



Discontinuance *Executive Summary*

**HMCPSI Thematic Review of the
Decision-making and Management in
Discontinued Cases and Discharged Committals**

Summative report based on the rolling programme of
Caserwork Quality Assessment undertaken in eight CPS Areas

December 2007

This is the summative report of Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSI) Review of the Decision-Making and Management of Discontinued Cases and Discharged Committals in the Crown Prosecution Service (CPS)

The review was part of a rolling programme of casework quality assessment designed to provide independent assurance about the quality of individual aspects of Crown Prosecution Service casework and casework processes. Discontinuance was selected because of the importance of the topic in maintaining public confidence in the CPS in its role of bringing offenders to justice. Additionally, the rates of discontinuance vary significantly between CPS Areas. Discharged committals are a relatively small proportion of unsuccessful case outcomes. However, they are important in being a significant number of relatively serious either-way offences that are fixed for committal to the Crown Court, but fail because they are not ready to proceed.

The overall review looked at discontinued cases and discharged committals in eight CPS Areas, comprising large, medium and small Areas, and those with high, medium and low rates of discontinuance.

Discontinued cases include:

- cases which are formally discontinued under section 23 of the Prosecution of Offences Act 1985 in the magistrates' courts;
- cases which are withdrawn or in which no evidence is offered in the magistrates' courts;
- cases sent to the Crown Court, but which the prosecution discontinue before service of the prosecution case (the CPS includes these with judge ordered acquittals in its case outcomes);
- Judge ordered acquittals (cases dropped by the prosecution before a jury is empanelled)

The term discharged committals refers to:

- Committals which are discharged when no evidence is offered because the prosecution is not ready to proceed and an adjournment is refused, or the prosecution consider no adjournment will be granted and therefore do not apply.

The term in this report does not include committals in which the defendant is discharged by the court after consideration of the evidence tendered by the prosecution.

Decisions to Prosecute

Crown prosecutors making charging decisions (other than when the threshold test applies – see below) and other decisions to prosecute, apply the full code test in the Code for Crown Prosecutors. This has two stages: first that there is sufficient evidence to provide a realistic prospect of conviction; and secondly whether the case merits prosecution in the public interest. The CPS finalisation categorisation has four categories of reasons for discontinuance. It includes the two stages within the full code test, a third category that the prosecution were unable to proceed (examples are the police file has not been received; the CPS are not ready; the victim or witness refuses to give evidence or retracts; or the victim or witness fails to attend court unexpectedly). The fourth category relates to other reasons for discontinuance, for example the defendant agreeing to be bound over to keep the peace.

The threshold test within the Code for Crown Prosecutors is applied in those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the full code test is not yet available. The threshold test requires crown prosecutors to decide whether there is at least a

reasonable suspicion that the suspect has committed an offence and, if there is, whether it is in the public interest to charge that suspect. The full code test must be applied as soon as reasonably practicable. It is clear that a decision using the threshold test may be correct, and that if the expected further evidence has not materialised, then a decision to discontinue the case when applying the full code test is equally correct.

Analysis of discontinued cases

There was a small but significant reduction in the level of cases discontinued in the magistrates' courts across the CPS nationally from 11.6% in 2005-06 to 10.8% in 2006-07. There were larger reductions in some of the Areas with the highest rates of discontinuance.

In the eight Areas examined in December 2006, out of a total of 20,358 cases, 1956 cases (9.6%) were discontinued or dropped. Out of the 1956 cases, 1253 were summary only (64%), 592 were either-way (30.3%) and 111 were indictable only (5.7%). Of these discontinued cases, 867 had been subject to a pre-charge decision by the CPS.

The following table sets out the main reasons given for discontinuance:

Reason		
Insufficient evidence	836	42.7%
Not in public interest	464	23.7%
Unable to proceed	506	25.9%
Other	150	7.7%
Total discontinued	1956	100%

The largest proportion of cases were summary motoring offences accounting for 513 (26.2%) out of the 1956 discontinued cases.

12.9% of the discontinued cases involved domestic violence. The CPS has issued extensive guidance and policy in relation to these cases. It is clearly desirable to bring offenders/perpetrators to justice and seek to prevent such crimes in the future. Nevertheless, in the light of high rates of discontinuance identified in Areas, there is a need for prosecutors to be realistic as to the future viability of cases and to clarify whether cases can proceed without the victim, or to take steps to gain some assurance as to the willingness of the victim to give evidence at a future trial and agree in the action plan with police appropriate steps or actions to support the victim

The next largest category of discontinued offences was assaults and offences against a person, which amounted to 466 (23.8%) out of 1956 cases. It is noteworthy that 197 of these were discontinued because the prosecution was "unable to proceed", which usually indicates that the victim was not willing to give evidence or did not attend court unexpectedly.

Quality of decision-making

Inspectors examined 325 discontinued cases. In excluding motoring cases and some other minor offences, a relatively high proportion of the cases examined were the subject of pre-charge decisions by crown prosecutors. The sample was therefore not statistically representative of the generality of cases discontinued by the CPS; it concentrated on the more significant casework.

Of the 298 cases that were the subject of positive decisions to discontinue, 287 complied with the Code for Crown Prosecutors (96.3%). This is a reasonable standard of decision-making that is better than the standard of decision-making in discontinued cases that we have found in our last full cycle (92.4%) and the recent programme (94.7%) of inspection. It is implicit that there remains some room for improvement in the standard of decision-making. These statistics must also be considered in the context of the 'reasonable prosecutor' test used by HMCPSI. Assessments are made on whether the decision was one which was open to a reasonable prosecutor applying the principles of the Code. Inspectors did not assess a decision as incorrect merely because they might have come to a different conclusion. It follows that decisions assessed as not complying with the Code are wrong in principle.

In most cases the subject of discontinuance there had been a change of circumstances since the commencement of proceedings which justified the decision to discontinue. In a few cases the original decision to charge was itself not in compliance with the Code whereby the subsequent decision to discontinue is of course correct.

There was no indication that cases were being discontinued in the public interest inappropriately. However, there were isolated examples of premature decisions that, because a defendant was facing more serious offences, a case did not merit proceeding because of the likelihood upon conviction of a small or nominal penalty.

In one Area there was a contentious issue identified through overall analysis as to the discontinuance of minor public order offences on public interest grounds and for insufficient evidence reasons. The issue merits clarification in conjunction with police and a resolution as to how best to deal with these incidents. If there is sufficient evidence then such offences could be the subject of fixed penalty notices for disorder issued by police. Alternatively, if the offences are of significant social impact locally then they would merit prosecution in the public interest.

Action to strengthen cases

Steps were taken in 78.8% of the discontinued cases examined to strengthen the case before the decision to discontinue was taken. This was a very positive aspect of the added value of the CPS. 72.6% of cases had been discontinued in a timely manner. In others there appeared to be weakness in case ownership whereby the case was not referred back to the reviewing lawyer when additional evidence or information was received.

Recording of decisions to discontinue

The reasons for discontinuance were properly recorded in 82.5% of cases.

Pre-charge decisions

Most of the cases in the file sample had been the subject of pre-charge decisions by crown prosecutors (under statutory charging the CPS has taken over from police the responsibility to charge in the more serious or contested cases).

Inspectors considered that 251 (89.3%) out of 281 pre-charge decisions complied with the full code test. This would consequently mean that 10.7% would be appropriately discontinued subsequently, upon a proper review of the case unless additional evidence had been gathered by police. This suggests that the standard of decision-making in the pre-charge decision cases may need to be addressed.

Discharged committals

The number of defendants who are discharged because the committal proceedings are not ready is a very small proportion of the total number of defendants dealt with in the magistrates' courts (0.2%). However, it is a considerably higher proportion of the numbers of defendants whose cases are committed or sent to the Crown Court (2.9%), and a still greater proportion of those cases which are fixed for committal (the CPS does not collect this data). Analysis tended to indicate the majority of cases were not ready because of non-receipt of forensic evidence or the complete police file. There were a number of cases in which notification of the cases being set for committal was delayed from CPS to police and other instances of the CPS not preparing the case for committal expeditiously.

Of considerable concern is the lack of actual or appropriate decision-making as to reinstatement of such cases. Whilst Areas indicate they have systems for monitoring cases that are discharged, there was little indication on files of clear decisions having been made

Ancillary Issues

Consultation with police

There was appropriate consultation with the police in 82.3% of cases.

Direct communication with victims (DCV)

In accordance with the Prosecutor's Pledge and the Code of Practice for Victims of Crime (the Victims' Code), the CPS should write to a victim when a charge is dropped or significantly altered in accordance with the direct communication with victims (DCV) scheme. The compliance with the scheme as indicated by the file sample was only 69.1%. Compliance ranged between 33.3% and 93.5%. Only two Areas exceeded 80% compliance and so there is considerable scope for improvement.

Motoring offences

Analysis of discontinued cases revealed a significant proportion of summary motoring offences, and in most Areas the largest proportion of discontinued cases were summary motoring offences. There were indications that the majority were documentary offences (driving without a licence, or using a vehicle without insurance or MOT certificate), as well as speeding offences. In cases involving the late production of documents the CPS, should not become involved. If the non-production of documents is a significant issue, then there is scope for either police or the CPS initiating proceedings for non-production of the documents and pursuing this to conviction which would enable a sanction being brought to bear and costs being awarded

File retrieval

This programme revealed a number of instances in which Areas were requested to provide identified files, but were not able to do so in discontinued cases. It is important that the file and reasons should be available if the integrity of a decision is subsequently called into question.

Action Points

18 action points were identified in relation to pre-charge decisions, continuing review, discharged committals, consultation with police, victims and witnesses, case management, social impact crime and motoring offences.

The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197) and is also available online at www.hmcpsi.gov.uk.

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