

Controversy continues to dog the Crown Prosecution Service. Here three legal experts analyse what they see as its shortcomings

Bad morale, too dogmatic and low standards

The Crown Prosecution Service was accused in these pages by Neil Addison (Law, April 23) of having an overcentralised, bureaucratic, autocratic management structure, and of lacking a clear sense of purpose.

In response, Graham Duff (Law, April 30) claimed that since 1992, the CPS has been doing a job that was already being done "even better and more efficiently". He described an attitude of openness and helpfulness as "another level of excellence to which the staff aspire". The service, he said, provided "accountability for high quality standards and consistency".

No one who works in the criminal justice system could recognise the CPS from Mr Duff's words. The reality, at least in London, is of an organisation low in morale, high in dogma and with low standards when it comes to the core task of preparing prosecutions. A week, incognito, in any London CPS office or court would demonstrate this to Mr Duff. And anyone who can describe the CPS as an organisation that "makes the best use of the skills and knowledge of its staff" should meet some of the disillusioned and marginalised ones who carry the can for its failings in court.

The real issue raised by the two articles is not a sterile debate over whether the CPS has become more or less centralised. It is about the quality of prosecution in our criminal justice system. Many people, in and outside the CPS, believe this should not be allowed to decline further. What we need is honest, open debate, not propaganda and the concealment of inadequacies through misleading statistics.

Take the figure quoted by Mr Duff for the conviction rate in the Crown Court, said to be 90 per cent. A more meaningful figure is obtained if all guilty pleas are extracted. It then becomes 58 per cent of all contested cases. But both figures have little meaning as performance indicators. The function of the prosecution is not merely to obtain convictions but to present cases where the evidence discloses a realistic prospect of conviction. There are all sorts of reasons why a jury may choose to acquit which would not necessarily make the prosecution at fault.

Another statistic often quoted by the CPS is its low rate of case discontinuance. The suggestion is that cases are so rigorously vetted that unless fresh circumstances arise, they are seldom discontin-

ued. The reality is very different. A low discontinuance rate can also be achieved simply by refusing to discontinue cases. They may eventually be thrown out by a judge or jury, but the CPS cannot be criticised for this, and a wholly misleading figure emerges. A more sophisticated barometer of performance is required.

What does all this mean for the criminal justice system? One of the most important qualities required by a prosecutor is confidence, a quality the CPS lacks. This is because a criminal trial is not a straightforward contest between prosecution and defence. The prosecution, with the resources of the State at its disposal, has a duty to do justice. That includes taking account of the interests of the defendant. There are many decisions relating to disclosure, charging and admissibility of evidence which a prosecutor has to take, and which involve wider considerations than how best to obtain a conviction.

So at the heart of prosecuting is potential for conflict. This comes from the pressure to obtain a conviction, from the police, victims or personal feelings about a case and from the duty to be objective and open. But this is what can make prosecuting such a rewarding and challenging occupation. When not resolved, however, this conflict has led to the



Police making an arrest: but will any subsequent case be presented as well as it can possibly be when it goes to court?

miscarriage cases that have so damaged the criminal justice system.

Given this role, the one thing the prosecutor can be sure of is that he or she will make mistakes and be unpopular. But if taken competently and for good reasons, those decisions will be justifiable.

But no prosecutor with one eye on the

statistics, one on the latest policy change and both on covering his own back is in a position to take the hard decisions that prosecuting requires. His motivation is more likely to be covering up failings of the CPS than the pursuit of excellence.

A high quality prosecution service could present cases more effectively. It could

also better protect the innocent by ensuring that no one is convicted by reason of emotional pressure, prejudice or ignorance of all the facts.

DAVID JEREMY

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Time to arrest the worrying decline

I READ Graham Duff's recent article with regret because it highlights the inability of the CPS management to look at itself critically and to address the huge concerns expressed by its lawyers and, ultimately, by the public at the receiving end of its inadequacies. It is almost irate to say the CPS is held in low regard by those who appreciate what a prosecution service should be.

The service was set up with limitations, including the fact that Crown prosecutors have no rights of audience in the higher courts, being restricted to magistrates' courts. Experienced lawyers cannot, therefore, be attracted because their career prospects are limited. As a result, there were problems in recruiting the right calibre of lawyer. The CPS resorted to training members of its own

staff to qualify as lawyers, with — in my view — indifferent results.

Over time, some of these lawyers have risen to positions of prominence in the organisation. Any reform that fails to tackle this will not begin to address the service's fundamental defects or arrest its lack of vision.

It is no answer to cite statistics about numbers of cases prosecuted. The issue cannot be whether the CPS successfully prosecuted 1.4 million cases a year, but how well these cases are prepared and whether the public has grounds for confidence that the job is in good hands. The original idea of stimulating innovation and prosecution of crime was excellent. If sufficient regard had been paid to it over the years, confidence might not have been so eroded. Now, however, a

shift can be seen towards fudging these respective roles.

We have a situation in which Crown prosecutors can set up shop at police stations. How, then, can the lawyer retain the detachment from the police necessary for an independent review of the cases brought by that police station? I agree that officers would benefit from legal advice, but that can be achieved by retaining private practice lawyers.

In my last year, morale was low and experienced lawyers were burnt out by management to spend time dealing with administrative and budgetary matters instead of on case work. The more senior you become, the less contact you have with legal matters. This trend has to be reversed. There is huge pressure to conform and obey. Some staff still

render excellent service. But for how long? The last appraisal report by my boss contained a line that says much about the future: "Chuck is learning there is a difference between the independent advocate and the Crown prosecutor." I was not able to seek clarification on this; but it was offered as evidence of my inadequacy.

There are courageous members of staff who have weathered the storm and are trying to make sense of what is regrettably an unattractive job. This is certainly no time for self-congratulatory gestures about the achievements of the service.

CHUCK NDUKA-ZE

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You need a special talent

I FOUND Graham Duff's "defence" to against Neil Addison's article to be pure propaganda — much of it out of touch with reality.

I should like to speak up, in a personal capacity, on behalf of the victim of crime — who has hardly had a mention so far.

Prosecuting crime requires a particular talent. The prosecutor has to be relentless, yet scrupulously fair. This quality of prosecuting cannot be bought or manufactured: it was possessed by the present Director of the CPS, Barbara Mills, QC, who appeared before me many times in Court 15 at the Old Bailey where I sat for 18 years. The need to be fair extends not only to the criminal but also the victim — and, as Mr Addison argued, to the general public.

Under Mrs Mills, however, the service has become over-bureaucratised, and is guilty of appalling delays and an excessive amount of plea-bargaining. Before the CPS, most prosecutions were conducted by the local police. The system was not perfect but it was quick, cheap and very effective. In the CPS's ten years, police officers have aged, been promoted or left the service. Hardly any officer below the superintendent rank has experience of conducting a prosecution. More than 90 per cent of all crime is tried in the magistrates' court, so why not return most of the criminal work in magistrates' courts to the police while they still have sufficient expertise and experience to undertake this crucial task?

As an active member of Victim Support, I am only too aware of how, in practice, the victim of crime is ignored. Recently an old woman — whose beautiful home had been burgled — asked me to accompany her to court for the hearing because she was nervous and without experience of such an event. To her astonishment, and mine, the case was prosecuted by another team of the CPS — not the team which agreed that the victim and I should attend court.

To make matters worse, the victim's name and address were published in the local newspapers, thus virtually ensuring that her house would again be burgled.

The CPS is not well paid and does not necessarily attract the best people. The resources saved by restricting its work to the more important Crown Court work should be switched to the police, who are undermanned and whose morale is generally low.

MICHAEL ARGYLE

● His Honour Michael Argyle was a Central Criminal Court judge from 1970 to 1983.