WORKING IN THE INTERESTS OF JUSTICE?
THE CROWN PROSECUTION SERVICE AND THE
PROSECUTION OF PUBLIC ORDER OFFENCES

by Roger Woods

ABSTRACT

In 1985 the power of the prosecution of offences was taken away from the police. The Crown Prosecution Service was created to provide an efficient, fair and independent review of cases accountable to Parliament and the public. The importance of this separation of powers goes to the constitutional heart of the criminal justice process.

This study is a comprehensive analysis of how prosecutors exercised their statutory powers in the 1990s particularly by reference to the prosecution of public order offences. The thesis provides an extensive analysis of the law relating to public order offences as well as a detailed picture of the prosecution of public order offences in the Manchester City magistrates' court through the use of three methods of case study data collection (a questionnaire, a cases survey and case files).

The findings of the research suggest that the Crown Prosecution Service plays a re-active rather than pro-active role in the decision-making concerning prosecutions for public order offences. The police are the dominant partner in the relationship between the police and Crown Prosecution Service who rely almost entirely on the police for the information available in prosecution cases.

There is a need for change in the way public order offences are prosecuted so that the Crown Prosecution Service really does provide an effective and independent review of cases. Only then will the Crown Prosecution Service be working in the interests of justice and have earned its full trust and respect as a member of the criminal justice system.
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I wish to acknowledge the many people who assisted me in this project which grew out of my thoughts as to the prosecution of public order offences and the role and future of the Crown Prosecution Service; little did I realise how much of my life it would come to dominate! I chose to study public order offences because of the diversity of the subject knowing that there was no previous research with regard to the prosecution of these offences.

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prosecution of public order offences.

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and do not reflect in any way the official policies of the Crown Prosecution Service.

ROGER WOODS

December 2000
ABBREVIATIONS

"The Act" unless the context shows otherwise refers to the Public Order Act 1986.

A.C.C.P. Assistant Chief Crown Prosecutor
B.C.P. Branch Crown Prosecutor
C.C.P. Chief Crown Prosecutor
CDA Crime and Disorder Act 1998
CJPOA Criminal Justice and Public Order Act 1994
C.P. Crown Prosecutor
CPIA Criminal Procedure and Investigations Act 1996
C.P.S. Crown Prosecution Service
D.C.W. Designated Caseworker
D.P.P. Director of Public Prosecutions
ECHR European Convention on Human Rights
HRA Human Rights Act 1998
PACE Police and Criminal Evidence Act 1984
P.C.P. Principal Crown Prosecutor
PFHA Protection from Harassment Act 1997
PICA Public Interest Case Assessment Schemes
POA Public Order Act 1986
POOA Prosecution of Offences Act 1985
P.T.L. Prosecution Team Leader
S.C.P. Senior Crown Prosecutor
LIST OF CASES

Albert v Lavin [1981] 3 All E R 878
Allen and Others v Ireland [1984] Crim.L.R. 500
Brutus v Cozens [1972] 2 All E R 1297
Chambers and Edwards v Director of Public Prosecutions [1995] Crim.L.R. 896
Cobb v Director of Public Prosecutions (1992) 156 JPN 330
Cooke v Director of Public Prosecutions [1992] Crim.L.R.746
D.H. Edmonds Ltd v East Sussex Police Authority *Times* 15th July 1988
Director of Public Prosecutions v Baillie [1995] Crim.L.R.426
Director of Public Prosecutions v Barnard and Others *Times* 9th November 1999
Director of Public Prosecutions v Clarke and Others *Times* 27th August 1991
Director of Public Prosecutions v Cotcher and Another *Times* 29th December 1992
Director of Public Prosecutions v Fidler and Another *Times* 27th August 1991
Director of Public Prosecutions v Hancock and Tuttle [1995] Crim.L.R. 139
Director of Public Prosecutions v Jones and Another *Times* 5th March 1999
Director of Public Prosecutions v Kitching [1990] Crim.L.R.394
Eluzouli-Daf v Commissioner of Police of the Metropolis and Another [1995] 1 All E.R. 833
Groom v Director of Public Prosecutions [1991] Crim.L.R.713
Huntington Life Sciences Limited v Curtin and Others *Times* 11th December 1997
I v Director of Public Prosecutions [2000] Crim.L.R. 45
Krumpa and Anderson v Director of Public Prosecutions [1989] Crim.L.R. 295;

*Times* 31st December 1988

Lodge v Director of Public Prosecutions *Times* 26th October 1988

M v Director of Public Prosecutions, H v Director of Public Prosecutions, I v Director of Public Prosecutions *Justice of the Peace* 26th June 1999

Masterson and another v Holden [1986] 3 All E R 39

McMahhon and Hannam v Director of Public Prosecutions *Times* 18th January 1988

Nawrot and Shaler v Director of Public Prosecutions [1988] Crim.L.R. 107


Parkin v Norman; Valentine v Lilley [1982] 2 All E R 583


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R v Ball [1989] Crim.L.R. 579

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R v Burnham [1995] Crim.L.R. 491

R v Burstow; R v Ireland House of Lords 24th July 1997

R v Carson *Times* 20th April 1990

R v Chief Constable of the Kent Constabulary and Another, ex parte L (a minor); R v Director of Public Prosecutions, ex parte B (a minor) [1993] 1 All E R 756


R v Crown Prosecution Service Ex parte Panayiotou Unreported 16th July 1996

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R v Director of Public Prosecutions Ex parte C Times 7th March 1994
R v Director of Public Prosecutions Ex parte P Unreported 16th July 1996
R v Gaskin Times 15th August 1996
R v Greaterex Times 2nd April 1998
R v Hebron; R v Spencer Times 12th May 1989
R v Horseferry Road Justices, Ex parte Siadatan [1991] 1 All E R 324; Times 11th April 1990; Independent 11th April 1990
R v Howell [1981] 3 All E R 383
R v Inland Revenue Commissioners, ex parte Mead and Another [1993] Crim.L.R. 772
R v Jefferson; R v Skerrit; R v Readman; R v Keogh [1994] 1 All E R 270; [1993] Crim.L.R. 880; Times 22nd June 1993
R v Lincoln Crown Court, ex parte Jude Times 30th April 1997
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R v Marylebone Magistrates' Court, Ex parte Perry and Others [1992] Crim.L.R. 514
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R v Stanley and Knight [1993] Crim.L.R. 618
R v Thind [1999] Crim.L.R. 842
R v Tomlinson; R v Mackie; R v Gladwell *Times* 2nd December 1992
R v Va Kun Hau [1990] Crim.L.R. 518
R v West London Youth Court, Ex parte M and Others *Times* 7th July 1999
Rukwira, Rukwira, Musoke and Johnson v Director of Public Prosecutions [1993] Crim.L.R. 882
Steel v United Kingdom ECHR 23 9 98 *Times* 1st October 1998
Swanston v Director of Public Prosecutions *Times* 23rd January 1997
Taylor v Director of Public Prosecutions [1973] 2 All E R 1108
Thacker v Crown Prosecution Service *Times* 29th December 1997
Vignon v Director of Public Prosecutions *Times* 9th December 1997
Winder and Others v Director of Public Prosecutions *Times* 14th August 1996

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We are committed to provide a high quality prosecution service, working in the interests of justice. As a unified service, we will apply common standards, policy and operational practices throughout England and Wales, ensuring a consistent and timely approach. Our decisions will be independent of bias or discrimination, but we will always consider the interests of others. We will act with integrity and objectivity, and will exercise sound judgement, with confidence (Crown Prosecution Service, Statement Of Our Purpose And Values, 1993: 3)

This thesis examines in detail the role of the Crown Prosecution Service (C.P.S.) in the prosecution process within the criminal justice system of England and Wales in the 1990s by reference to the prosecution of public order offences under part I of the Public Order Act 1986. The C.P.S. was founded in 1985\(^1\) to improve the criminal justice system when the functions of the police of the investigation and prosecution of criminal offences were separated. This was an important development in the criminal justice system as the C.P.S. was to represent the prosecution as an independent, impartial and accountable body. However, critics\(^2\) have suggested that in practice the C.P.S. does not exercise sufficient independence. They assert that the prosecution process is still dominated by the police. This study will consider whether a decade or so after its foundation this criticism of the C.P.S. is well founded.

Public order offences provided a good case study for the examination of the role of the C.P.S. as the breadth and diversity of public order situations means that this is difficult area of the criminal law.\(^3\) There is a contrast between the police using their powers and authority to deal with public order incidents on the streets and the

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\(^1\) Prosecution of Offences Act 1985.

subsequent prosecution of criminal offences that may have arisen from those incidents. There is a good deal of scope for the exercise of discretion in police and prosecution decisions. The thesis aims to examine that role played by the C.P.S. in the review, management and presentation before the courts of public order offences. This study by referring to previous research and the findings of this research will ascertain whether or not there is a need for change in that role.

The main argument of this thesis is that a fair, accountable and independent review of cases by the C.P.S. does not happen in practice, as the C.P.S. rely almost entirely on the police and play a re-active rather than a pro-active role in the decision-making process. As a result the main reasons for the creation of the C.P.S. have not been fully satisfied and the quality of justice has not sufficiently improved.

This introduction sets the context of the thesis by discussing the importance of the research interest and the main argument to be put forward. It sets out the aim and objectives of this research. There is an outline of the thesis with a summary of the arguments to be presented in each chapter.

**RESEARCH INTEREST**

The separation of the functions of investigation and prosecution by the creation of the C.P.S. following the report of the Philips Commission (Philips, 1981) was of fundamental importance to the criminal justice process. The C.P.S. took over from the police the conduct of the prosecution of all criminal cases, apart from some minor road traffic cases and as an independent prosecution service was formed to review all decisions to prosecute, applying a higher evidential standard than that hitherto.

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3For an in-depth discussion of the nature of public order law appreciative of the political, social and constitutional issues see Chapter 1 of Smith (1987).
adopted by the police\textsuperscript{4} (Ashworth, 1998: 177) and to present the prosecution case to the courts. The C.P.S. therefore occupies a position between the police and the courts (Glidewell, 1998: 1). The police continue to be responsible for deciding on the charge and for preparing a case file for the C.P.S.. The C.P.S. then have to review the case to decide whether or not the evidence that has been obtained is sufficient to prove the charge and, if so, whether or not it is in the public interest to proceed with a prosecution. In making these decisions there are no statutory criteria laid down. However, prosecutors are guided by C.P.S. documentation and in particular the Code for Crown Prosecutors (C.P.S., 2000, Appendix 1(2)) that sets out the evidential and public interest requirements for prosecution. If the evidence is not sufficient the prosecutor then has to decide whether on not to substitute a lesser charge or to discontinue the proceedings completely (Glidewell, 1998: 36). This power of being able to stop cases by discontinuance is the main statutory control the C.P.S. has over prosecution cases. The C.P.S. can give advice to the police but cannot direct the police to obtain further evidence or conduct more enquiries.

This study will highlight questions and issues about the operation of the prosecution process by the example of the prosecution of public order offences looking at the culture, processes and practices that are behind these formal legal structures and procedures. The broader issues are introduced in Chapter 1 and concern the theoretical and practical context of the prosecution process, structural issues, policy issues and the concept of case construction that relate throughout to the findings of this research. The findings will reflect these broader issues and inform the debaters about them. The analysis of data uses the example of public order cases as a

\begin{quote}
\textsuperscript{4}The C.P.S. would apply the objective evidential standard of 'realistic prospect of conviction' as set out in the Code for Crown Prosecutors as opposed to the standard of 'prima facie' case applied
\end{quote}
case study to inform the nature of the prosecution process and the position of the
C.P.S. generally within the context of the criminal justice process. A number of
broader issues are critical in informing the context of this study.

First, there is the theoretical and practical context of the prosecution process. A
consideration of the position of the C.P.S. in the context of the adversarial system,
the law and policy and various models of the criminal justice process is crucial
because this reflects the values and working practices of the prosecutors. It will be
shown that "crime control" values are dominant over "due process" values. The
strong position of the police and the weak position of the defence solicitors are also
parts of this equation. The context of the prosecution case within the criminal justice
process as a whole is therefore fundamentally important to the main argument of this
thesis. There are many organisational and structural pressures on prosecutors to
proceed with cases notwithstanding the formal legal structures and procedures that
might suggest otherwise. This has been recognised by other commentators.

What pressures are placed on decision-makers within the CPS? What is
thought to please one's superiors in the CPS? What in fact gains promotion
within the CPS? How important are good working relations with the police, and
how do most Crown Prosecutors think that good relations can be achieved?
Questions of this kind do not remove the need to ensure that the declared
policies are put into practice - what is stated in the CPS Manuals (which are
confidential and which most Crown Prosecutors would consult rather than the
Code), and how if at all do managers within the CPS ensure that the declared
policies are followed? (Ashworth, 1994: 193)

There is an acceptance by all parties within the criminal justice process of a system
of negotiated justice encouraging such practices as over-charging by the police,
charge-bargaining and plea-bargaining avoiding the need for the uncertainty, expense
and delays of the formal trial process (Ashworth, 1998: 274, Sanders and Young,

beforehand by the police. Philips recommended that the test of 'reasonable prospect of conviction'
should be extended to all cases (Philips, 1981: 174).
1994: 267 - 281). Decision-making becomes re-active as opposed to pro-active in this context as prosecutors are prepared to see if an effective disposal can be negotiated with the defence.

Second, there are the structural issues. The C.P.S. was created in addition to the existing criminal justice system with an artificial division of responsibility for the prosecution case from that of the police. The way in which the C.P.S. was founded and has developed means that it is in a structurally weak position within the criminal justice process. Although the C.P.S. was created to enable a fair, independent and accountable review of prosecution cases in practice the work of the C.P.S. is dominated by the police and by a shared culture driven by discretion and a lack of accountability. This leads to an acceptance of police views and a loss of control of the prosecution process by the C.P.S.. The C.P.S. rely almost entirely on the information provided to them by the police and there is a lack of will to question the nature and quality of this information so that a truly impartial view of a case can be taken.

Third, there are policy issues. No formal policies are laid down as to how certain criminal offences are to be prosecuted. There is a wide discretion to the police and to the C.P.S. in the way, for example public order offences are dealt with. The present guidelines are weak and mean in effect that the C.P.S. react to police initiatives. The C.P.S. does not seek to assert itself as an independent body in the formulation of an overall policy. The police are powerfully represented at the political level and have proved themselves adept at lobbying successive Governments for resources and greater powers and authority. By contrast there appears to be a lack of confidence in the C.P.S..
Fourth, there is the more controversial issue of case construction. This concept recognises that the police dominate the prosecution process by selectively constructing cases around the police charge making it difficult for C.P.S. prosecutors to independently probe the evidence in cases short of full trial hearings. This has led to an over-reliance on the police and the C.P.S. failing to be pro-active in the prosecution and review of cases.

There has been a limited amount of research on the C.P.S. and the prosecution process particularly on many key issues that underlie the formal legal and structural procedures (Ashworth, 1998: 205). There is a need to know how cases are prosecuted in practice notwithstanding the policies and commitments made in the Code for Crown Prosecutors and other C.P.S. documentation that will be referred to. This study is an attempt to examine the practical situation as the following main aim and objectives set out.

AIM & OBJECTIVES

The aim of this thesis was to examine the role of the C.P.S. in the criminal justice system with particular reference to offences under part I of the Public Order Act 1986. By examining the role of the C.P.S. in the prosecution of particular types of cases, for example public order offences, it will be shown how the C.P.S. relies on the police for the information and how cases are reviewed and prosecuted in practice. The theoretical and operational context of the prosecution of these cases will be examined highlighting the differences between the law and policy and practice.

5One of the reasons for the implementation of the Glidewell Review (Glidewell, 1998) was the lack of confidence in the C.P.S. by the Labour Government that took office in 1997. This is apparent from the establishment and terms of reference of Glidewell (1998: 219).
Changes in the role of the C.P.S. would ensure a fairer system and improve the quality of justice.

There were five main objectives in conducting this research. First, to examine how prosecutors exercised their statutory powers when prosecuting public order offences. The main role of the C.P.S. is to prosecute persons accused of committing criminal offences. The C.P.S. also has the power to discontinue cases where there is insufficient evidence or it is not in the public interest to proceed. By looking in detail at how prosecutors review and deal with public order cases it will be seen how the C.P.S. in practice is not independent but relies upon the police and is dominated by a culture that favours the police in decision-making. It will be shown that decisions are made on the practical basis of securing convictions. The C.P.S. was created to provide a fair and independent review with prosecution separate from the investigation of offences. So the C.P.S. is failing to provide an impartial review by allowing the prosecution to be dominated by the police.

Second, to critically analyse the role of the Crown Prosecution Service in pursuing prosecutions for public order offences. The C.P.S. has a wide discretion in the way cases are prosecuted and presented to the courts. The C.P.S. can change the charges or accept guilty pleas to lesser charges or discontinue cases. The argument is that the C.P.S. is not pro-active in practice failing to stop the prosecution of weak cases at the appropriate stage in the criminal justice process. This assumes that the police might over-charge offences or exercise influence in the construction of prosecution cases.

Third, to examine the relationship between the police and the Crown Prosecution Service. The relationship between the police and the C.P.S. is fundamental to the role of the C.P.S.. The C.P.S. review cases where the police have already made decisions

6 A comprehensive account of case construction appears in McConville et al., (1991) the only major
as they retain the power to charge. By examining the relationship between the police and the C.P.S. that remains ill defined and problematical the reliance of the C.P.S. on the police will become apparent. The argument is that the police are the dominant partner in that relationship.

Fourth, to ascertain the information available to the Crown Prosecution Service for prosecuting cases for public order offences. By looking at the information available to the C.P.S. the relationship between the C.P.S. and other agencies in the criminal justice process will become clearer. This is a key part of the relationship with the police. Almost all the information available to the C.P.S. comes from the police although other agencies do provide a limited amount of information. The argument is that the C.P.S. rely too much on the nature and quality of the information provided by the police so that the independence and fairness of case review is compromised. This will involve a consideration of how the police present information to the C.P.S. and can construct a case around the charge making it virtually impossible for the C.P.S. to carry out a fair and independent review.

Fifth, to discuss the future direction of possible changes to the prosecution of public order offences. This discussion will show that the C.P.S. can be fair and independent and play a pro-active role in the prosecution of public order offences. The argument is that the C.P.S. can strengthen prosecution values, policies and working practices and be less reliant on the police. This will take a major effort given the present structures of the criminal justice process. However, such changes in the prosecution of offences are necessary if the quality of justice is to be improved and the C.P.S. is to truly assert itself as a respected and independent member of the criminal justice system.
SUMMARY

This introduction raises the issues to be addressed in this thesis regarding the C.P.S., the prosecution process and the prosecution of public order offences. An attempt was made to go behind the formal legal structures and procedures and examine how the prosecution process worked in practice. What follows is a detailed study of the work of prosecutors in the 1990s by reference to the prosecution of public order offences.

Chapter 1 deals with the theoretical and practical context of the Crown Prosecution Service within the criminal justice process, why and how it was created, including the reactions of the police and other commentators. It also sets out the organisational and procedural issues within the Crown Prosecution Service and how the process of prosecution works. Chapter 2 discusses the prosecution of public order offences including definitions of the offences under sections 1 to 5 of the Public Order Act 1986, the policing of public order, police authority and culture and prosecution policies, guidelines, procedures and issues relating specifically to these offences. In Chapter 3 the methodology utilised for the research is described. Chapter 4 details the findings of the research and discusses by themes the prosecution process in cases involving public order offences. These themes relate to the broader issues and are concerned with the lack of formal prosecution policy, the uneasy relationship between the police and the C.P.S., the nature and quality of case information and decision-making by prosecutors, and the role of the defence and the courts in
participating in a system of negotiated justice within the context of crime control as opposed to due process. Chapter 5 brings the thesis to a conclusion drawing upon the findings and relating them back to the broader issues and discussing the implications of possible future developments in the work of the C.P.S..
CHAPTER 1

THE CROWN PROSECUTION SERVICE AND THE PROSECUTION PROCESS

This chapter introduces the broader issues to be considered throughout the thesis. These are the theoretical and historical context and the main structural and policy issues of the Crown Prosecution Service (the C.P.S.). There is a consideration of the part the prosecution plays within the criminal justice process and why the C.P.S. was founded. An understanding of the position of the C.P.S. in the context of the adversarial system, the law and policy and various models of the criminal justice process is crucial because this reflects upon the values and working practices of the prosecutors. It will be shown that "crime control" values are dominant over "due process" values. The strong position of the police and the weak position of the defence solicitors are also part of this equation. The context of the prosecution case within the criminal justice process as a whole is therefore fundamentally important to the main argument of this thesis, which is that the C.P.S. does not provide a fair, accountable and independent review as in practice it continues to rely almost entirely on the police and plays a re-active rather than a pro-active role. The argument is that the C.P.S. is in a structurally weak position, which makes it unable to carry out its

1 An organisation created by the Prosecution of Offences Act 1985 to conduct the majority of criminal prosecutions (Oxford Dictionary of Law, 1996).

2 Reference is made to the criminal justice process as opposed to the criminal justice system. Although many who speak and write about criminal justice tend to refer to 'the criminal justice system', it is widely agreed that it is not a 'system' in the sense of a set of co-ordinated decision-makers...it will be apparent that many groups working within criminal justice enjoy considerable discretion, and that they are relatively autonomous (Ashworth, 1994: 21). Ashworth also refers to further discussion of this issue by Pullinger and Feeney in Moxon (1985).
role fully. Although the C.P.S. was created to enable a fair, independent and accountable review of prosecution cases in practice its work is dominated by the police and by a shared culture driven by discretion and a lack of accountability. The relationship between the C.P.S. and the police is analysed and how this has lead to a culture that favours the police in decision-making. This includes a discussion about the inherent weaknesses in the way the C.P.S. was set up. The independence, effectiveness and accountability of the C.P.S. will be examined in this context with analysis of how these are measured. The way in which the prosecution process works within the criminal justice process in practice favours police case construction. The concept of case construction recognises that the police dominate the prosecution process by selectively constructing cases around the police charge making it difficult for C.P.S. prosecutors to independently probe the evidence in cases short of full trial hearings. This has led to an over-reliance on the police and the C.P.S. failing to be pro-active in the prosecution and review of cases.

Prosecution is not a separate part of the criminal justice process. This involves a complex structure of law and procedure, the investigation of crime, the charging, prosecuting and adjudication by the courts of complaints of crime, sentencing of those found guilty and the penal system (Uglow, 1995: 1). Many agencies and procedures are concerned in this process which itself operates within the wider political, social and economic environment of modern society. There is interdependence between these agencies; for example, the C.P.S. depends on the police for its caseload and decisions taken by the C.P.S. affect the work of the courts.

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3 A process whereby weak cases are made to appear strong (Sanders & Young, 1994: 220)
The duties of the prosecutor in reviewing files of evidence and conducting cases at trial may determine criminal justice policy by, for example, deciding not to prosecute certain offences viewed as outdated. The way in which a prosecution case is dealt with may have wide-ranging effects on the decision-making practice of all the other agencies throughout the process. Discontinuing cases before they reach the courts for example clearly will affect the workload of the courts. Although there have been a large number of reports and reviews on the C.P.S. there has been no analysis of the criminal justice process as a whole. The Royal Commissions in 1981 and 1993 for example, did not do so (Uglow, 1995: 7).

The role of a state prosecutor within the criminal justice process is an important constitutional one. The prosecutor occupies a key position between the police as the investigators of crime and the courts of law as the adjudicators. In many jurisdictions the prosecutor has wide powers and exercises a judicial role being able to waive prosecution\(^4\) or imposing penalties directly without the intervention of the courts.\(^5\)

The need for an independent prosecution service as part of the criminal justice process had been recognised for many years. However, in England and Wales the C.P.S. was not founded until the Prosecution of Offences Act 1985 following a number of government reports and the studies of the Philips Commission (1981). The C.P.S. has had a chequered history with many external and internal reviews of its work during the fourteen years or so of its existence.\(^6\) The structure of the organisation has been the subject of constant changes. The Glidewell Review (1998)

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\(^4\) For example in the Netherlands (Uglow, 1995: 105).

\(^5\) For example in Germany (Fionda, 1995: 239 - 240).

\(^6\) The Glidewell Review of the C.P.S. (1998) contains in Appendix C a comprehensive list of all the major internal and external reviews concerning the C.P.S. - no less than 57 different reports and reviews between 1981 and 1998.
which was set up by the Labour Government\(^7\), elected following the General Election on 1st May 1997, to review the work of the C.P.S.\(^8\) recognised that this environment had made it very difficult for the C.P.S. to establish itself within the criminal justice process. This lack of confidence in the C.P.S. has affected the way in which cases are dealt with by the C.P.S. and has enabled the police to continue their dominant role.

Historically the criminal justice process in England and Wales focuses upon a system of trial that is adversarial as opposed to inquisitorial. The adversarial principle is that it is for the prosecution to bring a case to court and prove guilt\(^9\) (Sanders and Young, 1994: 7). The court in making decisions does not act as an investigative body but relies upon the parties to put their case presenting evidence in accordance with certain rules and procedures that allow both prosecution and

\(^7\)In April 1997 the Labour Party published a document "The Case for the Prosecution" in which they had expressed concern about the current state and performance of the C.P.S.

\(^8\)The Terms of Reference for the Review were:

Against the background of the decision that the C.P.S. should in future be divided so that there are Chief Crown Prosecutors in all police force areas but within a national framework, to:

- Examine the organisation and structure of the C.P.S. including the role of Headquarters, together with C.P.S. policies and procedures and to consider whether and, if so, what changes are necessary in order to provide for the more effective and efficient prosecution of crime through local public prosecutors.

Without prejudice to the generalities of the above, for that purpose, to:

- assess whether the C.P.S. has contributed to the falling number of convictions for recorded crime;
- consider the manner in which the C.P.S. influences its relationship with the police;
- consider the validity of criticisms that the C.P.S. has led to unjustified "downgradings" of charges; and
- make and cost recommendations taking into account the need to operate within existing provision.


\(^9\)It is a fundamental principle in English law that a defendants are always presumed innocent unless and until the prosecution has satisfied the magistrates or jury of their guilty beyond reasonable doubt (Runciman, 1993: 4).
defence\textsuperscript{10} to attack the credibility and reliability of the witnesses (Uglow, 1995: 131). This adversarial system is an important characteristic of common law systems similar to that in England and Wales, for example in Australia, Canada and the United States. By contrast civil law systems such as France and Germany are based on inquisitorial principles where the court enquires about the case and there is judicial supervision from the beginning of the investigation (Sanders and Young, 1994: 7 and Uglow, 1995: 130). The Runciman Commission considered the European systems but concluded that, apart from the difficulties in adopting a system based on a completely different history and culture\textsuperscript{11}, a system in which the critical roles of the police, prosecutors and judges are kept separate offers a better protection for the defendant (Runciman, 1993: 4). The constitutional importance of the C.P.S. prosecutor therefore remained assured. However, the adversarial approach affects the way in which the agencies in the criminal justice process work. By creating an atmosphere of contest between opposing parties there is pressure on the police and the C.P.S. to measure their success by the securing of convictions and conversely for the defence to measure their success by the securing of acquittals. This underlying tension creates a structural pressure on both prosecution and defence to settle cases by negotiation outside the formal constraints of the law and the procedures of the courts. It encourages practices such as over-charging and plea-bargaining. There is clearly a satisfactory outcome to both parties in an adversarial context if there can be a compromise they find acceptable.

\textsuperscript{10}There is a right to confront the accuser and the evidence (Uglow, 1995: 131).

\textsuperscript{11}This had been recognised by the Philips Commission in 1981: 

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change to a fully-fledged inquisitorial system, even if it could be shown to be desirable, would be so fundamental in its effect upon institutions that had taken centuries to build as to be impossible on political and practical grounds (Philips, 1981: 4).
\end{quote}
In an adversarial system of criminal justice it is also clear that in bringing a prosecution or not there is discretion. This discretion also extends to the nature of the charge, any plea bargaining, representations on the mode of trial and the way generally in which a case is presented to the courts. Every day C.P.S. lawyers and staff are involved in numerous decisions of this type. In practice there is little accountability regarding the way in which the C.P.S. deal with these decisions in particular cases.

**THE THEORETICAL CONTEXT:**

'DUE PROCESS' VERSUS 'CRIME CONTROL'

Before the specific history of the C.P.S. is examined it is necessary to consider briefly the theoretical context of the criminal justice process of which prosecution is a part. Two of the theoretical approaches to the criminal justice process will be examined for use in later analysis and discussion. Firstly, there are the models of the criminal justice system developed as a framework principally by Packer (1968) and Blumberg (1967) and later developed and modified by others such as Bottoms and McLean (1976) and King (1981). Secondly, the work of McBarnet (1981) which focuses on the law itself.

Packer (1968) developed two models of the criminal process: due process and crime control. King (1981) who expanded the concepts to six models made later modifications to this approach. A number of other modifications and variations of these models have been suggested by others. Packer's models of due process and crime control are useful as they perhaps crudely identify the conflicts, the competing

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12Crime Control, due process, bureaucratic, medical, status passage and the power model.
demands, which lay within the English criminal justice system. This enables any
analysis of the C.P.S. to be placed in a wider context when achieving the aims and
objectives of this research.

In the Crime Control Model the major function of the criminal justice process is the
repression of criminal conduct. Such repression ensures the rule of law and avoids
anarchy. Packer (1968) compared the Crime Control Model to a conveyer belt
speeding people along to conviction and sentence with uniform and routine
procedures, which minimise any opportunities for challenging these procedures.
There is a presumption of guilt and the police and prosecution has a great deal of
discretion in the way they operate to speed up the conviction of a defendant. Crime
control encourages negotiation and plea-bargaining and seeks to keep any safeguards
to a minimum. In terms of the prosecution of offenders crime control emphasizes the
ability of the prosecution agency to screen out innocent defendants at an early stage
and speed the criminal justice process along to the conviction and sentence of the
guilty defendants. The prosecutor exercises a high level of discretion in whether
defendants are prosecuted or not, the level of charges proceeded with or not, the way
in which the case is presented to the court.

The Due Process Model is at the opposite end of a spectrum from the Crime Control
Model. Under this model the major function of the criminal justice process is to
safeguard the liberty of the individual by insisting on formal adjudicative fact-finding
in which the case against the accused is tested before a public and impartial court.
There is a presumption of innocence and the burden of proving a case rests on the
state. This model is analogous to an obstacle course where each stage of the process
is a hurdle and if each hurdle is not surmounted the defendant does not complete the
process. In terms of the prosecution of offenders due process involves the formal
findings of facts by the courts and the prosecution agency adhering to rules and
procedures in the way the case by the state is presented and proved beyond doubt.
The level of discretion at the pre-trial stage will be severely restricted. Every case
would proceed to court and this may lead to expense and delays. In this model there
is no scope for prosecution discretion or plea-bargaining as every case is to be tested
before the courts.

There is a great contrast between these two models.

At the risk of oversimplification, one can summarise the different positions
of the two models in the following way: crime control values prioritise the
conviction of the guilty, even at the risk of the conviction of some (fewer)
innocents, and with the cost of infringing the liberties of the citizen to achieve
its goals, while due process values prioritise the acquittal of the innocent,
even if risking the frequent acquittal of the guilty, and giving high priority to
the protection of civil liberties as an end in itself. (Sanders and Young, 1994:
17 - 18).

These models are not meant to be prescriptive and Packer himself suggested that
anyone who supported one model to the complete exclusion of the other would be
viewed as a fanatic (Packer, 1968: 154). Nevertheless, these models as opposing
positions are useful tools in the discussion and analysis of issues arising in this thesis.
They recognise the fundamental tensions within the criminal justice process. Political
debate tends to polarise, with the liberal thinkers advocating the protection and
increase of the rights of defendants (due process) and more conservative thinkers
advocating policies of greater police powers and heavier sentences (crime control) in
the belief this will reduce crime levels in the interests of the community and the
victim (Uglow, 1995: 7). The trends, of late, appear to have been towards crime
control values as the police have been given greater powers by layers of new
legislation and systems, such as the introduction of Narey courts, have been introduced to expedite the criminal justice process.

Another model, the bureaucratic model (King, 1981) is similar to the due process model in that a system of rules limits any discretionary decision-making. King (1981) argues that these models can also be used to provide types for identifying the participants in the criminal justice process with the due process perspective likely to be held by defence lawyers and crime control perspectives by the police and prosecution. In his bureaucratic model standard procedures are used to process defendants in an economic and efficient way. There is little scope for taking into account the particular circumstances of an individual. Prosecution processes based on bureaucratic principles would emphasize the need for records and a drive for economy and efficiency. The needs of the individual defendant would be subordinated to the system.

Bottoms and McLean (1976) produced a similar variation in creating their liberal bureaucratic model that adopted the values of due process overridden by the need for efficiency created by the structures of the court system; an amalgam of due process and crime control. They made the point that even the defence lawyers must work within the court system (Bottoms and McLean, 1976: 231).

Blumberg (1967) created a similar model of bureaucratic due process. He argued that the working of the bureaucratic organisations within the criminal justice system caused the difference between the rhetoric of due process and the practical operation of the criminal justice process. These agencies were able to create practices with the goal of efficiency. Accordingly the prosecution process would involve a large element of negotiation decisions being made outside the formal court hearing. Due process is therefore evaded with a court culture that works towards efficiency
through negotiation. This would involve practices like plea-bargaining or the downgrading of charges.

Other models of the criminal justice system and the process of prosecution have been suggested. Fionda in her analysis of the prosecution systems of a number of countries referred to yet more developed models, namely the operational efficiency model\(^{13}\), the restorative model\(^{14}\) and the credibility model\(^{15}\) which offered alternative sets of prosecution principles (Fionda, 1995: 172 - 236). However, her approach was concentrated on developing the sentencing role of the prosecutor and there has been no reform in England and Wales as yet which suggests any move towards a greater direct involvement of the C.P.S. in this regard. In practice there is a good deal of overlap when trying to apply these various models to analysing the C.P.S.

The second theoretical approach considers the contrast between the rhetoric of law and the reality of the law in practice. At the end of the 1970s McBarnet (1983) developed a this view of the English legal system which emphasized the gap between the substance of the law, the 'law in books' and the administration of law:

...the law governing the production, preparation and presentation of evidence does not live up to its own rhetoric...Police and court officials do not abuse the law to subvert the principles of justice; they need only use it. (McBarnet, 1983: 154 & 156).

She argues that the substance of the law, which provides the rhetoric of due process, actually works for crime control. This is partly due to the mystique and

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\(^{13}\) This gives the prosecutor the central aim of diverting cases to avoid costly courts cases (Fionda, 1995: 176).

\(^{14}\) In this model the prosecutor concentrates on the victim with schemes for reparation and mediation (Fionda, 1995: 180).

\(^{15}\) Similar to Packer's crime control model in this model the prosecutor's aim is to punish offenders and uphold the credibility of the criminal justice system (Fionda, 1995: 188).
inaccessibility of the law that protects it from scrutiny by the vast majority of people. So agencies within the criminal justice process including prosecutors can use the law as a tool for crime control whilst outwardly professing adherence to due process values. The vagueness of the law structures discretion.

McConville et al., (1991) also concluded that the crime control model described the English system but considered that McBarnet had failed to give sufficient emphasis to those due process rights that were enshrined in law. These rights in practice were unenforceable or were not enforced by the courts when presented with opportunities to do so. They argued that due process and crime control had always co-existed uneasily with both the law and practice favouring crime control rather than due process allowing the process of case construction to be driven by the values of crime control. Smith (1997) criticises this approach\(^\text{16}\) arguing that McConville et al., (1991) exaggerated the scope for case construction and misinterpreted police objectives. He suggests that the police have wider goals than that of producing convictions (Smith, 1997: 319 - 344) and that it is an understanding of these goals that is the key to the supposed dichotomy between due process and crime control.

The taking away of the police conduct over the prosecution of offences and the creation of the C.P.S. as an independent body from the police can be seen as a recognition of due process values. However, one of the central themes of this thesis is whether in practice the C.P.S. prosecutors do act scrupulously fairly and completely independent or do they act as mere 'police prosecutors' confirming the actions and decisions already taken by the police. There is the difference, for

\(^{16}\)The academic debate becomes heated with a rejoinder from McConville et al. in their article "Descriptive Or Critical Sociology. The Choice Is Yours" (McConville et al., 1997: 347 - 358)
example between the rhetoric of the prosecution guidelines as contained in the Code for Crown Prosecutors, the public document setting out the guidelines to be applied to the decision on whether to prosecute an offender or not (Appendix 1(2)) and the actual application of these guidelines in practice when prosecutors are exercising their powers in dealing with the prosecution of real cases. There is a considerable scope for the exercise of discretion in whether or not cases are prosecuted and, if so, how they are presented to the courts. Public order offences, the subject of this research, are a good example of the types of cases where C.P.S. decisions come within this theoretical context. The situations presented by public order cases are wide-ranging and there are substantial overlaps between the sorts of charges and disposals available within the criminal justice process.

The question of where on the spectrum between crime control and due process the English system of criminal justice is today to be located must, therefore, take account of both the formal law, as laid down in statutes and case law, and the organisational practices of officials operating within that legal framework. (Sanders & Young, 1994: 20).

THE HISTORY OF THE CROWN PROSECUTION SERVICE

The C.P.S. was brought into being in 1986. The system in England and Wales for the prosecution of offences prior to the establishment of the C.P.S. was based on the historical right of any citizen to bring a wrongdoer before the courts of law.\textsuperscript{17} In practice the police brought most prosecutions. The establishment of the C.P.S. therefore marked a fundamental change in the criminal justice process. Until the

\textsuperscript{17}This right was retained after the foundation of the C.P.S. subject to the permission of the Attorney General or Solicitor General for the prosecution of certain particular offences. In recent years there have still been a number of cases where private prosecutions have been launched where for one reason or another the C.P.S. has not proceeded with a case. For example, the failed private prosecution by the Lawrence family in the case that led to the Stephen Lawrence Inquiry (Macpherson, 1999).
creation of the C.P.S. there had been no state prosecutor although there had been calls for the appointment of the same for many years.\textsuperscript{18} Prior to the foundation of the C.P.S. the police had began to employ their own lawyers to conduct proceedings on their behalf although many cases were still conducted before magistrates' courts by police officers (Philips, 1981: 126). There were a number of police forces that had large prosecuting solicitor's departments although the arrangements varied in different parts of the country (Philips, 1981: 127). Many of these existing prosecuting solicitors joined the C.P.S. These solicitors were in a solicitor/client relationship with the police which meant that if the police insisted on prosecuting in certain cases the prosecutor could do little about it save making his or her own views clear. Any decision to withdraw a case or accept pleas to lesser charges had to be agreed by the police. When this situation changed after the C.P.S. came into being and these decisions became solely those of prosecutors the police found this difficult to accept and placed pressure on their former colleagues to proceed with cases. Many prosecuting solicitors had been unhappy about this lack of independence and made this clear in their evidence to the Philips Commission (Philips, 1981: 132). They cited instances where evidentially weak cases were continued by the police sometimes in the face of contrary advice from the lawyer having conduct of the prosecution (Philips, 1981: 132).

Apart from these somewhat disparate arrangements for the prosecution of cases the Prosecution of Offences Act 1879 created the office of the Director of Public Prosecutions. This was only a small department with around 70 lawyers by the time the C.P.S. was established. It dealt with a small number of cases prescribed by regulations including all murder cases and cases involving national security, public figures and police officers. However, in founding the C.P.S. the government looked

\textsuperscript{18}For example, the Criminal Law Commissioners recommended the appointment of public prosecutors in 1854 (Rozenburg, 1987: 79). Two Royal Commissions in 1929 and 1962 had recommended the separation of the investigative and prosecution functions (Glidewell, 1998: 33).
to the Director to take over the management of all C.P.S. prosecutions throughout the country. The management of a large organisation was thrust upon what had been a very small department. This caused problems as a small department began to manage a much larger organization. Glidewell recognised that even after a number of changes this caused over-centralisation of management with too much authority and control at Headquarters (Glidewell, 1998: 40)

THE PHILIPS COMMISSION

The powers of the police in the way crime was investigated and prosecuted were being questioned by the 1970s. Against a background of rising levels of crime there was a concern about the way in which the police were said to have investigated and prosecuted certain cases (Benyon and Bourn, 1986: xi). It was asserted that the job of the police in bringing dangerous criminals to justice was hampered by the restraints of criminal procedure. On the other hand the way in which the police used their powers of investigation was open to question (Philips, 1981: 2). There was uncertainty and confusion about what powers the police had or did not have. For example, the powers to stop and search suspects of crime were uncertain and open to abuse. In 1970 the Committee of JUSTICE had recommended a 'fundamental reappraisal' of the entire criminal justice system (Fionda, 1995: 16). The law lagged behind the changing social patterns and expectations of a modern society (Philips, 1981: 15).

In 1977 an official enquiry was established under Sir Henry Fisher into the Confait
Fisher found that the police had not observed the correct procedures in obtaining the confessions. The Report also criticised the prosecution lawyers for failing to review the evidence with sufficient independence where there had been clear police malpractice. It specifically criticised the lawyer at the D.P.P.’s office who had dealt with the case. The Report was the best-documented and authoritative attack on the work of the Director of Public Prosecutions and his staff (Rozenberg, 1987: 63). Fisher recommended that there be a Royal Commission to review the whole of the criminal justice process.

Against this background the Government announced on 23rd June 1977 a Royal Commission on Criminal Procedure (the Philips Commission). The Philips Commission would review the whole criminal process from the start of the investigation to the point of trial with the fundamental balance between the interest of the whole community and the rights and liberties of the individual citizen in mind (Philips, 1981: 4). The terms of reference for the Royal Commission were wide ranging incorporating a complete review of the powers & duties of the police, the process of prosecution and the whole pre-trial criminal procedure. They commissioned research, received a large amount of written and oral evidence and made many visits in England and Wales and abroad (Philips, 1981: 198 - 201).

The Philips Commission applied three broad criteria in deciding whether the arrangements for the conduct of prosecutions should be changed. These they described as fairness, efficiency and openness and accountability (Philips, 1981: 127). They concluded that the existing arrangements failed to achieve fairness. In too

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Three teenage boys were charged with murder on the basis of their confessions. In October 1975 the Court of Appeal quashed the convictions after scientific evidence showed that they could not have been guilty.
high a proportion of cases they stated that came before the courts the evidence was not strong enough to support the charge and there were wide differences in prosecuting policy in different areas of the country (Philips, 1981: 126 - 143). The Commission found that the general standard of accountability was unsatisfactory. The current arrangements for prosecuting was inefficient, largely because there was no common standard which prosecutors should aim to achieve (Glidewell, 1998: 33).

They recommended wide-ranging changes. A separate statutorily based prosecution service should be established without any further delay to take over the conduct of all criminal cases once the decision to initiate proceedings had been taken by the police (Philips, 1981: 144 - 170).

The Philips Commission concluded that the investigation and prosecution of crime should be separate processes because their goals were incompatible (Philips, 1981: 131). They argued that it was unsatisfactory that the person responsible for the decision to prosecute should be the same person who had carried out the investigation as there could not be sufficient detachment and impartiality (Philips, 1981: 132). They had heard evidence that evidentially weak cases had been continued by the police sometimes in the face of contrary advice from the lawyer in charge of the prosecution. Having formed an opinion as to the guilt of a suspect the investigator might fail to consider other evidence against that view or might overestimate the strength of the evidence assembled (Philips, 1981: 132). They argued that it was wrong for the prosecuting lawyer to have the investigator as client because the prosecutor should act impartially. A prosecution system cannot bring all those who are guilty of offences before the courts.

The proper objective of a fair prosecution system is not therefore simply to
prosecute the guilty and avoid prosecuting the innocent. It is rather 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. This requires a high standard of competence, impartiality and integrity in those who operate the system. (Philips, 1981: 128)

The Philips Commission was also persuaded by the arrangements in other jurisdictions, principally the United States of America, Scotland and Canada where the functions of the investigator and prosecutor were separated (Philips, 1981: 136).

There were two key questions about the new prosecution service. First, at what point in the prosecution process the new service would take over responsibility from the police. Second, in terms of accountability whether the new service should be organised on a national or a local basis. On the first question, they recognised that there was overlap between the investigation and prosecution parts of the process and concluded that it was desirable that the initial decisions whether or not to prosecute should remain with the police although they could seek legal advice before charging suspects. The new prosecution service would review and conduct decisions to prosecute thereafter. These recommendations about the way the C.P.S. was created are of key importance as a fundamental overhaul did not take place and the C.P.S. was added to existing arrangements within the criminal justice process. Thus, the police maintain a significant role in the prosecution process as many decisions are made before a case is referred to the C.P.S. In other words, the police make the initial decision whether to prosecute which the C.P.S. then have to overturn if a case is not to be proceeded with. Structurally this has made the work of the C.P.S. difficult. It is much harder to reverse a decision that has already been made than to make an initial decision.
Furthermore, the cautioning procedure, whereby offenders can receive either an informal or formal caution in place of prosecution, remains with the police. It did not become a part of the jurisdiction of the C.P.S. unlike systems in other countries such as the Netherlands and Germany where prosecutors can issue a form of warning (Fionda, 1995: 5). In practice the C.P.S. does not become involved in cases until it receives the case papers from the police in most cases after charge. The police also collect information, which forms the basis on which the C.P.S. make their decisions. The C.P.S. have no investigative powers and cannot direct the police to seek information or deal with a case in a particular way. The C.P.S. can advise the police that certain actions should be taken but the police are not bound to follow that advice.

Contrary to the hope expressed by the Philips Commission that the police would consult the C.P.S. before they initiated proceedings (Philips, 1981: 146) they do not make great use of the facility to seek advice prior to charge with only about 4 per cent of cases being referred to the C.P.S. for pre-charge advice (C.P.S. Casework Statistics 1991 - 2000). The following table summarises the percentages of cases by comparison with cases charged referred by the police to the C.P.S. for advice from 1991 to 2000:
Table 1.1 shows that the police have been consistent in seeking advice from the police in only around four per cent of cases. Despite encouragement in a number of reports this proportion has not increased. The nature of a charge is the most important part of the prosecution process retained by the police (McConville, et al., 1991: 116). The whole progress of a criminal case through the criminal justice process depends on the kind of charge preferred by the police. It is perhaps not surprising that they have not sought to seek the advice of the C.P.S. except in those cases where they have perceived possible evidential problems.

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The number of advice cases in 1998 - 1999 was 57,351 out of 1,423,200. This was an increase of 7.7 per cent over the year. This increase was contributed to by pilot schemes in which prosecutors attended at police stations to provide advice before charge. It remains to be seen whether the
On the second question as to the organisation of the new service the Philips Commission considered three general approaches. One was to manage the C.P.S. nationally through central government. The second was to use local authority management based on police areas. The third was to create a regionally based service (Philips, 1981: 151-152). The Commission referred to other countries, the USA, Canada and Scotland, where a national service did not operate. They considered that the population of England and Wales would constitute too large an area for a national service to be workable.

The Commission concluded against a national service and recommended a locally based service but with a central directed accountability to government (Philips, 1981: 154). Separate local police and prosecuting authorities should be set up using the same areas as the existing police authorities. This would have the advantage of both chief officers being answerable on equal terms to the same authority. It would also enable a close working relationship to be built up on the ground between police and prosecutors whilst the clear definition of function and mutual respect would ensure independence (Philips, 1981: 154-155).

This locally based system working to national guidelines was based on evidence presented to the Commission by the Prosecuting Solicitors' Society. They argued that such a system would enable prosecutors to be able to respond to local circumstances in their decision-making whilst at the same time achieving uniform standards of efficiency and accountability (Philips, 1981: 155).

implementation of the Narey system will increase significantly references to the C.P.S. for advice before charge given the greater presence of prosecutors in police stations.
After the Philips Commission reported there was a lengthy debate about the form the new prosecution service should take.\textsuperscript{21} The Government adopted the option of an integrated national system on the grounds of consistency of policy and cost-effectiveness. This was the adopted rather than the local system suggested by the Philips Commission. It appears that the Government preferred a national system on grounds of cost and central control. In effect the Government merged the office of the Director of Public Prosecutions with existing prosecuting solicitors' departments. It did not make the C.P.S. accountable to any local body. This is important because by contrast the police and the magistrates' courts are accountable to local bodies. Nationally a degree of accountability was created by the need for the D.P.P. to present an annual report to Parliament but this means little in practice.

Sections 1 and 2 of the Prosecution of Offences Act 1985 (the POOA) created the C.P.S.. The D.P.P. is head of the Service and is appointed by the Attorney General. These sections also established Areas throughout England and Wales each headed by a Chief Crown Prosecutor with responsibilities for supervising the operation of the C.P.S. in that Area.

The C.P.S. prosecutes all proceedings except some minor traffic offences. The Director can also take over the conduct of any other criminal proceedings so in law the C.P.S. can intervene in cases brought by private prosecutors.\textsuperscript{22}

The structure of the C.P.S. has been changed a number of times since it was originally established as it was subjected to a series of reviews, external and internal

\textsuperscript{21}The Government's response was to set up the Inter-Departmental Working Party on Prosecution Arrangements. This recommended a national system operating locally through prosecuting solicitors' departments. In October 1983 the Home Office White Paper (1983) \textit{An Independent Prosecution Service for England and Wales}, (Cmnd.9074), London: HMSO was published setting out the proposed legislation.

\textsuperscript{22}Section 6 Prosecution of Offences Act 1985.
making for uncertainty in management and unsettling for the staff (Glidewell, 1998: 216). For example, Regional Directors were appointed in 1987 but these posts were abolished only two year later as an unnecessary layer of management between the Areas and Headquarters. In 1993 the C.P.S. was reorganised into 13 Areas but this structure only lasted five years. Glidewell recognised the difficulties all these changes had caused and recommended that once the new structure and procedures proposed were in place, there should be no further major changes to the C.P.S. for a considerable period of time (Glidewell, 1998: 216).

**SUMMARY**

The C.P.S. has suffered from a chequered history. It was created as an additional body within the criminal justice process not as a result of any fundamental overhaul of that process. Existing prosecuting solicitors from the police departments joined the C.P.S. and brought their values and culture with them. The management of the C.P.S. was vested in the office of the D.P.P. causing managerial problems and an over-centralisation at Headquarters. The initial decision to prosecute was left with the police and the C.P.S. became a decision reverser or confirmer as opposed to a decision maker. The C.P.S. has no investigative powers and the police do not regularly seek advice in cases before commencing proceedings. The way in which the C.P.S. was created inevitably raises problem issues of efficiency, accountability and independence. The relationship between the police and the C.P.S. is a key element in understanding the history of the C.P.S. and will be discussed in the next section.
THE RELATIONSHIP BETWEEN THE POLICE AND THE C.P.S.

The police can only prosecute cases through the medium of the C.P.S.. The C.P.S. rely almost entirely upon the police for the nature and quality of the information provided in a case. The relationship between the two bodies has been an uneasy one. The police still play a large part in the prosecution process. As well as investigating crime the police deal with the charging of defendants in the majority of cases before a case file is passed to the C.P.S. They also deal with the submission of the case file to the C.P.S. They also make a decision on whether a defendant once charged is to be given bail with or without conditions or kept in custody. So the police have already made a number of decisions on how a case is to proceed before the C.P.S. become involved. This is important because the C.P.S. are reviewing the police decisions that have already been made. The police are a powerful lobby claiming that they are representing the best interests of victims and this makes it difficult for the C.P.S. to overturn police decisions. It is not surprising that an organisation where many conflicting interests have to be balanced will receive criticism. If certain cases do not proceed the C.P.S. will be attacked by the police and by victims for being too weak whereas if certain cases do proceed the C.P.S. will be attacked by the courts and defence lawyers for being over-zealous. So the C.P.S. is a target for criticism and this does not help the working arrangements and morale of the staff that feel under constant pressure (C.P.S. Staff Survey, 2000).

When the C.P.S. was founded some police officers did not accept the need for an
independent prosecution service\textsuperscript{23} and resented the taking away of their control of the prosecution of cases that they had investigated (Reiner, 1992: 156 - 160). To a large extent the antagonism created when the C.P.S. was founded has continued in the background despite an improvement in working relationships between the two bodies.

Amongst its findings the Home Office study of Crisp and Moxon (1994) found that there was antagonism between the C.P.S. and the police and recommended that the police be made more accountable to the C.P.S. This was a vain hope given the history of the two organisations and the power of the police as a political lobby as opposed to the weakness of the C.P.S. in that regard. Any attempts to involve the C.P.S. at an earlier stage seem unlikely to succeed given where the present borderlines in the prosecution process lie. The C.P.S. will always be subordinate to the police unless they are given powers to direct the police and this is highly improbable.

Several attempts have been made to look at the problem of the relationship between the C.P.S. and the police. It is clear from the evidence presented to the Home Affairs Committee of the House of Commons (1990) that there were difficulties in that relationship. Whilst recognising in the main the need for an independent prosecution service the police in their evidence felt that there were cases that the C.P.S. had decided not to prosecute where the police, pre-1986, would have done so. This criticism belies one of the reasons why the C.P.S. was founded. On the other hand the D.P.P. suggested quite bluntly that there might be some police officers who were unwilling to co-operate with the C.P.S. The Committee Report recommended co-operation between the C.P.S. and police and suggested that there

\textsuperscript{23}Reiner refers to the Operational Policing Review's survey that 65 per cent of all ranks (and 71 per
ought to be training so that each became familiar with the other's work and responsibilities. These sorts of suggestions did not deal with the fundamental problems of the structural relationship between the police and the C.P.S.

Despite these recommendations the Runciman Commission (1993) again found evidence of continuing friction between the police and the C.P.S.. The Runciman Commission examined the criminal justice system from the investigation stage by the police right through to the stage at which a defendant who has been found guilty has exhausted rights of appeal (Runciman, 1993: 1) and was announced following a number of notorious miscarriage of justice cases in the 1990s. The police gave evidence that they rarely refused reasonable requests from the C.P.S. for further investigation. However, the C.P.S. suggested that in some areas it was not uncommon for their requests to be ignored or refused (Runciman, 1993: 74). Runciman recommended that there be a mechanism for consultation to take place to resolve disputes. Again this recommendation failed to address the fundamental problems. The Commission did not recommend the giving of further powers to the C.P.S. to direct the police.

The best way forward seems to us to be for the police service to undertake in future to meet all reasonable requests from the C.P.S., with a formal system of consultation at a variety of levels of seniority to resolve disputes in cases where the police consider a request to be unreasonable. (Runciman, 1993: 74)

No such formal system of consultation has been created in response to this recommendation.

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24 Particularly the 'Birmingham Six', the 'Guildford Four' and 'the Maguires' cases (Runciman, 1993: 1). The terms of reference included the conduct of police investigations and the role of the prosecutor (Runciman, 1993: i)
Runciman (1993) repeats the criticism levelled previously about the establishment of the C.P.S.. Concerns were expressed as to the level of ordered and directed acquittals in the Crown Court (Runciman, 1993: 70). The Report stressed the need for a system of internal review of performance. Runciman also recommended the greater use of the statutory function under section 3(2) of the Prosecution of Offences Act 1985 for the giving of advice to the police. There was, however, no significant increase in the number of cases referred for advice after Runciman had reported. Nothing was really done to adopt this recommendation.

A number of recommendations were made by Runciman that were unrealistic. For example, recommendation number 95 was that where the chief officer of police is reluctant to comply with a request from the C.P.S. to investigate further, HM Chief Inspector of Constabulary in conjunction with the D.P.P. should bring about a resolution of the dispute. This conflicts with recommendation number 96 that the C.P.S. should take a decision where a case is to be discontinued in sufficient time wherever practicable to save the defendant, the victim and other witnesses from attending court. Both these recommendations failed to recognise that the police have already commenced court proceedings by charge or summons before the case is referred to the C.P.S..

The Runciman Commission has been criticised for failing to strengthen the position of the C.P.S.

In 1993 the Royal Commission had the opportunity to clarify the relationship between the C.P.S. and the police, either to move towards greater prosecutorial control or to reduce C.P.S. interference in police decisions, emphasising their role as a junior partner. The nettle was not grasped and the status quo was affirmed. It was not desirable that the C.P.S. should be put in charge of police investigations; it was 'impracticable' that they should be responsible for the initiation of prosecutions; there would be no fall-back power to require further inquiries but instead a formal system of consultation. Inevitably the interface between C.P.S. and police will remain murky. (Uglow, 1995, p105-106)
Even as late as 1996, ten years after the introduction of the C.P.S., some Chief Constables were suggesting to the Narey Review that the C.P.S. be abolished or that the police might take over the prosecution of straightforward uncontested cases (Narey, 1997: 15). Although they did not seriously believe that the position would be changed these suggestions were evidence of the continuing tensions between the two organisations.

Glidewell (1998) recognised that the relationship between the C.P.S. and the police had not been an easy one and that in part that unease continued (Glidewell, 1998: 93). Glidewell identified the isolationist stance of the C.P.S. and the institution of Administrative Support Units, for the preparation of files, by the police as particular problems. This created a "blame culture" where allegations by the police of poor case review and management within the C.P.S. were met by counter-allegations of poor police case management and inadequate attention to evidential and procedural requirements (Glidewell, 1998: 95).

The solution proposed by Glidewell was some form of amalgamation of some of the functions of the C.P.S. and the police administrative units so that the C.P.S. could assume responsibility for the prosecution process from the point of charge (Glidewell, 1998: 127). However, the government rejected the proposal to bring criminal justice units under the C.P.S. and not police control and preferred to keep day-to-day control in the hands of the police with some C.P.S. input (Law Society's Gazette, 26th May 1999: 5). The proposal to take control away from the police was too radical and the Government did not want to alter the boundaries of responsibility. The police are a very powerful political lobby and a very organised at a senior level because of the Association of Chief Police Officers (ACPO) and with other strong
staff associations such as the Police Federation. It is unlikely that the police would have co-operated with any of the Glidewell proposals that would have meant the C.P.S. becoming responsible for the level of charging. This redefinition of the boundary between the police and the C.P.S. does not address the fundamental issue of independence.

More recent developments such as the introduction of lay presenters in court, the Narey courts and a trend to greater integration with prosecutors attending in police stations only reinforce the structural weakness of the C.P.S. It is perhaps not surprising that the C.P.S. has become in practice subordinate to the police. The lack of powers available to the C.P.S. to supervise or direct investigations by the police is part of the problem, but the greater difficulty is the adversarial system itself where the police and C.P.S have broadly similar crime control objectives (Sanders, 1996: xiii). It is unlikely that the position will change in the near future. The C.P.S. will only become a truly independent part of the criminal justice process when it is powerful enough to assert itself. Given the weaknesses inherent in the way it was founded and the current trends for greater integration with the police one cannot be optimistic.

THE CHANGING STRUCTURE OF THE C.P.S.

It has since been recognised that insufficient funding and staffing requirements had been allowed in the reorganisation of the pre-existing prosecution arrangements into the C.P.S. (Glidewell, 1998: 37). It took some time for the C.P.S. to recover from this difficult start. The Royal Commission on Criminal Justice stated in its Report in
The establishment of the C.P.S. did not take place without controversy. It appears to have been hastily effected and inadequately resourced, particularly in London and in those parts of the country outside London where there had not previously been a prosecuting solicitors' department. (Runciman, 1993: 70)

Following the criticisms of the Glidewell Review about over-centralisation (Glidewell, 1998: 40) further re-organisation of the C.P.S. in 1999 created 42 Areas coterminous with police force areas and a Chief Executive was re-appointed. This created a more locally based prosecution service albeit with national guidelines. It also coincided with changes to the other agencies in the criminal justice process so that all work within the same boundaries. In effect several years of uncertainty and almost continual problems and reforms have ultimately led to the establishment of the C.P.S. almost as originally envisaged by the Philips Commission. However, the recommendation as to accountability to a local body, has never been adopted. It appears that the government was determined to maintain a central control over the C.P.S. and not devolve any power over the C.P.S. to any local bodies or authorities. It felt that a national system would secure maximum cost-effectiveness and efficiency. It was afraid that local devolution might lead to different prosecution policy in different areas of the country and possible improper local influence (Glidewell, 1998: 35).

The present structure of the C.P.S. is that Headquarters headed by the D.P.P. is based in London. There are 42 Areas across England & Wales coterminous with police force areas each headed by a Chief Crown Prosecutor (C.C.P.). Within the Areas there are Branches and these are the main operating units. The Branches are made up of teams of lawyers\textsuperscript{25}, caseworkers\textsuperscript{26} and administrative staff. All cases are
allocated to teams, which are headed by Prosecuting Team Leaders (P.T.Ls). A team working system is operated that is meant to ensure that the prosecuting lawyer in a particular case remains responsible for that case throughout whichever way it proceeds, whether being dealt with in the magistrates' courts or the Crown Court. Whilst this structure might indicate that prosecution decision making is taken at the local Branch level in practice C.P.S. lawyers are constrained by uniform national policies and procedures laid down in operations manuals and directives from Headquarters. Glidewell considered that the management system was not genuinely devolved because the functions of management were at the Area level not the Branch level. Whilst recognising that team working was a better system than the separate systems for magistrates' court work and Crown Court work, which had previously been utilised, Glidewell suggested that over-prescriptive national standards had stifled best practices and local ingenuity (Glidewell, 1998: 48 & 49). Police forces and the courts are not bound by national controls so why should the C.P.S. not be able to develop locally based policies and practices.

THE NAREY PROVISIONS

In October 1996 three government departments, the Lord Chancellor's Department, the Home Office and the Law Officer's Department sponsored a review to identify ways of expediting the progress of cases through the criminal justice system from initiation to resolution, consistently with the interests of justice and securing value for money" (Narey, 1997: 51).

This led to the publication of the Narey Report (1997) which contained a large

25Depending on seniority and experience the lawyers are ranked as Principal Crown Prosecutor (P.C.P.), Senior Crown Prosecutor (S.C.P.) and Crown Prosecutor (C.P.).

26Including Designated Caseworkers (D.C.W.) who can now prosecute certain uncontested cases before the magistrates' courts.
number of recommendations for that purpose many of which were accepted by the government (Home Secretary's statement in Parliament of 30th July, 1997, Hansard, 341). These recommendations implemented important changes in the way the prosecution process works in practice. C.P.S. staff would work with the police on the speedy preparation of the prosecution file and prosecute all cases where a guilty plea is anticipated (usually within forty-eight hours of a defendant being charged) and that non-lawyers (designated caseworkers) would be able to review files and present uncontested cases in the magistrates' courts. A national system to this effect was implemented on 1st November 1999 after the scheme had been piloted in a number of areas. There is no parallel provision for defence lawyers to be present at the police station to make representations about whether or not a person should be charged or as to the nature of the charge. This system of Narey courts although only recently implemented has had a substantial impact of the way the prosecution process works in practice. Non-lawyers have been presenting cases and prosecutors and caseworkers attending at police stations to speedily review and present these Narey type cases. It is likely that a significant number of cases will be fast-tracked by the Narey system. It is too early to assess the full impact of this system. Nevertheless, the introduction of the Narey system must be seen as a reinforcement of crime control values as opposed to due process values. This is because there are pressures on all parties in the criminal justice process, the police, C.P.S., the courts, the defendants and the defence solicitors, to deal with cases expeditiously within the terms of this Narey system. 27 The speedy processing of cases in this way does not give the same opportunity for a deliberate, careful or totally impartial review of cases as envisaged when the C.P.S. was created (Philips, 1981: 194).

27See Bridges (2000)
THE GLIDEWELL REVIEW

In 1997 the incoming Labour Government clearly felt that the public lacked confidence in the C.P.S. There were perceptions\(^{28}\) of falling conviction rates, a poor relationship between the police and the C.P.S., and the unjustified 'downgrading' of charges. This is implicit in the terms of reference of the Glidewell Review (1998: 30 & 219). The new Government had promised a reorganization and review of the work of the C.P.S. and so the Glidewell Review was set up to look at the whole structure, organisation and procedures of the C.P.S. with a view to see what changes were necessary to provide for a more effective and efficient local prosecution service (Glidewell, 1998: 219). The members of the Review Team\(^{29}\) consulted a wide range of people and visited C.P.S. offices adopting an informal approach.\(^{30}\) The proposals that the Glidewell Review made were deliberately vague so as to enable the senior management of the C.P.S. to work out the detailed implications and changes (Glidewell, 1998: 220).

The Glidewell Review (1998) proposed a number of radical organisational changes to the C.P.S., which will have a great impact on the prosecution process. Glidewell recommended that some of the functions of the police and C.P.S. be amalgamated so that the C.P.S. could assume responsibility for the prosecution process from the point of charge (Glidewell, 1998: 127) envisaging that there would be a C.P.S. unit with some police staff. This Criminal Justice Unit would have sole conduct of the fast-track cases building on the Narey Report and would be responsible for case management in the magistrates' courts (Glidewell, 1998: 128). Glidewell proposed

\(^{28}\)Criticised as naive and misleading (Ashworth, 1998: 189)

\(^{29}\)The Rt.Hon. Sir Iain Glidewell (a former Lord Justice of Appeal), Sir Geoffrey Dear (a former senior police officer) and Robert McFarland (a former Chief Executive in industry) (Glidewell, 1998: v)

\(^{30}\)See 'Method of Working' in Appendix A to the Review (Glidewell, 1998: 219)
that the 42 Areas would replace the Branch structure as the key-operating units. Within each Area would be Trial Units and a series of Criminal Justice Units. The Trial Units would be responsible for all prosecutions in the Crown Court, and be available to undertake the advocacy of trials of either-way cases in the magistrates' courts (Glidewell, 1998: 131).

These proposals were based on the general desire of the Glidewell Review to shift the emphasis of C.P.S. legal work from the magistrates' courts cases to the Crown Court cases, what Glidewell called the shift in the centre of gravity of the Service (Glidewell, 1998: 215). The preparation of Crown Court work would be given a higher priority. The idea being that C.P.S. lawyers released from spending time on the less serious cases by the adoption of the fast-tracking methods and the presentation of cases by non-lawyer members of C.P.S. staff, should then be able to devote more time and attention to the preparation of Crown Court cases (Glidewell, 1998: 135). This might have implications for the oversight of the less serious cases, of course, as lay-presenters may develop a culture that will support the police thereby again undermining the independence of the C.P.S.. After making these radical proposals the Glidewell Review suggested that there should be no further major changes or review of the C.P.S. for a considerable period of time to enable it to settle down and make the new systems work (Glidewell, 1998: 216).

The government accepted most of the Glidewell recommendations including the creation of Criminal Justice Units and Trial Units and a lengthy process is presently in hand that will lead to radical changes in the organisation of the C.P.S. along the lines recommended by Glidewell. There are a number of reasons, however, why it is not possible to be optimistic that the proposed changes will have a positive effect on the prosecution process.

The Glidewell Review dealt largely with organisational changes within the C.P.S. where many changes of direction already have not proved satisfactory. The fundamental issues about the independence, effectiveness and accountability of the C.P.S. were not directly addressed by these proposals. The greater integration of
functions within the prosecution process with the police clearly undermines the independence of the C.P.S.. The creation of different sections of the C.P.S. in Criminal Justice Units and Trials Units may well be a return to practices before the introduction of team working where the responsibility for a particular case became fragmented amongst different staff of the C.P.S., both lawyers and non-lawyers. There is a fear that an artificial hierarchy will be created with those lawyers employed in Trials Units somehow thinking that they are superior to those lawyers employed in Criminal Justice Units as they are 'only' dealing with magistrates' court cases. Despite the publicity which has been given to the supposed ineffectiveness of the C.P.S. in the studies of judge ordered and judge directed acquittals, the fact remains that Crown Court cases, although dealing with the more serious crimes, are only a small proportion of the workload of the C.P.S. compared with the number of cases dealt with in the magistrates' courts. The change of emphasis relied upon by the Glidewell Review therefore appears to be misconceived. What is required is not further re-organisation of the C.P.S. as proposed but a fundamental reappraisal of the responsibilities of the C.P.S. based upon the values that led to its foundation. The work of the Glidewell Review will not affect these broader issues. Indeed the Glidewell proposals may lead to further problems regarding the independence, effectiveness and accountability of the C.P.S. and these issues will be discussed in the next section of this chapter.

THE INDEPENDENCE, EFFECTIVENESS AND ACCOUNTABILITY OF THE C.P.S.

In this section the principles of independence, effectiveness and accountability referred to in the report of the Philips Commission will be discussed in greater detail taking into account the findings and recommendations of the Glidewell Review.
Independence

The principle of the separation of the investigation and prosecution of criminal offences was fundamental to the findings of the Philips Commission (1981). There are still problems with the lack of independence. In theory, prosecution decisions are made completely independently by the C.P.S. In practice the position is more complex. The C.P.S. has usually only one client providing cases to it, namely the police and it relies entirely upon them for the nature of the information provided and for co-operation. The relationship with the police is a key element in understanding why independence may be more apparent than real. A number of commentators have been critical of the C.P.S. in allowing its identity within the criminal justice process to be weakened by readily accepting the police views of cases. Fionda (1995) concentrated on a comparison between different jurisdictions to explore the possibility of the C.P.S. being given the power to deal with cases by means of prosecutor fines or other forms of diversion from court. She recognised that the process where the prosecution has already been instigated by the police means that the momentum for proceedings already exists and the C.P.S. have only a secondary discretion, to drop the case or not (Fionda, 1995: 59).

One work describing the findings of major research into prosecution decision making since the reforms of the 1980s is "The Case for the Prosecution" by McConville, Sanders and Leng (1991). This is the only text where there has been an analysis of a range of prosecution cases. The authors are critical of the C.P.S. suggesting that prosecution decisions are in practice subordinated to the views of the

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31The fieldwork, according to the preface, took place between 1986 and 1988 with the consent of the Director of Public Prosecutions and of the Chief Constables of three police forces. It involved the collection and analysis of 1,080 cases on a random basis from arrest to disposal (McConville et al., 1991: vii).
police. They suggest that the police carry out a process of "case construction" deliberately constructing the evidence and information about a case around the nature of the charge that has been determined by them. This in itself makes it difficult for the C.P.S. to disagree with the police. They found that the C.P.S. failed to assert its independence. In general, the C.P.S. prosecuted cases presented by the police without greater consideration or review with a presumption in favour of prosecuting provided there was sufficient evidence in a case. Significant C.P.S decisions were reactive.

The rhetoric of prosecution decision-making emphasises objectivity, impartiality and individualization. Police influence over a case is said to be confined to the investigation and case preparation stages with the ultimate decision making by the prosecutor applying rigorous tests of public interest and evidential sufficiency. The reality is a system of routined decision making embodying an overwhelming propensity to prosecute, bolstered by the presumption that earlier decisions were properly made and should not be overturned. The system is dominated throughout its stages by the interests and values of the police, with the C.P.S. playing an essentially subordinate and reactive role. (McConville, et al., 1991: 126)

The C.P.S. was found to be unable to exercise an impartial review of cases constantly accepting the police views to proceed in weak cases and relying almost totally on the information provided by the police.

The C.P.S., far from being an independent agency, is a police-dependent body, confining review to evidence sufficiency questions, eschewing public interest criteria, utilising the contradictory and malleable nature of the principles in the codes to further narrowly conceived objectives and, at worst, adopting an uncritical support-the-police-mandate. (McConville, et al., 1991, p.147)

Sanders and Young (1994) suggested that the C.P.S. cannot be expected to be an effective independent prosecution body given the power of the police and "case construction" which takes place reducing or nullifying any external scrutiny.
despite appearances and protestations to the contrary, the C.P.S. is a police-dependent, rather than an independent, institution. (Sanders and Young, 1994: 226)

the C.P.S. is not a decision taker but a decision confirmer or reverser. It is more difficult to reverse a decision of which one disapproves than it is to refuse to take it in the first place. The result is 'prosecution momentum': the continued prosecution of cases, as a result of inertia, which should never have begun. (Sanders and Young, 1994: 220)

These commentators recognised that the C.P.S. could not be truly independent given the reliance placed upon the police for case files and information. Uglow (1995) was more optimistic suggesting that the C.P.S. would eventually fight for its own institutional autonomy and emerge as a "competitor" to the police.

Now the teething problems over efficiency have been overcome, the C.P.S. inevitably will fight for its own institutional autonomy. In legal terms, it already occupies the high ground. Through the discretion as to whether to proceed with prosecutions, the C.P.S. can develop the power to censor police actions or to take a more pro-active role in investigation and interrogation before the trial. This conclusion flows from the prosecutor's discretion whether to proceed in any particular case. (Uglow, 1995: 125)

This has not occurred because the police are a very powerful political body. They are highly organised and represented by strong associations such as ACPO and the Police Federation. As the guardians of law and order under the law they are obviously very influential. The subordination of the C.P.S. to the police is recognised even if only by implication by the Government as is clear from the reaction to the Glidewell recommendations. For example, the Attorney General announced in Parliament that the recommendation that the C.P.S. take over the warning of witnesses for court from the police was rejected. Instead there would be a new framework for joint C.P.S./police administration to enable the police and the C.P.S. to work together (Hansard, 28th June 1999: column 12).

The current (2000) trend therefore appears to be one of the greater integration of police and C.P.S. functions. The C.P.S. has not been given any greater autonomy.
There is a danger that the fundamental principle of independence will be compromised.

**Effectiveness**

Within a criminal justice process the effectiveness of the prosecution would usually be measured in terms of the number of convictions secured. Convictions in high profile and celebrated cases attract considerable publicity. Indeed the terms of reference of the Glidewell Review referred to whether the C.P.S. had contributed to the falling number of convictions for recorded crime (Glidewell, 1998: 219). However, in discussing the effectiveness of the C.P.S. there is an immediate difficulty in defining what one means by effectiveness. Some commentators do appreciate the number of variable factors, which can affect the outcome of a case some of which are outside the control of the C.P.S.. Ashworth recognised that the nature of a case may change through factors outside the control of the C.P.S. (Ashworth, 1994: 1699) and stated that there is:

no clear benchmark of the success or failure of prosecutorial decisions (Ashworth, 1994: 176)

The Glidewell terms of reference (1998) suggested that the success of the C.P.S. is measured in fairly crude terms not by the number of weak cases actively screened out (regarded as too high) but rather by the number of convictions obtained (regarded as too low) (Belloni & Hodgson, 2000: 111).

Nevertheless, several possible measures of the effectiveness of the C.P.S. have been commonly used. Various studies and reports have looked at overall conviction rates, the level of judge ordered and directed acquittals at the Crown Court and at the rate of discontinuance as three possible measures of effectiveness.
So far as overall conviction rates are concerned high numbers of acquittals by the courts may suggest that too many weak cases are being prosecuted. The problem with this approach is that there are so many variable factors that can affect the outcome of a case. An acquittal does not necessarily mean that the case was too weak to place before the court. For example, witnesses can become ill, juries can be perverse, and so on. In addition there are problems with the statistics that are available. Different statistics are produced by the Home Office, the Court Service and the C.P.S. relating to criminal prosecutions but these statistics are inconsistent with each other (Glidewell, 1998: 71). In broad terms Glidewell found that between 1985 and 1996 the total number of defendants in the magistrates' courts fell by 227,000 from 2,147,167 to 1,919,494. The number of cases discontinued, discharged or withdrawn increased by nearly 260,000 an increase from 7.9 per cent to 18.8 per cent. Glidewell concluded that this substantial increase accounted for almost all the drop in the proportion of cases in which defendants were convicted or pleaded guilty before magistrates' courts from 85.1 per cent to 72.8 per cent and was because of the establishment of the C.P.S. (Glidewell, 1998: 78). This suggested that weak cases were being stopped by the C.P.S.. So it is difficult to draw any conclusions from then statistics as they are presently obtained.

In Crown Court cases Glidewell found that there had been a reduction in caseload between 1991/2 and 1996/7 and that proportion pleading guilty before the Crown Court fell from 80.4 per cent to 77 per cent. They found it impossible to analyse the conviction rate in Crown Court cases given the disparity in the statistics available. However, concern was expressed as to the level of judge directed and ordered acquittals that had increased from 47.6 per cent in 1985 to 58.8 per cent in 1991
(Glidewell, 1998: 86 - 89). So despite some findings that weak cases were being stopped by the C.P.S. this did not appear to apply in the same way to the Crown Court cases where there had been an increase in judge directed and ordered acquittals. This may amount to some measure of C.P.S. effectiveness given that ideally weak cases should have been foreseen and not proceeded with. A number of studies have concentrated on these types of acquittals. However, as a measure of the effectiveness of the C.P.S. these studies of the Crown Court cases may only be of limited value. It is important to appreciate the fact that the majority of cases dealt with by the C.P.S. (about 92 per cent) are finalised in the magistrates’ courts (Darbyshire, 1997).

In research studies commissioned for the Runciman Commission (1993) Block, Corbett, and Peay (1993) studied judge ordered and judge directed acquittals at the Crown Court. In this study 100 case files where there had been an ordered or directed acquittal at the Crown Court were examined. They found that in 55 per cent of these non-jury acquittals evidential deficiencies were sufficient to make acquittal either clearly foreseeable (27 per cent) or possibly foreseeable (28 per cent). In 15 per cent the evidence was so weak that the case should have been discontinued before committal proceedings in the magistrates’ court (Block, Corbett and Peay, 1993: 12). So there was evidence that the C.P.S. were still proceeding in the Crown Court with weak cases that should have been discontinued.

32 An ordered acquittal is where the judge orders an acquittal before the trial begins usually because the prosecution are unable to offer evidence in the case. The case never reaches the jury. A directed acquittal is where the judge directs the jury to an acquittal during the course of a trial usually because the prosecution has failed to offer sufficient evidence.

33 In 1995 over four times as many trials took place in the magistrates’ courts as in the Crown Court and magistrates imposed around 95 per cent of all sentences. (Darbyshire, 1997: 628). In 1999 - 2000 1,434,194 cases were dealt with by the C.P.S. in magistrates’ courts whereas 124,348 were dealt with in the Crown Court (C.P.S. Annual Report, 1999 - 2000: 33 - 35).
The subject of judge ordered and directed acquittals at the Crown Court was returned to by further research commissioned by the C.P.S. itself in 1995 and 1996 (Baldwin, 1997: 536). Professor Baldwin and his team scrutinised 173 committal files from 3 C.P.S. Areas and discovered a reluctance to discontinue cases where weaknesses in evidence or potential problems had been identified. Baldwin found that as much as 80 per cent of non-jury acquittals were foreseeable by prosecutors and suggested that the C.P.S. should have stopped cases at an earlier stage. Renewing the criticism of McConville, et al., (1991) Baldwin reported:

It was frequently evident when reading the prosecution files that some reviewing lawyers, far from conducting a dispassionate examination of a case, uncritically accepted the initial police view. (Baldwin, 1997: 544)

Baldwin and his team interviewed 18 C.P.S. lawyers and 15 barristers instructed on a regular basis by the C.P.S. to appear in Crown Court cases. Baldwin's research found that prosecutors depend more on their experience and intuition rather than on any formal code or guidelines in making decisions about whether a case is to proceed or not.

It is not enough to devise codes or manuals of guidance for reviewing lawyers in the hope they will in themselves produce consistent decision taking: weak cases will only be terminated when reviewing lawyers apply dispassionately the standards as they are required under the Code for Crown Prosecutors. (Baldwin, 1997: 555)

Baldwin found that many prosecutors lacked confidence and tended to endorse police decisions.

The picture which emerges is not one of the careful evidential scrutiny of cases, but of C.P.S. lawyers wading through large numbers of poorly organized files, making hurried and inconsistent decisions which fail to test out the initial police view (Belloni & Hodgson, 2000: 110)

Glidewell found that not all the reasons for cases being unable to proceed were within the control of the C.P.S. For example, in 19.8 per cent of judge ordered
acquittals for 1997 a witness was missing having failed to attend. So as a measure of
C.P.S. effectiveness the use of the judge ordered and directed acquittals may be of
limited value. However, Glidewell estimated that in say 40 per cent of the judge-
ordered acquittals in 1996/7 (some 2,650 cases) there were problems that should
have been foreseen or overcome. This was only an estimated figure based on the
benefit of hindsight. It may well be that the publicity given to the failures in the more
serious cases in the Crown Court, together with criticisms by the judges of the
C.P.S., led Glidewell (1998) to recommend a change in the emphasis of C.P.S. work
towards the Crown Court cases despite the fact that the majority of cases are dealt
with in the magistrates' courts.

The discontinuance rate may appear to provide some measure of the effectiveness
of the C.P.S. in stopping weak cases from proceeding. The position is not as simple
as this. Crisp and Moxon (1994) is the only study\textsuperscript{34} to date to look in detail at why
the C.P.S. discontinued cases. They found that there were no simple explanations.
They found wide variations between C.P.S. branches in the reasons for discontinuing
cases and also between the rates of consultation with the police (Crisp and Moxon,
1994: 38). They discovered from their analysis of the statistics and their case studies
that whilst there had been an increase in cases being discontinued by the C.P.S. there
was no expected decrease in the acquittal rates at court to reflect the weeding out of
weak cases (Crisp and Moxon, 1994: 37). They could only suggest continuing
monitoring of the C.P.S. and the need to be more consistent in applying the revised

\textsuperscript{34}This study examined 1,286 cases that had been terminated, 2,201 cases that had proceeded to court
and 443 advice files. Crown prosecutors and police officers were also interviewed in thirteen branches
from seven areas. Of 901 non-motor cases that were terminated 65 dealt with public order
offences. 46 per cent of public order cases were terminated on evidential grounds and 43 per cent on
public interest grounds and the remaining 11 per cent for other unspecified reasons. (Crisp & Moxon
1994).
Code for Crown Prosecutors (1994 edition) that emphasised proceeding rather than discontinuance where the decisions were finely balanced (Crisp and Moxon, 1994: 41).

Glidewell found that there was little disparity between the termination rates over the years and that over the five-year period from 1991 to 1996 a figure of around 12 per cent was the norm. However, there was a disparity between the rates of discontinuance for different types of offences with the highest rates being for charges involving violence against the person and criminal damage (Glidewell, 1998: 79 & 80). Glidewell recognised that these are often the most difficult cases to prosecute but suggested more research was necessary.

Whilst each of the above methods has been attempted no real measure of the effectiveness of the C.P.S. has been agreed upon. However, the general consensus amongst the various commentators is one of disappointment about the way the C.P.S. has performed. Glidewell accepted that this situation was not wholly due to the C.P.S. making the point that there had been a failure on of the police, C.P.S. and courts to set overall objectives or to agree their respective roles and responsibilities. Nevertheless, Glidewell concluded that the performance of some parts of the C.P.S. was not as good as it should have been and improvement was needed (Glidewell, 1998: 90) hence the organisational reforms suggested. It is difficult to propose any other measures of effectiveness whilst the proper statistics for comparison are not available although the discontinuance rate as a measure of screening out weak cases appears to be more attractive than the crude measure of the number of convictions.
Accountability

In general terms the accountability of the C.P.S. is limited. Philips (1981) recommended that its proposed prosecution service should be accountable to a form of local supervisory authority but this did not happen. Nationally the D.P.P. is accountable for the C.P.S. to the Attorney General and through him to Parliament. This accountability is limited to the management and administration of the C.P.S. and to prosecution policy only in broad terms. There are two different levels of accountability namely that of general policy and practice and that of the review of individual cases. There is some limited degree of accountability in the presentation of cases to the courts. However, this can only be restricted to those cases that are presented before the courts for scrutiny. Because of the mechanisms of negotiated justice and plea-bargaining there are cases that never become scrutinised by the courts at all. There is no external review of prosecution decisions not to proceed with certain cases that do not reach the courts. The courts will examine prosecution decisions by way of judicial review only in the most limited of circumstances (Hilson, 1993: 746).

The establishment of an independent inspecting body to look at C.P.S. casework has been a late development. It may be somewhat surprising that the C.P.S. Inspectorate concerned with casework quality had only been in existence for less than 12 months before the Glidewell Review (1998). The Glidewell Review suggested that there be more accountability of the C.P.S. to the public at large.

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It is clear to us that the Crown Prosecution Service needs to establish a more positive relationship with the general public, and to operate in a way that enables it to take properly into account the views of the public at large. It is also important for the Service to establish and maintain a higher public profile, so as to enable it to be more properly understood. (Glidewell, 1998: 204).

Glidewell renewed the call for the C.P.S. to be answerable at a more local level and concluded that the community strategy groups proposed by the Crime and Disorder Act were the appropriate forum for the C.P.S. to relate to the local community (Glidewell, 1998: 207). Much work needs to be done before this sort of accountability be introduced. This is important because without this level of accountability there can be little public confidence in decisions of the C.P.S. It may well be that systems are so well entrenched that any radical changes in this direction be difficult to implement. So there is a lack of accountability and this is likely to remain the case unless radical changes are made.

**SUMMARY**

The C.P.S. has suffered a changing history. This was recognised in the Glidewell Review (1998). However, this Review, as with the earlier studies and Reports referred to, was mainly concerned with organisational changes. It did not address the fundamental problems discussed in this chapter about the real lack of independence of the C.P.S. and the need for greater accountability and efficiency. The change of organisational emphasis to the Crown Court cases must be questioned given that the majority of criminal cases are dealt with in the magistrates' courts. Far from encouraging greater independence and efficiency the Glidewell proposals coupled with the already activated provisions of the Narey Report may only seek to make the C.P.S. even more reliant on the police who remain a very powerful body. The
organisational changes proposed represent an attempt to create closer working relationships between the police and C.P.S.. The whole purpose of an independent, efficient and accountable prosecution authority will be undermined.

The present trends are clearly towards crime control values with increasing pressures to deal with cases as expeditiously as possible. In certain cases under the Narey system only a speedy and perfunctory review of a case from the police perspective will be possible. The introduction of closer liaison between the C.P.S. and the police inevitably leads to questions about the independence and impartiality of the C.P.S.. Expeditious justice is not necessarily true justice. Sometimes there are cases where a slower and deliberate objective review of the situation may be in the interests of justice.

A return to fundamental principles is needed for the C.P.S. to re-establish itself as an independent and respected part of the criminal justice process. The next section goes on to discuss prosecutorial discretion, the nature of the prosecution process and the work of the C.P.S. in this context.

**PROSECUTION DISCRETION**

The prosecution system in England and Wales has been described as an 'opportunity system' in which there is complete discretion (Sanders & Young, 1994: 208). The speech in 1951 of the then Attorney General, Lord Shawcross is still quoted in paragraph 6.1 of the Code for Crown Prosecutors (Appendix 1(2)) and remains the classic statement of the 'public interest':

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36 As opposed to a 'legality system' where the police must report all offences to the prosecutor who must prosecute. This system is common amongst European countries of the inquisitorial system, such as Germany (Sanders & Young, 1994: 208)
It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution (House of Commons Debates, vol.483, column 681, 29 January 1951)

The same principles apply across the whole of the criminal justice process. The doctrine of 'constabulary independence' that will be discussed more fully in relation to the powers and authority of the police in the next chapter ensures that the police also operate within the sphere of discretion. The consequence is almost complete autonomy for law enforcement bodies in all enforcement and prosecution decisions (Sanders & Young, 1994: 211-2). Therefore, the C.P.S. operates largely in a sphere of discretion. It may create its own policies and prosecutors exercise in practice a considerable degree of discretion in their day-to-day decisions (Ashworth, 1998: 176). The C.P.S. has the responsibility for the prosecution case in court, may drop or amend charges and has the ultimate veto of prosecution (McConville et. al., 1991: 124). The way in which the law operates through the adversarial system creates this context. There are statutory obligations on the C.P.S. but the rules, guidelines and controls such as the Code for Crown Prosecutors and other prosecution directives and manuals are only partially inhibitory without sanctions. Discretion is a dominating feature of the prosecution process (Sanders & Young, 1994: 247). It will be seen in subsequent discussions that the very vagueness of the law with complicated definitions of offences and the lack of any firm policies or guidelines creates a situation in which prosecutors are left very much to their own judgements in what cases are proceeded with, at what level of charge and how they are to be presented to the courts. Although the Code for Crown Prosecutors embodies the principles of a neutral and independent 'Minister of Justice' role so much is left to prosecution discretion within the context of the adversarial system as to make this virtually meaningless in practice.
THE PROSECUTION PROCESS

The prosecution process involves a number of different functions divided by the Glidewell Review into the basic three; Review, File and Case Management and Advocacy (Glidewell, 1998: 64 - 68). Prosecution discretion applies to each of these functions as the prosecution process is a continuing one and decisions are made at each of these stages. The police submit a file of case papers to the C.P.S. usually via some form of administrative unit dealing with the management of case papers. The reviewer carries out a process that involves consideration of the file within the Code for Crown Prosecutors and the other operational prosecuting manuals. The reviewer must decide whether or not there is sufficient evidence to prove the charge or any alternative charge and whether, if so, it is in the public interest to proceed with a prosecution. In this regard given the structure of the law and the lack of definitive policies and guidelines in practice the reviewer will have an almost complete personal discretion. This review process is the most important task of the C.P.S. as it is the initial review of a file that will determine whether a prosecution will proceed and on what basis. It will determine the whole flavour of a particular case from the C.P.S. point of view. The review of the file is the stage at which the C.P.S. can play an independent role in dealing with a case. Glidewell found, however, that because of the pressures on lawyers to attend the magistrates' courts to conduct cases review was being fitted in, done in "spare" time or performed inadequately which was highly undesirable (Glidewell, 1998: 56).

It must be recognised that whilst certain official policies may be laid down by the
C.P.S. as to the prosecution of, for example, public order offences, in practice there may be other factors operating on prosecutors applying these policies to day to day decisions.

As practitioners and academics alike recognise, the official description of how a certain process is meant to operate may be considerably different from how that process operates in practice. (Ashworth, 1997: 533)

Practical decision making takes place in a larger context bringing C.P.S. lawyers into daily contact with the police, magistrates, witnesses, representatives of other agencies, such as the probation service, defence lawyers and defendants. There are therefore pressures caused by the need to maintain these working relationships.

These issues were recognised by Ashworth.

...any attempt to explain practical decision-making must take account of the organizational and operational contexts in which the decisions tend to be made. What pressures are placed on decision-makers within the CPS? What is thought to please one's superiors in the CPS? What in fact gains promotion within the CPS? How important are good working relations with the police, and how do most Crown Prosecutors think that good relations can be achieved? Questions of this kind do not remove the need to establish guidelines on policy matters, but they emphasize the need to ensure that the declared policies are put into practice - what is stated in the CPS Manuals (which are confidential and which most Crown Prosecutors would consult rather than the Code), and how if at all do managers within the CPS ensure that the declared policies are followed? (Ashworth, 1994: 193)

There are therefore many underlying structural, cultural and organisational factors that will affect in practice how a file is reviewed.

Once a file has been reviewed there are hosts of other ongoing case management tasks. The nature of the prosecution case can change as the case passes through the courts and the continuing need for review is recognised in paragraph 3.2 of the Code for Crown Prosecutors (Appendix 1(2)). Glidewell found that because C.P.S. lawyers were so occupied in the preparation and presentation of their own cases in the

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57 These units are known by different names in different police forces, such as "administrative support units", "criminal justice units", "file manager's unit".
magistrates' courts that they had little time to devote to the more serious Crown Court cases where much of the preparation was carried out by caseworkers with only limited guidance (Glidewell, 1998: 67). This is why he suggested the organisational changes to the C.P.S. but without the wider consideration of the fundamental principles referred to in this thesis.

The task, however, that occupies C.P.S. lawyers for most of their time is acting as advocates in the magistrates' courts. Glidewell found that in the busier Branches there were C.P.S. lawyers with no management functions who were carrying out six, seven or eight court sessions per week; in effect acting as full-time advocates (Glidewell, 1998: 56). However, in order to present a prosecution case properly an advocate must rely on the information available so the proper review and preparation of the case beforehand is vital. Where decisions have not been taken or there is a lack of information an advocate can be left with a situation where the C.P.S. has to re-act to developments in a case rather than taking a positive pro-active role. This has lead to the major criticisms of the C.P.S. by the courts for delays (Glidewell, 1998: 96). The way in which the C.P.S. is organised with a large workload, insufficient resources and under structural pressures heavily influenced by the police leads to a lack of the proper preparation and knowledge of cases. So in practice the C.P.S. cannot provide a fair, accountable and independent review. The law itself and the rules, guidelines and controls structure prosecution discretion as can be seen when the work of the C.P.S. is considered.

THE WORK OF THE C.P.S.

The POOA 1985 created the C.P.S. but there is nothing in the Act itself governing the duties of prosecution decision-making. The Code for Crown Prosecutors (Appendix 1(2)) is therefore the main public document setting out guiding principles for all Crown Prosecutors. The Code gives guidance to prosecutors by general
principles to be applied by them in determining whether proceedings should be
instituted or continued, the nature of charges and about representations about the
mode of trial. However, much is left to the discretion of the prosecutor.

Once the C.P.S. became independent of the police the permission of the police was
no longer required to drop cases at court or accept pleas to lesser charges although in
practice the police are consulted. In addition under section 23 of the POOA an
entirely new power was given to the C.P.S. to the discontinue proceedings in
magistrates' courts. This power of discontinuance is the most important power of the
C.P.S. as a prosecutor can by this means stop a case from proceeding further without
the intervention of the police or the courts. This power of discontinuance is in
addition to those other means of ending a prosecution case of offering no evidence or
withdrawing a charge. So the C.P.S. can discontinue a case, withdraw a charge
before the court or offer no evidence on a charge at court.

The absence of C.P.S. powers is more significant than the actual powers available
when considering the function of the C.P.S. The C.P.S. has no powers to institute
proceedings itself, to give directions to obtain evidence to the police or to put
questions to any other person. So the C.P.S. has no powers of investigation. The
C.P.S. is entirely dependent on the police for the information given to it in relation to
any prosecution case.

Since prosecution is not automatic, and the police retain autonomy in arrest
and prosecution decisions, their discretion and control of the prosecution
process (in its early stages, at least) are virtually absolute
(McConville, Sanders and Young, 1991: 6).

This police domination is implicit in the Code for Crown Prosecutors (Appendix 1
(2)), which although stressing the independence of the C.P.S. refers to the need to
consult with the police about prosecution decisions and case information. The next

38 In this respect the C.P.S. differs from prosecution agencies in many other countries where there are
powers to direct the police investigation. For example, in Scotland the police are in law subordinate to
the prosecutor in the investigation of crime (Fionda, 1995: 66).
section considers the Code in greater detail.

THE CODE FOR CROWN PROSECUTORS

The predecessor of the Code for Crown Prosecutors was the Attorney General's Guidelines on the criteria for prosecution that were issued in 1983. The first edition of the Code for Crown Prosecutors was issued in 1986 and subsequent revisions in 1992, 1994 and 2000. The present Code and the Explanatory Memorandum are set out in full at Appendix 1. Basically the prosecution review of a case deals with two issues. Firstly, is there sufficient evidence? Secondly, is it in the public interest to prosecute? The answer to the second question depends on the answer to the first as only if there is sufficient evidence to proceed does the question of the public interest come into play.

The test of whether there is sufficient evidence is a "reasonable prospect of conviction". This "means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged."(Code para.5.2) This is an objective test. Where there are doubts about the admissibility of evidence that are not "clear cut" the case should be put before the court. So the balance even where there are uncertainties is still to proceed with the case.

The Code when dealing with the issue of the public interest sets out a number of factors for and against prosecution that prosecutors need to weigh up. These lists are not meant to be exhaustive. Several factors are likely to be particularly pertinent to public order cases. These include the use of violence or a weapon, the involvement

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39 The case studies in this research were all reviewed in the context of the 1994 Code. The fourth edition of the Code came into effect on 11th October 2000 (appendix 3) although much of the Code has remained unchanged and the tests have not been altered. The more recent changes have been more of form than substance. When revising the fourth edition the C.P.S. did not want any amendments to be construed as a change of approach where none was meant (C.P.S. 2000: 3)
of a group or gang, a discrimination motive and the victim suffering personal attack, damage or disturbance. This suggests that in for example most public order cases of any seriousness the public interest test will be resolved in favour of proceedings. Prosecutors will find those factors that suggest proceeding taking a view that proceedings in court are the most appropriate way of continuing. The factors against prosecution include the old age or infirmity of the defendant, physical or mental health and the possibility of the court imposing a nominal penalty for the offence.

It is important to note that detailed guidance on particular offences was not thought to be appropriate to the Code. Policy matters were to be found in other operational manuals that are still restricted. The Code is meant to be a public statement of general principles. There have been a number of Charging Standards in particular types of cases such as Offences Against the Person and Public Order Offences (Appendix 4) that will be considered later that give further guidance. But a lot of discretion is left to prosecutors.

Where defendants wish to plead guilty to a lesser charge but not guilty to more serious charges the Code advises that the court must not be left in a position where it is unable to pass a sentence consistent with the gravity of the defendant's actions. So this may discourage prosecutors from reducing charges if they think that they will be criticised by the court for reducing the powers of sentence available. This may in turn encourage practices such as over-charging by the police if the police are confident that the C.P.S. will not alter the level of charge.

When a plea is accepted to a lesser charge the prosecution cannot then present the case as more serious than what is accepted by that charge. The C.P.S. should not use a multiplicity of charges to put pressure on a defendant to plead guilty to some of them. Factors such as the speed of trial and the mode of trial permit a charge of lesser gravity so long as the court's sentencing powers are adequate.
The present emphasis in the Code is clearly in favour of prosecution. This may discourage prosecutors from a thorough independent review of cases as they can argue that in cases of doubt the balance of emphasis in the Code is to place cases before the courts.

The Code is clearly a fundamental document for prosecutors. However, research (Hoyano et al., 1997: 556) suggests that it is not referred to on a regular basis and that the impact of the revisions to the Code in 1994 upon case decisions was limited. A team from the University of Bristol were commissioned by the C.P.S. to study whether the evidential and public interest tests were being implemented in line with the guidance contained in the revised Code and, to discover what impact, if any, the revision had had upon prosecutors' case decisions. Tape-recorded interviews were held with eighty C.P.S. personnel in four C.P.S. areas. The findings of this research indicated:

...most prosecutors seldom consulted the Code. It was certainly not a matter of routine to pick up a copy and refer to it. The main reason for this is clear: most prosecutors regarded the Code as a very basic document to which they saw no need to refer on a regular or even occasional basis as they felt that the Code's general principles had been absorbed into their bloodstream. Prosecutors had to glean more specific case guidance from other sources. The ones mentioned most often (in order of frequency) were: the recently revised C.P.S. Prosecution Manual; policy circulars; and consultation with colleagues (Hoyano & others, 1997: 558).

Rather than refer to the guidelines that were viewed as too imprecise to provide guidelines in specific cases prosecutors were shown to place more reliance on their own judgement and experience or on that of colleagues:

Prosecutors stressed that the only way to acquire the ability to assess the likelihood of conviction was through experience, or through consulting colleagues. They acknowledged that different prosecutors might well reach different conclusions in the one case, so finely balanced were the judgments involved (Hoyano & others, 1997: 559).

This may well have the effect of creating a conservative culture measured by the
success of convictions and perpetuating certain beliefs and values reinforced by
unofficial working practices, relationships and methods and encouraging an
acceptance of the police views of cases rather than a rigorous and truly independent
review.

SUMMARY

The C.P.S. operates almost exclusively within the sphere of discretion that is in
practice reliant upon the judgements and decisions of individual prosecutors. The
vagueness of the law and the lack of firm controls, policies or guidelines create a
structure where discretion is virtually absolute. The Code for Crown Prosecutors is
not an inhibitory document to prosecution discretion as the definitions it provides are
so wide-ranging. The general emphasis of the Code is for prosecutions to proceed
before the courts.

The prosecution process is complex. There are so many elements that can change
as a case progresses. It is not enough to lay down policies and guidelines in formal
documents without an understanding of the underlying factors and pressures that
operate on prosecutors in their day-to-day work. Although much has been achieved
by the C.P.S. there has been no concerted effort to set out the ethics of prosecution as
a distinct subject and the C.P.S. has not been successful in inculcating a truly
independent approach in the minds and conduct of certain crown prosecutors
(Ashworth, 1998: 193). It appears that a fundamental re-appraisal of the work of the
C.P.S. and the role of prosecutors is required.
CHAPTER 2

THE PROSECUTION OF PUBLIC ORDER OFFENCES

INTRODUCTION

This chapter deals in detail with the prosecution of public order offences. First there is an outline of the law under sections 1 to 5 of the Public Order Act 1986 including a discussion of the trends in the use of these offences by an analysis of the national statistics. Second a short review of the substantial overlap between public order offences and other criminal offences and disposals. Third a brief examination of the policing of public order including police powers, authority and culture which are a key to understanding the practicalities of the policing of public order situations. Fourth a review of the C.P.S. role and the day-to-day practicalities and problems of prosecuting public order offences. Reference is made to the Public Order Offences Charging Standard (1996) (the Charging Standard) where appropriate. The full text of the Charging Standard is set out in Appendix 4.

The main argument of this chapter is that the structure of the law and the lack of policy on public order offences coupled with the considerable powers and authority of the police mean in practice there are pressures on the C.P.S. to proceed with cases as opposed to carrying out an independent and fair review. It is necessary first of all, however, to outline the law relating to public order offences and particularly those offences set out in sections 1 to 5 of the Public Order Act 1986 that formed the subject of this research.
THE PUBLIC ORDER ACT 1986

The Public Order Act 1986 put into effect major changes in the law of public order abolishing the common law offences of riot, rout, unlawful assembly and affray (The full text of Part I the Act is set out in Appendix 2). However, the Act did not deal with the whole of public order law. It was not a codifying statute but rather superimposed the new provisions onto the existing law.\(^1\) The Act, for example, did not affect the common law powers to deal with or prevent a breach of the peace (section 40 (4)). There is a substantial overlap with other offences and disposals. The result is that there is no coherent structure to public order law (Card, 2000: 3).

The Act created the five new offences of riot (section 1), violent disorder (section 2), affray (section 3), fear or provocation of violence (section 4) and harassment, alarm or distress (section 5). It is possible to distinguish the first three of these offences as more serious than the other two given the definitions and penalties applicable to them. A discussion of each of these offences follows in detail distinguishing the more serious offences from the less serious offences.

RIOT, VIOLENT DISORDER AND AFFRAY

Table 2.1 sets out the ingredients for the offences of riot, violent disorder and affray. This table seeks to summarize the somewhat complicated legal definitions of these offences where important terms are left largely as a question of fact for the courts (Card, 2000: 5). It also assists in identifying the common ingredients of these

\(^1\)For a comprehensive examination of the law of public order there are a number of legal textbooks. Smith (1987) recognised the wider implications and provided an in-depth analysis of public order law at that time. Marston and Tain (1995) include the later legislation but their book is more specifically for the legal practitioner. The latest work is that of Card (2000) which provides a more up-dated analysis and includes a discussion of the impact of the Human Rights Act 1998 on public order law.
offences and highlighting the differences. All involve the use or threat of unlawful violence. Outsiders need not witness this conduct; a "hypothetical bystander test" applies. Each of these offences can be committed in private as well as in public places. Specific intention or awareness is required on behalf of the perpetrators of these offences although the defence of non-medically prescribed self-induced intoxication is specifically disallowed. In law and practice, however, there is considerable scope for alternative verdicts given that there are many common ingredients between those public order offences that are to be tried on indictment.

This means that the possibilities for alternative convictions are in theory dauntingly wide (Smith, 1987: 31). Indeed, given the overlap with other offences which are not Public Order Act offences such as assaults, possession of offensive weapons, obstructing a constable, and others there is very substantial scope for all kinds of alternative offences and disposals.

2"Violence" is defined in section 8. The section is unusual in giving examples and in the way that it excludes conduct towards property from the offence of affray. In reality this wide definition means any sort of violent conduct although the key to riot is the actual use of violence by certain elements of a crowd rather than just threats of violence.

3The conduct of the participants taken together must be such as to cause a person of reasonable firmness present at the scene to fear for his personal safety. This is an issue for the jury to determine as an objective matter. This "hypothetical bystander test" is a common element in the offences of riot, violent disorder and affray. It was introduced to avoid problems that had occurred with cases before the Act when witnesses were not prepared to attend court to say that they were alarmed. It was difficult to prove that people had been afraid, as they were reluctant to come forward. The prosecutor does not now have to prove that any bystander was present. In the case of affray the Court of Appeal in R v Thind [1999] Crim.L.R. 842 confirmed that the person put in fear must be a person other than that against whom the threat was originally directed. It was a question of whether any bystander would be placed in fear by the defendant's actions.

4Where a charge of violent disorder is tried on indictment the jury may acquit of that offence and convict of the alternative section 4 offence under section 7 (3). Then the Crown Court has the same sentencing powers as the Magistrates' Court s7 (4).

5In the case of R v O'Brien [1993] Crim.L.R. the Court of Appeal confirmed that section 6(3) of the Criminal Law Act 1967 permitted a person upon arraignment to plead guilty to any offence of which he might be found guilty on indictment and the Court was satisfied that this provision applied to the alternative offences under the Public Order Act. In other words, the Crown Court judge could accept a plea of guilty to the section 4 offence without empanelling a jury to reach a verdict.

Although these provisions do not apply to the magistrates' courts the House of Lords held in the case of Chief Constable of Norfolk v Clayton [1983] 2 A.C. 473 that a magistrates' court may try more than one information alleging one offence at any one time. A prosecutor can therefore include alternative charges such as affray and section 4 or section 4 and section 5 and the magistrates can order a joint trial even if the defendant does not consent.
There are a number of differences between these three more serious offences. These include the numbers of people involved and the type of disorderly behaviour required for each offence. Table 2.1 sets out the number of people who need to be involved and the different penalties for each offence. Riot involves the use of violence by one or more of the twelve or more persons who must be present so the offence is confined to larger groups of people. The use or threat of violence for affray must be towards another person. The offences of riot and violent disorder may be committed against property as well as people.
**TABLE 2.1: Ingredients of the more serious offences**  
Sections 1 to 3 Public Order Act 1986

<table>
<thead>
<tr>
<th></th>
<th>Riot</th>
<th>Violent Disorder</th>
<th>Affray</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number participating</strong></td>
<td>12 or more persons present together</td>
<td>3 or more persons present together</td>
<td>1 person</td>
</tr>
<tr>
<td><strong>Act required</strong></td>
<td>Use or threaten unlawful violence for a common purpose</td>
<td>Use or threaten unlawful violence</td>
<td>Use or threaten unlawful violence towards another (a threat cannot be by the use of words alone)</td>
</tr>
<tr>
<td><strong>Fear test</strong></td>
<td>the conduct of them (taken together) would cause a person of reasonable firmness present at the scene to fear for personal safety</td>
<td>the conduct of them (taken together) would cause a person of reasonable firmness present at the scene to fear for personal safety</td>
<td>the conduct is such as would cause a person of reasonable firmness present at the scene to fear for personal safety</td>
</tr>
<tr>
<td><strong>Presence</strong></td>
<td>No person of reasonable firmness need actually be, or likely to be, present at the scene</td>
<td>No person of reasonable firmness need actually be, or likely to be, present at the scene</td>
<td>No person of reasonable firmness need actually be, or likely to be, present at the scene</td>
</tr>
<tr>
<td><strong>Intent</strong></td>
<td>Intention to use violence or awareness that conduct may be violent</td>
<td>Intention to use violence or awareness that conduct may be violent</td>
<td>Intention to use or threaten violence or awareness that conduct may be violent or threaten violence</td>
</tr>
<tr>
<td><strong>Place</strong></td>
<td>Private as well as public</td>
<td>Private as well as public</td>
<td>Private as well as public</td>
</tr>
<tr>
<td><strong>Maximum Penalty</strong></td>
<td>(Indictable only) 10 years imprisonment or a fine or both (Note: D.P.P.'s consent required)</td>
<td>(Indictable) 5 years imprisonment or a fine or both (Summary) 6 months imprisonment or a fine or both</td>
<td>(Indictable) 3 years imprisonment or a fine or both (Summary) 6 months imprisonment or a fine or both</td>
</tr>
<tr>
<td><strong>Defences</strong></td>
<td>Non-medical self-induced intoxication is not a defence</td>
<td>Non-medical self-induced intoxication is not a defence</td>
<td>Non-medical self-induced intoxication is not a defence</td>
</tr>
</tbody>
</table>
Riot

The offence of riot is the most serious of the public order offences. It carries the severest sentence of ten years maximum imprisonment and is the only offence triable solely on indictment. It should therefore be reserved for the gravest cases of disorder. The consent of the Director of Public Prosecutions is required before a prosecution can proceed (section 7 (1)). Whilst the POOA section 1 (6) has the effect of giving all Crown Prosecutors these powers, in practice a charge of riot would not be allowed to proceed unless the matter had received careful consideration from the most senior prosecutors within the C.P.S.

For the offence of riot there must be the use or threat of unlawful violence for a common purpose. This is another essential element in the offence that distinguishes it from the other offences in the Act that of common purpose. Section 1 (3) says, however, that this common purpose may be inferred from conduct. This concept is nebulous but the Act does not affect the general law with regard to complicity. Case law has decided\(^6\) that all the offences created by the POA could be committed by aiders and abettors as well as by principals so giving a wide scope to prosecutions for public order offences against all participants of whatever degree.

The mental element required for the offences of riot, violent disorder and affray is set out in section 6 of the Act. The mental element of intention or awareness is a subjective one that is there is a conscious act or risk taking. A person whose awareness is impaired by intoxication as the result of drinking alcohol, taking drugs or by other means or combination of means, is deemed to be aware of that of which he would be aware if not intoxicated unless the intoxication is not self-induced or

\(^6\)R v Jefferson and others [1994] 1 All E.R. 270; [1993] Crim.L.R. 880; The Times, June 22, 1993. This was a most important case in public order law as it confirmed that the offence of aiding and abetting, as a common law offence, was applicable to all Acts unless specifically excluded by statute.
caused solely by taking medical treatment. If the person’s awareness is genuinely impaired the Act therefore shifts the burden of proving this upon a defendant on a balance of probabilities test. So being drunk or affected by drugs does not afford a defence unless the defendant can prove this was not self-induced or caused by a medical condition.

Riot is restricted in practice to large-scale incidents of markedly serious disorder that can be treated as distinct from the other public order offences available under the Act. Riot is generally confined to unusual cases where the scale of the disorder is such that the incident concerned has attracted the national interest. For example, the poll tax riots in Trafalgar Square in 1990 where £6 million damage was caused and more than five hundred police officers injured (The Times, 3rd October 1995, referring to the later imprisonment of one of the rioters). The Charging Standard in paragraph 8.6 gives a number of examples of exceptionally serious acts of violence against public order committed in furtherance of industrial disputes and organised attacks on people and property in the context of marches and demonstrations but makes it clear that circumstances where riot is charged will be rare.

**Violent Disorder**

Violent disorder has been used and is intended for use as the normal charge for serious cases of public disorder. The offence is clearly very wide-ranging covering all kinds of group disorder from the most major incidents of public disorder to more minor disturbances involving threats to property. Both violent disorder and affray are triable "either way" and subject to the plea before venue arrangements in the magistrates’ courts. However, the National Mode of Trial Guidelines (1995) suggest

7 If a guilty plea is indicated the magistrates' court proceeds to convict and sentence the defendant or commit for sentence to the Crown Court where it considers its sentencing powers to be insufficient. If a not guilty plea or no plea is indicated the magistrates' court has to consider which mode of trial appears more suitable.
that in almost every case of violent disorder the case should be committed for trial on indictment. The offence requires at least three participants although any number less than three can be convicted so long as it is proved that at least three took part.

Paragraph 7.5 of the Charging Standard gives examples of the type of conduct appropriate for a charge of violent disorder; fighting between rival groups using weapons and disorder causing major disruption at a public demonstration where missiles are thrown and other violence is used against and directed at the police.

**Affray**

The offence of affray is quite different from the common law offence of affray, which was abolished by the Act. The offence is triable “either way”. However, the National Mode of Trial Guidelines (1995) make reference to a number of factors in cases of affray\(^8\) which would normally lead to a case being more suitable to be dealt with at the Crown Court as opposed to the magistrates’ courts. This means that in practice many cases of affray are sent to the Crown Court to be dealt with.

The definition of affray is wide ranging.\(^9\) There is no requirement as to the numbers of participants as with riot and violent disorder. However, if two or more persons are involved the conduct of each person will be judged by the conduct of the group under section 3(2). The fact that affray may be committed in private as well as in public has the effect that domestic assaults in a person’s own home can be prosecuted as affray (particularly where the victim does not wish to pursue a complaint for assault) provided there is sufficient evidence that there was violence of

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\(^8\) 1. Organised violence or use of weapon
2. Significant injury or substantial damage
3. The offence has clear racial motivation

\(^9\) In the case of R v Smith (Christopher) [1996] Crim.L.R. 893 it was confirmed that affray is a continuing offence in that it involved a course of conduct and that where a continuous course of conduct was alleged it was not necessary for the prosecution to identify and prove particular incidents.
a sufficient degree. This happens quite frequently in practice where, for example, the
police or others have witnessed domestic violence and the complainant does not wish
to pursue a prosecution. Indeed, the Charging Standard refers at paragraph 6 to
examples of conduct appropriate for the offence of affray and includes a person who
brandishes a knife or other weapon and issues threats towards another while both are
on private property. No specific reference in made in the Charging Standard,
however, to domestic situations as such. In effect the POA applies to conduct in
private where the only persons present are the person using or threatening unlawful
violence and a person towards whom the violence or threat is directed.10

Section 8 that defines violence specifically excludes violent conduct towards
property for affray, unlike the position for riot and violent disorder. The violence
used or threatened must be directed at another person. Furthermore by section 3(3):

For the purposes of this section a threat cannot be made by the use of words
alone

The threat has therefore to be a physical threat. The courts have, however, interpreted
this provision widely finding that what amounts to a threat is essentially a question of
fact in each case.11

Although the offence of affray is wide ranging its use in general is clearly directed
at fights and brawls between opposing parties where the public will be put in fear by
the conduct of others. For the prosecutor it is often hard to distinguish in practice

10 In the case of Director of Public Prosecutions v Cotcher and Another The Times, 29th December,
1992 Mr Justice Macpherson said that if the only persons present were those involved in the violence
the court had to consider the matter with care and imagine the reaction of a notional person of
reasonable firmness present at the scene. It could take into account the nature of the premises and the
scene where the incident took place. He made it clear that there would be cases where violence would
be limited to those involved, that is a person of reasonable firmness would not fear for his own safety.

11 In the case of I. v Director of Public Prosecutions [2000] Crim.L.R. 45 the Divisional Court held that
the visible carrying in public of primed petrol bombs by a large number of youths out for no good was
capable of constituting a threat of unlawful violence. What amounted to a threat was essentially a
question of fact in each case. The mere possession of a weapon without threatening circumstances was
not enough. The hypothetical bystander, for whose protection the offence of affray was primarily
designed, was not to know precisely when and where and towards whom the threatened violence
would occur.
between those cases at the lower end of the scale, which might better be dealt with summarily. Affray has frequently been utilised in domestic cases, where one partner against the other in private has made threats, when it is clear that it was not really intended for such use (Law Commission Report No.123, 1983: para.3.38).

The position with regard to charges of violent disorder and affray is further complicated as the law makes specific provision for an alternative verdict. The jury may find that person not guilty of the offence charged but guilty of an offence under section 4 despite the fact that the section 4 offence is triable only summarily. The jury has to be satisfied that all the elements of the section 4 offence have been proved as against the defendant. Where there is a finding of a section 4 offence under this provision by section 7(4) the sentencing powers of the Crown Court are limited to those that a magistrates' court would have on convicting the defendant of the section 4 offence. These provisions for alternative verdicts are only referred to briefly in paragraph 9 of the Charging Standard.

SUMMARY

The legal definitions of the more serious public order offences of riot, violent disorder and affray are complicated and create a structure that allows prosecutors considerable discretion in how they are prosecuted. The charge of riot is reserved for the most serious public order situations involving large numbers and a high degree of disorder. It is rarely encountered. Violent disorder is generally used for the most serious situations of public disorder where numbers of people are involved such as gang violence or serious disruption. The definition of affray is so wide-ranging that this has created problems identified by the C.P.S. (C.P.S. Annual Report 1992 -
1993: 10) in that prosecutors have proceeded on charges of affray bringing cases to the Crown Court where lesser offences under the POA would have been more applicable or even charges under other provisions of the criminal law such as assault charges. The Charging Standard offers little by way of practical guidance so prosecutors are left very much to their own judgements.

The next section of the Chapter will examine the national statistics that are available as to the charging and conviction of defendants for the three more serious offences under the POA to see if any trends are discernible.
An examination of the national statistics will show the trends with regard to the prosecution of the three more serious offences in the POA.

**TABLE 2.2**

<table>
<thead>
<tr>
<th></th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Conviction rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>3</td>
<td>1</td>
<td>33%</td>
</tr>
<tr>
<td>1988</td>
<td>68</td>
<td>17</td>
<td>25%</td>
</tr>
<tr>
<td>1989</td>
<td>82</td>
<td>22</td>
<td>27%</td>
</tr>
<tr>
<td>1990</td>
<td>95</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>1991</td>
<td>135</td>
<td>9</td>
<td>7%</td>
</tr>
<tr>
<td>1992</td>
<td>24</td>
<td>25</td>
<td>104%</td>
</tr>
<tr>
<td>1993</td>
<td>21</td>
<td>13</td>
<td>62%</td>
</tr>
<tr>
<td>1994</td>
<td>37</td>
<td>1</td>
<td>3%</td>
</tr>
<tr>
<td>1995</td>
<td>27</td>
<td>10</td>
<td>37%</td>
</tr>
<tr>
<td>1996</td>
<td>19</td>
<td>8</td>
<td>42%</td>
</tr>
<tr>
<td>1997</td>
<td>17</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>1998</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>1999</td>
<td>7</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>


Table 2.2 shows the national statistics for riot offences from 1987 to 1999. As prosecutions for riot are rare the figures are low and show erratic trends for conviction rates. Although defendants have been charged with the offence of riot it is still rarely used and quite unusual in practice for the matter to proceed to conviction on that charge. The higher figures in the early 1990 reflect particular events of large-scale public disorder specifically the Trafalgar Square poll tax riots of 1990. Despite

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12The numbers for prosecutions refer to those defendants charged by the police and brought before the magistrates' courts for committal proceedings to the Crown Court. The numbers for convictions refer to those defendants convicted of riot at the Crown Court.
the changes in the law by the Act it appears that riot is still a difficult offence to prove given all the elements including the number of people required for an offence to be made out. The statistics on riot confirm that it is rarely prosecuted and that this situation has not changed with the changes in law introduced by the 1986 Act.

**TABLE 2.3**

**VIOLENT DISORDER STATISTICS 1987 - 1999**

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Conviction rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>1683</td>
<td>432</td>
<td>26%</td>
</tr>
<tr>
<td>1988</td>
<td>4980</td>
<td>2462</td>
<td>49%</td>
</tr>
<tr>
<td>1989</td>
<td>5722</td>
<td>2277</td>
<td>40%</td>
</tr>
<tr>
<td>1990</td>
<td>5000</td>
<td>2243</td>
<td>45%</td>
</tr>
<tr>
<td>1991</td>
<td>4785</td>
<td>1571</td>
<td>33%</td>
</tr>
<tr>
<td>1992</td>
<td>4681</td>
<td>1151</td>
<td>25%</td>
</tr>
<tr>
<td>1993</td>
<td>4220</td>
<td>1051</td>
<td>25%</td>
</tr>
<tr>
<td>1994</td>
<td>4479</td>
<td>840</td>
<td>19%</td>
</tr>
<tr>
<td>1995</td>
<td>4285</td>
<td>821</td>
<td>19%</td>
</tr>
<tr>
<td>1996</td>
<td>4898</td>
<td>867</td>
<td>18%</td>
</tr>
<tr>
<td>1997</td>
<td>5078</td>
<td>796</td>
<td>16%</td>
</tr>
<tr>
<td>1998</td>
<td>5337</td>
<td>871</td>
<td>16%</td>
</tr>
<tr>
<td>1999</td>
<td>5164</td>
<td>785</td>
<td>15%</td>
</tr>
</tbody>
</table>


Table 2.3 shows the national statistics for violent disorder offences from 1987 to 1999. The numbers proceeded against for violent disorder over the period has remained fairly static around the 5,000 mark per annum. The conviction rates varying between 16 per cent and 49 per cent appear low when it is considered that

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13 The figures for prosecutions are the total numbers of defendants proceeded against on a charge of violent disorder whereas the figures for convictions are those for all offenders convicted and sentenced at all courts for the offence of violent disorder.
the conviction rate for summary non-motoring offences is 78 per cent\textsuperscript{14} (Criminal Statistics England and Wales Supplementary tables 1997, Vol.1 & Vol.2, Table S1.1 (A): 18). It appears that the conviction rate for violent disorder has also fallen to below 20 per cent when in 1988, for example it was nearly 50 per cent. So whilst a similar number of people have been proceeded against each year the proportion being convicted has fallen\textsuperscript{15}. It is not easy to explain why from the statistics themselves. It appears that there was either a substantial element of over-charging by the police or the C.P.S. were downgrading a large portion of these cases, or there was an element of both these factors.

\textsuperscript{14} Glidewell refers to overall conviction rates for all defendants before the magistrates' courts between 85.1 per cent for 1985 and 71.3 per cent for 1996 based on Home Office figures (Glidewell, 1998: 78).

\textsuperscript{15} The Crown Court figures for 1997 show that 1,072 defendants were sent for trial for violent disorder of which 58 per cent (626) were found guilty. The magistrates' courts statistics show that of the 5,078 persons proceeded against for violent disorder in 1997 65 per cent (3,281) were not convicted of that offence. The C.P.S. discontinued 381 charges and withdrew the charge against 2,346 defendants. The courts discharged the cases against 462 defendants and dismissed the cases against 92 defendants.
### TABLE 2.4

**AFFRAY STATISTICS 1987 - 1999**

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Conviction rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>2293</td>
<td>404</td>
<td>18%</td>
</tr>
<tr>
<td>1988</td>
<td>4204</td>
<td>2711</td>
<td>64%</td>
</tr>
<tr>
<td>1989</td>
<td>5236</td>
<td>2769</td>
<td>53%</td>
</tr>
<tr>
<td>1990</td>
<td>5561</td>
<td>3665</td>
<td>66%</td>
</tr>
<tr>
<td>1991</td>
<td>6186</td>
<td>4079</td>
<td>66%</td>
</tr>
<tr>
<td>1992</td>
<td>7908</td>
<td>4344</td>
<td>55%</td>
</tr>
<tr>
<td>1993</td>
<td>8690</td>
<td>4614</td>
<td>53%</td>
</tr>
<tr>
<td>1994</td>
<td>11128</td>
<td>5514</td>
<td>50%</td>
</tr>
<tr>
<td>1995</td>
<td>13370</td>
<td>6240</td>
<td>47%</td>
</tr>
<tr>
<td>1996</td>
<td>14565</td>
<td>6637</td>
<td>46%</td>
</tr>
<tr>
<td>1997</td>
<td>16734</td>
<td>7697</td>
<td>46%</td>
</tr>
<tr>
<td>1998</td>
<td>17600</td>
<td>8218</td>
<td>47%</td>
</tr>
<tr>
<td>1999</td>
<td>17184</td>
<td>7312</td>
<td>43%</td>
</tr>
</tbody>
</table>


Table 2.4 shows the national statistics for affray offences from 1987 to 1999.\(^{16}\) Although the numbers proceeded against for affray over this ten years period has steadily risen the conviction rate has fallen from around 65 per cent to less than 50 per cent. There appears to have been an increase in the use of affray charges as opposed to charges of violent disorder that have remained fairly static. Also the use of affray charges has clearly increased as opposed to section 4 and section 5 offences referred to below where there has been a trend towards reduction that has only recently been reversed.

So in relation to the more serious public order offences it appears that riot is rarely

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\(^{16}\)The figure for 1987 is low because the offence of affray under the Act was not in force for the whole of that year.
prosecuted and can be treated in isolation. Violent disorder prosecutions remain relatively static and there is a low conviction rate for this offence although it is not clear whether this is because of police over-charging or the C.P.S. accepting pleas to lesser offences as an alternative. There is likely to be an element of both these factors. There is an increase in the number of defendants proceeded with and convicted of affray.

FEAR OR PROVOCATION OF VIOLENCE AND HARASSMENT, ALARM OR DISTRESS

Table 2.5 sets out the ingredients required for the offences under sections 4, 4A and 5 of the POA. Section 4A causing intentional harassment, alarm or distress is rarely prosecuted so this discussion will concentrate on sections 4 and 5. The offences created by sections 4 and 5 are triable summarily only, that is before the magistrates' courts only. There is, therefore, a clear dividing line in the seriousness of these offences from those in sections 1, 2 and 3 and the powers of punishment available. The section 4 offence carries a maximum sentence of six months imprisonment or a fine not exceeding level 5 on the standard scale of fines set out under the Criminal Justice Act 1982. The section 5 offence carries a maximum fine not exceeding level 3 on the standard scale under the Criminal Justice Act 1982. The section 4 offence is designed to prevent violence whereas the section 5 offence aims at a lower level of harassment, alarm or distress (Sherr, 1989: 92).

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17 There were 730 prosecutions for this offence in 1999 (Home Office, 2000)

18 Currently the maximum fine is £5,000.

19 Currently the maximum fine is £1,000.

81
**TABLE 2.5: Ingredients of the less serious offences**
**Sections 4 to 5 of the Public Order Act 1986 as amended**

<table>
<thead>
<tr>
<th></th>
<th><strong>Section 4</strong></th>
<th><strong>Section 4A</strong></th>
<th><strong>Section 5</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Act required</strong></td>
<td>a) uses towards another person threatening, abusive or insulting words or behaviour, or b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting</td>
<td>a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or b) displays any writing, sign or other visible representation which is threatening, abusive or insulting</td>
<td>a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or b) displays any writing, sign or other visible representation which is threatening, abusive or insulting</td>
</tr>
<tr>
<td><strong>Fear test</strong></td>
<td>with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person or to provoke the immediate use of unlawful violence by that person or another or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked</td>
<td>with intent to cause a person harassment, alarm or distress</td>
<td>within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby</td>
</tr>
<tr>
<td><strong>Place</strong></td>
<td>Private or public place except that no offence is committed where the words or behaviour are used or the writing, sign or other visible representation is distributed or displayed by a person inside a dwelling and the other person is also inside that or another dwelling</td>
<td>Private or public place except that no offence is committed where the words or behaviour are used or the writing, sign or other visible representation is displayed by a person inside a dwelling and the other person is also inside that dwelling</td>
<td>Private or public place except that no offence is committed where the words or behaviour are used or the writing, sign or other visible representation is displayed by a person inside a dwelling and the other person is also inside that or another dwelling</td>
</tr>
<tr>
<td>Section 4</td>
<td>Section 4A</td>
<td>Section 5</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
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<td>-----------</td>
<td></td>
</tr>
<tr>
<td><strong>Maximum Penalty</strong></td>
<td>(Summary only) 6 months imprisonment or a fine not exceeding level 5 on the standard scale or both</td>
<td>(Summary only) 6 months imprisonment or a fine not exceeding level 5 on the standard scale or both</td>
<td>(Summary only) A fine not exceeding level 3 of the standard scale</td>
</tr>
<tr>
<td><strong>Intent</strong></td>
<td>Intends words or behaviour, or the writing, sign or other visible representation to be threatening, abusive or insulting or is aware that it may be threatening, abusive or insulting</td>
<td>Intends to cause a person harassment, alarm or distress</td>
<td>Intends words or behaviour, or the writing, sign or other visible representation to be threatening, abusive or insulting or is aware that it may be threatening, abusive or insulting or intends behaviour to be or is aware that it may be disorderly</td>
</tr>
<tr>
<td><strong>Defence</strong></td>
<td>Non-medical self-induced intoxication no defence</td>
<td>Non-medical self-induced intoxication no defence</td>
<td>Non-medical self-induced intoxication no defence</td>
</tr>
<tr>
<td></td>
<td>It is a defence for the accused to prove that the words or behaviour used or the writing, sign or other visible representation was inside a dwelling and that the accused had no reason to believe they would be seen or heard by a person outside</td>
<td>It is a defence for accused to prove a)no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or b)that inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed would be heard or seen by a person outside that or any other dwelling, or c)the conduct was reasonable</td>
<td></td>
</tr>
</tbody>
</table>
Section 4

The definition of the offence in section 4 appears complicated. There are a number of elements to the offence. The conduct in question must be used towards another person. Unlike the "hypothetical bystander" in cases of riot, violent disorder or affray section 4 requires the actual presence of persons who are likely to be threatened, abused or insulted. However, the Divisional Court held in the case of Swanston v Director of Public Prosecutions *Times* 23rd January, 1997 that a court was entitled to hold that threatening, abusive or insulting words or behaviour were perceived by a person without hearing evidence from the victim. Nor was the court required to hear evidence from that victim in order to find that the offence was committed without the requisite intent as described below. It was open to the court to rely solely upon evidence from a bystander and to draw the inference that the victim did perceive what was said and done by the appellant. There was no requirement to hear evidence from the object of the behaviour as to his actual belief.

The words "threatening, abusive or insulting" are disjunctive so that a person is guilty if the conduct falls under any one of the three. These words are not defined in the Act so it will be a question of fact for the magistrates in each case to decide whether the conduct was threatening, abusive or insulting in the ordinary meaning of those terms. The offence may be committed in either a public place or a private place but not in a dwelling unless the words or behaviour take effect outside the dwelling (Section 4(2)). So domestic disputes within a dwelling are excluded by this exception.

20Dwelling is defined in section 8 of the Act. The case of R v Va Kun Hau [1990] Crim.L.R. confirmed that the alternative charge of section 4 in place of affray pursuant to section 7(3) and (4) could not be put where the parties were in a dwelling as section 4(2) applied.

In the case of Rukwira, Rukwira and Johnson v Director of Public Prosecution [1993] Crim.L.R. 882 the Divisional Court upheld a submission by the prosecution respondent that a communal landing to some flats was not part of a "dwelling", an example of the possible complexities in defining these offences.
The reaction to conduct is broadly defined. The offence may be committed with intent or with provocation or whereby there is a likelihood of the fear of violence or that violence will be provoked. In practice it is easier for the prosecutor to rely on the "whereby" clauses as these do not involve proof of the defendant's intent or awareness. Despite all the possible permutations section 7(2) confirms that section 4 only creates one offence. In practice it is easier for the prosecutor to incorporate all the alternative elements in one charge to cover the possible combinations. Unfortunately this has the effect of making section 4 charges very wordy and unwieldy, as all the possible permutations have to be set out.

In the case of Winn v Director of Public Prosecutions (1992) 156 JP 881 an appeal was allowed because there was a variance between the facts found and the particulars alleged without an amendment of the information. The case confirms that although section 4(1) creates only one offence that may be committed in four different ways. The conduct towards another person can be either with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or with intent to provoke the use of such unlawful violence, or whereby that person is likely to believe that such violence will be used, or it is likely that such violence will be provoked. Common to all four is the requirement that the accused must intend or be aware that words or behaviour are or may be threatening, abusive or insulting, and must be directed to another person. The findings of this case also encourage prosecutors to put charges in alternative wordings.

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21 That is, specifying alternative descriptions of the alleged behaviour in the charge so that the different elements in the terms of the section in the POA are covered.
Section 5

Section 5 of the Act creates a new offence that covers behaviour that had not previously been a specific criminal offence. It is the most minor of the public order offences and is the only offence dealt with so far which does not carry imprisonment by way of punishment. The basic definition of the offence is set out in section 5 (1). There are a number of elements to the offence. The words or behaviour do not have to be directed towards another person as in the section 4 offence. The words "threatening, abusive or insulting" and "disorderly" are not defined in the Act. As with section 4 these words are to be given their ordinary meaning.

Whether behaviour is disorderly is a question of fact for the trial court to determine. This has been interpreted very widely. In Vigon v Director of Public Prosecutions "The Times" 9th December, 1997 the Divisional Court held that partially concealing a camera so as to film customers trying on swimwear was capable of being disorderly and insulting behaviour likely to cause harassment, alarm or distress contrary to section 5. The words of the section were not limited to rowdy behaviour.

It is sufficient if a police constable gives evidence that there was a victim likely to be caused harassment, alarm or distress. This has implications, of course, as to the way in which the police can bring cases to deal with activity they claim to have witnessed. It places the police in a powerful position. In many cases, as confirmed by the findings of this research, police officers are the only witnesses presenting evidence before the courts even where clearly there were other potential witnesses who may not even be identified. Many trials become a dispute between the evidence of the police and the defendant with the magistrates in most cases preferring the
evidence of the police.

The question soon arose after the Act came into force as to whether an offence under section 5 could be committed if the only victim was a police officer who by reason of training and experience should not be effected by abuse or insulting behaviour. In the case of Director of Public Prosecutions v Orum [1988] 3 All.E.R. 449, 1989 1 W.L.R. 88, 153 JP 85, the Divisional Court held that a police officer is capable of being the victim. It was a question of fact in each case as to whether the police officer was harassed, alarmed or distressed. However as they are less likely to suffer such a reaction prosecutors should look carefully at those cases where the only victims are the police. In reality, such careful and impartial C.P.S. review does not occur.

However, it is not necessary that the person alarmed should be concerned at danger to himself or herself; it might be alarm about the safety of an unconnected third party. In the case of Lodge v Director of Public Prosecutions, The Times, October 26, 1988 a policeman saw the appellant walking into the middle of the road shouting, kicking and gesticulating. A car approached and the police officer was seriously concerned that an accident might occur. The Divisional Court refused the appeal against conviction under section 5 saying there was ample evidence on which the justices could come to the conclusion that alarm was likely to have been caused so far as both the policeman and the car driver were concerned. So in practice there is considerable scope for convictions to be based only on the evidence of a police officer.

Unlike the other offences in Part I of the Act section 5 (3) provides three specific defences\textsuperscript{22} to a charge. It is a defence for the accused to prove that he or she had no

\textsuperscript{22}In the case of Director of Public Prosecutions v Clarke and Others [1992] Crim.L.R. 60; (1991) 156 JP 267; The Times, August 27, 1991, the Divisional Court confirmed the burden and standard of proof of these defences and said that the defence of reasonable conduct is to be viewed objectively. The
reason to believe that there was any person within sight or hearing who was likely to
be caused harassment, alarm or distress under section 5 (3) (a). It is a defence under
section 5 (3) (b) for an accused to prove that he or she was inside a dwelling and had
no reason to believe that the words or behaviour used, or the writing, sign or other
visible representation displayed, would be heard or seen by a person outside that or
any other dwelling. It is a defence by section 5 (3) (c) for the accused to prove "that
his conduct was reasonable". There is no further guidance in the Act as to what this
means. The standard of proof of any of these defences is proof on the balance of
probabilities. This means it is up to the defendant to prove that it is more probable
than not that the particular facts in support of these defences are made out. This is a
lighter burden than that on the prosecution of proving beyond reasonable doubt on
the issues on which it has to prove guilt (Card, 1992: 91)

Specific to section 5 there is an unusual power of arrest set out in section 5 (4).
This allows for a police officer to arrest without warrant where an officer has warned
a person as to his or her offensive conduct and the person continues to engage in
further such conduct after the warning. "Offensive conduct" is widely defined in
subsection (5). The need for a prior warning before arrest under these provisions
appears to be unique. The section does not effect a police constable's other powers of
arrest such as to prevent a breach of the peace or under section 25 of the Police and
Criminal Evidence Act 1984. The warning of arrest under section 5 (4) does not have
to be in any particular words provided it is clear that should the conduct be repeated
or continued the person concerned would be breaking the law. This was held in the
case of Groom v Director of Public Prosecutions [1991] Crim.L.R. 713 where the
Divisional Court made it clear that magistrates should look at the substance rather
than the form of what was said and done.

 justices had applied an objective test in finding that the conduct of each of the defendants in carrying a
picture of an aborted foetus outside a licensed abortion clinic was not reasonable. However, the Court
dismissed the prosecution's appeal because the justices had found that the defendants did not have the
required intent or awareness under section 6 (4) where the test is subjective.
Until 1996 the power of arrest could only be exercisable by the police officer who had personally administered the warning required by the section and an officer who had not administered the warning did not act in the execution of duty if the officer purported to arrest under section 5. This was held in the case of Director of Public Prosecutions v Hancock and Tuttle [1995] Crim.L.R. 139. This finding clearly had practical implications for officers operating together. After lobbying from the police the government passed the Public Order (Amendment) Act 1996 which came into force on the 17th October 1996. This Act amended section 5(4) of the Public Order Act 1986 by leaving out the word "the" and inserting the word "a" with effect from that date. This simple amendment has considerable implications in practice as the power of arrest may be exercised by any police officer provided that the person has been warned by a police officer to refrain from continuing with disorderly conduct. The restriction set out in R v Hancock and Tuttle was removed.

The Charging Standard is very confusing when it comes to the consideration of these lesser public order offences. The paragraphs dealing with the offences under sections 4, 4A and 5 of the POA are purely descriptive restating the legal definitions from the POA. The Charging Standard suggests that the reviewing prosecutor should first determine under which category of behaviour the allegations fall into and then refer to the relevant paragraphs in the Standard to identify which charge might be appropriate. This appears to create a complicated double definition test firstly determining the nature of the behaviour and secondly placing it within the offences outlined in the paragraphs. Distinguishing between different types of conduct in this way seems somewhat artificial. In providing examples of disorderly behaviour in paragraph 5.5 the Charging Standard refers to examples that appear to come from the government documents made before the passing of the POA some ten years
beforehand. No reference is made to the police or to the Home Office research (Brown and Ellis, 1994) that suggested the police are over-zealous in their use of section 5 charges. So the Charging Standard did not use examples built up from an experience of real cases and the guidance it gives is limited. In paragraph 5.19 the Charging Standard gives examples of threatening, abusive or insulting words or behaviour. Again these examples are very limited. Mention is made of individuals carrying out public service duties but strangely no specific reference to the police.

Section 5 is open to criticism in terms of its width and vagueness that allows its boundaries to be settled in particular cases by the police and the magistrates (Card, 2000: 156). Concern about the use of section 5 was highlighted in the Home Office study referred to (Brown & Ellis, 1994). It has been described as an example of what can result from broadly defined offences with undemanding requirements of proof (Ashworth, 1995: 100).

**SUMMARY**

The legal definitions of the section 4 and section 5 offences are complicated and wordy. There are definitions of behaviour left largely to the interpretation of fact and this necessarily implies a high degree of discretion on the part of the police and prosecutors. The Charging Standard does not use examples drawn from real cases and as a result the guidance it gives is only limited. It is therefore likely that prosecutors do not refer to the Charging Standard on a regular basis. The Home Office research on the use of section 5 by the police highlighted the dangers that can arise where there is no practical check on the police being over-zealous in the use of their powers.

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23 In particular the Government White Paper that led up to the POA that attempted to suggest some descriptions of 'minor acts of hooliganism' that might be dealt with by the section 5 offence (Home Office, 1985: 18)
The next section will present an analysis of the national statistics regarding Section 4 and Section 5 offences that will assist in determining whether there are any particular trends with regard to the prosecution of these offences.
### TABLE 2.6

**SECTION 4 STATISTICS 1987 - 1999**

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Conviction rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>8833</td>
<td>6483</td>
<td>73%</td>
</tr>
<tr>
<td>1988</td>
<td>20814</td>
<td>15488</td>
<td>74%</td>
</tr>
<tr>
<td>1989</td>
<td>22927</td>
<td>16125</td>
<td>70%</td>
</tr>
<tr>
<td>1990</td>
<td>21061</td>
<td>14176</td>
<td>67%</td>
</tr>
<tr>
<td>1991</td>
<td>18683</td>
<td>11749</td>
<td>63%</td>
</tr>
<tr>
<td>1992</td>
<td>17824</td>
<td>10585</td>
<td>59%</td>
</tr>
<tr>
<td>1993</td>
<td>16029</td>
<td>9451</td>
<td>59%</td>
</tr>
<tr>
<td>1994</td>
<td>16252</td>
<td>9555</td>
<td>59%</td>
</tr>
<tr>
<td>1995</td>
<td>16913</td>
<td>9875</td>
<td>58%</td>
</tr>
<tr>
<td>1996</td>
<td>17461</td>
<td>11647</td>
<td>67%</td>
</tr>
<tr>
<td>1997</td>
<td>18208</td>
<td>11320</td>
<td>62%</td>
</tr>
<tr>
<td>1998</td>
<td>18592</td>
<td>13242</td>
<td>71%</td>
</tr>
<tr>
<td>1999</td>
<td>18099</td>
<td>12617</td>
<td>70%</td>
</tr>
</tbody>
</table>


Table 2.6 shows the national statistics for section 4 offences from 1987 to 1999. The numbers for prosecutions refer to the number of defendants proceeded against in the magistrates' courts for an offence under section 4. The numbers for convictions refer to those defendants found guilty of the section 4 offence in the magistrates' courts. Unlike violent disorder and affray the trends in section 4 offences seem to be more variable. Over the ten years period the numbers proceeded against first fell then rose again recently although they have not reached the peak figure in 1989. This is mirrored by the conviction rates that fell but have picked up again in the last three years.
Table 2.7 shows the national statistics for section 5 offences from 1987 to 1999.

The numbers for prosecutions show the number of defendants proceeded against in the magistrates' courts for section 5 offences. The numbers for convictions show the number of defendants found guilty in the magistrates' courts of a section 5 offence.

The trends appear similar to those for the section 4 offences. That is over the ten years period the numbers proceeded against have fallen and then recovered but not to the 1989 level. The conviction rate also fell and then recovered in the last few years.

It is interesting to note that the conviction rates for section 4 and section 5 offences have largely been in parallel over the ten years period. These contrast with the lower
conviction rates for the more serious offences, particularly the low rate for violent disorder offences. So there are higher conviction rates for the less serious offences and this may place pressure on prosecutors to accept pleas to the lesser offences or reduce charges to the lesser offences knowing that the likelihood of conviction for the more serious offences is much less certain.

Consequently, an overall analysis of the national statistics shows a number of trends in the prosecution of public order offences. Riot is rarely prosecuted and can be treated in isolation. Violent disorder prosecutions remain relatively static and there is a low conviction rate for this offence although it is not clear whether this is because of police over-charging or the C.P.S. accepting pleas to lesser offences as an alternative. There is an increase in the number of defendants proceeded with and convicted of affray. The use of section 4 and section 5 offences in the magistrates' courts did fall but has begun to rise again slowly.

Care has to be exercised in drawing conclusions from the statistics as mentioned. In the Home Office Criminal Statistics if proceedings involve more than one offence the tables record the principal offence. The offence shown in the tables on court proceedings is not necessarily the offence for which a defendant was initially prosecuted, for example the court may have accepted a plea of guilty on a lesser charge which then becomes the principal offence. Secondary sentences and sentences for non-principal offences are not counted in the tables (Home Office, 1998: 29).

If a plea of guilty is accepted by the C.P.S. and the courts to a lesser offence this

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24 The basis for selection of the principal offence is:
   a) where a defendant is found guilty of one offence and acquitted on another, the offence selected is the one for which he is found guilty;
   b) where a defendant is found guilty of two or more offences, the offence selected is the one for which the heaviest sentence is imposed;
appears in both Home Office and C.P.S. statistics as a guilty plea to a charge of a single offence. The acceptance of a not guilty plea to the more serious offence is not recorded. There are no published statistics dealing with the subject of the downgrading of charges (Glidewell, 1998: 84). So it is difficult to engage in any meaningful discussion of downgrading without the assistance of any statistics in that regard.

OTHER OFFENCES AND DISPOSALS

Public order law is not static and police powers and discretion have been developed since the 1986 Act. A number of substantial amendments were made to the POA by the Criminal Justice and Public Order Act 1994 (the CJPOA 1994) dealing with a range of public order issues that had arisen since the 1986 Act. The relevant text from the CJPOA 1994 is set out in Appendix 3. Some of the new provisions are quite complicated more so in parts than the Act. Part V of the CJPOA 1994 increased police powers considerably in a variety of public order situations. New criminal offences were created which are controversial because they increased the extent to which the police can regulate protestors such as, for example, hunt saboteurs who had taken their active protests onto the hunting field. Political issues inevitably become involved when dealing with the rights of protestors.

Bucke and James (Home Office, 1998) provided an examination of how the additional public order provisions of the 1994 Act have worked in practice. Prosecutions for the offences introduced by the Act have been relatively rare. These provisions considerably strengthened the authority of the police and protesters have tended to comply with the directions of the police, which is why the number of prosecutions is low. The police have been more concerned with the maintenance of

c)where the same disposal is imposed for two or more offences, the offence selected is the one for which the statutory maximum penalty is the most severe
order in, for example, hunt protest incidents and hence the number of arrests and convictions may appear low in the context of these incidents.

The Crime and Disorder Act 1998 (Appendix 3) added another layer of legislation concerned with offences that are racially aggravated. The law concerning public order has become more complex and wide-ranging, as the Government reaction to perceived situations of disorder has been to add further legislation despite the fact that the existing provisions could deal with the majority of situations. The powerful police lobby has encouraged the introduction of further offences and an increase in the powers and authority of the police.

Despite the very wide-ranging nature of public order offences under the Act and related legislation in practice there can be considerable overlap with other offences and provisions of the criminal law. There is very substantial scope for additional or alternative charges in many situations. A survey of the public order cases dealt with before the Manchester City Magistrates' Court between 1991 and 1993 showed many different types of charges being used in company with public order charges throughout the whole range of criminal offences (See Appendix 6). Whilst in the main the most prevalent were matters involving violence to the person and criminal damage potentially any case may involve a public order element as any form of confrontation or challenge to the authority of the police may involve public disorder within the terms of the law. There are no clear boundaries to what constitutes public order law (Card, 2000: 1). This section will identify some of the other areas of the criminal law, which overlap with public order offences. There are many other provisions that might be appropriate in a public order situation under common law, statute, bylaws, regulations and the like.

There are also other specific provisions that might apply in a public order situation. Under sections 1 to 4 of the Crime and Disorder Act 1998 police or local authorities
can apply for an "Anti-social Behaviour Order" against individuals who act in an anti-social manner. This is a civil procedure that does not involve the C.P.S.. The police and local authorities have been given substantial powers under these provisions taking into account that the burden of proof in civil proceedings "on the balance of probabilities" is less than that of "beyond reasonable doubt" as required in the criminal courts. Anti-social behaviour is defined in section 1(1) (a) of the 1998 Act as "behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself" so there is scope for the police applying for such orders where people have been convicted or face proceedings for public order offences.

In the appropriate circumstances the police and the prosecution have a wide-ranging choice of charges available from for example assaults, obstructing a police constable, obstructing the highway, public nuisance, possession of weapons or firearms, criminal damage, conspiracy, binding over proceedings and many others some very common and some quite obscure.

Where there has been an assault then the full range of assault charges is available. There are also the offences of assaulting a constable in the execution of his duty, or a person assisting a constable, or obstructing or resisting a constable in the execution of his duty pursuant to the Police Act 1997. These offences are very frequently encountered in the prosecution of public order cases. There are also a

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25 An order lasts for two years and is like a court injunction ordering the respondent to desist from specified conduct. Breach of an order is a criminal offence that will be prosecuted by the C.P.S. and under section 1(10) of the Crime and Disorder Act 1998 this offence is triable either way and carrying a maximum sentence on indictment of five years imprisonment.

26 In law the application of unlawful physical force to the person of another intentionally or recklessly (R v Venna [1976] QB 421)

27 Ranging through murder, manslaughter, all the offences under the Offences against the Person Act 1861 such as causing or inflicting grievous bodily harm, wounding with intent, wounding, assault occasioning actual bodily harm and, under section 39 of the Criminal Justice Act 1988, common assault. There can also be attempts to commit these offences.
substantial number of statutes creating offences involving the making of threats other than the POA (Alldridge, 1994).

In addition there is the Protection From Harassment Act 1997 (Appendix 3) passed to deal with a course of conduct such as "stalking" which amounts to harassment of another. Harassment is not defined in this Act but includes alarm or distress similar to section 5 of the POA. There is therefore scope for withdrawing an earlier charge under the 1986 Act and substituting a charge under the 1997 Act where a further incident establishes a course of conduct.

There are a number of provisions regarding the carrying of weapons, firearms and other articles that will lead to charges in addition to public order offences where such items are used. There have been a number of highly publicised incidents in the last few years involving the use of firearms or knives that have led to changes in the relevant legislation. The Offensive Weapons Act 1996 and the Knives Act 1997 followed the murder of a headmaster outside his school in West London and an incident where injuries were inflicted on children and staff at a school in the West Midlands.

Where any property has been damaged or destroyed a full range of criminal damage charges is available. There are offences of destroying or damaging property, arson, endangering life, threats to destroy or damage property and possessing anything with intent to destroy or damage property under sections 1 to 3 of the Criminal Damage Act 1971.

As with all offences there is nothing to prevent the prosecution from proceeding with conspiracy or inchoate offences where appropriate although this will not be common in public order situations given the wide-ranging nature of the available public order offences.
In many cases of disorder drunkenness plays a part. Indeed this is recognised in the Charging Standard, which includes drunk and disorderly behaviour under the Criminal Justice Act 1967.

The Charging Standard recognises in paragraph 2.3 that offences involving public order are often a precursor to, or part of, the commission of other offences. Assaults, possession of weapons and criminal damage are specifically referred to. Paragraph 10 suggests that in these situations the prosecutor must ask whether the offence really is one of public disorder where there have been other offences or vice versa, i.e. the prosecutor should form a view as to where the balance of offences lays, sometimes a very difficult decision to make. The Charging Standard deals with assaults, possession of weapons and criminal damage but does not refer to any other offences where there may be an overlap. So far as assaults are concerned the standard suggests that in the more serious public order offences it will usually be appropriate to charge assaults as well. In the lesser offences it may be more appropriate to charge assaults instead. There is not a great deal of guidance and these overlapping situations are left very much as a 'grey area'. There is no reference to offences of assaulting a police officer in the execution of duty.

The common law powers in England and Wales to deal with or prevent a breach of the peace were specifically not affected by the Act under section 40 (4). In practice

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28 In practice there is often a substantial duplication between section 5 of the Act and the offence of being drunk and disorderly in a public place contrary to section 91 of the Criminal Justice Act 1967 which carries on summary conviction a level 3 fine.

29 The Charging Standard suggests that where a defendant is in possession of a weapon then the more likely a further charge should be added to reflect this fact.

30 Paragraph 10.15 highlights again the need to carry out a balancing exercise between the seriousness of the offences.

31 Strangely there is no corresponding provision in the Offences Against The Person Charging Standard (1996) issued at the same time as the Public Order Offences Charging Standard.

32 These powers are very wide. The most recent judicial definition of what constitutes a breach of the
prosecutors are dealing daily throughout the country with numerous applications before justices to make binding over orders. The C.P.S. Annual Report for 1998-99 refers in the casework statistics to other disposals comprising binding over orders and other matters in the magistrates' courts for 1998-1999 to 114,250 cases out of 1,354,017 (8.4%) (C.P.S., 1999: 39). There is a substantial duplication between these applications and the lower level public order cases under sections 4 and 5. The courts and prosecutors often take the view that it is better for the court to exercise a degree of preventative justice and bind the defendant over to keep the peace and be a good behaviour for a period of time in an appropriate sum rather than impose a small fine for say a section 5 offence. Amazingly the Charging Standard fails to recognize the frequent use of binding over orders suggesting in paragraph 11 that the circumstances in which it will be appropriate to dispose of a case by way of a bind over will be rare. This is contrary to all the evidence in the statistics that show that a significant proportion of cases both in the magistrates' courts and the Crown Court are disposed of by way of binding over orders. In the Home Office study on the use of section 5 nineteen per cent of nearly nine hundred defendants at court agreed to be bound over (Brown and Ellis, 1994: 47).

**SUMMARY**

The complex structure of the law relating to public order offences, the availability of a large number of other offences or disposals and a lack of policy or guidelines

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peace appeared in the case of R v Howell [1982] QB 416 where Watkins LJ said:

> there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done.

In effect anyone may arrest for a breach of the peace committed in his presence.

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53 Other disposals comprise cases in which the defendant was bound over to keep the peace and committal proceedings in which the defendant was discharged. Also included are cases which could not proceed because the defendant could not be traced by the police, or had died; or where proceedings were adjourned indefinitely. These cases are not discontinued (C.P.S. 1999: 39)
creates a situation where there is a substantial discretion on the part of the police and the C.P.S. how public order cases are to be dealt with. Coupled with the considerable powers vested in the police this can lead to excesses by the police in the way public order situations are dealt with. The consequences of such a wide discretion are that there may be a lack of consistency in the way certain public order cases are dealt with. An understanding of the policing of public order, police authority and culture is therefore crucial and the next section of the chapter will deal with this.

THE POLICING OF PUBLIC ORDER, POLICE AUTHORITY AND CULTURE

In this section the policing of public order offences will be considered. An understanding of the way the police deal with public order situations within the context of their powers, authority and culture is a crucial element to any discussion on the prosecution of public order offences. Although police power is not absolute it is clear that the police have more influence than any other agency within the criminal justice process (McConville et al., 1991: 153). The role of the police in society is multifaceted and complex and is constantly changing and evolving (Smith, 1987: 16). The police are called upon by society to play many roles. So far as the policing of public order is concerned

...public order policing is necessarily shaped by the changing nature of the social, economic and political order and the forms and foci of protests to which it gives rise (Critcher and D.Waddington: 1996: 29)
There have been many changes in policing public order in the post war years.34

Significant developments have occurred in such areas as protective clothing techniques, communications, command and control systems; the structures, strategies and tactics employed; the use of 'tension indicators'; and, not least, the provisions of the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994 (Brearley and King, 1996: 101).

Whilst the criminal justice and criminological literature on the role of the C.P.S. is limited by contrast there is a vast research literature about the police and policing and specifically about public order policing. The development and findings of police research over the last thirty or so years has been summarised by Reiner (1997: 997 - 1049, 2000: 205 - 235). It is beyond the scope of this thesis to carry out a detailed examination of the police and policing. However, there are a number of key issues that arise in discussing the role of the police in public order cases. These are the powers and authority of the police, police discretion, and police culture. Each of these issues will be dealt with in turn.

Historically the police took over the duty to maintain law and order from the magistracy and the military since the early part of the nineteenth century (Smith, 1987: 17). The powers and duties of the police come from the law itself and not from any agency of the state (Fielding, 1991: 67). This creates a high degree of autonomy, the concept of 'constabulary independence', vesting powers in the individual police constable (Belloni and Hodgson, 2000: 23), and giving the police considerable power. The vagueness of the law allows the police to invoke legal sanctions when it serves their purpose (Waddington, 1993: 369). The legal powers of the police

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derived from the common law have been considerably supplemented in the area of public order by subsequent legislation. Indeed, the trend in the 1980s and 1990s was to increase police powers. Following a number of high profile incidents of public disorder\(^\text{35}\) the police showed a willingness to enter into political controversy (Brewer et al., 1996: xxx) and proved a powerful lobby\(^\text{36}\) in legislative change. The POA and the CJPOA and related legislation (Appendix 3) give the police extensive powers; they can exercise a substantial degree of control with offences and sanctions where appropriate to back this up.

So far as public order policing is concerned the key to understanding the power and authority of the police is that there is a considerable discretion vested in them. This is a central concept. Beginning at the initial police response to a public order situation, including any information received beforehand by way of intelligence or otherwise, right through to the processes of arrest and charging and referring the case to the C.P.S. to prosecute and to the courts, there are many stages where decisions have to be made and where discretion can be exercised. This discretion arises for a number of reasons. First, the police do not have sufficient resources to enforce every law and choices must therefore be made about priority. In any event full enforcement would violate generally accepted criteria of justice.\(^\text{37}\) It is recognised that there will be those cases where proceedings should not occur. Indeed, this is also implicit in the public interest factors set out in the Code for Crown Prosecutors (Appendix 1 (2)) against

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\(^{36}\)Through the Association of Chief Police Officers (ACPO), the Police Federation and other representative bodies.

\(^{37}\)The example given by Fielding (1981) is that few mothers and children have been prosecuted for disrupting traffic while demanding pedestrian crossings, a very common protest in the 1970s and 1980s (Fielding, 1981: 77).
prosecution. Second, the way in which the law is defined requires interpretation in practical situations and this inevitably brings the element of discretion (Reiner, 1992: 210-211). Discretion is therefore at the root of policing. There can be a number of levels of discretion from general policy goals, force policy, working rules perhaps influenced by an operational police culture, down to the individual police officer (Sanders, 1997: 1055). This inevitably creates and encourages a gap between the legal rules and working practices (Sanders, 1997: 1084). The problem with such a vast area of discretion is the lack of any control or supervision. The police may be motivated by many factors beyond the control of the formal rules of the criminal justice system (Ashworth, 1998: 76). Without checks wide discretion is open to charges of partiality. In policing public order the police are engaged in making political judgments whether they like it or not (Smith, 1987: 19).

The considerable discretion available to the police creates ambivalence in their approach to public order offences (Waddington, 1993: 350-351). On the one hand they seek the approval of the community at large in the maintenance of public order. On the other hand they assert their authority over others in order to keep control. This dilemma between the consensual and the confrontational faces all policing of public order. In many situations police over reaction can increase the possibilities of disorder. The police seek to strike a balance between freedom of expression and the maintenance of order (Waddington, 1994: 382). It appears that a distinction can be drawn between the few large-scale events, of the sort that have led in the past to the legislative changes in the powers of the police, which have attracted considerable media attention (Brearley and King, 1996: 101), and the every day small scale incidents.
So far as the large-scale events of disorder in the 1980s and 1990s was concerned, the reaction of the police was to develop a more co-ordinated, tougher and militaristic style of policing (Waddington, 1987, 1991 and 1993). This approach more recently has become more subtle and complex. There is a leaning towards pre-emptive or preventative policing (based on the use of predictive 'tension indicators', intelligence gathering and surveillance, and negotiation and co-operation with protest organisers or community representatives) as part of a general commitment to offsetting, rather than extinguishing public disorder (Critcher and D.Waddington, 1996: 2). However, the image of senior police officers being accommodating belies an underlying determination to exert firm operational control; they are only prepared to negotiate so far (Critcher and D.Waddington, 1996: 20). The key is the need for the police to retain control.

So far as the less serious incidents are concerned there is evidence that it is only when those who are engaged in such disturbances challenge the authority of the police that they run the risk of being arrested (Smith, 1987: 20, Sanders, 1997: 1057). A police officer is more likely to arrest and charge someone who threatens the officer's authority by means of insults or failure to comply with the officer's command or requests (Ashworth, 1998: 144). The key is the need for the police to retain their authority. They are more likely to adopt a "hard policing" approach if that authority is called into question.

If disorderliness is interpreted by the police as an attack on their authority - that is their personal authority - as well as the abstract authority of Law and Order (Wesley, 1953) - they rarely accept it (McConville et. al., 1991: 25).

This can lead to situations when the police arrest people to stop them from behaving in a certain manner as a reaction to a challenge to their authority without any
consideration of subsequent proceedings. In other words enforcement takes precedence. If the matter is to then proceed to a subsequent prosecution this may encourage case construction where the police fit the circumstances around a particular charge or charges (McConville et. al., 1991: 25-26).

The danger of police officers misapplying their discretion in small-scale public order incidents was reviewed in the Home Office study on the police use of section 5 of the POA by Brown and Ellis (1994). This research involved six police forces and the analysis of nearly 900 cases of arrests for the section 5 offence. It found that in a substantial minority of incidents police officers were exclusively treated as the victims of offensive conduct and that in a third of cases in which the public were viewed as victims there were doubts about whether any real harm was caused (Brown and Ellis, 1994: 49). Realising that once in an encounter in which officers may have little option but to arrest in order to maintain face this research suggested the police approaching low-level disorder with a view to resolving situations short of arrest (Brown and Ellis, 1994: 51-2). By identifying the section 5 offence with relatively minor instances where only the police are abused this research suggested that this could cause the offence to fall into disrepute making the courts unwilling to sentence adequately offences where the public have been genuinely alarmed (Brown and Ellis, 1994: 52). This research is not widely known amongst C.P.S. lawyers and staff. It does not appear to have been circulated amongst the prosecutors when it was published and is not referred to in any case review notes in the case files that were examined for the purposes of this research.

The police view of their mandate to maintain public order by exercising their control and authority has assisted in the creation of working values and practices
within a police occupational culture (Waddington, 1992: 16). The police see themselves as a special part of society.

The elements of mission in the police perspective are reflected in the sense of themselves as 'the thin blue line', performing an essential role in safeguarding social order, which would lead to disastrous consequences if their authority was threatened (Reiner, 1992: 112)

There has been a great deal of research into the occupational culture of the police, sometimes referred to as 'cop culture' or 'canteen culture' (Reiner, 2000: 1001-1002). This culture is of considerable influence and motivates the police beyond and above the formal rules of the criminal justice system (Ashworth, 1998: 74-77). The core characteristics of this culture are conceptions of mission, cynicism, suspicion, isolation from society, solidarity with fellow officers, identification of certain groups within society as criminal or miscreant, conservatism and pragmatism, all of which are explored in detail by Reiner (1992; 107-137). Clearly these values and conceptions will inform, consciously or unconsciously, the policing of public order and may be used by an officer to characterize a person's behaviour (McConville et. al., 1991: 134). This sort of cultural outlook is resistant to change and acts as a powerful 'crime control' engine (Sanders and Young, 1994: 33). In the context of public order policing this means that particular sections of the community may be singled out for police attention (Critcher and D. Waddington, 1996: 11) particularly young males from poor and minority sections of the community (Sanders, 1997: 1059, McConville et. al., 1991: 35). The Home Office study on Section 5 refers to tentative evidence of disproportionate use against members of ethnic minorities (Brown and Ellis, 1994: 52). It found that 48 per cent of section 5 incidents in which Afro/Caribbean suspects were involved were categorised as abusive, threatening or violent behaviour directed at the police compared with a figure of 28 per cent for white suspects (Brown and Ellis, 1994: 33). However, this study could not conclude
whether this was because Afro/Caribbean people are more likely to be provoked by police warnings or whether the police are more ready to react adversely to abuse from these suspects (Brown and Ellis, 1994: 33).

The needs of the police to retain control and authority can lead to police excesses. Attempts have been made to control police practices. Research on the Police and Criminal Evidence Act 1984 (PACE) that introduced many procedural controls on police actions, however, has found that it is impossible to regulate the working practices and values of the police by the imposition of legal rules (Reiner, 1992: 223 - 232).

The effect of PACE on the operation of discretion is clearly limited. Police working rules gel with cop culture stressing the importance of 'facing down' challenges to authority, investigating the incongruous, picking on 'known criminals' and so forth far more than with PACE (Sanders, 1997: 1058).

PACE appears to have made little difference to the working rules of the police (McConville et. al., 1991: 28, Sanders and Young: 1994: 64). So there remains a gap between the rules of law and the day-to-day practices of the police. The police retain considerable discretion throughout the whole history of a public order matter and indeed, continue to exercise a considerable degree of control over the progress of a case even after the submission of a case file to the C.P.S..

SUMMARY

A recognition of the considerable power and autonomy of the police is essential to understanding the policing and prosecution of public order offences. Their approach
to public order situations within an institutional and operational framework will clearly affect the presentation of case files to the C.P.S. for subsequent prosecution. It may well be that practices such as case construction and overcharging are symptomatic of the context of police authority, control and culture that has been examined. There is a danger that a lack of recognition of these issues may affect the way in which the C.P.S. deal with public order cases. The police expect the C.P.S. to support their actions in public order situations and anticipate a shared system of values and crime control practices from prosecutors. The next section will look at how the C.P.S. deal with the prosecution of public order offences in practice.

THE CROWN PROSECUTION SERVICE AND THE PROSECUTION OF PUBLIC ORDER OFFENCES

This section of the chapter examines the C.P.S. and the prosecution of public order offences. It looks at the day-to-day practicalities and problems of prosecuting these offences by reference to a number of themes. These themes will be returned to later in this thesis when there is an analysis of the findings of this research. These themes are the breadth of public order cases within the law, the lack of policy or guidelines on the prosecution of public order offences, the relationship between the police and the C.P.S., case information, the decision making processes of the C.P.S., the impact of the defence, plea bargaining and negotiated justice and the court processes.

There is only a very limited literature within the criminal justice and criminological research regarding the prosecution of public order offences. It appears that research specifically into the prosecution of public order offences has not previously been
undertaken. There are, however, a number of studies with regard to other aspects of the work of the C.P.S. that provide some useful insights into the way in which prosecutors carry out their duties. However, the key text is McConville et al., (1991), which although dealing only with a small number of public order cases (McConville et al., 1991: 24 - 25) examined the entire prosecution process from arrest to conviction. This study is critical of the role of the C.P.S. It is interesting to note that the Glidewell Report (1998) devotes only 8 out of 263 pages to an analysis of the workings of the prosecution process including the nature of the charge, file preparation and review, case management, advocacy and court procedures. It makes no attempt to identify the working rules of prosecutors or in the recommendations to deal with the ethics or future standards of prosecution cases.

Just as it has been noted that the police have a considerable discretion in the exercise of their powers and authority so it has been recognised that there are particular problems of judgment and discretion to be considered by the prosecutor in the area of public order offences.

...the public order offences are hedged about with extremely delicate questions of prosecution policy that require to be taken into account by prosecution agencies (Smith, 1987: 39).

The choice of charge, for example, and the way the case is presented to the court are crucial decisions.

These are sensitive issues of judgment that are frequently absent when the use of other areas of the criminal law is under consideration. Public order law is in this respect very much unlike other areas of the law, where by and large the criminal law is required to be utilised. But the prevalence of discretion in this area might be an indication that the law suffers from what the Americans would term overbreadth (Smith, 1987: 40)

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38 There are difficulties in obtaining access and meaningful data and the C.P.S. has only been in existence since 1986.

Despite the breadth of the discretion in prosecuting public order offences little guidance was offered to prosecutors until the publication of the Public Order Offences Charging Standard (the Charging Standard) (Appendix 4) in 1996.\textsuperscript{40} The publication of the Charging Standard implied that there was recognition of the possibility of over-charging by the police and prosecutors proceeding too readily. Inspectors within the C.P.S. had already highlighted this problem in 1992 (C.P.S., Annual Report 1992 - 1993: 10).

The aim of the Charging Standard, agreed by the police and the C.P.S. and a public document, is to ensure that the correct charge is identified at the earliest opportunity in a case. This is with a view to reducing problems later when cases proceed in court and to reduce the number of cases where the charge has subsequently to be amended. However, it has already been found that prosecutors seldom referred to the Code for Crown Prosecutors preferring to rely on their experience, consultation with colleagues and any policy documents from C.P.S. headquarters (Hoyano et al., 1997). So it is likely that they do not refer to the Charging Standard on a regular basis either. There are weaknesses in the Charging Standard that do not encourage it to be consulted widely. Some of these weaknesses have been referred to already in discussing the various offences under the POA and related legislation.

The Charging Standard does not appear to have been based upon any research about the prosecution of public order offences or any great appreciation of the day-to-day practicalities and problems in the prosecution of public order offences. It missed an opportunity to give real guidance by way of examples drawn from true

\textsuperscript{40}This standard was issued at the same time as a revised charging standard for offences against the person on the 26th April, 1986 and formally adopted on the 3rd June, 1996 after having been agreed with the police.
cases as to the appropriate level of charge. The categorising of conduct within it is artificial and the references are outdated being concerned with definitions and situations referred to when the POA was passed nearly ten years beforehand. As a policy document it is not a document that inspires confidence in prosecutors. The C.P.S. Inspectorate found in 1999 that the correct charge was preferred in only 77.2 per cent of cases in which the Charging Standard applied and recommended that prosecutors should seek to apply the relevant standard when reviewing files (C.P.S. Inspectorate, 1999: 15). The Glidewell Report was critical of over-prescriptive policies (Glidewell, 1998: 49) but recommended the development of a national framework for criminal prosecutions including codes, standards, work practices and advisory services (Glidewell, 1998: 123) although it gave no hint of the direction in which this documentation should be framed.

To date the Charging Standard has not been updated or replaced. Whilst the existence of the Charging Standard recognises that there is a need for policy and guidelines in the prosecution of public order offences in practice there is very little guidance to prosecutors and there is no coherent policy with the police over the types of public order offences that would be prosecuted or the requirements for the same. So individual prosecutors are left in practice to exercise their own experience and judgement when deciding how to deal with public order cases.

The police retain the power to charge so in that sense the prosecution process has already begun by the time the prosecutor receives a case file for review in public order cases. So far as public order offences are concerned just as the police have developed an occupational culture with certain working values and practices there is the danger that prosecutors have done the same. The structural relationship between

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41 Definitions that were set out in the Government White Paper of 1985 that recognised it would not be
the police and the C.P.S. encourages prosecutors to develop a system of shared culture and practices and case review will therefore reflect the character and values of the reviewing prosecutors. There will, of course, be different types of prosecutors, just as there are different types of police officers or defence lawyers, but effectively there is the danger that the development of working relationships undermines the independence of the C.P.S.

The reliance of the C.P.S. on the police for the information for prosecution case files provides the police with scope for case construction in public order matters because the definitions of the offences necessarily involve a qualitative assessment of behaviour.

Because the officer anticipates review of the case for evidential sufficiency and having to prove the offence in court, the relevant behaviour of the accused is described on the exact terms of the offence. Generally evidence of this sort is inscrutable short of cross-examination in court (McConville et al., 1991: 134)

In these circumstances there are pressures on prosecutors to allow matters to proceed. If a prosecutor seeks to question the police information he or she may well be seen as awkward or unpopular and there is a great temptation to let things pass (Baldwin, 1997: 544, Blake and Ashworth, 1998: 27). It appears that prosecutors do not see it as their role to seek out information from other sources than the police; they have no powers to investigate offences or to direct the police (Gelsthorpe and Giller, 1990: 160). However, there is evidence that when independent information was provided to the C.P.S. prosecutors found this most useful and did take it into account when making their decisions. In experimental Public Interest Case Assessment (PICA)

easy to define an offence of harassment, alarm and distress (Home Office, 1985: 19)
schemes the probation service were involved in providing further information by way of reports42 to the C.P.S.. The Home Office Study on these schemes found that the discontinuance rate was doubled for these cases and that the C.P.S. found them helpful (Crisp et al., 1995). However, the schemes were found to be costly and were short-lived (Ashworth, 1998: 187).

Within the adversarial system and the structural and institutional constraints discussed there are strong pressures on defendants to plead guilty. In the context of public order offences the opportunities for negotiation and plea-bargaining are facilitated by the nature of the offences and the practices of overcharging and case construction. Whilst Glidewell (1998) was inconclusive on the practice of the downgrading of charges and suggested further research it is clear from the statistics and the studies that are available that it does go on. There are structural and cultural pressures on the police to select the highest potentially sustainable charge (Genders, 1999: 692). This encourages practices such as over-charging and subsequent downgrading. The research into other offences such as assaults has found the alteration of charges by the time a case proceeds in court (Crisp and Moxon, 1994: 26, Darbyshire, 1997: 632, Genders, 1999: 691). Glidewell noted that in moderately serious offences of violence and public order the pressure to downgrade if a guilty plea is offered to a lesser offence is considerable based upon a swifter disposal of the case, the cost saving43 and the expectation that the courts will be reluctant to deal with cases where such pleas have been offered (Glidewell, 1998: 85).

42 The Probation Service interviewed defendants and provided information by way of written reports to the C.P.S. as to the defendant's circumstances. The more serious public order offences of riot, violent disorder and affray were excluded from the schemes but the less serious offences were included.

43 The 1994 Code for Crown Prosecutors made no reference to the cost of proceedings. Nevertheless it is clear that there are practical pressures on prosecutors to avoid non-serious cases proceeding to the Crown Court where jury trials are far more expensive than trials in the magistrates' courts (Ashworth, 1998: 187)
The weaknesses of the defence lawyers are also part of the equation. The concept of negotiated justice is long standing and pre-dates the foundation of the C.P.S. and the POA (Baldwin and McConville, 1977). In the context of public order because of the breadth of offences there is pressure to negotiate and for plea-bargaining. To some extent defence lawyers share an occupational culture with the police and prosecutors (Ashworth, 1998: 77). A number of studies have referred to the defence lawyers being part of the criminal justice crime control system failing to challenge the police and prosecution (Sanders et al., 1989, McConville et al., 1991: 167 - 170, McConville et al., 1994). There is almost an expectation in all these circumstances on the part of prosecutors and the defence lawyers that negotiations will take place as to the feasibility of a guilty plea to a lesser offence or the possibility of a binding over order. The delays in the court processes if a matter proceeds to trial and the anticipation of relatively lenient sentencing in the lesser offences of public order also add to this expectation. The findings of this research show that there are often considerable delays in dealing with contested cases. They also show that public order offences are not generally treated as seriously as other criminal offences when dealt with by the courts.

SUMMARY

The complexities of the law relating to public order offences and the overlaps with a large number of other offences or disposals creates a situation where there is a substantial discretion on the part of the police and the C.P.S. how public order cases are to be dealt with. The police have considerable power and autonomy but operate
within a culture that encourages proceedings. The lack of firm policies and guidelines within the C.P.S. with regard to the prosecution of public order offences means that in practice individual prosecutors are left in their discretion to deal with cases based upon their own working values and practices. Prosecutors may well share these values with the police. There is a general acceptance of the police views on prosecution in these types of cases. These structural and institutional contexts allow a certain prosecution momentum to public order proceedings with the C.P.S. reliant on the nature and content of information provided almost exclusively from the police. Decision-making is reactive. The adversarial system, the criminal justice process and working practices and constraints encourage over-charging, downgrading, plea-bargaining and negotiation. If the C.P.S. is to work truly in the interests of justice it appears that changes in the prosecution of public order offences are needed. The next sections of the thesis deal with the research methodology adopted to analyse more closely the practicalities of the prosecution of public order offences and the findings of this detailed study.
CHAPTER 3

METHODOLOGY

This chapter sets out the research methodology adopted to examine more closely the practicalities and problems of the prosecution of public order offences under sections 1 to 5 of the 1986 Act. It discusses the practical and ethical considerations in obtaining the information required. It also explains how and why these particular types of offences were chosen to be the subject of this research.

The availability, access and use of information from the C.P.S. is also considered; this had a practical impact on the nature of the research undertaken.

AIM AND OBJECTIVES

The aim of this thesis was to examine the role of the Crown Prosecution Service in the criminal justice system in the prosecution of offences with particular reference to offences under the Public Order Act 1986.

The main objectives in conducting this research were:

1) To examine how prosecutors exercise their statutory powers when prosecuting public order offences;

2) To critically analyse the role of the Crown Prosecution Service in pursuing prosecutions for public order offences;
3) To examine the relationship between the police and the Crown Prosecution Service;

4) To ascertain the information available to the Crown Prosecution Service for prosecuting cases for public order offences;

5) To discuss the future direction of possible changes to the prosecution of public order offences.

Three methods were used to collect data:

1) A questionnaire to Chief Crown Prosecutors;

2) A cases survey comprising the retrospective analysis of a sample of Crown Prosecution public order offences case files dealt with in the Manchester City Magistrates' court in 1994;

3) Case files concerning the detailed analysis of a small number of Crown Prosecution public order offences cases dealt with in the Manchester City Magistrates' court in 1996 including telephone interviews with a number of police officers involved in those cases.

These methods were chosen in order to provide comprehensive information about the prosecution of public order offences and to follow the prosecution process through from the receipt of a file of case papers by the C.P.S. from the police after charge until the final disposal of the case by the courts.
Each of these methods will be considered in detail. First there will be a discussion as to why public order offences were chosen to be the subject of this research.

PUBLIC ORDER OFFENCES

The offences under sections 1 to 5 of the Public Order Act 1986 were chosen to be the subject of this research for a number of reasons. Firstly, these are the types of offences where the police are exercising their authority over the public at large. Major constitutional issues of civil liberties and the role of the police in the preservation of public order arise.1 So the role of the C.P.S. as an independent prosecuting body in dealing with these types of offences is crucial. This research sought to examine whether or not the C.P.S. is truly independent.

Secondly, there is a considerable breadth and diversity concerning the nature of public order situations. The Public Order Act 1986 created a number of offences from riot to harassment with wide ranging penalties ranging from ten years imprisonment to fines. In addition the police and C.P.S. have a bewildering choice of other charges available not under the Act from, for example assaults, obstructing a police constable, obstructing the highway, public nuisance, possession of weapons or firearms, criminal damage, conspiracy, binding over to keep the peace proceedings and many others. There is a substantial overlap in the types of charges and offences that can be applied. This is reflected in the nature of the decisions to be made by

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1Public Order law is unlike other areas of the criminal law such as theft, homicide and criminal damage, or the offences against the person. For all that it is so understudied a branch of the law, it can touch upon areas of our social existence of quite fundamental political and constitutional importance, especially where the disorder is occasioned or accompanied by the activities of those who are exercising rights of freedom of speech in public. To put it altogether too crudely, society has not much option but to penalise theft, criminal damage or the various offences against the person. Public order is different. The extent to which any society sees the need to penalise those who challenge its prevailing mores, assumptions and constitutional arrangements is much more a matter of political judgement.(Smith, 1987: vii).
prosecutors in the C.P.S. deciding how cases are to be proceeded with. There are issues of judgment as there is an exercise of substantial discretion in many cases.

Thirdly, the Public Order Act 1986 came into force at the same time as the foundation of the C.P.S. so the service has developed at the same time as these types of offences. It is important to consider whether there have been any changes in the way cases are prosecuted as the organisation of the C.P.S. has changed.

Fourthly, parallel with this has been a growth in police powers and responsibilities, which have increased since the 1996 Act. Successive governments have passed legislation to respond to what have been perceived as particular problems. For example, the Criminal Justice and Public Order Act 1994 gave the police substantial powers to direct the conduct of people in certain potential public order situations. The complexity of the legislation is sometimes bewildering. By way of example, the police were given greater powers of stopping and searching for weapons by section 8 of the Knives Act 1997 amending section 60 of the CJPOA 1994 which was further amended by section 25 of the Crime and Disorder Act 1998. This grants a police constable power to require the removal of any item worn to conceal identity such as masks or face coverings. It is only one of the many powers the police have. It is important to consider whether there have been any changes in the way public order cases are prosecuted by the C.P.S. to check or balance this increase in police power.

Fifthly, Home Office research has indicated a potential for over-zealous policing and the misuse of the public order legislation (Home Office, 1994). The C.P.S. has an important part to play in ensuring that this misuse does not occur.

Sixthly, the C.P.S. itself has recognised the problems of prosecuting these types of cases. In 1992 Inspectors of the C.P.S. found that in a number of public order cases prosecutors had applied for the proceedings to be committed to the Crown Court
when summary trials before the magistrates would have been more appropriate (C.P.S. Annual Report 1992 - 1993, HCP 1992/1993 748: 10). These findings were repeated as recently as June 1999 when the C.P.S. Inspectorate in their review of adverse cases found that public order cases were still presenting difficulties to prosecutors. They found evidence of overcharging by the police and prosecutors accepting too readily the wrong charges when reviewing these types of cases.

At more than one Branch, staff told us that the police are more likely to overcharge if they apply a charging standard incorrectly. They also said that the police have difficulty in selecting the correct charge in cases of public disorder. We found that prosecutors are less likely to amend such charges. As a result, the correct charge was preferred in only 77.2 per cent of those cases in which the public order charging standard applied. We are keen to find out why this category of offences causes particular difficulty. We are told that prosecutors do not always identify incorrectly charged public order offences when they review cases for committal. (C.P.S. Inspectorate, 1999: 15)

It was envisaged that an analysis of these types of cases would yield information and data about the whole of the prosecution process and whether the C.P.S. was being pro-active.

HOW INFORMATION AND DATA WERE GATHERED

It was decided to adopt a "triangulation" approach and use multiple research methods with the aim of combining quantitative and qualitative research. This would provide a spread of information and data and balance the strengths and weaknesses of the different approaches to the material. The use of a number of research methods would allow an exploration of different aspects of the prosecution of public order cases allowing comparisons to be made without relying on the findings of one method alone.

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2The use of different types of data to uncover, explore and report the different facets of a multi-faceted phenomenon such as crime (Jupp, 1989: 34).
Cross-method (triangulation) refers to the procedure of using dissimilar methods of research to examine the same phenomenon. It could include, for example, the use of official statistics, observational methods and life histories to examine deviant sub-cultures. The value of such cross-method triangulation is that it balances the strengths and weaknesses of differing methods. The use of differing methods, therefore, maximises the theoretical value of any research by revealing aspects of phenomena which the use of one method alone would miss. (Jupp, 1989: 72-74)

The methodological approach adopted in this research sought to identify any gap between the rhetoric of C.P.S. policy and practical decision making in dealing with public order offences. Whilst reference was made to C.P.S. policy documents, the Code for Crown Prosecutors (Appendix 1(2)) and the Charging Standard for Public Order Offences (Appendix 4), it is important to consider whether these policies were applied in practice.

The research study was carried out over a three year period (1994 to 1997). So far as the case survey and case studies were concerned Manchester was chosen for practical reasons as being within part of the local Crown Prosecution Service Area from which information could be readily obtained. The Greater Manchester and Cheshire areas together formed at the time of this research the Crown Prosecution Service Area known as C.P.S. North-West. Manchester was also chosen because it is seen to be typical of many northern areas of the country. The Greater Manchester area covers just less than 500 square miles and contains a diverse region from open moorland to inner-city areas. The police divisions within the Greater Manchester police area which were dealt with by the
Manchester City Magistrates' Court contained high concentrations of people and traffic and a large population of students attending Manchester's universities and colleges. Unemployment was higher, at over 9 per cent in 1995, than both the national and regional rate. Some parts of South Manchester had suffered the effects of economic and social decline. \(^4\) There was therefore a potential for disorder as the area displayed many of the features of those areas where disorder had previously occurred. \(^5\)

**CASE STUDIES**

In order to achieve the aim and objectives of this research it appeared that a case-study approach was the most appropriate method. Quantitative research based upon a national population of C.P.S. case files was beyond the limited resources of a lone researcher. A case-study approach would allow the collection of data about the prosecution process in a flexible way using multiple methods combining both qualitative and quantitative approaches. The advantages of case studies are that they allow for an in-depth analysis and flexibility of approach. This allowed a detailed examination of a host of variables in the prosecution of public order cases. Other researchers have since used this approach in examining the work of the C.P.S. (Mhlanga, 2000).

The cases survey involved examining in detail a sample of C.P.S. case files to provide wide-ranging information about the prosecution process in relation to these

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\(^3\) Under further C.P.S. reorganisation announced in 1997 Greater Manchester and Cheshire became separate areas again in April 1999 coterminous with the respective police forces for those areas.


\(^5\) The high unemployment, social deprivation, political exclusion and hostility towards the police are characteristics identified by the Scarman inquiry and referred to by commentators such as John Benyon see Benyon, J. (1993) *Disadvantage, Politics And Disorder*, Leicester: Centre for the Study of Public Order.
types of offences. This inevitably raised issues of representativeness and
generalisability.6

In case study research...it is considered more appropriate to treat
representativeness in terms of qualitative logic for the selection of cases for
study, rather than a quantitative logic of sampling from a population. (Allan

However, this does not mean that issues of representativeness did not arise. The way
the case files were selected and their qualitative representativeness were of
importance to enable a cross-section of cases to be analysed. An effort was made in
selecting the sample cases to ensure they were representative of the entire process of
the prosecution of public order offences. A conscious effort was made to ensure that
the files selected were not, for example, all relating to one particular type of public
order offence.

QUESTIONNAIRE

A questionnaire to Chief Crown Prosecutors was devised to provide general
information as to C.P.S. policies regarding the prosecution of public order offences.
The advantage of a questionnaire was that policy considerations could be examined
quite quickly because of the limited population of those with managerial
responsibility and control within the C.P.S.. The Chief Crown Prosecutor is head of
the Service in his or her own Area and responsible for policy matters in that Area
subject to any national policies.

The aim of the questionnaire to Chief Crown Prosecutors was to discover whether
there were national or local policy, trends or guidelines for the prosecution of public

6These methodological problems and issues are identified in Chapter 16 Rose,H. (1991) Case Studies
order offences. It was designed to gain a broad picture of the official policy of the 
C.P.S. for the prosecution of public order offences. It also revealed whether policies 
were consistent across the Areas. It provided information about the knowledge of the 
limited target population of Chief Crown Prosecutors with regard to the prosecution 
of public order offences in their Areas. It was anticipated that apart from any general 
national policy it was unlikely that Chief Crown Prosecutors would have much 
knowledge of the day to day prosecution of public order offences. Their role is 
primarily managerial.

The questionnaire was sent out in January 1996 to all 13 Chief Crown Prosecutors 
for each of the C.P.S. Areas throughout the country. This was before the 
introduction of the national policy document, the Public Order Offences Charging 
Standard in June 1996 although publication of the Standard was anticipated at that 
time. The questionnaire was addressed to each Chief Crown Prosecutor individually 
however it was clear from the replies that some delegated the completion of the 
questionnaire to members of their staff.

Closed questions were used in order to focus upon particular issues concerning the 
prosecution of public order offences and to aid the subsequent analysis of the 
answers. The questionnaire was structured to deal with general and then specific 
issues regarding the prosecution of public order offences. It also provided the 
opportunity for comments and any general observations on the prosecution of public 
order offences. The draft was shown in confidence to a number of prosecutors and 
then piloted in December 1995 with a former Deputy Director of Public

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7These 13 Areas then were C.P.S. Anglia, C.P.S. East Midlands, C.P.S. Humber, C.P.S. London, 
C.P.S. Merseyside/Lancashire, C.P.S. Midlands, C.P.S. North, C.P.S. North West, C.P.S. 
Severn/Thames, C.P.S. South-East, C.P.S. South-West, C.P.S. Wales and C.P.S. Yorkshire. The 
C.P.S. has since been reorganised into 42 Areas.
Prosecutions. Given the limited population to be surveyed, the 13 Chief Crown Prosecutors, it was not felt necessary to extend the pilot and confidentiality was required. In the light of comments during the pilot the questionnaire was redrafted slightly to clarify the questions. A draft was also seen by Mrs Barbara Mills QC, then Director of Public Prosecutions as her support for the project was vital if there were to be any response from the Chief Crown Prosecutors.

The final form of the questionnaire (Appendix 5(1)) was sent out to the 13 Chief Crown Prosecutors. An effort was made to minimise non-response by stressing the importance of the questionnaire. The response rate was 8 replies from 13 Areas. Two questionnaires were returned unanswered and there was no response to three questionnaires despite a reminder sent in February 1996. Given the limited sample involved this was a satisfactory return rate. The information gathered cannot be considered representative of the views of Chief Crown Prosecutors about the prosecution of public order offences.

The non-response of five Chief Crown Prosecutors must be taken into account in drawing any conclusions from the questionnaire findings. For example, if a Chief Crown Prosecutor had a particular Area policy in dealing with public order cases in a certain way the results of the questionnaire would be biased. It is not believed that there is any diversity by Area in dealing with such cases. Policy is largely dictated from C.P.S. headquarters and it would be unusual for a Chief Crown Prosecutor to develop Area policies separately. However, as the questionnaire was designed specifically for the Chief Crown Prosecutors the replies did give information about the policy of the C.P.S. on the prosecution of public order offences. There did appear to be broad agreement on all the issues raised within the questionnaire from those who did respond.
In order to examine prosecution decision making in public order cases it was decided to analyse a number of C.P.S. case files. This analysis would provide information on how prosecutors were dealing with public order cases in practice. It would show what information was being provided to prosecutors in these types of cases. The relationship between the police and the C.P.S. in these cases would be examined. A practical and manageable sample of completed case files was therefore required. Given the limitations of time and resources this was confined to the local C.P.S. Area. There were also a number of problems with concerning access to Crown Prosecution Service material to overcome. The result was a small-scale primary survey (Allan & Skinner, 1991: 258) which resulted in both quantitative and qualitative data. This data was then analysed using multivariate analysis than enables relationships between variables to be explored.

C.P.S. prosecution files constituted vital documentary sources for the purposes of this research. The advantages and disadvantages of such source material must be appreciated. The files contained the papers submitted by the police to the C.P.S. together with any review notes, correspondence, notes of court hearings and the like. The files provided comprehensive information about the history and nature of any particular prosecution case. In general C.P.S. staff used a uniform system in the

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8Small-scale primary surveys or other forms of primary data collection are common for projects in which the research student is working alone and is responsible for planning and carrying out the study including data collection and analysis. Such studies are often characterised by limited resources and fieldwork which must be completed by the student. The sample size is often of 100 subjects or less. Frequently the subjects are very varied and the researcher recognises that a wide range of individual characteristics may affect the dependent variable. The net result is a large number of variables collected from a relatively small sample. (Allan & Skinner, 1991: 259 - 260).
recording of information which meant that the core data can be assumed to be reasonably accurate. There was little need to question the authenticity or credibility of the information recorded. This provided an advantage in the collecting of data. Of course there must be an appreciation that not everything would necessarily have been recorded. For example, it was rare for prosecutors in endorsing review decisions to refer specifically to the Code for Crown Prosecutors or the Charging Standard. Baldwin (Baldwin, 1997: 539) discovered when examining C.P.S. committal files that this revealed that case review is by no means a precise or scientific procedure. It is one that inevitably reflects the character and values of the lawyer concerned.

The cases survey involved sampling a number of C.P.S. files for public order offences heard at Manchester City Magistrates' Court in 1994. This court was selected because it was anticipated that as a busy city centre court there would be a large number and cross-section of public order cases of all types for analysis. The accessibility of completed files was also an important factor as files were disposed of after being stored for a number of years and were held in many different locations.

In order to make a systematic selection of case files a computer print of all defendants appearing before the Manchester City Magistrates' Court in 1994 for offences under the Public Order Act 1986 was provided by the C.P.S. According to this list cases for a total of 1,401 defendants had been completed for those charged with public order offences. In order to produce a sample every 7th name was marked off thus producing a list of 200 names. The files proved difficult to find and a total of 92 files (Appendix 7) were found and analysed. These files involved 146 defendants a total sample of 10 per cent of defendants who had appeared in Manchester City Magistrates' Court in 1994 for public order offences.
Table 3.1 compares the national criminal statistics for public order offences for 1994 with the sample. This breakdown of the cases survey sample by comparison with the national statistics shows how representative the sample is.

The Cases Survey Sample

TABLE 3.1

Comparison national and sample cases (cases survey) by charge
Numbers of defendants

<table>
<thead>
<tr>
<th>Charge</th>
<th>National</th>
<th></th>
<th>Sample</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
<td>Number</td>
<td>Percentage</td>
</tr>
<tr>
<td>Riot</td>
<td>37</td>
<td>1</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Violent Disorder</td>
<td>4479</td>
<td>8</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Affray</td>
<td>11368</td>
<td>20</td>
<td>24</td>
<td>16</td>
</tr>
<tr>
<td>Section 4</td>
<td>16252</td>
<td>30</td>
<td>42</td>
<td>28</td>
</tr>
<tr>
<td>Section 5</td>
<td>22820</td>
<td>41</td>
<td>75</td>
<td>51</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>54956</td>
<td>100</td>
<td>146</td>
<td>100</td>
</tr>
</tbody>
</table>


The collection of statistics concerning the operation of the criminal justice system is complex and not uniform. There are problems with using the national Criminal Statistics record. The offence shown in the national tables is not necessarily the same as the offence for which the defendant was initially prosecuted as the court may have accepted a guilty plea on a lesser charge.9

Table 3.1 demonstrates that the sample underrepresented the more serious offences of violent disorder and affray and over represented the less serious offences under

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sections 4 and 5 of the Act. This can probably be explained by the fact that the sample was drawn from a list of magistrates’ court cases which only dealt with preliminary proceedings for the more serious cases which proceed to the Crown Court. Furthermore the C.P.S. Crown Court case files when completed were filed in a different location than the magistrates’ court files and access to them was difficult to arrange. It was felt that the effect of the absence of this Crown Court data on the findings of this research effect would be relatively marginal. The C.P.S. review of a file takes place when it is received from the police before any committal proceedings to the Crown Court. In any event it was possible to obtain the information needed about the defendants in the cases survey who were committed to the Crown Court for trial.

Each of these case files was examined and the details transferred to a research schedule. A copy of the Research Schedule appears in Appendix 6(2). Each Research Schedule provides comprehensive information about the case and its history and the C.P.S. involvement including how prosecutors were exercising their statutory duties and discretions from initial receipt of the case papers from the police to the final outcome of court proceedings. The information from the Research Schedules was then analysed using SPSSPC+.

The breakdown in gender of the 146 defendants was 123 male and 23 female, or just under 19 per cent female. This is a high proportion of female defendants as the national Criminal Statistics for 1994 indicate that out of 54,956 defendants proceeded against for public order offences 4,023 were female, or 7 per cent. The female defendants were not concentrated into one particular type of public order offence but were spread evenly across the sample.
The following table gives a breakdown of the ages of the defendants in the 1994 cases survey sample.

**TABLE 3.2**

**Ages of Defendants by number of defendants and percentages**

*(Cases Survey sample)*

<table>
<thead>
<tr>
<th>Age in years</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 and under</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>16 - 17</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td>18 - 20</td>
<td>37</td>
<td>26</td>
</tr>
<tr>
<td>21 - 25</td>
<td>40</td>
<td>28</td>
</tr>
<tr>
<td>26 - 30</td>
<td>24</td>
<td>16</td>
</tr>
<tr>
<td>31 - 34</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>35 and over</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>143</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: In the case of 3 defendants their age could not be ascertained.

Table 3.2 shows that the majority of defendants fall within the age range from 18 to 25 years. The mean age was 23.16 years. The youngest defendant was 13 years of age and the eldest 48 years of age. A further analysis showed 78 per cent (n = 114) of the defendants were single with only 10 per cent (n = 14) shown as married. Therefore, the majority of the defendants were single males between the ages of 18 and 25 years. By comparison with the national Criminal Statistics for 1994 the sample had a higher proportion of younger defendants. Of the 54,956 defendants referred to in the national statistics less than half a per cent were under 14 years of age, 14 to 17 year olds made up 11 per cent, 18 to 20 year olds 21 per cent and the remainder 21 and above 68 per cent (Home Office, 1995). The higher proportion of younger defendants in the sample might be explained by the likelihood of a younger population in a city area like Manchester where there are large numbers of students.
### TABLE 3.3

**Employment of Defendants by number of defendants and percentages**

*(Cases Survey sample)*

<table>
<thead>
<tr>
<th>Job</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unemployed</td>
<td>77</td>
<td>53</td>
</tr>
<tr>
<td>Full time employment</td>
<td>43</td>
<td>30</td>
</tr>
<tr>
<td>Education</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>Self Employed</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Gov. Scheme</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Not Known</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>146</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Table 3.3 shows the breakdown of employment of the defendants in the cases survey sample. Over 50 per cent (n = 77) of the defendants were shown as unemployed and 10 per cent (n = 15) were students. This is consistent with the population of the Manchester city area with high levels of unemployment and a large student contingent.

It is interesting to note that the five defendants in the cases survey charged with the most serious offence of violent disorder were all employed. This shows that those involved in the most serious disorder cases were not unemployed.

The ethnic breakdown of the sample was that 69 per cent (n = 101) defendants were classified as white and 2 per cent (n = 4) were classified as black. The remaining 29 per cent (n = 41) were not recorded by the police according to their ethnic origin although the police are supposed to provide this information in all cases.
Table 3.4 shows a breakdown of the cases survey sample by reference to the number of co-defendants charged together. Forty two per cent of the defendants (n = 62) were charged on their own but more than half (57 per cent, n = 84) were jointly charged with others indicating that there is alleged group disorder within this sample. However, the commonest groups are small groups of two, three or four rather than any higher numbers. A C.P.S. case file can have a number of defendants together where they are jointly charged. The most number of defendants involved together in one case was seven. Public order cases can involve large numbers of defendants because of the nature of the charges. As a matter of law in the case of riot and violent disorder offences these must involve twelve or more persons or three or more...
persons respectively. Public order offences frequently involve persons acting together or against each other in groups whatever the nature of the charges.

CASE FILES

A more detailed analysis was made of 20 case files from 1996 (Appendix 8). These case files were selected at random on one day in November 1996. They came from the Manchester office of the C.P.S. No attempt was made to make this sample representative of the public order cases heard in the Manchester courts in 1996. The files were selected entirely at random from those public order files which had recently been finally dealt with before the courts and which were readily to hand. The objective was to provide a small "snapshot" of public order cases being completed at that particular time.

Although this was only a small sample of 20 cases these case files highlighted the variety of situations which are dealt with by public order offences. They also showed the different ways in which these cases can change from the prosecutor's point of view. These cases involved twenty-three defendants in all there being only two cases where there were co-defendants. There were only two female defendants.

The aim of analysing the case files was to allow some comparison with the findings of the 1994 cases survey. In particular to see if there had been any changes in the way the C.P.S. were dealing with public order cases following the publication of the Charging Standard in June 1996. Also, to see whether there had been any changes in the relationship between the C.P.S. and police and the level of information available to the C.P.S.. For each of these 20 cases a research schedule (Appendix 5 (2)) was completed in the same way as the 1994 files. However, in relation to these 20 files there was in addition a more detailed consideration of each case obtaining copies of
the police summaries, statements and records of police interviews of the defendants where appropriate. Twenty police officers who had been involved in these cases were also interviewed. These police officers were sent a short questionnaire based on the specific case which was followed up by a telephone interview. The aim of this was to investigate how the police officers perceived the prosecution decisions made and the role of the C.P.S. in the case in such a way that they could express their views freely. The interviews took place during the summer of 1997 after each police officer in the case studies had been sent a short questionnaire raising specific questions\textsuperscript{10} about their particular case.

It was decided to use both questionnaires and telephone interviews for several reasons. Firstly, the time available to the police officers was limited given their other duties and a long interview face to face was not possible. Secondly, the consideration of the questionnaire prior to the interview allowed the officers to answer specific issues in relation to the particular case. Thirdly, the telephone interviews although brief enabled the police officers to speak freely to the researcher in their own time without any element of supervision.

Nine police officers responded by telephone interview giving a response rate of 45 per cent. Although this was not as high as the researcher had hoped for nevertheless valuable information was provided as to the nature and extent of communications between the police and C.P.S. in the particular cases involved.

\textsuperscript{10}E.g's. Whose decision was it to charge affray? Were you satisfied by the way the C.P.S. handled this case? Were you consulted by the C.P.S. about changing the charge to section 5?
Ethical Considerations

In conducting this research it was impossible to ignore the fact that the researcher is himself a Crown Prosecutor so bringing to the enquiry certain knowledge, experience and consciousness of the prosecution of public order cases as can be gathered over a period of years as a prosecutor and prior to that as a defence lawyer.

Participant observation is a recognised method of social research where the researcher collects findings by participating in the social world of those being studied (Jupp, 1989: 58). It is typified by covert and unstructured means of collecting data although research can be overt where the researcher makes his presence and intentions known (May, 1993: 117). It is important to note that participant observation was not used as a method in the collection of data for this research because apart from the practical considerations it would have been difficult, if not impossible to separate the act of collecting data from the act of participating.

The advantages of the researcher being a Crown Prosecutor were those of familiarity with the nature of the case files, an understanding of the practicalities and problems faced by prosecutors in dealing day to day with public order cases and easier accessibility to C.P.S. material for the collection of data for analysis.

The danger is that there may be a lack of objectivity and a predetermination, however conscious or unconscious, with regard to certain concepts regarding the role of the prosecutor. Inevitably certain subjective views were brought to the research although an attempt was made to be open minded about the nature of the data and information that was obtained.
SUMMARY

A coherent research project was created and the methods complemented each other enabling data on the prosecution of public order offences to be assessed. The bringing together of information from the questionnaire to Chief Crown Prosecutors, the cases survey and the case files enabled a comprehensive picture to be built up as to the prosecution of public order offences and the part played by the C.P.S.. Each method had specific aims and facilitated the collection of data concerning every aspect of the prosecution process, relations between the police and the C.P.S. and the level of information available to prosecutors. The combination of the questionnaire and the cases survey and case files provided a large amount of information in the time available. The questionnaire identified policy issues that could be compared with the analysis of the cases survey and case files samples as to how prosecution cases were dealt with in practice. The questionnaire dealt with a general overview of the C.P.S. position on the prosecution of public order offences whilst the analysis of the cases survey and case files fully investigated the specific roles of the police and prosecutors in the process of prosecuting these cases. The findings of this Research will be discussed in detail before there is a drawing together of conclusions and a discussion about the possible future development of the prosecution of public order offences.
CHAPTER 4

THE PROSECUTION OF PUBLIC ORDER OFFENCES IN PRACTICE

INTRODUCTION

In this Chapter the findings of the present Research are discussed in detail. There is a thematic examination of the whole prosecution process incorporating information throughout from the police seeking C.P.S. pre-charge advice to the final disposal of a case in court. The findings reflect how prosecutors dealt in practice with public order cases and relate to the broader issues. The questionnaire to Chief Crown Prosecutors provided an overview of information in terms of any C.P.S. policy for the prosecution of public order offences. The cases survey (Appendix 7) and the case files (Appendix 8) supplied data on the prosecution process in sample public order cases. There are many stages in this process some involving to a large extent the other agencies in the criminal justice process, such as the police, the defence solicitors and the courts. There is a great degree of overlap as one part of the process may have a substantial influence on another part. The situation can be complex and it is not always easy to ascertain what particular influences are paramount. For example, the reduction of charges might be because the C.P.S. decided that the police had overcharged. On the other hand it could be as a result of a process of downgrading of cases by prosecutors taking into account formal or informal representations by the defence. There are discussions about what information was available to prosecutors, what part the police played and what factors and influences
were important in how the cases were reviewed and prosecuted before the courts.

Certain common themes kept appearing as the information provided by the data collection was analysed. These main themes are briefly summarised here. There was a lack of any formal policies and guidelines about the prosecution of public order cases. A great deal was left to the discretion of individual prosecutors. Despite the Code for Crown Prosecutors and the Charging Standard (1996) these documents were not referred to in file endorsements. This suggested that prosecutors did not consult them on a regular basis. The police dominated the prosecution process as they had conduct of the charge and the way in which the case is then presented to the C.P.S. There was a wide acceptance of the police views on cases. Information provided by the police and accepted by prosecutors dealing with these types of cases was often one-sided or incomplete. Prosecutors did not actively seek further information to assist them in their decision-making. C.P.S. decisions were made late and there were changes to cases as problems arose. It will be seen that the C.P.S. played a reactive role in the prosecution of these cases as opposed to a proactive role.

The relationship with the defence solicitors included the acceptance of a system of plea-bargaining or negotiated justice. Charges were changed or guilty pleas accepted to lesser charges at a late stage, often on the day of trial. There were delays in bringing these types of cases to trial. The courts generally treated public order cases leniently, which encouraged plea-bargaining and similar practices. Each of these issues will be discussed in detail and related to the wider debates about the prosecution process as a whole. First there is an analysis of prosecution policy and guidelines as revealed by the questionnaire and the analysis of the cases survey and case files data. There is also a discussion of some of the factors that apply to the level of charging in these cases and how they are dealt with.

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PROSECUTION POLICY AND GUIDELINES

This section will look at the findings of this research with regard to the lack of formal prosecution policies or guidelines and at some of the factors that are relevant in the prosecution of public order offences in practice. The lack of formal policies and guidelines means that much is left to the discretion of the individual prosecutor. This also encourages the development of informal working practices that are often hard to discover. The responses to the questionnaire confirmed that there were no nationally applied specific policies for dealing with public order offences. None of the replies to the questionnaire indicated that any Areas had formulated their own local policies with regard to the charging of public order offences although four responses referred to the Charging Standard that was awaiting publication at that time. So there were no specific charging policies. The Areas were prepared to wait for the indications given by any national guidelines when published. However, a comparison of the cases survey sample (Appendix 7) and the case files (Appendix 8) showed that the publication of the Charging Standard appeared to have made little difference as to how these types of cases were dealt with by the C.P.S.. Whilst the files analysed in the cases survey and case files did not always tell the true picture in relation to cases, because reasons for decisions were not usually endorsed in writing it is likely that prosecutors did not refer regularly to the documentation of the Code for Crown Prosecutors and the Charging Standard. They preferred to rely on their experience or that of colleagues, as found in other research (Hoyano et al., 1997).

However, despite this lack of formal policy, it is clear that in certain Areas there were informal policies agreed with the police. For example, the C.P.S. in Exeter had
agreed with the local police not to accept a disposal by "binding over" orders against anyone charged with public order offences in the City centre.\textsuperscript{1} So informal agreements did exist despite the replies to the questionnaire although it was difficult to discover these arrangements because of their ad hoc nature arising out of particular working relationships between certain prosecutors and the police in their locality. Clearly the implications of such agreements are important in the absence of any formal policies or guidelines, as they appear to bind the C.P.S. to certain police viewpoints and thereby undermine the independence of the prosecution. Also they are not publicised so similar cases might be dealt with differently in other Areas or even within the same Area.

There appears to be some ambiguity in prosecution attitudes to public order cases. Whilst no specific policies are set out nevertheless in certain types of cases deemed to be politically sensitive some arrangements were made for closer liaison with the police and the designation of particular prosecutors. It was reported in the questionnaire replies that this was to ensure a consistency of approach so that the same types of disorderly behaviour would be charged with the same public order offences and those offences would be proceeded with through the courts. These special cases involve controversial topics such as football hooliganism, offences with racial elements, and the like. These tend to be ad hoc arrangements reacting to certain situations as they arise rather than attempting to lay down specific policies in anticipation. These special cases will be discussed briefly.

\textsuperscript{1}Discussion with Exeter prosecutors July 1997.
Special Cases

In these sorts of cases particular prosecutors were nominated to deal with them and
to liaise closely with the police and to advise on the nature of the charges to be put in
some instances. For example, in three Areas particular prosecutors were designated
to deal with cases involving animal rights activists and road protestors. The purpose
of this was reported to be to ensure consistent decision-making in similar types of
cases and close liaison with the police.

Cases such as football cases and racially motivated offences cases also received
special attention. Three out of the eight Areas had specific arrangements for football
cases. In one Area a specific prosecution team dealt with all the football cases. In
another Area a particular prosecutor was assigned to these cases on the match day. In
the third Area a lawyer was designated as responsible at an early stage so that he
could be consulted by the police prior to charge. Football cases were therefore
recognised as a special type of public order case in these Areas where arrangements
existed where there had been problems with football hooliganism. Specific
legislation deals with football-related offences because there were problems with
large-scale football hooliganism in the 1980s and 1990s. There were three cases in
the cases survey and one case in the case files treated as football cases but they had

\[\text{Of course, the incidence of any football cases depended on the type of Area and whether there were}
\text{many or any football clubs in the Area and whether or not they were clubs which attracted large}
\text{numbers of supporters.}\]

\[\text{The Football Spectators Act 1989, the Football (Offences) Act 1991, the Criminal Justice and Public}
\text{Order Act 1994 and the Football (Offences and Disorder) Act 1999.}\]

\[\text{It is beyond the scope of this thesis to explore the substantial literature regarding football}
\text{research.}\]
not been dealt with by any special arrangements in the Greater Manchester Area indicating that at that time football violence was not seen as a particular problem in the Area.

All eight Areas responding to the questionnaire said that they had special arrangements for dealing with cases where there was a clear racial element as identified to the C.P.S. initially by the police on file submission. There is a system of forms and records involving additional checking of these types of cases in all the Areas. Nominated lawyers dealt with this system in all the Areas. C.P.S. national guidelines, first laid down since 1987 and renewed in 1991 were being followed when dealing with such cases. The aim of these guidelines is to ensure those cases involving racially motivated offences are given particular attention when reviewed and prosecuted given the sensitivity of racial issues. All cases should, of course, be reviewed carefully but these types of cases have been specifically identified by the C.P.S..

The responsibility for identifying a case that had a clear racial motivation was that of the police in submitting a file to the C.P.S.. There was only one such case in the cases survey and case files. However, the police did not always identify cases to the C.P.S. where they involved a racial element. Forty-one defendants in the cases survey were not classified by ethnic origin when the police should have made such a

---

5This was defined as
Any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation or any incident which includes an allegation of racial motivation made by any person (ACPO definition 1991)

This subjective definition has since been changed to
A racist incident is any incident which is perceived to be racist by the victim or any other person
following a recommendation from the Stephen Lawrence Inquiry Report (CPS 1999) and the provisions introduced by the Crime and Disorder Act 1998 for racially aggravated offences.

6These guidelines were revised again in 1995 and 1999 in the light of further changes in the law and the Report of the Stephen Lawrence Inquiry.
classification. Prosecutors could themselves have made such identification when reviewing the evidence on a file. However, this would have been very difficult in some cases as the police had failed to provide enough information as to ethnic origin and racial issues were not readily identifiable from the description provided as to the nature of the disorderly behaviour alleged. This is important because the failure by the police to provide the information led to the C.P.S. not applying the guidelines where needed. A racially sensitive case might be missed due to the reliance of the C.P.S. on the information provided by the police and this in turn could lead to community dissatisfaction about the way certain cases were dealt with. The C.P.S. set up a Racial Incident Monitoring Scheme in April 1995, which showed that the police were failing to identify crimes with a racial motivation (The Guardian, October 20, 1998). The Report of the Inquiry into the death of Stephen Lawrence7 (Macpherson, 1999) criticised the failures of the police to deal adequately with enquiries that involved a racial element. The C.P.S. undertook in its submission to the Inquiry to review the monitoring scheme. It has reinforced the monitoring of these cases but still relies upon the information provided by the police to identify them.

So the replies to the questionnaire confirmed that special arrangements were made for cases involving football hooliganism and racial attacks or threats. The situation, however, differed when turning to look at other groups such as road protesters and animal rights protesters. Only three out of the eight Areas had any special arrangements for dealing with such cases. In one Area certain lawyers were nominated to deal with animal rights cases. In another Area such cases were referred

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7Stephen Lawrence was murdered in an apparently racist attack on 22nd April 1993. The police brought no one to justice although a subsequent private prosecution by the Lawrence family failed due to lack of evidence.
to the Assistant Chief Crown Prosecutor and dealt with off the usual Branch teams by the Specialist Case Lawyers for the Area. In a third Area these cases were referred to the Area Chief Crown Prosecutor for co-ordination. So in most Areas there were no special arrangements for these cases and there were different ways of dealing with them in those three Areas. There was no consistent policy applied throughout the C.P.S..

So the C.P.S. appears weak against the public interest test in the Code for Crown Prosecutors as no attempt has been made to define policy criteria in terms of the wider public interest and much is left to the discretion of individual prosecutors often deferring to the police views in this regard.

In reality prosecutors almost invariably defer to the police on questions of policy and public interest on the basis that the close involvement with the community makes them the best arbiters of local needs (McConville et al., 1991: 142)

In only one Area out of the eight there were special arrangements for dealing with cases involving "New age travellers" where a lawyer was available to discuss policy with the police before any charges were put. The C.P.S. agreed with the police beforehand the level of charges to be put for certain types of disorderly behaviour. In this Area, however, there was a particular problem with such groups as the Area included Stonehenge. This landmark has attracted the attention of such groups and there have been a number of incidents of confrontation with the police over recent years ("Times" 9th January, 1996). In the cases survey there was only one case involving "New age travellers" identified as such by the police. No special arrangements were applied to this case. The two defendants charged with section 4 offences were acquitted after a full trial, the court indicating that the police may have been heavy-handed in their approach.
So, there are examples in these special cases of the C.P.S. working more closely with the police and advising about the nature of the charge. However, even the approach in these cases was inconsistent. So far as the policy issues are concerned the C.P.S. approach seems to be reactive adapting to legislative changes and particular incidents rather than planning in advance and setting out particular prosecution policies or guidelines beforehand. This means that prosecutors retain a considerable discretion about how they deal with the prosecution of public order offences. The choice of charges can be very wide and the next section will examine the charging practices adopted in the cases survey and case files. The level of charging by the police is a critical decision in these types of cases as the whole way in which a prosecution case is dealt with flows from the nature of the charge.

Charging practices

The police dominate the prosecution process as they initiate proceedings by charge or summons. The fact that the police initiate the charge is a structural weakness of the C.P.S.. There is a danger that the police charge offences at too high a level. One reason for the recommendations for greater C.P.S. and police co-operation in the Narey Report (1997) and the Glidewell Review (1998) is the recognition of the fact that the police have a tendency to overcharge. Six Areas out of the eight responding to the questionnaire recognised a tendency on the part of the police to overcharge in public order cases. Two Areas suggested that there were too many violent disorder and affray offences charged when section 4 and section 5 charges were more appropriate. On the whole, however, the response indicated that the police charging

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8 And, indeed in all the Reports and reviews of the C.P.S./police relationship referred to in Chapter 1.
was generally felt to be satisfactory. One Area replied that a reduction in charges by the C.P.S. did not cause any difficulties with the relationship with the police. They were generally happy to accept the C.P.S. decision on the level of charges. So, although the C.P.S. recognised that the police may overcharge they did not see this as a particular problem. This fails to recognise the possibility of police case construction, that is the police tailoring the information and evidence they supply to the C.P.S. to fit the nature of the charge they have chosen.

There are a number of explanations for possible overcharging by the police. The decision about the appropriate charge is usually made following interview, if held, while the suspect is still in police custody. At this stage there will rarely be anything in writing. The custody officer has the formal responsibility for the decision about charging that is made after discussing the case with the investigating officer involved. Thus charges are chosen without long consideration on the basis of limited information. However, the choice of charge is not necessarily a straightforward process. Some commentators suggest that the police construct the case to suit that charge rather than select the charge according to the nature of the evidence (McConville et. al., 1991: 116).

Rather than being an assessment of a case which already exists, the choice of charge is itself part of the process by which the case is constructed. (McConville, Sanders & Leng, 1991: 116).

In public order cases where a challenge to the police authority, as they see it, may be an issue, higher charges may be more likely where the police feel strongly about a case and the level of punishment applicable. There is also the fact that in the area of public order cases there is such a wide range of alternative charges available not necessarily just for public order offences but for all the related criminal offences.
This encourages over-charging particularly if the police think that they can obtain a confession and a guilty plea and there is scope for plea-bargaining.

Genders (1999) refers similarly to over-optimistic charging by the police in her research into offences against the person:

> it is not inconceivable that charge reduction or downgrading, may in part, be a consequence of, or facilitated by, over-optimistic charging by the police. When recording an incident and referring the case for prosecution there are certain structural and cultural pressures on the police to select the highest potentially sustainable charge. The police stand at the gateway of the formal criminal justice process and hence act as an important filter through to subsequent stages of criminal procedure. The logical temptation, then, is to be over-inclusive rather than over-exclusive in the selection of charges in the knowledge that it is easier for charges to be reduced or cases to be filtered out at the stages of prosecution and trial than it is for cases to be upgraded or drawn in (Genders, 1999: 692 - 693).

One consequence of over-charging is the identification subsequently by both prosecutors and the defence of possible alternative charges or disposals to be discussed in the context of plea-bargaining and negotiated justice. There is evidence from both the cases survey (Appendix 7) and the case files (Appendix 8) that overcharging by the police had taken place. Very few cases actually proceeded to trial as originally charged by the police. In only nine per cent (n = 8 out of 92) of the cases survey did cases proceed to a full trial before the magistrates' or Crown Court on the original charges as put by the police. In the case files only ten per cent (n = 2 out of 20) proceeded as originally charged. There were many changes to cases as can be seen from the breakdown in Appendices 7 and 8. The C.P.S. accepted pleas to lesser charges or agreed a binding over order. Further analysis of these changes will be made. It is difficult to separate cases where the charge was reduced in this way between those cases where the police had overcharged and those cases where the C.P.S. downgraded the matter. It is likely that both practices were going on. There were some cases where the C.P.S. indicated that the police had overcharged but there
were also many cases where the C.P.S. reduced the charge in any event particularly in not guilty cases where guilty pleas to lesser charges were forthcoming. So there was evidence of both overcharging and downgrading.

First, however it is necessary to look at how the sample cases were originally charged by the police before any alterations were made. Table 4.1 shows the charges put initially by the police in the cases survey sample.
Table 4.1 shows the breakdown of public order charges in the cases survey sample. There were only 2 cases where the police had charged in the alternative with other Public Order Act charges where both section 4 and section 5 had been charged in the same case arising out of the same factual allegations. Although it is legally possible to charge in the alternative it is unusual for the police or the C.P.S. to do so. This is because alternative charges might be seen as suggesting that they are unsure of the nature of the evidence in a case because they are unable to select the correct charge. Trying charges in the alternative can also be very confusing as the different public order offences have divergent ingredients. The police are more likely to charge other matters such as police assault or criminal damage. In the cases survey 35 per cent (n = 51) of the defendants were charged with other offences apart from the charge for a public order offence. These included charges of police assault, police obstruction, assault occasioning actual bodily harm, assault with intent to resist arrest, common assault, wounding with intent, wounding, possession of offensive weapon and criminal damage. In the case files similarly in 35 per cent (n = 7 out of 20) of the cases there were additional charges of assault occasioning actual bodily harm, common assault, possession of offensive weapon, police assault, deception, theft, and

Table 4.1

Charging Levels by number of defendants and percentages

(Cases survey sample)

<table>
<thead>
<tr>
<th>Charge</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent Disorder</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Affray</td>
<td>24</td>
<td>16</td>
</tr>
<tr>
<td>Section 4</td>
<td>42</td>
<td>29</td>
</tr>
<tr>
<td>Section 5</td>
<td>75</td>
<td>51</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>146</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Table 4.1 shows the breakdown of public order charges in the cases survey sample. There were only 2 cases where the police had charged in the alternative with other Public Order Act charges where both section 4 and section 5 had been charged in the same case arising out of the same factual allegations. Although it is legally possible to charge in the alternative it is unusual for the police or the C.P.S. to do so. This is because alternative charges might be seen as suggesting that they are unsure of the nature of the evidence in a case because they are unable to select the correct charge. Trying charges in the alternative can also be very confusing as the different public order offences have divergent ingredients. The police are more likely to charge other matters such as police assault or criminal damage. In the cases survey 35 per cent (n = 51) of the defendants were charged with other offences apart from the charge for a public order offence. These included charges of police assault, police obstruction, assault occasioning actual bodily harm, assault with intent to resist arrest, common assault, wounding with intent, wounding, possession of offensive weapon and criminal damage. In the case files similarly in 35 per cent (n = 7 out of 20) of the cases there were additional charges of assault occasioning actual bodily harm, common assault, possession of offensive weapon, police assault, deception, theft, and
criminal damage. These additional charges meant that in these cases there was a
greater scope for plea-bargaining as pleas could be accepted to some of the charges
and others dropped. In 13 cases in the cases survey (14 per cent) pleas to charges
other than public order charges were accepted and there were four such cases in the
case files (20 per cent).

When the C.P.S. reviewed the files in the cases survey the prosecutors indicated in
one-quarter of the cases (n = 36) that the level of charge was too high. So, in a
quarter of cases the C.P.S. were indicating that in their opinion the police had
overcharged. In only two cases were the charges considered too low and increased by
the C.P.S. from section 5 offences to section 4 offences. In 32 per cent of the cases (n
= 29) the charges were eventually reduced as some form of plea-bargaining was
entered into. The charges were either reduced to a lesser public order offence or
"binding over" orders were agreed.

The point of charge is the stage when the defendants formally entered the
prosecution process. The nature of the charge affected the way in which the whole
case is subsequently dealt with. After charge the police may bail or detain defendants
to appear at court. The next section looks at how this decision affected their cases.

**Bail or Custody?**

Just over a third (35 per cent, n = 51) of defendants in the cases survey had been
kept in police custody pending their first court appearance. In one case the police
had granted conditional bail whilst all the remaining defendants (65 per cent, n = 91)
had been granted unconditional bail. Previous research on bail suggests that there is a
correlation between the nature and seriousness of the offence and the remand
decision (Hucklesby, 1994: 205). An analysis of the national statistics showed that
Defendants charged with indictable offences are more likely to be remanded in custody than defendants charged with summary offences. Table 4.2 confirms this and shows the comparison between the police detention decision and the types of public order offence charged by number of defendants. It was more likely for the defendants to be kept in custody by the police the more serious the charge. This is confirmed in the cases survey sample. All those charged with violent disorder and more than half of those charged with affray were kept in custody by the police to appear at court.

**TABLE 4.2**

Comparison: Bail/Custody by police by types of public order offence

(Number of defendants: Cases survey sample)

<table>
<thead>
<tr>
<th></th>
<th>Missing n =</th>
<th>Unconditional Bail n =</th>
<th>Conditional Bail n =</th>
<th>Custody n =</th>
<th>Total n =</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missing</td>
<td>3</td>
<td>2</td>
<td></td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Violent Disorder</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affray</td>
<td>10</td>
<td>1</td>
<td>13</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Section 4</td>
<td>25</td>
<td></td>
<td>17</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Section 5</td>
<td>54</td>
<td></td>
<td>14</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3</td>
<td>91</td>
<td>1</td>
<td>51</td>
<td>146</td>
</tr>
<tr>
<td>Percentages</td>
<td>2%</td>
<td>62%</td>
<td>1%</td>
<td>35%</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Apart from 1 case the cases survey cases were before the introduction by section 27 of the Criminal Justice and Public Order Act 1994 of the police power to release on bail subject to conditions (as recommended by Runciman).*
Table 4.2 shows that those charged with the more serious offences were more likely to be remanded in custody but it also shows that the police detained even those charged with the lesser offences. In around one third of the custody cases (n = 18, 35 per cent) only police officers were the victims. This suggests that the police may be using the detention as part of a punishment, a 'cooling off' period in effect before the defendant appeared at court. There are other reasons for detention. The defendant might be too drunk to be released or it was too late to release before the court appearance. Fourteen defendants for section 5 offences were held in custody to appear at court even though this offence is not particularly serious and does not carry a custodial sentence.10 This was also a feature in the case files. In one case:

The defendant was charged with a section 5 offence (which does not carry a custodial sentence) having allegedly issued threats to police officers when his young child had been taken into care. The police kept the defendant in custody to appear at court although they indicated on the file that they did not oppose unconditional bail. Unconditional bail was agreed by the C.P.S. at court. (Case 10)

A night in the police cells before a court appearance must be unpleasant bearing in mind that over half the defendants in the cases survey were not known to have any previous convictions. So they must have had little or no experience of police detention. They could not be the subject of objections to bail based on any previous record of offending. Out of the 51 defendants kept in custody for the first court appearance 47 per cent (n = 24) had no previous convictions. Previous research on bail has found that a defendant who has previous convictions is less likely to be granted bail (Hucklesby. 1994: 208). However, the fact that over half of the

10The Narey provisions now provide shorter bail dates so that the police can bail a defendant, with or without conditions, to appear at court within forty-eight hours. Before the introduction of these provisions the police generally bailed defendants after charge to a court date one month later. They might have felt this too long a period if they wanted a defendant charged with public order offences to be dealt with expediently and the remand became to them a part of the punishment.
defendants kept in custody had no previous convictions may indicate, given that 60
per cent \( (n = 31) \) were charged with the lesser offences under section 4 and section 5,
that the remand in custody was part of the police exercising their authority and
control over the defendant before the first court appearance. So the police did
exercise a strong control over how a case is presented before the magistrates' court
by their decision to withhold bail.

Only one case in the cases survey attracted custodial sentencing where the
defendant had committed a section 4 offence within a few days of a suspended
sentence for assault. Generally, therefore these cases did not attract custodial
sentences yet the police had kept defendants in custody before their first court
appearance. The police decision whether or not to detain after charge therefore had a
powerful influence on cases. The police might think that a remand in custody or the
imposition of very stringent bail conditions places pressure upon defendants to plead
guilty even if they had not confessed in order to have the case disposed of as quickly
as possible and to prevent scrutiny of their charging (Sanders, 1987). In fact the
situation in the cases survey suggests that the contrary is the case. Of the 51
defendants held in custody to appear at court 67 per cent \( (n = 34) \) pleaded not guilty.
The remainder, only 19 per cent \( (n = 10) \) pleaded guilty and were dealt with
immediately by the magistrates' court. The same considerations of the significance of
the plea and the possibility of plea-bargaining and negotiation appeared to apply to
those detained as to those that were bailed. In other words there was no evidence that
being detained in custody led defendants to enter guilty pleas more readily.

By comparison with the police the C.P.S. only recommended to the court a remand
in custody for 7.5 per cent \( (n = 11) \) of the defendants. So the C.P.S. views on bail at
court were less strict than those of the police when charging. This is an area where
the C.P.S. views can have influence on the court decision. However, these cases were before the introduction of police powers to release defendants on conditional bail so the C.P.S. had the option of asking the magistrates' court to impose conditions that had not been available to the police. The defendants where the C.P.S. opposed bail were five defendants charged with affray, one section 4 case and five section 5 cases. Conditional bail was agreed by the C.P.S. in the cases of 30 per cent (n = 43) of the defendants who had been detained in police custody and unconditional bail in the remaining 61 per cent. It appeared that apart from the Bail Act objections to bail (briefly, substantial grounds for believing that the defendant might abscond, commit further offences or interfere with witnesses) prosecutors were also taking into account, as they are obliged to do the likely disposal of cases and the lack of any previous convictions in deciding not to object to bail being granted by the magistrates, otherwise they would have made more objections to bail being granted. Research on bail indicates that the C.P.S. viewpoint is very influential in the magistrates' decision (Hucklesby, 1994: 226). The bail decision may also have an impact on the progress of a case. Prosecutors might be more likely to agree conditional or unconditional bail rather than ask for a remand in custody knowing that these cases may be the subject of plea-bargaining and unlikely to be dealt with by custodial sentences.

One of the major factors in considering bail or a remand in custody is whether the defendant has any record of previous convictions. Objections to bail based on the likelihood of further offences are stronger where a pattern of previous offending can be established. A record for previous offences however, has wider implications and the next section will consider this further in terms of whether those known to have previous convictions are more likely to be found in conflict with the police.
Character of the Defendant: Previous Convictions

The previous offending history of defendants may be relevant to how they are prosecuted for public order offences in a number of different ways. Firstly, if defendants have numerous previous convictions they may be thought more likely to clash with the authority of the police and the courts. Secondly, the Code for Crown Prosecutors (2000) refers to a number of common public interest factors in favour of prosecution based on previous character. These are the defendant's previous convictions or cautions, if relevant to the offence, or the fact that the defendant is alleged to have committed the offence whilst under an order of the court or there is a history of recurring conduct. On the other hand having no criminal record means that a defendant might be dealt with more leniently. The Code (2000) refers to a number of factors where a prosecution is less likely including if the court is likely to impose a nominal penalty and this may be the case where the defendant has no previous convictions. This section will explore the impact of previous convictions, if any on the way the cases were dealt with.

TABLE 4.3
Previous Convictions by number of defendants and percentages
(Cases survey sample)

<table>
<thead>
<tr>
<th>Number of previous convictions</th>
<th>Number of defendants</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>78</td>
<td>53</td>
</tr>
<tr>
<td>1</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>2 - 3</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>4+</td>
<td>34</td>
<td>23</td>
</tr>
<tr>
<td>Not known</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>146</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>
Table 4.3 shows to what extent the defendants in the cases survey were known to have any previous convictions. Just over half (53 per cent, n = 78) of the defendants were not known to have any previous convictions. This is a high proportion. It might be taken to indicate that the police are determined to assert their authority in situations involving persons with no previous dealings with them. Home Office research suggests that there may be a greater scope for flexibility by the police in such situations.

Officers may do well to approach low-level disorder with the view that the situation may be resolved by methods short of arrest. This may mean simply advising the party or parties to move on or seeking assistance from friends of the offender in getting them home when they are drunk and abusive (Home Office, 1994: 52)

An attempt was made to see if there were defendants in the sample with previous convictions specifically for public order offences indicating repeat offenders who might be treated more harshly by the police as troublemakers. There were previous convictions specifically for public order offences in the case of 18 per cent of the defendants (n = 27). In these cases three were for previous public order matters within the last three months and a further five within the last six months. In the case of 9 per cent (n = 13) the previous public order offences were over two years old. So there were only a small number of defendants, eight in all, with recent public order convictions. However, there is no indication in the cases survey data that these cases involving defendants with previous public order convictions were treated any differently than the rest of the defendants in terms of the level of charge or the way in which their cases were dealt with.

When looking at previous convictions for all offences, not just public order offences, twenty-three per cent of male defendants (n = 34) were regular offenders with four or more previous convictions. The police were more likely to view these
offenders with whom they have had previous dealings as troublemakers. This is evidenced by the fact that a greater proportion of those with the most previous convictions were charged with the lesser offences. In over a quarter of cases (27 per cent) where the police were the only victims, indicating some sort of confrontation or dispute with the police alone the defendants had four or more previous convictions. This may be indicative of public order confrontations between the police and those less likely to recognise police authority or cause trouble upon arrest. Another explanation is that the police seek out these defendants having had previous dealings with them. There was no evidence in the cases survey sample that those defendants with the most previous convictions were more likely to be charged with more serious public order offences. However, there was some evidence that they were more likely to be charged with the less serious offences. Out of thirty-four defendants with four or more previous convictions 55 per cent (n = 19) were charged with the section 5 offence as opposed to 37 per cent (n = 28) out of seventy-five defendants with no previous convictions. This may indicate that the police were targeting the minority known to them with previous convictions.

In the Home Office research (1994) a quarter of the section 5 offenders surveyed had prior public order convictions, so again there was a high proportion of those with previous convictions being charged with the lesser offences. The Home Office research found it impossible to say whether this reflected the greater involvement in public disorder of certain members of the population in specific areas or stricter police enforcement (Home Office, 1994: 27).

Table 4.4 gives the breakdown of those with previous convictions related to their most serious previous sentence and indicates that of those defendants just over one-tenth (13 per cent, n = 19) of the whole sample had previous custodial sentences. This is important because again the police might view those with previous custodial sentences as being potential public order troublemakers. Of the 19 defendants with previous custodial sentences 63 per cent (n = 12) were charged with the section 5 offence. So there were a small section of defendants with previous custodial
sentences who might seek out confrontation with the police or be targeted by them.

### TABLE 4.4

**Previous Sentence History by number of defendants and percentages**

(Cases survey sample)

<table>
<thead>
<tr>
<th>Type</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custody</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td>Community Service Order</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Combination Order</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>SSO</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Curfew Order</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Probation</td>
<td>12</td>
<td>8</td>
</tr>
<tr>
<td>Fine</td>
<td>27</td>
<td>18</td>
</tr>
<tr>
<td>Conditional Discharge</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>Binding Over Order</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>None</td>
<td>65</td>
<td>45</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>146</td>
<td>100</td>
</tr>
</tbody>
</table>

However, table 4.4 also shows that in the cases survey the majority of the defendants were of good character and there did not appear a propensity for persistent offending so far as public order offences are concerned. So a large proportion of the defendants were apparently of no previous criminal record yet had behaved in a manner that had lead them to being charged with public order offences. In many cases this was as a result of confrontations or challenges to police authority. It might be expected that those who appear to challenge authority will plead not
guilty. The nature of the plea entered affected the way in which cases were dealt with and the next section will look at pleas. There were differences between the processes that were applied to those pleading guilty and those pleading not guilty.

**Pleas**

The general rate of guilty pleas in the magistrates' courts is high. For example, the C.P.S. statistics for all summary cases in 1999 - 2000 showed that of cases that proceeded to a hearing 82 per cent were guilty pleas, 12 per cent were proved in absence, four per cent were convicted after trial and in two per cent were cases dismissed (C.P.S., 2000: 34). However, analysis of the cases survey (Appendix 7) and case files (Appendix 8) showed that there was a high level of not guilty pleas in these public order cases. In the cases survey nearly 60 per cent of the defendants pleaded not guilty. 58 per cent of male defendants pleaded not guilty and 65 per cent of female defendants. These not guilty pleas were spread evenly across the age range of defendants.

**TABLE 4.5**

**Types of Pleas by number of defendants and percentages**

(Cases survey sample)

<table>
<thead>
<tr>
<th>Pleas</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty to all charges</td>
<td>35</td>
<td>24</td>
</tr>
<tr>
<td>Guilty to some charges (accepted by C.P.S.)</td>
<td>9</td>
<td>6</td>
</tr>
<tr>
<td>Not Guilty</td>
<td>87</td>
<td>60</td>
</tr>
<tr>
<td>Not known</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>146</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Table 4.5 shows the nature of the pleas entered by the defendants in the cases
survey sample at their first appearance at court. There did not appear to be any
distinction either between types of defendants, for example, whether or not those
with previous convictions were more likely to plead not guilty. Although there was a
high rate of not guilty pleas this was not sustained, as only 5 defendants were found
not guilty after full trial. It may well be that defendants were being advised to plead
not guilty by their lawyers in the expectation that there was a possibility of plea-
bargaining and the charge being reduced. There is a good deal of evidence to support
this when looking at the nature of the offences where not guilty pleas were entered
and how they were ultimately dealt with. Table 4.6 shows what proportion of those
charged with particular public order offences pleaded not guilty.

**TABLE 4.6**

*Nature of offences where not guilty pleas by percentage of those charged*

*(Cases survey sample)*

<table>
<thead>
<tr>
<th>Nature of offence</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent Disorder</td>
<td>5¹¹</td>
<td>100</td>
</tr>
<tr>
<td>Affray</td>
<td>12</td>
<td>50</td>
</tr>
<tr>
<td>Section 4</td>
<td>31</td>
<td>73</td>
</tr>
<tr>
<td>Section 5</td>
<td>35</td>
<td>51</td>
</tr>
</tbody>
</table>

Table 4.6 shows the nature of the charges where not guilty pleas were entered and
what percentage of those charged with those offences pleaded not guilty. There were
a higher percentage of not guilty pleas in section 4 cases where there is a possibility
of charge reduction to section 5.

¹¹The violent disorder case involving 5 defendants was adjourned for committal proceedings to the
Crown Court.
The entering of a not guilty plea places the case into a different process than that for cases where a guilty plea is entered. When a guilty plea is entered the court proceeds to sentencing and disposal of the case. When a not guilty plea is entered the case is either adjourned to a trial date or to a pre-trial review hearing to enable the issues in the case to be further reviewed by the prosecution, defence and court before proceeding to a trial date. In both instances the pre-trial process encourages bargaining between the prosecution and the defence as the avoidance of a trial is seen as desirable by both sides. The findings of the research support the view found by other research (McConville et al., 1994) that this is the general working culture.

In the cases survey (Appendix 7) very few cases proceeded to full trial at which the witnesses were called and the evidence considered by the court on the original public order charges. A great deal of bargaining appears to have gone on leading to guilty pleas to lesser offences or "binding over" orders albeit these changes were often made at a late stage sometimes at the trial date itself. In most of the cases of affray (80 per cent, six cases involving 19 defendants) the charges were reduced. In 70 per cent of the section 4 cases (13 cases involving 29 defendants) section 5 pleas or pleas to other charges or "binding over" orders were accepted. In 30 per cent of section 5 cases (12 cases involving 23 defendants) "binding over" orders were agreed. A similar picture emerged in the case files (Appendix 8) with half of the cases (10 out of 20) involving plea-bargaining of this type. So the nature of the plea can affect the way cases are prosecuted with a high expectation of some form of plea-bargaining or downgrading of charges.

In many cases the police were shown as the only victims so generally any form of plea-bargaining or downgrading of charges is approved by the police as they are consulted by the C.P.S.. The next section goes on to consider to what extent the types of victims of public order offences were relevant to the prosecution process, particularly those cases where only the police were the victims.
Victims of Public Order Offences

The types of victims of public order offences are relevant to how defendants are prosecuted for a number of reasons. Prosecutors are likely to form a view of the case based upon the nature of the victim. Paragraph 6.7 of the Code for Crown Prosecutors (2000) states that the C.P.S. prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. Crown Prosecutors should take into account the consequences for the victim of the decision whether or not to prosecute and any views expressed by the victim or the victim's family. Paragraph 6.4 sets out a number of public interest factors in favour of prosecution. It refers to the fact that a prosecution is likely to be needed if the victim was vulnerable, has been out in considerable fear, or suffered personal attack, damage or disturbance (6.4 h) or the offence was motivated by any form of discrimination (6.4 i) or violence was threatened (6.4 b).

The intention of the lesser offences in the Public Order Act was to deal with minor acts of low-level disorder and protect those most vulnerable in society (Home Office, 1985). However, the research shows that in a large number of cases the only victims were police officers. In a just over half (54 percent) of cases in the cases survey police officers were the only victims. Table 4.7 shows the breakdown of the types of victim in the cases survey cases. Six cases out of the twenty case files involved only police officers as victims.

The police were the victims in 20 out of 42 of the section 4 defendants and in 47 out of the 68 section 5 defendants. So in the larger proportion of lesser offences the victims were solely police officers. The findings of the cases survey echo that of the Home Office in their study of the use of section 5 of the POA (Home Office, 1994). There is a danger that the use of section 5 might fall into disrepute where it has been used for relatively minor instances of disorder in which only the police are abused and in which the public suffer no detriment (Home Office, 1994: 52).
TABLE 4.7
Types of Victims by number of defendants and percentages
(Cases survey sample)

<table>
<thead>
<tr>
<th>Victim</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>79</td>
<td>54</td>
</tr>
<tr>
<td>Stranger</td>
<td>29</td>
<td>20</td>
</tr>
<tr>
<td>Friend/Acquaintance</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>Neighbour</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>Organisation/Business</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Other Family</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Partner</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Not known</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>146</td>
<td>100</td>
</tr>
</tbody>
</table>

The case files provided further evidence of the police being the only victims. For example,

The defendant was approached by the police officer who stated he was similar in appearance to a wanted man. The officer then alleged that the defendant swore at him and claimed he was being harassed. He refused to give his details and was arrested for a section 5 offence. A trial was held five months later and the defendant was found guilty, given a conditional discharge for 12 months, and ordered to pay £90 costs. (Case 8)

By way of another example,

A drunken man allegedly gave a "V sign" to police officers. He had no previous convictions. He was arrested for a section 5 offence, pleaded guilty and was fined. The police officer's attitude was "he can't get away with it" and the reviewing lawyer agreeing with this view indicated that a binding over order would not be acceptable to the C.P.S.. (Case 20)

The officer's attitude in this case raises important issues about the use of police authority. The C.P.S. seem not to limit prosecutions where only the police are
victims. Section 5 prosecutions are not reserved for those situations where members of the public suffer, or are genuinely likely to suffer, harassment, alarm or distress as a result of offensive conduct. This was the stated intention of the legislation. So, it might be the case that the C.P.S. should be seeking to limit those cases where the police are the only victims as opposed to the public at large. So again the C.P.S. appear weak in terms of the public interest test.

The C.P.S. did not discontinue cases more readily where police officers are the only victims. This could be a means of checking police excesses but there is no evidence it is was used in this way. There is no policy of reserving section 5 prosecutions only for those who have caused harassment to members of the public. In fact the contrary is the case as in the majority of cases only the police are victims or witnesses.

The Home Office research into section 5 cases found that only 4 per cent were discontinued by the C.P.S. as opposed to 11 per cent in all cases (Home Office, 1994: 46).

There was no evidence that the CPS were any more likely to discontinue cases in which police officers rather than members of the public were the victims of offensive behaviour. This might have been expected if the CPS had wished to mark section 5 out as aimed primarily at misconduct which alarms the public (Home Office, 1994: 47)

In the cases survey only five cases where police officers were the victims were dropped (>3 per cent), four on grounds of insufficient evidence and one on public interest grounds.

In 20 per cent (n = 29) of the cases survey the victim or victims were strangers to the defendants. In only 2 per cent (n = 3) were the victims either the defendant's partner or other family member. So there was not a propensity to use public order offences in domestic situations so far as the survey was concerned.
So the analysis of the victims in the cases survey and the case files showed that in the majority of cases the only victims were the police. They expected the C.P.S. to support their actions and prosecute defendants involved in confrontations with them. The next section will look further at the uneasy relationship between the police and the C.P.S. in terms of the nature and quality of the information supplied by the police in these cases.

THE POLICE AND THE PROSECUTION

The uneasy structural relationship between the police and the C.P.S. is key to an understanding of the police dominance of the prosecution process. The findings of the research confirmed that the police did not consult widely with the C.P.S. about charging practices in public order cases. The C.P.S. relied almost entirely upon the police for the nature and quality of the information provided. The C.P.S. were acting as a confirmer or reverser (Sanders and Young, 1994: 220) of the police decision to charge based upon information provided by the police. So by relying almost entirely on the police the C.P.S. must be weakened in terms of the evidential test in the Code for Crown Prosecutors. It is impossible to properly confirm whether or not there is a realistic prospect of conviction where the evidence provided is one-sided or distorted.

Pre-Charge Advice

Under section 3 of the Prosecution of Offences Act 1985 the C.P.S. has a statutory function of the giving of advice to police forces on all matters relating to criminal offences. This has not been interpreted as enabling the C.P.S. to direct the police or
in laying down particular prosecution policies. In practice it is the police who take the initiative for advice (Ashworth, 1994: 173).

The evidence to the Runciman Commission suggested that the police only seek pre-charge advice in a very small number of public order cases, estimated at around one per cent as opposed to four per cent for cases generally (Runciman, 1993: 72). No particular types of cases were prescribed by legislation at the time of this research for reference by the police to the C.P.S. for pre-charge advice. Such references appear to be wholly at the discretion of the police. Four Chief Crown Prosecutors indicated in their questionnaire answers that the police only sought such advice when there were problems with evidential issues such as identification. In two Areas, advice was obtained where large-scale disorder was anticipated. The Runciman Commission recommended that the police should increase the number of cases they referred to the C.P.S. for pre-charge advice (Runciman, 1993: 72). It appeared that there had been no increase in such referrals concerning public order cases. There were no cases in the cases survey or case files where the police had sought pre-charge advice. However, there were a few cases that were dropped by the C.P.S., three in the cases survey (3 per cent) and two of the case files (10 per cent) that might not have been proceeded with at all had the police sought C.P.S. advice pre-charge. These were cases where it was obvious that evidence was lacking, for example:

The 14 years old defendant was charged with violent disorder having been named by his co-defendants as being involved in an attack on two boys. The case was withdrawn at a subsequent hearing at court by the C.P.S., as there was no evidence of identification provided after further information had been requested from the police. The police agreed to the case being dropped (Case study 14).

The research confirmed that the police were not seeking pre-charge advice from the C.P.S. and indeed were still proceeding to charge defendants even when there were
deficiencies in the evidence. This was disturbing given that the C.P.S. rely almost entirely upon the police for the nature and quality of the case information as will be seen in the next section.

Case Information

The C.P.S. rely on the police for the nature and quality of the information provided in the case papers. The C.P.S. were, however, content to proceed with cases even where they seemed to consider the information supplied to be inadequate. There did appear to be a problem of communication between the C.P.S. and the police about the nature and quality of the information provided in the sampled cases. In about half the cases (47 per cent, n = 69) the C.P.S. lawyer reviewing the file noted that the police needed to provide some further information before the case could be reviewed indicating the file was not satisfactory. Yet in only just over half of these cases (52 per cent, n = 36) had the C.P.S. actually raised queries with the police. It is difficult to explain why there was this discrepancy. So whilst C.P.S. lawyers were indicating on the files that further information was required to make the file satisfactory in only about half those cases were they actually seeking further information from the police. For example, in around two-thirds of the cases of affray (63 per cent, n = 15) and in over half of the section 5 cases (54 per cent, n = 37) the C.P.S. lawyer indicated on the file that more information was needed. Yet they were content to allow cases to proceed without seeking further information where they felt this would be of assistance. So the C.P.S. accept a situation where the prosecution case may be weak in terms of the evidential test in the Code for Crown Prosecutors.
There were basically two situations arising where the C.P.S. felt that further information would be of assistance. First, more background information about why certain offences had arisen. This information might be crucial to the C.P.S. decision as to whether the case should proceed. Second, other queries were raised seeking the opinion of the police as to whether the recommendations of the C.P.S. as to the acceptance of lesser charges or a "binding over" order would be an acceptable disposal of the case. Although the final decision as to how a case is to be prosecuted is that of the C.P.S. the views of the police are canvassed because of the undertakings given by the C.P.S. to consult with the police (Code for Crown Prosecutors, 2000 paragraph 3.2: 3 and Explanatory Memorandum, 1994, paragraph 4.7: 5). There is a need to keep the police informed as to the key decisions in cases as they may provide further evidence or information that might effect those decisions. Victims or witnesses also need to be kept informed by the police of any changes in cases.

For three-quarters of the defendants (78 per cent, n = 115) the police had provided copies of statements from the arresting officer and sometimes other officers present describing the nature of the disorderly behaviour alleged against the defendant. This was not deemed to be sufficient by the C.P.S. in those cases where further information was requested. The statements in themselves did not address the queries raised as to background information. In the remaining cases (12 per cent) no statements had been provided. The police supplied a form of summary of the offences describing the disorderly behaviour alleged although the quality of these summaries appeared to vary with some officers providing only the barest outline of the allegations. These cases were nine section 4 matters and 18 section 5 matters. Of these cases 20 involved cases where only police officers were victims or witnesses. The summaries also tended to adopt a particular formulae in describing the
defendants' behaviour in terms of the statutory definition of the offence, for example in section 5 cases the police referred to the likelihood of members of the public witnessing the behaviour and being distressed although not specifically identifying that there were other witnesses present. So in these cases the C.P.S. were prosecuting without actually having seen the evidence in the case relying entirely upon the police account. This must make the prosecution weak in terms of the evidential test in the Code for Crown Prosecutors.

So although the C.P.S. prosecutors did not feel they were receiving sufficient information from the police they were not actively seeking further information in all the cases where this was indicated. There appeared to be little follow up to enquiries when questions had been raised. Cases were proceeding to court despite the fact that either no queries had been raised or no reply had been received. It appeared that there had been insufficient time between the raising of queries and the first court appearance for a reply to be received or considered. The police might have overlooked the request for further information or knew from experience that the enquiry would not be followed up. So clearly the C.P.S. could not have carried out an impartial review of cases where information was lacking.

The types of cases where information was lacking were generally the less serious offences involving the police themselves. In the cases survey they were mainly section 5 offences. Despite the missing information the C.P.S. nevertheless continued with cases perhaps in the hope that it would be forthcoming later. Prosecutors did not use their power of discontinuance to discipline the police.

In only 17 per cent (n = 26) of cases had the defendant been interviewed. These were generally the cases involving the more serious charges, with interviews of all
five defendants in the violent disorder case, 12 defendants charged with affray, four defendants charged with a section 4 offence and only one defendant charged with a section 5 offence. This appeared to be a low figure. In most other cases including, for example, offences of dishonesty or assault, that involve the need for evidence of the defendant's knowledge or state of mind, it is usual for defendants to be interviewed as a matter of course by the police. The police appeared to take the view that they did not need to interview defendants charged with public order offences particularly where they were the only witnesses. They seem to think that where they have witnessed disorderly behaviour there is no need to seek an explanation or confession from defendants. So the C.P.S. received a one-sided view of the evidence in a large number of cases (83 per cent). There might be a very different view of a case upon review if interviews had taken place or there was more background information. McConville et al., (1991: 133 - 134) examined the tendency on the part of the police to influence the later conduct of the case by means of the nature and quality of the information supplied, part of the process of case construction, and concluded that the police dominate the prosecution decision making by anticipating and pre-empting review and by co-option of other actors (the prosecutors) into police ideology (McConville et al., 1991: 133).

Therefore, the C.P.S. had no information from the defendant's point of view unless representations were subsequently made by the defence solicitors either in writing or at court or by defendants in person at court. In many cases such representations were made. If no such representations were made matters proceeded purely on the account provided by the police. So the way in which cases were prosecuted was affected by

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\[\text{As provided for under section 60 of the Police & Criminal Evidence Act 1984 and the PACE Codes of Practice.}\]
the nature and quality of the information supplied by the police and the impact of any
defence representations.

The requests for further information and the querying of the appropriateness of the
charges indicated that prosecutors were well aware of the tendency on the part of the
police to present the case in a one-sided manner. Yet they did not appear to follow up
their queries sufficiently. The C.P.S. were failing to deal with cases in a fair and
impartial manner. The way in which the C.P.S. dealt with the cases in practice will
be examined further in the next section that looks at C.P.S. decision-making
particularly the review process, the level of prosecutors dealing with public order
cases and the nature of the decisions made.

C.P.S. DECISION MAKING

In this section there is a discussion of the findings of this research in terms of
C.P.S. decision-making. There is a consideration of the C.P.S. review of the sample
files, the timeliness of the review and the level of prosecutors dealing with the cases.
There is an analysis of those few cases discontinued by the C.P.S.. Robust decision-
making by prosecutors would be the point at which the C.P.S. could play a pro-active
role in the prosecution process. The evidence found is to the contrary with the C.P.S.
accepting the police view of cases and playing a passive role. Other research has
found that the C.P.S. rarely dropped cases that were evidentially weak, and then
when they did so this was usually on the initiative of the police and/or only after
several court appearances (McConville et al., 1991). These practices must undermine
the C.P.S. position in terms of both the evidential test and the public interest test in
the Code for Crown Prosecutors.
C.P.S. Review

The necessity for cases to be reviewed by the C.P.S. is one of the major reasons why the C.P.S. was brought into existence (Philips, 1981: 128). Review is one of the most important tasks of the C.P.S. and is recognised as such by prosecutors (C.P.S., 1993: 49). The purpose of review by the C.P.S. is to ensure that prosecutions are initiated only in those cases where there is adequate evidence and where the prosecution is justified in the public interest (Philips, 1981: 128 & Glidewell, 1998: 65). The reviewing prosecutor must consider, amongst other things, the strength of the evidence, the appropriate charge, bail conditions (where appropriate), advance information, mode of trial, which witnesses to call or written statements to tender and whether there is any unused material to disclose. This function is a continuing one; fresh information or further evidence must be examined and the prosecutor must be satisfied that the case can properly proceed (C.P.S., 1993: 32).

The ability of the C.P.S. to review case files adequately clearly depends upon the way the organisational systems for review are organised and also the time available for prosecutors to do so after receipt of the case papers from the police. This time is limited as C.P.S. lawyers spend most of their time acting as advocates in the magistrates' courts (Glidewell, 1998: 66 - 67). So there are pressures on prosecutors to accept the nature and quality of the information provided by the police without questioning. There are dangers in there being insufficient time for review and if the review is delayed.
The timeliness of case review by the C.P.S. has a very important impact on the progress of cases. Ideally a review of case papers should be made at an early stage. The evidence from the cases survey suggests, however, that reviews of case papers were taking place but in insufficient time before the first court hearing to enable there to be an informed exchange of views with the police how the C.P.S. were going to proceed with the case. So cases become dealt with re-actively as they are proceeding through the court process rather than firm decisions being made at the start of cases.

Commentators have been critical of the nature of the C.P.S. review. They suggested that the C.P.S were not reviewing cases adequately.

The review, where it actually occurs before first court appearance, is a cursory examination of the file, conducted on the basis of a presumption of propriety, the normal consequence of which is endorsement of the prior police decision in the case (McConville, Sanders & Leng, 1991: 146).

In the cases survey C.P.S. reviewing lawyers did ask the police for further information in 25 per cent of the cases indicating more than just a "cursory examination". However, the C.P.S. did not always follow up their queries about further information and in those circumstances the process of review became merely a routine check to ensure that there were no obvious deficiencies in the file submitted by the police. There were no detailed endorsements on the files referring to the Code for Crown Prosecutors or the Charging Standard to indicate on what basis decisions to proceed with cases had been made.
The policy dealing with the submission of files by the police to the C.P.S. is contained in a Manual of Guidance\textsuperscript{13}(1998). This Manual was first introduced in 1992 with the aim of introducing common standards for the preparation and presentation of police files.\textsuperscript{14} Over the last few years the requirements on the police have gradually been reduced. So the reliance on summaries provided by the police as opposed to the obtaining of fuller evidence by statements and other information allows the police to control the nature and quality of the information provided by them to the C.P.S.. The types of file are described in the Manual (1998). The two main types are a full file and an abbreviated file. The time limits for submission are dependent upon the type of file and before the introduction of the Narey system were three weeks from the defendant being charged by the police for a full file\textsuperscript{15} and fourteen days from that time for an abbreviated file.\textsuperscript{16} If defendants were bailed by the police for four weeks then this gave the C.P.S. only seven days and fourteen days respectively to review the file before the first court appearance. If the file was in order this might have been sufficient time. If there were queries to be raised with the police it was likely to be too short. The cumbersome system of communication between the C.P.S. and the officer in the case via a file management unit inevitably

\textsuperscript{13}Prepared and published by an Editorial Board consisting of representatives from ACPO, the C.P.S. and the Home Office.

\textsuperscript{14}A brief history of the changes in the preparation of prosecution files by the police is set out in Mackie, Burrows & Tarling, (1999). The latest revision of practices was in April 1998. Each revision has reduced the requirements on the police with regard to file preparation.

\textsuperscript{15}A full file contains all the witness statements in a case. A full file is submitted where one or more of the following applies. The defendant or one of the defendants:

i) has been charged with an indictable only offence;

ii) has been charged with an either way offence the circumstances of which make it more likely that the Magistrates will direct that it be heard at the Crown Court;

iv) has elected trial by jury;

v) is likely to deny the offence;

vi) has entered a plea of not guilty in a case to be heard in the magistrates' court.

\textsuperscript{16}An abbreviated file contains only key witness statements sufficient in the view of the police to prove the offence charged. It may be submitted in any case which does not fall under the above criteria.
involved delays. The prosecutor addressed any queries to the file management unit who in turn sent to the officer in the case for further information that is then sent back to the C.P.S. via the file management unit.

In addition to all the above the introduction of the Narey provisions reduces the time available for an informed C.P.S. review given that these cases will be expedited. Under the Narey system that provides for cases to be placed before the courts within a few days of charge the C.P.S. will be reviewing files on the day of the court hearing or the day before. In effect the C.P.S. are relying upon the police for the nature and quality of the information provided. The time for any enquiries has been severely curtailed. So there are implications as to the fairness and impartiality of the C.P.S. review of cases.
Table 4.8 shows the timing of the first review of the case papers by the C.P.S. in relation to the first court appearance date by number of defendants in the cases survey. 64 per cent of the cases were reviewed prior to the first court hearing but of these only 36 per cent were more than fourteen days beforehand. Most of the late review can be explained by the fact that defendants had been kept in custody for an earlier court appearance. There were 51 defendants in custody at first appearance (see TABLE 4.2). Of these the cases of 20 were reviewed at court and 17 within seven days, two fourteen days before, eight seven days before, two within fourteen days and two more than fourteen days after court appearance. So, even cases where the defendants had been in custody were reviewed late.

Over one third of the cases sampled (39 per cent, n = 57) were reviewed either at court at the first appearance of the case or after the first court hearing. If defendants

<table>
<thead>
<tr>
<th>Time</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;14 days before</td>
<td>53</td>
<td>36</td>
</tr>
<tr>
<td>&gt;7 days before</td>
<td>36</td>
<td>25</td>
</tr>
<tr>
<td>At court (custody)</td>
<td>20</td>
<td>14</td>
</tr>
<tr>
<td>At court (on bail)</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Within 7 days</td>
<td>21</td>
<td>14</td>
</tr>
<tr>
<td>7 - 14 days after</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>&gt;14 days after</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Not known</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>146</td>
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</tr>
</tbody>
</table>
had been kept in custody before the first court appearance the C.P.S. could not review the file of papers until it was received from the police on the court day. Also, where defendants had been kept in custody but were then bailed at the first appearance this gave the C.P.S. the opportunity to review the file further. Bail representations in such cases were limited to a speedy comprehension of the police facts at court by the prosecutor, which is treated as correct for the purposes of the first hearing where the court determines whether to bail a defendant or remand in custody, but without a careful review of the file as evidenced by the number of these cases reviewed further after the first court hearing.

A higher proportion of the cases with more serious charges were reviewed later suggesting that these defendants had been kept in custody and the C.P.S. did not receive the case papers until the court date. Review at court or later took place in 19 out of the total 24 defendants charged with affray. In only four cases out of the ninety-two in the cases survey (4 per cent) the defendants had been bailed but the case file was not reviewed until the court date or after. On the other hand 21 defendants' cases (14 per cent) were reviewed at court and disposed of on that appearance.

A standard period of one month to the first court date had been adopted by the police in all the cases sampled where the defendants had been bailed to attend court (65 per cent), as opposed to being detained (35 per cent). This should have enabled the police to supply the C.P.S. with case papers in good time before the first court appearance. In two or three cases it appeared that the police were late in supplying case papers. However, the C.P.S. were clearly reviewing cases late as in about one third of the sample review took place after the first court appearance. The Glidewell Review recognised the pressure on resources and made the point that review is sometimes performed inadequately (Glidewell, 1998: 56). The findings of this research reflect this view. If the C.P.S. do not review cases adequately there is a danger that certain cases are allowed to proceed that should not do so. The nature of the review might be affected by the experience of prosecutors dealing with the cases
and the next section considers this aspect.

**Prosecutors' Experience**

In this section the experience of prosecutors' in dealing with public order cases is explored. Chief Crown Prosecutors were content to leave the day-to-day practicalities of prosecuting public order cases to their staff. Prosecutors at a senior level within the C.P.S. rarely got involved in the prosecution of public order cases. No Areas reported any special arrangements for the review of prosecution case files involving public order cases or the seniority or experience of prosecutors dealing with these cases.

**TABLE 4.9**

**Level of C.P.S. review by number of defendants and percentages**

(Cases survey sample)

<table>
<thead>
<tr>
<th>Level of C.P.S. review</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crown Prosecutor</td>
<td>60</td>
<td>41</td>
</tr>
<tr>
<td>Senior Crown Prosecutor</td>
<td>63</td>
<td>43</td>
</tr>
<tr>
<td>Principal Crown Prosecutor</td>
<td>18</td>
<td>12</td>
</tr>
<tr>
<td>Branch Crown Prosecutor</td>
<td>None</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Not known</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>146</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 4.9 shows the level of prosecutor who dealt the cases in the sample at first review based upon the endorsements on the case files as to the review decisions.
Crown Prosecutors and Senior Crown Prosecutors reviewed the majority of cases (84 per cent, n = 123 defendants) whilst Principal Crown Prosecutors dealt with the remaining cases. The next table 4.10 gives a further breakdown by reference to the nature of the charges.

TABLE 4.10

Nature of Charges by number of defendants by level of C.P.S. reviewer

(Cases Survey sample)

<table>
<thead>
<tr>
<th>Nature of charge/Level of reviewer</th>
<th>Not known</th>
<th>CP</th>
<th>SCP</th>
<th>PCP</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent Disorder</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Affray</td>
<td>4</td>
<td>14</td>
<td>6</td>
<td></td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>Section 4</td>
<td>20</td>
<td>19</td>
<td>3</td>
<td></td>
<td></td>
<td>42</td>
</tr>
<tr>
<td>Section 5</td>
<td>33</td>
<td>29</td>
<td>4</td>
<td>2</td>
<td></td>
<td>68</td>
</tr>
<tr>
<td>Not known</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3</td>
<td>64</td>
<td>63</td>
<td>18</td>
<td>2</td>
<td>146</td>
</tr>
<tr>
<td><strong>Percentages</strong></td>
<td>1%</td>
<td>43%</td>
<td>43%</td>
<td>12%</td>
<td>1%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 4.10 shows a complete breakdown of the nature of the charges in the cases survey by number defendants by reference to the level of the reviewing C.P.S. lawyer or staff. Two section 5 cases were reviewed by caseworkers but lawyers dealt with the remaining cases in the cases survey. The cases reviewed by Principal Crown Prosecutors were the more serious cases with them reviewing the violent disorder case and one quarter (n = 6 out of 24) of the affray cases. The Branch Crown Prosecutor did not review any of these cases. Nor were any referred at the review stage to any higher level within the C.P.S..

The more senior prosecutors were more likely to suggest that the police charges were inappropriate although they were dealing with the more serious cases where
there was likely to be evidence of over-charging. Crown Prosecutors suggested that 18 per cent of the cases they reviewed were wrongly charged whereas this figure rose to 31 per cent for Senior Crown Prosecutors and was 27 per cent for Principal Crown Prosecutors.

In most cases the file would remain in the hands of the same prosecutor throughout the case; the concept of "file ownership". In only 7 per cent (n = 10) of cases where there were not guilty pleas did it appear that a different prosecutor later reviewed the file. This can be ascertained from the way in which the files were endorsed although consultation with colleagues was not normally noted on the files so the files do not always tell the true picture. There are advantages to this concept of file ownership in that there may be more consistency in decision-making. On the other hand the retaining of files by one prosecutor does not allow for a fresh look at the evidence or policy in a particular case. Although prosecutors work within teams there appeared to be a great deal of autonomy in the way in which the cases were dealt with. Prosecutors may have discussed cases with their colleagues but apart from the 10 cases referred to there were no endorsements to suggest that a second opinion was ever formally requested. So prosecutors had a great deal of personal discretion in the way that they dealt with cases even if they did not have a great deal of experience in dealing with the particular types of cases involved. There were organisational and structural pressures to proceed with cases and only a very small number of cases were discontinued or dropped at court, as the next section will consider.

Discontinuances/ Dropped Cases

The analysis of the cases survey and case files data showed that the C.P.S. were reluctant to discontinue or drop cases at court even in the face of problems that arose. Very few of the cases in the samples were discontinued. There were only two cases in the cases survey where formal discontinuance notices were issued, both where the defendants were already in custody on other matters and therefore there was little to
be gained by continuing proceedings.

The cases of 17 defendants were dismissed at court by the C.P.S. offering no evidence rather than by formal discontinuance notices. In these cases alternative charges or "binding over orders were agreed" or problems arose at court such as witnesses not attending (see Appendix 7 and Appendix 8). So it appeared that decisions were being made at a late stage rather than by cases being discontinued by notices under section 23 of the Prosecution of Offences act 1985 before the defendants attended a court hearing. The police were consulted in all these cases and generally agreed with the C.P.S. decision not to proceed. There were only 2 cases where the police did not agree to cases being dropped although the C.P.S. proceeded to discontinue those cases anyway.

So, in general the C.P.S. were content to proceed with cases even where there were problems of evidence or police overcharging. However, very few of the cases actually proceeded as charged, particularly where not guilty pleas were entered. There was a continuing process of negotiated justice with the C.P.S. reacting to the progress and developments in cases rather than taking a lead at the commencement. The defence solicitors had a part to play in this regard and the next section will look at the impact of their role in the making of representations both formal and informal as to how cases were to be treated.

THE DEFENCE AND THE PROSECUTION

In this section the role of the defence in the cases survey and case files will be explored. The relationship between defence lawyers and the C.P.S. is clearly an important one forming a working environment and culture that will affect the way in which cases are dealt with. There will be a discussion of the nature of representations by the defence and their impact on the conduct of the cases. Representations by the
defence can be in a number of forms. Informal representations can be made at court or out of court and may not be recorded on the C.P.S. case files. However, it is clear from an analysis of the cases survey (Appendix 7) and case files (Appendix 8) that defence representations were a common feature and did have an impact on how cases were dealt with.

Defence Representations

The research found that defence representations did make a significant difference to the prosecution of public order offences. Defence representations both formal and informal were a common feature in the cases surveyed. Defence representations about the nature of the charge in a formal way in writing were made in 13 per cent of the cases (n = 12, out of 92). This is because it is likely that the defence solicitors appreciated that in these types of cases their representations would have an impact. The vagueness of the law in defining the offences and the processes that encourage plea-bargaining and the downgrading of charges inform this appreciation. In 80 per cent of these cases (n of defendants = 53) the defendant had pleaded not guilty. So, there were pressures on prosecutors to avoid the time, trouble and expense of trials by considering alternative disposals. The defence representations were then considered by the C.P.S. reviewing lawyer and were usually successful if changes of plea to lesser charges were under consideration. The defence solicitors were more likely to make representations where they perceived a possibility of successful negotiation and where the nature of the offences provided considerable scope for plea-bargaining. In 29 cases out of the 92 in the cases survey the C.P.S. accepted pleas to lesser charges or "binding over" orders. In at least 12 of these cases formal
representations had been made by the defence and is likely that there were many other cases where informal representations were made at court. The defence representations were not always successful although in many cases they were.

The defence role in making representations to the C.P.S. about whether cases should proceed or whether alternative disposals by way of lesser charges or "binding over" orders took place within the whole context of a process of plea-bargaining and negotiated justice that will be examined more fully in the next section.

PLEA-BARGAINING AND NEGOTIATED JUSTICE

Plea-bargaining and negotiated justice avoiding the formal process of trial at court are features of the criminal justice process within the context discussed in Chapter 1. Plea-bargaining occurs in two ways. Either the defendant faces two or more charges and the prosecution drop one or more in return for a guilty plea to one charge or the defendant faces one charge and the prosecution drop that charge in exchange for a plea of guilty to a less serious charge (Ashworth, 1998: 271). There was evidence of both these types of bargaining occurring with the cases survey sample (Appendix 7).

Changes to Charges

This research confirmed that the nature of prosecutions for public order offences positively encouraged plea-bargaining and changes to lesser charges. This was recognised in the questionnaire replies. Seven out of the eight Areas that responded indicated that there were pressures by way of informal or formal representations on the C.P.S. at court from the defence and from the judges and magistrates to accept pleas to lesser charges in public order cases. It is of course the job of the defence to
seek to achieve the best possible outcome of cases for their clients. Two replies referred to the boundaries or dividing lines between the different public order offences causing overlap. Two replies referred to the reluctance of Judges to try other than the most serious types of public order cases. Three replies referred to the defence trying to "do a deal" or minimise sentence.

All eight Areas indicated that prosecutors asked for "binding over" orders in place of proceeding in cases of sections 4 and 5 Public Order Act matters where considered appropriate, although one Area added the rider that this was not as a matter of course.

In public order cases there is scope for substantial overlaps with a large number of other offences. So there is considerable scope for plea-bargaining where there is a wide choice of possible charges. Any incident of criminal offending that involves contact with the police or public has a potential to include disorder. In 35 per cent (n = 51) of the cases in the cases survey (Appendix 7) there were other charges for other offences. 65 per cent (n = 95) were charged with Public Order Act offences only.

This pattern was repeated in the case files (Appendix 8) where in 9 out of the 20 cases there were charges of assault occasioning actual bodily harm, dangerous driving, possession of a prohibited weapon (a CS gas spray), criminal damage, obtaining services by deception, police assault, theft and common assault.

These cases were treated differently only in that the further charges gave more scope for plea-bargaining. In 13 cases in the cases survey (Appendix 7) where there were other charges pleas to these other charges were accepted and the public order charges not proceeded with. This occurred in 4 of the case files (Appendix 8).

The C.P.S. in this respect appear to have been re-active rather than pro-active. In other words lesser pleas or binding over were accepted at a fairly late stage usually at

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17 See Chapter 3.
trial or where the prosecution was faced with difficulties such as witnesses not attending court. Where the C.P.S. had not received information about the defence account or the defendant had not been interviewed it appeared that C.P.S. lawyers were inclined to accept the police account of cases until they were faced with a situation that challenged this. In the context of case construction it is difficult for the C.P.S. accounts provided by the police short of a full trial hearing where the evidence can be tested.

This pattern is repeated in the 20 case files where in seven cases the C.P.S. made changes to the charges. It is difficult for the C.P.S. to increase charges as opposed to reducing them. There were two cases where C.P.S. decisions to increase charges caused problems in prosecuting those cases. In Case Study number 1, for example, the C.P.S. added a charge of affray only to drop this when the case was ultimately dealt with at the Crown Court. In Case Study number 4 the C.P.S. added a charge of affray that was reduced to a section 4 at the Crown Court at the trial some ten months later. In neither of these cases had the C.P.S. lawyer consulted the officer in the case before increasing the charge. So there are pressures on prosecutors not to increase charges but to reduce them within the context of bargaining as to the outcome of cases.

It could be argued that the practice of plea-bargaining is a sign of the independence of the C.P.S. as prosecutors are determining an acceptable level of charge to present to the Courts and thereby changing the charge from that initially put by the police. However, the wider implications of the data are that this is not the case.

First, plea-bargaining is part of the continual process of negotiation that goes on in cases avoiding trials. This process appears to be recognised and accepted by all the
agencies in the criminal justice system including the police, the defence and the Courts. There is some evidence that the police over-charge if they think there is scope for plea-bargaining as shown by the number of cases where charges were reduced. In no cases of those analysed did the police object to the C.P.S. accepting a reduction in the charge. They were generally content that a conviction of some kind had been achieved.

Second, if plea-bargaining were a sign of C.P.S. independence it would not occur at such a late stage. There would be more evidence of the C.P.S. suggesting lesser charges when reviewing case files. This is not the case as although prosecutors did enquire of the police whether lesser charges or binding over orders were acceptable in certain cases down-grading took place at a later stage in the progress of cases. So plea-bargaining is more a part of the working culture of prosecutors founded in the structural pressures within the whole criminal justice process to settle cases by negotiation rather than proof of the independence of the C.P.S.

So it is clear that a continual process of plea-bargaining and negotiated justice avoiding trials wherever possible did go on. The C.P.S. reacted to developments in this process and the defence played their part in making representations both formal and informal to the C.P.S.. This process was informed by the likely outcome of public order cases in the courts. Prosecutors are more likely to accept a plea to a lesser charge or a binding over order if they believe that the courts do not treat public order cases seriously or there are likely to be substantial delays until trial. The next section will look at the court process and examine the nature of trials and sentencing in the sample cases to see if these views are justifiable.
THE COURT PROCESS: TRIALS AND SENTENCING

This section looks at the way in which the courts dealt with the cases in the cases survey (Appendix 7) and the case files (Appendix 8). The outcome of cases clearly affects the way these types of cases are prosecuted. For example, if there is a perception amongst prosecutors that public order cases are not treated seriously enough by the courts this might encourage plea-bargaining and the acceptance of lesser charges or binding over orders as this would reinforce a view that it is a waste of time and resources to proceed on the original charges if the likely outcome is largely the same. The evidence from the cases survey and case files showed that whilst pleas of guilty were dealt with immediately there were substantial delays to trial hearings and that public order offences were not treated as serious by the courts.

Disposals at Magistrates' Court

Subsequent to a guilty plea being entered the magistrates can order the preparation of a pre-sentence report by the Probation service that gives full details about the offence and the defendant. The purpose of a pre-sentence report under the Criminal Justice Act 1991 is to assist the sentencer by providing information and analysis of offence, offender and related matters. The report can provide an assessment of the risk of re-offending and of harm to the public and may propose the merits of a particular programme within the framework of a community sentence (probation, community service, combination order or curfew order) (Ashworth, 1997b: 1109 & 1124). These sentences are seen as more severe than discharges or fines (Ashworth, 1997b: 1124). However, in only one case in the cases survey was a pre-sentence report ordered where there was an immediate guilty plea at the first appearance. So the public order offences in general were not seen as serious enough to merit the consideration of pre-sentence reports and as far as possible the court dealt with cases
where there was a guilty plea at the first appearance.

**TABLE 4.11**

Types of Immediate Disposal by number of defendants

(Cases survey sample)

<table>
<thead>
<tr>
<th>Disposal</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine</td>
<td>21</td>
</tr>
<tr>
<td>Conditional Discharge</td>
<td>16</td>
</tr>
<tr>
<td>Binding Over Order</td>
<td>11</td>
</tr>
<tr>
<td>Custody</td>
<td>1</td>
</tr>
<tr>
<td>Absolute Discharge</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
</tr>
</tbody>
</table>

Table 4.11 shows how the cases in the cases survey sample, 35 per cent (n = 50), that were the subject of immediate guilty pleas at the first or subsequent hearings of the magistrates' court, were dealt with. Only one case received a custodial sentence where the defendant had committed a section 4 offence within days of a previous suspended sentence of imprisonment for another section 4 offence. So the less serious public order offences where there were guilty pleas were dealt with by fines, conditional discharges or "binding over" orders. The implications of this are to encourage the prosecution and defence to enter into a bargaining process, as they are aware that cases are likely to be sentenced leniently if they can be disposed of quickly.
Trials

If a defendant pleads not guilty the case is adjourned for trial before the magistrates' court in the cases of summary offences. In the cases of either way offences where the defendant elects trial before the magistrates' court as opposed to trial by jury at the Crown Court these cases will also be adjourned for trial before the magistrates. The C.P.S. have to ensure that the matter is ready for trial reviewing the file again and advising the police which witnesses to warn to attend the trial to give evidence. So, the entering of a not guilty plea triggers a different process with regard to the prosecution file of papers although the pre-trial process encourages continued bargaining in the hope that a full trial can be avoided.

In the prosecution case files of 46 per cent (n = 67) of the defendants in the cases survey adjourned for trial additional evidence was received from the police. Further statements were submitted after the initial submission of the file in order to provide the C.P.S. with the statements of all prosecution witnesses for the purposes of a trial. There were 16 per cent (n = 23) of the cases where there were six police officer witnesses. This indicates that there are public order situations where the police attend in number as often their evidence is duplicated. Six was the most frequent number of police officers witnesses in these cases. In 25 per cent (n = 36) of the cases there were one or more civilian witnesses. So, there is a propensity for cases to be based largely on police evidence only and where there are police officers providing similar evidence in numbers it is difficult for this to be challenged.

Another common theme throughout those cases adjourned for trial was the considerable delay before the cases were tried. Again these delays encourage plea-bargaining and an earlier disposal of cases where possible. Although it was not always possible to ascertain the times involved from the file endorsements there were
at least four cases in the cases survey where the time between the incident and trial was four months, four where this period was five months and one case where the delay between the incident and trial was eleven months. In the case files there were six cases where there were long delays until the trial. For example,

Some 10 months after the incident prosecuting counsel at the Crown Court without consulting with the C.P.S. representative accepted a plea to a charge of criminal damage only. By this time 2 witnesses could no longer be traced, particularly the witness who had identified the defendant to the police at the scene. (Case 4)

The defendant elected trial on a charge of affray before the magistrates and the case was adjourned for trial. The case was adjourned twice because of witness difficulties, although there were only three witnesses, two civilian witnesses and the officer in the case. At the third trial date which was more than 11 months after the incident the two civilian witnesses did not attend thus forcing the prosecution to offer no evidence and the case was dismissed. (Case 9)

These cases are examples of what can happen if there is delay in bringing cases to trial. It is likely that witnesses had lost interest in their cases after long delays. It appeared to be the case that some not guilty pleas are tactical in the hope of the defendant that witnesses would not attend court if the case were delayed. This was particularly the case where neighbour or domestic types of cases were involved. There were 10 per cent of cases in the cases survey \( (n = 9 \text{ out of } 92) \) where witnesses did not attend court hearings or retracted their complaint and similarly in 10 per cent of the case files \( (n = 2 \text{ out of } 20) \). Long delays must reduce the prospect of conviction in terms of the evidence available, as witnesses cannot remember events after months have elapsed but it was clear that no further review of cases took place by the C.P.S. in terms of the evidential test in the Code for Crown Prosecutors. So delays in bringing matters to trial did not assist the prosecution process and encouraged plea-bargaining and negotiation wherever possible.
However, even where cases did proceed to trial and witnesses attended court there were many cases where the defendants then entered guilty pleas on the day of trial sometimes to the original charge and sometimes to reduced charges after negotiation between the prosecutor and the defence on the trial date. There were late guilty pleas in 22 per cent (n = 20 out of 92) of the cases in the cases survey sample (Appendix 7) and 20 per cent (n = 4 out of 20) of the case files (Appendix 8). There did not appear to be any distinction in the final disposal of these cases by the magistrates' court in terms of sentence from those cases where the defendants had pleaded guilty. In other words those pleading guilty late were not given more severe sentences. It is difficult to find that those pleading guilty early were given a sentence discount.18 It appeared that generally public order cases were dealt with in the same manner in the magistrates' court whenever the guilty plea was entered. This encourages plea-bargaining and delay as the defendants might consider they have nothing to lose by delaying their guilty pleas.

So, although there were initially a high proportion of not guilty pleas only very few defendants, 3 per cent (n = 5) were actually found not guilty where trials did proceed. The conviction rate in the cases survey appeared therefore to be a high one. However, this does not give the true picture taking into account how few cases actually proceeded to full trial as opposed to how many were dealt with by plea-bargaining or downgrading.

After trials the magistrates were slightly more likely to impose community based sentences (community service orders and probation orders) than conditional discharges and fines following guilty pleas. The court was much less likely to impose only a "binding over" order where there had been a trial and conviction of a substantive charge. Generally, however, public order offences were not treated as

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18 Section 48 of the Criminal Justice and Public Order Act 1994 allows the court on sentence to take
serious offences by the magistrates. In only one case, for a section 4 offence, was a custodial sentence imposed, where the defendant was in breach of an earlier suspended sentence. The next section will consider the overall picture on analysing the sentencing of the sample cases.

Sentences

The sentences imposed overall by the magistrates' court in the cases survey (Appendix 7) and case files (Appendix 8) confirmed that public order offences were not generally treated as serious by the courts. For example, none of the 24 defendants dealt with initially for the more serious affray charges ultimately received a custodial sentence before the courts.

**TABLE 4.12**

**Sentences imposed by number of Defendants**

(Cases survey sample)

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine</td>
<td>39</td>
</tr>
<tr>
<td>Conditional Discharge</td>
<td>38</td>
</tr>
<tr>
<td>Binding Over Order</td>
<td>33</td>
</tr>
<tr>
<td>Supervision Order</td>
<td>3</td>
</tr>
<tr>
<td>Community Service Order</td>
<td>2</td>
</tr>
<tr>
<td>Probation Order</td>
<td>1</td>
</tr>
<tr>
<td>Custody</td>
<td>1</td>
</tr>
<tr>
<td>Absolute Discharge</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>118</strong></td>
</tr>
</tbody>
</table>

Table 4.12 shows all the sentences imposed in the cases survey upon the defendants who either pleaded guilty to all or some of the charges or were found guilty after trial. The usual sentences were fines, discharges or binding over although community based sentences were imposed in a few cases after trials.

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into account at what stage in the proceedings the plea has been indicated (Ashworth, 1998: 277)
Other research has found a similar pattern. Home Office research on sentencing surveyed a large sample\(^\text{19}\) of magistrates' courts and Crown Court cases between September 1995 and January 1996. This research found that 32 per cent of public order cases received a custodial sentence in the Crown Court, the lowest percentage for types of offences, compared with 67 per cent for burglary offences and 66 per cent for drugs offences (Home Office Research Study 180, 1998: 157). In general terms public order cases were treated leniently. This is not to suggest that they should be treated more severely but to show that the eventual likely outcome of these types of cases clearly affected the way in which they are prosecuted encouraging practices such as downgrading and plea-bargaining within a context of negotiated justice.

\(^{19}\)3,000 magistrates' court cases and 1,800 Crown Court cases.
SUMMARY

The findings of this Research reflect the broader issues and inform the debates about these issues. The analysis of the data used the example of public order cases as a case study to inform the nature of the prosecution process and the position of the C.P.S. generally within the context of the criminal justice process.

The lack of formal policies and guidelines as to the prosecution of public order cases reflected the context of the prosecution process and the dominant position of the police in how these cases were dealt with. Structurally the C.P.S. was in a weak position. There was a general acceptance of police views. Although there is provision for obtaining pre-charge advice from the C.P.S. the police retain the power to charge and rarely obtained C.P.S. advice. The police exercised considerable authority in the way public order cases were dealt with bearing in mind that their involvement began with the practicalities of the policing of public order situations. The way in which the police dealt with these situations in practice may not have a great deal to do with the eventual prosecution of public order offences.

There is an argument that the whole of the case presented to the C.P.S. to prosecute by the police was constructed around the charge rather than the charge reflecting the nature of the case as a whole. This was evidenced by over-charging and the way in which defendants were dealt with by the police, including whether they were remanded in custody or granted bail to appear before the courts.

The quality of the information provided by the police to the C.P.S. was variable and inevitably one-sided. It appeared that prosecutors did frequently ask for further
information but that often this was not forthcoming and there was a lack of will in insisting that this be provided. The C.P.S. have no powers to direct the police and can only consider discontinuing cases if the criteria set out on the Code for Crown Prosecutors are met. In general terms this study has found that there was an acceptance of the police views of a case. Very few cases were discontinued.

These structural and policy weaknesses of the C.P.S. were found in the high proportion of public order cases where decisions were made late in the proceedings. These weaknesses were both in terms of the evidential and public interest tests in the Code for Crown Prosecutors. There were a number of cases where the C.P.S. were forced to react to problems or situations that should have been foreseen. This is evidenced by the high proportion of cases where charge bargaining and plea-bargaining went on and where there were changes in the nature of the case often at a late stage. The often substantial delays that occurred in bringing cases before the court for trial encouraged these processes as it was in the interests of the prosecution and defence to settle a case speedily avoiding the expense and delay of a trial. The courts generally treated public order cases with a low priority and the offences were not seen as serious offences.

Given the context of the prosecution and the structures, systems and policies that were applied the role of the C.P.S. in pursuing prosecutions for public order offences was reactive as opposed to pro-active. If the C.P.S. are to provide a fair, accountable and independent review a re-appraisal of the way cases are prosecuted is needed. The next chapter will summarise the findings of this research in terms of the broader issues. It will also discuss any future developments with regard to the prosecution of public order offences and the role of the C.P.S. in general in the prosecution process.
CHAPTER 5

WORKING IN THE INTERESTS OF JUSTICE?
THE CROWN PROSECUTION SERVICE AND THE
PROSECUTION OF PUBLIC ORDER OFFENCES

INTRODUCTION

This research into the prosecution of public order offences is the first attempt to comprehensively understand the role played by the C.P.S. in proceedings for particular types of offences. McConville et al., (1991) examined the whole prosecution process\(^1\) particularly in the context of case construction, whilst Fionda (1995) concentrated on the possibility of developing a sentencing role for the C.P.S. comparing the prosecution systems of a number of countries. The value of this study has been in highlighting questions and issues about the operation of the prosecution process by the example of the prosecution of public order offences looking at the culture, processes, and practices that are behind the formal legal structures and procedures. This understanding of the working culture and practices of prosecutors is the key to examining the role of the C.P.S..

The aim of this study was to examine the role of the C.P.S. in the criminal justice system by reference to the prosecution of public order offences. The main objectives of this research were to analyse how prosecutors approached their work within the broader issues of the theoretical, practical and structural context of the prosecution

\(^1\) Nearly 70 per cent of their sample involved property offences of theft, handling stolen goods, burglary and fraud (McConville et al., 1991: 211).
process. In addition, to examine the nature of the relationship between the C.P.S. and the police, to ascertain the information available to the C.P.S. for prosecution cases and to discuss the future direction of possible changes to the prosecution process. This final chapter reconsiders the broader issues in the light of the research findings. It returns to the main argument of the thesis that in practice the role of the C.P.S. is limited by the context and structure of the prosecution process. The process remains dominated by the police upon whom the C.P.S. rely almost entirely for the nature and quality of prosecution cases. This has serious implications for the wider interests of justice, as the main reason for the creation of the C.P.S. was to separate the roles of the investigator and the prosecutor.

Since public order law gives the police and prosecutors such a wide discretion it is useful to consider briefly whether the findings of this research would have been different had other types of offences been considered as a case study? It is only possible to make some speculations. To some extent public order offences are unusual in the vagueness of their definition and the degree of interaction between the police and public in terms of challenges to the authority of the police. However, although public order offences do involve in practice a high degree of discretion that is not to say that much of what has been discussed in this thesis would not apply to the whole range of criminal offences of all types. McConville et al., (1991) in their study analysed 423 persons prosecuted for indictable and either-way offences of all types of which nearly 50 per cent (n = 210) were for theft or handling offences and 17 per cent (n = 72) for burglary (McConville et al., 1991: Appendix, Table 17). In other words public order offences did not feature highly in their analysis.
Other research has found similar police and prosecution practices as discussed in this thesis in the whole range of other types of offences. For example, Hoyle (1998) deals with domestic violence cases and Genders (1999) refers to 'relabelling' in cases involving offences against the person. McConville et al., (1991) say than plea-bargaining happens in all types of crime including drugs offences, deception and handling (McConville et al., 1991: 165).

The introduction by the police and C.P.S. of Charging Standards in the areas of offences against the person, motoring offences, and drugs offences (as well as public order offences) may be a tacit recognition of the problems with regard to particular types of offences in the level of charge. There are certain categories of cases such as offences against the person, public order offences, fraud, burglary and handling stolen goods, and cases where death has resulted from a motor accident where discontinuance and downgrading appeared more prevalent and these were highlighted by Glidewell (1998: 84) who suggested further research was needed (Glidewell, 1998: 85). Public order offences are therefore not unique. Other criminal offences may be more certainly defined in the law but the general conclusions of this thesis with regard to the C.P.S. remain the same whilst recognising the differences created by those particular features of public order offences that have been highlighted.

This chapter ends with a discussion about ongoing and future developments with regard to the C.P.S. considering the changes that were proposed by the Narey Report (Narey, 1997) that created a system of expediting magistrates' court hearings where guilty pleas are anticipated and the Glidewell Review (Glidewell, 1998) that recommended changes in the organisation of the C.P.S.. Their recommendations have already begun to have an affect. These changes sought to improve the working
relationships between the C.P.S. and the police. However, they also have implications for the structural dependence of the C.P.S. on the police and continue to undermine the principle of the separation of powers within the prosecution process.

Finally, there is a discussion about how there might be changes in the work of the C.P.S. More research into that work is called for. The conclusion of the thesis is that in the opinion of the researcher the C.P.S. must re-assert its independent role as member of the criminal justice system in order to regain confidence in its work and to ensure that it truly becomes a body of stature in which the public can find trust. Otherwise the wider interests of justice will not be served, the C.P.S. will remain police-dependent and the reasons for its foundation will be undermined.

THE C.P.S. AND THE PROSECUTION PROCESS IN PRACTICE

The major findings of this research have been presented in a series of themes. These themes were the lack of formal prosecution policies and guidelines, the dominant position of the police in their relationship with the C.P.S., the nature and quality of case information and the concept of case construction, the structural and policy weaknesses of C.P.S. decision-making, the system of negotiated justice encouraging plea-bargaining and similar practices and the context of the court process reinforcing such practices. This part of the chapter returns to these themes in summarising the findings of this study and discussing their implications.

The role of the C.P.S. within the prosecution process is first considered in the theoretical context of the debate between due process and crime control values and the nature of the law itself. In theory the vetting and presentation of prosecution
cases by an independent C.P.S. is part of the protections inherent in a system of due process. In practice, however, it was found that crime control values prevailed. So, although the formal English criminal justice system emphasises adversarial procedures and due process safeguards if the practical way the system operates is examined is displays features of the crime control model. The great majority of defendants whose cases proceed to trial plead guilty and the prosecution evidence is not tested by the trial process. This is confirmed by the findings of the research with regard to the reluctance of the C.P.S. to stop weak cases, shared cultural and working values between prosecutors and the police, the general acceptance of the police views of cases, the organisational and structural pressures to secure convictions and the entering into a system of negotiated justice where pleas to lesser offences were accepted avoiding the need for trials. Only a very few of the cases surveyed actually proceeded to a full trial. Crime control orientated decision-making is consistent with the law, not contrary to it (McConville et al., 1991 and Sanders, 1997: 1053). It is not surprising that crime control values prevail, as it was clear that the working culture and practices of prosecutors was to proceed with prosecution cases wherever possible. They saw their job as to prosecute as evidenced by the way the cases surveyed were dealt with.

It seems that, despite the CPS view that 'times have changed' since the research of McConville et al, the CPS mind-set is still that of a prosecution agency rather than, as in countries like Holland a criminal justice agency (Sanders and Young, 2000: 363)

The vagueness of the law and the lack of formal prosecution policies and guidelines allowed prosecutors considerable discretion in the way cases were dealt with (McBarnett, 1983: 154 - 156). There did not appear to be a consistent approach despite the Code for Crown Prosecutors and the Charging Standard. These formal
documents structure prosecutorial discretion but it was found that prosecutors did not appear to refer to them on a regular basis and preferred to act on their experience or that of their colleagues as suggested by other research (Hoyano et al., 1997). The decisions that were made by prosecutors about whether or not cases should proceed, the level of the charge and what pleas or disposals were acceptable to the C.P.S. were decisions driven by working practices and values often shared with the police. Crime control values clearly prevailed with pressures to secure convictions. There was generally a presumption that defendants were guilty and that the police had done their job properly and should be supported by the C.P.S. There are also other organisational and economic pressures in practice to proceed with cases as the success of the C.P.S. is crudely measured by conviction rates and considerations of cost-effectiveness.\(^2\)

It is recognised that it is not enough to devise codes of practice or manuals of guidance (Baldwin, 1997: 555) as it is what prosecutors do in practice within the legal and organisational structures and their cultural and working context that is important.

Policy reforms in themselves are unlikely to bring about the desired changes. Whilst there has been no in-depth analysis of the impact of policies and guidelines in C.P.S. decision-making a useful analogy can be drawn from the research on policing. There has been a lengthy debate on the extent to which the legal regulation of police powers affects police practices. Dixon (1997) comprehensively addressed the complex interrelation between the law and policing and whether police practices could be significantly changed by legal regulation. He concluded that regulation could have some impact but only in combination with other processes and strategies.

\(^2\) As implicit in the Glidewell Review (1998) Terms of Reference (see Chapter 1) that refer to both the
Significant variables are likely to include the ways in which rules are expressed and communicated, the immediate and long-term political contexts, the support for or opposition to change in police and other criminal justice agencies, the level of commitment to actively seeking compliance and the provision of effective sanctions for non-compliance, and the significance (or otherwise) accorded in popular culture and discourse to rights and the limits of police powers (Dixon, 1997: 268)

In other words an appreciation of the socio-political context and the interaction between formal policy and the working culture, processes and practices is fundamental to any understanding of changes to the nature of the work of the C.P.S. Simply issuing tighter policy documents will not be enough.

Hoyle (1998) found that in the context of the criminal justice response to domestic violence policy changes at the beginning of the 1990s aimed at increasing police and prosecution, action had not brought about a dramatic impact in practice as had been expected (Hoyle, 1998: 180 - 181). Her research showed that the working rules and responses adopted by the police and prosecutors in these types of cases were largely informed by the attitude and preference of victims. The C.P.S. did not force reluctant victims to give evidence in any of the cases she surveyed despite the legal power available to do so (Hoyle, 1998: 213).

In her discussion about changing police culture Chan (1996) tried to present a model which emphasized the relationship between the social, legal and organizational context of policing and the schemas, classifications, and vocabulary of precedents central to the craft of policing (Chan, 1996: 131). Using as a case study the reform of police/minorities relations in Australia she also found that policy changes were largely ineffective in altering police practices (Chan, 1996: 130).

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1 In particular the Home Office Circular 1990/60 Domestic Violence which encouraged the police to be more pro-active in investigating domestic violence complaints and to deal with them as crimes committed by strangers (Hoyle, 1998: 5).
Changes in the field (e.g. in the formal rules governing policing) inevitably alter the way the game is played, since habitus\textsuperscript{4} interacts with the field, but the resulting practice may or may not be substantially or even discernibly changed. Once again the analogy of sports may be useful here. If the rules of a game or the physical markings on the field have been changed, an experienced player may be able to adjust quickly to the new rules and hence shows no sign of changing his or her performance. Conversely, changes to habitus (e.g. in the objectives of policing) also affect practice, but unless the field is changed in a way that reinforces the new habitus, habitus itself may revert to its old dispositions. It is therefore unproductive to debate whether rule-tightening or changing culture was more important. It may be that tightening the law is easier to achieve than changing police culture, but the results of both can be unpredictable. Moreover, changing the field can be just as difficult as changing habitus when the distribution of power and resources is the target of change (Chan, 1996: 131).

Glidewell recommended that a national framework of codes, standards, work practices and advisory services be created by the C.P.S. (Glidewell, 1998: 123). Nothing has been done about this recommendation as yet as the C.P.S. has concentrated so far on the organisational changes suggested by Glidewell. There has not been any concerted effort to set out the ethics of prosecution, goals and good practices (Ashworth, 1998: 123). More work is needed on the ethical principles and public policy in prosecuting (Ashworth, 1998: 520) with the need to developing a professional ideology for prosecutors (Gelsthorpe & Giller, 1990: 563). It is difficult to claim that the C.P.S. is working in the interests of justice when those interests have never been defined in terms of an overall criminal justice policy acceptable and understandable to the public at large and all the agencies within the criminal justice system. If the measure of success becomes that of securing convictions then it is not surprising as was recognised in the Philips Report that lawyers who spend their lives working in a prosecution agency may become just as committed to securing convictions as police officers are said to do (Philips, 1981: 133). So the principles of

\textsuperscript{4} Chan takes these concepts from the work of Bourdieu on social theory. Habitus equates with cultural
independent and impartial scrutiny by prosecutors become undermined.

The evidence examined in this study showed that the police continued to dominate the prosecution process despite the foundation of the C.P.S. as an independent prosecution service. Structurally the C.P.S. is in a weak position. The way in which the C.P.S. was created ensured that this would be the case. The C.P.S. was added on to the previously existing prosecution arrangements as an organisation with limited powers and responsibilities. The C.P.S. has no supervisory role over the police who retain the power to charge, the most important decision in the prosecution case that affects the whole way in which cases proceed. The C.P.S. can discontinue cases but this responsibility inevitably creates tensions between prosecutors and the police. Prosecutors are reversing, by discontinuance, a decision to proceed already made by the police. It is not surprising that few cases were discontinued and that there was a general acceptance of police views in this context. Police accounts generally were not challenged. There are a number of reasons for this. Prosecutors rarely dropped weak cases because they shared the crime control values and working rules with the police to proceed. They had no interest in discontinuing cases on any policy grounds and operated within the processes that encourage guilty pleas. In addition the adversarial system and pre-trial structures encouraged negotiation and the likelihood of a disposal of the case by way of a guilty plea to lesser charges. There was a lack of prosecutorial self-confidence that can be excused by allowing cases to continue to court. In this context it was easier to accede to the police request to continue cases. In this way a certain 'prosecution momentum' was created.

Lack of self-confidence may in some cases stem from the CPS's knowledge - a system of dispositions integrating past experiences and generating strategies (Chan, 1996: 114 - 115).
relationship, or a particular prosecutor's relationship, with the local police: it may take considerable nerve for a relatively young prosecutor to tell a long-serving police officer that a case has to be dropped, and it may be easier to accede to the police desire to 'run it'. Indeed, there are some weak cases that may result in a conviction, either through the defendant's late decision to plead guilty or through a jury verdict, and this may be regarded as a reason for 'running' such a case, especially if the defendant is thought to be an unworthy type (Ashworth, 1998: 193).

So, the police generally got their way in the prosecution process and the C.P.S. acquiesced in this police dominance. This creates an inherent weakness in the position of the C.P.S. in terms of the public interest test of the Code for Crown Prosecutors. Prosecutors cannot claim to represent objectively the wider interest of the public if they defer to the police in their decision-making.

Although there is provision for obtaining pre-charge advice from the C.P.S. the police retain the power to charge and rarely obtain C.P.S. advice. In none of the sample cases was any pre-charge advice sought. Other research has confirmed that this situation is unlikely to change. The evidence from the experimental scheme\(^5\), held before the introduction of the Narey (1997) system that provides for early court hearings, was that the police did not seek pre-charge advice from prosecutors even when they were available in the police station to be consulted (Baldwin and Hunt, 1998: 521 - 536). This research found that the extent to which pre-charge advice was sought was a rare occurrence\(^6\) (Baldwin and Hunt, 1998: 524). This was because the decision to request pre-charge advice depended upon a judgment made by a police officer that depended upon officers being able to identify appropriate cases for advice in any event. The conclusion was that little evidence was available to prosecutors at the pre-charge stage and that advice given frequently added nothing to

\(^5\)This was held in 12 areas of the country in 1996 and was known as Lawyers At Police Stations scheme (Baldwin and Hunt, 1998: 523).
what would be done subsequently on case review by the C.P.S. (Baldwin and Hunt, 1998: 535). So, initiatives from Runciman (1993) and Glidewell (1998) to increase the advisory role of the C.P.S. appear misconceived given the continuing responsibility of the police for charging. The police are unlikely to seek C.P.S. advice pre-charge unless it is made a condition of a prosecution continuing that they must do so.

It is clear that the charge is the most important stage in a prosecution case. This study confirmed the findings of other research in this respect.

Once chosen, the charge itself becomes the organising matrix round which the case is built, and which governs the creation, selection, interpretation and presentation of the evidence (McConville et al., 1991: 116)

It was found that the police exercised considerable influence in the way public order cases were dealt with bearing in mind that their involvement began with the practicalities of the policing of public order situations. When dealing with a disorderly situation on the streets the police were meeting challenges to their powers and authority. They were not necessarily considering at that time the likelihood of prosecution for particular offences. This is evidenced by the way in which case information was presented to prosecutors. Also, by the police agreement to the subsequent plea-bargaining and negotiation that was found in so many of the cases. Information was one-sided and selective and reinforced the police view of cases. It was found that the cases passed to the C.P.S. to prosecute by the police were constructed around the charge rather than the charge reflecting the nature of the case as a whole. This was evidenced, in the opinion of the researcher, by some over-

\footnote{Only eleven out of 600 cases examined (1.8 per cent) (Baldwin and Hunt, 1998: 524).}

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charging, the nature of the case information provided to the C.P.S. and the way in which defendants were dealt with by the police, including whether they were remanded in custody or granted bail to appear before the courts. By subsequently agreeing to lesser charges or binding over orders the police avoided any scrutiny of their actions by the courts in trials.

The quality of the case information provided by the police to the C.P.S. was variable and inevitably one-sided. Philips recognised that a police officer that carries out an investigation forms a view as to the guilt of the suspect. This may shut the officer's mind to other evidence against that view or make the officer overestimate the strength of the evidence (Philips, 1981: 132). This was a major reason why Philips recommended the separation of the roles of the investigator and the prosecutor (Philips, 1981: 144 and 194) and the creation of the C.P.S.. However, it was found that whilst it appeared that prosecutors did frequently ask for further information often this was not forthcoming in time for court appearances. There was a surprising lack of will in insisting that this be provided. In a few cases the requests were ignored but in the majority of cases the information came too late. Yet prosecutors continued with cases at court despite not receiving replies to their requests. A one-sided view of the evidence in a case clearly weakens the C.P.S. in terms of the evidential test in the Code for Crown Prosecutors. The C.P.S. have no powers to direct the police and can only consider discontinuing cases if the criteria of insufficient evidence or lack of public interest in terms of the tests set out in the Code for Crown Prosecutors are met. There was no evidence that prosecutors were prepared to be firmer by saying that they would discontinue the case if the police did not provide the further information requested. In general terms this study found that there was an acceptance of the police views of a case. It is easier for prosecutors to
do so hoping that defects in cases can be corrected or that there may be a guilty plea or that there will be opportunities in the pre-trial process for negotiation with the defence (Sanders, 1997: 1074). In terms of maintaining good working relationships it is simpler in practice for prosecutors to accede to the police case and seek to deal with the situation subsequently through the pre-trial processes that are available.

So, the findings of this research confirmed that the relationship between the police and the C.P.S. remained an uneasy one with the police continuing to dominate. This structural relationship with the police needs change if prosecutors are to be adequate reviewers of evidence and public interest (Sanders. 1997: 1075). The C.P.S. have recognised that this is the case. In their evidence to the Runciman Commission the C.P.S. made a number of recommendations (C.P.S., 1993). In particular the C.P.S. favoured changes in the division of responsibility between the police and the C.P.S. (C.P.S., 1993: 67). They suggested an enhanced advice system whereby the police should be encouraged to seek advice from the C.P.S. before the decision is taken to institute proceedings (C.P.S., 1993: 6, 67 - 79). The difficulties caused by the C.P.S. having no power to oblige the police to conduct investigations after proceedings have been instituted needed to be addressed and rectified. The C.P.S. suggested a 'declaratory statement' to the effect that the police should abide by the lawful instructions of the D.P.P. (C.P.S., 1993: 7, 81 - 84). The C.P.S. wanted this power to avoid the difficulties created by police officers being unable or unwilling to comply with requests for further investigation post-charge taking the view that the C.P.S. had then the responsibility for the prosecution without any power to require that is was properly investigated and prepared (C.P.S., 1993: 81). This would clarify the division of responsibility between the police and C.P.S.. However, the Runciman Commission did not take up any of these recommendations. They were clearly too
radical. Runciman suggested instead that the police should seek C.P.S. advice before charge in accordance with agreed guidelines (Runciman, 1993: 72). There should be a formal system of consultation to resolve any disputes over requests from the C.P.S. for further evidence (Runciman, 1993: 74). Even these more limited recommendations have not occurred as the police have continued to guard their powers to investigate and charge offences. There has not been any political will to place the C.P.S. on equal terms with the police within the prosecution process. There are a number of reasons for this. First, this would mean putting far greater resources into the C.P.S. than appears to be acceptable to successive Governments. Second, there appears to remain a political lack of confidence in the C.P.S. caused by the problems that occurred after its foundation as recognised in the Glidewell Review (1998: 36 - 40) as it found it difficult to establish a clear role for itself and to have that role accepted by the existing agencies in the criminal justice process. Third, a small number of high-profile miscarriage of justice cases have continued after the creation of the C.P.S. and inevitably have attracted adverse publicity to the prosecution process. Fourth, the police continue to be a powerful body adept at political lobbying as evidenced, for example, by the decision not to amalgamate certain police and C.P.S. functions as recommended by Glidewell (1998) as the Government feared a lack of police cooperation (Law Society's Gazette, 26th May, 1999: 5) and by the continuing growth in legislation increasing police powers and authority (Sanders and Young, 2000: 21).

It was found that in a high proportion of the cases surveyed C.P.S. decisions about whether to accept pleas to lesser offences or to continue at all with cases where
problems were evident were made late in the proceedings. This reflects the structural
and policy weaknesses of the C.P.S. that have been discussed. There were a number
of cases where the C.P.S. were forced to react to problems or situations that might
have been foreseen. Just as working relationships have developed with the police
similar arrangements with the defence solicitors are part of the culture that has
developed around the prosecution process. This is evidenced by the high proportion
of cases where charge bargaining and plea-bargaining took place and where defence
representations, both formal and informal, were made. Generally, C.P.S. decision-
making was found to be re-active. Case review reflected the character and values of
prosecutors often shared with the police. Given the vagueness of the law, the lack of
ethical guidelines, the nature and context of the prosecution process, the everyday
working relationships and the generally conservative nature of prosecutors this is not
surprising. So, the nature and context of the prosecution process affects the day-to-
day role of prosecutors.

The findings of this research showed that the court processes built around the pre-
trial adversarial system facilitated a system of negotiated justice. The substantial
delays that were found in bringing cases before the court for trial encouraged these
processes. It was in the interests of the prosecution and defence to settle cases
avoiding the expense, uncertainties and delays of trials. It was also found in
surveying the outcomes of cases that the courts generally treated public order cases
with a low priority and the offences were not seen as serious offences. This had an
affect on how cases were prosecuted, as prosecutors were unlikely, for example, to
proceed on a Section 4 charge if they thought that the court would impose no greater

\[For\, example,\, the\, 'Cardiff\, Three'\, and\, the\, West\, Midlands\, Serious\, Crime\, Squad\, cases\, where\]
penalty than that for a lesser Section 5 charge. So, the way in which the courts dealt with these cases and the delays to trials encouraged negotiation and practices such as downgrading and plea-bargaining.

The implications for criminal justice of the findings of this study are important and far-reaching. The C.P.S. was created to provide an independent, fair and accountable review and presentation of prosecution cases. This was found not happen in practice as the C.P.S. relied almost entirely on the police and played a re-active rather than a pro-active role in the decision-making processes. As a result the main reasons for the creation of the C.P.S. have not been fully satisfied and the quality of justice has not sufficiently improved. There is lack of confidence in the C.P.S. and this situation is unlikely to change in the near future. The next section of the chapter goes on to consider ongoing and future developments in the work of the C.P.S..

convictions obtained post C.P.S. have been quashed for irregularities (Sanders and Young, 2000: 19).
FUTURE DEVELOPMENTS

The findings of this study suggest to the researcher that changes in the prosecution of offences are needed to improve the quality of justice and assert the C.P.S. as a respected and independent member of the criminal justice system. A change of attitudes re-asserting the independence of the C.P.S. would be required. However, it is not possible to be optimistic at present about the likelihood of such changes occurring. The working culture of prosecutors will now be hard to change. The structural relationships with the police and the defence appear to be entrenched. The path to reform is blocked by either a lack of political confidence in the C.P.S., implicit in the Glidewell Review terms of reference and the rejection by the Government of a number of the Glidewell recommendations, or by the power of the police or by a combination of the two (Ashworth, 1998: 206). Indeed, ongoing initiatives such as those proposed by the Narey Report (1997) and the Glidewell Review (1998) further undermine the independence of the C.P.S. They bring closer together the investigation and the prosecution of offences that the Philips Commission sought to separate in the wider interests of justice by the foundation of the C.P.S.. In seeking to create closer working relationships between the police and the C.P.S. the danger of these initiatives is to bring together those parts of the prosecution process and to reinforce a shared working culture between the police and prosecutors (Baldwin and Hunt, 1998: 521 - 522).

The creation of the Narey courts system for expediting the hearing of cases before the magistrates' courts that followed the recommendations of the Narey Report

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(Narey, 1997) should have increased the involvement of the C.P.S. in pre-charge advice to the police. The presence of C.P.S. lawyers and staff at police file preparation units to review and prepare cases for early court hearings commenced in November 1999. This gives the police greater opportunity to consult with the C.P.S. pre-charge if they choose to do so but it also reduces the independence of the C.P.S. to a certain extent. In theory C.P.S. representatives will also be able to make their views known to the police about the nature and level of charges before charge. However, given the findings of other research it is unlikely that the police will seek C.P.S. advice unless they foresee evidential problems in certain kinds of cases (Baldwin and Hunt, 1998: 521 - 536). The position regarding the C.P.S. giving pre-charge advice to the police at the police station is a controversial one. Any suggestion of C.P.S. lawyers and staff working directly with the police appears to compromise the fundamental principle of independence on which the service was founded (Philips, 1981: 144). The Philips Commission envisaged a legally qualified prosecutor that was not identified with the investigative process (Philips, 1981: 144). Nevertheless, the current trend is towards a greater degree of co-operation between the C.P.S. and police. This will raise many issues about the prosecution of these cases. For example, if a C.P.S. lawyer has already advised about the nature of the charge at the police station it may be more difficult in practice for there to be any subsequent changes thereafter in that particular case. In the short time before the court appearance it is likely that the prosecutors will only receive limited information about the case reinforcing the police view. If a prosecutor seeks to depart from advice previously given about the level of a charge this could be open to a challenge in court. Opportunities for negotiation with the defence may be limited. The Home

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8 See Chapter 1.
Office has refused to allow defence lawyers access to the C.P.S. at this stage to make representations on case disposal arguing that this would undermine the police's independent role in investigating and charging suspects (Bridges, 1999). Unless there are to be very firm guidelines it appears that there may be police pressure on the prosecutors to agree to certain courses of action. So the independence of the C.P.S. is likely to be compromised. Although it is too early to assess the impact of these changes there is a danger that the C.P.S. in this situation will become even more a confirmer of police actions and decisions.

The Glidewell Review (1998) of the C.P.S. went further than Narey and recommended some form of amalgamation of the functions of the C.P.S. and the police so that the C.P.S. could assume responsibility for the prosecution process from the point of charge (Glidewell, 1998: 127). The reason for this recommendation was to seek to cure the strained relationship between the police and C.P.S. that had created what Glidewell describes as a "blame culture" between the C.P.S. and police administrative units in the management of prosecution case files. Glidewell went as far as recommending a C.P.S. criminal justice unit with some police staff. However, the Government rejected this proposal. The Attorney General referred to a number of pilot areas where C.P.S. prosecutors had been based in police stations and stated that the Government preferred to maintain this sort of arrangement without any formal transfer of responsibility from the police to the C.P.S. (Law Society's Gazette, 26th May, 1999: 5). The Government whilst accepting many of the Glidewell recommendations did not made any radical changes to the responsibilities of the police and the C.P.S. for their respective parts of the prosecution process. So, the structural weaknesses of the C.P.S. that have been identified in this study are likely to continue. The prosecution process will remain dominated by the police as they
retain the power to charge and provide nearly all the information to the C.P.S. in their cases. In all these circumstances it is difficult to accept that the C.P.S. can ever be a truly independent agency (Sanders and Young, 2000: 345).

It does not appear that there are likely to be any major changes in the role of the C.P.S. in the future. Various proposals in the past to add to C.P.S. functions\(^9\) have come to nothing. Such changes in the structure of the prosecution process are unlikely given the lack of political will or confidence in the C.P.S.. However, given great effort changes in the working culture of prosecutors could be brought about from within the C.P.S.. Changes in the policies, values and working practices of prosecutors are needed to improve the quality of justice and assert the C.P.S. as a respected and independent member of the criminal justice system. If the C.P.S. is to re-affirm itself as a truly independent decision-maker within the criminal justice process it must develop a more pro-active role in the review and presentation of prosecution cases. The C.P.S. must not be seen as a servant of the police but as truly independent taking into account the public perceptions of law and order. The need is for a coherent criminal justice policy taking into account the parts played by all the agencies in the criminal justice system and the wider interests of justice. The C.P.S. cannot claim to be "working in the interests of justice" if those interests are not properly defined within the terms of a long term criminal justice policy with clear standards based on well-founded principles (Ashworth, 1998: 520).

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\(^9\)For example, the power to require the police to administer a caution (Runciman, 1993: 82), the power to offer prosecution fines (Runciman, 1993: 83), the power to recommend sentences (Fionda, 1995: 246), the taking over of the prosecution case from the point of charge (Glidewell, 1998: 127).
CONCLUSION

This study of public order cases has informed the role of the C.P.S. and the nature of the prosecution process. However, a great deal of information about that complex process is still lacking. More research is needed so that future debate about the C.P.S. and its work can be better informed. The conclusion of this thesis is that in the opinion of the researcher the C.P.S. must assert its independent role as member of the criminal justice system in order to ensure that it truly becomes a body of stature in which the public can find trust. Such changes need to take place within the wider remit of a coherent criminal justice policy. This also means great changes in the working culture of prosecutors. Given the present context and structure of the prosecution process and the dependence of the C.P.S. on the police such reforms are unlikely but only then can the C.P.S. properly boast that it was working in the interests of justice.
APPENDIX 1

1) CROWN PROSECUTION SERVICE: STATEMENT OF OUR PURPOSE AND VALUES (1993)


3) THE EXPLANATORY MEMORANDUM (1996)
STATEMENT OF OUR PURPOSE AND VALUES

The Crown Prosecution Service reviews and, where appropriate, prosecutes criminal cases, following investigation by others. We also advise the police on matters relating to criminal offences. In each case we review, we consider whether there is sufficient evidence and, if so, whether the public interest requires a prosecution.

We are committed to providing a high quality prosecution service, working in the interests of justice. As a unified service, we will apply common standards, policy and operational practices throughout England and Wales, ensuring a consistent and timely approach.

Our decisions will be independent of bias or discrimination, but we will always consider the interests of others. We will act with integrity and objectivity, and will exercise sound judgement, with confidence.

In all our dealings with each other and the public, we will be open and honest. We will show sensitivity and understanding to victims and witnesses; and treat all defendants fairly.

We are accountable to Parliament and the public; we will work together with our colleagues to maintain public trust, and to provide an efficient and effective criminal justice system. In explaining our decisions, we will be courteous and helpful.

In order to achieve these high standards, we will report on our performance, and respond to criticism positively.

*Crown Prosecution Service: Working in the interests of justice*

(Source: Crown Prosecution Service, Statement Of Our Purpose And Values 1993)
THE CODE FOR CROWN PROSECUTORS

(Fourth Edition, 2000)
The Crown Prosecution Service is a public service for England and Wales headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

The Director of Public Prosecutions is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be applied when making decisions about prosecutions. This is the fourth edition of the Code and replaces all earlier versions. For the purposes of this Code, 'Crown Prosecutor' includes members of staff in the Crown Prosecution Service who are designated by the Director of Public Prosecutions under section 7A of the Act and are exercising powers under that section.
INTRODUCTION

1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved - victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.

1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should take account of the Code when they are deciding whether to charge a person with an offence.

1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.
2 GENERAL PRINCIPLES

2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.

2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.
2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

3 REVIEW

3.1 Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges, to change the charges, or sometimes to stop the case.

3.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.
4 THE CODE TESTS

4.1 There are two stages in the decision to prosecute. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.

4.2 This second stage is the public interest test. The Crown Prosecution Service will only start or continue with a prosecution when the case has passed both tests. The evidential test is explained in section 5 and the public interest test is explained in section 6.
5 THE EVIDENTIAL TEST

5.1 Crown Prosecutors must be satisfied that there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

5.2 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates’ court should only convict if satisfied so that it is sure of a defendant’s guilt.

5.3 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:
Can the evidence be used in court?

a Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

Is the evidence reliable?

b Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

c What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

d If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
e Is the witness’s background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

f Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.4 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.
6 THE PUBLIC INTEREST TEST

6.1 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: “It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution”. (House of Commons Debates, volume 483, column 681, 29 January 1951.)

6.2 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

6.3 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.
The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

Some common public interest factors in favour of prosecution.

6.4 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

a a conviction is likely to result in a significant sentence;

b a weapon was used or violence was threatened during the commission of the offence;

c the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);

d the defendant was in a position of authority or trust;

e the evidence shows that the defendant was a ringleader or an organiser of the offence;
f there is evidence that the offence was premeditated;

g there is evidence that the offence was carried out by a group;

h the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;

i the offence was motivated by any form of discrimination against the victim’s ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;

j there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;

k the defendant’s previous convictions or cautions are relevant to the present offence;

l the defendant is alleged to have committed the offence whilst under an order of the court;
m there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or

n the offence, although not serious in itself, is widespread in the area where it was committed.

Some common public interest factors against prosecution

6.5 A prosecution is less likely to be needed if:

a the court is likely to impose a nominal penalty;

b the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;

c the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);

d the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
e there has been a long delay between the offence taking place and the date of the trial, unless:

• the offence is serious;

• the delay has been caused in part by the defendant;

• the offence has only recently come to light; or

• the complexity of the offence has meant that there has been a long investigation;

f a prosecution is likely to have a bad effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence;

g the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
h the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or

i details may be made public that could harm sources of information, international relations or national security.

6.6 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

6.7 The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim’s family.
6.8 It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

**Youths**

6.9 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant’s age. The seriousness of the offence or the youth’s past behaviour is very important.

6.10 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.
Police Cautions

6.11 These are only for adults. The police make the decision to caution an offender in accordance with Home Office guidelines.

6.12 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. This will include a police caution. Again the Home Office guidelines should be applied. Where it is felt that a caution is appropriate, Crown Prosecutors must inform the police so that they can caution the suspect. If the caution is not administered because the suspect refuses to accept it or the police do not wish to offer it, then the Crown Prosecutor may review the case again.
7 CHARGES

7.1 Crown Prosecutors should select charges which:

a reflect the seriousness of the offending;

b give the court adequate sentencing powers; and

c enable the case to be presented in a clear and simple way.

This means that Crown Prosecutors may not always continue with the most serious charge where there is a choice. Further, Crown Prosecutors should not continue with more charges than are necessary.

7.2 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

7.3 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.
8 MODE OF TRIAL

8.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. (See the ‘National Mode of Trial Guidelines’ issued by the Lord Chief Justice.) Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.

8.2 Speed must never be the only reason for asking for a case to stay in the magistrates’ courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.
9 ACCEPTING GUILTY PLEAS

9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

9.2 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.

9.3 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.
10.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.

10.2 These reasons include:

a rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;

b cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and

c cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.
The Code is a public document. It is available on the CPS Website: www.cps.gov.uk

Further copies may be obtained from:

Crown Prosecution Service
Communications Branch
50 Ludgate Hill
London EC4M 7EX
Telephone: 020 7796 8442
Fax: 020 7796 8351
Email: commsdept@cps.gov.uk

Translations into other languages and audio cassette or braille copies are available. Please contact CPS Communications Branch (above) for details.
EXPLANATORY MEMORANDUM

THE CODE FOR CROWN PROSECUTORS
INTRODUCTION

1.1 The Code for Crown Prosecutors is issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985. It sets out the basic principles which Crown Prosecutors should follow when they make case decisions. It is a public document and, although written for members of the Crown Prosecution Service, it is widely used by others in the criminal justice system to understand the way in which Crown Prosecutors make decisions.

1.2 In June 1994, the third edition of the Code for Crown Prosecutors was published. The purpose of this memorandum is to explain to Crown Prosecutors and other CPS staff what changes have been made, and why.

BACKGROUND

2.1 The Code is kept under continual review to make sure that the principles it sets out remain appropriate. Since the start of the Crown Prosecution Service, the Code has been amended on a number of occasions. The last substantial amendments to the Code were made in January 1992.

2.2 Early in 1993, the Director of Public Prosecutions commissioned an internal review of the Code to see whether its wording could be improved and simplified. In December 1993, the Attorney General made the following announcement during a debate about the Crown Prosecution Service in the House of Commons:

"[The] Code is to be reviewed, and the aim of the review will be to simplify the language of the Code and to put it into plain English to make it a document more easily understood by police officers and members of the public who are not lawyers. That is to be widely welcomed. The DPP is confident that the fundamental principles of the Code remain sound, but she believes - and I believe - that the evidential criterion and the requirement for a realistic prospect of conviction can be clarified and that the public interest factors in favour of a prosecution can be brought out more clearly."

2.3 Members of the Crown Prosecution Service have been consulted about the revisions to the Code which are contained in the edition published today. Others in the criminal justice system have also been consulted.

EXPLANATION OF THE CHANGES MADE

3.1 The language of the Code has been simplified and the Code's contents clarified in accordance with the Attorney General's statement. The Plain English Campaign was formally consulted and has greatly assisted us in producing a Code which members of the public will, hopefully, understand. Many of the "technical legal expressions" which appeared in the previous
edition of the Code have been removed so that the general principles may be better understood by non-lawyers. Certain legal expressions have been retained because of their significance, but wherever possible these, too, have been explained.

3.2 Some sections of the previous Code have been left out. This is because either they are no longer of relevance or they are better placed in other guidance which Crown Prosecutors receive; for example, because they are too detailed for a Code which explains the basic principles.

3.3 Some provisions in the new Code are included for the first time; in many cases these already represent proper established practices.

3.4 The contents of the Code follow a more logical order in this edition. There are also separate sections for different topics.

3.5 All of these changes have been introduced to make sure that the Code is a clearer and simpler document. The fundamental principles of the decision making process, however, remain the same.

3.6 The following section goes through the new Code in greater detail, explaining the specific changes which have been made.

THE REVISED CODE

Introduction: Code paragraphs 1.1 – 1.2

4.1 This section sets out why the Crown Prosecution Service has a Code and emphasises the importance of our role in the criminal justice system. This also means that all those with whom members of the Service come into contact are entitled to know and understand the basis upon which we make our decisions.

General Principles: Code paragraphs 2.1 – 2.3

4.2 This section is new; it states quite simply that the basic duty of all members of the Service is to reach decisions fairly, without allowing inappropriate considerations to weigh in the decision making process. Of course, there may be quite proper non-evidential factors to bear in mind when assessing a case, such as information about witnesses or the defendant, which does not necessarily affect the strength of the evidence. These factors are discussed later in the Code under the heading of the public interest.

4.3 Crown Prosecutors must make their decisions without any bias; there is no place for prejudice in the decisions which members of the Service take.

4.4 The Director and her staff act as an important filter both into and away from the criminal justice system. It is as important to make sure that those
against whom there is not enough evidence to proceed, do not enter the system as it is to prosecute firmly and fairly those who properly need to be put before the courts.

Review: Code paragraphs 3.1 - 3.2

4.5 Although the review function was mentioned in the last edition of the Code, this is the first time a section is devoted to the subject. The Code states what all those who take decisions already know: review is one of the core functions of the Service. Crown Prosecutors cannot apply the tests set out later without reviewing a case. Review is that process by which Crown Prosecutors assess the evidence and other information which the police, and sometimes others, supply in the file.

4.6 The Code emphasises the continuing nature of the review process. As cases proceed, often more and more information emerges about the offence and the alleged offender. It is essential that such information is considered against what else is known, so that proper decisions may be taken at all stages of the case.

4.7 Reference is also made to the need to make sure that the police are kept fully informed about the key decisions in a case. Often, the police may be able to meet the concerns which Crown Prosecutors might have about possible areas of weakness; they may be able to find further evidence on a particular point which could make the difference between continuing and stopping the case. If the Service is to reach the right decision in cases, it must allow the police the opportunity to uncover any further evidence which might exist. This necessarily means that Crown Prosecutors and the police must liaise with one another as the case progresses.

The Code Tests: Code paragraphs 4.1 - 4.2

4.8 This edition of the Code re-inforces the two tests with which Crown Prosecutors have been familiar since the Service was established. Emphasis is also placed on the order of the tests; evidence must be considered before public interest. If the evidential test is not satisfied, there must not be a prosecution, no matter how great the public interest may seem in having the matter aired in court. It is not the role of the Service simply to give cases a public hearing, regardless of the strength of the evidence. It is absolutely essential that Crown Prosecutors apply the tests to the correct standard and in the right order.

The Evidential Test: Code paragraphs 5.1 - 5.4

4.9 The definition of the standard of evidence required before Crown Prosecutors should allow a case to continue remains as a 'realistic prospect of conviction'. In the past, there has been some concern that this phrase is capable of differing interpretations, ranging from something just above fanciful to almost certainty. The opportunity has therefore been taken in
this edition of the Code to offer greater guidance about what this expression means.

4.10 There must be an objective assessment of the evidence. Crown Prosecutors should not take into account any perceived local views of the bench or juries when considering whether there is a realistic prospect of conviction. The reason for this is simple: if local considerations of this nature were allowed to influence the decision to prosecute, the goal of consistent decision making would be lost. The assessment of the evidence must be undertaken objectively.

4.11 In reinforcing this point, the Code goes on to define a realistic prospect of conviction as meaning:

'a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged'.

4.12 It follows, therefore, that Crown Prosecutors should not be looking for the same high standard of proof that a jury or bench of magistrates needs to find before it can convict. That is too high a standard for the Crown Prosecution Service to require and it would tend to usurp the role of the court. A test based on 'more likely than not' means just that. It requires Crown Prosecutors to weigh the adequacy of the evidence in order to decide whether a conviction is more likely than an acquittal. Only where it is clear that there is no realistic prospect of conviction should Crown Prosecutors decide not to prosecute. This definition of realistic prospect of conviction should enable Crown Prosecutors to be more consistent in their decision making.

4.13 There are several issues which need to be brought together. The way in which the tests are defined means that Crown Prosecutors must consider the strength of the evidence and the likely result of any case as if it were put before an objective, impartial and reasonable tribunal. There is no distinction for these purposes between a bench of magistrates and a jury, both properly directed in accordance with the law. There is no room for allowing individual opinions on where cases are more likely to succeed to influence the decision to prosecute. The quality of justice does not vary from courtroom to courtroom or between tiers of court. The Code's evidential test is an objective test to be considered against the background of an objective tribunal.

4.14 Crown Prosecutors should not define the evidential test as 'a 51% rule'. The Crown Prosecution Service has always stated that weighing evidence (and the public interest) is not a precise science; it is therefore misleading to talk in terms of percentages - particularly to a single percentage point - because it implies that we can give individual pieces of evidence an exact weight and then add them up to reach a decision about prosecution. Crown Prosecutors should continue to avoid using any expressions which could convey the impression that the decision making process is susceptible of very precise numerical definition.
4.15 There will also be some who talk of cases where the evidence is '50 - 50' or where the witnesses are 'one-to-one'. This provides a good example of why it is wrong to see the decision making process as simply a question of adding up the pieces of evidence on each side and coming to a mathematical conclusion. Very rarely will evidence be '50 - 50'. Seldom will two witnesses who say contradictory things be equally reliable or believable. If Crown Prosecutors do not have enough information to assess whether a conviction is more likely than an acquittal, they should identify what else they need to know before a decision can be made, and advise the police accordingly.

4.16 In summary, therefore, Crown Prosecutors should carefully weigh all the evidence and reach a view about whether a conviction is more likely than an acquittal. Only where it is clear that there is no realistic prospect of a conviction - when set against this test - should the case be terminated.

4.17 When assessing the evidence, Crown Prosecutors should have regard to any lines of defence which are clearly available to, or have been indicated by, the accused. For example, breaches of the Codes of Practice under the Police and Criminal Evidence Act 1984 may lead to exclusion of evidence and consequently undermine the prosecution case. A further example would be where the papers indicate that the accused will seek to rely on self-defence. In these circumstances, Crown Prosecutors will need to ensure the availability of rebuttal evidence before deciding whether or not to continue. A mere assertion, however, on the part of the accused, or witnesses, which simply contradicts the prosecution evidence, should not in itself be sufficient to undermine the case to such an extent that the matter should not proceed. Crown Prosecutors should not attempt to anticipate a line of defence in the absence of an indication on the face of the papers. In appropriate cases, however, they should try to find out whether there are other factors which call into question the reliability of the prosecution case. Crown Prosecutors must consider all the evidence that can reasonably be expected to be available. They must consider whether there are any further reasonable lines of enquiry which should be pursued which may strengthen or weaken, either the prosecution or defence case. The sorts of question that Crown Prosecutors may need to consider are referred to in paragraph 5.3 of the Code.

4.18 It is very important for Crown Prosecutors to distinguish between cases which are evidentially complex or difficult and those cases which are weak. Crown Prosecutors must guard against the temptation to confuse the two concepts. Clearly, weak cases which do not satisfy the evidential test set out above must be terminated. On the other hand, complex or difficult cases require considerable care. It is important that Crown Prosecutors analyse the evidence in detail in order to reach an informed decision about prosecution.

4.19 The Crown Prosecution Service has developed a programme of National Casework Guidelines designed to assist Crown Prosecutors in cases which are complex or difficult. The purpose of these guidelines is to identify those evidential issues which often cause difficulty and to highlight the ways in
which Crown Prosecutors might be able to reach the right decision about
the weight to be given to individual pieces of evidence, as well as to the
prosecution case as a whole. Here, it will sometimes be necessary to refer
matters back to the police for clarification before reaching a final decision
about the strength of the evidence. This is to be encouraged. It is wrong
for Crown Prosecutors to conclude that a case should not be prosecuted
because of a lack of evidence simply because there may be an omission in
the file of evidence supplied by the police. Given the complexity of some
parts of the law, the police may often need assistance from the Crown
Prosecution Service in order to obtain the evidence necessary to proceed
with the case. This is particularly so with regard to some evidential issues,
such as the quality of identification evidence. The Crown Prosecution
Service is happy to provide advice to the police and indicate the areas of
the evidence in respect of which further information may be required in
order to avoid the inappropriate termination of proceedings. The series of
National Casework Guidelines - which have been made available to the
police - will help identify the type of additional information in certain cases
without which it would not be right to reach a final decision about the
merits of prosecution. Crown Prosecutors should apply the Guidelines in
all relevant cases to avoid terminating cases on the grounds that the
evidential issues in them are too complex or difficult.

4.20 Of course, cases may also be seen as complex or difficult because they
require Crown Prosecutors to consider what approach the courts might take
to questions of admissibility. Indeed, satisfaction of the evidential test set out
in the Code may sometimes be dependent on a court's ruling about the
admissibility of a particular piece of evidence. The simple fact that there may
be questions raised about the admissibility or reliability of a particular piece
of evidence should not lead the Crown Prosecutor automatically to reject it.
Often, it will be right to go before the court with that evidence and seek a
ruling about its admissibility or reliability. Clearly, where there has been, for
example, a breach of the rules governing the detention or questioning of a
suspect and case law already indicates how the courts are likely to regard
evidence obtained as a consequence of that breach, Crown Prosecutors may
be able to disregard it completely from the start. But more often, the issue
will not be clear cut and Crown Prosecutors must consider carefully
whether it is more appropriate for the issue to be determined in court.

The Public Interest Test: Code paragraphs 6.1 – 6.3

4.21 The role of the public interest in the decision making process remains the
same, although the Code now brings out more clearly those factors which
may tend towards a prosecution.
Paragraph 6.2 of the Code states that:

“In cases of any seriousness, a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour.”

The crucial words here are “clearly outweigh”. The Code now clearly states that where there is enough evidence to offer a realistic prospect of conviction, in cases of any seriousness, a prosecution will be the usual course of action. This recognises that it is important to uphold the criminal law and that, in effect, there is a public interest in doing so. It remains the case, however, that there may be instances where an analysis of the public interest may still lead Crown Prosecutors to a correct decision not to prosecute, but those factors must clearly outweigh any other factors which point in the opposite direction.

Where it is considered that the public interest factors are evenly balanced (which is possibly more likely than in an analysis of the evidence), a prosecution will follow, because it cannot be said that the factors against prosecution clearly outweigh those in favour.

As before, Crown Prosecutors must assess often competing public interest factors. To assist in this process, the Code more clearly identifies those factors which Crown Prosecutors should consider as being in favour of prosecution. These are listed at paragraph 6.4. Equally, the Code has clarified those factors which might be thought to lead the Crown Prosecutor away from prosecution. A further helpful guide is found at paragraph 6.2, where the attention of Crown Prosecutors is drawn to the fact that, often, those public interest factors which may appear to be tending against a decision to prosecute should more properly be brought to the attention of the court in any plea in mitigation after conviction by the defence.

The lists of public interest factors should not be regarded as exhaustive. It is impossible to write down every single factor which may properly influence the decision making process. The Code identifies the more common factors - for and against prosecution - but Crown Prosecutors should by no means see this as a prohibition on introducing into their decisions any other relevant public interest factors. Each case is unique and so might be the public interest factors which need to be considered.

A further general point needs to be made about the lists of factors. Crown Prosecutors should not imply that the absence of a factor necessarily means that it should be taken as a factor tending in the opposite direction. For example, just because the defendant was not in a position of trust does not necessarily mean that the absence of a breach of trust is a factor against prosecution.
Some common public interest factors in favour of prosecution:
Code paragraph 6.4

4.28 This edition of the Code more clearly highlights factors which favour prosecution. These factors have been kept deliberately short so that they are clearly understandable by all those who read the Code. The inclusion in the list of most of these factors is self-evident and goes to the seriousness of the offending (including the effect of the crime on the victim) or the circumstances of the offender.

4.29 One particular point which needs to be made here concerns the effect of the crime on the victim. Just as in the previous edition of the Code, Crown Prosecutors are entitled to consider the particular victim of the crime. So, the fact that it is thought that a particular offence would not generally have a serious effect on an “average” victim is irrelevant if in the particular case with the actual victim the effect of the crime was more serious. This may be of particular relevance in cases of relatively minor assaults where one victim may be young and healthy and a second victim may be considerably older and more frail. The effect of the same crime on each may be very different and Crown Prosecutors are entitled to consider what the actual effect is on the victim in question. In other words, the defendant must take the victim as found, and cannot be heard to suggest his or her crime is not that serious simply because another victim may have been stronger or more resilient to the effects of those actions.

4.30 All crimes which have as part of their motive an element of discrimination or intimidation of a member of a minority group - whether that group is singled out by reason of its ethnic or national origin, sex, religious beliefs, political views or sexual preference - are serious, and a prosecution may well be appropriate.

4.31 The previous edition of the Code talked of “peripheral defendants”, whereas this edition talks of “ringleaders or organisers”. The emphasis has been changed to reflect the fact that those who organise crime may often not be those who actually take the lead in committing the offence. They are, nevertheless, just as liable to proceedings as others who take part, and the public interest factor has been put in this way to ensure that consistent decisions concerning them are taken. Crown Prosecutors remain able to weigh in the balance the fact that the defendant played only a peripheral role in the commission of the offence, since this may well be a reflection of the extent of his or her criminality.

4.32 This is another example of the point made in paragraph 4.26 above. Reference to ringleaders and organisers as a factor in favour of prosecution must not be taken to imply that there is a public interest factor against prosecuting those defendants who do not fall into this category. All defendants must take responsibility for their actions, including those who aid and abet crimes committed by others. But Crown Prosecutors must always balance the seriousness of the offence with the role that each defendant played in its commission before deciding whether a prosecution
is needed. Crown Prosecutors should be careful to give proper weight to those who, although not involved in the commission of the offence, may be just as culpable because of the role they have played in its preparation or because of the encouragement they have offered to those who have committed the crime.

4.33 This edition of the Code highlights specifically the need for Crown Prosecutors to set the offence against the background of the particular defendant's circumstances. This is important. The commission of identical crimes by two defendants may on occasion lead to different decisions concerning the need for prosecution by a Crown Prosecutor depending on the circumstances of each defendant. This point may apply even where there are joint defendants and special care is needed to consider each defendant separately. Examples of relevant factors here are the defendant's previous criminal history; whether the defendant is subject to an order of the court; or whether the offence is likely to be repeated. Crown Prosecutors are entitled to take into account, when assessing the public interest factors in favour of prosecution, whether the defendant is currently on bail in respect of another matter; whether the defendant would be in breach of a court order - such as a conditional discharge or a community service order; or whether the defendant is liable to have a suspended order activated if found guilty of the current offence.

Some common public interest factors against prosecution:

Code paragraphs 6.5 - 6.6

4.34 Immediately following the list of public interest factors in favour of prosecution is a list of public interest factors which tend against prosecution. Again, this list is not exhaustive. Crown Prosecutors will recognise many of these factors from the previous edition of the Code.

4.35 As before, this Explanatory Memorandum is not designed to offer guidance in respect of every factor which appears on the list. The following notes address some of the more common issues which may arise.

4.36 At paragraph 6.5a, reference is made to a "very small or nominal penalty". There has been concern expressed about what "very small or nominal" means in practice. Inevitably, hard and fast rules cannot be given; it will all depend on the circumstances of the case. It is important, however, to view "very small or nominal" objectively. It is wrong for Crown Prosecutors to set the likely penalty against the actual defendant in respect of whom it may be imposed and form a view that that person may think it is "very small or nominal". To take an extreme example: a millionaire defendant may see a £10,000 fine as very small, but in absolute terms, such a penalty falls outside this factor.

4.37 Generally speaking, if it is thought likely that the courts will impose a form of discharge or a low value fine, Crown Prosecutors should weigh that fact in the balance when considering the public interest.
4.38 The public interest factor which addresses the mental ill health of the defendant has been shortened and made more clear. The Crown Prosecution Service remains of the view that such defendants are more likely to be better helped by referral away from the criminal justice system to specialists who can help with the particular difficulties which the defendant has. But it is important for the Crown Prosecutor to take his or her decision in context. Helping the defendant must be balanced against the needs of society; if the offence is serious, it remains likely that a prosecution will be needed in the public interest. Similarly, Crown Prosecutors may decide to proceed where the offence itself is more minor but where there is a history or danger of repetition by the defendant.

4.39 Paragraph 6.5g is new. It has been included to reflect the fact that Crown Prosecutors will often find themselves faced with defendants who admit that they have committed offences but who have paid compensation to the victim or the costs of repair etc. These cases are not easy; on the one hand, minor acts of vandalism, for example, committed by those without previous convictions, may not require prosecution where there are signs of genuine contrition and the defendant has paid for the damage caused. On the other hand, the stopping of proceedings in such circumstances must not be seen as a means for those who can afford to pay their way out of the criminal court to avoid taking responsibility for their actions. Again, there cannot be any hard and fast rules, but Crown Prosecutors should exercise a discretion against prosecution with some care in these cases.

4.40 The Crown Prosecution Service is fully aware of the difficulties which can be faced when part of a case is made up of sensitive information. The inclusion of the public interest factor at paragraph 6.5h is designed to reflect this concern and is distinct from the evidential difficulties which will also need to be assessed. Clearly, Crown Prosecutors should use this particular factor sparingly, but there will be cases where part of the balancing process will involve repercussions, for example, to informants, should their details be disclosed to the defence. As in all cases, Crown Prosecutors should work closely with the police when this factor may become relevant in the decision making process, regardless of the actual decision eventually taken.

4.41 Although the factors in the revised Code have been deliberately set out in list form, Crown Prosecutors must not simply pick out the relevant factors and add them up on either side of the prosecution line. It is not a question of weighing individual factors for and against and seeing which side of the scales is numerically heavier. It is quite possible that one factor alone may outweigh a host of other factors which lean in the opposite direction.

**The relationship between the victim and the public interest:**

**Code paragraph 6.7**

4.42 There are several references to victims throughout the Code, especially in the list of public interest factors which appear at paragraphs 6.4 and 6.5. The statement of policy at paragraph 6.7 reflects the position which the Crown Prosecution Service has taken for a number of years. Clearly, the
interests of the victim are important; they cannot, however, be the final word on the subject of prosecution. Crown Prosecutors should also draw a distinction between a victim's “interests” and a victim's “views”. “Interests” are far more objective than “views” and Crown Prosecutors should make sure that whilst they are aware of the victim's views about what should happen in a case, it is their “interests” which should be considered in the overall context of the wider “public interest”.

**Youth offenders: Code paragraph 6.8**

4.43 A section dedicated to Crown Prosecution Service policy on youth offenders has been retained. As before, Crown Prosecutors should take great care when dealing with cases involving youths. The longer term damage which can be done to young people because of a brush with the law early in their lives should not be underestimated and, consequently, prosecution must be seen as a serious step in such cases.

4.44 However, it is also important that Crown Prosecutors bear in mind the widespread concern about the extent to which some young people commit serious crimes without action being seen to be taken. Consequently, the revised Code draws attention to the need for Crown Prosecutors to balance the age of the offender against the seriousness of the offence and the offender's past behaviour. Such behaviour does not necessarily mean that only a person's criminal record should be considered. Crown Prosecutors will clearly wish to know whether the youth has been previously cautioned or whether the police have any relevant information about his or her past behaviour.

4.45 Crown Prosecutors may wish to note that in 1991 the Government of the United Kingdom agreed to be bound by the United Nations Convention on the Rights of the Child, article 3.1 of which states:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

**Police cautions: Code paragraph 6.9**

4.46 Police cautioning remains a legitimate way by which offenders may be diverted from the more formal criminal justice system, whilst being reminded that they need to keep within the law. The recently revised Home Office Circular (HOC No 18/1994) has, to some extent, changed the emphasis on when a caution might be an appropriate disposal and Crown Prosecutors must make sure that they are fully familiar with what the Circular says. The Service will apply the terms of the Home Office Circular on cautioning to those cases where it is considered that diversion may be appropriate. Clearly, for the most part, all suitable cases for a caution should be identified by the police at a stage before they are sent to the Crown Prosecution Service, but it is possible that some cases will still reach the Service where a caution may be a suitable disposal. Crown Prosecutors
should be aware of this possibility, especially in the case of youths and young adults, and seek to ensure that appropriate action is taken.

**Charges: Code paragraphs 7.1 – 7.3**

4.47 The paragraphs dealing with charging practice have been clarified and slightly expanded to take account of the Director’s Circular concerning charge amendment after election for trial.

4.48 The basic principles to be followed when deciding the right charge remain the same. For some types of offending, guidance on the most appropriate charge to be preferred has been agreed between the Crown Prosecution Service and the police. Such guidance is issued in the form of charging standards. Crown Prosecutors must be satisfied that any charge preferred is consistent with the relevant charging standard. It is essential that the charges selected reflect the seriousness of the offending and provide the court with adequate sentencing powers. It is equally important that the choice and number of charges allow the case to be explained to the magistrates or jury in a simple and clear way.

4.49 If all these criteria are met, it is possible that Crown Prosecutors will not have to proceed in all cases with the most serious charge where there is more than one from which to choose. Similarly, Crown Prosecutors should not overload the case with any more charges than are necessary to meet the criteria set out in paragraph 7.1.

4.50 Paragraphs 7.2 and 7.3 are very important. Tactics of the nature described in paragraph 7.2 are not to be used: Crown Prosecutors must make sure that, as far as possible, the case has both the right number of charges, and charges which reflect the seriousness of the offending from as early a stage as possible. This should mean that the number of “cracked” trials are reduced over time as all parties in the criminal justice system come to accept that the correct number of appropriate charges or counts reflect the seriousness of the offending.

4.51 Paragraph 7.3 must be followed in all cases. Once a decision has been taken that an either way offence is the right charge in the circumstances of the case, it is entirely wrong to withdraw it and to prefer a summary only offence in the light of the defendant’s election for trial, or, more rarely, the magistrates’ direction for trial. Tactics such as this bring the Crown Prosecution Service into disrepute and must not be used.

**Mode of Trial: Code paragraphs 8.1 – 8.2**

4.52 As before, this edition of the Code instructs Crown Prosecutors to apply the same guidelines which magistrates use (see National Mode of Trial Guidelines issued by the Lord Chief Justice and reported at [1990] 1 WLR 1439) when deciding where a case ought to be tried. It is important that consistency is brought to this area to make sure that less serious cases do not go to the Crown Court at the direction of the magistrates who,
research shows, tend to follow the representations of the prosecution in the vast majority of cases.

4.53 The vast majority of either way cases attract a penalty which the magistrates could have imposed and Crown Prosecutors should familiarise themselves with the current levels of sentencing in the Crown Court for either way offences. This should help them inform the magistrates about how such cases are being dealt with in the Crown Court with a view to keeping them in the magistrates' court in the first place. Although statistics show that a greater proportion of cases are being retained by magistrates, more can still be done in this area. Crown Prosecutors have a role to play here when they make their representations to the bench about venue for trial.

Accepting guilty pleas: Code paragraph 9.1

4.54 This edition of the Code states more clearly the policy of the Crown Prosecution Service in accepting guilty pleas. The overriding concern must be whether the court will have sufficient powers to sentence the defendant for his offending. Crown Prosecutors should be particularly alert here if there is a history of offending which needs to be put to the sentencing court. Isolated offences are more likely to be dealt with more leniently than if the court is made aware of the fact that the charges reflect a course of criminal conduct. Accepting pleas to certain charges or counts on an indictment may deprive the court of that information and Crown Prosecutors should be wary of accepting pleas in these circumstances.

Re-starting a prosecution: Code paragraphs 10.1 – 10.2

4.55 This section of the Code is new and reflects the undertaking which the Attorney General gave to Parliament in March 1993 concerning the policy of the Crown Prosecution Service in this area.

Conclusion: Code paragraphs 11.1 – 11.3

4.56 This edition of the Code has a conclusion which repeats the need for all those concerned in the criminal justice system to be aware of the principles under which the Crown Prosecution Service operates. The Service has a pivotal role to play in the criminal justice system and each of us has a part to play in making sure that those outside the Crown Prosecution Service understand how we make our decisions.

4.57 Particular reference is made in paragraph 11.2 to the police taking “account of the principles of the Code when deciding whether to charge a defendant with an offence”. This is important. If the various agencies in the criminal justice system use the same criteria to start proceedings, it is far less likely that arguments will occur about why certain actions have been taken (such as discontinuance) and there will be greater understanding about how decisions should be taken.
The revised Code also has a training function in this area. The more the police know about how we do what we do, the more they should appreciate the difficulties involved in reaching the right decision. Crown Prosecutors are encouraged to discuss the new edition of the Code with their local police so that all those who are involved in bringing defendants to court understand what is required.

DELETIONS FROM THE PREVIOUS EDITION OF THE CODE

5.1 The Code is shorter and certain sections of it are new. It follows therefore that some of the previous text of the Code has been deleted. Some of these deletions have been commented on in the text above already. Set out below are other topics which have not been included in this edition of the Code. There are several reasons why some parts of the previous Code has been removed. A decision was taken early on that the Code should not be used to re-state the law; neither was it thought appropriate that a Code which sets out the basic principles of prosecuting should contain references to detailed matters of policy which should properly be housed elsewhere. The text of the revised Code states simply and clearly the basis for decision making in the Crown Prosecution Service; matters which do not assist in that process have been removed.

Sexual offences

5.2 Crown Prosecutors who compare the two editions of the Code will see that there is no longer any specific reference to sexual offences in the list of public interest factors. This does not mean that the Crown Prosecution Service no longer regards them as among the most serious offences which can be committed. References are made in the new edition of the Code to the public interest factors of corruption and personal attack which were part of the previous Code. There is also a reference to the relative ages of the defendant and victim. Sexual assaults, especially those involving children, are always serious offences and the Service is committed to making sure that appropriate action is taken.

Discontinuance

5.3 The previous entry in the Code under this heading actually dealt with a substantial number of topics which have now been covered more accurately under their own headings. For example, “review” and “accepting guilty pleas” now have their own paragraphs. Generally speaking, discontinuance (or more accurately all methods by which cases can be stopped) is now dealt with at paragraph 3.1 as a natural consequence of review. The power to stop proceedings is, of course, very important, and remains the most visual way in which Crown Prosecutors may demonstrate their independence and commitment to the fair and just prosecution of those who do break the law. But there are other equally important tasks for the Service and these have been highlighted more clearly in the new edition of the Code.
Conspiracy to commit a statutory offence

Conspiracy to defraud

5.4 These sections have been removed because they address particular offences and were introduced into the Code as a result of a Practice Direction and section 12 of the Criminal Justice Act 1987 respectively. Both sections are detailed and rehearse the law; they do not go to the fundamental principles of prosecution so much as provide detailed advice on charging practice.

5.5 As the Prosecution Manuals are updated, these sections of the previous edition of the Code will be incorporated.

Juveniles

5.6 The relevant sections in the previous edition of the Code have been recast so that only the basic principles concerning the prosecution of youth offenders, as they are now described, are now included. Much of what was contained in the previous Code has been dealt with in the new section dealing with police cautions.

Mode and venue of trial considerations affecting juveniles

5.7 These sections in the previous Code simply stated the law and did not offer any policy guidance. As a result, they have been removed.

THE WAY AHEAD

6.1 Although this latest review of the Code is the most fundamental since the Code was first introduced, the process of evaluation and monitoring of its provisions will continue. The Crown Prosecution Service is committed to making sure that the basic principles by which it takes its decisions remain correct; this means that the Code will be continually reviewed to see if further improvements can be made and to make sure that it properly reflects what society should expect of its independent prosecution service.
APPENDIX 2

THE PUBLIC ORDER ACT 1986

1986 CHAPTER 64

An Act to abolish the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order; to create new offences relating to public order; to control public processions and assemblies; to control the stirring up of racial hatred; to provide for the exclusion of certain offenders from sporting events; to create a new offence relating to the contamination of or interference with goods; to confer power to direct certain trespassers to leave land; to amend section 7 of the Conspiracy and Protection of Property Act 1875, section 1 of the Prevention of Crime Act 1953, Part V of the Criminal Justice (Scotland) Act 1980 and the Sporting Events (Control of Alcohol etc.) Act 1985: to repeal certain obsolete or unnecessary enactments; and for connected purposes.

[7th November 1986]

PART I

NEW OFFENCES

1. Riot. (1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

(6) A person guilty of riot is liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both.

2. Violent Disorder. (1) Where 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal
safety, each of the persons using or threatening unlawful violence is guilty or violent disorder.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

(5) A person guilty of violent disorder is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine or both, or on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

3. Affray. (1) A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his person safety.

(2) Where 2 or more person use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A constable may arrest without warrant anyone he reasonably suspects is committing affray.

(7) A person guilty of affray is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or a fine or both, or on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

4. Fear or provocation of violence. (1) A person is guilty of an offence if he uses towards another person threatening, abusive or insulting words or behaviour, or distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(2) An offence under this section may be committed in a public or a private place, except that no visible representation is distributed or displayed by a person inside a dwelling and the other person is also inside that or another dwelling.
(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 of the standard scale or both.

4A. Intentional harassment, alarm or distress. (1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he
a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words of behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for the accused to prove-
   a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
   b) that his conduct was reasonable.

(4) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

5. Harassment, alarm or distress. (1) A person is guilty of an offence if he-
a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
b) displays any writing, sign or other visible representation which is threatening, abusive or insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the accused to prove-
   a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or
b) that he was inside a dwelling and had no reason to believe that the words or
behaviour seen by a person outside that or any other dwelling, or
c) that his conduct was reasonable.

(4) A constable may arrest a person without warrant if-
a) he engages in offensive conduct immediately or shortly after the warning.
b) he engages in further offensive conduct immediately or shortly after the warning.

(5) In subsection (4) "offensive conduct" means conduct the constable reasonable
suspects to constitute an offence under this section, and the conduct mentioned in
paragraph (a) and the further conduct need not be of the same nature.

(6) A person guilty of an offence under this section is liable on summary conviction
to a fine not exceeding level 3 on the standard scale.

6. Mental element: miscellaneous. (1) A person is guilty of riot only if he intends to
use violence or is aware that his conduct may be violent.

(2) A person is guilty of violent disorder or affray only if he intends to use or
threaten violence or is aware that his conduct may be violent or threaten violence.

(3) A person is guilty of an offence under section 4 only if he intends his words or
behaviour, or the writing, sign or other visible representation, to be threatening,
abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person is guilty of an offence under section 5 only if he intends his words or
behaviour, or the writing, sign or other visible representation, to be threatening,
abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as
the case may be) he intends his behaviour to be or is aware that it may be disorderly.

(5) For the purposes of this section a person whose awareness is impaired by
intoxication shall be taken to be aware of that of which he would be aware if not
intoxicated, unless he shows wither that his intoxication was not self-induced or that
it was caused solely by the taking or administration of a substance in the course of
medical treatment.

(6) In subsection (5) "intoxication" means any intoxication whether caused by drink,
drugs or other means, or by a combination of means.

(7) Subsection (1) and (2) do not affect the determination for the purposes of riot or
violent disorder of the number of persons who use or threaten violence.

7. Procedure: miscellaneous. (1) No prosecution for an offence of riot or incitement
to riot may be instituted except by or with the consent of the Director of Public
Prosecutions.

(2) For the purposes of the rules against changing more than one offence in the same
count or information, each of sections 1 to 5 creates one offence.
(3) If on the trial on indictment of a person charged with violent disorder or affray the jury find him not guilty of the offence charged, they may (without prejudice to section 6(3) of the Criminal Law Act 1967) find him guilty of an offence under section 4.

(4) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (3) convicted before it of an offence under section 4 as a magistrates' court would have on convicting him of the offence.

8. Interpretation. In this Part- "dwelling" means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate of shared with others) but does not include any part not so occupied, and for this purpose "structure" includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

"violence" means any violent conduct, so that-

a) except in the context of affray, it includes violent conduct towards property as well as violent conduct towards person, and

b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

9. Offences abolished. (1) The common law offences of riot, rout, unlawful assembly and affray are abolished.

(2) The offences under the following enactments are abolished.-

a) section 1 of the Tumultuous Petitioning Act 1661 (presentation of petition to monarch or Parliament accompanied by excessive number of persons),

b) section 1 of the Shipping Offences Act 1793 (interference with operation of vessel by person riotously assembled),

c) section 23 of the Seditious Meetings Act 1817 (prohibition of certain meetings within one mile of Westminster Hall when Parliament sitting), and

d) section 5 of the Public Order Act 1936 (conduct conducive to breach of the peace).

10. Construction of other instruments. (1) In the Riot (Damages) Act 1886 (compensation for riot damage) "riotous" and "riotously" shall be construed in accordance with section 1 above.

(2) In Schedule 1 to the Marine Insurance Act 1906 (form and rules for the construction of certain insurance policies) "rioters" in rule 8 and "riot" in rule 10 shall, in the application of the rules to any policy taking effect of or after the coming into force of this section, be construed in accordance with section 1 above unless a different intention appears.

(3) "riot" and cognate expressions in any enactment in force before the coming into force of this section (other than the enactments mentioned in subsections (1) and (2) above) shall be construed in accordance with section 1 above if they would have been construed in accordance with the common law offence of riot apart from this Part.
(4) Subject to subsections (1) to (3) above and unless a different intention appears, nothing in this Part affects the meaning of "riot" or any cognate expression in any enactment in force, or other instrument taking effect, before the coming into force of this section.

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APPENDIX 3

RELATED LEGISLATION

1  THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994
   Sections 60 to 71 and Section 154

2  THE PROTECTION FROM HARASSMENT ACT 1997
   Sections 1 to 7

3  THE CRIME AND DISORDER ACT 1998
   Part II; Sections 28 to 32 (Racially-aggravated offences)
60. Powers to stop and search in anticipation of violence

(1) Where a police officer of or above the rank of superintendent reasonably believes that-
   (a) incidents involving serious violence may take place in any locality in his
       area, and
   (b) it is expedient to do so to prevent their occurrence, he may give an
       authorisation that the powers to stop and search persons and vehicles conferred by
       this section shall be exercisable at any place within that locality for a period not
       exceeding twenty four hours.
(2) The power conferred by subsection (1) above may be exercised by a chief
    inspector or an inspector if he reasonably believes that incidents involving serious
    violence are imminent and no superintendent is available.
(3) If it appears to the officer who gave the authorisation or to a superintendent that it
    is expedient to do no, having regard to offences which have, or are reasonably
    suspected to have, been committed in connection with any incident falling within the
    authorisation, he may direct that the authorisation shall continue in being for a
    further six hours.
(4) This section confers on any constable in uniform power-
   (a) to stop any pedestrian and search him or anything carried by him for
       offensive weapons or dangerous instruments;
   (b) to stop any vehicle and search the vehicle, its driver and any passenger for
       offensive weapons or dangerous instruments.
(5) A constable may, in the exercise of those powers, to stop any person or vehicle
    and make any search he thinks fit whether or not he has any grounds for suspecting
    that the person or vehicle is carrying weapons or articles of that kind.
(6) If in the course of a search under this section a constable discovers a dangerous
    instrument or an article which he has reasonable grounds for suspecting to be an
    offensive weapon, he may seize it.
(7) This section applies (with the necessary modification) to ships, aircraft and
    hovercraft as it applies to vehicles.
(8) A person who fails to stop or (as the case may be) to stop the vehicle when
    required to do so by a constable in the exercise of his powers under this section shall
    be liable on summary conviction to imprisonment for a term not exceeding one
    month or to a fine not exceeding level 3 on the standard scale or both.
(9) Any authorisation under this section shall be in writing signed by the officer
    giving it and shall specify the locality in which and the period during which the
    powers conferred by this section are exercisable and a direction under subsection (3)
    above shall also be given in writing or, where that is not practicable, recorded in
    writing as soon as it is practicable to do so.
(10) Where a vehicle is stopped by a constable under this section, the driver shall be entitled to obtain a written statement that the vehicle was stopped under the powers conferred by this section if he applies for such a statement not later that the end of the period of twelve months from the day on which the vehicle was stopped and similarly as respects a pedestrian who is stopped and searched under this section.

(11) In this section-

'dangerous instruments' means instruments which have a blade or are sharply pointed;

'offensive weapon' has the meaning given by section 1(9) of the Police and Criminal Evidence Act 1984; and

'vehicle' includes a caravan as defined in section 29(1) or the Caravan Sites and Control of Development Act 1960.

(12) the powers conferred by this section are in addition to and not in derogation of, any power otherwise conferred.

PART V PUBLIC ORDER: COLLECTIVE TRESPASS OR NUISANCE ON LAND

Powers to remove trespassers on land

61. Power to remove trespassers on land

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and-

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonable believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those person became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him-

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.
(6) In proceedings for an offence under this section it is a defence for the accused to show-

(a) that he was not trespassing on the land, or
(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it-

(a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and
(b) references to 'the occupier' included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not-

(a) require action my more that one occupier; or
(b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section-

'common land' means common land as defined in section 22 of the Commons Registration Act 1965;

'commoner' means a person with rights of common as defined in section 22 of the commons Registration Act 1965;

'land' does not include-

(a) buildings other than-

(i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988 or, in Scotland, section 7(2) of the Valuation and Rating (Scotland) Act 1956, or

(ii) schedules monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;

(b) land forming part of-

(i) a highway unless it falls within the classifications in section 54 of the Wildlife and Countryside Act 1981 (footpath, bridleway or byway open to all traffic or road used as a public path) or is a cycle track under the Highways Act 1980 or the Cycle Tracks Act 1984; or

(ii) a road within the meaning of the Roads (Scotland) Act 1984 unless it falls within the definitions in section 151 (2)(a)(ii) or (b)(footpaths and cycle tracks) of that Act or is a bridleway within the meaning of section 47 of the Countryside (Scotland) Act 1967;

'the local authority', in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;

'occupier' (and in subsection (8)'the other occupier') means-

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and

(b) in Scotland, the person lawfully entitled to natural possession of the land;

'property', in relation to damage to property on land, means-

(a) in England and Wales, property within the meaning of section 10(1) of the Criminal Damage Act 1971; and

(b) in Scotland, either-
(i) heritable property other than land; or
(ii) corporeal moveable property,
and 'damage' includes the deposit of any substance capable of polluting the land;
'trespass' means, in the application of this section-
(a) in England and Wales, subject to the extensions effected by subsection (7)
above, trespass as against the occupier of the land;
(b) in Scotland, entering, or as the case may be remaining on, land without
lawful authority and without the occupier's consent; and 'trespassing' and 'trespasser'
shall be construed accordingly;
'vehicle' includes-
(a) any vehicle, whether or not it is in a fit state for use on roads, and includes
any chassis or body, with or without wheels, appearing to have formed part of such a
vehicle, and any load carried by, and anything attached to, such a vehicle; and
(b) a caravan as defined in section 29(1) or the Caravan Sites and Control of
Development Act 1960;
and a person may be regarded for the purposes of this section as having a purpose of
residing in a place notwithstanding that he has a home elsewhere.

62. Supplementary powers of seizure

(1) If a direction has been given under section 61 and a constable reasonably
suspects that any person to who the direction applies has, without reasonable excuse-
(a) failed to remove any vehicle on the land which appears to the constable to
belong to him or to be in his possession or under his control; or
(b) entered the land as a trespasser with a vehicle within the period of three
months beginning with the day on which the direction was given,
the constable may seize and remove that vehicle.

(2) In this section, 'trespasser' and 'vehicle' have the same meaning as in section 61.

63. Powers to remove person attending or preparing for a rave

(1) This section applied to a gathering on land in the open air of 100 or more
persons (whether or not trespassers) at which amplified music is played during the
night (with or without intermissions) and is such as, by reason of its loudness and
duration and the time at which it is played, is likely to cause serious distress to the
inhabitants of the locality; and for this purpose-
(a) such a gathering continues during intermissions in the music and, where
the gathering extends over several days, throughout the period during which
amplified music is played at night (with or without intermissions); and
(b) 'music' included sounds wholly or predominantly characterised by the
emission of a succession of repetitive beats.

(2) If, as respects any land in the open air, a police officer of at least the rank of
superintendent reasonably believes that-
(a) two or more persons are making preparations for the holding there of a
gathering to which this section applies,
(b) ten or more persons are waiting for such a gathering to begin there, or
(c) ten or more person are attending such a gathering which is in progress, he may give a direction that those persons and any others persons who come to prepare or wait for or to attend the gathering are to leave the land and remove any vehicles or other property which they have with them on the land.

(3) A direction under subsection (2) above, if not communicated to the persons referred to in subsection (2) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) Persons shall be treated as having had a direction under subsection (2) above communicated to them if reasonable steps have been taken to bring it to their attention.

(5) A direction under subsection (2) above does not apply to an exempt person.

(6) If a person knowing that a direction has been given which applies to him-
(a) fails to leave the land as soon as reasonably practicable, or
(b) having left again enters the land within the period of 7 days beginning with the day on which the direction was given,
he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(7) In proceedings for an offence under this section it is a defence for the accused to show that he had a reasonable excuse for failing to leave the land as soon a reasonably practicable or, as the case may be, for again entering the land.

(8) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(9) This section does not apply-
(a) in England and Wales, to a gathering licensed by an entertainment licence; or
(b) in Scotland, to a gathering in premises which, by virtue of section 41 of the Civic Government (Scotland) Act 1982, are licensed to be used as a place of public entertainment.

(10) In this section-
'entertainment licence' means a licence granted by a local authority under-
(a) Schedule 12 to the London Government Act 1963;
(b) section 3 of the Private Places of Entertainment (Licensing) Act 1967; or
(c) Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982;
'exempt person', in relation to land (or any gathering on land), means the occupier, any member of his family and any employee or agent of his and any person whose home is situated on the land;
'land in the open air' includes a place partly open to the air;
'local authority' means-
(a) in Greater London, a London borough council or the Common Council of the City of London;
(b) in England outside Greater London, a district council of the council of the Isles of Scilly;
(c) in Wales, a county council of county borough council; and 'occupier', 'trespasser' and 'vehicle' have the same meaning as in section 61.

(11) Until 1st April 1996, in this section 'local authority' means, in Wales, a district council.
64. Supplementary powers of entry and seizure

(1) If a police officer of at least the rank of superintendent reasonably believes that circumstances exist in relation to any land which would justify the giving of a direction under section 63 in relation to a gathering to which that section applied he may authorise any constable to enter the land for any of the purposes specified in subsection (2) below.

(2) Those purposes are-
   (a) to ascertain whether such circumstances exist; and
   (b) to exercise any power conferred on a constable by section 63 or subsection (4) below.

(3) A constable who is so authorised to enter land for any purpose may enter the land with a warrant.

(4) If a direction has been given under section 63 and a constable reasonably suspects that any person to who the direction applied has, without reasonable excuse-
   (a) failed to remove any vehicle or sound equipment on the land which appears to the constable to belong to him or to be in his possession or under his control; or
   (b) entered the land as a trespasser with a vehicle or sound equipment within the period of 7 days beginning with the day on which the direction was given, the constable may seize and remove that vehicle or sound equipment.

(5) Subsection(4) above does not authorise the seizure of any vehicle or sound equipment of an exempt person.

(6) In this section-
   'exempt person' has the same meaning as in section 63;
   'sound equipment' means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment, and 'music' has the same meaning as in section 63; and
   'vehicle' has the same meaning as in section 61.

65. Raves: power to stop persons from proceeding

(1) If a constable in uniform reasonably believes that a person is on his way to a gathering to which section 63 applies in relation to which a direction under section 63(2) is in force, he may, subject to subsections (2) and (3) below-
   (a) stop that person, and
   (b) direct him not to proceed in the direction of the gathering.

(2) The power conferred by subsection (1) above may only be exercised at a place with 5 miles of the boundary of the site of the gathering.

(3) No direction may be given under subsection (1) above to an exempt person.

(4) If a person knowing that a direction under subsection (1) above has been given to him fails to comply with that direction, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(6) In this section, 'exempt person' has the same meaning as in section 63.
66. Power of court to forfeit sound equipment

(1) Where a person is convicted of an offence under section 63 in relation to a gathering to which that section applied and the court is satisfied that any sound equipment which has been seized from him under section 64(4), or which was in his possession or under his control at the relevant time, has been used at the gathering the court may make an order for forfeiture under this subsection in respect of that property.

(2) the court may make an order under subsection (1) above whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment.

(3) In considering whether to make an order under subsection (1) above in respect of any property a court shall have regard-

(a) to the value of the property; and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making.

(4) An order under subsection (1) above shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

(5) Except in a case to which subsection (6) below applies, where any property has been forfeited under subsection (1) above, a magistrates' court may, on application by a claimant of the property, other than the offender from whom it was forfeited under subsection (1) above, make an order for delivery of the property to the applicant if it appears to the court that he is the owner of the property.

(6) In a case where forfeiture under subsection (1) above has been be order of a Scottish court, a claimant such as is mentioned in subsection (5) above may, in such manner as may be prescribed by act of adjournal, apply to that court for an order for the return of the property in question.

(7) No application shall be made under subsection (5), or by virtue of subsection (6), above by any claimant of the property after the expiration of 6 months from the date on which an order under subsection (1) above was made in respect of the property.

(8) No such application shall succeed unless the claimant satisfied the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used at a gathering to which section 63 applies.

(9) An order under subsection (5), or by virtue of subsection (6), above shall not affect the right of any person to take, within the period of 6 months from the date of an order under subsection (5), or as the case may be by virtue of subsection (6), above, proceedings for the recovery of the property from the person in possession of it in pursuance of the order, but on the expiration of that period the right shall cease.

(10) The Secretary of State may make regulations for the disposal of property, and for the application of the proceeds of sale of property, forfeited under subsection (1) above where no application by a claimant of the property under subsection (5), or by virtue of subsection (6), above has been made within the period specified in subsection (7) above or no such application has succeeded.

(11) The regulation may also provide for the investment of money and for the audit of accounts.
(12) The power to make regulations under subsection (10) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(13) In this section-

'relevant time', in relation to a person-
(a) convicted in England and Wales of an offence under section 63, means the time of his arrest for the offence or of the issue of a summons in respect of it;
(b) so convicted in Scotland, means the time of his arrest for, or of his being cited as an accused in respect of, the offence;
'sound equipment' has the same meaning as in section 64.

Retention and charges for seized property

67. Retention and charges for seized property

(1) Any vehicles which have been seized and removed by a constable under section 62(1) or 64(4) may be retained in accordance with regulation made by the Secretary of State under subsection (3) below.

(2) Any sound equipment which has been seized and removed by a constable under section 64(4) may be retained until the conclusion of proceedings against the person from whom it was seized for an offence under section 63.

(3) The Secretary of State may make regulations-
(a) regulating the retention and safe keeping and the disposal and the destruction in prescribed circumstances of vehicles; and
(b) prescribing charges in respect of the removal, retention, disposal and destruction of vehicles.

(4) Any authority shall be entitled to recover from a person from whom a vehicle has been seized such charges as may be prescribed in respect of the removal, retention, disposal and destruction of the vehicle by the authority.

(5) Regulation under subsection (3) above may make different provisions for different classes of vehicles or for different circumstances.

(6) Any charges under subsection (4) above shall be recoverable as a simple contract debt.

(7) Any authority having custody of vehicles under regulations under subsection (3) above shall be entitled to retain custody until any charges under subsection (4) are paid.

(8) The power to make regulation under subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this section-

'conclusion of proceedings' against a person means-
(a) his being sentenced or otherwise dealt with for the offence or his acquittal;
(b) the discontinuance of the proceedings; or
(c) the decision not to prosecute him,
whichever is the earlier;
'sound equipment' has the same meaning as in section 64; and
'vehicle' has the same meaning as in section 61
68. Offence of aggravated trespass

(1) A person commits the offence of aggravated trespass if he trespasses on land in the open air and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land in the open air, does there anything which is intended by him to have the effect-
   (a) of intimidating those person or any of them so as to deter them or any of them from engaging in that activity,
   (b) of obstructing that activity, or
   (c) of disrupting that activity.

(2) Activity on any occasion on the part of a persons on land is 'lawful' for the purposes of this section if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(4) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(5) In this section 'land' does not include-
   (a) the highways and road excluded from the application of section 61 by paragraph (b) of the definition of 'land' in subsection (9) of that section; or
   (b) a road within the meaning of the Roads (Northern Ireland) Order 1993.

69. Powers to remove person committing of participating in aggravated trespass

(1) If the senior police officer present at the scene reasonably believes-
   (a) that a person is committing, has committed or intends to commit the offence of aggravated trespass on land in the open air; or
   (b) that two or more person are trespassing on land in the open air and are present there with the common purpose in intimidating persons so as to deter them from engaging in a lawful activity or of obstructing or disrupting a lawful activity, he may direct that person or (as the case may be) those person (or any of them) to leave the land.

(2) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(3) If a person knowing that a direction under subsection (1) above has been given which applies to him-
   (a) fails to leave the land as soon as practicable, or
   (b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given, he commits and offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(4) In proceedings for an offence under subsection (3) it is a defence for the accused to show-
   (a) that he was not trespassing on the land, or
   (b) that he had a reasonable excuse for failing to leave the land as soon as practicable or, as the case may be, for again entering the land as a trespasser.
A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

In this section 'lawful activity' and 'land' have the same meaning as in section 68.

70. Trespassory assemblies

In Part II of the Public Order Act 1986 (processions and assemblies), after section 14, there shall be inserted the following sections-

14A. Prohibiting trespassory assemblies

(1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only a limited right of access and that the assembly-

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result-

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district of a part of it, as specified.

(2) On receiving such an application, a council may-

(a) in England and Wales, with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approve by the Secretary of State; or

(b) in Scotland, make an order in the terms of the application.

(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that an assembly is intended to be held at a place on land to which the public has no right of access or only a limited right of access in his police area and that the assembly-

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limit of the public's right of access, and

(b) may result-

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument.
he may with the consent of the Secretary of State make an order prohibiting for a
specified period the holding of all trespassory assemblies in the area or a part of it, as
specified.

(5) An order prohibiting the holding of trespassory assemblies operates to prohibit
any assembly which-

(a) is held on land to which the public has no right of access or only a limited
right of access, and

(b) takes place in the prohibited circumstances, that is to say, without the
permission on the occupier of the land, or so as to exceed the limits of any
permission of his or the limits of the public's right of access.

(6) No order under this section shall prohibit the holding of assemblies for a period
exceeding 4 days or in a area exceeding an area represented by a circle with a radius
of 5 miles from a specified centre.

(7) An order made under this section may be revoked or varied by a subsequent
order made in the same way, that is, in accordance with subsection (1) and (2) or
subsection (4), as the case may be.

(8) Any order under this section shall, if not made in writing, be recorded in
writing as soon as practicable after being made.

(9) In this section and sections 14B and 14C-

"assembly" means as assembly of 20 or more person;

"land" means land in the open air;

"limited", in relation to a right of access by the public to land, means that
their use of it is restricted to use for a particular purpose (as in the case of a highway
or road) or is subject to other restrictions;

"occupier" means-

(a) in England and Wales, the person entitled to possession of the land by
virtue of an estate or interest held by him; or

(b) in Scotland, the person lawfully entitled to natural possession of the land,
and in subsections (1) and (4) includes the person reasonably believed by the
authority applying for or making the order to be the occupier;

"public" includes a section of the public; and

"specified" means specified in an order under this section.

(10) In relation to Scotland, the references in subsection (1) above to a district and
to the council of the district shall be construed-

(a) as respects applications before 1st April 1996, as references to the area of
a regional or islands authority and to the authority in question; and

(b) as respects applications on and after that date, as references to a local
government area and to the council for that area.

(11) In relation to Wales, the references in subsection (1) above to a district and to
the council of the district shall be construed, as respects applications on and after 1st
April 1996, as references to a county or county borough and to the council for that
county or county borough.

14B. Offences in connection with trespassory assemblies and arrest
therefor

(1) A person who organises an assembly the holding of which he knows is
prohibited by an order under section 14A is guilty of an offence.

(2) A person who takes part in an assembly which he knows is prohibited by an
order under section 14A is guilty of an offence.
In England and Wales, a person who incites another to commit an offence under subsection (2) is guilty of an offence.

A constable in uniform may arrest without a warrant anyone he reasonably suspects to be committing an offence under this section.

A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

A person guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.

Subsection (3) above is without prejudice to the application of any principle of Scots Law as respects art and part guilt to such incitement as is mentioned in that subsection.

71. Trespassory assemblies: power to stop person from proceeding

After the section 14B inserted by section 70 in the Public Order Act 1986 there shall be inserted the following section-

14C. Stopping persons from proceeding to trespassory assemblies

(1) If a constable in uniform reasonably believes that a person is on his way to an assembly within the area to which an order under section 14A applies which the constable reasonably believes is likely to be an assembly which is prohibited by that order, he may, subject to subsection (2) below-

(a) stop that person, and
(b) direct him not to proceed in the direction of the assembly.

(2) The power conferred by subsection (1) may only be exercised within the area to which the order applies.

(3) A person who fails to comply with a direction under subsection (1) which he knows has been given to him is guilty of an offence.

A constable in uniform may arrest without a warrant anyone he reasonably suspects to be committing an offence under this section.

A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Harassment, alarm or distress

154. Offences of causing intentional harassment, alarm or distress

In Part I of the Public Order Act 1986 (offences relating to public order), after section 4, there shall be inserted the following section-

4A. Intentional harassment, alarm or distress

(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he-

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,
thereby causing that or another person harassment, alarm or distress.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for the accused to prove-
   (a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
   (b) that his conduct was reasonable.

(4) A constable may arrest without warrant anyone he reasonable suspects is committing an offence under this section.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

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1. (1) A person must not pursue a course of conduct-
   (a) which amounts to harassment of another, and
   (b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows-
   (a) that it was pursued for the purpose of preventing or detecting crime,
   (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
   (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

2. (1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

(3) In section 24(2) of the Police and Criminal Evidence Act 1984 (arrestable offences), after paragraph (m) there is inserted-
Civil remedy.

"(n) an offence under section 2 of the Protection from Harassment Act 1997 (harassment).".

3. - (1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) Where-

(a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and

(b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

(4) An application under subsection (3) may be made-

(a) where the injunction was granted by the High Court, to a judge of that court, and

(b) where the injunction was granted by a county court, to a judge or district judge of that or any other county court.

(5) The judge or district judge to whom an application under subsection (3) is made may only issue a warrant if-

(a) the application is substantiated on oath, and

(b) the judge or district judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.
(6) Where-

(a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a), and

(b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence.

(7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not punishable as a contempt of court.

(8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished as a contempt of court.

(9) A person guilty of an offence under subsection (6) is liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

4. - (1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.
(3) It is a defence for a person charged with an offence under this section to show that-

(a) his course of conduct was pursued for the purpose of preventing or detecting crime,

(b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

(4) A person guilty of an offence under this section is liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

(5) If on the trial on indictment of a person charged with an offence under this section the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 2.

(6) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (5) convicted before it of an offence under section 2 as a magistrates' court would have on convicting him of the offence.

5. - (1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence under section 2 or 4 may (as well as sentencing him or dealing with him in any other way) make an order under this section.

(2) The order may, for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which-
(a) amounts to harassment, or

(b) will cause a fear of violence,

prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(6) A person guilty of an offence under this section is liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

Limitation.

6. In section 11 of the Limitation Act 1980 (special time limit for actions in respect of personal injuries), after subsection (1) there is inserted-

"(1A) This section does not apply to any action for damages under section 3 of the Protection from Harassment Act 1997."

Interpretation of this group of sections.

7. - (1) This section applies for the interpretation of sections 1 to 5.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve conduct on at least two occasions.

(4) "Conduct" includes speech.
Meaning of "racially aggravated". 28. - (1) An offence is racially aggravated for the purposes of sections 29 to 32 below if-

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

(2) In subsection (1)(a) above-

"membership", in relation to a racial group, includes association with members of that group;

"presumed" means presumed by the offender.

(3) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above whether or not the offender's hostility is also based, to any extent, on-

(a) the fact or presumption that any person or group of persons belongs to any religious group; or

(b) any other factor not mentioned in that paragraph.

(4) In this section "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.
Racially-aggravated assaults. 29. - (1) A person is guilty of an offence under this section if he commits-

(a) an offence under section 20 of the Offences Against the Person Act 1861 (malicious wounding or grievous bodily harm);

(b) an offence under section 47 of that Act (actual bodily harm); or

(c) common assault,

which is racially aggravated for the purposes of this section.

(2) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(3) A person guilty of an offence falling within subsection (1)(c) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Racially-aggravated criminal damage. 30. - (1) A person is guilty of an offence under this section if he commits an offence under section 1(1) of the Criminal Damage Act 1971 (destroying or damaging property belonging to another) which is racially aggravated for the purposes of this section.
(2) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine, or to both.

(3) For the purposes of this section, section 28(1)(a) above shall have effect as if the person to whom the property belongs or is treated as belonging for the purposes of that Act were the victim of the offence.

Racially-aggravated public order offences. 31. - (1) A person is guilty of an offence under this section if he commits-

(a) an offence under section 4 of the Public Order Act 1986 (fear or provocation of violence);

(b) an offence under section 4A of that Act (intentional harassment, alarm or distress); or

(c) an offence under section 5 of that Act (harassment, alarm or distress),

which is racially aggravated for the purposes of this section.

(2) A constable may arrest without warrant anyone whom he reasonably suspects to be committing an offence falling within subsection (1)(a) or (b) above.

(3) A constable may arrest a person without warrant if-

(a) he engages in conduct which a constable reasonably suspects to constitute an offence falling within subsection (1)(c) above;
(b) he is warned by that constable to stop; and
(c) he engages in further such conduct immediately or shortly after the warning.

The conduct mentioned in paragraph (a) above and the further conduct need not be of the same nature.

(4) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(5) A person guilty of an offence falling within subsection (1)(c) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) or (b) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.

(7) For the purposes of subsection (1)(c) above, section 28(1)(a) above shall have effect as if the person likely to be caused harassment, alarm or distress were the victim of the offence.

Racially-aggravated harassment etc. 32. - (1) A person is guilty of an offence under this section if he commits-

(a) an offence under section 2 of the Protection from Harassment Act 1997 (offence of harassment); or

(b) an offence under section 4 of that Act (putting people in fear of violence),
which is racially aggravated for the purposes of this section

(2) In Section 24(2) of the 1984 Act (arrestable offences), after paragraph 'o' there shall be inserted-

"(p) an offence falling within section 32(1)(a) of the Crime and Disorder Act 1998 (racially-aggravated harassment)."

(3) A person guilty of an offence falling within subsection (1)(a) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(4) A person guilty of an offence falling within subsection (1)(b) above shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine, or to both.

(5) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(a) above, the jury find him not guilty of the offence charged, they may find him guilty of the basic offence mentioned in that provision.

(6) If, on the trial on indictment of a person charged with an offence falling within subsection (1)(b) above, the jury find him not guilty of the offence charged, they may find him guilty of an offence falling within subsection (1)(a) above.

(7) Section 5 of the Protection from Harassment Act 1997 (restraining orders) shall have effect in relation to
a person convicted of an offence under this section as if the reference in subsection (1) of that section to an offence under section 2 or 4 included a reference to an offence under this section.
PUBLIC ORDER OFFENCES

CHARGING STANDARD

AGREED BY THE POLICE

AND

THE CROWN PROSECUTION SERVICE
# PUBLIC ORDER OFFENCES CHARGING STANDARD

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Public Order Offences Charging Standard
26 April 1996
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PUBLIC ORDER OFFENCES CHARGING STANDARD

AGREED BY THE POLICE AND CROWN PROSECUTION SERVICE

1 Charging Standard - Purpose

1.1 The purpose of joint charging standards is to make sure that the most appropriate charge is selected, in the light of the evidence which can be proved, at the earliest possible opportunity. This will help the police and Crown Prosecutors in preparing the case. Adoption of this joint standard should lead to a reduction in the number of times charges have to be amended which in turn should lead to an increase in efficiency and a reduction in avoidable extra work for the police and the Crown Prosecution Service.

1.2 This joint charging standard offers guidance to police officers who have responsibility for charging and to Crown Prosecutors on the most appropriate charge to be preferred in cases relating to public order offences. The guidance:

- should not be used in the determination of any pre-charge decision, such as the decision to arrest;
- does not override any guidance issued on the use of appropriate alternative forms of disposal short of charge, such as cautioning;
- does not override the principles set out in the Code for Crown Prosecutors;
- does not override the need for consideration to be given in every case as to whether a charge/prosecution is in the public interest;
- does not remove the need for each case to be considered on its individual merits or fetter the discretion of the police to charge and the CPS to prosecute the most appropriate offence depending on the particular facts of the case in question.

2 Introduction

2.1 The criminal law in respect of public order offences is intended to penalise the use of violence and/or intimidation by individuals or groups. The principal public order offences are contained in Part I of the Public Order Act 1986 ("the Act"). Further offences are found in Part III of the Act which deals with public disorder designed to stir up racial hatred. Other public order offences are set out in the Football Offences Act 1991, and reference is also made to the offence of drunk and disorderly behaviour. This joint standard gives guidance about the charge which should be preferred if the criteria set out in the Code for Crown Prosecutors are met.
(ii) the choice of charges should ensure the clear and simple presentation of the case, particularly where there is more than one defendant;

(iii) it is wrong to encourage a defendant to plead guilty to a few charges by selecting more charges than are necessary;

(iv) it is wrong to select a more serious charge which is not supported by the evidence in order to encourage a plea of guilty to a lesser allegation.

4 General Principle: Public Order Act offences

4.1 The purpose of public order law is to ensure that individual rights to freedom of speech and freedom of assembly are balanced against the rights of others to go about their daily lives unhindered.

5 Offences contrary to sections 5, 4A, 4, 18, 19 and 23 of the Act and section 91 Criminal Justice Act 1967

5.1 There is an overlap in the conduct required to commit any one of these offences.

5.2 To use this section of the Charging Standard you should:

• consider which category the behaviour complained of falls into; and
• refer to the relevant paragraphs to identify which offence may be appropriate to charge and prosecute.

5.3 The categories of conduct are:

• disorderly behaviour (paragraph 5.5 - 5.18);
• using threatening, abusive or insulting words or behaviour (paragraph 5.19 - 5.28); and
• publishing, distributing or displaying any writing, sign or other visible representation which is threatening, abusive or insulting (paragraph 5.29-5.33).

5.4 Not all the offences cover each type of behaviour.

Disorderly Behaviour

5.5 Whether behaviour can be properly categorised as disorderly is a question of fact. Disorderly behaviour does not require any element of violence, actual or threatened; and it includes conduct that is not necessarily threatening, abusive or
insulting. It is not necessary to prove any feeling of insecurity, in an apprehensive sense, on the part of a member of the public: Chambers and Edwards v DPP [1995] Crim LR 896. The following types of conduct are examples which may at least be capable of amounting to disorderly behaviour:

- causing a disturbance in a residential area or common part of a block of flats by, for example:
  - persistently shouting;
  - knocking over dustbins;
  - putting refuse through letter-boxes;
  - banging on doors;
  - blockading entrances;
  - throwing things down the stairs;
  - peering in windows;
- persistently shouting abuse or obscenities at passers-by;
- pester ing people waiting to catch public transport or otherwise waiting lawfully in a queue;
- rowdy behaviour in a street late at night which might alarm residents or passers-by, especially those who may be vulnerable, such as the elderly or members of an ethnic minority group;
- causing a disturbance in a shopping precinct or other area to which the public have access or might otherwise gather;
- the use of placards, slogans or language aimed at causing distress.

5.6 Where you are satisfied that you are dealing with an offence amounting to disorderly behaviour, the choice of charge is between the following:

- drunk and disorderly behaviour - section 91 of the Criminal Justice Act 1967;
- section 5 of the Act;
- section 4A of the Act.

5.7 The following table sets out what has to be proved in respect of each offence:
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5.8 An offence under section 5 should be charged where there is disorderly behaviour, together with evidence that:

- the suspect intended his behaviour to be or was aware that it may be disorderly; and
- it was likely that harassment, alarm or distress would occur as a result: section 6 of the Act.

5.9 There must be a person within the sight or hearing of the suspect who is likely to be caused harassment, alarm or distress by the conduct in question. A police officer may be such a person, but remember that this is a question of fact to be decided in each case by the magistrates. In determining this, the magistrates may take into account the familiarity which police officers have with the words and conduct typically seen in incidents of disorderly conduct. (DPP v Orum (1988) Crim LR 848.)

5.10 Although the existence of a person who is caused harassment, alarm and distress must be proved, there is no requirement that they actually give evidence. In appropriate cases, the offence may be proved on a police officer's evidence alone.

5.11 The conduct may take place in a public or private place. No offence is committed under this section, however, if such conduct takes place inside a dwelling and the other person is also inside that or another dwelling.

5.12 Police officers are aware of the difficult balance to be struck in dealing with those whose behaviour may be perceived by some as exuberant high spirits but by others as disorderly. In such cases informal methods of disposal may be appropriate and effective; but if this approach fails and the disorderly conduct continues then criminal proceedings may be necessary. Section 5 should be used in cases which amount to less serious incidents of anti-social behaviour. Where violence has been used, it is not normally appropriate to charge an offence under section 5.

5.13 In deciding whether a charge under section 5 is appropriate, the nature of the conduct must be considered in light of the penalty that the suspect is likely to receive on conviction.

5.14 As a prerequisite to the execution of a lawful arrest for an offence under section 5, the accused must have been warned by the arresting police officer to refrain from continuing with the disorderly behaviour: DPP v Hancock and Tuttle (1995) Crim LR 139.

5.15 Where there is reliable evidence that the accused was drunk in a public place at the time of the alleged offence to the extent that the accused had lost the power of self control, a charge of drunk and disorderly behaviour should be preferred where otherwise a section 5 charge would be appropriate.
5.16 A charge under section 4A will only be appropriate if:

i the accused intended to cause harassment, alarm or distress and

ii the accused actually caused harassment, alarm or distress.

If either one or both of these additional features is not present, a charge under section 5 or, if appropriate, a charge of drunk and disorderly will be the only alternatives available.

5.17 Section 4A may be appropriate where there is evidence of a persistent course of conduct causing harassment, alarm and distress; for example, in cases of racial harassment or 'stalking' behaviour.

5.18 The offence may take place in a public or private place. No offence under this section is committed, however, if such conduct takes place inside a dwelling and the person to whom it is directed is inside that or another dwelling.

Using threatening, abusive or insulting words or behaviour

5.19 The following types of conduct are examples which may at least be capable of amounting to threatening, abusive or insulting words or behaviour:

- threats made or abuse directed towards individuals carrying out public service duties or jobs, such as ambulance workers, fire fighters or bus or train drivers;

- the throwing of missiles by a person taking part in a demonstration or other public gathering where no injury is caused;

- scuffles or incidents of minor violence or threats of violence committed in the context of a brawl (such as in or in the vicinity of a public house);

- incidents between neighbours or within domestic relationships which do not justify a charge of assault;

- incidents which do not justify a charge of assault where an individual is picked on by a gang.

5.20 Where you are satisfied that you are dealing with an offence of using threatening, abusive or insulting words or behaviour, the choice of charge is between the following:

- section 5;
5.21 The following table sets out what has to be proved in respect of each offence:
<table>
<thead>
<tr>
<th>Section 5</th>
<th>Section 4A</th>
<th>Section 4(1)(a)</th>
<th>Section 18j</th>
</tr>
</thead>
<tbody>
<tr>
<td>threatening, abusive or insulting words or behaviour</td>
<td>threatening, abusive or insulting words or behaviour</td>
<td>requiring consent.</td>
<td></td>
</tr>
<tr>
<td>within the hearing or sight of a person likely to be caused</td>
<td>with intent to cause and thereby causing</td>
<td>with intent to stir up racial hatred or by which racial hatred is likely to be stirred up</td>
<td></td>
</tr>
<tr>
<td>harassment, alarm or distress</td>
<td>harassment, alarm or distress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>with intention or awareness that such behaviour may be threatening, abusive or insulting</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*requires AG’s consent.*
5.22 Conduct which may be capable of amounting to threatening, abusive or insulting words or behaviour for the purposes of an offence under section 4 will be more serious than that required under section 5 or section 4A.

5.23 A charge under section 4 will only be appropriate where there is evidence that the accused intended or was aware that his words or behaviour - being directed towards another person - were or may have been threatening, abusive or insulting and either:

- the accused intended the person against whom the conduct was directed to believe that immediate unlawful violence would be used against him or another by any person; or
- the accused intended to provoke the immediate use of unlawful violence by that person or another; or
- the person against whom the conduct was directed was likely to believe that violence would be used; or
- it was likely that such violence would be provoked.

5.24 The offence may take place in a public or private place. No offence under this section is committed, however, if such conduct takes place inside a dwelling and the other person is also inside that or another dwelling.

5.25 Where there is insufficient evidence to establish any of the elements specified in paragraph 5.23:

either:

a charge under section 4A may be appropriate if:
- the suspect had an intent to cause harassment alarm or distress
  - and
  - actually caused harassment alarm or distress;

or:

a charge under section 5 may be appropriate if:
- the prohibited conduct took place within the hearing or sight of a person likely to be caused harassment alarm or distress.

5.26 In deciding upon the correct charge as between section 5, section 4A and section 4, it will be necessary to consider the nature of the conduct and the likely penalty that the suspect would receive on conviction.

5.27 If you think that a charge under section 18 may be appropriate, you must refer to the guidance given in paragraphs 5.34 - 5.48. Please note in particular that a
prosecution may not be instituted for an offence under section 18 of the Act, without the consent of the Attorney General.

5.28 The offence under section 18 may be committed in a public or private place. No offence is committed, however, if such conduct takes place inside a dwelling and the person to whom it is directed is inside that or another dwelling.

Publishing, distributing or displaying any writing, sign or other visible representation

5.29 Where you are satisfied that you are dealing with an offence amounting to the publishing, distributing or displaying of any writing, sign or other visible representation, the choice of charge is between the following:

- section 5;
- section 4A;
- section 4;
- section 18;
- section 19.

5.30 The following table sets out what has to be proved in respect of each offence:
<table>
<thead>
<tr>
<th>Section 5</th>
<th>Section 4A</th>
<th>Section 4</th>
<th>Section 18*</th>
<th>Section 19*</th>
</tr>
</thead>
<tbody>
<tr>
<td>displays</td>
<td>distributes or</td>
<td>displays</td>
<td>displays</td>
<td>publishes/ distributes</td>
</tr>
<tr>
<td>any writing sign or other visible representation</td>
<td>displays</td>
<td>any writing sign or other visible representation</td>
<td>any written material</td>
<td>any written material</td>
</tr>
<tr>
<td>which is threatening, abusive or insulting</td>
<td>which is threatening, abusive or insulting</td>
<td>which is threatening, abusive or insulting</td>
<td>which is threatening, abusive or insulting</td>
<td>which is threatening, abusive or insulting</td>
</tr>
<tr>
<td>within the hearing or sight of a person likely to be caused</td>
<td>with intent to cause and thereby causing</td>
<td>either: with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person; or: with intent to provoke the immediate use of unlawful violence by that person or another; or: whereby that person is likely to believe that such violence will be used; or: it is likely that such violence will be provoked</td>
<td>with intent to stir up racial hatred or racial hatred is likely to be stirred up</td>
<td>with intent to stir up racial hatred or racial hatred is likely to be stirred up</td>
</tr>
<tr>
<td>harassment, alarm or distress thereby</td>
<td>harassment, alarm or distress thereby</td>
<td>with intention or awareness</td>
<td>* requires AO's consent.</td>
<td>* requires AO's consent.</td>
</tr>
</tbody>
</table>
5.31 If you think that a charge under section 18 or 19 may be appropriate, you must refer to the guidance given in paragraphs 5.34-5.48. Please note in particular that a prosecution may not be instituted for an offence under section 18 or 19 of the Act, without the consent of the Attorney General.

5.32 Section 1 of the Malicious Communications Act 1988 may be a useful charge if a letter or other article has been sent to a person or persons to cause distress or anxiety. In particular, you may use it as an alternative to section 18 where the material in question is sent to a selected individual or individuals with a hostile intent which is racially motivated but the more general intention to stir up racial hatred required by section 18 is not present.

5.33 For the purposes of section 19, it must be proved that there was a publication or distribution to the public or to a section of the public. Written matter includes any sign or other visible representation.

Racially motivated crimes: Relationship between offences contrary to Part I of the Act and Part III of the Act

5.34 Part III Public Order Act 1986 (sections 17 to 29) creates a number of offences concerned with inciting racial hatred. The offences involve:

- conduct (using words or behaviour, publishing, displaying etc);
- which is threatening, abusive or insulting; and
- which is either intended or likely to stir up racial hatred.

Part III offences involve incitement to racial hatred. Conduct which is contrary to offences set out in Part I of the Act (sections 1 to 5) may be racially motivated but may not involve incitement to racial hatred. If that is the case, you should charge the appropriate Part I offence. Remember that racial motivation, whether a Part I or Part III offence is involved, is recognised as a public interest factor weighing in favour of prosecution in the Code for Crown Prosecutors. Thus, the public interest will always tend to favour a prosecution in these cases when there is sufficient evidence.

5.35 "Racial hatred" is defined as "hatred against a group of persons in Great Britain defined by reference to colour, race, nationality...or ethnic or national origins": section 17.

5.36 "Hatred" is not defined by the Act. It is much stronger than ridicule or contempt; it is not enough to cause offence or to mock a racial group. "Hatred" connotes an element of hostility.

5.37 It is an offence to use words or behaviour, or display any written material, which
is threatening, abusive or insulting and either intended or likely in all the circumstances to stir up racial hatred: section 18.

5.38 Part III offences require the consent of the Attorney General to be prosecuted: section 27. Consent need not be obtained pre-charge (section 25 Prosecution of Offences Act 1985) but must be obtained before the case proceeds to mode of trial proceedings. Generally, however, you should submit the case for consent prior to charging. Police should therefore submit such cases to the CPS for pre-charge advice, with a view to seeking consent if that it appropriate.

5.39 The Attorney General’s consent must be sought by the CPS Area through CPS Central Casework (Prosecutions). CPS Central Casework will be responsible for reviewing the evidence and applying for consent in appropriate cases. Whenever there is sufficient evidence to support a Part III charge the case must be referred by the CPS Area to CPS Central Casework (Prosecutions).

5.40 It is important to distinguish between conduct which amounts to an offence under Part I of the Act (particularly sections 5, 4A and 4) and conduct which amounts to an offence under Part III (particularly section 18). The distinction is in the effect the conduct has on the audience (person or persons) who sees/hears the conduct.

5.41 The effect of Part I conduct is to cause offence to the audience of that conduct, by being threatening, abusive or insulting towards the audience. The effect, likely or intended, of Part III conduct is not to offend the audience but to incite them to hatred of a racial group other than that of the audience.

5.42 The general guide is that a charge under Part I should be considered when the conduct is motivated by the audience’s race; and a charge under Part III should be considered when the conduct is motivated by the race of a group other than that of the audience.

5.43 A practical example may help: a person uses language which is abusive of a racial group.

- If the audience is exclusively made up of that racial group then it is unlikely that the speaker either intends or is likely to stir up the audience to hatred of the audience’s own racial group: a Part III charge will be inappropriate; a Part I charge may be appropriate, aggravated by the racial motivation.

- If the audience is exclusively made up of some other racial group (for example, the same racial group as the speaker) then it may be that there is an intention or likelihood of the speaker stirring up racial hatred in the audience, in which instance a charge under Part III may be appropriate.

5.44 There may be instances when the defendant’s conduct does amount to an offence
under Part I and Part III of the Act. This is likely to occur when the audience is not exclusively made up of one racial group but is made up of individuals of more than one racial group, each affected by the conduct in different ways, such as in the following circumstances:

- when members of the abused racial group and the defendant’s supporters (of a different racial group) are both present and the defendant’s conduct, or individual parts of the conduct, is aimed at both groups;
- when there are two or more defendants acting together in a racially motivated attack (verbal and/or physical) upon a victim; as well as the conduct towards the victim of the attack, there may be some conduct, either express or implied, between the defendants amounting to mutual encouragement; and
- when bystanders unconnected with either the defendant or the victim witness the defendant racially attacking (verbally and/or physically) a victim.

5.45 In each instance the conduct must be considered both as a whole and by its constituent parts. The appropriate charge(s) must reflect the seriousness of the conduct. The following should be in mind:

- when there are two or more defendants acting together in a racially motivated attack, as equal partners, it will be more appropriate to pursue a non-Part III offence and to emphasise the racial motivation as an aggravating feature;
- when there are two or more defendants acting together in a racially motivated attack, and one defendant takes a lead role, encouraging and directing others to commit a racially motivated crime while standing apart from the actual attack on the victim, a Part III charge should be considered: such a Part III charge will attach to the conduct of the defendant towards others within his group, not to the conduct of the defendant towards the victim of the racially motivated crime;
- when there are bystanders, unconnected with either the defendant(s) or the victim of a racially motivated attack, a Part III charge may follow if there is some explicit act on the part of the defendant, intended or likely to incite the bystanders. Otherwise, a Part I offence, aggravated by the racial motivation, should be charged. In cases where bystanders make statements expressing sympathy for the victim it will be difficult to support a Part III offence.

5.46 When the evidence supports an offence contrary to sections 5, 4A or 4 of the Act and section 18 of the Act, the section 18 offence should be preferred.
5.47 When the evidence supports an offence contrary to sections 1, 2 or 3 of the Act and section 18, both the Part I and Part III offence should be charged.

5.48 When there is evidence of any other offence linked to the section 18 offence, you should refer to paragraph 10 for further guidance.

Possessing Racially Inflammatory Material

5.49 A charge under section 23 of the Act may be appropriate where there is evidence that a person:

- was in possession of written material
- which is threatening, abusive or insulting
- with a view to its being displayed, published, distributed broadcast or included in a cable programme service
- intending racial hatred to be stirred up thereby; or where,
- having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

5.50 A prosecution may not be instituted for an offence under section 23 of the Act without the consent of the Attorney General.

5.51 For the purposes of section 23, it is not necessary to prove that the accused had physical custody of the material, provided it can be established that he exercised control over it.

5.52 It is a defence for the accused to prove that he was not aware of the content of the material and neither suspected nor had reason to suspect that it was threatening, abusive or insulting.

Penalties and Venue for all offences in paragraph 5

5.53 Table IV sets out details of the mode of prosecution and the penalties for all offences referred to in paragraph 5.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 91 CJA 1967</td>
<td>Drunk and disorderly</td>
<td>Summary</td>
<td>Level 3 fine</td>
<td></td>
</tr>
<tr>
<td>S.5 POA 1986</td>
<td>Harassment, alarm or distress</td>
<td>Summary</td>
<td>Level 3 fine</td>
<td></td>
</tr>
<tr>
<td>S.4A POA 1986</td>
<td>Intentional harassment, alarm or distress</td>
<td>Summary</td>
<td>6 months and/or level 5 fine</td>
<td></td>
</tr>
<tr>
<td>S.4 POA 1986</td>
<td>Fear or provocation of violence</td>
<td>Summary</td>
<td>6 months and/or level 5 fine</td>
<td></td>
</tr>
</tbody>
</table>
| S.18 POA 1986 | Acts intended or likely to stir up racial hatred - use of words or behaviour or display of written material | Either way          | (a) Summary: 6 months and/or level 5 fine  
(b) On indictment: 2 years and/or a fine | Requires AG's consent |
| S.19 POA 1986 | Acts likely to stir up racial hatred - publishing or distributing written material | Either way          | (a) Summary: 6 months and/or level 5 fine  
(b) On indictment: 2 years and/or a fine | Requires AG's consent |
| S.23 POA 1986 | Possession of racially inflammatory material | Either way          | (a) Summary: 6 months and/or level 5 fine  
(b) On indictment: 2 years and/or a fine | Requires AG's consent |
| S.1 Malicious Communications Act 1988 | Offence of sending letters etc. with intent to cause distress or anxiety | Summary             | Level 4 fine                      |                       |
6.1 Under section 3 of the Act, it must be proved that a person has used or threatened:

- unlawful violence
- towards another
- and his conduct is such as would cause
- a person of reasonable firmness
- present at the scene
- to fear for his personal safety.

6.2 The seriousness of the offence lies in the effect that the behaviour of the accused has on members of the public who may have been put in fear. There must be some conduct, beyond the use of words, which is threatening and directed towards a person or persons. Mere words are not enough. Violent conduct towards property alone is not sufficient for the purposes of an offence under section 3. The offence is not confined to group disorder.

6.3 An offence under section 3 is triable either way. The maximum penalty on conviction on indictment is three years' imprisonment and/or a fine of unlimited amount. On summary conviction the maximum penalty is six months' imprisonment and/or a fine not exceeding level 5.

6.4 The offence may be committed in a public or private place.

6.5 Examples of the type of conduct appropriate for a section 3 offence include:

- a fight between two people in a place where members of the general public are present (for example, in a public house, discotheque, restaurant or street) and are put in fear for their safety (although the fighting is not directed towards them);

- a person who, on being refused entry to a nightclub, throws objects at the staff whilst at the same time issuing threats towards them;

- a person armed with a knife or other weapon who, when approached by police officers, brandishes the weapon and threatens to use it against them;

- a person who brandishes a knife or other weapon and issues threats of violence towards another while both are on private property (for example inside a dwelling).

6.6 Affray should be charged where there is relevant conduct and it can be proved that the accused:
used or threatened unlawful violence towards another; and

his conduct was such that it would cause a person of reasonable firmness present at the scene to fear for his personal safety. No person of reasonable firmness need actually be, or be likely to be, present at the scene however: section 3(4).

R v Sanchez, (1996) The Times, 3 March, makes it clear that the two persons - the 'victim' of the affray and the 'person of reasonable firmness present at the scene' - must be distinguished. It was necessary to show that a notional third person at the scene would have feared for his personal safety, not that the victim was put in fear. Were it otherwise, the definition of affray would be extended to include every common assault.

6.7 The accused must have intended to use or threaten violence; or have been aware that his conduct may be violent or may threaten violence.

6.8 In cases where an offence under section 3 is a precursor to, or part of, the commission of an offence of assault, the question of selecting the number and type of appropriate charge arises. Generally, the more serious the injury, the less likely the need to charge a section 3 offence. For further guidance on charge selection see paragraph 10 below.

7 Violent disorder

7.1 Under section 2 of the Act, it must be proved that:

- three or more persons
- present together
- used or threatened
- unlawful violence
- so that the conduct of them (taken together) would cause
- a person of reasonable firmness
- present at the scene
- to fear for his or her personal safety.

7.2 This offence should only be charged in relation to instances of serious disorder. It will be an especially appropriate charge where such disorder has been planned, although the violence does not have to be premeditated. The offence should not be charged simply because three or more persons are involved in minor disorder.

7.3 An offence under section 2 is triable either way. The maximum penalty on conviction on indictment is five years' imprisonment and/or a fine of unlimited amount. On summary conviction the maximum penalty is six months' imprisonment and/or a fine not exceeding level 5.
7.4 The offence may be committed in a public or private place. The relevant conduct may be directed against a person or persons or against property.

7.5 Examples of the type of conduct appropriate for a section 2 offence include:

- fighting, involving the use of weapons, between large groups of rival football supporters in a street or town centre;
- fighting, including the use of weapons, between rival groups in a place to which members of the public have access (for example a restaurant, discotheque, public house, street or town centre);
- disorder causing major disruption at a public demonstration where missiles are thrown and other violence is used against and directed towards the police.

7.6 There must be evidence which shows that:

- three or more people (including the accused), while present together, used or threatened unlawful violence; and
- their conduct (taken together) was such that it would have caused a person of reasonable firmness present at the scene to fear for his personal safety.

7.7 There must also be evidence which shows that the accused intended to use or threaten violence, or was aware that his conduct may be violent or threaten violence.

7.8 Whilst three or more persons must have been present and used or threatened unlawful violence, it is not necessary that three or more persons should actually be charged and prosecuted: R v Mahroof (1988) 88 Cr App R 317. The charge must make clear, however, that the defendant was one of the three or more involved in the commission of the offence.

7.9 A charge under section 2 will reflect the potential danger that existed to innocent members of the public. Accordingly, an offence under section 2 should almost always be charged (where there is sufficient evidence) in addition to any offence(s) which may also be made out under section 20 or 18 of the Offences Against the Person Act 1861. For further guidance on charge selection see paragraph 10 below.

8 Riot

8.1 Under section 1 of the Act, it must be proved that

- twelve or more persons
present together
used or threatened unlawful violence
for a common purpose; and that
the conduct of them (taken together)
was such as to cause
a person of reasonable firmness
present at the scene
to fear for his personal safety.

8.2 An offence under section 1 will be an appropriate charge only in wholly exceptional circumstances, where the most serious outbreaks of violence have occurred. Such circumstances will be rare.

8.3 A prosecution for riot or incitement to riot may be commenced only by, or with the consent of, the Director of Public Prosecutions.

8.4 An offence under section 1 is triable on indictment only. The maximum penalty on conviction is ten years' imprisonment and/or a fine of unlimited amount.

8.5 A charge of riot should be confined to the most serious outbreaks of public disorder. These can be distinguished from other examples of group disorder by virtue of:
- the scale of the disruption;
- the violence used;
- the number of individuals involved;
- the element of common purpose.

8.6 Conduct which falls within the scope of this offence includes:
- exceptionally serious acts of violence against public order committed in furtherance of industrial disputes;
- public disturbance on a wide scale involving serious acts of violence, serious damage to property and looting;
- organised attacks on people and property in the context of marches and demonstrations;
- large scale acts of football violence which have an element of organisation;
- serious and organised violent attacks on the police or other public servants.
8.7 The defendant must intend to use or threaten violence, or be aware that his conduct may be violent, or threaten violence.

8.8 Where there is sufficient evidence for a charge under section 1 of the Act, and an offence under section 20 or 18 of the Offences Against the Person Act 1861 can also be made out, it will almost always be appropriate to continue with the section 1 offence, in addition to the assault charge. For further guidance on charge selection see paragraph 10 below.

9 Alternative Verdicts

9.1 The Act recognises that there may be some overlap between some public disorder offences by providing for the return of an alternative verdict where the offences of affray or violent disorder have been tried on indictment. In these circumstances, the jury may, in finding the defendant not guilty as charged, find him guilty of an offence under section 4. It is important to emphasise, however, that the offence which is most appropriate to the circumstances of the case should always be charged. An offence of affray or violent disorder should never be charged with a view to obtaining a guilty verdict under section 4.

9.2 The operation of section 6(3) Criminal Law Act 1967 is not affected by the Act. Hence, a jury may on an indictment for riot, return an alternative verdict of guilty of violent disorder or guilty of affray: R v Fleming (1989) 153 JP 517. Section 6(3) may also be used where a defendant faced with an indictment charging either violent disorder or affray wishes to plead not guilty as charged, but guilty to an offence contrary to section 4: R v O'Brian (1992) 156 JP 925.

9.3 Similar provisions do not exist for the return of alternative verdicts in the magistrates' courts.

10 Additional Charges and Charge Selection

10.1 It is a common feature of public order incidents that sufficient evidence exists to charge the accused with offences other than those under the Act, for example, unlawful possession of an offensive weapon, assault and/or criminal damage.

10.2 It is difficult to give general guidance in this area, because each course of conduct should be considered in the light of the facts of the particular case. However, the following general factors may help in deciding which combination of offences should be charged where more than one is possible.

- Is the offence basically one of public disorder in which there has been some minor assault; or vice versa? If the former, concentrate on the public disorder aspect.
Where there are aggravating features to an assault, such as the use of a weapon, it is likely that an assault charge should be preferred.

Where there is an allied assault or act of criminal damage, is it one in which compensation is an issue? If so, an assault charge or criminal damage charge may also be appropriate. But remember compensation may be payable to a victim in respect of offences of affray and violent disorder. This will be so, if the loss, damage or personal injury arose from the group activity in which the offender took part, and there is sufficient connection between his participation in the offence and the injury to support the making of a compensation order.

10.3 A charge under the Football (Offences) Act 1991 ("F(O)A") will be more suitable where the following types of conduct have occurred at a designated football match:

- throwing missiles onto the playing area, or any area adjacent to the playing area to which spectators are not usually admitted: section 2, F(O)A;
- racialist or indecent chanting: section 3, F(O)A;
- going onto the playing area or any area adjacent to the playing area to which spectators are not usually admitted without lawful authority or lawful excuse: section 4, F(O)A.

10.4 The choice of charge will ultimately be made on the facts of individual cases and in accordance with paragraphs 1.2 and 3.1 above. Paragraph 3.1(ii) has particular relevance to public order offences. Where the additional factors listed in paragraph 10.2 are not present, the following paragraphs offer general guidance about the correct combination of offences to charge where there is sufficient evidence to proceed on each of them.

Assaults

10.5 If there is sufficient evidence to justify a charge under section 1 of the Public Order Act and an assault contrary to:

- section 18 of the Offences Against the Person Act 1861 (OAPA); or
- section 20 OAPA

it will usually be appropriate to charge both. It will not normally be appropriate to charge section 47 or common assault contrary to section 39 of the Criminal Justice Act 1988 together with an offence contrary to section 1 of the Act.

10.6 If there is sufficient evidence to justify a charge under sections 2 or 3 of the Public Order Act and an assault contrary to
• section 18 OAPA; or
• section 20 OAPA; or
• section 47 OAPA

It will usually be appropriate to charge both. It will not normally be appropriate to charge common assault (section 39 of the CJA 1988) together with an offence contrary to sections 2 or 3 of the Act.

10.7 If there is sufficient evidence to justify a charge under section 4, 4A, or 5 of the Act and an assault contrary to

• section 18 OAPA; or
• section 20 OAPA; or
• section 47 OAPA

it will usually be appropriate to charge the assault alone. In cases of section 4 conduct, if other victims have not been assaulted, it will usually be appropriate to charge section 4 in addition to the assault.

10.8 Where you have evidence to prove conduct contrary to section 4, 4A or 5, together with a common assault (section 39 of the CJA 1988), it will usually be appropriate to proceed on the common assault alone. But if the conduct contrary to section 4, 4A or 5 was directed at others who were not victims of common assault, consider charging both.

Section 18 - conduct intended to or likely to stir up racial hatred

10.9 Where the evidence supports a charge under section 18 of the Act and there is evidence of an assault, and/or criminal damage, and/or unlawful possession of an offensive weapon, the section 18 offence should always be charged in addition to the other offence(s). Refer to paragraph 5.34-5.48, especially 5.38.

Offensive Weapons

10.10 Generally, the more serious the outbreak of public disorder - when the defendant is also in possession of an offensive or bladed weapon - the more likely it will be to add a further charge to reflect that fact.

10.11 Where any type of weapon is carried by those involved in public disorder, this is an aggravating factor to be taken into account in the presentation of the case. The approach to be taken will depend on the following factors:

• the type of weapon concerned;
• whether the weapon was used or its use threatened;
• how the weapon was used;
the potential for serious injury;

- the time when the weapon was discovered or produced (i.e. was it produced during the incident or found on arrest).

10.12 Where a summary only public order offence is appropriate, but where the defendant is in unlawful possession of an offensive weapon, police officers and prosecutors should consider carefully whether it might be more appropriate to focus on the possession of the offensive weapon (which is an offence triable either way) and recount the circumstances of the disorder in presenting the case to the relevant tribunal. If, however, the summary public order offence is itself serious, such as, for example, racially motivated harassment or 'stalking', consider charging both offences.

10.13 You should reflect the possession of a bladed weapon in a separate charge when the appropriate public disorder offence is summary only.

10.14 You should reflect the unlawful possession of an offensive weapon in a separate charge when the appropriate public order offence is triable either way or only triable on indictment.

Criminal Damage

10.15 Acts of criminal damage are frequently committed during public disorder. Where there is sufficient evidence to support both offences, consider charging both. If, however, offences contrary to section 1 or 2 of the Public Order Act are being charged and the criminal damage is minor, charge the section 1 or 2 offence alone. (Paragraph 10.2 - last bullet point deals with the issue of compensation.) If the criminal damage is serious and the public order act offence is minor, then you should consider charging the criminal damage alone.

11 Alternative Disposal - Bind Over

11.1 Both the Crown Court and magistrates’ courts may make an order binding over an individual to keep the peace. An application for a bind over should never be made as a matter of convenience and should not be made in the Crown Court except in exceptional circumstances. A court may be asked to exercise its power to bind over where:

- there has been an outbreak of bad behaviour which is not sufficiently serious to prefer a charge under the Act but which amounts to a breach of the peace; and

- there is a danger that the conduct complained of will be repeated; and
11.2 For conduct to constitute a breach of the peace, the conduct must involve violence or the threat of violence. The violence need not be perpetrated by the defendant, provided that the natural consequence of his conduct, was that others would be provoked to violence (Percy v DPP [1995] Crim LR 714).

11.3 It will be appropriate to seek a bind over where conduct falling short of that required for a substantive offence under the Act has been committed. If you have identified the case as one which should proceed by way of bindover, then you should pursue the case on the basis of a complaint rather than charge for an offence.

11.4 Where a decision has been made to prosecute in accordance with the Code for Crown Prosecutors, the circumstances in which it will be appropriate to dispose of the case by way of a bind over will be rare. There must have been a significant change in circumstances; for example, where a witness refuses to give evidence against the defendant, but there remains sufficient evidence that the defendant was involved in a disturbance.
APPENDIX 5(1)

QUESTIONNAIRE
CROWN PROSECUTION SERVICE

THE PROSECUTION OF PUBLIC ORDER OFFENCES UNDER THE PUBLIC ORDER ACT 1986

QUESTIONNAIRE TO CHIEF CROWN PROSECUTORS

INTRODUCTION

This questionnaire forms part of research being carried out by Roger Woods, Principal Crown Prosecutor, CPS North-West into the prosecution of public order offences under the Public Order Act 1986. It is designed to establish how the prosecution of these offences is dealt with throughout the 13 Areas of the CPS. The findings will inform and improve the prosecution of public order offences in the future.

It is important that the policy in your Area is included so that a complete picture of policy nationally can be built up.

I would be grateful if you would complete this questionnaire and provide any policy documents etc. which may be useful to the research. Thank you for your assistance.

A pilot study has shown that it will not take long to fill in this questionnaire.

This research is fully supported by the Director and by the Board of Management of the CPS.

Please fill in all of the questionnaire and return it in the enclosed envelope to:

Roger Woods
Principal Crown Prosecutor
Bury
CPS North West
DX 25581
Tel: 0161-705-2775
Fax: 0161-762-9887

by......................................................

All the information collected will be anonymous and confidential.

322
1. How many files were opened in your Area in 1994 for the following Public Order Act 1986 offences:

(1) (s1) Riot.................................................................

(2) (s2) Violent Disorder...........................................

(3) (s3) Affray.............................................................

(4) (s4) Fear or provocation of violence.....................

(5) (s5) Harassment, alarm or distress......................

2. Are there any special arrangements in your Area for the review of public order cases? (e.g. file tagging, special allocation) (Please tick as appropriate)

(1) Yes [ ]

(2) No [ ]

(3) Don't know [ ]

If yes, please give details:

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If no, is there any reason for this?

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3. Do you have any Area policies relating to the grade and experience of prosecutors reviewing public order cases? (Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

If yes, please state what are they:

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If not, is there any reason for this?

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4. Do the Police in your Area seek pre-charge advice on the appropriate charge from the CPS in public order cases? (Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

If yes, (i) in approximately what proportion of cases do they seek pre-charge advice?

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(ii) Are there any particular types or characteristics of cases where they seek advice?
(Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

If yes, please state further details

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5. Do you think the level of charging in public order cases by the Police in your Area is:
(Please tick as appropriate)

(1) Excellent [ ]
(2) Good [ ]
(3) Satisfactory [ ]
(4) Unsatisfactory [ ]
(5) Don't know [ ]
Please give reasons for your answer:

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6. Do you have an agreed Area policy with the police relating to the level of charging in public order cases?
   (Please tick as appropriate)
   
   (1) Yes [ ]
   (2) No [ ]

   If so, I would be grateful if you will please forward a copy of any policy documents.

   If not, is there any reason for this?

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7. Do you have any special arrangements for dealing with "football" cases? (i.e. those public order cases involving incidents at football matches or linked to supporters before or after football matches)
   (Please tick as appropriate)

   (1) Yes [ ]
   (2) No [ ]

   If yes, please give details:

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   .................................................................
   .................................................................
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   .................................................................
8. Do you have any special arrangements for dealing with cases with a clear racial element i.e. where the police identify that a race issue is involved?
(Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

If yes, please give details:

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9. Do you have any special arrangements for dealing with specific groups such as road protesters or animal rights protestors etc.?
(Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

If yes, please give details:

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10. Do you have any special arrangements for dealing with "new age travellers"?
(Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

If yes, please give details:

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11. Do the prosecutors in your Area ask for "binding over" orders in low level sections 4 and 5 Public Order Act 1986 cases in place of proceeding?
(Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]

12. In your opinion do you think that there should be specialist prosecutors for public order offences?
(Please tick as appropriate)

(1) Yes [ ]
(2) No [ ]
(3) Don't know [ ]
13. Do you find that there is pressure on the CPS at court to accept pleas to lesser charges in public order cases? (Please tick as appropriate)

(1) Yes

(2) No

(3) Don't know

If yes, is there any reason for this?

Please add any further comments you have on the subject of the prosecution of public order offences:
THANK YOU FOR COMPLETING THE QUESTIONNAIRE
APPENDIX 5(2)

RESEARCH SCHEDULE
CROWN PROSECUTION SERVICE

THE PROSECUTION OF PUBLIC ORDER OFFENCES UNDER THE PUBLIC ORDER ACT 1986

RESEARCH SCHEDULE

CASE NUMBER ........ (for administrative use only)

URN.: ............... 

SECTION 1 - DEFENDANT DETAILS

1. Name. .................................................................................................................
   ......................................................................................................................
   ......................................................................................................................
   ......................................................................................................................
   ......................................................................................................................
   (for administrative use only)

2. Gender (1) male (2) female [ ]

3. Age. ..............................................................

4. Address. ........................................................................................................
   ......................................................................................................................
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Roger Woods
5. Employment

(1) Full time
(2) Unemployed
(3) Gov. scheme
(4) Full time education
(5) Self emp
(6) Casual/part time
(7) Sick/disabled
(8) Retired/House person
(9) Other
(10) Not known [ ]
6. Ethnic origin
   (1) White
   (2) Black
   (3) Asian
   (4) Oriental
   (5) Other
   (6) Not known

7. Partnership
   (1) Single
   (2) Married
   (3) Div/Separated
   (4) Co-habiting
   (5) Widow(er)
   (6) Not known

8. Number of Co-defendants (if any)
   1
   2
   3
   4
   5
   6
   7
   8
   9
SECTION 2 - CHARGE DETAILS

1. Major offence

   Home Office Code...........

   (1) Riot

   (2) Violent Disorder

   (3) Affray

   (4) Fear or provocation of violence

   (5) Harassment, alarm or distress [ ]

Details of offence

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2. Other Public Order offence (alternative charges)

   Home Office Code...........

   (1) Riot

   (2) Violent Disorder

   (3) Affray

   (4) Fear or provocation of violence

   (5) Harassment, alarm or distress [ ]
3. Other offences

Home Office code

Details of offences

4. Victim Profile

(1) Partner

(2) Child of family

(3) Other family

(4) Friend/acquaintance

(5) Neighbour

(6) Stranger
5 Bailed or in Custody at first hearing?

(1) Bailed (unconditional)

(2) Bailed (conditional)

Conditions:

(3) Custody

6. Police views on bail if in custody

(1) Bail opposed

(2) Conditional bail not opposed

(3) Unconditional bail not opposed

7. C.P.S. views on bail

(1) Bail opposed

(2) Conditional bail not opposed

(3) Unconditional bail not opposed
SECTION 3 - PREVIOUS HISTORY

1. Number of previous convictions within last 2 years
   (1) None  (2) 1  (3) 2-3  (4) 4+
   (5) Not known

2. Previous convictions for any Public Order Act matters?
   Yes
   No
   (1) Riot
   (2) Violent Disorder
   (3) Affray
   (4) Fear or provocation of violence
   (5) Harassment, alarm or distress

Details of any previous public order matters
   similar
   or
different ?

Elements of previous matters:

3. When were previous public order matters?:
   (1) Within 3 months ?
   (2) Within 6 months?
   (3) Within 1 year ?
   (4) Within 2 years?
   (5) Over 2 years?
4. Previous sentence history (tick where appropriate)

<table>
<thead>
<tr>
<th>No.</th>
<th>Level/Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Custody</td>
</tr>
<tr>
<td>2</td>
<td>Probation/ Supervision</td>
</tr>
<tr>
<td>3</td>
<td>CSO</td>
</tr>
<tr>
<td>4</td>
<td>Fine</td>
</tr>
<tr>
<td>5</td>
<td>Suspended sentence/SSSO</td>
</tr>
<tr>
<td>6</td>
<td>Combination order</td>
</tr>
<tr>
<td>7</td>
<td>Curfew order</td>
</tr>
<tr>
<td>8</td>
<td>Conditional discharge</td>
</tr>
<tr>
<td>9</td>
<td>Binding over order</td>
</tr>
<tr>
<td>10</td>
<td>Other</td>
</tr>
</tbody>
</table>
SECTION 4 - CPS PROSECUTION FIRST REVIEW

1. Pre-charge advice request from police?
   (1) Yes
   (2) No

2. Timing of review
   (1) > 14 days before court hearing
   (2) > 7 days before court hearing
   (3) At court
   (4) Within 7 days of court hearing
   (5) 7 - 14 days after court hearing
   (6) > 14 days after court hearing

3. Level of prosecutor reviewing file
   (1) Crown Prosecutor
   (2) Senior Crown Prosecutor
   (3) Principal Crown Prosecutor
   (4) Branch Crown Prosecutor
   (5) Other

4. Sufficient information provided by police for first review? i.e. Was it necessary for the C.P.S. to seek further information from the police?
   (1) Yes
   (2) No

   If yes, how was the information deficient?
5. Copy statements provided by police?
   (1) Yes
   (2) No

6. Was the level of charge felt appropriate?
   (1) Yes
   (2) No

7. If not, what was the appropriate charge?
   .................................................................
   .................................................................
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8. Was further information sought from the police?
   (1) Yes
   (2) No

9. Was the case ready for ADVANCED DISCLOSURE where appropriate?
   (1) Yes
   (2) No

10. What decision was made by the CPS on the MODE OF TRIAL representations? (where appropriate)
    (1) Suitable for Summary Trial
    (2) Not suitable for Summary Trial

Any further comments:
   .................................................................
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SECTION 5 - COURT

1. How long did the case take to appear first at court from the date of charge?
   
   (1) 1 day
   (2) Within 7 days (1 week)
   (3) 7-14 days (2 weeks)
   (4) 15-21 days (3 weeks)
   (5) 22-28 days (4 weeks)
   (6) 29-35 days (5 weeks)
   (7) 36-42 days (6 weeks)
   (8) Over 43 days

2. When was the MODE OF TRIAL determined where appropriate?
   
   (1) 1st appearance
   (2) 2nd appearance
   (3) 3rd appearance
   (4) 4th appearance
   (5) Other

3. What were the CPS representations at court as to mode of trial where appropriate?
   
   (1) SST (Suitable for Summary Trial)
   (2) NSST (Not Suitable for Summary Trial)

   If the matter was NSST what were the reasons given:

4. What representations were made by the Defence?
   
   (1) SST
What were the reasons given if any representations?

5. What was the court decision as to mode of trial?
   (1) SST
   (2) NSST

6. Where did the defendant elect to be tried?
   (1) Magistrates' Court
   (2) Crown Court

7. Pleas (where appropriate)
   (1) Guilty (to all)
   (2) Guilty (to some) (acceptable) (CPS asked for charges to be dismissed)
   (3) Not guilty

8. Disposals at Magistrates' Court
   If guilty plea entered
     a) Dealt with immediately?
        (1) Custody
        (2) Fine
        (3) Conditional Discharge
        (4) Absolute discharge
        (5) Binding over
        (6) Other?

     b) Adjourned for Pre-sentence reports?
        (1) Custody
(2) Probation/Supervision
(3) CSO
(4) Fine
(5) Suspended sentence/SSSO
(6) Combination order
(7) Curfew order
(8) Conditional discharge
(9) Absolute discharge
(10) Binding over
(11) Other

Any further comments re sentence?
(Levels/periods determinate sentences).................................
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SECTION 6 - PROSECUTION FURTHER
REVIEW (Committals/Trials)

1. Did the same prosecutor as on first review review the
   file further?
   (1) Yes
   (2) No

2. What level of prosecutor reviewed the file for
   committal/trial?
   (1) Crown Prosecutor
   (2) Senior Crown Prosecutor
   (3) Principal Crown Prosecutor
   (4) Branch Crown Prosecutor
   (5) Other?

3. Was additional evidence received from the police?
   (1) Yes
   (2) No

4. How many witnesses were there in all?
   (1) 1
   (2) 2
   (3) 3
   (4) 4
   (5) 5
   (6) 6
   (7) More than 6

5. Did the case involve any civilian witnesses?
   (1) Yes
   (2) No
6. Were there taped interviews?
   (1) Yes
   (2) No

7. Were there any other exhibits?
   (1) Yes
   (2) No

What were they? ...................................................

8. What representations were made by the defence, if any, as to the nature of the pleas/charges?

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SECTION 7 - FURTHER COURT ACTION (COMMITTALS/TRIALS)

1. Was the committal contested? (i.e. old style committal?)
   
   (1) Yes
   
   (2) No [ ]

2. What were the issues at trial?

3. What level of Counsel appeared for the prosecution? (Crown Court trials) (4 most senior, 1 least senior)
   
   (1) 1
   
   (2) 2
   
   (3) 3
   
   (4) 4 [ ]

4. Did Prosecuting Counsel give any advice as to the level of charges or pleas tendered?
   
   (1) Yes
   
   (2) No [ ]

If yes, what was Counsel's advice to the CPS?:

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5. Were changes made to the charges?
   (1) Yes
   (2) No [ ]

6. If yes how were the CPS notified of these changes?
   (1) In writing
   (2) By telephone
   (3) At court [ ]

7. Did the court play any part in changing charges?
   (1) Yes
   (2) No [ ]

8. Were the police & victims consulted?
   (1) Yes
   (2) No [ ]

9. How were consultations made?
   (1) At court
   (2) By telephone
   (3) Other? [ ]

10. How was the case disposed of?
    (1) Guilty to all matters after trial
    (2) Guilty to some matters after trial
    (3) Not guilty after trial
    (4) No case to answer on submission
    (5) No case at Judge's direction
(6) Binding over

(7) Other [ ]

11. Reasons for disposal:

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12. If convicted what was the sentencing outcome?

a) Dealt with immediately?
(1) Custody
(2) Fine
(3) Conditional Discharge
(4) Absolute discharge
(5) Binding over
(6) Other? [ ]

b) Adjourned for Pre-sentence reports?
(1) Custody
(2) Probation/Supervision
(3) CSO
(4) Fine
(5) Suspended sentence/SSSO
(6) Combination order
(7) Curfew order
(8) Conditional discharge
(9) Absolute discharge
(10) Binding over
(11) Other [ ]

Any further comments re sentence? (Levels/periods determinate sentences) .................................................. .................
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13. Was there any Appeal and, if so, what was the basis of the appeal and what was the outcome?

Yes [ ]

No [ ]

Appeal against:

Conviction [ ]

Sentence [ ]

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SECTION 8 - DROPPED CASES

1. Method of disposal

   (1) Section 23 Discontinuance at least 48 hours prior to first hearing

   (2) Discontinuance less than 48 hours before first hearing

   (3) Discontinuance at least 48 hours prior to subsequent hearing

   (4) Discontinuance less than 48 hours prior to subsequent hearing

   (5) Withdrawn at Court first hearing

   (6) Withdrawn at Court subsequent hearing

   (7) Discharged

   (8) Dismissed

2. Reasons for dropping case

   (1) Insufficient evidence

   (2) Public interest

   Comments:
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3. Did police agree to the case being dropped?

   (1) Agree

   (2) Disagree

Notes:
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## APPENDIX 6

### OTHER OFFENCES CHARGED WITH PUBLIC ORDER OFFENCES

**MANCHESTER CITY MAGISTRATES' COURT CASES 1991-1993**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Damage</td>
<td>278</td>
</tr>
<tr>
<td>Assault occasioning actual bodily harm</td>
<td>257</td>
</tr>
<tr>
<td>Grievous bodily harm</td>
<td>132</td>
</tr>
<tr>
<td>Offensive weapon</td>
<td>129</td>
</tr>
<tr>
<td>Police Assault</td>
<td>126</td>
</tr>
<tr>
<td>Breach of the peace</td>
<td>72</td>
</tr>
<tr>
<td>Theft</td>
<td>63</td>
</tr>
<tr>
<td>Wounding</td>
<td>59</td>
</tr>
<tr>
<td>Driving offences</td>
<td>56</td>
</tr>
<tr>
<td>Obstruct Police</td>
<td>49</td>
</tr>
<tr>
<td>Drugs offences</td>
<td>31</td>
</tr>
<tr>
<td>Fail Bail</td>
<td>28</td>
</tr>
<tr>
<td>Firearms offences</td>
<td>24</td>
</tr>
<tr>
<td>Threats to kill</td>
<td>20</td>
</tr>
<tr>
<td>Common Assault</td>
<td>19</td>
</tr>
<tr>
<td>Possession of pointed or bladed article</td>
<td>18</td>
</tr>
<tr>
<td>Assault with intent to resist arrest</td>
<td>17</td>
</tr>
<tr>
<td>Burglary</td>
<td>15</td>
</tr>
<tr>
<td>Handling stolen goods</td>
<td>11</td>
</tr>
<tr>
<td>Robbery</td>
<td>11</td>
</tr>
<tr>
<td>Threaten Damage</td>
<td>11</td>
</tr>
<tr>
<td>Offense</td>
<td>Count</td>
</tr>
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<td>----------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Drunk &amp; disorderly</td>
<td>10</td>
</tr>
<tr>
<td>Aggravated Burglary</td>
<td>8</td>
</tr>
<tr>
<td>Going equipped</td>
<td>8</td>
</tr>
<tr>
<td>T.W.O.C. &amp; A.S.T.B.C.</td>
<td>8</td>
</tr>
<tr>
<td>Counterfeiting</td>
<td>6</td>
</tr>
<tr>
<td>Deception</td>
<td>6</td>
</tr>
<tr>
<td>Attempts</td>
<td>5</td>
</tr>
<tr>
<td>Drunk in Sports Ground</td>
<td>5</td>
</tr>
<tr>
<td>Assault with intent to rob</td>
<td>4</td>
</tr>
<tr>
<td>Dangerous Dog</td>
<td>4</td>
</tr>
<tr>
<td>Indecent Assault</td>
<td>4</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>4</td>
</tr>
<tr>
<td>Vehicle Interference</td>
<td>4</td>
</tr>
<tr>
<td>Absent without leave</td>
<td>3</td>
</tr>
<tr>
<td>Bilking</td>
<td>3</td>
</tr>
<tr>
<td>Escape</td>
<td>3</td>
</tr>
<tr>
<td>Indecent Exposure</td>
<td>3</td>
</tr>
<tr>
<td>Obstruct Highway</td>
<td>3</td>
</tr>
<tr>
<td>Perjury</td>
<td>3</td>
</tr>
<tr>
<td>Pervert course of justice</td>
<td>3</td>
</tr>
<tr>
<td>Administer noxious substance</td>
<td>2</td>
</tr>
<tr>
<td>Avoid Fare</td>
<td>2</td>
</tr>
<tr>
<td>Burglary with intent</td>
<td>2</td>
</tr>
<tr>
<td>False imprisonment</td>
<td>2</td>
</tr>
<tr>
<td>Gross indecency</td>
<td>2</td>
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<tr>
<td>Abstract electricity</td>
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<tr>
<td>Aggravated T.W.O.C.</td>
<td>1</td>
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<tr>
<td>Begging</td>
<td>1</td>
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<tr>
<td>Conspiracy</td>
<td>1</td>
</tr>
</tbody>
</table>
Disorderly behaviour in police station 1
Drunk in charge of child 1
False accounting 1
Indecent telephone call 1
Loiter for Prostitution 1
Possession with intent to cause damage 1
Procure prostitute 1
Unnecessary suffering to Dog 1

Source: Crown Prosecution Service, Greater Manchester

Notes:
1. This information is based upon public order cases involving 2,475 defendants finalised before the Manchester City Magistrates' Court between September 1991 and September 1993.
2. T.W.O.C. & A.S.T.B.C. are the offences of taking a conveyance (usually a motor vehicle) without the consent of the owner or other lawful authority and allowing oneself to be carried in or on such a conveyance contrary to section 12 of the Theft Act 1968.
3. Aggravated T.W.O.C. is the aggravated taking of a vehicle contrary to section 12A of the Theft Act 1968 as amended.
### APPENDIX 7

**The Cases Survey Sample**
(Arranged by nature of public order offence)

<table>
<thead>
<tr>
<th>Case</th>
<th>Number of defendants</th>
<th>Public Order Charge</th>
<th>Other Charges</th>
<th>Plea</th>
<th>Disposal</th>
<th>Notes / Comments</th>
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<td>22</td>
<td>5</td>
<td>Violent Disorder</td>
<td>Assault a.b.h.</td>
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| 55   | 5 (Youths)           | Violent Disorder    | Assault a.b.h. | NG            | Conditional Discharge x 2  
(Rest dismissed) | Violent disorder withdrawn. Guilty pleas from 2 at trial date |
| 6    | 4                    | Affray & Section 5  | Assault a.b.h. & Obstruct Police | NG          | Guilty plea to assault x 1 and Binding Over x 3 | Affray & Section 5 withdrawn. Overcharged |
| 26   | 1 (Youth)            | Affray              | Kidnapping and Robbery | NG          | Supervision Order  | Guilty plea at trial to affray. Other charges dropped |
| 36   | 2                    | Affray              | Section 18 wounding with intent | None        | Case discharged   | Committal discharged                  |
| 38   | 3                    | Affray              | None          | NG            | Conditional Discharge x 3 | Downgraded from Affray to Section 4 |
| 48   | 1                    | Affray and Section 4 | None          | NG            | Conditional Discharge | Affray not guilty and Section 4 downgraded to Section 5 |
| 54   | 1                    | Affray              | None          | None          | Case discharged   | Committal discharged. Witness did not attend |
| 56   | 1                    | Affray              | Common Assault | None         | Case discharged   | Committal discharged. Victim retracted |

1 Assault occasioning actual bodily harm contrary to section 47 Offences Against The Person Act, 1861.
<table>
<thead>
<tr>
<th>Case</th>
<th>Number of defendants</th>
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<th>Disposal</th>
<th>Notes /Comments</th>
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<tr>
<td>53</td>
<td>Warrant file only</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

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APPENDIX 8

The Case Files Sample
(Arranged by public order offence type)

<table>
<thead>
<tr>
<th>Case</th>
<th>Number of defendants</th>
<th>Public Order Charge</th>
<th>Other Charges</th>
<th>Plea</th>
<th>Disposal</th>
<th>Notes/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>2</td>
<td>Violent Disorder</td>
<td>None</td>
<td>NG</td>
<td>Conditional Discharge x 1 CSO 150 hours x 1</td>
<td>Late guilty plea to Section 4 downgraded from violent disorder at trial date.</td>
</tr>
<tr>
<td>6</td>
<td>3</td>
<td>Violent Disorder</td>
<td>Deception</td>
<td>None</td>
<td>YOI x 2 Case dismissed x1</td>
<td>Violent Disorder dropped. Guilty pleas to Deception charges</td>
</tr>
<tr>
<td>14</td>
<td>1</td>
<td>Violent Disorder</td>
<td>Assault a.b.h. and Theft</td>
<td>None</td>
<td>Case withdrawn</td>
<td>No identification evidence</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>Affray</td>
<td>Assault a.b.h.</td>
<td>None</td>
<td>Fine and Binding Over</td>
<td>Guilty plea to Dangerous Driving at Crown Court 9 months after incident. Affray dropped.</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>Affray</td>
<td>Assault a.b.h. Possession Offensive Weapon</td>
<td>None</td>
<td>Conditional Discharge</td>
<td>Guilty plea at Crown Court trial date to Possession Offensive Weapon. Other Charges dropped.</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>Affray</td>
<td>Criminal Damage x 2</td>
<td>NG</td>
<td>CSO 100 hours</td>
<td>Affray dropped. Pleas at Crown Court to damage only.</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>Affray</td>
<td>Section 4 withdrawn by C.P.S.</td>
<td>NG</td>
<td>Not Guilty</td>
<td>Full trial</td>
</tr>
<tr>
<td>9</td>
<td>1</td>
<td>Affray</td>
<td>None</td>
<td>NG</td>
<td>Case dismissed</td>
<td>Witness did not attend trial</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>Affray</td>
<td>None</td>
<td>G to Section 5</td>
<td>Conditional Discharge</td>
<td>Downgraded to Section 5</td>
</tr>
</tbody>
</table>

1 Assault occasioning actual bodily harm contrary to section 47 Offences Against The Person Act, 1861
<table>
<thead>
<tr>
<th>Case</th>
<th>Number of defendants</th>
<th>Public Order Charge</th>
<th>Other Charges</th>
<th>Plea</th>
<th>Disposal</th>
<th>Notes/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>1</td>
<td>Affray</td>
<td>None</td>
<td>NG</td>
<td>Conditional Discharge</td>
<td>Downgraded to Section 4 at pre-trial review</td>
</tr>
<tr>
<td>17</td>
<td>1</td>
<td>Affray</td>
<td>Criminal Damage and Common Assault</td>
<td>G</td>
<td>Supervision Order</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>1</td>
<td>Section 4</td>
<td>None</td>
<td>NG</td>
<td>Binding Over</td>
<td>Downgraded to Binding Over at trial date</td>
</tr>
<tr>
<td>15</td>
<td>1</td>
<td>Section 4</td>
<td>None</td>
<td>G</td>
<td>Fine</td>
<td>Football case</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>Section 5</td>
<td>None</td>
<td>NG</td>
<td>Conditional Discharge</td>
<td>Late guilty plea at trial date</td>
</tr>
<tr>
<td>10</td>
<td>1</td>
<td>Section 5</td>
<td>None</td>
<td>NG</td>
<td>Binding Over</td>
<td>Witness did not attend trial</td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>Section 5</td>
<td>None</td>
<td>NG</td>
<td>Not Guilty</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>1</td>
<td>Section 5</td>
<td>None</td>
<td>G</td>
<td>Conditional Discharge</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>1</td>
<td>Section 5</td>
<td>None</td>
<td>G</td>
<td>Conditional Discharge</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>1</td>
<td>Section 5</td>
<td>None</td>
<td>G</td>
<td>Fine</td>
<td></td>
</tr>
</tbody>
</table>
BIBLIOGRAPHY


Archbold Criminal Pleading, Evidence & Practice (2000), 2383 - 2401 (annually), London: Sweet & Maxwell


372


Bridges, L. (1999) 'Narey may not be a force for the good', The Times, November 9 1999


Cohen, S. (1973) Folk Devils & Moral Panics, St Albans: Paladin

Coleman, C., and Moynihan, J. (1996) Understanding Crime Data: Haunted by the Dark Figure, Milton Keynes: Open University Press


374


Hilson, C. (1993)'Discretion to Prosecute and Judicial Review', Criminal Law Review; 739 - 747


378


Newburn, T., Brown, D., Crisp, D., and Dewhurst, P. (1991) 'Increasing Public Order', *Policing* Vol. 7 (1); 22 - 41


Rowe, M. (1994) 'Race Riots' In Twentieth Century Britain, Leicester: Centre for the Study of Public Order


Smith, D. J. (1997) 'Case Construction And The Goals Of Criminal Process', *The British Journal of Criminology*, 37 (3); 319 - 346


Tevlin, A. (1993) 'Motives For Prosecution', *Journal of Criminal Law*, 57(3); 288 - 297


Williams, G. (1985) 'Letting off the guilty and prosecuting the innocent', *Criminal Law Review*; 115 - 122
