REPORT OF THE THEMATIC REVIEW OF THE JUSTICE GAP

CONTENTS

	Paragraph
BACKGROUND	1.1
PURPOSE OF THE REVIEW	2.1
METHODOLOGY	3.1
Scope of the review	3.2
General points about the review	3.13
TERMINATED CASES	4.1
The offence profile	4.9
The reasons for termination	4.10
Victims and witnesses in terminated cases	4.14
Special category cases	4.20
Cases terminated in the Crown Court – judge ordered acquittals	4.25
CHARGE ATTRITION	5.1
The offence profile	5.12
Witnesses in charge attrition cases	5.13
Victims in charge attrition cases	5.15
Special category cases in charge attrition	5.25
The extent of charge attrition	5.29
Road traffic offences in charge attrition	5.35
Police and CPS charging	5.40
The quality of police charging	5.45
The quality of CPS charge determination	5.47
Evidential difficulties	5.55
DISCHARGED COMMITTALS	6.1
ADVERSE CASES	7.1
Findings from the data on adverse cases	7.4
Witnesses in adverse cases	7.7
Foreseeability in adverse cases	7.9
Progress during the inspection cycle	7.12
Learning from adverse cases	7.17
Other learning	7.20
COMMON FACTORS AFFECTING THE JUSTICE GAP	8.1
Joint performance management	8.2
Continuing review	8.8
File endorsement	8.13
Victims and witnesses	8.18
Witness warning notification to the Witness Service	8.25
At court	8.26

	Paragraph
SUMMARY AND CONCLUSIONS	
The size and creation of the justice gap	9.1
Key findings about reasons and patterns	
Terminated cases	9.5
Charge attrition	9.8
Adverse cases	9.12
Changing the culture	9.19
The quality of police files	9.25
The importance of continuing review, file responsibility and good endorsement	9.29
The impact of the justice gap on victims	9.34

ANNEX 1 The Creation of the Justice Gap

ANNEX 2 Magistrates' Courts Unsuccessful Outcomes

ANNEX 3 Crown Court Unsuccessful Outcomes

ANNEX 4 List of HMCPSI Thematic and Joint Reports

ANNEX 5 List of HMCPSI Area Reports

ANNEX 6 HMCPSI Questionnaires

BACKGROUND

1.1 The justice gap is the difference between the number of crimes recorded and the number of crimes where the offender is brought to justice. It was also known as the process of "attrition".

1.2 In this context, an offender is "brought to justice" where there is a conviction, a caution or where an offence is taken into consideration when the defendant is sentenced for other matters.

1.3 Concern has for some time been expressed at the widening of the gap. As a result, a number of goals and targets have been set. These include:

- To double the chance of a persistent offender being caught and punished - *Government Manifesto*.
- To deliver by 2004 100,000 more crimes where a victim sees an offender brought to justice - White Paper, *"Criminal Justice: The Way Ahead"*.
- To increase the number and proportion of recorded crimes for which an offender is brought to justice by 2003-04. The number is quantified as 100,000 more crimes brought to justice in 2003-04 than in 1999-2000 - *CJS Ministers*.
- To bring 1.2 million offences to justice in 2005-06 (compared with 1.025 million in the year ending March 2002) including a requirement to reduce the proportion of ineffective trials – *Criminal Justice System Public Service Agreement*.

1.4 It is proposed that criminal justice departments and agencies tackle the justice gap in three ways:

- by developing strategies to overcome weaknesses in the overall system;
- by targeting particular types of offences (e.g. the street crime initiative); and
- by targeting particular types of offender (e.g. the persistent offender).

1.5 All criminal justice system (CJS) agencies will be involved in the delivery of the aims working, as, for example, with the Persistent Young Offenders project, in close co-operation with each other. Indeed such co-operation is the only way of achieving the aims. The White Paper "Justice for All", whilst not setting further targets, deals with proposals to modernise and improve the CJS so that its aims can be achieved more effectively.

1.6 The CJS inspectorates will have an important part to play both in targeted reviews (joint or otherwise) and in reporting on progress and good practice in their inspections. With that in mind, HMCPSI here reviews the present position in the Crown Prosecution Service (CPS).

PURPOSE OF THE REVIEW

2.1 Our aim in this review is to ascertain from existing HMCPSI data and fieldwork the extent of the justice gap within the prosecution process; the factors affecting it; the reasons for it and the types and pattern of offences where it occurs most. We hope that our findings will inform the CPS contribution to addressing the justice gap.

2.2 A very large percentage of the justice gap takes place before the CPS has any involvement.

2.3 We set out at Annex 1 a graphic illustration of the creation of the justice gap. Although the CPS may have advised against proceeding with a case before charge in a few cases, the decision to charge and the nature of the charges remains (at the moment) with the police. Only when the defendant is charged, does the CPS become responsible. The number of offences not being brought to justice which are affected by the CPS decisions and practices, when set against the picture as a whole, is therefore comparatively small. It should be noted that the police measure by recorded offences, but the CPS measures by defendant cases (which may, of course, contain more than one offence).

2.4 Once charged, there are a number of reasons for unsuccessful outcomes in the sense that the defendant is not convicted. The CPS collates all these outcomes. The term “unsuccessful outcomes” therefore embraces adverse outcomes which we discuss at chapter seven. The figures from the latest available report are shown at Annexes 2 and 3. Some of these outcomes may be amenable to influence by the CPS but others are clearly not; for example, defendants failing to attend court and warrants remaining unexecuted. Within this wide range of outcomes, we have focussed to some extent on adverse outcomes. These comprise no case to answer in the magistrates’ courts, and judge ordered and judge directed acquittals in the Crown Court (see paragraph 7.1 for definitions). These outcomes may often, but not always, reflect on the quality of CPS work.

2.5 Chapter 3 explains our methodology, and the following chapters set out our findings and the evidence upon which they are based.

2.6 The final chapter summarises our findings and conclusions and the annexes contain some data and background information.

2.7 The review team comprised three legal inspectors supported by the Northern Group Director and administration staff from the Northern Team.

2.8 The Chief Inspector is grateful for the assistance and co-operation of CPS and police staff in those Areas who participated in the pilot and provided files for our review of charge attrition, and for the help given by others in the CPS and other agencies.

METHODOLOGY

3.1 Fourteen Areas assisted us in our work. A short pilot exercise was carried out with the help of Cheshire, Lancashire, Norfolk, South Yorkshire, South Wales and Staffordshire. We visited and read files from Cambridgeshire, Cheshire, Hertfordshire, Northumbria (Newcastle), North Yorkshire, Nottinghamshire, Suffolk, West Midlands (Birmingham) and West Yorkshire (Leeds). These Areas and offices gave us a representation of the CPS as a whole giving a balance of character and size. None of the Areas was involved in the charging pilot. This is an initiative by the CPS and the police which is testing the proposal that CPS lawyers should take over responsibility for most aspects of the charging of defendants.

Scope of the review

3.2 There are four main categories of finalisation for cases that are dropped during the course of a prosecution. These categories are of cases where all offences alleged against a defendant on a file are dropped. There are, however, many cases where some charges are dropped even though the defendant is convicted and "brought to justice" on one or more other offence.

3.3 The categories are:

- Termination in the magistrates' courts (including S23 Prosecution of Offences Act, 1985; withdrawals and cases where no evidence is offered).
- Discharged committals.
- Adverse cases - no case to answer in the magistrates' courts (NCA), judge ordered acquittals (JOA), and judge directed acquittals (JDA).
- Warrants not executed and other administrative write offs.

3.4 It should be noted that JOA cases are the Crown Court equivalent of terminated cases in the magistrates' courts, a point we develop at paragraphs 4.5 and 4.25.

3.5 As for warrants, the police (and other authorities) have a high input and would be more effectively reviewed in conjunction with HM Inspectorate of Constabulary. We have therefore concentrated on the other categories. We would merely comment that it is self evident that regular review of outstanding warrants, for recorded offences in particular, by all the relevant agencies could be effective in bringing offences to justice and narrowing the justice gap.

3.6 In view of the government's goals and targets set out above, we have also carried out an investigation of what might be called "charge attrition". The aim of this investigation was again that set out at paragraph 2.1.

3.7 We have analysed in detail the database created during the course of our Area inspection to date, which covers 39 Areas. Figures for a further three Areas were not available at the time of writing the report, but in view of the size of the samples, we do not consider that this affects our conclusions. The file samples were:

Category	Number of Cases
No Case to Answer	206
Judge Ordered Acquittals	1,229
Judge Directed Acquittals	238
Terminated	4,228

3.8 In some instances we have compared figures with the total Area inspection database which includes 11,728 cases.

3.9 The section on discharged committals is based on the specific work done in the West Midlands for the Area report. A joint re-inspection of discharged committals has been carried out and was published in September 2002. We have therefore confined our remarks to general lessons from the West Midlands, London and other relevant reports.

3.10 We have reviewed all our published reports (both Area and Thematic) in order to bring together the common factors and comments that we have made in the last two years. Our Thematic Reports are relevant in a number of respects to the issue of the justice gap – in particular the Thematic Report on Adverse Cases (Thematic Report 1/99, published June 1999). For the sake of brevity, we have not included all the recommendations in those reports. We merely suggest that they are revisited. To assist, we have listed these reports at Annex 4 along with details of how to obtain them.

3.11 We have drawn together the good practice and commendations that we have made in our reports that are relevant to the justice gap and set out some practical suggestions for improvement. A list of our Area Inspection reports is at Annex 5.

3.12 For the review of charge attrition, we examined 1,107 recently completed files where charge attrition had occurred. Inspectors sifted them from files set aside for a specified complete week of finalised cases in each of nine Areas, supplemented where necessary (to make up the shortfall compared with the Area's performance indicators) by other, randomly selected, recently completed work. These files were examined against a questionnaire, which can be found at Annex 6.

General points about the review

3.13 We are aware that Areas tend to concentrate on their own report. There are benefits to reading all reports and learning lessons from them. Here we have gathered information from all our publications thus presenting in effect a résumé of factors affecting the justice gap.

3.14 It is important to note that all the work of every member of staff contributes to efficient and effective outcomes. In this sense *all* aspects of work, as covered by the Area reports, are relevant to reducing the gap. Here, however, in analysing reports, we have concentrated mainly on the casework procedures.

3.15 Many of our findings are not new. Many of our conclusions will be readily apparent to those in the CJS who have read our reports. One purpose of the figures that we set out is to give some empirical evidence to anecdote and "gut feeling".

3.16 Again, many Areas will already be carrying out the actions for improvement that we suggest: but others are not. Our purpose is to prompt managers to question their own management and systems and to try new initiatives if they are relevant to their Area.

3.17 We are conscious that our reports go back over two years. Much may have changed over time. Indeed, we would hope that action on our recommendations and suggestions has improved those aspects that we highlighted. Nevertheless the lessons remain there to be learned by others. Similarly, some systems, which we commended, may have altered due to changed circumstances - but they may still be relevant elsewhere.

3.18 Many initiatives have been introduced or settled down in the two years that our inspections cover. For example:

- early charging and hearings resulting from the recommendations in the Narey Report;
- cases are sent directly to the Crown Court under section 51, Crime and Disorder Act 1998;
- direct communication with victims where the CPS informs victims when there has been a dropping or substantial reduction of a charge;
- cracked and ineffective trial monitoring in the Crown Court and magistrates' courts;
- co-location of CPS and police staff resulting from the proposals in the Glidewell Report;
- the charging pilots, where CPS lawyers formulate the charges rather than the police;
- the street crime initiative.

3.19 There are separate and detailed reviews and assessments elsewhere of these initiatives and so it is not our purpose to measure their effect in detail. It is right to say, however, that we have seen an improvement resulting from most of these measures over the two years and noted the commitment of staff, sometimes in difficult circumstances, to ensure their success.

3.20 We have taken all our figures to one decimal point. On occasions, therefore, the total will add up to just under 100%. We have left these totals rather than make false adjustments.

TERMINATED CASES

4.1 If, at any stage in proceedings, the prosecutor is no longer satisfied that there is a realistic prospect of the defendant being convicted of any offence, or that it is no longer in the public interest to prosecute, the case should be terminated as soon as is reasonably practicable. We refer to these cases as terminated. They include those that are discontinued under the provisions of section 23, Prosecution of Offences Act 1985, those with are withdrawn and those upon which no evidence is offered. The CPS performance figures calls all these cases "discontinued".

4.2 During CPS Area inspections, HMCPSI inspectors examine a sample of cases in which all charges against the defendant were terminated. The size of that sample is determined by the size of the Area. A questionnaire is applied that is designed to scrutinise the quality of the handling of such cases and identify the principal reason why each case was terminated.

4.3 In analysing the data that is produced, therefore, we are able to identify the reasons why cases are dropped and any trends. For the purpose of this report, we have concentrated mainly on these aspects of work rather than on the quality of judgement.

4.4 The data upon which we base our findings arises from the examination of 4,228 cases in the course of the Area inspection cycle to date that were discontinued, withdrawn or had no evidence offered in the magistrates' courts or Youth court.

4.5 Where the prosecution decides to terminate proceedings at the Crown Court stage, it is technically necessary for the judge to order that the defendant is acquitted of the charges. Such cases are referred to as judge ordered acquittals (JOAs) and are classified by the CPS as an adverse outcome. We deal in some detail with adverse cases in chapter seven of this report.

4.6 However, it is important to recognise that JOAs are also terminated cases in the sense that the charges are dropped as a result of a decision taken by the CPS rather than the court, which is not the position with other forms of adverse case. For this reason, we also deal briefly with JOAs at the end of this chapter on terminated cases.

4.7 We found that road traffic offences are significantly more likely to be terminated than other types of offence, often because driving documents are produced. (It should be noted, however, that most road traffic offences are not recorded offences and that therefore the effect on the narrowing the justice gap target is minimal.) The most common specific reasons for termination are that the evidence does not cover an essential legal element of the offence or because the victim has retracted. The quality of initial review in terminated cases is below average and there are often general deficiencies in the handling of cases that are not terminated in a timely fashion.

4.8 We set out our findings in detail under the relevant headings below.

The offence profile

4.9 The analysis of our data for terminated cases shows the following profile for the main original offence charged. The overall figures arise from 11,728 cases, of all types, examined during the course of the first HMCPSI Area inspection cycle (Area Cycle).

Main terminated offence profile

Offence	Area Cycle %	Terminated Cases %	Difference %
Homicide	0.4	0.1	-0.3
Assaults	23.4	20.0	-3.4
Sexual offences	5.7	1.7	-4
Theft and fraud	27.8	21.8	-6
Criminal damage	6.6	9.4	+2.8
Drugs offences	3.7	2.1	-1.6
Public order	8.6	8.7	+0.1
Road traffic	20.2	33.3	+13.1
Public justice	1.2	0.4	-0.8
Other	2.3	2.7	+0.4

Points to note:

- road traffic offences are significantly more likely to be terminated than other types of offence: they account for a third of terminated cases.

The reasons for termination

4.10 In recent times, the CPS and police have analysed the reasons for the termination of cases as part of joint performance management (JPM). That system has 25 specific reason categories within the three general headings of evidential, public interest and cases in which the prosecution was unable to proceed. The system can be used to identify and address trends. As part of their examination of such cases during the course of Area inspections, HMCPSI inspectors record (where it is possible to discern) the principal reason why each case was terminated according to the JPM model.

4.11 The breakdown of the reasons for termination was as follows:

Reasons for Termination by Category	
EVIDENTIAL	**%**
Inadmissible evidence - Breach of PACE	0.3
Inadmissible evidence - other reason than Breach of PACE	0.8
Unreliable confession	2.4
Conflict of evidence	4.5
Essential legal element missing	21.8
Unreliable witness or witnesses	4.4
Unreliable identification	9.7
Sub-total	*43.9*
PUBLIC INTEREST	**%**
Effect on victim's physical or mental health	0.4
Defendant elderly or in significant ill health	2.1
Genuine mistake or misunderstanding	0.5
Loss or harm minor and a single incident	1.9
Loss or harm put right	1.8
Long delay between offence/charge or trial	1.4
Very small or nominal penalty	12.3
Informer or other public interest immunity issues	0.1
Caution more suitable	4.1
Youth of offender	0.7
Sub-total	*25.3*
PROSECUTION WAS UNABLE TO PROCEED	**%**
Case not ready/adjournment refused	4.5
Offence taken into consideration	0.4
Victim refuses to give evidence or retracts	14.0
Other civilian witness refuses to give evidence or retracts	0.9
Victim fails to attend unexpectedly	4.4
Other civilian witness fails to attend unexpectedly	0.8
Police witness fails to attend unexpectedly	1.1
Documents produced at court	4.6
Sub-total	*30.7*

Points to note:

- it is more likely that cases will be terminated for evidential reasons than because the prosecution was unable to proceed or was not in the public interest.

4.12 Placing the reasons for termination in their order of frequency produces the following table:

Reasons for Termination by Frequency	
REASON	**%**
1. Essential legal element missing	21.8
2. Victim refuses to give evidence or retracts	14.0
3. Very small or nominal penalty	12.3
4. Unreliable identification	9.7
5. Documents produced at court	4.6
6.= Conflict of evidence	4.5
6.= Case not ready/adjournment refused	4.5
8.= Unreliable witness or witnesses	4.4
8.= Victim fails to attend unexpectedly	4.4
10. Caution more suitable	4.1
11. Unreliable confession	2.4
12. Defendant elderly or in significant ill health	2.1
13. Loss or harm minor and a single incident	1.9
14. Loss or harm put right	1.8
15. Long delay between offence/charge or trial	1.4
16. Police witness fails to attend unexpectedly	1.1
17. Other civilian witness refuses to give evidence or retracts	0.9
18.= Inadmissible evidence – other reason than Breach of PACE	0.8

18.=Other civilian witness fails to attend unexpectedly	0.8
20. Youth of offender	0.7
21. Genuine mistake or misunderstanding	0.5
22.=Effect on victim's physical or mental health	0.4
22.=Offence taken into consideration	0.4
24. Inadmissible evidence – Breach of PACE	0.3
25. Informer or other public interest immunity issues	0.1

Points to note:

- by far the most common reason for termination was that the evidence available did not cover an essential legal element of the offence;
- it is relatively common for victims to refuse to give evidence or retract;
- it is also relatively common for all offences on a file to be dropped because the defendant would not receive any significant additional penalty for them, usually because of a sentence (or pending sentence) in respect of other offences on other files;
- identification evidence would appear to be a problem area for the police and CPS;
- in around one in 20 cases that are terminated (4.5%), it is because the prosecution are not ready to proceed and an adjournment has been refused.

4.13 We have identified actions designed to ensure that problems are identified quickly and that case termination is always appropriate and timely:

Possible actions to improve

- Ensure that the results of monitoring of terminated cases are received regularly and analysed in time for meetings.
- Engage all staff in the reasons for monitoring so that full and accurate figures are obtained.
- Negotiate a pre-trial review policy with the police and the magistrates' courts to ensure realistic expectations and effectiveness.
- Consult the JPM Good Practice Guide.
- Develop a protocol with the police setting out roles and responsibilities in respect of resolution of disputes about termination.
- Where there is a concern, agree procedures with the local Bar to ensure that offences are not terminated inappropriately.
- Produce monthly digests explaining legal points from cases, law reports and journals.
- If there is insufficient time in management meetings to deal with casework issues, establish a separate casework (or legal information) group.

Victims and witnesses in terminated cases

4.14 It is the second most common reason for termination that the victim has refused to give evidence or retracted. If combined with those cases in which the victim fails to attend court unexpectedly (so that the prosecution is unable to proceed), 'victim failure' accounts for almost one-fifth of all reasons why cases are terminated (18.4%). It is clearly a significant factor in increasing the justice gap.

4.15 Termination may be due to problems with victims and witnesses if:

- the prosecutor considers one or more to be unreliable;
- an important witness refuses to give evidence or retracts their evidence; or
- an important witness fails to attend a trial.

4.16 As can be seen from the table at paragraph 4.12 above, one of the most common reasons for termination is that a witness is considered to be unreliable, either at the initial review of the case or as a result of information later received (4.4% of all terminated cases).

4.17 It is relatively rare for a witness, other than the victim, to refuse to give evidence, retract or fail to attend court unexpectedly.

4.18 We found, however, that prosecutors are less likely to react quickly to indications of civilian witness reluctance (and terminate if necessary in timely fashion) than they are to appreciate other reasons why the case should not continue. We found that it was significantly more likely that termination would be overdue in such cases.

4.19 We have also identified actions designed to reduce the proportion of cases that are terminated because of witness problems:

Possible actions to improve

- Establish a single witness liaison point in each office.
- Review and update service level agreements (SLAs).
- Durham has developed a process map jointly with other agencies - what witnesses need from where - with a view to establishing an appropriate service level agreement.
- Develop protocols with the police to ensure timely communication in respect of, for example, victim or witness difficulties or reluctance.
- The police in Humberside check witnesses' willingness to give evidence before trial.
- Ensure that vulnerable witnesses are identified at an early stage and that appropriate measures are taken to protect their interests.
- Participate in multi-agency witness care initiatives.
- Consider caseworker support in magistrates' courts on busy trial days.
- Thames Valley and Suffolk have surveyed witnesses to identify problems and priorities.
- Cleveland have worked with the police to identify common witness problems, identify where support is needed and where questions of credibility arise.
- North Yorkshire systematically seeks feedback from child witnesses to improve their treatment.

Special category cases

4.20 The CPS nationally recognises that cases involving child abuse, domestic violence and cases that are racially aggravated require particular care and attention in handling because they are of a sensitive nature.

4.21 The analysis of our data for terminated cases shows the following profile for special category cases. We have compared the percentage of each offence type in all cases examined in the two-year cycle with the percentage of cases in the terminated category.

Profile for special category cases

Offence type	Area Cycle %	Terminated %	Difference %
Child abuse	3.8	1.1	-2.7
Domestic violence	6.7	9.0	+2.3
Racially aggravated	1.3	0.9	-0.4
Not special category	88.1	88.9	+0.8

Points to note:

- it is more likely that domestic violence cases will be terminated than generally;
- the majority of child abuse cases are dealt with in the Crown Court. We would therefore expect the overall percentage of cases dropped to be higher than that in the terminated category, which covers cases only in the magistrates' courts.

4.22 We found that the police are more likely to instigate and less likely to object to discontinuance in cases of domestic violence. Conflicts of evidence and the perception that a witness was unreliable were significantly more prevalent, as was concern for the health of the victim. Decisions to terminate tended to be quicker, with 71% being terminated within 56 days of charge compared to 65.4% generally.

4.23 Conflict of evidence and unreliable witnesses were also prevalent evidential reasons in cases of alleged child abuse that were terminated. Prosecutors may be too ready to drop racially aggravated cases, since inspectors disagree with a significantly greater proportion of the prosecutors' decisions to terminate than generally (25.8% compared to 8.7%).

4.24 We deal in detail with termination in racist incident cases at paragraphs 6.100 – 6.111 of our Report on the Thematic Review of Casework Having a Minority Ethnic Dimension (Thematic Report 1/02, published May 2002).

Cases terminated in the Crown Court - judge ordered acquittals

4.25 Judge ordered acquittals (JOAs) are also terminated cases in the sense that the charges are dropped as a result of a decision taken by the CPS. There were 11,825 of these cases in 2000 – 2001, which is 13.8% of the Crown Court caseload.

4.26 A JOA occurs when the CPS terminates all charges against a defendant on a particular file in a Crown Court case. Although classified by the CPS as a form of adverse case, it is effectively the Crown Court equivalent of dropping cases in the magistrates' courts. They may be caused by poor quality decision-making in the earlier stages of the case, in the sense that the outcome was foreseeable and the case should have been terminated earlier, or may be caused by unforeseeable developments. The category also includes cases sent under section 51, Crime and Disorder Act 1998 which will not be subject to detailed scrutiny until they are in the Crown Court.

4.27 Such outcomes represent another contribution to the justice gap. Of the 1,673 adverse cases that have been examined during the course of the Area inspection cycle to date, 1,229 were JOAs (73.5%).

4.28 We highlight the importance of assuring the quality of police files in the context of identifying the correct charge at the earliest possible stage and thereby reducing the level of subsequent charge attrition. It is equally important that prosecutors liaise effectively with the police when they are aware that the necessary information has not been made available to them.

4.29 In many cases, the termination of Crown Court proceedings is unforeseeable and unavoidable. It was confirmed, however, in our Thematic Review of Adverse Cases (Thematic Report 1/99), that there are a significant number of JOAs in which Crown Court termination could have been avoided if the police had supplied better raw material for the CPS to work with and/or if prosecutors had taken appropriate remedial action to ensure that there was a successful outcome.

4.30 We have identified some common failings. For our 1999 report we examined 377 adverse cases (finalised in 1998) taken from ten CPS Areas and drew attention to a higher than average number of such cases in which there had been a failure to satisfy the law relating to the admissibility of identification evidence, and in which the legal elements of offences of dishonesty could not be proved. The same problem areas have again been highlighted in our analysis, for the purpose of this review, of data arising from examination of a further 1,673 adverse cases during the Area inspection cycle to date. We set these out in more detail at paragraphs 7.5 and 7.6.

4.31 In some JOAs, although termination is unavoidable, it is foreseeable at an earlier stage that the case will not or should not result in conviction. Where proper the CPS should take prompt action to discontinue proceedings, that is before they reach the Crown Court. We discuss forseeability at paragraphs 7.9 – 7.16. Termination in the magistrates' courts is less damaging in the perception of victims, since their unwarranted expectations are not prolonged unnecessarily. It is also less expensive, in terms of the drain on resources and the administrative burdens that are placed upon the CJS as a whole.

CHARGE ATTRITION

5.1 The Home Office measures the justice gap by recorded crimes. Thus it counts the number of crimes recorded (supplied by police forces) and counts the number of recorded crimes for which the defendant is convicted, cautioned or where the crime has been taken into consideration when the defendant is sentenced for other offences (supplied by the courts). The difference is the justice gap.

5.2 The system does not track individual crimes so that the final conviction figures do not correlate with the original charges. Thus, where a charge for a crime is substituted by another and the original crime is dropped, this will add to the justice gap, even if the "new" crime was a correct substitution on the evidence available. For example, an offender may be arrested for, and charged with, an offence under section 18, Offences Against the Person Act 1861 (grievous bodily harm with intent). This is the offence recorded. Later it transpires that the evidence will not support this charge and the CPS adds an offence under section 47 of the same Act (assault occasioning actual bodily harm). The defendant is sentenced for this lesser offence. The defendant is brought to justice for the incident but not for the offence recorded: there has been "charge attrition".

5.3 The CPS recording methods can also change the picture. As long as a defendant is convicted of any offence on a case file, it will be treated as a conviction. Thus for example, it will count as a conviction where all substantive, serious charges have been dropped but the defendant is sentenced for failing to appear at court.

5.4 We have looked at a sample of these cases where the defendant is not brought to justice for all the offences recorded and charged. We have analysed the data collected. As well as ascertaining the extent of the gap, the factors affecting it, the reasons for it and the types and patterns of offences, we have asked questions about whether the final charges provided the court with adequate sentencing powers and about victims of dropped offences.

5.5 We visited nine CPS Areas to examine finalised files which had been set aside during a specified week, supplemented by other recently completed, randomly selected, files to make up the numbers to that required as indicated by the Area's performance indicators. There were 5,135 finalised files from which we found 1,107 cases (21.6%) in which there had been some form of charge attrition, i.e. so that the gravity of the final charges was less than originally preferred by the police.

5.6 We included in our examination, files of all types including road traffic cases. Despite the Government focus on recorded offences (which are mainly either-way and indictable only offences), we felt that it was important to address the question of attrition generally. Many of the summary "non-recorded" offences relate to exactly the type of misconduct and disregard for the law which undermines public confidence. The latter is itself a Government target.

5.7 The cases were finalised predominantly in the magistrates' courts (820 – 74.1%) and Youth court (191 – 17.3%). There were 96 Crown Court cases (8.7%). This compares with a general CPS casework breakdown of 7.8% of cases finalised in the Crown Court in the year ending 31 March 2002.

5.8 We set out our findings in detail under the relevant headings below. The percentages quoted are rounded to one decimal place.

5.9 The level of charge attrition can be reduced significantly through early identification of the correct charge on the basis of good quality information and by establishing a culture within the criminal justice system under which it is widely understood that all charges will ordinarily be pursued.

5.10 We found that the final charges (after reduction) provided the court with adequate sentencing powers in almost all cases. However, the final charges are slightly less likely to provide adequate sentencing powers (than generally) in cases with an identified individual victim and in a special category cases (domestic violence, child abuse and racially aggravated). (See paragraph 5.17.)

5.11 Road traffic and public order cases are particularly susceptible to charge attrition and cases of dishonesty are problematical for the police and CPS, in terms of identifying and addressing evidential difficulties. The overall quality of file endorsements is unsatisfactory as the reason for reduction in the level of charging is not always recorded in sufficient detail.

The offence profile

5.12 The analysis of our data for charge attrition cases shows the following profile for the main original offence charged. The Area Cycle figures arise from cases, of all types, examined during the course of the first HMCPSI Area inspection cycle.

Profile for main original offence charged

Offence	Area Cycle %	Charge Attrition %	Difference %
Homicide	0.4	0	**-0.4**
Assaults	23.4	18.6	**-4.8**
Sexual offences	5.7	1.4	**-4.3**
Theft and fraud	27.8	28.6	**+0.8**
Criminal damage	6.6	3.9	**-2.7**
Drugs offences	3.7	3.1	**-0.6**
Public order	8.6	15.4	**+6.8**
Road traffic	20.2	27.0	**+6.8**
Public justice	1.0	0.8	**-0.4**
Other	2.3	1.2	**-1.1**

Points to note:

- theft and fraud, road traffic, assault and public order were the dominant offence categories in the charge attrition sample;
- the proportion of road traffic offences in the charge attrition sample significantly exceeded that found generally, confirming that such cases are more susceptible to charge attrition;
- the proportion of public order offences in the charge attrition sample was above that found generally, confirming that such cases are also more susceptible to charge attrition;
- the proportion of theft and fraud cases in the charge attrition sample was only slightly greater than generally, suggesting that such cases are not more likely to result in charge attrition;
- perhaps surprisingly, cases of assault were less common in the charge attrition sample than in the general Area inspection cycle sample.

Witnesses in charge attrition cases

5.13 There were only eight cases in the charge attrition sample in which the original charge was dropped or changed at initial review because of problems with witnesses. The charge alleged an assault in six of those cases.

5.14 There were 59 cases in which the CPS accepted mixed pleas or a partial plea because of witness problems, representing 11.9% of all cases in which a mixed or partial plea was accepted. The offence profile of those cases was as follows:

Mixed or partial plea acceptance - witness problems

Offence	Cases	%
Homicide	0	**0**
Assaults	33	**55.9**
Sexual offences	1	**1.7**
Theft and fraud	11	**18.6**
Criminal damage	4	**6.8**
Drugs offences	2	**3.4**
Public order	4	**6.8**
Road traffic	3	**5.1**
Public justice	0	**0**
Other	1	**1.7**

Points to note:

- charge attrition caused by witness problems is an important issue in assault cases, and a significant one in theft and fraud cases.

Victims in charge attrition cases

5.15 Charge attrition can have a damaging impact on victims of crime. Almost half of the cases in our charge attrition sample had an identifiable individual victim with an interest in the outcome of the proceedings (49.6%).

5.16 In a significant proportion of those cases (22.9%), the dropped charges had different victims from the convicted offences. Therefore, whilst the basis for sentence was adequate (because the final charges provided the court with adequate sentencing powers), there would still have been some victims who did not see an offender brought to justice for their offence.

5.17 We found that the final charges, after reduction, are slightly less likely to provide adequate sentencing powers in cases where there is an individual victim than generally. For individual victim cases, we considered that the final charges provided the court with adequate sentencing powers in 94.9% of cases, compared to 96.1% generally.

5.18 If, however, the charge is set at an incorrect level at the outset the expectations of victims may be raised unnecessarily. Later reduction can create a negative impression about the way in which the case has been handled and in respect of the CJS generally. It also increases the need for the CPS to explain its actions to victims under procedures for direct communication.

5.19 We considered that the main (most serious) original police charge preferred by the police was incorrect or inappropriate in 166 of the 542 cases where there was an identified individual victim (30.6%), having regard to the evidence and information available at that time. The breakdown was as follows:

Cases with an identified individual victim

Quality of police charging	Cases	%
Police charge correct	376	**69.4**
Police charge too high	95	**17.5**
Police charge inappropriate	67	**12.4**
Police charge too low	4	**0.7**

Points to note:

- Too high is where, for example, section 18, Offences Against the Person Act 1861 was charged instead of section 47 or affray instead of section 4, Public Order Act 1986. Inappropriate is where the wrong offence is charged, for example, obtaining by deception rather than forgery.

5.20 We went on to consider whether the charge determined by the CPS at initial review, either through adoption, amendment or replacement of the police charge, was correct (again in light of available information):

Quality of CPS charge determination	Cases	%
CPS charge correct	464	**85.6**
CPS charge too high	58	**10.7**
CPS charge inappropriate	20	**3.7**
CPS charged too low	0	**0**

5.21 We have commented, in previous reports, on the disappointing quality of some police files, and the lack of remedial action taken by prosecutors to improve them. It is difficult to assess the correct level of charge on the basis of incomplete or inadequate information, for example, in cases of assault, without sufficient evidence about an injury. We saw a number of cases in which the original charge appeared appropriate but had to be revised once medical evidence became available.

5.22 Clearly, the level of failure would be reduced if there were an accurate assessment of the gravity of the case, to identify the most appropriate recorded offence and charge from the outset. Early indications from the charging pilot sites (where CPS lawyers are responsible for the charges) show that the changing and dropping of offences charged is much reduced.

5.23 It is sometimes agreed by the parties that a defendant will plead guilty to some of the charges laid against him or her on the understanding that others will be dropped. In our sample of charge attrition files, we considered the reasons why mixed pleas or partial pleas were accepted by the prosecution at any stage after the appropriate charges had been determined at initial review:

Reason for acceptance of pleas	Cases	%
Sentence sufficient on the same file	203	40.9
Sentence sufficient from other files	56	11.3
Direct alternative charge preferred	36	7.3
Evidential difficulties on dropped charge	134	27.0
Witness problems	59	11.9
Other	8	1.6

5.24 If the charges are right in the first place an ethos should develop throughout the criminal justice system that the original charges will be pursued wherever possible. Defendants would then be discouraged from maintaining an unjustified not guilty plea (in the hope of charge reduction to induce a guilty plea and despite the credit that is given for early guilty pleas) or making inappropriate proposals for compromise. As this ethos establishes itself, and the prosecution is less inclined to accept guilty pleas on only some of the charges, it is likely that there would, at first, be more trials. The system would have to be prepared for this. We develop this point further in our conclusions at paragraphs 9.19 to 9.24.

Special category cases in charge attrition

5.25 The CPS nationally recognises that certain types of offence require particular care and attention in handling because they are of a sensitive nature. The principal categories are cases involving domestic violence, child abuse and cases that are racially aggravated.

5.26 The analysis of our data for charge attrition cases shows the following profile for special category cases. Again, the comparative overall figures arise from cases examined during the course of the Area inspection cycle:

Profile for special category cases

Offence type	Area Cycle %	Charge Attrition %	Difference %
Domestic violence	6.7	7.8	**+1.1**
Child abuse	3.8	0.8	**-3.0**
Racially aggravated	1.3	1.1	**-0.2**
Not special category	88.1	90.2	**+2.1**

Points to note:

- special category cases were less common in the charge attrition sample, suggesting that they are less susceptible to reduction than generally;
- the proportion of domestic violence cases in the charge attrition sample was greater than in the general Area inspection cycle sample taken from the cycle to date, confirming that cases of domestic violence are more susceptible than other types of case to charge attrition.

5.27 We found that the final charges are slightly less likely to provide adequate sentencing powers in special category cases than generally. In special category cases, we considered that the final charges provided the court with adequate sentencing powers in 92.9%, compared to 96.1% generally.

5.28 The proportion of cases in the charge attrition sample with child or other vulnerable witnesses was below that found generally in the Area inspection cycle. This suggests that charge attrition

is less likely to occur in cases involving vulnerable witnesses.

The extent of charge attrition

5.29 In cases in which there was some charge attrition, the average number of original charges was almost twice the average number of final charges. This suggests that the overall rate of attrition (in the sense of the number of charges faced) is approximately 50%.

Rate of attrition - charge attrition file sample

Average number of original charges	2.8
Average number of original charges sentenced	1.5
Difference	**1.3**

5.30 The police record crime according to the "Principal Crime Rule". That is, if the sequence of crimes in an incident, or a complex crime, contains more than one type of crime, then only the most serious crime is recorded although other offences may be charged. Frequently, however, the "recorded" offence is charged and dropped, but it is often substituted by another offence.

5.31 In the majority of the charge attrition cases that we examined, it was the most serious offence that was dropped i.e. as opposed to a less serious offence charged on the same file. That occurred in 63.1% of cases.

5.32 For each case that we examined, we recorded the most serious offence that was dropped and whether that was the most serious offence charged. Comparing the general dropped offence profile with the offence profile in cases in which the main offence was dropped reveals the type of cases in which there is a greater likelihood that the most serious offence will be dropped.

5.33 Our findings confirm that in cases of assault, it is relatively common for the original charge to be replaced with a lesser offence against the person. In road traffic cases, however, it is significantly more likely that the most serious offence will be pursued and that lesser accompanying offences will be dropped.

5.34 The table below shows in which type of offence it is more likely that the more serious offence charged will be dropped.

Profile of dropped offences

Offence	Dropped %	Main Offence Dropped %	Difference %
Homicide	0	0	**0**
Assaults	19.5	23.9	**+4.4**
Sexual offences	1.0	1.4	**+0.4**
Theft and fraud	25.2	33.1	**+7.9**
Criminal damage	4.9	3.6	**-1.3**
Drugs offences	2.3	3.3	**+1**
Public order	16.7	21.2	**+4.5**
Road traffic	27.9	10.9	**-17**
Public justice	0.9	1.0	**+0.1**
Other	1.5	1.6	**+0.1**

Points to note:

- it is more likely in cases of assault, theft/fraud and public disorder (than in other types of case) that the most serious offence will be dropped;
- it is significantly more likely in road traffic cases that a less serious offence or offences on the same file (e.g. those relating to possession of driving documents) will be dropped (usually because those documents are produced) rather than the most serious offence alleged.

Road traffic offences in charge attrition

5.35 The impact of road traffic cases on the overall rate of charge attrition (and the tendency for lesser offences to be withdrawn in such cases) should not be underestimated. It must be pointed out, however, that most road traffic offences are not recorded offences and they will not affect the justice gap as measured by the Home Office. As we have already highlighted (at paragraph 5.12) the proportion of road traffic offences in which there is charge attrition is well above average compared with most other types of cases. It is also more common for lesser, rather than the more serious, offences to be dropped.

5.36 We examined numerous road traffic cases in which the defendant pleaded guilty to the main offence (for example, driving whilst disqualified or with excess alcohol) and the accompanying lesser driving offences were dropped. In 24.6% of all road traffic cases in our file sample, the most serious dropped offence was one of driving without insurance and in 51.5% it was a lesser offence such as driving without a test certificate or otherwise than in accordance with a driving licence.

Main dropped offence profile – road traffic offences

Offence	Main Dropped Offence %
Dangerous driving	3
Careless driving	2.4
Excess alcohol	4.7
Fail to provide specimen	1.3
Fail to stop/report accident	4
Fraudulent use of documents	1.7
Driving whilst disqualified	2.7
Use document with intent to deceive	0.3
Using a vehicle without insurance	24.6
Miscellaneous other minor road traffic offences	51.5
Other non-road traffic offences	3.7

5.37 We found it uncommon for the CPS to pursue alternatives offences of failure to produce driving documents to the police in cases where defendants first produced their documents at court.

5.38 Pursuing such alternatives in appropriate cases would encourage defendants to bring their driving documents to the police station (as the law requires) rather than merely produce them at court. That would reduce the numbers of unnecessary additional charges, the rate of charge attrition in such cases and the administrative burdens that are placed upon the criminal justice system.

5.39 We did not always find that legitimate driving documents were produced to the satisfaction of the court. In a significant proportion of such cases, the lesser offences appeared to have been dropped because prosecutors considered that they would not add significantly to the overall sentence, rather than because the evidence did not establish them. We did not always share that view, for example, in cases where (in addition to the main offence) it was alleged that the defendant had driven without insurance.

Police and CPS charging

5.40 At present, the decision whether to institute criminal proceedings rests, other than in exceptional circumstances, with the police albeit they may seek advice from the CPS before taking the decision. Following the institution of proceedings, the police submit a file to the CPS, which should be subject to an initial review to see whether it should be accepted for prosecution. Prosecutors are required to take all such decisions in accordance with the principles set out in the Code for Crown Prosecutors.

5.41 Our findings suggest that there is a significant degree of charge attrition that is caused by inappropriate police charging, either because there are evidential difficulties in respect of the charge selected or because the charge preferred exceeds the gravity that ought to be attributed to the case. This lends support to plans for initial charging to become the responsibility of the CPS.

5.42 Further to a recommendation of Sir Robin Auld in his Review of the Criminal Courts of England and Wales ('the Auld Report'), the police and CPS are to introduce new procedures, under which it will be CPS lawyers (rather than the police) who determine the original charge or charges that the defendant should face (other than in very minor cases). Any issues about the quality of police charging, and its potential to contribute to the level of charge attrition, may become much less relevant. (The necessary legislation is now contained in the Criminal Justice Bill which is at the committee stage in Parliament.)

5.43 The results of the evaluation in the first charging pilot report are generally positive, albeit that very few cases had been completed under the pilot scheme. The results indicate, amongst other factors, that the number of charges that have been changed or dropped has reduced significantly and there is limited evidence that the quality of files has improved.

5.44 Currently, however, the general position remains that each case has a police determined charge or charges until there is an effective initial review by a CPS prosecutor, whereupon they can be said to become 'the CPS charge' (or charges). If, therefore, there is an appropriate reduction in the level of charging by the prosecutor at the first effective CPS review (for example, because there are evidential difficulties or because the police have overcharged) that form of charge attrition might be attributed to inappropriate police charging.

The quality of police charging

5.45 There was alteration of the original police charges by the prosecutor at initial review in 452 of the 1,107 cases (40.8%). The breakdown of the reasons was as follows:

Reason for alteration of police charge	Cases	%
Direct alternative preferred	32	**7.1**
Original charge substituted	145	**32.1**
Evidential difficulties on dropped charge	257	**56.9**
Witness problems	8	**1.8**
Other	10	**2.2**

Points to note:

- the most common reason for alteration of the police charge at the first effective CPS review was that there were evidential difficulties;
- in almost one third of cases, the prosecutor replaced the original police charge with a more appropriate (but not necessarily more or less serious) charge;
- it is rare for witness problems to be evident at the initial review stage.

5.46 Of the 452 cases where the charge was altered, there were 248 where we considered that the police charge was incorrect. The breakdown of the reasons was as follows:

Reason for substitution of police charge	Cases	%
Police had preferred the wrong charge	110	**44.4**
Police had overcharged	131	**52.8**
Police had undercharged	7	**2.8**

Points to note:

- it is relatively common for the police to overcharge;
- it is relatively common for the police to select an inappropriate charge.

The quality of CPS charge determination

5.47 If charge attrition occurs at a later stage than initial CPS review, and there has not been any material change in circumstances or additional information reducing the gravity of the allegation or the quality of the evidence, it suggests that the prosecutor has not identified the most appropriate charge or charges at the outset or that the gravity of the case has been reduced inappropriately.

5.48 Overall, our findings do not support the contention that the CPS is reducing charges inappropriately so that they fail ultimately to reflect the gravity of the offending and the defendant cannot be sentenced properly. We considered that the final charges, after reduction, provide the court with adequate sentencing powers in 96.1% of cases, when judged on the present criteria and practices of the criminal justice system.

5.49 However, our evidence suggests that a significant proportion of charges are set too high, either by the police or by the CPS at initial review. Overcharging can result in exaggerated expectations and gives the impression of excessive charge reduction and 'plea bargaining'. The quality of police files, and CPS action taken to supplement them where appropriate, is particularly important if this is to be avoided.

5.50 If the CPS is to contribute to a reduction in the level of charge attrition, it is important that prosecutors consider good quality files containing adequate evidence and other relevant information from the outset, to identify the most appropriate charges and then 'stick to their guns'.

5.51 Prosecutors should make an assessment of the most appropriate charge that the

defendant should face during their initial review of the police file. That charge is not always the final one upon which the defendant is sentenced. Our charge attrition file sample, we found that there was a later material alteration to the charge or charges that had been determined by the prosecutor at initial review in 114 cases (10.3%). We considered the reasons:

Reason for substitution of CPS charge	Cases	%
CPS had preferred the wrong charge	34	**29.8**
CPS had overcharged	80	**70.2**
CPS had undercharged	0	**0**

Points to note:

- in the majority of cases where there is a later reduction of the charge determined by the CPS at initial review, it is because the CPS have overcharged;
- alteration is often affected by the culture of plea acceptance which we discuss at paragraphs 9.19 – 9.24.

5.52 During the course of the Area inspection cycle we have quite often found evidence of late identification of the correct charge and pockets of excessive police charging.

5.53 We have also identified some interesting initiatives:

Possible actions to improve

- North Yorkshire has provided training for the police on charging levels and monitors the effect, taking remedial action where necessary.
- Humberside supplies written guidance to the police on the appropriate level of charging in certain types of cases that are causing difficulty.
- Gwent Police have created a specific post for an individual to be responsible for taking medical statements. This has been successful in ensuring that statements are more accurate and timely, so that the appropriate level of charge can be assessed at the earliest possible stage. The risk that the evidence will not be obtained or is inadequate is also reduced.
- West Midlands have meetings between the CPS, police and local hospital staff with the hospital monitoring the timeliness of responses to requests for medical statements.

5.54 Late amendment of charges is often caused by a difference of opinion between initial reviewers and other lawyers becoming involved in the latter stages of the case, for example Trials Unit (TU) lawyers or prosecuting counsel. In some CPS Areas, we found that insufficient thought had been given to systems of file allocation and ownership since co-location and separation of prosecution units into Criminal Justice Units (CJUs) and TUs, resulting in frequent changes in the identity of the responsible lawyer. We understand that the charging pilots have thrown this issue into even sharper relief.

Evidential difficulties

5.55 There were 257 cases in which the police charge was dropped or changed at initial review and 134 cases in which the CPS accepted mixed pleas or partial pleas because of evidential difficulties. The breakdown of those cases by offence type may illustrate problem areas resulting in charge attrition:

Offence type	Police Charge		CPS Review	
	Cases	%	Cases	%
Assaults	29	11.3	14	10.4
Sexual offences	2	0.8	1	0.7
Theft and fraud	74	28.8	47	35.1
Criminal damage	5	1.9	4	3
Drugs offences	13	5.1	5	3.7
Public order offences	33	12.8	15	11.2
Road traffic offences	95	37	46	34.3
Miscellaneous	6	2.3	2	1.5

Points to note:

- the road traffic offence category is misleading, as document offences are recorded as dropped due to evidential difficulties if the relevant documents were produced at court;
- cases of dishonesty are problematical for the both the police and CPS - the proportions of theft and fraud cases in the evidential difficulties categories were greater than was found in the general Area inspection cycle file sample (27.8%);
- In addition to charges being changed, some charges are dropped because guilty pleas to others are accepted. We discuss this at paragraph 5.23.

DISCHARGED COMMITTALS

6.1 Many cases which are destined for the Crown Court presently go through a committal procedure in the magistrates' courts. At this stage the defence can argue that the committal papers do not reveal a case to answer. The court may also discharge a case if the prosecution concedes that there is insufficient evidence to justify a committal or it is not ready to proceed. This will usually happen when the prosecution file has not been prepared or served on the defence.

6.2 The number of committals has been reduced since the introduction of section 51, Crime and Disorder Act 1998 whereby offences which can only be tried in the Crown Court (together with some other offences) are sent straight to the Crown Court with only an initial hearing in the magistrates' courts.

6.3 In the future, it is likely that all cases, where a decision is made that they are to be tried in the Crown Court, will be sent in a similar way to the indictable only cases. If so, the problem of discharged committals and their re-instatement will disappear. However, the issue of cases not being ready will merely become an issue in the Crown Court.

6.4 In a number of our reports we noted a concern about the number of cases that are discharged because the prosecution was not ready. We also expressed concern at the lack of systems for the considered re-instatement of proceedings that have been discharged. The effective and continued prosecution of these cases is important because, whilst no longer including indictable only offences, they often involve charges at the more serious end of the scale.

6.5 Without dedicated monitoring arrangements, it is difficult for Areas to know the scale of the problem (if it exists at all) as the CPS has not in the past required collection of this data. Furthermore, these cases are recorded in the case outcome statistics as discontinued cases together with all other types of cases that are terminated in the magistrates' courts.

6.6 Details of our concerns and the issues can be found in the Area report on London (19/01) and more particularly in the Area report on West Midlands (6/01) where, in view of the high number of discharged committals, we made a special investigation. A follow-up inspection has also been conducted in the West Midlands and the report was published in September 2002.

6.7 The issues are not confined to the larger metropolitan Areas. We have seen that shortages of staff (both in the CPS and the police) can lead to a short-term problem in the timely preparation of committal files which results in a number being discharged in a short period of time. Every Area should therefore be alert to the issues and ensure that its systems are effective.

Possible actions for improvement

- read the reports for London (19/01), West Midlands (6/01) and its follow-up inspection (Sept 2002).
- continue efforts (through JPM and otherwise) to increase the number of "perfect" files.
- be aware of the number of committals that are discharged because they are not ready.

- ensure that there are adequate systems for the effective and timely consideration of re-instatement at the appropriate level.
- clarify the responsibilities of the CJU and the TU.

ADVERSE CASES

7.1 The file sample in our Area inspections covered a full range of cases but focused on adverse cases which include cases:

- where all charges are dismissed by magistrates on the basis that there is no case to answer at the conclusion of the prosecution case (NCAs);
- where a trial judge at the Crown Court orders that an acquittal should be entered following a decision by the prosecution that the case should not proceed and prior to the empanelling of a jury. These are called judge ordered acquittals (JOAs); and
- where a trial judge in Crown Court proceedings rules, following the commencement of the evidence, that it is insufficient for the Crown to proceed and directs the jury to acquit. These are called judge directed acquittals (JDAs).

7.2 During the course of our Area inspections we have assessed a total of 1,673 of these cases broken down as follows:

- No Case to Answer - 206 cases
- Judge Ordered Acquittals - 1,229 cases
- Judge Directed Acquittals - 238 cases

7.3 Here we give the findings from our analysis of all these cases. In some instances we have compared figures with the total Area inspection database, which includes 11,728 cases.

Findings from the data on adverse cases

7.4 The analysis of our data of all adverse cases shows the following offence profile for adverse cases compared to the profile for all files in the Area inspections:

Offence profile

Offence Category	Overall %	Adverse %	Difference %
Homicide	0.4	0.5	**+0.1**
Assaults	23.4	30.8	**+7.4**
Sexual	5.7	9.9	**+4.2**
Theft and fraud	27.8	36.5	**+8.7**
Criminal damage	6.6	2.1	**-4.5**
Drugs	3.7	4	**+0.3**
Public order	8.6	8.6	**None**
Road traffic	20.2	3.3	**-17.7**
Public justice	1.2	2.4	**+1.2**
Other	2.3	1.9	**-0.4**

Points to note:

- These figures appear to suggest that cases of assault, sexual offences and theft/fraud are more likely to result in an adverse outcome than other types of offence. When considering the measures that could be taken, Areas might consider concentrating their efforts on these three categories of offence;
- While this conclusion might have been anticipated for assaults and sexual offences, it is less obvious for thefts and fraud (the highest category).

There may be a greater proportion of these offences because they are more susceptible to the dropping of cases when there is sufficient sentence on other files.

7.5 The following table shows the reasons for non-conviction in adverse cases:

Reasons for non-conviction

Reasons for Non-conviction by Category	
EVIDENTIAL	**%**
Inadmissible evidence - Breach of PACE	2.1
Inadmissible evidence - other reason than Breach of PACE	2.1
Essential legal element missing	17.3
Other evidential element missing (e.g. continuity)	6.1
Unreliable identification	9.8
Victim fails to come up to proof	6.6
Other civilian witness fails to come up to proof	4
Police witness fails to come up to proof	1
Sub-total	*49*
PUBLIC INTEREST	
Defendant with serious medical problems	2.1
Effect on victim's physical/mental health	0.6
Other indictment or sentence	9.2
Informer or other PII issues	1.1
Sub-total	*13*
PROSECUTION WAS UNABLE TO PROCEED	
Victim fails to attend	15
Other civilian witness fails to attend	3.4
Victim intimidation	0.5
Other civilian witness intimidation	0.2
Victim refuses to give evidence	16.5
Other civilian witness refuses to give evidence	2.4
Sub-total	*38*

Points to note:

- the most common reason for failure on evidential grounds (legal element missing) will be affected by a number of factors including the quality of the files submitted by the police and the quality of the continuing review;
- by far the most common reason for dropping a case in the public interest was because defendants were sentenced adequately on other files in the same hearing or because they were already serving a custodial sentence;
- witness issues account for 49.6% of the total.

7.6 We broke down these factors to discover the reasons for non-conviction in different offence types and in special cases (domestic violence, child abuse and racially aggravated cases). We found that:

- the number of cases failing because the legal element was missing was high in theft and fraud cases and particularly so in affray cases;
- PACE problems (procedures under the Police and Criminal Evidence Act 1984) appear particularly prevalent in burglary cases;
- problems with identification were particularly high in robbery cases;
- the victim failed to come up to proof (that is they did not give the same evidence in court that they gave in their statement to the police) in a high proportion of all the special cases and in other types of assault;
- cases are sometimes dropped because the defendant is sentenced adequately for similar offences on other files. This is more often so in robbery and theft cases. Conversely, commendably, no racially aggravated cases were dropped for this reason.

Witnesses in adverse cases

7.7 Our analysis of reasons confirms that victim and witness failure is a major factor in cases where there is no conviction, which contribute to the overall justice gap.

7.8 We analysed the reasons for each type of offence and in special cases and found that:

- a significantly higher proportion of witnesses fail to come up to proof in assault cases generally, with even more in S47 assaults;
- the percentage of witnesses failing to come up to proof or refusing to give evidence is high in sexual offences;
- missing legal elements are a significant factor in theft and fraud cases and identification in robbery cases. In these cases, the witness's background is less likely to be available;
- missing legal elements are a significant factor for failure of public order offences and affray in particular;
- the background of witnesses was included in special category offences with the significant exception of racially aggravated cases where it was included in only 33.3% of cases compared to the average of 69.2%;
- where domestic violence cases were unable to proceed, it was because of witness problems in 94.3%;
- a high percentage of witnesses in child abuse cases fail because victims refuse to give evidence or fail to come up to proof;
- the victim or witness failed to attend in 75% of racially aggravated cases where the case was unable to proceed.

Foreseeability in adverse cases

7.9 The reasons for a case failing that are set out above are often unavoidable. Good and timely anticipation of the problems, however, can sometimes prevent failure.

7.10 Our examination of the HMCPSI data about foreseeability showed:

Issue	NCA %	JOA %	JDA %	All adverse cases %
The reason for acquittal was reasonably foreseeable	40.6	33.7	33.2	33.7

Action was taken to avoid the acquittal	25.3	40.8	34.1	38.2
CPS should have done more to avoid acquittal or dropped earlier	38.0	22.4	22.3	24.4

Points to note:

- the figures are the % within each separate category;
- in nearly a quarter of adverse cases where acquittal was reasonably foreseeable, the CPS should have done more to avoid it or dropped the case sooner;
- performance was significantly worse in the magistrates' courts compared to the Crown Court.
- these figures are from the 1,673 adverse cases in our database at the time of writing this report. The figure of 24.4% compares with 19.0% shown in the Chief Inspector's last annual report for the year ending 30 September 2001 and our assessment of 20.5% for the inspection cycle to 30 June 2002.

7.11 We broke down these questions into the different offence types and special cases (domestic violence, child abuse and racially aggravated cases) and found that:

- less attention was paid to foreseeable problems in cases of theft, public order and affray and in racially aggravated cases;
- more should have been done on average in 24.4% of cases but in a significantly greater percentage in burglary and theft cases;
- there is a significantly better performance than generally in cases of domestic violence, child abuse, sexual offences and robbery offences.

Progress during the inspection cycle

7.12 We published our Thematic Review of Adverse Cases in June 1999. It contained a similar analysis of reasons for failure of cases and made recommendations. Unfortunately, some specific issues that were highlighted remain. In particular:

- prosecutors are failing to get to grips, enough or at all, with missing legal and evidential elements;
- prosecutors are not successfully addressing issues surrounding PACE;
- witness attendance issues have not been addressed.

7.13 From April 1999 CPS Areas have been required to record the percentage of adverse cases where acquittal was foreseeable but where no remedial action was taken. Our assessment of these figures is given in our reports from January 2001.

7.14 Until guidance was given at the beginning of 2002, Areas based their assessment on a narrow interpretation of the test – recording only where decisions were clearly wrong. HMCPSI, on the other hand, judges whether a suitably experienced prosecutor ought to have foreseen failure and taken action or dropped the case. The guidance brings the Areas into line with the Inspectorate's test.

7.15 The percentage of cases where acquittal was foreseeable but where no remedial action was taken ranges from 0% to 40.3%, with an average of 14.6%.

7.16 The majority of Areas needed to be more realistic and robust in their assessments, which were frequently significantly below our findings. Only three out of the 22 Areas on which we reported these findings, had figures similar to our own. The CPS's Chief Executive has now raised this issue with the Chief Crown Prosecutors.

Learning from adverse cases

7.17 Our experience has shown that a good system for learning from cases includes the following:

- pick up all adverse cases (including those in the magistrates' courts);
- ensure contribution from all appropriate staff which may be: the caseworker at court, prosecuting counsel, reviewing and preparing lawyers and caseworkers, Heads of Units and the Chief Crown Prosecutor;
- ensure reports are complete, realistic and not defensive;
- analyse issues and trends;
- include issues from successful cases and positive feedback;
- plan, implement and monitor remedial action;
- share results and lessons to all staff throughout the Area (using Connect 42 where available);
- deal with individual shortcomings discretely so avoiding a blame culture;
- share, discuss and manage remedial action with the police and, where necessary, the courts.

7.18 We rarely saw all these elements together although we have commended a number of Areas for good elements in their system. These include: full reports with appropriate input, a system which includes all the internal elements and full discussion internally and externally.

7.19 We have also identified some good practice:

Good Practice

- In West Yorkshire a monthly digest is prepared which is disseminated to all lawyers and caseworkers.
- In a Unit in Merseyside and one in North Yorkshire a simple form informs lawyers of the results of all cases.
- In one Branch in Merseyside the manager writes personally to those involved in a case where there has been a particularly good result.

Other learning

7.20 The learning from experience process is a continuing one. Further, all are aware how important it is to keep up with changes in law and practice. Often, staff felt that they have insufficient time to read all that they should. Often, staff cannot attend meetings. Most Areas have tried to overcome this by producing summaries in various forms. These include:

- a quarterly digest prepared by the Special Casework Lawyer at Humberside including the reasons for failures and the themes that emerge;
- analysis by the Area Secretariat in West Yorkshire with a monthly digest;
- a monthly bulletin is produced in Dorset with contributions from all staff dealing with casework, legal and general issues. It includes summaries of Casework Directorate Bulletins.

7.21 There are some other practices of note:

- managers in Cheshire produce an attendance note when they have prosecuted in the magistrates' courts, which details any problems that they have found relating to procedural or review issues. These notes are then discussed in team meetings;
- staff in Suffolk are told of positive outcomes through the electronic links;
- South Yorkshire use HMCPSI reports to plan and develop initiatives;
- the centrally produced *inform* is well received and widely read.

Good Practice

- A bulletin is prepared by a BCP in Merseyside every two months with recent cases and summaries of legal articles.
- A Casework Committee, separate from the Area Management Team in Hampshire, ensures that casework issues are not neglected in meetings. It deals with all casework issues including the learning process in general.
- Unit Heads in West Yorkshire prepare monthly reports on adverse cases, adopting a thematic approach to identify particular trends.

7.22 We have one note of concern. Many initiatives and developments in good practice take place in isolation. We have mentioned that there is a significant amount of sharing within Areas but we find little to show that Areas are prepared to share with others. Too often, now that Areas have a large amount of autonomy, the wheel is being re-invented all over the country.

7.23 There is some development to improve communication between Areas in order to prevent unnecessary work. Greater use is gradually being made of the intranet, particularly by the Policy Directorate. The Good Practice Committee (with representatives from the CPS and HMCPSI) has produced reports on Review Endorsements, Area/community links, Complaints and Pre-trial checks. HMCPSI Area and Thematic reports contain comments on good (and not so good) practice, although we are aware that many managers read only their own reports in any detail.

7.24 We would like to see a greater willingness by managers to share good ideas and experience using every method available to them and welcome the fact that one of the aims of the proposed Directorate of Business Development is to strengthen the partnership between Areas and Headquarters and help identify opportunities to share good practice.

COMMON FACTORS AFFECTING THE JUSTICE GAP

8.1 In each category of case that we have reviewed (terminated, discharged committals, adverse cases and in relation to charge attrition) there are common factors which affect the justice gap. In this chapter we bring these together.

Joint performance management

8.2 Crucial to the successful outcome of a case is that the CPS receives from the police good evidence of the offence charged, in good time. Joint performance management (JPM) is the mechanism, agreed nationally, for use by the CPS and the police to measure the quality and timeliness of files and to analyse the reasons for failure of cases in both the Crown Court and the magistrates' courts.

8.3 The most recent national data continues to show decrease throughout the year in the number of "perfect" full files (that is those which are both fully satisfactory and in time). Only 41% of adult files and 44% of youth files are "perfect", a decrease of 7% and 4% respectively from the previous year.

8.4 The Chief Inspector's Annual Report 2000–2001 at paragraph 4.24 highlights the variable performance of JPM as a dominant theme in more recent Inspectorate reports. Very few Areas that we have inspected over the two years use the system effectively. The CPS has recognised that the mechanism is not as effective as it should be. It is revising the system in order for it to focus on case outcomes and their relationship with file quality. In the meantime, Areas are urged to continue to use the system in one form or another in a continued effort to improve files.

8.5 When police and CPS staff are working together and in close proximity, the problems caused by poor file quality and timeliness should be minimised. It will, however, still be necessary to monitor files and deal with issues that arise on receipt of the file. To this end, the new case management system (COMPASS) will include a facility to enter the assessment of quality electronically.

8.6 The reasons why trials do not proceed should also be monitored under JPM. The resulting data should be analysed and issues raised and dealt with in inter-agency meetings, particularly with the courts and the police. Our reports have shown a very variable performance in this respect with many Areas seeing little result from the time consuming effort that goes into the system.

8.7 In those Areas where JPM is used more effectively there appear to be some common features:

Possible actions to improve

- ensure a high level of commitment from CPS and police managers.
- ensure all staff understand the system and give them regular feedback, in intelligible form, from inter-agency work to show either improvement or efforts towards it – i.e. give some point to the extra work involved.
- increase the TQ1 returns (particularly with exception reporting).
- ensure criteria for criticism of police files is agreed with police and consistently applied.
- ensure analysis is complete, thorough and timely.

- discuss results not only on individual cases but of trends.
- identify weaknesses with police and plan improvement.
- take action! and let staff know what has been done.

Continuing review

8.8 Review is a continuous process. Prosecutors must assess the appropriateness of the police charge and thereafter take account of any change in circumstances, which may necessitate a revision of the charge. At initial review there is usually sufficient information and evidence for the lawyers to apply the Code tests in order to ascertain that the basic elements of the offence charged, or another offence, are present and that it is in the public interest to proceed. Defendants frequently plead guilty to the majority of charges. It is after this first review that the judgement of the lawyers and the action that they take are crucial to the success of trials and of cases that are committed to the Crown Court.

8.9 In some CPS Areas, we found that some lawyers were failing to take a robust and proactive approach with the effect that inappropriate charging was not being addressed at the earliest stage. Late and poor-quality continuing review can lead to decisions being made at court, where the pressure to accept mixed pleas or a partial plea, or drop the case altogether, is greater.

8.10 Lack of case control and delays can result in compromised acceptance of pleas or the unnecessary failure of a case. File responsibility is an important factor in control. For various reasons there can be a number of different lawyers who handle a case throughout the prosecution process. It is important to reduce these changes to a minimum and ensure that responsibility for a case is clear.

8.11 In adverse cases the evidence that a file had been considered after the initial review was disappointing. Whilst we accept that the issue may be one of recording further review, rather than carrying it out, the effect is frequently the same. Several lawyers can be involved in most cases and the lawyer at court is rarely the reviewing lawyer. Work not recorded is frequently work wasted.

8.12 We compared performance in adverse cases with all other cases. Our findings were:

Issue	NCA %	JOA %	JDA %	Adverse overall %	Random overall %
There was evidence of further review on receipt of the full file	63.5	81.6	78.0	78.9 (Range 29.7 –100)	73.0

Points to note:

- the range from which these figures are compiled showed very variable performance across the Areas. Individual Area performance is given in our Area Reports;
- the performance in the magistrates' courts for those cases resulting in a finding of no case to answer is particularly low;
- we further analysed this issue according to special case category and offence type. We would expect all cases to show that there has been further review: in this sense, none of the figures were good. It shows, however, that performance is significantly better in domestic violence, racially aggravated and robbery cases whereas performance in burglary and theft cases is significantly worse.

File endorsement

8.13 The quality of continuing review is closely related to the question of review endorsement. This is particularly important when a number of people handle the file. With the development of separate Units, good endorsement becomes crucial. When assessing cases we ask if there is evidence of further review. It may well be that good work is done on a file, but it is lost to others if it is not recorded.

8.14 In our analysis of adverse cases we found:

Issue	NCA %	JOA %	JDA %	Area Inspections Overall %
Where appropriate, review endorsements referred to identifiable evidential weaknesses	50.4	64.6	61.3	**62.0** (Range 16.7–100)

Points to note:

- there is a very large range of performance in the Areas overall;
- NCA cases are particularly disappointing.

8.15 We also analysed these figures according to special case categories (domestic violence, child abuse and racially aggravated offences) and offence types. We found that:

- endorsement was significantly worse in burglary, theft and public order offences;
- although still not good enough, endorsement of review in the special category cases was better, particularly in the racially aggravated cases.

8.16 The overall quality of file endorsements was also unsatisfactory in our charge attrition sample. In just over 20% of charge attrition cases, the reason for the dropping or change of charge was not endorsed in sufficient detail.

8.17 In this sample, at first sight, the proportion of cases in which endorsement was adequate (79.9%), compares favourably with the Area inspection sample figures, which were: endorsement of the relevant evidential (63.5%) and public interest factors (58.2%) at initial review. However, in this context, the file endorsement provides the justification for reducing the gravity of the case and, as such, is evidence of a decision that is more likely to be the subject to scrutiny and require explanation to victims (through the direct communication initiative) and other interested parties. The quality of such endorsements should, therefore, be high.

Victims and witnesses

8.18 We have set out and commented on our findings from the data about witnesses in

relation to each category of case which contributes to the justice gap. Our reports also deal with some more general points about the treatment of witnesses.

8.19 It has long been recognised that the proper treatment of victims and witnesses is a crucial factor for all criminal justice agencies, both to ensure the successful conclusion of cases and to increase the public's confidence in the criminal justice system.

8.20 The issues are complex and the initiatives depend throughout on the co-operation and commitment of all agencies.

8.21 The CPS has played a full part in these initiatives including:

- Public Statement on the Treatment of Victims and Witnesses - 1993;
- The Victim's Charter - 1996;
- The TIG National Standards for the Care and Treatment of Victims and Witnesses - 1996-7;
- Implementation of Direct Communication with Victims;
- Implementation of Special Measures under Youth Justice and Criminal Evidence Act 1999.

8.22 The TIG National Standards set out the standards and responsibilities the CPS has in its dealings with witnesses. Each Area was required to produce a Service Level Agreement (SLA) with other agencies which includes:

- arranging convenient court dates and times;
- giving information about the process and procedures before and after the hearing;
- looking after witnesses at court;
- attending to compensation and expenses;
- responding to unjust criticism by the defence.

8.23 The National Standards remain the bedrock of CPS responsibilities even though there have been a number of further projects dealing with parts of them. In general we found much good work in relation to witnesses but too often it has been undirected. Plans often needed updating and in many Areas, managers had no way of telling the level of performance.

8.24 Our comments in reports have included the following:

Witness warning notification to the Witness Service

8.25 It is important for the Witness Service to be informed in good time which witnesses are expected at court, and whether any are vulnerable or have special requirements, in order that they can offer help and support. Agency co-operation is essential for the well being of witnesses. While we had positive comments in three Areas, too often there are failings. The following actions have been taken from our reports.

Possible actions to improve

- dust off and update the SLA on Treatment and Care of Victims and Witnesses.
- get an agreement with the Witness Service and police about respective responsibilities.
- agree who will monitor it and how long – share results and act on them.
- ensure information from the police about vulnerable witnesses or special needs is passed on for action.
- give notice in time for the Witness Service to do something.
- ensure Witness Service knows if a case is dropped or the new date if adjourned.
- check that the systems for the Crown Court and the magistrates' courts are clear and consistent.
- consider a witness care bureau with the police (and Witness Service?).

At court

8.26 The treatment of witnesses (which includes victims and witnesses) at court not only affects their ability to give evidence but also influences the way they regard the criminal justice system as a whole. Their messages are returned to the community and influence the public's confidence in the system.

8.27 The Witness Satisfaction Survey 2000 (Home Office Research Study 230) indicated that 76% of witnesses were very or fairly satisfied with their overall treatment and 87% were satisfied with the CPS. Nevertheless, 40% of witnesses and 47% of victims said that they would not be happy to be witnesses again.

8.28 There are three main factors for which the CPS shares responsibility, which affect witnesses' attitudes:

- the information that they receive about the court process;
- the delays they experience in waiting for trials and waiting at court;
- their treatment at court.

8.29 We comment throughout our reports on the level of care and effectiveness of CPS staff and agents. Again, we have seen some excellent work. In many Areas, the caseworkers in the Crown Court and lawyers in the magistrates' courts are praised for their consideration and co-operation, sometimes in very stressful circumstances.

8.30 Often, however, witness care was dependant on the commitment or experience of individuals and performance could be variable. Typical issues include:

- witnesses attend court but are not required;
- witnesses left for long periods of time in waiting rooms;
- witnesses not being told of the progress of a case;
- staff attending late at court so that witnesses are not spoken to;
- counsel not speaking to witnesses;
- staff at court unaware of witnesses' special needs;
- lack of staff at court.

8.31 With the exception of the last point (which, we are frequently told, is the reason for most of the other problems but which should be eased with the greater

funding received by the CPS) these issues are soluble with proper management and training at little or no further cost.

8.32 We have seen a number of initiatives and have made a number of suggestions in our reports:

Possible actions to improve

- dust off and update the SLA on Treatment and Care of Victims and Witnesses.
- keep reminding counsel of paragraph 6.1 of the Bar Council Written Standards for the Conduct of Professional Work, which emphasises that there is no longer a rule which prevents a barrister from having contact with a prosecution witness in order to make introductions and explain procedures.
- ensure effective communication and liaison with the Witness Service at court and enlist their help in times of pressure.
- Suffolk has conducted a joint agency survey of witnesses to see if there are particular problems and to assess priorities.
- inform police promptly if witness not required – follow up with police if witness not dewarned.
- Durham has developed a process map with other agencies to identify what information is needed, from whom, and when with a view to updating the SLA.
- Merseyside has considered with Social Services the possibility of a profile of witnesses with learning difficulties (given to the judge and counsel but also assists the CPS).
- large court complexes could consider jointly funded crèche facilities at court - Birmingham has developed this.
- Essex has staff dedicated to witness care in co-located TUs and has considered involvement of the Witness Service or Victim Support in CJUs.
- Dorset discusses witness care issues (general and individual) at regular meetings with listing officers.

SUMMARY AND CONCLUSIONS

The size and creation of the justice gap

9.1 The number of defendants not being brought to justice that are affected by the CPS decisions and practices, when set against the picture as a whole, is comparatively small. Most leave the system before the charges are laid and the CPS is involved (see Annex 1).

9.2 Overall we found that the CPS is reducing charges appropriately so that they ultimately reflect the gravity of the offending and the defendant can be sentenced properly. In our charge attrition sample we considered that the final charges after reduction provided the court with adequate sentencing powers in 96.1% of cases. These findings were judged on the present criteria and practices of the criminal justice system. We comment on this at paragraphs 9.19 – 9.24.

9.3 However, our evidence suggests that a significant proportion of charges are set too high, either by the police or by the CPS at initial review. The quality of police files and CPS action taken to supplement them, where appropriate, is particularly important if this is to be avoided.

9.4 Our findings suggest that there is a significant degree of charge attrition that is caused by inappropriate police charging, either because there are evidential difficulties in respect of the charge selected or because the charge preferred exceeds the gravity that ought to be attributed to the case. This lends support to plans for initial charging to become the responsibility of the CPS.

Key findings about reasons and patterns

Terminated cases

9.5 One third of terminated cases are road traffic offences (often because driving documents are produced). Most of these are not recorded offences and do not count towards the target for narrowing the justice gap. If these cases were excluded from the discontinuance figure, the rate would be 8.7% instead of 13.1%. The justice gap is measured by recorded offences. Termination is measured by the number of cases against a defendant which are dropped. CPS will in future need to distinguish recorded offences if they are to measure progress against the targets set by the Government. We understand that work has already started to achieve this in future so that, as a matter of course, recorded offences can be separated using the new case management systems.

9.6 Other offences which are terminated in significant numbers are, theft and fraud (21.8%) and assaults (20%).

9.7 The main reason for termination was that an essential legal element was missing (21.8%). Other significant reasons are victim failure (18.4%) and that a small or nominal penalty is expected - which includes where the defendant is sentenced on another file or is in prison - (12.3%). Conflict of evidence and unreliable witnesses were also prevalent evidential reasons in cases of alleged child abuse that were terminated. Prosecutors may be too ready to drop racially aggravated cases, since inspectors disagree with a significantly greater proportion of the prosecutors' decisions to terminate than generally (25.8% compared to 8.7%). This last finding reflects a similar finding in our Thematic Review of Casework

Having a Minority Ethnic Dimension (April 2002).

Charge attrition

9.8 We found that the final charges (after reduction) provided the court with adequate sentencing powers in almost all cases (96.1%) when judged on the present criteria and practices of the criminal justice system. We comment, however, on the culture of acceptance of pleas at paragraphs 9.19 – 9.24.

9.9 Road traffic, assaults and public order cases are particularly susceptible to charge attrition and cases of dishonesty are problematical for the police and CPS, in terms of identifying and addressing evidential difficulties.

9.10 Of the original police charges where there was an identified individual victim, 30.6% were incorrect or inappropriate. The CPS lawyer altered the original police charge in 40.8% of all cases in the charge attrition sample. Of these, 56.9% were altered because of evidential difficulties on the dropped charge. The majority of these were theft and fraud cases.

9.11 In 22.9% of charge attrition cases, the dropped charges had a different victim from that affected by the charge on which there had been a conviction.

Adverse cases

9.12 It is important to recognise that judge ordered acquittals (JOAs) are also terminated cases, in the sense that the charges are dropped as a result of a decision taken by the CPS rather than the court, which is the position with other forms of adverse case.

9.13 In adverse cases, 49% were dropped on evidential grounds, 13% in the public interest and in 38% the prosecution was unable to proceed.

9.14 Our figures suggest that cases of assault, sexual offences and theft/fraud are more likely to result in an adverse outcome than other types of offence. Whilst this conclusion might have been anticipated for assaults and sexual offences, it is less obvious for thefts and fraud (the highest category). There may be a greater proportion of these offences because they are more susceptible to the dropping of cases when there is sufficient sentencing power on other files. However, performance in review and action taken in theft and burglary cases is below the average for all adverse cases in every respect. When considering the measures that could be taken, Areas might consider concentrating their efforts on these three categories of offence.

9.15 Again, the most common reasons for cases failing are because an essential legal element is missing (17.3%) and victims refuse to give evidence (16.5%). Victim and witness issues generally account for 49.6% of cases being dropped or otherwise failing.

9.16 An essential legal element missing was particularly a problem in theft and fraud cases and affray. Victims refusing to give evidence were particularly a problem in domestic violence and sexual cases. Victims failing to attend were notably common in racially aggravated cases.

9.17 Where the outcome was reasonably foreseeable, the CPS should have done more to avoid it in 24.4% of the cases. The percentage is significantly higher in burglary and theft cases. Performance is better in domestic violence cases.

9.18 The majority of Areas needed to be more realistic and robust in their own assessments of cases where acquittal is foreseeable but where no remedial action was taken.

Changing the culture

9.19 We mention in this report the importance of good evidence and the early selection of the correct charges. We go on to discuss the advantages of establishing a culture within the criminal justice system under which it is widely understood that all charges will ordinarily be pursued.

9.20 We have said that we found that the court has adequate sentencing powers in a high proportion of cases, but qualify this with the phrase "judged on the present criteria and practices of the criminal justice system".

9.21 At paragraph 5.23 we show the reasons for the acceptance, or partial acceptance, of pleas. Over 50% of these are charges that are dropped on public interest grounds because of other sentences. It is commonly said that some charges are not pursued "because it would make no difference to the final sentence".

9.22 Whilst this approach is pragmatic and well established in the courts, it does, in numerous respects, detract from the overall quality of justice and is a substantial source of contribution to the justice gap. Charges properly brought and supported by evidence which are not pursued to their proper conclusion, widen the justice gap. From the CPS perspective, it is difficult to challenge the position and, in the short term at least, it could be costly to do so. The judiciary and the magistracy would be likely to criticise cases or charges being pursued when the outcome, in terms of a different sentence, is likely to be minimal or none. But these considerations have to be weighed against some qualitative factors such as the impact on the victim when a crime is not pursued and the incomplete basis on which any subsequent sentencing may take place.

9.23 There would be a number of advantages to a new approach where there would be less compromise:

- given the importance of a "better deal" for victims and witnesses, their confidence would be raised as their expectations are more likely to be realised and more would see their case brought to justice;
- it would be clear to guilty defendants that there is nothing to be gained from entering inappropriate not guilty pleas in the hope of compromise and playing the system leading to greater delay and expense;
- the possibility of more trials while the new approach bedded in (and thus greater cost) because compromises will not normally be accepted, should be balanced in the longer term by the savings by all CJS agencies, as many cases will not be adjourned and dragged out only to be compromised at the last minute;
- the defendants' records will better reflect the true extent of their offending;
- prosecutors would gain confidence that their early decisions were right and that it is accepted that they had taken the public interest factors into consideration.

9.24 It would be important to have the commitment of all agencies and tribunals to encourage this new approach. We think it right to flag up these considerations whilst recognising that striking a balance is a policy matter for the judgment of others. These considerations have a bearing on both the prospect of meeting the targets for narrowing the justice gap and the Government objective of increasing public confidence in the criminal justice system, including through putting the victim at the heart of the system.

The quality of police files

9.25 Crucial to the successful outcome of a case is that the CPS receives from the police good evidence of the offence charged, in good time. The most recent national data available continues to show an unsatisfactory number of "perfect" full files (that is those which are both fully satisfactory and in time). Only 42% of adult files and 43% of youth files are "perfect".

9.26 Variable performance in the effective use of JPM continues to be a dominant theme in our reports both in achieving "perfect" files and in identifying with the police and other agencies issues for improvement. The CPS is revising the system in order for it to focus on case outcomes and their relationship with file quality. In the meantime, Areas are urged to continue to use the system in one form or another in a continued effort to improve files.

9.27 When police and CPS staff are working together and in close proximity, the problems caused by poor file quality and timeliness should be minimised. It will still be necessary to monitor performance by the most effective means.

9.28 We have identified common features in those Areas where JPM is used more effectively.

The importance of continuing review, file responsibility and good endorsement

9.29 Review is a continuous process. Often the evidence available at the outset of a case is basic. It is after the initial review that the judgement of the lawyers and the action that they take are crucial to the success of trials and of cases that are committed to the Crown Court.

9.30 In some CPS Areas, we found that some lawyers were failing to take a robust and proactive approach throughout the case with the effect that inappropriate charging was not being addressed at the earliest stage. Late and poor-quality continuing review can lead to decisions being made at court, where the pressure to accept a partial plea or drop the case is greater.

9.31 Lack of case control and delays can result in compromised acceptance of pleas or the unnecessary failure of a case. File responsibility is an important factor in control. For various reasons there can be a number of different lawyers responsible for a case throughout the prosecution process. It is important to reduce these changes to a minimum and ensure that responsibility for a case is clear. This is particularly important as the configuration of Units change under the Glidewell arrangements.

9.32 Evidence that charge or evidential deficiency issues had been considered after the initial review was disappointing. Whilst we accept that the issue may be one of recording the assessments made at further review, rather than carrying it out, the effect is frequently the same. Several lawyers can be involved in most cases and the lawyer at court is rarely the reviewing lawyer. Work not recorded is frequently work wasted.

9.33 We frequently mention in our reports that the quality of file endorsement is unsatisfactory. We found the same disappointing standards in all types of cases that we analysed for this review. In all the categories of case covered by this review, the file endorsement provides the justification for reducing the gravity of the case or dropping it. These decisions are likely to be subject to scrutiny and require explanation to victims (through direct communication) and other interested parties. The quality of such endorsements should, therefore, be high.

The impact of the justice gap on victims

9.34 It has long been recognised that the proper treatment of victims and witnesses is a crucial factor for all criminal justice agencies both to ensure the successful conclusion of cases and to increase the public confidence in the criminal justice system.

9.35 The treatment of witnesses (which includes victims and other witnesses) at court not only affects their ability to give evidence but also influences the way they regard the criminal justice system as a whole. Their messages are returned to the community and influence the public's confidence in the system.

9.36 We comment throughout our reports on the level of care given to witnesses and the effectiveness of CPS staff and agents. We have seen some excellent work but more could be done. Areas need to reinforce the National Standards.

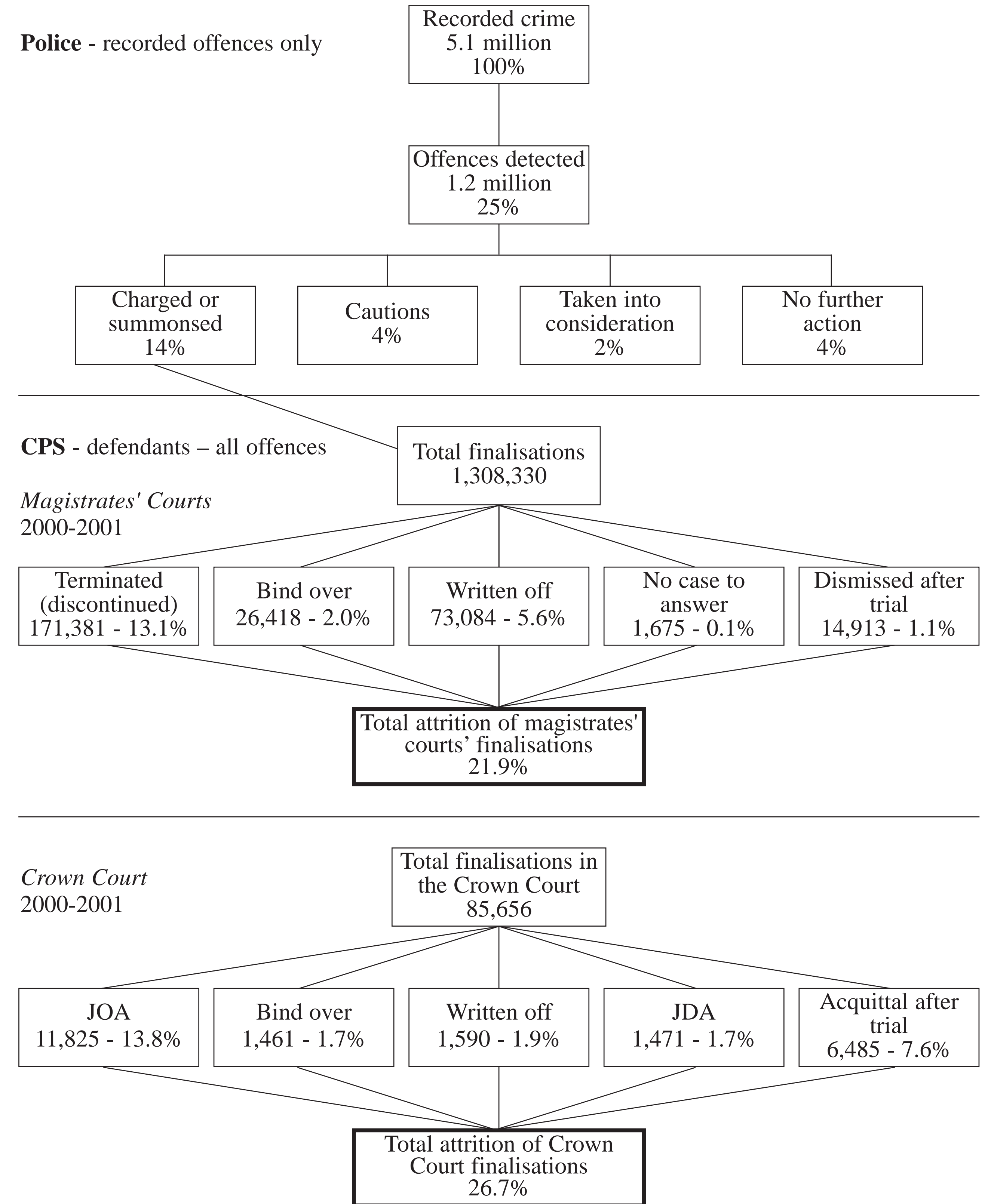
9.37 Charge attrition can have a damaging impact on victims of crime. Almost half of the cases in our charge attrition sample had an identifiable individual victim with an interest in the outcome of the proceedings.

9.38 In a significant proportion of those cases (22.9%), the dropped charges had different victims to the convicted offences. Therefore, whilst we found that the sentence was adequate, on present thinking, (because the final charges provided the court with adequate sentencing powers overall), there would still have been a considerable number of victims who did not see an offender brought to justice for their offence.

9.39 If, however, there is insufficient evidence for the charge or it is set at an incorrect level at the outset, the expectations of victims may be raised unnecessarily. Later reduction can create a negative impression about the way in which the case has been handled and in respect of the criminal justice system generally. It also increases the need for the CPS to explain its actions to victims under procedures for direct communication.

9.40 We make a number of suggestions for actions to improve the service to victims and witnesses, based on the initiatives and good practice that we have found throughout the country.

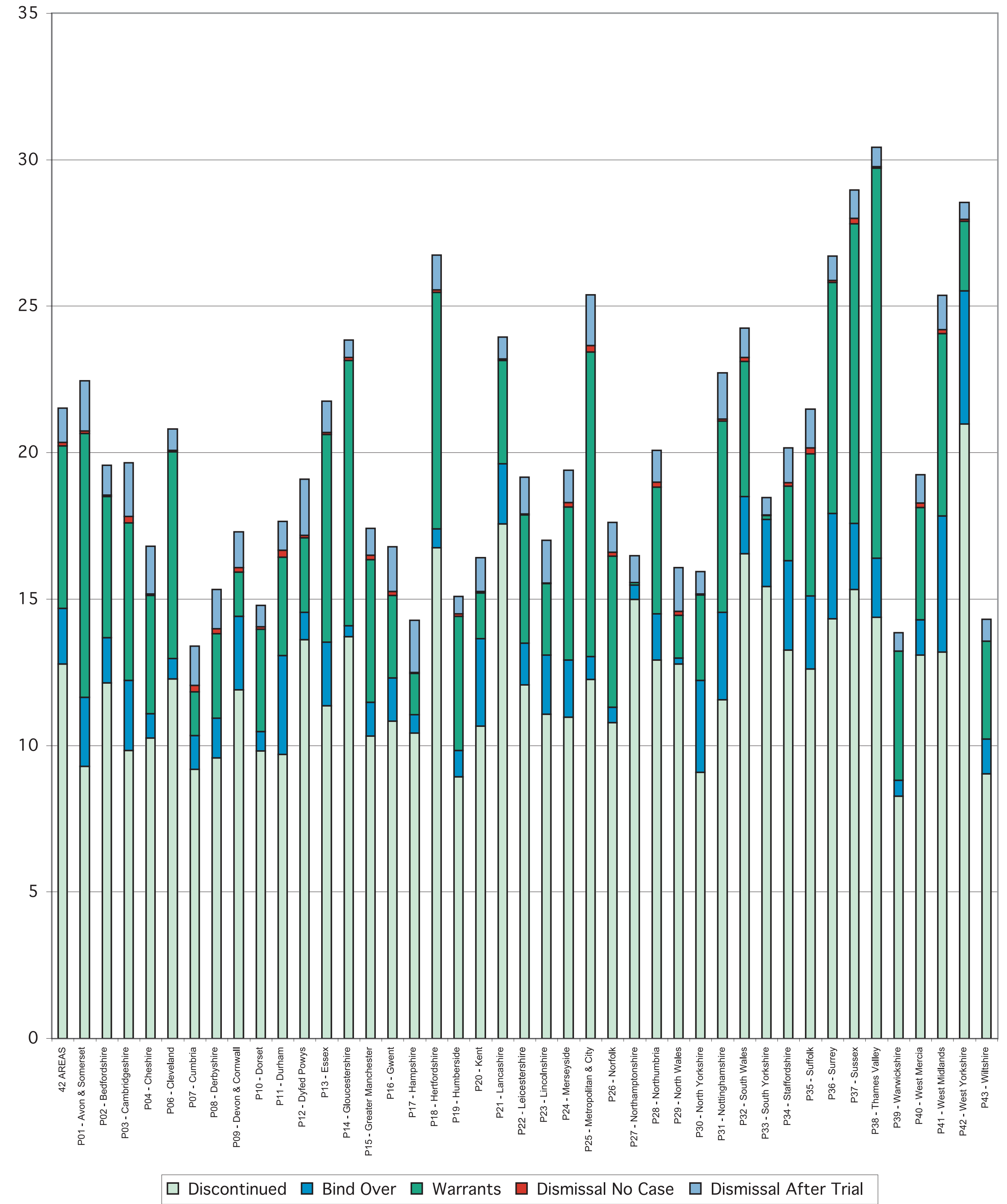
THE CREATION OF THE JUSTICE GAP

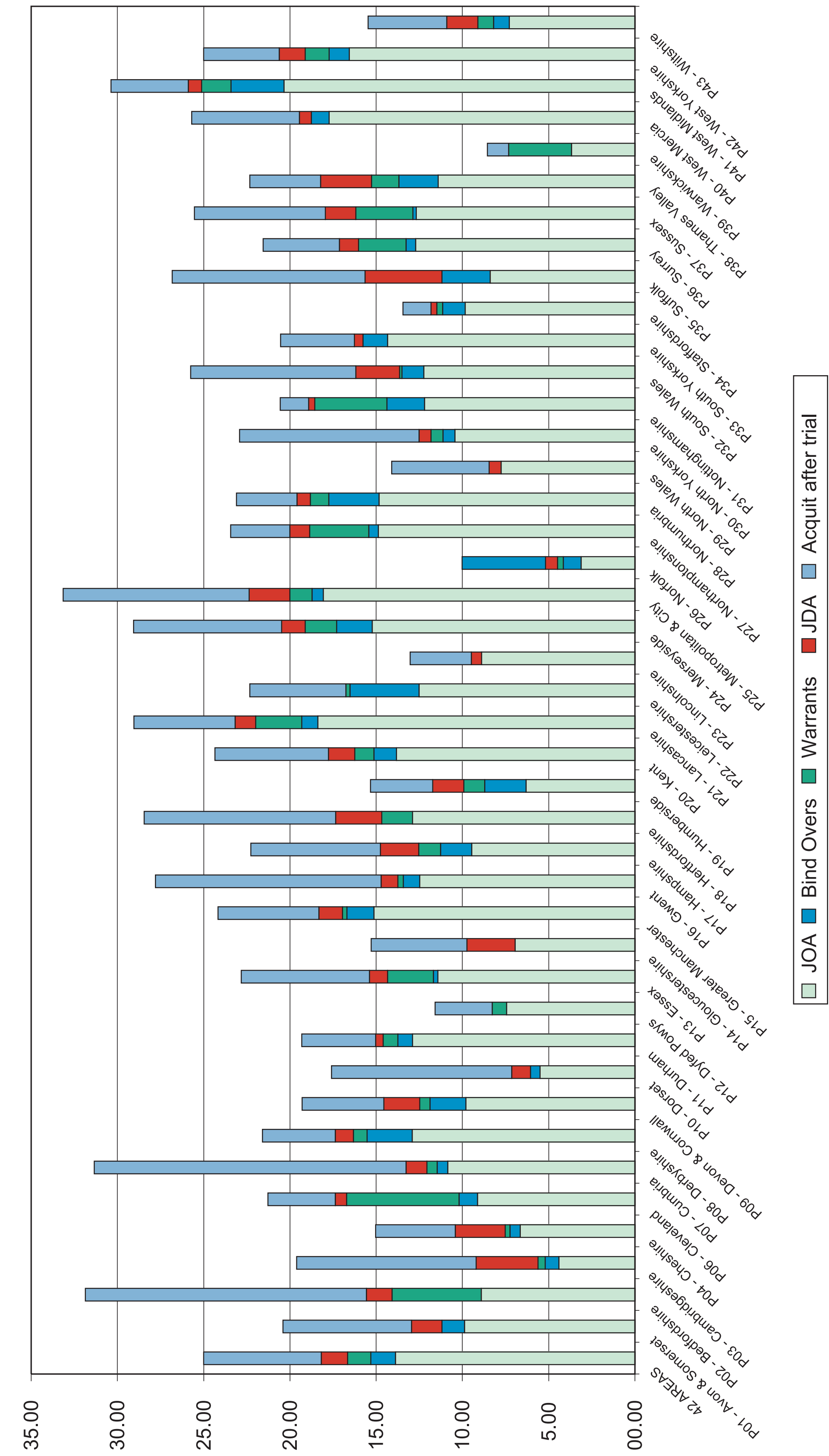


Once charged, there are a number of reasons for unsuccessful outcomes in the sense that the defendant is not convicted. The fact that there is no conviction does not necessarily mean that the outcome is not a just one. The CPS collates all these outcomes. The figures from the latest available report are shown at Annex 2 and 3.

The term “unsuccessful outcomes” embraces adverse outcomes which we discuss at chapter seven. Some of these outcomes may be amenable to influence by the CPS but others are clearly not; for example, when defendants fail to attend court and warrants remain unexecuted. Within this wide range of outcomes, we have focussed in this report, to some extent, on adverse outcomes. These comprise no case to answer in the magistrates’ courts, and judge ordered and judge directed acquittals in the Crown Court (see paragraph 7.1 for definitions). These outcomes may often, but not always, reflect on the quality of CPS work.

Acquittals include both cases where there has been no crime (for example self-defence in assault cases or where there is no dishonesty in theft cases), as well as cases where there is clearly a crime but the person charged was not found to be responsible (for example where there has been mistaken identity). Within the present definition of the justice gap, all offences recorded and not brought to justice contribute to the widening of the gap. Thus these “just” outcomes will be included.


Magistrates' Court Unsuccessful Outcomes
as a % of completed cases Apr - Jun 2002
35
30
25
20
15
10
5
0
42 AREAS
P01 - Avon & Somerset
P02 - Bedfordshire
P03 - Cambridgeshire
P04 - Cheshire
P06 - Cleveland
P07 - Cumbria
P08 - Derbyshire
P09 - Devon & Cornwall
P10 - Dorset
P11 - Durham
P12 - Dyfed Powys
P13 - Essex
P14 - Gloucestershire
P15 - Greater Manchester
P16 - Gwent
P17 - Hampshire
P18 - Hertfordshire
P19 - Humberside
P20 - Kent
P21 - Lancashire
P22 - Leicestershire
P23 - Lincolnshire
P24 - Merseyside
P25 - Metropolitan & City
P26 - Norfolk
P27 - Northamptonshire
P28 - Northumbria
P29 - North Wales
P30 - North Yorkshire
P31 - Nottinghamshire
P32 - South Wales
P33 - South Yorkshire
P34 - Staffordshire
P35 - Suffolk
P36 - Surrey
P37 - Sussex
P38 - Thames Valley
P39 - Warwickshire
P40 - West Mercia
P41 - West Midlands
P42 - West Yorkshire
P43 - Wiltshire
Discontinued
Bind Over
Warrants
Dismissal No Case
Dismissal After Trial


Crown Court Unsuccessful Outcomes as a % of completed cases April - June 2002
35.00
30.00
25.00
20.00
15.00
10.00
5.00
00.00
JOA
Bind Overs
Warrants
JDA
Acquit after trial
42 AREAS
P01 - Avon & Somerset
P02 - Bedfordshire
P03 - Cambridgeshire
P04 - Cheshire
P06 - Cleveland
P07 - Cumbria
P08 - Derbyshire
P09 - Devon & Cornwall
P10 - Dorset
P11 - Durham
P12 - Dyfed Powys
P13 - Essex
P14 - Gloucestershire
P15 - Greater Manchester
P16 - Gwent
P17 - Hampshire
P18 - Hertfordshire
P19 - Humberside
P20 - Kent
P21 - Lancashire
P22 - Leicestershire
P23 - Lincolnshire
P24 - Merseyside
P25 - Metropolitan & City
P26 - Norfolk
P27 - Northamptonshire
P28 - Northumbria
P29 - North Wales
P30 - North Yorkshire
P31 - Nottinghamshire
P32 - South Wales
P33 - South Yorkshire
P34 - Staffordshire
P35 - Suffolk
P36 - Surrey
P37 - Sussex
P38 - Thames Valley
P39 - Warwickshire
P40 - West Mercia
P41 - West Midlands
P42 - West Yorkshire
P43 - Wiltshire

HMCPSI THEMATIC AND JOINT REPORTS

Reports can be obtained from the web: office@hmcpsi.gov.uk or from HMCPSI, 26 – 28 Old Queen Street, London, SW1H 9HP.

Subject	Date	Number
Thematic Reports		
Cases involving Child Witnesses	Jan 1998	01/98
Cases involving Domestic Violence	May 1998	02/98
Advice Cases	Sept 1998	03/98
Adverse Cases	June 1999	01/99
Evaluation of Lay Review and Lay Presentation	Aug 1999	02/99
Advocacy and Case Presentation	Feb 2000	01/00
Disclosure of Unused Material	Mar 2000	02/00
Performance Indicator Compliance and Case Outcomes	July 2000	03/00
Casework Having a Minority Ethnic Dimension	May 2002	01/02
Custody Time Limits	Aug 2002	02/02
Joint Inspections		
How Long Youth Cases Take (with HMIC & HMMCSI)	May 1999	-
Casework Information Needs within the CJS (with HMIC, HMMCSI, HMI Prisons, HMI Probation, SSI)	Apr 2000	-
Implementation of Section 1 Magistrates' Courts (Procedure) Act 1998 (HMMCSI Report contributed to by HMCPSI & HMIC)	Nov 2000	-
Progress Made in Reducing Delay in the Youth Justice System (with HMIC & HMMCSI)	Feb 2001	-
Investigation and Prosecution of Cases Involving Allegations of Rape in England & Wales (with HMIC)	Apr 2002	-
Joint Follow-up Inspection of the Progress Made in Reducing Delay in the Youth Justice System (with HMIC & HMMCSI)	May 2002	-
Joint Inspection of the Handling of Discharged Committals in the West Midlands Area (with HMIC & HMMSCI)	Sept 2002	-
Safeguards for Children (SSI report contributed to by HMCPSI)	Oct 2002	-
Listing: Creating the Virtuous Circle (with HMIC & HMMCSI)	Oct 2002	-

HMCPSI AREA REPORTS

No	Area
1/00	Dorset
2/00	Merseyside
3/00	Gloucestershire
4/00	West Mercia
5/00	Northumbria
6/00	Derbyshire
7/00	Essex
8/00	Nottinghamshire
9/00	Cambridgeshire
10/00	Durham
11/00	Lancashire
1/01	South Wales
2/01	Suffolk
3/01	South Yorkshire
4/01	Cheshire
5/01	Kent
6/01	West Midlands
7/01	Hampshire
8/01	Northamptonshire
9/01	Cleveland
10/01	Norfolk
11/01	Gwent
12/01	Lincolnshire
13/01	Gloucestershire (re-inspection)
14/01	West Yorkshire
15/01	Humberside
16/01	Staffordshire
17/01	Warwickshire
18/01	North Yorkshire
19/01	London
1/02	Bedfordshire
2/02	Thames Valley
3/02	Dyfed Powys
4/02	North Wales
5/02	Greater Manchester
6/02	Leicestershire
7/02	Cumbria
8/02	Hertfordshire
9/02	Devon & Cornwall
10/02	Sussex
11/02	Surrey
12/02	Wiltshire
13/02	Avon & Somerset
14/02	Policy
15/02	Casework

HMCPSI QUESTIONNAIRES

CPS INSPECTORATE – FILE EXAMINATION

STANDARD INTRODUCTORY QUESTIONS FOR ALL QUESTIONNAIRE CATEGORIES

HMCPS Inspectorate reference number	
CPS unique reference number	
Offence code for main offence	
Offence code for main offence dropped/substituted	
Are offences	[ ] All charges [ ] All summonses [ ] Mixed
Is offender	[ ] Adult [ ] Youth [ ] Corporate
Type of court	[ ] Mags [ ] Crown [ ] Youth
Special category	[ ] Racial incident [ ] Domestic violence [ ] Child abuse [ ] PYO [ ] Not SC
Special type	[ ] Child witness [ ] Vulnerable witness [ ] Not ST
Was the victim of the dropped offence	[ ] Individual victim [ ] Corporate victim [ ] Police victim [ ] No victim
What was the defendant's racial description	[ ] White [ ] Asian [ ] Black [ ] Other
Is the main offence recorded offence	Yes No
Is dropped offence recorded offence	Yes No

CHARGE ATTRITION QUESTIONNAIRE

The questionnaire will applied to each defendant giving extra defendants A, B, C numbers added to the main HMCPSI number.
Please circle answer

1	Total number of original charges	1 - 20
2	Total number of charges sentenced or TIC'd	1 - 20 Automatic calculation of difference between 1 & 2
3	Reason for dropping or change at first effective review *	Direct alternatives Original charge substituted Evidential difficulties on dropped charge Witness problems Other (FRS) NK/NA
4	Was reason endorsed in sufficient detail	Y/N/NK
5	If charge substituted (in Q3) was the original police charge:	Wrong charge Too high Too low NA
6	Was charge accepted by CPS, later changed	Y/N/NK
7	If yes to Q6 was this because the charge was:	Wrong charge Too high Too low NA
8	Were mixed pleas accepted after final review	Y/N/NK/NA
9	If yes to Q 8 was the acceptance of partial plea because	Sentence sufficient on same file Sentence sufficient from other files Direct alternatives Evidential difficulties on dropped charge Witness problems Other (FRS) NK/NA
10	Did the final charges provide the court with adequate sentencing powers	Yes/No
11	Did the dropped charge have different victim/s from convicted offence/s	Y/N/NK/NA
12	Was the opinion of counsel a significant factor in the change of charges	Y/N/NK/NA
13	Was the opinion of the court a significant factor in the change of charges	Y/N/NK
14	In trials that proceed, was there already a guilty plea to other offences on the same or other file	Y/N/NK/NA

* These cannot be applied to each charge. They are applied to the main charge changed or the overall character of the offending.