**Special Session: Independence of Prosecution Services**

**International Association of Prosecutors**

**26 September 2022**

**Opening**

Good morning, it is my pleasure to be hosting this special session on the independence of prosecution services. I am grateful to be joined by such distinguished speakers. Before I hand over to them I will briefly give my reflections on independence – which is fundamental to the existence of the Crown Prosecution Service – or CPS – of England and Wales.

**Independence in practice**

All our legal systems are of course structured differently, but I hope my remarks will have comparative interest to colleagues.

‘Independence’ is often used in relation to prosecution services – but what do we mean by it? From whom might we be independent, and why?

In England and Wales there are three key strands to our independence – all of which we guard fiercely.

* First, we are separate from every other government body, and our prosecution decisions are independent of political influence.

We work openly with, but cannot be directed by, democratically elected representatives, such as Police and Crime Commissioners and Members of Parliament.

We see this political independence as essential, so everyone involved can be confident that cases have been brought fairly and lawfully. Because whatever the circumstances of a case, we follow the two-stage test set out in our Code for Crown Prosecutors in deciding whether to charge a suspect – asking if there is sufficient evidence to provide a realistic prospect of conviction, and if prosecuting is in the public interest.

* Second, we are independent of investigators.

This was key to the establishment of the CPS in 1985. A Royal Commission recommended a new national prosecuting service that recognised the importance of independent legal expertise in the decision to prosecute – and made the conduct of the prosecution the responsibility of someone both legally qualified and not identified with the investigative process.

It is worth noting that this did not lead to the CPS charging and prosecuting all criminal cases. The police in England and Wales have always retained the power to charge in some cases, and indeed to prosecute in some – with the balance between police and CPS responsibilities changing over time. The police currently charge around two-thirds of all cases, but more serious cases always come to the CPS for the charging decision.

* Third, prosecutors are also independent of the court in which they prosecute. Crucially, our role in court is to present the evidence against the defendant, whilst also representing the public interest. We do this by making a case against a defendant, while also upholding their right to a fair trial, for example through providing disclosure to the defence of relevant additional material gathered during the police investigation. We support victims and witnesses, generally and specifically through arranging special measures to support those who are particularly vulnerable. But we do not represent any individual or group. We represent the public interest, which is for justice to be served.

**Independence and beyond**

So our independence is vital – but we must not use it as a barrier to collaborative working, or a shield to avoid accountability. To do so would damage the service we provide to the public – and would invite challenge of our independent status.

So alongside our independence we must also be collaborative and accountable.

***Collaborative***

Starting with collaboration – just as independence is central to our function, our success as a prosecution service lies in the quality of the relationships we have with our partners. So we must invest in local, national and international strategic partnerships.

In fact, that Royal Commission report, which made such a compelling case for our independence from investigators, also noted that a successful system was one that depended upon cooperation, with checks and balances operating within a framework in which all were seeking the same objective. In summary, there would be "... unity of purpose but independence of responsibility".

***Accountable***

We also need to be accountable – our independence cannot be an excuse for cutting ourselves off.

The CPS is accountable to Parliament through the Attorney General – an elected politician and member of the Cabinet, who is responsible for superintending the CPS’ performance. We also appear before parliamentary committees, which scrutinise our work in public sessions.

We also need to listen to and engage with the diverse communities we serve. We do this by consulting stakeholders and the public on the guidance we develop for our prosecutors, and seeking feedback on our performance. The is part of how we fulfil our public sector equality duty under the UK’s Equality Act 2010.

**Closing**

So in England and Wales our prosecutorial independence is central to our existence – but it does not prevent us being accountable or collaborative – and together this allows us to deliver justice on behalf of the public we serve.

I am keen to hear other perspectives, and so will now hand over to…