

## **File Management and Organisation**

An audit of CPS performance in the quality and effectiveness of file endorsements and the administration of cases

May 2008





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Audit of CPS Performance in the Quality and Effectiveness of File Endorsements



## PREFACE

This report on Crown Prosecution Service performance relating to the quality and effectiveness of file endorsements follows an audit exercise undertaken by a team within the Inspection Support Group of Her Majesty's Crown Prosecution Service Inspectorate (HMCPISI).

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

This move away from cyclical inspection means that all 42 CPS Areas are now subject of a periodic overall performance assessment but a significant number are now visited relatively infrequently. Yet there are, from time-to-time, issues where it is important to be able to assess quickly performance or compliance across the Service. The audit team fulfils that role and file endorsement is an example of such an issue.

File endorsements, ranging from initial review to that made at court, provide a written record of decisions, discussion and events. They inform both prosecutors and administrative staff of decisions taken and provide the means to ensure timely and necessary actions are carried out on prosecution files. The quality of endorsements is vital to all aspects of CPS work and internal guidance states that they should be easily located and readily understood. Failure to make clear and accurate endorsements on files can lead to incorrect decisions, failures to take timely actions and even to failed prosecutions. Should a case go to appeal or judicial review, good quality file endorsements will be imperative to understand the history of the case. Poor quality endorsements can also lead to poor communications with victims and failures in monitoring the expiry date of the custody time limit associated with a defendant. This may result in a defendant being detained unlawfully or being released from custody for want of a CPS application to extend the time limit. Clear file endorsements assist prosecutors and caseworkers at court in being able to understand quickly the actions and events in a case as at court speed is necessary to prevent delays in proceedings.

The quality of file endorsements has been a consistent concern of the CPS and the Inspectorate and inspectors have assessed the quality of file endorsements in previous inspection cycles. In carrying out more detailed analysis of this aspect of CPS performance this audit highlights common problems, gives some indication of the quality of endorsements generally and identifies if there are systems that work well rather than leaving them to the diligence of individuals. The audit team undertook scrutiny within 12 CPS Areas.

An important purpose in undertaking these exercises is that the Director of Public Prosecutions and Chief Executive of the CPS (as accounting officers) and the Law Officers (the Attorney General and Solicitor General who have accountability to Parliament for the work of the CPS) have a sound basis for reassuring themselves as to the performance of the CPS on matters which are fundamental to the effectiveness of its casework handling. HMCPISI has recently undertaken a similar thematic exercise in relation to the quality of discontinuance decisions and an audit of CPS performance in relation to keeping victims informed of the progress in their cases. These were aimed at capturing performance across the CPS and were not confined to those Areas which have been the subject of formal inspections.

This pattern of risk-based Area performance inspections, linked to thematic scrutinies focussed on key aspects of performance, is likely to underpin HMCPSI inspection programmes for the foreseeable future. It has the effect of reducing inspection activity on Areas which are known to be performing to a sound standard and freeing up Inspectorate time to concentrate on those where improvement is most needed, and also on joint working with other criminal justice inspectorates across the criminal justice system. This reflects an important Government priority.

# 1 INTRODUCTION

- 1.1 The Crown Prosecution Service (CPS) has historically used paper files but in 2004 an electronic case management system (CMS) was introduced and much of the work carried out in CPS offices is now undertaken using the templates and recording facilities on this system. All electronic communications or documents prepared for a case can be stored with an electronic file that can closely correspond to the paper file, but there are problems in ensuring that information corresponds completely on both systems. CPS Areas now have access to CMS terminals at many remote court offices and charging centres at police stations, where their lawyers provide advice to the police and take decisions on charging offenders. However terminals are not available at all locations or in individual court rooms and thus the paper copy is required as the main working file. All endorsements should therefore also be recorded on the paper file and if work such as case review is prepared electronically on CMS this should be printed out and attached to the file to ensure that prosecutors in court have access to all information.
- 1.2 Although the paper copy is the master file CMS is used for case tracking and CPS administrators transfer details of what happened at each court hearing, the next court date and case results from the paper file to the electronic system. CMS is used to count the types of results on finalised cases to produce caseload information and measure performance. A variety of data is collated to assist in analysing performance and for specific types of case that are monitored. It is also used nationally for monitoring custody time limit expiry dates. For this reason it is essential that accurate endorsements are made at each court hearing to ensure that administrators can update CMS accurately.
- 1.3 The CPS has introduced targets to encourage the use of the electronic file for recording case reviews and other work done, but at present in all but a few Areas there is no electronic link with police computers. Therefore in most Areas CMS is not used to store evidence, so statements and exhibits will usually be in the form of paper copies on the file. Details of pre-charge decisions, initial, summary trial or committal reviews and the indictment should be stored on CMS. However copies of these documents must be printed for the paper file.
- 1.4 Details of the location of 'live' or archived files can be entered into CMS to assist in file retrieval and destruction dates for finalised cases can be recorded to manage their disposal at the appropriate time.
- 1.5 Guidance on file endorsements is available nationally to staff on the CPS internal electronic information system (infonyet). It contains a standard that all endorsements should be:
- in the correct part of the file;
  - legible;
  - accurate;
  - signed; and
  - dated.

- 1.6 The guidance states that “this is to ensure a clear audit trail which enables colleagues to follow actions/decisions taken on a case/file. It is also to enable a number of management functions to follow including; staff appraisal, complaint investigation, quality monitoring, payment to service providers and any other management function.” Some guidance on specific types of endorsement and a list of accepted abbreviations is also included.
- 1.7 The infonet also has guidance on file ‘housekeeping’ and associated management issues drafted by the HMCPSI/CPS Joint Standing Committee on Good Practice in 2002. This followed Inspectorate concerns about the poor quality of file housekeeping during previous inspection cycles.
- 1.8 There is also guidance in CMS manuals on the updating and recording of information on the electronic files. Training material for lawyers and administrative staff covers the requirement for clear and comprehensive file endorsements.
- 1.9 The CPS guidance is not prescriptive and, although a standard is set, interpretation may vary between Areas according to local systems and practice. For this reason each of the 12 Areas audited were asked to supply any local instructions that have been issued to staff.
- 1.10 Guidance on finalisation codes to be input into CMS is contained within the CPS Performance Indicator Manual and this guidance is prescribed to enable accurate recording of performance statistics.
- 1.11 The CPS uses two types of paper file. All cases start in the magistrates’ courts and have a file to record and store all magistrates’ courts’ activity. If the case progresses to Crown Court the magistrates’ courts’ file will be enclosed within a Crown Court cover. The endorsements for each court should remain on their respective file covers. Most files follow an accepted format with details of the defendant’s name and charges recorded on a printed label on the front of the cover, but there are variations between Areas and different coloured files are sometimes used to denote different types of cases, such as those involving youth offenders or child abuse.
- 1.12 The file cover has specific spaces to record court hearings and also room to include review decisions. Out of court work should also be recorded in an agreed place on the file cover. Crown Court files usually have a log on the back of the cover to record court hearings and a fee log to record payments to barristers employed by the CPS to prosecute cases on their behalf. Systems for storing notes of hearings, correspondence and reviews differ between and within Areas and the audit team have had to take account of local variations in file design and use.
- 1.13 A working group tasked with designing an Optimum Business Model (OBM) for the CPS was established following criticisms in a National Audit Office report. This group is looking at all aspects of handling cases in the magistrates’ courts and is reviewing all associated systems and processes, with a view to creating a more cohesive national model. It follows that many of the issues touched on in this report will already be receiving consideration as part of that exercise. This is an ongoing process and it has not been practicable to revisit all issues and see what the implications would be if all of the OBM proposals were accepted. Readers of this report must recognise what it describes is the situation as found in late 2007-early 2008 at a point when the OBM was in the pilot stages. Proposals in the Model may well mitigate some of the weaknesses we have identified. An example of the fluidity of the situation is that the OBM will make the use of the new file jacket obligatory, which would meet one of our criticisms.

- 1.14 Each of the 12 Areas participating in this audit have received individual feedback. This report draws together the issues and findings that emerged from the files examined for all 12.

**Methodology**

- 1.15 The audit results are based on the examination of a number of files selected to ensure the most recent cases were seen, with a variety of offence types and finalisation categories. Most cases selected were those that had progressed to trial in the magistrates or Crown Court. This was to ensure that a full range of endorsements could be seen. Files were examined against a questionnaire which dealt with issues around review work, court endorsements, out of court work and monitoring and finalisation activity. They were examined in two tranches and were taken from cases finalised in September-October 2007.
- 1.16 Each Area was asked to supply 20 files - five Crown Court and 15 magistrates' courts. A total of 240 were examined (60 Crown Court and 180 magistrates).



## **2 OVERVIEW OF FINDINGS AND SUMMARY OF RECOMMENDATIONS AND GOOD PRACTICE**

- 2.1 File endorsements form an integral and vital part of the effective prosecution of cases and this subject is covered in a wide range of manuals, training material and guidance. The file endorsement standard, which was last updated in June 2006, is intended to bring together some essential points. However there have been some significant changes in the way the CPS operates in the last few years that are not referred to in the standard, the most far-reaching being the introduction of CPS lawyers making the charging decision in most of the more serious cases and the Service-wide implementation of CMS, which requires targets to be met for the recording of reviews and the speed of updating cases. It would be helpful for the CPS to update existing guidance and to consider bringing together some of its other guidance, such as CMS instructions where the input of information relies on file endorsements, so that staff have one point of reference for file endorsements.
- 2.2 The local Area instructions provided to us were often drafted from the national version. These had sometimes been amended to incorporate instructions on how to deal with new initiatives such as Criminal Justice: Simple, Speedy, Summary (CJSSS) in review and charging processes, which the national instructions have yet to take account of.
- 2.3 The CPS file endorsement standard emphasises that for the effective and efficient prosecution of offences endorsements must be of a consistently high standard. It explains that failure to maintain the standard may lead to incorrect decisions on cases, failed prosecutions or miscarriages of justice, duplication of effort and wasted resources. This audit revealed performance that failed to meet the standard in a significant proportion of cases.
- 2.4 Even the smallest percentage of cases failing to meet the standard often results in extra work for those who handle the file and need to know its history. CPS files are dealt with by a number of staff at different times. A file is not the particular responsibility of one person, which is why it is vital to record all events and decisions pertaining to that case in an identifiable place on it. Administrative staff may have to seek clarification from lawyers or the court for incomplete or missing endorsements. Lawyers required to make a legal decision on a case may not be aware of all facts or review decisions taken previously as it may not have been endorsed on the file or be somewhere that is not easily found. A prosecutor in court may struggle to make a decision about a custody or bail application if, on a previous occasion, another has failed to record all the pertinent details of a bail application.
- 2.5 On a national basis there is no consistent approach to monitoring and managing the quality of file endorsements. Lawyer managers who go to court will see their staff's work on files on a regular basis and it may be that the standard of endorsements are set as a personal objective for lawyers in their staff appraisal. However it often relies on the degree of diligence of the individual as to the action they will take should endorsements fall short of the standard. The Casework Quality Assurance (CQA) monitoring system is used by lawyer managers to check the work of their staff on a monthly basis. This encompasses a number of issues including the quality of the legal decision-making and the treatment of witnesses. However the quality of file endorsements is not specifically mentioned, it being a question that was removed from the CQA form in an update in January 2005. In order to raise awareness and improve the quality of endorsements some form of structured monitoring would be useful, even if it were in the form of a snapshot survey on an annual basis which would lead to follow-up action and keep the subject of file endorsements in the foreground.

- 2.6 Almost all the problems identified in this report are the subject of guidance in the endorsement standard. It is accepted that guidance cannot cover every situation, but minimum standards should apply in all Areas and cover a range of routine and required endorsements and the standard of file housekeeping. Compliance should be monitored and feedback given to staff to ensure the standards are consistently met. The application of this system will obviously take up staff time, particularly that of lawyer managers, but we would suggest that it would be more than adequately offset by the amount of time saved by the range of staff who would otherwise have spent time trying to follow difficult endorsements or making sense of a file in a state of disarray.
- 2.7 File covers, or how they were used, was often a contributory factor in the poor quality of endorsements. Even with a printed cover with designated spaces for specific endorsements, individuals handling the case would deal with endorsements in different ways which often led to a case that was difficult to follow. The CPS has had several attempts in the past to design a file cover that would resolve the problems found in this report but, as yet, a solution does not appear to have been provided. When a new design for the cover is introduced, it is left to the discretion of the Areas as to whether they wish to adopt it. This means there will always be different styles of file cover in use across the country. Therefore any centralised training or instructions cannot be specific about what and where to record information on the file cover.
- 2.8 The use of the CMS record as a working copy of the file raised some issues. The audit looked at both the paper and CMS files and often this was necessary either to locate a review endorsement or to ascertain why a case had been to court, as it was not apparent from the paper file. It also was a concern that in many cases we found that there was not a record of the result for each charge on CMS. This reliance on a combination of electronic and paper files brings serious disadvantages.
- 2.9 Endorsements regarding action taken on correspondence were often found to be missing. We did not see any Area that had a consistent system that logged in receipt of correspondence and on some files it was difficult to ascertain if letters had been dealt with. In a small number of cases there were up to three letters from the defence attempting to obtain information or asking for a response to earlier letters and there was nothing marked in the file that would indicate that the correspondence had been seen and acted upon.
- 2.10 The legibility of review endorsements was of a good standard and this was largely due to the requirement for reviews to be recorded on CMS. The few found on paper files could be difficult to read. The review template on CMS also assisted in ensuring that all relevant issues to be considered were commented on. Legibility was more of a problem in endorsements made in court, although it is acknowledged that these are often made under pressure.
- 2.11 File housekeeping - that is the order in which the papers in the file are maintained - is a challenge, particularly in those that have a lot of correspondence, court appearances and additional information from the police. The consequences of poor housekeeping are files in which it is difficult to follow the sequence of events and the decisions taken. This is a subject that the CPS, in conjunction with HMCPSI, has issued guidance on. Again this is something that Areas can choose to adopt and, perhaps more importantly, enforce.



2.12 Most cases were finalised correctly on CMS, though some were not due to misleading or inaccurate endorsements. In some instances this would have resulted in the Area being credited with carrying out work that it had not. The most common example of this was seen in cases which had been due to go to trial, but the defendant had pleaded guilty on the day of the trial. Some of these had been recorded as having been a full trial, often due to misleading court endorsements. Such incorrect finalisations would count towards the budget allocation for the Area.

2.13 This audit revealed a number of other significant issues including:

- Reviews had been recorded in 89% of initial reviews, 73% of summary trials and 75% of cases to be heard at the Crown Court.
- The record of court endorsements was complete in 89% of magistrates' courts' cases and 82% of Crown Court files.
- Post-court work was not recorded or highlighted as necessary in 16% of magistrates and 35% of Crown Court files, which in some cases led to essential action not being taken and the case having to be adjourned at the next court hearing.
- There was no consistent system used in Areas to record work done outside court and in a significant number of cases it was not clear what work had been done, with gaps in information.
- Custody time limit cases had inadequate or missing endorsements, which in one instance led to an incorrect expiry date being calculated.
- The bail status was not recorded at each hearing in 36% of cases in both the magistrates' courts and the Crown Court.
- Outcomes were not correctly marked on the CPS file in 14% of cases, which contributed to the 35% of cases that were not correctly finalised on CMS.
- The CPS had failed to send a Direct Communication with Victims scheme letter to victims in 31% of cases where it was required and this was often due to the fact that the lawyer had not endorsed the file with an instruction to send one.

## Recommendations

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1 The CPS should ensure that the reviews carried out by the lawyer pre-charge should clearly state the substantive offence to be charged, together with the further information necessary to make clear the form of the charge where it may be preferred in a number of different terms (particularly when an enactment creating an offence which may be committed in a number of different ways). This will ensure that the police custody sergeant is in no doubt about the charge advised (paragraph 3.10).

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2 Consideration should be given to creating a compulsory field for recording consideration of witness needs on the MG3 and review templates on the case management system (paragraph 3.16).

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- 3 Guidance should be produced to ensure that Areas attach copies of initial reviews to files, and specifies an approved location to do this (paragraph 3.23).

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- 4 Where an initial review is adopted and entered into the summary trial review section on the case management system, decisions made or consideration given at this stage should be properly evidenced so that it is clear that there has been an effective summary trial review (paragraph 3.31).

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- 5 Where an earlier (initial) review is adopted and entered into the committal review section of the case management system, it should be updated as necessary so that decisions made or consideration given at this stage are properly evidenced and it is clear that there has been an effective committal review (paragraph 3.49).

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- 6 In the absence of a completed Crown Court case preparation package, the Area should ensure that there is clear evidence on the file as regards the decisions made in relation to the evidence to be included in the committal/section 51 papers, the counts on the indictment and any arrangements for witness care, and a record of who made those decisions (paragraph 3.54).

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- 7 The consideration given to unused material and instructions for its handling should be recorded (paragraph 3.56).

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- 8 Counsel's instructions should inform them of the legal issues considered, any further evidence or issues that are outstanding, and if any pleas would be acceptable or not (paragraph 3.61).

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- 9 Areas should ensure clear and structured arrangements for recording the outcome of hearings on the file, including the development of a continuation sheet to be attached securely to the file in the right place (paragraph 4.18).

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- 10 Court endorsements should record the type of hearing or reason for the listing and who had asked for the case to be listed (paragraph 4.24).

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- 11 Instructions should be prepared for counsel or caseworkers prior to a court hearing where actions are required and these should be evident on the file (paragraph 4.29).

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- 12 The plea and case management hearing form should be obtained directly after the court hearing to enable urgent actions required to be prioritised. Areas should have structured arrangements for highlighting if urgent action is required on files returning from court. (paragraph 4.34).

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- 13 Designated minute sheets should be used to record Crown Court hearings and they should be stored in an agreed place on the file (paragraph 4.40).

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- 14 The court hearing log or fee log should be completed separately to provide a clear chronology of the case (paragraph 4.40).
- 
- 15 Actions taken to deal with correspondence or further evidence should be endorsed on an agreed part of the file to ensure that what has been done is evidenced (paragraph 5.13).
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- 16 Telephone communications (other than those with no significance) should be endorsed on the file in an agreed place or printed from the case management system and stored in an agreed place (paragraph 5.16).
- 
- 17 Any further consideration of witness needs should be clearly endorsed on the file with reasons why an application for special measures is being made or not (paragraph 5.17).
- 
- 18 Communications from the Witness Care Unit should be printed out and stored in good order to allow timely review of issues arising and to ensure that when further reviews are carried out, the lawyer can see quickly what issues have arisen previously, have been resolved or are part of a continuing issue (paragraph 5.20).
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- 19 The custody time limit expiry date should be clearly marked on the front of the file and distinguished from any other dates that would be used for monitoring purposes (paragraph 6.4).
- 
- 20 CPS Headquarters should clarify the monitoring/flagging requirements in relation to identified victims to ensure that cases can be tracked.
- lawyers should endorse monitoring codes in the initial review and administrators should ensure they are entered as monitoring codes on the case management system; and
  - the file endorsement standard should promote the use of monitoring codes (paragraph 6.15).
- 
- 21 Any change to the plea entered by the defendant should be clearly recorded in the correct printed space allocated on the magistrates' courts' file and in clear terms on the Crown Court file. If a late guilty plea is entered on the date of trial the endorsement should make clear that no trial took place (paragraph 7.9).
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- 22 The endorsement should make it clear whether a case proceeds to trial and set out the outcomes precisely (paragraph 7.11).
- 
- 23 Prosecutors should record outcomes in terms which enable administrators to identify the correct finalisation code on the case management system and standard abbreviations should be used. If an outcome is unusual a good explanation should be given on the CPS file to enable the correct finalisation on the case management system (paragraph 7.17).
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- 24 A suitable place on the file for Crown Court finalisation and sentence endorsements should be designated (paragraph 7.20).
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- 25 Amendments made to charges on magistrates' courts' files and to indictments should be clearly recorded and highlighted for administrators to update the case management system (paragraph 7.21).

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- 26 Endorsements and correspondence should be maintained in chronological order to ensure that those dealing with the case can ascertain what has happened and that problems are not caused due to missing or poorly filed information (paragraph 9.6).

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- 27 Evidence served in magistrates' courts' cases should be collated into a trial bundle which is clearly identified as such for the benefit of the advocate (paragraph 9.11).

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- 28 A copy of the instructions and enclosures sent to counsel should be maintained on the CPS file and further instructions should be indexed to follow from the original brief to maintain a record of items sent (paragraph 9.18).

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### **Good practice**

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- 1 In one Area there were a few examples of the lawyer recording decisions/instructions regarding warning witnesses, serving statements and service of unused material as part of the summary trial review on the case management system (CMS), which meant that all relevant decisions and instructions for actions were in one place and there was a record not only on the paper file but also on CMS (paragraph 3.35).

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- 2 Action taken by administrative staff to warn witnesses, serve witness statements and unused material in the case was evidenced by the lawyer's instructions being ticked, initialled and dated (paragraph 3.37).

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- 3 Good practice was seen in a unit in one Area where the Unit Business Manager used a white form to remind lawyers that committal reviews and committal preparation needed to be done. A red reminder form was used when the review became more urgent. Letters to the police to chase late full files were also sent on this unit. This system had not been adopted Area-wide (paragraph 3.46).

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- 4 Good practice was seen in the use of pro-forma documents to instruct caseworkers and typists in actions required for the preparation of bundles of evidence for service prior to committal and under section 51, Crime and Disorder Act 1998 (paragraph 3.53).

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- 5 An example of good practice was seen in one brief where the lawyer had given counsel detailed instructions about the issues in the case, possible pleas that would be acceptable and mitigation that the prosecution would not refute. This appeared to be information that the lawyer had gleaned from dealing with a number of similar cases that were prevalent in this Area and it gave a clear instruction to counsel on what he could agree at court (paragraph 3.57).

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- 6 In one Area details of a judge in chambers bail application had been noted on the magistrates' court file. This gives a full, chronological record of issues in relation to bail on the file cover, whereas in many cases the result of the hearing would be found inside the file (paragraph 4.8).
- 
- 7 In a number of Areas where post-court action had been requested in the court endorsement, administrative staff consistently initialled and dated the instruction to indicate that action had been taken. This would allow the prosecutor next in court with the case to see that action had been taken (paragraph 4.11).
- 
- 8 In one Area in cases that had been adjourned for trial in the magistrates or Crown Court, administrators would note after the court endorsement that a full file had been requested and would also note an action date for delivery of the file to CPS (paragraph 4.11).
- 
- 9 Good practice was seen on some files in the use of large printed notes from caseworkers to colleagues at court asking for items to be handed out in court, and these were sometimes ticked and initialled as done (paragraph 4.29).
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- 10 Good practice was seen where the caseworkers had listed the actions required and in one Area these were seen to be ticked and initialled as they had been dealt with (paragraph 4.32).
- 
- 11 Good practice was seen where the Area also completed brief notes of the listing in the hearing log on the back of the file or fee folder. This chronology of hearings was easy to follow and, if action was necessary, it could be clearly indicated here (paragraph 4.40).
- 
- 12 Good practice was seen in one Area in using the front of the magistrates' courts' file for court endorsements and the inside back to detail work done outside court. In this Area the endorsements formed a written dialogue between the administrators, typists and prosecutors. Notes about what had been reviewed, problems that had arisen, the action that was required and by whom were seen. The noted action would then be initialled and dated when done, which was also good practice. Letters were even seen drafted in this space. By reading the out of court endorsements alongside those made in court, it was possible to follow the history of most cases and understand why a course of action had been taken. This would be of great benefit to those looking at the file at court or carrying out further review and would save time. It is to the credit of staff in this Area that this system was used consistently (paragraph 5.9).
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- 13 Good practice was seen in four Areas where the Crown Court caseworkers or administrators passed work to the lawyers using a note typed in large print asking them to review the further evidence attached or deal with an item of correspondence. The lawyer would note the actions to be carried out following this request and the caseworker, in most cases, had ticked and initialled the actions as done. The notes were a clear method of dealing with out of court work and were stored with the resulting correspondence. In two of these Areas a standard form was used as a means of communication between lawyers and caseworkers. Queries or instructions were typed on it and a response would be written or typed below (paragraph 5.14).
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- 14 Good practice was seen in one Area where telephone calls were noted on the case management system (CMS) and printed out for the file and in another where one file had ten phone calls recorded on the minute sheet and CMS (paragraph 5.16).
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- 15 A pro-forma sheet was used in both magistrates' courts and Crown Court cases to document procedures carried out to ensure the accuracy of the custody time limit expiry dates and checks to ensure that they were properly monitored (paragraph 6.7).
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- 16 Good practice mentioned previously in Chapter 5 was seen where one Area endorsed all work done out of court and actions to be carried out following court on the back cover of the CPS file. This was signed and dated and initialled when done. All court hearings were noted at the front of the file. This made the chronology easier to follow but there were some files where this was not the case and loose correspondence was not evidenced as dealt with. Another Area noted the out of court endorsements amongst the court hearing endorsements on the front of the file. This gave a good chronology of the case but there was some confusion as it was not clear if the endorsement was one made in court or of work done out of court (paragraph 9.6).
- 
- 17 Good practice was seen in some Areas that had consistently adopted the use of a number of folders within the file to store correspondence and details relating to unused material. Some Crown Court files had a series of folders in addition to these which may include papers relating to witnesses, custody time limits, reviews, special measures and court notes (paragraph 9.9).
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- 18 In one Area on some files the evidence that was served had been attached together and it was clear which statements had been served as part of the trial pack (paragraph 9.11).
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### 3 REVIEW ENDORSEMENTS

#### Overview

- 3.1 CPS guidance requires that all files are endorsed with review decisions. It is also specific as to the legal factors that should be noted, as well as requiring that the person carrying out the review signs and dates it. Some magistrates' courts' file covers and the review template on CMS have specific sections to cover the essential aspects. This audit found that the majority of files (88%) had a record of an initial review. Further reviews are usually required at the stage a case is committed to the Crown Court for trial or when it is prepared for a contest in the magistrates' courts (summary trials). Performance was less impressive in summary trial reviews, which had been recorded in 73% of relevant cases, than in committal reviews which had been noted in 75% of Crown Court cases.
- 3.2 Reviews had been recorded on CMS in the majority of cases, though in some a hard copy was not placed on the paper file. It was found that a significant number of summary trial and committal reviews were a direct copy of the initial review endorsement. This can be problematic unless it is clear that there has been proper consideration and nothing has changed since the earlier stage. Use of the review templates on CMS appeared to assist in ensuring that all relevant issues were covered in the review note. It also resulted in most reviews meeting the quality standard in relation to the legibility of the note and ensuring that it was clear who had carried out the review and when.
- 3.3 Decisions were not well documented regarding witness statements to be served on the defence, witnesses to be called for court in summary trial cases, or instructions regarding the preparation of cases for committal. Witness needs were not always considered at the initial review and there was often no indication that this had been addressed at the summary trial or committal review. Very few examples were seen of adequate instructions drafted for prosecuting barristers who would undertake the case on behalf of the CPS.

#### Initial review

##### *Recording the review*

- 3.4 The CPS lawyer reviewing the evidence and taking the decision to charge a defendant, or reviewing a file where a defendant has already been charged by the police, is required to note the reasons for their decision. This should be recorded on the template on CMS and a copy of the review placed on the paper file both to inform prosecutors handling the file subsequently of the reasons for the review decision and to comply with the endorsement standard. If the first review is carried out at court there may be no access to a CMS terminal, but the fact that the review has been carried out on the paper file should be recorded on CMS and it would be helpful if there was some detail of the review noted on the electronic file.
- 3.5 Entries are required under a number of headings which include evidential sufficiency and whether it is in the public interest to prosecute the case in line with the Code for Crown Prosecutors.

*Initial review types*

<b>Area</b>	<b>Pre-charge decision</b>	<b>Post-charge in office</b>	<b>Post-charge in court</b>	<b>No initial review</b>
A	15	0	1	4
B	13	0	1	6
C	17	2	0	1
D	17	0	2	1
E	12	0	4	4
F	17	0	2	1
G	16	2	2	0
H	16	0	2	2
I	18	0	1	1
J	17	0	2	1
K	14	0	2	4
L	13	2	3	2
<b>Total</b>	<b>185</b>	<b>6</b>	<b>22</b>	<b>27</b>

- 3.6 Of the 240 files examined, 185 (77%) had been subject to a pre-charge decision (PCD). A further 28 (12%) had been reviewed at a later stage in the CPS office or at the first hearing at court. Twenty seven (11%) of the files had no evidence of an initial review; the CPS requires that a review must be done in all cases. Overall this audit found that an initial review had taken place in 89% of cases.
- 3.7 Of the 27 cases that did not have an initial review the majority were minor motoring offences, although two involved domestic violence assaults and one was a charge of supplying controlled drugs. In only one Area were all the files in the sample found to have an initial review. In the worst performing Area in this respect, six out of 20 cases showed no evidence of an initial review on the paper file or on CMS. In those files with no initial review it was not often apparent why none had taken place. Two cases which did not have an initial review had very early summary reviews as the full file was available at this stage.
- 3.8 Most of the initial reviews had been recorded in some way on CMS, in that in some the charging decision recorded on the MG3 form (used by the police and CPS to record charging decisions) had either been saved as an electronic document or its contents had been copied into the initial review section in CMS. Whilst the content of each of the aspects of the initial review template varied, most contained some comments as to the views of the lawyer. In a minority the only entry in some sections was “yes” or “no”. Some of the most thorough initial reviews seen were ones completed by CPS Direct which provides out-of-hours cover for charging advice.



- 3.9 There was inconsistent use of the MG3 and MG3A forms which should be used to record advice to the police in cases in which a defendant has yet to be charged. Use of the incorrect form and the practice of storing multiple forms with follow-up advice in different parts of the file made it difficult to ascertain how the case had developed.
- 3.10 There was variation in the practice of recording on the MG3 the charges that had been agreed. In some the lawyer had clearly listed the charges along with the relevant Act and section for the benefit of the police. In others abbreviations had been used or the specific charge required was less clear and this had resulted in the wrong charge being laid. The lawyer giving face-to-face advice may have discussed the specific charges verbally with the police officer requesting the decision, but had not recorded this in written advice for the officer to work from. Framing the correct charge(s) is an integral part of the CPS responsibility in PCD cases.

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### RECOMMENDATION

The CPS should ensure that the reviews carried out by the lawyer pre-charge should clearly state the substantive offence to be charged, together with the further information necessary to make clear the form of the charge where it may be preferred in a number of different terms (particularly when an enactment creating an offence which may be committed in a number of different ways). This will ensure that the police custody sergeant is in no doubt about the charge advised.

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- 3.11 The CMS instructions require that a review should be recorded in all cases on a CMS template and on the CPS file, and should be in sufficient detail to provide a clear understanding of the analysis carried out and the decision taken. At present the CPS measures CMS usage performance by counting the number of PCD reviews carried out on it and it is considered good performance if 90% of cases are recorded on CMS. Sometimes reviews are recorded on the paper file if the review is undertaken at court where there is not always access to a CMS computer terminal. However there is no measurement of the quality of the review record.

#### *Use of the review template (initial review)*

- 3.12 There are compulsory sections of the review template on CMS that must be completed with consideration of issues arising from the European Convention on Human Rights (ECHR) and the prosecutor's recommendation as to whether the case is suitable to be heard at the magistrates' court or the Crown Court (mode of trial). Some printed file covers contain sections for consideration of these issues.
- 3.13 There was a comment in the ECHR section of the review in 200 of the 213 cases which had an initial review. In half of the Areas in the sample ECHR had a remark in all cases.
- 3.14 Mode of trial was considered in the majority of cases in which it was appropriate. Of the 127 cases with either way charges, a decision as to whether the case was suitable to be tried at the magistrates or the Crown Court was endorsed in the review in 120. It was apparent that where reviews were not completed on CMS, consideration of ECHR and mode of trial were more likely to be missing.

- 3.15 Consideration of witness needs is not a compulsory field in the initial review on CMS. In some cases there are unlikely to be any real problems and in others, such as some motoring offences, the only witnesses are likely to be police officers. However it is important for witnesses' needs to be considered at an early stage to ensure, for example, that those with special needs are treated appropriately, to ascertain whether a translator may be required, or whether the victim is eligible for special measures should the case come to trial.
- 3.16 It is not clear why witness needs is not a specific field within CMS. It is likely to be relevant in a significant proportion of cases – more so than matters such as ECHR implications for which there is a specific field.

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### RECOMMENDATION

Consideration should be given to creating a compulsory field for recording consideration of witness needs on the MG3 and review templates on the case management system.

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#### *Witness needs*

- 3.17 Where witness needs had been considered at initial review, the entries ranged from quite detailed analysis of what would have to be considered if the case were to go to trial, to very brief comments stating that witness needs were not apparent at that stage. In the 168 cases in which witnesses other than police, expert or professional witnesses were involved, some comment as to their needs was recorded in 62 (37%). Given that 179 cases in the sample had identified victims (some of whom would be classified as vulnerable and intimidated), this means that some thought had been given to potential witness needs in only 35% of cases. In case types where consideration should be given to the victim being classified as vulnerable or intimidated, such as domestic violence, the initial review did not always address this issue.
- 3.18 Some Areas performed better than others in considering witness needs. In the four better performing ones witness considerations had been noted in more than 50% of relevant cases. However there were several Areas in which the performance relating to this aspect was particularly poor. In the worst performing one 90% of relevant cases had no comment about witness needs in the initial review. One exception to this was found in those cases subject to PCD by CPS Direct. In these witness needs were always mentioned as part of the review, often with instructions to the police or the Area about further work or enquiries that may be relevant.
- 3.19 In one Area only four out of 15 cases in which witness needs were relevant had any evidence that these been considered. Six of the 15 involved potentially vulnerable or intimidated victims including offences of domestic violence and one of child abuse. In another Area where only two of the 16 relevant cases had any mention of witness concerns, three involved elderly people and two had witnesses with mental health issues. These cases all had issues concerning the witnesses attendance at court later on, which might have been avoided if consideration had been given to their needs at an early stage.

*Further instructions*

3.20 In certain circumstances it may be relevant to include in the review a note to the prosecutor about the case or instructions regarding action to be taken at court. Such instructions were included in 48 of the cases seen. Again, this was most commonly seen in review endorsements made by CPS Direct lawyers. Instructions often related to acceptable bail conditions and, in a small number, acceptable pleas were noted.

*Meeting the standard (initial review)*

3.21 The quality of initial review was also analysed in regards to the endorsement being in the right place, legible, signed and dated. The standard was met in 198 (93%) cases with an initial review. This level of quality was achieved as the majority had either been completed on the MG3 or CMS. Those typed reviews which required a name and date removed problems in complying with the requirement to sign and date the review and it also meant there were no issues with legibility.

3.22 Difficulties locating the review arose if a printed copy from CMS was not attached to the paper file or not placed where it was readily retrievable. In some files the only version of the review was a copy of the MG3 attached to the police file, which was generally easy to locate. It was also very easy to find where it was attached inside the back cover of the file.

3.23 Initial reviews that had been handwritten on the file revealed the most problems in relation to the quality. Legibility was often an issue and often the reviews were not signed and dated.

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**RECOMMENDATION**

Guidance should be produced to ensure that Areas attach copies of initial reviews to files, and specifies an approved location to do this.

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**Summary trial review**

*Number of files with a summary trial review*

Area	Yes	No	NA
A	13	2	5
B	7	8	5
C	12	3	5
D	9	6	5
E	14	1	5
F	13	2	5
G	15	0	5
H	10	5	5

I	5	8	7
J	10	5	5
K	9	6	5
L	11	2	7
<b>Total</b>	<b>128</b>	<b>48</b>	<b>64</b>

*Recording the review (summary trial)*

- 3.24 Summary trial review is required in a contested case when a full file of evidence is received from the police. An initial review of the evidence available prior to or shortly after charge should already have taken place, but further evidence is often submitted when it becomes clear that the case will be contested. In some cases the full file of evidence is available at the first review and the summary review may only require confirmation that there is no further information to add to the initial one.
- 3.25 There were 48 summary trial files in the sample (27%) which had not been the subject of a review when the full file of evidence had been received. Both the paper file and CMS were checked for evidence of a review at this stage and it was not found on either. There was a wide range of performance in respect of summary trial reviews. In one Area every file had one, while in another 62% of files had not received a review at this stage. In half of the Areas over 30% of files did not have a summary trial review on the file or on CMS. Cases in which there was no evidence of a summary trial review included serious offences of domestic violence assault, fraud, attempted burglary and theft.
- 3.26 In seven summary trial files in which there was no evidence of a full file review, there was also no evidence that an initial review had been carried out.
- 3.27 Late review or absence of a review led to variety of problems. Examples included witnesses being warned to attend court late; cases being discontinued at a late stage; and appropriate applications made either at the last minute or having to be abandoned as they were out of time. In some cases special measures applications had to be made on the day of the trial and in others applications to admit evidence of bad character had to be abandoned as it was too late to prepare or apply for them. In one case which had not had a full file or initial review the lawyer who was to prosecute the case had to discontinue it three days before the trial as it was decided that there was not enough evidence to prove the case. By this time the case had been in the court system for over a year and the witnesses had to be de-warned at short notice.
- 3.28 Whilst reviews undertaken late or not at all may result from late delivery of the full file from the police this was not always the case; in a number of instances the problem was internal to the CPS. A review had been prompted at a relatively late stage by case progression processes, for example where a check had revealed that a summary trial review had not taken place. In one Area several examples of late review were found where there were also problems with delays in listing cases for trial and late provision of full files. One file had a summary review five months after the full file was marked as received and after the pre-trial review at court. On another file the review was not done until after the case was adjourned on the day it was listed for trial.

*Use of template (summary trial)*

- 3.29 In a significant number of cases the summary trial review recorded on CMS was a copy of the PCD/initial review. Some had additional comments but often it was an exact copy of the initial review containing comments as to the gaps in the evidence revealed at that stage and further work that needed to be carried out to complete the case. The key requirement is that there should have been a full review - that a prosecutor should have applied their mind to the evidence at the summary trial stage. It is perfectly proper to adopt the earlier review provided the note makes it clear that there has been suitable further consideration and identifies any further work required.
- 3.30 In one case the initial review endorsement mentioned that CCTV evidence had not been viewed. This review was copied into the full file review section on CMS. The case was later dropped at trial due to failings in the CCTV evidence. If it is common practice to copy the initial review into the summary review, assumptions may be made that any outstanding work has been done. As seen in this file, this is not always the case.
- 3.31 CPS Area performance is measured against a target of 90% of summary trial cases having a review recorded on CMS. It is clearly right for the CPS to focus attention on achieving proper use of the new technology. However we do have concerns that the practice of copying the initial review may reflect a wish to 'tick the box' rather than a real review of the evidence at that stage in the case. Such an action lacks the added value that would be expected in a case that is to be tried before a magistrates' court.

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**RECOMMENDATION**

Where an initial review is adopted and entered into the summary trial review section on the case management system, decisions made or consideration given at this stage should be properly evidenced so that it is clear that there has been an effective summary trial review.

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- 3.32 The majority of full file reviews had been recorded on CMS and usually a copy would be printed and placed on the paper file. This meant that the review was legible, covered a number of essential aspects (as prompted by the CMS template) and it was clear who had carried out the review on what date. This practice allows summary trial reviews to meet the quality standards set out in the CPS guidance in terms of legibility, being signed and dated and containing the correct elements.
- 3.33 Most of the cases where the review was recorded on CMS had a printed copy placed on the file. In some Areas it was attached to a specific part of the file cover which ensured that it was quick and easy to locate, which is particularly important if a prosecutor in court needs to refer to it. However in other Areas it was not kept in a specific place and in one it tended to be stored in the correspondence folder, which does not seem appropriate and could make it difficult to locate quickly, particularly if there was a large amount of correspondence on the file.

### **Summary trial preparation**

- 3.34 Summary trial review tended to fall into two distinct parts. Review of the evidence against the Code for Crown Prosecutors and case handling and preparation issues, including which witnesses to warn for court, which statements to serve on the defence, what to serve as unused evidence and applications to be prepared for special measures (for vulnerable/intimidated witnesses) or bad character. It appeared in the majority of files that both parts were done at the same time.
- 3.35 Most reviews were recorded on CMS which, whilst it encourages a detailed review of the evidence, does not encourage lawyers to record decisions regarding actions to be taken. Some Areas had adopted the practice of using a template sheet which was filled in by hand with varying degrees of completeness and legibility. In others witnesses to be called may be noted as part of a court endorsement and the other actions were recorded elsewhere on the file.

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### **GOOD PRACTICE**

In one Area there were a few examples of the lawyer recording decisions/instructions regarding warning witnesses, serving statements and service of unused material as part of the summary trial review on the case management system (CMS), which meant that all relevant decisions and instructions for actions were in one place and there was a record not only on the paper file but also on CMS.

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- 3.36 In eight of the 12 Areas some type of pro-forma instruction sheet was used to record decisions regarding witness warning and service of evidence on the defence. In another lawyers consistently used a specific part of the file cover to note decisions and instructions to administrative staff. In a further two there did not appear to be any kind of standard form in use for this purpose and decisions were recorded somewhere on the file cover, or on pieces of paper stored somewhere among the file papers. Even where there did appear to be some form of standard practice, it was not consistently applied.
- 3.37 The practice in some Areas was for administrative staff to tick, date and initial the instruction to show that the work had been carried out. This made it easy to establish what action had been taken. Where this was not done it was only by locating the letters serving evidence on the defence, the witness warning form and letter serving unused material, that was it possible to determine that appropriate action had been taken. These documents were not always in a designated place on the file, so that the trial prosecutor would find it difficult to ascertain whether all appropriate action had been taken.

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### **GOOD PRACTICE**

Action taken by administrative staff to warn witnesses, serve witness statements and unused material in the case was evidenced by the lawyer's instructions being ticked, initialled and dated.

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- 3.38 Some files contained folders for unused evidence and some of these had a disclosure record sheet on the front. Few were completed with details of when evidence was served, some contained information not relevant to the service of unused material and others had nothing written on them at all, though it was obvious some unused material had been served.

*Witness needs*

- 3.39 It was not always clear from files if witness needs had been considered, even by the stage of summary trial review. If the file contained notification from the Witness Care Unit of concerns about witnesses, it was not always obvious what action had been taken by the CPS. One Area had several examples of witness needs not being effectively dealt with:

- In one case there were several memos from the Witness Care Unit informing the CPS that the witnesses did not want to come to court. However there was nothing on the file to indicate that these had been considered or any action taken.
- In a further two files in the same Area witness issues did not appear to have been considered at an early stage, which resulted in late applications for special measures.
- In another case there was nothing noted on the file to indicate that the need to apply for special measures had been considered for a particularly vulnerable victim.

All these cases had been dropped at court and similar examples were seen in a small number of cases in several other Areas.

**Instructions for trial lawyers**

- 3.40 In four Areas some summary trial reviews contained instructions for the prosecutor at court. In a small number of cases this gave guidance as to whether any other pleas might be acceptable. In other cases, the notes only informed the trial advocate of the lateness of various applications such as special measures or that certain applications had not been made as it was too late to do so.

**Meeting the CPS standard (summary trial review)**

- 3.41 Of the 127 cases in which summary trial review had been done only 14 (11%) did not meet the standard, in that the review was illegible, not signed or dated or was not in the right place (on CMS but not on the paper file) or was inaccurate. In a small number of files it was found that the summary review had been done after the case had been into court for a trial and adjourned to another date. As such these cases did not meet the quality standard as they had not been carried out at the right time.

**Committal review**

*Recording the review*

- 3.42 For the purposes of this report the review of the full file of evidence in either way offences to be committed for trial at the Crown Court, or indictable only cases sent to the Crown Court under section 51 of the Crime and Disorder Act 1998, will both be referred to as the committal review.
- 3.43 This may be the first time that the full file of evidence has been reviewed by the lawyer, although at the PCD stage the CPS should have been aware of issues likely to arise and in some cases most of the evidence is available at this early stage.

- 3.44 CPS lawyers are expected to complete this review on the CMS template to encourage consideration of specific issues, such as the evidential and public interest tests set out in the Code for Crown Prosecutors, and there is a special section on CMS for analysis and evidential issues to be noted. Only the paper file is accessible in court and it is required that the review is printed out and stored on the file in a recognised place to comply with the CPS endorsement standard.
- 3.45 Five Crown Court files were examined in each of the 12 Areas audited; 45 of the 60 relevant cases seen (75%) had committal reviews and 15 (25%) did not.

*Number of files with a committal review*

<b>Area</b>	<b>Yes</b>	<b>No</b>
A	4	1
B	3	2
C	5	0
D	4	1
E	3	2
F	5	0
G	4	1
H	3	2
I	3	2
J	3	2
K	5	0
L	3	2
<b>Total</b>	<b>45</b>	<b>15</b>

- 3.46 Three of the 12 had committal reviews on all five files seen. In most Areas one or two of the five files examined had no committal review on the file or CMS. There were examples of serious offences of sexual assault, possession of indecent photographs, drug supply, robbery and grievous bodily harm where no committal review was recorded. Only one file with no committal review also had no initial review. This case was a drug supply matter that appeared to be part of a larger operation containing a number of files where the same counsel had perhaps been instructed to prosecute all related matters. The brief contained little information and counsel sent two advices asking for basic evidence to be obtained that should have been considered by an earlier review.



## GOOD PRACTICE

Good practice was seen in a unit in one Area where the Unit Business Manager used a white form to remind lawyers that committal reviews and committal preparation needed to be done. A red reminder form was used when the review became more urgent. Letters to the police to chase late full files were also sent on this unit. This system had not been adopted Area-wide.

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- 3.47 All committal reviews seen were completed on CMS and were therefore legible, signed and dated, however of the 45 seen 14 were not printed out and stored on the paper file. Reviews were stored in different parts of the files but there was general consistency within individual Areas. Those attached to the front or the back of the file could be referred to more easily than those stored amongst large correspondence folders. As the considerations of the lawyer at committal review were not always reiterated in the brief, it would be preferable that the review could be located quickly on the file to determine, for example, if acceptable pleas had been considered.
- 3.48 Performance in relation to full file reviews carried out is ascertained from the number completed with over 100 characters in the CMS template. This is to encourage further consideration of the case at this stage and the recording of reviews on the electronic file. Despite this four committal reviews seen had very brief entries with "yes" entered beneath the template headings and would not register as a review for performance data purposes, or explain the lawyer's analysis and reasoning. Three of these were from the five files seen in one Area.
- 3.49 Of the 45 committal reviews seen, six were duplicates of the initial review with no further consideration noted. There were others that duplicated the initial review, but further consideration or confirmation that the contents were still relevant had been added. In these cases most evidence may have been available at the initial review stage, but confirmation that further consideration was given would seem appropriate.

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## RECOMMENDATION

Where an earlier (initial) review is adopted and entered into the committal review section of the case management system, it should be updated as necessary so that decisions made or consideration given at this stage are properly evidenced and it is clear that there has been an effective committal review.

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### **Committal preparation**

- 3.50 At the committal review it is usual practice for the lawyer to consider the appropriate charges for the indictment and which statements and exhibits should be included in the evidence served on all parties prior to committal or under section 51, Crime and Disorder Act 1998. The unused material schedules are usually reviewed at this time and letters are prepared to provide initial disclosure to the defence. Caseworkers or typists will then prepare the appropriate letters and bundles of evidence for service.

- 3.51 In most of the cases seen it was not possible to find a record of these decisions or how preparation instructions had been communicated. The decisions taken regarding the service of evidence or unused material are legal matters that form part of the lawyers' review and some form of accountability should be evidenced. Some pro-forma preparation forms were seen to be used in some Areas and it may be that those not seen were discarded once used.

*Content of the indictment*

- 3.52 In 24 (53%) out of the 45 committal reviews there was some record of consideration of the charges to be included in the indictment by the lawyer. This was usually confirmation of the charges advised at the pre-charge stage being correct or, in a few cases, some amendments were noted as necessary. Some indictments had been drafted on CMS by the reviewing lawyer but this was not always the case and where there was no further comment on the charges in the review, it seemed to be accepted that the counts in the indictment would follow the pre-charge advice.

*Preparation of committal evidence*

- 3.53 In five of the 45 some issues around the service of witness statements were mentioned. In most files seen it was not apparent how the committal papers were prepared, but in two Areas pro-forma documents were completed to instruct administrators or typists in the preparation of the committal or section 51 papers, the indictment and sometimes the unused material letters. Where these forms were used it was possible to follow an audit trail in the preparation of the case for trial.

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**GOOD PRACTICE**

Good practice was seen in the use of pro-forma documents to instruct caseworkers and typists in actions required for the preparation of bundles of evidence for service prior to committal and under section 51, Crime and Disorder Act 1998.

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*Witness needs*

- 3.54 Witness needs were not often given further consideration in the committal review, even in cases of domestic violence or those with young or elderly vulnerable victims. If applications for special measures were made consideration was not often noted on the file, although applications could be seen in the correspondences folders.

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**RECOMMENDATION**

In the absence of a completed Crown Court case preparation package, the Area should ensure that there is clear evidence on the file as regards the decisions made in relation to the evidence to be included in the committal/section 51 papers, the counts on the indictment and any arrangements for witness care, and a record of who made those decisions.

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*Unused material*

- 3.55 Consideration of unused material was usually dealt with separately from the review, but at the same time, to ensure timely initial disclosure was carried out. Unused material was only referred to in five out of the 45 committal reviews and these related to witness statements that were to be considered for service as unused material due to the witness withdrawing or supporting the defence case.
- 3.56 Preparation of unused material disclosure letters in Crown Court cases was usually done by the caseworkers or typists after the lawyer had reviewed and endorsed the unused material schedule provided by the police. In some Areas lawyers noted on the file which of the unused pro-forma letters should be sent and the items to be copied and enclosed for the defence. In others it was not possible to see how the instructions were given and in one case sensitive unused material had been disclosed to the defence. It was not possible to see from the file why this had happened - it may have been due to poor instructions or inadequate training of staff.

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**RECOMMENDATION**

The consideration given to unused material and instructions for its handling should be recorded.

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**Instructing trial counsel**

- 3.57 The brief templates on CMS, used to prepare instructions to counsel to prosecute trials, consist of a few pages of standard paragraphs and refer counsel to guidance issued to all barristers instructed to appear at court to prosecute for the CPS. There are sections within the pro-forma for information about the individual case to be entered. There is no specific requirement as to the information to be put into the brief but it would be good practice that counsel should be informed of legal issues considered, any further evidence outstanding and if any pleas would be acceptable or not. This would prevent counsel providing advice on issues already considered and unnecessary adjournments to take instructions. However the audit found that practice differed nationally and within Areas.

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**GOOD PRACTICE**

An example of good practice was seen in one brief where the lawyer had given counsel detailed instructions about the issues in the case, possible pleas that would be acceptable and mitigation that the prosecution would not refute. This appeared to be information that the lawyer had gleaned from dealing with a number of similar cases that were prevalent in this Area and it gave a clear instruction to counsel on what he could agree at court.

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- 3.58 Legal issues were mentioned in 43 (72%) of the 60 briefs seen and these usually had some note of the lawyer's consideration from the review, but these were often sparse or very light in touch. The briefs did not contain information on issues that may have arisen outside the review process. In some other cases counsel was referred to a copy of the lawyer's review or the police summary that were listed as enclosures. In general, few briefs had any detailed information and were little more than a list of enclosures. This was sometimes, but not always, a reflection of the limited information seen in the review template.
- 3.59 The acceptability or not of pleas was noted in only 14 (23%) of the 60 briefs. Although alternative pleas may not be relevant or acceptable in all cases, some confirmation that no alternatives should be considered could prevent unnecessary adjournments, at public expense, for counsel to seek instructions.
- 3.60 In some cases where there was a reference to possible pleas, the terms of instructions were unhelpful. One case noted that "counsel may care to carefully consider any plea to an appropriate public order offence should it be offered" which provided no effective instruction or steer. A number of other briefs simply noted that any offer of plea should be referred to the reviewing lawyer. In two cases seen notes about alternative pleas made in the review were not reiterated in the brief.
- 3.61 Analysis of the files by reference to Areas showed that:
- In one Area acceptable pleas were only mentioned in one out of the five briefs. In three of the remaining four cases lesser pleas were eventually accepted and, on one of these, the CPS and police had corresponded and agreed that a plea was acceptable to another charge, but counsel had not been informed.
  - There were three Areas in which no briefs seen made any mention of acceptable pleas, although it was clearly relevant. Some briefs had no instructions other than the date of committal, the charge and one line about the facts of the case.
  - In one Area, apart from a short paragraph in two briefs about the facts of the case, there was only mention of issues considered in one and none gave any instructions on the acceptability of pleas. Two of these files had reviews which canvassed possible acceptable lesser pleas but these were not reflected in the brief.

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## RECOMMENDATION

Counsel's instructions should inform them of the legal issues considered, any further evidence or issues that are outstanding, and if any pleas would be acceptable or not.

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### **Ad hoc review**

- 3.62 A few ad hoc reviews were seen on cases where issues had arisen as they progressed to trial. These were infrequently used and, as noted in Chapter 5, actions following issues around witness problems or disclosure were not often noted on the file or in further reviews on CMS. Ad hoc reviews were used in some instances, but not all, where the case was to be discontinued.

## 4 ENDORSEMENTS MADE AT COURT HEARINGS

### Overview

- 4.1 Whilst the CPS guidance accepts that file endorsements made in court are often completed under pressure, it requires that the endorsement fully and accurately records the decisions of the court. It specifies that all actions required and action dates set must be noted. The use of abbreviations is encouraged and a list of standard abbreviations is provided. The guidance specifies the information that must be recorded when a case is adjourned and when it is finalised.
- 4.2 In 11% of magistrates' courts' cases and 18% of Crown Court cases at least one court hearing was not recorded. In 36% of both magistrates and Crown Court cases some file endorsements contained no information about the bail position and in cases where it had been recorded, details were often inadequate. The mode of trial decision had been recorded in 76% of cases in which it was relevant. In Crown Court cases actions required by the judge were not always fully noted on the file. Generally, action to be taken following court hearings was highlighted on the files in 63% of magistrates' courts' cases and 35% of those in the Crown Court. The court endorsements failed to meet the standard in 20% of cases in terms of legibility, being in the right place on the file and signed and dated. Crown Court and magistrates' courts' file covers were not used in a consistent way and the design may have contributed to the shortcomings found.

### Magistrates' courts

- 4.3 The CPS guidance is clear that there should be a full record of all court hearings on every file. Covers provide a specific space although that may not always be appropriate for all endorsements, for example where the court has given directions requiring certain actions to be taken. The audit found 11% (26 out of 239) magistrates' courts' files did not have a record of each court appearance (in one Crown Court file there was no magistrates' courts' cover inside). In the two worst performing Areas the endorsement for at least one court hearing was missing in five and six out of 20 cases respectively.
- 4.4 Information from court hearings is often vital to progress the case and enable important monitoring to be carried out. Those which were not recorded included first appearances, pre-trial reviews, one concerned with abuse of process and committal hearings. In one file seen the first two court appearances had not been endorsed on it. This missing information was particularly important since the case involved a defendant who had been remanded in custody and, as a result of the missing information, the custody time limit expiry date had been incorrectly calculated. In an identical situation in another Area checks carried out by those monitoring the custody time limits had picked up on the earlier hearing and had correctly calculated the expiry date.

### *Instructions for those at court*

- 4.5 Some Areas appeared to have a practice of noting instructions on the file for the prosecutor who would be in court. In one, 13 out of 16 magistrates' courts' files had instructions to the prosecutor in court with information regarding such things as whether to oppose bail, the acceptability of pleas, or charges that were to be dropped at court. These had been recorded in the part of the file designated for court hearing endorsements and so would have been readily accessible to the prosecutor in court. Other Areas made less use of this practice and it was not clear how the advocate would have been informed about issues that were relevant to the next court hearing.

In one Area the summary trial reviews in two cases had indicated that the CPS should discontinue them, but there was no instruction on the file for action to be taken in court or to discontinue the case prior to the trial hearing.

*Mode of trial*

- 4.6 The mode of trial decision made at court was noted on the file in 83 of the 109 cases (76%) in which it was relevant. Methods of recording varied. In some Areas use was made of a printed section on the file cover which referred to mode of trial. In others it was recorded as part of the court endorsement. Two Areas had noted the decision in all relevant cases, but in the worst performing one, six out of 11 cases did not show the mode of trial decision. In one of the poorly performing Areas the file cover had a printed section available where the mode of trial decision could easily be recorded, but it was rarely used.

*Bail issues*

- 4.7 There was a wide variation of performance in recording the bail position at each hearing. Overall, 75 out of 206 (36%) files had no note of the bail status of each defendant at each hearing. There was one Area in which the bail status had been noted at each hearing, however, four Areas had more than 50% of files which were not properly endorsed and in one, only three out of 17 files had the bail status recorded at each hearing.
- 4.8 Where bail details were recorded most of the endorsements were satisfactory. However there were several examples of endorsements at the first court appearance which recorded “remanded on conditional bail as before”. This might have been a reference to the terms of bail applicable when the defendant was charged at the police station. The result would be that a prosecutor or administrator needing to know the bail conditions would have to search the file for details. In one case which involved a domestic violence assault and in which the police had noted that they were opposed to the defendant being given bail as he had previous convictions for violence on the same victim, there was no clear endorsement which recorded if the prosecutor opposed bail, what the defence had argued and why the defendant had been granted bail. It also failed to note whether bail was conditional or unconditional and this was only established by locating a copy of the court form at the back of the file.

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**GOOD PRACTICE**

In one Area details of a judge in chambers bail application had been noted on the magistrates’ court file. This gives a full, chronological record of issues in relation to bail on the file cover, whereas in many cases the result of the hearing would be found inside the file.

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**Noting action required after court hearings**

- 4.9 In order to progress cases effectively, it is vital that prosecutors record clearly and highlight any actions that are necessary before the next court hearing. The guidance states than any post-court actions should be clearly endorsed on the file and emphasised in some way, either by using printed columns available on the file cover designed to capture points for action, or by heading the information “action required”. This should ensure that the endorsement does not get lost among other details noted and therefore ensure that appropriate action is taken.

- 4.10 Of the 229 files seen which required some action to be taken, 37 (16%) did not record it in such a way as to make it clear that action was needed. This did not mean that in these cases the action was not noted by administrative staff and the necessary work done, but that was the risk. There were several cases in which a full file was requested by administrative staff for summary trial or committal which, had it not been, would have caused a substantial delay in case progress.
- 4.11 Whilst there were examples of endorsements requiring action that were not clearly highlighted but the work was nevertheless done, there were also examples of clearly labelled post-court actions where it was obvious that no action had been taken.

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GOOD PRACTICE

In a number of Areas where post-court action had been requested in the court endorsement, administrative staff consistently initialled and dated the instruction to indicate that action had been taken. This would allow the prosecutor next in court with the case to see that action had been taken.

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GOOD PRACTICE

In one Area in cases that had been adjourned for trial in the magistrates or Crown Court, administrators would note after the court endorsement that a full file had been requested and would also note an action date for delivery of the file to CPS.

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- 4.12 In some Areas a shared file system meant that the CPS prosecutor could communicate directly with the police regarding work to be carried out by noting actions in the court endorsements on the file. In such circumstances it is essential that the prosecutor records clearly any action to be taken by the police. In two cases seen the prosecutor had not requested the preparation of a full file for trial and, consequently, the work was not done.
- 4.13 The guidance recommends that in cases which have been adjourned and no action is required of the CPS before the next hearing, the prosecutor endorses the file to that effect. This streamlines after-court work, allowing the administrative staff to update the case quickly and file it away as it is clear that there is no work to be done on the file at that point. This endorsement was seen on some files, but the practice did not appear to be consistent.
- 4.14 Finalisation endorsements should be recorded on the front of the file showing the plea, result and sentence for each charge listed. Further details about the final hearing are also required but these had not always been recorded (see paragraph 7.5).

### **Meeting the CPS standard**

- 4.15 In order to comply with the quality standards the CPS requires that file endorsements are in the right place on the file, signed and dated, accurate and legible. The audit found that 20% of cases did not comply with the standard. In two Areas eight out of 20 files (40%) did not meet it. Some Areas had adopted the practice of recording endorsements made out of court amongst endorsements made in court. Though this practice gives a good chronology of events in the case, it made it difficult at times to follow through what had happened at court as each type of endorsement was not distinguished from the other in any way. However in one such case a lawyer had headed an out of court endorsement as “file note” which made it immediately obvious that it did not refer to a court hearing. It is suggested that this is a sensible approach and should be adopted as good practice.
- 4.16 Illegible endorsements caused problems in some cases. Any administrator updating the case would need to contact the prosecutor concerned or the court for details of what took place and whether there was any action required before the next hearing. The prosecutor would not necessarily be a member of CPS staff. Missing or inaccurate vital information such as the next court date was evident in small number of cases.
- 4.17 Problems also arose in the way Areas continued to record court hearings on the file once the cover was full. In some photocopied template sheets were used and attached to the file, often in a particular place. Others did not appear to have a formal system, which led to pieces of paper being used to record details of court hearings. These may or may not be attached to the file and sometimes were found among the case papers. There were also files where the court endorsements were not easy to follow as some were on pieces of paper not attached to the file in the correct order and others were not on the paper continuation sheet but recorded in an empty, but inappropriate, space on the file cover, therefore losing the chronological integrity.
- 4.18 Attempts by lawyers to squeeze the court endorsement into the remaining space on the file cover or at the bottom of continuation sheets often rendered the note illegible. The use of blank pieces of paper to record the court hearings often meant that not all the relevant information was captured. Columns printed on the file cover require the prosecutor in court to record the court date, details of the hearing, next court date and their initials, or full name if they are an agent working for the CPS. Where template continuation sheets were not used the initials of the advocate recording the endorsement were often missing, as was the date of the next court hearing in a small number of cases.

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### **RECOMMENDATION**

Areas should ensure clear and structured arrangements for recording the outcome of hearings on the file, including the development of a continuation sheet to be attached securely to the file in the right place.

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### **Crown Court**

- 4.19 A note had been made of all hearings in the Crown Court on 49 (82%) out of the 60 files seen. As can be seen in the table below, three Areas had all hearing details entered and most others had at least one problem file.



*Crown Court files in which all hearings had been endorsed*

<b>Area</b>	<b>Yes</b>	<b>No</b>
A	4	1
B	3	2
C	5	0
D	4	1
E	5	0
F	4	1
G	3	2
H	4	1
I	4	1
J	4	1
K	4	1
L	5	0
<b>Total</b>	<b>49</b>	<b>11</b>

4.20 Most Areas had at least one file with a Crown Court hearing endorsement not included. Missing endorsements were usually of unscheduled hearings, such as mention hearings or bail applications.

4.21 Examples of missing endorsements included:

- Applications to vary bail were not recorded on one file.
- One case had no record of a special measures application.
- One case had no endorsement of the preliminary hearing or of an application to join two cases on one indictment for trial.
- Two cases had no endorsement of the sentence hearing.

4.22 Some files had endorsements acknowledging that no one knew what had happened at the previous hearing, or stating “case not marked up”, and there was no evidence that the result of these hearings had been checked with the court. Some hearing details were not endorsed on the file but were updated on CMS.

4.23 Apart from making the chronology of the case hard to follow, failure to note a hearing could lead to other problems.

- 4.24 Where cases had been listed for mention it was not always possible to determine the purpose of the hearing or if it had been requested by the CPS or the defence. Cases are most often listed for mention to apply to change the trial date or to ask the judge to rule that some action should be carried out. Without a full note of these hearings the necessary actions would not be dealt with and witnesses would not be told of changes to the date of the trial.

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## RECOMMENDATION

Court endorsements should record the type of hearing or reason for the listing and who had asked for the case to be listed.

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### *Endorsements for financial accounting purposes*

- 4.25 Delays may occur in ensuring that counsel is paid for each appearance made in the case if the file is not fully endorsed with a record of each hearing. The payment of fees to the barrister instructed is usually made at the end of the case and a record of each hearing and its type is needed to ensure that correct and timely payments are made. There is a fee folder for this purpose but the fee log on this had not always been fully completed in the few that were seen.

### *Bail issues*

- 4.26 If the outcomes of bail applications are not recorded this can lead to problems. If the CPS is not aware of a condition imposed (such as a surety) and this condition cannot be met, the defendant may remain in custody without the prosecution being aware for custody time limit monitoring purposes.
- 4.27 The CPS has a national standard that requires the details of bail or custody status to be noted or confirmed at each hearing. This is to ensure the length of time that a defendant is remanded in custody is monitored correctly. Endorsements relating to bail or custody were missing from hearings on 22 (37%) out of the 60 files seen. In only one Area were details of bail noted on all the files at each hearing and four Areas had details missing on three out of their five files. Issues arising relating to custody time limits are commented upon more fully in Chapter 6.
- 4.28 Many of the endorsements noted that bail was “as before” or used standard CPS abbreviations, but some errors in recording were seen on some files. Examples included:
- In two cases the status was altered to conditional rather than unconditional bail at different hearings, which appeared to be an error of endorsement rather than a change in bail status.
  - One file had two defendants where the bail position/conditions for each was not clarified.
  - In a number of problematic endorsements the caseworker had simply not confirmed the bail or custody status for each defendant at each hearing.

*Instructions for those at court*

- 4.29 Files were examined for evidence of instructions noted on them for counsel or the caseworker at court. It was not always possible to see if actions were needed, but ten of the 60 files seen did have some note and these included instructions for counsel to offer no evidence and one concerning bail. On five files actions seen to be required from the correspondence folder were not evident in any marking on the file prior to the relevant hearing. It was often not possible to see how counsel was instructed to deal with cases listed for mention or applications.

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GOOD PRACTICE

Good practice was seen on some files in the use of large printed notes from caseworkers to colleagues at court asking for items to be handed out in court, and these were sometimes ticked and initialled as done.

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**RECOMMENDATION**

Instructions should be prepared for counsel or caseworkers prior to a court hearing where actions are required and these should be evident on the file.

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**Noting action required after court hearings**

- 4.30 Failure to make a note of orders made by judges could result in unnecessary adjournments and judicial criticism. It also causes inefficiency and extra work for staff in finding out what happened.
- 4.31 The guidance requires that post-court actions are clearly highlighted on the file to bring it to the urgent attention of those who need to complete the work ordered by the judge or update the CMS system. Out of 52 relevant cases that required some action following hearings 18 (35%) did not have post-court actions highlighted.
- 4.32 Nothing was seen that would have been attached to the files returning from court to draw attention to urgent work. The actions needed were noted within the body of the endorsement on the minute sheet and could be identified, but were not always highlighted.

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GOOD PRACTICE

Good practice was seen where the caseworkers had listed the actions required and in one Area these were seen to be ticked and initialled as they had been dealt with.

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- 4.33 Cases were seen where there was no endorsement made of the actions required following the plea and case management hearing (PCMH) and some files only noted that the allocated caseworker would need to obtain a copy of the PCMH form, on which they were outlined. The PCMH form is signed by the judge and is the definitive record of all the orders made at this hearing. It also includes the witness requirements for the trial. To ensure that urgent actions are dealt with in a timely manner it would seem appropriate that the PCMH form should be obtained directly after the hearing from the court and returned to the caseworker responsible along with the file. Any urgent actions required should be highlighted on the file or notified to those needing to comply with them on the day of the hearing, to ensure that the work is prioritised.
- 4.34 In two Areas actions were not noted on the files and reliance was placed completely on the copy of the PCMH form. In one of the files seen the PCMH form had been mislaid by the court and it was not possible to tell from the file how this had been resolved.

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## RECOMMENDATION

The plea and case management hearing form should be obtained directly after the court hearing to enable urgent actions required to be prioritised. Areas should have structured arrangements for highlighting if urgent action is required on files returning from court.

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### Meeting the CPS standard

- 4.35 The endorsements on 12 of the 60 files seen did not meet the CPS standard as to legibility, location, dating and signing, but in general Crown Court endorsements were of better quality than those on the magistrates' courts' files. The contributing factors to the problems were the design of the file jacket, inconsistent use of the jacket and inconsistent instructions on how to use it.
- 4.36 There was no coherent system used to record Crown Court hearings. Different Areas used different methods of recording and, although there was usually some consistency within Areas, practice sometimes varied between individual caseworkers. A combination of recording practices caused confusion.
- 4.37 Some Areas made no other note of the hearing than an entry on the court hearing log on the back of the Crown Court file cover, which is the only printed space on the file designated for endorsements. The court hearing log does not have sufficient capacity for lengthy notes and when this was full the next court endorsement was often placed on the inside envelope flap of the file cover. It was not certain where the note would then progress if there had been further hearings other than the few that could fit into this space. In one Area using this method endorsements proved difficult to locate. On one file only two endorsements fitted into this space and, where they reached the edge of the file, they had been worn away and were no longer legible.
- 4.38 Some Areas used scraps of paper that were often hard to identify. These often had no note of what the case was listed for, were sometimes not dated and did not give the name of the judge or of counsel appearing for the prosecution. One Area did not meet the standard on any Crown Court file, as all contained endorsements on sheets of paper which did not record the court date and most were not signed.

- 4.39 Records of court hearings were clearest in Areas that adopted a system using special minute sheets printed specifically with headings for court endorsement purposes. Five Areas used versions of these. In one they were called caseworker hearing reports and in another court hearing cards. The latter also used printed continuation sheets which were sometimes copied on coloured paper, making them stand out on the file.
- 4.40 Court hearing minute sheets were stored in a variety of places on the file and were often difficult and time consuming to find. If they were stored in one consistent place they could be found more easily. However some were seen dispersed amongst other loose papers in the file and not in chronological order. In Areas where they were stored amongst correspondence they were not easy to find, although if the court hearing log on the back of the file cover had also been completed, the minute sheet for that date could usually be found if the correspondence was kept in date order. The easiest minute sheets to find and follow were tagged to inside of the file cover or in a special folder or the fee folder.

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#### GOOD PRACTICE

Good practice was seen where the Area also completed brief notes of the listing in the hearing log on the back of the file or fee folder. This chronology of hearings was easy to follow and, if action was necessary, it could be clearly indicated here.

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#### RECOMMENDATION

Designated minute sheets should be used to record Crown Court hearings and they should be stored in an agreed place on the file.

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#### RECOMMENDATION

The court hearing log or fee log should be completed separately to provide a clear chronology of the case.

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- 4.41 In most Areas caseworkers made more detailed notes of the trial - often on notepads - and these appeared to be a record of witness examination and cross-examination to assist counsel.
- 4.42 Most endorsements could be read but some were less clear and where the final endorsement was noted amongst the trial notes or on rough scraps of paper, the outcome was not always apparent. A few files in one Area noted the sentence details on the front but the result was not completed for each offence. If verdict or sentence details were completed in the hearing log at the back of the file and it set out each charge and defendant, this made the task of administrators finalising the cases much easier. This is covered in more detail in Chapter 7.



## 5 ENDORSEMENTS MADE FOLLOWING WORK COMPLETED OUTSIDE COURT HEARINGS

### Overview

- 5.1 CPS guidance requires that endorsements made out of court should cover the usual landmarks in the life of the file, together with anything else of significance. It also states that if the endorsement cannot be located quickly and readily understood it fails the quality test.
- 5.2 The audit found that 84% of relevant files had issues that had been recorded on it in some way and that 78% had corresponding actions that were seen to be noted. Endorsements of actions that triggered other events recorded on the file were sometimes missing. Only 64% of the out of court endorsements met the CPS standard as it was often hard to locate the endorsement, understand the reason for the action taken, or tell by whom it was taken.

### Systems for endorsing issues arising out of court

- 5.3 The file endorsement standard requires that the pre-printed spaces on the magistrates' courts' file cover should be used to record information regarding work done out of court. This may include dealing with further evidence, correspondence or telephone calls from the defence or other agencies, witness difficulties, and the events that lead to a decision not to proceed. In most of the audited Areas no printed spaces on the magistrates' courts' files were designated to be used for out of court work and none of the Crown Court files seen had printed areas for this purpose.
- 5.4 Only one Area had a regular system for recording work done out of court but here, as with all the others audited, it was not always easy to follow the sequence of events and there were gaps in information. Copies of emails, correspondence and further evidence were loose within some files and some items were seen to be missing or not evidenced as seen or dealt with.
- 5.5 If relevant correspondence was seen that raised an issue and further correspondence was found that dealt with this, it was accepted by the audit team as being recorded on the file and noted as action taken. However information was often missing and, where it was possible to follow the events and actions done on a file, it was often time consuming. Staff relying on the file at court or for further review would not be able to quickly understand what actions had been carried out or locate relevant items.

*Number of cases where out of court work applied and it had been endorsed on CPS files*

	Yes	No	NA
Endorsements made on files about issues arising or phone calls outside court	167	31	42
Endorsements made on the files of actions following notification of issues or phone calls outside court	145	51	44
Endorsements made that met the CPS standard of legibility, signed and dated in the right place, and accurate	123	68	49

- 5.6 Performance varied between Areas but we found that 84% of relevant files had some form of record of issues arising and that in 78% of relevant files, where action was seen to be needed, there was some documentation on the file to show that this had been done. In the remaining 22% of relevant files either no action had been taken or it had not been recorded. Those files where there was no evidence that issues had arisen, or where issues arising required no further action, were marked as not applicable.

#### **Meeting the CPS standard**

- 5.7 Of the 191 cases where some actions were apparent from the file and could be assessed under the CPS endorsement standard, 123 (64%) met the standard. Again the lack of appropriate provision for recording was a contributing factor.
- 5.8 On files where there was no out of court endorsement on the cover and the correspondence was not in good order, it was difficult and time consuming to establish the course of events and it was not always clear who had been responsible for actions or decisions. Even if notes of work carried out were made, if they were stored amongst large correspondence folders it was not easy to locate them. If a query was raised in court it would have been difficult for a prosecutor or caseworker to ascertain what actions had been carried out.
- 5.9 An established process in relation to the endorsement of work done outside court, reviewing further evidence, or dealing with issues arising was seen in only two Areas.

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#### **GOOD PRACTICE**

Good practice was seen in one Area in using the front of the magistrates' courts' file for court endorsements and the inside back to detail work done outside court. In this Area the endorsements formed a written dialogue between the administrators, typists and prosecutors. Notes about what had been reviewed, problems that had arisen, the action that was required and by whom were seen. The noted action would then be initialled and dated when done, which was also good practice. Letters were even seen drafted in this space. By reading the out of court endorsements alongside those made in court, it was possible to follow the history of most cases and understand why a course of action had been taken. This would be of great benefit to those looking at the file at court or carrying out further review and would save time. It is to the credit of staff in this Area that this system was used consistently.

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#### **Magistrates' courts' files**

- 5.10 In another Area all court endorsements and notes of work done out of court were recorded together. This gave a good chronology of events, but it was difficult to distinguish between the two. This was also a problem in other Areas where a few out of court endorsements were noted amongst court hearings. There was nothing to indicate if the endorsement was a note of a hearing or an action done out of court unless it was clear from the context, which was not always so.



- 5.11 Two Areas used the front of the magistrates' courts' file cover for court hearing endorsements, but the back was left blank and out of court work could only be established by working through the correspondence received or sent.
- 5.12 In order to ensure the success of cases going for trial it is essential that any information received from the defence, court or police is dealt with efficiently and any action taken endorsed on the file. Several examples were found of cases where it was clear that action should have been taken earlier on correspondence or information that was to have a decisive affect on the success of the trial. For example:
- One case was dropped two days before trial after information that had been available on the file for two months was reviewed. There was nothing on the file to show if this had been considered earlier.
  - In another case it appeared that new evidence had been overlooked. It was amongst loose papers inside a file and there was no endorsement to show that it had been seen by a lawyer before a decision to drop the case was taken.
- 5.13 Other files had gaps in information and, on one, a memo containing information about why the case could not proceed and an endorsement of the final decision were missing. It could not be seen from the file why the case was dropped.

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## RECOMMENDATION

Actions taken to deal with correspondence or further evidence should be endorsed on an agreed part of the file to ensure that what has been done is evidenced.

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### **Crown Court files**

- 5.14 Crown Court file covers have no designated area where notes of out of court work can be written. Minute sheets, scraps of paper and, in few cases, post-it notes were used to write communications between caseworkers and lawyers. These were seen attached to the inside front cover of some files but were not always signed and dated and did not provide a clear chronology of work carried out.

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### GOOD PRACTICE

Good practice was seen in four Areas where the Crown Court caseworkers or administrators passed work to the lawyers using a note typed in large print asking them to review the further evidence attached or deal with an item of correspondence. The lawyer would note the actions to be carried out following this request and the caseworker, in most cases, had ticked and initialled the actions as done. The notes were a clear method of dealing with out of court work and were stored with the resulting correspondence. In two of these Areas a standard form was used as a means of communication between lawyers and caseworkers. Queries or instructions were typed on it and a response would be written or typed below.

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- 5.15 Poor practice was seen on some Crown Court files where there were no endorsements of out of court work and it was difficult to ascertain what, if any, action had been taken. It was often difficult to see how work had been passed to the prosecutor for consideration or, if this was seen to be done, what instructions the lawyer had given. One file had further material to be disclosed that was not dealt with for six months despite defence requests and the case being listed for mention. There were several letters from the defence on the file concerning this but there was no evidence of action taken in dealing with these. The court eventually granted an adjournment, on the day it was listed for trial, for the disclosure to be made. No endorsement could be found on the file that explained the delay and the further expense to the public purse incurred. It was not clear if the prosecutor had been aware of the issue prior to opposing the application to break fixture and being criticised by the court for doing so.

**The recommendation made at paragraph 5.13 in relation to magistrates' courts' work applies equally to Crown Court work.**

#### **Telephone contact**

- 5.16 In most Areas there was no formalised way of recording telephone contact with other parties, although it was apparent from subsequent hearings or correspondence that this must have taken place. In some cases brief details of telephone calls were seen on unsigned scraps of paper amongst other correspondence and some were recorded on CMS, but not all were printed out for the file.

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#### **GOOD PRACTICE**

Good practice was seen in one Area where telephone calls were noted on the case management system (CMS) and printed out for the file and in another where one file had ten phone calls recorded on the minute sheet and CMS.

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#### **RECOMMENDATION**

Telephone communications (other than those with no significance) should be endorsed on the file in an agreed place or printed from the case management system and stored in an agreed place.

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#### **Further consideration of witness needs and issues**

- 5.17 Out of 129 cases where an endorsement of further consideration of witness needs would have been expected, in only 58 (45%) was it clear that this had been done. In one Area seven out of nine relevant cases had no further consideration. Sometimes the only evidence of further consideration were the applications for special measures seen in the file or the note of the result of the application hearing. There was no evidence of the grounds for the application in some cases. Witness needs assessment forms were sometimes requested but not seen in the file and, if they were, it was not clear if they had been reviewed and what action had been taken.

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## RECOMMENDATION

Any further consideration of witness needs should be clearly endorsed on the file with reasons why an application for special measures is being made or not.

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### **Problems associated with the split file**

- 5.18 The efficient handling of issues arising was sometimes hampered by the different information stored on the paper and electronic CMS files. In ten of the 12 Areas audited the use of electronic communications, especially with the Witness Care Unit (WCU), caused some confusion in understanding what had happened in the case. In many instances this was because the communication was not printed and stored on the CPS paper file. Numerous attempts made by the WCU to contact witnesses were seen on some CMS records but these were not printed and attached to the CPS file. Sometimes printed communications explaining the problem were seen on the paper file, but these were often dated later in the case and it was not clear if the difficulties had been notified previously or if the lawyer had known of the difficulties prior to this. Some files had several printed WCU minutes notifying the lawyer of different witness issues and these were not always filed in good order. It was not possible to tell if these had been dealt with and which of them were relevant to specific applications to postpone the date of trial. This would not make it easy for any lawyer dealing with a further problem on the same file to understand what had happened before and review the new information in conjunction with the case history.
- 5.19 In one Area where two cases were noted at initial review as requiring further consideration of special measures, there was none endorsed on the files. The WCU use their own electronic file and communication system called WMS (witness management system) and this feeds information into the CPS CMS electronic file. In both cases it was seen that the WCU had problems in contacting the witnesses concerned through numerous communications and they eventually applied for witness summonses. It is not clear from any endorsement if the CPS lawyer had been consulted. In another Area further consideration of the need for special measures was evident on only two of six relevant files seen and in one there were a number of memos from the WCU informing the CPS that the witness did not wish to attend court. Nothing was noted to suggest that this information was considered or acted upon by the CPS lawyer.
- 5.20 Problems with witness attendance were the most common issues affecting trial cases seen. Where cases had been dropped at court or pleas accepted to other charges there was often an element in this decision that related to the non-attendance of witnesses.

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## RECOMMENDATION

Communications from the Witness Care Unit should be printed out and stored in good order to allow timely review of issues arising and to ensure that when further reviews are carried out, the lawyer can see quickly what issues have arisen previously, have been resolved or are part of a continuing issue.

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## 6 ENDORSEMENTS RELATING TO CUSTODY TIME LIMITS AND OTHER MONITORING PURPOSES

### Overview

- 6.1 Court endorsements in cases where the defendant is in custody or relating directly to the custody time limit (CTL) are of vital importance. Failing to record accurate information may result in a defendant being released who would have otherwise have remained in custody or an incorrect custody time limit expiry date being monitored, which may mean that a defendant is held unlawfully. The CPS also requires Areas to monitor certain categories of case such as vulnerable and intimidated witnesses, domestic violence, rape and those with identified victims. Examples were seen of missing or incomplete endorsements in cases in which CTLs applied. All CTL files except one had evidence that they had been monitored. A note had not been made of the custody status at each court hearing in 36% of CTL cases. Endorsements in a few Areas showed that CTL calculations were being double-checked. It was clear that a significant number of cases within monitoring categories were not being picked up and monitored from the outset. Less than two thirds of identified victims had been flagged on CMS. Only a fifth of victims who might have been regarded as vulnerable or intimidated had been flagged.

### Custody time limit endorsements

- 6.2 Twenty one of the cases in the file sample had defendants who had been remanded in custody in a magistrates' court and there were 20 Crown Court custody cases. The CPS has a duty to monitor the CTL expiry date and it is essential that it is properly calculated. This relies on accurate court endorsements.
- 6.3 Of the 21 magistrates' courts' cases only four did not have a note of the custody status at each court hearing. In the Crown Court files there were 11 cases that did not record whether the defendant remained in custody at each court appearance. All files except one had evidence that the time limit was being monitored.
- 6.4 Most files displayed the expiry date on a coloured sticker or a stamp on the front. However on a number of them several dates were shown on the sticker or stamp and it was not always clear which was the actual expiry date. Often action dates and both the potential expiry dates in the magistrates' courts (56 days for cases to be heard by the magistrates and 70 days for those to be committed to the Crown Court) were marked on the file and there was nothing to indicate which date applied. This is important information that a prosecutor in court may need to know at a glance if, for example, a trial date is being fixed as the hearing should be held before the expiry date if at all possible.

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### RECOMMENDATION

The custody time limit expiry date should be clearly marked on the front of the file and distinguished from any other dates that would be used for monitoring purposes.

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- 6.5 In all but one case the expiry dates had been correctly calculated. In the magistrates' courts' case with the incorrect calculation there was no endorsement on the file cover of the first two appearances at court. A note of the first hearing was found on the front of the police file but had not been transcribed onto the CPS file cover. It was clear that the defendant had been remanded in custody at the first hearing but this was not the date used to calculate the expiry date.
- 6.6 Failure to note when a defendant is first remanded in custody could result in the incorrect calculation of the time limit expiry date, or this date not being monitored at all. It is also important in custody cases to record details relating to the custody status at each court hearing. If a defendant was to be granted bail the monitoring should be suspended, but would start again if the defendant was later remanded into custody again in the same case. In this circumstance a new expiry date would have to be calculated, factoring in time already spent in custody. It is therefore essential that all this information is available on the file jacket.
- 6.7 Another example of incomplete endorsements relating to CTLs was seen in one Crown Court case in which the defendant had been brought to court after a warrant had been executed and was consequently remanded in custody. It appears that the caseworker did not have the file in court and had noted the details of the hearing on a piece of paper. One vital piece of information was missing from the endorsement - the date of the hearing. At the next court hearing shown on the file the defendant was granted bail. The file shows no evidence of monitoring the time the defendant spent in custody and it was impossible to work out the expiry date from the file as there was no date for the hearing at which the defendant was remanded. This information would be essential if the defendant had been remanded in custody again at a later date as it is necessary to reduce the expiry calculation by the length of time previously spent on remand.

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#### GOOD PRACTICE

A pro-forma sheet was used in both magistrates' courts and Crown Court cases to document procedures carried out to ensure the accuracy of the custody time limit expiry dates and checks to ensure that they were properly monitored.

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#### **Special category case monitoring**

- 6.8 There are several types of case that the CPS requires to be monitored on CMS. This allows the CPS to report on how many cases of that type they have prosecuted. It can also assist in ensuring that these categories of case receive the correct consideration. For example, those involving identified victims may need a Direct Communication with Victims letter if the case or an individual charge is dropped and the ability to run a report of cases monitored as having an identified victim allows checking to be done.
- 6.9 It is likely that most monitoring types can be identified by the lawyer at the initial review. In many cases seen a number of monitoring codes had been noted at the end of the evidential review. It was also clear that monitoring codes were not always identified at the initial review but had been picked up at subsequent reviews. In some cases, however, important codes had never been recorded on CMS, even though they had been identified at initial review. Missing codes included child abuse, vulnerable or intimidated victim and domestic violence.

6.10 In addition to monitoring on CMS the front of the file cover may also be marked to highlight a particular type of case. This is useful to alert staff handling the file that there may be reason to give the case priority or there may be particular considerations or measures to be applied for. When monitoring codes are activated as the file is being registered on CMS the label printed displays a list of these, but this is in small print and does not stand out in any way. The label is attached to the file on registration and monitoring codes for categories identified and added to CMS after the file is registered will not appear on the printed label.

*Domestic violence and child abuse*

6.11 Domestic violence is one of the monitoring categories available on CMS. Performance in relation to this was good with only five out of 37 cases not having been marked for monitoring. Ten out of the 13 cases in the sample which involved child abuse had been highlighted for monitoring purposes on CMS.

*Identified victims*

6.12 One category of case that is required to be monitored is those involving an identified victim. Tracking cases with victims is particularly important as the CPS is under a duty to send a letter to them in cases where the charges have been substantially altered or dropped to explain why the decision had been taken. Having identified victims flagged on the computer system allows for checks to be made to ensure that letters have been sent in appropriate cases and is also used to monitor CPS performance.

6.13 Of the 240 files examined 179 had identified victims and, of these, 106 (59%) had been monitored on CMS. The worst performing Area had monitored only one of 15 cases that involved an identified victim. A second method of marking victims on CMS showed slightly better results as 137 (77%) cases had been identified. However this method of identification is currently only used to measure performance in relation to the standard of service provided to vulnerable and intimidated victims. It is not a means of tracking cases involving identified victims generally - this relies on the first method of flagging.

6.14 The CPS requires that victims who are classed as vulnerable or intimidated are monitored on CMS. These victims have the right to consideration for special measures at court such as giving evidence from behind screens so that they cannot see the defendant, or being able to give evidence via video link to the court. In such cases the CPS has to make an application to the court in good time to ensure that the appropriate measures are agreed by the court and that the necessary arrangements made. In the file sample there were 86 files where the victims may have been classed as vulnerable or intimidated, including victims of rape, domestic violence and child abuse. Only 19 cases had been flagged on CMS as involving a vulnerable or intimidated victim. Three Areas had failed to record any victims as vulnerable or intimidated when several qualified for this description under the legislation.

6.15 Part of the non-recording on CMS of identified victims may be due to the misunderstanding arising from the two similar methods of monitoring identified victims, though they appear to have separate functions. The flagging system which allows a report to be created listing all cases with identified victims and the "snooker ball" method which is not yet fully functional.

### **RECOMMENDATION**

CPS Headquarters should clarify the monitoring/flagging requirements in relation to identified victims to ensure that cases can be tracked.

- lawyers should endorse monitoring codes in the initial review and administrators should ensure they are entered as monitoring codes on the case management system; and
  - the file endorsement standard should promote the use of monitoring codes.
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## 7 RECORDING CASE RESULTS

### Overview

- 7.1 The CPS standard gives detailed instructions about the information that should be recorded on the file to note the result and sentence for each defendant and each charge. CMS manuals give detailed guidance on how all cases should be finalised on CMS, with results entered for each defendant and each charge.
- 7.2 The audit found that, overall, 14% of cases had results and/or sentences that were not correctly marked on the file, but performance varied and in one Area 30% were not correctly shown. These were cases where the file endorsement was incomplete for each charge and defendant, where the endorsement was missing and where there was conflicting information. Without comparing the result endorsed on the CPS file with that recorded by the court it would not be possible to say if a result endorsed was correct. There may well have been greater inaccuracy.
- 7.3 It should be stressed that whilst such inaccuracy may impact on CPS case outcomes and performance data, it does not affect the Police National Computer (PNC). Results for PNC purposes are taken from the court register which is the definitive record.
- 7.4 Overall 35% of files did not have results correctly updated on CMS. The majority of these were because the result for each defendant and each charge had not been entered or because amended charges had not been updated on CMS and the case had therefore not been finalised properly. Sometimes only a single overall result had been entered on CMS. In 4.6% of cases the error in finalisation on CMS was due to the misinterpretation of poor file endorsements.

### *Outcomes properly marked on the CPS file*

Area	Yes	No	% incorrect
A	16	4	20
B	18	2	10
C	18	2	10
D	17	3	15
E	17	3	15
F	18	2	10
G	17	3	15
H	18	2	10
I	18	2	10
J	18	2	10
K	18	2	10
L	14	6	30
<b>Total</b>	<b>207</b>	<b>33</b>	<b>14%</b>

- 7.5 Thirty three (14%) out of 240 files seen had outcomes which were not properly recorded on the file. All Areas had two or three such omissions, but one Area had four (20%) and another had six (30%) out of the 20 files seen.

**Magistrates' courts' finalisation endorsements**

- 7.6 On the front of all CPS magistrates' courts' file jackets there is a set place for the result of the case to be endorsed, next to each of the charges listed on the label that is printed from CMS on registration. This should contain a clear result and enable administrative staff to finalise the case accurately on CMS. On some files the result was noted in the place provided on the front but in others it was in the body of the endorsement inside the file. The results were not always written in the clearest terms or were amongst other information about the hearing and difficult to find inside the file. Sometimes the results were only partially transferred to the front of the file and not completed for each charge listed and this also caused difficulties. The sentence imposed was not always noted on the file or clarified for individual charges.
- 7.7 It is important to note that the CPS requires for its own purposes more information than just the outcome in legal terms. For example, charges may be dismissed in a magistrates' court because the prosecution offers no evidence (either because it decides not to pursue the case or because witnesses do not attend) or as the result of an adjudication by the magistrates. CPS records need to capture not just the dismissal but also the circumstances. A clear endorsement of the reason for the outcome is needed and it should be recorded in clear terms from which administrative staff can readily derive the appropriate reason code for entry in CMS.

**Problems in recording late guilty pleas**

- 7.8 The result column on magistrates' courts' files is next to the column where the plea is endorsed. In the sample of files examined it was common for a defendant to change their plea at a later hearing or on the date of the trial. Where this happened the plea noted in this column was not always amended appropriately. This can sometimes cause confusion as the plea remains as "NG" (not guilty) but the result of guilty ("G") is entered next to it and it appears as a guilty verdict following a trial. This is especially confusing if the case was listed for trial and was a late guilty plea. Although the legal outcome is correct, the manner the case is recorded for CPS management information purposes is very different.
- 7.9 Administrators updating the system may look no further than the front of the file when transferring the result to CMS. If the defendant changed his plea but the plea noted on the front of the file had not been changed, the administrator may assume that a trial had taken place and record this as a guilty verdict after trial. Six of those noted as finalised incorrectly were listed for trial but did not proceed as trials, as the defendant entered a guilty plea, and were recorded as guilty verdicts after trial on CMS. Another example of an incorrect finalisation arose because a prosecutor in court had noted the outcome on the front of the file as a not guilty verdict rather than an outcome of no case to answer which was revealed in the endorsement inside the file.

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## RECOMMENDATION

Any change to the plea entered by the defendant should be clearly recorded in the correct printed space allocated on the magistrates' courts' file and in clear terms on the Crown Court file. If a late guilty plea is entered on the date of trial the endorsement should make clear that no trial took place.

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### Endorsements relating to contested hearings

- 7.10 There were examples of files where it was not possible to see if the trial had actually taken place as the endorsements did not always mention witnesses being called, but just entered the result with no more than a few words. It could sometimes be seen from the completed list of witnesses to attend court that they had been called and left court at regular intervals and it was therefore likely that the trial had proceeded.
- 7.11 Confusing endorsements of outcomes were also seen where the court had ruled that there was no case to answer but the endorsement did not make it clear that the trial had not proceeded to a conclusion. Some of these cases were finalised incorrectly as not guilty verdicts after trial.
- Five cases from the sample that were listed for trial were seen to be finalised incorrectly as not guilty verdicts after trial when the CPS had offered no evidence, magistrates had ruled that there was no case to answer, or the outcome was a judge directed acquittal.
  - An example was seen in one case where there was no endorsement of the outcome on the front of the file but the note inside the file stated that the case was "NG after the witness refused to answer any questions". It is not clear if the CPS offered no evidence or if it was ruled as no case to answer by the court.

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## RECOMMENDATION

The endorsement should make it clear whether a case proceeds to trial and set out the outcomes precisely.

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- 7.12 Where unusual circumstances arise at court, or protracted discussions take place about the acceptance of pleas, the endorsement of the outcome was not always clear. The confusion that can arise was shown in one magistrates' court case where it was not clear from the endorsement if a trial had proceeded or if it was abandoned after a special reasons argument. An administrator must then spend time checking results with the prosecutor or court. Three other cases had endorsements indicating a guilty plea but it was not certain to which charge.
- 7.13 A magistrates' court case was seen where there were five defendants and results had not been entered for each charge and defendant on the file, but it had been updated on the CMS system. It is not clear how that could occur without further checks being made by the administrator.

### **Terminology used to endorse results**

- 7.14 There were also problems seen in the terminology used by the prosecutors to note outcomes, most often seen in the use of the term “dismissed”.
- 7.15 The finalisation codes entered into CMS are used to generate performance indicator information and so it is vital that administrators are able to input the correct code. Administrative staff may be inexperienced and some of the terms used could be confusing if not used with precision.
- 7.16 Only two outcome codes available on CMS use the term “dismissed”: where a case is dismissed after full trial or dismissed by the magistrates as there is no case to answer. Although prosecutors used correct legal terminology, such as “no evidence offered: case dismissed”, this did not necessarily correspond with the terms used by the CPS for internal purposes. This was exacerbated if the endorsements were not sufficiently detailed to show what had occurred and standard CPS abbreviations had not been used.
- Examples of this type of problem included a file in which a prosecutor stated, before the trial started, that “I invited the court to dismiss the case”. The prosecutor had offered no evidence and invited the court to dismiss the case but failure to use the abbreviation suggested in the CPS standard of “NEO” (no evidence offered) or “WTH” (withdrawn) would have caused the administrator further work in checking the correct CPS finalisation.
  - Another case, where the CPS offered no evidence as witnesses had not attended, was noted as “dismissed for want of prosecution evidence”. The administrator had chosen to finalise this case as “prosecution stayed” as the endorsement had not clarified that in fact no evidence had been offered as the witness had not attended and, as a result, the prosecutor had invited the court to dismiss the case. The administrator appears to have looked for the nearest similar option available in the CMS finalisation code options.
  - Another noted that the charges were withdrawn and dismissed at half time but the court had, in fact, ruled that there was no case to answer. It would be difficult for anyone updating the case to be sure what the outcome was.
- 7.17 As mentioned earlier there were also cases where the terminology in the endorsement was not clear but the administrator had coded the correct result, which indicates that the administrator had checked the result with the prosecutor or the court, a time consuming process.

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### **RECOMMENDATION**

Prosecutors should record outcomes in terms which enable administrators to identify the correct finalisation code on the case management system and standard abbreviations should be used. If an outcome is unusual a good explanation should be given on the CPS file to enable the correct finalisation on the case management system.

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### **Crown Court finalisation endorsements**

- 7.18 On Crown Court files there is no place for the result of the case to be entered other than on the hearing log on the back of the file cover. The CPS file endorsement guidance is not prescriptive but suggests that this is the most suitable place; this was by no means universal or necessarily the norm. Some examples were seen where the result and sentence had been endorsed here and they were usually clearly noted for the administrators to finalise the case.
- 7.19 On other files where the log was not used the result could be in the body of the endorsement inside the file. Some minute sheets had a clear note of the results and the sentence attached to each defendant and each count on the indictment, however, sometimes the minute sheets were not easy to locate. On a few files caseworkers had noted the result as part of the more lengthy notes of the trial and it was not possible, or was difficult, to see what had happened to all the charges, as some may have been dealt with through legal argument during the course of the trial on different days.
- 7.20 Files were seen where the full result and sentence was not clearly endorsed for all the charges and defendants listed on the indictment. Sometimes the endorsement of the sentence hearing was missing. It would be beneficial if there was a more consistent approach or a designated place for the result and sentence of Crown Court cases to be noted.

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### **RECOMMENDATION**

A suitable place on the file for Crown Court finalisation and sentence endorsements should be designated.

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### **Amendments to charges**

- 7.21 Where charges had been amended or a plea had been accepted on a different charge this was not always made clear on the front of the file. We saw some examples where the new charge had been added to those listed on the magistrates' court file, often handwritten on the CPS label. However on other files the endorsement did not make the change clear and the need to amend the charges on CMS was not recorded. This was a particular problem in the Crown Court where changes to the indictment were not updated on the CPS file cover or on CMS. In one extreme example the indictment had been amended from eight to 25 counts following counsel's advice but this had not been updated on CMS and a clear note of the result was not endorsed on the file. The charges finalised on CMS were not the correct charges.

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### **RECOMMENDATION**

Amendments made to charges on magistrates' courts' files and to indictments should be clearly recorded and highlighted for administrators to update the case management system.

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**Meeting the CPS standard**

- 7.22 The finalisation endorsements were considered to meet the CPS standard in 172 (72%) files out of the 240 seen. Failure to meet the standard related to issues of accuracy or endorsements being in the accepted place, as already discussed in this chapter. Often the finalisation endorsement on the magistrates' courts' files were not signed and dated, however, only a few endorsements seen were not legible.

**Misrecording and inconsistencies in finalisation on CMS**

- 7.23 The inaccurate coding of finalisations on CMS will result in inaccurate performance information and a discrepancy between the information stored on the paper file and the electronic file. As noted previously some incorrect recording of outcomes on CMS was due to incorrect or unclear endorsements made at court (4.6%). However out of 240 cases seen 85 (35.4%) cases were not properly finalised on CMS. This most often related to the absence of a plea and result on CMS for each of the charges or amended charges not being updated on the system (30.8%). The CMS training manual instructs staff to enter these details. In only one Area were all cases correctly finalised.

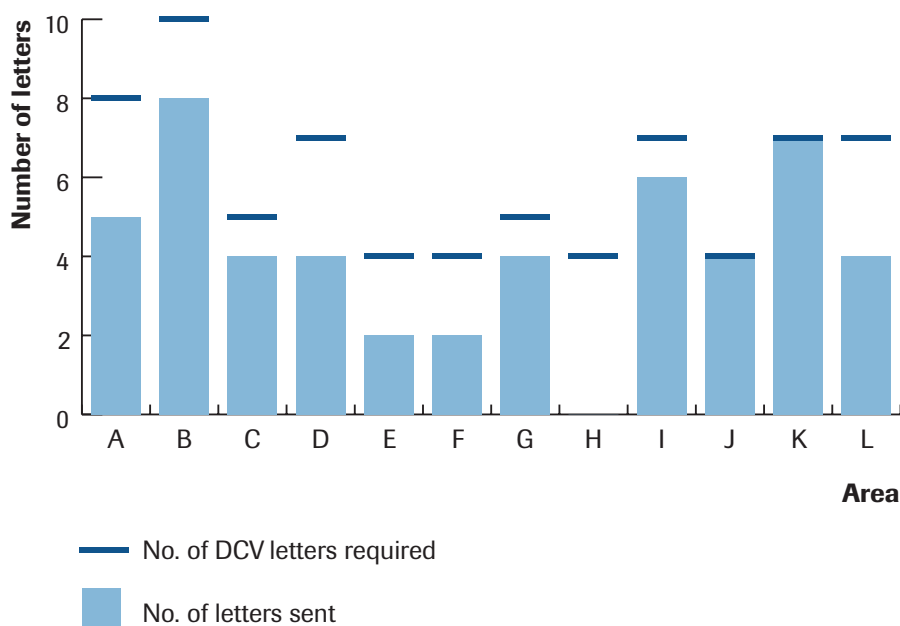
## 8 ENDORSEMENTS RELATING TO WORK FOLLOWING FINALISATION AT COURT

### Overview

- 8.1 Once a case is finalised there may be further work to do. Often this is associated with witness care or administrative tasks which may assist with improving performance in the future. In cases which involve an identified victim, the CPS has a duty under the Code of Practice for the Victims of Crime (the Victims’ Code) to contact victims to explain the decision to drop or substantially alter any charges in the case. A letter under the Direct Communication with Victims (DCV) scheme should be sent within five working days of the decision or one working day if the victim is classed as vulnerable or intimidated. A DCV letter had been sent in 69% of cases where it was required. Files were not routinely endorsed with instructions to send a DCV letter and some endorsements revealed a misunderstanding of the application of the scheme. In relation to other work required after the case was finalised, in two cases it was not clear what action had been taken regarding complaints received from victims.

### Direct Communication with Victims

Number of letters required against the number sent



- 8.2 The majority of post-finalisation work seen in the sample was around the need to write to victims to explain why a decision had been taken to drop a case at court or to accept pleas to a lesser charge. It was found that in 72 of the cases in the sample a DCV letter was required and had been sent in 50 (69%).

- 8.3 The person best placed to identify the need for such a letter is the prosecutor in court and the success of the scheme relies on clear instructions in the court endorsement to ensure that one is sent. In only 20 of the 50 cases (40%) in which a letter was sent was there any instruction in the court endorsement. In those cases where there was no request for a DCV letter to be sent the need for one appeared to have been picked up by experienced administrative staff and the file directed to the appropriate person. However this adds an additional stage to the process which is labour-intensive and increases the risk that all files requiring letters are not being identified. In one Area DCV letters were required in three cases; none of these had an endorsement directing that one be done and a letter had not been sent in any of the three, therefore failing to meet the CPS's duties under the Victims' Code.
- 8.4 Of the 22 cases in which a letter was required but had not been sent, most had no relevant endorsement. However there were a few examples of files in which the need for a letter had been endorsed clearly on the file but no letter had been sent. The reason for this oversight was not apparent.
- 8.5 In view of the requirement to send a letter within five days, it is important that the need for one is identified quickly after the file is returned from court and a clear endorsement would make that target easier to achieve. The file sample showed that 19 of the 50 (38%) cases letters had been sent within the time target. In the worst example, it had taken a month before the letter was sent out.

### **Other work following finalisation**

#### *Adverse outcomes*

- 8.6 Some cases had final court hearing endorsements with instructions to complete an adverse case outcome form. These are used as part of performance management and can be used to learn lessons for the future, so an instruction to complete the form is helpful in ensuring that the work is done.

#### *Complaints*

- 8.7 There were two cases in one Area where the victim in one case and a witness in the other had contacted the WCU with an enquiry or complaint post-finalisation, but no correspondence or endorsement on the files showed that these had been dealt with by the CPS. In both cases the WCU had recorded a detailed note on WMS and this automatically appeared on CMS as a WCU communication. It was not clear in either case what action had been taken or if the CPS had been notified in some other way. In one of them the victim was told to contact the CPS for an explanation of why the defendants had been found not guilty when the victim had not been called to give evidence. In the other a witness who had attended court had not been told that the case had been dealt with and had waited to give evidence at court all day. There was no letter on the file from the victim, no copy of the WCU communication and no evidence that any action had been taken.

### **Meeting the CPS standard**

- 8.8 The standard of finalisation endorsements were satisfactory in 172 (72%) of cases. In two Areas the standard was met in less than half the files seen, and one of the problems identified was the failure to mention relevant post-court work.



## 9 OVERVIEW OF THE STANDARD OF FILE ENDORSEMENTS, FILE HOUSEKEEPING AND PROFESSIONALISM

### Overview

- 9.1 In 22% of the files seen the chronology of proceedings and actions taken could not be followed and in many others it was time consuming and difficult to ascertain the course of events. This was attributable to the types of weakness in recording described in earlier chapters together with missing endorsements, missing or disordered correspondence and non-recording of actions taken out of court.
- 9.2 The organisation of the file to make items easily accessible was satisfactory in 56% of cases seen. File housekeeping is a challenge, particularly in those that have had a lot of correspondence, court appearances and additional evidence. The CPS has issued guidance in relation to this, but it is not prescriptive and is a matter for individuals to adopt. There were concerns about the organisation of correspondence, unused material, evidence served and the arrangement of the copy of the papers that are sent to the prosecuting counsel.

### Following the chronology of events

*Number of cases where the chronology of the file could be followed*

Area	Yes	No	% of files where chronology could not be followed
A	13	7	35
B	20	0	0
C	14	6	30
D	18	2	10
E	10	10	50
F	15	5	25
G	9	11	55
H	17	3	15
I	18	2	10
J	19	1	5
K	20	0	0
L	14	6	30
<b>Total</b>	<b>187</b>	<b>53</b>	<b>22%</b>

- 9.3 The endorsement guidance requires a clear audit trail to be evidenced on the file. This should allow information to be to be easily ascertained from the file at court and make reviews of further evidence, or of the file when issues arise, easier to deal with.
- 9.4 The chronology of events was not apparent in 53 (22%) of the 240 files seen. The reasons for this have already been covered in the individual chapters of this report, but auditors undertook an overview of each file to consider if the history and activity on the case could be followed. As the table above indicates there was a wide discrepancy in performance. In a number of Areas there was difficulty following the chronology due to a combination of missing review endorsements, missing or ambiguous court hearing endorsements, and missing evidence of further reviews and work out of court around witness needs or further evidence. These files were often in disarray and had disorganised correspondence. The CPS guidance states that if endorsements cannot be located quickly and readily understood, they fail to meet the quality test.
- 9.5 It is difficult and time consuming for anyone dealing with a file to take an overview of a case and its history unless the contents were presented in a structured and accessible way. Witness issues offer a good example. Some cases were seen to be listed a number of times for applications to move the fixed trial date and it was usual for them to be handled by different individuals each time a problem arose. The overall effect was that each occasion was apparently treated as a separate query arising in isolation, rather than as part of a series of events. Problems may have arisen with the same or a related witness at different times, but no overview of the case and its history appeared to be taken. Some of these cases eventually had no evidence offered on the trial date due to missing witnesses.
- 9.6 The audit accepted that some of the chronology of the case could be ascertained from the correspondence rather than through detailed endorsements of work done outside court. However some of the correspondence was so badly arranged that it was not possible to follow the events in the case in this way. In some of the files it could not be seen why letters from the defence solicitors and further evidence had not been dealt with for some time - or at all - and why instructions given at earlier reviews, sometimes to discontinue the case, had not been actioned. On one case what had happened could only be discovered through reading a defence letter.

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#### GOOD PRACTICE

Good practice mentioned previously in Chapter 5 was seen where one Area endorsed all work done out of court and actions to be carried out following court on the back cover of the CPS file. This was signed, dated and initialled when done. All court hearings were noted at the front of the file. This made the chronology easier to follow but there were some files where this was not the case and loose correspondence was not evidenced as dealt with. Another Area noted the out of court endorsements amongst the court hearing endorsements on the front of the file. This gave a good chronology of the case but there was some confusion as it was not clear if the endorsement was one made in court or of work done out of court.

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## RECOMMENDATION

Endorsements and correspondence should be maintained in chronological order to ensure that those dealing with the case can ascertain what has happened and that problems are not caused due to missing or poorly filed information.

### File housekeeping standards

*Number of cases where file housekeeping was to a satisfactory standard*

Area	Yes	No	% of files where the housekeeping was not satisfactory
A	8	12	60
B	12	8	40
C	0	20	100
D	17	3	15
E	11	9	45
F	13	7	35
G	7	13	65
H	16	4	20
I	14	6	30
J	13	7	35
K	15	5	25
L	12	8	40
<b>Total</b>	<b>138</b>	<b>102</b>	<b>42.5%</b>

- 9.7 Housekeeping is a term used to describe the organisation of the papers held on a CPS file. It is essential that the file is maintained in good order so that anyone handling it can quickly follow the events in the case. This requires evidence submitted by the police, correspondence from the police and WCU, letters from the defence and any out of court and review work to be stored in date order on the file. The CPS worked with HMCPSI in the Joint Standing Committee on Good Practice to provide guidelines for a consistent order for files. This is available to all CPS Areas on the internal electronic infonet, although it is up to each whether they wish to adopt this practice.
- 9.8 Housekeeping was considered satisfactory in only 138 (58%) of the 240 files seen. In one Area none were of a satisfactory standard and in two others over half the files seen were not considered satisfactory.

*Systems of file housekeeping*

- 9.9 Most Areas appeared to have a system that could facilitate good file housekeeping but these were not being operated consistently. This mainly consisted of the use of specific folders within the file. Most Areas had folders for unused material and correspondence but in some files examined these were quite often empty or not used correctly. In some cases different systems existed within the same Area and examples of differing systems were also seen within the same team.
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**GOOD PRACTICE**

Good practice was seen in some Areas that had consistently adopted the use of a number of folders within the file to store correspondence and details relating to unused material. Some Crown Court files had a series of folders in addition to these which may include papers relating to witnesses, custody time limits, reviews, special measures and court notes.

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- 9.10 A problem arising from poor housekeeping is that important information/evidence could be overlooked or not recorded as being reviewed or dealt with.

*Evidence served prior to summary trial*

- 9.11 It was not always possible to ascertain what evidence had been served prior to the summary trial following the summary review in magistrates' courts' cases. Where the evidence was attached together in some form of trial pack it was clearer but in other cases, where statements and exhibits were loose amongst other papers, it was not immediately apparent what had been served.
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**GOOD PRACTICE**

In one Area on some files the evidence that was served had been attached together and it was clear which statements had been served as part of the trial pack.

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**RECOMMENDATION**

Evidence served in magistrates' courts' cases should be collated into a trial bundle which is clearly identified as such for the benefit of the advocate.

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*Disclosure*

- 9.12 It was often difficult or time consuming to ascertain what had been disclosed as unused material because the relevant records were not stored in good order, were missing or not endorsed. However the issue of disclosure is being dealt with extensively in a substantially contemporaneous thematic review.

*Dealing with further evidence or correspondence*

- 9.13 Where correspondence was loose it was not always possible to see if it had been dealt with and in larger files it was a daunting and time consuming task. The audit found that a number of Areas attached correspondence to the file while others had specific folders for the purpose, but this did not always result in correspondence being filed correctly.
- 9.14 In one case within the audit poor housekeeping led to a case being dropped after protracted problems in using CCTV evidence. Amongst the body of loose papers and numerous copies of documents in the file there was an item of further evidence apparently producing a further set of CCTV evidence. This statement suggested that it showed the incident concerned and although it was dated as received some time before the case was dropped, there was nothing on the file to indicate that it had been served or disclosed or that it had been seen by the lawyers who had reviewed the case prior to offering no evidence. It was not possible to assess what had happened in this case and the large amount of loose papers, correspondence and general state of the file was a cause for concern.

*Documents relating to witness issues*

- 9.15 Some Areas used folders for witness information, special measures applications and lists of witnesses to attend court. These were helpful if the information was stored there. However on many, mostly magistrates' courts', files witnesses' needs assessments and messages from the WCU were seen loose and it was not clear if they had been dealt with. In cases in which it was clear that an application for special measures had been made, a copy was not always available on the file.

*Record of papers sent to counsel*

- 9.16 The organisation of papers in the Crown Court files caused some concern. The practice of ensuring that there is an ordered copy of the instructions and enclosures sent to the prosecution counsel on the file is a good way of ensuring that items referred to by counsel can be identified and found easily. However the papers within many Crown Court files, some following a trial, were loose and not in any discernible order. Items referred to in the brief could not be located. On one file the bundles of statements and exhibits that formed the evidence in the case were no longer on the file.
- 9.17 The system by which further evidence was sent to counsel varied, not only between Areas but also within Areas and units, and it seemed that the organisation of the papers differed according to the practice of individual caseworkers.
- 9.18 Given that counsel are external to the CPS it is imperative that Crown Court case files contain a copy of items that have been sent to counsel, with a numbered list of the enclosures visible and easy to locate at a glance. In this way it can be ensured that counsel has been informed of all additional evidence and information that will be necessary in order to properly present the prosecution case in court.

## RECOMMENDATION

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A copy of the instructions and enclosures sent to counsel should be maintained on the CPS file and further instructions should be indexed to follow from the original brief to maintain a record of items sent.

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### **The professional tone of file endorsements**

- 9.19 The file endorsement standard emphasises the need for each individual to take responsibility for the quality of endorsements made on case files. Endorsements are required for specific reasons; to record the decisions made in the case, note what happened in court, direct appropriate action to be taken in a case, note action taken and to record the results. Within these a degree of professionalism is implicit, particularly as any file could be the subject of a judicial review and all comments recorded on the file would be open to scrutiny.
- 9.20 Overall the standard of professionalism was high, though there were several examples of endorsements in which inappropriate comments had been recorded.

## ANNEX A: GLOSSARY

### **Adverse case**

A judge ordered acquittal (JOA), judge directed acquittal (JDA), no cast to answer (NCTA) or one where magistrates decide there is insufficient evidence for an either way case to be committed to the Crown Court.

### **Agent**

Solicitor or barrister not directly employed by the CPS who is instructed by them, usually on a sectional basis, to represent the prosecution in the magistrates' court.

### **Casework Quality Assurance (CQA)**

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

### **Caseworker**

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.

### **Charging scheme**

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. Shadow charging arrangements were put in place in Areas; and the statutory scheme had a phased roll-out across priority Areas and subsequently all 42 Areas, the last being in April 2006.

### **Code for Crown Prosecutors (the Code)**

The public document that sets out the framework for prosecution decision-making. Crown Prosecutors have the DPP's power to determine cases delegated, but must exercise them in accordance with the Code and its test – the evidential stage and the public interest stage. Cases should only proceed if, firstly, there is

sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest.

### **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**

IT system for case tracking and case management used by the CPS. Compass is the new comprehensive system used in all Areas.

### **CPS Direct**

This is a scheme to supplement the advice given in Areas to the police and the decision-making as to charge under the charging scheme. Lawyers are available on a single national telephone number out of normal office hours so that advice can be obtained at any time. It is available to all Areas.

### **Custody time limits (CTLs)**

The statutory time limit for keeping a defendant in custody awaiting trial. May be extended by the court in certain circumstances.

### **Direct Communication with Victims (DCV)**

The CPS writes directly to a victim of crime if a case is dropped or the charges reduced in seriousness. In some instances a meeting will be offered to explain this.

### **Disclosure**

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.

### **Evidential test**

The initial stage under the test in the Code for Crown Prosecutors – is there sufficient evidence to provide a realistic prospect of conviction on the evidence?

### **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.

### **Judge directed acquittal (JDA)**

Where the judge directs a jury to find a defendant not guilty after the trial has started.

### **Judge ordered acquittal (JOA)**

Where the judge dismisses a case as a result of the prosecution offering no evidence before a jury is empanelled.

### **MG3**

Form used by the police and CPS in relation to advice and decisions as to charging an accused person.

These and other forms are contained within the Prosecution Team Manual of Guidance.

### **No Case to Answer (NCTA)**

Where magistrates dismiss a case at the close of the prosecution evidence because they do not consider that the prosecution have made out a

case for the defendant to answer.

### **Pre-trial review**

A hearing in the magistrates' court designed to define the issues for trial and deal with any other outstanding pre-trial issues.

### **Public interest test**

The second stage under the Code test – is it in the public interest to prosecute this defendant on this charge?

### **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. 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.





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