

## CROWN PROSECUTION SERVICE (CPS) COMPARATIVE ANALYSIS OF COSTS

The NAO received correspondence from a Member of the Public Accounts Committee regarding the savings claimed by the CPS in respect of the use of in-house advocates. The correspondent asked whether the methodologies used to calculate savings stand up to proper scrutiny and whether CPS spending on in-house counsel is economic, effective and efficient. In response, the NAO team which undertakes the audit of the CPS, has carried out a review of the Europe Economics report, drawing on evidence from a variety of sources, including the CPS's own documentation, meetings with the staff from the CPS itself and the CPS Inspectorate (HMCPsi), and a recent HMCPsi report *HMCPsi Report of the thematic review of the quality of prosecution advocacy and case presentation*.

Europe Economics disagreed with the CPS's approach of using short-run marginal costs and consider that the CPS's analysis also did not meet government standards in not assessing costs and benefits, being insufficiently transparent and not correctly treating property costs.

### Summary of findings

From our review, we found that the methods for the calculation of counsel fee saving figures are reasonable and fairly transparent, in line with HMT efficiency guidance and subject to audit review within CPS and HMCPsi. If anything, the systems for calculating savings may be overly detailed and could be streamlined to concentrate on key savings.

The Business Case underpinning the Advocacy Strategy is predicated on the qualitative benefits, but it has also had the effect of generating financial savings. The more qualitative benefits of the Advocacy Strategy are to be assessed formally, both internally and externally (by the BPP Law School) through the Advocacy Quality Management Strategy. We consider that there is scope for greater refinement of the measurement of financial and quality performance, and the process for ongoing validation and review.

We set out our analysis and findings in greater detail below.

### **How the CPS calculates savings from the use of in-house advocates**

#### NAO review of savings figures

The CPS reported that the deployment of in-house advocates achieved gross savings of £17.1 million (excluding VAT) in external fees paid to Counsel in its 2007-08 Annual Report. However, it also reported £8.4 million efficiency savings in a June 2009 press release (see CPS website [www.cps.gov.uk](http://www.cps.gov.uk)), which is also referred to in the report commissioned by the Bar. The former savings figure is a 'gross figure' in that it does not include the additional costs incurred by the CPS as a result of the decision to use an in-house advocate. The efficiency figure reported is the difference between total savings (including VAT) less associated costs. We provide further analysis on both the gross and the net figures below.

We have looked at the methodologies used by the CPS to calculate the £17.1 million saving claimed in 2007-08. The CPS calculates the individual savings for each case where an in-house advocate is used based upon the estimated external counsel fees that would have been incurred had external counsel been used. We reviewed the process for calculation of savings and found that there were good arrangements for recording and validation, through a robust process of recording data for each court session, as well as internally conducted audits of these figures. We found no significant weaknesses in the process, which provides assurance as to the accuracy of the savings figures.

The CPS efficiency figure of £8.4 million in 2007-08 is the difference between savings from the deployment of in-house advocates less the costs of their deployment. These costs comprise time spent on cases, pro-rated from actual gross salary costs, plus 10.5 per cent overheads covering certain variable costs (including training, recruitment, travel and subsistence, IT). However, it excludes other overhead costs such as accommodation, in-house advocate downtime and other administration costs. We consider that the principle of using the marginal cost of deploying in-house advocates i.e. taking account only of costs that vary between options, is appropriate and it is standard practice when evaluating different options. Nevertheless, assumptions have been made by the CPS that the differential costs relating to certain overheads are not significant for doing this calculation, and have, therefore, been omitted.

It is clear that there is either a misunderstanding of the CPS's approach or some disagreement between CPS and the Bar Council about what is truly differential, not least about costs incurred in providing services on an ongoing basis, that include overheads. Therefore, longer term, there is scope for the two parties to reach an agreement on which costs vary across options and to what extent, and then repeat the costings, if necessary for transparency, on an all costs basis. Such developments, combined with ongoing internal and external validation of quality performance measures and of the financial efficiency calculation should lead to a greater shared understanding of how CPS is assessing the quantitative impact of the advocacy strategy.

#### HMCPsi review of savings figures

HMCPsi have also carried out a review of the advocacy efficiency saving figures and concluded that "the figures are sufficiently accurate to indicate that the advocacy programme does deliver savings in financial terms" and also stated that "there are too many variables to make an accurate projection of savings on an individual case possible".

#### Other issues raised by the Bar

The Bar report also comments on the apparent inconsistency between the £5 million decrease in external counsel fee and the £16 million increase in staff costs (per the financial statements between 2006-07 to 2007-08) and the claimed efficiencies. We have confirmed that the main reasons for these differences are the increased caseload activity in Crown Courts (taken into account in the CPS' Efficiencies calculation), and the grade restructuring exercise within CPS. Another issue cited in the Bar report is the difference between counsel fees in the CPS calculation and the financial statements, which is due to slightly different classifications of counsel fees included in the financial statements and in this CPS calculation, for example for advice. The inclusion of VAT in the figure, is also raised, but seems appropriate given that this is currently a cost to the CPS.

#### Government efficiency standards

Although we have not carried out an in-depth efficiency review, the overall methodology adopted by the CPS does not appear inconsistent with the Government standards of Efficiency Principles. Also, as the figures have been, in part, recently assessed as sufficiently accurate by HMCPsi we do not consider there is merit in re-opening this issue for more detailed NAO review at this time.

The Bar report also refers to HM Treasury's Green Book and the Department for Business, Innovation and Skills' Impact Assessment Toolkit, but we consider that the HM Treasury Efficiency guidance is most relevant.

## **Has the use of in-house advocates improved the quality of advocacy at court?**

### Broad assessment of Advocacy Strategy

The decision by the CPS to increase the use of in-house counsel was made to transform the CPS into a Service which routinely conducts its own high quality advocacy in all courts, efficiently and effectively, as stated in the business case, and various factors are taken into consideration in individual deployment decisions. The CPS is of the view that use of in-house advocates improves the quality of its advice to the police about investigations, improves its charging decisions, and contributes to better witness care and broadens career opportunities.

The CPS produced a comprehensive business case for the Advocacy Strategy in 2005-06, including project plan, risk analysis and cost-benefit analysis, and this has been updated as appropriate. The £17.1 million HCA savings figure and £8.4 million efficiencies figures only represent part of the benefits and measures in the business plan. The CPS identified ten high level benefits for the programme, falling under four categories: capacity, quality, confidence/satisfaction and efficiency/value for money. Initially there were minimal performance measures and no baselines to assess performance, however, as mentioned above, the Advocacy Quality Management Strategy, a national system of advocacy assessment was announced in June 2006 to include assessment of these broader 'quality' measures.

### Other reviews of quality

The HMCPSi report focused on the quality of prosecution delivered by the CPS Advocacy Strategy programme. HMCPSi identified that across the board there were still a small proportion of CPS advocates, and a very small proportion of external advocates (the majority of whom were from the Bar), who were less than competent. HMCPSi found that there was a difference in quality across different types of hearing by type of advocate, and that, although there was "insufficient focus on quality in the early days", advocacy assessors were being introduced from September 2009.

### **Economy, effectiveness and efficiency**

The question of whether spending on in-house counsel is economic, effective and efficient is a broader question, but also relates to the overall consideration of the various 'quality' and 'financial' aspects as referred to above. The more thorough assessment of the various benefits and costs of the scheme underway will provide a more definitive answer, but as discussed, there is evidence that certain financial benefits have already been achieved.