

**CPS / BAR FRAMEWORK OF PRINCIPLES FOR PROSECUTION**  
**ADVOCATES IN THE CROWN COURT**

**Overarching objectives**

The Bar and the CPS are committed to working in harmony together, serving the interests of the criminal justice system, and ensuring the highest possible standards of advocacy and case preparation in the criminal courts in England and Wales.

In the Crown Court, the CPS is intent on delivering an excellent prosecution service using high quality prosecutors drawn from the ranks of self-employed barristers and in-house Higher Courts Advocates (HCAs). The Bar and the CPS are committed to training of the very best standard.

To help achieve these objectives the CPS and the Bar agree this statement and will abide by the Farquharson Guidelines attached to this Framework.

**Underpinning Statements**

The Bar understands that the CPS wishes to increase the number of in-house prosecutors with higher court rights of audience and also to deploy in-house prosecutors more often on the full range of case types in the Crown Court. This will provide career opportunities for employed barristers but will inevitably affect the amount of work available to the self employed Bar.

The CPS recognises that the self employed Bar provides a valuable service to the CPS by offering high quality self employed barristers to undertake prosecution work. Self employed barristers bring wide experience and understanding to their prosecution work and the CPS is determined to ensure that there remains a flourishing self employed Bar with barristers of skill and ability at all levels who are willing and able to play their part in prosecuting a full range of work for the CPS.

The CPS seeks to develop HCA deployment as an integral part of the whole prosecution function from community engagement, to advising police on major investigations, to making charging decisions, to undertaking case preparation, to dealing with restraint and confiscation, through to advocacy in all courts. Crown Prosecutors will discharge these duties more effectively having gained suitable advocacy, and in particular trial advocacy, experience.

Both the Bar and CPS recognise that for advocates to develop their ability to a high standard they need to be able to undertake a range of advocacy work commensurate with their developing skills, handling more difficult cases as their skills develop but only undertaking those cases, either alone or being led, for which they have sufficient advocacy experience. All advocates will require a range of work in order to develop their expertise.

To assist this developmental process, there may be a greater interchange of advocates between the self-employed Bar and CPS, enabling practitioners to contribute to this essential public service from either the employed or self employed sectors.

It is also envisaged that the Bar and CPS will continue to explore together initiatives, such as advocacy training, where there can be mutual benefit.

### **Liaison between the Bar and the CPS**

The CPS and the Bar will continue to liaise at a national and local level.

In particular:

- The CPS and the Bar will, through the Advocacy Liaison Group (ALG), raise matters of concern and mutual interest affecting advocacy in the Criminal Courts, including training.
- The CPS will alert Circuit Leaders and local Bars to any significant employment initiatives for the recruitment of HCAs by the CPS, so as to enable local Bars to discuss such initiatives with the CPS, and plan barrister recruitment.
- CCPs or nominated representatives will meet with Circuit Leaders or nominated representatives on a regular basis (at Joint Advocate Selection Committees or otherwise subject to local agreement) to discuss the provision of advocacy services and to further the aims set out in this document.
- The CPS and the Bar will share information about developments in their approach to advocacy quality assurance through the ALG.

- The CPS and the Bar will continue to work to develop secure e-mail as a means of communication for the better conduct of CPS cases.

### **Key principles**

The CPS and the Bar will work together to ensure that all advocates demonstrate high standards of advocacy in accordance with the principles set out below:

1. The CPS will endeavour to identify those cases that are likely to be contested and will select the trial advocate as early as practicable. In such cases the trial advocate (whether external counsel or HCA) should be instructed as soon as possible after the case has been sent or committed to the Crown Court, and where possible at least 14 days before the PCMH, so that any necessary advisory work and case preparation can be undertaken in good time to ensure that the PCMH is effective for the proper and efficient future management of the case.
2. In those cases identified prior to PCMH as likely to be contested, and where external counsel is instructed as trial advocate, he/she should conduct the PCMH wherever possible. Where this is not possible, the CPS must be informed at the earliest opportunity to enable suitable alternative arrangements to be agreed. This may involve instructing an HCA as replacement advocate for PCMH purposes, taking into account the HCA's ability to make decisions and give the court the assistance which the trial advocate would otherwise be expected to give. The trial advocate must ensure that the case is in good order, and discuss with the advocate undertaking the PCMH any outstanding

issues or potential difficulties, and the directions which the prosecution will seek. HCAs will be expected to work on a similar basis.

3. The CPS will endeavour to deliver instructions which:
  - i. address the issues in the case including any strategic decisions that have been or may need to be made;
  - ii. identify relevant case law;
  - iii. explain the basis and rationale of any decision made in relation to the disclosure of unused material;
  - iv. where practical, provide specific guidance or indicate parameters on acceptable pleas; and
  - v. where a case is an appeal either to the Crown Court from the magistrates' court or is before the Court of Appeal, Divisional Court or House of Lords, address the issues raised in the Notice of Appeal, Case Stated, Application for Judicial Review or Petition.
  
4. On receipt of instructions as trial advocate, external counsel will consider the papers and provide timely advice to CPS where appropriate, preferably within 5 working days of receiving instructions or within any other agreed timescale<sup>1</sup>. HCAs will be expected to work on a similar basis in order to identify quickly where further pre-trial work is required.
  
5. Advocates who attend Court to present the case at the plea stage should wherever possible also be the advocate who attends at the

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<sup>1</sup> As per the Farquharson Guidelines

sentencing hearing. Advocates who attend the substantive hearing at the Crown Court should wherever possible also attend any subsequent Court of Appeal hearing.

6. External counsel should only return a CPS brief for trial in circumstances permitted under the Bar Code of Conduct (or any other applicable Code or Rules). If an advocate (whether external counsel or HCA) has professional difficulties which may cause a trial brief to be returned, he/she must raise these at the earliest possible stage with those responsible for the allocation of CPS briefs, to ensure that instructions are delivered which are well prepared and timely. He/she should also provide a full explanation of the reasons for the return. It is the intention of the CPS and the Bar that only rarely should PCMH briefs be returned and only in very exceptional circumstances should a trial brief be returned. HCAs will be expected to work on a similar basis.
7. The advocate (where external counsel) must not give an indication or undertaking which binds the prosecution without first discussing the issue with the CPS. The CPS will, whenever possible, make available to external counsel a CPS lawyer or employee with sufficient authority to enable decisions (for example, as to acceptance of pleas) to be made promptly and efficiently. Where this is not possible, external counsel should ask the court to adjourn the hearing for a realistic period in order to consult with the CPS.
8. The CPS will wherever practicable, seek to have trials fixed so that the advocate instructed can prosecute the case.

9. It is essential that all advocates attending court make every effort to avoid being double booked in two or more different courts at the same time, wherever possible.
  
10. All advocates will abide by the Prosecutors' Pledge on the delivery of services to victims.
  
11. All advocates will seek to further the overriding objective of the Criminal Procedure Rules.