

Report of the Inspection of the Counter Terrorism Division of CPS Headquarters

April 2009





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CONTENTS

1	Introduction	1
	Purpose of the inspection.....	1
	Background	1
	Scope of the inspection.....	1
	The structure of Counter Terrorism Division.....	2
	Methodology.....	2
2	Summary of inspection findings and recommendations	5
	Introduction	5
	Advice and decision-making.....	5
	Case management.....	5
	Case presentation.....	5
	Specialist offences	6
	Victims and witnesses.....	6
	Resource management.....	6
	Performance management	7
	Leadership and community engagement.....	7
	Conclusions, recommendations, aspects for improvement, strengths and good practice	7
3	Advice, review and decision-making	11
	Introduction	11
	Referral of cases.....	11
	Allocation of cases within the division	11
	The provision of early advice.....	12
	The involvement of counsel at the pre-charge stage.....	12
	Case building	13
	The quality of review and decision-making	13
	Timeliness of review and decision-making.....	13
	Monitoring quality and timeliness.....	13
	Detention of suspects before charge.....	14
4	Case management	17
	Introduction	17
	Magistrates' courts.....	17
	Attorney General's consent.....	17
	Case management in the Crown Court.....	18
	<i>Terrorism Case Management Protocol</i>	18
	<i>Compliance with court directions</i>	18
	<i>Director's Case Management Panels</i>	19
	The use of experts	19
	Disclosure of unused material.....	19
	Effective, ineffective and cracked trials.....	21
	Successful outcomes	22
	Discharged committals and discontinuance	23
	Learning lessons from casework.....	23
	Custody time limits.....	24

5	The case at court	25
	Introduction	25
	Choice of advocate.....	25
	<i>Selection and use of counsel</i>	25
	<i>Use of crown advocates</i>	25
	Advocacy monitoring	26
	Instructions to counsel	26
	Attendance at court by the caseworker.....	26
	Presentation of evidence	27
6	Specialist casework	29
	Terrorism	29
	Control orders.....	29
	<i>Contribution to policy</i>	29
	<i>Prosecution of breaches</i>	29
	<i>Review of orders</i>	30
	Violent extremism including incitement offences	30
	War crimes, genocide, crimes against humanity, torture or serious violations of international law ..	31
	Offences falling under the Official Secrets Acts	32
	European arrest warrants, extradition procedures and evidence from abroad	33
7	The service to victims and witnesses	35
	Introduction	35
	No Witness No Justice	35
	Responsibility for witness care.....	36
	Victim and witness initiatives	37
	<i>Contact with the victim or victim’s family</i>	37
	<i>Special measures</i>	37
	<i>Anonymity of witnesses</i>	38
	<i>Pre-trial interviews with witnesses</i>	38
8	Managing resources	39
	Management of financial resources	39
	CTD budget and staffing.....	39
	Role of higher court advocates	40
	Management of human resources	40
	Managing attendance	41
	Flexible working	41
	Training.....	41
9	Managing performance to improve	43
	Performance information and analysis	43
	Casework quality assurance.....	43
	Continuous improvement and knowledge sharing	44
	Joint performance.....	44
10	Leadership	45
	Business planning.....	45
	Corporacy and cohesion	45
	Communication and feedback.....	46
	Equality and diversity	46

11	Community engagement and liaison	47
	National liaison	47
	International liaison	48
	Media relations	48

Annexes

A	Progress against previous recommendations and suggestions	49
B	Number of files examined.....	51
C	File reading entries.....	52
D	Representatives of criminal justice agencies and organisations who assisted in our inspection	55

1 INTRODUCTION

Purpose of the inspection

- 1.1 This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSI) report about the Crown Prosecution Service's (CPS) Counter Terrorism Division (CTD). The division is part of CPS Headquarters and has its offices at Ludgate Hill in London. A second office in Leeds is due to open in April 2009.
- 1.2 The purpose of the inspection was to:
- assess the quality of the decision-making, case preparation and performance of CTD; and
 - assess progress against the recommendations and suggestions (insofar as they are still relevant) made in the report of the inspection of CPS Casework Directorate in November 2002.

Background

- 1.3 The work dealt with by CTD was formerly handled by Casework Directorate (set up in 1998 as part of Headquarters in response to the review of the CPS by Sir Iain Glidewell) in order to provide a centre of excellence to deal with serious crime.
- 1.4 CTD was set up in 2005 as part of CPS Central Casework, which replaced the Casework Directorate. There are three separate divisions: Special Crime, Organised Crime and Counter Terrorism. The divisions work in partnership with each other but responsibility for the specific types of cases and aspects of work handled by each is defined. Each of the three has a Head of Division who reports to the Director of Public Prosecutions (DPP), but the Senior Business Manager (SBM) and Secretariat are shared. As with the former Casework Directorate the purpose of the divisions is to provide centres of excellence and to deal with those complex, serious and sensitive cases that, for operational or resource reasons, are better undertaken by CPS Headquarters rather than by individual areas. The majority of CTD's work relates to terrorist offences but it also handles all cases involving incitement to racial and religious hatred, war crimes, genocide and related offences, prosecutions under the Official Secrets Acts and hijacking.
- 1.5 Casework Directorate was last inspected in November 2002. In that report we made 15 recommendations and five suggestions for improvement. In the course of this inspection we have assessed the extent to which these have been addressed, insofar as they are applicable to CTD, and a synopsis is included at annex A.

Scope of the inspection

- 1.6 The full scope of the inspection was to:
- assess the quality and timeliness of casework decisions in all categories of cases handled by CTD;
 - assess the arrangements for case 'ownership', the quality of preparation and case handling;
 - assess the management of casework handled and levels of decision-making;
 - assess the standard of case presentation by in-house advocates and counsel;
 - consider the impact of new initiatives eg statutory charging, Direct Communication with Victims, witness care units, the Prosecutors' Pledge, the Victims' Code and the Victim Focus Scheme;
 - consider how resources are deployed within the division and how performance is monitored to effect improvement;
 - consider the effectiveness of community engagement in bringing about service improvements and the extent to which equality and diversity principles are embedded within the division;

- review, insofar as they are still applicable, the progress against recommendations in the last report;
- identify good practice; and
- make recommendations for improvement.

The structure of Counter Terrorism Division

1.7 As at 1 December 2008 the division employed the equivalent of 55.5 full-time staff. This included 20.4 lawyers (excluding the Head of Division). The Secretariat, which is also based in London, provides support to all three Central Casework divisions and comprises the SBM and full-time equivalent of 9.6 other staff. The full breakdown of CTD staff is:

Grade	Total
Head of Division (Senior Civil Service)	1
Deputy Head of Division (level E)	1
Lawyers - senior crown advocate (level E)	5
Lawyers - crown advocate (level D)	13.4
Lawyers - senior crown prosecutor (level C2)	1
Managers (level B2)	2
Caseworkers (level B1)	15.5
Caseworkers (level A2)	6
Secretariat (shared resource)	10.6
Total	55.5

- 1.8 The Head of Division reports to the DPP and is supported by a Deputy. Caseworkers are managed by a B2 casework manager and the B2 business and performance manager has a small business administration team.
- 1.9 Current plans include the establishment of a unit in Leeds with effect from 1 April 2009. The unit head has been appointed from within CTD following a CPS internal trawl and a level D lawyer has also been appointed from one of the other casework divisions. They are included within the table.

Methodology

1.10 Like the two other Central Casework divisions CounterTerrorism does not easily compare with other CPS areas or units. It provides a national service taking work from all police forces, although most of its casework comes from the Metropolitan Police CounterTerrorism Command and the Greater Manchester, West Midlands and West Yorkshire Police CounterTerrorism Units. CTD also deals with other proceedings ancillary to its prosecution work. Importantly these include prosecutions for breaches of control orders under the Prevention of Terrorism Act 2005. Many of its cases involve enquiries of foreign jurisdictions which means that it engages and liaises with a range of organisations both abroad and in the United Kingdom, with which CPS areas would not normally deal. As a result a bespoke methodology and framework for the inspection was devised following initial consultation with CTD managers.

- 1.11 Almost all of the files submitted to the division are for pre-charge advice. The only exceptions relate to non-terrorist cases such as racial hatred offences, which may have been charged in an area before referral to CTD. Most cases are referred at a very early stage of the investigation and the division are closely involved with the investigator in advising upon evidence and building the case before charge.
- 1.12 Inspectors examined a full range of cases handled by the division. Because of the nature of the work and numbers of cases we were able to examine only one or two files in some categories. The file sample comprised pre-charge decision cases in which no further action was advised (categorised according to the nature of the offences alleged), magistrates' courts' cases and Crown Court trials (whether acquittals or convictions). A breakdown of the number and categories of cases is at annex B.
- 1.13 Inspectors examined 50 cases against a database of questions specifically tailored to the work of the division, although most related to processes common to all criminal prosecutions. Before the formal process of file examination started we had the opportunity to spend some time with CTD managers and staff to assess the nature and scale of the undertaking. Most of the division's prosecutions generate large volumes of evidence, exhibits and unused material. We developed an approach which enabled us to review the significant case papers whilst at the same time having access to all other papers should we need to refer to any. This approach also allowed us to see how the volumes of evidence and unused material were categorised and filed for ease of reference. In addition, and importantly, we were able to discuss the issues in the case with the reviewing lawyer. This was often invaluable in enabling us to acquire a speedy understanding of the case and issues and the approach to the handling of disclosure.
- 1.14 Observations were made at court which enabled inspectors to see the performance of advocates and the delivery of service. These are included within the findings of this report.
- 1.15 In cases which proceeded to prosecution we considered the quality of the pre-charge decision, application of the two stage test in the Code for Crown Prosecutors and the quality of casework processes. We made a number of assessments about the quality of decision-making and case handling in the course of the file examination. Key assessments are shown in the table at annex C.
- 1.16 Inspectors considered a self assessment provided by CTD together with supporting documents. We also conducted interviews with members of CPS staff at all levels, criminal law practitioners and representatives of criminal justice agencies. Other stakeholders were also consulted by questionnaire. A list of individuals inspectors met or from whom comments were received is at annex D.

2 SUMMARY OF INSPECTION FINDINGS AND RECOMMENDATIONS

Introduction

- 2.1 Counter Terrorism Division was set up to specialise in prosecuting terrorism cases, which have been increasing rapidly in both quantity of caseload and the complexity of the cases over the last three years. CTD also handles all cases involving incitement to racial and religious hatred, war crimes, genocide and related offences, prosecutions under the Official Secrets Acts and hijacking.

Advice and decision-making

- 2.2 Most of the cases are referred directly from dedicated investigators and there are guidelines for referrals. The nature of terrorism investigations means that the reviewing lawyer is almost always involved at an early stage. Lawyers liaise closely with the investigators to determine potential courses of action and evidence gathering. This means that the division is very much at the forefront in combating terrorism and bringing offenders to justice.
- 2.3 The quality of decision-making is very good. The advice to police and review notes are detailed and set out the relevant facts and law and reasons for decisions in a logical format. The quality of advice is monitored by managers who approve each review note. Standards in general are excellent.

Case management

- 2.4 Post-charge case management is routinely good. Lawyers and caseworkers are proactive in progressing cases and court directions are generally complied with. Many defendants are detained in custody pending trial and custody time limits are closely monitored. There have been no custody time limit failures.
- 2.5 CTD handles unused material well. It applies the provisions of the Criminal Procedure and Investigations Act 1996 appropriately, whilst adopting a helpful approach to the defence. A record of disclosure actions is maintained, although this is not always kept on the main file with other disclosure papers.
- 2.6 When a case is contested the caseworker attends court on a daily basis. The trend to move cases away from London to regional courts means that CTD needs to establish firmer links with some centres to ensure that caseworkers have access to necessary facilities and that arrangements for the receipt and storage of documents at court ensure security. Measures had already been put in hand to address this.

Case presentation

- 2.7 CTD lawyers are encouraged to act as advocates in their own cases according to their experience, ability and availability. Higher court advocates have acted as junior counsel in a number of cases. The division has been proactive in developing the skills of its in-house advocates. The standard of both in-house and externally briefed counsel reflects their considerable skill, experience and ability in this type of casework. Instructions to counsel are comprehensive and detailed and are often part of a staged process which involves counsel in planning and strategy for prosecutions.
- 2.8 Sometimes evidence in trials is presented electronically using computer generated images to depict events, conversations etc. This can be expensive but can save money by reducing trial times as well as simplifying issues for a jury. Most of the cost is borne by the prosecution team.

- 2.9 Learning lessons from casework is a strength and the division is prepared to be very self critical. Post-trial case conferences are held after every trial to identify what was done well and also those aspects which should have been done better.

Specialist offences

- 2.10 CTD deals with a number of specialist offences in addition to terrorism cases. Letters of request for evidence or extradition of suspects from other countries are not uncommon and are handled well. There are champions and specialists for all categories of case.
- 2.11 The division handles prosecutions against those accused of breaching control orders which restrict the movement and activity of persons suspected of being engaged in terrorism but who have not been charged. They also undertake reviews of potential evidence obtained against such persons. Although there are relatively few cases often urgent action is required. The operation of control orders is reviewed annually by Parliament. The role of CTD is viewed positively.

Victims and witnesses

- 2.12 The CTD shares the Secretariat-based witness care unit with the other two Central Casework divisions. There are relatively few civilian witnesses in CTD cases. Most aspects of witness care are dealt with by the police who are happy to do this in most instances and have the procedures and experience to do it efficiently. However it is important that CTD retains a role in looking after witnesses at court. This should involve more proactive engagement with those giving evidence both in assessing their needs before court and in keeping the witnesses informed of the progress of a case throughout their attendance.
- 2.13 In some very sensitive cases the division has shown an ability to respond innovatively to assist victims to cope with traumatic occurrences. Special measures are identified early and every effort is made to assist the giving of evidence despite often significant obstacles.

Resource management

- 2.14 The importance of CTD's work ensures that casework is adequately funded despite the high costs involved. Nevertheless the division rightly has to account carefully for the expenditure it incurs. Resources are used effectively and the value for money principles are clearly apparent in the close scrutiny of costs.
- 2.15 Staff have a professional approach to their cases, often working very long hours because of their commitment and dedication. The level of sickness absence is below the national average. Whilst managers allow flexibility in working arrangements to give a proper work-life balance, the nature and demands of the work sometimes make this difficult to achieve.
- 2.16 The number of staff has increased considerably. Achieving and retaining the skilled staff to fulfil the demands of this difficult work is not easy. The division has taken lawyers on secondment from elsewhere in the CPS with a view to them developing expertise which can later be called upon if needed, should there be a sudden upturn in work. However many in fact become permanent within CTD. A strategy for developing a cadre of lawyers with CTD experience who could return if an upturn of work suddenly occurs should, nevertheless, be considered.

Performance management

- 2.17 Although the number of cases is small when compared with the average CPS area, most of them are large and complex and can take many months to prepare; trials may last several weeks. Managing performance in order to improve must concentrate on a case-by-case basis using monthly reports rather than the volume of cases. The monthly casework report is considered in management team meetings alongside financial and administrative information. Greater comparison of performance with other specialist departments or CPS group complex casework units could be beneficial.
- 2.18 The CPS’s electronic casework management system (xCMS) is rarely used other than for registering case details. It is, with justification, considered to be unsuited to the needs of CTD. In contrast the use of the division’s shared drive on the CPS internal intranet as an electronic repository for exchanging knowledge and expertise is of particular benefit. Many staff contribute information or samples of prepared documentation which assist their colleagues and is of particular value to new members of staff. The drive needs to be regularly updated to ensure relevance.

Leadership and community engagement

- 2.19 Senior managers are highly regarded by their staff, CPS colleagues and external partners for their dedication and commitment. Effective partnerships have been developed both at home and abroad. Managers meet regularly with key partners from government agencies to address concerns and devise strategies to counter global terrorism and other serious casework. The reputation of the division is high and requests for help and training from other prosecuting authorities across the world are common.
- 2.20 Whilst CTD does not have a local neighbourhood the nature of its work affects different community groups. Community engagement is focused where a need is determined and activity is diverse and frequent. To ensure that a consistent approach is given to both communities and the media the national lead on violent extremism takes responsibility for this work, alongside the Head of Division.

Conclusions, recommendations, aspects for improvement, strengths and good practice

- 2.21 In assessing CTD’s performance we take into account that it is difficult to equate the level and nature of the caseload and the resources to undertake it with other CPS units or areas. Overall the division undertakes its role to an exceptionally high standard. It will be difficult for generalist units to aspire to this, although we consider that there is much in this report which should commend itself to them.
- 2.22 Where we have identified good practice we have sought to commend those aspects of the division’s work which we consider could be of particular benefit to other specialist units within the CPS, for example the other Central Casework divisions and complex casework units.
- 2.23 We make recommendations about the steps necessary to address significant weaknesses relevant to important aspects of performance, which we consider to merit the highest priority, and have made four to help improve the division’s performance.

1 Counter Terrorism Division should ensure that the disclosure record sheet or other written record of disclosure decisions and actions is retained on each case file, or is kept securely if necessary (paragraph 4.29).

2 CounterTerrorism Division should ensure that whenever documents are forwarded to court in advance of trial there are appropriate arrangements for their receipt, handling and secure storage (paragraph 5.15).

3 CounterTerrorism Division, in conjunction with the Special Crime and Organised Crime Divisions, should:

- set out definitive guidelines as to the role and responsibilities of the witness care unit and ensure all staff are familiar with them;
- ensure all witness care officers receive appropriate training as soon as practicable to enable them to perform their functions effectively; and
- develop systems to enable the divisions to undertake analysis of No Witness No Justice measures in compliance with the Victims' Code (paragraph 7.5).

4 CounterTerrorism Division's managers should continue to work with Business Information Systems Directorate to improve the functionality of the case management system to ensure all core actions are recorded and monitored and that the system is fit for the division's use (paragraph 9.4).

2.24 We identified one aspect for improvement.

1 The approval of charging decisions by the Head of Division or Deputy Head of Division should be recorded with the case papers and annexed to the review decision (paragraph 3.20).

2.25 We found five strengths.

1 The availability of CounterTerrorism Division prosecutors at all times to provide investigative and evidential advice to the police pre-charge (paragraph 3.11).

2 The high quality of decision-making and detail of review notes (paragraph 3.15).

3 CounterTerrorism Division's approach to casework review and decision-making involves early participation in the investigation process and quality assurance of decisions by senior managers throughout the life of the case (paragraph 9.6).

4 The leadership demonstrated by the Head of Division and the management team displays a high degree of commitment to the prosecution of high profile complex cases. This level of commitment also manifests among staff (paragraph 10.14).

- 5 Counter Terrorism Division's involvement in community engagement and liaison with agencies nationally and internationally is both extensive and necessary. Senior managers have demonstrated that this aspect of work is core to its business and are highly respected externally by its stakeholders (paragraph 11.11).
-

2.26 Two aspects of good practice were also identified.

- 1 Post-trial case conferences highlight good practice in the investigation and prosecution of terrorist offences and analyse issues to determine where lessons can be learned and improvements made (paragraph 4.43).
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- 2 Counter Terrorism Division's use of electronically presented evidence to explain issues in the trial to the court and jury and to save court time (paragraph 5.23).
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3 ADVICE, REVIEW AND DECISION-MAKING

Introduction

- 3.1 CTD has always been involved in the provision of early advice to the police during the investigation stage and prior to the case being charged. This is a key factor in the high quality of its decisions and subsequent case management. This involvement pre-dates the statutory charging scheme provided by areas whereby the CPS has taken over the responsibility from the police for deciding whether or not a suspect should be charged in the more serious and contested cases. In this chapter we discuss the provision of advice and charging decisions by CTD, the quality and timeliness of decisions and the processes for managing cases at the pre-charge stage.
- 3.2 We examined 50 cases which had been referred for advice, in 39 of which CTD had advised there was sufficient evidence to charge the defendant.

Referral of cases

- 3.3 The types of cases dealt with by the division are clearly set out on its 'home page' of the CPS internal intranet and include cases involving allegations of terrorism, war crimes, crimes against humanity, racial and religious hatred cases, Official Secrets Acts cases, hijacking and crimes against the state.
- 3.4 Cases are usually referred to the division by the Metropolitan Police Counter Terrorism Command, or the West Midlands, Greater Manchester and West Yorkshire Police Counter Terrorism Units. Occasionally cases may be referred by local police forces to CPS area offices, usually in respect of racial hatred rather than terrorism cases. The referral criteria on the intranet reminds local prosecutors to refer all cases to CTD that fall within the categories shown and, additionally, those where there is a possibility that a terrorist-related or racial hatred offence may need to be considered. Prosecutors are encouraged to contact CTD where there is any doubt whether the case should be dealt with by the division or locally, which generally works well. We found one case was referred to CTD after the suspect had been charged and the charges were wrong in law. New charges were put to the accused but procedural issues had to be overcome before the defendant admitted the offences.
- 3.5 Cases will be referred at different stages in the investigation process depending on the nature of the advice sought. For example those where the defendant is on bail and a charging decision is sought will be dealt with in accordance with the Director's Guidance on Statutory Charging but in the serious, complex and high profile terrorist cases, such as the prosecution arising out of the bombings in London on 7 July 2005, very early advice will be sought.

Allocation of cases within the division

- 3.6 The approach to case allocation is to appoint the reviewing lawyer at the earliest stage. Each case is allocated to a lead prosecutor and 'buddy' by the Deputy Head of Division. New prosecutors within CTD are often appointed to the buddy role in order to be mentored on more complex cases by experienced prosecutors. Often the buddy will have no direct involvement, but will be expected to deal with the case in the absence of the lead prosecutor. Allocations take into account the lawyer's level of experience; size and complexity of the case; security clearance levels required; development needs of lawyers and any particular specialisms. The case is then passed to the caseworker manager who will allocate caseworkers on the same principles.

- 3.7 Staff do not consider there is an imbalance in caseloads although it is generally recognised that more experienced prosecutors do consistently have heavier caseloads than some of their colleagues.
- 3.8 CTD has adopted a strong approach to case ownership and the lawyer who is allocated a case at the pre-charge decision stage will usually retain it until conclusion, unless their existing workload means this is not feasible. However the allocation of terrorist cases is not an exact science and some which may have appeared at the outset to be relatively straightforward can 'grow', for example where enquiries in respect of one defendant lead to multiple arrests of other defendants. The division's approach has established a good prosecution team ethos, which is valued by the police. There was good continuity of prosecutor and caseworker in all the files we examined.

The provision of early advice

- 3.9 The complex and sensitive nature of the cases handled means it is important that prosecutors are involved at the earliest opportunity. The close working relationship that has developed between the police and division means that the police will contact CTD at a very early stage in an investigation and usually before a defendant has been arrested. At this point contact may be for notification purposes only, or to seek preliminary advice on the direction of the investigation.
- 3.10 CTD has agreed a restricted joint protocol dealing with the investigation and prosecution of terrorism offences. It has also devised a central repository of other internal guidance with other agencies, some of which is understandably restricted, to assist the prosecution team in handling terrorist cases.
- 3.11 In accordance with this protocol a CTD prosecutor is on call to provide an out-of-hours service to the police and Security Service 24 hours a day, 365 days of the year. Prosecutors frequently work outside the usual office hours to assist with the investigation by providing advice on potential courses of action or lines of enquiry and will attend police stations to provide on the spot advice where necessary.

STRENGTH

The availability of CounterTerrorism Division prosecutors at all times to provide investigative and evidential advice to the police pre-charge.

The involvement of counsel at the pre-charge stage

- 3.12 Counsel is usually instructed prior to the plea and case management hearing and only rarely at the pre-charge stage. In some cases counsel may be retained at an earlier stage and consulted on aspects of the prosecution strategy before receiving formal instructions. Counsel was instructed pre-charge by CTD in two cases out of 50 (4%) within our file sample; each contained complex issues with political overtones.

Case building

- 3.13 The nature of the cases handled means that there is an intense period of case building before charge. The protocol referred to above emphasises the need for CTD and the police to work closely together to build the case from the outset. Early conferences are frequently held and strategies are agreed for the pre-charge advice stage, for example for the provision of material to

be provided and dealing with applications for further detention. This means that there is good consideration of ancillary issues at an early stage, such as the need to apply for special measures for witnesses, how evidence from foreign jurisdictions will be obtained and adduced, and the admissibility of hearsay and bad character evidence. In our file sample ancillary issues were considered appropriately in all 21 cases where it was a relevant consideration.

The quality of review and decision-making

- 3.14 The quality of review and decision-making is very good and is highly regarded by external stakeholders. The decision in all of the cases within the file sample accorded with the evidential and public interest tests of the Code for Crown Prosecutors. All decisions were made at the appropriate level and proceeded on the correct charges without significant amendment.
- 3.15 All decisions were recorded on an MG3 (a record of charging decisions) or a separate review note and, sometimes, both. The charging decision was properly recorded in all cases within the file sample. In some an initial MG3 was subsequently followed with a much more detailed review note. Generally the review note recites the facts and evidence, application of the law and reasons for the decision. Overall the quality of the review notes was very good and in some instances excellent. We saw a number of cases where difficult decisions were supported by detailed, thorough and well reasoned review notes.

STRENGTH

The high quality of decision-making and detail of review notes.

Timeliness of review and decision-making

- 3.16 Under the Terrorism Act 2006 suspects in terrorist cases can be detained before charge for an initial period of 48 hours. This period can be extended but it is essential that the prosecution show that it has acted expeditiously. It is therefore imperative that advice is provided by CTD in a timely manner.
- 3.17 We examined the timeliness of review and decision-making in cases where the defendant was on bail, terrorist cases where the defendant was in custody and others submitted for procedural or policy advice. Although there are no agreed timescales with the police for the timeliness of provision of pre-charge advice we found the timeliness of advice to be commendable, bearing in mind the nature of some of the cases and workloads of some of the prosecutors. In none of them did we conclude that there had been any avoidable or unjustifiable delay.

Monitoring quality and timeliness

- 3.18 Managers monitor the timeliness of advice and review through monthly reports which must be submitted by prosecutors in respect of all their cases. The reports set out what action has been taken on the case during the month, including progress on actions from the previous month and the actions planned to progress the case in the next month.
- 3.19 All charging decisions must be authorised by the Head of Division (HOD) or Deputy Head of Division (DHOD) and this is used as a method of monitoring the quality of decision-making. A copy of the review note or MG3 is supplied to the HOD or DHOD and a discussion involving

the case may take place between them and the reviewing lawyer. In some cases the HOD or DHOD will have been involved in the provision of the preliminary advice to the police and will have discussed the case at other stages with the allocated prosecutor. The fact that the advice had been referred to a senior manager by the reviewing lawyer was often recorded on the file. However it was rare to see any acknowledgement or note that the advice was approved. The usual practice is that the approval is confirmed by means of an email message to the reviewer, a copy of which is stored electronically on the case file folder on the division's electronic shared drive (P drive).

- 3.20 We consider that confirmation of the approval should be attached to the file with the advice. The inside of the file jacket is generally used to store copies of the MG3 or review note and other documents such as case summaries for preliminary hearings, any skeleton arguments and any applications for the Attorney General's consent, together with a copy of the consent if granted. This provides an obvious place to store a copy of the approval of the initial decision and provide a complete audit trail of decisions on what the CPS states is the definitive file.

ASPECT FOR IMPROVEMENT

The approval of charging decisions by the Head of Division or Deputy Head of Division should be recorded with the case papers and annexed to the review decision.

Detention of suspects before charge

- 3.21 Because of the need to take urgent action in terrorist cases and the nature and complexity of enquiries that sometimes need to be made, Parliament has given investigators power to detain suspects for questioning before charge for longer periods than in the generality of criminal cases. These powers are strictly controlled.
- 3.22 Following arrest for a terrorism offence a suspect can be detained for 48 hours without charge. However the Terrorism Act 2000, amended by the Terrorism Act 2006, allows the period of detention to be extended on application by the police or CPS to a designated District Judge where continued detention is necessary for the purpose of obtaining relevant evidence. A warrant of further detention may extend the period a further seven days. Further warrants may be granted on application up to a maximum period of 28 days.
- 3.23 There were 12 cases within the file sample in which the suspect(s) had been detained for a period before charge. Not every one required an application for a warrant of further detention. However in each case there was evidence on the file that the pre-charge detention period had been properly monitored and reviewed.
- 3.24 Applications for detention up to 14 days from arrest are generally dealt with by the police (an officer of at least the rank of superintendent), although the need to apply and the circumstances of the detention will be carefully considered by the police and the reviewing lawyer. Applications to extend the period of detention beyond 14 days are made by the CTD lawyer to a High Court Judge. The senior investigator will attend to give evidence if required. Applications are carefully scrutinised by the court. The prosecution must give full explanation as to why further time is required and show that the investigation is proceeding expeditiously.

- 3.25 CTD treat the extended power of detention very carefully. Applications are only made if properly justified and careful consideration is given to the further period required to complete the enquiries. Three cases have required applications to be made to extend detention beyond 14 days, although one involved applications in respect of a large number of suspects.
- 3.26 Written applications to the court are very detailed. They consist of an outline of the case including enquiries already made, details of each accused and the nature of the enquiries to be made.

4 CASE MANAGEMENT

Introduction

- 4.1 In this chapter we consider the way CTD manages cases once suspects have been charged. Although prosecutions are relatively few in number they are conducted according to special procedures and strict timetables for terrorist offences managed by the courts, often with high media coverage. They give rise to a variety of complex evidential and legal issues which are considered in the early stages of investigation, but some cannot be predicted. Continuing case ownership allows the lawyer and caseworker to provide a high level of care and attention to the case throughout its progress and contributes to the impressive level of successful outcomes in some of the most complex casework.

Magistrates' courts

- 4.2 Once a defendant is charged the arrangements for prosecuting the case will depend on the nature of the offence(s) charged. All terrorism cases, regardless of where they originate, are initially listed after charge at the City of Westminster Magistrates' Court unless the Senior District Judge there directs otherwise. If the offences are triable either way the case will continue in the magistrates' court until it is ready to be committed to the Crown Court. All hearings, including any contested committal proceedings, are dealt with by the reviewing lawyer. Proceedings are governed by the Terrorism Case Management Protocol (see paragraphs 4.9-4.12). Cases are committed to a fixed date for a preliminary hearing in accordance with the protocol.
- 4.3 If the offence is indictable only it is sent by the magistrates' court to the Central Criminal Court (the Old Bailey) under the provisions of section 51, Criminal Procedure and Investigations Act 1996 for a preliminary hearing.
- 4.4 Official Secrets Acts cases tend to be dealt with in a similar way to terrorist ones. Other cases, including those involving allegations of racial or religious hatred, are dealt with in the local magistrates' court and committed or sent to the local Crown Court for trial. Hearings in the magistrates' courts are generally covered by the CTD lawyer, or sometimes by a local prosecutor if the hearing is some distance from London and is not likely to be contentious.
- 4.5 It is not unusual for the defence to contest committal proceedings in either way terrorist cases. In these circumstances the prosecution and defence prepare skeleton arguments about their case which are served upon each other and the court. These are helpful in narrowing the issues. CTD lawyers prepare their own skeleton arguments setting out a summary of the case which refers to the evidential and legal issues. Copies are kept on the division's shared drive as examples for others and the standard of most is very good.

Attorney General's consent

- 4.6 Many of the offences prosecuted by the division under terrorism legislation and the Official Secrets Acts, as well as race and religious hate cases, require the consent of the Attorney General to the proceedings. Consent is not required before a suspect can be charged but it must be obtained before a defendant is arraigned in the Crown Court. Consent is not a formality and in some cases the division is under difficult time constraints.

- 4.7 The file sample contained 13 cases in which the consent of the Attorney General was required and had been obtained. The requests were drafted by the reviewing lawyer to a generally high standard with a detailed summary of the case and relevant law. Only one case led to additional enquiries from the Attorney General's Office about some evidential issues which were not covered in the original application.
- 4.8 The Attorney General's Office is positive about the quality of applications for consent and contact with CTD in general. Sometimes there is an early indication from the division that consent will be required in a case which may have some urgency. This will be done initially by telephone but may lead to a meeting to discuss the issues in the case. This helps to speed the process of consent when a formal application is made.

Case management in the Crown Court

Terrorism Case Management Protocol

- 4.9 Terrorist cases in the Crown Court are managed according to the Terrorism Case Management Protocol issued by the President of the Queen's Bench Division. The protocol sets out the criteria for an offence to fall within the definition of a terrorism case and sets out the responsibilities of the prosecution and the courts following charge.
- 4.10 When a terrorism case is sent or committed to the Crown Court, the magistrates' court will normally order an early preliminary hearing. In indictable only cases this should be within 14 days of charge and in committal cases will be as soon after committal as possible. The court will also order the prosecution, three days prior to the preliminary hearing, to serve on each defendant and the regional listing co-ordinator standard documentation which includes a case summary, a timetable for service of the case papers and estimate of length of trial, and an indication of any disclosure issues.
- 4.11 The documentation is drafted by the reviewing lawyer. We were told by members of the judiciary that there were some differences in the standard of case summaries, but they were generally good and very helpful to the court. We saw several examples and were generally impressed with the quality.
- 4.12 In rare instances the defence may take issue that the case falls within the definition of a terrorism case and the prosecution may have to argue that it should remain within the terrorism list. In these circumstances the prosecution reviewing lawyer and defence prepare skeleton arguments for the court. We examined two cases in which this point was raised by the defence. The arguments on both sides were detailed and helpful; in both the defence argument failed.

Compliance with court directions

- 4.13 Following the preliminary hearing a plea and case management hearing (PCMH) will be held, conducted by the trial advocate, where the defendants enter pleas. If they plead not guilty a trial date and venue are set and trial judge nominated. Dates are set for hearing of any legal argument (and service of any skeleton arguments) and for the preparatory hearing. The judge is likely to give directions to both parties to ensure that the case progresses expeditiously. CTD has a good history of complying with directions, or going back to the court to explain any difficulties and request further time.

- 4.14 Preparatory hearings are mandatory in terrorist cases and are used to identify the principal issues in the trial and assist with its management. We examined 21 cases in which a PCMH was held. The prosecution was prepared for each hearing and had complied with directions in all but one. In that case, the trial readiness certificate was served late on the court and the defence.

Director's Case Management Panels

- 4.15 CTD cases are frequently reviewed by the Director's Case Management Panel which scrutinises those handled by the Central Casework divisions. The panel comprises the DPP, HOD and a representative from External Performance and Resources Branch (which has responsibility for monitoring expenditure on counsels' fees). The reviewing lawyer, business manager and/or caseworker also attend. The panel will discuss all issues of the case including the evidence, case management, unused material, compliance with directions and trial readiness. As such they provide an additional means of ensuring that cases progress expeditiously.

The use of experts

- 4.16 The nature of the division's work involves a great deal of expert evidence on a wide variety of topics. These may range from the properties and effects of explosive substances to the ideology behind a terrorist or suspected terrorist group. The close co-operation between the police and CTD in the investigation means that such evidence can be considered at an early stage and experts can be given clear and appropriate instructions.
- 4.17 There were 13 cases in our sample in which expert evidence was considered at the appropriate stage of the investigation. In some cases experts are called in automatically by the police without the need to refer to the CTD lawyer. These are often specialist police experts in any event who assist from the outset. There were nine cases within the file sample in which the reviewing lawyer was involved in the decision to use expert evidence. In each the instructions to the expert were clear and comprehensive.
- 4.18 The prosecution expert's evidence was served on the defence in every case where it was to be relied on at the trial. Similarly the evidence of experts instructed by the defence was served on the prosecution.

Disclosure of unused material

- 4.19 The prosecution is under a duty to disclose to the defence any material obtained in the course of the investigation which does not form part of the prosecution case and which may undermine the prosecution case or assist that of the defence. The nature of CTD's casework means that not only are there sometimes large volumes of evidence to consider, but there are often greater amounts of unused material to look at.
- 4.20 The division handles the disclosure of unused material well. It applies the principles of the Criminal Procedure and Investigations Act 1996 appropriately but will engage in positive discussion with the defence about application of the disclosure tests. Because the investigation process usually involves input and advice from CTD lawyers, issues relating to unused material are considered from the outset and as the case progresses. This enables the prosecution team to prepare a disclosure strategy and identify as early as possible disclosure issues which may affect the case or give rise to considerations of public interest immunity or anonymity for witnesses.

- 4.21 Because the reviewing lawyer retains responsibility for the case throughout its duration they are in a position to keep disclosure under continuing review. The investigation and case building process means that disclosure schedules and material are sent to the division by the police at regular intervals. This is a controlled process managed by the lawyer and police disclosure officer rather than a haphazard piecemeal approach.
- 4.22 Police schedules are generally prepared to a high standard. They often contain detailed descriptions of material and its content. The schedules in 19 out of 22 relevant cases in our file sample were completed to this standard. Those in the remaining three cases were returned to the police for amendment. Schedules are also returned if they contain material which is not relevant or is evidence which will be used in the prosecution.
- 4.23 Lawyers are meticulous in their consideration of unused material and endorse each individual item on the schedule with their decision. This process can involve hundreds of pages of police schedules and thousands of individual items. In a few instances counsel may be instructed as disclosure junior specifically to deal with unused material.
- 4.24 There were 22 cases within the file sample where the duties of disclosure were triggered. The prosecution's duty of initial disclosure was complied with in every case and continuing disclosure was dealt with appropriately in each of 16 relevant ones. This is an impressive performance: at the time of HMCPSI's thematic review of the duties of disclosure of unused material (May 2008), the performance of CPS nationally was 56.6% and 71.3% respectively.
- 4.25 In many instances the security classification or nature of the material means that the lawyer or counsel may spend weeks at police or Security Service premises inspecting material. The Security Service have always employed a co-operative approach in identifying and revealing unused material. In many cases the Security Service are involved in the investigation process at an early stage. The procedures which have evolved have now been formalised within a joint protocol which sets out the duties and responsibilities of each agency.
- 4.26 There is often a controlled phased approach to disclosure at different stages of the investigation and case progress. The lawyer works closely with the police disclosure officer to manage the process. In many cases the process is overseen by the court through preliminary case management hearings.
- 4.27 Schedules and correspondence relating to disclosure are stored in a separate folder within the case file. A disclosure record sheet (DRS) is required to be completed in every case. This is a record of all actions relating to disclosure undertaken on the case. The standard format of a DRS is not always compatible with actions and events in CTD cases. They are completed where appropriate but in other instances a bespoke record which suits the circumstances of the individual case is made.
- 4.28 There is, however, no standard procedure for storing the record of disclosure. In some cases inspectors observed a DRS was stored with the schedules of material in the disclosure folder within the file. In others there was no immediately accessible record. There were 21 relevant cases within the file sample in which a DRS of some kind should have been made. In seven of those cases there was no sheet. In another case the reviewing lawyer had retained a record in electronic form but a hard copy was not on the file.

- 4.29 Unless someone has direct and detailed knowledge of the case the position regarding disclosure is not easily apparent, particularly given the volumes of material and location. The format of the DRS may not be ideal in all cases but CTD should retain and maintain with the case papers a written digest of disclosure decisions and actions.

RECOMMENDATION

Counter Terrorism Division should ensure that the disclosure record sheet or other written record of disclosure decisions and actions is retained on each case file, or is kept securely if necessary.

- 4.30 CTD cases generate a lot of sensitive material. This is material which would attract a claim of public interest immunity (PII) if it fell to be placed before the court, that is, if disclosed it creates a real risk of serious prejudice to an important public interest. It includes details of informants or undercover investigators. The division has well established procedures for storing schedules of sensitive material which are not retained on the main file. The lawyer (or counsel instructed to deal with disclosure) will decide whether material should be inspected. The information itself is retained by the investigator and will be viewed on their premises. There were 17 cases within the file sample which raised issues relating to sensitive material. The division dealt with it appropriately in all but one case, which was not terrorist related.
- 4.31 There are relatively few applications made for material to be withheld on grounds of PII. Inspectors examined one case and the application was dealt with appropriately. We were told by members of the judiciary that such issues are handled correctly in accordance with the law and policy. However due to a misunderstanding no log has been maintained to record the incidence and outcome of PII applications. CPS policy has changed recently requiring all applications to be logged and not just those which are made without notifying the defence. Such applications are rare in any event and none has been made by the division. CTD managers are now instituting a procedure for recording all applications.
- 4.32 In some cases material is held by foreign investigators or intelligence services. This can cause particular difficulties in some jurisdictions which may be reluctant to allow inspection of material, particularly if it is classified. CTD meets these challenges according to the circumstances of individual cases. One particular operation involved arrests in a number of different countries. In order to deal with issues of sensitivity, a protocol was agreed by all jurisdictions which allowed material to be inspected by a lawyer representing the relevant jurisdiction on instructions from the CTD lawyer. The procedure was challenged but upheld by the Court of Appeal.

Effective, ineffective and cracked trials

- 4.33 The CPS aims to reduce the numbers of cracked and ineffective trials¹. Victims and witnesses have to attend court unnecessarily and the conclusion of the case is delayed if it is adjourned. The division has very few cracked or ineffective trials. The following table shows the figures for the calendar years 2007 and 2008.

¹ A cracked trial is one listed for a contest which does not proceed either because the defendant changes his plea to guilty, pleads to an alternative charge or the prosecution offers no evidence. An ineffective trial is one listed for a contest but which is unable to start when scheduled to do so, for one or more of a variety of reasons, and is adjourned.

	2007 calendar year		2008 calendar year	
	Number	%	Number	%
Cracked	1	5.3	2	8.7
Ineffective	0	0	1	4.3
Effective	18	94.7	20	87.0
Total	19	100	23	100

4.34 The one ineffective trial shown in 2008 relates to an Official Secrets Acts case where the first trial was adjourned because the defence were not ready to proceed. There was one cracked trial in our file sample which involved two defendants. One pleaded guilty on the day the trial was due to start and the prosecution offered no evidence against the other. We refer to this case again at paragraph 4.40.

4.35 The good outcomes reflect the high standard of case preparation by CTD and the positive effect of the terrorism case management procedures.

Successful outcomes

4.36 The CPS target for reducing the rate of unsuccessful outcomes in both magistrates' courts and Crown Court cases does not apply to CTD. Nevertheless attrition is discussed in the quarterly performance review with the DPP and Chief Executive in the same way as areas discuss their performance.

4.37 The following tables show CTD's successful outcomes and the number of defendants in each category for 2007 and 2008 in respect of all cases and terrorist related cases only.

	2007 calendar year		2008 calendar year	
	Defendants	%	Defendants	%
Case outcomes in the Crown Court – all cases				
Judge ordered acquittals	0	0	4	4.8
Judge directed acquittals	0	0	1	1.2
Acquittals after trial	5	10.0	13	15.5
Guilty pleas	24	48.0	30	35.7
Convictions after trial	21	42.0	36	42.8
Total	50	100	84	100
Overall conviction rate	-	90.0	-	78.6

	2007 calendar year		2008 calendar year	
	Defendants	%	Defendants	%
Case outcomes in the Crown Court – terrorist related cases				
Judge ordered acquittals	0	0.0	2	2.6
Judge directed acquittals	0	0.0	0	0.0
Acquittals after trial	4	9.1	13	17.1
Guilty pleas	22	50.0	27	35.6
Convictions after trial	18	40.9	34	44.7
Total	44	100	76	100
Overall conviction rate	-	90.9	-	80.3

4.38 It will be seen from these tables that case numbers are small and casework data does not identify trends and aspects for concern. Managers consider issues which arise in individual cases and it is in this way and from the post-trial case conferences that casework lessons are learned.

Discharged committals and discontinuance

4.39 The prosecution team approach, exemplified by the early involvement of the division in the investigation process, means that no cases are discharged at committal because the prosecution are not ready to proceed.

4.40 Discontinued cases include those which are formally discontinued under section 23, Prosecution of Offences Act 1985 and those in which the prosecution offer no evidence before a jury is sworn in at the Crown Court (judge ordered acquittals). In rare cases the judge may order that an indictment should lie on file without requiring the prosecution to offer no evidence. The effect of this is that the prosecution stops and will only proceed in very exceptional circumstances. There were two cases within our file sample which did not proceed in these circumstances. One was discontinued following a decision on a point of law in an appeal case which had raised similar issues. In the other the prosecution decided not to proceed against one defendant when the principal offender pleaded guilty; the judge ordered that the case should lie on file.

Learning lessons from casework

4.41 CTD is compact in terms of size and, currently, its structure and location. This means that lawyers and caseworkers have a good knowledge of work being handled within the division as well as issues that might arise in individual cases, not just their own. If a particular case gives rise to an issue of good practice which can be used in other instances or a problem from which lessons can be learned, staff are generally aware of it before any formal notification.

4.42 In addition post-trial case conferences are always held. These are chaired by the CTD lawyer and attended by the caseworker, counsel, investigators and other agencies involved in the case. A member of the office of the National Co-ordinator of Terrorist Investigations usually attends so that lessons learned can be disseminated to the counter terrorism police. Those attending look at all aspects of the case and identify good practice as well as those matters which might have

been done better. Notes are distributed to each agency and within the division and action points are taken up by the appropriate agency. Issues which have a wider application or relevance are disseminated to other CPS managers or agencies.

- 4.43 Inspectors observed one such conference following a successful high profile Official Secrets Acts prosecution. It was well attended by the agencies involved and well managed by the CTD lawyer. Those at the meeting were keen to look at those aspects of the case which could have been better handled despite the overall success of the prosecution. We consider the case conferences to be a strength but also commend them as good practice which should be adopted by other units in respect of serious and complex cases.

GOOD PRACTICE

Post-trial case conferences highlight good practice in the investigation and prosecution of terrorist offences and analyse issues to determine where lessons can be learned and improvements made.

Custody time limits

- 4.44 Once charged defendants in custody are subject to the normal custody time limit (CTL) regulations. The CTL ceases when the defendant pleads guilty or the court begins to hear evidence. In terrorist cases the time limit ceases at the preparatory hearing.
- 4.45 There have been no CTL failures; they are carefully monitored in accordance with the division's system, which is currently being updated to comply with the new CPS national system. In addition lawyers and caseworkers are very much aware of the time limits in their own cases. Cases can proceed for many months before trial (or preparatory hearing in terrorist cases). The need to make an application to extend the CTL is properly considered in each case and applications are made with proper notice. They are accompanied by detailed chronologies setting out the reasons for the application and the case history in order to show that the prosecution has acted diligently and expeditiously.
- 4.46 The file sample contained 18 cases in which at least one defendant was remanded in custody and in each the CTL was properly monitored. Applications to extend were made with proper notice or anticipated in court if a case was adjourned beyond the date for preparatory hearing or trial.

5 THE CASE AT COURT

Introduction

5.1 CTD managers encourage lawyers to present their own cases in court as much as possible, compatible with their experience and ability. They conduct all preliminary hearings and some intermediate hearings. They have also acted as juniors in contested cases as well as presenting pleas and sentencing hearings. We observed a number of cases which were prosecuted by counsel instructed by CTD as well as in-house staff. The quality of advocacy was invariably of a high standard.

Choice of advocate

Selection and use of counsel

5.2 Counsel is not generally instructed until just before the PCMH or sometimes the preliminary hearing if the case is unusually complex. However on some occasions counsel is retained at an earlier stage and consulted about the strategy for prosecution of the case.

5.3 The division is keen to ensure that counsel has the right experience for the type of case being prosecuted. The prosecution of terrorist and Official Secrets Acts cases is one of the roles of Treasury Counsel, who are based at the Old Bailey. They are not used in every case, however, and CTD instructs other counsel who have experience of the types of cases it deals with. As the numbers of prosecutions increase and more cases are being dealt with outside London so the pool of counsel is becoming larger, although any instructed must have already demonstrated that they have the right skills and experience to undertake the particular type of case. In this connection the division will seek the views of other senior CPS lawyers and senior counsel about who has the required skills to act as junior counsel.

5.4 The selection of counsel is always approved by the HOD or DHOD and, in high profile cases, the selection is discussed with the DPP. Some cases require counsel to be security cleared, in which event Treasury Counsel will be instructed. Any counsel newly instructed will be led by experienced senior counsel.

Use of crown advocates

5.5 CTD has adopted and modified the Central Casework divisions' advocacy strategy so that it represents the division's aims and the nature of its casework. The strategy encourages the use of higher court advocates (HCAs) for hearings in the preliminary stages of a case in the Crown Court and for conducting trials appropriate to the experience of the advocate. The DHOD has assumed responsibility for delivery of the strategy. CTD has 16 crown advocates of whom nine are higher court advocates.

5.6 The experience of CTD lawyers varies - most are from a CPS background while others are recruited from the private Bar and have experience of dealing with serious casework. The quality of advocacy varies but is generally well regarded. Lawyers are encouraged to act as advocates in their own cases according to their experience, ability and availability. The reviewing lawyer deals with the preliminary hearing in their own cases. Any subsequent hearing during the preliminary stages of the case will be dealt with by an HCA, wherever possible. The HOD or DHOD will consider at an early stage whether the case is suitable for HCA involvement and to what extent.

- 5.7 PCMHs are dealt with by the trial advocate, who may be the CTD lawyer. HCAs have acted as junior counsel in some trials and in a recent case leading and junior counsel were both CTD lawyers. However managers are careful to ensure that any in-house advocate acting as junior should have the necessary skills and experience to be able to take over the case in the absence of leading counsel. The division is keen to develop the experience of HCAs and in-house and external training has been provided.

Advocacy monitoring

- 5.8 In-house advocates are monitored on a formal basis for development purposes. The HOD and DHOD receive feedback on performance from a number of sources including counsel and judges. Although there are some variations in the standard of individual advocates, the general picture is a positive one.
- 5.9 Until recently the performance of counsel was not formally monitored; they are chosen because of their already proven skills. Caseworkers report back to the HOD or DHOD if the case raises any issues over counsel's performance. The division has now introduced a more formal system of monitoring which requires caseworkers to complete an assessment form.

Instructions to counsel

- 5.10 In most cases the CPS uses a template package for instructions to counsel which allows the caseworker or lawyer to select standard paragraphs on issues relevant to the circumstances. These include disclosure, acceptability of pleas and the custody status of the defendant. The package also allows the use of freetext to give instructions on the specifics of the case.
- 5.11 The template is not generally of practical assistance in CTD cases, although relevant standard paragraphs are used. In most cases there will already have been conferences with counsel and the police about the prosecution strategy and other issues before counsel is formally instructed. Mostly instructions are in a format which reflects the stage proceedings have reached and the areas which have been discussed. In this way they are comprehensive and relevant. The standard is monitored by the B2 caseworker manager. We looked at the instructions to counsel in 16 cases; in each the instructions were comprehensive, detailed and relevant to the specific case issues. There were two in which it was appropriate to give guidance on acceptable pleas. The issue was not dealt with in one case involving offences of a different nature and in which a plea of guilty to one offence was accepted.

Attendance at court by the caseworker

- 5.12 Hearings at the Crown Court are covered by the allocated caseworker whose duties include providing assistance to counsel. The reviewing lawyer will try to attend court hearings at significant stages or if their assistance is of particular benefit.
- 5.13 In some cases caseworkers are away from their office for periods of some months. The buddy system ensures that other casework receives attention during the period of absence and CTD managers take steps to minimise any personal problems this may cause to individuals. Sometimes a colleague may be deployed to take over for a short period. Managers will also review working arrangements for those caseworkers for whom long absences cause difficulty in any event.
- 5.14 Caseworkers' other duties include liaising with the police and witnesses and dealing with administrative tasks connected with case preparation such as the photocopying of witness statements and exhibits. In those courts in which CTD cases are regularly prosecuted facilities

have generally been installed in accommodation which is set aside for the use of CPS, if not CTD. Photocopying paper and printer ink cartridges are supplied by the division because the volumes of documents can be huge. The position is more difficult in other courts although arrangements made well in advance with the court and with the local CPS office usually minimise problems.

- 5.15 Because of the large volumes of documents involved case papers are usually sent to the court in advance of the trial. These are generally taken by courier and CTD has established appropriate arrangements with some courts for the receipt and secure storage of these documents. In others, however, no proper arrangements exist. In November 2008 following the loss of some papers at court senior managers issued guidance to staff on the procedure for service of papers on the courts, including those with which formal arrangements have not been established. Nevertheless there has been one more recent incident of documents left in non-secure locations awaiting collection by the caseworker. Although the documents are copies of jury bundles or evidence that is to be used in the trial and as such will be in the public domain, their sensitivity and the work and cost involved in replacement if they are lost justifies more definite and secure arrangements being made. This is likely to be an increasing problem as more cases are tried in local courts.

RECOMMENDATION

Counter Terrorism Division should ensure that whenever documents are forwarded to court in advance of trial there are appropriate arrangements for their receipt, handling and secure storage.

Presentation of evidence

- 5.16 The evidence gathered in CTD investigations may fall into several different categories as follows:
- search, probe and surveillance;
 - phone, email and cell site analysis;
 - computer, including internet search;
 - documentary, including statements, interviews and exhibits;
 - forensic, including fingerprints;
 - foreign, including intercept evidence;
 - extreme material;
 - expert evidence; and
 - financial evidence.
- 5.17 The prosecution case is prepared so that each of these categories comprises a different section of the evidence bundle and is thus easy to identify and locate. Prior to the preliminary hearing the reviewing lawyer and police agree the categories of evidence and a timeframe for service. This is then incorporated into the Terrorism Case Management Protocol timetable which is served on the court and defence. The court then sets the timetable for service at the preliminary hearing.
- 5.18 The reviewing lawyer works closely with counsel in relation to how the case is presented to the jury. Those CTD lawyers who have been juniors have been involved in providing instructions in relation to the electronic presentation of evidence drafting schedules of searches and surveillance, drafting admissions, editing interviews, preparing the jury bundles etc.

- 5.19 The reviewing lawyer is also involved in discussions on whether witnesses should be called or their statements read to the court as agreed evidence and whether witnesses from abroad should be called to give live evidence in UK or from their own country via television link. Every case is different and depends on its own particular facts.

Electronic presentation of evidence

- 5.20 Terrorism trials frequently last up to six months and can be even longer, involving complex legal issues and technical evidence. It is important for the prosecution and the defendant that the case is presented to the jury in a way which can be easily understood throughout its duration. One way in which this is done is by presenting some of the evidence in electronic format both during the opening of the trial and in presenting the evidence.
- 5.21 The electronic presentation of evidence translates witnesses' evidence into computer generated images. It simplifies aspects of the case for the jury and can significantly reduce trial time. It has been used on a number of occasions in CTD cases to present, for example, video surveillance and audio probe evidence and telephone and cell site analysis as well as witness testimony. It can show the movement of defendants and their conversations. The content of electronically presented evidence will depend on the circumstances of the individual case and will be the subject of consultation between CTD, the investigator and counsel. The use of such evidence has been commended by the judiciary and other organisations in the criminal justice system. It is often used by the defence in trials to reinforce parts of the defence case.
- 5.22 The electronic presentation of evidence is, however, very expensive. It is usually arranged through tender by private companies and covers the provision of the hardware and the installation in the court. It is usually paid for by the prosecution whose duty it is, of course, to present the case. Where, on occasion, the defence have indicated that they wish to present evidence electronically the Legal Services Commission have contributed to the cost. There have been some talks between CTD and HM Courts Service about the sharing of the cost, as it can save court time, but these are unlikely to progress.
- 5.23 Electronically presented evidence has been used in trials in CPS areas in some complex and high profile cases. There are clearly implications in respect of its cost but it could be considered and used more often by other areas and units in the CPS, particularly the CPS group complex casework units. We consider the division's use of electronically presented evidence to be good practice.

GOOD PRACTICE

CounterTerrorism Division's use of electronically presented evidence to explain issues in the trial to the court and jury and to save court time.

- 5.24 In cases that have a trial estimate of over eight weeks CTD copy the full prosecution papers in electronic format and serve them on the court and defence. In some cases this can represent in excess of 10,000 pages of statements and exhibits. Exhibits are usually copied in an electronic format. The index and exhibits reference are hyperlinked to the actual statement or exhibit. The scanned papers are easily searchable and the format allows the court or the defence to edit the material for their own purposes. This facility is very useful to and is much appreciated by the recipients.

6 SPECIALIST CASEWORK

6.1 In this chapter we discuss the different types of casework and associated specialist liaison which is unique to CTD. All of the division's casework is specialist in nature requiring different skills and expertise in complex and rapidly developing areas of criminal law. Whilst the majority of the workload relates to offences of terrorism, the skills and experience which CTD lawyers acquire in this field equip them to deal with other aspects of casework often associated with terrorism offences.

Terrorism

6.2 The majority of cases dealt with by CTD are terrorist related. The table at paragraph 4.37 shows that 44 out of 50 cases (88%) in 2007 were, and the figure for 2008 was 76 out of 84 (90.5%). We have dealt in detail in chapter 4 of this report with the Terrorism Case Management Protocol under which terrorist cases are managed by the Crown Court. In most other respects the approach to handling terrorist cases is the same as that for the division's other casework.

6.3 However CTD's involvement in managing control orders is exclusive to terrorism. There are a number of sensitive and controversial issues surrounding control orders and the role of the division is crucial in ensuring they are dealt with in accordance with the enabling legislation.

Control orders

6.4 The Prevention of Terrorism Act 2005 introduced a system of control orders. The purpose of the Act is to impose obligations on individuals suspected of being involved in terrorist related activity. Control orders are preventive orders designed to restrict or prevent further involvement in terrorist activity.

6.5 The control order legislation must be renewed annually. Before this takes place the operation of the Act is independently reviewed and a report prepared for the Secretary of State. Currently this is undertaken by Lord Carlile of Berriew QC. His detailed reports are available online. The 2009 report was published on 3 February.

6.6 CTD has three responsibilities in respect of this area of law:

- it contributes to and informs government policy;
- prosecutes breaches of orders; and
- assists in the review of orders.

Contribution to policy

6.7 The first responsibility is to contribute to the ongoing debate into the legislation. The division provides a response to Lord Carlile's annual report where it is deemed appropriate. It also works closely with CPS Policy Directorate and the Home Office in contributing to the debate about renewal of the legislation at the draft report stage, looking specifically at human rights issues and other prosecution policy issues. Briefings for ministers are prepared.

Prosecution of breaches

6.8 Section 9, Prevention of Terrorism Act 2005 makes it an offence to breach an obligation imposed by a control order without reasonable excuse. Responsibility for prosecuting breaches lies with CTD. They are prosecuted in accordance with the Code for Crown Prosecutors (the Code) and the division's lawyers exercise a wide discretion when applying the public interest test. Some breaches which are of minor significance are not prosecuted. Examples include late reporting by only a few minutes, dealing with family emergencies or problems with the monitoring equipment.

- 6.9 During the last 12 months there have been three cases where criminal breach proceedings have been brought. Two of these are bailed awaiting judgments relating to appeals. The third has a trial date in March 2009. One individual who was not subjected to a control order was prosecuted by the division, convicted, and sentenced to three-and-a-half years imprisonment for assisting an individual to breach their control order.

Review of orders

- 6.10 It has long been a fundamental tenet of English law and is now incorporated in human rights legislation that individuals should not be readily and unnecessarily deprived of their liberty. This concern is also reinforced in the basic principles of terrorism legislation. Individuals suspected of terrorism offences should be prosecuted and convicted wherever possible rather than made subject to executive action restricting their liberty.
- 6.11 Before a control order can be made or applied for the Secretary of State must consult the chief constable of the police force for the relevant area to ensure that there is insufficient evidence against the suspect to provide a realistic prospect of conviction for a criminal offence. The chief constable must consult the DPP on this aspect. If a control order is made the chief constable has an obligation to keep under review the possibility of an investigation and criminal proceedings and should consult the prosecutor to the extent that he considers it appropriate to do so.
- 6.12 CTD undertakes this responsibility on behalf of the DPP. In every case a file is prepared by the investigator and examined along with any primary evidence. A detailed and fully documented review is undertaken by an experienced and security cleared lawyer. Issues of national security sometimes require this work to be done immediately.
- 6.13 If the CTD lawyer, applying the Code, decides there is insufficient evidence for a prosecution the chief constable is notified of this and the reasons for the decision. The chief constable then notifies the Secretary of State of the decision. To date none of the reviews has resulted in advice that there is sufficient evidence to prosecute for any offence.

Violent extremism including incitement offences

- 6.14 In 2006 the then Attorney General convened a working group to develop a cross-governmental strategy to tackle violent extremism. This was fully supported by the CTD with the HOD playing a central role. Violent extremism is not an exact term and may be defined as the demonstration of unacceptable behaviour by using any means or medium to express views which:
- foment, justify or glorify terrorist violence in furtherance of particular beliefs;
 - seek to provoke others to terrorist acts;
 - foment other serious criminal activity or seek to provoke others to serious criminal acts; or
 - foster hatred which might lead to inter-community violence in the UK.

Such conduct can give rise to a number of offences which include, for example, incitement to racial hatred.

- 6.15 In April 2007 a violent extremism co-ordinator was appointed within the division to provide direction nationally and to support colleagues, and is also the CPS national lead on violent extremism. One of the roles is to update a log of all violent extremism cases referred to CTD. This log shows that in 2008 there were 17 cases where advice was given involving 34 potential defendants. They included soliciting murder and inciting racial hatred and covered a wide spectrum of extremist opinions.

- 6.16 The co-ordinator plays an important role in ensuring that the case lawyers are fully aware of the internal policy and procedures pertaining to violent extremism. If required they will assist the lawyer with preparation of a case plan. When a review is completed it is checked by the co-ordinator to ensure that guidance and policy is followed before being passed to the DHOD to authorise any charge or agree that no further action is appropriate.
- 6.17 The co-ordinator sometimes gives advice on the legality of particular publications being circulated by those holding extreme views. The decision, usually taken in conjunction with the HOD or DHOD, is circulated throughout CTD and, if appropriate, this guidance is disseminated to relevant police officers. This ensures a swift and consistent response should there be a subsequent request for advice.
- 6.18 Seven CPS area champions, who are drawn from the larger city units, have been trained and liaise with the co-ordinator. It is anticipated that some of the less serious cases may, in the future, be dealt with locally. This has not happened so far but when it does the details will be recorded on the log. Lawyers within CTD and police officers have also attended training.
- 6.19 Two trials relating to offences of race hate extremism were observed during the period of the inspection; both resulted in convictions. One was a case of harassment of a mixed race family and possession of materials for terrorist purposes. The second concerned the publication and distribution of anti-semitic material. The cases were soundly prepared and successfully prosecuted despite numerous legal and jurisdictional points being raised throughout the trials. In both trials leading and junior counsel presented the case to a high standard and showed a thorough grasp of the issues. They were positive about the support they had received from the reviewing lawyer.

War crimes, genocide, crimes against humanity, torture or serious violations of international law

- 6.20 The United Kingdom has recognised its responsibilities in ensuring that war criminals or those who commit genocide, crimes against humanity, torture or other serious violations of international law should be brought to justice whenever and wherever their crimes were committed. The responsibility for considering such offences is CTD's. These cases are complex and require an in-depth knowledge of international as well as domestic law. There may be significant public interest considerations if the evidential test is met. The decisions will inevitably attract widespread media attention and need to be handled with great sensitivity. We are satisfied that they are.
- 6.21 There are very few such cases; most are referred directly from the Crimes Against Humanity Unit of the Metropolitan Police Counter Terrorism Command. A protocol between the two agencies was agreed in 2007. This allows CTD to give preliminary advice on jurisdiction and potential immunity issues in advance of a full enquiry. Upon receipt of the advice the police can then consider whether a comprehensive investigation should be launched.
- 6.22 Five files in this category were examined during the inspection. These included two very high profile cases involving deaths and which gave rise to very serious and complex international and diplomatic issues.
- 6.23 In each of the cases there was evidence of exhaustive research and exceptional attention to detail, with the reviewing lawyer exploring every avenue to obtain potential evidence. In one the lawyer and Head of Division travelled to another country to try to secure evidence. All five cases were overseen by the HOD, who clearly played an active part in the decision-making process and supported the lawyers throughout.

Offences falling under the Official Secrets Acts

- 6.24 Offences contrary to the Official Secrets Acts of 1911, 1920 and 1989 are often complex, highly sensitive and of significant interest to the media. They include cases where information has been unlawfully disclosed as well as more traditional allegations of espionage. These potential prosecutions are dealt with by experienced lawyers with a high security clearance.
- 6.25 Safeguarding access to often very secret material is a priority. Inappropriate disclosure could result in potentially life threatening situations. Undertakings from defence solicitors and the courts are sometimes required as the CPS has to be satisfied that classified information is protected at all times. It is apparent that care is taken in respect of storage, copying and access to these documents. Some particularly sensitive files are only seen by two lawyers, one of whom would be the HOD or DHOD.
- 6.26 A lead prosecutor has been appointed who has particular expertise in dealing with some of the unusual features of these offences. Applications for parts of the proceedings to be held in camera (where the public are excluded) to protect national security are not uncommon. Ministerial certificates may need to be obtained. Frequently there are issues relating to media handling and press restrictions sometimes giving rise to potential contempt of court considerations.
- 6.27 Official Secrets Acts cases often involve different perceptions between government departments and CTD about the public interest aspect in individual prosecutions. These cannot be ignored but it is essential that the division maintains its position as an independent prosecuting authority. It is clear that it has been independent when considering potential prosecutions. However it is also important to maintain proper channels of communication between the relevant departments and the division to ensure investigations are conducted in as open an environment as possible, consistent with the overall public interest.
- 6.28 Following a recent unsuccessful prosecution it was determined that an inter-governmental protocol on the handling of cases relating to employees covered by the Official Secrets Acts would assist the conduct of future potential prosecutions. This awaits finalisation.
- 6.29 The lead prosecutor has also contributed the draft version of a second protocol which deals with the way in which minor offences are reported by the Security Service and other agencies. It aims to ensure that there is a consistent approach to investigation and prosecution. This also awaits finalisation.
- 6.30 Both protocols will assist the work of the division in handling Official Secrets Acts cases but divisional managers have only limited influence in securing their completion. All parties need to work together to ensure that the protocols can be finalised and implemented.
- 6.31 There was one case in our file sample which related to a prosecution under the Acts and we observed the post-trial case conference in another (see paragraph 4.43).
- 6.32 Both cases raised difficult issues. The first was relatively straightforward on the facts and evidence, but there were sensitive issues of public interest in determining whether a prosecution was merited, which presented a conflict between the personal circumstances of the defendant and the wider public interest. The decision to prosecute was well thought out and the reasons for prosecution set out in detail in the lawyer's review note.

6.33 The second case related to acts of espionage. It was complex, requiring liaison with other government departments and relying on evidence collected from abroad. The case was successfully concluded although it took two years. The delays were not due to CTD but they brought to the prosecution added complications which were dealt with well by the reviewing lawyer. The initial review was thorough and the reviewer was required to play a proactive and demanding role throughout the proceedings, supported by senior managers when this was necessary.

European arrest warrants, extradition procedures and evidence from abroad

6.34 The nature of the division's work requires co-operation from law enforcement partners worldwide. Enquiries have to be undertaken in jurisdictions which also differ in their constitutional make-up to that of England and Wales. The procedure for seeking assistance and/or the gathering of evidence can therefore vary from one country to another. Careful liaison between jurisdictions is necessary to secure evidence which can then be used fairly in the English courts. Lawyers are therefore required to have additional skills to handle complex international jurisdictional issues, sometimes whilst under intense media scrutiny. As a consequence CTD have built up a wealth of knowledge in dealing appropriately with foreign agencies. These cases are rarely straightforward and may involve liaison through diplomatic channels.

6.35 Many of the cases prosecuted by CTD involve obtaining evidence or examining potentially disclosable materials from other countries. Frequently the files examined during the inspection contained several letters of request to obtain assistance, sometimes to diverse places across the world. There was evidence of lawyers preparing such documents at short notice and working long hours to complete them.

6.36 CTD lawyers have frequently travelled abroad to assist police in the gathering of evidence and to examine secret material which may contain disclosure issues. It is often crucial to have direct prosecutor-to-prosecutor contact to facilitate the investigative process and to reassure the authorities about disclosure rules or to facilitate the inspection of unused material.

7 THE SERVICE TO VICTIMS AND WITNESSES

Introduction

7.1 Since the 2002 report on Casework Directorate a number of changes have been introduced to the criminal justice system in order to deliver the government's commitment to improve the service to victim and witnesses. These were contained in a White Paper Justice for All. The CPS strategy for 2008-11 aims to deliver excellent standards of victim and witness care. In its current business plan CTD has specifically adopted a number of key business priorities including improving their support for victims and witnesses, particularly those who may be vulnerable or intimidated. In order to achieve this the division has committed itself to further training of prosecutors on pre-trial witness interviews and continued monitoring to ensure compliance with its obligations to victims prescribed by the Direct Communication with Victims (DCV) initiative.

No Witness No Justice

7.2 The No Witness No Justice (NWNJ) scheme was introduced in 2003-04 and is based on two main principles: a needs assessment approach for all witnesses (in cases where there is a not guilty plea) and the introduction of dedicated witness care units (WCUs). The initiative sets out 14 minimum requirements to support witnesses through the criminal justice process, underpinned by a number of primary and secondary measures against which performance should be monitored.

7.3 The Central Casework divisions set up their own WCU in 2006 to undertake witness care in respect of civilian witnesses for Special Crime, Counter Terrorism and Organised Crime. Caseworkers have retained the responsibility for warning police witnesses. The unit is based in the London office and has four CPS staff, who are part of the shared Secretariat. They are responsible for assessing the needs of witnesses and provide information on the progress of the case directly to the victim or their family, or via the police family liaison officer where there has been a fatality, and notifying families of the outcome of each court hearing and the next hearing date.

7.4 This arrangement means that the witness care officers (WCOs) undertake other unrelated work as well as witness care. At times this has led to some difficulties over which work should take precedence and there have been occasions when the WCU have been unable to take on a case due to pressure of other work. In addition although the WCOs themselves show a high level of commitment to their job their training has been limited. Our report on the inspection of the Special Crime Division recognises the awareness of senior managers of the need to develop the potential of the WCOs. This is already being attended to in some respects by 'shadowing' arrangements at court with Witness Service volunteers and additional training.

7.5 The WCOs are aware of the timescales and their obligations under the Victims' Code and NWNJ. The WCU does not have access to the CPS national witness management system (WMS) and therefore has had to develop its own systems. This, coupled with the lack of data that can be generated from the electronic case management system (xCMS), means that it is very difficult for CTD to undertake any performance monitoring of compliance with the Victims' Code or primary and secondary measures. Although it is accepted that the number of CTD trials involving civilian witnesses is small there is a need for analysis of performance across the three divisions.

RECOMMENDATION

CounterTerrorism Division, in conjunction with the Special Crime and Organised Crime Divisions, should:

- set out definitive guidelines as to the role and responsibilities of the witness care unit and ensure all staff are familiar with them;
 - ensure all witness care officers receive appropriate training as soon as practicable to enable them to perform their functions effectively; and
 - develop systems to enable the divisions to undertake analysis of No Witness No Justice measures in compliance with the Victims' Code.
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Responsibility for witness care

- 7.6 As will be apparent from an analysis of the division's casework only a small proportion of its 'live' prosecutions concern offences where there are identifiable victims or eye witnesses. For example, many police investigations result in the arrest of suspects believed to be involved in the planning or preparation of acts of terrorism or the encouragement of others to engage in such activity. In cases where terrorist acts have been perpetrated the majority of witnesses will not be ordinary members of the public but will be drawn from police ranks or other professional disciplines such as emergency care, forensic investigation or expert scientific opinion.
- 7.7 The Victims' Code, issued under the Domestic Violence, Crime and Victims Act 2004, came into force on 1 April 2006. It sets out the minimum level of service to be provided to all victims of criminal conduct in order to support them through the criminal justice process. One of the aims is to provide a joined up multi-agency approach to victim care. It clarifies who is responsible for keeping victims or victims' families informed of the progress in the case at each stage of the proceedings and sets out the appropriate timescales within which communication should take place. The families of victims who have died as a result of criminal conduct are also to be provided with an enhanced level of support.
- 7.8 In terrorism cases, for reasons of historical practice as well as practical convenience, the police have retained the major role in contacting witnesses, assessing their needs should they be required to give evidence at court and keeping them informed as to the progress and outcome of the case. The Metropolitan Police CounterTerrorism Command and the regional CounterTerrorism Units have trained officers who can provide the specialist witness care that is often required in CTD cases. The division needs to ensure that it maintains a high profile in dealing with all witnesses irrespective of their background. It would be prudent to consider carefully how best to share the initiative in witness care with the police.
- 7.9 The police have continued to provide a high level of support through their witness liaison officers appointed on a case-by-case basis. The police have expressed satisfaction with this approach although they have also praised the availability of CTD staff to discuss witness queries when required.
- 7.10 It is understandable that witnesses may regard the police as the primary source of information about their case even after the commencement of a prosecution. In turn CTD staff at court find that their traditional witness care responsibilities are often discharged by police staff, so that their own skills are underdeveloped. This can pose a problem in those few cases where the police do not deliver their customary service either because a local non-specialist force has investigated the case or the trial is heard at a remote court location.

- 7.11 We observed one case where witnesses were not well served by any of the support services and where more should have been done to keep them informed of the progress of the case. In the absence of clear responsibilities this should have been undertaken by CTD staff. The division has provided written guidance to its staff and delivered a number of seminars, but more is needed to ensure that caseworkers engage directly with witnesses at court by providing them with information about the case and assisting with expenses and other administrative issues if this responsibility is to be fully discharged.
- 7.12 There are positive aspects to CTD's care of witnesses at court. It has helped to pioneer the practice of setting up a 'virtual courtroom' so that families of victims and survivors of the London bombings of 7 July 2005 could observe, through a remote location via television link, the trial of those accused of being involved in the planning and preparation of the attacks. This was welcomed by support groups representing those victims and witnesses.

Victim and witness initiatives

Contact with the victim or victim's family

- 7.13 CTD differs from most CPS areas in that the numbers of identifiable victims in their cases are few. Nonetheless the division has taken its responsibilities seriously on those rare occasions where communication directly with victims or their families are appropriate.
- 7.14 Under the DCV initiative the CPS should write to victims where a charge is dropped or substantially altered to explain the decision, and in certain categories of cases the prosecutor will also offer a meeting. In those involving a death the scheme extends to the family of the victim. There were no cases within our file sample which required a letter under the DCV initiative.
- 7.15 The Victims' Code deals with those cases in which the CPS decides at the pre-charge stage, in the absence of a face-to-face discussion with the investigating officer, that there is insufficient evidence to prosecute for any criminal offence. In these circumstances the CPS must notify the victim or victim's family of the decision and offer a meeting where a death is involved. The Victim Focus Scheme came into force on 1 October 2007. Under this the CPS will meet victims' families in homicide cases, usually after charge, to explain the court process and role of the prosecution. CTD has embraced both initiatives.
- 7.16 There were three cases in the file sample in which the victim or victim's family were notified, in accordance with the above schemes, of the CTD charging decision. Two of these involved deaths and both were the subject of intense international media interest. In one the decision to prosecute required the extradition of a foreign national and it was made clear that the law of the country concerned would not permit this. In the other case the decision was that there was insufficient evidence to proceed. In each letters were sent to the immediate family of the victim. The letters were carefully and considerately drafted, showing sympathy and understanding.

Special measures

- 7.17 In certain circumstances the prosecution (and defence) can apply to the court for special measures to assist witnesses in giving their evidence. These range from the provision of screens in court to shield the witness to evidence being given by live television link. We examined five cases in which applications had been made by prosecutors to allow witnesses to benefit from special measures to assist them to give their evidence at trial. In all these cases the applications were appropriate and had been made in good time.

Anonymity of witnesses

- 7.18 The statutory framework set out in the Criminal Evidence (Witness Anonymity) Act 2008 has recently replaced the former common law provisions enabling witnesses to testify without revealing their identities. It is likely that CTD will need to apply this legislation more than other CPS areas in view of its caseload of terrorism offences and breaches of the Official Secrets Acts. Many of the issues which led to the demise of the common law provisions do not apply in terrorism cases. Most witnesses requiring anonymity are undercover investigators and issues as to their character and possible motives for giving evidence do not arise.
- 7.19 We were able to confirm that all CTD prosecutors had been provided with the guidance issued both by the Attorney General and DPP on this issue. Indeed a recent case brought under the Official Secrets Acts had generated a significant number of statutory applications for anonymity to protect service personnel. These had proved successful enabling the evidence to be adduced at the trial without making public the identity of the witnesses.

Pre-trial interviews with witnesses

- 7.20 Another recent procedural change of great significance to the CPS has been the introduction of a scheme enabling prosecutors to speak to witnesses during the investigation of a criminal offence for the purpose of clarifying their evidence or assessing its reliability. This is known as the Pre-Trial Witness Interviews scheme. The division has embraced the potential benefits of the scheme for its casework and ensured that two of its lawyers have been trained to undertake such interviews. There are plans to train a further two lawyers during the forthcoming business year.
- 7.21 CTD has used the procedure in one case which involved a witness who had made several statements that had led to concerns about reliability. The interview showed the witness's evidence to be compelling and articulate.

8 MANAGING RESOURCES

Management of financial resources

- 8.1 The CTD budget is allocated at the beginning of the business year and is based on historical and predicted spend. Unlike most CPS areas and units the budget includes high cost and very high cost cases. The non-ring fenced administration cost (NRFAC) budget has more than doubled from 2006-07 (£1.5m) to 2008-09 (£3.6m) although the reprofiled actual spend for 2008-09 is predicted to be substantially lower (£2.8m). Prosecution costs estimates (which cover counsels' fees and other expenses) for cases and subsequent trials have become more sophisticated within the division, but there is still an element of unpredictability about the costs of its casework. Prosecution costs can double if a case demands a retrial.
- 8.2 Because the potential for unpredictable costs exists CTD have developed good and accurate systems to assess the likely cost of cases. Budgets are reprofiled every month and where it is predicted that allocated costs will not meet demand, a business case requesting further funding is prepared to the appropriate CPS Headquarters budget holder.

CTD budget and staffing	2006-07	2007-08	2008-09 (predicted)
NRFAC budget allocated at the beginning of year	£1,494,156	£2,136,039	£3,595,995
Uplift/reprofiling of budget	£1,709,156	£2,586,039	£3,545,995
Actual spend	£1,720,959	£2,529,566	£2,872,129
Prosecution costs	£5.8m	£5.5m	£6.0m
Number of staff (total)	27.4 (as at 1 January 2007)	42.8 (as at 1 April 2008)	59.9
Cost of electronic presentation of evidence	£696,759	£1,476,863 (as at 6 February 2009)	£1.8m

- 8.3 The business and performance manager produces a monthly finance and administration report which is considered by the management team at their monthly meetings. The report provides information about actual fees expenditure and invoices processed as well as detailing estimated future counsel fees and electronically produced evidence costs.
- 8.4 Because of the high profile nature of CTD casework and the associated high cost of bringing defendants to trial, casework costs are scrutinised at the highest levels within the CPS. The Head of Division discusses with the business and performance manager the status of fees, costs and resources within the division and asks for updates regularly. Actions are raised at management meetings and updated at the next meeting if not completed immediately. Details are also forwarded to the DPP, Chief Executive and Chief Operating Officer.

- 8.5 The resource implications of certain cases are also discussed at the Director's Case Management Panel where the HOD is called to account for effective use of resources, the appointment of appropriate counsel and of ensuring proper casework handling. In addition CTD, along with the two other casework divisions, operate a local case management panel where the HODs and the Senior Business Manager scrutinise costs and fees, and effective timely progression, as well as other casework issues.
- 8.6 It was apparent from managers, lawyers and other staff that value for money and the effective use of resources is clearly embedded in CTD culture, despite the nature of the casework and the often very high costs involved in bringing cases to justice. The selection of counsel was taken very carefully and has to be approved by the HOD or DHOD. In high profile cases the HOD also discusses CTD's preferred choice of counsel with the DPP before they are instructed. Estimates of costs and requests by counsel to be assisted by junior counsel are also carefully judged and wherever practicable CTD lawyers perform the role of junior or give such assistance as necessary to counsel that the need for a junior can be avoided.

Role of higher court advocates

- 8.7 CTD do not have a target for counsel fees saved in respect of the use of higher court advocates. The use of HCAs (dealt with at paragraphs 5.5-5.7) needs to be carefully balanced between the savings likely to be achieved, ensuring cases are handled by those with the requisite skills and expertise, the lawyer maintaining and developing advocacy skills, and the business need of lawyers being available to progress the case or work on other investigations. Savings that are made have not been consistently captured; therefore the savings made are under-estimated. No records of HCA savings were kept until the 2008-09 period.

Management of human resources

- 8.8 The allocation of work to lawyers and caseworkers is made through the DHOD and casework manager and is discussed in some detail in paragraphs 3.6-3.8. The national CPS staff survey showed that 63% of staff were comfortable with the amount of workload pressure placed upon them compared to the CPS average of 41%. The assessment of individual workload and level of experience for case allocation is not scientific but is made through judgment and collaboration with staff. This works well for CTD and workloads appear to be balanced. The system of buddying lawyers together to share work, learn and develop skills is also effective. A more systematic, transparent method of allocation should be developed over time to assure staff that their workloads are balanced, albeit personal judgment will be an important element of this assessment.
- 8.9 Record sheets detailing how much time is spent by staff on particular cases have recently been introduced. The purpose is to calculate how much a particular case is costing and this will enable the division, over time, to assess more accurately the cost and amount of resources needed for a case when it is first received. These costs will be available for the court should they require them. This costing exercise also informs the Office of Criminal Justice Reform who are collating the cost of terrorism cases across the entire criminal justice system.
- 8.10 The onus for recording the time taken on a particular case rests with the individual, who may be working on several cases during the day. Although staff are aware of the reasons for filling out the time sheets, they do not do so systematically. Spot checks are made by managers but there is no system in place to check whether individuals have filled out time sheets accurately. While management reinforce the need to keep time sheets up-to-date it is doubtful, without a more systematic approach being developed, that costs will be accurate.

- 8.11 The number of staff will have increased from the full-time equivalent of 27.4 in 2006-07 to 52.9 (excluding the Secretariat) when the Leeds office becomes fully staffed. The NRFAC budget has more than doubled in this time. Although the number of cases dealt with by CTD has also increased, from 100 in 2006-07 to 119 in 2008-09, planning and reviewing the numbers of staff needed to meet CTD demands remains problematic. This is due to the unpredictability and complexity of the casework the division undertakes. The activity based costing model is inappropriate to calculate staffing levels as the volume of caseload is too low to be a determining factor.
- 8.12 Contingency, succession planning and staffing levels are therefore difficult for CTD to predict with any accuracy. Planning is made more complex because the expertise and competency of lawyers is gained only after a year or two within the division. A sudden upturn in casework cannot be met by the immediate recruitment of staff. CTD managers have developed a strategy of taking staff on periods of secondment from other divisions and CPS areas so that they can gain experience of this specialised field of work. This would provide them with a bank of lawyers to call upon in any emergency. This strategy is often frustrated when secondees apply for permanent posts within CTD when they arise. This is nevertheless an important aspect in ensuring that the division can function efficiently at all times. Managers will want to reinforce their present commitment and look at alternative ways of developing a pool of experienced lawyers.

Managing attendance

- 8.13 CTD have a very low sickness absence rate (2.4 days per person in 2007-08) compared to the CPS average (9.4 days). There appeared to be no one single measure that could explain the low sickness rate and managers and staff gave various explanations including the dedicated ownership of cases; the interesting and stimulating nature of the work; being treated with respect; good management and leadership; and the ability to have flexible working conditions despite some extraordinary demands being placed upon them.

Flexible working

- 8.14 CTD operate a number of working patterns including part-time, compressed hours and flexi-time working. Although the majority of staff were called upon to work at short notice, be on a rota for out-of-hours casework and work long hours, often away from home, most were satisfied with the way CTD management operated flexibly to ensure a work-life balance.

Training

- 8.15 Training is reviewed through a tri-divisional group for the three Central Casework divisions, although the group does not meet regularly. The specialist nature of CTD work requires that much of it is conducted in-house by lawyers who have the relevant expertise. This means that the training available tends to be tailored to the work of the division and staff often miss out on other national training, which may be more generally important in ensuring that staff are not deskilled in the wider aspects of prosecution work.
- 8.16 Lawyers attend specific external courses. The HOD and DHOD also act as mentors by giving guidance and assistance concerning review notes and the charging process. The more experienced caseworkers mentor those staff with less knowledge through the processes and procedures of routine work. The retention of casework material and precedents on the P drive is a good learning tool for new joiners to CTD of all grades.

- 8.17 The staff survey exposed weaknesses in the induction provided to new staff and these issues have been addressed through the implementation of a comprehensive and planned induction programme. This programme was also informed by a paper prepared for managers by a recent recruit about his experience as a lawyer new to the division. Caseworker induction is tailored to meet individual needs along with their being provided with a folder containing relevant information. Access to induction material for both lawyers and caseworkers are also provided on the P drive. In addition a learning and leadership partner is developing a CPS induction day for all three casework divisions.
- 8.18 Where common training themes can be identified that are applicable to all three divisions these are taken on by the tri-divisional training committee which can provide value for money by training all divisions on the identified issues.
- 8.19 Training needs are initially identified through the annual performance development process and then an assessment is conducted as to whether these needs should be addressed in-house, by specific external training, development through secondment, or through the tripartite group.
- 8.20 Overall the survey indicated that 56% of staff were satisfied with their level of training compared to the CPS average of 38% and that improvement in performance as a result of skills developed was also higher than the CPS average.

9 MANAGING PERFORMANCE TO IMPROVE

Performance information and analysis

- 9.1 Compared with an average CPS area the volume and variety of caseload that CTD handles is small. Cases can, however, take many months or years to bring to a conclusion. Managing performance to improve therefore tends to be conducted on a case-by-case basis rather than the collation and analysis of volume cases.
- 9.2 The business and performance manager produces a monthly casework report which is presented to the management monthly meeting, along with the finance and administration report. The casework report includes cases received during the month and total caseload; adverse cases; a list of defendants who are subject to custody time limits and the date of review; a breakdown of defendants' ethnicity; the amount of in-house advocacy coverage in courts; a list of up-to-date actions on all racial incidents registered; a breakdown of time spent by each grade on each case or operation; a copy of the complaints register; and issues concerning victim and sensitive witnesses.
- 9.3 The casework report itself has little commentary or analysis of the data presented. Information contained in the report is discussed at the management meeting. Ad hoc reviews or reports requesting further analysis or explanation are requested through this forum, but there is no benchmarking with other specialist departments.
- 9.4 Very little use is made of xCMS or xMIS (Central Casework's management information system) to inform analysis, or conduct quality assurance, because of the problems associated with its use. The system does not cater completely for proper management of CTD's casework so it is not often used. Staff and managers consider that xCMS is not fit for the division's purpose. Some lawyers stated they never used it at all, while other staff used it just to register cases. There is discussion in casework reports of the incompleteness of xMIS and xCMS which means that the business and performance manager has to extract such information from various sources - this is unsatisfactory and may not be accurate. The HOD and the Senior Business Manager (SBM) are in consultation with the CPS Business Information Systems Directorate to employ a system that is fit for purpose as well as being secure. Similar problems exist within the Special Crime Division and HMCPSI recommendations made during our inspection of that division equally apply to CTD.

RECOMMENDATION

Counter Terrorism Division's managers should continue to work with Business Information Systems Directorate to improve the functionality of the case management system to ensure all core actions are recorded and monitored and that the system is fit for the division's use.

Casework quality assurance

- 9.5 Police refer the majority of cases to CTD prior to any arrest being made. This means that the division is able to influence the direction of the investigation and build a solid case with the police. The HOD and DHOD are aware of all cases under investigation and approve all charging decisions, but also guide and advise on aspects prior to the decision to charge. The most sensitive or high profile cases are referred to the HOD from the outset.

- 9.6 This high level involvement in casework and key decision-making such as sensitive unused material handling, acceptance of pleas, or media handling continues throughout the case. The consequences of the CTD lawyer being involved at the earliest stages of the investigation and the case being quality assured at the highest level means that discontinuances are very low and successful outcomes average 83%. This compares well with the national average of 80.8% for successful outcomes in the Crown Court in the first two quarters of 2008-09.

STRENGTH

CounterTerrorism Division's approach to casework review and decision-making involves early participation in the investigation process and quality assurance of decisions by senior managers throughout the life of the case.

Continuous improvement and knowledge sharing

- 9.7 We have commented at paragraphs 4.42-4.43 about the division's post-trial case conferences. There is evidence that these conferences do help improve other ongoing cases and contribute to CTD's knowledge management and assist investigators in determining better operational practices.
- 9.8 The Central Casework Senior Business Manager has also started to collate and compare tri-divisional performance indicators. The performance matrix is in its infancy but compares attrition rates, budgets, sickness and caseload across the three divisions. Although each is resourced separately there have been instances where caseworkers have assisted other divisions due to a sudden upturn in workload. There are few other opportunities to share resources in a similar way although there is some reallocation of budget, with the agreement of each HOD, at the end of the financial year. The SBM is considering ways in which performance and performance measures can be refined to improve value for money. These include benchmarking and sharing of resources where appropriate.
- 9.9 CTD's shared drive has been referred to earlier as a knowledge sharing repository, where all staff can share knowledge and expertise as well as learn from others. Management are committed to ensuring everyone contributes to this database and this commitment has been included in the business plan. The shared drive includes a number of template documents and precedents as well as training and other useful guides.
- 9.10 Whilst the commitment to share knowledge and experiences is laudable, care must continue to be taken to ensure the drive does not become populated with out-of-date information or becomes too large to be user friendly.

Joint performance

- 9.11 We have referred in chapter 11 to CTD's engagement with national and international partners and post-trial case conferences which allow agencies to share performance issues on a case-by-case basis. CTD also provide the Office of Criminal Justice Reform (OCJR) with caseload details on a monthly basis. This information is used by OCJR to forecast the number of terrorist trials, associated risk assessments and the most suitable trial locations, and time taken between arrest and charge. In addition costs associated with terrorist cases are collated by OCJR across all agencies.
- 9.12 It is apparent that over the past three years police have come to value CTD's early intervention in operations and their influence in the direction of ongoing investigations has not only made cases more solid, it has focussed police resources in a more value for money way.

10 LEADERSHIP

- 10.1 The CTD management team meets formally every month and consists of the Head of Division, Deputy Head of Division, Senior Business Manager, senior crown prosecutor legal assistant, business and performance manager, and line managers for caseworkers and administrative staff. Until recently meetings were not formalised or minuted. There is no fixed agenda for management team meetings, consisting instead of agenda items particular to that meeting. Issues such as performance, business plans, budget and fees, and staffing are always addressed.
- 10.2 There are comprehensive action points made at each meeting on various issues that need addressing and these are recorded in the minutes. Most action points are then updated at the next meeting.

Business planning

- 10.3 CTD's business plan for 2008-09 sets out its priorities and objectives for the year. It does not typify other CPS business plans, although it complements CPS national objectives and vision where possible. The plan is reviewed monthly at the management meeting. The objectives have milestones although the outcomes could be more quantifiable. Ownership of objectives is heavily weighted on the HOD, with ten of the 15 being made her responsibility.
- 10.4 CTD staff have been involved with and informed of the business planning process. Some objectives were taken from suggestions at an all staff training day and before the business plan is published it is circulated to staff for comments and amendments. Staff annual performance development reviews link personal objectives to the division's objectives.
- 10.5 The division also reviews its risk register regularly and updates it when necessary. The register itself has identified the key risks facing the division with many of them having a high impact. It comprehensively details existing counter-measures and further planned measures to reduce the risk of harm or impact. It is clear that all managers are aware of the 'environment of risk' that is associated with their work and the management team is alive to potential risks to its business or reputation.
- 10.6 The business continuity plan was, at the time of the inspection, currently being renewed and updated by the SBM on behalf of all the three casework divisions.

Corporacy and cohesion

- 10.7 There is a corporate approach to the management team. Although the HOD and DHOD have different styles and strengths in their management and leadership delivery, they provide a synergy within the management team that enables it to be clear about its roles and responsibilities, which assures a cohesive approach to its business. Such attributes are vital to the role CTD perform. The corporate approach adopted by the management team extends to the many varied CTD partners that they engage with. Stakeholders were complimentary about the quality of the division's work, but in particular its leadership.
- 10.8 A decision to locate lawyers, caseworkers and administrators separately has been met with mixed reactions from staff, with some now feeling isolated from the lawyers. However in general most staff clearly feel part of a cohesive unit.
- 10.9 The increased volume of work and consequent increase in staff numbers means that the management team have needed to build in a more systematic approach to managing staff and resources and this is continuing to be developed. The DHOD has carried a heavy caseload,

having been promoted within CTD, but is now streamlining her involvement in cases in order to develop management systems and quality control.

Communication and feedback

- 10.10 CTD is a medium sized unit located in one office in CPS Headquarters, London (the Leeds office at the time of the inspection was not operational), therefore communication and feedback operates on a more informal day-to-day basis. Line managers for caseworkers and administrative staff hold separate meetings where opportunity is given for a two-way communication and concerns by staff are drawn to the attention of the management team through the formal management team meeting arrangements. Most staff (88%) believed they had regular meetings and that they were effective.
- 10.11 Staff seemed to be aware of proposed changes to CTD operations and most felt they had been involved in them and that changes mainly delivered improved performance and outcomes. The division also scored favourably in the staff survey (compared with other specialised units and the CPS generally) when asked if changes were explained to them clearly.
- 10.12 Staff at all levels believed the management team to be approachable and inclusive with the HOD leading by example. Various examples were given of lawyers and caseworkers seeking advice from more experienced lawyers and the management team and time was made to assist and advise. Additionally because the nature of CTD work is often secret the HOD and DHOD are available to assist, sometimes at short notice.
- 10.13 The P drive, mentioned throughout this report, also supports a communication network where experiences and knowledge are captured and shared with staff.
- 10.14 A recent staff survey was largely positive and in many instances staff scored the division much better than other specialist departments and the CPS generally. Weaker aspects of the survey have been addressed in an action plan after a round of consultation with staff.

STRENGTH

The leadership demonstrated by the Head of Division and the management team displays a high degree of commitment to the prosecution of high profile complex cases. This level of commitment also manifests among staff.

Equality and diversity

- 10.15 CTD is a diverse team in terms of its ethnic mix gender and age. About 20% are from black and minority ethnic backgrounds and 60% are female, including the majority of the management team. Fewer than 3% of staff have declared themselves as disabled but the division actively encourages disabled applicants in recruitment campaigns.
- 10.16 CTD operate a number of working patterns including part-time, compressed hours and flexi-time. The staff survey showed that 81% believed they were treated with respect (compared to 58% nationally) and that most staff were aware that support networks existed for them.
- 10.17 CTD regularly monitors the ethnicity of defendants and the HOD and DHOD ensure that the charges brought are fair and consistent in all cases.

11 COMMUNITY ENGAGEMENT AND LIAISON

- 11.1 The nature of casework demands that the division is alive to perceptions of the wider community and certain sections of it who may feel that they are adversely affected by terrorism laws and the decisions made by CTD. The CPS's Equality and Diversity Unit work closely with CTD management in respect of engaging with the community and advising on equality and diversity issues.
- 11.2 The HOD is the community engagement champion and ensures engagement is a key objective in the business plan. Because of the sensitivity of cases and the political environment of terrorist law in general the management team considers community engagement to be core business. Although staff expressed an interest in getting involved in community engagement work, at the request of the previous DPP community engagement is conducted primarily by the HOD and the violent extremism co-ordinator in order to provide a consistent message to communities and the media.
- 11.3 Whilst direct engagement with the community is restricted to the HOD and co-ordinator it is clear that active debate takes place at management team meetings and the importance of community engagement is discussed with all staff, including an ideas debate at a team training day and a seminar arranged for CTD lawyers.
- 11.4 Activity is captured in a community engagement log and is available for CTD staff to view on the shared P drive. The log captures events with the community, international liaison and media relations. The type of activity is broad and engagement is frequent. Actions required from such engagement are also captured in the log which are then fed into training days or passed onto other counter terrorism agencies. In one particular meeting with victims the log captured that it had influenced the information that was given at a trial and also eased access to court for the victim's families.
- 11.5 One of the strands of the CPS engagement strategy has been to include local geographically based communities through community involvement panels. CTD have adapted this initiative by setting up a nationally based community involvement panel to discuss issues of violent extremism. As far as is possible the purpose of the group is to include, and through the panel engage with, groups who are at risk of exclusion. This initiative is in its infancy but terms of reference have been agreed and future quarterly meetings are planned.

National liaison

- 11.6 The United Kingdom has a long term strategy, known as CONTEST, for countering terrorism at home and abroad. It has four strands known as Prevent, Pursue, Protect and Prepare. CTD collaborate with many other agencies to deliver and develop these aims. In addition to being involved in sub groups of the CONTEST strategy the division are involved in numerous working groups to counter terrorism, are asked to comment and assist with proposed legislative changes, are required to deliver multi-agency training and speak at conferences.
- 11.7 The division's main criminal justice partner in respect of casework is the police and regular liaison takes place. Referrals are made through the Counter Terrorism Command in London or one of the specialist Counter Terrorism Units located in Birmingham, Leeds and Greater Manchester, although referrals are also made from other provincial forces from time to time. In close co-operation with police, CTD have built up a wealth of best practice to assist prosecutors and police in handling terrorist cases. This is included within a central repository of internal guidance, some of which is understandably restricted.

International liaison

- 11.8 The nature of the division's work requires global co-operation from law enforcement partners. Enquiries have to be undertaken in different jurisdictions which also differ in their constitutional make-up. Requests for assistance and/or the gathering of evidence can therefore be quite different from one country to another. Careful liaison between jurisdictions is necessary to secure evidence which can then be used fairly in UK courts. As a consequence CTD have developed considerable knowledge in dealing appropriately with foreign jurisdictions.
- 11.9 CTD lawyers have travelled abroad frequently to assist police in the gathering of evidence, to direct prosecutor-to-prosecutor contact to facilitate the investigative process, and to reassure the authorities about disclosure rules or to facilitate the inspection of unused material.
- 11.10 In addition to international co-operation concerning ongoing investigations, CTD is also a key member of international forums and attends other meetings to counter global terrorism. Events include a European Arrest Warrant conference in France which resulted in greater confidence in procedures between the two jurisdictions, highlighted weaknesses in existing legislation and also resulted in drafting amendments to the Extradition Act; Eurojust meetings and conferences; Commonwealth and United Nations training events; biannual liaison meetings with the US Department of Justice; and biannual working group sessions with Spanish prosecutors and a similar arrangement with German prosecutors.
- 11.11 The feedback from external partners is positive with the division and the UK, in general, having a good reputation abroad for its collaborative approach to tackling terrorism. As a result there is demand on CTD from foreign jurisdictions for prosecutors to share their knowledge. The HOD has to balance these requests to promote global co-operation with the need to ensure essential ongoing casework is not undermined.

STRENGTH

CounterTerrorism Division's involvement in community engagement and liaison with agencies nationally and internationally is both extensive and necessary. Senior managers have demonstrated that this aspect of work is core to its business and are highly respected externally by its stakeholders.

Media relations

- 11.12 Most of CTD's casework is high profile where the trials of those accused attract media attention worldwide. Each case dealt with by the division has its own press strategy and media handling plan. This strategy is agreed through close liaison with the police. The HOD, DHOD and other CTD staff have had media exposure in respect of high profile charging announcements, steps of the court interviews and pre-trial briefings. Information about an ongoing trial is provided regularly to the press in accordance with the national CPS media handling protocol.
- 11.13 The business plan contains several objectives with regard to media handling. These are to ensure a media strategy is considered at all key stages of a case; to consider proactive strategies when appropriate; and provide staff with media awareness training. CTD have also placed information on the CPS website for the media and public about its work and the cases it has successfully prosecuted, with a brief synopsis.

ANNEX A: PROGRESS AGAINST PREVIOUS RECOMMENDATIONS AND SUGGESTIONS

Recommendation	Progress by 2009
<p>1 The system of file allocation should be reviewed to ensure a more even distribution of work. Branch Crown Prosecutors should regularly monitor the caseloads of individual lawyers and caseworkers.</p>	<p>Substantial progress. All files are allocated by the DHOD or HOD according to set criteria and judgment.</p>
<p>2 Guidance should be issued setting out the criteria which determine the point at which a full file of evidence is to be treated as submitted to ensure a consistent approach in monitoring the timeliness of review.</p>	<p>This has no real application to the division's work. The lawyer is involved in casebuilding from a very early stage and timeliness is monitored by monthly case reports.</p>
<p>3 The directorate should review the level of detail supplied to the police when explaining decisions not to proceed, including references to the relevant evidential and public interest factors which have influenced the decision and which reflect the considerations of the reviewing lawyer.</p>	<p>Achieved. Review notes are detailed and often document face-to-face discussion. They are approved by the HOD or DHOD.</p>
<p>4 The caseworker and lawyer should prepare formal written reports in all adverse cases. The reports should be submitted to the BCP, analysed and the results of the analysis published to all directorate staff to ensure that appropriate lessons are learned from casework.</p>	<p>Achieved. Adverse case reports are submitted and debrief notes added to the shared drive following post-trial case conferences.</p>
<p>5 Guidance should be provided to lawyers and caseworkers on the preparation of instructions to counsel to ensure that they are detailed and informative and adequately reflect the case issues. BCPs should monitor briefs to ensure a consistent quality.</p>	<p>Achieved. Instructions to counsel are full and detailed. In many cases counsel has already been involved in case conferences and instructions draw on these.</p>
<p>6 All calculations of custody time limit expiry dates should be checked and initialled by a senior caseworker. Cases should be checked periodically against the monitoring diary to ensure that details are entered correctly.</p>	<p>Achieved.</p>
<p>7 The directorate should review its custody time limits system to ensure that monitoring procedures are effective. Training should be provided for all relevant staff in custody time limits procedures and the application of the Custody Time Limits Regulations.</p>	<p>Achieved.</p>

	Recommendation	Progress by 2009
8	Senior managers should devise a strategy which will provide greater opportunities for lawyers, who wish to do so, to maintain their advocacy skills and including the training and deployment of higher court advocates in the Crown Court.	Significant progress. The division has adapted the Central Casework divisions' advocacy strategy to its own requirements. All magistrates' courts, many Crown Court hearings and some trials are dealt with by CTD prosecutors.
9	The directorate should consider its role in fraud cases to determine whether its current involvement should continue and, if so, review the existing criteria for its handling of fraud cases to ensure that they represent the most efficient use of the expertise and resources of the directorate and CPS areas.	No longer relevant.
10	Senior managers should take steps to improve arrangements for the review of plans and become more focused on the delivery of actions.	Substantial progress. CTD business planning processes are clear. Plans are reviewed in management meetings.
11	Directorate senior managers should seek clarification of its role in relation to that of the Policy Directorate.	Achieved. A Memorandum of Understanding is in place.
12	The directorate should consider its needs in respect of performance information to establish a system of performance indicators which will best assist management of its casework performance.	Limited progress. This is still being worked on within the division and has been hindered by functional problems with the xCMS case management system.
13	The directorate should revise its staffing strategy to create closer links between the forecasts as to the mix and volume of work received and the business planning and budgeting process.	Substantial progress.
14	The directorate should review the work allocation arrangements at both branch and individual level.	No longer relevant.
15	The directorate should further develop its strategy for performance appraisal which ensures the best development of individual potential and that underperformance is effectively dealt with.	Achieved.

Suggestion	Progress by 2009
1 The directorate should consider methods of promulgating the Casework Referral Guidelines to police forces to ensure that cases are referred promptly by the police, either to the directorate or to the local CPS office as appropriate, and that progress of cases is not delayed or otherwise prejudiced.	Substantial progress. Most cases are referred direct by the investigator in any event. The referral guidelines work well in the majority of instances where relevant.
2 Directorate lawyers should prepare, in every extradition case, a review note which sets out the factors taken into account in the decision and discusses the case issues, or makes reference to them when they can be found elsewhere within the file.	Achieved.
3 The directorate should further develop its communications strategy, including the use of IT.	Achieved.
4 The directorate should review and restate its policy in relation to part-time working arrangements.	Achieved. The division operates part-time working in accordance with CPS policy.
5 The directorate develop a uniform system for the handling of complaints drawing on guidelines issued recently by the Joint Standing Committee on Good Practice.	Achieved.

ANNEX B: NUMBER OF FILES EXAMINED

Case category	Number of files examined
Terrorism	28
Violent extremism	11
War crimes/genocide	5
Incitement/racial and religious hatred	5
Official Secrets Acts	1
Total	50

ANNEX C: FILE READING ENTRIES

	Y	N	NA	%Y	%N
Pre-charge advice and decision-making					
Was investigative advice given before the case was submitted for PCD?	15	35	0	30	70
Was the charging decision properly recorded on the MG3 or review note?	50	0	0	100	0
If appropriate was the threshold test properly applied?	8	0	42	100	0
If appropriate was the threshold test followed up with a full Code test?	8	0	42	100	0
Was specific CTD guidance adhered to?	22	0	28	100	0
Was the case sent to counsel to advise upon pre-charge?	2	48	0	4	96
Was the reviewer proactive in building the case?	29	1	20	97	3
Were ancillary matters such as bad character, hearsay, POCA/asset freezing, special measures, disclosure, and victim and witness issues considered?	21	0	29	100	0
Was the charging/initial review decision in accordance with the Code evidential test?	50	0	0	100	0
Was the charging/initial review decision in accordance with the public interest test?	50	0	0	100	0
Was there any avoidable delay in the progress of the case at the pre-charge stage?	7	43	0	14	86
If there was avoidable delay, was any attributable to the CPS?	1	6	43	14.3	85.7
If the advice was to take no further action was the decision justified in accordance with the Code evidential test?	11	0	39	100	0
If the advice was to take no further action was the decision justified in accordance with the Code public interest test?	11	0	39	100	0
Trial/Crown Court review					
If the case required the Attorney General's consent was this obtained in good time?	12	1	37	92.3	7.7
Was the decision to proceed to the Crown Court/summary trial properly recorded?	19	0	31	100	0
Was the decision to proceed in accordance with the Code evidential test in respect of the main charge?	21	0	29	100	0
Was the decision to proceed in accordance with the Code public interest test in respect of the main charge?	21	0	29	100	0
Did the review note at this stage comply with the standard for review notes?	21	0	29	100	0
Charges/indictments					
Did the indictment/charges reflect the seriousness of the case and provide adequate sentencing powers?	22	0	28	100	0
Did the case proceed on the charges/indictment determined by the prosecutor without significant amendment?	20	2	28	90.9	9.1
Disclosure of unused material					
Were schedules of unused material properly completed by the police?	19	3	28	86.4	13.6
If not, did the reviewer return the schedules for proper completion?	3	0	47	100	0
Was the duty of initial disclosure properly complied with?	22	0	28	100	0
Was the duty of continuing disclosure properly complied with?	16	0	34	100	0
Was any sensitive material dealt with properly (including completion of schedules)?	16	1	33	94.1	5.9
Were the arrangements for disclosure agreed with the court and the defence?	8	0	42	100	0
Did any unused material give rise to questions of public interest immunity?	1	17	32	5.6	94.4
If so, did the prosecutor devise a strategy to deal with any potential adverse ruling?	1	0	49	100	0
Was the appropriate type of PII application made?	1	0	49	100	0
Did the lawyer/counsel take the appropriate action (if any) in respect of any third party material?	3	0	47	100	0
Was the disclosure record sheet used so there was a clear audit trail of decisions and actions?	14	7	29	66.7	33.3

	Y	N	NA	%Y	%N
Use of experts					
Was the need for expert evidence considered at the appropriate time?	13	0	37	100	0
Was the expert called to give oral evidence at court?	4	1	45	80	20
Where expert evidence was required, were instructions clear and comprehensive?	9	0	41	100	0
Was the prosecution expert evidence served on the defence?	8	0	42	100	0
Was the defence expert evidence sent to the prosecution expert?	4	0	46	100	0
Did the expert attend any conferences with counsel where appropriate?	1	1	48	50	50
Case progression					
Was the prosecution ready for any preliminary/preparatory hearing?	21	0	30	100	0
Were all orders complied with on time or the case referred back to court?	20	1	29	95.2	4.8
Was the prosecution ready for the PCMH?	21	0	29	100	0
In terrorist cases was the prosecution ready for the preparatory hearing?	15	0	35	100	0
Was correspondence from the defence acknowledged and dealt with appropriately?	23	0	27	100	0
Was additional material from the police correctly logged, reviewed and served/disclosed as appropriate?	22	0	28	100	0
Was overall post-charge case progression by CTD expeditious?	23	0	27	100	0
Were subsequent review notes completed by prosecutors?	20	0	30	100	0
Were those subsequent review notes of a satisfactory quality?	20	0	30	100	0
Instructions to advocates					
Were instructions to counsel or advocate complete containing a case summary and dealing adequately with the issues?	16	0	34	100	0
Did the instructions contain satisfactory guidance on the acceptability of lesser or alternative pleas and action to be taken when pleas are offered?	1	1	48	50	50
Trial					
If the trial cracked or was ineffective, was this outcome foreseeable?	0	0	50	-	-
If the trial was cracked or ineffective did CTD take action to avoid this?	0	0	50	-	-
Were pleas accepted to lesser offences/charges?	0	13	37	0	100
If pleas were accepted was this justified?	0	0	50	-	-
If a basis of plea was agreed was this set out in accordance with the guidance?	5	0	45	100	0
If pleas were accepted was this at the earliest opportunity?	3	0	47	100	0
Discontinuance					
If the case was discontinued following a CTD charging decision, was the decision justified in accordance with the Code test?	2	0	48	100	0
Where the case was discontinued, was this the result of further evidence/information or other material change of circumstances?	2	0	48	100	0
If the case was discontinued was there appropriate consultation and was the decision properly recorded?	2	0	48	100	0
Could any action by CTD have avoided discontinuance?	0	2	48	100	0
Was the decision to discontinue taken at the earliest opportunity?	2	0	48	100	0
Victim and witness care					
Was the charging decision notified to any victim or the victim's family?	3	0	47	100	0
Was a meeting offered to the victim or family where the CTD advice was that there was insufficient evidence or it was not in the public interest to prosecute?	1	0	49	100	0
Where the VFS applies did the prosecutor offer to meet the family after charge to explain the processes and procedures?	2	0	48	100	0
Was a Victim Personal Statement made?	2	0	48	100	0
If there was no VPS in the file from the police, did the CTD request one?	0	0	50	-	-

	Y	N	NA	%Y	%N
If the charge was reduced/dropped was the victim/victim's family notified in accordance with DCV and where appropriate a meeting offered?	0	0	50	-	-
Was any DCV letter of the appropriate quality?	0	0	50	-	-
Was any DCV letter timely?	0	0	50	-	-
Were witness special needs identified and appropriate applications for special measures made?	5	0	45	100	0
Were any applications for special measures timely?	5	0	45	100	0
Was the anonymity of any witness properly considered?	1	0	49	100	0
Did any application comply with current law and guidance?	0	0	50	-	-
Did the arrangements at trial ensure that witness needs were properly catered for?	3	1	46	75	25
Pre-charge detention and custody time limits					
If the defendant was detained pre-charge, does the file contain evidence that the detention was closely monitored and any application for extension appropriate?	12	0	38	100	0
Where CTLs applied was the case monitored and handled in accordance with divisional systems?	18	0	32	100	0
Letters of request					
If the case required letters of request to be sent to foreign jurisdictions, were the letters in proper form and in compliance with the law?	11	0	39	100	0
Were appropriate arrangements made for the presentation of any evidence from abroad?	3	0	47	100	0

ANNEX D: REPRESENTATIVES OF CRIMINAL JUSTICE AGENCIES AND ORGANISATIONS WHO ASSISTED IN OUR INSPECTION

Judges

Mr Justice Calvert Smith
His Honour Judge Beaumont QC Recorder of London
His Honour Judge Collier QC Recorder of Leeds
His Honour Judge Grant
Senior District Judge Workman

Police

Commander J McDowall
Detective Chief Superintendent L O'Brien
Superintendent G Marshall
Detective Chief Inspector A Scott
Detective Inspector N Draper
Detective Sergeant J Elliot
Detective Sergeant J Maguire
Mr N Colley Counter Terrorism Security Advisor

Attorney General's Office

Ms S Patten
Ms K Jones

Cabinet Office

Mr W Nye
Mr C Wright

Home Office


Ms F Taylor
Ms F Kennah
Ms R Walker

Security Service

A representative of the Security Service

Counsel

Ms D Breen-Lawton
Miss P-K Cheema
Mr A Edis QC
Mr D Farrell QC
Mr J Laidlaw QC
Ms A Morgan
Mr J Sandiford
Mr P Taylor
Mr P Wright QC



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