



## **The Role of the Crown Prosecution Service in the Criminal Justice System**

### **Investigating and Prosecuting Corruption: A Practical Approach**

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## **WHO WE ARE**

- # The Crown Prosecution Service (CPS) is a Government department. It is the principal prosecution authority in England and Wales.
- # We prosecute people who have been charged by the police with a criminal offence.
- # We work closely with the police, the courts and other agencies throughout the criminal justice system but are an independent body.
- # In 2000-01 the CPS dealt with more than 1.35 million cases in magistrates' courts and approximately 116,000 cases in the Crown Court.

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## History of the CPS

- 1981 Royal Commission on criminal procedure recommends new prosecution service
- 1983 White Paper published "An Independent Prosecution Service for England and Wales"
- 1984 Prosecution of Offences Bill laid before Parliament
- 1985 Prosecution of Offences Act creates the CPS
- 1986 The CPS comes into operation throughout\* England and Wales



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## HISTORY

- # Criminal Court system in England and Wales for centuries
- # Before 1880 - no public prosecutions
- # 1880 - the first Director of Public Prosecutions

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## BACKGROUND

- Police set up own prosecuting departments
- Set up against a background of miscarriages of justice
- Position reviewed by a series of Royal Commissions

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## RELATIONSHIP BETWEEN THE DIRECTOR & THE GOVERNMENT

- The Director is Head of the CPS
- is required by law to take over the vast majority of criminal proceedings;
- is politically independent;
- is accountable through the AG to Parliament.

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## How we fit into the Criminal Justice System

- The Director of Public Prosecutions is superintended by the Attorney General
- The Attorney General, assisted by the Solicitor General, provides the Government with advice on a range of legal matters, including proposed legislation and has final responsibility for enforcing criminal law



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## THE ROLE OF THE CPS

- # ADVISE the police on cases for possible prosecution;
- # REVIEW cases submitted by the police;
- # PREPARE cases for court; and either
- # PRESENT cases in the magistrates' court or
- # INSTRUCT advocates for the higher court or use our own

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## Our organisation

- In April 1999 the CPS organisation changed from 13 to 42 geographical areas to meet the Government's aim of developing a co-ordinated criminal justice system with national policies delivered locally
- Areas correspond to police force areas and CPS London Area covers the City of London and Metropolitan Police Forces
- There are a number of offices contained within each of the 42 Areas which are led by a Chief Crown Prosecutor supported by an Area Business Manager. Headquarters staff are based in London and York



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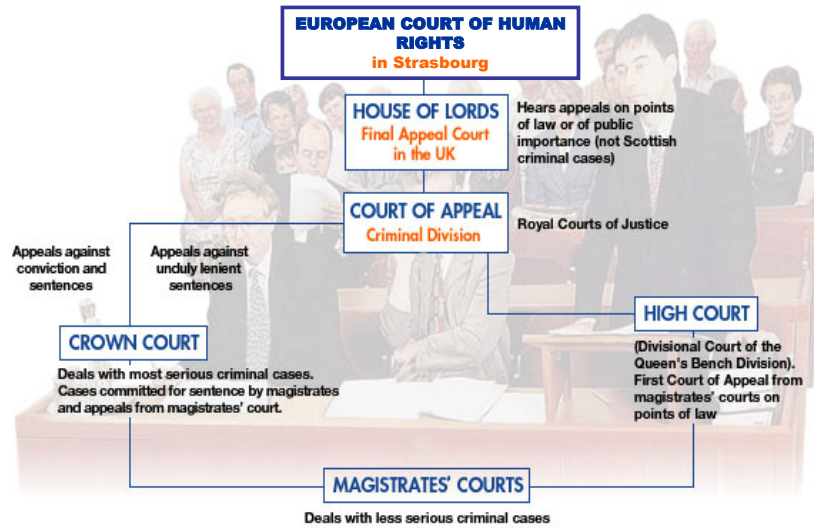


## STRUCTURE

- # Currently 42 Geographical areas
- # The current Director is Ken McDonald QC
- # 7000 staff, approximately 2000 lawyers
- # CPS branches have recently divided into trial units dealing with the Crown Court and criminal justice units dealing with Magistrates Courts

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## The Criminal Courts in England & Wales



## The Code

The basic principles which Crown Prosecutors should follow when making case decisions:

### Evidential Test

- The Crown Prosecutor must be satisfied that there is enough evidence to provide a "realistic prospect of conviction"
- Can the evidence be used in court?
- Is the evidence reliable?
- Cases must not go ahead if they do not pass the Evidential Test

### Public Interest Test

- In cases of any seriousness, a prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour
- There will be instances where an analysis of the public interest will lead to a correct decision not to prosecute

### Victims of Crime

- The CPS must think carefully about the interests of the victim when deciding where the public interest lies

### Youth Offenders

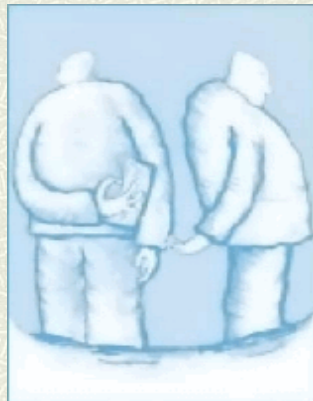
- The Crown Prosecutor must balance the seriousness of the offence against the age of the offender





# CORRUPTION

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## HISTORICAL CONTEXT

- # The Public Bodies Corrupt Practices Act 1889
- # The Prevention of Corruption Act 1906
- # The Prevention of Corruption Act 1916
- # Law Commission Report - 1998
- # OECD Convention - 1998
- # GRECO - Established 1999

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## REFLECTING CORRUPT BEHAVIOUR BY CHARGES OTHER THAN CORRUPTION:

- # Misconduct in a Public Office;
- # Dishonesty / False Accounting Offences;
- # Conspiracy to Defraud;
- # Perverting the Course of Public Justice.

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## REFORM OF CORRUPTION LAW (JUNE 2000)

- # Responded to:
  - Law Commission
  - GRECO / OECD
- # Some proposed responses
- # Abolish presumption of corruption
- # Public / Private
- # Jurisdictional Issues

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## ANTI-TERRORISM, CRIME & SECURITY ACT 2001

- # Links to corruption
- # Corruption provisions
  - Activities of UK nationals abroad
  - Foreign officials abroad
  - Presumption removed

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## **DRAFT CORRUPTION BILL (Publ. 2003)**

- ## Abolition of presumption
- ## Definition of “corruption”
- ## Trading in influence
- ## Members of Parliament
- ## Public / Private

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## **CORRUPTION**

**Private to Private**

**Public Sector**

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## **CORRUPTORS/CORRUPTTEES BEFORE THE UK COURTS**

- # Local Public Officials;
- # Police Officers and their criminal associates;
- # Other Law Enforcement Officers/Officials;
- # Lawyers and Other Professionals;
- # Public Officials within Government Departments;
- # Commercial / Business.

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## **A METHODOLOGY:**

- # Specialisation: Investigators & Prosecutors;
- # Early Legal Advice;
- # Reporting Mechanisms;
- # Reactive Investigations: Recognising the use and the limitations;
- # Proactive Investigations: Focus; What do we want? How can we achieve that? Practical limitations?
- # Intellectual honesty and consistency.

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**CPS**

- Prosecutions as a result of:-
  - (i) Reactive investigations
  - (ii) Proactive investigations

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## **THE PROACTIVE APPROACH**

- Will feature in investigations re bribery overseas.
- Early advice by the CPS.
- A mistake early on in the investigation may taint everything thereafter.
- Risk of entrapment.

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## COVERT INVESTIGATIONS: TOOLS

- Undercover Deployment
- Participating Sources
- Probes (listening devices + video)
- Wiretaps
- Communications Data
- Surveillance

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## COVERT DEPLOYMENT: AUTHORISATIONS & SAFEGUARDS

- The Authorisation Procedure + The Role of the Authorising Officer
- Judicial Oversight (very limited!)
- Renewals of Authorisations
- Scrutiny at Court

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## THE INTEGRITY TEST

- # 'Random Virtue' or 'Intelligence Led'?
- # The Scenario: Feasibility, Credibility, Legality, Necessity, Proportionality;
- # For how long should it 'run'?
- # Strengths & Weaknesses.

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## ENTRAPMENT

- What amounts to "Entrapment"?
- # End of active/passive distinction
  - # The "unexceptional opportunity" test
- What justifies providing an opportunity to offend?
- # Reasonable suspicion
  - # Not predisposition
  - # Proper supervision of the operation

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## “LEGALLY AUDACIOUS” OPERATIONS

- # Courts and Jurors do not like “created” scenarios. The greater the elaboration/artificiality the more likely that Judge and/or Jury will cry “Entrapment”.
- # But, in general, the more serious/the more difficult to detect the suspected offence, the wider the ambit of acceptable activity of those investigating.

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## REACTIVE CASES

- # Main witness may be disgruntled/an accomplice/unreliable/incapable of belief.
- # Can the witness be guarded against attack?
  - (a) Supporting evidence;
  - (b) Free from unacceptable inducement
- # Are there any witnesses willing to come forward?
  - Company/organisation/colleague “loyalty”

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## PUTTING TOGETHER THE PROSECUTION CASE IN AN OVERSEAS CORRUPTION CASE

### # Some issues:

- (i) Jurisdiction (where will the trial take place?)
- (ii) The evidence-gathering (Mutual Legal Assistance, Disclosure problems, claims of immunity locally)
- (iii) Will witnesses attend?

### # Who will be charged?

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## COMMON PROBLEMS IN CASES CONCERNING LAW ENFORCEMENT CORRUPTION

- # **The nature of the evidence: no honest officers having come forward as witnesses against colleagues.**
- # **Resident informants: type of person; need for cleansing; need for corroboration. Motives for lying.**
- # **Potential witness who is willing to give a statement and evidence, but is unwilling to plead guilty to his part before the court.**
- # **Disclosure / PII applications.**
- # **Prior destruction of papers / unavailability of witnesses.**
- # **Production of exhibits, when person originally producing is himself a suspect.**
- # **Reluctance of juries to convict.**

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## ADMISSIBILITY OF EVIDENCE

- # Technical surveillance
- # Undercover operatives
- # Informants
- # Resident sources
- # Integrity Tests

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## DISCLOSURE: THE CURRENT POSITION

Disclosure is a 3 stage process:

- # REVELATION by Police to CPS
- # DISCLOSURE by CPS to the Defence
- # DEPLOYMENT (with the leave of the Judge) in cross examination

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## **MONEY LAUNDERING**

### **Case Type:**

- **Not enough evidence for prosecution of actual crimes**
- **Organised criminals who have transformed from criminals to businessmen**
- **Professionals – accountants, lawyers, bank employees who assist in concealing the true source or origins from crime**
- **Difficult to gather evidence to prosecute due to ruthless crime organisations – long investigations; need for persons who will follow the case throughout its history at all levels**
- **Multi agency approach – sharing intelligence and evidence**
- **Case examples**