

# REPORT ON THE THEMATIC REVIEW OF CUSTODY TIME LIMITS

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## INTRODUCTION

1.1 This is the report of the thematic review by HM Crown Prosecution Service Inspectorate of the handling by the CPS of cases which attract custody time limits. The purpose of such a review is to provide an overall picture of how the CPS nationally deals with a particular aspect of its responsibilities, based on evidence drawn from a number of Areas and Headquarters.

1.2 The purpose of this 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 were 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.

1.3 It is a well established principle of the common law that an individual should not be deprived of his or her liberty unless there are good and substantial grounds for

doing so. The Bail Act 1976 reinforced that principle by creating a presumption that accused persons have a right to bail unless the prosecution can establish one or more of the specified grounds for withholding it. Those grounds are principally that the defendant would, if granted bail:

- fail to surrender to custody;
- commit an offence while on bail; or
- interfere with witnesses or otherwise obstruct the course of justice.

1.4 These provisions have the effect that the vast majority of defendants in criminal proceedings are remanded upon bail, although conditions may be attached where this is necessary to ensure attendance, prevent offending whilst on bail or interference with justice. The importance attaching to the liberty of the individual, now reinforced by statutory incorporation of the European Convention on Human Rights, caused Parliament to regulate the period which a defendant from whom bail has been withheld may be detained in custody pending trial. Section 22 (1)(b) of the Prosecution of Offences Act 1985 (the Act) made provision for regulations stipulating the maximum custody periods during the initial stages of proceedings in the magistrates' courts and the Crown Court. Between 1987 and 1991, a series of regulations progressively introduced custody time limits in respect of either way and indictable only offences throughout England and Wales.

1.5 Regulations later extended the application of custody time limits to youth offenders remanded in custody (including those remanded in custody to local authority accommodation) and, with effect from 1

November 1999, to summary only offences. The Prosecution of Offences (Custody Time limits) (Amendment) Regulations 2000, which came into force on 15 January 2001, regulate the period of time a defendant can be kept in custody in indictable only cases sent to the Crown Court under section 51 of the Crime and Disorder Act 1988.

- 1.6 Details of the maximum periods in which a defendant can be retained in custody are set out in Annex A. The Act and regulations allow the custody time limit to be extended if the case is not ready to proceed before expiry. The prosecution must establish grounds for doing so and show that it has acted with all due diligence and expedition.

### **The role of the CPS and its response**

- 1.7 Neither the primary nor the subordinate legislation impose an obligation on any agency for monitoring custody time limits. But any application to extend a custody time limit must be made by the prosecution – even where it is ready for trial and it is the defence or the court which needs further time. Consequently, CPS offices are required to establish systems for monitoring time limits and ensuring that there is a timely application for an extension in any appropriate case. Even so, errors in calculating the expiry dates of time limits or in monitoring them have led on some occasions to custody time limits expiring without the necessary application being made in time. This results in defendants being released on bail because the courts have no option even if they consider the defendant to be potentially dangerous. Litigation relating to custody time limits has created a body of case law; quite recently, this has increased the responsibility placed upon the CPS by creating an obligation for the

prosecution to take the initiative in having the case listed in circumstances where the Crown Court has not (as is the norm) fixed a date for trial at the plea and directions hearing.

- 1.8 Operating the custody time limit regime has proved problematic for the CPS from its inception. In March 1995, national guidance was issued to Areas in the form of a Service Standard which set out the basic elements of a custody time limits monitoring system. Shortly afterwards, a national quality assurance review of custody time limit procedures was carried out. The report of the review, which was promulgated internally, highlighted concerns in a number of aspects of performance. These included:

- errors in calculations in expiry date;
- poor file endorsements leading to misunderstandings and errors in the calculation of expiry dates and in monitoring;
- failures to update monitoring systems;
- lack of awareness amongst staff responsible for monitoring caused by inadequate training;
- lack of knowledge of the application of the regulations amongst staff at all levels;
- failure by lawyers to endorse files with details of their decisions when considering applications to extend a time limit;
- lack of adequate written systems or desk instructions; and
- failure to appreciate the extent of the risk to which the CPS was exposed

because only a small proportion of the errors made actually resulted in a custody time limit failure.

- 1.9 A national campaign to increase awareness of custody time limits followed publication of the report, although the success of this campaign was not formally monitored. In September 1999, CPS Management Audit Services (MAS) issued further guidance to Areas setting out the elements of good practice in a custody time limits system. We refer to aspects of the guidance at relevant sections of this report.
- 1.10 In 1997, the Inspectorate (then CPSI) commenced a programme of Branch inspections which have continued as Area inspections following a review of its operations in the wake of the Glidewell report. Branch and Area inspections have continued to reveal concerns with performance in relation to custody time limits, despite recommendations for action and improvement. The importance of this aspect of the Service's work led to this review.

### Methodology

- 1.11 The review team consisted of a legal inspector and casework inspector. All CPS Areas were asked to give details of their arrangements for operating and monitoring the custody time limit regime. The team visited ten sites to examine procedures and interviewed CPS staff at all levels involved with handling and monitoring custody time limits cases. The sites included 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 routine visits after February 2001 and, as far as possible,

sites visited during other recent thematic inspections in order to avoid inspection fatigue.

- 1.12 The team examined 50 magistrates' courts and 50 Crown Court files which were subject to a custody time limit. The sample included 45 magistrates' court files and 30 Crown Court files in which the need to extend the time limit had been considered. The overall statistics are affected by the following considerations. 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. The file data also includes statistics in respect of the magistrates' court proceedings in those Crown Court cases (other than sent cases) in which the defendant had been in custody in the magistrates' court. This represents an additional 33 magistrates' court cases. The results of our file examination are set out in Annex B.

### Overview

- 1.13 We found that in many Areas the systems for identifying cases subject to custody time limits, calculating those limits and monitoring the progress of affected cases were inadequate. In some Areas 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. We found many instances of errors which had the potential to contribute to the release of a defendant on bail had cases not been committed or proceeded to trial within the time limit. It is therefore important that senior managers should take steps to heighten awareness of the importance of thoroughness in the operation of the custody time limits regime and take steps

to ensure stricter compliance. The potential consequences of defendants being inappropriately released on bail require that risk be reduced to an absolute minimum.

## IDENTIFICATION AND NOTATION OF CUSTODY TIME LIMIT CASES

### Introduction

2.1 The CPS needs to develop a culture under which all custody cases receive appropriate consideration at all times. This would simply require everyone handling a custody case at any time to be aware of the need to take action promptly, to encourage others (for example the courts and the police) to do so and to be aware of the custody time limit expiry date. In the last instance, staff should also bear in mind any special considerations that the proximity of the expiry date imports, for example taking the time to check that appropriate action has been taken in respect of applications to extend. This culture will be assisted if custody cases are clearly identifiable as such at all times.

2.2 There are two aspects to be considered:

**Identification** - there should be some means of making it apparent at a glance that the file is subject to a custody time limit;

**Notation** - the expiry and review dates should be clearly and prominently marked on the file.

2.3 Most Areas use the same method both to identify files as custody cases and to record the expiry dates.

### Identification

#### *Applying custody time limits*

2.4 The first remand hearing is, perhaps, the most important event in the management of a custody time limits case. The whole

process of monitoring depends upon the clear indication by the lawyer at court that the case is a custody case. In most instances, this is achieved by the prosecutor using the abbreviation RIC (remanded in custody). Administrative staff responsible for monitoring custody cases respond to this by initiating monitoring procedures. Some lawyers endorse a specific instruction to this effect, although this practice is rare. Some emphasise the date from which the time limit should be calculated, though this is even rarer. Our file sample showed a number of instances where lack of clear instructions led to monitoring procedures not being activated until a second or subsequent remand, usually following specific instructions from the prosecutor.

2.5 Sometimes, usually in respect of Saturday and Bank Holiday remand courts, prosecutors dealing with a first remand do not have a CPS file jacket for the initial remand papers. In such cases, they will endorse details of the hearing on the remand papers and administrative staff have instructions to transcribe in full the initial endorsement onto the front of the file jacket when a file is registered. These details are not, however, uniformly located and have even been found on the back of case papers, making them easily overlooked.

2.6 Area inspection reports, and this review, have revealed sufficient mistakes in calculations resulting from the failure to transcribe endorsements from the initial remand papers to the file jacket to cause particular concern. We observed two such instances out of 83 cases examined which led to incorrectly calculated expiry dates. In one of these, the error resulted in the grant of an application to extend the time limit after the correct expiry date. The expiry date had been calculated from the

first date appearing on the file jacket which was one week after the first remand. The error was noticed after the second hearing but a clear endorsement pointing this out was not acted upon. It remained unnoticed until our file examination in the Branch office a few days after the time limit was extended. It was rectified immediately, although the defendant was lawfully detained in custody on other matters.

- 2.7 Some prosecutors employ the simple expedient of always having with them in court a stock of blank file jackets so that the endorsement can be noted directly onto the jacket itself, and thus removing the potential for transcription errors or failures. We think that this is good practice which should be universally adopted.
- 2.8 The example referred to in paragraph 2.6 also underlines the importance of clear instructions being followed by prompt action in custody cases. When the error was initially discovered, the note on the file simply indicated that the time limit should be calculated from the earlier date (which was specified). The note itself was not signed or dated, nor was it addressed to any individual. It was, however, prominently displayed. We presumed that persons subsequently reading the note (and there are likely to have been several) concluded that someone else had already rectified the matter. However, no one apparently checked. Had the endorsement targeted the instructions more specifically, and remedial action been noted, the problem would not have occurred. Confirming by endorsement that actions have been taken should be standard practice.

## Methods of identifying cases

- 2.9 The principal methods of identifying custody cases are as follows:

**Coloured wallets** - the MAS guidance suggests that custody time limit files should be enclosed in re-useable coloured plastic wallets. This allows immediate and clear identification and assists in retrieval of cases for review. We visited one Area which had adopted this approach, but are aware from Area inspections, that it is used in some others.

**Coloured stickers** - the most commonly used means of identifying files is by attaching to the jacket a coloured sticker upon which the expiry date and, in most cases, the review date are noted.

**Printed label** - some case tracking systems automatically produce a computer-generated label showing the expiry date which can be attached to the front of the file. These, however, sometimes obscure other details and simply provide a means of noting the time limit unless a separate "Custody Time Limits" sticker is attached to the top of the file jacket.

**Custody time limits box** - the date is simply noted in the relevant box incorporated in the file jacket. This, however, has only the same effect as the computer label in recording the expiry date.

**Rear of the file jacket** - one Area we visited recorded details of the custody time limit on the rear of the file jacket in a section which allowed ample space to record details of the expiry and review dates for a number of defendants as well as any new charges and recalculations following the return to custody of any

## IDENTIFICATION AND NOTATION OF CUSTODY TIME LIMIT CASES

defendant granted bail. Files had a sticker attached to the front with the words “Custody Time Limits Apply”, alerting staff to the fact that the case was a custody case.

**Custody time limits card** - another Area used a yellow card that was stapled securely inside the jacket on which the relevant details were recorded. This card was visible outside the jacket and acted as a clear marker that the case involved a custody time limit.

- 2.10 The above methods relate largely to magistrates’ court files. Very few Areas appear to have a means of identifying custody cases in the Crown Court. Some use a red-bordered sticker with “Custody Time Limits” printed on it; some endorse the abbreviation “CTL” in large lettering using a black or red marker pen. Others simply note the expiry date and review dates without any particular distinguishing mark on the file.
- 2.11 We have already referred to the importance of staff handling custody cases being aware that a time limit applies and when that limit expires. We consider that best practice requires the expiry date to be noted on the front of the file. The information is not confidential and is best displayed in a prominent position to ensure that files are handled with priority. It also serves as a visible reminder to the prosecutor at each hearing.

### Notation of the custody time limit

- 2.12 The current expiry date should be displayed at all times. All Areas note the custody time limit expiry date on or within the file jacket, as we report in the previous section. The expiry date was displayed on the file in all 83 magistrates’

court cases we examined. It was not displayed on three of the 50 Crown Court files (6%).

- 2.13 Most Areas also note the relevant review date. This was endorsed on the file in 69 magistrates’ court cases (83.1%) and 36 Crown Court cases (72%). In the case of an either way offence, it is usual for files to be endorsed with two dates representing the 56 and 70 day expiry dates. The former date is usually the review date for the 70 day expiry. It can also represent the expiry date if summary trial is determined before 56 days has expired.
- 2.14 The status of dates, however, is not always indicated. Some files are endorsed simply with the dates themselves, relying on staff to be familiar with the system to know what they represent. Others have “(56)” and “(70)” endorsed after them, sometimes followed by the words “review” (or “action”) and “expiry”.
- 2.15 Crown Court file jackets usually had the expiry and review dates marked on the outside of the jacket, often on a coloured sticker or highlighted in some way, although some were simply noted on the jacket itself, without any particular distinction.

### Cases in which more than one time limit applies

- 2.16 Each charge attracts its own custody time limit. In most instances, a single expiry date applies throughout each stage of case progress. However, situations can arise in which more than one time limit applies or the original time limit changes. We refer in the following paragraphs to situations which can commonly arise, but would emphasise at this point that these are matters which also need to be taken into



account in monitoring to ensure that each custody time limit is being treated individually and separately monitored.

**More than one offence charged at the same time**

- 2.17 A series of either way offences, for example unlawful wounding and affray, charged at the same time will each have an individual expiry date, albeit the same one. The most common (if not universal) approach in these circumstances is to note one expiry date and one review date on the file. If one charge is discontinued or withdrawn within the time limit, monitoring of the remaining charges is unaffected.
- 2.18 Either way and summary only offences (for example affray and common assault) charged at the same time attract different time limits of 70 days and 56 days respectively. In these circumstances files are usually endorsed with dates representing 56 and 70 days, sometimes with the number of days in brackets after each date. We saw no examples of the dates being distinguished by reference to the individual offences or offence categories.
- 2.19 Some Areas record only the 70 day expiry date. This situation has a number of implications. If, in the example set out in the preceding paragraph, the court proceeds to summary trial within 56 days on the charge of affray, both charges then have an expiry date of 56 days. Similarly, if the affray is discontinued, the time limit is 56 days. If only the 70 day limit is being monitored, problems will arise once 56 days expires, if no application is made to extend.

**Further charges on the same facts**

- 2.20 If a defendant is later charged with a further offence arising from the same facts, a new time limit applies from the date of first remand on the later charge, provided the prosecution is acting in good faith. The new expiry and review dates should be noted on the front of the file and clearly distinguished from those relating to the original charge.
- 2.21 In cases within our file sample involving charges which attracted different time limits, the expiry date for each charge was distinguished in eight out of nine magistrates' court cases where it was relevant. There were no relevant Crown Court files.

**Cases involving more than one defendant**

- 2.22 If two or more defendants are remanded in custody on the same day after being charged with connected offences, the same time limit will apply. Most Areas note only one time limit on the file, although some distinguish between defendants. If the defendants are charged on different occasions, individual time limits apply from the date each is first remanded and should be separately noted on the file.
- 2.23 In our file sample, the expiry date for each defendant was distinguished in four out of six relevant cases in the magistrates' court. There were three relevant Crown Court cases; the expiry dates were distinguished in none.

**Defendants in custody on more than one file**

- 2.24 If a defendant is remanded in custody in relation to two or more series of unconnected offences dealt with on separate files, each file will note the

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relevant expiry date. It is important that each individual time limit should be monitored separately.

- 2.25 Our file sample yielded one or two such examples which showed that the correct approach was being followed. However, we saw four files in our sample of 100 cases in which this was not the case. In two of them, it was clear from information on the file that monitoring had been “transferred” to other files involving the defendants which attracted a later time limit. In another, a decision was taken when the case was reviewed not to apply for an extension because the defendant was subject to a later time limit on another matter, although the prosecutor at court in fact applied successfully to extend.
- 2.26 Similar considerations apply when the defendant is serving a prison sentence on other matters. We saw one example of this, but the time limit was being correctly monitored.

### **Defendants returned to custody after being granted bail**

- 2.27 If a defendant, initially remanded in custody, is granted bail, the custody time limit is suspended. This is best dealt with by striking through the expiry date in such a way as not to obscure it completely. In some Areas, the number of days already spent in custody is noted on the front of the file. If the defendant is remanded again in custody on the same charges for any reason, the time limit starts again and the new expiry date, taking account of the time already spent in custody, should be noted clearly on the file.
- 2.28 If the reason for the defendant being returned to custody relates to the

commission of further offences, upon which he is also remanded in custody, those charges attract a separate time limit, calculated from the date of the first remand.

- 2.29 A defendant, previously in custody, who is arrested for a breach or apprehended breach of bail conditions, will usually be brought before the court for the area in which he is arrested. That court must then remand him to the original court, either on bail or in custody. If he is remanded in custody on a Saturday or Bank Holiday when contact cannot be made with the originating court or CPS Area, and the time limit is almost expired, there is a danger that he may be remanded to a date after expiry if the court is unaware of the number of days already spent in custody. Prosecutors in such cases must ensure that they have adequate information about the custody time limit to enable them to make the appropriate application.

### **Conclusions**

- 2.30 We have considerable sympathy for CPS staff. The custody time limit regime can seem disproportionately complex in circumstances where any need for further time may not emanate from the prosecution. The main complicating features are the substantial number of repeat offenders including those who, having been granted bail, either commit further offences or breach their bail conditions. A wider review may be justified but that is not a matter within our remit.
- 2.31 The method of noting expiry and review dates needs to cater for the situations we refer to above and to ensure that staff handling files can ascertain quickly the expiry date in respect of each defendant and each charge. The standard CPS file

jacket does not encourage separate noting of the time limit for each defendant. The CPS SCOPE file jacket contains space for up to four defendants, although it prompts the noting of only one expiry date if it applies to all.

2.32 We found that, 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 are little larger than a postage stamp and do not cater readily for the cases referred to above, often leading to confusion. Some methods we have described go some way to dealing with this, though none fulfilled the objective of showing clear and accurate information about the custody time limits at a glance.

2.33 We believe that the issue is one which should be addressed nationally. We are aware that a national working group is currently considering the design of CPS file jackets and that endorsement of custody time limits is within its remit. We do not wish to be prescriptive but would offer the suggestion that the design of the jacket (or suitably sized label or insert) should cater for the various situations which we have referred to. In the shorter term, however, Areas may wish to take more immediate action themselves.

2.34 Whatever system is adopted, the following factors require consideration as essential and minimum requirements of effective monitoring:

- the case must be identified at the outset as a custody time limits case;
- the events at the first hearing and accurate endorsement on the file are crucial;

- systems must take account of initial remand endorsements recorded on the remand papers;
- lawyers must endorse files clearly;
- staff must be alert for unusual situations such as defendants in custody on more than one file;
- calculations must be accurate - use of the ready reckoner is the most reliable;
- calculations must be checked;
- monitoring must be subject to frequent management checks.

### CALCULATION OF CUSTODY TIME LIMITS

#### Introduction

3.1 Accurate calculation of the custody time limit is the basis of effective monitoring. However, errors continue to occur, some of which are the result of misunderstanding about the regulations or poor or inaccurate file endorsements; others are without any apparent explanation.

#### Method of calculation

3.2 The CPS issues annually to all Areas a custody time limits ready reckoner. This shows the expiry dates on any given day for 56, 70, 112 and 182 day time limits. Most Areas use the ready reckoner, usually as the principal means of calculation, but sometimes as a means of checking a computer generated calculation. The ready reckoner takes account of Saturdays, Sundays and Bank Holidays in its calculations. (The regulations provide that any time limit which would expire on any of these days shall expire on the first preceding day which is not a Saturday, Sunday or Bank Holiday.)

3.3 Some Area staff calculate custody time limits manually, usually in order to verify the ready reckoner. This involves counting off the weeks one by one using a calendar or diary. Although this attitude may appear to be somewhat perverse, the mistrust amongst a few staff of the accuracy of the ready reckoner was reinforced by an error in the 2001 issue. This was an obvious typing or printing error and was soon discovered. We believe the ready reckoner is the most accurate method of calculation and

checking. The capacity for errors in calculation using manual methods of counting is far greater. We visited one office in which expiry dates were sometimes calculated manually using the monitoring diary. We examined the diary which showed expiry dates on Bank Holidays (notably Boxing Day), presumably because the person calculating had not noticed the significance of the dates. Of greater concern, however, was the fact that some time limits were shown as expiring on Saturdays.

3.4 Most computerised case tracking systems have a facility to calculate expiry dates in custody cases. However, in most Areas staff continue to rely on the ready reckoner rather than the computer calculated dates. We were told that computer generated expiry dates were often incorrect and had to be altered. Many computer systems did not appear to have the facility to calculate the 182 day expiry date which applies to indictable only cases.

#### Checking calculations

3.5 The custody time limit was incorrect in 11 cases out of 133 in our file sample (8.3%). Only ten files (7.5%) showed any evidence of the calculations having been checked. Both of these findings are cause for concern.

3.6 Expiry dates are usually calculated by level A administrative staff who endorse the relevant dates on the file. Not all Areas require calculations to be checked, although managers often carry out checks on a sample of files. In some Areas, the system requires the calculation to be checked by managers, sometimes in every case, but again more usually on a sample of cases. It was rare, however, for the

person checking to endorse the file to the effect that it had been done.

- 3.7 Most lawyers did not feel that it was their responsibility to check expiry dates as a matter of course when handling cases in court. They relied on administrative staff to have made the correct calculation. Some said they may check calculation of the expiry date when considering whether to apply for an extension.

### Recalculation

- 3.8 If a defendant previously remanded in custody is granted bail, the custody time limit is suspended. We have dealt with the procedure which should be adopted in these circumstances at paragraph 2.27. If the defendant is later remanded in custody again on the same charges, most Area custody time limit systems encourage the lawyer in court to endorse specific instructions on the file for administrative staff to re-activate the time limit. Our file sample included only two cases on which the custody time limit was re-activated. On one file the lawyer in court had given specific instructions to administrative staff to recalculate the expiry date, deducting the number of days on bail, and to check the recalculation with him. Ironically, the lawyer had calculated the number of days on bail incorrectly, but this was noticed and the correct new date was applied. In the other case, the court endorsement did not make it clear that the defendant had been remanded into custody again. However, someone appeared to have noticed this subsequently and a re-calculated expiry date was placed on the front of the file and noted in the monitoring system.

- 3.9 Recalculation is usually undertaken by A level staff. Most of those we interviewed said that they would always have any

recalculation checked by a manager or lawyer. In some offices visited, an administrative manager was responsible for the recalculation and would usually ask a lawyer to check it.

### Conclusions

- 3.10 Our experience is that the calculation of expiry dates cannot be checked too often. In addition to any system of formal management checking, we feel that it is prudent for lawyers dealing with remands to assure themselves and the court, particularly when considering or making an application to extend, that the expiry date is correct. Although this issue may be of lesser concern if Areas adopt the practice of agreeing expiry dates in court (paragraph 4.5), we think that the matter should be addressed more immediately. Similarly, although recalculation of the custody time limit is a simple mathematical exercise, it is one with particular scope for errors to be made. An independent check of any recalculation will reduce the risk.

- 3.11 We recommend that all initial calculations of custody time limit expiry dates and all recalculations in cases in which a defendant is returned to custody after time on bail should be independently checked and files should be endorsed to show that this has been done.**

### MONITORING PROCEDURES

#### The purpose of monitoring

- 4.1 The principal purpose of monitoring custody time limits is to ensure that if committal is unlikely to take place or the trial start before the expiry of the time limit, the case can be reviewed to determine whether an application to extend is appropriate. It also enables those who are tracking the case to ensure that all actions are taken promptly so that it progresses as quickly as possible.

#### Responsibility for monitoring custody time limits

- 4.2 Neither the Act nor the Regulations impose upon any agency specific responsibility for monitoring custody time limits to ensure that they do not expire without the need to extend the limit being considered. However, the Regulations make it clear that it is the responsibility of the prosecution to serve notice of any application to extend on the magistrates' court or the Crown Court, as appropriate, although the requirement of notice may be dispensed with in some circumstances.
- 4.3 Since the introduction of custody time limits, the prosecution has accepted, in isolation, the responsibility for monitoring and continues to do so. The attitude of the defence varies. Many defence lawyers are content to assume that the correct time limit is being accurately monitored and that the prosecution will make application to extend, if appropriate. Others are more rigorous in their approach.

#### The magistrates' court

- 4.4 Involvement in monitoring of custody time limits by magistrates' courts is rare if not non-existent. It is possible, and likely, that the majority of custody cases will proceed in the magistrates' court without the expiry date being referred to at any stage, thus giving neither the court nor the defence the opportunity to check upon its accuracy.
- 4.5 However, we visited two Areas (and written systems forwarded to us from other Areas indicate other examples) where prosecutors seek to agree with the court the custody time limit expiry date at the first remand hearing. The degree of enthusiasm amongst prosecutors for this initiative, and co-operation by the courts, varies from location to location. However, in those courts in which it is most widely practised, there is a perception of greater benefit and assurance in the accuracy of the custody time limit.
- 4.6 We consider this to be **good practice**. It should be encouraged, built upon and extended to all magistrates' courts. In all cases, the prosecutor and clerk should agree the expiry date when a defendant is first remanded in custody. Some CPS lawyers have said that it is unrealistic and dangerous to expect the prosecutor to calculate the custody time limit in a busy remand court with many defendants. This misses the point. Each defendant, on any given day, will attract the same time limit, depending upon the type of case. At most, the prosecutor and clerk will need to know only three dates, that is 56, 70 and 182 days, which can be ascertained (and agreed) in advance of the court.
- 4.7 In addition, we take the view that at each subsequent hearing when the defendant is

further remanded in custody, the expiry date should again be mentioned to act as a reminder to all parties in the case and to prompt any action required to expedite progress of the case.

### The Crown Court

4.8 Recent case law has imposed a duty on the Crown Court, as well as the prosecution, to ensure that trial dates for defendants in custody are fixed within the custody time limit. In some instances, this can lead to transfer of the case to another court centre. This has accelerated the process, already begun, of individual Crown Court centres monitoring case progress. The custody time limit is a specific issue at plea and directions hearings (PDHs). In cases in which the trial cannot be listed at PDH, directions are given by the judge that the case is to be listed within the time limit, or the case should be put before the court for further directions if this appears to present difficulty.

4.9 We have come across examples, in this review and Area inspections, of Crown Courts forwarding to CPS offices computer generated lists of cases in which the custody time limit is due to expire within the next seven days. Area staff find this useful as a double check, although they told us of discrepancies between the Crown Court and CPS expiry dates, and continue to use their own systems as the principal form of monitoring.

4.10 However, any monitoring undertaken by Crown Courts is done in isolation. We think a better approach is a co-ordinated system of monitoring between the CPS and the Court which involves a full exchange of information, commencing with agreement as to the expiry date

following committal and continuing at all stages of case progress.

**4.11 We recommend that CPS Areas should seek to establish a protocol with the Crown Court to adopt a co-ordinated approach to monitoring custody time limits cases. This should involve early agreement of the expiry date and exchange of information about case progress, and listing issues as the case progresses.**

### Entering data into the monitoring system

4.12 Once a custody case is identified and expiry and review dates are calculated, details are entered into the Area's monitoring system. Most Areas use both a computerised and a manual system (usually a diary) as the MAS guidelines advocate. Only one of the Areas visited relied entirely on the computer system.

4.13 The primary responsibility for monitoring rests with the Unit handling the case. If, therefore, for whatever reason, a case is to be heard at the Crown Court, monitoring will transfer with the file from the CJU to the TU. In one office visited, however, the CJU continued to monitor custody time limits, up to committal, after transfer of the file to the TU, as a back-up system. In another office, the CJU maintained full responsibility for monitoring time limits as long as the case was in the magistrates' court, even after it was transferred to the TU.

4.14 Most data entry is undertaken by level A staff. The MAS guidance recommends that all information entered into monitoring systems should be checked by a senior caseworker or lawyer to ensure accuracy. This was done in only four of the ten offices visited in respect of

magistrates' court cases and in five of the ten in respect of Crown Court cases. Even then, these were more likely to be a check of a sample only. In those Areas where checks occurred, they were undertaken by level B1 or B2 staff. The majority did not indicate on the file or within the system that the check had been done and the entry was correct. This could, of course, lead to the check possibly being done several times, thereby wasting resources.

4.15 Management checking of initial data entry is restricted to ensuring that the data from the file has been accurately transferred into the system. This review showed many examples of omissions to record expiry and review dates, some of which were without apparent explanation. We are not aware of any Area whose procedures include a check to ensure that the details of every custody remand case are actually entered into the monitoring system within a specified period of the first hearing.

4.16 In eight offices visited, case details were deleted from the monitoring system when the time limit ceased to apply, for example following the grant of bail or plea of guilty. In those offices where this was not done, details were not usually removed until the file had been retrieved and checked at the review date, although some intervening event might lead to its being done earlier. This was regarded as a safeguard, though the inconsistent approach makes its value questionable. In our view, the monitoring system should accurately reflect the current position.

**4.17 We recommend that Area monitoring systems should be:**

- **checked frequently to ensure that the expiry date and review date in each custody case have been**

**correctly entered into the system and the entries should be annotated to show the check has been done;**

- **immediately updated after each court hearing, and other event which affects the case, to ensure that the system accurately reflects the true position.**

### Management checks

4.18 Most offices visited recognised the advantages of regular management checks to ensure that custody time limits were being properly monitored. The depth of these checks and the level of responsibility varied, however. In some offices, a B1 manager carries out a weekly check, to ensure that action has been taken on all the cases with review dates for that week. Most managers annotate the system to show the checks have been done. Some Prosecution Team Leaders or Unit Heads were also involved in checking the monitoring system. One of the written systems that we examined required a written weekly report confirming that all monitoring checks had been carried out and action taken. Managers at one office that we visited reported orally on the performance of the system at management meetings.

4.19 Examination of the system alone is not enough. Nor is simply checking dates noted on the file against the relevant date in the diary or on the computer print out. This, of itself, will not reveal the errors which lead or contribute to failures.

4.20 We visited one office in which each team leader was required to carry out a monthly audit on a sample of cases subject to a custody time limit (although this often included all cases within the team). It involved an examination of files



which were checked for accuracy of expiry dates and clarity of endorsements, amongst other things, and a report prepared for the Unit Head which was then forwarded to the CCP. This exercise followed on from the Area inspection report (which made recommendations in respect of custody time limits) and discussions with inspectors about the nature of the action to take to improve the handling of custody cases. It was viewed as a positive exercise which had assisted in improving performance in respect of custody time limits monitoring, and had made senior managers aware of repeated poor performance and the types of mistakes which occurred and which contributed to mismanagement of custody cases. We believe this to be **good practice**. Examination of individual files will not only identify any latent problems there may be in respect of specific files, but will highlight common generic errors which contribute, or are capable of contributing, to monitoring failures and will enable managers to initiate remedial action.

- 4.21 We recommend that custody time limit cases should be subject to regular and documented management checks to ensure that endorsements are clear and accurate and that all necessary action has been taken.**

#### **System failures which result in the release of the defendant**

- 4.22 In April 2002 (after the completion of our visits to CPS offices), the DPP reintroduced a requirement (which had ceased some three years previously) to report all custody time limit failures to CPS Headquarters. This report would have recommended the reinstatement of the requirement, had the decision not

been taken independently. The requirement ensured that failures are investigated thoroughly, sometimes by a neighbouring Area. The findings should result in changes to the system, if appropriate, to ensure that mistakes are not repeated. Lessons of wider application might be promulgated nationally.

- 4.23 The review confirmed that Areas take failure very seriously but the lack of any need to report them centrally gave rise to some concerns. We detected a hint (though by no means universal) that, if a failure did not attract any adverse publicity, there was a feeling that the Area “had got away with it”. Nevertheless, it is clear from this review, and Area inspections, that most failures have continued to be investigated within Areas and remedial action taken.
- 4.24 The DPP’s minute to CCPs refers to reports of “custody time limit failures”. It is not clear whether the requirement includes those cases in which the expiry date has been missed because of a monitoring failure but the defendant has remained in custody on other matters, and those in which an error has been discovered in sufficient time to take remedial action. We regard these as failures, from which others may learn valuable lessons. The number of failures or “near misses” each year is hopefully small in most Areas. However, they are just as capable of providing valuable lessons as cases which result in the release of the defendant.

### REVIEWING THE CUSTODY TIME LIMIT

#### Introduction

5.1 Review dates are set principally as action dates or triggers to retrieve files which are subject to a custody time limit, so that the case can be reviewed to determine whether an application to extend the time limit will be required and is appropriate. We deal with applications to extend in chapter 6 of this report. They can also enable staff to ensure that the case is progressing quickly and that outstanding actions are expedited.

#### Setting review dates

5.2 Areas use a wide range of action dates. In those offices visited, the dates used as review dates tended to fall 14 days prior to the expiry for magistrates' court cases. We did however, find one office that set review dates 21 days after the first remand when the expiry date, at the earliest, would be five weeks away. A similar set of wide ranging dates for review were used for Crown Court cases with the earliest being set ten weeks before the expiry and the latest being two weeks before.

5.3 Such early review dates would be too early to consider whether an extension would be necessary but could usefully be used to check the progress of the case to ensure that any work necessary on the file was on schedule. The danger perhaps with using early and frequent review dates is that staff see the files so many times and at such an early stage, that they may tire of checking case progress so often. They therefore become less effective.

5.4 Careful thought must be given to setting frequent and early review dates. It may be more effective to set action dates for specific items such as the receipt and review of the full file of evidence or any additional evidence requested, rather than retrieve a file on several separate occasions to check, perhaps unnecessarily, case progress. It is also important if review dates are used for checking case progress, that action taken is noted on the file.

#### Action at review date

5.5 Review dates are checked in the monitoring diary or on printouts from the computer system on either a daily or weekly basis. Diaries or printouts would normally be annotated to show what action had been taken. These tasks were usually carried out by administrative staff. This work was sometimes checked on a regular basis by managers (the Unit Head in one instance) to ensure that all the relevant files had received attention.

5.6 Files are normally retrieved by level A staff but sometimes this task is undertaken by B1 managers. Office instructions commonly state that files must be retrieved on the review date and not left if the file was difficult to find. After a check to ensure that time limits still apply, most office systems required that the files be handed to a lawyer for a review of case progress and/or to initiate action to produce written notices to extend the time limit.

5.7 The MAS guidance recommends that files which have reached a review date are not left on lawyers desks, but are personally handed over to the lawyer and a note made on the file to record when responsibility for action was handed onto

them. This did not appear to be the procedure in most offices we visited. If lawyers were out of the office, custody files that had reached the review date may be left on a lawyer's desk, usually with a note explaining what action was required of them. However, in some offices, if the lawyer allocated to the case was not in the office, administrative staff had instructions to hand the file to a senior lawyer to consider the necessary action.

### Ensuring that cases progress quickly

5.8 In only a very small number of offices visited, we found formal systems to ensure that files given to a lawyer for action on the review date had been dealt with. This was usually achieved by a nominated member of administrative staff handing the file to the lawyer and having the file returned to them when the necessary action had been taken. In some offices an action date was set to follow up if the file had not been returned by the date fixed.

5.9 Although most cases proceed to committal or trial within the custody time limit, the CPS and its partners in the criminal justice system should remain aware of the need to ensure that custody cases proceed through the courts quickly and that actions required on files are dealt with promptly. We found that Area staff clearly appreciated the importance of this aspect although not all Areas had in place appropriate systems to ensure speedy case progression.

5.10 There are national guidelines which govern the time in which the police must submit a full file to the CPS. The police work to these guidelines. In some Areas, the CPS send the police a pro-forma minute requesting submission of the full file and setting out the target date. Some

Areas set the police action dates for receipt of further evidence or information, though this usually applies to all cases. Action dates may be more urgent in custody cases, however. We saw other examples of minutes to the police in custody cases which said that action was "urgent" and sometimes that it was required "as soon as possible". Some simply mentioned the next remand date. Only a minority highlighted the custody time limit expiry date, although some referred in the text of the minute to the fact that the defendant was in custody.

5.11 Whatever system might be used, however, target or action dates for files are rarely monitored and followed up within CPS.

**5.12 We recommend that the police should be set target dates for submission of full files and responses to other requests for information in custody cases. Minutes to the police should indicate that the file is subject to a custody time limit and highlight the expiry date. Action dates should be monitored and followed up as necessary.**

## APPLICATIONS TO EXTEND THE CUSTODY TIME LIMIT

### Introduction

6.1 The experience of this review has shown that most cases proceed to trial or committal within the period of the custody time limit. Section 51 of the Crime and Disorder Act 1998, which allows indictable only cases to be sent to the Crown Court without the need for committal proceedings, has removed the need to review the time limit at 70 days so far as they are concerned. Although such cases are fewer in number than summary or either way offences, their serious nature often meant that a longer period of time was required to prepare the case for committal. However, applications to extend the time limit still occur, mainly in the Crown Court, and are, perhaps, the most important aspect of custody time limit monitoring.

### When application may be made

6.2 The Act and regulations make provision for custody time limits to be extended, upon written or oral application, if the case is not ready to proceed before expiry of the time limit. Certain criteria must be satisfied. The prosecution must give notice in writing of its intention to make application to extend (two days in the magistrates' court and five days in the Crown Court), although notice may be dispensed with in certain circumstances. The court can only extend if it is satisfied that:

- the need for the extension is due to:
  - (i) the illness or absence of the accused, a necessary witness, a judge or a magistrate;

- (ii) a postponement which is occasioned by the ordering of the court of separate trials in the case of two or more accused or two or more offences; or
- (iii) some other good and sufficient cause; and

- the prosecution has acted with all due diligence and expedition.

6.3 The first two criteria are largely straightforward matters of fact, about which there will usually be little argument. They rarely feature as reasons for the need to extend the time limit. The majority of applications are made in circumstances in which the case is not ready to proceed to committal or trial by the expiry date.

6.4 The need to show that there is good and sufficient cause to extend the custody time limit, and that the prosecution has acted with all due expedition, are often matters of contention which have given rise to a wealth of case law. They are questions which require the exercise of legal judgment. As such, they need to be carefully considered in individual cases to ensure that an accused does not spend more time in custody than is consistent with the merits of the case and the interests of justice. We consider that, other than in wholly exceptional circumstances, this decision should be taken by a Crown Prosecutor before notice is given to the court and the defence that application is to be made.

6.5 This is reinforced in the CPS Prosecution Manual which requires prosecutors, as part of their duty of continuing review, to consider whether the custody of the defendant is still justified, or whether conditional bail may be appropriate. The Manual also requires that monitoring

systems should ensure that files where the time limit is due to expire are “brought before the reviewing lawyer or lead PCP in good time to make a decision and, if appropriate, an application to extend the CTL”. This is not always done, however. We refer to this further at paragraphs 6.8-6.10.

### Procedures in the magistrates’ courts

- 6.6 Few offices have a system to ensure that files retrieved for review are actioned quickly. Prompt responses are achieved by caseworkers personally handing files to the lawyers and waiting for the decision, or by passing to the lawyer the responsibility to ensure the notices are prepared promptly. Preparation of notices is generally given priority.
- 6.7 We examined 45 magistrates’ court cases in which an application to extend the time limit was made. The circumstances of the application required prior notice to be given in 42 of them. The file showed that the notice was served in time in 36 of the 42 cases (85.7%), although we could not tell when the notice was served in two of the remaining six cases.
- 6.8 In some offices, level A or B caseworkers have instructions to prepare notices of application to extend automatically when a file is retrieved for review. In most instances, these are passed to a lawyer for signature. If the reviewing lawyer is unavailable, another lawyer is usually asked to sign, although the system in some offices allows caseworkers to do this. In the latter instances, and sometimes the former, there is no real review of the need to apply and justification for applying.
- 6.9 In other offices, the file is passed direct to a lawyer to prepare the notices to extend.

Again, in these circumstances, we were told that notices are sometimes prepared and served without proper consideration of the circumstances. Our file sample showed evidence that a lawyer had considered the need to make an application to extend prior to notices being served in 21 out of 45 cases. We were satisfied that prior consideration was not given in six of the remaining cases and were unsure of the position in 18.

- 6.10 The result of this is that, in many cases, the decision whether to make an application is, in effect, taken initially by the prosecutor on the day of the hearing. We acknowledge that the ultimate decision must be that of the lawyer in court when application is made; circumstances may change between the serving of notice and the hearing which make application inappropriate. However, this is rarely the case and applications in court usually follow the service of notice. As such, the decision to apply should be informed by a careful consideration of all relevant issues when the file is reviewed and before any notice is sent out.
- 6.11 Even in cases where the reviewing lawyer carries out a full review to determine whether an extension is justified, there is no record of the decision with the factors taken into account endorsed or noted within the file. The prosecutor who makes the application is usually faced with a decision which he or she then has to justify to the court, with no recorded reasons, when the application is made. In some instances, the prosecutor at court may decide that application to extend cannot be justified and the defendant will eventually be released on bail.

### Procedures in the Crown Court

- 6.12 We examined 30 cases in which application was made in the Crown Court to extend the custody time limit. We were able to ascertain that the notice was served in time in 25 cases. It was served out of time in three and we could not ascertain the position in the remaining two cases.
- 6.13 Procedures for extensions in the Crown Court vary. Files are retrieved at the appropriate action date and usually forwarded to the caseworker handling the case. In some instances, the caseworkers will consider the need to extend and prepare notices if application is to be made. This decision may sometimes be taken in consultation with the reviewing lawyer. In some offices, it is the practice for the lawyer to take the decision. We could find evidence that the need to apply to extend the time limit was considered by a lawyer prior to notices being served in only five cases. We concluded that it had not been considered by a lawyer in four cases and were unsure of the position in the remaining 21.
- 6.14 Again, the majority of reviews result in an application to extend. Decisions not to extend are rare and applications generally result in time limits being extended.
- 6.15 If a case is listed specifically for an application to extend, the Crown Court will normally list it as such rather than “for mention”. If the application is required to be made at another hearing, files are usually highlighted in some way to remind the caseworker that application may be necessary if the case is adjourned. If a case listed for trial is to be vacated, the majority of courts retain appropriate cases in the list so that an application to extend can be made. The Crown Court

revises its lists on a daily basis. Area systems must guard against removal from the list of any case in which an application to extend the time limit is to be made, or likely to be required because of the postponement, without the approval of a senior member of CPS staff.

### The culture of decisions

- 6.16 Although we were told in each office visited of instances where application was not made following a decision at review, or by the prosecutor in court, we saw no example of this, except in one office. In most offices, the prevailing culture was to apply to extend in most cases. This culture extended to the courts and the defence so that extensions were granted often without too much enquiry from the courts and little or no opposition from the defence. We were told that the defendant was often happier to serve time on remand rather than as a convicted prisoner.
- 6.17 In one office, however, it appeared equally to be a matter of course not to apply to extend because “there were no grounds for extension”. This was invariably in the magistrates’ court on the basis that the prosecution could not show due diligence and expedition because the police had not submitted a full file for committal or summary trial. The office concerned used a review sheet to record the decision but, in the files that we saw, this was never completed except in the terms quoted above. There were no reasons given for coming to the conclusion and files did not generally show particular efforts to expedite matters with the police. Courts rarely appeared to query the prevalence of decisions not to apply to extend and the defence were presumably used to the idea that their clients would be released from

custody after the appropriate time lapse. Neither were we told of any particular objections from the police, either in individual cases or more generally.

- 6.18 We did not conclude in any file that we examined that the decision to apply to extend the custody time limit, or not, was clearly wrong in the individual circumstances of the case. However, the exercise of the reviewer's discretion might have produced a different but equally supportable decision in some cases. Despite this, we feel that neither of the situations described in the preceding paragraphs is sustainable and Areas will wish to review their own approach in the light of what we say.
- 6.19 The decision whether to apply to extend a custody time limit is an important legal decision which requires careful consideration of all relevant factors in each individual case and which should be properly evidenced on the file.
- 6.20 We recommend that all decisions whether to apply to extend a custody time limit in the magistrates' courts and in the Crown Court should be made by a lawyer before any notices are served. Details of the decision should be endorsed on the file, stating clearly the grounds for any application or reasons why any application is inappropriate.**

### Chronologies

- 6.21 Whatever the ground for making an application to extend a custody time limit, the prosecution must still show that it has acted with all due diligence and expedition. This issue must be considered by the court before making a decision, even in cases where it is not contested by the defence.

- 6.22 To assist in its deliberations, the court should be provided with a chronology which sets out details of all relevant events and dates in the progress of the case (R v Chelmsford Crown Court, ex parte Mills, The Times, 31 May 1999). Ideally, the chronology should be agreed, which implies service on the defence prior to the hearing of the application. Additionally, it is considered good practice to give the grounds of the application in the notice.
- 6.23 Chronologies to establish due diligence and expedition on the part of the prosecution are not prepared as a matter of course for extensions in the magistrates' courts. A chronology was prepared in only four out of 42 cases (9.5%) in which applications to extend were made in the magistrates' court. Those examples we saw were very brief and usually set out in the standard notice to the court and defence.
- 6.24 Chronologies are more usual in the Crown Court, though it is not universal practice to prepare a chronology in every case to accompany the application. They were prepared in 17 out of 30 relevant cases (56.7%) we examined. Chronologies are normally prepared by the caseworker or lawyer who takes the decision to seek to extend, though counsel may prepare them in bigger or more complex cases. They are usually served on the court and defence in advance when the notices are served. Some are incorporated within the actual notices, whereas others are within a separate document. In some instances, they are made available at court with copies for the court and defence counsel.
- 6.25 We recommend that chronologies of case progress to show that the prosecution has acted with all due**

**diligence and expedition should give full details of all events and actions to expedite progress, and should be served on the court and defence with notices of application to extend a custody time limit.**

6.26 Most staff told us that they found chronologies relatively easy to prepare, except in the bigger and more complex cases. Caseworkers, who prepare the majority of chronologies, said that their day-to-day involvement with a case meant that they were already in possession of most of the information they needed. The ease of preparation, however, was often reflected in the quality of the document. The standard of chronologies varied. Some were very detailed and informative, containing not just a record of events and dates but also a narrative of case progress and expectations. The majority, however, were very poor, often being little more than a recital of the committal date, plea and directions hearing date and proposed trial date.

6.27 We noted that one or two offices had some form of case progress sheet which could be used to record details of events as the case progressed. Most were in the form of a checklist which required a tick, signature and date as the event occurred or action was taken. They were usually stapled to the inside flap of the file jacket. Unfortunately, they were often only partly completed or not completed at all. However, each one, if properly maintained, was capable of assisting in the preparation of a chronology. We are reluctant to recommend the creation of new forms to attach to, or within, files when experience in this review and Area inspections tells us that the rate of completion is often minimal. However, we take the view that this aspect of

custody time limits is of particular importance but is often given less than full consideration.

**6.28 We recommend that files involving custody time limits should contain a record of case progress and actions taken to expedite submission of files, further evidence and other necessary information to assist in the preparation of chronologies.**





### APPEALS AGAINST REFUSAL TO EXTEND A CUSTODY TIME LIMIT

7.1 Section 22(8) of the Act allows the prosecution a right of appeal to the Crown Court against a magistrates' court's refusal to extend a custody time limit. Such appeals are very rare for a number of reasons. The majority of cases are dealt with within the relevant time limit without the need to consider an extension. The majority of refusals are not so unreasonable as to warrant the consideration of an appeal against the decision. However, we have two principal concerns which may impact upon the number of such appeals.

7.2 The first is that knowledge amongst CPS lawyers of the right to appeal was mixed. Some Area systems refer to the appeal procedure in differing degrees of detail, and our impression is that most lawyers are aware that the power exists. There were some, however, who did not seem to know of it and this too may be a factor contributing to the low number of appeals. Others confused it with the right of the prosecution to appeal against a granting of bail by magistrates under the Bail (Amendment) Act 1993. Many of those who were aware of the existence of the power knew little more than that it existed.

7.3 Our second concern relates to the timescale for appeals. The right of appeal is dependent upon the service of notices to the magistrates' court, Crown Court and the defence. Notice must be lodged with the Crown Court before the expiry of the time limit. The time limit continues to run until notice is served, at which point it is suspended, pending the determination of the appeal. Clear dangers exist if an application to extend the time limit is

made on the actual day of expiry and refused. There is little time to prepare and serve the notices in cases in which it is felt right to appeal.

7.4 Full appreciation of this potential situation varied. Some lawyers and caseworkers had not appreciated the danger. Others felt it was very unlikely to occur. The reasons for this were that applications to extend were becoming fewer since the Narey provisions expedited the initial stages of case progress; applications were usually made a few days in advance of the expiry date; and there were few cases in which it was felt appropriate to challenge the refusal.

7.5 It is important that lawyers should be aware of the right of appeal as well as the procedure involved and that Area systems should reflect the procedure. The timing of applications to extend the time limit should also take account of the requirements of the appeal procedure to ensure that proper consideration can be given in individual cases of the need to appeal and that the right of appeal can be exercised in all appropriate cases.



### WRITTEN SYSTEMS

#### Introduction

- 8.1 A comprehensive written custody time limit system will best achieve the consistent application of the system by all staff. It is also a firm basis for training and reliable reference guide. The current CPS Prosecution Manual encourages Areas to produce a written system dealing with custody time limits which must be available to all staff. The MAS report suggests that Areas document their systems and “distribute it to all staff as a visible desk aid”.
- 8.2 The quality assurance review referred to in paragraph 1.8 found that the format and purpose of written systems produced by Areas varied considerably. In a summary of good practice elements, the report suggested that documented systems be provided to all staff, accompanied by desk instructions relating to individual responsibilities. This tended to ensure that staff had a far greater awareness of their role within the system. In some of the Areas we visited, we found that staff had written their own desk instructions, in the absence of any formal written office system.

#### Format and content of Areas systems

- 8.3 We requested, in advance of our site visits, written systems from all 42 Areas. We received responses from only 35 Areas. We considered each system sent to us and examined those of the ten sites visited in greater detail.
- 8.4 The content and quality vary widely. Some are excellent in format and content. They include a summary of the law, containing details of more recent case law

and set out comprehensively the roles and levels of responsibility in relation to each task. There are examples of systems with “aide memoir” sheets for each grade of staff that detailed their tasks within the system. In some Areas these sheets have been laminated, anticipating frequent reference and usage. However, many Area systems are less detailed. One or two were no more than handwritten notes made by administrative staff.

#### Consistency and good practice

- 8.5 In addition to the lack of consistency in the standard of written Area systems across the country, we also found inconsistencies in the standard and quality of systems produced within an Area. In some Areas, we found examples of comprehensive written guidance in one office and less detailed guidance in another office.
- 8.6 We were aware from Area inspections, that a written system and accompanying guidance from one particular Area had been made generally available. During this review we found that several Areas had a copy of the system. Some had adopted it as an example of a good practice and adapted their own systems accordingly. In other Areas, the system had been distributed to staff with little or no explanation as to what should be done with it. Such adaptation and sharing of good practice is to be commended but needs to be better controlled and co-ordinated.

#### Legal background and case law

- 8.7 We have referred earlier in this chapter to the use of desk instructions for individual responsibilities. Although commendable, these are not enough in themselves, otherwise actions are carried out as a

matter of routine. We believe that staff will operate more efficiently and with greater confidence if they are not only properly trained in their role, but also have an understanding of the legal background.

- 8.8 We found that most of the administrative staff we spoke to were keen to know more about the law. They felt it would be helpful to have an understanding as to why they were required to do certain things with custody cases as opposed to simply knowing what to do. Some had picked up an understanding of certain aspects of the regulations, but this piecemeal approach may lead to greater misunderstandings.
- 8.9 Many Area systems contain a summary of the law appropriate for all levels of staff. However, it is also useful to cover this material during any training that is given to staff. Some administrative staff we spoke to said that their knowledge of the law had been gained through experience, having to deal with unusual situations when they had had to ask for guidance.
- 8.10 Most staff were happy that they were being informed of new case law. However, some felt such information could be disseminated in a more user-friendly form. CPS issues Casework Bulletins which update staff on any new cases affecting particular areas of the law. These are released as and when necessary for custody time limits.
- 8.11 Some staff commented that it was difficult to keep up to date with developments in case law. The CPS new communications infrastructure (Connect 42) can provide an effective method of achieving this objective.

### **Ensuring that systems are accurate**

- 8.12 One thing that most of the written systems had in common, even those of a high standard, was that they were not entirely up to date with changes that have occurred in the law regarding custody time limits. Many of the Areas visited conceded that their written instructions required some updating.
- 8.13 The most common omission was that of the law and procedures relating to the handling of indictable only cases. Section 51 of the Crime and Disorder Act 1998 introduced new provisions in such cases with effect from January 2001. We requested copies of Area systems in August 2001. Not all systems incorporated this important change. Those Areas that had information regarding indictable only cases often presented it in a document separate from the general guidance.
- 8.14 Of greater concern was the fact that some Areas had not incorporated into their systems important changes introduced in 1996 (when the maximum period of custody in the Crown Court changed from committal to arraignment to committal to start of trial), and 1999 (when custody time limits were applied to summary only cases). We presume that staff involved in monitoring time limits were aware of the correct position but misunderstandings could lead to time limits expiring without extensions being properly considered.
- 8.15 The final feature emerging from the examination of the written Area systems was the occurrence of mistakes in the guidance. It is essential that once systems have been devised and recorded that such guidance is thoroughly checked to ensure that it does not contain any out of date information or any errors. One system we

looked at gave incorrect guidance about the commencement of the custody time limit in the magistrates' court which, if adhered to, would have led to expiry dates being calculated, in many cases, some weeks later than they should have been.

- 8.16 Such examples of out of date guidance may explain why some staff prefer to rely on notes they have made themselves whilst being trained in custody time limits. Current information is essential for all members of staff and they should be confident that their written guidance contains the most up to date information. Absence of an up to date system means that staff must rely on word of mouth or remain uninformed. Such out of date or inaccurate instructions may lead to a custody time limit being missed if someone unfamiliar with the changes removes a case from the monitoring system.
- 8.17 Changes in the law or procedures should be written into guidance and desk instructions as soon as possible after the changes occur and not communicated as separate instructions. If changes do occur which require written guidance to be updated, it would present a good opportunity for Areas to reassess their current instructions and ensure all aspects of the guidance accurately reflect the current system.
- 8.18 Written systems must be easy to update so that all members of staff have the most current information. This is something that Areas must bear in mind when deciding on a format for their system.
- 8.19 Some of the Areas we visited had carried out a review of their system and had subsequently made changes. It is essential that not only are staff given an updated version of the guidance but that this is

properly introduced to them so that all members of staff are aware of the changes.

### Conclusions

8.20 We take the view that a properly documented custody time limits system is essential to effective monitoring. Systems should make clear what needs to be done, when it needs to be done and who is responsible for doing it. Systems should also be kept up-to-date so that they reflect the current state of the law and Area procedures as they are in fact practised. If systems are not properly maintained there is a danger that incorrect procedures will be perpetuated as new staff become involved in monitoring duties and staff will have no reliable reference point for any queries or uncertainties they have concerning monitoring.

**8.21 We recommend that Areas should devise a mechanism to ensure that their written custody time limit guidance is reviewed and updated to reflect changes in the law and national and local procedures as they occur, and that these changes are effectively communicated to Area staff.**



### CO-LOCATED UNITS

- 9.1 At the time of this review, CPS Areas were in the process of implementing the recommendations of the Glidewell review in respect of Criminal Justice Units (CJUs) located within police stations. The move to co-located Units raises issues in respect of file administration and management which will vary according to the system adopted. However the responsibility for at least some aspects of file management will pass from CPS to police administrative staff. The importance of custody time limits procedures requires special consideration in establishing co-located Units.
- 9.2 We sought to ascertain as far as was possible, given the stage of implementation of the recommendations at the time of the review, what the specific issues were and how they were being addressed. We visited two co-located Units to speak to police and CPS staff and visited a third CPS office in which the CJU had recently moved to police premises. Although we did not visit the Unit itself, we spoke to some of the staff.
- 9.3 In each of the three Units, responsibility for monitoring the custody time limit remains with CPS. In two of them, files are returned to police administrative staff for updating immediately after court. If defendants are in custody, they pass the files on to CPS staff to initiate monitoring or to update the system, as appropriate. In one of these, the abbreviation “RIC” in the file endorsement was intended to alert police staff to the need to pass the file to CPS. We were told that this was sufficient and no failures in monitoring had occurred.
- 9.4 In the other, police staff were instructed to pass the file to CPS only if the prosecutor had indicated in the file endorsement that specific action was required. Unless this were done, the police retained the file until the next hearing, even though the file indicated that the defendant was in custody. We were told, and saw examples in our file sample, of failures to monitor the custody time limit until after the second or a subsequent hearing because lawyers had omitted to indicate that specific action was required.
- 9.5 In the third Unit, files were returned after court to CPS staff first so that monitoring could be initiated or updated immediately. CPS had undertaken to pass files to the police within 24 hours if any actions were required of them. Both the CPS and the police were happy that this arrangement allowed each of them to undertake all necessary file actions promptly.
- 9.6 Whilst there will clearly be some variations in the structure of the new Units, a number of common issues need to be addressed. Police and CPS staff must be closely involved in evolving appropriate systems before the Units are established. Prosecutors must ensure that their endorsements are clear and specific. All administrative staff should be properly trained in systems and have access to detailed guidance. Systems should be evaluated after an agreed period of time once the Units are operating.





### TRAINING

- 10.1 The CPS has shown its commitment to the provision of effective staff training by its participation in the Investors in People award scheme. The importance of such training is particularly demonstrated in respect of custody time limits.
- 10.2 Most, if not all, staff involved in custody time limits monitoring (including lawyers) have received some form of training. There is, however, no nationally approved training package available to Areas so that training has to be locally prepared and organised. The result of this is that the nature and extent of Area training varied considerably. Many lawyers could recall no training since that which they received when custody time limits were first introduced. Many administrative staff had received only on-the-job training from their line managers when they first took up their duties in respect of custody time limit monitoring. Some were given desk instructions which were sometimes prepared by the member of staff who had carried out their duties previously. Others were given, or had access to, the Area's written system or guidance, which was sometimes inaccurate or out of date. The lack of a consistent approach led to some misunderstandings of monitoring requirements amongst staff.
- 10.3 Any more recent training was usually initiated by a change in an Area's system due perhaps to a change in the law or following an investigation into a monitoring failure. Area inspection reports have also recommended training in aspects of custody time limits. The latest national training initiative related to the implementation of section 51 of the Crime and Disorder Act (indictable only cases sent to the Crown Court). We comment at paragraphs 12.3 and 12.4 on this training which focussed on the whole procedure and included the application of the new Custody Time Limits Regulations. Staff expressed positive views about the nature of the training, although there are misunderstandings about the application of custody time limits in section 51 cases.
- 10.4 The lack of any nationally co-ordinated training is a matter of concern. Areas have their own training packages but the content of them varies considerably. We saw one example of a training package which had been delivered to all staff following an overhaul of the Area's custody time limits procedures. Not only did it deal with the new system but it dealt with the legal background and relevant case law. We think this aspect is particularly important since it allows staff to know not just what needs to be done, but why, and leads to greater confidence in carrying out their duties and using their initiative. The package has been sent to the CPS Training Division and is available for others who wish to use or adapt it.
- 10.5 There are, however, no proposals, as far as we are aware, to organise any national training or to provide Areas with any nationally approved training package on custody time limits. We think that this should be given urgent consideration. Area inspection reports have highlighted the widespread need for training in all aspects of custody time limits and the variation in the quality of Areas' own training packages lends support to the formulation of a nationally approved one.
- 10.6 We recommend that CPS managers and Training Division should urgently consider the need for a national training package which deals in detail with the custody time limits regime and the essential requirements of custody time limits monitoring.**



### FILE ENDORSEMENTS

- 11.1 Clear and accurate file endorsements are vital to the accurate monitoring of custody time limits. This is recognised by CPS national guidance on file endorsements which deals specifically with the requirements of custody time limit cases. Many Area written systems emphasise the need for accurate and legible endorsements at all stages of the prosecution and many of the Areas we visited in this review had targeted the quality of file endorsements generally as an aspect of performance for improvement.
- 11.2 Area inspection reports have highlighted the general poor quality of all aspects of file endorsements. Some reports have referred specifically to the effect of poor or confusing file endorsements in relation to custody time limit cases. Nevertheless, this review has shown that poor handwriting and misleading court endorsements continue to give rise to inaccuracies and uncertainties in custody time limit monitoring. We sought to measure the quality of file endorsements according to certain criteria which included clarity and legibility, whether endorsements distinguished between defendants, whether changes in custody status were highlighted, and whether technical bail was specified as such. We considered the overall quality of file endorsements to be poor in 68 cases that we examined (51.1%). Although our criteria included factors which are not appropriate to all file endorsements, the results are particularly disappointing.
- 11.3 Examination of the files in our sample was often frustrated by missing, incomplete, misleading, confusing and conflicting endorsements. We found

examples of failures to indicate whether defendants were remanded in custody or on bail at the first hearing, failures to record dates and other details of plea before venue proceedings and failures to record committal dates. Many endorsements simply did not make sense in relation to a previous or subsequent endorsement because events or circumstances appeared to conflict. We have listed at Annex C details of some of the problems we encountered in our file examination with regard to file endorsements. We do this not just as a means of illustration, but also to highlight those errors which Areas need to address.

- 11.4 It is important that each file should show a clear and accurate record of the progress of the case. There are many circumstances in which prosecutors may be required to seek or provide information about a case at any time during its life or afterwards. It is a routine requirement in custody time limits cases when justifying the need to apply for an extension of the limit. Although most of the files we examined were cases which had been finalised, we saw some files which had not been dealt with. In some of these as well as the concluded files, it was not possible to give a logical and cogent explanation of case progress. Poor file endorsements were responsible for some of the errors in calculation of expiry dates that we noted. In one case, as we have reported, this led to an application to extend a time limit being made, and granted, after the limit had expired.
- 11.5 Unless the basic recording of key information is improved, inaccuracies in monitoring will occur and situations will continue to arise where defendants have to be released from custody. In view of the weaknesses we have identified, senior managers should regard this as a high

risk. We have recommended at paragraph 4.21 that regular management checks of custody files be undertaken. These should include specific monitoring of the quality of file endorsements. Immediate and appropriate action should be taken to address any deficiencies.

### CASES SENT TO THE CROWN COURT

- 12.1 Section 51 of the Crime and Disorder Act, which is now implemented nationwide, requires magistrates to send defendants charged with indictable only offences straight to the Crown Court without committal proceedings.
- 12.2 Regulations which came into force on 15 January 2001 provide that the custody time limit in such cases is 182 days from the defendant's being sent to the Crown Court and the start of trial. The regulations make provision for deductions in respect of time spent in the custody of the magistrates' court in respect of the indictable only offence and also deal with situations where counts are added to the indictment after the case is sent to the Crown Court. The effect of the regulations is to ensure that the overall time limit from first appearance in the magistrates' court to the start of trial, subject to any extension, is 182 days.
- 12.3 The implementation of section 51 was rightly recognised as a major procedural change and was the subject of initial trials in six former Branches before full implementation. A major national training programme ensured that training on the procedural aspects of section 51 was given to all staff.
- 12.4 This training included explanation of the operation of custody time limits in sent cases. However, it was apparent that despite the training, there was very mixed understanding of the effect of the regulations in situations which might be described as non-standard. Interviews with lawyers and administrative staff included discussions about time limits in section 51 cases, using actual and

hypothetical examples. We set out at Annex D a digest of the regulations with examples to illustrate their operation in certain situations. These examples, or similar ones, formed the basis of our discussions.

- 12.5 It was clear from these discussions that the level of understanding varied considerably and might lead to some misapplication of the time limits in non-standard situations, setting the expiry date in some cases beyond what the regulations allow. It was also apparent that CPS staff would welcome further guidance in respect of the application of custody time limits in indictable only cases.
- 12.6 We recommend that national guidance should be issued to Areas reinforcing the training in relation to custody time limits in indictable only cases and providing examples of the application of custody time limits in non-standard situations.**



### CONCLUSIONS, GOOD PRACTICE AND RECOMMENDATIONS

- 13.1 We hope that this report has sufficiently emphasised the importance of accurate monitoring of custody time limits cases as an aspect of CPS performance. We hope also that it has shown that, despite periodic reviews into monitoring procedures, the issue of national guidance and recommendations in Area inspections, custody time limits is an aspect of CPS performance which continues to give rise to concern and which requires urgent action for improvement.
- 13.2 Errors in calculation of expiry dates continue to occur (8.3% in our file sample). The reasons for some miscalculations were the result of poor file endorsements and some misunderstandings as to the basis of calculation. Some that we found were completely inexplicable.
- 13.3 Our review showed that all staff who had responsibility for handling and monitoring custody cases were keenly aware of the possible consequences of monitoring failures. Nevertheless, we encountered many such failures during the review. Most of them did not lead to the release of a defendant on bail, though each had the potential to contribute to that result.
- 13.4 Despite the appreciation of the need for accurate monitoring, the relatively low number of defendants who are released because of a monitoring failure is often seen as proof that systems are working effectively. This can give a false sense of security
- 13.5 There needs to be a greater appreciation of the degree of risk to which most Areas are exposed. We believe that the factors which have influenced the low incidence of defendants' being released 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.
- 13.6 Very few Areas carry out any formal thorough audit of custody cases. Caseworker and lawyer managers see files when they are identified for review. The checks carried out at this stage are basic, amounting to ensuring that the defendant is still in custody and consideration of whether it will be necessary to make an application to extend the time limit. There is 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.
- 13.7 We have particular concerns that the majority of lawyers feel that they have no active role to play in monitoring of custody time limits. Many to whom we spoke expressed a negative attitude to assuming any responsibility for agreeing the custody time limit with the court at the first remand hearing. Most felt that checking the accuracy of the time limit at any stage, including when they were dealing with subsequent remands or even applying for extensions, was not something they were required, or needed, to do. However, their responsibilities as advocates for the prosecution impose greater responsibilities.
- 13.8 Monitoring of custody time limits should not simply be a staged process of registering, recording and reviewing at



predetermined intervals. All staff should be aware, when handling custody cases at any stage, of their special status and use the opportunity to ensure that all the requirements of accurate monitoring have been complied with.

13.9 The poor quality of file endorsements continues to be an issue affecting all aspects of 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.

13.10 There has been an almost universal lack of appropriate ongoing training on custody time limits regulations and procedures. Most training has been prompted by changes in Area systems which have sometimes followed on from monitoring failures. 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. The provision of appropriate training which addresses not only the requirements of monitoring, but the requirements of the law, will obviate the misunderstandings which contribute largely to many of the errors we found.

13.11 We have commended the following as good practice:

1. Prosecutors having with them in court a stock of blank CPS file jackets to ensure that details of the first remand hearing can be endorsed on the jacket rather than the remand papers (paragraph 2.7);
2. Agreement of the custody time limit expiry date with the clerk of the

magistrates' court at the first hearing (paragraph 4.6);

3. Monthly audits of a sample of custody cases consisting of examination of a selection of files for accuracy of expiry dates and clarity of file endorsements with a report on the findings to the CCP (paragraph 4.20).

13.12 We have made the following recommendations:

1. All initial calculations of custody time limit expiry dates, and all recalculations in cases in which a defendant is returned to custody after time on bail, should be independently checked and files should be endorsed to show that this has been done (paragraph 3.11);
2. CPS Areas should seek to establish a protocol with the Crown Court to adopt a co-ordinated approach to monitoring custody time limits cases. This should involve early agreement of the expiry date and exchange of information about case progress, and listing issues as the case progresses (paragraph 4.11);
3. Area monitoring systems should be:
  - checked frequently to ensure that the expiry date and review date in each custody case have been correctly entered into the system and the entries should be annotated to show the check has been done;
  - immediately updated after each court hearing, and other event which affects the case, to ensure that the system accurately reflects the true position (paragraph 4.17);

## CONCLUSIONS, GOOD PRACTICE AND RECOMMENDATIONS

4. Custody time limit cases should be subject to regular and documented management checks to ensure that endorsements are clear and accurate and that all necessary action has been taken (paragraph 4.21);
5. The police should be set target dates for submission of full files and responses to other requests for information in custody cases. Minutes to the police should indicate that the file is subject to a custody time limit and highlight the expiry date. Action dates should be monitored and followed up as necessary (paragraph 5.12);
6. All decisions whether to apply to extend a custody time limit in the magistrates' courts and in the Crown Court should be made by a lawyer before any notices are served. Details of the decision should be endorsed on the file, stating clearly the grounds for any application, or reasons why any application is inappropriate (paragraph 6.20);
7. Chronologies of case progress to show that the prosecution has acted with all due diligence and expedition should give full details of all events and actions to expedite progress and should be served on the court and defence with notices of application to extend a custody time limit (paragraph 6.25);
8. Files involving custody time limits should contain a record of case progress and actions taken to expedite submission of files, further evidence and other necessary information, to assist in the preparation of chronologies (paragraph 6.28);
9. Areas should devise a mechanism to ensure that their written custody time limit guidance is reviewed and updated to reflect changes in the law and national and local procedures as they occur, and that these changes are effectively communicated to Area staff (paragraph 8.21);
10. CPS managers and Training Division should urgently consider the need for a national training package which deals in detail with the custody time limits regime and the essential requirements of custody time limits monitoring (paragraph 10.6);
11. National guidance should be issued to Areas reinforcing the training in relation to custody time limits in indictable only cases and providing examples of the application of custody time limits in non-standard situations (paragraph 12.6).



### CUSTODY TIME LIMITS

#### Magistrates' courts

- **Summary only offences – 56 days** from first appearance to start of summary trial;
- **Either way offences – 70 days** from first appearance to committal for trial, unless mode of trial is determined as summary trial before the expiry of 56 days, in which case the time limit shall be **56 days**.

#### Crown Court

- **Either way offences in the Crown Court – 112 days** from the date of committal to the start of trial;
- **Indictable only cases sent to the Crown Court – 182 days** from first appearance in the magistrates' court to the start of trial in the Crown Court.

#### Youth offenders

- **Homicide cases – 70 days** from first appearance to committal;
- **Other indictable only offences – 56 days** from first appearance if, within that time, the case is deemed suitable for trial in the youth court. If such determination is made after 56 days, or the court decides to commit the case to Crown Court, the limit is **70 days**;
- **Either way offences – 56 days** from first appearance to trial if a plea is entered within that period; **70 days** if no plea has been entered within the 56 day period;

- **Summary only offences – 56 days** from first appearance to start of trial.

In all cases, the regulations provide that, if a custody time limit would expire on a Saturday, Sunday, Christmas Day, Good Friday or other Bank Holiday, it shall be treated as expiring the previous day.



## ANNEX B - FILE EXAMINATION STATISTICS

### MAGISTRATES' COURT CASE FILE EXAMINATION RESULTS

| Question   | Yes |       | No |      | Not Known |      | Not App. |      | Total |       |
|--|-----|-------|----|------|-----------|------|----------|------|-------|-------|
|  | No  | %     | No | %    | No        | %    | No       | %    | No    | %     |
| Review date correctly calculated                                       | 66  | 79.5  | 2  | 2.4  | 9         | 10.8 | 6        | 7.2  | 83    | 100.0 |
| Review date displayed on front of file                                 | 69  | 83.1  | 11 | 13.3 | 0         | 0.0  | 3        | 3.6  | 83    | 100.0 |
| Expiry date correctly calculated                                       | 78  | 94.0  | 5  | 6.0  | 0         | 0.0  | 0        | 0.0  | 83    | 100.0 |
| Expiry date displayed on front of file                                 | 83  | 100.0 | 0  | 0.0  | 0         | 0.0  | 0        | 0.0  | 83    | 100.0 |
| Expiry date correct on computer/in diary                               | 54  | 65.1  | 17 | 20.5 | 11        | 13.3 | 1        | 1.2  | 83    | 100.0 |
| Expiry dates shown for each defendant                                  | 4   | 4.8   | 2  | 2.4  | 0         | 0.0  | 77       | 92.8 | 83    | 100.0 |
| Evidence calculation checked   | 8   | 9.6   | 75 | 90.4 | 0         | 0.0  | 0        | 0.0  | 83    | 100.0 |
| No of days spent in custody endorsed (if bail granted)                 | 0   | 0.0   | 2  | 2.4  | 0         | 0.0  | 81       | 97.6 | 83    | 100.0 |
| Recalculated expiry date correct (if returned to custody after bailed) | 1   | 1.2   | 0  | 0.0  | 0         | 0.0  | 82       | 98.8 | 83    | 100.0 |
| Notice of application to extend served in time                         | 36  | 43.4  | 4  | 4.8  | 4         | 4.8  | 39       | 47.0 | 83    | 100.0 |
| Application considered by lawyer before served                         | 21  | 25.3  | 6  | 7.2  | 18        | 21.7 | 38       | 45.8 | 83    | 100.0 |
| Chronology provided  | 4   | 4.8   | 38 | 45.8 | 1         | 1.2  | 40       | 48.2 | 83    | 100.0 |
| New expiry date on front of file (if application successful)           | 10  | 12.0  | 11 | 13.3 | 3         | 3.6  | 59       | 71.1 | 83    | 100.0 |
| New expiry date on computer/in diary                                   | 5   | 6.0   | 13 | 15.7 | 5         | 6.0  | 60       | 72.3 | 83    | 100.0 |

### CROWN COURT CASE FILE EXAMINATION RESULTS

| Question   | Yes |      | No |      | Not Known |      | Not App. |       | Total |       |
|--|-----|------|----|------|-----------|------|----------|-------|-------|-------|
|  | No  | %    | No | %    | No        | %    | No       | %     | No    | %     |
| Review date correctly calculated                                       | 26  | 74.3 | 3  | 8.6  | 4         | 11.4 | 2        | 5.7   | 35    | 100.0 |
| Review date displayed on front of file                                 | 27  | 77.1 | 8  | 22.9 | 0         | 0.0  | 0        | 0.0   | 35    | 100.0 |
| Expiry date correctly calculated                                       | 33  | 94.3 | 2  | 5.7  | 0         | 0.0  | 0        | 0.0   | 35    | 100.0 |
| Expiry date displayed on front of file                                 | 33  | 94.3 | 2  | 5.7  | 0         | 0.0  | 0        | 0.0   | 35    | 100.0 |
| Expiry date correct on computer/in diary                               | 25  | 71.4 | 1  | 2.9  | 9         | 25.7 | 0        | 0.0   | 35    | 100.0 |
| Expiry dates shown for each defendant                                  | 2   | 5.7  | 2  | 5.7  | 0         | 0.0  | 31       | 88.6  | 35    | 100.0 |
| Evidence calculation checked   | 1   | 2.9  | 34 | 97.1 | 0         | 0.0  | 0        | 0.0   | 35    | 100.0 |
| Crown Court advised by letter of expiry date                           | 2   | 5.7  | 29 | 82.9 | 2         | 5.7  | 2        | 5.7   | 35    | 100.0 |
| Counsel informed of expiry date  | 21  | 60.0 | 6  | 17.1 | 4         | 11.4 | 4        | 11.4  | 35    | 100.0 |
| Recalculated expiry date correct (if returned to custody after bailed) | 0   | 0.0  | 0  | 0.0  | 0         | 0.0  | 35       | 100.0 | 35    | 100.0 |
| Recalculated expiry date correctly noted on computer/in diary          | 0   | 0.0  | 0  | 0.0  | 0         | 0.0  | 35       | 100.0 | 35    | 100.0 |

# HM CROWN PROSECUTION SERVICE INSPECTORATE

|  |    |      |   |      |    |      |    |      |    |       |
|--|----|------|---|------|----|------|----|------|----|-------|
| Notice of application to extend served in time               | 18 | 51.4 | 1 | 2.9  | 0  | 0.0  | 16 | 45.7 | 35 | 100.0 |
| Application considered by lawyer before served               | 3  | 8.6  | 3 | 8.6  | 11 | 31.4 | 18 | 51.4 | 35 | 100.0 |
| Chronology provided  | 11 | 31.4 | 7 | 20.0 | 1  | 2.9  | 17 | 48.6 | 35 | 100.0 |
| New expiry date on front of file (if application successful) | 11 | 31.4 | 7 | 20.0 | 0  | 0.0  | 17 | 48.6 | 35 | 100.0 |
| New expiry date on computer/in diary                         | 14 | 40.0 | 1 | 2.9  | 3  | 8.6  | 17 | 48.6 | 35 | 100.0 |

## INDICTABLE ONLY CASE FILE EXAMINATION RESULTS

| Question   | Yes |      | No |      | Not Known |      | Not App. |       | Total |       |
|--|-----|------|----|------|-----------|------|----------|-------|-------|-------|
|  | No  | %    | No | %    | No        | %    | No       | %     | No    | %     |
| Review date correctly calculated                                       | 6   | 40.0 | 4  | 26.7 | 2         | 13.3 | 3        | 20.0  | 15    | 100.0 |
| Review date displayed on front of file                                 | 9   | 60.0 | 4  | 26.7 | 0         | 0.0  | 2        | 13.3  | 15    | 100.0 |
| Expiry date correctly calculated                                       | 10  | 66.7 | 4  | 26.7 | 0         | 0.0  | 1        | 6.7   | 15    | 100.0 |
| Expiry date displayed on front of file                                 | 14  | 93.3 | 1  | 6.7  | 0         | 0.0  | 0        | 0.0   | 15    | 100.0 |
| Expiry date correct on computer/in diary                               | 6   | 40.0 | 2  | 13.3 | 7         | 46.7 | 0        | 0.0   | 15    | 100.0 |
| Expiry dates shown for each defendant                                  | 0   | 0.0  | 3  | 20.0 | 0         | 0.0  | 12       | 80.0  | 15    | 100.0 |
| Evidence calculation checked   | 1   | 6.7  | 14 | 93.3 | 0         | 0.0  | 0        | 0.0   | 15    | 100.0 |
| Crown Court advised by letter of expiry date                           | 1   | 6.7  | 14 | 93.3 | 0         | 0.0  | 0        | 0.0   | 15    | 100.0 |
| Counsel informed of expiry date  | 9   | 60.0 | 3  | 20.0 | 3         | 20.0 | 0        | 0.0   | 15    | 100.0 |
| Recalculated expiry date correct (if returned to custody after bailed) | 0   | 0.0  | 0  | 0.0  | 0         | 0.0  | 15       | 100.0 | 15    | 100.0 |
| Recalculated expiry date correctly noted on computer/in diary          | 0   | 0.0  | 0  | 0.0  | 0         | 0.0  | 15       | 100.0 | 15    | 100.0 |
| Notice of application to extend served in time                         | 7   | 46.7 | 2  | 13.3 | 2         | 13.3 | 4        | 26.7  | 15    | 100.0 |
| Application considered by lawyer before served                         | 2   | 13.3 | 1  | 6.7  | 8         | 53.3 | 4        | 26.7  | 15    | 100.0 |
| Chronology provided  | 6   | 40.0 | 1  | 6.7  | 4         | 26.7 | 4        | 26.7  | 15    | 100.0 |
| New expiry date on front of file (if application successful)           | 3   | 20.0 | 6  | 40.0 | 1         | 6.7  | 5        | 33.3  | 15    | 100.0 |
| New expiry date on computer/in diary                                   | 4   | 26.7 | 0  | 0.0  | 6         | 40.0 | 5        | 33.3  | 15    | 100.0 |

### EXAMPLES OF POOR FILE ENDORSEMENTS

- Failure to record the grant of bail.
- Failure to indicate to which defendant a time limit applies.
- Failure to note the new expiry date after an application to extend - “CTL extended for 28 days”.
- Incomplete endorsements on the Crown Court file jacket making the audit trail impossible to follow.
- Failure to record the date of hearing in an endorsement – “deft PG therefore no need to apply”.
- The Endorsement of a hearing at which an application to extend was to have been made indicates that the defendant was committed to Crown Court on other matters. There is no indication whether this was in custody or on bail. The present case is adjourned for a decision whether to continue with it and the endorsement says deft is given conditional bail. It is silent as to whether this was after a failed application to extend or not. The endorsement of the next appearance states that the defendant is committed in custody to the Crown Court. The same file has a missing court endorsement and an apparent failure to apply for an extension, relying perhaps on the defendant’s being in custody on other matters.
- The defendant is remanded again in custody after some time on bail. File endorsements make no reference to reactivating the time limit or to the amount of time already spent in custody. New dates on the custody time limit stickers appear to have no connection with dates of the events on file.
- The abbreviation “Cttl” is used on the same file and in the same endorsement to refer to committal and custody time limit. One endorsement reads: “Send cttl extension notices. Bench told we are working towards cttl – therefore court do not expect cttl, but did comment on the cttl position.”
- The first hearing endorsement of a case relating to two defendants, both of whom are remanded in custody, makes no reference to the number of defendants. The time limit is extended but the endorsement makes no reference either to a new date or period. The file later fails to record, after previous extensions, whether a further application is made to extend. The endorsement simply says that the case is adjourned.
- Failure to record a new expiry date on the file or in the monitoring diary. The defendant is shown as having unconditional bail when all other indications are that he is in custody.
- The expiry date bears no relationship to any court endorsement visible on the file.
- Failure to record any plea before venue/mode of trial.
- Failure to note the custody status of the defendant.
- Failure to note any arguments on a contested application for extension.
- Failure to note new extension dates by the lawyer in court and to record new



extension dates on the custody time limit sticker on the file jacket.

- The defendant is a serving prisoner. The file indicates that he is remanded in custody on the present offences. The first endorsement states that custody time limits apply but subsequent endorsements make no reference to custody status. CPS ask the court to verify the status but the court is also unsure.
- Missing court endorsement which, later endorsements indicated, related to an extension of the custody time limit.
- One defendant out of four committed in custody. Expiry date on file jacket makes no reference to any defendant by name.
- Sudden remand in custody without explanation after previous remands on bail.
- First remand endorsement does not specify whether the defendant was remanded on bail or in custody.
- Failure to note date or fact of plea before venue/mode of trial.
- Failure to note whether an extension was applied for or not.
- Failure to distinguish defendants in multi-defendant case.

**CUSTODY TIME LIMITS AND  
SECTION 51 OF THE CRIME AND  
DISORDER ACT 1988**

**Prosecution of Offences (Custody Time  
limits) (Amendment) Regulations 2000**

1. The above regulations came into force on 15 January 2001. They regulate the period of time a defendant can be kept in custody in indictable only cases sent to the Crown Court under section 51 CDA.

**Paragraph 6B**

2. Paragraph 6B provides that where a defendant is sent for trial under section 51, the maximum period of custody between being sent to the Crown Court for an offence and start of trial in relation to it shall be 182 days less any period, or the aggregate of any periods, during which the defendant has since first appearance for the offence been in the custody of the magistrates' court.

**Example A**

3. The defendant appears before the magistrates' court on 8 May 2001 charged with rape. The magistrates send him to Crown Court on that day. The CTL is 182 days from 8 May, ie 6 November 2001.

**Example B**

4. The defendant appears before the magistrates' court on 8 May 2001 charged with rape. There are further enquiries to be made and he is remanded in custody to the magistrates' court for 7 days to 15 May. On 15 May he is sent to the Crown Court. The CTL is 182 days from 15 May (16 November) less the 7 days custody in the magistrates' court, ie 6 November 2001.

**Example C**

5. The defendant appears before the magistrates' court on 8 May 2001 charged with indecent assault and is remanded in custody. The custody time limit is 70 days from 8 May ie 17 July 2001. (If, before the expiry of 56 days, the defendant indicates a plea of guilty or, the court decides to proceed to summary trial, the limit will be 56 days, ie 3 July.) After three weeks, however, at PBV proceedings, no plea is indicated by the defendant and the court direct trial at Crown Court. On 5 June, after receipt of the full file, the prosecution charge rape, withdraw the indecent assault and the defendant is immediately sent to Crown Court. The time limit, in accordance with paragraph 6B of the Regulations, is 182 days from 5 June, ie 4 December 2001.
6. Strict interpretation of the Regulations does not allow the defendant any credit for time spent in the custody of the magistrates' court. The wording of paragraph 6B is framed in such a way that the entitlement to deduct any such period only attaches to the S51 offence and not to any earlier either way offence, even though it is on the same facts.

**Paragraph 6C**

7. Paragraph 6C of the regulations deals with cases in which the indictment is preferred by direction of the Court of Appeal or the High Court. Its effect is similar to that of paragraph 6D which is dealt with below.

**Paragraph 6D**

8. Paragraph 6D deals with the situation where counts other than the one for which the defendant is sent for trial are put on or later added to the indictment. It provides that where, following a defendant being sent for trial, the indictment contains a

count relating to an offence for which he was not sent for trial, the maximum period of custody:

- Between preferment of the indictment and start of trial, or
- If the count was added to the indictment after preferment, between the addition of that count and start of trial

shall be 182 days (after making any deductions for time spent in the custody of the magistrates' court) less any period, or the aggregate of any periods, during which he has, since being sent for trial, been in the custody of the Crown Court for the **offence for which he was previously sent for trial.**

*Example D*

9. If, in example B above, the indictment preferred on 5 June 2001, includes a charge of robbery (of the same victim), the CTL will be 182 days from 5 June (4 December 2001) less 21 days custody in the Crown Court (13 November) less the 7 days custody in the magistrates' court (6 November 2001).

*Example E*

- 10 Using the above example, if the robbery count was added to the indictment after preferment at a hearing on 19 June, the CTL will be 182 days from 19 June (18 December), less 35 days custody in the Crown Court (13 November), less the 7 days custody in the magistrates' court (6 November 2001).