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Initiatives to Improve Performance in England and Wales

1 Introduction

This briefing paper has been requested by the Justice Committee which has been considering the performance of the criminal justice system in relation to addressing avoidable delay. The paper provides information on initiatives introduced to improve performance and efficiency in England and Wales. The Committee is interested in initiatives introduced by Keir Starmer Q.C, the Director of Public Prosecutions (DPP). Mr Starmer was appointed as Director of Public Prosecutions in November 2008 therefore information has been mainly obtained from Crown Prosecution Service Annual reports from 2008 and speeches or presentations made by the DPP.

Some of the initiatives identified are multi-agency initiatives with involvement of the CPS and other justice agencies. Initiatives considered in this briefing paper include:

- Criminal Justice: Simple, Speedy, Summary (CJSSS) and Streamlined Process;
- Optimum Business Model (OBM);
- Digitalisation of the Crown Prosecution Service;

- Modernising Statutory Charging;
- Introduction of the Early Guilty Plea Scheme.

2 Criminal Justice: Simple Speedy Summary and Streamlined Process

The Criminal Justice: Simple Speedy Summary (CJSSS) is a multi -agency work programme which includes the CPS, HM Courts Service and the police with the aim of improving timeliness in magistrates' court cases.¹ There are two specific targets:²

- A reduction in the number of hearings from the current average of five to an expectation of one (for guilty pleas) and two (for contested cases);
- Simple cases taking on average between one day to six weeks from charge to disposal, as opposed to the current system which averages 21 plus weeks.

The following information has been obtained from the Legal Services Commission in England and Wales as to how the CJSSS will ensure that cases are disposed of in a timely manner.³

Pre-court, the scheme will ensure that:

- the prosecution is ready so the first hearing is effective and proportionate
- the level of information is appropriate and sufficient for the type of charge, expectation of plea and court decisions;
- all appropriate information is given to the defence and the court so the defence is ready to ensure the first hearing is effective.

At first hearing:

- the judiciary will ensure issues are identified
- the defendant will enter a plea
- where a guilty plea is entered, sentencing will take place on the same day where possible
- where a not guilty plea is entered, an effective trial date will be fixed within four to six weeks.

¹ Crown Prosecution Service Annual Report 2008, <http://cps.gov.uk/publications/reports/2008/>, NAO Criminal Justice Landscape Review, November 2010, 17

² http://www.legalservices.gov.uk/docs/cls_main/AboutCJSSS.pdf

³ http://www.legalservices.gov.uk/docs/cls_main/AboutCJSSS.pdf

From first hearing to trial, the scheme will ensure:

- the case management regime is appropriate to the seriousness of the case
- pre-trial reviews will be by exception
- case progression will take place outside the courtroom; interim hearings will take place only where necessary
- trials proceed where appropriate on the appointed day in the absence of the defendant where there is a failure to appear.

Benefits for the defence include:

- they are in a better position to advise their client and ensure the appropriate plea is entered at first hearing
- more guilty pleas are dealt with at first hearing
- the standard fee goes further
- fewer attendances at hearings
- proportionate advance information is available
- the level of Crown Prosecution Service (CPS) case file preparation is better
- improved timeliness of case resolution
- earlier payment as cases are resolved more quickly.

The CJSSS was rolled out across the magistrates' courts during 2007-08 and across the youth court during 2008-09. In youth court cases no specific targets were set.⁴ To support the CJSSS and reduce bureaucracy, the CPS and Association of Chief Police Officers (ACPO) developed the Streamlined Process (SP). In respect of uncomplicated volume guilty pleas suitable for sentencing in the magistrates' courts, this provides for a more streamlined prosecution file. Under SP, a file will be produced which assists the prosecution, defence and the bench. The file will contain sufficient information to determine the appropriate charge. It will also provide sufficient information to allow the defence to take instructions and to enter a guilty plea if appropriate. The file will facilitate the bench in understanding the case and will

⁴ Ministry of Justice "Time Intervals Survey of Criminal Proceedings in Magistrates' Courts" March 2011, 18

assist in sentencing and case management if there is no guilty plea.⁵ Implementation of the SP will result in:⁶

- A reduction in police officer and administrative staff time taken to prepare a prosecution file;
- Little or no detrimental impact on the guilty plea rate at first hearing; and
- Little or no increase in the number of adjournments before trial.

The Streamlined Process was tested in seven criminal justice areas during 2008. Reviews halfway through the process highlighted no significant flaws and no negative effect on CJSSS data.⁷

Keir Starmer suggested that this cross agency work such as the introduction of CJSSS and the Streamlined Process has brought many benefits, including a reduction in the number of hearings in most magistrates' courts.⁸ The Time Intervals Survey (TIS) indicated that for adult defendants in charged cases in June 2011, the estimated average time between the date an offence was committed and the date the defendant's case was heard was 44 days (6.2 weeks). The TIS highlighted that the average time has significantly reduced over the last couple of years and is lower than 2007. The explanation given is that this was due to a steady increase in the proportion of cases completed within the six weeks target (68% target in June).⁹ For youth defendants in June 2011, the average time between the date the offence was committed and the date the defendant's case was completed in the magistrates' courts was 43 days (6.1 weeks).¹⁰

3 Optimum Business Model (OBM)

The CPS has moved to a system called the Optimum Business Model (OBM) where there are a team of people to ensure the progression of cases. The model ensures that all the information is available in time for trial.¹¹ The OBM involves the transfer of responsibility for individual cases from individual staff members to a team with rolling membership. Each

⁵ <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/186/186we02.htm>

⁶ The Crown Prosecution Service Annual Report 2008-Improving Performance in the Magistrates' courts, http://cps.gov.uk/publications/reports/2008/performance_magistrates_court.html

⁷ The Crown Prosecution Service Annual Report 2008-Improving Performance in the Magistrates' courts, http://cps.gov.uk/publications/reports/2008/performance_magistrates_court.html

⁸ Challenge and Opportunity-DPP's address to the London Justices' Clerks' Society, 11 March 2011, http://www.cps.gov.uk/news/articles/challenge_and_opportunity/index.html

⁹ Ministry of Justice "Time Intervals Survey of Criminal Proceedings in Magistrates' Courts" June 2011, 14 <http://www.justice.gov.uk/statistics/criminal-justice/magistrates-times>

¹⁰ Ministry of Justice "Time Intervals Survey of Criminal Proceedings in Magistrates' Courts" June 2011, 15

¹¹ National Audit Office "Criminal Justice Landscape Review" November 2010, 17

member performs sets functions.¹² The OBM was developed in response to comments made by the National Audit Office in 2006 identifying inefficiencies in the one lawyer, one file approach.¹³ In evidence to the House of Commons Justice Committee in 2011, Mr Starmer highlighted that where the model works well, it is effective; he went on to note that it was important that the model be properly staffed and constantly monitored.¹⁴

The desired outcome of the OBM is to produce a framework of tested structures, roles and processes which will drive improvements across the CPS. The CPS has reported that these processes have improved the timeliness and preparation of casework ahead of court hearings in the magistrates' court process. Due to the success of this model, an OBM has been developed for the Crown Court process.¹⁵

4 Digitalisation of the Crown Prosecution Service

The CPS has introduced a programme called Transforming through Technology or T3 whose aim is to transform the CPS processes from paper based ones to fully digital ones. There are three main elements to this programme: electronic case working; knowledge and information management; and infrastructure improvement.¹⁶ According to the CPS Annual Report, early T3 achievements for 2011-12 include prosecuting lists at Court directly from a hand held computer, and increasing the use of electronic presentation of evidence in the most complex cases.¹⁷

The Director of Public Prosecutions highlighted the importance of digitalisation in an address to the London Justices' Clerks' Society, where he stated:

“It is high time for the electronic case file and electronic case management systems to become the main currency in the criminal justice system. In my view, this is one of the most important transformational developments that we have within our grasp.”¹⁸

The CPS is leading the cross criminal justice system move to streamlined digital working.¹⁹ The CPS and Law Society urged criminal law firms to embrace electronic working as the CPS aimed to go completely digital by April 2012, however to date the CPS is still working on this and is making progress.²⁰ Both bodies have called on firms to sign up to use secure email to enable prosecutors and defence lawyers to share information safely and quickly as

¹² HM Crown Prosecution Service Inspectorate “Follow up report of the thematic review of the quality of prosecution advocacy and case presentation” 97, March 2012,

http://www.hmcpsi.gov.uk/documents/reports/THM/ADV/ADV_FU_Mar12_rpt.pdf

¹³ House of Commons Justice Committee Minutes of Evidence, 18 January 2011 HC745-i.

¹⁴ House of Commons Justice Committee Minutes of Evidence, 18 January 2011 HC745-i.

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/745i/745i.htm>

¹⁵ The Crown Prosecution Service Annual Report 2009, <http://www.cps.gov.uk/publications/reports/2009>

¹⁶ The Crown Prosecution Service Annual Report 2009, <http://www.cps.gov.uk/publications/reports/2009>

¹⁷ The Crown Prosecution Service Annual Report 2010, <http://cps.gov.uk/publications/reports/2010/technology.thml>

¹⁸ Challenge and Opportunity-DPP's address to the London Justices' Clerks' Society March 2011,

http://www.cps.gov.uk/news/articles/challenge_and_opportunity/index.html

¹⁹ The Crown Prosecution Service: Capability Action Plan, March 2012, 5.

²⁰ Information obtained in a telephone call with a representative of the CPS, 30 May 2012

well as to promote efficiency in the criminal justice system.²¹ The CPS intends to routinely use email to serve prosecution papers and evidence on the defence in magistrates' court cases to enable some problems to be resolved electronically and to reduce the number of hearings.²² Some practical examples of electronic working have been implemented in England and Wales:

- A CPS prosecutor has prosecuted a guilty plea case from a laptop in Winchester Crown Court.
- In Dyfed Powys, a CPS prosecutor is regularly prosecuting cases in the magistrates' court from a laptop, and advanced information is now being served on the court electronically.
- It was anticipated that in Merseyside the electronic file would become the primary file within the CPS office for CJSSS cases.
- In Wales, progress has been made in establishing an electronic case file and work is progressing to develop the two-way electronic interface between police and CPS offices.
- In London, the CPS has given the police full access to the CPS case management system to introduce the concept of the Integrated Prosecution Team.²³

5 Modernising Charging

In England and Wales, statutory charging was introduced in 2003.²⁴ Up to 2002, all charging decisions were made by the police, although in many cases they consulted with the CPS. However in October 2002, Lord Justice Auld's Review of the Criminal Courts recommended that the CPS should be given greater legal powers to determine the decision to charge in all but minor cases.²⁵ The CPS makes charging decisions in more complicated cases whereas the police retained charging decisions in less serious cases.²⁶ Initially statutory charging was conducted face to face, usually with a session in a police station where a prosecutor would be available to review a file and give a decision on charging. It was recognised that there was a gap overnight from 5pm -9am and CPS Direct was developed to provide a telephone advice service.

The CPS Annual Report for 2009 indicated that the CPS and police have been working in partnership on improving the statutory charging programme to reduce delays and

²¹ Challenge and Opportunity-DPP's address to the London Justices' Clerks' Society March 2011, http://www.cps.gov.uk/news/articles/challenge_and_opportunity/index.html ,

²² Challenge and Opportunity-DPP's address to the London Justices' Clerks' Society March 2011, http://www.cps.gov.uk/news/articles/challenge_and_opportunity/index.html

²³ Police Superintendents' Association of England and Wales Annual Conference 2010 Lecture by Keir Starmer QC
²⁴ Part 4 of the Criminal Justice Act 2003.

²⁵ Yung Fang Chen and Chris Lewis "Equality and Diversity Impact Assessment of CPS Statutory Charging: England and Wales for the Period ending March 2006", September 2007

²⁶ House of Commons Justice Committee Minutes of Evidence 18 January 2011, HC-745-i

bureaucracy.²⁷ The Modernising Charging Programme was developed by the CPS along with the police and aims to:

- improve accessibility in charging arrangements;
- establish new joint performance standards; and
- a realignment of the offences enabling the police to make charging decisions without referral to the CPS.²⁸

For volume cases, the CPS has a 24/7 telephone advice and if a police officer wants to get a decision on charging in an ordinary volume case, they can phone and get a reply. Most of the time, the police can get a decision within an hour or so for volume cases.²⁹ Face to face contact has been retained for serious cases such as murder and rape cases. The introduction of improved 'daytime access' via the Solidus based instant access system has been cited as having a number of benefits including economic benefits, quick and easy access to prosecutors and quick decisions.³⁰ There is a team of lawyers working across a group to provide advice which means they are deployed all of the time, rather than having set lawyers in police stations in each of the areas.³¹

The CPS has also in partnership with ACPO looked at the balance between the cases the CPS charge and the police charge.³² The Chief Executive of the CPS indicated to the House of Commons Justice Committee that about 5% of the cases charged by the CPS would be given back to the police. The police charge 68% of cases and this would increase to 73% of cases. The CPS also explored with the police and Home Office whether some summary offences could be returned to the police, but would carefully pilot that in the first instance.³³ In a speech to the Whitehall and Industry Group Lawyers Network in 2011, the DPP stated that the CPS had agreed with ACPO that a 12 month pilot would be undertaken to test the proposal for the police to charge in Theft (shoplifting) cases where a not guilty plea is anticipated; currently, the police can charge in such cases only when a guilty plea is anticipated.³⁴ According to the Director's Guidance on Charging, the police can charge any Summary Only offence (including criminal damage where the value of the loss or damage is less than £5000) irrespective of plea and any either way offence anticipated as a guilty plea and suitable for sentence in a magistrates' court, provided it is not:³⁵

- a case requiring the consent to prosecute of the DPP or Law Officer;
- a case involving a death;

²⁷ Crown Prosecution Service Annual Report 2009

²⁸ Crown Prosecution Service Annual Report 2009

²⁹ House of Commons Justice Committee Minutes of Evidence 18 January 2011, HC-745-i

³⁰ Police Superintendents' Association of England and Wales Annual Conference 2010 Lecture by Keir Starmer QC

³¹ House of Commons Justice Committee Minutes of Evidence 18 January 2011, HC-745-i

³² House of Commons Justice Committee Minutes of Evidence 18 January 2011, HC-745-i

³³ House of Commons Justice Committee Minutes of Evidence 18 January 2011, HC-745-i

³⁴ Challenge and Opportunity-DPP speech to the Whitehall and Industry Group Lawyers Network, 15.06.11

³⁵ The Director's Guidance on Charging 4th Edition, January 2011, (Revised arrangements)
http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_4.html#a19

- connected with terrorist activity or official secrets;
- classified as Hate Crime or Domestic Violence under CPS Policies;
- an offence of Violent Disorder or Affray;
- causing Grievous Bodily Harm or Wounding, or Actual Bodily Harm;
- a Sexual Offences Act offence committed by or upon a person under 18;
- an offence under the Licensing Act 2003

Prosecutors will make charging decisions in all Indictable Only cases, any either way offence not suitable for sentence in a magistrates' court or not anticipated as a guilty plea, and the offences specified as exceptions above in relation to charging decisions made by police.³⁶ The revised arrangements would see prosecutor time concentrated on the most serious offences and the police able to process less serious offences quickly and with a reduction in bureaucracy.³⁷ At the Police Federation Annual Conference in 2012, the Home Secretary announced that the police prosecution powers are to be extended to take over nearly 50% of the cases that go through magistrates' courts. The police rather than the CPS would have the power to prosecute 500,000 uncontested traffic cases where defendants either did not enter a guilty plea or failed to turn up at court. The Home Secretary also announced that she is exploring police prosecutions to other low level offences and would make an announcement later this summer.³⁸

6 Early Guilty Plea Scheme

The CPS has supported the Senior Presiding Judge in his piloting of an early guilty plea scheme.³⁹ The Senior Presiding Judge is leading on the scheme which is aimed at producing effective and prompt disposals for guilty pleas. The scheme is intended to address the problem of cracked trials which are cases that are listed for trial but do not proceed as trials as the defendant pleads guilty on the day of trial or shortly before commencement of trial.⁴⁰ In 2009-10 the percentage of cracked trials across England and Wales was 42.2%. Such trials can have a considerable impact on police and prosecution resources due to the time required to prepare a case for trial.⁴¹

The Early Guilty Plea scheme which has been piloted in Reading, Winchester and Bristol identifies appropriate cases at an early stage. The cases are separated into bespoke early

³⁶ http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_4.html#a20

³⁷ Crown Prosecution Service Annual Report and Resource Accounts 2010-2011
<http://www.cps.gov.uk/publications/reports/2010/charging.html>

³⁸ The Guardian "Theresa May Heckled and Jeered during police conference speech" 16 May 2012,
<http://www.guardian.co.uk/uk/2012/may/16/theresa-may-heckled-police-conference>

³⁹ The Crown Prosecution Service Annual Report 2010- Performance

⁴⁰ Police Superintendents' Association of England and Wales Annual Conference 2010 Lecture by Keir Starmer QC
http://www.cps.gov.uk/news/articles/dpp_s_annual_lecture_to_the_police_superintendents_2010_conference/

⁴¹ Police Superintendents' Association of England and Wales Annual Conference 2010 Lecture by Keir Starmer QC

guilty plea courts and expedite the plea and sentence. The defence can pull out of the scheme at any time. The pilots are based on a Merseyside scheme running since 2009.⁴² The DPP has indicated that these schemes in Liverpool and elsewhere are demonstrating increasing numbers of early guilty pleas.⁴³ In evidence to the House of Commons Justice Select Committee, the DPP highlighted that at the end of 2011, it was anticipated that in Liverpool, 50% of the committals would be dealt with as early guilty pleas.⁴⁴

7 Conclusion

A number of initiatives have been introduced in England and Wales to improve performance in the criminal justice system. The paper provides information on initiatives outlined in CPS Annual reports since Mr Starmer came into post in 2008 and other sources such as speeches and presentation. Many of the initiatives require the CPS to work in partnership with other criminal justice partners, the legal profession and the judiciary,

The CPS has worked in partnership with other criminal justice agencies to streamline process in the magistrates' courts in the CJSSS and Streamlined Process. The TIS survey has indicated that there have been improvements in the time it takes to process cases in magistrates' court cases over the last couple of years and is due to the increase in cases completed within the targets.

The CPS has introduced the Optimum Business Model (OBM) in response to National Audit Office comments which identified inefficiencies in the one lawyer, one file approach. The system has now moved to a team of people progressing cases which require progression. The revised processes as a result of the OBM have reportedly provided substantial improvements in timeliness preparation ahead of magistrates' court cases. An OBM has been developed for the Crown Court process.

The CPS has introduced the T3 Programme, Transforming Through Technology, moving the organisation from paper based processes to a full digital way of working, aiming to go completely digital by April 2012. Early T3 achievements for 2011-12 include prosecuting lists at Court directly from a hand held computer, and increasing the use of electronic presentation of evidence in the most complex cases. The CPS also aims to routinely use email to serve prosecution papers and evidence on the defence in magistrates' court cases to enable some problems to be resolved electronically and to reduce the number of court hearings.

The CPS and police have been working in partnership on the Modernising Charging programme. Initially statutory charging was conducted face to face, usually with a session in

⁴² Challenge and Opportunity-DPP's address to the London Justices' Clerks' Society March 2011, http://www.cps.gov.uk/news/articles/challenge_and_opportunity/index.html

⁴³ Challenge and Opportunity-DPP's address to the London Justices' Clerks' Society March 2011, http://www.cps.gov.uk/news/articles/challenge_and_opportunity/index.html

⁴⁴ House of Commons Justice Select Committee Minutes of Evidence 18 January 2011, HC-745-i

a police station where a prosecutor would be available to review a file and give a decision on charging. However changes have been made to arrangements to improve accessibility. The CPS has 24/7 telephone advice (with face to face contact for more serious cases such as rape or murder). There is a team of lawyers working across a group to provide advice which means they are deployed all of the time. In relation to making charging decisions, the CPS considered the balance between the cases the CPS charge and those that the police charge and they have been exploring giving some summary offences back to the police. It is anticipated that these arrangements enable prosecutors to concentrate on more serious cases and enable the police to process less serious offences quickly.

The CPS has supported the Senior Presiding Judge in his piloting of an early guilty plea scheme aimed at producing effective and prompt disposals for guilty pleas. It was anticipated that in Liverpool by the end of 2011, 50% of committals would be dealt with as early guilty pleas.