



# JUSTICE IN POLICING

A JOINT THEMATIC REVIEW OF THE HANDLING OF  
CASES INVOLVING AN ALLEGATION OF A CRIMINAL  
OFFENCE BY A PERSON SERVING WITH THE POLICE.

HM CROWN PROSECUTION SERVICE INSPECTORATE  
HM INSPECTORATE OF CONSTABULARY

JANUARY 2007



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HM Crown Prosecution Service Inspectorate



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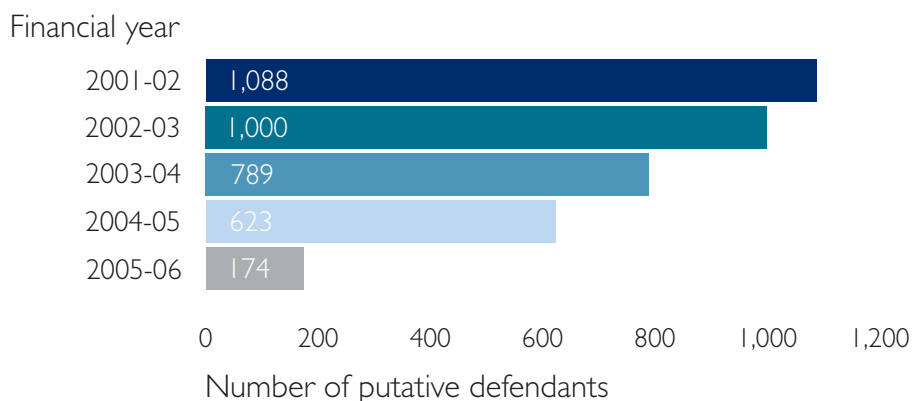
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## I INTRODUCTION

- 1.1 This is the report of a review conducted jointly by Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and Her Majesty's Inspectorate of Constabulary (HMIC) to analyse and assess the quality of the handling of cases involving alleged criminal misconduct by a person serving with the police (sometimes referred to as police complaint cases).
- 1.2 The maintenance of professional standards and discipline within the police service is an important and challenging process. The framework and procedures are laid down by the Home Office through a combination of legislation, regulation and guidance. However, it is axiomatic in a nation which believes in the rule of law, and where policing is generally by consent, that the police themselves should not be above the general criminal law. There is inevitably an overlap between the disciplinary system and the criminal law and the two must therefore operate together to provide a firm but fair and appropriate response to the full range of misconduct. Generally speaking, fairness in the context of the criminal law means that persons serving with the police should be in no better or no worse position in terms of treatment than any other citizen. However, it is implicit within that concept of fairness that proper consideration will be given to those aspects of police work which are particularly difficult and challenging, if not downright dangerous. The judgements which have to be made are therefore frequently difficult and may well be controversial – particularly since public expectations of the police service and its profile have seldom been higher.
- 1.3 These considerations, together with the fact that the police service now has a vastly greater range of powers than ever before (certainly in peacetime), make it essential that the procedures for investigating misconduct and the taking of decisions about discipline and prosecution are thorough, fair and transparent to all parties. That has been the starting point for this review. Successive legislation has for many decades required complaints involving an allegation of criminal misconduct to be referred to the Director of Public Prosecutions (DPP) for consideration whether to prosecute. The rationale for this approach is that there must be overt independence as regards the decision-maker and the person about whom the complaint is made. Although it is not a primary consideration, such an arrangement also has the advantage that the work is concentrated in the hands of a relatively small number of individuals who are likely to develop a feel for the factors peculiar to such cases (and the environment in which they tend to arise) so as to give greater consistency in decision-making.
- 1.4 The manner of implementing the requirement that decisions be taken by (or on behalf of) the DPP has changed substantially over the years. Prior to the inception of the Crown Prosecution Service (CPS) in 1986, there was a dedicated division within the DPP's office which considered all such cases. The CPS Annual Report 1986-87 shows that in the last full year prior to establishment of the CPS, the DPP's office dealt with 6,350 police complaint cases. This was a simple, but highly centralised, rigid system which did not distinguish adequately between, at one end of the spectrum, an allegation of minor motoring offences and, at the other, allegations of serious corruption or the unlawful use of lethal force.

- 1.5 The majority of police complaint cases (except motoring) were retained within CPS Headquarters until a substantial tranche of such cases were devolved from Central Casework, later known as Casework Directorate, in 1997. At that time, arrangements were put in place for 'cross-bordering'. This involved complaints from police forces being sent to the CPS Area serving a neighbouring police force so as to avoid any suggestion that the decision-maker might be known to, or have a professional relationship with, the officer against whom the complaint was made.
- 1.6 A further tranche of devolution took place in 2005. This was accompanied by an updating of the existing specimen service level agreement intended as the basis for local arrangements between CPS Areas and the police forces from whom they received police complaint cases. This updated template was issued in May 2005 together with legal guidance on the subject. This guidance took account of the various changes both within the CPS and with regard to other organisations, for example the creation of the Independent Police Complaints Commission (IPCC), the widening of the definition of 'police complaints' to include all police staff, not just police officers, and the introduction of the statutory charging scheme and other changes in structure and casework location within the CPS.
- 1.7 Under the statutory charging scheme, introduced by the Criminal Justice Act 2003, the CPS has assumed responsibility from the police for the initial decision whether to charge in all save minor cases (as set out in the Director's Guidance). The IPCC and police are obliged by virtue of the Police Reform Act 2002 to send a file for review and decision as to whether a person serving with the police should be prosecuted where a criminal offence 'may' have been committed. Many allegations of criminal misconduct relating to persons serving with the police are therefore likely to be caught by two separate pieces of legislation, each requiring their case to be considered by the CPS before charges are preferred.
- 1.8 The effect of the devolution arrangements in terms of the volume of cases dealt with by CPS Headquarters is shown below:



- 1.9 The figures in the table are for putative defendants who are not the subject of an allegation relating to a death in custody or serious corruption. These cases were removed in order to show the decline in other casework and the effectiveness of the latest round of devolution in ensuring the middle and lower band of work is dealt with in CPS Areas.



- I.10 This wider distribution of police complaints work has of itself given rise to a number of issues. There do not appear to be mechanisms which enable CPS managers to know how much such work the Service receives and how well it is being handled. Although some cases are handled within CPS Headquarters, and Policy Directorate provides guidance on specific issues, there is no individual or unit within the CPS which has overall ownership of this area of business. As will be apparent from this report, this makes it difficult for the DPP to be assured on an ongoing basis as to the quality of the work. Similarly it does not fit within the overall CPS schemes relating to training or monitoring for equality and diversity purposes.
- I.11 The Police Reform Act 2002 perpetuated the requirement for police complaint cases to be referred to the Crown Prosecution Service and also introduced other significant changes:
- It established the Independent Police Complaints Commission which, unlike the Police Complaints Authority (its predecessor), has the power to investigate cases - some of which are referred to it directly - and not merely to oversee investigations carried out by the police service.
  - Allegations that a person serving with the police has committed a criminal offence fall to be investigated by a force Professional Standards Department, the IPCC or by divisional officers.
  - The Act also extended the remit of the statutory complaints scheme to include all persons serving with the police i.e. police officers, other employees under the direction and control of the Chief Constable and special constables.
  - Service level agreements have been updated to take account of the extended remit of the complaints scheme so that all cases involving an allegation of a criminal offence against a person serving with the police are dealt with in accordance with discreet arrangements. However not all such cases are likely to be captured.
  - Whilst Professional Standards Departments and the IPCC are aware of cross-border arrangements contained within the service level agreements for such cases, that is not always the position in relation to those divisional officers who happen to encounter such a case. Off duty conduct, whether in the individual's own force area or not, is likely to be dealt with initially on division and may be referred to a duty prosecutor under the statutory charging arrangements.
- I.12 The combined effect of these changes makes it more difficult to ensure that each case is passed through the appropriate channels.
- I.13 In 2005, the Taylor review of Police Disciplinary Arrangements was published. One of the key points to emerge was the need to shift the emphasis and culture in police conduct and disciplinary matters towards a development and improvement environment as opposed to one focused on blame. In addition, the review stresses the importance of an early full assessment of conduct with a view to a proportionate and non-bureaucratic response. The implementation of recommendations is ongoing but there has been broad acceptance of the thrust of the review.

- I.14 It was against this background that HMCPSI concluded that it would be appropriate to undertake a review. It was subsequently learned that in late 2005, Her Majesty's Inspectorate of Constabulary (HMIC) conducted a thematic inspection of professional standards – in tandem with its baseline assessment process – throughout England and Wales. As part of this process, the Professional Standards Departments of 45 forces were assessed and graded. It was agreed that HMCPSI and HMIC should work together on this review, which builds on and is complementary to, the report from HMIC's thematic "Raising the standard". By adopting a holistic approach to the fieldwork, the review was able to capture issues for the CPS, police, Independent Police Complaints Commission and other stakeholders.

#### **Independent Police Complaints Commission**

- I.15 In this report we have highlighted the important role of the IPCC as supervisors and guardians of the police complaints system. The IPCC manages, supervises and conducts investigations into misconduct. Where we have made reference to the police as an investigative or referral body, or the Association of Chief Police Officers (ACPO) as a lead organisation, but not specifically mentioned the IPCC, then these references should be read across to include them where appropriate.

#### **Purpose**

- I.16 The purpose of the review has been to analyse and assess the quality of the handling of cases involving an allegation of criminal conduct by a person serving with the police. This has included:
- the timeliness of investigations, submission of papers to the CPS and decision-making;
  - the quality, integrity and consistency of decision-making and casework handling generally; and
  - the relationship, in the context of police complaint cases, between CPS Headquarters (Policy Directorate and Special Crime Division), CPS Areas, the Independent Police Complaints Commission and Professional Standards Departments.

## 2 ISSUES AND METHODOLOGY

### **The review team**

- 2.1 The review team comprised a lead HMCPSI legal inspector and two assistant legal inspectors. HMIC provided two inspectors who had previously worked on the baseline and thematic assessment of Professional Standards Departments (PSDs). Although led by HMCPSI, this review was a joint effort, particularly in the fieldwork phase.

### **Key issues considered**

- 2.2 The following key issues were considered:
- policy and management – including allocation, monitoring and tracking of cases;
  - review – timeliness and quality of review decisions;
  - case preparation – quality of case handling; and
  - stakeholder and confidence issues – including communication and complaint handling.

An extract from the scoping paper for the review, setting out the full range of issues considered, is included at Annex A.

### **Nature of the review**

- 2.3 The review was structured in a manner which allowed inspectors to trace a case through handling by a PSD or Independent Police Complaints Commission (IPCC) to the relevant CPS Area or Special Crime Division (SCD) to examine where the points of tension within the system were, and to better understand where and why delays occurred.
- 2.4 The review sought to examine a sample of pre-charge advice and prosecution cases. However, identifying such cases where they are not handled at CPS Headquarters was problematic since they are not flagged in any way on the main CPS Compass case management system. At Headquarters, the Special Crime Division has a rudimentary system which captures cases flagged with a specific code. The problem was overcome by obtaining details of cases submitted from the Professional Standards Departments.
- 2.5 The CPS Areas and police forces were asked to assist after preliminary contact had been made. PSDs provided some statistical detail and CPS Areas completed a questionnaire which, amongst other information, asked for confirmation of workloads.
- 2.6 The following CPS Areas were visited as part of the review: Dyfed Powys, South Wales, Gwent, Hampshire and the Isle of Wight, Wiltshire, Greater Manchester, North Yorkshire, West Yorkshire, Suffolk and London. Special Crime Division in London and York also assisted as part of the review.
- 2.7 The PSDs visited had working relationships with those CPS Areas and with SCD. The current cross-border arrangements in England and Wales are set out in Annex B to this report. Those assisting in this review were: North Wales, South Wales, Surrey, Kent, Thames Valley,

Greater Manchester, Cheshire, North Yorkshire, West Yorkshire, Essex and the Metropolitan Police. The majority of sites visited were either in the IPCC Northern or South East and London Regional Groups and therefore personnel at the Commission's Manchester (Sale) and London offices were also consulted.

### **File examination**

- 2.8 There was a need to examine 'live' cases in addition to those where proceedings had been completed. In order to assess current working practices, it was essential that the file sample was as up-to-date as possible. Areas and SCD were asked to supply a sample of recently completed files, a proportion of which should be cases which proceeded to prosecution. These files were considered before the on-site phase.
- 2.9 The live file sample was selected with the assistance of the PSDs, IPCC and other stakeholders interviewed during the course of the inspection. The team were conscious of the need to balance the desire to look at 'problem' files with the need to ensure that there was an element of randomness to the sample selected. This was achieved with the completed file sample being controlled by the CPS Area or SCD and the live sample being identified by Inspectors using the information and intelligence that they had garnered.
- 2.10 In all, 142 completed cases and 67 live cases were examined during the review, a total of 209.

### *Limitations on the file sample*

- 2.11 The methodology adopted in the review allowed for a significant number of CPS files to be examined, which was conducted by the HMCPSI inspectors on the team. However in scoping this piece of work it was acknowledged that resources did not allow for an in-depth analysis of decisions made in the heavier complex and sensitive prosecutions. In many of these cases, senior counsel had been instructed at an early stage and the degree of public scrutiny had already been extensive.

### **Interviews**

- 2.12 Interviews were conducted with CPS decision-makers in Areas and at SCD. In the PSDs, interviews were conducted with relevant chief officers, heads of department, investigators and file builders. Focus groups or face-to-face interviews with those that represent persons serving with the police were conducted, including representatives from the Federation, their solicitors and Trade Unions. In addition, IPCC Commissioners, lawyers and investigators, as well as lawyers representing complainants, were spoken to in order to get a complete picture and balanced perspective on issues.
- 2.13 A list of those visited and interviewed is set out in Annex C.

### **Reference Group**

- 2.14 The inspection benefited greatly from the advice of a Reference Group comprising individuals with particular expertise and knowledge in the field. The members of the Group assisted in the scoping of the review and provided valuable feedback at the emerging findings phase, where they agreed with the preliminary views of the team that there were a number of areas

of policy which required more in-depth consideration. It was felt that wider consultation by way of a seminar of interested parties would be beneficial and the issues discussed at the seminar are considered below.

- 2.15 The Chief Inspectors are grateful for the valuable contribution of the Reference Group to the inspection; a list of members is set out in Annex D.

#### **Seminar**

- 2.16 Following the fieldwork and early drafting of the inspection report, members of the Reference Group and the review team invited stakeholders and other interested parties to consider a number of issues at a seminar held in London on 3 August 2006.

- 2.17 The issues identified during the review which seemed to merit wider consideration were:

- The threshold test for the referral of cases to be sent by the police and IPCC to the CPS, as set out in the Police Reform Act 2002. The evidence suggested that the test itself may require attention and that it was being given widely different interpretations throughout England and Wales.
- The structure of CPS units that deal with this category of case (accepting that there is a clear need for a specialist cadre of lawyers to deal with deaths in custody and corruption cases), and monitoring arrangements.
- The effects of the sub judice rule and possible ways of mitigating its impact on evidence-gathering and progressing cases at court, and the closely related issue of limitation of proceedings on summary offences.
- The guidance to follow in respect of the way the public interest test is applied in these cases, bearing in mind possible disciplinary proceedings, and the relationship between criminal process and possible civil sanctions.

- 2.18 The seminar provoked lively debate and thoughtful discussion. It assisted in shaping the recommendations and suggestions of the review. The information and views gathered have been incorporated into the report at the appropriate point.

#### **Appreciation**

- 2.19 Both Chief Inspectors are grateful to the relevant Chief Crown Prosecutors and Chief Constables for releasing their staff to participate in this review. The review team are grateful for the co-operation and support of those with whom we came into contact during our work.



### 3 EXECUTIVE SUMMARY

#### Overview

- 3.1 The Crown Prosecution Service has a statutory duty to consider the outcome of all investigations where a person serving with the police is alleged to have committed a criminal offence. The importance of this work is far greater than its modest volume might imply. Many cases involving complaints against the police have a high profile at either national or local level. In addition, public confidence requires that the criminal law ought to operate with the police disciplinary system to provide a robust but fair and proportionate response to the full range of potential misconduct. Generally speaking, fairness in the context of criminal law means that persons serving with the police should be treated no better or no worse than any other citizen, subject to the need to take account of circumstances which are specific to those that serve with the police and the powers they exercise.
- 3.2 This review has focussed on the overall process of investigating such cases (referred to generally as “police complaint cases”), including the quality of the CPS work in the discharge of its statutory duty (both as regards the decision-making and in handling), how they are managed and the effectiveness of the arrangements for maintaining public confidence. Overall, we have found that the arrangements for investigating and handling police complaint cases result in sound decision-making and case preparation, notwithstanding a number of weaknesses, mainly in the manner in which they are managed. Those weaknesses are attributable for the most part to the lack of any clear and consistent ownership of policy or operational issues within the Directorates of CPS Headquarters. There is no monitoring or measurement of these cases, which has resulted in a fragmented approach to performance and management issues.
- 3.3 There is clear evidence from this review of the need for the police and the CPS to work more closely together to consider the future management and conduct of investigations and prosecutions. In particular, there is a need for more structured arrangements for recording cases, and monitoring and analysing outcomes which can be the basis of joint performance management arrangements through which concerns raised by properly interested groups such as those representing complainants and the Police Federation can be addressed. In addition, Chief Officers the IPCC and the CPS should ensure that they have mechanisms in place to monitor the outcomes of investigations and prosecutions so as to identify any bias which may exist, whether from the perspective of a complainant or that of a person who is the subject of an allegation.
- 3.4 We conclude that the handling of cases involving complaints against persons serving with the police currently operate outside the main CPS business processes to an unacceptable extent. This needs to be addressed and a system of regional units should be considered as a possible way forward. Such units would need to develop links, not only with relevant Professional Standards Departments, but also with the Independent Police Complaints Commission.
- 3.5 It is against this background that the report sets out its main conclusions.

## Conclusions

- 3.6 The framework for the investigation and consideration of cases involving alleged criminal misconduct by persons serving with the police is set out in the Police Reform Act 2002, which stipulates that any such case shall be referred to the CPS where a criminal offence 'may' have been committed. A series of service level agreements between CPS Areas and police forces (based on a model agreement developed by ACPO and CPS Headquarters) ought to govern day-to-day working arrangements under which the majority of cases are dealt with by CPS Areas through 'cross-border' arrangements. The balance (the more serious and difficult cases) are handled within the Special Crime Division at CPS Headquarters. The rationale for this approach is that there must be overt independence as regards the decision-maker and the person about whom the complaint is made.
- 3.7 These arrangements do not operate satisfactorily; a lack of clarity surrounds the criteria for referral of cases to the CPS. Many practitioners consider that the threshold for referral by the 2002 Act is too low and there are, as a result, different interpretations being developed which are intended to avoid cases being sent to the CPS unnecessarily.
- 3.8 The service level agreements between the CPS and police forces have not been as effective, or implemented as consistently, as intended. They should be 'living' documents customised to suit the needs of both organisations. Opportunities have been missed with the result that, in addition to substantial variations as to the circumstances in which cases are submitted to the CPS, there is a lack of understanding about the appropriate 'gateways' to obtaining CPS advice arising from:
- the statutory extension of the police complaints regime to include persons serving with the police. This now includes other staff irrespective of whether the allegation arises from a complaint or not and whether it arises in the course of duty or even within the area of the employing force. The fact that the statutory regime applies may easily be overlooked;
  - the establishment of statutory charging arrangements, whereby the majority of cases are submitted to the CPS for consideration prior to charge, has resulted in different arrangements even within police force areas. Submission to a duty prosecutor under a statutory charging scheme meets the requirements of the 2002 Act for reference to the CPS, but it does not correspond with the cross-bordering arrangements intended to ensure that cases involving persons serving with the police receive considerations by a CPS lawyer unconnected with the force to which the individual belongs;
  - as the result of the wide range of circumstances now covered by the police complaints regime, files may emanate from the Professional Standards Departments (who deal with most complaints arising out of duty situations), from Borough or Basic Command Units, or from the Independent Police Complaints Commission, established by the 2002 Act with the power to investigate cases which are serious or have a significant public interest or organisational learning aspect to them.



- 3.9 The standard of files submitted by the police vary considerably. In many instances files are built to a standard specification which exceeds what is required to enable the CPS to make a properly informed decision. Thoroughness of investigation and file preparation should not be compromised, but early consultation with designated lawyers in the CPS could yield dividends in ensuring that unnecessary work is not undertaken and that time is saved where appropriate. Against this, there were two crucial aspects in which many files were found not to comply with the requirements of service level agreements. The provision of the service record of the person being considered for prosecution did not take place, and in a significant minority of cases the provision of antecedents to decision-makers did not occur.
- 3.10 PSDs keep records of the length of time an investigation takes from complaint to file submission. HMIC have commented previously on the different ways forces interpret the 120 day target in which they aim to complete the investigation. This is because the time runs, and is suspended, at key moments in the process and there have been inconsistencies in the interpretation of when the clock stops and starts. Cases and circumstances vary so substantially that there can be no fixed time limit for an investigation or the submission of files. In this review, inspectors marked as timely a file which was submitted within four weeks of the last interview of the suspect, or receipt of the last piece of significant evidence. Of those where the date of submission to the CPS could be established, half were submitted in a timely manner.
- 3.11 An historical consequence of the devolution of police complaints cases from CPS Headquarters to the Areas has been to place them largely outside the standard arrangements for case tracking or recording under the Compass case management system (CMS), introduced progressively since 2003. The result is that the CPS cannot quantify the number of police complaint cases which it handles, save in relation to CPS London and the Special Crime Division at CPS Headquarters. This also means that there can be no meaningful oversight of those cases, or assessment of the resources devoted to the current arrangements and the cost of handling such cases.
- 3.12 Although the capacity and functionality of CMS are both substantially greater than those of the previous computerised case tracking system, it is not employed in a manner which would enable the CPS to track police complaint cases (assuming they were all properly registered) as a discreet body of work, or to abstract information about performance in relation to those cases. As a result, the CPS is unable to respond effectively to criticisms by the police service and other stakeholders on issues such as timeliness or lack of even-handedness. In particular, the CPS has no data on which to draw to respond in a comprehensive manner to suggestions by the National Black Police Association that its decision-making is susceptible to bias.
- 3.13 Despite the absence of management information as to the quality of decision-making, the vast majority of decisions as to whether to prosecute examined in this review reflected a proper application of the principles set out in the *Code for Crown Prosecutors*. Of the 209 examined, inspectors considered that the decision reached was wrong in only four cases, which is a margin of error broadly comparable with that found in relation to casework generally. The reasons for decisions are not always recorded as fully as they should be. In some files examined by inspectors, the lawyer repeated or referred to the narrative in the police report and did not complete a fresh analysis of the evidence or a full review note.

3.14 Inspectors identified two specific issues relating to decision-making by the CPS:

- The use of common assault and assault occasioning actual bodily harm charges are frequently problematic because of the length of time investigations may take and the statutory time limit applicable to common assault cases. In many circumstances, there are barriers to shortening the investigation, such as the operation of the sub judice principle. This report therefore recommends a change of legislation either by extending the time limit applicable in the particular circumstances, or by providing for the laying of a protective information. (This is a procedure which enables the putative prosecutor to give notice that proceedings are being considered and time ceases to run for the purpose of the time limit.)
- A lack of clarity on the part of CPS lawyers as to the extent to which it is appropriate to take into account the likely outcome of any disciplinary proceedings when determining whether a prosecution would be in the public interest. The current approach seems unduly cautious and further guidance by CPS Policy Directorate is needed.

3.15 There are concerns about the timeliness of decisions made by the CPS. These are not restricted to the Special Crime Division, but the evidence suggests that delays on referral to them are of most concern to stakeholders. These are high profile, long running, complex cases and unexplained delays have a disproportionate impact on how effective the system is seen to be. During the period April 2005 to March 2006, 248 of 552 cases were the subject of decisions within the target of 28 days from receipt of the completed file. Although the nature and complexity of the casework often makes exceeding that target inevitable, inspectors saw several instances where the file had apparently and inexplicably received no attention from the reviewing lawyer for several months after it had been received. Where there are unavoidable delays, the impact can to some extent be mitigated by more effective communication.

3.16 Police complaint cases are notable for the absence of any effective recording or analysis of outcomes; this needs to be addressed. The level of scrutiny of CPS decisions in these cases, from stakeholders and special interest groups, makes it important that there is an ability to produce performance data and cogent analysis. This is essential to ensure that the processes and outcomes are not only fair, but are seen to be fair, both to complainants and those serving with the police.

3.17 The standard of communication from the CPS to complainants and/or victims is variable and there is scope for considerable improvement. Channels of communication also need to be developed and kept open with other key stakeholders such as PSDs and the IPCC. There are tensions present within the system at the moment, particularly regarding timeliness, for which there does not appear to be any natural outlet.

## Recommendations

3.18 We make the following 17 recommendations:

- 
- 1 Police forces and CPS Areas should ensure that they have in place an up-to-date, signed service level agreement. It should be regularly reviewed and updated (paragraph 4.5).
- 
- 2 (a) The criterion for referral of cases to the CPS contained within Schedule 3, paragraph 24 of the Police Reform Act 2002, that a criminal offence may have been committed, be reviewed by the Home Office and replaced by a clearer test which requires CPS consideration of cases only where there is some evidence on which a decision to prosecute could be based.  
  
(b) Any revised requirement along the lines of this recommendation should be balanced by creating a right on the part of the complainant to have a decision by a police force not to submit a file to the CPS reviewed by the Independent Police Complaints Commission (paragraph 4.19).
- 
- 3 File builds by the police and the Independent Police Complaints Commission need to be proportionate and, in appropriate cases, designated lawyers in the CPS should guide investigators as to their requirements (paragraph 4.23).
- 
- 4 There should be a national flag put on Compass CMS to identify, track and monitor those cases where a criminal offence is alleged to have been committed by a person serving with the police (save for minor road traffic incidents) (paragraph 5.8).
- 
- 5 The flagging of cases on Compass CMS should be designed to allow monitoring to take place to inform local managers of timeliness issues, patterns of outcomes, and casework lessons and themes (paragraph 5.9).
- 
- 6 Professional Standards Departments and their CPS counterparts should formalise a joint performance management regime based on a national template developed by the Association of Chief Police Officers and CPS Headquarters (paragraph 5.16).
- 
- 7 Special Crime Division should establish a point of contact where Area prosecutors may seek guidance and advice on specialist issues likely to arise in the devolved casework (paragraph 6.9).
-

- 8 Chief Crown Prosecutors should satisfy themselves that systems are in place to ensure that decisions made on these cases are consistent and subject to peer or line management review (paragraph 6.15).

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- 9 CPS guidance on the public interest factors in these cases should reflect the fact that decision-makers can and, in some circumstances, should take account of likely disciplinary outcomes. This guidance needs to be kept under review (paragraph 6.20).

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- 10 Where sub judice is likely to be an issue, there should be early consultation and advice as between the investigating officer, Independent Police Complaints Commission (where involved) and the CPS (paragraph 7.16).

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- 11 CPS Policy Directorate should review the relevant charging standard to ensure that it addresses sub judice situations more effectively (paragraph 7.27).

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- 12 The Home Office should bring forward legislation to extend the limitation period for summary only offences or to provide for protective informations, in discreet defined circumstances, where an investigation cannot be conducted due to sub judice factors (paragraph 7.28).

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- 13 Chief Officers and the CPS should ensure that they have mechanisms in place to monitor relevant equalities categories, prosecution decision-making and case outcomes, so as to identify any bias which may exist, whether from the perspective of a complainant or that of a person who is the subject of an allegation (paragraph 8.11).

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- 14 Letters to complainants should set out a proper explanation of the decision made, including reference to the relevant evidence considered. A copy of this letter should be sent to the Professional Standards Department or Independent Police Complaints Commission as appropriate (consent to release or editing of text should be undertaken if personal or confidential information the recipient is not privy to would be revealed). In appropriate cases an explanation of the decision should be sent to HM Coroner (paragraph 9.5).

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15 The CPS should endeavour to establish closer liaison between Areas and the Independent Police Complaints Commission and to facilitate a better understanding on the part of CPS lawyers of the IPCC's role (paragraph 10.8).

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16 The CPS should identify a Lead Directorate to take responsibility for ownership of policy and operational issues, with a view to ensuring that arrangements will continue to be appropriate for changing circumstances (including those signposted by the Taylor review) and to ensure that other stakeholders, such as national interest groups and those who represent complainants, officers and police staff, are consulted and engaged in that process (paragraph 10.8).

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17 The CPS should consider whether cases relating to alleged criminal conduct by persons serving with the police would be managed better within regional units, which should in turn develop links with the Independent Police Complaints Commission (paragraph 10.12).

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### **Suggestions**

3.19 We make the following 13 suggestions:

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1 Service level agreements should clearly set out the different arrangements for advice in cases involving police officers and others, on and off duty conduct, behaviour outside force area, and matters investigated by Professional Standards Departments, the Independent Police Complaints Commission, and officers based on Division in a Basic (or Borough) Command Unit (paragraph 4.9).

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2 All files submitted to the CPS relating to a person serving with the police should be accompanied by an MG3 bearing the relevant Unique Reference Number (together with an indicator as to the status of the proposed defendant as a person serving with the police) and should be registered on the Compass CMS system (paragraph 5.8).

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3 Special Crime Division should migrate from their case recording system (CAMS) to Compass CMS as planned and ensure that staff and managers are trained in its use and functionality (paragraph 5.14).

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- 4 There should be no requirement to confine police complaints work to Chief Crown Prosecutors, Unit Heads or Special Casework Lawyers. Instead, Chief Crown Prosecutors should designate in writing those lawyers who are to undertake this work on the basis of their assessment of ability, based on experience and training (paragraph 6.5).

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- 5 Lawyers who undertake this work in Areas should receive training on legal and policy issues. If necessary, Learning and Development Branch should be approached to assist in devising a programme (paragraph 6.6).

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- 6 Training needs should be considered locally on a joint basis with CPS, the Independent Police Complaints Commission and the police to cover matters of mutual interest (paragraph 6.8).

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- 7 CPS guidance on the Data Protection Act and the offence of misconduct in a public office should be revisited, with a view to setting out more clearly the aggravating and mitigating features of offences and the circumstances in which they are likely to be committed (paragraph 6.23).

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- 8 The managers within CPS Areas responsible for work received on a cross-border basis should nominate a member of their support staff to be the point of contact who deals with administrative issues (paragraph 6.29).

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- 9
  - (a) CPS Areas should review their service level agreements with their Professional Standards Departments to ensure that they establish appropriate timescales to govern for provision of advice. The agreed timescales should reflect the varying degrees of importance and complexity in files sent to the CPS.
  - (b) In the more serious and complex cases, there should be a mechanism for reporting on progress at agreed stages or on significant events in the life of a case (paragraph 7.19).

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- 10 The police/Independent Police Complaints Commission and CPS should create structured mechanisms for the exchange of information on outcomes, significant cases, and where there are clear lessons to be learnt (paragraph 8.6).

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- I 1 CPS lawyers should be prepared to hold a meeting with complainants when circumstances merit it, in order to explain their decisions (paragraph 9.5).
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- I 2 Professional Standards Departments should ensure that any person or group representing a complainant is kept fully informed and that their details are passed to the CPS with the investigation file. The CPS should involve a complainant's representative fully in any communication with the complainant (paragraph 9.7).
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- I 3 The identity of designated lawyers and/or a single point of contact should be made known to the police Professional Standards Departments, to Basic (or Borough) Command Units, and to the regional office of the Independent Police Complaints Commission (paragraph 10.2).
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### **Good practice**

- 3.20 HMCPSI defines good practice as 'an aspect of performance upon which the Inspectorate not only comments favourably but considers that it reflects a manner of handling work developed by an Area which, with adaptation to local needs, might warrant being commended as national practice'. Those considering adopting good practice should bear in mind the need for scrutiny of the aspect under consideration to ensure that it can be readily transferred. We found the following examples of good practice:

*File allocation* - at Special Crime Division lawyers are available for early advice in cases likely to result in planned arrests, such as enquiries into alleged corrupt activities, and advise on evidence-gathering techniques such as integrity tests. They then 'own' the file and remain a point of contact throughout the case (paragraph 5.2).

*File recording* - in the Police Complaints Unit (PCU) of CPS London an administrator had a specific duty to allocate, track and monitor caseload (paragraph 5.6).

*Performance information and management* - the PCU actively manages its performance, using Compass CMS to produce data, particularly on timeliness, and holds quarterly performance meetings with the police where they discuss file standards, trends, disclosure and other matters of mutual concern. The fact that reliable performance data can be drawn on undoubtedly drives these meetings, sets them in a meaningful context and arguably provides a model for introduction elsewhere should re-structuring be a consideration (paragraph 5.16).

*Training* - the Chief Crown Prosecutor for South Wales devised a training programme for lawyers in his Area (delivered in July 2005) (paragraph 6.6).

*Disclosure under the Criminal Procedure and Investigations Act 1996* - the PCU is pro-active in seeking out related files and court transcripts so that lawyers have full information as to the surrounding circumstances of the allegation made (paragraph 6.26).

*Timeliness: police* - in Leicestershire and Cambridgeshire Professional Standards Departments, complaints are subject to early assessment and then placed into categories which, depending on perceived severity, are assigned differing levels of investigation (paragraph 7.9).

*Timeliness: sub judice* - in some cases, lawyers had been pro-active in seeking to make decisions on both the complaint and the related allegation of criminal conduct by the complainant. All the case material could be reviewed, and a consistent and timely decision made on both (paragraph 7.15).

*Relationships with complainants* - in some Areas, a copy of the letters sent to the complainant advising on, and giving reasons for, decisions made are sent to the Professional Standards Department by the CPS lawyer. This assisted in ensuring consistency in the information being delivered to the complainant (paragraph 9.2).

Greater Manchester CPS assisted the PSD in drafting a form of words to be used in communicating decisions to those whose conduct has been complained of. This specifically points out that the decision could be reviewed in the light of any further information and evidence becoming available (paragraph 9.4).



## 4 FILE SUBMISSION/PROCESS

### **Cross-border arrangements and service level agreements – the current position**

- 4.1 The majority of CPS Areas have service level agreements (SLAs) in place for the handling of police complaints cases. These either adopt or are based on the model agreement drawn up by CPS Headquarters and the Association of Chief Police Officers (ACPO) with a view to being customised to local circumstances. However, their implementation has been far from consistent and their overall effectiveness is questionable.
- 4.2 London is the only CPS Area to have significantly amended the model SLA to reflect its own unique working practices. In July 2005, in anticipation of the further tranche of devolution from Headquarters, CPS London set up its own Police Complaints Unit (PCU), which specifically deals with these cases. The unit is attached to the Special Casework Unit based at Ludgate Hill and undertakes work referred by the Metropolitan, City and British Transport Police Forces on behalf of CPS London.
- 4.3 Of the 32 CPS Areas that provided copies of their SLAs following a request by HMCPSI, 26 have agreements that mirror the model issued them in May 2005. CPS London's agreement has been fully customised, whilst several other Areas have implemented minor changes to theirs, for example, in terms of to whom a case is initially referred and time limits for providing advice. However, at least six of these Areas provided SLAs that remained unsigned by the police and, on occasions, the CPS themselves. At least three SLAs were out of date, reflecting the pre-2005 devolution arrangements, with the result that the terms of reference were incorrect. One police force discovered that it did not have an agreement with the CPS to reflect its cross-border arrangements and another CPS Area confirmed that it did not have any agreement in place for dealing with these cases.
- 4.4 The majority of those Areas and police forces visited during the review confirmed that they rarely referred to the agreement when handling these cases. One Area was unable to provide a copy of it upon request despite having an SLA in place, albeit one unsigned by the police, and its cross-border police force also struggled to locate it. There was little evidence of either the CPS Areas or police forces holding the other to account on the basis of the obligations set out in their agreements. However, most of those visited confirmed the benefits of having an agreement in place. Prior to the revised SLA being implemented, the arrangements for the handling of such cases were often unclear and generated confusion as to which CPS Areas cases were to be referred to for advice.
- 4.5 It is essential that all CPS Areas and police forces have such agreements. They should be living documents, tailored to fit the needs of both the police and CPS and subject to regular review and amendment as required.

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### **RECOMMENDATION I**

Police forces and CPS Areas should ensure that they have in place an up-to-date, signed service level agreement. It should be regularly reviewed and updated.

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### **File submission**

- 4.6 In general, cross-border arrangements work well in terms of the file submission and the working relationships between Professional Standards Departments and the CPS, although there were isolated examples found of files being sent to the wrong CPS Area, or to an Area when the matter should have been referred to Special Crime Division. In one Area, this appeared to happen as a direct result of the SLA arrangements not being updated and embedded across the region. On the occasions that this happened, the receiving CPS Area picked up the error and forwarded the file, or directed the police to the correct point of contact. There was no evidence that any prejudicial delays were occasioned by these errors.

*"I had a case involving an allegation of corruption which I was invited to give advice on. It was clear that this was a case that needed to go to SCD – I referred it to them straight away – there was no problem."*

**CPS Head of Trial Unit**

- 4.7 There were examples of tensions, particularly around the issue of delay in receiving advice. There was evidence of concern in some PSDs that the work was not accorded the appropriate priority by the CPS. In one instance there was a resource issue in the relatively small CPS Area receiving work from a large police force, which affected timeliness. In another, large, CPS Area the relatively smaller PSD considered that their work was not being accorded the appropriate priority. The general theme pertaining to both these examples was that there was a lack of apparent ownership and timely management of these cases within the generality of CPS work. The CPS does not routinely measure timeliness and therefore was unable to refute such concerns or offer reassurance.
- 4.8 There was confusion within the police and the CPS concerning the inter-relation of cross-border case referrals and statutory charging. A CPS internal minute published in June 2005 sought to set out the position – clarification being required as the phased implementation of the charging arrangements meant that, at that time, CPS Areas were operating different regimes.
- 4.9 Now that statutory charging has been successfully rolled-out throughout England and Wales, any confusion over the circumstances in which to refer to the cross-border designated lawyer or duty charging lawyer (CPS Direct out-of-hours service) for a charging decision or advice should have disappeared. It clearly had not and was best illustrated by different responses to the question posed as to how to deal with cases of domestic violence alleged against a person serving with the police. It is clear that advice on such cases has been given by charging lawyers in the Area which serves the force to which the individual under investigation belongs, as opposed to designated prosecutors under cross-border arrangements. The reason for such confusion lies in the inconsistent application of SLAs and the various ways that the CPS can become involved in a case. Engagement with the local duty prosecutor was often the preferred route amongst investigators to gain access to a lawyer who would provide immediate advice.

### Case Studies

A Group of Detective Chief Inspectors in a PSD in a large force commented that they were aware of difficulties in obtaining pre-charge advice under the cross-border arrangements in cases of alleged domestic violence. The suspects in these cases can be bailed and advice is then sought on their return to the police station. In these cases the investigators did not adhere to the cross-border arrangements and obtained charging advice from the 'local' CPS.

A Detective Chief Inspector from another large force area commented 'I tried to deal locally with an allegation of domestic violence. In this case the suspect was not arrested but presented himself to the local police station. I agreed with the Detective Sergeant that the advice should be sought from the local CPS. Out of courtesy I phoned the CPS to whom cases are cross-bordered. I was advised by the designated lawyer to fax papers through to her with an MG3 – she made the decision and faxed a reply back to me by the end of the day'.

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### SUGGESTION 1

Service level agreements should clearly set out the different arrangements for advice in cases involving police officers and others, on and off duty conduct, behaviour outside force area, and matters investigated by Professional Standards Departments, the Independent Police Complaints Commission, and officers based on Division in a Basic (or Borough) Command Unit.<sup>1</sup>

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### Appropriateness of requests for advice

- 4.10 The Police Reform Act 2002 (PRA) stipulates (Schedule 3, paragraph 24) that a file should be sent to the Crown Prosecution Service for advice if there is evidence that a criminal offence may have been committed.
- 4.11 There was evidence that the statutory requirement of the PRA was being interpreted in different ways by both PSDs and CPS Areas. This lack of consistency made comparisons of workload and performance difficult to judge. The IPCC considered that the commonly adopted interpretation reflected too low a threshold and had declined to refer a small number of serious cases to SCD for advice on the grounds that the evidence did not reveal that a criminal offence may have been committed.
- 4.12 Thames Valley Police (TVP) adopts a robust stance on the interpretation of the statutory requirement. This is with the encouragement and support of the IPCC locally. TVP use an interpretation of the test based on the likelihood of a prosecution to refer cases to the CPS. They have inserted a paragraph in their SLA with Wiltshire CPS to reflect this. It reads "*The need to demonstrate independence does not prevent Thames Valley Police determining whether or not there is an indication that a criminal offence has been committed by a person serving with the police*". The Police Authority in Thames Valley, which oversees complaint cases, is aware of the change of approach. In addition HMIC, in their own separate thematic, endorsed the stance taken, particularly as it appeared that there were sufficient checks and balances in the system. A feature of the approach taken is the high standard of explanation of decisions by the Head of the PSD to complainants.

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<sup>1</sup> In the Metropolitan Police, they are referred to as Borough Command Units and elsewhere as Basic Command Units

### Case Study

The Head of PSD at Thames Valley Police made available for examination by inspectors nine files that he had declined to send to the CPS for a decision on the basis that he had determined that there was no indication that a criminal offence had been committed. The judgements made were correct and the reasoning readily apparent from the file. The complainants received timely and full explanations for the decisions reached. The letters of explanation were superior in quality to the majority of those sent by the CPS (see later) in terms of their analysis of the evidence and explanation of the role of the IPCC. The number of cases that this PSD were sending to the CPS has declined dramatically since this new approach was introduced with 76 cases sent in 2004-05 and only 18 in 2005-06.

- 4.13 A metropolitan force has recently sought to amend its approach to clarify the interpretation of the requirement of the PRA. Its cases are the subject of advice from CPS lawyers within the metropolitan area itself, or an adjoining CPS Area, depending on from which Basic Command Unit (BCU) they originate. Impartiality is maintained in terms of the CPS lawyers from the metropolitan area as they work in geographically discreet districts allowing for cross-bordering within the conurbation itself. The force embraced the approach taken by the adjoining CPS Area who advised that cases should only be sent to them for advice if there was a 'reasonable suspicion that an offence had been committed'. The inspection revealed that the lawyers within the metropolitan area were unaware of this change of approach and they appeared less comfortable with the interpretation of the statutory test to which the force was working.
- 4.14 In contrast to the above, some forces have been sending to the CPS any file that contains an allegation of a criminal offence no matter how weak the evidence or how trivial the incident complained of, as they felt that their interpretation of the provisions of the legislation left them no alternative. An extreme example of this was to refer to the CPS a case where there was video evidence exonerating the subject of the complaint. It is important, in terms of transparency and public confidence, that the CPS - with its independent position - should become engaged whenever there is an effective decision to be made about prosecution. However, no useful purpose is served by sending a file to the CPS if there is no admissible and credible evidence of a criminal act against an identified individual. Some cases were, in fact, being sent where there was no real decision to be made.
- 4.15 The Inspectorates have concerns about the 'reasonable suspicion' approach as this is taken from the Director's Guidance on charging and is intended to be applied within the context of decisions being made by Duty Prosecutors on custody cases where more evidence is expected to be gathered. Also, officers use this test when exercising their power of arrest. When used in particular contexts, it has acquired particular meaning, partially through scrutiny by the courts, which should be borne in mind when considering whether it is an appropriate standard. A test needs to be devised that is higher than the current threshold and a specific recommendation is made to this effect.

- 4.16 The review team is clear that the current statutory requirement is unsatisfactory and should be replaced by a clearer test which is more effective in focussing CPS resources on the cases that are likely to benefit most. The issue was considered at a workshop for stakeholders. A strong consensus emerged amongst stakeholders that there should indeed be a clearer test for PSDs and the IPCC to apply in deciding whether to refer cases to the CPS. The current test of whether a criminal offence “may” have been committed has led to cases being sent to the CPS unnecessarily and sometimes almost on a speculative basis. This conclusion matched the experience and findings of the inspection team.
- 4.17 Despite the consensus as to the need for change, there was no unanimity as to how a new test should be expressed. Potential cases span a spectrum from those where the evidence is clearly sufficient to meet the test contained in the *Code for Crown Prosecutors* to those which are ‘no hopers’. The Inspectorates consider that what is required is a criterion which will result in cases being submitted to the CPS whenever it is reasonably arguable that the *Code* test may be satisfied, i.e. there is some evidence on which a prosecution could be based.
- 4.18 Cases should always be submitted to the CPS if the evidential criterion is met. It would not be right to withhold submission because the IPCC, PSD or investigating officer considered that criminal proceedings would not be in the public interest.
- 4.19 It is clearly essential that, if fewer cases are to be referred to the CPS, this is not at the expense of public confidence or that of complainants. Any recasting of the statutory test needs to be balanced by safeguards against inappropriate decisions. The IPCC itself could have a role to fulfil in appeals by complainants in respect of a PSD’s decision not to refer a case to the CPS. This is not a great extension of the existing appeals process, as an appellant may appeal on findings or outcomes in relation to an investigation, which could naturally include the submission of a file to the CPS. The IPCC could also have a role through guardianship, of reviewing those cases not sent to the CPS, as part of assessing confidence in the system.

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## RECOMMENDATION 2

- (a) The criterion for referral of cases to the CPS contained within Schedule 3, paragraph 24 of the Police Reform Act 2002, that a criminal offence may have been committed, be reviewed by the Home Office and replaced by a clearer test which requires CPS consideration of cases only where there is some evidence on which a decision to prosecute could be based.
- (b) Any revised requirement along the lines of this recommendation should be balanced by creating a right on the part of the complainant to have a decision by a police force not to submit a file to the CPS reviewed by the Independent Police Complaints Commission.
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- 4.20 In the meantime, it is essential that the present arrangements should be made to work as satisfactorily as possible. The requirement is a statutory one and it is not for the practitioners themselves to devise and substitute their own test. Consistency is the key, and the development of the joint working, monitoring and training contained within the recommendations and suggestions of this report are designed to support this approach. For example, within the context of a periodic review of the working of the SLA in any given force area, the threshold arrangements could be examined for consistency in terms of the files referred and those not referred to the CPS.

### **File standards**

- 4.21 In the files analysed, almost none reached the standard as set out in the annex to the model SLA or its predecessor. The omissions were mainly matters of form, but in two crucial aspects the files were found wanting. In order to maintain transparency, the service record of the person being considered for prosecution should accompany the file so that the reviewing lawyer can assess whether he or she has had, or is likely to have had, contact with that person in their professional capacity. These service records were not submitted with the file. Also complainant's antecedents were not routinely included in the file.
- 4.22 The file should now be accompanied by a form MG3 (the report on a case required to be generated by the police when seeking advice from the CPS). It was more likely to be the case that an MG3 would be submitted if the file had originated on a police division where officers are familiar with the requirements of the statutory charging scheme. It is an important recording document (see below) and the submission of MG3s by the police should be the norm. The inspection revealed that performance in this regard was patchy.
- 4.23 The evidence file was described by PSDs as a 'DPP file' and contained full records of interview, which were also comprehensively summarised in the Investigating Officer's report. There was little thought given as to what was proportionate in terms of the evidence that the CPS required to make an informed decision. The SLAs do not mandate PSDs to continue to provide files in this format. Thoroughness of investigation and file preparation should not be compromised, but early consultation with the reviewing lawyer would yield dividends in ensuring that unnecessary work is not undertaken and that time is saved where appropriate. Inspectors found examples of files with a full set of statements and interview records being built where the offence under consideration had become statute-barred. The revised file standard in respect of police complaint cases currently being negotiated between the CPS and ACPO provides an opportunity to address the issue.

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### **RECOMMENDATION 3**

File builds by the police and the Independent Police Complaints Commission need to be proportionate and, in appropriate cases, designated lawyers in the CPS should guide investigators as to their requirements.

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## 5 CROWN PROSECUTION SERVICE FILE HANDLING

### File allocation

- 5.1 In many areas, the cross-border arrangements resulted in Professional Standards Departments sending files to an established point within the relevant CPS Area – either a named lawyer or point of contact. Such arrangements having been built up over a number of years. In some areas, PSD investigators personally delivered files to the CPS. In others, including London (other than those cases dealt with by the specialist Police Complaints Unit), where divisional officers and the IPCC may want to refer a matter, there was no established or recognised point of contact. A suggestion is made later at paragraph 10.2 regarding the necessity for a designated point of contact.
- 5.2 In cases where there is an issue with the limitation period or the police require advice on lines of enquiry, e.g. on a pro-active operation, the police generally access the expertise that they require at the appropriate stage, provided there is a designated contact point for the purpose. This was particularly the case in pro-active enquiries into alleged corruption where advice was sought from Special Crime Division in relation to integrity tests. The lawyer ‘owns’ the file thereafter and remains the point of contact throughout the case. This is **good practice**. It was replicated in Areas such as Dyfed Powys where the Chief Crown Prosecutor made himself available to South Wales Police to advise in conference as and when requested.

### Case Study

PSD officers had reason to suspect that an officer had been dishonest in his dealings with property that he received during the course of his duties. There was, however, insufficient evidence to proceed to a prosecution. The PSD concerned wished to mount an operation to test the integrity of the officer concerned. The investigating officer accessed specialist advice from SCD. This enabled comprehensive advice to be given at the outset of the operation on such matters as proportionality, human rights, bad character, and the Regulation of Investigatory Powers Act 2000. The operation proved a success and yielded unassailable evidence against the officer who was found guilty of theft. The judge complimented the way that the case had been dealt with.

### File recording

- 5.3 One historical consequence of the devolution of police complaint cases from CPS Headquarters to the Areas has been to place them substantially outside the standard arrangements for case tracking or recording under the Compass case management system, introduced progressively from 2003 onwards. This situation arises largely because cases handled under cross-border arrangements are passed direct from the PSD or the investigating officer to the designated lawyer within the receiving Area. The designated lawyer or Chief Crown Prosecutor (CCP) usually allocated the files with a manual record maintained by the CCP and usually kept by an administrator. In Areas where the pool of lawyers was larger, this tracking was not done and there was no grip on allocation and workload.

- 5.4 In circumstances where the case by-passed the cross-border arrangements and was submitted under the statutory charging arrangements to the duty prosecutor it would then be recorded in the normal manner; but in many instances with no indication that the suspect or defendant was a person serving with the police, and that the case itself is to be dealt with in accordance with the provisions of the Police Reform Act 2002 and the service level agreement.
- 5.5 The result is that the CPS cannot quantify the number of police complaint cases which it handles save in relation to CPS London and the Special Crime Division of CPS Headquarters. This means that there can be no meaningful assessment of the resources devoted to the current arrangements or the cost of handling such cases.
- 5.6 In CPS London, the Police Complaints Unit has the benefit of consistent use of MG3s and an administrator was able to allocate and track the unit's caseload. This is **good practice**. It allows the unit to monitor cases, manage its caseload, address performance issues, and share information with the police. However, we found some cases appearing on Compass CMS as part of the London Special Casework Unit's caseload. PCU managers may want to ensure registration of all work stays within the unit, which is important to maintain the completeness and accuracy of the data.
- 5.7 The Special Crime Division within CPS Headquarters (which is distinct from the London PCU referred to above) uses a separate system (CAMS) to register cases on receipt and record when they are finalised. It thus has basic caseload information, but the system does not act as a case management tool.
- 5.8 Although the capability of Compass CMS is substantially greater than that of the previous computerised case tracking systems, it is not employed in a manner which enables the CPS to track police complaint cases as a discreet body of work, or abstract information about performance in relation to those cases. The reasons identified by inspectors for this situation maybe summarised as follows:
- The absence of MG3s on some files adversely affects the ability of the CPS to record these cases on its computerised case management system (Compass CMS). This issue related mainly to cases emanating from PSDs.
  - Where an MG3 is used, there was no consistent use of the Unique Reference Number (URN) which should be provided by the police and adopted by the CPS as the main identity defining reference. It is important if cases are to be tracked through the course of their life on Compass CMS. Some files submitted for advice had a police Professional Standards Department number rather than a URN. In cross-border cases there was confusion as to whether the URN should incorporate the force identification relating to the submitting force or the force ordinarily served by the receiving CPS Area. Inspectors found a general lack of awareness around the need for one URN, or at least to merge different URNs used at different stages during the life of a file.
  - The details recorded on Compass CMS relate mainly to defendant particulars and the charges they face. None of the details routinely recorded identify cases as relating to a person serving with the police – whether received from a PSD or from a police division via a charging centre. The narrative of the advice recorded on the MG3 (if provided) was the only way of discovering that a case fell within the statutory regime.



- Although Compass CMS has a facility for causing discreet groups of cases to be flagged on registration, that had not happened. One CPS Area has put in an IT Change Request to flag police complaint cases on the system. We consider that that is the right approach and preferable to the variety of manual recording systems encountered locally.
- It would be useful if the IPCC could have access to URN numbers, perhaps utilising their own prefix for identification purposes.

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## **SUGGESTION 2**

All files submitted to the CPS relating to a person serving with the police should be accompanied by an MG3 bearing the relevant Unique Reference Number (together with an indicator as to the status of the proposed defendant as a person serving with the police) and should be registered on the Compass CMS system.

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## **RECOMMENDATION 4**

There should be a national flag put on Compass CMS to identify, track and monitor those cases where a criminal offence is alleged to have been committed by a person serving with the police (save for minor road traffic incidents).

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### **Performance information and management**

- 5.9 The current arrangements for recording cases do not provide the CPS with any meaningful information about how cases falling within the statutory police complaint regime are handled. The rationale behind the current arrangements is to ensure transparency and accountability; the confidence of the public and stakeholders within the criminal justice system therefore needs to be maintained. It is important that the police and the CPS, and perhaps other interested parties, are able to have access to information regarding timeliness, outcomes, trends and any issues which are becoming prevalent.
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## **RECOMMENDATION 5**

The flagging of cases on Compass CMS should be designed to allow monitoring to take place to inform local managers of timeliness issues, patterns of outcomes, and casework lessons and themes.

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- 5.10 As noted, Special Crime Division (SCD) does not record or manage its cases using CMS. Historically it has used a stand-alone system, CAMS, to record cases. CAMS is used to register the case and record when it is finalised – it does not act as a case management tool.
- 5.11 Within SCD, the performance management data that is produced relates to volumes, case types and timeliness. Lawyers and caseworkers are therefore reliant on their own diaries and 'bring forward' systems to actively manage their cases. This is not ideal and may, in part, be one of the factors which has negatively impacted upon workflow management, timeliness and monitoring of performance.

- 5.12 SCD managers receive reports dealing with timeliness, based on a scheme of Corporate Performance Monitoring (CPM) rather than CAMS. This scheme has drawbacks – it relies on form filling and an assessment on when a full evidential file has been received before timeliness of advice is measured, the target being 28 days. Also, it is not a pro-active management tool as it measures performance retrospectively. In any event, from interviews conducted it was apparent that some staff were unclear as to whether CPM was still in operation.
- 5.13 The Head of SCD is aware of the lack of performance management information available to her. Since her appointment in September 2005, her focus has been on casework quality issues. There are plans for the introduction of CMS as reflected in SCD's Business Plan for 2006-07. In addition, the Head of SCD is supplied with updates on cases and regularly discusses them with staff – the necessary timeliness and risk analysis, and subsequent prioritisation is, however, lacking.
- 5.14 As part of the review by the Attorney General of deaths in custody (*A review of the role and practices of the CPS in cases arising from a death in custody*, published 15 July 2003), it was recommended that statistical information should be compiled. This would enable the CPS to demonstrate its performance and identify any patterns and any scope for improvement. There was no evidence that this was being done.

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### SUGGESTION 3

Special Crime Division should migrate from their case recording system (CAMS) to Compass CMS as planned and ensure that staff and managers are trained in its use and functionality.

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- 5.15 There was little enthusiasm for performance information to be made available to CPS managers in the Areas. The general feeling was that the number of cases is so small in relation to the general workload that issues can be dealt with on a case-by-case basis. The Professional Standards Departments, in contrast, could see the benefit of sharing performance information on timeliness and from the point of view of lessons to be learned. The CPS Areas felt that nationally produced data would be more useful. The availability of local data, as shown below, does yield dividends. The range of indicators produced, and the extent of performance management required, should be negotiated locally, but within a national framework.
- 5.16 The Police Complaints Unit actively manages its performance. It uses CMS to produce data, particularly on timeliness, and holds quarterly performance meetings with the police. These meetings discuss file standards trends, disclosure and other matters of mutual concern – the fact that reliable performance data can be drawn on undoubtedly drives these meetings and sets them in a meaningful context. This is **good practice**. The dedicated unit can offer a contact point, access to expertise and training, and a learning environment. Its existence was complimented by the Metropolitan Police who have experienced better performance and liaison since its inception.

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### RECOMMENDATION 6

Professional Standards Departments and their CPS counterparts should formalise a joint performance management regime based on a national template developed by the Association of Chief Police Officers and CPS Headquarters.

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## 6 CROWN PROSECUTION SERVICE DECISION-MAKING AND CASE MANAGEMENT

### CPS Policy Guidance

- 6.1 The Policy Guidance published by the CPS in its Manual is well drafted and a useful guide for lawyers, particularly in Areas. It sets out the position with regard to the 'gateways' for the police and IPCC to access appropriate advice and follows the definition of a person serving with the police as set out in the Police Reform Act 2002. The guidance on police powers does now need attention having regard to the changes to powers of arrest brought about by the Serious and Organised Crime Act 2005.
- 6.2 It was apparent that the material circulated by CPS Headquarters was not utilised and adopted in a consistent manner. Inspectors found that those lawyers who were aware of the Guidance and where to find it, considered it of value and used it, the *Code*, and charging standards as the key internal reference materials on which to base their decisions. The evidence of use of such material was, however not as widespread as it should be.

### Training

- 6.3 In Areas, the files are invariably advised on by senior lawyers; the CCP, a Special Casework Lawyer or Unit Head. Some had been trained at the time of the original devolution from Casework Directorate, but many had not received recent training and, in some instances, advice was being given by prosecutors without the relevant experience or training.
- 6.4 At Area level, the person responsible for ensuring that this work is handled properly and by appropriate personnel is the CCP, who is also the person that has signed the service level agreement. In some Areas the day-to-day management of this work had quite properly been delegated to other senior lawyers, although as the responsible officers, CCPs should nevertheless be in a position to satisfy themselves that arrangements are working as they should.
- 6.5 The file sample that inspectors examined confirmed that, in Areas, the decisions to be made on files were those that a lawyer with relevant experience would have no difficulty making – the issues that commonly arose were self defence, the reasonable use of force, and the exercise of powers of arrest. Subject to accessibility to experienced colleagues in the Area, or at SCD where appropriate, there is no need to restrict this work to the CCP, Special Casework Lawyer or Unit Head cadre. The added dimension in undertaking review work when the allegation is of a criminal offence committed by someone working with the police is invariably the sensitivity surrounding the case, and the need for knowledge of the context within which a decision is being made.

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### SUGGESTION 4

There should be no requirement to confine police complaints work to Chief Crown Prosecutors, Unit Heads or Special Casework Lawyers. Instead, Chief Crown Prosecutors should designate in writing those lawyers who are to undertake this work on the basis of their assessment of ability, based on experience and training.

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6.6 The CCP for South Wales had recognised the lack of an up-to-date training package and had taken it upon himself to devise a training programme for lawyers in his Area, which was delivered in July 2005. The programme dealt with the following topics:

- History and context of devolution;
- New categories of casework;
- Letters to the complainant;
- Structure and content of advice letters;
- Function and involvement of the IPCC;
- The police disciplinary process;
- Double jeopardy; and
- Case examples.

This is **good practice**.

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#### **SUGGESTION 5**

Lawyers who undertake this work in Areas should receive training on legal and policy issues. If necessary, Learning and Development Branch should be approached to assist in devising a programme.

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6.7 The police were receptive to the idea of a joint training event covering such areas as powers of arrest, which would also allow lawyers to get an understanding of their response techniques in conflict situations.

6.8 The benefits of joint training would be to receive legal guidance on those matters which commonly fall to be investigated, e.g. misuse of confidential information. In addition, both organisations would gain insight into each other's work and develop closer and better working relationships.

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#### **SUGGESTION 6**

Training needs should be considered locally on a joint basis with CPS, the Independent Police Complaints Commission and the police to cover matters of mutual interest.

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6.9 Areas are now dealing with a tranche of casework with which their lawyers are unfamiliar, i.e. perjury, attempt to pervert the course of justice, and misconduct in a public office. No matter how useful written policy guidance is, there is a learning need around how to approach these types of cases in terms of assessment of the prospects of conviction, the best approach to prosecution and the public interest.

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## RECOMMENDATION 7

Special Crime Division should establish a point of contact where Area prosecutors may seek guidance and advice on specialist issues likely to arise in the devolved casework.

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### Decision-making

- 6.10 In cases from SCD and the Areas, inspectors considered that the vast majority of decisions as to whether to prosecute reflected a proper application of the principles set out in the *Code for Crown Prosecutors*. Of 209 files examined, inspectors concluded that the decision reached was wrong in four cases. Decisions were recorded as incorrect only if the inspector considered that it was one that no reasonable prosecutor could have made having regard to the terms of the *Code*. This is a margin of error broadly comparable with that found in relation to casework generally. However, police complaint cases may be extremely high profile, and the ramifications of poor decisions may be disproportionate to the small number of such cases. There was a further case where the correct decision was reached, but on a flawed analysis of the case, the reviewing lawyer having confused the officer and the complainant in his analysis of the evidence.
- 6.11 In the four cases where Inspectors found that the decision had been wrong, the issues were: one case in which the reviewing lawyer advised that a caution should be administered despite the alleged offender having denied the offence; two cases concerning allegations of misconduct in a public office where there was clearly insufficient evidence to establish that the neglect of duty was sufficiently serious to amount to the offence; one case involving a death, where there was insufficient evidence to establish causation, and the charge of gross negligence manslaughter (and other charges which were also subject to flaws in reasoning) had to be discontinued.
- 6.12 The reasons for decisions were not always recorded as fully as they should. In some files inspectors examined the lawyer repeated or referred to the narrative in the police report and did not complete a fresh analysis of the evidence or a full review note.

### Second opinions

- 6.13 In some Areas a single lawyer, or small pool of lawyers, deal with cases from a particular Professional Standards Department. Inspectors were aware of second opinions being sought on particular types of cases; the majority of these were where the reviewing lawyer was minded to prosecute. All decisions, whether to prosecute or not, are equally important. There needs to be a balance struck; second opinions are important in difficult and complex cases, but also to demonstrate that decisions being made by individual lawyers or a team are consistent and fair.
- 6.14 Within the Police Complaints Unit in CPS London, all decisions to prosecute and all public interest-based decisions are required to be referred to a senior lawyer for a second opinion, which is endorsed on the file prior to the decision being communicated to the police or IPCC. This may be an over-cautious approach given that the unit is staffed by lawyers who have acquired expertise and knowledge through their exposure to this type of casework. Also, there is no balance in terms of a review of those cases that do not proceed to prosecution.

- 6.15 In Manchester, senior lawyers discuss difficult cases (whether likely to yield a prosecution or not) and give each other second opinions. This process could be strengthened in terms of embedding such practice in a structured way, combined with a reporting mechanism to give the CCP an assurance that these cases are being dealt with in accordance with the *Code*, police guidance and service level agreements.

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### RECOMMENDATION 8

Chief Crown Prosecutors should satisfy themselves that systems are in place to ensure that decisions made on these cases are consistent and subject to peer or line management review.

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#### Reasons for decisions

- 6.16 On the whole, the main reason cases were not proceeded with was evidential grounds, with conflict of evidence the most frequent cause. Only a small portion of cases failed the second limb of the *Code for Crown Prosecutors*, and were not proceeded with on public interest grounds.

#### Charging standards

- 6.17 The file examination revealed that, on the whole, CPS charging standards were being utilised and properly applied. We identified a specific problem in relation to the use of common assault and assault occasioning actual bodily harm which is directly linked to the length of time investigations may take and the statutory time limit applicable to common assault cases. We deal with that in the next chapter, which discusses timeliness. Other than this, there is no issue to report and in the small number of pursuit cases examined, the correct application of charging standards and the ACPO guidelines was apparent.

#### Public interest considerations, double jeopardy and discipline

- 6.18 Lawyers in interview had differing views about how they should approach public interest factors, and specifically the possibility of disciplinary proceedings, in deciding whether to advise that a case should proceed. Although recorded as not a defining factor in decision-making, lawyers were aware of the context in which they were working. They interpreted CPS guidance as an absolute prohibition on taking into account disciplinary sanctions when arriving at decisions. In fact, the current guidance invites lawyers to take account of any representations from the IPCC that, in some cases, a disciplinary outcome is preferred to a criminal prosecution.
- 6.19 Double jeopardy has been abolished, so if a criminal case is halted by discontinuance or attracts an acquittal, there is no statutory bar to disciplinary process. The primary issue, however, is fairness. Stakeholders agreed, and seminar delegates concurred, that current Home Office guidance discouraged disciplinary action where there has been a prior disposal with no finding of guilt in criminal proceedings.

- 6.20 The delegates at the seminar considered that decision-making for lawyers would be made simpler if Home Office guidance was amended. Nevertheless, the anticipated implementation of the reforms suggested by the Taylor review, which will result in simplified disciplinary procedures and discreet identified outcomes for particular levels of misconduct, will assist.

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### RECOMMENDATION 9

CPS guidance on the public interest factors in these cases should reflect the fact that decision-makers can and, in some circumstances, should take account of likely disciplinary outcomes. This guidance needs to be kept under review.

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#### Data Protection Act

- 6.21 Staff in PSDs commented on what they perceived to be a lack of consistency in dealing with Data Protection Act offences. The file sample examined did contain some examples of these cases and those proceeded with appeared to have been properly prosecuted. There did appear to be an overlap between specific Data Protection Act offences and misconduct in a public office, and inspectors noted some indictments where both were pleaded.
- 6.22 The other issue raised was the interpretation of the public interest test in deciding whether to proceed. The CPS legal guidance on the subject does not contain guidance on aggravating and mitigating features. The police themselves are aware of the potential gravity of a breach of the Data Protection Act and the unauthorised accessing and disclosure of personal information.

#### Case Study

A PSD attached to a large Metropolitan force referred a matter to the CPS for a decision where there was little evidence of an offence. The circumstances of the case meant that there was a premium placed on the need to show transparency in decision-making. After a minor road traffic incident a vehicle drove off. The offender was eventually traced. An audit showed a police officer undertaking a Police National Computer (PNC) check. The evidence showed that the vehicle had been traced by observations and not unauthorised interrogation of PNC.

- 6.23 The above example demonstrates the seriousness with which the police view unauthorised disclosures, and the IPCC has re-inforced this message in its publications. Those who deal with these cases within the CPS would welcome some more detailed guidance on the subject. There is frustration amongst staff within PSDs concerning perceived inconsistencies.

*“The CPS is inconsistent on this. In our force there were two cases. In the first an officer was charged with five breaches of the Data Protection Act, allegedly having viewed intelligence on family members who were known criminals. In the second, an officer admitted offences of misuse of the PNC for his own use to identify men who were visiting his ex-partner. This was not proceeded with as it was deemed not to be in the public interest.”* **Answer to questionnaire from PSD of a Northern force**

### SUGGESTION 7

CPS guidance on the Data Protection Act and the offence of misconduct in a public office should be revisited, with a view to setting out more clearly the aggravating and mitigating features of offences and the circumstances in which they are likely to be committed.

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#### Disclosure

- 6.24 The police and CPS alike were alive to disclosure issues in these cases and the need to cross-reference a complaint file with the papers for a related criminal prosecution of a complainant. There was, however, no uniform method of capturing this unused material and on occasions it was not referred to at all. Sometimes PSDs would provide a copy of the paperwork with the file, while on other occasions it was the CPS reviewing lawyer who was pro-active in seeking out this material.
- 6.25 Disclosure generally was dealt with inconsistently by both agencies, and areas for improvement seen, but these were ones which have already been identified in thematic and Area-based inspections, i.e. not including items that should be revealed on an MG6C (related case papers), lack of clarity in endorsing schedules, and inconsistent use of disclosure record sheets. We did not identify any issues specific to the handling of this type of casework.
- 6.26 The Police Complaints Unit was pro-active in seeking access to related files. On consideration of a file involving an allegation of a person serving with the police, the unit seek to identify any related files. They then invite their colleagues based in the Boroughs to retrieve and send the papers to them so that they have all the material before them to make decisions and comply with disclosure obligations. The unit also actively seeks relevant transcripts where comments have been made on the evidence given by an officer at a related trial. This is **good practice**.

#### Other case handling issues

- 6.27 There needs to be liaison and co-operation between CPS Areas when dealing with cross-border work. Inspectors found that Areas were willing to cover short court appearances, such as adjournments, to assist the designated out-of-Area prosecutor. The process would be improved if there were clear lines of communication between Areas to deal with issues such as file or paperwork transmission, and results of hearings, directions made by the court, or other points to note.
- 6.28 Specialist experience and the linkage between review and advocacy are important, but cannot always be achieved in the cross-border arrangements due to scheduling and resource issues. In the PCU there was more opportunity for this connection to be made. The unit needs to ensure that it seizes opportunities to follow through its cases at court to maximise the added value that its reviews can bring to a case.



- 6.29 Communication between the reviewing CPS Area and the police, court and local CPS Area needs to be clear and co-ordinated as demonstrated by the case studies referred to below:

### Case Studies

In one case examined by inspectors, the offences summonsed included an allegation of fraudulent use of a vehicle excise licence. The reviewing lawyer came to a clear conclusion that this was an offence for which there was a reasonable prospect of conviction and it was in the public interest to proceed. The defence indicated that they would challenge this allegation as an abuse of process. This was the only allegation with a dishonesty aspect to it, the other allegations were minor traffic violations. The argument was that the person concerned had been advised that he would not be reported for such an offence and in effect the prosecution were going back on their word. The reviewing lawyer was not aware of this 'promise' by the police. A failure to communicate all the information available proved embarrassing.

In another case, the CPS advised a summons for a minor motoring offence. No thought was given to whether proceedings would be specified or not and to which court the case would be summonsed. This lack of co-ordination meant that the prosecutor in the court where the case was dealt with had no papers or information from the police or the reviewing CPS Area. In the absence of such information, the court decided to dismiss the matter for want of prosecution.

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### SUGGESTION 8

The managers within CPS Areas responsible for work received on a cross-border basis should nominate a member of their support staff to be the point of contact who deals with administrative issues.

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- 6.30 Areas adopted widely differing approaches to how files were kept, bearing in mind the sensitivity of some of the cases. In some Areas, no specific arrangements were made and in others files were kept securely in separate locations. SCD have their own appropriately secure arrangements in place to deal with sensitive files.

### Advocacy

- 6.31 Areas deal with advocacy differently and much will depend on geography. If the distances are not prohibitive and resources allow, the reviewing Area will try and conduct the advocacy at pre-trial reviews (PTRs) and trials. Difficulties can arise as a result of the distances involved, e.g. Merthyr Tydfil office in South Wales dealing with North Wales Police's cases.
- 6.32 Some Areas took a definite policy line that contested cases can be dealt with by counsel. Avoidance of any embarrassment and resource issues were cited as reasons for this. In contrast, in other Areas a view was taken that these cases should be prosecuted in-house. As an example, an appeal was dealt with by an in-house Higher Court Advocate on the basis that a CPS lawyer would be more familiar with police powers.

6.33 Inspectors were aware of one or two examples where the police were unhappy with the choice of counsel, but these were isolated criticisms. In the Areas a senior junior was usually instructed. In SCD, Treasury Counsel were appropriately instructed and the Head of SCD had taken the recent step of widening the pool of available counsel to give her more flexibility. The quality of instructions to counsel was mixed, reflecting the position across CPS casework as a whole.

## 7 TIMELINESS

### Overview

- 7.1 Timeliness in terms of prosecution decisions is a key issue in complainant and witness satisfaction, stakeholder and public confidence and, not least, the welfare of officers and police staff who may be suspended, on full pay, for significant periods (in some cases years) pending decisions.
- 7.2 It is always important that allegations of criminal conduct are investigated and, if appropriate, prosecuted with thorough and fair regard to the evidence and public interest factors. These cases should be dealt with when they enter the criminal justice system in the same way as any other. The level of scrutiny prior to proceedings being decided on is another matter; public confidence demands that the requisite degree of care in terms of evidence-gathering and review at the appropriate level needs to be undertaken. This seems to mean, generally, that the process from the point of complaint to ultimate disposal is longer than where a suspect is someone not serving with the police.
- 7.3 Professional Standards Departments do keep records of the length of time an investigation takes from complaint to file submission. HMIC have commented previously on the differing ways forces interpret the 120 day target in which they aim to complete the investigation. This is because the time runs and is suspended at key moments in the process. There have been inconsistencies in the interpretation of when the clock starts and stops.
- 7.4 Inspectors found that some investigations did seem to take a disproportionate length of time, but that there are barriers to the effective progression of this category of case, which are discussed below. The most significant is the operation of the sub judice rule, which impacts on this area of casework significantly more than in the usual course of police investigations or CPS casework.
- 7.5 The policy changes brought about by the Police Reform Act 2002 (PRA), the introduction of the Independent Police Complaints Commission, and the changes envisaged by the Taylor review highlight the concept of proportionality of investigations and outcomes. The IPCC place a premium on outcomes and the position of the complainant in the process. In essence, investigators are now encouraged to ask: What is the misconduct complained of, and if it did occur, what sanction should it attract? This approach has yet to filter through to the CPS.
- 7.6 The recommendations of the Taylor review are designed to ensure that disciplinary procedures are streamlined and simpler. Stakeholders and delegates at the seminar readily agreed that an essential requirement of the system is to move quickly to discipline where that may be appropriate and criminal proceedings are inappropriate or not viable.

### **File building**

- 7.7 Although inspectors support an approach which ensures full and thorough investigation of offences, it is understandably the case that many forces are employing what might be described as a 'Rolls Royce' approach to file submission and are furnishing far more evidence than would reasonably be required for the CPS to make a decision as to whether or not a prosecution should follow.
- 7.8 This cautiousness is perhaps understandable given the high profile in terms of media interest, to ensure every possible precaution is taken to guarantee that there are no gaps in the prosecution case. The perceived need to cover every possible angle does, however, need to be balanced against the intention of the PRA, supported by the IPCC, that there should be greater proportionality and improved timeliness in addressing complaints against persons serving with the police.
- 7.9 The recent HMIC inspection of PSDs identified forces which adopt a more proportionate method of investigation. These forces, such as Leicestershire and Cambridgeshire, subject complaints to early assessment and then place them into categories, depending on perceived severity, and award them differing levels of investigation. This is **good practice** and should lead to a more focused approach.

### **Reasons for delay in Professional Standards Departments**

- 7.10 It is difficult to set an overarching appropriate time limit for an investigation or the submission of a file because cases and circumstances vary so substantially. In the file examination, inspectors looked at the timeliness of the police submission of the file to the CPS. They marked as timely a file which was submitted within four weeks of the interview of the suspect, or receipt of the last piece of significant evidence if this was after the interview. Of those cases where the date of submission to the CPS could be established, half were submitted in time.
- 7.11 Whilst some forces blamed lack of staff as a common cause for delay, others identified that delays are caused by complainants who, having made an initial complaint against police, then become unhelpful and non-compliant with investigators. This non-compliance can manifest itself in a reluctance to answer correspondence or an unwillingness to give statements. Other issues which create delays include the difficulties experienced in arranging interviews with police officers, their solicitors and Federation representatives. Whilst the majority of authorised solicitors and Federation representatives are co-operative, it is occasionally difficult to facilitate interviews under caution or to contact police officers who may be suspended from duty.

### **Sub judice**

- 7.12 The start of an investigation may be postponed because the matter is considered to be sub judice. The term means 'before the court' and the sub judice rule limits comment and disclosure so as not to prejudice the defendant/complainant and/or the proceedings. Most complainants who are also facing criminal proceedings are likely to feel inhibited about making even a statement in case it in some way hampers their defence. A complainant may, however, with legal advice, choose to assist an investigation even whilst awaiting trial.

- 7.13 The majority of allegations where sub judice issues arise are those of common assault where, during the course or following an arrest, allegations have been made that an officer assaulted a detainee. In such a case, the law requires that any information should be laid or charge preferred within six months of the commission of the offence.
- 7.14 There are, however, incidents where alleged conduct takes place outside the bounds of the original event. If it can be established that there is 'clear water' between this conduct and the original incident then there is no reason why investigation cannot take place. Also, there are opportunities to gather, for example, forensic and scientific evidence without prejudicing proceedings. PSD personnel should remain alive to these opportunities and avoid the temptation effectively to place investigations on hold pending the resolution of the original case. There is a danger that the effects of the sub judice rule can be overplayed.

### Case Study

In Wiltshire CPS the reviewing lawyer made himself available at an early stage to provide informed advice on a complicated public order case. The case involved an allegation of criminal behaviour by officers who had attended a scene of public disorder on a large scale. It was alleged the officers used excessive force. Several persons were arrested for public order offences. There were issues of sub judice and concerns about the limitation period in respect of allegations against officers of common assault. With the agreement of the IPCC, the investigating officer presented the reviewing lawyer with the evidence so far gathered and video footage of the incident. The reviewing lawyer was able to make decisions on whether and what to charge, and advise on sub judice issues.

- 7.15 In a small number of cases referred to during the fieldwork, the reviewing lawyer had adopted a pro-active approach to the situation where there were cross-complaints. The review of both allegations at the same time, with all the material relating to the complaint and the criminal allegation against the complainant, was achieved. This is **good practice**. It leads to consistent and timelier decision-making.
- 7.16 This issue was explored more fully at the seminar held to canvass the views of stakeholders. It was common ground that a 'blanket' application of the sub judice principle tends to operate at present and the prosecution team should take a more pro-active approach in avoiding this where possible and proper. With this in mind consideration ought to be given at an early stage in the investigation as to the feasibility of parallel enquiries, similar to the practice in civilian counter-allegation matters. The IPCC argue that this approach results in a more consistent treatment of those serving with the police and others. However, experience shows that there are real impediments to this approach; there is no procedure in the criminal courts equivalent to claim and counter-claim in the civil courts. It is acknowledged that most complainants and their representatives would be opposed to the provision of statements and for the investigation to proceed whilst the complainant was subject to criminal proceedings. Nonetheless, there were circumstances where a positive and pro-active approach could result on progress being made.

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## RECOMMENDATION 10

Where sub judice is likely to be an issue, there should be early consultation and advice as between the investigating officer, Independent Police Complaints Commission (where involved) and the CPS.

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### Timeliness in the Crown Prosecution Service

- 7.17 There was some evidence that decision-makers were aware of the wider context in which they were working, particularly if an officer was suspended. However, delays can impact on the operational deployment of an officer; this is highlighted in the quote below.

*“The local police federation highlighted to us a case where delay in CPS decision-making resulted in the officer being unable to take up a new post within the force.” Investigating Officer with PSD in a Northern force*

### Service level agreements

- 7.18 One of the most problematic parts of the service level agreements (SLAs) and the legal guidance identified by both the police and the CPS concerns the timeliness of decision-making. The model SLA refers to timescales of 48 hours, five working days, ten working days and 28 days for review. Some police forces considered that the wording of the model agreement was unclear. At least two CPS Areas had agreed adjustments to the timescales within their local agreement.
- 7.19 The CPS London Police Complaints Unit (PCU) has interpreted the timescales in its SLA in a consistent manner and in partnership with the Metropolitan Police so as to produce meaningful performance statistics on timeliness.

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## SUGGESTION 9

- (a) CPS Areas should review their service level agreements with their Professional Standards Departments to ensure that they establish appropriate timescales to govern for provision of advice. The agreed timescales should reflect the varying degrees of importance and complexity in files sent to the CPS.
- (b) In the more serious and complex cases, there should be a mechanism for reporting on progress at agreed stages or on significant events in the life of a case.
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- 7.20 CPS adherence to the time limits set out in the SLA appears patchy, and few are being held to account for delays either by their PSDs or by CPS Headquarters. There were concerns expressed by many interviewees about lengthy delays in cases, which were unexplained by the complexity either of the evidence or legal issues, particularly with regard to cases being sent to Special Crime Division.

**Performance**

7.21 The timeliness figures for Casework Directorate (which then became Special Crime Division in September 2005) for the period 1 April 2005 to 31 March 2006 for police cases are as follows:

	Decision made within 28 days of full file	Decision made after 28 days of full file
April 2005	51	64
May	21	19
June	19	20
July	60	30
August	25	17
September	6	7
October	15	19
November	29	22
December	17	10
January 2006	15	5
February	8	2
March	2	33
<b>TOTAL</b>	<b>304</b>	<b>248</b>

7.22 It is apparent that there are issues with timeliness within SCD. Some of the delay may be attributed to the nature and complexity of the casework handled within it. However, the team saw several instances where the full file had apparently and inexplicably received no attention from the reviewing lawyer for several months after it had been received, and there was no indication given to the police as to when a decision could be expected. Suggestion 9, proposing progress reports, is specifically designed to overcome this problem.

7.23 The performance of SCD is broadly replicated in CPS Area performance, where the results of the file examination showed that just over half the cases were advised on within the agreed period. This does not include those cases where we were unable to determine the date the Area had received the file and therefore when time started to run.

7.24 The absence of any structured or effective arrangements within the CPS for registering or tracking police complaints cases means that the CPS has no means of knowing its own performance on a routine basis. It cannot therefore refute the criticisms on timeliness.

### **Fast-tracking**

- 7.25 Fast-tracking is a process whereby police forces may commence disciplinary proceedings before any criminal prosecution against an officer has been concluded. There are limited circumstances where it is permitted. Guidance was issued by the CPS and ACPO jointly to CPS prosecutors to assist PSDs in fast-tracking disciplinary proceedings. The aim was to engage the CPS early on and to secure agreement on the strength of evidence in a case, either because of an admission or some other unassailable evidence such as video footage. In such a case, the police would then be able to discipline without fear of prejudicing the criminal proceedings. No such cases were found in the sample examined by inspectors.

### **Limitation period on assaults**

- 7.26 Inspectors found that about half of the cases examined involved an allegation of assault. A minority of lawyers took the view that if the injuries amounted to a common assault and it was subject to limitation period considerations, then it need not be advised on if it was out of time. Others argued that in the (not uncommon) scenario of an arrestee making a complaint about the exercise of arrest powers or excessive use of force to arrest, the offences of misconduct in a public office and unlawful imprisonment were potentially available, neither of which attract the six month limitation of proceedings for summary only offences.
- 7.27 The CPS charging standards were amended in November 2004 to increase the number of offences where it is permissible to prefer a charge of assault occasioning actual bodily harm even though the injuries appear to be consistent with common assault. Such a course is permitted where there is a serious aggravating feature present. There were differences of opinion expressed as to whether an arrestee could be automatically classed as vulnerable, which would amount to a serious aggravating feature, thus making a charge of assault occasioning actual bodily harm justifiable within the terms of the charging standard. The following case study illustrates the dilemma facing investigators and reviewing lawyers.

#### **Case Study**

**12 February 2004.** A 15-year-old youth was arrested for a Public Order Act offence. On the same day, he complained that he was assaulted by an officer who, on arrest, had allegedly kned him in the stomach, punched him in the jaw and elbowed him to the right eye. The youth sustained cuts and bruises.

**6 July 2004.** After the criminal proceedings against the complainant ended (without a conviction) the complainant confirmed that he wished to proceed with the complaint, which had until then been treated as sub judice.

**July 2004.** The CPS advised that to lay protective information at court for common assault was potentially an abuse of process.

**12 August 2004.** The six month time limit for the offence of common assault expired.



**February 2005.** A file of evidence was submitted to the CPS. The reviewing lawyer concluded the injuries received were such that they would normally result in a prosecution for common assault, but that the CPS charging standards could be brought into play as there were serious aggravating features so that a charge of assault occasioning actual bodily harm would be justifiable. These features included the vulnerability of the victim.

***Result:** the case was stayed as an abuse of process at the Crown Court. The Judge decided that this should have been prosecuted as a common assault, and that the offence of actual bodily harm had been preferred to circumvent the limitation period for that offence. This outcome is unsatisfactory for complainant and officer alike.*

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### **RECOMMENDATION 11**

CPS Policy Directorate should review the relevant charging standard to ensure that it addresses sub judice situations more effectively.

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- 7.28 In addition to the recommendation on the need to amend CPS Policy Guidance, a wider policy issue needs to be addressed. The Home Office should consider bringing forward a legislative amendment in cases where the complainant or an important witness faces criminal proceedings (which inhibit a settled decision on the conduct of the person complained of) that an investigator could issue a certificate as to the time when he was in full possession of all the evidence so that the limitation period runs from that point. Such certificates are issued already in cases of no insurance and driving whilst disqualified, which have the effect of extending the limitation period. Alternatively, a system similar to that which pertains in Northern Ireland, where a Form 1 or protective information can be laid, could be adopted.

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### **RECOMMENDATION 12**

The Home Office should bring forward legislation to extend the limitation period for summary only offences or to provide for protective informations, in discreet defined circumstances, where an investigation cannot be conducted due to sub judice factors.

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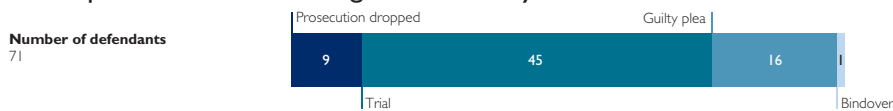


## 8 OUTCOMES

### General

- 8.1 The CPS as a whole does not have in place any arrangements for capturing the results of cases brought against persons serving with the police. For CPS Headquarters the outcomes up to the end of 2005-06 are shown in the table below. Direct year-on-year comparisons need to be treated with some caution as Special Crime Division took over this work in September 2005 from Casework Directorate, and this re-organisation also took place against a background of devolution to the Areas. Any comparisons between years are not necessarily like-for-like. The figures have been compiled by SCD and exclude serious corruption cases prosecuted under the banner of 'Visa' cases, which were recorded separately. The following tables relate to cases where a decision to prosecute was taken.

#### Decision to prosecute taken during the financial year 2002-03



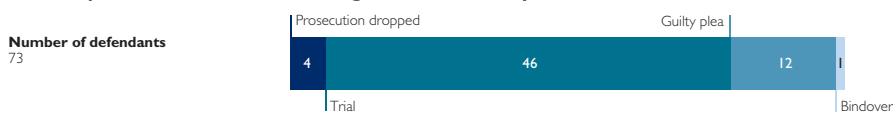
Of those who went to trial, 17 were convicted; 24 acquitted after trial and three resulted in a Judge Directed Acquittal in the Crown Court.

#### Decision to prosecute taken during the financial year 2002-03



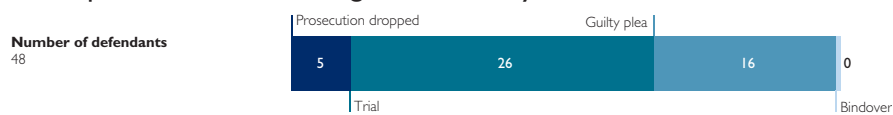
Of those who went to trial, nine were convicted; 21 acquitted after trial and two resulted in a Judge Directed Acquittal in the Crown Court.

#### Decision to prosecute taken during the financial year 2003-04



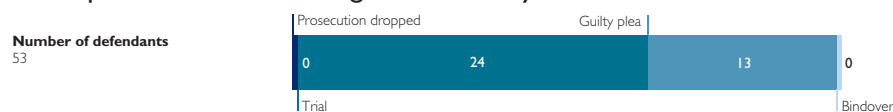
Of those who went to trial, 12 were convicted; 21 acquitted after trial (including one case of a discharged committal) and 11 resulted in a Judge Directed Acquittal in the Crown Court. A number of cases in this period were 'written off' in terms of the eventual disposal – a tidying up of record keeping which accounts for the apparent numerical discrepancy.

#### Decision to prosecute taken during the financial year 2004-05



Of those who went to trial, eight were convicted; 12 acquitted after trial (including four discharged committal cases) and six resulted in a Judge Directed Acquittal in the Crown Court.

#### Decision to prosecute taken during the financial year 2005-06



16 defendants not yet finalised. Of those cases that went to trial, 18 were convicted; six were acquitted and there were no Judge Directed Acquittals.

8.2 The figures for SCD and its predecessor, Casework Directorate, do show cases disposed of as Judge Directed Acquittals, although there are a small number of such cases. Nevertheless, an analysis of what happened and why, with lessons to be learnt for the future (to be shared with the police and IPCC as appropriate), would be useful. It is acknowledged that some caution is required in analysis of statistics and making comparisons with the generality of CPS cases. Practitioners report their experience is that obtaining convictions of persons serving with the police (particularly police officers) is more difficult than of civilians in comparable cases with comparable evidence.

8.3 The absence of any analysis of outcomes by SCD, the Areas or the CPS nationally means that much of the evidence about why judges stop cases is anecdotal. There was a view that the judiciary on occasion could be unsympathetic to prosecutions when they thought that the criminal law was being used, where what was really at stake were employment and service issues.

*“There is a perception that a different standard is applied by the CPS in cases involving a police officer. It is easier to find yourself being prosecuted if you are a police officer.” **Police Federation representative***

*“There is a feeling amongst my members that they are singled out by virtue of their office and are being prosecuted or the subject of a lengthy investigation and advice before a decision is made.” **Superintendents Association***

8.4 In some Areas, a single person handles complaints from a particular police force or Basic (or Borough) Command Unit (BCU) and keeps their own records, usually manually. Only one lawyer produced a list of cases from a computer, which was again from his records, and none contained the actual results of cases. The records, if kept, were an aide-memoir so that the lawyer could deal with later queries on the file and have a reference point.

8.5 If adopted and implemented, Recommendation 5 would ensure that the CPS had information about its performance in relation to this important category of cases. It will be important that this information should be used effectively.

8.6 There is no evidence at present of the police, IPCC and CPS liaising over outcomes. One lawyer commented that he was not aware of what happened to a person serving with the police once he had given advice to take no further action, or following an acquittal. Lawyers need to be aware of the context within which they work and this feedback could be useful. The IPCC have suggested a Regional Operational Communications group be set up with stakeholders to cement effective working relationships and address other issues.

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#### **SUGGESTION 10**

The police/Independent Police Complaints Commission and CPS should create structured mechanisms for the exchange of information on outcomes, significant cases, and where there are clear lessons to be learnt.

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### **Ethnicity issues**

- 8.7 The Race Relations (Amendment) Act 2000 places a positive duty on bodies such as the police and the CPS to show that they do not discriminate in carrying out any of their functions.
- 8.8 Prior to the commencement of this review, the National Black Police Officers' Association had expressed to the Director of Public Prosecutions (DPP) concerns they had over a specific decision to prosecute one of their members. Without credible performance information and analysis, the CPS can do little to promote its position or defend itself from criticisms.
- 8.9 The inspection found the following:
- The ethnicity of an alleged offender complained of should be recorded on form MG3.
  - Not all files have an MG3 attached.
  - Not all forces identify the ethnicity of the alleged offender or if they do, not all use the Home Office 16 point plus 1 classification.
  - In the file sample examined, the ethnicity of the defendant or suspect was not recorded by the CPS in half of the cases analysed.
  - PSDs record figures on the ethnicity of complainants and pass these to the Home Office. There may be doubts as to the reliability of this information as it depends on accurate form filling and self-declaration. The Home Office also keeps data on the ethnic diversity of persons serving with the police – these figures are easier to compile as each force will have records of the ethnicity of its workforce.
  - The CPS does not routinely record the ethnicity of the complainant and in the file sample, two thirds of the cases had no record of this information.
- 8.10 It has proved impossible for this review to effect any meaningful evaluation as to whether there is discrimination (based on grounds of ethnicity or for any other reason) in the way these cases are handled, either from the perspective of the complainant or a person serving with the police who has been the subject of an allegation of criminal conduct. This highlights the need expressed elsewhere in this report for the CPS to have a proper recording and monitoring regime for this category of case. The level of scrutiny of CPS decisions in these cases, from stakeholders such as the Police Federation and interest groups such as the Commission for Racial Equality and Liberty, requires that there is an ability to produce performance data and cogent analysis. The process and the outcomes need to be fair and be seen to be fair to complainants and those serving with the police.
- 8.11 It is acknowledged that it is sometimes difficult to capture the information when this is contingent on self-declaration, but in the vast majority of cases a statement is taken from a complainant and therefore ethnicity can be recorded. If police officers recording statements do not complete the ethnicity coding then this will soon become apparent, provided that the CPS is properly recording the information it receives and is in a position to analyse jointly with the police trends, issues, and outcomes as previously set out in this report.

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**RECOMMENDATION 13**

Chief Officers and the CPS should ensure that they have mechanisms in place to monitor relevant equalities categories, prosecution decision-making and case outcomes, so as to identify any bias which may exist, whether from the perspective of a complainant or that of a person who is the subject of an allegation.

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## 9 RELATIONSHIPS WITH COMPLAINANTS

### **Level of communication between the police, CPS and complainants/victims and witnesses**

- 9.1 Most Professional Standards Departments had a system in place to keep complainants informed of the progress of their case, although several accepted that they had more to do to reach the standards set by the *Code of Practice for Victims*. CPS Areas generally did not communicate with the complainant until the final decision was made. However, in cases involving a fatality, the standards in the Director's Guidance regarding meeting the family of the deceased were being met.
- 9.2 Practice varied as to whether the CPS lawyer sent the PSD a copy of their letter to the complainant. One Area sent a draft of the letter to the police before sending it to the complainant. This should be the norm in the generality of cases, but care needs to be taken not to compromise the independence of the CPS in the eyes of those involved. It would be advisable, for example, where a complainant may be a witness in criminal or disciplinary proceedings and contamination of their evidence must therefore be avoided. We commend as **good practice** those Areas that did adopt the practice of sending copy letters to the PSDs.

### **Quality of letters to complainants**

- 9.3 Most complainants received a letter from the CPS lawyer giving the outcome of their review. In all the cases seen by the inspection team, this was a decision not to prosecute the officer(s) against whom the complaint was made. There were examples seen of good letters to complainants which set out fully the evidence considered and the reasoning leading to the decision. The standard of letters was reported to have improved over the last year, but inspectors examined, and were advised of, numerous letters which lacked adequate explanation. These were usually based on the template letter contained in the service level agreement and contained only a brief outline of the tests applied and the decision. It was apparent that the standard of victim and witness care afforded as a result of the introduction of recent national initiatives has not been extended to encompass police complaint cases.

*"The CPS are generally poor at communication – the detail in the letter is lacking. Also any explanation given to a complainant's family at court needs to be backed up with a full letter which the family could keep and refer to – the CPS does not appear to understand this."* **Solicitor representing complainants**

### **Timeliness of letters to complainants**

- 9.4 Most Areas sent the letter to the complainant at the same time as the decision was made and the police advised. This could hamper an effective re-review of the allegation if new information came to light, since the officer(s) would by then have been advised that there was to be no further action, and would potentially be able to argue abuse of process. Greater Manchester CPS has recognised this eventuality and has assisted their PSD with a form of words to be used to ensure that the person serving with the police realises that the decision may be re-opened. This is **good practice**.

- 9.5 The need for sensitive handling of communication to complainants is highlighted by the following case study:

#### **Case Study**

A Chief Crown Prosecutor decided to meet a complainant to explain a decision that he made to advise no prosecution of an officer when ordinarily the case on its facts would have merited communication by letter. The driver of a vehicle was stopped. The Vehicle Excise Licence displayed did not appear to have the correct details which was, in fact, an error by the issuing Post Office. In the course of the officer's investigation into alleged offences, the driver was arrested. The arrest was part of a chain of events that led to widespread public disorder. It was right to explain in person to the complainant the legal issue surrounding the exercise of the power of arrest and the basis of the decision reached. The CCP said 'in these circumstance you have to use your discretion as to whether to offer a meeting'.

In Special Crime Division lawyers do hold meetings with complainants to explain their decisions. This was commented on favourably by the IPCC during the course of the inspection. The above case study demonstrates how important such meetings can be even in what, on the face of it, appears to be a routine case. The CPS Policy on Direct Communication with Victims and Witnesses sets out circumstances in which a meeting with a victim should take place. Police complaints cases are not a category of case where a meeting is mandatory, but the Chief Crown Prosecutor has the discretion to make such an offer.

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#### **SUGGESTION 11**

CPS lawyers should be prepared to hold a meeting with complainants when circumstances merit it, in order to explain their decisions.

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#### **RECOMMENDATION 14**

Letters to complainants should set out a proper explanation of the decision made, including reference to the relevant evidence considered. A copy of this letter should be sent to the Professional Standards Department or Independent Police Complaints Commission as appropriate (consent to release or editing of text should be undertaken if personal or confidential information the recipient is not privy to would be revealed). In appropriate cases an explanation of the decision should be sent to HM Coroner.

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#### **Complaints**

- 9.6 Very few complaints appear to be made to the CPS regarding the decision; such complaints tended to be directed towards the police and often concerned the later decision regarding disciplinary action. Where complaints were made to the CPS, they were dealt with under the usual complaints procedure.



- 9.7 Inspectors were advised of instances where a solicitor representing the complainant was not given information regarding the progress and outcome of the complaint, nor information about which lawyer in the CPS was reviewing the file. It was not clear whether the CPS had been told of the involvement of a solicitor or not, but in cases where the solicitor wrote directly to the CPS about a case, the standard of information provided to the solicitor on that case improved.

*“The standard of letters is now better than it used to be. We used to get one-liners with the decision. Some of the letters we have seen contain factual inaccuracies. There are examples of good letters particularly those from a lawyer who we regularly deal with.”* **Solicitor specialising in representing complainants**

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#### **SUGGESTION 12**

Professional Standards Departments should ensure that any person or group representing a complainant is kept fully informed and that their details are passed to the CPS with the investigation file. The CPS should involve a complainant's representative fully in any communication with the complainant.

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## 10 JOINT WORKING AND BUILDING RELATIONSHIPS

- 10.1 There was a mixed picture regarding relations between the CPS and police. Some parts of the country enjoyed excellent relationships, with clear lines of communication, and a good understanding of the other's role. However, there were several areas where the Professional Standards Departments and CPS did not work as closely, or lines of communication were not as well established. Geographical distance between the PSD and CPS in some instances may have exacerbated this, but it was also apparent that closer working was achievable in some instances. PSDs did not always have an effective point of contact or a clear understanding of who would be dealing with their cases, and CPS understanding of the work of PSDs was patchy in places.
- 10.2 The police, and to a lesser degree the IPCC, were on the whole satisfied with the quality of decision-making by the CPS. However, nearly all the PSDs visited and IPCC personnel interviewed had a 'story' to tell regarding timeliness and lack of communication.

*"I have been involved at a strategic level in two high profile cases. The issue is not only timeliness but also lack of communication. It is difficult to manage the silence.....A little information can go a long way. CPS lawyers have tended to be less than helpful when chased or asked for information and generally refuse to be hurried or give timescales for decisions." **Deputy Chief Constable of a force visited in the course of the inspection***

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### SUGGESTION 13

The identity of designated lawyers and/or a single point of contact should be made known to the police Professional Standards Departments, to Basic (or Borough) Command Units, and to the regional office of the Independent Police Complaints Commission.

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- 10.3 The Special Crime Division and Policy Directorate of the CPS are not generally seen as a resource for CPS Areas or PSDs to call on for advice or guidance on these cases. Where Area lawyers needed advice, they tended to call on colleagues within the Area. We have suggested earlier at paragraph 6.9 that there is a role for SCD to play in terms of the specialist advice that it can provide.
- 10.4 There were differing views as to whether the establishment of the IPCC had impacted significantly on the number of cases being sent to the CPS. Some interviewees attributed an increase to the larger number of complaints being made since the IPCC came into being. Others reported that it had made no appreciable difference to how many cases went to the CPS, or that the numbers had decreased due to guidance given by the IPCC to PSDs on proportionality of investigations. The absence of any aggregated information about CPS case volumes meant that we could not reach a view on this.

- 10.5 Within the CPS there was limited understanding of the role of the IPCC and even less liaison, save where the IPCC directly referred a case after a managed or independent investigation. Most of these cases went to SCD, where communication and understanding were better developed, although there are issues still to be resolved, particularly around a protocol between the two organisations. There did not appear to be any national or local links between the CPS and other stakeholders, such as national interest groups and those regularly representing complainants and officers or staff.
- 10.6 The lack of mutual understanding in relation to the roles and responsibilities of the IPCC and CPS has manifested itself in a number of ways. There have been tensions surrounding disclosure. Attempts have been made on a case-by-case basis and through protocols to address issues. We note, however, that amendments to the protocol between the IPCC and SCD have not been agreed as at the date of drafting this report. In addition, the IPCC needs to have working arrangements with the CPS Areas who, since devolution, are more likely to be dealing with managed or independent investigations.

#### Case Study

A senior lawyer was involved at an early stage in giving the police advice on a sensitive case. The investigation was being managed by the IPCC, whose legal team gave the police advice about evidence-gathering. The CPS lawyer did not feel comfortable with this as he felt himself accountable for the success or otherwise of a high profile case which attracted widespread media coverage. The IPCC were, of course, entitled to act in the way they did but there can be a fine line between operational matters and advice on lines of enquiry. The novelty (as it was then) of having investigators with access to their own legal team was something that the reviewing lawyer was not anticipating.

The joint training referred to at paragraph 6.8 if implemented would assist in the understanding of roles and responsibilities.

- 10.7 Lawyers representing complainants made the points about timeliness and communication expressed elsewhere in this report. They were alive to the issues as to why there may be delay in complex cases, e.g. access to the appropriate expert evidence. They were of the view that timeliness of decision-making was important, but placed far more emphasis on there being a thorough review with all the evidence being available. A correct decision was the most important outcome and complainants' representatives placed a premium on the CPS 'getting it right'. More concern was expressed about a perceived lack of challenge and robust enquiry over police evidence and the need for prosecutors to be more pro-active in this regard.
- 10.8 Lawyers representing complainants were aware of the shift in emphasis likely to be brought about by the recommendations in the Taylor review. Complainants usually wanted 'justice' in relation to the complaint and a focus on outcomes and proportionality was seen as consistent with this. The view was expressed that in appropriate cases what was required was an acknowledgement of wrong-doing and an apology.

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### RECOMMENDATION 15

The CPS should endeavour to establish closer liaison between Areas and the Independent Police Complaints Commission and to facilitate a better understanding on the part of CPS lawyers of the IPCC's role.

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### RECOMMENDATION 16

The CPS should identify a Lead Directorate to take responsibility for ownership of policy and operational issues, with a view to ensuring that arrangements will continue to be appropriate for changing circumstances (including those signposted by the Taylor review) and to ensure that other stakeholders, such as national interest groups and those who represent complainants, officers and police staff, are consulted and engaged in that process.

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#### Regional CPS units

- 10.9 At the seminar, delegates were invited to consider whether police complaints work within the CPS should be re-organised into dedicated units. The benefits and good practice which flow from the London Police Complaints Unit have been referred to earlier in this report. One of the main advantages the PCU enjoys is the fact that it is an identifiable unit which can be engaged by, and can engage with, stakeholders on police complaints.

The case for reorganising into specific units is based on:

- the work does not need to be done centrally but must be properly managed, which is more easily achieved within discreet units;
  - units lend themselves to clear lines of communication and constructive relationships;
  - experience can be built up within units, and training and updates delivered more efficiently; and
  - recording and monitoring of workloads and outcomes can be structured more readily.
- 10.10 One of the key factors against dedicated units is the assumed resource implications; however, it is hard to measure these, since there is currently no assessment by the CPS of the resource impact of current arrangements.
- 10.11 It was not the function of a review of this nature to undertake an in-depth study of the feasibility of changing the business processes of the CPS in a particular way. However, our findings show that the handling of cases involving persons serving with the police currently sit outside the main CPS business processes to an unacceptable extent. This needs to be addressed and a system of regional units, with links to IPCC structures, might be a way forward.

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**RECOMMENDATION 17**

The CPS should consider whether cases relating to alleged criminal conduct by persons serving with the police would be managed better within regional units, which should in turn develop links with the Independent Police Complaints Commission.

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## ANNEX A: EXTRACT FROM SCOPING PAPER

### KEY ISSUES TO BE CONSIDERED

#### **Policy and management**

- Whether CPS policy guidance is adequate, clear and readily accessible in relation to the review and handling of cases involving an allegation of a criminal offence by a person serving with the police.
- Whether the gateway and allocation procedures with the police, IPCC and within the CPS (as between SCD and the Areas) are clear, robust, adhered to and are mutually compatible.
- Whether appropriate, experienced lawyers within the Areas are handling this work, whether they are equipped to do so in terms of time, knowledge and any specific training they have received.
- What cross-border arrangements for handling these cases in Areas exist and how they work in practice, including the mechanisms for feedback and learning opportunities.
- Whether, in the Areas and within SCD, these cases are discreetly tracked and monitored.
- What performance information is available to managers and how it is used.
- Whether the performance information available to the CPS can be used to demonstrate to minority ethnic groups that cases are being dealt with fairly, so as to promote confidence in the system (from the perspective of those accused and those making complaints).

#### **Review**

- How these cases are identified in order to accord appropriate consideration.
- The impact of the statutory charging arrangements.
- Quality of the application of the evidential test. This will be examined generally, but the review in particular will examine how allegations against officers acting in the execution of their duty, or self-defence, are dealt with.
- In addition, the review will consider how the public interest test is applied in police 'pursuit' cases where criminal offences have potentially been committed by officers.
- Quality and application of the public interest test, in particular the consideration of the possibility of disciplinary proceedings being instituted or a resignation accepted.
- The nature and quality of material provided to the CPS by investigating officers.
- The timeliness of pre-charge advice.
- Selection of the appropriate charge.

#### **Case preparation**

- The quality of case handling in cases where proceedings are instituted.
- The selection and briefing of counsel.

### **Stakeholder and confidence issues**

- Whether the police (those that manage the system and those complained about) have confidence in the case handling arrangements.
- Whether other stakeholders and other interested parties, particularly from minority ethnic groups, have confidence in the case handling arrangements.
- Whether the CPS is seen by others, including defence solicitors and those representing the interests of complainants, as being sufficiently independent of the police so as to engender confidence in the process.
- The quality and timeliness of letters to complainants. The extent to which information is provided at key points in the life of a case and the timeliness thereof.
- The handling of complaints arising from decisions made (either to prosecute or not).
- Whether the files are handled by the CPS with appropriate discretion so as to ensure secure file handling and confidentiality.



ANNEX B: CPS AREAS AND THE POLICE FORCES/DIVISIONS THEY DEAL WITH IN RESPECT OF CASES INVOLVING AN ALLEGATION OF A CRIMINAL OFFENCE BY A PERSON SERVING WITH THE POLICE

<b>CPS AREA</b>	<b>POLICE FORCE OR DIVISION</b>
Avon and Somerset	Devon and Cornwall
Bedfordshire	Cambridge
Cambridgeshire	Norfolk
Cheshire	Manchester (part)
Cleveland	Northumbria (part)
Cumbria	Northumbria (part)
Derbyshire	Nottinghamshire
Devon and Cornwall	Dorset, Avon and Somerset (part)
Dorset	Avon and Somerset (part)
Durham	Northumbria (part)
Dyfed Powys	South Glamorgan
Essex	Hertfordshire
Gloucestershire	West Mercia
Greater Manchester	Greater Manchester (part dealt with internally between branches), Cheshire
Gwent	West and Mid Glamorgan
Hampshire and the Isle of Wight	Kent, Surrey
Hertfordshire	Bedfordshire
Humberside	South Yorkshire (part)
Kent	Sussex
Lancashire	Merseyside
Leicestershire	Northamptonshire
Lincolnshire	South Yorkshire (part)
Merseyside	Lancashire
London	London (dealt with internally across sectors or in Police Complaints Unit)
Norfolk	Suffolk
Northamptonshire	Leicestershire

<b>CPS AREA</b>	<b>POLICE FORCE OR DIVISION</b>
Northumbria	Cumbria, Cleveland, Durham
North Wales	Gwent
North Yorkshire	West Yorkshire (part)
Nottinghamshire	Derbyshire
South Wales	Dyfed Powys
South Yorkshire	Humberside, Lincolnshire
Staffordshire	West Midlands (part)
Suffolk	Essex
Surrey	Hampshire (part)
Sussex	Hampshire (part)
Thames Valley	Wiltshire
Warwickshire	West Midlands (part)
West Mercia	Gloucestershire
West Midlands	West Midlands (part handled internally between offices), Staffordshire, Warwickshire
West Yorkshire	North Yorkshire
Wiltshire	Thames Valley

## ANNEX C: THOSE WHO ASSISTED THE INSPECTION

### **Crown Prosecution Service Areas**

Dyfed Powys  
Greater Manchester  
Gwent  
Hampshire and the Isle of Wight  
London Police Complaints Unit  
Special Crime Division (London and York offices)  
South Wales  
Suffolk  
Wiltshire  
West Yorkshire

### **Police – Chief Officers and Professional Standards Departments**

Cheshire Police  
Greater Manchester Police  
Kent Police  
Metropolitan Police  
North Wales Police  
North Yorkshire Police  
South Wales Police  
Surrey Police  
Thames Valley Police  
West Yorkshire Police

### **Independent Police Complaints Commission**

Maneer Afsal  
Ernest Brentnall  
Kerry Candy  
Simon Cousins  
Deborah Glass  
Marie Lydon  
Joseph Penrose  
Jason Taylor  
Mark Webb-James

### **Police Federation and other representatives**

Jan Berry, Police Federation  
Hugh Monro, Police Federation  
Steve Smith, Police Federation  
Local Federation and Unison representatives within various police forces

### **Superintendents' Association**

Tom Moran

**Solicitors**

Raju Bhatt, Bhatt Murphy

Daniel Machever, Hickman Rose

Peter Mahy, Howells

Phillipa Matthews, Howells

Tony Murphy, Bindmans

Katriona Swan, Russell Jones and Walker

## ANNEX D: REFERENCE GROUP MEMBERS

Stephen Wooler CB, HM Chief Inspector, HMCPSI (Chair)  
Sue Akers, Commander, Metropolitan Police  
Raju Bhatt, Solicitor, Bhatt Murphy Solicitors  
Steve Chappell, HM Legal Inspector, HMCPSI  
Rob Drybrough-Smith, CPS Organised Crime Division  
David Evans, Assistant Director, CPS Policy Directorate  
Simon Martin, Staff Officer, Policy Team, HMIC  
Rebecca Marsh, IPCC Commissioner, Wales and South West  
Andrew Sanders, Professor of Law, Manchester University  
John Sculthorp, Policy Team, HMIC  
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Report is also available on the following websites:  
[www.hmcpsi.gov.uk](http://www.hmcpsi.gov.uk)  
[www.inspectorates.homeoffice.gov.uk/hmic](http://www.inspectorates.homeoffice.gov.uk/hmic)

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