

CROWN
PROSECUTION
SERVICE
INSPECTORATE

THE INSPECTORATE'S REPORT
on
SOUTH GLAMORGAN BRANCH
of
CPS WALES

BRANCH REPORT 5/99

FEBRUARY 1999



South Glamorgan Branch



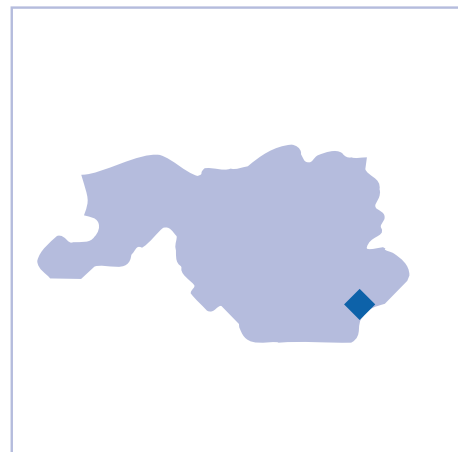
BRANCH OFFICE

◆ Cardiff

COURTS COVERED

Magistrates' Courts
Cardiff
Vale of Glamorgan (Barry)

Crown Court
Cardiff



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REPORT ON THE INSPECTION OF THE CPS SOUTH GLAMORGAN BRANCH

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INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the South Glamorgan Branch of CPS Wales.
- 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 South Glamorgan Branch is in the CPS Wales Area and has its offices at Cardiff. On 30 November 1998, it employed 66.4 staff (the Branch Crown Prosecutor (BCP) and 24.8 other prosecutors; one caseworker manager and 30.8 other caseworkers; a Branch office manager and 7.8 other administrative staff).
- 1.5 The Branch comprises three teams. All these teams prosecute cases at Cardiff Magistrates' Court. Team 1 (5.8 prosecutors and 10 caseworkers) is responsible for cases from the Central police division. Team 2 (8.6 prosecutors and 10 caseworkers) is responsible for cases from the Rumney police division. Team 3 (10.4 prosecutors and 10.8 caseworkers) is responsible for cases from the Fairwater police division. It also prosecutes cases from the Vale of Glamorgan police division in the magistrates' court at Barry. Each team is also responsible for Crown Court cases originating from its police divisions.

- 1.6 At the moment, two prosecutors and a caseworker on team 2 are exclusively engaged on cases and advice work arising from a large-scale police enquiry into child abuse. In addition, the Area Special Casework Lawyer assists the Branch for half of each week.
- 1.7 The team of four inspectors visited the Branch between 30 November and 10 December 1998. During this period, we observed twelve CPS advocates in the magistrates' courts at Cardiff and Barry and in the youth court at Cardiff. We also observed counsel in the Crown Court at Cardiff.

CONCLUSIONS AND RECOMMENDATIONS

- 2.1 The Branch has a high proportion of experienced staff who support each other well. They cope successfully with heavy lists in Cardiff Magistrates' Court, and with the large amount of work generated by the child abuse enquiry.
- 2.2 Branch prosecutors' decisions about whether cases should proceed are good; indeed, we agreed with the decisions on the application of the evidential and public interest tests in all cases. They are also willing to learn from their mistakes. However, greater attention needs to be paid to the correct level of charges, and to the timing of decisions. They should also record decisions about cases more thoroughly.
- 2.3 Most Branch advocates present cases well, both in the magistrates' courts and when conducting bail applications in the Crown Court. They work well with representatives of other criminal justice agencies. They have contributed substantially to the success of an initiative to deal quickly with youth offenders.

- 2.4 To improve the quality of the Branch’s casework still further, we recommend that:
- i the Prosecution Team Leaders (PTLs) should ensure that advice is provided promptly (paragraph 4.11);
 - ii the BCP should take the opportunity of recent revisions to the assaults charging standard, to conduct training to improve the consistency of the application of all the standards, and to discuss with the police the appropriate level of charges in such cases (paragraph 5.15);
 - iii the BCP should use Joint Performance Management (JPM) information, to help the police to identify the evidence needed to prove particular categories of offence (paragraph 5.20);
 - iv the BCP should ensure that prosecutors always record the reasons for their review decisions, including their recommendations about mode of trial, and that they record them in the same place on the file (paragraph 5.39);
 - v the BCP should ensure that team meetings are held regularly, attended by all levels of staff together, and that they are minuted (paragraph 5.45);
 - vi the BCP and PTLs should provide refresher training on the handling of unused and sensitive material, and ensure that the material is always properly and timeously considered by prosecutors (paragraph 6.10);
 - vii the BCP should introduce a system for the secure storage of sensitive material and records relating to it (paragraph 6.12);
 - viii Branch managers should check at least a sample of custody time limit calculations regularly, to ensure their accuracy (paragraph 6.17);
 - ix the BCP should ensure that prosecutors always keep the need to call witnesses under review (paragraph 6.27);
 - x the BCP should discuss with police managers

- steps to reduce the number of cases which have to be dropped because prosecution witnesses do not attend court (paragraph 6.29);
- xi prosecutors should ensure that instructions to counsel contain:
 - properly prepared summaries, commenting on the issues in the case; and
 - instructions on the acceptability of pleas (paragraph 6.37);
- xii the BCP should introduce a system for monitoring the quality of indictments as soon as possible, in order to:
 - eradicate typing errors;
 - ensure that the substantive content of each indictment is correct; and
 - improve the drafting skills of prosecutors and caseworkers (paragraph 6.43);
- xiii the BCP should introduce a system to ensure that directions given at plea and directions hearings (PDHs) are complied with fully and promptly (paragraph 6.50);
- xiv the BCP should introduce a system of quality assurance to improve the quality of all file endorsements (paragraph 6.52);
- xv the BCP should ensure that the quality of advocacy of Branch prosecutors is monitored effectively, in order to identify training needs and to improve the standard of advocacy, where necessary (paragraph 7.5);
- xvi the BCP should liaise with representatives of chambers, in order to improve the percentage of cases in which counsel originally instructed attends the PDH, the trial and the sentence hearings (paragraph 7.9).

THE INSPECTION

- 3.1 In the year to 30 September 1998, the Branch dealt with 21,498 defendants in the magistrates’

courts and 1,680 defendants in the Crown Court. In a further 756 cases, advice was given to the police before charge.

- 3.2 The inspection team examined a total of 434 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, advice cases constituted 3.4% of the Branch's total caseload, compared with 4.2% nationally. The Branch has an agreement with the police about the types of case to be submitted for advice. It is currently being amended to implement the recommendations made in our thematic review of advice cases (3/98), which was published in September 1998.
- 4.2 We examined ten cases in which Branch prosecutors gave pre-charge advice. Eight had been appropriately submitted. In the other two, there was clearly insufficient evidence to warrant proceedings, and police supervisors could have made the decision not to prosecute.
- 4.3 Prosecutors no longer attend police stations to give advice. This facility was offered at Fairwater police division, but the level of use did not justify its retention.
- 4.4 Prosecutors frequently give advice by telephone. This advice should be recorded on a form, and included in the Branch's performance indicators (PIs). The form is linked with the prosecution file

if the case proceeds. We were told that the advice is not always recorded, however. The BCP will want to ensure that this work is fully recorded and that the guidance given in our thematic review is followed.

- 4.5 The two prosecutors assigned to cases arising from the police enquiry into child abuse allegations also provide a considerable amount of written advice, which is not included in the Branch's PIs. It is important that all advice, including any by telephone, is reflected in the PIs, so that the Branch's workload is fully recorded.

Quality of advice

- 4.6 The PTLs or the senior caseworker allocate advice files. Routine cases are allocated in rotation, according to the experience of the prosecutors and their workload. Cases involving child abuse are allocated to specialists. Each team also has specialists who advise on racial incidents, drugs cases and youth cases.
- 4.7 We agreed with the advice given in all ten cases that we examined, and most was fully reasoned, well set out and typed.
- 4.8 The PTLs monitor the quality of the advice, by periodically checking the folder in which copies are retained. They discuss any problems with the prosecutor concerned.

Timeliness of advice

- 4.9 The CPS has set a target of providing advice within 14 days of the receipt of an adequate file from the police. The Branch achieved this target in only five of the ten cases that we examined. It was clearly late in three, with delays of between two and 11 days. In the remaining two cases, we could not ascertain when the request for advice had been received. The Branch's own figures for the quarter

ending 30 September 1998 also show that only 67% of pre-charge advice was returned in time. Advice is, however, usually provided before defendants return to the police station to answer their bail.

- 4.10 The caseworker managers use the Branch's computerised case tracking system daily to identify any cases in which advice is due. Prosecutors are frequently away from the office, so that advice is sometimes still late.

4.11 We recommend that the PTLs should ensure that advice is provided promptly.

Advice from counsel

- 4.12 Branch prosecutors rarely seek advice from counsel before charge. The BCP authorises any such requests. We did not see any examples of counsel's pre-charge advice, nor any where it would have been appropriate. Branch prosecutors can also obtain advice from the Area Special Casework Lawyer.

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 examined the quality of the review decision in 80 files covering the magistrates' courts and the Crown Court. We agreed with the decision to proceed on the evidence, and with the application of the public interest test, in all of them.
- 5.3 The BCP and the PTLs do not systematically monitor the quality of decision making. PTLs allocate cases for review on the same basis as advice cases They prosecute in court two or

three times a week and, therefore, regularly see the files and the quality of their prosecutors' work.

Timeliness of review

- 5.4 National guidelines provide that cases should be reviewed within seven days of receipt of a file from the police. The Branch's own monitoring figures show that, in the quarter ending 30 September 1998, 80.4% of cases were reviewed within the target timescale. Our examination of files showed that they were usually reviewed before the first court appearance.
- 5.5 The Branch prosecutors' ability to meet this target is clearly affected by the quality and timeliness of files received from the police. This is measured by JPM which is a management system by which the CPS and the police jointly collect information about aspects of their activities.
- 5.6 For the quarter ending 30 September 1998, between 45% and 51% of files were received within the agreed timescales. Between 21% and 34% were more than five days late, however, and between 7% and 10% did not contain sufficient evidence for the case to proceed to the next stage. The figures have improved in recent months and both Branch managers and senior police officers are committed to securing further improvements.

Fast track and short bail date cases

- 5.7 The Branch participates in an initiative (known as fast tracking) at Cardiff Magistrates' Court for dealing quickly with persistent youth offenders. The Branch and other agencies involved are justifiably proud of the success of the scheme, which has received national interest. Defendants whose cases come within the scheme are bailed for five weeks. The police provide a full file of evidence. The Branch's youth prosecutors review all these files and prosecute the cases at court when possible. In

this way, they are familiar with the circumstances of the defendants and all the charges against them. They are able to make immediate, pragmatic decisions in court, where necessary, and finalise cases quickly. Representatives of the magistrates' court told us that the time taken to deal with these cases has been halved to an average of 35 days.

- 5.8 A short bail date scheme started at Cardiff Magistrates' Court in September 1998 for certain straightforward cases which could be dealt with at the first hearing. The scheme has not yet achieved great success. Branch managers are committed, however, to ensuring that cases are dealt with as quickly as possible. The BCP is continuing to co-operate with the other criminal justice agencies to realise the benefits that the scheme should provide.

Selection of the appropriate charge and charging standards

- 5.9 The original police charges required amendment in 21 of the 80 cases (26.3%) that we examined. Fourteen were amended at first review, all of them correctly. Three should have been further amended, however, when new evidence was received. Four of the others could have been amended earlier.
- 5.10 The CPS and the police nationally have agreed charging standards for assaults, public order offences and some driving offences. Representatives of other criminal justice agencies told us that the original police charges were sometimes too high. We found this to be so in three cases that we examined. Whilst prosecutors changed the charges promptly in these cases, they did not always consider the level of charges carefully or at the earliest opportunity. Reviewing prosecutors rarely noted the reasons for their decisions.
- 5.11 In six out of the 44 relevant cases (13.6%) that we examined, prosecutors did not apply the

standards correctly. All these were assault cases where the prosecutor pursued a more serious charge than the evidence justified. In three, a guilty plea to a lesser offence was accepted at the last minute. For example, in one case, the defendant caused two small cuts to the head and some bruising to the body of his girlfriend. The police charged an offence under section 18, Offences Against the Person Act 1861 (causing grievous bodily harm with intent). There was insufficient evidence that the defendant had the required intent. As a result, the prosecution accepted a plea at the Crown Court to an offence, under section 20 of the same Act, (inflicting grievous bodily harm), which does not require proof of intent.

- 5.12 In another case, the defendant attacked a man in the street. He was committed to the Crown Court for offences under section 20 (inflicting grievous bodily harm) and section 47 (assault occasioning actual bodily harm), Offences Against the Person Act 1861, and for affray. Although he was committed on all charges, the indictment did not include the section 47 offence, which was restored by counsel. A plea was accepted to the section 47 offence only. We could not find any indication that the prosecutor had considered the appropriate charge.
- 5.13 On the other hand, representatives of other criminal justice agencies gave examples of assault cases in which prosecutors were too ready to accept pleas to lesser offences, often at the last minute. Prosecutors in these cases appeared to concentrate on the seriousness of the injury, without also considering the circumstances of the offence, or the intention of the defendant. We were also told about similar failures to consider the appropriate charges in some cases of public disorder.
- 5.14 Prosecutors must always carefully consider the appropriate charge at the first opportunity. They

should not wait until pleas are offered at court before applying their minds to the appropriateness of the charges.

5.15 We recommend that the BCP should take the opportunity of recent revisions to the assaults charging standard, to conduct training to improve the consistency of the application of all the standards, and to discuss with the police the appropriate level of charges in such cases.

Discontinuance

- 5.16 The Branch's discontinuance rate (16.2%) is significantly higher than the national average (12%).
- 5.17 We examined 247 cases which were stopped by the prosecution in the magistrates' courts during September 1998, to look at the reason for termination, and to find out whether the police were consulted about, and agreed with, the decision. Forty-one (16.6%) cases were formally discontinued by notice under section 23, Prosecution of Offences Act 1985; one hundred and forty-five (58.7%) were withdrawn in court; and the prosecution offered no evidence in 61 (24.7%).
- 5.18 Sixty-three cases (25.5%) were terminated because there was insufficient evidence to proceed, and 62 (25.1%) because it was not in the public interest to prosecute. In 55 (22.3%), the prosecution was unable to proceed, and in 50 (20.2%) the relevant driving documents were produced. The prosecutor had not given the reason for the termination in the remaining 17 cases (6.9%), and it was not apparent from the file.
- 5.19 Of the 63 cases dropped due to insufficient evidence, 25 (39.7%) were attributable to deficiencies in identification evidence. Twenty-two of these related to defendants stopped by the police for motoring offences. Proceedings were dropped because the defendant denied the

offence, and the police officer was unable to confirm that the defendant was the person who had been stopped. In some instances, the driver had given false details. Seventeen cases (27%) were terminated because an essential legal element was missing, and a further 21 (33.3%) were dropped because of other deficiencies in the evidence. The Branch and the police have only recently begun to use JPM to analyse the reasons for discontinuance.

5.20 We recommend that the BCP should use JPM information, to help the police to identify the evidence needed to prove particular categories of offence.

- 5.21 Of the 62 cases terminated because it was not in the public interest to proceed, 37 (59.7%) were dropped due to the likelihood of a small or nominal penalty being imposed. In 32 of the 37, the defendant was already serving a custodial sentence, or had recently been sentenced on other matters. In a further eight cases (12.9%), the prosecutor recommended that the defendant should be cautioned. The remaining 17 cases (27.4%) were stopped for a variety of reasons, including the likely effect of proceedings on the defendant's health, and the minor nature of the loss or harm.
- 5.22 In 55 cases, the prosecution was unable to proceed. Prosecution witnesses refused to give evidence in 25 (45.5%); and they failed to attend court in a further 22 (40%). The Court refused an adjournment in seven cases (12.7%) in which the prosecution was not ready to proceed. In the remaining case, the offence was dealt with at another court.
- 5.23 The police were consulted in 126 (51%) of the cases that were terminated. They did not object to the decision in any of them. In 54 (21.9%), the reason for the termination became apparent only at the court hearing. We could not tell why the police were not consulted in the remaining 67 (27.1%).

5.24 We examined ten terminated cases in detail, in order to assess whether the Code tests had been correctly applied. We agreed with the decision to terminate in all of them.

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

5.25 In the year to 30 September 1998, the magistrates did not stop any trials at the close of the prosecution case. The national average is 0.2%. In the same period, no defendants were discharged at committal because the magistrates decided that there was insufficient evidence to commit them to the Crown Court for trial.

Judge ordered and judge directed acquittals

5.26 In the year to 30 September 1998, 56 cases were not proceeded with in the Crown Court. This represents 4.2% of the Branch's caseload, less than half 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).

5.27 We examined 20 such cases. We disagreed with the decision to proceed in two. One concerned an allegation that the defendant had forged cheques belonging to his brother-in law, who refused to co-operate with the prosecution. Although the defendant's fingerprints were found on the cheques, he gave an explanation which the prosecution could not rebut. An expert on handwriting provided a report at a later stage, but he was unable to say that the defendant signed the cheques. Although the reviewing lawyer had recognised the difficulties in the case from the outset, he had allowed it to proceed to the Crown Court without resolving them.

5.28 In the second case, money was stolen from an elderly man. The police pointed out that the victim and the other key witness were unlikely to be able to give clear evidence. In spite of this, the

case proceeded without further enquiry. The case was dropped several months later, after a medical report was considered.

5.29 We considered that the prosecution should not have dropped one of the cases. The defendant was charged with robbery and an affray, which took place when he was arrested. The victim of the robbery refused to give evidence and the whole case was dropped several months later. There was, however, ample independent evidence of the affray, which should have continued.

5.30 During the same 12 months, there were 23 cases where the judge directed an acquittal after the trial had started. This is 1.8% of the Branch's caseload, compared with 2.2% nationally. We examined four of these cases and agreed with the original decision to proceed in all of them.

Mode of trial

5.31 We agreed with the prosecutors' recommendations about mode of trial in 44 of the 45 relevant cases that we examined. The factors taken into account were properly recorded, however, in only 27 (60%). Reviewing prosecutors should ensure that their views are marked on the file to assist their colleagues when dealing with the case in court (see paragraphs 5.36 - 5.39).

5.32 Sometimes, important medical evidence about the seriousness of injuries is not available when mode of trial is considered. The BCP is attempting to reach agreement with the police and the local hospitals to obtain this information sooner. Occasionally, a case is committed to the Crown Court on the basis of the evidence available, and the charges have to be amended when the true nature of the injuries becomes apparent.

Bail

5.33 Representatives of other criminal justice agencies told us that prosecutors usually deal effectively with applications for custody or for conditions to be attached to the grant of bail. They substantiate

their applications, although we were told that, occasionally, they do not make the nature of their application clear at the outset. We saw two confusing, unstructured applications during our visits to court.

- 5.34 We were also told that some prosecutors are less objective, and follow police views even when they are not justified. However, we examined 16 cases where the defendant had been remanded in custody, and we agreed with the decision to oppose bail in all of them. The endorsement of bail decisions was satisfactory. The prosecutor's grounds for the application were shown on the file in 15 cases, and the court's reasons for keeping the defendant in custody were endorsed on the file in 14 (87.5%).
- 5.35 The BCP will want to bear in mind the comments of others and the evidence of our findings based on our visits to court.

Review endorsements

- 5.36 The recording of review decisions is unsatisfactory. The evaluation of the evidence was endorsed in only 44 out of 80 cases (55%), and the public interest factors were properly set out in only 43 (53.8%). Mode of trial considerations were shown in 27 of the 45 (60%) relevant cases.
- 5.37 Some endorsements were very difficult to read. It was also sometimes difficult to find notes of review because Branch prosecutors write their endorsements in different places. Some review notes were mixed with the record of events at court. Further review notes on the same file were often found elsewhere. Many files also contained a standard form which was rarely completed. We were told that arrangements about where to record review decisions had changed several times. There is now a coloured folder in the file on which review decisions should be noted. It is not always used, however.

- 5.38 It is important that review decisions are clearly recorded and that the notes are easily accessible. This enables other prosecutors and caseworkers to find out quickly what evidence was considered by the reviewing prosecutor, and the reasons for key decisions, when questions arise at court.

5.39 We recommend that the BCP should ensure that prosecutors always record the reasons for their review decisions, including their recommendations about mode of trial, and that they record them in the same place on the file.

Learning from experience

- 5.40 Caseworkers prepare reports for all cases which result in an acquittal in the Crown Court, summarising the reason for the failure. The reviewing prosecutors add their comments after which the reports are assessed by the PTL. They discuss issues which arise from these cases at Branch Management Team (BMT) meetings and with their teams. The reports are kept in a folder on each team, so that all staff can learn from the experience of others. There is little feedback, however, on successful cases.
- 5.41 The BCP occasionally issues a bulletin which deals with any trends that have been identified from these reports, and changes to administrative procedures. For example, Branch lawyers recently discussed how to overcome identification problems in some traffic cases. The issue has now been raised with the police.
- 5.42 Full minutes of BMT meetings are circulated to all staff. This helps to ensure consistency of practice across the teams.
- 5.43 The teams do not hold regular meetings, however. Two teams meet when sufficient staff are present, but the third team rarely meets. The meetings are informal, without an agenda, and they are not minuted. Prosecutors and administrative staff usually meet separately,

relying on PTLs or the senior caseworker to pass any relevant information to the other group.

5.44 In order for a team to work effectively, however, there should be an opportunity for all staff to meet regularly. Staff should know what is to be discussed, and minutes should be taken, so that staff who are not present are informed about the matters discussed.

5.45 We recommend that the BCP should ensure that team meetings are held regularly, attended by all levels of staff together, and that they are minuted.

PREPARING CASES

Advance information

- 6.1 Caseworkers prepare advance information when the file is registered. It is checked by the prosecutor who reviews the case. National guidelines require that it should be provided to the defence within seven days of receiving the file from the police, or learning the identity of the defence solicitor.
- 6.2 Where the court has granted legal aid, the name of the defence solicitor is available to the Branch via a link to the court's computer. In spite of this, advance information is rarely served before the first hearing. Where it is not available at the first hearing, however, it is often given only at the next hearing, rather than being served in the interim.
- 6.3 The Branch's Corporate Performance Measures (CPMs) show that, in the quarter to 30 September 1998, advance information was provided within the target timescale in 87% of relevant cases. Our examination of cases showed that it was served in time in 35 out of 40 cases (87.5%). We could not ascertain when it was served, however, in a further 14 cases; indeed, in ten of these, we could not tell whether it had been served at all. It is important that the Branch should have an accurate record of

service, including details of what was served, when, and upon whom. In September 1998, the BCP reminded his staff of this requirement. We were pleased to note that the endorsement of files that we saw at court showed an improvement compared with those in our file sample. The BCP will wish to ensure that this improvement is maintained.

6.4 The Branch has a written policy about the provision of advance information when the law does not require it. It is normally provided in imprisonable cases. Prosecutors also have a discretion whether to supply it in other cases. Representatives of other criminal justice agencies told us that prosecutors generally exercise their discretion sensibly and consistently.

Unused and sensitive material

- 6.5 All prosecutors and caseworkers received training on the disclosure provisions of the Criminal Procedure and Investigations Act 1996 when it was first introduced. We are not satisfied, however, that full or timely consideration is always given to unused material. Prosecutors do not control the process sufficiently.
- 6.6 Representatives of other criminal justice agencies told us that the material is often not properly considered and that letters requesting access to the material are sometimes not answered. Branch caseworkers sometimes send defence statements directly to the police for comment. In some cases, we could not find any evidence that a prosecutor considered the defence statement at any stage. Some prosecutors also ask the police to supply unused material unnecessarily, for example, in abbreviated file cases.
- 6.7 In the magistrates' courts, the schedule of unused material was completed in only 17 of the 30 relevant cases (56.7%). It was sent to the defence in 16 of these, but it was provided late in three of them. Performance was better in Crown

Court cases. The schedule was sent to the defence in all 30 cases that we examined; it was sent at the correct time in 27 of them. The schedules were correctly completed in 24, but, in five, we could not find a copy on the file.

- 6.8 We accept that some defence requests for access to unused material are inappropriate, and that delays sometimes occur in obtaining it from the police. Nevertheless, some prosecutors and caseworkers appear to lack confidence in dealing with unused material. For example, we saw two files where the schedule was endorsed “noted - not reviewed” where the police have not provided copies of the material. This is not acceptable. It is the duty of the prosecutor to ensure that proper consideration is given to any material which may undermine the prosecution case, and to make it available to the defence.
- 6.9 Representatives of other criminal justice agencies told us that sensitive material was dealt with well, and that careful consideration was given to questions of public interest immunity. We found, however, that prosecutors had completed the schedules (which record their decisions) in only one of the three relevant cases that we examined. In another, material, which was clearly disclosable, was served very late, and only after considerable correspondence with the defence solicitor.

6.10 We recommend that the BCP and PTLs should arrange refresher training on the handling of unused and sensitive material, and ensure that the material is always properly and timeously considered by prosecutors.

- 6.11 The police normally retain possession of sensitive material, but Branch staff may have notes or documents about the material which are themselves sensitive. Branch staff were not aware of any system for the secure storage of this material. It is important that such notes and

documents, as well as the material itself, are stored separately and securely.

6.12 We recommend that the BCP should introduce a system for the secure storage of sensitive material and records relating to it.

Custody time limits

- 6.13 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.
- 6.14 We examined ten custody time limit cases. The review dates and the expiry dates were correctly calculated and displayed in eight of them. In one of the others, the review and expiry dates had been calculated from the second appearance in court, two days after the first hearing at which the defendant was remanded in custody. In the second case, the expiry date had been calculated to expire one day early.
- 6.15 In two cases, the prosecution had applied to the courts to extend the custody time limit. One application had been made in the magistrates’ court, without notices being served in accordance with the regulations. This was because the defence had requested an adjournment the day before the defendant was due to be committed for trial, which was also the day on which the custody time limit expired. The other application to extend was made at the Crown Court and the notices were served in accordance with the guidelines.
- 6.16 Branch staff monitor the time limits using a diary and the Branch’s computerised case tracking system. They use a nationally produced ready reckoner to calculate the review and expiry dates. Although the system seemed robust and staff were aware of the importance of monitoring

expiry dates, managers do not check the dates calculated.

6.17 We recommend that Branch managers should check a sample of custody time limit calculations regularly, to ensure their accuracy.

6.18 The file endorsements in relation to custody time limits on the files that we examined were not as clear or full as would be expected if the national standard were applied. On two Crown Court files, the court endorsements failed to mention whether the defendant continued to be remanded in custody. One magistrates' court case involved two defendants of the same surname, only one of whom was in custody. Some court endorsements did not clearly identify the defendant to whom they related. We comment further on the quality of file endorsements at paragraphs 6.51 - 6.52.

Summary trial preparation

6.19 Statements of witnesses whose evidence was likely to be agreed were correctly identified and served in time under section 9, Criminal Justice Act 1967 in 26 out of 28 relevant cases (92.9%). Recently, Branch staff have begun to serve these statements when advance information is given. Most files that we examined were dealt with before the system changed. In view of our recommendation at paragraph 6.27, the BCP will wish to ensure that, in the event of a trial, timely consideration is given to witnesses to be called at trial.

6.20 Prosecutors are familiar with the provisions for making formal admissions of fact under section 10, Criminal Justice Act 1967. This is a convenient way of avoiding the unnecessary attendance of witnesses, and of simplifying evidence. Although the provision is rarely used, its suitability is now a standard question at the pre-trial review hearing (PTR). We expect it to be used more frequently.

6.21 Section 23, Criminal Justice Act 1988 provides that a witness's statement may be read to the court if the witness is outside the United Kingdom, or is mentally or physically unfit to attend court, or is too frightened to attend court. Prosecutors rarely use the provision, although they consider it when appropriate. We did not see any examples, nor any where it could have been used.

6.22 PTR hearings have recently been introduced at Cardiff Magistrates' Court. The BCP is committed to ensuring that they are effective, and provides experienced prosecutors to deal with them. Early indications suggest that they have improved the listing of contested cases, the identification of witnesses to be called, and the timely consideration of pleas. In spite of this, court figures show that only one in four trials proceeded on the first trial date.

6.23 At the Vale of Glamorgan Magistrates' Court, which sits at Barry, PTRs have been held for some time. Their effectiveness has declined since they were first used. The BCP will wish to reinforce the value of PTRs, to ensure that they remain effective.

Witnesses

6.24 Trials are often not effective because witnesses fail to attend court or refuse to give evidence. As we have mentioned in paragraph 5.22, these factors accounted for 47 of the 247 cases (19%) stopped by the prosecution in the magistrates' courts in September 1998. They also accounted for 11 of the 20 judge ordered acquittals (55%) that we examined. Thirty-two of these 58 cases (55.2%) were offences of actual or threatened violence.

6.25 Branch staff clearly consider which witnesses are needed to give oral evidence when they prepare cases for trial. Our examination of magistrates' courts files showed that the witnesses required to give oral evidence were correctly identified in 27

out of 30 cases (90%). The police were told promptly which witnesses to warn in 29 cases.

6.26 We saw and were told of some cases, however, where the interests of witnesses were not properly considered at other stages. For example, a witness was called, although his statement was correctly served under section 9, Criminal Justice Act 1967, and the defence had not required his attendance. The de-warning of witnesses was occasionally late, although this sometimes resulted from factors outside the Branch's control. Police witnesses were sometimes called unnecessarily, or called on days when they had notified Branch staff that they were unavailable. In one case, the police had informed Branch staff that a witness was not available, but no action was taken. Witnesses not required by the prosecution were not tendered to the defence.

6.27 We recommend that the BCP should ensure that prosecutors always keep the need to call witnesses under review.

6.28 There does not appear to be an effective system for re-checking near the trial date, to see if witnesses are still available, or still willing to give evidence. Although the difficulties are frequently discussed in meetings with the police, there does not appear to be an overall strategy to improve the rate of attendance of witnesses.

6.29 We recommend that the BCP should discuss with police managers steps to reduce the number of cases which have to be dropped because prosecution witnesses do not attend court.

Committal preparation

6.30 Committals are prepared using the CPS Crown Court Case Preparation Package. This is a pro-forma package which contains standard paragraphs to be included in instructions to counsel, with free text options to incorporate specific instructions relevant to each case. Most committals are prepared by caseworkers on one

team; by prosecutors on another; and the division of the work is about equal on the third.

6.31 On all three teams, prosecutors should check the preparation of the case. They had done so in 29 of the 30 cases that we examined. The content and order of the bundles was satisfactory in all 30. The standard of instructions to counsel and indictments is unsatisfactory, however (paragraphs 6.34 and 6.40 - 41).

6.32 Committal papers should be served on the defence within 14 days of receipt of a full file from the police (or 10 days where the defendant is in custody). The Branch has a target of serving 70% in time. It exceeded its target throughout the year ending 30 September 1998. The papers were served in time in 21 of the 30 cases (70%) that we examined.

6.33 Despite meeting the target, however, many committal papers were served on the defence on the day scheduled for committal. In a few cases, the Branch was responsible for the delay, but in many cases the police sent the full file late. The police and Branch managers monitor the quality and timeliness of files through JPM and meet to discuss the results. In the quarter ending 30 September 1998, 45% to 57% of full files were provided late. There has been some improvement in timeliness recently. However, some of this improvement in timeliness has been at the expense of quality. The BCP will want to consider with senior police officers how to maintain quality while continuing to seek improvements in the timeliness of files (see paragraph 5.6).

6.34 The instructions to counsel were satisfactory in only ten of the 27 cases (37%) in which we could find a copy of the instructions. Only eight contained an adequate summary of the case. All contained a short outline which is prepared to assist the resident judge to allocate the case to an appropriate court. Many prosecutors mistakenly

considered this, or the police summary of the case, to be adequate. Prosecutors must set out their analysis of the strengths and weaknesses of the case for the benefit of counsel.

6.35 In 20 cases, there were alternative counts on the indictment, or particular counts had been chosen in preference to other possible offences. The acceptability of potential pleas or the basis for the decision was set out in only seven. The issues in the case were rarely addressed.

6.36 It is important that all these matters are dealt with fully. Counsel often has little time to consider the papers, both because of early PDHs, and because many cases are transferred at short notice to other counsel.

6.37 We recommend that prosecutors should ensure that instructions to counsel contain:

- **properly prepared summaries, commenting on the issues in the case: and**
- **instructions on the acceptability of pleas.**

6.38 The Branch's CPM figures for the quarter ending 30 September 1998 show that 91% of counsel's instructions were delivered within the timescales which have been agreed between the CPS nationally and the Bar. Twenty-eight of the 30 cases (93.3%) that we examined were delivered in time. Even so, counsel often had little time to consider the case because the cases are listed for the PDH only three weeks after committal. This sometimes results in the conduct of cases being changed, or the indictment being amended, at the last minute. It is particularly important in these circumstances to provide counsel with comprehensive instructions.

Quality of indictments

6.39 Indictments are drafted by prosecutors or caseworkers when they prepare the committal papers. In all cases, we were told that they are

normally checked by the prosecutor. The senior caseworker also checks the indictment before it is lodged.

6.40 In spite of this, 11 of the 30 indictments (36.7%) that we examined were amended. For example, in one case, sample counts of indecent assault were reduced by counsel from 14 to eight and, in another, counts of rape and indecent assault were amended twice. We also saw a charge of burglary which was replaced by offences of criminal damage and common assault. It was rare to see any endorsements on the file to explain the reasoning behind the original indictments.

6.41 Representatives of other criminal justice agencies also told us that indictments appeared to be drafted with insufficient thought. They gave examples of too few sample counts; counts in the wrong order; wrong dates; wrong offence charged; and typing errors.

6.42 We were told that the Branch does not monitor amendments that are made to the indictments after they are lodged. We were also told that no one had brought any problems about indictments to the attention of the managers.

6.43 We recommend that the BCP should introduce a system for monitoring the quality of indictments as soon as possible, in order to:

- **eradicate typing errors;**
- **ensure that the substantive content of each indictment is correct ; and**
- **improve the drafting skills of prosecutors and caseworkers.**

6.44 Indictments were lodged promptly with the Crown Court in all 30 cases that we examined.

The CPS in the Crown Court

6.45 All the Branch's cases are committed to the Crown Court sitting at Cardiff. Branch

caseworkers usually support counsel at the key stages of each case. Most are experienced, and they were described as helpful.

- 6.46 Branch prosecutors conduct bail applications in chambers at the Crown Court. They remain at court to instruct counsel in the PDHs and any trials that are listed on the day. They stay in the CPS room at the court, because the PDHs are listed in several courtrooms, although some counsel seemed unaware of this. A prosecutor with knowledge of a case, and with authority to make decisions, is usually available at the Branch office for counsel and caseworkers to consult when necessary.
- 6.47 We examined 18 cases in which the judge had made directions at the PDH. They were apparently complied with in 15, but it was often not clear on the file exactly what the directions were, or whether they had been complied with in full and on time.
- 6.48 All representatives of other criminal justice agencies told us that compliance with directions made at PDHs was poor. Cases are listed for trial very quickly (often within three weeks of the PDH). Some orders are only complied with after the defence have sought to re-list the case. Branch staff frequently do not answer defence letters and do not have an agreed system with the police to ensure timely compliance. Whilst we accept that outstanding evidence or material is usually requested promptly, the Branch relies on each caseworker to ensure that directions are complied with on time. Branch managers do not effectively monitor compliance.
- 6.49 The Crown Court appointed a case progression officer in November 1998, to try and enforce compliance by both the prosecution and the defence. The Branch must improve its performance.

6.50 We recommend that the BCP should introduce a system to ensure that directions given at PDHs are complied with fully and promptly.

File endorsements

- 6.51 We have commented that review endorsements need to be improved (paragraphs 5.36 - 5.39); that endorsements were unsatisfactory where cases were discontinued (paragraph 5.18); and in custody time limit cases (paragraph 6.18). Other endorsements also need to be improved. We often had difficulty finding when actions had been taken. For example, we often could not ascertain when files were received from the police, when advance information was supplied, or when papers were served on the defence.

6.52 We recommend that the BCP should introduce a system of quality assurance to improve the quality of all file endorsements.

PRESENTING CASES IN COURT

- 7.1 We observed twelve prosecutors in the magistrates' courts at Cardiff and Barry, and in the youth court at Cardiff. Our observations confirmed the view of representatives of other criminal justice agencies that the standard of advocacy varies considerably.
- 7.2 Most prosecutors that we saw were able, confident and conscientious. They were well prepared; they presented their cases clearly; and they made sensible decisions in court, without the need for an adjournment. Too many simply read from the file, however, without maintaining eye contact with the magistrates, to see if they were following their submissions. Some bail applications were unstructured and confusing. We saw two cases where prosecutors relied on the clerk to take a point that should have been pursued by the prosecution. We also saw an example of failure to show due deference to the magistrates, and an abrasive approach.

- 7.3 We were told that some prosecutors have difficulty in adapting their style of advocacy appropriately to the different expectations of lay and stipendiary magistrates. Their presentation was sometimes much too detailed.
- 7.4 Branch managers monitor the performance of their advocates, but mostly on an informal basis. PTLs conduct courts two or three times a week and assess their prosecutors in court when they have the opportunity. Whilst Branch managers are clearly aware of the quality of their advocates, generally they tell prosecutors of the assessments only at their performance appraisal review. Feedback needs to be given promptly, if it is to achieve significant improvements.
- 7.5 We recommend that the BCP should ensure that the quality of advocacy of Branch prosecutors is monitored effectively, in order to identify training needs and to improve the standard of advocacy, where necessary.**
- 7.6 Branch advocates also deal with bail applications in the Crown Court. Although we did not see any examples, we were told that they were presented competently.
- 7.7 We agree with the view of representatives of other criminal justice agencies who told us that the standard of counsel in the Crown Court was generally satisfactory. They were concerned, however, that, in some fairly serious cases, prosecuting counsel was not sufficiently experienced. Caseworkers and prosecutors assess counsel informally and report their findings to the senior caseworker.
- 7.8 Frequently, counsel originally instructed by the Branch do not attend hearings. Our examination of Crown Court cases showed that counsel originally instructed dealt with only ten out of 30 PDHs (33.3%); nine out of 20 trials (45%); and eight out of 20 sentencing hearings (40%). In our experience, while unsatisfactory, these figures

are about average. Caseworkers told us that the return rate for sensitive and complex cases is lower than the overall figure. The CPS and the Bar Council have agreed that the number of returned briefs should be monitored by chambers on a monthly basis. These figures are not yet available locally. Branch managers must use the data when it is available to seek improvements in this performance.

- 7.9 We recommend that the BCP should liaise with representatives of chambers, in order to improve the percentage of cases in which counsel originally instructed attends the PDH, the trial and the sentence hearings.**

THE BRANCH AND OTHER AGENCIES

- 8.1 Branch staff enjoy good relationships with other criminal justice agencies. Branch managers are co-operative and effective in regular liaison meetings with their counterparts in other agencies.
- 8.2 The scheme for fast tracking persistent youth offenders at Cardiff Magistrates' Court has been particularly successful. It involved considerable planning and resources, and the BCP remains fully committed to ensuring its continued success. In the Crown Court, the BCP and PTLs are working with other agencies on an initiative to reduce the number of trials that do not proceed.
- 8.3 PTLs regularly meet police divisional commanders to discuss issues that arise from JPM information. Some problems have arisen about the accurate recording of the data, but Branch staff and the police are co-operating to improve its effectiveness. The police told us that relations with Branch staff are generally open and effective. Caseworkers and administrative staff have exchanged visits

with their police counterparts, in order to reach a better understanding of each other's work.

- 8.4 Branch managers have reached an agreement about the provision of disclosure packages to the Probation Service and the system now works well.

KEY STATISTICS

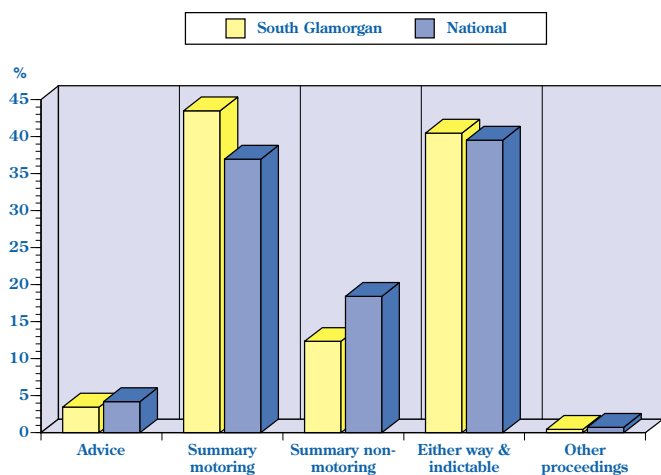
- 9.1 The charts which follow this page set out the key statistics about the Branch's casework in the magistrates' court and the Crown Court for the year ending 30 September 1998.

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

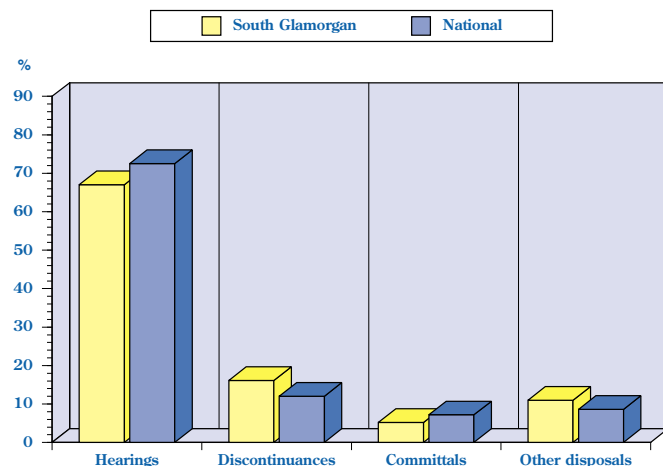
1 - Types of case



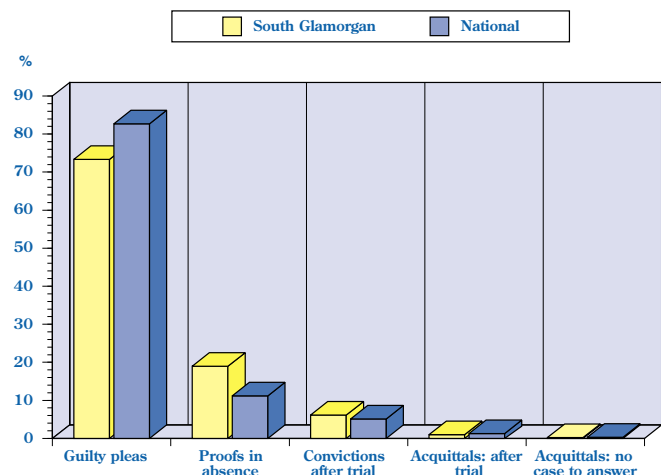
	South Glamorgan		National	
	No.	%	No.	%
Advice	756	3.4	60,220	4.2
Summary motoring	9,672	43.5	530,379	37.0
Summary non-motoring	2,755	12.4	263,469	18.4
Either way & indictable	8,988	40.4	567,549	39.6
Other proceedings	83	0.4	11,512	0.8
Total	22,254	100	1,433,129	100

2 - Completed cases

	South Glamorgan		National	
	No.	%	No.	%
Hearings	14,408	67.3	983,826	72.3
Discontinuances	3,464	16.2	163,707	12.0
Committals	1,186	5.5	97,335	7.1
Other disposals	2,357	11.0	116,529	8.6
Total	21,415	100	1,361,397	100



3 - Case results

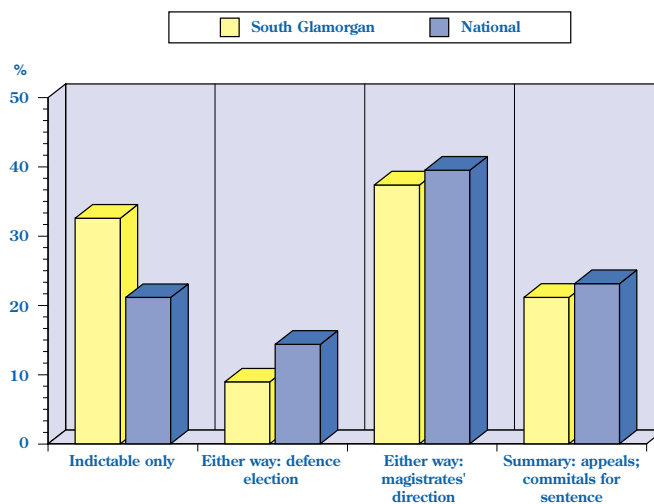


	South Glamorgan		National	
	No.	%	No.	%
Guilty pleas	10,607	73.6	804,174	81.4
Proofs in absence	2,755	19.1	115,102	11.6
Convictions after trial	863	6.0	50,910	5.2
Acquittals: after trial	185	1.3	15,609	1.6
Acquittals: no case to answer	-	0.0	2,386	0.2
Total	14,410	100	988,181	100

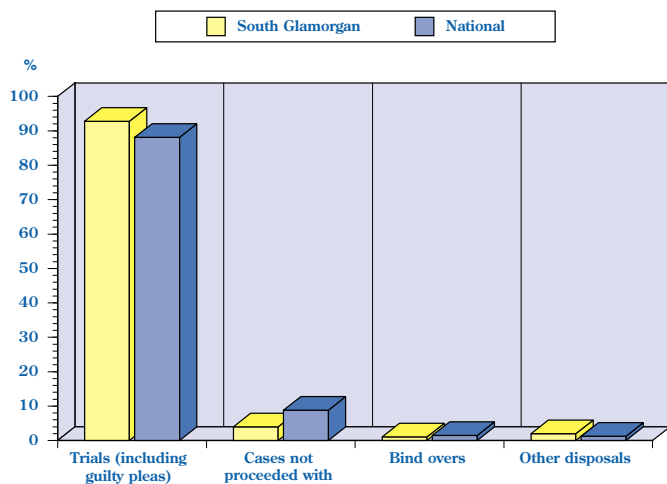
CROWN COURT

4 - Types of case

	South Glamorgan		National	
	No.	%	No.	%
Indictable only	557	33.2	27,122	21.4
Either way: defence election	144	8.6	19,354	15.3
Either way: magistrates' direction	619	36.8	50,075	39.5
Summary: appeals; committals for sentence	360	21.4	30,203	23.8
Total	1,680	100	126,754	100



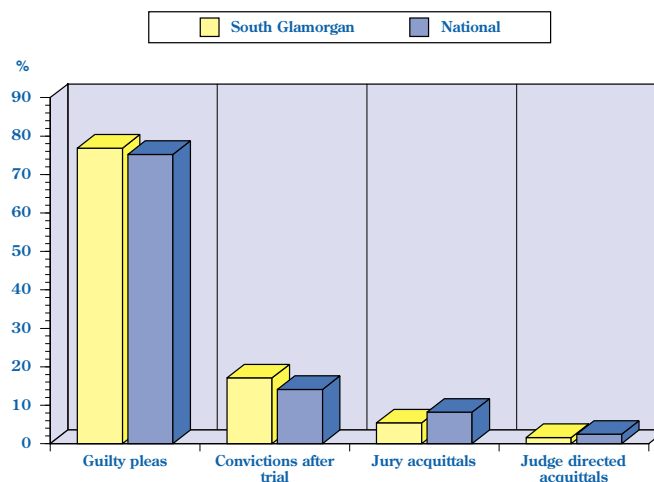
5 - Completed cases



	South Glamorgan		National	
	No.	%	No.	%
Trials (including guilty pleas)	1,222	92.6	85,158	88.1
Cases not proceeded with	56	4.2	8,526	8.8
Bind overs	16	1.2	1,596	1.7
Other disposals	26	2.0	1,351	1.4
Total	1,320	100	96,631	100

6 - Case results

	South Glamorgan		National	
	No.	%	No.	%
Guilty pleas	986	76.5	65,701	75.6
Convictions after trial	216	16.8	12,226	14.1
Jury acquittals	64	5.0	7,083	8.1
Judge directed acquittals	23	1.8	1,924	2.2
Total	1,289	100	86,934	100



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

Judges	His Honour Judge Stephens His Honour Judge Jacobs
Magistrates' courts	Mr G Watkins, Stipendiary Magistrate Miss P Watkins, Stipendiary Magistrate Mr G Patten, Justice of the Peace, Chair of the South Wales Magistrates' Courts Committee Mr M Heap, Justices' Chief Executive, South Wales Magistrates' Courts Committee Mrs G Baranski, Clerk to the Justices, Cardiff Mr T Seculer, Clerk to the Justices, Vale of Glamorgan
Police	Chief Inspector R Geen Chief Inspector G McCarthy Inspector V Giles Detective Inspector G Sullivan Detective Sergeant A Bonas Sergeant S Rogers Ms B Ranger, Acting Head, Administration of Justice Department Ms K Durbidge, Administrative Support Unit Mr M Hinge, Administrative Support Unit
Defence solicitor	Mr R Morgan
Counsel	Mr D Aubrey QC Mr T Crowther Mr P Murphy Mr P Richards
Probation Service	Mr G Brunt, Assistant Chief Officer
Witness Service	Mr D Parr

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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