

THE INSPECTORATE'S REPORT
on
THE PORTSMOUTH BRANCH
of
CPS SOUTH EAST

Portsmouth Branch



BRANCH OFFICE

◆ Portsmouth

SUB-BRANCH

Newport, Isle of Wight

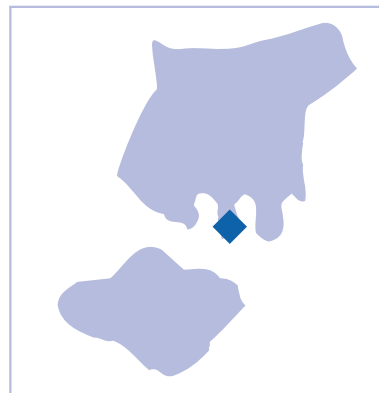
COURTS COVERED

Magistrates' Courts

Fareham
Newport
Portsmouth

Crown Court

Newport
Portsmouth
Winchester



REPORT ON THE INSPECTION OF THE CPS PORTSMOUTH BRANCH

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INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the Portsmouth Branch of CPS South East.
- 1.2 A good casework decision is one which results in the right defendant being charged with the right offence in the right tier of court at the right time, thereby enabling the right decision to be taken by the court. The decision must also be taken at the right level within the Crown Prosecution Service (CPS) and be prosecuted by the right prosecutor.
- 1.3 The purpose and aims of the Inspectorate are set out on the inside back cover of this report. The inspection process focuses on the core business of the Service: providing advice; reviewing cases; preparing cases; and presenting cases in court.
- 1.4 The Portsmouth Branch is in the CPS South East Area and has its office at Portsmouth, with a sub-office at Newport, Isle of Wight. On 3 August 1998, it employed 53.1 staff (the Branch Crown Prosecutor (BCP) and 18.4 other prosecutors; one senior caseworker and 25.2 other caseworkers; and 7.5 administrative staff).
- 1.5 The Branch comprises four teams. The Fareham team (five prosecutors and 6.1 caseworkers) is responsible for the conduct of prosecutions in the magistrates' court at Fareham. The Havant team (4.8 prosecutors and 6.5 caseworkers) is responsible for the conduct of some of the prosecutions in the magistrates' court at Portsmouth. The Portsmouth team (six prosecutors and eight caseworkers) is responsible for the conduct of the remaining prosecutions in the magistrates' court at Portsmouth. All three teams are also responsible for the conduct of

prosecutions in the youth court at Fareham. The Isle of Wight team (2.6 prosecutors and 4.6 caseworkers) is responsible for the conduct of prosecutions in the magistrates' court at Newport. Each team is also responsible for Crown Court cases originating from its magistrates' courts.

- 1.6 The team of four inspectors visited the Branch between 3 and 14 August 1998. During this period, we observed ten CPS advocates in the magistrates' courts at Fareham, Newport and Portsmouth and in the Fareham Youth Court. We also observed counsel in the Crown Court sitting at Newport and Portsmouth.

CONCLUSIONS AND RECOMMENDATIONS

- 2.1 The Branch has two offices, with the Newport office housing the smallest team. The Branch as a whole is well managed and, despite the different locations, the systems in both offices are consistent.
- 2.2 Staff in the Branch clearly work well together, and are willing to assist their colleagues, both within and across the teams. The Branch has good relationships with other criminal justice agencies and court users. Overall, the quality of decision-making is good. However, the evidence in some contested cases and committals for trial needs to be analysed more carefully.
- 2.3 We were pleased to note the initiatives that have been introduced to reduce delays in the criminal justice system, and the steps that are being taken in the Branch to improve casework quality. The timeliness of some aspects of case preparation, however, and in particular the timeliness of the provision of advice to the police and initial review, needs to be improved. Some aspects of the Branch's casework and office procedures also require attention.

2.4 We recommend that:

- i the BCP should introduce an action-dating system, to ensure that pre-charge advice is given to the police within 14 days (paragraph 4.14);
- ii the BCP should ensure that prosecutors are consulted in all Crown Court cases, before the advice of counsel is sought (paragraph 4.19);
- iii the BCP should ensure that initial review is carried out within seven days of receipt of the file in all cases (paragraph 5.13);
- iv the BCP should ensure that effective review is carried out in all cases, and that decisions to amend charges are taken at the earliest appropriate opportunity (paragraph 5.17);
- v the BCP should take steps to ensure that cases that are contested in the magistrates' courts or awaiting committal to the Crown Court are further reviewed when the full file is received from the police, to assess whether prosecution is still appropriate (paragraph 5.53);
- vi the BCP should ensure that prosecutors and administrative staff receive continuing training on the recording of Performance Indicator (PI) information, to improve the accuracy of casework information (paragraph 5.57);
- vii prosecutors should record a note of their review on the file, to include references to the evidential and public interest tests, and mode of trial considerations, so that colleagues and counsel have a comprehensive guide to the decisions and actions taken, and the reasons for them (paragraph 5.60);
- viii the BCP should ensure that the whole Branch is able to learn from its cases, both successful and unsuccessful (paragraph 5.62);
- ix the BCP should ensure that a common approach is adopted by prosecutors to requests for advance information in summary cases (paragraph 6.5);
- x the BCP should monitor the completion of disclosure schedules, to ensure that they are correct (paragraph 6.8);
- xi the BCP should monitor the Branch's handling of unused material in magistrates' courts cases, to ensure that such material is properly considered and dealt with by prosecutors (paragraph 6.11);
- xii an effective action-dating system should be created and maintained throughout the Branch, to assist in the timely preparation and service of committal papers (paragraph 6.22);
- xiii the Branch Management Team (BMT) should ensure that caseworkers undertake increasing amounts of committal preparation (paragraph 6.25);
- xiv the BCP should introduce quality assurance arrangements, to ensure that instructions to counsel fully address the issues in the case, and, where appropriate, the acceptability of pleas (paragraph 6.30);
- xv the BCP should introduce a system for monitoring the quality of indictments, in order to ensure that the substantive content of each indictment is correct, and to improve the drafting skills of prosecutors and caseworkers (paragraph 6.38);
- xvi the BCP should introduce an action-dating system, to ensure that directions given at plea and directions hearings (PDHs) are complied with fully and promptly (paragraph 6.45);
- xvii the BCP should ensure that the advocacy of Branch prosecutors is monitored effectively, in order to identify training needs and improve the overall standard of advocacy (paragraph 7.3);

xviii the BCP should liaise immediately with representatives of chambers, to seek a significant reduction in the number of returned briefs (paragraph 7.8);

xix the BCP should discuss listing practices in the magistrates' courts at court user group meetings, with a view to agreeing practices that are of benefit to all court users (paragraph 8.4).

THE INSPECTION

3.1 In the year to 30 June 1998, the Branch dealt with 16,060 defendants in the magistrates' courts and 1,509 defendants in the Crown Court. In a further 488 cases, advice was given to the police before charge. In 1997, receipts of cases in the magistrates' courts rose by 4.9% and in the Crown Court by 12.3%. We were told that this upward trend has continued in 1998.

3.2 The inspection team examined a total of 236 cases, ranging from those where an acquittal was directed by the judge, through those where the prosecution terminated proceedings, to those where the defendant pleaded guilty. The team interviewed members of staff in the Branch and local representatives of the criminal justice agencies that directly affect, or are directly affected by, the quality of casework decisions taken in the Branch. A list of those representatives from whom we received comments is at the end of this report.

PROVIDING ADVICE

Appropriateness of requests for advice

4.1 In the year ending 30 June 1998, advice cases constituted 2.9% of the Branch's total caseload, compared with 4.1% nationally.

4.2 Both the police and Branch staff told us that some cases are inappropriately submitted for advice. This was the position in one case in our sample. In advising the police, the prosecutor pointed out that the case had been inappropriately submitted.

4.3 There is no formal agreement with the police about the types of case which should be submitted for pre-charge advice. The BCP has drafted guidelines on the referral of cases to the CPS for advice, and these have been circulated to the Hampshire Constabulary. We are pleased to note this and trust that the BCP will soon reach an agreement with the police.

4.4 Prosecutors do not attend police stations to give advice, but they do go to discuss specific cases. They also give advice to police officers over the telephone.

4.5 Telephone advice is noted and recorded in the Branch's PIs. The forms used to note the advice are attached to any subsequent prosecution file, which is then allocated to the prosecutor who gave the advice.

4.6 We were told that, although the forms are used regularly, they are not completed in every case, and we saw examples of very generalised records. It is important to ensure that such advice is recorded and linked to prosecution files, so that the prosecutor is aware of the previous CPS involvement, and to ensure continuity of approach. The BCP will wish to ensure that all telephone advice is properly recorded and entered in the Branch's PIs.

Quality of advice

4.7 Three Prosecution Team Leaders (PTLs) allocate advice files to prosecutors, taking account of their expertise and workload. In the fourth team, the PTL allocates the more complex cases, using the same criteria, and the remainder are allocated by caseworkers equally amongst the prosecutors.

- 4.8 The quality of advice given is generally good. We agreed with the advice given in all ten cases that we examined. All advices were typed and well reasoned.
- 4.9 During our inspection, we examined a number of other files that had been prosecuted, following advice given by Branch prosecutors. In two cases, we considered that the advice was wrong. Both defendants were committed for trial to the Crown Court, and both were acquitted. We deal with these cases in more detail in paragraphs 5.42 and 5.46.
- 4.10 The PTLs examine one advice file for each prosecutor every month, in order to monitor the quality of the advice provided. The advice given in the two cases referred to in the preceding paragraph was given over a year ago, and we saw nothing else to suggest that incorrect advice is given regularly. Nevertheless, the BCP will wish to consider whether additional monitoring of the quality of advice given to the police is required.

Timeliness of advice

- 4.11 The CPS has set a target of providing advice within 14 days of receipt of the file from the police. Branch figures indicate that, in May 1998, prosecutors responded to requests for advice within the agreed period in only 33.3% of cases.
- 4.12 Advice was provided late in five of the ten cases (50%) that we examined. In one case, a delay of six days was due to a decision to seek counsel's advice. We refer to this case in paragraph 4.15. The delay in the other cases varied from one to 15 working days.
- 4.13 Prosecutors accepted that they did not give priority to advice work. There is no formal system for monitoring the return date for advices.
- 4.14 We recommend that the BCP should introduce an action-dating system, to ensure that pre-charge advice is given to the police within 14 days.**

Advice from counsel

- 4.15 Requests to counsel for pre-charge advice have to be authorised by the BCP, and are rare. We saw one complex case, involving an allegation of manslaughter, where pre-charge advice from counsel was appropriately sought, and we were pleased to note that the prosecutor had set out detailed views of the case in the instructions.
- 4.16 Prosecutors and caseworkers exercise their discretion in seeking advice from counsel in cases that have been committed to the Crown Court. We saw three cases in which counsel had been requested to advise after committal. In two cases, this was inappropriate.
- 4.17 In both instances, caseworkers had sought counsel's advice without consulting a prosecutor. In each case, the issues were clear and a Branch prosecutor could have made the appropriate decision.
- 4.18 We also saw a case at a PDH where a caseworker had sought counsel's advice, following receipt of material from the police. The prosecutor had not been consulted. The material affected the prospects of conviction, and it should have been referred to the prosecutor, who could have reconsidered the decision to prosecute.
- 4.19 We recommend that the BCP should ensure that prosecutors are consulted in all Crown Court cases, before the advice of counsel is sought.**

REVIEWING CASES

Quality of review decisions

- 5.1 Under the Prosecution of Offences Act 1985, the CPS is required to review every case it deals with in accordance with the Code for Crown Prosecutors (the Code). It must establish whether there is sufficient evidence for a realistic prospect of conviction, and whether it is in the public interest to prosecute the matter.

- 5.2 We inspected the quality of the review decision in 80 files, covering cases in the magistrates' courts and the Crown Court. We agreed with the assessment of the evidence in 77 cases (96.3%).
- 5.3 One case in which we disagreed with the decision to prosecute concerned a charge of supplying drugs. There was no evidence to prove that the substance concerned was, in fact, a proscribed drug. There was sufficient evidence to support a charge of possession of another drug, but this was not added until after committal. On counsel's advice, no evidence was offered on the supply charge, and the defendant pleaded guilty to the charge of possession. A decision to proceed only on that charge should have been made at an earlier stage, when the case may have stayed in the magistrates' court.
- 5.4 In both the remaining cases, the prosecutors had failed to give due weight to likely lines of defence. In one case, an assertion of self-defence was entirely consistent with the facts, and, in the other, people other than the defendant had an equal opportunity to commit the offence alleged. In both instances, the defendants were acquitted after Crown Court trials.
- 5.5 A more careful analysis of these cases should have identified their weaknesses. We reached similar conclusions in some of the cases in which the magistrates found there was no case to answer, or in which the judge ordered or directed an acquittal (see paragraphs 5.38 - 5.53).
- 5.6 We agreed with the public interest decision in all relevant cases.

Timeliness of review

- 5.7 We were concerned about the timeliness of review. The Branch's figures show that, in May 1998, 68.4% of new files were reviewed within seven days of receipt. We found that only 41 of the 80 cases (51.3%) in our sample were reviewed within this period.

- 5.8 Twenty-two cases (27.5%) were reviewed after the first date of hearing. Six of these were reviewed only after the defendants had pleaded not guilty.
- 5.9 Another case, which was discontinued, was not reviewed until over six weeks after it had been received from the police, and after a not guilty plea had been entered. It was finally discontinued after the pre-trial review (PTR).
- 5.10 We were told that there was a backlog in copying papers for advance disclosure, and that this meant that some files were not passed to prosecutors for review until shortly before the first date of hearing. We were also told by prosecutors that court commitments leave them little time to review cases.
- 5.11 We noted that, on occasion, the advocate preparing for court the following day had reviewed a case, rather than the allocated reviewing prosecutor. Although we were pleased to see that advocates are prepared to make decisions in cases, rather than adjourn them for the reviewing prosecutor to consider, review at this stage is too late.
- 5.12 Late review reduces the time available for liaison with the police about further evidence or amended charges, or to discuss possible discontinuance, and results in late decision-making.
- 5.13 We recommend that the BCP should ensure that initial review is carried out within seven days of receipt of the file in all cases.**

Selection of the appropriate charge and charging standards

- 5.14 Police charges required amendment in 17 of the 80 cases (21.3%) that we examined. They were amended at first review in only three.

5.15 Seven cases were disposed of without the charges being amended. The charges were amended after the second date of hearing in an eighth case. Charges in the other six cases were finally amended by counsel, after committal.

5.16 It is important that charges are amended as soon as the need arises, so that defendants know the extent of the case against them, as early as possible.

5.17 We recommend that the BCP should ensure that effective review is carried out in all cases, and that decisions to amend charges are taken at the earliest appropriate opportunity.

5.18 Branch prosecutors told us that they are prepared to increase or add to police charges in appropriate circumstances. We saw one case where this had occurred. The police charged the defendant with common assault, and the prosecutor substituted a more serious charge of wounding, with which we agreed.

5.19 The CPS and the police nationally have agreed charging standards for assaults, public order offences and some driving offences, to ensure a consistent approach to levels of charging. We agreed with the charge selected by the reviewing prosecutor in 32 out of 33 relevant cases (97%) in our sample.

5.20 The case where we disagreed involved an allegation of assault. A charge of common assault was included in the indictment, when the injuries were sufficiently serious to justify a charge of assault occasioning actual bodily harm. The charge was only increased after counsel's advice. The defendant was sentenced to a term of imprisonment that was longer than the maximum sentence for the lesser charge.

5.21 Representatives of other criminal justice agencies told us that public order offences tend to be prosecuted at too high a level, and that charges of

affray are sometimes used in inappropriate circumstances. We saw two examples of this. One involved a charge of affray, when the evidence only justified a charge of threatening behaviour. In the other case, a charge of affray added nothing to the original assault charge.

5.22 The BCP will wish to monitor cases involving public disorder, and, where appropriate, take action to ensure that only the correct charges are selected.

Fast track cases

5.23 The Branch has instigated a scheme, with the co-operation of the police and the magistrates' courts, and in liaison with defence solicitors and the Probation Service, aimed at ensuring early disposal of straightforward cases.

5.24 The scheme, which has been operating since 1 May 1998 in both the magistrates' and youth courts, applies to most summary offences, minor theft and other offences of dishonesty, criminal damage up to £1,000, possession of an offensive weapon, and possession of a small quantity of some drugs. It is only used where a guilty plea is anticipated. Defendants are bailed to a court within 48 hours. In every case, the police provide a second copy of the papers for service on the defence.

5.25 Representatives of the other criminal justice agencies told us that the scheme was operating well. In the first three months, 48.2% of the defendants included in the scheme pleaded guilty and were sentenced at the first hearing.

5.26 This has considerable advantages for those involved. It reduces the amount of paperwork which has to be prepared by arresting officers, and disposes of cases more quickly. It assists the magistrates' courts by reducing the number of adjournments required. It also reduces the number of file movements within the CPS.

- 5.27 Evidence of the main witnesses is provided, but we have some concerns about whether prosecutors are given sufficient information, to enable them to apply the public interest test properly. We noted one case where the prosecutor should have sought more information about the defendant's mental condition, before accepting a guilty plea. Our concerns were also echoed by one prosecutor to whom we spoke.
- 5.28 The scheme is still being evaluated and the BCP will wish to ensure that the quality of the files is also monitored, in order to satisfy himself that all the necessary information is provided for a properly informed decision to be taken.

Mode of trial

- 5.29 Branch prosecutors generally make appropriate representations on mode of trial. However, magistrates told us that advocates do not always provide them with sufficient information. Some training may be required, and the BCP will wish to consider this, after implementing recommendation xvii.
- 5.30 Mode of trial representations accorded with the Lord Chief Justice's guidelines in all 45 relevant cases that we examined.

Bail

- 5.31 Representatives of other criminal justice agencies told us that prosecutors generally make independent and appropriate decisions whether to seek a remand in custody. Applications are, in the main, well argued and structured. However, we observed one application in which a personal opinion was expressed. This was inappropriate.
- 5.32 We examined six cases where the defendant appeared in custody, and an appropriate decision whether to oppose bail was made in each case.

Discontinuance

- 5.33 The Branch's discontinuance rate of 9.5%, for the year ending 30 June 1998, is lower than the national average (12%). We examined a sample of 65 cases stopped by the prosecution in the magistrates' courts, to look at the reasons for the terminations.
- 5.34 Thirty cases (46.2%) were stopped because there was insufficient evidence, and 15 (23.1%), because it was not in the public interest to prosecute. In 17 cases (26.2%), the prosecution was unable to proceed because, for example, witnesses refused to give evidence, or failed to attend court. Three cases (4.6%) were stopped because defendants produced their driving documents.
- 5.35 Sixty per cent of the cases were formally discontinued under section 23, Prosecution of Offences Act 1985, and 27.7% were withdrawn at court. In the remaining 12.3%, no evidence was offered by the prosecution.
- 5.36 We examined ten terminated files, in order to assess whether the Code tests had been correctly applied and agreed with the decisions taken in all of them.
- 5.37 Nine of the ten cases were discontinued at the earliest opportunity. We have already referred to the tenth case at paragraph 5.9.

Judge ordered and judge directed acquittals

- 5.38 In the year to 30 June 1998, 137 cases were not proceeded with in the Crown Court. This represents 10.9% of the Branch's caseload, which is higher than the national average of 8.2%. The great majority were stopped by the judge at the request of the prosecution before the trial started (judge ordered acquittals).
- 5.39 We examined 27 judge ordered acquittals, and we agreed with the original decision to prosecute in 21.

- 5.40 In two of the six cases where we disagreed, insufficient thought had been given to whether it could be proved that goods had been stolen.
- 5.41 In a further case of dishonesty, the evidence of participation by a second defendant had not been correctly assessed.
- 5.42 In the remaining three cases, all involving allegations of assault, the reviewing prosecutors had not properly considered the strength of the evidence. There was a failure to consider a realistic line of defence in one case, which had started as a result of advice given by a Branch prosecutor (see paragraph 4.9). In another, the evidence consisted of a child's video recorded interview. The prosecutor did not watch the video. One recommendation of the Inspectorate's thematic review of cases involving child witnesses (published in January 1998) was that prosecutors should always watch the video of a child's evidence, prior to making review decisions. The video in this case was first watched by counsel, after committal. There were concerns about the quality of the interview, and doubts about the child's ability to differentiate between right and wrong. The case was stopped after counsel advised that there was insufficient evidence to provide a realistic prospect of conviction. In the last case, the identification evidence was too weak for the case to proceed.
- 5.43 In the same period, there were 51 cases in which the judge directed an acquittal after the trial had started. This represents 4.6% of the Branch's caseload, which is higher than the national average of 2%.
- 5.44 We examined nine judge directed acquittals, and we agreed with the original decision to prosecute in six. In each, unforeseeable changes in evidence or evidential difficulties arose during the trials.
- 5.45 Two cases in which we disagreed with the original decision to prosecute involved allegations of assault. In one, there were difficulties in establishing how the injuries sustained by the victim were caused. This was not identified at first review. In the other, there were difficulties in proving that the defendant had not acted in self-defence. These were identified at first review, but, in addition, the case relied upon the evidence of two witnesses whose credibility was clearly doubtful. This problem was not identified nor resolved.
- 5.46 The third case had originally been submitted as an advice file (see paragraph 4.9), and we disagreed with the advice to prosecute. The case involved allegations of public disorder against four defendants. There was only sufficient evidence against three of them. It was apparent from the outset that the fourth had been trying to calm the situation, and the reviewing prosecutor had identified his lack of involvement. Despite this, the defendant was charged.
- 5.47 All nine judge ordered or directed acquittals with which we disagreed with the original decision to prosecute had evidential difficulties, only some of which appeared to have been appreciated by the reviewing prosecutors. A thorough review at committal should have identified these difficulties, when either steps could have been taken to resolve them, or the cases stopped. We take this matter further at paragraph 5.53.
- Cases lost on a submission of no case to answer in the magistrates' courts and discharged committals**
- 5.48 The Branch PIs show that, in the year to 30 June 1998, 105 trials were stopped by the magistrates at the close of the prosecution case. They also show that, in the same period, 59 defendants were discharged at committal after the magistrates decided that there was insufficient evidence to commit them to the Crown Court for trial.

- 5.49 We examined 17 summary trials which had been recorded as cases where magistrates had found that there was no case to answer. Only four were correctly recorded. Of these, we agreed with the decision to proceed in two.
- 5.50 One of the other two cases involved an allegation of assault against two youths. There was sufficient evidence against one of the youths, but the second denied involvement. The reviewing prosecutor noted that identification was in issue, but failed to appreciate that, in the absence of an identification parade, there was insufficient evidence against the second youth.
- 5.51 The second case involved a charge of being drunk and disorderly. The reviewing prosecutor failed to appreciate that there was no evidence that the youth was drunk.
- 5.52 None of the cases upon which we have commented in this and other sections of the report should have been accepted at first review without further evidence. However, it appeared that not one of the 11 cases was further reviewed when they were being prepared for summary trial or committal.
- 5.53 We recommend that the BCP should take steps to ensure that cases that are contested in the magistrates' courts or awaiting committal to the Crown Court are further reviewed when the full file is received from the police, to assess whether prosecution is still appropriate.**
- 5.54 We examined seven cases which had been recorded as discharged committals. Only one was correctly recorded. This case had been reviewed and dealt with by a senior prosecutor in another Branch.
- 5.55 The PIs suggest that poor decision-making by Branch prosecutors is resulting in a high number of cases being stopped by magistrates at the

close of the prosecution case. Our examination suggests that the problem is inaccurate recording of case results. The BCP is aware of the issue and has circulated a copy of the PI manual to all members of staff. In addition, the authority of a PTL is required for a case to be recorded as a case stopped at the close of the prosecution case.

- 5.56 Whilst fewer cases have been wrongly recorded in recent months, errors are still occurring. Accurate PI information is essential, if the Branch is to evaluate its own performance accurately. Although we acknowledge the steps that the BCP has already taken, it is essential that he ensures that incorrect finalisations no longer occur.

5.57 We recommend that the BCP should ensure that prosecutors and administrative staff receive continuing training on the recording of PI information, to improve the accuracy of casework information.

Review endorsements

- 5.58 The reviewing prosecutor had made an appropriately full note of the evidential issues in 52 of the 80 cases (65%) in our sample. Public interest factors were fully endorsed in only 44 cases (55%). Mode of trial considerations were sufficiently endorsed in only 23 out of 45 relevant cases (51.1%).
- 5.59 In many cases, we found little evidence of the reviewing prosecutor's analysis of the issues. There was no review note at all in others. In the absence of good review endorsements, it is very difficult for anyone else dealing with the file to identify the factors which were taken into account when the decision to proceed was made. This makes it difficult for another prosecutor to make decisions about the progress of the case.

5.60 We recommend that prosecutors should record a note of their review on the file, to include references to the evidential and public interest tests, and mode of trial considerations, so that colleagues and counsel have a comprehensive guide to the decisions and actions taken, and the reasons for them.

Learning from experience

5.61 Caseworkers complete adverse case reports in judge ordered or judge directed acquittals, which are then passed to the PTL, via the reviewing prosecutor, for comment. The reports are kept centrally. Feedback on failed cases is given to prosecutors individually, and the BCP disseminates information about any significant casework implications. However, we were told that there is no general discussion of failed cases or casework issues at team meetings. Neither did we see any evidence of mechanisms for sharing successful casework lessons. Branch prosecutors and caseworkers are losing opportunities to learn from all cases.

5.62 We recommend that the BCP should ensure that the whole Branch is able to learn from its cases, both successful and unsuccessful.

5.63 Branch staff are kept up to date on developments in the law. They receive copies of national and Area circulars, and, in addition, receive formal training. Some Branch staff have recently attended training days arranged by the Area, and have cascaded the information that they received to other members of the Branch.

PREPARING CASES

Advance information

6.1 Branch administration staff prepare advance information, as soon as the file is registered. Prosecutors check it before it is given to the defence. As most files are only reviewed shortly

before the first court date, advance information is generally served at the first hearing.

6.2 Branch staff monitor the timeliness of the provision of advance information. During February 1998, it was sent within seven days of receipt of the file in 14 out of 18 cases (77.8%). It was served promptly in 43 out of 49 relevant cases (87.8%). We could not ascertain the date of service in a further nine cases.

6.3 The Branch receives requests for advance information in cases in which the law does not require the prosecution to provide it. Branch policy is that such disclosure should be given in all cases where there is a PTR; and, exceptionally, if there would be a clear benefit to the prosecution. In practice, prosecutors' responses vary.

6.4 Disclosure should always be made in cases where the interests of justice require it. It is also important that prosecutors adopt a consistent approach, so that defence solicitors can be confident that requests are considered in an objective manner.

6.5 We recommend that the BCP should ensure that a common approach is adopted by prosecutors to requests for advance information in summary cases.

Unused and sensitive material

6.6 All prosecutors and caseworkers have received training on the disclosure provisions in the Criminal Procedure and Investigations Act 1996 (CPIA). Branch staff generally understand the provisions and apply them properly.

6.7 We found, however, that the unused material disclosure schedule had been correctly completed in only 28 out of 54 relevant cases (51.9%). The position was unclear in a further three cases. It is important that disclosure schedules are correctly completed, so that the defence and the police are aware of a prosecutor's decision on disclosure.

6.8 We recommend that the BCP should monitor the completion of disclosure schedules, to ensure that they are correct.

6.9 We were concerned to note that disclosure was made in only 38 of the 54 cases (70.4%) and timely in 28.

6.10 Out of 30 summary trials that we examined, the disclosure schedule had only been served in 17 (56.7%). The provisions relating to unused material apply as much to magistrates' courts cases, as they do to Crown Court cases. It is essential that the provisions are properly applied.

6.11 We recommend that the BCP should monitor the Branch's handling of unused material in magistrates' courts cases, to ensure that such material is properly considered and dealt with by prosecutors.

6.12 Sensitive material is handled well, and the relevant disclosure schedule had been correctly completed in both the relevant cases in our sample. We also examined several sensitive disclosure schedules during the course of our visit. All but one had been correctly completed, and the appropriate procedures appeared to have been followed. The position was unclear in the remaining case. The schedules are securely stored, in folders, in the two offices.

6.13 We were told by Branch staff that, on occasion, orders for disclosure are made at PDHs, before a defence statement has been served. Under the CPIA, such a statement is normally required before the prosecution is under any obligation to provide secondary disclosure material. The BCP will wish to discuss the disclosure provisions with members of the other criminal justice agencies, to ensure that the proper procedure is followed.

Summary trial preparation

6.14 The local magistrates' courts hold PTRs in most cases where a not guilty plea has been entered. These hearings seek to ensure that the prosecution and defence are ready to proceed on the date fixed for trial. Magistrates' courts users told us that PTRs are not as effective as they should be, and that this is due, in part, to cases not having been properly reviewed by Branch prosecutors.

6.15 We saw three cases which had not been reviewed until after the PTR. We saw another two cases which had been reviewed only shortly before the PTR. A not guilty plea had been entered in all five cases before they were reviewed. Early review is essential if progress is to be made at the PTR. Recommendation iii at paragraph 5.13, if implemented, should improve the effectiveness of the PTRs.

6.16 We examined 30 summary trials. In 29 cases, the police were told promptly which witnesses to warn, and appropriate statements were promptly served under section 9, Criminal Justice Act 1967.

6.17 Prosecutors are aware of the procedure for agreeing admissions of fact under section 10, Criminal Justice Act 1967. We saw one summary trial where the procedure had been considered, and two Crown Court cases where admissions had been made.

6.18 Prosecutors are also familiar with section 23, Criminal Justice Act 1988. Subject to certain conditions, this enables a witness' statement to be read to the court if he or she is outside the United Kingdom, or is mentally or physically unfit to attend court, or is too frightened to attend court. We did not see any examples where it would have been appropriate to use this section in summary trials, but we did see one Crown Court case in which it was properly considered, but eventually not required.

Committal preparation

6.19 National guidelines require committal papers to be prepared and served by Branch staff within 14 days, in cases where the defendant is on bail, and within ten days, if the defendant is in custody, once they have received a complete file from the police.

6.20 Magistrates' courts users told us that papers are often served on the defence on the morning of the court hearing. We examined a sample of 30 cases. We found that service was timely in 24 (80%), but, during May 1998, Branch statistics indicated that only 50% of committal papers were served within the CPS guidelines. Late service of committal papers can cause delay, as the defence may need to seek an adjournment to consider them.

6.21 Every team has an action-dating system to ensure timely delivery of papers from the police. The system extends to monitoring the preparation of committal papers by staff, once the necessary papers have been received, but does not include action-dating.

6.22 We recommend that an effective action-dating system should be created and maintained throughout the Branch, to assist in the timely preparation and service of committal papers.

6.23 Prosecutors prepare the good majority of committals in three teams. The remainder are undertaken by caseworkers, under the supervision of the reviewing prosecutor. In the fourth team, the amount of committal preparation undertaken by caseworkers has recently increased to 50%, but only because one caseworker is unable to go to court.

6.24 Increased involvement by caseworkers pre-committal would offer them valuable experience, and would assist in their career development. It could also improve the casework process, by

giving prosecutors the opportunity to deal more expeditiously with their other responsibilities, in particular, initial review.

6.25 We recommend that the BMT should ensure that caseworkers undertake increasing amounts of committal preparation.

6.26 Committals are prepared using the CPS Crown Court Case Preparation Package. This produces a series of standard paragraphs, with free-text options for instructions to counsel. These enable the caseworker and prosecutor to prepare a case summary, and to insert information, relevant to the case.

6.27 The instructions to counsel contained a summary of the case in 23 of the 30 relevant cases (76.7%) in our sample. However, some summaries did not analyse the issues. A well prepared summary, which addresses the issues in the case, will always be a useful aid to counsel, particularly in complex cases.

6.28 In addition, the instructions referred to the prosecutor's views on the acceptability of any mixed pleas in only three of the 16 cases (18.8%) where that would have been appropriate. The absence of guidance in this area often causes unnecessary delay in the Crown Court, as the cases have to be put back for a prosecutor to be consulted.

6.29 We were pleased to note that the PTLs monitor the quality of instructions to counsel, by sampling one prepared package per prosecutor per month. However, this does not appear to have achieved the desired result. In view of the fact that a high percentage of briefs are returned (that is, they are transferred to another counsel, usually at a late stage), it is particularly important that the instructions are of a high standard. We refer in more detail to the high rate of returns in paragraphs 7.5 - 7.8.

6.30 We recommend that the BCP should introduce quality assurance arrangements, to ensure that instructions to counsel fully address the issues in the case, and, where appropriate, the acceptability of pleas.

6.31 In 21 of the 30 relevant cases (70%), the instructions were delivered to counsel within the agreed Bar Standard time guidelines.

Quality of indictments

6.32 Amendments to indictments were made in 12 out of 30 cases (40%). None of the amendments was of a minor cosmetic nature.

6.33 We do not have any criticism of the Branch in relation to six of the amendments. One involved adding a count, when an acceptable plea was offered. Another involved the removal of two counts, after a ruling on a difficult legal issue.

6.34 In the remaining six cases, however, amendments had to be made because of poor drafting. One indictment had to be amended because of non-compliance with the charging standard on assaults (see paragraph 5.20). Two were amended to add additional counts, in circumstances where these should have been added before committal. One indictment had to be amended because the wrong charge had been selected. Another had to be amended because the dates were wrong. The sixth amendment was made in order to remove a count, and add another (see paragraph 5.3).

6.35 In a further two cases which we saw in the course of our examination, indictments had been amended because of non-compliance with the charging standard on assaults. We have referred to one of these cases at paragraph 5.42.

6.36 Individual prosecutors are notified of substantial amendments to indictments. However, there is no monitoring of amendments, nor is a formal record kept. This means that prosecutors and

caseworkers do not share lessons to be learned from the amendments that are made, and thereby miss an opportunity to improve their drafting skills.

6.37 The volume and extent of the amendments required are not acceptable.

6.38 We recommend that the BCP should introduce a system for monitoring the quality of indictments, in order to ensure that the substantive content of each indictment is correct, and to improve the drafting skills of prosecutors and caseworkers.

6.39 Indictments have to be lodged within 28 days of committal or transfer. Twenty-six of the 30 indictments in our file sample (86.7%) were lodged within the time limit. We were unable to ascertain the position in the remaining four. The Branch's log shows that most indictments are lodged very soon after committal.

The CPS in the Crown Court

6.40 We are satisfied with the arrangements for courtroom coverage by caseworkers in all the Crown Court centres to which the Branch commits its cases.

6.41 Branch prosecutors conduct the majority of the bail applications in chambers at Portsmouth Crown Court. Senior prosecutors also attend most PDHs at the Crown Court sitting at Newport and Portsmouth. We were pleased to see that they familiarise themselves with the cases to be heard. This means that they are able to contribute fully to the proceedings, where appropriate.

6.42 We were told by Crown Court users that Branch staff do not always comply with directions made at PDHs. On occasion, cases are re-listed at the prosecution's request, so that an application may be made for more time to comply with directions.

However, in other cases, directions are either not complied with at all, or are complied with late.

- 6.43 Our examination of the files confirmed this view. Directions were not complied with in five of the 11 cases (45.5%) in our sample. The fault for the delay in three cases lay with the Branch. In the remaining two, prompt action was taken initially, but there was no follow-up action.
- 6.44 The Branch has a system in place to ensure that the police are notified promptly of PDH directions, and of any work that they have to undertake. However, there is no system for monitoring compliance with directions, or other requests made to the police.
- 6.45 We recommend that the BCP should introduce an action-dating system, to ensure that directions given at PDHs are complied with fully and promptly.**

Custody time limits

- 6.46 Custody time limit provisions regulate the length of time during which an accused person may be remanded in custody in the preliminary stages of a case.
- 6.47 The Branch has effective monitoring systems in place for cases in which custody time limits apply. We were informed that the Branch has never failed to apply for an extension of a custody time limit, where appropriate.
- 6.48 We examined twelve relevant cases. All were properly endorsed, and the expiry dates were correctly calculated. We noted a further case, which the Branch had wrongly treated as being one to which the time limits applied. It was a committal for sentence, and custody time limits do not apply in these circumstances.

File endorsements

- 6.49 We have commented upon the need to improve the quality of review endorsements in paragraphs 5.58 - 5.60. In contrast, the standard of other file

endorsements is generally very good. Out-of-court endorsements are particularly good. Fifty-six out of 58 relevant magistrates' courts cases (96.6%), and all 29 relevant Crown Court cases, had such endorsements clearly and legibly recorded in the appropriate section of the file.

- 6.50 Court endorsements are also good. Sixty-seven out of 80 magistrates courts files (83.8%) and 29 out of 30 Crown Court cases (96.7%) had a comprehensive record of case progress in court.
- 6.51 However, we noted that the file endorsements relating to bail applications did not always differentiate between representations made by the prosecutor, and the adjudication of the court. This makes it difficult for a different advocate to deal with any subsequent application for bail. Prosecutors will wish to ensure that their bail endorsements reach the same good standard as their other court endorsements.

PRESENTING CASES IN COURT

- 7.1 We observed ten Branch advocates presenting cases in the magistrates' courts and youth court, and one advocate dealing with bail applications at the Crown Court. The overall standard of advocacy was variable. With one exception, all advocates were well prepared. However, some advocates lacked a clear and positive style, and we saw two bail applications in which the prosecution argument was unstructured. We also saw an advocate presenting a summary trial which was prolonged because of a lack of conciseness.
- 7.2 PTLs should monitor the advocacy of prosecutors at least twice a year. Only one formal advocacy assessment had been carried out during the last year, although the PTLs see prosecutors at court on an informal basis. They also monitor any advocate whose performance has given cause for concern. When monitoring is carried out,

feedback is given to the prosecutors. Our findings suggest that this monitoring has not been fully effective.

7.3 We recommend that the BCP should ensure that the advocacy of Branch prosecutors is monitored effectively, in order to identify training needs and improve the overall standard of advocacy.

7.4 We observed 12 counsel in the Crown Court. They were all sufficiently experienced for the cases that they were prosecuting. Monitoring of counsel is mostly informal, although caseworkers make a note of very good, or poor, performance. Some Crown Court users told us that insufficiently experienced counsel are, on occasion, instructed to prosecute. The BCP will wish to consider implementing a formal system to monitor counsel's performance to assess the position.

7.5 Counsel originally instructed do not attend court in the majority of cases, resulting in the instructions being passed to other counsel. Our examination of Crown Court cases showed that counsel originally instructed only dealt with nine out of 30 PDHs (30%); five out of 20 trials (25%); and five out of 22 sentencing hearings (22.7%). In our experience, these figures are very poor.

7.6 The CPS and the Bar Council have agreed that the number of returned briefs should be monitored by chambers on a monthly basis. For the period 1 February to 30 June 1998, figures prepared by chambers, and collated by Branch staff, show that counsel originally instructed dealt with 50.6% of initial hearings (including PDHs), and 54.8% trials or appeals against conviction. These figures are substantially at odds with our own findings. Branch managers have suggested that their figures do not show a comprehensive picture for the period concerned.

7.7 When a brief is transferred, particularly at the last minute, it can mean that counsel is not well prepared, and can involve an unnecessary adjournment of a case. We were told of a serious case where counsel originally instructed was unable to attend the PDH. This resulted in the hearing having to be adjourned, and an award of costs being made against the Branch.

7.8 We recommend that the BCP should liaise immediately with representatives of chambers, to seek a significant reduction in the number of returned briefs.

THE BRANCH AND OTHER AGENCIES

8.1 Branch staff have good working relationships with all the other criminal justice agencies. Representatives from the Branch attend formal liaison meetings, as well as ad hoc meetings, which deal with issues as they arise. The Branch's role in instigating the scheme for fast track cases is an example of the effectiveness of these relations.

8.2 In his role as the nominated Crown Prosecutor for Hampshire, the BCP attends the Senior Detective Officers Conference, at which strategic issues affecting the county are discussed. He has also drafted the guidelines on referral of advice cases.

8.3 Branch advocates appear in the magistrates' courts seven half-day sessions a week. Some courts that they cover list only a very small number of cases, while other courtrooms are opened at short notice. We observed that the listing policy of some magistrates' courts means that it is impossible for the Branch to ensure that advocates appear in court with their own cases.

Not only does this mean that cases have to be read by more than one prosecutor, it also reduces the advocate's ability to assist in the smooth running of the court.

8.4 We recommend that the BCP should discuss listing practices in the magistrates' courts at court user group meetings, with a view to agreeing practices that are of benefit to all court users.

8.5 Branch staff maintain a high standard of service to witnesses, and a service level agreement (SLA) on witness care has been signed by all the criminal justice agencies.

8.6 Branch staff have not been timely in the provision of information to the Probation Service, so that its staff may write timely pre-sentence reports on defendants. However, the BCP has recently negotiated an SLA with the Probation Service, which sets out guidelines for the content of pre-sentence report packages and their timely provision. We hope to see swift improvement in the position as a result.

KEY STATISTICS

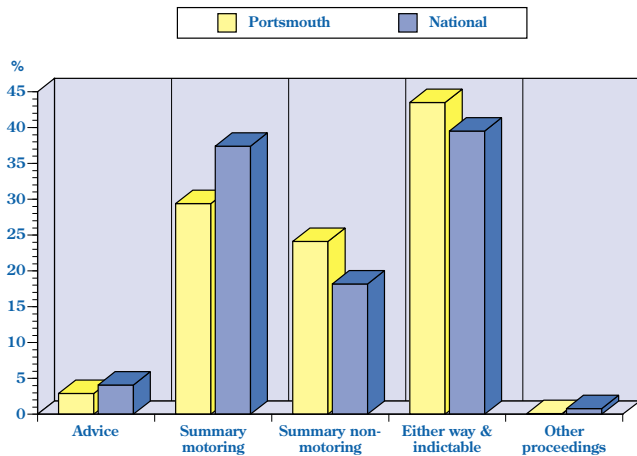
9.1 The charts which follow this page set out the key statistics about the Branch's casework in the magistrates' courts and the Crown Court for the year ending 30 June 1998.

EXTERNAL CONSULTATION

10.1 On page 20, there is a list of the local representatives of criminal justice agencies who assisted in our inspection.

MAGISTRATES' COURTS

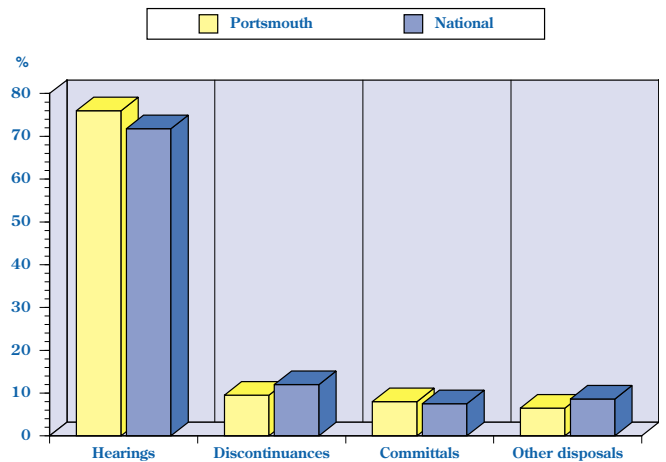
1 - Types of case



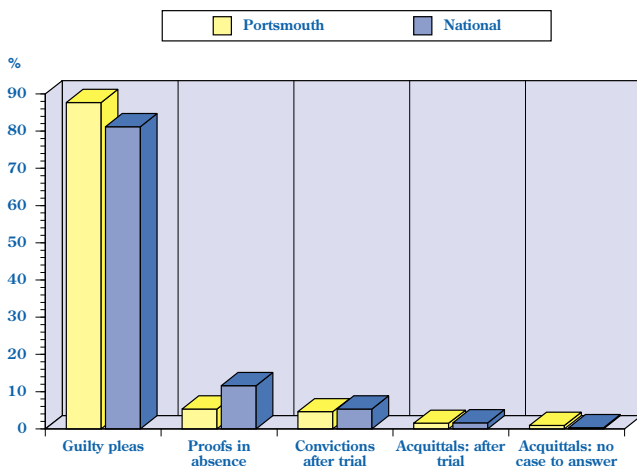
	Portsmouth		National	
	No.	%	No.	%
Advice	488	2.9	57,687	4.1
Summary motoring	4,870	29.4	532,242	37.4
Summary non-motoring	3,983	24.1	259,538	18.2
Either way & indictable	7,191	43.5	562,574	39.5
Other proceedings	16	0.1	11,378	0.8
Total	16,548	100	1,423,419	100

2 - Completed cases

	Portsmouth		National	
	No.	%	No.	%
Hearings	12,198	76.0	972,907	71.8
Discontinuances	1,518	9.5	163,059	12.0
Committals	1,291	8.0	101,373	7.5
Other disposals	1,039	6.5	117,033	8.6
Total	16,046	100	1,354,372	100



3 - Case results

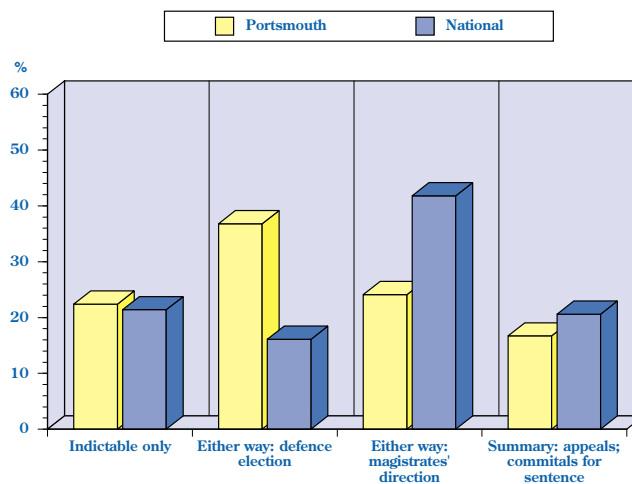


	Portsmouth		National	
	No.	%	No.	%
Guilty pleas	10,699	87.7	793,895	81.2
Proofs in absence	646	5.3	113,299	11.6
Convictions after trial	565	4.6	52,025	5.3
Acquittals: after trial	182	1.5	15,595	1.6
Acquittals: no case to answer	105	0.9	2,557	0.3
Total	12,197	100	977,371	100

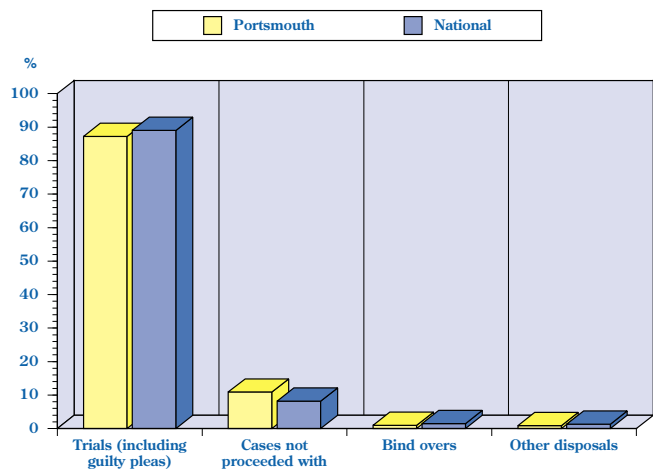
CROWN COURT

4 - Types of case

	Portsmouth		National	
	No.	%	No.	%
Indictable only	338	22.4	27,450	21.4
Either way: defence election	555	36.8	20,677	16.1
Either way: magistrates' direction	364	24.1	53,634	41.8
Summary: appeals; committals for sentence	252	16.7	26,437	20.6
Total	1,509	100	128,198	100



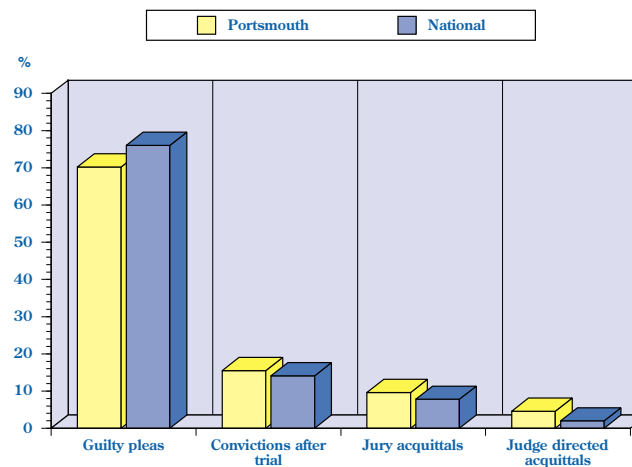
5 - Completed cases



	Portsmouth		National	
	No.	%	No.	%
Trials (including guilty pleas)	1,096	87.2	90,596	89.0
Cases not proceeded with	137	10.9	8,359	8.2
Bind overs	13	1.0	1,519	1.3
Other disposals	11	0.9	1,307	1.3
Total	1,257	100	101,781	100

6 - Case results

	Portsmouth		National	
	No.	%	No.	%
Guilty pleas	774	70.2	70,380	76.0
Convictions after trial	171	15.5	13,094	14.1
Jury acquittals	106	9.6	7,184	7.8
Judge directed acquittals	51	4.6	1,891	2.0
Total	1,102	100	92,549	100



LIST OF LOCAL REPRESENTATIVES OF CRIMINAL JUSTICE AGENCIES WHO ASSISTED IN OUR INSPECTION

Judge	His Honour Judge Selwood His Honour Judge Shawcross
Magistrates' courts	Mr G Cowling, Stipendiary Magistrate Mr D Hansford, Justice of the Peace and Chair of the Isle of Wight Justices Mr A Philp, Justice of the Peace and Chair of the South East Hampshire Justices Mrs B Robinson-Grindey, Justice of the Peace and Chair of the South Hampshire Justices Mr D Joynt, Justices' Chief Executive and Clerk to the Isle of Wight Justices Mr K Doran, Clerk to the South and South East Hampshire Justices Mrs J Oakford, Deputy Clerk to the South and South East Hampshire Justices
Police	Chief Superintendent P Scott Superintendent A Emmott Chief Inspector P Horn Miss K Masterman, Manager of Administration of Justice Department
Defence solicitor	Mr R Townsend
Counsel	Mr T Compton
Probation Service	Mr S Murphy, Chief Probation Officer
Victim Support	Ms J Webb
Witness Service	Mrs L Henley

CROWN PROSECUTION SERVICE INSPECTORATE

STATEMENT OF PURPOSE

To promote the efficiency and effectiveness of the Crown Prosecution Service through a process of inspection and evaluation; the provision of advice; and the identification and promotion of good practice.

AIMS

- 1** To inspect and evaluate the quality of casework decisions and the quality of casework decision-making processes in the Crown Prosecution Service.
- 2** To report on how casework is dealt with in the Crown Prosecution Service in a way which encourages improvements in the quality of that casework.
- 3** To carry out separate reviews of particular topics which affect casework or the casework process. We call these thematic reviews.
- 4** To give advice to the Director of Public Prosecutions on the quality of casework decisions and casework decision-making processes of the Crown Prosecution Service.
- 5** To recommend how to improve the quality of casework in the Crown Prosecution Service.
- 6** To identify and promote good practice.
- 7** To work with other inspectorates to improve the efficiency and effectiveness of the criminal justice system.
- 8** To promote people's awareness of us throughout the criminal justice system so they can trust our findings.



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