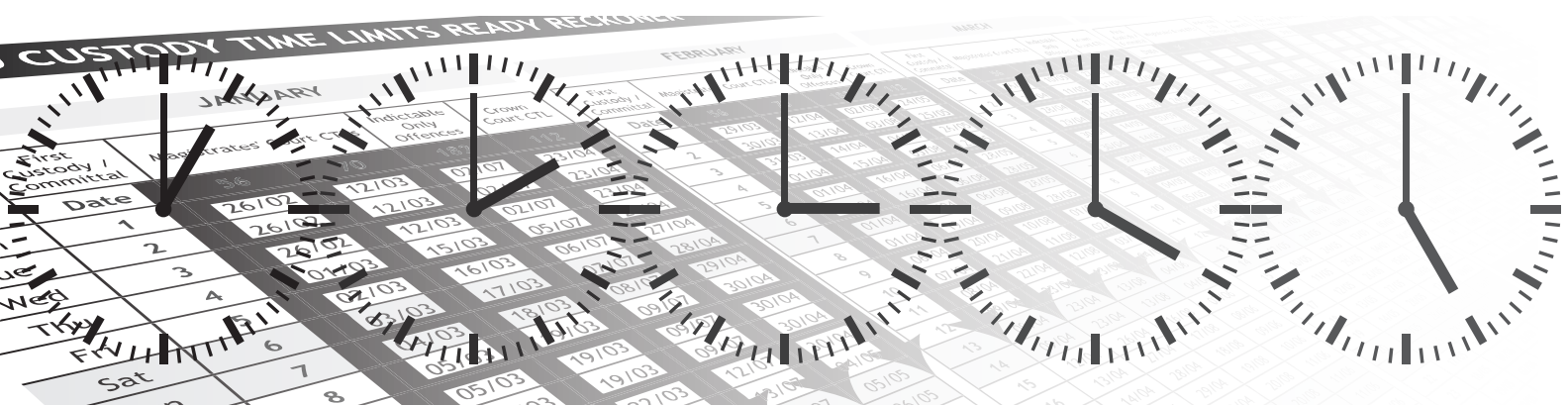


Custody Time Limits

A report relating to the handling of Custody Time Limits by the Crown Prosecution Service

March 2010





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Report of the audit of handling custody time limits by the CPS

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HM CHIEF INSPECTOR'S FOREWORD

Some means of limiting the time defendants in custody wait for their trial is an essential part of any developed and progressive criminal justice system. It was a well established principle of common law, now guaranteed by Articles 5 and 6 of the European Convention on Human Rights, that an unconvicted individual should not be deprived of their liberty for longer than reasonably necessary to bring them to trial. The custody time limit framework founded on section 22 of the Prosecution of Offences Act 1985 is intended to give effect to that simple but important principle.

The 1985 Act made provision for regulations stipulating the maximum custody periods during the initial stages of proceedings. As a contributor to the legislation I know that there was no expectation of the complex, convoluted and resource intensive processes which would prove necessary to manage custody time limits in the 21st century.

In 2002 I published a thematic report on the handling of custody time limits and expressed my concerns about the increasing level of complexity. The report said:

“Neither the primary nor the subordinate legislation impose an obligation on any agency for the monitoring of custody time limits. But any application to extend a custody time limit must be made by the prosecution Consequently CPS offices are required to establish systems for monitoring time limits... Operating the regime has proved problematic for the CPS since its inception.”

The 2002 report identified a number of steps that the CPS could take to strengthen its systems and processes and improve its handling of custody time limits. However, what remained outstanding (and outside the scope of the 2002 inspection) was the absence of clear and unambiguous guidance on how matters outside the control of the prosecution which affected the issue should be dealt with.

Since the 2002 report HMCSI has continued to examine the handling of custody time limits. Performance has been regularly scrutinised during area effectiveness inspections as well as our programmes of overall performance assessments. The latter confirmed a continuing lack of consistency and reliability in the operation of the custody time limit regime. Our findings, and an increased number of time limit failures, prompted the CPS to reinvigorate the custody time limit system. Staff in HMCSI collaborated extensively with the CPS champions and policy leads in this project. Legal guidance has been updated and a new national standard was issued in 2008 to be implemented by all CPS areas. An area minimum standard was also developed as a model system. There are lengthy and detailed documents.

As part of the ongoing assurance offered to the Attorney General and the Service itself, HMCSI concluded that the time was right, a year after the revised system was launched, to carry out an audit of the handling of custody time limits. This report outlines our findings. However, it is also pleasing to report that the CPS has made substantial efforts to improve its handling of systems and that the focus on this aspect of its business from a national lead and a policy lead has resulted in much more consistent guidance and systems. Even so there are a number of aspects where the CPS could work to improve current systems and processes to ensure better compliance with custody time limits.

But the issue that I outlined in 2002 remains and has been somewhat intensified as investigative techniques and increasingly complex cases within the system become more of the norm. Cases involving multiple offences by the same defendant with differing time limits are no longer a rarity. The cost of checking and rechecking manual systems is extensive.

It is impossible to avoid commenting on a statutory infrastructure which requires the prosecution to make application for extensions of time limits in circumstances when the prosecution itself has no need for an extension and may indeed wish the case to proceed. An observer coming to the situation for the first time might well conclude that operation of the system of custody time limits has for the CPS had to become an end in its own right in order to minimise the risk of harm which could flow if a failure led to the release of a dangerous individual. Their focus needs to be on the substantive prosecution of the case. By contrast, the intention of Parliament was a simple one; to ensure that defendants awaiting trial who could not be granted bail should not spend any longer in custody of their trial than was necessary for the proper administration of justice.

In my view the time has come for a more fundamental review. Whilst the audit report has considered the level of CPS compliance against its own systems and processes, the commentary offered at chapter 12 deals with some of the issues that remain unanswered. I hope that this report will trigger that debate.

A handwritten signature in black ink that reads "Stephen J. Wooler". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Stephen J Wooler CB
HM Chief Inspector

1 INTRODUCTION AND CONTEXT

Introduction

- 1.1 This report on the Crown Prosecution Service (CPS) performance relating to the handling of custody time limits (CTLs) follows an audit exercise undertaken by a team of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). HMCPSI is the independent inspectorate for the CPS and other prosecuting authorities. Because its area and thematic inspections are risk based there remain some aspects of work which need to be scrutinised with regularity to provide assurance to the Attorney General, the Director of Public Prosecutions (DPP) and to the Chief Executive of the CPS. This audit of CTLs is one such exercise.
- 1.2 Custody time limits regulate the length of time that unconvicted accused persons may be held in custody before trial and were introduced by the Prosecution of Offences Act 1985 (the 1985 Act). This sets out the maximum custody periods during the initial stages of proceedings in the magistrates' courts and the Crown Court to ensure that accused persons are not deprived of their liberty for longer than is reasonable. The maximum periods a defendant may be detained in custody are set out in annex A.
- 1.3 The effect of the legislation is to place the responsibility for ensuring compliance on the CPS. They must make an application in good time to extend the time limit and must satisfy strict criteria to obtain an extension. Areas developed their own monitoring systems to ensure this was done. It is an onerous responsibility because many factors affecting how soon a case may come to trial are outside its control and changes in procedure and the nature of the caseload have made the task of compliance more complicated. Consequently the CPS now struggles to achieve compliance and when it does, the resource implications are substantial.
- 1.4 Following the HMCPSI report on the thematic review of custody time limits published in September 2002 the CPS issued an essential actions and good practice document to provide a framework and guidance in managing CTLs.
- 1.5 HMCPSI recognised the importance of effective monitoring of CTLs and has examined performance in this aspect in both area effectiveness inspections and overall performance assessments (OPAs). The summative report of the 2007 OPAs (published March 2008) confirmed a continuing lack of consistency and reliability in the operation of the CTL regime across the 42 areas. This and an increase in the number of cases involving failures to extend CTLs in recent years prompted the CPS to reinvigorate the CTL system. Legal guidance has been updated and a new CTL national standard was issued in 2008 to be incorporated into all area CTL management systems. An area minimum standard was also developed as a model system containing optional good practice. This audit looks at progress in implementing the national standard.

Context

- 1.6 The courts and the CPS aim to expedite cases where the accused is in custody and list them for trial quickly within the custody time limit. However, under the original legislation, where this is not done, the CPS has the right to apply to the court to extend the period of custody. The application must be supported with grounds showing that there is good and sufficient cause for such an extension and that the CPS has acted with all due diligence and expedition in their efforts to prepare the case. Even when the prosecution is ready to proceed and it is the defence or the court which are not, it is still the responsibility of the CPS to apply to extend the expiry date.

- 1.7 If the CPS fails to make a timely application or to satisfy the criteria for an extension the defendant will be released on bail as the court has no discretion in these circumstances, irrespective of the seriousness of the case. The release of a defendant may create a risk of danger to the public. Monitoring systems implemented by the CPS to ensure they make all necessary applications have operated successfully in most cases but there have been instances where applications were not made or were not granted.
- 1.8 The CTLs that apply to each defendant are not always straightforward. The initial legislation (annex B) was supplemented by a series of regulations issued between 1987 and 1991 which introduced CTLs in respect of either way and indictable offences and these were later extended to include youth offenders and certain summary only offences. In 2001 amendments to the legislation introduced a time limit which would apply to indictable only cases sent to the Crown Court under section 51 of the Crime and Disorder Act 1988.
- 1.9 Custody time limits do not apply to a case as a whole but separately to each charge for each defendant. They will depend on the category of offence (summary, either way or indictable only) and the date that the defendant was first remanded by the court or was committed to the Crown Court on each charge. The varied time limits now in place can mean that one defendant can have different time limits that apply to separate charges on the same case. The position becomes even more complicated where there is more than one defendant in a case.
- 1.10 Although responsibility has defaulted to the CPS to monitor the CTL expiry dates, there are other agencies in the criminal justice system which have an interest in the effective monitoring of CTLs.
- 1.11 The police often initiate the request to retain a defendant in custody. They are required to provide the evidence for the prosecution case and are considered part of the prosecution team when the court is considering if the prosecution has acted with due diligence and expedition. As such the police need to be fully aware of the constraints of the CTL in order to provide the evidence in good time for the CPS to prepare, serve papers and present the case in court.
- 1.12 The court is responsible for remanding the defendant in custody, not the CPS or the police. The policy underpinning the legislation is that cases should be listed prior to the expiry date so that the defendant is not remanded beyond this and therefore unlawfully detained in custody.
- 1.13 In 2004 the magistrates' courts were asked by the Justices' Clerks' Society to assist in improving the working of the scheme by sharing with the CPS the task of calculating and recording the expiry date in court. This would have reduced the scope for mistakes as the prosecution and courts would be working to the same expiry dates. However, this was not widely adopted. In 2009 a new national protocol was agreed with Her Majesty's Courts Service (HMCS) to be implemented locally from 1 April 2009. This also includes sharing CTL information for joint checks on expiry dates and provided new forms for applications and appeals against decisions. Although the main responsibility lies with the CPS it is more sensible to have a rationalisation of responsibility and cooperation between relevant agencies.
- 1.14 Since the introduction of CTL regulations there have been many changes in the criminal justice system. Each agency has introduced more demanding performance monitoring and targets and there has been substantial legislative change.

- 1.15 The workload associated with these initiatives and the redeployment of experienced staff has exacerbated the position and also increased the potential for mistakes in monitoring CTL expiry dates. This is reflected in the increased number of failures reported to CPS Headquarters each year since 2007-08.
- 1.16 Some failures follow a breakdown in monitoring procedures, resulting in a failure to make the necessary application to the court. For many years it has been necessary for failures of this type to be logged, and formally reported to CPS Headquarters. Failures also occur where the CPS has been unable to demonstrate that the prosecution (team) has acted with all due diligence and expedition, causing a judicial refusal to accede to an application to extend. This case progression type of failure has only had to be reported since May 2008.
- 1.17 The overall number of failures has recently increased from 35 in 2008-09, to 44 in the year 2009-10 to date. Whilst the number of monitoring related failures has reduced from 24 to 11 over the same period, this is more than off set by the impact of the expanded definition to cover case progression type failures, which have tripled. These have served to increase the overall level to the point where it has exceeded the 2006-07 figure of 41 failures.
- 1.18 Investigation techniques are now more complex as improved forensic evidence, CCTV footage and mobile telephone records have become available. It can be a lengthy process to obtain this type of evidence and in cases involving a CTL, this will affect whether an extension is necessary. Although the court will take complexity into account, it is more difficult in complex cases for the prosecution to show all due diligence where the cause of delay in the case has been dependent on evidence gathered from outside agencies. This is becoming an increasingly significant factor in an environment where pressure on police forensic budgets may lead to refusal to send items for examination. The CPS have reported several examples of reluctance to commit resources to investigations which have in turn led to CTL failures.
- 1.19 A further difficulty arises when the prosecution is ready to proceed but the court is not able to provide a date for trial within the CTL period. Despite being ready, the prosecution must apply for an extension of the time limit which, despite its own readiness, is not a foregone conclusion. There is a body of case law to the effect that 'routine listing difficulties' do not constitute good and sufficient cause for an extension. The Lord Chief Justice recently said in an interview reported in Law Gazette that resource constraints within HMCS could make it more difficult for the Crown Court to bring on custody cases within the statutory time limits.
- 1.20 It can be especially difficult to determine and monitor CTLs on cases where more than one expiry date applies. A complex case may have multiple defendants and charges brought at different times. Defendants may be in custody on more than one case.
- 1.21 It is imperative that clear endorsements are made on each file for each defendant and for each charge to ensure that CTLs are monitored correctly. Pressures in court may make detailed endorsements difficult and if the courts do not also record the information it will be difficult to establish the position later. Most cases with CTLs are those with more serious offences in the Crown Court. Cases here are more likely to have multiple defendants and different expiry dates relating to offences on which the defendant was remanded or committed at different times.
- 1.22 The number of CTL cases across England and Wales is 5.85% of the total Crown Court caseload¹. However the burden of monitoring in areas differs substantially with areas such as Lincolnshire and Wiltshire having only 2.82% and 2.92% of their caseload and West Midlands and Humberside

1 Area caseload taken from the figure carried forward from September 2009 to October 2009 excluding pre-charge decision cases.³

having 9.01% and 9.21% respectively. A table of all areas' CTL cases as a percentage of their Crown Court caseload is at annex C.

- 1.23 Against this background accurate and reliable operation of comprehensive schemes for monitoring and administering the system of time limits is vital.

Methodology

- 1.24 In May 2009 the team requested a copy of written CTL systems from all 42 CPS areas and three Headquarters divisions to compare compliance against the national standard which should have been implemented by the end of December 2008.
- 1.25 To establish an overview of progress in implementing the national standard the audit team selected seven areas of varying size and performance and requested a sample of live files. A total of 85 files were examined against set criteria during on-site visits. During the visits the team also interviewed a range of staff involved in the management of cases with CTLs including administrative, managerial and legal staff. The team looked at the operation of the CTL monitoring system and carried out observations at court to establish progress in implementing protocols with the courts. Individual feedback was provided to each area visited and this report gives an overview of our findings.
- 1.26 In addition to auditing current performance, HMCPSI has given additional consideration to the structure of the CTL regime because its complexity seems to be a contributing factor to the relatively high incidence of CTL failures. Chapter 3 describes in more detail the requirements of the regime and the steps which have been taken to minimise the number of failures. However, further significant improvement is essential because the consequences of a CTL failure can be so severe that no level of risk is really acceptable. In addition to setting out the findings as to current performance, we have gone on to consider whether a different approach might achieve the same objective as the current arrangements but with less risk to the public and less diversion of resource from effective case management. We have been greatly influenced by the difficulty which the CPS has, despite significant efforts over a lengthy period, in achieving full compliance. To us, this highlights the demanding and sometimes anomalous nature of the present regime. We therefore canvass some possibilities for change and the need for a wider review.

Structure of the report

- 1.27 The report looks at:
- Audit summary, recommendations, compliance points and good practice (chapter 2).
 - CPS processes and the operating environment (chapter 3).
 - How CPS areas have incorporated the new national standard into their written system (chapter 4).
 - How CTL cases are identified (chapter 5).
 - How the expiry date is calculated (chapter 6).
 - How CTL monitoring systems are operated (chapter 7).
 - The action taken at review dates (chapter 8).
 - How applications to extend CTLs are made (chapter 9).
 - The role of CPS Headquarters in CTLs (chapter 10).
 - The training provided to CPS staff in CTLs (chapter 11).
 - A commentary on the present position (including some possibilities for change) more widely but in the context of our audit findings (chapter 12).
 - Brief conclusions (chapter 13).

2 AUDIT SUMMARY AND RECOMMENDATIONS

- 2.1 The audit found that progress had been made since the last thematic review in the monitoring of CTLs with the introduction of a national standard. However, compliance by the CPS areas with the standard varies and more work needs to be done to ensure consistent application of the standard.
- 2.2 Progress has also been made in engaging the courts in agreeing the CTL expiry date. Protocols have been agreed in most areas. Observations in court during the audit revealed that this agreement was still in the very early stages and its application appeared to rely on the attitude of individuals be that the prosecutor, the court legal advisor or the judge.
- 2.3 The standard of file endorsements continues to hamper efforts to monitor CTLs effectively. Examples of files were seen in which it was difficult to follow court endorsements in terms of identifying whether a defendant remained in custody. However, very recent improvements were seen in some areas where the involvement of the prosecutor in agreeing the expiry date with the court appears to have triggered clearer court endorsements which contain the information required to identify, and therefore monitor, defendants who have been remanded in custody. CTL failures where the CPS had failed to make an application to extend in time were often due to poor file endorsements.
- 2.4 Prosecutors are taking on more responsibility for CTLs. This is a positive change since the last review when many lawyers felt that calculating, monitoring and applying for extensions to CTLs were administrative functions.
- 2.5 Despite improvements in the written area systems, there continue to be CTL failures. A new category of failure now has to be reported to CPS Headquarters, ones in which the court has refused to extend the CTL as it is felt that the CPS has not shown that it has acted with all due diligence in preparing the case. At the time of the audit visits, a number of areas had only recently become aware of the requirement to report this type of failure, though it had applied for over a year, and had not been reporting such failures to Headquarters. Since the introduction of the new definition the number of failures reported has increased.
- 2.6 The CPS has recently developed the optimum business model designed to streamline its processes. A consequence of this is the move away from file ownership by prosecutors which runs contrary to the personal responsibility expected in the CTL national standard. This has been addressed in guidance to CPS areas to ensure that CTL files are allocated to an individual lawyer. The audit found that this was not necessarily being followed (due to resource issues).
- 2.7 The assistance available centrally to areas and the guidance issued by Headquarters has improved recently. The work of the lead chief crown prosecutor (CCP) on CTLs and the Headquarters lead on this subject has helped to raise awareness of this important aspect and provides an accessible source of assistance for staff in CPS areas.
- 2.8 The quality of the area written CTL systems varied with most complying with the national standard in most aspects. However, area visits revealed that staff were not always following the area system in every respect. In some areas this meant that checks were not being carried out to ensure the CTL expiry had been correctly calculated or that entry of information into the monitoring system had not be checked by a second person.

Recommendations and compliance points

Recommendations

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- 1 It is suggested that the good practice points in chapter 4 are added to the national standard (paragraph 4.16).

 - 2 Consideration should be given to redesigning the CPS file jacket in the magistrates' courts sections and the Crown Court to allow consistent use of the file for CTL monitoring (paragraph 5.18).

 - 3 CPS Headquarters should consider amending the national standard to set out more fully the proactive role required of paralegal officers at the Crown Court (paragraph 6.6).

 - 4 Cases should only be removed from the monitoring system by staff with authorisation to do so (paragraph 7.10).

 - 5 CPS Headquarters should consider whether the definition of a failure should be further extended to include cases in which a decision is taken by the lawyer not to apply for an extension as it would not be possible to demonstrate CPS had acted with due diligence (paragraph 7.13).

 - 6 Areas should ensure that the culture change aimed at engaging a wider range of staff in CTL monitoring responsibilities has been achieved (paragraph 7.14).

 - 7 CPS Headquarters and CPS areas should consider how case progression fits into the role of CTL expiry monitoring (paragraph 8.8).

 - 8 CPS Headquarters should provide clearer guidance about the handling of CTL cases in relation to the optimum business model which ensures that there is clear and workable ownership of responsibility for CTL actions (paragraph 8.13).

 - 9 Consideration should be given to adding to the national standard the action to be taken when a decision is taken not to apply for an extension (paragraph 9.8).

 - 10 CPS Headquarters may wish to consider guidance to areas advising that in particular types of case, written applications for an extension should be made at the appropriate point, even if it seems that there is no reason for the case not to be dealt with within the expiry date (paragraph 9.13).

 - 11 Consideration should be given to offering interagency training on an area or family group basis with the courts' staff and with counsels' chambers (paragraph 11.9).
-

Compliance points

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- 1 Where an area has referred to the national standard or area minimum standard, the local system should fully comply with both (paragraph 4.9).

 - 2 Expiry dates should be confirmed at subsequent hearings and this should be endorsed on the file (paragraph 5.8).

 - 3 Written CTL systems should contain the instructions on the file endorsements as noted in the national standard (paragraph 5.9).

 - 4 The standard of endorsements should be given effective quality assurance by managers and improvement sought if necessary (paragraph 5.10).

 - 5 The start date from which the CTL applies and the current CTL expiry date that applies (56, 70, 112, 182 days) should be noted on the front of the file (paragraph 5.16).

 - 6 Areas should assess and further promote the involvement of the courts in calculating and agreeing expiry dates (paragraph 6.5).

 - 7 Counsel should be instructed to ensure that CTL expiry dates are agreed at the first hearing in the Crown Court, confirmed at subsequent hearings and that strenuous efforts should be made to list cases for trial within the time limit (paragraph 6.6).

 - 8 Areas should ensure that all initial calculations are checked. If a lawyer has not calculated the expiry date in court the calculation carried out in the CPS office should be checked by a lawyer to ensure it is correct and that responsibility for the initial calculation does not fall to administrative staff (paragraph 6.8).

 - 9 The role of prosecutors and paralegal officers in checking expiry dates on cases they handle should be reinforced (paragraph 6.9).

 - 10 Incorrect expiry dates should be referred back to assist staff in understanding any errors they make (paragraph 6.10).

 - 11 Areas should ensure that systems to notify originating areas quickly of breach of bail hearings are in place and operated expediently (paragraph 6.17).

 - 12 Areas should carry out regular internal audits of the operation of the CTL system to ensure full compliance with the written area system (paragraph 7.6).

 - 13 Expiry and review dates entered into the monitoring system should be checked by someone other than the person who had entered the information (paragraph 7.8).

 - 14 CTL files should be returned to the person responsible for CTL monitoring after each court appearance to check that necessary updates have been made in the CTL monitoring system (paragraph 7.10).
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- 15 Areas should ensure that all staff are aware of the extended definition of a failure and of the action required should this situation occur (paragraph 7.12).
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- 16 Areas should continue to liaise with local courts to ensure effective exchange of CTL information (paragraph 7.18).
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- 17 All CPS areas should fix review dates at two weeks prior to the expiry in the magistrates' courts and four weeks in Crown Court cases in accordance with the national standard (paragraph 8.6).
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- 18 Area systems should include instructions to inform the police of the CTL expiry date and to set target dates for outstanding work (paragraph 8.9).
-
- 19 Areas should ensure that action taken at review dates should be recorded in the monitoring system and on the file (paragraph 8.17).
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- 20 Areas should have in place that a system to ensure action is taken at review dates within 24 hours (paragraph 8.19).
-
- 21 Areas must ensure that procedures are in place to check with the court to make certain that extension hearings have been listed (paragraph 9.15).
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- 22 Checks should be in place in the system to ensure that applications listed for an extension have been made (paragraph 9.19).
-
- 23 Lawyers should consider whether an appeal should be made should the court refuse to extend the expiry date and clear instructions should be recorded on the file for the prosecutor in court (paragraph 9.22).
-
- 24 Training should be logged to ensure that all staff are included in the training (paragraph 11.3).
-

Good practice

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- 1 One area system covered the action to be taken when a charge is discontinued and the defendant is in custody. The discontinuance of proceedings means that the defendant should then be released as soon as the decision to discontinue is taken unless there are other charges on which he remains remanded; or a sentence is being served. As this affects the liberty of an unconvicted person, it is an important aspect and it is suggested that all CTL systems should contain guidance on this point and that the national standard be updated to ensure this (paragraph 4.14).
-
- 2 A few area systems had instructions on staff cover to ensure that the monitoring of CTL cases continued in the absence of key staff. This is essential to the effective operation of the CTL system and it is suggested that the national standard be amended to include this as a compulsory part of area CTL systems (paragraph 4.14).
-

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- 3 In two areas visited administrative staff were asked to check the first date of hearing endorsed on the file against the date noted on the police papers and check with the court if there was an anomaly (paragraph 5.4).
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- 4 The use of a separate folder within the CPS file where all information about reviews and correspondence relating to CTLs could be found quickly (paragraph 5.17).
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- 5 The use of management controls in some areas to ensure that errors are not made in altering the expiry date that has been calculated in CMS (paragraph 6.11).
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3 CPS PROCESSES AND THE OPERATING ENVIRONMENT

The structure

- 3.1 The current CTL regime is founded on the 1985 Act, which does not attribute to any individual or organisation the legal duty to ensure compliance with it. However, it places the onus for making any necessary application to extend time limits on the prosecution. The CPS has responded by creating and operating systems to monitor the approach of expiry dates, and by ensuring that applications to extend are made in good time. This brings difficulty in that the CPS does not (and cannot) always control the factors which affect its ability to bring a case to trial within the time limits. This is due to the involvement of other bodies, including the police in the case preparation process and the courts in relation to listing. Sometimes, the CPS may not have knowledge of relevant circumstances, such as the location of the defendant in custody, and the exact number of days he has spent in custody. For example, an individual may be granted bail subject to conditions being fulfilled and remain in custody until those are met.
- 3.2 This is not wholly logical. Whilst it is the prosecution which must apply for a remand in custody, it is a judicial function to remand the defendant. Further, the court can of course adjourn proceedings against the defendant of its own motion, or at the request of the defence itself. Also, whilst it is the responsibility of the prosecution to apply to extend the expiry date, a failure to do so does not lead automatically to the defendant's physical release. Prisons hold prisoners against the warrants issued by the courts and these do not specify a custody time limit. It is possible for an individual to remain in custody beyond the expiry of the limit unless one of the parties realises the position and takes action to secure a release. This may be an astute defence practitioner or the prosecution. Although the courts are the only body to be directly involved in every remand and must authorise the extension of custody limits, they have no specific responsibility.

Compliance systems: calculating and monitoring the expiry date

- 3.3 The current CTL regime, founded on the provisions of the 1985 Act, is relatively simple at its basic level, see annex B. Indeed, the calculation of expiry dates and preparation of applications to extend should be relatively straightforward matters in the simplest of cases, assuming an understanding of the basic law and procedure. Conversely, the risk attached to non-compliance is potentially grave, as it could cause the release of the defendant, regardless of the risk this might pose to the public which is not a factor in the statutory criteria the court has to apply.
- 3.4 However, any number of common circumstances can serve to complicate the process of calculating the expiry date and ensuring compliance. Such complicating factors include defendants in the same case being charged with the same offence but on different days. Should one defendant be granted bail following a period in custody, then remanded again on the same charge, his CTL expiry date will be out of step with his co-defendants although the charge has not changed.

Should one defendant be granted bail following a period in custody, then remanded again on the same charge, his CTL expiry date will be out of step with his co-defendants although the charge has not changed.

A defendant charged with assaults and breach of an ASBO is remanded in custody by the magistrates. His case is committed to the Crown Court, and he is granted conditional bail. The CPS notes that the CTL has ceased to run at this point. The defendant is then remanded in custody again for breach of a bail condition by the magistrates. Because it is a different court, the information does not get noted on the Crown Court file that the CTL has started to run again, and it expires without application to extend. The defendant is released one month after expiry, and cannot be remanded in custody again on the same charges unless he breaches the terms of his bail again.

- 3.5 Defendants might face two charges, one of which was laid some time after the first. Whilst the charges may be linked and eventually tried together, they too will have different expiry dates. The addition of fresh charges, each with their own expiry dates, can also cause complication. The limit applicable to either way offences may change at the point the court determines mode of trial.

The addition of fresh charges, each with their own expiry dates, can also cause complication.

A suspect involved in large scale drug dealing is charged with either way offences involving firearms and the supply of class A drugs, and produced in court. After the first hearing, but prior to committal, an indictable only conspiracy charge is added, which causes the whole case to be sent to the Crown Court immediately. The CTL for the conspiracy is noted on the file and in the office diaries. However, the CTL for the either way offences has not been so endorsed. They expire without an application to extend. Should the conspiracy charge be discontinued, the defendant will have to be released.

- 3.6 The impact of all of the above factors can then be further accentuated, and compounded by combinations of defendants and charges on each case, and defendants facing similar charges in different cases, with different expiry dates. The scope for confusion is increased if the different cases are listed before the court simultaneously.
- 3.7 It can be appreciated from the above that, for example, a burglary case involving three defendants may require the calculation and monitoring of numerous expiry dates arising from different factors, including the date of first appearance, differing time spent on bail (or unlawfully at large), and the addition of new charges. Numerous hearings to apply for extensions at different times could also be required.
- 3.8 The potential impact of failure requires full compliance and leads to systems of increased complexity to deal with this level of potential complication. In turn, the increasing sophistication of monitoring systems renders the re-calculation and monitoring of the expiry date an onerous task, even in the simpler cases. Overall, systems become burdensome and resource intensive, involving considerable management time and staff involvement which can detract from proactive prosecution of the cases.
- 3.9 Relevant reference documents on the CPS intranet (the "infont"), which are there to assist those operating local CTL systems, have grown in size to meet the increased level of complexity. The CPS legal guidance on CTLs, which is a distilled analysis of relevant law, runs to nearly 16,000

words. The national guidance is more than 3,000 words long, and the area minimum standard, which is a model compliance system, is over 14,000 words long. In addition all CPS areas have local written systems and desk instructions. As with most frontline systems, resource limitations require that CTL processes are operated by administrative staff. The responsibility is therefore an onerous one.

- 3.10 This is borne out by the CPS legal guidance relating to the addition of charges once a case has reached the Crown Court.

“The CTL for this additional count is calculated from the total time allowed (112 days for committal or 182 days for sending) and commencing from the preferment of the bill of indictment (up to the start of the trial) but less the total of any time the person was in custody since committal or, in cases sent, was in the custody of the magistrates’ court and the Crown Court”.

- 3.11 On any view, this is not a straightforward, or easily comprehensible formula, though it is one that needs to be understood by those administrators operating the systems.
- 3.12 Further examples of CTL failures in 2008-09 include the potential for release of the defendant following the failure to extend a CTL after the defendant’s pleas of guilty to some charges, but not all. In another case, the same thing happened because the CPS area was told that the defendant had pleaded guilty to all offences, when he had maintained a plea of not guilty to some. A failure has been caused in the past by the expiry of the time limit between the re-remand of a defendant for breach of his bail conditions by the magistrates in the area where the breach occurred, and his production at the Crown Court which had originally granted bail. The expiry date was noted on the Crown Court file, but the advocate in the magistrates’ court did not (understandably) have this to hand.

Compliance systems: applying to extend the time limit

- 3.13 There are specific rules which dictate the form and timescales involved in applications to extend the expiry date. There are also specific but limited circumstances under which such an application must be granted.
- 3.14 In order to secure an extension the prosecution must satisfy the court:
- that one of the specified grounds has been established; and
 - that the prosecution has acted with all due diligence and expedition.
- 3.15 For those purposes, ‘prosecution’ embraces those responsible for preparing the case so that the length of time taken to secure evidence from others such as the police, forensic scientists, medical experts or overseas authorities will be relevant.

The length of time taken to secure evidence from others such as the police, forensic scientists, medical experts or overseas authorities will be relevant.

A suspect is charged with three offences of rape and (unconnected) robbery. Case progression by the CPS and police is poor. Neither the CPS nor the police ensure that evidence is seized promptly, or sent for essential forensic analysis in time to ensure trial readiness, despite requests by defence. Delay causes a vacated trial. Application for extension refused for want of due diligence and expedition, and defendant bailed.

- 3.16 Moreover, the second limb of the test is not necessarily linked to the first so that an application may fail if the prosecution cannot show 'all due diligence' even though that may not have made the application necessary.
- 3.17 So long as the need for an application to extend has been identified and the application made in good time, the process can be straightforward, for example, a trial is vacated due to illness of the judge or the defendant, and the CPS can show that the case was prepared promptly and that it is ready to go ahead. Even so, the written notice of application takes some time and thought to prepare in even the simplest cases. It must include a chronology setting out all relevant case progression actions, in order to show all due diligence and expedition. It must include the full basis of the application, rather than leaving this for the advocate to argue in court. It will be noted in the example given that this burden falls on the prosecution even though it has done nothing to make it necessary and is itself ready for trial.
- 3.18 It can be a more onerous task in the more complex cases. This is partly due to the inherent complexity of the CTL scheme. In particular, the three statutory alternative requirements for an extension are limited in application, and again, along with the proviso that the CPS must demonstrate all due diligence and expedition, these have created a wealth of case law, which it is the job of the prosecutor to know.
- 3.19 Therefore, it is a difficult task for the prosecutor to decide in some cases whether there is an arguable case for extension. For example, the failure of the court to list the case for trial in time can be "good cause" under certain circumstances, but not others. In addition there is a perception among senior prosecutors that the courts tend to focus more on the "diligence and expedition" test than the impact of the increasing volume of business which is exceeding capacity at some centres.

A listing problem is not a ground for extending a CTL unless it is exceptional (perhaps temporary), and steps which have a prospect of success are being taken to resolve it.

A robbery case is listed for trial in November, because there are no slots available before then. The CTL expires in July, when the CPS applies to extend and can show all due diligence and expedition. The defence argue that the lack of a trial date is due to the systemic failure of the listing system, which is not good and sufficient cause for an extension. However, the CPS is successful because the cause of the delay is unexpected and exceptional (the combined effect of the closure of another court, and the unavailability of two judges); and the counter-measures are likely to succeed (recruitment of judges and the transfer of some cases to another court centre).

- 3.20 In the absence of those special factors, the application to extend might well have failed.
- 3.21 Complexity can qualify under some circumstances, but not others. The relevance of the past history of the case, particularly relating to the prosecution showing all due diligence and expedition, varies.
- 3.22 It is against this background that our audit must be considered. We have focussed primarily on compliance but also looked more widely at the challenges and the case for change. However, it is apparent that, even allowing for a very demanding regime, better adherence to basics could and would significantly reduce the risk of CTL failures. The audit findings highlight those aspects of CPS performance which are not complying with national standards, and also in some cases outlines good practice found whilst undertaking area visits.

4 AREA WRITTEN SYSTEMS

Overview

4.1 Area written systems have to comply with the national standard and provide a useful reference for staff. This was not always seen. Systems were of differing quality, some giving succinct but comprehensive guidance whilst others were lengthy and overly complex. Responsibilities of staff were not always clearly set out.

The effect of a new of a national standard

4.2 An effective monitoring system is vital to ensure that the approaching expiry of the CTL is identified and a decision is made in good time about the need for an extension to the CTL. CPS areas created systems for this purpose when the CTL legislation was first introduced. However, there was a lack of national guidance at that time which resulted in different systems in different areas and sometimes different systems within the same area.

4.3 Following the HMCPSI thematic review of CTLs in 2002, a CPS working group issued a document which set out the essential aspects of an effective CTL system. The essential actions document was intended to provide a framework for all area CTL systems. Between 2002 and 2008 a number of area inspections and, in particular, the 2007 series of OPAs identified that the systems had been inconsistently applied. Provision of national guidance and standards is an important development since the CTL thematic review.

4.4 In September 2008, CPS Headquarters issued two documents, the CTL national standard and the area CTL minimum standard. Compliance with the national standard is compulsory and areas were asked to implement the necessary changes by the end of December 2008. However, the audit found that there appeared to be some confusion between the compulsory nature of the national standard and the optional good practice suggested in the area minimum standard.

4.5 When these documents were disseminated to all CCPs the accompanying minute explained that the area minimum standard was a model CTL procedure which incorporated all the actions contained in the national standard and much good practice.

4.6 The use of the term “minimum standard” may be misleading. To assist in clarifying this for all staff it may be beneficial if the area minimum standard is renamed to emphasise its role as a good practice model.

Format of the revised area systems

4.7 As part of the audit 45 written systems were examined to establish compliance with the national standard. Of these: 30 had been tailored specifically to the organisational structure of the area concerned, eight had adopted the area minimum standard but also had some form of local area instructions and six had simply adopted the area minimum standard without amendment to the system or to job titles used in the particular area.

4.8 We saw examples of area systems that were clear and concise, that had fully integrated all of the points in the national standard and which were easy to follow. We also saw examples of systems that were overly complex, containing sections copied from the national standard or the area minimum standard and a great deal of legal guidance, all of which made the system difficult to follow as a step-by-step guide to handling CTL cases.

- 4.9 In some areas where local guidance had been produced, staff had been referred to the national standard and the area minimum standard. Often the reason for the referral was not stated, whether it was purely for information or whether staff were expected to act in accordance with both the local and the national instructions. In a few areas where this had been done, procedures set out in the local system contradicted the requirements in the national standard.

Compliance point

Where an area has referred to the national standard or area minimum standard, the local system should fully comply with both.

- 4.10 It is important that as a working document all parts of the CTL system should be easy to refer to. This is best achieved by the use of paragraph numbering throughout the document so that relevant points can be quickly located by staff. Less than half of the area systems had consecutive paragraph numbering throughout. It is also important that staff are sure that they are working from the latest version of the system. For this reason, systems should have a version number or a date when the document was produced. Only 15 of the 45 systems seen had either a version number or a date. For these reasons areas should ensure written systems have consecutive paragraph numbering and a version number or a date.
- 4.11 Written instructions must be kept up-to-date with new guidance that affects the operation of the system. Several of the systems contained out-of-date information and references to guidance issued by CPS Headquarters that has now been superseded by the new national standard. It was also apparent that some areas were still in the process of updating the systems to comply with the national standard. At the time the systems were submitted, the new standard had been available for eight months and should have been fully implemented in areas for at least five months.

Responsibilities

- 4.12 It is essential that area systems clearly set out which member of staff is responsible for each task in relation to CTLs. In some area systems there was a lack of clarity around who was responsible for particular actions. This is particularly of concern when the task involves taking the decision to apply for an extension which must be the responsibility of a lawyer. In a few systems it was not clear if the decision was to be taken by the paralegal officer or the lawyer.
- 4.13 In some areas, sets of desk instructions had been produced for different levels of staff who have responsibilities within the system. However, there was often no document which gave an overall picture of the system which would allow all staff to understand where each task fits into the process.
- 4.14 Most areas had adopted an area-wide CTL system with instructions for dealing with magistrates' courts and Crown Court cases. However, in a few areas different offices had produced their own instructions which varied in quality. Whilst different systems operating in the area may be necessary due to the involvement of police staff in co-located units for example, all written instructions should be compliant with the national standard and be of an acceptable quality.

Good practice

One area system covered the action to be taken when a charge is discontinued and the defendant is in custody. The discontinuance of proceedings means that the defendant should then be released as soon as the decision to discontinue is taken unless there are other charges on which he remains remanded; or a sentence is being served. As this affects the liberty of an unconvicted person, it is an important aspect and it is suggested that all CTL systems should contain guidance on this point and that the national standard be updated to ensure this.

Good practice

A few area systems had instructions on staff cover to ensure that the monitoring of CTL cases continued in the absence of key staff. This is essential to the effective operation of the CTL system and it is suggested that the national standard be amended to include this as a compulsory part of area CTL systems.

RECOMMENDATION

It is suggested that these points are added to the national standard.

5 IDENTIFICATION AND NOTATION

Overview

- 5.1 To ensure that cases with custody time limits are identified and monitored it is essential that clear endorsements are made at court. Many CPS area written instructions did not specify the endorsements required by the national standard or indicate a system of quality assurance. The examination of the file sample revealed that endorsements were sometimes missing, incomplete or unclear and that quality assurance was not rigorous. Experience shows that such shortcomings are one of the most frequent causes of CTL failures.
- 5.2 The CTL expiry date, the time limit that has been applied and the start date from which the CTL was calculated, should be clearly noted on the front of the CPS file as required by the national standard. This is to enable those responsible for checking the expiry date and confirming the date with the court at subsequent hearings, to understand quickly the calculation made. Files examined usually had the expiry date displayed clearly on the front cover and a stamp or sticker to highlight that there was a CTL and this was also specified in most written systems. However, the start date and clarification of which time limit had been applied were not always noted and nearly a third of area written instructions did not require this. It was often unclear which time limit had been applied in the magistrates' courts as the 56 and 70 day limit were both marked on the front of the files.

File endorsements

- 5.3 On the files examined prosecutors in the magistrates' courts had usually noted "RIC" at the first hearing (to denote that the defendant had been remanded in custody) and often added an "action" note to highlight that monitoring was needed. However, confirmation that this action had been taken was rarely found on the file and instructions on this may need to be clarified in the national standard.
- 5.4 Custody time limits run from the first date that a defendant is remanded in custody by the court or committed to the Crown Court and it is therefore imperative that the date on which the time limit began is clearly highlighted in the court endorsement on the CPS file. Mistakes in establishing the start date are a common cause of calculation errors and examples of these were seen in our file sample. On the files examined prosecutors did not highlight the start date of the CTL other than noting the date of the hearing and in a few endorsements this was also missing. Good practice was seen in two areas where administrative staff check the first date of hearing recorded on police papers with that recorded by the prosecutor, if an anomaly is found they check this with the court.

Good practice

In two areas visited administrative staff were asked to check the first date of hearing endorsed on the file against the date noted on the police papers and check with the court if there was an anomaly.

- 5.5 The standard of file endorsements seen was mixed. In most files it was possible to determine the custody status of the defendants at each hearing. However it was not possible to see clearly what had happened on all files as endorsements were missing, confusing or illegible; these were usually those with multiple defendants or linked cases and those where defendants had been committed or pleaded guilty on different occasions.
- 5.6 There was no consistent method of endorsement used on Crown Court files within areas and sometimes between individuals. Lengthy endorsements sometimes made it difficult to see relevant information about custody or bail. Two areas had better endorsements resulting from local expectations. In some areas we were told that a list of standard CTL file endorsements had been provided by CPS Headquarters; these had been circulated recently but their use was not yet evident on the files in our sample.
- 5.7 Full details of bail applications were sometimes missing and changes to custody status were only highlighted on the file in half the relevant cases seen in the magistrates' courts and in less than half in the Crown Court.
- 5.8 Most endorsements of subsequent hearings confirmed that the defendant was remanded on "bail as before" or was RIC but very few noted that the expiry date had been confirmed with the court as the national standard requires.

Compliance point

Expiry dates should be confirmed at subsequent hearings and this should be endorsed on the file.

- 5.9 Most of the 45 written systems provided by CPS areas did not specify all of the minimum endorsement requirements needed at initial hearings and 14 did not mention that the endorsement at subsequent hearings should confirm the bail or custody status. The national standard requirements should be clearly stated in each area's written CTL guidance.

Compliance point

Written CTL systems should contain the instructions on the file endorsements as noted in the national standard.

- 5.10 Quality assurance of the standard of endorsements is an issue and more could be done by managers in the areas to bring about improvements. Poor file endorsements have been a contributing factor to many reported CTL failures and errors caused by unclear endorsements were seen in our file sample. The internal audits conducted by two areas highlighted file endorsement issues. All areas visited had some system in place to address this issue including managers seeing the endorsements during casework quality assurance checks and administrative staff providing managers with photocopies of poor endorsements. However, instructions to refer unclear endorsements to unit heads were not included in over a quarter of the 45 written systems

seen and nearly a quarter did not mention that managers should check the quality of endorsements. The standard of endorsements seen on-site indicated that more consistent and rigorous checks are required.

Compliance point

The standard of endorsements should be given effective quality assurance by managers and improvement sought if necessary.

Methods of notation

- 5.11 The information about current CTLs noted on the front of the CPS file is important as it allows those in court to understand quickly what the CTL expiry date is, which time limit has been applied and from which date it has been calculated. This assists them in checking the expiry date before confirming this with the court at subsequent hearings or in calculating the days spent in custody by the accused when bail is granted.
- 5.12 In all cases seen, a mark on the front of the CPS file made it clear that CTLs applied. Different methods of notation were seen but most used an orange sticker or a stamp on the front of a file to show that a CTL was active. Nearly all of the 45 written systems specified the type of mark to be used.
- 5.13 The lack of space to record CTL information on the front of CPS files was a problem and resulted in two areas visited using a separate sheet to record the expiry and review dates in addition the coloured stamp or sticker. Both sheets were clear and had room to enter details of changes to the expiry date or accommodate new defendants or charges, however, we were concerned that these could become detached from the file or obscured by other documents.
- 5.14 In most areas the current expiry date was clearly highlighted. However in three of the seven areas visited the endorsement did not always indicate which expiry date had been applied (56, 70, 112 or 182 days). This would not assist those responsible for checking that the expiry date is correct.
- 5.15 In two areas visited the current expiry date was not highlighted as both the 56 and 70 day time limits were being displayed routinely on all magistrates' courts files². Although most written instructions stated that in either way cases the 56 day expiry date should be monitored initially, before the 70 day expiry date, it was sometimes ambiguous which date was to be on the file cover. Some instructions indicated that both dates could be noted. This is not correct, only the current expiry should be on the file cover to avoid confusion.
- 5.16 Area written instructions did not always specify how CTL information should be highlighted on the CPS file for monitoring purposes. Staff entering monitoring information on the front of the file did not usually include the start date used to determine the CTL expiry date. Less than a third of magistrates' courts files and Crown Court files had this noted with other monitoring dates. An instruction to note the start date was missing in over a third of 45 written systems seen and a requirement to note the type of CTL that had been applied (56, 70, 112 or 182 days) was also missing in nearly a third. Area written instructions should give clear instructions to staff about the notation required.

² For the purpose of CTL monitoring in either way cases the 56 day limit changes to 70 days once a defendant elects to be committed to the Crown Court for trial or if the mode of trial is not decided before the 56 day time limit expires.

Compliance point

The start date from which the CTL applies and the current CTL expiry date that applies (56, 70, 112, 182 days) should be noted on the front of the file.

- 5.17 Review dates were noted on the files in 21 out of 64 magistrates' courts files and 23 out of 50 Crown Court files. Although in many areas they were written alongside the expiry dates, in others they were not. It is not a mandatory requirement of the national standard that review dates are highlighted on the front of the file, but information about the dates on which the CTL was reviewed and the review that took place was useful and it may be that a suitable place could be agreed nationally for review information. Good practice was seen in one area where a folder inside the CPS file was used to store details of reviews and copies of applications.
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Good practice

The use of a separate folder within the CPS file where all information about reviews and correspondence relating to CTLs could be found quickly.

- 5.18 There are a number of different file jacket designs used by the areas. We did not see any that particularly assisted in the clear recording of CTL information on the front of the file. CTL stickers and stamps were seen to obscure hearing endorsements and where there were multiple defendants on a file, almost the whole of the front of the jacket could be covered with CTL stickers. We are aware that file jacket design has been considered by working groups in the past and is being developed by the CPS Change and Implementation Division. There are competing demands for space on file jackets but it may be that a new design to be used in all areas could provide adequate space for CTL information.
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RECOMMENDATION

Consideration should be given to redesigning the CPS file jacket in the magistrates' courts sections and the Crown Court to allow consistent use of the file for CTL monitoring.

6 CALCULATION

Overview

- 6.1 The national standard requires that prosecutors should be responsible for calculating the CTL expiry date and that this should no longer be left to administrative staff. Prosecutors are to agree the date calculated with the court when the accused is first remanded into custody and local protocols have been signed with the courts to facilitate this. In areas visited it was apparent that compliance depends on the awareness of individual prosecutors or legal advisors in the magistrates' courts. In the Crown Court expiry dates were not seen to be formally agreed but judges were interested in establishing the expiry date to ensure that the case was listed for trial within the time limit. Most prosecutors seen were not proactive in engaging with the court about CTLs.
- 6.2 Some files had CTL expiry dates calculated and endorsed by prosecutors but there was most often no note that this had been agreed with the court. Where the date had not been calculated by the prosecutor in court, the person assigned to check the calculation would instead make the initial calculation. This was usually an administrator or their manager and no checks were then made on this.
- 6.3 Where defendants are arrested for breaching bail conditions details of time already spent in custody are not always available to the prosecutor or the court to enable recalculations. Changes to the law would be necessary to avoid failures in these circumstances.

Calculating and agreeing the custody time limit expiry date in court

- 6.4 All areas visited confirmed that they use the national 'ready reckoner' to make initial calculations and that prosecutors have been instructed to calculate and agree dates in court. Of the 45 written systems seen, 42 instructed staff to do this.
- 6.5 There are signs that prosecutors are now involved in calculating and monitoring CTL expiry dates but this needs further work. There was little evidence on the files examined or in court observations that the protocols, signed recently with the courts, were being complied with. It is apparent that some legal advisors are more active than others in calculating expiry dates in the magistrates' courts and in the Crown Court it is not the practice, thus far, for the clerk of the court or the judge to agree the expiry date. Areas had provided the courts with copies of the ready reckoner but further work to promote increased cooperation was not yet evident in the areas visited. When prosecutors had calculated the expiry date and endorsed this on files seen it was rarely noted as agreed with the court.

Compliance point

Areas should assess and further promote the involvement of the courts in calculating and agreeing expiry dates.

- 6.6 Crown Court observations indicated that many counsel and crown advocates were not proactive when asked about custody matters by those judges eager to fix trials within time limits. In these instances paralegal officers were not seen to remind counsel of obligations to agree or confirm CTL expiry dates or ensure that prosecutors had correct information.

Compliance point

Counsel should be instructed to ensure that CTL expiry dates are agreed at the first hearing in the Crown Court, confirmed at subsequent hearings and that strenuous efforts should be made to list cases for trial within the time limit.

RECOMMENDATION

CPS Headquarters should consider amending the national standard to set out more fully the proactive role required of paralegal officers at the Crown Court.

Checks on the initial calculation

- 6.7 Errors in calculation were seen that had gone unnoticed at subsequent hearings or management checks. Six out of 64 relevant cases in the magistrates' courts and three out of 50 in the Crown Court had incorrect expiry dates recorded.
- 6.8 Most areas visited had a process to ensure that the expiry date calculated by the lawyer in court was checked, as required by the national standard. Sometimes, where the prosecutor in court had not calculated and noted the date as intended, the initial calculation was made by the person assigned to check, usually an administrator or their manager. As no further check was then carried out, the initial calculation was therefore not checked and the responsibility fell to administrative staff rather than the prosecutor as intended. Many files did not have any endorsement to indicate that a check had been carried out.

Compliance point

Areas should ensure that all initial calculations are checked. If a lawyer has not calculated the expiry date in court the calculation carried out in the CPS office should be checked by a lawyer to ensure it is correct and that responsibility for the initial calculation does not fall to administrative staff.

- 6.9 There were other examples of incorrect initial calculations that had been noticed and amended, sometimes by prosecutors at subsequent hearings. However, it was apparent that prosecutors and paralegal officers did not check CTL expiry dates as required by the national standard and considered this to be the responsibility of those monitoring, whether administrative staff or lawyers' managers. Only 33 out of 45 written systems contained instructions to check the CTL before court.

Compliance point

The role of prosecutors and paralegal officers in checking expiry dates on cases they handle should be reinforced.

- 6.10 Where those checking the initial calculation made at court found an anomaly, the file was not always referred back to the prosecutor. Administrators and their managers check information with the court and make the calculation themselves. Staff may repeat their errors without feedback.
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Compliance point

Incorrect expiry dates should be referred back to assist staff in understanding any errors they make.

- 6.11 All staff in the areas visited had access rights to alter the CTL expiry date calculated automatically in the computerised case management system (CMS). Good practice was seen in some written area systems where management controls were in place to ensure that more senior staff check and authorise any alterations made. This is important as the information on CMS will produce the reports used to ensure that timely applications are made. Errors in updating CMS and other monitoring systems have resulted in failures as cases were taken out of the monitoring system by mistake and we saw a few examples of incorrect dates recorded in CMS.
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Good practice

The use of management controls in some areas to ensure that errors are not made in altering the expiry date that has been calculated in CMS.

Agreement and notation of days spent in custody and recalculations

- 6.12 The number of days spent in custody prior to bail being granted and recalculations when an accused person was re-remanded were not seen to be calculated and agreed in court in the areas visited. The reason given for this was that it caused delay as the ready reckoner cannot be used for this purpose and the calculations must be done manually. It is desirable that the correct number of days spent in custody is noted on the CPS and court files for accurate recalculation to be carried out if the defendant is rearrested, however, on files where there is more than one active CTL this may be time consuming.
- 6.13 Calculating days spent in custody and recalculation caused concern for some staff as it had to be done manually and there was a greater risk of error. All administrative staff confirmed that they would not use the ready reckoner but would check the date calculated automatically by CMS using a manual calculation. These recalculations were often referred to managers or unit heads to check rather than the prosecutor or reviewing lawyer, although there is concern that some written systems did not specify checks in these circumstances.

Calculations following breach of bail and arrests on warrant

- 6.14 When a defendant is arrested and brought to court at short notice charged with breach of bail or arrested on a warrant for failing to attend a hearing, the CPS prosecutor will not necessarily have the original case file. If the case is heard in the originating court and a local CTL protocol is in place, the court file will have the number of days spent in custody before grant of bail noted. This will assist in recalculating and agreeing the new CTL expiry date.
- 6.15 Where the court dealing with the breach is not the originating court neither the prosecutor nor the court will have access to the original file and may not have access to information on CMS. Failures have occurred in the past where only a few days remain on the time limit when an accused person is remanded back into custody. Local CTL protocols between the CPS, courts and the police specify that a warrant issued for failing to appear should have the number of days spent in custody written on it as this will be brought to court with the defendant on arrest and the number of days spent in custody will be available to calculate the correct expiry date and ensure that any necessary application is made in good time.
- 6.16 As yet it has not been possible to find a similar feasible system to deal with breach of bail cases. This is particularly problematic where the breach relates to the defendant's proximity to or interference with victims or witnesses and in some circumstances could create the risk of danger to the public.
- 6.17 Most areas visited had systems in place to ensure that the endorsements of breach of bail hearings and judge in chambers bail applications were noted on files. Area written instructions did highlight the importance of notifying originating units about breach of bail hearings but the urgency was not always emphasised and systems were not always in place or followed consistently. Areas should ensure that these cases are prioritised as if there is little time remaining and the originating area is not aware, the CTL may expire. This has resulted in failures and defendants being released.

Compliance point

Areas should ensure that systems to notify originating areas quickly of breach of bail hearings are in place and operated expeditiously.

7 OPERATION OF CUSTODY TIME LIMIT MONITORING SYSTEMS

Overview

- 7.1 The operation of the CTL system in those areas visited did not always comply fully with the area's own written instructions. The divergences included, lack of effective checks on the calculation of the expiry dates and of the entries into the monitoring system.
- 7.2 The DPP had recently extended the CPS requirement to report to CPS Headquarters CTL failures to include those where the application had been made in a proper and timely manner but refused because the prosecutor could not show that the case had been progressed with due diligence. The extended definition of a CTL failure had not been widely publicised in some areas and only recent training had brought it to the attention of staff. This may have resulted in failures not having been reported to CPS Headquarters.
- 7.3 A change of culture was discernable in most areas with a wider range of CPS staff being involved in and responsible for aspects of handling cases with CTLs. The involvement of the courts in agreeing expiry dates and monitoring CTLs varied but it was clear that in most of the areas visited, the courts were becoming more involved since local protocols had been signed.

Compliance with the national standard

- 7.4 In the seven CPS areas visited we compared the area written system against the national standard and examined how staff were operating the CTL monitoring procedures set out in their system. Since the national standard should have been implemented by the end of December 2008, it was disappointing to find that in a number of areas visited an updated CTL system had only recently been implemented. In some areas, this had happened only weeks or days before our visit and it was therefore difficult to evaluate the effectiveness of the system as it was so recently adopted.
- 7.5 Compliance with the national CTL standard varied. None of the written systems from the areas visited complied fully though most only deviated in a small number of aspects which were not of a critical nature. All areas visited have received a report and we have recommended that the areas undertake further work to ensure full compliance with the national standard.
- 7.6 The purpose of a written system is to ensure an effective process is in place and that staff apply that process consistently. On-site work revealed that in some areas, the operation of the system did not follow the written instructions in every aspect. Examples of this include lawyers not agreeing or announcing CTL expiry dates in court and a failure to immediately notify the originating area of a breach of bail and subsequent remand of a defendant. Thorough training of all staff and regular audits carried out by the areas themselves would help in ensuring compliance. We saw evidence of audits carried out by some areas which had highlighted some important points. However lack of effective action was an issue as our audit identified some of the same concerns.

Compliance point

Areas should carry out regular internal audits of the operation of the CTL system to ensure full compliance with the written area system.

Maintaining the monitoring system

- 7.7 Dual monitoring systems were operating in all areas visited. This was often in the form of CMS and a manual system, often a diary. Examination of the area systems from all CPS areas revealed a small number which had more than two monitoring systems including white boards and log sheets. This complicates the system, making its operation and maintenance more onerous and if the dual system is run effectively, further back-up systems should be unnecessary.
- 7.8 Accurate entry of information into the monitoring system is vital. Mistakes have led to failures in the past and 'near misses' where the need for an application has been picked at the last minute. For this reason, the national standard requires that entry of information is double-checked on all monitoring systems whether that be on CMS or in a manual system. For this double-check to be effective, it should be carried out by someone other than the person who entered the information. In several areas visited, this was not done and the check was carried out by the same person who entered the details initially.

Compliance point

Expiry and review dates entered into the monitoring system should be checked by someone other than the person who had entered the information.

- 7.9 In order to maintain an effective monitoring system, it is important that it is kept up-to-date with any changes in the custody status of a defendant, whether the defendant had been bailed, the expiry date extended, or new charges or defendants had been added to a file. Almost a third of the written systems examined did not require that CTL files must be returned after each court appearance to the staff responsible for monitoring for checks as is set out in the national standard. Failures have occurred where changes to CTLs have not been notified to those monitoring and examples were seen in our file sample of files that had by-passed monitoring staff. We saw examples of:
- cases that had not been updated in the system after the defendant was released on bail and, more seriously, where the extension to expiry date had not been recorded in the monitoring system; and
 - monitoring systems not being updated immediately after changes suspending or ending the CTL. In some areas, the system would only be updated when the review date was reached at which point the details of the file would be deleted from the system. This is not the most efficient system and creates unnecessary work retrieving and examining files where the CTL is no longer active. Whilst some area systems set out that all CTL files should be returned to the CTL monitor after each court appearance to check for any changes, in some areas this was not being done.
- 7.10 In some areas, examples were seen where any member of the administrative staff updating files after court would alter or delete expiry dates from the monitoring system. Whilst this should be a straightforward task, there may be factors that mean the case should not be removed from the system. We would suggest that such alterations to the monitoring system should be undertaken by the person responsible for maintaining the system. This person will have a more in-depth knowledge of CTLs and of the cases that are in the system. Cases incorrectly removed from the monitoring system led to CTL failures in 2008.

Compliance point

CTL files should be returned to the person responsible for CTL monitoring after each court appearance to check that necessary updates have been made in the CTL monitoring system.

RECOMMENDATION

Cases should only be removed from the monitoring system by staff with authorisation to do so.

Custody time limit failures

- 7.11 If the CPS fails to apply for an extension to a time limit, the defendant will often be released from custody unless they have been remanded on another offence. Following the HMCPSI thematic review in 2002, CPS Headquarters required that areas report any such failures. At that time, the definition of a CTL failure included only those cases where there had been a failure in the monitoring system which had led to an application being missed. In April 2008, the definition was extended to include those cases where an application to extend the CTL had been properly made but where the court refused the application as the CPS had failed to show that it had acted with all due diligence and expedition.
- 7.12 In all but one of the areas visited the systems included the extended definition of a failure. However, on-site work revealed that a surprising number and level of staff had been unaware of this extended definition until recent training at which point the new definition had been in place for almost a year. This is likely to have resulted in the non-reporting of this type of CTL failure.

Compliance point

Areas should ensure that all staff are aware of the extended definition of a failure and of the action required should this situation occur.

- 7.13 An issue that was raised by auditors with staff concerned cases where the lawyer decided not to apply for an extension because the CPS felt that the prosecution could not demonstrate that it had acted with due diligence and expedition. Generally it was felt that such cases should fall under the extended definition of a failure and be reported as such. The reasoning is that there should be no less concern about a situation where the CPS has itself concluded that the prosecution cannot argue that there has been due diligence and expedition than one where the Crown Court so determines. Arguably, if the position is so clear cut that the application cannot realistically be argued, the concern should be greater. In this context, we use the term “prosecution” generically so as to embrace not only the CPS but others whose efforts contribute such as the police (especially important), forensic scientists and other experts.

RECOMMENDATION

CPS Headquarters should consider whether the definition of a failure should be further extended to include cases in which a decision is taken by the lawyer not to apply for an extension as it would not be possible to demonstrate CPS had acted with due diligence.

Responsibility for custody time limit monitoring

- 7.14 One of the aims of the national standard and the essential actions document which it replaced was to precipitate a change in culture which would ensure that responsibility for the monitoring of CTLs does not rest entirely on the staff administering the monitoring system but also with more senior staff having responsibilities for the cases in question, including reviewing lawyers and lawyer managers. In most areas visited this wider responsibility had been in place for some time but in others it appears to have been surprisingly recent and connected to the establishment of a protocol with the courts which requires prosecutors to agree the expiry date with the court. In some areas this attitude of wider responsibility has yet to be fully embedded. Written CTL systems that clearly set out the responsibilities of the different grades of staff and thorough training appear to be factors in ensuring a wider range of staff in take responsibility for CTLs.

RECOMMENDATION

Areas should ensure that the culture change aimed at engaging a wider range of staff in CTL monitoring responsibilities has been achieved.

- 7.15 Part of this culture change includes senior managers in the areas becoming involved in management checks on the CTL monitoring system. The grade of staff involved and their level of involvement varied. In some areas, unit heads were very much involved in the checks whereas in other areas, administrative managers carried out checks and were providing assurances on the operation of the system to more senior managers. Feedback to the CCP also varied with some preferring a verbal report at the monthly area management meeting whilst others required written assurance on a weekly basis as is set out in the national standard.
- 7.16 The previous thematic review suggested that as well as managers becoming involved in ensuring CTL cases were properly monitored, it should be the responsibility of all staff dealing with any CTL file to ensure that it was being handled expeditiously. In this audit we saw examples of paralegal officers who were previously closely involved with dealing with CTLs now taking a much less active role in this side of their cases since lawyers have become more involved in CTL monitoring. Whilst no longer responsible for applying for extensions as was seen in some areas in the thematic review, paralegal officers play an essential role in ensuring that cases are dealt with as quickly as possible and in taking a leading role in case progression. Only 27 of the 45 written systems seen suggested that prosecutors or paralegal officers should check case progress each time they handle the case.

Involvement of the courts

- 7.17 Since the issue of the essential actions guidance, CPS areas have been encouraged to liaise with their local courts in order to engage them in the monitoring of CTLs. The national standard and recent guidance from CPS Headquarters has required areas to formalise this in a protocol with the courts in which it is set out that prosecutors in court will agree the expiry date with the court and that the two agencies will exchange, on a regular basis, information detailing the cases in which CTLs apply. This exchange of information would highlight any discrepancies where one agency has different information to the other and allow action to be taken.

- 7.18 The role of the courts in monitoring the CTL expiry is an issue in some areas. In a number of areas, such exchange of information between the courts and the CPS has been in place for a several years. However in most of the areas we visited this was unusual and areas were working with the courts to secure their involvement in monitoring CTL cases.

Compliance point

Areas should continue to liaise with local courts to ensure effective exchange of CTL information.

8 ACTION AT REVIEW DATES

Overview

- 8.1 Timely review dates are necessary to allow the CPS to apply in good time for an extension to the custody time limit. The majority of area CTL systems complied with the national standard requirements regarding setting review dates. However, some areas set a number of review dates beginning at an early stage in the case which causes additional work for staff in retrieving and checking CTL cases. The purpose of review dates needs to be clarified – whether they are a prompt for timely action to extend a CTL as we believe they should be, or whether they are to be used to drive case progress.
- 8.2 Files did not always have a record of the decision taken at the review date and of any action taken. The length of time allowed to deal with a file that had reached the review date varied and only half of the area written systems complied with the national standard which requires action within 24 hours.

Timely review dates

- 8.3 Timely action is required if the CPS is to make an application successfully to extend the custody time limit. In order to comply with the legislation the court must be served with the written application notice two days before the hearing in the magistrates' courts and five days before in the Crown Court. In some circumstances, notice may be waived (see paragraph 9.12).
- 8.4 The national standard requires that review dates are fixed sufficiently in advance for allow for applications to be made in good time. In magistrates' courts cases the standard stipulates a review date at least two weeks before the expiry and four weeks in advance in the Crown Court.
- 8.5 An examination of the files revealed that 42 (69%) of the 61 magistrates' courts cases had a review date two weeks or more prior to the expiry date. However, ten cases did not and in nine cases the review date was not recorded on the file. In one area it was the practice to mark a review date one week prior to the expiry but files were retrieved and action taken two weeks in advance of the expiry date. A similar situation was found in the Crown Court files examined where nine of the 50 cases had a review date less than four weeks in advance of the expiry date and again one area marked six of the nine files with a three week review date but retrieved the files a week prior to this.
- 8.6 In the 45 CPS area systems examined all but four had fixed review dates which complied with the national standard.

Compliance point

All CPS areas should fix review dates at two weeks prior to the expiry in the magistrates' courts and four weeks in Crown Court cases in accordance with the national standard.

The role of the review dates

- 8.7 One of the main issues with review dates in the areas visited, is the number and purpose of these dates. In some areas there were as many as four review dates beginning at a relatively early point after the defendant was first remanded in custody. At each review date, administrative staff are required to retrieve the file and either provide an update on case progress which is entered onto a form or to give the file to the reviewing lawyer.
- 8.8 The issue is whether the review dates are intended to trigger timely action to apply for an extension when required or whether they are being used to drive case progression. Retrieving and updating lists of CTL cases with the latest information on case progress was an onerous task and generally fell to the administrative manager responsible for running the monitoring system. A decision needs to be made as to whether the CTL monitoring system should also act as a tool to drive case progression or whether this responsibility would be better placed elsewhere.

RECOMMENDATION

CPS Headquarters and CPS areas should consider how case progression fits into the role of CTL expiry monitoring.

- 8.9 The police, as part of the prosecution team, have an important role in case progression. It is vital that the police are made aware of the time constraints for the preparation of the evidence and therefore should be kept informed about the custody status of defendants and of the CTL expiry date. Failure to progress cases with due diligence is likely to lead to any application for a CTL extension to be refused. It is important that police officers understand this. Routinely reminding the police of the expiry date had only recently been adopted since a revised national template for communication minutes to the police was introduced onto CMS. Prior to that in most areas, informing the police that the defendant was in custody and/or of the expiry date was inconsistent. The examination of all written systems revealed that whilst staff were expected to inform the police of the expiry date in 30 of the 45 systems, only 25 instructed staff to set target dates for the police for any further work to be delivered as is required in the national standard.

Compliance point

Area systems should include instructions to inform the police of the CTL expiry date and to set target dates for outstanding work.

Responsibility for taking action at custody time limit review dates

- 8.10 Prior to the issue of the essential actions document, there was no guidance on who should take the decision and authorise the application to extend the CTL. In many areas, this was seen as an administrative function which required no input from legal staff. However, prosecutors are under an obligation to keep cases under review and the question as to whether to retain a defendant in custody forms part of this duty.

- 8.11 In all the areas visited, the CTL system places the responsibility on the lawyer for the decision at the review date. We found only two examples of areas where it appeared that a lawyer was not always involved in deciding whether to make an application to the court. In a number of written area systems from across the CPS, responsibility for the decision was not clear suggesting that the review could be carried out by casework staff or that an application should be sought automatically.
- 8.12 A recent initiative introduced by the CPS, the optimum business model (OBM), has changed the way in which files are allocated to prosecutors for review. Under this model only certain types of case will be allocated to a specific lawyer who will retain responsibility for the case throughout. This limited file ownership had caused problems in some areas when files involving CTLs reached the review date. CPS Headquarters had issued further instructions stating that CTL files should be excluded from the OBM scheme and allocated to a specific lawyer.
- 8.13 There was a lack of consistency in the way in which areas had dealt with this issue. Some areas had allocated all CTL files to reviewing lawyers but in others, all the files which reached a review date were dealt with by the unit head, sometimes due to the fact that they were the only lawyer in the office. The unit head either made the decision or would allocate files to a lawyer for action.

RECOMMENDATION

CPS Headquarters should provide clearer guidance about the handling of CTL cases in relation to the optimum business model which ensures that there is clear and workable ownership of responsibility for CTL actions.

Action taken at review dates

- 8.14 Responsibilities for the actions taken at the review date were not always clearly set out in a number of the written systems.
- 8.15 Depending on how areas chose to check those cases with review dates, this task could involve a significant amount of work. In most areas the administrative staff would obtain a list each week from CMS of cases with a review date. What was included in this list varied. Some would produce a list of cases with review dates in the next one or two weeks. Others would run lists of all cases with a review date in the next month and in some instances the list contained all CTL cases. Depending on the number of cases which involved CTLs, retrieving and dealing with these files could take some time.
- 8.16 In order to ensure that action is taken on time and that the monitoring system is up-to-date, both the monitoring system and the file should have a record of the action taken at the review date. Recording the decisions taken at the review was not consistent. Action was often noted in the diary or on the CMS printouts. However, unless an application had been prepared, it was often not possible to ascertain from the file what action had been taken at the review dates. This was particularly the case where review dates had been fixed well in advance of the point where action to extend the CTL would be necessary.
- 8.17 In the 15 files seen in the sample where review dates had been reached, only five had evidence of action having been taken within 24 hours of the review date.

Compliance point

Areas should ensure that action taken at review dates should be recorded in the monitoring system and on the file.

- 8.18 Systems to ensure prompt action at the review date were not always in place. In some areas if confirmation of a decision regarding the application had not been received within 24 hours, the staff monitoring the CTL system would follow up on the case. In other areas visited, the responsibility for prompt action was left with the lawyer making the decision.
- 8.19 The examination of all area systems found 23 of the 45 had an instruction to ensure that action was taken within 24 hours of the review date. Examples of systems were seen that required action within 48 hours. In others, no follow up action was taken until the next review date was reached seven days later. Where areas had a number of review dates beginning at relatively early stage, prompt action would not necessarily be seen as essential at these early review dates and looking at files for CTL review several times may dilute the urgency required when a decision on an application is imperative. This emphasises the need for clarity as to the purpose of bringing cases forward for review.

Compliance point

Areas should have in place that a system to ensure action is taken at review dates within 24 hours.

9 APPLICATIONS TO EXTEND THE CUSTODY TIME LIMIT

Overview

- 9.1 In all of the areas visited and in most of the area systems, a lawyer was responsible for making the decision to apply for an extension to the CTL. This is an improvement since the last CTL thematic review.
- 9.2 The legislation allows oral application to be made to extend a CTL but it is suggested that in particular types of case consideration should be given to always applying for an extension in writing in accordance with the time targets.
- 9.3 CTL failures have occurred in the past when the court has not received written applications for an extension. Not all area systems had a procedure in place to check that the court had received the application and had listed the case for an extension hearing.
- 9.4 The national standard requires that the lawyer who decides to make an application to extend should also consider and note on the file whether it is necessary, should the application be refused, to lodge an appeal. This was not included in a number of area systems.

Responsibility for the decision to extend

- 9.5 At the review date, the lawyer must make a decision as to whether there is good and sufficient cause to retain the defendant in custody. If the decision is to detain the defendant further, the lawyer must submit an application to the court along with a detailed chronology showing that the prosecution has acted with all due diligence and expedition as is required by the legislation. The court can only extend the CTL if it is satisfied that the need for an extension is due to:
- i the illness or absence of the accused, a necessary witness, a judge or a magistrate;
 - ii a postponement which is occasioned by the ordering of the court of separate trials in the case of two or more accused or two or more offences; or
 - iii some other good and sufficient cause; and
 - iv the prosecution has acted with all due diligence and expedition.
- 9.6 There is a body of case law to the effect that routine listing difficulties – something outside the control of the prosecution – may *not* be a reason for granting an extension.
- 9.7 The national standard requires that the decision to apply for an extension must be made by a lawyer. In the files examined, in ten out of 18 cases in which an extension had been considered, the decision had been made by a lawyer. In six cases it was not clear who had made the decision and in two it did not appear that a lawyer had made the decision.
- 9.8 If the lawyer decided that the defendant should not be retained in custody, there was no guidance in most area systems as to whether authorisation should be obtained or setting out the action to be taken at that point. The CTL legal guidance refers to the lawyer taking immediate action to list the case as soon as possible after such a decision is made.

RECOMMENDATION

Consideration should be given to adding to the national standard the action to be taken when a decision is taken not to apply for an extension.

- 9.9 Chronologies detailing the events in the case must be submitted with the application to extend. In some areas visited, the paralegal officer in the case drafted the chronology for approval by the lawyer in Crown Court cases. The national standard does not specify who should be responsible for preparing the chronologies but the involvement of the paralegal officer may be sensible as they sometimes have more in-depth knowledge of the case progression and it involves them in the process.

Listing the application in court

- 9.10 It was found in most of the areas visited that the Crown Court, which accounts for the majority of CTL cases, has hitherto been able to list these cases for trial before the expiry date is reached although that is not universally the case and the Lord Chief Justice has referred to the possibility of future difficulties in the light of increasing caseloads and tighter resources. In one area visited the court would prioritise CTL cases and move other trials in order to accommodate them. It would appear that since the last thematic review, the number of applications to extend may have dropped significantly due to more efficient listing. However, senior managers in the CPS were able to draw our attention to a number of areas where this was not the case. With cuts in resources imminent, it is likely that those courts which are able to list CTL cases before the expiry date, will find this difficult in future as the number of court sessions are reduced.
- 9.11 In most areas applications to extend were timely. Only one area had examples of notices that were served late and applications that were listed for an extension the day before or the day of the expiry. We found no examples of applications made without notice or made at the time a trial date was set that was close to or beyond the expiry date. In some areas judges would not allow applications so far in advance of the expiry date and required a written application to be submitted at the appropriate time so that the issue of case progression could be addressed regardless of the fact that the court was not able to list the case before the expiry date.
- 9.12 Seven of the 45 area systems specified the notice that must be given in writing prior to the application hearing in the magistrates and the Crown Court. An application may be made without notice and the defence may waive the right to notice. The court will consider the merits of the application without notice or the defence waiver. Though the regulations allow for an application to extend being heard without notice, there have been recent CTL failures due to this circumstance.
- 9.13 Some areas visited were not making written applications where, for example, the commencement of the trial was some days prior to the CTL expiry. If the trial did not proceed and the defence did not waive notice, the case would have to be listed for a separate application and the file returned to the CPS office for notices to be prepared. Though it is not mandatory to apply in writing and an oral application is possible, there may be particular types of case or offence category with the safety of the public and the victim being uppermost, where it would be sensible to apply for an extension in writing even if it was felt that there was no reason for the trial not to go ahead.

RECOMMENDATION

CPS Headquarters may wish to consider guidance to areas advising that in particular types of case, written applications for an extension should be made at the appropriate point, even if it seems that there is no reason for the case not to be dealt with within the expiry date.

- 9.14 Listing cases at court for an extension could be problematic in a small number of areas and staff there were aware of the difficulties. We were told of courts which would take cases out of the list without informing the CPS and in these areas the staff would check in advance to ensure that the case had remained in the list.
- 9.15 However, in 13 of the 45 area systems examined, there was no mention of a procedure in place to check that the court had listed the case. This is of concern as several recent failures have been attributable to the court not listing CTL extension hearings as they had not received the notice.

Compliance point

Areas must ensure that procedures are in place to check with the court to make certain that extension hearings have been listed.

- 9.16 At the time of our visits difficulties with the courts were focused on whether there was a need to make an application. In two of the areas visited, problems had been encountered with not only the court but also prosecution counsel who did not agree that an extension was necessary when a defendant had pleaded guilty to some but not all counts on an indictment. As custody time limits attach to the offence not to the case, if all charges are not dealt with the CTL will remain active on the outstanding offences. This is an issue referred to in the protocol drafted by CPS Headquarters but not all courts have signed the protocol as yet. Better information and training being made available to both the courts and to counsel may be the way forward. This has now been taken forward by CPS Headquarters and agreement has been reached with the courts.

Ensuring the application is made in court

- 9.17 Mistakes and oversights in the past have led to CTL failures when the prosecutor in court has not made the application to extend the CTL. On those files seen where extensions had been made, there was often no evidence of the need for an application having been brought to the attention of the prosecutor. The national standard requires the use of a brightly coloured form on the front of the file when it is sent to court to alert the prosecutor that an application is to be made. In a third of the written area systems, this requirement was not mentioned.
- 9.18 A check carried out after court to ensure that the application has been made is particularly important if the hearing is close to the expiry date. Methods by which staff in those areas visited checked that applications had been made varied. In some areas, the CTL monitor would expect the prosecutor in court or the paralegal officer to telephone the result to the office so that the system could be updated. In one area there was no check after court. The risk here is that if the application was not made, the CTL may have expired before the omission was discovered. Of the 45 area systems examined, a third did not specify that a check be carried out within 24 hours of the hearing to ensure that the application was made. This is particularly important in those venues where the advocate is not supported by a CPS representative.

- 9.19 Failures have occurred in the past due to confusion as to the exact date to which the CTL has been extended. The national standard requires the prosecutor in court to ask the magistrates or the judge to state the exact date to which the extension has been granted. Of the 45 area systems examined, only 14 had this requirement.

Compliance point

Checks should be in place in the system to ensure that applications listed for an extension have been made.

Appeals against the decision not to extend

- 9.20 If the magistrates refuse to extend a custody time limit, the prosecution has a right of appeal to the Crown Court. However, the decision to appeal has to be taken immediately upon refusal and a notice of appeal served on the same day.
- 9.21 In order to facilitate this, the national standard requires that the lawyer considering the need for an extension also decides and notes on the file whether to appeal against a refusal to extend the time limit.
- 9.22 Almost half of the written systems did not contain the instruction for lawyers to consider and note on the file whether an appeal was appropriate. Lawyers spoken to in the areas did not regard this as an essential task when preparing an application for an extension.

Compliance point

Lawyers should consider whether an appeal should be made should the court refuse to extend the expiry date and clear instructions should be recorded on the file for the prosecutor in court.

10 THE ROLE OF CPS HEADQUARTERS

Overview

- 10.1 The CPS responded positively to the thematic report on CTLs in 2002 introducing a number of important initiatives which have recently been reinvigorated and expanded by the Headquarters lead on CTLs and the new lead CCP for CTLs. This is a pivotal role in driving up performance as the impetus comes from someone who is dealing with the same issues as other CPS areas.
- 10.2 Area visits confirmed that action taken by the Headquarters team has been successful in many respects. However, the mandatory application of the national standard for CTLs has taken time to be fully adopted in some areas and further work is necessary to ensure that full compliance is achieved.

A standard for custody time limit systems

- 10.3 After the thematic report was published, the CPS set up a working group to respond to the recommendations. It was recognised that areas should have some definitive guidance on the elements of a sound CTL system and this was encapsulated in the essential actions document. Though this document was used by the Inspectorate as a standard against which it compared area CTL systems, implementation was not regarded as mandatory.
- 10.4 Following an increase in the number of failures reported to CPS Headquarters, work commenced which resulted in the issue in September 2008 of the CTL national standard. The new standard built on the essential actions document and, more importantly, was disseminated to areas with the instruction that its implementation was mandatory. The revision of the legal guidance and the national standard had helped to focus attention on the importance of an effective CTL monitoring system.
- 10.5 A good practice model was issued alongside the new standard with the intention that areas may wish to introduce all or some of the aspects into their own system. The CTL legal guidance on the CPS infonet was also updated in April 2008.
- 10.6 The audit has revealed a lack of compliance with the national standard in a number of areas and also late action in revising area systems. In August 2009 the DPP wrote to all CCPs requesting an assurance that their CTL systems complied with the national standard, the first time since the introduction of the new standard in September 2008.

Negotiations with the courts

- 10.7 Discussion with HMCS regarding the involvement of the courts in the calculation and monitoring of CTL expiry dates began after the thematic report. This resulted in guidance being issued to the courts recommending that they take a more active role in custody time limits. However, participation in CTLs was not mandatory and was not universally adopted.
- 10.8 More recent discussions between the CPS and the court authorities have sought to strengthen the courts' involvement and further guidance was issued. However, as we found during our visits to areas, the level of involvement by the courts in discussions about the CTL varied. Whether the CTL was a subject routinely raised in court appeared to be due to the culture established in the court rather than it being an essential part of the proceedings.

Area custody time limit champions

- 10.9 A network of CTL champions was established after the thematic review. Each CPS area nominated a member of staff, usually a lawyer, who was to be regarded as the area expert and a contact point for all issues relating to CTLs.
- 10.10 The role of the champion had been strengthened recently in the national standard which has outlined the duties of the champion. Work by Headquarters has also resulted in a support system for the CTL champions with the introduction of an internet forum to allow discussion of CTL case law and system queries. The information and updates circulated to areas by the Headquarters CTL team has resulted in area staff feeling that they have an accessible resource in Headquarters regarding CTL matters. Headquarters advice and guidance on cases or systems is also easily accessible.
- 10.11 This audit found that the remit of the CTL champion role differs between areas and whilst some champions were allocated time to carry out their duties, others were expected to fit it in around their other work.

Reporting custody time limit failures

- 10.12 It has been mandatory for areas to report CTL failures to Headquarters since the thematic review in 2002. Details of these failures are entered into a log sheet and are examined to highlight any trends or learning points. It is important that the log is kept up-to-date so that CPS Headquarters staff and the Inspectorate have an accurate picture of area performance.
- 10.13 The number of failures has increased over the last year. This is due in part to the application of the expanded definition of a failure which requires CPS areas to report cases in which the court has refused an extension on the grounds that the CPS failed to demonstrate it had acted with all due diligence and expedition. The table below sets out recent performance. This also shows that reported failures due to the CPS not making an application to extend the CTL in good time have decreased.

Number and type of reported CTL failures

Reason	2006-07	2007-08	2008-09	2009-10 to date
System error	41	32	24	11
Due diligence*	NA	NA	11	33
Total	41	32	35	44

* Although the new definition was issued with legal guidance in May 2008 these gradually began to be more regularly reported after December 2008.

- 10.14 The importance of effective CTL monitoring is emphasised by performance in custody time limits being discussed at quarterly review meetings between the DPP, the Chief Executive and the CCP.

Other developments

- 10.15 Changes to template documents used nationally have been instigated by the Headquarters team. The template minute to the police now contains a direction to insert the CTL expiry date or delete this if it is not appropriate. A similar field is to be added to the national template for the brief to counsel. This approach appears to have been successful.

11 TRAINING

Overview

- 11.1 The national standard requires all staff to be trained in the standard and this is considered to be a role for the CTL champion. Training packs and support are available but training is being carried out with mixed results. Some areas visited had delivered training for a wide range of staff who gave positive feedback; some had had short updates that were not adequate and one area had asked their staff to read the guidance as training was not yet available. Some staff had missed training events and the lack of understanding of the role intended for them in the system was apparent.

Training in the areas

- 11.2 Most areas visited had only recently implemented the national standard. Only one had not carried out any training and in this area staff had been asked to confirm that they had read the system and there was some uncertainty about the new procedures amongst staff.
- 11.3 In most areas training had been delivered by the CTL champion and was often based on the national training material and involved staff in practical exercises working out CTL dates. However in some areas training had not yet reached all staff. All the paralegal officers and lawyers in one trial unit had not been able to attend their allocated training and they were not aware of their role in the system. There was a poor level of understanding which was apparent from errors seen on the files in a number of areas where basic refresher training would have been beneficial.

Compliance point

Training should be logged to ensure that all staff are included in the training.

- 11.4 Some of the training presentations were detailed and CPS Headquarters had expressed a preference that they should be delivered in groups of mixed roles to enable staff to see what others' responsibilities were. In two areas where this had been done staff said that it had been helpful and they felt that they had all learnt something new.

Learning sources

- 11.5 CPS Headquarters has also developed a computer based training package. This is part of the induction programme for all new staff and is an electronic presentation with some interaction that gives a good basic introduction to CTLs.
- 11.6 A new training course is being developed to disseminate information about some of the common pitfalls that cause failures and how to avoid these. This has been delivered in one CPS area and was well received.
- 11.7 The amended legal guidance that was issued in May 2008 was intended to be a source of reference for staff. Information about the causes of recent failures is distributed amongst the area CTL champions and liaison and support are provided to them. It is intended that they will become a source of expertise in their area. We found that this was the case in some areas visited but in others staff usually referred to line managers.

Interagency training

- 11.8 In the areas visited interagency training had not been requested or delivered with regard to CTLs. Court observations indicated that more work needs to be done to ensure that the courts' involvement becomes 'business as usual' and some form of training would assist this.
- 11.9 Some recent failures indicated a lack of understanding by counsel who were not seen to be engaged or proactive in dealing with CTLs in the Crown Court. In one area the CTL champion had offered a CTL training session to local counsel which received a positive response and this was attended by both junior and senior counsel. However, most areas had not considered offering training to counsel or joining with other areas or their family group to provide this.

RECOMMENDATION

Consideration should be given to offering interagency training on an area or family group basis with the courts' staff and with counsels' chambers.

12 COMMENTARY

- 12.1 Chapter 3 and in particular its casework examples give a flavour of the range of situations which the system of custody time limits must address. Catering for so many different scenarios requires the development of monitoring systems which can become overly complex to the point of being virtually impenetrable. Simplicity and clarity are lost in the quest for a scheme which covers every detail.
- 12.2 The need to monitor custody status at so many points in the life of a case in order to recheck and, if necessary, revise the expiry date of the CTL reinforces concerns about its complexity. The need for the system to be fail-safe has resulted in dual schemes of electronic monitoring linked to manual diaries with a requirement for double-checking of all entries and routine quality assurance by senior managers. Even so, it is clear from the number of CTL failures that cases slip through the net. This suggests that the scheme has become so detailed as to be unduly vulnerable to human error. The circumstances of some of the failures we considered tends to confirm that. For example, the scenario where a case is listed for trial in the Crown Court on a Monday morning at the very end of the custody limit; the CPS may receive a telephone call late on the Friday because circumstances have arisen which mean that the case cannot proceed. Unless the individual receiving the call is in a position immediately to realise that the effect will be to cause a breach of the time limit, that is what may occur.
- 12.3 It is impossible to avoid commenting on a statutory infrastructure which requires the prosecution to make application for extensions of time limits in circumstances when the prosecution itself has no need for an extension and may indeed wish the case to proceed. An observer coming to the situation for the first time might well conclude that operation of the system of CTLs has for the CPS had to become an end in its own right in order to minimise the risk of harm which could flow if a failure led to the release of a dangerous individual. Their focus needs to be on the substantive prosecution of the case. By contrast, the intention of Parliament was a simple one; to ensure that defendants awaiting trial who could not be granted bail should not spend any longer in custody of their trial than was necessary for the proper administration of justice.
- 12.4 The approach adopted by many of the practitioners involved in the process suggest that they too would prefer to focus on the preparation and conduct of cases rather than the administration of a complicated set of rules. Prosecutors within the CPS have historically tended to regard custody time limits as a matter for administrators; counsel are often disinclined to become involved, in part because lack of understanding is accompanied by a failure to appreciate the seriousness of the consequences which can flow from non-compliance. Judges do not necessarily see the regime assisting in their case management. Bringing custody cases to trial expeditiously is something which they would instinctively wish to do.
- 12.5 It is also pertinent to note that CTLs were introduced by the 1985 legislation at a time when the judiciary were less directly involved in the management of cases and there were extensive delays in bringing cases to trial. Both situations have changed significantly. Although the picture is a variable one, delays are not now as extensive as they were at that time. There is also now a strong expectation that judges and magistrates will take a firm grip on the management of cases from an early stage and ensure that they proceed through the system with the maximum expedition consistent with the proper administration of justice.

- 12.6 Against this background, it is right to consider whether the CTL regime as it operates at present (together with its complex administrative requirements and the attendant scope for error) remains the right one. There are some steps which could be taken to make it more flexible and manageable and to reduce the risk of outcomes which are contrary to the public interest. There is also argument for a more radical approach which would build on the increasing assumption of responsibility for case management by the judiciary and make the CTL regime more proportionate. The possibilities include:
- Empowering the court to allow some relief to the prosecution where an expiry date is missed or there is some other technical non-compliance. This would recognise that the present consequence of non-compliance by the prosecution may be disproportionate in terms of its impact on the public if the defendant is released before trial. Whilst it is right to impose discipline on prosecutors and require thorough and speedy progression of cases, that should not lead to the public being penalised.
 - Consideration should be given to conferring a discretion on the judiciary to extend the custody limit beyond the expiry date even though none of the current statutory grounds may be applicable if there were evidence to suggest that the release of the alleged offender would create a danger for the public. For example, the inability of the court to list a case within the statutory time limit ought not to become a source of risk for the public.
 - It is arguable that the CTL should stop at the preliminary hearing stage of the case when it might reasonably be assumed that the trial judge would oversee not only the management of the case itself but also ensure that the accused did not remain in custody for an unjustified period. Such a provision might be supplemented by a specific requirement that the court review the custody/bail position at regular intervals.
- 12.7 The above would represent variations on the present basic scheme. Any review ought also to consider the more radical option canvassed above of making the requirement that individuals held in custody be brought to trial within a reasonable time an integral part of the case management role of the court.

13 CONCLUSION

- 13.1 The fundamental purpose of this audit report was to assess the performance of the CPS in managing the application of the custody time limits regime for which it bears, by default, the primary responsibility. There is scope for some criticism of the present position – which is significantly stronger than previously – and some examples of good practice on the part of the CPS. We make recommendations as to how the variable performance, evident by the modest but significant continuing incidents of CTL failures, can be improved by internal and joint action to strengthened the system. However, the comments made in the preceding section make clear why we think that, despite the scope for improvement, circumstances will prevent the CPS from obtaining a truly satisfactory system.
- 13.2 The present arrangements are overly complex and the virtually impenetrable nature of the CTL scheme as it currently exists, combined with increased pressure on case progression functions through developments in procedure and investigative techniques, makes it vulnerable to human error. Increasing resource constraints are likely to exacerbate that position.
- 13.3 Our conclusion is that time is right for a more substantial review than would be proper in the context of this audit report. That review should consider not only the scope for modification of the existing regime but a more radical approach building on the increased role of the judiciary in case management.

ANNEX A: CUSTODY TIME LIMITS

Magistrates' courts

Summary only offences – 56 days from first appearance to start of summary trial.

Either way offences – 70 days from first appearance to committal for trial, unless mode of trial is determined as summary trial before the expiry of 56 days in which case the time limit shall be 56 days.

Crown Court

Either way offences in the Crown Court – 112 days from the date of committal to the start of trial.

Indictable only cases sent to the Crown Court – 182 days from first appearance in the magistrates' court to the start of the Crown Court trial.

Youth offenders

Homicide cases – 70 days from first appearance to committal.

Other indictable only offences – 56 days from first appearance if, within that time, the case is deemed suitable for trial in the youth court. If such determination is made after 56 days, or the court decides to commit the case to Crown Court, the limit is 70 days.

Either way offences – 56 days from first appearance to trial if a plea is entered within that period; 70 days if no plea has been entered within the 56 day period.

Summary only offences – 56 days from first appearance to start of trial.

In all cases, the regulations provide that, if a custody time limit would expire on a Saturday, Sunday, Christmas Day, Good Friday or other Bank Holiday, it shall be treated as expiring the previous day.

ANNEX B: THE CURRENT CUSTODY TIME LIMIT REGIME

The law concerning CTLs is to be found in section 22 of the Prosecution of Offences Act 1985 as amended, and Prosecution of Offences (Custody Time Limits) Regulations 1987 as amended.

CTLs apply to the charge and not the offender, and each charge attracts its own CTL expiry date.

Additional charges have their own CTLs which run from the date the new charge is laid. Generally this is the case unless the new substitute charge is merely an amended version of the original, or the defendant is able to establish bad faith by successfully alleging that the prosecution laid it purely as a means of extending the existing expiry date.

CTLs apply where a defendant is remanded in custody, or to secure accommodation (youths), or under a hospital order, or following a transfer to hospital.

The CTL runs from the day after the date of first remand in custody, until midnight on the (last normal working day before the) day of expiry. They run from the date of the remand, even if loss of liberty is delayed, until actual release, even if this is delayed for compliance with a bail condition. The relevant time periods are set out in annex A.

CTLs stop permanently on the start of the trial (or preparatory hearing for a serious or complex fraud), committal to the Crown Court (or start of section 6(1) committal), the entry of an acceptable guilty plea, or the escape from lawful custody of the defendant. The clock also stops temporarily when the defendant is granted bail or absconds. The clock starts to run again in these cases following a subsequent remand in custody.

In order to extend the time limit, the prosecution must satisfy the court, on the balance of probabilities, that the requirements of section 22(3) of the 1985 Act are satisfied; namely:

- i the illness or absence of the accused, a necessary witness, a judge or a magistrate;
- ii a postponement which is occasioned by the ordering by the court of separate trials in case of two or more accused persons, or two or more charges; or
- iii some other good and sufficient cause;

and the prosecution has acted with all due diligence and expedition.

Applications are on notice but the defence can waive this, and the court has discretion to hear applications without notice.

However, the court has no authority to consider an application after expiry of the CTL period.

ANNEX C: PERCENTAGE OF AREA CASELOAD THAT HAS CUSTODY TIME LIMITS³

Area	No defendants in custody end Sept 2009	No of live cases carried forward end Sept 2009	% of caseload (excl PCDs) that have CTLs
Avon & Somerset	277	4,164	6.65
Bedfordshire	115	1,931	5.96
Cambridgeshire	92	1,855	4.96
Cheshire	104	2,110	4.93
Cleveland	140	2,084	6.72
Cumbria	77	1,598	4.82
Derbyshire	186	2,261	8.23
Devon & Cornwall	143	3,691	3.87
Dorset	69	1,997	3.46
Durham	108	1,954	5.53
Dyfed Powys	49	1,068	4.59
Essex	209	4,163	5.02
Gloucestershire	62	1,348	4.60
Greater Manchester	728	10,428	6.98
Gwent	64	1,538	4.16
Hampshire & the Isle of Wight	352	5,765	6.11
Hertfordshire	136	3,387	4.02
Humberside	293	3,183	9.21
Kent	262	5,314	4.93
Lancashire	400	6,177	6.48
Leicestershire	212	2,705	7.84
Lincolnshire	48	1,701	2.82
London	2,549	40,509	6.29
Merseyside	316	5,554	5.69
Norfolk	96	2,071	4.64
Northamptonshire	120	2,098	5.72
Northumbria	239	4,933	4.84
North Wales	77	1,665	4.62
North Yorkshire	83	2,524	3.29
Nottinghamshire	257	3,599	7.14
South Wales	284	4,425	6.42
South Yorkshire	321	3,747	8.57
Staffordshire	122	2,735	4.46
Suffolk	69	1,561	4.42
Surrey	91	2,266	4.02
Sussex	262	3,981	6.58
Thames Valley	303	7,520	4.03
Warwickshire	33	822	4.01
West Mercia	149	3,072	4.85
West Midlands	765	8,493	9.01
West Yorkshire	414	9,598	4.31
Wiltshire	49	1,677	2.92
England and Wales	10,725	183,272	5.85

³ Area caseload taken from the figure carried forward from September 2009 to October 2009 excluding pre-charge decision cases.

ANNEX D: GLOSSARY

Agent

Solicitor or barrister not directly employed by the CPS who is instructed by them to represent the prosecution in the magistrates' courts.

Casework quality assurance

A CPS national scheme for managers to analyse the quality of one file per month for lawyers and associate prosecutors for individual feedback and national collation.

Compliance point

Highlighted when area performance diverges from a CPS national standard or guidance in an aspect of case handling.

Charging decisions

The Criminal Justice Act 2003 took forward the recommendations of Lord Justice Auld in his Review of the Criminal Courts, so that the CPS will determine the decision to charge offenders in the more serious or contested cases.

Committal

Procedure whereby a defendant in an *either way* case is moved from the magistrates' court to the Crown Court for trial, usually upon service of the prosecution evidence on the defence, but occasionally after consideration of the evidence by the magistrates.

Compass CMS

The IT system for case tracking and case management used by the CPS. Compass is the system used in all areas.

Crown advocates

Crown advocates are in-house CPS lawyers who are entitled by professional qualification and CPS designation to appear in the Crown Court.

Counsel

Agent prosecutor in the Crown Court not directly employed, but instructed by the CPS as an advocate to represent the prosecution.

Disclosure, *initial and continuing*

The prosecution has a duty to disclose to the defence material gathered during the investigation of a criminal offence, which is not intended to be used as evidence against the defendant, but which may be relevant to an issue in the case.

Discontinuance

The dropping of a case by the CPS in the magistrates' court, whether by written notice, withdrawal, or offer of no evidence at court.

Either way offences

Those offences triable in either the magistrates' courts or the Crown Court, e.g. theft.

Good practice

An aspect of performance upon which the Inspectorate not only comments favourably, but considers that it reflects a manner of handling work developed by an area which, with appropriate adaptations to local needs, might warrant being commended as national practice.

Indictable only offences

Offences triable only in the Crown Court, e.g. murder, rape, robbery.

Legal advisors

Qualified barrister or solicitors are responsible for giving legal advice to magistrates in magistrates' courts throughout England and Wales. They also advise all parties at court on points of law, practice and procedure.

Paralegal officer

A member of CPS staff who deals with, or manages, day-to-day conduct of a prosecution case under the supervision of a crown prosecutor and, in the Crown Court, attends court to assist the advocate.

Review: *initial, continuing, summary trial etc*

The process whereby a crown prosecutor determines that a case received from the police satisfies and continues to satisfy the test for

prosecution in the Code for Crown Prosecutors.
One of the most important functions of the CPS.

Section 51 Crime and Disorder Act 1998

A procedure for fast-tracking *indictable only* cases to the Crown Court, which now deals with such cases from a very early stage – the defendant is sent to the Crown Court by the magistrates.

Summary offences

Those triable only in the magistrates' courts, e.g. most motoring offences, common assault etc.

If you ask us, we can provide a synopsis or complete version of this booklet in Braille, large print or in languages other than English.

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