



HMCPSI

HM Crown Prosecution
Service Inspectorate

An inspection of Crown Prosecution Service actions in the Valdo Calocane case

**The events in Nottingham on 13
June 2023**

March 2024

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Who we are

HMCPST inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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1. Summary

Headlines

Report summary

1.1. Valdo Calocane's crimes were horrific. He brutally killed three innocent people and violently attacked three other victims. This was a case that shocked the nation and none of us can imagine the anger, grief and despair that the families of Barnaby, Grace and Ian will have felt, and continue to feel, as they deal with the loss of their loved ones.

1.2. Whilst having to deal with the loss of their loved ones in such horrific circumstances, the families have also had to deal with the criminal justice system. The families' view is that the system that is there to provide justice let them down. The families have set out a number of concerns about how they perceive that the police, Crown Prosecution Service (CPS) and mental health services, have failed them and their loved ones.

1.3. This inspection was requested as a result of a meeting between the families and the Prime Minister. His Majesty's Crown Prosecution Service Inspectorate (HMCPPI) were requested by the Attorney General to conduct an urgent inspection of the handling of the Calocane case by the CPS. Our remit was to examine whether the decision not to proceed to trial for murder but to accept pleas to manslaughter was correct and whether the approach taken by the CPS in engaging with the families during the case met the standards and expectations as set out in the Victims' Code and its own Bereaved Family Scheme.

1.4. HMCPPI is independent of the CPS and has a statutory duty to inspect the CPS. To conduct this inspection, we had access to all material relating to the case and were able to interview all who had dealt with the case on behalf of the prosecution, including the first prosecution psychiatric expert. We also met with the families before we started the inspection to understand their concerns and to hear directly from them of their experiences of dealing with the criminal justice system and specifically the CPS.

Headline findings

The charge

1.5. The decision taken on 16 June to charge three offences of murder and three offences of attempted murder in relation to the events of 13 June 2023, was set out in a detailed and reasoned document by the reviewing lawyer. Our inspection confirms that the decision to charge these offences was correct.

The acceptance of pleas to manslaughter

1.6. The decision to accept the pleas of not guilty to murder but guilty to manslaughter by reason of diminished responsibility was correct.

1.7. The CPS could not have proceeded on the murder allegations because of the clear and unambiguous findings of the prosecution and defence

psychiatric reports that the offender's actions were because of pure psychosis that substantially impaired his ability to form rational judgments and to exercise self-control. Had the CPS disregarded the Code for Crown Prosecutors and proceeded to trial on the murder charges, it is likely that the judge would have stopped the trial, ruling that, given the psychiatric evidence, a murder conviction would not be one that a properly directed jury could deliver.

1.8. To have continued with an evidentially weak case in the hope that a jury would have been willing to convict because of the horrific nature of the offender's crimes, would have been wrong and not in accordance with the Code for Crown Prosecutors. The CPS and prosecution counsel considered the relevant law as to the acceptance of the pleas and applied it correctly.

1.9. We realise that our findings are going to be difficult for the families to accept. They told us when we met with them that they felt the CPS and the experts had not asked the right questions, not listened to their concerns, and had too easily accepted the views that the offender was suffering from psychosis at the time of the offences. Our findings conclude that the CPS's actions were appropriate in this case. Unusually, the CPS commissioned a further expert's report in light of the concerns expressed by the families and this additional report also supported the position of the previous three psychiatrists that the partial defence of diminished responsibility was available.

1.10. It is understandable why the bereaved families find the decision by the CPS to accept the pleas of not guilty to murder but guilty to manslaughter difficult to accept. Their loved ones were violently killed by an offender who knew what he was doing was wrong and who intended to kill them. The term manslaughter has the perception to underplay the gravity of what has taken place. In 2006 the Law Commission recommended that there should be three tiers of homicide: first degree murder, second degree murder and manslaughter. The Law Commission found that the potential use of the term second degree murder to describe the verdict a jury must reach when a partial defence of diminished responsibility is available was strongly supported by groups representing victims' families. If the recommendation of the Law Commission in 2006 had been accepted and implemented, the unlawful killings in this tragic case would have been categorised as murder, albeit second degree murder.

CPS engagement with the families

1.11. Generally, we found that the CPS had met their obligations to the bereaved families under the Victims' Code of Practice and the Bereaved Family Scheme and were committed to providing a good service to the families.

1.12. There were a number of aspects where the CPS could have handled this case better.

- Introductory letters included standard paragraphs about the legal proceedings which may not have been understood or well-received by grieving families.

- The family liaison officer (FLO)¹ is the conduit through which all CPS engagement is handled. In this case, the first CPS letter to the families was dated before the first hearing date but was delivered after it to each family by the FLO and thus was out of date when received.
- Where FLOs are being asked to explain legal concepts to bereaved families, it would be good practice for the CPS to provide them with case specific written guidance. In this case the families' understanding of diminished responsibility may have been aided at an earlier stage had the CPS provided a form of words for the FLOs to use.
- Two of the families were invited to a meeting with the CPS and prosecution counsel on 24 November to discuss the psychiatric evidence. There were further meetings on 7 December and 15 January with the same two families. There was no record of the third family having been specifically told about these meetings, which led to a feeling of being left out and overlooked. Had the third family been told about the meetings, they could have made a fully informed choice as to whether to attend or not. The CPS must ensure that, in cases where there are multiple victims/bereaved families, the same level of service is provided to all.
- The CPS used the word 'consult' on a number of occasions when referring to engagement with the families around the legal decision-making in this case. We found that the use of the word may have contributed to a general misunderstanding of the CPS's obligations to victims and bereaved families when decisions are taken on evidential grounds. There is no obligation on the CPS to 'consult' victims when making a decision on the evidential test of the Code for Crown Prosecutors, but rather to 'inform' and 'explain' their decision.

Recommendation

By October 2024 the Crown Prosecution Service must undertake a review of all guidance relating to victims' engagement to ensure that all staff are aware when use of the terms 'consult' or 'consultation' is appropriate.

1.13. We are aware that our findings will be disappointing for the families. They were clear when we met with them that they felt let down, that they had no voice, and that they had been treated as secondary parties in the criminal justice system.

1.14. This case brings into stark relief the disconnect that can exist between the reality of being in the system and what support there is available. In this case, we conclude that the CPS charging decision was correct, that the acceptance of the pleas of not guilty to murder but guilty to manslaughter was correct and generally the CPS met their obligations set out in the Victims' Code

¹ To ensure that the families in murder cases are effectively supported, a police family liaison officer (FLO) is appointed.

and the Bereaved Family Scheme. But the experience of the families is such that they felt unsupported and secondary to the whole process.

1.15. Despite our findings that the CPS has complied with the law and their obligations, the families' concerns and the public disquiet about this case highlights aspects where further consideration is needed. Government needs to consider:

- Whether homicide should be categorised in three tiers, as recommended by the Law Commission in 2006.
- Whether the culpability of the person who commits murder should be reduced to manslaughter by reason of diminished responsibility.
- If homicide is not to be categorised in three tiers as recommended by the Law Commission in 2006, and diminished responsibility is not to be a partial defence to murder, whether the mandatory life sentence should remain for all cases of murder.
- Whether the support provided by the existing Victims' Code and Bereaved Family Scheme should be reconsidered, and whether and to what extent victims should be 'consulted' or informed about decisions.

BACKGROUND AND CONTEXT

2. Factual summary

Factual summary

2.1. In the early hours of 13 June 2023, a 31-year-old man, Valdo Calocane (the offender), carried out two separate knife attacks in Nottingham. He killed three people, two 19-year-old Nottingham University students, Barnaby Webber and Grace O'Malley-Kumar, and Ian Coates, a 65-year-old caretaker on his way to work, whose van the offender then stole.

2.2. He then tried to kill three other people in two further attacks by running them down with the van in the city centre. The names of these victims are Wayne Birkett, who suffered life changing injuries, and Marcin Grabonski and Sharon Miller, who suffered serious injuries.

2.3. After the attacks, the offender was arrested by police near the city centre while still in the stolen van. He was wearing blood-stained clothing and had three knives and a length of scaffolding pole in his possession. The police were able to promptly rule out any terrorism connection. When interviewed he made no comment to the questions put to him.

2.4. On 16 June 2023, the Crown Prosecution Service (CPS) charged the offender with three offences of murder and three offences of attempted murder. He appeared at Nottingham Magistrates' Court the following day and was remanded in custody to appear at Nottingham Crown Court on 20 June.

2.5. Over the following few months, three psychiatric reports on the offender were prepared, two on behalf of the defence and one on behalf of the prosecution. Each psychiatrist concluded that the offender was suffering from a serious mental illness, namely paranoid schizophrenia, which led to an abnormality of mental functioning and substantially impaired his ability to form rational judgments and exercise self-control. As a result, they all concluded that the partial defence to murder of diminished responsibility was available to the offender.

2.6. In November 2023, the offender pleaded guilty to manslaughter by reason of diminished responsibility in relation to the three killings. He also pleaded guilty to attempted murder for the three attacks using the van. At that point, the CPS commissioned a fourth psychiatric expert to review the previous reports. This psychiatrist reviewed the evidence in detail, including the extensive mental health records, and agreed with the conclusions of the other psychiatrists; namely that the partial defence of diminished responsibility was available to the offender.

2.7. Following consideration of the psychiatric evidence, the CPS concluded that there was no longer a realistic prospect of conviction in relation to each of the three murder counts and accepted the defendant's guilty pleas to three counts of manslaughter by reason of diminished responsibility.

2.8. At the sentencing hearing on 23 January 2024, Nottingham Crown Court heard from the families and friends of those who were killed by the offender, and from his surviving victims. On 25 January the Judge sentenced the offender to a Hospital Order under section 37 of the Mental Health Act 1983. The Judge further ordered that he be subject to the special restrictions set out in section 41 of the Mental Health Act 1983. The effect of this is that the offender will be detained at a high-security hospital for treatment and will not be released until either the Secretary of State for Justice or a First Tier Tribunal assess that he no longer poses a risk to the public under Sections 37 and 41 of the Mental Health Act 1983.

2.9. The Attorney General has since referred the sentence to the Court of Appeal as an unduly lenient sentence². The Court of Appeal will now decide whether the sentence passed was unduly lenient. At the time of writing this report, a date is yet to be fixed for the Court of Appeal hearing.

² <https://www.gov.uk/ask-crown-court-sentence-review>

3. Context

Context

3.1. The lives of the bereaved families have been torn apart by the offender's actions, and the effect on the lives of the surviving victims and their families has been profound. The brutality and senselessness of the attacks shocked the city and the wider country and generated widespread media coverage.

3.2. Immediately following the sentence on 25 January 2024, members of the bereaved families expressed, via the media, criticism of the Crown Prosecution Service (CPS) for accepting the offender's pleas. Over the next few days that followed, they met the Prime Minister and expressed to him their concerns relating to the handling of the offender by various criminal justice and mental health organisations.

3.3. On 30 January 2024, the Attorney General commissioned His Majesty's Crown Prosecution Service Inspectorate (HMCPISI) to carry out a swift and thorough independent inspection of the actions of the CPS in the case following concerns raised by the bereaved families. Specifically, the Attorney General indicated that our inspection should address the concerns raised by the victims' families about the decisions on charges and the approach taken by the CPS in engaging with the families.

3.4. We invited members of the bereaved families to meet with us so that we could hear directly from them about their concerns over the CPS's handling of the case. The invitation was also extended to the three surviving victims, but they did not respond. Ian's partner declined the offer of a meeting, confirming in a telephone call to us that she had no concerns about the CPS's engagement with her and was complimentary about the service she had received. Both Barnaby and Grace's parents and one of Ian's sons (who was the point of contact for Ian's three sons) accepted the offer of a meeting. It was agreed that this would be a joint meeting, which took place on 9 February 2024. Three supporters were also in attendance.

Concerns of the bereaved families in respect of the CPS handling of the case

3.5. From our meeting with the bereaved families, together with documents they provided to us, we have understood their concerns in relation to the CPS to relate to the legal decision-making around the acceptance of pleas to manslaughter by reason of diminished responsibility and to the CPS's engagement with them. In relation to the legal decision, they highlighted some specific concerns about the basis on which the psychiatric experts had come to their conclusions. We have endeavoured to address the families' concerns in detail in this report.

Concerns relating to the CPS decision to accept guilty pleas to manslaughter

3.6. Whilst the bereaved families acknowledged that the four psychiatric experts found that the offender was suffering from a recognised mental illness at the time of commission of the offences, which afforded him the partial defence of diminished responsibility, they had concerns that this was not a properly reached conclusion based on the following:

- The psychiatric experts did not adequately consider and assess the offender's presentation at the time of commission of the offences, but placed too much weight and emphasis on the offender's presentation when they interviewed him some months later and at a time when his mental state may have deteriorated due to his incarceration.
- The fact that a mental health assessment was not deemed necessary whilst the offender was in police custody, and that he was initially detained in a prison rather than a mental health facility/hospital, suggests that there was no immediate concern as to his mental health status shortly after commission of the offences.
- No samples were taken from the offender to rule out voluntary intoxication (and he had refused to voluntarily provide a urine or blood sample whilst in police custody). The families consider that in the absence of intimate samples, a non-intimate hair sample should have been taken to test for potential drug intoxication, the outcome of which may have affected whether the partial defence of diminished responsibility was available to the offender.
- The psychiatric experts did not interview witnesses with whom the offender had engaged at the time of commission of the offences. The families' concern was that the experts' failure to do so had led to the omission of potentially relevant evidence about the offender's state of mind at the time of the killings.
- The second prosecution psychiatric expert was not instructed to interview the offender. He completed a "peer review" of the other three experts' reports and conclusions. The bereaved families' concern was that the psychiatrist had simply concurred with the findings of his peers, rather than forming an independent view of the offender's mental state at the time of the attacks.

Concerns relating to the CPS engagement with the bereaved families

3.7. We detail in chapter 8 the obligations on the CPS under the Code of Practice for Victims of Crime (the Victims' Code) and its own Bereaved Family Scheme (BFS) for engaging with victims and bereaved family members. The specific concerns the bereaved families raised with us included the following:

- They were not provided with sufficient information at an early enough stage about the possible direction of the case. They told us that they had been led to believe by the police that this was a clear case of murder. It therefore came as a shock to them when, on 24 November 2023, they were informed that pleas to manslaughter by reason of diminished responsibility would be accepted.
- The first meeting Barnaby and Grace’s parents had with the CPS was on 24 November 2023, which was four days prior to the Plea and Trial Preparation Hearing (PTPH). They felt that this meeting was at their behest rather than the CPS initiating it. Whilst Barnaby’s parents recollected that very soon after the offences in June 2023 their police family liaison officer (FLO) had offered them a meeting with the CPS and they had declined at that time, they do not recall being asked again if they wanted to meet until they requested the meeting with the CPS in November 2023.
- Ian’s son told us that he was disappointed that he had not been made aware of the meeting on 24 November 2023 between the CPS and Barnaby and Grace’s parents as, had he known, he would have attended.
- In relation to the CPS’s statement that they “consulted” the bereaved families over the decision to accept the guilty pleas to manslaughter, the bereaved families told us that they were not consulted but rather “informed” of the decision which they felt was a “fait accompli”.
- They felt “rushed” and “railroaded” and that the process was all too quick. They felt that the CPS’s decision to accept the pleas was rushed.
- Some of the bereaved family members described the CPS engagement as impersonal and felt that the FLOs were a barrier. They felt at arm’s length and that the CPS were not working with them. This was compounded by the CPS refusing to provide them with copies of the psychiatric experts’ reports.
- The families told us that it was never communicated or explained to them that the second prosecution psychiatric expert would, in essence, be carrying out a peer review of the other experts’ conclusions rather than undertaking a fresh assessment, as the families had wanted. At a meeting on 7 December 2023, attended by the CPS, the police, and Barnaby and Grace’s parents, there was a discussion around the CPS instruction of their second psychiatric expert. The families had specific questions that they wanted the expert to address but felt that the CPS were not listening to them and were not prepared to raise their concerns with the expert.
- Ian’s son told us that he felt there had been a general lack of contact from the CPS. He said that he and his brothers were spoken to briefly at court on

28 November, the day of the PTPH about the decision to accept pleas to manslaughter (they had already been informed of the decision by their FLO four days previously). Thereafter, they had had little contact from the CPS. He was disappointed that he had not been made aware of, or invited to, the meetings between the CPS and Barnaby and Grace's parents on 7 December 2023 and 15 January 2024. He told us that following the sentencing hearing on 25 January, the CPS left court before he could talk to them and ask them questions about what had happened.

Additional concern

3.8. The families have raised a concern regarding what, if any, involvement the CPS had in decisions relating to any alleged offences committed by the offender prior to the offences on 13 June 2023, and whether there were any missed opportunities to prosecute him.

3.9. We set out in chapter 7 details of a prior case involving the offender that was referred to the CPS by the police. From the information with which we have been provided, the CPS had no involvement in any other previous criminal allegations concerning the offender.

4. Chronology

Chronology

4.1. To help understand the sequence of events leading to the legal decision-making on the acceptance of pleas and to provide a clear timeline, particularly in relation to the Crown Prosecution Service (CPS) engagement with the bereaved families and surviving victims, a detailed chronology has been prepared and can be found below.

4.2. The chronology has been prepared after speaking with the bereaved families, the CPS lawyers and prosecution counsel, and after reviewing the CPS digital case file, which included email correspondence with the police and family liaison officers (FLOs), together with a review of the FLO logs provided to us by Nottinghamshire police.

4.3. In reaching judgments on whether the CPS engaged appropriately with the bereaved families and met their obligations under the Code of Practice for Victims of Crime (the Victims' Code) and Bereaved Family Scheme (BFS), it was important to review and capture not only what was evident from both the letters sent by the CPS to the bereaved families and the notes of bereaved family meetings, but also what was taking place in the background in terms of the CPS contact and liaison with the FLOs and the information the latter were imparting to the CPS about the bereaved families. It is only within this context that proper and fair judgments can be reached.

4.4. The chronology starts in September 2021 to capture the involvement that the CPS had had with the offender prior to the commission of the 13 June 2023 offences.

Chronology table

Key:

- **Black:** Key events in relation to the prosecutions of the offender.
- **Blue:** Key events in relation to the CPS engagement with the bereaved families.
- **Green:** Key events in relation to the CPS engagement with surviving victims.
- **Purple:** Key information obtained from the FLO logs that does not fall within the blue CPS bereaved family engagement but assists in understanding that engagement.

Date	Event
03/09/21	The police attended the offender's address to assist in executing a warrant issued under section 135 of the Mental Health Act 1983. The offender failed to comply with the doctor's request to go to hospital and assaulted a police officer. He was detained under section 2 of the Mental Health Act 1983.

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06/10/21	The police submitted a file of evidence to the CPS to consider a charge of assault on an emergency worker relating to the incident on 3 September 2021. The CPS set the police an action plan to submit further material by 6 December 2021.
26/04/22	After numerous delays in gathering the evidence required, the police submitted the further material and again requested a charging decision.
09/05/22	The CPS gave the police authority to charge the offender with an assault on an emergency worker.
24/08/22	The police sent a postal summons to the offender's last known address for him to appear at Nottingham Magistrates' Court on 22 September 2022 for the assault on an emergency worker.
22/09/22	The offender failed to appear at Nottingham Magistrates' Court and a warrant was issued for his arrest.
13/06/23	The offender carried out his attacks on six victims in Nottingham. He was arrested and detained. He was deemed fit to continue to be detained and interviewed. He refused to provide intimate samples for toxicology and provided "no comment" responses in his police interviews.
14/06/23	The CPS emailed the police for the bereaved families' details so that letters of introduction could be prepared in accordance with the Bereaved Family Scheme and attached form BFS/1 for the FLOs to complete.
14/06/23	The reviewing lawyer contacted the first prosecution psychiatric expert and retained his services should a psychiatric issue be raised by the offender in due course.
16/06/23	The reviewing lawyer applied the threshold test ³ and authorised the police to charge the offender with three offences of murder, relating to Barnaby, Grace and Ian, and three offences of attempted murder relating to the three victims who survived.
16/06/23	Introductory letters for the bereaved families were drafted by the CPS and sent to the FLOs for personal delivery.

³ The Threshold Test is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge.

The Code for Crown Prosecutors; CPS; October 2018.

www.cps.gov.uk/publication/code-crown-prosecutors

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16/06/23	<p>The FLO for Barnaby’s family told them that the offender had been charged. They were told that they could attend the first hearing at Nottingham Magistrates’ Court on 17 June and the hearing at Nottingham Crown Court on 20 June. They were told that they could meet with the CPS at these hearings. Barnaby’s parents stated they would not be attending either hearing.</p> <p>The FLO for Grace’s family told them that the offender had been charged. Grace’s parents confirmed that they would not be attending the first hearing on 17 June but would decide whether to attend the Crown Court on 20 June and meet with the CPS then.</p> <p>The FLO for Ian’s partner told her that the offender had been charged. She confirmed that she would not be attending the magistrates’ court hearing on 17 June but would attend the Crown Court on 20 June and meet with the CPS.</p>
17/06/23	<p>A FLO was assigned to Ian’s sons. They confirmed to their FLO that they would attend the Crown Court on 20 June and meet with the CPS.</p>
17/06/23	<p>The offender appeared, in custody, before Nottingham Magistrates’ Court. He was remanded in custody to appear at Nottingham Crown Court on 20 June 2023. The issue identified by the defence was “fitness to plead”. The reviewing lawyer and District Crown Prosecutor (DCP) had attended and were ready to meet with any bereaved family members. No bereaved family members attended the hearing.</p>
18/06/23	<p>The FLOs for Barnaby and Grace’s families confirmed to the CPS that the introductory letter had been emailed to the families on this date.</p>
20/06/23	<p>The FLO for Ian’s sons met with them before the court hearing and read the CPS introductory letter to them. In addition, the FLO emailed the letter to one of Ian’s sons to share with his other two sons.</p>
20/06/23	<p>The offender appeared at Nottingham Crown Court for a preliminary hearing. A timetable was set for service of the prosecution’s case (by 18 August), and service of the defence statement, including identification of issues, and defence psychiatric reports (by 15 September). The defence confirmed that matters were in hand regarding a psychiatric report. The plea and trial preparation hearing (PTPH) was listed for 25 September and the trial was listed for 12 January 2024. No application was made for bail and the offender was remanded in custody. It was noted that an</p>

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	application would be required in due course to extend the custody time limit (CTL) ⁴ as the trial was set beyond the expiry date due to the court being unable to accommodate the trial within the timescale.
20/06/23	Ian's partner and sons were at court for the preliminary hearing. They met with the reviewing lawyer and junior counsel. The outcome of the hearing was explained and that the case would centre on medical evidence relating to the offender. They were advised that they could contact the CPS through their FLOs. No members of Barnaby or Grace's families were present at this hearing.
23/06/23	The PTPH date was adjourned administratively from 25 September 2023 to 31 October 2023.
26/06/23	Form BFS1 was received from Ian's partner's FLO. It confirmed that she had met with junior counsel and the reviewing lawyer at court and would approach her FLO if a further meeting with the CPS was required.
04/07/23	The FLO for Barnaby's family agreed to write a letter to them with the court dates as the family did not, at this time, want to be provided with any further information about the details of the investigation (See entry on 25 July 2023).
04/07/23	The FLO for Grace's family emailed the CPS to confirm that form BFS1 had been discussed with them and that they would like to meet with the CPS and counsel at some point.
04/07/23 to 07/07/23	Internal email communications between the reviewing lawyer and Senior District Crown Prosecutor (SDCP) regarding potential timing and location for a meeting with Grace's family and that a meeting should also be arranged with Barnaby's family.
07/07/23	The reviewing lawyer emailed the FLOs for Barnaby and Grace's families. He asked that they be approached at an appropriate time about whether they would like a meeting with the CPS. He requested available dates and times and if they wanted a meeting in person or via video-link.
07/07/23	The FLOs for Barnaby and Grace's families emailed the CPS that they would address the offer of meeting with them after Barnaby and Grace's funerals. The CPS were advised that Barnaby's family did not, at this stage, want to hear about the court process but if this changed, they would likely be receptive to a virtual meeting.

⁴ The length of time that a defendant can be kept in custody awaiting trial. It can be extended by the court in certain circumstances.

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16/07/23	The FLO for the three surviving victims emailed the CPS and confirmed that at this stage they did not require a meeting with the CPS. The completed form BFS1 was attached.
25/07/23	The FLOs for Barnaby and Grace's families prepared a letter with key information including court dates and the offer of meetings with the CPS and counsel and with the senior investigating officer (SIO). A copy was also provided to the FLO for Ian's partner and Ian's sons for their information.
26/07/23	The trial date was adjourned administratively from 12 January 2024 to 16 January 2024 due to a change to the designated High Court Judge's sitting dates.
18/08/23	The CPS served the prosecution case, complying with the Stage 1 service date set at the PTPH.
22/08/23	The reviewing lawyer completed a file review after the prosecution case had been served. The full code test ⁵ was not applied as a significant amount of evidence was still awaited. The reviewing lawyer set further actions for the police to complete.
22/08/23	Grace's parents met with the SIO. They were not yet ready to hear the details of the offences. The police told them that there was a possibility of a mental health defence. Grace's parents stated that they wanted to meet with the CPS and counsel in the future.
12/09/23	The FLOs and the SIO conducted a home visit with Barnaby's parents. They were provided with some limited information about the offences and the offender. They were told it was not known what pleas would be entered by the offender at the PTPH on 31 October or what his defence would be, but there was a strong possibility that the defence would be asking for psychiatric reports. The police were guided by the family as to the amount of information they could cope with at this stage.

⁵ The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage. The Full Code Test should be applied: a) when all outstanding reasonable lines of inquiry have been pursued; or b) prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.

The Code for Crown Prosecutors; CPS; October 2018.

www.cps.gov.uk/publication/code-crown-prosecutors

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14/09/23	Ian's son was offered a home visit from the SIO. This was declined.
19/09/23	The CPS chased the defence for their first psychiatric expert report on the 18 and 19 September 2023. The reviewing lawyer told the defence that they would need to request, in writing, an extension from the court for service of their report.
20/09/23	The defence emailed Nottingham Crown Court to request an extension of the deadline for service of their first psychiatric expert report. They confirmed that they had the report but had not been able to see the offender to discuss its contents and obtain his permission to serve it. They confirmed that the report could be served by 4pm on 29 September 2023.
28/09/23	The defence emailed Nottingham Crown Court and the CPS to confirm that their first psychiatric expert report would now be served by 4pm on 2 October 2023 as the defence solicitor had been unable to visit the offender as intended.
02/10/23	The defence served their first psychiatric expert's report. The report was dated 25 August 2023. It concluded that the partial defence of diminished responsibility was available to the offender for the three murder charges. The CPS sent a copy of the report to prosecution counsel and to the prosecution psychiatric expert they had retained to prepare a report. They emailed it to the police and advised them to liaise with the FLOs as the bereaved families would need to be informed of the psychiatric opinion.
02/10/23	The FLO for Grace's family advised the CPS that both Barnaby and Grace's families did not intend to be at the PTPH. Both families remained unable to hear details of the offences. It was the FLO's view that a family meeting with the CPS and counsel would be best held after the PTPH, by which time more should be known regarding pleas and possible defences. They could then re-visit the families to provide more information about the case.
02/10/23	The reviewing lawyer responded to the FLO and confirmed that the first defence psychiatric expert's report had been received and it raised the partial defence of diminished responsibility. The reviewing lawyer suggested that the FLOs speak with their police colleagues regarding a strategy for communicating the contents of the report to the families. The families' proposed non-attendance at the PTPH was noted but the reviewing lawyer confirmed that if they changed their mind, the CPS would meet with them.

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02/10/23	The reviewing lawyer emailed Nottingham Crown Court to request that the PTPH be moved to the week commencing 27 November 2023 to allow time for the prosecution psychiatric expert to prepare his report and for the CPS to consider it and liaise with the bereaved families. The CPS expected to receive their expert's report on 20 November 2023. (See entry on 9 October where the court subsequently agreed to move the PTPH to 28 November 2023).
02/10/23	The reviewing lawyer completed a file review. The full code test was applied following receipt of the additional material that had been requested from the police on 22 August 2023. The review noted the contents of the first defence psychiatric expert's report and that the issue would be the availability of the partial defence of diminished responsibility to the three murder charges. It was confirmed that the CPS would review the position once their psychiatric report was received in November.
03/10/23	The FLO for Grace's parents told them that the first defence psychiatric report had raised the partial defence of diminished responsibility. The FLO revisited whether they were ready to hear more details of the incident, but they confirmed they were not. They were informed that the prosecution would now obtain a report and, once received, the family would need to hear more details of the offences.
04/10/23	The CPS sent a formal letter of instruction to the first prosecution psychiatric expert.
04/10/23	The FLO for Barnaby's family told them that the first defence psychiatric report had raised the partial defence of diminished responsibility. The FLO explained that the CPS would now instruct an expert to prepare a report. They were told that the CPS had asked the court to move the PTPH date from 31 October 2023 to the week commencing 27 November 2023.
09/10/23	Barnaby's father asked the FLO what a partial defence of diminished responsibility meant. The FLO told him that she would get a point of reference from the CPS and revert to him.
09/10/23	The FLOs for Ian's partner and Ian's sons told them that the first defence psychiatric expert's report had identified the partial defence of diminished responsibility. They were told that the prosecution would now instruct a psychiatric expert to prepare a report. Ian's son was asked again if he would like a home visit from the SIO, which he declined, but was

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	happy to meet and get an update from him at the PTPH. Ian's partner also declined the offer of a visit from the SIO.
09/10/23	The PTPH date was adjourned administratively from 31 October 2023 to 28 November 2023 at the CPS behest, to accommodate receipt and consideration of the first prosecution psychiatric expert's report. The FLOs notified the bereaved families, over the next few days, of the date change.
07/11/23	Barnaby's mother asked the FLO about the partial defence of diminished responsibility and the possible outcomes at the PTPH. She wanted to speak to the CPS for them to explain it to her. The FLO confirmed that they would contact the CPS.
13/11/23	The FLO for Barnaby's family informed the CPS that the family needed to fully understand the partial defence of diminished responsibility and the possible outcomes at the PTPH. Barnaby's parents requested a virtual meeting with the CPS prior to the PTPH.
13/11/23 to 14/11/23	The CPS and FLO for Barnaby's family agreed a mutually convenient date of 24 November 2023 for a virtual meeting.
14/11/23 to 15/11/23	Email communications between the CPS and the FLO for Grace's family about whether they also wanted a meeting with the CPS and counsel. The FLO confirmed Grace's parents would, but after the CPS had received their first psychiatric report. Arrangements were made for a virtual meeting with Grace's parents on 27 November 2023. This was then re-arranged to a joint virtual meeting with Barnaby's parents on 24 November 2023 after both families confirmed that they would like the meeting with the CPS and counsel together.
21/11/23	The CPS received their first psychiatric expert's report. He agreed with the defence psychiatric expert's conclusion that the partial defence of diminished responsibility was available to the offender.
22/11/23	The FLO for Grace's parents emailed the reviewing lawyer and SIO with details of their expectations for the meeting on 24 November which included an understanding of the offender's mental health and what that meant for the prosecution.
22/11/23	The CPS received information from the FLO for Barnaby's parents that their main concern was to understand diminished responsibility.

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22/11/23	The SIO confirmed to the CPS that Ian's sons and partner did not want to meet with the CPS, but they would be attending court on 28 November 2023 for the PTPH and suggested that the CPS could speak to them then.
23/11/23	The CPS, leading and junior counsel, and the police, had a case conference. The first defence psychiatric expert's report and the first prosecution psychiatric expert's report were discussed. The conclusion was that, in the absence of a differing opinion from the second defence psychiatric expert, (who had been instructed by the defence and his report was awaited), the CPS would accept guilty pleas to manslaughter by reason of diminished responsibility for the killings of Barnaby, Grace and Ian.
23/11/23	The CPS sent a proposed agenda to the FLOs for Barnaby and Grace's families to be provided to them ahead of the meeting on 24 November 2023.
24/11/23	At 09:30am, the CPS received the second defence psychiatric expert's report. That expert concluded that the defence of insanity was available, (which was at odds with the two psychiatric experts' reports already obtained). He also concluded that the partial defence of diminished responsibility was available as the offender's ability to form a rational judgment and exercise self-control were substantially impaired at the time of the offences.
24/11/23	A meeting was held virtually with Barnaby and Grace's parents, the CPS, leading and junior counsel, and the police. The meeting lasted for two hours. The families were advised of the conclusions of all three psychiatric experts' reports. It was explained that the CPS intended to accept pleas to manslaughter by reason of diminished responsibility for the killings of Barnaby, Grace and Ian. Sentencing options were discussed.
24/11/23	Whilst the meeting was taking place with Barnaby and Grace's parents, the FLO for Ian's partner and Ian's sons contacted them and relayed the same information.
24/11/23	The FLO for the three surviving victims contacted them and relayed the same information.
24/11/23	The reviewing lawyer completed a file review following receipt and consideration of the three psychiatric experts' reports. The reviewing lawyer concluded that there was no evidence capable of rebutting the partial defence of diminished responsibility and the CPS and counsel agreed that guilty pleas to manslaughter by reason of diminished responsibility should be accepted.

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24/11/23	The FLO for Grace's family contacted the CPS to advise them that they wanted another virtual meeting with counsel on 27 November 2023 as they had further questions prior to the PTPH. The reviewing lawyer emailed counsel and asked if they were available for a further meeting.
24/11/23	The SIO sent an email to the SDCP outlining Grace's parents' concerns with the psychiatric experts' reports and that they would like a further psychiatric report to be considered.
25/11/23 to 26/11/23	Email communications over the weekend between the CPS and counsel as to the proposed next steps given Grace's parents' concerns, particularly the commissioning of a fourth expert's report.
26/11/23	The reviewing lawyer completed a file review of the material considered by the psychiatrists after the concerns raised by the parents of Barnaby and Grace. He was satisfied that the experts had considered relevant material and had provided their expert opinions on the offender's mental state at the time of the offences.
27/11/23	Email communication between the CPS and the police in which it was confirmed that Ian's sons would be attending the PTPH.
27/11/23	A meeting of senior CPS lawyers took place where it was agreed that the offender could enter guilty pleas to manslaughter at the PTPH, but the pleas would not be accepted by the prosecution at that stage. It was agreed that a second prosecution psychiatric expert's report would be commissioned, and a suitably qualified and experienced expert was identified.
27/11/23	<p>The SDCP advised the SIO of the CPS's decision not to accept pleas to manslaughter at this stage but to commission a second prosecution psychiatric expert's report. She requested that the SIO inform the bereaved families of this decision, and that the CPS would like to discuss with them the first prosecution expert's report. (The FLOs for all the bereaved families subsequently relayed this message to them).</p> <p>The SDCP confirmed that she was available to meet with Grace's parents that day, as per their request, but that counsel was unavailable. The offer was made to meet the family at a later date if that was their preference.</p>
27/11/23	The SDCP decided to delay drafting and sending letters to the bereaved families regarding changes to the charges

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	until the CPS had received and considered the second prosecution psychiatric expert's report.
27/11/23	The CPS formally instructed a second psychiatric expert to prepare a report. The CPS letter of instruction referred to the concerns raised by Grace's parents. The letter of instruction contained the line: <i>'it is not intended at this stage that you yourself interview the defendant.'</i>
27/11/23	The FLO for Grace's parents confirmed that they did not require a meeting with the CPS that day. If they attended the PTPH the next day, then they would like to speak with leading counsel after the hearing. The FLO attached an email received from Grace's parents that outlined their concerns with the first prosecution psychiatric expert's report. The FLO subsequently emailed the CPS to confirm that Grace's parents would be attending the PTPH.
28/11/23	PTPH at Nottingham Crown Court. Grace's parents, Ian's partner and Ian's sons were present at the hearing. Barnaby's father attended via video-link. The offender pleaded not guilty to the three charges of murder but pleaded guilty to manslaughter by reason of diminished responsibility. He pleaded guilty to the three attempted murders. Leading prosecution counsel confirmed that the guilty pleas to manslaughter were not accepted by the CPS at that stage and confirmed that the CPS had instructed a second psychiatric expert. The CPS were ordered to serve their second report by 15 December 2023 and inform the defence and court by 22 December 2023 whether the pleas to manslaughter were accepted or not.
28/11/23	The CPS and leading counsel had a meeting at court with Grace's parents, Ian's partner and Ian's sons both before and after the hearing. The purpose of the hearing and the purpose of obtaining the second prosecution psychiatric report was explained to the families.
28/11/23	Barnaby's parents told their FLO that they would benefit from some further disclosure about the offences and contents of the psychiatric reports. The FLO confirmed that she would relay this to the SIO and the CPS.
28/11/23	The SDCP sent the SIO a copy of the CPS letter of instruction to the second prosecution psychiatric expert to assist him in his conversations with the bereaved families later that week and that he may decide to use parts of the letter to explain to them what had been provided to the expert. (see entry below of 30 November 2023).
28/11/23	The SIO advised the CPS that Barnaby and Grace's parents had cancelled the meetings with him later that week as they

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	needed time to process what had happened at court that day.
28/11/23	The SDCP confirmed to the SIO that there was an open offer for the CPS to explain the psychiatric reports to Barnaby, Grace and Ian's families. She said that the CPS would be guided by the police and families about how much they wanted to know and when. The SDCP suggested that they could discuss how best to do this once the families had had time to process what had happened over the last few days.
28/11/23	The CPS sent the list of Grace's parents' concerns about the psychiatric evidence obtained so far to their second psychiatric expert and asked him to address the concerns in his own report if he felt able to.
30/11/23	The CPS and the SIO agreed a form of words to be provided to the bereaved families in relation to the instruction of the second prosecution psychiatric expert. The CPS's offer to meet with the families was repeated.
01/12/23	The FLOs for Barnaby and Grace's families emailed them the agreed form of words in relation to the CPS's instruction of the second prosecution psychiatric expert.
01/12/23	Arrangements were made for Barnaby's parents to meet with the SIO in Bristol on 7 December 2023. They were also told that the CPS could meet with them to go through the psychiatric reports.
01/12/23	Grace's parents were invited to attend a meeting with the SIO as the police needed to provide them with more information about the offences. It was agreed that they would join the meeting in Bristol on 7 December 2023. They were told that the CPS could discuss the first prosecution psychiatric expert's report but that the CPS would not have the second prosecution psychiatric expert's report by the time of the meeting.
04/12/23	Arrangements were made for the SIO to conduct a home visit with Ian's sons on 17 December 2023 to go through the evidence.
04/12/23	The FLO for Barnaby's family emailed the CPS a request from Barnaby and Grace's parents for a meeting in person in Bristol.
05/12/23	The SDCP arranged to travel to Bristol on 7 December 2023 to meet with Barnaby and Grace's parents to take them through the psychiatric reports and explain the legal process to them. At the same meeting the police would provide more details of the events of 13 June 2023.

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07/12/23	The meeting took place at police headquarters in Bristol, with Barnaby and Grace's parents, and lasted several hours. The police provided the families with further details of the offences. The psychiatric reports were explained, and the families raised their concerns about the psychiatric evidence that had been obtained to date. The SDCP explained the purpose of obtaining a second prosecution psychiatric expert's report and that the CPS expected that it would come to the same conclusion as the other three experts regarding the partial defence of diminished responsibility being available to the offender.
08/12/23	The CPS emailed both prosecution psychiatric experts about Barnaby and Grace's parents' concern around the need for the experts to interview certain prosecution witnesses. Both prosecution experts later confirmed why they would not, in the circumstances of this case, (and generally), interview such witnesses.
10/12/23	Grace's father emailed the SDCP and the SIO directly to thank them for travelling to meet with them. He repeated his concerns with the psychiatric reports obtained to date and attached a copy of those concerns. Barnaby's parents emailed to confirm that they shared those concerns.
11/12/23	Email communications between the FLOs and the SDCP regarding the need for communication with the bereaved families to be re-established through the FLOs and these lines of communication to remain in place.
11/12/23	The CPS received a draft of the second prosecution psychiatric expert's report.
13/12/23	The CPS received the final report of the second prosecution psychiatric expert. The CPS sent it to the SIO with confirmation that the FLOs could disclose the main parts to the bereaved families.
13/12/23	Meeting held virtually with Barnaby and Grace's parents and their FLOs. The FLOs provided a precis of both prosecution psychiatric experts' reports to Grace's parents. Barnaby's parents had to leave the meeting before the second prosecution psychiatric expert's report was discussed. The FLO told Barnaby's parents that they could arrange another date to take them through the second report, but they stated that they would get an update from Grace's parents instead. Both families were told that although the CPS had not yet accepted the pleas to manslaughter by reason of diminished responsibility, they expected they would. The decision would then be communicated by the FLOs and followed up by letter from the CPS.

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13/12/23	The SDCP offered, via the FLOs, to meet the families of Barnaby and Grace in London on 19 December 2023, as they were due to meet the SIO on this date.
14/12/23	The offer to meet with the CPS on 19 December 2023 was declined by Barnaby's family.
15/12/23	The FLO for Grace's family confirmed to the CPS that they were considering whether they wanted to meet on 19 December 2023. They had also asked if there would be an opportunity to speak to leading counsel in the new year.
16/12/23	The CPS received a written advice from prosecution counsel regarding the acceptability of pleas to manslaughter by reason of diminished responsibility.
17/12/23	The reviewing lawyer completed a file review as to the acceptability of pleas to manslaughter by reason of diminished responsibility.
17/12/23	The SIO and the FLO visited Ian's sons to discuss the evidence in more detail and the psychiatric experts' reports. They were told that the police had a meeting with the CPS on 18 December 2023 when they expected that the CPS would tell them that they had made the decision to accept the pleas to manslaughter. Ian's sons were informed that they could have a meeting with the CPS. They indicated they may want a meeting in the new year.
18/12/23	Meeting held virtually between the CPS, SIO and FLOs for Barnaby and Grace's families. The CPS updated the FLOs that they had decided to accept the guilty pleas to manslaughter by reason of diminished responsibility. It was agreed that the FLOs would personally deliver letters from the CPS to the bereaved families the next day. However, if Grace's parents attended the meeting that had been offered with the CPS on 19 December 2023, they would be handed the letter in that meeting. The FLOs agreed that the CPS would be notified once the letters had been delivered and the CPS would then notify the court and defence that the pleas would be formally accepted. The SIO confirmed that he would contact the FLO for Ian's sons that day.
18/12/23	The CPS prepared letters to be sent to the families explaining their decision to accept guilty pleas to manslaughter by reason of diminished responsibility. The letters included that the offer of a meeting with the CPS remained open. The letters were handed to the police for personal delivery to the families.
18/12/23	The offer of a meeting in London with the SDCP and the SIO on 19 December 2023 was declined by Grace's parents on the basis that the CPS decision would not be changed,

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	but they appreciated the arrangements that had been made to meet.
19/12/23	Grace's father emailed the CPS and the SIO again outlining his concerns with the psychiatric reports. Barnaby's family endorsed those concerns.
19/12/23	The CPS letter to the bereaved families explaining the decision they had made to accept the guilty pleas to manslaughter was hand-delivered by the FLOs to Barnaby's parents, Grace's parents, Ian's partner, and Ian's sons.
19/12/23	The surviving victims were also notified by their FLO of the CPS's decision.
19/12/23	The CPS notified the court and defence that the guilty pleas to manslaughter were accepted.
20/12/23	The FLO for Grace's parents told the CPS that they wanted a meeting in person with leading counsel in the new year, prior to any hearing, to understand how the case would be presented and to discuss the sentence.
20/12/23 to 21/12/23	Email communications between the CPS and counsel's chambers to arrange a meeting in the new year with Grace's parents. 12 January 2024 was identified as a potential date, but the CPS were awaiting confirmation of when the case would next be listed in court.
20/12/23	Barnaby's mother emailed the CPS on behalf of Barnaby and Grace's families. She raised their concerns about the decision to accept the guilty pleas to manslaughter and concerns about the second prosecution psychiatric expert's report. She said they felt "rushed, hastened, and railroaded" given their first contact with the CPS was 24 November.
20/12/23	The SDCP sent a response to Barnaby and Grace's parents via the FLOs. It included an offer to meet again in the new year to discuss the next stage of proceedings.
04/01/24	The FLO for Barnaby's family told the CPS that Barnaby's parents would like a virtual meeting with counsel the following week if possible. The reviewing lawyer responded that he was awaiting confirmation of the hearing date so would revert to the FLO.
08/01/24	After some chasing by the reviewing lawyer, the court confirmed that the sentencing hearing date would be 23 and 24 January 2024. The reviewing lawyer emailed the SIO and FLOs and asked them to notify the families. An offer of a virtual meeting on 15 January 2024 with the CPS and counsel was also made to Barnaby and Grace's parents. Both families accepted this meeting date.

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15/01/24	A meeting was held virtually with the parents of Barnaby and Grace. The reviewing lawyer and the SDCP, junior and leading counsel, the SIO and FLOs for Barnaby and Grace's families were present. The meeting focused on the sentencing regimes. Barnaby and Grace's parents wanted the CPS to press for a hybrid order. Leading counsel confirmed that this was the sentence the CPS would request.
15/01/24	The prosecution sentencing note was uploaded to the Crown Court Digital Case System (CCDCS). It confirmed that the prosecution would seek a hybrid order at the sentencing hearing.
15/01/24	The reviewing lawyer emailed a copy of counsel's sentencing note to the SIO and the FLOs so that they could take the bereaved families through it.
17/01/24	An addendum report from the first defence psychiatric expert was received which covered sentencing options. A report was also prepared by the offender's treating clinician at the secure hospital at which he was detained. Both reports were uploaded to CCDCS.
17/01/24	The reviewing lawyer emailed the two additional psychiatric reports to the SIO and the FLOs with guidance on the points to cover with the families.
17/01/24	The reviewing lawyer contacted the Crown Court to try to get the sentencing hearing moved to a larger courtroom after concerns were raised by Barnaby's parents that the courtroom in which it was currently listed was too small. Confirmation was received from the Crown Court that the hearing would be moved to a larger courtroom.
18/01/24	The defence sentencing note was uploaded to the CCDCS. The defence sought a hospital order under S.37 of the Mental Health Act 1983 (the MHA) with restrictions under S.41 of the MHA.
22/01/24	An addendum report from the first prosecution psychiatric expert was uploaded to CCDCS. This report was prepared to assist the judge at the sentencing hearing.
23/01/24	The case was listed for the first day of the sentencing hearing at Nottingham Crown Court.
23/01/24	At court, prior to the hearing, the reviewing lawyer and DCP met with Ian's partner, Ian's sons and one of the surviving victims. They explained how the hearing would proceed.
24/01/24	The case was listed for the second day of the sentencing hearing at Nottingham Crown Court.

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24/01/24	The SDCP emailed the reviewing lawyer, DCP and counsel and advised them that the families had left court and had said that they did not want to meet before the sentence was passed the following day. The FLOs had been asked to update the SDCP if that changed.
25/01/24	The final day of the sentencing hearing at Nottingham Crown Court. The offender was sentenced to a hospital order under S.37 of the MHA with restrictions pursuant to S.41 of the MHA.
25/01/24	The CPS met with one of the surviving victims immediately after the sentencing hearing.
25/01/24	Ian's partner declined a meeting with the CPS immediately after sentencing. Barnaby and Grace's families and Ian's sons left court after the sentencing hearing without meeting the CPS.
29/01/24	The CCP of East Midlands CPS sent a letter to Barnaby and Grace's parents, Ian's partner and Ian's sons inviting them to attend a meeting with the CPS on 7 February 2024. After initially accepting the offer of a meeting, Ian's partner then declined on the basis that she did not require clarification on any matter and thanked the CPS for their support and compassion. By 5 February 2024, the CPS had received no response from Barnaby or Grace's parents or Ian's sons.
05/02/24	The CCP of East Midlands CPS sent a further letter to Barnaby and Grace's parents and Ian's sons acknowledging that they had not responded to the offer of a meeting and that the CPS would suspend arrangements to meet on 7 February 2024 but remained open to meeting the families whenever they wanted.

FINDINGS

5. Legal outline

Introduction

5.1. It was always the prosecution case that the offender intended to kill Barnaby Webber, Grace O'Malley-Kumar and Ian Coates when he attacked them in horrific circumstances on 13 June 2023. The offender did not dispute that he had intended to kill those innocent victims, as well as the three surviving victims whom he attacked using the van he was driving as a weapon.

5.2. The families of Barnaby, Grace and Ian have expressed their concerns about the Crown Prosecution Service (CPS) decision to accept the offender's pleas to manslaughter by reason of diminished responsibility, and not to proceed to trial on the three murder counts.

5.3. Before we consider the correctness or otherwise of the decision, it is important to set out the legal and professional parameters within which CPS prosecutors must operate when making decisions in murder cases, as well as the duties of prosecution counsel and expert witnesses.

Legal context

5.4. To understand the CPS decision on charge and whether it was appropriate to accept a plea of not guilty to murder but guilty to manslaughter, it is important to consider the development of the offence of murder and the statutory partial defence to murder of diminished responsibility.

5.5. Murder is the unlawful killing of another with the intention to kill or to cause grievous bodily harm. For the offence of attempted murder, the prosecution must prove that the accused had an intention to kill.

5.6. The Homicide Act 1957 made amendments to the law relating to homicide and the trial and punishment of murder in England and Wales. It introduced the partial defence to murder of diminished responsibility, which was and is for the accused to prove, on the balance of probability. Section 2 of that Act stated: "An offender shall not be convicted of murder if the offender was suffering such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing."

5.7. Section 52 of the Coroners and Justice Act 2009 amended the definition of diminished responsibility in the Homicide Act 1957 s2 and replaced it with a modernised definition based on the concept of "an abnormality of mental functioning" arising from a "recognised medical condition".

5.8. The new definition requires that the abnormality substantially impaired an offender's ability to do one (or more) of three things, namely understand the nature of his conduct, form a rational judgment or exercise self-control.

5.9. The definition also provides that the offender's abnormality of mental functioning should be at least a significant contributory factor in causing the defendant's acts or omissions.

5.10. A person who, but for this section, would be liable to be convicted of murder shall be liable instead to be convicted of manslaughter.

5.11. An accused cannot be charged with manslaughter by reason of diminished responsibility. An accused must face a murder charge and be guilty of the legal elements of murder, including an intention to kill (as in this case) or to cause really serious harm, for the partial defence of diminished responsibility to be operative.

5.12. The CPS has issued legal guidance on the approach that prosecutors should take when diminished responsibility is raised by a defendant as a partial defence to murder.

CPS legal guidance

As the onus is on the defendant to establish diminished responsibility on the balance of probabilities, they are likely to need to obtain expert evidence in support. The prosecution will then review the case. In some cases, it may not be necessary to obtain evidence from a further expert, because the defence expert evidence (on paper, or when challenged in cross-examination) is unlikely to substantiate the defence. More usually, the prosecution will need to obtain evidence from a further expert. As part of the ongoing duty of review, the prosecution will further review the case. In doing so, it should be borne in mind that the jury is not bound to accept medical evidence and that the evidence, especially when tested through cross-examination, may not meet the elements of diminished responsibility. (See the prosecution guidance on experts).

The judge must consider whether the defence of diminished responsibility should go to the jury. First, however, a prosecutor will review the case and make clear to the court and the defence whether it is the prosecution view that there is a realistic prospect of conviction for murder or not. If there is no realistic prospect of conviction, especially if the evidence is unequivocal and uncontradicted and has plainly met each element for diminished responsibility, then a plea of manslaughter should be accepted. If there remains a realistic prospect of conviction, in the course of that review the prosecution should establish whether in its view there is or is not sufficient evidence to go to the

jury for the partial defence, and make submissions accordingly, inviting the judge to withdraw the defence in appropriate cases.

5.13. It is not unusual for the prosecution to accept a plea of manslaughter by reason of diminished responsibility from an offender originally charged with murder. It will do so where it considers the psychiatric evidence that the partial defence is available, taken as a whole, to be compelling and it concludes that there is insufficient other evidence capable of persuading a reasonable jury properly directed to reject the opinion of the psychiatric experts.

5.14. The Supreme Court of the United Kingdom has acknowledged the frequency and propriety of accepting a plea to manslaughter by reason of diminished responsibility. As per Lord Hughes⁶ “It is an important part of the Crown’s function, where the charge is murder and a case of diminished responsibility is advanced, to assess the expert evidence – almost invariably obtained on both sides – and its relationship to any dispute of fact. If it is clear that the defendant was indeed suffering from a recognised medical condition which substantially impaired him in one of the material respects, and that this condition was a significant cause of the killing, the Crown is entitled to, and conventionally frequently does, accept that the correct verdict is guilty of manslaughter on the grounds of diminished responsibility and no trial need ensue. In practice quite a large proportion of verdicts of manslaughter on this ground arise from the Crown taking this responsible course: see the research undertaken for the Law Commission by Professor Mackay cited in *Partial Defences to Murder Law Com 290 (2004)* at Appendix B, especially paras 6, 20 and 21. Acceptance of a plea to manslaughter may properly be given either before trial, thus making it unnecessary, or after testing the evidence if that is required.”

5.15. The main psychiatric evidence in this case did not suggest, and the defence did not argue, that the offender did not know the nature of his offending, that he did not know that what he was doing was wrong, and that he had not intended to kill the six people he attacked. What it did suggest was that the offender was suffering from an abnormality of mental functioning which arose from a recognised medical condition, and which substantially impaired his ability to form a rational judgment and to exercise self-control, such as to provide an explanation for the killings.

5.16. As diminished responsibility is not a defence to attempted murder, the offender pleaded guilty to the attempted murder of three victims, Wayne Birkett, Marcin Grabonski and Sharon Miller, whom he tried to kill using the van he had stolen from Ian as a weapon.

⁶ *R-v-Golds*, [2016] UKSC 61 (10), paragraph 48

5.17. We recognise that it can be bewildering to many that an offender can be convicted of the attempted murder of three people he tried unsuccessfully to kill but be not guilty of murder (but guilty of manslaughter) in respect of the three victims he tried to and did kill. It may be easier understood when considering sentence as the sentence for murder is a mandatory life sentence, whereas the sentence for both manslaughter by reason of diminished responsibility and attempted murder is a discretionary life sentence.

5.18. We also think it important to mention, in passing, that, on the recommendation of the Law Commission, the Home Office announced in October 2004 a review of the law relating to murder, which the Commission had described as “a mess.”

5.19. In November 2006, the Law Commission published its report, “Murder, Manslaughter and Infanticide”. It recommended, amongst other things, that instead of the current two-tier structure of general homicide offences, namely murder and manslaughter, there should be a three-tier structure:

- First degree murder (attracting a mandatory life sentence)
- Second degree murder (attracting a discretionary life sentence) and,
- Manslaughter (discretionary life sentence).

5.20. The Law Commission found that the potential use of the term second degree murder to describe the verdict a jury must reach when a plea of diminished responsibility is successful as a defence to first degree murder was strongly supported by groups representing victims’ families.

5.21. The Law Commission’s recommendations on updating the law on the partial defences to murder of diminished responsibility and provocation were implemented by the Coroners and Justice Act 2009. Diminished responsibility was redefined, and provocation was abolished and replaced by the new partial defence of loss of self-control.

5.22. The remainder of the Commission’s recommendations, including that an offender be convicted of murder, albeit second-degree, rather than manslaughter when, for example, successfully arguing diminished responsibility, were rejected by Parliament.

5.23. A more detailed overview of the development of the offence of murder and the statutory partial defence of diminished responsibility, and the Law Commission’s 2004 and 2006 reports on the law of murder, can be found at Annex C.

Duties of the prosecutor

5.24. The Crown Prosecution Service was established by the Prosecution of Offences Act 1985. It is independent of the police and government and CPS prosecutors must be fair, objective, and independent. The Director of Public Prosecutions (DPP) is the head of the CPS and answerable to the Attorney General.

5.25. The Code for Crown Prosecutors (the Code)⁷ is a public document that sets out the general principles that prosecutors should follow when they make decisions on a case.

5.26. Prosecutors must only start or continue a prosecution where the case has passed both stages of the Full Code Test: (i) the evidential stage; followed by (ii) the public interest stage.

5.27. The prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against a suspect on each charge. That decision is based on their objective assessment of the evidence, including the impact of any defence and any information the suspect has put forward or on which they may rely. It means that an objective, impartial and reasonable jury, properly directed and acting in accordance with the law, is more likely than not to convict the accused on each charge alleged. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

5.28. Although criminal cases in England and Wales are adversarial, pitching the prosecution against the defence, the CPS does not act for a victim, or the relatives and friends of a victim. The independence of the prosecutor is central to the criminal justice system in a democratic society.

5.29. Nevertheless, prosecutors have an important role in protecting the victim's interests in the criminal justice process, not least in the acceptance of pleas and during the sentencing exercise. Prosecutors are also obliged to adhere to the principles set out in the Code of Practice for Victims of Crime.

5.30. It is a well-established common law principle that prosecutors are to regard themselves as ministers of justice and not struggle for a conviction. The decision to accept the pleas to manslaughter was made on evidential grounds, as the reviewing lawyer concluded that there was no longer a realistic prospect of conviction for the three counts of murder. Having come to that conclusion the reviewing lawyer was bound by the Code, which stipulates that a case (or individual charges within that case) that does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. We discuss later in

⁷ *The Code for Crown Prosecutors*; CPS; October 2018.
www.cps.gov.uk/publication/code-crown-prosecutors

Chapter 6 whether we find the reviewing lawyer's conclusion that there was no longer a realistic prospect of conviction for murder to have been correct.

Duties of the prosecution advocate

5.31. Where the CPS instructs counsel from the independent Bar to prosecute a case in court on its behalf, that advocate also is independent. They play an important public role, conducting the case in court on behalf of the CPS. They too must act as a minister of justice and not struggle for a conviction. The prosecution advocate also does not act for a victim, or the relatives and friends of a victim.

5.32. Whilst the advocate remains instructed by the CPS to prosecute a case, it is for the advocate to take all necessary decisions in the presentation and general conduct of the prosecution. Where matters of policy arise, including the acceptance of pleas, it is the duty of the advocate to consult with the CPS, where the ultimate responsibility for ending a case or accepting pleas lies.

5.33. Like CPS prosecutors, prosecution advocates have an important role in protecting the victim's interests in the criminal justice process. They too are obliged to adhere to the principles set out in the Code of Practice for Victims of Crime.

5.34. The appropriate disposal of a criminal case after conviction is as much a part of the criminal justice process as to the trial of guilt or innocence. The prosecution advocate represents the public interest and should be ready to assist the court to reach its decision as to the appropriate sentence. This will include drawing the court's attention to:

- any victim personal statement or other information available to the prosecution advocate as to the impact of the offence on the victim
- any statutory provisions relevant to the offender and the offences under consideration
- any relevant sentencing guidelines and guideline cases
- the aggravating and mitigating factors of the offence under consideration.

5.35. The prosecution advocate may also offer assistance to the court by making submissions, in light of all these factors, as to the appropriate sentencing range.

Duties of an expert witness

5.36. The duties of an expert witness and how expert evidence is dealt with in criminal cases is set out in the Criminal Procedure Rules, Part 19. An expert

witness is a person who is required to give or prepare expert evidence for the purpose of criminal proceedings, including evidence required to determine fitness to plead or for the purpose of sentencing.

5.37. The overriding objective of the criminal procedural code is that criminal cases are dealt with justly. Dealing with a criminal case justly includes; acquitting the innocent and convicting the guilty; dealing with the prosecution and the defence fairly; and ensuring that appropriate information is available to the court when sentence is considered. It is important that the case is dealt with in ways that take into account the gravity of the offence(s) alleged, the complexity of what is in issue and the severity of the consequences for the defendant and others affected.

5.38. The expert witness must help the court in achieving its overriding objective by giving an opinion that is objective and unbiased and within the expert's area(s) of expertise. This duty overrides any obligation to the person from whom the expert receives instructions or by whom the expert is paid.

5.39. This is the legal and professional context in which the CPS had to decide whether there remained a realistic prospect of conviction for murder in the light of the reports from the psychiatric experts.

6. The decision to charge murder and accept pleas to manslaughter

Did the Crown Prosecution Service reach the correct decision under the Code?

The decisions to charge murder and attempted murder and to accept pleas to manslaughter by reason of diminished responsibility

6.1. Having been made aware by the police of the general circumstances of the appalling events that had unfolded in the early hours of 13 June 2023, the reviewing lawyer contacted the first prosecution psychiatric expert, an eminent forensic psychiatrist, and retained his services should a mental health issue be raised by the offender in due course.

6.2. On 16 June, in a detailed and reasoned document, the reviewing lawyer made the decision to charge the offender with three offences of murder and three offences of attempted murder. The reviewing lawyer concluded that those offences met the CPS threshold test⁸ and merited charge for the reasons they had set out. The reason the threshold test was applied was that relevant evidence was outstanding. The reviewing lawyer anticipated that, on the facts then available, an issue as to the mental state of the offender might be raised by the defence in due course.

6.3. On 22 August the reviewing lawyer again applied the threshold test when carrying out a further review of his decision as there was still outstanding material awaited from the police. On 2 October, in a further detailed written review, the reviewing lawyer applied the Full Code Test and confirmed his charging decision to prosecute the offender for three offences of murder and three offences of attempted murder.

6.4. On 2 October the defence served the first defence psychiatric expert's report, which was dated 25 August. This expert concluded that the offender's ability to form a rational judgment and to exercise self-control was substantially impaired, and the killings would not have occurred but for his psychotic symptoms. He therefore concluded that the partial defence of diminished responsibility was available to the offender for the three murder counts. On the same day, the CPS sent a copy of the report to prosecution counsel and to the first prosecution psychiatric expert. That was followed up on 4 October, when the reviewing lawyer sent a formal letter of instruction to the first prosecution psychiatric expert. In addition to the first defence psychiatric expert report, the first prosecution psychiatric expert was provided with the police case summary, junior prosecution counsel's short case summary, prepared for the first Crown Court hearing on 20 June, all the prosecution evidence that had been served,

⁸ The Threshold Test is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge.

The Code for Crown Prosecutors; CPS; October 2018.

www.cps.gov.uk/publication/code-crown-prosecutors

and all disclosed unused material. The evidence provided to the expert included the CCTV compilation, which showed much of the offending, and a sequence of events chart containing a timeline of the offender's movements and activity before, during and after the attacks. The unused material provided to the expert included: police reports relating to material obtained from a download of his mobile phone which was indicative of previous mental health issues (most notably fixations on mind control); a significant amount of medical information obtained from the Local Authority which referenced the offender's previous involvement with the mental health services; the content of the messages the defendant sent to his brother the day before the attacks and material provided by his family to doctors in 2020.

6.5. On 21 November, the CPS received the first prosecution psychiatric expert's report. It was a detailed document, 26 pages long plus an appendix, and included reference to the expert interviewing the offender for five hours at the secure hospital. The psychiatrist agreed with the defence psychiatric expert's conclusion regarding the partial defence of diminished responsibility being available to the offender. He concluded that the offender was suffering from an abnormality of mental functioning at the time of the offences, namely a psychotic state characterised by reality distortion symptoms (auditory hallucinations, persecutory delusions, delusions of control) and disturbances of his affect, i.e., his mood and emotional expressions (hostility, aggressivity, fear), when psychotic. Despite that, the offender knew what he was doing was wrong at the time of his offending and was capable of forming the intent to significantly harm others whether with a knife or a vehicle. The expert concluded that the offender was not insane at the time. His psychotic state arose from a recognised medical condition, namely paranoid schizophrenia. His abnormality of mental functioning (characterised by reality distortion symptoms and disturbance of affect) substantially impaired his ability to form rational judgments and to exercise self-control and provided potential explanation for his conduct.

6.6. Significantly, the first prosecution psychiatric expert took into account findings that might have suggested some ability to form a rational judgment and exercise self-control on the day in question, including the offender slowing down his driving for speed humps and hiding from passing cars when trying to break into the residential home. The expert spoke to the offender about the commission of the fatal attacks and concluded that the offender was aware of the assaults which he carried out but was not considering their rationality at the time. In addition, the expert concluded that the offender felt compelled by command hallucinations and delusions of control by an outside force to conduct the fatal and non-fatal assaults, which significantly impacted his ability to form rational judgment and to exert self-control at the material time.

6.7. On 23 November, a case conference was held between the CPS, leading and junior counsel, and the police. The two expert psychiatric reports were discussed. The reviewing lawyer concluded that, in the absence of a differing

opinion from the third psychiatric expert, the second instructed by the defence (the report from whom was awaited), the CPS would accept guilty pleas to manslaughter by reason of diminished responsibility to the three counts of murder.

6.8. On the morning of 24 November, the CPS received the second defence psychiatric expert's report. That expert concluded that the defence of insanity was available, which was at odds with the two expert psychiatric reports already obtained. The second defence expert psychiatrist did however also conclude that the partial defence of diminished responsibility was available, on the basis that the offender's ability to form a rational judgement and exercise self-control was substantially impaired.

6.9. On 24 November, the reviewing lawyer completed a fresh written review of the evidence following receipt and consideration of the three psychiatric expert reports. He concluded that there was no evidence capable of rebutting the partial defence of diminished responsibility and that there was no longer a realistic prospect of conviction for murder. Leading and junior counsel agreed with the reviewing lawyer's conclusions, and it was agreed that guilty pleas to three counts of manslaughter by reason of diminished responsibility should be accepted.

6.10. On 27 November, because of concerns raised by the bereaved families after they were told of the decision, the reviewing lawyer and counsel agreed that if the offender entered guilty pleas to manslaughter by reason of diminished responsibility at the plea and trial preparation hearing (PTPH) on 28 November, these would not be accepted by the prosecution at that stage. Exceptionally, having heard the families' concerns, the CPS agreed to commission a report from a second prosecution psychiatric expert.

6.11. The CPS formally instructed its second psychiatric expert to review the three existing expert psychiatric reports and the evidence in the case, with particular regard to how the offender presented on 12 and 13 June. The expert was instructed to provide an opinion on whether the conclusions of the three other psychiatric experts on the issue of diminished responsibility had been properly reached. The reviewing lawyer specifically did not instruct the expert to conduct an interview with the offender. He did however ask whether, without doing so, the expert could provide an opinion on whether, at the time of the offences, the offender was suffering from diminished responsibility.

6.12. On 28 November, at Nottingham Crown Court the offender pleaded not guilty to the three counts of murder but pleaded guilty to manslaughter by reason of diminished responsibility. He pleaded guilty to the three attempted murders. Leading counsel for the prosecution confirmed the guilty pleas to manslaughter were not acceptable to the prosecution at that stage and that the CPS had instructed a second psychiatric expert. The CPS was ordered to serve their

second expert's report by 15 December 2023 and inform the defence and court by 22 December 2023 if the pleas were to be accepted or not.

6.13. On 28 November, the CPS sent a list of concerns about the psychiatric evidence, which had been raised by Grace's parents by that stage, to their second psychiatric expert and requested him to address these in his own report if he felt able to. Then on 8 December, the CPS emailed both their instructed expert psychiatrists regarding a concern that Barnaby and Grace's parents had raised around what they saw as the need for the experts to interview certain prosecution witnesses. Both prosecution experts later confirmed why they would not, in the circumstances of this case, interview such witnesses.

6.14. On 13 December, the CPS received the final report from the second prosecution psychiatric expert. It too was a detailed document, 30 pages long. It is noteworthy that the expert considered and commented on some aspects of the offender's behaviour and mental state that might appear to contradict the formulation link between his mental disorder and the offences, and which also were relevant to concerns raised by the families.

- In relation to interviewing the offender's brother and the security guard who spoke to the offender outside the residential home, the expert opined that there was little benefit from psychiatrists interviewing them personally as they had provided witness statements. Neither would be able to provide a medical opinion and both had given the detail of their interaction with the offender. Their evidence was relevant to building a picture of the offender's likely mental state but interviewing them further would not have provided anything more useful than had already been provided. The expert said that it was unusual for witnesses to be interviewed by a psychiatrist. The main purpose for a psychiatrist to interview people other than the offender is for corroborating historical aspects of an offender's mental health problems. In this offender's case however, there was a comprehensive history of his mental health problems.
- The offender apparently was calm when he was arrested. Calmness is not necessarily representative of a normal mental state in the circumstances. Mentally ill people do not necessarily look or behave in a way that allows determination of whether they are in fact ill. His lack of communication in custody did not mean he was mentally well and in fact probably reflected the opposite position.
- Due to the seriousness of the offences, a formal mental health assessment did not take place whilst he was in police custody. That was not unusual. Medical notes recorded that on 13 June health care professionals thought he was mentally unwell.

- The offender's apparent understanding of his actions did not undermine the partial defence of diminished responsibility. The evidence suggested he did know what he was doing. It was likely that those actions were driven by psychosis and it was the association between his psychosis and his actions that was important.
- The offender's refusal to provide samples and making no comment in interview did not contradict the notion that he was unwell. His psychosis was likely to have had a direct impact on the decisions he made that led to the offences even if he was able to make other decisions apparently rationally.
- Capacity was not a relevant issue in this case because assessing whether the elements of diminished responsibility are satisfied is not a capacity-based test.
- The clinical evidence suggested mental ill health from immediately after his remand, even if it took several months for his admission to hospital to happen.

6.15. The second prosecution psychiatric expert acknowledged that there was often a need to consider the relative contribution of other factors in cases of diminished responsibility, for example: a pre-existing relationship between the offender and victim, drug use, criminal behaviour predating any mental illness, and indicators of a personality disorder. The expert noted that none of these factors were relevant in this case.

6.16. The second prosecution psychiatric expert concluded that the offender was likely to have been in a directly abnormal state at the time of the offences and that this was supported by the evidence. Further, the expert concluded that the partial defence of diminished responsibility was the proper conclusion in each of the expert reports he had considered.

6.17. Significantly, the expert observed that the process of providing an opinion required engaging in a retrospective reconstruction of the likely mental state of the offender. That process means any opinion can never be accompanied by certainty and sometimes there can be a sense of different factors being finely balanced. In this case, there was no such fine balancing. Mental illness was a very compelling dominant explanation for these offences.

6.18. On 16 December, the CPS received written advice from leading and junior prosecution counsel regarding the prospects of conviction for murder and the acceptability of guilty pleas to manslaughter by reason of diminished responsibility. They reviewed the four expert psychiatric reports and the legal framework, including relevant case law. Counsel agreed with the detailed review note written by the reviewing lawyer on 24 November and were fortified by the report of the second prosecution psychiatric expert. Their conclusion was that

the evidence that established that the partial defence to murder was made out was compelling and that there was no proper basis upon which the prosecution could invite a jury to reach a different conclusion to the unanimous view of the experts.

6.19. On 17 December, the reviewing lawyer carried out a further review of the case in the light of the second prosecution psychiatric expert's report. He similarly concluded that there was no basis on which the prosecution could invite a jury to reject the psychiatric evidence and convict the offender of murder.

6.20. The court and the defence were informed in writing that the prosecution accepted the pleas of not guilty to murder but guilty to manslaughter by virtue of diminished responsibility. Prosecution counsel prepared a note for the sentencing hearing, which began on 23 January 2024. The prosecution submitted that the most appropriate sentence would be imprisonment, together with a hospital direction and a limitation direction under section 45A of the Mental Health Act 1983, which is often referred to as a hybrid order.

Sentence

6.21. The sentencing process took place over three days. The prosecution set out the seriousness of the case and repeated orally the submission that the appropriate sentence would be a hybrid order.

6.22. The defence argued that the judge should not impose a hybrid sentence but instead impose a hospital order under s37 of the Mental Health Act, with a restriction under section 41 of the same Act.

6.23. The High Court Judge agreed with the defence submission and made the offender subject to a section 37 hospital order without limit of time and a s41 restriction order.

6.24. Although we heard that the bereaved families have concerns about the sentence passed, judicial decisions are not susceptible to review or comment by His Majesty's Crown Prosecution Service Inspectorate (HMCPsi). The sentence currently is the subject of a Reference by the Attorney General to the Court of Appeal Criminal Division as a potentially unduly lenient sentence. That hearing will take place after the publication of this report.

Additional work carried out by HMCPsi

6.25. In addition to considering the case materials provided to us, we interviewed the reviewing lawyer, the district crown prosecutor for the CPS Area Complex Casework Unit (CCU), the head of the CCU, the Chief Crown Prosecutor, both prosecution counsel and the first prosecution psychiatric expert. It was clear from the review notes, conference notes, counsel's advice and email exchanges that we saw that the CPS and counsel had carefully

scrutinised whether it was appropriate to accept pleas to manslaughter by reason of diminished responsibility.

6.26. In relation to the first prosecution psychiatric expert's report and finding that the partial defence was available to the offender, the expert confirmed to us:

- He had been retained at an early stage of proceedings, although the first defence expert psychiatrist's report, despite being dated 25 August 2023, was not served on the prosecution until 2 October. There had then been some delay in the first prosecution expert psychiatrist seeing the offender as the latter was in the process of being transferred to a high security hospital, although he did complete his report and provide it to the CPS within seven weeks of the defence report being served.
- His approach was guided by the material that was made available to him. He had everything available about the incidents themselves and had read all the material provided. There were good psychiatric records, good records from the offender's family both in relation to his earlier psychosis and also more recent accounts. He had interviewed the offender for five hours. There was no rush in his assessment and he had all the time he needed with the offender. The expert received a full account from the offender and was able to challenge him where necessary from the material that he had.
- He had considered whether the offender had either fabricated his mental illness or that his illness had deteriorated whilst he had been in custody. Here the evidence triangulated with his interview with the offender and all the information provided to him and all the other experts. This was not a case where he judged that the offender was trying to dupe him. There was much more information here to rely on than just his clinical assessment.
- Even if the offender's condition had deteriorated later, his psychosis persisted at the time of the offences.
- There was no inconsistency with the offender being assessed as fit to be detained and the later diagnosis of diminished responsibility. The offender had psychotic symptoms (hallucinations and delusions) that he could conceal from others at times, and he did that whilst in police custody. That is not uncommon in individuals whose psychosis does not include a disorganised component. There was evidence of hallucinations and delusions very early on when in prison.
- Three of the expert psychiatrists, including himself, had concluded that the offender was not insane. He understood the nature and quality of his acts. He understood that he was using knives to attack and kill. It is incorrect to think that having been engaged in planning his attacks he was a cold, calculating murderer. He was not planning in the abstract rational sense. He

was under the influence of a profound psychosis that profoundly impaired his rational decision making. His actions were informed by delusions and hallucinations. His psychosis affected everything and critically affected his rational decision making and exertion of self-control.

- He had taken into account the evidence that suggested that the offender could exercise some self-control, such as being on a tram near young people and not attacking them or the security guard he later spoke to outside the residential home at a time when he was trying to break in to the premises. It was purely chance that he met the people he killed whilst under the influence of his psychosis. There were times when he was battling with an overwhelming psychosis that he kept under control when on the tram and when talking with the security guard but could not keep under control when he met those he unlawfully killed.
- Two limbs of diminished responsibility were met here, when only one limb is required for the partial defence to be available to an offender. Here the offender's ability to form a rational judgment and ability to exercise self-control were both substantially impaired. Both limbs were assessed separately.
- Misuse of drugs did not feature in this case. This was a clear case of pure psychosis.
- The first prosecution psychiatric expert had taken into account previous assaults including the assaults on co-workers, police and housemates. These all occurred when the offender was under the influence of untreated psychosis.

Issues raised

6.27. Repeatedly, the bereaved families have said that they have been let down by the legal system.

6.28. It is understandable that anyone who has had a child or father unlawfully killed in such shocking and appalling circumstances wants the offender to face justice.

6.29. The law recognises that someone who kills another or others when their mental responsibility is diminished at the time in accordance with recognised psychiatric parameters is less culpable than someone with a sound mind.

6.30. The reason for that is that criminal sentencing looks both at the seriousness of the offence, including assessing the harm caused, and the culpability of the offender. Here, the harm could not be greater. That was laid bare by prosecution counsel when the awful facts were set out at the sentencing

hearing. Having assessed the harm caused, the court had then to look at the culpability of the offender. Here all the expert evidence showed that his responsibility was diminished at the time of the unlawful killings.

6.31. The bereaved families raised issues that they thought were relevant for the psychiatric experts to consider. Those issues were raised with and considered by the two prosecution psychiatric experts. There was no evidence that the offender was intoxicated by drink or drugs at the time of the offending. No one who was engaged with him at the time, on his arrest or during his detention suggested that he was intoxicated in any way. The psychosis he was suffering from meant that two limbs of diminished responsibility were met, namely, his ability was substantially impaired to form a rational judgment and to exercise self-control, when only one limb was required.

Findings

6.32. The fact that the offender had previously committed other acts of violence, only one of which was referred by the police to the CPS, was not indicative of a violent man who was now faking his mental illness. Those reported earlier violent incidents were all when the offender was under the influence of untreated psychosis.

6.33. The decision to charge three offences of murder and three offences of attempted murder is beyond reproach. It was fully reasoned in a detailed charging decision by the reviewing lawyer. The decision by the CPS to retain a forensic psychiatric expert at a very early stage was not to pre-judge the situation - it was a sensible and professional precautionary measure in the circumstances of this case.

6.34. The law is clear that in the appropriate circumstances the prosecution can accept a plea of not guilty to murder but guilty to manslaughter by reason of diminished responsibility.

6.35. The first prosecution expert was an eminent forensic psychiatrist. His conclusion was clear and unambiguous. A plea of guilty to manslaughter by virtue of diminished responsibility was appropriate. That report considered countervailing arguments. It is clear to us, as a result of our meeting with this expert, that he had taken into account the concerns that have been raised by the bereaved families about the assessment of the offender's mental state on the day of the attacks.

6.36. The CPS was prevailed on by the bereaved families to obtain a second prosecution psychiatric report - that report also was clear and unambiguous. A plea of guilty to manslaughter by reason of diminished responsibility was appropriate.

6.37. The CPS and prosecution counsel considered the relevant law as to the acceptance of the pleas and applied it correctly. Further, applying the Code to that law, this was not a borderline case, or one where there were competing arguments. In the light of the expert reports, there was no longer a realistic prospect of conviction for the offences of murder.

6.38. Further, and in accordance with good practice and the Attorney General's guidance on the acceptance of pleas and the prosecutor's role in the sentencing exercise, prosecution counsel provided the court with assistance as to the appropriate sentence.

6.39. It is clear to us that the decision to accept the pleas of not guilty to murder but guilty to manslaughter by reason of diminished responsibility was correct on the evidence and under the law as it currently stands.

6.40. It is easy however to understand why the bereaved families find the decision by the CPS to accept the pleas of not guilty to murder but guilty to manslaughter difficult to accept. Their loved ones were killed by an offender who knew what he was doing was wrong and who intended to kill them.

6.41. It is notable that in its report in 2006 the Law Commission recommended that there should be three tiers of homicide: first degree murder, second degree murder and manslaughter. The Law Commission found that the potential use of the term second degree murder to describe the verdict a jury must reach when a plea of diminished responsibility is successful as a defence to first degree murder was strongly supported by groups representing victims' families.

6.42. If the recommendation of the Law Commission in 2006 that there should be three tiers of homicide had been accepted and implemented, the unlawful killings in this tragic case would have been categorised as murder, albeit second degree murder.

**7. Crown Prosecution
Service involvement in
previous cases involving
the offender**

Crown Prosecution Service previous involvement with the offender

7.1. One of the families' concerns was whether the Crown Prosecution Service (CPS) had had any previous involvement with the offender and whether there had been any missed opportunities to prosecute him.

Assault on Emergency Worker

7.1. There was one referral only from the police in relation to the offender prior to his commission of the offences on 13 June 2023. This was for an alleged offence of assault on emergency worker, arising from an incident on 3 September 2021. We have had access to this file and outline the details and chronology of that prosecution below.

7.2. Whilst the offender had come to the police attention on other occasions prior to 13 June 2023, none of these other matters had been referred to the CPS.

7.3. In accordance with the Director of Public Prosecution's (DPP) Guidance on Charging, the police are authorised to make a decision to charge or take no further action in certain cases. It follows, therefore, that not all incidents reported to the police are referred to the CPS.

Facts of assault on emergency worker

7.4. On 3 September 2021, police attended the offender's address with two doctors and a social worker to assist with executing a warrant under section 135 Mental Health Act 1983 (MHA). The offender refused to comply with the doctors' requests to go with them by ambulance to hospital. As police officers went to take hold of him, he assaulted one of them by punching and headbutting him, causing bruising and swelling to the officer's head and face. The offender was subsequently assessed and detained in a mental health facility under section 2 MHA. He was not interviewed in relation to the alleged assault.

Chronology of contact between the CPS and police

7.5. It is the role of the police to investigate crimes. They will take statements and gather evidence. If they have evidence in relation to an identified suspect, they will send a file to the CPS (unless it is an offence that the police have powers to charge without consulting the CPS which include those expected to be a guilty plea and which are suitable to be dealt with in the magistrates' courts). A prosecutor will look at all the evidence and information contained within the file submitted by the police, and will decide, applying the Code, whether charges are authorised. Where prosecutors identify further reasonable

lines of enquiry, they should set these out in an action plan for the police to consider.

7.6. We have examined the CPS case file in relation to the assault on emergency worker and the following chronology sets out the sequence of events and actions taken in that prosecution.

- On 3 September 2021 the offender assaulted an emergency worker (a police officer).
- On 6 October 2021, the file of evidence was submitted by police to the CPS for consideration of a charge of assault on emergency worker. The CPS sent the police an action plan, for completion by 6 December 2021, for further material, including statements from the mental health practitioners, and information about the offender's mental health condition. This was to enable proper consideration of both the evidential test and public interest test of the Code for Crown Prosecutors.
- On 16 December 2021, the officer in the case (OIC) responded to the action plan seeking further time to comply with the CPS's requests as there had been a delay in speaking to one of the mental health practitioners who had been present at the time of the incident and was now on leave until the new year. The CPS extended the compliance date for completion of the action plan to 14 January 2022 and notified police of the new date.
- On 21 January 2022, as no response had been received, the CPS sent an escalation email to the main criminal justice mailbox, copying in the police manager with responsibility for the charging team at that time.
- On 1 February 2022, the CPS checked the case again and deferred the pre-charge decision (PCD) date to 17 February 2022.
- On 15 February 2022, the CPS deferred the PCD date to 2 March 2022.
- On 1 March 2022, the CPS deferred the PCD date to 17 March 2022.
- On 2 March 2022, the CPS sent a second escalation email to the criminal justice mailbox, again copying in the police manager with responsibility for the charging team, as the action plan remained outstanding.
- On 15 March 2022, the CPS deferred the PCD date to 6 April 2022.
- On 6 April 2022, the CPS marked the case as 'no response' [from the police] and it was finalised on their system. The CPS has told us that an electronic message would have been sent to the police via the two-way interface system alerting them to the fact that the case had been finalised on the CPS system.

- On 26 April 2022, the police sent an email to the CPS requesting that the case be reactivated as the OIC had completed the outstanding actions. The case was reactivated by the CPS the same day. Further material was submitted for consideration, which included a statement from a consultant psychiatrist, dated 27 January 2022, who had attended the offender's address on 3 September 2021. He gave a factual account of events on that day but declined to provide any comment on the offender's diagnosis or prognosis citing patient confidentiality and lack of consent. He was able to confirm that he and his colleague had been attempting to execute a warrant under section 135 MHA due to concerns raised by the offender's community mental health nurse. The offender had refused further assessment and treatment with mental health services at that time and had refused access to his address. The psychiatrist was also able to confirm that the offender was not currently detained in any mental health facility.
- On 9 May 2022, the CPS gave authority to charge the offender with one offence of assault on emergency worker.
- On 24 August 2022, the police sent a postal requisition to the offender's last known address informing him of the charge and that he was due to appear at Nottingham Magistrates' Court on 22 September 2022.
- On 22 September 2022, the offender failed to appear at court and a warrant without bail was issued. The warrant was not executed by police before the events of 13 June 2023.
- On 17 June 2023, the offender appeared at Nottingham Magistrates' Court in custody in relation to the offences on 13 June 2023. The assault emergency worker matter was adjourned to 26 June 2023 for the prosecution to consider whether it was in the public interest to proceed, given the seriousness of the new offences.
- On 21 June 2023, the CPS wrote to Nottingham Magistrates' Court setting out the position in relation to the offences on 13 June 2023 and seeking an adjournment of the hearing on 26 June for the assaulting an emergency work charge to 2 October 2023. On the same day, the court responded and agreed to the application.
- On 26 September 2023, the CPS system records that the hearing date was further adjourned to 14 November 2023.
- On 7 November 2023, the CPS system records that the hearing date was further adjourned to 12 December 2023.
- On 29 November 2023, the CPS served a notice of proposed discontinuance on the police in relation to the assault on emergency worker charge, citing

that it was no longer in the public interest to proceed with the prosecution given that the offender had pleaded guilty to three offences of manslaughter and three offences of attempted murder arising from the incident on 13 June 2023.

- On 7 December 2023, in the absence of any representations from the police, a notice of discontinuance for the assault on emergency worker charge was served on the court, the defence, and police, in accordance with section 23(3) of the Prosecution of Offences Act 1985.

Did the CPS comply with the Code for Crown Prosecutors in relation to this offence?

7.7. We found that the decision to charge the offence of assault on emergency worker was correct, and the CPS had considered relevant law and guidance when making their decision. The reviewing lawyer had sought further information concerning the offender's mental health, in accordance with the CPS guidance Mental Health: Suspects and Defendants.

7.8. The subsequent decision to discontinue the assault on emergency worker charge on public interest grounds, was correct, given the seriousness of the 13 June 2023 offences and the likely sentence.

8. Crown Prosecution Service obligations to victims and bereaved families

Crown Prosecution Service obligations under The Victims' Code and Bereaved Family Scheme

The Victims' Code

8.1. The Code of Practice for Victims of Crime (the Victims' Code) is issued by the Secretary of State for Justice under section 32 of the Domestic Violence, Crime and Victims' Act 2004. It sets out victims' rights and the services, and a minimum standard for those services, that must be provided to victims of crime by organisations (referred to as 'service providers') in England and Wales.

8.2. A 'victim' is defined in the Victims' Code as:

"Any person who has made an allegation to the police, or had an allegation made on his or her behalf, that they have been directly subjected to criminal conduct under the National Crime Recording Standards (NCRS)."

This definition also includes bereaved relatives or partners in homicide cases.

8.3. Which of the specific rights under the Victims' Code will apply, will depend on whether the crime is reported to the police, if the case goes to court, and whether the defendant is convicted, as well as a victim's personal needs and circumstances. Certain victims are eligible for enhanced rights under the Victims' Code, including close relatives bereaved by a criminal offence.

8.4. The service providers that are required to deliver the rights under the Victims' Code, include the police, the Crown Prosecution Service (CPS), and His Majesty's Courts and Tribunals Service.

8.5. In all criminal cases, victims have the right to:

- be treated with respect, dignity, sensitivity, compassion and courtesy
- make informed choices that are fully respected
- have their privacy respected by service providers in accordance with their obligations under the relevant privacy and data protection laws, and
- have services provided to assist them and their family to understand and engage with the criminal justice process and that are offered in a professional manner, without discrimination of any kind.

8.6. We have identified the specific rights that apply to this case review as:

- to be able to understand and to be understood. Victims have the right to be helped to understand what is happening and to be understood. All service providers must communicate in simple and accessible language. If, due to the impact of the crime, victims need assistance to understand or to be understood, they can be supported by a person of their choice, unless the service provider considers that it would not be in their best interests or that it would impact the investigation or prosecution (Right 1)
- to be provided with information about the investigation and prosecution. Victims have the right to be offered a meeting with the CPS prior to or following a decision to charge a suspect. The CPS will explain how the case is likely to progress and answer any questions. The CPS will also discuss the victims' needs and jointly agree how regularly they will receive updates in the case. Following charge, if the CPS decides to stop a charge and proceed with another or make a substantial change to a charge, the victims have the right to be told the reason why (Right 6)
- to make a victim personal statement. Victims have the right to make a victim personal statement (and to express a preference as to how they want that statement presented to the court) and the right to have someone with them when they do so, regardless of whether they have made a witness statement. Following a conviction, the judge will decide whether and what sections of the victim personal statement should be read aloud (or played), and who should read it (Right 7)
- to be given information about the trial and the trial process, and to be offered a meeting with the CPS prosecutor or advocate who will be presenting the case in court (Right 8)
- to be given information about the outcome of the case and any appeals. Victims have the right to be offered a meeting with the CPS:
 - following conviction, but before the sentencing hearing of the defendant, to confirm that a victim personal statement has been made or to confirm that it is up to date (this meeting will usually take place at court)
 - following the sentencing hearing to explain the sentence given (this meeting will usually take place at court)
 - in cases where the defendant is found not guilty or is convicted of a less serious charge the offer of a meeting will be made a few weeks after the case has concluded, unless the CPS decide that this is inappropriate. The actual timing of the meeting will be informed by

the wishes of the family who will be contacted to discuss when it should take place (Right 9)

- to make a complaint about the rights under the Victims' Code not being met. Victims are entitled to make a complaint if they believe that they have not received their rights under this Code (Right 12).

The Bereaved Family Scheme

8.7. The CPS offers what it terms an enhanced service to bereaved families in homicide cases. The Bereaved Family Scheme (BFS) sets out the minimum service expected, although the guidance stresses that CPS Areas or specialist divisions should not feel constrained from doing more if it is necessary to do so. The principles of the scheme should be applied to all qualifying cases, which includes murder and manslaughter. The scheme was designed to dovetail with the obligations that the CPS has under its internal Victim Communication and Liaison Scheme, as well as its duties under the Victims' Code.

8.8. The principle running through the operation of the scheme is that prosecutors will offer to meet bereaved families at important stages of the criminal justice process. When arranging a meeting under the scheme, the prosecutor should ensure there is liaison with the police family liaison officer (FLO) and/or the senior investigating officer (SIO) as this will assist in preparing for the meeting and reducing any potential risks. The FLO is a specially trained officer assigned to a bereaved family by the police at the outset of an investigation. Part of the FLO's role is to act as the point of contact for the CPS to communicate prosecution decisions to the family.

8.9. The guidance highlights that, wherever possible, the same prosecutor should be involved throughout so there is continuity for the bereaved family when they attend court or meetings with the CPS. As well as meeting a family at important stages of the case, the scheme also requires prosecutors to communicate with a bereaved family by letter, sent via the FLO.

8.10. The purpose of a specific meeting will vary depending on the case and the stage of proceedings, but the scheme excludes detailed discussion of the evidence. Prosecutors should however explain the anticipated progress of the case, what is expected to happen at each court hearing, and the possible sentences available for the offences charged. The guidance makes it clear that it is the prosecutor's responsibility to ensure that any concerns that the family has about the process are dealt with and that they have confidence the case is being handled professionally and competently.

8.11. If the CPS decides to discontinue or substantially alter charges in a case that falls within the scheme, it should write to the bereaved family within one working day to explain the decision. The letter will give as much detail as

possible of the reasons behind the decision, but considering any sensitive important issues that may restrict the amount and/or type of information that can be given.

8.12. In dealing with a case in which there is a substantial alteration to the charge, the explanation provided to the bereaved family will be restricted to an explanation of the basis for the decision setting out the relevant Code test only.

8.13. There are several sensitive and important issues surrounding the amount and type of information that can be given to bereaved families, balancing openness with the interests of others (including the offender and other witnesses). For example, there are obvious sensitivities concerning disclosure of information relating to a person's medical history.

8.14. Prosecutors will need to take account of issues such as confidentiality, disclosure issues where proceedings are ongoing, and the need to avoid prejudicing the trial process.

8.15. The letter should offer the bereaved family the opportunity to meet with the prosecutor to receive a more detailed explanation and to ask any questions they may have.

8.16. Meetings with bereaved families will ordinarily take place within CPS offices in accommodation set aside for the purpose. Where a family live a considerable distance from the CPS office, prosecutors should consider holding the meeting at a location that is more convenient to the family, usually at a local CPS office or police station. Other methods, such as virtual meetings, can also be considered.

The role of the family liaison officer (FLO)

8.17. Bereaved close relatives are entitled to have a family liaison officer (FLO) assigned where appropriate (Victims' Code Chapter 2 Part A).

8.18. FLOs act as conduits, helping to relay important and timely information about the investigation and prosecution to bereaved relatives. They usually act as the single point of contact between the bereaved family and service providers.

8.19. The role of a FLO is to support the family through the police investigation, to answer their questions and to gather important information about the person who has died as part of the investigation. FLOs need to be able to do that sensitively and compassionately, and in line with the Criminal Procedures and Investigations Act (CPIA) 1996, which governs the disclosure of unused material in criminal proceedings, to maintain the integrity of the investigation.

8.20. The FLO will help guide families through the criminal justice system and procedures and ensure that families know what other support is available elsewhere to help them deal with the trauma they are facing, for example, Victim Support. They also act as the point of contact for communicating prosecution decisions to the family as well as taking any victim personal statement (VPS).

**9. Crown Prosecution
Service engagement with
the bereaved families
before the decision to
accept pleas to
manslaughter**

Quality and timeliness of the Crown Prosecution Service engagement with the bereaved families

9.1. Concerns have been raised by Barnaby and Grace's parents and Ian's son (who was the designated point of contact for all three of Ian's sons) regarding the Crown Prosecution Service's (CPS) engagement with them.

9.2. Ian's partner declined to meet with us but confirmed in a telephone call that she had no concerns regarding the CPS's engagement with her and was complimentary about the service she had received. We have also seen an email that Ian's partner sent to the CPS following their offer to meet with her on 7 February 2024, which she also declined, in which she confirmed she had no concerns to raise and thanked the CPS for their support and compassion.

9.3. The three surviving victims were invited to meet with us, but we have received no response from them.

9.4. The concerns raised by Barnaby and Grace's parents, and Ian's son regarding the CPS engagement with them, were outlined in Chapter 3 at paragraph 3.7. In this and the following chapter, we deliver our judgments and provide a detailed chronology to help explain our findings.

9.5. We found that the prosecution team were committed to delivering the best possible service to the bereaved families and were disappointed that some of the bereaved families were unhappy with the service they had received from the CPS.

9.6. Whilst we found that the CPS had, overall, met and adhered to their obligations under the Code of Practice for Victims of Crime (the Victims' Code) and the Bereaved Family Scheme (BFS) when it came to engaging with the bereaved families, (and arguably went beyond in commissioning a fourth expert report to try and meet the families' concerns), we found that there were some discrete areas where the quality of engagement could have been better and make a recommendation as a result.

The CPS engagement with bereaved families up to 24 November 2023

9.7. Barnaby and Grace's parents expressed a concern to us that they had little engagement with the CPS in the months before their first meeting with them on 24 November 2023, and that this meeting was at their behest, rather than the CPS initiating it.

9.8. Ian's son told us that he had had no prior knowledge of the meeting that the CPS had arranged with Barnaby and Grace's families on 24 November. He said that had he been told about it he would have attended.

9.9. The three families told us that insufficient engagement with them before 24 November left them unprepared for the possibility that the defendant would be convicted of manslaughter and not murder.

9.10. We have considered the contact that the CPS had with the bereaved families, both directly and indirectly, including via the family liaison officers (FLOs), from 13 June, the date of the offences until 24 November. We found that in these first five months the CPS did meet their obligations under the Victims' Code and the BFS by offering meetings to the bereaved families. That said, we found some areas where the engagement could have been clearer, and potentially reduced some of the subsequent discontent and dissatisfaction felt by the bereaved families.

9.11. The first contact from the CPS to the bereaved families was by way of an introductory letter, which introduced the prosecution team and provided information on the next stages of the proceedings. The letter was provided to the FLOs on 16 June, the day the offender was charged. The FLOs for Barnaby and Grace's parents handed them the letter on 18 June 2023. A decision was made by the senior investigating officer (SIO) not to give Ian's son the letter on this date due to it being Father's Day. The FLO had however contacted Ian's son on 17 June and informed him that the offender would be appearing at Nottingham Crown Court on 20 June and that the CPS had offered to meet with Ian's sons after the hearing. Ian's sons' FLO then met with Ian's three sons before court on 20 June 2023 and read the CPS's letter to them and also provided a copy by email.

9.12. Whilst none of the bereaved relatives have raised any concerns regarding the quality of the letter, we found that there should have been better communication between the CPS and police around the timing of delivery of the letter. By the time the parents of Barnaby and Grace received their letter on 18 June, and Ian's son received his letter on 20 June, some of the content was out of date. In particular, the letter referred to the offender's first magistrates' court appearance as being Saturday 16 June (which was in fact an error as the correct date was Saturday 17 June) and offered a meeting with the prosecutor at court on that day.

9.13. We did note however that the reviewing lawyer and a district crown prosecutor (DCP) had been present at the first hearing on 17 June ready to introduce themselves and meet any of the families who attended, although unsurprisingly none did.

9.14. We also found that some of the paragraphs used in the initial letter appeared to be from a template and were unlikely to be helpful to families who had lost loved ones a few days earlier in terrible circumstances. Whilst we appreciate that the CPS was mindful of its obligations to ensure that information about the criminal justice process was conveyed at an early stage, greater thought and sensitivity is required in circumstances such as these as to the nature and amount of information provided to traumatised individuals. A short bespoke letter may have been more appropriate at this stage.

9.15. However, significantly, the letter did make clear that the families could meet with the CPS and prosecution counsel at an appropriate time for them. It advised the families that their FLOs would be the liaison point should they wish to take up the offer of a meeting.

9.16. We found that, despite some qualitative issues as outlined above, the CPS, at this initial stage, complied with Right 6 of the Victims' Code and the principles of the BFS in providing the bereaved families with an introductory letter that gave them information about the investigation and prosecution and included an offer of a meeting.

9.17. Ian's partner and sons attended the initial hearing at Nottingham Crown Court on 20 June and met with the reviewing lawyer and junior counsel. Barnaby and Grace's parents did not attend this hearing. According to the CPS note of the meeting, the reviewing lawyer and junior counsel explained to Ian's partner and Ian's sons the timetable for the case and that the defence had indicated their intention to obtain medical evidence. At the end of the meeting, Ian's partner and sons were informed that they could contact the reviewing lawyer and counsel through their FLOs.

9.18. On 16 June, the day the offender was charged, the CPS sent a form (BFS1) in accordance with the BFS to the FLOs for all the bereaved families. The FLOs are required to confirm that the scheme has been explained to the families and whether they wish to meet the prosecutor. We have not seen any completed BFS1 forms in relation to Barnaby and Grace's parents or Ian's sons.

9.19. However, we have seen email communication from the FLO for Grace's family to the CPS on 4 July stating that the BFS1 form had been discussed with Grace's parents and they wanted to take up the offer of a meeting with the CPS and prosecution counsel at some point in the future. The reviewing lawyer then engaged in further email communication with the FLO as to whether Grace's parents were planning on attending the plea and trial preparation hearing (PTPH), which by this time had moved to 31 October, as the prosecution team could meet them in Nottingham on that date. The reviewing lawyer also asked the FLO to ascertain if they would prefer to meet earlier than the PTPH date and if so whether they would be prepared to travel to Nottingham or meet virtually.

9.20. Barnaby's parents told us that very soon after the events in June 2023, their FLO had asked them if they would like to meet the CPS. They understandably declined at that time, given the fact that they had just lost their son. They told us that they do not recall any further offer of a meeting until they themselves requested, in mid-November, to meet with the CPS.

9.21. In the aftermath of losing a loved one in horrific circumstances, bereaved families will understandably be in a high state of shock, disbelief, and grief. This is where the FLOs are vital in being the conduit and can reinforce to bereaved families as the days and weeks move on, that the offer made in the CPS introductory letter to meet with the prosecution team remains an ongoing offer. The CPS cannot force bereaved families to meet with them and are heavily reliant on the FLOs, who are in regular contact with the bereaved relatives, to

keep them updated about the family's position and views on if, and when, they are ready to meet the prosecution team.

9.22. Internal communications between the CPS and police show that on 7 July 2023 the reviewing lawyer had emailed the FLOs for Barnaby and Grace's families asking that they be approached at an appropriate time to discuss whether they would like a meeting with the CPS. This followed on from the earlier communications on 4 July that the reviewing lawyer had had with the FLO for Grace's family. The reviewing lawyer requested that the FLOs provide the CPS with dates and times and the families' preferences as to whether they wanted to meet in person or virtually. The FLOs responded that they would address the offer of a meeting with both families after Barnaby and Grace's funerals, which would therefore be sometime after 24 July. The CPS did not make any similar request of Ian's sons' FLO at this time, (but Ian's sons had already met the reviewing lawyer and junior counsel at court on 20 June).

9.23. The FLO logs we have been provided with, record that on 25 July the police sent a letter to Barnaby and Grace's parents that contained the court dates and the offer of meetings with the CPS and prosecution counsel, as well as the offer of a meeting with the SIO. The SIO then arranged to meet with Grace's parents in August and Barnaby's parents in September with the aim of providing them with some details about the investigation and offences.

9.24. The SIO met with Grace's parents on 22 August. The FLO logs record that they were not yet ready to hear the details of the attacks. The SIO informed them that there would be an indication of the offender's plea at the PTPH scheduled for 31 October and that there was a possibility of a mental health defence. The log records that Grace's parents stated that they would like to meet with the reviewing lawyer and counsel in the future.

9.25. We have seen the notes of a meeting that took place between the senior district crown prosecutor (SDCP) and the police on 30 August where a family update was provided about the SIO's visit to Grace's parents and the fact that he was arranging to meet with Barnaby's parents and Ian's sons. The SDCP noted that it was unclear whether the bereaved families would be attending the PTPH, but that it was a timely reminder that plans needed to be put in place to ensure that the CPS and leading counsel met the families.

9.26. Between late July and 2 October there was no contact between the CPS and FLOs to discuss or make arrangements to meet with the bereaved families. However, up to this point, we found that the CPS had still met their obligations under the Victims' Code and BFS as the offer of a meeting with the bereaved families had been made in the introductory letter, and it was an open-ended invitation. The offer had also been repeated through the FLOs. In any event, up until 2 October, there had been no developments that would have necessitated the CPS revisiting their offers to meet the bereaved families.

9.27. The SIO met with Barnaby's parents on 12 September. The FLO logs record that they were not ready to hear the details of the attacks but did want to know more about the offender's mental health, the potential outcome should he be found mentally unfit, the court process and progress of the case. The SIO

answered their questions and, according to the FLO log, explained to them the strong possibility that at the PTPH on 31 October the defence would ask for psychiatric reports and that, at the present time, the police and CPS had no indication of the potential defence but would know more after the PTPH.

9.28. On 14 September Ian's son was offered a home visit from the SIO but he declined at that time.

9.29. On 2 October, the CPS received the first defence psychiatric expert report. The reviewing lawyer emailed a copy to the officer in the case (OIC) and requested that he liaise with the FLOs as the bereaved families needed to be told of the expert's opinion, that the defence of diminished responsibility was available to the offender.

9.30. On the same date, the FLO for Grace's parents updated the reviewing lawyer as to the position of both Barnaby and Grace's parents. The CPS were told that neither set of parents intended to be at the PTPH on 31 October as they felt unable to hear the details of the incident. The FLO confirmed that a meeting with the CPS after the PTPH date would be best for both families as more would be known about the case by then, including any defences raised.

9.31. The reviewing lawyer responded to the FLO and told them that the defence report had been received and it raised the partial defence of diminished responsibility. The reviewing lawyer asked the FLO to liaise with the police investigation team regarding a strategy for communicating the contents of the report to the bereaved families. He also confirmed in the same email that the prosecution team would meet with Barnaby and Grace's parents at the PTPH if they decided to attend.

9.32. It was on 3 October that the FLO for Grace's parents advised them that the first defence psychiatric expert had raised the partial defence of diminished responsibility. The FLO for Barnaby's parents told them the conclusion of the defence report on 4 October and Ian's son was told by his FLO on 9 October. They were all told by their FLOs that the CPS would now be instructing their own psychiatric expert, and it was later confirmed to them that the PTPH date had been moved to 28 November to accommodate this.

9.33. The FLO log records that on 9 October Barnaby's father asked his FLO what a partial defence of diminished responsibility meant. This demonstrates that he did not understand the potential implications of such a defence and what this could mean in relation to the outcome of the case. Whilst we note that the FLO told him that she would consult the CPS as she did not want to make any mistakes in explaining it, there are no subsequent records to indicate that this request was forwarded to the CPS or that the CPS provided any form of words for the FLOs to use when explaining the legal concept of diminished responsibility and the potential implications for the case.

9.34. On 7 November, Barnaby's mother asked their FLO again about the partial defence of diminished responsibility. It was clear that Barnaby's parents were still unaware of the potential implications of the defence and what would

happen at the PTPH. Barnaby's mother then specifically requested, via her FLO, a meeting with the CPS so that diminished responsibility could be explained.

9.35. The FLO logs from 9 October record that Ian's son informed the FLO that he understood what he was being told and that he was content to meet with the FLO and prosecution team at the PTPH for a further update.

9.36. On 24 November, the prosecution team met with Barnaby and Grace's parents virtually and told them that the CPS would be accepting pleas to manslaughter by reason of diminished responsibility. Ian's son was informed of the decision via a telephone call from his FLO. In our meeting with the bereaved families on 9 February 2024, they all told us how shocked and unprepared they had been for this decision, which suggested that, up until the meeting on 24 November, they had not fully understood the significance to the case of the conclusions reached by the first defence psychiatric expert in his report provided to the CPS on 2 October.

9.37. Right 1 under the Victims' Code, refers to victims (the definition of which includes bereaved relatives or partners) having the right to be able to understand and to be understood. Victims have the right to be helped to understand what is happening and for service providers to communicate in simple and accessible language. Whilst FLOs have an important role to play in keeping victims up to date with developments in a case, complex legal concepts such as diminished responsibility require a careful and clear explanation and are best undertaken by CPS lawyers either meeting bereaved families in person or providing written guidance for police FLOs to use.

9.38. In this case, the CPS did not provide any guidance to the police when they asked them on 2 October to devise a strategy for informing the bereaved families of the partial defence of diminished responsibility, which had been raised in the first defence psychiatric report. This contrasted with the CPS's later approach when a form of words was agreed with the police when explaining the decision to commission the second prosecution psychiatric report. Had the CPS provided guidance or a form of words for the police to use, this may have assisted the bereaved families to understand at an earlier stage the potential implications of the partial defence being raised in the first defence psychiatric expert's report. We cannot determine from our examination of the case papers why after Barnaby's father request on 9 October for some clarification of what diminished responsibility might mean, why the CPS were not contacted by the FLO.

9.39. Following the request for a meeting that was made by Barnaby's mother to her FLO on 7 November, the FLO informed the reviewing lawyer of this on 13 November. The FLO informed the reviewing lawyer that the request was for a meeting with the CPS and counsel, preferably before the PTPH, as Barnaby's parents wished to understand fully the partial defence of diminished responsibility and the possible outcome of the PTPH on 28 November. The FLO said that she and her fellow liaison officers felt that they did not have the necessary experience and knowledge to explain this legal concept and would be more comfortable if the reviewing lawyer and counsel could do so. We note that

this request was made six weeks after the reviewing lawyer had requested that the FLOs liaise with the police investigation team regarding a strategy for communicating the contents of the first defence psychiatric expert's report to the families.

9.40. The reviewing lawyer anticipated that he would receive the first prosecution expert's psychiatric report by 22 November so sought to arrange a conference with prosecution counsel to discuss the expert's findings shortly after that date.

9.41. There followed an email exchange between the CPS and the FLOs for the parents of Barnaby and Grace about arranging a meeting before the PTPH, which led to the agreed date of 24 November (four days before the hearing). The invitees were Barnaby and Grace's parents, the reviewing lawyer, the SDCP, prosecution counsel, the SIO and the FLOs for the two families. The original intention was for the CPS, prosecution counsel and the SIO to meet Barnaby's parents on 24 November and for the meeting with Grace's parents to take place on 27 November, the day before the PTPH. However, the CPS arranged a joint meeting with both families on 24 November after being informed that this was their preference.

9.42. On 15 November, the SDCP emailed the prosecution team and police to clarify that the purpose of the meeting was for the families to understand the nature of the medical reports and the outcomes available.

9.43. On 22 November, the FLOs for Grace's parents informed the reviewing lawyer that their expectations for the meeting were to understand what the psychiatrists instructed by the defence and prosecution were saying about the defendant's mental state, what their conclusions meant for the 'route map' through the criminal justice system, what diminished responsibility and fitness to plead meant, and the implications of the defendant's mental health for the eventual sentence, including whole life tariffs. The FLO for Barnaby's parents informed the CPS that their main concern was understanding what diminished responsibility meant.

9.44. The CPS had prepared an agenda for the meeting, which covered the topics to be discussed, and this was shared with Barnaby and Grace's parents by the FLOs on 23 November. The topics were an explanation of the psychiatric reports, what the reports meant for the 'route map' of the case, and what the next steps would be.

9.45. The CPS, prosecution counsel and the police had a meeting on 23 November. It was decided that in view of two psychiatric experts concluding that the defence of diminished responsibility was available to the offender, pleas to manslaughter would be accepted.

9.46. During the virtual meeting on 24 November, which was attended by the parents of Barnaby and Grace, a supporter for the family, leading and junior counsel, the reviewing lawyer, the SDCP, the SIO, a family liaison co-ordinator and the FLOs for the two families, leading counsel explained the legal test for the partial defence of diminished responsibility and explained the findings of the

two psychiatric experts and how they had reached their conclusions. Just before the meeting started, the prosecution had also received the second defence psychiatric expert report.

9.47. We heard from those we interviewed, and saw from the meeting notes, that leading counsel informed the families that the prosecution had no basis for challenging the psychiatrists' conclusions and that therefore the case would not proceed to a murder trial but that pleas to manslaughter would be accepted. Counsel then explained how he would open the case, the sentencing options, that each family would be given the opportunity to make a personal statement about the impact on them and the options of how that statement could be presented in court. Counsel explained that there were two potential sentences available, namely a hospital order with restrictions or a hybrid order, which was a combination of a hospital order and prison sentence. He then explained what each order involved and that the prosecution would seek a hybrid order.

9.48. During our inspection, we found no evidence that Ian's family had been told a meeting was taking place on 24 November with Barnaby and Grace's parents or that an invitation to attend the meeting had been extended to them. The only reference to Ian's family we could find was an email on 22 November where the DCP referred to the SIO having said that Ian's sons did not wish to meet with the CPS '*specifically*' but had asked to meet with the SIO. The email noted that Ian's sons would be at the PTPH on 28 November so that may provide an opportunity for the CPS and counsel to speak to them.

9.49. However, in the police FLO logs we examined, we did not find any reference to Ian's son specifically saying that he and his brothers did not wish to meet with the CPS prior to the PTPH. There is nothing in the logs to suggest that the FLO discussed the CPS offer of a meeting with Ian's sons between the date of the first Crown Court hearing on 20 June, (when Ian's sons met the reviewing lawyer and junior prosecution counsel), and 24 November, when the FLO called Ian's son to inform him that the first prosecution psychiatric report had been received and that it was likely the CPS would accept pleas to manslaughter.

9.50. We did note that on 14 November, the FLO had contacted Ian's son to inform him that the prosecution psychiatric report would be completed the following week, and that she would update him when further information was available. She also offered him a meeting with the SIO after the PTPH and asked him to speak to his brothers to identify some suitable dates. On 21 November, the FLO contacted Ian's son to inform him that the hearing on 28 November would be going ahead and again discussed a meeting with the SIO. Ian's son told his FLO that he was keen to meet with the SIO and on 23 November it was agreed that Ian's sons would meet with him after the PTPH on 28 November. By this stage, the CPS meeting with Barnaby and Grace's parents on 24 November had been arranged but there is no record of this meeting having been mentioned to Ian's son.

9.51. The FLO recorded that on telling Ian's son of the CPS decision on 24 November, he was very upset and felt let down by the decision. His FLO told

him that he would have the opportunity to ask questions and raise any concerns with the CPS and SIO at the PTPH.

9.52. We were told by Ian's son when we met him and the other bereaved families on 9 February 2024, that had he known about the meeting on the 24 November he would have attended. He was aggrieved and disappointed that the CPS had not extended the invitation to him and his brothers.

9.53. We do not seek to underestimate the difficulties for the CPS in effectively managing engagement with four bereaved families in a case as sensitive as this. But, it must be conscious of the need to ensure that all families are treated with equal care and consideration so as to avoid any feelings of discontent that one is not being made aware of developments or being given the same information as others. If a meeting has been arranged with one or more bereaved families, we would encourage the CPS to make sure, where appropriate, that other bereaved families are told, via their FLOs, why the meeting is taking place and the issues that will be discussed, as this could affect their thinking on whether to request a meeting themselves. It would also reduce the risk that a family or families later believe, as happened with Ian's sons in this case, that they had not been given sufficient information to make a properly informed decision on whether to do so. Subject to any issues of confidentiality, it is important that significant messages about a case, or answers to significant concerns being raised by one or more families, are conveyed to all bereaved families at or around the same time and, if possible, in the same way.

9.54. Regarding Barnaby's parents' concern that they do not think they would have had a meeting with the CPS prior to the PTPH had they not initiated it, we found evidence to the contrary. As far as the CPS were aware, from information received on 2 October from Barnaby's parents' FLO, a meeting was to be held after the PTPH as they were unable, at that time, to hear details of the offences (at this point the PTPH was still listed for 31 October). The reviewing lawyer acknowledged this but told the FLO that if the family changed their mind, the CPS would meet with them. We found no record in the FLO logs to indicate that that message was relayed to Barnaby or Grace's parents but as far as the CPS were concerned, from information they had received and then imparted back to the FLO on 2 October, the offer of a meeting with the CPS was a continuing offer that had been extended to both Barnaby and Grace's parents.

9.55. Up until 13 November, the CPS had been unaware that Barnaby's parents had not understood the partial defence of diminished responsibility as they had not been told by the FLO. Likewise, if the other bereaved families had not understood it, the CPS had not been informed.

9.56. The CPS knew that they would not receive their first prosecution psychiatric report until around 20 November. The reviewing lawyer had requested the PTPH be moved back to the week commencing 27 November as they would need time to consider the report and liaise with the bereaved families. Whilst arrangements had not been made to meet with the bereaved families prior to the FLO for Barnaby's parents contacting the CPS on 13 November, it was clearly in the reviewing lawyer's mind to liaise with the families

once the prosecution expert's report had been received, which would be close to the PTPH date. As the reviewing lawyer told us, the date the CPS would get the prosecution psychiatric report would dictate when they could meet with the families.

Findings

9.57. We found that written guidance on diminished responsibility should have been provided by the CPS to the FLOs. This would have assisted the FLOs when explaining this legal concept to the families and would have enabled them to understand the potential implications for the case at an earlier stage.

9.58. We found no record that the request by Barnaby's parents on 9 October for clarification on diminished responsibility had been communicated by the FLO to the CPS. It was not until 13 November, after a further request from Barnaby's mother, that the FLO informed the CPS, leading to the meeting of 24 November.

9.59. Although the CPS were informed by the SIO on 22 November that Ian's sons did not want a meeting, we found no record that they had been made aware of the issues being raised by the other families or the meeting that had been arranged on 24 November. Consequently, Ian's sons had not been in a position to make an informed decision on whether to accept the offer of a meeting that had previously been made by the CPS. Indeed, we were told by Ian's son that had he known of the meeting he would have attended.

9.60. These points highlight the importance of a proactive and probing approach being taken by both the CPS and FLOs when communicating with each other.

**10. Crown Prosecution
Service engagement with
the bereaved families
after the decision to
accept pleas to
manslaughter**

Timing of the CPS making and communicating their decision to accept pleas

10.1. The bereaved families told us that they felt the CPS decision to accept the pleas to manslaughter was rushed. Barnaby's parents described feeling "railroaded" by the decision. They, along with Grace's parents and Ian's son, expressed anger at the suggestion by the CPS that the bereaved families had been consulted on the decision to accept the pleas. They told us that rather than being consulted over the decision, they were informed by the CPS that a decision had been made and they felt it was a "fait accompli".

10.2. The decision to accept pleas was, understandably, always going to be unpalatable for grieving families who have suffered the most unbearable loss in such traumatic circumstances, irrespective of the stage of proceedings that decision was made and communicated. However, from what the families have told us, their upset over what they saw as the late notification of the decision to accept pleas to manslaughter was compounded by the fact that, up until that time, they had been led to believe by the police that the offender would be convicted of murder.

10.3. We discuss in Chapter 9 the CPS engagement with the bereaved families prior to the meeting of 24 November and our findings in relation to the information provided to the bereaved families following receipt of the defence psychiatric report on 2 October.

10.4. Whilst it is regrettable that the families were only told four days prior to the PTPH that the prosecution intended to accept pleas to manslaughter on the grounds of diminished responsibility, we found that the CPS had not been able to make this decision any sooner as the timing was dictated by when they received their psychiatric expert's report. Consequently, they could not have communicated the decision to the bereaved families any sooner than they did. Likewise, once the prosecution psychiatric expert's report had been received there were no grounds for the CPS to delay making and communicating the decision.

10.5. The defence had only served their first psychiatric expert's report on 2 October 2023. Whilst the CPS had engaged their expert from a very early date and the reviewing lawyer had been sending evidence and material to him, the CPS could not formally instruct him to visit the offender and prepare a report unless and until the defence had served their psychiatric report. It is for the defence to first raise and establish through expert evidence whether there is a medical issue that impacts a defendant's ability to enter pleas to the offences with which they are charged, and/or to stand trial, or provides them a defence. Until the defence serve a report, the prosecution does not know what, or if, any medical issue arises that would necessitate them commissioning their own expert's report.

10.6. It is unfortunate that the defence served their report late. A court direction had been made at the hearing on 20 June 2023 that any defence expert report was to be served by 15 September 2023. On 20 September, the defence asked the court to extend the date for service of their report to 29 September, which

the court agreed to. The defence then sought a further extension to 2 October, which again the court agreed to. Upon receipt of the first defence expert's report on 2 October the reviewing lawyer asked the court to adjourn the PTPH date from 31 October to the week commencing 27 November to allow the first prosecution psychiatric expert time to prepare his report and for the CPS to consider it and liaise with the bereaved families. The court agreed to move the PTPH date to 28 November.

10.7. The first prosecution psychiatric expert, having received the formal instruction from the CPS on 4 October 2023, visited the offender on 14 November to interview him. Given the expert's other commitments and the fact that the offender had been moved from one establishment to another, which presented some initial difficulties in locating him, we do not consider this to be an unreasonable timeline. The CPS received its expert's report on 21 November. The first prosecution psychiatric expert agreed with the first defence psychiatrist that the partial defence of diminished responsibility was available to the offender in relation to the three offences of murder. The CPS arranged a conference with the police and prosecution counsel for 23 November to discuss the two psychiatric reports. By the time of the conference on 23 November, the CPS were still awaiting the second defence psychiatric expert's report, but a decision had been made by the reviewing lawyer, that if the second defence expert did not differ from the first two experts in his opinion of the availability of the partial defence, the CPS would accept guilty pleas to manslaughter.

10.8. As the meeting with the parents of Barnaby and Grace was about to start on the morning of 24 November, the CPS received the second defence psychiatric expert's report. This expert also concluded that the partial defence of diminished responsibility was available to the offender. Now, based on the conclusion reached by all three experts, the prosecution made the definitive decision that there was no longer a realistic prospect of conviction for murder and that it would accept guilty pleas to manslaughter and attempted murder. The decision was communicated to Barnaby and Grace's parents during the meeting.

10.9. Whilst this meeting was taking place, the FLOs for Ian's partner and Ian's sons contacted them by telephone and also told them of the CPS decision. The surviving victims were also contacted and informed of the CPS decision.

10.10. In the days that followed, Barnaby and Grace's parents raised concerns about the acceptance of pleas. The CPS listened to their concerns and decided to instruct a second psychiatric expert for the prosecution. At the PTPH on 28 November, the prosecution did not accept the offender's guilty pleas to manslaughter and informed the court that they had instructed another expert to prepare a report. The CPS were ordered to serve this report by 15 December and to inform the defence and the court by 22 December if the pleas entered were accepted or not.

10.11. A meeting took place immediately after the PTPH with Grace's parents, Ian's partner, Ian's sons, their respective FLOs, the SIO, the reviewing lawyer, SDCP and leading prosecution counsel. After the meeting, the SDCP emailed

the SIO to confirm that the CPS would meet again with the parents of Barnaby and Grace, and Ian's family, to explain the existing psychiatric reports. She added that they could discuss how best to do this once the families had had the chance to digest the information they had received over the previous few days. The SIO responded later that day that Barnaby and Grace's parents had cancelled meetings with him and the FLOs that had been arranged for 30 November and 1 December as they wished to have more time to think about what had happened at the PTPH and the information they had been given.

10.12. We discuss below at paragraph 10.52 how a meeting on 7 December with Barnaby and Grace's parents at Avon and Somerset police headquarters in Bristol then came about. At that meeting, the SDCP was present with the SIO, the respective FLOs and the officer who had overseen the gathering and collation of relevant CCTV footage. From the meeting notes we have reviewed, the SDCP was clear in communicating to Barnaby and Grace's parents that the CPS did not expect the second prosecution psychiatric expert's report to differ in its conclusion to the existing three experts' reports, again preparing them for the likelihood that guilty pleas to manslaughter would be accepted.

10.13. The CPS received their second psychiatric expert's report on 13 December, which did not differ in its opinion on diminished responsibility from the other three experts' conclusions. The police discussed the reports with Barnaby and Grace's parents on 13 December and with two of Ian's sons on 17 December. During these meetings with the police, the families were told that they expected the CPS to now accept the guilty pleas to manslaughter. Ultimately, the CPS did not make the final decision to accept the guilty pleas until 17 December 2023, which was over three weeks after the families had initially been told that the pleas would be accepted.

10.14. We note the concerns of the families who felt that the decision to accept pleas had been made too quickly, but we found that the initial CPS decision to accept the pleas had been made within three days of the CPS receiving its first prosecution psychiatric expert's report. The CPS were simply not in a position to make such a decision before it had that report in its possession.

10.15. Having listened to the bereaved families' concerns about the decision, the CPS then delayed accepting the pleas to manslaughter until it had commissioned and received a second prosecution psychiatric expert's report. This meant that a further three weeks elapsed before the final decision was taken.

10.16. We appreciate that whilst no passage of time will ever be long enough for bereaved families to process and accept a legal decision such as this, there is a point at which the CPS must make a decision and communicate it.

Consultation

10.17. We note that another of the families' concerns was that they were not consulted over the decision to accept pleas.

10.18. The word ‘consult’ was used in the prosecution’s opening address to the judge at the sentencing hearing, with there being reference to the prosecution having considered the psychiatric conclusions and having “*consulted with the families of the deceased*” and that “[*the prosecution*] *considered carefully the representations that were made in the course of those consultations*”. We also found that the word ‘consult’ was used in a communication between the CPS and the police when the CPS confirmed that they would delay the decision to accept pleas and notify the court that they needed further time to consult with the bereaved families. In FLO logs from 27 November, the FLOs for Grace’s parents and Ian’s son both used the word ‘consult’ when explaining that the prosecution was not going to accept pleas at the PTPH as they required further time to consult with the families and obtain further psychiatric evidence.

10.19. The CPS decision to accept pleas to manslaughter was made on evidential grounds. Considering the clear and unambiguous psychiatric evidence that the partial defence of diminished responsibility was available to the offender, and the CPS conclusion that there was no proper basis on which it could be challenged, the prosecution decided that there was no longer a realistic prospect of conviction for murder.

10.20. In cases of such a serious and sensitive nature, the prosecution should listen to the views and concerns of the victims’ families and should ‘inform’ and ‘explain’ where required.

10.21. The Code is clear that where there is a realistic prospect of conviction, but prosecutors are deciding whether to end a case or take a plea to a lesser charge on public interest grounds, the prosecutor should firstly consider a number of factors, including any views expressed by a victim or victim’s family about the impact the offence has had on them. This requirement to take the views of victims or their families into account does not extend to decisions that the prosecution take on evidential grounds.

10.22. As per Right 6 of the Victims’ Code, if the CPS decides to stop a charge and proceed with another, victims, including bereaved families, have the right to be told the reason why. We found that the CPS complied with their obligations by informing and explaining to the bereaved families the decision taken and the reasons for that decision.

10.23. However, we found that the CPS did not fully comply with Right 1 of the Victims’ Code where victims have the right to be helped to understand what is happening and to be understood. The use of incorrect terminology led to a general misunderstanding of the CPS’s obligations under the Victims’ Code and arguably led to an expectation on the part of the bereaved families that they could influence the CPS’s legal decision-making.

Recommendation

By October 2024 the Crown Prosecution Service must undertake a review of all guidance relating to victims' engagement to ensure that all staff are aware when use of the terms 'consult' or 'consultation' is appropriate.

The CPS engagement with Barnaby and Grace's families after 24 November 2023

10.24. We heard from Barnaby and Grace's parents that following their meeting with the CPS on 24 November, they did not feel the concerns they subsequently raised regarding the psychiatric evidence, were properly listened to and addressed by the CPS. They told us that they had not received a clear explanation from the CPS about the terms of the instruction to the second prosecution psychiatric expert and the remit of his report, which compounded their feelings of the CPS not having listened to them.

10.25. They described the CPS engagement as being very impersonal and felt that the FLOs were a barrier. They told us that they felt at arm's length from the CPS and as if the CPS were not working with them. They told us that this concern had been exacerbated when the CPS refused to provide them with copies of the psychiatric reports, which they had requested at the meetings on 24 November and 7 December.

10.26. We reviewed the evidence relating to the CPS's engagement with Barnaby and Grace's parents after the meeting on 24 November and found that the CPS had met their obligations under the Victims' Code and BFS by listening to and attempting to address the families' concerns and continuing to meet with them at important stages in the proceedings. We found that the CPS explained the anticipated progress of the case and tried to ensure that the families' concerns about the psychiatric evidence, were addressed in order to give them confidence that the case was being handled competently and professionally.

10.27. Whilst we understand that the bereaved families do not feel that the case was handled in this way, and the answers they received were not the ones they had wished or hoped for, this does not mean that we found their concerns were not properly addressed.

10.28. It is entirely understandable that grieving relatives who have suffered an unimaginable loss will seek to challenge legal decisions they do not agree with, and it is their right to raise their concerns with the CPS. However, the CPS, as an independent organisation must make all of its decisions, however difficult and sensitive, within the constraints of the law as it stands and in accordance with the principles set out in the Code for Crown Prosecutors.

10.29. In considering how the CPS engaged with the bereaved families we found that they maintained their independence, as they are required to do under the Code, whilst trying to work with the families to address their concerns.

10.30. In relation to the specific requests for copies of the psychiatric reports, we note that during the exchanges between the CPS and counsel over the weekend of 25 November, junior counsel had raised the possibility of asking the court's permission to show the psychiatric reports to the families so that the duty to inform the victims of crime was complied with.

10.31. The CPS receives and holds material to carry out and comply with its prosecutorial functions. At times, persons that are not a party to criminal proceedings and are not therefore in exercise of these functions make requests of the CPS for copies of material. When proceedings are ongoing, as they were at the time these requests were made by Barnaby and Grace's parents, the overwhelming consideration must be to ensure that nothing is disclosed that has the potential to cause prejudice to criminal proceedings. Following junior counsel's email, the DCP took advice from the CPS Information Access Team who advised that the psychiatric reports were subject to exemptions from disclosure by the CPS under the Data Protection Act 2018 and Freedom of Information Act 2000. We were told by the CPS that they had explained to the families the reasons why the psychiatric reports could not be provided to them during the ongoing proceedings.

10.32. We did find that the explanation provided to the families about the instruction of the second prosecution psychiatric expert could have been made clearer at an earlier stage. Barnaby and Grace's parents told us of their surprise that the second prosecution expert had not been asked to interview the offender, when they felt that their request of the CPS in commissioning this fourth report was clear. However, having spoken to the reviewing lawyer, his recollection and understanding was different. He thought that it had been made apparent that the expert would not be asked to interview the offender to avoid the concern raised previously by the families, namely that the other experts had placed too much weight on the offender's presentation when interviewed by them months after the events and had placed too little weight on existing evidence of his mental state on the day of the offences.

10.33. We found the families' misunderstanding was not intentional on the part of the CPS and that the CPS had in fact listened to the families' concerns by not asking the second prosecution psychiatric expert to assess the offender. However, the remit of the second prosecution expert's report should have been made clearer at the outset.

10.34. It was in the late afternoon of Friday 24 November, following the meeting where the CPS had informed Barnaby and Grace's parents of the decision to accept guilty pleas to manslaughter, that the FLO for Grace's parents contacted the reviewing lawyer to say that they too had further concerns and questions about the decision to accept the pleas. They requested a further meeting with counsel on Monday 27 November. Shortly after the FLO's email was received, the SIO emailed the SDCP with Grace's parents' concerns. These related to whether the psychiatrists had placed too much weight the offender's presentation when they interviewed him and too little weight on the evidence of his presentation on the day of the offences. Grace's parents asked the CPS to consider commissioning a further psychiatric report focussing on how the

offender presented in custody and when interviewed, how he was deemed fit to be detained and interviewed, and the reviews undertaken in police custody. The SIO also asked whether the decision to not provide the families with the psychiatric reports could be revisited as it might assist them to better understand the decision made.

10.35. Over the weekend of 25 and 26 November, and on Monday 27 November, the reviewing lawyer, DCP, SDCP, Deputy Chief Crown Prosecutor (DCCP) and both prosecution counsel discussed via email the concerns raised by Grace's parents. On 26 November, the reviewing lawyer carried out a further review of the case in light of those concerns and concluded that there was nothing to suggest that there had been any errors in the experts' approach and that each had specifically stated that they had been asked to provide expert opinion on the offender's mental state at the time of the offences. Nevertheless, the CPS acknowledged that, in view of the court timeframes and the confidentiality that attached to the psychiatric reports, the families had had little time to digest the information provided to them and that some of the concerns they raised were understandable.

10.36. As a result of these discussions, and following a conference attended by the Chief Crown Prosecutor (CCP), DCCP, SDCP, DCP and reviewing lawyer, on the morning of 27 November, the CPS agreed to delay the decision to accept the pleas to manslaughter and to explore whether a second prosecution psychiatrist would be available to provide a further expert opinion. This demonstrated that the CPS had listened to the families.

10.37. We found that the instruction of a fourth expert was an exceptional course of action, given the agreement amongst the three expert psychiatrists already instructed, and was undertaken not because the CPS had concerns about those existing reports, but due to their desire to address the families' concerns to help assure them that the conclusion of all three experts was correct.

10.38. When communicating these developments to the SIO on 27 November, the SDCP explained that the prosecution had listened to the concerns raised by Grace's parents, which were supported by Barnaby's parents, and had decided to delay the decision to accept the pleas. The reasoning behind this, which the SDCP told the SIO could be shared with the families, was: first, so that the CPS could take them through the report of the first prosecution expert so that the prosecution could demonstrate the extent to which the offender's actions on the day and his presentation on arrest and in police custody had been taken into account; and second, to explore the possibility of instructing a second psychiatrist for the prosecution to provide a further opinion on the offender's mental health at the time of the offending. The SDCP stated that this report would specifically address the concerns raised by the families at the meeting on 24 November and in subsequent emails, although the terms of the instructions to the psychiatrist had not yet been finalised. The SDCP also informed the SIO that she wanted to assure the families that the first psychiatrist instructed by the prosecution, and the second one about to be instructed, were leading experts in

their field. The SDCP confirmed to the SIO that she was still happy to meet with Grace's parents that day, but that counsel was unavailable.

10.39. Later that day, the reviewing lawyer spoke to the second prosecution psychiatric expert and then confirmed his instructions in writing that a report was to be provided after review of the existing reports and the evidence in the case to determine if the conclusions were justified. The timescale for provision of the report was agreed as a minimum of two to three weeks. The written instructions included reference to the concerns raised by Grace's parents that the prosecution and defence psychiatrists may have been unduly influenced by the offender's presentation when they saw him, and that insufficient regard may have been given to the evidence of the offender's presentation on the day of the offences and whilst in police custody after arrest. The reviewing lawyer informed the psychiatrist that he was not being asked to interview the offender.

10.40. Although the reviewing lawyer acknowledged elsewhere that this approach would enable the psychiatrist to produce a report more quickly, the instructions made it clear that the primary reason for not asking him to see the offender in person was to avoid the bereaved families' concern that the existing reports had placed too much weight on the offender's presentation at the time of their interviews with him. The reviewing lawyer asked the psychiatrist to have particular regard to the offender's presentation on 12 and 13 June but added that if he was unable to provide his own expert opinion on whether the partial defence was available without interviewing the offender, he should confine his report to providing an opinion on whether the conclusions of the other psychiatrists regarding diminished responsibility had been properly reached.

10.41. We have seen that the SDCP emailed the SIO again to confirm the second prosecution expert had now been instructed. She also confirmed that his report would be a review of the existing reports plus consideration of the evidence to determine if the conclusions were justified. It was made clear that the instructions specifically directed the second expert towards the offender's presentation on the day.

10.42. We found that both the SDCP's emails to the SIO implied that the second prosecution psychiatrist was not instructed to interview the offender as the other psychiatrists had, but this was not explicitly stated. The SDCP confirmed in her second email that the offer to meet with the families to discuss and explain the first prosecution psychiatrist's report remained open.

10.43. The SIO confirmed by email that he had provided a summary of the position to the FLOs based on the SDCPs emails, so that they could inform the three families.

10.44. We have seen an email sent to Grace's parents by their FLO on 27 November which updated them as to the reasons why the CPS were delaying their decision to accept the pleas. Grace's parents then confirmed to the CPS, via their FLO, that they no longer wanted a meeting with the CPS that day but were considering attending the PTPH the next day and if they did, they wanted to speak to counsel after the hearing. The FLO attached a further email from Grace's father in which he elaborated on his concern that the psychiatric reports

did not accurately reflect the offender's mental state on the day of the offending. He asked that 14 points (which were set out in his email) be taken into account when considering this issue.

10.45. Although the CPS became aware of these specific points after it had instructed the second psychiatrist in writing, on 28 November the reviewing lawyer sent an email to the psychiatrist, attaching Grace's father's email, and asked the expert to address the concerns if he felt able to do so. The expert responded to say that all was understood.

10.46. At the PTPH on 28 November, the reviewing lawyer, SDCP, the FLOs and leading counsel met with Grace's parents, Ian's son and Ian's partner, before the hearing to explain what would happen, and then again after the hearing. Barnaby's father did not attend court in person but observed the hearing via a video link.

10.47. At the hearing, the offender pleaded not guilty to three counts of murder but guilty to manslaughter by reason of diminished responsibility, and guilty to three counts of attempted murder.

10.48. Leading prosecution counsel said the following in open court:

- that there were already psychiatric reports in existence which lent support to the availability of diminished responsibility as a partial defence to murder
- that the prosecution felt it proper given the nature and sensitivity of the case, that it commissioned one final report
- that the prosecution sought further time to consider whether to accept the pleas to manslaughter or to proceed to trial on the murder counts.

10.49. At the meeting after the hearing, the short CPS note records that counsel again went over issues relating to diminished responsibility. He also answered questions from Grace's father relating to the lack of toxicology evidence and whether the psychiatrists had focused sufficiently on evidence of the offender's mental health on 13 June and on the days following when in police custody after his arrest. Leading counsel also explained the purpose of instructing a further psychiatrist to carry out a review of the expert reports. The note records that counsel was clear that he did not expect the new report to come to a different conclusion as to whether diminished responsibility was available as a partial defence. The families were also told that there was now a court order for the CPS to inform the court and defence of its decision regarding the acceptance of pleas by 22 December. The note does not record whether those present were specifically informed that the second prosecution expert would not be interviewing the offender when preparing his report.

10.50. We have seen email communications that on 30 November the SDCP and SIO agreed a form of words that the police would use when explaining to the families the basis upon which the prosecution had instructed the second psychiatrist. This explanation included reference to the concerns expressed by

the families that the psychiatrists had paid insufficient regard to evidence of the offender's presentation on the day of the offending and whilst in police custody after his arrest. The explanation also included reference to the newly instructed expert being asked to review the available evidence in the case, with particular regard to the evidence of the offender's presentation on 12 and 13 June, before providing an opinion on the conclusions reached by the three experts who had already provided reports.

10.51. As well as providing the police with a steer as to the explanation to be given for the instruction of the second prosecution expert, the agreed words included a repeated offer of a meeting with the CPS to explain the findings of the first prosecution psychiatric report, which was made on 28 November. The agreed form of words concluded by hoping that by instructing the second prosecution expert the families would be provided with the reassurances they had sought in relation to the way in which the conclusions regarding diminished responsibility had been reached. We note that the form of words to be used did not suggest that the second prosecution expert would be interviewing the offender as the first three experts had, but neither did it specify that this would not happen.

10.52. We have seen an email dated 1 December sent to Grace's parents by their FLO. The email discussed a proposed meeting with the SIO the following week to share timelines of the investigation and to discuss the mental health of the offender. It also discussed showing some of the CCTV footage in the case, although only that footage the family was ready and prepared to see. The email also incorporated the form of words that the police had agreed with the SDPCP on 30 November. According to the FLO log, an email in similar terms was sent to Barnaby's parents. This communication prompted a response from Barnaby and Grace's parents asking for a meeting with both the police and CPS as they had concerns about how things were being dealt with. It was agreed that the meeting would take place in Bristol on 7 December.

10.53. The SIO and SDPCP met Barnaby and Grace's parents on 7 December at Avon and Somerset police headquarters in Bristol. Also present were the FLOs for the two families, and the officer who had overseen the gathering and collation of relevant CCTV footage. The meeting lasted for several hours. The meeting notes we have seen reveal that during the sequence of events, and when the psychiatric reports were discussed, Barnaby and Grace's parents again raised concerns about the psychiatrists' conclusions and the provisional CPS decision to accept pleas to manslaughter by reason of diminished responsibility. One of these concerns was that the CPS had initially said that they would be accepting the pleas but had then changed their minds and instructed a second prosecution expert. It was described by one parent as the CPS 'flip-flopping' and made it difficult for the families to trust them. The SDPCP explained that the CPS had not changed its mind, that she anticipated that the pleas would still be accepted but that they had listened to the families' concerns and had instructed a second expert to provide assurance to the families that the experts' conclusions were correct.

10.54. We have been told by the CPS, and have seen in the meeting notes, that Barnaby and Grace's parents again raised concerns that evidence that tended to show that the offender exhibited calm behaviour and, on occasions, rational judgment and self-control, had not been given sufficient weight by the experts. The families also asked why the first prosecution psychiatric expert had not interviewed two people who had spoken to the offender between the first and second attacks, namely his brother, by phone, and the security guard, face to face, at the residential home. The families wanted the experts to interview these witnesses.

10.55. We saw from the meeting notes and were told by the SDCP in our meeting with her, that she had explained to the families that experts interviewing witnesses would be highly unusual and the CPS could not tell a psychiatrist to interview a particular witness as that was a matter for the expert. Further, the methodology used by an independent expert to reach an opinion was a matter for that expert and whilst the CPS could determine the material provided to the expert, they could not direct that expert to reach a particular opinion or employ certain methods in order to do so.

10.56. However, later that day, in response to the concerns raised, the reviewing lawyer asked the second prosecution psychiatric expert, who was in the process of preparing his report, whether there would be any benefit in him interviewing the two witnesses who had engaged with the offender in the period between the first and second attacks. If not, then the expert was asked to explain why this was. In his report, received on 13 December, the expert did indeed explain why generally, there would be no need to interview a witness and why, specifically, there was no such need in this case.

10.57. The first prosecution psychiatric expert also responded to the CPS and gave a clear explanation why interviews with witnesses were very unusual and the process a psychiatric expert would adopt if they needed clarification of a witness's account. This expert said that he had never interviewed a witness in more than 20 years of preparing psychiatric reports and explained why no such interviews were needed in this case.

10.58. At the meeting on 7 December, the SDCP had been able to disclose and explain parts of the first prosecution psychiatric expert's report to Barnaby and Grace's parents, but there was insufficient time to go through the whole report. It was agreed that that would happen at a later date.

10.59. On 10 December, Grace's father emailed the SDCP and SIO to thank them for travelling to Bristol to meet with the two families and for taking them through the timeline and narrative of events. After considering the timeline of events Grace's father raised several further concerns in relation to whether the first prosecution expert had focused enough on certain aspects of the evidence when assessing the offender's state of mind on the day of the attacks. Barnaby's parents emailed to confirm that they shared these concerns.

10.60. On receiving the second prosecution psychiatric expert's report, the CPS sent it to the SIO on 13 December and confirmed that they were content for the

FLOs to meet the families to inform them of the psychiatrist's findings and conclusions.

10.61. The FLOs met Barnaby and Grace's parents that day via a video link and, according to the FLO logs, read out the first prosecution psychiatric expert's report verbatim. The log records that Barnaby's parents had to leave the meeting when the FLOs started to read out the second prosecution psychiatric expert's report. The FLOs later emailed the SDCP and SIO to confirm what had happened at the meeting and that the families' concerns persisted.

10.62. On 14 December, following input from the CPS, the FLOs for Barnaby and Grace's parents emailed them. The email explained that the CPS were required under the Victims' Code to provide them with a letter notifying them of their decision to accept pleas to manslaughter and that this would be provided once the CPS had considered the second prosecution expert's report. The email included a link to the CPS guidance on judicial review of its legal decisions, and also offered the families a meeting with the SIO and SDCP in London on 19 December.

10.63. On 15 and 17 December respectively, the FLOs provided a document to the parents of Barnaby and Grace that provided answers to concerns and questions previously raised by them. The document had been prepared with contributions from the CPS and police. Each of the two documents provided to the two families was similar but differed in some respects for reasons of sensitivity. In the covering email to Barnaby's parents, the FLO referred to the proposed meeting on 19 December with the SDCP and SIO and that if they did not feel up to travelling, a virtual link could be arranged for them. Barnaby's parents declined the offer of a meeting. Grace's parents initially accepted the meeting offer but then later declined it.

10.64. On 17 December the reviewing lawyer carried out a further review and concluded that there was no longer a realistic prospect of conviction for the three counts of murder and decided that the pleas to manslaughter by reason of diminished responsibility would have to be accepted. On 18 December, letters to the three bereaved families notifying them of the decision to accept pleas to manslaughter and the reasons for the decision were prepared for approval by the CCP. This was in accordance with Right 6 under the Victims' Code and the BFS where the CPS should write to bereaved families within one working day of a decision being made to stop or substantially alter a charge.

10.65. On 19 December, Grace's parents emailed the SDCP and SIO outlining their continuing concerns with the psychiatric reports, which Barnaby's parents supported.

10.66. One of the concerns raised in these communications, and in a later communication on 16 January, was that the police had failed to conduct a specific line of enquiry relating to toxicology by not taking samples from the offender whilst in custody or subsequently. The forensic strategy, as is usual in cases of this nature, is a matter for the SIO who leads the police investigation. We have seen emails that confirm that there was a clear forensic strategy in this case and that the SIO had explained his decision-making to the families. Police

decision-making around, for example, forensic strategies, is outside our remit. However, we note that there was no evidence in this case of previous or current drug or alcohol abuse by the offender and as the first prosecution psychiatric expert told us, his opinion was that the offender was suffering from 'pure' psychosis.

10.67. On 19 December, the letter from the CCP explaining the CPS decision to accept pleas was personally delivered to Barnaby and Grace's parents by their FLOs. We found that the CCP's letter was empathetic and contained a clear explanation for why the prosecution had concluded that the partial defence of diminished responsibility was available to the offender and why the decision had been taken that there was no longer a realistic prospect of conviction for murder. The letter also addressed again various concerns that the families had expressed about the psychiatrists' conclusions.

10.68. On receipt of the letters, Barnaby and Grace's parents requested a meeting with counsel in the new year, before the sentencing hearing, to understand how the case would be presented and the likely sentence.

10.69. On 8 January 2024, once the date of the sentencing hearing was known, the CPS arranged a meeting with Barnaby and Grace's parents to take place via video-link on 15 January with the reviewing lawyer, the SDCP, prosecution counsel, the FLOs and the investigation team.

10.70. At the meeting on 15 January, leading prosecution counsel explained to Barnaby and Grace's parents that although it had been helpful to see the documents detailing the families' concerns, the decision to accept the pleas was now final and that counsel was satisfied that the correct legal decision had been made. Counsel explained what would happen at the sentencing hearing and explained that the prosecution would seek a hybrid order, which had a penal element, as opposed to a hospital and restriction order. Counsel explained how the judge would approach the sentencing options and the factors he would need to take into account. Counsel also agreed that the FLOs could show the families the prosecution opening note, which covered the facts of the case and representations on sentence. That document was passed to the FLOs later that evening.

10.71. At the sentencing hearing at Nottingham Crown Court on 23 to 25 January, the reviewing lawyer, DCP, junior counsel and leading counsel were present throughout. The SDCP also attended on 24 and 25 January. We were told by the prosecution team that offers remained throughout that time to meet with Barnaby and Grace's families. However, apart from discussions with junior counsel over their victim personal statements, the families did not accept the offers.

The CPS engagement with Ian's sons after 24 November 2023

10.72. We discuss at paragraphs 9.10 to 9.52 our findings regarding the CPS engagement with Ian's son (who was the designated point of contact for Ian's

three sons) up to 24 November when he was told in a telephone call from his FLO of the CPS decision to accept pleas to manslaughter.

10.73. Ian's son has also told us that he felt there had been a general lack of contact with him from the CPS after the meeting at the PTPH on 28 November. He told us that after this meeting he had no further contact from the CPS until he received their letter on 19 December, hand delivered to him by his FLO, informing him of the final decision to accept pleas to manslaughter. Again, he had no knowledge and had not been informed of the meeting that Barnaby and Grace's parents were having with the SIO and the CPS in Bristol on 7 December or, later, the meeting that they had virtually with the CPS, prosecution counsel and the police on 15 January 2024.

10.74. After our meeting with the families on 9 February 2024, he raised a further concern that, following the completion of the sentencing hearing on 25 January, he felt the CPS representatives left the court swiftly, leaving his family no opportunity to speak with them to understand what had just happened in terms of the sentence.

10.75. We found that whilst the CPS did meet its general obligations under the Victims' Code and the BFS in terms of its engagement with Ian's son after 24 November, he was not made fully aware about concerns that the other bereaved families had raised about the case and did not know about the meetings that the CPS had with the other families on 7 December and 15 January and what was to be discussed in those meetings.

10.76. We found that the CPS, via the FLO, had offered meetings to Ian's son and there were two bereaved family meetings held with him and his brothers, after the FLO had communicated the CPS decision to accept pleas on 24 November. These two meetings took place in person at court with the CPS and prosecution counsel. They were held immediately before and following the PTPH on 28 November and on the first day of the sentencing hearing on 23 January.

10.77. After their meeting with the CPS on 24 November, Barnaby and Grace's parents had raised concerns about the CPS decision to accept guilty pleas to manslaughter based on what they considered to be deficiencies with the prosecution psychiatric expert's report and elements of the police investigation. We have seen a record that the FLO for Ian's son called him on 27 November and informed him that the guilty pleas to manslaughter would not now be accepted at the PTPH on 28 November as further time was needed to '*consult*' with the families and obtain further psychiatric evidence due to concerns raised '*by families*'. The log does not record whether Ian's son was aware of, or had been informed about, the meeting with Barnaby and Grace's parents on 24 November, the nature of the concerns they had raised in that meeting, and in their later emails, or what they had been told by the police and CPS at that meeting. Having met with Ian's son he has told us that he was not aware of this meeting and was not, at that time, aware of the specific concerns that Barnaby and Grace's parents had raised.

10.78. On 27 November when the SDCP informed the SIO of the CPS decision to delay accepting the guilty pleas to manslaughter, she did ask whether any members of Ian's family would be attending the PTPH the next day. The SIO responded to confirm that Ian's three sons would be in attendance. This does indicate to us, and the CPS have told us, that Ian's sons were in the minds of the CPS, and they were conscious about wanting and having the opportunity to speak with them in person to explain the developments and help them understand the reason for the decisions they had made. It was considered that this obligation under the Victims' Code and BFS would be met when they met with Ian's sons the following day at court.

10.79. On 28 November, Ian's sons met with the CPS and prosecution counsel at court, together with Grace's parents and Ian's partner. Although the brief meeting notes do not detail this, the CPS have told us that more broadly the offer to meet separately with the bereaved families was made to all in that meeting.

10.80. After the PTPH, the SDCP emailed the SIO to confirm that the CPS repeated its offer to meet Barnaby and Grace's parents and Ian's family to explain the existing psychiatric reports. She had suggested that they could discuss how best to do this once the families had had the chance to digest the information they had received over the previous few days. We discussed at paragraph 10.52 the emails sent to Barnaby and Grace's parents by their FLOs on 1 December which led to the in-person meeting they had in Bristol on 7 December with the SIO and the SDCP.

10.81. The FLO log relating to Ian's sons was silent as to whether a similar email was sent to Ian's son and whether they were aware thereafter that an in-person meeting had been arranged with Barnaby and Grace's parents. We have not seen or heard any evidence that this was communicated to Ian's sons and Ian's son has told us he was not aware of this meeting taking place.

10.82. It was following the PTPH hearing on 28 November that arrangements were made for the SIO to visit Ian's sons to go through the investigation. The initial date arranged of 10 December was later changed to 17 December owing to the unavailability of the SIO.

10.83. We have seen nothing in the FLO logs or communications between the CPS and SIO to indicate that, when the arrangements were made for the SIO to meet Ian's sons on 10 December, rearranged then to 17 December, the CPS were notified of this arrangement so that they could specifically offer to meet with Ian's sons at the same time and take them through the psychiatric reports, as they had arranged to do with Barnaby and Grace's parents on 7 December. We were told by the CPS that as far as they were aware, the general continued offer of a meeting with the CPS had been made to Ian's sons, but they had not taken up this offer.

10.84. By the time the SIO met with two of Ian's sons on 17 December (Ian's third son was unavailable to meet but was happy for the meeting to go ahead in his absence), the CPS had received their second psychiatric report. The log records that the SIO took Ian's two sons through the timeline of events on 12

and 13 June, the evidence, and the psychiatric reports. The information provided regarding the psychiatric reports covered similar ground to the information provided to Barnaby and Grace's parents at the virtual meeting with their FLOs on 13 December. The SIO also informed Ian's sons that he would be meeting the CPS the next day and he thought that the CPS would accept the pleas to manslaughter given the conclusions of all four psychiatric reports. The log records that the SIO explained to Ian's sons their entitlement to meet the CPS once the decision was made and that he would update them as soon as it had been made.

10.85. The records show that Ian's son's FLO telephoned him on 18 December and told him she would be hand delivering a letter from the CPS on 19 December. On 19 December, the letter explaining the CPS decision to accept guilty pleas to manslaughter was hand delivered to Ian's son. The letter included the offer to meet with the CPS to discuss their decision and asked him and his brothers to contact their FLO should they wish to meet prior to the sentencing hearing. We saw no record that there was any request made by Ian's son, after receipt of this letter, to meet with the CPS prior to the sentencing hearing.

10.86. Barnaby and Grace's parents both requested a meeting with the CPS and prosecution counsel prior to the sentencing hearing and a virtual meeting was arranged for 15 January. The available sentencing regimes were discussed during this meeting and they were able to impress upon the CPS and counsel their desire for a hybrid order to be sought.

10.87. We have found no evidence in the FLO logs or communications between the CPS and police to indicate that Ian's son was notified of the meeting arranged for 15 January with Barnaby and Grace's parents, or the reasons for it, or that any consideration was given to extending the invitation to him and his two brothers. Ian's son has told us that he did not know, very much like the meetings of 24 November and 7 December, that this meeting was taking place.

10.88. The CPS considers that it met its obligations to Ian's sons under the Victims' Code and BFS. The CPS had offered to meet them at an early stage of the case, had met them at court on 20 June and 28 November, and had continued to offer meetings through the FLOs and via their letter of 19 December. However, we found that Ian's sons not being told of the issues being raised by, and the meetings that were taking place, with the other bereaved families, affected their ability to make a properly informed decision about whether to request a meeting.

10.89. As we said at paragraph 9.53, we do not underestimate the difficulties, in a case of this sensitive nature, with several bereaved families, to ensure that everyone is provided with similar information at a similar time and afforded the same opportunities to meet. We also understand the nuances and uniqueness of this case where Barnaby and Grace's parents were in greater contact with their FLOs and the CPS due to various and repeated concerns they raised in relation to the evidence, particularly the psychiatric reports. This naturally led to a greater degree of contact than might otherwise have arisen. Nevertheless, from the evidence we have seen or gathered, Ian's son was not fully aware of the

concerns about the case being raised by the other bereaved families from October onwards and did not know about the meetings that the police and CPS held with them on 24 November, 7 December and 15 January.

10.90. We suggest, in future cases involving more than one bereaved family, the CPS make sure that where it is providing information about the case to one family either directly or via a FLO, or arranging a meeting with that family, it ensures that, where appropriate, it updates the other family or families at the same time. The CPS would, of course, need to consider this on a case-by-case basis and take into account issues such as confidentiality. But in actively considering this, it should avoid families in the future feeling that they have not been made aware of developments in the case or given information that was provided to other families.

10.91. Regarding the concern raised by Ian's son about the CPS engagement with him at the sentencing hearing, we found that the CPS went as far as they could in meeting their obligations under the Victims' Code and BFS. The reviewing lawyer, DCP and junior counsel met with Ian's sons at court on the morning of 23 January which was the first day of the sentencing hearing. We have seen records that this meeting took place before the hearing started and that the likely timetable for the next two days was explained. The CPS have told us that they were present throughout the three days of the sentencing hearing and were therefore available to meet with bereaved relatives as and when they required.

10.92. Ian's son told us in an email communication that the CPS left court swiftly following sentence and gave him no opportunity to meet with them to discuss the sentence that had just been passed. The notes we have seen and the evidence we have gathered from speaking to the reviewing lawyer, the DCP, the SDCP and prosecution counsel would not support a finding that the prosecution team left the court swiftly providing no opportunity for bereaved relatives to speak with them. They told us they had remained in court and the DCP and SIO had been able to approach Ian's partner to check if she wanted to meet to discuss sentence. She declined the offer. As they were leaving the court room, the CPS were approached by the FLO for one of the surviving victims as that victim wanted to meet the CPS and prosecution counsel. The CPS remained at court and held a meeting with that victim. We were told by prosecution counsel and the CPS that they were prepared to meet with any of the bereaved families immediately following sentence and they remained present and available at court for that purpose, but their recollection was that Barnaby and Grace's parents together with Ian's son immediately left the court.

10.93. The CPS subsequently wrote to Ian's son, along with the other bereaved families, on 29 January to offer them a meeting on 7 February but the CPS told us that they received no response, other than from Ian's partner who politely declined the offer, and so the meeting was paused.

Findings

10.94. We found that the CPS could not have made the decision that there was no longer a realistic prospect of conviction for murder and to accept the pleas to manslaughter any earlier than they did.

10.95. We also found that the decision was taken at a time when the CPS had all relevant material they required properly to apply the Code for Crown Prosecutors.

10.96. We found that the reasons for the decision were clearly explained to Barnaby and Grace's parents during their meeting with the CPS on 24 November. We also found that the reasons for the decision were again clearly explained in the CCP's letter to all of the bereaved families on 19 December.

10.97. We found that the use of the word 'consult' may have contributed to a general misunderstanding of the CPS's obligations to the bereaved families when making the decision on evidential grounds.

10.98. We found that the CPS did listen to the concerns raised by Barnaby and Grace's parents about the findings of the psychiatric experts. Exceptionally the CPS commissioned a fourth expert report to address those concerns.

10.99. As with the meeting of 24 November, we found no record that Ian's sons had been made aware in advance of the meetings that the other bereaved families had with the CPS on 7 December and 15 January. Again, we were told by Ian's son that had he known of these meetings he would have attended. As a result, Ian's son did not receive the explanation for the decision from the CPS on 24 November, but instead from the FLO by telephone. This again highlights the importance of a proactive and probing approach being taken by both the CPS and FLOs when communicating with each other.

Annex A

Attorney General's commission



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29th January 2024

Dear Andrew,

Rapid Inspection of CPS Actions in the Calocane (Nottingham) Case

Following the sentencing of Valdo Calocane, I would like the Inspectorate to undertake a thorough and rapid inspection of the CPS actions in this case. I am therefore referring this matter to you under section 2(1)(b) of the Crown Prosecution Inspectorate Act 2000.

This inspection should address the concerns raised by the victims' families about the charging decision and the approach taken by the CPS in engaging with the families.

I would like HMCPSI to report to me before Easter, so that any lessons to be learned can be rapidly implemented.

Yours,

RT HON VICTORIA PRENTIS KC MP
ATTORNEY GENERAL

Annex B

Methodology

Methodology

On 29 January 2024, the Attorney General asked His Majesty's Crown Prosecution Service Inspectorate (HMCPIS) to undertake a thorough inspection of the CPS actions in the case of R v Valdo Calocane. The Attorney General requested that the inspection address the concerns raised by the families of those unlawfully killed about the decision not to proceed to trial for murder but to accept pleas to manslaughter and the approach taken by the CPS in engaging with the families.

The overarching inspection question our report has therefore sought to answer is: did the CPS make appropriate decisions on charge and acceptance of pleas, and did they engage appropriately with the bereaved families?

This inspection was led by His Majesty's Chief Inspector of the Crown Prosecution Service, Anthony Rogers.

He was assisted by two HMCPIS legal inspectors, Joanne Milner and Emma Jones, solicitors with extensive previous experience of criminal casework and litigation, both for the defence and the CPS.

They were joined by Richard Whittam KC, a specialist regulatory and criminal practitioner, with extensive experience in the most complex and high profile criminal cases, and former First Senior Treasury Counsel (crime) and James Jenkins, an associate legal inspector, who until recently was a senior legal inspector in HMCPIS. Previously, he was a prosecutor with the CPS for 20 years, before working as a senior legal adviser at the Attorney General's Office, latterly as head of criminal casework.

Our inspection has considered whether the CPS's decision to accept guilty pleas to manslaughter on the grounds of diminished responsibility was correct. It has also considered whether the CPS met its obligations to the bereaved families under the Victims' Code and its own bereaved family scheme (BFS). These obligations include its duties to have engaged with and offered meetings to the families at important stages of the case, to have given them information in a way that was easy to understand, and to have provided them with updates on the case and informed them when important decisions were taken.

The inspection team examined the CPS electronic case file, and the case material held on the Crown Court Digital Case System (CCDCS). The CPS file included all the evidence in the case, the psychiatric reports, unused material, review notes, conference and meeting notes, and counsel's written advice. We were also provided with and read the full transcripts of the three Crown Court hearings, namely the first hearing on 20 June 2023, the plea and trial preparation hearing on 28 November and the sentencing hearing, which began on 23 January 2024 and spanned three days.

We were also provided with and considered numerous emails relating to the case that had been sent or received by the CPS between 13 June 2023 and 2 February 2024. These included emails from and to the bereaved families, in

some of which they raised concerns and questions about the investigation or the decision to accept pleas to manslaughter on the grounds of diminished responsibility.

Although this inspection has looked at CPS decision-making and the quality of CPS engagement with the families, we were also provided with and considered the logs of engagement with the families that the Nottinghamshire Police family liaison officers kept from June 2023 to January 2024. It was important for us to consider these as they contain information relevant to assessing the quality of CPS engagement.

We met with the parents of Barnaby and Grace, and one of Ian's sons, so that we could understand their specific concerns about the CPS engagement with them and the ultimate decision not to prosecute the offender for murder but to accept his pleas to manslaughter. They also provided us with emails and some additional information that we considered. We spoke briefly with Ian's partner on the telephone.

We also carried out interviews with the senior prosecutors who handled the case on the CPS East Midlands Complex Casework Unit (CCU). These were, the reviewing lawyer, who was responsible for the day to day handling of the case and for making the decision to accept the pleas to manslaughter, the deputy head of the CCU (the DCP), and the head of the CCU (the SDCP). We also interviewed the Chief Crown Prosecutor for CPS East Midlands, and leading and junior prosecution counsel instructed by the CPS to conduct the case in court.

The families' main concerns about the decision to accept pleas related to the soundness of the conclusion that the offender had a partial defence to murder by reason of diminished responsibility. We therefore met with the first prosecution forensic psychiatric expert who had interviewed the offender and assessed his mental state at the time of the offending to discuss these concerns and the conclusions he reached in his report.

Annex C

Overview of law and practice relating to murder and diminished responsibility

Relevant law and practice relating to diminished responsibility and law commission reports

Although considered the most serious crime, the offence of murder has not been defined by statute. It is important to understand the development of the offence of murder and the statutory partial defence to murder of diminished responsibility.

Murder is the unlawful killing of another 'under the King's peace', with the intention to kill another or to do that other grievous bodily harm. The requirement for the killing to be 'under the King's peace' is not relevant to this inspection.

For the offence of attempted murder, the prosecution must prove that the accused had an intent to kill.

The Homicide Act 1957 made amendments to the law relating to homicide and the trial and punishment of murder in England and Wales.

It introduced the partial defence of diminished responsibility, which was for the accused to prove, on the balance of probability. Section 2 stated: "An offender shall not be convicted of murder if the offender was suffering such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing."

An accused must be guilty of the legal elements of murder, including an intention to kill or cause really serious harm, for the partial defence of diminished responsibility to be operative. Diminished responsibility does not apply to attempted murder or to manslaughter.

An accused cannot be charged with manslaughter on the basis of diminished responsibility. The accused must be charged with murder. A jury after hearing the evidence can, where the partial defence is run, return a verdict of not guilty to murder but guilty to manslaughter on the grounds of diminished responsibility. Alternatively, if the accused, when arraigned on an indictment for murder, enters a plea of not guilty to murder but guilty to manslaughter on the grounds of diminished responsibility, the prosecution may, in some cases where the psychiatric evidence to that effect is compelling, conclude that there is no longer a realistic prospect of conviction for murder and accept the plea and not proceed with the murder count.

Although the Homicide Act 1957 retained the death penalty for certain 'capital murders' (since repealed), including murder by shooting, and for repeat murders, (ss 5 & 6), it prescribed a sentence of life imprisonment for all other offences of murder (s8).

The Criminal Justice Act 2003 (“CJA”) set out general provisions for sentencing and the purposes of sentencing, namely punishment, crime reduction, reform and rehabilitation, public protection and reparation (CJA ss142-146). It also established the Sentencing Guidelines Council (CJA ss167-173).

Parliament set out how the court should determine the minimum term in relation to mandatory life sentences (sentences fixed by law) (CJA s269(1)). The sentencer was obliged to have regard to the general principles set out in Schedule 21 to the CJA (CJA s269(5)).

The effect of the CJA was that the minimum term imposed represented the actual time served in custody. It had the effect of doubling the length of custodial sentences for murder. There was no express link between the guidance in Schedule 21 and sentencing decisions in manslaughter. The culpability of a defendant in diminished responsibility manslaughter cases might sometimes be reduced almost to extinction, while in other cases it may remain high. When fixing the minimum for manslaughter, subject to the specific element of reduced culpability inherent in diminished responsibility, the court should have regard to the guidance in Schedule 21 (Lord Judge CJ, R-v-Wood, [2010] 1 Cr App R (S) 2) H5, 21-22).

One of the mitigating factors in Schedule 21 was that the fact that the person convicted of murder suffered from any mental disorder or mental disability which fell short of diminished responsibility, lowered their degree of culpability.

Law Commission (Law Com 290): Partial Defences to Murder 6 August 2004

The Law Commission is a statutory independent body that keeps the law of England and Wales under review and recommends reform where it is needed.

On 6 August 2004, the Law Commission reported on “Partial Defences to Murder”. It commented, “The law of murder in England and Wales has changed regularly over the last 50 years and is still not in a state of rest.” (§2.36 and §2.41 et seq). Rather starkly, it described the then law of murder in England and Wales as “a mess” (§2.74) and recommended a complete review. In October 2004 the Home Office announced a review of the law of murder.

The Law Commission had long thought that the law of murder needed review, but was limited in its terms of reference, which included reporting on the partial defence to murder of diminished responsibility.

In its report, the Law Commission recommended that as long as the law of murder remained as it was, there should be a partial defence to murder of diminished responsibility which would reduce what would otherwise be a conviction for murder to one of manslaughter (§1.16 and 5.11).

The Law Commission acknowledged the breadth and depth of discontent with the substantive law and sentencing regime. That dissatisfaction emanated from all shades of opinion, including lawyers and victim groups (§2.18(1) and fn18).

In its report, the Law Commission commented that there was no doubt that some cases of alleged murder arouse public passions to a far greater degree than any other offence and that public attention naturally tends to focus on the most lurid or shocking cases (§2.19). It also became clear that public perception of what murder involved was inaccurate and unrealistic (§2.21).

In particular, it was observed that only about half of those who commented on the Law Commission's Consultation Paper addressed the partial defence of diminished responsibility. Those that did respond had mixed views. Whilst caution had to be exercised about a limited response, most of the consultees who supported the abolition of diminished responsibility, provided the mandatory sentence was abolished, were of the view that the issues raised by the defence were no more than issues of mitigation which went to sentence (§5.17).

There were arguments in favour of retaining diminished responsibility even if the mandatory life sentence were abolished. The main rationale being "fair and just labelling": "Consultees frequently expressed the view that it is unjust to label as murderers those not fully responsible for their actions. Some consultees referred to the stigma which attaches to a conviction for murder, the most serious of all crimes. According to those consultees, the reason why it is unjust is that their culpability is diminished." (§5.18)

The Law Commission observed that this rationale merited two comments (§§5.19-5.21).

- First, the partial defence of manslaughter represents an exception to the general approach precisely because it only comes into play if the defendant killed with the intention to kill or cause really serious harm. Further, diminished responsibility was not a complete defence exculpating the defendant from all liability. Some would maintain that, for this reason, partial defences are anomalous and owe their existence solely to the mandatory sentencing. A leading academic summed it up in this way: "There is, in my view, a clear moral distinction between murder and a diminished responsibility killing despite the presence of the mens rea of the former offence ... what is needed is a newly crafted plea which more appropriately reflects this moral distinction."
- Secondly, why should the partial defence be confined to murder, and not also to attempted murder, or grievous bodily harm with intent?

The upshot was that the Law Commission was not persuaded that it was desirable to come to a final view about diminished responsibility in advance of a comprehensive review of the law of murder and the sentencing regime (§§5.47, 5.86, 5.92 et seq)

Law Commission (Law Com No 304): Murder, Manslaughter and Infanticide November 2006

In October 2004 the Home Office announced that a review of the law of murder would take place.

On 29 November 2006 the Law Commission published its report, "Murder, Manslaughter and Infanticide". It was a substantial piece of work, the substantive report being 176 pages long, with 99 pages of appendices.

The report recommended, amongst other things, that instead of the current two-tier structure of general homicide offences, namely murder and manslaughter, there should be a three-tier structure:

- First degree murder (mandatory life sentence)
- Second degree murder (discretionary life sentence), and
- Manslaughter (discretionary life sentence).

The report described the existing law governing homicide in England and Wales as "... a rickety structure set upon shaky foundations. Some of its rules have remained unaltered since the seventeenth century, even though it has long been acknowledged that they are in dire need of reform." (§1.8)

In particular, the Law Commission recommended that, for the first time, the general law of homicide should be rationalised through legislation: "Offences and defences specific to murder must take their place within a readily comprehensible and fair legal structure. This structure must be set out with clarity, in a way that will promote certainty and in a way that non-lawyers can understand and accept." (§1.10)

It recommended that the two-tier structure of general homicide offences, murder and manslaughter, be replaced by a three-tier structure in descending order of seriousness, first degree murder, second degree murder and manslaughter:

- (1) First degree murder (mandatory life penalty)
 - (a) Killing intentionally.
 - (b) Killing where there was an intention to do serious injury, coupled with an awareness of a serious risk of causing death.
- (2) Second degree murder (discretionary life maximum penalty)
 - (a) Killing where the offender intended to do serious injury.
 - (b) Killing where the offender intended to cause some injury or a fear or risk of injury, and was aware of a serious risk of causing death.
 - (c) Killing in which there is a partial defence to what would otherwise be first degree murder.
- (3) Manslaughter (discretionary life maximum penalty)
 - (a) Killing through gross negligence as to a risk of causing death.
 - (b) Killing through a criminal act:
 - (i) intended to cause injury; or
 - (ii) where there was an awareness that the act involved a serious risk of causing injury.
 - (c) Participating in a joint criminal venture in the course of which another participant commits first or second degree murder, in circumstances where it

should have been obvious that first or second degree murder might be committed by another participant.

The Law Commission was of the opinion that killing in which there is a partial defence (e.g. diminished responsibility) to what would otherwise be first degree murder should be exempt from a mandatory life penalty. (§1.67)

In considering the 'offence labels' the Law Commission noted that there was no unanimity on the question of the right name for different offences (§2.37) although the clear majority supported the use of the terms first degree murder and second degree murder to express the distinction between the two most serious offences of homicide. In particular, the use of the term second degree murder to describe the verdict a jury must reach when a plea of provocation or diminished responsibility is successful as a defence to first degree murder was strongly supported by groups representing victims' families. (§2.38).

The Law Commission stated that it was its view that when the offender has killed with the fault element for first degree murder but pleads a 'partial defence' successfully, they still ought to be convicted of an offence of 'murder' (second degree murder). (§2.149)

It recommended that the definition of diminished responsibility should be modernised, so that it was both clearer and better able to accommodate developments in expert diagnostic practice. (§5.107).

The Law Commission's recommendations on the partial defences to murder of diminished responsibility and provocation were implemented by the Coroners and Justice Act 2009. Diminished responsibility was redefined and provocation was abolished and replaced by the new partial defence of loss of self-control. The remainder of its recommendations, including introducing a three-tier structure of first degree murder, second degree murder (to include those found to have diminished responsibility) and manslaughter, were rejected by Parliament.

Coroners and Justice Act 2009

Section 52 of the Coroners and Justice Act 2009 amended the definition of diminished responsibility in the Homicide Act 1957 s2 and replaced it with a modernised definition based on the concept of "an abnormality of mental functioning" arising from a "recognised medical condition". The new definition requires that the abnormality substantially impaired the defendant's ability to do one (or more) of three things and also provides that the defendant's abnormality of mental functioning should be at least a significant contributory factor in causing the defendant's acts or omissions. The Homicide Act 1957, s2 now reads:

Section 2 Persons suffering from diminished responsibility:

(1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—

- (a) arose from a recognised medical condition,
- (b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and
- (c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are—

- (a) to understand the nature of D's conduct;
- (b) to form a rational judgment;
- (c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

Sentencing Act 2020

The Sentencing Act 2020 was an Act to consolidate enactments relating to sentencing. It abolished Schedule 21 to the Criminal Justice Act 2003 and replaced it with its own Schedule 21 which also set out how the determination of the minimum term in relation to a mandatory life sentence for murder should be approached. A mitigating factor is that a defendant suffered from a mental disorder or disability which (although not falling within s2(1) of the Homicide Act 1957) lowered the defendant's degree of culpability (Schedule 21(10)(C))

Annex D

Glossary

Attorney General

Chief legal adviser to the monarch and Government. Advises the Government on legal matters, answers questions in Parliament and brings unduly lenient sentences and points of law to the Court of Appeal. Also superintends the CPS and is accountable to Parliament for its performance.

Charging or pre-charge decision

A decision by the CPS (or the police in certain circumstances) on whether there is sufficient evidence, and whether it is in the public interest, to charge a suspect with a particular offence. The process is governed by the Director's Guidance on Charging.

Chief Crown Prosecutor (CCP)

Each of the 14 CPS Areas has a CCP who runs the Area with the Area Business Manager. The CCP is responsible for the legal performance in the Area, such as the quality of legal decision-making, case progression, and working with stakeholders, communities, and the public to deliver quality casework.

Code for Crown Prosecutors (the Code)

A public document, issued by the Director of Public Prosecutions, that sets out the general principles CPS lawyers should follow when they make charging decisions. Cases should proceed only if there is sufficient evidence against a defendant to provide a realistic prospect of conviction and it is in the public interest to prosecute.

Count

A specific charge or allegation against a defendant that is contained on an indictment at the Crown Court.

Crown Court Digital Case System (CCDCS)

An IT platform that holds digital Crown Court case files allowing users to view and print case documents that have been uploaded to it. Users of the system must be registered to gain access and access to an individual case file is by invitation of anyone with existing access.

Custody time limit

A time limit for how long an unconvicted defendant can be kept in custody before a trial. The present time limit for Crown Court cases is 182 days.

Deputy Chief Crown Prosecutor (DCCP)

Second-in-command in a CPS Area, after the Chief Crown Prosecutor, for legal aspects of managing the Area.

Diminished Responsibility

A state of mind in which a person's mental capacity is diminished in such a way that they lack the ability to form the required intention for a crime. It provides a partial defence to murder so that if successful, it reduces the charge to manslaughter. A defendant must prove, on the balance of probabilities, that they suffered from an abnormality of mind arising from a recognised medical condition which provides an explanation for committing the killing. The abnormality must have substantially impaired their ability to understand the nature of their conduct, form a rational judgment and/or exercise self-control.

Director's Guidance on Charging

Guidance issued by the Director of Public Prosecutions in relation to charging decisions. It sets out guidance for the police and CPS about how to prepare a file so that it is ready for charging, who can make the charging decision, and what factors should influence the decision. It also sets out the requirements for a suspect whom the police will ask the court to keep in custody to be charged before all the evidence is available, which is called the threshold test. The latest edition (the sixth, also called "DG6") came into effect on 31 December 2020.

Discontinuance

Where the prosecution stops the case because there is insufficient evidence to carry on, or it is not in the public interest to do so.

District Crown Prosecutor (DCP)

A lawyer who leads and manages the day-to-day activities of prosecutors and advocates.

Family Liaison Officer (FLO)

A police officer who is specially trained to deal with bereaved families. They provide a two-way flow of information between bereaved families and investigation teams and the CPS.

First-Tier Tribunal

A First-tier Tribunal settles legal disputes and is structured around a particular area of law. The mental health First-tier tribunal is responsible for handling applications for the discharge of patients detained in psychiatric hospitals.

Full Code Test

A method by which a prosecutor decides whether or not to bring a prosecution, based on the Code for Crown Prosecutors. A prosecution must only start or continue when the case has passed both stages of the full Code test: the evidential stage, followed by the public interest stage. The full Code test should be applied when all outstanding reasonable lines of inquiry have been pursued – or before the investigation being completed, if the prosecutor is satisfied that any

further evidence or material is unlikely to affect the application of the full Code test, whether in favour of or against a prosecution.

Home Office

A department of the British Government that is responsible for immigration security and law and order. The Home Secretary is responsible for this Government department.

Junior counsel

A barrister who is of a lower rank than a King's Counsel. They prosecute or defend criminal cases alone or, where two or more counsel are instructed to prosecute or defend, work with and help leading counsel in the preparation and presentation of a criminal case.

Law Commission

A statutory independent body that keeps the law of England and Wales under review and recommends reform to laws where it is needed. Its aim is to ensure that the law is fair, modern, simple and as cost effective as possible.

Leading counsel

A senior barrister who will often be a King's Counsel recognised for excellence in advocacy. Often seen as leaders in their area of law.

Offender

A person who has admitted guilt as to the commission of an offence, or who has been found guilty in a court of law.

Postal summons

A legal document notifying a person that they are to be prosecuted for a criminal offence and are required to attend the magistrates' courts to answer the allegation.

Prosecutor

A lawyer with day-to-day conduct of a case, responsible for completing reviews, instructing advocates, making decisions as to the progress of a case and being accountable for the decisions made.

Plea and Trial Preparation Hearing (PTPH)

A hearing in the Crown Court where the defendant is expected to enter a plea to the charges against them. Depending on the plea/s entered, the court will then direct the case towards a trial or set a date for sentencing.

Review

The process whereby a CPS prosecutor determines whether a case received from the police satisfies, or continues to satisfy, the legal test for prosecution in the Code for Crown Prosecutors. This is one of the most important functions of the CPS.

Senior District Crown Prosecutor (SDCP)

A senior lawyer who provides legal leadership for the handling of cases. Third-in-command in a CPS Area, after the Chief Crown Prosecutor and Deputy Chief Crown Prosecutor, responsible for managing legal aspects in a particular casework team.

Senior Investigating Officer (SIO)

A senior police officer acting on serious and complex investigations, managing the investigative response and resources associated with an investigation. They are accountable to chief officers for the conduct of the investigation.

Supreme Court

The final court of appeal for criminal cases in England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance.

Threshold test

See Director's Guidance on Charging. It is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge.

Unused material

The police have a duty to record, retain and review material collected during an investigation which is relevant but is not being used as prosecution evidence, and to reveal it to the prosecutor. The prosecutor has a duty to provide the defence with copies of, or access to, all material that is capable of undermining the prosecution case and/or assisting the defendant's case.

Victim Personal Statement (VPS)

When a victim explains to the court how a crime has affected them. If a defendant is found guilty, the court will take the VPS into account, along with all the evidence, when deciding on an appropriate sentence.

Victims' Code

Sets out a victim's rights and the minimum standards of service that organisations must provide to victims of crime. Its aim is to improve victims' experience of the criminal justice system by providing them with the support and

information they need. It was published in October 2013 and last updated on 21 April 2021.

