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In the public interest: speeding cases prove the case for the Crown Prosecution Service

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A decision to charge a person with a criminal offence is not to be taken lightly. Reputations can be destroyed and lives ruined, even if the charges are abandoned subsequently.

The Royal Commission on Criminal Procedure, in its 1981 report, recommended that the responsibilities for investigating and prosecuting crime should be separated. If the police conduct an investigation and believe that they have identified the offender and are responsible for a resultant prosecution their approach may not be open-minded. The commission's report led to the creation of the independent Crown Prosecution Service (CPS) in 1986. (another example of the Principle of Separation of Powers? Idris)

In the early days initial decisions remained with the police. If a charge was brought the police passed the file to the CPS, who decided whether to proceed with the prosecution. This proved an imperfect compromise. More recently, the decision to bring a charge has been transferred to the CPS, save in a few comparatively routine cases.

Dominic Grieve, the Shadow Home Secretary, announced recently that the next Conservative government will "return charging discretion for all summary offences to the custody sergeant and review the scope for doing the same with offences triable either way". Those two categories encompass most criminal offences, including many of great gravity.

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In reaching decisions on prosecutions both the police and the CPS must comply with the code issued by the Director of Public Prosecutions (DPP) under Section 10 of the Prosecution of Offences Act 1985. The code requires careful consideration of the strength of the evidence and whether the public interest requires a prosecution, having regard to any mitigating circumstances. In these respects the code encapsulates principles understood by prosecutors throughout living memory.

These decisions are often difficult. Mr Grieve's proposal is not founded on a belief that moving the responsibility from crown prosecutors to police sergeants would serve the interests of justice better. Instead, he estimates that a million police hours would be saved each year. If police sergeants and crown prosecutors approach this task with equal care, how is this eye-catching figure to be achieved? This is far from obvious.

Twenty-two years after the establishment of the CPS, there are still concerns among some police

officers over what they see as a diminution of their authority. Mr Grieve's new policy may reflect an element of seeking to meet those concerns. It is surely no accident that the policy was announced at a conference of police superintendents.

In the cases where the police have continued to be entrusted with these decisions, have they fulfilled their obligations under the Section 10 code? Alleged breaches of speed limits are much the most common of those cases. The DPP has made clear, and the Association of Chief Officers (Acpo) has acknowledged, that the code applies as much to these cases as to any others. The unhappy reality is that for many years it was Acpo's national policy automatically to bring a prosecution for a speeding offence unless a motorist accepted a fixed penalty, including the endorsement of three penalty points on his or her driving licence. In direct disregard of the long-established principle and the express requirement of the Section 10 code, any mitigating circumstances were entirely disregarded.

Often the police indicated, in stark terms, that rejection of a fixed penalty was likely to result in the imposition by a court of a much more severe penalty, including up to six penalty points. There was no mention of the possibility of avoiding any penalty points by demonstrating to the court special reasons for that course. Faced with such an unbalanced ultimatum, few are likely to have opted for a prosecution.

There would rightly be an uproar if police officers engaged on urgent duties were penalised for exceeding speed limits. Why should wholly different criteria be applied to members of the public confronted with a genuine emergency or other extenuating circumstances, in clear contravention of the Section 10 code?

When Acpo's policy came to my notice in 2005, I raised my concerns with the respected head of the Crown Prosecution Service Inspectorate. He shared those concerns, as did an official of the equally respected Inspectorate of Constabulary. Only in February this year, having belatedly obtained its own expert legal advice, did Acpo advise all forces that the Section 10 code requires them to have proper regard to any mitigating factors.

I have since tried, without success, to secure the help of the Home Office and the Ministry of Justice in identifying a way in which corrective action, short of applications to the High Court, can be taken in those cases where motorists have unjustly incurred penalty points that remain on their driving licences. It is likely that the "totting-up" provisions will have cost some people their driving licences and their jobs. I hope they will take prompt legal advice.

Mr Grieve may wish to reconsider the idea of entrusting the police with decisions on bringing charges in the overwhelming majority of cases.

The author is a former assistant director of Public Prosecutions and senior official of the CPS