

THE INSPECTORATE'S REPORT  
*on*  
THE WEARSIDE BRANCH  
*of*  
CPS NORTH

# Wearside Branch



**BRANCH OFFICE**

◆ Washington

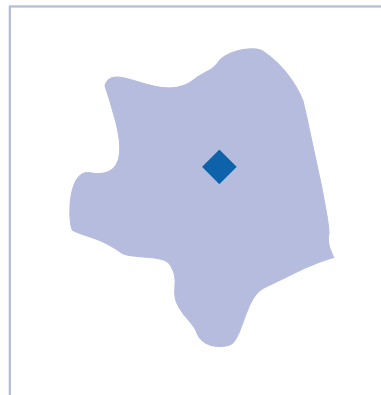
**COURTS COVERED**

**Magistrates' Courts**

Houghton-le-spring  
South Tyneside  
Sunderland  
Washington

**Crown Court**

Durham  
Newcastle-upon-Tyne



REPORT ON THE INSPECTION OF THE CPS WEARSIDE BRANCH

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## INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the Wearside Branch of CPS North.
- 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 CPS: providing advice; reviewing cases; preparing cases; and presenting cases in court.
- 1.4 The Wearside Branch is in the CPS North Area and has its offices at Washington. On 14 September 1998, it employed 52.1 staff (the Branch Crown Prosecutor (BCP) and 16.4 other prosecutors; three caseworker managers and 25.7 other caseworkers; a Branch office manager; and five other administrative staff).
- 1.5 The Branch comprises two teams. The Wearside team (8.6 prosecutors and 14.6 caseworkers) is responsible for prosecutions in the magistrates' court at Sunderland. The South Tyne team (7.8 prosecutors and 14.1 caseworkers) is responsible for prosecutions in the magistrates' courts at Houghton-le-Spring, South Tyneside and Washington.
- 1.6 The team of four inspectors visited the Branch between 14 and 24 September 1998 and on 29 September 1998. During this period, we observed nine CPS advocates in the magistrates' courts and the youth courts at Houghton-le-Spring, South Tyneside and

Sunderland. We also observed counsel in the Crown Court at Durham and Newcastle-upon-Tyne.

## CONCLUSIONS AND RECOMMENDATIONS

- 2.1 The Branch operates in a challenging environment. Whilst it does not deal with an unusual proportion of the most serious offences, it handles many cases of violence and public disorder. Although this may mean that prosecutors sometimes try to continue with cases that others - in another environment - might stop sooner, the great majority of casework decisions are correct. Most advocacy is also satisfactory and some aspects of case preparation, particularly in the Crown Court, are good.
- 2.2 Branch staff are keen to learn from the results of their cases. We were pleased to find that Branch managers had already recognised the need to improve some aspects of case preparation that we mention, and that they had already developed proposals to deal with them.
- 2.3 To assist the Branch in improving its casework, we recommend that:
  - i the BCP should seek an agreement with the police on the types of case that should be submitted to the Branch for pre-charge advice (paragraph 4.5);
  - ii the BCP should monitor the timeliness of the provision of advice, to ensure that it is provided within the CPS target of 14 days from receipt of an adequate file (paragraph 4.15);
  - iii prosecutors should ensure that they consider all the relevant information before deciding whether a prosecution is in the public interest (paragraph 5.5);

- iv the BCP should ensure that, in cases where there is disagreement with the police, prosecutors adopt a consistent approach and are able to demonstrate that their decisions are taken promptly and independently (paragraph 5.9);
- v the BCP should ensure that the Branch complies strictly with its obligations under Joint Performance Management (JPM), to enable the police to analyse fully the quality and timeliness of files submitted by them (paragraph 5.16);
- vi prosecutors should not seek to have cases adjourned unnecessarily in order to consider discontinuance, or to serve formal notices of discontinuance (paragraph 5.28);
- vii Prosecution Team Leaders (PTLs) should assess a proportion of each prosecutor's review endorsements monthly and report the results to the Branch Management Team (BMT) (paragraph 5.43);
- viii the BMT should consider the Branch's approach to the provision of advance information where the law does not require it, to ensure a consistent approach, particularly in youth cases (paragraph 6.6);
- ix the BCP should ensure that unused material is properly considered and dealt with in all summary trials (paragraph 6.11);
- x the BCP should ensure that all staff fully understand custody time limit procedures and that only the correct time limit review and expiry dates are displayed on the file jackets (paragraph 6.18);
- xi the BCP should seek to improve the Branch's summary trial preparation by:
  - ensuring that all necessary decisions and actions have been taken by the date of the pre-trial review (PTR); and
  - discussing with representatives of other court users ways in which PTRs can be made more effective (paragraph 6.24);
- xii the BCP should:
  - make arrangements for caseworkers to provide the Branch with details of directions made at plea and directions hearings (PDHs) on the date of the hearing, so that any necessary action can be initiated promptly; and
  - monitor the effectiveness of the new action-dating system to secure timely compliance with directions (paragraph 6.37).
- xiii the senior caseworker should ensure that the information required to be entered on the front of each Crown Court file jacket is completed, to show the timing of actions carried out (paragraph 6.42);
- xiv the BCP should ensure that details of discussions with the police about cases are always fully recorded on the file (paragraph 6.44);
- xv the BCP and PTLs should observe a higher proportion of contested hearings when undertaking advocacy monitoring in the magistrates' courts (paragraph 7.7);
- xvi the BCP should ensure that agents in the magistrates' courts understand and comply with Branch systems when dealing with files, and that their performance is monitored (paragraph 7.10);
- xvii the BCP, together with representatives of Area headquarters, should seek to improve the percentage of cases in which counsel originally instructed prosecute trials in the Crown Court (paragraph 7.13);

xviii the BCP should ensure that compliance with the proposed Service Level Agreement regulating the provision of pre-sentence report packages to the Probation Service is monitored, to ensure that the Branch fulfils its obligations to provide packages promptly (paragraph 8.3).

## THE INSPECTION

- 3.1 In the 12 months to 30 September 1998, the Branch dealt with 14,906 defendants in the magistrates' courts and 1,207 defendants in the Crown Court. In a further 400 cases, advice was given to the police before charge.
- 3.2 The inspection team examined a total of 265 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 the 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 September 1998, the proportion of pre-charge advice in the Branch's caseload (2.6%) was significantly lower than the national average (4.2%).
- 4.2 We were given two main reasons for the low proportion. First, prosecutors fail to record some telephone advice. Secondly, Northumbria police have a policy of encouraging officers to make as many decisions as possible themselves.

- 4.3 Advice given to the police by telephone should be recorded by prosecutors and included in the Branch's performance indicators. We were told that prosecutors sometimes fail to record the advice that they have given. To remedy this, the BCP has recently introduced a system under which the Branch's telephonist notes the receipt of all calls for advice. This record should accord with the prosecutors' own records. The BCP will want to monitor the effect of this system to ensure that all telephone advice is properly recorded.
  - 4.4 Police supervisors filter requests for advice. They are guided by the criteria set out in the Manual of Guidance for the preparation, processing and submission of files, which has been agreed nationally between the CPS and the police. We did not see any cases in which it was inappropriate for the police to seek advice. We are concerned, however, that there may be some types of case, particularly public order offences, in which the Branch and the police would benefit from more frequent provision of pre-charge advice.
  - 4.5 **We recommend that the BCP should seek an agreement with the police on the types of case that should be submitted to the Branch for pre-charge advice.**
  - 4.6 Initiatives for prosecutors to attend police stations to give advice have not so far been very successful. Prosecutors were withdrawn from a scheme at Washington because they were rarely consulted. We are pleased to note that a scheme has recently begun at Sunderland, under which prosecutors are available to give advice and review some prosecution files. The Branch has also approached the police at South Shields with a view to setting up a similar scheme.
- ### Quality of advice
- 4.7 We agreed with the advice given by prosecutors in nine of the ten cases that we

examined. The file in the tenth case did not contain enough information for us to make an assessment.

- 4.8 We agreed with the application of the public interest test in both cases where it was relevant. In another case, however, the prosecutor appeared to have considered the public interest before deciding whether there was sufficient evidence to proceed.
- 4.9 PTLs allocate routine advice cases to prosecutors in strict rotation, although they ensure that designated prosecutors deal with more specialised cases, such as those concerning youths or allegations of child abuse.
- 4.10 Advice was generally well presented and fully reasoned. In two cases, however, it was given by telephone, without written confirmation, although a note of the advice was made on the file in both cases. The note in one was inadequate, however. The decision was made on public interest grounds, but it was not clear whether the prosecutor knew about the defendant's criminal record.
- 4.11 In one case, we were not satisfied that the prosecutor provided genuinely independent advice. A youth was seen breaking into a car from which a tape cassette was stolen. The defendant was stopped in possession of the tape seven minutes later. He said that he had found it in the street. The prosecutor advised that either the defendant should be cautioned for theft by finding, or that no further action should be taken, "whichever the police think appropriate". We consider the independence of prosecution decisions further at paragraphs 5.6-5.9.

## Timeliness of advice

- 4.12 The CPS has set a target of providing advice within 14 days of the receipt of a request from the police. The Branch's Corporate Performance Measures (CPMs) show that advice was timely in 33.3% of cases in the

quarter to 31 March 1998 and in 57.7% of cases in the quarter to 30 June 1998.

- 4.13 Advice was clearly provided promptly in only two of the ten cases that we examined. The delay in the other eight ranged from four to 25 days. It was unclear in some cases whether there was sufficient information on which to advise when the file was originally submitted. It is important, for the accurate assessment of the Branch's performance, that timeliness is measured from the receipt of an adequate file. A minute to this effect was recently sent from CPS headquarters to all BCPs (and others), following a recommendation made in the report of our review of advice cases, published in September 1998 (Thematic Report 3/98).
- 4.14 The Branch has a system for identifying cases in which advice is still outstanding ten days after the request. The system needs to be used vigorously to ensure that advice is provided promptly.
- 4.15 We recommend that the BCP should monitor the timeliness of the provision of advice, to ensure that it is provided within the CPS target of 14 days from receipt of an adequate file.**
- 4.16 The Branch rarely seeks pre-charge advice from counsel. It is requested only on the authority of the BCP. We did not see any case in which counsel's advice had been sought before charge, nor any in which it would have been appropriate.

## 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 Whilst the proportion of either way and indictable only cases in the Branch's caseload (41.1%) is close to the national average (39.6%), the proportion of summary non-motoring offences (37.5%) is more than twice the national average (18.4%). Conversely, the proportion of summary motoring offences (18.8%) is only just over half the national average (37%). This reflects the large number of summary public order offences that the Branch handles.
- 5.3 We specifically looked at 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 79. In the case with which we disagreed, a youth under 14 years of age was charged with assault. Although the reviewing prosecutor recognised at an early stage that the prosecution could not fulfil the requirement to prove that the defendant knew that his actions were seriously wrong, the case was allowed to proceed.
- 5.4 We agreed with the application of the public interest test in all 78 cases in which there was sufficient information on the file for us to make an assessment. One of the remaining two cases concerned a defendant with psychiatric problems, who had broken some windows at a police station. The prosecutor should have sought more information before deciding that a prosecution was in the public interest. In the other case, a woman who swore at a police officer was charged with an offence under section 5, Public Order Act 1986. It was arguable whether or not a prosecution was in the public interest. The prosecutor revised his opinion that the case should be discontinued in the light of strong police representations. The decision would have been better informed if the prosecutor had first established whether the defendant had any previous convictions. The defendant was convicted after a trial and she was conditionally discharged for nine months.
- 5.5 We recommend that prosecutors should ensure that they consider all the**

**relevant information before deciding whether a prosecution is in the public interest.**

- 5.6 A number of representatives of other criminal justice agencies expressed concern that some prosecutors are sometimes influenced too much by the police view, when deciding whether a prosecution is justified. We found some support for this perception during our visits to court (and see also our comments at paragraph 4.11).
- 5.7 In one case, the victim of an assault, who had not made a statement, could not be contacted. The officer in the case suggested that the case should be discontinued, but the prosecutor accepted the view of the supervising officer that the case should continue until the witness failed to attend court. The case should have been rejected at first review. In another case, the police agreed with the prosecutor that a charge of affray should be replaced by a charge under section 4, Public Order Act 1986. The prosecutor said, however, that he would have continued with the affray charge, if the police had pressed the point. In a third case, a police officer insisted that there was a realistic prospect of proving that the defendant was the driver of a car when it was involved in an accident, although the only evidence was that he was driving a car of the same make and colour, with damage consistent with the accident, two hours later. The prosecutor doubted whether the case could be proved, but allowed it to proceed.
- 5.8 On the other hand, we saw some examples of robust decision-making among discontinued cases. All concerned public order offences. They were all correctly stopped with the agreement of the police, after the legal and evidential difficulties had been properly explained to them. In two, however, another lawyer had to take a fresh look at the case before the problems were fully explained to the police.
- 5.9 We recommend that the BCP should ensure that, in cases where there is**



**disagreement with the police, prosecutors adopt a consistent approach and are able to demonstrate that their decisions are taken promptly and independently.**

5.10 The PTLs allocate cases for review on the same basis as advice cases. However, some youth cases that we examined did not appear to have been reviewed by a youth specialist. Although we agreed with the decision to proceed in all of them, the endorsement about the public interest assessment was inadequate in some. We are pleased to note that the Branch has recently arranged for all youth files to be reviewed by a designated youth specialist on each team who will, when possible, also present the cases at court.

#### Timeliness of review

- 5.11 The Branch's CPMs show that, in the quarter to 31 March 1998, prosecutors reviewed 59% of cases within seven days of receiving a file from the police. This figure had risen to 70.1% in the quarter to 30 June 1998. We are pleased to note that the Branch is determined to maintain this improvement.
- 5.12 The timeliness and quality of files submitted by the police affects the ability of the Branch to review cases promptly and fully. This is measured by JPM, which is a system by which the CPS and the police jointly collect information about aspects of their activities. These figures show that the police submit almost 90% of files within the agreed timescales. Some cases do not contain sufficient evidence to enable a full review to take place, however, when the file is first submitted. Evidence is frequently received piecemeal, so that files have to be reviewed several times. For example, about one quarter of committal files do not contain sufficient evidence for the case to proceed on first submission.
- 5.13 We comment later in this report (paragraph 6.20) that files for summary trials are also

sometimes incomplete at the time of the PTR hearing. This contributes to the inability of prosecutors to make early decisions about these cases.

- 5.14 The Branch and the police are working closely together under JPM to identify ways in which the quality and timeliness of files can be improved. Branch managers meet regularly with their police counterparts to discuss problems that need to be addressed.
- 5.15 The data for JPM is collected on a form (known as the TQ1) which the Branch returns to the police for collation. The return rate is better than many that we have seen and is still rising. According to police figures, during the eight months ending 31 August 1998, the rate averaged 71%, against a demanding target of 93%. The improving return rate will increase confidence in the quality of the data. However, the forms are often returned late and in batches.
- 5.16 We recommend that the BCP should ensure that the Branch complies promptly with its obligations under JPM, to enable the police to analyse fully the quality and timeliness of files submitted by them.**

#### Discontinuance

- 5.17 The Branch's discontinuance rate (12.9%) is slightly above the national average (12%).
- 5.18 We examined 136 cases which were stopped by the prosecution in the magistrates' courts during July 1998 to ascertain the reason for termination, and to find out whether the police were consulted about, and agreed with, the decision. Seventy-five cases (55.1%) were formally discontinued by notice under section 23, Prosecution of Offences Act 1985. Thirty-nine (28.7%) were withdrawn at court; and in 22 (16.2%) the prosecution offered no evidence.
- 5.19 Thirty-seven cases (27.2%) were terminated because there was insufficient evidence.

Forty-six (33.8%) were stopped because it was not in the public interest to proceed. In 42 (30.8%), the prosecution was unable to proceed; and five (3.7%) were terminated because the relevant driving documents were produced. The reason for termination was unclear in the remaining six cases (4.4%).

5.20 Of the 37 cases stopped because there was insufficient evidence, six were dropped because the prosecution could not fulfil the requirement to prove that a child under 14 knew that his actions were seriously wrong. The need to prove this point ceased on 30 September 1998. We have not, therefore, made a specific recommendation about it; but we are pleased to note that Branch managers had noticed the trend earlier in the year. This was discussed with the police, through the JPM machinery, and Branch prosecutors provided training to police. No significant trends emerged from the other 31 cases.

5.21 Of the 46 cases terminated because it was not in the public interest to proceed, 21 were stopped due to the likelihood of a nominal penalty being imposed. Twenty of these defendants had already been sentenced for other offences. In 13 other cases, seven of which involved youth defendants, the prosecutor recommended that the defendant should be cautioned.

5.22 Of the 42 cases in which the prosecution was unable to proceed, 30 (mainly assault cases) were terminated because prosecution witnesses refused to give evidence, and four because witnesses failed to attend court. Four of the remaining eight cases had been taken into consideration when the defendants were sentenced at other court centres.

5.23 The police were consulted in 111 (81.6%) of the cases that were terminated. They agreed with the decision in 103 and disagreed in three. In two of these three cases, we could not find any evidence of further consultation

with the police before the case was terminated; and in the third, police objections arrived after the case had been withdrawn in court. We could not tell whether the police agreed or disagreed in the remaining five cases.

5.24 In ten of the 25 cases in which the police were not consulted, the reason for termination became apparent only at the court hearing.

5.25 We examined ten terminated cases in more detail to assess whether the Code tests had been correctly applied. We agreed with the decision in all of them. The victims refused to give evidence in six cases, three of which concerned incidents of domestic violence.

5.26 The CPS' published policy is that the decision to terminate a domestic violence case should be approved by a prosecutor who is at least a Principal Crown Prosecutor. That grade no longer exists and the policy is being revised to ensure that decisions in these difficult cases are taken, or approved, by prosecutors of suitable seniority and experience. Until such time as the revised policy is promulgated, the BCP will therefore wish to be satisfied that all such decisions in his Branch are taken, or approved, by appropriate prosecutors.

5.27 It is in the interests of the courts, defendants and victims that cases which should not proceed further are discontinued as soon as possible. Prosecutors rightly seek to discontinue cases by notice under section 23, Prosecution of Offences Act 1985, rather than withdrawing them at court, or offering no evidence. They should not, however, seek adjournments simply to serve a notice, or to consult the police, when it is clear that the case cannot proceed. We saw a number of cases which were adjourned for unnecessary consultation, and we were told that cases were occasionally adjourned simply to allow the prosecution to serve a formal notice of discontinuance. If a case is

to be dropped, it is important that this takes place at the earliest opportunity.

**5.28 We recommend that prosecutors should not seek to have cases adjourned unnecessarily in order to consider discontinuance, or to serve formal notices of discontinuance.**

#### **Selection of the appropriate charge and charging standards**

5.29 The original police charges required amendment in 14 out of 80 cases (17.5%) that we examined. In two, the prosecutor added a charge or substituted a more serious charge. One of these resulted in a conviction for burglary, when the police had originally charged the defendant with handling the goods that had been stolen.

5.30 In three cases of assault, the prosecutor substituted lesser offences to comply with the agreed charging standards (see paragraph 5.33). Another two cases involved charges which the police had unnecessarily added to allegations of assault; and another could be satisfactorily dealt with in the magistrates' court by a summary offence under the Protection from Harassment Act 1997.

5.31 In four cases, prosecutors amended the details of the charge to describe the defendant's alleged conduct more accurately. They should also have amended the wording of another two charges for the same reason.

5.32 Most amendments were made promptly, but two should have been made earlier. One case may have been finalised more quickly if the charge had been amended at the first opportunity.

5.33 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. The standards were correctly applied by prosecutors in all 39 relevant cases that we examined.

#### **Cases lost on a submission of no case to answer in the magistrates' courts and discharged committals**

5.34 In the year to 30 September 1998, 17 trials were stopped by the magistrates at the close of the prosecution case. This is 0.2% of the Branch's caseload, the same as the national average. We examined two of these cases. We agreed with the decision to proceed in both. The cases were lost when prosecution witnesses changed their account at trial. In the same period, 21 committal cases were discharged at the end of the prosecution case. Only one was recorded for the period from which our file sample was selected. It was wrongly recorded: the prosecution was forced to drop the case when the magistrates refused a further adjournment.

#### **Judge ordered and judge directed acquittals**

5.35 In the 12 months to 30 September 1998, 76 cases were not proceeded with in the Crown Court. This represents 8% of the Branch's caseload, just below the national average of 8.8%. The great majority were stopped by the judge at the request of the prosecution before the trial started (judge ordered acquittals).

5.36 We examined 13 judge ordered acquittals. We disagreed with the original decision to proceed in only one, in which the prosecutor failed to consider relevant case law. Although the decision to proceed in another two was finely balanced, the evidence had been very carefully analysed.

5.37 Seven were stopped because important witnesses refused to give evidence, or could not be found. One was stopped because the police lost a vital document. In another, new information, which cast doubt on the reliability of the victim's account, emerged after the defendant had been committed for trial. The remaining case was stopped on the advice of counsel, although there was clear evidence of the offence; the defendant was bound over to be of good behaviour.

5.38 During the same 12 month period, there were seven cases in which the judge directed an acquittal after the trial had started. This represents 0.8% of the Branch's caseload, under half the national average of 2.2%. We examined three of these cases. We agreed with the original decision to proceed in two. Both resulted in an acquittal when the evidence of key witnesses was discredited in cross-examination.

5.39 In the other case, more careful analysis of the evidence would have raised doubts about whether the defendant intended to pervert the course of justice. The reviewing prosecutor did not appear to have responded to a detailed analysis of the evidence submitted by the defendant's solicitor.

#### Mode of trial

5.40 We were told that prosecutors make good representations about whether a case should be dealt with in the magistrates' court or at the Crown Court, drawing the court's attention to the salient points. We agreed with the prosecutor's recommendation in all 48 relevant cases that we examined.

#### Bail

5.41 Representatives of other criminal justice agencies told us that some prosecutors appeared to follow police views about bail uncritically, although others were prepared to take a more independent line. Prosecutors made appropriate decisions whether to oppose bail in all 11 relevant cases that we examined, and in the six relevant cases that we saw during our visits to court.

#### Review endorsements

5.42 Some review endorsements are very good. The relevant evidential factors were fully set out on the file in 57 out of 80 cases (71.3%) and the relevant public interest considerations were satisfactorily recorded in 48 cases (60%). In many of the remaining cases, the review endorsements were

perfunctory; and one was idiosyncratic. More detailed endorsements would enable prosecutors to demonstrate clearly that they take independent decisions (see paragraphs 5.6-5.9).

**5.43 We recommend that the PTLs should assess a proportion of each prosecutor's review endorsements monthly and report the results to the BMT.**

#### Learning from experience

5.44 Branch staff are keen to improve their review and handling of cases by learning from experience. Caseworkers prepare reports about cases which result in an acquittal in the Crown Court. Prosecutors add their comments and the report is passed to the relevant PTL and the BCP. Any general lessons or themes are discussed at team meetings, or are analysed in briefing notes prepared by the PTLs. These briefing notes also summarise new legal developments and new procedures.

5.45 The Branch also operates a regular training programme covering a number of topics. The programme has recently included training on custody time limits; child abuse cases; instructions to counsel; and the management of Crown Court cases.

5.46 The Branch has only recently begun to collate information under JPM about the reasons for discontinuance and Crown Court acquittals. Branch managers will discuss the results with their police counterparts. It is also important that Branch managers provide regular summaries of this analysis to help prosecutors and caseworkers to prepare cases better, and to identify any training needs. This approach would probably have identified the difficulties in proving that defendants under 14 years of age knew that their actions were seriously wrong (paragraph 5.20).

## PREPARING CASES

## Advance information

- 6.1 National guidelines require advance information to be provided to the defence within seven days of the Branch receiving a file from the police and learning the identity of the defence solicitor. Taking this into account, it was served in time in 38 out of 43 cases (88.4%) that we examined. We could not ascertain when it was served in the remaining five. This figure is consistent with the Branch's CPMs, which show that, in the quarter to 30 June 1998, advance information was served promptly in 92.5% of cases. Frequently, further statements are received at a later stage. These are generally served promptly on the defence.
- 6.2 Caseworkers copy the documents to be served as advance information as soon as the file is received from the police. They list the documents in a covering letter so that the contents of the disclosure bundle are clear. When prosecutors review the evidence, they check that only appropriate documents are to be served.
- 6.3 Whilst this system usually provides a clear record of what has been served, the date of service is often unclear. The letters accompanying disclosure are generally dated when they are prepared. Many packages are served at the first court hearing, however, although we noted from our examination of files that some are supplied earlier. Prosecutors sometimes fail to amend the date on the letter, or to record the date on the file jacket, if the package is handed over at court. This leads to disputes about when (or whether) advance information was served, which causes delay. PTLs will wish to ensure that the true date of service is always clearly recorded on the file.
- 6.4 In summary cases, the prosecution is not required by law to provide advance information. The Branch does not have a written policy setting out when advance information will be provided in such cases. Prosecutors have a wide discretion, which

they exercise fairly narrowly. They sometimes provide the material, if it will help to prevent delay. More often, they allow the defence solicitor to see the relevant material on an informal basis in court.

- 6.5 Prosecutors adopt a reasonably consistent approach to this voluntary provision of advance information, although some provide it in most youth cases. This is helpful, because defence solicitors often find it difficult to obtain instructions from young clients. We saw one case in the youth court where a prosecutor had refused a request for advance information. This had resulted in an adjournment, because the defence solicitor was unaware of the full case against his client.
- 6.6 We recommend that the BMT should consider the Branch's approach to the provision of advance information where the law does not require it, to ensure a consistent approach, particularly in youth cases.**
- 6.7 We were told that some agents for the prosecution apply to adjourn cases unnecessarily for advance information to be served. The BCP will wish to ensure that this is addressed when implementing our recommendation at paragraph 7.10.

## Unused and sensitive material

- 6.8 Prosecutors correctly completed schedules of unused material and served them on the defence in time in all 30 Crown Court cases that we examined.
- 6.9 In magistrates' courts trials, however, the schedules were completed correctly in only 17 out of 27 cases (63%); and they were served late in 12 of the 23 cases (52.2%) in which we could ascertain the date of service. Two schedules had clearly not been served on the defence, although the prosecutor had completed them.
- 6.10 In a further three cases, we could not find a schedule on the file, nor any evidence that it had been requested.

**6.11 We recommend that the BCP should ensure that unused material is properly considered and dealt with in all summary trials.**

6.12 We examined 14 cases that contained sensitive material. In 13, the proper tests were applied in considering the material, and the schedules were correctly completed. In the other case, we could not find any evidence that the prosecutor had considered whether an application should be made to the court to withhold the material, and counsel had to clarify the point. Prosecutors play a critical role in ensuring that sensitive material is properly considered. The reviewing prosecutor should always take the initiative in deciding how to deal with such material.

6.13 The Branch does not usually retain possession of sensitive material. It is usually kept by the police, but the Branch sometimes keeps notes or documents about the material which may themselves be sensitive. The Branch has arrangements to store these items securely. We were concerned, however, to find one item of sensitive material on the file in a finalised case. The BCP will wish to remind all Branch staff of the importance of rigorous compliance with the arrangements for the security of sensitive material, and any documents or notes relating to it.

**Custody time limits**

6.14 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. Failure to monitor the time limits, and, where appropriate, to make an application to extend them, may result in a defendant being released on bail who should otherwise remain in custody.

6.15 We examined ten custody time limit cases. Branch staff are clearly aware of the

importance of monitoring the time limits and the courts have not had to release any defendants following the expiry of the limit for the last three years. The action and expiry dates were marked on the front of the file in all ten, but they had been wrongly calculated in one. It appeared that the expiry and review dates applied to this file came from a later custody case for the same defendant. Indeed, we could not determine from the file endorsements whether the defendant was in custody on the file that we examined, or whether he remained on bail. The prosecution successfully applied to extend the limits, although this may not have been necessary.

6.16 We also saw two cases in which the 56 day expiry date was not changed to the 70 day limit when it was determined that the case would be sent to the Crown Court. Although this was an error on the safe side, it suggests that Branch staff may not fully understand the procedures, in spite of having received several training sessions.

6.17 Staff monitor the time limits manually, using a diary system for magistrates' courts cases and a log system for cases committed to the Crown Court. The expiry and review dates are noted on the front of the file. Branch staff do not rely on expiry dates generated by the Branch's computerised case-tracking system, SCOPE, because they have found them to be unreliable. They use the national ready reckoner to calculate the dates instead. However, the SCOPE-generated expiry date is also printed on the file jacket and is not crossed through. It was apparent from the file endorsements in two cases that the presence of both expiry dates on the file jacket had led to confusion in court about the correct date.

**6.18 We recommend that the BCP should ensure that all staff fully understand custody time limit procedures and that only the correct time limit review and expiry dates are displayed on the file jackets.**

### Summary trial preparation

6.19 Each magistrates' court covered by the Branch operates a system of PTRs. These are hearings designed to ensure that both the prosecution and defence are ready to proceed on the trial date and, where possible, to agree evidence. Although the systems vary, the hearings are frequently used merely to fix a date for trial, rather than to address the issues in the case, or decide which witnesses need to be called to give evidence. Prosecutors contribute to the ineffectiveness of the hearings, because they do not always prepare sufficiently for them, or carry out the necessary actions for them to be effective.

6.20 Sometimes the PTR is held before the prosecutor has received a complete file of evidence. Even when all the evidence is available, however, prosecutors do not control cases sufficiently. We were told that statements are often served on the defence at the PTR hearing, so that they do not have time to consider them properly. Too often, prosecutors do not make early decisions about which witnesses are required. For example, we saw several cases where the decision to serve a police officer's evidence under section 9, Criminal Justice Act 1967, was made only after the police questioned whether the officer needed to attend court. Similarly, section 9 statements were sometimes served only after the defence had indicated that the evidence would be accepted. Witnesses are rarely tendered to the defence. For example, in one case, a witness who was a friend of the defendant was required to attend, although the police had already informed the prosecutor that he was likely to be hostile to the prosecution.

6.21 Notwithstanding these concerns, witnesses to be called were correctly identified in 25 of the 29 relevant cases that we examined (86.2%) and statements were served promptly under section 9 in 24 out of 28 relevant cases (85.7%).

6.22 Nevertheless, lack of preparation sometimes results in prosecutors dropping cases after

the PTR, and sometimes on the day of the trial. For example, in the first eight months of 1998, 65% of trials at South Tyneside Magistrates' Court did not go ahead as a trial on the scheduled date. The prosecution offered no evidence in almost one quarter of these and was at fault in some way in a further 6%.

6.23 Branch managers have recognised that the Branch's procedures for preparing summary trials are not satisfactory. They are carrying out a full review, which will consider whether to establish a dedicated summary trial unit. The review will also set time limits by which the necessary actions should be taken.

**6.24 We recommend that the BCP should seek to improve the Branch's summary trial preparation by:**

- **ensuring that all necessary decisions and actions have been taken by the date of the PTR; and**
- **discussing with representatives of other court users ways in which PTRs can be made more effective.**

6.25 Section 23, Criminal Justice Act 1988 provides that, under certain conditions, the statement of a witness who has been deterred from attending court may be read. Branch prosecutors are aware of the provision, but it is rarely used. We were told that there are few cases in which the necessary conditions could be satisfied. We did not see any cases in which it would have been appropriate to use the provision.

6.26 Admissions of fact can be agreed under section 10, Criminal Justice Act 1967. Although we did not see any examples in our file sample, Branch prosecutors told us that they had used this facility to prove that a defendant was disqualified from driving and to agree that the correct procedures had been carried out in an identification parade. We approve of the use of the section in these circumstances, and urge all prosecutors to consider its use more frequently.

## Committal preparation

- 6.27 The quality of committal preparation is good. Prosecutors and caseworkers clearly work together to prepare cases. Caseworkers prepare between 20% and 40% of committals for approval by a prosecutor. The PTLs decide which cases are suitable for the caseworkers to prepare and the senior caseworker allocates them to individual caseworkers. Any additional evidence that is required is requested at an early stage and, when received, it is promptly reviewed and, if appropriate, served on the defence. Prosecutors checked the final instructions to counsel in all 30 Crown Court cases that we examined. Prosecutors also make key decisions after committal.
- 6.28 Although all 30 Crown Court cases were properly prepared, the papers were served on the defence promptly (taking into account when the file was received from the police) in only ten of the 27 (37%) in which we could discover the date of service. Papers were frequently served on the day set for committal, although the defence usually agreed to the committal proceeding without an adjournment. The Branch has recently established a dedicated committal unit, which we were told has led to a significant improvement in the timeliness of service since the period from which our file sample was drawn. The BCP will wish to ensure that this improvement is sustained.
- 6.29 The Branch uses the Crown Court Case Preparation Package to prepare instructions to counsel. This is a pro-forma word processing package which contains standard paragraphs to be included in the instructions, with free text options to incorporate specific instructions relevant to each case.
- 6.30 We frequently comment in our reports on the poor quality of instructions to counsel. We were pleased to find that Branch staff at Wearside have made a special effort to improve the quality of their instructions. Training has been given to all relevant staff

and the PTLs check all briefs before they are sent to counsel. Twenty-five of the 30 sets of instructions (83.3%) that we examined contained detailed case summaries, most of which addressed the issues in the case. The acceptability of potential pleas was considered in seven of the 11 relevant cases. Overall, 23 out of 30 sets of instructions to counsel (76.7%) were satisfactory or better. Twenty-two (73.3%) were clearly delivered to counsel within the agreed timescales; we could not tell the position in six of the remainder. Although there is still room for improvement, and the instructions remain dominated by the standard paragraphs, these figures are significantly better than we are accustomed to seeing.

## Quality of indictments

- 6.31 Prosecutors or caseworkers draft the indictment when preparing the committal papers. We were told that they were generally drafted well and allowed the case to be properly presented. They rarely required amendment at court, except to add counts in order to accommodate guilty pleas offered by the defence.
- 6.32 Only two of the 30 indictments that we examined were amended. Both resulted from a failure to analyse the evidence carefully. One concerned the choice of two possible appropriations of property in a theft case. The other should have referred to an imitation firearm, rather than a firearm. We also saw another case in which the order of counts could have been better arranged.
- 6.33 Indictments were lodged promptly in all 25 cases where we could ascertain the position. The date of lodging was not recorded in five, however (see paragraph 6.41).

## The CPS in the Crown Court

- 6.34 The Branch provides caseworkers to support counsel in the Crown Court at Durham and Newcastle-upon-Tyne, but managers at the Branches in Durham and Newcastle have the main responsibility for allocating



caseworkers to courtrooms. Caseworkers cannot always cover cases from their own Branches, because court staff sometimes list cases from more than one Branch in the same courtroom. They normally cover cases from their own Branch at PDHs, however.

6.35 The Branch does not always receive copies of directions given at PDHs promptly. They are usually sent by post. Branch staff should not have to wait until the court sends a copy of the directions before they can take any necessary action. The caseworker who attends the PDH, even if from another Branch, should send details of the directions by facsimile or by telephone on the day of the hearing.

6.36 In spite of this, the Branch complied promptly with directions in all 13 relevant cases that we examined. Branch staff frankly accepted, however, that deadlines for compliance with directions are sometimes missed. Branch managers have recently introduced an action-dating system to ensure prompt compliance.

**6.37 We recommend that the BCP should:**

- **make arrangements for caseworkers to provide the Branch with details of directions made at PDHs on the date of the hearing, so that any necessary action can be initiated promptly; and**
- **monitor the effectiveness of the new action-dating system to secure timely compliance with directions.**

6.38 Branch prosecutors do not attend the Crown Court frequently. They deal with applications for bail to a judge in chambers, but do not stay at court to assist counsel at PDHs. This means that, if a defendant offers to plead guilty to part of an indictment, or to alternative counts, a caseworker, who may be from another Branch, has to contact the reviewing prosecutor by telephone. If the reviewing prosecutor is not available, the relevant PTL will usually be able to make a

decision, because he retains a copy of counsel's brief. At Newcastle, the Area's special casework lawyer will also help.

6.39 Prosecutors derive significant benefits from attendance at the Crown Court. We appreciate that the BCP must allocate his resources carefully, but he will wish to consider how he can provide more opportunities for prosecutors to attend the Crown Court, particularly to assist with PDHs.

#### **File contents and endorsements**

6.40 We have already mentioned review endorsements at paragraph 5.42. The standard of endorsement about events in court was better, however. Prosecutors clearly noted the reasons for applying for remands in custody, or for conditions to be attached to bail, as well as the decisions of the court. They also clearly identified any action to be taken, although some could improve their handwriting. Overall, 74 out of 80 sets of court endorsements (92.5%) provided a clear record of case progress in the magistrates' courts. All 30 Crown Court files showed a clear history of the case.

6.41 The record of office work undertaken by caseworkers was also good, showing clearly what had been done, when, and by whom. Crown Court files were very well organised, with separate folders for correspondence, evidence and unused material. This greatly assists the proper control of a case and ensures that key information is easily accessible. Some important information about actions taken in a case were omitted from the file jackets, however. For example, in six cases, we could not tell from the file when instructions were sent to counsel; nor, in five cases, when the indictment was lodged. We accept that the senior caseworker keeps separate records of these actions, but details should be recorded in the space provided on the file jacket to ensure that the information is readily available.

**6.42 We recommend that the senior caseworker should ensure that information required to be entered on the front of each Crown Court file jacket is completed, to show the timing of actions carried out.**

6.43 The endorsements of office work carried out by prosecutors were sometimes less clear. They did not always record full details of discussions which had clearly taken place with the police.

**6.44 We recommend that the BCP should ensure that details of discussions with the police about cases are always fully recorded on the file.**

## PRESENTING CASES IN COURT

7.1 Most Branch prosecutors present cases competently and professionally. They are well prepared, with up-to-date knowledge of the law, and present their cases fully and clearly. In one case that we saw, the prosecutor dealt extremely well with a complex argument about jurisdiction in a youth case. She was well prepared and produced the relevant authorities to the court, even though she had been given very short notice that the application was to be made.

7.2 Others, however, presented their cases less confidently. One or two spoke rather quickly and read from the files, so that eye contact with the magistrates was lost. Another failed to address the court on points of law in two cases, relying on the clerk to advise.

7.3 Several representatives of other agencies told us that prosecutors did not always provide sufficient information to the court to substantiate applications for remands in custody, or the imposition of bail conditions. Whilst the quality of information given at bail applications depends on what has been provided by the police, we were told that available facts were occasionally not given to the court.

7.4 We were also told that prosecutors did not always provide opening speeches or location plans in trials when these would be helpful. Prosecutors should always consider carefully how best to assist the court in all types of hearing, particularly contested applications or trials.

7.5 Despite these criticisms, prosecutors made full representations in all five of the bail applications that we saw, and the only trial that we saw was also competently presented.

7.6 The performance of Branch advocates is monitored intermittently by the PTLs. In our view, the monitoring should be carried out by the BCP, as well as the PTLs; it should be more frequent; and it should include more contested cases, in order to assess whether all prosecutors present these cases effectively.

**7.7 We recommend that the BCP and PTLs should observe a higher proportion of contested hearings when undertaking advocacy monitoring in the magistrates' courts.**

7.8 The Branch continues to use a substantial number of agents in the magistrates' courts. They deal mainly with trials, but they also prosecute in the youth court. We were told that they were sometimes unprepared and attended court too late to take instructions from Branch staff when necessary. Some were also unfamiliar with Branch procedures, so that their file endorsements were unsatisfactory.

7.9 The Branch has appointed a senior lawyer to act as an agent liaison officer. This role should include the monitoring of agents' performance and ensuring that all agents, particularly those newly appointed, know what is expected of them.

**7.10 We recommend that the BCP should ensure that agents in the magistrates' courts understand and comply with Branch systems when dealing with files,**

**and that their performance is monitored.**

7.11 The senior caseworker monitors the quality of counsel in the Crown Court. She receives frequent reports from caseworkers, and from the Area’s special casework lawyer, who regularly attends the Crown Court at Newcastle-upon-Tyne. She also liaises with senior caseworkers in other Branches. We were told that, generally, counsel dealing with the Branch’s cases are sufficiently experienced for the cases in which they are instructed. We saw nine counsel at PDHs. All performed satisfactorily, but the hearings were straightforward.

7.12 Counsel originally instructed attended the PDH in half of the 30 cases that we examined and the sentence hearing in 11 out of 21 cases (52.4%). We were particularly concerned to note that only six out of 20 trials (30%) were prosecuted by counsel who was originally instructed. Figures collated by the Bar show that briefs were returned in 47.6% of trials in the three months to 30 April 1998. Whilst below the national average, this level of returned briefs in contested cases is unacceptable, particularly as some of the cases that we saw concerned very serious allegations. The CPS and the Bar nationally have agreed a mechanism for monitoring the rate of returned briefs. This provides information to enable Branch and Area staff to discuss performance with the heads of local chambers.

**7.13 We recommend that the BCP, together with representatives of Area headquarters, should seek to improve the percentage of cases in which counsel originally instructed prosecute trials in the Crown Court.**

## THE BRANCH AND OTHER AGENCIES

8.1 The Branch enjoys good working relationships with other criminal justice agencies. Branch managers frequently meet their counterparts in the other agencies.

8.2 Branch managers are co-operating with other agencies to improve the performance of the local criminal justice system. For example, they and their colleagues in other local Branches are negotiating a Service Level Agreement with the Northumbria Probation Service. This will regulate, among other things, the provision of information which probation officers need when preparing pre-sentence reports. In the past, many reports have been prepared without it, although this may not have been entirely the fault of the Branch. It is important that the effect of the new arrangements is closely monitored to ensure that the expected improvement is realised.

**8.3 We recommend that the BCP should ensure that compliance with the proposed Service Level Agreement regulating the provision of pre-sentence report packages to the Probation Service is monitored, to ensure that the Branch fulfils its obligations to provide the packages promptly.**

## KEY STATISTICS

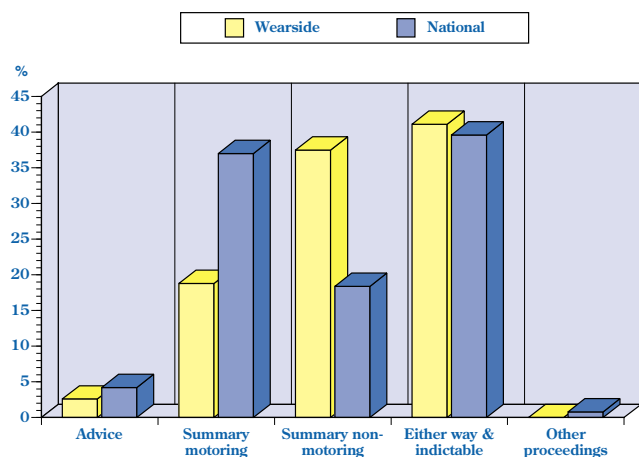
9.1 The charts which follow this page set out the key statistics about the Branch’s casework in the magistrates’ courts and the Crown Court for the year ending 30 September 1998.

## 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

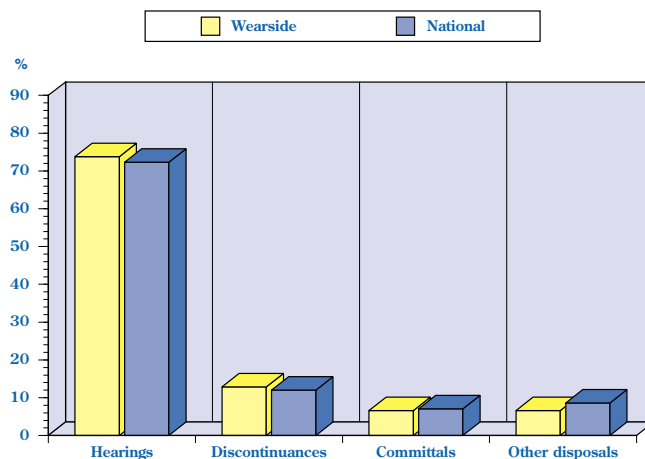
### 1 - Types of case



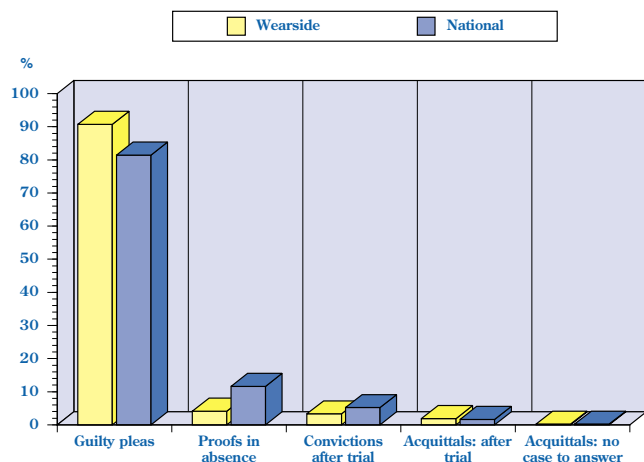
	Wearside		National	
	No.	%	No.	%
Advice	400	2.6	60,220	4.2
Summary motoring	2,881	18.8	530,379	37.0
Summary non-motoring	5,739	37.5	263,469	18.4
Either way & indictable	6,285	41.1	567,549	39.6
Other proceedings	1	0.0	11,512	0.8
<b>Total</b>	<b>15,306</b>	<b>100</b>	<b>1,433,129</b>	<b>100</b>

### 2 - Completed cases

	Wearside		National	
	No.	%	No.	%
Hearings	11,006	73.8	983,826	72.3
Discontinuances	1,920	12.9	163,707	12.0
Committals	989	6.6	97,335	7.1
Other disposals	990	6.6	116,529	8.6
<b>Total</b>	<b>14,905</b>	<b>100</b>	<b>1,361,397</b>	<b>100</b>



### 3 - Case results

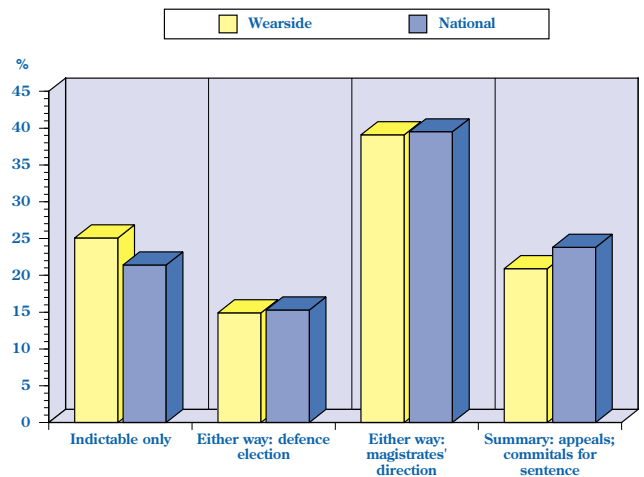


	Wearside		National	
	No.	%	No.	%
Guilty pleas	9,997	90.7	804,174	81.4
Proofs in absence	448	4.1	115,102	11.6
Convictions after trial	359	3.3	50,910	5.2
Acquittals: after trial	207	1.9	15,609	1.6
Acquittals: no case to answer	17	0.2	2,386	0.2
<b>Total</b>	<b>11,028</b>	<b>100</b>	<b>988,181</b>	<b>100</b>

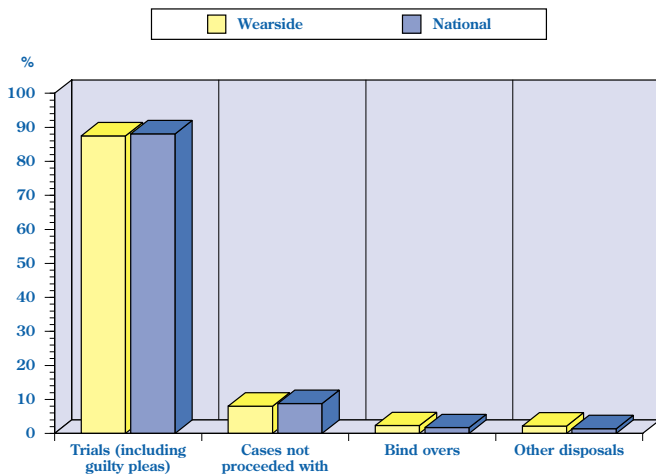
CROWN COURT

4 - Types of case

	Wearside		National	
	No.	%	No.	%
Indictable only	303	25.1	27,122	21.4
Either way: defence election	180	14.9	19,354	15.3
Either way: magistrates' direction	472	39.1	50,075	39.5
Summary: appeals; committals for sentence	252	20.9	30,203	23.8
<b>Total</b>	<b>1,207</b>	<b>100</b>	<b>126,754</b>	<b>100</b>



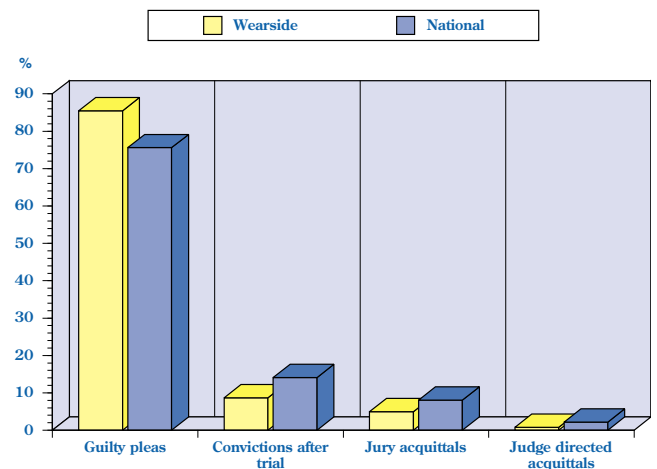
5 - Completed cases



	Wearside		National	
	No.	%	No.	%
Trials (including guilty pleas)	836	87.5	85,158	88.1
Cases not proceeded with	76	8.0	8,526	8.8
Bind overs	22	2.3	1,596	1.7
Other disposals	21	2.2	1,351	1.4
<b>Total</b>	<b>955</b>	<b>100</b>	<b>96,631</b>	<b>100</b>

6 - Case results

	Wearside		National	
	No.	%	No.	%
Guilty pleas	717	85.5	65,701	75.6
Convictions after trial	73	8.7	12,226	14.1
Jury acquittals	42	5.0	7,083	8.1
Judge directed acquittals	7	0.8	1,924	2.2
<b>Total</b>	<b>839</b>	<b>100</b>	<b>86,934</b>	<b>100</b>



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

<b>Judge</b>	HHJ Hodson, Recorder of Newcastle-upon-Tyne
<b>Magistrates' courts</b>	Mr G Middlemiss JP, Chair, South Tyneside Magistrates' Courts Committee Mrs K Moore MBE JP, Chair, Sunderland Magistrates' Courts Committee Mr J Ahmad JP, Chair, Sunderland Justices Mr C Livesley, Justices' Chief Executive, South Tyneside Mr D Yorke, Justices' Chief Executive, Sunderland
<b>Police</b>	Mr C Strachan QPM, Chief Constable, Northumbria Police Chief Superintendent R Jackson Inspector G Irvine Sergeant A Lucas Mr R Barclay
<b>Defence solicitors</b>	Mr N Barnes Mr T Carney Mr N Hodgson
<b>Counsel</b>	Mr J Evans
<b>Probation Service</b>	Ms H Knotek
<b>Witness Service</b>	Mrs J Chandler

## 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.



**Crown Prosecution Service Inspectorate  
50 Ludgate Hill, London EC4M 7EX**

**Produced by Publications & Design Unit, CPS Communications Branch,  
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**Tel: 0171 273 8117.**