



Audit of the instruction of prosecution advocates in the Crown Court and the payment of counsel by the Crown Prosecution Service

July 2009

*The audit was conducted contemporaneously with
and to inform HMCPsi's thematic review of the quality
of prosecution advocacy and case presentation*





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PREFACE

This report on the Crown Prosecution Service's (CPS) performance relating to the instruction of prosecution advocates in the Crown Court and payment of counsel follows an audit exercise undertaken by a team of Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI).

HMCPPI was established by the Crown Prosecution Service Inspectorate Act 2000 as an independent statutory body. Since then the nature of its work has developed to reflect the ten principles for public service inspection promulgated in 2003 by the Office for Public Service Reform. These envisage (amongst other things) a move away from cyclical inspection according to a standardised framework to an inspection regime based on risk assessment, with the inspection resources being focussed where performance is perceived to be weaker. The fundamental purposes of inspection remain unchanged – to drive improvement and spread good practice.

The move away from cyclical inspection means that all 42 CPS areas are now the subject of a periodic overall performance assessment but a significant number are now visited relatively infrequently. Yet there are, from time-to-time, issues where it is important to be able to assess quickly performance or compliance across the Service. The audit team fulfils that role and the selection and instruction of prosecution advocates and payment of counsel fees are examples of such issues.

The selection of a prosecution advocate to take on the conduct of a case in the Crown Court is as important as thorough case preparation. They are under an obligation not only to present the case in court but also to provide to the CPS with advice on any legal issues and on any further work the advocate believes to be necessary. If the person selected does not have the correct level of experience there may be serious consequences in regard to the progress of the case and its outcome.

As part of the selection and instruction process the CPS provides the advocate with a brief which should include the evidence, an analysis of issues in the case and other vital documents. The standard of the brief is important as it is the only information that the advocate holds on the case. The quality of instructions to counsel has been an element of inspection for many years and has often been noted as a concern in area reports. It is also important that the brief is provided in good time for the advocate to be able to prepare thoroughly for the court hearing.

The timely payment of counsel for work carried out in respect of Crown Court cases is an aspect of performance that is regularly scrutinised by the CPS using its own performance measures and internal audits. There are guidelines for arrangements to pay counsel and areas have systems in place to ensure that they comply with them. This audit has examined the systems against the guidelines.

Since the development of the Services's advocacy strategy in 2004 and the wider deployment of in-house advocates at the Crown Court, it was felt that there should be a more detailed examination of how this had affected the selection and instruction of advocates and how it may have affected systems and performance in relation to the payment of counsel.

An important purpose in undertaking these exercises is that the Director of Public Prosecutions and Chief Executive of the CPS (as accounting officers) and the Law Officers (the Attorney General and Solicitor General who have accountability to Parliament for the work of the CPS) have a sound basis for reassuring themselves as to the performance of the CPS on matters which are fundamental to the

effectiveness of its casework handling. HMCPSI has recently undertaken a linked thematic exercise in relation to the standard of advocacy in the Crown Court and the magistrates' courts. This pattern of risk based area performance inspections, linked to thematic scrutinies focussed on key aspects of performance, is likely to underpin HMCPSI inspection programmes for the foreseeable future. It has the effect of reducing inspection activity on areas which are known to be performing to a sound standard and freeing up Inspectorate time to concentrate on those where improvement is most needed, and also on joint working with other criminal justice inspectorates across the criminal justice system. This reflects an important government priority.

1 INTRODUCTION

- 1.1 Until the mid 1990s self employed members of the Bar practicing from chambers held a monopoly (with some very limited exceptions) to appear for the prosecution and defence in the Crown Court. The Crown Prosecution Service (CPS) had systems to allocate cases to individual barristers and provide written instructions (the brief) to prosecute the case, together with the evidence and relevant documents. Changes were introduced enabling employed members of the Bar and solicitors to gain rights of audience in the higher courts. Initially referred to as higher court advocates (HCAs) the CPS has given them the title of crown advocates (CAs).
- 1.2 In recent years the CPS has introduced its advocacy strategy, which stipulates that it should routinely conduct its own high quality advocacy in all courts and across the full range of cases. Currently it aims for CAs to undertake 25% of the value of the generality of cases that are dealt with under what is known as the graduated fee scheme (GFS). This means that members of the self employed Bar (we will refer to them simply as counsel) will undertake the remaining 75% of such work. In practice the CPS does not instruct self employed solicitors who are HCAs to appear for the prosecution in the Crown Court.
- 1.3 The CPS therefore needs to have systems for allocating cases to CAs or counsel at the outset and for reallocation where appropriate. The CPS has retained the same system of instructing the advocate, whether CA or counsel, by the provision of briefs enclosing the evidence and documentary material in the case. At the conclusion of the case there is a system for paying counsel under the GFS, or for assessing the saving in counsel's fees if a CA has undertaken the work and court appearances.
- 1.4 This audit will examine the efficiency and effectiveness of the handling by the CPS of those three stages (allocation, instruction, payment) and compliance with its own guidance and standards. The nature of work and listing of cases in the Crown Court sometimes leads to individual advocates being unable to deal with all hearings in a case and sometimes to the case being returned altogether if the instructed advocate is not available to deal with the trial. As this is such a significant issue we will devote a separate chapter to these returns.
- 1.5 Consideration of the allocation of cases will include the supporting systems for grading counsel and CAs; the nature of the case and the impact of whether it is considered to be a likely contested case and the CPS protocol with the Bar; compliance with standards relating to the early consideration of briefs and provision of advice; clarity of roles and responsibilities within the CPS; and the impact of targets for the use of CAs and counsel fee savings, and proper considerations of value for money and efficiency.
- 1.6 In dealing with returned briefs we will consider their impact on case presentation and the systems in place to minimise the numbers so far as possible and to deal effectively with the returns that are inevitable.
- 1.7 Examination of briefs will consider any differences in whether counsel or a CA is chosen; quality and timeliness of the instruction; quality of the preparation that supports the brief and ensures the readiness of the case for each hearing; and the impact of these on the case itself and on other court users.

- 1.8 In examining the payment of fees to counsel we will consider the efficiency and effectiveness of systems and compliance with standards set by the CPS in relation to timeliness. There is an inherent need to ensure that the use of public money is properly accounted for and that value for money is obtained. We will deal briefly with the CPS consideration of fee savings when CAs are used.

Methodology

- 1.9 In each of the eight CPS areas visited, ten recently finalised Crown Court files were examined against a questionnaire which covered the allocation of the case, standard of the brief and the payment of counsel fees or recording CA savings. The sample of ten included eight cases committed for trial, one committed from the magistrates' court for sentence at the Crown Court and one appeal, either against conviction or sentence at the magistrates' court. A total of 80 files were examined.
- 1.10 The team spoke to members of CPS staff who were involved with allocation of work to CAs or counsel and payment of fees. Recording systems for payment of fees to counsel and the recording of CA savings were also examined.
- 1.11 There is general guidance on the content of briefs and the quality of instructions to be provided. There is an electronic template and the joint CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court (CPS/Bar Framework) has set out guidelines on some key principles. Though this document is not a standard against which the CPS measures its performance, it provides a useful guide to what is expected. We assessed compliance against this and our own casework expectations that we use in all our inspections and reviews.

Reasons for the audit

- 1.12 If a case is to be successfully prosecuted in the Crown Court it is necessary for the appropriate decision to have been made as to charges against a defendant and for these to be appropriately encapsulated as counts on the indictment lodged with the Crown Court. The level of complexity and sensitivity of the case needs to be assessed and the appropriate prosecuting advocate - whether self employed counsel or CPS CA - selected, with the case allocated to that individual in good time. The brief to the advocate needs to be prepared with an appropriate analysis of issues, together with any guidance as to the law, the basis of the case against the defendant and the evidence and documents. Thereafter it is important that the prosecuting advocate considers the papers and provides prompt advice as to any further work that is required. It is desirable in terms of effectiveness to maintain continuity of approach, and of efficiency to avoid unnecessary duplication of work, for the prosecuting advocate originally instructed to retain the case. The instructed advocate should appear in key court hearings and the trial and avoid returning the brief so that it has to be taken over by a different advocate. It follows that there should be appropriate and timely payment of counsel's fees, or assessment of any savings made by the use of in-house CAs.
- 1.13 The audit will consider CPS performance against the key principles and the standards of advocacy set out in the CPS/Bar Framework and the CPS advocacy strategy and higher court advocate progression framework.
- 1.14 The methodology chosen specifically targeted the generality of cases dealt with in areas under the GFS. It did not target those cases of particular complexity or seriousness that would be handled by group complex casework units, CPS London special casework, or Headquarters casework divisions. Some of those cases would in any event fall outside the GFS. Other inspections carried out by HMCPSI have confirmed that cases dealt with by these specialist units are subjected to high standards of preparation, conduct and presentation.

Aims of the audit

1.15 The audit sought to establish:

- The systems used to identify contested and non-contested cases suitable for CAs of various levels and to allocate work to CAs or counsel.
- The timeliness of delivery of briefs to CAs or counsel.
- Whether the CPS is adding value to the standard brief package.
- The systems in operation for CAs and counsel to complete initial advice forms.
- Arrangements for monitoring compliance as to the provision of initial advice.
- The level of compliance in the retention of cases by counsel or CAs.
- The frequency, timeliness and reasons for the return of cases from CAs and counsel.
- The level of recording information to assist in the accurate payment of counsel's fees.
- Arrangements for recording the time and costs of CAs in relation to cases handled.
- The level of identifiable discrepancies in the completion of the initial fee information sheet forms.
- The recording and administration of the fee payment system.
- Chase-up systems used to obtain timely invoices from chambers and processes to deal with out of time invoices.
- The timeliness of fee payments.

Structure of the report

1.16 We have structured the report as follows:

- Chapter 2 - a summary of our findings together with a list of the compliance and action points identified.
- Chapter 3 - the systems and practices for allocating Crown Court cases to CAs or counsel.
- Chapter 4 - the issues surrounding the return of cases by an advocate who is unable to undertake the next hearings or, more significantly, the trial.
- Chapter 5 - the quality and context of the instructions sent to advocates and the marshalling of evidence and documents to be enclosed with them.
- Chapter 6 - the system for identifying work done by counsel, reconciling this with the fees claimed and to be paid under the GFS. We also deal briefly with the calculation of savings of counsel's fees when work is undertaken by CAs.

2 SUMMARY

Allocation of Crown Court cases to an advocate

- 2.1 Cases should be allocated to an appropriate advocate taking into account their complexity and sensitivity and the experience and expertise of the advocate. Assessing the 'weight' of a case requires judgement on the part of either the lawyer involved or an experienced caseworker. In most of the country self employed counsel are given a grading by a Joint Advocate Selection Committee made up of members of the Bar and the CPS. There is a parallel system of grading for CAs which had not been fully implemented by the time of this audit. The CPS/Bar Framework provides for allocation of any case likely to be contested to be undertaken at least two weeks before the plea and case management hearing (PCMH), and furthermore that the selected advocate will be expected to retain the conduct of the case through to trial.
- 2.2 In some areas it was common place for the initial case allocation to be based on the availability of a CA to cover the case at the PCMH. Thereafter if the case is to go for trial as a result of a not guilty plea the brief is likely to be reallocated to a more experienced CA or to counsel. Overall the CPS is undertaking 58% of PCMHs in-house and this does not appear out of alignment with the approximate rate of 80% pleas of guilty in the Crown Court. However it ignores the rate of late pleas of guilty at or near trial and in-house coverage of PCMHs varied substantially around the country with between 28% to 89% being undertaken by CAs.
- 2.3 One of the major considerations of those allocating cases was meeting the target set for savings generated by the deployment of CAs rather than counsel in the Crown Court. The need for maximum deployment contributes to the late allocation of cases in some areas. Allocation is often delayed until the publication of the final Crown Court list to facilitate one CA undertaking up to five PCMHs in the same court room, as well as to avoid changes of advocate after receipt of the list.
- 2.4 In some areas when a not guilty plea was entered at PCMH the case was promptly reallocated to the trial advocate, whether it be counsel or CA. In others it was the practice to allocate a number of such cases generally to the pool of CAs and for there to be a late decision near the trial date as to whether a particular advocate was to be instructed or the case sent out to counsel. In either event there was an inherent risk of last minute work being necessary to prepare the case for trial.
- 2.5 In the end cases were allocated to the right advocate in terms of experience and expertise, but in a significant number the practices meant that the CPS/Bar Framework was not being complied with. Additionally the instances of late allocation meant that necessary work was not undertaken at an early stage and this could impact upon readiness for trial and the quality of case presentation. The practice of reallocating cases for trial after the PCMH increased the risk that necessary action was delayed by several weeks because the trial advocate did not receive the case at the outset. Listing trials weeks or months after the PCMH often meant that this delay did not always cause significant problems, but did mean that the case had not been progressed as quickly as it could have been.
- 2.6 There was no training and minimal guidance available for the clerks who coordinated the work of the CAs and, in many instances, were responsible for the allocation of all cases to both them and counsel.

Instructions to the advocate

- 2.7 In preparing cases for committal or sending to the Crown Court CPS areas compile briefs to the advocate, whether in the event a CA or counsel is instructed. Counsel, and sometimes CAs, do not have direct access to the CPS case files until they are in court and so all information, evidence and documents necessary to prosecute a case effectively should be provided in the instructions sent to them. These should tell the prosecuting advocate what is required of them and provide the information and evidence necessary for this to be done. Briefs should be provided and read early enough to allow any further work required to be progressed in good time.
- 2.8 Of the 74¹ briefs examined 55 (74%) comprised mostly standard paragraphs with little or no information tailored to the particular case. Some staff commented that counsel no longer read briefs as they contained little of value. It was often hard to be certain what had been sent out due to incomplete lists of enclosures, poor organisation of documents and lack of endorsements. On some files it was unclear if work outstanding at the time of the last case review or evidence received after this had been dealt with. It would be helpful if relevant information that the CPS wishes counsel or the CA to know is highlighted at the front of the brief.
- 2.9 Lawyers were responsible for the content² of the brief in all areas visited. This was nearly always prepared at the time of their review prior to committal or service of papers under section 51, Crime and Disorder Act 1998 and they had no further involvement in the instructions sent out.
- 2.10 In the past an experienced caseworker was allocated the case on committal and finalised the instructions and retained responsibility for it thereafter. In five areas this was now being done by level A2 casework support officers and cases were not allocated to caseworkers with Crown Court experience until after the brief has gone out (or at all in some areas). In these areas it was unclear if anyone with the relevant experience to deal with correspondence or further evidence saw the file before the brief went out, or sometimes shortly before the PCMH.
- 2.11 The audit found that there was lack of clarity about who was responsible for cases at the various stages. Allocation and case 'ownership' bring accountability. Without allocation it is necessary to have a clear set of instructions to staff on the systems to be used for brief preparation, file management and endorsement. These are crucial to allow anyone picking up files to see quickly what has been done, when, by whom, and what is outstanding.

Returned briefs

- 2.12 In our file sample more cases were returned by CAs than counsel proportionate to the number allocated to each, indicating that counsel provided greater continuity at court and in case ownership. However a survey conducted by the CPS in the week of 23 March 2009 showed the opposite for late returns within seven days of the trial date.
- 2.13 There was an attitude that returns between CAs was not a matter for concern because it was an internal matter. However care needs to be exercised to aim for continuity, which is especially important in the more serious cases and can impact adversely upon case strategies and victim and witness care. The CPS expects case continuity from counsel where feasible and should aim for the same from CAs.

1 Of the 80 cases seen six had no brief on the file or CMS. The audit therefore assessed the overall quality of 74 briefs.

2 As to the content see paragraphs 5.11-5.17.

- 2.14 In some of those areas where it was the practice to reallocate cases following a not guilty plea at the PCMH there had been a return in every case after the first hearing.
- 2.15 Some areas continue to monitor the number of returns from counsel and will address any issues arising from this at meetings with counsel's chambers. Few areas recorded the number and reasons for returns between CAs and assessed whether this had had any influence on the outcome of the case.
- 2.16 If a brief is returned by counsel or a CA it should be reallocated to an appropriate advocate of at least the same grade or level. On a positive note we found that this was always done in the cases in the file sample.

Payment of counsel

- 2.17 It is proper for a public authority such as the CPS to ensure that counsel are paid in good time for work done. It is also beneficial to make timely payments to allow accurate budget planning.
- 2.18 Six of the eight areas visited had adequate or good systems in place to ensure that timely claims for payment are received and unpaid fees are identified. They also had systems to reconcile the amounts claimed with the work recorded on the CPS file. However, two areas were less successful.
- 2.19 Timeliness in all areas was nevertheless hampered by the inaccurate completion of the initial fee information sheet (FIST) to authorise payment. Poor file management and endorsements on the fee logs also caused difficulties in resolving anomalies between the work noted as done on the CPS file and that claimed for by counsel. Fee clerks often relied upon the record of work provided by the court rather than that on the CPS papers and some fees had gone unnoticed and unpaid due to poor recording.
- 2.20 Caseworkers completing the FISTs had not had training for some time and new caseworkers were trained by colleagues. There were concerns that sometimes incorrect instructions were passed on.
- 2.21 Most staff were not aware of their levels of financial delegation or what purpose this had under the GFS.

Compliance and action points

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- 1 CPS Headquarters should either ensure that areas adhere to the CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court concerning the allocation of cases likely to be contested, or renegotiate the provisions (paragraph 3.9).
-
- 2 The CPS should identify at an early stage those cases which need to be handled by the same advocate throughout and establish suitable systems to achieve this, introducing a category in which the file is allocated with a view to the advocate retaining the case throughout, particularly in contested cases with victims (paragraph 3.21).
-

- 3 CPS areas should have a system in place to ensure that the date of allocation, name of the advocate to whom a case is allocated and any changes to this are recorded and notified to the caseworker and reviewing lawyer (paragraph 3.25).

- 4 CPS areas should ensure that individual advocates are instructed in good time prior to the plea and case management hearing for basic checks on the case (e.g. the correctness of the indictment) to be done, particularly in cases which are likely to go to trial (paragraph 3.25).

- 5 CPS areas must ensure that cases are allocated and checked for readiness before any hearing so that remedial action can be taken (paragraph 3.52).

- 6 CPS areas should seek arrangements with Crown Court listing officers which ensure that the legitimate interests of the Service are properly considered (paragraph 3.52).

- 7 The CPS should introduce guidance and training for crown advocate clerks to ensure consistency in the allocation of briefs and in managing deployment of crown advocates at court (paragraph 3.62).

- 8 The CPS should consider developing a more tailored and sophisticated diary system to assist crown advocate clerks (paragraph 3.67).

- 9 CPS areas should record the number of, and reasons for, returns from both crown advocates and counsel. This information should be used in an effort to reduce the number of returns (paragraph 4.10).

- 10 The CPS should reconsider the content and format of the brief preparation package to ensure the case specific content is in a prominent place where it can be identified and easily read (paragraph 5.36).

- 11 CPS area managers should ensure that instructions to counsel are prepared with properly listed and marked enclosures, and copies retained on file (paragraph 5.36).

- 12 CPS area managers should quality assure the content of the instructions to counsel or crown advocates (paragraph 5.36).

- 13 CPS areas should put in place systems to assure the accuracy and content of the indictment prior to it being lodged (paragraph 5.40).

- 14 CPS areas should introduce or reinvigorate systems to ensure that counsel and crown advocates confirm that they have received and read the instructions and initial advice should be provided at the earliest possible time where relevant (paragraph 5.43).

- 15 CPS areas should ensure that the allocation of responsibility for decision-making and case/file management should be clearly defined for each stage as the case progresses (paragraph 5.48).
-
- 16 CPS areas should ensure that systems are in place to quality assure the completion of the fee information sheet and fee log and the reconciliation of the graduated fee claim with the fee information sheet (paragraph 6.22).
-
- 17 The CPS should determine best practice and provide guidance to areas to assist them to work with counsel's chambers so as to receive graduated fee claims in good time (paragraph 6.27).
-
- 18 CPS areas should have systems in place to deal with late graduated fee claims and decisions not to pay should be made by staff of an appropriate level against clear criteria (paragraph 6.48).
-
- 19 The CPS should update the fees guidance and ensure that it is easily accessible as a helpful and comprehensive point of reference for all staff involved in fee payments. (paragraph 6.51).
-
- 20 CPS areas should provide regular refresher training for all staff in the completion of the fee information sheet and fee logs. Local area champions should be appointed and trained appropriately to assist with training and updating staff (paragraph 6.57).
-
- 21 The CPS should issue guidance clarifying the appropriate levels and purpose of financial delegation for all individuals involved in fee payments and raise awareness and understanding (paragraph 6.62).
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3 ALLOCATION OF CROWN COURT CASES TO AN ADVOCATE

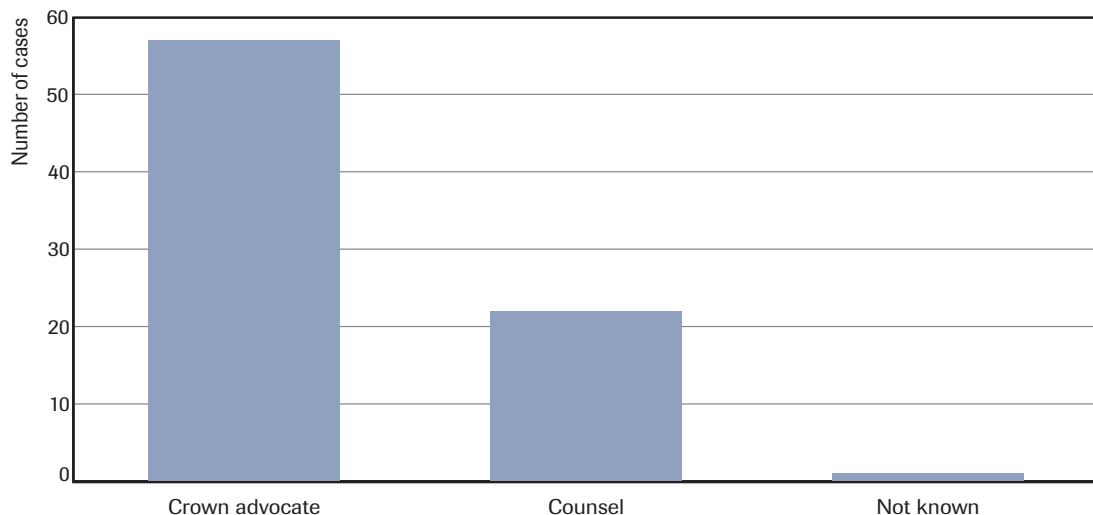
Background

- 3.1 CPS areas are now using a combination of in-house crown advocates and counsel from the self employed Bar to undertake prosecution cases in the Crown Court. The proportions varied between the areas visited. Targets for the amount of GFS savings to be achieved by CAs varied from 20% to 25% and some areas were achieving considerably more than their target.
- 3.2 Most areas had some form of crown advocate unit in which the CAs were primarily involved in presenting cases in the Crown Court. Those outside the unit undertook a combination of Crown Court advocacy, providing charging advice to police, case preparation and some magistrates' courts' advocacy. Some areas referred to these lawyers as 'hybrids'.
- 3.3 In order to manage the work of the crown advocate units areas have introduced a new administrative post of crown advocate clerk. This mirrors to some extent the functions carried out by counsel's clerks in chambers. The precise functions of the role may be tailored to the experience of the individual engaged and the extent of their responsibility for overall allocation of cases varies.

Initial allocation

- 3.4 When a case is committed or sent under section 51, Crime and Disorder Act 1998 to the Crown Court instructions to the prosecution advocate are prepared. The decision regarding initial allocation to an advocate is now taken by the crown advocate clerk who decides in most instances whether to allocate the case to a CA or to counsel. If it is decided to instruct counsel the case may be sent back to the allocated caseworker to select counsel of suitable grade and experience.
- 3.5 In seven of the eight areas we visited the crown advocate clerk considered all cases and decided whether they could be covered by a CA or sent to counsel. Three of those seven did not routinely allocate rapes or serious sexual assault cases to the crown advocate unit as they did not have advocates with the required level of training and experience to take on all of these types of case. In the eighth area files were vetted and marked by a lawyer manager at an early stage (before committal to the Crown Court) as to whether the case was suitable to be dealt with by a CA.

Initial allocation of Crown Court cases to crown advocates and counsel



- 3.6 In those areas where CAs undertake a wide range of work, including charging advice to police and other pre-committal tasks, the crown advocate clerk may seek to continue case ownership by allocating a case to the CA who dealt with it at an earlier stage. However, this was not done systematically.
- 3.7 In allocating cases clerks did not always work with fixed resources. In some areas in addition to the full-time CAs there would often be a number of lawyers acting as part-time advocates. Sometimes the part-time nature was due to their commitments in preparing cases for Crown Court, while in other areas lawyers based in satellite offices would offer a fixed amount of their time to act as a CA in the Crown Court. In one area the crown advocate clerk also had to accommodate an expectation that the CAs in the unit would cover two sessions a week in police stations where they would be giving charging advice.
- 3.8 In all of the areas the crown advocate clerk had the authority to allocate cases for PCMH. In some this decision was based on the grading of the CA and their suitability to undertake the case up to and including a trial. In others, however, the decision was driven by Crown Court listing and an advocate's availability to cover the PCMH before the file was reallocated for trial. In some areas where briefs had been allocated to a particular CA several days or weeks in advance of the PCMH, the clerk would try to ensure that that advocate covered the case in court at the PCMH on the basis that they would have read and be familiar with the case. The success of this system is very much reliant on the cooperation of the Crown Court listing office.
- 3.9 This allocation of cases without real consideration of the likelihood of them being contested is contrary to the CPS/Bar Framework. The overall split of PCMHs between CAs and counsel nationally is 58%:42%, but this marks larger variations between areas of between 28% to 89% of PCMHs handled by CAs. The failure to adhere to the framework causes a disproportionate level of harm to CPS relationships with the Bar and the impact on the level of trust between the two organisations.

COMPLIANCE POINT

CPS Headquarters should either ensure that areas adhere to the CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court concerning the allocation of cases likely to be contested, or renegotiate the provisions.

Reallocation of cases for trial

- 3.10 In order to ensure ownership, and because of the CPS/Bar framework, reallocating a case for trial should only take place in limited circumstances. However the Service now attaches less significance to continuity of handling. HMCPSI accepts that changes of advocate may sometimes be unavoidable and in a proportion of cases the impact is likely to be minimal. Nonetheless it is essential that at all stages there is an individual with the clear responsibility for progressing each case and ensuring that there is proper care and conduct. For reasons described below we found a number of areas which were routinely reallocating cases after a CA had covered the PCMH. These were cases in which a plea of not guilty had been entered at that hearing and were then assigned to a different CA or sent out to counsel.

- 3.11 A lack of continuity in the prosecution advocate may have repercussions in several aspects of case handling. When the CPS instructed a particular counsel in a case in the past, it was expected that that counsel would retain responsibility for the conduct of the case throughout. That position may have been too rigid. However regular reallocation of cases post-PCMH, whether that be to another CA or to counsel, is undesirable. There needs to be more structured planning so it is clear who in the longer term is to have a case.
- 3.12 Reallocation of cases post-PCMH meant that the advocate appearing at the PCMH could not say whether they would be in court with the case on the next occasion. The practice of briefing CAs in as many PCMHs as possible with a view to reallocating the cases after the hearing to another advocate does not correspond with the allocation practice in respect of counsel.

How it operates in practice: allocation of cases to crown advocates

- 3.13 Allocating trials to CAs works in a number of different ways. In a few areas the crown advocate clerks were allocating most cases for trial to the CAs. Some saw their role as assisting in the development of advocates in the unit, in that they would allocate cases towards the upper end of an individual's grading or at a higher level. Should the CA feel unready to take on the case, they would speak to the clerk or discuss it with the unit head.
- 3.14 In other areas the unit head, a senior lawyer, had much more involvement in allocating cases for trial. In one area they held a weekly meeting with the crown advocate clerk to decide which advocate would cover cases that had been adjourned for trial at the PCMH. In another area the clerk forwarded a copy of the case details to the unit head who would decide on the allocation for trial.
- 3.15 Not all trials are given a fixed hearing date, they are placed on a 'warned' listed for a particular one or two week period and may be called into court at some time during that period if court time allows. This arrangement made it difficult for the clerks to allocate the case. In some areas trials were left for a CA to pick up if they would be available to conduct them. However if this was not done by a certain point before the hearing date (in one area, 14 days before the trial), then the crown advocate clerk would arrange for counsel to be instructed. With this type of listing there is always the chance that a case may not be heard during the week it is on the warned list. Should the case have been allocated to a CA, any preparation time may be regarded as wasted and it would also follow that the CA would not be able to take on any substantial work in court whilst waiting to see if the case was called into court. As this would affect the amount of savings earned, it may be more cost effective for the CPS to allocate such cases to counsel albeit similar problems of managing counsel's availability will arise for counsel's clerks.
- 3.16 Cases with a fixed trial date were often allocated to a CA. They are often of a more serious nature or involve defendants affected by custody time limits. Crown advocate clerks would often reserve these types of case to the more experienced CAs to ensure that they had enough work at the right level. However such cases were sent out to counsel when the trial date was fixed if the allocated CA or another of suitable experience were not available.

How it worked in practice: allocation of cases to counsel for trial

- 3.17 If a CA with the requisite level or experience is not available or the case requires particular expertise the brief will be sent out to counsel. This may be either before the PCMH or prior to a later hearing.
- 3.18 Practice varies between areas when counsel was to be instructed. The clerk in most areas sent the brief back to the allocated caseworker who would then select and instruct appropriate counsel. In two areas, however, the clerk selected counsel as well as allocating to the CAs. In others a casework manager in the Crown Court unit would select counsel. All areas had a list of counsel who have the specialist skills and training to cover cases involving rape. This list was available to those staff asked to instruct counsel. Counsel in most circuits are graded (see paragraph 3.26) and this list is used to assist in allocation.
- 3.19 Logistical problems could sometimes cause difficulties in the selection of appropriate counsel. In one area caseworkers sent the case file to the crown advocate unit which was in a different location to their own section. If a CA could not cover a court hearing the caseworkers were asked, often the day before the hearing, to instruct counsel. However as the file and brief remained at the crown advocate unit the caseworkers had little information on which to base their choice of counsel.

Recording reasons for the allocation of advocates

- 3.20 Most areas visited recorded only limited information regarding the allocation of cases to CAs or counsel. The reason why a case had been sent out to counsel was recorded in only one area, where it was examined by the unit head.
- 3.21 Prior to the introduction of CAs areas were expected to record the number of cases allocated to particular counsel, but this was not universally done. This information allowed them to ensure that work was being distributed fairly to counsel and chambers. Many areas reported that they no longer record this information.

COMPLIANCE POINT

The CPS should identify at an early stage those cases which need to be handled by the same advocate throughout and establish suitable systems to achieve this, introducing a category in which the file is allocated with a view to the advocate retaining the case throughout, particularly in contested cases with victims.

Recording the allocation to an advocate

- 3.22 Systems for recording allocation to an advocate varied and in some areas meant that the prosecutor responsible for the case had no awareness of the advocate selected. This information is necessary for a proper dialogue between those responsible for handling the case, that is the reviewing lawyer, caseworker and advocate.
- 3.23 The name of the CA to whom the case is allocated might be recorded on the brief, file and the electronic case management system (CMS) by the crown advocate clerk. In some areas it was recorded on all three, in others only on CMS, which would have to be interrogated to ascertain the identity of the advocate.

- 3.24 In some areas, in cases identified as suitable for a CA the briefs and files would merely be marked as "CA" and did not have the name of a specific advocate as this was often only decided a day or so before the PCMH.
- 3.25 Change in allocation was also an issue in some areas where they would often only be recorded on CMS. Unless the caseworker was involved in instructing counsel there was no means by which they would be made directly aware that one of their allocated cases had been taken on by a different advocate.

COMPLIANCE POINTS

CPS areas should have a system in place to ensure that the date of allocation, name of the advocate to whom a case is allocated and any changes to this are recorded and notified to the caseworker and reviewing lawyer.

CPS areas should ensure that individual advocates are instructed in good time prior to the plea and case management hearing for basic checks on the case (e.g. the correctness of the indictment) to be done, particularly in cases which are likely to go to trial.

Criteria for allocation

- 3.26 In allocating cases there are various sources of information referred to in order to ensure that the right level of case goes to an advocate with suitable experience. Counsel in most circuits are assigned by the Joint Advocacy Selection Committee a grading between 1 and 4, with grade 1 representing counsel with the least experience in the Crown Court and grade 4 those having the experience and expertise to deal with the more serious and complex matters. Where leading counsel is also required this will usually be Queen's Counsel or Senior Treasury Counsel, or sometimes a senior or principal crown advocate.
- 3.27 The CPS has produced a Crown Advocate Progression Framework which in some respects mirrors the grades given to counsel. It sets out the type of experience a CA needs to be classified at a level between 1-4. This was released at the end of April 2008 to be implemented by 5 May 2008. (The CPS is to revise matters so that there is a single system of grading of prosecution advocates and eventually there could be a convergence with a Legal Services Commission grading for defence advocates.)
- 3.28 In September-October 2008 four of the eight areas we visited were unable to provide a list of all their CAs with gradings, however the crown advocate clerks were able to provide the audit team with details of the type of work each CA was capable of. One area was in the process of producing a graded list.

Allocation: the practice

- 3.29 In the file sample, 67 of 69 cases had been allocated to the correct grade of counsel or CA where this could be ascertained, which is good performance. In one area two cases appeared to have been allocated to CAs who were not of the required level.

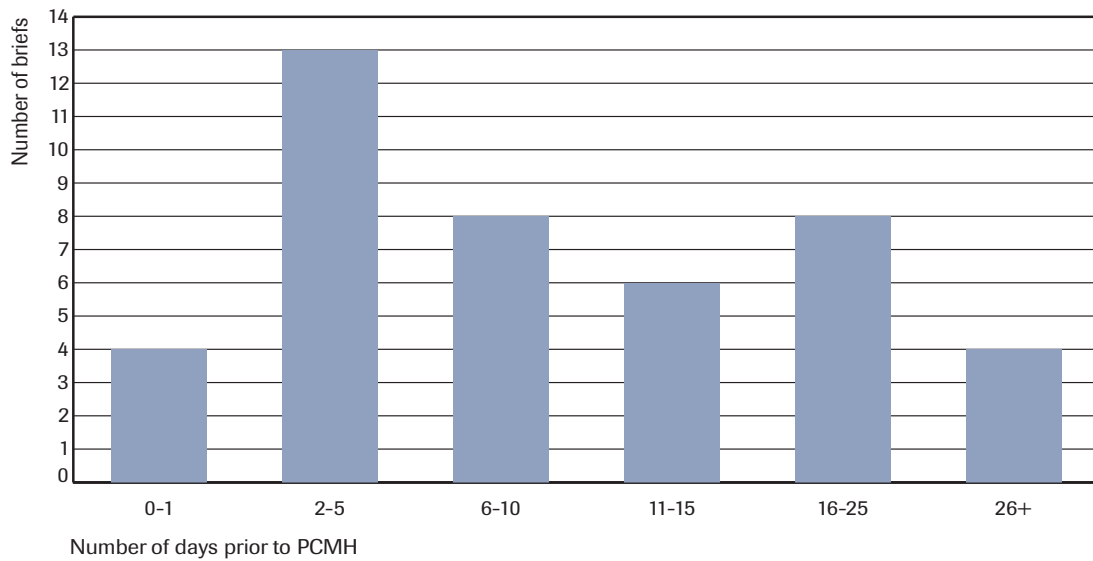
Changes of advocate

- 3.30 The allocation criteria found in the CPS/Bar Framework expects that in those cases where a not guilty plea is anticipated, the CPS will select the trial advocate as soon as is practical and that the brief instructions should be sent at least 14 days prior to the PCMH. This guidance anticipates that the trial counsel may not always be available to appear at the PCMH and, in those cases, the CPS should instruct a suitable replacement. Any advocate covering a PCMH should have the correct level of experience to make decisions in court and to provide the court with any assistance required. The case should have been considered by the trial counsel before the PCMH to ensure it is in good order.
- 3.31 The file sample had 42 cases in which there was an indication of a plea of not guilty at the time it was allocated. Thirty three (78.6%) were allocated to a CA and nine (21.4%) to counsel. There was a change of advocate prior to the trial in 19 cases, 18 of which related to CAs. Of these, 13 were sent out to counsel and five were allocated to another CA. The one case returned by counsel was given to another counsel within the same set of chambers.
- 3.32 In looking at the continuity of coverage provided in cases the figures in our file sample show that, proportionately, counsel were less likely to return them. Counsel initially allocated retained the case up to the end of the trial in 78% of those in the sample, while the figure for CAs was 30%. This disparity may be in part explained by the fact that in some types of more serious case, particularly serious sexual assaults and child abuse, counsel with expertise in these areas will be instructed and there is a higher expectation that they will retain the case throughout. These types of case are also likely to be given a fixed date for trial allowing the advocate to ensure they are available for the hearing.
- 3.33 Allocation decisions in some areas were influenced by the earnings it was aiming to achieve in relation to the use of CAs. In some almost all cases for PCMH are allocated to CAs and staff told us that this was an effective way of making the most savings. It guarantees a fixed amount of money for the PCMH and, should defendants plead guilty at this hearing, the size of those earnings increases.

Timeliness of allocation

- 3.34 Timeliness of allocation appears to be an issue in most areas. The CPS/Bar Framework contains guidance that in cases identified as likely to be contested, the brief should be allocated and delivered to the trial advocate at least 14 days prior to the PCMH.
- 3.35 Of the 64 cases committed for trial we were only able to establish the allocation date in 35, of which 19 (54%) had been allocated ten working days or less prior to the PCMH. Eleven cases had been allocated to a CA and in eight counsel had been instructed.
- 3.36 Forty six cases were identified as likely to be contested and of those we were able to ascertain the allocation dates in 24. Only half of these cases had been allocated more than ten days prior to the PCMH.

Timeliness of brief allocation



NB this graph is timeliness of allocation for all cases including committals for sentence and appeals.

3.37 The reasons for allocation close to the PCMH date may be due to the practice of allocating only when the final court list is received (see below). The advantage of an early court list was demonstrated in one area in which the crown advocate clerk was able to allocate files almost two weeks in advance of PCMH, as the court provide a relatively accurate list at that stage. However the date of allocation was not recorded on any of the ten files examined in this area so the team was unable to establish the actual timeliness of allocation.

3.38 In some areas allocation would be made generically to the crown advocate unit but not to a particular individual until the court lists were received. At that point the crown advocate clerk could work out who could cover which cases in which courts with the view to obtaining the highest savings. In effect these cases were often not allocated to a CA until the day before the PCMH.

3.39 Late allocation also affected briefs that were sent out to counsel. If it was decided that a CA would not be able to cover a case for the PCMH counsel would be instructed. In ten cases committed for trial in which counsel had been instructed, eight had been allocated less than ten working days before the PCMH. In some areas we were told that this late allocation could mean that it was difficult to instruct counsel with the particular expertise to handle the case.

3.40 Other explanations for late allocation include problems with systems that provide the briefs to the crown advocate clerk. In one area the system for dealing with cases immediately after the committal or sending of the case to the Crown Court had been revised to better ensure that briefs were provided to the crown advocate clerk as soon as possible. In other areas systems had been adopted which meant that administrative staff completed the second part of the instructions (see chapter 5) after the case had been committed or sent to the Crown Court rather than returning the file to a caseworker or lawyer to complete this task. This change was to ensure that briefs were sent to the crown advocate clerk more quickly as caseworkers or lawyers were not always in the office or able to deal with this work as a priority. In another area the crown advocate clerk received a copy of the draft brief prepared before the case was committed or sent to the Crown Court. This allowed them to assess the types of cases that would be received into the unit and to plan in advance the grade/level of advocate that would be needed to cover them.

Case progression

- 3.41 In several areas auditors were informed by CPS staff that it would be unlikely the brief would be read until the day before the hearing, even though allocation to a CA may take place some time before the PCMH. It was considered that in these areas, because the CAs were in court for most of the day and did not have time in the office, they would not be able to read the brief in good time for the hearing. In addition the selected CA might not be able to cover the case in court and, potentially, reading the case in advance could be seen as wasted preparation.
- 3.42 The practice of the advocate reading the brief very shortly before the hearing and of cases being allocated to a different advocate for trial is likely to impact upon case progression. The CPS and the defence are under an obligation to ensure that all work is carried out in cases at the earliest possible opportunity to ensure that they progress through the criminal justice system as efficiently as possible.
- 3.43 The allocation of cases the day before the hearing, or lack of opportunity to read those briefs allocated in advance, often meant that there was little time to carry out remedial work that might be necessary. Caseworkers could often be involved in last minute work on the day of the PCMH to ensure that information required for the hearing was made available. Where this could not be done there would be a significant amount of work to carry out after the hearing which could have been initiated at an earlier stage had the brief been read.
- 3.44 The understanding with counsel for some years has been that they will consider the case on delivery of the instructions and provide an initial advice to the CPS detailing any further work that is required. The CPS/Bar Framework creates a similar expectation for both counsel and CAs, but there was little evidence of this on the part of CAs in the files and caseworkers confirmed that it is rare that CAs forward such documents to them.
- 3.45 In areas where CAs are handling almost all cases at PCMH with little or no expectation of presenting the trial it is unlikely that the case will be regularly checked and action implemented for trial readiness. In effect the advocate who then receives the brief for trial may have lost several weeks during which work could have been carried out.

The allocation of cases and the impact of listing practices

- 3.46 The Crown Court daily list sets out the cases to appear in each court room and is a vital element of the allocation process. It determines whether cases previously allocated to an advocate can be covered in court by that particular individual. For example an advocate may be instructed to appear in three cases in court on a particular day but each case may be listed in a different court room which, depending on the timing, may make it difficult if not impossible for the same advocate to appear in all three.
- 3.47 In many Crown Court centres meetings or discussions are held on a daily or weekly basis between clerks from counsel's chambers and the Crown Court listing office. At these meetings agreements are usually reached regarding the listing of cases in order to allow counsel (for the prosecution and defence) to appear in as many as possible of the cases in which they had been instructed.
- 3.48 The relationship between the CPS crown advocate unit and Crown Court listing officer is currently in the early stages of development in a number of areas. In some the CPS is represented at these meetings by the crown advocate clerk and/or a lawyer manager. Other areas are not represented at these meetings and the crown advocate clerk has to negotiate separately with the listing office in order to gain as much accommodation for CAs as possible.

- 3.49 As the Crown Court list is often not finalised until late afternoon the day before, the crown advocate clerk may have to decide priorities and reallocate a number of cases late in the day and in some instances have to send cases out to counsel if it is not possible to cover them in-house.
- 3.50 As noted earlier (paragraph 3.37) some areas have adopted the practice of only allocating cases once the Crown Court list has been received which can maximise deployment of CAs. In one a final list was available over a week in advance but in most others a finalised list was not available until late afternoon on the day before court. The system requires allocation well in advance of the hearing to an advocate who will undertake the necessary check of the readiness of the case, or similar standards of preparation and anticipation of problems by the reviewing lawyer. A good working relationship with the court listing officer (who is carrying out a judicial function) will help, but work on the case cannot be left to the last minute.
- 3.51 The crown advocate clerk may have to liaise with the Crown Court listing officer about cases which may take additional time at court or where they are of a sensitive nature and the advocate may need time to speak with the victim or the victim's family. The crown advocate clerk would often rely on information from the advocate or the caseworker in these cases to be able to make the necessary arrangements with the Crown Court regarding timings.
- 3.52 It is important that CPS staff should be involved in the routine discussions which take place between listing officers and those managing advocates so that the CPS interests may be properly represented, whilst recognising that the prosecution cannot expect preferential treatment.

COMPLIANCE POINTS

CPS areas must ensure that cases are allocated and checked for readiness before any hearing so that remedial action can be taken.

CPS areas should seek arrangements with Crown Court listing officers which ensure that the legitimate interests of the Service are properly considered.

Crown advocate savings

- 3.53 One of the aims of CAs presenting cases in the Crown Court is that the CPS saves money that it would have otherwise spent on counsel's fees. CPS areas are provided with funding at the start of each financial year based on the expected deployment of CAs in court and this is adjusted throughout the year in line with the volume of cases handled. The CPS has had an incremental target framework for CA deployment which envisages an increase in the amount of savings to be made in each area year on year. (For 2009-10 it has been set at a minimum of 25% of GFS for each area.) The crown advocate clerks and unit managers work to meet these targets by making the best use of the CA resources.
- 3.54 The area will have to demonstrate the savings. It is often part of the crown advocate clerk's duties to record in a financial spreadsheet the saving made for each court appearance covered by a CA. Where usage does not achieve the savings target the area is expected to return the unearned funding. Given that the area will have to pay salary costs of the CAs regardless it will, in the event of a shortfall, have to find savings elsewhere to fund the crown advocate unit.

- 3.55 Some crown advocate clerks preferred to keep a running total of savings so that they could try to adjust their allocation of CAs to court in order to achieve their target. A number even set themselves weekly savings targets. It was clear that allocation of cases was influenced by the potential savings in a case as well as other factors. In some areas certain types of cases were routinely sent out to counsel as they did not secure the best savings, for example appeals against sentence cases were not allocated to CAs because the savings that could be achieved were minimal.

Allocated responsibility and case ownership

- 3.56 The introduction of CAs appears to have highlighted the lack of clarity in some areas regarding the roles and responsibilities of the caseworker, reviewing lawyer and advocate. The role of the caseworker in relation to preparation of the brief and dealing with correspondence on the case, for example, is no longer clear cut. There is also a blurring of the roles of the reviewing lawyer and the CA to whom the case is allocated (see chapter 5). In one area the team saw guidance which clearly set out the responsibilities of staff.
- 3.57 In all the areas visited the reviewing lawyer retained some responsibility for the decisions taken throughout the case. The exception to this was that in most areas any decisions that needed to be taken in court were taken by the CA. In one area the CA in court had to refer decisions back to the reviewing lawyer even if this meant having to adjourn the case. In other areas this practice had ceased, particularly since judges were understandably often not happy to grant adjournments when the advocate in court was employed by the CPS.

Crown advocate clerk – grade and responsibilities

- 3.58 The responsibilities of the crown advocate clerk usually include deciding whether briefs are to be retained by the crown advocate unit or whether they should be sent out to counsel; allocating cases to an appropriate CA; and managing the CA diary. The clerk is often also responsible for collating and recording the savings made by the use of CAs in the Crown Court. The most significant difference seen in the remit of the post lay with the level of authority the clerk had to allocate cases for PCMHs and trials.
- 3.59 The grading of the crown advocate clerk post varied. This might reflect additional responsibilities but that was not always so. There is as yet no national guidance on the level of skills and experience required for the post and no guide that outlines how the system should be set up. In a few of the areas we visited staff had been to other CPS areas where systems had already been established.
- 3.60 Contingency arrangements to cover for the absence of crown advocate clerks was a concern in some areas visited.
- 3.61 The clerk is often an experienced Crown Court caseworker who has had the responsibility for allocating cases to counsel in the past. Several of the clerks we saw had been in the post since the inception of the initiative and had been involved in developing the systems. In other areas the clerks were relatively new to the post and in one they did not have a background in casework. In these areas the CA lawyer manager was more closely involved with the allocation of work, particularly trials.
- 3.62 There is no formal training available to crown advocate clerks. Often new clerks would have some instruction by the previous post holder if they were available to provide this. Those from a Crown Court caseworker background will have experience in allocating cases to counsel, but they will not have experience of managing the work of a number of advocates. The optimum amount of work taken on by the CAs and the number of advocates for a single clerk to manage is not yet clear.

Action point

The CPS should introduce guidance and training for crown advocate clerks to ensure consistency in the allocation of briefs and in managing deployment of crown advocates at court.

Diary systems

- 3.63 All the clerks had a means of recording the court allocation for CAs. Most used an electronic diary system within the Microsoft Office suite. In some areas separate diary systems were used to record cases for trial and another with the details of non-contested hearings. In two the clerk relied entirely on a paper diary.
- 3.64 The diary was used to record allocation of trials to particular CAs and that time was blocked out to cover court in those cases. The diaries also recorded time set aside for preparation of cases where this had been agreed and any leave commitments. A number of clerks recorded in the diary brief details of the cases allocated which may include a cost estimate. These details assist if they have to brief a case out to counsel as they can see which are more cost effective to be kept in-house. This appeared to be the dominant factor, rather than ensuring the right advocate for the case.
- 3.65 In most crown advocate units the paper or electronic diary are available to the unit staff and Crown Court caseworkers. In one area the clerk produces a weekly update to the diary which lists the trials allocated to CAs in the coming weeks and is sent to the advocates and caseworkers. This allows the CAs to retrieve the briefs at a time they feel appropriate to prepare for the case.
- 3.66 Though similar diary systems are used most clerks were concerned that with an increasing number of CAs, and consequently an increase in the amount of court coverage they provide, the diary systems currently used were becoming cumbersome and more difficult to manage.
- 3.67 CPS staff believed that some counsel's chambers appeared to have an electronic diary system more suited to the work that can produce such things as a printout of counsel's availability, which would be required when fixing a trial date. This is not as easy for CPS clerks. The CPS computerised case management system does not assist in this work. Even if the details of the CA allocated to a case is recorded on CMS, the printout of all cases listed on a particular day does not currently show the allocated CA.

Action point

The CPS should consider developing a more tailored and sophisticated diary system to assist crown advocate clerks.

4 RETURNED BRIEFS

Returned briefs - definition and impact

- 4.1 A brief is said to be returned when the original advocate instructed is unable to appear at court to cover the case. A true return relates to the original advocate being unable to deal with the trial rather than for an interim hearing after which responsibility could go back to the original advocate.
- 4.2 The impact is both one of cost if work has to be duplicated and, importantly, one of quality if the new advocate has little time to prepare. Continuity in cases is important, particularly in more serious complex cases, and returns can impact upon case strategies and tactics as well as on the perception of police and witnesses if there have been a different advocate in conferences and hearings to the advocate who appears at the trial.
- 4.3 Briefs can be returned from either external counsel or by CAs. If the CPS does not have a suitable CA to cover a case, the crown advocate clerk will arrange for the case to be briefed out to counsel. When cases are allocated to counsel arrangements are put in place to ensure that, should counsel be unable to cover the case in court, the CPS are contacted in order to agree a suitable replacement.
- 4.4 Often counsel's clerks will have a suitable advocate in chambers to offer the CPS, but occasionally may have to arrange for counsel from another chambers to cover the case if someone of the right grade and/or experience is not available within chambers.
- 4.5 Since the introduction of CAs the volume of work being sent to counsel has reduced and with it the number of returns from counsel. Rather than the counsel's clerk arranging for a suitable replacement in chambers, in some areas they are required to contact the CPS and the crown advocate clerk will ascertain if there is a CA who can cover the case. If this is not possible then suitable counsel will be accepted.

Recording returns

- 4.6 In the past areas were expected to record the number of returns from counsel in order to try and determine reasons for them and to reduce the proportion of returns. This information would show if there were any chambers or counsel who were returning work frequently and this could be addressed at meetings with chambers. This information is not recorded in all areas though some were still recording and making use of it in these meetings.
- 4.7 The file examination revealed a low level of returns from counsel who had been initially instructed compared with the number in cases in which a CA had been allocated (see paragraphs 3.31-3.32). In some areas a record was kept of the number of cases briefed out to counsel after being allocated to a CA, but this was less often than not. Where it was recorded the information was examined by the crown advocate unit managers. The CPS has undertaken short surveys of late returns in cases listed for trial. In the week of 23 March 2009 there were 26% late returns by CAs and 34% by counsel.
- 4.8 In general changes of allocation between CAs was not recorded as, in financial terms, it did not make any difference. However changes, particularly at a late stage, may have an effect on the conduct of the case and any correlation between a change in advocate and an adverse outcome (or acceptance of a plea previously offered) in a case should be examined.

- 4.9 Reasons for returns had not been recorded on the files except if counsel had returned the brief. One area recorded the number of cases and reasons why briefs had been sent out to counsel on return from CAs. Area managers told us that the most common reasons for the case being returned by a CA, either at PCMH or trial, would often be due to lack of CA resources or the inability to cover all cases because of the way in which they had been listed in court rooms. We were not able to establish in any case who had accepted and authorised any returns as there were no endorsements on the files.
- 4.10 In the CPS/Bar Framework it is expected that in cases which are likely to be contested the advocate who was allocated the case would prepare it for PCMH. Where the allocated advocate is unable to attend the PCMH it is suggested that the trial advocate and the one who is to conduct that hearing should discuss the case to ensure that all points trial counsel would wish to cover are dealt with. On examining files that had been returned to another advocate there was no evidence that there had been any consultation on either the file or the brief.

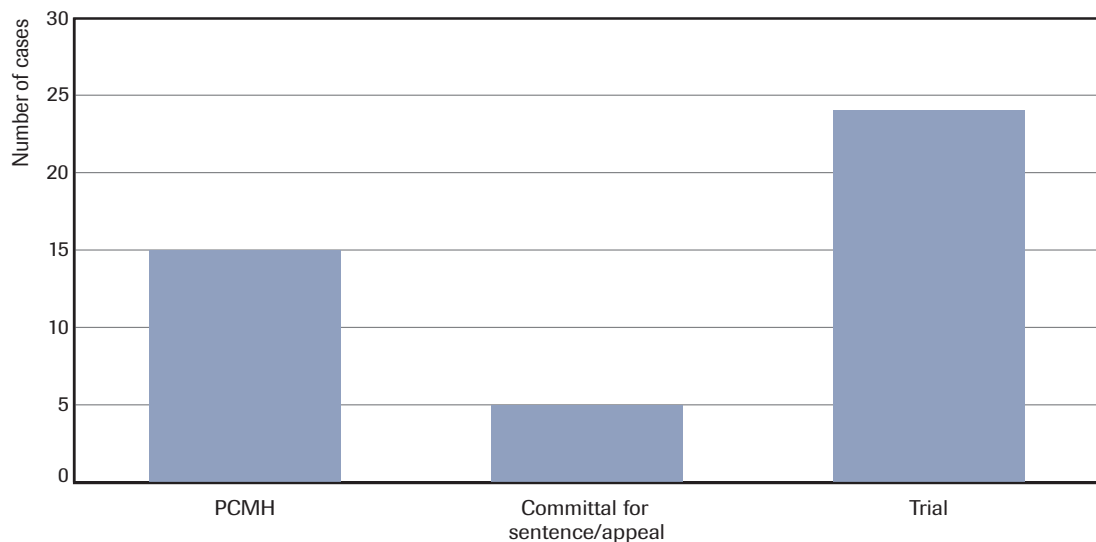
COMPLIANCE POINT

CPS areas should record the number of, and reasons for, returns from both crown advocates and counsel. This information should be used in an effort to reduce the number of returns.

File examination

- 4.11 In our sample of 80 files, 40 cases had been returned at PCMH, trial or appeal and in 13 the brief had been returned on more than one occasion. One appeal against conviction case had been returned five times and had a different advocate for each court appearance.

Stage at which cases returned



- 4.12 Cases in our sample were mostly returned well in advance of the trial date. However five set for trial were returned less than four working days prior to the hearing. The cases included one of attempted robbery and another of sexual assault on a child.

- 4.13 In most instances cases were returned from a CA to counsel (21 of the 40 in our sample), with 13 returned between CAs. Of those initially allocated to counsel there had been returns between counsel in nine cases and in eight of these return was to counsel within the same chambers. Only one case in the sample was returned from counsel to a CA. It was not possible to establish whether there was any significant difference in the timing of returns from CAs to counsel or between CAs as information regarding the timeliness of returns was not available on the files, particularly where returns between CAs had taken place.
- 4.14 Only one area had a very low level of returns at PCMH and trial; here the initial allocation was done with the intention that the case would remain with that advocate throughout. PCMHs were not allocated at the time the court list was received but well in advance. However this area had experienced some difficulty making the most efficient use of their CAs and were considering changing the system so that allocation of PCMHs would be in line with court lists. It was felt, however, that this method would not always allow the crown advocate clerk to pitch the right quality of work to the correct individual.
- 4.15 Some areas showed a greater level of returns than others which may be attributed to the blanket allocation of cases to CAs to cover PCMHs, with the intention that in the event of a not guilty plea the case would be reallocated. In only one area did the originally instructed counsel retain all the cases which were expected to go for trial throughout.

Area	Number of cases in total expected to go to trial	Case retained by initial advocate
A	5	2
B	7	1
C	6	3
D	5	1
E	5	5
F	5	1
G	4	1
H	5	3

- 4.16 There were no examples in the file sample of cases being allocated to the incorrect grade of advocate on return.

5 STANDARD OF INSTRUCTIONS TO THE ADVOCATE

Instructions to prosecuting advocates

- 5.1 The CPS prepares instructions to the prosecuting advocate irrespective of whether this is to be counsel or a crown advocate. There are no specific requirements for the content and quality of the instructions but there are some key principles drafted as guidance for the CPS reviewing lawyers in the CPS/Bar Framework. These state that CPS instructions will endeavour to address issues in the case including the strategic decisions made and how the prosecution puts its case. They will identify relevant case law and explain the basis and rationale of decisions made regarding disclosure of unused material. Where practical they will provide specific guidance or indicate parameters on acceptable pleas and address issues raised in any appeal.
- 5.2 HMCPSI uses a set of casework expectations to make assessments in its inspections and reviews and these include specific ones for documentary instructions to advocates. In addition to the essentials contained in the CPS/Bar Framework these include guidance on assessing the general approach taken by the author of the instructions. They are founded on the need for instruction documents to be clear, place the advocate in a position where they are sighted on all relevant issues, and reflect the nature of the relationship between the advocate and those instructing him. For example it is expected that the author of the instructions should make no assumptions as to the state of knowledge of the reader because cases and hearings can be returned between advocates at very short notice and the instructions document has a key role when this happens.

Systems used to produce instructions to counsel

- 5.3 The CPS has a Crown Court case preparation package which is available on CMS and this is used to prepare papers for committal or service under section 51, Crime and Disorder Act 1998. Reviewing lawyers were responsible for completing the first part of the electronic brief template using information from the review of the papers at this time.
- 5.4 The second part of the template can only be finalised after committal or service of papers. This includes the final list of enclosures, names of the allocated lawyer and caseworker, date of committal or sending and the first hearing in the Crown Court. There is also a standard paragraph to be updated with details of the defendant's bail or custody status. There are numerous standard paragraphs some of which have options that are to be deleted.
- 5.5 In the past Crown Court caseworkers always completed the second part of the brief. It was at this point that they could deal with correspondence or evidence that had arrived after committal and check that outstanding items requested had arrived, or send reminders. Any new information could be included in the brief. This was an important early check that work was being progressed effectively before the PCMH. However if backlogs developed this work was not always done.
- 5.6 To reduce backlogs and speed up brief preparation some areas had introduced new systems. Two still allocated this work to specific caseworkers and one now rotated caseworkers onto a team to do this. Most units in the remaining five areas had introduced systems where A2 caseworkers or typists took on this role and typed up the sections from information on the file provided by lawyers. One of these had done this for a number of years but in the others it was a new system.

- 5.7 Where these systems were in place cases were only allocated to named Crown Court caseworkers after the brief had been delivered, often just before the PCMH. Caseworkers in three of these areas expressed concerns that administrators did not include all relevant enclosures or information and they received the case too late to check this. They thought that work not done at this time could cause problems later at PCMH or hinder early guilty pleas. This concern was validated by instructions seen in our sample that had poor lists of enclosures and standard details not completed. Work was not progressed at this stage and items that should have been included in the brief were sent out late or counsel had to request them.
- 5.8 However in one of the two areas in which caseworkers were allocated cases upon committal for trial briefs were poorly completed, bail status and conditions were not set out and it was unclear if an additional handwritten sheet was a list of further enclosures or an instruction to A2 caseworkers or typists. The content of the brief was minimal due to lawyers not completing appropriate sections pre-committal.
- 5.9 In the other area where caseworkers were allocated to prepare the briefs they were of noticeably better quality. Here we were told that the importance of this part of the process was recognised and clear instructions and training had been given. The lawyer's contribution to the brief was also more detailed.
- 5.10 The completion of briefs should be overseen by someone skilled in dealing with further evidence and casework. The importance of this stage of case progression should be recognised. Those preparing the brief should have standard instructions, with adequate guidance and training to ensure that all relevant information is provided and work is progressed.

The content of the instructions to counsel

- 5.11 The overall appearance of most briefs seen was of pages of standard paragraph script which overwhelmed any information more tailored to the case.
- 5.12 The electronic brief templates have a number of standard paragraphs giving instructions on current CPS policies; it is not clear which of these are obligatory or which the areas can customise. Overall paragraphs containing some information pertinent to a particular case made up less than a third of the text in briefs. Certain critical information, such as bail status, was in paragraphs that sometimes did not have the standard options deleted correctly.
- 5.13 Of the 74 briefs examined³ 55 (74%) comprised mostly standard paragraphs. Of these only 29 had some further detail, usually a short paragraph under the heading "case details", but this was lost amongst computer generated text. One brief stated simply that counsel was instructed to read the papers.
- 5.14 The remaining 19 (26%) of the 74 had many standard paragraphs but there was a clear section that was helpful and to the point of the individual cases. Sometimes these were more serious cases where the reviewing lawyer had detailed information to pass on. However we also saw examples of sensitive and serious cases where the briefs were mostly standard paragraphs and some further information or analysis ought to have been included.

3 Of the 80 files seen six had no brief on the file or CMS. The audit therefore assessed the overall quality of 74 briefs.

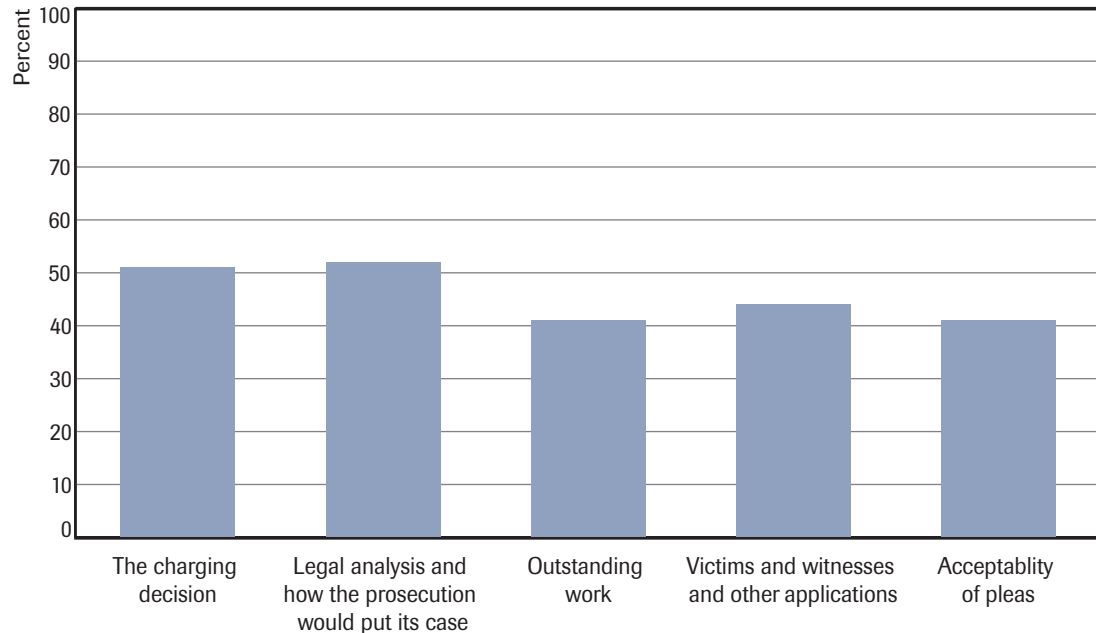
- 5.15 One of the eight areas visited produced significantly better instructions than others. Here nine out of ten briefs had many standard paragraphs but also had a clear section that was tailored to the case. (This is the area referred to previously in paragraph 5.9.)
- 5.16 In this area the lawyers prepared the instructions pre-committal and the caseworkers were allocated cases after committal and encouraged to complete the outstanding details in the second part of the brief template. They dealt with any further evidence received and included it as necessary. In this area the unit head and a CA had reviewed the brief template and had visited another area to look at their good practice. They had desk instructions, training and guidance that had been sent out to try to standardise the quality of briefs.
- 5.17 If the brief is to be useful to the prosecuting advocate, whether counsel or CA, it should contain relevant information clearly set out and highlighted at the front and distinguishable from the standard paragraph instructions. We are aware from other inspections and reviews that counsel become so used to receiving briefs with only standard paragraphs that they may not read ones that are in fact tailored to the case. Essential basic contents are already established in the CPS/ Bar Framework principles. In addition instructions should include details of the history of the case with regard to bail or custody, information about victims and witnesses, applications and the current position regarding outstanding work or evidence.

The lists of enclosures

- 5.18 It is important that documents sent to the prosecuting advocate are accurately listed and marked, and bundles paginated where appropriate, to clarify what has been sent. It helps the advocate, informs staff carrying out further work and enables the timely and accurate payment of counsel or assessment of CA savings. The CPS file should be maintained in good order with a copy of the instructions and labelled copies of enclosures to identify all items sent.
- 5.19 All but one brief seen listed the items enclosed but the information varied in quality. Most were not comprehensive or accurate and were not maintained as further items were sent out. The enclosures themselves were not marked or labelled to make identification easy. Some had numbering and some did not; others had a section headed "instructions for counsel" which was a bundle of documents not listed separately. Sometimes documents referred to in the list, such as a police form or memo, could not be located.
- 5.20 In one area the enclosures listed did not correspond to the items in the brief. It appeared that a number of briefs in this area had pro forma lists that had not been customised to the case appropriately.
- 5.21 Some areas did not reproduce a copy of the brief in the CPS file and it was difficult to find items listed or referred to amongst the papers. Other areas chose to file items in different coloured folders rather than produce a copy of the brief.
- 5.22 It was difficult to ascertain what material had been sent to the advocate subsequently, or had been served as additional evidence. Staff mentioned this as a concern and it was an issue in the accurate and timely payment of counsel's fees. For clarity, items enclosed with further instructions should follow on from the numbering of the original enclosure list. Only one area did this.

Required elements that should be included in the instructions to the advocate

Percentage of relevant briefs containing some information about



Information about the charging decision and reviews and legal analysis

- 5.23 Of the 72 relevant briefs⁴ over half, 37 (51%), contained some information about the initial charging decision made. This was often in the enclosed pre-charge advice review (MG3 form) which was sometimes listed as an enclosure or referred to in the text. However in three areas the majority of briefs had no information about the charging decision.

- 5.24 Out of 64 briefs⁵ in cases committed or sent to the Crown Court for trial 33 (52%) had some legal analysis of the issues or instructions on the basis of the prosecution case. Sometimes this was just in the enclosed charging review but in three areas this legal analysis had been included in the text of most briefs.

- 5.25 Two areas had no legal analysis in any of the briefs. In one of these we were informed that some lawyers do not fill in the Crown Court case preparation package but simply deal with unused material and draft an indictment. In the other area lawyers preparing the committal or section 51 papers complete a form that identifies issues in the case and consideration of likely pleas. However this form is not included in the brief but is used by the crown advocate clerk in allocating cases. This information should be included in the brief. In these areas we were not surprised to be informed that counsel no longer read the brief but just turned to any enclosed charging advice and the police summary of the facts.

⁴ Of the 74 briefs seen 72 were subject to a charging decision by a CPS lawyer.

⁵ The eight committal for sentence and eight appeal briefs were not counted in this total as it was felt that it is not usual to provide detailed legal analysis in these cases. The relevant number of files was therefore 64.

Information about outstanding work or evidence

- 5.26 Counsel or the CA would be better prepared to deal effectively with issues arising at the PCMH if information about further work requested to be undertaken and its progress were clearly set out in the instructions. Out of 49 relevant cases where further evidence or work was seen to be outstanding less than half, 20 (41%), provided details of this.
- 5.27 In two cases counsel asked about information that was clearly on the file before the brief was sent out. On another file video evidence had not been sent to counsel early enough to assess properly its value for trial.
- 5.28 Where information about outstanding work or evidence was provided it was usually by reference to a memo from the CPS to the police for further action. Two areas were more consistent in including this than others. The best performing area was one in which the caseworkers entered this information into the brief when preparing it.

Victim and witness issues and other applications

- 5.29 Where information should have been provided to counsel or the CA about victims or witnesses' needs, bad character or other applications less than half, 20 (43%), of the 46 relevant cases had any information in the brief. Performance was inconsistent across the eight areas and was significantly worse in four of them.
- 5.30 In three cases it could be seen that counsel had sent advices asking for information about special measures or bad character considerations. No information was provided in some cases involving child victims, victims of sexual assaults and offences of violence.
- 5.31 Special measures and bad character applications were not always progressed before the PCMH and information provided in the brief was sometimes out of date, having been written at the time of the committal review or charging advice.
- 5.32 Even when there had been early consideration of these matters in pre-charge advice it was not always addressed in instructions sent to counsel. It was stated in one brief that an application would be drafted for special measures but this was not done and was the subject of an order at the PCMH. The instructions regarding this would have been drafted by the lawyer before committal. One area we visited intended to second caseworkers to the team of lawyers preparing committal and section 51 papers to ensure that applications were completed at an earlier stage to address this concern.

Instructions on the acceptability of pleas

- 5.33 Of 58 relevant cases, 41% provided some instructions to counsel on the consideration given to the acceptability of pleas. Some stated that only a plea to the full indictment was acceptable, others asked counsel to consider any pleas tendered. The two areas that did not provide legal analysis or consideration of information about outstanding work also did not provide guidance about acceptable pleas.
- 5.34 A few cases had detailed consideration of the elements of an acceptable basis of plea noted within the text of the brief or within the enclosed MG3. The instructions in one area (in which there were higher standards of preparation instructions generally) had more information about consideration of pleas and produced better briefs overall. Another area produced a pro forma sheet to assist the crown advocate clerk for allocation purposes that noted this consideration, but this information was not included in any of the briefs seen.

- 5.35 Of 24 cases where a plea had been accepted to charges other than those on the indictment or where a basis of plea had been agreed, only ten had any note explaining why or who had authorised this. Endorsements were not detailed or were missing from the file. Sometimes a basis of plea was mentioned but it was uncertain if it had been accepted and some had no copy of the written basis of fee on the file.
- 5.36 We have marshalled action and compliance points to address the issues described in relation to instructions to the advocate.

COMPLIANCE AND ACTION POINTS

The CPS should reconsider the content and format of the brief preparation package to ensure the case specific content is in a prominent place where it can be identified and easily read.

CPS area managers should ensure that instructions to counsel are prepared with properly listed and marked enclosures, and copies retained on file.

CPS area managers should quality assure the content of the instructions to counsel or crown advocates.

Quality of indictments

- 5.37 In the Crown Court the charges against a defendant are shown as counts on the indictment. The indictment must be lodged with the court by the prosecution within 28 days of committal or the service of papers in sent cases. Out of 64 cases with indictments 89% had no errors. Of the seven (11%) in which errors had gone unnoticed prior to the indictment being lodged, three were simple typing errors but four were more substantial legal or form errors. Seven other indictments were altered following the acceptance of pleas to counts added to the indictment.
- 5.38 In all areas indictments were lodged by A2 caseworkers directly after committal, usually by email. There was consensus amongst those spoken to that they were not trained to check the content of the indictment prior to lodging and if changes were needed they would not necessarily know.
- 5.39 The situation can be rectified by applications by the prosecuting advocate to amend the indictment, but bad drafting gives a very poor impression to counsel and judges of the competency of the CPS.
- 5.40 It was not apparent from the files examined that there were any checks made to monitor the quality of indictments and we were unable to establish the existence of effective systems from the staff spoken to. In the area where caseworkers were rotated on to the team to complete briefs we were told that deterioration in quality had been seen. This was thought to be due to a lack of file ownership and accountability. An experienced caseworker on this team was now trying to address the team's standards with some quality checks from the caseworkers' managers being introduced.

Action point

CPS areas should put in place systems to assure the accuracy and content of the indictment prior to it being lodged.

Timely reading by the advocate of instructions and the provision of early advice

- 5.41 The key principles contained in the CPS/Bar Framework gives guidance that on receipt of instructions as trial advocate, external counsel will consider the papers and provide timely advice to the CPS where appropriate, preferably within five working days of receiving the instructions. CAs are expected to operate on a similar basis in order to identify quickly where further pre-trial work is required. Previous Bar standards required counsel's chambers to return a form acknowledging receipt of the brief, confirming that it had been read and providing any initial advice within five to seven working days. Some areas were still operating this system but in others it had fallen into disuse.
- 5.42 Staff interviewed were often not certain if this system was still operating; they felt that counsel sometimes provided initial advice but the CAs less so. They believed it was more likely that the CAs would send an email directly to the police. Where the CAs contacted the police directly with requests and advice they did sometimes copy the caseworker or lawyer into the email. However it was most likely that the items requested would go directly to the CA.
- 5.43 Out of 61 relevant cases⁶ an initial advice had been sent in 15 (25%). Four were referrals from the CA for the lawyer to reconsider certain issues after PCMH and 11 were from counsel. The majority of advices seen from counsel were in three areas and nearly half were provided within seven days. Most were not on the Bar standard forms but were more substantial advices. As we mentioned earlier in two cases requests were made for items that were already available and should have been included in the enclosures with the brief.

COMPLIANCE POINT

CPS areas should introduce or reinvigorate systems to ensure that counsel and crown advocates confirm that they have received and read the instructions and initial advice should be provided at the earliest possible time where relevant.

Roles and responsibilities and case ownership

- 5.44 The audit found that there was a lack of clarity about who was responsible for cases at various stages. In seven areas visited the reviewing lawyer preparing the case formally retained responsibility for the decisions taken throughout. Staff indicated that this sometimes caused difficulty as the CAs were more experienced than the reviewing lawyers. In practice sometimes CAs who had been allocated the case did take over the decision-making role. If the CA had requested further items from the police these may be directed back to them, bypassing the reviewing lawyer and caseworker. Caseworkers sometimes felt that they were 'out of the loop'. If the reviewing lawyer was not available some caseworkers would seek advice from the CA.
- 5.45 In most areas CAs were authorised to take pleas at court without referral back to the reviewing lawyer. However we had one file in our sample where the case was adjourned specifically for the reviewing lawyer to consider the plea.

⁶ The committal for sentence and appeals were not included in the relevant cases and one had no brief sent due to an early plea being entered.

- 5.46 In one area the CA took over as the reviewing lawyer when allocated the brief for trial. However the perception of some staff was that the original reviewing lawyer would be called to court to deal with any judicial criticism and that when a brief was returned to counsel from a CA the file would be returned to the reviewing lawyer, often with considerable correspondence not dealt with.
- 5.47 Lack of clarity as to case ownership had become such an issue in one area that guidance was issued stating who was responsible for the conduct of the case at various stages.
- 5.48 In areas where caseworkers were not allocated cases until after the instructions to the advocate were sent out there could be issues as to the responsibility for remedial action if this was close to the PCMH.

COMPLIANCE POINT

CPS areas should ensure that the allocation of responsibility for decision-making and case/file management should be clearly defined for each stage as the case progresses.

6 FEE PAYMENTS TO COUNSEL AND FEE SAVINGS BY CROWN ADVOCATES

CPS systems for issuing payments to prosecuting counsel

- 6.1 The graduated fee scheme (GFS) is used in the generality of cases by the CPS to pay prosecuting counsel and by HM Courts Service to authorise the payment of defence counsel. The scheme has pre-set fees for the level and type of work carried out, with uplifts (increases) for the number of indictments or defendants or for the number of days in any trial. Counsel are also paid for the number of pages of evidence read and for this reason a clear record of items sent to counsel or the crown advocate must be maintained.
- 6.2 The CPS payment system for work done in the Crown Court requires a fee log (financial folder) to be updated with each item of work carried out for which payment can be claimed. These include details of the type of hearing and who covered it and other work such as the length of videos viewed or conferences held. The CPS uses a blue fee log that is stored within the Crown Court file. (Details of other items for which the CPS issues payments such as expert fees and witness expenses are also to be stored in this log.) The log is a financial record for accounting purposes and the items recorded must be accurate.
- 6.3 In order to issue payments a fee information sheet (FIST) should be completed on the last hearing date, one for each counsel instructed in the life of the case. This FIST does not have amounts of money listed but requires those completing it to enter set codes that identify the types of payment.

Quality of fee log and fee information sheet completion

- 6.4 There is a service standard within the CPS to pay for work done within 20 working days. This is based upon the principle that payment to an advocate for work actually and reasonably undertaken should be achieved without unreasonable delay as soon as is practicable following the conclusion of the case. To enable this it is expected that caseworkers will complete a FIST directly after the final hearing in the case and that it will record accurately the work requiring payment. In one area visited a fees clerk completed all initial FISTs.
- 6.5 Completed FISTs are forwarded to area fees clerks (usually an administrator or caseworker) or in larger areas to a fees team. These are most often sent with only the fee folder and the clerks do not always have access to the CPS case file.
- 6.6 Fees clerks match the FIST to the invoice sent from counsel's chambers to claim for work done - the graduated fee claim (GFC). They will try to work out any anomalies between the two by checking the items noted on the fee folder, CPS court lists annotated with results and the electronic record of work from the Crown Court computer system (EXHIBIT). If they cannot resolve the differences they may refer back to the caseworker who completed the form.

- 6.7 There were 45 cases in our sample where counsel had done some work requiring payment and 33 dealt with wholly by CAs. Of the 45 cases⁷ involving counsel, 43 had an initial FIST completed and 20 (47%) of these were not correctly filled in. Sometimes more than one FIST on a file was incorrect. In one area initial FISTs completed on seven out of ten files seen had amendments.
- 6.8 The incorrect completion of the FIST by caseworkers was sometimes a problem for the fees clerks. Discrepancies were seen between hearings or items of work recorded on the fee log or FIST and those seen on the file. Dates of hearing, records of taped interviews and conferences had been missed from the fee logs. The numbers of pages of evidence noted and codes entered into the FISTs were often wrong and some had extensive crossings out. It was apparent that many amendments had been made by the fees clerks when checking the sheets.
- 6.9 Some initial FISTs appear to have been completed by the fees clerks and then amended upon receipt of the GFC. This indicates that the record of work on the CPS file was not adequate for them to complete the FIST accurately. Although some fees clerks mentioned that they checked CMS it was apparent that it was not an effective tool. Our file examination revealed that in most areas there were hearing entries on the files that did not match those on CMS, usually due to the latter not being updated correctly. Seven out of ten files seen in one area had hearings that had not been updated correctly on CMS.
- 6.10 To reduce anomalies and improve timeliness caseworkers are advised that it is best practice to agree the work listed on the fee log with counsel at court. This was sometimes seen to be done, however in one area caseworkers had been asked not to do this as there were concerns that they were agreeing incorrect details and this caused difficulty later when fees clerks tried to reconcile the GFC claims.
- 6.11 The audit team found that, overall, the quality of initial FIST completion was poor. Items were missing from fee logs or not recorded as sent to counsel and this caused delays in issuing payments.

Reconciliation of the fee information sheet and the graduated fee claim

- 6.12 The CPS/Bar standard requires counsel's chambers to submit the GFC within three months of the conclusion of the case. The CPS Service Standard states that the fees clerk should confirm the GFC against the FIST within ten working days of receipt and forward it to the National Finance Business Centre to issue payment. The time taken to do this is affected by the accurate completion of both the FIST and fee logs. Once the FIST and GFC match and any differences have been resolved the fees clerk signs that this is done and forwards them to the National Finance Business Centre, who should issue payment within ten working days of receipt, effectively within 20 working days of the receipt of GFC.
- 6.13 In ten of the 43 files (see footnote 6) where GFCs had been received the work recorded by chambers on the claim differed from that noted in the initial FIST completed by the caseworker or fees clerk.
- 6.14 Six of these discrepancies were resolved in favour of the work recorded on the CPS file and FIST. These included two cases where counsel had claimed for the wrong type of hearing, one where conference time claimed for was excessive, one where two counsel had claimed for the same advice and two disputes over pages of evidence.

⁷ Counsel were instructed in 45 cases out of the 80 seen, but only 43 of these had completed initial FISTs that were seen. Two had not been paid. One case had no FIST; one had no GFC; on another file there was no fee folder.

- 6.15 Four were resolved in favour of counsel's claim and related to pages of evidence and tapes served but not recorded on the file. One had no uplift for a second defendant.
- 6.16 Where there is a discrepancy between the FIST and GFC the fees clerk may pass it back to the allocated caseworker or the caseworker who completed the FIST to resolve. However this was not always possible and the fees clerks found that this caused further delays.
- 6.17 If the fees clerks could not resolve claims using their's or the court's records they would ask chambers to send the item claimed or details of it. On receipt of this they could pay the claim. Clerks thought these items were often missing where further evidence was served at court and caseworkers were not covering the hearings. The number of pages of evidence that had been served, tapes and photographs were all mentioned as items at variance in claims.
- 6.18 The audit team saw examples of payments that had been missed where counsel had not claimed for work and no payment had been made. These included four hearings that were noted on the file but where no payment had been made or claimed. The last day of hearing in these cases was over 30 days before we examined them, but GFCs may still be submitted.
- 6.19 Overall the resolution of discrepancies between the work recorded on the CPS file and that claimed for was hampered by the poor recording of items sent to counsel or served at court. The audit team could not ascertain what had been sent to counsel on some files and notes of hearings were not always clear or comprehensive.

Quality assurance

- 6.20 Most fees clerks were assuring the quality of FISTs completed by the caseworkers. Clerks were frustrated by recurring errors and passed this information to caseworkers' line managers, but it was not always clear that remedial action had been taken. In one area caseworkers realised their own poor standard of FIST completion when they covered the fees clerks' job for a short while.
- 6.21 The casework manager's role does not include any remit to check the accuracy of FISTs and it was therefore difficult to improve performance, although in one area line managers have now been asked to dip sample the quality of FIST completion and it appears that some internal audit work had been done.
- 6.22 Instructions issued with the new fee folder and FIST identify that the fees clerks' work should be closely supervised but staff could not tell us of any system in place as yet. We were told of the National Finance Business Centre returning cases to areas if they noticed anomalies, which indicate that incorrectly completed forms were being forwarded on to the Centre.

COMPLIANCE POINT

CPS areas should ensure that systems are in place to quality assure the completion of the fee information sheet and fee log and the reconciliation of the graduated fee claim with the fee information sheet.

Systems used by the CPS to remind chambers to send a graduated fee claim

- 6.23 Six of the eight areas visited had adequate or good systems to ensure that the GFC was received in time to comply with timeliness targets. These comprised reminders sent by the fees clerks to chambers about claims that had not been received.
- 6.24 One area used a system where individual reminder letters were sent out on each case at seven, 14 and 21 day intervals. They were seen on two out of the three relevant cases although a record of the chase up for the third file, where a GFC was still not received after 30 days, was seen on the fee log.
- 6.25 Five used the fees spreadsheet to highlight fees not paid and sent reminder lists to specific chambers. This was fast and effective and showed that if the fee was noted on the list, the claim had not been received. It was hoped that this would prevent misunderstandings where chambers thought the claim had been sent. Reminders were usually at seven, 14 and 21 day intervals but one area sent an immediate reminder as soon as the case was finalised and then two follow-ups.
- 6.26 Two areas did not use a staged reminder system. In one large area managers had stopped this and no reminders are now issued. There is a backlog of appeals against refusals to pay and many are from chambers who state that they had submitted claims. This is an area with many errors in the initial FISTs completed (seven out of ten) and nearly half (four out of ten) of the GFCs seen arrived over 15 days after the last date of hearing.
- 6.27 One area sent only one reminder at the end of every month. If a case was finalised at the end of a month the reminder may not go out for another 30 days. Two out of five GFCs seen in this area were late.

Action point

The CPS should determine best practice and provide guidance to areas to assist them to work with counsel's chambers so as to receive graduated fee claims in good time.

Systems put in place to ensure all fees are captured

- 6.28 Fees clerks can only remind chambers to send invoices for fees known to be outstanding and if a payment has been overlooked and then claimed much later it obviously causes timeliness issues. The accuracy of the estimates of accruals also depends on the area knowing of all relevant finalised cases awaiting payment. Some items for payment seen in the audit sample had been missed or noticed late.
- 6.29 Six of the eight areas visited had systems to check for finalised cases requiring payment. However these systems were time consuming. Most fees clerks only receive the fee log with the FIST and reported that sometimes administrators accidentally archived the fee folder with the file. To try to capture these fees clerks check the court lists noted with results by the CPS caseworkers, results provided by the court for the witness care unit staff, CMS and the court computer system.
- 6.30 In the large area mentioned at 6.26 these checks were not being done, again out of line with the systems seen in other areas. The fees team knew of fee logs that had been archived by mistake or with the payments outstanding, but the number of Crown Court centres covered and originating units they dealt with meant that checking all the result lists would take considerable resources. The fees team did file the large number of GFCs they received early before the logs arrived to ensure they were matched, but this also took time. There were concerns that recent logistical changes in the area had led to GFCs being sent to the wrong office and not forwarded on.

Types of log used to record payments and accruals

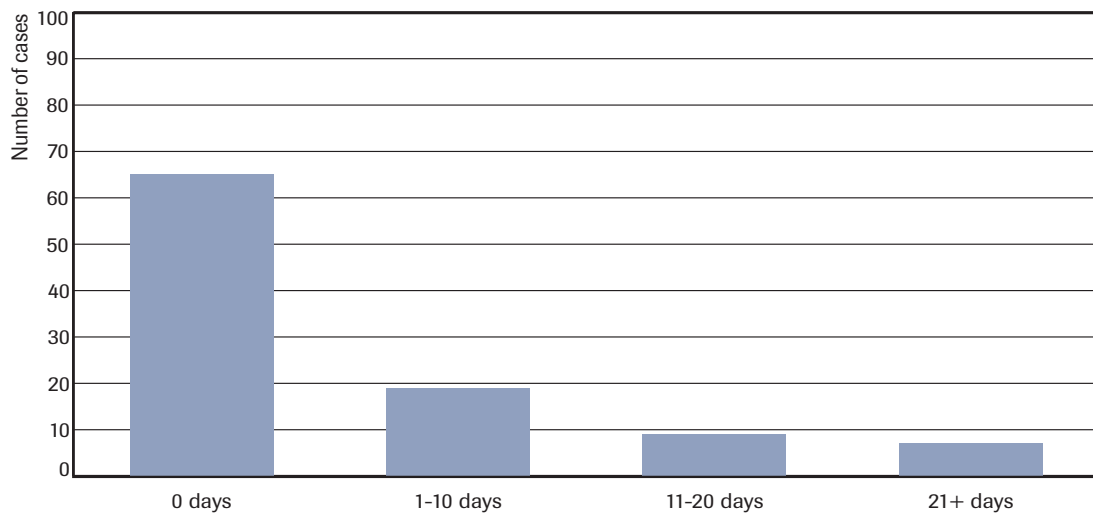
- 6.31 Different versions of spreadsheets containing different information were being used to record and manage fee payments.
- 6.32 Many areas used the national log or a version of it. This has columns in which to record estimated amounts payable awaiting claims, dates of reminders to chambers, the date the claim was received and when the FIST was signed off. Finance staff involved in budget forecasting have access to view the outstanding payments on the spreadsheets.
- 6.33 Other areas had developed their own logs and fees clerks thought this was under the auspices of CPS Headquarters, although it was not certain if this was the national or area Headquarters. Some logs did not have a facility to note reminders sent or did not have an accrual/estimate column and so the clerks dealt with this by sending copies of the outstanding FISTs to their finance officer to calculate.
- 6.34 In four of 45 cases⁸ where payment had been or was to be made details were not recorded accurately. Three could not be found on the logs and in one there was a discrepancy in the amount entered.

Timeliness of payment

Timeliness of fee information sheet completion

- 6.35 To enable timely payments the FIST should be completed on the last day of hearing or as soon as possible after this. Timeliness of completion of the initial FIST was an issue, as shown by the proportions that were completed late, and this usually related to the more problematic cases. It was thought that caseworkers found it difficult to prioritise fees on finished cases when there was urgent work to be done on 'live' cases. In some areas caseworkers had been given a target for the timely completion of the initial FIST but there was sometimes a lack of awareness about this.

Timeliness of completion of the initial FIST seen in the file sample



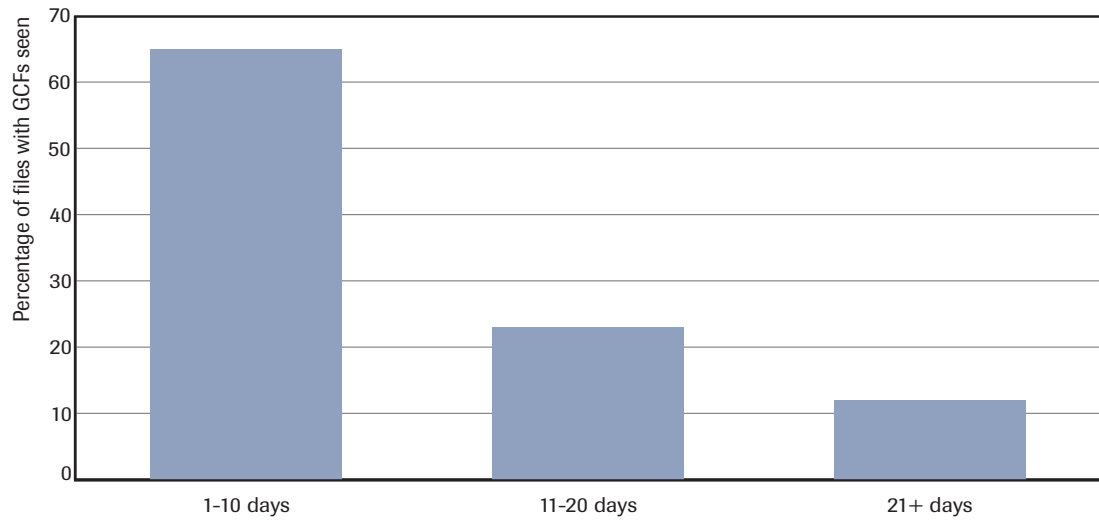
8 The two cases that had not been paid were recorded on the area logs awaiting payment. The one with no fee log could not be checked to ascertain if what was recorded was correct and so this is not known. The number not recorded was therefore out of 44.

6.36 Of 43 files⁹ on which we saw a dated initial FIST, 28 (65%) had been completed on the last date of hearing. These were from five areas we visited.

6.37 Seven cases had initial FISTs completed more than ten days later and three of these were after 20 days. These late forms came mostly from two areas.

Timeliness of receipt of the graduated fee claims

Timeliness of receipt of GFCs in the file sample



6.38 The majority of the GFCs received from chambers in our sample were timely. Of 43 relevant cases¹⁰ 28 (65%) were received within ten days of the last date of hearing. However a substantial number, 15 (35%), were received after ten days and some of these resulted in late fee payments.

6.39 Three of the late claims took over 20 days and two over 30 days to arrive. On another file the GFC was still outstanding and the last date of hearing was over 30 days prior to our check. Some of these very late GFCs were from the area that now had no reminder system and here it took some considerable time for these late fee claims to be paid. Others were from an area that did send reminders but chambers still forwarded late claims.

6.40 Six files had an initial FIST completed only when the GFC was received late. Five of these came from the same two areas noted above and it appeared that an initial FIST had not been completed by a caseworker. Evidence from the file sample suggests the payments for items and hearings that are missed in initial FIST completion hinder area timeliness.

6.41 Most invoices were dealt with within a few days of their receipt but some took longer. Most delays were a result of disparities between the FIST and GFC being resolved. For example in one area where the fee was paid 19 days after the receipt of the claim, correspondence can be seen with chambers trying to resolve disputed work.

9 Counsel was instructed in 45 cases out of the 80 seen. However one FIST was not dated and on one file there was no fee folder. Therefore 43 files had initial FISTs on which the date of completion could be ascertained.

10 Of the 45 files where counsel was instructed one had no fee folder and one had no GFC received. Therefore the timeliness of GFCs received could be looked at in 43 cases.

- 6.42 In the area we were told had substantial backlogs three out of ten claims were matched to the FISTs 35 days or later. This was the area with no system to ensure that they were aware of all the files requiring payment and none now being used to remind chambers to send claims. The area was working to reduce backlogs that had accrued and had some way to go before an effective system could be operated. At present they were not dealing with claims in order of timeliness.
- 6.43 Most areas visited had designated fees clerks but in one an administrator dealt with all the unit's fees as a supplementary role to other urgent administrative duties. This was not satisfactory as we were told that fees were often not processed until a backlog had built up, although this was not seen in the sample provided.

Out of time graduated fee claims

- 6.44 To ensure timely claims the CPS Service Standard states that if counsel's chambers do not claim a fee within three months of the last date of hearing, no payment will be made unless exceptional reasons can be shown. To enable this to be implemented fairly systems must be in place to assure managers that claims had not been received and overlooked before payment is refused.
- 6.45 Our file sample was selected from cases that were finished just over 30 days before we visited and they would not therefore have any examples of very late claims or appeals that exceeded the three month deadline. However we asked staff about area procedures.
- 6.46 In most areas we were told that very late claims were rare and where they did occur it was often due to payments or claims being overlooked. Late claims were usually passed to the unit head or area business manager who would decide whether payment should be made.
- 6.47 In three areas staff told us the fees clerk would check that a reminder had been sent out and then refuse to pay. Chambers were then instructed to write to the unit head or area business manager with reasons to appeal this decision. In another area late claims were passed to senior managers who usually authorised payment.
- 6.48 In the area with a significant backlog of appeals against refusals to pay out of time claims, the fees team was hindered by the lack of any systems to ensure that they had all relevant fees requiring payment or to remind chambers about missing GFCs.

COMPLIANCE POINT

CPS areas should have systems in place to deal with late graduated fee claims and decisions not to pay should be made by staff of an appropriate level against clear criteria.

CPS guidance and training on graduated fee scheme payments

- 6.49 The CPS has a GFS manual available on the internal electronic intranet that was issued in 2005 and updated in July 2008. There are a number of updates to the system and there is mention of items being highlighted in a fees newsletter to areas. The Frequently Asked Questions document clarifies some of the more common queries, for example around counsel and CA splits in payment on cases. There is a bulletin board used by staff to post queries that other areas or Headquarters may be able to answer. Some of the fees clerks we spoke to find the bulletin board helpful and keep copies of answers for future reference. Most clerks mentioned that the CPS Headquarters fee auditors have assisted with their queries.

- 6.50 A new electronic FIST and more detailed fee log are being introduced and instructions issued clarifying how they should be completed.
- 6.51 The audit team were not always confident that the information in the CPS instructions was the most up to date available and it was not always straightforward. For example a section on travel expenses referred staff to “long known principles”. These may not be widely known and clarification in the simplest terms to avoid misinterpretation and further research would be preferable. A consolidated, up to date version of the manual encompassing more regular detailed queries and the updates following increased use of CAs would be a good reference point for all.

Action point

The CPS should update the fees guidance and ensure that it is easily accessible as a helpful and comprehensive point of reference for all staff involved in fee payments.

Training in payment of fees

- 6.52 Most caseworkers spoken to were experienced but none had any recent training in the payment of fees. New staff were trained by experienced colleagues.
- 6.53 Four of the fees clerks who had been in post for some time had been shown what to do by a predecessor and had no formal GFS training. Two told us that they had received some help in understanding GFS payments from the local chambers’ clerks. Most fees clerks mentioned that they found the bulletin board and the electronic calculator helpful.
- 6.54 Poor completion of the FISTs and sometimes the fee logs by caseworkers was an issue in most areas and we saw examples in our file sample. In one area where caseworkers were not completing the forms correctly they had asked for training and this had been put into their personal development plans, however the area had found it very hard to secure places on courses.
- 6.55 The scope of the GFS had expanded since the time when most caseworkers were trained at its inception. Scheme B has been implemented and the increased use of CAs raised new issues in the payments on files for counsel. The completion and use of the financial folders differed between areas and staff signing the FISTs varied. In some areas counsel were asked to agree entries on the fee log at court as accurate, but not in others.
- 6.56 Some areas had experienced casework staff designated as fees champions along with experienced fees clerks and some provided refresher and personal training for long serving staff needing help.
- 6.57 The CPS has issued recent guidance on the use of the new FIST but areas reported some initial difficulties as it will not allow parts of the form to be left blank for later entry of data. There is also an issue regarding the signing of electronic forms.

Action point

CPS areas should provide regular refresher training for all staff in the completion of the fee information sheet and fee logs. Local area champions should be appointed and trained appropriately to assist with training and updating staff.

Financial delegation

- 6.58 The audit team found that there was uncertainty and lack of clarity amongst staff about the levels and purpose of allocated financial delegation.
- 6.59 Under the previous system caseworkers at court were completing notification of fee forms (NOFFs) which are still used to pay for work done in the magistrates' courts and for very high cost case payments that fall outside GFS. Caseworkers were then setting or negotiating the rates of fee payment to counsel and for this purpose they required certain levels of financial delegation.
- 6.60 Under GFS the fees are already set. In Scheme A, introduced in 2001, only trials lasting less than 25 days with no more than 400 pages of evidence and 80 witnesses were included. In 2005 when Scheme B was introduced most cases were included and now only very high cost cases lasting more than 40 days, having three or more trial advocates instructed, or proceedings in the Court of Appeal, are excluded. This means that some very large payments are made on FISTs.
- 6.61 In all areas many staff were not certain of their financial delegation under the revised system or what they were authorising. Casework staff and their managers thought that they probably still had delegation but few knew which level or what it was for. We were told that they used to deal in amounts of payment but now it was just codes on FISTs. Some of the fees clerks were concerned that they were signing for huge amounts of money to be paid with no checks on what they were doing. Some fees clerks had financial delegation but most did not.
- 6.62 Instructions issued with the introduction of the new fee folder state that appropriate financial delegation must be given to those allocating work to counsel, signing the fee log and the FIST to authorise payment. It is still unclear what levels of financial delegation are appropriate for different staff under the scheme.


COMPLIANCE POINT

The CPS should issue guidance clarifying the appropriate levels and purpose of financial delegation for all individuals involved in fee payments and raise awareness and understanding.

The recording and calculation of crown advocate court work as graduated fee scheme savings

- 6.63 The CPS aims to make substantial savings on counsel's fees through the use of CAs and this is one of the measures in relation to each area. It is important that the calculations are based on sound and accurate information and data.

- 6.64 A daily log sheet is completed at the end of each court session by the CA. Most areas were using a form produced nationally for this purpose. The only difference in its usage was that some CAs recorded the actual saving whereas others noted the types of hearing they had appeared in, for example a PCMH or sentencing hearing. Some crown advocate clerks used different means of ensuring that they had been informed of all the work that a CA had covered in court as a double check to ensure that they were capturing all the savings made.
- 6.65 The crown advocate clerk calculates the saving using the appropriate fee that would have been paid to counsel under the GFS. Most of the crown advocate clerks used an electronic form, the fees calculator, which was highly regarded as an efficient method of accurately calculating payments.
- 6.66 Fee savings are then entered into a spreadsheet either by the crown advocate clerk or administrative staff working in the unit or on area performance teams. This spreadsheet is the means by which areas record the amount of savings achieved and monitor savings against their target.
- 6.67 Comparison of the monitoring system against the files examined revealed that fee savings had been accurately recorded in all but three of the 44 cases in which a CA had appeared. In these three the relevant savings had not been recorded on the spreadsheet.



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