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DPP - John Harris Memorial Lecture

— 05 September 2017 | [News](#)

Speech from Alison Saunders, DPP, on developments in technology and society, and addressing terrorism, fraud and mental health issues.

When the Police Foundation started holding this annual lecture the Crown Prosecution Service was but a twinkle in a Home Office white paper somewhere - this event was in its fourth year before we in the CPS could even have been on your invite list.

So what were these lectures about while the CPS was being established then developing into the organisation we are today?

Well in 1986 - the year the CPS was founded - the annual lecture was delivered by Sir Kenneth Newman, Commissioner of Police of the Metropolitan Police Service.

He talked about relations between the police and the public - but in doing so reflected on the pace of change that policing had seen.

He said: "It was in 1970, 16 years ago, that Alvin Toffler published *Future Shock*. It is dated now, precisely because of the accuracy of its main message, that the pace of change is constantly accelerating, and as individuals we find it increasingly difficult to keep up. It is not just those of pensionable age who regret the pace of change, but the middle-aged, those who have to cope with it for the second half of their working lives."

Without getting into the subject of which age groups might or might not regret change, I think we can agree the pace of change is still accelerating - and dealing with the changes we face today is the subject I want to focus on today.

First though I want to mention another previous lecture. After the death of Lord Harris of Greenwich, the founder of the Police Foundation, in 2001 the event was renamed the John Harris Memorial Lecture - acknowledging his unique contribution.

And in 2001 the late Lord Williams of Mostyn had quite a bit to say about the CPS - including this:

"The Crown Prosecution Service is making a big effort to increase its profile, and in particular the profile of each of its chief crown prosecutors. All chief crown prosecutors have established contact with their local MPs, and local media. Some have appeared on television, many in their local newspapers ... I hope that we can see the Crown Prosecution Service opening its doors to members of the public in future, showing people round offices and explaining what they do."

Now I can't quite claim to have been at the CPS for its entire history, but it was still pretty early days when I joined in September 1986. Thinking back about the difference between then and now what is striking is that back then we didn't talk to anyone - not the police, we didn't speak to the media.

Lord Williams noted we had moved on somewhat by 2001 - and I hope would have been pleased to see how much more open, and accountable we are now. We 'opened our doors' quite wide when we took part in a BBC documentary focused on our work last year - and I'll talk a bit later about new ways we are engaging with the public now and how we make our decisions.

So what I plan to do this evening is:

- First explain how in the CPS we have adapted our approach to deal with developments in technology and society - particularly in relation to social media and hate crime.
- Before going on to look at three challenges we in the criminal justice system are currently facing - how we have responded so far and what more we need to do. Those challenges are terrorism, fraud and mental health issues.
- I'll then try to pull some common themes out from those subjects which I hope can help the CPS and police to continue to provide the best possible service to the public - which is what we are all about.

It's quite a bit to get through and I hope you will enjoy the next three hours.

The easiest way to demonstrate how we've adapted to change is to take an example which did not exist for the majority of the CPS' history.

When we were established in 1986 there was no such thing as social media. Online communication platforms like Facebook and Twitter did not even come into existence until the mid-2000s, yet Facebook now say they have over 2 billion monthly users worldwide. Individuals are using the internet to communicate more than ever and it has become increasingly clear that amidst the hundreds of millions of messages sent each day, some amount to criminal conduct. As with everything it is a minority spoiling it for the majority.

Despite social media being new, there was already legislation in place which could be used to police it - the offence of sending a message via a public electronic communications network, namely the internet. The message has to be threatening, false, indecent or grossly offensive and it must be intended to cause distress or anxiety to the recipient, whoever that might be.

However, the challenge for us has been to correctly interpret the meaning of the words "grossly offensive" and "threatening" which we have found to be the two main categories of potentially criminal communication.

Comments and contributions on social media are often almost instantaneous emotional reactions and poorly thought through. Conversations which would have been dismissed and disregarded as simply rude and insulting in for example a bar setting, are now published and accessible to the general public, some of whom are bound to take offence at an infinite variety of sentiments and ideas that are expressed on social media.

Great care must therefore be taken before criminalising a simple comment - but we also have a responsibility to protect individuals. So this is quite a challenging balance.

To address this challenge we developed new guidance for our prosecutors. Since the CPS was founded we have continually evolved our policies and guidance to adapt to changes in crime and wider society - initially through what was known as the 'red manual' of CPS policy, and through regular 'policy circulars' which were distributed. The format has thankfully changed now but policies and guidance have remained an important and effective way for us to address issues as they arise.

Our guidance on social media cases makes a clear distinction between:

- on the one hand communications which amount to credible threats of violence, a targeted campaign of harassment against an individual or which breach court orders;
- and on the other hand communications that are grossly offensive.

The first group are more likely to be prosecuted whereas the second group will only be prosecuted if they cross a high threshold. The courts have defined grossly offensive as meaning more than offensive, shocking or disturbing even if painful to those subjected to the message - being offensive or insulting in itself is not a crime.

This is because the prospect of a very large number of these cases being prosecuted has the potential for a very chilling effect on free speech. Article 10 of the European Convention of Human Rights provides the right to freedom of expression and information - it is a qualified right, but it can be restricted only where the restriction is both necessary and proportionate.

Threats, however, I am pleased to say, have never attracted the same protection under Article 10 as an expression of opinion.

We first published guidelines on this subject in 2012. But we are constantly working to ensure that our guidance stays relevant to modern crime so last year we updated them.

Among other changes we needed to add:

- 'virtual mobbing' - those who encourage others to participate in online harassment campaigns;
- 'doxxing' - making available personal information, for example a home address or bank details;
- and

- 'sexting'.

We also included new sections on violence against women and girls (VaWG), hate crime and vulnerable victims - alerting prosecutors to cyber-enabled VaWG and hate crime offences. These can include 'baiting', the practice of humiliating a person online by labelling them as sexually promiscuous or posting photoshopped images of people on social media platforms. All of this is a new way to target individuals.

And this brings me on to hate crime - another area where our approach has evolved over time to ensure we are best protecting all victims of hate crime, wherever it takes place.

A search through our archives tells me that we issued one of our 'policy circulars' on racially motivated attacks back in 1987 - so this is not a new phenomenon - setting out that racial motivation is an aggravating factor pointing towards prosecution.

Since then our guidance on hate crime has developed significantly - taking account of new legislation and, sadly, new forms of hate crime.

Events in Charlottesville in the US during August focused minds around the world on the issue of hate - and for us in the UK that came at a time of increasing reports of hate crime.

Home Office figures showed that police-recorded hate crime across England and Wales rose by more than 20 per cent in the first quarter of 2017, compared to the same period of 2016. And if we look over a longer period the number of hate crime prosecutions rose from just under 10,000 in 2005/6 to more than 15,000 ten years later.

The extreme events in America may seem remote from our own situation, but we should remember that there are spaces where extreme views on issues such as race, religion, sexuality, gender and even disability are openly expressed by people in the UK.

This includes of course the online world I've just been discussing - where an increasing proportion of hate crime, we found, is now perpetrated.

In new public statements on hate crime we published last month, along with new legal guidance for prosecutors, we commit to treating online hate crimes just as seriously as those experienced face-to-face.

This does not mean - as some have suggested - that we want to prosecute every nasty remark on Twitter. This is not about restricting free speech - that is not what we are about. This is about hate crimes that we would not tolerate in the street - and so should not tolerate online.

In a world where an ever greater amount of our time is spent online, it is only right that we do everything possible to ensure that people are protected from abuse that can now follow them everywhere via the screen of a smartphone or tablet. The sad fact is that some groups in society still believe that abuse is part of their everyday life.

My message to them is that the CPS, police and others in the criminal justice system are ready to listen and, where we have the evidence, hold those committing hate crimes, online or offline, to account.

It's important that message is heard - and so alongside publishing our new statements and legal guidance last month we also ran a public campaign to encourage people to come forward and report hate crime.

Thank you to all our police partners and others who were involved in and supported this campaign. This is relatively new territory for the CPS - building on our first major campaign about sexual consent - but, I believe, crucial if we are to effectively tackle issues such as hate crime, which is not only damaging for individuals but also society where it sows the seeds of division and intolerance.

When we speak out about polarising issues like this it is inevitable that we will attract some criticism - we know that not everyone agrees with what we do and how we do it, but it is good to see debate and that in itself promotes awareness. The negative views are balanced by the support we've seen from affected communities, and also the number of people we can reach with important messages - in this case about what hate crime is and the importance of reporting it.

With this campaign we potentially reached almost 24 million people, with our campaign hashtag #hatecrimematters potentially seen more than 65 million times. So - a good way of raising awareness of what hate crime is and what people are suffering from.

So - social media and hate crime. Two issues where we have responded to developments in society and technology - adapting our approach - to make sure we continue to deliver justice.

The policies and guidance we have on these and other issues are not a substitute for the law - and they do not detract from the Code for Crown Prosecutors which governs our decision making in every case. They are to assist prosecutors in making decisions on individual cases by setting out in one place the information and guidance they need.

They also play an important role in public accountability. The public can have a say in shaping our policies through consultation; they can see clearly the basis on which we will make our decisions; and they can judge our decisions against those policies.

As such they are a key way for us to respond to and deal with some of the changes we see in society.

But there are other challenges - areas where we have already achieved a great deal but where it is vital the police and the CPS continue to work together if we are to effectively tackle some of the big issues facing the criminal justice system and wider society today.

I'm going to cover today two areas of serious crime - terrorism and fraud - and the wider issue of mental health within the criminal justice system.

I'll start with terrorism.

It may feel like we've been living with the threat of international attacks for a long time - next week will be 16 years since 9/11. But it's an ever changing picture that we and the police have to deal with.

We have seen a significant rise in the number of cases we receive and prosecute over the last 3 years - with live cases rising from 167 in April 2014 to 258 in June 2017.

And it's not just the number of cases that is changing - terrorist behaviours and methods are also constantly evolving.

In the past we were mainly dealing with complex, coordinated plans for large-scale attacks - more recently we have of course seen the so-called 'lone-actor' attacks - often undertaken by individuals or small groups acting alone, with lower-tech methods. And since Daesh took over large areas of Syria and Iraq in 2014, many of our Counter Terrorism cases involve people who have travelled to Syria.

The quantity and nature of digital material is also increasing which is an additional complexity. An average CT investigation recovers approx four terabytes. The more significant investigations typically recover 10+ terabytes and a large investigation will be 20+ terabytes.

To put that into context, let's say you wanted to store one of those average cases with 4 terabytes and put it on an iPad. Well first you would need to delete all the apps from the iPad so you can use all the storage. Then you would need to delete all the apps from the iPads of 124 friends.

Because in total you would need 125 empty iPads to store just an average CT investigation which is a huge amount of material.

So how are we in the CPS dealing with these changes in CT cases?

- we have increased the size of our Counter Terrorism Division team;
- our prosecutors have developed their knowledge and skills to tackle the shift in threat. A key way we have done this is by our prosecutors spending time with and further understanding the work of the security services and counter terrorism police; which brings me to my final - and crucial - point
- we build cases alongside the police and security services - for example, in May we had two lawyers working side-by-side with the police in Manchester for 10 days in the wake of the attack there during the key period of investigation. We are clear about our mutual roles and independence but this leads to stronger, more focused cases and earlier prosecutorial decisions.

Our CT lawyers are available to provide the police and security services with investigatory advice 24/7 - this takes place through the life of a case, from the early operational stage, through advice on issues such as warrants and then on potential charging decisions where appropriate. This approach is even more essential with the recent changes in terrorist methods.

All this has helped us to maintain a conviction rate in terrorism cases of over 80% - and we will continue working to adapt so we can successfully prosecute dangerous criminals who plan and attempt terrorist activity.

Another area where we have seen major change in both caseload and case type in recent years is fraud.

Fraud is now the most commonly experienced crime in England and Wales - with an estimated 3.4 million incidents in the year ending March 2017. Over half of these (57%, 1.9 million incidents) were cyber-related.

In the CPS we have seen an increase of 31% in fraud and forgery cases since 2011.

But a comparison of data from different sources suggests that only 17% of victims of fraud report to the police or Action Fraud - so there is potential for this figure to grow significantly further.

Fraud is also changing as a result of evolving technology, which provides new opportunities to criminals to cloak their activities.

It is increasingly enabled through the internet and the use of digital devices. The data alone increases year on year and the frauds often cross international borders, involving large corporate structures.

Each of us now carries around with us devices that hold a huge amount of data and this makes investigation and prosecution of criminal offences more complex.

The used and unused material in a complex fraud case may be measured in multiple terabytes or even petabytes. And given the challenges both the police and CPS face in fully meeting our disclosure duties in far smaller cases - this is a major issue for us both.

Keeping the scope of the case within reasonable limits so that trials are manageable at court is a constant challenge. We try to mitigate this risk by frontloading the disclosure process prior to charge - allowing cases to proceed efficiently and effectively at court. But that means us working together effectively from an early stage - and both taking our disclosure responsibilities seriously.

You will all be familiar with the recent HBOS case which involved a £245 million loss. In this case there were in excess of 200,000 pages of evidence which was served and in excess of 8,000 items of scheduled unused material. The electronic material contained terabytes of material, including a memory stick containing over 32,000 documents which had to be manually searched. This is not a rare case.

Fraud is not limited by international boundaries so it is vital that we have good and effective international relationships with prosecutors and judges overseas. The ability to secure the right evidence from abroad and collaborate effectively - especially where the jurisdiction to prosecute is shared - is central to our work. And so as Britain leaves the EU we will need to ensure we continue to have effective relationships with our European and other counterparts in the international sphere.

The complex nature of fraud can also often require painstaking analysis of financial transactions. This was the case in Operation Greenyards, where two city traders conspired to defraud a Russian bank of more than £141million. The proceeds of the fraud were moved around the world including the Caribbean, Switzerland and Eastern Europe in an effort to cover up its origins. The financial analysis allowed us to outline the individual roles which each defendant played which resulted in a successful conviction. The men were sentenced to 12 years' and 7 years' imprisonment. But we wouldn't be able to do this without the evidence from abroad and without the data.

So what is the CPS, the wider criminal justice system and government doing to address these challenges?

- We have a dedicated, specialist fraud division to ensure we devote the right skills and resources to prosecuting complex and serious fraud and corruption. Their work ranges from prosecution of bankers and investment scams to prosecuting those who seek to defraud the taxpayer of millions of pounds. As fraud continues to evolve and we continue to see an increase in online fraud, our specialist division is ready and prepared with the necessary skills and experience to prosecute these cases.
- We are available to be involved in cases at the earliest opportunity. There is a real risk that a fraud can be perpetrated over a long period of time, involving more victims or greater losses, or allowing evidence to be destroyed or removed with the investigation and trials taking longer than they need to.
- We are working more digitally ourselves as we prosecute digital crime. The criminal justice system certainly can't claim to have been at the forefront of the technological revolution - and there is still a lot more to do - but in the past few years we have made significant progress. We are all now working digitally. We now receive cases electronically, we deal with them in the office electronically, and in most cases "we serve the papers" electronically. We are also increasingly making use of ICT in the courtroom itself using iPads in a number of our trials. (But don't worry - each juror doesn't need 125 of them.)

All this action has helped us to maintain a conviction rate of 86% and above in recent years, despite the new challenges we face.

However, we would be very foolish to think that we've seen all the changes and are now dealing with a stable picture. Technology will continue to evolve, and so will the fraudulent use of it - and we need to anticipate those changes and plan now for the future.

So what should we be doing?

What new skills and capability do we need to develop - for investigators and prosecutors? A National Audit Office report published last September set out that 1 in 6 police officers' main function was neighbourhood policing while 1 in 150 police officers' main function was economic crime. Within the CPS we have specialists within our Specialist Fraud Division, but many cases are dealt with elsewhere in the business - so we also need to make sure our generalists have the skills they need for fraud cases. Here our specialists can help by providing advice and assistance to our generalists where necessary.

Should we be doing more to help those around us understand the risks of becoming victims of fraud?

Almost everyone in this audience will have received a phone call or email seeking to extort funds or offering the opportunity of an investment scheme. Hopefully as people dealing with crime on a daily basis we can identify these for what they are.

But we need to work together across the criminal justice system and more widely with banks, businesses, charities and beyond to help educate others so they can avoid becoming another victim of fraud.

Another area where we need to consider how to work together better is in the area of mental health. 1 in 11 of us are expected to have a serious mental health issue at some point in our lives.

Along with everyone else, I have seen the reports of the significant increase in the amount of police time taken in dealing with mental health issues over the past few years.

At the other end of the criminal justice process, there are significant issues with prisoner mental health. Recent reports show 49% of prisoners have anxiety and/or depression (compared to 15% of general population) and 16% reported symptoms indicative of psychosis (compared to 6%).

Also, mental health issues seem to be linked to higher rates of reoffending: studies suggest that 61% of male prisoners with symptoms of depression were reconvicted within one year compared with 47% of those without. 66% of women with depression were reconvicted, compared with 31% without these symptoms.

These are clearly concerning figures for us all. So in the CPS we recently decided to examine a sample of our cases to see how many involved mental health issues and what impact this had.

We found that in at least 1 in 5 cases there was a defendant, victim or witness with a mental health issue.

We - either CPS or police - only identified these issues in our initial review of the cases in 31% of those cases. If we don't identify that there is a mental health issue early in a case then it is not taken into account in decisions to charge and may result in cases entering the system where defendants are better dealt with through a mental health intervention.

In addition we found that the mental health difficulties of defendants led to delays in a number of cases - with more hearings leading to greater use of court resource and delay in outcomes for victims and witnesses. Similar numbers of cases were discontinued at court due to the mental health issues of victims and witnesses which, if identified earlier, could either have led to better support and help being put in place to allow them to participate successfully in the cases, or quicker resolution.

So how can we improve the situation here? I know that the police and NHS England have been working to put in place more and better liaison and diversion services in custody suites across the country so that mental health issues are identified more often and more quickly. But we need

better arrangements for making sure that prosecutors have the information available to them when making charging decisions.

The presence of a mental health issues does not mean, automatically, that we are less likely to charge. We need to consider many factors including the seriousness of the offence and the public interest in prosecuting. But having the information means that the decision is fully informed rather than being based on a partial picture.

From a CPS point of view we need to be sure that our guidance on dealing with mental health for defendants, victims and witnesses remains relevant and reflects society's views on such issues. For example our current guidance on defendants is based on the relevant legislation - from the last century but still in force - and so uses the term 'mentally disordered offenders'. I don't think that language is appropriate so we are considering how we might update it, not just in relation in the language but also in the issues that may help offenders.

We also need to ask whether we are clear on issues which occur more often. For example, there is a significant increase in cases involving defendants or victims and witnesses with dementia, raising questions around mental capacity. A good example is in the increasing number of offences against the person in care homes or committed by older people. Does our current guidance do enough to help officers and prosecutors in their decision making in such cases?

We are looking at our guidance on mental health to make sure that it is still fit for purpose in our changing society and want to work with the College of Policing to make sure our guidance is aligned as far as possible and that our processes for information sharing are as effective as they can be.

That will be published and we will welcome your views.

In the examples I've discussed tonight - social media, hate crime, terrorism, fraud, mental health - I see two very strong themes.

The use of technology - to both commit and tackle crime - and how the CPS and the police work together.

So - starting with technology.

We've started to make it work for us.

There are countless opportunities out there - or soon to be out there - which could help reduce crime, help the police to investigate it, and help us to prosecute it.

Driverless cars could significantly reduce road accidents.

Victims and witnesses can record incidents and report crimes from their mobiles using simple apps which provide the police with huge amounts of information.

Artificial intelligence has the potential to help us with the huge disclosure tasks we face in the terror, fraud and other cases where we've got terabytes of material. But as technological solutions become more advanced, they also raise important questions for us to consider.

Who is to blame when a 'driverless' car malfunctions, giving control back to the driver moments before a crash?

If victims and witnesses are submitting evidence through mobile apps, how do we know they are not being unduly influenced by someone else? And what does it mean for our current approach of a witness not seeing their police statement in the time before they give it, and when they come to court to give evidence? We do that to avoid the witness rehearsing their evidence.

And on artificial intelligence, researchers at UCL have created an 'AI judge' - based on data sets for 584 cases heard before the European Court of Human Rights, the AI judge analysed the information considered by the court and reached the same verdict in 79% of cases. Meanwhile the US National Bureau of Economic Research has produced an algorithm to predict whether defendants are a flight risk. This has been tested in New York where it was shown to be more accurate than judges.

Fascinating - but raising fundamental questions about what 'decisions' it is appropriate for computers to make.

I want technology to help victims and witnesses have a better experience of the criminal justice system.

I want technology to help us manage huge volumes of material that can be initially assessed digitally - allowing my teams to spend their time on the work where they add most value.

And I want us to make use of large data sets to discover patterns and trends which help us to focus our resources.

But we need to think about the impacts - and we need to be clear about what we can tolerate and what we cannot. And we can only do that if we work together to anticipate the changes that are coming and make them work for us.

Which brings me to the other theme I identified.

How the CPS and the police - and beyond to the wider criminal justice system and others - work together.

As technology changes the way we work, and society changes too, we need to continue to develop how we collaborate - maintaining and building strong relationships to suit the challenges we face.

And I think there are some key things we should be doing together:

We need to have an open conversation about how we deal with the increasing prevalence of mental health issues in the criminal justice system. We need to tackle this together because it is not just an issue for the police, or the CPS - it is an issue for the whole criminal justice system, and our whole society.

We also need to finally deal with disclosure in all cases - not just the bigger, more serious cases. The recent HMIC/HMCPSI report showed we haven't done that yet - but we absolutely must.

With the size of cases we are now dealing with in fraud, terrorism and elsewhere, it's an increasingly difficult task - the Criminal Procedure and Investigations Act of 1996 could not have envisaged some of the issues we now have with digital material. We have the Attorney General's guidance, which was updated in 2013, but do we need to look at this again.

We need to stop and together decide how we make sure we both get this right.

To help us do this we are holding a roundtable discussion - bringing together not just the CPS and the police but also inviting other experts such as the Law Commission, Treasury Counsel and defence representatives to consider options and find solutions.

I'm sure one of the issues that will be discussed is the optimum point in a case to consider disclosure, which brings me to my final point - The stage at which we work together on key cases.

We have arrangements for early investigative advice in particular case types - but are these the right case types? And where it happens, is it happening in the most effective way?

When discussing terrorism and fraud cases I demonstrated the positive impact of CPS and police teams working together at an early stage, so should this be extended? Might it be useful in all intelligence-led cases? Or all indictable-only offences?

I'm not suggesting we make it mandatory in more cases, but if we recognise the benefits it can bring should we not consider taking advantage of those benefits more often while preserving the fundamental and important separation between investigators and prosecutors?

The police are experts in investigation. The CPS are experts in prosecuting. But these are not two separate processes - they do not exist in a vacuum with each other. A really good investigation is nothing if it can't lead to a successful prosecution. And a brilliant prosecution will not succeed unless it is based on a sound investigation.

We need each other - so why would we not take every opportunity to learn from each other and work together in the interests of justice and society?

I hope we continue to do so and we continue to improve the service to society.

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