS prosecutors and staff dealing with the meeting will be aware of the great care needed to strictly define the limitations of what can be discussed and the need for proper recording.

7.87 There may be instances where it is decided that although a meeting should be held, it should be delayed until after the conclusion of the case. This is likely to be very disappointing to the victim's relatives, and could be a cause for considerable distress. We were told of instances where the response from CPS staff seemed less than sympathetic, and gave rise to complaints being made. Area managers will, therefore, want to assure themselves that in such cases their staff

have appropriate training, guidance and ability to give a proper and reasoned account as to why the meeting cannot be held earlier, and that this information is conveyed to the victim's relatives in a polite, informative and sympathetic manner.

The Victim Personal Statement scheme

7.88 For some considerable time, it has been open to victims to provide a statement which sets out the impact which the offence has had upon them, and the information contained in that statement can be conveyed to the court, which would be able to take the issues into account when sentencing the offender. These statements were usually referred to as 'victim impact statements' or, more recently, 'victim statements'.

7.89 A scheme was introduced throughout England and Wales on 1 October 2001 with the intention of improving the position of victims and to enable them, if they wish, to have a higher level of involvement in the criminal justice process. Statements provided under this scheme replace the 'victim impact statements' and 'victim statements', and the term 'victim personal statements' (VPS) is used to reflect the purposes of the statements.

7.90 The VPS has three basic functions:

- to enable the victim to make known their legitimate interests or wishes, for instance, to receive information about case progress; to express concerns about intimidation or the alleged offender being granted bail; their wish to seek compensation; or to request referral to a help agency;
- to enable victims to make known how the crimes have affected them,

whether physically, emotionally, psycho-logically, financially or in any other way;

- to provide the appropriate criminal justice agencies (including the CPS) with a ready source of information on how the particular crime has affected the victim involved, supplementing other sources of information which may be available.

7.91 The definition of a 'victim' for the purpose of the VPS scheme includes anyone in the case of road traffic incidents who has:

- suffered serious personal injury in a road traffic collision; or
- is the parent, or carer, or partner (including same sex partners) of a deceased victim.

7.92 It is envisaged that VPSs will be taken by the investigating officer, who will usually be a police officer, and the Home Office has issued appropriate guidance on the scheme to investigators. In addition, a booklet has been issued for distribution to victims, explaining the purpose and procedure for making a VPS. The VPS will then be passed to the CPS so that prosecutors are aware of the information contained in it, and can take any appropriate action.

7.93 Some victims' relatives and organisations representing them have misgivings about a number of other issues relating to the VPS scheme. These range from a preference for the term 'victim impact statement' or objections to the fact that the VPS will be discloseable to the defence. These will be matters for the Home Office to evaluate in due course.

7.94 Although reservations were expressed to us by some, the majority of victims' relatives in road traffic fatality cases want the opportunity to be able to make the courts aware of the effect the death of the victim has had upon them, and see a VPS as a means of achieving this.

7.95 We saw from the files that we examined (most of which pre-dated the introduction of the VPS scheme) that in many cases CPS prosecutors and caseworkers were actively asking the police to offer victims' relatives the opportunity to make what were then victim statements so that the information could be available to the courts.

7.96 Nevertheless, we met a number of individual victims' relatives who were unaware of the existence of their right to make such a statement. We appreciate that other agencies are also involved in the process, but it is open to the CPS prosecutors and caseworkers to ensure that victims' relatives are always offered the opportunity to make a VPS.

7.97 We suggest that prosecutors and caseworkers dealing with road traffic fatality cases confirm with the police that the victim's relatives have been made aware of the opportunity to make a VPS.

7.98 It can also be important that where a VPS has been made, the victims' relatives are properly informed as to the use that will be made of the VPS, to avoid expectations being unrealistically raised, and unnecessary distress caused. This is particularly so in summary road traffic offences being prosecuted in the magistrates' courts. A statement about the impact of the death on the victim's relatives is unlikely to form part of the prosecution case in any trial, but may

contain information that can be given to the sentencing court after conviction.

7.99 The sentencing court in summary proceedings is required to be more concerned with the quality of the driving rather than the consequences, although in some cases, the consequences of the driving are admissible and relevant to sentence to the extent that they indicate the nature and risk caused by the carelessness. To ensure that only appropriate information is provided to the court, CPS prosecutors have been advised not to hand the statement to the court as a matter of routine, but to read the statement to the court, omitting any inadmissible or prejudicial passages. This is less likely to be an issue in relation to a road traffic fatality case, because the victim's relatives will not usually be witnesses, and the prosecutor may consider, on a case-by-case basis, that it is appropriate for the statement to be read in full to the court. Nevertheless, in those cases where the statement is not read in full, even though there may be good reasons for doing this, this might be a cause for concern, and distress, on the part of a victim's relatives if they have not been informed of what will happen in relation to their VPS.

7.100 We recommend that prosecutors ensure that victims' relatives are informed about how their VPS will be used in court, and, where appropriate, are given an explanation as to why a particular course has been adopted.

EXTERNAL CONSULTATION

- 8.1 Annex 3 is a list of representatives of criminal justice agencies and other organisations who assisted in our review and members of the public who forwarded written submissions to us.
- 8.2 We spoke to a number of individual members of the public during the course of the review, either at meetings or by telephone and, although not listed in the annex, we want to acknowledge and thank them for their assistance.

**DRIVING OFFENCES CHARGING
STANDARD AGREED BY THE POLICE
AND CROWN PROSECUTION SERVICE**

1 Charging Standard - Purpose

- 1.1 The purpose of joint charging standards is to make sure that the most appropriate charge is selected, in the light of the evidence which can be proved, at the earliest possible opportunity. This will help the police and Crown Prosecutors in preparing the case. Adoption of this joint standard should lead to a reduction in the number of times charges have to be amended which in turn should lead to an increase in efficiency and a reduction in avoidable extra work for the police and the Crown Prosecution Service.
- 1.2 This joint charging standard offers guidance to police officers who have responsibility for charging and to Crown Prosecutors on the most appropriate charge to be preferred in cases relating to driving offences. The guidance:
- should not be used in the determination of any pre-charge decision, such as the decision to arrest;
 - does not override any guidance issued on the use of appropriate alternative forms of disposal short of charge, such as cautioning;
 - does not override the principles set out in the Code for Crown Prosecutors;
 - does not override the need for consideration to be given in every case as to whether a charge/prosecution is in the public interest;
 - does not remove the need for each case to be considered on its individual merits or fetter the discretion of the

police to charge and the CPS to prosecute the most appropriate offence depending on the particular facts of the case in question.

2 Introduction

- 2.1 The purpose of road traffic legislation is to promote road safety and to protect the public. The principal driving offences are contained in the Road Traffic Act 1988 (“RTA 1988”). This joint standard gives guidance about the charge which should be preferred if the criteria set out in the Code for Crown Prosecutors are met.
- 2.2 This standard covers the following offences:
- careless driving or inconsiderate driving - section 3 RTA 1988;
 - dangerous driving - section 2 RTA 1988;
 - causing death by careless driving when under the influence of drink or drugs - section 3A RTA 1988;
 - causing death by dangerous driving - section 1 RTA 1988;
 - manslaughter - contrary to common law;
 - causing bodily harm by wanton or furious driving, etc. - section 35 of the Offences Against the Person Act 1861.

3 General Principles: Charging Practice

- 3.1 You should always have in mind the following general principles when selecting the appropriate charge(s):
- (i) the charge(s) should accurately reflect the extent of the defendant’s alleged involvement and responsibility

thereby allowing the courts the discretion to sentence appropriately;

- (ii) the choice of charges should ensure the clear and simple presentation of the case particularly where there is more than one defendant;
- (iii) it is wrong to encourage a defendant to plead guilty to a few charges by selecting more charges than are necessary;
- (iv) it is wrong to select a more serious charge that is not supported by the evidence in order to encourage a plea of guilty to a lesser allegation.

4 General comments about driving offences

- 4.1 The manner of the driving must be considered objectively. In practice, the difference between the two types of bad driving will depend on the degree to which the driving falls below the minimum acceptable standard. If the manner of the driving is below that which is expected, the appropriate charge will be careless driving; if the manner of the driving is far below that which is expected, the appropriate charge will be dangerous driving. There is no statutory guidance about what behaviour constitutes a manner of driving which is “below” and “far below” the required standard.
- 4.2 The purpose of this charging standard is to make sure that once a decision to prosecute has been taken, police officers and prosecutors select the most appropriate charge where there is a choice of two or more charges. The following factors are not relevant when deciding whether an act of driving is careless or dangerous:

- the injury or death of one or more persons involved in a road traffic accident, except where Parliament has made specific provision for the death to be reflected in the charge. Importantly, injury or death does not, by itself, turn an accident into careless driving or turn careless driving into dangerous driving;
- the age or experience of the driver;
- the commission of other driving offences at the same time (such as driving whilst disqualified or driving without a certificate of insurance or a driving licence);
- the fact that the defendant has previous convictions for road traffic offences;
- the disability of a driver caused by mental illness or by physical injury or illness, except where the disability adversely affected the manner of the driving.

4.3 There is no clear cut dividing line between acts of careless driving and acts of dangerous driving. True momentary inattention will not usually have very serious adverse effects and therefore does not usually warrant criminal proceedings. Something more than momentary inattention (which may have minimal or serious results) is generally careless driving. Substantial/gross/total inattention (which may have minimal or serious results) is generally dangerous driving, even though it may take place over a period of a few seconds. The factual examples set out in this standard are merely indicative of the sort of behaviour which may merit prosecution under either section 2 or section 3, RTA 1988.

4.4 It is important to put the facts of the case in context. Although the test is objective, the manner of the driving must be seen in the context of the circumstances in which the driving took place. Behaviour which may not be criminal in certain conditions may merit proceedings in other conditions, for example, a safe lane change in slow moving traffic may become unsafe on a motorway where speeds are faster, there is less time to react and the consequences of any accident are likely to be more serious. Similarly, behaviour which might merit proceedings under section 3 in certain conditions may merit a prosecution under section 2, for example, if there is poor visibility; increased volume of traffic; adverse weather conditions; or difficult geography, such as blind corners.

Driving in emergency situations

4.5 When a member of the emergency services commits an offence while responding to an emergency call, discretion should be used in deciding whether or not a prosecution is needed. Generally, a prosecution is unlikely to be appropriate in cases of genuine emergency unless the driving is dangerous or indicates a high degree of blameworthiness. For example, a prosecution of a driver who caused a minor accident while responding to an urgent, life threatening, emergency may not be appropriate; but a prosecution may be appropriate when a serious accident is caused by an over-enthusiastic driver responding to a less urgent emergency call in which life is not threatened. In each case it is necessary to weigh all the circumstances of the case, particularly the nature of the emergency known to, or reasonably perceived by, the driver and the nature of the driving.

4.6 There will be cases when persons who are not members of the emergency services drive in an emergency situation. Examples include doctors who receive an urgent call for assistance and a driver taking a sick child to hospital. As with members of the emergency services, all the circumstances of the case must be weighed, particularly the nature of the emergency known to, or reasonably perceived by, the driver and the nature of the driving.

Driving and alcohol/drugs

4.7 The road traffic legislation treats the consumption of alcohol and drugs alike. The following principles apply to driving affected by the consumption of alcohol or drugs, though the case law, and the following paragraphs, focus on alcohol.

4.8 Assessing the relevance of the consumption of alcohol is a difficult area. The leading authority is *R v Woodward (Terence) [1995] 1 WLR 375 (Court of Appeal)*. The following general principles come from that case:

- the mere fact that the driver has had drink is not of itself relevant to or admissible on the question of whether his driving is careless or dangerous;
- for such evidence to be admissible, it must tend to show that the amount of drink taken is such as would adversely affect a reasonable driver, or alternatively, that the accused was in fact adversely affected.

4.9 In practice, however, there will need to be some further evidence to show that the manner of the driving fell below or far below that which is to be expected in order to justify proceedings under section 3 or section 2 respectively.

5 Careless driving - section 3, RTA 1988

- 5.1 The offence of driving without due care and attention is committed when the driving falls below the standard expected of a reasonable, prudent and competent driver in all the circumstances of the case. It is a summary only offence carrying a level 4 fine (£2,500), discretionary disqualification for any period and/or until a driving test has been passed. The court must endorse the driver's licence with 3-9 penalty points unless there are special reasons not to do so.
- 5.2 The test of whether the standard of driving has fallen below the required standard is an objective one. It applies both when the manner of driving in question is deliberate and when the manner of driving occurs as a result of an error of judgement or simply as a result of incompetence or inexperience.
- 5.3 Section 38(7), RTA 1988 states that failure on the part of a person to observe a provision of the Highway Code shall not of itself render that person liable to criminal proceedings, but a failure, particularly a serious one, may constitute evidence of careless or dangerous driving.
- 5.4 In general, prosecution for careless driving will be appropriate when the manner of the driving demonstrates a serious miscalculation or a disregard for road safety, taking into account all the circumstances including road, traffic and/or weather conditions.
- 5.5 There will be rare occasions where an accident occurs and yet there is no evidence of any mechanical defect, illness of the driver or other explanation to account for why the accident happened. In these cases, a charge of careless driving may be appropriate. The prosecution can provide evidence to the court about the accident on

the basis that in the absence of any explanation - such as the ones identified above - it is inevitable that the defendant must have been driving below the standard expected of a reasonable, prudent and competent driver, since otherwise the accident would not have happened.

5.6 The following are examples of driving which may support an allegation of careless driving:

- 1 acts of driving caused by more than momentary inattention and where the safety of road users is affected, such as:
 - overtaking on the inside;
 - driving inappropriately close to another vehicle;
 - driving through a red light;
 - emerging from a side road into the path of another vehicle;
 - turning into a minor road and colliding with a pedestrian.
- 2 conduct which clearly caused the driver not to be in a position to respond in the event of an emergency on the road, for example:
 - using a hand held mobile telephone while the vehicle is moving, especially when at speed;
 - tuning a car radio;
 - reading a newspaper/map;
 - selecting and lighting a cigarette/cigar/pipe;

- talking to and looking at a passenger which causes the driver more than momentary inattention;
- leg and/or arm in plaster;
- fatigue/nodding off.

The above examples explain the driver's conduct rather than demonstrate a course of driving which necessarily falls below the objective standard of the driving itself. For example, they may explain why the driver veered across carriageways, passed through a red light or otherwise caused a danger to other road users. In these cases, it is necessary to go beyond the explanation for the driving and consider whether the particular facts of the case warrant a charge of careless or dangerous driving. The reason for the driver's behaviour is not relevant to the choice of charge: it is the acts of driving which determine whether the driver has fallen below (careless driving) or far below (dangerous driving) the standard required.

These examples are placed here because usually when this conduct occurs the appropriate charge will be section 3. But police officers and prosecutors must always consider the manner of the driving in the context of the other facts in the case to decide the most appropriate way forward.

- 5.7 In deciding whether a charge of careless driving is appropriate, you will want to consider whether the act of driving concerned was the result of either momentary inattention or an isolated misjudgment, or something more serious. A moment's inattention which causes the manner of the driving to fall below the objective standard required of the reasonable, prudent and competent driver need not, of itself, lead to a prosecution. It

is acts caused by more than momentary inattention - especially where the manner of the driving adversely affects the safety of other road users - which will normally result in a charge of careless driving.

- 5.8 In cases where there has been an accident and the evidence suggests that more than one driver may have been at fault, it will be necessary to establish that there is independent evidence against each driver before charging any individual driver, or that the facts speak so strongly for themselves in relation to any individual driver that the only conclusion possible to draw is that he departed from what a reasonable, prudent and competent driver would have done in the circumstances.

- 5.9 The public interest in favour of a prosecution is proportionate to the degree of blameworthiness: the greater the blameworthiness, the greater the public interest in favour of prosecuting. In addition, the public interest will favour prosecuting in cases when the court may wish to make an order under section 36 of the Road Traffic Offenders Act 1988, disqualifying the driver until he passes a driving test; or where it appears that the court ought to notify the Secretary of State that the driver may be suffering from any relevant disability within the meaning of section 22, Road Traffic Offenders Act 1988.

- 5.10 However, the public interest does not call for a prosecution in every case where there is a realistic prospect of conviction for careless driving: prosecution for an act of slight carelessness is unlikely to have a deterrent effect; and it is not the function of the prosecution to conduct proceedings merely to settle questions of liability for the benefit of insurance companies.

5.11 The public interest will tend to be against a prosecution for careless driving where:

- the incident is of a type such as frequently occurs at parking places, roundabouts, junctions or in traffic queues, involving minimal carelessness such as momentary inattention or a minor error of judgement;
- only the person at fault suffered injury and damage, if any, was mainly restricted to the vehicle or property owned by that person.

5.12 In addition, there is often an overlap between careless driving and some other offences such as driving with excess alcohol, regulatory offences, offences of strict liability, or offences under the Road Vehicles (Construction and Use) Regulations 1986. The merits of many individual cases can be adequately met by charging the specific statutory or regulatory offence which Parliament made available, subject to paragraphs 5.13 and 5.14 below.

5.13 Sometimes, there will be evidence of a course of conduct which involves the commission of a number of different statutory or regulatory offences, or the commission of the same statutory or regulatory offence on a number of occasions which are very close in time with one another. For example, a driver may drive through a red traffic light, ignore a pelican crossing and fail to give way at a junction within what might reasonably be described as the same course of driving. Alternatively, a driver may drive through two or more sets of red traffic lights, one after the other, within what may reasonably be described as the same course of driving.

5.14 In these situations, it is not appropriate simply to charge a number of individual statutory or regulatory offences: the court needs to be made aware of the link between what might otherwise appear as isolated incidents, when in reality they form part of a more serious course of bad driving. This course of bad driving should be reflected in a more serious charge. Where this type of situation arises, the manner of the driving has, in reality, fallen far below that expected of a competent and careful driver because of the driver's systematic failure to pay heed to the relevant traffic directions. Accordingly, consideration should be given to prosecuting the driver under section 2 of the Act: see paragraph 7.

6 Driving without reasonable consideration - section 3, RTA 1988

6.1 The offence of driving without reasonable consideration is committed when a vehicle is driven on a road or other public place as a result of which other persons using the road or place are inconvenienced. It is a summary only offence carrying a level 4 fine (£2,500), discretionary disqualification for any period and/or until a driving test has been passed. The court must endorse the driver's licence with 3-9 penalty points unless there are special reasons not to do so.

6.2 The accused must be shown:

- to have fallen below the standard of a reasonable, prudent and competent driver in the circumstances of the case; and
- to have done so without reasonable consideration for others.

6.3 The difference between the two offences under section 3 is that in cases of careless driving the prosecution need not show that any other person was inconvenienced. In cases of inconsiderate driving, there must be evidence that some other user of the road or public place was inconvenienced.

6.4 An allegation of inconsiderate driving is appropriate when the driving amounts to a clear act of selfishness, impatience or aggressiveness. There must, however, also be some inconvenience to other road users, for example, forcing other drivers to move over and/or brake as a consequence. Examples of conduct appropriate for a charge of driving without reasonable consideration are:

- flashing of lights to force other drivers in front to give way;
- misuse of any lane to avoid queuing or gain some other advantage over other drivers;
- unnecessarily remaining in an overtaking lane;
- unnecessarily slow driving or braking without good cause;
- driving with undipped headlights which dazzle oncoming drivers;
- driving through a puddle causing pedestrians to be splashed.

6.5 A person who drives without reasonable consideration for other road users can be convicted of driving without due care and attention although the reverse does not apply.

7 Dangerous Driving - section 2 of the Act

7.1 A person drives dangerously when:

- the way he drives falls far below what would be expected of a competent and careful driver; and
- it would be obvious to a competent and careful driver that driving in that way would be dangerous.

7.2 Both parts of the definition must be satisfied for the driving to be "dangerous" within the Act. Dangerous driving is an either way offence. In the magistrates' courts the maximum penalty is a level 5 fine (£5,000), and/or six months imprisonment; in the Crown Court, the maximum penalty is 2 years imprisonment and/or an unlimited fine. In both instances, the court must disqualify the driver from driving for at least one year and must endorse the driver's licence with 3-11 penalty points unless in either case there are special reasons not to do so.

7.3 The test of whether a driver has fallen far below the required standard is an objective one. It applies both when the manner of driving in question is deliberate and when the manner of driving occurs as a result of an error of judgement or simply as a result of incompetence or inexperience.

7.4 There is no statutory definition of what is meant by "far below", but "dangerous" must refer to danger either of injury to any person or of serious damage to property: s.2A(3) of the Act. Additionally, s.2A(2) of the Act provides that a person is to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

- When considering the “state” of the vehicle, regard may be had to anything attached to or carried by the vehicle: section 2A(4) of the Act. Therefore, you must consider whether the vehicle should have been driven at all, as well as how it was driven.
- 7.5 The standard of driving must be objectively assessed. It is not necessary to consider what the driver thought about the possible consequences of his actions. What must be considered is whether or not a competent and careful driver would have observed, appreciated and guarded against obvious and material dangers.
- 7.6 In deciding whether a charge of dangerous driving is appropriate, you will want to consider whether the act of driving concerned was undertaken deliberately and/or repeatedly. Although the test of dangerousness is an objective one, deliberate or repeated disregard, for example, of traffic directions (be they “stop” or “give way” signs or traffic lights) may be evidence that the manner of the accused’s driving has fallen far below the standard required, thereby making a charge of dangerous driving appropriate.
- 7.7 In addition, the following are examples of driving which may support an allegation of dangerous driving:
- racing or competitive driving;
 - prolonged, persistent or deliberate bad driving;
 - speed which is highly inappropriate for the prevailing road or traffic conditions;
 - aggressive or intimidatory driving, such as sudden lane changes, cutting
- into a line of vehicles or driving much too close to the vehicle in front, especially when the purpose is to cause the other vehicle to pull to one side to allow the accused to overtake;
- disregard of traffic lights and other road signs, which, on an objective analysis, would appear to be deliberate;
 - failure to pay proper attention, amounting to something significantly more than a momentary lapse;
 - overtaking which could not have been carried out with safety;
 - driving a vehicle with a load which presents a danger to other road users.
- 8 Causing death by careless driving when under the influence of drink or drugs - section 3A, RTA 1988**
- 8.1 This offence is committed when:
- the driving was without due care and attention or without reasonable consideration for other road users; and
 - the driving has caused the death of another person; and
 - the driver is either unfit through drink or drugs, or the alcohol concentration is over the prescribed limit, or there has been a failure to provide a specimen in pursuance of the RTA 1988.
- 8.2 It is an offence triable only on indictment and carries a maximum penalty of 10 years imprisonment and/or an unlimited fine and an obligatory disqualification for at least 2 years (3 years if there is a previous relevant conviction). The

- driver’s licence must be endorsed with 3-11 penalty points.
- 8.3 The examples given in paragraph 5 of careless driving apply to this offence; in the context of section 3A, less serious examples of careless driving (which may not of themselves require a prosecution under section 3 alone) may also merit proceedings under section 3A.
- 8.4 The accused’s driving must have been a cause of the death but need not be the sole one.
- 8.5 Proper procedures have to have been adopted in the requesting and/or obtaining of any sample of breath, blood or urine. In cases where the procedures are flawed, there is a risk that the evidence may be excluded. Where this is possible, careful consideration must be given to whether the remaining evidence will support an alternative allegation of causing death by careless driving while unfit to drive through drink/drugs, in which case, evidence other than that from an intoximeter machine can be relied upon to demonstrate the defendant’s unfitness to drive.
- 8.6 It is not necessary to add a further charge relating to drink/driving when the defendant is charged with a section 3A offence, because a guilty verdict to the relevant drink/drive offence can be returned by the jury under the statutory provisions: see paragraph 14.
- 9 Causing death by dangerous driving - section 1, RTA 1988**
- 9.1 This offence is committed when:
- the driving of the accused was a cause of the death of another person; and
- the driving was dangerous within the meaning of section 2A of the Act (see paragraph 7.3 of this standard).
- 9.2 The offence is triable only on indictment and carries a maximum penalty of 10 years imprisonment and/or an unlimited fine with an obligatory disqualification for a minimum of 2 years. The driver’s licence must be endorsed with 3-11 penalty points.
- 9.3 The accused’s driving must have been a cause of the death but need not be the sole one.
- 9.4 The examples given in paragraph 7 of dangerous driving apply to this offence.
- 9.5 Where a section 1 offence can be proved and there is sufficient evidence of a section 4, 5 or 7 offence, the appropriate summary offence should be charged and adjourned sine die pending the outcome of the section 1 offence - these offences cannot be committed to the Crown Court under section 41(1), Criminal Justice Act 1988. If the defendant is convicted of the section 1 offence, the court will often make it clear that the sentence imposed reflects the element of drink/driving, in which case the summary offence should not subsequently be pursued. Where the defendant is acquitted of the section 1 offence (or is convicted but it is clear the court has not taken the element of drink/driving into account) prosecutors should consider re-activating the drink/drive offence.
- 10 Relationship between section 1 and section 3A, RTA 1988**
- 10.1 Offences under section 1 and section 3A carry the same maximum penalty, so the choice of charge will not inhibit the court’s sentencing powers. The courts

have made it clear that for sentencing purposes the two offences are to be regarded on an equal basis. (Attorney General’s Reference (No.49 of 1994) *R v Brown [1995] Crim LR 437*; *R v Locke [1995] Crim LR 438*.)

10.2 The court will sentence an offender in proportion to his criminality. The consumption of alcohol is an aggravating feature increasing the criminality of the offender and therefore the sentence passed. The consumption of alcohol is an aggravating feature within the definition of section 3A. The consumption of alcohol is not part of the definition of section 1 but may be treated as an aggravating feature in appropriate cases.

10.3 Where a section 1 offence can be proved, it should be charged. However, you may on occasions have to decide which is the more appropriate charge: section 1 or section 3A. This will almost always occur when the manner of the driving is on the borderline between careless and dangerous. The prosecution is likely to be put to election if the two offences are charged in the alternative. In borderline cases, section 3A should be chosen provided all the other elements of that offence can be proved. The prospects of a conviction will be greater and the court’s sentencing power remains unaffected.

11 Manslaughter - contrary to common law

11.1 Manslaughter is committed when the driver, in breach of a duty of care, is criminally negligent and causes the death of the victim.

11.2 The offence is triable only on indictment and carries a maximum sentence of life imprisonment and/or an unlimited fine. The driver must be disqualified for at least two years and there is a compulsory

re-test. The driver’s licence must be endorsed with 3-11 penalty points.

11.3 The driver must be shown to have been in breach of a duty of care towards the person who died. The ordinary principles of the law of negligence apply to ascertain whether there is such a duty. There is a general duty of care on all persons not to do acts imperilling the lives of others. To show a breach of a duty of care will require proof that the driving:

- fell far below the minimum acceptable standard of driving; and
- involved a risk of death; and
- was so bad in all the circumstances as, in the opinion of the jury, to amount to a crime: *R v Adomako [1994] 3 All ER 79*.

11.4 The examples of driving which fall far below the minimum acceptable standard of driving set out in paragraph 7.7 apply here as well.

11.5 This charge will very rarely be appropriate in road traffic fatality cases because of the existence of the statutory offences.

11.6 Manslaughter should be considered when a vehicle has been used as an instrument of attack (but where the necessary intent for murder is absent) or to cause fright and death results.

11.7 Manslaughter should also be considered where the driving has occurred other than on a road or other public place, or when the vehicle driven was not mechanically propelled, and death has been caused. In these cases the statutory offences do not apply.

12 Causing bodily harm by wanton and furious driving - section 35, Offences Against the Person Act 1861

12.1 It is an offence for any person in charge of a vehicle:

- to cause or cause to be done bodily harm to any person; by
- wanton or furious driving, or other wilful misconduct, or by wilful neglect.

12.2 It is a offence triable only on indictment and carries a maximum penalty of a 2 years imprisonment and/or an unlimited fine.

12.3 This offence should be used rarely as it does not carry endorsement or disqualification. It should normally only be used on those occasions when it is not possible to prosecute for an offence under the road traffic legislation, for example:

- when the driving was not on a road or other public place;
- when the vehicle used is not a mechanically propelled vehicle within the RTA 1988;
- when the statutory notice of intended prosecution is a prerequisite to a prosecution and has not been given.

12.4 This offence is useful in cases when a victim suffers serious injury though there has been no direct contact between the victim and the vehicle. For example, when the driving caused the victim to take avoiding action and as a result of which sustained serious injury by, say, falling down a ditch.

12.5 When a vehicle has been deliberately used as a weapon and has caused injury, alternative charges of dangerous driving under s.2 of the Act or s.18 Offences Against the Person Act 1861 should be considered if all the elements of those offences can be proved.

13 Road Traffic Fatality Cases: “Nearest and Dearest”

13.1 In addition to the public interest considerations set out in the Code for Crown Prosecutors, special considerations apply to cases when there is a family or other close personal relationship between the deceased and the accused driver. These are often referred to as “nearest and dearest” cases. The considerations are unlikely to be relevant in any case where the evidence would support proceedings for manslaughter.

13.2 In each case, the particular circumstances and the nature of the relationship will have to be considered. The closer the relationship between the deceased and the accused driver, the more likely it will be that the guidance which follows will apply.

13.3 In cases of causing death by dangerous driving involving the death of a “nearest and dearest”, where there is evidence to suggest an aggravating feature which imperils other road users or that the accused is a continuing danger to other road users, the proper course will be to prosecute for dangerous driving (section 2). The focus of the case will then be imperilling of other road users.

13.4 Additionally, if the accused drove in such a way as to show serious disregard for the lives of the “nearest and dearest” or other road users, notwithstanding that a “nearest and dearest” has been killed, proceedings for causing death by dangerous driving should be considered.

- 13.5 However, in cases of causing death by dangerous driving involving the death of a “nearest and dearest”, where there is no evidence either of an aggravating feature imperilling other road users nor that the accused is a continuing danger to other road users, the proper course is not to prosecute.
- 13.6 In cases of causing death by careless driving while under the influence of drink etc. involving the death of a “nearest and dearest”, the proper course will be to prosecute for careless driving and the appropriate drink/driving offence.
- 13.7 In cases of careless driving which caused the death of a “nearest and dearest” where there is evidence to suggest that the accused is a continuing danger to other road users, the proper course is to prosecute for careless driving (section 3).
- 13.8 However, in cases of careless driving which caused the death of a “nearest and dearest” where there is no evidence that the accused is a continuing danger to other road users, the proper course is not to prosecute.
- 13.9 Evidence that an accused presents a continuing danger to other road users may be found in his/her previous convictions or medical condition. In such cases, the court may wish to make an order under section 36 of the Road Traffic Offenders Act 1988, disqualifying the driver until he passes a driving test; or when it appears that the court ought to notify the Secretary of State that the driver may be suffering from any relevant disability within the meaning of section 22, Road Traffic Offenders Act 1988.
- 13.10 If a person other than a “nearest and dearest” is killed as a result of the dangerous driving, notwithstanding the fact that a near relative has also been killed, a charge for causing death by

dangerous driving should normally follow. In order to present the case fully to the court a separate charge for the death of the close relative cannot, in these circumstances, be avoided.

14 Alternative verdicts

- 14.1 In certain circumstances, it is possible for a jury to find the accused not guilty of the offence charged but guilty of some other alternative offence. The general provisions are contained in section 6(3), Criminal Law Act 1967 and are supplemented by other provisions which relate to specific offences.
- 14.2 Section 24 of the Road Traffic Offenders Act allows for the return of alternative verdicts where the allegations in the indictment amount to, or include, an allegation of an offence specified in the table set out in that section. The relevant statutory provisions are:

Offence charged	<i>Alternative verdicts</i>
Section 1: death by dangerous driving	Section 2: dangerous driving
Section 2: dangerous driving	Section 3: careless, and inconsiderate, driving
Section 3A: causing death by careless driving while under the influence of drink or drugs	Section 3: careless, and inconsiderate, driving and/or the relevant offence from: Section 4(1): driving whilst unfit Section 5(1)(a): driving with excess alcohol Section 7(6): failing to provide a specimen

- 14.3 Where the accused is charged with an offence under section 3A, RTA 1988 he may not be convicted as an alternative with any offence of attempting to drive: section 24(2), Road Traffic Offenders Act 1988.
- 14.4 In the very rare cases when manslaughter is charged, it will normally be prudent to prefer an alternative charge for causing death by dangerous driving if the driving took place on a road or other public place. Further, when manslaughter is charged there should be no difficulty in also charging as an alternative a section 3A offence if it is made out, although such a situation is most unlikely to arise.
- 14.5 It is essential however, that the charge which most suits the circumstances is always preferred. It will never be appropriate to charge a more serious offence in order to obtain a conviction (whether by plea or verdict) to a lesser offence.

The CPS Statement on the Treatment of Victims and Witnesses

1. Introduction

- 1.1 It is vital that victims of, and witnesses to, crime have faith in the criminal justice system. The Crown Prosecution Service (“CPS”) is at the heart of that system and the manner in which the CPS treats victims and witnesses is extremely important.
- 1.2 The CPS is committed to upholding the principles set out in the Victim’s Charter and the Citizen’s Charter. We have made a public declaration of our principles in our Statement of Purpose and Values:

“We will show sensitivity and understanding to victims and witnesses.”
- 1.3 Making provision for the proper care and treatment of victims and witnesses is an essential feature of CPS initiatives.
- 1.4 This statement explains our policies about victims and witnesses and sets out how we intend to put our commitment into practice.

2. Statement of Policy

The role of the Crown Prosecution Service

- 2.1 The CPS is an independent prosecuting authority. We take decisions about cases based on the strength of the evidence followed by an assessment of the public interest. This process is governed by the Code for Crown Prosecutors. The CPS does not act directly on behalf of individual victims or represent them in court in criminal proceedings because it has to take decisions reflecting the overall public interest rather than the particular interests of any one person. Nevertheless,

the interests of the victim are very important when we make decisions.

The decision to prosecute

- 2.2 The more serious a case is, the more likely it is that a prosecution will be required in the public interest. The Code for Crown Prosecutors specifically says the extent of the loss or the harm suffered by the victim should be judged according to the circumstances of the victim in question; what may not be significant to one victim may be very important to another. It is therefore important for us to know how the crime has affected the victim.

Information about victims and witnesses

- 2.3 When the police send a file to the CPS, it will contain some information about victims and witnesses. This information is important to the Crown Prosecutor because it allows the crime to be seen in context. The information could, for example, help us stop an unfair attack on a victim’s or witness’ character.

Compensation

- 2.4 In many cases, victims may wish to claim compensation for the harm or loss they have suffered as a result of the crime. Where this is the case, the police should include details of the claim made in the file. If these details are not included, and the case is accepted by the CPS for prosecution, the Crown Prosecutor will ask the police to provide details or explain why they are not required. In cases where there is a claim for compensation, the Crown Prosecutor will tell the court.

Victims and witnesses at court

2.5 Victims of crime have a proper interest in the cases in which they are concerned. CPS staff will always try to help victims and witnesses at court by giving appropriate and useful information, although their other duties may constrain the extent to which this is possible.

3. Service Standards

3.1 Victims and witnesses deserve consideration and understanding throughout the criminal trial process. Taking practical steps to improve the service provided to victims and witnesses is just as important as responding sympathetically to their concerns.

3.2 We are committed to consistent standards of service for the care and treatment of victims and witnesses.

Before trial

3.3 Before every trial, we will consider whether it is absolutely necessary to require the attendance of a witness. We recognise that witnesses who have to attend court often feel worried and concerned about what to expect. To help witnesses, we will:

- ask the court to set a date for trial that is as convenient as possible to witnesses;
- let the witness know what will happen in court, if appropriate with Victim Support;
- arrange assistance, with the police, for the elderly and disabled to get to court;
- ask for children to be allowed to give their evidence, if appropriate, by means of a television link.

At trial

3.4 Once the trial has started, we will:

- try to ensure that witnesses attend court only when they are required to give evidence, so that they are not kept waiting too long;
- introduce ourselves to witnesses, whenever possible;
- look after the interests of the witnesses as the trial progresses (for example, if the case is adjourned we will suggest to the court a new date as convenient as possible to witnesses);
- ask the court, when appropriate, to allow a witness to leave after giving evidence;
- explain the results of cases, whenever possible, to victims at court.

Compensation

3.5 When the victim has been injured or lost money, we will:

- do all we can to ensure that the information given to us on compensation claims is sufficient for the court to make a compensation order, if it wishes;
- remind the court of its power to award compensation in cases where there is no financial loss;
- remind the court that it must give reasons where a compensation order is not made if the case is one in which an order may have been possible.

Defence mitigation

3.6 When defence mitigation contains unjust criticism of the character of the victim or witness, we will:

- tell the court that the mitigation is not accepted by the prosecution;
- invite the court, where necessary, to hear evidence on the issues raised by the defence.

Witness expenses

3.7 To ensure that witnesses are paid properly and quickly, we will:

- pay prosecution witnesses' expenses within five to ten working days of receiving the completed claim form
- try to make emergency arrangements. If a witness at court needs an advance payment to return home.

Appeals to the Court of Appeal from Crown Court

3.8 Victims are usually not required to attend court when the defendant appeals against conviction or sentence. To ensure that victims are kept in touch with progress of the appeal, we will:

- tell the police of the developments in the appeal to allow them to keep victims and their families informed;
- tell the police the result of the appeal to allow the victim or family to be informed quickly in cases where a person has died or where a sexual crime is alleged.

Cases involving fatalities

3.9 The CPS recognises that cases which involve the death of the victim may cause considerable anguish to her relatives and friends. Therefore, we will:

- make sure a lawyer of appropriate experience deals with and looks after the case;
- be prepared to meet relatives of the victim to discuss the basis on which a decision was taken;
- ask the court to pay special attention to the listing of these cases.

4. Conclusion

4.1 In publishing this statement, we hope we have shown you our commitment to the proper care and treatment of victims and witnesses. We shall keep this statement under continuous review.

4.2 The criminal justice system depends on victims and witnesses to ensure that cases are dealt with properly at court. We know that going to court may sometimes be a difficult experience. Having read this leaflet, we hope that you will feel less worried about the prospect of giving evidence. The CPS is committed to doing all it can to help.

**LIST OF REPRESENTATIVES OF
CRIMINAL JUSTICE AGENCIES,
OTHER ORGANISATIONS AND
MEMBERS OF THE PUBLIC WHO
ASSISTED IN OUR REVIEW**

1. Criminal Justice Agencies

HM Coroners

The Coroners' Society of England and Wales
and a number of individual coroners

Police

Superintendent P Cluelow, Metropolitan Police
Superintendent M Summers, Dorset Police
Chief Inspector T Diment, Essex Police
Chief Inspector L O'Donnell, Merseyside
Police
Chief Inspector T Whittle, Dorset Police
Inspector G Bullock, West Midlands Police
Inspector R Haslem, Merseyside Police
Inspector G Payne, North Yorkshire Police
Sergeant R Edwards, Nottinghamshire Police
Sergeant R Lane, Metropolitan Police
Sergeant J McAvee, Metropolitan Police
Sergeant N Mears, West Midlands Police
Sergeant J Oswin, Nottinghamshire Police
Sergeant J Skelton, Cumbria Constabulary
Sergeant N Stickland, North Yorkshire Police
Sergeant B Wevill, West Midlands Police
Mr B Kirkbride, Decision Maker, Cumbria
Constabulary
Ms G McIlveney, Executive Officer,
Metropolitan Police
Mr S Powell, Trials Unit Manager, Essex
Police

Victim Support

Mr R Ayres, West Essex
Ms M Langley, Southend-on-Sea
Mr D Palmer, Nottingham
Mr A Welsh, Thurrock and Brentwood
Mrs L Westoby, Preston

Witness Service

Ms K Brewer, Scarborough Law Courts
Mr S Goodyear, Birmingham Magistrates'
Court
Ms M Horsman, Nottingham Crown Court
Mrs C Kellett, York Crown Court
Ms S Sagar, Birmingham Crown Court
Ms J Worth, Carlisle Crown Court

2. Other agencies and organisations

Automobile Association

Mr A Howard
Mr M Warburton

Cyclists' Touring Club

Mr D Simper

RoadPeace

Ms A Aeron-Thomas, London Community
Project Co-ordinator
Ms B Chaudhry, Founder, National Secretary
Mrs P Fielding, RoadPeace North West
Mrs M Highton, RoadPeace North West
Mrs Z Stow, Chair
Mrs R Taylor, Vice Chair

**3. Individual members of the public who
made written submissions to the review**

Ms C Barlow
Mrs P Bentley
Mr and Mrs J Bradford
Mr T Byrne
Mrs I Collins
Mrs S Doyle
Mr R Eaton
Mr and Mrs M Farroll
Mr and Mrs A Foster
Mrs V Foulkes
Mr and Mrs G Fox

Dr R Gale
Mr D Ginty
Mrs J Harrison
Mr and Mrs A Hay
Mrs J Holley
Mrs C Lobb
Mr and Mrs R Manser
Mr D Myler
Mr A Pagan
Mr C Porter
Mr G Smith
Mrs E Spry
Mrs M Sullivan
Mr C Taylor
Mrs J Webb
Mr and Mrs J Westwood
Mr and Mrs B White
Mrs C Williams
Mrs J Wright