



Ministry
of Justice

Public Bodies Act 2011:

Giving legal effect to the administrative merger
of the Crown Prosecution Service and the
Revenue and Customs Prosecutions Office:
Consultation responses

October 2013

Responses to consultation

1. Mr Justice Calvert-Smith
2. Jim Barker-McCardle, Chief Constable Essex Police
3. Simon Cramp
4. The Criminal Bar Association
5. Crown Prosecution Service
6. HM Land Registry
7. HM Revenue and Customs
8. Magistrates' Association

Stakeholders notified of the publication of the consultation document (excluding agencies of the Ministry of Justice and other government departments)

Please note that these stakeholders were identified as having a specific interest in the merger of the offices of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions. Responses were not limited to those listed here, however: views from others with an interest in this merger were welcomed.

Statutory consultees

The Director of Public Prosecutions/Director of Revenue and Customs Prosecutions Office

Such other persons appearing to the minister to be representative of interests substantially affected by the proposal (see other consultees below)

The Lord Chief Justice

Such other persons as the minister considers appropriate (see other consultees below)

Other consultees

Association of Chief Police Officers
Attorney General's Office
Cabinet Office
Council of Circuit Judges
Council of District Judges (Magistrates' Courts)
HM Courts and Tribunal Service
HM Crown Prosecution Service Inspectorate
HM Revenue and Customs
HM Treasury
Information Commissioner
Justices' Clerks' Society
Legal Services Commission
National Audit Office

Senior Presiding Judge
Serious and Organised Crime Agency
The Bar Council
The Law Society
The Magistrates' Association
Relevant Trade Unions
UK Border Agency
Welsh Office
Whitehall Prosecutors

Response from The Honourable Mr Justice Calvert-Smith

My concerns in general were:

a. The quality of prosecutorial and investigative preparation at Customs was, in my experience, in general superior to that at the CPS. It would be important to ensure that the good habits within Customs (albeit assisted by the fact that they were not "demand led" in the way the CPS was and is) would not be lost in the merger.

b. The "cultures" of the organizations were very different. This I attributed in part to the fact that the legislation (CEMA 1979) governing the powers granted to Customs as a revenue gathering organization were far in excess of those granted to the police. The Writ of Assistance (s 161), the requirement that the Commissioners order the institution of proceedings, (s145) the power of the Commissioners to sist stay, order release from prison etc (s 152), the different people who could conduct proceedings (s155) - though of course the position at the CPS is now very much on a par with s155 etc, meant that prosecutions of non-revenue Customs offences had a very different framework to similar offences prosecuted by the police/CPS.

c. While I would hope and expect that the de facto merger has led to a gradual merger of cultures under the joint management of Keir Starmer QC and David Green QC, I do not know what, if anything, has been proposed to ensure that there is no difference between the way in which the new single organization will prosecute offences which were formerly prosecuted by RCPO and those which the CPS used to prosecute.

While I of course accept that special powers may be necessary to assist in the gathering of revenue and the prosecution of tax evasion, I would hope that any carry over of those special powers into non-revenue prosecutions should be avoided. It was the culture which bred in some minds the idea that the C&E were somehow "above the law" which led I believe to some of the worst examples of abuse of process - in particular most recently the so-called City Bond scandal which led to Butterfield J's report. This in turn resulted in the fact that during my short stint at CEPO between one third and one half of its resources were devoted to so-called "legacy" cases which needed to be examined in order to ensure that no material irregularities had occurred.

d. In short I am anxious that the merger both de facto and de jure is handled in such a way as to transfer the good characteristics of the RCPO and eliminate the not so good, so that current and future DPPs are in charge of an organization with a single set of values which will enable the new organization to achieve and maintain a status which a prosecution service should enjoy in any democracy.

From: Tracey Hitching
Sent: 15 March 2012 13:30
To: Wilson, Guy
Subject: Consultation on giving legal effect to the administrative merger of the CPS and RCPO. [NOT PROTECTIVELY MARKED]

Classification: NOT PROTECTIVELY MARKED

Sent on behalf of Chief Constable Jim Barker-McCardle

Dear Guy

Further to Louise Carrad's letter of 28th February regarding the above.

Thank you for giving me the opportunity to comment on the consultation document. I can advise that I see no issues with the proposed administrative merger of the CPS and SRCPO from a policing perspective.

Kind regards

JBM

Tracey Hitching
PA to Chief Constable
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Fax:
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CM2 6DA

Opening hours: Mon - Fri 08:00 - 17:00

To find out what is happening in your neighbourhood and all about your local neighbourhood policing team visit **HYPERLINK**
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/my_neighbourhood.aspx and enter your postcode

About you

Please use this section to tell us about yourself Full name simon cramp	
Job title member of the public	
Date 20th may 2012	
Company name/organisation N/a	
Address 242 brimington road, tapton chesterfield, derbyshire	
Postcode s41 0tb	
If you would like us to acknowledge receipt of your response, please tick this box x	(please tick box)
Address to which the acknowledgement should be sent, if different from above	

Questionnaire

We would welcome responses to the following questions set out in this consultation paper. Please quote the relevant question numbers in your response.

Question 1: Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office?

yes i do agree but make terms and conditions fair and make the process transparent

Question 2: If yes, are you content that the approach we are proposing will achieve the desired effect?

have my doubts as one of the parties you mention cant send me the correct response to a tax matter i have with them by the most senior officer because she cant not be bother to read the original letter properly

so if you can get that sorted i dont see why not

Question 3: Do you have any other comments on the proposal?

no

Question 4: Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

no



This is the response of the Criminal Bar Association of England & Wales to the Public Bodies Act 2011 consultation of February 2012 regarding giving legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office.

Question 1: Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office?

1. The CBA is in favour of placing this merger on a statutory footing as failure to do so would create uncertainty and make decisions susceptible to challenge. In reality this is codifying an arrangement that already exists and thus it makes sense.

Question 2: If yes, are you content that the approach we are proposing will achieve the desired effect?

2. The requirements under s.8 of the Act appear to have been complied with and therefore the order should achieve the desired effect.

Question 3: Do you have any other comments on the proposal?

3. It is understood that this consultation has been launched on a limited basis and that wider issues of principles have previously been considered. This is however an opportunity for the CBA to observe that there is wisdom in concentrating the number of agencies empowered to bring prosecutions. Multiple agencies increase

the chances of replication of functions, confusion over remit and inconsistent application of prosecution policy.

Obviously the government hopes that rolling up the functions under the umbrella of the CPS will save money and that laudable aim is supported by the CBA. However the CBA urges the government to ensure that sufficient funding is made available to the CPS to take account of its now much broader remit. Prosecutorial expertise similarly must not be allowed to erode as a result of the merger.

Question 4: Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

4. No

Nick Hunt
Director of Strategy and Policy
Crown Prosecution Service
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Tel: 020 3357 0849



Guy Wilson
Ministry of Justice
Post point 6.10
102 Petty France
London
SW1H 9AJ

22 May 2012

Dear Guy

RE: Crown Prosecution Service response to Ministry of Justice Consultation Paper CP6/2012: Public Bodies Act 2011 – Order to merge the CPS and RCPO

Thank you for providing the CPS with an opportunity to respond to this consultation.

Since the merger was announced in April 2009 by the Attorney General, the CPS and RCPO have worked together to bring about the administrative merger of the two organisations. This took place in January 2010, and we now operate under a single management structure. As part of the merger process, we have consulted key stakeholders, maintained a dialogue with staff and managed any risks that we have identified.

We have also worked closely with HMRC, the AGO and the MoJ to address the questions of whether and how to give legal effect to the merger. We agree that a legal merger will streamline and clarify the legal landscape, allowing us to operate more efficiently and effectively. We also support the use of an order under the Public Bodies Act 2011 to give legal effect to the merger, and we continue to support MoJ on the work to finalise the order.

With regard to the specific consultation questions:

Question 1: Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office?

Answer: Yes. The CPS agrees with the reasons for giving legal effect to the merger set out at p9 of the consultation. A single legal identity for the two organisations clarifies the role of the CPS and underlines the permanence of the merger.

Question 2: If yes, are you content that the approach we are proposing will achieve the desired effect?

Answer: Yes. CPS officials worked with HMRC and the AGO to identify an appropriate legislative vehicle to effect the legal merger. Section 2 of the Public Bodies Act 2011 provides the flexibility required to abolish the role of the DRCP and to transfer to the DPP any functions of the DRCP which the DPP does not have. It will also allow us to establish a gateway for the transfer of information from HMRC to the CPS, and to extend the s40 gateways and prohibition on disclosure, under the Commissioners for Revenue and Customs Act 2005, to CPS staff.

Question 3: Do you have any other comments on the proposal?

Answer: No.

Question 4: Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

Answer: No. Potential adverse equalities impacts on those with protected characteristics were previously considered by the CPS Director of Equality and Diversity, as part of the Equality Impact Assessment. No evidence of any such equalities impacts was found. However, the department will continue to consider any feedback in relation to the merger and take action as appropriate.

We hope you will find our views useful.

Yours sincerely,



NICK HUNT
Director of Strategy & Policy

Consultation on an order to give legal effect to the administrative merger of the Crown Prosecution Service and Revenue and Customs Prosecutions Office

Questionnaire

We would welcome responses to the following questions set out in this consultation paper. Please quote the relevant question numbers in your response.

Question 1: Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office?

Land Registry welcomes the opportunity to respond to the consultation.

We do not feel that it is appropriate to respond to specific policy issues raised in the consultation. We would, however, like to make minor comments in relation to paragraph 41 of the consultation document. We do so under question 3 below.

Question 2: If yes, are you content that the approach we are proposing will achieve the desired effect?

Question 3: Do you have any other comments on the proposal?

As a copy of the draft order was not included in the consultation we were not able to check that the proposed deletions to other legislation included references in the Land Registration Rules 2003 to the Director of Revenue and Customs Prosecutions or a member of the Revenue and Customs Prosecutions Office authorised to apply on behalf of the Director. We trust you have this in hand, but for ease of reference the deletions required are in columns 1 and 2 of Schedule 5 to the Land Registration Rules 2003 (as amended by the Land Registration (Amendment) Rules 2005). You will also need to delete the same references in Form CIT in Schedule 1 to the Rules, at certificate A/B, certificate C/D, certificate E, certificate H, and certificate I. As the DPP and the CPS are not included in certificate H, you may want to consider adding them to this certificate in Form CIT if you have not already done so. That would, of course, require adding reference to certificate H to the second column of Schedule 5 to the Land Registration Rules 2003, opposite the listing for the DPP. Please do not hesitate to contact us if you wish to discuss these changes further.

Question 4: Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself Full name Joy Bailey, on behalf of the Chief Land Registrar	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.) Assistant Land Registrar/Lawyer	
Date 21 May 2012	
Company name/organisation (if applicable): HM Land Registry	
Address Trafalgar House, 1 Bedford Park, Croydon, CR0 2AQ DX No 8888 Croydon (3) Tel: 0300 006 0001 GTN: 2020 Fax No: 0300 006 0021	
Postcode CR0 2AQ	
If you would like us to acknowledge receipt of your response, please tick this box	(please tick box)
Address to which the acknowledgement should be sent, if different from above	



HM Revenue & Customs

Anthony Inglese CB
General Counsel and Solicitor

Guy Wilson
Ministry of Justice
Post point 6.10
102 Petty France
London
SW1H9AJ

Date 22 May 2012

Our ref

Your ref

Dear Guy

Re: H M Revenue and Customs' Response to Consultation on an order to give legal effect to the administrative merger of the CPS and RCPO

I write to respond to your consultation on the administrative merger of CPS and RCPO set out in the Public Bodies Act 2011 and to reply to the questions you ask in that consultation.

Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs and Prosecution Office?

HMRC welcomes giving legal effect to the administrative merger to resolve those legal difficulties that have occurred as a result of the current non legislative merger.

If yes, are you content that the approach we are proposing will achieve the desired effect?

HMRC is content that the approach you are proposing will achieve the desired effect. HMRC officials and lawyers have been working closely with CPS and MoJ to ensure that the approach that you are suggesting will deliver an efficient and effective prosecution service for HMRC cases.

Do you have any other comments on the proposal?

HMRC has no further comments.

Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

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HMRC does not anticipate that these proposals will impact on those with protected characteristics under the Equality Act 2010.

Yours sincerely

A handwritten signature in black ink that reads "Anthony Inglese". The signature is written in a cursive style with a large, sweeping 'A' and a long, trailing 'e'.

Anthony Inglese



Date and paper number **May 2012 12/28**

Committee **Judicial Policy Committee**

Document title **Giving legal effect to the administrative merger of the CPS and the Revenue and Customs Prosecutions Office**

Document type **Response**

Comments should be sent to sally.dickinson@magistrates-association.org.uk

Deadlines for comments **External: 22 May 2012**

Link to consultation <https://consult.justice.gov.uk/digital-communications/cps-rcpo-merger>

Question 1: Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office?

Answer: Yes

Question 2: If yes, are you content that the approach we are proposing will achieve the desired effect?

Answer: Yes

Question 3: Do you have any other comments on the proposal?

Answer: It is to be hoped, firstly, that the additional efficiency and effectiveness gains, over and above those already realised since January 2010 (but unfortunately not quantified in the consultation paper), together with the forecast, but again unspecified, economies of scale and those to be achieved by minimising duplication, will be deployed within the CPS to help extend the digital court documentation system as rapidly as possible after April 2012 to benches and retiring rooms in magistrates' courts, as well as to address the listing delays resulting from shortages in the numbers of prosecutors.

Secondly, with regard specifically to efficiency, the Association understands from discussions at local Judicial Issues Group (JIG) level that the performance targets used by the CPS are not aligned with those of HMCTS and that this can potentially have perverse consequences. By way of example, the CPS has in some areas pressed for longer first-bail periods to allow them to better prepare files for first hearings (because they are assessed on the number of hearings per case, a target which rightly promotes the avoidance of unproductive hearings). This target is not, however, one used by HMCTS, which is working rather to a target (which we likewise strongly support) of disposing of 75% of adult criminal cases within 6 weeks. Introducing longer lead times, as urged by the CPS, could well put achievement of that target at risk.

The Magistrates' Association, as demonstrated inter alia by its key contribution to the 'Stop Delaying Justice' initiative, is committed to promoting and ensuring truly effective case management. We would therefore suggest that the formal merger of the CPS and RCPO, and the resultant drive to reassess processes across the spectrum with a view to achieving real efficiency savings, be used as a suitable opportunity to look at aligning the performance targets in place across the CJS so as to produce greater synergies, given that overall performance is affected by that in each part thereof.

Question 4: Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

Answer: None apparent.