

Prosecuting in the public interest: independence without isolation

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In an essay to accompany an event with the Bingham Centre for the Rule of Law, Max Hill QC outlines what independence means for the Crown Prosecution Service in an extraordinary 2020 and beyond, and how it intersects with the Service's other values and responsibilities. Drawing on the experiences of the past six months, he considers what it means to remain independent while also being collaborative, responsive and adaptable in a changing world – and the importance of each of these qualities in maintaining public confidence in the criminal justice system.

Introduction

The coronavirus pandemic has altered many facets of our lives beyond recognition – and the criminal justice system is no exception. The circumstances in which we operate changed completely in March this year, and the way the CPS works shifted dramatically in a very short space of time.

Despite considerable logistical challenges, the CPS had to continue to provide its vital public service within the restrictions imposed. Almost overnight, most of our colleagues moved from offices and courts across England and Wales to work from home. Some staff continued to appear in person in court throughout lockdown, while others travelled to offices to complete vital work. It is entirely appropriate that our staff were accorded keyworker status. I am incredibly grateful to them all. We also had to swiftly adapt our approach – developing guidance and protocols which reflected the rapidly changing circumstances in which the criminal justice system found itself.

In navigating this unprecedented period, we have remained firmly rooted in our mission to deliver fair and independent prosecutions, which underpin the rule of law and protect the public interest. Independence was one of our founding principles when the CPS was created in 1986, and it has remained the central thread in our story. An independent prosecutor – by which I mean, a prosecutor free to apply the law fairly and without bias, and without external pressure intended to influence decision-making – is essential to the rule of law. In his 2010 book on the subject, eminent judge Tom Bingham concluded that the rule of law is the principal difference between good and bad governance. In my role, with responsibility for all criminal prosecutions, I would echo him in asserting that an independent prosecutor is an essential component of a fair society where all are equal under the law.

During such extraordinary months, I have had regular cause to reflect on what independence means for the CPS in 2020. Because our independence is vital, but alone it is not enough – and that has never been more evident than during this pandemic. The need to balance independence with a broad and open approach to justice – which makes sure that the criminal justice system is here to serve all of us – has been at the forefront of my mind throughout this national crisis.

As we look to the future, we know that we need to remain independent, but we also need to be collaborative, responsive and adaptable in a changing world. Each of these qualities directs and defines our work in normal times, but also underpinned our coronavirus response.

Independence in practice

I have emphasised that our independence is fundamental – but from whom are we independent, and why?

Investigators

First, we are independent of investigators – in most of our cases that means the police, though it also includes the National Crime Agency, Her Majesty’s Revenue and Customs and others. In order to understand why this is so important, we need to understand something of how the CPS came to be.

Until our creation in 1986, criminal offences in England and Wales were prosecuted by a haphazard mixture of people. Would-be prosecutors then included private individuals, police officers or police solicitors, county prosecutors and local firms of solicitors.

Over a century earlier, in 1879, the Prosecution of Offences Act had created the office of the Director of Public Prosecutions – which I now hold. But far from overseeing all prosecutions, this new Director had the duty to act only in cases of ‘importance and difficulty’. He (it was always a he in those days) had very limited resources, with no department of his own and only one assistant and three clerks to help him. A slightly disconcerting detail I discovered recently is that although he may have been short-staffed, at some point a ‘departmental firearm’ was added to the resources at the then DPP’s disposal. Thankfully, this is not something I’ve ever felt myself in need of since taking up post!

Over the following decades, the DPP gradually became involved in more criminal prosecutions, but his impact remained limited. Local prosecutions – led by the police – remained the norm. In 1962, a Royal Commission on Police looked at the conduct of prosecutions and reported that ‘In general, we think it is undesirable that police officers should appear as prosecutors except for minor cases’.

But it wasn’t until 1978 that questions about the need for independence of prosecution decisions surfaced again. Another Royal Commission – this time on Criminal Procedure – was established, as the immediate result of concern over police procedure in a particularly high-profile case.

The Commission examined the existing prosecution framework in light of important questions, including:

- “is the system fair?”
- Are there “inexplicable differences in the way that individual cases or classes of case are treated locally or nationally?”
- Is it open and accountable, in that those who make the decisions to prosecute or not can be called publicly to explain and justify their policies and actions as far as that is consistent with protecting the interests of suspects and accused?” (6.8)

In considering the separation of the investigator's and lawyer's roles the Report notes that it was "... said to be unsatisfactory that the person responsible for the decision to prosecute should be the person who has carried out or been concerned in the investigation." (6.24)

When it reported in January 1981, the Commission had three main criticisms of the Criminal Justice system in England and Wales:

1. The police should not investigate offences and decide whether to prosecute. The officer who investigated a case could not be relied on to make a fair decision whether to prosecute;
2. Different police forces around the country used different standards to decide whether to prosecute; and
3. A significant number of cases were coming to court that should not have progressed to that stage: 43% of cases resulting in acquittal failed because the prosecution was unable to adduce sufficient evidence to make a prima facie case.

As a result, the report recommended that a prosecuting solicitor service – which came to be the Crown Prosecution Service – should be established to cover every police force in England and Wales.

The service was to be structured to recognise the importance of independent legal expertise in the decision to prosecute; make the conduct of the prosecution the responsibility of someone both legally qualified and not identified with the investigative process; and achieve better accountability locally for the prosecution service, whilst making it subject to certain national controls.

It is worth noting that this did not lead to the CPS charging and prosecuting all criminal cases. The police have always retained the power to charge in some cases, and indeed to prosecute in some – with the balance between police and CPS responsibilities changing over time.

Vitality, the report recognised that the police perform a range of public services. Supporting the prosecution of crime is a vital one – but it is one of many. Take a road traffic incident – a police officer might be the first on the scene and need to assess casualties, divert other traffic and speak to traumatised witnesses. They might then have to identify those seriously injured or killed, and their next of kin and bereaved families. They may decide whether to arrest a suspect at the scene. They may take statements, collect physical evidence, and deal with forensic evidence. Back at their desks, they will prepare and submit a case file for consideration by our prosecutors.

The police perform an invaluable and broad public service for which I am very grateful – both as a citizen and as DPP. At the CPS our duty is narrower and more focused: to prosecute crime through independent and fair prosecutions. And this vital difference has once again served its purpose during the coronavirus pandemic – when, often at understandably short notice, the criminal justice system found itself being given exceptional powers to help keep all of us safe.

New offences were created under the Coronavirus Act and Health Protection Regulations. The police were given the power to charge people with these offences, but the CPS was to then take over and prosecute the cases in court.

In such a fast-moving and unprecedented situation, with the police under immense pressure and dealing with complex new powers, it became clear fairly early on that it would be sensible for us to review all charges brought under the Act and the Regulations.

Between March and July, we reviewed 659 finalised cases to make sure that the new laws were being applied consistently and appropriately. All 121 cases under the Coronavirus Act were found to have been incorrectly charged; because there was no evidence they covered potentially infectious people, which is what the law as enacted by Parliament required. This is a clear example of how our role as independent legal specialists is so important. I don't raise it to be critical of the police – who were doing an incredible and dangerous job on the frontline of the pandemic – but to point out that it is perfectly right and proper that we stepped in in this way. It exemplifies why the nature of our relationship with the police is so necessary, and how during an unprecedented situation, the rules governing that relationship proved themselves to be essentially sound once again.

Our independence from investigators ensures we can make our decisions impartially, testing a case on its facts and the application of the public interest test – either when making the original charging decision in more serious cases, or in reviewing cases that the police have charged. It would not be fair, it would not be right, to expect anyone so close to a serious case to make the critical decision to charge a suspect. Or, just as importantly, not to charge that suspect.

We do not decide whether a person is guilty of an offence, but must consider whether it is right for a case to go before the court. Then the magistrates, judge or jury must decide whether a person is guilty of a criminal offence, once they have heard all the evidence.

Every charging decision is based on the same two-stage test:

1. Does the evidence in the case provide a realistic prospect of conviction? And
2. Is it in the public interest to prosecute? That means asking questions like how serious the offence is, the harm caused to the victim, the impact on communities and whether prosecution is a proportionate response.

Having a single organisation, independent of investigators, apply this consistent test across all more serious cases is the best way to ensure fairness – for suspects, victims, witnesses and the wider public we serve.

The first stage of the test is the evidential stage, which states that prosecutors must be satisfied that there is enough evidence to provide a “realistic prospect of conviction” against each defendant on each charge. The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

Only if the evidential stage of the two-part Code test is met, can the prosecutor move to the second element – is it in the public interest to prosecute? To return to the 1981 Royal Commission on Criminal Procedure, the report it produced concluded that an important cornerstone of a fair

prosecution system is to "... ensure that prosecutions are initiated only in those cases in which there is adequate evidence and where prosecution is justified in the public interest." (6.9) And thus, representing the public interest became another core responsibility of the newly formed CPS that is central to our mission to this day.

The public interest is also the part of the Code test which is perhaps most often misunderstood. The 'public interest' can often feel like a somewhat amorphous concept, which is why we have such clear guidance within the Code for Crown Prosecutors on how it is to be determined. The public interest does not mean those things or cases in which the public are interested. Nor is it, necessarily, the public's view or opinion on whether a prosecution should progress. Instead it is a reasoned assessment, based on a set of questions clearly defined in The Code, on whether a case should proceed.

Once again, the coronavirus pandemic provides an example of how consideration of the public interest works in practice. In the face of a national lockdown and the immense impact on criminal justice proceedings – the system could only cope with a fraction of the normal caseload during lockdown – we took the decision early on to ask our prosecutors to consider the impact of the pandemic when weighing up whether criminal charges were in the public interest. Our prosecutors always consider the public interest – but this was a request, via interim guidance, for additional consideration in the face of extraordinary circumstances. Our consideration of the public interest does not take place in a vacuum – it must reflect the reality in which we are operating, and so it was vital we responded to extraordinary changes in our society.

We continued to review both new and existing cases on their own merits, always considering every available course of action – including community resolution or accepting a guilty plea to a different offence if prosecutors were satisfied that a sentence which met the seriousness of the offending could be passed. This allowed us to be realistic in a time of national crisis, and to provide much timelier conclusion of cases than would otherwise have been possible – which we know is important to victims and witnesses.

The second function of the guidance though, which was equally important, was to underline the public interest in proceeding with the most serious cases. The guidance was there to give confidence to prosecutors that their decision making remained sacrosanct. It gave them a clear basis to say, "Even in this time of national emergency, I have reviewed the public interest and it remains as important as ever that this case continue to trial."

In that way, the guidance underlines the independence of the prosecutor and, by extension, upholds the rule of law. This was never about moving away from prosecuting certain types of crime. It is about the opposite: empowering prosecutors to continue to make independent decisions – no matter the practical difficulties that those decisions may represent for the criminal justice system. These decisions then needed to be quickly, consistently and fairly applied across the country – and as the independent national prosecution authority we were ideally placed to ensure that happened.

Government and politics

The CPS is also separate from every other government body, and our prosecution decisions are independent of political influence.

We work openly with, but cannot be directed by, democratically elected representatives, such as Police and Crime Commissioners and Members of Parliament. That political independence is essential in a democracy, so everyone involved can be confident that cases have been brought fairly and lawfully.

The Attorney General is responsible for superintending the CPS' performance – scrutinising how the CPS is run, to ensure we use public money properly – but is not involved in the decisions that we take in the vast majority of our cases.

Prior to 1985, the Prosecution of Offences Act 1879 charged the Attorney not only with the superintendence of the DPP, but also provided him or her with the power to direct the institution of proceedings in special cases. The power to direct is not mentioned in the 1985 Act, and – as a former Attorney has characterised it, the Attorney does not 'control or direct [our] daily work'.

It is still the case that for some offences, particularly those involving national security, the Attorney's consent is needed to bring a prosecution. In such cases, the CPS' role in protecting the public is to recommend suitable charges and highlight public interest factors that may affect the decision. Once consent is secured, prosecutors keep the Attorney informed of progress and consult on key decisions. However, the Attorney's role here is a legal, not a political, one – and in no other cases can she or any other part of the government have any influence on our decisions.

That is important for specific cases as well as our broader system of justice. Most obviously it ensures that allegations in which the government, or individuals in positions of power, may have an interest are treated exactly as any other. This is vital for justice in those cases, but also ensures that no one is above the law – which of course brings us back to the rule of law.

The first General Principle (2.1) of the Code for Crown Prosecutors addresses the independence point explicitly. It says: "Prosecutors must be free to carry out their professional duties without political interference and must not be affected by improper or undue pressure or influence from any source." This serves as a clear and public commitment to independent prosecutions – which I hope goes some way to providing the assurance that is so crucial for public trust.

Our independence from government also works the other way. Just as prosecutorial decisions are for prosecutors, political decisions are for ministers. We can use our experience to provide advice on the operational implications of law and policy proposals – and help to find operational solutions to challenges. We do so regularly. But we do not interfere in political matters.

Within the context of the coronavirus pandemic, there were suggestions that trial by jury should perhaps be temporarily suspended. That would have been a political decision, which is why we have been, and will remain, silent on the subject.

The court

Prosecutors are also independent of the court in which they prosecute – and the other parties in that court. Crucially, our role in court is to represent the public interest. Yes, we make a case against a defendant. Yes, we absolutely support victims and witnesses. But we do not represent any individual or group. We represent the public interest, which is for justice to be served.

Everything we have done over the past six months has been in support of this. CPS staff continued to attend court and go to offices where that was necessary to allow urgent court business to go ahead, and I am immensely grateful to them. And as set out above, we worked with partners to find solutions to the challenges we faced – again, representing the public interest in the delivery of justice.

This duty continues after a guilty verdict, when it is our duty to assist the judge or magistrates in reaching an appropriate sentencing decision. This involves presenting the impact the offence has had upon the victim and drawing the attention of the court to any aggravating features of the offence, as well as highlighting how offences may affect whole communities to ensure the punishment fits the crime – again in the public interest.

For example, the CPS plays a central role in securing sentence uplifts in cases where a crime was motivated by hate. The law places a duty on the courts to increase a sentence if it can be proved that an offence was a hate crime – meaning there was a demonstration of hostility, or the crime was motivated by hostility, towards a victim’s race, religion, sexual orientation, transgender identity or disability. It is the duty of the CPS to apply to the court for an increased sentence – known as a sentence uplift – in cases where this hostility can be proved.

Where there is the evidence to do so, we will always make these applications – and we have increased the numbers of successful applications significantly in recent years. Last year there was a sentence uplift recorded in 77% of hate crime convictions – up from just 34% four years ago. During the pandemic, this work has continued. In March, a 27-year-old man was prosecuted for a coronavirus-related hate crime in the West Midlands. During the course of his arrest for shoplifting, the individual became aggressive towards police officers and shouted racist abuse referring to coronavirus. He pleaded guilty to two counts of racially aggravated harassment, two counts of assault by beating and one count of theft from a shop. Following an application by the CPS, the court specifically increased the man’s sentence by one month, from 12 weeks to 16 weeks, to reflect the racially aggravated element of his offending.

The reasons for our ongoing commitment here are twofold. It is important to recognise how much more serious an offence becomes when it has been motivated by hatred towards an individual or group. Not only can the effect on victims be devastating but hate crime can also send shock waves through communities who share the targeted identity, creating fear and feelings of isolation.

Given this impact, it is also vital that the public – including victims, witnesses and would-be offenders – see that the justice system recognises this motivation as an aggravating factor. This sends a clear message that this kind of offending will not be tolerated.

Independence and beyond

I have explored the vital importance of our independence – both in normal times, but in many cases specifically during the coronavirus pandemic.

But the CPS will not use independence as a shield to avoid scrutiny, nor do we see our independence as a barrier to engaging with partners or our communities on matters of shared interest.

Because independence alone is not enough – and this has never been more true than during the challenges of recent months. The need to balance independence with a broad and open approach to justice – which makes sure that the criminal justice system is here to serve *all* of us – has been at the forefront of my mind throughout this national crisis.

The very real consequences of inequality have always been there – and striving for equality through inclusivity has long been a priority for the CPS. But they have been brought into very sharp perspective by recent events. We have lived through a pandemic that has disproportionately impacted those from black and minority ethnic backgrounds; those with underlying health conditions or disabilities; the poor and the elderly. We have seen protests in response to systemic racism and violence worldwide. Recent events have only strengthened my conviction that independence alone is not enough.

As we look to the future we know we need to be independent *and* collaborative, responsive and adaptable. Each of these is essential to ensuring our prosecutions are fair, and that we secure public confidence in our work – which are key features of our new organisational strategy to carry the CPS towards 2025. I'll explore each in turn.

Collaborative

Just as independence is central to our function, our success as a prosecution service lies in the quality of the relationships we have with our partners. The CPS must therefore be collaborative and communicate clearly with our partners while maintaining our independence.

The CPS works at the heart of the criminal justice system and so we must invest in both national and local strategic partnerships including engaging with Parliamentarians, communities, and our local and international criminal justice partners. Insights from our prosecutors and local criminal justice partners, as well as feedback from our communities, help develop an evidence base to inform national law and policy reform. In turn, these partnerships help us to understand the local impact of any national changes.

Our relationship with investigators proves every day that our fiercely guarded independence must be accompanied by thoughtful collaboration. It almost goes without saying that without this relationship, no cases would be brought before a court and no justice would be done. In fact, that original Royal Commission report, which made such a compelling case for our independence from investigators, also noted that a successful system was one that depended upon cooperation, with checks and balances operating within a framework in which all were seeking the same objective. In summary, there would be "... unity of purpose but independence of responsibility". This remains a neat summary of how our relationship with the police – and indeed all our national and local partners – should look.

Our approach to the coronavirus pandemic has also centred on collaboration – which was vital for a compelling and cohesive criminal justice response. We were an integral part of the criminal justice system strategic command, which brought together all parts of the system, with advice from NHS and public health experts on health and safety considerations. We worked together to identify and avoid potential issues and find practical solutions to the challenges we faced.

Through this structure and our existing relationships with partners we worked with all of the following:

- the National Police Chiefs' Council (NPCC) on numerous joint protocols – including interim charging guidance;
- the judiciary, to agree a protocol for those cases where delays caused by the pandemic meant that the statutory period of time an individual can usually be held in custody without a trial was about to expire; and
- the NPCC and solicitors' organisations, to secure arrangements for the remote participation of solicitors in interviews of suspects in custody at a police station.

Our existing strong relationships with these partners, and our place in the strategic command structure, meant that we were able to quickly respond to unprecedented circumstances together – and maintain continuity of service for the public.

Responsive

We also need to be responsive. Our independence cannot be an excuse for cutting ourselves off: we need to listen carefully to the communities we serve and be open to changing our approach in response.

We do not make the law – that, of course, is a matter for Parliament – but it is the role of our prosecutors to work out how the law is applied in each case, in the service of justice. We regularly issue Prosecution Guidance on specific criminal offences or procedural issues. In conjunction with The Code, this legal guidance is used by our prosecutors to inform their decision making and is published so we can be as transparent as possible about how we work. But how do we ascertain how we should apply the law in a way that works for society, and ultimately delivers justice? We listen.

The CPS has well-established national and local mechanisms in place to listen carefully to communities, and to translate what we hear into action where appropriate. I am proud that in the Lammy Review of Black, Asian and Minority Ethnic (BAME) representation in the criminal justice system, the CPS approach to community engagement was recognised as best practice.

Listening has never been more important than during the pandemic. Lockdown has had a huge impact on how we all communicate, and that includes how we engage with communities. Over the past few months, colleagues across the CPS have been thoughtful and creative in finding ways to continue communicating with local stakeholders. We may be in extraordinary circumstances, but we have continued to prioritise listening to the communities we serve, making sure we remain visible and reassuring people that we are still here to help keep them safe and ensure justice is done.

In normal times, we engage closely with local communities with the support of our Inclusion and Engagement Managers. These managers play a crucial role in co-ordinating Local Scrutiny

Involvement Panels (LSIPs) across each of our 14 CPS Areas. Attended by local community representatives who reflect local concerns, these groups have played an important role in feeding back issues to local staff to improve casework quality and support for victims and witnesses. They have also worked with us to develop and deliver training to our prosecutors and caseworkers and helped to improve the accessibility of our communications with victims. Panel members also take back messages to their own communities, something I encourage all of our staff to do.

Although we haven't been able to meet communities face to face for some time, local teams have been continuing to engage with LSIPs virtually, providing a space to find out how local services have adapted during the pandemic, and how local communities have been affected. Online panels have also provided an opportunity to update partners and communities on how coronavirus is impacting the criminal justice system – and how we're responding both locally and nationally. We have had some positive feedback from panel members on moving the LSIPs online, with one reflecting that engaging with the panel again gave a "comforting reminder of normality".

We have also shaped engagement outside our usual mechanisms to respond to the specific challenges of the pandemic. For example, colleagues in the South East held an online conversation with local domestic abuse support services – in response to the huge increase in demand they have experienced as a result of lockdown. This was an opportunity to explain the steps we are taking to ensure that domestic abuse victims continue to be able to access justice during this time, and to learn more about the specific pressures faced by local support services and the victims they serve.

In the West Midlands, we brought community groups together – including local charities, faith groups and organisations that support victims – to listen to their experiences of hate crime during the pandemic. The conversation highlighted concerns over coronavirus-related hate crime targeting the Chinese community, and so our West Midlands colleagues were able to deliver a bespoke online workshop on hate crime awareness and available support for the Birmingham Chinese Community Centre. The workshop explained our approach to prosecuting hate crime, and how we support victims and witnesses, as well as aiming to tackle myths that can prevent people from reporting this type of crime. The team then held a further follow up event on the topic of hate crime for the Chinese community in Birmingham with the West Midlands police.

At a national level we hear from the communities we serve through groups including our Community Accountability Forum, National Scrutiny Panels and the Violence Against Women and Girls (VAWG) External Consultation Group. To improve our response to some areas of national importance and following feedback from stakeholders, we also established a Hate Crime External Consultation Group, a Child Sexual Abuse Stakeholder Forum and a Men and Boys Group. These groups are made up of experts from academia, NGOs and community groups. Their insight and advice have been instrumental in refreshing our approaches to various types of prosecution – for example, crimes against older people.

Our Community Accountability Forum has moved online due to the pandemic, and we recently held an invaluable meeting on the disproportionate impact of coronavirus on health and criminal justice outcomes for black and ethnic minority communities. We have further sessions planned on domestic abuse and honour-based violence, and the Black Lives Matter movement. As part of our wider

response to the Black Lives Matter movement, we are also holding local listening exercises with black and ethnic minority people on their experience of coronavirus. All will assist in shaping our recovery from the pandemic – ensuring that the voices of those directly impacted, as well as our wider communities, are at the heart of our response.

In normal times, this engagement is supplemented at a wider level by public consultations on the key pieces of guidance we develop for our prosecutors – making sure we are applying the law in a way which reflects the realities and nuances of community experience. That is, in a way that will best deliver justice in every case. For example, following the first ever UK conviction for Female Genital Mutilation (FGM) last year, we expanded our legal guidance on these types of offences. The updates were shaped by a consultation with criminal justice and Whitehall colleagues, the Violence Against Women and Girls External Consultative Group, and more than 80 voluntary and community contacts specialising in FGM.

By drawing on the expertise, insight and experience of specialists with a wide range of knowledge, we were able to make sure that the expanded guidance reflected practical experience of challenges in FGM cases and provided clarification on piercing and cosmetic surgery. The section on support for victims was also improved. It now asks prosecutors to consider the age of the victim, and whether they took an informed, consensual decision to undergo any procedure, at the public interest stage of the Code test. These changes were broadly welcomed by stakeholders as addressing in a more practical way the likely challenges of FGM cases – and ultimately allowing the law to be applied in the most helpful way to deliver justice.

Engaging with and responding to communities is one way in which we remain accountable for the service we provide. We also welcome the formal scrutiny of our independent inspectorate tasked with assessing our work to ensure that we are remaining efficient, effective, and fair, and we are accountable to Parliament through the superintendence of the Attorney General.

It is important to stress here, though, that it will not always be appropriate or right for us to change our approach in response to feedback. Our casework decisions are made by experts applying the law. Sometimes those decisions will be unpopular; that does not mean we should change them. What we can do is explain our decisions, be open about them wherever possible, and always remain accountable.

Another crucial part of being a truly accountable public body is to be transparent about our performance. We now publish prosecution data on a quarterly basis as part of this commitment to transparency and openness. This data will be used to drive internal action to address any issues, as well as to help illustrate any long-term challenges for the whole criminal justice system, so that we can better work with our partners to address emerging issues.

A key strategic aim in our new organisational strategy, CPS 2025, is to invest in our digital capability – in part so that we can use the data we generate to drive change. Making good decisions in an increasingly data-driven world is impossible without high-quality evidence. Collecting useful and trustworthy data on our own work and the shifting demands and challenges we face – and analysing

it effectively – is vital. Insight will help us to lead evidence-based conversations across the criminal justice system and beyond, using our expertise to drive change.

Adaptable

We also – perhaps now more than ever before – need to be adaptable. I thought I knew what it was to be an adaptable prosecution service before coronavirus – but the past few months have tested our ability to adapt to external forces beyond anything we could have anticipated. In shaping our response, we relied on our new strategy – CPS 2025 – which outlines the organisation we want to become over the next five years. Our five strategic aims – our people, digital capability, strategic partnerships, casework quality and public confidence – cover the organisational capabilities we need to fulfil our mission: to deliver justice through independent and fair prosecutions. And so they also governed our response to a nation in crisis – allowing us to adapt effectively while staying true to our core principles and priorities.

The health, safety and wellbeing of **our people** remains our priority. This included a focus on elements of our **digital capability** to help us to rapidly adjust to new working arrangements. We collaborated more closely than ever within our **strategic partnerships** as we faced unprecedented challenges together. Ensuring outstanding **casework quality** was as vital as ever – in the urgent cases that had to go to court during the pandemic, as well as the cases which were paused. All of these elements underpinned **public confidence**: allowing us to operate in a way that would allow society to trust that, despite uncertainty, justice would continue to be done.

Our adaptability will continue to be important as we emerge from the other side of this pandemic into the new normal. And it will remain vital in dealing with all the other changes we were facing before we had heard of COVID-19. In fact, we have to be especially mindful that the intense demands of delivering justice during a pandemic don't distract us from other issues at stake.

The nature of crime is rapidly changing, as traditional crime is committed in new ways and entirely new crime types are emerging. Cybercrime is now the most frequently experienced type of fraud in the UK, becoming increasingly sophisticated as our world becomes more connected – not least through the smart appliances in our homes and the smart devices that we wear. Our connectivity brings endless benefits, but it also creates new avenues to commit theft, fraud and abuse. Our place in the world is also changing, and we must consider new ways to engage with communities in a way they expect and understand.

Investing in the digital capability of our staff is one way in which we will ensure that our people have the skills to adapt to the often complex knowledge necessary to effectively assess an increasingly digital caseload. We are also committed to innovating, including using emerging technology, to solve some of the associated difficulties.

Similarly, we know that crime will have an increasingly international dimension in the years ahead, and we will need to work creatively with partners around the globe to continue delivering justice across borders.

As I discussed earlier, the CPS must necessarily remain independent of any political influence, but we must also adapt to changes in criminal legislation and policy. We know that we must use our

expertise and unique insight to inform changes as they emerge or develop, to ensure that the CPS can effectively adapt to, and succeed under, changes to the political and regulatory framework.

Serving the public

Being all of these things – collaborative, responsive, and adaptable – informs the service we provide and the public interest test we apply, and so supports our role protecting the public and keeping communities safe. This was more important than ever during a global pandemic. When the general public was facing uncertainty on all sides, we did everything we could to continue playing our part in keeping them safe – and to demonstrate that to the public.

In practice, this meant making it very clear from the outset that crime would continue to be taken seriously, and that our approach would consider types of offending specific to the current situation. For example – we completed more than 300 prosecutions for assaults on emergency workers during the first month of lockdown. These cowardly attacks usually involved police officers and other emergency workers being coughed at and spat on by members of the public claiming to have the virus. We reassured the public early on that these crimes would be prioritised for charging decisions, and that the coronavirus element would be captured by prosecutors so that they could be treated as aggravating features in court.

Looking to the future

As we move through the coronavirus crisis, there is a feeling across society that we are at something of a turning point. We have lost a lot – many of us have been bereaved. Isolation and disconnection have made this a lonely time for many. In the criminal justice system, we are now facing an inevitable backlog of cases – we will not return to anything near ‘normal’ for a long time.

But in all this challenge, there is also opportunity. And I am confident that the ways of working that have served us during the pandemic will continue to serve us as we navigate its aftermath. We will also be able to build on the immense progress we have made in certain areas. Foresight in upgrading our digital capabilities meant all staff including prosecutors could continue their essential work with minimal disruption when lockdown began. This included the widespread rapid rollout of video technology and conferencing platforms, as well as training for lawyers in the new Cloud Video Platform (CVP) software introduced by HMCTS. There have now been over 30,000 hearings using CVP, and CPS prosecutors have regularly appeared by video link.

We also quickly adopted measures to maintain support for victims and witnesses. For example, setting up remote links for bereaved families, so they can hear sentences being passed and be a part of this significant stage in the criminal justice process without being exposed to risk. At the same time, we have been clear that we will prioritise attending court in person where we need to support vulnerable participants.

I am determined that none of this progress will be lost – of course, we have and will continue to return to doing more of our work in person. There have been dedicated colleagues attending court

and offices throughout the pandemic, and those numbers have been increasing for many weeks. But the importance of embracing new ways of working will not go away.

All of this comes as our place in the world is changing. The public will rightly expect more and more from us. They will expect more transparency and more personalised services that meet the needs of different communities – whether based on geography or protected characteristics. We will need to collaborate across the criminal justice system to transform the end-to-end service we deliver, making sure it is fair and understood by all communities.

We also need to be conscious that the wider world in which the CPS operates is changing rapidly. Technological advances are accelerating in almost every area; the age of the population is steadily increasing; the volume and variety of data is growing but its trustworthiness is subject to greater scrutiny and doubt; and our societal views are diversifying.

The criminal justice system, including the CPS, may soon have to routinely be able to distinguish between a real voice recording or video and a ‘deep fake’, we might have to address the changing social sensibilities around ‘grossly offensive’ speech, or be a part of tackling the potential increase in environmental crime in the race to secure and dispose of resources against a changing environmental backdrop.

While it is difficult to predict exactly how criminal behaviour or societal expectations are likely to change in the future, I can say for certain that effective collaboration with our partners, a responsive mind-set, and a willingness to adapt will ensure the CPS is fit to respond to the challenges ahead. And rather than threatening our independence, these traits will help us to preserve it – and to continue to deliver justice on behalf of the public we serve.