



HM Crown Prosecution
Service Inspectorate

Thematic review of youth offender casework

Follow-up

October 2013



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Chief Inspector's foreword

The thematic review of youth offender casework, conducted in July 2011, found that the CPS was contributing effectively in a number of aspects to the principal aim of the youth justice system: to prevent offending by children and young persons. Youths were being correctly diverted from court, including in cases where the police may have inappropriately charged defendants, and prosecutors were circumspect when deciding whether an application should be made before conviction to restrict the liberty of young people. This follow-up inspection reaffirms that assessment.

In the period between the review and this follow-up there have been significant revisions to Youth Court law and procedure and substantial changes to the types of pre-court disposals available for youths. However, none of these have impacted on the validity of the priority recommendations made in the review.

The review identified that improvement needed to be made in the quality of charging decisions, particularly with regard to setting out the representations that should be made in determining whether the more serious cases should be dealt with in the Crown Court. Aligned to this there were concerns about the quality of the recording of hearing outcomes.

I am encouraged that substantial progress has been made in the recording of this aspect of the charging decision, but the overall quality of the record still requires further improvement. More still also needs to be done to ensure a full and accurate account is made of the grave crime determination hearing. Of concern is the number of cases where there was no file record of any kind.

Similarly, there has been substantial progress in ensuring that prosecutors at court do not agree inappropriately to a pre-court disposal where the youth has been charged correctly. However, the proportion of police charged cases that inspectors considered should have been dealt with from the start by way of a pre-court disposal was high. This needs to be addressed with the police at a local level through joint performance management.

There remains a need for the CPS to improve the use of core quality standards monitoring to assess performance in youth casework. More use in this respect could be made at a local level of Area Youth Justice Co-ordinators, now that the role has stabilised following the CPS restructuring.

The changes made to the pre-court disposal regime for youths took place shortly before this follow-up inspection. It is therefore too early to assess their impact. I intend to review in due course the effect on CPS decision-making of the changes, particularly with regard to the removal of the previous structured arrangements.



Michael Fuller QPM BA MBA LLM LLD (Hon)
Her Majesty's Chief Inspector



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1 Follow-up inspection context

1.1 This report details the findings of Her Majesty's Crown Prosecution Service Inspectorate's (HMCPPI) follow-up inspection of the thematic review of youth offender casework, conducted in July 2011 and published that November.

1.2 The thematic review made six priority recommendations and three others. It also identified two aspects of good practice.

1.3 The aim of the follow-up is to provide an objective view on progress made by the Crown Prosecution Service (CPS) against the recommendations, the direction of travel and current performance. It also takes into account the substantial legislative changes in respect of youth law and procedure which have taken place since the publication of the thematic review. These include different types of pre-court disposal than existed at the time of the review, together with a different approach to when they may be used; new statutory provisions to be applied when seeking to deprive, or restrict, a youth's liberty before conviction; and substantial revision of the procedures by which cases may be allocated to the Crown Court.

1.4 Additionally, the CPS has restructured how it delivers charging advice to the police with the majority now provided by CPS Direct lawyers. However, none of these changes have any impact on the validity of the priority recommendations made in the review.

1.5 We have rated the CPS response to each recommendation using the following measures and the results appear in the table in chapter 2 and at annex A:

- **Achieved** – the CPS has accomplished what was required
- **Substantial progress** – the CPS has made real headway in taking forward its planned actions in relation to the recommendation
- **Limited progress** – the CPS has done something to address the recommendation
- **Not progressed** – the CPS cannot demonstrate any progress
- **No longer applicable** – where there has been a change in circumstance such as area restructuring or the implementation of a national initiative

1.6 This follow-up inspection examined 130 files involving youth offenders, including cases where they had been jointly charged with adults. It also draws on the findings from a further 380 files involving youth offenders which formed part of the HMCPPI 2012-13 annual casework examination programme (ACEP). The full methodology of the follow-up inspection is at annex B.



2 Executive summary

2.1 Since publication of the HMCPSI thematic review of youth offender casework in November 2011, there have been substantial legislative changes to both Youth Court law and procedure and the pre-court disposal regime for youth offenders. Additionally, the CPS has restructured how it delivers its charging decisions, and the majority are now dealt with by CPS Direct.

2.2 None of these changes affect the principal aim of the youth justice system, which is to prevent offending by children and young persons. The review found that the CPS contribution to this aim was encouraging. The findings of this follow-up inspection do not alter that assessment.

2.3 There has been substantial progress made in respect of three of the review's six priority recommendations, with the overall quality of aspects of charging advice recording still requiring further improvement. Assessments of the strength of identification evidence and proving joint enterprise continue to be weaknesses in the application of the evidential test in the Code for Crown Prosecutors (the Code). These are common threads in HMCPSI's assessment of casework across all inspections. Prosecutors also continue to need to be more alert to youth specific issues in cases involving a mix of adult and youth defendants.

2.4 The role of Area Youth Justice Co-ordinators has stabilised after the CPS restructuring, which took place just before the review. However, the findings from the follow-up indicate that the role could still add further value by greater involvement in local training and the assessment of youth casework performance. As in other aspects of CPS work, the reduction in resources has had an impact on how the role is delivered, with fewer opportunities for Co-ordinators to meet to discuss issues and share good practice.

2.5 Prosecutors remain effective at diverting youth offenders from court by appropriately directing pre-court disposals at the charging stage. It was, however, too early to assess whether the new pre-court disposals, which came fully into force on 8 April 2013, will create new challenges in determining the correct outcome.

2.6 Inspectors were concerned at the proportion of police charged cases which should have initially been dealt with by way of a pre-court disposal. Whilst the correct outcome was eventually achieved, there was often unnecessary delay caused by late review by the CPS, failures by prosecutors to promptly notify the police to administer a pre-court disposal and delays in it being administered. There were also cases correctly charged by the police and accepted for prosecution by the CPS where either the police or Youth Offending Service subsequently administered a pre-court disposal. There was no evidence of prior consultation with the CPS. This needs to be addressed, as it runs contrary to the provisions of the Prosecution of Offences Act 1985 (see paragraph 3.20).

2.7 There is now better compliance by charging lawyers with the requirement to set out clearly in their charging advice the factors to be considered in grave crime determinations, but some still showed a worrying lack of understanding. However, there appears to remain a stubborn reluctance on the part of prosecutors to endorse the hearing record sheet with an adequate record of representations made at the grave crime determination hearing. Inspectors were also concerned at the proportion of cases (11.9 per cent) where there was no electronic record of the hearing. Despite the absence of adequate records prosecutors continue to make the correct representations in almost all cases.

2.8 Whilst CPS areas now have greater flexibility on which cases they select for core quality standards monitoring (CQSM), the findings from HMCPSI's ACEP suggest that only a small proportion of those involving youth offenders are selected. The exception is CPS Direct which carries out extensive daily quality checks across the range of casework as well as the monthly CQSM requirement. Its monitoring identified similar issues to those found in this inspection.

2.9 Both inspectors and CPS legal managers assessed the overall quality of youth casework subject to CQSM as lower than that for cases involving adult defendants. There was also agreement on those individual aspects where performance fell short.

2.10 Only limited progress had been made in providing assurance that all prosecutors are trained sufficiently in Youth Court law and practice. Area Youth Justice Co-ordinators have provided some training to Associate Prosecutors and mandatory e-learning modules have been developed, but have yet to be implemented. Inspectors recognise that there are competing priorities, but consider that providing the necessary assurance remains a priority if the CPS is to maintain its current contribution to the aims of the youth justice system.

Progress against recommendations

Priority recommendations		Progress at July 2013
1	In the light of its restructuring, the CPS reviews the role of Area Youth Justice Co-ordinator and develops a role which enables the original scope of the post to be delivered locally	Limited progress
2	The CPS should reinforce to prosecutors that the legal guidance on administering a reprimand or final warning should be applied consistently	Substantial progress
3	The CPS should, in consultation with its stakeholders, review its policy guidance on looked after children to consider whether those in foster care should be included; and reinforce the need to ensure the current guidance is followed at the pre-charge decision stage	Substantial progress
4	The MG3 (record of charging decision) should, in every case where a grave crime determination must be made, set out clearly all the relevant factors to enable the prosecutor at court to make effective representations	Substantial progress
5	The CPS develop a series of prompts to ensure charging lawyers address correctly all relevant youth issues	Limited progress
6	The CPS ensures all prosecutors have a basic understanding of Youth Court law and procedure	Limited progress
Other recommendations		
1	The CPS should agree procedures with the Association of Chief Police Officers which ensure prosecutors are notified whether a youth has been subject to a community resolution for previous offending	No longer applicable
2	The CPS file should be endorsed with the prosecution and defence representations and the court's determination at the grave crime hearing, particularly in cases involving allegations of sexual offending	No progress
3	Youth offender casework is included by CPS areas as part of their core quality standards monitoring either as a continuing part of the monthly selection of cases or on an ad hoc basis	Limited progress



3 Progress against recommendations

3.1 The thematic review had made six priority and three other recommendations. Three of the priority recommendations (numbers 3, 4 and 5) and one of the others (which is no longer applicable) were designed to improve the quality of charging decisions. The other three priorities dealt with the role of Area Youth Justice Co-ordinators (AYJCs) (number 1), the application of legal guidance on the use of pre-court disposals (2) and training for prosecutors (6).

3.2 The other two recommendations dealt with the quality of file endorsements (the second of the three) and monitoring of casework quality (the final one). Where appropriate we have considered together progress against priority and other recommendations.

Priority recommendation 1

Limited progress

In the light of its restructuring, the CPS reviews the role of Area Youth Justice Co-ordinator and develops a role which enables the original scope of the post to be delivered locally.

3.3 At the time of the thematic review the CPS had just completed a substantial restructuring of its areas, coupled with the departure of a number of experienced AYJCs. Inspectors had found there was a lack of clarity about how the role would develop in the new larger areas.

3.4 We recognise that national CPS budgetary reductions have impacted on a number of aspects which previously assisted in sharing information and good practice, including regular AYJC conferences and the publication of the CPS Youth Newsletter. Necessary information on changes to youth law practice and procedure is distributed promptly, but this needs to be reinforced through more structured local delivery of training and guidance.

3.5 The findings from the follow-up inspection¹ indicate that there is now a better understanding of the role. Each area, including CPS Direct, now has at least one AYJC, with support at the local unit level. This addresses one of the concerns in the original report although the extent of the role's effectiveness remains varied. Co-ordinators have taken the lead in the delivery of training to Associate Prosecutors on Youth Court practice and procedure, although the extent to which they

¹ Based on an analysis of questionnaire responses from AYJCs.

reinforce relevant CPS Prosecution College e-learning varies. Additionally, only one AYJC had delivered training on the new Association of Chief Police Officers (ACPO) gravity matrix² which is used to consider whether a youth is eligible for a pre-court disposal. Structured liaison with Youth Offending Service managers is patchy, and the responses to our questionnaire indicate that some remain ad hoc.

² The ACPO gravity matrix sets out generic and specific aggravating and mitigating factors for a wide range of offences to assist police officers and prosecutors in deciding whether the youth is eligible for a pre-court disposal, and if so what type.

Priority recommendation 2

Substantial progress

The CPS should reinforce to prosecutors that the legal guidance on administering a reprimand or final warning should be applied consistently.

3.6 The thematic review had noted that there were proposals to change the types of statutory pre-court disposals available for youths, as well as extending the powers of the police to administer youth conditional cautions. These came fully into effect on 8 April 2013.

3.7 Whilst our file sample spanned both regimes this does not affect the findings of the follow-up inspection. The thematic review had considered two scenarios, where the prosecutor directed a pre-charge disposal at the charging stage and where they agreed to one after the defendant had been charged. In the latter, cases which had been charged by the police were also considered. The same approach was used in this inspection.

Pre-court disposals where there was no initial charge

3.8 The number of youths receiving a pre-court disposal continues to fall. In 2011-12 there was a reduction of 18 per cent from 49,407 to 40,757 compared with 2010-11.³ Whilst few of these will have been subject to a CPS charging decision, the 2013 ACPO gravity matrix reinforces the requirement for the more serious offending to be referred to the CPS for a charging decision, including in appropriate cases whether a pre-court disposal is available.

³ www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics

3.9 The thematic review had found that the evidential stage of the Code was applied correctly in 55 of the 57 cases (96.5 per cent) where the decision was to reprimand, administer a final warning or direct no further action. The public interest stage was applied correctly in all but one of the relevant cases. Of those we examined in the follow-up 23 met the criteria with the addition of youth conditional cautions. The evidential stage was applied correctly in all but one (95.7 per cent), and the public interest stage in each relevant case. There were five youth cases in the ACEP file sample that met the criteria and in all of them both stages of the Code had been applied correctly.

3.10 There was only one instance in our current sample where the pre-charge decision was to direct a youth conditional caution. However, the police now have the authority to use this pre-court disposal without referring to the CPS which is likely to account for the reduction in numbers. In the one case the condition set by the prosecutor was not proportionate, requiring the offender to compensate the victim within 28 days for the theft of her mobile phone without any exploration of his means.

3.11 The MG3 (record of charging decision) referred specifically to the ACPO gravity matrix in only 61.9 per cent of relevant cases. This is less than had been found in the thematic review (80.0 per cent), although the matrix continued to be applied correctly in each case. Prosecutors need to be reminded that they must evidence their decision-making in this aspect.

3.12 Overall, decision-making in respect of pre-court disposals at the charging stage is good. It is, however, likely that the new regime which allows for youths to receive pre-court disposals even though they may have previous convictions, will make this more challenging.

Other recommendation 1

No longer applicable

The CPS should agree procedures with the Association of Chief Police Officers which ensure prosecutors are notified whether a youth has been subject to a community resolution for previous offending.

3.13 The thematic review had noted that prosecutors at the charging stage were not always being told by the police whether a youth's previous offending had been subject to a community resolution. This information was important in assisting determination of the appropriate pre-court disposal. Subsequent changes to the regime have removed the previous structural rigidity which lessens the importance of provision of this information.

Pre-court disposals where there was an initial charge

3.14 The thematic review had identified a number of issues where a pre-court disposal was sanctioned after the youth had been charged. In police charged cases there was a concern that, particularly in low level public order offending, the police were not giving any consideration to whether a pre-court disposal was appropriate at the charging stage. That concern remains.

3.15 The other concern was that prosecutors were agreeing to a pre-court disposal after charge where the youth had not admitted the offence. The review highlighted that this was contrary to national CPS guidance and the relevant case law. Subsequent to the publication of the report the CPS reissued and reinforced its guidance with regard to this aspect. When selecting the file sample for the follow-up we noted far fewer CPS

charged cases which were subsequently finalised as a pre-court disposal. This and the findings from the follow-up file sample indicate that there has been substantial progress with regard to this recommendation, although examples of the original issues were still identified.

3.16 There were 24 police charged cases in our file sample which were finalised in the Magistrates' Court. The police applied the evidential stage of the Code test correctly in 91.3 per cent, but the public interest stage in only 42.9.⁴ The gravity matrix was applied correctly by the police in few cases, and was only rarely referred to in the record of their charging decision.

3.17 Nineteen of the 24 cases (79.2 per cent) were ultimately finalised by way of either a pre-court disposal or discontinuance without any sanction. However, the CPS review was not always prompt and led to unnecessary hearings while a pre-court disposal was arranged. Further delays were noted either where the CPS initially failed to inform the police that a pre-court disposal had been agreed, or there was delay in it being administered. The high proportion of police charged cases which did not pass the public interest stage of the Code test needs to be addressed at a local area level through joint performance management arrangements.

3.18 In two of the 19 police charged cases (10.5 per cent) the CPS agreed that a pre-court disposal was appropriate when there had been no admission by the youth of guilt before charge. In one the decision was taken on the day set down for trial and in the other proceedings were discontinued incorrectly by the CPS on public interest grounds.

3.19 We were concerned to note that there were three police charged cases in the sample where either a caution or conditional caution was subsequently administered without apparent reference to the CPS. Each had been correctly accepted for prosecution by the CPS. It appeared from their chronologies that the defendant was charged before 8 April 2013 when a caution or conditional caution would not have been available to the police or Youth Offending Service, but administered after that date. In each case the CPS was left with no alternative but to terminate the proceedings. There was nothing on the CPS case management system to indicate that this practice had been drawn to the attention of either the police or Youth Offending Service.

3.20 We are aware that at a national level the CPS has concerns about this practice, which we share. The provisions of section 3 (2) (a) Prosecution of Offences Act 1985 mandates the Director of Public Prosecutions (DPP) to take over the conduct of all criminal proceedings instituted on behalf of a police force.⁵ There is no provision which allows for this responsibility to be suspended or delegated. The CPS will want to ensure through discussions with ACPO and the Youth Justice Board that the statutory position is understood and applied.

3.21 There were only three CPS charged cases where a pre-court disposal was subsequently administered. In each there had been a change of circumstances which affected the original decision that it was in the public interest to prosecute.

⁴ This excludes cases where we were unable to determine what information the police had to make their decision.

⁵ There are certain exceptions for specified proceedings, none of which applied in the cases we examined.

Priority recommendation 3*Substantial progress*

The CPS should, in consultation with its stakeholders, review its policy guidance on looked after children to consider whether those in foster care should be included; and reinforce the need to ensure the current guidance is followed at the pre-charge decision stage.

3.22 The thematic review had found that the CPS policy guidance on cases involving 'looked after children' was not followed consistently. Interviewees seen in the course of the review were concerned that children were entering the criminal justice system who should not have been prosecuted. The review also recommended that the policy should be reviewed to consider whether children in foster care, for whom many of the same issues applied, should be included.

3.23 The CPS reminded all prosecutors in July 2012 of the guidance and in its August 2012 Law and Policy Digest, which is mandatory reading for all prosecutors. However, they decided not to consult on extending the policy to children in foster care, as they considered there was insufficient distinction between them and all children in a domestic setting.

3.24 There were 11 looked after children in our follow-up file sample. Consideration of the policy arose in four CPS charged cases, and it was applied correctly in three. Although a small sample, this indicates progress. However, there was an additional police charged case involving assaults on staff in a care home which was discontinued incorrectly solely on the grounds that the care home had not considered the relevant criteria in the policy. This is not a bar to prosecution, and in this case there was sufficient evidence and the nature and circumstances of the assault met the Code's public interest criteria.

Priority recommendation 4*Substantial progress*

The MG3 (record of charging decision) should, in every case where a grave crime determination must be made, set out clearly all the relevant factors to enable the prosecutor at court to make effective representations.

Other recommendation 2*No progress*

The CPS file should be endorsed with the prosecution and defence representations and the court's determination at the grave crime hearing, particularly in cases involving allegations of sexual offending.

3.25 In the most serious cases the Youth Court must determine whether the youth should remain there or be dealt with at the Crown Court.⁶ This is known as the grave crime determination and is based on whether a sentence substantially in excess of that which could be imposed by the Youth Court is a realistic possibility.⁷

6 This includes all cases which would have to be dealt with at the Crown Court if the defendant was an adult and the more serious either way offences, for example sexual assaults and dwelling house burglaries. See *R (B) v Norfolk Youth Court and Crown Prosecution Service* [2013] EWHC 1458 (Admin) for a recent review of the issues which arise at a grave crime determination.

7 There are slight variations in the test to be applied for 10 and 11 year olds and 12-14 year old non-persistent offenders in respect of whom a custodial sentence would not normally be imposed. The court is now no longer required to take the prosecution case at its highest (without considering factors which would reduce the seriousness of the offence).

3.26 The thematic review had found that only 26.6 per cent of MG3s referred correctly to all the relevant grave crime criteria necessary for the court to determine whether the youth should be dealt with at the Crown Court. After publication of the thematic review the CPS issued 'venue' prompts for charging lawyers with links to the relevant sections of its legal guidance. This included guidance on how to complete the MG3 and good practice examples.

3.27 The findings from the follow-up file sample showed that there had been improvement with 49.2 per cent of charging decisions referring correctly to the necessary aspects, and 55.6 of the relevant cases in the ACEP file sample. The direction of travel is therefore positive, although some charging decisions still displayed a worrying lack of understanding.

3.28 CPS Direct, which now provides the majority of CPS charging decisions, is reviewing the approach to the content of MG3s. In the light of our findings (which although encouraging indicate clearly that there is still room for improvement) they will wish to ensure that their review considers how best to ensure prosecutors refer correctly and proportionately to grave crime criteria.

3.29 Providing appropriate grave crime determination guidance to the prosecutor at court in respect of rape and other serious sexual assaults was much better than for cases overall in the follow-up file sample. In 80 per cent of the relevant cases the MG3 referred to the relevant factors. However, we noted that in all but the most straightforward cases it was usual for the court to request skeleton arguments from the parties.

3.30 Quality and sufficiency of the grave crime determination endorsement on the CPS hearing record sheet had also given rise to concern in the thematic review. Only 28.6 per cent of relevant files contained an adequate endorsement of the prosecutor's representations, falling to 7.1 which recorded the defence representations. Only a third contained any reference to what the court said when making its determination. Prosecutors should be aware that these determinations are susceptible to judicial review and there must be an adequate decision-making audit trail.

3.31 Since the thematic review the CPS has moved to digital files in the Magistrates' Courts, including digital file jackets. In 11.9 per cent of cases in the follow-up file sample we could not determine what took place at the relevant hearing due to the absence of hearing record sheets on the CPS case management system. Where there was a record, it contained an adequate endorsement of the prosecution's representations in only 29.7 per cent, falling to 19.4 which recorded the defence representations. Just over a third contained any reference to what the court said in making its determination and far fewer had any reference to the relevant Sentencing Council Guidelines.

3.32 Although there was a paucity of adequate endorsements, we considered that the prosecutor's representations were correct in 87.5 per cent of cases. In two cases the prosecutor at court, contrary to correct instructions, made different representations on the appropriate venue. Where there are concerns about aspects of a charging decision they should be discussed with a CPS legal manager prior to the hearing.

3.33 The quality of the endorsement relating to initial applications to remand the defendant in youth detention was much better (although still requiring improvement), with 63.2 per cent of cases containing sufficient detail, compared with 48.4 in the original review. However, the recording of subsequent remand hearings was inadequate (31.2 per cent compared with 50.0). All the relevant cases complied with the CPS custody time limit (CTL) standards, supporting the findings from the recently published HMCPSI *Follow-up review of the handling of custody time limit cases by the Crown Prosecution Service* (July 2013).

Priority recommendation 5

Limited progress

The CPS develop a series of prompts to ensure charging lawyers address correctly all relevant youth issues.

3.34 This recommendation reflected the overall concern about the quality of MG3s; in particular their reference to relevant youth issues. Prompts on charging, venue and remands were issued by the CPS in July 2012. These linked to relevant sections of the legal guidance.

3.35 As we have noted, there has been an improvement in recording grave crime issues. Similarly, there has been an improvement in the quality of instructions to the prosecutor in respect of relevant remand criteria. However, in both aspects there is a need for further significant improvement before performance reaches an overall acceptable level. In the thematic review only 54.8 per cent of MG3s had contained adequate remand instructions. The follow-up file sample showed that 60.6 per cent were adequate.

3.36 There were good examples of MG3s which set out clearly the necessary conditions to remand the youth in detention and how they were met in the particular case. Others set out plainly why there were no grounds to apply for such a remand. However, not all MG3s met this standard. We were concerned to note that in some cases the charging lawyer had correctly determined that there were no grounds to remand the youth, but the police kept them in custody after charge pending their court appearance. Prosecutors rightly made no application to remand the youths, but nevertheless the defendant spent an unnecessary period in detention.

3.37 Overall, 43.3 per cent of MG3s in the follow-up were assessed as good or better,⁸ and 43.9 per cent of applicable MG3s in the ACEP file sample (44.0 for those with only adult defendants). Whilst there was almost no difference in the ACEP file sample in the comparative proportion of good or better MG3s, there was a higher proportion of ACEP youth MG3s assessed as poor (21.9 per cent compared with 18.3 involving only adults). We found that 24.0 per cent of MG3s in the follow-up file sample were poor.⁹

3.38 Prosecutors were less likely to consider relevant issues where there was a mix of youth and adult defendants, for example in allegations of affray and drugs cases.¹⁰ In particular there was unlikely to be consideration of what representations should be made as to whether the youth should proceed to the Crown Court with the adult. Some records of charging decisions did not even acknowledge that a youth was involved. Where the case did proceed to the Crown Court very few file records (10.5 per cent) indicated that proceedings had been expedited because a youth was involved and in some unnecessary delay was caused to the finalisation of the youth's case. Only 20.0 per cent of hearing record sheets contained any endorsement to indicate whether the court had considered it was in the interests of justice that the youth should go with the adult to the Crown Court.

3.39 We are aware that CPS Direct are reviewing how charging lawyers record their assessment on the MG3 of the case against each defendant. Once implemented this should help to focus attention on the relevant aspects for youth defendants.

3.40 Overall the introduction of youth prompts for charging lawyers has led to substantial progress in addressing relevant issues in the MG3, and that is reflected in our assessment of progress in respect of the specifics of the recommendation. However, our findings reflect more general concerns about the quality of case analysis and strategy, in particular in respect of issues of identification and joint enterprise.

⁸ The proportion was slightly higher in CPS Direct cases (46.0 per cent).

⁹ The thematic review did not have an overall rated charging question, so no comparison can be made.

¹⁰ Particularly in police drugs test purchase operations.

Priority recommendation 6

Limited progress

The CPS ensures all prosecutors have a basic understanding of Youth Court law and procedure.

3.41 The thematic review had found that with the disbanding of specialist youth teams¹¹ there had been a decline in the necessary experience to deal with Youth Court law and procedure. Aligned to this was a reduction in the number of Youth Court sittings which resulted in more youths appearing initially in the Magistrates' Court. This increased the risk that the prosecutor would not have the necessary experience.

3.42 The CPS has prepared three mandatory e-learning modules to provide a basic level of youth training to all prosecutors, but at the time of the follow-up these had not yet been launched.

3.43 Some Area Youth Justice Co-ordinators have delivered local training on key aspects, such as grave crime determinations. This is not consistent across the CPS, and has been targeted primarily at Associate Prosecutors to enable them, once assessed as proficient, to undertake bail and grave crime hearings.

¹¹ Since the thematic review CPS London has reinstated its Youth Court Team.

Other recommendation 3

Limited progress

Youth offender casework is included by CPS areas as part of their core quality standards monitoring either as a continuing part of the monthly selection of cases or on an ad hoc basis.

3.44 CPS areas now have greater flexibility in the types of case they select for CQSM. However, there is no mandatory requirement to include those involving youth offenders, although they will be considered as part of area adverse case outcome monitoring procedures. CPS Direct, which is now responsible for the majority of CPS youth charging decisions, undertakes additional monitoring of the quality of charging decisions across a range of cases including youth defendants. The data supplied by CPS Direct shows that its managers identified the same issues as found in this inspection. This is taken forward by way of individual feedback and general learning points. Cases dealt with by the CPS London Youth Court Team will also be included within CQSM.

3.45 The ACEP file sample included 502 cases which had been subject to CQSM, but only 35 involved youths. In some units, over a three month period, we were unable to find any youth cases which had been subject to this process.

3.46 Inspectors and CPS legal managers assessed overall youth casework quality lower than for that involving adult defendants. The CPS managers gave an overall weighted score of 86.2 per cent for the youth cases, but 90.2 for adults. Inspectors assessed the weighted scores¹² as 78.7 and 82.9. The difference between the scores of inspectors and CPS legal managers is similar in both categories.

3.47 Individual aspects where inspectors and legal managers both assessed quality as much lower in youth cases included appropriate instructions and guidance on the MG3 to the prosecutor at court, file endorsements in relation to bail and reviews in Crown Court cases. These findings reinforce those from the follow-up file sample and the thematic review.

3.48 We found that a number of cases originally selected to be examined during this inspection were incorrectly recorded as involving youths on the CPS management information system.¹³ Although the defendant was a youth at the time of the commission of the alleged offence their status had changed either by the time of the charging decision or first hearing, which are the determinative events. More care needs to be taken to ensure that the CPS case management system is updated to reflect accurately the defendant's status.

¹² The weighted score indicates the overall quality of the casework on the file, taking into account the relative importance of a number of factors reflected in the assessment questions.

¹³ The management information system takes data from the case management system.

Annexes

A Progress against recommendations

Priority recommendations	Progress at July 2013
1 In the light of its restructuring, the CPS reviews the role of Area Youth Justice Co-ordinator and develops a role which enables the original scope of the post to be delivered locally	Limited progress
2 The CPS should reinforce to prosecutors that the legal guidance on administering a reprimand or final warning should be applied consistently	Substantial progress
3 The CPS should, in consultation with its stakeholders, review its policy guidance on looked after children to consider whether those in foster care should be included; and reinforce the need to ensure the current guidance is followed at the pre-charge decision stage	Substantial progress
4 The MG3 (record of charging decision) should, in every case where a grave crime determination must be made, set out clearly all the relevant factors to enable the prosecutor at court to make effective representations	Substantial progress
5 The CPS develop a series of prompts to ensure charging lawyers address correctly all relevant youth issues	Limited progress
6 The CPS ensures all prosecutors have a basic understanding of Youth Court law and procedure	Limited progress
Other recommendations	
1 The CPS should agree procedures with the Association of Chief Police Officers which ensure prosecutors are notified whether a youth has been subject to a community resolution for previous offending	No longer applicable
2 The CPS file should be endorsed with the prosecution and defence representations and the court's determination at the grave crime hearing, particularly in cases involving allegations of sexual offending	No progress
3 Youth offender casework is included by CPS areas as part of their core quality standards monitoring either as a continuing part of the monthly selection of cases or on an ad hoc basis	Limited progress

B Methodology

File criteria	Number
Pre-charge out of court disposal (including no further action)	25
Post-charge out of court disposal	24
Grave crime retained in the Youth Court	25
Grave crime directed to the Crown Court	21
Youth jointly charged/linked with adult – indictable only offence	21
Youth jointly charged/linked with adult – either way offence	14
Total	130

File sample

Inspectors examined 130 files finalised over a three month period, drawn from five CPS areas. The composition of the file sample is set out in the table above.

Files were not selected with regard to the status of the victim, but it is of note that in over a third of cases the victim was also a youth.

Inspectors also considered the findings from 380 finalised files (including five where a pre-court disposal was directed by the CPS at the charging stage) involving youth defendants which were examined as part of the 2012-13 ACEP.

Thirty five of the 380 ACEP youth files had also been subject to CPS core quality standards monitoring. These were considered to determine the robustness of CPS assessments of casework quality.

Position statement

The CPS provided a position statement setting out the actions taken following the publication of the thematic review. This informed our thinking on the progress made against the recommendations.

Questionnaires

Each Area Youth Justice Co-ordinator was asked to complete an online survey on key issues.

Interviews

Interviews were held with:

- The Chief Crown Prosecutor with thematic responsibility for youth offender casework
- The CPS policy lead on youth justice
- The Deputy Chief Crown Prosecutor, CPS Direct

C Key findings from the file examination

Age of youth at time of charging decision where a pre-court disposal directed or first hearing in charged cases

Age	Number
10	0
11	1
12	7
13	2
14	13
15	23
16	37
17	47
Total	130

Status of victim

Criteria	Number
Young victim	45
Elderly victim	2
Disabled victim	1
Other vulnerable victim	18
Not applicable	64
Total	130

CPS or police charging decision		
Reprimand		2.3%
Final warning		5.4%
Conditional caution		0.8%
Caution		6.9%
Charge		80.8%
No further action		3.8%
The CPS charging decision		
The threshold test was applied correctly		76.5%
The reason for applying the threshold test was recorded correctly		82.4%
The evidential stage of the full Code test was applied correctly at the pre-charge decision (PCD) stage		93.6%
The public interest stage of the full Code test was applied correctly at the PCD stage		100%
The CPS policy guidelines on looked after children were followed		60.0%
The MG3 referred to the ACPO gravity matrix		33.8%
The ACPO gravity matrix was applied correctly		98.6%
The MG3 referred correctly to the relevant grave crimes criteria		49.2%
The MG3 set out the relevant remand criteria		60.6%
The MG3 set out clearly the necessary instructions to the prosecutor at court		53.2%
Overall quality of the MG3	Excellent	1.0%
	Good	42.3%
	Fair	32.7%
	Poor	24.0%
Police charged cases		
The evidential stage of the full Code test was applied correctly by the police		91.3%
The public interest stage of the full Code test was applied correctly by the police		42.9%
The police applied the ACPO gravity matrix correctly		18.8%
The evidential stage of the Code test was applied correctly by the CPS at initial review		100%
The public interest stage of the full Code test was applied correctly by the CPS at initial review		91.7%

Pre-court disposals in charged cases	
Unnecessary hearings awaiting the post-charge pre-court disposal (proportion of cases)	47.8%
Proceedings were discontinued promptly following post-charge out of court disposal	90.9%
The decision to give a post-charge pre-court disposal was Code compliant	86.4%
Grave crime determination	
The CPS file/digital file jacket recorded fully the prosecutor's representations	29.7%
The CPS file/digital file jacket recorded fully the defence representations	19.4%
The CPS file/digital file jacket recorded fully the grave crime determination	32.4%
The prosecutor's representations were correct	87.5%
The Crown Court sentence was within the Youth Court range	69.2%
Remand applications	
The correct remand conditions were applied	100%
The CPS file/digital file jacket recorded fully the detail of the first remand application (including unsuccessful)	63.2%
The CPS file/digital file jacket endorsed clearly the detail of subsequent remand hearing(s)	31.2%
There was compliance with CPS CTL standards	100%
Adult/youth cases	
Being linked to an adult caused unnecessary delay	18.9%
The case was expedited because a youth was involved	10.5%
The adult and youth appeared together at the first hearing	84.2%
The CPS file/digital file jacket indicated a consideration of the interests of justice provisions	20.0%
The youth was remitted to the Youth Court for sentence	17.9%
The Crown Court sentence was outside the Youth Court's powers	32.0%



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