CROWN

PROSECUTION

SERVICE

INSPECTORATE

THE INSPECTORATE'S REPORT

on

THE REVIEW OF ADVERSE CASES

THEMATIC REPORT 1/99

JUNE 1999

CPS

Branches that assisted the thematic review

BRANCHES

1. Buckinghamshire (CPS Severn/Thames)
2. Dorset (CPS South West)
3. Dudley and Sandwell (CPS Midlands)
4. East Kent (CPS South East)
5. Essex North (CPS Anglia)*
6. Horseferry Road (CPS London)
7. North Liverpool (CPS Mersey/Lancashire)*
8. Rochdale/Bury (CPS North West)*
9. South Staffordshire (CPS Midlands)*
10. Tower Bridge and City (CPS London)

* Denotes Branches visited by the review team

Since the review was conducted before the re-organisation of the CPS in April 1999 this map, and the Report as a whole, reflect the Area and Branch structure that existed at the time we carried out our work.

REPORT ON THE THEMATIC REVIEW OF ADVERSE CASES

CONTENTS

	Paragraph
INTRODUCTION	1.1
THE BACKGROUND TO THE REVIEW	2.1
CONCLUSIONS, GOOD PRACTICE AND RECOMMENDATIONS	3.1
The misrecording of adverse findings	3.3
The quality of review in adverse cases	3.4
The reasons for adverse findings	3.6
The role of prosecuting counsel	3.7
Learning from experience	3.8
Good Practice	3.9
Recommendations	3.10
METHODOLOGY	4.1
Scope of the review	4.3
Our approach	4.5
Literature review	4.8
File examination	4.12
Interviews	4.18
Management data	4.19
THE QUALITY OF REVIEW IN ADVERSE CASES	5.1
Initial review	5.2
Continuing review	5.9
Magistrates' court: no case to answer	5.12
Magistrates' court: discharged committals	5.14
Crown Court	5.15
The selection of the appropriate charge	5.21
Offences of dishonesty	5.26
Charging standards	5.30
Unused and sensitive material	5.38
File endorsements	5.50
THE REASONS FOR ADVERSE FINDINGS	
Recording the reasons	6.1
Our overall findings	6.5
Principal reasons for adverse findings	6.8
Venue	6.10
Cases of disputed identification evidence	6.14
Identification parades	6.25
Information about the identifying witness	6.31
Identification and recognition cases	6.34
Witness warning and liaison	6.40
Training	6.60
THE FORESEEABILITY OF ADVERSE FINDINGS	7.1
The foreseeability of the reasons for adverse findings	7.12
The role of prosecuting counsel	7.15
THE MISRECORDING OF ADVERSE FINDINGS	
The need for accurate recording	8.1
Our findings	8.6
Classification – type of adverse result	8.19
Classification – reason for adverse result	8.26
File endorsements	8.33
Categorisation	8.41
LEARNING FROM EXPERIENCE	9.1
Crown Court adverse case reports	9.2
Magistrates' court adverse case reports	9.13
A NATIONAL PERSPECTIVE	10.1
CONCLUSION	11.1

ANNEX A: Themes of the review
ANNEX B: Breakdown of file sample
ANNEX C: Charts and statistics
ANNEX D: Reducing the number of adverse cases
ANNEX E: CPS Inspectorate's Statement of Purpose and Aims

INTRODUCTION

1.1 This is the report on the Crown Prosecution Service Inspectorate's fourth thematic review. As our subject, we have undertaken an in-depth study of the way in which the Crown Prosecution Service (CPS) handles cases that result in an adverse finding.

1.2 The CPS categorises four types of finding as adverse:

- trials stopped by the magistrates at the close of the prosecution case (otherwise referred to as "No Case to Answer" or "NCTA")
- cases in which the defendant is discharged after a contested committal ("Discharged Committal" or "DC")
- judge ordered acquittals (JOA); and
- judge directed acquittals (JDA).

1.3 Considerable attention is paid by the CPS, by other agencies in the criminal justice system and by the media to all cases which suggest fault in the CPS decision-making process. This review, therefore, sought to discover whether these case outcomes are indicators of poor decision-making, the result of unforeseeable developments or the consequence of something entirely different. We also considered the frequency with which CPS staff wrongly categorise cases as adverse findings and how staff learn from such findings.

1.4 As a result of our findings, we are able to provide reliable data from which the CPS generally should be able to improve its performance in this area.

1.5 A good casework decision is one that results in the right defendant being charged with the right offence in the right tier of court at the right time, thereby enabling the right decision to be taken by the court. The decision must also be taken at the right level within the CPS and be prosecuted by the right prosecutor.

1.6 Chapter 2 sets out the background to this review and puts it into context.

1.7 Chapter 3 summarises the review team's conclusions and recommendations and lists the good practice it discovered during the course of our work.

1.8 Chapter 4 sets out the methodology used in this review.

1.9 The remaining chapters examine our findings in depth and set out the evidence on which those findings are based.

1.10 The annexes at the end of the report contain data, background information and detailed explanations in support of some of our findings.

1.11 The review team comprised three CPS prosecutors, two of whom were seconded from Branches and a caseworker inspector. The Central Administration Unit of the Directorate of Casework Evaluation which, at the time, housed the CPS Inspectorate, supported the team. The Chief Inspector is grateful to the relevant Chief Crown Prosecutors for releasing their staff to participate in the review.

1.12 The Chief Inspector and the thematic review team are grateful for the co-operation and support of all those with whom they came into contact during the review – either in the

preparation of material for the team's consideration, or in interview. The atmosphere in which the review was conducted ensured that the best results were obtained, so that the CPS can continue to maintain and, where appropriate, improve its efforts to reduce the number of cases that unnecessarily result in an adverse finding.

THE BACKGROUND TO THE REVIEW

2.1 In the year to 31 December 1998, the total number of adverse case results recorded by the CPS was as follows:

No case to answer	2,248	
Discharged committals	922	
Total of adverse cases in the magistrates' courts		**3,170**
Judge ordered acquittals	8,680*	
Judge directed acquittals	1,851	
Total of adverse cases in the Crown Court		**10,531**
Overall total		**13,701**

*Care must be taken with regard to this figure. It represents the number of cases recorded in the P.I. category of 'Prosecution dropped' but actually includes a very small number of instances where the Defendant has died or the Attorney General has issued a nolle prosequi. These are not, strictly speaking, JOAs. However, their impact on the figures, and thus on the conclusions drawn in this report, is insignificant and the data has been left in its original form.

2.2 The total number of cases finalised in the magistrates' courts and the Crown Court over the same period was as follows:

Magistrates' Courts	1,359,096
Crown Court	92,313
Total	**1,451,409**

2.3 It is important to keep the problem of adverse cases in perspective. The figures quoted above reveal that the number of adverse cases forms only a very small part of the total CPS caseload. At 13,701 in 1998, they represented only 0.94%. Even this percentage exaggerates the problem because the blame for all adverse cases cannot be laid at the door of the CPS.

2.4 The findings of this review, combined with those of the 43 Branch inspections completed at the time of writing this report, suggest that only 21.7% or 2973 of the 13,701 adverse cases were the fault of the CPS. This figure is arrived at by deducting from the total of adverse cases, all those that fail for reasons entirely outside the control of the CPS. As we explain later in paragraph 3.1, over 78% of cases in this category failed for reasons that the CPS could not have foreseen.

2.5 In the final analysis, on the basis of the Inspectorate's data, the CPS can only be said to be at fault in respect of just 0.2% of its total 1998 caseload. This is the context in which the rest of this report should be read. However, this should not give rise to complacency. The fact that as many as 2973 cases failed so badly is still a sad commentary on CPS judgment in a small, but nevertheless significant, number of instances. There is a particular need to focus on the relatively high proportion of adverse findings in the Crown Court.

2.6 Most of these cases will have involved victims and witnesses who may well have been left

disappointed or disillusioned with their experience of the criminal justice system. Some would undoubtedly have felt similarly if the case had not been brought at all or had been terminated sooner; but this is exacerbated when expectations are raised but the proceedings just fizzle out. Nor can the impact on defendants and their families be ignored or the implications for other agencies. In addition, a significant amount of resources will have been lost. These cases also expose the CPS to criticism with its inevitable impact on the Service's reputation. Consequently, all managers will want to know the causes of adverse cases and will want to take steps to ensure that mistakes are not repeated.

2.7 In 1993, the Royal Commission on Criminal Justice (RCCJ) published the findings of its Research Study number 15 entitled: *Ordered and Directed Acquittals in the Crown Court* (Block, Corbett and Peay). That study examined 100 non-jury acquittals. As a minimum, it was assessed that, in 15% of cases, manifest deficiencies should have been rectified, or the case discontinued, before committal.

2.8 The House of Commons Committee of Public Accounts, in its report on the CPS (Thirty third report – April 1998), expressed concern at the increase since 1994-95 in the proportion of contested cases dismissed after a submission of no case to answer in the magistrates' courts. It encouraged the CPS to investigate the reasons for the increase, such as whether more time spent by prosecutors in court was leaving them insufficient time to review and prepare cases and weed out very weak cases before they reach court (paragraph 42).

2.9 The CPS has acknowledged the link between the number and type of adverse case and the quality and timeliness of decision-making. Whilst there will always be cases that result in an adverse finding, because that outcome is not always foreseeable, the importance of reducing their number is recognised by specific casework targets.

2.10 During the year ending March 1999, 3.3% of the 65,070 contested cases in the magistrates' courts were recorded as having been stopped at the close of the prosecution case. The target was actually 3.5%. The corresponding outturn for NCTA cases for the year ending March 1997 was 3.9% and for the year ending March 1998 it was 3.7%. Local variations in performance between CPS Areas in the year up to March 1999 ranged from 1.7% to 4.5%.

2.11 In the year ending March 1999, 13.6% of the 89,578 completed cases committed for trial in the Crown Court resulted in a non-jury acquittal or bind over. This compared with 10% in the year ending March 1997 and 11% in the year ending March 1998. The target for 1999 was actually 9%. The local variations in performance between CPS Areas ranged from 9.7% to 17.3%.

2.12 The setting of published targets commits resources towards their achievement. Their continued need and level is determined by analysing the number and type of adverse case that are reported by the Areas to CPS headquarters.

2.13 The accurate recording of adverse cases is, therefore, particularly important, if the CPS is to:

- assure the quality and timeliness of its decision-making;
- deploy and manage its resources effectively; and

- provide a true reflection of its casework performance.

CONCLUSIONS, GOOD PRACTICE AND RECOMMENDATIONS

3.1 Based on a sample size of 381 cases involving 463 defendants, our review suggests that over two-thirds (68.2%) of cases that result in adverse findings were unforeseeable and could not be said to be the fault of the CPS decision-making process. Furthermore, when all of the Inspectorate's data is considered (from this review, and from the 43 inspections to date), the percentage of unforeseeable adverse case results rises to 78.3%. In these cases the prosecutor applied correctly the Code for Crown Prosecutors (the Code) and the adverse findings reflect the often inevitable changes in circumstances that can occur as they progress through the courts.

3.2 However, this broadly encouraging picture should not be used to mask the fact that many cases which result in adverse findings should have been terminated earlier by the CPS. In these cases, we have concerns about the way in which positive action was not taken at the earliest possible moment. As a result, many cases drift through the system inappropriately. We make several recommendations designed to help to address this issue.

The misrecording of adverse findings

3.3 In addition, our review suggests that, overall, the CPS still has some way to go in being able to rely on the figures generated by the Areas. A significant number of cases which were examined by the review team had been incorrectly recorded as having an adverse result. We are concerned that staff are not always identifying, or recording correctly, cases that result in an adverse finding. This gives a misleading picture of how the CPS is performing. It makes it difficult to draw appropriate conclusions and for managers to take appropriate action.

The quality of review in adverse cases

3.4 Given that the cases being scrutinised were those that had proved problematic, it was to be expected and was in fact the case, that the quality of decision-making with regard to the sufficiency of evidence was below that found generally in previous Branch inspections and in earlier thematic reviews. The evidential sufficiency test set out in the Code was correctly applied in 85.8% of the cases that we examined. The public interest test was correctly applied in 98.3% of those cases that satisfied the evidential sufficiency test.

3.5 Our evidence suggests that prosecutors do not always identify evidential weaknesses at initial review. Where a weakness is identified, the police are not usually asked to remedy the deficiency at that stage. In some cases, the absence of continuing review leads to adverse findings that are avoidable.

The reasons for adverse findings

3.6 The principal reason for the adverse finding was evidential in 61.6% of cases in our sample (381 cases). In a further 26.2%, the prosecution was unable to proceed, and in the balance (rounded up to 12.3%), it was decided that it was no longer in the public interest to proceed. The victim failed to attend in nearly half the cases where the prosecution was unable to proceed. In some cases, there was a lack of continuing contact

between the police and the victim. Often, it was at the very last stages of a case that it was realised that an essential witness would not attend. Better liaison at the key stages of a case's progress would allow the CPS to take better-informed decisions about whether it should proceed.

The role of prosecuting counsel

3.7 Although prosecutors could be more robust in weeding out weak cases at the time of committal review, our evidence also suggests that counsel rarely raise doubts about the strength of the case before the day of trial. In particular, the lack of continuity of counsel impedes the process of continuing review and, therefore, effective case management.

Learning from experience

3.8 It is important that staff are able to learn from cases which result in adverse findings, if they are to prevent similar outcomes in the future. We found that adverse case reports are not always completed in appropriate cases. When they are completed, their quality is sometimes disappointing and they are not always used to inform subsequent casework decisions. The sharing of experience should not be seen as fostering a blame culture. Quality reports are a useful tool for identifying themes and trends in adverse cases in the hands of good managers. The more widely this is disseminated the less likelihood of recurring difficulties.

Good Practice

3.9 In the course of this review, we have observed a number of systems and practices that assist the CPS in avoiding adverse cases. We have highlighted several of them in the appropriate sections of the report. For ease of reference, we list them here under the chapter headings in which they appear. We commend those practices where:

The quality of review in adverse cases

i failure by the police to apply charging standards correctly is raised by the CPS at JPM meetings (paragraph 5.37);

ii written and oral guidance is given to staff about the required standard of file endorsements (paragraph 5.52);

The reasons for adverse findings

iii feedback is given to the police about identification evidence at JPM and other liaison meetings (paragraph 6.24);

iv the police provide witness availability details directly to the Crown Court. If the availability of a key witness is not known, the PDH is adjourned automatically for two weeks for further enquiries (paragraph 6.49);

v monitoring has identified witness reluctance as a common cause of adverse findings in cases of assault and, as a result, a successful system for confirming availability has been introduced (paragraphs 6.55 and 6.56);

The misrecording of adverse findings

vi a form has been introduced that contains a copy of the national 'Performance Indicators – Magistrates' court activity sheet and the PI codes' relevant to the

particular Branch's computer system. This assists the caseworkers to finalise cases accurately (paragraph 8.5);

vii Caseworkers responsible for this function have a record of the PI codes that are appropriate for their computer system (paragraph 8.22);

viii to raise awareness, a PI training package is being used at weekly in-house sessions (paragraph 8.24);

Learning from experience

ix the police are asked to contribute to Crown Court adverse case reports. This keeps them informed and increases the amount of information available (paragraph 9.9);

x PTLs and senior caseworkers are present when failed cases are discussed with the police at JPM meetings. They then provide guidance about particular problems or issues to staff at team meetings (paragraph 9.9);

xi adverse case reports are sent to the police Criminal Justice Support Unit which produces a training newsletter for officers, based on feedback given by the CPS (paragraph 9.11);

xii the caseworker covering the court when the case is lost fills in the adverse case report (paragraph 9.20);

xiii adverse case reports are collated centrally so that managers can assess whether there are any themes or trends (paragraph 9.25).

Recommendations

3.10 In the light of our findings, we have identified where improvements may be made. For ease of reference, we have grouped our recommendations under the chapter headings in which they appear in the report. We recommend that:

The quality of review in adverse cases

i Chief Crown Prosecutors (CCPs) should ensure that all cases awaiting trial or committal are further reviewed when the appropriate file is received from the police, to assess whether a prosecution remains appropriate (paragraph 5.20);

ii CCPs should:

- discuss with the police ways of ensuring that the relevant charging standards are correctly applied when the defendant is originally charged; and
- ensure that their prosecutors correctly apply the relevant charging standards when reviewing files (paragraph 5.36);

iii CCPs should take urgent steps to ensure that all prosecutors comply with the procedures surrounding disclosure, including seeking assurances from the police in cases where any relevant schedules are absent from the file (paragraph 5.49);

iv prosecutors should ensure that their review endorsements include reference to any evidential weakness identified at any stage of the review (paragraph 5.55);

The reasons for adverse findings

v CCPs should ensure that prosecutors and caseworkers are fully aware of:

- the law relating to identification; and
- the way in which it is interpreted and applied by counsel and judges in Crown Court cases (paragraph 6.23);

vi CCPs should discuss with the police ways of ensuring, at an early stage in cases where identification is in dispute, that:

- identification parades are considered where appropriate; and
- the relevant law and procedures regarding parades are applied correctly (paragraph 6.30);

vii CCPs should discuss with the police ways of ensuring that, where identification is in dispute, and particularly where there is any suggestion of recognition, statements of identifying witnesses contain reference to all relevant criteria under the National Casework Guidelines (paragraph 6.39);

viii CCPs should discuss with the police ways of ensuring that all relevant background information on the reliability and willingness of witnesses to give evidence is supplied to the prosecution, so that informed decisions can be made at all stages of the process (paragraph 6.45);

ix in appropriate cases, as part of the preparation for committal or trial (in either the magistrates' courts or the Crown Court), prosecutors and caseworkers should consult the police, to ensure that key witnesses are available and willing to give evidence (paragraph 6.59);

x CCPs should ensure, through the effective monitoring of adverse cases, that:

- any trends are recognised; and
- appropriate training or guidance is provided for staff (paragraph 6.64);

The foreseeability of adverse findings

xi CCPs should monitor counsel's compliance with the requirements of the Bar/CPS Standard 2 and, where appropriate, discuss the results with heads of chambers (paragraph 7.31);

The misrecording of adverse findings

xii CCPs should ensure that all finalised cases are recorded in the correct performance indicator (PI) category (paragraph 8.25);

xiii CCPs should ensure that all adverse cases are recorded under the correct PI code identifying the reason for the adverse decision (paragraph 8.32);

xiv where a case is lost on a submission of no case to answer, or a committal is discharged, the prosecutor should endorse the file with the fact that it is an adverse finding (paragraph 8.38);

xv Casework Performance and Resources Division (CPRD) should revise the PI coding used for discharged committals and

cases lost on a submission of no case to answer, to align them with those used for judge directed acquittals (paragraph 8.43);

Learning from experience

xvi CCPs should ensure that, in Crown Court cases, where applicable, the form CCA1 is completed whenever a case results in an adverse finding (paragraph 9.6);

xvii the Trials Issues Group (TIG) should consult the police with a view to revising the form CCA1 to allow comment by:

- the Prosecution Team Leader (PTL); and
- the CCP (paragraph 9.8);

xviii CCPs should ensure that reports are completed in all cases that result in an adverse finding (paragraph 9.16);

xix CCPs should ensure that prosecutors and caseworkers endorse fully on the adverse case report the factual and legal reasons why a case results in an adverse finding (paragraph 9.21);

xx adverse case reports should contain, as a minimum requirement, an endorsement setting out comments on the decision from the reviewing prosecutor, PTL and CCP, which should highlight any lessons to be learnt from the case (paragraph 9.23);

xxi CCPs should ensure that adverse case reports are collated, so that trends may be identified and appropriate feedback given to relevant staff (paragraph 9.26);

xxii adverse case reports should be discussed constructively at team meetings, to enable learning points from cases to be disseminated to prosecutors and caseworkers (paragraph 9.30).

METHODOLOGY

4.1 The purpose of a thematic review is to paint a national picture about how the CPS deals with a given subject throughout England and Wales, based upon evidence drawn from a number of Branches and from CPS headquarters.

4.2 Ten Branches assisted us in our work: Buckinghamshire (CPS Severn/Thames); Dorset (CPS South West); Dudley and Sandwell (CPS Midlands); East Kent (CPS South East); Essex North (CPS Anglia); Horseferry Road (CPS London); North Liverpool (CPS Mersey/Lancs); Rochdale/Bury (CPS North West); South Staffordshire (CPS Midlands); and Tower Bridge and City (CPS London). These Branches represent a cross-section of the entire CPS, and provided us with a mix of urban and rural environments from which to draw our evidence. We examined files from all ten Branches and visited four – Essex North; North Liverpool; Rochdale/Bury and South Staffordshire.

Scope of the review

4.3 The review examined cases that had been categorised by the Branches as:

- trials stopped by the magistrates at the close of the prosecution case;
- cases in which the defendant was discharged after a contested committal;

- JOAs; and

- JDAs.

4.4 We also considered the monitoring and recording of adverse cases and the use that is made of adverse case reports.

Our approach

4.5 A comprehensive list of the issues that we considered is set out in annex A of this report.

4.6 We used the following techniques to carry out our work:

- a brief review of the literature available;

- file examination;

- interviews with CPS staff; and

- an analysis of management and performance information.

4.7 Some general points about these techniques follow.

Literature review

4.8 In 1993, the RCCJ published its research study into ordered and directed acquittals in the Crown Court. It suggested several modifications to the system that could reduce substantially the proportion of non-jury acquittals. We have considered a number of the themes that were identified in that study.

4.9 We have identified further themes arising from the earlier inspections of 43 CPS Branches.

4.10 We also considered the CPS Performance Indicators Open Learning Guide, the Code and the CPS Statement of Purpose and Values.

4.11 The report contains information that we hope others in the criminal justice system will find of interest and which will help generally in evaluating how the CPS deals with adverse cases.

File examination

4.12 We examined 56 magistrates' courts and 325 Crown Court cases involving 463 defendants. A breakdown of the file sample drawn from each Branch, by defendant and by case outcome, is set out in annex B.

4.13 Our sample of cases that were discharged at committal comprised both cases in which witnesses were called to give evidence and cases in which the evidence was read to the magistrates and a submission made by the defence "on the papers". By virtue of the Criminal Procedure and Investigations Act 1996, the way in which defendants are committed to the Crown Court has changed, in respect of all those cases in which the investigation started after 1 April 1997. Because our file sample was taken from 1 January to 30 June 1998, the defence was entitled to require the prosecution to call witnesses at the committal proceedings in some cases, as the police investigation had begun before the 1 April of the preceding year.

4.14 The type of committal proceedings did not seem to have any bearing on the outcome.

4.15 We intended to examine all adverse cases from the magistrates' courts and Crown Court that were recorded in the Branches' PIs between 1 January and 30 June 1998. In the event, some

Branches were unable to supply us with their quota of files. We discuss the issues surrounding this in chapter 8.

4.16 We were also provided with data collated from the examination of adverse case files by the CPS Inspectorate's Branch inspection teams. We considered the findings in the earlier 43 Branch inspection reports.

4.17 We have incorporated the most relevant charts and tables of data in the appropriate sections in the text of this report. However, annex C sets out in detail some further information that our file examination uncovered.

Interviews

4.18 We interviewed staff at all levels in the four Branches that we visited. They were seen either individually or in small groups. Ranging from the local Branch Crown Prosecutor to the Branch's caseworkers, they provided information on a practical level about how adverse cases are dealt with on the Branch.

Management data

4.19 In addition to information from the ten chosen Branches, we had access to data collected at a national level.

THE QUALITY OF REVIEW IN ADVERSE CASES

5.1 The CPS is required to review each case that it deals with in accordance with the Code. It must establish whether there is sufficient evidence for a realistic prospect of conviction and whether it is in the public interest to proceed.

Initial Review

5.2 We examined the quality of the initial review decision taken by prosecutors in ten Branches in a total of 381 cases involving 463 defendants. We agreed with the decision on the evidential sufficiency in 327 cases (85.8%). We have commented on this in paragraph 3.4 above.

5.3 We agreed with the review decision on the public interest in 98.3% of cases in our sample.

5.4 Our findings are broadly supported by the earlier work of the Branch inspection teams. Data collated from the examination of adverse cases during Branch inspections showed that the teams agreed that the evidential sufficiency test had been met in approximately 79.6%. They agreed with the review decision on the public interest in 98%.

5.5 Prosecutors do not always take early action to deal with deficiencies in the evidence. We discuss, at paragraphs 5.9 to 5.20, our concern about the quality of continuing review, particularly at the stage when a summary trial or committal file is received from the police.

5.6 In 239 cases, there was an evidential weakness which, although not necessarily fatal to the case, merited comment by the prosecutor at some stage of the proceedings. We recognise that, in some cases, particularly where there is an initial custody remand application, there may be insufficient information for a prosecutor to identify evidential weaknesses at first review. However, in 180 of the 239 cases (75.3%), the evidential weakness was apparent at initial review. It was identified, at that stage, in only 71 of the 180 cases (39.4%).

5.7 Further, the police were asked to remedy the weakness in only 35 of the 71 cases and remedial work was carried out in only seven of those.

5.8 We have a number of concerns arising from these figures. First, the evidential weaknesses were identified at initial review in too few cases; secondly, even where the weaknesses were identified, action was only taken to notify the police in about half of those cases. This will give managers cause for concern. Where evidential weakness is identified, the police need to be informed in order to see whether steps can be taken to improve the situation. Lastly, in 90% of the 35 cases in which the police were notified of the difficulties, no action was taken – and seemingly no follow-up requests for action were sent. There is clear room for improvement at each of the stages. Where evidential weakness is not remedied early on, cases may drift without appropriate decisions being taken until close to the day of trial, or at all.

Continuing review

5.9 Review is a continuing process. Prosecutors should take into account any change in circumstances of which they are aware when deciding whether a case should continue. We considered how prosecutors deal with further evidence or information that arrives after initial review.

5.10 Our findings also suggest that prosecutors may be slow to react to material that weakens the case. Where that weakness means that there is insufficient evidence, proceedings are not always terminated at the earliest opportunity. For example:

- the defence alerted the prosecution to the issue in 37 cases, but the prosecutor sought to remedy the evidential weakness in only 22. In the remaining 15 cases no action at all was taken.

- the police drew the prosecutor's attention to the issue in 31 cases, but action was taken in only 15. Again, in the remaining 16 cases nothing was done.

5.11 As cases progress towards trial or committal, it is essential that any further material and evidence supplied by the police is considered and the whole case reviewed again to see if prosecution remains appropriate. Further, if that review discloses new or continuing evidential weakness, prosecutors must take action either to cure the defect or, if fatal to the case, to terminate it.

5.12 **Magistrates' court: no case to answer -** We found clear evidence of further review in only 15 of the 48 cases that resulted in no case to answer in the magistrates' courts, and, of these, the prosecutor identified the evidential problem in five. The cases continued to trial, however.

5.13 In addition, in nine of the 48 cases (18.8%), not all the relevant evidence or information was available. The prosecutor requested the missing material in six. In four cases, where the information was still missing on the day of trial, we disagreed with the decision to proceed.

5.14 **Magistrates' court: discharged committals -** The position was similar in discharged committal cases. There was evidence of a further review of the full police file in only three of the eight cases that we examined. We disagreed with the

decision about the sufficiency of the evidence in two. In five cases, we could not tell whether a further review had taken place.

5.15 **Crown Court -** We have special concerns in respect of review upon receipt of a full file in cases which are to be heard in the Crown Court. At more than one Branch, caseworkers told us that they prepare cases for committal without a review of the full file by the prosecutor. It is their perception that it is often those cases that go wrong.

5.16 At one Branch, a caseworker, experienced in Crown Court matters, reads each file after committal. If he foresees an adverse finding, the case is referred back to the reviewing prosecutor or to the BCP. The system would be improved if the assessment of the case took place before committal, so that a possible adverse finding could be avoided.

5.17 This arrangement does not receive universal support. It was felt that some prosecutors did not welcome their decisions being questioned and tended merely to instruct that the case should proceed. The considered input of a caseworker, with relevant and recent experience of the approach of judges and counsel, has obvious value.

5.18 We feel sure that CCPs will wish to ensure that the experience and expertise of their staff is utilised to the full and that prosecutors give proper consideration to advice offered by their caseworker colleagues.

5.19 Staff told us that the police submit files in a piecemeal fashion. They felt that they would rather send an incomplete file on time and comply with the Joint Performance Management (JPM) timeliness requirements, than delay submission to obtain all the available evidence. In this event, it is difficult for prosecutors to review fully all the evidence before committal proceedings take place. This increases the likelihood that cases will reach the Crown Court without decisions being taken about whether a prosecution remains appropriate.

5.20 We recommend that CCPs should ensure that all cases awaiting trial or committal are further reviewed when the appropriate file is received from the police, to assess whether a prosecution remains appropriate.

The selection of the appropriate charge

5.21 We considered that the original police charges were correct in 282 out of 375 cases (75.2%). They were incorrect in 93. In six cases, we could not ascertain the initial police charge.

5.22 Prosecutors do not always amend incorrect police charges. In some cases, that omission causes the adverse finding. Based on the 93 cases in our sample of 375 in which the initial police charge was incorrect, the following table shows the breakdown of charges by result category, together with the number of cases in which the charge was correctly amended. There was a failure to amend the charge in 17 cases (5% of our sample).

Response to incorrect charging

Case category	Charge(s) incorrect or inappropriate	Incorrect or inappropriate charge(s) amended	% of charges amended
No case to answer	9	6	66.7%
Discharged committal	2	2	100%
JOA	64	52	81.3%
JDA	18	16	88.9%
Overall	**93**	**76**	**81.7%**

5.23 In those cases where the charge was amended correctly, that was not the only problem with the case and the adverse finding arose because of other reasons, such as the failure of witnesses to attend court.

5.24 In our view, the failure to amend the incorrect or inappropriate charge directly led to the adverse finding in nine of the 17 cases. Prosecutors had not assessed correctly the strength of the evidence on which the charge brought by the police was founded. Examples are provided by the cases that we examined in which:

- there was insufficient evidence to support the charge of theft, but the case could have proceeded if the defendant had been charged with handling stolen goods; and

- the police charged the wrong limb of the offence of handling stolen goods. The prosecutor did not notice the mistake. If the correct offence had been pursued, we are satisfied that the case would have gone to the jury.

5.25 In the remaining eight cases, there was either insufficient evidence to pursue any charge or the amendment would not have prevented the principal reason for the adverse finding.

Offences of dishonesty

5.26 In our sample of 381 cases, 44.4% of offences involved an allegation of dishonesty. Theft and handling stolen goods offences made up almost a quarter of our sample. We found that a high proportion of dishonesty charges were incorrectly drafted. In addition to the example at paragraph 5.24, others included:

- a charge of false accounting which was pursued when there was no evidence that the document was required for an accounting purpose; and

- an offence of deception where there was insufficient evidence that the defendant was aware that the representation was false.

5.27 At one Branch, we were told that the police are good at providing evidence to establish guilty knowledge. At another, it was suggested that prosecutors become case-hardened in considering allegations of handling stolen goods. As a result, there is a danger that inappropriate cases proceed because prosecutors do not accept familiar defences even though a jury might find them plausible.

5.28 In the RCCJ study, Theft Act offences accounted for more than a third of their sample. Three-quarters of those cases resulted in a JOA. It also identified a difficulty in proving the required legal elements of the offence.

5.29 Our findings suggest that this is a continuing difficulty. To avoid unnecessary adverse findings in cases of dishonesty, CCPs will wish to satisfy themselves that prosecutors apply the Code correctly and ensure that there is sufficient evidence to prove each of the constituent elements of the offence under consideration.

Charging standards

5.30 The CPS and the police nationally have agreed charging standards for assaults, public order offences and some driving offences, to ensure a consistent approach to levels of charging.

5.31 A charging standard was relevant to 123 of our cases. It was applied correctly by the police in 91 (74.6%). In one case, we could not identify the initial police charge. Prosecutors applied the charging standard correctly in 107 out of the 123 (87%). In the remaining 16, where we disagreed, the final charge alleged a more serious offence than was revealed by the evidence.

5.32 Branch inspectors have reached similar conclusions in those adverse cases that they have examined in which a charging standard was relevant.

5.33 At more than one Branch, staff told us that the police are more likely to overcharge if they apply a charging standard incorrectly. They also said that the police have difficulty in selecting the correct charge in cases of public disorder. We found that prosecutors are less likely to amend such charges. As a result, the correct charge was preferred in only 77.2% of those cases in which the public order charging standard applied.

5.34 We were keen to find out why this category of offence causes particular difficulty. We were told that prosecutors do not always identify incorrectly charged public order offences when they review cases for committal. We were also told that prosecutors allow public order offences to go to the Crown Court on the original police charges, because the case can be 'sorted out' after committal.

5.35 Applying the relevant charging standard correctly reduces the likelihood that cases will result in adverse findings.

5.36 We recommend that CCPs should:

- **discuss with the police ways of ensuring that the relevant charging standards are correctly applied when the defendant is originally charged; and**
- **ensure that their prosecutors correctly apply the relevant charging standards when reviewing files.**

5.37 At more than one Branch that we visited, BCPs told us that the failure of the police to apply the charging standards correctly had been raised at JPM meetings. This had led to an improvement in the application of the charging standards in the first instance. This is an example of good local liaison and shows the benefits that it can bring.

Unused and sensitive material

5.38 In some cases, information or evidence that undermined the prosecution case was brought to the attention of the CPS (and counsel) at a late stage, causing prosecutions either to be dropped or to result in directed acquittals. It was not always possible to tell whether that information had been (or should have been) held by or available to the police at an earlier stage.

5.39 We found some evidence of non-compliance with disclosure procedures. The police do not always provide the necessary disclosure schedules and in some cases they are not requested by prosecutors. This obstructs the flow of important information and prevents prosecutors from taking informed decisions at an earlier stage in the proceedings.

5.40 Because of the nature of the offences charged, disclosure schedules would not have been appropriate in 32 cases out of our sample of 381. However, 13 out of the balance of 349 files (3.7%) did not contain such a schedule, which is intended to notify the CPS whether there is any unused material (MG6(C)). In only four of the 13 cases in which the MG6(C) was missing was it requested.

5.41 A schedule listing sensitive unused material (MG6(D)) was absent in 93 of the 349 relevant files (26.6%) submitted by the police and requested in only five. Forty-one files did not contain an MG6(E) schedule, either listing the unused material that might undermine the prosecution case or informing the prosecutor that the police were not aware of any such material. Where it was absent, an MG6(E) was requested in only six cases (14.6%).

5.42 In 16 of the 19 cases, where the MG6(E) revealed undermining information, the prosecutor considered it properly.

5.43 There were 22 cases in our sample of 381 (5.8%), in which unused material caused or contributed to the adverse finding. For example:

- medical evidence in a case of child abuse was inconsistent with the allegation;
- continuing a case of handling stolen goods might have compromised an informant;
- a video recording was absent, which the defence said might assist their case; and
- statements from persons present at the scene of an assault cast doubt on the prosecution version.

5.44 At all Branches that we visited, we were told that the police failed routinely to supply relevant video recorded evidence. It was often the defence who first alerted the prosecution to its existence. The retention of close circuit television tapes in public order cases is a particular problem.

5.45 Staff also told us that disclosure of undermining information in Social Services files sometimes occurs at a very late stage. Such information is often fatal to a case. In one case in our sample, disclosure did not take place until the day of trial.

5.46 In our thematic review on cases involving child witnesses, we highlighted this difficult area of unused material. We recommended that protocols should be agreed between Branches and other appropriate bodies relating to material held by Social Services, so that all parties are aware of their obligations with regard to the disclosure of unused material. Our findings in this review confirm the importance of these protocols.

5.47 Staff told us that, generally, there had been an improvement in the provision of unused material by the police. However, 4.5% of the cases in our sample resulted in adverse findings because of a failure to comply with the disclosure regime. Though small in number, any failures in this important area must be a cause for concern.

5.48 The CPS is publicly committed to scrupulous compliance with the statutory disclosure regime. The failure of the police to comply fully with the disclosure procedures in some cases in our sample - or prosecutors failing to take steps to rectify that failure to comply has adverse consequences for the ability of the CPS generally to meet its objective.

5.49 We recommend that CCPs should take urgent steps to ensure that all prosecutors comply with the procedures surrounding disclosure, including seeking assurances from the police in cases where any relevant schedules are absent from the file.

File endorsements

5.50 Standing CPS instructions state that, "for the effective and efficient prosecution of offences by the CPS... endorsements must be of a consistently high standard."

5.51 We found that file endorsements were of inconsistent quality. In some cases, they were inadequate or absent altogether. It was often difficult, when examining the files, to ascertain whether those dealing with the case at the various stages of the process had recognised the existence of evidential weaknesses.

5.52 However, we were pleased to note that, at one Branch, additional written and oral guidance had been given to staff about the required standard of review endorsements. PTLs also give feedback to staff about endorsement quality generally. At another Branch, the BCP gives feedback to staff about the quality of file endorsements in adverse cases.

5.53 We have discussed, at paragraph 5.6, the 239 cases where we considered that there was an evidential weakness. In 180 of those cases, we considered that there should have been a file endorsement at initial review identifying those weaknesses. An endorsement was present in only 57 (31.7%). In a further 14 cases, the prosecutor wrote to the police telling them of the weakness, but did not endorse the file. Even at the subsequent stages of review, files were endorsed adequately in only 46.3% of cases. Such poor file discipline will be a source of embarrassment and concern to line managers.

5.54 Effective review must be supported by good review endorsements. Such endorsements ensure that other prosecutors and caseworkers dealing with the case are aware of the relevant factors taken into account by the reviewing prosecutor. They also assist in establishing whether evidential weaknesses, identified at any stage of the process, have been remedied. Where the weakness cannot be remedied, but the case continues, the file should be endorsed with the prosecutor's reasoning.

5.55 We recommend that prosecutors should ensure that their review endorsements include reference to any evidential weakness identified at any stage of the review.

THE REASONS FOR ADVERSE FINDINGS

Recording the reasons

6.1 If the CPS is to increase its understanding, both locally and nationally, about the specific causes of adverse findings, and so reduce the risk of recurrence, its internal systems must permit a close and careful scrutiny of the reasons why they occur.

6.2 The CPS and police analyse the reasons for Crown Court acquittals (including those determined by the jury) as part of JPM. That system has 22 specific reason categories within the three general heads of "evidential", "public interest" and "cases in which the prosecution was unable to proceed." The system is used to identify and address trends.

6.3 The CPS adopts a similar, if less detailed, method to identify the reasons for JOAs and JDAs from its PIs but the two systems are not entirely consistent.

6.4 We used the JPM categories to identify trends in the Crown Court cases that we examined. We also extended it to trials stopped by the magistrates at the close of the prosecution case and to cases in which the defendant was discharged after a contested committal. We recognise that cases may fail for a combination of reasons. Where it was possible to tell the principal reason why the case failed from the file, we recorded the JPM category.

Our overall findings

6.5 The majority of adverse cases are caused by problems with the evidence, rather than by public interest factors or developments which prevent the prosecution from proceeding. Importantly, we recognise that not all the reasons for adverse findings are foreseeable. We discuss this in detail in chapter 7.

6.6 It was possible to identify the principal reason for the adverse finding in 359 of the 381 cases in our sample. In 22 cases, we were unable to identify a principal reason. This was either because the papers were not sufficiently clear or because there was, on the face of it, more than one reason and it was not possible to determine which was the principal one.

6.7 We calculated the cases that fell within each JPM category as a percentage of that category and as a percentage of the overall file sample. Our findings are shown by the following table.

Principal reasons for adverse findings

6.8 A high level of adverse case results was caused by there being insufficient evidence in respect of the key elements of the offence. In some cases the reason for the finding arose after committal, when an adverse finding could not be avoided. It should not, therefore, be assumed that every evidential adverse finding implies fault on the part of the prosecutor. Managers will, however, wish to be alert to the particular difficulties that certain types of offence can pose in this regard - for example, proving dishonesty in theft cases can be problematic.

6.9 Our findings also suggest that cases involving disputed identification evidence (particularly in assault and public order cases) and those where witnesses fail or refuse to testify (notably in assault, public order and sexual offences) form a significant proportion of adverse cases. We consider these issues further in paragraphs 6.14 to 6.39 and paragraphs 6.40 to 6.59 respectively.

Principal reasons for adverse findings

JPM category	Number	% within category	% overall
Evidential			
Legal element missing	92	41.6%	25.6%
Unreliable identification	40	18.1%	11.1%
Evidential element missing eg. continuity	35	15.8%	9.7%
Victim fails to come up to proof	17	7.7%	4.7%
Other civilian witness fails to come up to proof	12	5.4%	3.3%
Inadmissible evidence – breach of PACE	11	5%	3.1%
Inadmissible evidence – other	8	3.6%	2.2%
Police witness fails to come up to proof	6	2.7%	1.7%
Sub-total	**221**	**100%**	**61.6%**
Public interest			
Other indictments or sentences	25	56.8%	7%
Defendant with serious medical problems	10	22.7%	2.8%
Effect on victim's physical or mental health	5	11.4%	1.4%
Informer or other PII issues	4	9.1%	1.1%
Sub-total	**44**	**100%**	**12.3%**
Unable to proceed			
Victim fails to attend	42	44.7%	11.7%
Victim refuses to give evidence	37	39.4%	10.3%
Other civilian witness fails to attend	10	10.6%	2.8%
Other civilian witness intimidation	2	2.1%	0.6%
Other civilian witness refuses to give evidence	2	2.1%	0.6%
Victim intimidation	1	1.1%	0.3%
Sub-total	**94**	**100%**	**26.2%**
TOTAL	**359**	**100%**	**100%**

Venue

6.10 We compared magistrates' courts and Crown Court adverse cases. We were interested to discover whether, in the higher court, having longer to prepare combined with the involvement of prosecuting counsel increases the likelihood that weaknesses will be identified.

6.11 Our findings are shown in the following table:

Venue of adverse findings

JPM category	Magistrates' courts			Crown Court		
	NCTA	DC	% within category	JOA	JDA	% within category
Evidential						
Legal element missing	17	5	40.7%	48	22	41.9%
Evidential element missing eg. continuity	7	1	14.8%	24	3	16.2%
Unreliable identification	6	1	13%	16	17	19.8%
Victim fails to come up to proof	6	0	11.1%	0	11	6.6%
Other civilian witness fails to come up to proof	4	1	9.3%	0	7	4.2%
Police witness fails to come up to proof	5	0	9.3%	0	1	0.6%
Inadmissible evidence – breach of PACE	1	0	1.9%	3	7	6%
Inadmissible evidence – other	0	0	0%	4	4	4.8%
Sub-total	**46**	**8**	**100%**	**95**	**72**	**100%**
Public interest						
Other indictments or sentences	NA	NA	NA	25	NA	56.8%
Defendant with serious medical problems	0	0	0%	10	0	22.7%
Effect on victim's physical or mental health	0	0	0%	5	0	11.4%
Informer or other PII issues	0	0	0%	4	0	9.1%
Sub-total	**0**	**0**	**0%**	**44**	**0**	**100%**
Unable to proceed						
Victim fails to attend	0	0	0%	42	0	44.7%
Victim refuses to give evidence	0	0	0%	37	0	39.4%
Other civilian witness fails to attend	0	0	0%	9	1	10.6%
Other civilian witness intimidation	0	0	0%	0	2	2.1%
Other civilian witness refuses to give evidence	0	0	0%	2	0	2.1%
Victim intimidation	0	0	0%	1	0	1.1%
Sub-total	**0**	**0**	**0%**	**91**	**3**	**100%**
TOTAL	**46**	**8**	**100%**	**230**	**75**	**100%**

6.12 In each venue, our evidence suggests that a similar proportion of adverse findings are caused by a failure to ensure that sufficient evidence is available in respect of the key elements of the offence.

6.13 On the face of the evidence, the longer a case proceeds the more likely it is that there will be an adverse finding because of witness difficulties. However, in the magistrates' court the prosecutor can discontinue proceedings if a witness or victim refuses or fails to attend to give evidence. This avoids an adverse finding. A similar option is not available in the Crown Court. We cannot therefore say that the longer a case proceeds, the more likely it is that witness problems will arise.

Cases of disputed identification evidence

6.14 The Criminal Law Revision Committee, in its report: *Evidence (General) 1972, (Cmnd 4991)*, regarded *"mistaken identification as by far the greatest cause of actual or possible wrong convictions"*: (paragraph 196).

6.15 The Court of Appeal, in R v Turnbull [1977] QB 224, laid down important guidelines for cases involving disputed identification.

6.16 The CPS has embraced and taken forward the guidance provided in R v Turnbull and has issued detailed National Casework Guidelines on evidence of visual identification.

6.17 The Guidelines emphasise the need for a careful consideration of the Turnbull factors in the review of visual identification evidence. We are disappointed to find that such a careful consideration does not always take place.

6.18 At one Branch that we visited, we were told that the police are quite good at covering the Turnbull criteria. At the other three, however, we were told that the police do not always provide sufficient detail for an informed decision to be taken about the quality of the identification evidence. Prosecutors often have to request a further statement or supplementary information.

6.19 Unreliable identification was the principal cause of the adverse finding in 40 of the 359 cases (11.1%) in our sample where we could identify the principal reason. We were keen to pursue the reasons for this with the staff of the Branches that we visited.

6.20 BCPs and PTLs told us that prosecutors are good at anticipating problems with identification evidence. They are told to take particular care to ensure that the evidence is sufficient. We found, however, that the National Casework Guidelines are not always applied correctly and that weaknesses are not always addressed.

6.21 We recognise that cases of disputed identification are often difficult. One BCP told us that identification cases cause more anxiety than most and witnesses who look reliable on paper often fail to come up to proof. Whilst we saw some cases that fell into that category, we also saw several cases in which problems with identification evidence might have been addressed earlier. For example:

- there was conflict between a police officer's statement, the observation log and his pocket notebook. The notebook had been amended to omit the word 'now', in the sentence 'whom I now know to be (defendant's name)'. The other documents gave the impression that the officer already

knew the defendant and had recognised him at the scene. The original entry in the notebook, before it was amended, suggested otherwise, and the case failed as a result; and

- the judge ruled that the identification evidence was flawed because the injured party had viewed a video recording of the incident before taking part in the identification parade. This could not have come as a surprise to the prosecution because it was pointed out in the summary of evidence that was submitted with the original file.

6.22 Some PTLs and, importantly, several of the caseworkers who regularly attend Crown Court trials, said that CPS prosecutors do not always adopt the same approach as counsel and judges. Prosecutors are not as critical of identification evidence. The cases that we have highlighted in paragraph 6.21 may, perhaps, reveal evidence of prosecutors taking a less robust approach.

6.23 We recommend that CCPs should ensure that prosecutors and caseworkers are fully aware of:

- **the law relating to identification; and**
- **the way in which it is interpreted and applied by counsel and judges in Crown Court cases.**

6.24 Staff told us that feedback is given to the police about identification evidence at JPM and other liaison meetings. General concerns are discussed and the police often raise such issues. At one Branch, we were told that unreliable identification evidence was not a disproportionate cause of adverse findings. The police had learned lessons as a result of feedback from earlier cases. At another Branch, however, we were told that the police system is not geared towards learning from experience. Individual officers prepare a limited number of cases each year and learning points are not necessarily disseminated. Generally, CCPs will want to make sure that the police are fully aware of the issues that need to be addressed when dealing with identification witnesses, so that an informed decision can be taken by the reviewing prosecutor about the quality of the evidence.

Identification parades

6.25 The National Casework Guidelines help prosecutors to recognise the circumstances in which it is appropriate for the police to conduct an identification parade.

6.26 At all four Branches, we were told that the police are sometimes reluctant to hold identification parades in appropriate cases. In some cases, there was a failure to appreciate the need for a parade at all. Often, this was because of confusion about the legal distinction between identification and recognition and a failure to seek CPS guidance on the point. We deal with this issue in more detail at paragraphs 6.34 to 6.39.

6.27 In some cases, lack of resources appears to be the most important factor in the decision by the police not to hold an identification parade. At two Branches, we were also told about logistical difficulties where suspects are from an ethnic minority. There is a shortage of volunteers to assist in the parade process.

6.28 We were pleased to hear, at one Branch, that the police seek guidance from the CPS about whether an identification parade is necessary. Often, however, the request is made after the defendant has been charged, by which time it is usually no longer practical to conduct a parade and the defendant is less likely to co-operate.

6.29 Failure to conduct an identification parade in appropriate cases was a significant cause of adverse findings in our sample. We were told of occasions where procedural irregularities had caused cases to fail, for example, because witnesses could overhear discussions about where the suspect would be standing on the identification parade.

6.30 We recommend that CCPs should discuss with the police ways of ensuring, at an early stage in cases where identification is in dispute, that:

- **identification parades are considered where appropriate; and**
- **the relevant law and procedures regarding parades are applied correctly.**

Information about the identifying witness

6.31 The quality of decision-making in identification cases is diminished if it is not fully informed. If the police do not supply important information, and the CPS does not seek it, cases may be pursued which would otherwise be terminated.

6.32 One BCP told us that most identification cases are decided on the veracity of the witnesses. Where they are lost, it is often because the witness does not come up to proof or is undermined in cross-examination. Staff told us, however, that it is rare for the police to provide sufficient information about the attributes of identifying witnesses, or about how reliable they are likely to appear, if their evidence is tested at court. We were told of cases in which the police had doubts about a witness throughout, but only chose to disclose them on the day of trial.

6.33 Some witness problems can be anticipated. So that decision-making is better informed, CCPs will no doubt wish to encourage the police to comment on the abilities of identifying witnesses at an early stage of the review process.

Identification and recognition cases

6.34 Adverse cases are sometimes caused by a failure to distinguish between cases of recognition and identification. In recognition cases, an identification parade is not thought to be appropriate, because it is believed that the witness recognises the suspect, relying on some prior knowledge of him. In some cases, the true extent of that prior knowledge is not investigated sufficiently thoroughly, or at all.

6.35 Again, assistance for prosecutors is contained in the National Casework Guidelines. A series of pertinent questions is supplied for use in testing the quality of recognition evidence. We found that prosecutors do not always ask these questions of the evidence in appropriate cases.

6.36 We saw cases in our file sample, and were told of others, in which witnesses in their statements had claimed to recognise defendants but later, when questioned more closely, admitted that their prior knowledge was cursory, or based on hearsay. In such instances, the case is one of identification rather than recognition, but it is too

late to retrieve the situation by holding an identification parade.

6.37 The Turnbull criteria and the extent of any prior knowledge should be covered routinely in the initial statements of identifying witnesses. If such important issues are not considered at an early stage, a fatal weakness in the case may not be identified until it is too late to avoid an adverse finding.

6.38 The CPS has responded to concerns about identification evidence and has issued valuable guidance to staff. That guidance has also been supplied to the police. We are of the firm view that the consistent application of that guidance would reduce the number of cases that fail because of unreliable identification evidence.

6.39 We recommend that CCPs should discuss with the police ways of ensuring that, where identification is in dispute, and particularly where there is any suggestion of recognition, statements of identifying witnesses contain reference to all relevant criteria under the National Casework Guidelines.

Witness warning and liaison

6.40 Witness problems caused the failure of more than a quarter of the 359 cases in our sample where we could identify the principal reason. The complainant or other witness did not attend the trial in 14.5%, and refused to give evidence in a further 10.9%. Some of these adverse findings were unforeseeable, but some were less excusable. For example:

- the police told the CPS that they could not find the complainant. She was the only identifying witness. The CPS asked whether she was traceable but did not receive any reply. The case was committed to the Crown Court for trial and it was only after the plea and directions hearing (PDH) that the police indicated that the complainant was probably with a circus and that they could not find her. The case was then dropped;

- the police told the CPS that the complainant in an assault case had left the country and that another important witness was untraceable. The prosecutor did not act on this information for two weeks, but then took the decision to proceed without the complainant. The fact that the other witness was also missing was not considered. When it was later realised that there was insufficient evidence in the absence of both witnesses, an adjournment of the trial was sought. The judge refused and the case was dropped; and

- the police informed the CPS in writing that the complainant in a case of assault, a former store detective, could not be found. Action was not taken until the case was dropped, more than a month later, on the day of trial when he did not attend.

6.41 Staff at all four Branches that we visited said that witness problems are the most common cause of adverse findings. One BCP said that delay is a significant factor. Often, over time, witnesses lose interest and floating trials that do not proceed cause them to lose heart. Some cases are dropped at a late stage because witnesses had taken time off work to attend court when the trial was not effective and do not wish to do so again.

6.42 In addition, the quality of information provided by the police about the reliability of witnesses is inconsistent. This was seen during the file examination and confirmed by staff. Often, the police provide limited information and Branch staff take little remedial action.

6.43 One BCP suggested that the police should pay more attention to assessing the reliability of witnesses and passing on that information. Officers may often have an impression about the quality of witnesses, which can be extremely useful in difficult cases.

6.44 Staff told us that prosecutors are alert to potential witness difficulties. Where possible, they ask the police to check whether witnesses will attend, if there is something in the file to raise doubts about their commitment to the prosecution. We are concerned that, due to the constraints on their time, it may not always be possible for prosecutors to raise or pursue such issues.

6.45 We recommend that CCPs should discuss with the police ways of ensuring that all relevant background information on the reliability and willingness of witnesses to give evidence is supplied to the prosecution, so that informed decisions can be made at all stages of the process.

6.46 We were frequently told that better communication and liaison with witnesses produces greater commitment to the prosecution and, as a result, fewer witnesses withdraw their evidence or fail to attend. We found, however, that the quality of witness liaison is inconsistent.

6.47 At two Branches, police officers visit witnesses, if they do not respond to a written warning to attend the trial. The CPS is notified quickly, if it appears unlikely that the witness will attend.

6.48 At one Branch, we were told that the police are good at keeping in touch with witnesses. At another, it is only after the PDH, when the case has been adjourned for trial, that liaison is considered to be satisfactory. At a third Branch, the quality of witness liaison depends on the individual police officer dealing with the case.

6.49 A system has been introduced at one Crown Court centre, in which the police provide witness availability details directly to the court. If a key witness does not respond to a request for their availability, the PDH is adjourned automatically for two weeks for further enquiries. We were told, however, that trials are sometimes fixed for dates on which witnesses have indicated that they are not available.

6.50 At two Branches that we visited, the police warn witnesses at a late stage, often less than two weeks before the hearing date. This means that any problems arise on, or very shortly before, the day of trial. It is then difficult for the prosecution to resolve those problems and consider all the options that are then available.

6.51 CCPs will wish to satisfy themselves, and consult with the police if necessary, to ensure that the procedures for the warning of witnesses allow for the timely discovery and proper consideration of any problems that may arise.

6.52 One Branch has particular problems with witnesses failing to attend trials. The police do not always notify the CPS if they lose contact with witnesses. Warnings are sent to addresses from which the police have not received any response to earlier correspondence. It is not

surprising, therefore, that some witnesses fail to attend. We found similar problems at another Branch that we visited. Cases are set down for trial, even though contact has been lost with one or more of the witnesses.

6.53 Where an essential witness fails to attend the hearing and the prosecutor is able to put forward a reasonable excuse, it is likely that an adjournment will be sought and granted. If the prosecution is unable to discover why the witness has not attended, it is more likely that the case will be dropped.

6.54 We were told that judges tend to refuse applications for adjournment, if the prosecution is unable to provide an explanation. It is assumed that the witness no longer wishes to testify. We were given an example of a case that was dropped because of the unexpected failure of the victim to attend the trial. It was later discovered that he would have very much liked to be present but had been arrested and was in police custody at the time.

6.55 We are pleased to note that, in one Branch, managers have used the monitoring of adverse cases to identify witness reluctance as a specific problem in cases of violence, and have introduced a system to deal with it. In cases of assault that are adjourned for trial or committal, the police are required to confirm that the witnesses will attend a trial, if that becomes necessary. If any witnesses say that they will not attend, the CPS are immediately notified.

6.56 We commend this system. It allows the CPS to make timely and informed decisions. The opportunity is created for a proper investigation and consideration of the key issues, for example:

- why the witness is reluctant;
- whether there has been any intimidation;
- whether compulsion is appropriate;
- whether an application under section 23 of the Criminal Justice Act 1988 is appropriate (to allow the statement to be read at trial); and
- whether the case should continue.

6.57 Too often, the prosecution cannot put forward an explanation for non-attendance on the day of trial, or only then discovers that a witness is untraceable or reluctant to testify. If there is insufficient opportunity for a proper consideration of the alternative options, the most likely outcome is that the case will be dropped.

6.58 The police should be encouraged to maintain contact with victims and witnesses who might be regarded as unreliable.

6.59 We recommend that, in appropriate cases, as part of the preparation for committal or trial (in either the magistrates' courts or the Crown Court), prosecutors and caseworkers should consult the police, to ensure that key witnesses are available and willing to give evidence.

Training

6.60 We have highlighted the most common causes of the adverse findings in our case sample and pursued the reasons for those trends with Branch staff. This has identified the particular areas of concern that we have discussed in this chapter. In the light of our findings, we have gone on to consider whether we should recommend any guidance or training for CPS staff.

6.61 We did not find that there had been any formal training on the reasons for adverse cases, at any of the Branches that we visited. BCPs often distribute important case reports, and some feedback is given on local problems.

6.62 We recognise that not all Branches have the same problems. This was evident from the four that we visited. For this reason, we are reluctant to recommend a national training initiative covering all the areas of difficulty that we have identified.

6.63 CCPs will no doubt wish to consider whether the types of case that we have discussed occur regularly at their Branch. If staff use monitoring effectively to identify the trends in their adverse cases, they will be better able to recognise and implement the specific training that would most benefit them locally.

6.64 We recommend that CCPs should ensure, through the effective monitoring of adverse cases, that:

- **any trends are recognised; and**
- **appropriate training or guidance is provided for staff.**

THE FORESEEABILITY OF ADVERSE FINDINGS

7.1 Continuing a case, particularly to the Crown Court, that ends in an adverse finding involves considerable expenditure of resources. It causes unnecessary anxiety to victims, witnesses and defendants. Burdens are placed on criminal justice agencies, and the presence of such cases in court lists causes the progress of more deserving cases to be delayed.

7.2 We have already mentioned in chapter 2 that the CPS recognises the importance of timeliness to the quality of decision-making in adverse cases. In addition to its other elements, a good casework decision is one that is made at the right time.

7.3 The 1993 RCCJ study examined 100 non-jury acquittals. It considered that 45% were caused by entirely unforeseeable circumstances. Acquittal was foreseeable in 27% of the cases examined. In over half of those cases manifest deficiencies should have been rectified, or the case discontinued, before committal. Acquittal was 'possibly foreseeable' in 28%.

7.4 Our findings are very similar. Of the 381 cases, it was possible to assess whether the outcome was foreseeable in 377. Four cases which resulted in no case to answer fell outside our sample on this basis. We were careful to ensure that the considerable advantage of hindsight did not colour our judgement. A very strict view of what was foreseeable was taken, with the benefit of any doubt being given to the prosecution. In some cases an adverse finding was unavoidable. If the reason for the finding did not occur until after committal, the result was at least a JOA. The CPS may, however, still be at fault if the decision to terminate the proceedings is not taken at the earliest opportunity. At worst, a case may result in a JDA, when a timely decision to terminate would have led to a JOA.

7.5 Our findings are shown by the table overleaf:

Category	NCTA	DC	JOA	JDA	Total	%
Unforeseeable	**27**	**3**	**169**	**58**	**257**	**68.2%**
Foreseeable*	**17**	**5**	**78**	**20**	**120**	**31.8%**
Foreseeable at initial review	12	1	25	7	45	11.9%
Foreseeable at subsequent review	1	1	8	0	10	2.7%
Foreseeable at trial review (MC)	4	NA	NA	NA	4	1.1%
Foreseeable at committal review	NA	3	9	10	22	5.8%
Foreseeable on the day of committal	NA	0	1	0	1	0.3%
Foreseeable at PDH	NA	NA	6	0	6	1.6%
Foreseeable after PDH	NA	NA	14	2	16	4.2%
Foreseeable at trial review (CC)	NA	NA	4	0	4	1.1%
Foreseeable on the day of trial	0	NA	11	1	12	3.2%

* By "Foreseeable" we mean that failure was obvious or ought to have been obvious to any prosecutor.

7.6 From the above data, it is possible to breakdown the stages at which the failure of the 120 cases in the "Foreseeable" category should have been obvious.

	NCTA	DC	JOA	JDA	Total
Magistrates' courts	17	5	43	17	82
Crown Court	NA	NA	35	3	38

* It will be seen that a total of 60 cases appear in the JOA and JDA categories in the Magistrates' Court. Although cases cannot be brought to an end in this way in the lower court, 60 cases that resulted in these outcomes in the Crown Court should have been terminated before committal because all the information that was necessary to do so was available at that early stage.

7.7 The longer that a prosecution is pursued after it can be foreseen that it will fail, the greater the waste of resources, for example, where the magistrates stop a case that should have been discontinued. Appropriate action taken after committal can also turn a potential JDA into a JOA.

7.8 We considered our findings and those of the Branch inspection teams from 43 earlier reports to calculate to what extent adverse cases could be reduced by a prompt termination of those that are foreseeable.

7.9 We have combined all the Inspectorate's findings in the following table. The term "Reduction" is used for the sake of brevity to denote the cases that we have classified as foreseeable in paragraph 7.6 above.

	NCTA	DC	JOA	JDA	Total
Total cases examined	145	22	833	219	1,219
Reduction – thematic review *	17	5	40	20	82
Reduction – Branch inspections	22	2	88	33	145
Overall reduction	39	7	128	53	227
Overall % reduction	**26.9%**	**31.8%**	**15.4%**	**24.2%**	**18.6%**

- In the section headed "Reduction – Thematic Review" the numbers of JOAs and JDAs differ slightly from the figures for those categories in the table in paragraph 7.6. This is because 3 cases recorded as JDAs were capable of being terminated as JOAs had earlier action been taken after committal when the relevant information first came to CPS attention.

7.10 Overall our findings suggest that the total number of adverse cases we have examined during Branch inspections and this review (1219) would have been reduced by 227 (18.6%), if prompt action had been taken. The number of JDAs that unnecessarily attract the expense of jury trial would be reduced by just under a quarter. We consider the implications of this at a strategic level in chapter 10.

7.11 A more detailed analysis of how we have arrived at our findings is contained in Annex D.

The foreseeability of the reasons for adverse findings

7.12 Not all cases that fail for evidential reasons are foreseeable. We were able to determine the reason for the adverse finding and whether or not that finding was foreseeable in 355 of the 377 cases where it was possible to assess whether the outcome was foreseeable. In the remaining 22 cases, we were able to assess whether the outcome was foreseeable but we were unable to identify the principal reason.

7.13 Our findings are set out in the following table where “F” stands for “Foreseeable” and “UF” for “Unforeseeable”.

JPM category	NCTA			DC			JOA			JDA			Total		
	F	UF	%F	F	UF	%F	F	UF	%F	F	UF	%F	F	UF	%F
Evidential															
Legal element missing	9	7	56.3%	4	1	80%	31	17	64.6%	8	14	36.4%	52	39	57.1%
Unreliable identification	2	4	33.3%	1	0	100%	7	9	43.8%	6	11	35.3%	16	24	40%
Evidential element missing e.g. continuity	4	2	66.7%	0	1	0%	14	10	58.3%	1	2	33.3%	19	15	55.9%
Victim fails to come up to proof	1	5	16.7%	0	0	NA	NA	NA	NA	0	11	0%	1	16	5.9%
Other civilian witness fails to come up to proof	1	3	25%	0	1	0%	NA	NA	NA	0	7	0%	1	11	8.3%
Inadmissible evidence – breach of PACE	0	1	0%	0	0	NA	1	2	33.3%	3	4	42.9%	4	7	36.4%
Inadmissible evidence – other	0	0	NA	0	0	NA	2	2	50%	0	4	0%	2	6	25%
Police witness fails to come up to proof	0	5	0%	0	0	NA	NA	NA	NA	0	1	0%	0	6	0%
Sub-total	17	27	38.6%	5	3	62.5%	55	40	57.9%	18	54	25%	95	124	43.4%
Public Interest															
Other indictments or sentences	NA	NA	NA	NA	NA	NA	1	23	4.2%	NA	NA	NA	1	23	4.2%
Defendant with serious medical problems	0	0	NA	0	0	NA	2	8	20%	0	0	NA	2	8	20%
Effect on victim's physical or mental health	0	0	NA	0	0	NA	1	4	20%	0	0	NA	1	4	20%
Informer or other PII issues	0	0	NA	0	0	NA	0	4	0%	0	0	NA	0	4	0%
Sub-total	0	0	NA	0	0	NA	4	39	9.3%	0	0	NA	4	39	9.3%
Unable to Proceed															
Victim fails to attend	0	0	NA	0	0	NA	4	38	9.5%	0	0	0%	4	38	9.5%
Victim refuses to give evidence	0	0	NA	0	0	NA	6	31	16.2%	0	0	0%	6	31	16.2%
Other civilian witness fails to attend	0	0	NA	0	0	NA	2	6	25%	0	1	0%	2	7	22.2%
Other civilian witness intimidation	0	0	NA	0	0	NA	0	0	NA	0	2	0%	0	2	0%
Other civilian witness refuses to give evidence	0	0	NA	0	0	NA	0	2	0%	0	0	0%	0	2	0%
Victim intimidation	0	0	NA	0	0	NA	1	0	100%	0	0	0%	1	0	100%
Sub-total	0	0	NA	0	0	NA	13	77	14.4%	0	3	0%	13	80	14%
Other															
Unable to determine the principal reason	0	0	NA	0	0	NA	6	13	31.6%	2	1	66.7%	8	14	36.4%
TOTAL	**17**	**27**	**38.6%**	**5**	**3**	**62.5%**	**78**	**169**	**31.6%**	**20**	**58**	**25.6%**	**120**	**257**	**31.8%**

7.14 This confirms that there is scope for improvement in those areas that we have discussed at paragraphs 5.26 to 5.29, 6.8 and 6.14 to 6.59.

The role of prosecuting counsel

7.15 The failure of the CPS to address weaknesses before committal is compounded if those weaknesses are not identified quickly by counsel. Up to the point of committal, other than in exceptional cases, counsel is not instructed and responsibility lies firmly with the CPS. Once a case has been committed, and the brief delivered, it might be expected that counsel who felt that the case was weak or that certain evidence was lacking would advise accordingly.

7.16 We considered the role and influence of prosecuting counsel in adverse cases. Our evidence suggests that counsel do not always provide timely advice, even where the failure of the case is foreseeable.

7.17 The CPS and Bar have agreed the Service Standard on Pre-trial Preparation by Counsel (Bar/CPS Standard 2 – August 1994) which states:

1.4 Upon receipt of instructions to prosecute on behalf of the CPS, counsel will read the papers within the time scale appropriate to the case;

1.5 Having read and considered the papers, counsel will, where necessary, advise in writing on any matter requiring such advice, and will indicate whether a conference is required.

7.18 Specifically, in the context of adverse cases, the Standard goes on to require:

3.1 If, in counsel's opinion, the evidence available does not support any count in the indictment to the standard required by the Code for Crown prosecutors, counsel will advise or confer on this aspect of the case, identifying the relevant evidential insufficiency.

7.19 If delivery of the brief is timely and counsel draws attention to weaknesses that cannot be remedied, before or at the PDH, the case can be dropped at that hearing. The expense of further unnecessary preparation is avoided. This does not happen in the majority of adverse cases.

7.20 There were 325 Crown Court cases in our sample. It was possible to determine whether the adverse finding was foreseeable in all of them. We found evidence that counsel had advised formally in only 37 of the total and in only 17 of the 98 cases in which we considered that the adverse finding was actually foreseeable.

7.21 In nine of the 17 foreseeable cases where advice was given, we considered that an adverse finding was already foreseeable by the time that the brief was delivered. The advice was received before PDH in only four of those cases .

7.22 In many cases that we examined, it appeared that prosecuting counsel raised doubts, for the first time, only on the day of trial. Following discussion, it was decided to offer no evidence and the outcome was a JOA. Branch staff confirmed that this was a frequent occurrence.

7.23 At all Branches that we visited, we were told that the lack of continuity of counsel was a problem.

Continuity was better for the defence than for the prosecution and, generally, as a result, defence counsel seemed to have a better understanding of the case.

7.24 Our impression was confirmed by a BCP, who told us that counsel are often reluctant to raise doubts at the PDH because they know that it is unlikely that they will be appearing at the trial. Another barrister might take a different view of the case and 'issues are fudged'. Papers are not considered in sufficient detail before the PDH and problems are raised at the last minute.

7.25 On the other hand, it was also said to us that prosecutors were sometimes:

- reluctant to stop cases even where counsel had advised at an early stage that a case was weak
- persuaded by the police to proceed with weak cases until the day of trial when officers finally capitulated to counsel's opinion and the case was dropped

7.26 Whilst it is not suggested that counsel's view should automatically prevail and whilst acknowledging that due consideration should always be given to the views of the police, examples such as these underline the need for CPS prosecutors to make timely decisions when it is no longer appropriate for a case to continue. Good quality, robust decision-making attracts respect.

7.27 At three Branches that we visited, we were told that there was an imbalance in the experience of counsel prosecuting and defending at PDH. It was felt that some prosecuting counsel did not 'grasp the nettle' at PDH because of their inexperience. This most commonly occurred where there was a return of instructions and the choice of a substitute was limited as a result. Generally, the prosecution is represented by counsel of less experience than those appearing for the defence.

7.28 The CPS has worked with the Bar to develop a system in which chambers monitor their own performance. The aim is to work together to reduce the number of briefs that are returned. Each month, chambers report on their performance to those Branches which have sent them instructions. The report is then discussed at regular meetings between local CPS managers and chambers to agree ways to improve performance (CPS/Bar Standard 3: The Service Standard on Returned Briefs - October 1996).

7.29 It is important that suitable counsel (either instructed or on a return) represent the prosecution at PDH. The instances of the late return of instructions should be minimised. CCPs who are not doing so already will wish to consult with local heads of chambers on these issues.

7.30 Prosecuting counsel, whether likely to present the trial or not, should be encouraged to consider cases in detail before PDH, so that any identifiable weaknesses can be addressed at that stage. They must be given adequate opportunity, through the timely delivery of instructions. Prosecutors and caseworkers must also draw counsel's attention to any perceived deficiency in the case as an essential element of those instructions.

7.31 We recommend that CCPs should monitor counsel's compliance with the requirements of the Bar/CPS Standard 2 and, where appropriate, discuss the results with heads of chambers.

THE MISRECORDING OF ADVERSE FINDINGS

The need for accurate recording

8.1 The data collected by the thematic review team is capable of being expressed in terms of defendants or cases. The data collected by the Branch inspection teams, however, is only available in terms of cases which are fewer than the figures for defendants. In order to be able to draw conclusions for the CPS generally, it has been necessary to combine the various data. As a result, some of the information that follows is expressed in terms of cases and some in terms of defendants. We have clearly indicated the basis used on each occasion.

8.2 In any event, the key to identifying any issues that emerge from adverse cases generally lies in the collection of Area and national statistics about the volume of such cases and/or defendants, and the reasons which caused them to fail. Accurate assessments of the volume of adverse results are essential, if measures are to be put in place, designed to reduce their true number. In the CPS, the collection of PI data is the means by which the number of defendants whose cases conclude in adverse results are recorded.

8.3 The CPS 'Performance Indicators An Open Learning Guide' (PI Guide) supports the approach, stating that accurate PIs are necessary:

- *"so that management can ensure that the necessary resources - staff and funds – can be made available when and where they are needed;*
- *to identify where performance calls for the attention of management, and where improvements may be necessary; and*
- *to provide Parliament with information about the efficiency of the Service and the way in which public resources are being used".*

8.4 We are concerned, therefore, that staff are not always identifying or recording correctly cases that result in adverse findings. This gives a misleading picture of how the Branch and, more generally, the CPS is performing.

8.5 We were encouraged by the efforts at one Branch that we visited to improve the accuracy of their PI codes. A form has been introduced that contains a copy of the national 'Performance indicators – Magistrates' court activity sheet and the PI codes' relevant to the Branch's computer system. This assists the caseworkers in finalising the case. Unfortunately, there is no mechanism for chasing up prosecutors when they do not complete the form. We were told that, in one team, the failure rate is 70%.

Our findings

8.6 From our analysis of PI data, we expected the Branches assisting our review to provide magistrates' courts and Crown Court cases in respect of 661 defendants.

8.7 However, we received a total of 406 cases involving only 488 defendants. In addition, four further cases – each involving one defendant – were sent for examination where it was not possible to identify in what category the forwarding Branch had recorded them. As a result, these have been excluded from our analysis. The breakdown of missing defendants by outcome is set out in the following table.

NCTA		DC		JOA		JDA	
PIs	Shortfall	PIs	Shortfall	PIs	Shortfall	PIs	Shortfall
85	22	37	18	440	116	99	17
	25.9%		48.6%		26.4%		17.2%

8.8 We were not provided with any satisfactory reason about why the cases involving these defendants could not be found. In seeking to convey a national picture, we have assumed that these cases would not impact – one way or the other – on the extent of misrecording of adverse cases, although there are many arguments to suggest that a greater number of these missing cases are likely to be miscategorised. We cannot say, categorically, that it is misrecording that accounts for the massive shortfall, but that seems the likeliest explanation. Our experience must raise serious questions to which managers at all levels should require urgent answers.

8.9 Certainly, the extent of the confirmed misrecording is sufficient to cause grave concern.

8.10 As regards those files that were miscategorised, some Branches provided a brief explanation about why they were not able to provide the files. For example, we were told by some that they were unable to match the files with the PIs. This is worrying.

8.11 Of the 406 cases that we received 25 had been incorrectly recorded as adverse findings. These 25 were excluded from our review and gave us our final case sample of 381 referred to in paragraph 3.1 earlier and elsewhere in this report.

8.12 Our findings were confirmed by the earlier work of the Branch inspection teams, based on the inspection of 43 Branches. Broken down into individual categories, the following table sets out the extent of misrecording of cases that the Inspectorate has discovered throughout its work. The figures from this thematic review have to be considered alongside the fact that so many cases recorded in the PIs as adverse cases could not be found for examination.

	NCTA		DC		JOA		JDA	
Thematic review	57		17		252		80	
Misrecorded	9	15.8%	9	52.9%	5	2%	2	2.5%
Branch inspections	179		63		613		148	
Misrecorded	78	43.6%	49	77.8%	27	4.4%	7	4.7%
Total number of cases	236		80		865		228	
Total number of cases misrecorded	87	36.9%	58	72.5%	32	3.7%	9	3.9%

8.13 There is a clear discrepancy in the level of misrecording between the thematic review team and the Branch inspection data in the magistrates' courts cases. However, as we have said in paragraph 8.7, a substantial number of cases involving many defendants were not forwarded for examination.

8.14 Misrecording occurs for a number of reasons. In the magistrates' courts, we found examples of defendants being discharged because committal papers were not ready for service on the defence. Instead of this being recorded as a termination, it was marked as a discharged committal, which for these purposes, is not correct. Two examples from our Crown Court sample highlight other reasons for misrecording:

- the defendant pleaded guilty to one or more charge on the indictment at PDH, and the prosecution, at a later hearing, offered no evidence on the remaining charge(s); and

- where the prosecution accepted a guilty plea to a lesser offence and offered no evidence on the substantive charge.

8.15 Both cases had been recorded as JOAs.

8.16 Three different case tracking systems operate at the four Branches that we visited. One Branch has CATS, one System 36, and two have SCOPE.

8.17 Once a PI finalisation code has been entered on System 36 and SCOPE, it cannot be amended. A mistake made by the caseworker cannot be rectified on either system. Management checks carried out after a code has been entered are, therefore, of limited value.

8.18 This reinforces the need for accurate inputting. Although manual corrections can be made before submission of PIs to CPS Headquarters, our concern is that this creates a discrepancy between those PIs and those on office computer systems. This can generate confusion.

Classification – type of adverse result

8.19 We also found that some cases, although recorded correctly as adverse findings, were finalised in the wrong case category in the P.Is.

8.20 Our file sample consisted of 381 correctly identified adverse cases. Sixteen of them (4.2%) had been finalised in the wrong category. These were:

- twelve JDAs recorded as JOAs; and

- four JOAs recorded as JDAs.

8.21 We were keen to find out why so many cases are recorded incorrectly. Staff told us that they did not receive formal training on the recording of adverse cases. Most consisted of one-to-one desk training, and/or the circulation of guidance. They criticised the adequacy of this brief training.

8.22 We were pleased to note that most Level A caseworkers have a record of the PI codes that are appropriate for their computer system. At some Branches, however, it appeared that training had not been provided on the application of those codes. We also noted that little reference, if any, was made to the national PI Guide. At one Branch, a copy of it could not be found.

8.23 At one Branch, the introduction of a new computer system ensured that caseworkers were

retrained on the use of PI codes. We found that PI training is most likely to be provided when new computer systems are introduced.

8.24 At another Branch, we were told that, to raise awareness, a PI training package was being prepared, for use at weekly in-house sessions. We commend this approach.

8.25 We recommend that CCPs should ensure that all finalised cases are recorded in the correct PI category.

Classification – reason for adverse result

8.26 Neither is the true reason for an adverse finding always recorded in the PIs. In cases where the incorrect reason code had been used, we found evidence that the 'catch-all' categories, of 'material change in circumstances since committal' and 'any other reason', were often entered when other, less favourable, categories were more appropriate.

8.27 Of the 58 cases that were coded wrongly, 23 (39.7%) had been recorded as 'material change in circumstances since committal' and nine (15.5%) as 'any other reason'. In 26 cases, we took the view that the correct code should have been 'doubts about evidence other than identification'.

8.28 We noted differences at the Branches that we visited over the recording of PIs. At all Branches, Level A caseworkers input the PIs for magistrates' courts cases. At some, the prosecutor in court writes the PI code on the file. Often, however, the Level A caseworker has to make enquiries to establish the correct code.

8.29 Crown Court PI codes are inputted by different levels of staff. At one Branch, the B2 caseworker inputs all Crown Court PI codes. At two, the B1 caseworkers enter them. A Level A caseworker is responsible at the fourth. All caseworkers told us that they have difficulty identifying the reason why, in some cases, there was an adverse result.

8.30 We are pleased to note that during our review, CPRD revised this section of the PIs. The 'catch-all' categories have been removed and more detailed information is now required.

8.31 If the CPS is to learn from adverse cases, their true causes should be reflected by the PIs. CCPs will wish to satisfy themselves that staff apply correctly the revised 'reasons for prosecution dropped' categories.

8.32 We recommend that CCPs should ensure that all adverse cases are recorded under the correct PI code identifying the reason for the adverse decision.

File endorsements

8.33 We have already drawn attention to the poor standard of endorsements when commenting on the quality of review in Chapter 5. Endorsements are also of crucial importance in the context of PI data collection. Caseworkers determine the reason for the adverse finding by reading the file endorsements. We were told that their quality varies according to the identity of the individuals completing them. The endorsements do not always provide sufficient information. This can lead to caseworkers guessing which PI code to use.

8.34 All the Branches that we visited had taken steps to improve the quality of their file endorsements. Minutes had been issued to staff on the quality of endorsements. At one, this had included detailed guidance on how to endorse a file.

8.35 At one Branch, PTLs assess general file endorsement quality and provide feedback, where appropriate, to the prosecutors concerned. We were told that this has improved the quality of endorsements.

8.36 We recognise that efforts have been made, generally, to improve the quality of endorsements. It was apparent, however, from both our file examination and our discussions with staff, that further improvement is necessary.

8.37 It is our firm view, that an improvement in the quality of file endorsements would reduce the number of miscategorised adverse cases.

8.38 We recommend that, where a case is lost on a submission of no case to answer, or a committal is discharged, the prosecutor should endorse the file with the fact that it is an adverse finding.

8.39 We were told that caseworkers, generally, make comprehensive endorsements on Crown Court files. Difficulties are encountered, however, when a caseworker is required to cover more than one court. They have to rely on counsel and the court clerk to inform them of the reason for the adverse case result. Occasionally, caseworkers use counsel's endorsements on the brief to establish the outcome of the case. We are concerned that, as a result, important information may be lost about why a case has failed.

8.40 But CCPs collectively need to ensure that the quality of their caseworkers' endorsements are consistently good, so that it ceases to matter whether or not the case itself emanates from their Branch. A corporate approach is required so that all endorsements in all cases are of a high standard, irrespective of their origin or destination.

Categorisation

8.41 The PIs for Crown Court adverse cases are divided into several categories, so that a specific reason for the finding can be recorded. This is not, currently, the position for adverse cases that are lost in the magistrates' courts.

8.42 Where cases fail, staff need to be aware of the reasons, if they are to avoid similar findings. Where specific reasons are recorded, trends can be identified and addressed. We do not see any reason why that exercise should be restricted to Crown Court cases. This is all the more important given that the CPS is now publicly committed to achieving a reduction in the number of magistrates' courts cases lost on a submission of no case to answer where the fault lies with the Service.

8.43 We recommend that CPRD should revise the PI coding used for discharged committals and cases lost on a submission of no case to answer, to align them with those used for judge directed acquittals.

LEARNING FROM EXPERIENCE

9.1 We have found little evidence that staff are informed of, or learn from, the reasons for adverse cases. Nationally, the quality of casework decision-making can only be improved if staff are informed about how similar problems can be avoided in subsequent cases. There needs to be a strategic approach to a learning culture.

Crown Court adverse case reports

9.2 All the Branches that we visited had systems in place to record adverse findings. At all but one, adverse Crown Court findings are recorded on the JPM CCA1 form. At each Branch, a similar internal form was used to record adverse findings in the magistrates' courts.

9.3 We are concerned to note that an adverse case report was completed in only 243 of the 381 cases (63.8%) in our sample. Branch inspections have produced similar findings.

9.4 A CCA1 form should be completed for all Crown Court acquittals, where JPM arrangements are in operation. We found that a report was completed in only 206 of the 325 Crown Court adverse cases (63.4%).

9.5 The proper use of the form allows CPS staff and the police to learn why the case failed. It also helps them to identify any trends or themes that arise. Staff cannot learn from the experience of adverse cases if an adequate record is not kept of the reasons why the case was lost.

9.6 We recommend that CCPs should ensure that, in Crown Court cases, where applicable, the form CCA1 is completed whenever a case results in an adverse finding.

9.7 At two Branches that we visited, the design of the form CCA1 did not allow for comments by the PTL or BCP. We are of the firm view that their assessment of the case, and of any lessons that can be learnt from it, should be included on the form. This gives valuable feedback to individual prosecutors and caseworkers; aids discussion at team meetings; and provides more information to the police about the learning points.

9.8 We recommend that TIG should consult the police with a view to revising the form CCA1 to allow comment by:

- **the PTL; and**
- **the CCP.**

9.9 We are pleased to note that, at one Branch, the police are asked to contribute to the Crown Court adverse case report. This keeps them informed, increases the amount of information available and, in most cases, confirms that they are content with the CPS performance. The issues that arise from failed cases are discussed with the police at JPM meetings. The PTLs and senior caseworkers are present and they provide guidance about particular problems or issues to staff at team meetings.

9.10 We commend this approach. It promotes the concept of learning from experience without any associated blame culture.

9.11 At another Branch that we visited, adverse case reports are sent to the police Criminal Justice Support Unit which produces a training newsletter for officers, based on the feedback given by the CPS. This too represents a positive learning approach.

9.12 Some prosecutors and caseworkers did not realise that the form CCA1 was used to provide feedback to the police. Consequently, they were not aware of the benefits to be gained from their completion of the reports. If they had, it is likely that they would have been more committed to ensuring that the reports were of the highest quality.

Magistrates' court adverse case reports

9.13 An adverse case report was completed in only 37 of the 56 magistrates' courts cases (66.1%).

9.14 At one Branch, we were told that an adverse case report is not usually compiled when a case is lost in the magistrates' court. Often, a written record is not made of why the case was lost. We found that details of any defence submission of no case to answer are not adequately endorsed. Only 39.4% contained such an endorsement.

9.15 The CPS is committed to reducing the number of adverse cases in all categories. The lessons to be learnt from adverse findings are as important in the magistrates' courts as in the Crown Court. In most cases, the lessons to be learnt from an adverse finding in one court will be relevant to those dealt with in the other.

9.16 We recommend that CCPs should ensure that reports are completed in all cases that result in an adverse finding.

9.17 In 48 of the 243 cases (19.8%) in which an adverse case report was completed, we considered that it did not contain sufficient information about the reasons why the case failed to inform prosecutors and caseworkers. In too many cases, the form merely stated the PI code.

9.18 At most Branches that we visited, we were told that the quality of the feedback is often reduced because caseworkers are not always present in court when the adverse finding occurs. The detail and accuracy is reduced by the need to rely on second-or third-hand information.

9.19 We recognise that a caseworker cannot always be in court when an adverse finding occurs. They may be assisting witnesses in other cases or counsel in another court. CCPs will wish to ensure, however, that there are systems in place so that caseworkers are able to obtain an accurate account of why cases are lost.

9.20 At all the Branches that we visited, the caseworker covering the court when the case is lost endorses the adverse case report.
The form is then passed to the prosecutor for his comments. We saw several reports that contained very full endorsements from the prosecutor. In other cases, however, we did not find any evidence that the prosecutor had seen the report.

9.21 We recommend that CCPs should ensure that prosecutors and caseworkers endorse fully on the adverse case report the factual and legal reasons why a case results in an adverse finding.

9.22 But for staff to learn fully from adverse cases, reports need to do more than merely recite the factual and legal reasons for the finding. If the quality of casework decision- making is to improve, staff must be informed about how similar problems can be avoided in subsequent cases. Inadequate and ill-informed reporting can mean that mistakes are repeated. It is essential that adverse case reports include a considered analysis of the case and identification of any lessons that can be learnt.

9.23 We recommend that adverse case reports should contain, as a minimum requirement, an endorsement setting out comments on the decision from the reviewing prosecutor, PTL, and CCP, which should highlight any lessons to be learnt from the case.

9.24 We were keen to discover what feedback is given to staff about adverse results so that similar findings may be avoided. At more than one Branch, staff told us that they did not see adverse case reports arising out of their colleagues' cases. There was little evidence of any feedback between the teams about the lessons to be learnt.

9.25 At only one Branch that we visited were adverse case reports collated centrally. At the other Branches, adverse case reports were kept with the case papers. The storage of reports in one location facilitates the PTLs' consideration of adverse findings from all the teams. An assessment of all the Branch's adverse case reports enables PTLs to assess whether there are any themes or trends across the teams. We found little evidence that staff were aware of the other teams' adverse findings.

9.26 We recommend that CCPs should ensure that adverse case reports are collated, so that trends may be identified, and appropriate feedback given to relevant staff.

9.27 The team meeting is an appropriate forum for the discussion of adverse cases. We were disappointed, therefore, to find that little discussion of adverse cases takes place. At one Branch, we were told that prosecutors do not receive feedback on individual cases and that there is no discussion of them at team meetings. At another, staff told us that the PTLs are reluctant to highlight adverse cases at team meetings, to avoid negative feedback and embarrassing colleagues. A 'blame culture' means that staff do not highlight adverse cases in a way that encourages learning from experience.

9.28 At the majority of the Branches that we visited, staff are not informed of the reasons for adverse cases and there is no feedback on any trends identified. In our thematic report on cases involving child witnesses (1/98), we expressed our concern about the absence of any strategic approach to a learning culture. That concern remains.

9.29 When a case fails, staff should be aware of why the adverse finding occurred and of how to avoid it in subsequent cases. Feedback should be seen as a means of sharing valuable experience, rather than as a way of attaching blame to individuals, although sensitivity will have to be used by line managers to avoid exposing individuals to embarrassment.

9.30 We recommend that adverse case reports should be discussed constructively at team meetings, to enable learning points from cases to be disseminated to prosecutors and caseworkers.

A NATIONAL PERSPECTIVE

10.1 There are two issues which impact on the volume of adverse cases throughout the CPS: they are the misrecording of cases and their foreseeability.

10.2 As we demonstrated in chapter 8, the extent to which cases are wrongly recorded as resulting in adverse findings suggests that the CPS does not have a true picture of the numbers involved. Without accurate information it is not possible to devise strategies to reduce them still further.

10.3 From our table in paragraph 8.12, the level of misrecording overall is as follows.

NCTA	DC	JOA	JDA
36.9%	72.5%	3.7%	3.9%

10.4 If these percentages were reflected across England and Wales, it is clear that the number of adverse cases recorded in the magistrates' courts (and, to a lesser extent in the Crown Court), is substantially higher than is, in reality, the case.

10.5 We have considered what the true level of adverse findings would be, if cases were recorded correctly and those that were foreseeable were terminated at the earliest opportunity.

10.6 Our calculations indicate that adverse cases could be reduced from the current recorded figure of 13,701 to 9,633. Overall, this would represent a 29.7% reduction. This realisable reduction would give a more accurate picture of how the CPS is performing and increase public confidence in the decision-making process.

CONCLUSION

11.1 We indicate at paragraph 2.5 that foreseeable adverse findings made up only 0.2% of the total CPS caseload in 1998. It is against this background that our comments on CPS performance should be considered. Inevitably, there will be a proportion of cases in which the decision makers could have done more to avoid the adverse finding. However, in many the prosecutor will apply correctly the Code but can do nothing to avoid the finding.

11.2 We have identified a disturbing level of misrecording of adverse case results which suggests that a misleading picture is given of the Service's performance. Our evidence indicates that the level of adverse cases, particularly those dealt with in the magistrates' courts, is overstated. Consequently, the judgement quality of prosecutors may well be better than the PIs indicate.

11.3 In over two-thirds of the cases that we examined, we considered that the adverse finding could not have been foreseen. We have highlighted the improvements that could be achieved through timely decision-making in foreseeable cases.

11.4 Finally, we have sought to estimate the true level of adverse case results (removing the misrecorded cases) and the extent to which those figures could then be reduced still further by the timely termination of all appropriate cases.

11.5 We have identified particular difficulties in specific types of cases and highlighted national themes. We have found little evidence that staff are informed of and learn from the reasons for adverse cases. In an earlier thematic review, we drew attention to the absence of any strategic approach to a learning culture in cases involving child witnesses. We are disappointed to find our concerns extending more generally following this review.

11.6 We have also commented critically on the quality of file endorsements with the implications this has for several aspects of CPS performance. This is a continuing problem to which the Service should give immediate attention.

11.7 We have drawn attention to and commended several local initiatives that have been introduced to reduce the frequency of adverse findings. These good practices help to reduce the number of adverse findings and improve further CPS

performance. We strongly encourage all CCPs to use monitoring effectively, to identify where problems lie and the measures that need to be adopted to address them.

11.8 But, overall, our conclusion must be that there is scope for improvement, both in the identification and recording of adverse cases. Until the true picture is obtained, it is difficult to assess whether the level of adverse cases is a cause of particular concern, although our review indicates some of the principal areas in which action needs to be taken.

THEMES OF THE REVIEW

A QUALITY OF REVIEW

1. Quality of application of evidential test
2. Quality of application of public interest test
3. Selection of the appropriate charge
4. Quality of file endorsements
5. Quality of continuing review

B REASONS FOR ADVERSE FINDINGS

1. What are the most common types of adverse findings?
2. What are the reasons for the trends identified?
3. Whether the CPS addresses effectively the reasons for adverse findings
4. Whether further guidance or training for CPS staff is necessary

C FORESEEABILITY OF ADVERSE FINDINGS

1. The extent to which adverse findings are foreseeable
2. The extent to which adverse findings are avoidable
3. The role and influence of prosecuting counsel
4. The extent to which the different reasons for adverse findings are foreseeable

D MISCATEGORISATION OF ADVERSE CASES

1. Whether the true level of adverse cases is reflected by the PIs
2. Whether the true reasons for adverse cases are reflected by the PIs
3. Quality of the endorsement of case results
4. The relationship between the PIs and JPM

E LEARNING FROM EXPERIENCE

1. Usage of adverse case reports
2. Quality of adverse case reports
3. Efficiency of monitoring procedures
4. Efficiency of feedback systems

F GENERAL

1. What more can or should be done?
2. What more can or should the CPS do?

BREAKDOWN OF FILE SAMPLE BY DEFENDANT

	No case to answer	Discharged committal	JOA	JDA	TOTAL
Buckinghamshire	4	0	35	8	**47**
Dorset	9	2	32	15	**58**
Dudley and Sandwell	16	1	41	2	**60**
East Kent	6	0	43	21	**70**
Essex North	2	1	20	3	**26**
Horseferry Road	2	2	22	8	**34**
North Liverpool	4	2	52	6	**64**
Rochdale and Bury	1	0	26	4	**31**
South Staffordshire	9	2	26	6	**43**
Tower Bridge and City	1	0	22	7	**30**
TOTAL	**54**	**10**	**319**	**80**	**463**
Number of defendants whose cases were wrongly recorded as adverse	9	9	5	2	**25**

BREAKDOWN OF FILE SAMPLE BY CASE OUTCOME

	No case to answer	Discharged committal	JOA	JDA	TOTAL
Buckinghamshire	4	0	27	8	**39**
Dorset	8	2	27	14	**51**
Dudley and Sandwell	15	1	24	2	**42**
East Kent	4	0	36	20	**60**
Essex North	1	1	18	3	**23**
Horseferry Road	2	1	19	8	**30**
North Liverpool	3	1	38	6	**48**
Rochdale and Bury	1	0	20	4	**25**
South Staffordshire	9	2	20	6	**37**
Tower Bridge and City	1	0	18	7	**26**
TOTAL	**48**	**8**	**247**	**78**	**381**
Number of cases wrongly recorded as adverse	9	9	5	2	**25**

CHARTS AND STATISTICS

The following charts and tables illustrate further data obtained as a result of the thematic review file examination.

OFFENCE PROFILE - GENERAL CATEGORIES

(A total of 662 offences were considered in the 381 adverse case files submitted)

Category	Thematic Review		
	Number	%	% correct
Theft and fraud	294	44.4%	88.8%
Offences against the person	137	20.7%	96.4%
Sexual offences	84	12.7%	86.9%
Public order	57	8.6%	77.2%
Criminal damage	23	3.5%	91.3%
Public justice	22	3.3%	77.3%
Road traffic offences	16	2.4%	100%
Drugs offences	15	2.3%	93.3%
Firearms	6	0.9%	100%
Post and telecommunications	2	0.3%	100%
Homicide	1	0.2%	100%
Dangerous dog	1	0.2%	0%
Others	4	0.6%	100%

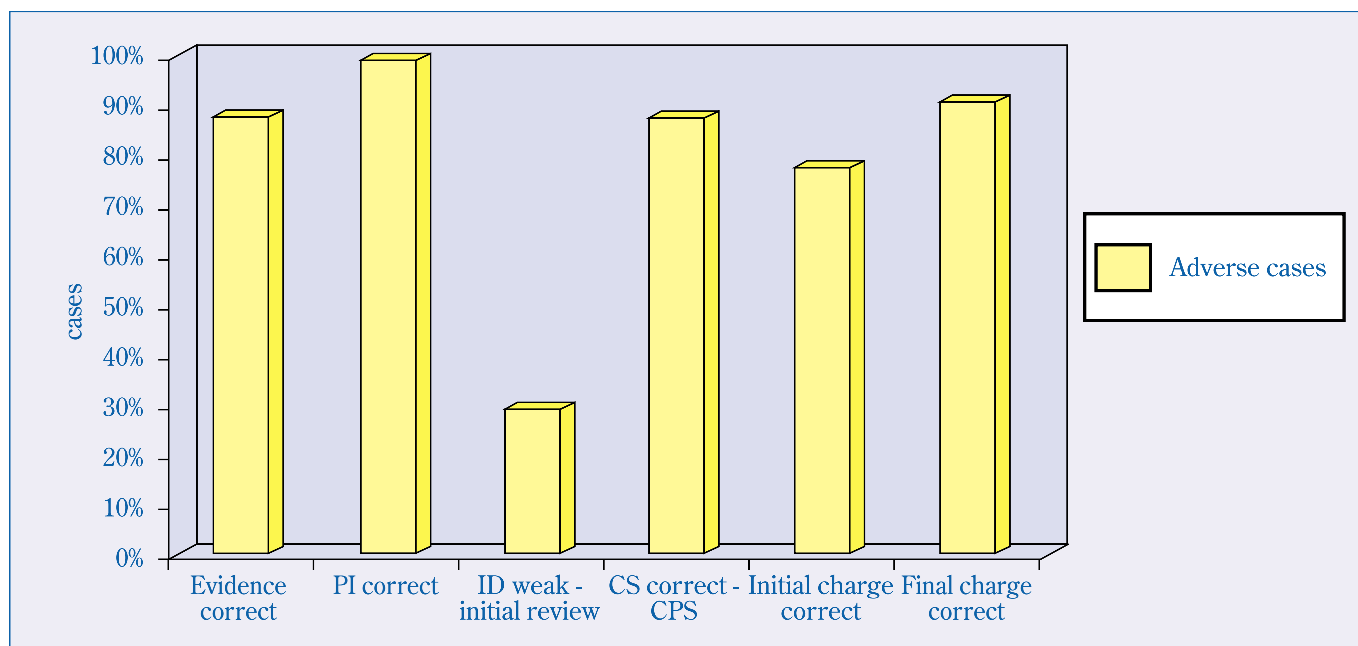
OFFENCE PROFILE - MOST COMMON OFFENCES

Offences	Thematic Review		
	Number	%	% correct
Theft	86	13%	83.7%
Handling stolen goods	76	11.5%	84.2%
Section 47	55	8.3%	98.2%
Indecent assault	49	7.4%	85.7%
Burglary	39	5.9%	92.3%
Robbery	26	3.9%	100%
Section 20	23	3.5%	95.7%
Affray	21	3.2%	90.5%
Arson or criminal damage	18	2.7%	100%
Rape	17	2.6%	100%
Section 18	16	2.4%	93.8%
Common assault	15	2.3%	100%

THE QUALITY OF REVIEW

Category	Thematic Review
INITIAL REVIEW	
Proportion of cases in which the decision about the prospects of conviction against each defendant for each charge was correct	**85.8%**
Proportion of cases in which the decision about the public interest was correct	**98.3%**
Proportion of cases in which the key decisions were taken at the appropriate level	**100%**
Proportion of cases in which the mode of trial guidelines were followed	**100%**
Cases in which the prosecutor identified the main evidential weakness at initial review	**71**
Cases in which police were asked to remedy a deficiency following initial review	**35**
Cases in which the prosecutor identified an evidential weakness at initial review and the evidential weakness was remedied after initial review	**7**
CHARGING	
Proportion of cases in which any relevant charging standard was applied correctly by police	**74.6%**
Proportion of cases in which any relevant charging standard was applied correctly by CPS	**87%**
Proportion of cases in which the police charge or charges were correct	**75.2%**
Proportion of cases in which the charge or charges were correct after initial review	**75.4%**
Proportion of cases in which the final charge or charges were correct	**90.9%**
Proportion of cases in which the Branch charge was incorrect and the adverse finding would not have occurred if it had been correct	**2.4%**
Proportion of cases in which the initial charge reflected the gravity of the offending	**75.8%**
Proportion of cases in which the final charge reflected the gravity of the offending	**92.7%**
CONTINUING REVIEW	
Cases in which the defence alerted the CPS to any perceived weakness in the prosecution case	**37**
Cases in which the prosecutor sought to remedy the evidential weakness as a result	**22**
Cases in which the police alerted the CPS to any perceived weakness in the prosecution case	**31**
Cases in which the prosecutor sought to remedy the evidential weakness as a result	**15**
Proportion of cases in which the police submitted further material after initial review that weakened the prosecution case	**24%**
Proportion of cases in which the case was reconsidered following the submission of such material	**96.7%**
Proportion of cases in which the prosecutor sought to remedy the evidential weakness as a result	**61.4%**
ENDORSEMENTS	
Cases in which the file was adequately endorsed at initial review to identify any evidential weaknesses in the case	**57**
Proportion of cases in which the file was adequately endorsed at a later stage to identify any evidential weaknesses in the case	**46.3%**

The quality of review



CASE PREPARATION AND PRESENTATION

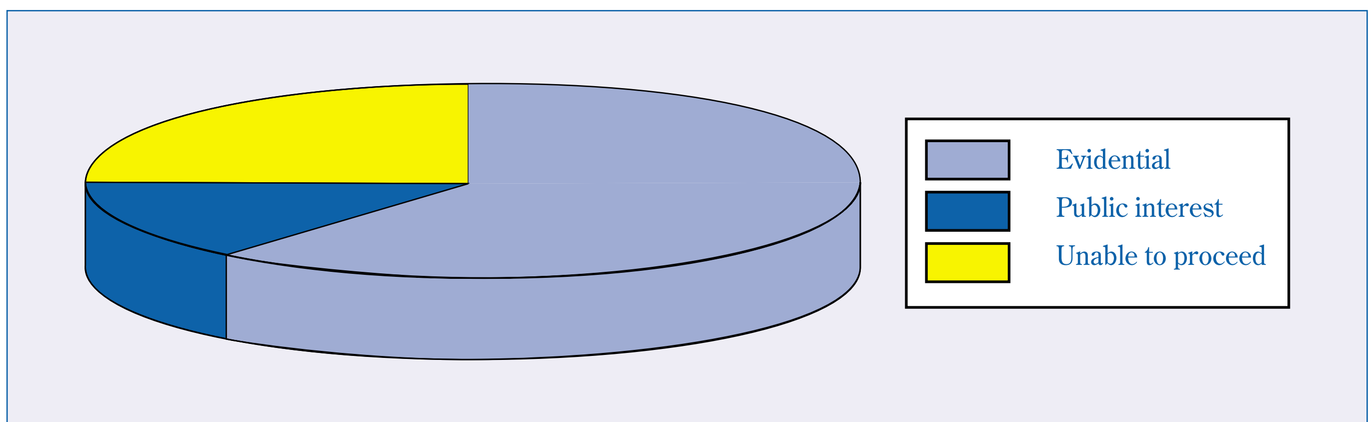
Category	Thematic Review
Proportion of cases in which the evidential weakness was identified at any stage between initial review and trial/committal/acquittal	**47.8%**
Proportion of cases in which all relevant evidence was available	**87.5%**
Proportion of cases in which all relevant evidence was not available and the decision to proceed to trial/committal was correct	**58.6%**
Proportion of cases in which details of any defence submission of no case to answer and response were adequately endorsed	**39.4%**
Proportion of cases in which action was taken by the CPS to avoid the dismissal/acquittal	**32.6%**
Proportion of cases in which the CPS could have done more to prevent the dismissal/acquittal	**17.1%**
Proportion of cases in which the police could have done more to prevent the dismissal/acquittal	**25.6%**
Proportion of cases in which the decision to proceed to trial or commit was taken at the correct level	**100%**

PRINCIPAL REASONS FOR ADVERSE FINDINGS BY CASE FILE

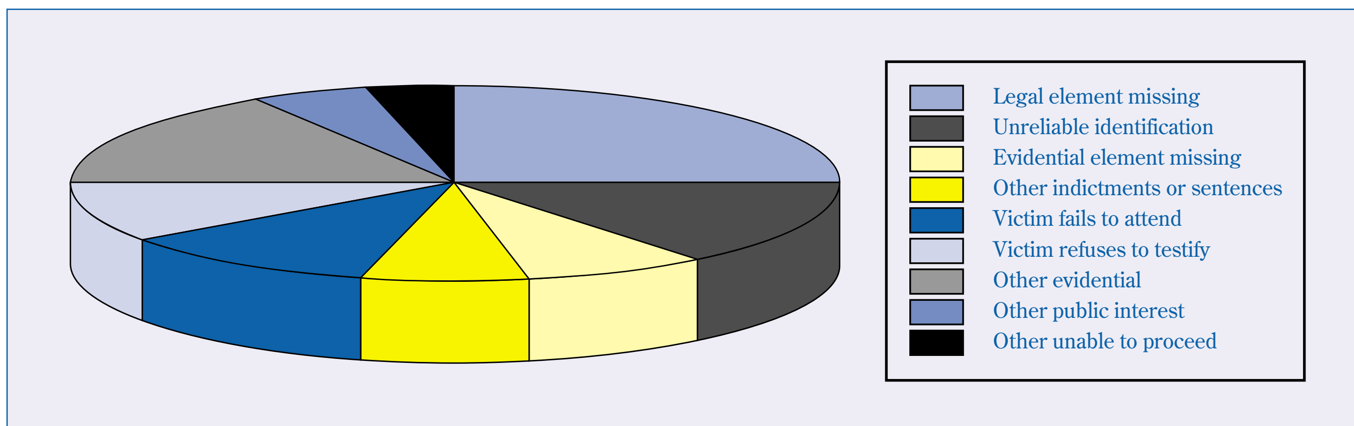
We examined 381 cases in total. It was possible to identify the principal reason for the adverse finding in 359.

Category	Thematic Review	
EVIDENTIAL	**Number**	**%**
Legal element missing	**92**	**25.6%**
Unreliable identification	**40**	**11.1%**
Evidential element missing eg continuity	**35**	**9.7%**
Victim fails to come up to proof	**17**	**4.7%**
Other civilian witness fails to come up to proof	**12**	**3.3%**
Inadmissible evidence – breach of PACE	**11**	**3.1%**
Inadmissible evidence – other	**8**	**2.2%**
Police witness fails to come up to proof	**6**	**1.7%**
Total	**221**	**61.6%**
PUBLIC INTEREST	**Number**	**%**
Other indictments or sentences	**25**	**7%**
Defendant with serious medical problems	**10**	**2.8%**
Effect on victim's physical or mental health	**5**	**1.4%**
Informer or other PII issues	**4**	**1.1%**
Total	**44**	**12.3%**
UNABLE TO PROCEED	**Number**	**%**
Victim fails to attend	**42**	**11.7%**
Victim refuses to give evidence	**37**	**10.3%**
Other civilian witness fails to attend	**10**	**2.8%**
Other civilian witness intimidation	**2**	**0.6%**
Other civilian witness refuses to give evidence	**2**	**0.6%**
Victim intimidation	**1**	**0.3%**
Total	**94**	**26.2%**

Principal reasons for adverse findings - general



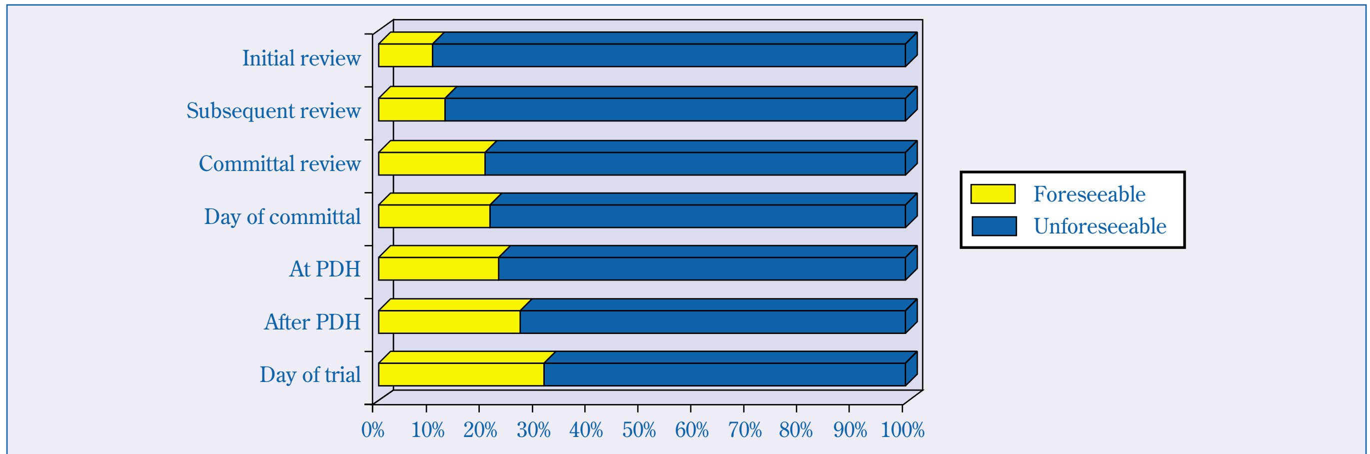
Principal reasons for adverse findings - specific



THE FORESEEABILITY OF ADVERSE FINDINGS

Category	Thematic Review	
	Number	**%**
Cases in which it was possible to tell whether the reason for the adverse finding was reasonably foreseeable	**377**	**99%**
Cases in which the reason for the adverse finding was not reasonably foreseeable	**257**	**68.2%**
Cases in which the reason for the adverse finding was reasonably foreseeable	**120**	**31.8%**
Cases in which the reason was reasonably foreseeable at initial review	**45**	**11.9%**
Cases in which the reason was reasonably foreseeable at subsequent review	**10**	**2.7%**
Cases in which the reason was reasonably foreseeable at trial review (MC)	**4**	**1.1%**
Cases in which the reason was reasonably foreseeable at committal review	**22**	**5.8%**
Cases in which the reason was reasonably foreseeable on the day of committal	**1**	**0.3%**
Cases in which the reason was reasonably foreseeable at PDH	**6**	**1.6%**
Cases in which the reason was reasonably foreseeable after PDH	**16**	**4.2%**
Cases in which the reason was reasonably foreseeable at trial review (CC)	**4**	**1.1%**
Cases in which the reason was reasonably foreseeable on the day of trial	**12**	**3.2%**

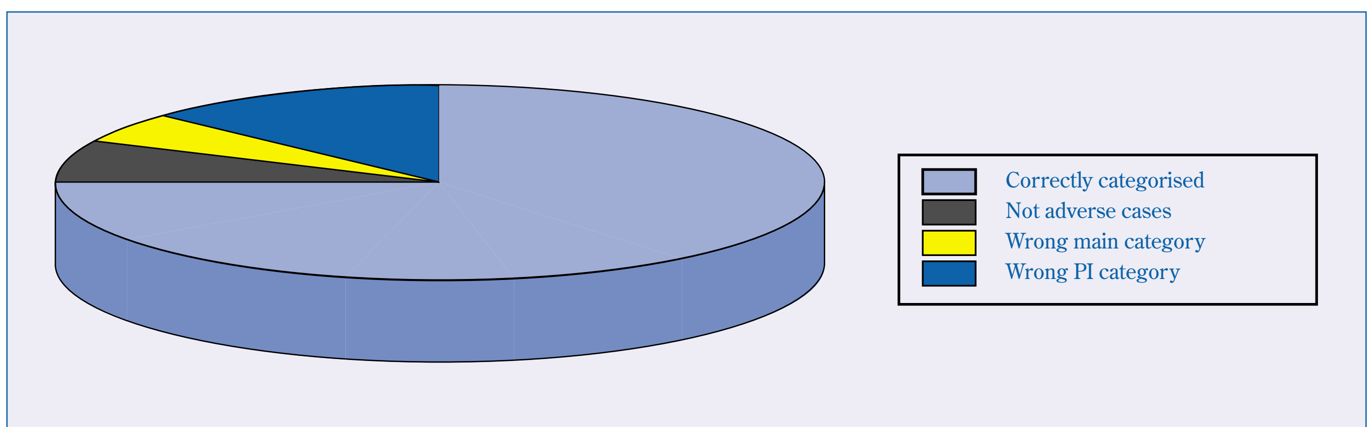
Cumulative foreseeability – Crown Court cases



THE MISRECORDING OF ADVERSE FINDINGS

Category	Thematic Review
Number of case files submitted by the Branches	**406**
Number of case files submitted by the Branches that were adverse cases	**381**
Number of cases that were wrongly categorised by the Branches as adverse cases	**25**
Number of cases that were finalised in wrong main category (NCTA/DC/JOA/JDA)	**16**
Proportion of adverse cases that were finalised in wrong main category	**4.2%**
Number of cases that were finalised in wrong PI reason category	**58**
Proportion of adverse cases that were finalised in wrong PI reason category	**15.2%**

Misrecording of adverse cases



REDUCING THE NUMBER OF ADVERSE CASES

The calculation of foreseeability

i) We considered how the breakdown of our case sample would have looked, if prompt action had been taken to terminate proceedings in cases where we considered that an adverse finding was foreseeable. Foreseeable magistrates' courts cases and Crown Court cases that were foreseeable before committal would have been discontinued. Foreseeable JDAs would have been converted to JOAs, saving the expense of trial.

ii) Of course, there are some cases in which the foreseeability of the outcome merely affects the timing at which the outcome is reached. For example, a JOA may first be foreseeable as such at the PDH. However, it may not actually have been stopped until the day of trial. In this instance, the fact that the case should have been stopped at PDH rather than at trial does not affect the nature of the outcome. In both, a JOA would result. There are, however, lessons to be learnt in terms of ensuring that cases are stopped at the earliest possible opportunity.

iii) In our view, the 120 cases which we have identified as foreseeable should have been either discontinued, or stopped at an earlier hearing in the Crown Court than was the case. If prompt action had been taken, the following outcomes would have been recorded.

	Discontinued	NCTA	DC	JOA	JDA
Unforeseeable	-	27	3	169	58
Foreseeable	82	-	-	38	-
Total	**82**	**27**	**3**	**207**	**58**

iv) The following table demonstrates the percentage reduction that there would have been in relation to these categories of case, had action been taken at the earliest possible opportunity.

	NCTA	DC	JOA	JDA
Reduction	38.6%	62.5%	16.2%	25.6%

v) The Branch inspection teams have also considered the number of cases that result in foreseeable adverse findings. Based on their data, the following table sets out the number of cases in which they disagreed with the decision taken at initial review to prosecute. It follows that all of the foreseeable cases should have been discontinued.

	NCTA	DC	JOA	JDA
Unforeseeable	79	12	498	108
Foreseeable	22	2	88	33
Total	**101**	**14**	**586**	**141**

vi) The following table demonstrates the percentage reduction that there would have been in relation to these categories of case, had they been discontinued at initial review.

	NCTA	DC	JOA	JDA
Overall % reduction	21.8%	14.3%	15%	23.4%

vii) The discrepancy between the two sample bases of magistrates' courts cases is, on the face of it, odd. We suspect that the relatively small number of cases in each sample base has contributed to this.

viii) We have combined all the Inspectorate's findings in the following table.

	NCTA	DC	JOA	JDA	Total
Total cases examined	145	22	833	219	1,219
Reduction – thematic review	17	5	40	20	82
Reduction – Branch inspections	22	2	88	33	145
Overall reduction	39	7	128	53	227
Overall % reduction	26.9%	31.8%	15.4%	24.2%	18.6%

ix) Our findings suggest that there is considerable room for improvement. The total number of adverse cases would have been reduced by 227 (18.6%), if prompt action had been taken. The number of JDAs that unnecessarily attract the expense of jury trial would be reduced by just under a quarter.

Calculation of the true level of adverse cases

x) The following table sets out the potentially true level of case results, amended to take account of the misrecording, based on figures collated for the year ending 31 December 1998.

	NCTA	DC	JOA	JDA	TOTAL
Recorded	2,248	922	8,680	1,851	13,701
% error	36.9%	72.5%	3.7%	3.9%	
% correct	63.1%	27.5%	96.3%	96.1%	
True level	1,419	254	8,359	1,779	11,811

xi) Overall, this represents a fall of 13.8% in the total number of adverse cases.

xii) It is against the true level of adverse cases that our findings regarding foreseeability should be set. Our analysis has the benefit of capturing JDAs that could have been converted to JOAs. The Branch inspectors' test is whether the case should have proceeded when the file was initially reviewed. This means that our figures are likely to show a lower percentage reduction of JOAs. However, taking on board that slightly different approach, we have, nevertheless, combined all the Inspectorate's findings. The table at paragraph 1.8 sets out the percentage of cases in which the adverse finding was foreseeable, and in respect of which prompt action would have led to a different result, and we repeat the relevant section here for convenience.

	NCTA	DC	JOA	JDA	Total
Overall % reduction	26.9%	31.8%	15.4%	24.2%	18.6%

xiii) These figures suggest that if all those cases in which the outcome was foreseeable were dealt with promptly, the real rate of adverse cases (allowing for some JDAs to become JOAs) would be substantially changed. Applying our foreseeability ratios to the true level of adverse cases (that is, those cases which alone should have been recorded as such) produces the following table.

	NCTA	DC	JOA	JDA	TOTAL
True base line	1,419	254	8,359	1,779	11,811
Reduction caused by foreseeability of outcome	26.9%	31.8%	15.4%	24.2%	
Optimum base line*	1,038	174	7,072	1,349	9,633

*The optimum base line represents the number of cases:

- which should properly have been recorded as adverse cases; and
- in which the adverse result was not foreseeable (accepting that some JDAs should have been terminated at a stage when a JOA would have been the correct result).

xiv) These figures show what could happen if the problems of misrecording were solved and prompt action were taken in respect of all foreseeable adverse case results. A figure of 9,633 set against a current recorded figure of 13,701 shows the extent to which the CPS could reduce its current level of adverse cases. Overall, this would represent a 29.7% reduction.

CROWN PROSECUTION SERVICE INSPECTORATE

STATEMENT OF PURPOSE

To promote the efficiency and effectiveness of the Crown Prosecution Service through a process of inspection and evaluation; the provision of advice; and the identification and promotion of good practice.

AIMS

1. To inspect and evaluate the quality of casework decisions and the quality of casework decision-making processes in the Crown Prosecution Service.

2. To report on how casework is dealt with in the Crown Prosecution Service in a way which encourages improvements in the quality of that casework.

3. To carry out separate reviews of particular topics which affect casework or the casework process. We call these thematic reviews.

4. To give advice to the Director of Public Prosecutions on the quality of casework decisions and casework decision-making processes of the Crown Prosecution Service.

5. To recommend how to improve the quality of casework in the Crown Prosecution Service.

6. To identify and promote good practice.

7. To work with other inspectorates to improve the efficiency and effectiveness of the criminal justice system.

8. To promote people’s awareness of us throughout the criminal justice system so they can trust our findings.

Crown Prosecution Service Inspectorate
50 Ludgate Hill, London EC4M 7EX

Designed & produced by Blackburns of Bolton Limited
Shiffnall Street, Bolton BL2 1EE
Tel: 01204 532121