

THE INSPECTORATE'S REPORT  
*on*  
THE Highbury Branch  
*of*  
CPS LONDON

# Highbury Branch



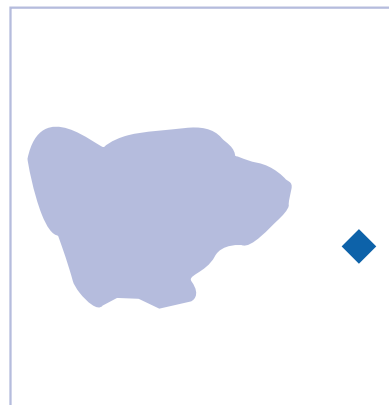
**BRANCH OFFICE**

◆ Stratford

**COURTS COVERED**

**Magistrates' Courts**  
Highbury Corner

**Crown Court**  
Central Criminal Court  
Inner London  
Snaresbrook



REPORT ON THE INSPECTION OF THE CPS Highbury Branch

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## INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the Highbury Branch of CPS London.
- 1.2 A good casework decision is one which results in the right defendant being charged with the right offence in the right tier of court at the right time, thereby enabling the right decision to be taken by the court. The decision must also be taken at the right level within the Crown Prosecution Service (CPS) and be prosecuted by the right prosecutor.
- 1.3 The purpose and aims of the Inspectorate are set out on the inside back cover of this report. The inspection process focuses on the core business of the Service: providing advice; reviewing cases; preparing cases; and presenting cases in court.
- 1.4 The Highbury Branch is in the CPS London Area and has its offices in Stratford, East London. On 13 July 1998, it employed 42.2 staff (the Branch Crown Prosecutor (BCP) and 12 other prosecutors; two senior caseworkers and 26.2 other caseworkers; and one administrative officer). It shares the services of a Special Casework Lawyer (SCL) and typing and reception facilities with two other Branches in the same building.
- 1.5 The Branch comprises two teams. One team (six prosecutors and 14.6 caseworkers) deals with cases arising from the Stoke Newington and the Shoreditch and Hackney divisions of the Metropolitan Police; the other team (six prosecutors and 13.6 caseworkers) deals with cases arising from the Holloway and Islington divisions. Both teams are responsible for the conduct of prosecutions in the magistrates' court at Highbury Corner. Each team is also responsible for Crown Court cases originating from its prosecutions.
- 1.6 The team of three inspectors visited the Branch between 13 and 24 July 1998. During this period, we observed seven CPS advocates prosecuting

cases in Highbury Corner Magistrates' Court. We also observed counsel in the Crown Court sitting at Snaresbrook.

- 1.7 The Branch was previously visited by a team of CPS inspectors in 1997, as part of an inspection of CPS London. A report on CPS London, containing 15 recommendations, was published in December 1997. We refer to the report as 'the CPS London report' at various points in the sections which follow. Although it contained a profile of each Branch, including Highbury Branch, the conclusions and recommendations were addressed to CPS London as a whole.

## CONCLUSIONS AND RECOMMENDATIONS

- 2.1 The Branch deals with a relatively high proportion of serious and complex cases. In the 12 months ending 30 June 1998, the proportion of contested trials in both the magistrates' court (13.4%) and the Crown Court (41.8%) was much higher than the national average (7.2% and 24% respectively). The Branch prosecutors and caseworkers have to deal with these cases against a background of very tight timescales set by a busy Inner London magistrates' court.
- 2.2 The standard of decision-making is good and the great majority of casework decisions are correct. Indeed, we found very few cases in the sample of 203 cases in which we disagreed with the analysis of either the evidence or the public interest considerations. We commend the standard of decision-making, although in a small number of cases, effective review does not appear to take place at the earliest opportunity.
- 2.3 In May and June 1998, there were a significant number of changes in Branch staff, including the two Prosecution Team Leaders (PTLs), a senior caseworker and several prosecutors. The Branch Management Team (BMT) has recognised that timeliness and some aspects of case preparation need to be improved. A number of new initiatives and systems have been, or are about to be,

introduced, with the specific goal of improving the performance of the teams and, therefore, the Branch as a whole.

2.4 The CPS London report made several recommendations designed to assist the Area and its Branches in improving the quality of its decisions and case preparation. Some of these recommendations have been included in the Branch Management Plan, but not all have been effectively implemented. Some recommendations are therefore repeated in this report.

2.5 To assist the Branch in improving its casework, we recommend that:

- i the BCP should introduce a system to ensure that proper and effective monitoring is carried out of the timeliness of advice, to ensure that pre-charge advice is given to the police within 14 days (paragraph 4.13);
- ii the BCP should ensure that effective review is carried out in all cases, at all appropriate times (paragraph 5.10);
- iii the PTLs should ensure that their teams' rate of return of documents required for joint performance management (JPM) continues to improve, so that effective use can be made of the information provided (paragraph 5.13);
- iv the BCP should ensure that the charging standard relating to offences involving assaults is applied correctly by all Branch prosecutors (paragraph 5.18);
- v the BCP should take immediate steps to ensure that all cases are given the correct PI finalisation code, and that the casework records kept by the Branch are accurate and informative (paragraph 5.28);
- vi the BCP should ensure that all files are properly stored, so that they can be retrieved, whenever required (paragraph 5.30);

- vii the BCP should ensure that adequate systems are in place to enable learning points from the Branch's cases, both successful and otherwise, to be identified and disseminated to prosecutors and caseworkers (paragraph 5.49);
- viii prosecutors should ensure that, in all cases where advance information is served on the defence, the date of service is clearly endorsed on the file and a list of the material which has been served is recorded (paragraph 6.6);
- ix prosecutors should ensure that primary disclosure in cases that are committed to the Crown Court is made at the appropriate time, and that such disclosure is clearly recorded on the file (paragraph 6.13);
- x the BCP should monitor the Branch's handling of unused material in magistrates' court cases, to ensure that such material is properly considered and dealt with by prosecutors (paragraph 6.15);
- xi the BCP should introduce an effective system for monitoring the progress of summary trial preparation, to ensure that all outstanding work is properly completed (paragraph 6.26);
- xii the BCP should introduce a system for monitoring the quality of indictments, in order to:
  - eradicate minor typing inaccuracies;
  - ensure that the substantive content of each indictment is correct; and
  - improve the drafting skills of prosecutors and caseworkers (paragraph 6.43);
- xiii prosecutors at the Crown Court should attend the plea and directions hearing (PDH)

courtroom, and undertake bail applications, when feasible (paragraph 6.52);

xiv the BCP should take steps to provide more effective and comprehensive coverage of the Crown Court by caseworkers (paragraph 6.55);

xv the BCP should examine with the police the effectiveness of the despatch system, to ensure that efficient lines of liaison are maintained (paragraph 6.63);

xvi the BCP should make every effort to ensure that counsel of appropriate experience are instructed in all cases, and that a formal system is implemented to monitor their performance (paragraph 7.5);

xvii the BCP should seek to improve the percentage of cases in which counsel originally instructed attends the PDH, the trial and the sentencing hearing in the Crown Court (paragraph 7.7);

xviii the BCP should ensure that all appropriate information is given to the Witness Service, to enable it to undertake its work effectively (paragraph 8.7).

## THE INSPECTION

3.1 In the 12 months to 30 June 1998, the Branch dealt with 9,975 defendants in the magistrates' court and 1,371 defendants in the Crown Court. In a further 630 cases, advice was given to the police before charge.

3.2 The inspection team examined a total of 203 cases, ranging from those where an acquittal was directed by the judge, through those where the prosecution terminated proceedings, to those where the defendant pleaded guilty. The team interviewed members of staff in the Branch and local

representatives of the criminal justice agencies that directly affect, or are directly affected by, the quality of casework decisions taken in the Branch. A list of those representatives from whom we received comments is at the end of this report.

## PROVIDING ADVICE

### Appropriateness of requests for advice

4.1 In the year ending 30 June 1998, advice cases constituted 5.9% of the Branch's total caseload, compared with 4.1% nationally. In addition to advice cases from its local police divisions, Branch prosecutors deal with advice files relating to complaints against police which arise in areas covered by some other CPS London Branches. It has effective systems for recording advice given in police stations or on the telephone. We were told that these factors account for the higher rate of advice work recorded by the Branch.

4.2 As a result of a recommendation in the CPS London report, the Area issued guidelines, setting out the circumstances in which it is appropriate to give advice to the police. It was intended that these guidelines should form the basis of local agreements, or protocols, with the police. The Branch entered into such an agreement with local police divisions in January 1998.

4.3 We examined a sample of ten advice cases, and considered that one case had been inappropriately submitted. This had been identified by the prosecutor dealing with the case who, when giving advice to the police, drew attention to the inappropriateness of the initial request.

4.4 In addition to dealing with formal requests for advice, prosecutors attend local police stations to be available to give advice. Originally, this scheme was piloted in one of the four local divisional police stations. Since 13 July 1998, it has been extended to cover all local divisions. We were told by prosecutors and the police that the scheme provides benefits to both agencies, and that its recent extension is welcomed.

- 4.5 Advice given in a police station is noted by the prosecutor, and a copy is given to the police officer. The Branch subsequently records the advice, so that it is included in the Branch's PIs.
- 4.6 Following a recommendation in the CPS London report, the Branch has a system for recording any advice given over the telephone. The new PTLs are encouraging the use of the system to ensure that all such advice is recorded.

## Quality of advice

- 4.7 Advice files are allocated to prosecutors according to their experience and expertise.
- 4.8 When the advice is sent to the police, the file is retained by the Branch. In the event of a prosecution being initiated, the original advice file is usually linked to it.
- 4.9 The police told us that they valued the advice received from the Branch. We agreed with the advice in nine cases that we examined, but in the tenth case, the prosecutor had failed to deal with the vital issue in the case, namely the evidence to identify the alleged offender.
- 4.10 The quality of the advice given is now monitored by the PTLs undertaking sample checks of advice files for each prosecutor on their team, on a monthly basis. As a temporary measure, in one team, because of the change in PTL and because a number of new prosecutors have joined the team, every advice file is seen by the PTL before the advice letter is sent to the police.

## Timeliness of advice

- 4.11 The CPS has set a target of providing advice within 14 days of receipt of the request from the police. In a sample of ten files, we found that eight had been dealt with within this time. The Branch, however, records that, during the period from 1 November 1997 to 31 March 1998, it provided advice within 14 days in only 58 of 186 cases (31.2%).

- 4.12 The timeliness of advice is a cause for concern to police, and delay can undermine the value of the advice that is sent. This issue was the subject of a recommendation in the CPS London report, but we were told that timeliness of advice is not currently a priority for the Branch. One team has a monitoring system in place, but it is not being used to reduce the length of time taken to send advice to the police.

**4.13 We recommend that the BCP should introduce a system to ensure that proper and effective monitoring is carried out of the timeliness of advice, to ensure that pre-charge advice is given to the police within 14 days.**

## Advice from counsel

- 4.14 It is very rare for counsel to be asked to advise on cases before charge or committal. Any such request has to be approved by the BCP. The BCP told us of one case where advice had been requested from Senior Treasury Counsel. This was a complex allegation involving an offence of conspiracy to murder, and was an appropriate case in which to seek counsel's advice at an early stage.
- 4.15 Prosecutors decide whether to seek advice from counsel after committal to the Crown Court. The BCP has given guidance about when requests may be appropriate, and we were told that such requests are now infrequent. In a sample of 30 Crown Court files, we did not see any case where a request for advice had been made.
- 4.16 We saw two cases where counsel had advised without being requested to do so. In both cases, the advice was appropriate: in one case, it led to further evidence being obtained, and, in the other, to an amendment to the indictment.

## REVIEWING CASES

### Quality of review decisions

- 5.1 Under the Prosecution of Offences Act 1985, the CPS is required to review every case it deals with

in accordance with the Code for Crown Prosecutors (the Code). It must establish whether there is sufficient evidence for a realistic prospect of conviction, and whether it is in the public interest to prosecute the matter.

- 5.2 We inspected the quality of the review decision in 80 files, covering cases in the magistrates' court and the Crown Court. We agreed with the review decision on the evidential sufficiency test and the public interest test in all cases.
- 5.3 The PTLs monitor the quality of review by sampling files on a monthly basis. Additionally, the BCP and PTLs regularly prosecute in the magistrates' court, and have the opportunity to see files that have been reviewed and prepared by prosecutors from their teams.

#### Timeliness of review

- 5.4 The Branch is less good at reviewing cases timeously, however. It aims to review every new file before it is taken to court for the first time. In a sample of 30 files, we found that 13 (43.3%) had been reviewed before the first hearing date, and nine (30%) had been reviewed on the first hearing date, before the case appeared in court. In the remaining eight cases (26.7%), the initial review appeared to have taken place after the first hearing date.
- 5.5 The Branch monitors the timeliness of its review decisions in accordance with the CPS Corporate Performance Measures. These show that, between 1 November 1997 and 31 March 1998, 578 of 792 cases (73%) were reviewed within seven days of receipt of the file from the police.
- 5.6 We found that, in 17 out of 80 cases (21.3%), the charges should have been amended at first review, but only 11 were amended at that stage. The remaining six were appropriately amended at a later stage. Two cases involved charges which were changed from either-way offences to offences which could be tried only summarily, after the defendants had elected trial in the Crown Court. The decision should have been taken before mode

of trial was dealt with, but we were told that the court sometimes proceeds with this at a very early stage. In such instances, early consideration of the appropriate charge is essential to avoid giving the impression that charges are amended to prevent Crown Court trial.

- 5.7 In another two cases, the decision to discontinue proceedings was taken only after the defendants had elected to have their cases tried in the Crown Court. One case had been adjourned for two weeks specifically to enable the case to be reviewed. We agreed with both decisions to discontinue the proceedings, but the decisions should have been taken earlier.
- 5.8 The police told us that they often receive requests for more information, or proposals about amendment of charges or discontinuance of cases, at a late stage. We were told that prosecutors, in some instances, make applications for cases to be adjourned to enable review to take place. We observed a prosecutor applying for an adjournment to enable a file to be reviewed which had been received by the Branch five working days before the court hearing.
- 5.9 These factors support the perception held by other agencies that, in a proportion of cases, effective review is not taking place at the earliest opportunity.
- 5.10 We recommend that the BCP should ensure that effective review is carried out in all cases, at all appropriate times.**
- 5.11 The timeliness and quality of files submitted by the police affects the ability of prosecutors to review cases promptly. Branch managers and the police monitor the quality and timely submission of files through JPM. The reviewing prosecutor completes a form which shows the date of receipt, the date of review and the prosecutor's assessment of the quality of the file. The form is then returned to the police for collation.
- 5.12 It is important that the timeliness and the quality of police files are accurately measured, if the police



and Branch managers are to seek improvements in their quality. At present, approximately two-thirds of the forms are returned by Branch staff, and the police told us that this is insufficient to provide an accurate assessment of the current position. The figure is improving, with the new PTLs targeting the return of these forms as a priority.

**5.13 We recommend that the PTLs should ensure that their teams' rate of return of documents required for JPM continues to improve, so that effective use can be made of the information provided.**

## Selection of the appropriate charge and charging standards

5.14 The defendant was prosecuted for the appropriate offence in all 80 cases that we examined, although we have already commented on the timeliness of the selection of the charge in some cases (paragraphs 5.4 - 5.10). In one particular case, however, although a number of appropriate charges were proceeded with, one charge was not in accordance with the charging standard for assault cases. The defendant should have been charged with common assault, instead of assault occasioning actual bodily harm. In the event, he was acquitted on all charges.

5.15 We have referred to the fact that in 17 out of 80 cases (21.3%) the original police charges required amending at first review (paragraph 5.6). In seven of the cases, the police had not applied the appropriate charging standard - in six cases, charging a more serious offence than was appropriate, and in the remaining case, charging a less serious offence. In seven other cases, the police charges were not supported by the evidence, and more appropriate charges were drafted. In one case, the charge was drafted incorrectly; in another, there was insufficient evidence to proceed; and the remaining case required only a minor amendment to the charge.

5.16 The CPS and the police nationally have agreed charging standards for assaults, public order offences and some driving offences, to ensure a

consistent approach to levels of charging. We found that the charging standard had been correctly applied at initial review by Branch prosecutors in 19 out of 22 appropriate cases (86.4%).

5.17 Two cases where the appropriate standard was not applied involved allegations of assault occasioning actual bodily harm, which should have been amended to charges of common assault. We have dealt with one case in paragraph 5.14. In the other case, the appropriate charge was put after the defendant had elected to be dealt with at the Crown Court (paragraph 5.6). The third case involved an allegation of unlawful wounding, where the appropriate charge was the more serious offence of wounding with intent to cause grievous bodily harm. The indictment was amended by counsel to include the appropriate charge.

**5.18 We recommend that the BCP should ensure that the charging standard relating to offences involving assaults is applied correctly by all Branch prosecutors.**

## Mode of trial

5.19 We agreed with the prosecutor's decision about whether the case should be dealt with in the Crown Court or the magistrates' court in all 39 relevant cases in our sample. The reviewing prosecutor had made a written record of the issues to be taken into account when dealing with mode of trial in 33 of these cases (84.6%).

5.20 We were told that prosecutors appear sometimes to make inappropriate submissions, in an effort to have cases dealt with in the magistrates' court, rather than by the Crown Court. We did not find any evidence of this in our sample.

## Bail

5.21 We were told that prosecutors opposed bail in appropriate cases. We examined 18 cases where the defendant appeared in custody, and an appropriate decision whether to oppose bail was made in each case. Furthermore, the prosecutor's grounds for opposing bail were endorsed on the file in all cases,

and the magistrates' reasons for refusing bail were endorsed in all but one relevant case.

### Discontinuance

- 5.22 The Branch's discontinuance rate of 12.1%, for the 12 months ending 30 June 1998, is similar to the national average (12%).
- 5.23 We examined a sample of 45 cases stopped by the prosecution in the magistrates' court, to look at the reason for the termination. Notice of discontinuance was used in 26 cases (57.8%), with eight (17.8%) being withdrawn at court. In the remaining 11 cases (24.4%), no evidence was offered by the prosecution.
- 5.24 Twenty cases (44.4%) were stopped because there was insufficient evidence, and seven (15.6%) because it was not in the public interest to prosecute. In 17 cases (37.8%), the prosecution was unable to proceed because, for example, witnesses refused to give evidence or failed to attend court. One case was stopped because the defendant produced his driving documents.
- 5.25 We examined ten terminated cases, in order to assess whether the Code tests had been correctly applied. We agreed with the decision about the sufficiency of evidence and the public interest in all cases. We have already commented in paragraph 5.7 on two cases where the decision to discontinue, although correct, was not taken at the earliest opportunity.

### Recording and finalising cases

- 5.26 Branch staff were asked to provide a number of files in various categories for examination, based on Branch statistics over a three month period. We are concerned that files relating to many defendants could not be identified or found. These files concerned:
- three out of six defendants in respect of whom the magistrates found that they had no case to answer at the close of the prosecution case at trial;

- two out of 11 defendants in respect of whom the magistrates decided that there was insufficient evidence to commit them to the Crown Court for trial - and the remaining nine files were found to have been incorrectly coded;
- 14 out of 45 defendants whose cases were stopped by the judge at the request of the prosecution (judge ordered acquittals); and
- two out of five defendants in respect of whom the judge directed acquittals after their trials had started (judge directed acquittals) - and one of the three cases sent was wrongly categorised.

5.27 The BCP accepts that staff are making errors in the coding and categorisation of cases, and has provided explanations. The fact remains that our inspection has revealed that the Branch's PIs are inaccurate in those important categories that reflect adverse decisions. It is essential that the results of cases are recorded properly, so that the Branch's performance can be accurately assessed.

**5.28 We recommend that the BCP should take immediate steps to ensure that all cases are given the correct PI finalisation code, and that the casework records kept by the Branch are accurate and informative.**

5.29 Furthermore, we are concerned that many files could not be located for inspection. It is essential that this situation is remedied.

**5.30 We recommend that the BCP should ensure that all files are properly stored, so that they can be retrieved, whenever required.**

### Cases lost on a submission of no case to answer in the magistrates' court and discharged committals

5.31 We were able to examine two cases which were correctly categorised as cases which the magistrates had stopped at the close of the

prosecution case. Of those, there was insufficient information in one file to confirm when the case had been concluded.

- 5.32 In the remaining case, the magistrates, having heard the prosecution evidence, found that the prosecution had failed to prove an element of the offence. Nevertheless, on the face of the statements, we considered that this was an appropriate case to prosecute.
- 5.33 For the reasons given in paragraphs 5.26 - 5.27, we were unable to examine any case in which the defendant was discharged at committal.
- Judge ordered and judge directed acquittals**
- 5.34 In the 12 months to 30 June 1998, 154 cases were not proceeded with in the Crown Court. This represents 14.3% of the Branch's caseload, substantially above the national average of 8.2%. The great majority resulted in judge ordered acquittals.
- 5.35 We examined 21 cases involving 31 defendants. We agreed with the decision to prosecute in 20 cases. In the other case, there was insufficient evidence to proceed because of flaws in the evidence identifying the offender. This issue should have been considered at an earlier stage, and the case should have been stopped then.
- 5.36 In ten cases (47.6%), prosecution witnesses failed to attend or declined to give evidence. Seven cases (33.3%) were stopped because it was quite properly no longer in the public interest to proceed; and two (9.5%) were stopped as the evidence could no longer be relied upon, because of circumstances which had changed since the committal proceedings. We were unable to ascertain why the remaining case had been stopped.
- 5.37 There are a high number of cases in which witnesses fail to attend to give their evidence. In some specific types of case - for example, those involving violence - the police are asked by the Branch to check that key civilian witnesses are still available and prepared to attend court, before

committal papers are prepared. This follows a recommendation in the CPS London report and we are pleased to note that these checks are carried out.

- 5.38 During the same 12 month period, there were 16 cases in the Crown Court which resulted in judge directed acquittals. This represents 1.8% of the Branch's Crown Court caseload, compared with the national average of 2%.
- 5.39 We examined two judge directed acquittals and agreed with the decision to proceed in both cases. In one case, it came to light during the course of the evidence that there had been a relevant video recording, which had since been destroyed, making it unsafe for the case to continue. In the other, the prosecution witness gave inconsistent and unreliable evidence. These matters could not have been foreseen by the prosecution.

## Review endorsements

- 5.40 Effective review must be supported by good file endorsements. We are pleased to note that review decisions were legibly and correctly recorded in 66 out of 80 cases (82.5%). In addition, in 40 out of 45 relevant cases (88.9%), the factors relating to the appropriate venue for trial were properly recorded.
- 5.41 Such endorsements ensure that other prosecutors and caseworkers who deal with the file are aware of the relevant factors taken into consideration by the reviewing prosecutor. In our experience, the overall standard of review endorsements in the Branch is good, and we commend the efforts that have been made. The BCP will want to ensure that this standard is maintained, and, where possible, improved upon by both teams.

## Learning from experience

- 5.42 A report is prepared by the caseworker in court in respect of any case that does not result in a conviction in the Crown Court. The report should be passed to the reviewing prosecutor for his comments, and then through the PTL to the SCL, who works with the Branch office. The SCL

assesses the report and indicates whether any issues should be considered further.

- 5.43 A senior CPS caseworker at the Crown Court at Snaresbrook, who is not a member of the Branch staff, reports any issues which arise at the Crown Court which should be drawn to the Branch's attention.
- 5.44 The failed case reports and any reports prepared by the senior caseworker are passed to the BMT. The issues are discussed, and any appropriate information is disseminated by the PTLs to their teams.
- 5.45 Although this system is capable of drawing the attention of the reviewing prosecutor to any issues in the case, we were unable to confirm from our examination of the reports that the reviewing lawyers were being sufficiently involved in the process. We looked at 21 reports relating to May and June 1998, and found that the reviewing lawyer had only signed three of them.
- 5.46 The system makes no provision for passing any relevant information to the caseworker who prepared the case for committal.
- 5.47 There is no formal system for identifying or disseminating appropriate information about cases which do not result in convictions in the magistrates' court.
- 5.48 The BCP informally discusses with Branch prosecutors and caseworkers any successful cases which are significant. This demonstrates a good personal approach to the matter, but its value depends on the number of staff who are present in the office at the time.
- 5.49 We recommend that the BCP should ensure that adequate systems are in place to enable learning points from the Branch's cases, both successful and otherwise, to be identified and disseminated to prosecutors and caseworkers.**

## PREPARING CASES

### Advance information

- 6.1 National guidelines state that advance information should be served within seven days of the receipt of the file from the police and of the identity of the defence solicitor being known. Branch records show that, between 1 November 1997 and 31 March 1998, advance information was served within these guidelines in 79.4% of cases. We found that advance information had been served promptly in 21 of 22 relevant cases in our sample.
- 6.2 Branch staff aim to serve the material before the first hearing, if there is a specific request from the defence solicitor, provided that they have received a file from the police and that there is sufficient time before the hearing date. In practice, however, the majority of advance information is served at the first hearing. This adds to the perception on the part of defence solicitors of late review, or of delay in linking their requests to relevant files.
- 6.3 Caseworkers prepare the relevant material when the file is received from the police. This is left on the file, with a blank pro-forma letter, to await service. The prosecutor should check the material, and then complete the letter by listing the material which is to be served, and endorse the file with the date of service. The letter is self-carbonating, and the copy should be retained on the file.
- 6.4 We found that the letter was often left blank, or, in some cases, the copy letter was missing from the file. In either case, subsequent readers of the file would not know what material had been served. We were told by prosecutors that the police often send in material in a piecemeal fashion, as it becomes available. It is essential, in these circumstances, that there is an accurate record of what material has, or has not, been served as advance information.
- 6.5 In some files, a record appeared not to have been kept of the date of service of the information.

**6.6 We recommend that prosecutors should ensure that, in all cases where advance information is served on the defence, the date of service is clearly endorsed on the file and a list of the material which has been served is recorded.**

6.7 The Branch receives requests for advance information in cases where the law does not require the prosecution to provide it. The Branch has a policy that, in these circumstances, advance information will not be given, unless it will assist the progress of the case.

6.8 As far as we could tell, prosecutors exercise their discretion on reasonable grounds, and are willing to let defence solicitors have sight of any relevant material on an informal basis.

#### Unused and sensitive material

6.9 All prosecutors and caseworkers have received training on the disclosure provisions of the Criminal Procedure and Investigations Act 1996. Training was undertaken jointly with the police.

6.10 In cases which are committed to the Crown Court for trial, the prosecutor should hand over the material which constitutes primary disclosure immediately after the committal has taken place and endorse the file to this effect. The date of primary disclosure is significant, because it activates various statutory time limits relating to disclosure.

6.11 Whilst primary disclosure is generally made immediately following committal proceedings, we found examples of it being made some days after committal and, in one instance, of it being made only following a direction given by a judge at the PDH.

6.12 Caseworkers told us that it was not always possible to ascertain from the file endorsements whether primary disclosure had been made. As a result, they would make primary disclosure, even though it was possible that this had already been done.

**6.13 We recommend that prosecutors should ensure that primary disclosure in cases that are committed to the Crown Court is made at the appropriate time, and that such disclosure is clearly recorded on the file.**

6.14 Local magistrates do not generally adjourn cases for trial to interim hearing dates, in order to allow the files to be upgraded, and pre-trial reviews (PTRs) are only held for trials of one day or longer. This means that the Branch rarely has enough time to undertake all its duties in all its cases. We found that, in magistrates' court trials, unused material frequently had not been dealt with properly. The new PTLs have already established this and two prosecutors are devising a system to ensure that unused material is dealt with in all appropriate summary cases. It is envisaged that a new pro-forma letter will be introduced, which will prompt disclosure when the trial is being prepared by a prosecutor. We were told that the system will be introduced shortly.

**6.15 We recommend that the BCP should monitor the Branch's handling of unused material in magistrates' court cases, to ensure that such material is properly considered and dealt with by prosecutors.**

6.16 The Branch handles a comparatively large proportion of cases which involve sensitive material. The BCP deals with certain categories, and prosecutors, under the supervision of their PTLs, deal with the remaining matters.

6.17 We saw four cases involving sensitive material. We found that the correct procedures had been properly applied in each of them, and we were impressed by the care and effort put into these cases.

#### Summary trial preparation

6.18 When a defendant enters a plea of not guilty in the magistrates' court, the magistrates seek to fix a date for trial.

- 6.19 If the prosecutor does not have details of the availability of non-police witnesses, the magistrates will consider an application to adjourn the proceedings for seven days for the prosecutor to obtain the relevant information, before fixing the trial date. If the prosecutor does not have details of police witnesses' availability, the magistrates fix a trial date, on the understanding that the prosecution will make an application to vacate the trial date, if the police witnesses are not available on that day.
- 6.20 There is often only a short period of time between fixing the trial date and the date by which the court wishes to know whether that date will be effective. The prosecutor therefore needs to find out about the availability of police witnesses very quickly. In order to do so, the prosecutor prepares and sends a notice to the police advising them of the witnesses to be warned to attend court. This notice is sent from the court on the day that the trial is fixed.
- 6.21 The police told us, however, that they often receive notification of witnesses required to attend trial at a late stage, although in all 20 files that we examined, the initial notice had been prepared by the prosecutor, and apparently sent on the day that the trial was fixed. We deal with this issue in more detail at paragraphs 6.63 - 6.66.
- 6.22 Whatever the reason, the effect is that the prosecutor does not always have the relevant information about police witness availability, in order to return to court within the time that the court allows, to make an application to vacate the trial date. As a result, when such an application is eventually made, the magistrates often refuse it and later dismiss the case against the defendant at trial, on the basis that the prosecution is not able to call its witnesses to prove the case against them.
- 6.23 The key to avoiding this unsatisfactory state of affairs is the early notification of witness availability by the police to the prosecution. This, in turn, rests on early notification that the information is required. If the police and Branch staff liaise effectively, applications to vacate trial dates may be

made at a time when the court is more likely to consider the requests sympathetically.

- 6.24 In a sample of 14 relevant cases, the Branch had correctly identified and served under section 9, Criminal Justice Act 1967, the statements of those witnesses whose evidence was likely to be agreed. Prosecutors are aware of the procedure for agreeing admissions of facts under section 10, Criminal Justice Act 1967, but we were told that it is rarely used. The lack of a PTR in many cases reduces the opportunity to utilise these provisions.
- 6.25 Prosecutors are familiar with the provisions of section 23, Criminal Justice Act 1988, which, subject to certain conditions, enables a witness' statement to be read if the witness is outside the United Kingdom, or is mentally or physically unfit to attend court, or is too frightened to attend court. We did not see any cases where its use would have been appropriate, but we were told of an example where it had appropriately been considered in the magistrates' court.
- 6.26 The Branch does not have an effective system to monitor the progress of its summary trial preparation. Files are not checked before the trial date, to ensure that any outstanding work is completed. Such a system could be used to ensure, for example, that witnesses have been warned, or that unused material has been properly dealt with by the reviewing prosecutor. We consider this particularly necessary because of the small number of PTRs.
- 6.27 We recommend that the BCP should introduce an effective system for monitoring the progress of summary trial preparation, to ensure that all outstanding work is properly completed.**

### Committal preparation

- 6.28 We were told that the Branch often serves committal papers on the defence on the day set by the magistrates for committal proceedings to take place. This can put pressure on the defence to consider the papers immediately, or to apply for an

adjournment which may not always be granted. We looked into this matter in some depth.

- 6.29 The Pre-Trials Issues Steering Group, a senior inter-agency working group, was established by ministers to deal with matters affecting relationships between the police, the CPS and the courts. Its work has now been taken over by the Trials Issues Group (TIG).
- 6.30 TIG has set down guidelines indicating the maximum periods of time which the police should have in order to prepare and provide a full file to the CPS; the CPS should have in order to prepare and serve the committal papers; and the defence should have in order to consider the papers before committal.
- 6.31 In our experience, magistrates elsewhere often adjourn cases to a date which covers all three periods. The magistrates at Highbury Corner Magistrates' Court usually adjourn cases to a date at the end of the second period, which is the date by which the CPS should serve the committal papers. Unless the court is prepared to grant a further adjournment for the defence to consider the papers, the effect is that the papers are served on the day of committal.
- 6.32 Whilst we understand the concern expressed to us, we also recognise the way in which the magistrates seek to manage the progress of the case through to committal. In our view, providing that adequate time is allowed to the defence to take instructions from the defendant on the prosecution papers, it is a matter for the magistrates and the defence to arrive at a suitable date for committal proceedings to take place.
- 6.33 The effect on the prosecution of the magistrates' approach is seen when the police fail to provide a committal file punctually. Where this happens, Branch staff have limited time to review the file and prepare the necessary papers. On occasion, further adjournments have to be requested from the court because committal papers are not ready. It is important, therefore, for the police to notify the prosecution in any cases where there may be a

delay in the submission of the case papers to the Branch.

- 6.34 All the committals in our sample had been prepared by caseworkers using the Crown Court Case Preparation Package. They should then have been checked by a prosecutor. We were unable to find evidence that a prosecutor had checked three out of 30 appropriate cases (10%) in our sample. The BCP will wish to ensure that all committal papers are checked by the reviewing prosecutor before committal, and that the prosecutor endorses the file to that effect.
- 6.35 The instructions to counsel contained a summary of the case prepared by the Branch staff in 24 of the 30 relevant cases (80%) and had addressed acceptability of pleas or possible alternative offences in five of the 13 relevant cases (38.5%). It is important that counsel is given all appropriate information, and we would normally make a recommendation in relation to the quality of the instructions to counsel, based on these figures.
- 6.36 Branch managers, however, have devised and are currently piloting a new committal preparation system. The system was introduced, with national approval, because of concerns about the standard and quality of instructions to counsel.
- 6.37 This system removes many of the standard paragraphs from the instructions and sets them out, instead, in a booklet which is distributed to all counsel's chambers used by the Branch.
- 6.38 There is a significantly greater free-text option for use by the person preparing the instructions. This system means that the instructions relate more specifically to the individual case.
- 6.39 We examined a number of instructions produced recently using this new system, and we were impressed by their standard. Each set of instructions contained a prepared summary of the case, and, where appropriate, comments about the acceptability of pleas, possible alternative offences and general information

about the case. The instructions appeared meaningful and comprehensive.

6.40 The new system is being carefully monitored by the Branch and the Area. It has only been in existence for a short time, and it is too soon for us to evaluate it. However, we do commend the Branch for introducing this major initiative and we look forward to hearing of its progress.

6.41 In 28 of the 30 cases (93.3%) that we examined, counsel's instructions were delivered within the agreed timescales set out in the CPS/Bar Standard.

### Quality of indictments

6.42 Indictments are drafted by Branch staff when the committal papers are prepared. In 29 out of 30 relevant cases, the indictments were lodged with the Crown Court within 28 days of the committal proceedings. In one case, the date of lodging was not recorded on the file.

6.43 We found that the indictment was amended in six out of 30 cases (20%). In two cases, the amendments were minor; in two cases, the counts in the indictment were wrongly drafted; and in the remaining cases, additional counts were added.

6.44 Local judges considered that the standard of indictments was a cause for concern, in that many indictments had to be amended at the PDH, for reasons ranging from simple typing errors, to counts being wrong.

6.45 The Branch has no system for monitoring the quality of indictments.

**6.46 We recommend that the BCP should introduce a system for monitoring the quality of indictments, in order to:**

- **eradicate minor typing inaccuracies;**
- **ensure that the substantive content of each indictment is correct; and**

- **improve the drafting skills of prosecutors and caseworkers.**

### The CPS in the Crown Court

6.47 Local judges told us that a number of cases from the Branch suffered from not being sufficiently ready at the PDH. This appeared to be for a variety of reasons, ranging from the defence not having obtained a copy of the tape-recorded interview from the police, to primary disclosure not having been undertaken.

6.48 Similarly, we were told and we observed that cases were listed for trial when they were not ready to start. Again, this was for a variety of reasons, the majority relating to witnesses not being at court. The lack of caseworker cover and prosecutor presence may contribute to a perception that the prosecution is less well prepared than it should be.

6.49 Overall, we were disappointed with the final presentation at the Crown Court, which did not reflect the professional review and case preparation to which we refer at paragraphs 5.2 and 6.36 - 6.40.

6.50 The Crown Court at Snaresbrook is a very large complex and Highbury is the dominant Branch in terms of the number of cases that are committed there. The Branch has not succeeded in reflecting this by a substantial representational role or presence.

6.51 Four Branches in the CPS London Area commit cases to the Crown Court at Snaresbrook, and each sends a prosecutor there on a particular day of the week. The Highbury Branch sends a prosecutor each Monday, because the Branch's PDHs are listed on that day. In addition to the prosecutor, the Branch also sends a senior and one other caseworker to deal specifically with the PDHs.

6.52 The prosecutor is available to deal with any issues arising in any cases listed, including cases which do not originate from the Highbury Branch.



Because of this, the prosecutor usually remains in the CPS office, so that he is available to counsel or caseworkers in other courtrooms.

6.53 In practice, most issues which have to be dealt with arise in the PDH courtroom, and we consider that the prosecutor, whenever possible, should be physically situated in that courtroom. This would give him the opportunity to observe the Crown Court proceedings; and, at the same time, provide a visible and substantial presence in the Crown Court. Judges told us that they were not aware that a prosecutor was in attendance for PDHs or other cases.

6.54 Although prosecutors do occasionally attend the Crown Court to deal with a particularly complex or serious case, there are in practice very limited opportunities for them to gain experience in the Crown Court. They do not deal with Crown Court bail applications, although they may have the opportunity to do so, when attending the Crown Court to deal with PDHs.

**6.55 We recommend that prosecutors at the Crown Court should attend the PDH courtroom, and undertake bail applications, when feasible.**

6.56 We were told that cases sometimes have to be listed for mention because the Branch has failed to comply with a direction given by the judge at the PDH. We found, however, in 15 out of 16 cases (93.8%) that the Branch had complied with directions given. Nevertheless, Branch managers should only be satisfied with 100% compliance with orders of the court, or, at the very least, with a clear explanation about why any order is not complied with by the prosecution.

6.57 A caseworker attends the Central Criminal Court to cover the Branch's cases. The majority of the Branch's Crown Court cases are dealt with at the Crown Court at Snaresbrook, but the Branch normally sends only one caseworker there each day. The Branch aims to cover courts on the basis of one caseworker to three courtrooms, but it is not unusual for a caseworker to have to cover four or even five courtrooms. This level of cover is too low.

**6.58 We recommend that the BCP should take steps to provide more effective and comprehensive coverage of the Crown Court by caseworkers.**

## Custody time limits

6.59 Custody time limit provisions regulate the length of time during which an accused person may be remanded in custody in the preliminary stages of a case.

6.60 We examined ten cases involving custody time limits, and found that the expiry and review dates were correctly calculated and clearly displayed on the front cover of the file in all ten cases.

6.61 Within the past year, the Branch failed to make an application to the court to extend the time limit in one case. In normal circumstances, this would result in the immediate release of the defendant from custody. In the case in question, however, the defendant was also being held in custody on other charges, in which the custody time limits had not expired. As a result, he remained in custody.

6.62 Since this case, the Branch has introduced satisfactory systems to monitor cases to which custody time limits apply.

## Communicating with the police

6.63 Branch and police staff need to liaise with each other at a number of key stages in the progress of each case. The majority of the communications, for example, requests for further information or notices about witnesses, are sent through a police internal despatch system.

6.64 The police told us that they often receive such documents at a late stage, putting unnecessary pressure on their resources. In some respects, the Branch needs to improve its timeliness, and we have commented on this elsewhere in the report. We did find, however, instances where the appropriate police unit had not apparently received the particular documents, although from our examination of the file, the documents appeared to have been sent.

6.65 Effective communication, particularly between the Branch and the police, is essential, and Branch staff must be confident that the means of communication is functioning properly.

**6.66 We recommend that the BCP should examine with the police the effectiveness of the despatch system, to ensure that efficient lines of liaison are maintained.**

### File endorsements

6.67 We have already commented on review endorsements (paragraphs 5.40 - 5.41). In general, the Branch files were satisfactorily endorsed, both in respect of court endorsements, and endorsements relating to work completed out-of-court.

6.68 We found that, in magistrates' court files, endorsements were satisfactory in 74 out of 80 cases (92.5%). Twenty-nine of the 30 Crown Court files (96.7%) were satisfactory. The contents of some files were, however, untidy, which made the progress of the case less easy to follow.

## PRESENTING CASES IN COURT

7.1 Representatives of other criminal justice agencies told us that the standard of advocacy of Branch prosecutors is satisfactory, although we were told that, in some instances, cross-examination was unstructured. We observed seven CPS advocates in the magistrates' court. We agreed with the views expressed by the other agencies.

7.2 Prosecutors attended court promptly, were usually well prepared, and generally presented their cases clearly.

7.3 The new PTLs intend to monitor the standard of the advocates in their teams formally at least twice a year, and they also observe them when they attend to prosecute in the magistrates' court.

7.4 Concern was expressed about the relative inexperience of counsel instructed in some cases

in the Crown Court, and our observations confirmed this. Although Branch prosecutors echoed this concern, no attempt is made to monitor counsel's performance. The CPS London report recommended that the Area should consider its arrangements for monitoring the performance of individual counsel, with a view to instituting targeted monitoring at Branch level, where a specified need for information is identified.

**7.5 We recommend that the BCP should make every effort to ensure that counsel of appropriate experience are instructed in all cases, and that a formal system is implemented to monitor their performance.**

7.6 From our sample, we found that counsel originally instructed attended the PDH hearing in 16 out of 30 cases (53.3%), and conducted the trial in eight out of 18 cases (44.4%). Eight out of 20 (40%) attended the sentencing hearing.

**7.7 We recommend that the BCP should seek to improve the percentage of cases in which counsel originally instructed attends the PDH, the trial and the sentencing hearing in the Crown Court.**

## THE BRANCH AND OTHER AGENCIES

8.1 In practice, there is a good working relationship with the local representatives of other criminal justice agencies. The BCP and the PTLs meet senior police officers regularly, and caseworkers have also attended these meetings, in an effort to assist in adopting practices which will benefit both agencies. Overall, Branch staff have a constructive attitude towards their role within the criminal justice system.

8.2 However, the frequent transfer of cases from one court to another can cause difficulties for the Branch. We were told of cases prepared for trial by prosecutors, only to be adjourned for lack of time.

8.3 We observed one instance where two half-day trials had been listed for hearing at the same time in the

same courtroom. Both cases had been adjourned on at least one earlier occasion. When it was apparent that both trials were capable of proceeding, one had to be adjourned again, to another date. Witnesses who had attended to give their evidence at the abandoned trial were sent away for a second time, and were required to attend on yet another occasion when it was hoped that the trial might proceed. The time spent by the prosecutor in preparing for the trial was also wasted.

- 8.4 The BCP may wish to consider further any ways in which he can assist the court in listing cases, so that all victims, witnesses, defendants and agencies gain the benefit of demanding, but achievable, listing practices.

## Witness care arrangements

- 8.5 CPS London Area has entered into an agreement with the Witness Service that it will provide details of prosecution witnesses who are to attend the Crown Court. This enables the Witness Service to approach the witnesses to ascertain whether they will require any assistance in connection with their court attendance.
- 8.6 The Branch accepts that this information has frequently not been provided, and the BCP is taking steps to rectify the matter.
- 8.7 We recommend that the BCP should ensure that all appropriate information is given to the Witness Service, to enable it to undertake its work effectively.**

## KEY STATISTICS

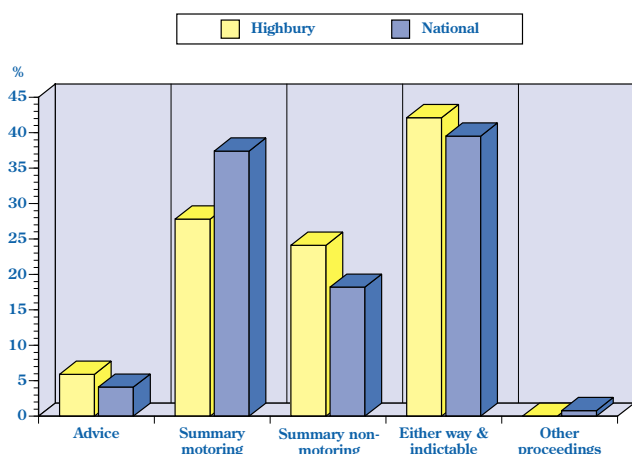
- 9.1 The charts which follow this page set out the key statistics about the Branch's casework in the magistrates' court and the Crown Court for the year ending 30 June 1998.

## EXTERNAL CONSULTATION

- 10.1 On page 20, there is a list of the local representatives of criminal justice agencies who assisted in our inspection.

## MAGISTRATES' COURTS

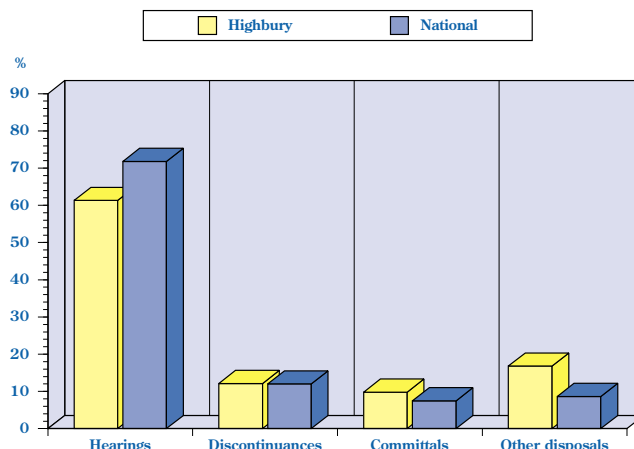
### 1 - Types of case



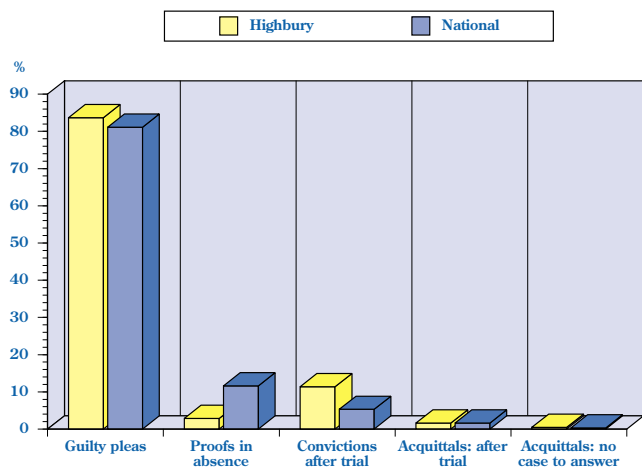
	Highbury		National	
	No.	%	No.	%
Advice	630	5.9	57,687	4.1
Summary motoring	2,947	27.8	532,242	37.4
Summary non-motoring	2,561	24.1	259,538	18.2
Either way & indictable	4,467	42.1	562,574	39.5
Other proceedings	0	0.0	11,378	0.8
<b>Total</b>	<b>10,605</b>	<b>100</b>	<b>1,423,419</b>	<b>100</b>

### 2 - Completed cases

	Highbury		National	
	No.	%	No.	%
Hearings	6,118	61.3	972,907	71.8
Discontinuances	1,211	12.1	163,059	12.0
Committals	975	9.8	101,373	7.5
Other disposals	1,671	16.8	117,033	8.6
<b>Total</b>	<b>9,975</b>	<b>100</b>	<b>1,354,372</b>	<b>100</b>



### 3 - Case results

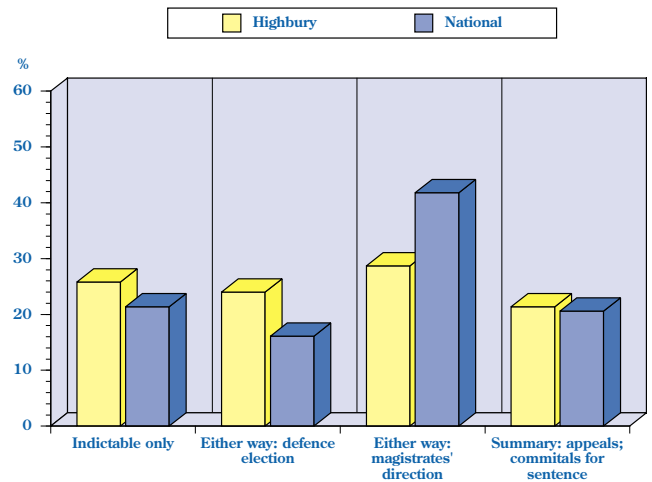


	Highbury		National	
	No.	%	No.	%
Guilty pleas	5,119	83.7	789,430	81.1
Proofs in absence	175	2.9	113,299	11.6
Convictions after trial	698	11.4	52,025	5.3
Acquittals: after trial	98	1.6	15,595	1.6
Acquittals: no case to answer	28	0.5	2,557	0.3
<b>Total</b>	<b>6,118</b>	<b>100</b>	<b>972,906</b>	<b>100</b>

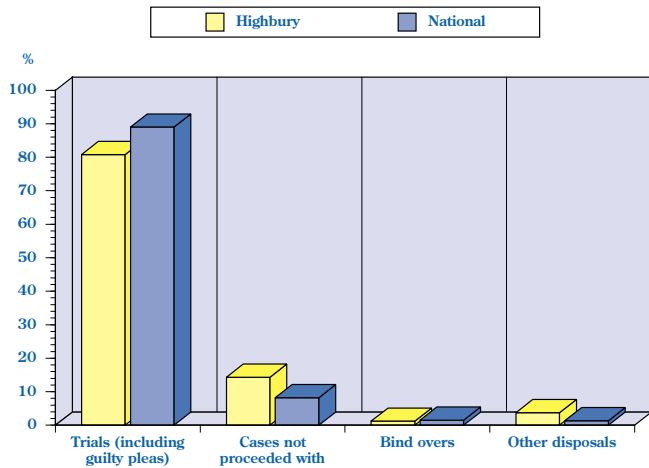
CROWN COURT

4 - Types of case

	Highbury		National	
	No.	%	No.	%
Indictable only	354	25.8	27,450	21.4
Either way: defence election	329	24.0	20,677	16.1
Either way: magistrates' direction	394	28.7	53,634	41.8
Summary: appeals; committals for sentence	294	21.4	26,437	20.6
<b>Total</b>	<b>1,371</b>	<b>100</b>	<b>128,198</b>	<b>100</b>



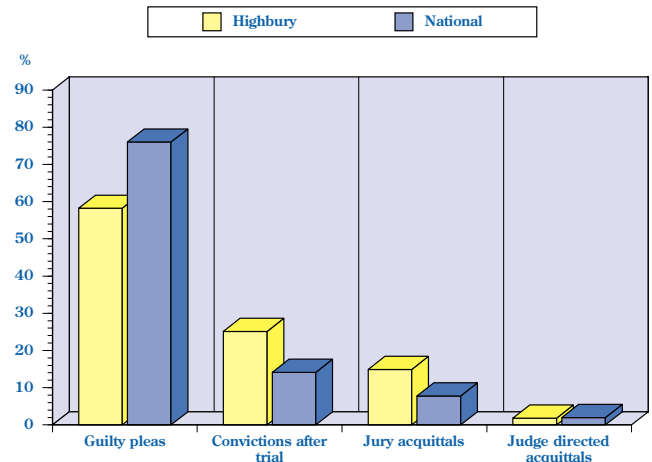
5 - Completed cases



	Highbury		National	
	No.	%	No.	%
Trials (including guilty pleas)	870	80.8	90,596	89.0
Cases not proceeded with	154	14.3	8,359	8.2
Bind overs	13	1.2	1,519	1.5
Other disposals	40	3.7	1,307	1.3
<b>Total</b>	<b>1,077</b>	<b>100</b>	<b>101,781</b>	<b>100</b>

6 - Case results

	Highbury		National	
	No.	%	No.	%
Guilty pleas	509	58.2	70,380	76.0
Convictions after trial	220	25.1	13,094	14.1
Jury acquittals	130	14.9	7,184	7.8
Judge directed acquittals	16	1.8	1,891	2.0
<b>Total</b>	<b>875</b>	<b>100</b>	<b>92,549</b>	<b>100</b>



### LIST OF LOCAL REPRESENTATIVES OF CRIMINAL JUSTICE AGENCIES WHO ASSISTED IN OUR INSPECTION

<b>Judges</b>	His Honour Judge Elwen His Honour Judge Hitching His Honour Judge King His Honour Judge Radford
<b>Magistrates' court</b>	Miss D Quick, Metropolitan Stipendiary Magistrate Mrs H Wood, Chair, East Central Division Justices Ms J Woolley, Clerk to the Justices
<b>Police</b>	Chief Superintendent D Smith Chief Superintendent P Robbins Superintendent A Smith Chief Inspector R Dewane Chief Inspector R Evans Chief Inspector S Lemon Chief Inspector T Smith Police Sergeant W Mawson
<b>Defence solicitor</b>	Ms S Green
<b>Counsel</b>	Mr C Dines Mr M Rainsford
<b>Counsel's clerk</b>	Mr J Pyne
<b>Witness Service</b>	Ms S Ellis

## CROWN PROSECUTION SERVICE INSPECTORATE

### STATEMENT OF PURPOSE

To promote the efficiency and effectiveness of the Crown Prosecution Service through a process of inspection and evaluation; the provision of advice; and the identification and promotion of good practice.

### AIMS

- 1** To inspect and evaluate the quality of casework decisions and the quality of casework decision-making processes in the Crown Prosecution Service.
- 2** To report on how casework is dealt with in the Crown Prosecution Service in a way which encourages improvements in the quality of that casework.
- 3** To carry out separate reviews of particular topics which affect casework or the casework process. We call these thematic reviews.
- 4** To give advice to the Director of Public Prosecutions on the quality of casework decisions and casework decision-making processes of the Crown Prosecution Service.
- 5** To recommend how to improve the quality of casework in the Crown Prosecution Service.
- 6** To identify and promote good practice.
- 7** To work with other inspectorates to improve the efficiency and effectiveness of the criminal justice system.
- 8** To promote people's awareness of us throughout the criminal justice system so they can trust our findings.



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