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INSPECTION OF COURT SERVICES

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HM Crown Prosecution Service Inspectorate

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assessment for continuous improvement

Creating the Virtuous Circle

An Interim Report
October 2002

A THEMATIC REVIEW OF THE LISTING AND MANAGEMENT OF CRIMINAL CASES
PHASE 1: THE MAGISTRATES' COURTS

by HM Inspectorate of Constabulary, HM Crown Prosecution Service Inspectorate and HM MCSI Inspection of Court Services

Chief Inspectors' Foreword

Phase 1: The Magistrates' Courts

This joint thematic review has been an extensive investigation into an area which lies at the heart of the court process. The Joint Chief Inspectors want to thank the many of you who have contributed to the work, either through interview or questionnaire.

Listing is a topic which excites great interest. It is bedevilled by anecdotes which fuel long-standing misconceptions. The review has sought to illuminate the aspects of all criminal justice agencies' work which affect the listing process. Although the team used available data as far as possible, the absence of important information required some original research which will, we hope, be of value to practitioners and policy makers alike.

The aim of the review was to promote the most effective and efficient listing of criminal cases in the Magistrates' Courts, consistent with a high quality of justice and was designed to contribute to the achievement of the following Government objectives for the criminal justice system:

i. to deal with cases throughout the criminal justice system with appropriate speed
ii. to meet the needs of victims, witnesses and jurors within the system
iii. to promote confidence in the criminal justice system

We have pleasure in circulating this substantial interim report on listing in the magistrates' courts. Our hope is that, by distributing the results in this interim format ahead of the final phase, which will extend into the Crown Court, many of the recommendations and good practice ideas can be put into place quickly. The research data contained in the report should also allow local staff responsible for listing to benchmark their own performance. The White Paper *Justice for All* and the current Case Preparation & Progression Project will address some of the issues highlighted here. We anticipate that the report's recommendations and suggestions will assist their progress. Indeed, some suggestions are explicitly directed to the Project for implementation. Where recommendations are directed to Local Criminal Justice Boards and other local practitioners it is in order to provide short-term improvements to problems which will also be covered in depth during the life of the Project.

Methodology: Brief Outline

This interim report is based on work conducted by Inspectors from HM Inspectorate of Constabulary, HM Crown Prosecution Service Inspectorate and HM MCSI Inspection of Court Services, and led by MCSI. The detailed work for the thematic was carried out mainly in the first six months of 2002, although considerable planning and consultation took place during the latter part of 2001.

The project arose from the widely acknowledged need for CJ agencies to work more closely together to achieve more efficient and effective scheduling, listing and case management practices

During the autumn of 2001, following up the initial consultation responses, the team sent a questionnaire to all chief officers of police, CPS and Magistrates' Courts seeking detailed information about specific processes and practices. Such was the interest in the project, the overall response rate was more than 80%.

As a general principle, the team undertook to use information already collected by agencies as far as possible. However, it was clear that in some areas there was no data available and some original research took place. The team were assisted in this by nine CJS areas who undertook to collect additional data and to make themselves available for interview. The team is grateful for their substantial contribution.

These original studies covered the following areas:

- Building the court lists
- The accuracy of police witness availability forms
- The calling of unnecessary witnesses

During the main fieldwork period, in order to test out hypotheses based on earlier research, Inspectors interviewed:

- all the main representative bodies and central government departments who have a responsibility for aspects of listing
- a cross-section of staff in local criminal justice agencies in five CJS areas to take the views of both practitioners and managers at all levels. ((including police, CPS, magistrates' courts, probation, YOTs, defence solicitors and the Witness Service)
- District Judges (Magistrates' Courts) and Bench Chairs in five pilot areas
- staff involved in new initiatives (salaried defenders, charging pilots, Xhibit)
- staff in areas with computerised diaries and video-links.

This is an interim report of Phase 1 of the listing thematic. Phase 2 will look at equivalent issues in the Crown Court.

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Executive Summary

This joint thematic report by HM Inspectorates of Constabulary, the Crown Prosecution Service and the Magistrates' Courts Service addresses the process of scheduling and managing business – in particular, criminal cases – through the magistrates' courts. A second phase of the study next year will examine the related but significantly different issues in the Crown Court.

The criminal court process involves a large number of agencies and private parties – the judiciary and the courts management, the police, the CPS, the defence, probation, the prisons and prisoner escort services, youth offending teams, the witnesses to be called and others – all of whose contributions are essential to its smooth functioning. All of these parties are managerially independent of one another, yet each depends, in often complex ways, on the performance of the others.

All the agencies have a role and responsibility to ensure that they provide a service which is fit for purpose at each stage of the process. But they need to go further. The aim for the agencies collectively must be to convert the linear process or 'supply chain' moving cases through the courts into a genuine *system*, in which each party takes account of and responds to the requirements of others. That calls for good information systems, so that the parties understand (as nearly as possible in real time) the demands on one another and the constraints within which each is operating, and organisational structures which enable each party to accommodate to the others. This process of managing the quality of the system through feedback and mutual adjustment is what we refer to as 'creating the virtuous circle'. It is only through such systemic change that the experience of the criminal justice process for victims and witnesses can be improved and defendants receive fair and speedy treatment.

Findings

The issues Inspectors identified related essentially to ensuring that people and information were in the right place at the right time, that services were provided to a fit standard and that the management of resources and the supporting information systems were adequate to enable that to happen. The results of the research undertaken for the review provide benchmarking information for local managers and central government departments.

For listing to work effectively there needs to be collaboration and agreement between all CJS agencies as to the guidelines being applied, and co-ordinated working to ensure successful outcomes. The most successful areas are those where pro-active Chief Officer Groups exist to provide leadership.

Targets and performance indicators need to be set so as to assure quality at the key stages of the court process. In particular there is a need to bring into the loop those parties whose activities are not yet held fully accountable for their input to ensuring effective hearings – principally the prosecution, the defence and the prison service – by setting shared targets for all agencies. Targets and performance indicators for the CJS agencies are not co-ordinated in such a way as to promote effective listing.

The main problems observed, many of which are familiar from other studies, were:

- There are often resource imbalances between the agencies locally which impair the performance of the system as a whole;
- Many delays are caused by the unavailability of forensic or video evidence. The police do not have the equipment to copy some kinds of videos;

- There are too many cracked and ineffective trials. 40% of trials crack on the day, and only 30% are effective. Pre-trial reviews have little impact on whether a trial is effective or not;
  - Pressures to make full use of courtroom and magistrate resources, coupled with high cracked and ineffective trial rates can lead to substantial overlisting of trials, to the detriment of victims and witnesses;
  - Prisoners too often arrive at court late, holding up business. Only 76% of prisoners are delivered to magistrates' courts on time; local prisons have working practices and their own resource and staffing problems which frequently impact adversely on listing;
  - Too many defendants do not turn up on the day at all. A quarter of trials are ineffective because (for one reason or another) the defendant does not turn up; sanctions to address non-appearance are not effective;
  - The time of District Judges, who work considerably faster than lay benches, is not best utilised. 60% of courts list the same number of cases for DJs as for lay magistrates; trial times, particularly when the trial is heard by a DJ, are generally over-estimated.
  - There are too many unnecessary adjournments, leading to delay and avoidable expense. But adjournments need to be of realistic length: adjournments that are too short for what needs to be done in the time are counter-productive; revised guidelines for stages of a case are needed to replace the outdated TIG Guidelines.
  - Courts often run on too long or finish unexpectedly early, wasting the time of magistrates. Transferring cases around the courthouse to deal with empty courtrooms is a waste of CPS resources and potentially detracts from the presentation of the prosecution case.
  - There is scope for using a more scientific approach in building lists; the length of court sessions should recognise that effective hearings are largely a product of other agencies' having time ***outside the courtroom*** to undertake necessary preparatory work. More work is needed to assist with trial estimation.
  - Defendants and witnesses have to wait too long in the courthouse because cases are not timetabled accurately enough. The average waiting time for witnesses is nearly an hour and a half;
  - The police are often called as witnesses at times which are inconvenient in relation to their rotas, resulting in expense and disruption to the police service; but the main reason for inconvenient calling of police witnesses is the inaccurate information provided by the forces themselves;
  - There is the potential to reduce the number of police and civilian witnesses being called unnecessarily to court through improvements to the prosecution trial preparation process;
  - Defence solicitors are sometimes unhelpful in relation to the prompt handling of business. A minority are perceived to 'play the system'; their work as 'officers of the court' is not sufficiently held to account
  - The quality and timeliness of police files and subsequent case preparation by CPS are weaknesses.

Recommendation Summary

Inspectors make 35 recommendations and 14 further suggestions, addressed to a range of government departments, public agencies, local agency staff and others. In addition, examples of good practice are provided throughout the text.

The establishment of the Case Preparation and Progression Project to look at the end–to–end processes of the CJS provides an opportunity for the development and implementation of many of the recommendations. Recommendations 4-6, 10-11, 14-16, 18 and 33-34 relate to areas which the Case Preparation and Progression Project is intending to address and inspectors make two suggestions directly to the project. However, its work will take some time to complete and therefore the recommendations addressed to Chief Officer Groups / Shadow Local Criminal Justice Boards are focussed on short-term actions to address the immediate problems. Recommendations 20 to 34 fall into this category and offer low-cost 'quick wins' to improve local area performances.

Some recommendations to central government also offer similar 'quick wins' (such as the abandonment of the courtroom hours target as a performance measure) whilst others, which may be of equal priority, would take longer to implement. The following table identifies which of the following recommendations Inspectors consider to be of the highest priority and which could offer quick solutions:

	Central Government Recommendations	Locally focussed recommendations	Recommendations to other bodies
Priority Recommendations	2, 3, 7, 12, 13, 14, 15, 17, 19		35
Quick Wins	5, 6, 7, 8, 9, 12, 15, 16, 19, 33, 34	20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34	

List of Recommendations and Suggestions

The following section lists recommendations under the organisations to whom they are directed. References are given to the relevant paragraphs in the report.

Recommendations to Central Government

The Inspection team recommends to the **Criminal Justice Ministers** *that:*

they consider allocating a joint sum of money to Local Criminal Justice Boards, to be used at local discretion, to ensure that resources are available locally to deal with imbalances of resources in the court process, including key personnel

(Recommendation 1: paragraph 1.15)

they consider establishing an agency to reproduce evidence for court.

(Recommendation 2: paragraph 1.27)

they commission work to design a multi-agency framework of supporting and complementary performance measures. The framework should provide for timely and just outcomes and:

- cover all agencies' contributions to effective court processes
- focus on quality and consistency
- be compatible with the Treasury/Cabinet Office framework for performance information
- ensure the frequency at which national data (particularly police file JPM, CIVTM and attrition data) is required does not adversely impact on the ability of staff to undertake their daily tasks

(Recommendation 3: paragraph 5.23)

they consider the potential for establishing 'duty courts'

(Recommendation 4: paragraph 3.44)

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The Inspection team recommends to the **Lord Chancellor's Department** *that it:*

commission research to establish average time taken for each aspect of a trial in order to improve time estimates in summary trials.

(Recommendation 5: paragraph 3.23)

commission research into the impact of pre-trial reviews on the overall effectiveness of the trial process

(Recommendation 6: paragraph 4.78)

takes action to ensure that:

- The Advisory Committee role be limited to appointing magistrates and overseeing complaints
- The Justices' Chief Executive be given the responsibility to determine the number of magistrates needed for the workload and to apply for the appointment of District Judges (Magistrates' Courts)
- The Justices' Clerk for the area be given the responsibility for deploying magistrates and District Judges (Magistrates' Courts)
- Magistrates' sittings figures are calculated on a rolling year basis

(Recommendation 7: paragraph 3.35)

in the light of the unwanted outcomes and the implications of the Rural White Paper, it reviews the validity of the courtroom usage target

(Recommendation 8: paragraph 3.36)

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The Inspection team recommends to the **Court Service** *that:*

it urgently commissions a simple (fit for purpose) in-court diary system capable of being run on the Libra Local Area Networks

(Recommendation 9: paragraph 3.40)

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The Inspection team recommends to the **Lord Chancellor's Department and the Home Office** *that:*

they establish a set of standard compensation amounts for routine cases which could be offered to the victim by the police officer taking the statement

(Recommendation 10: paragraph 3.42)

they, in consultation with the Senior District Judge (Chief Magistrate), the Magistrates' Association and the Justices' Clerk's Society issue guidance on the use of Directions to ensure that:

- Directions are given to the agency responsible for the outcome, including the police where appropriate
- Sanctions (where available) are applied when directions are not complied with

(Recommendation 11: paragraph 4.164)

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The Inspection team recommends to the **Crown Prosecution Service** *that:*

it take the lead in seeking to extend the range of cases which can be prosecuted by designated caseworkers

(Recommendation 12: paragraph 2.10)

it puts in place national performance measures for the summary trial process

(Recommendation 13: paragraph 4.69)

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The Inspection team recommends to the **Criminal Defence Service** *that it:*

- audits the work practices of those firms in an area which have regularly have a significantly higher % of late guilty pleas on day of trial compared with other firms
- considers including provision for the production of a defence 'issues' statement within the fee structure
- reviews the fee structure with a view to supporting the proper entry of early guilty pleas compatible with the interests of justice

(Recommendation 14: paragraph 4.94)

devises a system for holding all defence advocates to account in their role as officers of the court

(Recommendation 15: paragraph 1.38)

- ensures that CDS staff are full partners in local inter-agency work
- considers recompensing defence advocates for time spent on inter-agency work

(Recommendation 16: paragraph 5.12)

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The Inspection team recommends to the **Home Office** *that*

that the impact of funding arrangements for the FSS on the operation of the criminal justice systems as a whole be examined in the context of the Quinquennial Review of the Forensic Science Service

(Recommendation 17: paragraph 4.32)

considers establishing sanctions for failure to progress cases and failure to meet case management directions by any agency responsible for the failure

(Recommendation 18: paragraph 4.101)

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The Inspection team recommends to the **Prison Service** *that it:*

takes steps to develop working practices in remand prisons to ensure that the procedures for prisoner collection and admission

- support the efficient running of the court
- avoid unnecessary use of police cells and
- improve prisoner care

(Recommendation 19: paragraph 5.10)

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Recommendations to Local Criminal Justice Agencies

The Inspection team recommends to **Chief Officers of local CJS agencies (as Chief Officer Groups/Shadow LCJBs)** *that:*

they review the inter-agency meetings and working group structure within their area to ensure its effectiveness in delivering change

(Recommendation 20: paragraph 1.13)

they ensure that a strategy is developed to minimise the transfer of cases on the day which takes as its presumption that case transfer should not normally take place after CPS has been sent the list and has allocated files and prosecutors to particular courts. The outcome to include an agreed protocol setting out clearly the type of cases that can be transferred on the day and the time allowed to prosecutors and designated caseworkers to read the new files

(Recommendation 21: paragraph 3.60)

in each CJS area they, with a representative input from the defence, devise their own area pre-trial issues framework that:

- gives all parties to the process realistic periods to prepare for the next stage
- assists the area in meeting any case completion targets set for the criminal justice system and
- sets a maximum period within which a trial will be listed in order to accommodate all witnesses, including police and other professional witnesses.

(Recommendation 22: paragraph 4.18)

they create an action plan for reduction in the cracked/ ineffective/ vacated trial rate. The action plan should:

- include targets for reduction of the cracked, ineffective and vacated trial rates
- require progress to be monitored against the CIVTM data
- address the effectiveness of PTRs with a view to reducing the proportion of cases with two or more PTRs.

(Recommendation 23: paragraph 4.49)

they explore the feasibility of establishing local witness warning arrangements to minimise unnecessary waiting time through the appropriate use of technology. Chief Officers of Police should thereafter develop a redeployment strategy to channel the freed police resource time into productive and measurable outcomes.

(Recommendation 24: paragraph 4.146)

they ensure that the local area listing policy:

- works towards single trial listing by increasing the proportion of effective trials
- provides for block listing the starts of trials.

(Recommendation 25: paragraph 4.157)

that, until national guidance is provided by the Case Preparation and Progression Project, they ensure there is a local protocol on the execution of warrants for failure to appear

(Recommendation 26: paragraph 4.162)

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The Inspection team recommends to **Magistrates' Courts Committees** *that they:*

- ensure that there is full and open consultation with all court users, including an examination of all available workload projections, before settling a scheduling pattern for the courts and
- that joint reviews as to the continuing appropriateness of the schedule are built into the consultation process

(Recommendation 27: paragraph 2.5)

commission their chief officers to undertake a comparison of their current list-building practices against the benchmarking data published in this report to ensure that the court lists are the most appropriate to the needs of the local criminal justice agencies

(Recommendation 28: paragraph 3.20)

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The Inspection team recommends to **Justices' Clerks** *that they*

compare trial estimates with actual time taken at regular intervals, to ensure that the method used produces accurate estimates.

(Recommendation 29: paragraph 3.22)

ensure that when a court collapses work is not transferred from the remaining courts unless they are clearly overlisted

(Recommendation 30: paragraph 3.33)

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The Inspection team recommends to **Chief Officers of Police** *that they:*

- urgently review the present methods by which their force provides police and civilian witness availability to the CPS to ensure that the information available to the court at the time the trial

date is set, is both timely and accurate. In doing so, forces are urged to consider the benefits of establishing a technology based solution supported by appropriate quality assurance mechanisms.

- negotiate an agreed set of criteria for calling police witnesses which minimises disruption to both individuals and forces

(Recommendation 31: paragraph 4.132)

- ensure that a clear corporate policy exists covering the criteria case officers should follow in deciding at what stage and in what circumstances forensic samples should be despatched to the FSS/alternative laboratories for analysis
- establish a mechanism to ensure that the return date for results of forensic analysis agreed with the FSS on initial submission is promptly communicated to the CPS
- review their in force forensic evidence submission forms to ensure that they are endorsed with the charge and court date, and
- establish appropriate procedures to ensure compliance with the above

(Recommendation 32: paragraph 4.33)

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The Inspection team recommends to **Chief Crown Prosecutors** *that*

in order to reduce the unnecessary attendance of witnesses, they:

- set up systems to ensure there is a final witness check with the defence a minimum of seven days before trial and
- monitor compliance

(Recommendation 33: paragraph 4.153)

they put in place robust management systems to ensure readiness for PTR and for summary trial

(Recommendation 34: paragraph 4.69)

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Recommendations to Other Bodies

The Inspection team recommends to **CENTREX (The Central Police Training and Development Authority)** *that:*

in conjunction with appropriate statutory and voluntary agencies (including the Association of Police Authorities, Association of Chief Police Officers, Witness Service, Victim Support and the Crown Prosecution Service) they:

- develop a revised initial police training input and approach covering the multi-agency aspects of the modern criminal justice system and the contribution required of officers.
- develop training, knowledge and awareness material for delivery locally to build on and support this foundation and reinforce desired outcomes covering all aspects of the prosecution process.

(Recommendation 35: paragraph 4.56)

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Suggestions to Central Government

The Inspection team suggests to the **Criminal Justice Ministers** *that:*

Consideration be given to the creation of a national compensation fund which guaranteed victims the receipt of the compensation awarded in court

(paragraph 3.42)

The Inspection team suggests to **the Case Preparation and Progression Project** *that:*

it explores ways in which JPM can be made more productive and less resource intensive, (for example by the use of IT and sampling).

(paragraph 4.61)

it considers the idea promoted by the Magistrates' Association of a specific certificate which relates to fitness to attend court.

(paragraph 4.160)

Suggestions to Local Criminal Justice Agencies

The Inspection team suggests to **Chief Officer Groups / Shadow LCJBs** *that:*

all those involved in case management are familiar with the standards within the local FSS protocol to enable them to set realistic adjournment periods.

(paragraph 4.22)

they examine ways of using the existing information from JPM as an effective problem-solving tool.

(paragraph 4.61)

consider how best to exploit the email technology available and ensure that staff receive sufficient training to counter the unfamiliarity and ensure active participation

(paragraph 5.26)

take steps to ensure the local arrangements for the copying and production of video evidence is as effective and timely as possible

(paragraph 1.27)

The Inspection team suggests to **Justices' Chief Executives and Justices' Clerks** *that they take steps:*

- to ensure that probation staff are included in all discussions regarding the scheduling framework and
- to ensure that the aims and objectives of the National Probation Service, as well as Youth Offending Teams, are fully taken into account when scheduling and listing breach, PSR and post-sentence review courts

(paragraph 2.40)

The Inspection team suggests to **Justices' Clerks** *that:*
where such expertise is available to them, District Judges are invited to assist with any training of legal advisers in case management

(paragraph 4.82)

The Inspection team suggests to **Chief Officers of Police** *that:*

to ensure that mechanisms exist to ensure that the FSS receive prompt notification in cases where there is a change in priority classification during the analysis period

(paragraph 4.27)

establish a mechanism to ensure that all local magistrates' courts staff are appropriately aware of the financial and personal implications of calling officers on rest days, annual leave and specific tours of duty.

(paragraph 4.137)

forces would benefit from assessing the extent to which the practice of remaining in court after giving evidence is prevalent and whether approaches need to be developed to regulate officers' continued attendance at court

(paragraph 4.141)

The Inspection team suggests to **Chief Crown Prosecutors** *that*

the case progression role be established within CPS in summary trial preparation

(paragraph 4.97)

Suggestions to Other Bodies

The Inspection team suggests to the **Judicial Studies Board** *that*:

it works with magistrates' training officers to develop and promulgate suitable training materials for use during breaks in the courtroom process.

(paragraph 3.32)

The Inspection team suggests to **The Magistrates' Association** *that:*

in consultation with the District Judge (Chief Magistrate), they encourage the development of consistent practices for dealing with defendants who fail to attend court.

(paragraph 4.161)

Magistrates' Courts Listing:

Overview

Good listing provides for effective hearings within timescales which focus on just outcomes, at the same time as ensuring victims' and witnesses' interests are also addressed, and resource costs are taken into account.

1.1 Listing is at the heart of the court system and is a prime component in meeting the government's aims for the criminal justice system. How and where cases are placed in the courtroom can impact on victims and witnesses and their experience of the justice system. It can also contribute to the achievement of the aim to reduce delay in process to a minimum – 'Justice delayed is Justice denied' is a firm belief of many involved in the court process. Good listing, providing effective hearings which ensure that the needs of all participants are met, will ultimately contribute strongly to promoting confidence in the criminal justice system. Poor listing has the potential to undermine all those aims.

1.2 This thematic review has looked at the way that the listing of cases by the court impacts on other participants. Equally it has looked at the contribution made by agencies to the listing process. The courtroom is at the centre of a complex web of inter-connecting strands of activity which must all come together successfully if a quality service – in the form of an effective hearing - is to be provided. Not all agencies have the court system at the heart of their core business but all have a responsibility to ensure that they make a positive contribution to the process.

1.3 The work of the thematic has spanned a period of considerable change with many more changes underway, not least the White Paper *Justice for All* which includes implementation of some changes recommended in the Auld Report[1]. In a period of change, it is often the day to day business that gets neglected as people struggle with the implications of new arrangements. It will be important for all agency managers to maintain a focus on driving through improvements to the listing process so that good practice becomes embedded and any new organisational structure can operate effectively. The recommendations set out below are intended to provide such a focus.

Volume versus complexity

1.4 There are 92[2] Crown Court centres (CCs) and 404 magistrates' courts[3], serving 600 Circuit Judges in the CC and approximately 28,500 lay magistrates and 95 full-time District Judges (Magistrates' courts) in magistrates' courts. The Crown Court deals mainly with more serious criminal trials, 90% of which are generated by CPS (and also have at least one hearing in the magistrates' courts). Figures produced in April 2002[4] show that 100,900 defendants in the Crown Court were prosecuted by the CPS in 2001, compared with nearly 1.32 million in magistrates' courts. These figures represent only 70% of all the prosecutions in the magistrates' courts. In addition, the magistrates' courts also need to list for other types of work such as licensing and family cases.

1.5 The term 'listing' is used differently in the magistrates' courts and in the Crown Court. In the magistrates' courts it is used broadly to embrace a range of administrative as well as judicial functions, reflecting the fact that the arrangements for managing the business of the

[1] Criminal Courts Review by Lord Justice Auld 2001
[2] All figures latest available from LCD at May 02
[3] As at end August 2002
[4] Criminal Justice Business Quarterly Report April 2002

courts are necessarily different. The volume of cases in the magistrates' courts is much greater, and the magistrates in attendance change from day to day. Magistrates have a central role in setting the dates for the hearing of cases - which is a judicial function - but much of what is broadly described in the magistrates' courts as 'listing', including the scheduling of cases in aggregate and decisions about how many courts of each kind to run, is in the hands of administrative staff under the management of the Justices' Chief Executive.

1.6 In the magistrates' courts service (MCS), following the Access to Justice Act 1999, the Justices' Clerks' Society and the Association of Justices' Chief Executives published a joint document outlining how they would approach the boundaries of administrative and judicial responsibilities in relation to listing.[5] This practical approach to deal effectively with summary cases on a day to day (or operational) basis document took its definitions from a Trials Issues Group (TIG) paper *Listing Arrangements for Criminal Cases in the Magistrates' Court.* In essence the paper states that developing the scheduling framework and building the list are administrative processes, although a decision to list or adjourn in each case is judicial. This thematic review uses broadly the same definitions given in that paper:

- Scheduling – the provision of a framework of resources for the hearing of cases and within which listing decisions are made
- List building – an agreed process by which lists are built up
- Case management – the management of the progress of a case through the judicial process

1.7 Magistrates have an interest in the wider scheduling and list-building decisions but their input into administrative listing policy issues is generally made through their representation on the Magistrates' Courts Committee, which should consult the Benches regularly on such matters.

Listing responsibilities

1.8 Listing is a complex balancing of competing legitimate interests and uncoordinated resources. Putting a case into any courtroom requires input and resource from many agencies – police, the Crown Prosecution Service (CPS), Youth Offending Team (YOT), defence solicitors etc – as well as legal advisers and magistrates. The agencies have differing roles in the criminal justice process which are not always clearly appreciated and can be the cause of misunderstandings and some acrimony. For example, within the courtroom, it is often not appreciated that CPS cannot *require* the police to undertake activities by a particular time. As a consequence prosecution lawyers are sometimes given directions which require action by the police. Failure to comply is laid to CPS and can lead to wasted costs orders although the non-compliance is by another agency.

1.9 Not only would it help effective listing if parties understood each other's roles, but Inspectors consider inter agency collaboration with regard to listing to be essential in order to make best use of the resources available, particularly when planning the court schedule. Inspectors' major overall conclusion is that getting actions right first time is the single most important message for improvement in listing in general, but particularly for case management. All agencies have a role and responsibility to ensure that they provide a service which is fit for purpose at each stage of the process.

"Listing is a balancing act, and every day is different. It is only as good as the information given to us." MCC Listing Officer

[5] Scheduling and Case Management in Magistrates' Courts 2000

1.10 The ability to build lists and manage cases effectively is dependent on having accurate and timely information from all the parties involved. Accuracy of information is essential if case management decisions are to take into account resource implications for other agencies. Frustration within the police service about the resource costs of the trial process is partly a consequence of a failure to provide accurate witness availability (see paragraph 4.106 below).

"There is an imbalance between responsibility and information. The court carries the greatest burden for effective listing but has the least information. Those with the most information ie defence and prosecution, carry little or no responsibility. Given accurate information effective listing is easy." Justices' Chief Executive

1.11 Inspectors found misconceptions about how listing is undertaken and some cultural issues within all agencies which are having a negative impact on effective listing and case management. Inspectors found that comments such as 'The courts' interests take precedence when there is a conflict' and 'The CPS is seen by police as a hurdle rather than an enabler' abound, although the evidence of the review would not support these comments. Recent reports, such as that produced by the Audit Commission[6] reflect a range of the anecdotal 'myths' which surround much of the debate about listing.

1.12 One such perception is that the police regularly overcharged because of a belief that CPS would routinely reduce the charge. Some defence solicitors proffered that view to Inspectors but it was not shared by the majority of interviewees. Current CPSI inspection statistics for indicate that the incorrect charge was put in 21% of cases examined, but these statistics include minor alterations as well as totally incorrect charges. Providing the CPS prosecutor undertakes a thorough review of the evidence provided on the police file prior to the court hearing, the level of overcharging should not in any event impact on the courtroom process. However, there is potential for more not-guilty pleas where wrong charges are not amended at an early date.

Role of CJS agencies

1.13 Ensuring that the listing of cases is effective is a joint responsibility of all the criminal justice agencies in each area. The effectiveness of the local arrangements for working together directly impacts on how well cases progress through the courts. In many areas the inter-agency structure has developed somewhat piecemeal in response to changing circumstances. This is not surprising given the separate introduction of local TIG[7]s, Area Criminal Justice Liaison Committees[8] and then the Area Criminal Justice Strategy Committees (ACJSCs). Local issues and personalities have clearly had an impact on the way in which the meetings structure has evolved. Whilst Inspectors do not think each area needs to have exactly the same structure, the team consider it is essential that the meetings and working group structure is able to generate and maintain change. It must also allow effective exchange of information on issues affecting listing such as policing initiatives or longer term workload trends. Our inspection evidence suggests that the most effective way to ensure such a structure exists is through the medium of a suitably constituted Chief Officer Group (COG). Such groups are able to make strategic decisions for the area, commit resources to ensure that they are implemented and provide visible evidence to their organisations of their commitment. As this report was being written, the White Paper *Justice for All* was published which announced the establishment of Local Criminal Justice Boards (LCJBs) with effect

[6] The Offender Pathway 2002

[7] Trials Issues Groups set up from 1993.

[8] Set up in 1994 to provide strategic forums that covered several local CJS areas. They were the predecessors to the ACJSCs who were set up in 1999 for each criminal justice area to give the local criminal justice agencies a consistent strategic direction.

from April 2003. Where areas do not already have a COG in place, shadow LCJBs are to be established. As a consequence, many of the recommendations following are addressed to the COGs/Shadow LCJBs. Inspectors explore their role further throughout the report and in Section 5 in particular.

Recommended: that Chief Officers of the main criminal justice agencies (as COGs/Shadow LCJBs) review the inter-agency meetings and working group structure within their area to ensure its effectiveness in delivering change

Resource impacts

1.14 Resource availability and deployment are key factors in effective listing. Poor listing can lead to increased resource costs for other agencies, as well as inconveniencing witnesses and defendants and significantly reducing public confidence in the criminal justice system (CJS). The availability of key resources – from legal advisers and courtrooms, to duty solicitors and prosecutors – impacts on the numbers of courts that can be listed and the effectiveness of hearings. It is not just the resource availability of main players which can prove impediments to the listing process. The limited resources available for forensic science analysis and the cost to police forces, for example, can frustrate the early listing of cases to avoid delay. See paragraph 4.21 below.

☞ In one CJS area the CPS had received additional funding which allowed it to recruit lawyers. These lawyers were recruited largely from legal advisers in the local magistrates' courts. This in turn had a significant impact on the number of courts the MCC was able to staff, leading to changes to the schedules.

1.15 It is the imbalance of resources in local areas which can be a significant cause of difficulty. Inspectors found a widespread current problem within the MCS of a drain of legal advisers to the CPS following funding being provided to address a shortage of prosecutors. This is leading to significant overlisting of cases in some areas and delay in listing trials in others. The allocation of resources to each local CJS agency is not centrally co-ordinated. It is not unusual, therefore, to find resource imbalances between the agencies that in turn adversely affect the overall efficiency and effectiveness of the local CJS. Inspectors consider that there is scope for Chief Officer Groups/Shadow LCJBs to take a more strategic approach to their local resource needs in order to ensure that such imbalances do not adversely impact on the areas' ability to meet their obligations. The ability to redress such imbalances requires an accessible, flexible source of funding which can be locally administered.

Recommended: that the Criminal Justice Ministers consider allocating a joint sum of money to Local Criminal Justice Boards, to be used at local discretion, to ensure that resources are available locally to deal with imbalances of resources in the court process, including key personnel

1.16 A major obstacle to managing daily lists is the unpredictability of prisoner delivery, attributable, at least in part, to resource pressures. Although the Prisoner Escort Service has a target to produce prisoners by one hour before the court start time, in practice this rarely happens, even for remanded prisoners whose arrival is planned for in the list. Restrictions both on van size and personnel can cause delay in both delivering and collecting prisoners. Added to this problem are the difficulties caused by prison practices relating to time of release of prisoners in the morning and closure times for acceptance. Inspectors found that the current capacity pressure on the prisons is causing even more difficulties as prisoners are sent significant distances away from the local prisons in order to find accommodation.

1.17 A review report published in 2000[9] identified many difficulties with the late arrival of prisoners (and prison service regimes) which impacted on the efficacy of the listing process. The review found that only 76% of prisoners were delivered on time to magistrates' courts (80% to Crown Court) and a significant proportion (13%) were not delivered until after the time the court had started. Inspectors found that many of the problems outlined in that review were still having significant impacts both on the listing process and on other agency resources. Prison regimes have a substantial impact on the efficacy of listing and the throughput of cases on the day and yet the Prison Service is not a full partner in ensuring effective hearings.

☞ Inspectors found one area where shortage of prison van drivers, and pressure to deliver prisoners to the Crown Court on time, had led to significant problems in the magistrates' courts. Prisoners were being taken to two different Crown Court Centres at some distance from each other before delivering prisoners to the magistrates' courts in the area, one of which was adjacent to the first Crown Court Centre – this despite the fact that the magistrates' court start time was earlier than the Crown Court Centre. The magistrates' court at the end of the 'run' frequently did not receive its prisoners until an hour after the start of court and, as last on the list for collection of prisoners, frequently could not return defendants to prison, necessitating the use of local police cells overnight.

1.18 There are conflicting government pressures on MCC's resource management which impact on decisions where to schedule courts including those affecting provision in rural areas, the needs of victims and witnesses and the pressure to achieve better resource usage of the court estate. In addition, limitations imposed by local pressure from magistrates to retain small benches militate against effective listing. Responding to these conflicting drivers can have significant resource implications for other CJS agencies.

"[This area] continues to operate with 13 courthouses spread across the county, thereby providing what we believe to be the best service to rural communities in the country. As a consequence we sit proudly [near the bottom] of the league table for courtroom usage." Justices' Chief Executive

"CPS have great difficulty in covering the 13 lower courts in [the area]. This reflects a commitment by the magistrates and clerks to the delivery of local justice even if courts contain only a few cases." Chief Crown Prosecutor for the same area

"The volume of DCW courts at individual courthouses is insufficient to create dedicated courts. Their restricted powers militate against flexible court listing. The MCC is seeking to create DCW courts at fewer centres but Petty Sessions Area boundaries do not assist." Justices' Chief Executive

Inspectors found rural areas where decisions to amalgamate small benches had significantly enhanced their ability to list effectively and efficiently. ✓

Information Technology

1.19 Many recent reports have highlighted the lack of connectivity between the information technology used across the criminal justice agencies. This review reiterates those concerns and confirms that Information Technology is not yet being used extensively and cohesively to improve listing and case management. There is no common IT platform across the magistrates' courts and matters have not been assisted by the delays in supplying the replacement national (Libra) system. The long development timescale for this system has

[9] A Review of Custody Arrangements in Magistrates' Courts – published by MCSI in May 2000

also meant a planning blight for magistrates' courts who cannot take advantage of local initiatives to improve inter-agency linkages because of the lack of capital funding. The rollout of the Libra system has encountered a number of difficulties and presently only 80%[10] of magistrates' courts committees are connected. The remaining MCCs will be placed on the infrastructure by the end of the financial year. However, this will provide only the basic hardware and software, not the core management system (which is subject to a further procurement exercise).

1.20 The use of in-court electronic diaries is sparse and where these are in place, they are rudimentary in design and use. The looked-for common IT interface between CJ agencies is still a hope for the future. The current plans for IT development in the CJS are based on a modular, incremental approach beginning with e-mail. Although it is possible for those MCCs with Libra to electronically communicate with the CPS and police this is currently only through unsecured e-mail. It is anticipated that the Libra system will receive GSI accreditation and thus secure e-mail links by the end of 2002. The CPS system (Connect) is already on GSI, and electronic connectivity with the police system (PNN) is undertaken through the secure (CJX) e-mail link (although in practice Inspectors have found that this link is not being extensively exploited). The newly established CPS COMPASS project aims to further develop links with the police to provide for eventual file transfer by 2003. Improving the interface with Libra will not be developed until late 2004.

1.21 Inspectors found that currently, even where these links are in place, the extent of e-mail traffic is very limited. Apart from technological restrictions and inhibitors it has become apparent from our fieldwork that there are also cultural barriers to be overcome in the use of IT as a communications medium to assist in listing and case management processes. Staff in the three main CJ agencies still tend to rely on phone, fax and face to face contact rather than utilise IT.

"The lack of IT to improve listing and case management in the CJS is indefensible and criminal" Senior Police Officer

"I am astounded that despite working in one of the busiest court centres in the country I am still required to use a manual diary to list cases, bearing in mind that we are living in the 21st century" Listing Officer

1.22 The use of video links to prisons for remand hearings was still in its infancy at the time of this review. Although the video link pilot sites have been up and running for some time, the remaining magistrates' courts have only recently been supplied with equipment and do not go live until July 2002. In the absence of the widespread use of video links it has been impossible to assess their impact on listing in remand courts and whether they affect the throughput of cases. Certainly the evidence from the video link pilot areas suggests that the lists can take just as long to run as if the defendant was in attendance. However benefits are gained in terms of security and in cost savings associated with the reduced need to bring prisoners to court.

1.23 There is evidence from the video link pilots that the impact of the installation of video links has been reduced by the introduction of S51[11] procedures for indictable only cases. In one area it was said that the video remand caseload has reduced by 20% and in another area by some 70%. Data supplied by the Prisoner Escort & Custody Service (PECS) shows a steadying decline in the numbers of prisoner deliveries across England and Wales. See paragraph 2.27 below.

[10] As at September 02
[11] s51 Crime & Disorder Act 1998

1.24 It is clear that video links have the potential to be used more widely in case progression, for example outside court hours by defence solicitors to take early instructions and for the Probation Service to prepare timely pre-sentence reports (PSR) reports. Generally magistrates' courts are receptive to the use of the links for these purposes which could enable subsequent resource savings in respect of reduced travelling time and cost. Evidence from the video link pilots however suggests that presently such take up is spasmodic. Part of the reason for this is cultural (defence solicitors preferring to see their clients in person) but also because of resource issues in prisons. This represents a wasted opportunity.

1.25 The complexity of the listing process is such that resource changes apparently remote from the courtroom can have significant impact. Inspectors found that increased resources given to provide closed circuit television cameras (CCTV) for crime prevention purposes in city centres and retail outlets has created significant delay in courtrooms as police forces struggle with a range of differing recording devices. The plethora of systems is causing a significant negative impact on delay as cases are routinely adjourned for four weeks for tapes to be copied. There is a particularly acute problem in relation to multiplex CCTV videos, where their introduction to assist crime reduction has not taken cognisance of the follow through impact in terms of technology required to produce videos and to show them as evidence in court. The police have difficulty in copying the videos because they often do not have the right equipment. Lack of liaison between police and prosecutors can mean that whole tapes are copied (it can take 8 hours to copy a 3 hour tape) instead of just the relevant parts. Inspectors were told that the police are also forced to approach individual retail stores for assistance in this task.

1.26 Inspectors were informed by magistrates and legal advisers that cases often cannot proceed because tapes have not been supplied to advocates in time. Defence solicitors confirmed that, in the absence of the video evidence, there was a greater likelihood of a not guilty plea which itself generates additional pressure on police resources in order to prepare a file suitable for trial purposes. Inspectors were also told of instances of defence solicitors being required to view video footage at retailers owing to the lack of suitable resources.

"Good crime detection (through the use of CCTV) is being compromised by video evidence issues not being taken forward and actioned properly within the court environment." District Judge

1.27 Inspectors suggest that this is an area where changing technology is likely to lead to further pressures on the courtroom and recommend that action be taken centrally to address this problem. The increasing use of technology in reproduction of visual (and oral) evidence for court is something which could readily be centralised and automated, in a similar way to the commercial production of photographs. The new availability of video identity parades and the potential to hold video interviews of suspects increases the need for such material to be copied quickly so as to inform any court hearings at an early stage. Given the necessity to retain control over the continuity of evidence, such work would need to be kept within public control (although there might be scope to include funding from retailers who would benefit from speedy resolution of court cases). Public control would also ensure that the potential evidential difficulties with digital imagery could be addressed. Centralising such a function would enable adaptation for technological advances to be made cost effectively and remove the current burden from the police. In the meantime Inspectors suggest there is a need for local Chief Officer Groups/Shadow LCJBs to address whether the local arrangements for the copying and production of video evidence is as effective and timely as possible.

Recommended: that the Criminal Justice Ministers consider establishing an agency to reproduce evidence for court.

Management of Performance

1.28 Targets and performance indicators for the CJS agencies are not co-ordinated in such a way as to promote a quality approach to individual responsibilities in ensuring effective listing. Many respondents to the review raised the question of performance indicators which directly competed with each other. Subsequent investigation of agency performance indicators, targets and standards did not reveal many which directly opposed each other. (A table of comparisons can be found at Annex A.) One such area where there are regular conflicting pressures is in that of witness attendance. CPS prosecutors have a witness standard which requires them to speak to witnesses before a trial begins. The magistrates' courts have a target for 50% of witnesses to wait less than one hour. Both of these aspirations are laudable but difficult to achieve in tandem. Keeping witness waiting times down to the shortest possible time would argue for staggered attendance of witnesses which directly militates against the CPS standard. At the extremes, severe inconvenience to witnesses can be the result - Inspectors were told of a recent trial where 23 witnesses were required by the CPS to turn up at 09 30 am.

"While [this area] enjoys a close working relationship between the agencies with frank discussion on many issues, it must be remembered that each agency is working to different performance indicators and priorities.

The throughput of cases and effective use of courtrooms is the court's main priority and as such they must balance the needs of the prosecution and the defence in expediting cases.

The CPS have different constraints in that they must serve the courts' requirements in the listing of cases, often through several adjournments.

The police presence at court is generally limited to those where officers are warned as witnesses, although short interim adjournments cause considerable pressure on the police to provide upgraded files to tight deadlines." Police Inspector

1.29 Inspectors found that, although the performance indicators and targets were not directly contradictory, the piecemeal approach to target-setting in particular could produce unintended adverse outcomes which impacted on other agencies and got in the way of effective listing. For example, Inspectors found that some police forces who could not meet both the timeliness and quality targets for the production of full files had chosen to meet the timeliness target, knowing that the quality was inadequate for an effective hearing. By taking this approach, the forces achieved 100% compliance with the timeliness target but the CPS prosecutor could not proceed in the courtroom, creating a wasted hearing and adding to delay. Similarly, pressure from the court to reduce delay can lead to adjournment lengths which are too short for the parties involved to complete the necessary actions, which again leads to ineffective hearings and further delay.

"They [CPS/Police] never get the full file to court by the 4 week deadline so we only give them 2 week adjournments now." A legal adviser

1.30 Police national performance indicators count a crime as being 'detected' when a person is charged, not when that person pleads or is found guilty. This Performance Indicator does not, therefore, encourage the police to focus on the quality of their important contribution to the court process after charge. There is no formalised national performance measurement which is attrition based which indicates the extent to which the police case preparation has been 'fit for purpose'. Given the crucial importance of the quality of police case preparation to effective hearings, this is a significant omission. Encouragingly, it is understood that the

Association of Chief Police Officers (ACPO) is presently researching with a number of forces to develop attrition based measurement criteria. It is also understood that the JPM Outcome Analysis Steering Group is developing an attrition based measurement system to replace the Joint Performance Measurement (JPM)model currently in place. Developments in this area should provide a more appropriate framework of accountability for the police contribution to the criminal justice process.

1.31 The court's role to ensure that the interests of justice, and those of victims and witnesses, are being best served can be obscured by pressure to meet its individual performance targets. The linking of speedy case completion with funding is seen by many agencies as a perverse incentive to push speed at all costs.

"Magistrates' Clerks …. have financial agendas which conflict with other agencies' objectives of efficiency and effectiveness" Head of a police criminal justice unit

"The court's listing practices are an example of conflicting performance indicators within the Criminal Justice System. One of the court's major targets is to process work as quickly as possible. This has led to a significant increase in the number of court sittings and the multiple listing of trials. This …..has stretched our resources beyond their limit to the extent that we unable to cover courts on a daily basis and have to rely on courts collapsing and agents becoming free at the last moment ie the day of the court sitting. This has an adverse impact on the effective handling of our cases." Chief Crown Prosecutor

1.32 The particular pressure exerted by targets to reduce under-usage of courtrooms can lead both to closing courtrooms and courthouses but also to ensuring that work is spread around a courthouse on the day to ensure that all courtrooms are used, impacting on resource costs of other agencies. It also reduces the incentive to challenge slow progress on the day.

1.33 Although, as indicated above, good listing which produces effective hearings requires all parties to contribute, the range of national performance indicators and targets across the agencies are not co-ordinated and sometimes focus on such a narrow part of the process that attention is diverted from the desired outcomes. For example, the main performance indicator for the police is to increase the number and proportion of recorded crimes for which an offender is brought to justice. This indicator is measured at the point of charge only. There is a perverse incentive to raise the level of charge to ensure that the charge is one for 'recorded' crime – and Inspectors were told of middle managers in the police who encouraged this behaviour. The lack of any accountability for further contribution to the process leads to attitudes described below.

1.34 Similarly case completion timeliness measures which the courts are expected to achieve can be affected by the courts' provision of resources (courtrooms, courthouses, magistrates, legal advisers). The ability of the courts to progress cases quickly is subject to the actions of other agencies. A government Public Service Agreement (PSA) timeliness target is proposed but the achievement of any target cannot be met unless actions of other parties are undertaken in a timely manner. This could only be achieved if target is a joint target. The one area where joint responsibility for the achievement of a timeliness target has been established – that for Persistent Young Offenders[12] (PYOs) – has had major benefits in improving co-operation at a local level and stimulated joint approaches to other problems such as cracked[13] and ineffective[14] trials. However, many respondents pointed out that the

[12] Joint work between police, CPS and the courts to reduce the average period from arrest to completion of cases involving persistent young offenders to 71 days.
[13] A case which is completed without the trial taking place
[14] A case that does not proceed on the day listed and is adjourned.

achievement of the PYO target was possible because it was a single priority which was given additional resource input and was achieved, in some instances, at the expense of others.

"The PYO initiative distorted resources, for instance in relation to youth cases, where non-PYO cases took a back seat, which in turn led to long delays in setting youth trials (which in turn led to reallocation of District Judge resources to the youth court to reduce that delay)." Justices' Clerk

1.35 In general, Inspectors found insufficient links between government PSA targets and operational listing activities – with the notable exception of the PYO target above. Some agencies have no national accountability for their part in the process – for example, the efficacy and efficiency of listing is directly related to the quality of the police case file and the effectiveness of CPS continuing review. The measurement of police file quality is subject to Joint Performance Monitoring with CPS. The system relies on CPS reviewing prosecutors completing forms to indicate whether files are on time and of sufficient quality. Poor return rates from CPS to police have led to questioning of the accuracy of the monitoring results and contributed to a 'blame culture' between the agencies only now being reduced through collocation of staff. As a result of the general suspicion about the validity of the monitoring results Inspectors found few examples of police forces using the JPM statistics as a performance management tool.

"Although nationally the police have dropped JPM police file monitoring, in [this area] we have refined the model. The results go out to ASU Inspectors and they are made responsible for their files. As a result, files across [the area] have improved in quality in the last 18 months and a more robust approach is taken to the way that staff are held accountable for quality." Senior Police Officer ✓

1.36 CPS itself has no national targets for timely and accurate review of files which leads to frustration amongst some police officers who see a lack of accountability for the quality of CPS input in ensuring effective hearings. Targets for all areas of the CJS, but particularly listing, need to be joined up so that all CJS agencies are working to the same outcome. See below paragraph 5.21.

1.37 Producing co-ordinated performance indicators and targets is problematic in an area where there are inherent tensions. The need to progress cases sufficiently quickly so that memories of witnesses do not deteriorate and victims retain confidence in the judicial process can lead to pressure to list cases in a way which have adverse costs to individuals and agencies. There is an inherent tension between allowing sufficient time for individual cases to progress and a need to ensure efficient use of resources. There can be a tension also between timeliness and attrition rates – Inspectors were told that pressurising police officers to charge at the earliest date and then to produce information quickly for court has the potential to lead to less rigorous investigation.

1.38 One significant problem area which is not monitored adequately at present is the work of defence advocates in their role as officers of the court. Behaviour of defence solicitors, particularly when acting as duty solicitors, can have significant impact on the effective operation of daily lists. For example, it is common for duty solicitors to have their own cases to handle, including trials, as well as being available on the day for consultation, although the arrangements for the duty solicitor scheme eschew such practices. As a result, courtroom processes are frequently halted to wait for particular advocates to be available from other courtrooms. Inspectors were also made aware that defence solicitors sometimes accept work in two different courthouses at the same time, without appointing agents, again leading to delay and wasted court time. The current, very limited, random sampling of their work in this area does not address what is an ongoing daily difficulty in many courthouses.

In some instances, Inspectors were told of the undermining of block listing[15] practices by defence advocates who did not wish their clients to be timetabled at different times. The development of the salaried defender service has the potential to address some of these issues, providing a benchmark for performance. However, Inspectors consider that, given the negative impact on efficient listing, the Criminal Defence Service should look at ensuring greater accountability for the service provided to the court.

Recommended: that the Criminal Defence Service devise a system for holding all defence advocates to account in their role as officers of the court

1.39 The lack of unified performance measures to ensure a quality process from incident to disposal is hampering local attempts to achieve the overall aims of the CJS. This lack is particularly significant in the complex area of effective listing for trial. The latest proposals to have timeliness targets covering the period from charge to disposal for cases in the magistrates' courts have the potential to address some of these problems if the targets are jointly owned and the quality of all agency input is also measured.

"It is difficult to measure the success of the courts because it is not clear what the criteria for or the definition of success is. Is it speed? Or the number of unsuccessful appeals? Or how we compare with other MCCs? Or the effective use of resources? Or the care and security of court users? Each of these are important but how do you judge success?" Justices' Chief Executive

1.40 For listing to work effectively there needs to be collaboration and agreement between all CJS agencies as to the guidelines being applied, and co-ordinated working to ensure successful outcomes. In particular there is a need to bring into the loop, those parties whose activities are not yet held fully accountable for their input to ensuring effective hearings – principally the prosecution, the defence and the prison service by setting shared targets for all agencies. Government Departments have a key role to play to ensure that nationally devised indicators and targets work towards achieving the overall aims of the CJS. Inspectors were encouraged by the work commissioned by the Performance and IT Board to address these problems. It is important that the impact on all parties is considered when determining CJS and agency targets and to ensure that everyone who has the potential to contribute to an area is given the same goals.

[15] The practice of listing cases to a specific block of time, rather than just a particular hearing date.

Scheduling the Court Hearings

Scheduling – the provision of a framework of resources for the hearing of cases and within which listing decisions are made

Background

2.1 Devising a framework to enable all the work of the magistrates' courts to be accommodated within the resources available is a complex exercise in logistics. The staff responsible must be aware of the courts' own resources (courtrooms, magistrates, courthouses, legal advisers and so on) as well as those of the other regular participants in the court process – prosecutors, probation officers, duty solicitors for example. Court staff also need to take into account the split of the type of work to be accommodated. Police-generated cases only represent 70% of the workload in the courtrooms and space must be made available to deal with work coming from a wide variety of other prosecuting bodies and also to accommodate non-criminal work such as family and licensing cases. Even within these broad categories there are other constraints – such as the need to predict the split between youth and adult criminal courts and the number of available magistrates on Panels which deal with youths, family and licensing. Some of these constraints are examined below.

2.2 Planning the schedule is one area where inter-agency co-operation is essential to ensure that the courts have the fullest information available in order to create the best-fit schedule which will make efficient use of all agency resources. Any shortfall between the resources available to any particular agency and the number of courts scheduled affects the ability of that agency to carry out its wider functions, as well as its ability to service the courts. The potential impact of initiatives (such as the introduction of speed camera hypothecation) also needs to be factored into the process. Inspectors found that most areas were aware of the need for consultation but in some instances the consultation process could be improved by involving other agencies at an earlier point. Some agency representatives commented that the 'consultation' was sometimes just asking for approval of an already fixed arrangement.

One MCC had a scheduling policy that set its objectives as: ✓

- Minimise delay;
- Maximise use of resources;
- Provide an efficient service to court users.

In seeking to achieve these objectives it stated that Bench chairmen, police, CPS, the Probation Service, the Law Society, the YOT and the Prisoner Escort Service will be consulted when determining the scheduling strategy.

2.3 The complexity of the process is such that areas rarely make wholesale changes to scheduling patterns which appear to be working adequately (or at least are not the subject of direct complaint). Most major changes to schedules tend to come as a result of resource pressures (such as shortages of legal advisers) or work changes brought about by legislative change[16] or the need to improve performance (such as increasing the number of trials courts in order to reduce delay). Changes to resources in an agency can have a marked effect on the appropriateness of the scheduling which is not always appreciated when the decisions are made. For example, increasing the numbers of designated caseworkers in an area will necessitate changes to the type of cases which can be listed in particular courts if the

[16] The last such major change to affect all scheduling was the introduction of the 'Narey' reforms in October 1999.

additional CPS resources are to be used effectively. Inspectors found that court staff were not always consulted as to the impact on scheduling prior to these type of decisions being taken.

" in relation to how far agency resources should determine listing decisions, in an ideal world they should not interfere at all…however in the real world the various agency resources do determine when courts can be convened and that is regrettable" Justices' Chief Executive

"The agencies do not sit down together to project caseloads on an annual basis, or indeed any other basis. This ought to happen routinely." Justices' Clerk

☞ *The lack of a method which would allow local CJS partners to identify the best mix of resources to deliver an effective service, stimulated outline research into the potential for a computerised solution as part of this review. Following preparatory work, one MCC area has taken the work forward:*

Members of *Bedfordshire Criminal Justice Excellence Forum*, involving chief officers from the criminal justice agencies, defence advocates and partners such as witness service and prison escort service, are developing a model to assist them to optimise timeliness in case completion for given resources. The first step taken by the group was to develop an "ideal" model of the progression of a case i.e. to determine what *should* happen in order to achieve an effective outcome. This was achieved by mapping the progression of a case through the criminal justice system, identifying main tasks and responsibilities of each agency or partner and incorporating good practice. The next step was to identify the allocation of resources required to meet desired outcomes and to conduct "what-if" analyses to test the impact on outcomes of changing the process or inputs to the process. The work to date will provide a firm foundation upon which to build a computer-based simulation model that will enable them to test the impact of different deployments of the resources needed to hear cases and different strategies for listing hearings.

2.4 It is in the interests of all agencies that their resources are used in the most efficient manner. Sufficient notice of the proposed schedule needs to be given to enable Chief Officers to plan deployment effectively. In order to accommodate all the above constraints, most courts are scheduled for periods of up to twelve months so that the resources necessary to run the courts can be planned for and deployed. Whilst this gives stability it can also lead to inflexibility to react to changes in workload or in-year difficulties with staffing in agencies. Inspectors found some good practice in which a half year review was built into the annual planning cycle which enabled alterations to be made to the scheduling pattern as required. However, Inspectors also found instances where such changes had been instigated with little consultation with other agencies, particularly where the changes had been introduced as a result of shortages of legal advisers.

2.5 A lack of consultation, at the least, leads to an erosion of confidence in joint working and at worst may have a significant impact on the efficiency and effectiveness of other agencies. The following recommendation, addressed to Magistrates' Courts Committees as current managers of the service, will also be applicable in any new management structure which will flow from the *Justice for All* White Paper.

Recommended: that Magistrates' Courts Committees

- **ensure that there is full and open consultation with all court users, including an examination of all available workload projections, before settling a scheduling pattern for the courts and**

- **that joint reviews as to the continuing appropriateness of the schedule are built into the consultation process**

Current Scheduling Concerns

Resource Deployment: people

2.6 A number of particular issues which the magistrates' courts need to consider with their CJS colleagues in making scheduling decisions were investigated during the thematic. One such issue was the belief amongst some CJS agency staff that courts continue to be scheduled, particularly but not solely in rural areas, in order to maintain sufficient numbers of magistrates' sittings. This perception arises when the number of courts scheduled is thought to exceed that required by the workload. Inspectors found that this belief was not supported in the main and that the perception was a reflection of practices which used to be more widespread. Whilst it may be true in some areas that courts are scheduled without regard to workload, the scheduling of too many courts in order to maintain an adequate number of magistrates' sittings is not as prevalent as it once was. Nonetheless, the need to maintain both the number of sittings and continuance of experience for lay magistrates remains a necessary and important factor in scheduling. (See paragraphs 3.30-3.35 below).

" I keep the size of the Bench under review to ensure that there is the right number of magistrates for the number of courts which in turn is based upon the amount of business." Justices' Clerk

2.7 The productive deployment of prosecutor resources is essential if hearings are to be effective. CPS prosecutors[17] carry out two principal activities: reviewing cases and presenting cases at court. The CPS can only achieve the right balance between these two activities with the co-operation of the courts. If the magistrates' court schedules a sitting pattern which leaves prosecutors with insufficient time to review cases, the CPS review of cases will suffer which, in turn, will affect the quality of case preparation and the overall outcome. (See below paragraph 3.20.) It is essential that the ability of the CPS to resource a scheduling pattern be taken into account by the magistrates' court through a process of full consultation. Inspectors found an increasing recognition of the need to ensure that the CPS can properly resource the scheduling pattern, although there remain areas where CPS considers that its needs are not fully recognised.

In one metropolitan court centre the scheduling pattern had been radically changed to align first appearance courts with the CPS Criminal Justice Units that in turn were based upon police Divisions. The magistrates' court had a key role to play in allowing the police and CPS to develop a working relationship intended to improve the overall quality of cases presented in the magistrates' court. ✓

2.8 As part of the reforms following the Narey Report[18] into delay in the magistrates' courts a new type of non-lawyer CPS prosecutor, known as a designated caseworker (DCW), was introduced to review and present straightforward guilty pleas in the magistrates' court. The introduction of DCWs meant a major change in scheduling practices in order to be able to accommodate the limited number of cases which DCWs are able to prosecute. DCWs are able to deal with straightforward guilty pleas, proof in absence of road traffic cases and sentences. They are not able to deal with cases which have any degree of complexity or which include custody applications, or applications in road traffic cases to avoid

[17] lawyers or designated caseworkers (DCWs)

[18] In 1997 Martin Narey published a Review of Delay in the Criminal Justice System. The highly influential Narey report resulted in a number of reforms designed to reduce delay in the magistrates' courts.

endorsement or disqualification. In general, Inspectors received very positive comments about the effectiveness of DCWs in the courtroom but significant feedback about the restrictions to efficient listing caused by their limited remit.

2.9 DCWs are most often used to present Early First Hearing courts which contain cases with anticipated guilty pleas. However, some cases may not result in a guilty plea and, since the DCW cannot deal with it, will need to be transferred to another court or adjourn to another day. Similarly, many DCWs also present traffic courts but if any degree of complexity is introduced (such as an application not to disqualify an individual because of exceptional hardship), again the case cannot be dealt with by a DCW and must be transferred or adjourned. In order not to unnecessarily adjourn such cases most areas ensure that a court being prosecuted by a lawyer is scheduled to run in parallel with the DCW court. In rural courthouses with few courtrooms, these limitations mean that scheduling DCW courts is not viable. The limited remit significantly reduces the scope for transferring cases between courts in order to expedite business on the day. In some instances the difficulties produce an unbalanced list for the courtrooms involved which mitigates against deploying the DCWs efficiently.

"The DCW system has removed much of the flexibility in listing, particularly in the ability to move cases between courts on the day (or even before the day). Sometimes the result is that more courts than are really necessary are run or the work between courts in the same building is out of balance." Justices' Chief Executive

"Care always needs to be taken to list cases that [DCWs] are able to deal with. The court also has to ensure that a CPS [lawyer] court is listed on the same day and because of the variety of cases that the DCW cannot deal with, the listing department has to be very careful not to list too much in the CPS [lawyer] court to allow for the number of cases that have to be transferred or for the custody cases." Deputy Justices' Clerk

"In the small (two courtroom) buildings in this area, DCWs limit the ability to list efficiently. If DCWs could deal with a wider range of cases, they would be of much greater value." Justices' Chief Executive

" The limit on the DCW role has affected flexibility in the sentencing courts - for example if there are not enough PSRs we would like to put a short trial into that court, but if the DCW is there it is not possible." Legal Adviser

2.10 Despite the constraints to scheduling that DCWs impose on courts, Inspectors found most areas attempting to accommodate their use. However, Inspectors also found that increases to the numbers of DCWs had been planned by CPS in isolation without a full understanding of how that would impact on the scheduling of courts. In other areas DCWs were not being used to their full capacity. Inspectors encourage local COGs/Shadow LCJBs to ensure that adequate consultation takes place to ensure the efficient use of both CPS resources and courtrooms in the scheduling of DCW work. However, this inflexibility in terms of listing would be reduced if the remit of DCWs were to be extended. Inspectors acknowledge that it would require policy and legislative changes to substantially extend the DCW remit. However, the review team was told that consideration was being given to some extension of the type of cases which DCWs can present. Inspectors would encourage the CPS, in consultation with other agencies, to widen the range of cases as much as possible in order to facilitate more efficient listing and scheduling. Particularly in more rural areas where there are courthouses with only one or two courtrooms, substantial expansion of powers is likely to be needed if effective use of DCWs is to be made.

Recommended: that the Crown Prosecution Service take the lead in seeking to extend the range of cases which can be prosecuted by designated caseworkers

2.11 In rural areas, the ability to schedule courts can be driven by the availability of defence solicitors to act as duty solicitors. Where there are few defence solicitor firms in an area, and particularly where most firms are sole practitioners, it will be sometimes be impossible to schedule hearings on the same day in different courthouses. Where a commitment to maintaining a presence throughout the area has meant the retention of a number of small courthouses, the limited number of defence solicitors to act as duty solicitors can lead to delay in listing cases because of scheduling limitations.

Resource Deployment: buildings

2.12 There are conflicting government pressures on MCCs which impact on decisions where to schedule courts:

- The Rural White Paper, with its requirement to rural proof all policies, is putting pressure on MCCs to retain rural courthouses (small courthouses with only one or two courtrooms), which are inherently inefficient to list.
- Public opinion, especially in the local media, is often strongly opposed to proposals to close smaller, local courthouses
- Pressures to improve facilities for victims, witnesses and defendants reduces the scope to use rural courthouses and increases the workload in courthouses with better facilities
- Recent concerns about security in courthouses has led to pressures to close courthouses (usually smaller, rural courthouses) that are expensive or difficult to keep secure and safe for staff and users.
- Other CJS agencies (especially CPS) are keen, for reasons of better use of limited resources, to reduce the number courthouses they have to service.
- CPS dislikes mixed lists (which are the most common way of listing cases in small courthouses) because it inhibits the use of DCWs and limits the most effective use of their staff.
- Defence solicitors are inconvenienced if their local court is closed (or no longer deals with remand cases) and they have to travel longer distances to the nearest court centre.
- Smaller, less well-equipped courthouses often have inadequate or sub-standard facilities for remand prisoners.
- The prisoner escort agencies find it hard to service outlying rural courts and to deliver prisoners on time, in accordance with the terms of their contracts.
- MCCs are under pressure to close smaller, less busy courthouses for budgetary reasons (because of economies of scale it is more efficient for MCCs to run fewer, busier courthouses than service a large number of scattered courts in rural areas that only open once or twice a week.).
- LCD has set MCCs a target that all courtrooms are used for 1250 hours pa (see paragraph 3.36).
- MCCs are under pressure to speed up throughput of cases on the day (the number of cases dealt with per hour) and the time it takes to complete cases.

2.13 These (and further) conflicting pressures have to be taken into account when a scheduling pattern is being devised for the courts. MCCs, often after difficult negotiations with their CJS partners, have devised different, local solutions to these competing pressures. The response in urban areas has been different to that in areas where the population is more sparsely scattered and public transport is poor or non-existent.

One Justices' Chief Executive said "Rationalising courthouses [and court schedules] in the interests of resource savings to the CJS agencies does lead to poor quality of services to parties"

but a Justices' Clerk was of the view

"Rationalising courthouses in the interests of resource savings does not necessarily lead to poor quality of service – it depends on your view of local justice and how that is defined. It would be useful to have a formal definition of what local justice means."

2.14 Many MCCs have or are in the process of closing occasionally-used, smaller courthouses with poor user facilities which cannot be up-graded or re-built cost effectively. Much of this has been driven by the need to comply with the Disability Discrimination Act 1995 (DDA). Where the custody accommodation is poor and cannot be up-graded cost effectively, MCCs have decided (or have been encouraged after an MCSI inspection) to close remand facilities and use the courthouse only for cases that are unlikely to lead to a custodial sentence.

One MCC states in its scheduling framework that it has applied the Rural Proofing checklist when formulating its estates policy. This resulted in a decision to keep open two courthouses, which might otherwise have been shut. The policy states that "This decision was taken in the knowledge that the estate of courtrooms would be under-used and that Government [LCD] targets in this particular area could not be met."

In one small rural CJS area, with seven courthouses, it was decided because of the standard of cell accommodation across the area to centralise remand cases in two of the newer courthouses, with better and more secure facilities. However, these courthouses were not necessarily close to the larger centres of population and defence solicitors have to travel long distances from their local courthouses (where they also have commitments) to represent clients on remand.

One Justices' Chief Executive, in a rural area, suggested one way of addressing the conflicting needs of 'local justice', and providing a better and more efficient service, would be to use a mobile courtroom. He accepted it should only be used for first hearings and 'instant justice' cases rather than trials.

2.15 Another solution to these competing pressures has been to centralise certain types of cases in specific courts. This can result, for example, in all motorway traffic offences being dealt with in one court, which may be a considerable distance from the place where the offence occurred. The ability to do this is constrained by Petty Sessions Area boundaries and in some areas the decision whether to centralise has been facilitated by the amalgamation of benches. Inspectors consider that centralising Road Traffic Act and other types of courts may lead to a better use of resources, (but see limitations in DCW section above). If this is done, however, there is a need to ensure that the organisation of the magistrates' rota does not mean some magistrates only gain experience of a limited category of cases. (See paragraph 3.35 below) Care must also be taken to ensure that the number of ineffective hearings is not increased because defendants find it more difficult to attend.

In one area all traffic cases across a large rural county were being listed in one court When the summons is sent out, the defendant in invited either to agree to the matter being heard at this court or - if they wish to contest the case – request that it is transferred to their local court. ✓

Impact of Narey

2.16 In 1997 Martin Narey's report of a *Review of Delay in the Criminal Justice System* was published. The highly influential Narey report resulted in a number of reforms designed to reduce delay in the magistrates' courts. The most important of these reforms were:

- A requirement for cases to appear in court as soon as possible after charge at an early first hearing (EFH), where there was an indication of a straightforward guilty plea, and an early administrative hearing (EAH) for all other cases
- The use of non-lawyers, designated caseworkers, to deal with the straightforward guilty pleas and
- Extra powers for single magistrates and justices' clerks to improve case management

(The above reforms were piloted and then introduced nationally in November 1999.)

- There was also a proposal, now enshrined in s51 Crime & Disorder Act 1998[19] (CDA), to send all indictable only cases (i.e. the most serious cases) straight to the Crown Court, after (usually) only one hearing in the magistrates' court. This removed from the magistrates' courts the long delays associated with preparing cases for committal to the Crown Court and handed case management of these cases to Crown Court judges.

  (This change came into effect in January 2001.)

2.17 The introduction of these reforms required a major review of scheduling in all magistrates' courts. The overall intention of the reforms was to reduce delay in dealing with cases, partly by ensuring that straightforward cases came to court and were disposed of quickly, freeing up time for the more complex cases. The most recent evaluation of the first three reforms mentioned above was carried out in autumn 2000[20] under the auspices of the Reducing Delays Subgroup of National TIG. It was carried out by an inter-agency team, visiting six sites (Avon & Somerset, Dyfed Powys, Essex, Merseyside, Suffolk and W Yorkshire), and found a large number of straightforward guilty pleas were being disposed of within days of charge. There was not, however, an improvement in the progress of cases after first appearance and the length (but not the number) of adjournments had increased slightly. The report contains a valuable list of examples of good practice and made a number of recommendations. Inspectors found that some CJS areas had used the evaluation report to audit or carry out 'health checks' on their scheduling and listing policies and systems. The good practice and recommendations are still applicable and many are echoed in this report.

Inspectors found a mixed response from practitioners on the effects of Narey:

"Narey reforms are great because they force practitioners to focus on the issues at an early date….There has been no adverse effect on the quality of justice, because there is still time for everyone to consider the issues after the first hearing." Defence solicitor

"The Narey system is not working because it is not producing the high percentage of guilty pleas expected. There is more work now in preparing full files than before Narey." Senior police officer

"It is no good having a speedy Narey process, if there are not enough legal advisers to staff the trial courts." Police officer

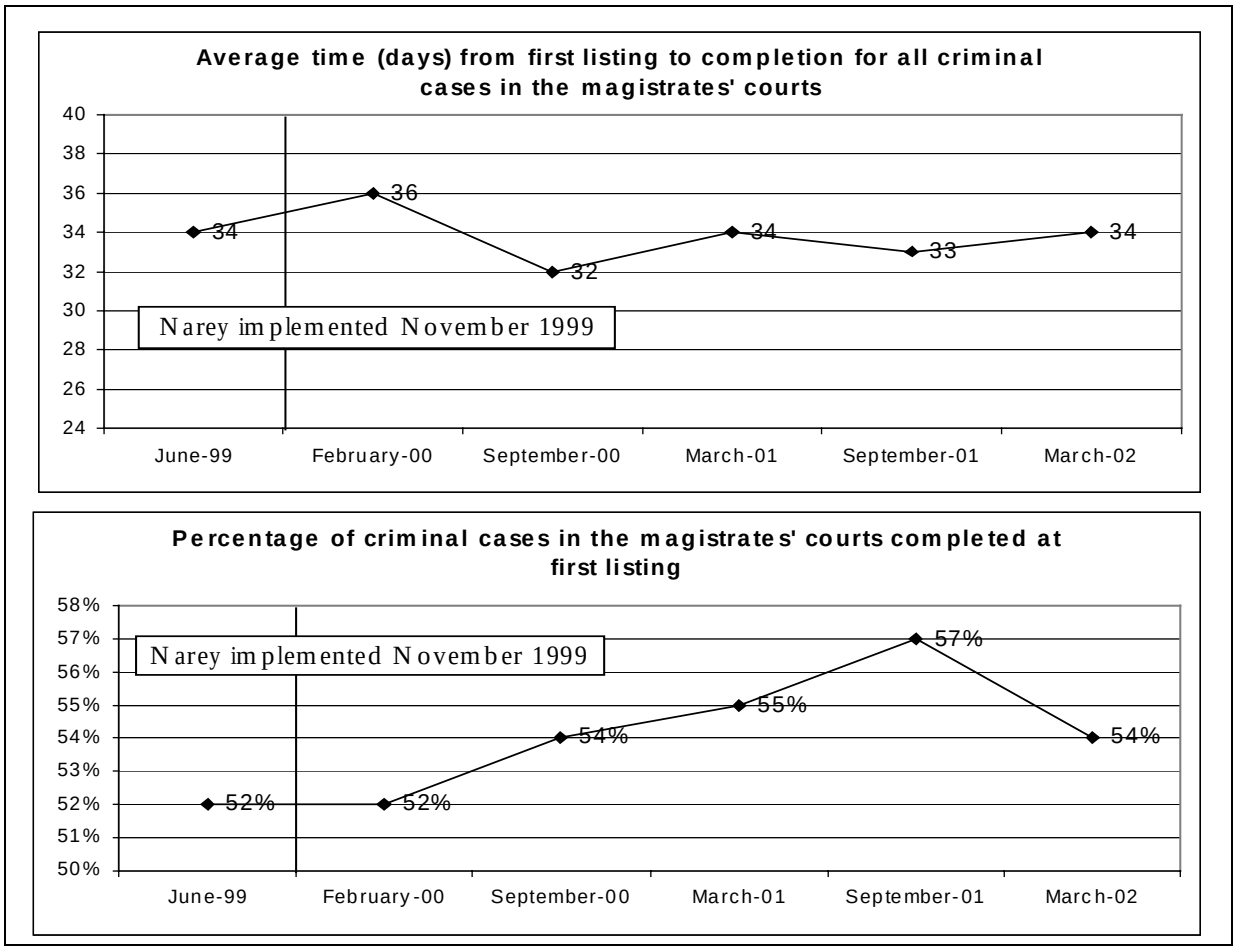
2.18 Given the three and half year time lapse since the implementation of Narey, Inspectors were able to look at the LCD Time Interval Survey data[21] to assess what effect the reforms have had over the longer period. The reduction in the time from charge to first listing remains the main benefit of the changes, routinely bringing the court appearance closer to the date offence. The earlier finding that Narey has had little effect on the overall time taken to complete cases in the magistrates' courts (from first listing to completion) is borne out. While the average time for progressing all criminal cases from first listing to completion has varied, there is no clear pattern post-Narey. A steady increase in the number of cases disposed of at first hearing (from 52% in June 1999 to 57% in September 2001) was not

[19] Procedure whereby all indictable only offence are "sent" to the Crown Court at the first or second hearing in the magistrates' court without consideration of the evidence by the court.

[20] *An Evaluation of Measures to Reduce Delay in the Magistrates' courts*, Trials Issues Group, April 2001 (publication delayed until June 2001, after the 2001 general election)

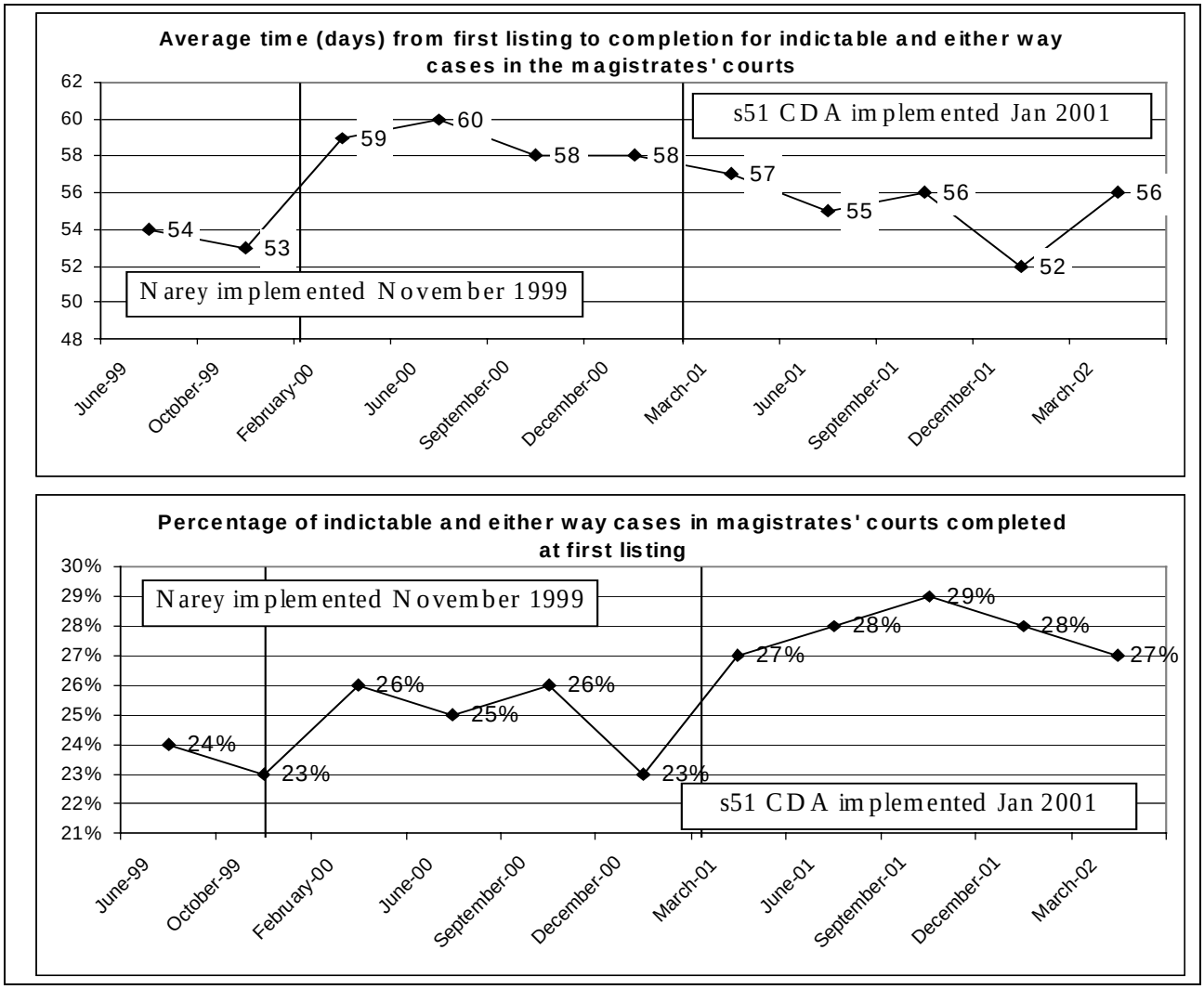
[21] LCD TIS data includes criminal cases commenced both by charge and summons, whereas the TIG Narey evaluation report (above) only looked at the more serious matters commenced by charge.

continued into the last quarter for which data is available (March 2002), when the disposal rate fell to 54%.

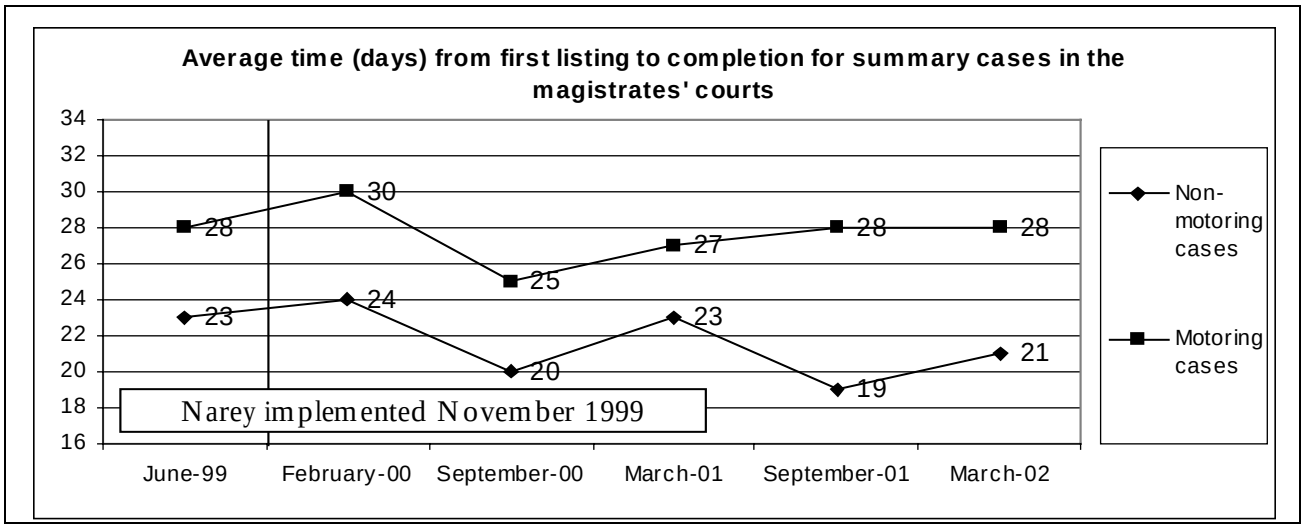


2.19 However the number and length of adjournments has changed little. The average number of adjournments per case has stayed level at around 1.1-1.2 and the average length of adjournments has also remained around the 28/29 day mark. These figures imply that the overall aim of removing simpler cases in order to facilitate the speedier throughput of other cases may not yet be achieved. However, the introduction of Specific Sentence Reports (see below) has the potential to improve the number of cases disposed of on the day.

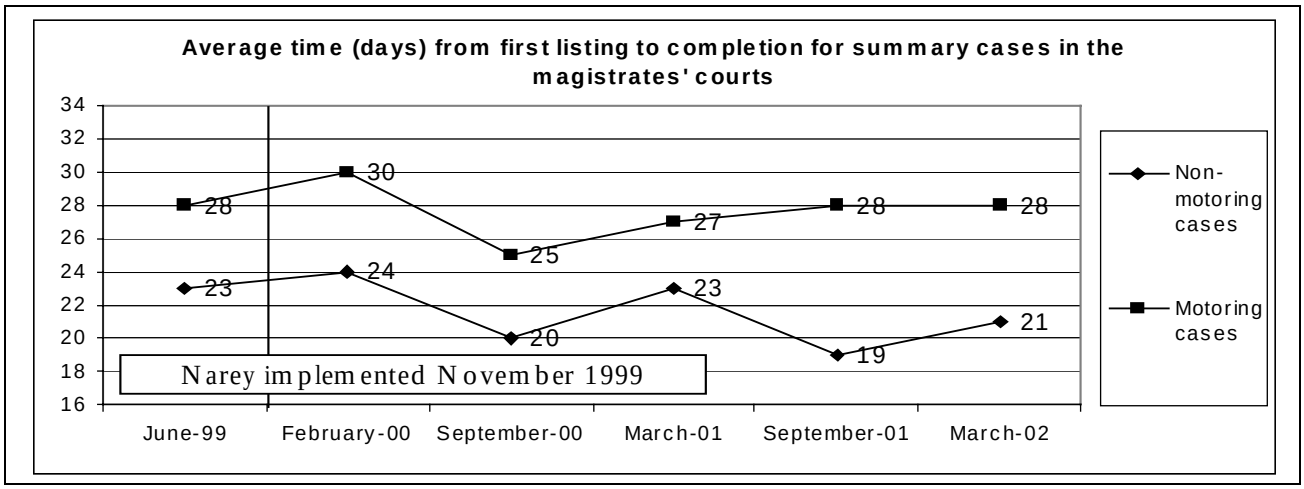
2.20 In addition to measuring case completion rates for all cases, LCD also analyses average times for indictable, summary non-motoring and motoring cases. Indictable (and either way) cases are the more serious matters and take longer to deal with, even in the case of guilty pleas. In addition to cases coming to court sooner, Narey also recommended that the more serious indictable only matters should be sent to the Crown Court after (usually) only one hearing in the magistrates' courts. This change was enacted by s51 of the CDA and came into force in January 2001. The data shows that time between first listing and completion increased (from 54 days in June 1999 to 60 days in June 2000) after the implementation of EFHs and EAHs. However, after the committal process for the more serious cases was removed from the magistrates' courts, there has been no marked improvement in the length of time taken to complete those cases which are triable either way.



2.21 The impact of Narey on summary cases (the less serious cases) has been limited. Non-motoring cases have speeded up (falling to 21 days in March 2002), but motoring cases, while fluctuating, have not shown the same improving, downward trend. This may be because most motoring cases are started by summons and are not routed through the Narey EFH and EAH courts. It may also reflect the tendency to adjourn cases proved in absence where disqualification is being considered (common in no-insurance cases). If the defendant does not attend the adjourned hearing then there would be further delay. There is inconsistent practice regarding disqualification in absence which could usefully be addressed by national guidance.



2.22 The improvement in the number of motoring and non-motoring cases completed at first instance has been slight. The impact of s1 of the Magistrates' Courts (Procedure) Act 1998 (which allows the prosecution to prove its case in the absence of the defendant in minor motoring matters) still seems to be having limited effect at the national level[22].



2.23 Inspectors conclude that the Narey and associated reforms have improved the time taken from charge to disposal to speed case completion. The time from charge to first listing has been considerably reduced. Furthermore guilty pleas, which are generally heard at EFHs, are being dealt with more quickly than prior to November 1999. However the effect on *not guilty* cases is much less clear. Improvements up to September 2001 were not sustained during the first quarter of 2002. It is too early to say if this recent fall in performance is a blip or the beginning of a trend, for example due to focus on other initiatives – such as PYOs. Not guilty cases take as long now as they did before the Narey reforms, but the delays occur later in the process. Improvements to the processes for dealing with not guilty pleas through better case preparation and management are now required if these figures are to be bettered. See Case Management section below.

[22] See the joint MCSI, HMIC & CPSI report *The Implementation of Section 1 of the Magistrates' Courts (Procedure) Act 199*8, MCSI, November 2000, which indicates that take up of the procedure by the police has been slow.

2.24 Since the initial introduction of new types of courts following each implementation of Narey, there have been a number of small alterations in order to improve the scheduling arrangements. Many courts have now moved to listing EFH courts in the morning in order to reduce late sittings which were sometimes the result of the unpredictability of the numbers in the list. More recently, the introduction of Specific Sentence Reports by the National Probation Service has also impacted on the decision when to schedule these courts. (See below paragraphs 2.35 - 2.40)

Effect of Section 51 Crime and Disorder Act 1998

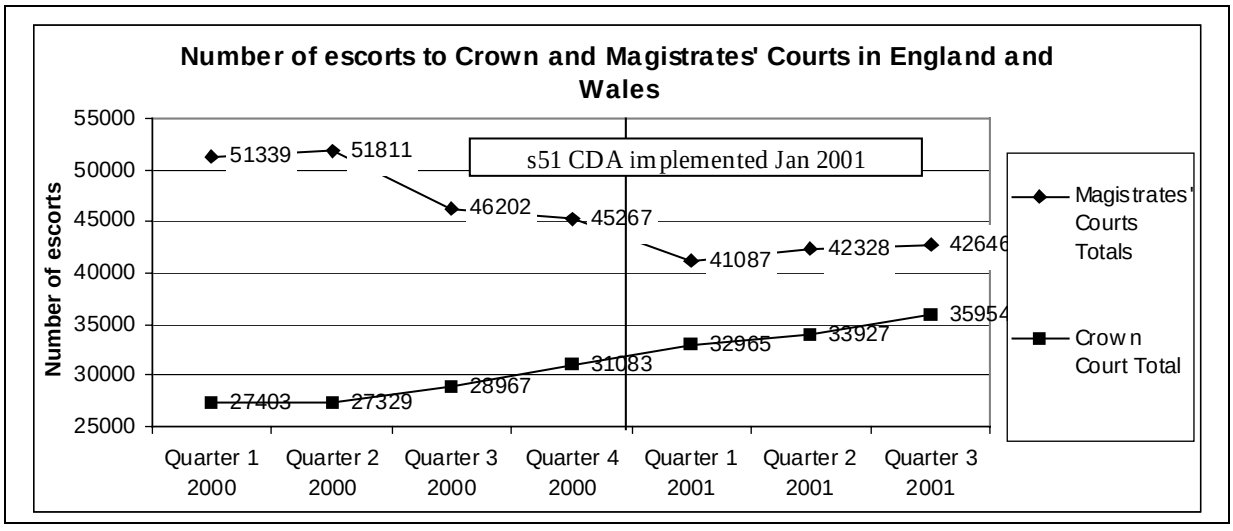
2.25 Section 51 Crime and Disorder Act 1998 came into effect nationally in January 2001.The great majority of indictable only cases are sent to the Crown Court at the first date of hearing, even though this is not mandatory. This removes a significant volume of the most serious and complex work from the magistrates' court[23]. However, Inspectors only found a limited acknowledgement amongst magistrates' court's staff that this has released listing time. Hardly anywhere had the effect of the change been quantified sufficiently to make specific scheduling changes.

2.26 While data is available to assess the effect of the EFH/EAH, there is less information about the effect of the s51 CDA changes on the magistrates' courts. Inspectors found that most court staff (particularly legal advisers and listing officers) thought that s51 CDA (in sending indictable only cases to the Crown Court after usually only one hearing) had had little impact on the workload of the magistrates' courts. Inspectors came across few CJS areas which had systematically measured the pre- and post- implementation effects of this reform.

"We have noticed no change in work levels as a result of Narey, except there has been a drop in remand cases at the centralised remand courts, but not enough to carve out a new trial court" Legal Adviser

In one busy inner-city court, however, the number of remands did drop sufficiently so that they were able to hold an additional trial court.

2.27 One group of agencies (apart from the Crown Court) particularly affected by this change was the prisoner escort agencies. The more serious cases are those in which defendants are more likely to be held on remand and so the shift of a category of prisoners from one court to another affected which courts the escort agencies have to deliver defendants.



[23] CPS data shows 27,620 defendants with indictable only offences were dealt with in the Crown Court in 2000, and 30,543 in 2001

2.28 The above chart shows that, in fact, court staff views about the relatively minor affect of s51 CDA on the magistrates' courts may be borne out by the data. This shows that the numbers of prisoners being delivered to the magistrates' courts was falling before the introduction of s51 CDA. This trend continued in the first quarter after January 2001, but numbers rose in the second quarter, the first time since the second quarter in 2000. However these figures should be treated with caution since the PECS data only relates to prisoners remanded in custody - and is therefore only a rough gauge of the change in numbers of indictable cases before the magistrates' courts. However it is the custody cases with lengthy bail applications, which take up time in a busy remand courts. Inspectors conclude that the impact of the s51 CDA has not been quantified sufficiently to make specific scheduling changes, although some in busy inner city courts extra time has been used to reduce trial delays.

Probation Service Changes

2.29 Until recently probation officers' role within the courthouse was to provide advice to magistrates and liaise with defendants outside the courtroom. It was common for probation staff to spend all day in courtrooms effectively at the disposal of the court. While probation staff still perform this role, changes to their remit have meant that increasingly they are acting as a prosecuting agency in their own right. Many of these changes came about with the setting up of the National Probation Service in 2001. Its role is to protect the public, reduce re-offending, ensure proper punishment of offenders in the community, ensure that offenders are aware of the effects of crime and rehabilitate offenders.

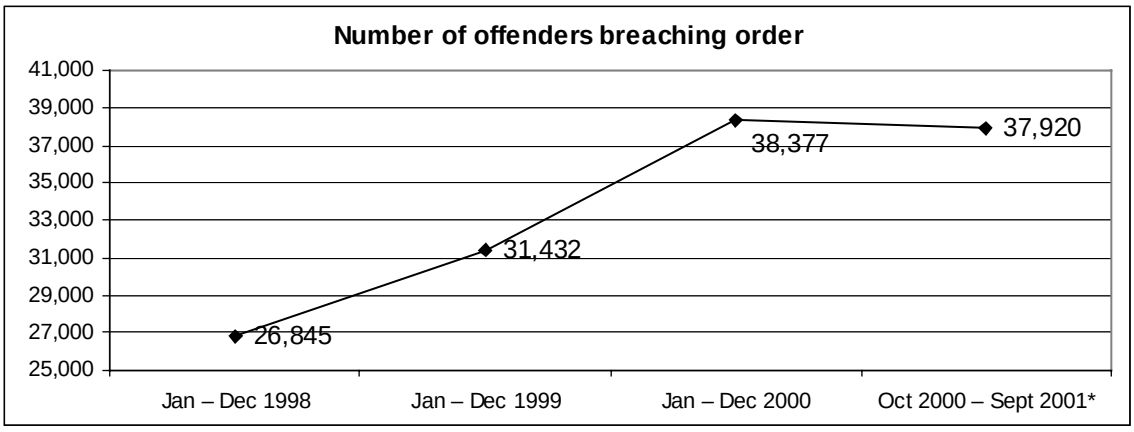
2.30 In terms of scheduling cases in the magistrates' courts probation staff now have three main roles:

- prosecuting offenders for breaches of community sentences
- providing magistrates in court with advice on sentencing either through pre-sentence reports (PSRs) or specific sentence reports (SSRs)
- increasingly monitoring community sentences – such as drug treatment and testing orders (DTTOs)– and reporting back to the magistrates on a regular basis the progress or otherwise of the offender

2.31 In order to fulfil these roles probation staff need to attend court frequently. If the scheduling framework does not reflect the balance of these different types of work, and if cases are not listed effectively, probation resources can be over-stretched and their ability to meet their overall aims reduced. While probation have always been responsible for prosecuting breaches of community orders, there has been a re-ordering of priorities.

"The Probation Service will be seeking to enforce orders more routinely and, less and less, will it be accepting excuses from offenders. Therefore, the number of breach hearings will continue to increase and there will be more contested "not guilty" hearings. These hearings will take longer as defendants are entitled to be represented by the duty solicitor and defence advocates are becoming more sophisticated in this area." Senior Officer of Probation

2.32 The current Home Office approach places much greater emphasis on punishment and on ensuring that punishment orders served in the community - e.g. probation, community service, curfew and drug treatment and testing orders - are complied with. Probation is expected to deal with all breaches promptly and appropriately. The number of offenders breaching punishment orders has increased considerably in recent years. Between 1998 and 2000/2001 there was an increase of over 11,000 offenders per year breaching punishment orders – an increase of over 40%, despite the introduction of direct recall for prisoners on licence.



2.33 However, Inspectors found that other CJS agencies (police, CPS and magistrates' courts) do not always recognise - at operational levels - this significant change in the nature of the probation role. Many probation staff confirmed that court staff are not yet fully aware that the Probation Service is now a prosecuting agency, whose needs should be taken into account when the scheduling framework is being agreed. As a consequence, when consultation takes place about scheduling changes, probation staff may not be invited to participate. The creation of Local Criminal Justice Boards, as envisaged in *Justice for All* White Paper, should address this problem.

"While bilateral relations are good, I accept that local Probation are not particularly involved in the CJS operational groups that meet to share issues and devise improved procedures". Chief Crown Prosecutor

"I often feel left out of the loop and on the fringe when it comes to planning scheduling and list building". Senior Probation Officer

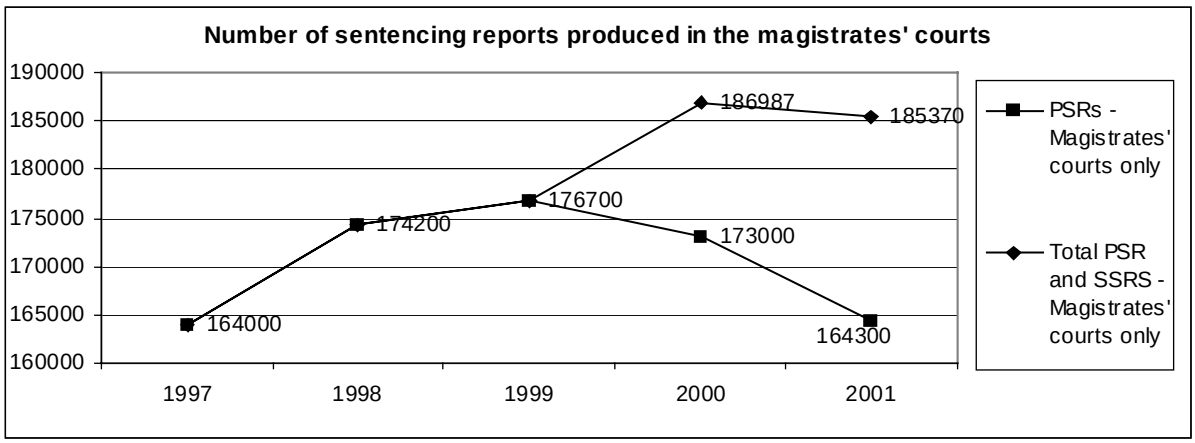
2.34 When scheduling courts, the magistrates' court service should ensure there are sufficient courts listed to meet probation needs to follow up breaches promptly and effectively. To assist in efficient use of probation staff, steps should be taken to ensure that, wherever possible, there are separate breach courts, and breach cases are not scattered throughout the lists with other types of cases. Where it is not feasible to schedule specialised courts (e.g. in smaller rural courts) breaches should be blocklisted, in order to avoid wasting valuable probation officer time waiting for cases to come up in a mixed lists. Similar issues arise for probation staff in resourcing DTTO courts. It is important that the same principles are applied to the listing of these type of hearings. In relation to scheduling, Inspectors did not find that Youth Offending Teams felt 'left out of the loop' to the same extent as probation staff. It may be that the smaller number of youth courts and the recent government focus on youth offending and PYOs has meant that YOTs have a higher profile within the youth courts and are more successful at ensuring that their needs are met.

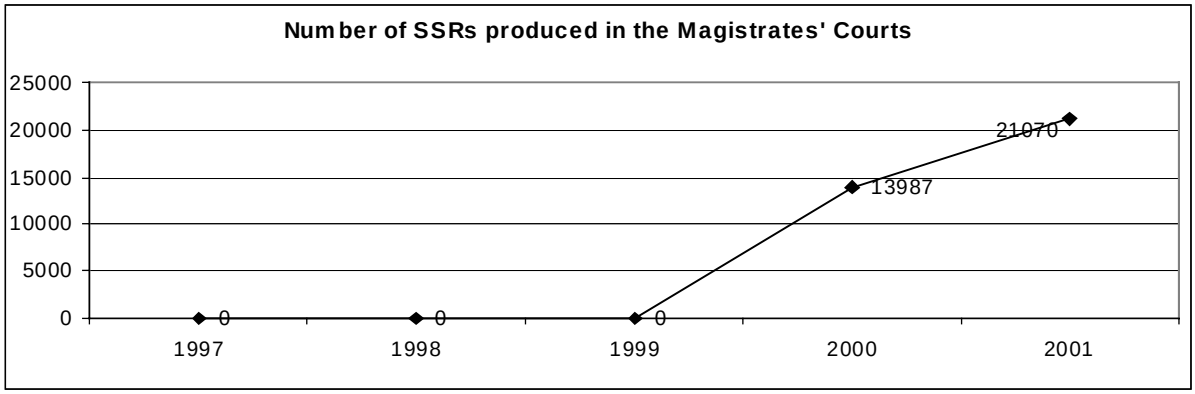
2.35 Pre-sentence Reports and Specific Sentence Reports (SSRs) make up a large proportion of probation work in magistrates' courts. PSRs have a higher profile in the scheduling process than breach courts and Inspectors found it is more common for there to be dedicated PSR courts. However in rural areas and smaller courthouses, where there may be insufficient PSRs to fill a session, they are often placed in a mixed list (listed to begin at 10am or 2pm, along with all the other cases). As with breach cases this can result in a waste of probation resources, although it is possible to manage the potential difficulties. Inspectors found in one rural courthouse that PSR cases are always heard at the beginning of the list to ensure

that the court is effective immediately. Where it is not possible to schedule a separate PSR court, MCCs should endeavour - at the very least - to blocklist PSRs so that probation resources are used to best effect. Where there are special PSR courts, Inspectors found the number of cases dealt with in court session varies widely: See Annex C, Chart 14.

2.36 SSRs (also called 'stand down reports', because they are dealt with on the day after a short adjournment), are designed to:

- relieve probation of the more lengthy task of preparing a full PSR (especially where earlier reports are readily available) because they look at specific possible sentences and
- reduce delay by avoiding a possible three week adjournment.





2.37 The most likely hearing to result in an SSR is an Early First Hearing. If, at the EFH the guilty plea is confirmed, in appropriate cases an SSR may assist the magistrates in sentencing without the need for an adjournment for a full PSR. Inspectors found that the time allocated by courts to probation to prepare an SSR varied between 20 minutes and one hour. SSRs were introduced gradually from 2000. In that first year take up of SSRs varied from a low 1.2% (of all reports) in one area up to 18.8%. Take up has since improved and, in the fourth quarter of 2001, the area with the lowest take up had improved to 3.5%, while the highest take up of SSRs was 35.6%. Probation has set a national standard that at least 20% of all reports should be by way of SSRs. Eight out of the 42 CJS areas were close to or exceeding the 20% target (which is currently under review).

2.38 By their very nature SSRs cannot be scheduled. They are called for as appropriate by magistrates on the day. Frequent SSRs in busy EFH courts have the following impact:

- Probation officers are fully employed carrying out the interviews and preparing the reports (interview rooms or Probation offices are required)

- If the EFH court is listed in the afternoon, the court needs to agree a cut off time for the preparation of an SSR. Inspectors found that in many cases EFH courts have now been scheduled for the morning, so that any SSRs can be dealt with in the afternoon. Where EFHs are still scheduled in the afternoon, Inspectors found either any late requests for SSRs were adjourned for 24 hours or more (defeating the object of completion on the day) or the magistrates requested a PSR instead, leading to at least a three week adjournment and burdening probation with extra work.
- Inspectors found that MCCs, and in particular listing officers, have not reviewed with the police the number of EFH cases referred each day, even though SSRs have the potential to slow down the throughput of business on the day.
- Inspectors also found that SSRs can cause delay to defence solicitors on the day, while they wait for probation to produce a report.

2.39 The growing success of SSRs has not, however, resulted in a corresponding decrease in PSRs which has led to an overall increase in the numbers of reports. The chart above shows that while SSRs in 2001 totalled 21,800, the total number of reports requested increasing from 176,700 (PSRs only) in 1999 to 185,370. This shows that SSRs are not reducing the numbers of more labour intensive PSRs as might have been expected. In addition, the increasing requirement on probation staff to assess offenders for accredited programmes or DTTOs is seen to be creating a tension with the SSR target.

2.40 The issues relating to PSRs and SSRs apply equally to YOTs. However the workload on YOTs to prepare PSRs and SSRs has the potential to reduce as a result of the introduction of referral orders (which occurred during the fieldwork period of this report). More cases will be taken out of the court system and will reduce the work of YOTs in the youth court (but with a corresponding increase of work before the referral panels). The effect of the introduction of referral orders on youth court schedules needs to be monitored by MCCs and YOTs to assess if any changes need to be made. Inspectors suggest that Justices' Chief Executives and Justices' Clerks should take steps to ensure that probation staff are included in all discussions regarding the scheduling framework. In particular they should ensure that the aims and objectives of the National Probation Service, as well as Youth Offending Teams, are fully taken into account when scheduling and listing breach, PSR and post-sentence review courts.

☞ **Current Domestic Violence Initiative**

A domestic violence (DV) project, initiated by the Women's Support Unit (WSU) and the CPS in a large city court, has led to the fast-tracking of DV cases. Prior to the EFH or EAH, the police mark on the file that it is DV case. The CPS identify any DV cases missed by the police. The police or CPS inform the WSU of the date of the first hearing. If the defendant pleads not guilty, the case is fast-tracked to a special weekly DV PTR court. If the plea remains unchanged at PTR, the listing office will try to list for single hearing within two weeks, so that DV trials should be completed within 6 weeks of first listing. The legal advisers who take the PTRs are specially trained and the specialist DV prosecutors have time out of court before and after the PTR to prepare the case and complete paperwork. A police officer (seconded to the WSU) monitors progress, attends the DV PTR hearings and, where possible, the trial to provide support to victims.

Policing Initiatives

2.41 In order to allow MCC's to plan effectively and enhance inter-agency planning and working relationships it is essential for police forces to ensure that they pro-actively notify the court of any planned operational initiatives likely to impact on the court's business. Inspectors

were encouraged to find that MCC staff confirmed that in respect of some operational aspects such as warrant execution, local derby football matches and racial tensions, the court was very often notified in advance to plan resources. However, this notification was not universal and in respect of some police traffic related initiatives advanced notification was not always forthcoming. Inspectors examined the impact on listing of one such initiative-hypothecation.

Hypothecation

2.42 Although it was anticipated that the introduction of speed camera hypothecation[24] would result in noticeable increases in caseload and therefore impact significantly on scheduling and list-building, information initially supplied to Inspectors revealed a somewhat mixed picture. The anticipated outcome has not been uniform across all MCC's with some areas experiencing significant increases whereas others have experienced little or no change. Furthermore, evaluation of the impact of hypothecation is difficult to quantify as there do not appear to have been any formalised monitoring systems in place nationally. Research undertaken with regards to changes in the disputing of fixed penalty tickets to assess the increased caseload from hypothecation appears equally inconclusive. Indications are in some areas that due to the fact only new fixed speed camera installations were eligible for hypothecation that the impact of the initiative was lessened. However, since the expansion of the hypothecation initiative to include both new and old installations there is the potential for an increase in the schemes' overall impact.

2.43 Areas who are currently involved in the development of schemes do not have any information to inform their forward planning. Any impact monitoring has been by individual initiative locally. As part of the inspection methodology, six of the hypothecation pilot sites were asked to complete a questionnaire concerning its planning and impact. Five of the six areas responded.

☞ One MCC area evaluated the increase in workload from hypothecation during the first eighteen months. Court staff worked with the police Central Ticket Office handling fixed penalty tickets to modify the coding system to enable prosecutions to be recorded. Camera prosecutions registered in one court were 1015 in the pilot year but had increased to 1526 in six months of the second year. The increases in workload from hypothecation (currently estimated to be 80,000 offences next year, of which 60,000 are anticipated will be paid) have been subject of detailed discussion at steering group meetings.

2.44 Most areas did not report substantial increases in workload following the introduction of the scheme. In relation to predicted increases in workloads from inter-agency planning, court centres stated that this had either not materialised or was within the thresholds predicted. However, one area commented on an increase in work due to the failure to nominate driver cases under Section 172 of the Road Traffic Offenders Act 1988[25]. Monitoring in respect of these cases, in some court areas has been quite detailed due to its impact on listing. The additional workload had materialised primarily in one courthouse due to the policy to centrally list those cases. The substantial increase in volume of cases had led to a subsequent effect on other court business. Inspectors noted that other court areas not presently listing centrally were contemplating doing so, in particular to cater for high volume cases from certain localities.

[24] Schemes to offset the cost of providing more speed cameras from fines raised
[25] whereby the registered keeper of a vehicle is required to provide the identity of the driver at the time an alleged offence took place.

2.45 Some MCC areas report that the onset of hypothecation has led to the time increasing between the offence, issue of summons and first hearing although it appears there is no evaluative data to reinforce this. One pilot site reported that there had been no impact on their timeliness measure from first listing to completion, whereas another MCC stated that performance had actually improved. It was noted however, in this latter case, that the additional levels of 'proof in absence' cases had added to the administrative burdens of the CPS and resulted in backlogs being created.

Building and Managing the List

List building – an agreed process by which lists are built up

Background

3.1 Magistrates' Courts list large numbers of cases on a daily basis, including cases other than criminal cases (for example, licensing and family). Each session can contain a single case (one trial) or as many as 200 cases (for example, where most responses to summonses are guilty pleas by post). In order to manage the range and type of these cases, most courts have appointed dedicated listing officers (administrative staff) who are responsible for the bulk of listing work, apart from listing for trial. Listing for trial is undertaken in the courtroom by legal advisers using information supplied by listing officers as to the availability of courtroom resources.

3.2 Most hearings are not trials, although they may be part of the pre-trial process.[26] The type of work which has to be undertaken at any particular hearing will vary, depending on where it sits in the judicial process. As a consequence, determining the numbers of cases in a list requires an understanding of how long each case is likely to take. Most areas have produced listing policies, governing how cases are to be listed. Historically, all cases tended to be listed for the same time, usually 9.30 or 10.00am with the expectation that the court would sit until the cases were completed. In some courts this is still the case but it is no longer common, apart from small rural courts. Most courts have attempted to reduce waiting times for individuals by block listing cases. Research for the thematic showed that most courts only block list by having a morning and an afternoon list (2 blocks). However, there are more sophisticated systems in place which allow for several blocks in both morning and afternoon sessions.

3.3 Inspectors found great variances in approach in determining how to load the list - from areas which leave all decisions to the legal adviser's discretion in the courtroom and do not have any formal agreements about timescales for types of cases, to others (particularly when computerised diaries were being used) where time estimates for all types of cases had been agreed, subject to any special circumstances. Where agreements existed about numbers of particular types of cases able to be listed in a given time, these decisions had for the most part been made by senior legal staff based on experience, although in a somewhat ad hoc, unscientific way. Inspectors found few examples where there had been attempts to actually monitor the length of cases of a particular type, despite the fact that whether numbers or times are used to fill the daily lists, accurate estimation of likely time is essential if lists are to be effectively filled.

3.4 Initial listing of criminal cases in the magistrates' courts is made at the instigation of police (either through charge or summons) or other prosecuting agencies (such as Customs & Excise, Driver Vehicle & Licensing Authority, Local Authorities). Liaison with all these agencies is necessary in order to determine how many cases should be placed in any courtroom which is scheduled for their casework. Inspectors found a mixed picture with regard to consultation, with some areas involving agencies and others taking decisions arbitrarily which can impact on the ability of other agencies to progress their work.

☞ At one fortnightly court the probation officer had to negotiate hard to get sufficient numbers of cases in the list. The court wanted to restrict it to 6 or 7 cases but given

[26] (CPSI figures for 2001 for CPS prosecutions, show that only 53,444 (4%) defendants actually proceeded to trial compared with the total number proceeded against of 1.3 million.)

the pressure of numbers, the probation officer had got an agreement to increase this to 15 new cases, 7 adjournments and 3 warrants.

3.5 Listing for first time appearances generated by the police ('Narey' cases and overnight arrests) is inherently problematic owing to the unpredictability of the number of cases, although some larger areas attempt to control the list by restricting the number of Narey cases. In other areas, it had been found impossible to manage the lists in this way because police operational methods and lack of technology to link police activity, meant that cases were sent to the court from a variety of police stations with no way to indicate that the courtroom was full. Discussions in some areas had overcome this difficulty by the police themselves setting up additional internal processes to assist the management of the list. Whilst it is possible to restrict the numbers of people attending court on police bail, when a defendant is retained in custody, it is necessary to place the person before the first available court. Considerable pressure can be placed on courtrooms where public order offences entail large numbers of overnight arrests, all of whom must be considered on that day.

Determining numbers in a list: non-trial hearings

3.6 Determining how many cases can be listed in one session does not only depend on the type of hearing. It also depends on other factors such as whether they are to be heard by a bench of lay magistrates or a District Judge (Magistrates' Court) [DJ] and whether other agencies might be involved (such as prisons with video link[27] hearings). Even taking into account these different factors, Inspectors found widespread differences in the numbers of cases of the same type which are listed in courtrooms even across a single CJS area.

3.7 There are no national benchmarks or good practice indicators to assist listing officers in knowing how their approach compares with others. As part of the thematic, 54 listing officers were asked to provide information about how many cases by type were listed each hour. This exercise caused most respondents considerable difficulty as for most, it was clearly an unfamiliar approach to list-building.

3.8 However, not all response difficulties were due to the unfamiliarity of approach. In one rural area, the decision to retain many small courthouses and their low workload effectively meant that lists built themselves. There was never a need to restrict any cases as the workload never filled the court time available. In another instance, the decision had been made that the timing of every individual case would be determined by legal advisers and so no figures could be provided. (However, when Inspectors discussed this approach with the legal staff involved, it was found that they had agreed a set of time estimates for themselves in order to be consistent and for speed.)

3.9 The absence of any agreed benchmarks for listing of cases can lead to inefficiency and pressure on resources of CJS agencies when lists are either too heavily or too lightly loaded. The thematic research revealed wide disparity in the numbers of cases considered to be appropriately listed for one hour as can be seen in the following table. Information was requested separately for lay magistrates (JJ) and District Judges (DJ) and for youth and adult cases. One significant finding which came out of the exercise is that, even those areas who use DJs regularly do not generally list different numbers of cases, despite knowing that DJs adjudicate on many more cases in the same time period as a bench of magistrates who will need to consult with each other and their legal adviser. Sixty per cent of courts list the same number of cases for both magistrates and DJs. The implications of this are considerable and are considered in paragraph 3.16 below.

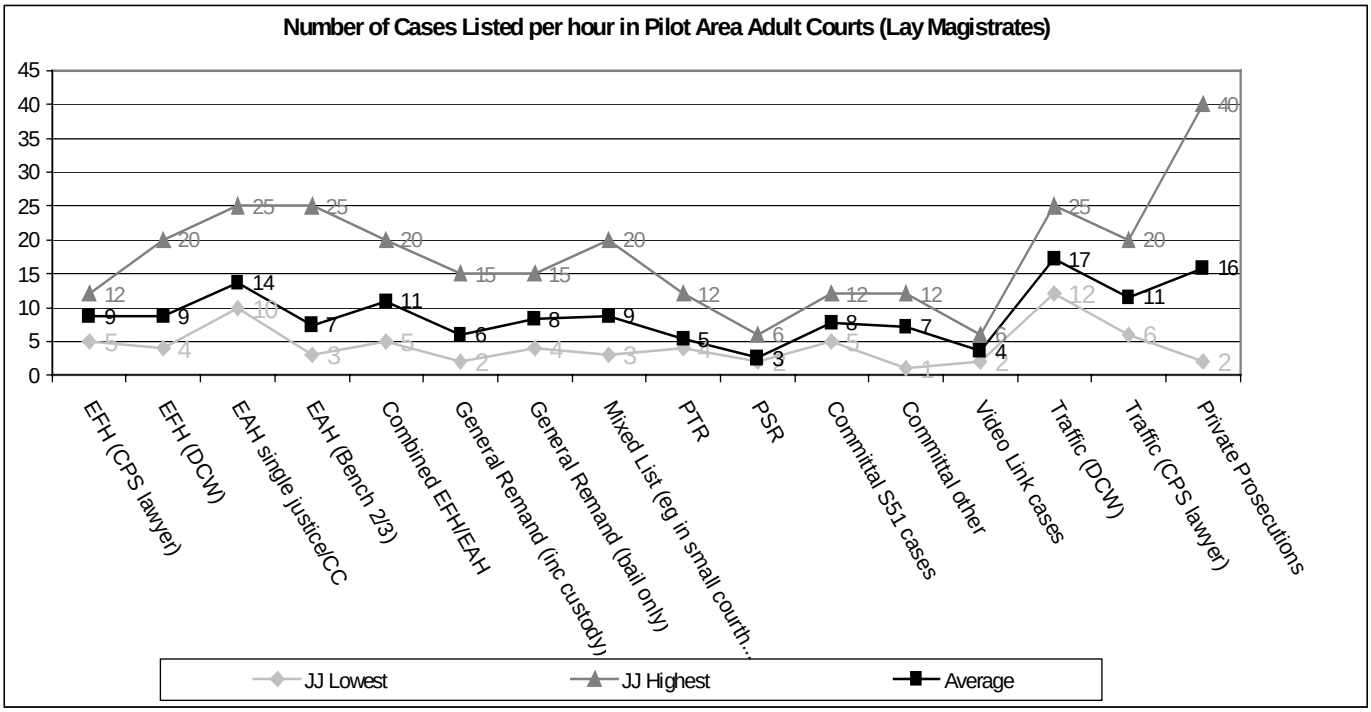
[27] Hearings for defendants remanded in prison which are heard by means of a visual link between the court and the prison.

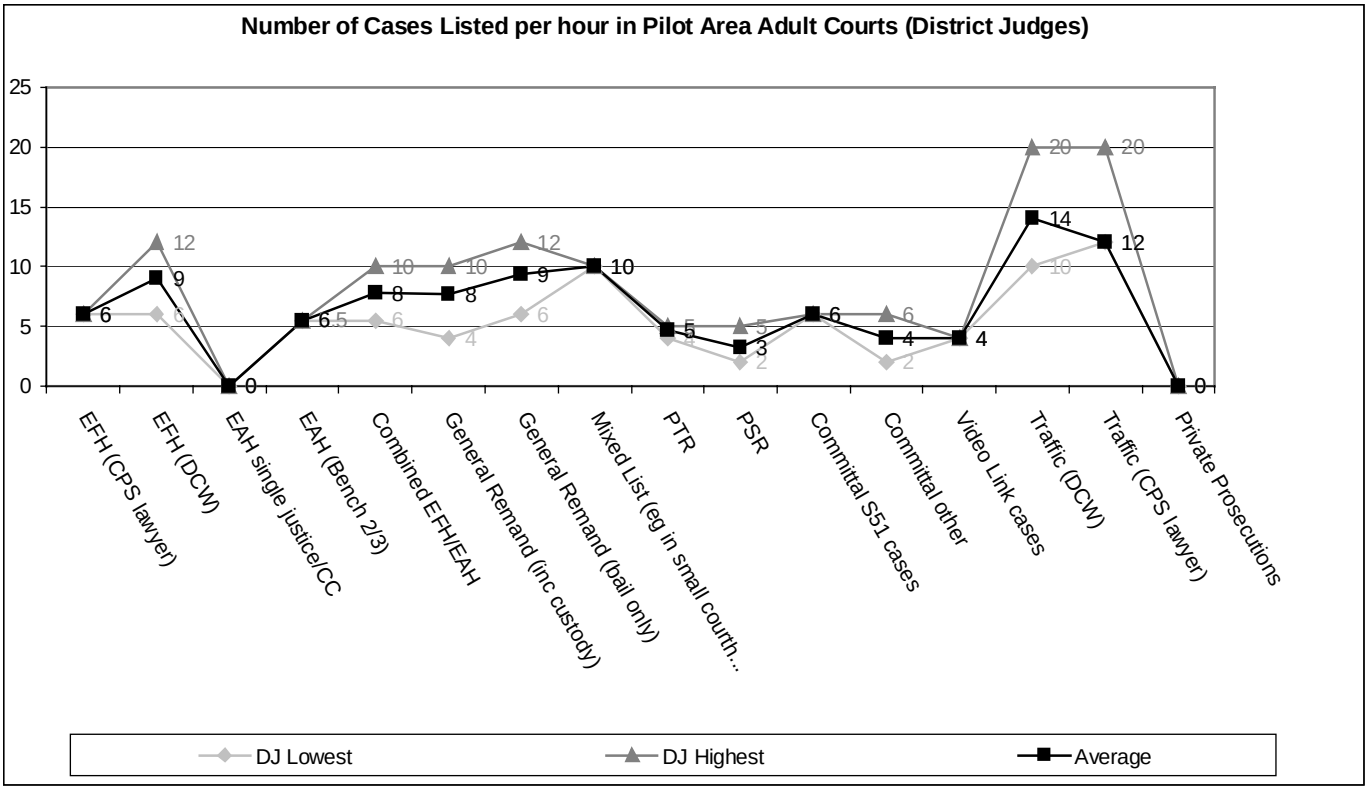
List-Building Questionnaire Results

Adult Courts

All Courts	Bench Composition								Listed			Blocks	
	Percentage of pilot site courts who sit court type		Range of cases listed per hour				Average number of cases listed per hour		% who list AM only	% who list PM only	% who list both AM and PM	% who blocklist JJs	% who blocklist DJs
	JJ	DJ	JJ Lowest	DJ Lowest	JJ Highest	DJ Highest	JJ	DJ					
EFH (CPS lawyer)	24%	2%	5	6	12	6	9	6	31%	54%	15%	38%	0%
EFH (DCW)	42%	4%	4	6	20	12	9	9	57%	22%	22%	27%	0%
EAH single justice/CC	20%	0%	10	-	25	-	14	-	36%	27%	36%	70%	0%
EAH (Bench 2/3)	25%	2%	3	5.5	25	5.5	7	5.5	64%	7%	29%	47%	0%
Combined EFH/EAH	38%	4%	5	5.5	20	10	11	8	52%	33%	14%	52%	0%
General Remand (inc custody)	49%	5%	2	4	15	10	6	8	44%	0%	56%	28%	0%
General Remand (bail only)	40%	5%	4	6	15	12	8	9	59%	0%	41%	36%	0%
Mixed List (eg in small courthouses)	36%	2%	3	10	20	10	9	10	25%	0%	75%	50%	0%
PTR	65%	5%	4	4	12	5	5	5	50%	39%	11%	58%	0%
PSR	71%	9%	2	2	6	5	3	3	41%	10%	49%	86%	75%
Committal S51 cases	45%	2%	5	6	12	6	8	6	68%	4%	28%	35%	0%
Committal other	38%	4%	1	2	12	6	7	4	71%	0%	29%	32%	0%
Video Link cases	25%	2%	2	4	6	4	4	4	36%	21%	43%	62%	0%
Traffic (DCW)	31%	5%	12	10	25	20	17	14	41%	0%	59%	80%	0%
Traffic (CPS lawyer)	55%	2%	6	12	20	20	11	12	60%	7%	33%	36%	0%
Private Prosecutions	67%	2%	2	-	40	-	16	-	14%	19%	68%	61%	0%
Youth Courts													
EFH	17%	0%	5	-	12	-	9.4	-	50%	50%	0%	38%	0%
EAH	15%	0%	2	-	25	-	10.8	-	57%	43%	0%	29%	0%
Combined EFH/EAH	65%	0%	5	-	12	-	9.1	-	81%	19%	0%	42%	0%
General Remand	60%	2%	2	15	15	15	5.9	15.0	38%	0%	62%	45%	0%
Mixed List	48%	2%	2	15	15	15	7.8	15.0	35%	0%	65%	61%	0%
PTR	46%	0%	1	-	12	-	5.2	-	68%	23%	9%	64%	0%
PSR	71%	4%	0.75	5	5	5	2.2	5.0	32%	6%	62%	68%	6%
Traffic	48%	0%	1	-	20	-	6.4	-	87%	0%	13%	57%	0%
Committal	50%	0%	1	-	12	-	5.2	-	79%	0%	21%	54%	0%
Video Link cases	15%	0%	0.3	-	6	-	3.6	-	71%	0%	29%	57%	0%

3.10 In order to establish potential benchmarks which could be used to compare local practice the results were analysed to show not only the highest and lowest numbers in a particular list but also where most responses fell. In order to determine if there was a difference in courts in Metropolitan areas with the pressures of high workloads, the data was also analysed to show these courts separately. The following two charts provide an overview.





3.11 Charts 1-4 at Annex C show the full analysis and the separation into Metropolitan/Other types of court. The findings show that *where* a case is listed makes little difference to the numbers in the list – in some instances the rural[28] courts show higher numbers in the list. Local practice at particular courthouses is a bigger determining factor than the geography. In the absence of any benchmark information, Inspectors have correlated the data in an attempt to fill the vacuum. Charts 5 – 30 show the individual ranges but, as an example, the following table gives the data for lay magistrates across a range of adult cases. It can be seen that only in the case of Pre-Sentence Reports and Video Link cases is there much consensus about the numbers in a list.

Type of Adult Case(s) listed before Lay Magistrates' Bench Per Hour	**Number of cases listed per hour most frequently**	**Significant Differences between courts? YES/NO**
EFH (CPS lawyer)	6	Y
EFH (DCW)	10	Y
EAH (Single Justice)	10	Y
EAH (Bench 2/3)	10	Y
Combined EFH/EAH	10	Y
General Remand (inc Custody)	2	Y
General Remand (bail)	6	Y
Mixed List	5	Y
PTR	4	Y
PSR	2	N
Committal (S51)	12	Y
Committal (Other)	12	Y
Video Link	4	N
Traffic (DCW)	20	Y
Traffic (CPS Lawyer)	6	Y
Private Prosecutions	15	Y

3.12 The above numbers represent the nearest approach to benchmark figures for lay magistrates' hearings. There are many courts who already list higher than the benchmarked figures but equally there are many who list fewer. There are great variances even within CJS areas with, in general, more cases listed per courtroom in busy urban areas than in rural courts with fewer cases. Many interviewees commented on the 'rural courts' syndrome where everything about the courtroom operates at a much slower pace – with the work expanding to fill the time available. This slower pace appeared to apply to all the participants, from the magistrates on the bench to the legal advisers and the prosecuting and defence solicitors. Inspectors found that even where the differences between courthouses were readily acknowledged, there seemed to be a reluctance to tackle the issue, leading to unnecessary resource costs and reducing the time available for CJS professional users to work on other cases.

"There are completely different expectations across the courts in [the MCC area] – a light list in [court A] would be regarded as a heavy list in one of the more rural courts. All of the agency staff take the same approach – the slow speed is reflected by everyone." Legal Adviser

[28] analysis comprised truly rural courts and also non-metropolitan courts in mixed areas

"At [court A] I will book 45 minutes for a PSR, but find that in 70% of cases it takes an hour. Magistrates tend to retire and are slow. In [court B] only 30 minutes is required. In both courts magistrates are given the PSR before court starts and will often read the PSR before the case is called on." Listing Officer

"In relocating work from [court A] to [court B] we noted that there had been a marked effect on magistrates at [court B] who appeared to become far speedier in order to deal with the extra work they had accommodated." Justices' Chief Executive

3.13 Magistrates' Courts do have some limited information about speed of throughput in the courtroom through their Core Performance Measure (CPM 7) which shows the number of completed (weighted) cases per hour. Inspectors found some good practice in trying to ensure that the court list is progressed at appropriate speed through case management training for magistrates and legal advisers. However, this training needs to be matched by ensuring that appropriate numbers of cases are placed in the list. There is too ready an acceptance of slow throughput on the day as an inevitable result of listing in less busy courthouses.

✓ As well as case management training for both legal advisers and magistrates, one area had introduced pre-court briefings for magistrates. The legal adviser speaks to the magistrates for 10-15 minutes about any issues concerning the specific cases on the list. They have found that this has had a direct impact on courtroom performance. Their throughput on the day has increased to around 15 since the introduction of these initiatives. The case management training was delivered by means of roadshows which have proved so successful that they are now using the same method to tackle fine enforcement performance.

3.14 The lack of benchmarking for numbers in the list can also lead to overlisting of cases. The pressures placed on courts to progress cases as quickly as possible and to ensure that courtrooms are used for a full day, can lead to too many cases being placed in a list. In addition, Inspectors found that many courts were overlisting cases on the assumption that trials would collapse and thereby free up courtroom space. The effect of this strategy can lead to considerable waste of CPS prosecutor time preparing cases which are then transferred elsewhere. It also leads to delay in the courtrooms as the work of one courtroom is delay in order to transfer the cases and then the second one is delayed while the transferred cases are read by another prosecutor. Routine transferring out of cases has the potential to influence the attitudes of prosecutors towards the preparation of cases.

"I find quite often that the list I have to deal with in the morning is different from the list prepared on the basis of the court lists sent the previous afternoon. I find that cases are transferred into other courts, even where I have read them, and this is frustrating because of the additional work involved. However the courts will give you time to read and prepare cases if they are being transferred if you ask. I recognise that some changes are probably necessary for the smooth running of the courts overall, but I do not think it's appropriate to have wholesale changes to lists during the day." Designated Caseworker

3.15 Inspectors were told by magistrates, legal advisers, prosecutors and defence solicitors that having too many cases in the list can be counter-productive. The tendency is to adjourn cases if they cannot be reached or not to question adjournments too closely if it means that the numbers in the list are thereby reduced. This effectively increases delay, and in the case of trials, inconveniences witnesses and wastes resources. The frequency of cases being adjourned for lack of court time was so great in one area that the local agencies coined a new verb - 'to lack off'. Some types of hearing are particularly affected by under-estimating the time required. Paragraph 4.84 below details the impact on the effectiveness of PTRs

when too many are placed in the list. Some interviewees also expressed concerns about too heavy lists having a negative impact on the quality of justice.

"In my view late sittings are unfair because the quality of justice suffers. This is something I feel myself in relation to mitigations I have made late in the day: Defence solicitor

"Too many cases in a list affects the outcome in terms of quality of justice, particularly with court sittings which drag on after 4pm, mainly because those involved are not at their best at that time of the day. Several courts have recently sat until 6.30pm and on these occasions, the quality of thought had diminished significantly by that time." CPS lawyer

"The potential for magistrates' decision making to be affected by pressure of time has to be countered by the legal adviser who must make sure that magistrates do not feel under pressure to short circuit the decision making." Legal adviser.

3.16 Overlisting in some areas is also practised because it is assumed that DJs will progress more quickly through the list and therefore time will become available to transfer cases. As reported above, areas who use District Judges do not always build lists adequately to ensure that there is sufficient work for a session, leading to the need to transfer in cases unnecessarily. This practice is often because the listing officers and legal advisers are unaware until just before the court date whether lay magistrates or a DJ will be sitting in that courtroom. However, in some instances, Inspectors were told that there is an unwillingness to list fully for the DJ in order to recognise magistrates' sensitivities. Where courts were listing fully for a District Judge, the limited availability of DJs at the end of the last financial year caused severe difficulties when courts which were listed for DJs had to be undertaken by lay magistrates. Inspectors found that generally, courts which did list specifically for DJs were doubling the numbers in the list but at least one area was triple listing. There is a need to recognise that fuller DJ lists also means additional work for other agencies in preparing for larger volume of cases.

"We don't allocate more cases for District Judges than for ordinary magistrates because of the way we list, although it is generally the experience that the District Judge finishes earlier and takes additional cases from magistrates that are sitting in other courts that day." Legal Adviser

"There should be a difference in listing and scheduling for District Judges as opposed to lay magistrates but in [this area], despite attempts to realise this difference, things tend to be haphazard" District Judge

"As a court clerk I feel pressure to fill the lists up. It's the court clerk's responsibility to work out time estimates when a case is adjourned and working it out can be a problem. The court clerks decided it was essential to have consistence in the listing and so met to decide what their standard timescales would be. We made a decision that a District Judge would spend about a third of the time that a Bench of three magistrates would take and so we triple list any District Judges' courts." Legal Adviser

3.17 Inspectors found that where a more sophisticated block listing approach was taken (with several blocks each morning and afternoon) more work tended to have been done to determine working benchmarks for average times for particular type of cases. Block listing cases reduces waiting times for defendants and also reduces the waste of agency resources by ensuring that professional users only attend as they are needed. In court sittings where several different types of cases are listed (for example in mixed lists in rural areas there can be standard adjourned cases, PSRs, CPS and non-CPS cases) there is even greater pressure to list effectively.

Inspectors were told that it was difficult to achieve block listing under these circumstances but good practice was found in one rural MCC which block-listed all its courts. In this area, the good co-operation between the CJS agencies was replicated amongst magistrates who had responded positively to the block listing initiative in order to provide a better service to users. ✓

3.18 Block listing also allows listing officers and legal advisers to take account of known difficulties such as long journey times for defendants or difficulties with child care or the routine late arrival of prisoners (for example because the courthouse is always at the end of the delivery run). The failure to take account of such regular late arrivals can mean a significant cost to the legal aid budget. For example, figures collated by the Criminal Defence Service for 2001/02 show that defence solicitors' time spent waiting at court costs in excess of £20 million. Annex D shows the breakdown by CJS area of defence solicitor average waiting times.

3.19 List building is more of an art than a science but there is great scope for taking a more scientific approach. More accurate time estimates can aid detailed block listing and lead to more efficient sittings. Listing for volume work needs guidelines to achieve consistency and to give assistance to the listing officers and legal advisers who have to plan the daily lists. For example, introducing new initiatives can have an impact on court listing times which should be factored into average timescales. Inspectors found that in general, the additional time taken in the courtroom when SSRs are commissioned, rather than PSRs, is not planned for when determining the length of the EFH list. Instead, Inspectors found that many areas had set up alternatives such as next day SSRs or magistrates reverted to requesting PSRs when the case appeared later in the list and there appeared insufficient time to hear the SSR.

3.20 In addition, the length of court sessions should recognise that effective hearings are largely a product of other agencies' having time ***outside the courtroom*** to undertake necessary preparatory work. If court sessions routinely finish late, there will be little time for defence advocates to meet clients and for prosecutors to review files. The adverse consequences which can result when advocates are unprepared are described in the Case Management Section of this report. Under- or Over -loading lists has implications for other agencies' resources and a negative impact on delay. It is important for those responsible to look at current practice to ensure it balances efficiency with effectiveness. Building the list for a court sitting is an administrative procedure which requires judicial and professional user feedback particularly to ensure that undue pressure is not exerted by overloading cases. Justices' Chief Executives and Justices' Clerks need to work together to ensure that the current rules of thumb or time estimates used to build lists are tested for their accuracy and to benchmark practices across their courthouses.

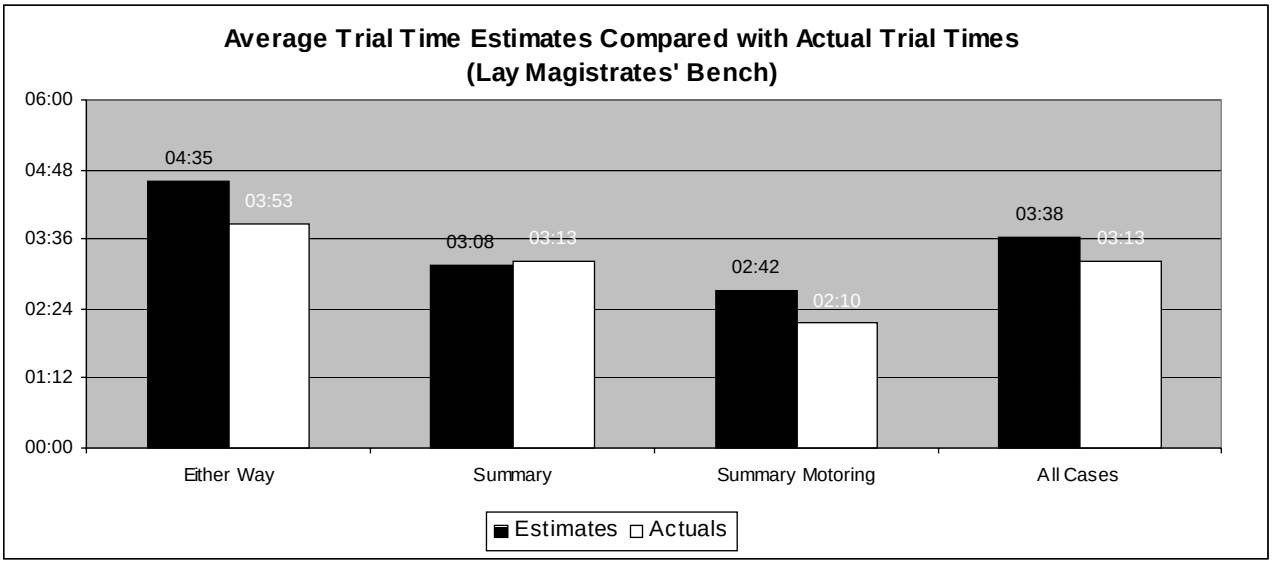
Recommended: that Magistrates' Courts Committees commission their chief officers to undertake a comparison of their current list-building practices against the benchmarking data published in this report to ensure that the court lists are the most appropriate to the needs of the local criminal justice agencies

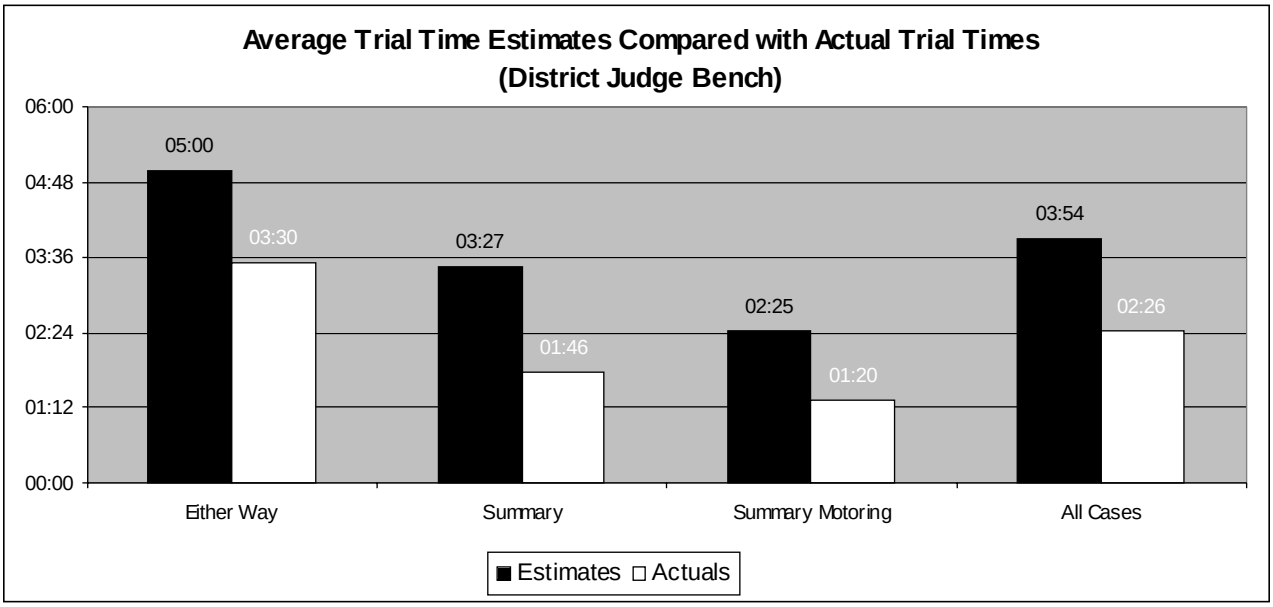
Determining numbers in a list: trials

3.21 The listing of trials is always as a result of time estimates based on the individual case and is less subject to average timescales than for other types of hearing. The estimated time is determined by the legal adviser in the courtroom based on information given by the prosecutor and defence advocates. As part of the list-building research Inspectors asked legal advisers in nine areas to record the actual time taken for each effective trial. This time was then compared with the trial time estimate. The method of estimating the trial time was

also requested. The responses varied with some legal advisers using a rule of thumb formula (for example, half hour per witness) and others treating every case on an individual basis. The range of responses can be found in Annex E. The following charts show that in general the methods used lead to over-estimation of trial length. The differences are even sharper when the trial is listed before a District Judge. The results show significant wasted time in courtrooms which could be used to progress other work and re-emphasise the need to list accurately for District Judges.

3.22 Inspectors undertook an analysis of the different systems in place to estimate trial lengths and compared them with the extent of over-estimation. The results do not indicate that any one system is better than another in estimating the time needed. Both formulaic and open methods could provide for overlisting of trials. This issue is discussed further below. Whichever method is in place, however, Justices' Clerks should satisfy themselves that the application of the method is not leading to significant over-estimation and ensure that cases listed for hearing before a DJ are reviewed to ensure that the time estimate is adjusted if necessary.





Recommended: that Justices' Clerks compare trial estimates with actual time taken at regular intervals, to ensure that the method used produces accurate estimates.

3.23 The ad hoc nature of most of the methods used to estimate the length of trials could be better informed by more detailed research than was possible for this thematic. Significant improvements to trial estimation would lead to better use of courtrooms and enable block listing trials in the interests of witness care. Such research could look at the average time taken for all aspects of the trial, including average length of witness testimony in order to provide more evidence-based benchmarks for summary trials. There is also the potential for such research to look at other types of hearing. Such data would inform and facilitate the use of in-court diaries when these become more widely available. (See also recommendation at paragraph 3.40 below.)

Recommended: that LCD commission research to establish average time taken for each aspect of a trial in order to improve time estimates in summary trials.

Inhibitors to effective list building and management

3.24 Managing the daily lists to ensure that there are sufficient cases to proceed efficiently is not, however, just a question of getting the initial time estimate right. There are many other factors which impinge on the effectiveness of the court list. Some of these factors must be catered for in terms of risk analysis because they occur on a daily basis and it is necessary to build in some contingency time into the list – either to reduce or increase the numbers of cases. Other factors are the result of external pressures which are less easily addressed by individual listing officers and legal advisers. This section looks at some of the difficulties which make effective list-building a complex activity.

Prisoner Deliveries

3.25 The time of delivery of prisoners to a courthouse can have an impact on the ability of legal advisers to progress through the list. Although the Prisoner Escort Service operate under a contract which allows for arrival at a courthouse one hour prior to the time the court starts, in practice this does not always happen for a variety of reasons. The limited resources of the Escort Service (in terms of numbers of staff and vans) can lead to round trips to several courthouses to drop off prisoners. The Escort Service is also limited by the time that Prisons are willing to release prisoners for court – often insufficiently early to enable deliveries on time. The difficulties are magnified if the prisoner is a youth or female since there are fewer prison establishments for youths and females. The current overcrowding in prisons is also causing severe difficulties in some areas as prisoners are having to be sent considerable distances from the courtroom when local prisons are full.

"The time of arrival for prisoners is a particular issue in [court A] as because they are the satellite court for [Court B], they are always put to the end of the delivery list. Additionally the prisoner escort service has made a decision that the Crown Court gets priority. So although the Crown Court does not start until 10.30 am, their prisoners are always delivered first. Prisoners that come from Winchester Prison tend to arrive at [here] between 10.00 and 10.30 am and those from Reading Prison at 11.00 to 11.30 am when they should be here by 9.30 am. It is very variable as to what time prisoners will arrive. I estimate that in the last six months approximately 90% of the prisoner deliveries were late." Court Custody Officer

"One youth had had to come from Stoke on Trent but had only arrived at [Court A] at 3 o'clock in the afternoon after having been conveyed with other prisoners to [three courts many miles apart] before arriving at [Court A]. By the time he arrived the Bench had decided to go home and another Bench had to be hastily formed." YOT Manager

3.26 The effect on courtrooms where this happens regularly can be mitigated by block listing non-custodial cases for the early part of the list. However, the problems caused by late prisoner arrival are so widespread and regular that Inspectors consider action is required to tackle the underlying causes of the problem. Prison operating practices also impact on listing via the use of video-links. There is a need to ensure that effective listing is facilitated by procedures within prisons which recognise their role in the process. Paragraph 5.22 below highlights those agencies whose impact on the courtroom process are not subject to external monitoring. The Prison Service is one such agency whose Key Performance Indicators do not cover its role in the criminal justice process. Inspectors consider that this should be remedied as a matter of urgency to ensure that procedures within prisons are compatible with the court process. See recommendation 5.10 below.

Defendants / Defence Solicitor issues

3.27 One of the aspects which requires listing officers to build in contingency time in their lists is the frequency with which defendants do not turn up for their hearing. Statistics[29] show that 12.5% of adjournments are caused by defendants' non-appearances. The listing officer must therefore take into account the probability that a portion of cases will take less time than if the hearing was effective. Another major factor which militates against a smooth progression through a daily list is that often defendants do not consult their solicitors prior to the day of the hearing. When a defence solicitor has several clients appearing at one courthouse, there can be delays to progress.

3.28 When the listing officer has several courtrooms in which cases can be listed, there can be difficulties when one defence solicitor's clients are listed in several different courtrooms. The difficulties are exacerbated where the defence solicitor is a sole proprietor and does not appoint agents to cover work in other courtrooms. Some listing officers attempt to mitigate the problems by listing each defence solicitor's work in the same courtroom. When this takes place in advance of the hearing date, it does not cause difficulties for other agencies but where this routinely happens on the day of the hearing, (as reported to Inspectors) it is at considerable cost to the prosecution in wasted time spent preparing cases. Equally, listing one firm's cases only in a courtroom would mean that, unless all consultation with clients has been undertaken prior to the start of the court session, there will be guaranteed times when the business of the court cannot be progressed. Inspectors were also told of particular defence solicitors undermining the block listing system by telling their clients to attend the courthouse at a time when they had other clients rather than the time to which the defendant had been bailed. Further issues concerning defence solicitor impact on listing is covered in paragraph 4.87 below.

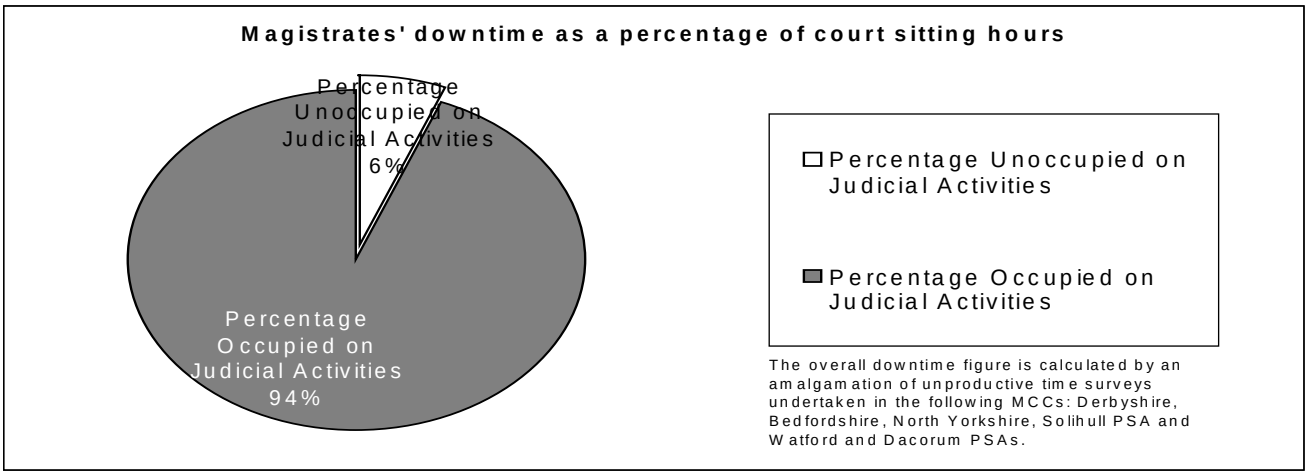
3.29 In general, there are difficulties with trying to accommodate one agency only as the result often produces tensions elsewhere. In one area, in order to accommodate a change in police structure, the listing in a single courthouse had been effectively been divided into three with cases from single police divisions going into a third of the available courtrooms. Whilst this was of great assistance to the police and the CPS, it was proving more problematic for other agencies and leading to delays on the day. Defence solicitors and probation officers were often required in more courtrooms than previously, there were insufficient numbers of cases to use designated caseworkers most effectively and the wider spread of courtrooms where prisoners were listed was causing difficulties in bringing prisoners up to court.

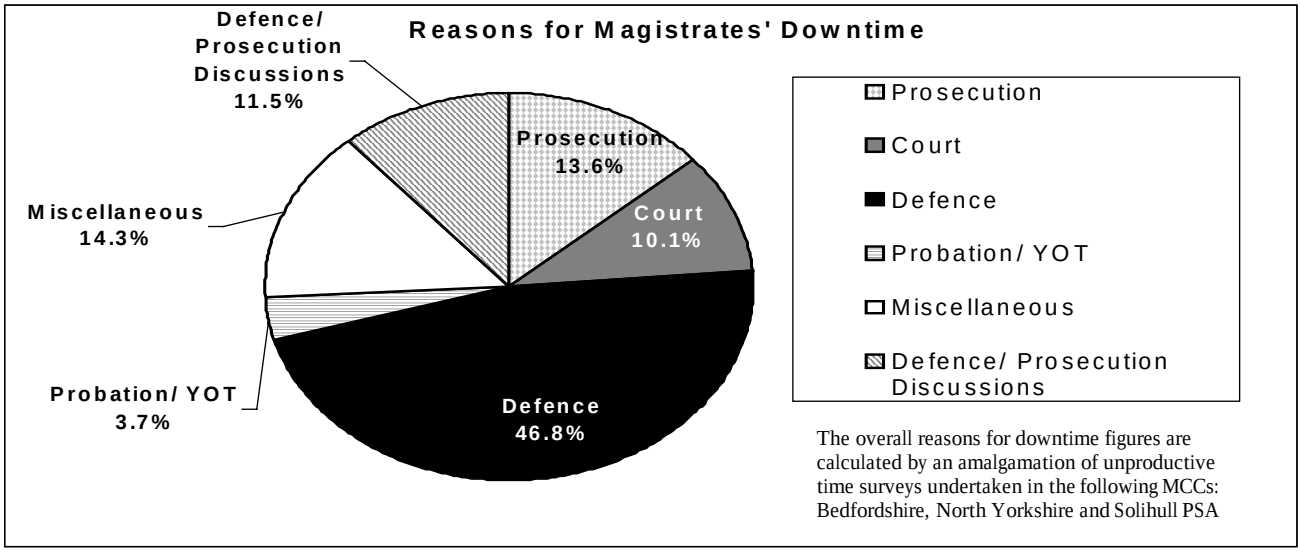
[29] Data collected by MCSI in 22 MCC areas over a two year period to December 2001 – see Annex F

Magistrates' concerns

3.30 Most of the lower tier courts are adjudicated on by volunteer lay magistrates. Court staff are understandably keen to list effectively to ensure that magistrates' time is used productively. In addition, magistrates must be given sufficient experience of different types of case to ensure their continued expertise, and sufficient numbers of sittings to meet the Lord Chancellor's expectations. The listing process has to accommodate all of the above requirements as well as providing for effective and efficient process. There can be dangers in leaning too far to accommodate one desirable end (ensuring that magistrates' experiences are positive ones) which unintentionally has a detrimental effect on other agency resources for example.

3.31 Magistrates have frequently expressed their frustration at listing which did not appear to keep them sufficiently occupied during their sittings, most recently at their Annual Conference in 2001. Inspectors were also told that pressure to keep magistrates busy can lead to a reluctance to block list effectively, to the detriment of defendants and witnesses, and higher defence costs. As part of the thematic, Inspectors collated research findings from MCC areas who had been monitoring magistrates' 'downtime'. Magistrates themselves collected much of the data. The two charts below show the results of the analysis. Since the data was collected independently by the 21 courts undertaking the monitoring, it was only possible to collate the reasons for downtime under broad headings but the headline figures show the major trends.





3.32 Re-assuringly the analysis shows that magistrates are actively engaged in court processes for 94% of their time, either in the courtroom or retiring room. Given the unpredictability of the courtroom process, some delays are inevitable. It is important therefore to ensure that the time is used productively. It was suggested to Inspectors by several magistrates that one most valuable way they could use their time would be to be engaged in a training activity – either through the use of computer based training or personal or group exercises undertaken in the retiring room. This productive use of time at court would have the benefit of reducing the amount of additional time that magistrates have to commit in order to attend for training. Inspectors suggest that the Judicial Studies Board works with magistrates' training officers to develop and promulgate suitable training materials for use during breaks in the courtroom process.

3.33 A further pressure which can influence listing decisions is that of the need to ensure that magistrates have sufficient sittings to meet the requirement set for at least 26 half days with an average figure for the Bench around 35 sittings. Inspectors investigated the proposition that too many courts were listed than would be required by the workload. Whilst there was no evidence to support this as a general proposition, court staff did confirm that there was a reluctance to close courts on the day of the hearing if, for example trials collapse. Equally, Inspectors also noted some court staff were reluctant to cancel courts immediately prior to a hearing, for example if a trial collapsed the day before. Where trials collapse, equalising work to keep all magistrates' busy rather than retaining a single viable court is wasteful of other CJS resources. A more analytical approach to list building should reduce the need to transfer work from court to court, and the benefits of better planning should be passed on to other agencies and to court staff. The availability of training materials as suggested above would ensure that any time freed up for magistrates would be used constructively.

Recommended: that Justices' Clerks ensure that when a court collapses work is not transferred from the remaining courts unless they are clearly overlisted

3.34 Many court staff confirmed that there had been a change in approach over the last few years with regard to how magistrates' time and sittings are managed. Management of the overall size of the bench is seen to be the most important factor in ensuring that magistrates can be given the right number of sittings and retain their expertise. Inspectors would endorse this approach which reduces the likelihood that more courts are retained than would be warranted by the number of cases. However, the Justices' Clerks and Justices' Chief Executives cannot directly ensure that they retain the right number of magistrates for the workload as the decision is taken by the Advisory Committee[30] for the area. Changes to this process and to the way that magistrates' sittings are calculated have the potential to enable local managers ensure that both magistrates and courtrooms are effectively deployed. The current method of collecting information about individual magistrate's sittings on a single-year basis does not allow the flexibility for magistrates and court staff to deal with personal or workload difficulties. Undertaking the measurement on a rolling basis would build in some flexibility.

"The listing officer closes courts in order to use magistrates more efficiently. We get monthly reports which show how many courts have been cancelled and the reasons. These frequently show the legend 'insufficient work'." Bench Chairs ✓

[30] Non-Departmental Public Bodies appointed by, and responsible to, the Lord Chancellor, except in the Duchy of Lancaster, where they are responsible to the Chancellor of the Duchy of Lancaster

"I keep the size of bench under review to ensure that there is the right number of magistrates for the number of courts which in turn is based upon the amount of business. Accordingly the need to ensure sufficient numbers of sittings for magistrates does not lead to scheduling of too many courts for the business available. If there is not enough business for a court it is simply not held – contrast the situation 20 years ago when magistrates would not have accepted this, and still required a very light listed court to sit. The culture has completely changed." Justices' Clerk ✓

3.35 The way that Bench rotas are managed can also impact on list building since, for example, if they are organised so that magistrates always attend on a specific day, there can be difficulty in ensuring that individual magistrates are exposed to a wide range of cases. The need to provide evidence of competences required by the Magistrates' New Training Initiative is adding a further layer of complexity to the process and impacting on list building and scheduling. The need to meet these requirements can lead to mixed lists in small courthouses and a rejection of centralising work which might benefit other agencies. Inspectors found some confusion about who had ultimate responsibility for the management of magistrates' rotas. Clarifying the current situation would assist in ensuring that Justices' Clerks can effectively undertake their duty to ensure that magistrates retain their expertise.

Recommended: that LCD take action to ensure that:

- **The Advisory Committee role be limited to appointing magistrates and overseeing complaints**
- **The Justices' Chief Executive be given the responsibility to determine the number of magistrates needed for the workload and to apply for the appointment of District Judges (Magistrates' Courts)**
- **The Justices' Clerk for the area be given the responsibility for deploying magistrates and District Judges (Magistrates' Courts)**
- **Magistrates' sittings figures are calculated on a rolling year basis**

Courtroom Targets

3.36 Many agency staff raised with Inspectors the pressure on list building and scheduling from the courtroom hours target and pressure to reduce delay for the magistrates' courts (see also Case Management section paragraph 4.154 below). The courts are required to play their part in reducing the under-usage of courtrooms and have come under pressure to use all their courtrooms for full days so as to meet their responsibilities. Ensuring efficient use of courtrooms is a laudable aim but the usage is measured against a target of 1250 hours per courtroom – which implies constant use of the courtroom each day. Where MCCs have retained courthouses in rural locations, in the interest of serving the local community, measurement against constant usage is not helpful. Given most MCC's commitment to meeting local needs, full usage of all courtrooms is not attainable outside metropolitan areas and is contributing to the pressure on courts which militates against effective listing. Inspectors consider that the courtroom usage target is valuable as a planning tool in relation to resource management, especially in urban areas, but should not be a performance tool since it does not measure the effective use of time ie takes no account of the way the courtroom is operating.

Recommended: that, in the light of the unwanted outcomes and the implications of the Rural White Paper, LCD review the validity of the courtroom usage target

Potential Enablers for effective list-building

Information Technology

3.37 The build up of lists, apart from the initial hearing, is through the adjournment of cases to further hearings. For the most part these adjournments are agreed in the courtroom and the information must then be recorded on the list for the chosen date. Because manual diaries are maintained, courts have to devise systems to ensure that space is available on the day preferred for the next hearing. Often case adjournments are decided through telephone links between the legal adviser and the listing officer who retains the manual diary and indicates whether space is available. Some courts provide the manual diary to the legal advisers who have to share access. Both of these methods create delays in the courtroom as legal advisers wait for access to the diary. Other courts provide copies of diary pages with an indication of likely availability to each legal adviser – although some skilled listing officers can manage the system well, there is always the potential for too many cases ending up in the same list. Because of this, most courts still require clerks to ring the listing officer for dates for trials, in order not to inconvenience witnesses by changing the hearing date later.

"The clerk in the PTR court will identify possible dates with the CPS and defence and the phone down to the listing office. There is no computer diary and staff are tied up for long periods on the phone. If the diary is being used to fix a date for one court, other courts have to wait. It is extremely wasteful not to have in-court diary & computing in [one of] the largest magistrates' court in the country." Listing Officer

3.38 Access to a computerised diary in the courtroom would enable legal advisers to fix dates confident that there was space available for the hearing. Inspectors found, however, that the use of in-court computerised diaries as an aid to effective listbuilding is not well developed. Only a small number of courts operate any form of in-court diary system. These range from commercial packages (some of which are unsupported following the demise of the supplier) and in-house developed spreadsheets. In general the systems are not attached to the main listing software packages so the court dates still need to be keyed in when the court is resulted. However, where the systems are linked locally between the courtrooms and the listing office, they have the potential to better control the building of the lists and to aid more sophisticated block listing.

3.39 Many staff expressed the frustration of still working to manual systems when fairly simple technology could vastly improve the arrangements. The commercially produced packages allow for setting of average timescales for particular types of cases and for determining whether or not there should be an element of overlisting to take account of the contingencies discussed above. Some listing officers have tried to develop their own IT solutions in the absence of any investment in IT other than Libra in the recent past. Now that Libra OA has given the potential for files to be accessed from both the listing office and the courtrooms, at least one proactive listing officer has begun to develop a spreadsheet which shows availability of courtroom space to enable legal advisers to book adjournments. Other areas indicated that they were considering spending time trying to develop something similar.

3.40 Inspectors consider there is a pressing case for courts to operate a live in-court diary system to aid listing. Such a system would assist legal advisers and listing officers to be more specific about list building. Computerised diaries require an effective application of time estimates which leads to more efficient listing of cases. The availability of computerised diaries in the courtroom speeds up the throughput of cases and, importantly, releases listing officers to pursue case progression activities. Until there is the provision of a national integrated IT system covering listing, the development of a stand-alone local area system is urgently needed. There is a danger that many individuals will spend time in isolation

duplicating effort trying to create such a system. Inspectors consider that it would be more cost-effectively provided nationally. In order to provide quick benefits the system should not be overly complex. The main priority is to give court staff a simple to use system which will take advantage of the technology already provided and which can build on the good practice already being employed by some MCC areas.

Recommended: that the Court Service urgently commission a simple (fit for purpose) in-court diary system capable of being run on the Libra Local Area Networks

Effective Hearings

3.41 Although the recent government initiatives to move to fixed penalty notices (which may be extended if the recommendations of the O'Dowd Task Force are accepted) have the potential to remove some more straightforward cases from the normal remand lists, ensuring that only cases which require judicial attention are listed for hearing will remain important to avoid the pressures to overlist so as not to delay cases. The use of delegated powers by legal advisers in the courtroom during times when magistrates are considering sentence, for example, speeds through those cases which are likely to be ineffective. Inspectors also found that areas which give listing officers adequate delegated powers to adjourn cases prior to the hearing date reduces the numbers of cases in a list which do not require sentencers' attention and therefore frees the list for effective hearings. Inspectors consider effective listing is considerably influenced by the pro-activity of legal advisers and listing officers. Where listing officers have received the training and support to develop their approach, there are tangible benefits to the whole process. Inspectors would encourage court managers to give appropriate attention to the listing officer role.

3.42 Reducing the need for further hearings by completing cases wherever possible on the day, also reduces the numbers of adjourned cases which need to be accommodated. Inspectors found that, particularly in EFH courts, the ability of courts to complete guilty pleas on the day are often restricted by the need to determine compensation amounts. In some instances the desire to complete leads to no compensation being awarded (to the detriment of victims) or an adjournment to a further hearing date – requiring more court time and more police time in contacting victims to provide compensation information. The main difficulty in obtaining detailed information about compensation is the short timescale before the first appearance in court (which can be as little as 24 hours). Although there is the potential for magistrates to award compensation amounts in the absence of information (in the case of personal injury), Inspectors were told that, in practice, this rarely happened. Inspectors propose that there should be a set of standard compensation amounts for routine crimes (such as broken windows) which could be suggested to the victim by the police officer investigating the incident. The amounts would always be overtaken by the victim's preference to obtain better information. The adoption of these amounts would ensure that victims' interests were not overlooked but reduce the number of hearings required in the simple guilty plea cases. Victim's representatives interviewed by the team supported the proposal but pointed out that for most victims, having a national compensation fund which guaranteed the receipt of the compensation was a higher priority. Inspectors suggest that LCD consider the establishment of such a fund.

Recommended: that LCD and the Home Office establish a set of standard compensation amounts for routine cases which could be offered to the victim by the police officer taking the statement

3.43 Ensuring that cases in the list are dealt with effectively so as to reduce the need to adjourn, is one way to ensure that only appropriate cases remain for future hearings. This has the potential to save resources for the magistrates' courts, CPS and the defence but does little to benefit police resources since files have already been prepared for the hearings. During the inspection one Chief Crown Prosecutor floated an idea which has the potential to reduce the costs to police resources – that of a 'duty court'. The basic approach of such a court would be that it would be the immediate entry into the court system without the need for the police to prepare a file. The court would have the following features:

- It would be staffed by professionals – District Judge (MC), CPS prosecutor, salaried defender, probation officer
- Supported by relevant IT – access to police national computer, probation records etc
- Evidence would be provided by the police officer's notebook which would be copied to provide the court evidence
- Charge would be determined by the prosecutor in discussion with the investigating/arresting officer
- Safeguards would be in place to take account of defendants considered unfit to plead (for example, due to the influence of drugs/alcohol or mental health problems)
- The court hours could be extended ones, operated on a shift basis and therefore allow for part-time working (since no direct preparation would be required by the prosecutor / defence /probation officers)
- The court hours would be supported by adequate access to prisons

3.44 The advantages of such as system would be that simple guilty plea cases would be dealt with immediately with no further work required by the police. Cases which then went on into the court system would be those which required more detailed work and time could be adequately built in to accommodate this. Without the need to produce case files for every arrest, police officers should be released to concentrate on those cases. There are many issues to be considered in such an approach but Inspectors consider that its potential to both reduce the burdens on the police and speed straightforward cases through the system, thereby releasing court time, warrants further scrutiny.

Recommended: that the Criminal Justice Ministers consider the potential for establishing 'duty courts'

Management of the daily court list

3.45 On the day it is the role of the legal adviser and the usher to regulate the order and flow of cases before the court, within the framework of the court list. The efficacy with which this task is managed contributes greatly to the overall effectiveness of the listbuilding process. Poor management of work on the day will undermine the most sophisticated planning beforehand.

Usher/Court reception

3.46 The usher has a key role. He or she is the first point of contact for the defendant and remains the best source of information about progress of the case throughout the waiting period. Most larger courthouses have a reception point, where defendants (and other users unfamiliar with the court process) are booked in or directed to the relevant courtroom or service. For example, witnesses may be directed to the witness service, if arrangements have not been made for the witness service to meet them outside the courthouse.

3.47 Where all cases have been listed (for example at 10 am or 2 pm) at the start of the session it is the task of the usher (in close liaison with the legal adviser) to determine the order in which cases are called before the magistrates. Where cases are blocklisted (e.g. for 1100 or 1200) they still need to agree a running order and accommodate any cases left over (or adjourned – such as SSRs) from earlier in the day.

3.48 The decision to call on a particular case rests with the legal adviser. However, Inspectors found that the system works best when the legal adviser liaises closely with an usher who is proactive in anticipating requirements both for the current case and for those still pending. The following case histories highlight the impact of different practices. The two are compilations of good and poor practice observed.

Case Study: Usher A

The usher greets defendants on their arrival at the courtroom, checks them against the court list and makes sure they are at the right place, finds out if their solicitor has arrived or directs them to the duty solicitor, if necessary. The usher finds out if the defendant has any special needs (for example has to leave early to collect children from nursery, has a doctor's appointment, etc). If the hearing is one at which it may be necessary to give oral evidence, the usher ascertains the defendant's religious beliefs and makes sure the necessary religious book is readily accessible. The usher then confirms with the defence solicitor whether the matter is ready to go before the court. Once these steps have been undertaken the usher liaises with the legal adviser and they agree the order that the cases should be called. The underlying rule is 'first arrived, first dealt with' subject to other legitimate priorities, the demands on the solicitor (who may be representing clients in other courtrooms or even courthouses) and the special needs of remand prisoners and those defendants who are unrepresented. The usher then gives the defendant a rough idea how long they will have to wait and updates this if there any delays. As each hearing finishes the usher has the next two or three defendants ready, either at the back of the court or outside the courtroom door, so that there is no gap between cases.

Usher B

In a busy city courthouse the usher sits for most of the time at the back of the courtroom. The clerk, without consultation with the usher calls on each case. The usher uses a tannoy to alert the defendant that his or her case is ready. If there is a delay, the usher repeats the defendant's name over the tannoy and finally goes into the main concourse or cafeteria to find the individual. This process may have to be repeated if the defendant's solicitor is not present. If the case is not ready (for example the defence has yet to take instructions) the matter is stood down for a short period and another defendant is called. There are delays between each case and over the period of the session there is a considerable waste of time of the magistrates, legal adviser, prosecutor and probation. The defendants have little idea when they will be called and there is an air of confusion and lack of purpose in the courtroom.

3.49 Often courthouses or clerkships have locally agreed protocols, which set out the order in which cases should be called. For example some areas agree that defendants who are represented by solicitors should be called in advance of those who are unrepresented, to reduce legal aid costs. Other take the view that unrepresented defendants can be seen early in the day, while solicitors are taking instructions. Giving priority to prisoners on remand is often an agreed principle. However, late delivery of prisoners and then delays in seeing their solicitors (for example because a lack of secure interview facilities) may mean that ushers have to fit remand prisoners into the list when feasible.

3.50 Inspectors consider the complex 'front of house' role played by ushers (in close liaison with legal advisers) is essential to good management of the list on the day in the magistrates' courts. Often, when faced with budgetary pressures, MCCs understandably look at staff costs, and of ushers in particular. When considering cutting the numbers of ushers MCCs

should not under-estimate the key function they carry out in day to day case management. However, Inspectors do not believe that there should always be one usher for every court. It will depend on the type of court and the number of defendants, how many courts an usher can manage effectively. The busier a courtroom the more important is the role of the usher, to ensure a smooth progression of cases during the session. This is particularly true in DJs' courts where case throughput – for example in remand or EFH courts - can be very fast.

"The usher is central to case management – it's a false economy to reduce the number of ushers." Legal Adviser

☞ In one area, because of the need to make budget savings, the MCC had reduced the number of ushers servicing the courts – in some cases from one per courtroom to as few as one per four courtrooms. Where once the legal adviser had relied on the proactive intervention of ushers to line up defendants outside the court and bring on the cases quickly and efficiently, the absence of ushers had had a considerable impact on the management of the list in the courtroom. Transfer of cases between courtrooms also became more cumbersome, because the legal adviser had to undertake this (often by leaving the courtroom to discuss a transfers with a colleague and the prosecutor) whereas changes were previously negotiated and agreed by the usher.

Legal Advisers (Court Clerks)

3.51 The role of the legal adviser (delegated from the Justices' Clerk) is varied. In the magistrates' court clerks (legal advisers) are legally trained and, under recently introduced rules, all future court clerks must be qualified solicitors or barristers. In addition to their central role of providing legal advice to lay magistrates, they record the decisions made at each hearing, undertake performance monitoring (such as the CITM, referred to elsewhere) and (with the ushers) manage the court, for example the order in which cases are called on. In the same way that a pro-active usher can affect the way in which a court session runs, so a legal adviser, who is effectively managing the proceedings, can ensure that:

- Progress is made at each hearing
- Sound advice is given to the magistrates in the hearing of all participants
- All parties are given a full opportunity to present their case
- The authority and the dignity of the court is maintained

3.52 The following case studies are hybrid examples from more than one courthouse, but they exemplify the good practice that Inspectors have observed across the country. The difference that an experienced and confident legal adviser can make to the efficiency and demeanour of a court is considerable. For example as mentioned the section below on pre-trial reviews, Inspectors consider that a pro-active legal adviser (who has prepared by reading the files) is essential to a worthwhile and effective hearing.

Case Studies: Legal Adviser A

The clerk arrives in the courtroom 30 minutes in advance of the court start and is able to discuss with defence solicitors and prosecution any issues or problems presented by the list. This may limit unnecessary argument before the magistrates or indicate those cases where there is an important issue that needs to be addressed by the bench. The clerk may also deal with matters for which there are delegated powers. The clerk then spends a short time with the magistrates in the retiring room explaining the nature of the list and supplying any PSRs that may be available, and brings the bench into court exactly on time. During the session the clerk works closely with the usher to ensure minimal gaps between hearings. When there are gaps – for example when the magistrates have retired – the clerk uses his or her delegated powers to dispose of matters not

requiring sentencers attention and makes sure the following cases are ready to be called on. At the start of each hearing the clerk reads out a summary of previous adjournments and, where appropriate, the directions of the court, so that the magistrates are fully aware of what progress (if any) was made in the past. Applications for adjournments are rigorously tested and a realistic period for completion of the next stage of the case is agreed. The clerk will ensure that at the end of the hearing the case has made progress (e.g. a plea has been taken, a trial date fixed, etc) and that all parties know what needs to be done before the next hearing.

Legal Adviser B

The legal adviser is not in court prior to the court start time and there have been no preparatory discussions with defence or prosecution. The clerk has not scanned the files before the court to ascertain if there are problem cases, e.g. complex PTR or bail hearings. The court does not start on time. There is limited liaison with the usher about the cases in the list and the order is determined by agreement between the busier local defence solicitors, who appear to run the proceedings. The clerk gives no summary of the progress of the case to the magistrates and any background information is left to the discretion of the party making the application. There is no questioning by the court of any requests for adjournments, which are agreed according to the maximum periods set out the local listing protocol. Where problems are encountered, or if the court is busy, an adjournment is agreed without any indication of what constructive progress is to be made by the parties prior to the next hearing.

3.53 Generally Inspectors found considerable support for an extension of the role of legal advisers. There is a widespread belief that lay magistrates should focus on their judicial role (determining innocence and guilt, hearing contested bail applications and sentencing) and that the more administrative parts of their role - such as dealing with EAHs and PTRs - should become the sole preserve of legal advisers (or DJs). Inspectors also found support for this approach from members of the magistracy who were interviewed.

"Case management could be improved by extending to Justices' Clerks [and by delegation to legal advisers] the ability to vary bail conditions and deal with mode of trial and s51 hearings". Justices' Clerk

"I don't see any point in magistrates being involved in PTRs – I think all of this should be done by the clerks because it's just administrative work". Bench Chair

3.54 Legal advisers also sit in the District Judges' courts. Unlike lay magistrates, who have no legal training, DJs are professional and experienced criminal lawyers. Inspectors agree with the conclusions of the Auld Report that it is not necessary to have legally qualified court clerks sitting with DJs. Crown Court judges and recorders do not sit with legally qualified clerks. Many areas have a shortage of legal advisers (especially in the south east, where market forces dictate that private law firms - and some other CJS agencies like the CPS - are able to pay higher salaries to lawyers than MCCs). Inspectors consider that, in consultation with the Senior District Judge and DJs, consideration should be given to replacing legal by administrative in-court support. However, a careful review should be undertaken to assess the type and level of administrative assistance needed to effectively support the DJ in court.

"In a busy DJ court the court clerk needs a court assistant as well as an usher to keep the flow of cases going." Legal Adviser

3.55 It may be that in a busy city remand court a DJ would require perhaps a trainee clerk and an administrative assistant (particularly where in-court computing is available) to maintain the throughput of work. Any change – for example requiring DJs to sit with experienced administrative assistants - will alter the DJ's role. They would be taking pleas, dealing with the mode of trial and plea before venue procedure; functions which - at present - they rely

on the legal adviser to deal with. The creation of a role for senior administrative clerks to sit with DJs, however, would open up a career path within the magistrates' courts in the same way as the post of DCW has in the CPS.

☞ Following the recommendations of the Auld Report, in order to address a shortage of court clerks, one area instigated an informal initiative for DJ's to sit without legal advisers in certain cases: longer contested criminal cases estimated to last one day or more. The legal adviser started the court, then left the DJ to sit alone. This has been successfully used in a small number of cases. By releasing legal advisers from the DJ trial court, it was envisaged an extra court could be scheduled or the legal adviser could undertake important work out of court. However, some of the trial cases cracked and so the DJs were given a general criminal list, for which they needed a legal adviser. The result was that the MCC could not list extra courts, in case DJ-only trials cracked, and had to keep a legal adviser on stand-by. Participants stated that similar deployment would benefit from an agreed written protocol and a formal evaluation of the outcomes.

District Judges (Magistrates' Courts)

3.56 As stated elsewhere in this report District Judges (DJs), previously known as stipendiary magistrates, generally have a faster work rate than three lay magistrates sitting together. Often Inspectors were told that professional judges (DJs) have gained the respect of practitioners across the CJS, particularly with regard to their case management skills. The fact that DJs may get through a list twice or three times as heavy as lay magistrates (apart from having scheduling and list building consequences) also has implications for the management of the list on the day. The large amount of administrative work that a legal adviser (or an administrative assistant), sitting with a DJ, has to process has been referred to above. This heavier workload also applies the prosecutor, who has to prepare many more files, and to probation and YOTs, in the case of PSR and EFH courts. Senior managers (Chief Crown Prosecutors in particular) need to be aware of the additional demands and allow sufficient time for case preparation in advance of hearings.

"DJs make a real difference to cases pre-trial, where they are strong, confident and good referees." Senior Police Officer

"If the DJ has long list this has implications for CPS, because it has to be prepared by a single prosecutor. It puts tremendous pressure on that prosecutor to skimp in order to get the work done." CPS Lawyer

Prisoners on remand

3.57 Late delivery of prisoners is a contractual issue between the parties to the contract – the escort agency and Prisoner Escort and Custody Service (PECS), which is part of the Prison Service. The MCC is not a party to this contract and so can have no direct influence on late delivery[31]. Failure of the escort agency to deliver on time should be taken up by the MCC with PECS (or the Prison Service/Home Office). But in the interim, late delivery results in waste of resources for the court, CPS, defence solicitors and CDS who have to wait while remand cases, listed for 10 am do not arrive and cannot be dealt with until much later in the day. Many MCCs already recognise that, in courthouses where prisoners are habitually not available on time, they need to schedule bail cases in the first block of the day[32]. However,

[31] See *A Review of Custody Arrangements in Magistrates' Courts*, MCSI, 2000 (p38) In the period April 1999 to February 2000 only 76% of prisoners were delivered by 9.30 (the contractual delivery time) and 13% were delivered after 10.00. This masks wide variation across the contractors/regions. In one PECS area only 58% of prisoners arrived by 9.30.
[32] ibid. p37

Inspectors still found some MCCs - in spite of long experience to the contrary, still listing remand cases for 10am and then having no work until later in the morning. Until PECS can enforce their contracts more effectively (as stated elsewhere in this report the reason for the delay may not lie with the escort agency but with, for example, the prison service), MCCs should consider listing other work in the remand court for the first hour block. MCCs should ensure that whatever time prisoners are delivered, they should be dealt with as soon as practicable[33].

☞ One custody escort agency reported an example of where a prisoner was delivered on time and seen by his defence solicitor at 1020, but the case was not called on until 1605 and he was only in the dock for 5 minutes. The facilities and condition of the cells were not suitable for holding people for long periods. The custody officer did not blame the court but the defence solicitor for dealing with his bail clients first, because they could 'pester' him in the waiting area, while the person in the cell had no influence at all.

Transfers on the day

3.58 In the scheduling and list building sections above emphasis has been placed on improving arrangements so that the number of ineffective hearings is reduced. However, even if the rate of cracked and ineffective trials is reduced and building of remand and Narey courts becomes more effective, there will still be occasions on which one court has no work or finishes early. Since defendants may change their mind about how to plead in the interval between arrest and EFH/EAH, transfer between those courts is common. In those circumstances the correct decision may be to release the lay magistrates and allow the legal adviser and prosecutor to focus on other out-of-court work. See recommendation at paragraph 3.33 above. However, if the other courtrooms are busy or over-listed, the usual solution is to transfer cases from the busy courts to relieve the pressure on them.

3.59 Transferring a case does however have consequences. It means that the prosecutor who has prepared the file or files transferred has wasted that time and the new prosecutor has to read the files in court. Where trials or more complex files are transferred - without allowing the prosecutor sufficient time to read the files (and, if necessary, talk to colleagues) - there can be a pressure on CPS to agree to lower charges. It could also lead to an adjournment that would not have been accepted if the original case handler had had charge of the matter. Ultimately there is considerable risk that cases may not be prosecuted as effectively as they might have been unless the new prosecutor has time to prepare the case. This can result in undermining confidence in the judicial system, particularly if the victim is at court and witnesses a less than adequate presentation of the case. The use of designated caseworkers puts constraints on the scheduling of cases which in some cases means that they cannot be deployed efficiently. Their restricted remit also makes transferring cases on the day more difficult. Inspectors found that transfers of files on the day are an inevitable shortcoming in the system that most experienced CPS prosecutors face with equanimity. However, the list building process should be efficient enough to ensure that as few cases as possible are moved during the court session. There should be no reason for cases to be moved from one court to another after CPS has been sent the list and has allocated files and prosecutors to particular courts.

"The courtroom hours target can lead to overlisting courts and consequent movement of cases on the day, which places pressure on prosecutors - especially where trial files are moved." CPS Lawyer

[33] ibid. p69: Recommendation 9

3.60 Transfer of cases causes less inconvenience to defendants and may result in a shorter waiting time, but moving from one courtroom to another can have an unsettling effect, increasing uncertainty in an already stressful environment. Delays may also occur because defence solicitors' clients are in different courts.

In one area - admitting that the transfer of files on the day is unwelcome but inevitable - a protocol was agreed between the magistrates' court and CPS that, generally, only adjourned cases would be transferred and exceptionally trials would only be transferred with the prior agreement of the receiving prosecutor. There is an understanding the new prosecutor may have up to 30 minutes to read the transferred file(s). The agreement also specifies clearly which cases can be transferred from a lawyer-run to a DCW court, a common area of dispute because many practitioners (legal advisers and professional prosecutors) do not know the exact limits on the scope of the authority of DCWs. ✓

Recommended: that Chief Officer Groups / Shadow LCJBs ensure that a strategy is developed to minimise the transfer of cases on the day which takes as its presumption that case transfer should not normally take place after CPS has been sent the list and has allocated files and prosecutors to particular courts. The outcome to include an agreed protocol setting out clearly the type of cases that can be transferred on the day and the time allowed to prosecutors and designated caseworkers to read the new files.

Case Management

Case Management – the management of the progress of a case through the judicial process

4.1 The previous sections dealt with the administrative aspects of putting cases before the court. This section addresses how cases are dealt with individually in the courtroom and the factors which impact on the effectiveness of hearings. It does not deal with magistrates' judicial roles - in finding of guilt or sentencing for example. Many of these case management issues are common to all hearings but their impact is felt most dramatically in listing for trials. This is also the area where government concerns about delay and the treatment of victims and witnesses are focussed.

Adjournments

4.2 The decision to adjourn a case is a judicial one, although in the magistrates' courts this decision usually has to be made within the limits of the scheduling framework. Adjournments have consequences for the further progress of the case and issues about unnecessary adjournments and other problems are discussed below. A proposal to address the need to adjourn EFH cases in order to obtain compensation information is made in paragraph 3.42 above.

Length of adjournments

4.3 Adjournments should be of realistic length to ensure progress will be made. In some courthouses/areas Inspectors found that the TIG guidelines (or the locally agreed protocols) were not treated as guidelines, but as strict deadlines by magistrates and legal advisers. This is a tribute to the training by MCCs to focus staff and magistrates on the need for speedy case completion, but can pose problems in individual cases that do not fit the agreed time limits. Inspectors were told of cases where the MCC case completion was the main driver, over and above the need to ensure that justice is served by ensuring that cases are properly prepared for trial.

4.4 Inspectors have found that short adjournments (not linked to realistic estimates of the time actually required by the parties) produce extra work for the agencies and the courts and lead to further adjournments and longer case completion times. Elsewhere in this report there is a discussion of the long delays involved in copying video and CCTV material. A better service and clearer understanding of how long this process takes, should lead to more realistic adjournments.

"There is now much greater pressure to limit the length of adjournments, with the result that they are sometimes shorter than they ought to be. As a result, there is more to be done by the defence and the CPS in less time, and it is not helpful if the list is cluttered by unnecessary short adjournments." Defence Solicitor

"A lot of short adjournments can overload the following lists. We have been trained on how to challenge applications for adjournments and it is often better to put a matter back for an hour to allow the advocate to do the necessary work on the day" Magistrate

Making Progress

4.5 When parties have been given a reasonable period to take instructions or carry out investigations, Inspectors found that in some cases there is limited monitoring by the court to see if the time was used properly. Inspectors consider that if a court gives an adjournment for specific purposes:

- the reasons for the adjournment should be clearly endorsed on the file (or even made into formal directions) and
- at the next hearing the legal adviser (or magistrate) should investigate whether the reason for the application has been satisfied

"It is rare for advocates to be held to account. If they ask for two weeks to interview three witnesses, it is very rare when the case comes up two weeks later, for anyone (clerk or magistrate) to ask if in fact the interviews have taken place." Salaried Defender

MCSI adjournment analysis

4.6 MCSI undertakes an analysis of adjournments on a sample of files[34] during each MCC inspection. A compilation of the results of 22 inspections during 2000-2001 is set out in Annex F. This analysis is based on the adjournment codes developed by the National Audit Office[35]. The adjournment analysis looks at all the hearings, not just the trial and includes hearings in cases where the defendant pleads guilty – so there is no trial. The analysis is by length and reason for each adjournment from first listing through to final disposal. The result shows that 56% of all adjournments are for standard procedural reasons, for example for the police to prepare the file or for probation to prepare a PSR.

4.7 The largest number of these standard adjournments are to prepare for a PTR or a trial. Again it is not surprising (given the discussion of the TIG guidelines below) that the length of these adjournments vary widely – depending upon the complexity of the case and the nature of the investigations to be carried out. Even so nearly 83% of these standard adjournments were for five weeks or less.

4.8 However, 44% of the hearings in the survey were ineffective. In stark terms, that means that in the average magistrates' court nearly one half of all hearings fail to progress the case though the criminal justice process. It is notable that of these ineffective hearings 28% were due to the failure of the defendant to attend (excluding failure to attend by reason of illness). The other significant category is that 20% of the ineffective hearings were because the defence needed to take further instructions. This is a considerable increase over the NAO finding in 1999, that only 9% of ineffective hearings were due to this reason. The likely explanation for part of this increase is that, after the introduction of Narey courts, cases are coming to court much more quickly and it is reasonable for the defence to seek adjournments to obtain instructions. Elsewhere in this report [paragraphs 1.38 above and 4.94] Inspectors have made suggestions about a CDS review of the conduct of defence solicitors who fail to perform efficiently.

Trials Issues Group: Pre-Trial Issues (PTI) Guidelines

4.9 In 1992 TIG agreed the PTI guidelines covering the time periods appropriate to all stages of the pre-trial process. These non-statutory guidelines were agreed by all relevant criminal justice agencies. However, because they were promulgated by TIG and have been in operation for ten years, Inspectors found the guidelines have become an important framework within which many local CJS agencies still operate. The guidelines cover each stage of the criminal justice process from the granting of police bail to conviction or committal to the Crown Court. The proposed length of time allocated to each stage differs depending on:

- How the action was started – by summons or charge
- Category of crime – summary, either way or indictable

[34] One weeks' adult and four weeks' youth completed criminal cases
[35] *Criminal Justice: Working Together*, NAO, Dec 1999

- Type of defendant – youth or adult
- Status of defendant – on bail or in custody
- Nature of the file required – full or abbreviated

4.10 Since 1992 there have been many changes – both operationally and by statute – in the way that cases are brought to and then progressed through the courts. Most recently the Narey reforms have cut across the TIG guidelines. For example, for cases commenced by charge the guidelines allow 4-5 weeks between charge and the first appearance in the magistrates' courts. Now the case, by statute, must come before the next available court, which usually means within about 48 hours or - in rural areas where court sittings are less frequent - 7 days at the most. The part of the PTI guidelines dealing with indictable only cases has been rendered obsolete by s51 CDA, which abolished the committal process for this category of cases. In addition the Forensic Science Service protocol for processing and returning evidence to the police (see below) cuts across the TIG guidelines.

"TIG guidelines are not working adequately and you would probably get a better product if you allowed the police more time to complete their enquiries." Justices' Chief Executive

"Except in the simplest cases, it is impossible to comply with the time guidelines for preparing a full file." Police Criminal Justice Unit Manager

"Some form of guidelines are important in order to focus people, but the TIG guidelines as currently set are rarely met." Salaried Defender

"TIG guidelines are a norm of expectation - necessary when dealing with mass production, as you are in the magistrates' courts. It is not possible to manage each case individually where there is very high throughput, although you should re-negotiate the guidelines, for example where forensic evidence is required and the standard period is clearly inadequate." Justices' Clerk

"National guidelines are helpful, but with the proviso that not all cases fit. Courts consider the guidelines are maximum periods, but this is not always realistic." Chief Crown Prosecutor

4.11 As a result of the growing inapplicability of the guidelines there has been a movement at national levels within TIG to dispense with or revise them. Inspectors understand this wish to abolish (or replace) advice on the length of adjournments, which has become out of date and unrealistic. Inspectors found however - with the exception of one area visited - that interviewees still place value on the guidelines, while acknowledging they are outmoded.

4.12 The Narey Evaluation Report (see paragraph 2.17 above) showed that the average time from charge to first appearance fell from 20 days to 6 days, compared with 4 or 5 weeks in the TIG guidelines. Data from the MCSI adjournment statistics was analysed to give an indication as to how applicable the TIG guidelines appear to be. The MCSI adjournment analysis measures the length of adjournments after the first listing of each case. Since the MCSI analysis is based on NAO adjournment codes (see above), the times recorded does not correspond with all the adjournments in the TIG guidelines. Nevertheless the chart [overleaf] does give an, albeit rough, indication whether the TIG guidelines still perform a useful function.

TIG Pre-Trial Time Guidelines			Interval	Adult	Youth (Inc. PYOs)	All
Interval	**Guideline**			**All (weeks)**	**All (weeks)**	**All (weeks)**
First appearance to plea / mode of trial	4 weeks(Bail) 2 weeks(Cust)	**1**	First appearance to plea / mode of trial	**3.02**	**1.96**	**2.55**
			Sample Size	611	483	1094
No national comparator available (Check with individual MCC)		**2**	Number of weeks from not guilty plea to first PTR / WA hearing	**4.73**	**4.32**	**4.54**
			Sample Size	314	256	570
		3	Number of weeks from not guilty plea to trial readiness	**5.86**	**6.52**	**6.14**
			Sample Size	471	336	807
Not guilty plea to summary trial	8 weeks(Bail) 2 weeks(Cust)	**4**	Number of weeks from not guilty plea to trial	**14.50**	**16.10**	**15.24**
			Sample Size	376	325	701
No national comparator available (Check with individual MCC)		**5**	Number of weeks from PTR to start of trial	**8.33**	**8.43**	**8.38**
			Sample Size	322	326	648
No national comparator available (Check with individual MCC)		**6**	Number of weeks from trial readiness to trial	**5.48**	**5.17**	**5.33**
			Sample Size	436	371	807
Conviction to sentence	4 weeks	**7**	Number of weeks from trial to completion	**0.71**	**0.98**	**0.83**
			Sample Size	611	483	1094
No national comparator available (Check with individual MCC)		**8**	Number of weeks from first listing to completion	**18.68**	**19.24**	**18.92**
			Sample Size	611	483	1094
Case Management Guidelines	**Adult Trials 112 days**	**9**	Number of **days** from first listing to completion	**131**	**135**	**132**
	Youth Trials 98 days		Sample Size	611	483	1094

1	The number of weeks between the date the case was first listed by the court and the date the defendant pleaded not guilty before venue.
2	The number of weeks between the not guilty plea before venue and the date of the first pre-trial review after the initial plea. Cases where the defendant fails to attend a court hearing after entering a plea are not included. As the MCSI adjournment analysis does not distinguish between an adjournment for a trial or a pre-trial review, there has to be two or more (PTR) adjournments in succession for a pre-trial review to be identified and the case to be included in this analysis.
3	The number of weeks between the not guilty plea before venue and the adjournment for trial. Cases where the defendant fails to attend court hearings after the plea are not included. The adjournment for trial is identified as the first available trial date the court can offer, therefore trial dates after the initial trial has cracked, was ineffective or vacated are not included in the sample. A trial readiness date is only recorded if the next adjournment reason recorded is for a sentence report requested or a no further adjournment. This is because the MCSI adjournment analysis does not distinguish between an adjournment for a trial or a pre-trial review.
4	The number of weeks between the date of the not guilty plea before venue and the date the trial was completed. Cases where previous trials cracked, were ineffective or vacated are included. This interval can be quite a substantial length as it represents the interval between the date the defendant pleaded not guilty and the date of the actual trial and does not distinguish between cases where the defendant has failed to attend.
5	The number of weeks between the date of the first pre trial review and the date when the actual trial was completed. This interval can be quite substantial in length as it represents the interval between the date the of the very first PTR and the date of the actual trial and does not distinguish between cases where the defendant has failed to attend or where previous trials cracked were vacated or ineffective.
6	The number of weeks between the date when trial readiness (See 3) was first indicated and the date when the actual trial was completed. This interval can be quite substantial in length as it represents the interval between the date the court first offered a trial date and the date of the actual trial and does not distinguish between cases where the defendant has failed to attend or where previous trials cracked were vacated or ineffective.
7	The number of weeks between the date the trial was completed and the date the case had no further adjournment recorded against it. Cases where the defendant failed to attend are included.
8	The number of weeks between the date the case was first listed in the magistrates' court and the date when no further adjournment was recorded against it.

Adjournment data collected from 10 MCC areas between November 2000 and November 2001

4.13 The analysis shows that the average time from first appearance to plea/mode of trial is 2.5 weeks. That compares favourably with the 4-week guideline for bail cases and only slightly exceeds the shorter 2-week limit for custody cases.[36] However, the average time for all cases from the not guilty plea to the trial is much longer (15.25 weeks) than the TIG bail guideline

[36] The MCSI analysis does not distinguish between custody and bail cases

of 8 weeks. The average time from conviction to sentence is less than a week, compared with the TIG guideline of 4 weeks (Note: probation target for PSRs is 3 weeks).

4.14 The TIG guidelines do not have simple overall targets for the time a not-guilty case should take from charge/summons to sentence, as the stages are broken down into segments. However - as an example - for a case (1) commenced by charge, (2) where a full file is required (3) the defendant is on bail and (4) which proceeds to summary trial, the guidelines suggest the following:-

First appearance to plea/mode of trial	4 weeks
Not guilty plea to summary trial	8 weeks
Conviction to sentence	4 weeks
Total	**16 weeks**
Average for all cases in the MCSI analysis	**19 weeks**

4.15 While this comparison needs to be treated cautiously (for all the reasons explained above), it does give a proxy for TIG guideline achievement. It is interesting that the average actual time taken for all cases does not exceed the TIG guidelines by an excessive amount (almost three weeks). However the time taken to complete the individual stages is wide of the mark. From this analysis Inspectors, albeit cautiously, conclude that the reforms since 1992 have moved delay from one part of the criminal justice process to others, but have not markedly speeded up the average time it takes to complete cases[37].

4.16 Despite the Narey and other changes, and the incompatibility of the FSS protocol, there remains a strong body of opinion that the TIG guidelines provide some benefit. Inspectors found that they are still seen as a useful framework for case management. However as the above discussion shows, the periods laid down for each stage of the criminal justice process are now far divorced from actual average times and the guidelines are no longer sufficiently realistic to provide a sensible framework for setting targets for the different stages of a criminal case.

4.17 Inspectors agree, however, that guidance on the time cases should take is useful when negotiating local targets and case management protocols. Inspectors consider that the new joint PSA target for completing cases will have the benefit of focusing all agencies on the same outcome (as it has already done for PYOs). It will also help address the perception that the police interest in a case decreases after detection and 'sign up' CPS to a performance indicator relating to case completion. In order to be effective the new targets set for case completion should not be broken into stages but should be joint targets for local CJS partners to achieve. The proposed overall figures for completion of cases are 112 (*131*) days for adult cases and 98 (*135*) days for youth cases (*the MCSI adjournment analysis average figures in days are given in brackets*). Inspectors suggest that, in advance of any national targets being set, local areas should use this as the basis for developing their own guidelines, with the aim of working towards or improving on the national target. Each area should develop a protocol that sets out the time, for example, from

- Charge to EAH/EFH
- EAH to PTR (if one is to be held)

[37] The TIG guideline of 16 weeks is only a guideline set in 1992. It is not an indication of the actual average time it took to process cases of this type a decade ago.

- EAH or PTR to trial (with special guidelines when forensic or medical advice is sought)
- Conviction to sentence

4.18 Many areas already have detailed agreements which cover these issues, in which case, the task will be revising the time limits so that the overall periods add up to achieving the new national targets. Attention needs to be given locally to making improvements ahead of any national guidance which may be issued by the Case Preparation and Progression Project. The local COG/Shadow LCJB should initiate drawing up or revising the local guidelines. However, agreement of the protocol should involve practitioners from police, CPS, the court service, probation, YOTs and – most importantly - CDS and independent defence solicitors. It is essential that all parties agree the new guidelines are workable or they will not be effective.

Recommended: that the Chief Officer Group/Shadow LCJB in each CJS area (with a representative input from the defence) devise their own area pre-trial issues framework that:

- **gives all parties to the process realistic periods to prepare for the next stage**
- **assists the area in meeting any case completion targets set for the criminal justice system and**
- **sets a maximum period within which a trial will be listed in order to accommodate all witnesses, including police and other professional witnesses.**

4.19 Once the local framework is agreed, magistrates, legal advisers, prosecuting and defence advocates will need to bear in mind that they are (like the TIG adjournment periods) ***guidelines*** and not strict time periods by which work should be done. Guidelines will not fit all cases. Simpler cases may well be dealt with more quickly and for more complex cases (for example involving forensic or medical evidence) adjournment lengths should be realistic – based on accurate knowledge of how long the reports will take to produce. TIG itself emphasised the need to allow for adequate time. Inspectors agree with their advice that "Cases should be adjourned, not for a standard period of weeks, but for the shortest time necessary in order to resolve issues and progress the case". However, Inspectors also recognise that decisions in individual cases need to be made within an agreed framework so that everyone working within the agencies is aware of individual responsibilities.

4.20 The whole area of the time taken to investigate crimes and prepare files is under investigation in a number of pilots/initiatives at present. A charging pilot is being conducted to see if there are benefits in having greater CPS input prior to the charge. The purpose of the charging pilots is to ensure that cases are fully prepared and court ready by the time of charge. Whilst this may mean that some cases take longer, it is not necessarily incompatible with the Narey principle of bringing defendants before court as soon as possible since some of those cases may well not have been able to proceed in any event. There will be a separate evaluation of this interesting initiative. There may be significant impacts on listing if the findings indicate a reduction in the number of adjournments.

Forensic Science Service (FSS)

4.21 The lengthy time it takes to turn round forensic evidence impacts on case management in the magistrates' courts and is a cause of ineffective hearings when forensic evidence is not available at the adjourned date. The delay whilst awaiting forensic evidence from the Forensic Science Service was detailed by several chief police officers as a factor in the overall delay of cases and lack of progress at hearings. The Forensic Science Service is available to all forces for forensic analysis services. Some forces also use other private laboratories which now provide similar services, although the majority of analysis is undertaken by the FSS.

4.22 Determining the correct length of an adjournment when forensic results are awaited is a difficulty for legal advisers. Inspectors found that magistrates and legal advisers are generally unaware of the time it takes FSS to turn around evidence. Inspectors suggest that all those involved in case management are familiar with the standards within the local FSS protocol to enable them to set realistic adjournment periods[38]. Of more concern, Inspectors found that CPS lawyers, and some police beat officers, were unaware of the time it will take for a particular piece of forensic evidence to be processed by FSS (or other forensic laboratories being used) and the results returned to the police.

4.23 The FSS has established a national protocol blueprint (which it has signed with most police forces) which sets out the agreed timescales for production of different types of forensic analysis. The protocol requires FSS to give a maximum return date for every sample within five days of submission from the police. Inspectors were told that this target was met in virtually all cases. Inspectors therefore concluded that the information which would allow for effective adjournments was not being passed from police forces to CPS to put before the court. In terms of managing case progression, there is clear benefit to be gained therefore, from communicating the return date to the CPS to establish a more accurate and appropriate adjournment period. See recommendation at paragraph 4.33 below.

4.24 The Forensic Science Service classify cases according to three categories:

- **Urgent** (These relate to specific work required to assist the police in their investigations, the results of which will be delivered as soon as practicably possible. Analysis under this classification attracts a Premium Rate charge for forces.)
- **Critical** (A critical case is one that it is essential to be delivered in advance of a specified court date.)
- **Standard** (The standard classification will cover all non-urgent or non-critical work within a case. This will predominantly cover those cases where the suspect is either unknown or has been bailed without charge to return to the police station awaiting forensic analysis.)

4.25 Within some of these classifications, the FSS has set standards to attain in terms of speediness of analysis. In some classifications however, the standard alters dependent on the ingredients of the case[39]:

Classification of Submission	Standard
Urgent	Target date negotiated with forces e.g. • Premium Rate DNA Analysis – 48 hrs or 5 days • Premium rate examination – 24-48hrs dependent on analysis
Critical	• Youth cases – 42 days • Persistent Young Offenders – either 21 days or 42 days (detailed by the force) • All other cases – 42-80 days (negotiated with forces)
Standard	• 80 days

4.26 The FSS also monitors its performance to these standards. In respect of negotiated deadlines under the Urgent and Critical classifications, the FSS monitors the extent to which

[38] These timescales can be found in Annex G.
[39] Data supplied by FSS.

it achieves those agreed deadlines. The following table illustrates FSS performance in these areas:

	Urgent %	Critical %	PYO %	Standard %
Violent Crime cases	92	91	89	92
Volume crime cases *	95	94	93	89
Drugs cases	97	83	97	93

*These do not include DNA crime scene stain cases submitted as part of the DNA expansion programme.

It can be seen that the FSS is able to achieve over 90% compliance to nearly every standard it has set.

4.27 There is however, potential for some delays to be occurring to court case progression where a forensic sample has originally been despatched to the FSS and the suspect in the case has yet to be charged and has been bailed to return to the police station. Without any other indication, this case would be classified as Standard and analysis would be completed within 80 days. If in the interim however, the defendant is re-arrested on additional evidence and charged to attend court, unless the police update the FSS with this information, the original sample analysis will still continue to be analysed within the 80-day timescale. If however, the FSS were notified of such cases, then samples could be appropriately re-classified as Critical and processed within 42 days.

4.28 The length of time taken to process forensic material is also dependent on when the sample is sent to FSS. Inspectors found that some forces often do not submit samples for forensic analysis until a not-guilty plea is entered, inevitably creating long delays in the court process. Additionally, the frequency of delivery of forensic evidence to the FSS by forces differs. In some forces, deliveries are apparently only scheduled once a week. This can result in samples being nearly a week old before they are despatched. Forces are urged to review their delivery arrangements to ensure that there is no appreciable delay connected with the physical delivery of samples to the FSS. The inspection team also established that at present, a significant number of force forensic evidence submission forms do not require case officers to record details of the charge and court date. It is evident, however, that this information would be beneficial to allow the FSS to establish priorities so as to meet the needs of the court.

4.29 The following table shows the average length of time between arrest/charge and the submission of material for all forces from 1st September to 31st December, 2001.[40]

Time between arrest/charge & submission (days)			
Category	**Minimum time**	**Average time**	**Maximum submission time in 90% of cases**
Urgent	0	30	75
Critical	0	21	48
Standard	0	23	52
PYO	0	23	51

The apparent delay in submission could be due to a number of reasons such as a change of plea by the defendant or case developments requiring evidence of forensic aspects. Although some of these figures seem to represent a considerable delay, some of these could

[40] Further details are to be found in Annex G

be legitimate. For example, in some cases there may not have been a requirement initially to have despatched the sample for analysis, which may have been a decision reached through consultation with the CPS.

4.30 There is evidence from the Thematic to support the view that cost is a significant factor in the decision-making process concerning the timeliness of forensic submissions. This may place forces in a precarious position. It is evident that when financial constraints are coupled with anticipated guilty pleas, forensic submissions are held back. A high degree of professional judgement is desirable in this aspect of investigations. Inspectors also recognise that the cost considerations involved in attempting to get information expediently can be considerable. As an example, for the same footwear analysis, forces have to pay an additional charge of £105 if the analysis is made under the urgent classification. In terms of case progression, the only option available to police forces to accelerate sample analysis under the Critical case classification is to pay the additional premium. Senior police officers criticised the present charging mechanisms which requires payment of additional fees for speedier analysis in order to meet the requirements of the court process. In essence, increased speed costs more money.

4.31 The late or delayed submission of forensic evidence for whatever reason inevitably leads to a delay in case progression. Given that the provision of forensic evidence is increasingly a tool in a force's armoury to detect and reduce crime, cost considerations should be balanced against the police responsibility to place the best evidence before the court. Inspectors urge that decisions on submission of items for forensic examination are not based primarily on cost, as appears evident from this Review, but remain focussed on the issue of justice.

"We wait and see if there is likely to be a not guilty plea and a request for a full file, before sending off evidence for forensic testing." Beat officers

4.32 It is acknowledged, however, the inevitable increase in workload which would emanate from divorcing the police from financial liability for submissions would cause significant resourcing difficulties for the FSS. There would appear to be considerable merit however, in examining existing funding arrangements for police forensic science submissions to alleviate the police of this potential conflict of interests. Inspectors suggest this may be an area appropriate for further exploration in the context of the forthcoming Quinquennial Review of the agency status of the FSS. This matter will also be of considerable importance to the Association of Chief Police Officers.

Recommended: that the impact of funding arrangements for the FSS on the operation of the criminal justice systems as a whole be examined in the context of the Quinquennial Review of the Forensic Science Service

4.33 Aside from potential delay due to cost, research undertaken by HMIC during the recent joint thematic inspection on the *Joint Follow up Inspection of the Progress made in Reducing Delay in the Youth Justice System* (May 2002) identified that a significant number of forces did not have procedures in place to monitor the delay in submission of forensic samples from the case officer to the FSS. There is potential therefore, for a number of the above cases to be simply one of delay in submission of the sample and request by the case officer. Forces are urged therefore, to address the recommendations in the joint thematic inspection report to establish submission monitoring systems covering the contribution of case officers.

Recommended: that Chief Officers of Police:

- **ensure that a clear corporate policy exists covering the criteria case officers should follow in deciding at what stage and in what circumstances forensic samples should be despatched to the FSS/alternative laboratories for analysis**
- **establish a mechanism to ensure that the return date for results of forensic analysis agreed with the FSS on initial submission is promptly communicated to the CPS**
- **review their in force forensic evidence submission forms to ensure that they are endorsed with the charge and court date, and**
- **establish appropriate procedures to ensure compliance with the above**

Medical evidence

4.34 Medical evidence (when requested by CPS or the defence) can lead to similar delays as forensic evidence. In July 2000 a protocol was agreed between the Association of Chief Police Officers, CPS and the British Association for Accident and Emergency Medicine, which provides some guidance on the priority to be given by medical staff to statements and the form and content of the statement. The protocol should be implemented through local service level agreements. As with the FSS, magistrates' courts should enquire of CPS when the medical reports are expected and set realistic adjournments accordingly.

"There is a lack of guidance for legal advisers and magistrates when defence solicitors request medical reports. It takes an enormous amount of time to get psychological reports. Magistrates and court clerks feel wary about having too many adjournments, but on the other hand do not want to prevent psychological reports, if they are actually necessary." Legal Adviser

Listing for Trial

4.35 A major theme to come out of this review is that CJS agencies need to co-operate and ensure their contribution to case management is

- accurate and
- fit for the purpose

If the charge is correct, if the file is well prepared, if the PTR identifies the issues that need to be addressed, if directions are acted upon (or followed up by the court), the trial is more likely to go ahead on the day. At each step in the process the work of the contributing CJS agencies must be of sufficient quality (fit for the purpose) to ensure effective progress to the next stage. The need for each agency to 'get it right first time' has been long understood. But since this objective is (i) crucial and (ii) seemingly so hard to achieve, it is worth repeating and emphasising its importance, particularly in relation to cracked and ineffective trials. It must also be recognised that all agencies have a joint responsibility for progressing cases and listing them for trial. Too often Inspectors came across examples of misunderstanding of other agencies' roles and a 'silo' mentality in areas where there were otherwise good working relations.

☞ It is important to recognise that all systems within the different CJS participants can have a significant impact upon the courtroom. For example, in one area visited the police force's internal mail took up to three weeks to deliver items. This led to delays in producing full files and numerous unnecessary adjournments.

4.36 Listing for trial is a complex process. The court must take account of the proper needs of both the prosecution and the defence to be trial ready, and the availability of the witnesses, as well as its own pressures to reduce delay and to ensure its resources are being used efficiently. A trial where both parties are ready to proceed on the first date that it is listed, and which does proceed on that day, represents a successful outcome for the listing process.

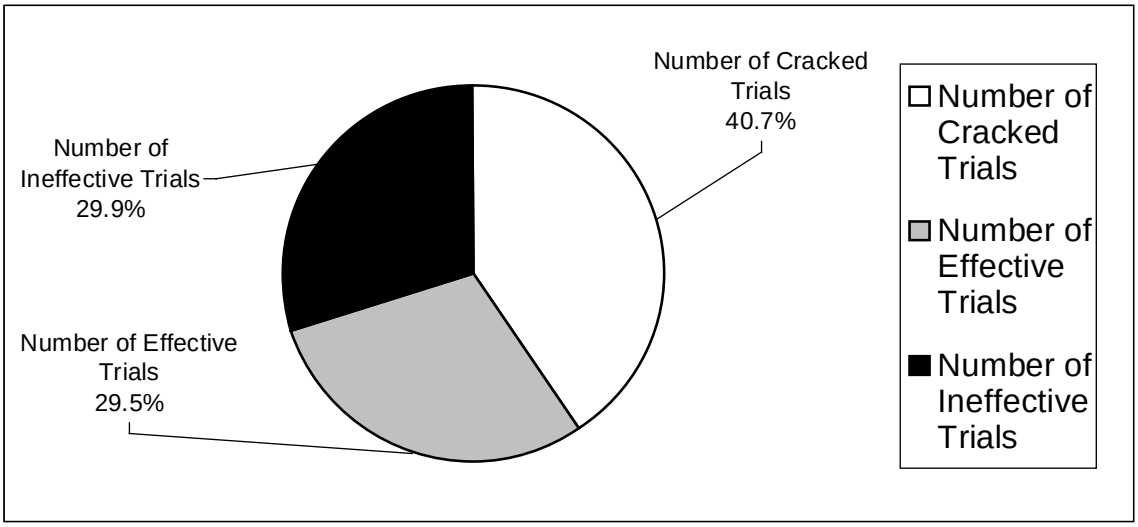
On the other hand, a trial that cracks or is ineffective on the day of the trial is wasteful of resources, and results in significant inconvenience to witnesses.

Cracked and ineffective trials

4.37 The Lord Chancellor's Department introduced, for the Joint Performance Management Strategy Group (on behalf of TIG), a system for monitoring cracked and ineffective trials from 1 January 2002. The scheme (Cracked, ineffective and vacated trial monitoring - CIVTM) was launched following a pilot in nine Areas[41]. While the scheme is not compulsory, all areas were participating in the data collection by April 2002. As part of the thematic, Inspectors requested that the pilot areas collect some additional information which was submitted together with the data for the first three months of 2002. The results of the analysis are detailed below.

4.38 Over 70% of trials achieve a result on the day. However the overall effective trial rate of only 29.5% is poor. The other 40.7% of cracked trials represent a significant waste of resources, even though they do achieve a result on the day of the trial. The proportion of youth trials that crack (44%) is higher than for adult trials. Analysis of the data shows that more youth trials crack on the day because there are more guilty pleas to alternative charges. This may be a reflection of the speed at which these trials are listed, with reduced time for both CPS and defence to prepare for trial. If this occurs locally, the CJS agencies will need to investigate, for example, whether current adjournment timescales allow enough time for evidence to reach the CPS and defence.

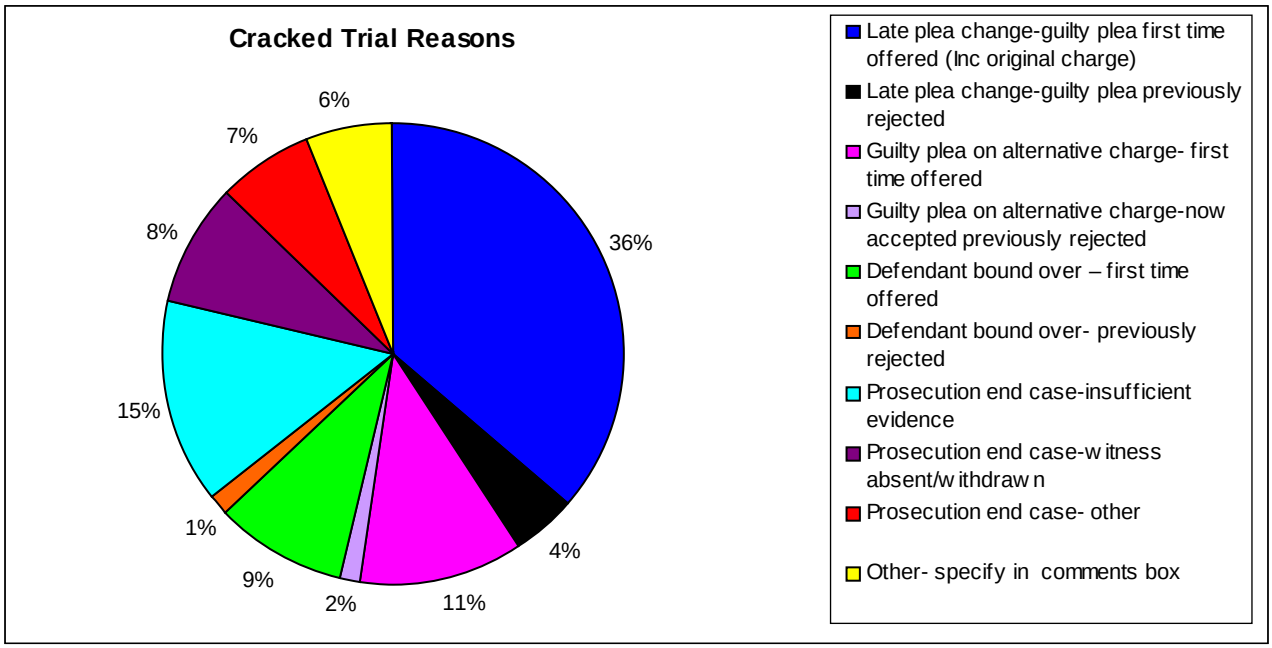
4.39 Inspectors discuss the impact of these figures on witnesses below (paragraph 4.148). It would be unrealistic to expect that every trial would go ahead as planned. There will always be a proportion of trials, which either crack or are ineffective on the day. For instance, some defendants will always delay entering a guilty plea or will fail to attend, and there will be occasions when witnesses are unable to attend. Nonetheless, there is scope for considerable improvement on the current level of performance. Indeed some areas already achieve a significantly higher effective trial rate[42].



Reasons for Cracked Trials

[41] Cumbria, Durham, Dyfed-Powys, Hampshire & IOW, Northumbria, North Wales, North Yorkshire, Surrey, West Midlands.
[42] The effective trial rate in the sample ranged from 24% to 46%.

4.40 The main reason for cracked trials (40%) is due to late changes of plea by the defendant. Currently the Home Office is undertaking research into why defendants plead guilty so late, with results due in the autumn of 2002[43]. However, Inspectors also have concerns about the belated actions of the prosecution. In 20% of cracked trials the defendant pleaded guilty on the day of the trial when - for the first time - alternative charges or a *bind over* were offered. In 15% of cases the prosecution was discontinued on the day because of lack of evidence and in another 15% of cases the trial ended because the prosecution witness did not attend or for other (prosecution-linked) reasons. Even given some doubts about the accuracy of allocation of causes for CIT, the large number of cracked trials that fall within the prosecution/police sphere serves to emphasise the importance of 'getting it right first time'. Police and CPS need to work together to address this area of cracked trials.

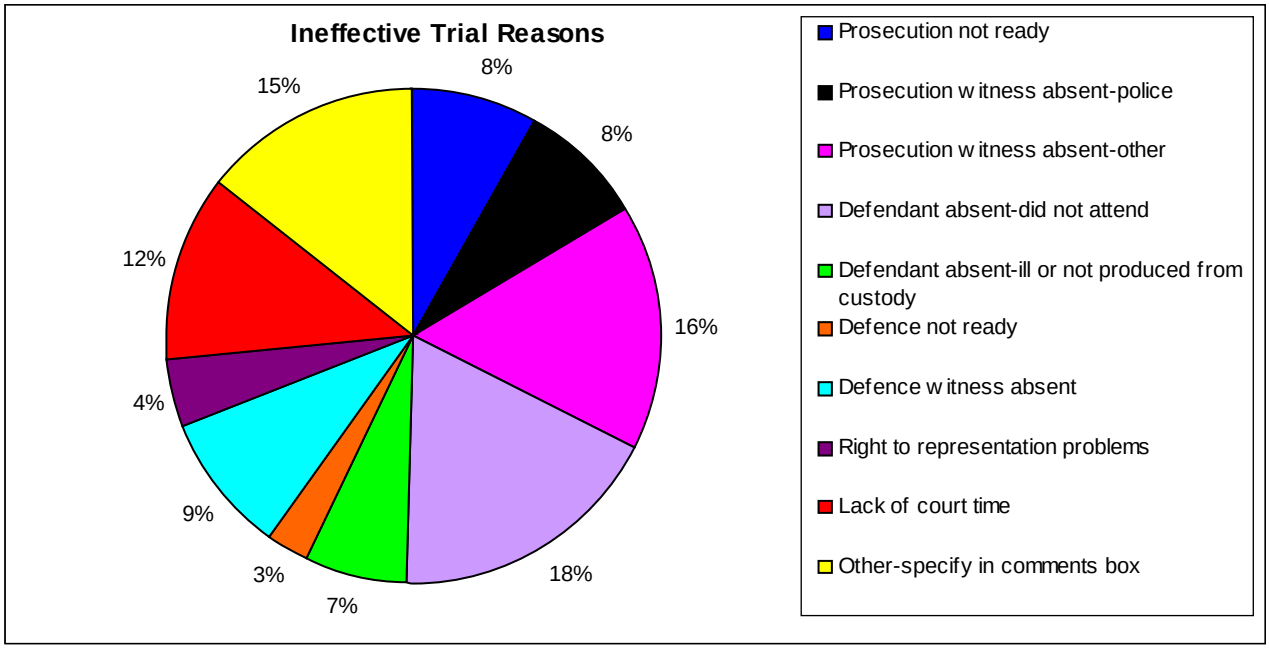


Reasons for Ineffective trials

4.41 Ineffective trials are a wide-spread cause of dissatisfaction. The extent of the problem is highlighted by the CITVM statistics collated for this review which show that of those trials in the survey that were ineffective, 16% (419 trials) had previously been ineffective. In addition, 14% (343) of effective trials and 11% (381) of cracked trials in the survey had previously been ineffective.[44]

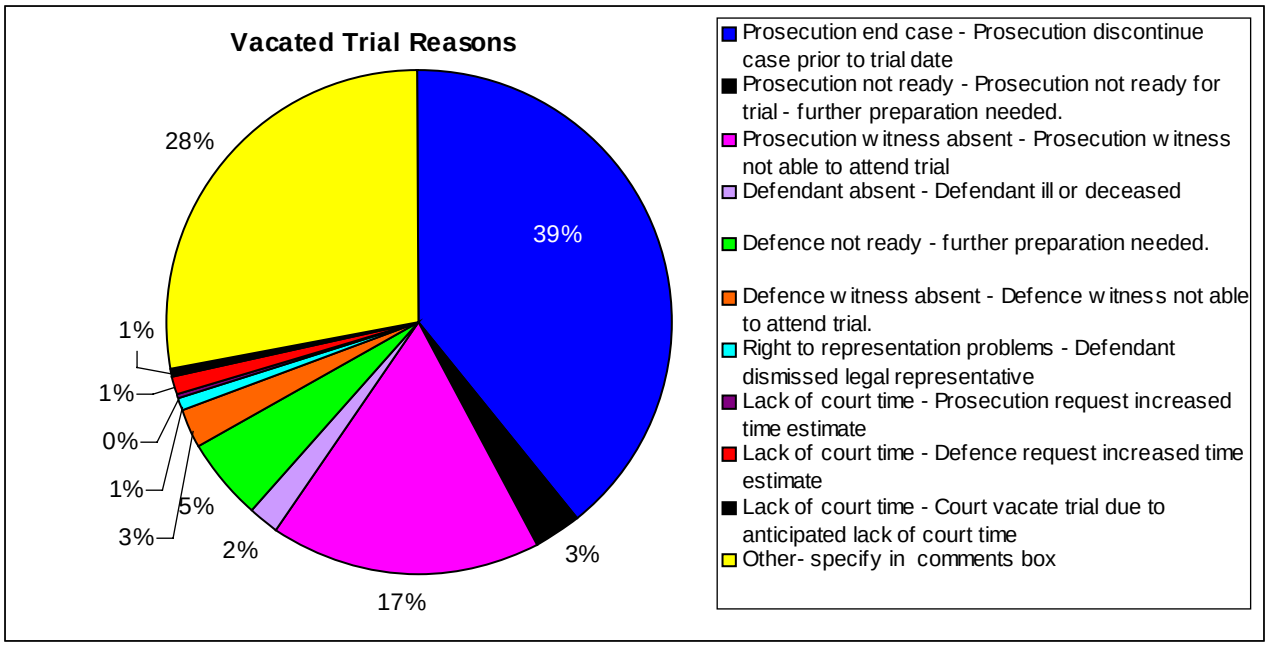
4.42 The defence is responsible for 30% of ineffective trials. Of these 18% are due to defendants failure to attend (not due to sickness). Witness non-attendance (both prosecution and defence) is a cause of 32% of ineffective trials. Of particular concern is that 8% relate to police witness non-attendance. Another significant factor is the 12% of trials that cannot go ahead on the day because of lack of court time. Finally, the 'other' category of 15% indicates that the monitoring system needs to be revised so that it more accurately records the reason for adjournments and can be used by local agencies to address the delays.

[43] Early guilty pleas are discussed in more detail at paragraph 4.89 below
[44] Data is only partial as only 69% of respondents stated whether the trial had been ineffective before



Vacated trials

4.43 The national scheme also extends to monitoring trials vacated (either adjourned to another date or discontinued) before the date of hearing. A vacated trial avoids unnecessary witness attendance, and may allow the court time to be re-allocated. Nonetheless a vacated trial is something to be avoided if possible. Resources will have been expended on preparing for the trial, court time will have been set aside and witnesses may have already made arrangements to attend court. Although the total number of vacated trials is much less than the number of cracked and ineffective trials, it still represents a substantial inefficiency and should be subjected to the same scrutiny as cracked/ineffective trials. Inspectors have carried out the same analysis for vacated trials as for cracked and ineffective trials as follows:



4.44 The 39% discontinuance rate is an issue that will need to investigated by police and CPS in each area. The 17% of vacated trials due to prosecution witness not being available is of concern. However this statistic fails to provide enough information for the CPS and police to take action. For example, was the adjournment because the original information about witness availability was inaccurate or was it because the witnesses were not told of the trial date sufficiently far in advance? The high 'other' category (28%) also makes this data of limited use to local agencies in exploring how to reduce the numbers of vacated trials.

Effectiveness of cracked/ineffective/vacated trial monitoring

4.45 Inspectors have two concerns in relation to the effectiveness of CIVTM: the accuracy of the information and the use to which it is put. The magistrates' courts manage the scheme. The CITVM form is completed by the court which also provide the statistics. In the case of cracked and ineffective trials, the legal adviser should also look to the prosecution and defence for an opinion as to the reason for the case cracking or being ineffective. Although the scheme was introduced after the pilot had been evaluated, Inspectors were told that the scheme was not easy to administer and the cracked/ineffective trial form was not always accurately completed, with the anticipated inter-agency discussion being omitted. In addition some areas had found problems both with the definitions and the spreadsheets. In two CJS areas Inspectors were told that discontinued cases were sometimes wrongly counted as cracked trials because the case had remained in the court list after it had been discontinued[45]. In addition the high percentage of ineffective and vacated trials where the reason is "other" gives rise to some concern as to the accuracy of data[46].

☞ In one area the CPS reported that out of 13 cases which according to the CIVTM had cracked or been ineffective due to the CPS, only one had been correctly attributed to the prosecution.

4.46 The scheme is resource intensive in the magistrates' courts. A balance should always be struck between the resources taken up by monitoring and those resources put into addressing performance itself. (See paragraph 5.18 below) There were also some concerns as to the value of the data produced in relation to identifying the root cause of problems. Inspectors were told some of the categories were unsatisfactory – for example because they did not identify how far the prosecution decision arose from witness attendance problems. In one area the CPS was completing its own monitoring form in parallel with the CIVTM in order to extract information that would be useful locally.

"It is very time consuming monitoring the cracked and ineffective trials, especially having two separate spreadsheets for vacated trials separate from the others- it is taking a lot of time for listing officers because clerks do not always fill in all the boxes." Listing Officer

4.47 Nonetheless Inspectors consider that CIVTM offers clear benefits. It has the potential to produce consistent national data that evaluates the effectiveness of trial listing area by area, and provide comparisons between similar areas. More importantly, it also has the potential to provide the information necessary for managers within the local CJS, and indeed at a national level, to identify ways in which the trial listing process can be improved. Although the pilots were subject to limited evaluation, Inspectors think it appropriate to review the operation of the scheme after a year in operation, in order to address the operational difficulties.

[45] Such a case should have been counted as a vacated trial.
[46] 15% ineffective and 28% vacated trials were designated "other".

4.48 However, the success of CIVTM will depend upon the extent to which it is used as a problem-solving tool to improve performance. Inspectors found encouraging signs that agencies were seeking to address issues.

In one area a slowing overall case progression rate had been linked to a high cracked and ineffective trial rate. The police, CPS and magistrates' court had spent a day examining reasons for cracked/ineffective trials, and the reasons behind slow case progression. The police team was led at Superintendent level, and the magistrates' court and CPS teams by the JCE and CCP. The result was a tri-partite case progression plan with measurable targets signed up to by all three agencies. This action plan is to be reviewed on a regular basis by the three agencies. ✓

In another area police, CPS and magistrates' court staff spent a day examining the cracked and ineffective trial data. Effort was concentrated on the 80 longest running cases to identify actions necessary to reduce the cracked/ineffective trial rate. One action was to extend the period from plea to PTR from 4 weeks to 5 weeks to allow the police additional time to prepare a good quality full file. As a consequence of the action plan Inspectors were told that the effective trial rate has risen from 33% to nearly 50%.

In another area analysis of the cracked/ineffective trial data led to the decision not to routinely have PTRs because PTRs were ineffective. A problem over a high number of police officers not attending trials was also identified. This led to a system for notifying the Divisional Superintendent if an officer failed to attend, and this in turn has led to an improvement of 6% in the cracked/ineffective trial rate.

4.49 Since improvements in overall performance often depend on changes in more than one agency, an inter-agency action plan supported by Chief Officers is necessary. The action plan should be sufficiently detailed to include measurable targets. This does not of course relieve each agency of the responsibility for reviewing the available CIVTM data, and its own management information, and introducing those improvements within its own control without waiting for action by others. Areas for improvement in the pre-trial process are highlighted below. The poor performance in this area requires urgent attention in the short-term to make inroads into the Cracked and Ineffective Trial rate ahead of any future guidance which may be issued by the Case Preparation and Progression Project.

Recommended: that each Chief Officer Group/Shadow LCJB create an action plan for reduction in the cracked/ ineffective/ vacated trial rate. The action plan should:

- **include targets for reduction of the cracked, ineffective and vacated trial rates**
- **require progress to be monitored against the CIVTM data**
- **address the effectiveness of PTRs with a view to reducing the proportion of cases with two or more PTRs.**

The police role

4.50 Inspectors found that changes to the way that police prosecutions are now handled (for example, the introduction of the CPS and the use of police Administrative Support Units) have created difficulties as individual police officers are perceived to have become more distant from the courtroom. In relation to the perceived role of the police in the criminal justice system, a number of Chief Officers of Police confirmed to Inspectors that some operational staff viewed attendance at court and the provision of evidence with reducing importance. This was in part influenced by officers' reactions to the frequency with which they attended court, but did not actually give evidence. However, Inspectors were told that due to the detached involvement some officers now had with the court that a significant

number of beat officers were becoming de-skilled and this was having a material affect on the quality of what they provided by way of evidence.

4.51 Similarly, legal advisers, District Judges and magistrates commented that police officers generally did not seem conversant with courtroom procedures and the need for certain evidence. In some cases, respondents detailed that at times police officers seemed uncertain as to their role in providing oral evidence and found difficulty in responding to cross examination, which can be a stressful experience even for professional witnesses. Whilst some Chief Officers of Police stated there was much being done to maintain and instil pride in officers as regards their contribution to the criminal justice system, some beat officers confirmed that this high-level commitment was not necessarily being reinforced on a daily basis. In particular, it was highlighted that file preparation was sometimes not seen as an important activity and officers were constantly pressed by line managers to resume patrol duties.

Police training

4.52 Given these concerns, Inspectors sought the views of interviewees on the training given to police officers to enable them to provide good quality witness statements and to equip them to appear as witnesses. During the fieldwork interviews there was clear agreement amongst both police and other agencies that the overall quality of police statement taking needed improving. It was commented by Chief Officers of Police that modern training inputs on statement taking appeared to advocate 'telling a story' and encouraged individuals to address evidential points at a later stage. This approach was felt to be contributing to the perceived fall in overall quality of police witness statement taking. In addition, all levels of police officers confirmed that local procedures and the approach taken by tutor constables and their peers had the most significant effect on how statements were eventually taken and constructed. These approaches sometimes undermined the formal training that had been given during their induction.

"Historically, the tutor constable has been viewed as pivotal to the management of the transitional period between the classroom and 'real' police work. The influential period which a probationer spends with her or his tutor constable can make the difference between cultivating the potential of, and ensuring the effective development of, an officer, or if handled incorrectly, the destruction of confidence and learning gained at the training centre." Training Matters[47]

4.53 Inspectors found little evidence of any formalised post initial training/tutorship input on taking witness statements. It was also confirmed by interviewees that the cultural issues connected with the provision of evidence and statement taking were not being addressed by existing training, as approaches being taken nationally and locally did not appear sophisticated enough to deal with some of the issues involved. In addition, research undertaken for the HMIC thematic inspection *Training Matters* indicated that even during initial probationer training delivered at Police Training Centres (PTC's), there was a variation between training provided, particularly concerning file completion and hearsay evidence. That inspection identified that in respect of issues such as hearsay evidence, some officers were being advised to include it, whereas others were encouraged to take a more cautious approach and exclude it. The inspection also identified that this potentially contradictory advice sometimes extended to the CPS where it highlighted different practices at local, area and national level. Similarly, different practice has evolved within local forces and command units.

[47] HMIC thematic inspection report on police training, 2002

4.54 *Training Matters* also identified a wide disparity in form design generally amongst various forces covering all areas of administrative work. This was identified as contributing to the confusing and potentially contradictory advice being given to students during initial police training. The report also identified the lack of standard training packages on statement taking and file preparation for trainers and Tutor Constables. It emphasised the need for a common set of standards. Inspectors found some support for the provision of a national template for witness statements which would help address some of the present perceived shortfalls. Some concern existed though, that this could encourage officers to adopt a 'tick the box' syndrome. Many officers expressed regret that the old 'points to prove' methodology no longer seemed to have any currency.

One force has developed a reference document 'Right First Time' which explains in detail what is required in each type of file, naming each document. It also provides very informative guidance notes on aspects such as sensitive material, disclosure and interview records. ✓

4.55 Some forces have recognised the difficulties detailed above and are taking steps to address them. These range from the issue of documents to assist individual beat officers and to emphasise their important contribution to the court process, to arranging job shadowing with other CJS partners. The Metropolitan Police have also developed an international award winning training and education video developed with leading barristers covering all aspects of police performance in the witness box. Although reservations were expressed about the potential burdens on agency staff, Inspectors found clear support for the development of a formalised input from other agencies into police training.

4.56 The HMIC *Training Matters* report concluded its findings in this area with: *HM Inspector recommends that, under the aegis of the Home Office, the responsibility for training probationers in court file preparation be placed on individual forces working in partnership with the local Crown Prosecution Service (CPS).* This report confirms the crucial need for the police contribution to the courtroom process to be of high quality, particularly in relation to file preparation. Inspectors urge those responsible for police training to ensure that the deficiencies which exist are addressed as quickly as possible. Everyone getting it right first time will save police resources as well as lead to more effective hearings. The following recommendations should be developed in close consultation with the Training Matters Action Group (TMAG) and involve the prescribing of national standards.

Recommended: that CENTREX (The Central Police Training and Development Authority) in conjunction with appropriate statutory and voluntary agencies (including the Association of Police Authorities, Association of Chief Police Officers, Witness Service, Victim Support and the Crown Prosecution Service):

- **develop a revised initial police training input and approach covering the multi-agency aspects of the modern criminal justice system and the contribution required of officers.**
- **develop training, knowledge and awareness material for delivery locally to build on and support this foundation and reinforce desired outcomes covering all aspects of the prosecution process.**

Effective Trial Preparation: Quality & Timeliness of Police File

4.57 The quality and timeliness of the police file of evidence is key to the preparation of the case for trial by the prosecution. It is essential that the police deliver to the CPS a full file of evidence, including disclosure of unused material, in sufficient time for a review of the file before the trial, or the PTR if one is held. The importance of timely, good quality files has long been recognised by both the police and the CPS. In an effort to improve the quality

and timeliness of police files, a national system of police file Joint Performance Management was introduced by the Trial Issues Group in 1995.

4.58 The success of JPM in ensuring that police files are provided which are of a good standard has been limited. Inspectors found that file preparation was sometimes affected by other policing priorities. In particular the priorities of ensuring a presence on the streets and quick response times to incidents. The table below compares national performance in Q4 1999 and 2001:

Period	Fully satisfactory	Timely	Fully satisfactory and timely
Q4 1999	56%	70%	42%
Q4 2001	54%	73%	43%

4.59 Policing priorities need to be addressed if good quality files are to be delivered on time. In one area Inspectors found that the timeliness target was given precedence over the quality, with the result that a file was delivered to CPS within the time period regardless of the quality. Such an approach does not assist in delivering effective trial listing. In another area quality was given precedence over timeliness so that there was a higher rate of late files in that area, which in turn affects the efficiency of the trial preparation process by CPS.

4.60 The extent to which JPM has led to improvements in the quality and timeliness of police files has varied from area to area. Inspectors found that the police often saw JPM as ineffective and a drain on police resources. However, Inspectors think that the quality and timeliness of the police file is of such importance that further efforts need to be made to find ways of making JPM a useful problem solving tool. It may be that the quality and timeliness of the police files needs to be linked more closely to the final outcome. Indeed Inspectors found continuing efforts being made locally to make JPM more effective.

In one area the link between file quality and timeliness, and the effectiveness of trial listing, had been recognised and as a consequence the police, CPS and the magistrates' court examined the JPM data together to identify action points. ✓

In another area the police have sought to present the JPM data in a more user friendly format to assist in identifying weaknesses in performance at a police divisional level.

One police force has determined that JPM data will form part of the appraisal system, with the result that if more than two files submitted by an officer are found to be less than sufficient, a management meeting will be triggered to discuss file quality.

4.61 The inspection team has recommended below the introduction of a co-ordinated basket of performance measures to ensure the whole case management process is covered. Measurement of the quality and timeliness of the police file will continue to be an important part of these measures. Inspectors suggest that the Case Preparation and Progression Project at a national level, explore ways in which JPM can be made more productive and less resource intensive, (for example by the use of IT and sampling). Until any revision to JPM, Inspectors suggest that local COG/Shadow LCJBs examine ways of using the existing information from JPM as an effective problem-solving tool.

4.62 As above, Inspectors found a widespread perception that the quality of police statement taking had declined. There are obvious benefits in having well prepared statements that include all the facts surrounding the alleged offence, and cover the evidential issues that need to be dealt with at trial. For instance Inspectors were told that statements in one area relating to public order situations were often inadequate because of a lack of identification

evidence. Better statements will facilitate CPS and defence decision making, reduce delay and assist the presentation of the case at court. It should maximise the use of statements under section 9 Criminal Justice Act 1967.

4.63 It was highlighted during interviews with various parties that there is a constant tension between timeliness and attrition. Some parties were openly concerned about a perceived large number of cases failing in the magistrates' court. As one chief officer of police stated 'Speed will not address this issue: in fact the quicker a case gets to court the more likely it will be dropped because it has been inadequately prepared.'

4.64 The inspection team were informed by several rank and file police officers during the inspection that timescales for file preparation, particularly in cases involving forensic evidence, were perceived as extremely demanding. Officers it was stated, tended to submit files hastily in order to meet court time targets and as a consequence content and quality suffered. There were clearly mixed views amongst forces as to which aspect they concentrated on most, quality or speed.

4.65 File quality assurance arrangements in forces also differ significantly. In one force, one chief officer of police highlighted that centralising the function of file checking had meant officers relied too much on sergeants to manage cases and to rectify matters which were faltering. In another force, file preparation responsibilities have been returned to case officers due to the number of officers committed to centralised file building. This decision created a significant re-skilling problem for the force. The move, however, has been viewed additionally as a tactic to reinforce to officers their role and contribution in file preparation and in the wider criminal justice system as a whole. In addition, it was highlighted by several interviewees that there appears to be conflicting advice being given to officers as to what constitutes a full file. Inspectors confirmed that this was a problem evident during the file analysis of CPS trial files undertaken as part of the thematic.

Effective Trial Preparation: Quality and timeliness of CPS trial review and preparation

4.66 The supply of the police file needs to be followed by a timely and effective review by CPS. This entails decisions on whether the case should continue; what the most appropriate charges are; whether further evidence is required; and which witnesses should attend in person, which can be served under S9 Criminal Justice Act 1967 and which can be tendered to the defence. In addition unused material must be disclosed. All this should be done before the PTR, if there is one.

4.67 The quality and timeliness of summary trial review and preparation by CPS is a weakness[48]. HM CPSI has examined 1214 summary trial files during the course of the current inspection cycle. Although appropriate and timely use of statements served under section 9 Criminal Justice Act 1967 was made in 94% of cases, it also found that in only 60% of cases was the overall summary trial preparation done effectively, and in only 70% of cases were all appropriate actions taken before PTR.

4.68 The efficiency of CPS is dependent in part on the quality and timeliness of the police file. It does not have the power to direct police action, and some of the weak performance in relation to trial preparation may be due to police failure to submit a good quality file on time. Inspectors found it was common for magistrates' court staff not to know whether late or ineffective review was the consequence of the police delivering a file late or in poor condition, or whether it was directly attributable to a CPS failure. Many court staff and magistrates expressed frustration and a sense of powerlessness to deal with this regular problem. These are issues that need to be examined by CPS, police and the magistrates'

[48] HM CPSI Chief Inspector's Annual Reports 1999-2000, and 2000-2001.

courts locally. Such examination is hindered by the lack of CPS management information on this aspect of performance.

☞ In one area the CPS did not send reminders to police if the police file was late because the file submission was considered to be the police's responsibility. This approach does not assist in ensuring that cases are dealt with appropriately and expeditiously.

4.69 Summary trial preparation is a key CPS process, but the CPS does not have any national performance measures to give management information about the quality and timeliness of performance. Furthermore, effective management systems to ensure, as far as possible, that cases are ready for PTR or trial are not universal within the CPS. What good practice exists is dependent on local Chief Crown Prosecutors setting up their own systems. Any performance measures introduced as a result of the following recommendations should form part of the basket of measures referred to in the recommendation at paragraph 5.23 below. They should also link to the key stages of the summary trial process.

In one CPS area where late review of summary trial files had been identified as a problem, all cases were monitored at a set period before trial. Once satisfied this target was being met, the focus of the target was moved from the trial date, to review within a set period from the trial-fixing date. In addition, a pre-trial check was initiated shortly before trial to ensure all directions had been complied with and the case was trial ready. ✓

Recommended: that the Crown Prosecution Service put in place national performance measures for the summary trial process

Recommended: that each Chief Crown Prosecutor put in place robust management systems to ensure readiness for PTR and for summary trial

Collocation

4.70 The *Glidewell Report*[49] into the CPS recommended that "as soon as possible, the reorganised CPS and police enter into discussions with a view to adopting a general principle for the establishment in one or more police divisions of a Criminal Justice Unit (CJU) serving a single magistrates' court or PSA." This initiative of establishing joint police and CPS units has come to be known as collocation. Each CJS area has adopted its own approach to this recommendation. Some moved fairly speedily to set up collocated units, others are only now beginning to develop plans for collocation. As a result it is too early - nationally - to form a view of the outcomes of this initiative or of its varied implementation.

4.71 Limited data was available for Inspectors to compare the efficiency of CPS areas pre- and post- collocation. In January 2001 a report[50] on six 'beacon' CJUs was published. It concluded the 'move to these innovative working methods was so new that there was little opportunity to identify, with clarity, any … efficiencies…' A second review, looking at the

[49] *The Review of the Crown Prosecution Service*, June 1998

[50] *An Early Assessment of Collocated Criminal Justice Units*, Glidewell Working Group, January 2001

same six sites, was commissioned and published in November 2001[51]. This report indicated the following improvements in efficiency[52]:-

	Before Collocation	**After Collocation**
JPM (file timeliness & quality)	73%	80%
Number of hearings per case	3.13	2.63
Percentage of disposals at first hearing	46%	61%
Conviction rate	98%	98%
Discontinuance rate	12%	10%

4.72 The main performance findings were:

- The timeliness and quality of files increased, primarily due to easier access by police staff to lawyers.
- The number of adjournments per case fell because closer proximity of staff meant that issues could be resolved more quickly prior to hearings.
- Perhaps most markedly, the number of disposals at the first hearing increased, again due to closer contact between key personnel.
- Prosecutors and police staff also confirmed that they were able to deal more efficiently with the duties of disclosure within the combined CJU.

4.73 Inspectors agree with these early conclusions that collocation has the potential to reduce delay by improving communication between CPS and the police, and assisting in problem solving over issues such as charging and file preparation. During this review, Inspectors visited areas

- where collocation had been established for over a year – and had had time to 'bed in',
- in the early days of working in a CJU
- still at the planning stage.

No up-to-date statistics were available to Inspectors to review the initiative from a national perspective, but in the areas visited there were differences of opinion about the effectiveness of collocation. Inspectors heard some complaints that are common to new initiatives. For example that the 'big idea' was not thought through carefully and implementation was patchy. Inspectors concluded that the manner in which collocation is established is crucial to the likely success of the project. Anecdotal evidence suggests it works best where the unit is located on one site – preferably at a busy police station. If the matter is not handled well it can have serious consequences for case management - for example if files are lost and file preparation takes much longer.

4.74 Some areas are still some way off establishing collocation, partly because there are problems in finding appropriate accommodation for the Criminal Justice Units. Several areas have, as an interim measure, set up Lawyers At Police Stations (LAPS) schemes. Where these have increased communication between the agencies they are perceived as being useful in giving some of the benefits of collocation – closer contact between lawyers and police officers which assists in breaking down the cultural barriers which Glidewell acknowledges.

Fixing the date of trial

4.75 The trial date is usually fixed either when the plea is entered or at the pre-trial review, if one is held. There are advantages to each practice. The benefits in fixing the date at plea are twofold. It allows the trial to be fixed at the earliest opportunity and so reduces delay. It also

[51] *A Review of Cost and Efficiency Savings within 'Glidewell' Collocated Criminal Justice Units*, Glidewell Working Group, November 2001
[52] ibid. p 12

allows a PTR to be fixed within that overall timescale. In one area the Criminal Defence Service has agreed to pay a full trial fee rate if the case has been prepared for trial and a guilty plea is entered at the PTR thus removing a potential disincentive to wait until the day of trial before entering a guilty plea.

4.76 Fixing a trial date at PTR means that the witness requirements of both parties should be known, and a trial date can be fixed taking into account witnesses whose evidence has been agreed. The delay in fixing a trial date can, however, lead to a longer period from plea to trial than if the trial date had been fixed at plea. Each area will need to balance the pros and cons of the two approaches in light of the local circumstances. Information from CIVTM should provide some indication of the effectiveness of current procedures. In some areas - after the not guilty plea taken at the EAH - there is a trial fixing hearing. At this hearing, in addition to fixing the trial date, it is decided if a full PTR is necessary. This has the potential to assist in accurate trial listing, but inserting a routine, extra hearing places greater burdens on CPS and defence and may lead to delay.

Effectiveness of PTRs

4.77 The analysis of CIVTM included the following analysis of the current efficacy of PTRs in the sample:

	PTR(s) Held	PTR not held	Percentage Held
Proportion of trials where a PTR(s) was held	4926	2623	65.3%
Proportion of effective trials where a PTR(s) was held	1417	787	64.3%
Proportion of ineffective trials where a PTR(s) was held	1509	727	67.5%
Proportion of cracked trials where a PTR(s) was held	2000	1109	64.3%
Proportion of vacated trials where a PTR(s) was held	636	341	65.1%

4.78 The analysis demonstrates that at present PTRs have little impact on whether the trial is effective or not. Indeed only 25.4% of trials that had a PTR were effective on the day. The analysis also showed that 18.3% of trials had 2 or more PTRs. Although there may be some cases where more than one PTR is necessary, Inspectors consider that there is scope to reduce the number of PTRs by ensuring that the first PTR is effective. Currently, the way that PTRs are monitored does not give an indication of how many trials do not go ahead as the result of a PTR. Given the widespread use of PTRs, it would be valuable to undertake more systematic research into this area.

Measuring the effectiveness of PTRs: The monitoring of cracked and ineffective trials (at the trial hearing), does not give a complete picture of the effectiveness PTRs, since cases that are completed at the PTR are not counted. In one large city court the number of not guilty cases going to trial has reduced by one third (nearly 900 cases in a year), after the PTR scheme was re-launched, by converting a trial-fixing hearing into a full PTR. Now experienced legal advisers (sitting without magistrates) handle the hearing pro-actively and the cases are presented by specialised prosecutors, who are given time the day before to prepare the cases and, if necessary, contact the police and defence advocates. The defendant is required to attend the PTR so that the defence solicitor can, for example, take instructions if an alternative plea is offered. If the alternative plea is ✓

accepted the case is transferred into a court sitting with a full bench for sentence. Looking at the effective trial rate does not reveal this improvement in performance, because the *proportion* of trials that are effective remains fairly constant – it is the *number* of cases proceeding to trial that has fallen markedly, allowing the court to offer earlier hearing dates.

Recommended: that LCD commission research into the impact of pre-trial reviews on the overall effectiveness of the trial process

4.79 One CJS area had already concluded that PTRs were a waste of resources in routine cases and reserved PTRs only for those cases estimated to extend beyond a day and cases where there was some degree of complexity. Instead emphasis was placed on setting directions at the plea stage and then using an MCS case progression officer[53] to check whether the directions had been complied with and the case trial ready. A case progression form on the court file is used as the monitoring tool. This is an interesting approach, but it was too early in its implementation for Inspectors to assess the impact of it on the cracked/ineffective/vacated trial rate.

"At one level (PTRs are effective) in that they provide a forum for parties to share information and provide information to the court eg as to special facilities or equipment required for the trial. However there is no evidence that they are effective at reducing the percentage of cracked or ineffective trials." Justices' Chief Executive

" In the main the PTR has become a date fixing exercise for the parties and little work is done by the CPS or defence at the PTR stage. As many cases crack or are ineffective which go through a PTR as those which have not." Justices' Clerk

☞ In one area the court and the CPS have agreed that there is no need to have PTRs in straight forward cases (defined in relation to the number of witnesses or the nature of the case such as domestic violence where a speedy trial is important). The consequent reduction in PTR courts will be used to increase the number of trial courts with a significant reduction in time to trial

4.80 There will always be a proportion of cases which are straightforward and which do not need a PTR. Inspectors question whether there is any purpose in holding a PTR for instance when there is a single police witness. Areas that keep the PTR system for most trials will want to consider guidelines to ensure PTRs are not set unnecessarily. Given the findings of the CIVTM monitoring, all areas need to concentrate on making PTRs more effective. HMCPSI and CPS, in consultation with HMMCSI, have produced a good practice guide[54] which sets out the following success factors if a PTR is to be effective:

The success of a PTR depends on a number of things:

The police submitting the file in time for it to be reviewed and action taken; the file must contain accurate information about witness availability and, their willingness to give evidence in cases in which this is likely to be in issue;

The CPS reviewing the file thoroughly, giving instructions on the service of witness statements, alternative charges, acceptable pleas, disclosure of unused material, and take all other necessary action without delay;

[53] Inspectors discuss case progression officers further at paragraph 4.95.
[54] HMCPSI/CPS Good Practice Note 3 of 2001

- *The CPS serving the defence with copies of statements of all witnesses the prosecution intend to use (whether they will ultimately be required to give evidence in person or not) and provided with details of those not to be used.*

- *A copy of the prosecution case being provided to the court to enable the clerk or bench conducting the PTR to deal fully with all issues. Consideration will need to be given to whether this is likely to disqualify the members of that bench (or District Judge) from dealing with a later trial of the case. Recent case law suggests, however, that this should not be an issue.*

- *The defence having full instructions from their client;*

- *The prosecutor at court being in a position to discuss the case issues and make decisions on alternative charges etc.*

- *The PTR being conducted robustly to ensure that all issues are dealt with and explored thoroughly. These will include:*

- *Witness requirements, i.e. those whose evidence is agreed and those who are required to attend the trial;*
- *Witnesses who can be tendered to the defence;*
- *Evidence which can be agreed under section 10 Criminal Justice Act 1967;*
- *Disclosure of unused material;*
- *The issues in the case;*
- *The likely length of trial.*

4.81 The guide points out that "if any one of these factors is absent, the objectives of the PTR will be frustrated and may lead to its adjournment." All the factors identified as success criteria were confirmed by this inspection, particularly the need for PTRs to be conducted by experienced staff. Inspectors recommend below that local COG/Shadow LCJBs review the effectiveness of their PTR procedures against these good practice criteria. Any subsequent changes should be monitored through the CIVTM process.

4.82 The importance of a proactive legal adviser who is prepared to explore issues fully with both parties was regarded as of paramount importance by most interviewees. There was also recognition that not all legal advisers had the necessary skills, and that training in the handling of PTRs may be required. One of the strengths of District Judges was seen as their ability to manage PTRs effectively. Inspectors suggest that where such expertise is available to them, District Judges are invited to assist with any training of legal advisers.

4.83 There was also general recognition that the CPS needed to be represented by an experienced in-house lawyer who was able and willing to make decisions. Although there would still be cases where consultation with the police or the victim was necessary, CPS managers acknowledged that some prosecutors were reluctant to take decisions on cases that had been reviewed by other prosecutors. Instructing agents to deal with PTRs was accepted as inappropriate because that agent would usually need to refer to a CPS lawyer before taking any decisions of substance on a case.

"You need to have an experienced CPS lawyer who is prepared to make decisions and has read the file. You also need a proactive court clerk who will question both parties and find out what the defence is. Some clerks are very good at this, but others not so." Defence Lawyer

"Within the right culture, PTRs work well." Defence Lawyer

4.84 Inspectors also found that the use of proformas to ensure a structured approach to the PTR was widespread. Most proformas are completed in the courtroom by the legal adviser.

However, in one area both prosecution and defence receive a copy of the PTR proforma before the PTR in the expectation that they complete the proforma before the PTR. This approach has the potential to focus attention on any areas of dispute so that the court can proceed more efficiently and there is greater time to discuss the relevant issues. If time for such discussions is not available the hearing will be little more than a trial fixing exercise. The creation of dedicated PTR courts, with a set number of PTRs, was identified as an important factor in trying to improve the effectiveness of PTRs. Inspectors consider that the lists in PTR courts must be built with a view to providing sufficient time to give productive outcomes.

In order to maximise the benefit of the PTR [and EAH], CPS lawyers are scheduled to attend the police station the following day, when a senior police administrative support officer is available to discuss issues arising from the hearing so that additional police work is focussed on the specific needs of the case.	✓

4.85 The defence also has an important role in making PTRs work. Inspectors were told that the culture within some areas is for defence solicitors to negate the effectiveness of the PTR process by a blanket refusal to raise issues at this stage. Their determination to put the prosecution 'to proof' means that little meaningful discussion can take place. Additionally, the effectiveness of PTRs can be undermined by poor preparation on the part of the prosecution. There are no effective sanctions on either party for failure to comply with the directions of the court, or to prepare adequately.

4.86 The strengths and weaknesses of particular PTR processes will vary from area to area and should be subject to local scrutiny, aside from any external sanctions which may be imposed. There is much to be done to ensure that the PTR process contributes effectively to the case management of not-guilty cases. See the recommendations at paragraphs 4.69 and 4.94.

Role of the defendant and defence solicitor

4.87 The defendant and defence solicitor have important parts to play in making the overall trial process efficient. The CIVTM analysis at paragraphs 4.37 ff illustrate this**.** A late change of plea by the defendant accounted for 36% of cracked trials, and 18% of trials were ineffective because the defendant failed to attend[55]. Inspectors found a perception among some in the police, CPS and the magistrates' courts that a minority of defence solicitors "played the system". As a consequence there was a reluctance to agree witness evidence under section 9 Criminal Justice Act 1967 and guilty pleas would only be entered on the day of trial. Inspectors also found a common perception that, even though the Criminal Defence Service now franchises defence solicitors, they remain largely unaccountable.

4.88 Some of this frustration arises from the adversarial nature of criminal proceedings themselves. Defence solicitors are bound to act on their clients' instructions and in their best interests. This may well extend to putting the prosecution to proof of its case. There will always be defendants who mislead their solicitors and delay entering a guilty plea, either in the hope that the prosecution make a mistake or to delay the day of judgement. Changing such attitudes to the trial process will depend on factors like the efficiency and effectiveness of the prosecution trial preparation and the discounts for early guilty pleas.

[55] This does not include defendants who fail to attend through illness, or are not produced from custody.

Early Guilty Pleas

4.89 In order to encourage speedy progress of cases, the Narey reforms also introduced the concept of a discount for early guilty plea. Many interviewees commented that the potential discount available to defendants for the provision of an early guilty plea was not always actively marketed by the court. In particular, the lack of a clear sliding scale of discount during the duration of a case was frequently mentioned. However, this issue had been recognised in some areas where a more systematic approach was taken to advising defendants of plea discounts. Inspectors were pleased to note that the *Justice for All* White Paper indicates a strengthening of the arrangements for early guilty plea discounts.

In one area, a written explanation is provided to the defendant in the presence of their solicitor of the discount for an early guilty plea at the time of charge. ✓

At one courthouse, an agreed form of words is distributed to magistrates to deliver to defendants emphasising the provision of a discount for an early guilty plea by highlighting initially the sentence that would have been imposed before indicating the discount that had reduced the sentence.

4.90 It is to the benefit of the court process that as many cases as possible are resolved quickly in order to reduce the resource costs to the agencies involved. Various disincentives to offering an early guilty plea were highlighted to Inspectors during interviews. For example, defence solicitors confirmed there was a potential incentive for prisoners remanded in custody to delay their plea in order to retain remand status (which attracts greater privileges, principally increased visiting rights). The importance of tackling such potential disincentives has stimulated a study by the Home Office into Why Defendants Plead Guilty So Late. In view of this work, which is due to report in the Autumn 2002, the thematic review did not seek to anticipate the findings through its own work.

4.91 There was also a common perception amongst a number of interviewees that the present payment system for defence solicitors provided a possible financial incentive to delay a decision on plea until the day of the trial. Most defence solicitors suggested that in fact it was likely to be more profitable for defence solicitors to have a speedier throughput of cases rather than to delay for trial. They also acknowledged that some solicitors might find it financially advantageous to delay plea, for example where their client list is small. However, it was a widely-held view that the fact that the enhanced fee rate is generally only paid on the date of trial does not assist the effectiveness of the PTR process.

4.92 The potential disincentive does not exist in the case of salaried defenders and Inspectors encourage the CDS to include a comparison of their performance in the evaluation of the salaried defender pilot. CDS has indicated that it is likely to undertake a review of the current fixed fee scheme. While Inspectors recognise the importance of properly funding work for defence where a denial to the charge has been appropriately entered, there is scope for CDS to address the potential disincentive when it reviews its fee structure. Inspectors suggest that any such review should focus on relating payments more closely to key inputs to the courtroom process.

Defence Statement

4.93 Inspectors found courts sometimes had difficulty in establishing the issues for trial at the PTR. It is important to do so because of the impact on which witnesses are required to give evidence in person and the length of time to be allocated to the trial. The Criminal

Proceedings and Investigations Act 1996 provides for the service of a defence statement[56], but this provision is little used in the magistrates' courts. Even where defence statements are served, they tend to be of limited value in narrowing the issues for trial. Nonetheless Inspectors think the provision of a type of defence statement, following appropriate disclosure of the prosecution case, merits further consideration. Inspectors would encourage the CDS to look to the possibility of tying payment to the production in court of evidence of work undertaken – a possible defence 'statement of issues' at PTR for example.

☞ In one CJS area the Criminal Defence Service has agreed to pay the enhanced rate to defence solicitors at the PTR stage, if the trial date and PTR are set at the same time. This reflects the belief that the advocate would be 'trial ready' at that point.

4.94 Inspectors found that wasted costs orders were not generally regarded as effective sanctions on either prosecution or defence. See below paragraphs 4.98 ff. In order to ensure that the defence contributes effectively to case management and in the absence of other effective sanctions, Inspectors consider there is scope for the CDS to use its inspection powers to ensure the accountability of publicly-funded advocates. In particular such inspections should focus on checking the working practices of those solicitors who regularly have a significantly higher than average rate of cracked trials.

Recommended: that the Criminal Defence Service

- **audit the work practices of those firms in an area which have regularly have a significantly higher % of late guilty pleas on day of trial compared with other firms**
- **consider including provision for the production of a defence 'issues' statement within the fee structure**
- **review the fee structure with a view to supporting the proper entry of early guilty pleas compatible with the interests of justice**

Case progression officers

4.95 Inspectors found that the case progression role (stimulated by additional funding allocated by LCD) was being developed in a variety of ways in the magistrates' courts. The principal aim of the role is to ensure that trials proceed effectively. In some MCCs, a person has been recruited specifically as a Case Progression Officer (CPO), but in other MCCs the role was undertaken by an existing member of staff, principally the listing officer. Where existing staff were given the role, some MCCs had restructured the post to ensure that the person had sufficient time for the new responsibilities involved but in others, individuals were expected to add the role to their current workload. Whatever the job title of the person carrying the case progression role, sufficient resource needs to be allocated to allow the role to be fully developed. Inspectors found that many CPOs were unable to spend sufficient time checking on readiness for trial because they had other pressing work demanding their attention.

4.96 Inspectors consider that the role has considerable potential in managing compliance with directions and the trial preparation process in general. Inspectors found the role worked particularly well where the CPO had been delegated sufficient authority to deal with uncontested adjournments. However, the activities undertaken by CPOs varied. Some individuals actively sought information and others merely received communications from the parties to the cases. At Annex J Inspectors propose some activities which could usefully be undertaken by a CPO (and/or a listing officer, depending upon the workload) and the

[56] The service of a defence statement is required if the defence want the prosecution to make secondary disclosure of the unused material.

competences necessary for the role. Previous thematic reports have made suggestions for improving case progression. For example in the joint report *Reducing Delay in the Youth Justice System*, there is a useful list of recommendations and good practice[57], many of which can be adapted for use in the adult court. Although much of the work focuses on progressing individual cases, Inspectors share the view of one JCE who said that CPOs should "form links with performance managers in other agencies, particularly the CPS, to meet together to discuss how better to manage cases through the system".

In one area the magistrates' court had used funding for case progression to "beef-up" the role of the listing officers and provide them with assistants so the listing officers could carry out the higher level case progression role in relation to individual cases. The listing officers began by looking at the long running cases, and were now addressing trends in cases. To assist in this they have started holding monthly meetings with the CPS and a senior legal adviser, as well as monitoring the available performance data eg cracked/ineffective trial data. The defence have also been invited to the monthly meetings but have not yet attended. In addition, the listing officers have been given delegated authority to deal with requests for adjournments or, in some cases, fix trial dates. ✓

In another area some of the listing officer's existing work had been re-allocated to enable her to carry out the case progression role. She had already established a close working relationship with both defence and CPS and had become the focus for all applications to adjourn trials. She was proactive in checking whether trials were ready to proceed. She held regular meetings with CPS, defence and police to deal with operational issues arising out of listing. In her court centre the effective trial rate was 52%, significantly higher than the national average.

4.97 The development of a CPS case progression role in summary trial preparation had started in several areas. It builds on the existing experience of case progression in persistent young offender cases, and in the management of Crown Court cases. Inspectors suggest there are considerable benefits in having a Case Progression Officer within CPS and encourage Chief Crown Prosecutors to contemplate developing such a role. It would assist in developing good lines of communication essential for individual case tracking and encourage proactive seeking of information prior to PTR and trial dates. It would also encourage the development of a culture of joint performance management of the trial preparation process.

Sanctions

4.98 The court can order costs for any unnecessary or improper act against the parties to the proceedings[58]. They are the CPS and the defendant. It cannot order costs at present against the police, even where the police are responsible for the unnecessary or improper act. The court can also order that the prosecution or defence representative pay the wasted costs as a result of any improper, unreasonable or negligent by that person[59]. These sanctions may be appropriate when cases crack or are ineffective and are adjourned. However, for a number of reasons, they are used infrequently.

4.99 The magistrates' courts have found it difficult to identify a failure by an individual sufficient to base an award of wasted costs against that person. It would usually require a long and painstaking enquiry before a court could be satisfied of the full facts in the case. This means

[57] see Annex C, *Joint Inspection of the Progress made in Reducing Delay in the Youth Justice System*, MCSI, February 2001

[58] section 19 Prosecution of Offences Act 1985

[59] section 19A Prosecution of Offences Act 1985

that costs, if ordered, are generally against the parties to the proceedings. In the case of the CPS, there is no need for the court to differentiate between a collective failure by CPS or police, albeit the court may well be reluctant to order costs against the CPS if it thinks that it is really a police failure. Magistrates rightly see an award of costs against the CPS as a way of sending a message to senior CPS managers. Inspectors consider that courts should have a similar power in relation to failures by the police.

4.100 On the other hand an award against the defendant in person is more problematic. There is the difficulty of establishing whether the defendant or his solicitor was really to blame. Even if the defendant is clearly culpable, there is the question of whether the defendant has the means to pay. There is a further limitation to the award of costs against the defendant, or his representative. Costs can only be ordered in respect of costs incurred by the CPS. These include the costs of time spent on the case, and the expenses paid to civilian witnesses. The CPS does not however make any payment for police officer attendance, and so costs cannot extend to wasted police time.

4.101 Magistrates have the power to issue case management directions to both prosecution and defence but there are no direct sanctions available to them if either party does not comply. There is little incentive therefore for defence advocates to be pro-active in seeking to meet their clients in advance of hearings, even when directed to do so. Inspectors consider that the lack of a method of enforcing directions undermines the ability of the court to manage cases efficiently.

Recommended: that the Home Office consider establishing sanctions for failure to progress cases and failure to meet case management directions by any agency responsible for the failure

4.102 Pro-actively addressing shortfalls in performance, however, is an approach which will reduce the need for formal sanctions.

✓ In one CJS area, the police recognised the unacceptable number of cracked, ineffective and vacated trials and their impact on police witness attendance. The force has identified those activities it can impact upon and has established a force performance indicator to reduce cracked ineffective and vacated trials by 10%.

The performance indicator is only part though, of an overall strategic approach and performance management framework and culture which cover the force's responsibilities to the criminal justice system. The force's *Strategic Approach To Criminal Justice* document outlines the responsibilities of not only front line police officers, but also local Commanders and the contribution of the Chief Officers' Group to increased performance. The accountability framework involves twice monthly accountability reviews being held between the Deputy Chief Constable and Commanders. In addition, criminal justice statistics appear as a standing agenda item on the monthly accountability review meetings attended by all operational Superintendents in the force. The force has also incorporated the key contribution of line supervisors in quality assuring officers contributions. As a consequence, force promotion selection processes require candidates to display competency in file preparation.

Witnesses

4.103 Experiences civilian witnesses have with the criminal justice system have a material effect on the likelihood of their agreeing to be a witness in the future.[60] Not only does witness

[60] See Home Office Research Study 230 on Witness Satisfaction October 2001.

dissatisfaction contribute to a lack of confidence in the criminal justice system but it has a direct impact on its future effectiveness. The analysis of the CIVTM data for this report shows that 33 % of ineffective trials and 8 % of cracked trials are due to the non-attendance of witnesses. Inconvenience to witnesses in choosing trial dates also causes concern to individuals and, in the case of professional witnesses (particularly the police) considerable additional resource cost.

4.104 One reason why witnesses may not attend trials, is if they are intimidated by the court process or the defendant. Victim Support and the local witness services are providing valuable support to people in these circumstances. Inspectors found some confusion amongst practitioners as to who falls within the category of a vulnerable witness, as defined by s16 of the Youth Justice and Criminal Evidence Act 1999, and how this Act applies in the magistrates' courts (when it comes into force in July 2002). Various special measures[61] are set out in the Act. Implementation in the magistrates' courts will, in the first place, be limited to the use of TV links and video evidence for the most vulnerable child witnesses, until the other measures (such as clearing the court, use of intermediaries, etc) are evaluated in the Crown Court. However, the magistrates' courts will still have their inherent powers to make arrangements for vulnerable witnesses as they see fit, while the formal measures - set out in the Act – are being introduced and evaluated.

4.105 The following sections examine some aspects of the trial process as they affect witnesses. As part of the research for the thematic review, two studies were carried out. The studies focussed on police witness attendance since they represent the highest numbers of professional witnesses, and it has been a major source of concern to Chief Officers of Police.

Police witness attendance

4.106 The inspection team found a perception amongst several non-police interviewees that police shift systems were inflexible and did not meet the needs of the modern criminal justice system. On further exploration however, it is apparent that the main difficulties are caused by those instances (particular large public order cases) where it is impossible to arrange a mutually convenient trial date for all police officers involved in a case within reasonable timescales. These difficulties arise fairly often however, given that initial responses to these incidents could potentially be resourced by officers from different police units and specialist departments, all of whom could be working different tours of duty. Consequently, subsequent mutually convenient trial dates may be difficult to establish.

4.107 The court's own drive to reduce delay and meet case completion targets can produce unwanted outcomes which inconvenience witnesses and increase the cost to police. It is clear that decisions about listing for trial are on occasion driven by the court's own performance targets rather than attempting to find a date which meets witness availability.

"If I could fix a trial date in 3 weeks (ie there was room in the court), but witness availability would mean that it would be pushed out for 6 weeks so as not to inconvenience anybody, I would have to think very carefully about allowing a 6 week trial date." Legal Adviser

4.108 In order for the court to minimise any potential impact on witnesses, it is essential however, that witness availability is provided for both police and non-police witnesses and is accurate. Provision of accurate witness availability is essential to not only enable the court to select where possible a mutually convenient date for witnesses but also to ensure the police

[61] Recommended in the report *Speaking up for Justice*, Home Office, June 1998

minimise the abstractions and resource costs created by officers being called to give evidence on inconvenient dates.

4.109 Costs to police forces of calling officers on inconvenient dates can by high. For example, depending on the period of notification, officers who are called to give evidence on a rest day or annual leave are entitled to enhanced payment which incurs significant costs for forces as well as officers suffering disruption to any domestic arrangements planned. The period of notification for cancellation of a rest day is crucial given that short timescales attract significant financial penalties under Police Regulations, whereas extended notice attracts none. The following table illustrates the repercussions:

Notice given of cancellation	Compensation applicable
15 days or more	No financial penalty – Replacement Rest Day allocated
8-14 days	Payment at the rate of x 1.5
Less than 8 days	Payment at the rate of x 2

4.110 It is therefore, crucial that appropriate notification is given to the police if the cancellation of a rest day to attend court is necessary. The following research by police forces indicates at its extreme the collective impact of rest day cancellations:

☞ In Police Force A, a force survey identified that 20% of court attendance was on a rest day, with an estimated 1,380 rest days lost annually to court attendance. The financial penalties for forces from cancellation of rest days can therefore be significant In Police Force B, the force calculated that the notional cost of court attendance on a rest day, annual leave and from a night shift could be £419,000 per year (approximately 15 police constable posts per year). In Police Force C, research estimates for court attendance on a rest day were put at best at £84,000 and at worst £228,000. In Police Force A, the annual cost of court attendance on a rest day was estimated at £74,000. In Police Force D, court attendance on a rest day and annual leave was estimated to cost the force £158,000

4.111 It is evident that provided sufficient notice is given, not all rest day cancellations will result in financial penalties for police forces. Nevertheless, taking the average of the above potential costs and applying them to each of the 43 police forces would result in an annual cost to the Police Service attributable to attendance at magistrates' court on rest days and annual leave of £7.9 million.

4.112 Aside from the financial cost, at its extreme, cancellation of an annual leave day could potentially require an officer to cut short a planned holiday. Although the process of cancellation of rest days and annual leave brings enhanced financial rewards, it is often cited as a significant demotivating factor for officers due to the disruption involved to their domestic arrangements. Even where rest days have initially been cancelled for court attendance but subsequently reinstated, depending on the timing there are still financial penalties incurred for forces, as illustrated below:

Notice given of reinstatement	Compensation applicable
More than 7 days less than 15 days	Rest day still taken with no compensation
Less than 8 days	The officer has the choice to take the reinstated rest day or work for enhanced payment at Rest day rate.

4.113 In addition to these penalties, listing trials on night shifts, particularly after the first night shift can result in officers having to gradually modify their tours of duty to ensure they are given appropriate time to recuperate before beginning to work a day shift to attend court.

4.114 This can create significant abstraction problems for some forces in that officers can be abstracted from the complement of officers available at night for several days. It is then almost impossible to arrange the rescheduling of other officers' duties to cover the entire night shift duty, due to the need to observe police regulations and protect officers from having unreasonable alterations to their shift patterns. Research conducted in Police Force A, estimated that 1,260 night shifts in that force are potentially affected through court appearances over a one year period.

4.115 Depending on the shift systems operated, a request for an officer to attend court on a tour of duty after the first night shift can involve alteration of two or three other officers' duties. It can also cause disruption to domestic arrangements and yet only partly covers the absence caused by the court attendance. These alterations can also sometimes involve the payment of overtime. There are clear incentives, therefore for forces to ensure listing officers are both aware of the implication of court attendance on planned night shifts and to ensure witness availability remains accurate.

4.116 There is also an incentive for forces to provide accurate availability to avoid where possible officers being called to give evidence on a date set aside for training course attendance. In-force streamlining of course content to reduce the period of abstraction for operational officers has placed an increased emphasis on the need for officers to receive all the requisite training input. Withdrawal from a course at a critical stage (which already may have caused prolonged absence from operational duties), could result in the officer's entire course attendance having to be rescheduled causing further abstractions from operational duties. Any reduction in the ability of forces to ensure that all officers are adequately trained ultimately impacts on operational police performance.

In one CJS area a computerised link has been established between the force's computerised duty management system and a computer terminal in the local court listing officer's office. The computer facility allows the listing officer to interrogate the system at the time a trial date is to be set to print off MG 10 witness availability forms for all relevant officers in the case. These are then used by the listing officer to advise the court of a suitable trial date. ✓

In one large metropolitan area, notification is sent to the police the day before a PTR requesting the provision of an up to date MG 10 police witness availability form. This is then used on the day of the PTR to set the trial date.

4.117 The need for accurate and timely police witness availability being made available to the court is critical. It therefore makes the implications of the following inspection team research findings even more compelling.

MG 10 Witness Availability Forms – Inspection Research Study

4.118 As part of the review, an exercise was undertaken to establish the presence of, and accuracy of, police witness availability forms (MG 10s) present on a selected number of CPS trial files. The files covered all effective trials in a two-week period in five CJS areas. All the MG 10s were examined to establish if they covered the relevant trial date. The team then assessed the extent to which the CPS file copy MG 10 mirrored the officers' actual duties for the same period up to the trial date as recorded at the relevant police station. The full methodology can be found in Annex M.

Overview of Findings

4.119 Overall, the inspection team found that the majority of CPS files examined did incorporate an MG 10 for those selected officers and the vast majority of these covered the relevant trial

date. The exercise identified though, major discrepancies between the CPS file copy MG 10 and the officer's corresponding duties as recorded at the police station. In essence, a significant number of individual officer's tours of duty had been changed after the CPS file copy MG 10 had been submitted; duty changes which police forces would have wanted the courts to have been aware of in when setting trial dates. The CPS, it would appear in the vast majority of cases, had not been updated of these changes or supplied with a revised MG 10.

4.120 The potential impact of these amendments not being brought to the courts attention is that trial dates could have been set on dates which had subsequently become night shifts, rest days or annual leave for officers. Not only could this have then resulted in unnecessary duty changes for fellow officers, it could also have resulted in significant financial penalties for forces in terms of rest day payments and cancellation of annual leave. It could also potentially explain the perception amongst some police staff that court officials appear to take little cognisance of the MG 10 in attempting to reach a convenient trial date.

Main Findings

4.121 Given the number of police witnesses attending magistrates' courts and the real concerns expressed on numerous occasions by senior police officers about the resource costs involved if officers are called inconveniently, Inspectors consider it worth reproducing the findings in detail here and in Annex L and M. In brief, the research identified the following:

☞ A total of 76 (81%) of the 94 files in the file sample were found to have a MG 10 which covered the relevant trial date. One area recorded 100% valid MG 10's in its file sample.

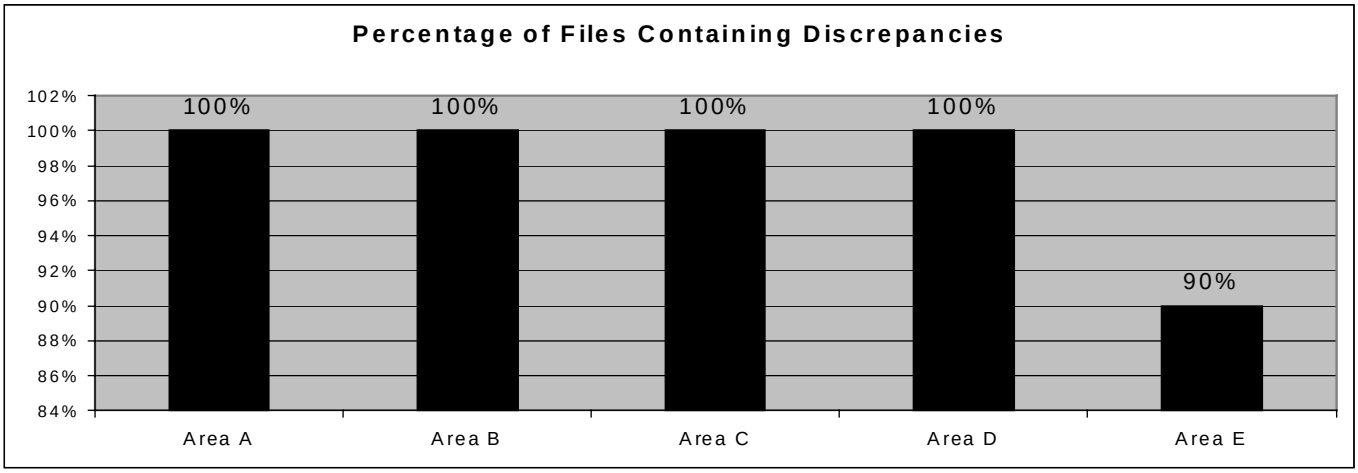
Where an initial MG 10 had not been supplied with the initial file and had subsequently been requested (in 34 cases), a response from the police varied from on the day to 25 days.

Where an initial MG 10 had been supplied with the police file but an updated one had subsequently been requested (in 14 cases), delays in the response from the police again varied from on the day to 25 days.

Where an MG 10 had been supplied, in 8 cases the MG 10 had only rest days marked with no other interim duties.

Discrepancy Analysis

4.122 Inspectors analysed the data in order to identify what discrepancies had occurred. In respect of overall discrepancies between the CPS file copy MG 10 and the corresponding police station duties, the inspection found the following:



4.123 It can be seen that, of the five areas sampled, only one police force had any MG 10's which did not contain any discrepancies. Even in that instance, the percentage of accurate MG 10's in reality represented only **one** MG 10. The inspection identified that, not only was there a very high number of MG 10's which were inaccurate, the number of inaccuracies for each of those MG 10's and for the overall area was also disturbing.

Area (Number of MG10s in sample)[1]	Minimum number of discrepancies (number of files)	Maximum number of discrepancies (number of files)	Files containing between 1-10 discrepancies	Files containing 11 or more discrepancies	Total Number of discrepancies for file sample	Mean average	Mean average excluding extreme case
Area A (8)	5 (1)	37 (1)	3	5	151	19	16
Area B (11)	3 (1)	80 (1)	6	5	205	19	13
Area C (20)	1 (2)	80 (1)	8	12	399	20	17
Area D (16)	1 (1)	46 (1)	11	5	195	12	10
Area E (10)	0 (1)	14 (2)	7	2	81	8	7

[1]Sample excludes files where there was No MG10, the MG10 was expired, the MG10 was blank and cases for which police duties were unobtainable.

4.124 Whilst some of the MG 10's analysed varied in the length of time they covered, even some MG 10's covering relatively short periods contained a high proportion of discrepancies. In one case, an MG 10 supplied only a few days prior to a PTR being held to set the trial date, contained 7 discrepancies out of the 15 duties detailed. On a further MG 10, 37 out of the 82 duties detailed contained discrepancies, one of which related to the fact that on the trial date the CPS file MG 10 indicated the officer was available, when in fact they were on a rest day. This is a clear illustration of the resourcing implications inaccurate police witness availability can have for police forces.

4.125 Some of the discrepancies identified referred to duties at a weekend and hence would not normally have had resource implications for forces. The research however undertook to examine the MG 10 from each force area which contained the most discrepancies and analysed the proportion of discrepancies occurring on weekdays only. The following table illustrates the findings. It can be seen, that despite the removal of discrepancies occurring at weekends, there still remain an alarming number of disparities.

Area	Number of discrepancies excluding Saturdays and Sundays	Duration of MG10 (days)	Number of discrepancies per 10 days
Area A	24	119	2
Area B	46	153	3
Area C	52	134	3.88
Area D	32	142	2.25
Area E	14 14	66 81	2.12 1.72

4.126 The research also profiled the nature of the discrepancies in order to determine the level of their impact. The potential disruption and resource impact caused by discrepancies can vary according to both their nature and the relationship between what is recorded on the CPS file copy MG 10 compared to the police station duties and vice versa. For example, where a discrepancy involves a CPS copy MG 10 detailing an officer available and the corresponding

police duty record shows an officer is on a rest day is more immediately problematic for the police than if the discrepancies were the other way round.

4.127 However, from both the courts' and police perspective, if the police station duties did detail the officer as available and the CPS copy details the officer as on rest day, this impacts on both parties. In respect of the court, this permutation represents a missed opportunity potentially to list a case earlier. In relation to the police, the subsequent delay in listing the case increases the likelihood that an inconvenient date will ultimately have to be selected for operational police officers, which could involve the cancellation of a rest day.

4.128 The following tables illustrate a summary of the nature of key discrepancies identified during the inspection which could have had an impact on the police, courts, victims and witnesses had the court selected or been able to select those dates for a trial:

CATEGORY		Total number of occasions discrepancy occurred					
Police Duties registering officer as:	Court MG 10 registering officer as:	Area A	Area B	Area C	Area D	Area E	Totals
Available	Course	1	5	3	0	0	9
Available	Rest Day	1	47	47	37	17	149
Available	Annual Leave	2	3	1	6	0	12
Available	Night Shift	15	8	28	20	15	86
Available	Other	0	0	3	2	0	5
Available	Court	0	0	0	0	2	2
Totals		19	63	82	65	34	263

CATEGORY		Total number of occasions discrepancy occurred					
Court MG 10 registering officer as:	Police Duties registering officer as:	Area A	Area B	Area C	Area D	Area E	Totals
Available	Course	23	0	65	22	8	116
Available	Rest Day	14	56	55	17	9	143
Available	Annual Leave	4	3	41	29	2	78
Available	Night Shift	39	1	51	5	15	109
Available	Other	0	19	1	0	0	20
Available	Court	2	2	6	8	0	18
Totals		81	34	208	79	82	484

4.129 From the MG 10s examined, there were a total of 263 dates which were available on which to set a convenient trial date for officers but which were not evident to the court due to the CPS file copy MG 10 being inaccurate. In addition, the research identified that there were a total 484 dates when there was potential for officers to be listed for an inconvenient trial date due to the court MG 10 detailing the officer was available, when in fact the police station duties had them detailed to a duty that they would wish to be preserved. Of these:

- 143 dates could have resulted in the cancellation of officer's rest days.
- 78 dates could have resulted in the cancellation of officer's annual leave.

- 109 dates could have resulted in officer's having to attend court off a night shift with potential impact over several days, possibly overtime and inconvenience to other officers

MG 10 system problems

4.130 Clearly such overall inaccuracies on MG 10's lead to avoidable resource costs to police forces. The inaccuracy of a significant number of MG 10's also largely contributes to the frustration felt by officers concerning the listing of trials on inconvenient dates. From the research the inspection team identified a number of inherent problems with present practices concerning the provision of MG 10 witness availability information:

- Once an MG 10 form has been submitted with the initial file, there does not appear to be a routine mechanism in place to ensure that an updated MG 10 is provided to the court either upon a duty change or, more feasibly, immediately prior to a trial date being set. This appears in part due to the fact that case officers often do not have ready access, the time or incentive to monitor the progress of the multitude of cases they deal with. They would therefore, not be aware of individual case progression and which cases were proceeding to trial and required an updated MG 10. In addition, unless forces enter into an arrangement with the CPS to trigger a request, there will be no action to request an updated MG 10 prior to setting a trial date.
- Where a mechanism has been developed to request an updated MG 10 (e.g. where the CPS notify the force the day prior to the PTR), even though the principle is sound, compliance is not always achieved in order to ensure the accurate provision of police witness availability. In one force where MG 10's are supplied from prompts from the CPS, it was highlighted to the inspection team that despite duty officers apparently undertaking duty updating on a daily basis, there was still a major degree of inaccuracy with officers' duties.
- Where technology has been introduced to facilitate live access to availability its full benefit is sometimes undermined due to the delayed updating of duties. In one force, where officers supply an updated MG10 to a central unit to update the centralised computer, Inspectors were informed that some officers have not updated their duties since the end of 2000.
- where rest day patterns are automatically printed on the MG 10 for officers, in some cases the entire interim duties are left completely blank, incorrectly suggesting an officer's availability.

4.131 It is evident that police forces stand to gain significant resource benefits from the provision of more accurate MG 10 witness availability to the court. Research already discussed above has identified the significant financial cost alone associated with court attendance on a rest day. However, the benefits of getting the MG 10 process right do not only accrue to the police. The trial listing process itself stands to make significant gains if the correct information is supplied to the court regarding witness availability.

4.132 There is clear potential to improve the accuracy and availability of police witness information however, through the use of technology. However, even some advanced technological solutions were found during the inspection to falter due to a failure to ensure that the data on IT systems remained up to date. Irrespective of the mechanism to be employed in providing witness availability, the inspection team's findings illustrate that the present shortfalls in compliance can neither be justified nor allowed to continue. Chief Officers of Police have it within their power to reduce the unnecessary costs incurred by poor information. In doing so, forces are urged to consider the benefits of establishing a technology-based solution supported by appropriate quality assurance mechanisms.

Recommended: that Chief Officers of Police:

- **urgently review the present methods by which their force provides police and civilian witness availability to the CPS to ensure that the information available to the court at the time the trial date is set, is both timely and accurate. In doing so, forces are urged to consider the benefits of establishing a technology based solution supported by appropriate quality assurance mechanisms.**
- **negotiate an agreed set of criteria for calling police witnesses which minimises disruption to both individuals and forces**

Reducing resource costs due to inconvenient trial dates

4.133 Having accurate information is only the first step in ensuring that the cost to police resources is minimised. While there are sometimes competing pressures which can potentially influence the listing of trial dates, there are justifiably strong representations from the police to ensure that where possible trials are listed either on a convenient date for all officers involved or on a date which causes the least impact.

4.134 As is apparent from the above findings, the frustration felt by officers concerning the perceived frequent listing of trials on inconvenient dates could be reduced by increasing the accuracy of the information. However, it is clear that most officers who attend court as a witness do not realise the complexity of listing a trial which will fulfil both the aspirations of meeting witnesses needs and the overall desire not to delay the proceedings unduly. Equally legal advisers need to be aware of the implications of setting trial dates which cause police officers to change their duties. There is scope to improve mutual understanding of the complications of listing between the police and MCC's and thereby ease some of this evident frustration.

4.135 Some police forces have pro-actively briefed court officials to apprise them of the implications of calling officers on rest days and annual leave and certain tours of duty to provide greater awareness over abstractions. The need to ensure that trial dates cause the least disruption to officers' operational duties has become an increasingly important issue given the pressure to reduce abstractions and facilitate high visibility policing. In particular, one chief officer of police spoke of the increasing difficulty experienced in managing course attendance to ensure officers received the full input. The thematic research study of MG10s identified that this situation is not helped by their inaccuracy (118 dates had officers recorded as available on the CPS MG10, when they were in fact on a course).

In Police Force A, negotiations with the magistrates' court had ensured that, where it is necessary to list trials during a night shift period, legal advisers are aware that they should only list on the first night shift tour of duty to minimise alterations to officers' duties. ✓

In Police Force B, the locally agreed listing protocol incorporates a section covering the courts commitment to avoiding where possible calling officers to attend court on certain inconvenient dates.

In Police Force C, local chief officers have developed a listing protocol specifically concerning the implications of calling officers to attend court to give evidence on inconvenient dates. The protocol details the entitlements and impact under Police Regulations and outlines that the local TIG will undertake to set and monitor targets to reduce police witness costs involved in court attendance. The protocol, signed by the main CJS agencies, incorporates an agreement that:

'All agencies involved in the Criminal Justice Process, particularly the Crown and Magistrates' Courts together with the CPS, should ensure that, as a general rule, no officer should be called to court on rest day or annual leave. (Where the appropriate

availability document, MG10 has been correctly completed.) Where this is unavoidable and only in exceptional circumstances, the justification should be recorded and relayed back to the relevant Criminal Justice Unit'

(The protocol makes exemptions for certain Crown Court cases.)

4.136 In listing trial dates however, it has to be recognised that courts have a responsibility to ensure that each case progresses with sufficient speed to facilitate a just outcome. Clear tensions begin to emerge therefore where legal advisers have to balance the request of several professional witnesses to avoid inconvenient dates with their duty to ensure speedy case progression. In some instances, setting trial dates sympathetic to all professional witnesses can result in inordinate delays. Few MCC's had established a protocol which incorporated their policy on this particular aspect. There is clearly merit in all MCCs ensuring the incorporation of appropriate detail in any listing protocols developed to promote inter-agency understanding of listing policies.

4.137 Inspectors suggest that Chief Officers of Police establish a mechanism to ensure that all local magistrates' courts staff are appropriately aware of the implications of calling officers on rest days, annual leave and specific tours of duty. There should be an agreed set of criteria for calling police witnesses which minimises disruption to both individuals and forces. This agreement should be incorporated into the local area listing protocol. (See recommendation 4.132 above.) Forces should negotiate and develop an inter-agency measurement system covering instances of police officer attendance at court on inconvenient dates to facilitate inter-agency problem solving and to monitor compliance. Forces should consider the additional merit of negotiating and monitoring targets with partner agencies to limit attendance of officers on certain inconvenient dates. The standard adjournment period agreed locally (see paragraph 4.3 above) should be communicated to partner Chief Officers of Police and be incorporated in the local area listing protocol.

Witness waiting times

4.138 One aspect identified as bearing significantly on witnesses' view of the court process is the length of time witnesses are required to wait. Several surveys have now been conducted which indicate that a considerable amount of time is spent by witnesses at the court building waiting to give evidence. The Joint Performance Management Witness Monitoring Exercise (November 2001)[62] calculated that the average civilian witness waiting time at magistrates' court was 1 hour 12 min. The figure for police officers was almost identical at 1 hour 14 min. These figures however, only represent the period of time from the appointed time the witness was asked to attend and being called to give evidence or released. It does not take account of travelling time to attend the court. Research in one force identified that on average, police officers spent 3.5 hours on court attendance, although this period could have incorporated some proportion of time actually spent giving evidence.

4.139 Of particular frustration to all witnesses however, is the number of occasions where they are asked to attend court to give evidence, incur waiting time, but are subsequently not required to give evidence. Figures from the above survey showed that only 48% of civilian witnesses and 36% of police officers eventually gave evidence. Officers confirmed to Inspectors the demotivating effect that cracked or ineffective trials have on them personally. For police forces waiting time occupies valuable resource time in a non-productive activity which when set against the emphasis on increased police visibility needs to be reduced to the minimum. The research study commissioned by the Home Office '*Diary of a Police Officer*' (2001) found that although only 0.6 % of the total survey time for all officers was spent attending court,

[62] See also Annex xxx

those officers who did attend court spent a third of their time in that activity. The research concluded that such a time commitment significantly impacts on an officer's ability to carry out other tasks.

4.140 It was a widely held view amongst interviewees that prosecution witnesses are often required to attend on the first morning of the trial not only to enable the CPS prosecutor to be aware of their attendance and if need be to speak to them, but also as one chief officer of police put it as part of the 'whites of the eyes syndrome'[63]. Some police witnesses identified instances where their presence appeared to be required for reasons other than the court appearance. Some police officers interviewed stated they had on occasions been used by CPS lawyers to carry out administrative tasks such as photocopying and to retrieve documents required on the day of the court which could have been requested in advance.

4.141 However, it is apparent that in some cases where officers are released, on occasions they choose to remain within the court to observe the case. Research in one police force identified that 8 % of officers reported remaining in the courtroom following being released, to observe the case. While officers may derive some benefit from observing the progress of the trial, it represents time when they could be engaged in other duties. Inspectors suggest that forces would benefit from assessing the extent to which the practice of remaining in court after giving evidence is prevalent and whether approaches need to be developed to regulate officers' continued attendance at court.

"Prosecutors should not require witnesses to attend at the beginning of a trial simply because they lack confidence in the system's ability to persuade witnesses to attend" Chief Crown Prosecutor

4.142 Some witness waiting is inevitable in half day or all day trials. While the court hearing should be structured to minimise the time spent by individual witnesses, attention should also be paid to ensuring that the expectations of witnesses are realistic about the length of time they would be likely to wait. The Witness Satisfaction Survey 2000 confirmed that witnesses who had a focus on waiting in order to ensure an effective outcome were less likely to feel dissatisfaction with their experience. Prosecutors and Witness Service personnel have a role to play in emphasising the value of the presence of the witness in ensuring that the trial is effective, or the reason for a guilty plea, rather than minimising the need to wait.

4.143 To overcome prolonged waiting times the option exists to stagger the attendance of witnesses. Inspectors found, however, that block listing the attendance of witnesses was not wide-spread. This approach tended to be adopted only for long trials (1-2 days). Magistrates' courts have a target to reduce witness waiting times and would welcome the opportunity to stagger witness attendance but the need for prosecutors to speak to all their witnesses in advance of the trial reduces the ability to block-list. The waiting time target aims to increase the number of witnesses whose waiting time was less than one hour from the time they are required to report to the time they give evidence. The latest statistics[64] show that 51% (target 50%) of witnesses waited one hour or less but the range across the 42 areas was from 30%-72%. The average waiting time ranges from 46 min to 2hr 03 min with an average of 1hr 24. Recognising the desire for CPS to be assured of individual witness attendance there is scope for greater staggering of witness attendance to take place. PTRs should be looking not only to identify witness attendance required, but also to set up initial staggering and standby arrangements.

4.144 Research conducted by MCSI in 21 MCCs during 2001-02, found that standby arrangements are not yet providing adequate support for witnesses. As a consequence police

[63] the hope that the defendant will plead guilty because of the presence of the witnesses.
[64] November 2001 JPM Witness Monitoring

officers, who could be employed on station duties during waiting periods, are kept unoccupied in court waiting areas. The table below shows the responses by courthouse identifying what standby arrangements were in place to accommodate witnesses. Inspectors found that the total number of pagers which were available for use in the 30 courthouses totalled 138. Of these 46 had been funded by LCD, 53 funded by the MCC and 28 funded in other ways.

Courthouse Analysis	Dedicated off-site facilities	Other standby arrangements (pagers/mobiles etc)	If standby available, witnesses are escorted to/from them	Pagers are provided
Total Yes	3	60	12	30
Total No	168	119	38	151
No answer given	14	3	30	4
Total 'not applicable'	---	3	105	---

4.145 Inspectors were encouraged to find that appropriate technology to assist in the management of witness attendance is currently being piloted in the Crown Court. The system provides for a variety of methods of contacting witnesses (telephone, text messaging etc) to alert them to the need to return to the courtroom. Although in its infancy and not yet fully evaluated, such features provide the potential for significant resource benefits for police forces and other professional witnesses, in particular. The principle of this method of witness notification, with appropriate planning, is transportable to the magistrates' courts environment with the potential for significant benefits to police resourcing. Inspectors would encourage LCD to extend the pilot to magistrates' courts as soon as feasible.

4.146 The Case Preparation and Progression Project will be looking at this issue and national guidance will be provided. However, local CJS agencies should be looking to work together now to reduce the impact of witness waiting time, particularly for professional witnesses. The under-use of pagers was explained to Inspectors as often arising from concerns about their potential loss or because suitable systems were not in place to facilitate their use. The extent to which professional witnesses can be released (and to what duties) pending their court appearance should be locally negotiated and publicised in an agreed protocol.

Recommended: that Chief Officer Groups/Shadow LCJBs explore the feasibility of establishing local witness warning arrangements to minimise unnecessary waiting time through the appropriate use of technology. Chief Officers of Police should thereafter develop a redeployment strategy to channel the freed police resource time into productive and measurable outcomes.

4.147 The magistrates' courts also must list in a way to reduce the inconvenience to witnesses, even if it has adverse implications for the use of courtrooms, or may keep magistrates waiting if trials collapse. Ultimately, Inspectors consider that single listing of trials would provide best treatment for witnesses. Given the current cracked trial rate, this may not be achievable immediately. As an interim measure, Inspectors suggest that the start of trials should be blocklisted. Improvements to estimation of trial should assist. See recommendation at paragraph 4.157 below.

Unnecessary Witness Attendance

4.148 Trials that crack or are ineffective result in significant numbers of witnesses and victims attending court unnecessarily. This, together with long waiting times at court before giving evidence, undermines the government's aims of meeting the needs of victims and witnesses in the CJS and of promoting public confidence in the CJS. Representatives of the Witness Service told the inspection team that it was not unusual for witnesses to leave court saying "never again". This is a serious outcome because the CJS is dependent on the willingness of witnesses to come forward and give evidence if required. Unnecessary attendance at court on inconvenient dates is the source of considerable frustration amongst the police.

4.149 The CIVTM analysis of 6048 cracked and ineffective trials over the three month period revealed the following unnecessary witness attendance:

Witness type	Number of unnecessary witness attendances
Police	4286
Adult civilian	3434
Child	421
Expert	68
TOTAL	8209

These statistics underscore the importance of reducing the cracked and ineffective trial rate as far as possible.

4.150 Inspectors also found a perception amongst the police that professional witnesses were being required to attend unnecessarily, even in those trials which were effective. Consequently Inspectors carried out a survey of a sample of 89 trial files from five CJS areas. Inspectors found that the attendance of 89 police officers and 15 civilian witnesses appeared potentially avoidable. It was notable that 38 of the police witnesses dealt solely with tape-recorded interviews. None of the witnesses were eyewitnesses to the alleged offending.

4.151 The reasons for unnecessary attendance were as follows:

Late/non service by police	8
Late/non service by CPS	10
Late acceptance at trial by defence	44
CPS failure to de warn	7
Other/reason for non acceptance unclear	35

4.152 These findings highlight the scope for both CPS and the police to improve the efficiency of their respective trial preparation. The high numbers of statements agreed at trial indicates

that more needs to be done to make the PTR a robust procedure to prevent unnecessary witness attendance at the trial.

4.153 Inspectors also found that it was common practice for CPS to serve a statement under section 9, *and* to warn the witness to attend in case the defence declined to accept the evidence. Such an approach is acceptable provided the CPS check with the defence to see whether attendance is required in default of any response from the defence. Better witness care could be provided by CPS undertaking a more pro-active role. Inspectors have already identified at paragraph 4.97 the good practice of having a pre trial check shortly before the trial and proposed the establishment of case progression officers to undertake such work. Inspectors consider such checks should extend to checking on acceptability of statements under section 9 Criminal Justice Act 1967 in order to reduce the unnecessary attendance of witnesses.

Recommended: that , in order to reduce the unnecessary attendance of witnesses, Chief Crown Prosecutors:

- **set up systems to ensure there is a final witness check with the defence a minimum of seven days before trial and**
- **monitor compliance**

Over listing trials

4.154 Overlisting[65] of trials is common. Our CIVTM analysis showed that 53.1% of trials were over listed. The practice is a response to the court's targets for avoiding delay in completing cases and courtroom usage in a situation where there is a high cracked and ineffective trial rate. The listing strategy for one area specifically provided for the over listing of trials, but also stated that the factor of overloading[66] should be related to the current cracked and ineffective trial rate.

4.155 However, over listing has a significant adverse impact on witness care. The policy relies on cases cracking or not being ready to proceed. This does not always happen. If more than one trial is ready to proceed, this leads either to a delay for witnesses before giving evidence or to the case being adjourned to another date. The CIVTM analysis shows that 12% of trials were ineffective because there was a lack of court time to deal with them. Witnesses may well be reluctant to attend an adjourned hearing[67]. This may in turn put pressure on the prosecution to crack the trial by accepting pleas to a lesser charge, or resolving the case by way of a bind over, in order to avoid the adjournment.

4.156 In areas where there is a high cracked and ineffective trial rate the priorities of reducing delay, making best use of courtrooms, and good witness care, conflict. The conflict can only be satisfactorily resolved by improving the trial preparation process to ensure a high probability that the case will proceed. The pressure for over listing will then be much reduced.

"We would like to reach single listing, but at the moment this is a nirvana." Justices' Clerk

4.157 Although over listing is a pragmatic response to the current high cracked and ineffective trial rate, Inspectors consider that the goal of improving the number of effective trials should be single or block listing of trials.

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[65] Listing more than one trial to start at the same time.
[66] Whether there should be double or treble listing of trials for the same time.
[67] CIVTM analysis showed 8% of cases cracked and 24% were ineffective because the prosecution witness failed to attend or withdrew

Recommended: that Chief Officer Groups / Shadow LCJBs ensure that the local area listing policy:

- **works towards single trial listing by increasing the proportion of effective trials**
- **provides for block listing the starts of trials.**

Impact of defendant non-attendance

4.158 The non-attendance by the defendant is often a bar to progress in a case. In the CIVTM analysis 18% of trials were ineffective because the defendant failed to attend[68]. According to an adjournment analysis carried out by HM MCSI 28% of ineffective hearings were due to defendant non-attendance[69].

4.159 Inspectors found areas that were developing good practice in dealing with this problem. Magistrates were being advised to take a plea and deal with sentence as soon as the defendant was brought back before the court, and, further, to avoid dealing with the case by way of "no separate penalty" because this minimises the offence in any subsequent proceedings. However, Inspectors also found that implementation of the policy tended to be piecemeal. As one clerk put it "magistrates need to be reminded to impose separate penalties for failure to attend". Another Justices' Clerk told the team that the imposition of separate penalties is still not a consistent practice, and it is not unusual for there to be no separate penalty because "it was lost in the final sentencing process". District Judges were generally seen to be much more robust in dealing with failures to surrender.

4.160 Several magistrates raised with Inspectors their concerns that defendants frequently do not attend court claiming sickness without being able to establish that their illness was such as to prevent them. Defendants frequently produce sickness certificates dealing with fitness to attend *work* which may not be sufficient reason not to attend court (for example if they had a broken arm). One experienced Bench Chair said: "I think that medical notes to justify absence of defendants from court are too easily accepted by magistrates. I think there should be specific reference on the medical note as to whether the person is fit to attend court." The Magistrates' Association have been attempting to bring about the introduction of a specific certificate which relates to fitness to attend court. In the light of the fact that 17% of all adjournments relate to defendant non-appearance, Inspectors support this approach and suggest that the Case Preparation and Progression Project consider taking the idea forward.

4.161 There is an understandable scepticism as to how far sanctions, in particular financial penalties, can influence the behaviour of defendants who have a history of offending. Nonetheless, Inspectors think the extent of the problem is such that the courts need to continue to develop a pro-active approach to managing non-attendance. Inspectors suggest to the Magistrates' Association that, in consultation with the District Judge (Chief Magistrate), they encourage the development of consistent practices for dealing with defendants who fail to attend court.

4.162 An important part of a proactive approach to managing defendant non-attendance is the timely execution of warrants issued by the courts. Police performance in this regard was often seen as weak. It was not unusual for backlogs of unexecuted warrants to build up and for a warrant only to be executed at the time a defendant was arrested for another offence. Magistrates' courts staff confirmed lessons that had been learned from PYOs included the

[68] A further 7% of trials were ineffective because the defendant was ill or not produced from custody.
[69] See Annex F

need for an effective protocol on warrant execution Inspectors suggest that COG / Shadow LCJBs ensure that sufficient attention is paid to the execution of warrants for non-appearance in adult as well as youth cases.

☞ In one metropolitan area a backlog of 20,000 unexecuted warrants had developed before an action plan was implemented to reduce the number

Recommended: that, until national guidance is provided by the Case Preparation and Progression Project, Chief Officer Groups / Shadow LCJBs ensure there is a local protocol on the execution of warrants for failure to appear

Case Management Role of Lay Magistrates, District Judges, and Legal Advisers

4.163 The numbers, and varied backgrounds, of the lay magistracy present a particular training challenge in relation to case management. Inspectors were encouraged to find that the need for training in case management was well understood. The importance of a pro-active and experienced legal adviser was recognised by magistrates and court users alike. Indeed, legal advisers alone now frequently deal with PTRs. The extension of the current delegated powers to legal advisers was also identified as a means of enabling them to manage cases more efficiently and to reduce the amount of time that magistrates spend on routine work. Variation of bail conditions and "sending" indictable only cases were all identified as suitable for consideration.

One MCC had embarked on an 18-month training programme on case management for magistrates. The first round of training had been for bench chairs only, but the second round had included all magistrates because there was a recognition that the whole of the bench had to understand policy in relation to case progression and management if the court were to operate efficiently. It was described as a major training exercise, but an essential prerequisite to improving overall case progression. ✓

4.164 District Judges were frequently praised by other court users as being particularly effective in managing adjournments, PTRs and non-attendance of defendants. The balance in numbers between the lay magistracy and District Judges depends upon more than just the technical competence in case management and lies beyond the scope of this review. Nonetheless, it is worth noting that case management, whether by lay magistrates, District judges or legal advisers, does require a high degree of skill. Inspectors suggest that, if the recommendations of this report regarding extending the range of sanctions available to assist magistrates in their case management role are implemented, they will only be effective if use is made of the power to make directions. Evidence from this review is that the making of directions is not consistently undertaken.

Recommended: that LCD and the Home Office, in consultation with the Senior District Judge (Chief Magistrate), the Magistrates' Association and the Justices' Clerk's Society issue guidance on the use of Directions to ensure that:

- **Directions are given to the agency responsible for the outcome, including the police where appropriate**
- **Sanctions (where available) are applied when directions are not complied with**

Managing the process

4.165 Many staff in criminal justice agencies are aware of the need to improve the management of cases through the court process. This section has highlighted just how many systems interact in order to progress a single case. These complex interactions do not work unless there is effective management of them in all agencies, as well as good case management in the courtroom. Making sure that every contribution to the process is fit for purpose should be the focus of managers' attention. As can be seen from the investigation into the accuracy of police witness availability information, although much has been written about problems emanating from the courtroom, the solution for the most part lies within the police forces themselves.

4.166 The lack of coherent performance management is in part related to difficulties with the information itself. However, Inspectors found that many areas had been undertaking monitoring and measurement of some of the problems highlighted above for some years. In order for improvements to take place, there needs to be a clear relationship between the measurement and action planning. As the Chinese Proverb says "You can't fatten a pig by weighing it". These issues are considered further in the following chapter.

Wider Issues

The 'virtuous circle' – working together to get it right

Creating the virtuous circle

"If we were able, more effectively, to get witnesses - including police officers - to court, if the court made it clear that discounts were given for guilty pleas, if the waiting time for trials was reduced, these initiatives, if brought together, form a "virtuous circle" and then as confidence in the system increases, witnesses are more likely to attend. This would reduce the likelihood of defendants waiting until the trial date before entering a guilty plea. There is no one simple answer, but a collection of [improvements] which need to be brought about." Chief Crown Prosecutor

5.1 The main thrust of this report echoes the sentiments of the Chief Crown Prosecutor quoted above. Ensuring that every contributor to the process provides a quality service that is fit for the purpose at every stage, is the only way to achieve the desired improvements to the listing and management of cases. Although the magistrates' courts have the main responsibility for the listing process, it is only by working together with criminal justice partners to identify and tackle these seemingly intractable issues that listing can achieve the result of supporting the overall aims of the criminal justice system.

Inter-Agency Co-operation

5.2 The way in which the MCC for an area deals with scheduling and list building has a major impact on the efficient use of its own resources, and those of its criminal justice partners, including the defence. However, listing is about more than the best use of resources, either for the magistrates' court or the local criminal justice system as a whole. Listing, in the widest sense, must also provide the framework for just outcomes at court and good victim and witness care. Effective case management, and the reduction of delay within the court system, depend upon a listing policy which provides for effective hearings within a timescale that allows both prosecution and the defence an appropriate period for case preparation and also takes into account victim and witness needs.

5.3 Some listing issues can be largely resolved by the magistrates' court alone. For example, list building based on benchmarking the number of cases per session or scheduling District Judges to sit without a legal adviser, thereby releasing the legal adviser to cover another court or deal with other out of court tasks. However, most listing issues can only be satisfactorily addressed through inter-agency work.

5.4 Although CJS areas can have very different inter-agency structures, a common feature in many areas is some form of chief officer group. The core membership of these groups is usually the police, CPS, probation and the magistrates' court, all at a senior level.

☞ In one area the inter-agency work at chief officer level centred on the Area Criminal Justice Strategy Committee (ACJSC) and local TIG, but there was an additional monthly meeting held by the listing officer in one court centre. It included police, CPS and defence, and dealt with local operational issues relating to that court centre.

In another area, although the ACJSC was active, a Chief Officer Group had constituted itself as a Criminal Justice Board. The local TIG was also active, with a number of sub groups, and it reported to the Criminal Justice Board as well as the ACJSC.

5.5 Inspectors consider a tightly-focussed COG to be essential if difficult issues such as the resourcing of court scheduling, or improvements to police file quality and timeliness and CPS trial preparation are to be fully addressed. Such issues often go to the heart of how an

agency prioritises its work and its resources. The balancing of case preparation with the operational priorities of high visibility policing is a particularly acute example of conflicting priorities for the police. Other agencies have their own conflicting priorities. Indeed the court must balance its own targets for reducing delay and making full use of its courtrooms, with the need to give the parties sufficient time to prepare for a hearing and the convenience of witnesses.

5.6 Chief Officer Groups also need to be supported by joint operational groups at a lower level in the agencies with the aim of delivering operational change under the leadership of the COG. Where such groups exist, Inspectors found a readiness to embrace change and to tackle issues together. This does not mean other local CJS partners do not also have an important part to play within the local inter-agency meetings structure. The Witness Service, prisons, prisoner escort agencies, CDS and defence solicitors all have an important contribution to make to the efficient running of the courts, and to good victim and witness care. However, evidence shows that the magistrates' courts, police, CPS, probation and YOTs are the key agencies with the resources to support and lead changes within the local CJS. Inspectors therefore welcome the creation of Local Area Criminal Justice Boards in the *Justice for All* White Paper.

5.7 Inspectors found less enthusiasm for some other inter-agency fora. The ACJSCs were not generally seen as effective forums for initiating and managing change. This was attributed mainly to the membership being too widely drawn. The CJS agencies are drawn together at a national level by TIG. The national TIG has also set up a network of local TIGs. The national TIG does not, however, have any power to direct action by the local TIGs. Its power to promote change is limited to the issuing of guidance. Inspectors found that the effectiveness of a local TIG depends very much on the level of representation from each agency, the chairing arrangements and the link it has formed to the COG.

In one area, the CCP chaired the TIG and it was seen as very effective whilst in another area the chair rotated. When agencies other than the main ones were in the chair, the relevance and urgency of information sent by national TIG was not always appreciated.

In one large metropolitan area, the police were represented at Superintendent level only, and the TIG was seen as ineffective because the Superintendent was unable to commit the police to any actions.

5.8 Nonetheless, there is an appreciation of TIG as a useful forum at national level for developing inter-agency guidance; it is seen as having a good "brand name". However, the tenuous relationship between the national organisation and the local TIGs make the promulgation and implementation of national guidelines more problematical. The national listing protocol for example, developed by the national TIG, whilst used as a checklist against which to assess local listing practice by some areas, others had not been aware of the document. "This must be the secret national listing protocol". Inspectors were also aware of the difficulties faced by national TIG in ensuring that the recommendations made in the joint inspection of Casework Information Needs were implemented, with many areas failing to provide a response to central requests for confirmation of implementation. Local Criminal Justice Boards with operational groups which have direct accountability to the LCJB should avoid many of the previous difficulties.

5.9 Although the structures varied between areas, Inspectors found an increasing understanding at a local level of the interdependencies between the agencies, and an increasing willingness to tackle problems jointly. This is in stark contrast to the attitudes prevalent in the past. It is the result of a sustained period of inter-agency initiatives such as police file JPM, the

introduction of the Narey reforms, and the more recent PYO initiative. The lessons from joint working thus far now need to be applied to improving listing, particularly in relation to trial management and to scheduling.

5.10 However, as highlighted earlier in the report, there is one agency that still not fully integrated within the local CJS. Bringing the Prison Service more into the local criminal justice arena would give opportunities for negotiation between local prisons and their courts to enable a better service to be provided. Prisons tend mainly to relate to local courts through Court User Groups where they link at all. Yet local prisons have working practices and their own resource and staffing problems which frequently impact adversely on listing. Late delivery of prisoners leads to wasted time in courtrooms and higher costs to the legal aid budget. The resource costs to police, and the impact on remand prisoners of being 'locked out' of prisons at the end of court sessions, are daily recurring issues across the whole country. Inspectors consider that prisons must be brought into partnership within the criminal justice system so that the prison regimes provide support to the courts. It cannot be acceptable that in a busy metropolitan area, the local prison operates a lock out time of 12 noon on a Saturday so that prisoners in court on Saturday morning have to be kept in police cells for the whole weekend. As pointed out in the MCSI Custody thematic, these are issues that need resolution at a national level.

Recommended: that the Prison Service take steps to develop working practices in remand prisons to ensure that the procedures for prisoner collection and admission

- **support the efficient running of the court**
- **avoid unnecessary use of police cells and**
- **improve prisoner care**

5.11 The Criminal Defence Service has an important part to play in ensuring that defence practitioners provide good support to both their clients and the court. Involving defence advocates in local area negotiations is always problematical because there is no one organisation that can speak for all private practitioners in an area. Yet there is a vital role for defence advocates to perform if there is to be effective case management. CDS can encourage inter-agency working by ensuring that the time spent by private defence advocates is suitably recompensed when they are attending meetings designed to improve local arrangements.

5.12 Inspectors consider that the introduction of salaried defenders, and the regional structure of the CDS, hold the potential for a constructive dialogue with the other CJS agencies. By taking part in local discussions about effective listing, the CDS can, through its quality assurance role, have a significant impact on local attempts to improve listing effectiveness.

Recommended: that the Criminal Defence Service

- **ensure that CDS staff are full partners in local inter-agency work**
- **consider recompensing defence advocates for time spent on inter-agency work**

5.13 Although individual solicitors cannot be said to represent their fellow practitioners in the way agency representatives can bind their agencies, it is important that defence solicitors are engaged as much as possible in the court processes. Inspectors found a number of examples of defence solicitors playing such a role locally.

In one area defence solicitors were part of a local TIG listing group. They had agreed to fix appointments for their clients within 7 days before PTR upon the commitment from ✓

CPS to serve the trial bundle at least 7 days before PTR.

Local evaluation of the impact of central initiatives

5.14 There is a role for Chief Officer Groups in evaluating the impact of policy changes on listing. Inspectors found little evidence locally of structured evaluations taking place of the effects of policy changes on listing. There have been national evaluations of, for example, the implementation of the Narey system and the indictable only procedures under section 51 Crime and Disorder Act1998. However, these tend to take place shortly after implementation of the policy. There is also a need to keep the impact under review locally over a more sustained period.

5.15 Inspectors consider that CJS areas, lead by the Chief Officer Group/Shadow LCJB, should undertake local evaluation of new initiatives to test how they impact on all the agencies involved. At the very least this should include preliminary monitoring to set a benchmark prior to the change and post implementation monitoring to assess the affect of the changes and what steps need to be taken (if any) to maximise the benefits. Wherever possible practitioners should seek to use data that is already being collected and if the data is not being routinely collected then only enough samples should be taken to produce worthwhile results. Agencies should focus monitoring where it can be used effectively and only collect information for specific purposes: "dip in, don't drown".

Management Information

5.16 Accurate and reliable performance information is essential to enable effective problem solving at both strategic and operational levels, and to develop trust between agencies. Senior agency staff identified the need for timely, comprehensive information on a continuing basis. Performance data currently available has shortcomings, both because data in some instances is not available (for example, performance data around CPS summary trial preparation) and methods of measurement are not compatible (for example, there are different definitions of a case within the agencies).

5.17 Inspectors welcome the current central initiative to provide local areas with a compilation of locally collected data to inform their work. Its value to local staff will be most effective if the information is provided speedily. The data is mainly based on the performance information each agency individually collects at present but with some centrally provided information added. Some areas have already sought to collate their own data and to use it to inform both action plans for specific initiatives and also to enable joint local target-setting.

In one area the COG obtained funding for a performance analysis post, and the local CJS agencies now receive a monthly analysis of performance data including CIVTM. ✓

In another area the COG is developing a basket of 12 performance measures for the area using existing performance data from the local agencies. This is being done with the help of a regional criminal justice co-ordinator working to the ACJSC. The COG is also looking to recruit a performance analyst to analyse the performance measures.

5.18 However, Inspectors have some concerns that the collection of information sometimes takes precedence over its analysis. Gathering the data becomes an end in itself and does not lead to action planning. Where the collection of the data is onerous, this phenomenon is more likely. Two primary sources of management data are the joint performance management information from police file JPM and CIVTM. The collection of both data sets is resource intensive. It is important that the collection of the data is seen to be for a purpose. Unless it is used to inform actions for improvement, those front-line staff tasked with the data collection will see the exercise as of little value. The impact of police JPM as a

management tool has been lessened because of the low completion rate in many areas – a phenomenon related, at least in part, to CPS prosecutors' lack of faith in its usefulness.

5.19 Inspectors have concerns that the same fate will affect the validity of CIVTM data if legal advisers are under time pressures and there is no clear purpose behind the data collection. Inspectors consider the extent of the data collection should be determined by the amount of data required to formulate an action plan, and thereafter to monitor progress of the action plan. Once a baseline of data for the action plan had been established, monitoring progress could be on the basis of data collection at set intervals. Although the team have concerns over the accuracy of CIVTM data (paragraph 4.45), Inspectors main concern is that the current CIVTM (like its local predecessors) will not be used to inform effective action plans, but will become little more than a statistical exercise. This will be much more likely if pressures from central government departments for information about CIVTM translate into a requirement to collect data on every trial. Criminal Justice Departments and local managers need to consider the substantial resource costs of providing information and tailor their monitoring requirements to minimise the burdens on front-line staff. See recommendation below.

5.20 The importance of effective analysis of all available performance data, as well as police file JPM and CIVTM, has been recognised in several areas and nationally. Inspectors welcome the proposal to recruit performance analysts to facilitate the action planning of local COG / Shadow LCJBs through detailed analysis of performance information.

Targets and performance indicators

5.21 The co-ordinated development of performance targets and measures is essential to ensure that various agency targets are not only compatible, but that they encompass an appropriate degree of accountability for that agency's contribution to effective case progression. This is particularly important given that performance measures covering one agency's activity can have a significant impact on another partner agency. There is clear potential for the ability of agencies to meet their own target to be skewed by the actions of a partner agency and thereby attract an adverse assessment of their performance.

5.22 As noted above, some local areas have undertaken their own work to link these disparate performance targets together. Inspectors also note that the Criminal Justice Performance and IT Board has commissioned a review of performance measures across the CJS and that the Case Preparation and Progression Project will be looking at this area. Inspectors consider it vital that a more holistic approach is taken to target setting and performance measures for each of the CJS agencies to ensure they are not developed in isolation. Unintended outcomes and perverse incentives need to be addressed, as does the omission of vital key milestones from the current suite of performance targets and measures. Inspectors have indicated in the table below these key stages and whether they are currently monitored through performance indicators.

Key Quality Assurance Stages for Parties to the Court Process		
Stage	**Agency Responsible**	**Covered by current PI?**
Comprehensive witness statements are obtained which cover the relevant points to prove (including witness availability and compensation details)	**Police**	✗
Prompt requests made for forensic/medical evidence	**Police**	✗
The defendant is charged with the most appropriate charge	**Police**	✗
EAH/EFH evidence files are provided to the CPS 'fit for purpose' and within agreed timescales	**Police**	✗
Initial review of the prosecution file takes place and disclosure is made to the defence	**CPS**	✗
Defence solicitors review the prosecution file prior to hearing	**Defence**	✗
Defence solicitors take client instructions prior to hearing	**Defence**	✗
Remand prisoners are produced by the prison service to the escort agency in sufficient time to allow attendance at court by start of court session	**Prisons**	✗
Remand prisoners are delivered promptly to the courthouse	**Prisoner Escort Service**	✔
Full prosecution file is provided to the CPS 'fit for purpose' and within timescales	**Police**	✔
Review of the full file of evidence takes place and	**CPS**	✗
Disclosure of unused material and witness statements is made to the defence	**CPS**	✗
Prosecution undertake a pre-trial readiness check and confirm witness requirements	**CPS**	✗
Defence advocate takes instructions from client prior to trial	**Defence**	✗
Provision of PSR report in time to allow defence, CPS and magistrates sufficient time to prepare for the sentencing hearing	**Probation/YOTs**	✔

5.23 The magistrates' courts have a role in managing the above process in the interests of justice and must provide the facilities to enable each court hearing to proceed effectively. All those agencies who have a role in contributing to effective hearings must be encompassed in the performance management framework since all have a responsibility for effective case completion. Targets and performance indicators need to be set so as to assure quality at the key stages of the court process. As the body of this report shows, achieving effective listing and case management requires all agencies to provide quality inputs to the courtroom process. Achieving effective hearings which provide for just outcomes and protect the interests of victims and witnesses requires performance indicators which recognise the interdependency of the activities involved.

Recommended: that the Criminal Justice Ministers commission work to design a multi-agency framework of supporting and complementary performance measures. The framework should provide for timely and just outcomes and:

- **cover all agencies' contributions to effective court processes**
- **focus on quality and consistency**
- **be compatible with the Treasury/Cabinet Office framework for performance information[70]**
- **ensure the frequency at which national data (particularly police file JPM, CIVTM and attrition data) is required does not adversely impact on the ability of staff to undertake their daily tasks**

5.24 There are clear factors which are critical to success in improving performance which have emerged during the review. Clarity of vision is essential if energies are to be channelled for mutual benefit, coupled with identification of the contributions required of staff and other CJ agencies to delivering that vision. There is also an overriding need for a robust performance management framework within agencies linked to a problem solving culture which has been built on a foundation of inter-agency working and co-operation. The final ingredient is one of leadership. It was evident to the inspection team that in those localities where inter-agency relationships were at their healthiest and problem solving and the quest for improvement most evident, it was down to the energy, drive and leadership of a collection of senior managers. It is perhaps this factor alone which is the enabler for all others and is key to performance improvement.

Information Technology

5.25 There has been a theme throughout this report that IT in the Criminal Justice system - at least so far as listing and case management is concerned - is either inadequate, unreliable or uncoordinated. Because IT systems have been developed independently there are often difficulties with agencies being able to 'talk' to each other electronically. Indeed, even where it is possible to conduct business through the IT medium there is a cultural reluctance to adopt this method of communication. E-mail usage has therefore hardly been exploited and our fieldwork has shown that much information concerning listing and case progression is still transmitted via 'traditional' methods.

5.26 Inspectors consider there is huge potential for the increased use of e-mail links between criminal justice agencies. The gradual expansion of the e-mail network across the agencies will only be effective if local partners grasp the opportunities presented. Inspectors found good practice beginning to emerge, even in advance of secure e-mail. Once Libra gains GSI accreditation the scope to use this medium will be even greater. Inspectors suggest that COG/Shadow LCJBs consider how best to exploit the technology available and to ensure that staff receive sufficient training to counter the unfamiliarity and ensure active participation.

Inspectors found e-mail being used: ✓

- By listing officers to notify defence solicitors of the granting of Representation Orders
- By legal advisers to send electronic PTR forms to both CPS and the Defence
- By the police to send summonses to the court
- By court staff to send results and warrants to the police
- By CPS lawyers to request additional information from police case officers

[70] *FABRIC*: see HM Treasury's website for details at www.hm-treasury.gov.uk/performance_info

Evaluating current pilot studies: impact on listing

5.27 Several criminal justice initiatives that may affect listing were underway during the course of this inspection. Of particular note were the charging pilots and the extended hours pilots. Both are due to be fully evaluated after the completion of this report, and Inspectors do no more than draw attention to the possible effect on listing. One way of managing listing is to prevent inappropriate cases entering the court system in the first place. This happens already through the reprimand and final warning scheme for youth offenders and adult cautioning. One aim of the charging pilots is to ensure suspects are not charged where there is insufficient evidence. In those cases where charge is appropriate, the aim is to ensure that that there is a full file available at the first date of hearing. This has the potential to significantly improve case management and reduce delay in the court system, although possibly at some police resource cost. The extended hours pilots may also assist in reducing delay, and will inevitably affect scheduling and the resourcing of the courts by the relevant agencies.

5.28 Another initiative to reduce the number of cases passing through the court system is the proposal to issue fixed penalty notices for a wider range of summary offences. The magistrates' courts will be required to enforce payment of the penalties, and this will have a significant impact on the administration of that process and potentially affect the balance of the types of courts scheduled. It will also have an impact on the number and type of cases being handled in the courtroom.

5.29 Listing is a complex balancing of priorities and resources not just within the magistrates' court but also within the local CJS as a whole. The CJS is coming under increasing scrutiny from the government, and this inevitably includes consideration of listing. Most new initiatives designed to reduce delay or improve the service given to victims and witnesses impact directly on the listing process. Policy makers need to factor in evaluation of this impact when new initiatives are proposed.

"The policy considerations around listing are wide and complex. Policy makers in Whitehall have neglected the magistrates' courts. Attrition has been made a clear CPS aim….but no-one in central government has written directly to the magistrates' courts" Justices' Clerk

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Annex B: Proposed delay reduction targets for SR2002 period.

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Annex E: Examples of trial time estimation procedures from list building questionnaire.

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Annex A

Criminal Justice System - Performance Targets and Indicators

Criminal Justice Indicators & Targets – Witnesses/ Victims/ Defendants

MCCs

Joint Performance Monitoring NPI6	Percentage of witnesses who attended court but did not give evidence as expected.
Joint Performance Monitoring NPI6	Percentage of witnesses whose waiting time was one hour or less.
Joint Performance Monitoring NPI6	Average witness waiting time from time witness asked to attend to time called to give evidence or released.
LCD PSA (Objective 1)	Secure a minimum 5 percentage point improvement in the level of satisfaction of users of the justice system by 2004, including that of victims and witnesses with their treatment in the CJS (contributes to progress against target 6 in the CJS PSA).

Police

Home Office PSA Objective 2	Improve by 5 percentage points the satisfaction level of victims and witnesses with their treatment in the CJS by 2002, and thereafter at least maintain that level of performance. Target contributing to CJS PSA

CPS

CPS PSA (Objective 2)	Improve by 5 percentage points the satisfaction level of victims and witnesses with their treatment in the CJS by 2002, and thereafter at least maintain that level of performance. Target contributing to CJS PSA
CPS PSA (Objective 4)	Improve the standard by which the CJS meets the rights of defendants, by achieving by 2004, 100% of targets in a basket of measures as defined in the CJS Business Plan. Target contributing to CJS PSA
	Witness expenses to be paid within 10 days of receipt

Criminal Justice Indicators & Targets – Timeliness

MCCs

CPM1/ NPI2	The average length of cases from first listing to completion
	The average number of days from arrest to sentence for persistent young offenders
	Number of days from offence to completion
	Number of days from offence to charge or laying of information
	Number of days from charge or laying of information to first listing
LCD Time Interval Surveys	Number of days from first listing to completion
	First time disposal rates
	Number of adjournments
	Length of adjournments
	Average number of adjournments by offence type
	reducing the time from charge to disposal for all defendants, with a target to be specified by March 2001;
LCD PSA (Objective 1)	dealing with 80% of youth court cases within their time targets
	halving from 142 to 71 days by 2002 the time taken from arrest to sentence for persistent young offenders and maintaining that level thereafter.

Police

	reducing the time from charge to disposal for all defendants, with a target to be specified by March 2001;
Home Office PSA (Objective 2)	dealing with 80% of youth court cases within their time targets
	halving from 142 to 71 days by 2002 the time taken from arrest to sentence for persistent young offenders and maintaining that level thereafter.

CPS

	reducing the time from charge to disposal for all defendants, with a target to be specified by March 2001;
CPS PSA (Objective 1)	dealing with 80% of youth court cases within their time targets
	halving from 142 to 71 days by 2002 the time taken from arrest to sentence for persistent young offenders and maintaining that level thereafter.

Annex A

Criminal Justice System - Performance Targets and Indicators

Criminal Justice Indicators & Targets - Resource Usage

MCCs

CPM6	The amount of occupied court sitting hours as a proportion of the number of planned hours of court time
CPM7/ NPI1	Weighted caseload per sitting hour
CPM12	Actual court hours as a proportion of capacity
NPI3	Courtroom utilisation
LCD SDA	To reduce the level of under-utilisation of all courtrooms by 10% by March 2002

Police

Home Office PSA (Objective 7)	Ensure annual efficiency gains by police forces are worth in total at least 2% of overall police spending in that year.

CPS

Criminal Justice Indicators & Targets - Provision of Information

MCCs

LCD PSA (Objective 3)	Increase the number of people who receive suitable assistance in priority areas of law, involving fundamental rights or social exclusion, by 5% by 2004; and secure year on year increases of at least 5% in the number of international legal disputes resolved in the UK. Target Contributing to CJS PSA

Police

BV131	Percentage of all full files and all full youth files provided to the Crown Prosecution Service both within pre-trial issue time guidelines and which are fully satisfactory or sufficient to proceed
BV131	Percentage of all expedited/remand files and all expedited/remand youth files provided to the Crown Prosecution Service which are fully satisfactory or sufficient to proceed

CPS

CPS PSA (Objective 2)	To ensure that the charges proceeded with are appropriate to the evidence, and to the seriousness of the offending by the consistent, fair and independent review of cases in accordance with the Code for Crown Prosecution.
	To send comittal papers within 10 (custody) / 14 (bail) days from receipt of full comittal file from police to defence
	Complaints to be answered within 10 days.

Criminal Justice Indicators & Targets - Crime Reduction

MCCs

CPS PSA (Objective 1)	Increase the number and proportion of recorded crimes for which an offender is brought to justice. Target Contributing to CJS PSA

Police

Home Office PSA (Objective 1)	Reduce the key recorded crime of vehicle crime by 30% by 2004;
	Reduce the key recorded crime of domestic burglary by 25%, with no local authority area having a rate more than three times the national average, by 2005
	reduce the key recorded crime of robbery in our principal cities by 14% by 2005.
	Ensure by 2004 that the levels of fear of crime in the key categories of violent crime, burglary and car crime, reported in the British Crime Survey (BCS), are lower than the levels reported in the 2001 BCS. Target contributing to CJS PSA
	Reduce the proportion of people under the age of 25 reporting the use of Class A drugs by 25% by 2005 (and by 50% by 2008). Target contributing to Action Against Illegal Drugs PSA
	Increase the number and proportion of recorded crimes for which an offender is brought to justice. Target contributing to CJS PSA

CPS

CPS PSA (Objective 3)	Percentage of No case to answer/judge Orderd Acquittals/Judge Directed Acquittals due to CPS failure, to be less than 0.6 percentage points nationally in 2000/1.
	Ensure by 2004 that the levels of fear of crime in the key categories of violent crime, burglary and car crime, reported in the British Crime Survey (BCS), are lower than the levels reported in the 2001
CPS PSA (Objective 2)	Increase the number and proportion of recorded crimes for which an offender is brought to justice. Target contributing to CJS PSA

Proposed delay reduction targets for SR2002 period
((February 2002)

To meet the standard times* set for youth and adult cases in the magistrates' courts, while by March 2006:

Raising the performance of the lowest quartile of performers to the level of the average achieved in 2003-4
And, in all criminal courts,

Reducing (from 02-03 levels) by x% the level of ineffective trials.

Standard Times set as part of SR 2000 for March 2004 being in the magistrates' courts:

□ Guilty pleas	42 days	both adult and youth courts
□ Committals	84 days adult	70 days youth
□ Trials	112 days adult	98 days youth

And in the Crown Court,
current targets being 78% of cases to be dealt with within:

□ Committals for trial	16 weeks
□ Transfers	26 weeks
□ Committals for sentence	10 weeks
□ Appeals	14 weeks

Annex C

Chart 1

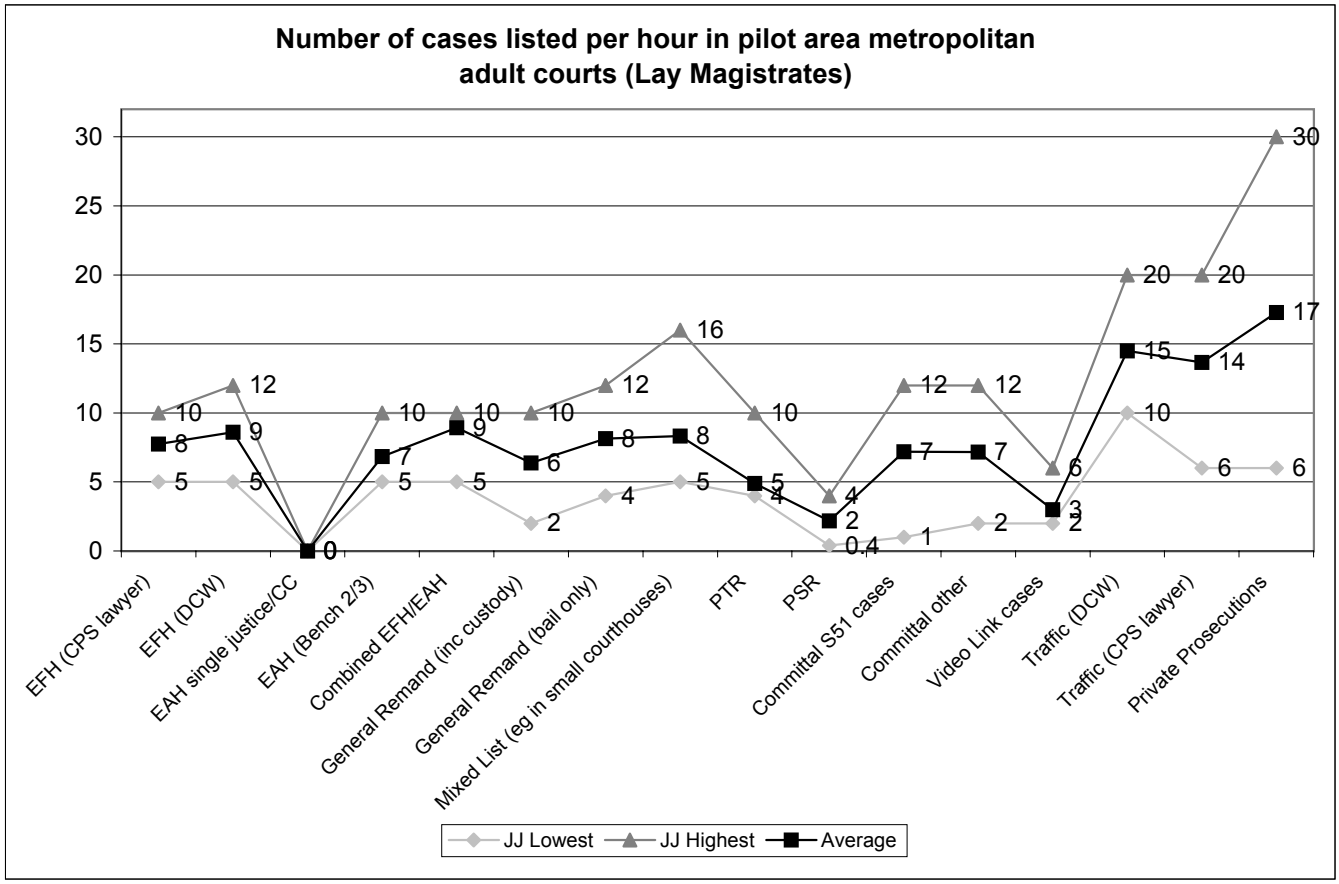


Chart 2

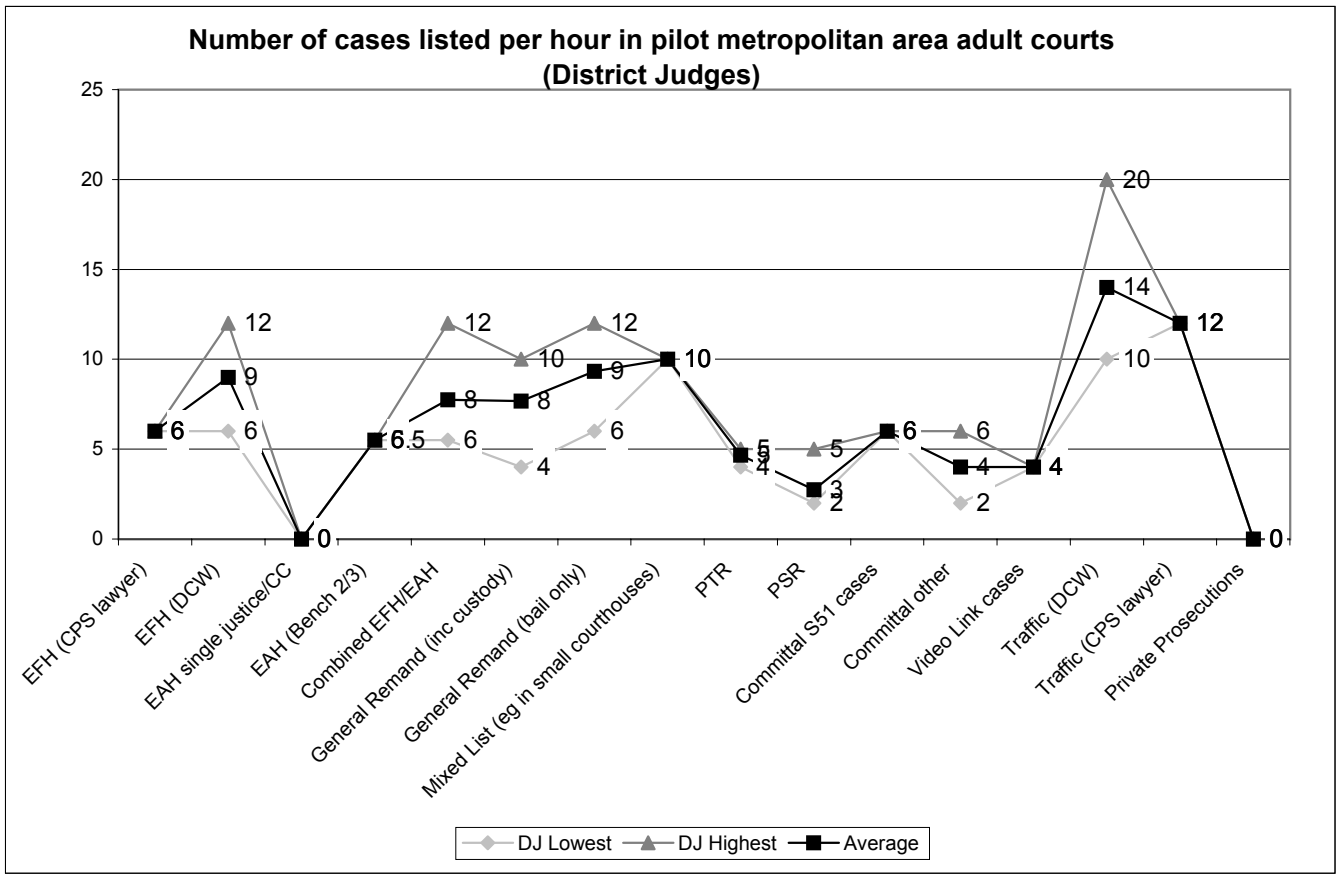


Chart 3

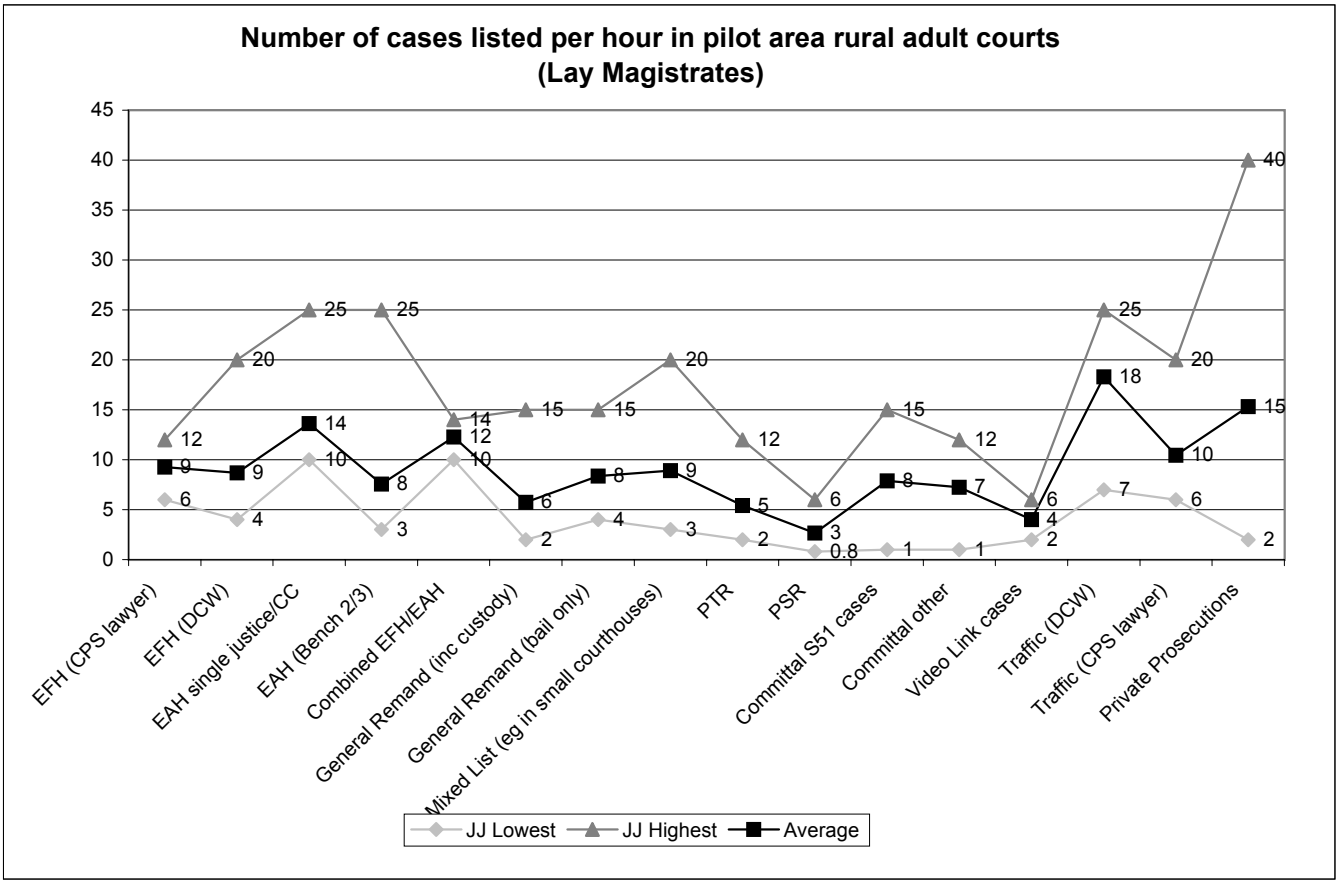


Chart 4

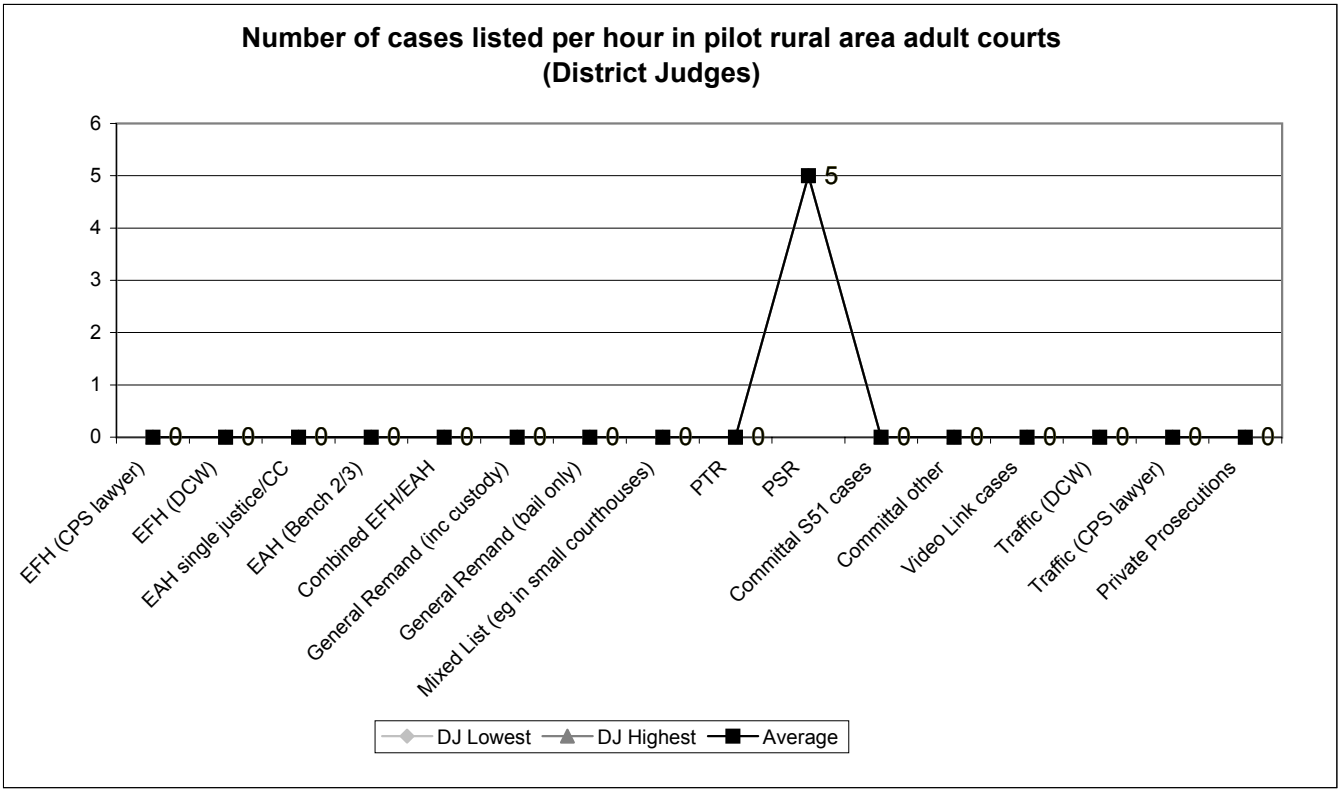
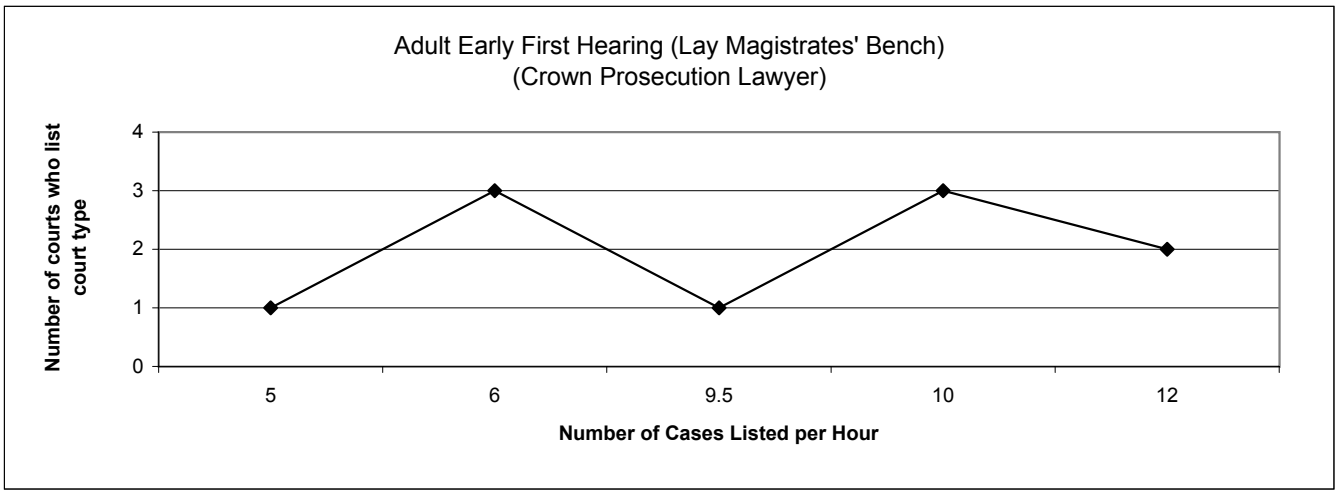
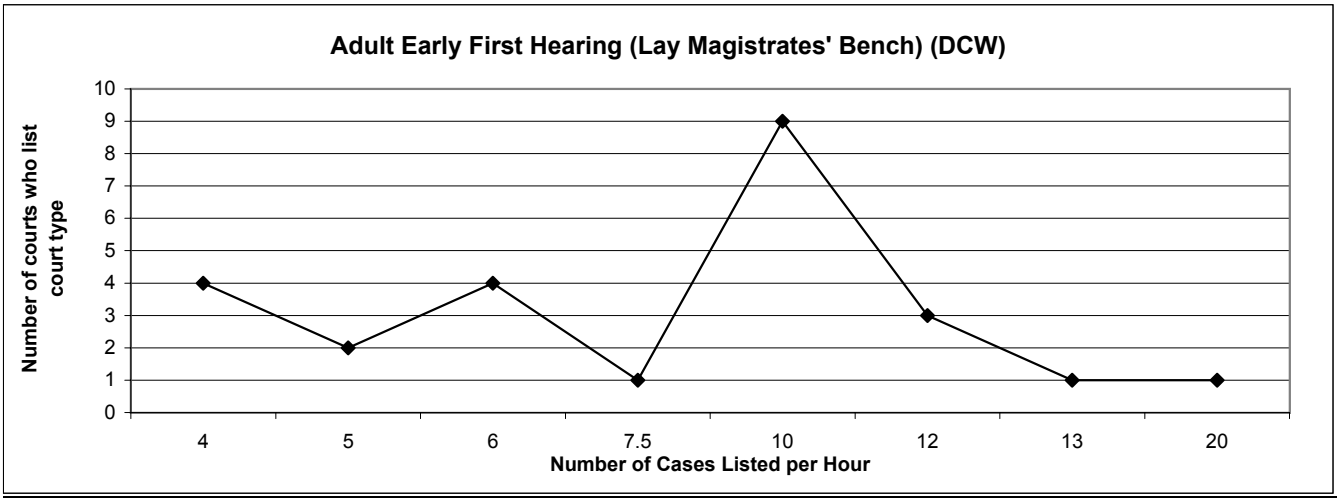


Chart 5



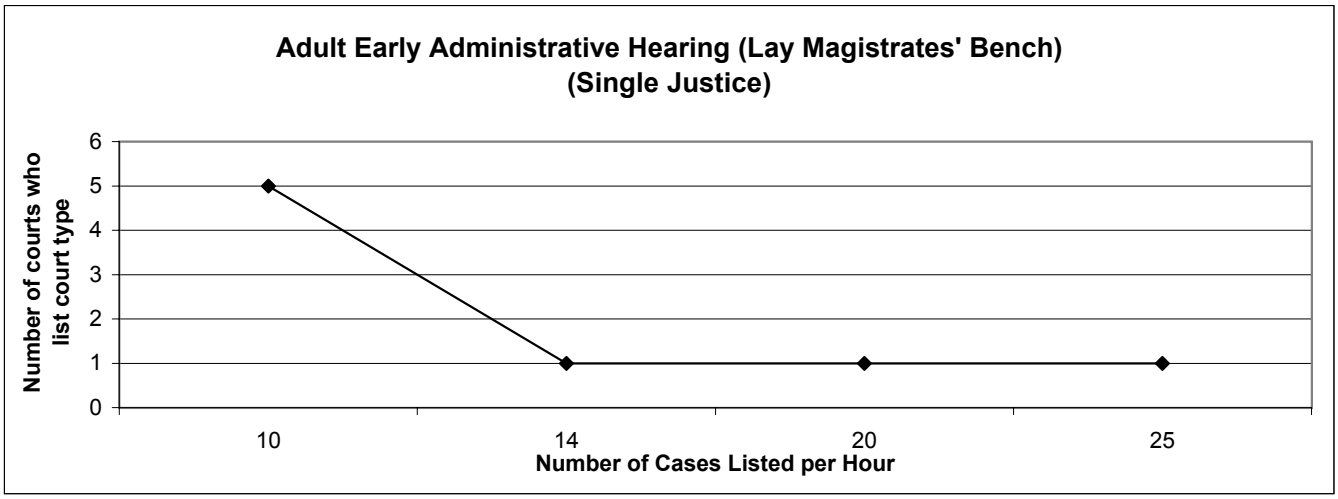
Most frequent number =	6.00	Average =	9.75	Middle range =	6.00	-	10.00

Chart 6



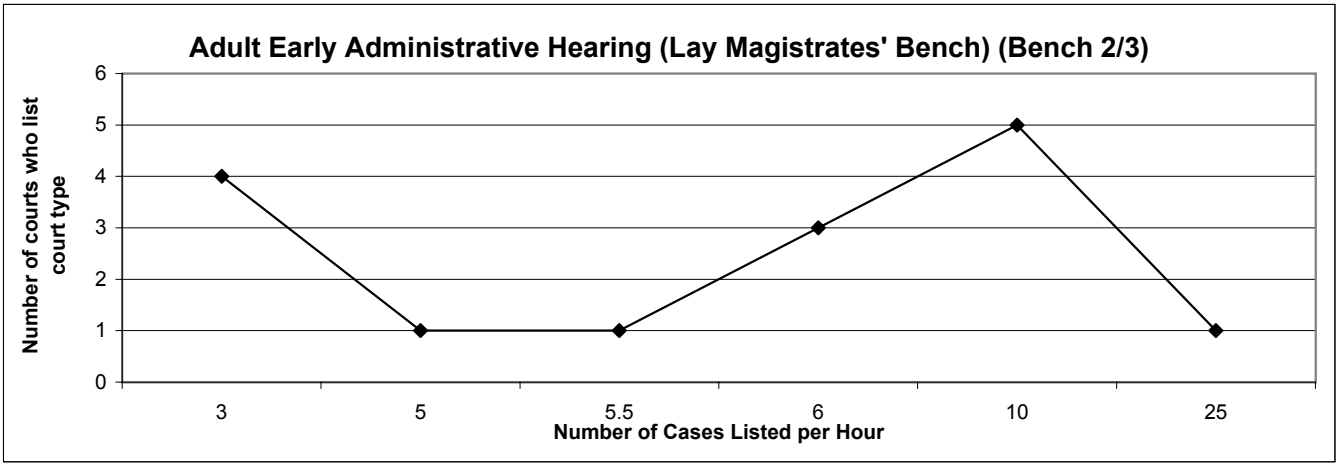
Most frequent number =	10.00	Average =	10.00	Middle range =	6.00	-	10.00

Chart 7



Most frequent number =	10.00	Average =	10.00	Middle range =	10.00	-	15.50

Chart 8



Most frequent number =	10.00	Average =	6.00	Middle range =	3.38	-	10.00

Chart 9

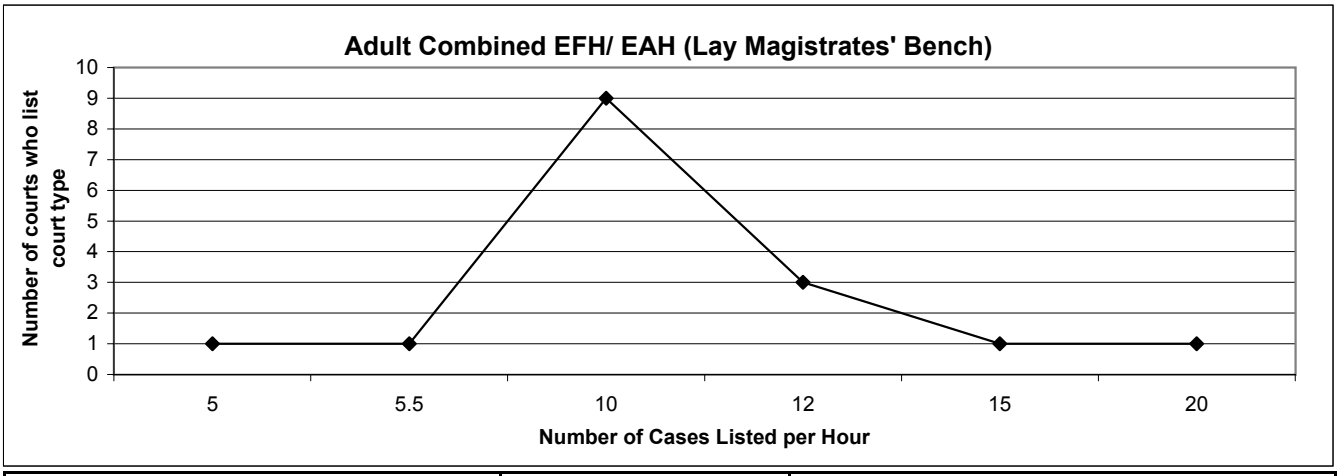


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Chart 10

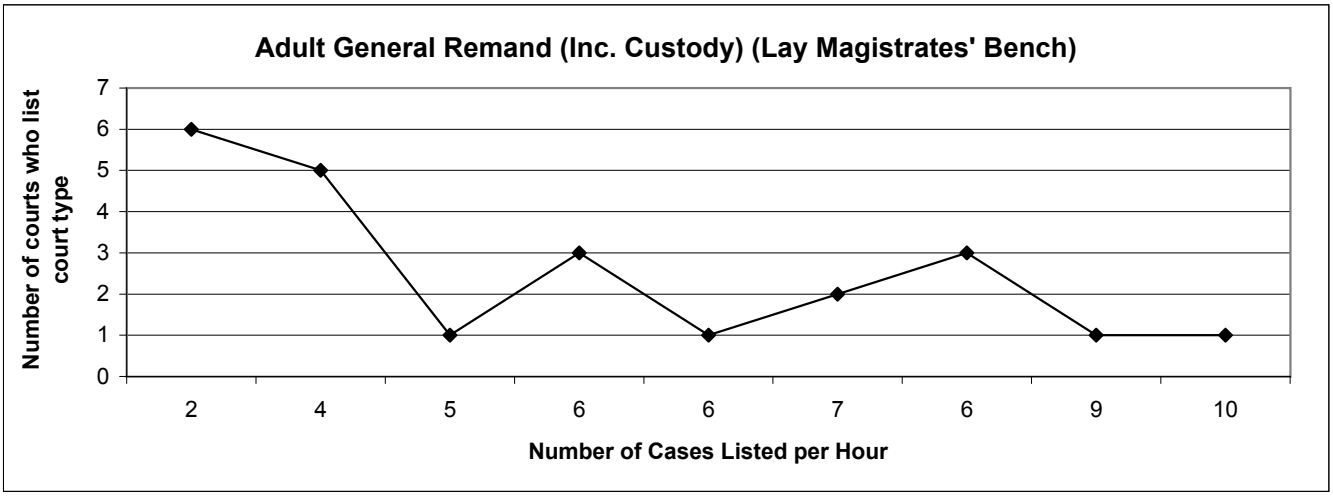

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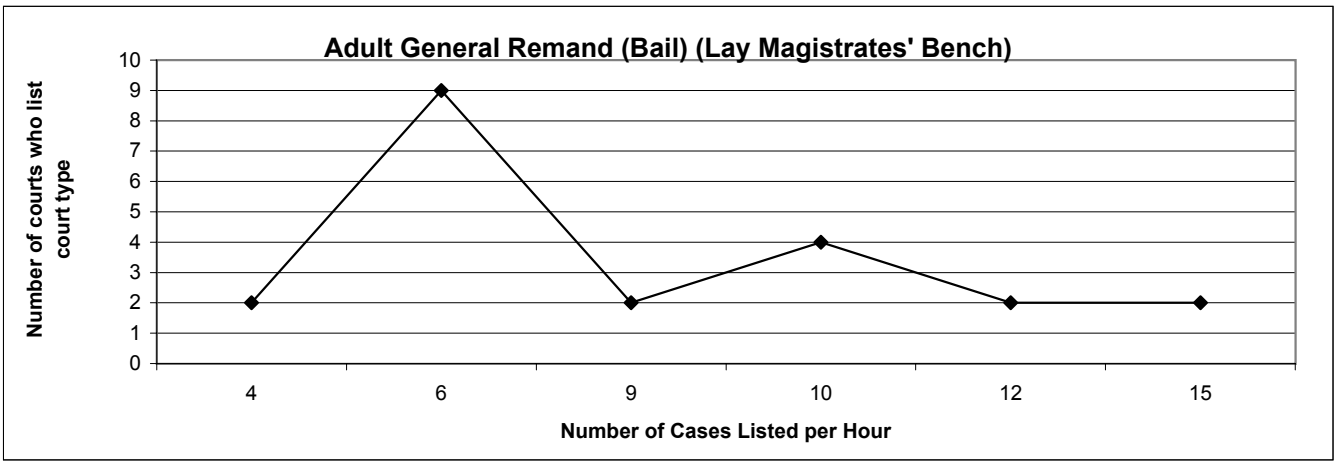
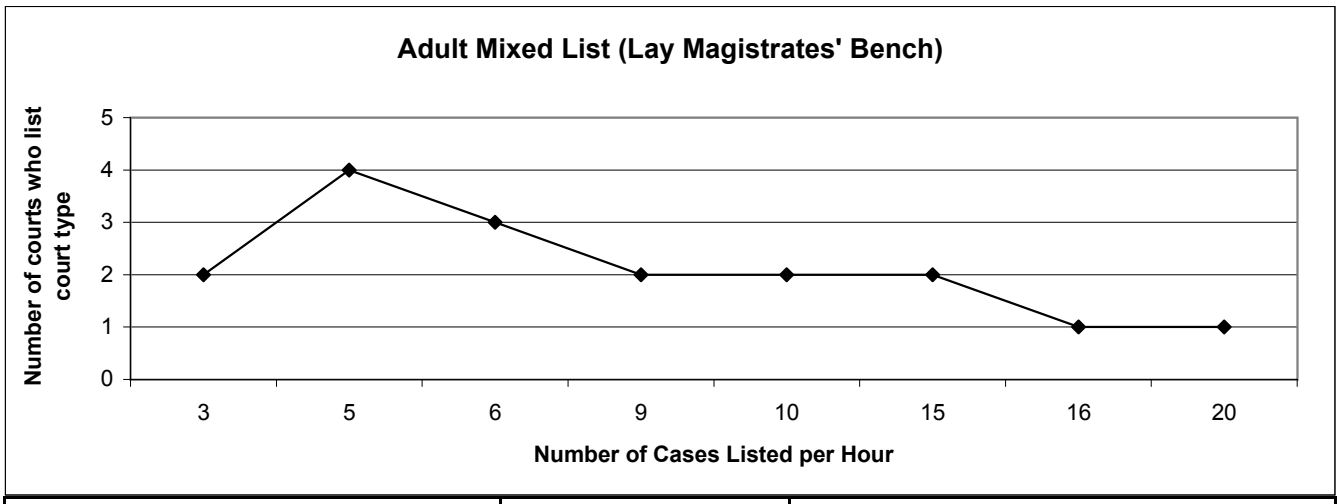
Chart 11



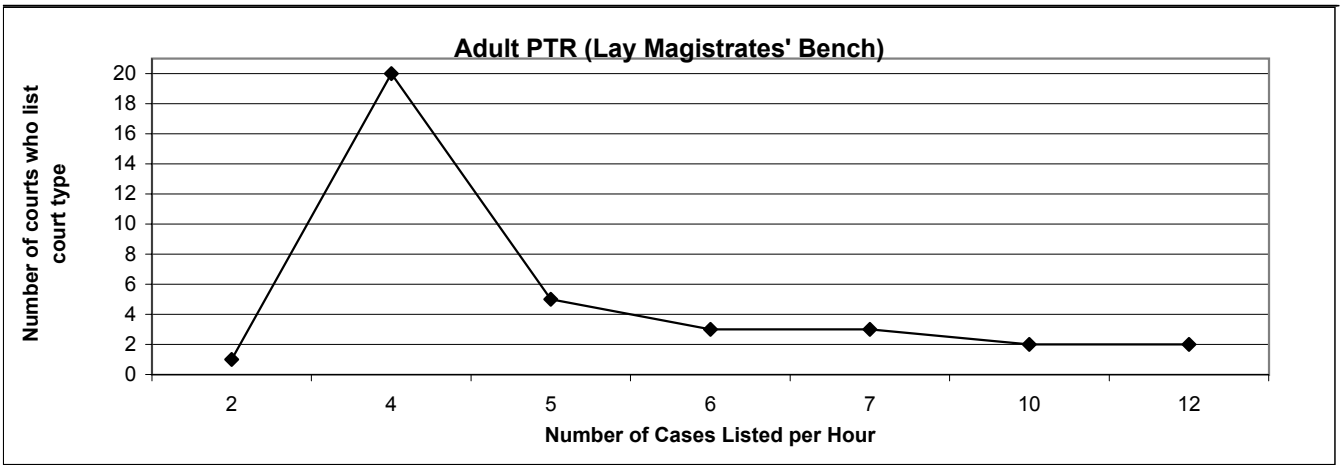
Most frequent number =	6.00	Average =	6.00	Middle range =	6.00	-	10.00

Chart 12



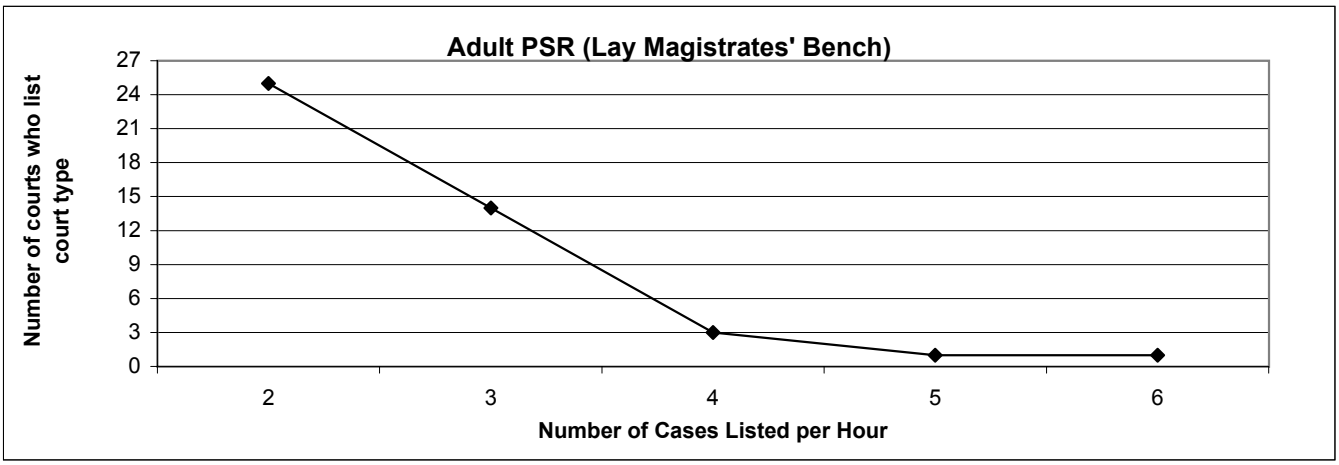
Most frequent number =	5.00	Average =	6.00	Middle range =	5.00	-	10.00

Chart 13



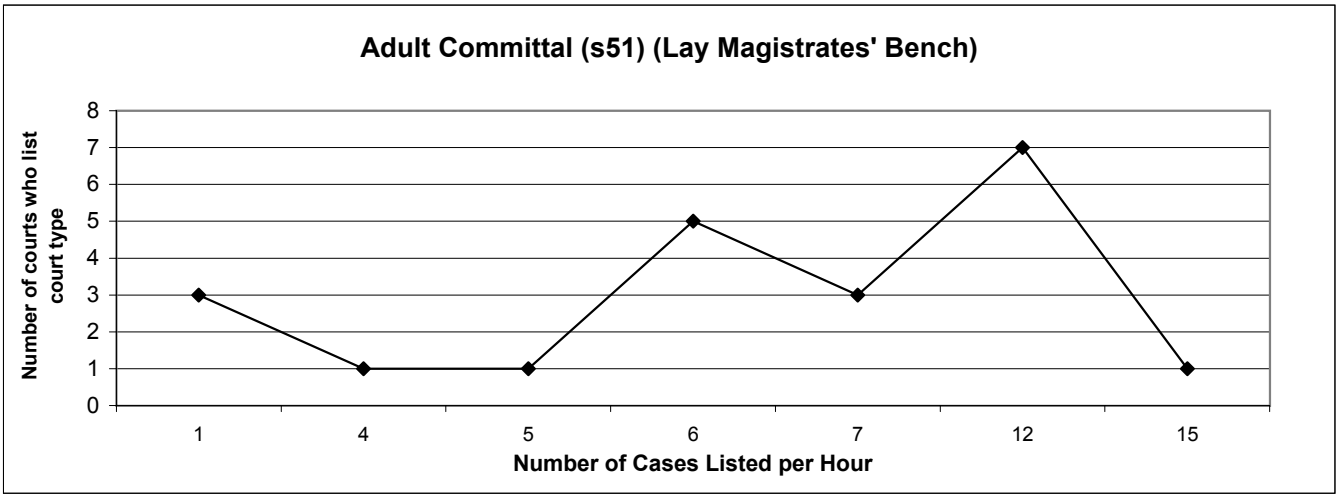
Most frequent number =	4.00	Average =	4.00	Middle range =	4.00	-	6.00

Chart 14



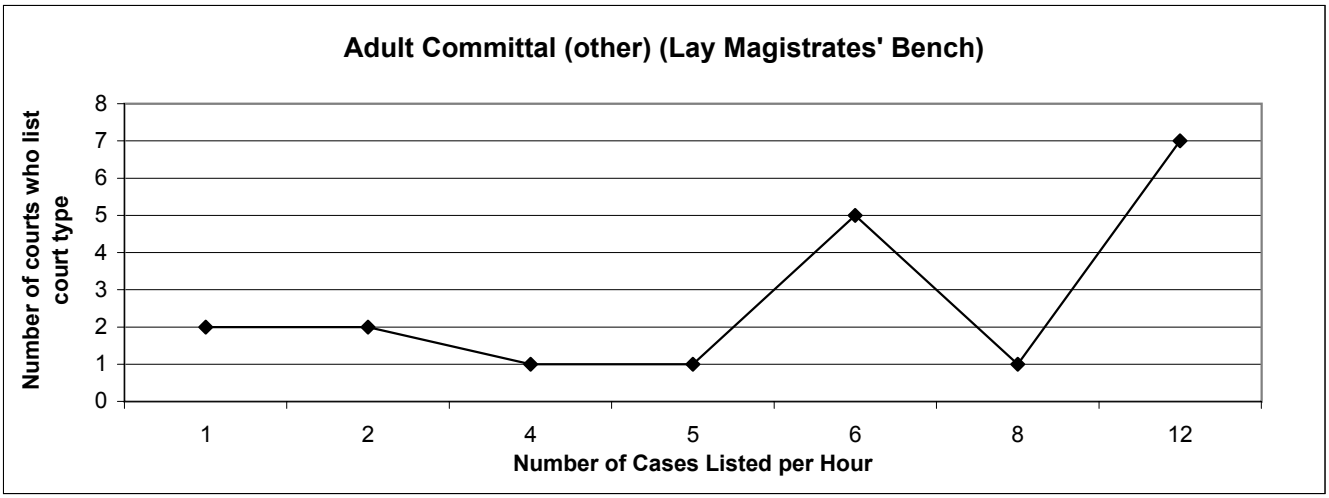
Most frequent number =	2.00	Average =	2.00	Middle range =	2.00	-	3.00

Chart 15



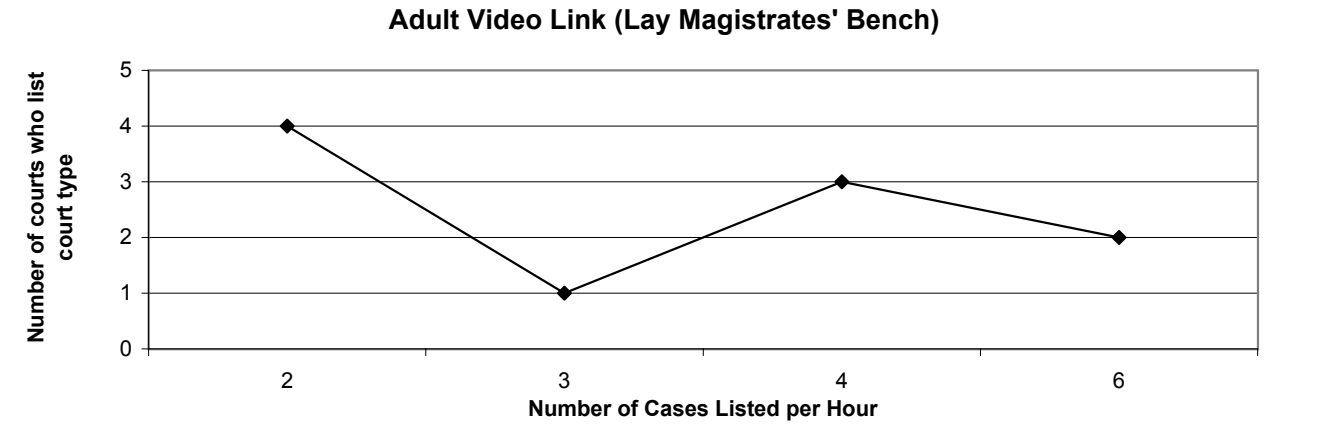
Most frequent number =	12.00	Average =	7.00	Middle range =	6.00	-	12.00

Chart 16



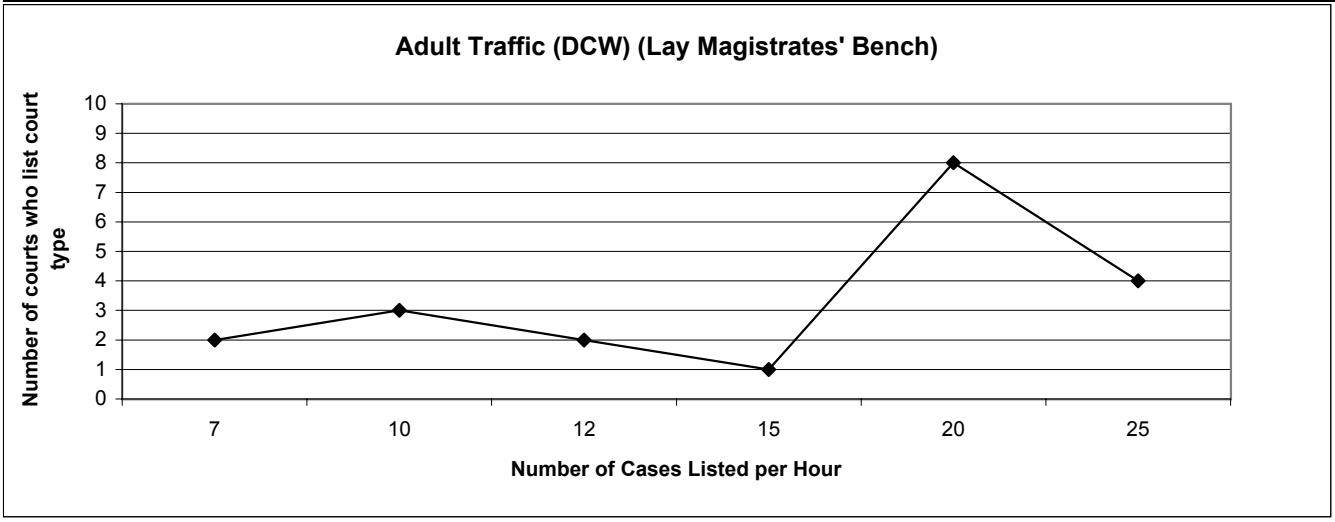
Most frequent number =	12.00	Average =	6.00	Middle range =	4.50	-	12.00

Chart 17



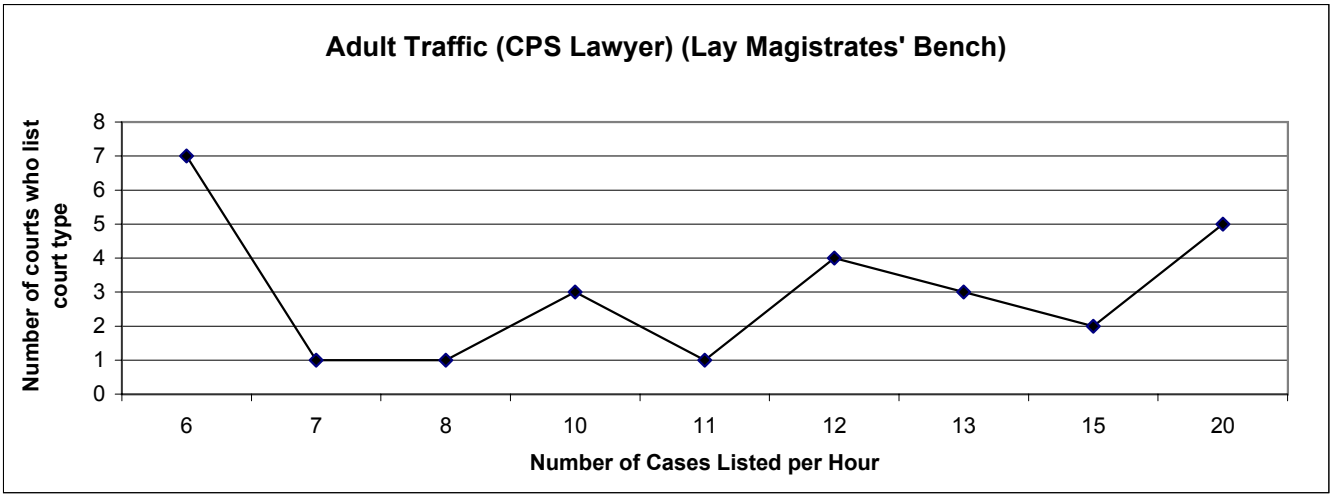
Most frequent number =	2.00	Average =	3.50	Middle range =	2.00	-	4.00

Chart 18



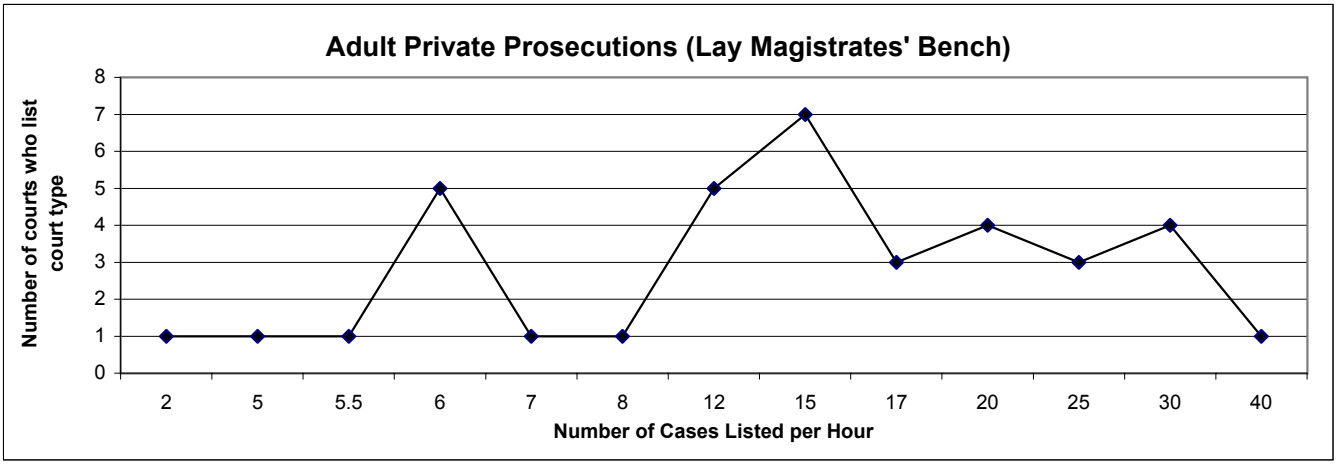
Most frequent number =	20.00	Average =	20.00	Middle range =	11.50	-	20.00

Chart 19



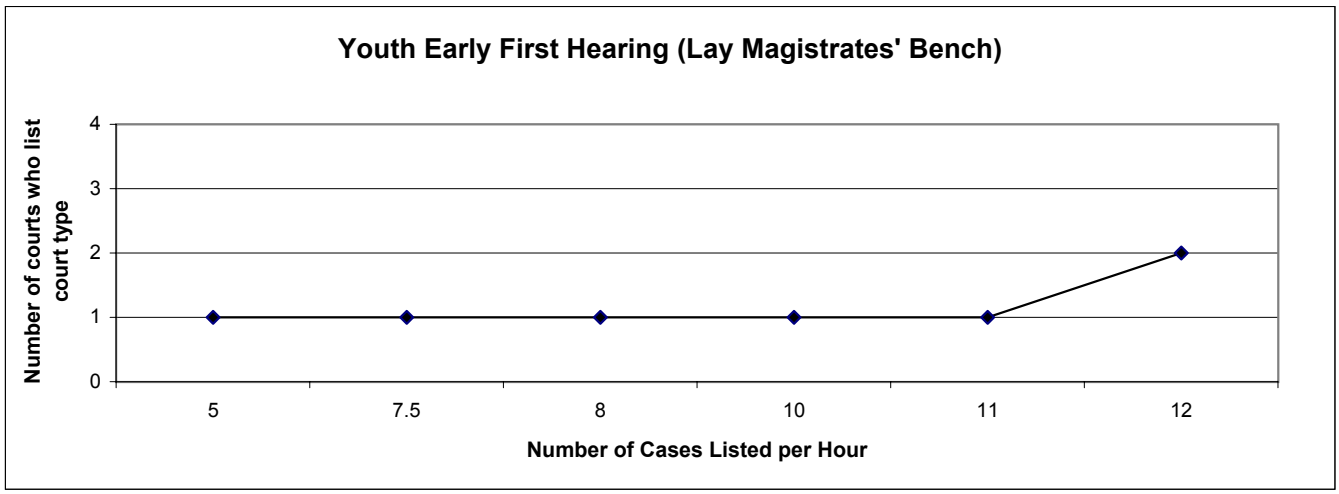
Most frequent number =	6.00	Average =	11.50	Middle range =	6.38	-	13.50

Chart 20



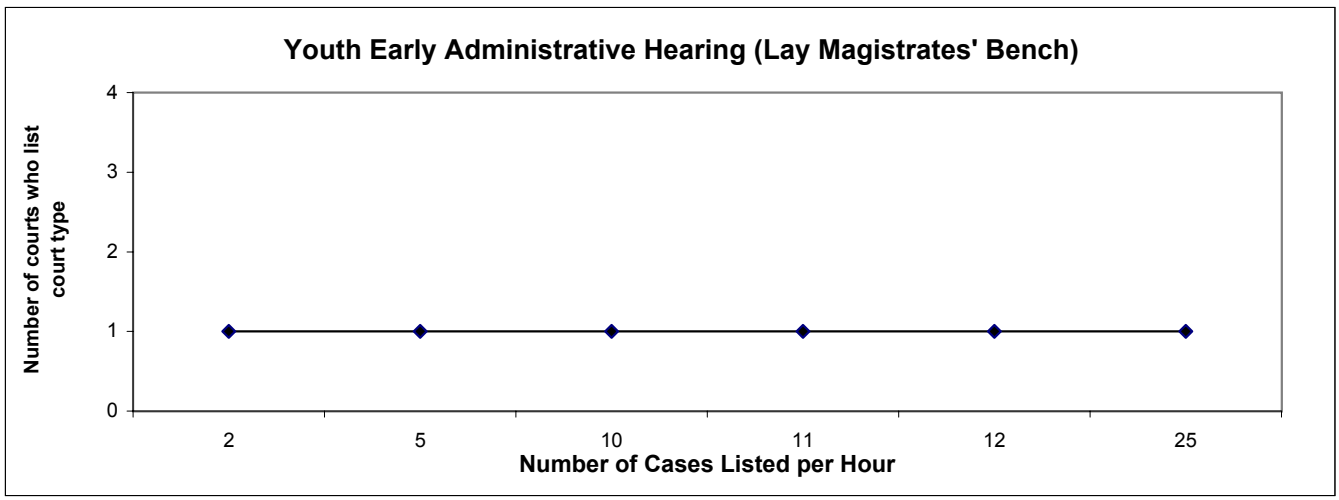
Most frequent number =	15.00	Average =	15.00	Middle range =	8.00	-	20.00

Chart 21



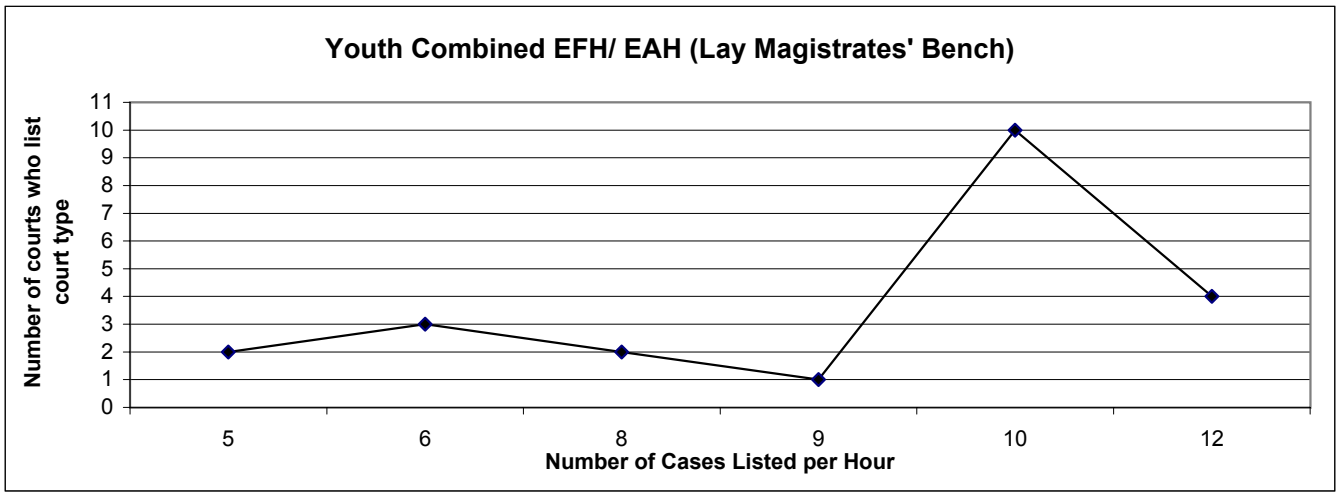
Most frequent number =	12.00	Average =	10	Middle range =	7.75	-	11.50

Chart 22



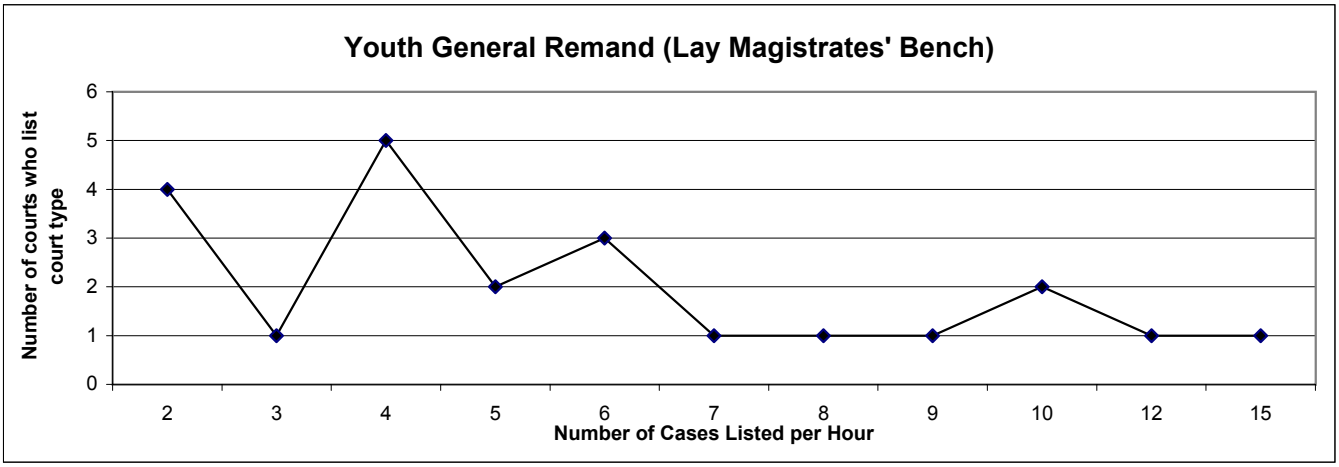
Most frequent number =		Average =	10.50	Middle range =	6.25	-	11.75

Chart 23



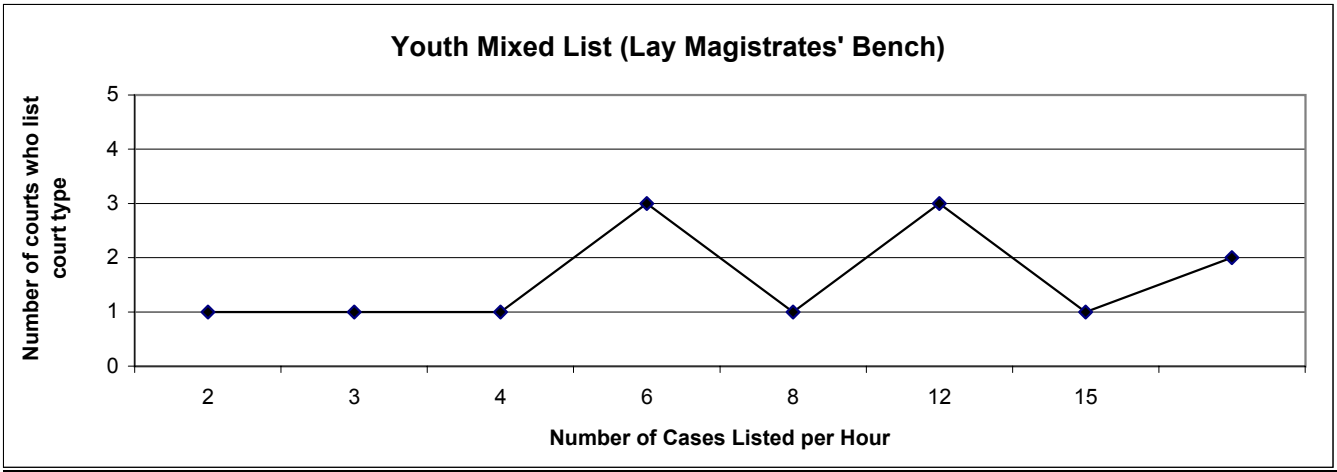
Most frequent number =	10.00	Average =	10.00	Middle range =	8.00	-	10.00

Chart 24



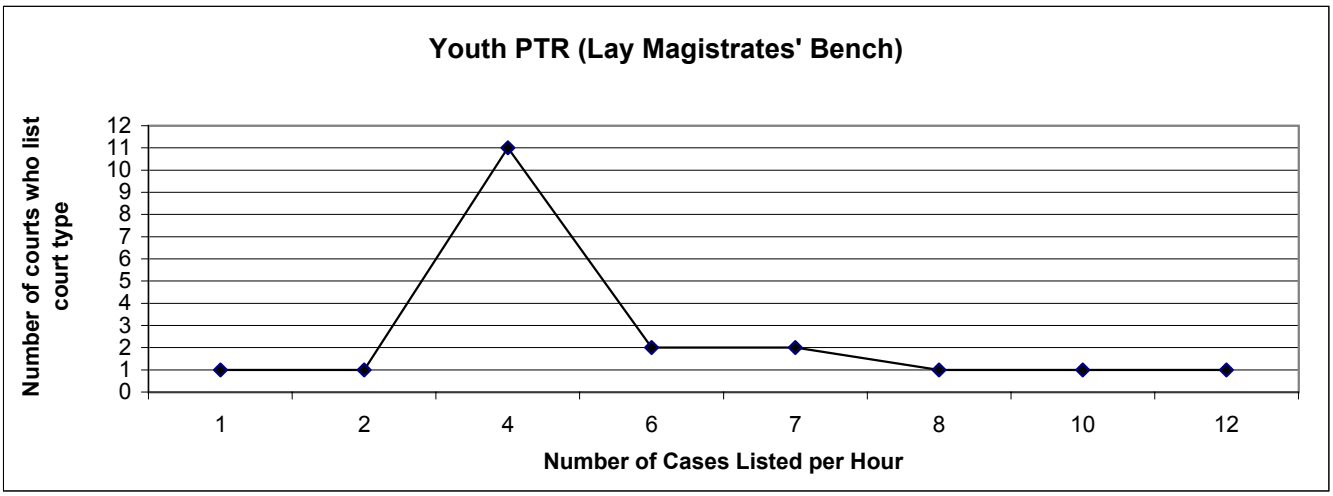
Most frequent number =	4.00	Average =	5.00	Middle range =	4.00	-	7.75

Chart 25



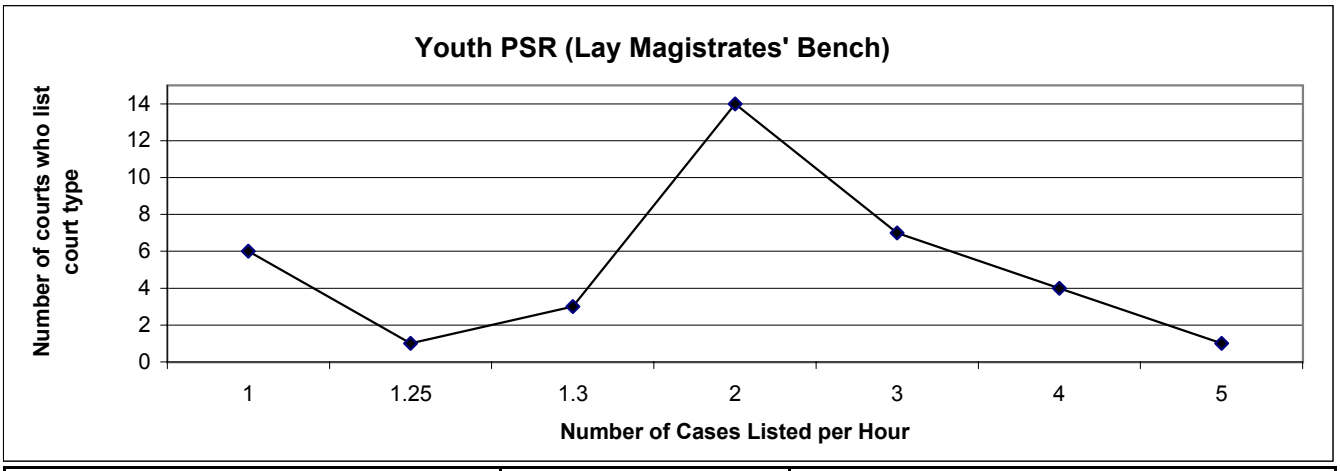
Most frequent number =	10.00	Average =	7.00	Middle range =	4.50	-	10.00

Chart 26



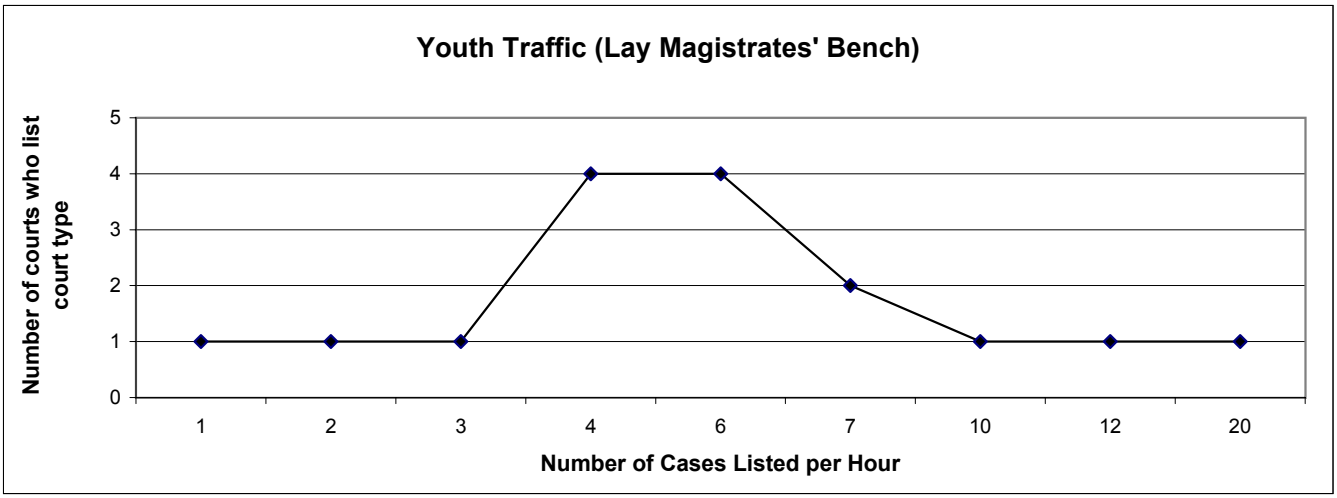
Most frequent number =	4.00	Average =	4.00	Middle range =	4.00	-	6.25

Chart 27



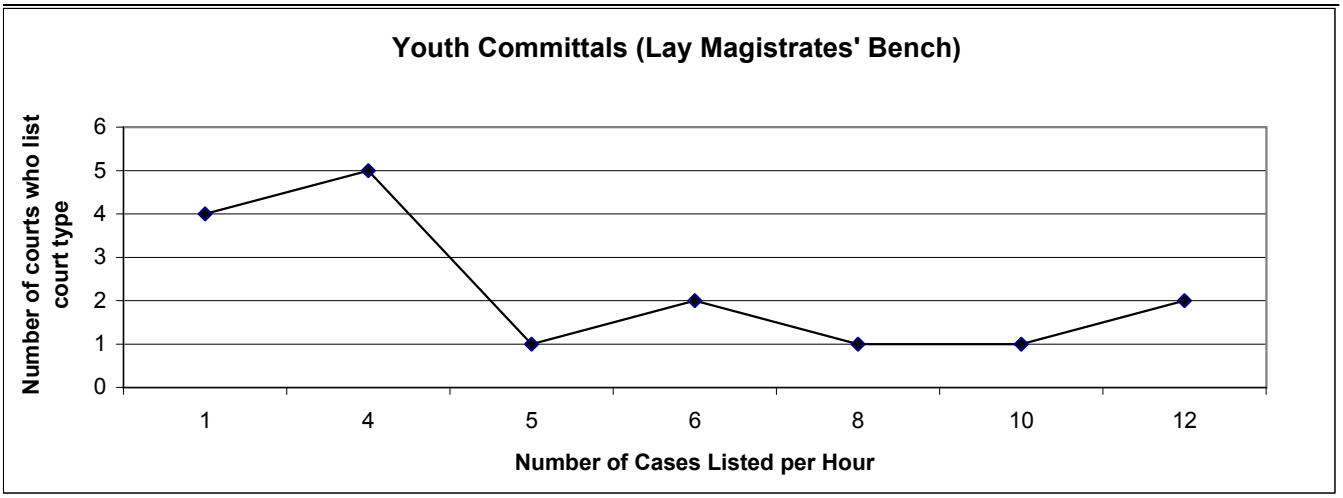
Most frequent number =	2.00	Average =	2.00	Middle range =	1.30	-	3.00

Chart 28



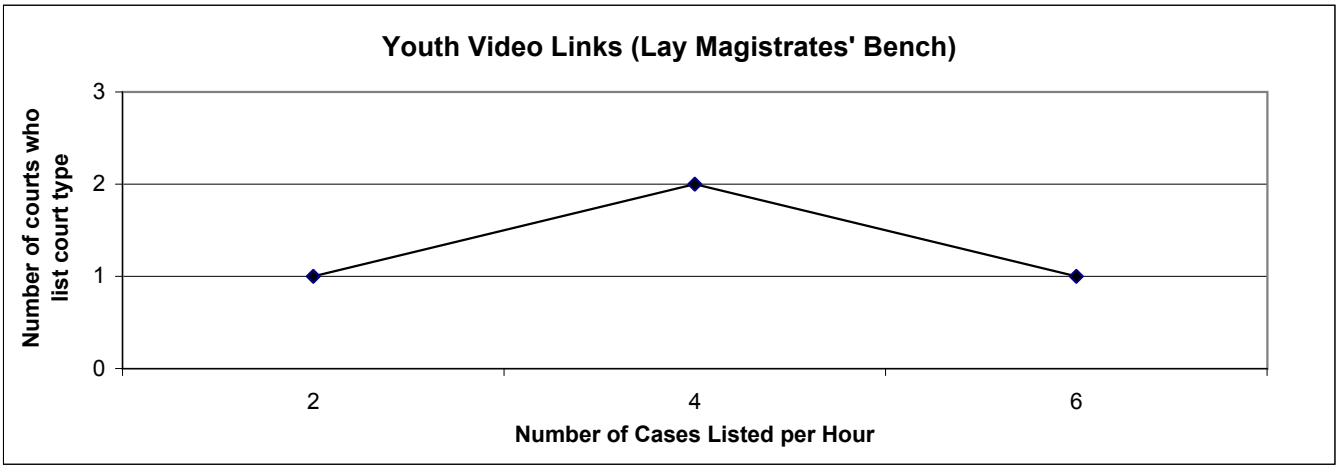
Most frequent number =	6.00	Average =	6.00	Middle range =	4.00	-	7.00

Chart 29



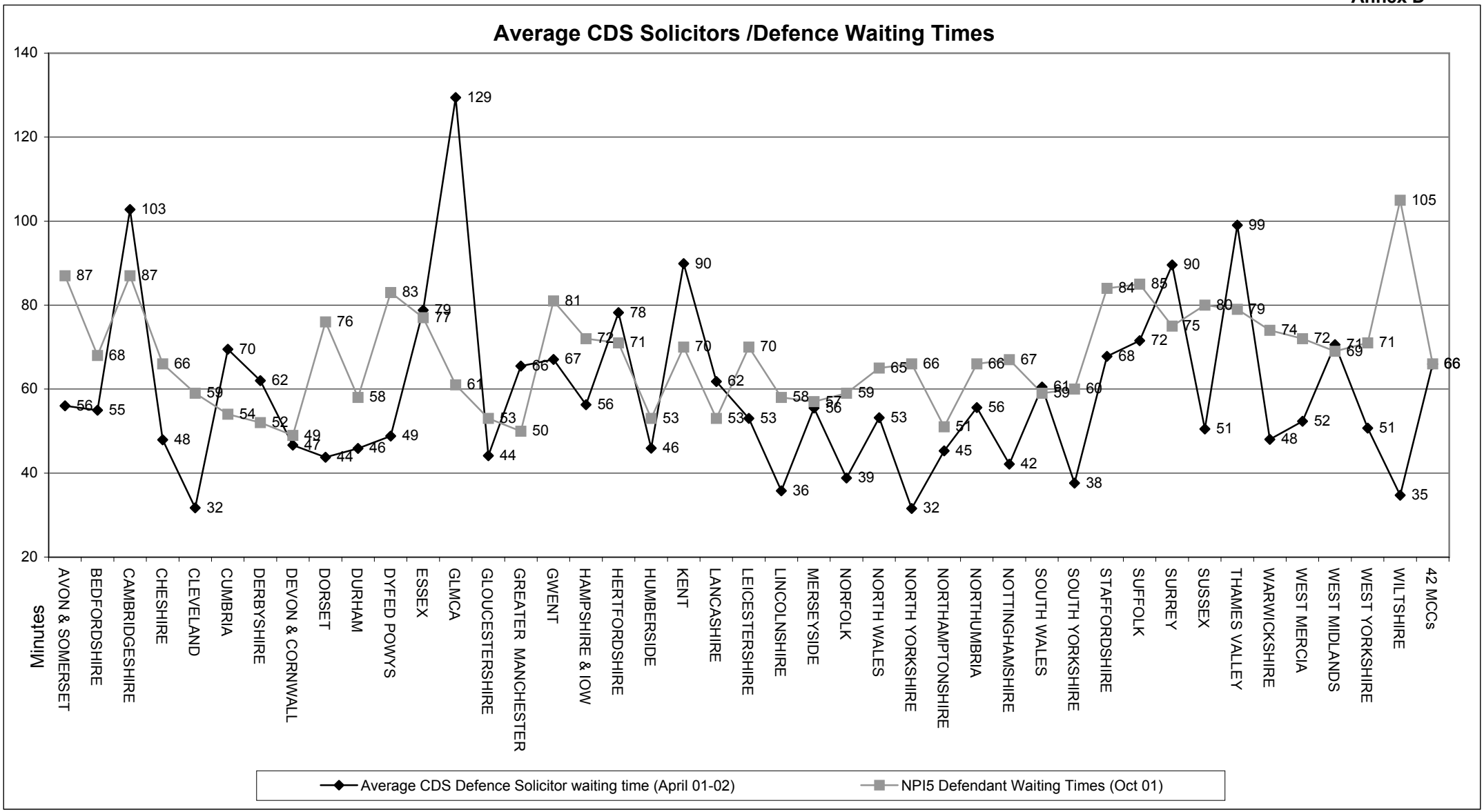
Most frequent number =	4.00	Average =	4.00	Middle range =	3.25	-	6.50

Chart 30



Most frequent number =	4.00	Average =	4.00	Middle range =	3.50	-	4.50

Annex D


Average CDS Solicitors /Defence Waiting Times
Minutes
140
120
100
80
60
40
20
AVON & SOMERSET
BEDFORDSHIRE
CAMBRIDGESHIRE
CHESHIRE
CLEVELAND
CUMBRIA
DERBYSHIRE
DEVON & CORNWALL
DORSET
DURHAM
DYFED POWYS
ESSEX
GLMCA
GLOUCESTERSHIRE
GREATER MANCHESTER
GWENT
HAMPSHIRE & IOW
HERTFORDSHIRE
HUMBERSIDE
KENT
LANCASHIRE
LEICESTERSHIRE
LINCOLNSHIRE
MERSEYSIDE
NORFOLK
NORTH WALES
NORTH YORKSHIRE
NORTHAMPTONSHIRE
NORTHUMBRIA
NOTTINGHAMSHIRE
SOUTH WALES
SOUTH YORKSHIRE
STAFFORDSHIRE
SUFFOLK
SURREY
SUSSEX
THAMES VALLEY
WARWICKSHIRE
WEST MERCIA
WEST MIDLANDS
WEST YORKSHIRE
WILTSHIRE
42 MCCs
Average CDS Defence Solicitor waiting time (April 01-02)
NPI5 Defendant Waiting Times (Oct 01)

Annex E

Examples of Trial Time Estimation Procedures

Court 1	All cases are subject to a PTR hearing. Agreed time estimates at PTR, where no estimate given - arrangements to stagger witnesses at half hour intervals
Court 2	The type of case – number of witnesses to be called, prosecution and defence - the issues involved - the length of statements made by the witnesses to be called - type of legal arguments that are known to be advanced by either side - use of video recording or interview and its length - if a site visit may be necessary.
Court 3	The court allows 30 minutes per witness (an average figure allowing for lengthy witness e.g.: I.P. and shorter witness e.g. arresting officer). 30 minutes allowed for opening and closing of a trial and an additional 15 minutes for the JJs to formulate the reasons for verdict. This formula would be affected by factors such as multiple defendants where separately represented and potential legal arguments. Enquiries would be made at PTR to establish time estimates.
Court 4	Depending on number of witnesses, type of case and clerk's judgement of case from experience
Court 5	PTR held in most cases. Normal estimate is 30 minutes per witness although this will alter depending on the needs of the witness e.g. child witness, interpreter required.
Court 6	Approximately 20 minutes per witness (depending on nature and extent of evidence) - figure agreed in consultation with CPS/Defence
Court 7	30 minutes per witness although time per witness is greatly dependent on type of witness e.g. civilian, Police forensic expert etc. Additional time is given for video viewing, listening to tape.
Court 8	A broad rule of thumb is to allow 30 minutes per live witness (to include time spent opening & closing the case and time for magistrates to make a decision). This is varied by taking into account the views of the parties, the nature of the alleged incident (e.g. a brief incident lasting seconds witnessed by 5 people will not take as long as an incident lasting, say 30 minutes, where there are 2/3 witnesses). Assessing the length of trials is part science and part art. An additional allowance might be made for other factors e.g. a particularly long-winded advocate!
Court 9	Half hour per witness (including defendant) plus legal argument time (as advised by legal staff)
Court 10	Calculation by clerk at pre trial review; approx. 20 minutes per witness plus summing up.
Court 11	A PTR is held for majority of cases. The time estimate is dependent upon the defence raised and the length of witness statements. A general marker of 15 minutes per witness would be used in straightforward traffic offences plus 15 minutes for the decision and preparation of reasons
Court 12	Court ascertains number of live witnesses & number of agreed witness statements. Normally half an hour per live witness and 5 minutes per S9. Can be longer if issue of credibility and lots of cross-examination. Advocates would assist at PTR with time allocation
Court 13	Estimate of half an hour per witness together with consideration of the length of rota, tape recorded interview, video etc. and considerations of breaks for child witnesses.
Court 14	4-6 witnesses per half day any more full day normally requested.
Court 15	Generally from estimates given by advocates. In absence 30 minutes per witness.
Court 16	Trial length calculated at half an hour per witness plus time allocated for representations from prosecution and defence.
Court 17	Half an hour per witness. An hour per witness if interpreter. Add an hour if legal argument. Double length if counsel known to be involved. Add a quarter of an hour for reasons if case last three hours or more. Add more time for known problems.

Annex F

	Length of adjournment (calendar days)												Total adjournments for reason specified		*NAO comparison
	<8		8 - 14		15 - 21		22 - 28		29 - 56		>56				
Standard Procedural Adjournments													**55%**		**59%**
To prepare for trial/pre-trial review	425		759		649		1,057		1,600		962		**5,452**	40%	36%
For reports prior to sentence	242		432		1,191		796		255		26		**2,942**	21%	16%
Miscellaneous (e.g. defendant was ill)	215		319		228		213		111		38		**1,124**	8%	13%
To serve concise witness statements	38		60		116		173		238		26		**651**	5%	10%
To prepare for committal	153		225		135		170		381		55		**1,119**	8%	8%
For defendant to be informed that s/he faces disqualification from driving	41		297		354		336		128		48		**1,204**	9%	8%
To tie in with other matters	352		281		263		149		127		34		**1,206**	9%	6%
For a full file after unexpected not guilty plea	1		11		9		18		12		2		**53**	0%	3%
Subtotals	**1,467**	**6%**	**2,384**	**10%**	**2,945**	**12%**	**2,912**	**12%**	**2,852**	**11%**	**1,191**	**5%**	**13,751**	100%	**100%**
Ineffective Hearings													**45%**		**41%**
Defendant did not attend															
Defendant did not attend	603		571		393		410		540		577		**3,094**	28%	25%
Subtotals	**603**	**2%**	**571**	**2%**	**393**	**2%**	**410**	**2%**	**540**	**2%**	**577**	**2%**	**3,094**	28%	25%
Defence - other reasons															
To take further instructions	515		868		453		287		171		24		**2,318**	21%	9%
Defendant had not applied for legal aid	17		52		24		25		14		2		**134**	1%	5%
Advance information had not been requested	11		37		17		12		9		-		**86**	1%	4%
Committal papers received but not considered	4		18		3		5		-		1		**31**	0%	3%
Advance information received but not considered	9		60		23		8		4		2		**106**	1%	1%
To review tape or video evidence	34		100		66		35		22		5		**262**	2%	1%
Subtotals	**590**	**2%**	**1,135**	**5%**	**586**	**2%**	**372**	**1%**	**220**	**1%**	**34**	**0%**	**2,937**	**26%**	23%
Court															
Details of previous driving convictions not available	63		82		118		130		57		7		**457**	4%	7%
Application for legal aid not processed	4		3		4		2		1		1		**15**	0%	2%
Insufficient court time	123		50		63		46		24		25		**331**	3%	1%
Subtotals	**190**	**1%**	**135**	**1%**	**185**	**1%**	**178**	**1%**	**82**	**0%**	**33**	**0%**	**803**	**7%**	10%
Prosecution															
To make further enquiries	109		282		204		185		120		16		**916**	8%	10%
Advance information not provided on time	20		71		42		32		19		2		**186**	2%	6%
Committal papers not provided on time	9		27		17		3		4		2		**62**	1%	5%
Summons not served	19		27		58		131		231		32		**498**	4%	2%
Concise witness statements not served	3		13		7		16		12		3		**54**	0%	2%
Prosecutor unable to produce file in court	74		83		49		63		62		1		**332**	3%	1%
To consider the appropriateness of the charges	66		203		138		100		54		8		**569**	5%	1%
Subtotals	**300**	**1%**	**706**	**3%**	**515**	**2%**	**530**	**2%**	**502**	**2%**	**64**	**0%**	**2,617**	**24%**	27%
Third party															
Witness did not attend	9		22		5		6		9		15		**66**	1%	4%
Subtotals	**9**	**0%**	**22**	**0%**	**5**	**0%**	**6**	**0%**	**9**	**0%**	**15**	**0%**	**66**	**1%**	4%
Probation Service															
Pre-sentence report requested but not provided	4		19		24		12		3		1		**63**	1%	2%
Subtotals	**4**	**0%**	**19**	**0%**	**24**	**0%**	**12**	**0%**	**3**	**0%**	**1**	**0%**	**63**	**1%**	2%
Prison Service/Prisoner Escort															
Prisoner Escort and Custody Service failed to produce prisoner	3		1		2		-		1		2		**9**	0%	2%
Subtotals	**3**	**0%**	**1**	**0%**	**2**	**0%**	**-**	**0%**	**1**	**0%**	**2**	**0%**	**9**	**0%**	2%
More than one party															
Defendant not made aware of hearing/issued with defective summons	28		39		20		24		29		6		**146**	1%	3%
For prosecution and defence to liaise	55		115		72		40		25		11		**318**	3%	3%
Subtotals	**83**	**0%**	**154**	**1%**	**92**	**0%**	**64**	**0%**	**54**	**0%**	**17**	**0%**	**464**	**4%**	6%
Miscellaneous															
Other miscellaneous reasons	157		130		77		76		71		41		**552**	5%	1%
Unable to identify the reason for adjournment	133		143		89		64		63		31		**523**	5%	n/a
Subtotals	**290**	**1%**	**273**	**1%**	**166**	**1%**	**140**	**1%**	**134**	**1%**	**72**	**0%**	**1,075**	**10%**	1%
TOTAL	**3,539**	**14%**	**5,400**	**22%**	**4,913**	**20%**	**4,624**	**19%**	**4,397**	**18%**	**2,006**	**8%**	**24,879**	**100%**	

Forensic Science Service 2002/03 Timescales

Table 1: Turnaround times for urgent jobs, critical and PYO Cases

The agreed turnaround times (calendar days) are:

	Urgent	Critical*	Authorised PYO
Violent Crime	As agreed with investigator	42days	21days
Volume Crime	As agreed with investigator	42days	21days
Drugs	As agreed with investigator	42days	21days

* Excludes s51 and adults in custody. Delivery dates are negotiated with the customer.

Table 2: Turnaround times for standard jobs

90% turnaround time targets (calendar days)

	Targets to be achieved by Quarter 1 2002	Targets to be achieved by Quarter 4 2003
Murder and other serious assaults	80	70
Rape and serious sexual offences	80	70
Burglary and dwelling house	80	70
Drugs	35	35
All other categories	80	70

Table 3: Turnaround times for The National DNA Database

Average turnaround time targets (calendar days)

	Targets to be achieved by Quarter 1 2002	Targets to be achieved by Quarter 4 2003
CJ Samples	12	12
Crime Stains (B04 samples)	21	14
DNA Match Confirmation	50	14

Forensic Science Service Timescales (prior to 2002/3)

Table 4

Class	Description	90% Delivery (Days)
	Drugs	
01D	Import/Export Controlled Drugs	28
02D	Production of Controlled Drugs	28
03D	Supply of Controlled Drugs	35
04D	Possession of Controlled Drugs	14
	Serious Crime	
01S	Murder/Manslaughter	110
02S	Attempted Murder	110
03S	Other Suspicious Death	110
04S	Rape	95
05S	Other Sexual Offences	95
06S	Robbery Serious	110
07S	Terrorism	125
08S	Explosives	125
09S	High Value Fraud	45
10S	Blackmail	65
12S	Use/Trade/Short/Convert Firearm	55
13S	Wounding/GBH	105
14S	Abduction and Kidnapping	135
16S	Arson/Fire Investigations	80
99S	Other Serious	105
	Volume	
01V	Less Serious Assault	90
02V	Criminal Damage	100
03V	Public Order	80
04V	Possession of Firearms	90
05V	Burglary in a Dwelling	95
06V	Robbery Volume	95
07V	Other Burglary	95
08V	Theft inc. Handling Stolen Goods	85
09V	Low Value Fraud and Forgery	50
10V	Auto-Crime	90
11V	Aggravated Burglary	85
99V	Other Volume	60
	Specific Services	
01X	Traffic Offences Fatal	95
02X	Traffic Offences Non-fatal	75
03X	Driving After Consuming Drugs	75
04X	Alcohol Technical Defences	35
6	RTA Alcohols	14
	Other	
BO4	Intelligence Samples Requiring Searching	21
BS4	Intelligence Samples Direct to DNA Unit	21
Notes 2. These are default timescales and, where requested, shorter delivery times can be provided.		

FSS Breakdown of Delay in receipt of samples from forces (in percentages)

Table 5

Days	Standard	Critical	Urgent	PYO
0-20	66%	69%	93%	67%
21-40	18%	17%	2%	19%
41-60	7%	6%	1%	7%
61-80	3%	3%	1%	4%
81-100	2%	2%	1%	2%
101-120	1%	1%	0%	1%
121-140	1%	1%	0%	0%
141-160	0%	0%	0%	1%
160+	1%	1%	1%	0%

Data for all force submissions of forensic submissions from 1st September to 31st December 2001

Table 6

	Minimum time recorded between arrest/charge & submission	Average time between arrest/charge & submission	Maximum submission time in 90% of cases
Urgent	0	30	75
Critical	0	21	48
Standard	0	23	52
Persistent Young Offender	0	23	51

PROTOCOL: CALLING POLICE OFFICERS TO ATTEND COURT

1]

1.1 The aim of this protocol is to reduce the costs involved, both operationally and financially, to Sussex Police through officers being called to give evidence at court. There is strong evidence that, of those actually called to court, very little time is spent giving evidence.

1.2 Delivery of this protocol will involve liaison between Justices' Clerks, Justices' Chief Executives, the magistracy, MCCs, Police, CPS and other prosecuting authorities, defence practitioners, Probation Service, Victim Support and other court users.

2] OBJECTIVES

2.1 To encourage co-operation between criminal justice agencies in the matter of listing cases to minimise the impact on officers duties.

2.2 To ensure appropriate account is taken of all court users.

2.3 To reduce delay in a manner consistent with the interests of justice

3] GENERAL PRINCIPLES

3.1 Regulations concerning Police remuneration are contained within the Police Regulations 1995, Reg 29 (for ranks below Inspector) and Reg 30 (Inspector and Chief Inspector).

3.2 The Police service is bound by certain regulations concerning the call of officers to duty on a rostered rest day or annual leave day.

Where an officer receives more than 15 days notice of a cancelled rest day, he/she shall be entitles to a further day in lieu of that cancelled day

Where an officer received less than 15, but more than 8 days notice, the officer is entitled to overtime payment at time and a half; and'

Where the officer receives less than 8 days notice, the officer is entitled to receive payment at double time

Where an officer is required to attend Court on an annual leave day, the officer shall be entitled to an additional two days leave in lieu for the hrs and (if still required), second day of the annual leave, and an additional one and a half days leave in lieu for subsequent days if required.

3.3 Of those officers called to attend court, on average, between 9 and 14% actually give evidence.

1. A minimum of 4 hours pay and, if the duty period is less than six hours, an additional 'travelling time' allowance.(Reg 29(9)(g)(i)

4] OPERATIONAL IMPACT

4.1 To call an officer to attend court on a rest day or annual leave impacts negatively on an officers welfare. It should not be underestimated that although a rest day for the officer was midweek due to shift work, it is just as important as a weekend would be for non shift workers.

4.2 Fixing trials in the middle of an officers 'nights' tour of duty causes considerable operational problems due to the need for an officer being required to miss up to three night shifts to make the court appearance and other officers often have to fill the void on overtime payments.

4.3 Where officers are cancelled prior to the hearing, the cancellation may not rectify the situation. The officer, and those who have been re-rostered to cover for their colleague, may be entitled to work the newly allocated duty and claim payment at the appropriate (overtime) rate.

4.4 Police Officers should only be called to attend court where scheduled to be on rest days and annual leave, in exceptional circumstances. Due and balanced regard should be had for the availability of all involved in the process, including the Prosecution and the Defence.

4.5 Evidence from research carried out in one Force indicates that the costs of officers called to court in the Magistrates and Crown Courts can cost more than £670,000 per year which equates to twenty three Police Officer posts

4.6 Courses are an important aspect of the officers ongoing training. The availability of courses has been dramatically reduced to save cost and only those with a pressing need for training are provided with courses.

4.7 Research has identified that almost half of trials listed in both the Magistrates Court and the Crown Court conclude with a late guilty plea. From this data the study in West Yorkshire identified that from 7,898 officers called, 3,713 would be required and only 334 would actually give evidence.

5] AGREED ACTIONS

5.1 The STIG will set yearly targets as outlined in the HMIC thematic Report 'Masefield's Progress' (March 1997) in an effort to reduce police witness costs. This will follow the introduction of a system of monitoring being implemented by Sussex Police.

5.2 All agencies involved in the Criminal Justice Process, particularly the Crown and Magistrates Courts together with the CPS, should ensure that, as a general rule, no officer should be called to court on Rest Day or Annual Leave. (Where the appropriate availability document, 'MG10' has been correctly completed.) Where this is unavoidable and only in exceptional circumstances, the justification should be recorded and relayed back to the relevant Criminal Justice Unit.

NB for rest days only, Crown court warned list cases and Crown court fixtures over 5 days are exempt from this requirement. Crown court fixed cases of 5 days or less in length should not be listed to coincide with police officer rest days unless their attendance can be staggered to avoid the rest day.

5.3 Every effort will be made to avoid calling officers during their night duty.

5.4 The police will ensure that every expedited file will have an up-to-date MG10 outlining the dates to avoid of all the key witnesses. This form will need to be updated by the police to include additional witnesses and also to ensure the prosecutor and court have up-to-date and accurate information when setting dates for trial. This will mean that if a not guilty trial date is not set at the first hearing up-to-date MG10s should be supplied for any relevant subsequent hearings in order to facilitate this agreement.

5.5 As a rule, Trial dates arranged where an officer is on Rest day or Annual Leave will be set with sufficient notice for the warning to be received by officers (ideally 28 days) and disposition of strengths organised to ensure adequate operational cover.

5.6 The CPS will communicate witness requirements and cancellations to the Police within 48 hours of any decision for a requirement to attend, or variation of a decision.

5.7 Where officers are de-warned, communication of this information is given priority.

5.8 Blanket refusals by the defence to accept witnesses will be challenged robustly.

6] STANDARDS OF DRESS FOR OFFICERS ATTENDING COURT

6.1 Officers may attend court dressed in 'routine' uniform, including utility belt and appointments.

6.2 There are no circumstances in which a Police officer may attend court or give evidence while carrying a gun without the express permission of the trial judge.

6.3 Some cases such as those involving very young children may require that full operational uniform should not be worn. These decisions are a matter for the trial judges discretion and potential difficulties should, where possible, be identified at Plea and Direction Hearings.

7] MONITORING

7.1 Sussex Trials Issues and Court User groups will monitor this protocol and any associated local service level agreements. These agreements will contain arrangements for resolving problems or difficulties that may arise at a local level, with the relevant agency and the officers' Divisional Commander.

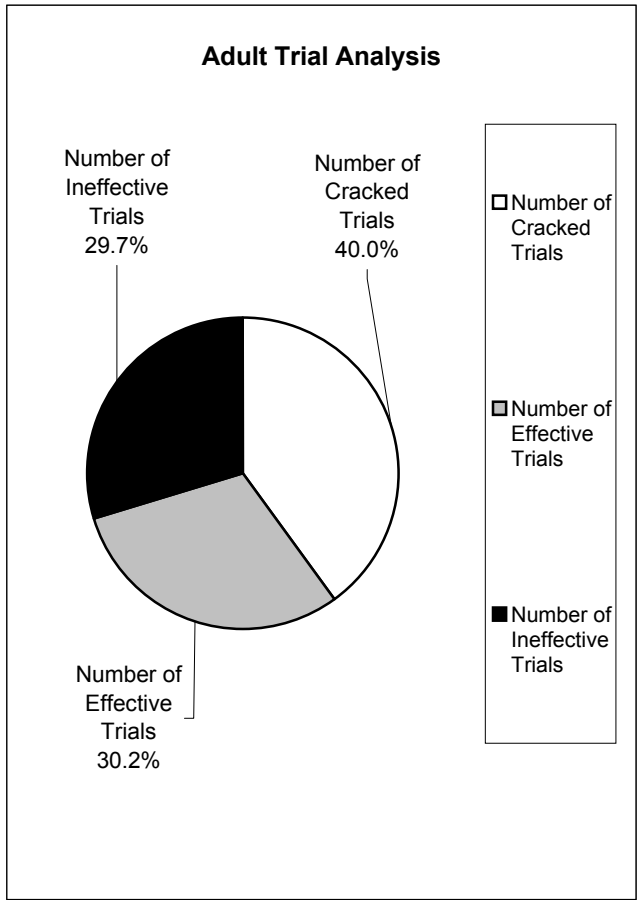
Thematic Review of Listing and Case Management of Criminal Cases in the Magistrates' Courts

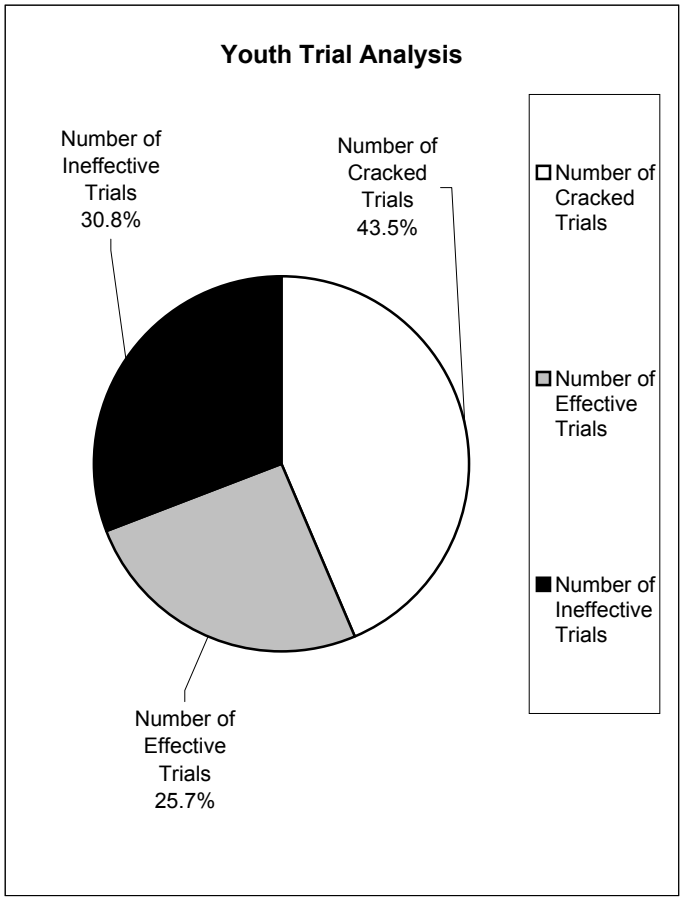
Annex I(A)

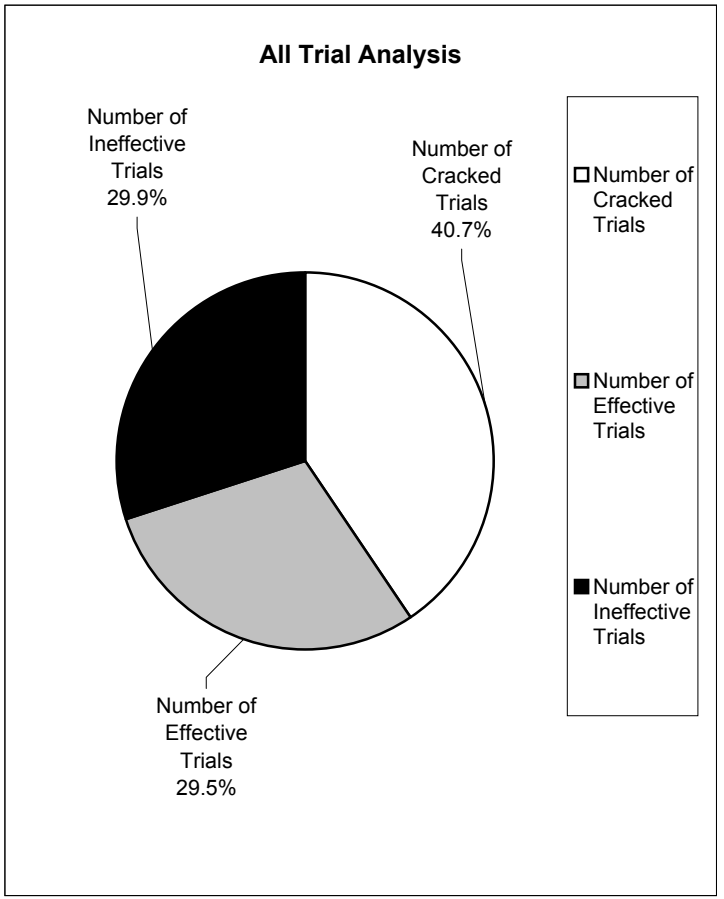
Overall Trial Analysis

	Adult		Youth		All	
Number of Cracked Trials	2798	40.0%	673	43.5%	3486	40.7%
Number of Effective Trials	2114	30.2%	398	25.7%	2526	29.5%
Number of Ineffective Trials	2079	29.7%	476	30.8%	2562	29.9%
All Trials	**6991**	**100.0%**	**1547**	**100.0%**	**8574**	**100.0%**

NB: 36 (0.4%) trials did not state whether the defendant was an adult, a youth or a PYO







Data collected in eight MCCs from 2nd January to 28th March 2002

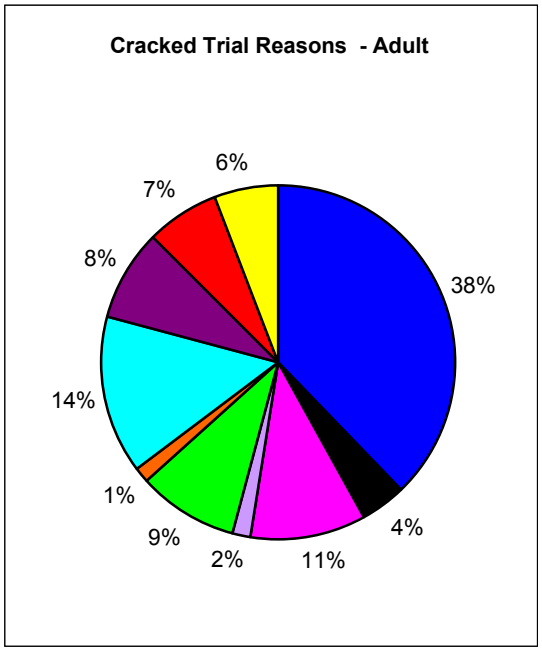
Thematic Review of Listing and Case Management of Criminal Cases in the Magistrates' Courts

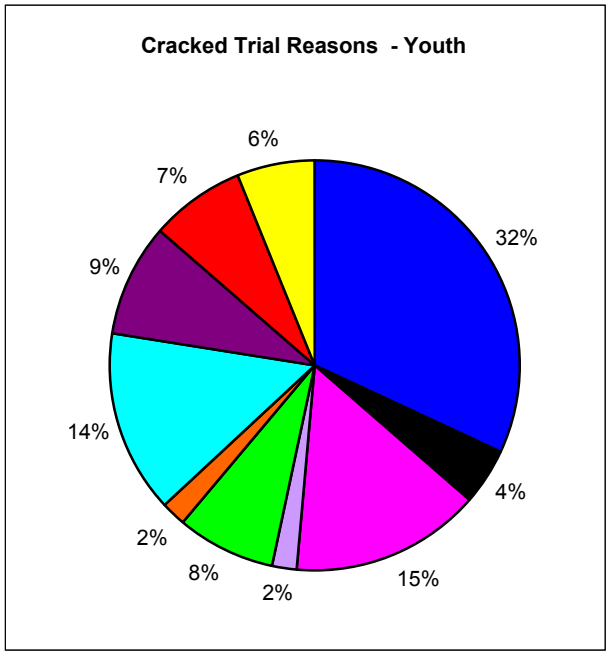
Annex I(B)

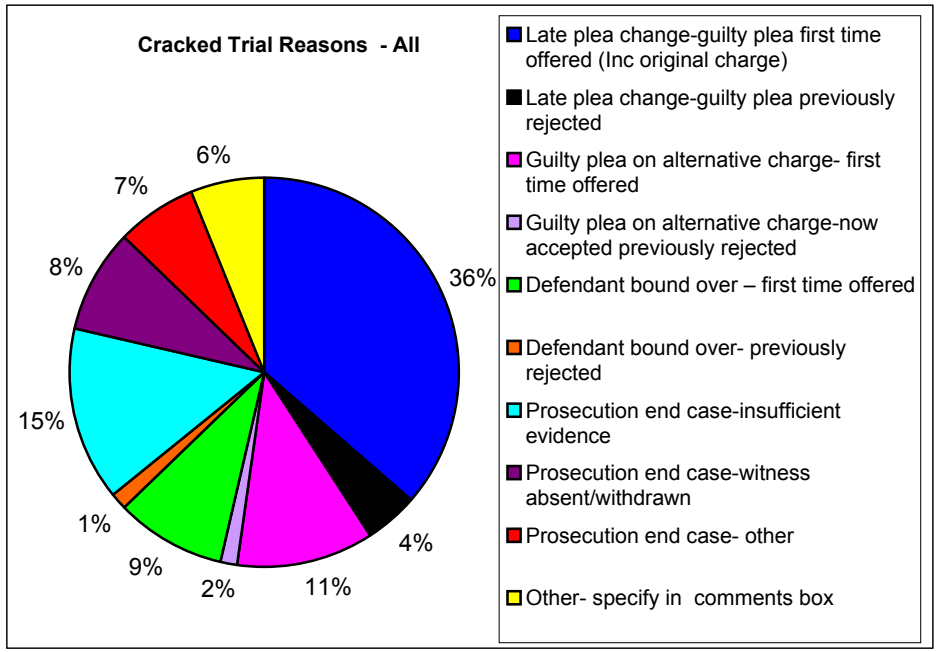
Cracked Trial Analysis

Cracked Trials	Adult		Youth		All	
Number of Trials	**2798**		**673**		**3486**	
Late plea change-guilty plea first time offered (Inc original charge)	**1056**	**38%**	**215**	**32%**	**1272**	**36%**
Late plea change-guilty plea previously rejected	**119**	**4%**	**30**	**4%**	**150**	**4%**
Guilty plea on alternative charge- first time offered	**294**	**11%**	**100**	**15%**	**394**	**11%**
Guilty plea on alternative charge-now accepted previously rejected	**43**	**2%**	**14**	**2%**	**57**	**2%**
Defendant bound over – first time offered	**262**	**9%**	**53**	**8%**	**316**	**9%**
Defendant bound over- previously rejected	**35**	**1%**	**13**	**2%**	**48**	**1%**
Prosecution end case-insufficient evidence	**405**	**14%**	**97**	**14%**	**506**	**15%**
Prosecution end case-witness absent/withdrawn	**232**	**8%**	**60**	**9%**	**295**	**8%**
Prosecution end case- other	**187**	**7%**	**49**	**7%**	**239**	**7%**
Other- specify in comments box	**165**	**6%**	**42**	**6%**	**209**	**6%**

NB: 15 (0.4%) trials did not state whether the defendant was an adult, a youth or a PYO







Data collected in eight MCCs from 2nd January to 28th March 2002

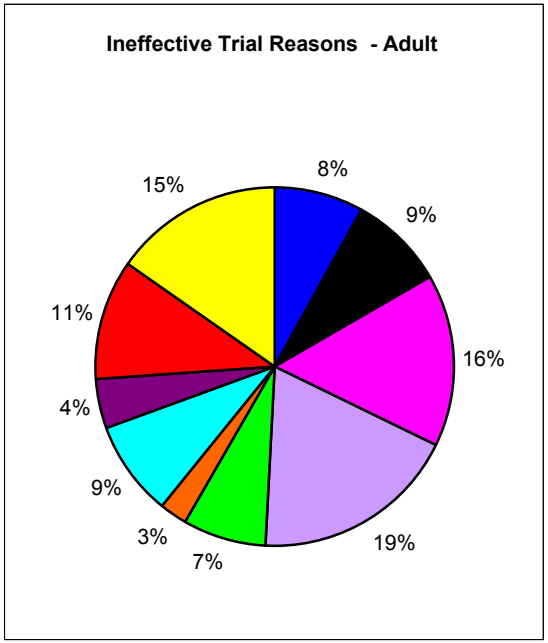
Thematic Review of Listing and Case Management of Criminal Cases in the Magistrates' Courts

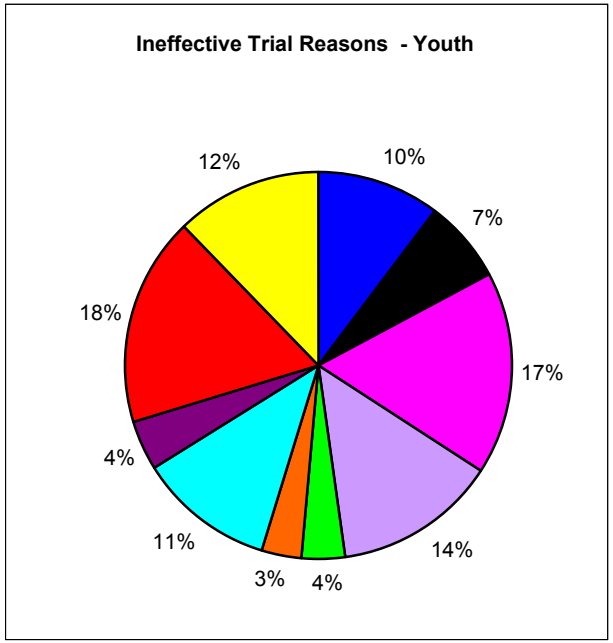
Annex I(C)

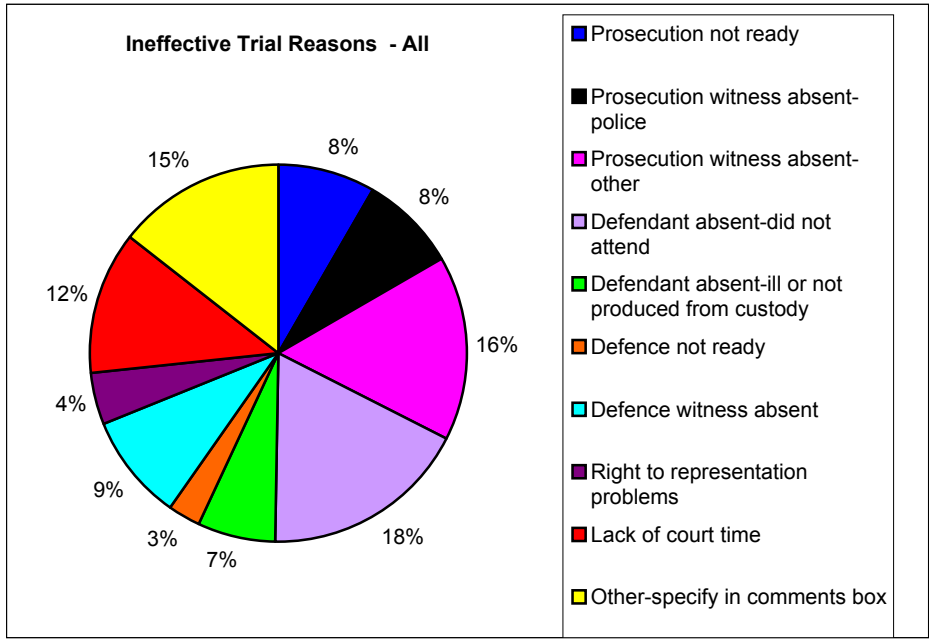
Ineffective Trial Analysis

Ineffective Trials	Adult		Youth		All	
Number of Trials	**2079**		**476**		**2562**	
Prosecution not ready	**167**	**8%**	**49**	**10%**	**216**	**8%**
Prosecution witness absent-police	**177**	**9%**	**33**	**7%**	**211**	**8%**
Prosecution witness absent-other	**325**	**16%**	**80**	**17%**	**406**	**16%**
Defendant absent-did not attend	**390**	**19%**	**65**	**14%**	**456**	**18%**
Defendant absent-ill or not produced from custody	**151**	**7%**	**18**	**4%**	**169**	**7%**
Defence not ready	**56**	**3%**	**16**	**3%**	**73**	**3%**
Defence witness absent	**179**	**9%**	**54**	**11%**	**234**	**9%**
Right to representation problems	**90**	**4%**	**19**	**4%**	**111**	**4%**
Lack of court time	**229**	**11%**	**84**	**18%**	**313**	**12%**
Other-specify in comments box	**315**	**15%**	**58**	**12%**	**373**	**15%**

NB: 7 (0.27%) Trials did not state whether the defendant was an adult, a youth or a PYO.







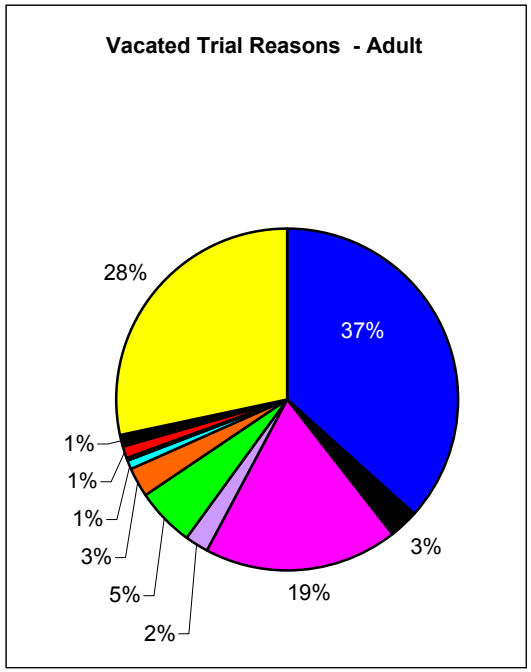
Data collected in eight MCCs from 2nd January to 28th March 2002

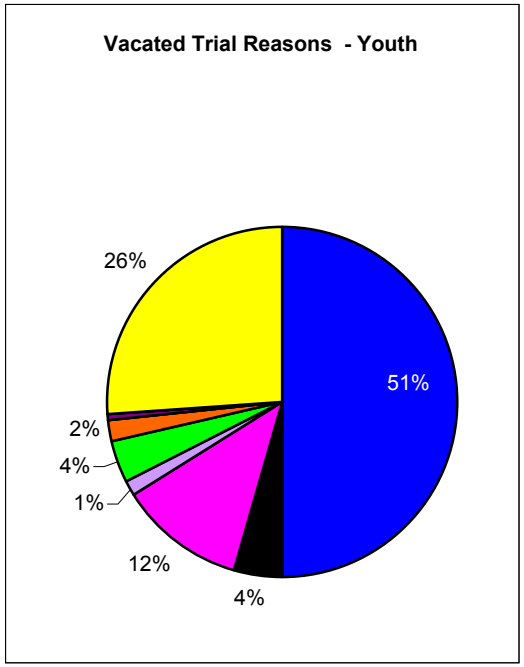
Thematic Review of Listing and Case Management of Criminal Cases in the Magistrates' Courts

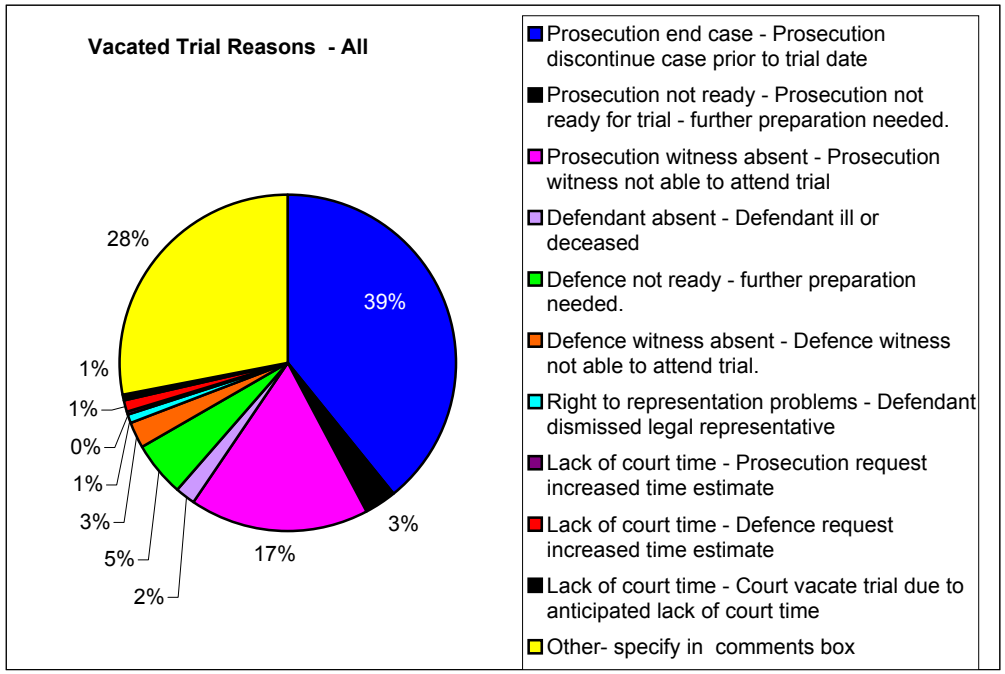
Annex I(D)

Vacated Trial Analysis

Vacated Trials	Adult		Youth		All	
Number of Trials	**880**		**206**		**1086**	
Prosecution end case - Prosecution discontinue case prior to trial date	**323**	**37%**	**103**	**50%**	**426**	**39%**
Prosecution not ready - Prosecution not ready for trial - further preparation needed.	**23**	**3%**	**9**	**4%**	**32**	**3%**
Prosecution witness absent - Prosecution witness not able to attend trial	**163**	**19%**	**24**	**12%**	**187**	**17%**
Defendant absent - Defendant ill or deceased	**19**	**2%**	**3**	**1.5%**	**22**	**2%**
Defence not ready - further preparation needed.	**48**	**5%**	**8**	**4%**	**56**	**5%**
Defence witness absent - Defence witness not able to attend trial.	**25**	**3%**	**4**	**2%**	**29**	**3%**
Right to representation problems - Defendant dismissed legal representative	**8**	**1%**	**0**	**0%**	**8**	**1%**
Lack of court time - Prosecution request increased time estimate	**2**	**0%**	**1**	**0%**	**3**	**0%**
Lack of court time - Defence request increased time estimate	**11**	**1%**	**0**	**0%**	**11**	**1%**
Lack of court time - Court vacate trial due to anticipated lack of court time	**8**	**1%**	**0**	**0%**	**8**	**1%**
Other- specify in comments box	**250**	**28%**	**54**	**26%**	**304**	**28%**







Data collected in five MCCs from 2nd January to 28th March 2002

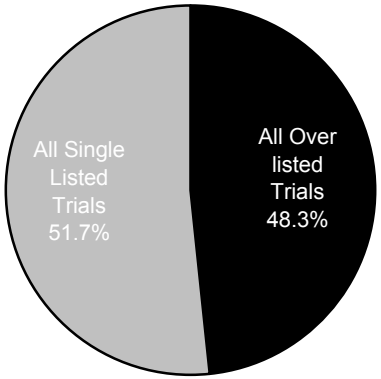
Annex I(E)

Overlisted Trials Analysis

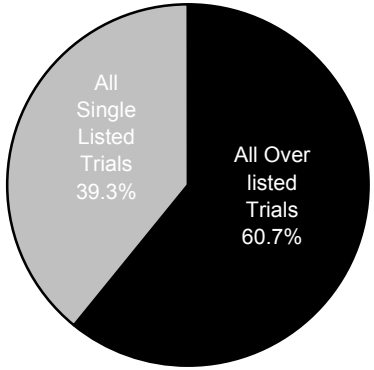
All Defendants				
Overlisted Trials	**All Over listed Trials**		**All Single Listed Trials**	
Percentage of Effective Trials	761	48.29%	815	51.71%
Percentage of Ineffective Trials	985	60.73%	637	39.27%
Percentage of Cracked Trials	1068	50.81%	1034	49.19%
All Trials	2814	53.09%	2486	46.91%

NB: 3274 (38.2%) trials did not state whether they were overlisted or not

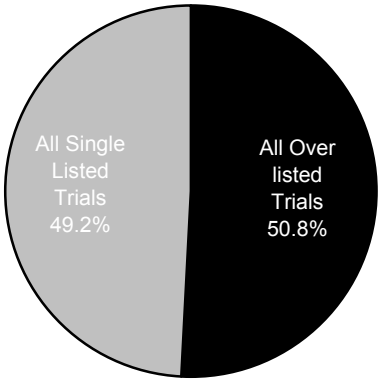
Overlisting Analysis - Effective Trials



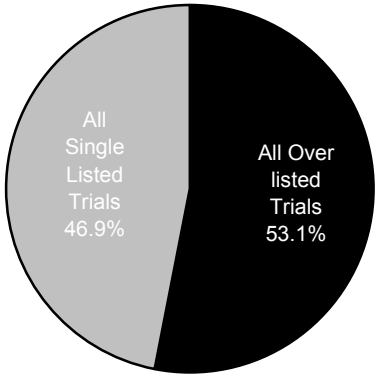
Overlisting Analysis - Ineffective Trials



Overlisting Analysis - Cracked Trials



Overlisting Analysis - All Trials



Data collected in eight MCCs from 2nd January to 28th March 2002

Thematic Review of Listing and Case Management of Criminal Cases in the Magistrates' Courts

Pre Trial Review and Witness Analysis

Annex I(F)

	Adult			Youth			All		
	PTR Held	PTR not held	%	PTR Held	PTR not held	%	PTR Held	PTR not held	%
Proportion of trials where a PTR was held	4013	2150	**65.1%**	835	463	**64.3%**	4926	2623	**65.3%**
Proportion of effective trials where PTR was held	1188	656	**64.4%**	223	126	**63.9%**	1417	787	**64.3%**
Proportion of ineffective trials where PTR was held	1213	600	**66.9%**	293	125	**70.1%**	1509	727	**67.5%**
Proportion of cracked trials where PTR was held	1612	894	**64.3%**	381	212	**64.2%**	2000	1109	**64.3%**
Proportion of vacated trials where PTR was held	532	259	**67.3%**	104	82	**55.9%**	636	341	**65.1%**
Proportion of effective trials where one PTR was held	874		**80.2%**	167		**79.5%**	1046		**80.2%**
Proportion of ineffective trials where one PTR was held	901		**81.4%**	235		**87.0%**	1139		**82.5%**
Proportion of cracked trials where one PTR was held	1230		**81.8%**	298		**83.9%**	1531		**82.2%**
Proportion of vacated trials where one PTR was held	371		**74.1%**	85		**87.6%**	456		**76.3%**
Proportion of effective trials where two PTRs were held	152		**13.9%**	32		**15.2%**	184		**14.1%**
Proportion of ineffective trials where two PTRs were held	135		**12.2%**	28		**10.4%**	163		**11.8%**
Proportion of cracked trials where two PTRs were held	178		**11.8%**	39		**11.0%**	218		**11.7%**
Proportion of vacated trials where two PTRs were held	84		**16.8%**	4		**4.1%**	88		**14.7%**
Proportion of effective trials where two or more PTRs were held	64		**5.9%**	11		**5.2%**	75		**5.7%**
Proportion of ineffective trials where two or more PTRs were held	71		**6.4%**	7		**2.6%**	78		**5.7%**
Proportion of cracked trials where two or more PTRs were held	95		**6.3%**	18		**5.1%**	114		**6.1%**
Proportion of vacated trials where two or more PTRs were held	46		**9.2%**	8		**8.2%**	54		**9.0%**
Percentage of cases (which held PTR) where one PTR was held	**3005**		**81.2%**	**700**		**83.8%**	**3716**		**81.7%**
Percentage of cases (which held PTR) where two PTRs were held	**465**		**12.6%**	**99**		**11.9%**	**565**		**12.4%**
Percentage of cases (which held PTR) where more than two PTRs were held	**230**		**6.2%**	**36**		**4.3%**	**267**		**5.9%**
Average Number of Unnecessary Witnesses after one PTR	**0.72**			**1.00**			**0.77**		
Average Number of Unnecessary Witnesses after two PTR	**0.64**			**1.08**			**0.70**		
Average Number of Unnecessary Witnesses after 2+ PTR	**0.63**			**0.57**			**0.63**		
Average Number of Unnecessary Witnesses after no PTR	**0.35**			**0.68**			**0.40**		

NB: 1025 (12%) cracked and ineffective trials did not state whether a PTR was held or not.

NB: 109 (10%) vacated trials did not state whether a PTR was held or not.

Data collected in eight MCCs from 2nd January to 28th March 2002

Witness Attendance Analysis

Annex I(G)

Unnecessary Witnesses

Witness Types	Prosecution Police		Prosecution Adult		Prosecution Child		Prosecution Expert		Defence Adult		Defence Child		Defence Expert	
	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses	Average Number of Unnecessary Witnesses per Trial	Total Number of Unnecessary Witnesses
Late plea change-guilty plea first time offered (inc. original charge)	1.67	1237	1.29	788	0.17	64	0.05	16	0.22	83	0.04	15	0.01	2
Late plea change-guilty plea previously rejected	1.58	115	1.57	94	0.27	8	0.04	1	0.36	10	0.08	2	0.00	0
Guilty plea on alternative charge- first time offered	1.71	428	1.51	313	0.28	37	0.03	3	0.43	58	0.04	5	0.00	0
Guilty plea on alternative charge-now accepted previously rejected	1.45	45	1.81	47	0.25	3	0.18	2	0.58	7	0.45	5	0.00	0
Defendant bound over – first time offered	1.38	209	1.04	147	0.27	23	0.03	2	0.43	38	0.08	6	0.00	0
Defendant bound over- previously rejected	1.37	37	1.48	31	0.43	6	0.00	0	1.06	17	0.08	1	0.00	0
Prosecution end case-insufficient evidence	0.85	138	0.69	91	0.04	4	0.03	3	0.30	32	0.02	2	0.00	0
Prosecution end case-witness absent/withdrawn	1.18	132	0.45	35	0.03	2	0.02	1	0.25	17	0.00	0	0.02	1
Prosecution end case- other	0.89	75	0.60	45	0.04	2	0.02	1	0.29	17	0.09	5	0.06	3
Other- specify in comments box	1.05	85	1.14	95	0.15	8	0.06	3	0.26	15	0.02	1	0.00	0
Prosecution not ready	1.46	127	1.11	80	0.32	14	0.08	3	0.69	33	0.24	9	0.12	4
Prosecution witness absent-police	1.21	116	0.64	44	0.27	14	0.06	3	0.59	38	0.14	7	0.06	3
Prosecution witness absent-other	1.33	256	0.85	115	0.09	9	0.02	2	0.51	57	0.17	17	0.04	4
Defendant absent-did not attend	1.45	328	1.24	249	0.05	5	0.01	1	0.02	2	0.04	4	0.00	0
Defendant absent-ill or not produced from custody	1.38	132	1.16	89	0.04	2	0.00	0	0.09	4	0.00	0	0.00	0
Defence not ready	1.35	54	1.19	43	0.00	0	0.12	2	0.11	2	0.00	0	0.00	0
Defence witness absent	1.48	170	0.98	92	0.28	17	0.06	3	0.44	28	0.19	11	0.00	0
Right to representation problems	1.78	121	0.88	46	0.44	17	0.03	1	0.43	17	0.16	6	0.00	0
Lack of court time	1.71	277	1.70	224	0.94	46	0.11	4	1.11	84	0.38	17	0.00	0
Other-specify in comments box	1.09	204	0.88	147	0.09	11	0.00	0	0.45	60	0.13	16	0.00	0
All Cracked and Ineffective Trials	**1.44**	**4286**	**1.14**	**2815**	**0.19**	**292**	**0.04**	**51**	**0.38**	**619**	**0.09**	**129**	**0.01**	**17**

Data collected in eight MCCs from 2nd January to 28th March 2002

Example of Listing Officer/Case Progression Officer Core Responsibilities

Annually

1 In consultation with other CJS partners (e.g. police, CPS, probation, YOTs, CDS), annually prepare court room sitting pattern/template taking into account:-

* projected workload (including number, type and length of cases listed for each type of court)
* number of legal advisers/prosecutors (and DCWs), probation and YOT staff available
* number of magistrates/DJs available
* other prosecutors/court users e.g. coroner, etc
* court rooms available

[Also need to carry out similar exercise for family court and licensing matters.]

2 Establish good communication links with relevant officers in police, CPS, probation and police. Establish good links with the main solicitor firms that operate in the magistrates' courts.

3 Maintain annual diary of courtroom availability and usage, listing hearings and trials in accordance with the agreed scheduling and listing policies

4 Supervise or prepare magistrates' rota (on a rolling basis or e.g. six monthly)

Daily

5 Ensure, so far is possible, there is an even spread of work across lay magistrates and DJ run courts.

6 Liaise with prisoner escort agency to ascertain

* number of defendants in custody
* which courts they are allocated to
* cut off time for remand cases during the day

7 Issue [seven] days in advance daily list and allocate cases to court, taking into account listing template, number of legal advisers, CPS prosecutors and DCWs available and taking into account magistrates disqualified from or seized of particular matters. Distribute list to CPS (probation, YOTs and other prosecutors).

8 Update daily list and distribute to CPS (probation, YOTs and other prosecutors) [three] days in advance.

9 Monitor compliance with directions made [at EAH, PTR, etc] in cases going to trial. If directions have not been completed by parties as directed, list cases for mention before DJ/appropriate court.

10 Identify long running cases and initiate action to progress them

11 Meet on regular basis with other youth justice agencies to monitor progression of all youth cases.

12 Maintain the Tracker system to monitor progress of all [youth] cases.

13 Review court workload on a regular basis to ensure even spread of work (e.g. if trials collapse, etc).

14 Liaise with Probation/YOTs to ensure PSRs are delivered to magistrates and DJs in advance

15 Deal with requests for adjournments, using delegated authority

16 Ensure that magistrates and legal advisers are available for search and entry warrants

17 Arrange out of hours and Saturday courts as necessary

18 Arrange interpreters for courts

Other

19 Appraise staff

20 Collate magistrates' sitting information and keep JC informed of low or high attendances

21 Contribute to training of staff and magistrates

22 Monitor and analyse performance as requested by JC/JCE. Respond to requests for performance data from JC/JCE

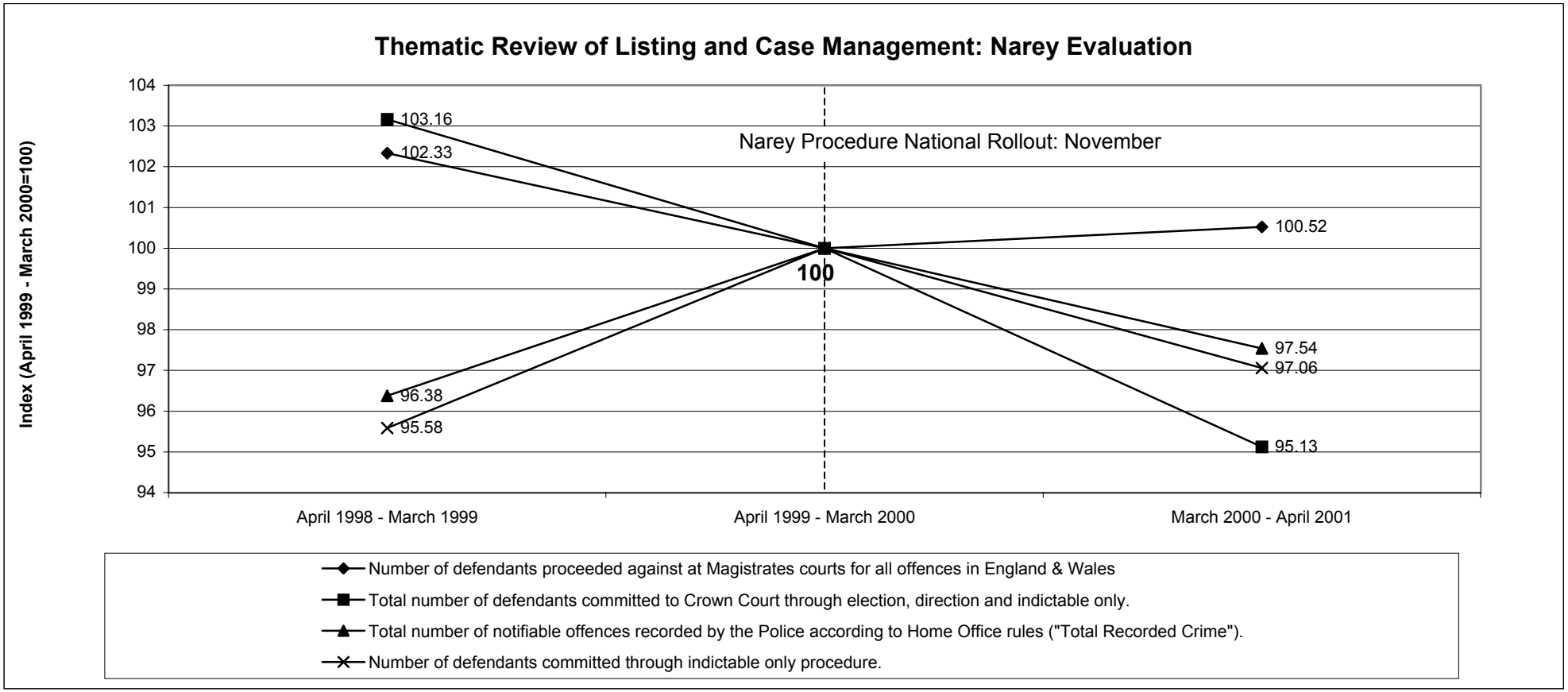
23 Contribute to strategic planning of the scheduling and listing function

24 Attend when appropriate court user group meetings, bench meetings, legal and administrative team meetings, etc

25 Be familiar with and implement the relevant recommendations and good practice set out in MCSI and joint reports:

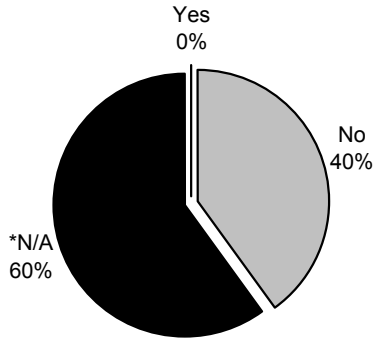
* A Review of Custody Arrangements in Magistrates' Courts, MCSI May 2000;
* The Implementation of Section 1 of the Magistrates' Courts (Procedure) Act 1998, a joint study, MCSI, November 2000;
* Joint Inspection of the Progress made in Reducing Delay in the Youth Justice System, MCSI, February 2001;
* A Review of Case Administration in Family Proceedings Court, MCSI, May 2001;
* A Review of the Use of Sign and Foreign Language Interpreters in the MCS, MCSI, October 2001.

Annex K

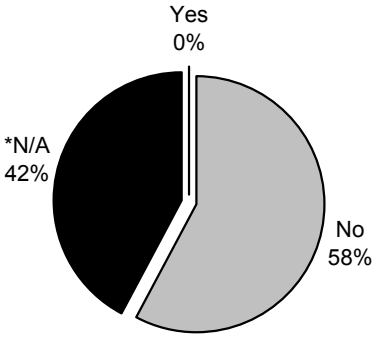


	April 1998 - March 1999	Index	April 1999 - March 2000	Index	March 2000 - April 2001	Index
Total number of notifiable offences recorded by the Police according to Home Office rules ("Total Recorded Crime").	5109089	96.38	5301185	100	5170831	97.54
Number of defendants proceeded against at Magistrates courts for all offences in England & Wales	1933744	102.33	1889632	100	1899530	100.52
Total number of defendants committed to Crown Court through election, direction and indictable only.	89578	103.16	86831	100	82598	95.13
Number of defendants committed through indictable only procedure.	26918	95.58	28162	100	27333	97.06

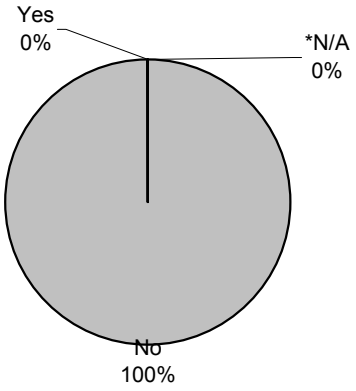
Area A:
Is the MG10 availability up to first trial date accurate?



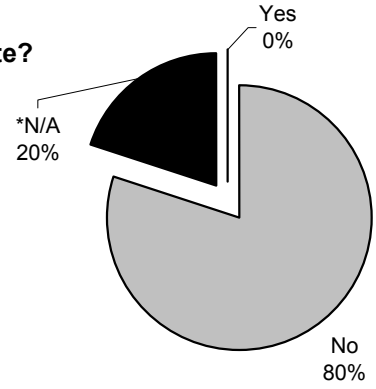
Area B:
Is the MG10 availability up to first trial date accurate?

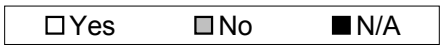


Area C:
Is the MG10 availablity up to first trial date accurate?



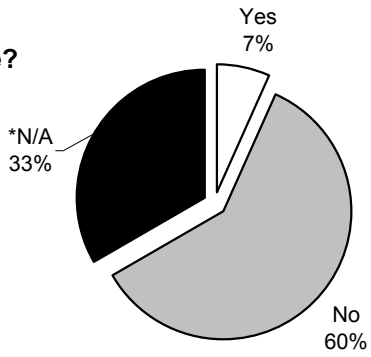
Area D:
Is the MG10 availability up to first trial date accurate?

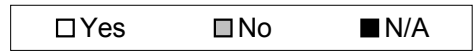




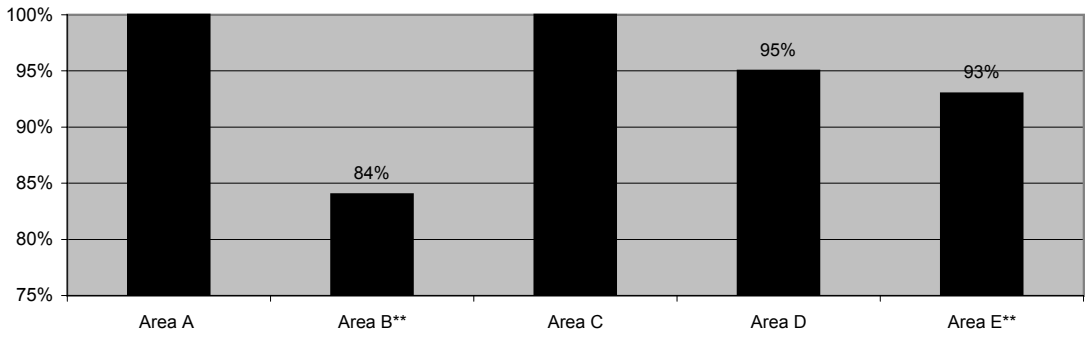
*Refers to files with no MG 10, expired MG10s, blank MG 10s and cases where police duties were unobtainable.
** Due to dismissed cases/ unavailable files, only 19 and 15 files were sampled in areas B and E respectively as opposed to 20 elsewhere.

Area E:
Is the MG10 availability up to first trial date accurate?

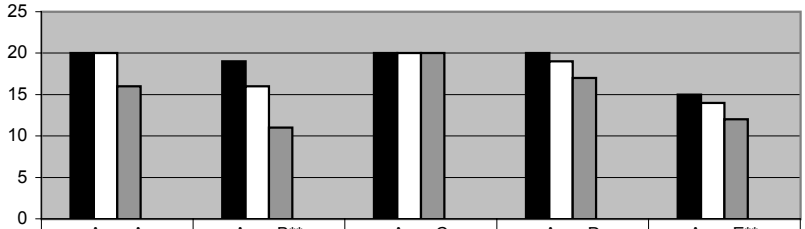




Percentage of files Containing MG10s

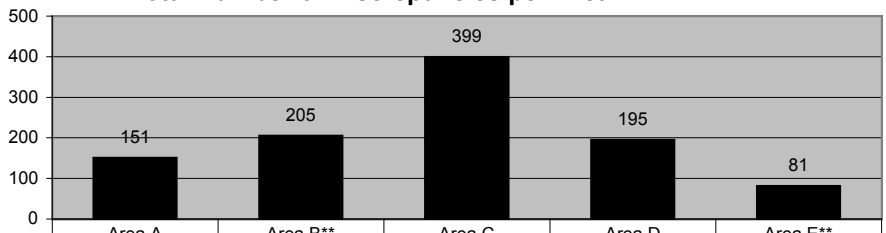


Number of Files Containing Valid MG10s



	Area A	Area B**	Area C	Area D	Area E**
Total files in sample	20	19	20	20	15
Number of files containing an MG10	20	16	20	19	14
Number of Valid MG10s	16	11	20	17	12
Percentage of Files Containing a Valid MG10	0.8	0.6875	1	0.894736842	0.857142857

Total Number of Discrepancies per Area



	Area A	Area B**	Area C	Area D	Area E**
Total number of discrepancies	151	205	399	195	81
Number of MG10s containing discrepancies	8	11	20	16	9
Number of MG10s in sample*	8	11	20	16	10

*Refers to files with no MG 10, expired MG10s, blank MG 10s and cases where police duties were unobtainable.
** Due to dismissed cases/ unavailable files, only 19 and 15 files were sampled in areas B and E respectively as opposed to 20 elsewhere.

MG 10 Discrepancy analysis - Extreme Cases[1]

CATEGORY		Total number of occasions discrepancy occurred					
Police Duties registering officer as:	**Court MG 10 registering officer as:**	Area A	Area B	Area C	Area D	Area E (Extreme Case 1)[2]	Area E (Extreme Case 2)[2]
Available	Night Shift	4			2		
Available	Other				1		
Available	Course	1	5		14		
Available	Rest Day		38		3	3	5
Available	Annual Leave				2		
Available	Night Shift				4		
Available	Court				3		1
Course	Night Shift	4		18	5		
Course	Rest Day	3		21	8		
Course	Available	5		36			
Course	Annual Leave	4					
Annual Leave	Night Shift				1		
Annual Leave	Available			3		1	
Rest Day	Night Shift	1			3	1	3
Rest Day	Available	1	37	2		3	4
Night Shift	Available	10				5	
Night Shift	Court					1	
Night Shift	Rest Day	1					1
Court	Available	2					
Court	Rest day	1					
Totals		**37**	**80**	**80**	**46**	**14**	**14**

1: Extreme cases relate to the MG10s which contain the highest number of discrepancies in each area.

2: This area contained 2 MG10s with the highest number of discrepancies (Extreme cases) a breakdown of each case is given here.

MG 10 Discrepancy analysis - Sample Summary

	Area A	Area B	Area C	Area D	Area E
Total files in sample	20	19*	20	20	15*
Number of files containing an MG 10	20	16	20	19	14
Number of files not containing an MG 10	0	3	0	1	1
Number of Valid MG10s	16	11	20	17	12
Number of Expired MG10s	0	4	0	0	1
Number of Blank MG10s	4	1	0	2	1
Number of MG10s containing discrepancies	8	11	20	16	9
Total Number of discrepancies for file sample	151	205	399	195	81
Number of MG10s containing no discrepancies	0	0	0	0	1
Number of duties unobtainable	8	0	0	1	2

* Sample for Area E and Area B contained fewer files due to a combination of cases being dismissed and files not being available.

MG10 Witness Availability Forms – Inspection Research Study

Methodology

As part of the inspection, an exercise was undertaken to establish the presence of, validity and accuracy of MG 10 police witness availability forms present on a selected number of CPS trial files. Details were obtained in advance of officers who attended for the trial and the relevant CPS files were then checked for the presence of an MG10 for that officer. In addition, the files were examined for requests for updated MG10's made to the police and correspondence examined to measure their timeliness in compliance.

It was acknowledged that in respect of some files examined that there was potential for the MG10 to have either become detached from the CPS file or to have not been received.

All the MG10's were examined firstly, to establish if they covered the relevant trial date and secondly to assess the extent to which the CPS file copy MG10 mirrored the officers actual duties for the same period up to the trial date as recorded at the relevant police station. In assessing any discrepancies, the research study only examined the duties between the commencement date of the most current MG10 recorded on the CPS file and either the date of the trial or the date of the research study visit, whichever was the earliest. This ensured it was reasonable to have expected any duty changes to have been notified to the CPS and to be present on the CPS file. The research study therefore, compared the MG10 which would have been used by the court to set the trial date with the officers corresponding duties recorded at the police station.

A total of 20 trial files were requested from each of the five CJS areas visited (100 files in total). Each file was examined for the presence of an MG10 relating to one officer who was recorded on the CPS Listed Witness Attending Court (LWAC) form contained in each of those files.

The research only counted discrepancies between the CPS copy MG10 and the police station duties which involved rest days, annual leave, night shifts, course or court commitments. Discrepancies relating to where the officer would still have been available for court attendance e.g a duty change from a day shift to an afternoon shift were not recorded. In addition, where the officer was unavailable on one or both sets of duties on a rest day and simply the nature of unavailability had changed to annual leave or vice versa, these discrepancies were not recorded. Where there was any doubt as to the degree of the discrepancy, the default position was to not record them in the data.

Annex N

Chart 1

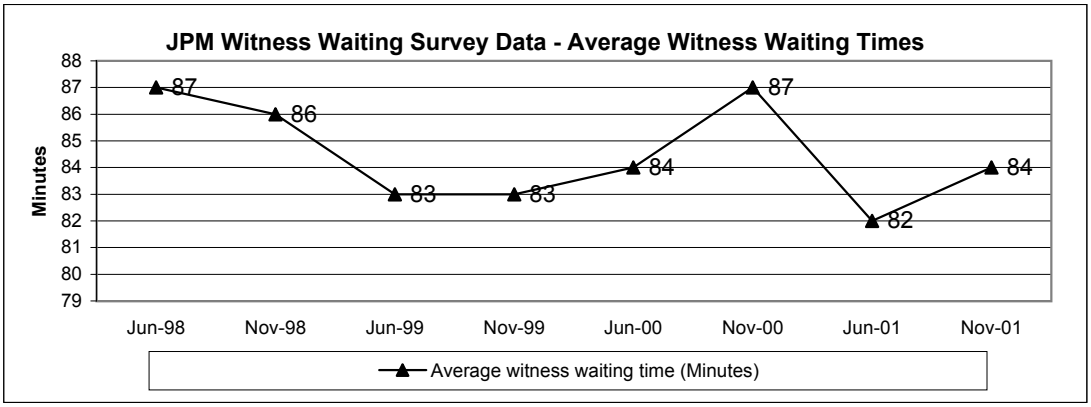


Chart 2

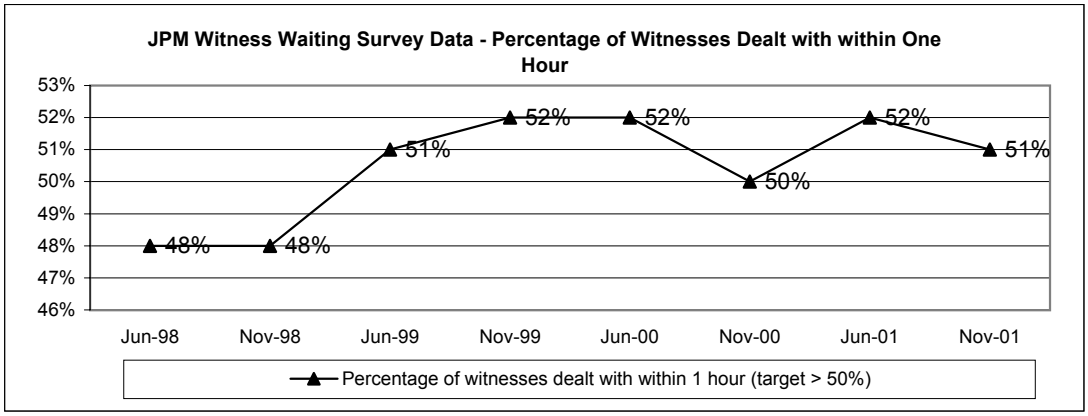


Chart 3

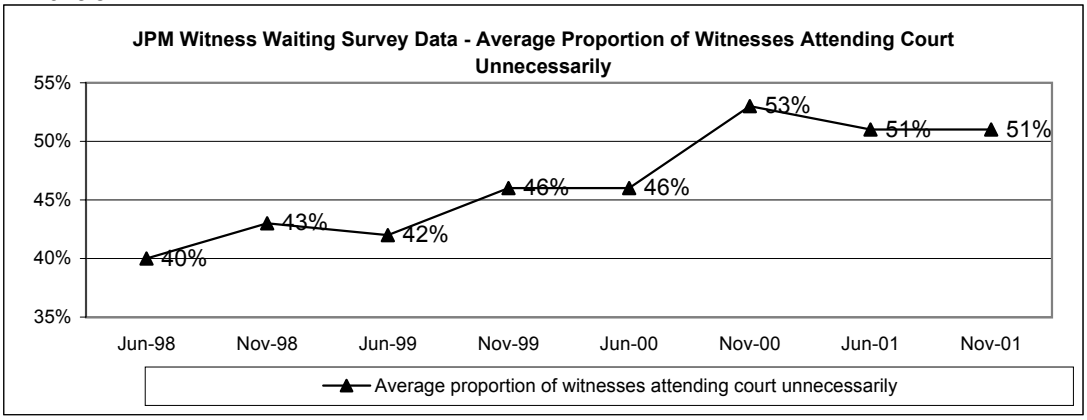


Chart 4