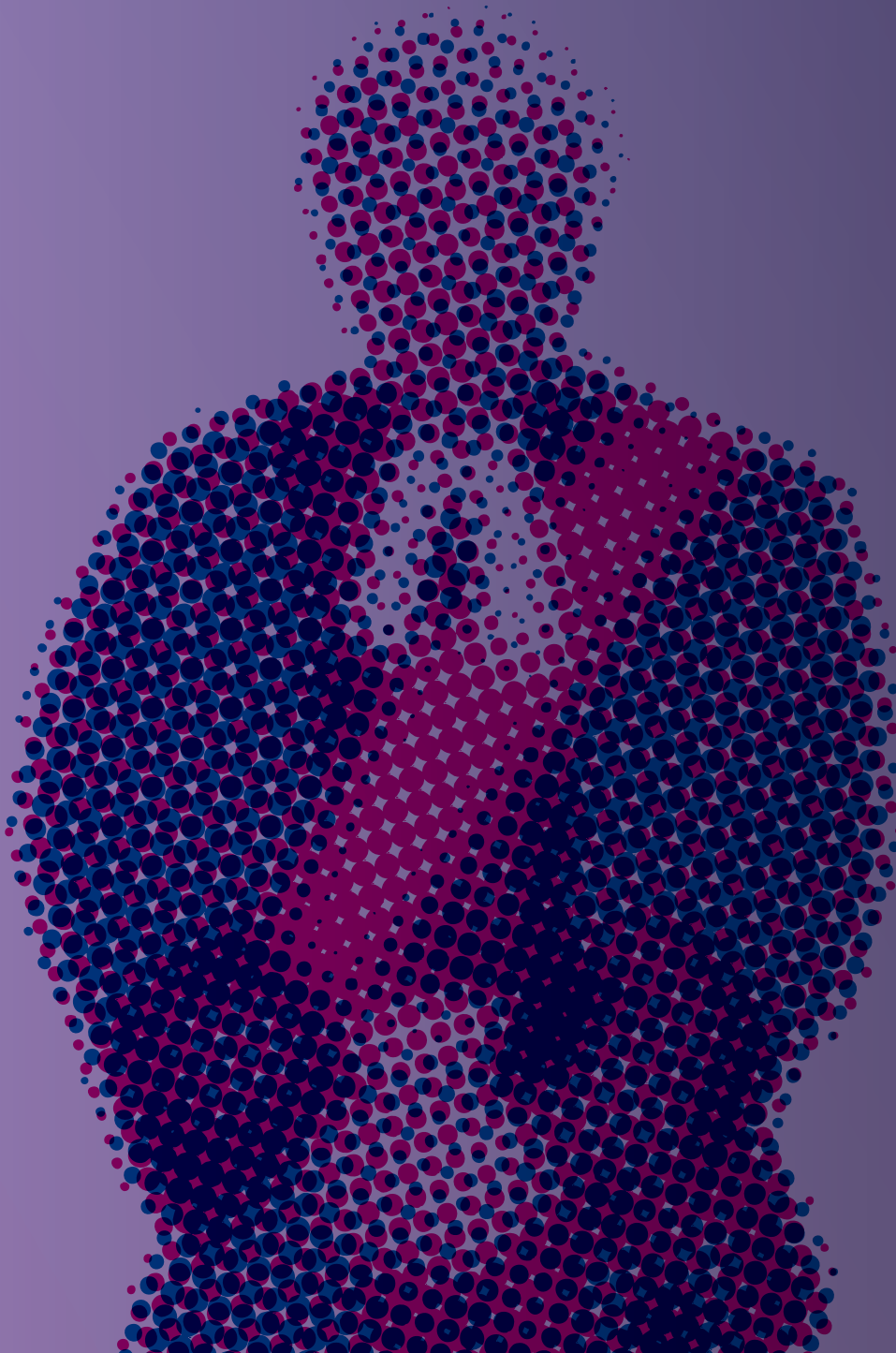




HM Crown Prosecution
Service Inspectorate

An audit of the Crown Prosecution Service handling of Judges' Orders in the Crown Court

September 2011



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Executive summary

Contextual factors and background

In the Crown Court the plea and case management hearing (PCMH) provides the judge with an opportunity to properly and effectively manage the case before it is listed for trial. Judges will issue orders for outstanding work to be done, often within certain timescales. This is to ensure that essential actions are completed before the trial date and so avoid additional listings for mention regarding non-compliance that cost money and adversely impact on the quality of justice. It is preferable that outstanding actions have been progressed before the PCMH so avoiding the need for orders.

At the PCMH both the prosecution and defence advocate complete a questionnaire to assist the judge by giving details of outstanding issues and possible legal argument or applications. Forms have been issued by the Ministry of Justice including an orders template for the judge to confirm in writing what has been directed. There are set timescales for service of disclosure and applications to be made that may or may not be recorded as an order but for which a time limit will still apply.

Summary of findings

Court orders were not an effective means of driving case progression in the cases seen in the audit. In only 23% of the cases in the audit, with time bound orders, did the Crown Prosecution Service (CPS) comply with the direction within the prescribed timescale. In 67.4% of cases the CPS did eventually comply with the order at some point prior to trial.

Monitoring the compliance with orders and action following non-compliance was not always consistent or apparent. Lack of compliance with orders often only became an issue relatively close to the trial date when the court required assurance as to the ability of the prosecution and defence to go ahead with the trial. Orders were not met and issues in relation to further evidence and continuing disclosure were often seen to be outstanding up to the trial date.

Where monitoring was being done there was no standard system. Often ambiguity over who was responsible for actions on the case after PCMH in some Areas led to delays in orders being dealt with and in case progression. The CPS are investing some resource in a national monitoring system which will be available on the electronic case management system by October 2011.

Opportunities for early review to ensure efficient case progression before the PCMH are missed by the CPS. The CPS review of the upgraded file of evidence sent by the police and the preparation of papers for service was often late. Missing evidence caused few committal hearing adjournments but orders were made at the PCMH for the service of further evidence or disclosure and a significant amount of evidence was served later. The further evidence needed could be identified at a much earlier stage to avoid orders being made by the judge at the PCMH and reduce delays before trial.

The use of the advocates' questionnaire was not consistent. The prosecution and the defence did not always fully complete this form and its incorrect use by judges to record the orders often led to a lack of clarity about what had been ordered.

Although the PCMH on 61 out of the 72 files in our sample was listed after the introduction of the judges' template for noting orders¹ we only saw a few of the forms completed. Where they were completed they provided a comprehensive note for all parties of the orders made and it was not clear why they were not being used.

In many cases the orders recorded on the advocates' questionnaire, the CPS file and the brief back sheet used by the prosecutor in court differed. These records were not cross-referenced in all Areas and in some cases this had led to orders being missed by the prosecution.

Many of the briefs for the PCMH/trial were allocated late or considered late. A more timely review of the papers by those instructed would ensure that further necessary work would be initiated at an earlier stage before the PCMH so reducing delay and avoiding orders being issued.

¹ The new plea and case management form was introduced by the Ministry of Justice in April 2010.

Recommendations

1 Areas should have systems in place to ensure that:

- the return of Bar standard forms is monitored to make sure that instructions are read in good time; and
- advice provided by counsel or the crown advocates on this form should be dealt with promptly (paragraph 1.13).

2 Post-plea and case management hearing, the court endorsement should be cross-referenced with the record of orders provided by the court to ensure that all orders are identified and action taken (paragraph 2.11).

3 The CPS should work with the senior judiciary to ensure compliance with Rule 3.11 (2) of the Criminal Procedure Rules to secure a clear and comprehensive record of the orders made at the PCMH for all parties (paragraph 2.11).

4 Areas should have a monitoring system in place to ensure compliance with orders issued by the court and which:

- monitors defence compliance if prosecution compliance with an order is reliant on defence action; and
- ensures that procedures are followed to apply for an extension if the CPS is unable to comply with an order in the time allowed (paragraph 2.21).

5 Areas should ensure that where a brief is not available for the crown advocate at the plea and case management hearing they should endorse the orders issued for inclusion in the brief (paragraph 3.5).

Compliance points

1 Areas should ensure that target dates for the submission of upgraded evidential files by the police should be highlighted in CPS correspondence (paragraph 1.4).

2 The need to apply for special measures, adduce bad character or introduce hearsay evidence should be considered prior to the plea and case management hearing and the intention should be noted in the advocates' questionnaire to enable these to be monitored along with any other orders (paragraph 2.8).

3 Areas should ensure that all actions whether they are considered to be orders or directions issued by the court are monitored to ensure compliance and effective case progress (paragraph 2.13).

4 Areas should ensure that prosecutors consider the defence statement as soon as reasonably practicable to:

- decide if it meets the requirements to consider continuing disclosure; and
- advise the investigating officer if any reasonable and relevant further lines of enquiry should be pursued (paragraph 2.24).

5 To ensure compliance with service of continuing disclosure, Areas should have in place effective systems to forward the defence statement to the police and to monitor the response from the police (paragraph 2.26).

Good practice

1 It is considered good practice that the upgraded file is requested directly after an indictable only case is sent to the Crown Court and that it is not delayed until after the preliminary hearing (paragraph 1.3).

2 Good practice was seen in one Area where the file is reviewed directly after the mode of trial hearing to ensure that all evidence needed to commit or serve the case had been requested (paragraph 1.8).



1 Early proactive CPS case progression in the Crown Court

1.1 To reduce the need for court orders and ensure that cases are ready for trial, the CPS must make efficient use of the time available from the mode of trial hearing to committal or in indictable only cases, from the date that the case is sent (under section 51 of the Crime and Disorder Act 1998) to the service of papers. The CPS must ensure that:

- a good quality upgraded evidential file² is received from the police;
- timely review of the upgraded file is carried out;
- the service of evidence is completed in good time to commit or send the case for trial in the Crown Court;
- initial disclosure is carried out; and
- early consideration is given to further evidence needed for trial, witness needs and relevant legal applications by the allocated trial advocate.

From our file sample it was seen that the time allowed for this work to be done usually varied between three to eight weeks.

Timeliness of the provision of upgraded files in Crown Court cases

1.2 A delay in the provision of the upgraded evidential file by the police would leave less time for the CPS to review and prepare evidence for service prior to committal or before the date of service in indictable only cases. It will also reduce the time available to request missing items of evidence or disclosure and some actions may remain outstanding much later at the PCMH.

1.3 For this reason it is important that the CPS notify the police promptly that an upgraded file will be needed after mode of trial has been decided or after the case has been sent. Most requests to the police were timely but some were late and a few were on indictable only cases where the request was delayed until after the preliminary hearing. **Good practice** was seen where the police were notified as soon as the case was sent.

1.4 The CPS would not always establish a target date in the requests to the police and although this was not seen to affect timeliness, confirmation of the target date for both parties would assist monitoring of compliance.

Compliance point

Areas should ensure that target dates for the submission of upgraded evidential files by the police should be highlighted in CPS correspondence.

1.5 The police were usually given half of the time before the committal or service date to provide an upgraded file and our file examination indicates that provision of a file which the police submitted as upgraded was usually timely. In only seven out of 72 cases was this upgraded file submitted less than two weeks prior to the committal or service date.

2 At an initial hearing only limited evidence is provided by the police to save time and money in preparing papers that may not be needed if a defendant pleads guilty. However, if a defendant pleads not guilty a comprehensive file of evidence is needed to prove the case at trial.

Quality of the upgraded files and remedial work before committal or service

1.6 The early arrival of the upgraded file would hardly ever result in an early review of the evidence by the CPS as other cases where the committal or service date was imminent were prioritised.

1.7 Nearly half of the upgraded files seen were only reviewed in the week before the committal or service date despite being received more than two weeks prior to this. Over a third of all the cases seen for committal (22 out of 52) had papers prepared for service within one working day of the committal date and it is likely that these papers were handed over at the committal hearing. It is therefore surprising that late service or missing evidence only resulted in seven adjournments which indicates that the upgraded file provided by the police was sufficient to commit the case. There was no endorsement of issues raised with regard to the late service on other files. Late review and service of papers does not reflect well on the CPS and reduces the time for other work to be done before PCMH or trial.

1.8 **Good practice** was seen in one Area where the file is reviewed directly after the mode of trial to ensure that all evidence needed to commit or serve the case had been requested. This also ensured that further work was only requested from the police on cases that are evidentially sound and others were discontinued at an early stage ensuring value for money savings. However, this review was a fairly recent innovation and its impact could not yet be assessed. This in line with the CPS Core Quality Standard 5.9.

1.9 In other Areas missing evidence would only be identified when the review was carried out and as noted above, this was sometimes shortly before committal. Further evidence was seen to be requested and in some Areas considerable further evidence was served prior to trial.

1.10 Papers were also served late in five out of the 18 indictable only cases seen and this was of special concern in one Area. In one case the CPS had requested an extension for service of papers but they did not meet this extended service date and no further extension request was apparent. In a further four cases papers were served late but no request for an extension of the time limit was seen on the file or on the electronic case management system (CMS). It appears that in some of these cases the papers were late; however, the reviews in three cases where section 51 papers were served late were done over two weeks after the upgraded file was noted as received.

Timeliness and quality of briefs for plea and case management hearings and the allocation of advocates

1.11 It is important that timely instructions are provided to counsel from the independent Bar or CPS crown advocates (CAs) to allow any necessary advisory work and case preparation to be undertaken in good time to ensure that the PCMH is effective for the proper and efficient future management of the cases³. It would be beneficial if they were informed of any relevant issues that may affect the proceedings.

1.12 Overall 81% of cases were allocated to CAs for PCMH and in one Area all cases were allocated to CAs. It was often not possible to tell when briefs had been allocated to CAs and it appeared that most of these briefs had been read just before the PCMH. We were told that uncertainty about listing until the day before PCMH made allocation to CAs problematic. Where the brief was assigned early some CAs would not read the case until they were certain that they would deal with it at court the next day and consequently little value was added by them in the period between committal and the PCMH.

1.13 Most Areas told us that they attached a form to the brief for counsel or the CA to complete to confirm that the papers had been read and to indicate any further work required. Forms were only seen returned in good time on 15 out of the 72 files in our sample and most of these were from two Areas. In one of these Areas the early allocation of briefs to CAs was more effective and half the files had forms returned. In another Area a local CA review form was used and two thirds of the files had forms returned in good time. However, overall, eight of the 15 forms returned advised further action but in only half of these was the action needed progressed⁴.

Recommendation

Areas should have systems in place to ensure that:

- the return of Bar standard forms is monitored to make sure that instructions are read in good time; and
- advice provided by counsel or the crown advocates on this form should be dealt with promptly.

³ In line with the CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court (2006) and the CPS Core Quality Standard 5.17.

⁴ As noted in the CPS/Bar Framework of Principles for Prosecution Advocates in the Crown Court and the CPS Core Quality Standard 5.17.



2 Plea and case management hearing

Use of forms and record of orders

2.1 Template forms have been issued by the Ministry of Justice to be used at the PCMH when the defendant pleads not guilty. One is to be completed by the prosecution and defence advocates, the "advocates' questionnaire" and the other, a "template for orders" form, is to be completed by the judge either by hand or electronically to record any orders made by the court to ensure the case is ready for trial. These forms have been available since April 2010 and in our file sample 61 of the 72 files had had a PCMH after that time.

2.2 A completed advocates' questionnaire was found on 39 files where it was the practice to conduct a PCMH but there were only three Areas where the template for orders form was found. These forms were found on only 12 of the 39 files and one Area accounted for eight of the 12 forms.

2.3 The advocates' questionnaire was usually completed the day before or on the day of the hearing. In one Area, the court had asked the prosecution to complete the form in advance of the hearing and forward it to the defence for completion. Consequently the CPS was completing forms for cases in which the defendant pleaded guilty at the PCMH. The benefit gained from the early completion of the forms in all cases which may identify legal issues or necessary applications must be balanced with the need to make the best use of resources. However, as in this Area the CAs were carrying out review of the case prior to the PCMH, it was not felt that the completion of the form was an imposition.

2.4 Of the 39 files in the sample that had forms with orders issued at the PCMH, only 22 forms provided a clear note of the orders.

2.5 The advocates' questionnaire sometimes presents a confusing record of what the court has ordered. Most forms appeared to be completed just before and during the hearing and can have up to three parties contributing to it - the prosecution, the defence and the judge. The form is designed to allow the prosecution and defence to record actions taken or information provided and also note any outstanding actions such as the intention to submit or consider an application to adduce bad character evidence for example. The defence will often suggest items of further evidence or disclosure they require of the prosecution though the judge may decide it is not appropriate.

2.6 The copy of the PCMH forms on the files examined did not often provide a clear record of the orders issued. This was often due to the judge using the section of the form completed by the advocates to note the orders made rather than using the template for orders form intended to record a summary of the orders or other separate record. Who had completed different parts of the advocates' questionnaire would often only be discernable from the different type of handwriting or pen used.

2.7 In three Areas visited, judges often completed a handwritten or typed summary of exactly what had been directed by the court. The forms were based on the template for orders form but were local adaptations. These local forms helpfully often included the name of the court, and had a section added to record the details of the case such as the name of the defendant and the case reference number, information which was missing on the Ministry of Justice form. A copy of the completed form was usually provided to the prosecution. Where this form was completed, it provided much greater clarity as to what was expected from both the prosecution and the defence. This form was not seen in all the Areas and CPS staff were not familiar with it as a definitive list of orders, even in Areas where it was seen. Under the current guidance it is the responsibility of the court to make available a copy of the orders. However in order to assist in this process, though it is not the responsibility of the CPS, it is suggested that the CPS attach a copy of the blank template for orders form to the advocates' questionnaire handed into the court to facilitate its completion and ensure that all parties have a comprehensive record of the orders made.

2.8 Inconsistency was seen in whether time bound applications, such as applying for special measures for victims and witnesses or to adduce evidence of bad character at the trial, were considered at the PCMH. The CPS should have considered whether these issues were relevant and have noted on the advocates' questionnaire the intention to make an application⁵. In some cases it was seen that the court had raised these issues and the application had been made subject of an order. However, we saw nine cases where applications had been made after the PCMH but which had not been mentioned at that hearing and therefore not monitored. In seven of these cases the application had been made after the expiration of the timescale. To enable compliance with the time limits for these orders, the lawyer or advocate should complete the relevant sections of the form so that the court is aware of the intention to apply and can monitor the timeliness of these applications.

Compliance point

The need to apply for special measures, adduce bad character or introduce hearsay evidence should be considered prior to the plea and case management hearing and the intention should be noted in the advocates' questionnaire to enable these to be monitored along with any other orders.

⁵ Criminal Procedure Rules 2010, Rule 3.3 & 3.11; Consolidated Criminal Practice Direction, Part IV 41.8 & Annex E.

2.9 The orders made by the court had often been noted by the judge on the advocates' questionnaire and arrangements were in place in all but one Area for the CPS to obtain a copy of this. In the other five Areas a copy of the form was found in almost two thirds of files (39). On other files the form could not be found. All Areas had files which had these completed forms missing. This was particularly the case in three Areas.

2.10 In the Area where forms were not provided, the court had only recently begun to list cases for PCMH and the court had not yet agreed to provide a record of the orders to the CPS after the PCMH. This caused some problems for the paralegal officers in court in trying to ensure that all necessary information was recorded on the CPS file as this was not always read out by the judge and this included the names of witnesses to be warned.

2.11 There were discrepancies between the court orders recorded on the file by the paralegal officer or assistant, the advocate's note on the brief and those recorded on the PCMH form. There were 39 files which had a copy of the PCMH form and in 11 (28.2%), the form and the file endorsement did not correspond. In some instances this may indicate that not all the orders are read out in court. Files were seen where orders were noted in the file endorsement but were not found on the PCMH form. In the first instance Areas should have a system in place to ensure that the CPS is aware of all the orders issued to guarantee timely compliance. In the longer term, the CPS should work with the court to ensure that a clear and comprehensive record of the orders from the PCMH is made available by the court to all relevant parties.

Recommendation

Post-plea and case management hearing, the court endorsement should be cross-referenced with the record of orders provided by the court to ensure that all orders are identified and action taken.

Recommendation

The CPS should work with the senior judiciary to ensure compliance with Rule 3.11 (2) of the Criminal Procedure Rules to secure a clear and comprehensive record of the orders made at the PCMH for all parties.

2.12 Three quarters (76.4%) of files contained an adequate endorsement of the PCMH. The rest of the endorsements were regarded as poor or were missing entirely. However, even where file endorsements were considered good, it was often not possible to determine if what was noted was an order or whether it was an action that the prosecution advocate regarded as necessary to progress the case.

Compliance with orders

2.13 Some staff queried the distinction between an order made by the judge and a direction. We saw differentiation made in only one Area where orders were now being monitored, but what were considered directions were only monitored on cases where the defendant was in custody or it was a sensitive case. This Area defined orders as directions that had not been met, where the judge had then ordered the action to be completed and may have specified the consequences of non-compliance. The difference in definition is not relevant in terms of ensuring case progress and monitoring should be carried out on any action directed or ordered by the judge.

Compliance point

Areas should ensure that all actions whether they are considered to be orders or directions issued by the court are monitored to ensure compliance and effective case progress.

2.14 Two thirds of cases (48) in the sample had court orders or had applications made. There was a time bound compliance element in 89.6% (43) of these cases. In over three quarters of these cases (33 - 76.7%), the prosecution failed to meet the deadline but an application for an extension was evident in only one case. In 19 of the 33 cases which failed to meet the orders within the timescale, the orders were met at some point before the trial date. Overall the CPS eventually complied with the order in 29 out of 43 cases (67.4%).

2.15 Delays by the defence in providing information may cause the prosecution to fail to meet deadlines set by the court. Orders were made for the CPS to complete editing of interviews or transcripts of video evidence within a certain timescale after the defence had notified them of their requirements. Sometimes it was suggested that this was dealt with at the start of the trial but the judge had made a direction to avoid delay. The defence were sometimes late in providing their requirements but the CPS nevertheless complied with the timescales. In others the editing was completed late.

2.16 In the files seen the prosecution were usually allowed 14 days to comply with orders. The shortest time seen was seven days. The file endorsements did not indicate that the prosecution had objected to the timescales allowed in any case. All Areas visited had procedures in place to deal with orders with short timescales.

2.17 In none of the 72 files examined were there any unusual orders made, most were for standard items. Orders included provision of medical or forensic evidence, further evidence, editing of interview summaries and for continuing disclosure. See annex A for a table of orders.

2.18 Each Area visited had a different system in place to monitor compliance with court orders. Three Areas used CMS to record orders as a task and may also use some other form of diary to monitor. In the remaining three Areas, an electronic diary system or manual diary were used. In these Areas it was felt that use of CMS to monitor compliance would be too onerous given the number of cases in which orders were made. In three Areas more formal monitoring had begun very recently.

2.19 Responsibility for dealing with court orders varied. In some Areas the allocated paralegal officer was responsible and one Area had a case progression team that monitored the orders and alerted the paralegal officer when the deadline was approaching. Who was responsible ultimately for ensuring that orders were complied with or an extension sought was not always clear.

2.20 In the files seen it was rare for the prosecution to be contacted by the court in respect of orders that had not been complied with. Nor were there any obvious examples of cases being listed at the request of the defence for the prosecution to explain why it had failed to meet an order. In one Area the court listed any case in which a trial readiness form had not been submitted by a specified date and cases in which this form identified outstanding issues which may impact on the effectiveness of the trial. At these hearings any outstanding orders would be addressed but this was not necessarily the primary reason for bringing the case before the court.

2.21 There was no comprehensive centralised system in place in any Area to ensure that an application was made to the court to extend the time allowed to comply with an order. This process is defined in the Criminal Procedure Rules 2010 as an essential part of the case management process.

Recommendation

CPS Areas should have a monitoring system in place to ensure compliance with orders issued by the court and which:

- monitors defence compliance if prosecution compliance with an order is reliant on defence action; and
- ensures that procedures are followed to apply for an extension if the CPS is unable to comply with an order in the time allowed.

Dealing with the defence statement

2.22 Compliance with the guidance on consideration of continuing disclosure was often affected by the efficiency with which the defence statement was dealt with. Defence statements were most commonly submitted at the PCMH in the files seen. In one Area the resident judge would not allow the PCMH to proceed if a defence statement had not been served but in other Areas orders were made for the defence to provide this after the PCMH and they were often served late.

2.23 Where the defence had handed a copy to the court, a copy was not always supplied to the prosecution and the prosecutor had not sought to obtain one. In one Area the defence statement was retained with the brief by the CA and there were often no instructions for staff in the Area to deal with it which caused delays in dealing with any issues.

2.24 In most Areas when the defence statement was received it was forwarded promptly to the police by administrative staff. It was rarely considered by a lawyer at that stage. Therefore any issues that could have been dealt with immediately were not addressed until the police response was received. In some defence statements seen there were indications of future issues, such as abuse of process arguments which could have been considered by the prosecution much earlier. In one Area the prosecutors were seen to review the defence statement some days after receipt and would send it again to the police with a more formal letter and sometimes note their considerations.

Compliance point

Areas should ensure that prosecutors consider the defence statement as soon as reasonably practicable to:

- decide if it meets the requirements to consider continuing disclosure; and
- advise the investigating officer if any reasonable and relevant further lines of enquiry should be pursued⁶.

2.25 There was only one Area where there were no delays seen in forwarding the defence statement to the police. In the other Areas a number of cases were seen where there were substantial delays and in some, it was not clear these had ever been sent. These delays increase pressure on the police and may result in continuing disclosure being served late. In some cases it was not evident from the file or CMS that continuing disclosure had ever been served.

2.26 Target dates for a response by the police to the defence statement were used in four Areas but were not seen in two others. Monitoring arrangements for these target dates varied between Areas and it was not clear if or who would contact the police to obtain a response if a reply had not been received.

Compliance point

To ensure compliance with service of continuing disclosure, Areas should have in place effective systems to forward the defence statement to the police and to monitor the response from the police.

⁶ Attorney General's Guidelines on Disclosure, points 18 and 36.

3 Allocation of briefs and responsibility for cases following the plea and case management hearing

3.1 It was not apparent from the files that CAs always considered that the brief remained allocated to them after the PCMH and they would often not retain the brief for the trial. In two Areas it was not clear if an allocated lawyer or the CA were responsible for further case progression. This lack of continuity of brief ownership before trial was not helpful in ensuring that orders were dealt with effectively.

3.2 In 42 of the 72 files in our sample the brief had been sent to another advocate after PCMH. In nearly two thirds (26) of these cases it was not apparent from the file when the brief had been returned and where a date of the return could be seen, just over half were considered timely.

3.3 In two Areas the frustrations of paralegal staff in seeking instructions from the CAs or lawyers to progress cases was clear, in one Area this was seen on three files and in another on two. These files contained undated, unsigned instructions for work to be done, possibly from CAs, and unanswered requests from paralegal officers, sometimes over a number of months, for advice about how to deal with orders or correspondence. In one of these cases all of the unanswered requests were passed to counsel when the brief was returned just before trial; counsel responded quickly to the backlog of queries allowing the paralegal officer to progress the case at a late stage.

3.4 Briefs were seen on 60 cases but nearly a third (18) did not contain information about issues in the case. In one Area, the CAs used the CPS file at PCMH as no brief was printed out at this stage to save unnecessary work. On these files, there was often no endorsement of the PCMH seen on the file and no back sheet seen to be completed. When briefs were returned later to counsel from the independent Bar, the instructions printed out and delivered were not updated, as they were those drafted at the time of the upgraded file review and completed prior to the committal or service of papers in indictable only cases. Although a copy of the PCMH form might be included in the instructions, these did not list the judge's orders and there was no information about actions carried out subsequently.

3.5 One counsel wrote an advice asking about a number of issues that had already been dealt with as she had not been provided with up-to-date information and had not been told that the trial date was fixed within the following week. This was a more extreme example of poor instructions but other briefs were seen with little information. An endorsement of what happened at the PCMH and subsequent actions would be helpful, especially where there is no endorsed brief back sheet. Updated instructions were also missing on briefs returned in other Areas.

Recommendation

Areas should ensure that where a brief is not available for the crown advocate at the plea and case management hearing they should endorse the orders issued for inclusion in the brief.

The way forward

3.6 The report highlights that there is a significant challenge faced by the CPS in complying with Crown Court orders. In only 23% of cases examined with time bound orders did the CPS comply within the time scale. The findings of the audit establish that the main reasons why the CPS fail to comply is that there are no effective systems in place to monitor the date of orders, and in too many instances the date of delivery had passed before any action could be taken. The CPS have already recognised this problem and recently issued guidance to strengthen the monitoring processes. The planned enhancement to the case management system in October 2011 will also improve the ability of the CPS to better identify and manage Crown Court orders.

3.7 However the audit identified that in some Areas lawyer reviews of the upgraded files were very late. The CPS could reduce the need for orders or improve compliance by ensuring that more considered analysis is undertaken at an earlier stage. In some cases more timely applications for bad character, hearsay, and special measures would give the CPS the ability to significantly improve compliance.

3.8 During the course of other inspection activity we have seen that prosecutors very often do not challenge the timescales set out for orders. This lack of proactivity and ready acceptance can lead to judicial expectations being unduly raised, especially if the prosecutor knows that the timescale stated is unrealistic. Areas need to consider how they can establish local agreements to set out realistic and yet still timely expectations. Regular local liaison between the CPS and the judiciary should form the basis for discussion and also confirm that all initiatives in relation to court orders have been fully implemented and are effective. The timing of this is of particular relevance in light of a new case management scheme being developed in the Crown Court.

3.9 It is also apparent that many of the issues outlined in this audit would become redundant if there was a functioning joined up IT system between the CPS, the courts, the police and the defence. Work is ongoing within the criminal justice system (CJS) to digitalize, however, a simple system that allows for the transfer of the necessary form between the court and all parties would serve to enhance the efficiency of the system and improve the outcomes for victims and witnesses as well as defendants. This simple process shows how important it is for the CJS agencies to work together to join up their systems.

Annexes

A Prevalence of types of orders seen in the audit sample

Types of direction	A	B	C	D	E	F	Total
Bad character	3	2	3	3	5	6	22
Special measures	2	2	-	3	1	4	12
Defence statement	1	1	2	2	2	1	9
Summarise/edit interview	-	2	2	-	-	1	5
Trial readiness form	-	-	5	-	-	-	5
Continuing disclosure	1	1	-	-	2	-	4
Medical	2	-	-	-	-	1	3
CCTV	2	-	1	-	-	-	3
Confirm witness availability	1	-	1	-	-	-	2
Further evidence	1	-	-	-	-	1	2
CPS respond to bad character	1	-	1	-	-	-	2
Fingerprint	2	-	-	-	-	-	2
Respond to defence proposals for editing	1	-	1	-	-	-	2
Maps	1	-	-	-	-	-	1
Photos	1	-	-	-	-	-	1
Achieving best evidence video interview editing	-	1	-	-	-	-	1
Prosecution to respond to basis of plea	-	-	-	1	-	-	1
Review case	-	-	-	-	-	1	1
Supply info on mediation process	-	-	-	-	-	1	1
Confirm CCTV compatible	-	-	-	-	-	1	1
Psychiatric report from defence	1	-	-	-	-	-	1
Full transcript of victim's evidence	-	-	-	1	-	-	1
No record of PCMH	-	-	-	-	1	-	1
Transcripts	-	-	-	-	-	1	1
None	4	4	3	5	5	3	24
Total	24	13	19	15	16	21	108



B Methodology

The audit team visited six CPS Areas of varying caseload. A sample of 12 CPS Crown Court files was selected on-site. The files were recently finalised cases that had progressed to a trial listing. Some files were examined on-site to assist in understanding local systems but most were returned to HMCPSI offices for examination against a set questionnaire.

The audit team spoke to a range of staff in each Area and looked at the systems used in the units dealing with Crown Court work to progress cases to trial and deal with court orders.

Court observations were also undertaken in the Crown Court to establish how plea and case management hearings were conducted.



C Glossary

Bad character applications

Applications can be made by either the prosecution or the defence to adduce information at a trial about the previous bad character of the defendant or witnesses.

Case management system (CMS)

IT system for case tracking and case management used by the CPS.

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.

Core Quality Standards (CQS)

Standards which set out the quality of service that the public are entitled to expect. The standards reflect legal and professional obligations.

Counsel

A barrister who can prosecute or defend in the magistrates' courts or Crown Court.

Crown advocate (CA)

A lawyer employed by the CPS who has a right of audience in the Crown Court.

Defence statement

A formal notice sent by the defence giving details of the defence case. This should trigger continuing disclosure by the prosecution.

Disclosure, initial, continuing

Initial disclosure is made following the review of unused material provided by the police to the reviewing lawyer. Disclosure is made of items that may undermine the prosecution case or assist the defence. The CPS has a duty of continuing review of unused material to consider if further disclosure should be made as the case proceeds.

Discontinuance

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

Instructions to counsel

The papers which go to counsel setting out the history of a case and how it should be dealt with at court, together with case reports. These are sometimes referred to as the "brief to counsel".

Indictable only, indictment

Cases which can be heard only at the Crown Court (eg rape, murder, serious assaults). The details of the charge(s) are set out in a formal document called the indictment.

Hearsay evidence

An application can be made in certain limited circumstances to introduce oral or written statements made by someone who is not a witness in the case but which the court is asked to accept as proving what they say.

Paralegal officer

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

Review, initial, continuing, summary trial etc

The process whereby a crown prosecutor determines that a case received from the police satisfies and continues to satisfy the legal test for prosecution in the Code for Crown Prosecutors. One of the most important functions of the CPS.

Section 51, Crime and Disorder Act 1998

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

Special measures

Applications can be made to the court to provide vulnerable victims of crime, and certain other categories of witness with special measures. These may include giving evidence by video link or behind screens.

Upgraded file

At an initial hearing only limited evidence is provided by the police to save time and money in preparing papers that may not be needed if a defendant pleads guilty. However, if a defendant pleads not guilty a comprehensive file of evidence is needed to prove the case at trial.

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