Background

1. The Crown Prosecution Service (CPS) was set up in 1986 under the Prosecution of Offences Act 1985 as an independent authority to prosecute criminal cases investigated by the police, and other investigators, in England and Wales. In undertaking this role, the CPS:
   
   - advises the police during the early stages of investigations;
   - determines the appropriate charges in more serious or complex cases;
   - keeps all cases under continuous review and decides which cases should be prosecuted;
   - prepares cases for prosecution in court and prosecutes the cases with in-house advocates or instructs agents and/or counsel to present cases; and
   - provides information and assistance to victims and prosecution witnesses.

2. Before charging a defendant and proceeding with a prosecution, prosecutors must first review each case in accordance with the Code for Crown Prosecutors. The Code sets out the principles which prosecutors follow when considering cases. The key principles are that a prosecution should only be started or allowed to continue if there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge, and, if so, where a prosecution is needed in the public interest.

3. The Code for Crown Prosecutors is supplemented by legal guidance for prosecutors which provides a detailed framework within which prosecutors take their decisions in individual cases to ensure consistency of approach throughout England and Wales. The guidance is publicly available via the CPS website.

4. The CPS supports the aims of HMCTS Reform to modernise the court service and improve the experience of the criminal justice system for all users. The principles underlying the proposals have the potential to improve efficiency by making full use of digital capabilities. They also have the potential to improve the criminal justice experience for victims and witnesses by creating a system which is: fair and transparent; digitally or physically accessible; and more proportionate to the nature and value of the dispute at issue.
5. The CPS will continue to work in partnership with HMCTS in the Crime Programme, influencing the design to ensure proposals work for CPS prosecutors and other users of the Criminal Justice System (CJS), however some plans are still being developed which makes the full impact of the changes difficult to ascertain.

6. The CPS, and other Criminal Justice System (CJS) agencies, are most significantly impacted by two strands of the Crime Programme:
   i. Crime Service Model - new end-to-end processes which aim to remove significant proportions of casework from the courtroom by dealing with this online or by video hearing.
   ii. Common Platform - a shared HMCTS and CPS case management system and one of the key digital enablers for new ways of working.

7. The CPS is represented at all levels across the programme:
   - The CPS Chief Executive is joint Senior Responsible Officer for the Common Platform;
   - The CPS Chief Executive and Director of Business Services are members of the Criminal Justice Integration Board, chaired by Susan Acland-Hood (HMCTS Chief Executive), which oversees the impact of the Crime Programme on all CJS agencies; and
   - CPS staff work within, or alongside, the programme representing CPS interests.

What will be the likely effects of the reforms, both implemented and proposed, on access to justice in relation to criminal justice and those who are digitally excluded or require support to use digital services?

8. Three aspects of the proposed Crime Service Model significantly change the way users, both public and professional, will interact with the CJS: video hearings; online plea; and online case progression.

9. Many of the principles underpinning the proposals are to be welcomed, for example improving case progression by removing administrative issues from the courtroom and dealing with them online, thereby freeing up the courtroom to progress more serious matters. The details of the proposals are under development and when that work is completed we will be able to provide a fuller assessment of their full impact. The
proposals are predicated on a number of assumptions, for example the percentage of defendants who are willing and able to engage digitally. The assumption that defendants will be able to engage in this way will need further testing in order to ensure that the impact of the changes does not disadvantage those for whom digital access may pose a challenge, such as people who do not have a fixed address, those with disabilities or older people.

10. HMCTS must ensure the courtroom remains available and accessible as the backstop arrangement, especially for those whose disability prevents them from accessing justice digitally as such reasonable adjustments are likely to be a requirement under the Equality Act 2010. To what extent this may result in a dual system is as yet unknown but will be evidenced through pilots. Some prosecutors may be required to appear remotely for video hearings and others required to appear in court for physical hearings. The pilots will reveal whether new arrangements will impact on the total number of prosecutors required to cover court sessions.

11. The proposal to increase the use of video hearings will impact on the way all users interact with the CJS and with each other. The CPS considers video hearings are appropriate for overnight remand cases and case management hearings but not trials.

12. Currently there are circumstances where a participant in a hearing may appear by video from a location other than the courtroom, for example, a defendant appearing from prison or a witness giving evidence from overseas. In seven police forces this has been expanded to include defendants appearing from custody suites in overnight remand cases.

13. The model proposes (subject to legislation) that in suitable overnight remand cases, all parties - including the judiciary/bench - will appear by video, thus removing the need for a hearing in a physical courtroom. A ‘fully video’ hearing requires technical solutions to ensure all parties are able to communicate effectively - as they do in a physical hearing. For example, meetings may take place between CPS prosecutors and defence representatives, CPS prosecutors and victims (or their families) and defence representatives and their clients. A technical solution is needed to ensure such engagement can happen in a timely and efficient manner.

14. The CPS recognises the benefits of video hearings, for example the ability for participants to appear from any location increasing flexibility with staff deployment.
The technology to support pre-hearing engagement must be well designed and meet the requirements of all users. Work is underway to develop this technical solution.

15. HMCTS recognise the critical importance of ‘justice being seen to be done’ and therefore video courts must be accessible for members of the public and media who have the right to observe hearings should they wish to.

16. The CPS recognises the successful launch of the facility to enter a plea online in Single Justice Procedure cases, for example Transport for London cases, and sees merit in digital solutions for these simple, summary, non-imprisonable offences.

17. The CPS understands that HMCTS is committed to putting in place strategies to encourage a change in defendant behaviour and support a shift from physical to digital channels.

18. The model proposes that if defendants indicate their plea online, subject to a judicial decision, they may be discharged from the requirement to attend their first court hearing. The criteria on which the judiciary will base this decision is being developed. The CPS will work with HMCTS to ensure that robust judicial case management will be maintained when parties are not brought together in a physical or virtual environment – and subsequently how to retain the benefits delivered as a result of Transforming Summary Justice (TSJ) and Better Case Management (BCM). TSJ and BCM are judicial initiatives that have delivered benefits for all users of the system. TSJ and BCM emphasise the importance of early engagement between parties and identification of the relevant issues in a case from the outset, resulting in the early resolution of matters, fewer hearings and reduced delay between first appearance and trial. This is an efficiency benefit for the CJS and an improvement in experience for all users.

19. The CPS welcomes the development of online case progression and recognises the substantial CJS-wide benefits. The increased visibility of case progression activity undertaken by all parties, and greater visibility by the judiciary of compliance with orders and directions, will improve the timely preparation of cases and increase the effectiveness of hearings.

What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in
HMCTS staffing under the reform programme? For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

20. Court closures have potential to impact victims and witnesses who are required to attend court to give their evidence. The impact may be increased travel time and costs, or an increase in non-attendance. Based on available CPS management data however there is no evidence to support that this risk has materialised thus far.

21. If there is greater availability and use of video links to enable witnesses living a considerable distance from court to give their evidence remotely, the risk of witness non-attendance may well be significantly mitigated.

22. Another impact of the Court Reform programme for the CPS is the impact that it is likely to have on prosecutors. Court closure, for example, may affect CPS staff if they are required to travel further to and from court, either from home or their CPS office.

23. However, the CPS considers that video hearings and online processes are workable alternatives to physical hearings providing the enabling technology is well designed and accessible. A future courts model will however need to be a mixture of digital participation, either online or by video, and access to physical courthouses or courtrooms where it is not possible for victims, witnesses or defendants to engage digitally. Systems will need to be in place to ensure victims and witnesses giving evidence remotely are fully supported. Additionally, this will impact the way CPS staff work and may change some individual CPS roles. The CPS will consider the impact on staff when more details about the future model are known.

Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with relevant stakeholders?

24. HMCTS have processes and mechanisms in place to engage and consult with stakeholders. Significant effort was made during the Crime Service Model Discovery phase to consult with the CPS, judiciary and other stakeholders on the proposals and details of the new ways of working and processes.

25. The CPS has been consulted on the development of the proposals, providing consistent and robust feedback as to the likely impact on CPS staff and existing processes. The
CPS will continue to work closely with HMCTS to provide feedback as proposals develop.

Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future?

26. HMCTS is committed to a full evaluation of the planned changes. Some proposals remain at an early stage, and the details of their full evaluation plans are not yet available.

27. Work has begun on a cross-CJS cost model to enable a better understanding of the financial impact of proposals and where costs are displaced between agencies.

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