



## **Direct Communication with Victims**

A follow-up audit of Crown Prosecution Service performance in relation to keeping victims informed

October 2009





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## **PREFACE**

This report is a follow-up audit of the progress made since the publication of the Direct Communication with Victims (DCV) audit of Crown Prosecution Service performance in relation to keeping victims informed, undertaken by a team of 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 regularly to provide assurance to the Director of Public Prosecutions and the Chief Executive of the CPS. One such exercise was the DCV audit.

Since the publication of the initial report in September 2007 the CPS has implemented a variety of measures, as set out in their action plan, aimed at improving performance in relation to DCV targets. Workshops have been held, guidance material updated and a new electronic tracking system to monitor and manage performance has been introduced. This follow-up considers the impact of this work on CPS performance.

Report of the follow-up audit of CPS performance in relation to keeping victims informed



# 1 INTRODUCTION

- 1.1 The initial audit report on Crown Prosecution Service (CPS) compliance with the Direct Communication with Victims (DCV) scheme was published in September 2007. It found examples of good practice and listed 20 compliance requirements (included at annex A along with the progress made against them). The CPS has developed an action plan to improve performance and this follow-up considers its impact.

## Background

- 1.2 The DCV scheme has been operational within the CPS since 2001. It recognised the importance to victims of receiving prompt information about decisions relating to cases which affect them, in particular where a charge has been dropped, or reduced or increased in gravity. The CPS committed itself to provide an explanation to the victim outlining the reasons for the decision – usually by letter. In certain serious or sensitive cases the victim or their family would be offered an opportunity to discuss the case with the person responsible for making the decision.
- 1.3 There are timescales set for this information to be provided. DCV letters must usually be dispatched within five working days of the decision but for cases involving a vulnerable or intimidated victim notification is required within one working day. This obligation is contained in the Code of Practice for the Victims of Crime (the Victims' Code) which came into effect in April 2006 and gave victims statutory rights.
- 1.4 In 2004 a national target was established in response to concerns about low compliance with the scheme. It used proxy measures based on the volume of letters sent as a proportion of the estimated number which should have been sent. A tracker mechanism was also established to record the timeliness of letters sent and this data was submitted to CPS Headquarters on a monthly basis. However the scheme did not involve any assessment of the quality of letters.
- 1.5 Inspections, including Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) overall performance assessments conducted in 2005, revealed variable performance in different CPS areas in both compliance against the proxy targets and timeliness. Concerns about the quality of letters were also highlighted. The 2007 audit therefore sought to clarify the overall picture and identify the reasons for variations in performance. Eleven CPS areas representing a range of perceived performance and different volumes of caseload were selected for scrutiny to enable meaningful comparisons and to identify good practice.
- 1.6 The original audit also considered the quality of letters. The CPS responded rapidly to the 2007 report and produced the action plan mentioned above.

## The inspection process

- 1.7 The purpose of this report is to measure subsequent progress, evaluate whether the strengths previously found are still present and examine the new monitoring system, which has now been in place long enough to have become 'business as usual'.
- 1.8 The follow-up results are based on examination of 195 files. We sought 20 from each of the ten areas selected but two of them were unable to supply the full file sample. The areas were of varying caseload size with a range of perceived performance. Cases with offence categories most likely to involve identifiable victims and requiring a DCV letter were chosen and we selected files

finalised in the last quarter of 2008 to provide the most up to date information. Each file was examined against a set of questions to establish the rate of compliance, timeliness and the quality of letters sent.

- 1.9 Local area written instructions and performance information was also requested and these were examined along with national performance data.
- 1.10 By way of a 'reality check' on the proxy target we examined all cases finalised on the electronic case management system (CMS) in one area in October 2008 to establish exactly how many of the files should have had letters. This figure was then compared to the area's proxy target for that month. The team also considered issues that may hinder the CPS in complying with their obligations.

## 2 OVERVIEW AND SUMMARY OF FINDINGS

### Overview

- 2.1 The file sample showed there has been an increase in the number of letters sent in relevant cases to 72.9%, 11% more than found in the last audit. Better use of the electronic case management system (CMS) may play a part in this but ensuring that staff are aware of the urgency required in identifying and dispatching DCV letters appears to be a key factor in this respect.
- 2.2 Electronic flagging to identify cases involving a victim has improved slightly. However those involving vulnerable and intimidated victims were not consistently identified. Cases of rape, sexual assault and domestic violence were found where victims had not received a letter and this was in some instances attributable to the lack of flagging.
- 2.3 File endorsements noting the need for a letter are essential, particularly where charges have been dropped or altered but the case continues on other charges, and this needs to be improved. This audit found cases of this nature which resulted in victims not receiving an explanation of the action taken. Files also need to be clearly endorsed with the reasons behind a decision not to send a letter where one would normally be required.
- 2.4 Failure to flag a case appropriately was compounded in nearly two thirds of relevant ones seen by the failure of the lawyer or prosecutor in court to endorse the file with an instruction to send a DCV letter.
- 2.5 The aim of sending 100% of letters within the time targets has not been reached. Where a letter to the victim was required within five days, 89.7% met the target. Performance was less good in relation to the demanding target of letters to be sent to vulnerable or intimidated victims within one day – met in 77.0% of cases.
- 2.6 The new monitoring system has improved the accuracy of recording the numbers and timeliness of letters sent. Some areas have procedures in place which if used properly would improve the timeliness of letters further.
- 2.7 The quality of letters was similar to that found in the previous audit but it was evident that more care was being taken to tailor the standard paragraphs to the circumstances of the case.
- 2.8 A suitable level of empathy was expressed in the majority of letters. However examples were found where cases were dropped through no fault of the victim and there was a failure to acknowledge the disappointment they might feel. The letters revealed that more could be done to include details of sources of support that might be available to the victim.
- 2.9 In 41.6% of cases where a meeting should be offered to the victim or their family this was not done. It is such omissions which adversely affect the public perception of the CPS.
- 2.10 Quality assurance of DCV letters is not done in most areas. Where it is, practices differ and forms issued for this purpose by CPS Headquarters are not being consistently used. Quality assurance may be useful in identifying problems before a letter is sent out or in highlighting training needs for those staff drafting them.

2.11 The proxy target given to areas to measure their performance in providing DCV letters continues to be an issue. HMCPSI considers the current system of proxy targets to be unrealistic. The CPS has recently revised the way in which these are calculated but it is felt that it will have minimal effect in providing a realistic figure. The target has been and will continue to be substantially under the figure for the number of victims who will require a letter. Work carried out as part of this audit confirms this assertion.

### Compliance requirements

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1 Areas should ensure that files are clearly flagged to identify cases in which a letter is required (paragraph 3.17).

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2 Areas should have management checks to ensure that all cases with identifiable victims are recorded on the case management system (paragraph 3.17).

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3 Areas should ensure that lawyers identify cases with vulnerable and intimidated victims at an early stage and that such cases are flagged appropriately (paragraph 3.21).

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4 Areas should ensure that all victims have the appropriate “V”, “L” or “T” monitoring symbols attached to enable letters sent to be recorded correctly in area performance data (paragraph 3.27).

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5 Areas should ensure that:

- lawyers or caseworkers endorse files requiring a Direct Communication with Victims letter with instructions directing the case to the appropriate person after court.
  - lawyers or caseworkers endorse files with full reasons explaining why the case or charge had been dropped or altered (paragraph 3.31).
- 

6 Areas should ensure that if the victim has been spoken to at court or by telephone, conversations are noted on the file and summarised in a Direct Communication with Victims letter. If the victim does not wish to receive a letter a note of this should also be made on the file (paragraph 3.37).

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7 Areas should ensure that where there are valid reasons for letters not to be issued lawyers endorse this on the file in line with national guidance (paragraph 3.37).

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8 Areas should ensure that a meeting is offered to the victim or their family in all relevant cases (paragraph 5.21).

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9 Areas should be expected to carry out a quality assurance exercise (paragraph 5.33).

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**Good practice**

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- 1 The use of reports generated from the management information system to check that cases with adverse outcomes requiring letters have them sent (paragraph 3.14).

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- 2 Routine use of a standard form to be completed at court and returned to the office immediately after court or faxed from there which allows preparation and dispatch of a Direction Communication with Victims letter with the minimum of delay (paragraph 4.6).

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### **3 IDENTIFYING CASES REQUIRING A DIRECT COMMUNICATION WITH VICTIMS LETTER**

#### **Overview**

- 3.1 Overall a greater percentage of cases (72.9%)<sup>1</sup> had DCV letters sent than in our previous audit in 2007 (61.9%), but it remains a concern that 27.1% of cases had no letter sent.
- 3.2 There was increased use of the electronic case management system (CMS) label to identify relevant cases but use of this was not always triggered by the lawyer identifying the victim at the pre-charge stage. Other physical markings on the front of the file had declined in use. Of the files with letters sent, 87.2% did have had a physical mark on them.
- 3.3 The identification of vulnerable or intimidated victims was not consistent and letters were not sent to some victims of rape, sexual assaults and domestic violence. Although victims of domestic violence are not formally classed as vulnerable or intimidated they are entitled to receive the enhanced service under the Victims' Code.
- 3.4 Endorsements on most files showed why charges had been dropped or altered at court but reasons for cases being discontinued in the CPS office were often not appropriately recorded.
- 3.5 Most files had no specific endorsement that a letter was required. Some of the reasons noted for letters not being sent were not valid under CPS national instructions.

#### **Identified victim flagging on the CPS file and CMS**

- 3.6 We found that the number of cases where a physical mark on the file was used to highlight that it had an identified victim had increased slightly to 70.8% (138 of the 195 files seen) compared to 69.2% in the 2007 audit. However there was some difference in the type of markings used.
- 3.7 CMS automatically prints an appropriate label if, at the time of registration, the administrator is aware that there is a victim and enters appropriate information. Administrators are dependent on the lawyer taking the charging decision to highlight the existence of an identifiable victim – something which is not always done.
- 3.8 However, the small increase in physical flagging, from 51.9% in 2007 to 56.9% (111 out of 195), was due to better use of the CMS label at an early stage.
- 3.9 The use of other physical marks (generally added later) such as identified victim stamps had decreased and these were seen on only 34.4% (67 out of 195) of files compared to 55.3% in 2007. Some files had both types of flag but 29.2% had no mark whatsoever.

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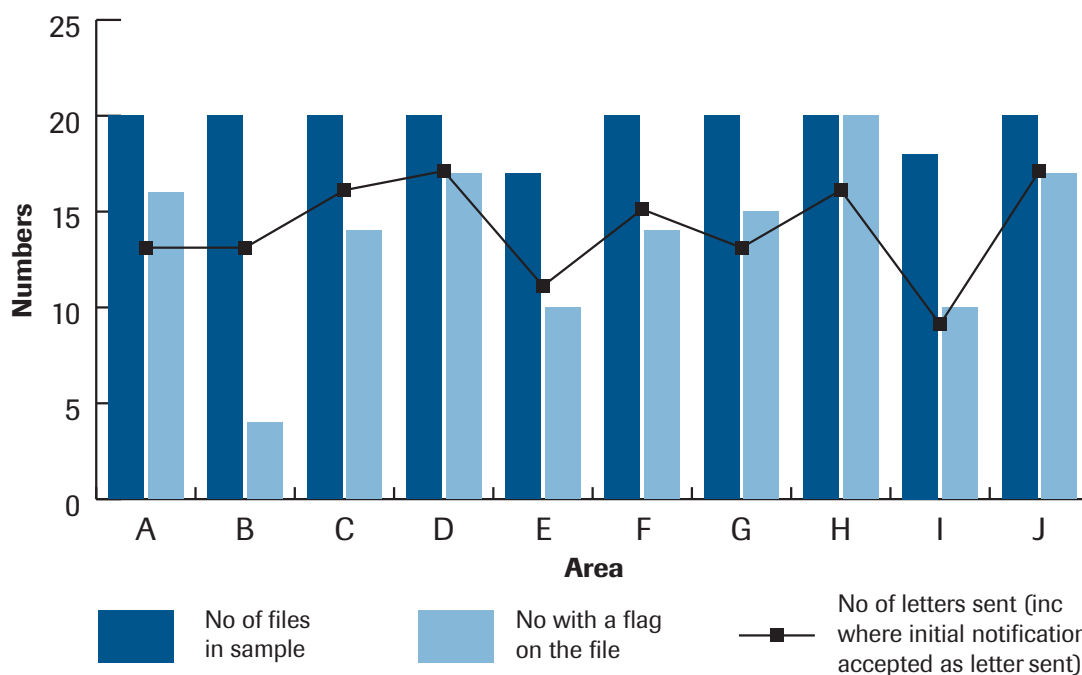
1 This data takes into account three files seen in the sample where the explanation noted on the file showed that no letter could have been sent due to the address of the victim not being known. These have been removed from the total sample used to calculate the percentage of letters sent used in the tables in this chapter.

There were also seven files where, although no letter was sent, initial notification was carried out either face to face at court or by telephone and it was noted that the victim did not want a letter. These have been added to the totals of letters sent used to calculate the percentages in the tables in this chapter.

3.10 Although the effect of physically flagging files cannot be categorically stated the audit team found some correlation as seven areas had sent the same, or almost the same, number of letters as files that were physically flagged. Even so not all files with physical markings had letters and some files with none had letters sent.

3.11 A compliance requirement in the 2007 report was that areas should ensure files are clearly flagged to assist those making decisions to prioritise cases in which a letter is required. Of the files in our sample, 29.2% did not have flags which indicates that there is still room for improvement.

*Comparison of the number of files with identified victims, those with a physical flag and the number of letters sent*



3.12 Three areas with good performance in sending over 80% of possible letters had the most regular flagging and there was also some correlation of data in areas with fewer physical flags where fewer letters were sent, as noted in the graph above.

3.13 The identified victim monitoring flag in CMS is important not only because it produces a physical mark on the file label if done at registration, but also because it can generate reports from CMS and the electronic management information system (MIS) which can be used in checking compliance.

3.14 An example of their use was seen in the written systems provided by one area which had good performance in flagging and the number of letters sent. Adverse outcome reports were checked to ensure that letters are sent in all relevant files. However written systems provided by other areas did not mention widespread use of these reports.



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### **Good practice**

The use of reports generated from the management information system to check that cases with adverse outcomes requiring letters have them sent.

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### **Early identification of victims and the role of the charging lawyer**

- 3.15 Paragraph 3.7 above noted that administrators are dependent on charging lawyers highlighting the existence of an identifiable victim in a case on the decision record (MG3). However this was a requirement in only three of the written area systems provided.
- 3.16 In fact only just over half the files in our sample were identified as requiring a flag at registration. A further 64 had a CMS flag attached later increasing the percentage marked up on the system to 89.7%. This is a substantial improvement since the last audit but it was not done early enough to enable the physical flag to be printed on the CMS label. It would improve the operation of the DCV scheme if, when an identified victim flag is added to CMS at a later stage, an appropriate mark is also added to the front of the file.
- 3.17 The evidence shows that where victims are identified at an early stage by the charging lawyer it is more likely that the files will be flagged appropriately on CMS at registration and the file label will have a physical mark. Compliance checks would help to improve performance and this was seen in one area where these helped to identify poor performance in flagging and other aspects in one unit.

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### **COMPLIANCE REQUIREMENT**

Areas should ensure that files are clearly flagged to identify cases in which a letter is required.

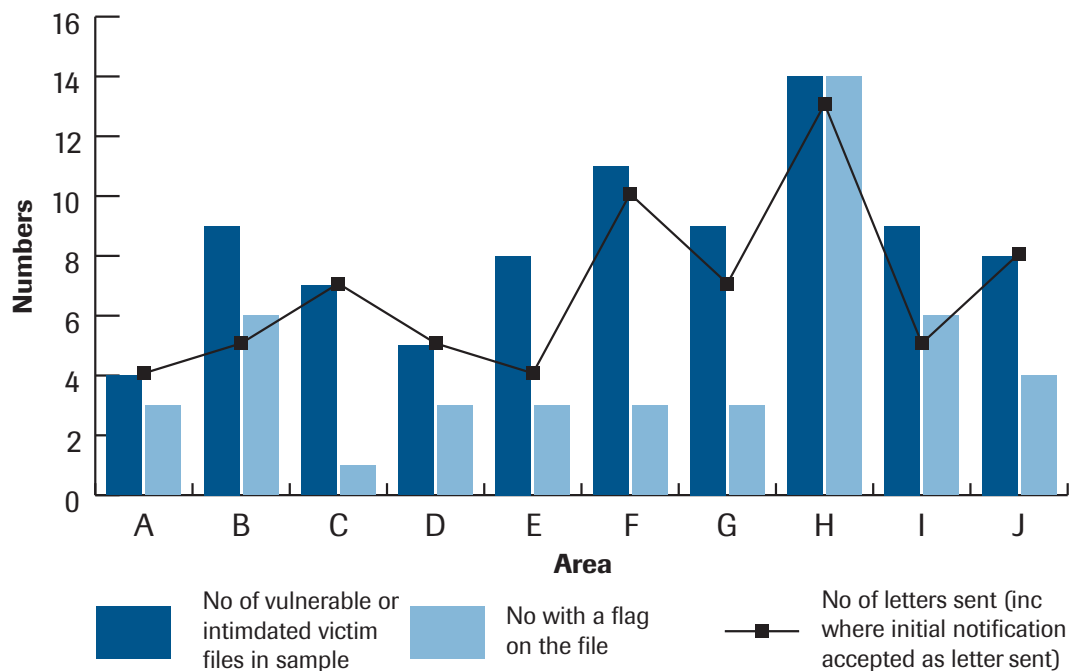
Areas should have management checks to ensure that all cases with identifiable victims are recorded on the case management system.

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### **Identified vulnerable or intimidated victim flagging on the CPS file and on CMS**

- 3.18 The Victims' Code requires that identifiable victims who are considered vulnerable or intimidated must be given initial notification within one working day when charges are dropped or materially altered and a full explanation within five days. Those who may be considered vulnerable or intimidated include victims of domestic violence; sexual assaults; racially, religiously or age motivated crime; those with mental or physical impairment and victims under 17 years of age. It is therefore important that these cases are identified at an early stage.
- 3.19 Letters had been sent in 68 (81.0%) of the 84 cases where the victims were considered vulnerable or intimidated. This meant that 16 (19.0%) received no written explanation from the CPS about why offences that they had reported had been dropped. These included one victim of rape, nine of domestic violence and three of sexual assault (one of whom was a child).

*Comparison of the number of files with vulnerable or intimidated victims, those with a physical flag and the number of letters sent*



3.20 The physical flagging of cases involving victims who were vulnerable or intimidated remains inconsistent. Only 54.8% of the cases seen in this audit had been identified sufficiently early to be flagged at registration on the CMS file label. Just over half of these also had an additional physical flag, such as a large blue stamp and a large red “V/I” mark. By the time these cases were finalised only six more had been flagged with the correct monitoring category on CMS, bringing the overall proportion to 61.9%.

3.21 It was apparent that areas continue to use systems to identify cases requiring letters which do not rely on CMS or physical flags. In five areas less than half the relevant files had a physical flag, while two of the five had sent letters on all files. In total seven areas sent significantly more DCV letters than they had flagged victims. However these systems were often time consuming. The appropriate use of flags is much more efficient and we remain concerned that there are still over 38% of cases involving vulnerable or intimidated victims not being marked during any stage of the process.

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### COMPLIANCE REQUIREMENT

Areas should ensure that lawyers identify cases with vulnerable and intimidated victims at an early stage and that such cases are flagged appropriately.

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**Use of the victim symbols in CMS for monitoring and recording performance**

3.22 Since 2006 CMS has incorporated a performance tracking and recording system which must be activated by attaching the appropriate symbol to the name in the witness list. The symbols are letters denoting the status of the victim:

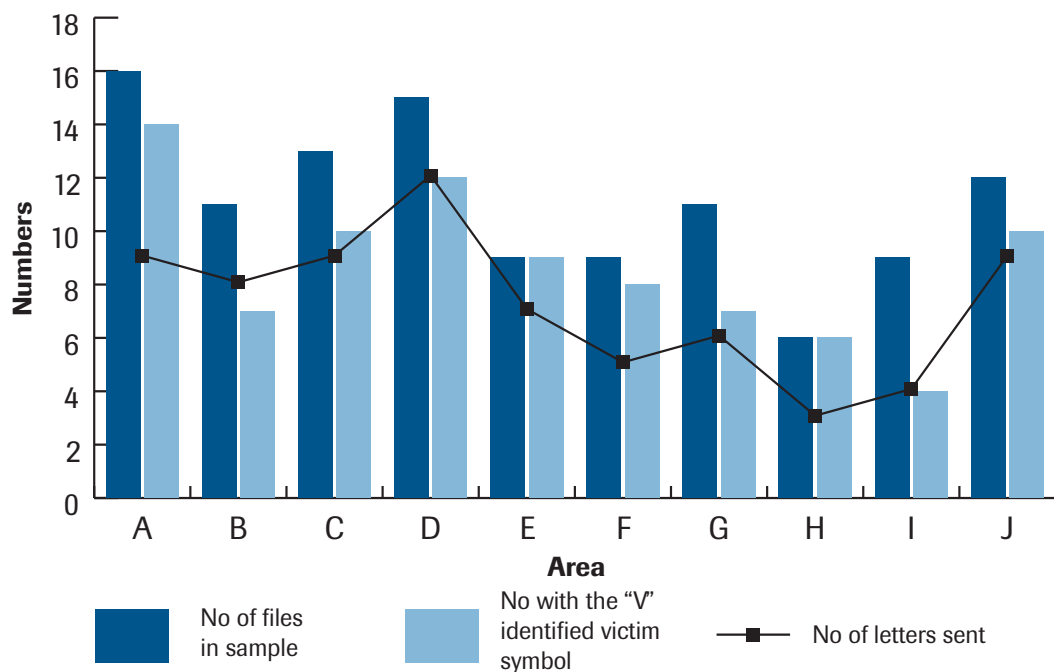
- “V” - a victim;
- “L” - a vulnerable victim; and
- “T” - an intimidated victim.

3.23 The system applies to all identified victims. These symbols are essential to ensure that the appropriate service under the Victims’ Code is triggered. It is useful as a management tool. Providing that the area enters the data correctly using them can assist in the timely completion of letters. The system can also be used to produce an audit trail for timeliness. It is the basis of national performance data in relation to identified and vulnerable or intimidated victims.

**Using the “V” symbol**

3.24 The date of the relevant decision and sending of the letter must be entered into the designated place on CMS. Whilst 78.4% of files with identified victims had the correct V symbol attached to individual witness names on CMS to show a letter was required, only 64.9% had letters sent.

*Number of identified victim only\* cases with a “V” symbol attached and letters sent*



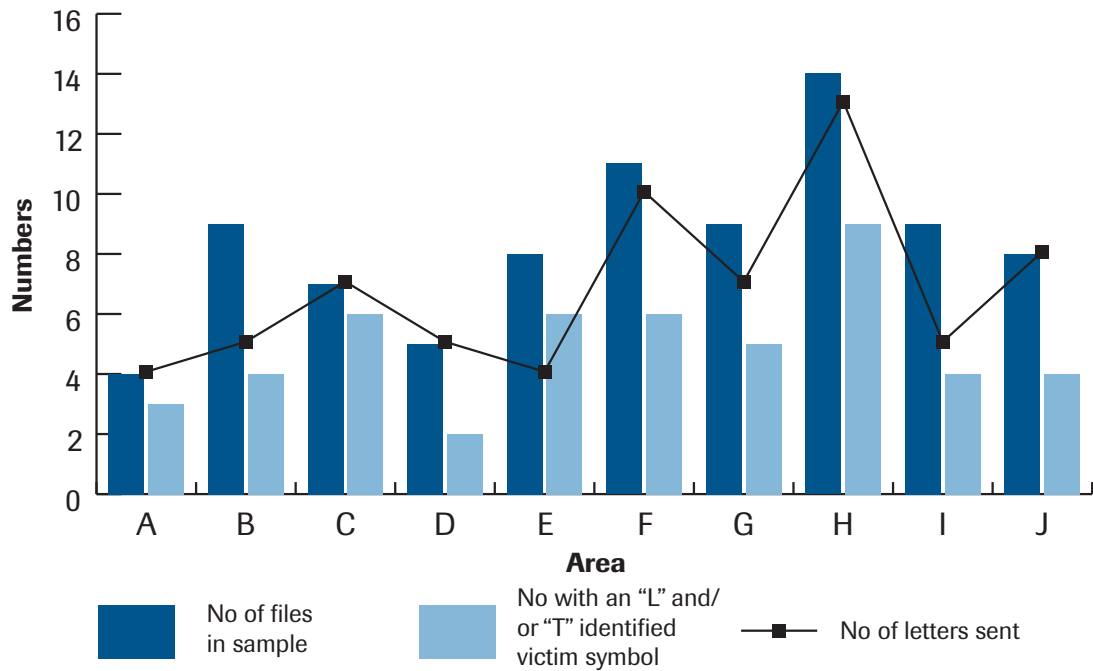
\* This does not include vulnerable and intimidated victims.

3.25 Closer examination showed that eight cases with no V symbol had letters sent. Lack of the identifier on CMS means that these letters cannot be counted or recorded for performance statistics. This means that the number sent may be under recorded.

**Using the “L” and “T” symbols**

3.26 Only 49 (58.3%) of the 84 cases with vulnerable or intimidated victims had relevant L or T symbols attached. Letters had been sent in nine of the remaining 35 cases but these were not correctly identified and therefore would not have appeared in performance data. Adding these in gives overall compliance of 69.0%.

*Comparison of the number of files, those with “L” and “T” symbols attached and the number of letters sent*



3.27 This inconsistency of flagging is a cause of concern and also has a detrimental impact on recording actual performance. Certain types of offence require that the victims must be routinely monitored as vulnerable but this was not done. In other files later consideration by lawyers of special measures or witness needs was observed, but this had not been highlighted to ensure that the victims were flagged appropriately.

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**COMPLIANCE REQUIREMENT**

Areas should ensure that all victims have the appropriate “V”, “L” or “T” monitoring symbols attached to enable letters sent to be recorded correctly in area performance data.

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**Endorsements made on files to ensure letters are done**

3.28 Clear and unambiguous endorsements of decisions taken and outcomes are essential so staff handling cases can identify where letters are needed.

3.29 The main findings were:

- Endorsements of the outcome were seen on most files (92.3%) although in some instances they were not clearly noted on the file cover but were on loose papers amongst documents inside.

- Under a third of files within the audit, 55 out of 195 (28.2%), had endorsements to show that a letter was needed.
  - Reasons for the decision could be ascertained from the file in 134 of the 195 (68.7%).
- 3.30 Three areas that provided written details of their systems indicated that staff at court used forms to direct the files back to the appropriate person for a letter to be written or completed a form at court that included a draft letter to be typed. These were to be attached to the front of files returned or sent by facsimile back to the CPS office.
- 3.31 Other areas with good performance in the number of letters sent did not have correspondingly good endorsements that letters were required and it appears that staff carrying out sifts of files returning from court must identify that a letter is needed from the outcome endorsed. This creates a risk they will be missed and in any event is more resource intensive.

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### **COMPLIANCE REQUIREMENT**

Areas should ensure that:

- lawyers or caseworkers endorse files requiring a Direct Communication with Victims letter with instructions directing the case to the appropriate person after court.
  - lawyers or caseworkers endorse files with full reasons explaining why the case or charge had been dropped or altered.
- 

### **Endorsements of reasons for decisions**

- 3.32 Usually it was easier to identify the reason for the decision in cases dropped at court than those which had been discontinued. In the former the reasons were often identified from the hearing endorsement, some of which showed that the initial notification was given to victims at court or on the telephone.
- 3.33 In cases that had been discontinued in the CPS office there was often no note of the review endorsement on either the file or CMS and the auditors had to use the reason highlighted in the victim letter why the case had been discontinued. Additionally on some files the only record of why the case had been discontinued was found in the adverse case report or in correspondence. This caused difficulty for the person drafting the letter.

### **Endorsement of reasons why letters were not required**

- 3.34 The audit included an assessment of whether DCV letters had been sent in all appropriate cases. There can be valid reasons why it is not possible or appropriate to send a letter.
- 3.35 In 192 of the 195 cases examined it was appropriate that a letter should be sent and, overall, auditors found that 140 of the 192 (72.9%) complied with the scheme.
- 3.36 Out of the 52 remaining with no letter sent, less than half (24) had a reason recorded on either the file or CMS to show why a letter was not considered necessary and some of these did not follow the national guidance.

- 3.37 Several endorsements stated that explanations were given at court but none indicated that the victim did not want a letter. CPS guidance requires that such an explanation (or those given by telephone) should be recorded on the file and a confirmation letter sent. Likewise if no letter is required. However there still appears to be a general level of misunderstanding by relevant staff.

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### **COMPLIANCE REQUIREMENT**

Areas should ensure that if the victim has been spoken to at court or by telephone, conversations are noted on the file and summarised in a Direct Communication with Victims letter. If the victim does not wish to receive a letter a note of this should also be made on the file.

Areas should ensure that where there are valid reasons for letters not to be issued lawyers endorse this on the file in line with national guidance.

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## **4 TIMELINESS OF DIRECT COMMUNICATION WITH VICTIMS LETTERS**

### **Overview**

- 4.1 Since the introduction of the enhanced CMS functionality accuracy of recording the numbers and timeliness of letters sent have both improved. Letters were found to be timely in 89.7% of cases involving identified victims with 51.0% of these having been dispatched within one working day of the decision. However performance in relation to letters to vulnerable or intimidated victims only reached 77.0% albeit against a more demanding target. Timeliness of letters in discontinued cases could be improved.
- 4.2 Though systems can assist in achieving timeliness targets a key factor appears to be the awareness of staff to treat cases where a letter is needed as a priority.

### **Monitoring system**

- 4.3 As noted earlier the enhanced functionality of CMS enables cases to be flagged as having an identified victim and/or including a vulnerable or intimidated victim by attaching the correct symbol to the witness name. The different time targets of five working days for letters for identified victims and one day for those who are vulnerable and intimidated can be applied and users can track the progress of letters prior to them being despatched. Reports can be generated from CMS showing all cases in which either kind of victim had been flagged, allowing checks to be made to ensure letters have been sent in cases which have been finalised or where a charge has been altered. Its effectiveness is however heavily dependent on the flagging of cases at relevant stages.
- 4.4 On CMS the monitoring of DCV letters is captured on the victim code screen. If the progress of a letter is to be monitored it requires staff to enter the details of the case into this screen at the point when the decision is made to drop or substantially alter a charge. If this information is captured and placed on CMS, a report may be produced from the system showing all cases in which a letter is pending and has not been sent. The victim code screen also records letters in which a meeting has been offered to further discuss the case and may record when one has been held.
- 4.5 As with the previous monitoring system (in place during the 2007 audit) it is at the discretion of the area as to whether it chooses to use the victim code screen to monitor the progress of letters to be sent out or whether to use it merely as a tool to record the number of letters and to enter the number of days between the decision and dispatch.

### **Area systems to ensure timeliness**

- 4.6 Five of the six areas that sent us copies of their local guidance had issued instructions to staff appearing in the magistrates and Crown Court to complete a proforma sheet with details of each case in which a charge had been dropped or altered. This sheet was to be faxed or returned promptly to the CPS office to allow whoever was responsible for drafting the DCV letter (often Victim Information Bureau staff) to complete the letter without delay. It was emphasised that this was particularly important in those involving vulnerable or intimidated victims.

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**Good practice**

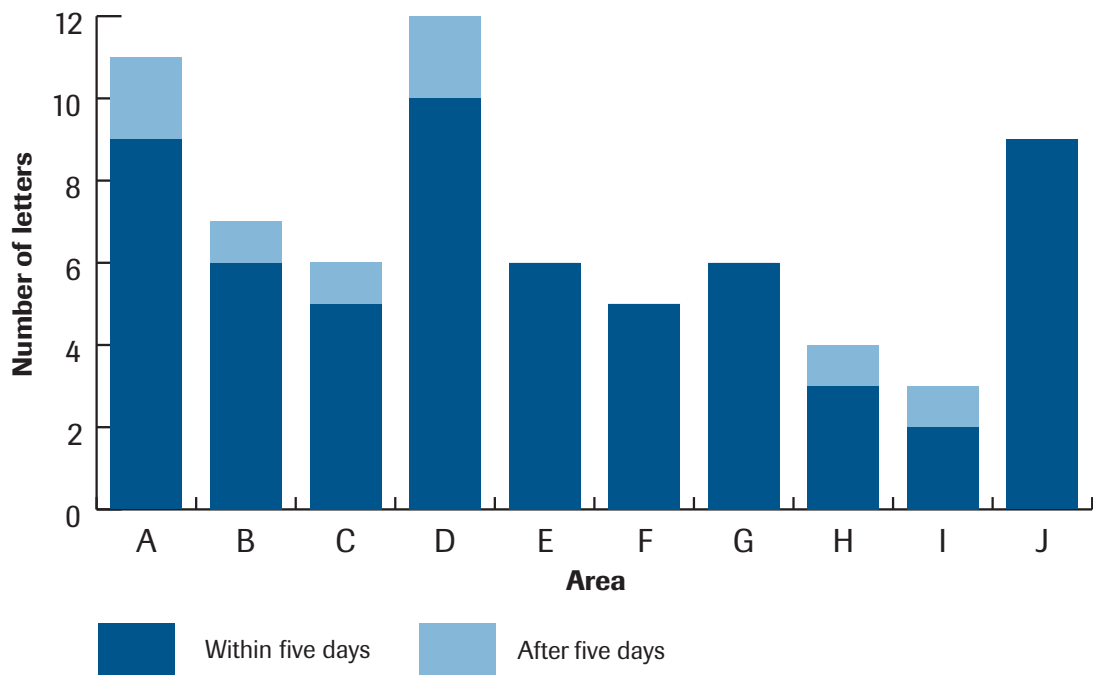
Routine use of a standard form to be completed at court and returned to the office immediately after court or faxed from there which allows preparation and dispatch of a Direct Communication with Victims letter with the minimum of delay.

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**Timeliness of letters**

- 4.7 Letters had been sent in 133 cases out of the sample of 195; 68 attracting a five day timescale and 65 requiring a letter within one working day.
- 4.8 Of the cases involving identified victims 61 of the 68 (89.7%) letters had been sent within the five day target. Thirty one (50.8%) of those letters sent in time had been dispatched within one working day of the decision.
- 4.9 Four of the ten areas had sent all letters in the files examined within the five day target.

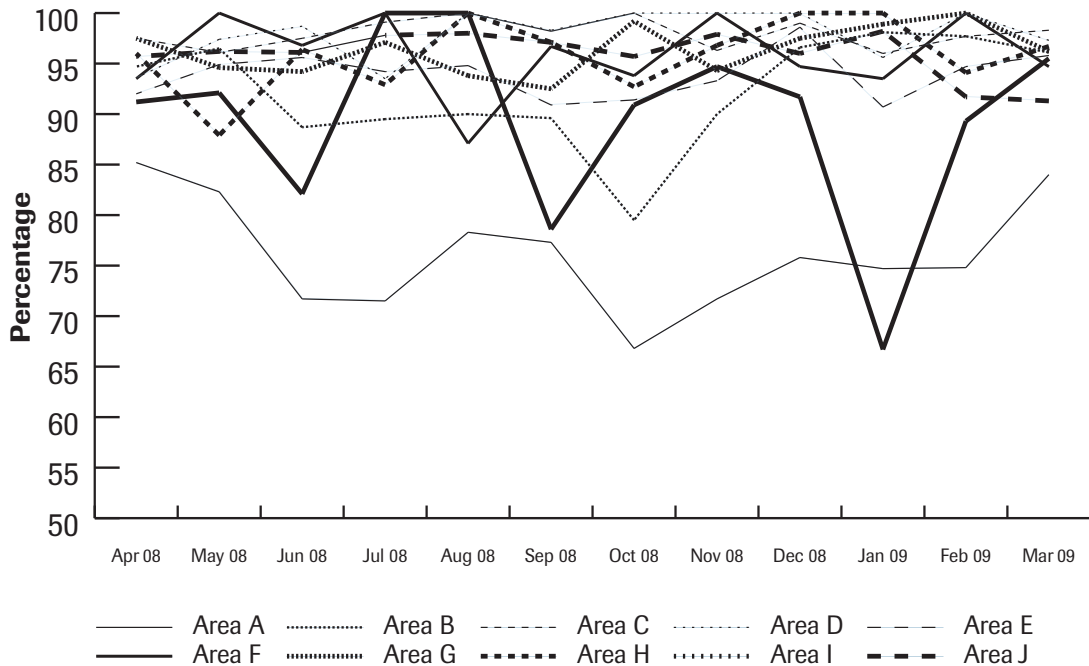
*DCV letters sent within five days (excluding cases with vulnerable or intimidated victims)*



- 4.10 Of the letters sent outside the time target, six were sent between six and ten days later and only two were sent over ten days after the decision was taken. In one case the letter was dispatched 15 days after the decision at court to drop charges in a case involving dangerous driving and in the other the letter was sent 14 days after the decision in a theft case. This is an improvement compared to our last audit when we found examples of letters sent out months after the decision had been taken.



*Timeliness performance to April 2009 (excluding cases with vulnerable or intimidated victims)*

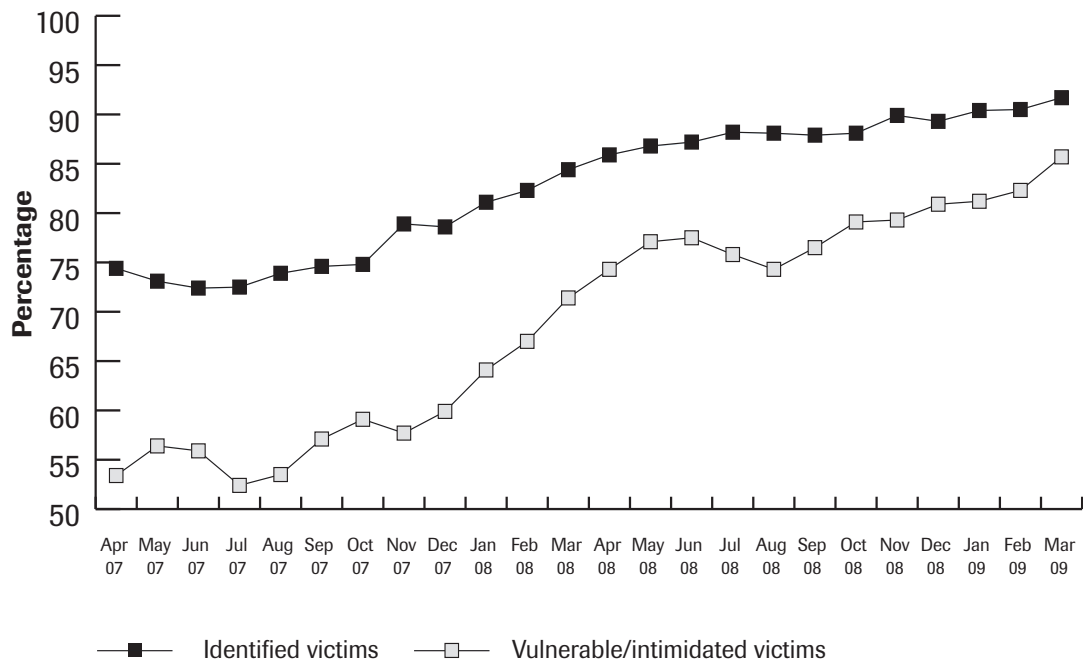


4.11 Performance over the year to April 2009 in the ten areas shows some variation though most are achieving timeliness in over 90% of cases. This contrasts with performance in the 2007 audit which was found in the range of 40%-80%.

**Vulnerable and intimidated victims**

4.12 The more stringent one day target for sending a letter to vulnerable and intimidated victims showed slightly poorer performance in the file sample than was seen for letters with a five day target. This corresponds with timeliness performance CPS records nationally. Timeliness of letters for both targets has improved steadily since the last audit report. Whilst that for vulnerable and intimidated victims has shown particular improvement, performance has only exceeded 80% since December 2008. However the trend remains encouraging.

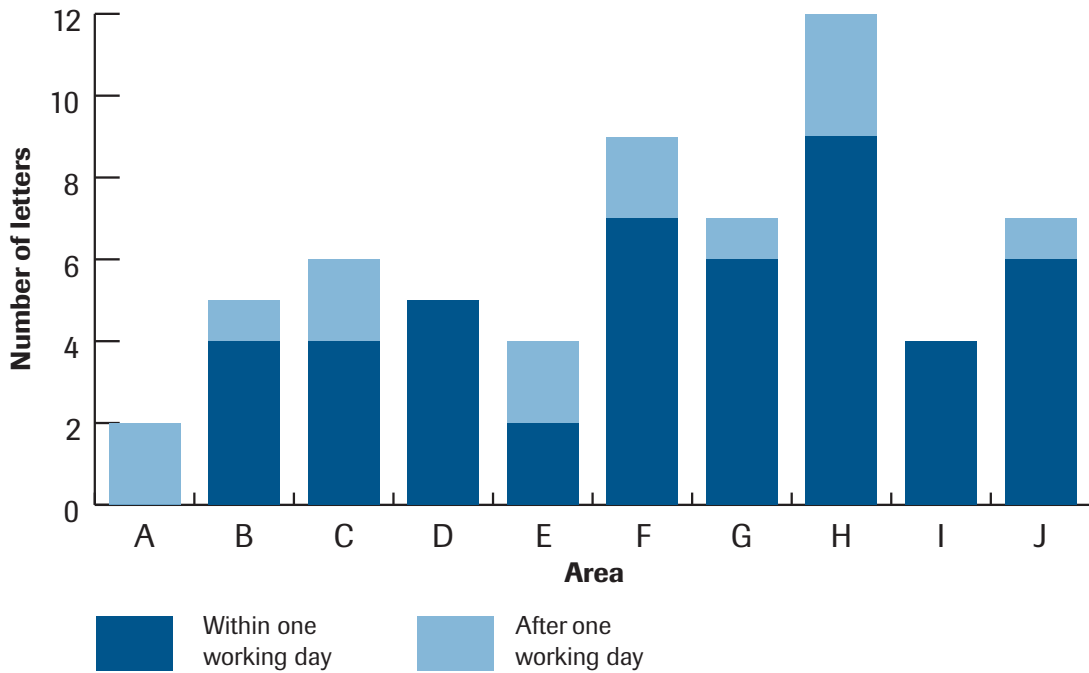
*National timeliness performance April 2007 to March 2009*



- 4.13 Of the 61<sup>2</sup> relevant cases 47 (77.0%) had been sent a letter within one working day of the decision being taken. The latest quarterly performance figure up to April 2009 gave the figure of 83.2% for letters to vulnerable and intimidated victims being sent within the time target. The modest disparity between our figures and the CPS's may be attributable, in part at least, to the fact that not all letters in the audit sample were necessarily recorded.
- 4.14 Whilst our file examination found that 77% of letters had been sent within the one day target actual performance could be somewhat better. In some areas witness care units (WCUs) contact victims with case results and progress and it was not always possible for auditors to identify from the file or CMS whether the victim had been contacted by the WCU. Whilst it is possible that some victims may have had a better service than that indicated by the file examination results, there remains an issue that there are not effective performance management systems in place to record actual performance accurately.

<sup>2</sup> Of the 65 cases in which a letter was sent to a vulnerable or intimidated victim, in four the victim had been contacted by some other means or had received a holding letter followed by a full letter at a later date.

*Timeliness of DCV letters involving vulnerable or intimidated victims*

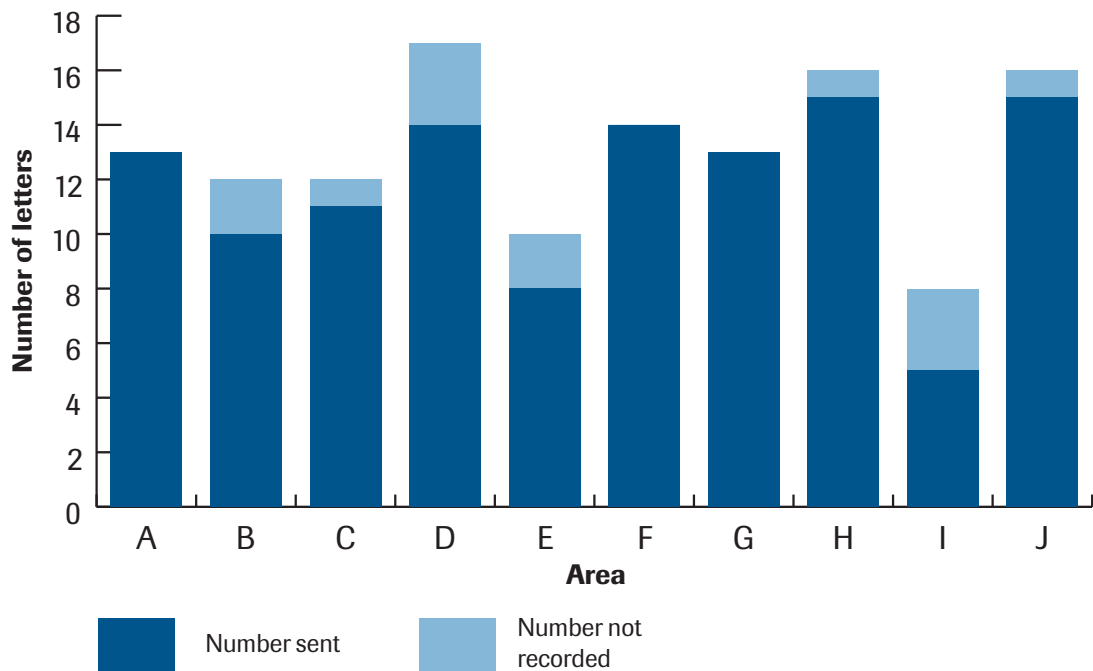


4.15 In those cases where the victim had been contacted within the time target the majority had been sent a full DCV letter and not a holding one, which would merely have informed them of the outcome of the case and not provided the explanation required in a DCV letter. Whilst it is accepted that there will be a small number of cases in which it would not be possible or appropriate to send out a full letter within a day, the fact that the letters were sent within one day of the decision in just over half the cases demonstrates that this is an achievable target despite reservations expressed by some of the areas that took part in our previous audit.

**Letters recorded on the victim code screen**

4.16 In 2007 it was found that not all letters actually sent were recorded in the monitoring system. This time 84% (110 of 131) of letters had been recorded as sent on the victim code screen. This is a significant improvement on the position noted previously when only 66% of letters sent had been recorded on the monitoring system.

*Number of letters not recorded on CMS*



4.17 Of the 13 letters that were not recorded on CMS ten were sent out within the target timescales, including five to vulnerable or intimidated victims. Of those sent outside the timescales two cases (both in the same area) had letters sent well after the five day target, one nine working days later and the other ten.

**Accurate recording of timeliness**

4.18 The 2007 report also highlighted the need to ensure accuracy of data entered into the monitoring system. Staff in areas are expected to note on the victim code screen the dates the decision to drop or alter the charges was taken and when the victim was contacted or letter sent out. One problem encountered in examining the accuracy of timeliness data recorded on CMS was that it was not always possible to determine if the date on the letter was the one on which it was dispatched. During the file examination we found that not all areas had adopted the practice of noting on the file the date the letter was actually sent, which might be different to the one on the letter. This made it difficult to be confident about reported timeliness data.

4.19 There were 20 cases (17.0%) in which a discrepancy was noted for the number of days recorded on the victim code screen between the time the decision was taken and the date the letter was sent. Fifteen showed fewer days between the decision and dispatch and five showed more days than was apparent from the file.

- 4.20 Of the 20 files 15 involved vulnerable or intimidated victims and were therefore subject to the requirement to contact the victim within one working day of the decision. In six of these had the timeliness been recorded accurately it would have shown that the area failed to meet the one day target. In most instances letters had been dispatched two days after the decision, however in two cases which had been recorded as meeting the target one letter had been sent after five days and the other after seven.
- 4.21 The number of inaccurate entries onto the monitoring system, at 17.0%, shows an improvement from the 36.7% recorded in 2007. However in order to identify where improvements can be made in the service provided to victims it is important that care is taken to record the timeliness accurately, particularly in relation to those letters sent to vulnerable or intimidated victims.
- 4.22 In June 2008 the Victim and Witness Care Delivery Unit in CPS Headquarters issued guidance which encouraged areas to monitor the performance of their systems in relation to DCV. A compliance questionnaire was issued which amongst other things allowed areas to monitor the accuracy of the information input into CMS, allowing them to identify and address any problems in recording accurate information for the purposes of DCV performance.
- 4.23 We found evidence of this form being used in only one of the ten areas examined. Headquarters suggested that an exercise in measuring compliance is carried out twice a year by areas. However we had no information from the areas as to their plans to use this form.

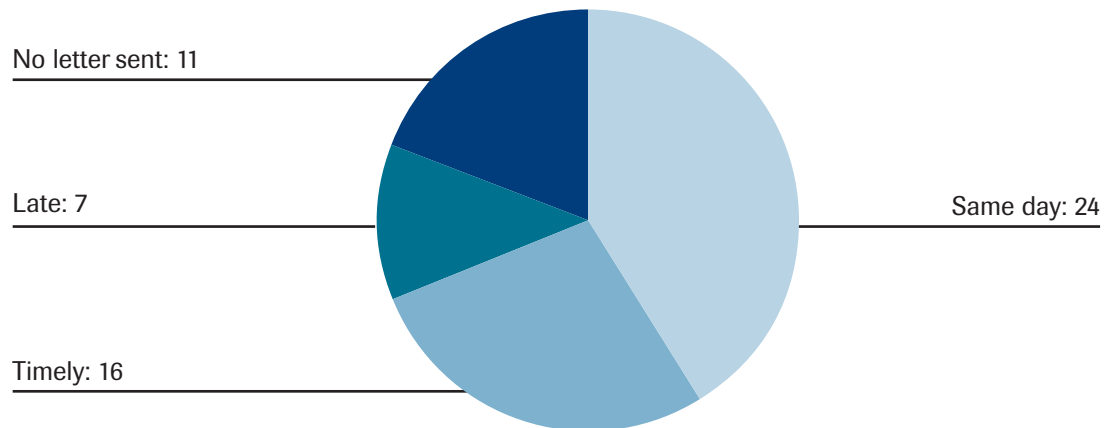
#### **Issues in achieving timeliness targets**

- 4.24 In meeting the one and five day targets it is crucial that there are systems in place to identify immediately cases in which a DCV letter is required. As was found in the previous audit - and was the subject of a compliance requirement - one of the most important contributions to ensuring a timely letter to victims is a clear file endorsement stating that a letter is required. However in the 195 files examined this time only 55 (28.2%) had a file endorsement stating that a DCV letter was needed. In this respect it appears that there is more work to be done to ensure that staff are aware of the importance of highlighting cases where a letter is required.

#### **Cases involving discontinuance**

- 4.25 National guidance states that in cases where the decision to drop or substantially alter a charge is made by a prosecutor in the office there should be no reason why the letter could not be drafted immediately and recommends this as good practice. This would ensure that the victim is kept up to date with the current status of the case and would not find out about the decision from another source. This addresses a serious weakness identified in 2007.
- 4.26 In the current file examination a total of 59 cases had all or some of the charges discontinued. Of those 59 a letter had been sent in 48. In one case it was not possible to determine the date the decision was made.

*Timeliness of letters sent in discontinued cases*



4.27 In just over half of the cases where a letter was sent it was drafted at the same time as the discontinuance notice. In 34% the letter was sent within the target timescales and in 15% it was late. It appears that there is some room for improvement as regards the timeliness of DCV letters in cases which are wholly or partly discontinued.

**Discharged committals**

4.28 As a result of the previous audit CPS Headquarters updated its guidance regarding the requirement to send a DCV letter in discharged committals. It advises staff that a letter is required where a charge has been discharged at committal due to the CPS being unable to proceed, even when the prosecution request an adjournment, and a decision is then take not to recharge the defendant.

4.29 In cases involving charges discharged at committal it can often be some time before the decision is taken whether to reinstate. In such circumstances unless the WCU notifies the victim of the position it may be several weeks or more before the victim is informed, if they are notified at all.

4.30 There were six discharged committal cases in the file sample and in four of these a timely letter had been dispatched. This is a positive development, in that not only is the CPS writing to victims in this type of case but that it is being done within a reasonable length of time.

4.31 There were two cases where no letter had been sent. One involved a burglary which was discharged due to lack of evidence. There was no evidence that a DCV letter had been sent or, in fact, whether a decision had been taken on reinstating the case. In the other case, another offence of burglary, lack of evidence at the committal had compelled the CPS to drop the case; again there was no evidence that a letter had been sent. It was not possible to establish in either case whether the WCU had contacted the victims to explain what had happened.

## 5 QUALITY OF DIRECT COMMUNICATION WITH VICTIMS LETTERS

### Overview

- 5.1 The standard of letters was found to be generally satisfactory, similar to the result in the last audit.
- 5.2 Though the standard paragraphs recommended by CPS Headquarters were present in all letters, some care had been invested in producing ones which were customised to the particular circumstances of the case and the standard paragraphs were used appropriately to produce a balanced letter.
- 5.3 Quality assurance of letters is not routinely undertaken in most areas.

### Quality of letters

- 5.4 There are three essential elements in a good DCV letter:
- It should outline the role of the CPS and the Code for Crown Prosecutors (the Code) as it is important the victim is clear about who is writing to them and their function in the criminal justice system.
  - A clear explanation setting out why the decision has been taken to drop or substantially alter a charge is essential in fulfilling the purpose of the letter.
  - It is also important in most cases that the letter expresses an appropriate level of empathy with the victim, who is likely to be disappointed by the outcome of the case.
- 5.5 In addition to these elements the writer should be aware of any particular needs of the victim, for example if a letter requires translation into the appropriate language for them. Information should also be included which would allow the recipient to contact organisations that can offer support or, as in the case of domestic violence, the letter should offer reassurance in encouraging the victim to report any further incidents.
- 5.6 The guidance available to CPS staff responsible for drafting DCV letters was amended following the last audit and encompasses all of the above elements.

### Introducing the writer

- 5.7 Standard paragraphs are available which introduce the author to the victim explaining why they are writing, the role of the CPS and setting out how the evidential and public interest tests in the Code influence the decisions made in cases.
- 5.8 The majority of letters (91.8%) had a paragraph outlining the role of the CPS and 87.8% set out the function of the Code tests. Two letters referred the victim to the enclosed leaflet for an explanation. However in two others which failed to set out the function of the Code tests this was actually judged to be good practice by the auditors as the victim in the case was a police officer and the explanation should not have been necessary. In three other letters omitting the explanation about the Code tests was also felt to be appropriate because it made the letter less complicated and was tailored to the needs of the particular victim. In the remainder where the explanation of the tests was omitted the letters appeared to be rushed or lacking in care.

- 5.9 Four letters in the sample did not correctly address the recipient and in one of these it was felt to be particularly detrimental. The case involved allegations of sexual assault against the father of the victim and the letter had been addressed "To the parents of". The victim was an adult and it was not clear why the letter was directed to the mother. It was felt that the victim may have been distressed if she believed that a copy of the letter had also been sent to her father.

#### **Providing a reasonable explanation**

- 5.10 An adequate explanation of why the decision had been taken to drop or substantially alter charges was clearly set out in 88.7% of letters. This shows a slight improvement since the 2007 finding of 84.0%. In the majority of cases letters had been customised to the circumstances setting out the reason why the decision had been made. In a few it was clear that the writer had gone to considerable effort to produce a clear and concise explanation for the victim.
- 5.11 In the 15 letters that auditors judged had failed to provide a reasonable explanation most involved cases where the victim did not attend court for the trial. The letter set out the decision but did not explain that without the evidence of the victim the case against the defendant could not be proved.
- 5.12 In a small number of letters the explanation was found to be too detailed. In one to a 16 year old victim of theft the explanation went into technical detail about the problems with DNA evidence. In another involving rape the letter contained too much detail, mentioning what other witnesses had said which contradicted the evidence of the victim and giving quotes from the defendant's interview, which the victim may have found upsetting. Both of these cases are from one area which operated a Victim Information Bureau. It may be that the person drafting the letter had the good intention of providing a full explanation but some of the detail had the potential to be upsetting. This may identify training issues regarding appropriate content. Two letters had also used legal terminology which had not been explained.
- 5.13 Of the 23 cases where only some of the charges had been altered or dropped the explanation was not always clear as to why the action was taken. In two cases seen, though it was clear that the original charge had been reduced it did not explain why this was appropriate and did not refer to the charging standard for assault cases, which was relevant and would have helped.
- 5.14 The percentage of letters containing legal terms which were not properly explained had reduced from 10.0% in 2007 to 6.7% this time. Once again we found letters which assumed a level of knowledge about the criminal justice system including terms used in forensic science and in court and sentencing situations that were not properly explained or expressed in layman's language.
- 5.15 In 50 of the files examined further information had been received which had a bearing on the case being able to continue. In 29 the DCV letter referred to this and the explanation was customised to the particular circumstances. However in 21 the explanation failed to refer to the new information.



### **Expressing empathy**

- 5.16 In the majority of cases where a DCV letter is required it is due to the level of the charge being reduced or charges being dropped altogether, so it is understandable that someone who has complained to the police of an offence against them is likely to be disappointed by the outcome. Letters should convey a sense of empathy in those circumstances.
- 5.17 In the last audit it was judged that 91.4% of letters expressed a suitable level of empathy. This time the percentage was 90.6% - not a significant difference.
- 5.18 Examples were seen of cases dropped through no fault of the victim and the letter failed to express any understanding of the disappointment they might feel.

### **Meetings with victims**

- 5.19 In cases involving a death; charges of child abuse; sexual offences; offences aggravated by hostility based on disability, race or religion; cases with a homophobic, transphobic or sexual orientation elements; or offences motivated by hostility based on age; the victim must be offered a meeting so they have the opportunity to gain a better understanding of the reasons for the decisions taken.
- 5.20 There were 24 cases in the sample where the offer of a meeting was relevant. In 14 (58.3%) a meeting was offered. In the ten cases where no meeting was offered, there was no evidence on the file to indicate that a decision had been made not to offer a meeting. This is a deterioration since our 2007 finding that a meeting had been offered in 70.0% of relevant cases. The omissions covered a range of cases including sexual assault, child abuse and racially aggravated harassment.
- 5.21 If there is a reason why a meeting is not offered this should be recorded on the file.

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### **COMPLIANCE REQUIREMENT**

Areas should ensure that a meeting is offered to the victim or their family in all relevant cases.

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### **Offering sources of support and information**

#### *Contact numbers for the CPS*

- 5.22 The last report included a compliance requirement that areas should ensure a clear telephone number and name were included in DCV letters in case the victim wished to contact the CPS. The current audit found that in all of the ten areas all letters had a telephone number which would allow the victim to contact the CPS. The number was often for the area switchboard or for the Victim Information Bureau. In some areas the appropriate telephone number was included in the body of the letter. This is considered to be **GOOD PRACTICE**.
- 5.23 The name of a specific person was not routinely included leaving the recipient to assume they should contact the person who signed the letter. In some areas a name other than that of the writer was included as a point of contact.

*Sources of support*

- 5.24 In 2007 it was found that details of local specialist support groups were rarely enclosed with DCV letters, though some areas did routinely include contact details for Victim Support. The latter was commended as good practice.
- 5.25 This audit found there has been little change in the information included giving details of appropriate support agencies. There were 89 letters in the sample where it would have been appropriate or helpful for the victim to have some information on where they might find some help or support. Of the 89, ten had contact information for support agencies and one referred to an enclosed leaflet. Examples of letters where no information was given included those to victims of rape, sexual assault and domestic violence.
- 5.26 As found in 2007 standard paragraphs drafted with the future safety of the victim in mind were not always included in cases involving domestic violence. In the current file sample there were 38 cases in this category and in which the paragraphs would have been appropriate. The majority of these had been flagged as domestic violence cases on the file and on CMS. However only ten were found to have the standard domestic violence paragraphs included in the letter, 18 did not contain any or all of the standard paragraphs and in ten no letter had been sent. Only a small number of letters to this type of victim contained any information about local domestic violence support groups.
- 5.27 The current CPS guidance on drafting DCV letters does not contain any recommendation that details of support agencies are either named in the letters or that leaflets from relevant organisation are enclosed with it. Though it is a statutory obligation for the police to provide the victim with this information, we feel that including contact numbers for the relevant agencies in the DCV letter would be helpful. This is an issue raised by the lay inspectors in chapter 6.

**Other issues**

- 5.28 The presentation of a letter can make the difference between a victim feeling valued or that it has been produced with little care. Of the 133 letters seen, 119 were well presented. Problems noted in the remaining 14 included typographical errors that had not been corrected and which sometimes meant that parts of the letter did not make sense; some used different fonts which occasionally made it obvious which paragraphs were standard and which customised; and a few still had the standard options in the letter such as "Insert name of accused".
- 5.29 The previous audit noted that many letters had been headed "Private" rather than "Private and confidential" as is recommended in the guidance. This audit found that this practice continues and 44.4% of letters were marked only as Private. We feel that a variant of the latter is preferable to the term Private and confidential because the latter is likely to be confused with a formal security classification which is not appropriate in these circumstances. The appropriate emphasis could be obtained by the use of "Private - to be opened by addressee only". In some areas a standard paragraph was inserted into the letters informing the victim that the letter was to be treated as confidential and only shown to someone with a proper interest in the case such as a solicitor. The justification for this is not clear.

### **Quality assuring letters**

- 5.30 The previous audit found that whilst the standard of letters was generally satisfactory, each of the 11 areas involved had examples of ones which were particularly good and particularly poor. This time 83% of letters were satisfactory or excellent but 17% did not reach an acceptable standard for a variety of reasons discussed above.
- 5.31 After the last report the CPS began to develop a standardised quality assurance framework for DCV letters. In June 2008 the Victim and Witness Care Delivery Unit issued guidance to areas that would allow them to monitor compliance with the scheme and quality assure letters. Questionnaires were developed and offered to areas to use as they felt appropriate. In monitoring the quality of DCV letters it was recommended that one file per lawyer is checked each month. Headquarters does not require areas to provide any information to them regarding the outcome of any monitoring they may choose to undertake.
- 5.32 Areas taking part in this audit were asked to send details of any quality assurance they had carried out. Six provided details of systems designed to support DCV work and three gave us evidence of systematic review of the quality of letters:
- One area carried out an annual review on a relatively small number of cases and produced a brief report of the findings and recommendations for improvement.
  - Another undertook what appeared to be periodic reviews and produced a similar report on quality as well as compliance and timeliness issues. This area also appeared to use the framework questionnaire provided by Headquarters, though it was not clear whether this practice was widespread in the area or how regularly a quality assurance exercise was carried out.
  - In the third area it was considered that lawyer managers signing DCV letters on behalf of lawyers who were not in the office was an adequate means of monitoring quality.
- 5.33 It appears that more work needs to be undertaken with CPS areas to encourage use of the framework questionnaire to monitor on a regular and systematic basis the quality of letters being produced. Reports produced by the two areas which had carried out at least annual reviews of DCV performance showed that valuable information can be revealed and action taken to improve performance generally within the area, or to highlight issues for particular members of staff who draft these letters.

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### **COMPLIANCE REQUIREMENT**

Areas should be expected to carry out a quality assurance exercise.

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## **6 LAY INSPECTORS' VIEWS**

- 6.1 In order to gain a lay perspective on the letters sent the audit team selected five letters at random from each of the ten areas. Two lay inspectors, Michael Gray and Roy Ham, examined these and commented on their suitability and quality. Each looked at letters from five areas.
- 6.2 Overall the quality was thought to have improved since the last audit and the use of standard paragraphs was seen to be less dominant.
- 6.3 One lay inspector commented that most standard introductory paragraphs contain references to the person writing or making the decision and phrases such as "I am the lawyer responsible" or "I have to make the decision" can sometimes be seen within the few opening lines of letters. Both lay inspectors felt that this draws attention away from the victim and makes the lawyer the subject of the letter. It was thought that in general most letters are better starting with some explanation of the charges against the defendant and the proceedings relating to the victim.
- 6.4 Several letters used the term "dropped" when referring to charges that had been discontinued or not taken forward and it was felt that using "discontinued" or stating that a decision had been taken not to continue with the case were more appropriate terms for a decision taken after careful review.
- 6.5 The majority of letters were considered good but a few were thought to be unsatisfactory. Those judged as good had clear, short explanations that were to the point, written in plain English and communicated personally with the victim. Less satisfactory were ones that contained poor English or confusing, incomplete, repetitive and wordy explanations.
- 6.6 Thirty out of the 50 letters were considered to provide a meaningful explanation and only two did not make it clear that all charges had been dropped. None had legal jargon used without explanation.
- 6.7 The lay inspectors were concerned that only 21 of the 49 relevant letters expressed a suitable level of empathy but sometimes the overall tone was good.
- 6.8 Both were concerned about the lack of information contained in the letters that would direct victims to agencies which could provide them with some support. In those few cases where details were included often only the briefest of information was present.
- 6.9 Good practice was seen in the use of plain English with explanations that were easy to read and understand. Reference to the views of the victim where withdrawal statements had been made was thought to be very important.



## **7 PERFORMANCE MANAGEMENT – THE PROXY TARGET**

### **Overview**

- 7.1 This audit found that the proportion of cases in which the CPS complied with the requirements of the DCV scheme had risen modestly since the previous study in 2007. The steps taken under the CPS action plan have undoubtedly contributed, as has the greater functionality of CMS. Better recording will also have contributed making it difficult to assess with precision the actual level of improvement or the underlying factors.
- 7.2 Nonetheless we are satisfied that CPS performance data, based on its system of proxy targets, substantially overstates performance and in that respect is fundamentally flawed. National performance and data showed that most areas easily exceeded the targets set. Proper adjustment to take account of the significant numbers of DCV letters being sent but not recorded would make outcome against target appear even greater.
- 7.3 It appears that performance is being overstated because the volume of letters sent is benchmarked against a proxy target that does not accurately reflect the number required to be sent under the scheme. The target is based on the number of cases dropped, however the scheme extends to victims affected by charges being dropped or altered even though some other charges continue to trial or a plea is accepted. The outcome recorded in these cases would not be prosecution dropped and it is only the dropped cases that are used in the calculation to set the proxy targets. This must have a substantial undermining effect on the validity of the these targets. We tested the position by reference to one area, which confirmed this assessment.

### **Performance against the proxy target**

- 7.4 The CPS recognised that its systems did not capture all relevant cases and has therefore for a number of years measured DCV performance against proxy targets set for each area. These are calculated using a formula to estimate the number of letters which each area may be expected to send. It assumes that every discontinued Crown Court case requires one letter and that magistrates' courts' discontinued cases (excluding motoring) require four letters for every five cases. The data used in this calculation is the total number of discontinued cases taken from the CPS management information system. It does not include those where individual charges are dropped or substantially altered but other charges proceed to trial or guilty plea. Such cases may also attract the requirement since a significant number have identifiable victims.
- 7.5 At the time of the 2007 audit national data showed that some areas were exceeding their targets considerably. This is intrinsically unrealistic given that the maximum achievable performance should be 100% if the proxy target reflects with reasonable accuracy the numbers of DCV letters required to be sent to cover every relevant case (ie 100% compliance). Moreover when the stated performance was compared with the results of our file sample it could be seen that this would increase further if adjusted to take account of letters which were sent but not recorded.
- 7.6 Whilst there was an improvement in the number of letters that we found to be sent, national performance data suggested much bigger improvement in the number of letters sent as a percentage of the proxy target set.

*Comparison of audit findings with performance recorded by the CPS*

	<b>% of letters sent in audit sample</b>	<b>CPS overall performance against proxy target</b>
2006*	61.9%	75.9%
2008	72.9%	125.3%

\* Published in 2007

7.7 The basis of our assessment is set out below. As in 2007 performance recorded nationally exceeded the proxy target set in most areas. A direct comparison of data from the previous audit cannot be made as the areas chosen to take part are different. However a calculation of the projected performance if letters not sent or not recorded were added is shown in the table below. The file examination shows that on average about one in three cases where DCV letters should have been produced were not being identified. If these were added to the figures produced by the CPS this would inflate the recorded performance against proxy targets.

*Number of letters sent in cases where they could have reasonably been sent*

<b>Area</b>	<b>No of files</b>	<b>No of files in which a letter could be reasonably sent</b>	<b>No of letters sent including where initial notification is accepted as letter sent</b>	<b>Letters actually sent as a % of those that could reasonably have had a letter sent</b>
A	20	19	13	68.4
B	20	20	13	65.0
C	20	19	16	84.2
D	20	19	17	89.5
E	17	17	11	64.7
F	20	20	15	75.0
G	20	20	13	65.0
H	20	20	16	80.0
I	18	18	9	50.0
J	20	20	17	85.0
<b>Totals</b>				
<b>2008</b>	<b>195</b>	<b>192</b>	<b>140</b>	<b>72.9</b>
<b>2006</b>	<b>318</b>	<b>318</b>	<b>197</b>	<b>61.9</b>



7.8 If the recorded performance against proxy targets for the areas we examined were adjusted to reflect the findings in the table at 7.7 the result would be:

*Area performance against the proxy target and projection of improvement that could be attained*

<b>Area</b>	<b>Actual no of letters sent in Oct 08 (national data)</b>	<b>Letters sent as a % of proxy target for Oct 08 (national data)</b>	<b>% of files that should have had letters but did not (audit results)</b>	<b>% of letters sent but not recorded in national CMS data (audit results)</b>	<b>Adjusted performance in letters that could be sent as a % against target</b>
A	287	147.9	31.6	5.3	234.0
B	49	89.1	30.0	5.0	137.1
C	171	140.2	15.8	5.3	177.6
D	141	153.3	15.8	15.8	224.1
E	93	120.8	35.3	0.0	186.7
F	47	142.4	25.0	0.0	189.9
G	149	115.5	35.0	5.0	192.5
H	60	130.4	20.0	0.0	163.1
I	35	72.9	50.0	11.1	187.4
J	83	172.9	15.0	5.0	216.1

**The changing proxy target**

7.9 Further questions as to the value and reliability of the proxy targets arise from the frequency with which changes are negotiated between Headquarters and the areas. Targets fluctuate from quarter to quarter and performance does not always follow the direction of change, as shown in the table below. Most areas audited exceeded their proxy target by a long way in October 2008 but correspondingly good performance was not seen in the findings.

*Changes seen in proxy targets and performance as a % of proxy target in audit areas during the past year*

	<b>4th quarter 2007-08</b>		<b>1st quarter 2008-09</b>		<b>2nd quarter 2008-09</b>		<b>3rd quarter 2008-09</b>		<b>4th quarter 2008-09</b>	
	Target no of letters	% of proxy sent	Target no of letters	% of proxy sent	Target no of letters	% of proxy sent	Target no of letters	% of proxy sent	Target no of letters	% of proxy sent
A	262	117.9	232	95.7	199	136.7	194	117.0	177	174.0
B	81	107.4	74	74.3	46	108.7	55	60.0	45	126.7
C	123	154.5	114	114.0	129	146.5	122	116.4	117	151.3

D	82	152.4	94	109.6	85	154.1	92	113.0	80	131.3
E	88	98.9	78	134.6	79	86.1	77	120.8	80	133.8
F	31	100.0	32	134.4	32	171.9	33	103.0	34	179.4
G	125	113.6	115	69.6	102	154.9	129	100.8	117	106.8
H	45	135.6	42	114.3	44	140.9	46	97.8	50	74.0
I	49	93.9	34	108.8	37	105.4	48	35.4	40	97.5
J	45	215.6	44	181.8	45	240.0	48	139.6	35	300.0

### Testing the proxy target

7.10 Because of the disparity between performance as measured against the proxy target and the findings of this and our earlier audits, we selected a specimen area to carry out an examination of all cases finalised during October 2008. The purpose was to ascertain with precision how many DCV letters would have been required to achieve 100% compliance under the scheme and compare that against the number actually sent.

7.11 Out of 1,313 files finalised (105 Crown Court and 1,208 magistrates' courts, including motoring offences) there were 73 relevant cases that required DCV letters. Due to a number where there were multiple victims 85 letters should have been sent, with actual performance of 45.<sup>3</sup>

### *Projected performance against the proxy target using data from the audit*

<b>Proxy target Oct 08</b>	<b>% of proxy achieved</b>	<b>Total letters recorded as sent by the area</b>	<b>No of possible letters that could have been sent<sup>3</sup></b>	<b>Projected % of proxy target</b>
33	142.4	47	85	256.6

7.12 If letters had been sent to all the victims seen in our audit the area would have achieved 256.6% of the proxy target for October 2008.

7.13 Our data showed that there is considerable under recording in relation to vulnerable and intimidated victims. The area recorded that of the 47 letters it had sent, 15 were to vulnerable and intimidated and 32 to other identified victims.

7.14 As noted above the file sample showed that there were 73 cases with identified victims requiring letters. Of these 37 should have been flagged as having vulnerable or intimidated victims but only 21 had been noted appropriately. There were 45 victims in these cases who should have been sent a letter but only 28 (62.2%) had and 17 (37.8%) had not.

<sup>3</sup> Our sample had three pre-charge cases with three victims where letters could have been sent. These cases are not counted in the performance data compared nationally and were therefore removed from our recalculation.

- 7.15 Only just over half of the letters sent to vulnerable or intimidated victims (15 out of 28) had been recorded appropriately in area performance data. The 13 that were not recorded correctly did not have the L and T symbols attached. One of those not recorded did appear to have the correct symbol attached and it is not clear why the letter was not counted; this is a problem that CPS Headquarters are looking into.

#### **Cases with some charges altered or dropped**

- 7.16 Calculation of the proxy target does not include those cases where some charges are altered or dropped but the case proceeds to trial or guilty pleas on other charges. Of the 73 cases we identified requiring letters, 36 had some charges altered or dropped but the case proceeded and would not be counted towards calculation of the proxy target. These types of case had slightly more letters sent (63%) compared to those where all charges were dropped (52%).
- 7.17 It may be that this has some bearing on why many areas exceed the proxy target with apparent ease as it is only based on cases which are dropped altogether. Those with some charges dropped or altered that resulted in an eventual conviction on at least one charge would not appear in the discontinued case sample used to calculate the target.
- 7.18 The findings in relation to this area confirm our view that the present system of proxy targets is fundamentally flawed. We understand that the CPS is considering changing the way that these targets are worked out using a retrospective calculation. We used the data from this area to see if this proposal would result in a more realistic target.

#### **Will the CPS new method make the proxy target more accurate?**

- 7.19 Looking in detail at all the files finalised in October 2008 we recalculated the proxy target using the suggested changes. Using finalisation data from that month rather than from the previous quarter their target would have been reduced to 28 letters instead of 33. This is obviously wrong. Area performance would have improved using this revised measure, which cannot be right. Eighty five letters should have been sent and the retrospective target would have been 28, 57 less than actual requirements. This detailed examination highlights that the CPS must consider the fundamental basis of how it calculates the proxy target and what weight it affords this crude measure of performance.
- 7.20 Our examination highlights that the major contributing factor of the targets being too low may be the significant number of cases where letters are required but the outcome is not one recorded as prosecution dropped. These cases are therefore not included in the data used to calculate the proxy target and in this area the target could be more than doubled. If the ratio in other areas is similar the targets should be re-examined.

#### **Conclusion**

- 7.21 Whilst the detailed scrutiny mentioned above related to only one area it strongly reinforces our concern that the current system of proxy targets is unrealistic and, moreover, the modest adjustment proposed will not address this. It therefore seems essential that Headquarters should, as we recommended in 2007, carry out a more fundamental review.

## **ANNEX A: CPS PROGRESS AGAINST COMPLIANCE REQUIREMENTS MADE IN THE 2007 AUDIT REPORT**

<b>Compliance requirement</b>	<b>Progress since 2007</b>
1 Areas should have management checks to ensure that all cases with identifiable victims are recorded on the case management system.	Limited progress. Only one of the ten areas seen this time provided evidence of management checks to ensure that victims had been identified.
2 Areas should ensure that files are clearly flagged to assist those making decisions to prioritise cases in which a letter is required.	Limited progress. There was a small increase in physical flagging on the files, however under a third of files requiring letters had an endorsement to show that one was needed.
3 Areas should ensure that in cases where there are valid reasons for letters not to be issued lawyers endorse this on the file in line with national guidance.	Limited progress. Less than half the cases seen where a letter was not considered necessary had a reason recorded to show why and some of those noted did not follow CPS national guidance.
4 Areas should ensure that lawyers identify cases with vulnerable and intimidated victims and that such cases are flagged appropriately.	<p>Substantial progress. The enhanced CMS functionality now allows vulnerable and intimidated victims to be identified and compliance and timeliness of communications with them can be recorded separately.</p> <p>Our audit did indicate that there has been progress in providing letters in these cases but that improvement was needed in early identification and the use of appropriate flagging on CMS.</p>
5 Areas should ensure that if the victim has been spoken to at court or by telephone, conversations are noted on the file and summarised in a Direct Communication with Victims letter. If the victim does not wish to receive a letter a note of this should also be made on the file.	Limited progress. Some examples of letters that referred to conversations at court were seen but where a file noted that the victim had been spoken to at court there was often no clear record of what information had been given.
6 The CPS guidance should be amended to make it clear that discharged committals are covered by the Direct Communication with Victims scheme.	Achieved. The guidance has been amended.
7 Areas should liaise with CPS Headquarters to ensure that their proxy targets are realistic and carry out compliance checks to ensure that they are capturing all cases and recording all letters sent.	Not achieved. Proxy targets set are not realistic. A projection of improved performance based on the audit findings suggests that most areas could exceed their target significantly if they sent letters in all relevant cases.

<b>Compliance requirement</b>	<b>Progress since 2007</b>
8 Areas should ensure that all Direct Communication with Victims letters sent are recorded on the appropriate monitoring system.	Substantial progress. The recording of letters sent has improved with the introduction of enhanced CMS functionality to capture this.
9 Areas should ensure that the number of days between the decision being taken and the letter being sent are accurately recorded on the monitoring system.	Substantial progress. Use of CMS for recording timeliness of letters has improved the accuracy.
10 Only cases in which a Direct Communication with Victims letter containing an explanation has been sent should be recorded on the monitoring system and be counted towards meeting the target.	Substantial progress. Use of CMS to monitor letters sent has made this less of a problem.
11 Areas should ensure that: <ul style="list-style-type: none"> <li>• Lawyers or caseworkers endorse files requiring a Direct Communication with Victims letter with instructions directing the case to the appropriate person after court.</li> <li>• Lawyers or caseworkers endorse files with full reasons explaining why the case or charge had been dropped or altered.</li> <li>• Systems are in place to ensure that files requiring a letter are returned to the office within 24 hours after the court hearing.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited progress. Missing or incomplete file endorsements giving instructions for a letter to be drafted continues to be an issue.</li> <li>• Reasons were not always clearly endorsed on the file and sometimes could only be discerned from the DCV letter.</li> <li>• Some areas have systems in place but this good practice needs to be more wide spread and used consistently.</li> </ul>
12 Areas should be satisfied that a system is in place which ensures that a letter is sent out at the same time as a discontinuance notice.	Limited progress. Not all cases in which charges were discontinued had DCV letters sent out at the same time.
13 Areas should ensure that all staff are aware of the time targets relating to Direct Communication with Victims and the priority that should be afforded to files requiring a letter.	Limited progress. Some of the systems seen were aimed at raising awareness of area staff and involved them completing forms at court which would initiate immediate action. This practice could be more widely adopted.
14 Areas should have systems in place to ensure that the unavailability of the person who had taken the decision to drop or alter charges does not delay the dispatch of the letter.	Substantial progress. There was no evidence to suggest this continued to be a problem as most letters were timely and gave an adequate explanation.
15 The CPS should consider how it can improve its processes to ensure that vulnerable and intimidated victims are treated as a priority (in line with the inference in the Victims' Code).	Limited progress. See compliance requirement 13 above.

	<b>Compliance requirement</b>	<b>Progress since 2007</b>
16	Areas should have in place a system of regular checks to ensure the standard of letters is maintained.	Limited progress. CPS Headquarters issued forms to be used for this purpose. Quality assurance is not apparent in all areas.
17	Area managers should be assured that all letters sent out under the Direct Communication with Victims scheme should contain an adequate explanation of why the decision had been taken to drop the charge or case and that refresher training is provided to all those drafting letters.	Limited progress. A slight improvement was seen in the current audit.
18	Areas should ensure that empathy is expressed in all letters as appropriate and if the decision is taken not to offer a meeting in cases in which it is compulsory, the reasons for this should be noted on the file.	Limited progress. This was not found in all letters seen where it was appropriate.
19	Areas should ensure that the reasons for any delay in sending out the Direct Communication with Victims letter is explained and an apology given.	Substantial progress. Few letters were sent that were substantially delayed and this was less of an issue.
20	Areas should ensure that a clear contact number and name are included in the letter.	Achieved.

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