



The Law Society

**Response of the Law Society of England and Wales
to 'Swift and Sure Justice: The Government's Plans
for Reform of the Criminal Justice System'**

October 2012



Law Society response to 'Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System'

Introduction

The Law Society of England and Wales is the representative body for over 145,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, government and others. This response has been prepared on behalf of the Law Society by members of its specialist Criminal Law Committee. The Committee is drawn from a wide range of backgrounds, including a number of prosecution and defence solicitors, together with a member of the Justices' Clerks' Society, and an academic lawyer.

The Law Society welcomes the opportunity to respond to the white paper, 'Swift and Sure: the Government's Plans for Reform of the Criminal Justice System'.

Opening observations

The white paper seeks to achieve swift and sure justice. The expression 'justice delayed is justice denied' is said to be central. However, speed and sure justice are not easy bedfellows. Justice is not simply the conviction of the guilty, but also, and importantly, the acquittal of the innocent. The Law Society agrees that it is in everybody's interests for criminal cases to be resolved swiftly, but this must be consistent with achieving a just result. There are many points in this paper which we support. However, it must be recognised that the defendant and defence solicitors are not the only players in the process and that delays can be caused by other agencies in the system, particularly those of the state. The failure to take this into account is a major flaw in the paper's proposals.

A criminal finding against an individual is likely to have a significant effect on his or her life. Quite rightly, where an individual is guilty, the stigma involved is substantial. This means that it is essential that there should be appropriate safeguards to ensure that the innocent are protected: this means that the prosecution must provide evidence to convict to the criminal standard and that the accused must be able to see that evidence (and also evidence which points against guilt) and have the opportunity to seek advice on his or her position. The Law Society supports initiatives which encourage individuals who are guilty to plead early but that plea needs to be made with full advice as to such matters as whether there are defences, the likely sentence and so forth.

The Law Society carried out a study in 2011 and published 'Improving efficiency in the criminal justice system: a new approach', to identify reforms to make the criminal justice system cheaper and more efficient. A copy of this is attached and we commend it to the Ministry of Justice. It is disappointing that none of these reforms are proposed in the consultation document.

We are particularly concerned that the thrust of this paper may be to reduce the ability of defendants to obtain proper advice and representation in order to make appropriate decisions on pleas and their defence. In 1999, the Narey review produced expedited court hearings for anticipated guilty pleas in the magistrates court (Early First Hearings) which largely worked well because it was essential that the prosecution produced a comprehensive bundle for the defence.

Subsequent initiatives such as Criminal Justice - Simple, Speedy, Summary ('CJSSS'), 'Stop Delaying Justice' and the Early Guilty Pleas Courts in the Crown

Court, however, have tended to reduce the disclosure provided to the defence and, during the much trumpeted riot courts following the August 2011 disturbances, defence lawyers were expected to advise their clients with a minimum of evidence, when bail was likely to be refused and a custodial sentence inevitable.

Moreover, even in the most serious cases heard at the Crown Court, the defence bundle is often served late, but the defence are expected nonetheless to serve a Defence Case Statement before the statutory period has elapsed, and be ready for trial in a matter of only a few weeks.

We are very concerned that simply concentrating on processing cases speedily is likely to reduce the safeguards that exist to protect the innocent, and the risk of a miscarriages of justice will be increased significantly.

Moreover, the delay between the date of the offence and disposal will not be cured by further reducing defence preparation time. The principal delay is usually caused by the long period between arrest and charge (often many months) over which the defence have no control, while the police and the Crown Prosecution Service ('CPS') build their case in what might be thought to be a leisurely fashion. Only when the defence are engaged, post-charge, is there an immediate emphasis on speed.

The Narey model advocated early court hearings following charge, but in Bethnal Green Police Station, for example, a charge in early September results in a court date in December. However, the defence will not be served with any evidence during this period and, instead of receiving Advance Disclosure, as per the Narey procedure, will in December receive only minimal 'streamlined disclosure' on which to advise the defendant as to plea and the strength of the case against him or her. The only beneficiary of the delay is the prosecution and, possibly, the guilty defendant. Such a system leads to neither swift nor sure justice, and the measures in the white paper do not address these deficiencies.

As more defendants are unrepresented, and without legal advice, because of the reductions in the availability of legal aid, they will require more time to prepare and present the cases themselves. The system needs to focus on ensuring that prosecution evidence is ready and provided at the earliest possible point so that the defence can play its part in ensuring that cases are handled swiftly.

The white paper contains a number of ideas for quite significant changes to the criminal justice system - for example, neighbourhood justice panels, and flexible courts - but with no detail as to the nature of the changes, how they will work and how their success will be evaluated. Some proposals seem to be more suitable for a consultative green, rather than white, paper. We are concerned that the government appears to be saying 'this is what we intend to do; we will pilot these new ideas and then enact legislation', with very little real consultation with practitioners as how the changes will work in practice.

In chapter 8 on the Impact, and Equalities Impact Assessments, paragraph 186 acknowledges that there are some gaps in the research and the statistical evidence about the potential impact of the proposals. This appears to confirm these observations, and suggests that the government has not consulted sufficiently.

We intend to consider and comment on those aspects of the white paper that are of the most concern.

Chapter 1 - Introduction

The causes of waste and failure in the criminal justice system

As discussed above, in our report 'Improving efficiency in the criminal justice system: a new approach', we set out a number of ways in which the system can be improved, without affecting its fairness. Improving communication between the defence and the prosecution, including by the increased use of technology, allowing legal aid applications to be made electronically, and improving the ability of solicitors to visit their clients in custody will all significantly increase efficiency. We are pleased to be involved in discussions with Chair of the CJS Digitisation Project Programme Board in order to provide a defence perspective on the move towards a digital, rather than paper-based, criminal justice system. These are all areas where there is strong scope for avoiding waste and failure.

Paragraph 7 states that '[D]elay can be seen as a tactic that can be used to favour a defendant...', and 'that we should not be surprised that they [victims] feel that the criminal justice system seems to put the interests of the defendants above their own'. The fact is that it is in everybody's interests for the right person to be convicted. A conviction has profound consequences for the remainder of the defendant's life. These will be deserved if the defendant is guilty but it is hard to see how the interests of victims will be advanced if the wrong person is convicted.

The Law Society holds no brief for defendants who take advantage of the system to delay their inevitable conviction. They are, however, entitled to see the full evidence in the case and have the opportunity to raise defences. Some defendants will exploit provisions which are properly there to protect the innocent, but that is not a reason to abolish those provisions. The Society would stress that defence practitioners have no interest in prolonging cases. Defence lawyers have been subject to significant reductions in legal aid fees, and are paid on the basis of a fixed, standard or graduated fee scheme for criminal cases. The incentive on them is for cases to proceed quickly.

In our members' experience, a significant number of wasted hearings and adjournments occur because the CPS has not served its papers on time, or because the defendant has not been brought to court on time from prison, and these delays are as frustrating for the defence practitioner as for anybody else. The report needs to recognise that this is the case and that this is as important as defendants' behaviour.

The need for a limit on police pre-charge bail pending investigation

The major cause of delay between an offence being alleged to have occurred, and the finalisation of proceedings in court, is the amount of time that suspects are subject to police bail while the police investigate. It is right that the police should have a reasonable time in which to investigate a case thoroughly, gathering all relevant evidence, including that which points away from the defendant's guilt as well as towards it.

However, in our members' experience there are often very long and apparently unnecessary delays until the police and the CPS make the decision to charge a suspect, resulting in police bail continuing for several months, if not years.

In our view, there should be a limit on the amount of time people can be subject to police bail, with a requirement for the police to apply to a magistrate for an extension of time to demonstrate that they are conducting the investigation with expedition.

We were surprised and disappointed by the omission from the white paper of any mention of delay caused by lengthy and inefficient investigations of offences, where police arrest a person, release them on pre-charge police bail, and then continually re-bail them while the investigation meanders along in an apparently unfocussed way.

In 2011, during the period between publication of the High Court decision in *Hookway* [2011] EWHC 1578 (Admin), which cast doubt on the legality of police bail stopping the 'custody detention clock', and the emergency legislation which restored the hitherto accepted interpretation of the PACE provisions, a brief but important public debate occurred. A number of legal organisations and practitioners, including the Law Society, suggested there is a need for a limit on the ability of the police to keep people on bail, often unnecessarily and often for long periods of time. The Law Society wrote to the Home Secretary in this regard.

We were therefore pleased when the Minister of State, Home Office, Baroness Browning, in moving the second reading of the Police (Detention and Bail) Bill, on 12 July 2011 (Lords Hansard, col 610) stated :

"I am also aware that, since the Hookway judgment, there has been some commentary from within the legal community - particularly from those acting on behalf of those suspected of an offence - which has sought to express concerns that the Hookway judgment is some sort of warning to the police that the courts will not put up with the way that they use pre-charge bail. We will take account of the wider issues of the way the police use bail, but in this particular case, nothing in the terms of the written judgment indicates that Mr Justice McCombe had any underlying concerns in relation to the operation of police bail; he seems to have reached his judgment purely on the basis of his interpretation of the statute.

Following a lot of discussion and some correspondence - indeed, I have had discussions with noble Lords in the House - I am aware of the concerns that have been expressed, including by Liberty, Justice, the Law Society and others, about excessive duration of police bail in some cases and about unduly onerous conditions attached to the bail. As my right honourable friend the Minister for Policing and Justice indicated in the other place, we are not able in this Bill to deal with any wider issues about the Police and Criminal Evidence Act. Moreover, it would be wrong to make changes to police bail in haste and without proper examination of the issues and consultation with the police, the Crown Prosecution Service, the legal profession and others. However, we will reflect carefully on the debates on the Bill, both in this House and in the other place. *In relation to these concerns, it is our intention in autumn this year to consult on matters relating to bail more generally and to the conditions that apply to them.*

I hope the House will be reassured that we are most certainly listening to people and intend to consult on those wider issues that have come to the forefront as a result of the legislation before us... " [emphasis added]"

And at column 625:

"Therefore, any and all input to that review in advance of its terms of reference being drawn up will be welcome. I can tell your Lordships' House and the wider community today that, further to the point raised by the noble Lord, Lord Hunt, about members of the public, there is a wide community of interest in this whole area. We would welcome, even before the autumn, any written submissions that will help us to set the terms of reference for that review, which will be wide and far-reaching. I hope it is of help to the House to know that."

Following a letter from the Home Secretary to the then President of the Law Society in July 2011, in which she brought to his attention this announcement, we contacted officials in the Home Office Police Powers Team in the Police Transparency Unit in September 2011, to enquire as to how they intended to conduct the review and the consultation process. We received a reply in October 2011, stating that they were still settling the scope and timing of the review, pending the results of some academic research underway that they may want to include in the consultation. We called on our members to provide details of cases in which they acted of clients subject to police bail facing lengthy investigations, details of which we intend to submit to the review.

No announcement of the review has been forthcoming.

We had very much hoped that an announcement of the review of pre-charge police bail would be included in the white paper, but unfortunately the issue of delay caused by lengthy periods of pre-charge bail is not referred to at all, and there is no mention of the promised review. Given the dual role of the Minister of State for policing and criminal justice, who straddles both the Home Office and Ministry of Justice, this is even less understandable.

Chapter 2 - the Government's wider programme of reform

We are disappointed to see the repetition of the government's apparent belief that defence lawyers determine the plea entered by defendants. This conclusion arises from the comments made at paragraph 63 which, following a discussion of the October 2011 changes to legal aid, suggested that the reforms to the fee structure 'seek to put in place the right incentives for those who acknowledge their guilt to do so at the earliest stage'. It is defendants who 'acknowledge their guilt', and not their lawyers. The new fee structure in fact penalises defence solicitors for changes of mind as to plea by defendants, and changes to the proffered charge or the acceptance of a plea by prosecutors, and as such, is both illogical and unfair.

Chapter 3 - Swift justice

Flexible courts

Paragraph 82 refers to the possible introduction of flexible court hours, apparently to enable the criminal justice system to respond in a flexible way to the needs of the public, and ensure offenders face the consequences of their actions quickly. It is said the idea is not to simply require courts to have longer opening hours, which will of course be very costly in terms of additional staff time, but to allow the courts to design local flexibility to accommodate the needs of lay court users.

We understand that this idea was prompted by the response of the courts to the widespread public disorder of August 2011. It does not necessarily follow that the

ability of the courts to cope with a time of emergency can readily be replicated to become a matter of routine.

Some of the options for flexible opening are sensible, for example an earlier than normal starting time may enable more efficient use of Prison-to-Court video links to deal quickly with simple matters involving remanded prisoners.

However, the Law Society has seen no evidence that there is any demand, either because of a backlog of cases, or from witnesses or defendants to attend court outside normal hours or at the weekend. We are unaware of any surveys or other research to back this. Such research should have taken place before even the pilot schemes were established, because it is inevitable that these will create additional cost.

There has been a concerning lack of meaningful local consultation with defence practitioners. We were informed of the plans to invite local court areas to pilot flexible courts by Ministry officials, and have been informed of the locally developed initiatives, albeit as they are about to commence rather than at an earlier planning stage. We are also aware that there have been discussions at a local level about the pilots, some of which have involved defence solicitors, but again at a late stage in the planning process. This has led to a strong feeling that, rather than being consulted and involved in the initial planning of these changes, the Law Society and local defence solicitors have simply been presented with a decision on the pilot of flexible working which, if it involves weekend court opening in particular, a large number of solicitor firms will find extremely difficult to staff, and very costly. This has happened at a time when many of these firms are undergoing severe financial difficulties.

While it is true that working patterns in society generally have, to some extent, changed, it is important to remember that solicitors and others have organised their businesses round the way in which the existing system works. It will not be immediately easy for them to adjust, given that many people have religious commitments, many engage in sporting activities on the weekend, and that significant renegotiation of contracts and other employment issues may be necessary. It will undoubtedly place additional costs on the profession and it is wrong for these to be imposed through pilots and without adequate time for the profession to adjust.

The Crown Court Early Guilty Plea scheme (EGPS) and 'Stop delaying justice' in the Magistrates' courts

We welcome the EGPS, as described in paragraph 87, but suggest that it requires the CPS to play its part by ensuring that cases are identified as possible candidates for fast-tracking, and then ensuring that adequate disclosure of the key features of the prosecution case is given to the defence at an early stage in the proceedings. Where the CPS does not do so, effective sanctions should be available. With proper timetabling the EGPS should work well. However, if the CPS do not provide adequate disclosure and there is pressure on the defendant to plead it becomes unfair.

We understand the case for the 'Stop Delaying Justice' initiative in the Magistrates' Court (paragraph 90), but would suggest that it can only work fairly where two conditions exist: first, that the CPS plays its part by providing early and sufficient disclosure of its case; and second, that the court, through its staff, consider and decide on applications for legal aid in a timely manner. With proper disclosure and funding in place, the defence solicitor is then in a position perform their function,

which is to assist the court while properly protecting and advancing the interests of their client.

Concern arises where these basic conditions are not met, but there continues to be pressure on the defence to progress the case. It is, in our view, simply unfair to require the defendant to enter a plea where there is a lack of disclosure of the prosecution case against him or her, and at a time when legal aid is not in place. The burden of proof is on the CPS, and we do not accept that defendants should be required to make the often life-changing decision about their plea in the absence of adequate disclosure and, essentially, legal representation. Magistrates and District Judges should grant an adjournments where there are good reasons to do so. The strictness of approach to granting adjournments should be applied even-handedly to both the defence and the prosecution, so that either party be allowed an adjournment where there is a good case for one.

Streamlined forensic reporting

We support this initiative, as described at paragraph 94. It is a very sensible way to provide forensic information in simple cases, and/or situations, where it is unlikely that the forensic evidence will be disputed. In the event the evidence is disputed, and further forensic analysis is required this can be requested by the defence.

Chapter 4 - Sure Justice

A 'Justice Test' for out-of-court disposals and oversight of out-of-court disposals

The use of out-of-court disposals has grown massively in the past decade, without any proper oversight. It is essential that all such disposals are subject to effective scrutiny in order that the public can be confident that they are being used fairly and appropriately.

There is a concern that the police may use cautions and penalty notices to deal with behaviour that is, objectively, not so serious that it needs to be subject to any criminal sanction, resulting in the criminalisation of large numbers of people, the young in particular, who will then have a disclosable police record which will inhibit their career. We are particularly concerned about the potential for cases where the police are aware there is insufficient evidence for the CPS to charge, and choose instead to offer the suspect a caution.

On the other hand, there have been reports of cases of serious offences which should have been prosecuted, being dealt with by way of an out-of-court disposal.

The Law Society agrees that a Justice Test should be developed for the police and prosecutors to use as an aide when considering the appropriateness of an out-of-court disposal, as discussed at paragraphs 109 to 114, but considers that it may be difficult to produce a test that both sets out meaningfully the relevant criteria, and is easy for police constables to apply in the context of an arrest on the street. We have seen the interim Test, which was trialled in two forces in September 2012, and will be interested to see the evaluation of this stage of the work.

We also support independent oversight of out-of-court disposals, to monitor that the police are using such disposals appropriately. We will consider with interest plans for how this will be achieved, and to what extent this information will be published.

Re-conceiving summary justice and Neighbourhood Justice Panels ('NJPs') (paragraphs 117-119)

There is very little detail in the white paper about what NJPs are intended to be, which makes it difficult to comment. This new way of dealing with offences appears to be intended to apply to offences that would either attract an out-of-court disposal, and minor summary matters that would go to court. It is noted that NJPs already exist, in Chard, Somerset, and in Sheffield.

It is said in the Executive Summary, at page 8, that what is proposed is not an alternative to the formal criminal justice system but a measured return of power and responsibility to communities to resolve less serious crimes quickly and rigorously. However, the proposed panels will, nevertheless, be empowered to deal with criminal offences, a power which has hitherto been the sole preserve of the courts (aside from offences dealt with by out-of-court disposals). Safeguards must ensure that any such panel proceeds fairly and with due process protections built in.

There are a number of questions that arise, and there is a noticeable lack of detail in the white paper about them. What sort of cases will NJPs deal with? Is it the case that matters that may normally result in an out-of-court disposal will be diverted to a NJP, or will cases that would otherwise go to court be sent to a NJP? Does there have to be an admission made to refer it to a NJP? Who will make the decision to refer a case to a NJP? Who will compose the panels? Who will be responsible for appointing them, and what training will they have?

There is little detail as to what the 'sentencing' powers of a NJP will be, aside from references to restorative justice. Will convictions, or some other police record, follow from these procedures? Will the Rehabilitation of Offenders Act provisions on spent convictions and records apply?

The white paper is completely silent on the question of rights to legal representation or legal advice. Will people have a right to be represented, or will people simply have a right to get advice? What duty solicitor arrangements will there be? The Human Rights Act article 6 right to a lawyer would apply to such proceedings, because they are determinative of a criminal case and could result in a criminal penalty.

It may be that NJPs could be considered a positive change, provided they are dealing with minor matters that would normally be dealt by an out-of-court disposal, rather than cases that otherwise would go to court. It could be better for the community as a whole and could improve confidence in the criminal justice system, that rather than a police officer cautioning a minor offender, out of public view, that they are given a restorative outcome. For example, where a number of youths have destroyed a public garden, the community sees them ordered to restore that garden.

However, the criteria for referring a case to a NJP will need to be very clearly defined, as well as the other questions referred to above answered. Detailed proposals should be developed and consulted upon, rather than proceeding in an ad hoc way, as is apparently happening in Somerset and Sheffield.

Magistrates sitting at places others than court buildings

In the Executive Summary (page 7, penultimate paragraph) reference is made to magistrates sitting alone to deal with 'certain low-level uncontested cases, in some cases outside traditional court buildings'. While not specifically mentioned in the main text dealing with the role of magistrates, the idea of magistrates sitting in other

premises is alluded to in paragraph 120, where it refers to the benefits to community concerns of a more 'localised approach'. There is little detail in the paper of the kind of other places that may be considered suitable, but press reports suggest consideration has been given to community centres, shopping malls and even police stations.

We have considerable concerns with regard to this proposal, both as to the principle, and from a practical perspective. As to the former, we are concerned that public respect for courts of law may diminish if their proceedings take place in such alternative premises. Attending at formal court premises helps to instil respect for the law, which is an important factor in maintaining the social fabric. If citizens are to take criminal justice seriously it should be done in an appropriate setting, and is conducted in a formal manner.

We do not consider it appropriate that magistrates' courts convene in police stations. This would completely undermine the idea that the courts are independent of the police, and would represent a retrograde move back to the time of 'police courts'.

On the practical side, alternative premises will need to be bought or rented, and possibly modified, and that will inevitably result in additional costs. There will be a need for additional court clerks and duty solicitors to be present, which will increase HMCTS and legal aid costs, which, in view of resource constraints, will have to be met by reducing some other part of the Ministry of Justice budget. The whole idea of courts sitting in non-court venues would appear to undermine the policy behind the recent courts closure programme.

Magistrates sitting on their own

We have no objection to magistrates' courts comprised of a single lay magistrates, rather than always having the traditional bench of two or three (paragraph 121). We note that there was once a power for single lay magistrates to hear contested committals. Presumably they would be sitting with a legal adviser.

Regulatory offences

Paragraph 122 refers to large-volume regulatory offences which are not contested and in which the defendant does not play an active role, which the paper suggests could be dealt with by a single magistrate. Perhaps this is the opportunity to query why more such offences, particularly low-level traffic matters not involving disqualification or a licence endorsement, TV licence offences, and fare evasion, should be the subject of criminal sanctions or whether they are better dealt with by way of on-the-spot fines, or by a different system of adjudication, in the same way as parking offences?

Retaining more cases in the Magistrates' Court (paragraph 124)

We are very pleased to note the Government's commitment to defending trial by jury, and that it has no plans to restrict the defendant's right to elect Crown Court trial. With that commitment in mind, the Law Society supports the proposal that there should be a restriction on the power of magistrates to commit a case to the Crown Court. This could be on the basis of a monetary threshold, as is suggested and currently applies to criminal damage cases.

We suggest that the restrictions on the power to commit for sentence, where a Magistrates' court has accepted jurisdiction and heard the trial, as enacted in the Criminal Justice Act 2003, also be brought into force.

Public service reform in probation services and community work provision

Paragraph 132 of the paper suggests that the management of low risk offenders in the community, i.e. probation services, and provision of unpaid work requirements be opened to competition from private firms. The firms will be paid on the basis of results. We understand and share the concerns expressed by HM Chief Inspector of Probation, in her recent response to the 'Punishment and Reform: Effective Probation Services' consultation, that there is a significant risk to public safety arising from the ill-planned and sudden outsourcing of offender management functions where the risk assessment process is not robust, and that the private market in offender management is not sufficiently developed.

The G4S Olympics contract shows the danger of entrusting vital functions involving public safety to private firms, who are motivated solely by profit. There is a serious risk to the credibility of the criminal justice system if contracts for probation services or unpaid work requirements are awarded to private companies that are not able to provide them. For example, if the company does not deploy sufficient staff to supervise community work, courts will soon decline to make such orders; if people have to report for duty six months after their sentence is handed down, this will not be speedy justice.

Contracting with companies that will naturally seek to keep the price of their service as low as possible may lead to major problems in the provision of vital justice functions. The unhappy experience of Applied Language Solutions in the provision of interpreting and translation services to HMCTS is clear evidence of this risk.

We note, again with concern, that consideration is being given to applying this procurement model to youth offender services as well.

Public service reform in the courts

Paragraph 134 states that the Government intends to determine what role competition can play in the provision of services in the criminal courts, drawing a clear distinction between judicial services and non-judicial services.

We agree that this distinction is very important. Legal advisers to magistrates must be included in the category of judicial services, given their role in providing advice to the lay bench, in exercising delegated powers of magistrates, and particularly in view of the assistance they give to unrepresented defendants. They have an important constitutionally quasi-judicial role in relation to case management, one that is not amenable to commercial considerations such as efficiency targets, or the profit motive of a private firm. The legal advisers role should not be outsourced.

Similarly, we would not agree that those who administer legal aid applications, and apply the interests justice test, be out-sourced.

However, back-office court staff duties of a purely administrative nature should be performed in the most efficient and cost-effective way, and we have no fundamental objection to these roles being undertaken by private sector providers.

Police powers in relation to the prosecution of offences

In the Executive Summary (page 6) reference is made to the Home Secretary's recent announcement that, in addition to police powers to prosecute low-level traffic offences, the police will prosecute these cases where there is no plea or the defendant fails to appear. We have no objection to this extension of police prosecuting powers, and agree this will avoid adjournments and the need to refer such cases to the CPS.

However, the paper suggests extending these police-led prosecutions to a wider range of low-level offences. This is somewhat vague. In the corresponding chapter 'Swift Justice', reference is made to the pilot scheme where police are now making the decision on charge in shoplifting offences where there is an anticipated 'not guilty' plea.

Aside from this pilot, we would need to consider exactly what offences were under consideration to be prosecuted by the police and not by the CPS. This raises concern about lack of independence in the prosecutorial decision-making process, something the creation of the CPS was intended to remedy. In the case of public order and police-related offences (e.g. assault police, resist arrest), it is certainly not in the interests of justice that one party involved in the alleged offence is prosecuting their own case.

Chapter 5 - Efficient justice through technology

Use of video-links in court proceedings

We support the use of video technology in the criminal justice system, where appropriate, and can see the clear benefits from more widespread use of court-to-prison video links, not only for the conduct of simple court hearings, but also for allowing solicitors to communicate with their clients in custody.

Paragraph 145 states that the government believes that, where appropriate, video evidence should be used routinely in court proceedings. We are pleased it is accepted that there are some circumstances in which evidence should only be given and challenged in person, and that the judiciary will always make the final decision. For example, we do not believe that defendants should give their evidence in a trial by video-link, because they have a right to be present in the courtroom and need to provide instructions to their solicitor during the course of a trial. The defendant's physical presence during their trial is essential. Indeed, the defendant should always be physically present at their first appearance in the Magistrates' court, as well as in the Crown Court at the Plea and Case Management Hearing, as they need to be present to provide instructions, or to reconsider their plea if discussions with the CPS have resolved a dispute.

However, we have no fundamental difficulty with prosecution witnesses giving their evidence by video-link, where appropriate. It may be that the impact of evidence is diminished if given by video-link, and it is suggested that research should be undertaken in relation to the wider impact of using this technology over time on conviction rates, and on witnesses' perception of the criminal justice system.

In paragraph 149 it is suggested that the use of video technology be extended by legislation to allow police officers to apply to magistrates for search warrants and make applications to extend the detention clock. We can see efficiency benefits

arising from both these changes. These would presumably involve changes to the Police and Criminal Evidence Act 1984.

Of more concern is the suggestion that police officers be allowed to use video technology to interview prisoners, as this could have a potentially adverse effect on suspects' right to access to a lawyer and legal advice. If this idea is to be developed care will need to be given to enabling those interviewed to exercise their right to advice.

However, we maintain our serious concern about, and opposition to, the use of video technology for first hearings, so called 'virtual courts'. This concern is based on considerations relating to the quality of justice that is possible where the defendant is physically away from the court and, usually, from their solicitor, at the first hearing. It is invariably an extremely important point in the proceedings when the decisions made, particularly in relation to bail, will significantly affect the defendant, and how the case subsequently proceeds. The use of the video-link inhibits communication, either between the defendant and their solicitor, or between the defence solicitor and the prosecutor and court. We have made our opposition to first hearing virtual courts widely known.

Chapter 6 - Transparent Justice

Broadcasting sentencing in the Crown Court (paragraph 158)

We support wholeheartedly the principle of open justice, particularly as a way to improve public scrutiny of, and confidence in, the courts. We agree that the complete legislative ban on cameras in court should be removed. We understand that the broadcasting of Court of Appeal proceedings will start in the near future.

The paper states that the Government is working closely with the judiciary to take forward work to allow the broadcasting of judges' sentencing remarks in the Crown Court. If this is introduced, we suggest it is essential that defendants should have the right to make representations about whether their sentencing remarks should be broadcast. Personal mitigation in relation to the defendant can be of a very sensitive nature, and may include references to others, such as character witnesses, who may not want to be associated so publicly with a particular defendant, if the case is televised.