

EFFECTIVE ADMINISTRATION OF THE POLICE AND THE PROSECUTION IN CRIMINAL JUSTICE

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I. INTRODUCTION

In order to understand the present day relationship between the way in which the Police operate to investigate and detect crime and the way in which criminals are prosecuted in England and Wales it is necessary first to understand the history of what are now two entirely separate organizations. I say England and Wales advisedly since in Scotland different arrangements exist entirely, the Procurators Fiscal (the prosecuting agents) having traditionally a wider responsibility for supervising and investigating crime in accordance with a different legal system and a different law. For no other reason than that I operate in England and Wales the perspective I will give on the themes dominating this seminar will of necessity be an English/Welsh one.

II. HISTORY

From an historical point of view the separation of the responsibilities for investigating crime and for prosecuting arrested defendants has been a relatively recent development, the Crown Prosecution Service for which I work having been created as recently as 1986 and arguably even now still battling to establish a place in the public conscience which recognises its powers and responsibilities and its independent role from that of the Police. The Crown Prosecution Service was the result of Parliamentary intervention in the form of an Act of Parliament, the Prosecution of Offences Act 1985 which resulted from no more than, say, 10 years gestation. The development of the Police service in England and Wales, like so much else, has been a long evolutionary process with little parliamentary intervention to guide its development (until relatively recently) since time immemorial.

Indeed, the origins of British policing lie in early tribal history. They are based on customs for securing order through responsibility being placed on local representatives of the community. It can perhaps best be described as a primitive system of policing of the people by the people. As time went by the system became based on the notion of communities being notionally split up into groups of 10 people. These groups were called "tythings". For each group there was one tything man who was responsible for the orderly behaviour of his tything. A further individual, a "hundred man" was responsible for the tythings and the "hundred man" had to answer to a more senior representative appointed to oversee an administrative area called a County. Those counties, subject to some boundary changes still exist today and they still largely determine the organization of the modern police service in England and Wales. The individual who was in charge of the county was known as the Shire-reeve or in due course the Sheriff. Despite the conquest of England in 1066 by the Normans the system broadly remained the same. Eventually (1346 and thereafter) the role of the Sheriff was gradually replaced in law enforcement terms by the appointment in the counties of Justices of the Peace who assumed a role entailing both the preservation of the King/Queen's Peace by detaining and punishing wrongdoers in the territory for which they were responsible.

Again in an evolutionary fashion and with larger populations springing up and larger local communities, the local Justices of the Peace started to appoint unarmed, able-bodied citizens to act unpaid for 12 months in each parish (a small community whose boundaries reflected the area from which the local Church drew its congregation). The Parish Constable worked in cooperation with the local Justices in securing compliance with the law and maintaining order. Where necessary, the Parish Constable would present before the Justices those who had broken the law and the Justices of the Peace (to become known as Magistrates) imposed some sort of sanction. This system of upholding justice worked comparatively well but began to be tested with a move towards a greater industrialised society in the 17th and 18th centuries and with the development of large urban areas and cities. In those areas it became necessary for the Magistrates or Justices of the Peace to appoint more "Parish Constables". One can readily see how these arrangements gradually led to the creation of the fledgling police forces throughout the country. In 1829 the Metropolitan Police Act was passed establishing in London the Metropolitan Police which until only within the last couple of years was responsible to the Home Secretary rather

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than as elsewhere throughout England and Wales to a Police Authority made up of locally elected members of the local authority and a selection of local Magistrates.

If I have dwelt on the historical background it has been merely to emphasize the strong traditional link which has always existed between the locally appointed Justices of the Peace and those acting as policemen. As upholders of the law the police were expected to present before the Justices those who had broken the law. Once they were presented before the Justices the Magistrates became, initially at any rate, prosecution, judge and jury in their own courts (originally even in their own houses!). Although in due course court procedures were regularised to ensure that the magistracy took a more judicial role, the responsibility for prosecuting the "prisoner before the court" and explaining why he was there remained firmly with the police. As late as 1985 to 1986 in London it was possible for even the most junior of police officers to arrest a defendant in the middle of the night; to produce him at court the following morning and personally to conduct the case before the Magistrate — a system ripe for the development of corrupt practice. Elsewhere had seen the development of police officers of varying degrees of seniority (Sergeant, Inspector, Chief Inspector) who acted as court presentation officers. All the police cases listed in a particular court on a particular day would be presented by him.

As the law became more specialised some of the police authorities in the larger cities started to create small departments manned by professional advocates who would prosecute some (but not necessarily all) of the cases prosecuted by the police force in that area. Thus, for example, the Police Force in Essex had created its own Prosecuting Solicitors office as early as 1947. Further impetus for the development of these offices came from the publication of a Royal Commission Report in 1962 on the Police, which effectively commented that police skills should be used for policing and that of lawyers for prosecuting cases in court. There was, however, no more philosophical analysis of the respective roles at this time.

By the time a further Royal Commission was commissioned in 1978 to consider police powers and the prosecution process approximately 32 of the then 36 police forces had Prosecuting Departments run and manned by qualified lawyers and support staff.

It is, however, important to note the relationship between the police and the prosecutor. The prosecutors had no statutory authority at all either to issue advice or to stop or alter charges brought against defendants. The relationship between the Chief Constable as head of the police force and the prosecutor was the same as that between solicitor and client. The client paid the solicitor to act or to give advice. If the client did not like the advice he was not bound to take it.

Though that was the constitutional position the reality was certainly much different. Although each prosecuting office was entirely independent and separate from other prosecuting offices up and down the country and therefore different systems and practices existed in each office, in general in those cases where they were experiencing difficulty they would:

- occasionally seek advice at an early stage about how to investigate a crime that had been committed or it was suspected was about to be; or
- sometimes present files of evidence for advice on what additional evidence might be obtained to strengthen the case against an individual; or
- regularly present files on complicated investigations for advice on what charge or charges should be brought. (Of course, in those cases the prosecutors might in submitting their advice suggest further enquiries be made in a certain direction).

The vast majority of files submitted however were those where the investigation had been completed and the defendant charged without prosecutorial involvement, the prosecutor being expected merely to present the case at court. Usually this was not a problem but from time-to-time there would be files where the prosecutor would bemoan the failure to consult at an earlier stage when an opportunity existed to improve the strength of the case.

From this it will be seen that no clear rules existed as to when, or if at all, the advice of the prosecutor should be sought. Much depended upon the personalities of individual police officers and the relationship which they had with their local prosecutors. In general terms those relationships were amicable and constructive with prosecuting advocates often working alongside police officers in the same building. Psychologically however there was in the minds of both a clear divide — police officers investigated crimes and prosecutors prosecuted them in court with little or no opportunity or even desire except in extremis for prosecutors to become much more involved in the investigative process.

The Royal Commission on the Police and Criminal Procedure (the Phillips Report) concluded amongst other things that:

- too many cases were being prosecuted with evidential weaknesses which should have been identified at a much earlier stage;
- the existing arrangements with prosecutions being handled on a local basis according to existing Police Force Areas lacked a cohesive influence with the danger of different prosecution policies being applied in different areas; and
- most importantly, it was quite inappropriate for the police to investigate crime and then to decide who should be prosecuted and taking also the responsibility for the prosecution process through the courts.

Phillips therefore recommended that an independent prosecuting authority should be created whose responsibility it would be to:

- advise in those cases where it was felt necessary;
- to receive files from the police where defendants had been charged;
- to decide whether those defendants should be prosecuted because there was sufficient evidence to suggest a realistic prospect of conviction and it was in the public interest to do so; and
- to conduct cases in the criminal courts.

III. THE CROWN PROSECUTION SERVICE

These recommendations were given life by the enactment of the Prosecution of Offences Act 1985 which created a national prosecuting agency — the Crown Prosecution Service — with effect nationally from 1 October 1986. The organization was such that initially 31 local offices were responsible for prosecuting all (save a small number of minor matters) criminal offences initiated by the Police in their 43 areas. There are four important issues which must be considered at this point. The first relates to the retention by the Police of the responsibility to initiate proceedings without the prior approval of the CPS. Of course, by the time files were considered for the first time by CPS, cases had started to develop a life of their own. The public perception of victims remained that if the police had charged there must be sufficient evidence and so a subsequent decision by CPS that the case should not go ahead was unpopular both with the public on occasions and also by charging police officers who hitherto had had an unfettered discretion to charge and who now, in effect, were being told they had made a wrong decision. Psychologically this was not popular particularly after large amounts of effort might have been expended in preparing a case that ultimately proved to be wasted effort. On other occasions it seemed to hard — pressed lawyers that in sometimes difficult situations where the police were under pressure from the public to produce results, it was easier to charge a defendant — sufficient evidence or not — and leave it to CPS to decide. If the CPS decided not to proceed the blame could neatly be shifted to that organization, the police indicating “we did our bit. If the case did not go ahead, it was not our fault”. It became easy for those who preferred the power to prosecute to remain with the police to claim that the CPS was, in fact, an acronym for Criminals Protection Society.

The second issue of significance relates to those efforts made on the part of the new Service to secure its independence. In one sense, quite understandably, efforts were made by prosecutors to distance themselves from the Police. Arrangements were rapidly made for prosecutors who had hitherto worked cheek by jowl with police investigators in police accommodation to decant and move to CPS buildings sometimes some distance away from where their work was being generated. Communication, if it took place at all, was in formal letter style or at best over telephone links. Inevitably with much less face-to-face contact problems which might formerly have been sorted out amicably became magnified out of all proportion. Worse than that in some circles, the desire to impose on staff the high degree of independence which was supposed to exist in Crown Prosecutors was such that all contact of a social nature with police officers was discouraged for fear that others might fear that the prosecutor was being unduly influenced in his approach to his work, consciously or unconsciously by the police. Whilst the pursuit of the firmly based impression of true independence was an ideal to be cherished it was often achieved at the expense of a good working relationship with police officers who in simple terms felt insulted at the pariah status they were being accorded. In some areas for example, the notion that a Crown Prosecutor should even set foot in a police station was frowned upon.

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Further feelings of growing alienation between the two organizations resulted from the 31 Area Structure adopted by CPS. This meant that some of the 43 police force areas based on county districts which had formally had their own prosecuting office based in, or near, their own Police Force Headquarters now had to liaise with the Chief Crown Prosecutor whose offices might be 65 miles away. If that was something of an irritation in 1986 the position became much worse in 1993 when the CPS reorganized itself into 13 larger areas which meant that a Chief Crown Prosecutor's sphere of responsibility might well encompass several police force areas. On my appointment as Chief Crown Prosecutor for the South West Area I became responsible for the prosecution of cases investigated by the Avon and Somerset Police Force, the Devon and Cornwall Police Force and the Dorset Police Force. Albeit that CPS operated through locally based branch offices manned by lawyers, Chief Constables inevitably felt more divorced from those who bore the ultimate responsibility for prosecuting their cases.

What is most significant about the 1985 Act however is the complete lack of control or power Chief Crown Prosecutors had over the Chief Constables with whom they had to deal. It has already been indicated that theoretically the police were only obliged to deliver the CPS file where a criminal charge had been laid. The Chief Crown Prosecutor had no power to insist on seeing a file, for instance, where the police were not minded to proceed for whatever reason, or where perhaps they were minded to issue a caution as opposed to issuing process. Worse however, was the situation in relation to both the acquisition of further evidence and general file quality. In his review of the file presented the prosecutor may have taken the view that the evidence could be considerably strengthened by further evidence being obtained. As a result a request would be made to the police to follow-up that requirement. It would however be no more than a request. If, for whatever reason — based either on resource problems, disagreements as to the need for further evidence, or even sheer cussedness — there was no power on the part of the prosecutor to insist on the evidence being produced. Again, file presentation standards became an early problem for Chief Crown Prosecutors. Prior to 1986 some police forces had been scrupulous in preparing neatly typed files all in a similar format which immeasurably improved the lot of the busy prosecutor in court. Lively debate ensued with police representatives claiming that the responsibility for typing files for presentation in court was part of the prosecution process and not therefore something which the police should be doing. If this sounds somewhat petty, it does reflect difficulties over funding arrangements. With no minimum standards of file presentation initially capable of agreement the trend moved towards that of the lowest common denominator with local Chief Crown Prosecutors having no power over Chief Constables but much responsibility for the outcomes in court.

IV. PROBLEMS

A further difficulty emerged at this stage — which I am not sure was ever totally resolved — again relating to the notion of independence and requests for advice. If, the argument went, the Crown Prosecutor was to be independent of the Police how could he then respond to a request for advice on how an investigation should be mounted because to do so would cross the line to the point at which the prosecutor was seen to be operating in the guise of a policeman? Thus when a colleague was asked to confer with the local police imminently faced with a public order situation which was likely to lead to mass arrests, he declined to do so on the basis that he could not become embroiled in such a matter — it was an operational issue for the police themselves to determine.

Another factor which over the years has bedevilled the relationship between the police and CPS has been the lack of confluence in the aims and objectives of each of the organizations. In 1829 one of the first Commissioners of the Metropolitan Police wrote to:

- “the primary objective of the Police is the prevention of crime; the next that of detection of and punishment of offenders if crime is committed”.

Each police force in England and Wales is required each year to produce a policing plan which identifies its priorities for the coming year. In addition, police forces are required to set a number of targets so that over a period a number improvements can be achieved. Some of the targets are targets upon which the police themselves fall, some are targets arbitrarily fixed by the Home Office, the Government Department bearing some responsibility for police issues. Thus in 2000-2001 numerical targets were required to be set by each police authority for:

- domestic burglaries per 1000 households
- robberies per 1000 population
- vehicles crimes per 1000 of the population.

Although no formal requirement was made as to the setting of the target for the detection of these crimes instructions to police authorities encouraged targets to be set. As far as the detection of crime is concerned the Home Office definition of a “detection” runs to six pages. Bizarrely, however, the successful outcome of a prosecution for the offence is no part of the definition. At one level, the fact that the defendant has been charged (sometimes not even that) will suffice to show that a crime has been detected. We seem to have come a long way from Sir Richard Mayne’s definition of the objectives of a police force set out as above in 1829. The impact of this, of course, is that there has been no premium for police forces to prepare good quality files for submission to the Crown Prosecution Service. Strange though it may sound, the response of a Chief Constable to the anguished pleas of one of my colleagues to improve the quality of files submitted in terms both of substance and presentation so better to secure a conviction, that “the conviction of charged defendants is not a priority in the policing plan” was thoroughly understandable.

V. SUCCESS IN SPITE OF DIFFICULTIES

If a picture emerges of relationships between police investigators and CPS prosecutors being irredeemably bad that is misleading and subject to many of the changes which have impacted upon the two organizations and others in recent years.

To redress the balance it might be constructive to give some examples of the sort of results which were being achieved regularly in the years following the creation of CPS which marked the ability of investigators and prosecutors to work closely together (though independently of each other) to achieve just outcomes in spite of, rather than perhaps because of wider political concerns.

In 1990 political agitators reacting to the imposition of a Poll Tax in the United Kingdom organized a demonstration in the centre of London which turned into an ugly riot with immense damage to property and injury to individuals. Much of the activity had been filmed, either by national or local broadcasters or by the police themselves. As a result of requests from the police to tender advice a special ad hoc CPS unit was set up, which with police officers analysed the available material identifying perpetrators of crimes and advising the police which of those identified as being involved should be the focus of attention. (At that stage the vast majority of the perpetrators had neither been arrested nor even identified by name). The prosecutors were not only able to guide the police to those most culpable but also to indicate some sort of framework around which potential interviews could be built. The approach undoubtedly assisted in focusing on what had to be done and eliminated much effort which might otherwise have been wasted.

Less dramatic but just as important as far as the locality was concerned was the investigation of a riot which occurred in my own area at that time when after an end of season football match, a totally mindless riot took place which again was the subject of a great deal of media film footage. By adopting similar tactics to those displayed in London similar economies of effort and improved chances of successful convictions were prompted.

More recently, as London has been subjected to May Day riots aimed at centres of commerce the degree of liaison between police officers in devising strategies to deal with those arrested has been a feature and planning meetings now regularly take place in the weeks preceding the 1 May.

In 1992 a paper was published by UNAFEI prepared by my colleague, Anthony Taylor, from Greater Manchester in which reference was made to Operation Gamma; Operation Omega; and Operation China in which the involvement of senior CPS lawyers at crucial points in the investigation of serious crimes is highlighted.

Again, in another area where I was Chief Crown Prosecutor — and to show that it is not always in cases concerning serious public disorder — immediately after an old sailing ship had foundered with the death of two passengers in the coast of north Cornwall, police officers once more in possession of excellent television footage immediately liaised with the local Crown Prosecutor who was able to advise them on the course of an intensive and far ranging investigation which led ultimately to the conviction of the owner and master of the *Maria Assumpta* for manslaughter.

Without doubting for a moment the value and the need arguably for prosecutors to become so involved in work at the early stage of an enquiry, I do have one cautionary tale involving the investigation of a somewhat gruesome murder committed in South Wales. Lawyers became engaged in the enquiry at an early stage advising on what powers the police had and how they might execute those powers. At the trial when cross-examined about a course of action he had taken one of the police officers responded to the effect that he had acted on the advice of the prosecutor. In due course the prosecutor concerned found himself in the unfamiliar position of being in the witness box being examined and cross-

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examined vigorously on his role in the investigation. That the subsequently convicted defendants were later to have their convictions quashed had nothing to do with this incident though the experience did cause pause for thought about the proper degree to which the division between the responsibility for investigation can be kept apart from the responsibility for independent conduct of the prosecution. Perhaps the only safe stratagem is for those so intimately involved in advising on the investigation to hand over to another team of lawyers at the point of charge? Do we then create a separate career cadre of investigating lawyers and prosecution process lawyers?

VI. SERIOUS FRAUD OFFICE

Of course, in the jurisdiction of England and Wales the principles of separating strictly the responsibility for investigating and prosecuting established in 1986 on the creation of CPS were swiftly jettisoned in relation to serious fraud offences. In 1986 in reviewing the existing arrangements for the prosecution of serious fraud the Roskill Committee recommended the creation of a unified organization properly resourced with statutory powers of investigation to handle the most serious fraud cases (currently '7 million and above). Thus was born in 1988 the Serious Fraud Office (SFO). The office is staffed by lawyers, accountants and others with relevant experience. It works closely with the police from the Metropolitan Police Service and City of London Police Force Fraud Squads based in the SFO's office. Working cooperatively SFO controls investigation and prosecution. Those wishing to know a little more about SFO might usefully refer to Anthony Taylor's same paper from 1992 in which a fuller description of SFO powers is given. In justifying what he thought some might see as an "opportunistic violation of (the) fundamental principle" that investigation and prosecution should remain steadfastly apart, my colleague described it as "an essential response to the special problems which serious frauds produce". Is it too much to argue that the complexities of law and crime in this terrorist world in which we currently live are as such that the greater involvement (albeit in a regularised fashion) of lawyers and police officers should be an equally essential response?

VII. MANUAL OF GUIDANCE

There are other developments too which have taken place over the course of the last 10 years which have assisted in enabling police officers and prosecutors to work more effectively. In terms of the preparation of files the anarchic situation which in earlier times had prevailed and which was described earlier led to senior representatives from the CPS and all police forces putting their heads together to prepare guidance on the format for file production which could be adopted by all police forces when submitting files to CPS. That work produced a volume called the Manual of Guidance for Police Officers. It is a volume which is constantly being updated and edited as changes in the law take place.

VIII. JOINT PERFORMANCE MANAGEMENT

It was, however, one thing to lay down nationally expected standards for the format of files, another to ensure that all investigating officers complied with the Manual. Again, the format of the file was one thing; the quality of that which was in those papers was another. In the course of time these issues were the subject of further debate between senior police officers and CPS which led to the introduction of a management tool known as Joint Performance Management (JPM). On the submission of each file CPS recorded whether the file had been received in the correct format; and qualitatively whether there was any essential evidence missing.

Monthly statistics were to be collated and regular meetings convened between local CPS lawyers and managers and local senior police officers to analyse the results and to agree targets for future improvement. When operated correctly the system worked well. It was possible in some areas for example to discern that local police officers did not fully understand the circumstances in which they were obliged to hold identity parades so that training could then be applied. The statistics also provided a useful tool for Her Majesty's Inspectorate of Constabulary to consider when undertaking their annual inspection of a police force.

Sad to note however that the JPM initiative has not been the success it should have been. There are two reasons for this I suggest:

- from a CPS point of view the bureaucratic burden of completing monitoring forms to be submitted to the police made staff antipathetic to the scheme. It created extra work for them. Moreover, it was claimed that even when the procedure was followed up to the letter, no improvements were secured over time.

- from a police perspective, there was some concern that the scheme was one-sided in that it seemed to measure only police performance. There was little in the scheme about CPS performance and in the prevailing atmosphere at this time paranoia reigned. Moreover, when the police noted that CPS was returning only a fraction of forms confidence fell further because it was claimed that the only reports being made were when failures had occurred.

Whether figures were massaged or not is difficult to say with any certainty. The difficulty has been that ultimately few have had confidence in the system and it is no longer the driving force it ought to be. On a more optimistic note steps have in recent times been taken to re-invigorate the system with a greater emphasis on exception reporting and less beauracracy.

IX. NAREY

A further development which threatened to impact on the quality of file submission by the police in the 1990s was the consistent claim — well publicised in the national press — that police officers were expected to complete so much paperwork that it was becoming difficult to get out of the police station to do any investigation. Hardly a day seemed to go by without some claim or other that as many as sixty different forms had to be completed in even a straightforward case. And, of course, it was CPS which was imposing those requirements. The fact that the claims were incorrect and failed to distinguish between those forms which were required under the Manual of Guidance and other forms required to be completed for police internal purposes hardly seemed to matter. As a result steps were taken by the Home Office (the Government Department which has responsibility for police affairs) to create a review of the administrative burdens placed on the police with a view nationally to reducing them. There was considerable pressure being placed on CPS to accept something much less than that which CPS felt was the minimum it required to ensure that proper decisions were being made in respect of defendants in accordance with its statutory duty. In the nature of things compromises were reached, which by and large have preserved the minimum standards CPS requires.

In a separate but allied development attention focussed on the process by which defendants appeared at court. Historically, defendants who were not being held in custody by the police were bailed to appear at a court sitting at least three weeks in advance. This enabled the police theoretically to have a quality file prepared before the date of first appearance. As a result of changes proposed and adopted, the police would bail the defendant to appear at the next available date on which the relevant court sat, which in many cases would be the next day. The day before what have become known as Early First Hearings (EFH's), a CPS lawyer would attend the local police station — note this development — to review the shortened file and to satisfy himself that sufficient information was available safely to deal with the case the following day where a guilty plea was anticipated. Where a not guilty plea was anticipated the case is scheduled in a separate court for an Early Administrative Hearing (EAH) at which it was hoped issues having a direct bearing on the case would be aired in a way that would enable the case to be managed better. It may be claimed that the now regular attendance of prosecutors in police stations has helped to promote closer working between the two organizations.

X. “JOINED-UP JUSTICE”

There has undoubtedly been a sea change in Government thinking on crime and its impact on society which in turn has started to influence the thinking of all involved in the criminal justice system. The government headed by Tony Blair was elected on a manifesto dedicated to “being tough on crime and the causes of crime”. Several initiatives have been taken and all of them seem to emphasize that the responsibility for delivering the manifesto commitments does not rest in isolation with any one organization but that the approach much be an holistic one. No longer can organizations look to their own narrow interests but they are expected to work cooperatively to achieve those ends the Government was voted in to achieve. It is a theme which pervades the whole of government thinking but in the criminal justice system it is expressed as imposing “joined-up justice” with the emphasis on “joined-up working”. The clear expectation has been that the police, CPS, the Courts and the Probation Service and the Prison Service and indeed any other organizations having an input should work collaboratively to achieve government aims.

XI. GLIDEWELL

One of the first actions which the newly elected Government took in 1997 was to appoint a former Appeal Court Judge (Lord Justice Glidewell) to review the way in which the Crown Prosecution Service operated. After 12 months or so in which the views of all interested parties both within and without the Service were consulted, the Report (reflecting

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not only the conclusions of Sir Iain Glidewell but also of a retired Chief Constable and a Senior Manager from Industry) concluded that:

- in the 12 years of its existence the Service had achieved a reputation for independence about which it no longer had to be quite so precious;
- that it had been traditionally under-funded; and
- that serious fault lines had developed between it and the police which were impacting deleteriously on the delivery of justice in the courts.

Specifically, recommendations were made advocating the re-organization of the Service into Areas reflecting the 43 Police Force Areas so that there was a Chief Crown Prosecutor for each area who could negotiate with the one Chief Constable. That recommendation was implemented with effect from 1999. There are now 42 Chief Crown Prosecutors working alongside 43 Chief Constables. (The anomaly is in the London Area, which covers not only the Metropolitan Police Service Area but also the Police Force for the "Square Mile" comprising the City of London Police.)

More fundamentally however, Glidewell recommended that at the point where defendants entered the Criminal Justice System, police officers together with administrators should work together with CPS lawyers in co-located units dedicated to providing a service to a specific Magistrates' Court or Courts in the locality.

Glidewell prophesied that the introduction of such an organization would reduce delays; reduce duplication of effort and material; create a better level of understanding between CPS lawyers and the police; and ultimately lead to efficiencies in the Criminal Justice System. Since 1999 Chief Crown Prosecutors and their Chief Constables have been working together to achieve those ends. Up and down England and Wales co-located criminal justice units have been opening and operating successfully. At seminars which I have attended and chaired involving both Police and CPS representatives, reports have been uniformly received commenting on the fact that not only have the Glidewell aims been achieved but that the notion of working together has immeasurably improved communications and imbued both organizations with a greater respect for, and understanding, of the other. These are still early days yet and it will take some time before a systematic evaluation of the newly created criminal justice units can be made. By way of example, however, one representative working in a unit was telling me that prior to the creation of the criminal justice unit the average number of occasions on which a case was adjourned was something like 2.8. Since the joint-working initiative that figure has fallen to 1.2. Anecdotal though this evidence is, it augers well for the future.

More than that however, Glidewell has created an impetus which is having an impact far wider than co-located CJU's. The Report recommended that the more serious criminal cases and trials which are heard in the Crown Court rather than the Magistrates' Court should be handled in CPS units called Trial Units. There was never any suggestion that police officers should be routinely housed in Trial Units. Experience is fast showing that the complexities of this serious casework militate in favour of having close links with the police and there is a growing trend to have police personnel based in the Trial Units. Thus for example, at the Central Criminal Court (the Old Bailey) in London I have a small area of the CPS premises dedicated to Metropolitan Police service officers who have installed their own computer equipment. These are not junior officers either. The response of the police, CPS personnel and the judiciary sitting of the Old Bailey proves the value of adopting this approach.

XII. CRIMINAL JUSTICE BUSINESS PLANS

Whilst Glidewell was independently examining the workings of the Crown Prosecution Service the notion of "joined-up justice" was furthered by the publication of a Joint Business Plan for the Criminal Justice System presented by the three Ministers who are responsible for the Criminal Justice System Departments. The Lord Chancellor, the Home Secretary and the Attorney General. This was the first occasion on which this had happened; beforehand the individual Ministers had published Annual Business Plans for their own Department alone. In the introduction to that document, the Ministers state:

"It is important to ensure that the Courts and other Agencies remain independent in their decision-making in individual cases; but equally it is essential that the departments, agencies and services that comprise the Criminal Justice System coordinate their activities effectively and efficiently in a joined-up way to achieve Criminal Justice System aims and objectives".

The current Business Plan sets two principal aims:

- To reduce crime and the fear of crime; and
- To dispense justice fairly and efficiently and to provide confidence in the rule of law.

Those over-arching aims are each underpinned by a number of objectives.

The priorities for the Criminal Justice System in the current planning year were agreed as:

- Crime reduction;
- Attrition;
- Reducing delay;
- Victims and Witnesses
- Information Technology;
- Making the Criminal Justice System work; and
- Implementing Criminal Justice System Reforms

Each of the eight objectives which support the aims of the Criminal Justice System reflect one or more of the priorities set. If I pick on one or two however, it will, I hope give a flavour of the way in which the police and the Crown Prosecution Service will be drawn together (and others) to meet the over-arching aims. A new objective that has a direct impact across the criminal justice system as a whole is that which demands that more offenders are brought to justice. The target is to reduce the high level of attrition, the gap between the number of crimes recorded and the number of crimes for which an offender is properly convicted. There are many ways in which that target can be met but fundamentally it will mean that quality files will have to be produced to prosecutors by the police if there is to be any prospect of a successful prosecution. Again, as part of the aim to reduce delays, statutory time limits have been introduced within which defendants must be dealt with at court. This puts a premium on both the police providing papers to a proper standard as quickly as possible and CPS lawyers responding equally quickly.

Perhaps the biggest challenge for the criminal justice system is to meet the objective of providing a better service for victims and witnesses. Though success is likely to be measured against the crude mechanism of a public opinion poll it will not be one organization which has to answer if the results are poor but all organizations and the heads of these organizations will seek to ensure that the service they provide is up to the mark. It will, for example, be important for CPS to liaise expeditiously with the police to allow them to warn witnesses who have to attend court in a convenient manner and equally for the CPS and the courts to treat the witnesses who arrive at court in a considerate manner. All this will help to promote confidence in the Criminal Justice System which is an additional objective.

XIII. WORKING TOGETHER

In 1999 a Report was published by the National Audit Office (NAO) significantly entitled “Criminal Justice — Working Together”. The NAO is a body totally independent of government which certifies the accounts of all Government Departments. In addition, the head of the NAO, the Comptroller and Auditor General has a statutory authority to report to Parliament on the economy, efficiency and effectiveness with which Departments and other bodies have used their resources. The Report containing 63 recommendations gave a clear message to criminal justice agencies that they must work together to solve the identified problems of the criminal justice system. In relation to the Police and CPS the Report recommends that police forces and Chief Crown Prosecutors should:

- Refine their data collection to improve the quality of monitoring under the joint performance management initiative;
- Develop monitoring to identify whether there are particular types of cases or procedures which give rise to disappointing performance on the timeliness and quality of file preparation, including the appropriateness of initial charges prepared by the police;

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- Take appropriate management action to address the problems identified by the monitoring.

In due course the fact that a Public Accounts Committee made up of Members of Parliament may wish to return to this subject provides a distinct encouragement for Chief Constables and Chief Crown Prosecutors to take up the responsibility placed upon them.

XIV. PERSISTENT YOUNG OFFENDERS

Perhaps the most influential lever in forcing all Criminal Justice Agencies to work cooperatively together, and in particular, the Police Service and CPS, has been the Government initiative to halve the time in which it takes to process persistent young offenders through the courts from arrest to sentence from 142 days to 71 days. The target was set in October 1997 when a persistent young offender was described as:

“A persistent young offender is a young person aged 10 to 17 who has been sentenced by any criminal court in the United Kingdom on three or more separate occasions for one or more recordable offences and within three years of the last sentencing occasion is subsequently arrested or has an information laid against them for a further recordable offence”.

This has proved to be a most challenging target which on a national basis has now been achieved though in certain areas, including London, the target has still not been met albeit that the agencies concerned — and there are several — have been forced to liaise closely with each other. As far as the police and CPS have been concerned these cases have become a priority so that initial file quality standards have been paramount together with the need for CPS to communicate quickly with the police where further work has been required, for example, to strengthen the evidence or to ensure witnesses are warned. The overall success of the initiative has led the Government to commit itself to targeting the prosecution of all persistent offenders (no matter what their age). The details of how they are to be targeted has not yet been finalised but once known they will undoubtedly force the police and CPS much closer together in trying to meet the targets set.

XV. SECTION 51 — CRIME AND DISORDER ACT

I mentioned earlier the initiatives aimed at reducing delays (EFH and EAH's) and statutory time limits. A further development aimed at reducing delays was produced by the Crime and Disorder Act 1998. Section 51 of the Act introduces a procedure whose impact has been to ensure that police and CPS lawyers cooperate if the Act is to be at all effective. In those cases where a defendant is charged with an offence which can only be heard in the Crown Court (an indictable offence) the traditional position has been that he must first appear in the lower Magistrates' Court and once all the evidence sufficient to mount a case has been formally presented to the Magistrates' Court he is committed for trial to the Crown Court. This has sometimes taken several weeks and has meant that often police officers have had to expend considerable effort in preparing full files of evidence before committal proceedings take place and the defendant next appears at the Crown Court — again possibly many weeks later — to enter a plea and if necessary to be tried. The new system operates on the basis that once charged with an indictable offence, the defendant appears at the Magistrates' Court as normal but is immediately sent to the Crown Court without any consideration of the evidence at all. Eight days later (28 if not in custody) the defendant appears at the Crown Court for a preliminary hearing before the Judge. At that preliminary hearing the Judge, amongst other things, estimates the complexity of the case and will set a period of not less than six weeks for the preparation of the full prosecution file which must be served on the defendant. It follows that if the time limits are to be met the CPS lawyers and the investigating police officers must be in close contact with each other. From the outset the CPS lawyers will have been provided with an “expedited file” — a file in short form with a summary which may well cover details of evidence available but not yet formally reduced to statement form. From that short form file the CPS lawyer may be able to indicate exactly what his needs are for a successful prosecution to be mounted, giving the investigator at least six weeks to produce evidence that he may well have not considered obtaining himself or obviating the need to obtain evidence as planned which the lawyer considers otiose. This sort of liaison is bound to be informed by discussions before the Judge involving those representing the defendant who may be able to identify the sole issues to be contested in the trial. Often defendants indicate at this first appearance in the Crown Court that they are intending to plead guilty which will mean that a less comprehensive file needs to be prepared.

The introduction of the procedure has undoubtedly enabled CPS lawyers to take a grip of a case at a much earlier stage than has traditionally been the situation and therefore to influence its development and progress.

XVI. EUROJUST

Crime as we know, no longer (if it ever did) confines itself to national borders. The cry often goes up that we are attempting to fight 21st century criminals with 19th century methods. In the European Union efforts to achieve a greater spirit of cooperation in the detection and prosecution of international crime has seen the development of Europol (drawing together the various police authorities operating in the European Union) and more recently and still very much in a developmental role Eurojust with broadly similar aims for those concerned in the prosecutorial and judicial aspects of the European criminal justice system. In very simple terms lawyers from member states are based in other member states with a brief to obviate the rubbing points which have plagued the investigation and prosecution of those responsible for international crime in the past. Thus, Eurojust lawyers have had minimum activities which have involved providing information on that national law, arranging contacts among investigating national bodies, the transfer of information on the stage of proceedings or on judgements, and the exchange of experience and legal advice. The European Commission however sees a wider role for Eurojust. There are moves afoot for it to become involved in individual criminal investigations. It is felt by the Commissioners that Eurojust collectively should be able to contribute actively to the proper coordination of individual cases, in particular where urgent cross-border advice is needed. In exercising the wider responsibility Eurojust would have powers requiring actions to be taken by member states on pain of having to explain publicly why action had not been taken. Thus far in its fledgling existence the CPS has been able to provide lawyers working on secondment in Belgium and Italy who as time passes will become more involved in the investigation rather than merely the prosecutorial process.

XVII. THE AULD REVIEW

Perhaps the most radical development in criminal litigation thinking in many years came about on the appointment in 1999 of a current Lord Justice of Appeal (Lord Justice Auld) to conduct a review of the way in which the criminal courts operate. The terms of reference were to carry out “a review into the practices and procedures of and the rules of evidence applied by the Criminal Courts at every level with a view to ensuring that they develop justice fairly, by streamlining all their processes, increasing their efficiency and strengthening the effectiveness of their relationships with others across the whole of the criminal justice system, and having regard to the interest of all parties including victims and witnesses, thereby promoting public confidence in the rule of law”.

Lord Justice Auld’s conclusions and wide-ranging recommendations (328) were published in October 2001. If only half of those recommendations were to be followed it would represent a substantial change to the way in which our criminal courts are administered.

Before I consider one of the most fundamental recommendations made in more detail it is as well to reflect on Lord Justice Auld’s view that the key to better preparation for and efficient disposal of criminal cases is early identification of the issues. For this to happen he identifies four essentials:

- strong and independent prosecutors;
- efficient and properly paid defence lawyers;
- ready access by defence lawyers to their clients in custody; and
- a modern communication system.

One of his recommendations states that sufficient resources should be provided to ensure that the Crown Prosecution Service can take full and effective control of cases. But the most radical recommendation from the CPS point of view concerns the decision to charge. As I have already made clear traditionally the position in England and Wales has been that the police retain the responsibility for setting the criminal process in motion by deciding whether to charge a potential defendant. Lord Justice Auld has recommended that in future the CPS should determine the charge in all but minor routine offences, or where because of the circumstances, there is a need for a holding charge seeking the advice of the service. In those cases where the police have preferred a holding charge it is recommended that a prosecutor should review and if necessary reformulate the charge at the earliest opportunity.

Setting aside for the moment the practical difficulties or details which might result from this — for example the attendance of a prosecutor at a police station where defendants are charged on a 24 hour basis, this represents a major

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shift in thinking welcomed whole-heartedly in CPS circles. The Auld Review is at present subject to a consultation process with all interested parties responding to the recommendations by the end of January 2002.

What has been just as interesting as the recommendation itself has been the response of the police service in the guise of the Association of Chief Police Officers — an organization made up of all the Chief Constables which although operating in a consultative and advisory capacity is effectively the voice of policing in England and Wales. It is not, I think, being too unfair to comment that the response from ACPO was expected to be negative. In reality, the response has been extremely positive to the extent that a number of pilot sites have been identified up and down the country aimed at testing out Lord Justice Auld's recommendation.

From the CPS point of view this is a vitally important development because if the prosecutor is there at the beginning of the process he will have an opportunity of influencing the course of the proceedings thereafter.

XVIII. CONCLUSION

These are exciting and challenging times for Crown Prosecutors. If aspirations are to be met, the two key essentials which need to be grasped are an ability to rise to the challenge of becoming increasingly involved at the charge and even pre-charge stage to an extent which justifies the confidence of police officers and the public as well; and secondly, the need to think cooperatively with the police and all others in the criminal justice system to meet the Government's ideal of a "joined-up criminal justice system".