

# Abandoned Prosecutions

An audit of CPS performance relating to the handling of  
discharged committals

**October 2010**





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## Chief Inspector's foreword

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This report deals with the issue of discharged committals, which represent a category of case which is not brought to justice and as a consequence resources are wasted across the criminal justice system. The cost to the CPS of these abandoned prosecutions amounts to potentially more than £600,000 a year. The report outlines where CPS processes need to improve if valuable resources are to be used more efficiently.

The importance of the relationship between the CPS and the police is clear when considering discharged committals. A successful prosecution is largely dependent on the CPS working closely with the police in securing good quality evidential files, which in turn are attended to within the timescales set by the court.

This audit recommends how the CPS could improve its case progression processes to ensure that a case is reviewed at the most appropriate stage and that backlogs in the review of committal files are avoided. It is unsatisfactory that those cases where files are received in good time from the police, are not receiving attention until shortly before the committal hearing. In many cases this is far too late to ensure effective case progression. Where a case cannot be progressed, steps must be taken to ensure valuable criminal justice system resources are not wasted.

I remain concerned that the audit has identified that there are a significant number of cases that are not brought to justice because of poor prioritisation and the fact that responsibilities for case progression are unclear. Our audit found evidence that 27 out of 119 (22.7%) of these discharged committals were due to CPS failure to review the case prior to committal.

The CPS therefore needs to ensure there is consistent national guidance in dealing with discharged committals. The audit found good practice in some Areas, who, on their own initiative had developed systems to monitor progression in discharged cases which were being considered for reinstatement. However, greater national consistency is still needed in this area.

The needs of victims in all cases must be considered a priority, especially in cases where committals are discharged. Cases suitable for reinstatement should be actioned and victims kept updated. The CPS also needs to ensure that there are consistent systems in place in all Areas to provide clear and timely information to victims.

This audit outlines three 'high priority' recommendations, as well other recommendations and compliance points. If the CPS acts to implement these, I am confident this will go a long way to ensuring that justice is best served along with consequent savings to the public purse.



## Executive summary

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### Contextual factors and background

Discharged committals are cases discharged in the magistrates' court because the prosecution are not ready to proceed to committal. The prosecution may seek an adjournment but if the court refuses to grant further time, the CPS is forced to offer no evidence and the defendant is discharged. It is possible for the CPS to reinstate such cases if missing evidence is provided within a reasonable timescale. Although only a small percentage of the total caseload in the magistrates' courts, discharged committals can represent a significant proportion of cases adjourned for committal to the Crown Court for trial.

### Summary of findings

Since 2007 there has been a slight fall in the number of committals discharged nationally although the number of cases adjourned for committal has risen slightly. However some Areas have seen a much greater increase which impacts on Area resources and may be in part responsible for the higher levels of discharged committals in those Areas.

The audit identified three main reasons why cases continue to be discharged:

- the late arrival of the evidential file from the police;
- that evidence was missing from the file received; and
- the late review of these files by the CPS due to backlogs in committal cases and non-availability of CPS staff.

Insufficient or incorrect advice given by the CPS to the police at an early stage in the case leads to further work being requested when the case is close to the committal date. Evidence that had been requested from the police was also found to be missing at this late stage. New streamlined arrangements for the provision of evidence by the police was also identified as a cause for cases not being ready for committal.

Late review was often carried out by the CPS on files that had been received some weeks before due to backlogs in preparation. Despite last minute attempts to rectify evidential deficiencies, the prevalence of requests to adjourn cases on the committal date made the courts unsympathetic. Problems of ensuring that committal cases are prepared effectively is leading to substantial wasted resources and the cost of these inefficient processes impacts within the police, the courts and the CPS.

The CPS has no national guidance on the reinstatement of discharged committals. Outstanding work on these cases should be followed up and they should be treated with as much urgency as any other case but this is not the reality. A lack of action by the CPS and the police after discharge has led to cases not being reinstated due to the length of time that has elapsed.

Victims of crime are often not informed or are confused about what is happening in a case that has been discharged. In some cases it may be many months before the victim is told of the CPS decision. Inconsistent practices by Areas in contacting victims impact on public confidence and can also lead to unnecessary confusion for victims of crime.





## Recommendations

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There are three high priority recommendations which need to be implemented within three months. These are:

### High priority recommendations

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- 1 Requests sent to the police for full files after the mode of trial has been decided should emphasise that a full evidential file is needed and that the streamlined process will no longer apply. The CPS should work together with the police to ensure that the principle of streamlined process does not compromise the quality of evidential file preparation for committal (paragraph 1.14).

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- 2 CPS Areas should put in place a system to monitor the progress of cases awaiting reinstatement to ensure that they are handled effectively (paragraph 2.18).

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- 3 The CPS should amend the section in the legal guidance dealing with termination of proceedings to make it clear that when a case is discontinued, there are restrictions in place that may prevent the case being reinstated later (paragraph 2.33).

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There are three other recommendations that relate to improving processes. Whilst these are not immediate priorities, they need to be implemented to improve the service offered by the CPS. We would expect that these secondary recommendations are implemented within the next 12 months. These are:

### Other recommendations

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- 1 We understand that the CPS is contributing to a criminal justice system review that will examine the national increase in cases being adjourned for committal to the Crown Court. The CPS should assess these findings and the impact this increase may have on future resources and its current resourcing model (paragraph 1.35).

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- 2 CPS headquarters should amend current guidance to clarify whether it is preferable to discontinue or offer no evidence in a case at the earliest opportunity when it is known that critical evidence will take several weeks to secure and to seek to reinstate later (paragraph 1.28).

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- 3 The CPS should issue national guidance setting out good practice regarding keeping victims informed of the progress and outcome in discharged committal cases (paragraph 3.7).

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## Compliance points

There are five compliance points which highlight practices that should already be in place in areas and immediate steps should be taken to ensure Areas comply.

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- 1 CPS Areas should have a case progression system which ensures that:
    - there is a record on the CPS file of the initial request made to the police for the full file;
    - there is an effective system in place to remind the police, at agreed action dates, of outstanding full files;
    - the CPS are able to establish the preparation status of missing full files to inform decisions about whether an application for adjournment should be made; and
    - details of efforts made to obtain the full committal file and its preparation status are evidenced on the CPS file to support any application for adjournment (paragraph 1.6).
  - 2 CPS managers should ensure through the application of the core quality standards monitoring that:
    - the advice given and action plans at charging are correct;
    - that essential evidence was identified and notified to the police at this early stage;
    - that early review of the full evidential file for committal is carried out; and
    - that those cases with no prospect of conviction are stopped at an early stage to prevent unnecessary work by the police and CPS (paragraph 1.20).
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- 3 Areas should ensure that systems for the preparation of committals allows time for administrative staff to prepare committal papers for service after review (paragraph 1.21).

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- 4 Areas should ensure that the reason for a case being discharged is clearly recorded by the prosecutor in court and input into the electronic case management system (CMS) to assist in the analysis of performance (paragraph 2.5).

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- 5 Where a victim has been informed at the time the case was discharged that there was a possibility of the case being reinstated, a follow up letter should be sent as soon as a decision is taken not to reinstate to ensure that the victim has closure on the case (paragraph 3.11).

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## Good practice

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- 1 The CPS had provided training and guidance to police officers as one reason given for inadequate evidential files was the gaps in knowledge and limited experience of some police officers. In two of the Areas visited, the CPS assisted in training sessions with the police or were involved in setting up guidance links to allow officers to see what a full file for particular types of offence should normally contain (paragraph 1.10).

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**2** Concerns about poor charging advice in one unit led to all cases adjourned for committal being vetted directly after mode of trial was decided. This was done by the unit head to quality assure the charging advice given, request missing evidence, request essential forensic evidence at an early stage and ensure that cases with no prospect of conviction were stopped before unnecessary work was carried out (paragraph 1.20).

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**3** A form was placed on discharged cases that were to be reinstated. This recorded action dates for receipt of further evidence as well as CPS action and allowed progress to be tracked. In most cases, the form was well completed. The form would also record the final decision regarding whether reinstatement was appropriate. In this Area there appeared to be less “drift” in dealing with cases post-discharge and the decision whether to reinstate was dealt with more quickly (paragraph 2.12).

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**4** In some CPS Areas a letter was sent to the victim at the time the case was discharged explaining that the matter may be reinstated. A further letter was sent when the decision was taken not to reinstate the case which allows the victim to put the matter behind them (paragraph 3.5).

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# 1 Reasons for discharged committals

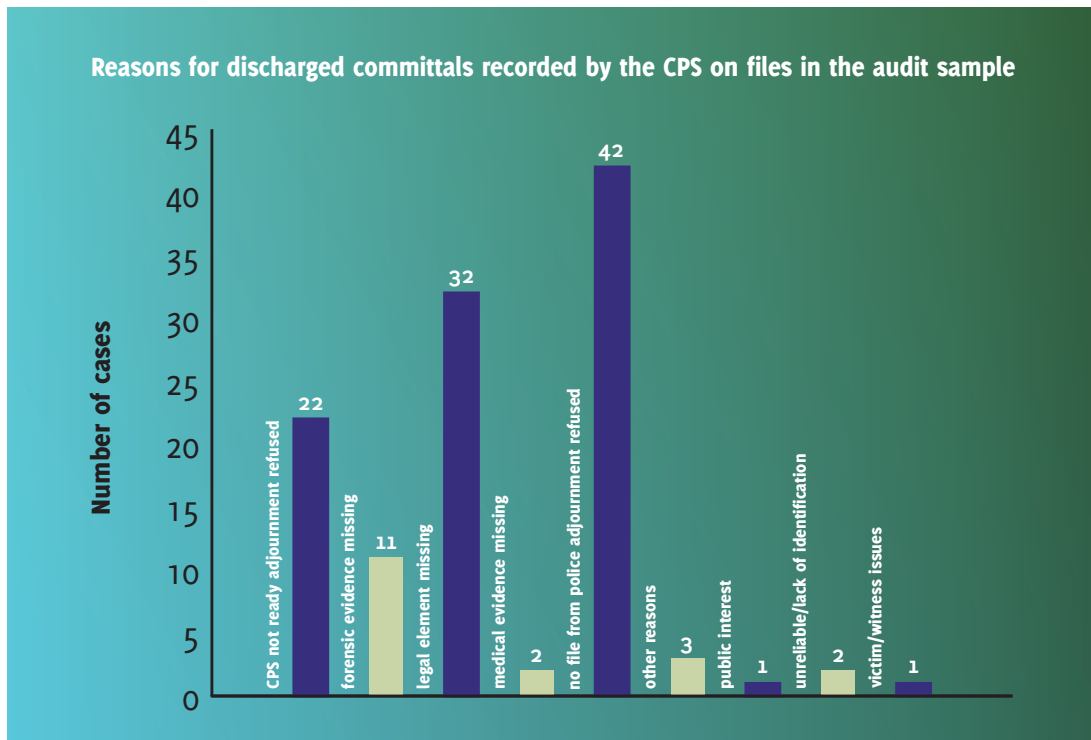
## Timeliness of the full files

1.1 The late provision of full evidential files by the police was a concern in all Areas visited. Of the 119 cases in our audit that were finalised as discharged committals<sup>1</sup> more than a third

(35%) were recorded<sup>2</sup> by the CPS as discharged because no file had been received from the police. This was the most prevalent reason recorded by the CPS but (as noted later at paragraph 1.8) the file had often been received but it was late and essential evidence was missing.

<sup>1</sup> The sample of 145 files also contained 26 cases that were finalised as discontinued or withdrawn.

<sup>2</sup> The CPS records reasons for types of outcome on their electronic case management system (CMS).



1.2 Following the mode of trial decision, the prosecution are usually given six weeks to serve committal papers when a defendant is in custody and eight when they are on bail. These timescales are set by local agreement and the

police are allocated part of this time to gather the evidence or full file and provide it to the CPS to review and prepare papers for service on the court and defence.

1.3 The CPS notify the police when a full evidential file is required following the mode of trial decision. Delays in this were not a significant reason for the late arrival of the full files in our sample, only 11 out of 102 requests seen were sent more than five days later, however, some requests were missing and full files had not been prepared. Each CPS Area visited had a system for chasing-up the full file from the police but this was not always evidenced on the file.

1.4 Two Areas had systems to remind the police and track target dates using central spreadsheets. In one Area this spreadsheet was now managed by a police case progression officer and staff perceived that this had brought better communication with the police and an improvement in timeliness.

1.5 We were told that when an adjournment was requested to obtain missing evidence the magistrates usually wanted details of efforts made by the CPS to obtain this. Our file examination identified that there was often no audit trail on the file to inform the prosecutor what action had been taken. This lack of information at court makes it difficult for prosecutors to inform the court of the action taken or to argue for more time on the basis that there has been proactive case progression.

1.6 In cases where the CPS were making a second or third application to adjourn a committal hearing it was often unclear what efforts they had made to obtain missing evidence or what assurance they had been given by the police that it would be available on the adjourned date. The basis for the application was therefore not always apparent.

#### Compliance point

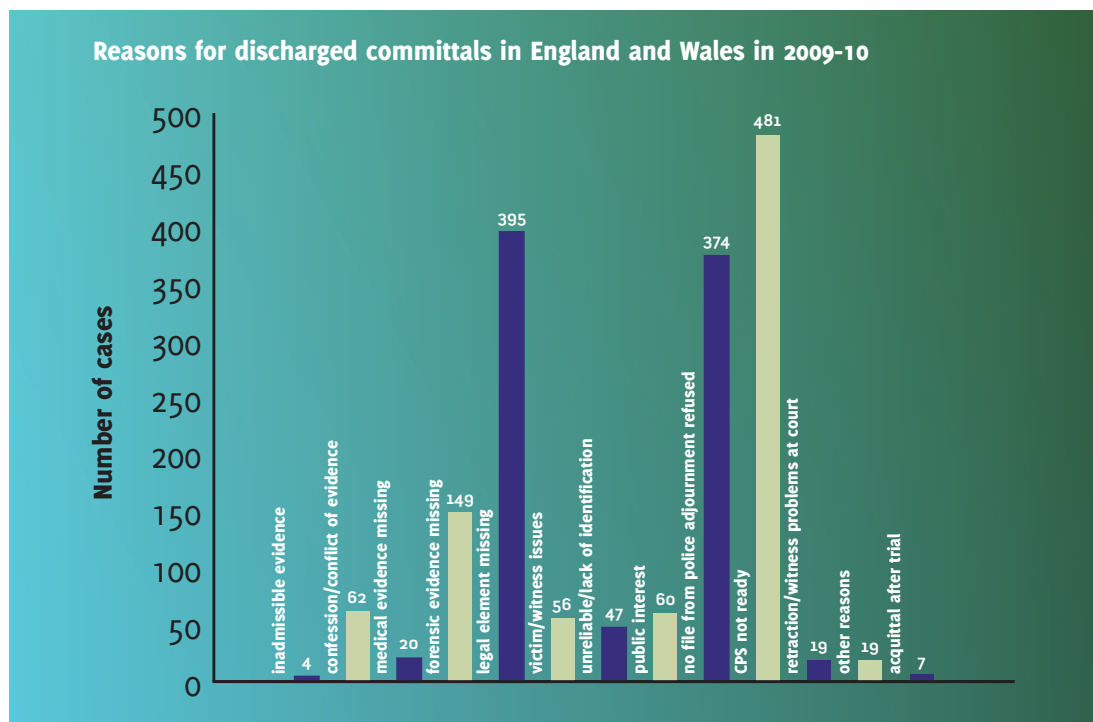
CPS Areas should have a case progression system which ensures that:

- there is a record on the CPS file of the initial request made to the police for the full file;
- there is an effective system in place to remind the police, at agreed action dates, of outstanding full files;
- the CPS are able to establish the preparation status of missing full files to inform decisions about whether an application for adjournment should be made; and
- details of efforts made to obtain the full committal file and its preparation status are evidenced on the CPS file to support any application for adjournment.

### Quality of police full file

1.7 The quality of the full files received from the police was an issue in all the Areas visited. The chart below shows the reasons recorded nationally by the CPS for committals being

discharged. In 2009-10 the main reason recorded was that the CPS was not ready (28.4%). However 23.3% were recorded as discharged because an essential legal element was missing and 8.8% as forensic evidence was missing.



1.8 The quality of the police files in our audit file examination appeared to be a much greater issue than national CPS data suggests. Our file examination revealed that those coded as discharged as no full file had been received or because the CPS was not ready, in reality, often had evidential files sent by the police but essential evidence was missing. These files were often received or reviewed too late by the CPS to obtain the missing evidence before committal.

1.9 In two Areas visited the police had recently set up quality assurance units to improve the content of full files and reduce the amount of last minute work necessary by the CPS to ensure a committal could be prepared. It

was too early to see if this was improving file quality. In two further Areas visited these units had been in place for some time and in both of these Areas the files often arrived late and evidence was still missing.

1.10 The CPS had provided training and guidance to police officers as one reason given for inadequate evidential files was the gaps in knowledge and limited experience of some police officers. This was **GOOD PRACTICE** and in two of the Areas visited, the CPS assisted in training sessions with the police or were involved in setting up guidance links to allow officers to see what a full file for particular types of offence should normally contain.

**1.11** There were also concerns in four of the Areas visited about inexperienced lawyers providing charging advice that contributed to problems with committal file preparation. Lack of proper direction given to the police at an early stage affected the quality of the full file produced and resulted in additional work to repair the file by lawyers preparing the committal. CPS and police resources were wasted in trying to progress these cases or in stopping them at a late stage.

**1.12** Interagency frustrations were apparent in some correspondence seen on the files, especially when officers, who had apparently anticipated that the defendant would plead guilty at an earlier stage in the magistrates' court, were now being asked to return to the case and obtain further evidence for the committal.

**1.13** The contribution of the streamlined process to the problems with committal files was an issue raised in a number of Areas. In the majority of cases police officers only need to provide a prescribed minimum evidential content in the initial file sent to the CPS. This process was agreed to reduce the resources used in obtaining unnecessary evidence where the defendant will most likely plead guilty. However, where a defendant does not plead guilty and the case is adjourned for committal it is felt that some officers no longer appreciate the higher standard of proof required to take a case to the Crown Court and some officers' expectations of a guilty plea are more optimistic than circumstances justify. This could lead to problems, for example, in obtaining timely forensic evidence as it would not be requested at an early point.

**1.14** An issue arising out of the streamlined process was the staged submission of evidence. This is part of the agreed process for likely guilty plea files but is not intended to apply to cases adjourned for committal. In one Area we were told that the police would provide only what they felt was needed to prove the case. For example, fingerprint analysis may not be obtained at an early stage in a case adjourned for committal unless the CPS specifically asked for this. As there was often no further review of the file by the CPS until the full file arrives, it would be too late to request this in time for the committal. Some earlier consideration of streamlined process files adjourned for committal is needed.

#### Priority recommendation

Requests sent to the police for full files after the mode of trial has been decided should emphasise that a full evidential file is needed and that the streamlined process will no longer apply. The CPS should work together with the police to ensure that the principle of streamlined process does not compromise the quality of evidential file preparation for committal.

#### CPS resource issues

**1.15** Twenty two (18%) of the cases in the audit sample had been recorded by the CPS as discharged as the CPS were not ready. As noted previously our file examination indicated that this was sometimes due to the late receipt of the full file but we were told of backlogs of preparation in the Areas visited and that Areas did not always have resources to ensure timely committal preparation.



1.16 Following the pre-charge decision, there may be no further review of a case adjourned for committal until the full file arrives and at this stage some months may have passed. The full file may be sent late by the police or reviewed late by the CPS. In three cases the full file reviews identified at a very late stage that the case should not have been charged as there was no prospect of conviction and CPS and police resources had been wasted in unnecessary evidence gathering and preparation work.

1.17 We were told that backlogs in committal preparation were a problem in most of the Areas visited and that full files may have arrived in the CPS office some weeks before they were allocated for review. This is because the CPS usually prioritise committal cases according to the proximity of the court date. Preparation would often be only days before the committal hearing and at this stage it is too late to request missing evidence or further investigation before the committal date and a further adjournment may be requested causing unnecessary file handling and court hearings at public expense.

1.18 CPS resources were mentioned as a reason for the committal papers not being ready in 18 of the applications for adjournment seen in our file sample. Most of these were in the Area where there had been the most dramatic increase in cases adjourned for committal in the past four years and the increased burden of committal preparation was apparent.

1.19 We were told that there were times in some offices when there were not enough lawyers to prepare all of the outstanding committals. Managers had to make the decision on a regular basis regarding which cases must be prepared and those which the CPS could risk being discharged if an adjournment was

refused. Those without identified victims, such as those involving possessing or supplying drugs, were usually chosen as the ones where the CPS would request an adjournment.

1.20 The optimum business model (OBM) for the Crown Court was in the process of being implemented in some form in most of the Areas visited. One Area told us that the OBM and the development of the paralegal officer's role had been successful in reducing significant backlogs. Concerns about poor charging advice in this unit led to all cases adjourned for committal being vetted directly after mode of trial was decided and this was thought to be **GOOD PRACTICE**. This was done by the unit head to quality assure the charging advice given, request missing evidence, request essential forensic evidence at an early stage and ensure that cases with no prospect of conviction were stopped before unnecessary work was carried out. This had just begun and had required significant staff resources but it was thought to have brought improvement.

### Compliance point

CPS managers should ensure through the application of the core quality standards monitoring that:

- the advice given and action plans at charging are correct;
- that essential evidence was identified and notified to the police at this early stage;
- that early review of the full evidential file for committal is carried out; and
- that those cases with no prospect of conviction are stopped at an early stage to prevent unnecessary work by the police and CPS.

This assurance is most necessary in Areas where the discharged committal rate is high.

**1.21** Sometimes a lack of administrative resources meant that committal papers could not be prepared. In one Area the bulk listing of committal cases in one court each week exacerbated these problems as many cases were still being reviewed by the lawyer the day before.

**Compliance point**

Areas should ensure that systems for the preparation of committals allows time for administrative staff to prepare committal papers for service after review.

**The position of the court**

**1.22** In two of the Areas visited requesting an adjournment at the committal hearing was so common that forms had been created on which the reasons for the committal not being ready were noted.

**1.23** In four of the eight Areas it was usual for the prosecution to write to the court in advance of the committal hearing to inform them that the case would not be ready. However in the other four Areas, communication with the court prior to the hearing was unusual and an adjournment would be requested on the day.

**1.24** File endorsements seen suggest that when refusing adjournments, magistrates sometimes consider the time that was available to the prosecution to obtain evidence following the charging advice being given.

**1.25** Sometimes the letters requesting an adjournment would inform the prosecutor of the reasons for the request or a note would be put on the file. However, it was not always clear from the files that prosecutors had been informed of the reasons.

**1.26** In dealing with requests for adjournments at the committal hearing, the action of the courts varied. We saw examples of cases which were refused an adjournment and discharged at the first committal hearing. Others were seen where the court had granted two adjournments, though often with great reluctance, for preparation of the committal. Overall there was little variation in the number of adjournments granted between the Areas in the audit.

Number of committal hearing adjournment requests seen	
	Total
Two adjournments granted	8
One adjournment granted	41
Discharged - adjournment request refused	69
Not applicable	27

1.27 One Area had discussions with the court about the case of CPS v Alan Picton (170 J.P.567) which summarises the factors the court should consider before refusing an adjournment. This Area had the most significant rise in cases adjourned for committal and late police full files with missing evidence resulted in large numbers of discharged committals. Details of this case were given to prosecutors to use in applications for adjournments and though a recent initiative, we were told that it appeared to be having some effect.

1.28 On a number of files where missing evidence would not be available for several weeks we saw examples of unrealistic requests for adjournments of one or two weeks. It is difficult to understand why this short adjournment is requested as the evidence was still not available at the adjourned hearing. Repeated adjournments take up court time, increase file handling and result in unnecessary cost, they also frustrate the court. If Areas had effective systems in place to reinstate discharged committals, where appropriate, the need to seek adjournments would be reduced. It may be preferable to discontinue the proceedings or offer no evidence and to consider reinstating the case when the evidence is received. It would, however, increase the discharged committal rates.

### Recommendation

CPS headquarters should amend current guidance to clarify whether it is preferable to discontinue or offer no evidence in a case at the earliest opportunity when it is known that critical evidence will take several weeks to secure and to seek to reinstate later.

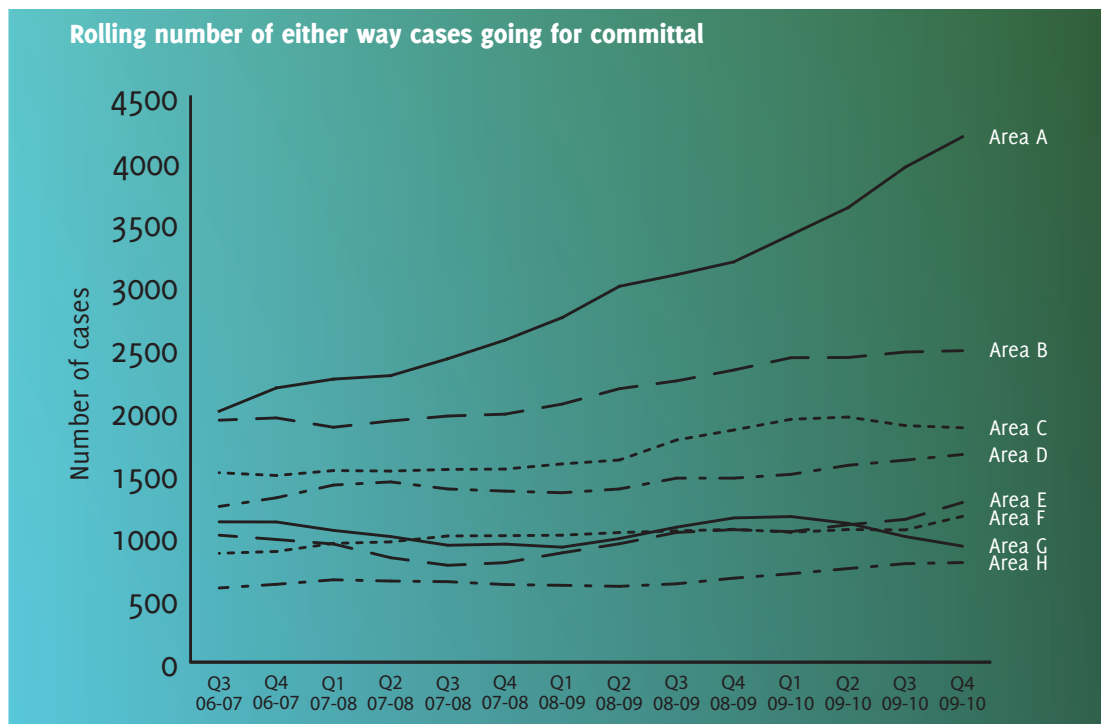
1.29 In a number of cases seen where the prosecution had reviewed the evidence and decided that there was no prospect of conviction, it was not clear why the case had been listed and discharged rather than discontinued in writing. In some cases the lateness of the review was a factor.

### The effect of the rise in the numbers of cases adjourned for committal

1.30 Cases going to the Crown Court comprise either way offences or more serious indictable only offences<sup>3</sup>. This audit is concerned only with either way offences that are adjourned for committal to the Crown Court because the magistrates direct this or because the defendant elects to be tried there.

1.31 The chart below shows a variation in the numbers of either way cases adjourned for committal in the audited Areas since 2006. In some Areas the increase is particularly sharp and will place a much greater burden on Area resources in preparing cases for committal and eventual Crown Court trial. In one Area the number has more than doubled in the last four years. Nationally the rise is not as great and it has not resulted in a rise in discharged committals; in fact numbers have fallen slightly.

<sup>3</sup> These cases are sent almost immediately to the Crown Court under section 51 of the Crime and Disorder Act 1988 without committal proceedings. However papers are prepared later for service in the Crown Court.



**1.32** Some Areas in the audit mentioned that an increase in the numbers of cases where the defendant elects Crown Court trial had caused this increased burden. Our findings do not reflect this view. Whilst we found that the number of cases where the defendant elected had doubled in most Areas since the end of 2006 and in the Area highlighted with most either way cases it has tripled, these formed only a relatively small number of the total either way cases adjourned for committal. Even in the Area where numbers had tripled this only resulted in 67 more cases being dealt with in the final quarter of 2009-10<sup>4</sup> than four years previously.

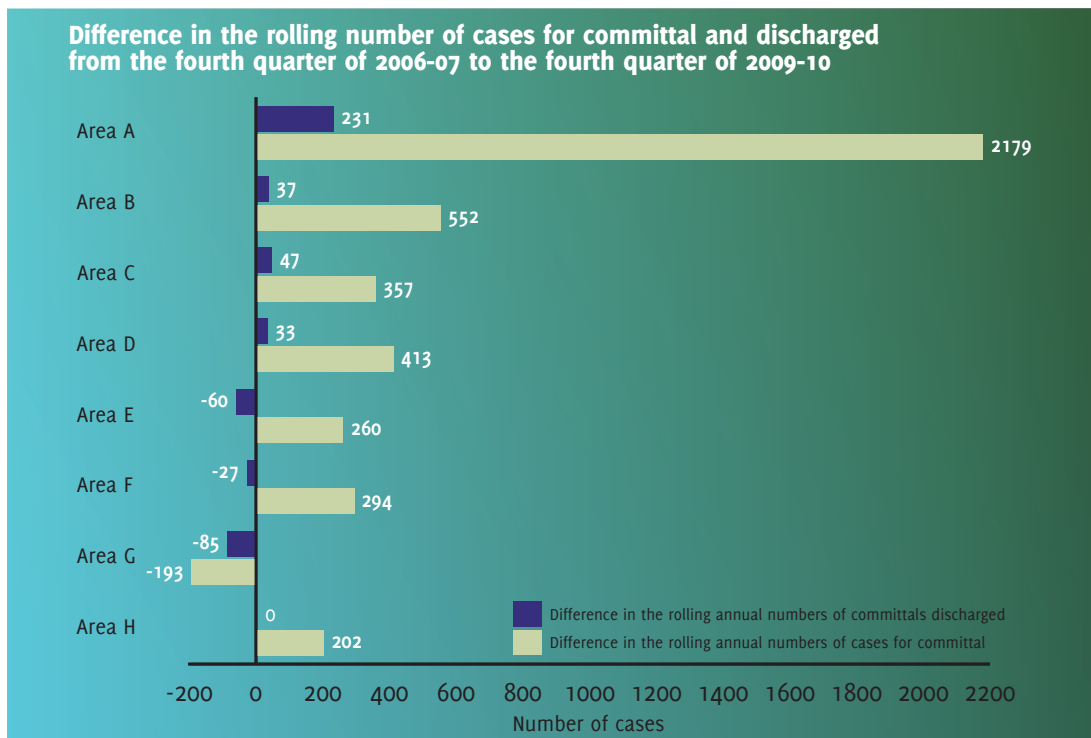
4 This data is taken from the CPS electronic management information system (MIS), Crown Court performance indicators 2009-10. This shows the number of case finalised each quarter in the Crown Court in which the defendant elected or the magistrates directed that the case should be tried in the Crown Court. This data does not correlate with the date in the same quarter committed from the Crown Court.

**1.33** Of greater impact was the rise in magistrates' directed cases which form the majority of cases requiring preparation for committal. This had caused the same Area to handle 396 more cases in the Crown Court in the final quarter of 2009-10 than four years previously<sup>5</sup>.

**1.34** The chart below shows the rise in either way cases adjourned for committal compared to the rise in those discharged using annual rolling data. Some correlation can be seen between the rise in cases adjourned for committal and the rise in discharged cases. It also shows improved performance in four Areas, despite two of these having increased numbers of cases for committal<sup>6</sup>.

5 This data is taken from CPS MIS, Crown Court performance indicators 2009-10.

6 This data is taken from CPS MIS, Crown Court performance indicators 2009-10.



1.35 CPS, police and court resources used in committing a case to the Crown Court for trial or for guilty plea are substantial. If the number of cases adjourned for committal can be reduced this would be beneficial in reducing the burden on all agencies, giving a speedy result for victims and witnesses and in reducing the costs to the criminal justice system. The reasons for the increase in committals are an issue that the CPS may wish to consider in more detail.

### Recommendation

We understand that the CPS is contributing to a criminal justice system review that will examine the national increase in cases being adjourned for committal to the Crown Court. The CPS should assess these findings and the impact this increase may have on future resources and its current resourcing model.

### The cost of wasted resources

1.36 The cost of a discharged committal was examined in more detail using the CPS analysis for activity based costing purposes. Costs are calculated by the CPS using average timings for the work carried out by each grade of staff involved in a particular process. This is primarily designed to assist resource distribution in the CPS, however, this gives some indication of the cost wasted if, for example, a committal is not progressed effectively and the defendant is discharged.

1.37 A case for committal will usually have had advice given before charge by a CPS lawyer and the timings and costs for this process have been added to the cost of the work calculated by the CPS for each grade of staff involved in a discharged committal. Each defendant discharged at committal is calculated to cost the CPS £302.57.

**1.38** The cost to the police of gathering evidence to collate a full file and to the courts in listing these cases has not been assessed and this calculation relates only to CPS resources used.

**1.39** The cost of one defendant discharged at committal has been used to estimate the cost to the CPS Areas in this audit and nationally for the financial year 2009-10. For all defendants who are discharged at committal in either way cases in England and Wales the cost was £652,946.06 and the cost to the Areas audited ranged between £3,630.84 and £82,601.61 in the same year.

## 2 Handling cases after discharge

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2.1 The focus of action post-discharge should be:

- to make a realistic assessment as soon as possible of whether it is worthwhile pursuing the case;
- to request, monitor and chase further evidence required within an appropriate timeframe; and
- to prepare the committal as soon as sufficient evidence is submitted and arrange to reinstate the case.

In none of the Areas visited were all these three elements in place and applied consistently.

### Coding of case results

2.2 It is important that cases which have been discharged at court are identified and reviewed within a reasonable timescale. This will allow appropriate action to be taken to secure any outstanding evidence and to prepare the case for committal if it is decided that the case is suitable for reinstatement.

2.3 Of the 145 cases examined, only 11 had been incorrectly finalised on the computerised case management system (CMS) often due to poor endorsement of the file at court or a misunderstanding of the result by the administrative staff.

2.4 A more frequent problem was the incorrect recording of the reason why the case had been discharged. In 32 of the 145 files the reason for the case being discharged did not appear to reflect events on the file. Accurate recording of the reason why a case could not be committed would highlight problem areas and assist in securing improvements to performance.

2.5 In the majority of the files examined the reason for the case being discharged was not routinely recorded in the court endorsement on the CPS file. It often required careful examination of correspondence and actions within the file to identify the cause, which creates unnecessary work for administrative staff.

### Compliance point

Areas should ensure that the reason for a case being discharged is clearly recorded by the prosecutor in court and input into the electronic case management system (CMS) to assist in the analysis of performance.

### Assessment of the case following discharge

2.6 It is essential that if cases are to be dealt with effectively after they have been discharged, that a decision is made on whether action should be taken to reinstate the case. In 32 of the 119 cases examined, the court endorsement recorded that consideration had been given to reinstating the case and the court and the defence had been put on notice. In the remaining cases a decision had to be taken after the court had refused an adjournment on whether it was realistic and appropriate to pursue the prosecution.

2.7 All the Areas visited had a system to direct discharged committals to either an administrative manager to check the finalisation code and to ensure that a letter was sent to the victim if necessary (see chapter 3), or to a lawyer manager to make an initial assessment on possible reinstatement or to examine the file as part of their analysis of cases with adverse outcomes.

**2.8** In some Areas the lawyer manager would take the initial decision regarding whether to reinstate. In some cases this would require action to request or chase outstanding evidence and in others it may merely require the preparation of the committal papers which the CPS had not been able to produce prior to the committal hearing due to lack of resources. In other Areas, the lawyer manager would forward the case direct to the reviewing lawyer to take the initial decision as to possible reinstatement and to follow up any outstanding work.

**2.9** It was not always clear from the files or from the systems described in the Areas, how quickly the initial decision was made to work towards reinstating the case after it was discharged. In some Areas the decision and action was taken relatively quickly. However in one Area there appeared to be delays in allocating the file to a lawyer after discharge to consider whether reinstating the case was possible. The delay could sometimes be substantial, amounting to months. Timeliness is dependent on available resources and in most of the Areas visited it was clear that most discharged cases are not seen as a priority.

### **Action to reinstate**

**2.10** In almost 75% of cases, the CPS had requested missing evidence prior to the case being discharged. The request was often made shortly before the committal hearing requiring the papers as soon as possible. Apart from any other consideration, this type of target date would be difficult to monitor as no specific return date was given. It was not clear from the files if the request for missing evidence or further action by the police was monitored or chased after the case was discharged. Some

Areas had “bring forward” systems where the administrative staff would bring the file to the attention of the lawyer at a set time after the discharge with the intention that the lawyer would take appropriate action.

**2.11** There was little evidence of CPS contacting the police post-discharge to confirm that the missing evidence was still required and setting further target dates. Target dates were found in 15 of 74 relevant files. There were ad hoc systems for monitoring target dates. We were told that reviewing lawyers may monitor dates in their own diaries. The optimum business model should aim to provide a system to monitor target dates. In a number of files the police were given several weeks for submission of further evidence. The reason for such a generous amount of time was not apparent other than the fact that there was no court date to work towards. Swift reinstatement is in the interests of justice as it may take several months to deal with the case should it go to trial at the Crown Court, prolonging the case for the defendant, victim and witnesses and allowing recollection of events to fade.

**2.12** We noted **GOOD PRACTICE** in one Area where a form was placed on discharged cases that were to be reinstated. This recorded action dates for receipt of further evidence as well as CPS action and allowed progress to be tracked. In most cases, the form was well completed. The form would also record the final decision regarding whether reinstatement was appropriate. In this Area there appeared to be less “drift” in dealing with cases post-discharge and the decision whether to reinstate was dealt with more quickly.



**2.13** As part of this audit a number of files from the sample were examined by a legal inspector for a view on whether the case should have continued after it had been discharged. In eight of the ten cases examined, it was felt that it would have been appropriate to pursue reinstatement but this was not achieved in any. In all these cases the concern raised is the failure to follow up on requests for further evidence and to take a positive and proactive approach in reinstating the case.

### **Systems to monitor cases to be reinstated**

**2.14** Once a case has been discharged at court it will often lose the sense of urgency that an impending court date provides. Many cases are allowed to drift for several months after which the decision may be taken that it is too late to reinstate the case and because the defence may raise an abuse of process argument.

**2.15** There is no system recommended nationally for monitoring cases in which the CPS is considering reinstatement after discharge. Each of the Areas visited had a different system which often relied on particular individuals for monitoring and tracking the progress of cases that were to be reinstated. In five of the Areas, there was no written instruction regarding handling and monitoring progress in these cases. One Area had recently introduced guidance but there was evidence that it had not been fully implemented.

**2.16** In four of the Areas visited a spreadsheet was used to record those cases in which reinstatement was being pursued. In two Areas the system was used to track and prompt progress in cases, in the others it often only recorded the result. Though the staff

responsible for the spreadsheet were aware of its usefulness as a means of prompting action in cases, maintaining it for this purpose and actions arising from it was not regarded as a priority at times when resources were stretched.

**2.17** In the remaining two Areas which did not have a spreadsheet in place, responsibility for maintaining progress in the cases often lay with the reviewing lawyer. Lawyer managers may periodically check the cases awaiting reinstatement, but there was no formal system to ensure that action was taken to secure missing evidence.

**2.18** Given that these cases are often not regarded as urgent, a system to secure missing evidence and prompt timely review when outstanding evidence is received would appear to be vital.

### **Priority recommendation**

CPS Areas should put in place a system to monitor the progress of cases awaiting reinstatement to ensure that they are handled effectively.

### **Timely review for reinstatement**

**2.19** The handling of discharged committal files is seen by staff as a challenge. It was also apparent that even when all the evidence necessary to commit the case had been received action to review the case was not always prompt. In 30 cases in the file sample there was evidence of substantial delays in further evidence being reviewed after receipt. The length of time varied from six weeks to five months before evidence was reviewed by a lawyer.

**2.20** It was not possible to determine the reasons for the delays in most cases. It was not clear whether it had taken some time to link the new papers to the file or whether, once linked, the lawyer had not been able to review the new evidence. In a small number of cases it was not clear whether further evidence had been reviewed at all.

**2.21** In a number of cases delay resulted in it being too late to recommence proceedings as it was felt that the defence would raise an abuse of process argument given the amount of time that had passed since the time of the offence or the time taken to obtain the evidence and reinstate the case.

**2.22** Delays were also apparent in taking a final decision on whether it was possible to reinstate in cases where evidence remained outstanding. Significant delay was noted in 22 cases where it had taken several months before a final decision was reached on the case or where there was no note of a decision at all. In three of these cases a decision was not made until a year after the case was discharged and in two it was decided it was too late to go ahead. In eight of the 22 cases, there was no record of any decision but it was clear that the cases had been archived.

**2.23** In one of the Areas visited where it was the practice to consult the police, it was not clear whether the CPS or the police had made the final decision whether to reinstate.

**2.24** In most Areas, in those cases that were reinstated, there was often no record of a formal review for that purpose. The committal review would often be the only indication that it had been decided to reinstate the case. Given that it is open to the defence to raise an abuse of process argument in court, it would be good practice to record on the file the reasons why it was considered appropriate to reinstate the case. This would assist the prosecutor in court if an issue was raised.

**2.25** We saw two cases in the sample where files had been mistakenly sent to archive after a lawyer had assessed that there was not enough evidence to reinstate at that point but expected further work by the police. In both these files, one concerning an offence of fraud and the other of serious assault, it was contact by the victim that had prompted further action.

**2.26** There did not appear to be any set length of time after discharge when it was considered too late to reinstate a case. Area staff indicated that the type of offence involved would be an important factor but that each case would be considered on its own particular circumstances. We saw examples in the file sample that were still being considered for reinstatement over a year after the case had been discharged.

**2.27** The authority to reinstate a case rests with the chief crown prosecutor (CCP) in an Area. In most of the Areas visited, the CCP had delegated this authority to a senior lawyer manager. We found that these managers were often involved in the decision shortly after committal was discharged and also gave final authorisation to proceed just before it was intended to reinstate the case. Senior managers are therefore aware of the issues with discharged committals and in some cases had refused to allow the case to be reinstated often due to the amount of delay. This knowledge should be used to discuss improvements in police performance and to put in place effective CPS systems to ensure that there are efficient reinstatement processes in place.

### **Preparing the case for reinstatement**

**2.28** Preparing a previously discharged case for committal is often an issue for CPS Areas in terms of prioritising work. Where there are committals to be prepared for a court hearing within the next few days, these will generally always take precedence over a discharged case in which sufficient evidence has now been received.

**2.29** In most of the Areas visited we were told that it was generally the practice to prepare the committal papers before final authorisation was sought to reinstate the case. This was in order to avoid the situation where the prosecution was not ready to serve committal papers at the first court hearing after reinstatement. However, in one case we noted that a previously discharged case was discharged for a second time because the CPS file and committal papers were not at court for the hearing. The lack of an established system for monitoring and storing files awaiting reinstatement may contribute to such problems.

**2.30** The procedure to be adopted when the committal papers had been prepared was unclear. In some Areas, the committal papers would be served on the defence before the case came back before the court if the defence solicitors were known. In others, the papers would be served at the first hearing. If papers were served prior to this hearing it may be possible to avoid a second hearing and commit the case to the Crown Court on the day.

**2.31** When a decision has been taken to reinstate a case, the prosecution are directed in their own national guidance to inform the accused promptly. In only nine cases of the 19 reinstated was there any evidence that the defendant or the defence solicitors had been contacted before the CPS arranged for a summons to be served.

### **Legal guidance**

**2.32** One case in the sample raised concerns about the sections in the CPS legal guidance which deal with the termination of proceedings and the reinstatement of proceedings. The case was discontinued due to a piece of vital forensic evidence which the CPS had not received. The discontinuance notice stated, in line with CPS policy, that should fresh or further evidence become available, proceedings may be reinstated. When the evidence was received it was apparent that it had been in the possession of the police at the time the case was discontinued but had not been forwarded to the CPS.

**2.33** The CPS legal guidance dealing with reinstatement of proceedings makes it clear in these circumstances that such evidence is not fresh or further evidence and does not justify reviving the case. However, this is not made sufficiently clear in the guidance dealing with the termination of the proceedings to alert lawyers to consider this specific aspect. This situation would not have occurred if the case had been discharged. If the CPS wish to discontinue a case in such circumstances, they should be clear as to whether the evidence required is in the possession of the police at the time.

**Priority recommendation**

The CPS should amend the section in the legal guidance dealing with termination of proceedings to make it clear that when a case is discontinued, there are restrictions in place that may prevent the case being reinstated later.

## 3 Keeping the victim informed

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### Duty to victims

**3.1** It is important that victims of crime are kept up to date with progress in the case. When a case is discharged the victim should be informed. This is one of the functions fulfilled by the witness care units (WCUs). However they may not be aware of the important decisions being taken by the CPS such as the decision to work towards reinstating a case that has been discharged at the committal hearing.

**3.2** Under the direct communication with victims (DCV) scheme, the CPS must contact victims in cases where a charge is dropped or substantially altered to provide the victim with an explanation for the decision. The CPS national guidance requires a DCV letter to be sent when a prosecutor applies to the court to discharge a case and has no intention to reinstate the case. This duty does not extend to those cases where the court refuses an adjournment and the CPS is considering reinstating the case. This has led to different practices in the CPS Areas in the way in which they treat victims in cases that had been discharged.

### Area practice

**3.3** In those Areas visited there were three main practices relating to keeping the victim informed when a case was discharged. These practices included:

- to send a DCV letter at the time of the discharge and nothing further once a decision had been taken not to reinstate the case;
- to send either a DCV letter or a holding letter at the time of the discharge and then another letter when a final decision had been made;
- to send a DCV letter only after it had been decided not to reinstate the case.

**3.4** Where it was the practice in the Area to send a DCV letter immediately the case was discharged, the letter often mentioned that, though the case had been finalised at court, it was not necessarily the end of the matter and that it may be reinstated when further evidence was received. When a decision was taken not to reinstate the case, the view was taken in these Areas that the position had not changed since the victim had been contacted after the case was discharged. From the point of view of the victim, this seems unfair as it leaves the matter unresolved. A follow up letter, even if it is sent several months after the initial letter would give the victim closure on the case.

**3.5** In other Areas, it had been decided that it was better practice to send a short letter to the victim at the time the case was discharged, explaining what had happened and informing them that the case may be reinstated in the future when the evidence became available. Another letter was sent when the decision had been taken not to reinstate the case. This is considered **GOOD PRACTICE** as it keeps the victim informed of the position and allows them to put the matter behind them when it is decided that the case will not be brought back before the courts.

**3.6** In some of the Areas visited the view was taken that a DCV letter should only be sent when a final decision had been made on whether to reinstate the case. In some cases, this meant the victim waited several months or more after the case had been discharged before they were told that the case was not going ahead. This, whilst in line with the DCV guidance, leaves the victim without an explanation of what is happening for an appreciable amount of time. This does not appear to be consistent with the principles of DCV and witness care generally.

**3.7** The WCU would normally contact the victim after the case had been discharged but the letters we saw on the files only told the victim that the case had been finalised at court. There was no indication that the case may be reinstated because this is information that the WCU would not necessarily be aware of. If the victim also receives a letter from the CPS stating that the case may be brought back to court, it may cause unnecessary confusion. The organisation best placed to give the victim accurate information is the CPS.

#### Recommendation

The CPS should issue national guidance setting out good practice regarding keeping victims informed of the progress and outcome in discharged committal cases.

#### File examination

**3.8** There were 82 cases which involved a victim and the victim was notified in 69 that the case had been discharged. In 37 (45.1%) of these cases the victim had not received any communication from the CPS at the time the case was discharged. In 13 of the 37 cases, the CPS had not contacted the victim at a later date when it had been decided not to reinstate the case, so the victim did not receive any explanation from the CPS for the decision. The types of cases in which the victim had not been contacted at any time by any agency included burglary, theft and affray.

**3.9** Where DCV letters were sent at the time the case was discharged, most were sent in line with the time targets set out in the DCV guidance. In some offices visited, the administrative manager would sift cases after court to identify if there were victims in cases that had been dropped and ensure that DCV letters were drafted before a decision was made on reinstatement.

**3.10** There were seven cases in the file sample where the only contact at the time the case was discharged was from the WCU. This contact usually informed the victim only that the case had been finalised. In two of these cases, this was the only contact with the victim as the CPS had not issued a DCV letter when the decision had been taken not to reinstate the case.

**3.11** The file sample contained 21 cases where the CPS had written to the victim after the case was discharged and had mentioned the possibility of reinstatement. In seven, including cases of serious assault and burglary there was no further contact with the victim to inform them that a decision had been made not to reinstate the case. We feel that this is unacceptable. Victims should be informed of the decision as soon as possible even if it is several months after the case was discharged in order to give them some closure on the matter.

### Compliance point

Where a victim has been informed at the time the case was discharged that there was a possibility of the case being reinstated, a follow up letter should be sent as soon as a decision is taken not to reinstate to ensure that the victim has closure on the case.

**3.12** There were three files in the sample in which the victim had contacted the CPS to ascertain what was happening with the case. In two of these cases it was this contact that had prompted action to consider or pursue reinstatement.





## A Methodology

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The audit team selected eight CPS Areas which have or have had high rates of discharged committals. A sample of files was examined from each Area and a total of 145 were seen. The team visited six of these Areas and spoke to staff dealing with the committal cases before and after discharge and Area systems were considered.

Ten cases from the file sample were examined by a legal inspector to consider if decisions taken after discharge whether to pursue missing evidence with a view to reinstatement were appropriate.

Most cases in the audit sample were discharged committals but the audit also looked at a small number of discontinued cases. Previous reviews by HMCPSI raised concerns that some committal cases were incorrectly discontinued rather than discharged. The cases examined in this audit provided assurance that their discontinuance was appropriate.

## B Glossary

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

The public document that sets out the framework for prosecution decision-making. Crown prosecutors have the Director of Public Prosecutions' power to determine cases delegated, but must exercise them in accordance with the Code and its two stage test – evidential and public interest. 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' courts 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 management used by the CPS. Compass is the new comprehensive system used in all Areas.

### **Direct communication with victims (DCV)**

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

### **Director's Guidance on the Streamlined Process (DGSP)**

Provisions agreed between the CPS and Association of Chief Police Officers (ACPO) concerning the streamlining of certain prosecution case files, whereby a restricted amount of information and evidence is initially included where there is an expectation that the defendant will plead guilty.

### **Discharged committal**

Discharged committals are cases discharged in the magistrates' court because the prosecution are not ready to proceed to committal on a date set by the court. (There is also a rarer form, not dealt with in this report, where the magistrates discharge the defendant after hearing all of the evidence read and deciding that it is insufficient to commit the case for trial in the Crown Court).

### **Discontinuance**

The dropping of a case by the CPS in the magistrates' courts, whether by written notice (under section 23 Prosecution of Offences Act 1985), withdrawal or offer of no evidence at court.

### **Evidential stage**

The initial stage under the *Code* test – is there sufficient evidence to provide a realistic prospect of conviction?

### **Optimum business model (OBM)**

System of processes implemented within the CPS to ensure that cases in the magistrates' court and the Crown Court receive systematic attention and progression.

### **Paralegal officer**

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

### **Public interest stage**

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 legal 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 eg most serious motoring offences, common assault etc.

**Witness care unit**

Units responsible for managing the care of victims and prosecution witnesses from the point of charge to the conclusion of a case. Staffed by witness care officers and other support staff whose role it is to keep witnesses informed of progress during the course of their case. Units are often staffed with a combination of police and CPS staff (joint units).

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

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