

HM CROWN PROSECUTION SERVICE INSPECTORATE

REPORT ON CUSTODY TIME LIMITS PROCEDURES WITHIN THE CPS

EXECUTIVE SUMMARY

Introduction and background

- 1.1 Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) has carried out a review of the handling by the CPS of cases which are subject to a custody time limit. Regulations made under section 22 (1)(b) of the Prosecution of Offences Act 1985 (the Act) made provision for the introduction of maximum periods during which an accused could be remanded in custody in the initial stages of proceedings in the magistrates' court and the Crown Court. Details of those maximum periods are set out in the Annex to this summary. The custody time limit may be extended if the case is not ready to proceed before expiry, provided that the prosecution can establish grounds for doing so and show that it has acted with all due diligence and expedition.
- 1.2 Custody time limits relate to the offence and not to the accused. Each offence charged against each defendant attracts its own limit which runs from the date the defendant first appeared at court on that offence. If a defendant is accused of a number of offences he or she may appear in court on a number of different days and several separately running custody time limits may be involved, each having its own expiry date. A similar and, often, more complicated situation arises in cases involving several co-accused each of whom first appeared in court on different dates.
- 1.3 Neither the primary nor the subordinate legislation impose an obligation on any agency to monitor time limits, but any application to extend a time limit must be made by the prosecution, even where the case is ready for committal or trial and it is the court or the defence which requires further time. Consequently, CPS offices are required to have in place systems for calculating and monitoring time limits to ensure that there is a timely application for extension in appropriate cases. Errors in monitoring custody time limits have led on a few occasions, however, to defendants being released on bail because applications to extend have not been made in time.
- 1.4 In March 1995, CPS Headquarters issued updated guidance to all Areas setting out the basic elements of a custody time limits monitoring system. Shortly after this, a national quality assurance review highlighted concerns in a number of aspects of performance, particularly errors in calculation of expiry dates, poor file endorsements, lack of proper training and inadequate written systems or desk instructions. The review led to a national campaign to increase awareness of custody time limits. In September 1999, CPS Management Audit Services (MAS) issued further guidance to Areas which set out elements of good practice in relation to custody time limits monitoring.

- 1.5 Since inspections were commenced in 1997, many have revealed concerns about performance in respect of custody time limits as well as a need to spread the good practice which was also identified. Those concerns and needs in this important aspect of the Service's work led to this review.
- 1.6 The purpose of the review included:
- * evaluating procedures for handling custody time limit cases and assessing how they were being monitored, particularly within the newly formed Criminal Justice Units (CJUs) and Trials Units (TUs);
 - * considering case management systems which ensure that cases progress to committal or trial within the time limit, or enable the prosecution to show that it has acted with all due diligence and expedition;
 - * evaluating procedures for ensuring that applications to extend time limits are made in appropriate cases;
 - * examining the extent of knowledge and awareness amongst CPS staff of custody time limit regulations and procedures, as well the availability and effectiveness of training; and
 - * identifying and highlighting elements of good practice.

Methodology

- 2.1 The review team visited ten CPS offices to examine custody time limit procedures and interview staff at all levels involved in handling and monitoring custody cases. Some sites were in Areas that had not been inspected at the time of the review; others were selected after an analysis of the written systems submitted by Areas. The selection excluded sites in Areas which had been the subject of inspection visits after February 2001 and, as far as possible, sites visited during other recent thematic inspections in order to avoid inspection fatigue. They included three in which the CJU was co-located in a police station.
- 2.2 The team examined 50 magistrates' courts and 50 Crown Court files which were subject to a custody time limit. The sample included 45 magistrates' courts and 30 Crown Court files in which the need to extend the time limit was considered. The sample of Crown Court cases included 15 which had been sent to the Crown Court in accordance with the provisions of section 51 of the Crime and Disorder Act. Inspectors also examined the magistrates' courts stage of proceedings in the sample of Crown Court files (other than sent cases) which provided data in respect of an additional 33 magistrates' court cases.

Main findings

- 3.1 Although over 90 per cent of custody time limits in our survey were calculated correctly, monitoring of custody time limits is an aspect of CPS performance which continues to give rise to concern and which requires urgent action for improvement.

- 3.2 Inspectors found that in some Areas monitoring systems were inadequate. In some, where the systems themselves were more sound, the manner in which they were operated created a significant risk of custody time limit failures. Many of the weaknesses identified in earlier reviews persist. Inspectors draw attention to good practice found in some Areas which they suggest should be adopted more widely (see paragraph 5.1 below)
- 3.3 Errors in calculation of expiry dates occur in 8.3% of the file sample. The reasons for some miscalculations were the result of poor file endorsements and some misunderstandings as to the basis of calculation. In some instances, straightforward human error was to blame. Others were completely inexplicable. Errors generally involved only a day or so but this could be sufficient to exceed the limit.
- 3.4 Staff were generally keenly aware of the possible consequences of errors in calculation or monitoring failures. Even so, they did occur. Most of the errors did not lead to the release of a defendant on bail, though some had the potential to contribute to that result. The relatively low number of defendants who are released because of a monitoring failure is often seen as proof that systems are working effectively. The factors which have influenced this, however, have nothing to do with the efficiency of monitoring systems. Most cases are dealt with within the appropriate time limit without the need for an extension. Applications to extend the time limit are usually made some days before expiry so that many inaccuracies in calculations have no impact.
- 3.5 Few of the Areas inspected carried out any formal audit of custody cases. Caseworker and lawyer managers saw files when they were identified for review. The checks carried out at this stage were basic, amounting to ensuring that the defendant was still in custody and consideration of whether it would be necessary to make an application to extend the time limit. There was at this stage (and, in many instances, at no other stage) no check upon the accuracy of the expiry dates or the information contained in file endorsements.
- 3.6 Most lawyers did not feel that it was their responsibility for monitoring custody time limits. They relied on administrative staff to have made the correct calculation and most lawyers did not effect any further check when considering whether to apply for an extension.
- 3.7 The quality of file endorsements continues to be an issue affecting CPS performance. This review has highlighted the potential for error in custody time limit monitoring. It was often difficult to follow events on files within our sample because of failure to record accurately, or sometimes at all, events at court or relevant out of court actions.
- 3.8 There has been insufficient training on custody time limits regulations and procedures. The most recent national training initiative related to the implementation of section 51 of the Crime and Disorder Act and the new regulations in respect of indictable cases sent to the Crown Court.

Specific findings

Identification and notation of custody time limit cases

- 4.1 In general, lawyers dealing with the initial remand hearings when a defendant is remanded in custody did not endorse files with specific instructions to administrative staff to initiate custody time limit procedures. In most instances, staff responded to the endorsement “RIC” which indicates that an accused has been remanded in custody. Some monitoring errors were caused by the failure to transcribe immediately the initial hearing endorsement from the remand papers in cases where the prosecutor does not have a file jacket in court, usually on a Saturday or Bank Holiday. This can be obviated if lawyers always have with them a stock of blank file jackets.
- 4.2 Custody time limit cases were identified in a variety of ways, including special wallets for files and the use of coloured stickers. The expiry and review dates were usually endorsed on the front of the file jacket though, in some offices, they were found on the back or inside the jacket. The latter instances did not allow immediate recognition of the case by staff handling it as one subject to a custody time limit.
- 4.3 Most methods of noting the expiry and review dates on the file did not allow for situations where there is more than one defendant or there are charges which attract different time limits. Except in straightforward cases involving one defendant and one time limit, noting custody time limits presented some problems, caused mainly by the lack of available space on the file jacket. The coloured stickers used by most Areas were little larger than a postage stamp and did not cater readily for such cases, often leading to confusion.

Calculation of custody time limits

- 4.4 Most calculations of expiry and review dates were done by staff using the national ready reckoner. Sometimes this was used also as a means of checking automatic computer calculations. In a few instances, expiry dates were calculated manually using a diary, although inspectors found examples of manual calculations which had led to expiry dates falling on Bank Holidays and Saturdays. Under the regulations, this cannot occur and it led to the calculated expiry date being a day late. Inspectors found that the expiry date was incorrect in 11 out of 133 cases (8.3%). Calculations were rarely checked as a matter of course, though some managers checked calculations on a sample basis. Lawyers rarely checked calculations. Recalculations of the time limit (when a defendant is again remanded in custody after spending time on bail) were usually checked, although few Areas required this to be done as standard procedure.

Monitoring procedures

- 4.5 Monitoring of custody time limits is principally undertaken by the CPS. Magistrates’ courts generally take no part in monitoring, although inspectors visited one office in which the expiry date was agreed in court at the first remand hearing. Inspectors found greater involvement by the Crown Court in monitoring expiry dates although a more co-ordinated approach would provide greater assurance.

- 4.6 Most Areas use both their computerised case tracking system and a diary in which to record and monitor time limits. Entry of data into the system or diary is not always checked, however, to ensure accuracy. Inspectors are not aware of any Area which carries out a check to ensure that details of all custody cases are entered onto the system. The inspection of CPS Wiltshire undertaken since the review found that checking did occur in that Area. Some offices do not update the system after each hearing even if the defendant is granted bail.
- 4.7 The majority of Areas carry out some kind of management check to ensure that custody time limits are being properly monitored, although the extent and frequency varied. Inspectors visited one office which carried out a monthly audit of a sample of custody cases, involving examination of files and comparison with the monitoring system. Sometimes the sample size was sufficient to comprise all custody cases. The lessons learned from this had led to overall improvements in performance.

Applications to extend the custody time limit

- 4.8 Most applications are successful in any event. Prosecution appeals against the magistrates' refusal to extend a time limit are rare. Inspectors found, however, that awareness of the right of appeal was mixed and was sometimes confused with the right of the prosecution to appeal against the grant of bail.
- 4.9 Custody cases are retrieved at review dates to consider whether it is necessary to apply for an extension of the time limit. Although all applications to extend the time limit were ultimately considered by a lawyer, the timing of the decision varied. In some offices, lawyers carried out a proper review when the file was retrieved and gave instructions to prepare the required notices. In others, notices were prepared and served automatically by administrative staff when the file was retrieved for review, and before consideration by the lawyer. In some instances, there was no effective review of the need to apply until the prosecutor reviewed the file before court. In cases in which the need to apply was considered in advance by a lawyer, a note of their decision and considerations was rarely endorsed on the file.
- 4.10 Inspectors found that an application to extend the time limit was made in almost every instance in which the case was not ready for committal or trial before expiry. In one office, however, the reverse situation occurred. Prosecutors usually concluded that, because the police had not completed enquiries and submitted a full file in time, the prosecution could not establish that it had acted with all due diligence and expedition. It is important that each case is considered on its individual merits.
- 4.11 Despite the requirement for the prosecution to show that it has acted with all due diligence and expedition, notices of applications to extend the time limit in the magistrates' court were rarely accompanied by a chronology setting out details of case progress. They were more usual in respect of Crown Court applications, although inspectors found that the standard of chronology varied considerably.

Written procedures

- 4.12 Inspectors found that most, if not all, Areas had written procedures for monitoring custody time limits, although the quality and detail varied. Some, however, had not been updated for some time and did not reflect the current position regarding time limits to the extent that adherence to the system could lead in some instances to expiry of a time limit without the need for an extension being properly considered.

Other issues

- 4.13 Although responsibility for monitoring custody time limits remained that of the CPS in each of the co-located CJUs visited, inspectors found different approaches towards file handling which had the potential to contribute to monitoring failures. In two Units, police administrative staff were responsible for updating files immediately after court. Custody cases were then passed to CPS staff to initiate or update monitoring. There were, however, occasions where this was not done, usually because the prosecutor failed to endorse the file with the required formula of words for triggering action. The error was usually picked up after a second or subsequent hearing. In the third Unit files were returned direct to CPS staff after court so that appropriate action could be taken. They were then passed to the police within 24 hours of the hearing.
- 4.14 There has been too little nationally co-ordinated training in custody time limits since their introduction in 1987. Most staff involved in monitoring have received training, although the extent has varied and some has been restricted to informal on-the-job training.
- 4.15 The poor standard of file endorsements and file housekeeping was a significant factor in many incorrectly calculated expiry dates and monitoring (or potential monitoring) failures.
- 4.16 Inspectors also found that there were some misunderstandings and misapplications of the custody time limits in indictable only cases sent to the Crown Court in accordance with the provisions of section 51 of the Crime and Disorder Act 1988. Regulations introduced in January 2001, provide for the application of an overall time limit in such cases and deal with situations in which new counts are added to the indictment. There was, however, some confusion about the application of the time limit in less straightforward cases, with again the potential for error in the most serious cases.

Good Practice

- 5.1 Inspectors found the following items of good practice:
1. Prosecutors having with them in court a stock of blank CPS file jackets to be used to record details of the first remand hearing in custody cases where a file has not already been opened;
 2. Agreement of the custody time limit expiry date with the clerk of the magistrates' court at the first hearing;
 3. Monthly audit reports to the CCP on custody cases, dealing with accuracy of expiry dates and clarity of file endorsements.

Recommendations

6.1 Inspectors have made the following recommendations:

1. All calculations and recalculations of expiry dates should be checked and endorsed accordingly;
2. Areas should seek a co-ordinated approach to monitoring custody time limits with the Crown Court;
3. Area monitoring systems should be checked frequently to ensure accuracy of data and updated after each court hearing;
4. Custody cases should be regularly audited;
5. The police should be given specific target dates for actions in custody cases;
6. Decisions whether to apply to extend a custody time limit should be made by a lawyer before notices are served and details of the decision should be recorded on the file;
7. Detailed chronologies of case progress should be served with notices of application to extend the custody time limit;
8. Custody time limit files should contain a separate record of case progress;
9. Written guidance should be regularly reviewed and updated;
10. CPS should give consideration to a national training package dealing with custody time limits;
11. National guidance should be issued in relation to the application of custody time limits in indictable only cases.

6.2 The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197).

HMCPS Inspectorate
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