

**THE INSPECTORATE'S REPORT**  
*on*  
**THE BIRMINGHAM BRANCH**  
*of*  
**CPS MIDLANDS**

# Birmingham Branch



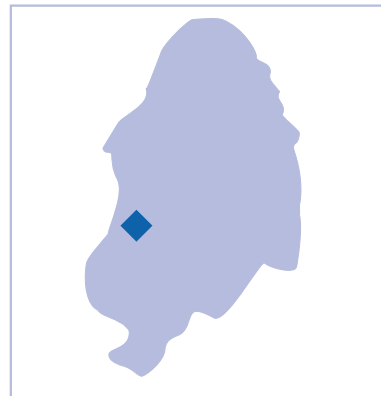
**BRANCH OFFICE**

◆ Birmingham

**COURTS COVERED**

Magistrates' Court  
Birmingham  
Sutton Coldfield

Crown Court  
Birmingham



REPORT ON THE INSPECTION OF THE CPS BIRMINGHAM BRANCH

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## INTRODUCTION

- 1.1 This is the Crown Prosecution Service Inspectorate's report about the quality of casework in the Birmingham Branch of CPS Midlands (as it was until 31 March 1999).
- 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 Birmingham Branch is in CPS Midlands Area and has its offices at Birmingham. On the 15 February 1999, it employed 135.7 staff (the Branch Crown Prosecutor (BCP), three special casework lawyers (SCLs) and 44.1 other prosecutors; three caseworker managers and 58.8 other caseworkers; a Branch office manager and 24.8 other administrative staff).
- 1.5 The Branch comprises three teams. The Central team (16.8 lawyers and 22.1 caseworkers) is responsible for the prosecution of cases from three police Operational Command Units (OCUs) in northern Birmingham. The East and Sutton Coldfield team (15 lawyers and 17.8 caseworkers) is responsible for the prosecution of cases from three OCUs covering eastern Birmingham and Sutton Coldfield. The South team (12.3 lawyers and 18.9 caseworkers) is responsible for the prosecution of cases from three OCUs in southern Birmingham. All the teams prosecute cases at Birmingham Magistrates' Court and the East and Sutton Coldfield team also prosecutes cases at Sutton Coldfield Magistrates' Court. Each team is also responsible for Crown Court cases originating from its police divisions.
- 1.6 The team of five inspectors visited the Branch between 15 and 19 February 1999 and between 1 and 5 March 1999. During these periods, we observed 20 CPS advocates in the magistrates' courts at Birmingham and Sutton Coldfield and in the youth court at Birmingham. We also observed CPS caseworkers and prosecuting counsel in the Crown Court at Birmingham.

## CONCLUSIONS AND RECOMMENDATIONS

- 2.1 The Branch is a recent amalgamation of three former branches and has a very large caseload. It operates in the difficult environment of a large city. At the time of our visit, both the West Midlands Police and the CPS were undergoing major changes. There is a high turnover of junior staff. All these factors contribute to stressful working conditions. There was often a backlog of correspondence and many of the processes of case preparation were dealt with late.
- 2.2 Most casework decisions were correct, although some could have been taken earlier. Despite the pressures, prosecutors must ensure that they prepare cases carefully and that they develop their expertise in the Crown Court. Most advocacy was satisfactory and some very competent.
- 2.3 The Branch has many dedicated and committed staff, the great majority of whom often work late in the evenings and at weekends. The BCP and his senior managers have a very clear understanding of the problems that a new Branch of this nature faces and have already taken action to improve performance in many respects.
- 2.4 To assist the Branch in improving its casework, we recommend that:
  - i the BCP should ensure that:
    - prosecutors record all advice given by telephone;
    - a copy of the advice is linked to the case file, where a prosecution results; and
    - where possible, prosecutors review cases on which they have advised (paragraph 4.7);
  - ii Prosecution Team Leaders (PTLs) should set and follow up action dates to ensure that advice is provided promptly (paragraph 4.14);
  - iii prosecutors should ensure that files are reviewed at the earliest possible opportunity, and that the date of review is recorded on the file (paragraph 5.9);
  - iv the BCP should ensure that prosecutors and PTLs contribute fully to the analysis of failed

- cases, and that the whole Branch learns from its cases (paragraph 5.45);
- v the BCP, together with the Area managers, should ensure that there is a structured and timely system for training junior caseworkers and administrative staff (paragraph 6.4);
- vi the BCP should ensure that advance information is provided to the defence at the earliest possible opportunity (paragraph 6.9);
- vii the BCP should arrange refresher training for Branch staff to ensure that:
- prosecutors consider the unused material fully, and properly endorse their comments;
  - prosecutors respond promptly to defence requests for information;
  - prosecutors deal correctly with sensitive material and mark the file appropriately;
- and that he discusses with police supervisors, arrangements to ensure that schedules are always supplied to the Branch, and that they contain sufficient information (paragraph 6.17);
- viii Branch managers should ensure that :
- custody time limits are always calculated immediately after the first occasion on which the defendant is remanded in custody; and
  - prosecutors make accurate file endorsements about custody time limits to distinguish the remand status of each defendant (paragraph 6.25);
- ix prosecutors should ensure that cases are carefully analysed to ensure that all the necessary evidence has been received and is included in the committal bundle, and to assess whether a prosecution remains appropriate (paragraph 6.41);
- x the BCP should develop a policy governing the reinstatement of cases discharged by the courts which takes account of existing CPS policy for comparable situations (paragraph 6.44);
- xi the BCP should take urgent steps to improve the proportion of committal papers that are served within CPS target timescales (paragraph 6.45);
- xii 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 6.49);
- xiii Branch managers should ensure that instructions are sent to counsel within the targets set by the CPS/Bar standard (paragraph 6.52);
- xiv the BCP should seek to provide prosecutors with the opportunity to attend the Crown Court, to conduct bail applications and to assist at plea and direction hearings (PDHs), in order to develop their expertise in handling Crown Court cases (paragraph 6.58);
- xv caseworkers should record action-dates, to improve timely compliance with directions at PDHs, and they should also ensure that their actions are recorded on the file so that, when necessary, the court can be fully informed about the reasons for any non-compliance (paragraph 6.61);
- xvi the BCP should introduce systems to improve the quality of:
- the endorsements about events in court;
  - the endorsement of actions taken in the preparation of Crown Court cases; and
  - the arrangement of papers, particularly in Crown Court files (paragraph 6.67);
- xvii the BCP should seek to provide prosecutors in Birmingham Magistrates' Court with administrative support, as soon as resources permit (paragraph 7.3);
- xviii Branch managers should monitor the performance of agents in the magistrates' courts in order to improve their performance in court and the quality of their file endorsements (paragraph 7.8);
- xix the BCP should continue to liaise with representatives of chambers, in order to increase the percentage of cases in which counsel originally instructed attends the PDH, the trial and the sentencing hearings (paragraph 7.12).

## THE INSPECTION

- 3.1 In the year to 31 December 1998, the Branch dealt with 34,809 defendants in the magistrates' courts and 3,675 defendants in the Crown Court. In a further 1,065 cases, advice was given to the police before charge.
- 3.2 The inspection team examined a total of 574 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 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 (3%) was significantly below the national average (4.2%). Prosecutors told us that some are submitted unnecessarily, however. Police supervisors do not always check cases and some are submitted simply for prosecutors to confirm the police view. We were also told that many cases do not contain sufficient information for prosecutors to make a decision.
- 4.2 We examined 12 cases in which pre-charge advice had been given to the police. Two were inappropriately submitted. In one, the evidence of identification was clearly insufficient. The other concerned a dangerous dog, which the owner had already destroyed: police supervisors could have decided that it was not in the public interest to proceed.
- 4.3 Prosecutors used to attend Rose Road police station to give advice. The scheme targeted cases that were likely to be committed to the Crown Court, in order to improve the quality and timeliness of their preparation. Although the scheme has not formally ended, prosecutors no

longer attend. The Branch did not see the expected benefits and could not justify the commitment of resources.

- 4.4 In December 1998, the CPS Midlands Area reached agreement with West Midlands Police about the types of case to be submitted for advice. The agreement also establishes standards for the contents of files and the quality and promptness of advice. At the time of our visit, it was too early to assess its effectiveness.
- 4.5 The three teams, which used to be in different Branches, have different systems for recording informal advice which is given over the telephone. Whilst most is included in the Branch's performance indicators, some staff seemed unsure of the systems.
- 4.6 Where advice results in a prosecution, a copy of the advice is not always linked to the prosecution file, nor is the prosecution file always allocated to the prosecutor who gave the advice.
- 4.7 **We recommend that the BCP should ensure that:**
  - **prosecutors record all advice given by telephone;**
  - **a copy of the advice is linked to the case file, where a prosecution results,; and**
  - **where possible, prosecutors review cases on which they have advised.**

### Quality of advice

- 4.8 PTLs allocate advice cases. An appropriate prosecutor deals with most specialist cases. For example, the BCP deals with, or supervises the provision of advice about, all road traffic offences where there has been a death. Youth files are not always allocated to youth specialists, however, although the specialists assist their colleagues if necessary.
- 4.9 We agreed with the advice given in 11 of the 12 cases that we examined. The advice was usually carefully reasoned. Most was hand-written to overcome time constraints. We found some were difficult to read but we understand steps are being taken to improve typing services.
- 4.10 In the other case, two defendants were alleged to have passed forged bank notes. The evidence was not complete. Although the prosecutor asked some pertinent questions, he failed to see

other lines of enquiry and advised that the case should not proceed, even though he had not received the further information that he had requested. In another case, concerning a dangerous dog, we agreed with the advice that the case should not proceed, but the prosecutor had misunderstood the evidence, and appeared to make her decision conditional on the payment of compensation.

- 4.11 Although it is no longer a national requirement, PTLs continue to monitor the quality of their prosecutors' advice, assessing three cases from their teams each month. They include their findings in a monthly report to the BCP.

### Timeliness of advice

- 4.12 Advice was provided within the CPS' target timescale of 14 days from receipt of an adequate file in seven out of 12 cases (58.3%) that we examined. It was only one day late in two of the others, and in the third, it was six days late. In a further two cases, we could not tell when it was given.
- 4.13 The Branch's own figures show that, in the quarter ending 31 December 1998, only 41.4% of advice was provided within the CPS' target. The previous quarter's figure was 48%. These low figures are partly explained by Branch staff measuring timeliness from receipt of an initial advice file, even when it does not contain sufficient information to enable prosecutors to advise. Our own assessment (58.3%) was measured from receipt of a satisfactory file. Nevertheless, Branch managers could do more to ensure the prompt provision of advice. They do not set dates on which prosecutors should be reminded about outstanding requests for advice. Prosecutors also told us that delays sometimes occur in the registration of files.
- 4.14 **We recommend that PTLs should set and follow up action dates to ensure that advice is provided promptly.**

### Advice from counsel

- 4.15 It is rare for Branch prosecutors to seek advice from counsel before charge. The BCP authorises any requests, which are usually confined to larger cases that are handled by the SCLs. We did not see any examples of counsel's pre-charge advice, nor any cases in which it would have been appropriate.

## REVIEWING CASES

### Quality of review decisions

- 5.1 Under the Prosecution of Offences Act 1985, the CPS is required to review every case it deals with in accordance with the Code for Crown Prosecutors (the Code). It must establish whether there is sufficient evidence for a realistic prospect of conviction, and whether it is in the public interest to prosecute the matter.
- 5.2 The quality of decision-making is good. Many files were well reviewed. Prosecutors identified any weaknesses in cases and promptly requested further evidence where necessary. Many cases were reviewed again when additional evidence was received. In some, however, we could not find any evidence that prosecutors had re-assessed the case.
- 5.3 We inspected the quality of the review decision in 88 cases, covering cases in the magistrates' courts and the Crown Court. We agreed with the assessment of the evidence in 86 (97.7%). We disagreed with the decision to proceed in one. The defendant was charged with being drunk and disorderly, although there was no evidence that he was disorderly. In the remaining case, we were unable to make an assessment because the witness statements were missing from the file.
- 5.4 We agreed with the application of the public interest test in all 87 cases in which there was sufficient information to make an assessment.
- 5.5 The method of allocation of review files varies between the teams. On one team, the PTL allocates all except minor motoring cases. On the other two teams, the PTLs allocate the serious and specialist cases, while the caseworker manager divides other cases between the prosecutors in rotation. We are satisfied that prosecutors handled cases appropriate to their experience and expertise. SCLs deal with some of the Branch's very large or serious cases.
- 5.6 The BCP and PTLs no longer systematically monitor the quality of review. The PTLs conduct court two or three times a week, however, and regularly see the quality of their prosecutors' work.

### Timeliness of review

- 5.7 National guidelines provide that cases should be reviewed within seven days of receipt of a file from the police. The Branch's figures show that, in the quarter ending 31 December 1998, this was achieved in 63.8% of cases.



5.8 We checked the timeliness of review in 48 cases that we examined. Twenty-four (50%) were not reviewed in time. In a further ten (20.8%), the prosecutor did not record when the file was reviewed. Many cases were reviewed after the first hearing. Some had been in court several times before they were reviewed. Late review can lead to much unnecessary work and causes adjournments at court.

**5.9 We recommend that prosecutors should ensure that files are reviewed at the earliest possible opportunity, and that the date of review is recorded on the file.**

5.10 The ability of prosecutors to review cases promptly is affected by the quality and timeliness of files received from the police. The police and Branch managers monitor the quality and timeliness of police files through joint performance management (JPM). This is a system under which the CPS and the police jointly collect information about aspects of their activities. Prosecutors record their assessment of a file on a form known as the TQ1.

5.11 The timeliness and quality of files varies between the OCUs. The figures for December 1998 show that only between 21% and 62% of all files were satisfactory in both respects. Between 12% and 51% did not contain sufficient evidence for the case to proceed to the next step. Overall, between 50% and 78% are sent within the time guidelines.

5.12 The BCP provides a monthly report about the figures for his staff and the police. The information is used in meetings with the police to identify areas of particular concern.

5.13 In December 1998, only 57.5% of the forms TQ1 were returned to the police. The West Midlands Police is currently undergoing a major restructuring. Although the police accept the validity of the figures which are produced, experience shows that the timeliness and quality of files received by the Branch are likely to suffer until the new arrangements settle down. The BCP will wish to ensure that the rate of return of TQ1s improves considerably in order to maintain confidence in the data for each of the smaller constituent parts of the new police structure.

**Selection of appropriate charge and charging standards**

5.14 The original police charges required amendment in 21 of the 88 cases (23.7%) that we examined. Reviewing prosecutors amended 17 (81%) of these

at initial review, all of them correctly. In seven of these cases, prosecutors had to add charges properly to reflect the defendant's conduct.

5.15 The CPS and the police nationally have agreed charging standards for assaults, public order offences and some driving offences. The standards were applied correctly in 54 of the 55 relevant cases that we examined.

5.16 Representatives of other criminal justice agencies also told us that the standards were generally applied well. In a few cases, however, prosecutors did not take sufficient account of the surrounding circumstances of the offence. For example, we were told of a case in which the victim was kicked while he was on the ground, but suffered only minor bruises and cuts. The prosecution charged common assault, which the magistrate on hearing the facts, refused to accept. He eventually directed that the case should be heard at the Crown Court on the more serious charge of assault occasioning actual bodily harm, contrary to section 47, Offences Against the Person Act 1861. The assaults charging standard has recently been revised to encourage prosecutors to give more weight to aggravating features such as those applying in this case.

5.17 Occasionally prosecutors select charges that do not properly reflect the circumstances of the case. For example, they sometimes rely on public order charges (particularly affray) instead of substantive assault charges. We were also told about other cases in which prosecutors pursued charges which were likely to make presentation of the case more difficult. For example, in one case, following an argument at school, a youth re-entered the school and threw a stone at another. He was charged with aggravated burglary rather than with inflicting grievous bodily harm contrary to section 20, Offences Against the Person Act 1861. In another case that we saw at the Crown Court, the defendant, who was drunk, grabbed one of a group of girls standing outside a shop, and dragged her down the street for about 20 feet. He was unnecessarily charged with kidnapping as well as assault occasioning actual bodily harm under section 47, Offences Against the Person Act 1861.

**Discontinuance**

5.18 The Branch's discontinuance rate (13.4%) is above the national average (12%).

5.19 We examined 298 cases which were stopped by the prosecution in the magistrates' courts during



November 1998, to ascertain the reason for termination, and to find out whether the police were consulted about, and agreed with, the decision. One hundred and one (33.9%) were formally discontinued by notice under section 23, Prosecution of Offences Act 1985; one hundred and three (34.5%) were withdrawn in court; and the prosecution offered no evidence in 94 (31.5%).

- 5.20 One hundred and five cases (35.2%) were terminated because there was insufficient evidence to proceed, and 60 (20.1%) because it was not in the public interest to prosecute. In 82 (27.5%), the prosecution was unable to proceed; and in 38 (12.7%), the relevant driving documents were produced. The reason for termination was unclear in the remaining 13 cases.
- 5.21 Of the 105 cases stopped because there was insufficient evidence, 36 (34.3%) were attributable to deficiencies in identification evidence. Twenty-four of these concerned minor motoring offences in which the officer was unable to confirm the identity of the defendant. Thirty-nine (37.1%) were terminated because an essential legal element was missing and 30 (28.6%) were stopped due to deficiencies in other evidence.
- 5.22 Of the 60 cases terminated because it was not in the public interest to proceed, 35 (38.3%) were stopped due to the likelihood of a nominal penalty being imposed. In 31 of these, the defendant was already serving a prison sentence, or had been recently sentenced on other matters. In seven cases (11.7%), the prosecutor recommended that the defendant should be cautioned. Eight others (13.3%) concerned minor offences or cases in which the harm had been put right. One case was stopped due to the length of time since the commission of the offence, and in four others the case was not proceeded with due to the likely effect of a prosecution on the defendants' health. Five other cases (8.3%) had been dropped for a variety of public interest reasons.
- 5.23 Of the 82 cases in which the prosecution was unable to proceed, 38 (46.3%) were terminated because prosecution witnesses refused to give evidence, and 16 (19.5%) because the witnesses failed to attend court. We deal with witnesses later in our report at paragraphs 6.32 - 6.37. In 23 (28.7%) the prosecution case was not ready and had to be withdrawn at court. Sixteen of these were scheduled for committal to the Crown Court, but either the police had not delivered a file of evidence until shortly before the hearing, or essential evidence was still awaited. Such a high

level of discharges in such circumstances is unsatisfactory. In the remaining five cases, the offences had been taken into consideration at another court.

- 5.24 The police were consulted in 192 cases (64.4%). They did not object to the proposal in any of them. In 61 of the others (20.5%), the reason for termination became apparent only at the court hearing. We could not tell why the police were not consulted in the remaining 45 cases.
- 5.25 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. The reason for the termination was clearly marked on the file. The decision in all cases was made at the earliest opportunity.

## Judge ordered and judge directed acquittals

- 5.26 In the year ending 31 December 1998, 264 cases were not proceeded with in the Crown Court. This represents 9.8% of the Branch's caseload, which is slightly 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).
- 5.27 We examined 53 judge ordered acquittals and disagreed with the decision to proceed in only three of them. In one, the defendant was charged with a number of offences, including dangerous driving. The identification evidence was unreliable. Not only was it based on a brief observation, in difficult circumstances, but also when the officer spoke to the defendant a short time later, he did not recognise him as the driver until some minutes had elapsed.
- 5.28 In another case, the defendant was charged with theft. He sold property which had been stolen from a warehouse. There was nothing to connect him with the original theft of the property. He also gave a plausible explanation for his possession of it, which made dishonesty difficult to prove. The reviewer's assessment of the case was simply that the magistrates would have to decide whom to believe. The case was dropped at the Crown Court when counsel advised that the evidence was insufficient.
- 5.29 In the third case, the defendant was charged with indecent assault. There was unused material which seriously undermined the prosecution case. The material was mentioned in the police

summary, and included in the schedule of unused material disclosed to the defence. However, the prosecutor did not examine it until the defence asked to see it. As a result, counsel and a prosecutor decided that the case could not proceed.

- 5.30 Twenty-one cases (39.6%) did not proceed because witnesses refused or failed to give evidence. In 20 of them, the relevant witness was the victim. Eight cases were dropped because of a conflict of evidence and the witnesses were considered unreliable in five. We discuss the question of witness failure later in our report (see paragraphs 6.32 - 6.37). In seven cases, the prosecution was likely to result in only a small or nominal penalty, usually because the defendant had recently received a term of imprisonment.
- 5.31 In the same period, there were 48 cases in which the judge directed an acquittal after the trial had started (judge directed acquittals). This represents 2% of the Branch's caseload compared with 2.2% nationally.
- 5.32 We examined seven judge directed acquittals and agreed with the original decision to proceed in each of them. In five, witnesses failed to give evidence according to their initial statements. In another, the victim refused to give evidence. The remaining case failed because the identification evidence was shown to be unreliable.

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

- 5.33 In the year ending 31 December 1998, 33 trials were stopped by the magistrates at the close of the prosecution case. This is 0.2% of the Branch's caseload, which is the same as the national average.
- 5.34 We examined nine of these cases. We disagreed with the decision to proceed in three (33.3%). In one, two youths were charged with going equipped for theft. There was no evidence of their intention. In the second case, the defendant was charged with allowing himself to be carried in a motor vehicle knowing that it had been taken without the owner's consent. The only evidence that he knew that it had been taken without consent was a note in the police interview with the defendant that "he claimed that he didn't notice that the ignition/steering column was damaged". There was no evidence of the damage, however. In the third case, the defendant was charged with a

serious assault on a doorman during a fight outside a nightclub. Proper analysis of the evidence would have shown a number of inconsistencies between the witnesses.

- 5.35 In all these cases, the deficiencies in the evidence were apparent from the outset and they should have been stopped earlier. In two other cases, the reviewing prosecutor noted problems with the evidence, but nevertheless decided to proceed. We agreed with those decisions. In the four other cases, witnesses failed to give oral evidence in accordance with the statements that they had given to the police.
- 5.36 In the year ending 31 December 1998, the Branch recorded that the magistrates discharged 40 defendants because there was insufficient evidence to commit them to the Crown Court for trial. There were five shown in the performance indicators for the period from which our sample was drawn. Only one was a discharged committal properly so called. The other four should have been recorded as cases terminated because the prosecution was not ready to proceed. The BCP will wish to ensure that such cases are properly recorded in the Branch's performance indicators. Otherwise, Branch managers are presented with a misleading picture of the Branch's performance.
- 5.37 We agreed with the initial decision to prosecute in the case which was properly recorded as a discharged committal. The defendant had previously been discharged twice, however, because the case was not ready to proceed. The court ruled that the third prosecution was an abuse of its process.

### **Mode of trial**

- 5.38 We agreed with the prosecutors' recommendations about mode of trial in all 55 relevant cases that we examined. Representatives of other criminal justice agencies also told us that prosecutors follow the Lord Chief Justice's guidelines, and that prosecutors usually provide sufficient information for the magistrates to decide where a case should be tried. Prosecutors recorded the relevant considerations, however, in only 42 of the 55 cases (76.4%).

### **Bail**

- 5.39 We were told that prosecutors make independent decisions whether to seek a remand in custody. They substantiate their applications for custody, or for the imposition of bail conditions, although

they do not always have enough information from the police.

- 5.40 Our own analysis confirmed this view. We examined 11 cases in which the defendant appeared in custody. We agreed with the decision to oppose bail in all of them. The grounds for the prosecution's application were recorded on the file in eight (72.7%). The reasons given by the court were endorsed in nine (81.8%). We comment further about the standard of file endorsements in paragraphs 6.62 - 6.67.

### Review endorsements

- 5.41 At Birmingham Magistrates' Court, many cases are transferred between courtrooms on the day of the hearing. Prosecutors often have little time to consider a file in detail. It is important, therefore, that the decisions of the reviewing prosecutor, who has had more time to examine the case, are endorsed clearly.
- 5.42 Some initial review endorsements were very good, showing the basis on which decisions were made and identifying any missing evidence. In some cases, we could see that any additional evidence was also assessed. Many files, particularly in fast track cases, are delivered to the Branch office, or even to the court, on the day of the first hearing. We were pleased to note that most of these also contained a satisfactory review note.
- 5.43 In other cases, however, endorsements were poor, or absent altogether. Some were illegible. The reviewing prosecutor's assessment of the evidence was endorsed satisfactorily in 68 of the 88 cases (76.4%) that we examined. The public interest factors were fully set out in 62 cases (71%). We make recommendations about file endorsements at paragraph 6.67.

### Learning from experience

- 5.44 Caseworkers complete adverse case reports in judge ordered and judge directed acquittals. The report and the file are returned to the reviewing prosecutor for his/her comments. The PTLs summarise the reports for the BCP's monthly performance report, which is circulated to all staff and the police. We found, however, that in many cases, prosecutors did not see the reports or did not comment on them. There was little input from the PTLs on the lessons to be learned from the cases. At the time of our visit, the production of the monthly performance reports had been delayed and staff did not consider them in detail.

- 5.45 We recommend that the BCP should ensure that prosecutors and PTLs contribute fully to the analysis of failed cases, and that the whole Branch learns from its cases.**

- 5.46 Each team meets every month. The meetings are minuted. Since the amalgamation of Branches in October 1998, the meetings have concentrated on systems, in order to achieve consistency across the Branch. They rarely address legal issues or casework points. Most staff feel able to contribute to the discussions, and solutions to problems are usually found. We were told, however, that some improvements are not sustained, including the quality of file endorsements.
- 5.47 A prosecutor prepares a weekly bulletin of recent cases and legal articles, which is circulated to all relevant staff. There is a programme of national training, which is delivered to Branches in the Area. Occasionally, other training sessions are arranged. For example, when we visited the Branch, staff were about to receive refresher training in the use of performance indicators.

### PREPARING CASES

- 6.1 There is a very high turnover of junior caseworkers. Area managers have devised an induction course for new caseworkers and administration staff, but some staff are unable to attend it until several months after their arrival, when there are sufficient trainees to make the course viable. Branch systems' manuals have been developed to amalgamate the practices of the two previous Branches. We found that many staff were not familiar with them, however, and some junior staff told us that they found them unhelpful. Most training is given on-the-job, some by staff who are relatively new, and not fully trained themselves.
- 6.2 The Branch has a very large throughput of files. The police frequently send further evidence, or other documents, to the Branch in a piecemeal fashion. These factors contribute to the late registration of files, and severe delays in linking police papers and correspondence from other agencies to the files. This has a significant impact on all stages of case preparation.
- 6.3 We were pleased to note that the BCP and Area managers intend to adjust the induction programme to deliver key aspects of training to each new member of staff on arrival.
- 6.4 We recommend that the BCP, together with the Area managers, should ensure that there**

**is a structured and timely system for training junior caseworkers and administrative staff.**

### Advance information

- 6.5 National guidelines provide that advance information should be served on the defence within seven days of receiving a file from the police, or learning the identity of the defence solicitor. Branch records for the quarter ending 31 December 1998 show that it was served within the target timescale in only 50.5% of cases. Our analysis revealed that it had been served promptly in 32 of the 66 (48.5%) relevant cases that we examined. We could not tell when it was served in 19 (28.8%) of the remaining cases.
- 6.6 Defence solicitors frequently request advance information immediately after attending the police station when the defendant has been arrested. The court also informs the Branch, via the police, of the identity of the defendant's solicitor when there has been an Early Administrative Hearing (EAH) but this may take time to filter through. Despite the Branch having access to the court computer, we were told that the procedures for identifying cases and detail about solicitors details is so time consuming as to be impracticable. This is of limited significance since Branch staff, in any event, rarely use this knowledge to serve advance information before the next court hearing. Some staff told us that the practice of the Branch was to return letters from defence solicitors if the police have not yet provided a file. The BCP disputes this and assures us that the only circumstance in which letters are returned to the defence is when the information provided in a defence letter is inadequate and the detail provided prevents an effective tracking of the file on the Branch or with the police. In those circumstances the letter is returned to the defence solicitor with a covering pro-forma letter requesting that the correspondence be returned containing the requested information. The BCP will wish to ensure that all staff do follow the correct procedures; we would disapprove of the sort of practice described by staff referred to above.
- 6.7 Caseworkers prepare advance information after prosecutors have reviewed the case. Many files are received late from the police, or are reviewed late. Frequently, caseworkers do not have time to prepare the information before the first hearing. This sometimes results in prosecutors spending valuable time copying it themselves when preparing for the next day's court.

6.8 Cases are frequently adjourned for advance information to be provided. Even then, it is often served at the next hearing, instead of between the hearings. This sometimes causes another adjournment for the defence to consider the material. It is essential that the Branch plays its part in ensuring that cases are ready to proceed as soon as possible.

**6.9 We recommend that the BCP should ensure that advance information is provided to the defence at the earliest possible opportunity.**

6.10 The Branch receives requests for advance information in cases in which the law does not require the prosecution to provide it. The BCP has set out guidelines about when it may be provided. Prosecutors have some discretion, and usually provide advance information when the defence can justify their request. Some prosecutors were unaware of the policy, however, and there appears to be some inconsistency in its application. The BCP will wish to remind all prosecutors about the policy and ensure that it is applied consistently.

### Unused and sensitive material

- 6.11 All prosecutors and caseworkers received training jointly with the police on the disclosure provisions of the Criminal Procedure and Investigations Act 1996 when it was first introduced. We are not satisfied, however, that the statutory procedures are complied with properly and in a manner which fulfils the purpose of the legislation.
- 6.12 In the magistrates' courts, the schedule of unused material was properly endorsed and signed in only five out of 32 relevant cases (15.6%). In Crown Court cases, only three out of 36 schedules (8.3%) were properly endorsed and signed. Even where the schedules were signed, there was often nothing to show that the material had been properly considered. Prosecutors told us that the police did not give sufficient information about the material for them to make a judgement. We saw only one case, however, where the prosecutor had returned the schedule to the police for correction.
- 6.13 There were other problems with the handling of unused material. For example, several files did not have a copy of the schedules, although they had apparently been sent to the defence. In one case, although disclosure had apparently been made, the defence requested it two months later. Branch staff did not respond. In another case, Branch staff did not respond to a defence case statement, although a prosecutor had endorsed the schedule



that disclosure could be made “only in matters pertinent to the case”. We also saw a disclosure letter which was dated eight weeks before it was served at committal. In the same case the defence wrote three times in a four-month period to request access to the material, but the case had to be re-listed for the court to order disclosure.

- 6.14 Some representatives of other criminal justice agencies told us that primary disclosure was sometimes made late. In our sample of cases, however, timeliness was acceptable. In the magistrates’ courts, the schedules were served on the defence in time in 26 out of 32 relevant cases (81.2%). In the Crown Court, they were served in time in 33 out of 36 cases (91.7%). We could not tell when the schedule was served in the remaining cases.
- 6.15 On the other hand, we saw three cases during our observations at court, in which the defence had requested a hearing to seek an order for disclosure of material. Branch staff had asked the police for the material. We were told that they do not always record any reminders to the police, however, so that the court cannot be provided with a complete history of their efforts to obtain the material.
- 6.16 Sensitive material was also dealt with unsatisfactorily. The schedule was properly endorsed and signed in only three out of eight cases (37.5%). In a further three cases, the schedule was not on the file. Two cases did not have a schedule of sensitive material where one would have been expected: the prosecutor did not request it.
- 6.17 **We recommend that the BCP should arrange refresher training for Branch staff to ensure that:**
- **prosecutors consider the unused material fully, and properly endorse their comments;**
  - **prosecutors respond promptly to defence requests for information;**
  - **prosecutors deal correctly with sensitive material and mark the file appropriately;**
- and that he discusses with police supervisors, arrangements to ensure that schedules are always supplied to the Branch, and that they contain sufficient information.**
- 6.18 We were satisfied with the arrangements for the secure storage of sensitive material. All Branch staff to whom we spoke were aware of the arrangements.

### Custody time limits

- 6.19 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.
- 6.20 We examined ten custody time limit cases. The expiry dates were correctly calculated and marked on the front of the files in all of them, although the review dates were not marked on any.
- 6.21 Branch staff monitor the time limits using a log which records the details of each defendant in custody. They do not rely on the computerised case tracking system, but use a nationally produced ready reckoner to calculate the review and expiry dates.
- 6.22 The monitoring system for magistrates’ courts cases is maintained by an experienced caseworker on each team. They are required to submit a weekly report to their managers confirming that all necessary action has been taken. The system for Crown Court cases is maintained by senior caseworkers. Spot checks are carried out by the BCP and PTLs on the systems for both courts.
- 6.23 The systems seemed robust and staff were aware of the importance of monitoring expiry dates. The prosecution needed to apply to extend the time limit in one of the Crown Court cases that we examined. The appropriate procedures were properly followed.
- 6.24 Although file endorsements in relation to custody time limits were usually adequate, some were confusing. On two files it appeared that action to monitor the custody time limit had not been taken until the second remand hearing, although the correct date was then calculated. Another case appeared not to have been monitored as a custody case until it reached the Crown Court, although the defendant was in custody during the magistrates’ court proceedings. In one case that we examined, two defendants had been remanded on bail for almost a year before one failed to attend court. Subsequent file endorsements did not always indicate the defendant to which they related so that we could not verify the date on which one of the defendants was first remanded in custody. We also noted that endorsements about custody were confusing in other cases, particularly those involving more than one defendant.

**6.25 We recommend that Branch managers should ensure that :**

- **custody time limits are always calculated immediately after the first occasion on which the defendant is remanded in custody; and**
- **prosecutors make accurate file endorsements about custody time limits to distinguish the remand status of each defendant.**

**Summary trial preparation**

- 6.26 The magistrates' courts at both Birmingham and Sutton Coldfield hold Early Administration Hearings (EAHs), which the defendant is required to attend two weeks after charge. Detailed service level agreements set out what is expected from each agency following these hearings.
- 6.27 At the EAH, the defendant is asked to indicate his intended plea. The court makes an appointment for him to see a solicitor. If he pleads not guilty the defendant is bailed to a pre-trial review (PTR) hearing four weeks later. In the meantime, the police should provide the Branch with a full file of evidence in time for it to be reviewed and for statements to be served on the defence before the PTR. Although the system started about six months ago, it has not been very effective in reducing delays.
- 6.28 Representatives of other criminal justice agencies told us that Branch staff do not always take the necessary action for the PTR to be effective. Prosecutors told us that the police frequently did not provide files in time for review. The JPM figures for December 1998 show that only between 2% and 22% of fully satisfactory full files (which include files for PTRs) were received within the time guidelines. In a PTR court that we saw, three files were missing. As a result, cases are often reviewed and prepared for trial after the PTR. In addition, at Birmingham Magistrates' Court trials are listed up to five months after the PTR. In these circumstances, it is easy for all parties to lose any sense of urgency. Discussions have been held to try and make the system work better. Branch managers must continue to play their part in developing a greater commitment from all parties to make the system effective.
- 6.29 Generally, summary trials are prepared satisfactorily. Prosecutors complete a trial review form. Branch staff advised the police promptly

which witnesses to warn in 31 out of 32 relevant cases that we examined. Prosecutors correctly identified the statements which were likely to be agreed and could be served under section 9, Criminal Justice Act 1967 in all relevant cases. Although these statements were often not served in time for the PTR hearing, they were served well before the trial date in 29 of the 30 relevant cases.

- 6.30 Prosecutors are aware of the procedure for agreeing admissions of fact under section 10, Criminal Justice Act 1967. Written admissions are not usually prepared for the PTR, but representatives of the court told us that they were sometimes used at the trial hearing. We did not see any example in the cases that we examined.
- 6.31 As trials are listed so far ahead, the prosecutors now check the file one month before the trial date, to ensure that the case is ready.

**Witnesses**

- 6.32 Trials are often not effective, both in the magistrates' courts and in the Crown Court, because witnesses fail to attend court or refuse to give evidence. In November 1998, 44 cases (14.8%) of 298 terminated in the magistrates' courts were stopped because of these factors. Six concerned police witnesses who failed to attend court. In the Crown Court these factors accounted for 26 of the 53 cases (49.1%) which were not proceeded with in September, October and November 1998.
- 6.33 In some cases, witnesses are deterred from giving evidence. Branch managers and the police are committed to ensuring that the courts deal with witness intimidation. Although these cases are difficult to prosecute, we saw a number where there had been a successful prosecution.
- 6.34 Prosecutors also consider the use of section 23, Criminal Justice Act 1988. This 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. Its scope is narrow but we were given examples of its use in the Crown Court. Other methods are also used to protect witnesses, such as the provision of screens, or an application to the court for a witness to remain anonymous.
- 6.35 Trials in both the magistrates' courts and in the Crown Court often take place many months after the alleged offence. Many have to be adjourned. Witnesses are often told of the trial date, or the



new trial date, very shortly before the hearing. Sometimes they cannot be traced or are no longer prepared to give evidence. The BCP will wish to ensure that prosecutors or caseworkers check with the police at key stages in the preparation of cases, that witnesses are still willing to give evidence.

- 6.36 Senior caseworker managers attend meetings with the police and Crown Court staff to identify the reasons why trials are ineffective. Their discussions include common trends in problems with witnesses and ways of solving them. Their conclusions should also be used to help to reduce the number of cases dropped in the magistrates courts.
- 6.37 We were told that in some cases, it was obvious from an early stage that the evidence was weak and that witnesses may not appear. We saw some examples of this, in which the reviewing prosecutor had not given sufficient thought to the credibility or reliability of witnesses. For example, in one case, the defendant was charged with a serious assault. In his interview with the police he said that he had acted in self-defence when he was attacked with a baseball bat. There were many discrepancies in the evidence given by the victim and other witnesses, which the prosecutor did not note, and which were not resolved before the trial. The case was dropped only when the victim failed to attend the Crown Court twice.

### Committal preparation

- 6.38 National guidelines require committal papers to be served within 14 days of the receipt of a full file from the police. In custody cases the time is reduced to ten days. They were served in time in only 13 of the 34 cases (38.2%) that we examined. In two further cases, we could not tell when they were served. The Branch's own figures show that in the quarter ending 31 December 1998, only 21.7% were served in time. Most cases are served on the defence on the day of the committal and a further adjournment is required for the defence to consider the papers.
- 6.39 In many cases, the police provided the full file late. As we have already mentioned, in the quarter ending 31 December 1998, only 2% to 22% of fully satisfactory full files were received in time. The evidence is often received piecemeal. We saw a number of cases, however, where the papers were received in good time and the delay occurred on the Branch. For example, in one case the complete file was provided by the police at the outset, but was not served until seven weeks later. In another case, eight weeks had been allowed for preparation of the committal file. The file was not in court at the hearing. Five days later, the committal bundle was sent to the wrong solicitor. It was shown to the defence solicitor at the next court hearing and sent to him three days later.
- 6.40 Prosecutors or caseworkers often have very little time to prepare committal papers, both because they are received late from the police and the magistrates apply the time guidelines for committals strictly. Nevertheless, cases should be prepared carefully. Prosecutors told us that those prepared by caseworkers have to be checked in detail and sometimes prepared again. Caseworkers told us that they often have to correct mistakes made by prosecutors, sometimes without consulting the prosecutor. This leads to duplication of work. In spite of this, some cases are committed for trial in which the evidence is flawed. We saw and were told about examples in which the continuity of exhibits was missing, or documents were not properly produced. Some cases included inappropriate witness statements, which should have been treated as unused material.
- 6.41 We recommend that prosecutors should ensure that cases are carefully analysed to ensure that all the necessary evidence has been received and is included in the committal bundle, and to assess whether a prosecution remains appropriate.**
- 6.42 The Branch has a high committal rate (9.8%) compared with the national rate (6.9%). Caseworkers are not sufficiently involved before committal, and prosecutors do not always take sufficient interest after committal. Much work is done under pressure, with little opportunity to check the quality of work. The BCP will wish to review the preparation of these cases in the context of the CPS's current restructuring.
- 6.43 The magistrates apply the time guidelines for committals strictly. Many defendants are discharged because the case is not ready for committal. Some are recharged immediately and committed quickly to the Crown Court. Many cases are not re-submitted, however. Prosecutors told us that in other cases, if further evidence is forthcoming, the file is re-submitted for advice about whether the case should proceed. Some prosecutors did not seem clear about the criteria for a case to be reinstated. Representatives of the police told us that they were not always told

whether and why a case was not proposed to be re-instated. The BCP has described procedures which the Branch believes should keep the police informed and enable them to remedy deficiencies. They appear cumbersome but that is probably a consequence of the large volume of such cases and it is clear that they are not always effective. Clarity of approach and adherence to principle is vital in this context. The CPS does not have a policy to cater specifically for this scenario. It reflects poorly on the criminal justice system as a whole when cases proceed in this way. It is intrinsically wrong that there should have to be two sets of proceedings in relation to the same individual and the same conduct - and potentially unfair. It is wasteful of scarce public resources and, in the long term, likely to increase delay.

**6.44 We recommend that the BCP should develop a policy governing the reinstatement of cases discharged by the courts which takes account of existing CPS policy for comparable situations.**

**6.45 We recommend that the BCP should take urgent steps to improve the proportion of committal papers that are served within CPS target timescales.**

### Instructions to counsel

6.46 Prosecutors prepare nearly all instructions to counsel. The BCP has recently set a target that each trained caseworker should prepare two cases a month. The Branch uses the CPS's Crown Court Case Preparation Package. This produces a series of standard paragraphs, with free-text options for instructions to counsel, which should include a case summary and specific instructions relevant to the case.

6.47 We examined 36 Crown Court cases. Three did not contain a copy of the instructions to counsel. All included a short outline, however, which is prepared to assist the resident judge to allocate the case to an appropriate court. Many prosecutors considered this outline, or the police summary, to be an adequate explanation of the evidence and the issues in the case. Neither of these documents is designed to analyse the strengths and weakness of a case for the benefit of counsel.

6.48 Counsel should also be instructed about the acceptability of pleas to alternative offences or some of a series of offences. Instructions about the acceptability of pleas were included in only two of the seven relevant cases (28.6%). Many cases

are not prosecuted by the counsel originally instructed. They are often transferred to other counsel at short notice. It is important, therefore, that these matters are dealt with fully in counsel's instructions.

**6.49 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.**

6.50 The Branch's figures for the quarter ending 31 December 1998 show that 53.8% of counsels' instructions were sent within the timescales that have been agreed between the CPS nationally and the Bar. Eighteen of the 36 instructions (50%) that we examined were delivered in time. In a further seven (19.4%), we could not ascertain when they were sent. When instructions are late, counsel has little time to advise on the deficiencies that we have mentioned in paragraphs 6.47-6.49. The late delivery of instructions may also contribute to the high rate of returned briefs. (See paragraphs 7.11-7.12).

6.51 Some delays occur when the results of hearings in the magistrates' courts are recorded and while Branch managers select counsel. Branch managers should seek to expedite these processes to enable instructions to be sent to counsel earlier.

**6.52 We recommend that Branch managers should ensure that instructions are sent to counsel within the targets set by the CPS/Bar standard.**

### Quality of indictments

6.53 Most indictments are well drafted. Thirty-five of the 36 that we examined were satisfactory. Representatives of other criminal justice agencies confirmed our view. Only four of the 36 indictments (11.1%) were amended. Two amendments were to accommodate acceptable pleas of guilty. In the other two cases we could not ascertain the reason for the amendment. In our experience, these are good figures.

6.54 Caseworkers told us that they frequently corrected indictments, however, before they were lodged with the Crown Court or sent to counsel. Common errors include: defendants who had been discharged at the committal proceedings

remaining on the indictment; counts in the wrong order; courts wrongly joined in the same indictment; and minor errors about dates or spellings. Prosecutors, who draft most indictments, should take greater care so that caseworkers do not have to spend time correcting avoidable errors.

- 6.55 Indictments have to be lodged at the Crown Court within 28 days of committal. The date of lodging was recorded on only six of the 36 files (16.7%) that we examined. Senior caseworkers explained that the Branch keeps a separate register, which is signed by Crown Court staff when the indictment is lodged. They told us that the date should also be recorded on a form on each file. Caseworkers told us that Crown Court staff often query whether the indictment has been lodged. This information should also be recorded in the proper place on the front of the file jacket, to enable caseworkers to locate it quickly when the court seeks confirmation that the indictment has been lodged.

### The CPS in the Crown Court

- 6.56 All the Branch's cases are committed to the Crown Court sitting at Birmingham, which is a very busy court centre. PDHs are listed in several courts each day. Caseworkers cover PDHs individually and are also in court during most of the key stages of serious cases. In other cases they are usually responsible for assisting counsel in more than one courtroom, but they can generally be contacted if needed. Caseworkers received widespread praise from representatives of other criminal justice agencies in the Crown Court, for their experience and helpfulness.

- 6.57 Two prosecutors are qualified as higher court advocates. They prosecute cases which have been committed to the Crown Court for sentence. Other prosecutors rarely attend the Crown Court, however, because of their heavy commitments in the magistrates' courts and in preparing cases. They do not conduct bail hearings before a judge in chambers, nor do they attend PDHs to assist counsel when important decisions have to be made. They often have little to do with the conduct of cases once they are committed to the Crown Court. As a consequence they sometimes fail to appreciate the steps that need to be taken to prepare a case for the Crown Court and occasionally make unrealistic judgements about the cases (see paragraph 5.17).

- 6.58 We recommend that the BCP should seek to provide prosecutors with the opportunity to**

**attend the Crown Court, to conduct bail applications and to assist at PDHs, in order to develop their expertise in handling Crown Court cases.**

- 6.59 The directions made at PDHs were complied with in 15 of the 18 relevant cases (83.3%) that we examined. We were told, however, that compliance was often late and that some cases had to be listed by the defence for mention in order to obtain the information that the prosecution had been ordered to provide. We saw three such cases during our observations at court.

- 6.60 In many cases, Branch staff have to ask the police for information or material to comply with a direction. Caseworkers send a memorandum to the police to explain what is required. This is sent by fax in urgent cases. Caseworkers do not always record action dates to ensure prompt compliance nor do they routinely remind the police when action is due.

- 6.61 We recommend that caseworkers should record action-dates to improve timely compliance with directions at PDHs, and that they should also ensure that their actions are recorded on the file so that, when necessary, the court can be fully informed about the reasons for any non-compliance.**

### File endorsements and file contents

- 6.62 The standard of file endorsements about events in the magistrates' courts was satisfactory in 76 of the 88 cases (86.4%) that we examined. In the Crown Court the standard was better; 34 of the 36 files (94.4%) were satisfactorily endorsed.

- 6.63 We appreciate that some courts are very busy and it is sometimes difficult immediately to endorse files comprehensively. We saw some files, however, where: the handwriting was difficult to read; results of cases or adjournment dates were not shown; it was not clear to which defendant an endorsement referred. This makes it difficult for caseworkers to keep track of cases and to record case results accurately.

- 6.64 Files should contain records of various actions taken in the office to prepare cases. Crown Court files are rarely endorsed in the correct place with the details of these actions or their timing. For example, in many cases we could not tell whether, or when, the indictment had been lodged or instructions sent to counsel. The jacket is designed to ensure that such information is readily available.

6.65 The order of many files was difficult to follow both in the magistrates' courts and in the Crown Court. Many did not have a separate folder for correspondence, which was sometimes mixed with other papers. Branch staff add a further file jacket when the section for court endorsements is full, instead of using a continuation sheet. In a sample of 12 files that we selected at random, 18 jackets were used. In one case, there were four jackets. Apart from being costly, the jackets were sometimes out of order, making it difficult to follow the progress of the case in court. Sometimes, only the result of the case was shown on the extra jacket. The problem was compounded in Crown Court files, where there was a curious practice of tearing in half the file jacket which contained papers relating to the magistrates' court phase of the case. Some papers from early stages of some cases had been destroyed.

6.66 Documents often have to be found quickly at court. Sometimes the history of a case has to be analysed in order to answer a question from a judge or a complaint. Managers also have to monitor the quality and timeliness of decisions and actions taken on files. It is important, therefore, to keep files complete with pages in a logical order.

**6.67 We recommend that the BCP should introduce systems to improve the quality of:**

- **the endorsements about events in court;**
- **the endorsement of actions taken in the preparation of Crown Court cases; and**
- **the arrangement of papers, particularly in Crown Court files.**

## **PRESENTING CASES IN COURT**

7.1 We observed 20 prosecutors in the magistrates' courts at Birmingham and Sutton Coldfield, and in the youth court at Birmingham. Birmingham Magistrates' Court is extremely busy, with about 400 cases listed each day, in up to 35 court sessions. Many files arrive late from the police and some are not available for the hearing. Every day, many cases are transferred between courtrooms. In such circumstances, prosecutors have only a few minutes to read a file before dealing with a case. It is a testing environment.

7.2 Caseworkers do not attend the magistrates' courts to assist prosecutors. Every day, prosecutors have to deal with administrative problems, when their time would be better spent speaking to defence

solicitors and preparing cases that arrive at the last minute.

**7.3 We recommend that the BCP should seek to provide prosecutors in Birmingham Magistrates' Court with administrative support, as soon as resources permit.**

7.4 Most prosecutors are experienced. Representatives of other criminal justice agencies told us that the standard of advocacy is generally acceptable and that some prosecutors are very competent.

7.5 We agree with this view. Most prosecutors that we saw presented cases clearly. They were well prepared and were able to discuss cases sensibly with defence solicitors and police officers. Others appeared less prepared, however. They read from the file without making eye contact with the magistrates to see whether they were following their submissions. They were also hesitant and had difficulty in finding information that the magistrates required. One omitted essential information when making representations in several objections to bail. We saw examples both of nervous presentation, where the prosecutor spoke too fast, and of ponderous delivery. The speed of delivery is important to ensure that the magistrates are able to follow the case.

7.6 PTLs monitor most of their advocates twice a year. They provide constructive feedback to prosecutors immediately after they have observed them. They were clearly aware of the strengths and weaknesses of their staff. They do not, however, monitor the performance of some of the most experienced prosecutors. In our experience, the quality of advocacy does not necessarily come from length of time in post. Branch managers will wish to see all their prosecutors in court to assess their performance.

7.7 At the time of our visit, agents prosecuted nearly all trials in the magistrates' courts. Many agents are experienced local solicitors or counsel, who were previously employed in the CPS. Others are very junior barristers from local chambers. We were told that some were good, but that too many were unsatisfactory. The Branch does not systematically monitor their performance. Many were unfamiliar with Branch systems, particularly the standard of file endorsements required.

**7.8 We recommend that Branch managers should monitor the performance of agents in the magistrates' courts in order to improve**



**their performance in court and the quality of their file endorsements.**

- 7.9 We observed one trial which was prosecuted by a Branch prosecutor. The case was presented properly and he identified the key points for cross-examination.
- 7.10 We agree with the view of representatives of other criminal justice agencies, and caseworkers, that the standard of counsel in the Crown Court is generally satisfactory. We saw ten counsel at PDH. All performed satisfactorily.
- 7.11 In most cases that we examined, however, counsel originally instructed did not deal with the case at any court hearings. They attended the PDH in only three out of 36 cases (8.3%); one out of 24 trials (4.2%); and two out of 24 sentencing hearings (8.3%). In our experience, these figures are extremely low. The CPS nationally and the Bar Council have agreed that chambers should monitor the number of returned briefs on a monthly basis. Branch and Area managers have met the heads of local chambers with a view to reducing the number of returns. To date there has been little improvement.
- 7.12 We recommend that the BCP should continue to liaise with representatives of chambers, in order to increase the percentage of cases in which counsel originally instructed attends the PDH, the trial and the sentencing hearings.**

**THE BRANCH AND OTHER AGENCIES**

- 8.1 All the local criminal justice agencies are going through a period of considerable change. The BCP is clearly aware of the many problems caused by the conflicting priorities of each agency, and acknowledges the effect that they have on the Branch's performance. Together with Area managers and his counterparts in the other agencies, he has sought to address them, at a time when the CPS itself is undergoing major changes.
- 8.2 Working relationships are constructive in a difficult environment, and Branch managers have reached a number of agreements with other agencies. Some are effective, whilst others have been less successful. For example the arrangements between the Branch, the courts and the police for EAHs and fast track cases have yet to demonstrate their effectiveness. Branch managers will wish to encourage co-operation between agencies at all levels in order to gain the expected benefits.

- 8.3 There are no formal liaison arrangements between the Branch and the probation service. In court user meetings, and on a day to day basis, however, Branch staff are helpful and constructive. At Birmingham Magistrates' Court, defendants who are suitable for intervention under the bail information scheme are identified before court each day, in discussions between the prosecutor and probation officers. In Birmingham Magistrates' Court alone, about 100 pre-sentence reports are required each week. The arrangements for the provision of prosecution bundles for these reports are very effective. The system for cases in the Crown Court is less successful, although we were told that the preparation of the report is not delayed by lack of papers from the Branch.

**KEY STATISTICS**

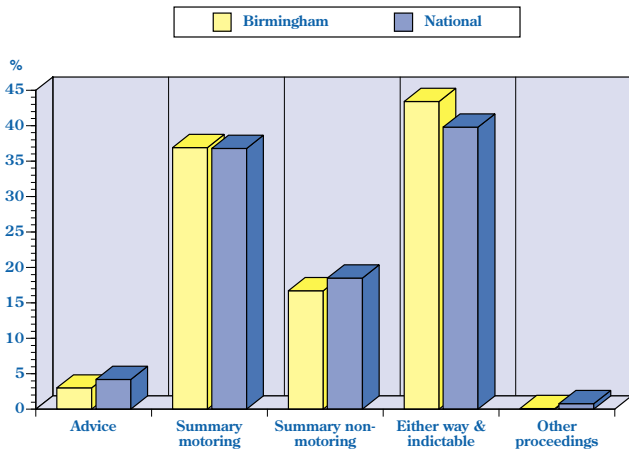
- 9.1 The charts which follow this page set out the key statistics about the Branch's casework in the magistrates' courts and the Crown Court.

**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

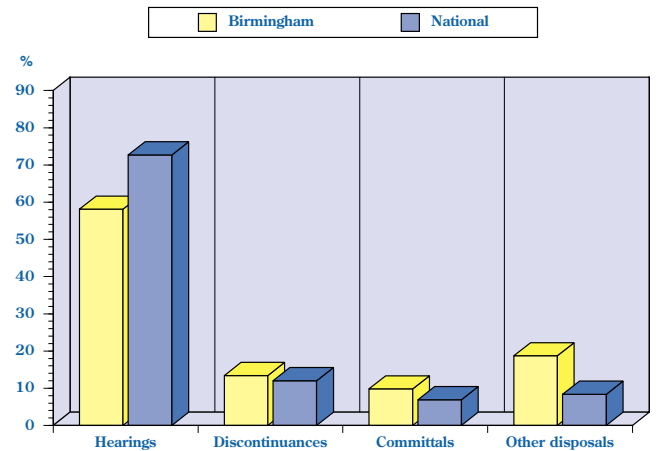
1 - Types of case



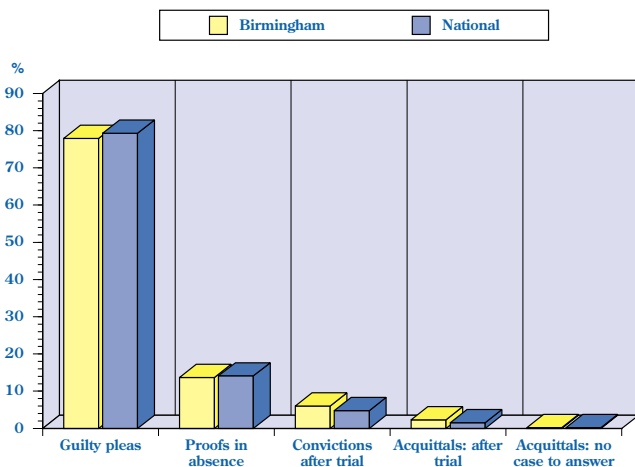
	Birmingham		National	
	No.	%	No.	%
Advice	1,065	3.0	59,799	4.2
Summary motoring	13,228	36.9	525,813	36.8
Summary non-motoring	5,987	16.7	264,365	18.5
Either way & indictable	15,567	43.4	568,918	39.8
Other proceedings	27	0.1	11,660	0.8
<b>Total</b>	<b>38,874</b>	<b>100</b>	<b>1,430,555</b>	<b>100</b>

2 - Completed cases

	Birmingham		National	
	No.	%	No.	%
Hearings	20,218	58.1	987,943	72.7
Discontinuances	4,657	13.4	162,661	12.0
Committals	3,413	9.8	94,151	6.9
Other disposals	6,494	18.7	114,342	8.4
<b>Total</b>	<b>34,782</b>	<b>100</b>	<b>1,359,097</b>	<b>100</b>



3 - Case results



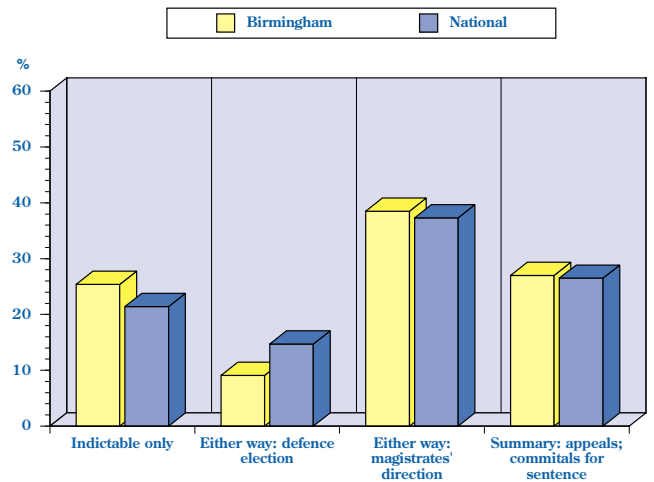
	Birmingham		National	
	No.	%	No.	%
Guilty pleas	15,843	77.9	810,952	79.3
Proofs in absence	2,778	13.7	114,133	14.1
Convictions after trial	1,219	6.0	49,466	4.8
Acquittals: after trial	458	2.3	15,442	1.5
Acquittals: no case to answer	33	0.2	2,248	0.2
<b>Total</b>	<b>20,331</b>	<b>100</b>	<b>1,022,241</b>	<b>100</b>



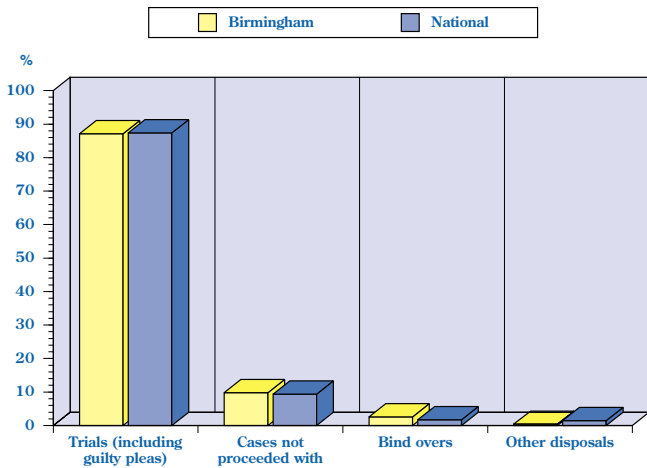
CROWN COURT

4 - Types of case

	Birmingham		National	
	No.	%	No.	%
Indictable only	932	25.4	26,918	21.4
Either way: defence election	335	9.1	18,481	14.7
Either way: magistrates' direction	1,415	38.5	46,915	37.3
Summary: appeals; committals for sentence	993	27.0	33,357	26.5
<b>Total</b>	<b>3,375</b>	<b>100</b>	<b>125,671</b>	<b>100</b>



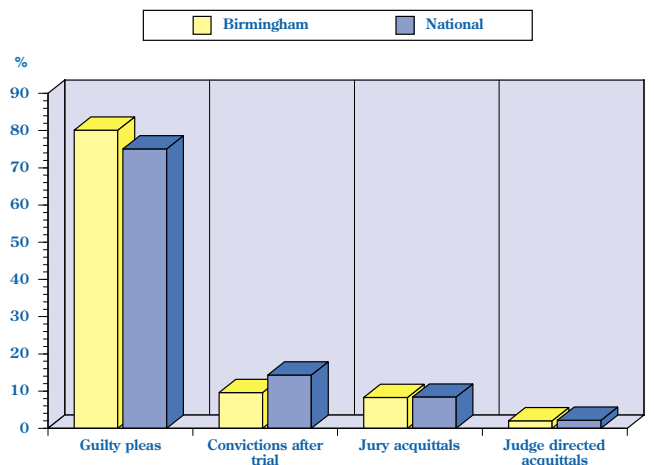
5 - Completed cases



	Birmingham		National	
	No.	%	No.	%
Trials (including guilty pleas)	2,336	87.1	80,743	87.4
Cases not proceeded with	264	9.8	8,680	9.4
Bind overs	71	2.6	1,567	1.7
Other disposals	11	0.4	1,404	1.5
<b>Total</b>	<b>2,682</b>	<b>100</b>	<b>92,394</b>	<b>100</b>

6 - Case results

	Birmingham		National	
	No.	%	No.	%
Guilty pleas	1,887	80.1	61,863	75.1
Convictions after trial	226	9.6	11,754	14.3
Jury acquittals	195	8.3	6,910	8.4
Judge directed acquittals	48	2.0	1,851	2.2
<b>Total</b>	<b>2,356</b>	<b>100</b>	<b>82,378</b>	<b>100</b>



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

<b>Judges</b>	HHJ Crawford, Recorder of Birmingham
<b>Magistrates' court</b>	Mr M James, Stipendiary Magistrate Mrs F Johnson, Justice of the Peace and Chair of the Birmingham Justices Mr A Pickering, Justice of the Peace and Chair of the Birmingham Youth Panel Mr E Rudge, Justice of the Peace and Chair of the Sutton Coldfield Justices Mr S Abbott, Director of Legal Services, Birmingham District Magistrates' Courts Committee
<b>Police</b>	Mr M Baggott, Assistant Chief Constable Superintendent S Green Chief Inspector P Martin Acting Chief Inspector N Murphy Detective Inspector A Crouch Inspector J Price Detective Constable R Greensmith Police Constable R Siddall Ms S Clook, Office Manager, Criminal Justice Unit, F Division Mr A Hill, Birmingham Process Unit Ms S Pearce, Deputy Office Manager, Operational Command Unit, E1 Division
<b>Defence solicitor</b>	Mrs F Warman
<b>Counsel</b>	Mr P Cooke Mr M Duck Mr D Millington
<b>Probation Service</b>	Ms D Goss, Acting Assistant Chief Probation Officer

## CROWN PROSECUTION SERVICE INSPECTORATE

### STATEMENT OF PURPOSE

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

### AIMS

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



**Crown Prosecution Service Inspectorate  
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