CROWN PROSECUTION SERVICE INSPECTORATE

THE INSPECTORATE'S REPORT

on

THE THEMATIC REVIEW OF ADVOCACY AND CASE PRESENTATION

THEMATIC REPORT 1/2000 FEBRUARY 2000

CPS

Areas and Branches that assisted this review

AREAS AND BRANCHES VISITED

1. CPS Cleveland
2. CPS Dyfed Powys
3. CPS Essex
4. CPS Gloucester
5. CPS Hampshire (Basingstoke Branch)
6. CPS London (Bow Street/Thames Branch and Horseferry Road Branch)
7. CPS South Yorkshire (Sheffield Branch)
8. CPS Staffordshire (South Staffordshire Branch)
9. CPS Warwickshire

REPORT ON THE THEMATIC REVIEW OF ADVOCACY AND CASE PRESENTATION

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(CHAPTER 1) INTRODUCTION

1.1 This is the report on the sixth thematic review of the Crown Prosecution Service Inspectorate. The standard of advocacy and some aspects of case preparation have always been specifically examined in the Branch and Area inspections we have conducted. However, this is confined to the quality of work within the particular Branch or Area and is not necessarily a reflection of its quality throughout the Service. We therefore proposed that we undertook an in-depth study of the standard of advocacy of Crown Prosecution Service (CPS) lawyers, and of solicitors and counsel instructed by them and the Director of Public Prosecutions readily agreed. We also decided to examine those aspects of case preparation which go to support effective advocacy. As a result, the scope of our study became so wide, that it might, more accurately, be termed a review of advocacy and case presentation.

1.2 The CPS Business Plan for 1999-2000 states that the aim of the CPS is "to contribute to the reduction of crime and fear of crime and to increased public confidence in the criminal justice system by fair and independent review of cases and by firm, fair, and effective prosecution at court". This reflects the aims of the criminal justice system as a whole.

1.3 To achieve this aim, one of the CPS objectives includes enabling the courts to reach just decisions by fairly, thoroughly and firmly presenting prosecution cases and rigorously testing defence cases. A high standard of case presentation is, therefore, an important and integral part of the overall aim of the CPS and the criminal justice system.

1.4 Over a period of time, the Inspectorate has acquired information about the quality of case presentation in a number of the former Branches and Areas. This provides a fuller picture but some of the information relating to earlier inspections is somewhat historical and so does not necessarily provide an accurate reflection of the standard of case presentation at any given time.

1.5 The purpose of this review, therefore, was to provide an overall assessment of the quality of case presentation undertaken by or on behalf of the CPS, to identify good practices that could be promulgated throughout the Service and to make recommendations, where appropriate, to improve its standard.

1.6 Chapter 2 sets out the methodology of our review and explains the standards that we used. Chapter 14 sets out the review team's conclusions and Chapter 15 contains our recommendations.

1.7 It is however appropriate at this stage to mention four general points which have a bearing on many of the more specific issues we cover. First, we have commented in very many of our Branch and Area reports, as well as in our earlier thematic reviews, on the need for clear and full file endorsement so that a prosecutor coming afresh to a file can quickly assimilate its history and the reasons for decisions previously taken. In this exercise we have had occasions to look more closely at the manner in which CPS files in many Areas and Branches are maintained and papers marshalled. In many instances we found poor file management, notably in relation to Crown Court cases. We believe that concentrating on improved file management offers considerable potential for better case preparation and presentation whilst actually reducing the burden on lawyers and caseworkers who seem to spend a disproportionate amount of time seeking out the information which they or the court are likely to require.

1.8 Secondly, our review was based on observing nearly 200 advocates in both the magistrates' courts and the Crown Court. It was therefore very resource intensive but even so we often felt that our work would have benefitted from more substantial periods of observation. This was because the length of time for which the

prosecutor is engaged in any given proceedings is limited. This seemed more pronounced in the Crown Court. In some instances as little as a fifth of the time allocated to court observation was actually focussed on prosecution activity. We have taken this into account in framing our report. It is especially important however to how we approach the question of more routine monitoring of advocacy standards by CPS managers.

1.9 Thirdly, we have noted the relatively limited involvement in and a consequent lack of familiarity of many CPS lawyers with Crown Court work. This impairs the effectiveness of their contribution to the more serious casework. We have identified several opportunities for CPS lawyers to become more involved in Crown Court proceedings and retain a firmer control over proceedings for which they have statutory responsibility. We cannot emphasise too strongly the importance of CPS lawyers involving themselves in, and accepting responsibility for, proceedings in the Crown Court.

1.10 Finally, the magistrates' courts, where the vast majority of cases are dealt with, have for many years worked on the principle of whole session advocacy so far as the prosecution is concerned, i.e. the same prosecutor is expected to handle all cases heard in a particular courtroom during a particular session. This arrangement, if properly operated, ensures efficient and effective use of both court and prosecutorial resources. However, many courts have listing arrangements which may either result in very late allocation of cases to particular courtrooms leaving the prosecutor inadequate time for preparation or causing cases to be transferred between courtrooms during a session so a fresh prosecutor must handle the case 'on the hoof'. The Review of the Crown Prosecution Service (the Glidewell Report), published on 1 June 1998, commented on the unsatisfactory nature of these arrangements and we look at them in more detail later. It is impossible to overstate the impact of listing arrangements on the ability of prosecutors to prepare and present cases fully and effectively.

1.11 In Chapter 16 we have adopted a new procedure, one that emerged from discussions with Chief Crown Prosecutors (CCPs) and others from whom we have sought feedback about the value of our reports. When our inspections and reviews have resulted in our forming a firm view about the need for improvement in a particular area of CPS activity, we have usually incorporated what action we consider necessary into the form of a recommendation. Many reports have contained numerous recommendations but without differentiating as to the degree of priority we consider should attach to them. Moreover, sometimes we have not considered it necessary to go that far. In the past, we have usually then just made a suggestion as to what action we think might be appropriate and left the suggestion in the body of the text. Acting on advice, we have now decided to address both these points by using two categorisations: recommendations and suggestions. This ensures that both are more easily identified when our readers are looking for the kind of guidance they often contain. We have, therefore, now highlighted both recommendations and suggestions in the text and reproduced them all in two separate chapters. The essential distinction is the degree of priority attaching to them. Our suggestions can be found in Chapter 16.

1.12 Chapter 17 contains the good practice we have identified during our review and which we believe the Service or Areas would benefit from adopting. We hope CCPs and others will find this approach helpful.

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

1.14 The annexes at the end of the report contain background information which is designed to help the reader with matters of detail.

1.15 The review team comprised six inspectors,

including the Chief Inspector and the Lead Inspector. All were experienced criminal lawyers and one had extensive experience as a trainer in the prosecution field, including training in advocacy.

1.16 The Chief Inspector and the other members of the review team are grateful for the co-operation and support of all those with whom they came into contact during the review - both CPS staff and members of other criminal justice agencies. We went out of our way to ensure that everyone who was likely to be observed by our inspectors was aware of this review and the fact that they might come under our scrutiny. At a national level the Bar Council, the Criminal Bar Association and the Law Society were advised well in advance of our intention to carry out this review. The Chief Inspector is particularly grateful for the support received from representatives of the Bar for what would, until relatively recently, have been seen as a very radical step. At local level, all possible steps were taken to publicise our review to CPS staff, agents and counsel likely to appear in the courts we were scheduled to visit. Notices containing the relevant information were sent to all courts and counsel's chambers that were likely to be affected. We are grateful to court managers, justices' clerks and counsel's clerks who assisted this process.

(CHAPTER 2) METHODOLOGY

2.1 This review was carried out by a combination of observing and assessing advocates in the criminal courts (both magistrates' courts and the Crown Court), by examining case files whenever this was practicable and by interviewing CPS staff and members of other criminal justice agencies who could be expected to comment on the quality of case presentation. We looked at various themes which contributed to the advocacy process. Our findings are analysed in detail in the following chapters. A list of the themes can be found at Annex A.

2.2 Much of the evidence on which this report is based was recorded by inspectors during the course of courtroom observations. The rest was obtained by discussing a range of issues with CPS staff and with the representatives of other criminal justice agencies. The style and content of the forms and questionnaires that we used was discussed in advance with NACRO whose advice on aspects of our review connected with racial issues and the interest of ethnic minorities was much appreciated.

2.3 Resources and time would not permit the review team to observe every advocate appearing on behalf of the CPS in every court throughout England and Wales. A sample was selected which was of sufficient size and diversity to provide accurate and meaningful information. In all, we visited 43 magistrates' courts, nine youth courts and 11 Crown Courts.

2.4 The review team observed advocates in each of the magistrates' courts and the main Crown Court centres covered by 12 separate CPS offices in nine CPS Areas. The 12 offices were Basingstoke (CPS Hampshire), Bow Street/Thames and Horseferry Road (CPS London), Carmarthen, Haverford West and Newtown, (CPS Dyfed Powys), Chelmsford (CPS Essex), Gloucester (CPS Gloucestershire), Sheffield (CPS South Yorkshire), Stafford (CPS Staffordshire), Middlesborough (CPS Cleveland) and Leamington Spa (CPS Warwickshire).

2.5 The Areas covered courts of varying size and types of workload. Some of the magistrates' courts, for example, were situated in rural areas. Others were in busy urban areas and were often presided over by stipendiary

magistrates. Some of the Crown Court centres had a large number of courtrooms dealing with CPS cases, whilst others had only one or two courtrooms in use. This selection provided a representative sample of the types of courts in which CPS advocacy is undertaken.

2.6 We observed a total of 190 advocates, 106 in the magistrates' courts and 84 in the Crown Court. We were, therefore, able to observe a significant number of advocates in courts which often provided very different environments.

2.7 Of the advocates in the Crown Court, 80 were counsel and four were CPS lawyers who have rights of audience in the Crown Court. These are known within the CPS as Higher Court Advocates (HCAs).

2.8 The review was conducted whilst Parliament was considering legislation to extend substantially the rights of audience which CPS lawyers may enjoy in the Crown Court. Such rights are at present very limited and, somewhat anomalously, exercisable only by solicitors within the CPS. Our task has been confined to assessing the present necessarily limited usage of HCAs but we hope our findings will inform the development of standards for these advocates and the future policy as to their deployment.

2.9 Of those advocates observed in the magistrates' courts, 96 were CPS advocates and ten were counsel or solicitors instructed by the CPS.

2.10 In this review, we did not consider the position of those caseworkers designated to conduct certain proceedings in the magistrates' court. This was the subject of a separate report by the Inspectorate (Thematic Report 2/99) published in August 1999.

2.11 There are inherent difficulties in inspecting the quality of advocacy. It cannot be measured in terms of quantity and so any judgment is qualitative. Further, an assessment of the standards of advocacy necessarily involves an element of subjectivity.

2.12 However, in order to be consistent assessment of the advocates must be measured against fixed standards. The review team used the CPS National Standards of Advocacy (the 'Advocacy Standards'). The Advocacy Standards also form the basis for assessment of CPS advocates by their own line managers and represent the framework around which CPS advocacy training is designed.

2.13 The standards identify seven key areas of advocacy in respect of which performance is to be assessed. They are: professional ethics; planning and preparation; courtroom etiquette; rules of evidence; rules of court procedure; presentational skills and case presentation. In a proportion of cases, however, some of these categories were not relevant or could not be assessed. As an example, not every advocate was able to display the extent of their knowledge of the rules of evidence whilst being observed dealing with a remand court. Nevertheless, wherever possible, every advocate observed by the review team was assessed against each of the seven categories.

2.14 The CPS Advocacy Standards are set out in Annex B. We say more about the use of standards and other criteria for evaluating advocacy in the chapters on monitoring performance (Chapters 6 and 13).

2.15 We were mindful of the fact that the Advocacy Standards were formulated by the CPS for their own use, and that advocates outside the CPS might not be aware of their content. Nevertheless the standards are logical and fundamental to good advocacy and, where appropriate, we felt able to apply them fairly to all of the advocates observed. We were also aware of, and took into consideration, the advocacy

standards laid down by the Bar Council and the Law Society together with other relevant professional rules or guidance.

2.16 As noted at the outset one of the over-arching difficulties encountered by advocates in the effective preparation and presentation of cases was the listing practices in the magistrates' courts. We deal with this in some detail in Chapter 3. The concept of whole list advocacy is peculiar to the CPS and their agents and the movement of cases at a late stage can impact on the quality of performance.

2.17 In addition to our court observations, we interviewed staff from each of the 12 CPS offices that featured in our review. The staff involved included those providing administrative support to the prosecutors, as well as prosecutors themselves and their managers. They were seen either individually or in small groups.

2.18 In order to complete the picture, the review team was able to speak to 126 local representatives of agencies that have dealings with CPS and have knowledge and experience of their advocacy on a day-to-day basis. In each Area visited, the review team interviewed members of the judiciary, magistrates, clerks to the justices, counsel and solicitors (including both defence solicitors and solicitors who act as advocates for the CPS). A list is set out at Annex C. We are grateful to them all for their time and their help.

(CHAPTER 3) THE PREPARATION OF CASES FOR THE MAGISTRATES' COURT

3.1 Thorough preparation is essential to good case presentation. However, there is more to proper case preparation than the prosecutor reading the file in advance of the proceedings. There must be proper procedures to support and assist the prosecutor. It is the responsibility of Area managers to ensure that these procedures are in place. They include such things as the careful and timely review of cases by lawyers of appropriate experience, ensuring that all the necessary information is on file and arranging matters in such a way that prosecutors receive their files in good time before court. Fundamental to the whole process is the requirement that good quality files are received in good time from the police and that CPS requests for further information have been answered. We touch on some of these matters below.

Case allocation

General allocation

3.2 Under the Prosecution of Offences Act 1985, the CPS is required to review every case it deals with in accordance with the provisions of the Code for Crown Prosecutors (the Code). The lawyer reviewing a file must decide whether there is sufficient evidence to establish a realistic prospect of conviction and also whether it is in the public interest to prosecute. However, review is a continuous process. As a case proceeds, more information will often emerge about the alleged offence and the alleged offender. It is essential that such information is considered in conjunction with the rest of the evidence, so that proper decisions can be taken at each stage of the case.

3.3 In order that cases can be dealt with in accordance with the Code, it is essential that they are allocated to prosecutors of appropriate experience for review. We found that there was some variation, not only between Areas, but also within Areas, with regard to the allocation of cases to prosecutors. In some of the CPS offices we visited, the Prosecution Team Leaders (PTLs) allocated all the cases. Elsewhere, the PTLs allocated just the more weighty cases whilst the administrative staff allocated the rest of the files on the basis of each individual prosecutor's

current case load and the police division covered by the relevant team. In others, files were allocated according to the days when lawyers were scheduled to attend court. This latter arrangement does have advantages provided it does not result in prosecutors handling cases for which they are not sufficiently experienced. It aids continuity and reduces the time required for preparation. Where a prosecutor takes the same court on the same day of each week these benefits are enhanced.

The Allocation of Trials

3.4 We do not share the view of some that the only true advocacy is trial advocacy. The criminal trial certainly calls for the exercise of particular skills but every type of hearing is important and requires skillful presentation on the part of the prosecutor if justice is to be done to all concerned and the court placed in a position in which to make an informed decision. However, it is important for the career development of every prosecutor that they acquire experience of prosecuting in all types of court. In the Areas that we visited we found that this was not always the case. We also found that, in some Areas, the less experienced prosecutors dealt with minor trials whilst the experienced prosecutors presented busy remand courts. Moreover, in other Areas, counsel or solicitors who are instructed to prosecute on behalf of the CPS as agents, tend to appear in the trial courts. Although this may be an effective use of agents, it has the disadvantage of depriving CPS prosecutors of valuable trial advocacy experience. Some prosecutors we spoke to acknowledged this, although there was a feeling that not enough attention was given to individual preferences for trial or remand courts.

The Prosecution of Complex and Sensitive Cases

3.5 Ideally, a prosecutor should be able to prosecute the trials that he or she has reviewed. This level of file ownership has benefits for all concerned and is an efficient and effective use of resources. Unfortunately, although we did find it was encouraged in some Areas, it was not always possible to achieve. Other commitments, coupled with the complexity of court listing often intervened. Nevertheless, we wonder whether more could not be done, in liaison with the courts, to try and ensure that trials of particularly complex and sensitive cases are conducted by the lawyers who have reviewed them. **We suggest that CCPs should ensure that all CPS prosecutors get experience in prosecuting trials in the magistrates' courts, and that, in cases of complexity and sensitivity, the reviewing prosecutor conducts the trial.**

Court Coverage

3.6 We found that, on average, CPS prosecutors covered between four and six sessions a week in the magistrates' courts. A session is a half day, although travelling can significantly add to the time a lawyer spends out of the office. The majority of court work is done by the Senior Crown Prosecutors and Crown Prosecutors. PTLs also went to court but their attendance varied from Area to Area, from one session a week to three or four sessions a week. One session per week for PTLs does seem on the low side.

3.7 In the Glidewell Report, adverse comment was made of the fact that senior lawyers appeared to spend less than a third of their time on casework and advocacy. Although some CCPs and Branch Crown Prosecutors (BCPs) presented cases in court, the general perception amongst CPS staff was that senior CPS lawyers did not go into court as much as they should. Although senior Area lawyers must decide for themselves the level of court appearance that is appropriate for them, they will not want to ignore the messages in the Glidewell Report and the many advantages that will follow from their prosecuting cases themselves. In particular, apart from the signals it

gives to their staff and to other court users, regular court attendance provides managers with an excellent opportunity to monitor the standard of their Area's files and to assess for themselves the performance of their own advocates and agents. It will also allow them to fulfil some of the liaison functions that a proper exercise of their role demands. We believe that CPS managers in the Areas should spend as much time in court as is consistent with the proper discharge of their other duties.

Listing and transfer of cases between courtrooms

3.8 In the majority of the Areas that we visited, the magistrates' court staff were responsible for the preparation of the daily lists allocating cases to courtrooms. The CPS usually received the court lists the day before. In many Areas, we were told that, despite what was contained on the court lists, cases were switched from court to court at the last minute. Indeed, we observed this for ourselves. The practice of moving cases in this way can mean that prosecutors will spend time preparing cases that they will not ultimately present. Others will be obliged to handle cases that they have not had sufficient time to prepare. Since many files no longer contain case summaries, some time will usually be required to assimilate the facts of the case from what can be the voluminous case papers. The issue of court listing has been raised with some of the court centres but unhelpful listing arrangements persist in many areas and it is clear that they can have an adverse effect on the time that the prosecutor has to prepare for court and, as a result, the quality of the case presentation. In the final analysis this may have an adverse impact on the wider administration of justice. With today's emphasis on the need for a more co-ordinated approach to justice, we would like to see some courts take more account of the impact transfers can have on others and on the process as a whole. Apart from anything else, now that the CPS has been allowed to deploy, as advocates, Designated Caseworkers (DCWs) who are not legally qualified, the transfer of cases will require more care as DCWs have only limited rights of audience and cannot handle every type of case.

3.9 The Glidewell Report (Recommendations 21 and 22) concluded that greater CPS involvement in listing was necessary for the more effective and efficient conduct of work in the magistrates' courts. It recommended that the CPS should be involved in the process of listing cases which do not follow the fast track procedure. This seems eminently sensible. The fact that the CPS handles such a high proportion of the cases before the magistrates' courts and necessarily works on a "whole list" inevitably creates a complex process so that listing decisions have a proportionately greater effect on the CPS than on other prosecutors or defence practitioners. Such considerations seem to us amply to justify the sort of arrangements envisaged by the Glidewell Report at Chapter 8 paragraph 32. They could be operated in a manner which did not give rise to any advantage - whether real or perceived - on the part of the prosecution.

3.10 The Government accepted the recommendations and the main vehicle to give effect to that was intended to be a national protocol developed under the auspices of the Trials Issues Group Reducing Delays Sub-Group. That protocol was eventually promulgated in October 1999. Its first stated objective is to encourage co-operation between criminal justice agencies in the matter of list building and it is addressed "to those who can contribute to the efficiency of the listing process by means of appropriate local agreements and effective flows of information". The protocol therefore provides the sort of framework for local level agreements contemplated by Glidewell and in this sense is a step in the right direction. We would like to see

it used as a basis for progress at local level. But it is still, in significant respects, disappointing. It does not seem to us to give the clear steer towards some change of approach which Glidewell considered necessary; nor does it seem to embody or endorse the type of arrangements the Glidewell Review Team had contemplated. There is in our view a distinct risk that improvements will occur only in those areas pre-disposed to a more holistic or consultative approach; where that is not already the case, the protocol seems unlikely to have any real impact.

3.11 We recommend that CCPs enter into discussion about court listing with Justices' Chief Executives, Justices' Clerks and Chairmen of the Bench with a view to reaching listing practices which reflect the true spirit of Glidewell, Recommendations 21 and 22.

3.12 The listing problems are compounded by the fact that, in magistrates' court centres with more than one courtroom, there is an almost universal practice of transferring cases from courtroom to courtroom as the work in one court finishes. The courts perceive this practice as necessary to ensure the efficient use of court time but often appear to be unaware of the adverse effect it may have on the quality of case presentation. Although the courts say they understand that prosecutors need time to consider cases that are transferred, the reality is that prosecutors are often presenting cases that they have not had a proper opportunity even to read. The same implication for the administration of justice exists with regard to the transfer of cases in this way as they do for the transfer of trials to which we have referred in para 3.8 above.

3.13 Prosecutors told us they were not always consulted about which cases are transferred. Sometimes the court usher would take CPS files whilst an advocate was addressing the court. We regard this as being unacceptable. We would like to see the prosecutors always participating in the transfer process. In our view they should, at the very least, be given an opportunity of indicating whether or not it is appropriate for a particular case to be moved. On occasions, they may need to brief the prosecutor in the adjourning courtroom with regard to matters that may not be immediately apparent on the face of the file. There may also be the difficulties about the transfer of files to DCWs to which we referred in paragraph 3.8 earlier. **We suggest that prosecutors, as part of their court preparation, should identify those cases that could be released to other advocates without compromising the conduct of the case.**

3.14 Some magistrates told us that the courts would look sympathetically upon requests by prosecutors for time to prepare files that were transferred. The reality is that many courts expect the prosecutor to be in a position to proceed at once. Our review suggests that it is often the court's legal advisers who are least understanding of the problem facing prosecutors when cases are transferred. We saw examples of prosecutors being put under pressure to deal with cases as soon as they arrived in their court. The need to progress cases swiftly through the courts is recognised as well as the desirability of ensuring that the time of magistrates is not wasted. Nevertheless, we do not think that justice should be jeopardised in order to achieve these objectives.

3.15 We recommend that CCPs should seek an understanding with their courts that prosecutors will be consulted before cases are transferred.

File delivery to prosecutors

3.16 Many CPS administrative staff told us that they were often in a position to retrieve files and prepare the cases for court a day or more in advance of the hearing date, but that court

listing practices could delay what is commonly called "the split" until sometimes quite late in the evening. Whilst some courts are undoubtedly better than others in this respect, delays in allocating cases to specific courts could mean that some prosecutors would not know exactly which cases they would need to prepare until the afternoon beforehand at the earliest. Even where the allocation has been done in good time, prosecutors complained that they were in court so much that time available for preparation in the office was limited. The situation is exacerbated in some Areas on the account of the length of time lawyers have to spend on the road, travelling back to their offices from distant courts. All these factors reduce the time lawyers can spend on preparation in the office. As we have noted elsewhere the majority of prosecutors to whom we spoke told us that a significant amount of preparation was done at home in their own time.

3.17 Prosecutors in some Areas complained that, on occasions, they were not provided with every file that appeared on their court list. We were told that this could result from a failure by the police to submit the file in time for the hearing, or from poor case tracking in the CPS office. Whatever the cause, it could present problems. The less time that prosecutors have to prepare their cases for court, the less time they have available to remedy this situation. Our observations confirmed that it was not uncommon for missing files or new papers (in addition to overnight custody cases) to arrive at court during the course of the morning's proceedings. This limits substantially the prosecutor's ability to carry out effective preparation. **We suggest that CCPs ensure that prosecutors have sufficient time to prepare properly for court by:**

- **giving consideration to the way prosecutors' time is rostered; and**
- **examining the systems used in their offices to identify the location of files and prepare court lists.**

File submission by the police

3.18 The timeliness and quality of files submitted by the police and the failure of officers to respond to CPS requests for further information can significantly affect the ability of prosecutors to prepare files properly. This in turn may impact on the ability of the prosecutor to present all the relevant facts to the court. The submission of files at a late stage also means that there is less opportunity to review the case and may necessitate a request for an adjournment. Furthermore, the lack of important information can have other serious consequences. For example, the lack of information regarding compensation can affect prosecution applications with serious implications for victims. The lack of medical evidence may hamper the prosecution on mode of trial representations. The lack of exhibits to present to the court may deprive the prosecution of the ability to demonstrate the true seriousness of an offence. Unless the magistrates can see the photographs of personal injury or damage to property, the offensive weapon or the offending material in a range of other offences, they cannot come to a true understanding of the nature of an offence and will find it difficult to reach correct mode of trial decisions and to sentence appropriately. Such omissions are serious, although we realise that the police will not always be responsible as some information may be beyond their ability to supply. Nevertheless, file delivery and much of file quality are matters entirely within the power of the police to control. Where performance is below par, the means now exist to identify the causes and to put them right.

3.19 For some time now, CPS Area Managers and senior police officers have been monitoring the quality and timeliness of submissions of files

through Joint Performance Monitoring (JPM). The JPM figures for the period 1 April to 30 June 1999, for the Areas we visited, show that the percentage of all files submitted by the police within the agreed time guidelines varied from 75.6% to 88.2%. The national average figure for timeliness was 80.9%. The percentage of all files whose contents were fully satisfactory varied from 46.8% to 77.5%. The national average figure for this category was 61.8%. The percentage of files that met both timeliness and quality targets in the Areas we visited ranged from 40% to 65.5%. The national average was 53.4%. The existing methods of ensuring compliance with JPM need to be effectively managed in order to improve the joint performance of the police and the CPS and, ultimately, the quality of CPS case presentation. **We suggest that CCPs use existing JPM procedures and other forms of liaison to discuss with the police methods by which police performance in relation to the timeliness and quality of police files can be improved.**

Administrative support

3.20 A prosecutor's opportunity to prepare cases for court can be reduced by inadequate administrative support. This also impacts on the quality of the case presentation. A file that has been well prepared by the administrative staff who have checked to see that all outstanding work has been done makes the tasks of preparation and presentation much easier for the advocate. We found that in 80% of the cases that we observed in court, all necessary work had been done before court. However, we were told that case papers were often served late, both prior to committal and prior to the plea before venue stage of cases being heard in the magistrates' court.

3.21 In some of the courts we observed the prosecutors had administrative assistance for at least part of the morning. This made it easier for the prosecutor to make enquiries, for missing files, papers or information to be located and for the early completion of memoranda to the police. This type of assistance does improve the quality of case presentation.

File endorsement

3.22 Poor quality file endorsements will also hinder case preparation. This is something in respect of which many previous Branch inspection reports have made mention. Failure to record fully everything that has happened in court can cause problems for those lawyers and non-lawyers alike who may subsequently have to handle a file. In particular, it may result in the administrative staff being unable to take appropriate action before the next hearing date. This, in turn, can cause delay, ultimately impacting on sentence or on ancillary matters such as compensation or forfeiture. In 95.4% of those cases that we observed at court, the standard of file endorsement was satisfactory, and in 1.8% it was very good. We did, however, observe some cases where the prosecutor failed to endorse comments made by the magistrates about the progress of the case. Other endorsements were very brief.

File management

3.23 Other than in the most straightforward cases, we found that a substantial number of the files that we saw both in the magistrates' and in the Crown Court were very untidy. Although we found that this was a problem with all types of files, it was particularly apparent with summary trial and committal files. Files were usually tidy when cases started, but as they progressed and as more material was added, they lost structure and order, with different categories of papers often mixed together. This made it difficult to read the files and to locate documents quickly. CPS staff must have the same problem. Again, this poor file management increases the time required to

prepare cases and can make the presentation of cases more difficult. We did find one Area, however, which used different coloured folders and inserts into which different categories of case papers were inserted. CPS prosecutors and others clearly found this simple device helpful. We did too. It is a pity that the same measure of file discipline was not in evidence elsewhere. Given the complaints we often heard about resources we are surprised that CPS managers have not paid more attention to proper file management. Good housekeeping here requires some additional effort but should nonetheless adequately repay that initial effort by reducing wasted time.

3.24 We recommend that CCPs review the procedures used in their Area relating to file management to ensure that:

- **files are tidy and that papers are kept in proper order throughout the life of a file; and that**
- **advocates, other staff and agents are aware of the need to keep files in proper order to make for easy handling.**

3.25 We suggest CCPs consider the use of different colour folders and inserts to assist the efficient management of all files.

Preparation for court by the prosecutor

3.26 We have said earlier that thorough preparation is at the heart of good advocacy and case preparation. Inevitably, this requires time. Ideally, prosecutors would like to have the ability to prepare their cases in their office. However, we were frequently told that this was not possible and that prosecutors often prepared for court at home the night before. Generally, and perhaps understandably, review and case preparation seemed to take precedence over court preparation. Further, late finishing courts can impact on a prosecutor's ability to prepare for the next day. This is not new, but it does underline the kind of pressure under which many lawyers work. What is particularly significant, as caseworkers and administrative staff told us, is the fact that the effect of this pressure is often felt by other members of the office because certain important tasks can be overlooked or only carried out in a rush. Last minute preparation can also impact adversely on witnesses, defendants and on members of other criminal justice agencies. During the course of our court observations, we found that the length of time that prosecutors had in the office to prepare for their court ranged from over four hours (42%) to less than an hour (12%).

Punctuality

3.27 It is important that the prosecutor arrives at court in sufficient time to deal with the many things that may require attention before the court starts its business. Overnight cases may need to be reviewed, discussions may need to take place with police officers and defence lawyers, witnesses may need to be seen and last minute decisions may need to be taken on a host of issues. We found that the time that prosecutors arrived at court varied from two hours before the court started to just ten minutes. The CPS instructions on arrival time at court are quite clear. Prosecutors dealing with remand courts should be at court one hour before the court sits. In those Areas where the prosecutors were at court early, we found that the defence lawyers were appreciative of that fact. Our impression was that, especially in the busy courts, the prosecutors needed plenty of time to prepare for the day's business and, where they had the time, looked more confident and relaxed.

3.28 We recommend that prosecutors ensure that they arrive at court in time to deal with whatever preparatory business they can reasonably anticipate, depending on the nature of their court.

The desirability of giving full explanations to the court

3.29 It is most important that courts are given as full an explanation as possible regarding the progress of a case. This is particularly important if the prosecutor is having to apply for an adjournment because the case is not ready to proceed. Magistrates expect such an explanation and also expect to be told what steps the prosecution has taken to progress the case. We found that the quality of such explanation varied from court to court. We saw one example of an application for an adjournment, because committal papers were not served, where the magistrate had to press the prosecutor for reasons for the delay. This can antagonise the court unnecessarily, making them less sympathetic to the prosecutor's application. Magistrates told us that there were occasions on which they would have liked more to be said by prosecutors by way of explanation for prosecution decisions. Such occasions might be when charges are withdrawn or reduced or the CPS decides to proceed on only one of a number of charges. We did see several instances of this for ourselves.

3.30 We recommend that prosecutors should ensure that courts are given the fullest possible explanations on issues that affect the progress of the case.

3.31 We found that there was considerable variation in the quality of preparation for court. In some Areas we were told that, overall, the prosecutors were generally well prepared for court although there was the occasional exception. In other Areas, the preparation was said to be variable, with some prosecutors being good, some poor. We were also told that CPS prosecutors tended to be better prepared than agents. The data we obtained from our observations in court, however, suggests that this was not always the case.

(CHAPTER 4) THE PREPARATION OF CASES FOR THE MAGISTRATES' COURT

The overall standard

4.1 Despite the difficulties with court preparation that we have identified in Chapter 3, we were pleased to find that the large majority of the 96 CPS advocates we observed in court performed satisfactorily or better. The table below shows our assessment of the advocates: only five of the 96 failed to reach the required standard. Annex D contains an explanation of the box markings used in this and all other tables found in the body of the report and Annexes E to I.

OVERALL ASSESSMENT OF CPS LAWYERS - MAGISTRATES' COURTS (including Youth courts)

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
1. Professional ethics	0	0%	0	0%	86	100%	0	0%	0	0%	3
2. Planning and Preparation	0	0%	9	9.4%	84	87.5%	3	3.1%	0	0%	2.94
3. Courtroom etiquette	0	0%	1	1.1%	93	97.9%	1	1.1%	0	0%	3
4. Rules of evidence	0	0%	0	0%	30	100%	0	0%	0	0%	3
5. Rules of court procedure	0	0%	1	1.1%	89	98.9%	0	0%	0	0%	2.99
6. Presentational Skills	0	0%	8	8.3%	85	88.5%	3	3.1%	0	0%	2.95
7. Case presentation	0	0%	8	9.8%	68	82.9%	6	7.3%	0	0%	2.98
Overall Assessment	0	0%	5	5.2%	86	89.6%	5	5.2%	0	0%	3

Note: *These assessments are based on many hours of courtroom observation. Nevertheless, time would not permit the more lengthy period of observation that might have persuaded us to place a very small number of advocates either in "Box 1" or "Box 5".*

4.2 We found that the CPS prosecutors were generally regarded as professional and competent advocates by representatives of other criminal justice agencies. The standard of prosecution advocacy was said, by some, to have improved since the inception of the CPS in 1986. The extent to which our own findings corresponded with what we were told by others in the criminal justice agencies makes us confident that our overall assessment is both reliable and a true reflection of the position nationally.

4.3 This review was concerned with advocacy and case presentation. We chose the title deliberately because there is more to conducting a case than speaking in court. Nevertheless, advocacy itself is probably the most crucial individual element.

4.4 Although the court will be concerned primarily with the substance of what it is told by the prosecutor, the effect of what is said can be influenced by the manner, style and appearance of the advocate. Books on advocacy all stress the importance of presentational skills from smartness of appearance, through such things as professionalism and fairness to fluency, eye contact and clarity of speech.

4.5 What the advice amounts to is the need for effective communication with the court, whether that be the magistrate, the jury or the judge. We bore all these matters in mind during the course of our review.

4.6 We found that the most impressive advocates demonstrated that they possessed all these qualities to a high degree. Above all, they displayed an air of authority, of quiet, assured confidence, of control, of being in command of the proceedings. Some of this confidence will have come from their knowledge of the law and procedure, some from their experience and from the familiarity with their surroundings. Some of it, perhaps a good deal, undoubtedly came from the detailed knowledge they had of their cases, demonstrating clear evidence of thorough preparation. It must be said that we did not encounter many who impressed us to this extent, even at the Crown Court, but there were some both there and in the magistrates' court.

4.7 The overwhelming majority of the other advocates that we saw were perfectly competent. Some possessed one or more of the characteristics mentioned above to a significant degree but were let down, overall, because of the odd weakness. Some of the more common weaknesses included speaking too fast, slavish adherence to the file with little eye contact with the bench, lack of fluency, hesitation, verbal or physical mannerisms (which can be surprisingly distracting) and the failure to make themselves entirely clear or to give a structure to what they wanted to say. It is instructive that the very small number of advocates (five), whose performance we regarded as being unsatisfactory, lacked several of the essential skills of the good advocate and presented their cases badly as well.

4.8 We made full allowance for the different types of courts in which CPS advocates appeared from the busy urban court presided over by a stipendiary or lay magistrate, to the small rural court with a short list of mainly traffic cases. We recognise that, to some extent, advocates will need to tailor their approach to suit the requirements of their tribunal and the practices or tradition of their court. Thus, a greater degree of brevity, speed and even formality will be required in some courts than in others.

4.9 Much of an advocate's style is personal to that advocate. Nevertheless, some techniques can be learned or improved and some mannerisms can be eradicated. Throughout our review, we were encouraged to learn from many of the prosecutors to whom we spoke said that they would welcome more monitoring of their performance with feedback being given of both

their good and bad points. Many, including some experienced advocates, would also welcome advocacy training. We refer later to the need for monitoring and training and would urge individual Areas and the Service as a whole not to ignore the expressed needs of their staff. The newly published CPS Advocacy Skills Package is an excellent start and all managers will want to see what use they can make of it. We deal more fully with the question of training in Chapter 7.

The presentation of facts

4.10 One of the key skills a competent prosecutor needs is the ability to present the facts of a case fully, fairly and clearly to the court. This ensures that all relevant matters are brought to the court's attention and enables the magistrates to make a proper determination.

4.11 We observed and assessed the prosecutor's presentation of the facts in 410 cases in the magistrates' courts. Our assessment of their presentation can be found in Annex E. In 396 cases (96.6%), we considered that the court was given an accurate and fair representation of the facts. We were impressed by the prosecutor's recognition, in cases where the defendant was unrepresented, of the need to bring to the court's attention matters which were of benefit to the defendant. This demonstrates a good understanding and appreciation of professional ethics. One advocate was seen to go out of his way to ensure that an elderly unrepresented defendant in a tragic case was at his ease before the hearing and was equipped to handle the proceedings for himself.

4.12 However, some magistrates and legal advisers (formerly known, in most courts, as court clerks) told us that prosecutors do not always address the court fully on all the relevant circumstances. In particular, they said that they often have to probe for more information about: any disparity in ages between the defendant and the victim in assault cases; the time of day, whether any occupants were present and the nature of commercial premises in burglary cases. Whilst we considered that a large proportion of the cases we saw were presented appropriately by the prosecutor, we did observe some examples of insufficient detail being provided. Whether that detail was on the file it was not always possible to tell. Although it would be wrong to give the impression that this is a serious problem, it should hardly need saying that prosecutors must address the court fully on all relevant matters. What these are should become obvious from reading the file in preparation for court. The experienced and competent prosecutor will be able to tell immediately what information the court is likely to require and will try to ensure that anything that is missing is supplied by the police in time for the hearing.

Inappropriate reference to sentencing issues

4.13 Whilst it is a general principle of criminal procedure that the prosecutor should not address the court on the appropriate sentence, that is not to say the prosecutor's role ends once the facts have been opened and ancillary applications made. Indeed, the prosecutor needs to remain alert in order to correct any errors of fact or invoke the recently enacted provisions about derogatory mitigation put forward by the defence, and to answer any queries the court may have. Nevertheless, the parameters of the prosecutor's role are fairly well defined. Although we were concerned to observe two cases, in different Areas, where the prosecutor had crossed the line and had made inappropriate comments, we considered that the overwhelming majority of prosecutors clearly understood their role.

Plea Before Venue

4.14 Our observations of plea before venue (PBV) hearings, however, presented a somewhat

different picture. Where the defendant indicated a guilty plea to an either way offence, pursuant to section 17A (6), Magistrates' Courts Act 1980, we found that prosecutors did not have as clear an understanding of their role. Different prosecutors appear to have adopted different practices, even within the same Area. Some, for example, confined their comments to an outline of the facts. Others drew the court's attention explicitly to the aggravating (and mitigating) features in the case. Further prosecutors addressed the court specifically on the mode of trial and sentencing guidelines in seeking to influence the court's decision on whether to commit the defendant to the Crown Court for sentence.

4.15 When the PBV procedure was introduced, the CPS issued guidance to prosecutors on their role. Amongst other factors, prosecutors were advised to:

- have in mind the mode of trial guidelines, which may assist the court in deciding whether its sentencing powers are sufficient; and
- ensure that the court is aware of all material facts, including those which may assist the defence, in order that the courts may arrive at an informed decision as to whether a committal for sentence is appropriate.

4.16 In May 1998, certain aspects of the procedure were considered by the Divisional Court in the cases of *R v Warley Magistrates' Court ex parte DPP, R v Staines Magistrates' Court ex parte DPP and R v North East Suffolk Magistrates' Court ex parte DPP* (commonly referred to as the *Warley Justices case*). Subsequently, further guidance was issued to prosecutors by the CPS. Prosecutors were told that they should be prepared to assist the court by drawing attention to:

- the mode of trial guidelines where these may assist the court to decide on the venue for sentence;
- the character of the accused if this is believed to have a bearing on the venue; and
- the recommended approach to identifying the venue for a 'Newton' hearing where appropriate.

4.17 Usually, prosecutors will be able to deal at the outset with all relevant issues by drawing the court's attention to the key features of the case. In a small number of cases, the prosecutor may consider it necessary to refer specifically to the mode of trial or sentencing guidelines. The Warley Justices case makes it clear that it is not inappropriate for the prosecutor to make such representations. Our observations suggest that many prosecutors are either not aware of the case law and the CPS guidance or that they are not following it.

4.18 We recommend that CCPs ensure that all prosecutors are aware of the CPS guidance on the plea before venue procedure and that the guidance is followed consistently in their Area. If necessary, CCPs should consult their local Justices' Clerks to ensure that there is agreement on the interpretation of the law.

Mode of trial representations

4.19 We were told by magistrates that prosecutors generally make appropriate representations in relation to mode of trial. Our observations confirmed this. Again, however, there is some inconsistency over the amount of information provided, and this can result in the court having to probe for further details.

4.20 We also found that there was some inconsistency over reference to the mode of trial guidelines. Some prosecutors referred to them as a matter of course in all relevant cases. Others made little or no reference to the guidelines, but told us that they have the relevant considerations in mind when making their representations. The mode of

trial guidelines were first published in October 1990 and were revised in 1995. It is reasonable to assume that magistrates and legal advisers are familiar with them. Nevertheless, there may be cases where it would assist the court, and the prosecutor's representations, if specific reference to the guidelines were made. **We suggest that prosecutors should bear in mind when considering how to present mode of trial representations the need on occasion to refer specifically to the mode of trial guidelines.**

Bail applications

4.21 The term 'bail application' is widely used throughout the criminal justice system where the prosecution opposes bail and invites the court to remand the defendant in custody (or, in the case of certain youth offenders, to local authority accommodation). In fact, it is a 'custody application' because, in most cases, the defendant will have a prima facie right to bail pursuant to section 4, Bail Act 1976. To avoid confusion we have retained the conventional phrase, and refer to such applications by the prosecution as 'bail applications'.

4.22 The prosecutor should make it clear to the court and defence that bail is being opposed. Thereafter, the application by the prosecutor should follow a logical structure. An appropriate framework in most cases is likely to be:

- to indicate the statutory grounds upon which bail is opposed;
- then to address the court on the relevant facts, commenting where appropriate on the strength of the evidence;
- then, where appropriate, to produce and comment on the defendant's previous convictions and antecedent history;
- and finally to relate the circumstances and other matters back to the grounds of objection.

4.23 We were told that bail applications were usually well prepared and well presented by prosecutors. We saw several bail applications during our court observations and we were generally impressed by the standard. In some cases, however, the prosecutor did not follow a clear structure and consequently these applications were not presented as fluently, as logically or as clearly as they might have been. **We suggest that prosecutors should give thought to the structure of their bail applications when preparing their cases for court.**

Trial Presentation

4.24 A number of lawyers, within the CPS and outside, commented that trial presentation is the real test of an advocate's skills. Whilst we consider that the basic skills of advocacy are common to all types of case, it is certainly true that trials present a different, and sometimes greater, challenge to the advocate. It is often in the trial situation that the advocate's planning, preparation and ability are most apparent. Annex F contains our assessment of the applications of those aspects to the trials that we observed in court.

4.25 We were told that good prosecutors tend to demonstrate their skills in all types of case and similarly that the weaknesses of other prosecutors are apparent in the range of cases they present. However, a small but significant number of external consultees told us that they regard trial advocacy as a weakness amongst CPS prosecutors in general. Some prosecutors themselves expressed concerns about the lack of training in trial advocacy and their relative inexperience in contested cases compared with other types of case. They told us that, often, agents are instructed to prosecute trials and CPS lawyers are left to deal with remand courts. This practice is understandable but it may not be entirely desirable. We deal elsewhere in this report with the training of advocates and the use of agents.

Opening speeches

4.26 The effective use of the opening speech is very important in trial advocacy. The prosecutor has the opportunity to explain the case to the court, identify the issues and address any points of law.

4.27 We were told by magistrates that prosecutors usually make opening speeches in appropriate cases and that they deal well with the relevant issues. We saw 13 trials where the prosecutor made an opening speech. In 11 cases, the opening accurately reflected the available evidence and dealt with any points of law and possible defences. However, we found evidence of a pre-prepared outline for the opening in fewer than half of the trials we observed. **We suggest that, except in the most straightforward of cases, prosecutors should prepare a note of the points to be covered in their opening speech, to ensure that all relevant matters are addressed and are drawn to the attention of the magistrates at the outset of the trial.**

Examination in chief

4.28 We observed 14 trials where the prosecution called witnesses to give evidence. In 13 cases, the advocate dealt competently or better with the examination of prosecution witnesses. Indeed, in two cases, we considered that the prosecutor handled examination-in-chief particularly well.

4.29 We were told of, and observed, a practice in some courts for police witnesses to be allowed to read at length from their notebooks without the prosecutor prompting their evidence by asking questions. This practice should be discouraged. All witnesses, including police officers, should be taken through their evidence by appropriate questioning from the prosecutor. This enables the prosecutor to bring out the relevant information, exclude the irrelevant, control the pace of the evidence and demonstrate their command of the prosecution case.

4.30 Problems can arise sometimes in examination-in-chief when a witness is unable to understand the questions asked of them. This can occur, for example, where the witness is a young person, or where he or she has difficulty understanding the language used by the advocate. These difficulties can often be overcome by the prosecutor speaking to the witness before the trial starts, to explain the court procedure. This gives the prosecutor and the witness the opportunity to become more familiar with each other's use of language. We saw one case at court where problems arose because the prosecutor failed to match his choice of words to those the witness had used himself, and framed questions using legal expressions. This was inappropriate and, on one occasion, required an intervention from the bench. **We suggest that, where a trial involves young witnesses, or those with limited understanding, the prosecutor should, wherever possible, speak to the witnesses before the trial starts. The advocate should also ensure that they use language appropriate to a witness when taking them through their evidence in chief.**

Cross-examination

4.31 We were told that some prosecutors have a tendency to cross-examine by simply putting the prosecution case to the defendant or defence witness. This will rarely be sufficient to test the defence case. In the trials we observed, cross-examination adduced helpful evidence and dealt with adverse evidence in six of the nine relevant cases.

4.32 We saw several examples of robust and effective cross-examination. However, we saw other cases where the cross-examination was unstructured and lacked focus. In one case, the prosecutor resorted to mocking the defendant and the answers he had given in his evidence in chief. Apart from being inappropriate,

this approach is usually counter-productive and is unlikely to impress the court.

4.33 Prosecutors need to remain sufficiently flexible to deal with issues which arise unexpectedly during the course of the trial. Nevertheless, some preparation for cross-examination will usually be appropriate. We saw evidence of a pre-prepared outline for cross-examination in only three out of 11 relevant cases. **We suggest that prosecutors should take greater steps to prepare the structure of their cross-examination.**

Dealing with submissions

4.34 Although we were told that some prosecutors fail to deal fully with defence submissions, we did not see any evidence of this during our observations at court. In all of the trials we observed, the prosecutor dealt competently with all defence points, submissions and applications. Effective planning and preparation, and a well structured opening note, will usually provide the prosecutor with an appropriate framework to deal with submissions of no case to answer and other representations made by the defence.

Ancillary applications

4.35 Prosecutors should consider whether to make ancillary applications in all cases. Such applications may relate to compensation, costs, forfeiture and destruction, exclusion and other issues relevant to the particular case.

4.36 Where an application is appropriate, the prosecutor should ensure that it is made as part of the prosecution case. We observed a tendency in some courts to assume that the court would make relevant orders without a specific application. This is inappropriate. For example, if the prosecutor wants the court to consider ordering costs against a convicted defendant, then a formal, quantified application should be made.

4.37 We found that there were some glaring inconsistencies between prosecutors over the amount of costs to be sought from convicted defendants. At one court centre, for example, we observed one prosecutor applying for £30 costs against defendants who pleaded guilty to summary offences at the first hearing. In the next courtroom, another prosecutor was applying for £40 costs in similar circumstances. There was also some evidence of variations as between Areas. The CPS has recently issued revised guidance to Areas on how to calculate the amount of costs for which it would be appropriate to apply. CCPs should take steps to ensure that this guidance is implemented by prosecutors in such a way as to achieve the greatest possible measure of consistency. Liaison with local courts with regard to these amendments will be essential.

4.38 We recommend that CCPs should ensure that all prosecutors, including agents and designated caseworkers, are aware of and implement the revised guidance on costs applications on a consistent basis.

(CHAPTER 5) DEALING WITH AGGRAVATED AND SENSITIVE CASES

General

5.1 Every prosecution is a serious matter. Nevertheless, certain categories of case contain features which make it necessary for them to be handled with special care. Those concerned with the criminal process would probably agree that such cases might include allegations of child abuse, rape, domestic violence and racial motivation. The prosecution of youth offenders requires a special combination of firmness and sensitivity as does the handling of cases involving death on the road. However, it must be recognised that the particular circumstances of almost any case can cause it to require sensitive

handling. Overall, we found that the CPS handled aggravated and sensitive cases well. We found that sufficiently experienced prosecutors dealt with these types of cases. All the Areas we visited, for example, had prosecutors who had been specially trained to deal with cases involving youth defendants and cases involving allegations of child abuse.

Youth cases

5.2 We found that the handling of cases involving youth defendants was satisfactory in all the Areas that we visited. We were told that most cases involving youth defendants were reviewed by prosecutors with specific training. The Service expects all prosecutors, whether youth specialists or not, to prosecute in youth courts, although it is preferable where a youth offender remand court sits regularly, for such a court to be conducted by a specialist. We were told that, occasionally, agents instructed to prosecute on behalf of the CPS were used in youth courts. CCPs will be aware of CPS policy on this point: youth offender remand courts should not be conducted by agents save in the most exceptional circumstances. **We suggest that CCPs should ensure that CPS policy on the prosecution of youth offenders is followed when allocating prosecutors to youth offender courts**

Domestic violence cases

5.3 In April 1993, the CPS issued a public statement of its policy in relation to cases involving allegations of offences of domestic violence. This was updated in August 1995 when the CPS published the "CPS Policy for Prosecuting Cases of Domestic Violence". If the victim does wish to withdraw the complaint, the CPS prosecutor should ask the police to obtain a further statement from the victim setting out in detail the reasons for wishing to do so and whether or not the original statement is true. If necessary, the court should be asked for an adjournment so that a statement can be taken and the case reconsidered. If the victim confirms that she or he wishes to withdraw, the prosecution should consider whether it is possible to proceed without the victim, if it would be in the public interest to do so. If it is not possible to proceed without the victim, the prosecution should consider whether the victim should be compelled to attend court or the case discontinued. Another option would be to seek to have the victim's statement admitted under the provisions of section 23, Criminal Justice Act 1988. This enables a witness' statement to be read to the court if the witness cannot attend because he or she is outside the United Kingdom, is mentally or physically unfit or is too frightened to attend court. Discontinuance of the proceedings on evidential grounds should only happen when all options have been considered and found inappropriate.

5.4 In most of the Areas that we visited, the CPS handled these types of cases with sensitivity. However, what we were told by some magistrates indicated that the CPS policy was sometimes not being complied with in cases where the victims wished to withdraw their evidence.

5.5 Between November 1997 and March 1998, the Inspectorate conducted a thematic review on the handling of cases involving domestic violence and our report was published in May 1998 (Thematic Report: 2/98). In that report, although we found that generally, these cases were treated with special care and that the quality of decision making was good, we were concerned that CPS policy was not being complied with in a significant number of cases in which the victim wished to withdraw. This was the subject of a number of specific recommendations. What we were told suggests that not all Areas have given proper effect to those recommendations.

5.6 We suggest that CCPs remind prosecutors of the CPS guidance on the handling of domestic violence cases. In considering

how best to ensure effective and continuing implementation, CCPs will want to consider the guidance issued by CPS Headquarters and the Inspectorate's thematic report.

Child witnesses

5.7 This category covers cases where children are victims or witnesses. We were told that CPS prosecutors deal with these cases sensitively and that the CPS handles child witnesses well. Nothing we saw would contradict this. All the prosecutors to whom we spoke were extremely sensitive to the needs of young witnesses. We saw one prosecutor at court explaining the trial process to a child witness and showing the child and her mother the courtroom.

Racially motivated cases

5.8 In the Areas we visited, we were told that the CPS generally handled well cases involving allegations of racially motivated offences. The prosecutors were said to prefer appropriate charges, to make appropriate representations as to venue and to bring aggravating features to the court's attention. In most of the Areas that we visited, we were told that they handled very few cases of racially motivated crime. In fact, we observed only four cases in court that involved some allegation of a racial motive. This was less than 1% of the total number of cases that we saw but it would appear to reflect the national figure. In the year ending March 1999, statistics record the prosecution of a total of 1,368 cases involving allegations of racially motivated offences out of a total caseload of over 1.4 million (a further 235 cases were discontinued). In all four of the cases we observed the racial motivation had been identified as an aggravating feature by the reviewing lawyer and in three of the cases, the racial motivation was brought to the attention of the court. The fourth case was a formal committal and, therefore, no reference to the racial element was required. Although our evidence on the handling of this important category of case was limited, it is consistent with the findings of a recently published report of a study by Dr Bonny Mhlanga from the Centre for Criminology and Criminal Justice at the University of Hull ("Race and Crown Prosecution Service Decisions", published by the Stationery Office, London, October 1999). Dr Mhlanga looked at the decisions taken by the CPS in September and October 1996 in cases involving five and a half thousand defendants under the age of 22 of different ethnic origins. He found no evidence of discrimination on the part of CPS decision-makers. Indeed, he stated that "Asian, black and other minority defendants often received more favourable outcomes from CPS lawyers' decisions than their white counterparts". However, he recommended that the reasons for the different outcomes should be the subject of further research.

Witness care

5.9 An important part of trial presentation is dealing with witnesses. Civilian witnesses are not usually familiar with court procedures and often need both information and reassurance. The prosecutor should take the time to talk to witnesses before the trial to explain the procedures and how they can expect the case to unfold. We found some variation in the way witnesses were dealt with, ranging from a case where the prosecutor spoke to witnesses, showed them the layout of the courtroom and explained what would happen, to a case where the magistrates had to suggest to the prosecutor that the witness should be asked whether a new trial date was convenient. **We suggest that CCPs should remind prosecutors that, whenever possible, they should make themselves known to prosecution witnesses before the start of a trial and that they should treat them with understanding and sensitivity throughout the proceedings.** This will involve

ensuring that they understand the processes whilst avoiding any conduct which might be misconstrued as coaching. We have commented, at paragraph 3.21, that in some courts prosecutors have administrative assistance. It may be possible, in appropriate cases, for the administrative staff at court to deal with some queries and concerns raised by witnesses.

(CHAPTER 6) THE MONITORING OF CPS ADVOCATES

6.1 There is a link between monitoring, training and performance. Effective monitoring reinforces good performance and identifies training needs where performance can be improved.

6.2 The performance of CPS advocates should be monitored by their line managers against the Advocacy Standards. We found that, in some Areas, regular monitoring was being carried out and advocates were given feedback on their performance. There is not a consistent picture, however, across the country.

6.3 Monitoring may also include obtaining the views of others at court (for example, magistrates, their legal advisers and defence solicitors). We were told that valuable feedback is often provided in such circumstances. There is great merit in receiving, and seeking, the views of others outside the CPS. However, this should be seen as an additional source of information and not as a substitute for structured monitoring by line managers.

6.4 We are firmly of the view that regular and effective monitoring is essential. Without such monitoring, it is impossible for managers to be certain of the standard of advocacy in their teams. They can neither praise the good advocate nor counsel the weak. Furthermore, monitoring is a requirement of the performance appraisal scheme. During our review we encountered widespread support for monitoring and for the feedback that should flow from it. Many advocates appeared to welcome the feedback we were able to give during the course of our court visits. Some told us that they had never had their advocacy appraised before.

6.5 Some PTLs told us that they found the process of observing their colleagues in court difficult and embarrassing. Others commented that monitoring was very resource intensive and that it was often difficult to find the time to carry it out alongside their many other duties. We have some sympathy for both these concerns. We recognise the difficulties in line managers setting aside substantial tranches of time to carry out monitoring, not least because of our own experience: despite the resources we had available to us during this review, we were surprised that we were only able to observe 106 advocates in the magistrates' courts.

6.6 Nevertheless, we consider that the concerns expressed by some PTLs can be overcome by increasing the level of awareness of the National Standards of Advocacy amongst all lawyers, and by Area and Branch management teams considering at a strategic level how to implement a coherent and structured monitoring programme. Consideration should also be given, at a local level, to providing guidance and training to line managers in how to give feedback.

6.7 As we have already commented, at paragraph 3.6, regular court coverage by senior lawyers provides an opportunity to carry out monitoring. Similarly, line managers can make use of the opportunities presented by being at court on other business, such as court user group meetings, to spend time observing lawyers in their team prosecuting in court.

6.8 As indicated earlier in this report, in order to evaluate the performance of the prosecuting

advocates that we saw, we adopted the criteria contained in the CPS' National Standards of Advocacy. We used these standards to supplement our own detailed checklist which we have used to assess advocacy since the Inspectorate was formed. In the light of this review, however, we have refined our criteria. We would be happy to make them available to assist CPS managers whose responsibilities include the monitoring of advocates. They would, of course, be equally relevant to the monitoring of advocates in the higher courts and we return to the topic of monitoring again when we discuss the performance of counsel in the Crown Court in Chapter 13.

6.9 We recommend that CCPs should ensure that there is regular and effective monitoring of the performance of CPS advocates in court, and that immediate feedback is given to the advocate concerned. There should be no need to wait until the time arrives for completion of the annual appraisal report.

(CHAPTER 7) THE TRAINING OF CPS ADVOCATES

7.1 In this section, we examine the identification of training needs of, and the delivery of training to, lawyers in the CPS. We considered the position of designated caseworkers (also known as lay presenters) in our thematic review published in August 1999. (Thematic Report: 2/99).

7.2 The need to provide structured training to lawyers joining the CPS, and to those prosecutors with limited experience, was addressed in May 1996 by the introduction of the Advocacy Training Programme. This programme was designed to be implemented locally, with experienced prosecutors acting as mentors and guiding those following the programme.

7.3 During our Area visits, we spoke with a number of prosecutors who had followed the programme. All of them commented favourably on its content. They told us that it provided them with helpful and practical information and exercises to support the advocacy they were undertaking in court. This view was shared by the PTLs and mentors whom we consulted.

7.4 We also received very favourable comments from advocates who had followed the CPS Higher Court Advocacy training course. We consider the training and deployment of Higher Court Advocates (HCAs) in Chapter 11.

7.5 Prosecutors in all Areas commented on the absence of magistrates' court advocacy training for more experienced prosecutors. Some considered that they, personally, did not require any further training. However, the large majority of prosecutors told us that they would welcome advanced, or refresher, training in certain aspects of their court work, particularly in relation to trial advocacy. Many told us that they had had little or no advocacy training and would welcome more feedback on their performance.

7.6 We are aware that a new Advocacy Skills Package has recently been circulated to Areas. The package has been designed for any prosecutor with a training need in advocacy, not just for new entrants. It contains self-study modules and case studies which form the basis of practical exercises. Modules have been added to the former Advocacy Training Programme to cover subjects which may arise for more experienced advocates.

7.7 Effective training is dependent on the quality of the training material and the proper application of that material by trainers and those undertaking the programme. We have examined the Advocacy Skills Package and were impressed by the range and quality of the material. We would like to see the package used as the basis for a structured

training programme. **We suggest that CCPs encourage lawyers and their managers to use the Advocacy Skills Package if they do not already do so. Its flexibility means that there are few who would be unlikely to benefit.** The greatest benefit will come from a combination of self-study, discussion and participation in mock trials and other practical exercises.

(CHAPTER 8) USE OF AGENTS

The standard of agents

8.1 The majority of prosecutors who appear in the magistrates' courts to prosecute on behalf of the CPS are CPS lawyers. There are occasions when the CPS will instruct either members of the Bar or local defence solicitors to prosecute on its behalf: these are referred to as "CPS agents". There was a wide variety of views among magistrates and defence lawyers about the quality of CPS agents in the Areas that we visited. In some, we were told that the standard of the CPS agents was good and that solicitor agents tended to be better than junior members of the Bar. Some court users preferred CPS prosecutors to agents. We observed ten CPS agents in court. The overall performances were satisfactory or better. Annex G contains our assessment of those performances. Annex H contains our assessment of their presentation of the facts in those cases that we observed in court.

Selection of agents

8.2 The CPS is instructing fewer agents than in the past. Generally, each Area has a small pool of experienced agents. These can be either counsel or solicitors. Some Areas have a tendency to rely on the junior Bar whilst others use mainly solicitors. We found that there was a perception among some representatives of the criminal justice agencies that agents were used for the more difficult or unpleasant cases. This was also a view expressed to us by more than one agent. This may be the case, but it is important to distinguish between an agent who is instructed as an additional resource as opposed to counsel who is instructed for their specialist knowledge. We do not necessarily regard it as an inappropriate use of resources for local managers to choose to instruct an agent to prosecute a lengthy trial when a CPS lawyer might be better employed on review work in the office or handling a busy remand court, but a balance should be struck which gives CPS prosecutors the opportunity to develop their trial skills.

Training of agents

8.3 There is no national training programme for CPS agents. None of the Areas that we visited had any formal training for them and the provision of instructions for agents varied. In most Areas, some form of instructions were provided but we were told that guidance tended to be limited and on an ad hoc basis. In three Areas we found that packages in the form of a manual with information about procedures and legal issues was supplied. Other Areas may wish to consider producing something similar for new agents. Another Area has invited prospective counsel agents to visit its offices and has found that this contributed to the good level of service they receive from that set. **We suggest that CCPs ensure that all agents, especially new agents, have clear but concise instructions covering the range of issues likely to arise in the cases in which they are routinely instructed.**

8.4 In another Area, at the time of our visit, the CCP was hoping to arrange a meeting of all the agents to discuss matters of mutual interest. Other CCPs

might wish to consider a similar course of action. The need for greater liaison with agents and for feedback from them was apparent during our review. Resources devoted to this would be a sound investment.

Monitoring of agents

8.5 As with CPS prosecutors, there was very little formal monitoring of CPS agents. There appeared to be some informal monitoring by CPS prosecutors when they were at court and there is a certain amount of reliance on feedback from court staff. However, it is just as important to ensure that the agents' performance in court is of an acceptable standard as it is the CPS prosecutors'. This can only be achieved by structured and effective monitoring with feedback given as soon as practicable.

8.6 We recommend that CCPs ensure that there is structured and effective monitoring of the performance of CPS agents at court, with suitable arrangements for feedback to be given as soon as possible thereafter.

Communications with agents

General

8.7 We found that the time agents received their files for court varied from three days to the evening before. Late delivery of files will, inevitably, affect the time available for case preparation. Although we can understand why sending files to agents at an early stage could cause problems if CPS staff have to deal with last minute requests from the defence or the late receipt of papers from the police, we can see no reason why in trials, especially those of some complexity, copies of the papers could not be sent in advance. We noted that this did happen in some Areas. **We suggest that CCPs ensure that papers or copies of papers in complex or difficult trials, are sent to agents sufficiently in advance of the hearing to facilitate effective case preparation.**

8.8 We found that, although in some Areas, agents' files were checked before they were sent out to ensure that all outstanding work had been done, in other Areas they were not. We have commented on this in relation to CPS prosecutors (see paragraph 3.22).

8.9 We recommend that CCPs ensure that there are systems in place to check all necessary work has been done on agents' files before they are sent out.

Referral of decisions

8.10 We were told that other court users can find the fact that CPS agents cannot take decisions in cases frustrating. Generally, however, there will be a CPS representative in the court building who can be consulted. Alternatively, a telephone call can be made to the CPS office. Good quality review endorsements dealing with such matters as acceptability of pleas and other issues might assist in reducing the need for consultation. The majority of Branch inspection reports published by the Inspectorate in 1998-99 contained recommendations with regard to the need for better file endorsements of the review process (The Annual Report of the Chief Inspector of the CPS Inspectorate 1998-99, paragraph 6.5). We are disappointed to find that this recommendation has had to be made so often and that there is little evidence of any improvement.

(CHAPTER 9) SELECTION OF COUNSEL

General

9.1 It is the policy of the CPS to instruct counsel of appropriate experience and ability for the conduct

of each case in the Crown Court. Everywhere except London and the South East, the Areas are generally limited to counsel from chambers within their circuits although choice is also dictated by geography. Outside London and the South East, the CPS lists junior counsel according to four categories:

- Category 1 is the basic category of counsel who do not qualify for inclusion in Category 2.
- Category 2 is counsel with at least two years experience of dealing with criminal cases, who have demonstrated their capability of undertaking the mainstream of prosecution work.
- Category 3 is counsel who would be considered suitable to undertake and advise on all cases of gravity and/or complexity, other than those referred to in category 4.
- Category 4 is reserved for counsel of lengthy experience and proven competency in advising and conducting cases of exceptional gravity and/or complexity.

9.2 The appearance of counsel's name under a particular category does not confine him or her to work of that kind. It is an indication of the highest category of work for which he or she is considered normally to be suitable. We found that some members of the Bar were concerned about the method of grading and re-grading counsel. The CPS has an Advocacy Selection Committee for each circuit, chaired by a CCP, which deals with the grading and re-grading of counsel. Information to aid this process is supplied by Areas. It will usually comprise feedback from those CPS staff with first hand experience of briefing and monitoring the individual members of counsel concerned.

9.3 We recommend that CCPs satisfy themselves that the procedures within their Area that are in place for feeding into the advocates selection system are appropriate, that they operate openly and fairly and that there is the necessary level of liaison between the Areas within that circuit so that all relevant information is collected.

9.4 We will touch on this further when we consider the monitoring of Crown Court advocates (see Chapter 13).

9.5 In CPS London and the other south-eastern Areas, counsel instructed to prosecute come from chambers known as "preferred sets", mainly in the Temple. These are sets of chambers who, by agreement, provide service to a particular CPS Area. An Area must send 80% of its work to chambers who are its designated "preferred sets". The remaining 20% can be sent to other chambers of an Area's own choosing. In conjunction with the preferred sets arrangement, the CPS in London and in the south-east operate a "General List" of junior counsel from which counsel will be selected to prosecute all types of criminal work, other than cases of exceptional gravity and/or complexity. There is a restricted "Special List" of counsel of lengthy experience and proven ability who advise on and conduct cases that fall into this latter category.

9.6 Concern was expressed to us by some members of the judiciary and the Bar with regard to what was perceived as partiality shown towards certain sets of chambers by the local CPS Branch and the exclusion of others. This exercise did not involve us in gathering the sort of detailed statistical evidence which would have enabled us to take a view on allocations by particular Branches. However, we would like to think that, at a local level, avenues exist for any such concerns to be communicated and discussed openly and frankly between the CPS and the Bar so that perceived grievances are not allowed to fester. We did find that, in some of the Areas that we visited, the number of briefs sent to counsel was monitored and the figures collated each month. This enabled those Areas to deal with any anxiety there may be

about the distribution of work. **We suggest that senior Area managers review their arrangements for selecting counsel from the relevant list and for the recording of data regarding the distribution of briefs.** The arrangements must be sufficiently robust to enable the Area to respond factually to concerns about the fairness of distribution of work. The arrangements will, however, also need to comply with data protection legislation as regards the detail of what information is made available about provision of work to individuals and groups of individuals.

9.7 Some of the views expressed to us during our discussion with individuals engaged in the criminal justice system make it appropriate for us to comment more generally on the present arrangements for the briefing of counsel by the CPS. We understand the concerns that some chambers have that they may not receive the same amount of work from the CPS as other chambers or that they feel they have a right to expect. Such concerns have been expressed most forcibly in London and the South-East where there is not enough prosecution work to satisfy every member of the Bar who would like to prosecute.

9.8 We also understand why the Bar retains the circuit structure as the basis upon which they wish counsel to be briefed. However, some of the feedback we received from CPS managers suggested that, in some Areas at least, this could be unduly restrictive and caused us to ask whether these arrangements best serve the interests of the CPS. The Defence solicitors are subject to no such restrictions as to whom they may brief - although the legal aid authorities will expect it to be cost-effective.

9.9 Opinions also varied in London and the South-East about the value of the preferred sets agreement. In one CPS Area there was no concern at all. Both the Area and their preferred sets were happy with existing procedures. Elsewhere, in the only other two Areas in the South-East that we visited, opinion was less relaxed. We are aware that the current arrangements are under review.

9.10 We have also been informed that discussions are taking place at national level that might lead to the relaxation of the strict application of the circuit structure. What is being contemplated is an arrangement that would allow a CPS Branch or Area, whose office or Crown Court centre was on the periphery of a circuit, to brief counsel from an adjacent circuit where that circuit might more easily service a particular court. We regard this as being a sensible development. The arrangement whereby prosecutors have confined themselves to selecting counsel from a particular circuit list according to venue, is rooted in history but is of doubtful relevance in the 21st Century where maximum flexibility is the norm in relation to the provision of services. There does not appear to be any reason why the CPS should continue to bind itself rigidly to such a system if something different would suit its interests better. The main justification for the CPS to continue to deal with such issues on a circuit basis is the need for an interface with the Bar at something less than national level for day-to-day liaison and as a forum for discussion, as well as on issues relating to quality and standards of service (including the arrangements for the maintenance of panels and the selection of advocates). The CPS is at present in discussion at national level with the Bar through the Bar/CPS Services Group to develop such arrangements, and in particular the establishment of a circuit-based system of Joint Advocate Selection Committees in which the Bar will participate and share ownership and responsibility for ensuring that an effective advocacy service can be provided to each of the 42 Areas. This approach could complement our recommendation at paragraph 13.11 in relation to monitoring and the pooling of data. Only time will tell whether the adjustment that is being contemplated will be sufficient to meet the needs of the CPS. The overriding principle must be that

the CPS enjoys the flexibility in the distribution of its work that it needs in order to secure the best possible service for the public (on whose behalf it spent £78.5 million in 1998-99 on counsel's fees in the Crown Court) and proper value for money.

9.11 As far as the preferred sets arrangement is concerned, we are firmly of the view that for the CPS in London and the South-East, the same principles apply. The preferred sets scheme is intended to achieve a fair spread of work whilst ensuring that the CPS work is not spread across such a large number of chambers that it becomes impossible to secure a proper level of service. However, it seems clear that the preferred sets arrangements has not yet found the right balance: the pool of advocates of the right quality from the present limited number of chambers may be insufficient and further work needs to be done to improve the standard of representation. We understand that this will be undertaken in consultation with key representatives of the London Bar. We welcome this and hope there will be swift progress. However, we see no justification for a system, as some seem to suggest, the purpose of which would be to oblige the CPS to give work to everyone who wants it, irrespective of whether they were the most able. Certainly, all chambers must have the opportunity of bidding for the work that the CPS has available to distribute. Where there is insufficient work to satisfy the demands of the Bar, chambers will have to compete with each other by offering the best service.

9.12 The routine selection of counsel is primarily a matter for CPS caseworkers but we found that the seniority of staff responsible varied across the Areas that we visited. In most Areas, the senior caseworkers have the main responsibility for choosing counsel. In some Areas, they would discuss their choice with the caseworkers who regularly attended the Crown Court. We found that there was a general view amongst the caseworkers that they should be more widely consulted because of their day-to-day experience of counsel in the Crown Court. However, there is a perception that, because of the reduction of caseworker coverage of courtrooms in the Crown Court, the CPS has lost some of its awareness of the quality of counsel. This could clearly have an adverse effect on the CPS' ability to select appropriate counsel.

9.13 In the serious and high profile cases, we found that PTLs, and sometimes the CCPs, were consulted about the selection of counsel. However, although the lawyers had some limited input into the selection process, the general view was that they do not have sufficient experience of counsel or the Crown Court to be able to make a constructive contribution. If this is true, then it is very disappointing. We are of the view that lawyers should have a part to play in the selection of counsel in their own cases, particularly the more serious ones, but we recognise that there may be problems because of their lack of appropriate Crown Court experience. The encouragement lawyers are now being given to concentrate more on Crown Court work should assist in this regard. We regard it as essential for the proper conduct of all prosecutions in the Crown Court that every CPS lawyer should acquire and retain the professional skills and knowledge to enable them, routinely, to handle effectively all categories of case in the higher court. We consider further the desirability of an increased CPS lawyer presence in the Crown Court in Chapter 10.

9.14 We recommend that CCPs take steps to ensure that all CPS lawyers are equipped to play a bigger role in the selection of counsel for the Crown Court.

Ethnic origin of prosecuting counsel

9.15 It hardly needs saying that CPS briefs should be distributed fairly and on merit to counsel who meet the CPS criteria. Ethnic minority counsel should expect to receive the same proportion of

work as their white colleagues of equal competence. 6% of all the prosecutors we saw in all courts were from the ethnic minorities. The six Counsel we saw prosecuting as agents in the magistrates' courts, were all white. In the Crown Court, we saw one black and two Asian counsel out of a total of 80. In other words, 3.75% of counsel were from ethnic minorities. It is doubtful if any conclusions can be drawn from this figure as the data is not available which would permit comparison of our figure with the proportion of ethnic minority counsel in practice at the Bar who hold themselves available for prosecuting work.

Returned briefs

9.16 When counsel is instructed to prosecute a case on behalf of the CPS, the expectation is that he or she will retain that brief and conduct the case. However, circumstances may arise when that is not possible and the case has to be given to another counsel to handle one or more of the hearings. These are generally referred to as "returned briefs". The key issues to consider when dealing with returned briefs are the timing of the return, the nature of the particular case and the suitability of the replacement counsel.

9.17 In order to minimise returns and to ensure that the CPS was receiving the best possible service from the Bar, in October 1996 the CPS and the Bar agreed a Service Standard on Return Briefs (CPS/Bar Standard 3). The Standard was based on the fundamental principle that the advocate initially instructed should conduct the case. For the purpose of setting standards aimed at reducing the level of returns, cases are divided into three categories:

- Category A which comprises cases in which fees are assessed ex post facto; pre-marked cases in which a Grade 4 or Special List counsel is instructed; cases in which Leading Counsel has been instructed; cases which fall within classes 1 and 2 of the Lord Chief Justice's Practice Direction classifying business in the Crown Court.

- Category B which comprises cases where the brief has been pre-marked and which do not come within category A, and standard fee cases where a fixed trial date has been allocated.

- Category C which comprises standard fees cases which have not been given a fixed trial date.

9.18 We were told that the return of briefs was very common, especially in standard fee cases. We were also told of more serious cases being returned at a late stage. Indeed, we saw an example of this for ourselves, a case involving allegations of child abuse being returned very shortly before the start of the trial. On other occasions briefs were returned as late as two days before the trial started or even the night before. Further, some of these cases were being returned to counsel of less experience, something which clearly jeopardised the quality of case presentation. Overall, we found that only 50.9% of the plea and directions hearings (PDHs) and only 50% of the trials that we observed in court were conducted by counsel originally instructed. We regard the latter in particular as being quite unsatisfactory.

9.19 We share the concern that the CPS itself has had for many years that the practice of returning briefs can be disruptive, can hinder good preparation and can impact adversely on the standard of case presentation. The systems for dealing with returns varies from Area to Area. In some, the CPS has a good relationship with chambers and briefs are returned to counsel of appropriate experience. In other Areas, this does not happen. CCPs will not want cases to be returned but, where a return is inevitable, CCPs will want to be satisfied that systems are in place to deal with them.

9.20 We recommend that CCPs should be robust in insisting that briefs are returned at the earliest opportunity, that they are returned to another counsel of suitable experience and that there are proper systems in place to ensure that this is happening.

Monitoring

9.21 When Bar Standard 3 was introduced, there was no system in place to monitor the performance of chambers in relation to returned briefs. In January 1998, a joint CPS/Bar working group recommended that chambers produce a monthly Chambers Performance Report (CPR) to each individual Branch that delivered work to chambers. Heads of chambers, senior clerks and the BCP were to meet on a regular basis to discuss the performance and level of service produced by chambers based on the information in the CPRs. This initiative is very much a partnership between the CPS and the local Bar.

9.22 There are CPR forms for trials, appeals against conviction and interlocutory matters. For each of the three categories of cases identified in Bar Standard 3, the form requires information on how many briefs were received, how many were undertaken within chambers by the counsel originally instructed, how many were returned within chambers and how many were returned outside chambers. The reasons for the returns have to be given. The form also requires details of when the brief was returned - less than one day before the trial, one to two days before the trial and over two days before the trial. PDH returns do not have to be included unless the CPS specifies that an identified counsel attends the hearing. Returns for cases in categories A and B are unacceptable except in certain restricted circumstances.

9.23 Although returned briefs are being monitored, we found that the standard of monitoring varied. Some Areas found that the information submitted by chambers was satisfactory but other Areas found that the forms were either not submitted or were submitted erratically. Some Areas carried out additional monitoring because they felt they could not rely on the information chambers submitted.

9.24 As we have already mentioned, this is essentially something that should be resolved locally between the Area/Branch and chambers. The Areas have the facility to ensure that there is effective monitoring of returned briefs and they must use it.

9.25 We recommend that the CCPs and the Area Business Managers (ABMs) should insist that chambers instructed by them comply with the scheme for monitoring returned briefs by providing full and reliable data. CCPs have a duty to obtain from the Bar a proper service commensurate with the substantial sums of public money expended.

Suitability of replacements

9.26 Some members of the judiciary expressed a degree of concern about the quality of prosecuting counsel who were instructed on returned briefs. They saw a direct link between a high return rate and poor case presentation. This concern was not necessarily shared by the Areas. There is no doubt that late returns can affect the standard of case presentation and we have already commented upon this (see paragraph 9.17). Where a return becomes inevitable (and the CPS recognises that this will sometimes occur), it is the responsibility of chambers to ensure that the replacement counsel is of the same status as the original counsel. Caseworkers told us that they would only accept returns on this basis and they are right to insist that the Bar honours its agreement.

(CHAPTER10) THE QUALITY AND TIMELINESS OF INSTRUCTIONS TO COUNSEL

The quality of instructions

10.1 In December 1994, the CPS introduced the Crown Court Case Preparation Package (the CCCPP). This produces instructions to counsel containing standard paragraphs, with freetext options which allow the lawyer or caseworker preparing the instructions to insert information relevant to the particular case. In particular, there are sections which enable counsel to be told of the issues in the case and the views of the CPS on the acceptability of possible pleas.

10.2 The CCCPP provides a useful framework for instructions. It incorporates a check-list which should ensure that all relevant matters (such as ancillary applications regarding forfeiture, or information about witnesses) are brought to counsel's attention. However, it is widely regarded as being too formulaic. We were told by counsel and by CPS lawyers and caseworkers that important information is sometimes lost amongst the large number of standard paragraphs.

10.3 A new version of the CCCPP is being used in some Areas. This reduces the number of standard paragraphs and places more emphasis on the drafting of freetext to address relevant issues. This is generally regarded as being an improvement on the previous package. Some lawyers told us that they do not consider the CCCPP meets their needs in complex and serious cases. They prefer to draft the instructions in their entirety themselves. One PTL told us that she had been complimented by leading counsel on the quality of instructions drafted in this manner.

10.4 It is important that instructions to counsel are complete and logically set out. Subject to those key features being present, we are more concerned with the content of the instructions than the method of production. The substance of what counsel is told is more important than the form. In our view, the instructions to counsel should contain:

- the reviewing lawyer's analysis of the evidence;
- an explanation as to why the counts on the indictment have been selected;
- guidance on the issues and areas of difficulty;
- where necessary, a request that counsel should focus on any outstanding issues;
- in appropriate cases, comments on the acceptability of pleas.

The amount of detail required will depend upon the circumstances and complexity of the case. In a straightforward case of theft from a shop, it is likely that the relevant information could be conveyed in a few sentences. A complex fraud would, of course, require a much greater depth of analysis and comment.

10.5 We were told that, too often, the instructions to counsel do not contain the necessary information or depth of analysis. This is consistent with our own findings in Branch inspections: we commented on the need to improve the quality of instructions in 23 of the 29 Branch inspection reports published in 1998-99 (The Annual Report of the Chief Inspector of the CPS Inspectorate 1998-99, paragraph 7.4). In most of the Areas that we visited, we found no structured approach to monitoring the quality of instructions.

10.6 The view was expressed in some Areas, by a minority of lawyers and caseworkers, that counsel should read the papers and form their own views about the case. Consequently, providing detailed instructions was unnecessary. We disagree strongly with this view. The reviewing lawyer has

a continuing responsibility for the case. Its presentation in the Crown Court should be seen as a partnership between prosecuting counsel and the CPS, with each bringing their own assessment and expertise to the case.

10.7 We recommend that CCPs should ensure that their lawyers and caseworkers understand the importance of providing good quality instructions to counsel and that their Area has systems in place to enable line managers to satisfy themselves about the quality of those instructions.

The indictment

10.8 Although, in cases of complexity, counsel is sometimes asked to draft the indictment, the large majority of indictments are drafted by the CPS. The indictment demonstrates the reviewing lawyer's conclusions as to the basis on which the prosecution presents its case. As such, it is properly regarded as being part of the instructions to counsel.

10.9 In five of the Areas we visited, judges and counsel were critical of the general quality of indictments. They made reference to the large number of amendments required on account of careless drafting errors. They commented (perhaps more significantly) on the fact that, in some cases, there appears to be, as one counsel put it, 'no appreciation of the tactical side of drafting indictments'. One judge told us that his perception was that too much use was made of precedents from internal manuals, without observing the guidance in Archbold. We have commented on several occasions in this report on the benefits of increased exposure of CPS lawyers to the Crown Court. Apart from anything else, it should contribute to greater tactical awareness on the part of lawyers.

10.10 During our earlier Branch inspections, we considered the quality of indictments and reported on the performance of individual Branches. Our cumulative finding, from all the Branch inspections in 1998-99, showed that the indictment was amended in nearly 25% of the cases that we examined (The Annual Report of the Chief Inspector of the CPS Inspectorate 1998-99, paragraph 7.5). In our court observations during this review, we found that the indictment was amended in 21.3% of cases.

10.11 Indictments are amended for a variety of reasons. On the one hand, the amendment may be necessary to accommodate guilty pleas to alternative offences, or because counsel takes a different view, for tactical reasons, as to how the case should be prosecuted. On the other hand, there may be errors in the indictment which need to be corrected. These may be minor cosmetic mistakes such as grammatical or spelling errors. Alternatively, there may be more substantial errors. These might include instances where the wording of the particulars is wrong or the reviewing lawyer has included a count which is not supported by the evidence. There may, in addition, be occasions where the order of counts, or defendants (and hence the order in which the defendants give evidence at trial), is incorrect. This may be due to carelessness, but it can also be indicative of the lack of tactical awareness which we have referred to at paragraph 10.9.

10.12 We found that practices for monitoring the quality of indictments varied between the Areas. In some, a senior caseworker or a lawyer checked all indictments before they were lodged. Other Areas had no formal system. In view of our findings, and the concerns raised by the judiciary and counsel, we consider that CCPs need to ensure that the quality of indictments is monitored and that remedial action is taken, where necessary, to improve the overall standard.

10.13 We recommend that CCPs should ensure that:

- **indictments are checked before they are**

lodged, by the reviewing lawyer wherever possible;

- **systems are in place to monitor the number of amendments at court and the reasons for those amendments; and**
- **appropriate action is taken to reduce the number of avoidable amendments.**

The timeliness of instructions

10.14 In August 1994, national agreements were reached between the CPS and the Bar relating to the timeliness of instructions and the work counsel would undertake on receipt of those instructions (CPS/Bar Standards 1 and 2). Under these agreements, instructions should be sent to counsel within 14 days of committal in standard fee cases, and within 21 days in the more complex cases where the brief fee is pre-marked. Counsel should carry out their preliminary assessment of the case within seven days of receipt and should return to the CPS a form, enclosed with the brief, outlining their assessment.

10.15 CPS/Bar Standards 1 and 2 were introduced to ensure that counsel received, and considered, the case well in advance of the PDH. Previously, the timeliness of instructions by the CPS was inconsistent. In some Areas, briefs were often delivered late and, on occasions, were delivered to counsel at court on the morning of the case's first listing. This was clearly unacceptable. Counsel should receive good quality instructions in sufficient time for full preparation for the PDH to be carried out and for liaison to take place with the CPS over outstanding issues.

10.16 The CPS/Bar Standards have resulted in improvements. It is now very rare for briefs to be delivered at court. The CPS has set a national target for the year 1999-2000 of 80% compliance with the timeliness requirements of the agreement. This is a significant step up from the 68% achieved in the previous twelve months. Some Areas are now delivering timely instructions in over 90% of cases. However, concerns were still raised by counsel in a number of Areas and there is substantial further improvement needed in some parts of the country. In the six months ending on 30 September 1999, the proportion of cases where individual Areas complied with the timeliness target ranged from 36.7% to 94%. The national average was 68.2%. We were concerned to note that 36 of the 42 Areas failed to meet their Area target.

10.17 We recognise that there were significant changes in the structure of the CPS, and of the personnel in senior management positions, during this period. Nevertheless, it is important that the service provided by the CPS consistently continues to show the improvements anticipated when the CPS/Bar Standards were introduced.

10.18 We recommend that CCPs should ensure that the target date for brief delivery is clearly understood by all relevant staff, and that action-dating systems are in place to prompt and monitor compliance.

Making decisions at court

10.19 The provision of good quality and timely instructions to counsel will enable issues which are likely to arise to be considered in advance by the reviewing lawyer and counsel. This will, in turn, reduce the number of cases where urgent, last minute discussion needs to take place at court.

10.20 It is unrealistic to expect that every issue in every case can be anticipated. There will always be cases where an issue arises unexpectedly at court. Most Areas are increasing the attendance of CPS lawyers at Crown Court. Often, we were told, lawyers are being rostered to attend PDHs or bail applications. The presence of a CPS lawyer at court is welcomed by the judiciary and by counsel, because it gives counsel the

opportunity to discuss problem cases at court with someone who is able to make decisions, thereby saving court time.

10.21 Prosecutors in a number of Areas told us that they would like to have more opportunity to attend court to observe trials in cases where they had prepared the committal papers. This would enable them to discuss aspects of the case's preparation with prosecuting counsel and to see how counsel presents the case. Balancing the need to provide prosecutors for magistrates' court sessions with increasing their presence in the Crown Court is a difficult task for Area managers. We hope that the increased use of designated caseworkers, and greater CPS input into listing arrangements, will enable resources to be balanced in such a way as to allow further Crown Court presence.

10.22 Where an issue arises at court when there is no CPS lawyer present, the practice in all Areas is for counsel or the caseworker at court to telephone the CPS office to speak to the reviewing lawyer. Often, the lawyer is unavailable because he or she is prosecuting in the magistrates' court. We were told of instances in some Areas where the magistrates' court had been contacted and the lawyer called out of court to deal with the query. Whilst it is desirable for the reviewing lawyer to be contacted where this is feasible, we consider that interrupting the business of a magistrates' court is unnecessary, save in the most exceptional of cases. Generally, another lawyer in the team, or the BCP or CCP, can be asked to make the decision. This is not ideal because that person often has no knowledge of the case. We have commented above that providing counsel with complete and timely instructions will reduce the number of cases where this occurs, but it will not eliminate the need for contingency plans. **We suggest that CCPs review existing arrangements and ensure that appropriate mechanisms are in place to deal with queries from court when such issues arise.**

(CHAPTER 11) PRESENTATION OF CASES

General

11.1 During the course of our inspection, we were given the impression that the standard of case presentation in the Crown Court was variable. We saw 84 advocates in the Crown Court, including four CPS lawyers with rights of audience in the Crown Court (Higher Court Advocates). We found that the overall standard of case presentation was satisfactory. Some was very good but the performance of a small number was disappointingly poor. Seven Counsel came into this latter category.

OVERALL ASSESSMENT OF COUNSEL - CROWN COURT

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
1. Professional ethics	0	0%	1	1.7%	57	98.3%	0	0%	0	0%	2.98
2. Planning and Preparation	0	0%	4	5%	69	86.3%	7	8.8%	0	0%	3.04
3. Courtroom etiquette	0	0%	0	0%	80	100%	0	0%	0	0%	3
4. Rules of evidence	0	0%	0	0%	30	100%	0	0%	0	0%	3
5. Rules of court procedure	0	0%	0	0%	77	100%	0	0%	0	0%	3
6. Presentational Skills	0	0%	6	7.4%	71	87.7%	4	4.9%	0	0%	2.98
7. Case presentation	0	0%	4	5.2%	64	83.1%	9	11.7%	0	0%	3.06
Overall Assessment	0	0%	4	5%	69	86.3%	7	8.75%	0	0%	3.04

File management

11.2 At paragraph 3.20 we expressed our concern about the number of files we saw which were untidy. The comments we made about the management of files in the magistrates' courts, apply equally to files in the Crown Court. By the time a case reaches the Crown Court, it will have gone through more stages and accumulated more paper, so the problems caused by the lack of order will be greater. Consequently, the need for structure to the files is more acute. Counsel is less familiar with CPS paperwork than CPS lawyers and caseworkers frequently have to cope with files with which they are not familiar. The problems are exacerbated when caseworkers have to cover more than one courtroom. The recommendation we make at paragraph 3.23 and the good practice commended at paragraph 3.24 are of particular relevance with regard to the handling of Crown Court files.

Plea and directions hearings

General

11.3 The PDHs enable the court, the prosecution and the defence to assess the progress a case is making towards trial and to deal with any matters which need to be clarified or upon which the judge's ruling is required. The prosecution should be in a position to deal with any amendments to the indictment and should have the availability of prosecution witnesses to hand. The prosecution should have dealt with primary disclosure before the PDH and should be in a position to deal with any outstanding disclosure matters. The prosecution and defence should have completed the judge's questionnaire and the prosecution should be ready to deal with any other issues raised by the judge or the defence.

PLEA AND DIRECTION HEARINGS

Assessment Category	Yes	No	%
Were there any changes to the indictment?	13	48	21.3%
Was the prosecution ready with witness availability?	35	3	92.1%
Had the prosecution dealt with disclosure prior to the PDH?	46	4	92%
Was the prosecution able to deal with any outstanding disclosure?	2	2	50%
Was the prosecution able to deal with any additional disclosure?	6	0	100%
Was counsel in court the counsel originally instructed?	28	27	50.9%
Was the judge's questionnaire completed prior to the hearing of the case?	51	2	96.2%
Was the prosecution able to deal adequately and appropriately with issues raised by the defence or the judge?	35	9	79.5%
Was the trial date fixed in advance of the PDH?	0	52	0%

Continuity

11.4 We have already commented upon the fact that counsel should receive good quality instructions in sufficient time for full preparation for the PDH to be carried out and for liaison to take place with the CPS over outstanding issues (see paragraph 10.15). Counsel should also have been instructed in sufficient time for advice to be provided in accordance with Bar Standard 2. This is a service standard agreed between the Bar and the CPS in relation to pre trial preparation by counsel. It is also anticipated that counsel instructed will attend the PDH. We were told that the frequency with which counsel instructed attended the PDH was variable. We found that in the PDHs we saw at court, counsel originally instructed attended in 50.9%.

11.5 We do not necessarily perceive the fact that counsel instructed does not always attend the PDH as a reason for serious concern. In some of the Areas we visited, the HCAs presented cases at the PDH stage. We also found that Areas would block book one counsel for a PDH court if they wanted that counsel to deal with a particular case. This makes counsel's attendance an economic proposition. Problems are likely to occur if the advocate who does attend the PDH is not properly prepared and is unable to deal with any issues that arise. We found that in 35 out of the 44 PDH cases that we saw in court, the prosecution was able to deal adequately and satisfactorily with issues raised by the judge or the defence. Most of the judges to whom we spoke expressed themselves to be happy with the level of preparedness of prosecuting advocates at PDHs.

11.6 There is a view that PDHs are ineffective. One of the main reasons is said to be that if trial counsel does not attend the PDH, the replacement will often be reluctant to take decisions that might tie trial counsel's hands. Effective liaison between trial and PDH counsel will usually overcome this difficulty. We consider that CCPs need to ensure that the advocates who appear at PDHs are of sufficient experience to deal with the cases and have been properly instructed.

11.7 We recommend that CCPs should ensure that advocates who appear at PDHs are of sufficient seniority and ability to fulfil their obligations to the court and are properly instructed.

11.8 In one of the Areas that we visited, we found that the Crown Court had a special procedure whereby, within 14 days of the committal or transfer of a particularly difficult or complex case, the prosecution or defence could ask to have it listed in a special PDH court. A date would be arranged that was convenient to all parties so that trial counsel always attended. We were told that this system worked extremely well and that the local CPS played a part in ensuring that the system operated satisfactorily. We intend to draw it to the attention of the Chief Executive of the Court Service so that consideration may be given to adopting it more widely.

Preparation generally

11.9 We were told that the prosecution normally completed the judge's questionnaire satisfactorily by the time of the PDH. In 96.2% of the cases that we saw at court, the questionnaire had been completed prior to the hearing.

11.10 Somewhat surprisingly, in view of what some judges told us, in most of the Areas that we visited, we found that the general view among CPS staff was that counsel was often under-prepared for PDHs. We were told that amendments to the indictment were common at PDHs although sometimes amendments were not made until the day of the trial. In 20% of the cases that we saw, there was evidence of under-preparation. This finding re-enforces the need for the CPS to ensure that advocates who attend PDHs are properly instructed.

Witness availability

11.11 We found that in most of the Areas we visited, the prosecution was ready with the availability of prosecution witnesses at PDH. Indeed, in some Areas, the CPS submitted it before the PDH. If there were problems, we were told that it tended to be because the defence had not indicated which prosecution witnesses they required to give evidence. In 92.1% of the PDHs we saw at court, the prosecution was able to provide the lists of witnesses' availability.

Disclosure

11.12 This is currently the subject of another thematic review. Consequently, although we did take note of the prosecution's compliance with its disclosure responsibilities in the cases we observed, it was not the main focus of our attention and we decided it would be best to leave measured comment to our colleagues whose report is likely to be published shortly.

Trials

11.13 In the Areas that we visited we were told that the quality of the performance of prosecution counsel in the preparation and presentation of cases was variable. In some Areas, it was clear that prosecution counsel were well regarded and of a high standard but in others some dissatisfaction was expressed. We found that some members of the judiciary felt that prosecution counsel were often less experienced than the defence and that, in some cases, ineffectual prosecution might have influenced the outcome of the case. This was not a view, however, that was universally held. Unfortunately, we were only able to see a small number of trials in the Crown Court; the few that we saw, however, were competently handled. In the main, counsel handled satisfactorily the different aspects of trial advocacy in which we were particularly interested. These were prosecuting counsel's opening speech to the jury, the examination, cross-examination and re-examination of witnesses and defendants and counsel's closing speech. We also saw counsel handle a variety of legal issues and ancillary matters and respond to defence submissions.

Disparity in fees

11.14 We make reference in paragraph 12.4 to a view held by some members of the judiciary and the Bar that, by virtue of the CPS fee structure, in rape cases, the prosecution is often represented by counsel of less ability than the counsel instructed by the defence. This was also a view we received about prosecution counsel in other cases although, again, it was not universally held. It is clear that there is a real concern in some quarters about the potential impact of the discrepancies in fees. Our work did not, however, involve any scrutiny of the level of counsel fees.

Observation/monitoring

11.15 We found that there was very little monitoring of trials. As we have already commented (at paragraph 10.21), lawyers would welcome the opportunity to attend the Crown Court to observe some of their more serious and sensitive cases, but this is not always possible to arrange. Their presence would enable them to contribute to the monitoring process.

Advocacy in other cases

11.16 There are a number of matters other than trials and PDHs, where an advocate has to be instructed to appear on behalf of the prosecution. These would include committals for sentence and appeals against conviction and sentence. Annex I contains our assessment of counsel's presentation of the facts generally in the cases that we observed in court.

11.17 In the Areas we visited we found that the impressions varied about the standard of case presentation in these types of case. We were told

that there was a tendency for the CPS to use junior members of the Bar who can be unaware of such matters as the sentencing powers of the court. We saw one example of this in court. **It is essential even in modest cases that advocates who appear in such cases are fully and properly instructed and have readily available all the information and assistance which the court may reasonably require. We suggest that CCPs take steps to ensure that this occurs**.

Higher Court Advocates

11.18 A certain number of solicitors employed by the CPS have been granted limited rights of audience in the Crown Court by the Law Society once they have completed a demanding CPS training programme. At present, the HCAs appear in the Crown Court to deal with PDHs, committals for sentence, appeals against conviction and sentence and bail applications.

11.19 In all the Areas we visited we found that the HCAs were very well received by other court users. We were told that they were well prepared and that their case presentation was entirely satisfactory. In some instances, judges were quite fulsome in their praise. We saw four HCAs in court and were able to confirm the impression others had given. Some members of the judiciary told us of delays caused when counsel had to contact a CPS lawyer in order to take instructions on a particular matter, for example, the acceptability of pleas. Sometimes, cases had to be adjourned for consultation to take place. The presence of the HCA at the Crown Court enabled counsel to discuss the case with a senior lawyer without causing undue delay to the proceedings. We were told that the judges found this of great assistance.

11.20 The HCAs that we spoke to found their training very demanding but rewarding and said that the courses were well run. We take the view that there would be benefit to other CPS lawyers if a similar type of course was made available to prosecutors in the magistrates' courts. The Advocacy Skills Package goes some way towards meeting this aim.

Crown Court bail applications

11.21 Although some bail applications in the Crown Court are conducted by CPS prosecutors, we were told that the majority are done by counsel. We were told, however, that when CPS prosecutors did cover bail applications, they were well prepared and the cases were well presented. There was a view that they were often better than counsel. Those we saw were certainly extremely competent. **We suggest that CCPs consider increasing the proportion of Crown Court bail applications handled by CPS lawyers, in the wider context of providing them with more opportunities to attend the Crown Court.**

(CHAPTER 12) DEALING WITH AGGRAVATED AND SENSITIVE CASES IN THE CROWN COURT

12.1 We have commented on the importance of handling certain categories of case with special care in chapter 5 of this report. Such cases, we found, were handled by prosecutors of suitable experience. This should ensure that all relevant evidential and public interest factors are fully considered during the review of the case. We also found that when aggravated and sensitive cases are dealt with in the Crown Court, CPS lawyers and caseworkers and prosecuting counsel demonstrated high levels of commitment and professionalism.

12.2 The selection of counsel is especially important in these cases. All of the Areas we visited use a list of counsel with particular experience and expertise in cases involving, for example, sexual

offences or child abuse, to guide caseworkers in their selection. We were told that in sensitive cases, more so than in other types of case, there is often discussion between the caseworker and the lawyer about the selection of counsel.

12.3 External consultees in three Areas told us that the handling of child abuse cases, including the selection of appropriate counsel, was a strong aspect of CPS performance. In two other Areas, however, some concern was expressed by the judiciary and the Bar that counsel of appropriate experience is not always instructed by the prosecution. **We suggest that CCPs endeavour to ensure that only counsel of appropriate experience are instructed in cases of this nature.**

12.4 We also received a range of views with regard to the selection of counsel in rape cases. The handling, by the CPS, of prosecutions for rape, is a matter that has been the subject of comment in recent years. Of particular concern to this review was the view, said to be commonly held by members of the judiciary and the Bar that, by virtue of the CPS fee structure, the prosecution is often represented by counsel of less ability than the counsel instructed by the defence. We did not see any cases of rape during our visits to court and so we are unable to comment on this view from our own observations. Nevertheless, the view expressed above was not one that was universally held by those to whom we spoke. It was certainly expressed by some judges, some counsel and indeed, by other observers of the court process, but they were in the minority. It was more common for us to be told that the prosecution was as competently represented as was the defence in this category of case. Nevertheless, the concern still exists in some quarters and more research would appear to be needed.

12.5 In actual fact, since this review was concluded our attention has been drawn to a recent CPS exercise in which Crown Court resident judges were asked for their views on the ability of counsel who appeared before them. Three quarters of the judges who replied (37 out of 49) were of the opinion that prosecuting counsel was of less ability than defence counsel. Many of the judges who said there was a disparity felt that it was particularly noticeable in cases of rape and other serious sexual offences. Such a substantial expression of concern about the quality of prosecuting counsel deserves attention. It goes without saying that if this level of disparity is correct and if it is allowed to persist, the consequences will be serious for the CPS and for the wider interests of justice. Although we did not ourselves see any rape trials, the Service and others would be well advised to take note of the mounting body of opinion about the quality of prosecution representation in this sensitive and important category of case.

12.6 In cases involving racially aggravated offences, it is important that counsel receives specific instructions on the evidence and background relating to the defendant's racial motivation. This enables counsel to address the court fully on the relevant facts. We were pleased to find that instructions we saw properly drew counsel's attention to the relevant racially aggravating features, and that in general these features were brought to the court's attention.

12.7 The Crime and Disorder Act 1998 introduced specific offences relating to racially aggravated assaults, criminal damage, public disorder and harassment. With one exception, the new offences can be tried either in the magistrates' court or the Crown Court. One CCP told us that prosecutors have found difficulties in drafting indictments in these cases. We saw an example of this for ourselves. The CCP concerned suggested that lawyers should consider checking their drafts against the guidance set out in Archbold or Blackstone. This is sensible advice.

12.8 The CPS has recently obtained counsel's opinion on the extent to which racially aggravated features should be particularised in the indictment. All staff have been made aware of this advice. **We suggest that CCPs take steps to ensure that prosecutors and caseworkers consider fully all of the guidance issued by the CPS and contained in practitioners' texts when dealing with these cases.**

(CHAPTER 13) THE MONITORING OF ADVOCATES IN THE CROWN COURT

13.1 We examined in Chapter 6 the link between monitoring, training and performance of CPS advocates in the magistrates' courts. So far as monitoring counsel in the Crown Court is concerned, the most significant link is between monitoring and selection. As we have discussed elsewhere in this report, Areas need to have in place systems to ensure that appropriate counsel are selected for each case. These systems should be supported by effective monitoring, thereby enabling the Area to be satisfied as to the performance of the counsel they have selected. Areas would do well to liaise with regard to these systems since, with the break up of the old CPS structure, the same chambers may be instructed by more than one Area.

13.2 We found that most of the monitoring that is currently done is informal. Caseworkers observe counsel at court and feed back to their colleagues their views about counsel's performance. This is a useful method of making a preliminary assessment of counsel's strengths and weaknesses, but it is too unstructured and subjective to form the basis of a proper monitoring system.

13.3 All Areas carry out more structured monitoring when counsel apply to be re-graded. Usually, this involves caseworkers at court completing a monitoring form to record their assessment of counsel's performance. The forms are collated and are used as the basis for regrading decisions, along with all other relevant information. Any regrading is undertaken by one of the six CPS Advocate Selection Committees, based on the six Bar circuits. Each is chaired by a CCP.

13.4 Some Areas have more developed monitoring systems. In one Area, for example, the senior caseworker maintains a log of monitoring forms, comments and observations from a variety of sources, including prosecutors who see counsel defend or prosecute cases in the magistrates' courts. The senior caseworker is responsible for selecting counsel in the Area and has developed an excellent knowledge of their strengths and areas of expertise.

13.5 We consider that all Areas should adopt formal monitoring systems. We recognise that, at many Crown Court centres, caseworkers often cover more than one court and so are unable to see individual cases from start to finish. This should not prevent monitoring from being carried out. Furthermore, we have suggested elsewhere in this report (see paragraphs 10.21 and 11.21) that CPS lawyers should have a greater presence in the Crown Court. As we have considered in paragraph 11.5, this would enable them to gain a better impression of counsel and thus permit them to contribute to the monitoring process.

13.6 Most counsel accept the need for some monitoring of their performance but it is, understandably, a sensitive issue. It might be prudent, and it might assist liaison, if CCPs were to discuss with the heads of chambers they instruct, appropriate arrangements for the monitoring of counsel. We hope that counsel would welcome the feedback about their performance that such arrangements could offer. What is more, we believe it to be right in principle for CPS managers to share with

chambers, and possibly with individual members of counsel, the results of any monitoring they have carried out. Important decisions regarding the briefing of counsel may well be influenced by such monitoring and those who are likely to be affected have a right to know what is being said about them. The same is true of all monitoring whether it is being carried out at the Area level or under the auspices of the circuit-based Advocacy Selection Committees.

13.7 In Chapter 6, we referred to the use that we believe CPS managers should make of the CPS National Standards of Advocacy as an aid to the monitoring of CPS advocates. It also mentioned our own criteria which we have revised in the light of this review. Everything we have said in that context about the monitoring of advocates in the lower courts is equally applicable to the monitoring of counsel in the Crown Court.

13.8 In encouraging Areas to undertake a greater degree of formal monitoring of counsel, we have not overlooked the impact that this could have on CPS resources. We know that these are already stretched. Nevertheless, we are persuaded that the systematic monitoring of counsel is necessary. It is not only in the interests of the CPS to secure the services of competent counsel. It is also in the public interest and in the wider interests of justice. Further weight has been added to our view by a report of the National Audit Office published on 1 December 1999, three months after the conclusion of this review. In their report, "Criminal Justice: Working Together" (HC 29 Session 1999-00), the NAO reiterate a recommendation, first made in their report on the Crown Prosecution Service (HC 400 Session 1997-98), that the CPS should develop a more explicit approach to monitoring the performance of Counsel. We agree. In spite of resource difficulties, we believe more can be done by way of monitoring if more creative use is made of existing opportunities that occur routinely during the course of normal business in the Crown Court. This is, therefore, a plea that existing resources should be used more productively so that, for example, CPS lawyers and caseworkers whose work takes them into the Crown Court, should take advantage of their presence there to assess the performance of the counsel they see. Local managers should then ensure that information that becomes available in this way is recorded and used. In this connection, it is worth reminding those who may be required to act on this recommendation, that good feedback should be recorded as well as the bad and that ways ought to be found of bringing feedback on performance to the notice of those concerned.

13.9 We hope that what we have suggested in this report, provided it is implemented by Areas, will not be a drain on scarce resources and will ensure that some measure, at least, of regular monitoring takes place. Only in this way will our concerns, and those of the NAO, be met. We do not feel it would be responsible to go further and advocate the adoption of more sophisticated monitoring procedures. In this, we are influenced by our own experience of the extensive observation of counsel which is required as the basis of a meaningful and reliable assessment and just how much time must be spent in court to achieve that. At a time when resources are being strained to cope with so much change and so many initiatives, we believe that anything more demanding or more prescriptive would not represent best value for money.

13.10 The comments we make in this chapter, and elsewhere in this report, about the maintenance of systems for the recording of information about the performance of individual advocates must be read in the context of the Data Protection Act 1998 whose provisions will impact on such records. The systems we propose and the data recorded in the way we have suggested may need

to be brought to the attention of those concerned and could well be disclosable on request. Area managers will need to be fully aware of their roles and responsibilities in respect of data which is covered by the Act. We are pleased to note that training has been planned for ABMs and relevant CPS Headquarters staff.

13.11 **We recommend that Areas should adopt formal monitoring systems so that CCPs and other managers can be satisfied that they are obtaining objective and reliable information about the performance of counsel. Areas should consider pooling their data through the medium of the Advocate Selection Committees.**

(CHAPTER 14) CONCLUSIONS

14.1 This review examined how well prosecution advocates in the magistrates' and the Crown Court presented their cases. We looked at every aspect of case presentation including, and perhaps most importantly, how well the advocates prepared their cases and the standard of their advocacy in court.

14.2 Overall, we were satisfied with the general standard of case presentation. The overwhelming majority of prosecuting advocates, in both the lower and higher courts, were entirely competent. Eighty-six of the 96 CPS lawyers that we saw in the magistrates' court came into this category. Five were particularly impressive and a further five were poor. All the ten agents that we saw were competent. In the Crown Court, 69 of the 84 advocates that we saw were entirely competent. We placed four in a higher category and seven we regarded as being unsatisfactory. All four HCAs that we saw were perfectly acceptable. Of those that we saw, therefore, CPS lawyers compared very favourably with their counterparts in independent practice.

14.3 In fairness to those we observed in court, it must be stated that, apart from those we have placed in the higher category, a number did display evidence of skills above the norm. However, we either did not see enough of their performance to be absolutely sure that they were significantly above the acceptable standard, or they possessed the odd weakness that detracted from their overall impact.

14.4 What we did see, and indeed what we were told, persuaded us that there was more scope for monitoring and for training than there is at present. We were impressed by the reaction we received from lawyers to whom we gave feedback at court and we believe that many lawyers would appreciate some assessment of their performance. In addition, there is a significant demand for training, even on the part of the more experienced advocates, which is not currently being met.

14.5 Other aspects of case presentation, we feel, would benefit from greater attention on the part of managers, both at national and at local levels. These we have identified in the body of our report.

14.6 Once again, we have found it necessary to comment upon the standard of endorsements, the quality of file management and the need for CPS lawyers to be given the time to prepare adequately for court. All these are matters which can impact on the effective performance of the CPS at local level and which can have some impact on the wider interests of justice.

14.7 We have also identified areas where the effective performance of the CPS can be significantly affected by the way in which other criminal justice agencies carry out their duties. Both the police and the courts, we believe, bear some responsibility in this regard.

14.8 The failure of the police to deliver good quality files on time in accordance with standards agreed with the CPS, combined with their failure to respond swiftly to CPS enquiries for further information, were matters about which lawyers in each of the nine CPS Areas that we visited, complained. Whilst recognising that the power of local CPS managers to influence police performance may be limited, we would expect local liaison with the police to be used to maximum effect. This aspect of our report will be brought to the attention of Her Majesty's Chief Inspector of Constabulary.

14.9 We have also identified ways in which the practices of the courts, particularly the magistrates' courts, can influence the quality of CPS case presentation. Listing is the prime example. Here also, we would expect full use to be made by local CPS managers of all the avenues that currently exist in terms of liaison, to effect changes, not only for the benefit for CPS alone, but also for the benefit of the criminal justice system as a whole and, ultimately, for the public. This is something we intend to mention to the Chief Inspector of Her Majesty's Magistrates' Court Service Inspectorate.

14.10 Throughout the three months of our review, we were impressed by the commitment and dedication, not only of CPS lawyers, but of the many agents and counsel we saw who were instructed to appear on behalf of the CPS. It is fair to say, that the overwhelming majority of prosecuting advocates whom we saw displayed a level of responsibility that was wholly in accordance with their status. Although a small number of advocates representing the prosecution did not reach the high standard that the Service and the public have a right to expect, our overall impression is that the conduct of nearly all of the criminal prosecutions that we saw was in good hands. The weaknesses, that we observed, such as they were could, we believe, largely be met by a greater level of monitoring and training which, we are encouraged to see, most advocates would willingly accept.

14.11 In the light of our findings, we have identified where improvements in case presentation may be made and we have made a number of recommendations and suggestions to assist Areas to make those improvements.

(CHAPTER 15) RECOMMENDATIONS

We recommend that:

i CCPs enter into discussion about court listing with Justices' Chief Executives, Justices' Clerks and Chairmen of the Bench with a view to reaching listing practices which reflect the true spirit of Glidewell, Recommendations 21 and 22 (Paragraph 3.11);

ii CCPs should seek an understanding with their courts that prosecutors will be consulted before cases are transferred (Paragraph 3.15);

iii CCPs review the procedures used in their Area relating to file management to ensure that:

- files are tidy and that papers are kept in proper order throughout the life of a file; and that
- advocates, other staff and agents are aware of the need to keep files in proper order to make for easy of handling (Paragraph 3.24);

iv prosecutors ensure that they arrive at court in time to deal with whatever preparatory business they can reasonably anticipate, depending on the nature of their court (Paragraph 3.28);

v prosecutors should ensure that courts are given the fullest possible explanations on issues that affect the progress of the case (Paragraph 3.30);

vi CCPs ensure that all prosecutors, are aware of the CPS guidance on the plea before venue procedure and that the guidance is followed consistently in their Area. If necessary, CCPs should consult their local Justices' Clerks to ensure that there is agreement on the interpretation of the law (Paragraph 4.18);

vii CCPs should ensure that all prosecutors, including agents and designated caseworkers, are aware of and implement the revised guidance on costs applications on a consistent basis (Paragraph 4.38);

viii CCPs should ensure that there is regular and effective monitoring of the performance of CPS advocates in court, and that immediate feedback is given to the advocate concerned. There should be no need to wait until the time arrives for completion of the annual appraisal report (Paragraph 6.9);

ix CCPs ensure that there is structured and effective monitoring of the performance of CPS agents at court, with suitable arrangements for feedback to be given as soon as possible thereafter (Paragraph 8.6);

x CCPs ensure that there are systems in place to check all necessary work has been done on agents' files before they are sent out (Paragraph 8.9);

xi CCPs satisfy themselves that the systems within their Area that are in place for feeding into the advocates selection system are appropriate, that they operate openly and fairly and that there is the necessary level of liaison between the Areas within that circuit so that all relevant information is collected. We will touch on this further when we consider the monitoring of Crown Court advocates (see Chapter 13 Paragraph 9.3);

xii CCPs take steps to ensure that all CPS lawyers are equipped to play a bigger role in the selection of counsel for the Crown Court (Paragraph 9.14);

xiii CCPs should be robust in insisting that briefs are returned at the earliest opportunity, that they are returned to another counsel of suitable experience and that there are proper systems in place to ensure that this is happening (Paragraph 9.20);

xiv CCPs and the Area Business Managers (ABMs) should insist that chambers instructed by them comply with the scheme for monitoring returned briefs by providing full and reliable data. CCPs have a duty to obtain from the Bar a proper service commensurate with the substantial sums of public money expended (Paragraph 9.25);

xv CCPs ensure that their lawyers and caseworkers understand the importance of providing good quality instructions to counsel and that their Area has systems in place to enable line managers to satisfy themselves about the quality of those instructions (Paragraph 10.7);

xvi CCPs should ensure that:

- indictments are checked before they are lodged, by the reviewing lawyer wherever possible;
- systems are in place to monitor the number of amendments at court and the reasons for those amendments; and
- appropriate action is taken to reduce the number of avoidable amendments (Paragraph 10.13);

xvii CCPs should ensure that the target date for brief delivery is clearly understood by all relevant staff, and that action-dating systems are in place to prompt and monitor compliance (Paragraph 10.18);

xviii CCPs should ensure that advocates who appear at PDHs are of sufficient seniority and ability to fulfil their obligations to the court and are

properly instructed (Paragraph 11.7);

xviv Areas should adopt formal monitoring systems so that CCPs and other managers can be satisfied that they are obtaining objective and reliable information about the performance of counsel. Areas should consider pooling their data through the medium of the Advocate Selection Committees (paragraph 13.10).

(CHAPTER16) SUGGESTIONS

We make the following suggestions:

i CCPs should ensure that all CPS prosecutors get experience in prosecuting trials in the magistrates' courts, and that, in cases of complexity and sensitivity, the reviewing prosecutor conducts the trial (Paragraph 3.5);

ii Prosecutors, as part of their court preparation, should identify those cases that could be released to other advocates without compromising the conduct of the case (Paragraph 3.13);

iii CCPs ensure that prosecutors have sufficient time to prepare properly for court by:

- giving consideration to the way prosecutors' time is rostered; and
- examining the systems used in their offices to identify the location of files and prepare court lists (Paragraph 3.17);

iv CCPs use existing JPM procedures and other forms of liaison to discuss with the police methods by which police performance in relation to the timeliness and quality of police files can be improved (Paragraph 3.19);

v CCPs consider the use of different colour folders and inserts to assist the efficient management of all files (Paragraph 3.25);

vi Prosecutors should bear in mind when considering how to present mode of trial representations the need on occasion to refer specifically to the mode of trial guidelines (Paragraph 4.20);

vii Prosecutors should give thought to the structure of their bail applications when preparing their cases for court (Paragraph 4.23);

viii Except in the most straightforward of cases, prosecutors should prepare a note of the points to be covered in their opening speech, to ensure that all relevant matters are addressed and are drawn to the attention of the magistrates at the outset of the trial (Paragraph 4.27);

ix Where a trial involves young witnesses, or those with limited understanding, the prosecutor should, wherever possible, speak to the witnesses before the trial starts. The advocate should also ensure that they use language appropriate to a witness when taking them through their evidence in chief (Paragraph 4.30);

x Prosecutors should take greater steps to prepare the structure of their cross-examination (Paragraph 4.33);

xi CCPs should ensure that CPS policy on the prosecution of youth offenders is followed when allocating prosecutors to youth offender courts (Paragraph 5.2);

xii CCPs remind prosecutors of the CPS guidance on the handling of domestic violence cases. In considering how best to ensure effective and continuing implementation, CCPs will want to consider the guidance issued by CPS Headquarters and the Inspectorate's thematic report (Paragraph 5.6);

xiii CCPs should remind prosecutors that, whenever

possible, they should make themselves known to prosecution witnesses before the start of a trial and that they should treat them with understanding and sensitivity throughout the proceedings (Paragraph 5.9);

xiv CCPs encourage lawyers and their managers to use the Advocacy Skills Package if they do not already do so. Its flexibility means that there are few who would be unlikely to benefit (Paragraph 7.7);

xv CCPs ensure that all agents, especially new agents, have clear but concise instructions covering the range of issues likely to arise in the cases in which they are routinely instructed (Paragraph 8.3);

xvi CCPs ensure that papers or copies of papers in complex or difficult trials, are sent to agents sufficiently in advance of the hearing to facilitate effective case preparation (Paragraph 8.7);

xvii Senior Area Managers review their arrangements for selecting counsel from the relevant list and for the recording of data regarding the distribution of briefs (Paragraph 9.6);

xviii CCPs review existing arrangements and ensure that appropriate mechanisms are in place to deal with queries from court when such issues arise (Paragraph 10.22);

xix CCPs take steps to ensure that advocates who appear even in modest cases are fully and properly instructed and have readily available all the information and assistance which the court may reasonably require. (Paragraph 11.17);

xx CCPs consider increasing the proportion of Crown Court bail applications handled by CPS lawyers, in the wider context of providing them with more opportunities to attend the Crown Court (Paragraph 11.21);

xxi CCPs endeavour to ensure that only counsel of appropriate experience are instructed in child abuse cases (Paragraph 12.3);

xxii CCPs take steps to ensure that prosecutors and caseworkers consider fully all of the guidance issued by the CPS and contained in practitioners' texts when dealing with cases involving racially aggravated offences (Paragraph 12.8).

(CHAPTER 17) GOOD PRACTICE

17.1 During the course of our inspection, we have identified certain aspects of good practice in the handling of case preparation and presentation developed by some Areas, which may, with appropriate adaptations, be adopted by other Areas.

We would commend the following as good practice:

i The allocation of files according to the days when lawyers were scheduled to attend court (paragraph 3.3);

ii Administrative assistance for prosecutors in the busier magistrates' courts (paragraph 3.21);

iii The use of different coloured folders and inserts for different categories of case papers (paragraph 3.23);

iv The provision of instructions to agents in the form of a manual with information about procedures and legal issues (paragraph 8.3);

v Arranging for prospective agents to visit the local CPS office (paragraph 8.3);

vi A meeting between the CCP and agents to discuss matters of mutual interest (paragraph 8.4);

vii The creation and maintenance of a log to assist with the selection and monitoring of counsel (paragraph 9.6); those concerned will need to bear in mind the implications of the Data Protection Act 1998.

THEMES OF THE REVIEW

Magistrates' Court

- Preparation for court (for and by the prosecutor).
- Presentation of cases.
- Dealing with aggravated and sensitive cases.
- Monitoring of CPS advocates.
- Training of CPS advocates.
- Use of agents, including selection, training and monitoring.

Crown Court

- Selection of counsel.
- Timeliness and adequacy of instructions to counsel.
- Presentation of cases.
- Dealing with aggravated and sensitive cases.
- Monitoring of Crown Court advocates (including Higher Courts Advocates).

CPS NATIONAL STANDARDS OF ADVOCACY

1. Professional Ethics

All advocates must be familiar with the professional duties of both the prosecuting and defending advocate.

The Guide to Professional Conduct of Solicitors and The Code of Conduct of the Bar of England and Wales apply to CPS advocates. They should also have regard to the general guidance contained in the introduction to the Farquharson Committee Report, where applicable. The prosecutor must always ensure that all relevant legislation and authorities whether in favour of the prosecution or otherwise, and any procedural irregularities are brought to the attention of the court.

The duty not to mislead the court places on the advocate a positive responsibility to ensure that any factual information (eg reasons for previous adjournments, or details of what was said on a previous bail application) is completely accurate.

2. Planning and Preparation

This is the cornerstone of effective advocacy and its importance cannot be emphasised.

a **The facts: the facts of the case must be mastered before the hearing. Advocates must seek to ensure, even in custody remand cases and cases transferred from another court, that they have a thorough working knowledge of the file before beginning to present the case.**

b **The law: in each case, advocates must satisfy themselves that they are aware of the law appertaining to the case, including all the ingredients which make up the offence(s) (with any statutory defences) and exactly what must be proved. Where the law is unusual or complex, it is essential that copies of the relevant statutory or other authority are prepared for the assistance of the court. Where it is intended to cite any authority, there is an obligation to inform the defence. In all contentious matters, advocates should take with them to court the necessary legal authorities.**

c **Documents/exhibits: the responsibility for ensuring that the original and sufficient copies of prosecution statements, documents and exhibits are available at the hearing rests ultimately with the advocate.**

d **Determining the issues: the advocate must be in a position to appraise the court of the issues of fact and law that may arise in the case. Where possible, the advocate should have agreed with the defence which facts or legal matters are disputed, and should have reduced and agreed the matters in issue before the start of the hearing.**

e **Planning cross-examination: as part of case preparation, advocates should anticipate likely defences and, where possible, should prepare an outline of cross-examination of the defendant and any known defence witnesses.**

f **Sentence: the advocate must be familiar with the maximum sentence for the offence, and in certain cases, with the minimum sentence (eg in excess alcohol cases and in relation to penalty points), and with the court's sentencing options.**

3. Courtroom Etiquette

Advocates must have a thorough knowledge of courtroom etiquette. It shows respect for the court and instils confidence in the advocate within the courtroom.

a **Advocates must be neat and tidy in appearance and suitably dressed for the tribunal before which they are to appear.**

b **Advocates must ensure that they are never rude or discourteous to anyone in court, including defendants and witnesses.**

c **Advocates must be careful to use the correct mode of address to the bench, clerk and opposing advocate.**

d **Advocates must observe silence when the oath is taken.**

e **Advocates should never express personal opinions or make statements or comments which suggest that they are giving evidence.**

4. Rules of Evidence

The advocate must master the rules of evidence (such as the examples given below) and in particular the admissibility of evidence. A knowledge of exactly what can properly be adduced before the court in each case is essential. Failure to observe the rules of evidence can prejudice the outcome of the case and damage the advocate's reputation.

Examples are:

a **The framing of questions and avoidance of leading questions in examination in chief.**

b **The admissibility of secondary evidence, and of documentary and computer evidence.**

c **The admissibility of opinion evidence.**

d **The introduction of evidence of bad character.**

5. Rules of Court Procedure

An advocate must have a thorough working knowledge of the rules of court procedure. He or she must be in a position to refer immediately to the relevant provisions in the standard works applicable to the court, in which the advocate is appearing. This knowledge of procedure must include:

a **making representations on mode of trial.**

b **the order of speeches - when the advocate should speak and what are the limits of what can be said.**

c **answering submissions of no case to answer.**

d **making and responding to ancillary applications.**

6. Presentation Skills

The ability to present the case in a persuasive manner is essential. This includes:

a **the voice, which needs to be projected in such a way as to reach all the courtroom. Intonation is as important as speed of delivery.**

b **the importance of simple and concise language being used and slang and colloquial expressions avoided. The advocate needs to be capable of being clearly understood by the person being addressed.**

c **an advocate continually assessing witnesses and adapting the style of questions accordingly.**

d **eye contact being maintained wherever appropriate. It is discourteous for an advocate who is addressing the court to be continually looking at the case papers.**

e **arguments being put in a succinct and structured manner, avoiding repetition unless by way of summary.**

7. Case Presentation

Planning and forethought do not stop once the hearing of the case begins.

a **File management: adequate planning and preparation will ensure the file contains all the relevant material. But it is equally important to ensure that the advocate has organised the file in such a way that documents to be referred to, and in particular handed to, the court are readily available and in the appropriate order. A thorough working knowledge of the file is essential and continuity is of considerable importance in the overall presentation of the case.**

b **Opening the case: the advocate should bear in mind that the court will know nothing about the case before the prosecution opening speech. This should be precise, well planned and accurately reflect the evidence for the prosecution and the defence case insofar as it is known, eg from the defendant's interview. The advocate should have prepared a written outline of the opening speech. The court should be informed of all foreseeable issues and the likely defence. The court should be appraised of legal issues where appropriate.**

c **Examination in chief: this should be prepared by a thorough knowledge of the witness statement, and also of matters raised in the defendant's interview. It should also elicit all the relevant evidence that the witness can give, in a logical manner.**

d **Cross-examination: this should be prepared in advance in outline only, to allow for flexibility and improvisation as the need arises. It should aim to adduce helpful evidence in support of the case and to destroy harmful evidence by exposing lying testimony and inconsistencies. It is important to assess the witness during examination in chief and to adapt cross-examination accordingly.**

e **Taking a note: written notes should be made of evidence given in answers to the questioning of witnesses by the defence advocate.**

f **Re-examination: advocates should be aware of when it is appropriate to re-examine a witness and what questions may be asked.**

g **Rebuttal evidence: advocates should be aware of when it is appropriate and permissible to seek to adduce rebuttal evidence.**

h **Closing speeches: advocates should be aware of the circumstances in which it is appropriate and permissible for the prosecution to address the court after the defence closing speech and of the limits on what can be said.**

i **Guilty plea cases and remand hearings: the prosecution case must be presented in a clear, succinct, accurate and informative manner. The advocate should be fully informed about any relevant ancillary prosecution applications, eg compensation, costs and forfeiture. Where appropriate, the advocate should remind the court of ancillary sentencing options such as the making of an exclusion order. Advocates should always listen to the plea in mitigation by the defence and be prepared to correct any inaccuracies of fact or law.**

LIST OF LOCAL REPRESENTATIVES OF THE CRIMINAL JUSTICE AGENCIES WHO ASSISTED OUR REVIEW

Judges

His Honour Judge Baker, QC, Sheffield Crown Court

His Honour Judge Bathurst-Norman, Senior Resident Judge, Southwark Crown Court

His Honour Judge Broderick, Resident Judge, Winchester Crown Court

His Honour Judge Clegg, Resident Judge, Basildon Crown Court

His Honour Judge Cole, Senior Resident Judge, Warwick Combined Court Centre

His Honour Judge Fox, Senior Resident Judge, Teesside Combined Court Centre

His Honour Judge Goldsack QC, Sheffield Crown Court

His Honour Judge Hutton, Resident Judge, Gloucester Crown Court

His Honour Judge Lockhart, Senior Resident Judge, Southend Crown Court

His Honour Judge Maclaren-Webster, QC, Resident Judge, Salisbury Crown Court

His Honour Judge Morton, Resident Judge, Swansea Crown Court

His Honour Judge Pearson, Chelmsford Crown Court

His Honour Judge Robertshaw, Sheffield Crown Court

His Honour Judge Shand, Senior Resident Judge, Stafford Crown Court

His Honour Judge Styler, Senior Resident Judge, Stoke-on-Trent Combined Court Centre

His Honour Judge Tucker, QC, Winchester Combined Court Centre

His Honour Judge Walker, Senior Resident Judge, Sheffield Crown Court

Magistrates

Mr D Abelson, Justice of the Peace, Chairman South Westminster Division, Bow Street Magistrates' Court

Mrs T Allsop, Justice of the Peace, Deputy Chairman Colchester Bench

Mr I Bing, Justice of the Peace, Stipendiary Magistrate, Thames Magistrates' Court

Mr R Bircham, Justice of the Peace, Chairman Colchester Bench

Mr A Bradley, Justice of the Peace, Chairman of Cirencester Fairford and Tetbury Bench

Mr A Brooker, Justice of the Peace, Chairman Epping and Ongar Bench

Mr A Brown, Justice of the Peace, Stipendiary Magistrate, Sheffield Magistrates' Court

Mr T Butcher, Justice of the Peace, Deputy Chairman Mid Warwickshire Bench

Mrs E A Cheyne, Justice of the Peace, Deputy Chairman South Gloucester Bench

Mr G Cowling, Justice of the Peace, Stipendiary Magistrate, Aldershot Magistrates' Court

Mrs M K Cox, Justice of the Peace, Deputy Chairman Epping and Ongar Bench

Mr R Crisp, Justice of the Peace, Deputy Chairman Basildon Bench

Mr A R Davies, Justice of the Peace, Metropolitan Stipendiary Magistrate, Horseferry Road Magistrates' Court

Mr P Dawson, Justice of the Peace, Chairman Cannock Bench

Mr E Dillow, Justice of the Peace, Chairman North West Hampshire Bench

Mrs S Driver, Justice of the Peace, Stipendiary Magistrate, Sheffield Magistrates' Court

Mr S P Etheridge, Justice of the Peace, Chairman Seisdon Bench

Mrs M Frankel, Justice of the Peace, Chairman North East Hampshire Bench

Mr K Gray, Justice of the Peace, Stipendiary Magistrate, Southend Magistrates' Court

Mr D Hepworth, Justice of the Peace, Chairman Sheffield Bench

Mrs S Hindley, Justice of the Peace, Chairman Lichfield Bench

Mr J Hodgson, Justice of the Peace, Deputy Chairman Teesside Bench

Ms P Hudson-Bendersky, Justice of the Peace, Chairman North Gloucester Bench

Mr J Jackson, Justice of the Peace, Chairman Stafford Bench

Mrs B Jones, Justice of the Peace, Chairman Ammanford Bench

Mr F W Lewis, Justice of the Peace, Chairman Rugeley Bench

Mr O Owen, Justice of the Peace, Deputy Chairman Llanelli Bench

Mr G Parkinson, Justice of the Peace, Chief Metropolitan Stipendiary Magistrate, Bow Street Magistrates' Court

Mrs T Patrick, Justice of the Peace, Chairman Basildon Bench

Mrs J Purves, Justice of the Peace, Chairman South Warwickshire Bench

Mr V Rayner, Justice of the Peace, Deputy Chairman Colchester Bench

Mrs M R Roderick, Justice of the Peace, Chairman Carmarthen, Aberystwyth, Lampeter and Cardigan Benches

Mrs J Rutherford, Justice of the Peace, Chairman Rugby Bench

Mrs P Sinclair, Justice of the Peace, Chairman Thames Magistrates' Court Bench

Mr D Smith, Justice of the Peace, Deputy Chairman Epping and Ongar Bench

Mr R Taylor, Justice of the Peace, Chairman Atherstone and Coleshill Bench

Ms V Telfer, Justice of the Peace, Deputy Chairman Forest of Dean Bench

Mrs M E Thompson, Justice of the Peace, Chairman Tamworth Bench

Mrs E Tunstall, Justice of the Peace, Chairman Hartlepool Bench

Mr E Vince, Justice of the Peace, Chairman Nuneaton Bench

Reverend G Walker, Justice of the Peace, Chairman Carmarthen Bench

Mr P Walker, Justice of the Peace, Chairman of the Bench Gloucestershire Area Bench

Mr T Watson, Justice of the Peace, Chairman Guisborough Bench

Justices' Chief Executives

Ms J Eeles, Justices' Chief Executive, Teesside

Mr M Eldridge, Justices' Chief Executive, Leamington Spa Warwickshire

Mr J Finnigan, Justices' Chief Executive, Gloucestershire

Ms C Glenn, Justices' Chief Executive, Inner London Magistrates' Courts' Service

Mr P McGuirk, Justices' Chief Executive, Essex

Mr P Townsend, Justices' Chief Executive, Dyfed Powys

Mr M West, Justices' Chief Executive, Hampshire and Isle of Wight

Mr D White, Justices' Chief Executive & Clerk to the Justices, Sheffield

Mr P Wooliscroft, Justices' Chief Executive, Staffordshire

Clerks to Justices

Mr A Armbrister, Clerk to the Justices, Teesside

Mr G Biggin, Senior Court Clerk, Stafford

Mr J Black, Clerk to the Justices, Havant

Mr P Carr, Clerk to the Justices & Director of Legal Services, Essex

Mr D Folland, Clerk to the Justices, Llanelli

Mr T Gill, Clerk to the Justices, Colchester

Mr K Griffiths, Clerk to the Justices, Thames Magistrates' court

Ms M Headen, Clerk to the Justices, Gloucester

Mrs G Houghton-Jones, Clerk to the Justices, Bow Street & Horseferry Road Magistrates' court

Mr A Marshall, Clerk to the Justices, Lichfield

Mr M Taylor, Chief Legal Officer, Leamington Spa Magistrates' court

Mr K Thomson, Clerk to the Justices, Hartlepool

Mr M Watkins, Joint Clerk to the Justices & Director of Legal Services, Leamington Spa

Counsel

Mr P Armstrong

Mr M Bowes

Mr S Brand

Mr J Butterfield

Mr T Davies

Mr N Easterman

Mr J Gibbons QC

Mr J Gompertz QC

Mr T A Jenkins QC

Mr R Keen

Mr E Lucas

Mr A Marron QC

Ms A Meech

Ms C Montgomery

Mr P Parker

Mr J Pegdon QC

Mr S Richards

Mr D Tate

Mr R Titheridge QC

Mr C Treacy QC

Counsel's Clerk

Mr J Maskew

Defence Solicitors

Mr M Duxbury

Mr J B Gray

Mr R Hallam

Mr J Holmes

Mr G Howells

Mr A Mathie

Mr D Melville-Walker

Mr P Morgan

Mr H Mullan

Mr C Reynolds

Mr R Roscoe

Mr Sheridan

Ms B Tait

Mr M Warren

CPS Agents

Mr Brindle

Mr B Carroll

Mr P Coates

Ms S Gratwicke

Mr R Mays

Mr J Pearce

Mr J Shenton

Mr D Wassall

Mr P Williams

EXPLANATION OF BOX MARKINGS - (ANNEX D)

Box 1	Outstanding
Box 2	Performance significantly above the normal requirements
Box 3	Performance meets the normal requirements of the grade
Box 4	Performance not fully up to the normal requirements, some improvement necessary
Box 5	Unacceptable

MAGISTRATES' COURTS GENERAL - CPS LAWYERS (BY CASE) - (ANNEX E)

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
Facts given were a fair representation	0	0%	21	6.1%	311	90.4%	12	3.5%	0	0%	2.97
All relevant legal points presented	0	0%	7	10.8%	54	83.1%	4	6.2%	0	0%	2.95
All relevant representations covered	0	0%	23	5.5%	367	80.1%	27	6.5%	0	0%	3.01
Dealt competently with defence points	0	0%	10	6.7%	129	86.6%	10	6.7%	0	0%	3
All ancillary matters dealt with	0	0%	10	2.9%	301	88%	30	8.8%	1	0.3%	3.06
Standard of file endorsements	0	0%	6	1.6%	368	95.3%	12	3.1%	0	0%	3.02

Category	*Yes*	*No*	*%*
Had all the necessary work been completed before court?	320	67	82.7%
Did the advocate follow any instructions or notes on the file?	95	5	95%

MAGISTRATES' COURTS - TRIALS (ANNEX F)

Category	Yes	No.	%
Was there evidence of a pre-prepared outline for the opening and presentation of the case?	8	9	47.1%
Did the opening accurately reflect the available evidence and deal with any points of law and possible defences?	11	2	84.6%
Did the cross-examination adduce helpful evidence and deal with adverse evidence?	6	3	66.7%
Was there evidence on the file of a pre-prepared outline for cross-examination?	3	8	27.3%
Was any re-examination relevant?	4	0	100%
Did the advocate competently deal with all defence points, submissions and applications?	12	0	100%
Were any representations about sentencing appropriate and correct?	2	0	100%

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
Examination elicited relevant evidence	0	0%	2	14.3%	11	78.6%	1	7.1%	0	0%	2.93%

OVERALL ASSESSMENT OF AGENTS - MAGISTRATES' COURTS (INCLUDING YOUTH COURTS) (ANNEX G)

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
1. Professional ethics	0	0%	1	12.5%	7	87.5%	0	0%	0	0%	2.88
2. Planning and Preparation	0	0%	1	10%	9	90%	0	0%	0	0%	2.9
3. Courtroom etiquette	0	0%	0	0%	10	100%	0	0%	0	0%	3
4. Rules of evidence	0	0%	0	0%	5	100%	0	0%	0	0%	3
5. Rules of court procedure	0	0%	0	0%	10	100%	0	0%	0	0%	3
6. Presentational Skills	0	0%	2	20%	8	80%	0	0%	0	0%	2.6
7. Case presentation	0	0%	0	0%	9	100%	0	0%	0	0%	3
Overall Assessment	0	0%	0	0%	10	100%	0	0%	0	0%	3

MAGISTRATES' COURTS GENERAL - AGENTS (BY CASE) (ANNEX H)

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
Facts given were a fair representation	0	0%	1	4.5%	21	95.5%	0	0%	0	0%	2.95
All relevant legal points presented	0	0%	1	16.7%	4	66.7%	1	16.7%	0	0%	3
All relevant representations covered	0	0%	1	4.3%	20	87%	2	8.7%	0	0%	3.04
Dealt competently with defence points	0	0%	1	20%	4	80%	0	0%	0	0%	2.8
All ancillary matters dealt with	0	0%	1	4.3%	19	82.6%	3	13%	0	0%	3.09
Standard of file endorsements	0	0%	0	0%	20	100%	0	0%	0	0%	3

Category	*Yes*	*No*	*%*
Had all the necessary work been completed before court?	19	0	100%
Did the advocate follow any instructions or notes on the file?	5	0	100%

CROWN COURT GENERAL - COUNSEL (BY CASE) (ANNEX I)

Assessment Category	Box 1		Box 2		Box 3		Box 4		Box 5		Average Mark
	No.	%	No.	%	No.	%	No.	%	No.	%	
Facts given were a fair representation	0	0%	3	6.7%	42	93.3%	0	0%	0	0%	2.93
All relevant legal points presented	0	0%	0	0%	20	95.2%	1	4.8%	0	0%	3.05
All relevant representations covered	0	0%	6	5.1%	106	89.8%	6	5.1%	0	0%	3
Dealt competently with defence points	0	0%	3	5.4%	51	91.1%	2	3.6%	0	0%	2.98
All ancillary matters dealt with	0	0%	2	2.5%	73	91.3%	5	6.3%	0	0%	3.04
Standard of file endorsements	0	0%	1	1.3%	75	97.4%	1	1.3%	0	0%	3

Category	*Yes*	*No*	*%*
Had all the necessary work been completed before court?	84	20	80.8%
Did the advocate follow any instructions or notes on the file?	35	0	100%

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.

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