Criminal Justice
Joint Inspection

THE JOINT THEMATIC REVIEW OF THE NEW CHARGING ARRANGEMENTS

NOVEMBER 2008

INSPECTING FOR IMPROVEMENT

CONTRIBUTORS

HM Crown Prosecution Service Inspectorate
HM Inspectorate of Constabulary

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1 INTRODUCTION

1.1 This is the report of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and Her Majesty's Inspectorate of Constabulary (HMIC) into the effectiveness of the operation of the new charging arrangements (commonly known as the statutory charging scheme), whereby the Crown Prosecution Service (CPS) have taken over the responsibility from police to determine whether an alleged offender should be charged in the more serious or contested cases, by virtue of the Criminal Justice Act 2003. This work has been undertaken as part of the criminal justice chief inspectors' joint inspection programme for 2008-09, although the planning and some of the fieldwork took place towards the end of the 2007-08 business year.

1.2 The 2008-09 joint inspection programme has been drawn up in accordance with the requirements of Part 4 of the Police and Justice Act 2006. This review reflects the commitment of the five criminal justice inspectorates to operate in an increasingly joined-up way and demonstrates their ability to continue to develop the capability to inspect end-to-end business processes that span two or more of the criminal justice agencies.

1.3 This review has been undertaken in accordance with the government's ten principles of inspection.

1.4 The proposal to introduce statutory charging was not taken in isolation. It formed part of a number of wide ranging criminal justice reforms including the No Witness No Justice initiative and Effective Trial Management Programme. It also complemented work already undertaken during the street crime initiative in which investigators received pre-charge advice from prosecutors in respect a of number of types of offence, most notably robbery.[1]

1.5 The implementation of the statutory charging scheme in England and Wales took place in stages between 2004 and early 2006 and was throughout a joint project between the Association of Chief Police Officers (ACPO) and the CPS. It has had a significant impact on the structure of the criminal justice system. For the first time in the history of the criminal law the decision whether or not a suspect should be charged with an offence has, in certain circumstances, passed to a body independent of the investigation.

1.6 It would be surprising if such a change did not receive close scrutiny from those most directly involved in its operation. There has been an ongoing programme of reviews by the National Charging Team (which comprises experienced members of the CPS and ACPO), particularly in the early days of the scheme, although inspectors consider that these reviews and those conducted at a local level have not been fully effective in identifying issues. Scrutiny has increased as the scheme has bedded down and its full impact has become apparent. Some recent commentary has been critical of certain aspects, in particular the impact it is perceived to have had on operational policing.[2] There have been suggestions that the scope of the scheme should be reduced substantially with the authority to decide whether to charge being passed back to the police in all summary offences and to additional offences which can be tried in either the magistrates' courts or the Crown Court.[3]

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1 See Streets ahead – a joint inspection of the street crime initiative – July 2003 for a detailed critique
2 24/7 Response policing in the modern police organisation – views from the frontline Police Federation. December 2006
3 The independent review of policing by Sir Ronnie Flanagan 7 February 2008, paragraph 5.54 (the Flanagan review)

1.7 Whilst charging was reviewed during the overall performance assessments of CPS areas conducted by HMCPSI in 2007-08, this is the first detailed independent review of the effectiveness of the scheme and as such we trust will contribute substantially to the debate currently taking place on its future operation. There is a resonance between our findings and some of the criticisms that have recently been voiced. The scheme could undoubtedly be operated more effectively and this is recognised by those with responsibility for its management at all levels within the police service and the CPS.

1.8 This joint review was undertaken in parallel with an HMCPSI inspection of CPS Direct (CPSD) which provides out-of-hours charging decisions across England and Wales. The operation of CPSD is significantly different from the daytime charging scheme in a number of aspects, in particular it is non-geographical and all charging decisions are provided over the telephone by home-based prosecutors. The findings from that inspection are the subject of a separate report[4] but to assist the reader our report includes a comparison of the operation of CPSD and local area charging schemes. This report, when read in conjunction with the CPSD report, provides a full analysis of how the scheme is operating in all its aspects.

1.9 In the majority of cases finalised in the magistrates' courts the decision to charge is still made by the police, albeit a large proportion of these cases will involve minor motoring allegations that commence by way of summons. In 2007-08 a total of 966,626 defendants' cases were finalised by the CPS in the magistrates' courts and a further 95,433 committed or sent to the Crown Court for trial. A total of 96,992 defendants' cases were finalised in the Crown Court.

1.10 For the same period the CPS directed that 335,339 defendants should be prosecuted. It is therefore significant to note that the police proceeded to charge without requiring the prior authority of the CPS in nearly 70% of finalised cases.

1.11 There have been undoubted benefits from the scheme not least of which is the improved working relationship between the police service and the CPS. The permanent presence of duty prosecutors in police stations has assisted in developing the 'prosecution team' ethos between prosecutors and police and improved the understanding of their respective roles.

1.12 The aspect of the process that is least criticised is the quality of the prosecutor's decision on whether or not to direct the suspect to be charged, or the appropriateness of the charge selected. The most strident criticism is directed at the actual or perceived time taken to get a decision and the amount of work the investigator has to undertake before the decision will be taken, which is supported to a significant extent by our findings.

1.13 This review puts forward a number of recommendations designed to address the key concerns identified, some of which will require a significant cultural change if they are to be implemented effectively. It also identifies some good practice which could usefully be adopted on a more widespread basis.

4 HMCPSI's report on the inspection of CPS Direct (published November 2008)

The structure of the report

1.14 This report is set out to show, as far as is possible, the various stages of the progress of cases through the charging scheme and the supporting structures and processes. Chapter 4 provides a brief history and background to the scheme including an outline of some of the key elements and chapter 5 sets out how the scheme was implemented. Chapter 6 compares the operation of the scheme at a local level with CPSD. Chapter 7 discusses the overarching governance arrangements at a national and operational level.

1.15 Chapters 8-14 deal with the progress of cases from the supervision of the investigative process through the provision of duty prosecutor coverage, management of appointments, and quality of the appointment and decision-making, to bail management (including the timeliness of arrest to final decision) and the use of action plans.

1.16 Chapter 15 assesses the overall value for money of the scheme including efficiency savings. The report concludes with chapters 16 and 17 which look at the performance management of the scheme and provision of training.

The review **team**

1.17 The team was comprised of staff officers from HMIC, together with an officer on secondment from the West Midlands Police, and from HMCPSI legal and assistant legal inspectors and a business and assistant business inspector.

Acknowledgment

1.18 The Chief Inspectors are grateful for the cooperation, support and assistance of all those with whom they came into contact throughout the review – from preparation of material for the team's consideration to arrangements for the fieldwork and participation in the interviews and observations.

2 METHODOLOGY

2.1 The methodology used to obtain the evidence which supports the findings of this review involved a variety of approaches set out in detail below. The specific findings are referred to at various parts of this report and in the annexes.

Stakeholder engagement

2.2 As part of the scoping of the project a stakeholder event was held, attended by a range of agencies and organisations with an interest in the findings from this review. Their views on the operation of the scheme and its key aspects informed the aim and objectives of the project which are set out at annex A together with a list of participants.

The pilot

2.3 The methodology, and in particular the process for observing appointments between prosecutors and investigators and then taking feedback from investigators, was piloted in the Avon and Somerset criminal justice area between 4-8 February 2008. The methodology was then assessed and refined, although no fundamental changes were made, so the findings from the pilot have been included in the overall evaluation of the evidence.

File sample

2.4 A total of 170 finalised cases drawn from the charging centres visited were examined by HMCPSI inspectors. In each the prosecutor had authorised that the defendant should be charged. The files were examined to consider the quality of a number of aspects around the provision of charging decisions. These included whether the appropriate test in the Code for Crown Prosecutors (the Code) had been applied in reaching the charging decision, and the quality of the information provided to the prosecutor by the investigating officer, the prosecutor's decision and of any action plan. The breakdown of files examined for each area is set out at annex B and the key data from the file examination referred to at various parts of the report.

2.5 The overall quality of the charging advice provided by the prosecutor, as reflected on the papers, was assessed and marked as good, adequate or poor. Inspectors would add a caveat that during their fieldwork observations they noted cases where there was a good discussion between the prosecutor and the investigator, although this was not necessarily replicated in the quality of the record of the decision. In assessing the file sample inspectors were not able to determine the quality of the discussion and therefore the findings are based on the information provided to the prosecutor at the time of the charging decision. The following criteria were used to make the assessment:

- *Good:* Overall it addressed all or most of the relevant considerations and did so succinctly, with the right charges being selected.
- *Adequate:* Overall it addressed the relevant (or most important) considerations but was not well structured or did not necessarily select the most appropriate charges.
- *Poor:* Overall it addressed none (or only a few) of the relevant considerations, or overlooked an important consideration, made an error in law, made an unjustified assumption in relation to a fact, selected the wrong charge, or was missing a vital element such as an action plan.

2.6 The overall quality of the charging advice was then compared against the eventual outcome in the case to determine specifically whether that outcome could, if unsuccessful, have been avoided by action taken at the time the charging decision was made. An analysis was also undertaken to determine whether there was any correlation between the quality of the charging decision as recorded by the prosecutor on the MG3 (the form on which decisions or advice are recorded) and the final outcome, for example whether a good MG3 always resulted in a successful outcome. The overall findings from the analysis are referred to in the body of the report and detailed at annex C.

The fieldwork

2.7 Following the pilot in early February the bulk of the fieldwork was undertaken in two tranches, between 25 February-7 March and 31 March-11 April 2008. The review team visited seven criminal justice areas comprising a mix of urban and rural sites, Avon and Somerset (pilot site); Gwent; Humberside; Lincolnshire; London; Nottinghamshire and Thames Valley. In each area the operation of two or more charging centres was observed, with the exception of Lincolnshire that only had one centre. In London six boroughs were visited comprising two from each CPS London geographical sector. Members of the team observed appointments between the CPS duty prosecutor and police at the charging centres visited. These, together with the number of appointments observed, are set out at annex D.

2.8 Inspectors do not identify in the body of this report from which particular area their specific findings are drawn, except where they highlight good practice, which assists other areas in obtaining more detail when considering the adoption of the practices identified.

2.9 At the time the fieldwork sites for this review were selected the pilot sites for the Director's (of Public Prosecutions) Guidance Streamlined Process (DGSP) - which aims, in certain cases, to reduce the amount of material an investigator has to place before a prosecutor for a charging decision - had only just been identified, and the operation of that process was in its very early stages. Whilst two of the sites selected for the fieldwork were also pilot sites, they were not operating the process at the time of our visit.

2.10 Towards the end of the fieldwork it was announced that CPS London was initiating a daytime telephone charging scheme (CPS London Direct) providing advice and decisions to charge similar to that operated out-of-hours by CPSD. The operation of this scheme was also examined as part of the consideration of alternative methods of delivering charging decisions.

Observations

2.11 Almost all the appointments observed took place in police stations although a few were held in CPS offices, either because they involved serious and complex cases where a lengthy appointment was required, or in one area due to temporary operational requirements during the closure of a custody centre.

2.12 The review team observed a total of 148 appointments at the 25 charging centres visited. These involved a wide range of crime types (from theft by shoplifting and burglary to robbery and rape) and included both bail and custody cases. The outcome of each appointment varied from where the prosecutor directed that no further action should be taken, or deferred a final decision pending obtaining more evidence or information (an action plan), through to the authorisation of charge. A summary of the outcome of the appointments is set out at annex E.

2.13 Inspectors broke the overall appointment period into key activities and monitored the time devoted to each; the time spent discussing the case, time spent by the prosecutor reading the papers, legal research and the time taken to type the decision up using the CPS computerised case management system (CMS). In some discussion took place while the prosecutor was reading the papers. Where this occurred inspectors allocated the time between the two relevant activities. The analysis of the observation data is at annex F.

2.14 At the end of the majority of appointments (65% of those observed) feedback was taken from the investigator in respect of a number of aspects relating to the specific case, including the time it had taken them to prepare the file, the time taken to travel to the appointment, and their view of the decision.

Questionnaires

2.15 At each charging centre visited questionnaires were given to custody officers, police personnel with responsibility for file supervision, investigators and prosecutors. The number of questionnaires analysed in each category is at annex G. Questionnaires were also sent to a selection of defence representatives who dealt with cases arising from the charging centres visited. In addition questionnaires on the operation of the statutory charge scheme were sent to each chief crown prosecutor (CCP) and chief constable in those criminal justice areas that were not visited.

2.16 The findings from the analysis of the responses are referred to at the relevant parts of the report.

Interviews

2.17 Interviews were conducted in each area visited with a range of CPS and police representatives, including CCPs, assistant chief constables and other senior police officers, custody officers, police file supervisors, CPS unit heads, duty prosecutors, and CPS and police personnel with responsibility for compiling and analysing performance data. Group interviews were also held with a range of police investigators. In some areas local criminal justice board representatives were also interviewed.

2.18 At a national level the representatives of key organisations were seen, including the ACPO lead on statutory charging, the Police Federation and the National Police Improvement Agency (NPIA). Senior members of CPS Headquarters, including the Chief Executive, were also interviewed about strategic aspects of the scheme.

Management and performance information

2.19 A range of management and performance information was considered by the team prior to the area visits. This included minutes of prosecution team performance management (PTPM) meetings and performance information provided for those meetings, local reviews of the operation of the scheme, and local guidance. Detailed performance information was drawn from the CPS management information system (MIS) and CMS. This is referred to at various parts of the report. During the fieldwork further supporting documents were made available to the review team.

Equality impact assessment

2.20 An initial equality impact assessment (EIA) was undertaken in compliance with the statutory requirements of the Race Relations Act 2000, Disability Discrimination Act 1995 and the Equality Act 2006. The EIA also assessed on a non-statutory basis the equality impact in respect of sexual orientation, religion and belief, and age. After consideration of the proposed methodology and the full assessment undertaken by the CPS of the operation of the charging scheme, inspectors concluded that there was no need to undertake a full EIA of the joint review. Those undertaken by the CPS found that the operation of the statutory charging scheme had a positive impact on the equality aspects of charging decisions. This conclusion was assessed during the course of the review but as there was no significant change to the methodology, nor any findings that gave cause for concern from an equality perspective, it was determined that there continued to be no need for a full assessment. The initial one can be found on the CPS's website at http://www.cps.gov.uk/publications/equality/eia/index.html.

3 SUMMARY OF KEY FINDINGS

Overview

3.1 The implementation of the statutory charging scheme has delivered benefits to the criminal justice process. It has required close partnership working between the CPS and the police service at both senior and operational levels. It has facilitated progress within the criminal justice system in relation to linked projects improving criminal case management and reducing delay in the courts. Nevertheless some aspects of the scheme need to be substantially refined in order to be fully effective. Operational personnel (both police and CPS), understood the potential benefits of the scheme and the vast majority were strongly supportive of the concept of prosecutors also giving pre-charge advice; however most also felt that the processes involved need to be significantly more efficient.

3.2 On a positive front inspectors identified the following key benefits:

- the final charging decisions by prosecutors are of good quality;
- discontinuance has happened earlier preventing weak cases from entering the court system;
- some progress has been made against most of the anticipated benefits in terms of casework outcomes and delivery of Public Service Agreement targets;
- there are a number of examples of good practice for individual processes within the overall scheme;
- relationships between the police and CPS have improved which has helped develop a more joined-up approach to managing initiatives; and
- feedback at multiple levels suggested that the statutory scheme is particularly helpful in managing serious and complex cases.

3.3 Aspects of work that require improvement include:

- police and CPS processes are inconsistent, overly complex, inefficient and lacking in pragmatism in too many instances, often leading to avoidable delays and frustration;
- the practice of delivering advice in a face-to-face meeting is not providing the anticipated benefits in all cases;
- police file quality supervision needs to be more robust;
- greater consistency of approach is needed by prosecutors in the level of information required to make a charging decision;
- conflicting CPS and police targets are not helpful (this issue was being addressed in the latter stages of the review);
- some guidance and definitions require clarification;
- a number of delays in CPS and police processes have a detrimental and significant knock-on effect on bail management; and
- performance management needs to be strengthened.

3.4 On balance progress has been slower than desirable, although gradual improvements have been made. As pressures build for new initiatives and priorities it is important that the police service and the CPS are able to realise the potential benefits of statutory charging. The processes observed in most of the areas visited were not efficient and need to be ‘smarter’, although there were some examples of good practice.

Processes, roles and responsibilities

3.5 In the areas visited there was little consistency in the processes, systems or responsibilities of those involved in implementing and delivering statutory charging. It was not unusual for there to be completely different approaches between police basic command units (BCUs) and charging centres in the same area. Whilst some degree of tailoring to local circumstances is healthy and sensible there is a need for greater consistency, preferably based on the sharing of good practice. Paradoxically whilst there are many different systems in place they are often utilised in an overly rigid fashion, when a more flexible approach would sometimes be more appropriate.

3.6 The provision of face-to-face charging decisions by prosecutors is the accepted norm for delivering pre-charge advice. Whilst for some cases this is clearly right observations showed a considerable number of examples where little value was added by this process. There is little value in the face-to-face appointment when it is not the investigator who attends on behalf of the police. They are unable to deal with queries raised by the prosecutor on important issues such as the demeanour and reliability of witnesses. The value of face-to-face appointments also depends much on the skills of the prosecutor in conducting the consultation and this is minimal when there is no discussion of the merits of the case. Some face-to-face meetings are very good and add value, others no more than if the investigator left the file and came back at the end of the allotted time for the decision.

3.7 A more flexible approach that enables an informed decision as to the best means of discussing a case is desirable. It is interesting that there were a considerable number of investigators who expressed a preference for using CPSD, which operates by telephone and fax.

3.8 Almost all the areas visited had concerns over the time taken to get a charging decision from a prosecutor, which was borne out by inspectors' observations.

3.9 A gap is growing in the expectations of many police officers and the CPS in respect of what is required for a charging decision. At some charging centres the police are preparing files sufficient for a full Code test decision, but prosecutors want a trial ready file where they intend to authorise charge but anticipate a not guilty plea. This in part is due to a lack of confidence in the police doing any additional work once charge is authorised and, partly, the pressure to comply with the requirements of the Criminal Justice: Simple, Speedy, Summary (CJSSS) initiative which requires the prosecution and the defence to identify trial issues at the first hearing, with the trial date normally set within six weeks of that hearing. In 2007-08 CPS produced data indicates that 74.5% of charging decisions were finalised at first appointment; this is somewhat better than inspectors encountered during their file reading and observations (63.5%).

3.10 CJSSS is now undoubtedly a key driver and is impacting on the delivery of the intended benefits of the statutory charging scheme. The need to be trial ready at the time of charging is increasingly being seen as paramount, to help minimise the number of ineffective hearings at court and ensure cases are ready on the date set down for the trial. There were also views that once the police had a sanction detection[5] they were less inclined to undertake further investigation as preparatory work as they had achieved one of their key targets, and that the

5 A sanction detection is when an offender is charged, reported for summons, cautioned, receives a final warning, has other offences taken into consideration, or receives a penalty notice or street warning

CPS were risk averse because reducing post-charge attrition[6] was one of their key targets. A move to making the police sanction detection rates and CPS attrition rates subordinate to the offences brought to justice (OBTJ) target was being initiated during the latter stages of the review.

3.11 The gap in expectations is leading to frustration on the part of investigators, increasing the number of times a suspect is re-bailed and contributing to the overall delay (because the investigator has to gather more admissible evidence at the investigative stage or subsequently when they go away with another action plan requiring further work to be undertaken and not a charging decision).

3.12 Suspects may be bailed several times before and after the first appointment, which is reducing the import of bail (although it is well managed at a few charging centres). The issue of bail management was brought to the fore during the course of the review and there are clear connections with the effectiveness of the management of action plan compliance, which is weak.

3.13 Custody and priority cases (such as those involving persistent young offenders) which require immediate decisions can have a significant impact on the smooth running of an appointment-based system. The interjection of these cases can lead to appointments in bail cases being put back or cancelled. This creates unnecessary police abstraction where the officer has travelled from another station and further increases delay. Few CPS areas have any contingency arrangements to provide a back-up facility. Duty prosecutors needed to be more proactive in assessing the impact of custody cases and more flexibility is needed to ensure that dealing with these cases is not to the detriment of others. The current 'one size fits all' model does not work efficiently or flexibly. Part of the solution may be a simplified threshold test (which is applied in respect of those cases where the full Code test cannot be applied because all the necessary evidence is not available but there is a need to keep the suspect in custody after charge) as suggested later.

3.14 An initiative by CPS London to provide telephone charging advice during office hours, similar to that operated by CPSD, may provide greater flexibility to give charging decisions when they are needed.

3.15 The wording of the threshold test needs to be reviewed to reflect more accurately the nature of the decision taken at that stage. Inspectors understand that this is currently being considered.

3.16 A significant proportion of the time allocated for an appointment is spent by the prosecutor typing their decision on CMS and often the officer is, by agreement, absent for most of the allotted time or sits doing nothing. The average overall time in the 148 consultations observed by inspectors was 60 minutes (including custody cases, which could be of any length) of which a third was spent in discussion between the prosecutor and the investigator. The majority of the rest of the time was spent by prosecutors reading the file and typing up their decision. Inspectors observed consultations where the time taken by the prosecutor to type up the decision led to later appointments being put back or cancelled.

6 Attrition is where there is an unsuccessful outcome against a defendant, either through the CPS dropping the charge or the defendant being acquitted after trial

3.17 Although inspectors observed some inefficiency in all the areas visited they also noted some positive examples of effective systems (which are discussed in detail in the relevant parts of the report). For example police file supervision in parts of Humberside was very good; bail management at the Wembley charging centre was strong; prosecutors and prisoner handling unit personnel were working well together in Nottingham Bridewell charging centre; and the early involvement of prosecutors in complex cases was beneficial.

3.18 It is difficult to say at this stage what the full impact of DGSP will be on the scheme. The process has not yet been evaluated, nor rolled-out beyond the pilot areas. It could speed up the process in applicable cases but only in conjunction with an overhaul of the appointments system. There is reduced added value if the investigator still has to wait to get an appointment.

Governance (including performance management)

3.19 The introduction of the statutory charging scheme was a significant challenge which has been subject to a considerable amount of oversight at a national level throughout its implementation. In the early days a steering group operated, with attendance at very senior levels from the police service and the CPS. A national Charging Operations Board remains in place. The board was less active in the early part of 2007-08 but has been reinvigorated to manage the piloting and implementation of DGSP. The joint charging team, branded as the National Prosecution Team, drove the development, testing, evaluation, roll-out and post-implementation review and maintenance of the scheme and has revised the Director's Guidance. This jointly managed project had practitioner involvement throughout. Overall the governance of charging-related issues has been a good example of joint working and has contributed to the prosecution team ethos. Whilst much of the work of these groups has been positive they, together with local managers, have not been wholly successful in ensuring the effectiveness of the scheme to deliver charging decisions at the time needed.

3.20 Leadership and management capability within the prosecution team was identified as a key challenge at the time of the evaluation of the pilot scheme. Whilst some areas have kept a tight management rein on statutory charging, in others effective management oversight has reduced as charging has made the transition from an initiative to 'business as usual'. Better management of processes and performance would have had a positive impact on some of the weaknesses identified during this review.

3.21 Statutory charging has been a national priority for the CPS and ACPO since 2004-05 and that has been reflected in CPS area business plans. However in some areas the emphasis has diminished as the need to implement other new initiatives has emerged. From a police perspective the strategic drive and determination to deliver the charging scheme fluctuates according to where criminal justice features in local policing priorities, the influence of criminal justice departments, and the level of ownership at operational command level within the police. Where there are effective inter-agency relationships there is an increased likelihood of effective planning and pragmatic, speedy, remedial action in times of difficulty.

3.22 The PTPM structure has developed slowly and still needs to be more proactive and robust. It was difficult to find examples where resilient changes had been made as a result of issues identified through PTPM. A number of factors impact: wrong people attending, data unwieldy, lack of knowledge about what data can and cannot show, lack of effective evaluation and drilling down of the data.

3.23 In most of the areas visited there was scope for a more holistic approach to the performance management of statutory charging. In some the performance management regimes gave the appearance of two very different systems running in parallel and bolted together for PTPM meetings rather than a seamless, joined-up system monitoring the entire charging process. Lincolnshire had made some progress in assessing joint performance at the various stages from arrest to charge.

3.24 CPS quality assurance centres on examination of the MG3s. This is not, in isolation, a reliable indicator of the overall effectiveness of the process. In short more managers need to get out and observe the operation in practice.

The impact on casework outcomes

3.25 Outcomes have improved since the scheme was introduced; discontinuance and overall successful outcome rates are better and guilty plea rates have improved. From a wider criminal justice system viewpoint there have been improvements in the level of ineffective trials and the number of offences brought to justice. These were all potential benefits identified during the pilot scheme. However based on the findings of this review it is clear that greater improvements could have been achieved. It is also not possible to comment as to what impact other initiatives such as No Witness No Justice and ETMP may have had on the outcomes. The table below indicates the improvement achieved at national level against the six key performance indicators.

Measure	Target	2005-06	2006-07	2007-08
Magistrates' courts (MC) attrition	31.0%	23.5% (41)	22.0% (42)	21.0% (42)
MC continuance	11.0%	16.7% (1)	15.7% (3)	14.7% (6)
MC guilty plea rate	52.0%	67.5% (42)	69.2% (42)	72.3% (42)
Crown Court (CC) attrition	23.0%	23.3% (20)	22.2% (28)	20.8% (37)
CC discontinuance	11.0%	14.0% (11)	13.1% (17)	12.9% (18)
CC guilty plea rate	68.0%	65.0% (18)	66.5% (20)	71.3% (36)
Targets achieved	-	**2**	**3**	**4**

Data provided by the CPS

Figures in brackets indicate the number of areas achieving the national target

3.26 There has been a gradual but steady decrease (improvement) in the percentage of cases where the decision is that there should be no further action. In 2007-08 the CPS directed that there should be no further action against 158,975 suspects (29.1% of the total of charging decisions). It is not possible to say in how many of these cases the custody sergeant would, prior to the implementation of the scheme, have made the same decision. Nevertheless this represents a considerable saving to the criminal justice system by reducing the time spent by the police in unnecessary file building and bureaucracy and by not allowing cases that would have subsequently been discontinued from clogging up the courts. This should allow for trials to be listed sooner with the resultant benefit for all concerned, particularly victims and witnesses.

3.27 The role of the police supervisor is to ensure that only those cases which meet the statutory criteria and standards are submitted to a prosecutor for a charging decision. In some cases the decision to take no further action might properly have been taken by a police file supervisor. The proper oversight of cases at the police supervisory stage could free up more prosecutor and investigator time and reduce the wait for appointments. The observations and interviews confirmed that in some cases CPS prosecutors are called upon to take decisions that the police could have properly made.

3.28 The level of OBTJ has continued to grow over the past few years. Increased use of diversionary disposals, for example penalty notices for disorder, have been a significant factor although this may have reached a plateau in 2007-08. It was envisaged that statutory charging would have a positive impact on the proportion of convictions as a sub-set of OBTJ. This was less apparent during the early stages of the roll-out but there has been a significant improvement in 2007-08. However relative performance is determined by a number of external factors, in particular the number of non-judicial disposals which are influenced by policing policies and priorities[7] and changes to the remit of the scheme.

3.29 There has been a reduction (improvement) in the level of ineffective trials[8] in the magistrates' courts (down from 21.2% in 2005-06 to 18.3% in 2007-08) in respect of all cases whether charged on the direction of a crown prosecutor, or by the custody sergeant in accordance with the Director's Guidance. There has been an increase (1.8%) in the level of cracked trials[9] in the same period. Both may be attributable to a number of reasons, including better victim and witness care resulting in higher attendance rates. Overall the number of trials listed (whether police or CPS charged) has increased by approximately 5.0% at a time where the caseload has reduced significantly. A similar pattern emerges for Crown Court cases in terms of the breakdown although the number of trials listed has reduced. There have been a number of initiatives involving victims and witnesses and case progression implemented during this timeframe that are likely to have contributed positively to these results.

Value for money

3.30 The value added by statutory charging can be considered in many ways. At an individual case level feedback and observations showed a mixed picture. Inspectors saw examples of cases that the police wished to charge, but following an effective discussion with the prosecutor it was recognised that there were significant problems with the evidence. On the other hand they observed cases where the prosecutor added limited value at that stage, but merely authorised the charge on what was clear evidence (under the full Code test) or information (under the threshold test) without contributing significantly to the investigation or marshalling of relevant evidence.

3.31 The CPS was the beneficiary of all the additional funding for the scheme, as it was anticipated they would take on most of the additional workload. However the benefits identified in the original business case are spread throughout the criminal justice agencies. There is limited evidence of robust analysis of indicators of these 'downstream' benefits to ensure that the scheme is delivering what was anticipated.

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7 This is discussed in more detail in the HM Chief Inspector of the Crown Prosecution Service Annual Report 2007-08

8 An ineffective trial occurs when the hearing is adjourned on the day set down for the contest to another trial date

9 A cracked trial occurs when either the proceedings are discontinued on the day set down for trial or the defendant enters an acceptable guilty plea

3.32 The CPS reported on a quarterly basis to HM Treasury on the 'efficiencies' delivered as a result of Spending Review 2004 funding (the statutory charging scheme forms part of the reporting regime). The reports are based on the changing profile of casework outcomes split between guilty pleas, discontinuances and contested cases. A cost is allocated to each outcome based on the time expected to be taken for such a case (based on the CPS activity cost model). The benefits are assessed by comparing current outcomes against the breakdown calculated during the pilot conducted in 2002-03. Inspectors had significant concerns with this system including:

- The pilot data was calculated against a particular sub-set of cases (not guilty pleas) but is now being compared to all cases that go through the charging scheme. Whilst improved outcomes have been achieved, the data used will overstate the improvement because a significant number of cases where the defendant would plead guilty anyway are now passed to a prosecutor because of the nature of the case, for example persistent young offenders and some categories of dishonesty offences.
- The 'efficiencies' are based on the assumption that the time saved by better outcomes will be used to absorb additional work that might otherwise attract additional funding. There is no requirement to account for the use of this time and no records were available to inspectors to give a level of assurance that the savings were realistic. Whilst the CPS has undoubtedly taken on additional work over time it has also had significant increases to budgets, while at the same time overall caseload has reduced significantly in the magistrates' courts.
- The costs of delivering the scheme are not taken into account in the reporting regime.

3.33 In purely financial terms it is difficult to gauge the value for money of the scheme, as there is limited reliable data on the cost of providing statutory charging and the scheme has changed significantly since the pilot and related business case. The CPS has allocated over £150 million to the scheme so far (including some additional funding and reallocation). Whilst there is no doubt that the scheme has delivered a number of financial benefits and some efficiency savings, the processes for monitoring the value of such an investment were not sufficiently robust. It is also clear that significant inefficiencies still exist within the scheme, indicating that further improvements could have been achieved.

Working relationships

3.34 The introduction of the scheme has strengthened working relationships between the police and the CPS and is a contributing element to the development of the prosecution team ethos.

3.35 Relationships tended to be stronger at a national level, partly because they are further away from the day-to-day challenges faced at operational level, although concerns expressed about the operation of the scheme were causing some tensions. There are still issues that need to be addressed, for example police concerns that some prosecutors are risk averse and prosecutor fears that police officers are less likely to complete work post-charge. However the working environment is now one where such issues can be discussed more openly and frankly with less emphasis on blame. The key challenge is to translate the benefits of these better working relationships into more effective management, delivering improved efficiency.

3.36 The stronger relationships have had a beneficial impact in the implementation of other inter-agency initiatives. Whilst other issues will clearly have also made a contribution, many felt that initiatives such as CJSSS and conditional cautioning have benefited from better police/CPS working relationships.

The impact on file building processes

3.37 Improving the quality of police files and reducing the burden caused by building cases that would subsequently be discontinued were two of the stated aims of statutory charging.

3.38 Where there is good quality police file supervision it is leading to a better file being presented to the CPS. Prosecutors considered the scheme had a positive impact on police file quality. Inspectors found numerous variations on how police file supervision was structured and substantial variations in effectiveness. Although there were good examples found of the value added to the charging scheme process through the use of evidence review officers, not surprisingly limited effectiveness was often a reflection of limited investment in the role. At its most extreme the expectations of the role were simply not being met.

3.39 Concerns over file quality in a number of police forces had led to the appointment of specialist teams to take over the process of completing an investigation after a suspect had been arrested. There was limited indication of effective systems to feedback to investigators or supervisors any weaknesses identified by evidence review officers or prosecutors; this enables ‘errors’ to be repeated. The advent of these specialist units has contributed to the de-skilling of investigators and front line sergeants.

3.40 It was clear that in a significant number of cases prosecutors were requesting a full trial ready file before making a charging decision. Therefore workloads have not decreased as much as anticipated, although work does happen earlier in the process. A full file may be built only for the prosecutor to direct that there should be no further action; this is clearly not what was intended. In the worst case scenario, which inspectors observed, a subsequent prosecutor will direct that there should be no further action when the first has indicated an authority to charge will be forthcoming when further work has been completed.

Conclusion

3.41 To be fully effective the scheme, as a minimum, requires the process to deliver two things which overall the findings from this review indicate are requiring improvement. First there needs to be good supervision by the police service at all stages of the investigative process, coupled with proactive oversight by supervisors to ensure that only appropriate cases are referred to a prosecutor.

3.42 Second, the CPS must be in a position to provide an effective charging decision when it is needed on a file that meets the prescribed standard, regardless of whether the suspect is on bail or in custody. As the findings indicate the CPS and police also need to consider whether the drive to deliver the decision face-to-face during office hours in all cases adds value, coupled with whether there is a necessity for the charging decision to be delivered locally. The impact of the CPS London Direct initiative on reducing the time an investigator has to wait for an appointment will assist to inform the way forward.

3.43 The scheme was intended to be fairly straight forward and efficient, aimed at ensuring that the right people were prosecuted with the right charges being applied first time, contributing to more offenders being brought to justice and improved efficiency as cases progressed through the system. For a variety of reasons the processes have become too complex, impacting on the effective delivery of the anticipated benefits. A more flexible ‘common sense’ approach to issues would improve efficiency.

3.44 Notwithstanding the desire for flexible, pragmatic systems there is scope for greater consistency in key functions. Wherever possible this should be based on best practice.

3.45 In reaction to comment made in early 2008 in the Flanagan review about the operation of the scheme, there has been a renewed drive by the National Prosecution Team to make it more effective. Alternative methods of providing prosecutor input - using better technology - are being planned. There are also a number of initiatives currently under development including DGSP, integrated prosecution teams, and virtual courts that should have a positive impact on the statutory charging scheme.

3.46 There is a solid foundation from which the necessary improvements identified by this review can be progressed. Many of the more challenging aspects of implementing the scheme, including issues around organisational culture, are in place or well advanced. The CPS and police need to build on previous work and improve the processes and systems that underpin effective delivery of pre-charge decisions. Systems need to be more flexible so that they can provide charging decisions when necessary. The level of improvement required will vary from area to area with some needing substantial remedial action.

Recommendations, aspects for improvement and good practice

3.47 Inspectors identify six instances of good practice and have made 15 recommendations which identify steps necessary to address weaknesses relevant to important aspects of performance, which they consider merit the highest priority for the CPS and police service in improving the scheme. They also identify 11 aspects for improvement which relate to other areas of the scheme that would benefit from improvement, but which do not have as high a priority.

Good practice

1 The formal accreditation of evidence review officers (paragraph 8.8).

2 The provision of additional/dedicated prosecutor resources in serious and complex cases to provide continuing investigative and charging advice while suspects remain in custody (paragraph 9.6).

3 The booking of the next appointment (if necessary) at the end of the first appointment (paragraph 10.7).

4 The use of a Bail Clerk to assist in bail management (paragraph 14.16).

5 The use of dedicated resources to target bail absconders (paragraph 14.17).

6 The monitoring of case outcomes from arrest to conclusion (paragraph 16.15).

Recommendations

3.48 Recommendations are normally targeted at very specific issues raised in particular sections of a report. However in this one there are several related issues around the processes involved in delivering the scheme and so inspectors make one overarching recommendation to deal with this. The alternative would have involved drafting multiple specific recommendations for individual processes. Reviews of processes will need to take account of other initiatives under

development such as DGSP and the provision of centralised telephone charging advice and should also take account of the impact of some of the more specific recommendations in this report. Most of the review work should be undertaken at local area level, although the National Prosecution Team may need to be involved in strategic solutions, particularly if technology and telephony is to play a more significant role in delivering the service. We recommend that:

1 The Charging Operations Board and local prosecution team managers should review the processes involved in delivering the statutory charging scheme. Systems need to be more flexible and pragmatic than currently is the case and must deliver an effective arrest to charge (or alternative disposal) process for suspects in custody or on bail.

2 The threshold test in the Code for Crown Prosecutors is revised so that it reflects more accurately the basis on which decisions are made at that stage in the process (paragraph 5.22).

3 The prosecution team performance management process is reinvigorated and participants need to gain a greater understanding of data and how to use the information to improve performance (paragraph 7.13).

4 In order to improve the effectiveness of the charging scheme the functions of the evidence review officer should be included in the police service Integrated Competency Framework and the Association of Chief Police Officers, together with the National Police Improvement Agency, should ensure that the role is clearly defined to meet the requirements of the statutory charging scheme, and reinforced by the setting of national training standards (paragraph 8.8).

5 The police Professionalising Investigation Programme take account of the obligations on investigators, particularly those involved in Level 1 priority and volume crime investigations, to prepare cases to a standard sufficient to meet that required by evidence review officers and duty prosecutors (paragraph 8.13).

6 The Director of Public Prosecutions issues guidance on what material the investigator is required to provide to the duty prosecutor in order for there to be a charging decision (paragraph 8.13).

7 The Director's Guidance on Charging is reviewed to clarify the relationship between the operation of the threshold test by custody officers and the requirement to refer certain categories of cases to a prosecutor under annex A (paragraph 9.15).

8 CPS managers ensure that there are appropriate quality assurance systems to enable them to accurately gauge the effectiveness of duty prosecutor performance (paragraph 9.20).

9 The police and the CPS use the prosecution team performance management structure to monitor the effectiveness of the appointments process locally and improve where required (paragraph 10.12).

10 The CPS ensures that resources are allocated effectively to enable a timely charging decision to be made in respect of all suspects in custody, without disruption to appointments already fixed (paragraph 10.25).

11 Prosecutors should ensure they consider all relevant ancillary matters, and endorse the MG3 accordingly, when determining whether or not to authorise the charging of a suspect (paragraph 12.7).

12 A timely full Code test review should be carried out by the prosecutor in every case which is subject initially to a threshold test review (paragraph 12.10).

13 The ownership of the supervisory process of pre and post-charge action plans needs to be unambiguous, including the part to be played by the evidence review officer in that process (paragraph 13.19).

14 The police and the CPS should routinely monitor the impact of bail management on the effectiveness of the charging scheme and implement local improvements where appropriate (paragraph 14.23).

15 A formal review of the prosecution team performance management data reports should be undertaken to ensure that they meet the current needs of the users (paragraph 16.17).

Aspects for improvement

1 The National Police Improvement Agency when planning future arrangements considers the opportunities for the police service to strengthen links with the criminal justice system, by assisting in the improvement of key aspects of the charging scheme (paragraph 7.14).

2 The CPS and police locally, taking into account National Prosecution Team guidance, should:
- issue clear guidance identifying those types of case that should be submitted to a CPS office (as opposed to a duty prosecutor) for a charging decision; and
- police file supervisors or evidential review officers should determine in accordance with that guidance at an early stage which route a case should take (paragraph 9.7).

3 The CPS and police forces in each area undertake an audit of the provision of duty prosecutor charging rooms to ensure that each provides an acceptable working environment to facilitate the provision of effective charging decisions and early advice (paragraph 11.4).

4 Duty prosecutors should, by arrangement, attend the custody suite before the start of each charging session to determine the possible impact of custody cases on the day's fixed appointments (paragraph 11.6).

5 The CPS and police forces should ensure that computer equipment, capable of displaying multiple file formats, should be provided in each charging centre room (paragraph 11.9).

6 The CPS should undertake a keyboard skills assessment of all prosecutors and where necessary provide appropriate training (paragraph 11.22).

7 Duty prosecutors and investigators should be trained in the planning of consultations to ensure the maximum benefit is obtained (paragraph 11.22).

8 The police and the CPS should ensure that the material provided to the prosecutor when making a charging decision is recorded fully on both the police and CPS part of the MG3 form (paragraph 11.30).

9 CPS managers should, as part of their assessment of prosecutor performance, undertake observation of the face-to-face appointment process (paragraph 11.31).

10 The CPS and Association of Chief Police Officers issue guidance on when early legal advice can be sought in accordance with the provisions of sections 5.2 and 5.3 of the Director's Guidance (paragraph 11.52).

4 A BRIEF HISTORY AND BACKGROUND TO THE SCHEME

4.1 Before the evolution of an organised police force in 1829 responsibility for reporting and prosecuting crime rested largely upon the victim. Although part-time constables, 'thief-takers' or night watchmen could assist in the process of arrest, the making of a criminal allegation was very much a 'private' matter between the victim and the accused. Once a suspect had been arrested they would be taken before the local magistrate who had to decide whether there was any substance to the complaint and, if there was, require the clerk of the court to write down the charge.

4.2 It was important to get the charge right since it would ultimately determine the level of punishment available on conviction, so responsibility for drafting criminal charges rested with the court, rather than the prosecutor. As policing developed and became more sophisticated administrative processes relaxed and it became less critical for the court to decide the correct charge and drafting responsibility gradually moved to the police. Individuals who were processed and charged at the police station would be, and still are, provided with a charge sheet setting out the allegation and imposing a requirement to attend court to answer the charge. Subsequent proceedings were built around this information which could be added to or amended.

4.3 Before 1879 no single authority had a general supervision of criminal prosecutions. For more important cases the Home Office would advise police forces and magistrates' clerks and, on occasion, instruct the Treasury Solicitor to commence proceedings. The role of Treasury Solicitor can be dated back to around 1655 and was primarily concerned with matters effecting Crown revenue. In addition the Attorney General had the right to institute and conduct criminal proceedings as well as having the power to take over a private prosecution and either continue or end it.

4.4 In 1879 there was some rationalisation of the process when Parliament passed the Prosecution of Offences Act and created the office of Director of Public Prosecutions (DPP). Acting under the superintendence of the Attorney General the DPP was responsible for giving advice in relation to cases specifically submitted to him by government departments, local police authorities or the courts. With the turn of the century the prosecution work undertaken by the Treasury Solicitor gradually transferred to the DPP until the Prosecution of Offences Act 1908 finally established the Director of Public Prosecutions as a department separate from that of the Treasury Solicitor.

4.5 After 1908 although the most serious cases in England and Wales were referred to the DPP for prosecution, most charges continued to be investigated and prosecuted by police officers. Concerns had been raised at various times during the 20th century about the police's dual role as both investigator and prosecutor until matters eventually came to a head as a result of public disquiet over the police mishandling of an investigation, and the subsequent conviction, of a number of people arising out of the death of Maxwell Confait in 1972.[10] As a result a Royal Commission on Criminal Procedure[11] was established in 1978 under the leadership of Sir Cyril Philips.

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10 The Maxwell Confait Inquiry 1975-1977 The National Archives HO253

11 The Royal Commission on Criminal Procedure 1978-81

The Royal Commission

4.6 In 1981 the Royal Commission recommended that prosecution decisions should rest with independent, legally qualified prosecutors.

4.7 By this stage a number of different arrangements had evolved for the conduct of criminal prosecutions. The most serious offences were prosecuted by the DPP's office. For all other offences one of three broad approaches was used. Some areas had a local authority prosecuting solicitor's department which would prosecute all cases, others retained one or more firms of private solicitors, or in the case of the Metropolitan Police Service had their own solicitor's branch. However the police still retained the right to conduct prosecutions and could choose whether to instruct a prosecutor. These prosecutors were not independent and the decision to prosecute, and continue with a prosecution, remained that of the chief constable although ultimately they would accept the advice of the prosecuting solicitor. In cases dealt with at the Crown Court these arrangements placed a premium on the independence of prosecuting counsel, which allowed them to decide whether a case should proceed. These arrangements eventually changed when the Prosecution of Offences Act 1985 established the CPS, which became operational in 1986.

4.8 In recommending an independent national prosecution service, the Royal Commission considered where the new authority would best fit into the prosecution structure, and concluded that the most effective solution was to bring in the prosecutor at the point immediately after charge. Whilst recognising that "*as a matter of practice, it is difficult to achieve a total separation*", the Commission considered that the point of charge was the *"....clearest point, which, for the purpose of legislation, can be used to mark the division in responsibilities of the police and the prosecutor."*

4.9 The new system required the CPS to take over responsibility for prosecuting all cases except the more minor uncontested traffic offences. A crown prosecutor was required to act in accordance with a written set of rules, the Code for Crown Prosecutors, which imposed a duty to review the police investigation to ensure that there was sufficient evidence for a realistic prospect of conviction and that a prosecution was required in the public interest. The police retained the right to decide whether a prosecution should commence, either by way of charge or through the laying of an information and the issuing of a summons.

The review of the Crown Prosecution Service

4.10 Having been operational for 12 years the CPS was subject to a comprehensive review[12] chaired by the Rt. Hon. Sir Iain Glidewell which was published in June 1998. The report contained some 75 recommendations dealing with the Service's operation, management and structure. Commenting upon charging, the review stated *"We believe that the police should remain responsible for the investigation of offences and for charging as well as for the preliminary preparation of case papers."*

12 The review of the Crown Prosecution Service Cm3972, presented to Parliament by the Attorney General by Command of Her Majesty June 1998

The review of the criminal courts of England and Wales

4.11 The momentum for a change in the roles and responsibilities in deciding whether a suspect should be charged arose from a review of the practices and procedures of the criminal courts conducted by Lord Justice Auld (the Auld review), commissioned in December 1999 and published in November 2001. Recommendation 154 stated that *"The Crown Prosecution Service should determine the charge in all but minor, routine offences or where, because of the circumstances, there is a need for a holding charge before seeking the advice of the Service."*

4.12 English law does not in fact recognise the concept of the 'holding charge'. However it is often necessary in reality to take a decision at a relatively early stage of an investigation as to whether there is likely to exist sufficient evidence to mount a viable case against the suspect. This point is frequently reached well before it is possible to assemble evidence in a structured manner such that it can be formally reviewed by application of the evidential stage in the test contained in the Code for Crown Prosecutors. It seems likely that the approach adopted by the Auld review was based on the recognition that any scrutiny at that stage (whether by a custody sergeant or prosecutor) could have only limited value.

4.13 The CPS response to the Auld review welcomed the recommendation and identified a number of benefits including better file building at the pre-charge stage, fewer cases where the charge would need to be amended or changed, and a rise in successful outcomes.

4.14 Following the review the government issued a White Paper "Justice for All"[13] and then enacted the Criminal Justice Act 2003, Schedule 2 of which implemented the provisions which placed the change in charging practice on a statutory footing. It did so by amending the provisions of one of the major pieces of legislation which arose as a result of the 1981 Royal Commission, namely the Police and Criminal Evidence Act 1984 (PACE). The anticipated benefits of transferring the authority to charge to the CPS are discussed at paragraphs 15.3-15.5.

4.15 PACE, as originally drafted, imposed a requirement on the police that a suspect in custody must after a specified time be either released or charged and that a specific individual not part of the investigation, designated the custody officer, had sole discretion on whether to release or charge.

4.16 Schedule 2 to the Criminal Justice Act 2003 added a provision allowing a custody officer to release a suspect without charge for the purpose of enabling the DPP to make a charging decision. It also set out that the DPP may issue guidance on the matter and imposed an obligation on custody officers to have regard to any such guidance.

4.17 The explanatory guidance to the Act envisaged, as suggested in the Auld review, that the police would still retain the authority to charge in those cases where the custody officer considered that the defendant should be kept in custody after charge.

13 Justice for All Cm5563, Presented to Parliament by the Secretary of State for the Home Department, the Lord Chancellor and the Attorney General by Command of Her Majesty July 2002

The Director's Guidance on Charging

4.18 The Director's Guidance on Charging: Guidance to Police Officers and Crown Prosecutors (the Guidance) issued by the DPP under section 37A of PACE was first issued in February 2004. The third edition (February 2007) of the Guidance sets out in considerable detail the considerations that a custody officer must apply in deciding how a suspect should be dealt with, including which offences may still be charged by the police without first obtaining a prosecutor's authority. It is the proscription placed by the Director's Guidance that prohibits the police laying a holding charge (as suggested by the Auld review) before seeking advice and which required a revision of the Code to include a "preliminary or provisional" test which was to be applied when necessary. This is called the threshold test and is discussed below.

4.19 In the course of this review the impact of custody cases on the overall operation of the statutory charging scheme has been considered carefully. Inspectors have concluded that their inclusion is necessary as those cases where it is intended to deprive the suspect of their liberty must by their nature be the more serious or where the suspect is continually offending. It is therefore important that a prosecutor is able to assess the merits of the case at a very early stage. This is discussed further in chapter 10.

4.20 Annex A of the Guidance sets out those categories of offence which must always be referred to a crown prosecutor for "early consultation and charging decision". These are the more serious offences, including all those which must be tried at the Crown Court, but also any case involving an allegation of domestic violence regardless of seriousness, cases involving persistent young offenders and certain offences involving dishonesty. Set out below is a brief synopsis of the current version of the Director's Guidance. Annex A of the Guidance is reproduced in full at annex H of this report.

Section	
1	Various aspects of the Guidance
2	Responsibilities of crown prosecutors, including the use of pre-charge bail and the provision of early advice
3	Criteria for crown prosecutors to determine the charge and when the custody sergeant may determine the charge; indicates that any case charged by the custody sergeant must be subject to review by a crown prosecutor; provides guidance on how to handle cases where some charges require crown prosecutor consent and others can be charged by the custody sergeant; confirms that all decisions will be made applying the Code for Crown Prosecutors; provides guidance on the selection of charges; provide guidance on when either the full Code test or the threshold test should be applied; deals with emergency provisions when a crown prosecutor is not available to provide a charging decision
4	Matters ancillary to the charging decision
5	Deployment and role of the duty prosecutor, including the provision of early advice
6	Procedures to be applied when the duty prosecutor determines that there shall be no prosecution

7	What material should be provided to the duty prosecutor to enable them to make a charging decision
8	Roles and responsibilities of the custody sergeant
9	Guidance on when a diversionary alternative to charge is determined, for example a caution
10	Breaches of pre-charge bail
11-13	Appeals procedure and requirements to comply with the Manual of Guidance provisions

The threshold test

4.21 Prior to the introduction of the statutory charging scheme the Code contained only one test which had to be applied by prosecutors in all cases; it is now known as the full Code test. In determining whether a prosecution instigated by the police should continue, the prosecutor had to determine whether there was a realistic prospect of conviction (the evidential part of the test) and where there was sufficient evidence whether it was in the public interest to carry on with the prosecution. The Code recognised that the application of this test was not a one-off exercise and that the circumstances on which a decision to prosecute (or occasionally not to prosecute) was based might change, and therefore cases must be subject to continuing review.

4.22 However where the Guidance requires the police to obtain the authority of a prosecutor to charge, a difficulty arises in those cases where the police are seeking to keep the suspect in custody if the prosecutor has always to apply the full Code test. This is because in many of these cases there will have been insufficient evidence obtained at that stage to enable the prosecutor to decide whether, applying the Code correctly, the evidential part of the test is met.

4.23 To overcome this and ensure that application could be made to remand in custody appropriate suspects the Code was amended to include a threshold test. The Code states at paragraph 6.1 and 6.2: *"The Threshold Test requires Crown Prosecutors to decide whether there is at least a reasonable suspicion that the suspect has committed an offence, and if there is, whether it is in the public interest to charge that suspect........However the test is only to be applied to those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the Full Code Test is not yet available."*

4.24 There will be cases where it is proposed to keep the suspect in custody in respect of which there will already be sufficient evidence to apply the full Code test. There will also be cases where the prosecutor determines, in their opinion, that it would not be appropriate to keep the suspect in custody and if the full Code test cannot be met at that stage the only appropriate option is to bail the suspect for a charging decision when sufficient evidence is available. The specific aspects of the threshold test are discussed in more detail at paragraphs 5.20 and 5.21.

5 THE IMPLEMENTATION OF THE SCHEME

5.1 In March 2002 the CPS commenced a six month non-statutory[14] pilot of the charging scheme to evaluate the new arrangements. The sites chosen to pilot the scheme were Bath, all of Essex, the Medway area of Kent, the Wrexham area of North Wales and Halifax. The Bath trial was extended in April 2002 to include Bristol.

5.2 When launched the then DPP stated that there were *"practical issues to resolve but these new arrangements will help to reduce the number of wasted hearings and avoidable adjournments. This will lead to savings both in time and costs for lawyers, police and the courts and provide a more effective criminal justice system."*

The pilot

5.3 The CPS issued a press release on 24 May 2002 stating that the early indications from the first pilot site (Medway) were positive. The then Attorney General, Lord Goldsmith QC, who was visiting the pilot site was quoted as saying: *"It is in the interest of defendants and victims that we deliver an effective criminal justice system. We are determined to do this. This pilot is already delivering benefits on the ground, improving co-ordination between the police and the CPS, and ensuring that cases progress quickly and efficiently through the courts."*

5.4 In its notes to editors, attached to the press release, the CPS informed the media that the pilot would be assessed and independently evaluated by consultants, appraised by the Home Office, and that a report would be expected in the autumn of 2002.

5.5 In July 2002 the government issued the White Paper "Justice for All". The pilot charging scheme was referred to and the White Paper stated *"We have … decided, in principle and subject to agreement on practical detail, that the CPS will assume responsibility for determining the charge in cases other than for routine offences or where, because of the circumstances, such as the need to ask a court to remand the defendant into custody, the police have to prefer a holding charge before obtaining legal advice. The necessary legislative changes will be proposed to Parliament."*

5.6 In June 2003 a further CPS press release stated that the pilot evaluation had been completed and a report produced by the appointed management consultants concluded that *"the provision of early charging advice leads to improved case building and more effective and efficient use of time."*

5.7 The evaluation report also indicated significant improvements in the level of guilty pleas and a reduction in the number of cases discontinued after charge. The findings from the evaluation and their impact are examined in detail in chapter 15.

5.8 Following the pilot charging scheme the CPS announced that it would be setting up 'shadow' charging schemes ahead of the implementation of the new legislation to prepare for the full national roll-out of the statutory scheme.

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14 The White Paper "Justice for All" had still to be published

The shadow scheme

5.9 During 2003 the CPS and ACPO produced a joint agreement setting the terms of reference for the implementation of shadow charging scheme across England and Wales. This gave guidance in dealing with the necessary practical arrangements that needed to be put in place, as well as the operation of the scheme in terms of the provision of early consultation, advice and charging.

5.10 The joint document pack made it clear that the 'charging project shadow scheme' was intended to implement Lord Justice Auld's recommendation 154 (set out at paragraph 4.11), which it interpreted as being:

- CPS charge in all but routine cases or where an early charge is requested before seeking advice in custody case;
- preparing for trial;
- increase use of police bail; and
- preparing better cases.

5.11 The charging framework was set out in the "Agreement on the practical arrangements for the implementation of a shadow charging scheme" document and envisaged that the CPS should be determining the charges in relation to cases that were destined either for summary trial in the magistrates' courts or to be heard in the Crown Court.

5.12 In respect of cases where either it was proposed to keep the suspect in custody or release on conditional bail, the shadow scheme stated that the police would continue to charge where it had not been possible to consult with a CPS lawyer. In such circumstances the test to be applied was whether there was sufficient to charge on the evidence available at that stage.

5.13 The shadow scheme was stated to have been based upon best practice from the pilot sites and listed the role of the duty prosecutor as being:

- complementary to the custody officer role and aimed primarily at full file cases;
- working with operational officers providing early advice and guidance as investigations develop - on lines of enquiry and evidential requirements;
- guidance on file requirements and pre-charge bail periods; and
- face-to-face advice in police stations.

5.14 The scheme highlighted that when advising on and reviewing a case the CPS would follow the guidance contained in the Code; namely whether there was sufficient evidence for a realistic prospect of conviction and whether the public interest required a prosecution (the full Code test).

The statutory scheme

5.15 The Criminal Justice Act 2003 received Royal Assent on 16 November 2003.

5.16 The move from the shadow to the statutory scheme was overseen by a joint CPS/police project implementation team. Each area was signed-off by the project implementation team, indicating that they considered the minimum requirements had been met to enable the transition from voluntary to mandatory operation in accordance with a set timetable.
The move from voluntary (shadow) to mandatory (statutory) was delayed in some areas where the National Prosecution Team was not satisfied that the necessary structures were in place. The main migration to statutory charging took place in 2005, although those priority areas that had been part of the street crime initiative went live in 2004, with the last area moving to statutory status in April 2006.

5.17 At the time of the pilot charging scheme and during the initial operation of the shadow scheme the fourth edition of the Code was in use, which had been compiled in 2000. In November 2004 the fifth edition of the Code was published which took account of the changes made in relation to charging. This new version changed the full Code test from two separate parts into a single two stage process: the sufficiency of evidence and public interest stages and introduced a new second test, the threshold test, the operation of which is discussed in the previous chapter.

5.18 The change to the Code was required in order to give effect to parts of the Director's Guidance on Charging which had been published nine months earlier in February 2004. The framework and provisions operated so as to place a proscription upon the police which prohibited them from charging suspects who were to be detained in custody without having first obtained the authority of a prosecutor. Save in an emergency the police were now required to submit a case to a prosecutor for review before, not after, charge in cases where there was a need to bring the suspect before a court with a view to seeking a remand in custody.

5.19 The Guidance was trialled at the Longsight Police Station charging centre in Greater Manchester which was a 'pathfinder' for its implementation. The detailed evaluation of the pathfinder site identified issues that are still of concern, for example the quality of police file supervision and delays in the CPS providing an appointment.

5.20 The change presented the CPS with something of a dilemma given that it was founded on the principle that cases should not go forward unless there is sufficient evidence to afford a realistic prospect of conviction. There is a significant body of cases where a suspect has been arrested and it is clear that there will in due course be a viable case which is likely to meet the evidential test of the Code, but the evidence has not yet been marshalled. Whereas previously the police would have preferred a 'holding charge' and provided the CPS with a file sufficient for remand purposes, there would have been no formal review against the evidential test of the Code until a full file had been submitted. Assuming responsibility for the decision to charge required the CPS to take that view at an earlier stage and in circumstances where, although the police could not provide sufficient material on which a prosecutor could justifiably conclude that the evidential part of the test had been met, common sense nonetheless required that a charge be brought. It was in these circumstances that the threshold test was subsequently adopted.

5.21 The wording of the threshold test, which is drawn from Article 3 of the European Convention on Human Rights, is very similar to the test used to justify the arrest of suspects by police officers. This perhaps highlights the extent to which suspects have historically been charged without the application of the full evidential test. The terminology used in the Director's Guidance relating to the threshold test can, however, imply that it is more evidence-based than it can be in reality. To that extent it may cause confusion and inspectors understand that it is in the process of being revised by the CPS. It would better reflect the true nature of the exercise if it were to be couched in terms of the prosecutor being satisfied on the basis of the evidence and information available to them at that time that it would in due course be possible to mount a viable case against the suspect, namely one which afforded a realistic prospect of conviction.

5.22 The role of the prosecutor at that stage would be to satisfy themselves that the proceedings would not be speculative and that there were good grounds for believing that the prosecution would have a viable case. Such an approach would provide an effective safeguard and, furthermore, would be more flexible and less likely to divert prosecutors from other cases for significant periods.

RECOMMENDATION

The threshold test in the Code for Crown Prosecutors is revised so that it reflects more accurately the basis on which decisions are made at that stage in the process.

5.23 The HMCPSI inspection of CPSD found that some investigators and custody officers were unsure about the operation of the threshold test, which led to inappropriate referrals.

The role of the custody sergeant under the statutory scheme

5.24 PACE imposed certain duties upon the police designed to protect the rights of an individual should they be arrested and taken into custody. The police had to appoint one or more custody officers for each designated police station (one that had been deemed suitable for detaining arrested persons).

5.25 As originally enacted the provisions of sections 37 and 38 of PACE imposed certain duties upon custody officers both before and after charge.

5.26 Section 37 enabled a custody officer, broadly speaking, to keep a suspect in custody until a decision could be made on whether there was sufficient evidence to charge. As soon as that point had been reached however the custody officer had to charge the suspect if there was sufficient evidence and either release on bail or keep in custody pending the first court appearance, or if there was insufficient evidence, release without charge.

5.27 To meet the requirements of the charging scheme, Schedule 2 to the Criminal Justice Act 2003 inserted into PACE two further ‘release’ options for the custody officer once the point had been reached where they were satisfied that there was sufficient evidence to charge. Now not only could they charge or release the suspect without charge as before, but they could also release a suspect on bail either to enable the DPP to make a charging decision or, alternatively, for any other reason.

5.28 However, consistent with the explanatory note to the Bill on which the Act was based, Schedule 2 did not make any amendments to that part of the section that gave the custody officer the continuing power to keep a suspect in custody beyond the point where there was, in the officer’s opinion, enough evidence to charge. Suspects, therefore, who had been arrested and not considered suitable by the police to be released on bail would have to be so released if the case fell within that category for which the CPS had to authorise charge.[15]

5.29 This position was altered by the Police and Justice Act 2006 which further amended section 37 to include the power not only to release on bail but also to keep a suspect in custody for the purpose of obtaining a CPS charging decision.

15 See *R (on application of G) appellant v Chief Constable of West Yorkshire (respondent) and Director of Public Prosecutions (interested party)* CA (Civ Div) 5 February 2008

The file requirement

Evidential and expedited reports

5.30 The Director's Guidance sets out the types of report which the police have to submit in order for the duty prosecutor to make a charging decision, namely an evidential or expedited report. Sections 7.2 and 7.3 of the Guidance set out what is required in each type of report and when either is to be used. If the case will be heard in the Crown Court or is likely to involve a not guilty plea then an evidential report is to be submitted. One should also be submitted if it appears to the prosecutor that the case is so complex or sensitive that a decision to charge cannot be made without an evidential report. In all other cases an expedited report should be compiled.

5.31 The difference between the two reports, as their respective names suggest, is the comprehensiveness of the content. In either case however the report must contain sufficient documentation to allow the CPS to review the case in accordance with the Code. The Manual of Guidance (used by police officers and crown prosecutors for the preparation, processing and submission of prosecution files) sets out what is required in each report.

5.32 The Director's Guidance states that an evidential report should contain the key evidence upon which the prosecution will rely, together with any unused material which may undermine the prosecution case or assist the defence (including crime reports, initial descriptions and any previous convictions of key witnesses). The evidential report must also be accompanied by a suggested charge(s), a record of convictions and cautions of the suspect and any observations of the reporting or supervising officer.

5.33 An expedited report should contain key witness statements, any other compelling evidence and a summary of any interview. Where the offence has been witnessed by no more than four police officers a key witness statement and a summary of the other evidence may suffice. Whether the summary of the interview or of other police witnesses is to be oral or written will be at the discretion of the duty prosecutor concerned. The expedited report must be accompanied by any other information that may have a bearing on the evidential or public interest stages of the full Code test, a record of convictions and cautions and any observations of the reporting or supervising officer.

5.34 This aspect of the scheme's operation was of concern in most of the areas visited and there was a lack of clarity about exactly what information or evidence the prosecutor required before they were prepared to make a charging decision, in particular when they were going to authorise charge. At some centres inspectors found that the duty prosecutor required a full trial ready file sufficient for an anticipated not guilty hearing before a charge would be authorised. This is discussed further in chapter 8.

The Director's Guidance Streamlined Process

5.35 In December 2007 the DPP issued the Director's Guidance Streamlined Process.[16] This guidance is being tested in seven areas (Cheshire, Gloucestershire, Humberside, London, Merseyside, Staffordshire and Suffolk), five of which are Office for Criminal Justice Reform (OCJR) 'beacon' sites and two which have previously trialled similar processes although not, at the time of the fieldwork, at any of the charging centres visited in the course of this review.

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16 Originally referred to as the Director's 'Quick Process', it is most recently framed in the document "Guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecutions under S37A of the Police and Criminal Evidence Act 1984 Test Area Edition v1.3 February 2008"

The DGSP is intended to introduce more proportionality into the prosecution process, including the content of the police files that are submitted to the CPS. The results from the test areas are being evaluated and it is anticipated that the process will be rolled-out quickly across all areas.

5.36 The guidance makes clear that the distinction between cases which the police may charge without prior CPS authorisation and those which must be referred to the CPS remains as set down in the original Director's Guidance on Charging. What the DGSP is intended to do is to reduce the amount of material which an investigator must compile in those cases where the police may charge without prior authorisation. It will also be applicable in those which come within the terms of the scheme where the prosecutor considers that the case is suitable to be dealt with in the magistrates' court and a guilty plea is anticipated.

5.37 Inspectors considered the initial guidance issued to the pilot sites, but understand that this is currently under revision as part of the evaluation. The CPS will wish to ensure that the revised guidance sets out clearly what an investigator has to submit to a prosecutor for a charging decision, based on the nature of the case and the anticipated plea.

5.38 Indictable only cases which must be sent to the Crown Court in accordance with section 51 of the Crime and Disorder Act 1998 are expressly excluded from the DGSP procedure and must be prepared in accordance with the Charging Guidance, which requires that an evidential file is prepared.

Potential benefits of the streamlined process

5.39 The DGSP guidance has also clarified the criteria for when a plea of guilty can be anticipated in cases where the suspect does not answer questions in interview. The expectation is that this will reduce the proportion of cases where a prosecutor is required to make the charging decision, although no analysis has been carried out to assess the likely impact. This addresses one of the issues raised in the Flanagan review (at paragraph 5.53) which suggested that there was a lack of clarity around the existing guidance, resulting in the police service not making full uses of their existing charging powers.

5.40 The overall benefit of the introduction of the process focuses on reducing investigative time by cutting down on what the investigator is required to produce to the CPS[17] in all but the most serious of cases. It may also reduce the time needed by prosecutors and associate prosecutors to carry out an initial review of those cases where the police can charge without referral to the CPS. However there needs to be an overall evaluation of the current pilots to determine exactly what the benefits of DGSP are at all the stages, including the availability of appointments and the time allocated.

5.41 Any benefit will be significantly reduced if prosecutors continue to insist, to ensure compliance with the strict time regime of CJSSS, on a trial ready file before charge in anticipated not guilty cases.

17 It will also reduce what the investigator has to produce for the prosecutor in police charged cases

6 A COMPARISON OF THE OPERATION OF THE SCHEME BY CPS DIRECT AND LOCAL CPS AREAS

6.1 In this chapter the reasons for CPS Direct being set up and the key aspects of the provision of charging decisions by it are set out. Comparison is also made between the operation of the out-of-hours aspect of the scheme and the delivery of charging decisions in local areas together with some of the key aspects of performance, including benefits realisation.

6.2 The CPS provides statutory charging decisions 24 hours a day, 365 days of the year. This report focuses on that part of the police and CPS operation which runs during normal office hours, namely 9am-5pm Monday-Friday. At times other than this CPSD, which is a non-geographical CPS area, provides charging decisions for investigators.

6.3 The pilot sites (discussed at paragraphs 5.3-5.8) provided very limited out-of-hours coverage and this was for giving urgent advice, not making charging decisions. There was very limited take up by the police of this resource and the evaluation of the scheme concluded that it did not provide value for money.

6.4 However the Director's Guidance, which was issued to coincide with the shadow schemes, required the police to obtain a charging decision from a prosecutor in all cases specified in annex A of that guidance regardless of whether it was intended to keep the suspect in custody. A suspect can only be kept in custody for a finite period, which once reached cannot be extended to obtain a charging decision from a prosecutor. It followed that the CPS had therefore to be in a position to provide charging decisions whenever they were required.

6.5 One option would have been to resource the provision of out-of-hours charging decisions on an area-by-area basis. However research showed that there was insufficient demand to justify a full-time area resource 24 hours a day, or it would have been so limited that investigators would have to travel some distance to the duty prosecutor. Furthermore there would have been insufficient capacity should the need for more than one charging decision in the area arise at the same time.

6.6 CPSD was therefore set up to provide out-of-hours charging advice to all police forces, although the original business case envisaged that over time local areas would provide some of the coverage, particularly at weekends. A fundamental difference between CPSD and the service provided by the local areas is that all its decisions are made over the telephone on the basis of evidential material faxed from the police. It does not work out of charging centres and all its prosecutors are home-based. There is no fixed appointment system as operated during office hours. Investigators telephone a central number when they need a charging decision and are put through to the next available prosecutor.

6.7 Charging decisions can be requested by investigators from CPSD whenever a suspect is in custody, whether they are to be kept in custody after charge or bailed. Charging decisions can also be requested in respect of a suspect who has answered their police bail but the investigator has not, for some good reason, been able to obtain a charging decision from the local area. The types of offences which CPSD deals with are identical to those handled by local areas. CPSD duty prosecutors can deal with cases where either the threshold or full Code test is applicable, although inspectors found that some custody officers and investigators thought that they only dealt with threshold test cases. Despite this misconception over 75% of CPSD charging decisions are made applying the full test.

6.8 Unlike local duty prosecutors CPSD prosecutors are employed only to provide charging decisions. They do not for example prepare cases for trial or deal with ongoing disclosure of unused material issues, nor do they present cases in court, except on the infrequent occasions when they return to CPS areas as part of arrangements for maintaining their advocacy skills. CPSD prosecutors are therefore selected specifically for the skills they have in providing charging advice. The lack of other casework pressures and the selection process may help to account for the difference inspectors found in the quality of the MG3 forms completed by CPSD prosecutors compared with those locally-based. Of the 62 forms considered as part of the CPSD inspection, 42 (67.7%) were assessed as good, compared with only 42 of the 170 (24.7%) assessed as part of this review. Only one MG3 produced by a CPSD prosecutor was found to be as poor, compared with 51 (30.0%) by local area prosecutors.

6.9 However whilst there was a substantial difference in the quality of the MG3s, there was no difference between CPSD and local prosecutors in their initial application of the Code tests. The main concern in this review was the subsequent failure by local prosecutors to apply the full Code test in those cases where the threshold test was applied initially. This is not relevant to the operation of CPSD as files are submitted by the police to their local CPS office in those cases where CPSD authorise charge in threshold test cases.

6.10 Unlike local CPS area managers those employed by CPSD manage just the operation of the charging scheme. They have access to a wide range of performance information although much relates solely to the operation of CPSD processes, for example the time taken to answer calls, their volume (essential for allocating resources) and length. They also have real time access to the charging decisions made by duty prosecutors and can access MG3s as soon as they are completed. Their oversight of the quality of decision-making is greater than that at a local level where managers have all aspects of casework performance to oversee.

6.11 There is little difference in the overall successful outcome rates for cases where the charging decision is made by CPSD compared to those handled from inception by the local area. This is despite CSPD having a higher proportion of cases with traditionally lower successful outcome rates, for example rape and domestic violence, and making almost a quarter of its decisions applying the threshold test, where less evidence is available. In 2007-08 the successful outcome rate for locally charged cases was 79.0% in the magistrates' courts and 79.2% in the Crown Court. The rate for CSPD was the same in the magistrates' courts but higher in Crown Court cases, at 80.8%. Despite this some local CPS managers perceived that CPSD charged cases had an adverse impact on their overall performance. However only 43.0% of the CPS areas who responded to our questionnaire had done any comparative analysis of the outcomes. The questionnaire responses indicated that almost all areas shared relevant performance information and analysis with CPSD managers. However inspectors found that there was limited awareness of this at an operational level.

6.12 The police responses to the questionnaire indicated that 91.0% considered they had clear lines of contact with CPSD managers. This strength was not as apparent in the areas visited or from other evidence, although some included their CPSD liaison manager in PTPM meetings.

6.13 The advantages of CPSD, expressed by a number of investigators, seems to be that it provides a charging decision when it is wanted and that the prosecutors are less risk averse (although this is not reflected in the overall successful outcome rate) or ask for less additional (and seen by the officers as unnecessary) work pre-charge. At the moment the downside to this is that the means by which investigators provide the information to the prosecutor is cumbersome, relying on fax transmission in most instances. There are added difficulties when the crucial evidence is recorded on CCTV, which cannot yet be viewed by the prosecutor from their home location. There are also, from the observations of face-to-face appointments, some cases where there is added value from the investigator and prosecutor sitting down together and discussing the issues. This has always been the situation, whoever has the authority to direct the charge. Any extension of the CPSD method of working to normal office hours will need to be able to identify clearly those categories of case.

6.14 In chapter 11 inspectors discuss the daytime appointment structure and comment on the fact that the investigator may be absent for part of the appointment time, when for example the duty prosecutor is typing up the advice. When an investigator seeks a charging decision from CPSD they have to remain on the telephone and cannot go about their other duties when the prosecutor has obtained all the information they need. This was a cause of some dissatisfaction to the police and diminishes the overall quality of the service provided. The CPS London Direct initiative (considered at paragraphs 10.26-10.29) does not require the investigator to remain on the telephone. Although this is a much smaller scale operation, it has the advantage of allowing the investigator to carry out other tasks while awaiting the decision.

7 GOVERNANCE ARRANGEMENTS

The national structure

7.1 In this chapter the governance structures of the scheme at both national and local levels are set out, together with where it sits in overall police governance arrangements and the use of PTPM meetings. The national governance structure has evolved since the scheme was implemented fully. Statutory charging is now regarded as business as usual by the police and the CPS, with the national structures remaining in place to support the scheme and oversee new initiatives connected with it.

7.2 The implementation of the statutory charging scheme was part of a wider criminal justice reform programme. The CPS Chief Executive and ACPO representative for criminal justice matters co-chaired the programme board and a steering group was established. Overall there was substantial joined-up work to oversee the implementation of the shadow and statutory schemes with good links to OCJR. The steering group received regular reports on progress which identified successes and where further work was needed.

7.3 Migration from the shadow scheme was overseen by a national implementation team comprising senior CPS staff and police officers, which supported local implementation teams. During the period of implementation the strategic oversight at both a national and local level was good. The national team remained in touch with local issues through their post-implementation review process.

7.4 The programme board became the Charging Operations Board (COB) in April 2007 as the scheme rolled-out. As the scheme moved to a business as usual state the COB met less frequently and at one stage consideration was given to it being wound up. However the need to oversee the introduction of the Director's Guidance Quick Process (which became DGSP) led to it being reinvigorated and at the time of the review was meeting monthly. It is now co-chaired by the National Policing Improvement Agency and the CPS Business Development Directorate. Other members include the ACPO lead on criminal justice matters and a representative of HM Courts Service. The presence of the latter enables the board to be sighted on other key developments within the criminal justice system, for example CJSSS, and the co-chairs sit on the Courts Improvement Board. As the scheme has developed the scope of the COB has widened to include new initiatives such as DGSP and the development of electronic files.

7.5 The work of the COB is now overseen by the Courts Improvement Board. Performance is now assessed at a national level primarily through progress against the six key performance indicators: the guilty plea, discontinuance and attrition rates in the magistrates' courts and Crown Court. There is less focus now at this level on efficiency and timeliness issues.

7.6 Whilst a significant emphasis was put on the collaborative approach at a national level, and this was clearly successful in the early stages, there are now indications that this needs to improve. The recommendation in the Flanagan review that the scope of the scheme should be radically altered appeared to have caught the CPS unawares, as did the concerns expressed at a senior level within the police service about the effectiveness of the scheme in London.

7.7 Members of the National Prosecution Team continue to provide assistance to areas on key aspects of the scheme including the development of PTPM, which is discussed below and in chapter 16. They also produce good practice guidance for areas.

Prosecution team performance management meetings

Format and frequency of meetings

7.8 At a local strategic level some larger areas hold performance meetings which usually involve chief crown prosecutors and assistant chief constables but it was normal to find that, at a local operational level, joint governance of the scheme was primarily through PTPM meetings. These were introduced as the means by which relevant charging data could be shared between the agencies, used to drive performance and be central to understanding how the scheme was performing. Most areas conduct regular PTPM meetings and attendance levels are generally better now than in previous years, although representation can still be inconsistent. In some areas meetings usually take place at basic command unit (BCU) level, whereas in others they may be at an area-wide level. Representation is usually at CPS unit head and police inspector or chief inspector level. Feedback from police force questionnaires suggested that usual frequency of PTPM meetings was monthly.

7.9 It was common for PTPM issues and actions to be fed into BCU senior management team meetings but given the broad range of issues facing BCU commanders the implementation of change and development of the scheme was often challenging, given the range of competing priorities and targets faced by senior police managers. In some cases this could lead to a lack of corporacy across areas as senior managers developed the charging scheme in different ways depending upon their own resources and wider demands.

Effectiveness of meetings

7.10 There are signs that meetings are gradually becoming more effective but there is still some way to go before they fulfil their full potential. Understanding performance data is key to improving the effectiveness of groups and more work needs to be undertaken in this respect, but at the present time there is considerable focus on the attainment of benefits realisation targets and little understanding of the drivers and reasons for performance levels. It was consequently rare to find the types of issue identified in this review being discussed at PTPM meetings.

7.11 Evidence of effective analysis of information either within performance reports themselves or within the minutes of PTPM meetings was limited. Managers complained of a 'wood for the trees' syndrome where the volume and presentation of data was overwhelming them and militating against effective analysis (which is discussed further in chapter 16). The records of meetings were of variable quality. It was often not possible to tell if salient points were being discussed (because of the very brief records kept) or easy to identify what remedial actions were carried out in respect of identified aspects of concern. This could contribute to missed opportunities in sharing good practice.

7.12 More use could be made of the flexibility of the CPS's management information service, which produces the PTPM data, particularly in drilling down to a level that enables effective management of performance at different levels. There is also scope to improve the sharing of good ideas and practices, particularly within the areas, and in order to equip them with the necessary skills and abilities new managers may benefit from an induction to PTPM and its opportunities.

RECOMMENDATION

The prosecution team performance management process is reinvigorated and participants need to gain a greater understanding of data and how to use the information to improve performance.

7.13 Where PTPM arrangements were well developed police participants were able to use performance information as a practical diagnostic tool to support wider policing issues. This was most apparent within the Humberside force area.

7.14 The structure of the charging scheme and the findings from this review could usefully be included by the NPIA in its development of strengthened links between core aspects of policing functions and the delivery of criminal justice, for example through assisting in the development of key functions such as PTPM and the role of evidence review officers (which aspects are discussed in detail in this report).

ASPECT FOR IMPROVEMENT

The National Police Improvement Agency when planning future arrangements considers the opportunities for the police service to strengthen links with the criminal justice system, by assisting in the improvement of key aspects of the charging scheme.

Local governance and performance

7.15 Arrangements for the practical local governance of the scheme varied from area to area. The CPS and ACPO produced joint guidance in relation to practical and operational arrangements for the provision of early consultation, advice and charging, as detailed elsewhere in this report, and police force areas were able to construct gradually local arrangements for the delivery of the scheme as it rolled-out across the country. As a result no two areas implemented identical methods of operation but devised models based upon local demands and resources.

7.16 Relationships between senior police and CPS managers were generally strong and were best where there had been periods of stability within those roles. Although there was occasional local criminal justice board input into area arrangements this was usually in a broad ‘exception’ sense, as from the outset of the scheme the effectiveness of the bilateral arrangements between the police and CPS were key.

7.17 Police governance arrangements were likely to be strategically led by a chief officer, implemented by the force criminal justice or administration of justice department, many of which were becoming increasingly responsive to the scheme. Tactical delivery was determined by BCU senior management teams, but due to the general devolvement of policing functions to BCU managers this could inhibit the corporate development of the scheme across an area, for example variations in performance management and file supervision. There was also often a lack of clarity created by disparate methods of police governance of criminal justice and custody arrangements. Although there was some alignment between the two aspects, custody management arrangements were typically the direct responsibility of the BCU whereas charging strategy and policy was set by a criminal justice department, meaning that police managers could find themselves in conflict about the quality of investigations, decision-making standards and the overall supervision of a case.

7.18 It was encouraging to find that the majority of areas visited had, or were in the process of, reviewing their criminal justice governance arrangements, although these reviews had usually been instigated where risks had been identified around the operation of the scheme rather than as part of a continuous development process. Inspectors were also encouraged to find that in one of the areas visited the police had recognised that the lack of operational corporacy described earlier was unhelpful and that a standard operating model was being introduced. This was designed, for example, to provide each BCU with a consistent charging framework which standardised the role of the evidence review officer.

7.19 However, overall the linkage between strategic arrangements, charging groups and forums, through to charging champions (who had specific responsibility as a minimum to oversee the operation of the scheme) and senior management teams needed to be improved. Charging champions often acted as a bridge between strategy and delivery, but the challenges of continuously promoting the scheme was a difficult one when set against competing policing and criminal justice agendas. The connection between criminal justice strategy, including the charging scheme, and frontline police managers, supervisors and personnel is crucial to the effectiveness of the scheme, but elements of strategy were still to be fully embedded at an operational level.

7.20 It was clear that where there was collaboration between the agencies in the operation of the scheme this was more likely to lead to improvements in investigation quality, resulting in earlier and more collaborative charging decisions. For example in one BCU in Humberside strong links had been forged between the senior detective with responsibility for crime investigation performance and their CPS counterparts. This had led to a strong joint performance culture, which sought to include and develop evidence review officers' understanding of PTPM and a greater understanding on the part of the police as to how the key aspects of the charging scheme could assist in the management of crime investigation.

7.21 The view of many practitioners was that, although the scheme had been key to some improvement in investigation standards and pre-charge preparation work, inadequate CPS and police resources had been a barrier to further improvements. Although additional resources would be unlikely in themselves to improve charging arrangements, additional investment in how the scheme is regarded and prioritised within both agencies is crucial.

7.22 There were for example significant capacity issues involved in ensuring that evidence review officers (EROs) were able to manage large numbers of cases to a consistent standard and when this presented as an issue the consequence was that cases could be referred unnecessarily for a charging decision. (Other aspects of the ERO role are discussed in chapter 8). It was also accepted that the number of lawyers available to the CPS to act as duty prosecutors had to be appropriately allocated to charging centres, but this did not always meet the actual demand at a local level for timely charging decisions.

The impact of agency targets

7.23 Between 2003-March 2008 increasing the volume of offences brought to justice was a Public Service Agreement target to which the police and the CPS had to contribute. Sanction detection rates were also a police-specific performance indicator until March 2008, but are now regarded as an underlying diagnostic indicator as part of the Assessment of Policing and Community Safety (APACS).[18]

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18 Since April 2008 police authorities and forces working alone or in partnership are subject to the new APACS developed by the Home Office and HMIC, which replace the Policing Performance Assessment Framework (PPAF)

7.24 However, during the review there was an acknowledgement amongst police and CPS managers that performance targets for the police to improve sanction detection rates and for the CPS to reduce attrition rates were often at odds with each other and likely to act as a barrier to an integrated prosecution team ethos. A sanction detection can be obtained even though the defendant may be acquitted, but an acquittal will have an adverse effect on CPS targets to reduce attrition. Sanction detection targets could encourage police officers to take on investigations in the hope them being recorded when there was not a realistic prospect of conviction. Alternatively attrition targets could encourage CPS lawyers to become more risk averse and not authorise a charge because if the case failed it would impact adversely on their targets. The existence of these conflicting targets was unhelpful in encouraging police and prosecutors to work towards common aims.

7.25 Inspectors were encouraged to find that in one area a strategic debate had been commenced in relation to the frequency of cases investigated by the police where no further action was taken, together with the merits of converting rates of detected offences into those brought to justice. Local targets to bring offences to justice over and above the requirement for sanction detections was being considered, with a corresponding realignment of police portfolios to support the proposed change. It was too early to identify progress but many interviewees felt that such a change, if brought about, was likely to assist in developing the prosecution team ethos.

Governance arrangements with CPS Direct

7.26 The HMCPSI inspection of CPSD found that some of their liaison managers have made significant progress in establishing clear links with partners, both police and CPS areas, and those managers were highly regarded by the police. However this was not consistent across all managers and there were a number of aspects where more structured arrangements and greater input would yield improvements in service delivery. This was supported by the finding that in some areas it was unclear which person within the local CPS had responsibility for liaising with CPSD. Where responsibility had been assigned this lay with the CPS charging champion.

The way forward

7.27 Overall there is considerable scope for further improvements in the governance of the scheme, particularly at the operational level. Its future development is likely to be predominantly aligned to the development of a balanced criminal justice infrastructure including virtual courts, integrated prosecution teams, and the use of information technology, which would allow prosecutors and police personnel to access shared computer drives to which evidence could be uploaded and viewed from different locations. Such developments would support even stronger connections between the key agencies and, it is suggested, provide structures which the police service can use to obtain improved criminal justice outcomes. This would accord with recommendation 22 of the Flanagan review which welcomed the intention of the NPIA to prioritise better working relationships between the police service and the criminal justice system.

7.28 Although progress has been made the PTPM process needs to be made more effective. In particular there remains a need for local managers to improve their focus on those aspects of performance that have a real impact on effectiveness, for example file supervision, waiting times for appointments and improving the flexibility of the scheme.

8 THE SUPERVISION OF THE FILE PREPARATION PROCESS

8.1 Before a case is submitted to a prosecutor for a charging decision it should be prepared to the standard required by the Director's Guidance. Police supervisors have an important role in ensuring that the standard is met. However in practice the level of involvement of supervisors in the file preparation process was found to vary and was often dependent on individual force supervisory structures.

8.2 For example all of the forces visited had introduced a specific 'gatekeeping' role to support implementation of the statutory charging scheme. Although known by a variety of titles, common functions included ensuring that only those cases meeting charging scheme criteria were submitted for a charging decision, together with reviewing the evidence in each case and level of preparedness of files prior to submission. This was not always a dedicated role, however, meaning that gatekeepers could also be responsible for a wide range of other supervisory functions. These findings have resonance with the HMIC thematic report of 2008, "Leading from the frontline" which commented that the "*burden of bureaucracy is falling on the frontline sergeant*" and acknowledged the "*apparent imbalance of administrative burden currently placed on frontline sergeants*".

8.3 The introduction of the statutory charging scheme coincided with the development across the police service, as part of the Workforce Modernisation Programme, of individual teams and units to deal with investigations. The intention was that once an offender had been arrested the case could be passed to one of these teams to complete the investigation and the file preparation, providing a dedicated investigative resource and allowing the first response officer to return to patrol duties. Depending on the timing of implementation, therefore, some forces also combined the role of investigation team supervisor with that of gatekeeper. In addition depending on the investigator's role cases could also be supervised by the investigator's direct line manager, particularly if assigned to CID or a specialist unit (such as those for the investigation of child abuse or rape).

8.4 As a result of the foregoing a number of different paths were identified whereby a file could reach a prosecutor for a charging decision, and these are set out at annex I. Irrespective of the process in operation, a recurring concern expressed by duty prosecutors and their managers during interview was that the lack of effective file supervision was resulting in the premature submission of cases for a charging decision and the inappropriate submission of cases which did not meet charging decision criteria (similar comments are reflected in "Leading from the frontline"). An examination was, therefore, made of the different supervisory processes, particularly the role of gatekeeper (referred to throughout this report as evidence review officer), and the effectiveness of the processes in practice.

Evidence review officers

8.5 Although all forces visited had introduced EROs there were significant variations in arrangements across each of the review sites. These ranged from dedicated posts supported by clear line management frameworks and effectively defined processes to ad hoc arrangements accommodated within existing supervisory structures, including the use of operational supervisors to carry out ERO functions. In most areas the role was found to be a developing one, at different stages of implementation, and it was common therefore to find variations in arrangements

across individual BCUs in the same force. For example some supplemented dedicated ERO posts through the use of operational supervisors. This could, however, lead to ambiguity as to which role had primacy for the review of investigations and file supervision. Even where corporate models had been developed, as the ERO function was primarily devolved to BCUs for implementation and management locally there was little evidence of any force having achieved a corporate approach in practice.

8.6 Wide differences in levels of experience and knowledge were also found. Although a large number of EROs were of sergeant rank, several forces and BCUs also used experienced constables in the role. In some cases the role was performed on a rota basis by existing operational team supervisors, for example for six-12 month periods. In others EROs had been identified for the post on the basis of their supervisory and investigatory experience. In two forces retired police officers with extensive investigatory background were used. The variety of structures not only resulted in different approaches being adopted, but different standards being applied in respect of file supervision.

8.7 Although there were many good examples found of the value added to the charging scheme process through the use of EROs, not surprisingly limited effectiveness was often a reflection of limited investment in, or poor implementation of, the role. It was often assumed that the background and experience of the post holder were sufficient to equip them with the necessary skills to carry out the role. However the absence of clearly defined responsibilities and supporting processes, inadequate or poorly timed training, lack of continuity, and limited succession planning were commonly identified as areas for improvement. At its most extreme, it was found that this resulted in the expectations of the role simply not being met.

8.8 At the time of the review ERO accreditation was being developed in Humberside Police. Although the results of the evaluation were still to be fully reviewed early indications were that identification of core competencies, the development of common standards and the provision of tailored training were resulting in greater consistency amongst post holders, increased confidence in decision-making, and were assisting in maximising the benefits of the role.

RECOMMENDATION

In order to improve the effectiveness of the charging scheme the functions of the evidence review officer should be included in the police service Integrated Competency Framework and the Association of Chief Police Officers, together with the National Police Improvement Agency, should ensure that the role is clearly defined to meet the requirements of the statutory charging scheme, and reinforced by the setting of national training standards.

GOOD PRACTICE

The formal accreditation of evidence review officers.

8.9 Notwithstanding the introduction of the ERO role, it was accepted that first line supervisors would continue to be responsible for the day-to-day supervision of incident response and, at the very least, provide direction on the progress of investigations in the early stages. In most cases they were also expected to oversee and sign-off a file prior to submission to the ERO. However there was consistent comment from EROs that, since the introduction of their role, they were seeing a steady transfer of decision-making responsibility on the part of many first line supervisors. It was also commented that, at the same time, the development of specialist units and dedicated investigation teams meant fewer opportunities for first response officers to gain investigative experience, leading to a consequential de-skilling of operational team supervisors. As a result there was a growing reliance on EROs to assume a more 'hands on' supervisory role within the process, which could often stretch their capacity. This also meant that officers were often in a position to identify training or development needs on an individual or team basis, but none of the forces visited had in place an effective system through which these could be highlighted and addressed.

8.10 Conversely first line supervisors within specialist units and dedicated teams were found to be far more likely to be actively involved in directing investigations and supervising the file process from the outset. In some areas these supervisors effectively carried out the ERO function, or there was a separate nominated ERO within the unit or team. It was clear that investigators, particularly specialist and CID personnel, had greater confidence in such a process due primarily to the level of specialist training and knowledge of unit supervisors. As a result the requirement to submit files through the ERO in order to obtain a charging decision was often viewed as an unnecessary part of the process and, in some instances, was regarded as a barrier to effective case progression.

File standards

8.11 The effectiveness of the professional relationship between EROs and duty prosecutors was often described as key to the success of the statutory charging scheme and improved working relationships between the police and CPS was highlighted consistently as one of the direct benefits of its introduction.

8.12 One area of contention that remained, however, was the level of information required by prosecutors before authorising a charge. It was found that prosecutors were increasingly requiring that all work in cases which were likely to result in a not guilty plea be conducted pre-charge to ensure that they were in possession of all the evidential material prior to a charging decision. This had resulted from concerns about the effectiveness of completion of post-charge actions, leading to prosecutors setting higher pre-charge standards. The effect was to require investigators to prepare trial ready files, contrary to police expectations of how the scheme would operate. In reality, for many cases the level of actual work has not changed but it now happens earlier in the process. This approach is not solely due to the introduction of the statutory charging scheme, but is a consequence of a number of recently introduced criminal justice initiatives, not least CJSSS.

8.13 It was apparent in some areas that, to support CJSSS, instructions had been given to the police that in bail cases the prosecutor would not authorise a charge until the file was trial ready. This is contrary to the Director's Guidance on file requirements for a charging decision and there appears to be uncertainty as to which guidance takes precedence. There is now a need for the CPS and ACPO to clarify the material required to be provided by the investigator to the prosecutor for a charging decision under the Director's Guidance on Charging, Conditional Cautioning and the Streamlined Process.

RECOMMENDATION

The police Professionalising Investigation Programme take account of the obligations on investigators, particularly those involved in Level 1 priority and volume crime investigations, to prepare cases to a standard sufficient to meet that required by evidence review officers and duty prosecutors.

The Director of Public Prosecutions issues guidance on what material the investigator is required to provide to the duty prosecutor in order for there to be a charging decision.

9 THE PROVISION AND TYPE OF DUTY PROSECUTOR COVERAGE

9.1 This chapter describes how the CPS provides duty prosecutor coverage, including how they are selected, to service the provision of charging decisions. There is specific discussion of those cases which are serious and complex including those which involve allegations of domestic violence.

Coverage

9.2 In order for the scheme to be fully effective the level of duty prosecutor coverage needs to be sufficient to enable a charging decision to be provided as soon as it is needed, subject to the file having been prepared to the prescribed standard. The coverage provided at each police charging centre varied across the areas visited and was usually agreed in discussion between the CPS and police. No area provided 9am-5pm cover Monday-Friday at every charging centre. At those centres where there were two duty prosecutors there were arrangements to ensure cover over the lunch time period. However where there was only one there were few formalised arrangements to provide cover during this period. Each of the areas had, since the introduction of the scheme, reviewed the level of coverage provided at charging centres and most had made some adjustments (some increased, others decreased). A number of areas had introduced additional sessions specifically for serious and sensitive casework in an attempt to reduce the delay in getting an appointment, which is discussed below.

9.3 In other criminal justice areas questionnaire responses from 23 police forces indicated that overall coverage of charging centres (either by full-time or part-time duty prosecutor presence) had dropped by 11.0%, with full-time coverage dropping by 18.2%. However only one police force reported dissatisfaction with the current level of coverage, nine considered it satisfactory and 13 out of 23 (well over 50%) had a high degree of satisfaction. The level of cover is meant to be agreed between the CPS and police service, but in some cases this appears to be agreed in the light of CPS resourcing constraints.

9.4 Where cover was regarded as only satisfactory or less the main issues of concern were appointment delays, a lack of prioritised queuing/appointments, no temporary cover arrangements and prosecutors unwilling to provide advice immediately before 5pm. The processes for arranging appointments are discussed in detail at paragraphs 10.6 and 10.7. Only 20% of coverage was at sites where the police and the CPS were fully collocated, with just under three quarters of these respondees stating that collocation had a positive impact on the operation of the charging scheme.

The handling of serious and complex cases

9.5 CPS area responses to the review questionnaire indicated that in a third (10 out of 30 responses), face-to-face charging advice was also provided at CPS offices. This was a similar proportion to the areas visited during the fieldwork. Cases dealt with at the CPS offices were usually those which were deemed too complex, serious or time-consuming to be worked on at the police charging centre. Police questionnaire responses indicated that 74% (17 out of 23 responses) had a high satisfaction level with the provisions made by the CPS for the referral of special, serious or sensitive cases.

9.6 Inspectors were encouraged to note that in all the areas visited the prosecution team retained some flexibility to respond to the demand for charging decisions arising from intelligence-led police operations and serious and complex cases which arose at short notice. In particular where there were good liaison arrangements it was noted that an experienced prosecutor would attend the charging centre, sometimes out-of-hours, to deal with specific cases as the investigation developed and while the suspects remained in custody. As well as ensuring that the normal charging centre arrangements are not severely disrupted, this provides a positive demonstration of the CPS commitment to the prosecution team ethos.

GOOD PRACTICE

The provision of additional/dedicated prosecutor resources in serious and complex cases to provide continuing investigative and charging advice while suspects remain in custody.

9.7 In addition all of the areas visited had arrangements whereby certain categories of case would be submitted to the CPS office for written charging advice, without there necessarily being any face-to-face discussion. Whilst there was agreement that all cases involving a fatality arising out of a road traffic incident should be submitted through this route, there was less clarity about which other types of case should be submitted, even where written guidance had been issued. In some areas the decision as to whether the case should be dealt with at the charging centre or submitted to the CPS office was left to the duty prosecutor or charging centre manager. This is too late in the process and was found to lead to some ineffective appointments and increased the time taken for the charging decision. In order to ensure a timely and effective charging decision the correct route for cases should be determined at an early stage. In this respect the police file supervisor or ERO has an important role to play in identifying these cases. They should be assisted by clear national guidance tailored if necessary to take account of local arrangements.

ASPECT FOR IMPROVEMENT

The CPS and police locally, taking into account National Prosecution Team guidance, should:

- issue clear guidance identifying those types of case that should be submitted to a CPS office (as opposed to a duty prosecutor) for a charging decision; and
- police file supervisors or evidential review officers should determine in accordance with that guidance at an early stage which route a case should take.

9.8 Some areas also had specific provisions for dealing with allegations of serious sexual offence cases including child abuse. These were usually in the form of ‘surgeries’, either at a police station where the relevant specialist police team or unit was based, or at the local CPS office. Whilst there were appropriate arrangements to provide pre-charge decisions in relation to rape cases they would not necessarily be allocated to the same specialist prosecutor throughout.[19]

19 This was a specific recommendation in the report of HMIC and HMCPSI’s joint inspection into the investigation and prosecution of rape offences in England and Wales (published April 2002)

9.9 Conversely, in one area where virtually all cases were dealt with at the charging centre the process was found to be impacting adversely on the overall throughput of cases. This arose due to the time taken within the normal appointment structure to consider serious and complex cases, thereby reducing the overall time available for consideration of more routine decisions. In another area, during observations of the appointments process all regular appointments were cancelled over a period of one and a half days to enable the prosecutor at the charging centre to deal with a serious sexual offence case.

9.10 Generally the time taken to review files submitted to a CPS office for written advice, whether or not there was also a face-to-face discussion, also presented concerns. These cases were likely to involve multiple suspects; or significant numbers of witnesses who were more likely to be vulnerable or prone to intimidation than in the more routine types of case. Although guidance usually existed as to the length of time the prosecutor should be expected to take to review these cases, this was rarely supported by written protocols. Return dates could vary considerably from area to area with examples being found of cases taking longer periods of time to complete than was reasonable. This had been identified as a cause for concern and steps were being taken to reduce delay by better management of the procedures for allocating and monitoring the cases in CPS offices.

9.11 There was also evidence from fieldwork interviews of ambiguity over the relationship between the operation of the threshold test by custody officers and the requirement to refer certain categories of cases to a prosecutor under annex A of the Director's Guidance. This ambiguity was particularly evident in relation to domestic violence cases.

9.12 Annex A states: "*Offences or circumstances which must always be referred to a Crown Prosecutor for early consultation and charging decision whether admitted or not*". It then lists a number of categories and types of offence including those classified as domestic violence, cases involving persistent young offenders and certain offences involving dishonesty.

9.13 Section 1 (i) of the Guidance, however, states under the heading "Charging by Crown Prosecutors – the principle" that: "*Crown Prosecutors will be responsible for the decision to charge…… in all indictable only, either way or summary offences where a Custody Officer determines that the Threshold Test is met in any case, save for those specified in this Guidance which may be charged or cautioned by the police without reference to a Crown Prosecutor.*"

9.14 Where a case does not meet the standard of the threshold test it should not be referred to a prosecutor for a charging decision even if the offence is listed in annex A. In these circumstances the custody officer should determine that there is insufficient evidence to charge at that stage. This will not necessarily lead to the release of the suspect as there may still be time left on the PACE 'clock' and further enquiries could be conducted. If the suspect is to be released conditions may still be attached to the bail under recent amendments (contained in the Criminal Justice and Immigration Act 2006) to section 37 of PACE which allow conditional bail even where there is insufficient evidence at the time of release.

9.15 However, during interviews there was a perception amongst some police personnel that some categories of case had to be referred to a duty prosecutor regardless of whether or not the threshold test was met. As the threshold test bar is set very low the number of cases that would fall to be dealt with in this way is probably small and, indeed, inspectors did not

identify any such cases during fieldwork observations. Nonetheless it is important that there is consistent interpretation of the Director's Guidance and that any ambiguity in relation to the application of annex A is removed.

RECOMMENDATION

The Director's Guidance on Charging is reviewed to clarify the relationship between the operation of the threshold test by custody officers and the requirement to refer certain categories of cases to a prosecutor under annex A.

9.16 During the observation of appointments inspectors noted that some prosecutors were asking investigators in domestic violence cases to contact the complainant during the appointment to confirm that they were still prepared to support a prosecution. Victims' needs can change over time, as circumstances change, and it is important that any developing needs are identified and addressed as cases progress. The timing of any approach and the way in which it is made, however, require careful consideration to ensure that it does not undermine victim confidence and result in disengagement with the criminal justice process. Whilst there is a need for prosecutors to be realistic about the future viability of cases and to clarify whether they can proceed without the victim, the practice of contacting victims of domestic violence at the point of a decision to charge, where there is no clear indication that they are not prepared to support the prosecution, could suggest to already vulnerable victims that there are difficulties with their case. This can undermine victim confidence at a critical stage of the criminal justice process and should cease.

The selection of duty prosecutors

9.17 Areas often used a small cadre of selected lawyers in the early stages of implementation of the charging initiative. Movement to the statutory scheme led to increased volumes and a wider range of prosecutors became involved. A significant investment in training was also made, albeit this was mainly of benefit to prosecutors. Most of the areas visited had undertaken some form of performance assessment of prosecutors that had identified those who are best suited for attending charging centres; this has resulted in further adjustments in deployment. A small number of areas have ongoing programmes of assessment and development of prosecutor skills in respect of delivering pre-charge advice to the police.

9.18 Each of the areas visited utilised their more experienced prosecutors in the provision of charging advice, although the manner in which they were utilised varied. A combination of higher court advocates (HCAs), crown advocates and special casework lawyers (SCLs) provided charging advice either as part of the normal rota at charging centres, CPS offices, or on those days set aside at the charging centre to deal with more serious and complex cases. Of the 30 CPS areas who responded to the questionnaire 27 (90%) indicated that they used HCAs, although a smaller proportion (33%) utilised their SCLs. A similar approach was adopted by the areas visited. In the light of the CPS creating complex casework units which may cover a number of geographical CPS areas it is not surprising that there is limited use of SCLs as an area-specific charging resource.

9.19 Specialist prosecutors also attended the surgeries that dealt with allegations involving serious sexual offences or charging centre sessions that were reserved for specific types of case, for example those involving allegations of domestic violence. The surgeries were part of the overall charging scheme but focussed on cases where there would be prosecutor input from an early stage and advice provided as the investigation developed.

9.20 Each of the prosecutors observed had undertaken the first part of the Proactive Prosecutor Programme (PPP) training (which addresses the critical skills of case analysis and giving investigative advice) and most had undertaken the second part. This was consistent with the response received from other areas. In those areas where there was effective quality assurance some prosecutors had been removed from the rota, in some cases due to a lack of IT skills or concerns over the quality of their decision-making. It was of concern, however, to note that in some instances prosecutors had been retained on the rota when managers had identified significant performance issues. This was invariably because the area did not consider it had sufficient other resources to replace them until they had received sufficient guidance and further training to bring them up to the required standard. It is essential that charging decisions are delivered consistently to a high standard by duty prosecutors who are able to engage constructively with investigators.

RECOMMENDATION

CPS managers ensure that there are appropriate quality assurance systems to enable them to accurately gauge the effectiveness of duty prosecutor performance.

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10 THE APPOINTMENT SYSTEM

10.1 In this chapter the operation and management of the appointment system is discussed, including how quickly one can be obtained. It looks also at a specific initiative by CPS London to speed up the process and the impact generally of custody cases. Chapter 11 deals in depth with what happens during the appointment.

10.2 The scheme was intended to ensure that once an officer commenced an investigation they would be supported appropriately, leading to an early appointment with a duty prosecutor to facilitate an early charging decision, with the case having been screened by the ERO. Such arrangements would also allow for early face-to-face consultation as the basis for improving standards of case preparation. Within existing national arrangements inspectors found that there are a number of methods by which an officer can arrange an appointment with a duty prosecutor or an ERO.

10.3 The introduction of the scheme coincided with the development across the police service, as part of the Workforce Modernisation Programme, of individual teams and units to deal with investigations. This means that a case may be passed from the arresting officer to a prisoner handling team (or equivalent). Depending on the type of case or the crime involved other specialist investigators may also become involved in the process before the ERO directs additional actions ahead of the prosecutor appointment. As the 'cradle to grave' model, briefly described earlier in the report, whereby the arresting officer remained accountable for the preparation of the file has changed, standards in the continuity of investigations have become critical.

10.4 An issue commonly raised by investigators during interview was the decline in quality of the initial investigation and, in particular, statement taking by first response officers. Consequently investigators could find themselves requesting additional material from arresting officers, long after the arrest stage, extending unnecessarily the time taken to build a case and seek a charging decision.

10.5 Once the police supervisor or ERO is satisfied that the case has been prepared to the right standard for a charging decision, the next step is for the investigator to consult with the prosecutor (the appointment) to obtain a charging decision.

Booking the appointment

10.6 The systems for arranging appointments varied depending upon local conditions and agreements. Whilst some variation is expected, it meant that there were limited single operating models for police personnel to follow and in some areas the appointments system was not well managed. More could be done to share good practice around the operation of processes. Some area systems allowed investigators to book their own appointments but this could lead to them being missed where officers were unable to attend due to operational or shift pattern demands, leaving valuable prosecutor time wasted. The failure of investigators to keep appointments can have a substantial detrimental impact on the operation of the scheme and even when the prosecutor has advance notification that the investigator will not attend, the rigidity of the system meant that it was unlikely that the vacant slot would be filled. During observations there was a completely ineffective afternoon charging session because investigators were not able to keep their appointments. Similarly, inspectors observed appointments being cancelled by prosecutors because they were typing up advices from earlier consultations, or they were dealing with custody cases and there was no cover to deal with the fixed appointment.

10.7 Overall responsibility for control of the appointments diary varied between charging centres. In some the police had control, but in others either the CPS charging centre manager or prosecutor booked the appointments. There are advantages to both approaches. Police control ensures that officers do not try and book appointments before the file is ready, but CPS input can assist in planning where necessary for the investigator to come back and see the same prosecutor. However there are challenges to whichever process is adopted, including coordinating police rosters and duty prosecutor rotas. At one charging centre the next appointment (if necessary) is booked by the CPS at the end of the first one. This provides some additional control on the completion of action plans (which is discussed below) and provides the investigator with a firm date to work towards. It can also assist in the management of bail periods, but it makes no difference whether this is done by the police or the CPS. Overall the process needs to be shared between the agencies, properly managed and flexible enough to deal with custody cases and fixed appointments.

GOOD PRACTICE
The booking of the next appointment (if necessary) at the end of the first appointment.

Managing the appointment process

10.8 Where the investigative process and appointment arrangements are not sufficiently well managed inefficiencies develop, which detract from the value of the scheme. Most areas kept only limited data on the length of time it might take to access an appointment, with estimates ranging from two to five weeks and up to eight on occasions. The rigid structure of the appointment system clearly caused delay for cases where a charging decision could have been made if the defendant was to be detained in custody, but because the grant of bail was not in issue the case did not qualify for an immediate appointment with the duty prosecutor. The suspect had therefore to be bailed with the resultant delay, because an appointment slot was not available or there was a standard time period for bailing suspects.

10.9 One charging centre visited had developed a process whereby the investigator saw a prosecutor at an early stage to identify what work was needed and then returned for a second appointment when the work was completed. The aim was to ensure that all actions had been undertaken before the suspect answered their bail. However it was taking up to four weeks to get the first appointment, thus defeating the aim of the process. The questionnaire responses to this aspect are discussed below.

Ascertaining waiting times

10.10 The time an investigator has to wait to get an appointment was cited by many investigators as one of the key inefficiencies of the scheme, but the responses received from the areas not visited are inconsistent with those that were visited. There was only one area visited which could consistently provide an appointment promptly at each charging centre, in the remaining fieldwork sites the average length of time varied from two to eight weeks. There is little empirical evidence collected or analysed in relation to this aspect by managers and the issue does not appear regularly in PTPM meeting minutes, but feedback from the areas visited suggested wide variations across both BCUs and from force to force.

10.11 At one of the charging centres visited prosecutors (and other CPS staff) were based in the police station, which allowed for a more flexible approach. Duty prosecutors were able to deal with other work during quiet times and other prosecutors could be called on when there was more than usual demand for charging decisions. In addition this charging centre did not operate a fixed appointment system (although this was not as a direct consequence of being collocated).

10.12 It is essential before any substantial amendments are made to the scheme that the correct position as to how long investigators have to wait for appointments, based on empirical evidence, is ascertained. This needs to take into account the effectiveness of the ERO or supervisor in deciding which cases fall so far short of the evidential requirement that the involvement of a crown prosecutor could serve no useful purpose.

RECOMMENDATION

The police and the CPS use the prosecution team performance management structure to monitor the effectiveness of the appointments process locally and improve where required.

10.13 Overall there was a lack of flexibility within areas which restricted the efficient use of appointment times. Investigators were rarely given an appointment outside their own designated charging centre, even if that would result in an earlier one. Diaries were usually managed from within the specific charging centre, with little awareness of any empty slots elsewhere in the area. Where there was some degree of flexibility built into the system and cancellations were managed in such a way as to have these slots quickly filled, there was a higher level of user satisfaction with the system. This flexibility usually presented itself in areas where there was a will amongst practitioners to ensure that appointments systems were flexible. However even where appointments were well managed, custody and other priority cases could still have an adverse impact on those which had been arranged but were cancelled due to advice being sought on these cases.

The operation of the rota

10.14 Every area operated a rota system for each charging centre that identified which prosecutor would be providing charging decisions at each centre. However the rota was often not published until late in the preceding week. This made it extremely difficult for repeat appointments to be arranged with the same duty prosecutor, although this could be arranged when the same prosecutor covered the same day each week. Most prosecutors observed undertook between two and four half day sessions a week. In one area prosecutors undertook a period of three months' coverage. This had the advantage of providing consistency, but had the potential to reduce the flexibility of management if any issues of poor performance arose or when there were unexpected absences by the duty prosecutor. There were also concerns that it led to feelings of isolation on the part of the prosecutors, who would spend very little time in the CPS office.

10.15 It is for the CPS at a local level to determine how best to allocate resources to cover the requirements of the scheme. However inspectors endorse a system which retains the ability for the same prosecutor to deal with those cases in which they have given initial investigative advice during the charging process, and if the case is complex then ideally throughout the prosecution process. This reduces the time needed subsequently to familiarise themselves with the facts of the case and increases the consistency of decision-making in individual cases.

The handling of custody cases

10.16 There was a variable approach to handling custody cases, which took priority over those where the suspect was on bail. In some charging centres one appointment slot was reserved for custody cases, usually the first or last slot in the afternoon. However other charging centres made no specific provision and dealt with custody cases as and when they arose. This resulted in appointments that had been fixed for this time being cancelled, causing frustration for investigators who had travelled to attend or remained available after their tour of duty. This was also contributing to the delay in receiving a charging decision, as those appointments that were cancelled had to be re-booked.

10.17 Conversely in those charging centres where there was a fixed slot for custody cases, it was not being utilised if there were no suspects in custody in respect of whom a charging decision was required. Inspectors also noted during their observations that the need for an immediate charging decision could arise at a time other than during that set aside for custody cases, with the same impact as in those areas that made no specific provision.

10.18 However the impact of custody cases on the appointment system was reduced where the majority were with personnel from prisoner handling units or their equivalent. Here there was more flexibility to move appointments around, as they were covered by personnel from the same unit, without inconveniencing either the prosecutor or the investigator.

10.19 Due to the inflexibility of the system inspectors found that in most areas where the custody officer considered that it was appropriate to release the suspect on bail, with or without conditions, they would be so bailed and the charging decision deferred until the investigator had made an appointment to see the prosecutor. This was clearly appropriate where there was insufficient evidence at that stage for a full Code test review to be undertaken by the prosecutor. However this was also happening where there was already sufficient evidence gathered for the full Code test review while the suspect was in custody. This was causing unnecessary delay and extra administrative burdens as the decision whether to charge could have been made while the suspect was in custody. It was apparent that there were not always sufficient CPS resources allocated for duty prosecutors to deal with both threshold test and full Code test review cases in respect of suspects in custody.

10.20 As detailed in the chapter on the brief history of the scheme, the initial intention was that the police would retain the right to charge suspects without prior authorisation from a prosecutor in those cases where the custody officer considered that the defendant should be kept in custody after charge. This was referred to in the Auld review as a holding charge. A similar process operates in Northern Ireland where the police have the authority to lay a holding charge in custody cases while they await the direction of the Public Prosecution Service as to whether the prosecution should continue.

10.21 There are undoubtedly cases where the defendant should be kept in custody after charge in which the detailed involvement of the prosecutor at the investigative and pre-charge stage is crucial and adds considerable value. Indeed inspectors comment favourably in the section on the handling of serious and complex cases on those areas that have good arrangements to involve senior prosecutors in this type of case before charge.

10.22 However observations suggest that in custody cases involving more straightforward offending, the current processes are over bureaucratic and have a significant adverse impact on the operation of the scheme. The threshold test process would be made more effective by use of the revised threshold test recommended at chapter 5. The issues for consideration would be significantly narrower.

10.23 One option would be to restore the power of the custody officer to charge the defendant in those cases where the threshold test must be applied. However as stated above there are cases where the involvement of the prosecutor adds value at this stage. Additionally those cases where it is intended to deprive the suspect of their liberty must by their nature be the more serious or where the suspects is continually offending. Inspectors do not consider therefore that there is any class or type of offence where in these circumstances the power to charge should revert to the custody officer.

10.24 However there is a clear need for the CPS to provide sufficient resources to enable a charging decision to be made quickly in all cases where the suspect is to remain custody, whether by application of the threshold test or the full Code test if this stage has been reached, without displacing fixed appointments.

10.25 Another option would be for areas to provide a dedicated prosecutor resource for cases where it is proposed to keep the suspect in custody, or where the full Code test can be applied although the suspect will be bailed after charge. In one area visited this approach had been adopted, although the driver for this change was unconnected with the operation of the scheme. Inspectors found that it was working well and enabled the custody cases duty prosecutor to consider not only those cases where the threshold test had to be applied but also those in which the defendant could be bailed but were ready for a full Code test review. These prosecutors were also expected to take other work with them which they could deal with during quiet periods. Another benefit of this approach is that it provides investigators with easier access to a prosecutor for early advice, rather than going through the formal appointments system.

RECOMMENDATION

The CPS ensures that resources are allocated effectively to enable a timely charging decision to be made in respect of all suspects in custody, without disruption to appointments already fixed.

The CPS London Direct initiative

10.26 Towards the end of the fieldwork CPS London announced that they were implementing an initiative, which is being funded by CPS Headquarters, to reduce the backlog of appointments and waiting times. This was in response to concerns expressed about the impact this was having on the operation of the scheme, although at the time the initiative was launched there was no empirical evidence to indicate the scale of the problem.

10.27 The initiative is similar to that operated by CPSD, although on a much smaller scale, and uses the same telephony and case management software. There are differences in that London prosecutors have access to the area case management system (CMS) and they do not keep officers on an open line while considering their decision. In the early stages the initiative is

dealing primarily with cases where an investigator cannot get an appointment within four weeks of bailing the suspect (on the understanding that the case is ready for charging advice); where a bail appointment is cancelled due to an intervening custody case; and some knife crimes. Early indications are that the initiative is proving successful and the aim is to take custody cases once the backlog of bail cases is cleared.

10.28 Since the launch of the initiative some work has been done to assess the true extent of the problem and this has shown that there are significant variations across London. Some charging centres are able to deal comfortably with all cases, whilst others have significant backlogs and waiting times. The initiative is also highlighting the significant differences in the quality of police file supervision across the London boroughs.

10.29 Although very early days, this operation does go some way to providing the flexibility to give investigators a charging decision when it is required.

The way forward

10.30 The findings set out in this chapter indicate clearly that the appointment process as currently operated is too rigid and inflexible to cope with the demand for charging decisions. An investigator who has prepared a file to the prescribed standard should be able to get a charging decision as soon as it is required. The CPS London Direct initiative, albeit currently on a small scale, suggests that this can be done effectively.

11 THE CHARGING DECISION PROCESS

11.1 In this chapter a number of factors that impact on the effectiveness of the appointment process are looked at, including the location of the duty prosecutor and the use of IT; how the charging decision is delivered; and the structure, quality and frequency of appointments. The effectiveness of the process for providing early advice is also discussed.

11.2 The duty prosecutor was allocated a specific room at each of the charging centres visited, with the suitability varying significantly. The standard of some was good, providing adequate space with good levels of light and ventilation, however a number were cramped and inspectors considered one to be unsuitable, being very small with inadequate light or ventilation. At this location the prosecutor had no option but to have their back to the investigator when typing their part of the MG3 on CMS. This reduced the effectiveness of the discussion and gave the effect of there being a barrier between the parties.

11.3 At another charging centre two duty prosecutors and two charging centre managers were accommodated in the same small room (although since the fieldwork this has reduced to one duty prosecutor). This made it extremely difficult for anyone to concentrate, particularly when two appointments were taking place at the same time, which with the presence of the investigators made the room unacceptably cramped. These difficulties were compounded when one of the appointments involved the viewing of CCTV. Similar unsatisfactory arrangements where facilities were shared were also observed elsewhere during the fieldwork.

11.4 Inspectors recognise that space can be at a premium in police stations and that there are other demands on the available accommodation. However the provision of unsatisfactory accommodation is likely to inhibit the effectiveness of the appointment and may give a perception that a lack of importance is attached to this part of the process.

ASPECT FOR IMPROVEMENT

The CPS and police forces in each area undertake an audit of the provision of duty prosecutor charging rooms to ensure that each provides an acceptable working environment to facilitate the provision of effective charging decisions and early advice.

11.5 None of the charging rooms visited were sited within the charging centre custody suite. Many were physically remote from this important operational function, often on different floors. This was symptomatic of a cultural remoteness between custody officers and duty prosecutors. Prosecutors rarely, if ever, visited the custody suite at the start of the day which prevented them making any informed assessment of what work was likely to be generated by cases involving suspects in custody.

11.6 Whilst it is not an exact science an experienced prosecutor should be able to make an informed decision, based on the progress of the investigation, as to the likely impact on fixed appointments of cases involving suspects in custody. Where it is apparent that there is likely to be an impact then the process needs to be sufficiently flexible to enable additional resources to be made available to ensure that fixed appointments are not cancelled. The pragmatic approach advocated here goes to the heart of what is needed to improve and strengthen the delivery of the scheme.

ASPECT FOR IMPROVEMENT
Duty prosecutors should, by arrangement, attend the custody suite before the start of each charging session to determine the possible impact of custody cases on the day's fixed appointments.

11.7 In Thames Valley the location of investigators, duty prosecutors and EROs was considered as part of a new custody suite and cell accommodation build. The proximity of these parts of the operation of the charging scheme can be an important factor in its success, and other areas would benefit from considering their locations when developing new custody suites or reviewing the scheme.

The use of IT in the charging centre

11.8 Each duty prosecutor had access to viewing equipment which enabled them to watch CCTV and other electronically produced evidence. However the necessary equipment was not always in the charging room and viewing had therefore to take place in the prisoner handling unit or equivalent, or the equipment was borrowed from the custody suite. CPS computer hardware could not be used as the restrictions on the system prevent the downloading of the necessary software to allow the viewing of various file formats. It is important, to assist in the smooth running of the appointment, that the prosecutor and the investigator are able at all times to view and discuss the content of any visual material in the charging room.

11.9 Developments in the provision of 'collaborative space', which involves the use of computer technology to enable the prosecutor and the investigator to view material simultaneously although physically at different locations, may assist this aspect. Inspectors recognise that there are a number of technical issues that may be problematic, not least the installation and updating of commercial software and budgetary pressures on investment in technical solutions.

ASPECT FOR IMPROVEMENT
The CPS and police forces should ensure that computer equipment, capable of displaying multiple file formats, should be provided in each charging centre room.

11.10 There was at least one CPS CMS terminal in each charging room. Whilst prosecutors indicated that the system was slow at times this did not appear to be as a result of the equipment being sited at a remote location, but was attributed to general slow downs in the operation of CMS. Inspectors observed the system fail completely once, but fortunately this was at a collocated site and the prosecutor was able to move the appointments to his regular desk. Duty prosecutors made effective use of the CMS functionality to check whether suspects (and in some cases victims or witnesses) had other cases in the system.

11.11 Each charge room also had a fax machine and printer. There was an acceptable level of provision of legal reference material, both in hard copy and through the CPS internal intranet.

The use of IT by investigators consulting CPS Direct

11.12 The HMCPSI inspection of CPSD identified that the IT facilities available to investigators could be improved. These included an inability to e-mail the MG3 to the CPSD prosecutor and the reliance in most police forces on fax machines to transmit other documents. That inspection found that these were often not conveniently located, which increased the amount of time needed to get a charging decision.

The method of delivering the charging decision

11.13 Duty prosecutors should record on the CPS part of the MG3 or MG3a the method by which they provide advice. The CPS has five categories in which the method of providing advice can be recorded: face-to-face, telephone advice (by a local office) telephone advice (by CPSD), video conferencing and written advice. There is a further category, included in the relevant performance information, of undefined cases where the prosecutor has failed to identify the method by which advice was provided.

11.14 There were significant variations across the areas visited in the method of providing advice, although face-to-face appointments were the most common in all, albeit only just in one area. The following table illustrates the percentage of decisions in each category (excluding those made by CPSD) in the areas visited for 2007-08. It is important to note that only the method by which the final charging decision is made is recorded in this data. This makes no difference in those cases where there is only one appointment or only one method of delivering the charging advice. However if, for example, the process starts with a face-to-face appointment at the end of which the investigator has to obtain further evidence but the subsequent appointment is over the telephone, only the last method will be recorded for statistical purposes.

	Face-to-face	Telephone	Video	Written	Undefined
Avon and Somerset	62.6%	3.1%	0.0%	20.3%	14.0%
Gwent	53.4%	19.9%	0.0%	25.3%	1.4%
Humberside	79.6%	0.8%	0.0%	9.2%	10.4%
Lincolnshire	41.1%	10.1%	0.2%	40.2%	8.3%
London	72.7%	2.2%	0.1%	16.4%	8.6%
Nottinghamshire	74.7%	5.9%	0.0%	14.5%	4.9%
Thames Valley	60.8%	0.9%	13.3%	24.6%	0.4%
42 areas	72.5%	3.4%	0.4%	18.6%	5.1%

Data source: CPS management information system

11.15 Those areas which provided a high level of written advice tended to be the more rural, where there would be longer travelling distances to charging centres, or where there was not a permanent duty prosecutor presence at each charging centre. Only one area was utilising video conferencing to any extent, although at the time of the fieldwork a number of other areas were actively considering its introduction as means of reducing police abstraction.

11.16 Overall the percentage of face-to-face appointments increased from 63.5% in 2006-07 to 72.5% in 2007-08, although inspectors cannot say whether this was an actual increase or better recording by prosecutors, as there was a significant decline from 13.9% to 5.1% in the percentage of cases where the method of providing advice was classified as undefined. There was little difference in the proportion of decisions provided by the other defined methods, which supports the contention that the increase noted in face-to-face appointments is probably due to better recording, rather than an actual increase.

11.17 The process is also reliant on the prosecutor recording the correct method, although observations indicated that there was a high level of compliance, with almost all being recorded correctly.

The structure of the appointment

11.18 At those charging centres which operated a fixed appointment system, where each case was given a time slot in advance the same amount of time was allocated for each. At some centres a double slot could be booked if it was anticipated that the charging decision would take longer than the time normally allowed, for example if there was a significant amount of CCTV material to be viewed. However no charging centre had provision for shortening the appointment period. Times varied from 45 to 90 minutes and the most common time slot was 60.

11.19 The allocated time for each appointment observed is set out in the following table. It should be noted that for the purposes of this exercise not every single activity throughout the day is recorded, for example gaps between appointments:

Scheduled appointment time	Number	As a % of all appointments
0 minutes*	21	14.2
30 minutes	1	0.7
45 minutes	26	17.6
60 minutes	89	60.1
90 minutes	4	2.7
90+ minutes	7	4.7
Total	**148**	**100%**

* Primarily custody cases which do not have a scheduled time

11.20 Inspectors assessed how the appointment time was utilised by dividing it into four bands, discussion (the part spent by the prosecutor and the investigator discussing the case and any issues arising), reading time, legal research and typing up the decision. It was not always possible to be exact on some of the timings because in some instances the prosecutor would read the papers and discuss issues with the investigator as they went along. The four categories were then time banded to assess what proportion of each appointment was spent on each activity.

11.21 The following table illustrates, in minutes, how appointment times were utilised, applying the four categories of discussion, reading, legal research and typing:

Scheduled appointment time	Average discussion time	Average reading time	Average legal research time	Average typing time	Overall average appointment time
0 mins*	16.67	1.00	1.95	5.67	25.29
30 mins**	20.00	10.00	0.00	20.00	50.00
45 mins	22.69	10.38	0.77	15.77	49.62
60 mins	17.64	16.85	1.69	20.90	57.08
90 mins	22.50	30.00	0.00	30.00	82.50
90+ mins	50.43	41.43	1.43	25.71	119.00
All cases	20.09	17.30	1.62	21.16	60.17

* Primarily custody cases which do not have a scheduled time

** One case

11.22 These findings indicate that a substantial proportion of the appointment time is spent by the prosecutor typing up their decision on the computer generated form MG3 or MG3a, leading to police 'down time' which we discuss further at paragraph 11.28. The time taken to type up the decision was influenced primarily by the level of detail used to record the decision and to some extent by the keyboard skills of the prosecutor, although all were proficient in the use of the system. Unsurprisingly there were significant variations in the keyboard skills of the prosecutors ranging from extremely proficient to basic skill levels. No assessment is undertaken of the keyboard skills of prosecutors.

ASPECT FOR IMPROVEMENT

The CPS should undertake a keyboard skills assessment of all prosecutors and where necessary provide appropriate training.

Duty prosecutors and investigators should be trained in the planning of consultations to ensure the maximum benefit is obtained.

11.23 Inspectors observed some very detailed MG3 or MG3a decision records during the course of observations. Assessed in isolation from the appointment process these might be considered as being of a better quality than those which were shorter in length. However in the overall context of the process in some cases the provision of detailed MG3s and MG3as led to the appointment overrunning, with a resultant delay for investigators, and in one instance inspectors observed two appointments cancelled because of the time taken to type an MG3a. Conversely they observed much shorter, but adequate, decision records being typed where there had been a wide ranging and constructive discussion. In these instances, although not much was recorded on the form, the investigator was fully aware of what was required.

11.24 These findings also indicate that the amount of time spent in discussion did not increase with the appointment time allocated, for example the proportion of time spent in discussion in 60 minute appointments was less than in those of 30 and 45 minutes. There was also no significant difference in the discussion time between 45 and 90 minute appointments. However, the longer the appointment the greater the time spent on reading papers. Whilst this is understandable, it does indicate that the investigator is not actively engaged for a considerable proportion of the appointment, particularly when the average typing time is also taken into account.

11.25 The average time for cases with no fixed appointment was just over 25 minutes, which shows that charging decisions can be made quickly, although the amount of material the duty prosecutor would have to consider would normally be less than where a full Code test review was undertaken. Where there was no fixed appointment the cases were most likely to be custody or other priorities, for example those involving persistent young offenders. These cases were more likely to be accommodated with minimum disruption at those charging centres where they were allocated a specific time slot although, as already stated, the need for the appointment did not always coincide with the designated slot. However where no specific time slot was reserved the impact of any custody or other priority case with an average time of 25 minutes would be to delay or cancel at least one appointment for each such case.

The quality of the appointment

11.26 Almost all the appointments observed were face-to-face with a few being done over the telephone, albeit from the charging centre. However the quality of face-to-face appointments varied considerably. Where investigators were sufficiently confident and had prepared files to the required standard then there was likely to be more value in the interaction and, equally, where prosecutors were regarded as good communicators who wanted to pass on learning then officers were more likely to engage in the process.

11.27 At their best appointments involved the duty prosecutor and the investigator exploring jointly the strengths and weaknesses of the case, with the prosecutor asking searching questions, when necessary, on key issues such as the reliability and credibility of witnesses. This would then be followed up where necessary with a discussion of why, and what, further evidence was required, or why the case could not go forward for prosecution. Inspectors found that where there was a good quality appointment the investigator would be positive about the outcome, even if it was not necessarily the result they had anticipated.

11.28 However all too often the officer was merely asked to give a brief outline of the facts, with the rest of the appointment time being spent by the prosecutor reading the papers and typing up their decision. During this time it was noted that the investigator would have little else to do but wait for the advice, or leave the charging room until the prosecutor had typed up their decision. Whilst investigators based at that charging centre could carry out other duties, this was not necessarily the case if they had come from another station. Overall the investigator was present throughout the appointment period in 75 of the 148 (50.7%) observed, for part of the time in 70 (47.3%) and not present at all in three (2.0%). Where there was a telephone appointment the investigator was recorded as present throughout.

11.29 The value of the face-to-face process was diminished further when the police officer attending the appointment was not the officer in the case. Where this occurred they were unable, if asked, to answer detailed questions about the case. Inspectors found that investigators were concerned that their appointment slot was not lost and would therefore rather send another officer than have to seek another appointment, which might be weeks away.

11.30 It was noted that there was an inconsistent use by investigators of that part of the MG3 where the material provided to the prosecutor should be recorded. In too many cases the section would either be incomplete or blank. This was confirmed by the file examination which indicated that only 104 of the 149 relevant cases (69.8%) recorded the material provided to the prosecutor. Whilst some prosecutors recorded in their advice the material they considered in reaching their decision, this was not a practice adopted by all. It is important that an accurate record is kept of the material considered at each stage of the charging process, both to assist subsequent prosecutors and to assure the quality of decision-making.

ASPECT FOR IMPROVEMENT
The police and the CPS should ensure that the material provided to the prosecutor when making a charging decision is recorded fully on both the police and CPS part of the MG3 form.

11.31 CPS managers have undertaken very little quality assurance of the face-to-face process. Most have relied on an examination of the written record of the charging decision as recorded on the MG3 or MG3a, which as has been indicated above may not necessarily reflect the overall quality of the appointment. The CPS has emphasised that they consider face-to-face charging decisions as a key element of the success of the process. However at the moment that success is being measured primarily in quantitative terms, namely is the level of face-to-face appointments increasing. In the light of these findings it essential that managers should also assure themselves of the qualitative nature of the process.

ASPECT FOR IMPROVEMENT
CPS managers should, as part of their assessment of prosecutor performance, undertake observation of the face-to-face appointment process.

11.32 Other aspects of quality assuring decision making are discussed in the chapter on performance management.

The number of appointments for each decision

11.33 A final decision was reached in 94 of the 146 (64.4%) appointments observed by inspectors where the investigator was seeking a charging decision. In the other two observed the investigator wanted early legal advice. There had been one or more previous appointments between the prosecutor and the investigator in 33 of the 146 cases (22.6%) and in four of the 33 there had already been two previous appointments. A final decision was reached in 19 of the 33 (58.0%) observed where there had been a previous appointment, including three of the four in respect of which there had already been two previous appointments. It is of concern that in the remaining 14 cases (42.4%) the final charging decision was again postponed pending the prosecutor receiving further information or evidence. Those 14 will therefore have been subject to a minimum of three appointments each by the time they are concluded.

11.34 In 75 of the 115 cases (65.2%) observed that had not been subject to a previous appointment a final decision was reached there and then, without the need for an action plan to obtain further information or evidence. Overall for all criminal justice areas in 2007-08, a final charging decision was reached at the first appointment in 74.5% of cases. The difference between these findings and those for 2007-08 may reflect the approach now being taken in some areas, that where a not guilty plea is anticipated a charge will not be authorised until the case is trial ready.

11.35 There was a significant variation across the criminal justice areas visited in the number of appointments needed before a final charging decision was made. In one the charging decision was made at the first appointment in 85.4% of cases observed, but in only 51.3% in another. From observations this disparity is attributable to a number of factors, including the quality of the file provided and whether the prosecutor required a trial ready file before authorising charge in cases where there was an anticipated not guilty plea.

11.36 There had been a total of 185 appointments to date in the 148 cases observed. A final decision to charge was made in 65 of the 148 involving a total of 78 appointments, averaging 1.2 per case. In 28 cases, involving 34 appointments, the final decision was that there was to be no further action at an average of 1.2 appointments per case.

The type of decision

11.37 Under the provisions of the scheme, duty prosecutor decisions are classified under one of 14 headings for analytical purposes, including where the file is submitted for written advice, without there necessarily being any face-to-face discussion. The type of decision made will be determined by what stage the investigation has reached. Nine of the 14 relate to the final outcome, four indicate the need for further work to be carried out before a final charging decision can be made, and one is categorised as "other". The full list of possible decisions is set out at annex J.

11.38 Inspectors observed different types of decision being taken by duty prosecutors: directing that the suspect be charged or cautioned with one or more offences, that no further action should be taken, or that further information or evidence was needed (investigative advice). Where investigative advice was given an action plan would be drawn up setting out what the prosecutor required. Action plans are discussed in detail in chapter 13. Annex J sets out the CPS data relating to the overall number of final decisions in each category for all cases where a final decision was made in 2007-08.

11.39 Of the appointments observed 62 of the 148 (41.9%) resulted in a direction that the suspect be charged, in 28 (18.9%) no further action was directed, in 52 (35.1%) the final decision was deferred and investigative advice provided, and in four (2.7%) the direction was that the suspect should be cautioned. In the other two cases (1.4%) the decision was stood over, either because the prosecutor ran out of time or because the investigator was asked to make an enquiry without a formal action plan or MG3 being completed. These cases arose when the prosecutor was dealing with cases handled by the prisoner handling unit, where appointment arrangements could be more fluid.

11.40 There was a significant variation in the range of decisions across the criminal justice areas. Appointments which resulted in a direction to charge ranged from 34.5% to 53.8%, no further action from 14.2% to 28.0% and investigative advice from 15.4% to 47.8%. A detailed breakdown of the type of decision, by criminal justice area, is at annex E. At some charging centres, due to a number of factors including inspectors' other fieldwork commitments, not many appointments were observed and therefore some of the findings should be treated with caution.

Accuracy of recording

11.41 As part of the pre-fieldwork file examination inspectors considered the accuracy of the recording of the decision on the MG3 and MG3a. The decision was recorded correctly in 226 of the 244 (92.6%) forms examined. Inaccurate recording or a failure to record any decision can distort an area's performance information, for example the proportion of cases where no further action is directed compared with those where a charge is forthcoming.

Repeat appointments, action plans and consistency

11.42 In 13 of the 52 (25.0%) appointments observed where investigative advice was provided the case had already been subject to an earlier appointment and in one had been subject to two previous appointments. In three of the 13 cases none of the actions had been completed and they were partly completed in six and fully in four. The reasons for non-completion varied. Some were understandable, for example not being able to contact medical practitioners, but in others the investigator did not consider that what was requested was necessary for a charging decision. In the four where the investigator had complied fully with the requirements of the earlier investigative advice, the subsequent duty prosecutor determined that more information was needed than requested previously. It was noted, as discussed in detail at paragraphs 8.12 and 8.13, that in part this was due to the tension between the prosecutor being provided with enough evidence to make a charging decision and the file being trial ready. Whilst compliance with the first action plan provided enough evidence for the prosecutor to determine that the case should proceed to charge, they were not prepared to give that authorisation until they were satisfied that all the evidence needed for trial had been obtained. This was leading to a delay in the suspect being charged, a further extension of their pre-charge bail and a frustration amongst investigators, who believed that they had complied with all that was required to make the charging decision. It also helped to reinforce the view held by some police file supervisors, investigators and defence representatives that there was a lack of consistency in decision-making.

11.43 Inspectors also observed two appointments where a previous prosecutor had given investigative advice but indicated that once the actions had been carried out a charge would be directed. In neither case was the evidence crucial to the decision whether or not to direct a charge. However at the subsequent appointment with a different prosecutor the decision was that there should be no further action. Although a very small proportion of the cases observed this provides some support for view expressed by a number of investigators that there is a lack of consistency between prosecutors, which gives the investigator unnecessary work and prolongs the uncertainty for both the victim and the suspect.

Early legal advice

11.44 The police part of the MG3 requires the investigator to indicate one of two reasons why an appointment is requested, namely for early legal advice or a charging decision. The latter would include those where investigative advice is given and the decision postponed pending the obtaining of further evidence or information. This section was rarely completed.

11.45 The Director's Guidance on Charging sets out at paragraph 5.2 the circumstances in which the police may seek an early consultation. Under the heading "Early consultations - When early advice may be sought by the police" it states: *"Early consultation and advice may be sought and given in any case (including those in which the police may themselves determine the charge) and may include lines of enquiry, evidential requirements, and any pre-charge procedures. In exercising this function, Crown Prosecutors will be pro-active in identifying, and where possible, rectifying evidential deficiencies and identifying those cases that can proceed to court for an early guilty plea as an expedited report."*

11.46 Paragraph 5.3 goes on to say: *"Early consultations should also seek to identify evidentially weak cases, which cannot be rectified by further investigation, either at that stage or at all, so that these investigations may, where appropriate, be brought to an early conclusion."*

11.47 The wording of both sub-sections follows closely that used in Section 2.4 of the Code for Crown Prosecutors.

11.48 Inspectors observed two appointments where early legal advice was requested, although these were not recorded correctly under the appropriate recording code. It is therefore possible that more early legal advice is being provided than is recorded. Early legal advice was more likely to be sought at one of the specialist charging sessions, for example those that dealt with allegations of serious sexual offences.

11.49 Where the duty prosecutor's room was located close to the prisoner handling unit or equivalent there was more scope for informal early advice to be given, although this was not usually recorded. There was a lack of clarity at some charging centres as to when formal early legal advice could be sought, with some investigators believing that they had to have an evidentially complete file before they could make an appointment, which was reinforced by the approach adopted by some duty prosecutors. The impact of the requirements of CJSSS, which was leading to prosecutors requiring a trial ready file, had contributed to this approach. Overall investigators were more likely to seek early advice from their supervisor than seek to discuss the case at that stage with a duty prosecutor, which might involve significant delay before they could get an appointment.

11.50 At the pilot sites and in the early part of the shadow charging scheme the provision of early advice was more common. However the process was much simpler at that stage, with no requirement for the investigator to submit an MG3, or for the prosecutor to record their advice in a similar manner. The process is now more formalised and does not encourage the provision of quick advice. Inspectors observed occasions where investigators sought some informal advice, but prosecutors insisted on an MG3 being completed and the investigators did not return. There is a need for the process to be more flexible to facilitate this type of advice, although it should be recorded to ensure a clear audit trail.

11.51 These findings suggest that there is scope for duty prosecutors to become more involved again in the provision of early legal advice than is currently occurring. It has particular value in identifying those weak cases that cannot be strengthened and ensuring they are stopped at that stage. It should not, however, be used as a means whereby investigators bypass their file supervision processes, or whereby supervisors refer to the CPS cases where they should be directing no further action.

11.52 None of the areas visited had local guidance as to the circumstances, or type of case, in which early legal advice could be obtained.

ASPECT FOR IMPROVEMENT
The CPS and Association of Chief Police Officers issue guidance on when early legal advice can be sought in accordance with the provisions of sections 5.2 and 5.3 of the Director's Guidance.

The way forward

11.53 Whilst the provision of charging decisions through the process of face-to-face appointment can add value, a rigid adherence to this structure at a local level does not provide the necessary flexibility. Greater use of other methods, for example telephone appointments, would reduce the level of police abstraction from operational requirements.

12 THE QUALITY OF THE DECISION

12.1 In this chapter the quality of the charging decision is assessed, including the consideration of matters ancillary to the decision and the quality of the decision as recorded on the MG3. There is also consideration of whether there is any correlation between the quality of the MG3 and the eventual outcome of the case. There is specific comment on the relationship between the threshold test and full Code test.

12.2 Where a charging decision was made during the appointment inspectors considered whether either the full Code test or the threshold test in the Code for Crown Prosecutors had been applied correctly. In each case they considered the material provided to the prosecutor, any additional information provided during the appointment and the prosecutor's written record of the decision. In each case observed the appropriate Code test was applied correctly.

12.3 However prosecutors were less effective when considering ancillary matters during the appointment process. Inspectors considered in particular whether they addressed issues such as the need to apply for special measures for victims and witnesses, any impact of unused material on the strength of the case (albeit that it is not expected that the disclosure of unused material should be dealt with fully at this stage) and whether there were grounds for making an application to adduce in evidence the bad character of the defendant.

12.4 Prosecutors were more alert to the potential for bad character applications and what information was required from the investigator to support any application, for example special measures for victims and witnesses. In the pre-fieldwork file sample consideration of bad character issues were recorded on the MG3 or MG3a in 71 of the 133 relevant cases (53.4%), although the request for the information could be premature and contribute to the delay in authorising the charge.

12.5 However the file examination indicated that they were less effective when considering whether special measures were needed. In some cases they were hindered by the lack of information on the form MG11, which should set out whether the victim or witnesses want an application for special measures to be made and the reason why they are required. Inspectors have commented at paragraph 10.4 of the concerns expressed by investigators about the quality of initial statements, which should include this detail. A record of the consideration of special measures was noted on only 35 of the 98 MG3 or MG3a (35.7%) cases in the file sample where the issue arose. There was better consideration of the credibility of the evidence, with a note that it had been discussed on 95 of the 147 relevant forms (64.6%). Inspectors cannot discount that these issues were discussed during the appointment but not recorded by the prosecutor, although observations supported these findings.

12.6 Similarly there was little consideration of unused material issues which could affect the strength of the evidence, even when it was apparent at the charging stage that there was material that would require particular thought, for example the record of interview of another suspect arrested in the course of the same investigation, but in respect of which no further action had been directed.

12.7 The effectiveness of the consideration of ancillary matters was considered to be one of the principal benefits of charging under the benefits assessment that accompanied the shadow charging scheme. Improvement is therefore necessary.

RECOMMENDATION

Prosecutors should ensure they consider all relevant ancillary matters, and endorse the MG3 accordingly, when determining whether or not to authorise the charging of a suspect.

The relationship between the threshold test and full Code test reviews

12.8 In every case where the threshold test is applied initially, a prosecutor must subsequently carry out a full Code test review to ensure that the evidential part, and if appropriate the public interest part, are met. Whilst consideration of threshold test cases will take place within the charging centre, the file (be it expedited or evidential) will be submitted to the CPS office. Therefore the full Code test review takes place outside the structure of the charging scheme. Inspectors did not therefore observe any appointments where the investigator was returning for a full Code test decision following an earlier threshold test authority to charge. However they examined a number of finalised files where this had occurred and the findings are not encouraging.

12.9 There were 37 cases in the pre-fieldwork file sample where the threshold test was applied initially and which should have then been followed up with a full Code test review, as part of either summary trial or committal preparation. That full Code test review was timely in only 16 of the 37 (43.2%). In 18 of the 21 cases (85.7%) where the review was not timely, there was either no indication on the file or CMS of any full Code test review, or the relevant part of the MG3 compiled at the threshold test stage was merely copied into the section on CMS where the full Code test review should be endorsed.

12.10 Ironically those cases which attracted a more thorough full Code test review were those where the prosecutor was proposing to discontinue the proceedings.

RECOMMENDATION

A timely full Code test review should be carried out by the prosecutor in every case which is subject initially to a threshold test review.

The quality of the MG3 and MG3a in the file sample

12.11 In each file examined in the pre-review file sample inspectors evaluated the quality of the MG3 and MG3a. The evaluation was in part to determine whether there was any correlation between the quality of the MG3 and the case outcome, therefore proportionately more cases with an unsuccessful outcome were selected than is reflected in overall casework performance. In those cases where there had been two or more appointments they made an overall assessment of quality. They assessed each form as good, adequate or poor against the following criteria:

- *Good:* Overall it addressed all or most of the relevant considerations, did so succinctly, with the right charges being selected.
- *Adequate:* Overall it addressed some of the relevant (or most important) considerations but was not well structured or did not necessarily select the most appropriate charges.

- *Poor:* Overall it addressed none (or only a few) of the relevant considerations, or overlooked an important consideration, made an error in law, made an unjustified assumption in relation to a fact, selected the wrong charge, or was missing a vital element, for example an action plan.

12.12 Inspectors assessed the MG3 as good in 42 of the 170 cases (24.7%) examined, adequate in 77 (45.3%) and poor in 51 (30.0%). Overall 70% of completed forms MG3 and MG3a were of an acceptable standard. In 13 of the 51 cases assessed as poor the correct charges had not been authorised, which required subsequent alteration once the case was before the court. The others were assessed as poor for a variety of reasons including failing to address apparent issues in relation to the credibility of the victim and witnesses or their willingness to attend court. Inspectors cannot discount that these issues may have been discussed, but if so should have been recorded to inform the advocate at court and any subsequent trial preparation.

The quality of the MG3 and outcomes

12.13 Inspectors went on to consider whether there was any correlation between the quality of the MG3 and the outcome of the proceedings. A case may result in an unsuccessful outcome for a variety of reasons, including where there is an acquittal after full trial. The reasons for an acquittal may arise after the charging decision and may not necessarily have been reasonably foreseen at the time the decision to charge was made, and therefore not be as a consequence of the quality of the charging decision. However where there is a failure to explore adequately issues around the credibility of witnesses at the charging stage this may increase the likelihood of an unsuccessful outcome. For these reasons the findings need to be treated with some caution, but they do suggest that there is more likelihood of there being an unsuccessful outcome when the MG3 is poor.

12.14 There was an unsuccessful outcome in 40 of the 51 cases (78.4%) where the MG3 was assessed as poor, compared with 46 in the 119 cases (38.7%) where it was assessed as adequate or good.

12.15 Overall there was a poor MG3 in 20 of the 47 Crown Court cases (42.6%) which resulted in an unsuccessful outcome and in 20 of the 39 magistrates' courts' cases (51.3%).

12.16 However it was also found that a good MG3 in cases dealt with at the Crown Court did not produce a positive correlation with the outcome. There were 21 MG3s in Crown Court cases which were assessed as good, but only eight of them (38.1%) had a successful outcome. The position was reversed in magistrates' courts' cases, where there was a successful outcome in 14 of the 21 (66.7%) where the MG3 was assessed as good.

The quality of the MG3 and the number of hearings

12.17 The chronology of each case examined was analysed to identify whether any unnecessary court hearings or adjournments could have been avoided by action taken at the charging stage or a better explanation of the prosecutor's reasoning for their decision. Overall there were one or more unnecessary court hearings or adjournments in 54 of the 170 cases (31.8%). In 27 of the 54 (50.0%) action taken at the charging stage to identify further evidence required, or a better MG3 setting out how the case should proceed, could have avoided one or more of the ineffective hearings.

13 THE USE OF ACTION PLANS

13.1 This chapter discusses, as part of the charging decision process, the use of action plans to obtain information or evidence necessary to make a charging decision. The impact of the requirement for an action plan on the bail management of suspects is considered in part of the next chapter.

13.2 If the prosecutor considers that they are unable to make a charging decision at the first or any subsequent appointment, because they lack essential evidence or information, they should draw up a pre-charge action plan which is recorded on the MG3. The action plan should set out clearly what evidence or information is required and by what date specific tasks and the overall action plan should be completed. Why the plan is necessary should be set out clearly in the MG3. The plan should also indicate the return bail date, although inspectors found that this last piece of information was rarely recorded. Most of the tasks set out in the action plan are expected to be completed prior to a charging decision being made and should be proportionate to the type of offence and strength of evidence already gathered.

13.3 The prosecutor may also draw up a plan at the time that they authorise the charging of the suspect. The post-charge authorisation action plan may address the further evidence or information that will be needed for the case to be successfully prosecuted or, in threshold test cases, to satisfy a subsequent full Code test review.

13.4 Although not specifically required under the Director's Guidance, it would be appropriate to use the action plan to record all work required for a case regardless of whether a review was completed under either the threshold or the full Code test. Whilst a significant number of MG3s examined did adopt this approach, it was by no means universal and a significant proportion of prosecutors simply referred to what was required within the body of the charging advice.

13.5 In both pre and post-charge cases the action plan can be used to address either investigative or evidential considerations, together with ancillary issues which have a bearing on the prosecution and ought to impose a realistic timetable for any action to be completed. Since the provision of a pre-charge action plan may delay, or even prevent (depending on the outcome of the actions) the police charging a suspect, the requirement to undertake further work can lead to tensions within the prosecution team. Although post-charge action plans can be just as, or even more, onerous than their pre-charge counterparts, they do not have the effect of delaying proceedings by preventing a charge being laid. In due course, however, whilst there is the possibility that an uncompleted post-charge action plan may lead to a prosecution being stopped, investigators tend to perceive them less critically. Investigation and file build proportionality varied even between BCUs in the same area.

13.6 Many of the additional tasks identified in action plans should have been conducted, with appropriate supervision, before the first appointment. However observations also highlighted evidence or information which could be obtained post-charge being requested at the pre-charge stage, for example evidence to support applications to adduce the defendant's bad character. There was a growing feeling amongst officers that the amount of work generated by pre-charge action plans was becoming increasingly disproportionate to the case and that there were occasions where an action plan allowed prosecutors to defer a difficult charging decision in

the knowledge that a subsequent lawyer was likely to have to make the same decision once the officer had completed the additional enquiries. Another cause of frequent frustration to investigators was when they complied with the requirements of an action plan, only to be given a further one by the next prosecutor. A number of appointments were observed where this was the outcome.

13.7 However despite these concerns the mechanisms available to investigators to challenge what they considered to be unnecessary action plan requirements were not being used.

Our findings

Pre-fieldwork file sample

13.8 The duty prosecutor drew up an action plan at the first appointment in 98 of the 170 cases (57.6%) examined in the pre-fieldwork file sample. In 78 of the 98 (79.6%) a realistic timescale had been set for the completion of the tasks, but the actions were only carried out expeditiously in 56 of the 98 (57.1%).

13.9 In six of the 98 (6.1%) inspectors considered that the investigator had been asked to carry out superfluous work that was not required to enable the prosecutor to make a charging decision. However these were finalised cases and most were not dealt with under the CJSSS scheme. Observations during the fieldwork indicated that there had been an increase at the pre-charge stage in such requests for additional work (albeit that it would probably need to be carried out at some stage).

13.10 A post-charge action plan was compiled in 13 of the cases examined in the pre-fieldwork file sample. The action plan was progressed expeditiously in eight of the 13 (61.5%) and none contained requests for superfluous work. In 12 the plan was used to address trial issues such as the provision of unused material or to assist in file building. Inspectors discuss further at paragraph 13.15 their concerns about the management of post-charge action plans.

Fieldwork observations

13.11 In 32 of the 148 appointments observed (21.6%) the investigator had previously been required to comply with an action plan. In 20 of the 32 cases (62.5%) all the required actions were completed, they were partially completed in nine (28.1%) and not at all in three (9.4%). This finding was supported by the questionnaire responses from custody officers and prosecutors who had concerns about the monitoring and supervision of action plans.

13.12 Only four of the 28 cases (14.3%) in which the prosecutor directed that there should be no further action had previously been subject to an action plan. In two the previous prosecutor had indicated that, subject to the work being carried out, a charge would subsequently be authorised but the subsequent prosecutor took a different view. In neither case was the additional evidence crucial to the charging decision. Concerns over inconsistent decision-making were raised by investigators in a number of questionnaire responses and it also leads to them carrying out unnecessary work, with additional delays.

13.13 During observations it was rare for the prosecutor to draw up an action plan at the time they directed charge, preferring instead to require all necessary tasks to be completed at the pre-charge stage. As inspectors have noted prosecutors adopted this approach to ensure that they could be satisfied that the requirements of CJSSS were complied with before the first hearing.

13.14 In one area, although the potential benefits of the scheme had not yet been fully realised there was a view that the expertise of the prosecutors and investigators ensured that evidence and unused material gathering has become increasingly focused and meaningful and that unnecessary lines of enquiry are not requested by prosecutors. Easy access by investigators to face-to-face charging advice has prevented some unnecessary work being completed and all parties benefit from the ability to discuss a case directly with each other. The scheme has had the effect, if anything, of reducing some unnecessary work that would have been carried out by investigators.

Monitoring compliance with action plans

Pre-charge action plans

13.15 The processes for monitoring compliance with action plans needed to be strengthened. In relation to pre-charge action plans, in most of the areas visited the prosecution team had insufficient collective awareness and management of the progress of cases once an action plan had been drawn up. Prosecutors did not, for example, always know whether these cases came back for a further appointment, whether the actions could not justifiably be completed and the police had decided that there should be no further action without referring the case back, or whether the actions had simply not been completed by the investigator.

13.16 Whilst there was clarity over the ERO's role in relation to file supervision prior to appointments, specific responsibility for monitoring and supervising completion of pre-charge action plans following appointments varied. In most areas this responsibility was stated as falling to the individual investigator's direct line manager with, for example, action plans being input onto the force crime management system and monitored through routine supervision. In practice, however, such a process is dependent on the action plan being input correctly onto the system in the first instance.

13.17 Although there were examples of further safeguards having been put in place to ensure that action plans were completed within set timescales (for example through ERO follow-up), these were not always effective in ensuring that individual actions were adequately carried out prior to the next charging decision appointment. Furthermore, it was also found that this could create ambiguity as to who had primary responsibility for action plan supervision.

13.18 Although it was not possible to test the effectiveness of first line supervision in this aspect during the review, the fact that the file reading showed that actions were carried out expeditiously in only 56 of the 98 relevant cases (57.1%) (see paragraph 13.8) suggests significant room for improvement in terms of supervision. There may be good reasons why an investigator is unable to complete certain actions within agreed timescales, for example, difficulties in tracing or contacting potential witnesses, or the need to await the results of forensic examinations. However the progress of action plans needs to be monitored effectively, not least to ensure that actions are completed and in good time, but also to confirm that cases are ready for a decision at the next charging appointment.

Post-charge action plans

13.19 With post-charge action plans the predominant police view was that it was the responsibility of the CPS to monitor progress and follow these up to ensure completion, as a decision to charge an offender effectively concluded the case in terms of police administrative processes. The difficulty with this approach, however, is that it leaves a clear gap in terms of police supervision during the final stages of the investigation.

RECOMMENDATION

The ownership of the supervisory process of pre and post-charge action plans needs to be unambiguous, including the part to be played by the evidence review officer in that process.

13.20 The CPS areas visited were at different stages in terms of monitoring systems; some had proportionate, ongoing processes to monitor outstanding cases; others conducted en-masse clearances on an ad hoc basis; and some had no well developed system at all. A spot check conducted by inspectors in May 2008 indicated that the level of cases inactive for at least eight weeks ranged from 2.5% of annual caseload to 7.6%. It is of some concern that the original decision had been to charge in more than 50% of the outstanding cases. (There may be a number of reasons for this, for example the suspect was charged and the file submitted under a different reference number, or they failed to answer their bail.)

13.21 There is a clear linkage between the management of suspects' bail (which is discussed in the next chapter) and supervision of action plans. Any unnecessary delay by investigators in actioning the tasks set out in the plan can lead to the repeat bailing of suspects. Although some areas deliberately set duty prosecutor appointments close to bail return dates in order to set timely evidence gathering standards, this can lead to a need to re-bail the suspect if there is insufficient time left to carry out any further necessary work.

The way forward

13.22 The effective use of action plans is an essential aspect of the scheme. However pre-charge they need to be targeted on what the duty prosecutor actually requires to make a charging decision. Additionally there need to be effective systems to monitor progress against the plans, to ensure that in every case the outcome of the action plan is communicated to the CPS. Only when this is achieved can there be any certainty that informed final decisions are made in every case and that all decisions are being recorded correctly.

14 BAIL MANAGEMENT

14.1 This chapter looks at the effectiveness of the management of cases where the suspect is released on bail pending a charging decision, which is crucial to the overall effectiveness of the operation of the scheme. The findings in respect of the impact of the scheme on the overall time from arrest to a charging decision are also considered.

The provisions applicable to the grant of bail

14.2 Once the decision has been made that the suspect should be prosecuted for a criminal offence, whether or not released on bail pending that decision, they have to be brought before a court. The custody officer is required to charge an individual and either keep them in custody to be taken before the next court sitting, or release on bail with an obligation to attend a particular magistrates' court on a specified day. Prior to 1998 the custody officer could determine to which court the defendant was bailed and this could be a number of weeks after charge.

14.3 Section 46 of the Crime and Disorder Act 1998 removed the custody officer's discretion to choose the date upon which a suspect was to appear at court and required that officer, instead, to bail to: *"a date which is not later than the first sitting of the court after the person is charged with the offence"*.

14.4 Changes or alterations to that date were permitted only by the authority of the clerk to the justices, the local magistrates' court's senior legal advisor.

14.5 Under this system (referred to as 'Narey bail') persons released on bail to appear at court were getting into court much quicker than before. The custody officer would decide whether there was sufficient evidence to charge a suspect with an offence and if they could be released on bail to attend court and, if so, bail them to attend the next available day, as designated by the clerk to the justices.

14.6 The introduction of statutory charging has not altered the operation of Narey bail; the custody officer must still bail to the next available court date. There has been, however, a significant change brought about by statutory charging for suspects accused of an offence which may only be charged on the authority of a CPS prosecutor, and who can be released appropriately on bail pending that decision. Previously the custody officer would formally charge a person if satisfied that there was "sufficient evidence to charge". This was the same test, regardless of whether the individual was to be kept in custody or released on bail to attend court, and was lower than the standard imposed by the full Code test, being similar to the threshold test in the current edition of the Code.

14.7 Under the Director's Guidance a prosecutor may only review a case using the threshold test for a suspect who ought to be kept in custody. For any individual who is suitable to be released on bail, which is the vast majority of suspects, a prosecutor can only authorise charge by applying the more stringent full Code test: that there is sufficient evidence for a realistic prospect of conviction and that a prosecution is required in the public interest.

14.8 The requirement for a prosecutor to authorise the charge in certain categories of case now means that individuals who would have been charged and bailed by a custody officer using a threshold test are now bailed to return to the police station, rather than court, until there is sufficient evidence to pass the full Code test.

14.9 The authority to release a suspect on bail pending a charging decision is contained in section 37 of PACE. Following the arrest of a suspect in any criminal enquiry it is likely that the investigating officer will reach such a point in the investigation where the need to bail the suspect, if appropriate, will be considered in order to allow more time to obtain all the relevant evidence. This will depend on a number of factors, including the nature of the alleged offence and whether the suspect has admitted the allegation. In each case where bail is granted before charge realistic timescales need to be set, based on an assessment of the time required to complete any outstanding tasks, for the suspect to return to the police station to answer bail and be informed either that no further action is to be taken or that they are to be charged.

The impact of the charging scheme on the bail provisions

14.10 Standards governing the use of bail are high and the timescale set for return dates should be kept short so as not to delay either the entry of the suspect into the criminal justice system, or keep an allegation hanging over them when ultimately no further action will be directed. Where additional periods of bail are sought, because the charging decision has not been made during the initial bail period, then the authority of an officer of at least the rank of inspector is usually required to ensure that it is necessary to extend the bail period and that the investigation is conducted expeditiously.

14.11 With the introduction of the scheme there was an expectation that the number of suspects on bail awaiting a charging decision, at any given time, would rise. This has undoubtedly occurred and the management of bail is now more challenging. Areas reported significant numbers of suspects being granted bail post-arrest and also that the number of occasions suspects were bailed in individual cases was increasing. At best overall bail periods could be for two to three weeks but could extend to several months in more complex cases.

14.12 Senior managers in some criminal justice departments had recognised the organisational risks and had taken steps to reduce outstanding numbers of defendants on bail and inspectors were able to look at some of the probable causes of the increased use of bail.

14.13 One factor is where response officers are deployed to deal with initial incidents and, if arrests are made, prisoner handling or investigation teams are required to deal with subsequent investigations. On occasions specialist officers may also become involved in this process. Due to the demands upon response teams the occasions where those officers are in possession of evidence of sufficient quality to invite an early charging decision has reduced, leading to an increased likelihood that only the use of bail will facilitate further enquiries and additional evidence gathering.

14.14 A contributory factor to the increase in the use of bail pre-charge was the lack of flexibility to accommodate charging decisions in respect of suspects who were in custody, but would be granted bail once charged. Even though a prosecutor could have made a full Code test decision at that stage, suspects were released on bail. This was sometimes because there was no available prosecutor time slots and also due to a perception that one would not be available. Some full Code test cases were dealt with while the suspect was still in custody; this was more likely where the charging room was situated close to the prisoner handling unit, allowing the investigator and the prosecutor to discuss the case as it developed.

14.15 Where bail is granted then advice should be sought, where necessary, from an ERO or duty prosecutor as to the lines of enquiry to be taken by the investigator. Where advice has been sought from a duty prosecutor these enquiries are likely to be specified in an action plan set following a face-to-face appointment and are expected to be conducted expeditiously. Where the actions are supported by appropriate supervision then arrest to charge and bail timescales can be suitably managed, although a certain amount of delay may be unavoidable, such as where the investigating officer is dependant on the receipt of evidence from other agencies, for example forensic medical evidence or doctors' medical statements.

Responsibility for bail management

14.16 Several police roles ranging from investigators and supervisors to custody sergeants and bail managers have responsibilities around the use of bail and, although EROs do not have a direct role in this, they are integral to the process. Overall legal responsibility rests with the custody sergeant but the systems and processes used by the police to manage bail need to be efficient. One example of good practice which made bail management more efficient was the appointment of a Bail Clerk who assisted in local procedures relating to bail by collating information from a variety of sources. This was developing into a comprehensive database which included details of investigators and evidence audit trails and was capable of being used as a supervisory tool, accessible to custody officers and other parties with an interest in bail management, for example EROs who need to be able to understand the impact of their work on bail issues.

GOOD PRACTICE

The use of a Bail Clerk to assist in bail management.

14.17 Bail management was assisted in Brent BCU by a response squad that targeted suspects and defendants who failed to answer either police or court bail. This borough had a very proactive approach to managing bail to return cases and had reduced significantly the number of outstanding defendants on bail.

GOOD PRACTICE

The use of dedicated resources to target bail absconders.

14.18 There was lack of clarity within areas as to who had operational responsibility for the oversight of bail management. One area reported that up to 75% of all investigations required some use of bail and that its frequency also appeared to be increasing. It is likely that reasons for this range from the many challenges faced by investigators in obtaining key evidence within demanding timescales, to the inconsistencies of prosecutors which can lead to requests for material additional to that requested by the original reviewing lawyer. The setting of initial realistic bail periods can also be critical.

14.19 In some areas inspectors were concerned to find that there were opportunities for investigators seeking to set and extend periods of bail to do so with limited supervision and restrictions. There was some danger that the use of bail could become a routine tool to assist or manage the investigative process.

14.20 Impending bail dates were also occasionally used as leverage by officers to obtain a charging decision from prosecutors and inspectors observed appointments where the suspect was due to answer bail that day, giving no time for any further necessary tasks to be completed without them being re-bailed. Prosecutors also appeared on occasions to work in a vacuum with little or no concern for the time a case was taking or the need to continue to re-bail suspects.

Managing performance in bail cases

14.21 Although inspectors were unable to focus closely on the management of bail there was a consensus amongst police managers that bail required a stronger management regime and that some areas had insufficient awareness of the proportion of suspects failing to answer bail. Where bail was performance managed and links between charging demands and bail were recognised these arrangements usually led to a proportionate management of bail.

14.22 Inspectors also found that areas did not have sufficient awareness of the proportion of suspects who failed to answer their bail and had not been charged in accordance with the decision. In some areas the extensive list of cases which had been inactive for eight weeks included many where the decision had been to charge and which, if this action had been carried out, should no longer be on that list. Only one charging centre was able to inform us reliably about what proportion of those cases were on the list due to the defendant not answering bail as opposed, for example, to the defendant being charged and the file resubmitted with a different reference number.

14.23 Whilst day-to-day management of bail rests with the police, we found that there was a lack of recognition by CPS managers of the responsibility of prosecutors to collaborate in a way that assisted the overall process. This included requesting additional evidence or information that was not necessary for the charging decision, but would necessitate the suspect being re-bailed. Inspectors observed that duty prosecutors were also slow to question why it had been necessary to bail a suspect on more than one occasion before a charging decision was sought. It was also rare to find aspects of bail management featuring on the agendas of PTPM meetings.

RECOMMENDATION

The police and the CPS should routinely monitor the impact of bail management on the effectiveness of the charging scheme and implement local improvements where appropriate.

Arrest to final decision times

14.24 As part of the file examination process inspectors calculated in each case the overall time from arrest to the charging decision. These were all cases where the decision was to charge and there would be further time spent in the court system. There was a significant variation, ranging from the decision being made on the day of arrest (mainly in threshold test cases) to 369 days after arrest. The time taken from arrest to charging decision was not always influenced by the number of appointments, for example one case took 133 days from arrest to decision, but there was only one appointment. In another case there were two appointments but overall it took 39 days.

14.25 In those cases which took a significant time, albeit with only one appointment, the delay arose during the course of the investigation and not because of the requirement for a prosecutor to authorise charge. There are likely to be significant variations between investigations which may appear to be similar in nature and these cases could depend heavily on an officer's ability to obtain necessary evidence, which may lead to longer arrest to charge times. This can be the reality of dealing with often complex cases and these would have had to be fully investigated before charge regardless of the operation of, or whether they fell within, the scheme.

14.26 The average period from arrest to charging decision for all cases was 41.3 days. Where the charging decision was made at the first appointment the average period reduced to 28.3 days. However when custody cases are removed from the equation (where the charging decision will be made on the day of arrest or the day after) the average period from arrest to charging decision in one appointment only cases rises to 46.6 days.

14.27 Observation of appointments confirmed the disparity in the time taken for a charging decision. In most cases the suspect would be bailed (often for at least six weeks) by the custody officer to enable the investigator to complete the file. This bail period was not usually calculated by reference to real need, but on the basis of normal practice or how long investigators had to wait for an appointment. In some cases inspectors observed the suspect had been re-bailed on more than one occasion before the first appointment, and further re-bails could occur once the prosecutor became involved. This could arise for a number of reasons, for example the cancellation of the first booked appointment by the duty prosecutor or the investigator awaiting essential evidence (the reasons for delay are discussed further at paragraphs 10.8-10.14). Most of the police systems examined did not enable managers to identify easily how many times a suspect had been re-bailed, as previous bail decisions were overwritten by the most recent.

14.28 It is clear that there are issues of capacity around both the appointments system and bail management that impact on timeliness and that it has been a challenge for the agencies to produce solutions to ensure that appointments and the use of bail complement each other. The mix of an absence of targeted bail periods, cancelled appointments for whatever reason, multiple action plans and inappropriate cases submitted for charging advice all contribute to unnecessary arrest to charging decision times.

14.29 In some of the cases observed investigators commented that even though they could carry out all the necessary actions before the suspect was due to answer bail, it would have to be extended because they could not get a further appointment within the time.

15 VALUE FOR MONEY, BENEFIT REALISATION AND EFFICIENCY GAINS OF THE SCHEME

General

15.1 In assessing the value and benefits of the statutory charging scheme inspectors considered the following key issues, which are discussed in detail in this chapter:

- whether the benefits gained throughout the criminal justice system are in line with the expectation;
- whether the targets and measuring systems are fit for purpose; and
- whether the processes utilised are the most efficient and effective.

15.2 Most of the assessments are based on the evidence gathered from examination of files, observations of processes, examination of documents, and interviews with police and CPS staff. Analysis of performance data across the criminal justice agencies has also contributed to these findings.

Potential benefits of the statutory charging scheme

Benefits and targets

15.3 The primary stated objective of introducing statutory charging was to improve the level of offences brought to justice (OBTJ) as a result of increased convictions. This was the basis of the business case presented to HM Treasury when bidding for additional funds to implement the scheme. It was estimated that 30,000 additional convictions would be obtained.

15.4 Whilst it is possible to measure the level of convictions it is not easy to establish a causal link between charging and any change in performance. With this in mind a set of proxy targets was established using the findings of the pilot as a baseline. It was assumed that changes to the level of guilty pleas, discontinuances and unsuccessful outcomes would give a good indication that the scheme would have a beneficial impact on the level of OBTJ. Approximately 8,000 additional convictions would result from reductions in unsuccessful outcomes, whereas the rest is based on the assumption that time saved (as a result of the reduced work in early disposition of weak cases) would be 'reinvested' in improving other investigations.

15.5 Whilst results varied by area, based on overall analysis it was concluded in the pilot evaluation report that:

- discontinuance rates could be reduced dramatically from 36% to 11%;
- conviction rates in cases that proceeded to trial improved by 15%; and
- guilty plea rates could be increased from 40% to 52%.

15.6 These measures were adopted as formal prosecution team targets against which statutory charging is judged, although there remained a police focus on the rate of sanction detections.

15.7 Other potential positive indicators included a reduction in the rate of unnecessary court hearings including cracked and ineffective trials, reductions in the number of charges subsequently amended, and improvements in the quality of police files. However these were not translated into formal targets to assess the impact of the scheme, although some are monitored for other purposes.

Method of assessing benefits

15.8 Taking account of the results of the pilot a business case was developed and this estimated that there was a saving to the criminal justice system as a whole of £264.10 for each relevant case and that based on prevailing caseloads it was estimated that the overall saving would be £62.9 million per annum. After consideration of the costs of implementation the business case indicated a benefit of £91.8 million over a ten year period. The potential savings were spread across all the criminal justice agencies and also included economies in Legal Aid costs.

15.9 On the surface this looks to be encouraging and a sound value for money investment. The savings were assessed using a criminal justice system flows and costs model that calculates the cost to all agencies based on the specific outcome of each case. As with most models this relies on a number of assumptions and can be affected by variables in the general operating environment. Limited review of the original potential benefits had been undertaken to take account of the significant amount of change that has occurred in the criminal justice system since the scheme was implemented, although the CPS has recently changed its targets for 2008-09.

15.10 There is little indication of any monitoring of the downstream benefits (for example the courts and Legal Aid fund) identified by the business case to ensure they are in line with expectations. Whilst some benefits have undoubtedly been realised, the scale of the achievement can not be assessed accurately.

15.11 The CPS monitors efficiency savings based on the differing cost of handling cases that result in guilty pleas, discontinuances or trials. Current outcomes are then compared to those established as baselines as part of the evaluation of the pilot. Reports are made to HM Treasury on a quarterly basis with projected and actual efficiencies achieved. There is an assumption that the improved outcomes release resources to take on additional productive work at no additional cost – the CPS claims a £10 million saving annually, although there is no requirement to account for how the time created was utilised.

15.12 Whilst the general methodology of 'before and after' is sound the fact that the ambit of the scheme widened substantially after the pilot has had a strong influence on current outcomes. The original pilot concentrated on cases where a not guilty plea was anticipated as these were the types of case expected to be handled by the scheme; therefore the level of guilty pleas was low and the level of trials was high. The results of the pilot were used to establish baselines for future benefits realisation targets.

15.13 However following the Director's Guidance the criteria for cases subject to a pre-charge decision was changed and a significant number of cases where a guilty plea is anticipated are now included (this is based on the type of offence or suspect). It is also worthy of note that the threshold test (see paragraphs 5.21 and 5.22) was only introduced after the pilot and because of the timescales involved in the pilot only a limited assessment of the impact on Crown Court work could be made.

15.14 The business case was based on an assumption of approximately 240,000 pre-charge decisions on suspects each year. In the last three financial years CPS prosecutors have handled an average of almost 565,000 decisions in each year. Therefore there is an element of 'comparing apples with pears' in the system of evaluating benefits and outcomes need to be interpreted with considerable caution. There was significant change in the scheme from the original pilot such as to warrant an earlier reassessment of whether the original benefits remained the most appropriate.

15.15 To put this into context, since the scheme was introduced in 2004-05 every area has easily exceeded the guilty plea rate target (52.0%) for magistrates' courts' cases in every year. Indeed, the worst result at a national level was 67.5% in 2005-06 when the roll-out was being completed. The improvement recorded against the baseline figures is dramatic, but the improvement in actual results since the statutory scheme was implemented in 2004-05 is less impressive (see paragraph 15.18).

15.16 Conversely, for magistrates' courts' cases the discontinuance target was only achieved by one area during the first two years of operation of the scheme. Slight improvements have been made in the last two years with between three and six areas achieving the target. From a national perspective the target has never been reached with the best performance coming in 2007-08 (14.7% nationally against a target of 11.0%). The CPS has recently decided to amend all three magistrates' courts' benefits realisation targets to rates considered to be more realistic.

15.17 Overall the achievements of the pilots in terms of performance outcomes have not been replicated as the scheme has been rolled-out. The outcomes from the pilots will have been affected by the type of cases selected, albeit this would not account for all of the differences. The level of cases where no further action was directed (8%), where there was an ineffective trial (10%), or a cracked trial (9%), recorded in the pilot are all significantly better than has been achieved as the roll-out has progressed.

15.18 Based on these findings the processes of identifying the key performance indicators and the efficiency savings measures have some weaknesses. Whilst the implementation of charging has undoubtedly delivered some benefits, the existing systems do not give a fully reliable indication of the benefits actually delivered by charging.

Review **findings on effectiveness**

15.19 The key findings based on examination of 170 files, assessment of 148 observations of charging appointments, and analysis of performance data are summarised below. More detail is included in relevant chapters throughout the report.

15.20 The sanction detection rate has improved significantly over recent years, although much of this is not attributable to statutory charging. The rate has improved by approximately one third since 2004-05 (from 21% to 28%).

15.21 In terms of outcomes against the six key performance indicators adopted by the CPS, some progress has been made since implementation of the statutory charging scheme began in 2004-05. Results for 2007-08 show improvement across the board, although it is greater in respect of Crown Court cases. Results in interim years are variable as illustrated in the following table:

Measure	Target	2004-05	2005-06	2006-07	2007-08
MC attrition	31.0%	22.0%	23.5%	22.0%	21.0%
MC discontinuance	11.0%	16.2%	16.7%	15.7%	14.7%
MC guilty plea rate	52.0%	70.1%	67.5%	69.2%	72.3%
CC attrition	23.0%	24.2%	23.3%	22.2%	20.8%
CC discontinuance	11.0%	15.1%	14.0%	13.1%	12.9%
CC guilty plea rate	68.0%	65.5%	65.0%	66.5%	71.3%

For attrition and discontinuance rates, lower is better

Effectiveness/timeliness of appointments

15.22 There is a general view that there are significant benefits if advice is given face-to-face as this affords the opportunity for issues to be discussed and clarified between the officer and the prosecutor in the early stages of the process. Whilst this is clearly true in some cases, observations identified a number of examples where the value added by the face-to-face discussion was not commensurate with the additional time needed to achieve this. There has been a significant increase in the level of face-to-face (up from 63.5% in 2006-07 to 72.5% in 2007-08), which may in part be due to an increase in the accuracy of recording the type of consultation. Interestingly, there does not appear to be a strong correlation between the level of face-to-face advice and casework outcomes. A number of factors might affect this, not least of which would be timeliness.

15.23 During the observation process inspectors monitored the time taken on the various key tasks performed during the period of the face-to-face appointment and the quality of the interaction between the prosecutor and the officer. They also monitored the efficient use of officer and prosecutor time through the effective use of appointments. Key issues to emerge included:

- approximately one third of the appointment involved useful discussion between the officer and the prosecutor;
- of the 148 appointments observed 94 were finalised on the day, and 62 of the 148 (42%) resulted in a decision to charge;
- 22% of cases seen had been subject to at least one other previous consultation and nearly half of these were still not finalised during this follow-up consultation; and
- of the 32 cases that had been subject to a previous action plan, only 20 had been completed fully by the time of the follow-up consultation; and in four of these further work was requested.

15.24 There was a concern among police personnel in some of the areas visited that the delay in getting an appointment or getting a decision from a prosecutor was increasing (it varied between areas but almost all had some concern). The effectiveness of the process is not helped by the numbers of weak cases that, despite police file supervision, are not filtered out but still go to the prosecutor and result in a decision that there should be no further action (NFA).

15.25 In 2007-08 29.1% of cases submitted for a charging decision resulted in the prosecutor directing that there should be NFA. Whilst there will always be some cases that require prosecutor input that will result in a decision to NFA, the current volumes are too high and this has not been addressed satisfactorily by managers at local or national level.

15.26 The level of cases that have been outstanding for a long time will have a marginal impact on all of the above results. Experience suggests that cases that have been outstanding in the system for long periods are less likely to lead to a prosecution (even if that was forecast in the original advice). In the seven areas visited there were 4,089 suspects where the case had been inactive for at least eight weeks. This represented approximately 5.3% of the overall pre-charge decision finalised caseload for 2007-08 in those areas.

Quality

15.27 The quality of decision-making in respect of compliance with the Code was good. There were no cases in the file sample where the decision was unreasonable. Whilst it was anticipated that charging would reduce the number of cases where a charge would be subsequently amended, there is no monitoring to see if this has happened.

15.28 Whilst decision-making was good, the quality of the MG3s produced can be strengthened. Thirty per cent of these documents seen as part of the file sample were assessed as poor (the reasons for which are set out at paragraph 12.12).

15.29 Most areas did not have a formal system to evaluate any improvement in the quality of police files. Prosecutors were of the view that where good quality file supervision existed, so the files they received had improved. There is still some way to go in improving the quality of front line investigative work, for example ensuring that the relevant information is included to enable the prosecutor to consider whether a special measures application should be made.

Wider criminal justice benefits

15.30 The level of offences brought to justice (OBTJ) by the police and CPS has increased significantly in recent years. Increased use of diversionary powers by the police, for example penalty notices for disorder, has made the biggest impact on overall performance. The volume of OBTJ attributable to convictions, which was a primary target of the charging scheme, remained reasonably static in recent years until 2007-08 when the numbers showed a significant improvement. OBTJ are not routinely measured at individual agency level, but CPS data indicates that the level of convictions for defendants subject to pre-charge decision has improved year-on-year. Whilst not measuring offences, the data provides a helpful proxy measure and indicates a positive trend. This is mainly due to the increased volume of cases going through the scheme, but also partly due to improvements in the level of successful outcomes. Whether current performance is in line with the expectations of the original business case is difficult to assess accurately as so many changes that impact on results have occurred since 2004. However it is clear that most indicators and proxy measures show that sustained progress has been made. For contextual purposes it is worthy of note that, based on the anticipated caseload for the scheme at the time of the pilot, it was expected that there would be 160,000 convictions. Following changes to qualifying cases and therefore caseload, almost 300,000 convictions (each would have at least one offence) were achieved in 2007-08.

15.31 Since 2005-06 there has been solid improvement in the level of ineffective trials in the magistrates' courts (from 21.2% to 18.3%), although it is unclear as to how much of the improvement is attributable to charging. Initiatives such as No Witness No Justice and case progression projects such as the Effective Trial Management Programme will also have impacted positively on outcomes. However the level of ineffective trials attributable to the prosecution not being ready has reduced by 50% since 2005-06, which is a good improvement in performance.

15.32 The level of cracked trials in respect of all cases, whether charged on the direction of a crown prosecutor or by the custody sergeant in accordance with the Director's Guidance, has worsened from 36.8% to 38.5% in the same timeframe - this is in line with an increase in the level of late guilty pleas. In overall terms there has been an increase of 6.6% in the level of all trial hearings listed since charging was introduced, whereas the overall level of prosecutions for all cases has dropped by 16.1% (completed trials have reduced by 8.7%). Whilst this may be attributable to a variety of reasons it does suggest that the economies envisaged as a result of charging and NWNJ initiatives may not have been fully achieved.

15.33 The impact on overall cracked and ineffective trials in the Crown Court has not been significant. There has been a gradual improvement in the level of ineffective trials but this is offset by a slight deterioration in the rate of effective and cracked trials.

15.34 As part of the file examination inspectors assessed the level of avoidable or unnecessary hearings held during the course of the cases examined. In 54 (31.8%) of the 170 cases there was at least one unnecessary hearing and, of these, 27 (50.0%) could have been avoided by a more proactive approach at the pre-charge stage, for example by an assessment at that stage of the need for a special measures application.

Costing statutory charging

15.35 The CPS, on the basis of its business case, was provided with substantial additional funding under Spending Review 2004 to implement a phased national roll-out of the statutory charging scheme, in addition to other initiatives. Other agencies were not given similar funding as it was anticipated that all the additional work would fall to the CPS. During the five year period from 2003-04 to 2007-08, the CPS allocated almost £140 million additional funding to the areas (including the central CPS Direct operation) to implement and maintain the statutory charging scheme (there would be other centrally absorbed costs on top of this).

15.36 The police were not given additional funding as some of their workload was transferring to the CPS. However the findings of this review indicate that over time the police have incurred costs (for example in providing accommodation and dedicated file supervision functions) that have not been offset as much as anticipated by reductions in aspects of work such as file building. The additional officer time involved in getting a charging decision, when compared to the time that was necessary before statutory charging was introduced, was a common cause of concern to police personnel.

15.37 Neither the police nor the CPS in the areas visited had carried out an effective costing exercise for the delivery of statutory charging. It seems that, to some degree, both organisations have accepted that statutory charging has to be done and have therefore not devoted much energy to costing the service. No analysis of the comparative costs of alternative delivery systems, for example the increased use of daytime telephone charging advice, was evident. In more recent months there is evidence of CPS managers seeking reductions in the level of deployment to which they are committed, mainly due to tighter budgetary constraints in the organisation.

15.38 Whilst accepting that monitoring spend to the last pound is neither practical nor productive, more attention should be given to the financial aspects of statutory charging. Issues such as changes to caseload, change of policy on delivering the out-of-hours service, and changes to qualifying cases introduced by the Director's Guidance all have financial implications. Consideration is being given to investing in statutory charging the savings that may be made through other initiatives, such as the streamlined process and increased usage of associate prosecutors. This implies that the current resourcing levels are considered insufficient to provide the service to the required standard. One area has recently increased significantly the resources devoted to charging, primarily in an attempt to improve timeliness.

Conclusions

15.39 It is not possible to state definitively the level to which statutory charging delivers value for money as sufficient reliable information is unavailable. The costs involved in providing the scheme are not monitored and the impact of changes implemented since the pilot have not been assessed fully. It is also difficult to disentangle the effect of other initiatives that have been rolled-out in recent years, for example the CJSSS scheme and the increased use of diversionary disposals such as fixed penalty notices for disorder.

15.40 The scheme has led to some improvements, when assessed against its stated measures and objectives, although inspectors had some concerns as to whether the targets were the most meaningful. There is no doubt that some cases which would otherwise have entered the court system have been halted pre-charge resulting in considerable savings across the criminal justice system. It is noteworthy that the volume of cases dealt with by the CPS under the scheme is twice that envisaged in the business case for which the CPS was externally funded. It is also clear that there has been a beneficial effect on the relationships between the police and the CPS which has helped in implementing other initiatives. Other benefits are set out in paragraph 3.2.

15.41 The monitoring of downstream benefits attributable to statutory charging is not robust and it is not possible to assess accurately whether the benefits identified in the business case are being realised. Whilst the targets used to assess performance give some indication of progress, by themselves they do not give sufficient assurance as to the effectiveness of the scheme.

15.42 As outlined in previous chapters it is clear that the way in which the scheme is operated means that efficiency savings are not maximised. Too many processes are not effective, leading to wasted time, duplication of effort and missed opportunities. The original business case highlighted the importance of effective leadership and management capability in making the scheme a success. The findings of this review indicate that there is still a need to improve management of the scheme if the criminal justice system is to take best advantage of the charging concept.

16 PERFORMANCE MANAGEMENT

General

16.1 Inspectors have commented in chapter 7 on the important performance management role played by the National Prosecution Team in the early stages of implementation of the scheme and the local governance structure of PTPM meetings. This section focuses on some specific aspects of the use of performance information within the local governance structure.

16.2 All of the areas visited had systems in place to monitor the performance of the statutory charging process. Whilst there is consistency in some of the measures monitored by the police and the CPS, there is wide variance of approach overall. The monthly benefits realisation data and PTPM reports form the basis of data information packs in all areas but the presentation, analysis and use of the information varies considerably. Most areas also consider other performance indicators at bilateral meetings, for example all areas visited consider the sanction detections rate.

16.3 In addition to the regular bilateral meetings most prosecution teams have undertaken a formal review over the past two years, although these varied in scope. In the areas visited these ranged from targeted specific reviews of particular roles/functions to full reviews of the whole system and most of these reviews led to action plans which set out the follow-up work required. The police tended to be more proactive in review work at the more focused level, whereas the wide-ranging reviews were more likely to be conducted on a joint basis. In the questionnaires - completed by areas not visited during the review - 60% indicated that local formal reviews had been conducted.

16.4 A common thread amongst interviewees was the impact of the incompatibility of high level police and CPS targets. The police place a high priority on the sanction detection rate whereas the CPS focuses on the level of unsuccessful outcomes. This has contributed to conflicting priorities between the two organisations.

16.5 Towards the end of the review positive work was undertaken jointly between ACPO and the CPS to modify targets to reduce the potential for conflict. Since the review finished both sanction detections and the CPS attrition rate have been changed from specific targets to underlying diagnostic indicators.

Data

16.6 There is limited consistency in the production and use of performance data in respect of statutory charging, save for the use in some way shape or form of PTPM reports produced by the CPS management information system (MIS) which, through use of the business objects programme, allows for the comparison of numerous casework data sets. There is a need to develop the analytical skills of managers in interpreting the available data which, as discussed below, needs to meet their requirements in terms of content and format. In all areas some degree of reorganisation of the core data takes place to suit the presentation requirements of the area. Final reports may be produced by the police, CPS or the local criminal justice board and are usually circulated in advance of joint PTPM meetings at which the data is discussed. Data is normally presented at police BCU level.

16.7 The integrity of the data has improved over recent years particularly in respect of the reduction in the number of undefined outcomes. There has also been a noticeable improvement in the level of cases that are not attributed to a specific police station. These improvements make interpretation of the high level data more reliable.

16.8 However there are still some concerns over the variable approach to finalising pre-charge decision cases that appear as inactive in the CPS case management system for an extended period. Some areas clear outstanding cases from CMS en masse by means of administrative finalisation;[20] others make a significant effort to establish what has happened in particular cases to ensure they are finalised or updated correctly. Those areas that use administration finalisations extensively are likely to artificially improve the area NFA 'performance' as administrative finalisations are excluded from the current method of calculating NFA rates. By way of illustration the level of cases administratively finalised in the areas visited ranged from 0.1% in one to 13.2% in another.

Use of data

16.9 The majority of police and CPS managers consider that interpretation of the data has not come easily and most feel that the information could be presented in a more user friendly format. Whilst understanding of the data has improved over time there is still a long way to go before it is used to its full potential. There is still a lack of understanding of the potential strength of MIS to produce ad hoc information based on local issues.

16.10 A number of managers expressed frustration at the perceived inability of the system to provide information at the level they required. In most cases drawn to their attention inspectors were aware that the information was available, but local CPS staff were unaware of how it could be obtained. Whilst the national charging team have undertaken some work to improve understanding of the PTPM data and processes more needs to be done. There is also a need to improve the understanding of the capability of MIS to assist in managing data in respect of statutory charging.

16.11 Whilst all areas monitor progress against benefits realisation targets most also monitor to some degree the level of cases where NFA is directed, the level of outstanding cases, and the number of appointments. The robustness and effectiveness of this additional monitoring was variable. Until very recently there was little monitoring of timeliness.

16.12 All areas had processes in place for appealing against decisions (made by prosecutors or EROs), albeit feedback from the areas visited suggested that not all cases that are of concern to officers are appealed. There was no systematic approach to monitoring the level of appeals. Whilst those that get escalated to senior officers are rare, all areas reported a significant amount of negotiation and informal appealing at lower levels. If basic data on such activity were recorded it might help corroborate (or otherwise) the police perception that some CPS prosecutors are risk averse.

16.13 Similarly whilst there were systems to monitor instances of cases bypassing the charging process inappropriately, there was limited evidence of data being collated on this issue and used to drive improvements.

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20 A case administratively finalised may have had one of a number of actual outcomes, including the suspect being charged under a different reference number, failing to answer their bail or the police deciding to NFA the case without referring back to the CPS because required further evidence was not forthcoming

16.14 There were indications of recent increases in local systems to monitor aspects of performance of concern to particular areas; these were often manual processes. Measuring the effective and efficient use of prosecutors' time lay at the heart of a number of these systems. Issues such as the overall number of appointments, the proportion where the police failed to attend, outcomes of appointments etc, were starting to be monitored. It is encouraging that the areas are beginning to focus on the efficiency of the statutory charging processes, although in most cases the systems were comparatively new and it was too early to see if they were leading to remedial actions or improvements in outcomes.

16.15 Although all areas had a significant amount of performance data for statutory charging cases that are handled by the CPS, only Lincolnshire had a systematic approach to monitoring cases as they moved through the police system. This holistic approach to monitoring performance, whilst still developing, enables the prosecution team to assess the outcome of each case at every stage of the process

GOOD PRACTICE
The monitoring of case outcomes from arrest to conclusion.

16.16 The PTPM data reports were designed at an early stage of the development of statutory charging and have been subject to limited change. A number of new initiatives have been introduced and significant process changes have been implemented since the inception of statutory charging. Annual reviews of PTPM data have been conducted by CPS Headquarters (although not by the National Prosecution Team) through a process of surveys to area staff. In some instances this has led to changes, but other issues persist from year to year. In some instances this will be affected by the limitations imposed on IT development work.

16.17 It is timely for a more robust review of PTPM reports to ensure that they remain fit for purpose and provide the best possible tool for the prosecution team to understand performance and address any appropriate issues. Similarly reports within the MIS system that relate to statutory charging should be reviewed. In inspectors' experience it is possible to obtain a variety of information, dependant upon the source and type of report selected.

RECOMMENDATION

A formal review of the prosecution team performance management data reports should be undertaken to ensure that they meet the current needs of the users.

16.18 The majority of prosecution team members were not as aware of CPSD performance as would have been expected. Some felt that more data had been available in the past, although the findings suggest that the problem is more likely to be attributable to dissemination at area level. Very few staff interviewed were aware of the CPSD website.

Assessing the quality of decision-making

16.19 From a CPS perspective all areas have systems to monitor the quality of pre-charge decision making by prosecutors. The level and effectiveness of the monitoring varies by area but is primarily done under the auspices of the national casework quality assurance (CQA) scheme, whereby files are assessed by managers on a dip sampling basis. The volume and robustness of checks could be more consistent, although it is accepted that a degree of risk assessment can be applied by managers. Whilst improving, there is still scope to make feedback processes more effective. Better feedback tended to be given in areas where some targeted monitoring of MG3s had taken place. In addition to the formal CQA checks some unit heads undertake charging sessions themselves, which gives them another opportunity to see the quality of other prosecutors' work.

16.20 There is less evidence of a systematic approach to monitoring the quality of decision-making by the police, although individual cases are subject to supervisory checks (often more than one). In some areas the NFA rate is used as a proxy measure for the effectiveness of EROs or other file supervisors. Partly because of changing general priorities (volume crime systems and sanction detections) and partly to try and improve charging, the police have introduced dedicated investigation units to support front line investigating officers. These units, particularly those involving a gatekeeping function, would be aware of the strengths and weaknesses of individual cases but there were inconsistent practices in place regarding feedback on such issues. Two areas visited had a more systematic approach to monitoring cases that the police had decided to NFA and other areas had done some helpful one off exercises to try and improve performance.

17 TRAINING AND DEVELOPMENT

17.1 The effectiveness of the training for the police service in relation to the requirements of the scheme has been mixed. Although other criminal justice initiatives, for example CJSSS, disclosure and conditional cautioning, were usually subject to structured joint agency training this was not so apparent in relation to the charging initiative. However where joint training had been delivered this was often described as very positive, leading to significant improvements in the operation of the scheme. All the police forces who responded to the questionnaire said there had been joint training with key officers. This was most likely to have occurred between prosecutors and EROs, but inspectors found that investigators outside the specific investigative units had little awareness of the overall requirements of the scheme.

17.2 Overall EROs considered they had receiving limited training and induction to equip them for the role. It was apparent that because of their recognised skills and abilities they were expected, on appointment to the role, to update knowledge levels themselves rather than through specific local training. Some local training had been given to investigators and specialists but this was patchy and had not been fully evaluated, with the exception of the accreditation scheme in Humberside.

17.3 Although custody sergeants had received initial threshold test training their responsibilities had since widened and, as the scheme had progressed, they had become less involved in the process. There were a number of key roles associated with the success of the scheme, but they were increasingly isolated from each other. Police investigators gained some benefit from attachments to the evidence review role and file building processes, but there was a lack of appreciation amongst recently appointed police officers of both the demands of the conduct of a professional investigation and those of a duty prosecutor seeking to prepare a case fit for trial.

17.4 Many officers expressed a desire to learn more about the requirements of the charging scheme and they often found themselves frustrated by the lack of performance feedback provided by the system to assist them meet the demands of evidence review officers and prosecutors. This type of feedback loop existed in pockets but its general standard required improvement. It is of note that in those police forces who responded to the questionnaire where there had been a formal review of the scheme, 80% indicated that they had improved training as a result of the review.

17.5 The training of prosecutors focussed on analytical skills and identifying the issues in a cases. This was delivered through the two part Proactive Prosecutor Programme (PPP). All the prosecutors observed had completed part one of the PPP and most had completed part two. The response from other areas indicated a similar level of training with almost all respondees indicating that almost all prosecutors had completed both parts of PPP. The training had been well received, but there is a need to increase its scope to include how best to handle an appointment.

ANNEXES

A JOINT REVIEW OF THE STATUTORY CHARGING SCHEME – AIM AND OBJECTIVES

The Aim
The aim of the joint review is:

To evaluate the operation of the statutory charging scheme against the expected benefits for the criminal justice system.

The objectives
The objectives of the review are:

1 To evaluate the operational effectiveness of the roles, responsibilities and processes of the police and CPS staff involved directly in the provision of charging decisions

2 To consider the effectiveness of governance arrangements, including local variations on the operation of the scheme and the application of the Director's Guidance and the operation of Prosecution Team Performance Management mechanisms

3 To determine the impact of the charging scheme on casework outcomes

4 To determine the impact of the charging scheme on resources for both the police and the CPS, including the capacity to make timely charging decisions and the impact on levels of police abstraction

5 To consider the effectiveness of the interfaces between the police, geographical CPS Areas and CPS Direct

6 To assess whether the scheme assists in improving the quality of investigations and case-building.

7 To identify good practice

Stakeholder organisations
Association of Chief Police Officers
Attorney General's Officer
Crown Prosecution Service
Independent Police Complaints Commission
National Police Improvement Agency
Police Federation
Superintendent's Association

B FILES EXAMINED FROM EACH AREA ASSISTING THE JOINT REVIEW

Area	Number of magistrates' court files examined	Number of Crown Court files examined	Total
Area A	18	17	35
Area B	5	5	10
Area C	10	10	20
Area D	5	5	10
Area E	23	18	41
Area F	16	10	26
Area G	14	14	28
Total	**91**	**79**	**170**

C COMPARISON OF QUALITY OF CHARGING DECISION AS RECORDED ON THE MG3 AND FINAL OUTCOME[21]

Area A

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	3	3	*100.00%*	0	*0.00%*
	CC[22]	5	3	*60.00%*	2	*40.00%*
	Overall[23]	8	6	*75.00%*	2	*25.00%*
Adequate	MC[22]	12	9	*75.00%*	3	*25.00%*
	CC[22]	7	6	*85.71%*	1	*14.29%*
	Overall[23]	19	15	*78.95%*	4	*21.05%*
Poor	MC[22]	3	0	*0.00%*	3	*100.00%*
	CC[22]	5	2	*40.00%*	3	*60.00%*
	Overall[23]	8	2	*25.00%*	6	*75.00%*
Overall[24]		**35**	**23**	***65.71%***	**12**	***34.29%***

Area B

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	0	0	*0.00%*	0	*0.00%*
	CC[22]	0	0	*0.00%*	0	*0.00%*
	Overall[23]	0	0	*0.00%*	0	*0.00%*
Adequate	MC[22]	4	1	*25.00%*	3	*75.00%*
	CC[22]	4	3	*75.00%*	1	*25.00%*
	Overall[23]	8	4	*50.00%*	4	*50.00%*
Poor	MC[22]	1	0	*0.00%*	1	*100.00%*
	CC[22]	1	0	*0.00%*	1	*100.00%*
	Overall[23]	2	0	*0.00%*	2	*100.00%*
Overall[24]		**10**	**4**	***40.00%***	**6**	***60.00%***

21 Each charging decision reviewed was rated as good adequate or poor. The venue the case concluded in and whether the cases was successful or failed was also recorded.

22 This figure is the % of cases that were successful or failed, broken down initially by the quality of the charging decision and then by the court in which the case concluded.

23 This figure is the % of cases that were successful or failed, broken down initially by the quality of the charging decision, irrespective of the venue in which the case concluded.

24 This figure is the % of cases that were successful or failed, irrespective of the venue in which the case concluded or quality of the charging decision.

Area C

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	3	2	*66.67%*	1	*33.33%*
	CC[22]	3	1	*33.33%*	2	*66.67%*
	Overall[23]	6	3	*50.00%*	3	*50.00%*
Adequate	MC[22]	3	2	*66.67%*	1	*33.33%*
	CC[22]	2	1	*50.00%*	1	*50.00%*
	Overall[23]	5	3	*60.00%*	2	*40.00%*
Poor	MC[22]	4	2	*50.00%*	2	*50.00%*
	CC[22]	5	2	*40.00%*	3	*60.00%*
	Overall[23]	9	4	*44.44%*	5	*55.56%*
Overall[24]		**20**	**10**	***50.00%***	**10**	***50.00%***

Area D

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	1	1	*100.00%*	0	*0.00%*
	CC[22]	3	2	*66.67%*	1	*33.33%*
	Overall[23]	4	3	*75.00%*	1	*25.00%*
Adequate	MC[22]	2	1	*50.00%*	1	*50.00%*
	CC[22]	2	0	*0.00%*	2	*100.00%*
	Overall[23]	4	1	*25.00%*	3	*75.00%*
Poor	MC[22]	2	0	*0.00%*	2	*100.00%*
	CC[22]	0	0	*0.00%*	0	*0.00%*
	Overall[23]	2	0	*0.00%*	2	*100.00%*
Overall[24]		**10**	**4**	***40.00%***	**6**	***60.00%***

Area E

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	6	5	*83.33%*	1	*16.67%*
	CC[22]	4	1	*25.00%*	3	*75.00%*
	Overall[23]	10	6	*60.00%*	4	*40.00%*
Adequate	MC[22]	8	6	*75.00%*	2	*25.00%*
	CC[22]	9	5	*55.56%*	4	*44.44%*
	Overall[23]	17	11	*64.71%*	6	*35.29%*
Poor	MC[22]	9	2	*22.22%*	7	*77.78%*
	CC[22]	5	0	*0.00%*	5	*100.00%*
	Overall[23]	14	2	*14.29%*	12	*85.71%*
Overall[24]		**41**	**19**	***46.34%***	**22**	***53.66%***

Area F

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	3	0	*0.00%*	3	*100.00%*
	CC[22]	3	0	*0.00%*	3	*100.00%*
	Overall[23]	6	0	*0.00%*	6	*100.00%*
Adequate	MC[22]	9	7	*77.78%*	2	*22.22%*
	CC[22]	5	4	*80.00%*	1	*20.00%*
	Overall[23]	14	11	*78.57%*	3	*21.43%*
Poor	MC[22]	4	1	*25.00%*	3	*75.00%*
	CC[22]	2	0	*0.00%*	2	*100.00%*
	Overall[23]	6	1	*16.67%*	5	*83.33%*
Overall[24]		**26**	**12**	***46.15%***	**14**	***53.85%***

Area G

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	6	3	*50.00%*	3	*50.00%*
	CC[22]	2	1	*50.00%*	1	*50.00%*
	Overall[23]	8	4	*50.00%*	4	*50.00%*
Adequate	MC[22]	4	2	*50.00%*	2	*50.00%*
	CC[22]	6	4	*66.67%*	2	*33.33%*
	Overall[23]	10	6	*60.00%*	4	*40.00%*
Poor	MC[22]	3	0	*0.00%*	4	*100.00%*
	CC[22]	6	2	*33.33%*	4	*66.67%*
	Overall[23]	10	2	*20.00%*	8	*80.00%*
Overall[24]		**28**	**12**	***42.86%***	**16**	***57.14%***

Overall

Rating	Venue		Outcome			
			Successful		Unsuccessful	
Good	MC[22]	22	14	*63.64%*	8	*36.36%*
	CC[22]	20	8	*40.00%*	12	*60.00%*
	Overall[23]	42	22	*52.38%*	20	*47.62%*
Adequate	MC[22]	42	28	*66.67%*	14	*33.33%*
	CC[22]	35	23	*65.71%*	12	*34.29%*
	Overall[23]	77	51	*66.23%*	26	*33.77%*
Poor	MC[22]	27	5	*18.52%*	22	*81.48%*
	CC[22]	24	6	*25.00%*	18	*75.00%*
	Overall[23]	51	11	*21.57%*	40	*78.43%*
Overall[24]		**170**	**84**	***49.41%***	**86**	***50.59%***

D TABLE OF AREAS AND CHARGING CENTRES VISITED, TOGETHER WITH THE NUMBER OF CONSULTATIONS OBSERVED

Area	Charging Centre	Number of consultations observed
Avon and Somerset	Bath	4
	Bridgwater	4
	Froomsgate House (CPS Avon and Somerset)	2
	Staple Hill (Bristol)	6
	Taunton	4
	Trinity Road (Bristol)	9
Gwent	Newport	5
	Ystrad Mynach	7
Humberside	Beverley	4
	Citadel House (CPS Humberside)	1
	Queens Gardens (Hull)	5
	Scunthorpe	3
Lincolnshire	Lincoln	7
London	Charing Cross (Borough of Westminster)	11
	Forest Gate (Borough of Newham)	0
	Hounslow (Borough of Hounslow)	7
	Stoke Newington (Borough of Hackney)	2
	Walworth Road (Borough of Southwark)	10
	Wembley (Borough of Brent)	9
Nottinghamshire	Bridewell (Nottingham City)	13
	Carlton	7
	Mansfield	5
Thames Valley	Loddon Valley (Reading)	13
	Milton Keynes	9
	Oxford	1
Total	25	148

E TABLE OF OUTCOME OF APPOINTMENTS OBSERVED BY AREA

Area	Decision deferred	Early advice	No further action	Action Plan	Charge authorised	Total
Area A	0	0	8 *(27.5%)*	11 *(38%)*	10 *(34.5%)*	29
Area B	0	0	3 *(25%)*	4 *(33.3%)*	5 *(41.7%)*	12
Area C	2 *(15.4%)*	0	2 *(15.4%)*	2 *(15.4%)*	7 *(53.8%)*	13
Area D	0	0	3 *(42.9%)*	1 *(14.2%)*	3 *(42.9%)*	7
Area E	0	0	6 *(15.4%)*	13 *(33.3%)*	20 *(51.3%)*	39
Area F	1 *(4%)*	0	7 *(28%)*	8 *(32%)*	9 *(36%)*	25
Area G	0	0	4 *(17.4%)*	11 *(47.8%)*	8 *(34.8%)*	23
Total	3 *(2%)*	0	33 *(22.3%)*	50 *(33.8%)*	62 *(41.9%)*	148

F ANALYSIS OF COMPOSITION OF APPOINTMENT TIMES

Allocated Time		Actual Time				Average Consultation Time
		consultation	reading	legal research	typing	
All Cases		20.09	17.30	1.62	21.16	60.17
0 mins*		16.67	1.00	1.95	5.67	25.29
30 mins	21–30	20.00	10.00	0.00	20.00	50.00
50 mins	41–50	22.69	10.38	0.77	15.77	49.62
60 mins	51–60	17.64	16.85	1.69	20.90	57.08
90 mins	81–90	22.50	30.00	0.00	30.00	82.50
90+ mins	90+	50.43	41.43	1.43	25.71	119.00

* Primarily custody cases which were deal with on an ad hoc basis

G QUESTIONNAIRES ANALYSED BY CATEGORY

Category	Number
Custody officers	11
Evidence review officers	15
Investigators	26
Duty prosecutors	25
Total	77

H ANNEX A OF THE DIRECTOR'S GUIDANCE ON CHARGING

Offences or circumstances, which must always be referred to a Crown Prosecutor for early consultation and charging decision - whether admitted or not

- Offences requiring the Attorney General's or Director of Public Prosecution's consent.
- Any indictable only offence.
- Any either way offence triable only on indictment due to the surrounding circumstances of the commission of the offence or the previous convictions of the person.

In so far as not covered by the above:

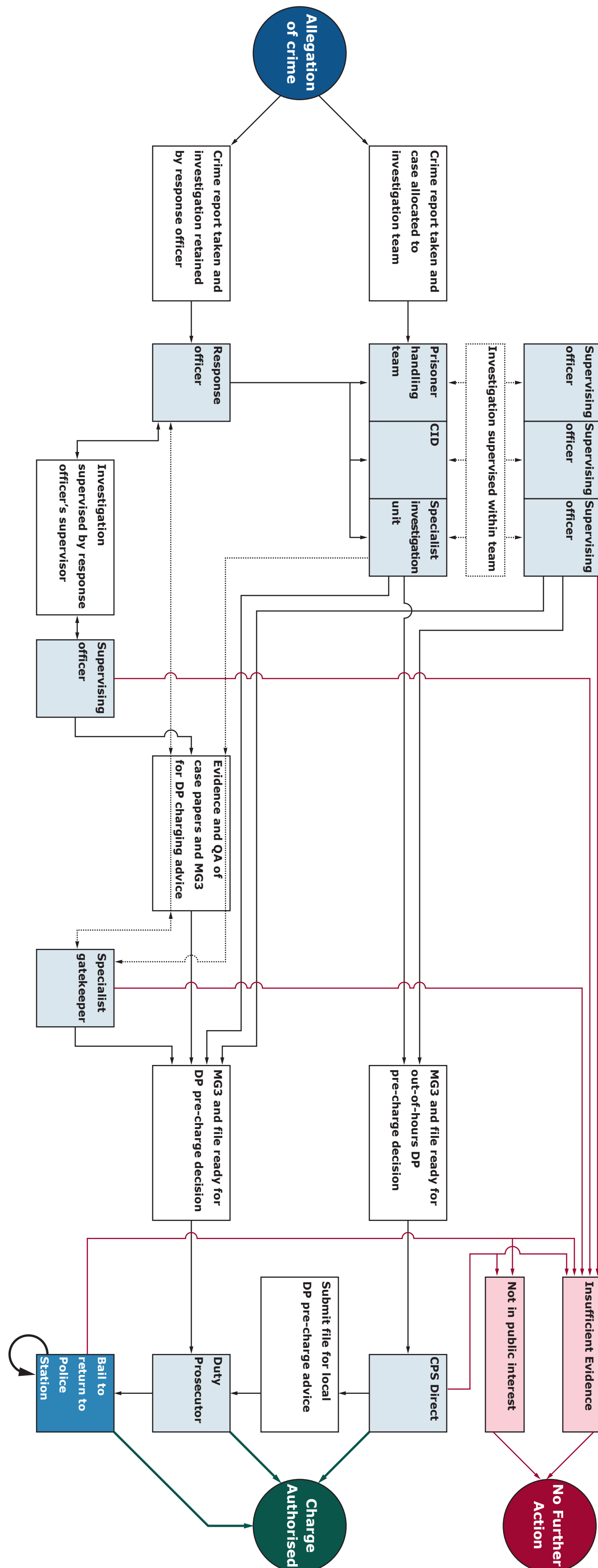
- Offences under the Terrorism Act 2000, the Prevention of Terrorism Act 2005 or any other offence linked with terrorist activity.
- Offences under the Anti-Terrorism, Crime and Security Act 2001.
- Offences under the Explosive Substances Act 1883.
- Offences under any of the Official Secrets Acts.
- Offences involving any racial, religious or homophobic aggravation.
- Offences classified as Domestic Violence.
- Offences under the Sexual Offences Act 2003 committed by or upon persons under the age of 18 years.
- Offences involving Persistent Young Offenders, unless chargeable by the police under Paragraph 3.3.
- Offences arising directly or indirectly out of activities associated with hunting wild mammals with dogs under the Hunting Act 2004.
- The following specific offences (see note 1):
  - Wounding or inflicting grievous bodily harm, contrary to Section 20 of the Offences Against the Person Act 1861
  - Assault occasioning actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861
  - Violent Disorder contrary to Section 2 of the Public Order Act 1986
  - Affray, contrary to Section 3 of the Public Order Act 1986
  - Offences involving deception, contrary to the Theft Acts 1968 & 1978 (see note 2)
  - Handling stolen goods, contrary to Section 22 of the Theft Act 1968
  - Offences under the Fraud Act 2006.

Notes

1. File requirements for these cases will be in accordance with the Manual of Guidance expedited file, to include key witness statements or other compelling evidence and a short descriptive note of any interview conducted.

2. If the offence was committed before 15 January 2007.

I INVESTIGATION, SUPERVISION AND CHARGE MODEL



J CATEGORISATION OF TYPES OF DECISION ON THE MG3

Code	Description	Final/interim	Grouping
A	Charge and request full file	Final	Charge
B	Charge and request expedited file	Final	Charge
C	Simple Caution	Final	Disposal
D	Conditional caution	Final	Disposal
E	Reprimand	Final	Disposal
G	TIC	Final	Disposal
H	Request evidential file	Interim	Investigative advice
I	Request expedited file	Interim	Investigative advice
J	Further evidence resubmit	Interim	Investigative advice
K	NFA evidential	Final	No further action
L	NFA public interest	Final	No further action
M	Other	NA	NA
N	Refer for financial investigation	Interim	Investigative advice

Type of decision in consultations observed

Area	Charge	No further action	Investigative advice	Other/stood down	Total
Area A	10 *(34.5%)*	5 *(17.2%)*	11 *(37.9%)*	3 *(10.4%)*	29
Area B	5 *(41.7%)*	3 *(25%)*	4 *(33.3%)*	0 *(NA)*	12
Area C	7 *(53.8%)*	2 *(15.4%)*	2 *(15.4%)*	2 *(15.4%)*	13
Area D	3 *(42.9%)*	1 *(14.2%)*	3 *(42.9%)*	0 *(NA)*	7
Area E	20 *(51.3%)*	6 *(15.4%)*	13 *(33.3%)*	0 *(NA)*	39
Area F	9 *(36%)*	7 *(28%)*	8 *(32%)*	1 *(4%)*	25
Area G	8 *(34.8%)*	4 *(17.4%)*	11 *(47.8%)*	0 *(NA)*	23
Total	62 *(41.2%)*	28 *(18.9%)*	52 *(35.1%)*	6 *(4.1%)*	148

Record of last charging decision made in 2007-08 for all areas

Decision	Number	%
Charge & Request evidential file	200,791	36.7%
Charge & Request expedited file	103,906	19.0%
Conditional Caution non compliance - Charge & Request expedited file	286	0.1%
Simple Caution	11,287	2.1%
Conditional Caution	4,941	0.9%
Conditional Caution non - compliance - No prosecution	37	0.1%
Conditional Caution Non-Compliance - Continue - Condition(s) Varied	4	0.1%
Conditional Caution Non-Compliance - Continue - Time for Compliance Extended	2	0.1%
Reprimand	2,068	0.4%
Final Warning	2,924	0.5%
Taken into Consideration	391	0.1%
Request further evidence to complete evidential report	4,533	0.8%
Request further evidence to complete expedited report	407	0.1%
Early Advice: further action necessary	1,167	0.2%
No prosecution - Evidential	147,797	27.0%
No prosecution - Public Interest	13,117	2.4%
Other	625	0.1%
Not Given for this Suspect	212	0.1%
Undefined	20,213	3.7%
Admin Finalised	32,342	5.9%
Total	547,050	100%*

Note: This data includes those cases where investigative advice had been given but a final charging decision was not made in 2007-08.

*All percentages rounded up to one decimal point and total rounded down

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