

TRANSCRIPT OF "FILE ON 4" - 'CPS'

CURRENT AFFAIRS GROUP

TRANSMISSION: Tuesday 25th July 2006 2000 - 2040

REPEAT: Sunday 30th July 2006 1700 - 1740

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PROGRAMME NUMBER: 06VQ3619LHO

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NORTHAM: According to the government, only 36% of us think that the needs of crime victims are properly met.

JOHN REID TALKING IN HOUSE OF COMMONS

REID: Too often it appears that the criminal justice system is on the side of the offender – protecting their interests and individual rights over those of the victim and the law-abiding majority. That has to change.

NORTHAM: Talk of ‘rebalancing’ the system has principally focussed attention on the courts, prisons and police. But the body which makes what for many victims is the crucial decision has attracted little notice. The Crown Prosecution Service, CPS, sets the charge on which an offender will be tried. And its top management has begun to lay great stress on representing the interests of victims. But how far has this changed the working approach of the thousands of Crown Prosecutors in England and Wales? File on 4 has examined cases where victims and their relatives feel profoundly let down by the CPS... blaming either incompetence or the pursuit of government targets which, they believe, in practice perversely marginalise the concerns of victims.

TWITCHETT: I certainly haven't got justice. My son didn't get justice and I know lots of other people out there who feel exactly the same because they're taking the easy option so that they can keep their figures for their targets at the end of the year, they don't care that they are ruining other people's lives.

SIGNATURE TUNE

ACTUALITY AT WITNESS CARE UNIT

NORTHAM: Over the past 3 years, the Crown Prosecution Service has put considerable effort into making direct contact with the victims of crime. This office in central Preston is one of 165 Witness Care Units set up around the country. It's like a small call centre, with staff answering phones by computer terminals which bring up the relevant case details. They arrange for witnesses to have a familiarisation visit at court before giving evidence. They can help arrange transport, childcare where necessary, and even pet care. And in the most serious cases Lisa Edwards, the Manager, can try to prevent trials collapsing when offenders threaten witnesses into silence.

EDWARDS: We had one case where a lady was very very frightened to go to court and the defendant in the case had threatened to burn down her property if she was to give evidence at the trial. One particular witness care officer spent a lot of time talking to her, we got the officer in charge of the case to go round to see her, to try and allay fears we arranged for police officers to drive by the property just to give her support and make her feel more at ease. On the day of the trial she was adamant that she still wasn't going to attend court, the witness care officer spoke to her again and she manage to go, and just by her presence of actually being in the court building it made the defendant change his plea to a guilty plea, so she didn't have to go and give evidence but they got the result that they wanted. He changed it to a guilty plea.

NORTHAM: And was convicted?

EDWARDS: Yes he was convicted and she feels proud of herself that she was confident enough to actually do that.

NORTHAM: Lancashire CPS is also at the forefront of a pilot scheme introduced this year in which prosecuting lawyers meet some victims and hear their account of the crime before the case comes to trial, where they will be witnesses. This would have been impossible previously, and required a change in the rules of the criminal Bar. As Robert Marshall, the county's Chief Crown Prosecutor, sees it, the contact brings advantages for both CPS and victims.

MARSHALL: The initial motive for this was to enable prosecutors to make better decisions but there are certainly spin off benefits for victims. One of the complaints that I've heard from victims over the years when we haven't proceeded with a case is that we've made the decision simply by looking at a piece of paper and victims will certainly feel better about decisions if we've actually seen them, met with them, and know how effective they are likely to be in court. I think the other benefit for victims and witnesses is obviously they will have met the prosecutor in advance of going to court and again that personal contact helps to build up a relationship and will perhaps make people feel more confident. Prosecutors say that this has made the decision making process much better because cases which they felt were either finely balanced or perhaps pretty unpromising on paper become much more clear cut once they have spoken to the witness and have direct experience of how the witness is likely to perform in court.

NORTHAM: The pilot schemes are due to be evaluated in September and could then be extended nationally. But while some areas of the CPS are adopting these radical new projects, others seem to be struggling even to appear victim-friendly in the way they approach cases.

HELMSLEY: He were a lovely boy always laughing and joking and teasing and he just enjoyed life and he were never in any bother, he were a good boy.

ACTUALITY IN MORLEY

NORTHAM: Christopher Benson was just 20 last year when he died here outside his grandmother's house on Britannia Road in Morley to the south of Leeds. It was past midnight as he walked up to the well-lit main road, crossed to the island in the middle and, just before he got to the far side, was hit and thrown through the air by a speeding car. As Christopher lay dying, the driver didn't stop... he carried on to the traffic lights down the road, turned round, and then accelerated away down a side street. The next morning he set his car on fire - destroying much of the evidence - and then phoned the police to report it stolen. The officer in charge of the case, Detective Inspector Mick McDermott was able to see through this cover-up and proved that the owner of the car, Councillor Inkthab Alam, was the guilty driver.

MCDERMOTT When Mr Alam was arrested we took combings from his hair and those combings were found to include glass samples which could only of come from the scene of the accident. We proved that he was forensically linked to the car. We proved that his allegation that the car had been stolen was false and the mobile phone evidence we recovered from his house all led to prove he was responsible for being the driver when Christopher was killed that night.

NORTHAM: Inkthab Alam was charged with failing to stop and perverting the course of justice. In respect of the most significant thing that night, the ending of a young life, Christopher's family also expected a charge of causing death by dangerous driving. But his mother Lynnette was horrified to learn that the Crown Prosecutor had decided on a much more minor charge.

TWITCHETT The family liaison officer and the CID, the detective in charge of the case Mick McDermott, came to my home to tell us the bad news that the CPS had decided to go for the lesser charge of careless driving.

NORTHAM: Why do you say bad news?

TWITCHETT: Well because we felt that he was getting away with it, because he wasn't being charged with the death of Christopher and death by dangerous

TWITCHETT cont: driving has a custodial sentence; careless driving doesn't, so I couldn't come to terms with the fact that he was going to get away with killing him he wasn't gong to be punished.

NORTHAM: Being found guilty of driving carelessly is still committing a crime isn't it?

TWITCHETT: Yes it is but the punishment isn't the same as death by dangerous driving, so there's a hell of a difference between the two charges.

NORTHAM: You were the person who had to tell Lynette that in fact the charge was going to be careless driving, driving without due care and attention. How did you face that?

MCDERMOTT: It was very difficult to tell Lynette that that was the charge that was being proposed because we felt that the CPS in this case were wrong. All the officers involved believed that this case warranted a charge of death by dangerous driving.

NORTHAM: Did you tell the CPS what you thought of the charge?

MCDERMOTT: Yes I did but CPS were adamant that it wouldn't substantiate a charge of death by dangerous driving. I don't believe genuine justice was done because this should have been a case that went before a jury and the jury should have made the decision as to whether this was dangerous driving or not.

NORTHAM: In the end, Mr Alam pleaded guilty. But it soon became clear that the judge sentencing him also held a low opinion of the CPS decision on the driving charge. He said it was 'nonsensical' and went on to lambaste the prosecution.

READER IN STUDIO: This case is a matter of some amazement to me. This was a serious piece of driving which fully justified a charge of causing death by dangerous driving. We have the family of a young boy whose life was snuffed out, and you're telling me that the CPS decided to charge the defendant with the offence of driving without due care and attention – when we hear a witness say he was driving at 60 to 70 miles per hour in a 40 zone. This is the third case I have had in two weeks of gross under-charging.

NORTHAM: And with that the judge adjourned the case and told the CPS to reconsider its decision. Christopher's grandmother, Marion, sitting in the court could hardly believe her ears.

HELMSLEY: When the judge stopped the trial and asked them to go back and reconsider the charge that they had given him I got this surge of hope inside thinking we are going to get justice here at least somebody's listening to us now. They're going to change their mind they're going to charge him with dangerous driving, maybe we will get some justice now, but it didn't happen.

NORTHAM: After the CPS decided to stick to the lower charge, the judge said that he profoundly disagreed but had no power to make them comply. Inkthab Alam got 2 years and 4 months in prison for failing to stop and perverting the course of justice. For the crash that killed Christopher he got a 4-year driving ban. Lynnette left the court distressed that the driver hadn't got an additional prison sentence for dangerous driving.

TWITCHETT: It would have meant that my son would have received justice and that we as a family could believe he's resting in peace because I don't believe he is at the moment and I don't think he ever will. That man's got away with killing him, he's ruined his life and he's ruined ours and he's not been punished for it.

NORTHAM: File on 4 asked the Crown Prosecution Service to explain its decision in this case. At CPS headquarters in London Peter Lewis of the Board of Directors insists that the evidence did not meet the high test for a charge of dangerous driving, defined as 'far below the standard expected of a normal prudent

NORTHAM cont: driver'. In this case, while a witness put the speed at 60-70 in a 40 area, the scientific evidence from tyre marks estimated it at 50-57 miles an hour. This didn't, in Peter Lewis' view, constitute proof of dangerous driving, however distressing this may be for Christopher's relatives.

LEWIS: These cases are enormously sensitive. A family is devastated by what has happened there's no question about that, we care very much about their reaction, but we still have to bring our offences in accordance with the law as it is.

NORTHAM: The police all thought apparently according to the inspector that the charge should have been dangerous driving that the evidence would satisfy your criteria for that, what's more so did the judge he said it was a case of gross undercharging and expressed amazement that you'd done it.

LEWIS: I know the comments made by the judge and also the views of the police officers at the time, we have to go and make a hard decision on the evidence in the case looking at the scientific evidence we had and placing the case at the highest we could we are still of the view, that in those circumstances, tragic though they are, the right charge was to bring a charge of careless driving.

NORTHAM: And the fact that the victim's mother and the police and the judge all think that you are wrong doesn't make you pause to reflect on this?

LEWIS: Of course we pause to reflect we listen very carefully when we have criticisms and views from the family, from the police and from the judges. Ours is a difficult job to take difficult decisions in very sensitive cases. It's not easy but we follow the law and that's what we have done in this case.

NORTHAM: The killing of Christopher Benson is by no means an isolated case. Prosecutors face criticism that they bring too low a charge in hope of securing a guilty plea over many other deaths on the roads. So many, that the CPS has announced a review of its policy in fatal driving cases in an attempt to meet what it sees as rising public

NORTHAM cont: concern. There'll be formal consultation in the autumn and a decision is expected by the end of the year. It's not only in road traffic cases that the CPS is accused of being too lenient in deciding on a charge. In other crimes too, victims protest that justice simply isn't done by prosecutors.

ALLMEY: It was about 5 o'clock one evening and the doorbell rang and I answered it and my children were at the table eating their food and my mother-in-law was just standing there. I hadn't seen her for a good few years so it was a shock. She then proceeded to force her way into the house, pushed me back and sort of launched quite a violent attack on me really.

NORTHAM: For years, Vicki Allmey had been estranged from her in-laws. The injuries she received that evening early last year only made a bad relationship worse.

ALLMEY: I had a deep bite on my right forearm. She went to bite my face actually but I put my arm up in self defence and so she got my the underside of my forearm, then bit my thumb, pushed my head against the wall. I had head injuries; I had lacerations to my face. My daughter witnessed the entire thing and was standing in the hallway screaming.

NORTHAM: And she was aged what?

ALLMEY: Five at the time, you know she had nightmares for a good couple of weeks afterwards.

NORTHAM: Vicki's mother-in-law, Barbara Allmey, was initially charged with causing her actual bodily harm. When the case came to court last October, Vicki arrived expecting to give evidence despite the fact that she was heavily pregnant and just 5 days away from her due date. As a witness in the case, Vicki waited for hours in a room outside the court and so wasn't able to hear the judge repeatedly lay into the CPS. What particularly enraged him was the decision by the prosecutor on the day of the trial to offer a plea bargain. The charge would be reduced to 'common assault' if Barbara Allmey agreed to

NORTHAM: How then does Peter Lewis, a Director at the CPS, account for the decision to reduce the charge on the day of the trial – which was so heavily criticised from the Bench?

LEWIS: I'm sorry I don't agree with the views of the judge.

NORTHAM: He also said it didn't represent justice.

LEWIS: I don't think that is the case, common assault is a perfectly proper charge that enabled the judge to exercise significant sentencing options, including if necessary custody, now the judge with those powers decided never the less to fine and order compensation and that seems to me to be an appropriate decision in those circumstances.

NORTHAM: The code that you've drawn up for prosecutors says that they must never accept a guilty plea simply because it's convenient and yet the judge said that's precisely what you'd done. He said this was a decision taken without principle but as a matter of convenience.

LEWIS: I'm sorry I don't agree with the views of the judge they are simply wrong, this wasn't a decision...

NORTHAM: But he was sitting on this case he saw all the evidence, saw all the photos.

LEWIS: The decision was not taken for convenience, we took into account the views of the victim that was expressed on a number of occasions and tried to find a resolution of this case that met the concerns of the victim and the need for justice.

NORTHAM: Well the victim, Vicky Allmey, has said this to us she says she thinks your performance was appalling. And she said they didn't represent me at all they just wanted the case closed they just didn't seem interested at all.

LEWIS: I absolutely appreciate this was an awful experience for the victim in these circumstances, but I can tell you the decision was not taken as a matter of convenience. We took this decision in the circumstances of the case based on what we thought were the views and the interests of the victim as expressed to us at that time and in order to get a proper outcome for this case.

NORTHAM: The suggestion from both the judge and the victim in this case, Vicki Allmey, that the CPS reduced the charge in order to get a quick result from a guilty plea, fits a pattern identified by one of Britain's leading academics in criminal justice. Professor Andrew Sanders, Head of Law at Manchester University, is one of the few independent researchers to have made an empirical study touching on the place of victims' interests within the CPS. He finds that, in practice, prosecutors often make assumptions about what victims and witnesses will want rather than finding out from the individuals concerned. They can see people as groups in boxes, he says. And he's worried that the political imperative to increase the number of convictions, and bring it much closer to the number of actual crimes, may be at odds with the policy of putting victims at the heart of justice.

SANDERS: The CPS are often in a cleft stick. One of the huge pressures on the CPS from the government is to increase the conviction rate to close the justice gap. One way is to persuade more people to plead guilty. Now some victims may welcome the opportunity to not have to give evidence in court if a person pleads guilty but other victims would be most unhappy about that they'd regard it as offensive and many victims feel very distraught in some cases as what they see as the crime done against them is no longer being pursued. And so for those victims however nerve wracking giving evidence in court maybe they may nonetheless prefer to have a contested trial.

NORTHAM: Do you mean that the victim may say I don't want you to press these lower charges even if the suspect is well prepared to plead guilty to them but the CPS may feel under pressure to ignore it?

SANDERS: Exactly yes, if the government is to put pressure on the CPS to narrow the justice gap through more plea bargaining and that that is what its doing the government really should acknowledge that in doing that in many cases it

NORTHAM: In an effort to help victims by making cases more robust and ready for court, the law has been changed to give prosecutors the decision on charges except in the most minor cases. It used to be the preserve of police officers, but the fear was that that meant any flaws in the case might only be discovered late in the day. Here at Preston police station there's a small queue of constables waiting outside the door of the CPS lawyer who's permanently stationed here. They all need to discuss charging decisions in the cases they're working on. Under the new so-called Statutory Charging Scheme - completed nationally only in April – prosecutor Peter McNaught assesses the evidence each officer brings and points out where it needs to be tightened up.

ACTUALITY DISCUSSING A CASE

MCNAUGHT: OK, well as identification is crucial in this case what we need to do is to obtain a further statement from the cashier to explain about the CCTV...

NORTHAM: This one is a case being prepared over an alleged attack on an all-night garage. PC Sonja Karlson is checking with the prosecutor the thoroughness of her evidence-gathering.

ACTUALITY DISCUSSING A CASE

KARLSON: Yeah my colleague's just on the phone to the cashier now and we're arranging for him to come in and hopefully within the next half an hour.

MCNAUGHT: OK that's fine. I can't authorise a charge, but hopefully after you've made these further enquiries we'll be able to consider whether a charge can be preferred.

NORTHAM: What are the crucial factors you take into account when deciding first of all whether you can charge in a particular case and secondly what the charge should be?

MCNAUGHT: In considering whether there should be a charge we apply the code for crown prosecutors which has two tests. Firstly there should be sufficient evidence, which is that there should be a realistic prospect of a conviction and secondly that it's in the public interest to bring a charge. Generally what we're looking at is to make sure the charge adequately reflects the criminality of what the person has done.

NORTHAM: What do you mean adequately reflects the criminality?

MCNAUGHT: Well that it incorporates into the charge all the wrong doing of the offender and that it gives the court sufficient sentencing powers to properly sentence them for that offence.

NORTHAM: Do you have anywhere in your mind the thought of what the victim of crime wants?

MCNAUGHT: In some cases, some more than others, the attitude of the victim will be an important consideration, in relation to considering whether it is in the public interest to bring a charge. In relation to applying the evidential test then that is an objective assessment by the lawyer of what is a realistic prospect of conviction in any particular case.

NORTHAM: So has the new arrangement succeeded in having cases prosecuted more effectively? One indication that things may not be going as planned nationally has begun to trouble Her Majesty's Chief Inspector of the CPS, Stephen Wooler. He's examined one of the measures of ineffectiveness, the proportion of cases which have to be stopped by the CPS because something's gone wrong, such as discovering a mistake in preparation or reluctant witnesses or continuing weakness in the evidence. In theory, this so-called discontinuance rate ought to have fallen under the new charging scheme. But Mr Wooler finds that it hasn't, it's stubbornly stuck.

WOOLER: At the moment we are finding quite a high percentage around 15 per cent of cases that go through where the proceedings are subsequently discontinued.

NORTHAM: And is the implication in those 15 or 16 per cent of cases the preparatory work simply hasn't been good enough otherwise they would have realised there was going to be a problem?

WOOLER: In some cases that is the case in other cases where decisions have had to be taken on less than complete evidence it may be that the evidence hasn't come out in the way that it has been expected. What is very important is that the CPS and the police should be working together to analyse the reasons why we have that discontinuance rate and to ensure that where cases are charged and brought before the court then it is on the basis of a case which is likely to stand up.

NORTHAM: And if the figure nationally is 15 or 16 per cent of cases failing once they've been prepared and the case work has been done is that too high, about one in six cases?

WOOLER: I would certainly expect and I think the CPS itself expected to see a lowering of the level of discontinuance rates as one of the benefits of the statutory charging initiative. It hasn't happened yet.

NORTHAM: The CPS accepts that this is a key area in which it has to improve on current performance. And another area in which it is found wanting in official inspections is its direct communication with victims. When prosecutors decide to reduce charges or drop them altogether, they are supposed to send the victims a letter of explanation. But there's a huge variation around the regions in the number of victims who actually get such letters. Nationally two-fifths of victims are left in the dark by the CPS, while in London that failure-rate is three-quarters, only one victim in four is actually written to. For Her Majesty's Chief Inspector, Stephen Wooler, this is a poor performance.

WOOLER: It means that there would be a significant number of people who would be left simply not knowing what has happened to their case or if they have learned of the outcome, the changes in charges or discontinuance, they'll be left wondering why that has happened and that is not a happy situation.

NORTHAM: It's not satisfactory is it?

WOOLER: It's not a satisfactory situation.

NORTHAM: If there's this gap between reality on the ground and the rhetoric which says victims ought to be at the heart of criminal justice is there some sort of cultural resistance within the CPS to actually taking victims seriously?

WOOLER: I think there's an element of that in some quarters but it's an element that is diminishing for many years prosecutors had little or no contact with victims or witnesses at all. It did come as a culture change; some would say culture shock for some of the prosecutors who did not feel comfortable or confident in dealing directly with members of the public, that is diminishing.

NORTHAM: But the slow pace of change means that while it proudly presents its new initiatives in victim contact and care, the CPS still has to fend off criticism over embarrassing incidents which give victims the impression of unconcern by officialdom.

ACTUALITY OF CARTER BAILEY AND HIS BROTHERS

NORTHAM: 5-year old Carter Bailey and his brothers have just come back from school. They don't realise it fully, but Carter is very fortunate to still be alive after a savage attack by a Staffordshire bull terrier named Tyson. Jane Bailey, Carter's mother, can't get out of her mind the day last summer when he and his grandmother Kathy went to visit a neighbour who was minding Tyson.

BAILEY: They went through the gate, Carter was by Kathy's side, she turned her back to close the gate and all she heard was this gruff growling and the next

NORTHAM: When the Crown Prosecution Service took the case on, Jane Bailey expected action against the dog's owner and she wanted Tyson put down. But prosecutors started proceedings against the wrong person – not the owner of the dog. By the time this was realised 6 months had passed and they'd gone beyond the legal time-limit. So in April this year, the Bailey family learned that there would be no prosecution and no move to have Tyson destroyed. But the letter they got from a local Senior Crown Prosecutor made it sound as if this was just a quirk in the law. It made no mention of the mistake the CPS made which scuppered the case, nor did it offer a hint of apology. Jane Bailey called in her MP Denis Murphy who has now elicited a more candid explanation and an apology from both the local CPS and the Director of Public Prosecutions. But even with the MP, the mistakes continued.

MURPHY: I wasn't impressed with the initial response from the CPS. I was actually given the wrong address by the CPS in office London. I was informed that I'd have to write to York. I received a response very promptly from York to say what was I doing writing to them when it had nothing to do with them, I needed to actually contact the Northumberland branch which I did and that's when we started to realise there had been a huge mistake from the very beginning with the CPS handling of this case.

NORTHAM: The government says that victims should be at heart of the Criminal Justice System, how far were the interests of the two victims in this case at the heart of the CPS procedures?

MURPHY: Well they weren't. I intend to meet with the Home Secretary to use this as an example of how the system has failed these people and failed them very badly. The CPS let them down; it's been a catalogue of disasters, admitted openly by the CPS in every letter we've received but it was not until we got involved was there any hint of an apology.

NORTHAM: At CPS headquarters, there's no attempt to disguise the failings of prosecutors in this case. Peter Lewis acknowledges that it was handled badly from the very beginning.

LEWIS: This is a case where there was an error of judgement, we got it wrong, we are clear we got it wrong, we made a mistake. I know this is not enough but we have apologised, both by the people in Northumbria who dealt with the case and the DPP he's also apologised, we prosecute more than a million cases a year, sometimes we make mistakes, we got it wrong in this case it shouldn't have happened, fell short of the standards we expect from our prosecutors and I'm afraid its as simple as that.

NORTHAM: When the CPS wrote to Jane Bailey the first time, there was no acknowledgement that a mistake had been made and there was no sense of an apology it took a letter from the MP to get an acknowledgement that there had been an error and also to get an apology out of you. If the victims come at the heart of everything why did it take an MPs intervention to get you to do the decent thing?

LEWIS: I've seen the letter it comes across as I suppose a factual account of what happened in the case without having making clear that this was a mistake, it was wrong it should have been clear and an apology, there's no question about that and I don't seek to defend that. As soon as the director got if of course there was a proper apology as the family and the victims deserved.

BAILEY: I think it's more of a slap in the face. Its like we're sorry and that should be the end of it, but no its not because they haven't done their best, and they haven't done their job properly and they should and it just feels like we don't matter and they just think we're just going to go away and you know sorry, pat on the head sorry, that's all we can do, but I think my son and my mother in law are worth more, worth more than that, and they should have justice for what happened to them.

SIGNATURE TUNE