

THE INSPECTORATE'S REPORT
on
THE BRISTOL BRANCH
of
CPS SOUTH WEST

Bristol Branch



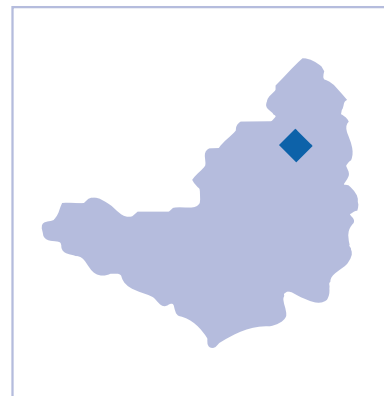
BRANCH OFFICE

◆ Bristol

COURTS COVERED

Magistrates' Courts
Bristol

Crown Court
Bristol



REPORT ON THE INSPECTION OF THE CPS BRISTOL BRANCH

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INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the Bristol Branch of CPS South West.
- 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 Bristol Branch is in the CPS South West Area and has its offices at Bristol. On 4 January 1999, it employed 47.7 staff (the Branch Crown Prosecutor (BCP) and 16.3 other prosecutors; two senior caseworkers and 21.8 other caseworkers; a Branch office manager; and 5.6 other support staff, including typists, who also provide services to another Branch.
- 1.5 The Branch comprises two teams, known as team B and team C. Team B has 7.9 prosecutors and 9.8 caseworkers. Team C has 8.4 prosecutors and 12 caseworkers. Both teams are responsible for prosecutions in the magistrates' court at Bristol. They divide the work according to the day of the week on which the defendant first appears at court. Each team is also responsible for its own cases in the Crown Court.

- 1.6 The team of three inspectors visited the Branch between 4 and 14 January 1999. During this period, we observed seven CPS advocates in the magistrates' court. We also observed CPS caseworkers and prosecuting counsel in the Crown Court at Bristol.

CONCLUSIONS AND RECOMMENDATIONS

- 2.1 The Branch has a high proportion of experienced staff who are clearly committed to their work. They often work until late in the evening and on Saturday mornings, to ensure that cases are reviewed and prepared. In spite of this, many aspects of case preparation take place at the last minute, and there are serious backlogs in answering correspondence.
- 2.2 Bristol Magistrates' Court is a busy court centre. Some courtrooms have very long lists, which frequently last until late afternoon or early evening. Prosecutors often do not have time to read all their files before court.
- 2.3 The Branch's staff resources have diminished in the last year, although the Branch has also been provided with funds to pay agents who prosecute on the Branch's behalf in the magistrates' court. The Branch's recorded caseload has increased by 9.1% in the last 12 months, compared with 3.1% nationally. Branch staff also carry out some unnecessary tasks and may not fully record some aspects of their work. The problem has been exacerbated by an imbalance in staffing levels between the teams, although this has recently been corrected.
- 2.4 To assist the Branch, we recommend that :
 - i the BCP, through his colleague in the neighbouring Branch, should resume negotiations with the police about a service level agreement dealing with the submission of advice cases, with a view to its early implementation (paragraph 4.5);

- ii the PTLs should use existing monitoring systems to ensure that advice is provided to the police within the national target of 14 days in all cases (paragraph 4.15);
- iii the BCP should ensure that file allocation and file handling systems in each team allow all files to be reviewed promptly, in accordance with identified priorities (paragraph 5.11);
- iv the BCP should ensure that review endorsements identify the relevant evidential and public interest factors which have influenced the prosecutor's decision and, where appropriate, mode of trial considerations, and that they contain an analysis of the issues in the case (paragraph 5.40);
- v the BCP should circulate the monthly synopsis of failed cases to all prosecutors and caseworkers (paragraph 5.43);
- vi the BCP should seek to agree with the police a protocol that identifies witnesses who may withdraw their complaints, so that support can be provided to ensure that they give evidence, or, in appropriate circumstances, that the case is reconsidered (paragraph 5.47);
- vii the BCP should ensure that a copy of the notice accompanying the service of advance information, identifying the documents served, is retained on the file in all cases (paragraph 6.4);
- viii the BCP should discuss with the police and Branch staff procedures relating to unused material, to ensure that all relevant material is revealed and disclosed, in accordance with the prosecution's statutory responsibilities in all appropriate cases (paragraph 6.11);
- ix the BCP should reinforce instructions on the procedure for handling sensitive material, including notes or documents referring to it, to ensure that all such material is stored securely at all times (paragraph 6.14);
- x the BCP should arrange refresher training for all staff, to ensure that custody time limits are calculated correctly (paragraph 6.19);
- xi the BCP should ensure that instructions to counsel contain a summary of the evidence, together with an analysis of the case issues, and instructions on the acceptability of pleas in appropriate cases (paragraph 6.37);
- xii the BCP should ensure that all post received is linked with the relevant file as soon as possible, and that all correspondence, including requests for the provision of advance information, is dealt with promptly (paragraph 6.47);
- xiii the BCP should ensure that, in order to provide a complete record of case management, file endorsements comply with the national standard, so that:
 - they provide an accurate record of court hearings in respect of each defendant, including details of the prosecutor's reasons for opposing bail and, in appropriate cases, the court's reasons for refusing bail;
 - details of all discussions about cases, including proposals to discontinue, are fully recorded;
 and that copies of all correspondence and internal minutes are retained sequentially within the file (paragraph 6.51).

THE INSPECTION

- 3.1 In the year to 31 December 1998, the Branch dealt with 15,369 defendants in the magistrates' court and 1,456 defendants in the Crown Court. In a further 431 cases, advice was given to the police before charge.

3.2 The inspection team examined a total of 326 cases, ranging from those where an acquittal was directed by the judge, through those where the prosecution terminated the 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 12 months to 31 December 1998, advice cases constituted 2.7% of the Branch's total caseload, compared with 4.2% nationally.
- 4.2 About two years ago, the BCP for the neighbouring Somerset/Avon Branch, acting on behalf of both Branches, began to negotiate a service level agreement with the Avon and Somerset Constabulary dealing with the submission of advice files. The draft agreement sets out the circumstances in which advice should be sought, and provides a system for recording informal advice. The agreement has not been formally concluded, and negotiations are now in abeyance. The police and Branch prosecutors have adopted the principles in the draft agreement, however, as guidelines for dealing with advice cases, although some prosecutors have not seen a copy.
- 4.3 We examined ten cases in which Branch prosecutors provided pre-charge advice. Only one need not have been submitted. The police described the case as "a non-starter". Branch prosecutors told us about other cases submitted for advice, however, in which the police could have taken the decisions themselves. Whilst officers in the police criminal justice unit filter out many advice cases, investigating officers submit some cases for advice directly to the Branch.

4.4 It is in the interests of both the police and the Branch to avoid unnecessary requests for advice. The BCP should make every effort to bring about a resumption of the negotiations with the police, with a view to early implementation of a service level agreement.

4.5 We recommend that the BCP, through his colleague in the neighbouring Branch, should resume negotiations with the police about a service level agreement dealing with the submission of advice cases, with a view to its early implementation.

4.6 Informal advice is recorded in the Branch's performance indicators (PIs). Each day, a duty lawyer is responsible for dealing with telephone enquiries from a number of sources, including police officers seeking informal advice. In many instances, this leads to the submission of an advice file. Otherwise, if the advice relates to a specific investigation, the duty lawyer records details on a form, which is then transferred to a register. Brief details are noted in a separate index, from which the number of advices each month is recorded in the Branch's PIs.

4.7 The Branch does not have a system for linking the advice note with any subsequent charge file, unless the police refer to it when they submit the file. We recommended that Branches should always link pre-charge advice to any later prosecution file in our thematic review of advice cases (3/98), which was published in September 1998. The BCP will want to consider how best to implement this recommendation.

Quality and timeliness of advice

4.8 PTLs are responsible for allocating advice files to individual prosecutors in their teams. They keep a register which records the date of allocation and the date that the prosecutor provides the advice. A reduction in the number of prosecutors led one team to abandon the allocation of files to individuals. Advice files on this team are dealt with by any available lawyer and compete for priority with other cases (see paragraph 5.9).

4.9 The BCP deals with all road traffic cases in which a police officer may be at fault, and PTLs usually deal with fatal road accident cases.

4.10 The quality of advice is good. We agreed with the advice given in nine of the ten cases that we examined. In the other case, the prosecutor failed to consider how to prove the required intent to commit the offence that he advised the police to charge.

4.11 Advice is handwritten, but it is well set out and addresses the relevant issues logically. We noted one example of excellent advice in a fatal road accident case, in which the evidence was complicated and conflicting. The advice to the police analysed the issues individually, and addressed the particular sensitivities of the case.

4.12 PTLs see all advice files before the written advice is sent to the police. This enables them to assess its quality regularly.

4.13 The CPS has set a target of providing advice within 14 days of receiving an adequate file from the police. Branch figures for the 12 months to 30 September 1998 indicate that the target was met in between 85.7% and 100% of cases. Advice was provided late in three of the ten cases that we examined, and we could not ascertain the position in a further three. In one case, the Branch responded after 34 days. There was no apparent reason for the delay.

4.14 PTLs sometimes use the register of allocation to monitor timeliness. The register provides a useful means of checking that advice is provided promptly, if it is used regularly.

4.15 We recommend that the PTLs should use existing monitoring systems to ensure that advice is provided to the police within the national target of 14 days in all cases.

Advice from counsel

4.16 Although it is still rare for Branch prosecutors to seek pre-charge advice from counsel, they sometimes do so in particularly serious or complex cases. We were also told that they have begun to seek it more frequently in such cases, because they do not always have time to consider them as carefully as they would like.

4.17 Branch staff rarely ask counsel to advise on issues once a case has been committed to the Crown Court, although counsel sometimes give general advice when acknowledging receipt of instructions. This often deals with issues which should have been resolved when the case was prepared.

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 The distribution of the Branch's caseload among the CPS' PI categories is similar to the national average. The overall proportion of summary cases (56.5%) is almost the same as the national average (55.3%). The proportion of either way and indictable offences (40.2%) is also close to the national average (39.8%).

5.3 The proportion of Crown Court cases in which the magistrates direct Crown Court trial (50.4%), however, is well above the national average (37.3%). Defence elections account for 10.4%, compared with 14.7% nationally. Drug and child abuse cases form a high proportion of the Branch's either way caseload. The overall proportion of cases committed to the Crown Court (8.7%) is also significantly above the national average (6.9%).

- 5.4 We inspected the quality of the review decision in 79 files covering cases in the magistrates' court and the Crown Court. We agreed with the application of the evidential test in 77. In one of the remaining two, the defendant was charged with assaulting his girlfriend on two separate occasions. He denied the allegations. Independent evidence relating to the second incident supported the defendant, who was acquitted on both charges.
- 5.5 In the second case, the defendant was charged with possessing a large quantity of drugs, intending to supply them to others. He denied any connection with the drugs, but admitted possession of a small (separate) amount for his own use. The case proceeded to the Crown Court, even though scientific evidence connected someone other than the defendant with the larger quantity. The defendant's plea of guilty to simple possession was eventually accepted at the Crown Court.
- 5.6 We agreed with the application of the public interest test in all 79 cases.

Timeliness of review

- 5.7 National guidelines require that files should be reviewed within seven days of receipt from the police. Branch figures for the year to 30 September 1998 show that 79.3% of files were reviewed within the target timescale. Our own analysis revealed a figure of 79.7%.
- 5.8 Each team has its own system of allocating files for review. On one team, a prosecutor is assigned each day to review all files received the previous day. This usually ensures that all files are reviewed within 24 hours of receipt.
- 5.9 On the other team, at the time of our visit, files were reviewed when an available lawyer had time. The same system operated in respect of files for summary trial and committal review, and files requiring replies to correspondence. Files were prioritised within each category in date order. The PTL was responsible for checking each category of file and assessing the overall priority. As a result, many files were reviewed just before the court hearing, leaving little time for any necessary remedial work. Branch managers have since reverted to a system of allocation to individual lawyers.
- 5.10 The timely review of files is an essential part of case management. Branch systems should enable all files to be reviewed promptly.
- 5.11 We recommend that the BCP should ensure that file allocation and file handling systems in each team allow all files to be reviewed promptly, in accordance with identified priorities.**

Minor process review

- 5.12 The Branch operates an unusual procedure for handling minor motoring cases. The police provide the Branch with the original file in all summary motoring cases, including specified proceedings which are not the responsibility of the CPS. Files are forwarded to the Branch office on the day before court. As well as dealing with cases which are the CPS' responsibility, Branch prosecutors record the results of specified proceedings for the benefit of the police and, occasionally, read the statement of facts when the defendant submits a written guilty plea. All motoring files are returned to the police after court.
- 5.13 Two or three days each week, a Branch prosecutor attends the central police station in Bristol to review any non-specified proceedings, including cases to be proved in the absence of the defendant. The files are later dispatched to the Branch, so that statements may be copied for service under section 9, Criminal Justice Act 1967. Some files are then returned to the police, only for the police to resubmit them for the court hearing. The files are not registered by the Branch, but the Branch office manager counts the finalised cases before they are returned to the police, so that they can be included in the Branch's PIs.

5.14 Some of these file movements are unnecessary. The Avon and Somerset Constabulary is involved in a pilot scheme in a neighbouring Branch, in which much of this preparatory work is dealt with before the summons is served on the defendant. This reduces the work required and allows many more cases to be disposed of at the first court hearing.

5.15 Elsewhere, similar schemes have proved effective. We hope that this will be the case here, and that the scheme is introduced in the Branch as soon as possible. The BCP will also want to satisfy himself that all relevant cases are being recorded.

Discontinuance

5.16 The Branch's discontinuance rate (10.8%) is below the national average (12%).

5.17 We examined 163 cases which were stopped by the prosecution in the magistrates' court during October 1998, to ascertain the reason for termination, and to find out whether the police were consulted about, and agreed with, the decision. Twenty-one cases (12.9%) were formally discontinued by notice under section 23, Prosecution of Offences Act 1985. One hundred and thirteen (69.3%) were withdrawn in court; and in 29 (17.8%), the prosecution offered no evidence.

5.18 Twenty-nine cases (17.8%) were terminated because there was insufficient evidence to proceed. Fifty-five (33.7%) were stopped because it was not in the public interest to proceed. The prosecution was unable to proceed in 41 (25.2%); and in 29 (17.8%), the relevant driving documents were produced. The reason for termination was unclear in the remaining nine cases.

5.19 Of the 29 cases dropped because of insufficient evidence, 16 related to deficiencies in identification evidence (14 of which were motoring cases in which the police officer was later unable to confirm that the defendant was the driver). Five cases were stopped due to other evidential weaknesses. Eight cases were

terminated because an essential legal element necessary to prove the case was missing.

5.20 Of the 55 cases terminated on public interest grounds, 39 were dropped due to the likelihood that only a nominal penalty would be imposed. In 35 of these, the defendant had recently been sentenced to a term of imprisonment on other matters. Four cases were dropped because the defendant was cautioned. Another was dropped because the offence resulted from a mistake or misunderstanding, and in four, the loss or harm resulting from the offence was of a minor nature and had been put right by the defendant. Two cases were dropped because of the health of the defendant. The remaining five cases were terminated for other public interest reasons.

5.21 Twenty-nine of the 41 cases in which the prosecution was unable to proceed were dropped because witnesses refused to give evidence or failed to attend court. Eighteen concerned offences of violence and three were offences of public disorder. We deal further with this issue at paragraphs 5.44 - 5.47. Another case was dropped after the court refused an adjournment when a police officer was unable to attend. Three were dropped because the offences were dealt with at another court. The remaining eight were dropped because the prosecution was not ready to proceed.

5.22 The police were consulted in 91 cases (55.8%). They objected to the proposed termination in only one. Proceedings were dropped as a result of events at court in 14. It was not possible to determine whether the police had been consulted in the remaining 58 cases. It is important that, wherever possible, the police are consulted about proposals to stop a case. This gives them an opportunity to provide any further relevant information. Details of the consultation, or the reasons why it was not possible to consult, should always be recorded on the file. We comment further on the quality of file endorsements generally in paragraphs 6.48 - 6.51.

5.23 We examined ten terminated cases in more detail, to determine whether the Code tests had been correctly applied. We agreed with the

decision in each, but the decision should have been taken earlier in one. The defendant, who was suffering from a mental disorder, had recently been sentenced in a separate case. Two letters from the defence did not receive attention. A third, sent six weeks after the first, prompted the Branch to take action.

Selection of the appropriate charge and charging standards

5.24 Police charges required amendment in 23 of the 79 cases (29.1%) that we examined. Charges were amended at initial review in 12. Most of the remainder were amended when the indictment was drafted as part of committal preparation. Four amendments were required to comply with a charging standard. The remainder related to the number or level of charges. The BCP will want to discuss with senior police officers how to ensure that the right charges are preferred at the outset in all cases.

5.25 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. Although representatives of other criminal justice agencies told us of some inconsistencies in charging levels in assault and public order cases, cases generally proceed on charges which appropriately reflect the facts and provide the courts with sufficient sentencing powers. Prosecutors applied the standards correctly in 44 of the 46 relevant cases that we examined. The other two were both assault cases. In one, the charge was wrongly reduced and, in the other, the prosecutor accepted a charge which was later properly upgraded by counsel.

Judge ordered and judge directed acquittals

5.26 In the 12 months to 31 December 1998, 113 cases were not proceeded with in the Crown Court. This represents 10% of the Branch's Crown Court caseload, which is slightly above the national average of 9.4%. The great majority were stopped by the judge at the request of the prosecution before the trial started (judge ordered acquittals).

5.27 We examined 27 cases in this category and agreed with the decision to proceed in 24 (88.9%). Two of the three cases in which we disagreed related to thefts by employees, in which there was clear doubt whether the prosecution could show that the defendant had acted dishonestly. The third case concerned an allegation of witness intimidation, in which the conduct and words complained of were, at best, ambiguous and could not be regarded as threatening or intimidating. More careful analysis of the evidence would have revealed the difficulties in each case, enabling them to be stopped before committal. In each instance, counsel advised of the weaknesses immediately upon receipt of the brief.

5.28 In the same 12 month period, there were 31 cases in which the judge directed an acquittal after the trial had started. This represents 3.1% of the Branch's Crown Court caseload, which is higher than the national average of 2.2%.

5.29 We examined five judge directed acquittals and agreed with the decision to proceed in all of them. In one involving an allegation of fraud, however, the charge on which the case proceeded did not fully reflect the facts; an alternative charge would have been more appropriate. The judge commented on the poor standard of preparation of the case.

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

5.30 The Branch's PIs show that, in the year to 31 December 1998, six trials were stopped by the magistrates at the close of the prosecution case. We examined two such cases, although the PIs for the relevant period showed only one. The evidence available at review justified proceeding to trial in both but, in one case, the oral evidence of the victim was not as clear as had been anticipated from his witness statement. It was not clear from the file why the other case was dismissed.

5.31 In the same period, there were no defendants discharged at committal as a result of the

magistrates deciding that there was insufficient evidence to commit them to the Crown Court for trial.

Mode of trial

5.32 Representatives of other criminal justice agencies told us that prosecutors' representations about whether a case should be heard in the magistrates' court or in the Crown Court usually accord with the Lord Chief Justice's guidelines. The appropriate representations were made in 49 of the 51 relevant cases that we examined. The relevant considerations were noted on the file in only 30 (58.8%), however. We comment further on this at paragraphs 5.37 - 5.40.

5.33 One of the cases in which we disagreed concerned a youth, with no previous convictions, who was charged with attempting to pervert the course of justice. There are special rules governing mode of trial in youth cases. The prosecutor who reviewed the file indicated that the case was not suitable for summary trial without recording his reasons. The youth court accepted jurisdiction, and imposed a sentence which was well within its powers.

5.34 The second case related to possession of cannabis with intent to supply it to others. The prosecutor persuaded the court to accept jurisdiction, but his representations were based on a misunderstanding of the guidelines, which suggested that the case should have been committed for trial.

Bail

5.35 Representatives of other criminal justice agencies also told us that prosecutors make appropriate decisions whether to apply for a remand in custody. Their decisions are based on an independent assessment of the nature of the allegations and background to the case. The prosecutor made the appropriate decision in 17 of the 18 relevant cases that we examined. In the other, there was nothing on the face of the remand papers to support two of the three grounds put forward for refusing bail.

5.36 The prosecutor's grounds for opposing bail, and the court's reasons for refusal, were noted on the file in 14 cases (77.8%). This figure needs to be improved: see paragraph 6.49.

Review endorsements

5.37 Initial review is intended to be a comprehensive review of the case. Branch guidelines require prosecutors to:

- set out a brief summary of the facts;
- indicate their views on mode of trial;
- give instructions for the service of advance information and the pre-sentence report package for the probation service;
- indicate which witnesses should be warned to attend court, and which statements should be served under section 9, Criminal Justice Act 1967, in the event of a not guilty plea; and
- note any further action required.

5.38 Details of review are recorded in a review log attached to the file. The log is updated whenever further information or evidence is received. In this way, if the defendant pleads not guilty, instructions for trial can be actioned immediately before the file is referred to a lawyer for formal trial review.

5.39 Most files that we examined complied with these requirements, although the prosecutor's summary of the case did not often identify the relevant evidential or public interest factors taken into account. The evidential factors were set out in only 48 of the 79 cases (60.8%) that we examined. Only eight (10.1%) contained a note of the public interest factors considered by the prosecutor. Very few cases contained any analysis of relevant issues. We also note at paragraph 5.32 that only 58.8% of either way cases contained a note of the mode of trial considerations.

5.40 We recommend that the BCP should ensure that review endorsements identify the relevant evidential and public interest factors which have influenced the prosecutor's decision and, where appropriate, mode of trial considerations, and that they contain an analysis of the issues in the case.

Learning from experience

5.41 Branch managers are careful to ensure that appropriate lessons are learned from casework decisions. Prosecutors prepare reports for all cases dismissed or discharged at the end of the prosecution case in the magistrates' court. Caseworkers prepare similar reports for cases which result in an acquittal in the Crown Court. The reports set out the reasons for the failure of the case. The reports are seen by the relevant PTL and the BCP, both of whom add their own comments on the case, where appropriate. The PTLs discuss the issues with the prosecutor, if necessary.

5.42 Copies of reports are not kept on the relevant file. Each month, however, the BCP prepares a synopsis, which is distributed to the PTLs and senior caseworkers, together with copies of individual reports. The synopsis and copy reports are also forwarded to the police to form the basis for discussion at JPM meetings. They are not distributed further within the Branch, however, although we were told that any general learning points are discussed in team meetings. Whilst prosecutors expressed confidence that all appropriate casework lessons are drawn to their attention, the synopsis and copy reports are valuable documents in themselves and merit wider circulation.

5.43 We recommend that the BCP should circulate the monthly synopsis of failed cases to all prosecutors and caseworkers.

Witnesses

5.44 Seven of the judge ordered acquittals and 29 of the terminated cases that we examined did not proceed because witnesses refused to give

evidence or failed to attend court. As a result, much valuable court time is wasted. The magistrates' court compensates for this by overlisting trials in individual courts, which imposes extra burdens on prosecutors.

5.45 The majority of the cases related to allegations of domestic violence or incidents in which the defendant was acquainted with the witnesses. In most, the witness's failure or refusal to give evidence appeared to be due to a reconciliation with the defendant. The available information on individual files did not suggest that intimidation was a feature in any of the cases. These issues are discussed in our thematic review of cases involving domestic violence (2/98).

5.46 The police have a domestic violence unit which seeks to ensure that retractions in such cases are not influenced by fear or intimidation and which offers support, if needed. We were told that, in the past, the police have considered establishing a witness liaison officer, who would be responsible for checking that witnesses are still available and prepared to give evidence. This is an issue which needs to be addressed by Branch managers and the police, to ensure that such cases are stopped as soon as is consistent with ensuring that witnesses have not been intimidated, and that such a course of action is appropriate.

5.47 We recommend that the BCP should seek to agree with the police a protocol that identifies witnesses who may withdraw their complaints, so that support can be provided to ensure that they give evidence, or, in appropriate circumstances, that the case is reconsidered.

PREPARING CASES

Advance information

6.1 Prosecutors give instructions for the service of advance information when the file is first reviewed (see paragraph 5.37). Administrative staff prepare the disclosure package immediately, so that it is ready for service when the identity of the defence solicitor is known. Otherwise, the

package remains on file until the first hearing, or until an earlier request is received.

- 6.2 Advance information is rarely given before the first hearing, although in many cases this is the first indication of the identity of the defence solicitor. Branch figures show that advance information was provided within target timescales in 78.4% of cases in the 12 months to 30 September 1998. It was provided promptly in 26 of the 57 cases (45.6%) that we examined. It was clearly late in 18 (31.6%), and we could not ascertain the position in the remaining 13 (22.8%). We were told by representatives of other agencies of some late service and we found evidence of this in the files that we examined. In some cases, service had occurred on, or after, the second hearing.
- 6.3 Although service of the package is accompanied by a notice which lists the documents served, Branch staff do not retain a copy on the file. Details of service are noted on the review log and sometimes in the endorsement of the hearing, if the information is handed over in court. We do not regard this as sufficient. In our view, it is essential to retain a copy of the letter which itemises the papers served on the defence, to resolve subsequent disputes which may affect the conduct of any trial.
- 6.4 We recommend that the BCP should ensure that a copy of the notice accompanying the service of advance information, identifying the documents served, is retained on the file in all cases.**
- 6.5 The law does not require the prosecution to supply advance information in cases which can be tried only in the magistrates' courts. The Branch has a sensible policy, however, of automatically providing details of the evidence upon which it intends to rely in all summary imprisonable cases. In other summary cases, supervised access to the CPS file may be allowed, or the prosecutor will discuss the case with the defence. Prosecutors have a positive attitude in this respect, since experience shows that some form of disclosure assists case progress.

Unused and sensitive material

- 6.6 All prosecutors and caseworkers have received training on the disclosure provisions of the Criminal Procedure and Investigations Act 1996. They understand the procedures and are aware of their responsibilities to disclose unused material. Branch staff and representatives of other criminal justice agencies expressed concern, however, that the procedures were not always fully followed.
- 6.7 There was a general lack of confidence that all relevant material was revealed by the police in every case. We were also told that descriptions of material on disclosure schedules were often not specific enough to enable a confident assessment to be made of its materiality. Although Branch prosecutors made further enquiry in some cases of apparent omission, concern was expressed that this was not always done. We were told of some cases in which the judge at the Crown Court ordered that prosecuting counsel should view all the material, and discuss case issues with defence counsel, before making decisions on disclosure.
- 6.8 We examined 29 Crown Court cases in which unused material had been considered by Branch prosecutors. The schedule was properly completed in 27 (93.1%), although we found evidence of service of a copy schedule in only 26 of those cases. The procedure was promptly carried out in 17 (58.6%).
- 6.9 Representatives of other agencies told us that primary disclosure of unused material in the magistrates' court was often dealt with just before trial, sometimes leading to an adjournment. We were also told of some cases, in which disclosure was not made. The schedule of unused material was correctly completed in 23 out of 30 relevant cases (76.7%) that we examined. A copy was sent to the defence in only 14 (46.7%), however, as far as we could tell. The procedure was timely in only nine (30%).
- 6.10 The timely, considered disclosure of unused material is vital in all Crown Court cases and trials in the magistrates' courts. The CPS is

publicly committed, in its Aims and Objectives, to scrupulously complying with the duties of disclosure, to enable the courts to reach just decisions. The effective administration of justice requires not only that the prosecution carries out its statutory responsibilities properly, but that other agencies and the public have confidence that it does so.

6.11 We recommend that the BCP should discuss with the police and Branch staff procedures relating to unused material, to ensure that all relevant material is revealed and disclosed, in accordance with the prosecution’s statutory responsibilities in all appropriate cases.

6.12 Representatives of other agencies told us that prosecutors showed awareness of the issues surrounding sensitive material in individual cases; applications to the court to withhold material on grounds of public interest immunity were professionally handled. We examined 21 cases which contained sensitive material. It was dealt with correctly in 17 (81%). In the other four, there was no evidence on the file that the material mentioned on the schedule had been considered at all. We have commented in paragraph 6.10 on the importance of being able to demonstrate compliance with the duties of disclosure. This is even more important in respect of sensitive material.

6.13 The BCP has issued instructions on the handling of sensitive material. The material should not normally be retained on the Branch, but there are arrangements for it to be kept securely, if circumstances make this unavoidable. Even where the material is returned to the police, Branch staff usually retain notes or documents referring to it. There was, however, some confusion amongst Branch staff about the arrangements for storing such material. In some cases, material may be kept on the file “depending on how sensitive it is”.

6.14 We recommend that the BCP should reinforce instructions on the procedure for handling sensitive material, including notes or documents referring to it, to ensure that all such material is stored securely at all times.

Custody time limits

6.15 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. Failure to monitor the time limits, and, where appropriate, to make an application to extend them, may result in a defendant being released on bail who should otherwise remain in custody.

6.16 We examined ten cases in which custody time limits applied. Prosecutors and caseworkers are clearly aware of the relevant procedures. We were concerned to note some errors, however, which indicate misunderstandings in some aspects. The expiry date in the magistrates’ court had been calculated wrongly in three cases. In one of these, two defendants were remanded in custody again after spending different periods on bail. The recalculated time limit related to only one of the defendants, and was the later of the two relevant dates. Custody time limits should always be calculated separately for each defendant.

6.17 In the other two cases, the limit had been calculated to expire a day early. We noted further examples of this in other file categories. Branch staff use a nationally issued ready reckoner, which calculates expiry dates from the date of the first remand hearing. However, uncertainty amongst some staff about whether the custody time limit expired at the beginning or end of the expiry day led them deliberately to calculate the limit to expire a day early. Whilst this is clearly an error on the safe side, it shows a lack of understanding about the procedures; and it is inconsistent with the way in which their colleagues calculate custody time limits.

6.18 In addition, the expiry date in the Crown Court was wrongly calculated in two cases. In one case,

it was a day early and, in the other, it was three days late. Overall, the position is not acceptable.

6.19 We recommend that the BCP should arrange refresher training for all staff, to ensure that custody time limits are calculated correctly.

6.20 Branch staff followed the correct procedures when it was necessary to apply to extend the custody time limit. Before an extension can be granted, the court must be satisfied that there is good and sufficient cause to extend, and that the prosecution has acted with all due expedition. Five magistrates' court and two Crown Court cases were the subject of applications to extend. Two were the subject of more than one extension. We are concerned about the nature and length of the delays that led to the need to seek an extension in some cases.

6.21 In one, a defendant was committed to the Crown Court for trial on offences of burglary and taking a vehicle without the owner's consent, four months after the original custody time limit expiry date. He was remanded in custody throughout the period, during which the time limit was extended twice. The file refers to another file (which was not in our sample) for offences charged later which was also the subject of two extensions to the time limit. The endorsements on the file did not explain the delay in committal, nor did they indicate that the question of due expedition had been considered (or explained to the court) by the prosecutor. We were also concerned about shorter delays in two other cases.

6.22 The delay between the first hearing and committal in two of the cases was not unusual. This reinforces the importance of what we say later about the timely service of committal papers (paragraph 6.32). Branch managers will wish to consider how best to give priority to cases subject to a custody time limit, to reduce the number of applications for extensions.

Summary trial preparation

6.23 The standard of trial preparation in the magistrates' court is generally satisfactory.

6.24 Prosecutors give instructions for trials when initial review is carried out (paragraph 5.37). Those instructions are updated when any further evidence is received. When a defendant pleads not guilty, the case is adjourned to a trial date, if the prosecutor has a full file of evidence. Otherwise, the case is adjourned for four weeks for a full file to be obtained and to fix a trial date.

6.25 Branch administrative staff notify the police which witnesses are to be warned, shortly after the adjourned hearing. The target time is 24 hours. At the same time, any relevant section 9 statements are served. Although we were told of instances when instructions to warn witnesses were given late, action was taken promptly in 29 of the 30 cases that we examined. Appropriate statements were served promptly in 24 out of 28 relevant cases (85.7%).

6.26 The police are also asked at this stage to supply any extra papers relevant to the trial. These usually consist of unused material schedules, which are reviewed by a prosecutor, once they are received. We were told that they often arrive just before the trial date.

6.27 Prosecutors are aware of the provisions of section 10, Criminal Justice Act 1967, which allow the prosecution and the defence to agree facts without calling evidence. We were told that this facility is not often used, however. We did not see any cases in the files that we examined in which the use of section 10 would have been appropriate.

6.28 We were also told that section 23, Criminal Justice Act 1988 has been used in appropriate cases. Subject to certain conditions, this enables a witness' statement to be read to the court if the witness is outside the United Kingdom, or is mentally or physically unfit or too frightened to attend court. The procedure was most often considered in domestic violence cases, in which complainants indicated that they wished to retract their complaint. It was rarely used, however. In most cases, the complainant was reconciled with the defendant and attended court to give evidence to this effect.

6.29 Pre-trial reviews are not usually held. They have not been found to be particularly effective in the past. Instead, the court operates a system of case timetabling, which applies at all stages of case progress. When a case is adjourned, the prosecution and defence are given a form, completed by the clerk, which details the action to be taken by the next hearing, such as service of advance information or committal papers.

Committal preparation

- 6.30 Prosecutors prepare the majority of committals. Caseworkers aim to prepare at least three committals each per month, although Crown Court commitments usually prevent this. Representatives of other agencies told us that committals were well prepared. The committal papers contained the appropriate witness statements and exhibits in all 29 relevant cases that we examined.
- 6.31 We were told that committal papers were often served late, however, sometimes on the day scheduled for the committal hearing, leaving the defence insufficient time to consider them. In some cases, defendants are discharged because the court refuses to adjourn the case further to allow papers to be prepared. Proceedings are sometimes reinstated but this involves all agencies in additional work that should not be necessary.
- 6.32 Papers were served outside national targets in six of the 29 cases (20.7%) that we examined. We could not ascertain the time of service in 18 (62.1%). As we have commented in previous reports, the timely service of committal papers is affected by the timeliness and quality of files submitted by the police. JPM figures for the quarter to 30 September 1998 show that 44.9% of committal files were submitted by the police within agreed guidelines and were at least sufficient to proceed. However, 42.3% of committal files, which were at least sufficient to proceed, were received more than five days late.
- 6.33 National guidelines require committal papers to be served within 14 days of receipt of the file, if the defendant is on bail, and within ten days, if

the defendant is remanded in custody. The guidelines provide for adjournment periods of eight and six weeks respectively, to allow for the preparation and service of committal papers, and to give time to the defence to consider them. These guidelines were not introduced in Bristol Magistrates' Court until October 1998. Prior to that time, adjournment periods were much shorter. Our file sample, and the figures quoted in the preceding paragraph, relate to cases which were committed for trial before October 1998. Although representatives of other agencies did not draw any distinction between the situation prior to October last year and the time of our inspection, we expect the position to improve. The BCP will wish to monitor the position very closely, to ensure that committal papers are served on the defence promptly.

- 6.34 The Branch uses its own condensed version of the CPS' Crown Court Case Preparation Package to prepare instructions to counsel. These list the accompanying documents; give details of the committal proceedings; set out the position in respect of unused material; detail any previous convictions of prosecution witnesses; and allow for any specific instructions on the acceptability of pleas. There is also a section for other information for counsel which may be used to set out a brief summary of the evidence and issues in the case.
- 6.35 Most examples that we saw contained only the most basic information. Only five of the 29 sets of instructions (17.2%) that we examined reached an acceptable standard. The prosecutor had prepared a summary of the evidence in only three of them. Specific instructions on the acceptability of pleas were given in only one of the ten relevant cases. We noted some cases in which the prosecutor had set out the case issues when the file was first reviewed, but these had not been incorporated into the brief.
- 6.36 Prosecutors and caseworkers also prepare an outline of the allegations, including the issues involved in the case, which is principally to assist the Crown Court in allocating the case to the appropriate court. A copy of this document is sent with counsel's instructions and served on the defence. Some that we saw were less than

helpful. For example, in a case of dangerous driving, the outline of the allegation read simply “the defendant drove dangerously”. In a child abuse case, which alleged indecent assaults on the two stepdaughters of the defendant over a period of five years, ending four years before the prosecution started, the summary read “historical indecent assaults on stepdaughters”. This is not acceptable.

6.37 We recommend that the BCP should ensure that instructions to counsel contain a summary of the evidence, together with an analysis of the case issues, and instructions on the acceptability of pleas in appropriate cases.

6.38 In 19 of the cases (65.5%) that we examined, briefs were delivered within the target timescales agreed between the CPS and the Bar nationally.

Quality of indictments

6.39 Representatives of other agencies did not express serious concerns about the standard of indictments prepared by prosecutors and caseworkers. Most amendments corrected minor errors or reflected the individual preferences of counsel. Caseworkers check indictments before lodging them at the Crown Court. Branch managers also monitor the reasons for amendments. We were told that this approach has led to a significant improvement in the quality of indictments.

6.40 Nonetheless, the error rate is high. Nine of the indictments (31%) in the cases that we examined required amendment. Four of these were to correct minor cosmetic errors, and two were to accept late pleas from the defendant. This suggests that the monitoring system is not fully effective. The BCP will want to take steps to secure further improvements.

The CPS in the Crown Court

6.41 Once a case is committed to the Crown Court, caseworkers assume responsibility for its day-to-day management. Prosecutors retain

involvement, however, by making decisions on further evidence and attending conferences with counsel. Branch managers also try to allow prosecutors to attend the openings of their more serious or complex cases. Commitments in the magistrates’ courts take priority, however, and prosecutors do not attend the Crown Court as much as they would like. Nor do resources permit prosecutors to attend plea and directions hearings (PDHs).

6.42 PDHs are held twice a week. Up to 30 cases may be listed in any one court. Each court is covered by one caseworker. Representatives of other agencies told us that some directions given at PDH were not complied with in the time given, although in many instances, this was due to circumstances outside the direct control of Branch staff. Directions given at PDH were complied with promptly in 12 out of 14 relevant cases (85.7%) that we examined. We could not ascertain the position in the other two.

6.43 Caseworkers usually cover more than one court, although PDH courts and serious or complex cases are covered individually. They do not attend most trials beyond the end of the prosecution case, unless the circumstances of the case make continued attendance desirable as, for example, with cases of child abuse. However, we were told that this has disadvantaged prosecution counsel, on occasion, when a problem arises in the trial which requires urgent attention.

Correspondence

6.44 Representatives of other agencies told us of long delays by Branch staff in replying to letters, and some instances of failure to reply at all. We have referred to one example at paragraph 5.23.

6.45 We also saw some cases where written requests for advance information were not dealt with until the court hearing, long after it had been requested and the Branch had received the file from the police.

6.46 The BCP has issued instructions about linking correspondence to files. We were told that correspondence is linked to files promptly, but that dealing with it assumes a lower priority than

more urgent work, such as committal review. It is, nevertheless, a matter which must be addressed.

6.47 We recommend that the BCP should ensure that all post received is linked with the relevant file as soon as possible, and that all correspondence, including requests for the provision of advance information, is dealt with promptly.

File endorsements

6.48 The standard of file endorsements and file housekeeping needs to improve considerably. We were often unable to discover whether unused material had been properly dealt with, because we could not find either a completed copy of the relevant schedule, or a copy of the letter accompanying service of the schedule on the defence. Similarly, we were often unable to locate copy letters accompanying the service of committal papers. We have commented at paragraph 5.22 on the difficulties experienced in determining whether the police had been consulted about proposals to terminate cases.

6.49 Endorsements of court hearings in the magistrates' court did not provide a clear and comprehensive record of events in 19 of the 79 cases (24.1%) that we examined. Often, they were confusing and conflicted with evidence of events found elsewhere, or with other endorsements on the file. In one case, the endorsements purported to show that a case had been discharged after the defendant had been convicted. We have observed at paragraph 5.36 that endorsements of bail applications need to be improved.

6.50 Some Crown Court endorsements caused particular difficulties. Details of hearings are endorsed on a results form which is retained inside the file jacket. If a defendant has more than one current file, events at each hearing for each case tend to be endorsed on one form which is copied for each file. The endorsement refers to the number of each indictment but, in many instances, we found it difficult to distinguish indictments because the number is not recorded

elsewhere on the file. The endorsements of Crown Court hearings were confusing or incomplete in six of the 29 cases (20.7%) that we examined.

6.51 We recommend that the BCP should ensure that, in order to provide a complete record of case management, file endorsements comply with the national standard, so that:

- they provide an accurate record of court hearings in respect of each defendant, including details of the prosecutor's reasons for opposing bail and, in appropriate cases, the court's reasons for refusing bail;
- details of all discussions about cases, including proposals to discontinue, are fully recorded;

and that copies of all correspondence and internal minutes are retained sequentially within the file.

PRESENTING CASES IN COURT

7.1 Representatives of other criminal justice agencies told us that the standard of the Branch's advocacy varies considerably. The majority of advocates present cases competently. They usually provide an opening speech in trials, unless the case is straightforward. Some cross-examination is unfocused, however. A small number of advocates would benefit from some advocacy training.

7.2 It was suggested that the reduction in the number of prosecutors and the rising caseload had affected the standard of case presentation, by reducing the available time for preparation. Many overnight remand files were received late, affecting the quality of representations in custody applications. There was some acknowledgement amongst prosecutors that lack of time and heavy caseloads sometimes prevented proper preparation. Although all seven advocates that we observed presented cases competently, we observed some cases in which presentation was affected by the lack of preparation.

7.3 We observed one trial. The prosecution case was presented properly, and the cross-examination concentrated on the relevant issues.

7.4 Advocates are monitored by the PTLs twice a year and receive constructive comment on their performance after the monitoring, and at the time of their annual appraisal.

7.5 Counsel from chambers in Bristol are instructed in Crown Court cases. Individual counsel have experience appropriate to the type of case with which they deal. They prosecute them competently. Counsel originally instructed to prosecute attended the PDH in 16 of the 29 cases (55.2%) that we examined; 11 of the 19 trials (57.9%); and 6 out of 20 sentence hearings (30%). These figures are better than we sometimes encounter, and we were told that substitute counsel of at least similar experience is usually offered by chambers, when the instructions have to be returned.

7.6 Counsel are monitored by caseworkers informally. Counsel are concerned that the absence of caseworkers during much of the defence case means that the Branch's knowledge of individual counsel's cross-examination skills is limited.

THE BRANCH AND OTHER AGENCIES

8.1 Branch staff enjoy good relationships with local representatives of other agencies in the criminal justice system. Issues are discussed frankly, both formally and informally, without any agency needing to compromise its professionalism or independence. The BCP is often involved in informal discussions on a variety of issues with senior representatives of other agencies.

8.2 We were told that a Branch representative is not always able to attend meetings of the criminal law committee of the Bristol Law Society. We believe that this is an important local criminal justice forum. The BCP will want to ensure that the CPS is fully represented.

8.3 There are regular liaison meetings between Branch managers and the Probation Service, but only to deal with the operation of the Bail Information scheme. However, day-to-day working relationships ensure co-operation to resolve other problems when the need arises.

8.4 Relationships with the Bristol Crown Court Witness Service are very good. There are no regular meetings, although concerns can be raised at court user meetings or by direct contact, if a particular problem occurs. Meetings may be held once or twice a year to discuss specific issues of mutual concern.

KEY STATISTICS

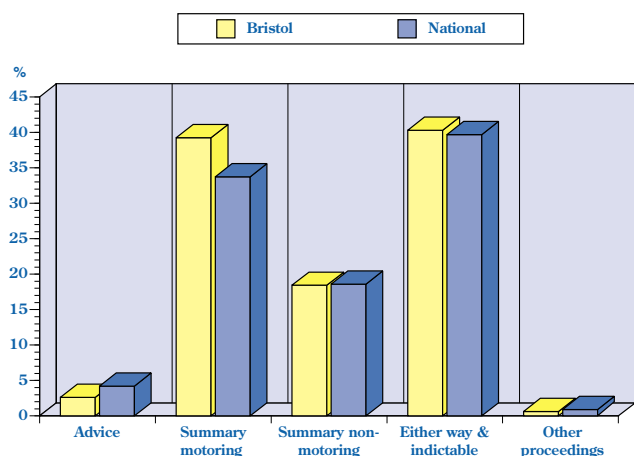
9.1 The charts which follow this page set out the key statistics about the Branch's casework in the magistrates' court and the Crown Court for the year ending 31 December 1998.

EXTERNAL CONSULTATION

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

MAGISTRATES' COURTS

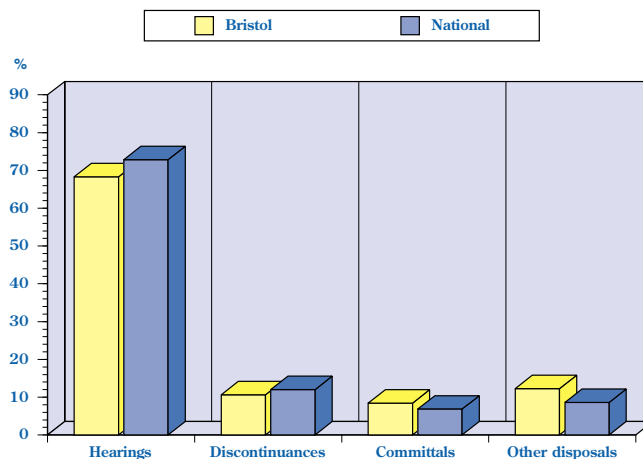
1 - Types of case



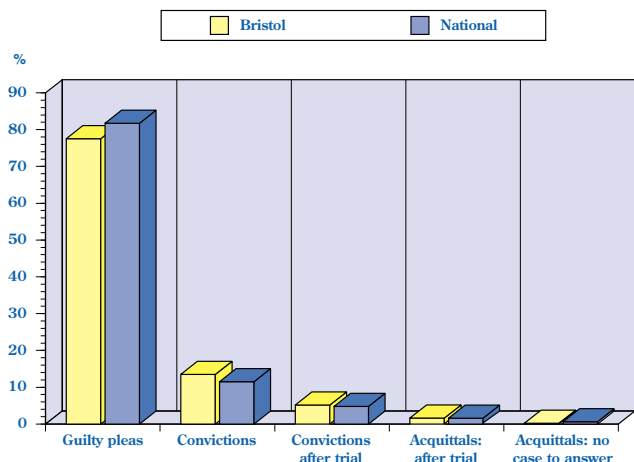
	Bristol		National	
	No.	%	No.	%
Advice	431	2.7	59,799	4.2
Summary motoring	6,027	38.1	525,813	36.8
Summary non-motoring	2,903	18.4	264,365	18.5
Either way & indictable	6,355	40.2	568,918	39.8
Other proceedings	84	0.5	11,660	0.8
Total	15,800	100	1,430,555	100

2 - Completed cases

	Bristol		National	
	No.	%	No.	%
Hearings	10,465	68.5	987,943	72.7
Discontinuances	1,654	10.8	162,661	12.0
Committals	1,334	8.7	94,151	6.9
Other disposals	1,832	12.0	114,342	8.4
Total	15,285	100	1,359,097	100



3 - Case results

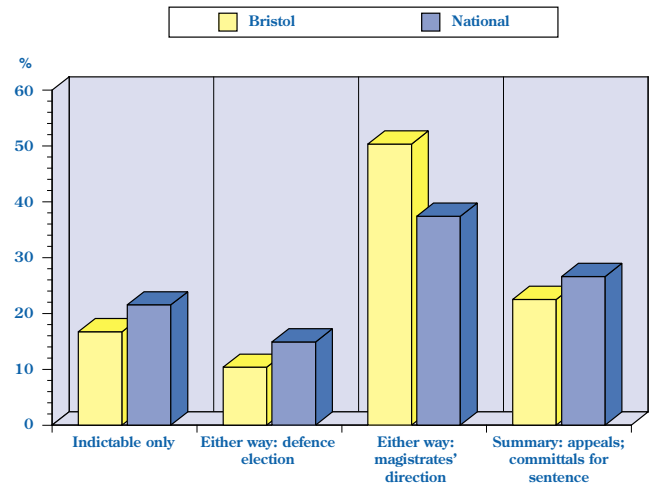


	Bristol		National	
	No.	%	No.	%
Guilty pleas	8,409	79.7	810,952	81.7
Proofs in absence	1,438	13.6	114,133	11.5
Convictions after trial	539	5.1	49,466	5.0
Acquittals: after trial	156	1.5	15,442	1.6
Acquittals: no case to answer	6	0.1	2,248	0.2
Total	10,548	100	992,241	100

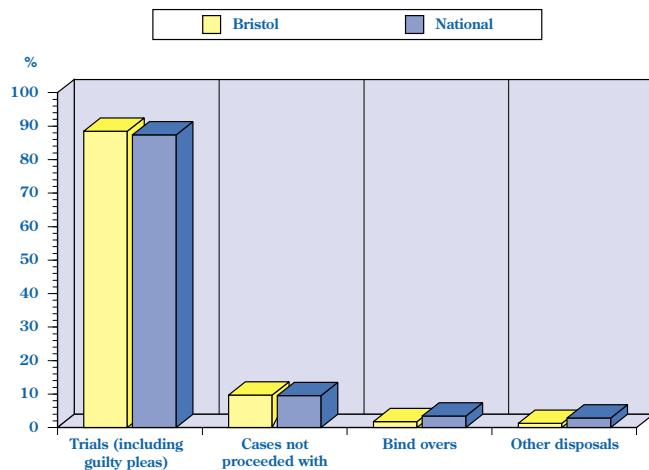
CROWN COURT

4 - Types of case

	Bristol		National	
	No.	%	No.	%
Indictable only	244	16.8	26,918	21.4
Either way: defence election	151	10.4	18,481	14.7
Either way: magistrates' direction	734	50.4	46,915	37.3
Summary: appeals; committals for sentence	327	22.5	33,357	26.5
Total	1,456	100	125,671	100



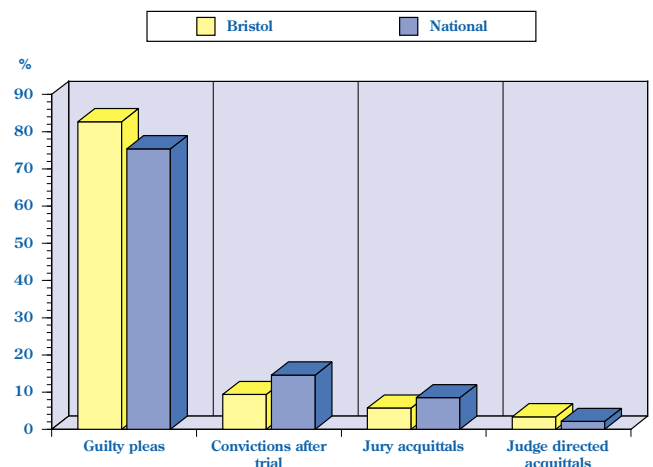
5 - Completed cases



	Bristol		National	
	No.	%	No.	%
Trials (including guilty pleas)	998	88.4	80,753	87.4
Cases not proceeded with	113	10.0	8,680	9.4
Bind overs	10	0.9	1,567	1.7
Other disposals	8	0.7	1,404	1.5
Total	1,129	100	92,394	100

6 - Case results

	Bristol		National	
	No.	%	No.	%
Guilty pleas	831	82.4	61,863	75.1
Convictions after trial	92	9.1	11,754	14.3
Jury acquittals	55	5.5	6,910	8.4
Judge directed acquittals	31	3.1	1,851	2.2
Total	1,009	100	82,378	100



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

Judge	His Honour Judge Dyer QC
Magistrates' courts	Mr J Budd, Justice of the Peace, Chairman of the Bristol Justices Mr D Speed, Justices' Chief Executive, Avon, and Clerk to the Justices, Bristol
Police	Assistant Chief Constable M Richards Acting Superintendent D Branfield Acting Chief Inspector M Bruce
Defence solicitors	Mr D Fanson Mr I Kelcey
Counsel	Mr N Ford QC Mr I Glen QC Mr C Barton QC Mr E Ambrose Mr R Davies
Counsel's clerk	Mr D Milson
Probation Service	Mr P Jones, Assistant Chief Probation Officer
Witness Service	Ms R Pitter, Bristol Crown Court

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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