

THE INSPECTORATE'S REPORT
on
THE BARKING/STRATFORD
BRANCH
of
CPS LONDON

Barking/Stratford Branch



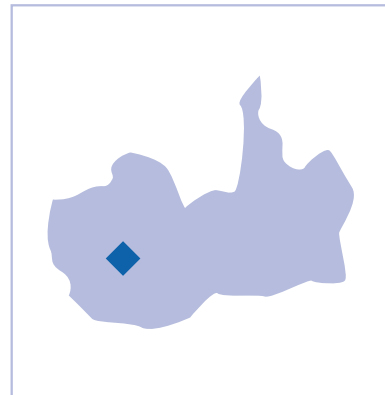
BRANCH OFFICE

◆ Stratford

COURTS COVERED

Magistrates' Courts
Barking
Stratford

Crown Court
Snaresbrook



(Barking/Stratford catchment area)

REPORT ON THE INSPECTION OF THE CPS BARKING/STRATFORD BRANCH

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INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the Barking/Stratford Branch of CPS London.
- 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 Barking/Stratford Branch is in the CPS London area and has its offices in Stratford. On 1 February 1999, it employed 44 staff (the Branch Crown Prosecutor (BCP) and 13 other prosecutors; two caseworker managers and 13 caseworkers; and 15 administrative staff, some of whom also provide a service to two further Branches in the same building).
- 1.5 The Branch comprises two teams. The Barking team (six lawyers and five caseworkers) is responsible for prosecutions in the magistrates' court at Barking. The Stratford team (seven lawyers and eight caseworkers) is responsible for prosecutions in the magistrates' court at Stratford. Each team is also responsible for Crown Court cases originating from its own magistrates' court.
- 1.6 The team of three inspectors visited the Branch between 1 and 11 February 1999. During this period, we observed seven CPS advocates in the magistrates' courts and in the youth courts at

Barking and Stratford. We also observed CPS caseworkers and prosecuting counsel in the Crown Court sitting at Snaresbrook.

- 1.7 A team of inspectors previously visited the Branch in 1997, as part of an inspection of CPS London. A report on CPS London, containing 14 recommendations, was published in December 1997. We refer to the report as "the CPS London report" at various points in the sections that follow. Although it contained a profile of each Branch, including Barking/Stratford, the conclusions and recommendations were addressed to CPS London as a whole.

CONCLUSIONS AND RECOMMENDATIONS

- 2.1 Branch staff deal with a high proportion of serious cases, which are generally well handled. Nearly all the casework decisions that we considered were correct, but we were concerned about failures to analyse the evidence properly in some of the adverse cases that we examined.
- 2.2 The CPS London report made several recommendations designed to assist the Area and its Branches to improve the quality of their decisions and case preparation. As a result of the report, the Branch produced a Branch Management Plan (BMP) and a Branch Action Plan, copies of which have been made available to all Branch staff. A number of the recommendations from the CPS London report have been incorporated in the BMP. Even where recommendations have not been specifically incorporated, steps have been taken to implement them. For example, Branch staff now ask the police to check that vulnerable witnesses are still willing to attend court. There has also been some training on the assessment of identification evidence.

2.3 We were pleased to find that there has been an improvement in the application of charging standards and in the standard of advocacy since the CPS London report. The timeliness of many aspects of the Branch's work, however, remains poor. This ranges from the review of files to the service of committal papers and the delivery of instructions to counsel. Steps need to be taken to improve timeliness, as well as some of the systems designed to support the quality of casework.

2.4 This has led us to make a number of recommendations designed to monitor aspects of timeliness and of case preparation. The BCP will wish to consider whether these and many of the other recommendations could be addressed through a Branch quality assurance programme.

2.5 To help the Branch to make further improvements to its casework, we recommend that:

- i the BCP should ensure that prosecutors and the police are familiar with the guidelines for the submission of files for pre-charge advice (paragraph 4.3);
- ii the BCP should ensure that prosecutors who give advice to the police by telephone or at surgeries:
 - record details of the material that they have examined; and
 - seek written requests for advice from the police, when appropriate (paragraph 4.10);
- iii the BCP should introduce a system to ensure that pre-charge advice is always linked to the appropriate prosecution file (paragraph 4.12);
- iv the BCP should introduce an action-dating system to ensure that pre-charge advice is given to the police within 14 days of the receipt of an adequate file (paragraph 4.14);
- v prosecutors should complete and return forms TQ1 in all appropriate cases, to enable

the police to compile accurate statistics on the timeliness and quality of file submission (paragraph 5.9);

- vi Prosecution Team Leaders (PTLs) should discuss with the police at Joint Performance Management (JPM) meetings the rate of amendments to charges, in order to reduce the number required (paragraph 5.12);
- vii prosecutors should carefully analyse the evidence in all cases which are contested, or are awaiting committal to the Crown Court, to assess whether a prosecution remains appropriate (paragraph 5.38);
- viii the BCP should ensure that adverse case reports are written in all relevant cases, including relevant cases finalised in the magistrates' courts (paragraph 5.45);
- ix the BCP should ensure that prosecutors receive details of the results of all their Crown Court cases (paragraph 5.49);
- x the BCP should develop guidelines on the provision of advance information in cases where that is not required by law; and ensure that a consistent approach is adopted (paragraph 6.4);
- xi the BCP should ensure that schedules of unused and sensitive material are always sought from the police and properly considered and endorsed by prosecutors (paragraph 6.8);
- xii the BCP should discuss with members of the other relevant criminal justice agencies ways in which to make pre-trial reviews (PTRs) more effective (paragraph 6.17);
- xiii Branch managers should ensure that the date of receipt of committal papers from the police and the date of service of committal papers on the defence is recorded on the file, to enable them to assess the timeliness of committal

preparation, and to take any appropriate action to improve performance (paragraph 6.23);

xiv Branch managers should introduce systems to ensure that all post, and papers received from the police, are linked to the appropriate file immediately (paragraph 6.26);

xv the BCP should ensure that:

- there are systems in place to ensure that committal files are sent to the allocated caseworker within 48 hours of the case being committed to the Crown Court for trial; and
- instructions to counsel are delivered promptly (paragraph 6.30);

xvi the BCP should introduce a system to ensure compliance with directions given at plea and direction hearings (PDHs) (paragraph 6.36);

xvii the BCP and PTLs should ensure that feedback is given to Branch advocates immediately after their performance at court has been monitored (paragraph 7.4);

xviii the BCP should liaise with the BCP responsible for the relevant London sector under the 'preferred sets' scheme to address the problem represented by the proportion of cases in which counsel originally instructed do not attend court, particularly in contested cases (paragraph 7.7);

xix the BCP should ensure pre-sentence report (PSR) packages are served on the Probation Service in all relevant cases, and that details of service are recorded on the file (paragraph 8.4).

THE INSPECTION

3.1 In the year ending 31 December 1998, the Branch dealt with 7,686 defendants in the

magistrates' courts and 1,152 defendants in the Crown Court. In a further 357 cases, advice was given to the police before charge.

3.2 The inspection team examined a total of 192 cases, ranging from those where an acquittal was directed by the judge, through those where the prosecution terminated the proceedings, to those where the defendant pleaded guilty. The team interviewed members of staff at the Branch and local representatives of the criminal justice agencies that directly affect, or are directly affected by, the quality of casework decisions taken in the Branch. A list of those representatives from whom we received comments is at the end of this report.

PROVIDING ADVICE

Appropriateness of requests for advice

4.1 In the year ending 31 December 1998, the proportion of cases in which the Branch gave advice to the police before charge (4.4%) was slightly above the national average (4.2%).

4.2 As a result of a recommendation in the CPS London report, Area headquarters issued guidelines, setting out the circumstances in which it would be appropriate to give advice to the police. It was intended that these guidelines should form the basis of local agreements, or protocols, with the police. In accordance with the guidelines, Branch managers have reached agreement with each of the local police divisions about the types of case that should be submitted for pre-charge advice. There have been many changes of personnel recently, however, both in the police criminal justice units and among Branch prosecutors. This may explain why neither the police nor Branch prosecutors appeared to be aware of the agreement.

4.3 We recommend that the BCP should ensure that prosecutors and the police are

familiar with the guidelines for the submission of files for pre-charge advice.

- 4.4 We examined ten cases in which advice had been given to the police before charge. All ten had been appropriately submitted, although the police could probably have made the decision in one.

Quality and timeliness of advice

- 4.5 The quality of advice is good. We agreed with the advice given in all ten cases. All the advice was well reasoned, and it was typed in seven cases. In one case, however, the prosecutor analysed the evidence carefully, but did not distinguish adequately between the evidential and public interest tests when advising that the defendant should not be charged.
- 4.6 Although the CPS has abandoned the national requirement for Branch managers to assess a proportion of each prosecutor's advice cases each quarter, one PTL checks the advice given by his junior prosecutors before it is sent to the police. He also allocates advice files individually to prosecutors. On the other team, the files are allocated to prosecutors by caseworkers, according to their reference numbers. The PTL sees the advice given only if he deals with any resulting prosecutions at court. He will wish to consider the benefit of his colleague's approach.
- 4.7 Branch prosecutors hold advice surgeries at three of their police stations every four to six weeks. The police contact the CPS when they have sufficient cases to justify the attendance of a prosecutor. We are concerned about the effectiveness of such infrequent surgeries which are designed to provide more immediate advice in urgent cases. The BCP will wish to consider ways of putting the surgeries on a more formal basis.
- 4.8 Advice given to the police at the surgeries and by telephone should be recorded and included in the Branch's monthly Performance Indicators (PIs).

Prosecutors accept that they do not always record advice given by telephone.

- 4.9 We examined some of the records of advice given at surgeries and by telephone. Some cases should have been submitted for written advice. It was also not clear what, if any, material had been considered at the surgeries, even in some serious cases. For example, in a case of child neglect, the prosecutor did not identify the material on which he advised that no further action should be taken. We also saw a case where the prosecutor wrongly advised that a child under the age of criminal responsibility should be arrested and interviewed under caution in relation to a suspected serious offence.

4.10 We recommend that the BCP should ensure that prosecutors who give advice to the police by telephone or at surgeries:

- **record details of the material that they have examined; and**
- **seek written requests for advice from the police, when appropriate.**

- 4.11 In the event of a prosecution, efforts are made to link a copy of the advice to the prosecution file. This does not always happen, however. The police try to link advice files to prosecution files. Otherwise, the system depends on the prosecutors' personal knowledge of the cases.

4.12 We recommend that the BCP should introduce a system to ensure that pre-charge advice is always linked to the appropriate prosecution file.

- 4.13 There is no effective administrative system for ensuring the timely provision of advice to the police. The Branch's Corporate Performance Measures (CPMs) for the quarter ending 31 December 1998 indicate that 23% of advice was provided within the CPS target of 14 days from receipt of an adequate file from the police. It was given within 14 days in only two of the ten

cases (20%) that we examined. It was clearly late in four. In one of them, it was given seven weeks after receipt of the papers from the police and, in another, three weeks after receipt. We were unable to tell the position in the remaining four cases.

4.14 We recommend that the BCP should introduce an action-dating system to ensure that pre-charge advice is given to the police within 14 days of the receipt of an adequate file.

Advice from counsel

4.15 Branch prosecutors rarely seek advice from counsel before charge. Any such request has to be authorised by the BCP. We did not see any case where counsel's advice had been sought before charge, nor any where it would have been appropriate. We were told, however, that counsel is asked to advise, either before charge or between charge and committal, in about four or five complex or serious cases a year.

REVIEWING CASES

Caseweight

5.1 Branch staff deal with a high proportion of serious cases. The proportion of cases committed to the Crown Court (11%) is well above the national average (6.9%). The proportion of the Branch's Crown Court cases that are indictable only is also significantly higher (30.7%, against 21.4%), as is the contest rate in the Crown Court (39.1%, against 24.9%).

Quality of review decisions

5.2 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 proceed.

5.3 The quality of decision-making is good. We specifically examined the review decision in 78 files, covering cases in the magistrates' courts and the Crown Court. We agreed with the assessment of the evidence in 77 (98.7%). In one of the 77, a charge was wrong, although the defendant admitted numerous similar allegations. In the remaining case, there was insufficient information on the file for us to make an assessment.

5.4 We agreed with the application of the public interest criteria in 77 cases (98.7%). In the other case, there was insufficient evidence on the file for us to reach a conclusion.

5.5 Although we were generally satisfied with the standard of review endorsements (see paragraph 5.45), some cases in which the magistrates ruled that there was no case to answer, or in which the judge ordered or directed an acquittal, would have benefited from a more detailed analysis of the evidence (see paragraphs 5.28 - 5.32).

Timeliness of review

5.6 Branch figures for the quarter ending 31 December 1998 indicate that 66% of files were reviewed within seven days of receipt from the police. Our examination of files showed that the great majority were reviewed before the first hearing, although we saw some examples of files that were not reviewed until the second or third appearance.

5.7 Late review can adversely affect the progress of a case. It delays decisions about the evidence, the appropriate charges and possible discontinuance. We saw examples of cases where late review had caused such delay (see paragraphs 5.22, 5.27 and 5.30).

5.8 The ability of Branch prosecutors to review files at an early stage is affected by the timeliness and quality of the files submitted by the police. Branch and police managers monitor this through JPM. The reviewing prosecutor completes a form, referred to as TQ1, showing the date when the file was received and the prosecutor's assessment of its quality. The form is returned to the police so that the results can be collated. We were told that between 60% and 70% of TQ1s were returned. Whilst this return rate is better than some that we have seen, a higher rate would generate more confidence in the data.

5.9 We recommend that prosecutors should complete and return forms TQ1 in all appropriate cases, to enable the police to compile accurate statistics on the timeliness and quality of file submission.

5.10 The JPM figures for the quarter ending 31 December 1998 show that between 33.3% and 91.6% of all files submitted by the police were submitted within the agreed time guidelines. Although in one division, all the files submitted contained sufficient information for the case to proceed to the next stage, in the others, between 4.0% and 13.1% did not.

Selection of the appropriate charge and charging standards

5.11 The police charges required amendment in 24 of the 78 cases (30.8%) that we examined. Nine (37.5%) were amended at first review and a further nine were amended at committal stage. Some could have been amended earlier. For example, some charges were amended on the day of the summary trial. In addition, a charge of assault occasioning actual bodily harm was replaced by a charge of common assault only after the defendant elected to be tried at the Crown Court. The file had not been fully reviewed before the decision about where the case should be tried. Sixteen of the amendments

(66.7%) involved matters of substance and only five (20.8%) were amended for cosmetic reasons. The need regularly to amend charges wastes time.

5.12 We recommend that PTLs should discuss with the police at JPM meetings the rate of amendments to charges, in order to reduce the number required.

5.13 The CPS and the police nationally have agreed charging standards for assaults, public order offences and some driving offences, to ensure a consistent approach to levels of charging. We found that the charging standards were correctly applied in 47 of the 48 relevant cases (97.9%) that we examined. In the other, there was insufficient information on the file for us to make an assessment.

Discontinuance

5.14 The Branch's discontinuance rate (10%) is below the national average (12%).

5.15 We examined 42 cases which were stopped by the prosecution in the magistrates' courts during November 1998, to ascertain the reasons for termination, and to find out whether the police were consulted about, and agreed with, the decision. Twenty-four cases (57.1%) were formally discontinued by notice under section 23, Prosecution of Offences Act 1985. Twelve (28.6%) were withdrawn in court, and in six (14.3%), the prosecution offered no evidence.

5.16 Twenty cases (47.6%) were terminated because there was insufficient evidence. Four (9.5%) were stopped because it was not in the public interest to proceed. In 16 (38.1%) the prosecution was unable to proceed; and in one (2.4%), the relevant driving documents were produced. The reason for termination was unclear in the remaining case.

5.17 Of the 20 cases stopped because there was insufficient evidence, only one was terminated due to deficiencies in identification evidence.

Three were stopped due to deficiencies in other evidence, and 16 were terminated as an essential legal element was missing.

- 5.18 Of the four cases terminated because it was not in the public interest to proceed, one was stopped due to the likelihood of a nominal penalty being imposed, as the defendant was already serving a prison sentence; one because the prosecutor recommended that the defendant should be cautioned; one due to the length of time since the commission of the offence; and another because the incident had been of a minor nature.
- 5.19 Of the 16 cases in which the prosecution was unable to proceed, six were terminated because prosecution witnesses refused to give evidence, and three because witnesses failed to attend court. In seven, the prosecution case was not ready and had to be withdrawn at court. Four of them concerned cases which were scheduled for committal to the Crown Court, but in which either the police had not delivered a file of evidence until shortly before the hearing or essential evidence was missing.
- 5.20 The police were consulted in 36 cases (85.7%). They did not object to the proposal in any of them. In five cases, the reason for the termination only became apparent at the court hearing. We could not tell why the police were not consulted in the remaining case.
- 5.21 We examined ten terminated cases, in order to assess whether the Code tests had been correctly applied. We agreed with the decision in all of them.
- 5.22 Two of the ten cases (20%) were not terminated at the earliest opportunity. One case, involving an assault by the former husband of the victim, was discontinued under the provisions of section 23, after a not guilty plea had been entered and a date for trial fixed. It was not reviewed until this stage, although it was clear from the outset that the case was unlikely to succeed. The second case, which involved a charge of criminal

damage, was terminated at the fifth hearing, two of which were trial dates, because there was no evidence of the alleged damage. We have already commented upon the problems caused by late review (see paragraph 5.7).

Judge ordered and judge directed acquittals

- 5.23 In the 12 months ending 31 December 1998, 127 cases were not proceeded with in the Crown Court. This represents 13.9% of the Branch's caseload, significantly higher than the national average of 9.4%. The great majority were stopped by the judge at the request of the prosecution before the trial started (judge ordered acquittals).
- 5.24 These cases were stopped for a number of reasons, some of which were beyond the control of the Branch. Fifty-three of the cases (41.7%) in which the judge ordered an acquittal were stopped because prosecution witnesses failed to attend court. We examined 29 judge ordered acquittals from September, October and November 1998. Prosecution witnesses failed to attend or give evidence in 16 (55.2%).
- 5.25 We recommended in the CPS London report that Branches should ask the police to check before committal that key witnesses were still prepared to attend court, especially in cases involving violence. Although Branch managers do not appear to have incorporated this recommendation in the BMP, we were told that the police were asked to keep in touch with vulnerable witnesses. Branch staff and police took appropriate steps to secure the attendance of the witnesses in all 16 relevant cases that we examined. The BCP will wish to remind staff, however, of the importance of taking all possible steps to secure witnesses' attendance at court.
- 5.26 We also found that 23% of the judge ordered and judge directed acquittals were attributed to the residual category 'other reasons'. This category should rarely be used, as important information

about the Branch's casework may be lost. The BCP will wish to ensure that failed cases are allocated to the correct PI categories.

- 5.27 We disagreed with the decision to prosecute in only one of the 29 judge ordered acquittals that we examined. The case involved the possession of a small amount of cannabis. The defendant's solicitors suggested, shortly after charge, that the defendant should be cautioned, but the reviewing prosecutor refused to consider their proposal. Seven months later, in the Crown Court, the Crown offered no evidence against the defendant, because a prosecution was not in the public interest. This decision should have been made at a much earlier stage.
- 5.28 We consider that three of the 29 cases (10.3%) should not have been stopped. Two concerned charges of possessing cannabis. In both, the prosecutor failed to appreciate that evidence which became unavailable, or that counsel advise was likely to be excluded by the trial judge, was of only marginal significance. The third case concerned a robbery in which the police did not act on the reviewing prosecutor's advice that identification parades should be held to improve the identification evidence. There was, however, still significant identification evidence, supported by potentially incriminating comments made by the defendants, to justify the prosecution continuing.
- 5.29 In some cases in which we agreed with the decision to proceed, the prosecutor did not give enough thought to the issues, or, having considered the problem, failed to take appropriate action, or bring the matter to counsel's attention. For example, in a case of assault occasioning actual bodily harm, the victim's description of his assailant was inadmissible as hearsay, because it was based on what he had been told by a witness who refused to make a statement. The reviewing prosecutor correctly identified the problem, but did not follow it through, nor was it referred to in counsel's instructions.

- 5.30 A second case involved charges of affray and assault occasioning actual bodily harm. Three of the four defendants were youths. The reviewing prosecutor indicated that it would be difficult to fulfil the requirement (since abolished) to prove that one of the defendants knew that his actions were seriously wrong. He took the matter no further, however, although there was video evidence of the incident which he should have considered. After the PDH, counsel saw the video and advised that the prosecution could not fulfil the requirement.
- 5.31 Another case was lost because of an elementary error in case preparation. It involved a robbery where the victim made a statement in Urdu. The committal papers contained the interpreter's statement and the English translation, but not the original Urdu statement. No one noticed this until the judge raised it at the trial. The defence successfully argued that the committal should be quashed.
- 5.32 We have already referred to the problems that can arise from the late review of files (see paragraph 5.7). Three of the cases referred to in this section clearly illustrate this; all three could have been terminated at an earlier stage, if proper consideration had been given to the evidential or public interest factors from the outset.
- 5.33 During the 12 months ending 31 December 1998, there were 27 cases in which the judge directed an acquittal after the trial had started. This is 3.6% of the Branch's Crown Court caseload, compared with 2.2% nationally. We examined eight and agreed with the decision to proceed in all of them.
- 5.34 Five of the judge ordered and three of the judge directed acquittals involved problems with identification evidence and, specifically, street identification. We are pleased to note that Branch managers have recognised the problem and have taken steps to address the matter (see paragraph 5.46).

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

- 5.35 In the year ending 31 December 1998, 19 trials were stopped by the magistrates at the close of the prosecution case. This is 0.4% of the Branch's caseload, double the national average of 0.2%. We examined three such cases and agreed with the decision to prosecute in all three, although we disagreed with the selection of charges in one.
- 5.36 In the remaining two cases, there was a lack of detailed attention to the evidence. One case involved an attempt to obtain petrol by deception. There were several discrepancies in the evidence which the prosecutor did not pick up. The other case involved an indecent assault by three youths. There was nothing in the file to indicate that the reviewing prosecutor had considered, in the case of one defendant, how to fulfil the requirement (since abolished) to prove that he knew that his actions were seriously wrong.
- 5.37 We have already commented on the lack of attention which appears to have been given to some Crown Court cases (see paragraphs 5.28 - 5.32). Most deficiencies on which we have commented should have been addressed earlier, so that the problems could have been rectified, or other appropriate action taken.
- 5.38 We recommend that prosecutors should carefully analyse the evidence in all cases which are contested, or are awaiting committal to the Crown Court, to assess whether a prosecution remains appropriate.**

Mode of trial

- 5.39 We were told that Branch prosecutors make appropriate representations whether a case should be heard in the magistrates' court or in the Crown Court. The Lord Chief Justice's guidelines were followed in 42 of the 43 relevant cases (97.7%) that

we examined. The relevant considerations were recorded in 36 of these cases (83.7%).

Bail

- 5.40 Prosecutors make appropriate decisions whether to apply for remands in custody. The prosecutor made the appropriate decision in 13 of the 14 cases (92.9%) that we examined. The quality of file endorsements concerning custody was satisfactory. The grounds given by the prosecution for opposing bail were endorsed in 12 cases (85.7%), and the court's reasons for refusing bail in 11 (78.6%).
- 5.41 The Bail (Amendment) Act 1993 gives the prosecution a right of appeal to the Crown Court against the granting of bail by magistrates to persons charged with certain serious offences. In the one relevant case that we examined, the Act was properly applied.

Review endorsements

- 5.42 The standard of review endorsements is satisfactory. There were good, detailed endorsements, with further reviews in some cases, either on receipt of further evidence, or on receipt of the full file. The evidential factors were fully recorded in 57 of the 78 cases (73.1%) that we examined. The public interest factors were recorded in 62 (79.5%). Endorsements about mode of trial and bail were also satisfactory (paragraphs 5.39 and 5.40). Branch managers will wish to maintain their efforts to improve the quality of review endorsements.

Learning from experience

- 5.43 Caseworkers complete adverse case reports in all cases which result in an acquittal in the Crown Court. These are passed to the senior caseworkers, who look for any lessons for

caseworkers, and then to the PTL, who prepares a report for the BCP. The BCP sees all the failed case reports. The reports are used to identify any trends, particularly in relation to cases which are dropped. We saw failed case reports in only 14 of the 37 relevant Crown Court cases (37.8%), however. Many missing reports concerned cases in which witnesses failed to attend court. It is just as important to prepare reports in these cases, so that Branch managers can discuss with the police how to reduce the number of such cases.

5.44 We did not see any failed case reports in the magistrates' courts cases that we examined. As a result, Branch managers miss an important opportunity to learn from unsuccessful cases.

5.45 We recommend that the BCP should ensure that adverse case reports are written in all relevant cases, including relevant cases finalised in the magistrates' courts.

5.46 We have already mentioned that missing witnesses are a major cause of judge ordered acquittals and set out the steps taken to deal with the problem (paragraphs 5.24 - 5.25). Problems with identification evidence have also been addressed. There has been training on issues involving identification evidence on Branch training days, and prosecutors have assisted with training for police officers on this and other subjects, including disclosure.

5.47 General lessons and legal points are also dealt with at team meetings. These tend to be infrequent, however, and the PTLs will wish to consider holding more of them.

5.48 We were told that prosecutors used to receive details of the results of all Crown Court cases. This stopped about a year ago. There are valuable lessons to be learnt from successful cases as well as failed ones.

5.49 We recommend that the BCP should ensure that prosecutors receive details of the results of all their Crown Court cases.

PREPARING CASES

Advance information

6.1 Branch caseworkers prepare advance information when the papers are received from the police and before the file is reviewed. A prosecutor checks the contents before it is served.

6.2 Advance information should be provided to the defence within seven days of receiving the papers from the police, or learning the identity of the defence solicitor. Although it is rarely served before the first court appearance, it was provided within the target timescale in 40 of the 53 relevant cases (75.5%) that we examined.

6.3 The Branch receives requests for advance information in cases in which the law does not require the prosecution to provide it. Branch managers have not issued guidelines on the provision of informal advance information in these circumstances. The prosecutors' approach to its provision varies. In the past, one team adopted a more restrictive approach than the other, but this has been relaxed recently.

6.4 We recommend that the BCP should develop guidelines on the provision of advance information in cases where that is not required by law; and ensure that a consistent approach is adopted.

Unused and sensitive material

6.5 The consideration and provision of unused material needs improvement both in magistrates' courts trials and in Crown Court cases. In the magistrates' courts, the schedules of unused material were served in 19 out of 26 relevant cases (73.1%), but service was timely in only 14 (53.8%). Further, the reviewing prosecutor had signed and properly endorsed the schedules in only 16 cases (61.5%).

6.6 In the Crown Court, the schedules were served in 28 out of 30 relevant cases (93.3%) and service

was timely in 27 (90%). The schedules were signed and properly endorsed, however, in only 17 cases (56.7%).

- 6.7 Sensitive material is usually dealt with by the relevant PTL in conjunction with the reviewing prosecutor. If prosecutors are not satisfied that the police have submitted schedules of sensitive material in appropriate cases, they pursue the matter. They make decisions about materiality, but the PTL decides whether public interest immunity applications should be made. The BCP becomes involved only in the most serious cases. We examined seven cases involving sensitive material. Although we found evidence that the correct procedures had been carried out in four, we only found evidence that the material had been properly considered and the schedule properly completed in three.

6.8 We recommend that the BCP should ensure that schedules of unused and sensitive material are always sought from the police and properly considered and endorsed by prosecutors.

- 6.9 We were pleased to note that the Branch Management Team has made plans for additional training on the handling of unused material generally.

Custody time limits

- 6.10 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.
- 6.11 We examined twelve custody time limit cases. The expiry dates, which were marked on the front of the files in all cases, had been correctly calculated in eleven. In the other, the expiry date

had been calculated from the date of the PDH rather than from the date on which the case was committed to the Crown Court. However, this mistake was rectified at the PDH; the trial date was fixed for a date beyond the time limit and the court allowed an application to extend the expiry date to be made without the usual written notice of an intention to apply. The BCP will want to ensure that time limits are always properly calculated.

- 6.12 The prosecution also applied to extend the custody time limit in a magistrates' court case. There was nothing on the file to indicate that notices had been served in accordance with the statutory guidelines.
- 6.13 Branch staff monitor custody time limits using a diary and the Branch's computerised case tracking system. A nationally produced ready reckoner is used to calculate the review and expiry dates. The system seemed robust and staff were aware of the importance of monitoring expiry dates. The system is maintained by an experienced caseworker on each team, and Branch managers carry out spot checks on the diary, to ensure that all necessary action is taken.
- 6.14 The file endorsements in relation to custody time limits on the files that we examined were adequate and some included instructions to the administrative staff to enter the case details in the monitoring system. The review dates were not marked on the file jackets, however, in spite of a recommendation to do this in the CPS London report.

Summary trial preparation

- 6.15 Summary trial preparation is generally satisfactory. The statements of witnesses whose evidence was likely to be agreed were correctly identified and served under section 9, Criminal Justice Act 1967 in 21 out of 25 relevant cases (84%) that we examined. The police were told

promptly which witnesses to warn in 27 out of 28 cases (96.4%).

6.16 The magistrates' courts at both Barking and Stratford hold PTRs in certain types of case where a not guilty plea has been entered. These hearings are designed to ensure that both the prosecution and the defence will be ready to proceed on the trial date. At Barking, these are usually held if a trial is estimated to last longer than half a day. At Stratford, the clerk of the court decides whether a PTR is appropriate. We found, however, that PTRs were not generally effective. Defendants are not required to attend, and the prosecution is not always fully prepared. For example, details of the availability of prosecution witnesses were not always ready.

6.17 We recommend that the BCP should discuss with members of the other relevant criminal justice agencies ways in which to make PTRs more effective.

6.18 Prosecutors are familiar with the procedure for agreeing admissions of fact under section 10, Criminal Justice Act 1967. This procedure is rarely used, and we did not see any files where its use would have been appropriate.

6.19 Prosecutors are also familiar with the provisions of section 23, Criminal Justice Act 1988. Subject to certain conditions, these enable a witness' statement to 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. This provision is rarely used, and we did not see any cases where its use would have been appropriate.

Committal preparation

6.20 Caseworkers prepare the majority of committals which should then be checked by a prosecutor. We found evidence that a prosecutor had checked the committal papers in 26 of the 30 Crown Court cases (86.7%) that we examined. On

one of the teams, the PTL conducts a full review of all cases which are to be committed to the Crown Court after mode of trial. On the other team, the PTL checks only those cases that are to be committed to the Central Criminal Court.

6.21 The quality of committal preparation was satisfactory in 28 of the 30 cases (93.3%) that we examined. In one of the remaining two, which involved allegations of indecent assault, a statement about the inappropriate sexual behaviour of one of the victims whilst on holiday with a third party should have been treated as unused material rather than included in the committal papers. We could not tell the position in the other case because there was insufficient information on the file.

6.22 The timeliness of the service of committal papers was poor. They were served within target timescales in only eight of the 30 cases (26.7%) that we examined. Service was clearly late in 11 (36.7%), and we were unable to ascertain the position in the remaining 11, because there was no record of when the papers had been received from the police, or served on the defence.

6.23 We recommend that Branch managers should ensure that the date of receipt of committal papers from the police and the date of service of committal papers on the defence is recorded on the file, to enable them to assess the timeliness of committal preparation, and to take any appropriate action to improve performance.

6.24 Committal papers are almost invariably served at court on the day set for committal; on one team, they were often served during the court session. This often led to adjournments or to cases being discharged.

6.25 The ability of Branch staff to prepare committals promptly is affected by the timeliness and quality of files submitted by the police. The JPM figures for the period ending 31 December 1998 show that the four police divisions served by the

Branch submitted between 27.8% and 97.3% of full files (which include files for committal) within the agreed timescales. Of these, between 4.3% and 47.8% were fully satisfactory. Although some of the delay in the service of committal papers could be attributed to the late submission of papers by the police, Branch staff did not immediately link the papers to the relevant file. Failure to link papers to files is a general problem, which also affects other aspects of the Branch's work (see paragraph 6.38).

6.26 We recommend that Branch managers should introduce systems to ensure that all post, and papers received from the police, are linked to the appropriate file immediately.

6.27 At present, Branch staff use the Crown Court Case Preparation Package to prepare instructions to counsel. 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. The Branch is in the process of changing to a system of committal preparation devised and piloted by the Highbury Branch of CPS London. This system removes many of the standard paragraphs from the instructions and sets them out, instead, in a booklet which is distributed to all counsel's chambers. There is a significantly greater free-text option for use by the person preparing the instructions, and the system means that the instructions relate more specifically to individual cases.

6.28 The standard of instructions to counsel was well above average. Twenty-six of the 30 Crown Court cases (86.7%) contained case summaries, some of which not only dealt with the issues in the case but also quoted relevant case law. Ten of the 15 appropriate cases (66.7%) contained instructions on the acceptability of pleas. Overall, the quality of 22 sets of instructions (73.3%) was satisfactory.

6.29 Instructions are often sent to counsel late, however. Only sixteen of the 30 sets of instructions (53.3%) were sent within the timescales agreed between the CPS and the Bar. Indeed, during our court observations, we saw one case where instructions had been sent to counsel the day before the PDH. Branch managers are aware that there is some delay in the delivery of instructions to counsel and the situation is being addressed. This is caused in part by a delay in the return of files to caseworkers after committal. Caseworker managers have begun to give greater priority to this work.

6.30 We recommend that the BCP should ensure that:

- **there are systems in place to ensure that committal files are sent to the allocated caseworker within 48 hours of the case being committed to the Crown Court for trial; and**
- **instructions to counsel are delivered promptly.**

Quality of indictments

6.31 Indictments are drafted by caseworkers. The senior caseworkers on both teams check the indictments before they are lodged, and make any necessary amendments. In spite of this, the indictments required amending at court in seven of the 30 cases (23.3%) that we examined. Whilst one amendment was to accommodate acceptable pleas and another because some evidence was unavailable, three were necessary to correct minor errors which should have been noticed earlier. Another was amended because there were too few counts. The seventh had to be amended because the wrong version was lodged at court.

6.32 Twenty-seven (90%) of the indictments that we examined were lodged within the statutory timescales.

The CPS in the Crown Court

6.33 Most of the Branch's cases are committed to the Crown Court sitting at Snaresbrook. Some serious cases are committed to the Central Criminal Court. Caseworkers attend up to three courts at any one time, although they attend PDH courts individually. The senior caseworkers also attend the PDH courts.

6.34 Branch prosecutors are expected to check that cases are ready for PDH a week in advance, but this does not always happen. There is a duty prosecutor in the PDH courts who also checks the files in advance of the hearing. Sergeants from the police criminal justice units also attend the PDHs. Branch staff notify the police if urgent action is required by facsimile from the Crown Court. The senior caseworker at the Crown Court contacts the senior caseworker at the Branch a few days before the date, to check that they have complied with any directions. There does not appear, however, to be a formal Branch system for monitoring compliance.

6.35 Compliance with directions given by the judges at PDHs is poor. In 11 out of 19 relevant cases (57.9%), the PDH directions were not complied with according to the judge's instructions. In most cases, compliance was late. In one case, the judge directed that further evidence should be served within 14 days. The further evidence was prepared but never served. In another case, it was not clear from the file, if the directions had been complied with by the prosecution. In 13 cases, the Branch sent instructions to the police, but it was not clear what steps, if any, were taken to monitor compliance. The situation is not acceptable.

6.36 We recommend that the BCP should introduce a system to ensure compliance with directions given at PDHs.

6.37 Although one PTL has recently begun to appear for the prosecution as a higher court advocate, other prosecutors rarely attend the Crown Court. They used to attend to respond to bail

applications, but they rarely do so now. They conduct some bail applications in chambers at the Central Criminal Court and all the Branch's bail applications before a judge in chambers at the High Court. We recognise the requirements for prosecutors to present cases in the magistrates' courts. The BCP will wish, however, to take any opportunities that arise to allow prosecutors to attend the Crown Court.

Office systems

6.38 Caseworkers prepare the lists for the magistrates' courts. A printout is obtained from the Branch's computerised case tracking system (SCOPE). One major problem, and one that we have already commented on in part (see paragraph 6.25) is the delay in linking papers to files. This applies to papers from the police and to correspondence generally. This leads to delays in preparing committals and in replying to correspondence. We have already made a recommendation about the need to have adequate systems in place for linking post to files (see paragraph 6.26).

File endorsements

6.39 In the magistrates' courts, the endorsements about events at court were good. There were clear and legible endorsements in 71 of the 78 cases (91%) that we examined. Overall, the endorsements complied with the CPS Service Standard in 52 of the 78 cases (66.7%).

6.40 In the Crown Court, endorsements about events at court were satisfactory in 29 of the 30 cases (96.7%) that we examined.

PRESENTING CASES IN COURT

7.1 We observed seven Branch prosecutors presenting cases in the magistrates' courts and in the youth courts. The standard of advocacy

was satisfactory. Although we were told that some prosecutors were less able than their colleagues, we did not observe any examples of poor advocacy.

- 7.2 The lists in the courts that we observed were moderately heavy. All the prosecutors whom we saw had prepared properly for their courts. They maintained an appropriate degree of eye contact with the magistrates. We were pleased to note that several prosecutors took advantage of breaks in the court proceedings to write memoranda to the police requesting further action on files.
- 7.3 Branch managers should formally monitor CPS advocates for performance appraisal purposes. We found some evidence of formal monitoring by one PTL but feedback was not given to prosecutors immediately after court, when it would have been of most value.
- 7.4 We recommend that the BCP and PTLs should ensure that feedback is given to Branch advocates immediately after their performance at court has been monitored.**
- 7.5 We saw eight counsel in the Crown Court dealing with PDHs. Most performed competently, although the hearings were straightforward. Caseworkers monitor counsel on an informal basis. They are able to provide only limited information, however, because they are required to attend up to three courtrooms each.
- 7.6 Counsel originally instructed attended PDHs in 17 of the 30 Crown Court cases (56.7%) that we examined. Counsel who had been originally instructed appeared in nine of the ten PDH cases that we observed. This is well above average, but the rate for trials and sentence hearings is poor. Counsel originally instructed attended only seven out of 20 trials (35%), and four out of 20 sentencing hearings (20%). It is important that the Branch is able to secure appropriate counsel to conduct trials, to ensure that contested cases are properly presented. However, the arrangements for monitoring the preferred sets

scheme means that this has to be addressed through the lead BCP for the relevant sector.

- 7.7 We recommend that the BCP should liaise with the BCP responsible for the relevant London sector under the ‘preferred sets’ scheme to address the problem represented by the proportion of cases in which counsel originally instructed do not attend court, particularly in contested cases.**

THE BRANCH AND OTHER AGENCIES

- 8.1 The Branch’s relations with other criminal justice agencies are satisfactory. The PTLs attend the court user group meetings at their respective magistrates’ courts. They also attend quarterly JPM meetings with the police.
- 8.2 The Branch works constructively with other criminal justice agencies. There are service level agreements on the provision of pre-sentence information to the Probation Service, and on witness care in the magistrates’ courts. However, the Branch could contribute further to improvements in the performance of the criminal justice system. We have already commented upon this (see paragraphs 6.16 - 6.17).

Providing information for pre-sentence reports

- 8.3 The Branch is required to provide the Probation Service with information about a defendant’s offences, so that probation officers are able to assess their seriousness when they prepare their pre-sentence reports. These reports assist the court in deciding how to sentence defendants. Despite the fact that there is a service level agreement with the Probation Service, we were told that PSRs were often prepared without access to the package. We found that the PSR package was served on the Probation Service in 26 of the 42 relevant cases (61.9%), but we were

unable to ascertain the position in the remaining 16. In the magistrates' courts, packages were sometimes either not requested or not collected. In the Crown Court, the disclosure package was prepared and handed over at committal proceedings, but details of service were not always endorsed on the file. Branch managers are aware that there is a problem and are taking steps to address the matter. A prosecutor has been given the task of liaising with the Probation Service to improve the situation.

8.4 We recommend that the BCP should ensure that PSR packages are served on the Probation Service in all relevant cases, and that details of service are recorded on the file.

KEY STATISTICS

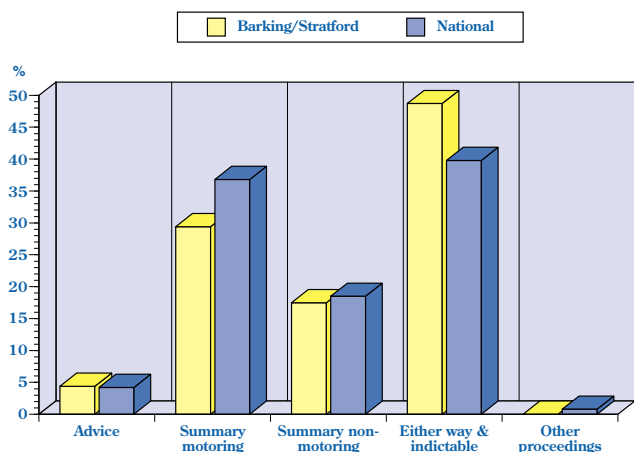
9.1 The charts which follow this page set out the key statistics about the Branch's casework in the magistrates' courts and the Crown Court for the year ending 31 December 1998.

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

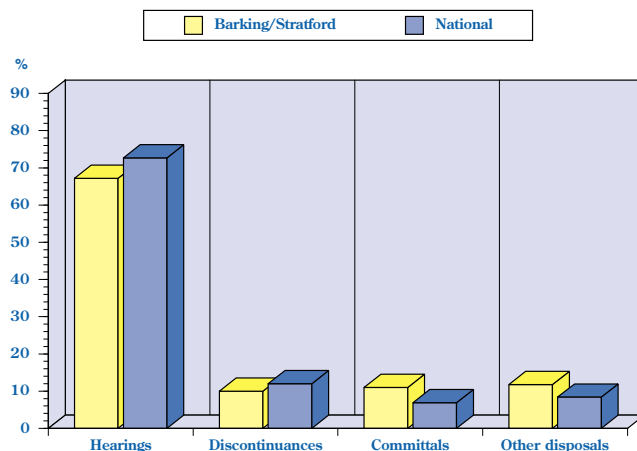
1 - Types of case



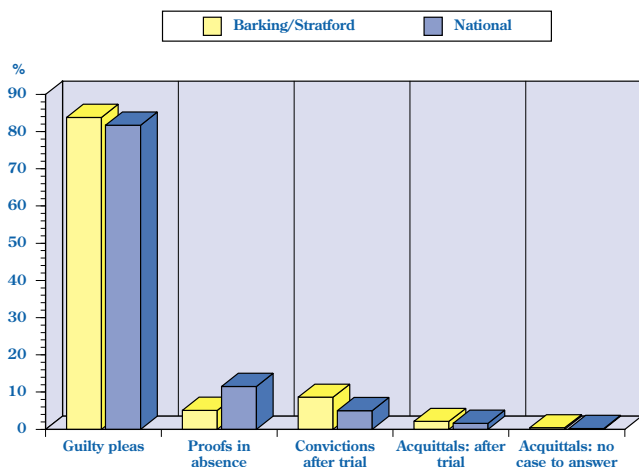
	Barking/Stratford		National	
	No.	%	No.	%
Advice	357	4.4	59,799	4.2
Summary motoring	2,365	29.4	525,813	36.8
Summary non-motoring	1,406	17.5	264,365	18.5
Either way & indictable	3,915	48.7	568,918	39.8
Other proceedings	0	0.0	11,660	0.8
Total	8,043	100	1,430,555	100

2 - Completed cases

	Barking/Stratford		National	
	No.	%	No.	%
Hearings	5,162	67.2	987,943	72.7
Discontinuances	771	10.0	162,661	12.0
Committals	848	11.0	94,151	6.9
Other disposals	905	11.8	114,342	8.4
Total	7,686	100	1,359,097	100



3 - Case results

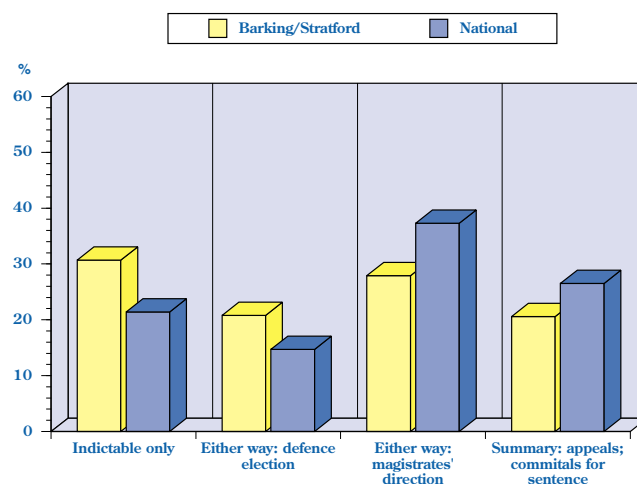


	Barking/Stratford		National	
	No.	%	No.	%
Guilty pleas	4,378	83.8	810,952	81.7
Proofs in absence	266	5.1	114,133	11.5
Convictions after trial	451	8.6	49,466	5.0
Acquittals: after trial	110	2.1	15,442	1.6
Acquittals: no case to answer	20	0.4	2,248	0.2
Total	5,225	100	992,241	100

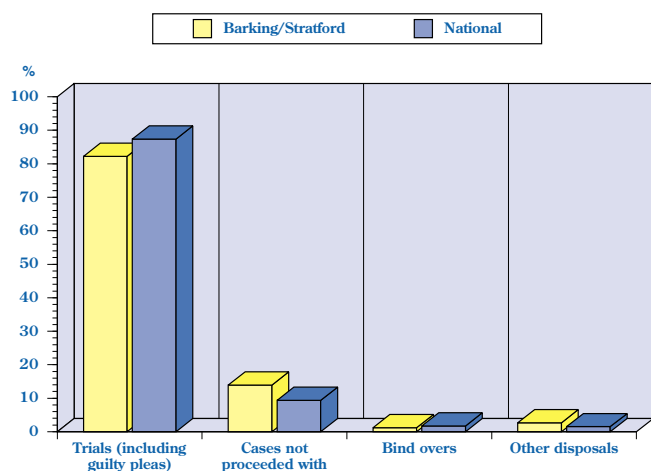
CROWN COURT

4 - Types of case

	Barking/Stratford		National	
	No.	%	No.	%
Indictable only	354	30.7	26,918	21.4
Either way: defence election	240	20.8	18,481	14.7
Either way: magistrates' direction	321	27.9	46,915	37.3
Summary: appeals; committals for sentence	237	20.6	33,357	26.5
Total	1,152	100	125,671	100



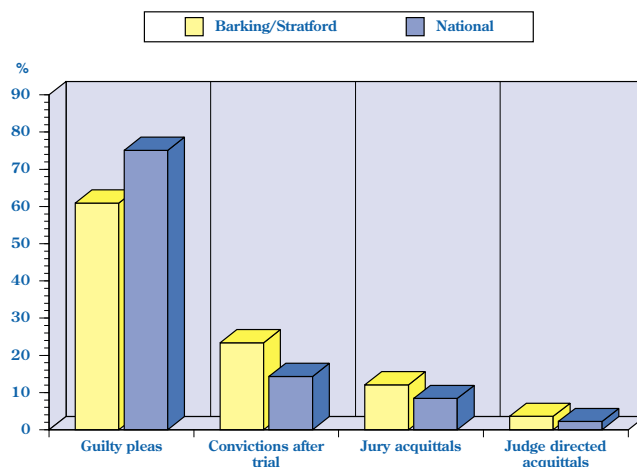
5 - Completed cases



	Barking/Stratford		National	
	No.	%	No.	%
Trials (including guilty pleas)	752	82.2	80,743	87.4
Cases not proceeded with	127	13.9	8,680	9.4
Bind overs	11	1.2	1,567	1.7
Other disposals	25	2.7	1,404	1.5
Total	915	100	92,394	100

6 - Case results

	Barking/Stratford		National	
	No.	%	No.	%
Guilty pleas	469	60.9	61,863	75.1
Convictions after trial	180	23.4	11,754	14.3
Jury acquittals	93	12.1	6,910	8.4
Judge directed acquittals	28	3.6	1,851	2.2
Total	770	100	82,378	100



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

Judges	His Honour Judge Charles QC His Honour Judge King His Honour Judge Wilkinson
Magistrates' courts	Mr G Cawdron, Stipendiary Magistrate Mr D Johnson, Justice of the Peace, Chairman of Barking Magistrates' Courts Committee Mr B Cooper, Justice of the Peace, Chairman of the Barking Bench Mr A Whincup, Justice of the Peace, Chairman of the Stratford Bench Mr I Sayer, Justice of the Peace, Deputy Chairman of the Stratford Bench Mr G Norris, Justices' Chief Executive, Stratford Mr R Wright, Justices' Chief Executive, Barking
Police	Chief Superintendent J Boylin Chief Superintendent D West Chief Inspector A Latter Chief Inspector M Mitchell
Defence solicitor	Mr H Cohen Mr D Forbes Mr B Huber
Counsel	Mr A Jafferjee Mr S Mayo
Probation Service	Mr P Baker, Assistant Chief Probation Officer
Victim Support	Ms S Johnson

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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