

Transforming Summary Justice: An early perspective of the CPS contribution

February 2016

If you ask us, we can provide this report in Braille, large print or in languages other than English.

For information or for more copies of this report, please contact our publications team on 020 7210 1197, or go to our website:

www.justiceinspectors.gov.uk/hmcpsi

1 Contents

1	Executive summary	1
	Overview.....	1
	Key findings.....	2
	Suggested steps.....	5
	Good practice.....	6
2	Introduction	7
	Context.....	7
	Background.....	8
	The ten characteristics.....	9
	Methodology.....	10
3	Leadership, governance and performance	11
	National external governance.....	11
	National internal governance.....	13
	Local governance.....	15
	The CPS Compliance and Assurance Team.....	16
	Training.....	17
	Performance data.....	19
	Blitz courts.....	23
	Domestic abuse, youth and custody cases.....	24
	Our findings.....	24
4	Quality assured police files	27
	The police charging decision.....	27
	Timeliness of file submission.....	28
	Categorisation of cases.....	29
	Compliance with the National File Standard.....	30
	Types of non-compliance with the National File Standard.....	31
	Victim Personal Statements.....	31
	Police case summary (MG5).....	33
	CCTV and other issues.....	33
	Disclosure.....	34
	Police quality assurance and joint performance management.....	35
	Our findings.....	37
5	Preparation for the first hearing	39
	The Inspectorate file sample.....	40
	CPS charging decisions.....	40
	Initial file review and lawyer allocation.....	40
	Completion of Preparation for Effective Trial form.....	43
	Disclosure of unused material.....	44
	Early receipt of initial details of the prosecution case.....	45

Structure of CPS units	47
Our findings.....	48
6 Engagement with the defence.....	51
Our findings.....	53
7 The first hearing.....	55
Anticipated plea hearings and the brigading of cases.....	56
The right personnel at the hearing.....	59
Court.....	61
Defence.....	61
Police support for anticipated not guilty hearings.....	62
Connectivity for each agency at court.....	63
Our findings.....	64
Annexes.....	65
A Scoping document.....	65
B The ten characteristics.....	69
C File reading data.....	71
D Court observations.....	77
E Glossary.....	83

1 Executive summary

Overview

1.1 This report details the findings of an inspection undertaken by Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) of the contribution by the Crown Prosecution Service (CPS) to the Transforming Summary Justice (TSJ) initiative.

1.2 TSJ is a recent cross-criminal justice agency initiative endorsed at the highest ministerial level by the National Criminal Justice Board. Its aim is to reform the way in which criminal casework is undertaken in the magistrates' courts and to create a swifter criminal justice system, with reduced delay and fewer hearings. The initiative is based on ten characteristics to be implemented by all the agencies to achieve its aims.

1.3 Previous initiatives have failed to improve substantially the way that magistrates' court work is delivered. Changes were introduced too quickly, with insufficient training and weak governance arrangements. Our initial assessment of the CPS contribution to TSJ is more positive. Good legal training has been delivered and strong governance arrangements are in place but it is essential that the focus is maintained and momentum is not lost. TSJ has to be given time to bring about a real culture change, which cannot happen overnight.

1.4 This review has taken place at an early stage of implementation. The court observations and interviews took place less than four months after the national start date. We considered only what is happening up to and including the first hearing and did not follow contested cases through to trial. The report details our findings but we do not make recommendations at this early juncture, rather we suggest steps to be taken to help embed the initiative and to complement the work that is already being done.

1.5 It is too early to say that TSJ is leading to an improvement in performance. The baseline period from which performance will be measured has not yet started. It is expected that it will be several months after that period before improvements can be realistically and accurately measured. The success or otherwise of TSJ will depend not only on an increase in the timeliness and number of guilty pleas, but on a reduction in the number of trials and an increase in their effectiveness.

1.6 We found that there is a good deal of 'buy-in' amongst CPS staff and their criminal justice partners to achieve TSJ's aims. It is encouraging to note that generally all agencies are looking at their own performance rather than blaming others when things do not go as planned. Against this background a number of aspects of the initiative have had a promising start, but operationally there is still a good deal of work to be done.

1.7 The findings in this report detail aspects which require further work. We reiterate the importance of the national and local governance arrangements remaining in place, and structured and consistent quality assurance and performance management being introduced across the CPS to allow work across all the agencies to be managed and challenged, ensuring that each fulfils its commitment to the initiative.

1.8 We intend to follow-up this inspection to assess how effective the whole process is in achieving the aims of TSJ. Our inspection methodology is set out at paragraphs 2.20-2.23.

1.9 The inspection team is grateful to all those who gave their time, whether in focus groups or interviews, to assist in the compilation of this report.

Key findings

1.10 The external governance structure is very visible at national and local level with clarity that TSJ is a cross-agency approach working towards achieving common goals. It is too early to judge whether it is as effective as it can be. There has to be caution that the governance structure is maintained until there has been a clear evaluation to show that the TSJ principles are embedded, with improved performance to evidence the transition.

1.11 There is clear commitment and strong leadership from senior CPS representatives at a national and local level to TSJ. However, local CPS Areas could be better supported by the National Implementation Team. In particular there are few effective mechanisms in place at this stage for sharing best practice or opportunities to learn lessons, which could potentially save resources and avoid duplication of effort.

1.12 The internal CPS Compliance and Assurance Team (CAT) is undertaking a programme of reviews in every CPS Area to assess the extent to which each Area is complying with the initiative. It will provide a valuable 'snap-shot' of progress and recommend actions. The results of these reviews will be assimilated with self-assessments by the Areas of their progress and it is intended that any issues identified will be actioned. This work had not been completed at the time of this inspection but we understand it was finalised shortly afterwards.

1.13 The CPS legal training was very good and well received, although it would have been further enhanced by coverage of more practical issues. The lawyer training contained case studies and is supported by a detailed TSJ NGAP (not guilty anticipated plea) and Costs Toolkit that is regularly updated and available for download by prosecutors through the Prosecution College. The extent of this training is indicative of the importance that the CPS places on the success of TSJ and shows a willingness to learn from previous efforts to introduce changes. The training of its administrative staff was markedly weaker.

1.14 A 'TSJ Dashboard' has been agreed nationally to measure the success or otherwise of the initiative, but this does not include any measures to assess compliance against the ten TSJ characteristics. Individual processes have been developed in local CPS Areas resulting in duplication and inconsistency. A centrally mandated national system of local compliance checks would better assist CPS Areas and their work with partner agencies.

1.15 It is too early to assess whether TSJ has produced the expected improvements in performance. A baseline is to be taken from the third quarter of 2015-16 with improvements not expected until the first quarter of 2016-17.

1.16 The National Trial Backlog Initiative was successful in finalising large numbers of trials which were in the court system before the implementation of TSJ. It is a good example of what can be achieved when the agencies work together.

1.17 We found that police charging decisions were good and assessed these as correct in 95.3% of the cases examined. They are supplying their files to the CPS in good time for review although they are not wholly complying with the timeframes which TSJ requires. They are also good at correctly assessing the anticipated plea on the basis of the evidence available before the first hearing (this was correct in 90% of cases). However, despite the evidence, defendants are not pleading as anticipated in nearly a third of cases.

1.18 Receipt of a quality police file is central to the ability of the CPS to deliver on its commitment. The police are failing to provide a file which meets the agreed standard; only 42.8% of the cases assessed contained the agreed documentation. In only 32.8% of relevant cases did we find that a Victim Personal Statement was included, which impacts on victims' rights and must be addressed.

1.19 We found that failings in the quality of police files were not being addressed by the CPS with a lack of effective, real time feedback. Different systems were in place in each of the Areas visited to monitor and feedback issues to the police, which included diverse processes for escalation in relation to timeliness and levels of authority. It is essential that the CPS finds an effective system of monitoring police file quality and producing reliable data in support to use as a tool to drive up performance. Adoption of a file quality standard measure by the National Criminal Justice Board as one of its performance measures would assist improvement. There is currently work ongoing by a joint working group consisting of the CPS and police to agree a standard for case file quality, which should also assist in driving up performance.

1.20 Dealing with disclosure of unused material at a very early stage is one of the key innovations of TSJ and essential to effective case management. The introduction of revised disclosure forms for use in magistrates' courts cases has created difficulties for the police in practice. Both police and CPS performance in relation to complying with their disclosure obligations is poor and needs to be improved.

1.21 Whilst CPS charging decisions were found to be good (94.1% of cases met the required standard) there was a failure to review cases for the first hearing in too many instances. A fundamental principle of TSJ is that the CPS conducts a proportionate initial review before the first hearing. In 69.0% of cases where a guilty plea was anticipated there was no record of this review on the file. In cases where a not guilty plea was anticipated 22.8% did not have any record of this review. Both the quality and timeliness of initial review by the CPS needs to be improved.

1.22 We found duplication in the work done by the CPS Direct charging lawyer, CPS Area lawyer undertaking the initial review, and the court prosecutor in relation the Preparation for Effective Trial form and, more widely, in respect of the review for trial preparation.

1.23 There is some indication that service of the initial details of the prosecution case (IDPC) on the court is improving. However, the CPS is poor at ensuring that IDPC is served on the defence in advance of that hearing. In 114 of the cases we assessed the defence solicitor's details were known before the first hearing, but in only 19 of these (16.7%) was the IDPC served on them in advance of that hearing.

1.24 At this stage it is too early to assess the most effective way to deploy prosecutors to deal with contested cases and different Areas are currently organising their magistrates' courts teams differently. When considering which model to use it is essential that managers do not under estimate the importance of staff buy-in or forget the need to maintain and develop the skills of their lawyers and other staff, their most valuable resource.

1.25 CPS lawyers are failing to engage effectively with the defence prior to the first hearing. A clear message is needed from CPS managers to staff and defence practitioners about what is expected with regard to defence engagement. Whilst there are obstacles to constructive and early engagement they are not such that the concept should be abandoned and much more effort needs to be made to bring about the required culture change at an operational level.

1.26 TSJ expects that cases are listed together in court in accordance with the anticipated plea. GAP courts will deal with guilty plea cases and NGAP courts with contested matters. Our court observations revealed many instances of cases not being brigaded together in this way and we found no evidence that the CPS were challenging Her Majesty's Courts and Tribunals Service (HMCTS) in this regard. In addition, despite nationally agreed optimum numbers for each type of court, we found that there were significant differences as to how many cases were actually listed.

1.27 We assessed 81% of first hearings as effective. In general, the right personnel are present at the first hearings with CPS prosecutors being well prepared, robust and able to make decisions. Joint court observations by CPS and court managers to review the performance of both prosecutors and legal advisors were found to be particularly good practice and an effective way of working together across the agencies to encourage improvement.

1.28 We found that there was a lack of awareness of the police support available at the NGAP hearing amongst CPS prosecutors. Prosecutors should use the police support at court if needed and managers should ensure that effective systems were in place to avoid delays where possible.

1.29 The defence presented a mixed picture with most, but not all, supporting TSJ.

1.30 Wi-Fi needs to be installed in all suitable courts to support the initiative.

Suggested steps

1.31 Consideration be given to a national forum comprising the CPS Area TSJ leads and national project team representatives. Inspectors understand that this already happens in respect of the rape and serious sexual offences work and that feedback is positive. This has the potential to save resources by sharing good practice, build engagement and maintain momentum (paragraph 3.17).

1.32 Consideration is given at a national level to the training of administrative staff to ensure that they are best equipped to carry out their roles. This is particularly important with the advent of Better Case Management which is an initiative being piloted to improve the way in which cases are managed in the Crown Court. A national package would be the best tool to assist in this regard and would save duplication across the different CPS Areas (paragraph 3.33).

1.33 We find that inclusion of the MGDDA documentation in guilty anticipated plea drink drive cases improves the chances of an early guilty plea being entered at the first hearing. Consideration should be given to seeking an agreement with the police to include this documentation (paragraph 4.12).

1.34 That the national board re-examines the disclosure forms, and considers simplification, so that the police fill out the same form whatever the type of case (paragraph 4.37).

1.35 Consideration should be given to revisiting the optimum number of cases to be listed in the NGAP and GAP courts in the light of operational experience at the national TSJG (paragraph 7.7).

Good practice

1 Inclusion of the MGDDA documentation in guilty anticipated plea drink drive cases improves the chances of an early guilty plea being entered at the first hearing (CPS East Midlands) (paragraph 4.12).

2 Proportionate CPS participation in police training is good practice, particularly in respect of police file quality and disclosure, and ought to benefit both organisations (CPS South West, East Midlands and London) (paragraph 4.46).

3 A template had been introduced for use in NGAP reviews in some of the files which reminded the reviewing lawyer to consider the relevant issues. This is a useful tool for managers to introduce when necessary to drive up the quality of the work of their team (CPS Eastern) (paragraph 5.17).

4 Several CPS Areas were noted as using a standard form of hearing record sheet containing a review box which prompted the advocate to evidence their review. We consider this a proportionate way of complying with the review requirement in guilty anticipated plea cases (paragraph 5.48).

5 CPS agents deployed in the magistrates' courts are required to undertake relevant TSJ training (CPS East Midlands) (paragraph 7.17).

6 In CPS South West joint court visits were arranged with the CPS and court managers conducting reviews of both prosecutors and legal advisors. Managers from both agencies advised us that these were particularly useful and that their staff appreciated the feedback. We find that this joint work is an effective way of working together across the agencies to encourage improvements (CPS South West and East Midlands) (paragraph 7.23).

2 Introduction

Context

2.1 Transforming Summary Justice is a cross-criminal justice agency initiative endorsed at the highest ministerial level by the National Criminal Justice Board (NCJB). Implemented throughout England and Wales from 1 June 2015 its aim is to reform the way in which criminal casework is undertaken in the magistrates' courts and to create a criminal justice system (CJS) with:

- reduced delay
- fewer hearings; and
- more trials effective on the day.

2.2 The expectation is that if CJS partners and defence representatives adhere to the principles of TSJ there will be swifter justice and, consequently, less distress for victims and witnesses. The Government has stated that improving the experience of victims and witnesses is at the heart of its strategy for the CJS and it is a key priority for the Director of Public Prosecutions (DPP). Successful implementation of TSJ will also enable all parties in the CJS to work more efficiently in an era of diminishing resources.

2.3 Senior managers in the CPS recognise that the CJS needs to be more efficient and effective if it is to continue to deliver justice with reduced resources. Their belief is that significant improvements will follow if the principles which form the basis of TSJ can be embedded across all the participating agencies. Successful implementation is essential to the CPS as its future strategy is predicated on the assumption that the initiative is fully operational in all magistrates' courts.

2.4 Following discussion with the CPS Chief Executive it was decided that HMCPSP should conduct an independent review of the contribution of the CPS to TSJ at an early stage and this report details our findings. The scope of the inspection is set out at annex A. The inspection covers the CPS's contribution up to and including the first hearing in the magistrates' court and assesses the effectiveness of the CPS contribution to achieving the ten characteristics of TSJ, namely:

- 1 Quality assured police files
- 2 Anticipated plea hearings
- 3 Brigading cases
- 4 Optimum bailing patterns
- 5 Early receipt of IDPC
- 6 The right personnel at the hearing
- 7 Streamlined disclosure
- 8 Clear expectations of effectiveness
- 9 Police support for anticipated not guilty hearings
- 10 Connectivity for each agency at court

We discuss these in detail throughout the report and set them out fully at annex B.

2.5 Ideally a joint inspection with Her Majesty’s Inspectorate of Constabulary (HMIC) would have taken place recognising the critical role that the police have in the prosecution process. However due to existing commitments they were unable to contribute at this stage.

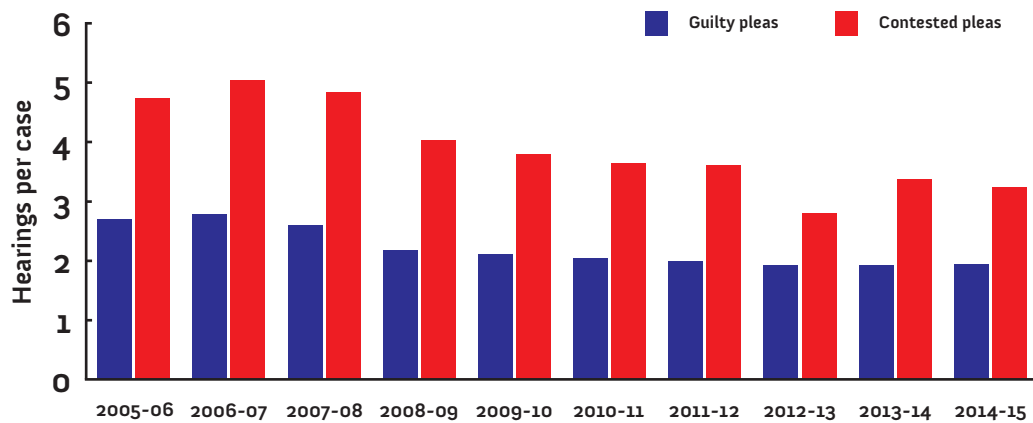
Background

2.6 There have been several earlier attempts to reform the way in which summary work is dealt with. More recent initiatives include: Criminal Justice: Simple, Speedy, Summary (CJSSS, 2007) and Stop Delaying Justice (2012).

2.7 The consensus of those interviewed is that previous projects have failed to produce sustained reform. However, it is fair to note that TSJ aims to develop principles taken from such earlier schemes and to build on what is proven to work well from past and more recent experience. There has been a steady improvement in the time that it has taken for criminal cases to be dealt with in the magistrates’ courts, which provides some evidence that past efforts have produced benefits.

2.8 The table demonstrates the progress that has been made over the past ten years:

National magistrates’ court hearings per case



2.9 Impetus for reform was revitalised followed the publication in June 2013 of Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System.¹ This document sets out the Government’s vision for the modern criminal justice system. It details 64 actions intended to transform criminal justice with a fundamental premise that all parts of the CJS should be working towards achieving the same set of values.

¹ Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System; Ministry of Justice; June 2013.

2.10 The CPS Chief Executive took responsibility for a number of these actions and as a consequence a Chief Crown Prosecutor (CCP) was appointed to lead a review of the way in which magistrates' court work was handled. A project team was established and its work resulted in a presentation to the NCJB in January 2014. At this meeting ministers endorsed a basic model to transform summary justice.

2.11 In parallel, a review of the disclosure of unused material in the magistrates' courts was being undertaken by Senior District Judge (Chief Magistrate) Judge Riddle and His Honour Judge Kinch QC. This work was undertaken at the request of the Senior Presiding Judge. Their Magistrates' Court Disclosure Review report was published in May 2014.²

2.12 There was clear overlap between the two strands of work and ultimately both sets of recommendations aligned with each other. It was decided that the proposals should be implemented through a single, joined-up programme. Thus the change programme encompassed the recommendations of both the judicial summary disclosure review and the TSJ model as endorsed by the NCJB.

2.13 In May 2014 an implementation plan was presented to, and approved by, the NCJB. The update published in July 2014 by the Ministry of Justice declared that the TSJ programme would *"implement the 10-point model of summary justice in England and Wales by May 2015 and support the related recommendations of the magistrates' court disclosure review"*.

2.14 A multi-agency Transforming Summary Justice Group (TSJG) was established to drive the changes required. Crucially, the programme was agreed between all the parties involved in the process – the police, CPS, courts, judiciary and defence.

The ten characteristics

2.15 Central to TSJ are ten principles often referred to as 'characteristics'. The majority were adopted following research from across England and Wales when the project team considered what was happening in the best performing CPS Areas. Essentially the team looked at what was working well and what not so well from the start to the end of the summary justice process.

2.16 The major innovation is to be found in the commitment at national level of all agencies to change the way that they work to deliver the desired reforms. The impact of the changes to existing working practices varies across the different agencies. However it is the combination of the changes taken as a whole which has such potential and this is why it is essential that each agency fulfils its commitment.

² *Magistrates' Court Disclosure Review*; Judiciary of England and Wales; May 2014.

2.17 One fundamental change involves the ‘front loading’ of cases which require:

- all cases are to be reviewed by a CPS lawyer in accordance with the Code for Crown Prosecutors prior to the first hearing
- any necessary remedial work is undertaken before that hearing; and
- where applicable, the initial disclosure of unused material takes place at the first hearing.

This necessitates significant change to the way that the CPS and the police work.

2.18 All CPS Areas were required to be compliant with the characteristics by 1 June 2015. There were a few ‘early adopter’ Areas which implemented some or all of the characteristics at an earlier stage.

2.19 At the start of every chapter this report highlights the relevant characteristic(s) to inform the reader of what the TSJ initiative expects to be done.

Methodology

The team

2.20 The inspection team comprised of five legal inspectors (including the lead) and one business management inspector. The team was also assisted by an administrative officer and a data analyst.

The fieldwork

2.21 The inspection team visited four CPS Areas (South West, West Midlands, London, and East Midlands) during September and October 2015. In each of these Areas we interviewed operational staff and TSJ leads within the CPS, police leads for the forces aligned to the four CPS Areas, TSJ leads within Her Majesty’s Courts and Tribunals Service (HMCTS), District Judges and Bench Chairs. In addition we observed 19 magistrates’ courts sittings and spoke with prosecutors and defence representatives during these observations. The views of the defence community were also sought by way of an electronic questionnaire. At a national level we interviewed the CPS Chief Executive, Chief Operating Officer, members of the TSJ project team and the CPS Compliance and Assurance Team.

File examination

2.22 A total of 271 files were reviewed against agreed criteria utilising a bespoke question set to assess compliance with the ten characteristics and file quality. The findings from these file reviews are referred to in relevant parts of this report and set out in detail at annex C.

2.23 180 of these files were selected from the nine CPS Areas not visited. We looked at 20 cases from each of these nine Areas, consisting of 15 anticipated not guilty plea (NGAP) and five anticipated guilty plea (GAP). The remaining 91 files were GAP and NGAP cases from the Areas visited; our review included observations of these particular cases at the first court hearing.

3 Leadership, governance and performance

Characteristic number 8

Clear expectations of effectiveness

- strong local governance to ensure that Areas deliver to a high level of performance
- effective communications between each criminal justice agency at an operational and strategic level
- accountability for any lack of sustained improvement
- joint performance measures from each criminal justice agency
- distinct local arrangements for measuring effectiveness

National external governance

3.1 The CPS accepts that failure to embed basic principles and sustain momentum contributed to the lack of success of previous initiatives to reform summary justice. In interviews senior managers accepted that changes were often introduced too quickly, with insufficient training and inadequate governance arrangements. Based on past experience the CPS must keep attention focused on the TSJ initiative to make it work and prevent ‘transformation fatigue’.

3.2 In his Review of Efficiency in Criminal Proceedings published in January 2015³ the Rt Hon Sir Brian Leveson describes lessons that must be learnt from the past:

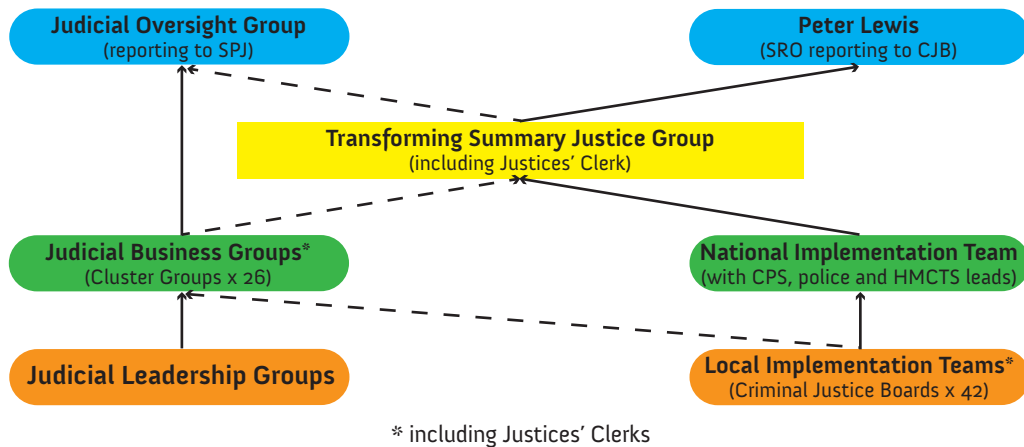
“When I was the Senior Presiding Judge for England and Wales, I was involved in the promulgation of a programme to improve the efficiency of the Magistrates’ Courts. Its aim was to reduce the number of hearings and to improve timeliness: it was known as CJSSS (‘Criminal Justice: Simple, Speedy, Summary’). It was successful in improving performance although the effectiveness of some of those improvements has since diminished. The initiatives needed refreshing in a new programme promoted by the present Senior Presiding Judge, “Transforming Summary Justice”. The most significant lesson learnt from these programmes has been that the criminal justice system is not, in reality, a single system: the police, the CPS, the defence community, HMCTS, the judiciary, the probation service and NOMS (to say nothing of the Ministry of Justice (“Moj”) and the Home Office) all have different priorities and different financial imperatives with performance indicators (where they exist) that are not aligned. The only way of improving the end to end operation is to bring the different participants in these systems together to debate and agree on initiatives to improve the whole.”

3 Review of Efficiency in Criminal Proceedings; The Rt Hon Sir Brian Leveson, President of the Queen’s Bench Division; Judiciary of England and Wales; January 2015.

3.3 The TSJ governance arrangements seek to do exactly what Sir Brian Leveson prescribes by bringing all the parties together with a common goal of successfully implementing the initiative. Effective governance arrangements are paramount to implement and drive the potential improvements.

3.4 The diagram demonstrates the external governance structure for TSJ:

Transforming Summary Justice governance structure



3.5 Essentially governance is split between the operational and judicial aspects. Governance for the judicial aspect rests with the Senior Presiding Judge through the Judicial Oversight Group (JOG).

3.6 The inspection team considered only the operational aspect which is governed by the Transforming Summary Justice Group (TSJG) chaired by the CPS. All the agencies are represented on this group including the defence and probation service and at the time of the inspection it met every six weeks. Inspectors were informed that membership is 'open ended' to ensure that focus on the initiative is maintained. We found that there is recognition, amongst CPS senior managers, of the potential challenge in maintaining commitment from all the agencies in the longer term.

3.7 Inspectors were informed that the link between the operational and judicial aspects came from the Justices' Clerks, one of whom was involved with both the JOG and an Area TSJ Implementation Board. However, the Chair of the TSJG had not been asked to attend the JOG to update them directly about the initiative.

3.8 The TSJG reports to the CPS Chief Executive who is the cross-agency Senior Reporting Officer accountable for TSJ delivery. The CPS Chief Operating Officer co-chairs (with the Chief Officer of HMCTS) the Joint National Improvement Board (JNIB) which is designed to operate just below the National Criminal Justice Board (NCJB).

3.9 The NCJB was re-convened and reconstituted after the May 2015 election. This board brings together the most senior representatives from across the CJS including the Home Secretary, Senior Presiding Judge, Director of Public Prosecutions and its Chair, the Lord Chancellor. It is committed to the delivery of TSJ, having identified it as one of its priorities.

National internal governance

3.10 The CPS established an internal TSJ project board to provide oversight, support and direction, and to manage the internal delivery and interface across the agencies. The board initially met every three weeks but by the time we conducted our fieldwork its meetings had reduced in frequency and took place monthly. We were informed that the board would remain in place for the foreseeable future and that there was a commitment to ensure continuing oversight, but the CPS will reconsider the position when the TSJ characteristics are considered to be embedded as business as usual.

3.11 Prior to implementation information was requested from each of the 13 CPS Areas, which also required input from partner agencies. This was to ascertain what needed to be done to implement the initiative and was achieved by each Area self-assessing their position in respect of the ten characteristics. There were inconsistencies around how this information was provided. Some Areas prepared a single matrix for the whole CPS Area whilst others broke them down into separate police forces. In total 29 matrices were provided to the national team (to cover 13 CPS Areas and 42 police forces). Since implementation, these matrices continue to be required quarterly and have become post-implementation action plans.

3.12 The information is collated by a National Implementation Team (NIT) which is staffed with representatives from the CPS, HMCTS and the police. The NIT reports to the national TSJG. Inspectors did see some evidence that the NIT held Areas to account at the pre-implementation stage following examination of the Area returns. Letters were sent to the Senior Reporting Officers, copying in the Chief Crown Prosecutors, in the Areas where implementation was not proceeding at the required pace, setting out the issues that needed to be addressed. There were some follow-up visits to these Areas by members of the NIT who considered that this was an effective way to drive up performance.

3.13 From 1 June 2015 all CPS Areas were required to follow the TSJ element of the CPS Casework Standard Operating Practice (SOP) which includes the review of cases destined for the Crown Court. The TSJ SOP Delivery Board requires all Areas to provide feedback on their compliance with the key stages of this SOP by way of self-assessment of a sample of cases in the magistrates' courts. The purpose of the monitoring is to assess compliance against the principles of TSJ, with targets set at 100%. This work links to other compliance checks undertaken by the CPS Compliance and Assurance Team (CAT) which is referred to later in this chapter.

3.14 Inspectors were advised that it was intended that all the information would be assimilated and steps would be taken to address any issues that were identified. This would include internal CPS scrutiny by way of discussion at the Area Quarterly Performance Reviews held with Chief Crown Prosecutors. Wider cross-agency issues were expected to be addressed by the members of the NIT, who were to identify a mix of good and poor performing Areas and arrange in-depth cross-agency visits. We were told that consideration would be given to focus on specific themes during these visits, for example, whether police support at court was effective. At the time of our inspection this work was only in its planning phase and so it is not possible to comment on its effectiveness.

3.15 Inspectors met with the senior CPS Area managers who had the responsibility of leading on TSJ for their Area. In each of the four Areas we were impressed by the leadership shown. Whilst they spoke with real enthusiasm about the initiative and its potential to deliver improvement, they also provided an open and honest assessment of the many daily challenges with which they had to deal.

3.16 At the time of the inspection some Area staff informed us that they would have welcomed better feedback from CPS Headquarters regarding their individual progress with the initiative. They did not believe that much could be learned, that they did not already know, from the self-assessment required by Headquarters or the work of the CAT. There was a general view that Areas could have been better supported by the national project team. Several issues were raised which included:

- the late supply of information
- failing to deal with queries appropriately
- the lack of a national steer on how to measure performance as against the ten characteristics
- late communication regarding the National File Standard; and
- unclear messages about how domestic abuse, youth and custody cases fitted within the scheme.

3.17 We also found that there was a failure to share good practice and lessons learnt from the early adopter sites, resulting in each Area having to work through its own issues with much duplication of effort. This also leads to inconsistent processes, which is unhelpful for a national organisation endeavouring to implement a national initiative and standard operating practices.

Suggested step

Consideration be given to a national forum comprising the CPS Area TSJ leads and national project team representatives. Inspectors understand that this already happens in respect of the rape and serious sexual offences work and that feedback is positive. This has the potential to save resources by sharing good practice, build engagement and maintain momentum.

Local governance

3.18 All the CPS Areas we visited began the process of implementation with the establishment of a cross-agency team. This was usually (although not exclusively) under the auspices of the Local Criminal Justice Board. These cross-agency meetings were being held regularly in each Area.

3.19 Some of these local groups were chaired by the CPS, one was chaired by a senior representative from HMCTS and another by a senior police representative. Every Area outside the capital was served by more than one police force and in these Areas, all the regional forces had come together for these meetings to ensure consistency. Within every group there were key personnel from the CPS, police and HMCTS which signified the level of importance placed on the initiative. Almost all the feedback from the participants in these groups was positive. We were told by several interviewees from the CPS, police and HMCTS about much improved working relationships and a desire to work together to find solutions. This is encouraging, but it is important that the momentum is maintained.

3.20 In one group, relationships were clearly strained, partly because of the introduction of a new system by the CPS to tackle, and if necessary escalate, cases where the police had not complied with the TSJ file standards. This highlighted to us the need for all agencies to find ways of working together to make best use of limited resources.

3.21 Inspectors found that participation by the defence was patchy at best and the lack of engagement at this level does raise concerns. Likewise, although there was some representation from the probation service on these local groups, there was clearly a limit to their authority and ability to make even local decisions. In one Area, problems had had to be escalated to the national TSJG due to local representatives being unable to facilitate an improvement. In that case, the issue was in the number of cases being adjourned for a full pre-sentence report, rather than an officer from the probation service providing a report on the day, which was impacting on the number of hearings per case, a key performance indicator for the success of TSJ. At the time of writing, the issue remained unresolved.

3.22 In every Area, concerns were expressed about the quality of performance data available for cross-agency governance meetings and examples were provided which included one document which lacked significant amounts of relevant data and another which a CPS manager could not decipher. Some Areas have been collating their own performance data for use at these meetings requiring resource intensive manual counting, which places additional burdens on them. We deal in detail with issues around performance data later in this chapter.

The CPS Compliance and Assurance Team

3.23 The CPS Compliance and Assurance team (CAT) is intended to provide internal assurance to senior management in respect of CPS performance. At the time of the inspection the CAT was involved in a programme of Area reviews of TSJ performance to quality assure and complement Area self-assessment and to report to the TSJ project board.

3.24 The work of the team includes an analysis of administrative processes, legal decision-making and court observations in each CPS Area. This analysis provides an early assessment of the extent to which each Area is complying with the ten characteristics.

3.25 We commend this piece of work which underpins the significance of TSJ to the CPS. The team has not yet completed a review for every CPS Area. However, it is encouraging to note that its key findings in the reviews completed at this stage broadly reflect our own. Its reports also include recommendations which should encourage better compliance by CPS Areas and provide a tool to measure progress and hold Areas to account. It is not clear as to how this will be managed in practice and clarification of the status of the CAT's recommendations and how they will be followed up would assist.

3.26 The results will also enable dialogue with CJS partners as they evidence issues which are not wholly within the control of the CPS but require improvement by partners. Inspectors were informed that these would be progressed with a member of the cross-agency NIT.

3.27 In addition to assessing compliance against the ten characteristics, the CAT reports include an assessment of the quality of legal decision-making and review, which is also a valuable measure to drive up performance.

3.28 We also commend the practice the CAT has introduced of producing comparisons of its findings with the self-assessments undertaken by Areas, copies of which were provided to us. Significant differences are noted in the two sets of results which does raise a question about the reliability of Area self-assessments.

Training

National roadshow

3.29 The Senior Presiding Judge commissioned a roadshow to communicate around the country the principles of TSJ. This work was led by a High Court Judge, the Chief Magistrate and the lead Chief Crown Prosecutor and included 19 events in nine cities over a two week period, with over 700 people addressed. Operational leads, Bench Chairs, magistrates and defence solicitors were told what the initiative entailed and what was needed from all participants to ensure its success. We received very positive feedback on these events and the overwhelming view was that this piece of work was most effective in the messages that it delivered.

CPS

3.30 CPS training centred on a national training package and of particular note is the two day training course for frontline prosecutors, which is detailed and classroom based. The lawyer training contained case studies and is supported by a detailed TSJ NGAP and Costs Toolkit that is regularly updated and available for download by prosecutors through the Prosecution College. The extent of this training is indicative of the importance that the CPS places on the success of TSJ and shows a willingness to learn from previous efforts to introduce changes. Inspectors received a very similar training package from the CPS training lead, which was well thought-out and comprehensive. Generally prosecutors told us they were happy with the national training which they felt was valuable and there was an appreciation of the face to face element which has been lacking in recent training. However, we share the views of some prosecutors that the training would have benefited from covering some of the more practical elements of the initiative and the ‘nuts and bolts’ required for frontline delivery, for example more detailed guidance as to what is to be expected by way of defence engagement and what should be included by way of contact details on the case management forms.

3.31 By contrast, training for administrative staff was neither centrally mandated nor developed as a national package. Familiarisation days were run in each Area by a Headquarters team with the expectation that this training would be cascaded to staff as and when necessary. However we found inconsistencies in the training delivered across the Areas. For example, in one Area training had consisted of notes sent via email, in another it was a short presentation to staff on the principles of TSJ, and in a different Area, there had been a half day workshop which was much better received by staff. Unsurprisingly, many administrative staff felt that their training was insufficient, especially having regard to the complexities of the revised Casework SOP and the responsibilities that it placed on them. An example of the complexity was that the SOP expects that administrative staff check up to four separate documents to ascertain whether the police had supplied a Victim Personal Statement.

3.32 Administrative managers spoke of the difficulties of delivering training when the SOP was still under construction and there were similar issues raised with regard to National File Standards and streamlined disclosure. Other challenges included movement of staff following re-structuring and differing working practices across offices and different police forces.

3.33 It is important that the training of administrative staff is not neglected to ensure that they are best equipped to carry out their roles as efficiently as possible. A national package would be the best tool to assist in this regard and would save duplication across the different CPS Areas.

Suggested step

Consideration is given at a national level to the training of administrative staff to ensure that they are best equipped to carry out their roles. This is particularly important with the advent of Better Case Management which is an initiative being piloted to improve the way in which cases are managed in the Crown Court. A national package would be the best tool to assist in this regard and would save duplication across the different CPS Areas.

HMCTS

3.34 Inspectors were informed that national training for legal advisors, magistrates and District Judges had been provided by HMCTS. In interviews with those who had had this training there was broad agreement that it had been good. In one court centre visited, inspectors were told that those who have not received the training do not sit in courts where there was an anticipated not guilty plea. In addition to the national training some local training has taken place and we spoke to one District Judge who had delivered training to the local lay magistrates.

Police

3.35 Police training varied considerably across the four CPS Areas that we visited and within the forces that served those Areas. In one Area, we were told that all supervisors and frontline police officers had received face to face training on file content and quality from a former CPS employee, in addition to National Centre for Applied Learning Techniques (NCALT) online training. The TSJ NCALT training package was used in some of the other forces although none of the forces could tell us how many officers had undergone the training. In one force we were told that there had not been any training; instead information was cascaded in face to face briefings and through the police intranet and newsletters. It was conceded that there were difficulties due to a large number of officers, most of whom dealt with very few prosecution files, in some instances only one or two a year.

3.36 As stated there has been inconsistency nationally and we cannot assess the quality of police training in this report. Generally there was an acceptance by the police that their training was not as good as it could be, save in the one Area where face to face training had been delivered to all officers.

Performance data

3.37 There was cross-agency agreement that accurate performance data was essential to measure and drive performance improvement – as one interviewee stated: *“What gets measured gets done”*.

3.38 At the time of the inspection the Joint National Improvement Board had recently agreed measures to assess the success of TSJ. The JNIB is comprised of senior strategic managers from the CPS, police and HMCTS. There are differences on the board in the use of league tables or other measures so it is not surprising that it took some time to agree how the partners would measure their success on the introduction of TSJ. It is a positive step that the agencies were able to devise a joint management framework given the previous absence of such agreement.

3.39 The measures on the TSJ Dashboard are:⁴

- 1 HMCTS - Average Days from Charge to First Listing
- 2 HMCTS - Average Days from First Listing to Completion
- 4 CPS - Guilty Plea at 1st Hearing Rate
- 5 CPS - Dropped at 1st Hearing Rate
- 6 CPS - Dropped at 3rd or Subsequent Hearing Rate
- 7 CPS - Finalised at 1st Hearing Rate
- 8 CPS - Overall Discontinuance Rate
- 8a CPS - Charged Discontinuance Rate
- 8b CPS - Police-Charged Discontinuance Rate
- 9 CPS - Either-Way Completed in Magistrates’ Court Rate
- 10 CPS - Guilty Plea Hearings per Case
- 11 CPS - Contested Hearings per Case
- 12 CPS - Percentage of Domestic Violence as a Proportion of Magistrates’ Court Caseload
- 13 HMCTS - Effective Trial Rate
- 14 HMCTS - Vacated Trial Rate
- 15 HMCTS - Cracked Trial Rate
- 16 HMCTS - Ineffective Trial Rate

⁴ There is no measure 3.

3.40 We were told that the expectation is that cases where the defendant pleads guilty will be dealt with in one hearing and not guilty cases will be concluded in two. However, it was decided by the national TSJG that targets should not be set at the early stage, but each CPS Area is expected to improve its performance and move up to the next quartile in the performance table. The measures are displayed on a TSJ Dashboard with a red, amber, green (RAG) rating system, namely where performance improves by 3% or more this is indicated by a green arrow pointing upwards and if performance falls by 3% or more there is a red arrow pointing downwards. This shows, at a quick glance, any improvements or deterioration. In addition to the RAG ratings for improvement and decline in performance, overall performance is ranked between one and 42 for police forces, one and 13 for CPS Areas and one and seven for HMCTS regions.

3.41 Inspectors were advised that the number of high level aspirational measures would continue to be reviewed at the Joint National Improvement Board. A file quality standard is also under consideration as an additional performance measure.

3.42 Inspectors found some confusion in Areas as to which period would be used as a baseline to measure performance. Ideally this should have been from the implementation date but this could not be done due to a number of factors. These included delays in preparing report templates for Area use, 'industrial action' by defence firms over the summer in relation to legal aid contracts and the impact of not guilty cases which were in the court process before the initiative started (these are known as 'legacy' cases). Staff at CPS Headquarters indicated that the third quarter of 2015-16 would be the period used to bench mark future performance.

3.43 The majority of the measures are based on existing performance data information used by the CPS and HMCTS although some new measures have been included, for example the percentage of cases finalised at the first hearing and the percentage of either way cases completed in the magistrates' courts. All magistrates' court cases are included with no distinction between guilty and not guilty cases, along with legacy and other cases which fall outside the TSJ principles.

3.44 It is of note that they consist of a combination of quantitative and outcome measures and there are no qualitative measures such as the percentage of cases which meet the correct test to be applied when a charging decision is made. It is difficult to see how CPS Headquarters will be informed of the quality standards in the Areas as the initiative moves forward. It is also noteworthy, and unhelpful, that none of the measures assess whether TSJ is being operated correctly; without this, improvement or decline in performance, as judged by the chosen measures, cannot be causally linked to TSJ. We discuss this further below.

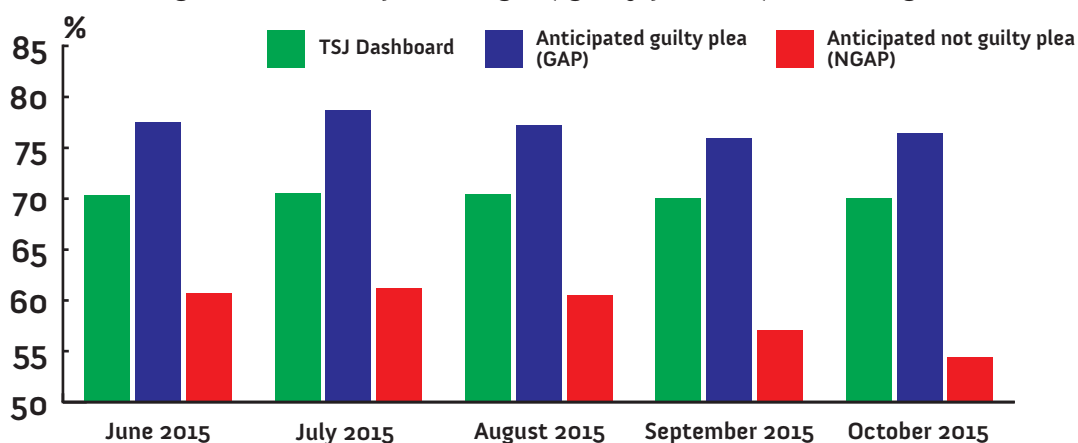
3.45 At this stage it is too early to assess whether the initiative is impacting on results. Whilst there was some early adoption of the characteristics in a number of CPS Areas they were not implemented nationally until 1 June 2015. In interviews with CPS and HMCTS staff inspectors noted that opinion varied as to when improvement should be apparent. The consensus was that improvement should be seen by the fourth quarter of 2015-16/first quarter of 2016-17.

3.46 It was accepted by senior CPS staff that the impact of the legacy cases had been under estimated. Whilst there had been some evaluation of the resources needed to deal with this work this had not been detailed or realistic enough. Every Area we visited was still struggling to deal with these legacy cases whilst trying to implement new systems to ensure that the new cases were reviewed prior to the first hearing. None of the Areas could provide an accurate figure for legacy cases still in the system, although all expressed a hope that they were nearing completion.

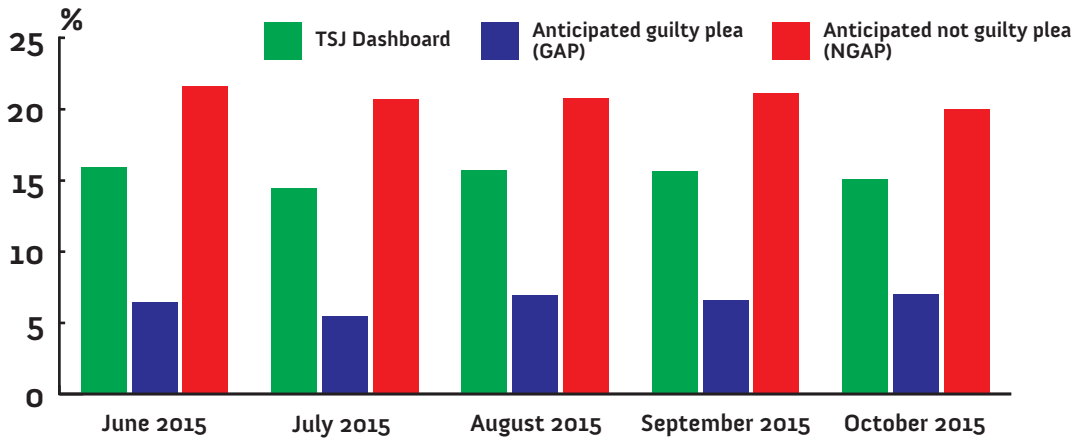
3.47 In the shorter term it would be a relatively simple process to produce monthly reports which would position both Headquarters and Areas better to track their progression. Consideration could also be given to producing reports specific to GAP and NGAP cases using the flags on the CPS case management system, thus removing the legacy cases which at present distort the data produced.

3.48 To demonstrate this we have included two examples below amending the existing quarterly CPS reports to monthly reports. These show the existing TSJ Dashboard measurement (which includes all cases without flags) and also separately the cases which are flagged as GAP and NGAP to show the difference this can make to the information:

National magistrates' court percentage of guilty pleas at first hearing (measure 4)



National magistrates' court CPS charged discontinuance rate (measure 8)



3.49 These limited examples demonstrate the differences to be found when separate GAP and NGAP reports are shown alongside the all case report. Comparisons can be made between GAP, NGAP and other cases (which would include legacy cases) so that there is a more accurate picture of what is happening in respect of specific types of cases. This in turn would identify where more targeted action is required.

3.50 Additionally, because the data is available for all 13 CPS Areas, comparisons could be made nationally to allow identification of the Areas with the best performance for GAP and NGAP cases. This could facilitate assessment of what they are doing differently and drive up performance nationally by sharing best practice.

3.51 The TSJ Dashboard does not specifically measure performance in respect of the ten characteristics, such as the requirements of the National File Standard, bailing patterns or other aspects of TSJ process, and neither the JNIB nor CPS Headquarters has mandated procedures or measures for ensuring compliance with the principles or processes. Both the quarterly post-implementation action plans and self-assessment document required by the Casework SOP Assurance Board assess performance in this regard, but neither are intended to be permanent, nor does it prescribe how the data is to be gathered, leaving it to an Area self-assessment which does have limitations and will inevitably not be consistent across the whole of the CPS. Likewise, whilst the work of the CAT provides a good snapshot of the current status of Areas' performance as against the characteristics, this team is not resourced to provide continuing oversight.

3.52 To fill this obvious gap, each of the Areas that we visited had developed its own system for measuring some aspects of the ten characteristics. The wide consensus from our interviews with staff at Area level was that the measures in the TSJ Dashboard were not sufficient to enable cross-agency challenge at a local level.

3.53 We found that there had been a significant duplication of effort as each CPS Area had devised different systems and created its own local reports to provide appropriate information and to hold partners to account to varying degrees. Central development and agreement across the agencies at national level would have ensured greater consistency and accountability for Area performance. Several senior CPS managers indicated that it would have been much more helpful for a national system of measures of local compliance with TSJ to have been mandated by CPS Headquarters, which could then have been shared with criminal justice partners.

3.54 In one Area a manual count by administrative staff had been introduced to measure the timeliness of service of papers and lawyers had been required to complete a spread sheet providing information around TSJ compliance. Such requirements are very resource intensive and are unsustainable in the long term. In another Area, the Area performance officer had developed outcome reports which were able to drill down into much greater detail, for example how many GAP cases actually progressed as guilty pleas, were discontinued or dealt with at the first hearing.

3.55 All the Areas visited had developed different ways of measuring the quality of police files which we discuss later in the next chapter.

Blitz courts

3.56 In three of the four Areas visited, there had been extra courts listed to deal with trial delays (known as ‘blitz courts’) and these were due to take place shortly in the fourth Area. These courts were arranged further to a National Trial Backlog Initiative led primarily by the Chief Magistrate, with the support of the Senior Presiding Judge.

3.57 This work had assisted in finalising large numbers of legacy cases, although it made great demands on the CPS to prepare and staff the extra courts. We were advised that there had been some negative impact on some of the cases which were not included within the scheme, leading to some trials being either vacated or ineffective.

3.58 HMCTS staff were very positive about this work and the CPS contribution to it. Indeed, all agencies held it up as a good example of what could be achieved when they worked together, and this has undoubtedly contributed to improved relationships between the CPS and HMCTS. It remains to be seen whether the resultant reduction in trial waiting times can be maintained in the longer term, or whether a decision will be required to repeat the use of blitz courts as a tool for keeping waiting times down.

Domestic abuse, youth and custody cases

3.59 Cases involving allegations of domestic abuse and those where the defendant is under the age of 18 do not operate within the timescales that TSJ imposes. The requirement for the police to bail to specific dates and provide the file to the CPS within a particular timeframe does not apply to these types of cases. Likewise there is no national agreement setting out when relevant additional documentation is to be provided by police to the CPS following an initial application to remand a defendant in custody.

3.60 In each Area visited we found that there was some confusion about how domestic abuse, youth and custody cases fitted within TSJ. The intention was to preserve any existing local arrangements in place before the initiative was introduced which enabled youth and domestic abuse cases to be dealt with more expeditiously. No-one wanted these sensitive cases to take longer because of the advent of the initiative. However, the lack of clear national guidance around expectations resulted in inconsistent practices developing and additional work for Areas in reaching agreement with their aligned police forces as to how these cases were to be handled.

3.61 We were told by CPS managers that it would have been much more helpful if there had been an agreement at a national level and a joint service standard set. In one Area, the lack of clarity had resulted in complicated negotiations with several different police forces which were aligned to that Area. A great deal of work could have been avoided if there had been an agreed national stance.

3.62 We found that there were inconsistencies in the way Areas deal with these types of cases. In some places an adjournment to a case management hearing is the norm in custody cases, whereas others adjourn them straight to the trial hearing. The Chief Magistrate has given clear guidance to courts that cases where a defendant appears in custody and pleads not guilty should still be case managed at the first hearing and not adjourned. Some Areas have agreed timeframes with police for the provision of the file in domestic abuse cases but other Areas have not, which could result in these sensitive cases taking longer to complete.

Our findings

3.63 Inspectors found that there was clear commitment and strong leadership from senior CPS representatives at a national and local level to TSJ.

3.64 The governance structure is very visible but it is felt that it is still too early to comment upon whether it is as effective as it can be.

3.65 Inspectors found evidence of much improved management working relationships and engagement. There is clarity that TSJ is a cross-agency approach working towards achieving common goals.

3.66 There has to be caution that the governance structure is maintained until there has been a clear evaluation to show that the ten TSJ characteristics are embedded, with improved performance to evidence the transition.

3.67 Inspectors found that Areas could have been better supported by the national team and, in particular, that there was no effective mechanism for sharing best practice which would assist CPS Areas and potentially save resources.

3.68 The work of the internal CPS Compliance and Assurance Team provides a valuable snap-shot of Area progress. Clarification of the status of the CAT's recommendations and how they will be followed up would assist.

3.69 CPS legal training was very good and well received, although it would have been further enhanced by coverage of more practical issues. The training of its administrative staff was markedly weaker.

3.70 The TSJ Dashboard does not include any measures to assess compliance with the ten characteristics. Individual processes have been developed in each CPS Area resulting in duplication and inconsistency. A centrally mandated national system of local compliance checks would better assist Areas and their work with partner agencies.

3.71 It is too early to assess whether the initiative has produced the expected improvements in performance. At the time of the inspection CPS Areas were still dealing with legacy cases. A baseline is to be taken from the third quarter of 2015-16 with improvements not expected until the first quarter of 2016-17.

3.72 The success of the blitz courts is a good example of what can be achieved when the agencies work together.

3.73 The lack of national guidance around how domestic abuse, custody and youth cases fit within the initiative has not been helpful and there needs to be a national 'steer' to ensure consistency across the Service.



4 Quality assured police files

Characteristic number 1

Quality assured police files

- strict timeliness for file submission
- an effective chase up system
- consequences for non-compliance

A dedicated team to

- review police charged files pre-charge
- assist with submission of files and liaison with the prosecution
- compulsory training on file preparation for officers and supervisors

4.1 The first of the ten characteristics is the requirement for the provision of a quality assured police file. The receipt of a quality police file is central to the ability of the CPS to deliver its obligations. In this chapter we assess how this characteristic is being met and the work that the CPS is doing to drive up standards.

The police charging decision

4.2 It is the responsibility of the CPS to review all cases in accordance with The Code for Crown Prosecutors (the Code).⁵ The initial decision to prosecute can be taken either by the police or a crown prosecutor depending on the circumstances of the case. The Director's Guidance On Charging 2013 (DG5)⁶ determines who has authority to charge a particular offence. Broadly, the police are able to charge the more simple straightforward cases and have to refer more complex cases to the CPS for a charging decision. If the police can make the charging decision they are required to comply with the Code in the same way as crown prosecutors.

4.3 The Inspection team examined a total of 271 cases, which included 169 police-charged cases. Of these, 95.3% (161 out of 169) complied with the Code test and were charged correctly. This figure compares favourably with previous inspection work (Annual Casework Examination Programme (ACEP) national figures for 2014-15 recorded police Code compliance of 84.7% in relation to magistrates' court work).

⁵ *The Code for Crown Prosecutors*; CPS; January 2013.

⁶ *The Director's Guidance On Charging – fifth edition (revised arrangements)*; CPS; May 2013.

4.4 Police compliance with DG5, at 91.2%, also shows marked improvement when compared to our findings in ACEP 2014-15, when we recorded compliance of 79.3%. However, there is still room for improvement, given the clear criteria contained in DG5, and the importance of independent decision-making in more serious cases.

Timeliness of file submission

4.5 Central to the objective of speedy and effective first hearings is a requirement that the police submit files to the CPS within specific timescales and that they use optimal bailing patterns. The applicable timescales vary according to whether the case is categorised as an anticipated guilty plea (GAP) by the police or an anticipated not guilty plea (NGAP). The table sets out the timeframes that police are expected to comply with:

	Optimum bailing period to first hearing after charge (or postal requisition or summons)	Timeframe for submission of file to CPS after charge (or postal requisition or summons)
Anticipated guilty plea cases	14 days	7 days
Anticipated not guilty plea cases	28 days	14 days

4.6 The files we examined were submitted on time and in accordance with the TSJ timeframes to the CPS in 67.0% of cases. In relation to the files assessed from the Areas that we did not visit, we found that on average the police were bailing 3.7 days beyond the optimum bailing date, which is not compliant with the TSJ principle of reducing delay. However, this did not impact adversely on the time that the CPS had to review the file before the first hearing.

4.7 This was particularly marked in relation to the GAP files examined where, on average, the file was delivered 13.1 days before the first hearing, nearly twice the prescribed number of days. In a number of Areas the GAP file was supplied on the day of charge and none were late. Performance in NGAP cases is more critical, due to the increased amount of review and preparation work which the CPS is required to undertake. The 14 days allowed for submission of the NGAP file was met or exceeded in all Areas save for one, which had an average of 12.2 days. It is important to note that this average is a function of both the bailing date and police file timeliness. In quite a lot of instances the police file was late, but the CPS still got its 14 days to review the file because the bailed-to-date was also late.

Categorisation of cases

4.8 The ability of the police to correctly categorise a case is important as this determines not only the timescales to be applied, but also what documentation must be included in the police file. The National File Standard (NFS) May 2015 details the requirements for different types of cases. Essentially, for a GAP case the file must include the charge sheet, a case summary and any previous convictions of the defendant. In addition an NGAP file requires that all key witness statements are included and a Streamlined Disclosure Certificate. For both types of cases other documents are needed where applicable and these include information about victims such as a Victim Personal Statement.

4.9 It is encouraging that in 90% of the cases we examined the police correctly assessed the defendant's anticipated plea based on the available evidence at the time of charge. This meets the TSJ standard which states that at least 90% of files should have an accurate prediction of plea. Our interviews with CPS staff, HMCTS staff and District Judges confirmed these findings and demonstrated an appreciation of positive police performance in this regard.

4.10 Despite the police correctly anticipating the defendant's plea we found that 79 defendants did not plead as expected at the first hearing, out of a sample of 251 (31.5%). Of these 25.6% were GAP cases, where the defendant unexpectedly pleaded not guilty, and 34.5% were NGAP cases where a guilty plea was entered. Therefore more defendants pleaded guilty than was anticipated which is positive, although the police had to do more work than was necessary in these cases.

4.11 There is benefit in the police and CPS conducting analysis into the reasons why some defendants are not pleading as expected, although it is far from certain that better predictors of plea would have the desired outcome. More material is provided to the defence in NGAP cases (in particular the key statements) and it may be that this can produce a guilty plea which would not be entered if only a summary of evidence was provided. This view is supported by defence solicitors at court; a common view held by them was that a guilty plea was more likely if statements were provided. They reported that they were better able to advise clients if they had sight of this material and that defendants were more likely to accept guilt if they saw the prosecution statements.

4.12 Inspectors did find evidence that the provision of evidence, over and above what is required by the NFS, can encourage prompt guilty pleas in some GAP cases. In the East Midlands an agreement had been reached with the police that the MGDDA documentation would be provided in drink drive cases. The NFS does not require that these forms are included in a GAP file. The experience had been that the guilty plea rate had gone down at a time when the MGDDA documentation was not served. Whilst in court in a different Area an inspector observed problems caused when this documentation was not included;

a timely guilty plea was only secured when a proactive prosecutor was able to obtain this documentation on the day of the hearing for service at court. We consider that this agreement with the police to include the MGDDA documentation is good practice as it improves the chances of an early guilty plea being entered at the first hearing.

Suggested step

We find that inclusion of the MGDDA documentation in guilty anticipated plea drink drive cases improves the chances of an early guilty plea being entered at the first hearing. Consideration should be given to seeking an agreement with the police to include this documentation.

Compliance with the National File Standard

4.13 As stated above the NFS determines the minimum requirements for the content of police files submitted to the CPS. It is essential that police files comply with these standards to ensure that guilty plea cases can be dealt with properly, reflecting the true seriousness of offending, and that not guilty cases can be effectively case managed at the first hearing.

4.14 At the launch of the TSJ initiative the expectation was that at least 90% of files would comply with the NFS. CPS lawyers informed inspectors of their concerns around the content and quality of police files and our file examination supports this view. Under half (42.8%) of files examined complied with the NFS. Failures were much worse in respect of the NGAP cases; only 31.7% of these met the required standard compared to 65.1% of GAP cases.

4.15 Not surprisingly, there appears to be a correlation between the failure to provide a file of sufficient quality with the eventual outcome of the case. In 78.3% of the cases which resulted in an unsuccessful outcome at court the police file had not included all that it should have.

4.16 Whilst there were differences in performance across the 42 police forces it is very clear that significant improvement nationally is key to the success of TSJ. Of course timeliness of file submission is important to contribute to the aims of TSJ and achieve speedy justice, but this cannot be allowed to come at the expense of file quality.

Types of non-compliance with the National File Standard

4.17 The main issues that Inspectors found in respect of NFS non-compliance were as follows:

	All cases	GAP	NGAP
If the police file did not comply with the National File Standard what was the main issue			
Missing statements (MG11s)	17.5%	16.7%	17.1%
Disclosure	33.8%	16.7%	38.2%
Witness previous convictions	6.5%	3.3%	7.3%
Defendant previous convictions	2.6%	6.7%	1.6%
Other	39.6%	56.7%	35.8%

Victim Personal Statements

4.18 The issue categorised as “Other” related predominantly to a failure to supply Victim Personal Statements (VPSs) in relevant cases. Despite some good performance (files from Cambridgeshire, Durham, Northumberland and South Yorkshire police forces all included statements where applicable) the provision of a VPS was far below an acceptable level. Overall in only 32.8% of relevant cases was a VPS supplied by the police and for 12 police forces the figure was 0%. In many instances, there was no VPS despite a request in the CPS charging advice action plan that one be provided for the first hearing.

4.19 Without a VPS, there is a risk that the court will proceed to sentence unaware of the full impact of the offending behaviour on the victim. The victim may have been deprived of their right to make a VPS and to decide how such a statement should be delivered to the court (as set out in the Victims’ Code).⁷ A District Judge told us that, in his experience, it was unusual to get a VPS but that when one was present it was “*very impactful*”.

4.20 Interviews with CPS and HMCTS staff and the judiciary confirmed that this was a common problem faced daily in court, often compounded by inadequate information on compensation. Inspectors observed several instances in court of the prosecutor having insufficient information about compensation. One Bench Chair told us that she would not adjourn a case to enable the prosecution to obtain compensation details or a VPS.

⁷ Code of Practice for Victims of Crime [the Victims’ Code]; Ministry of Justice; October 2015.

4.21 The majority of police staff that we spoke with accepted that their service to victims in this regard was simply not good enough. A senior police officer told us that it was difficult to know exactly why there was this problem and advised us that work was underway in his force to raise awareness of victim issues.

4.22 Whilst the TSJ principles aim to ensure that cases are dealt with as quickly as possible we found that in practice this can conflict with the rights of the victim to have a voice at sentencing. This practical problem was considered when the TSJ timeframes were originally agreed, but it is important that the police and CPS are able to work within the current process to meet the victim's rights.

4.23 Our findings correspond with those contained in a recent report by the Victims' Commissioner: *The Silenced Victim – A review of the Victim Personal Statement*.⁸ This found that even though victims, judges and magistrates valued the VPS, over 60% of victims reported that they had not been offered the opportunity to make one.

4.24 We also noted inconsistencies in the manner in which information about the VPS was recorded on the files. In some instances it was attached to the end of the victim's evidential statement but in others it is a stand alone document. This is exacerbated by varying practices by different police forces for naming documents when uploading them to the CPS electronic file system. In the worst case, the VPS and other material may each be labelled as 'doc.pdf' with the result that anyone wishing to check the VPS would have to open various documents to find it. Information as to whether the victim is aware of their right to provide a VPS is contained in a different place to the information as to whether he or she wishes to read the statement out in court.

4.25 CPS administrative staff are required to check whether there is a VPS on the file and to raise non-compliance with the police at the time the file is submitted to the CPS. A consistent approach would prevent time being wasted by CPS staff looking for a VPS as they would know where to look for relevant information. This would in turn prevent unnecessary liaison and escalation with the police over VPS issues.

⁸ *The Silenced Victim: A review of the Victim Personal Statement*; Victims' Commissioner; November 2015.

Police case summary (MG5)

4.26 The quality of the police MG5 is of particular significance in GAP cases as the NFS does not ordinarily require any statements to be included in the file sent to the CPS (and then to the court and defence) but relies on this document to detail the alleged offending. In most GAP cases the defence have to decide whether to advise the defendant to plead guilty or not on the basis of this document. If the MG5 is not seen as credible there is less likely to be any reliance on it and less likely to be a guilty plea.

4.27 Inspectors found that MG5s adequately reflected the key facts and issues in 82.7% of the cases which we examined with another 14.4% partially meeting this standard. Only in 3.0% of cases did we find that the standard was not met at all.

4.28 Despite our positive findings many concerns were expressed during our fieldwork about the quality and reliability of police MG5s. These were voiced not only by defence practitioners and prosecutors but also by the judiciary with one District Judge describing police MG5s as “*appalling*”. It may be that there have been improvements in the quality of MG5s which have yet to filter through and that the views of practitioners have lagged behind. Nevertheless the perception that police MG5s are not wholly reliable is significant given that the TSJ initiative invites the defence to provide robust advice to defendants on the basis of the MG5, with a view to reducing the number of contested cases.

CCTV and other issues

4.29 Where relevant, CCTV and other ‘hard copy’ media, such as digital voice recordings or body-worn camera footage, was made available to the CPS in just under half (49.4%) the cases assessed by inspectors. The impact of good quality relevant CCTV can be a significant factor in ensuring a prompt guilty plea and if not available can result in a trial being listed unnecessarily. Inspectors were told by CPS lawyers that CCTV was often not provided to them for the first hearing. Conversely the police gave the inspection team several examples of the CPS losing CCTV that had been delivered to CPS offices or handed over at court. These are long-standing complaints which should reduce as digitalisation of the prosecution process progresses and negates the need for hard copy media. There is currently a joint inspection being undertaken by HMCPSI and Her Majesty’s Inspectorate of Constabulary (HMIC) which is considering this aspect in greater detail.

4.30 There was evidence that the police routinely failed to provide complete witness availability, which is required in all NGAP cases, and during court observations in one Area we saw cases being listed for trial without up-to-date witness availability. This would inevitably result in significant resources having to be deployed later by the CPS and HMCTS if it transpired that a witness or witnesses could not attend on the date fixed for trial. This is plainly an inefficient use of resources and can result in increased stress for the witness involved.

Disclosure

4.31 The ability of the prosecution to provide the relevant unused material at the first hearing is one of the key innovations of TSJ. The seventh characteristic of TSJ provides that an unused material report will be available to the defence at the first hearing with detailed information available as soon as a not guilty plea is entered. There has been no change to what the prosecution must disclose, merely when they must do so and the forms that must be used.

4.32 In NGAP cases there should be a Streamlined Disclosure Certificate (SDC) which is served on the defence immediately after a not guilty plea is entered. The SDC replaces the MG6C, D and E forms which were provided before the implementation of TSJ, although it is important to note that these forms are still used for cases which are expected to progress to the Crown Court.

4.33 In GAP cases there should be a certification by the police which confirms that the prosecution understand their common law disclosure duties in accordance with the judgement in *ex parte Lee*.⁹ The certification is included on the MG5 and no other schedule or document is required.

4.34 Inspectors found that police complied fully with their disclosure obligations in only 61.5% of the cases included within the file sample. They were assessed as partially meeting their obligations in 14.0% of cases and not meeting them at all in 24.5%. For GAP cases the new regime simply involves an entry on the MG5 which should not present significant difficulties, yet our file examination revealed that there was only 87.0% compliance in these simple cases. The results were markedly worse in NGAP cases with only just over half (51.0%) of submissions complying with the requirements of streamlined disclosure.

4.35 There is no doubt that the provision of disclosure at the first hearing enables much better case management and is a major contributor to changing attitudes and making progress. Defence practitioners we spoke to particularly welcomed this aspect of TSJ. However we also received negative feedback from the police in relation to the new regime in NGAP cases. In interviews, police staff accepted that understanding of the disclosure regime was a long-standing weakness for frontline police officers and stated that the introduction of the new forms had caused more confusion. One Superintendent stated that “chaos” had been caused which had distracted police officers from what they should actually be disclosing, as they were having difficulties trying to work out which forms should be used. CPS managers confirmed that there were problems for the police and one senior manager stated that the new system simply did not work.

⁹ *R v DPP ex parte Lee* [1999] EWHC Admin 242.

4.36 One Area visited had not yet required the police to submit the new SDC but continued to accept the old forms. It was expected that this would be addressed in early 2016 but the CPS managers felt that it was the early provision of information which was making a positive difference rather than which forms were used.

4.37 Inspectors found that the introduction of the new SDC with a difference in the process for magistrates' court and Crown Court work is unhelpful at a time when the focus should be on driving up standards. The desire to streamline disclosure is commendable, but the new forms appear to have caused more confusion than clarity for those who need to understand them most. Any saving in police time in completing one rather than two forms in summary cases cannot take precedence over the need for officers to understand their disclosure duties and convey the information about unused material clearly to the CPS.

Suggested step

That the national board re-examines the disclosure forms, and considers simplification, so that the police fill out the same form whatever the type of case.

Police quality assurance and joint performance management

4.38 All CPS managers interviewed recognised that one of the biggest challenges to successful implementation of TSJ was good police file quality. The CPS must find ways to secure buy-in from the police to achieve improvement. We found that the failings in police file quality were not being addressed significantly by the CPS by effective, real time feedback. Different systems were in place in each of the Areas visited to monitor and feedback issues to the police. The case management system used by the CPS does not provide a method to collate issues on a case by case basis. Some of the Areas had introduced bespoke forms or logs to be completed by administrative and legal staff to record issues, with the intention that these could later be used to inform the police. However, inspectors found little evidence that the systems used were effective. Often the forms and logs were not filled in at all or not done so adequately. Prosecutors in one TSJ review team said they did not fill in the form due to lack of time and that managers were aware of this.

4.39 Our file examination revealed that where the police file failed to comply with the NFS there was no evidence on the file this was raised with the police in 67.9% of relevant cases (127 out of 187). It appears that the CPS is not addressing police non-compliance adequately which does not assist in driving up standards. On a case by case basis it is important that if a police file does not comply with the NFS this failure is identified when the file is reviewed by the CPS and that this is fed back as quickly as possible to the individual officer involved. Themes that emerge can then be addressed with supervisors and can assist the police in identifying training needs.

4.40 CPS Areas have escalation processes in place to deal with non-compliance, but again we found that the systems varied as to the numbers and levels of referral and the agreed timeframes for dealing with the issues. In one Area we observed that its system was working well, but in another, it was evident that the volume of escalations had created some tensions between the agencies. There were police complaints that the procedure had been imposed on them by the CPS and examples given of cases being identified incorrectly as non-compliant by CPS administrative staff. Inspectors would expect that escalation needs to be the exception and this was clearly not the case in this particular Area.

4.41 TSJ states that there will be unspecified consequences for non-compliance if the police fail to provide a quality assured file, yet we found no evidence that this was happening consistently or robustly. Throughout the inspection we received many complaints from staff across all agencies that the data available was simply not good enough to rely on and this may well explain why we did not find evidence of any real accountability. This was not simply a CPS problem as concern was expressed around the accuracy of data provided by HMCTS, which was accepted by its staff. On a positive note, generally we did not find that individual agencies were blaming each other in this regard but rather there was a will to work together with what was available at this early stage.

4.42 It is essential that the CPS finds an effective system of monitoring police file quality and producing reliable data in support to use as a tool to drive up performance. Several CPS staff expressed the view that it would have been of assistance if there had been national guidance and a process agreed at national board level on how to monitor police file quality from the outset. It was also suggested that a national service level agreement would have assisted their negotiations with different police forces and saved a considerable amount of re-work and duplication.

4.43 TSJ includes an expectation that the police will have a dedicated team to review police charged files before charge, that there would be compulsory training for officers and supervisors, and that file quality would be visibly and effectively managed at divisional level and joint agency meetings.

4.44 We found wide differences in the ways that file quality assurance is managed internally by the police and differing levels of resource employed on this function across the forces. Inspectors were advised of many issues which hampered their ability to focus on TSJ. These included concerns about the quality of police training, differing levels of effective supervision, lack of reliable performance data and significant restructuring which some of the forces were going through at the time of our visits. Despite the many challenges all the police staff that the inspection team met with were positive about TSJ and expressed their commitment to making it work.

4.45 Police performance in this regard is critical to the work of the CPS and in at least one Area visited the TSJ implementation date had had to be delayed because of the lateness of police training. In three of the four Areas, South West, East Midlands and London, there had been some involvement by CPS staff in police training. The feedback that we received was positive from both organisations and all involved felt that it was time well spent. In one Area, a Deputy Chief Crown Prosecutor had delivered training in respect of the new disclosure process, of which the police spoke very highly. In another two Areas CPS staff had assisted with work around police file quality which both the CPS and the police believed had contributed to improvement. We were also informed of instances when police staff had attended CPS training.

4.46 Whilst inspectors appreciate that there are many demands on CPS staff we consider that proportionate CPS participation in police training is good practice, particularly in respect of police file quality and disclosure, and ought to benefit both organisations.

4.47 We were told that regular file audits were undertaken jointly with the police in one Area. These took place on a fairly regular basis across all the forces within that Area although levels of engagement varied. There had been some joint thematic work done in this way and training had followed. However, there was a view that some of these meetings were not always as productive as they could be. Joint quality assurance work provides an opportunity for the CPS and police to work together which must not be wasted if the time and commitment required are to be justified.

4.48 At the time of writing there was a consultation exercise being undertaken by a joint working group consisting of the CPS and police in relation to an agreed standard for case file quality. It is hoped that the final draft of the National Case File Quality Assessment Standard will be available in early 2016. It will then be piloted in some force areas with opportunity for further consultation. We also understand that a file quality standard measure is being considered by the National Criminal Justice Board as one of its performance measures. It is hoped that this will in due course set out an effective standard to be adopted which can be effectively quality assured.

Our findings

4.49 The Inspection team found that receipt of a quality police file is central to the ability of the CPS to deliver on its commitment.

4.50 Police charging decisions are good.

4.51 The police are supplying their files to CPS in good time for review.

4.52 The police are good at correctly assessing the anticipated plea on the basis of the evidence available before the first hearing, but defendants are not pleading in accordance with the anticipated plea in nearly a third of cases. The CPS should consult with the police to ascertain whether a review might help better understand what is happening.

4.53 The police are failing to comply with the National File Standard in a significant number of their files. Whilst timeliness of file submission is important to contribute to the aims of TSJ and achieve speedy justice, this cannot be allowed to come at the expense of file quality.

4.54 A major problem is a failure to properly deal with Victim Personal Statements which is impacting on victims' rights and needs to be addressed.

4.55 The front loading of disclosure is one of the key innovations of TSJ and essential to effective case management.

4.56 The introduction of revised disclosure forms for use in the magistrates' courts has created difficulties for the police in practice.

4.57 CPS participation in police training is seen as good practice with benefits for both agencies.

4.58 Failings in the quality of police files were not being addressed by the CPS by effective, real time feedback.

4.59 Different systems were in place in each of the Areas visited to monitor and feedback issues to the police. It is essential that the CPS finds an effective system of monitoring police file quality and producing reliable data in support to use as a tool to drive up performance.

4.60 Adoption of a file quality standard measure by the National Criminal Justice Board as one of its performance measures would assist improvement.

5 Preparation for the first hearing

Characteristic number 4

Optimum bailing patterns

- to allow full preparation of cases by police, CPS and defence
- dependant on type of case
- a suggested timescale of 14 days between charge and first hearing for GAP cases
- a suggested timescale of 28 days between charge and first hearing for NGAP cases
- to allow time to construct the case file, carry out a full review, prepare applications and engage constructively with the defence

Characteristic number 5

Early receipt of IDPC

- to allow defence solicitors sufficient time to prepare the case
- ideally sent by electronic service (secure e-mail) a minimum of 5 days before the first hearing
- ideally sent as soon as the representative firm is known to the prosecution

Characteristic number 7

Streamlined disclosure

- an unused material report available to the defence at first hearing
- a standardised form of written confirmation provided to defence in GAP cases that confirms that the prosecution understand their common law duties (*ex parte Lee*), but not requiring a schedule
- early provision of unused material in NGAP cases
- an unused material report with a list of items given to the CPS before the hearing
- report served on defence immediately in event of not guilty plea
- National File Standard amended by police and CPS to reflect the requirements of the Code for Crown Prosecutors regarding provision of unused schedule and disclosure officer's report

The Inspectorate file sample

5.1 We examined 271 files to assess compliance with the ten characteristics and file quality. The findings from these file reviews are set out in detail at annex C. One hundred and eighty of these files were selected from the nine Areas which we did not visit; for each of these, we looked at 20 cases, consisting of 15 anticipated not guilty pleas and five anticipated guilty pleas. The remaining 91 files were live cases spread across the Areas visited, for which our review included observations of the first court hearing.

5.2 Our assessment included compliance with the Code for Crown Prosecutors and the Director's Guidance on Charging, quality of the charging decision and initial review, timeliness of service of Initial Disclosure of the Prosecution Case (IDPC), compliance with the streamlined disclosure regime, engagement with the defence, and the effectiveness of the first hearing. We focussed on NGAP cases, as these have the greatest potential to bring about improvement if managed in accordance with the ten characteristics. Over 70% of the cases in the file sample were NGAP cases (190 out of 271).

CPS charging decisions

5.3 As stated in the previous chapter it is the responsibility of the CPS to review all cases in accordance with the Code. It was applied correctly in 94.1% (96 out of 102) of CPS charged cases in the file sample. This compares favourably with previous Inspection work, including the latest round of ACEP, where we found that Code compliance in magistrates' courts cases was 92.2%.

5.4 As part of our file examination we found Code test failures in four live cases. We were able to inform the relevant Areas of our findings and three of the cases were then discontinued. In the fourth case the Area disagreed with our assessment, as it was entitled to, and allowed the case to proceed to trial. The defendant in this case was subsequently found not guilty.

Initial file review and lawyer allocation

5.5 One of the fundamental changes introduced by TSJ is the requirement that all cases are reviewed by the CPS prior to the first hearing, irrespective of whether they were charged by the police or upon the authority of CPS, and whether the anticipated plea is guilty or not guilty.

5.6 As we indicated above, the police are not always using the optimum bailing patterns set out by TSJ. Despite this, and because of early file delivery in many cases, on average the CPS had 16.3 days in which to review and prepare the cases. This provides sufficient time for the CPS to prepare the file for court, including taking remedial action when required, but is not TSJ compliant.

5.7 The CPS TSJ Casework SOP requires that all NGAP cases are allocated to a lawyer. In our file sample, only 54.7% of the cases assessed had been allocated to a named individual, but this masks wide discrepancies amongst the CPS Areas; one Area had allocated all the NGAP cases whilst another had allocated only 6.7%.

5.8 In at least one Area the allocated individual was not a lawyer and the allocation had been used simply as a tool to distinguish NGAP files from legacy cases. Plans were in place to implement lawyer allocation in that Area in the near future.

5.9 Where files had been allocated to lawyers, inspectors found that it rarely meant that the file would in practice be reviewed and owned by that individual until its finalisation. It is unclear to inspectors exactly what is expected of the allocated lawyer, other than what is set out in the SOP, and we could find no guidance to assist in this regard. CPS managers in interviews were unable to explain what was expected. Without exception, CPS staff and managers agree that allocation should lead to better casework review and consistency around decision-making. However, it is also clear that managers are struggling to introduce meaningful file ownership for the ‘volume’ magistrates’ courts cases. If file allocation is to have any real value then there needs to be clear and realistic guidance nationally covering what this means in practice.

5.10 Inspectors were disappointed to note that in 37.7% of the cases examined there was no evidence that a review had been completed before the first hearing. This applied to both GAP and NGAP cases, with a breakdown included below. There was wide variation between the CPS Areas with one evidencing an initial review in 88.6% of the cases examined and another doing so in only 30.0%.

5.11 The table illustrates the numbers of cases which received a review and the quality of that review:

	All cases	GAP	NGAP
Did the case receive a proper and proportionate initial case review			
Fully met	38.8%	17.9%	48.9%
Partially met	20.9%	11.9%	25.0%
Not met	2.6%	1.2%	3.3%
Not done	37.7%	69.0%	22.8%

5.12 Our findings from the files were confirmed by a number of interviewees. Evidence from several sources confirmed that cases were not always able to proceed at the first hearing. One Bench Chair described how prosecutors appearing before her often stated that a particular case had not been 'signed off', meaning that it had not been reviewed before the first hearing.

5.13 In our file sample, in cases where the initial hearing was not effective, 22.2% of those were due to failings on the part of the CPS. It is vital that CPS managers ensure that a proper and proportionate initial case review is done on every file, a step which is fundamental to the success of TSJ.

5.14 The review is also the stage at which the prosecutor checks the information bundled by administrative staff for despatch to the court and defence to ensure that all appropriate material is included, and that anything inappropriate (such as a witnesses' personal details) is removed or edited out. We found that, where service of the prosecution bundles was late, nearly half the time (43.8%) it was due to late review and this, too, will impact on the effectiveness of the first hearing. We discuss this further below.

5.15 Inspectors noted that the review in GAP cases most often consisted of an endorsement on the hearing record sheet by the advocate dealing with the case in court. Several Areas were using a standard form with a review box which prompted the advocate to evidence their review. We consider this to be good practice and a proportionate way of complying with the review requirement in these types of case.

5.16 In addition to ensuring that the Code test has been met the lawyer conducting the NGAP review should review the file sufficiently to facilitate effective case management at the first hearing. A case strategy should be recorded to deal with the disputed issues. The charges must be checked with amendments as necessary and appropriate applications should be completed for use at court to include special measures, bad character and hearsay applications.

5.17 In some of the files examined from CPS Eastern we found that a template had been introduced for use in NGAP reviews which reminded the reviewing lawyer to consider the relevant issues. We think that this is an example of good practice and a useful tool for managers to introduce as necessary to drive up the quality of the work of their team.

5.18 Our file examination revealed that there are still significant improvements required in respect of the CPS reviews that were done on the files. The table details the findings from the file examination in relation to some of the issues:

Does the review clearly set out the strategy for the case in a manner that enables the case to be effectively case managed at the first hearing	Fully met	44.9%
	Partially met	22.4%
	Not met	32.7%
Where appropriate have s.10 admissions been drafted	Yes	45.9%
	No	54.1%
Has the prosecutor prepared any relevant applications (e.g. bad character applications, hearsay, special measures)	Yes	41.3%
	No	58.7%

Completion of Preparation for Effective Trial form

5.19 In order to assist the court with case management in contested cases and to identify the disputed issues all parties are required to complete a Preparation for Effective Trial (PET) form at the first hearing. This should detail evidential issues, any ancillary applications to be made and list the court directions which are required to ensure that an effective trial can take place. It is the responsibility of the CPS to initiate this document and include it within the papers prepared prior to the first hearing.

5.20 In police charged cases this form is completed from scratch by the reviewing lawyer in the office. In CPS charged cases the understanding is that the charging lawyer will initiate completion of the form. The charging lawyer for magistrates' courts cases is usually a lawyer who works for CPS Direct (CPSD), a dedicated team of lawyers who provide charging advice around the clock to the police across England and Wales.

5.21 Completion of the forms by CPSD lawyers was not consistent and opinion was divided as to how useful it was for the charging lawyer to perform this function. In one Area, a manager said that they had instructed their lawyers to commence the form afresh whilst another stated that he found it useful for his team to use the CPSD form. There was also an Area where the courts were using a different form so the national form completed by CPSD was of no use. Some lawyers described technical difficulties in completing forms that had been initiated by CPSD lawyers and so they always completed their own. The result is duplication of effort and the potential for conflicting instructions for the court advocate, which is unhelpful.

5.22 Another problem inspectors encountered in relation to the PET form related to the completion of the document at court. The ideal is that the form is included within the papers served digitally by the CPS before the hearing, with the defence and the court thereafter completing their sections digitally at court. In practice this does not happen

and a printed copy of the form is most often completed manually at court which is then scanned by a court officer and either printed or emailed to the parties. We found that it was not unusual for the form to be completed again from scratch at court resulting in further duplication of effort at this stage.

5.23 Our concerns around duplication of effort apply equally to the review function and, although outside the scope of this inspection, we found that there was considerable overlap between the role of the charging lawyer and that of the Area reviewing lawyer. This is a matter which needs to be resolved if the CPS is to make best use of limited resources.

5.24 Overall we found that the PET form was completed to a fully satisfactory standard in only 8.9% of applicable cases, although there was partial compliance with expectations in a further 62.5% of cases. The most common problem (the cause of lower than full compliance in nearly 60% of the defective cases) was a simple failure to endorse adequate contact information for the prosecution on the form. Too often, we found that either there were no contact details included at all or that they were too vague to enable anyone to contact the allocated lawyer, if indeed there was one. This impacts on the ability of the defence to engage with the CPS; a frequently voiced concern of defence practitioners is that they are unable to get a response when they contact the CPS and this does nothing to address that complaint. We discuss defence engagement in the next chapter.

Disclosure of unused material

5.25 In chapter 4 we discussed police performance in respect of their disclosure obligations and our findings in respect of the CPS performance were even more disappointing. We found that the prosecution had fully complied with its duties of disclosure in only 34.8% of the cases examined, partially complied in 22.5% and failed to comply at all in 42.7%. Common issues included a failure to sign or endorse the Streamlined Disclosure Certificates, failing to challenge the police when inadequate disclosure was provided and serving poorly prepared certificates. In far too many cases inspectors encountered a complete failure to deal with disclosure.

5.26 Compounding this problem we found a lack of an adequate audit trail with a disclosure record sheet completed appropriately in just 35.8% of the relevant cases which we examined.

5.27 It is clear that disclosure continues to pose a real problem for both the police and CPS. If the disclosure regime is to be effective, performance needs to be addressed urgently. On our findings in this review, we cannot provide assurance that the prosecution team were handling disclosure appropriately.

Early receipt of initial details of the prosecution case

5.28 To enable the first hearing to be as effective as possible the defence also have to be in a position to make progress. Characteristic 5 requires that the initial details of the prosecution case (IDPC) are served on the defence in sufficient time to prepare. The CPS SOP provides for IDPC to be served on the court and the defence (electronically where possible) a minimum of five days before the first hearing.

5.29 We found that service of the documentation on the defence was particularly poor. Even when defence details were known before the first hearing (which was the case in over half the files examined) the papers were only served on them ahead of the hearing in 16.7% of cases. We discuss below the issues around defence engagement and this poor service does not encourage the defence that the CPS is in a position to engage professionally.

5.30 The table sets out the results from the file examination in relation to the service on the court:

	All cases	Cases read before the fieldwork	Cases read as part of the fieldwork
Was the IDPC bundle served on the court in accordance with TSJ timescales			
Yes	50.0%	45.6%	58.4%
No	50.0%	54.4%	41.6%
If not give the reason			
Late police file	10.0%	11.8%	5.4%
Late review	43.8%	40.9%	51.4%
Late bundling	26.9%	23.7%	35.1%
Mixed	19.2%	23.7%	8.1%

5.31 It was apparent from our interviews that the collection of information around the timeliness of service of IDPC is resource intensive for the CPS because it cannot be obtained directly from the case management system. At the time of our fieldwork every Area had had to provide a self-assessment of its compliance rate which (with two exceptions) was more positive than the findings of the CPS Compliance Assurance Team; in one instance there was a difference of 45%. There were concerns raised in some interviews with CPS managers about how much reliance could be placed on the Areas' self-assessments in this regard. The table overleaf compares our findings with those of the CAT when IDPC service is broken down into GAP and NGAP cases:

	IDPC delivered within 5 days in GAP cases	IDPC delivered within 5 days in NGAP cases
CAT national	83%	49%
HMCPSI national	74%	41%

5.32 Some Areas had implemented a manual count to obtain this information for use at their joint governance meetings with the police and courts. One Area had developed an IDPC ‘Service Calculator’ which automatically calculated dates and assisted with its work.

5.33 We were also told that some court centres had staff committed to monitoring timeliness and in one instance it appeared to inspectors that there was duplication with both the CPS and courts collecting the same information. This data is considered important by partner agencies to hold the CPS to account where necessary. Justices’ Clerks described in interview the negative impact on their ability to work effectively if the IDPC is received late or not at all. In court observations, we noted instances where progress was slower than it ought to have been because the District Judge had not been able to read the papers in advance or the court did not have the defendant’s previous convictions or other relevant information.

5.34 Whilst there are clearly issues, we were given some general feedback from HMCTS staff of an improving service by the CPS. There is some corroboration for this view when our findings are broken down. The table on the previous page shows that service for the cases that we observed during our fieldwork was better those seen earlier. However the same data also indicates that the delay occasioned by late review is growing and that more delay is being caused by late bundling of the IDPC package by CPS administrative staff.

5.35 Inspectors did not find any evidence that Areas were assessing the cause of late service. In our file examination we found the primary reasons to be late review of the file by CPS lawyers and late bundling of the material for service. This underlines the importance of receiving the digital file in a timely manner from the police and allowing sufficient time for review and preparation of the files for the court hearing.

Structure of CPS units

5.36 We visited CPS units in Birmingham, Bristol, London and Nottingham. Each of the relevant CPS Areas had re-structured their magistrates' court units for the delivery of TSJ. Inspectors found that different models of operation and deployment of staff had been adopted by each of the Areas in relation to the management of NGAP cases.

5.37 In two Areas, the units had been divided into an office based review team and an advocacy team. A decision had been taken in one of these Areas that lawyers in the review team would still attend court each month to maintain advocacy skills. In the other Area, the lawyers were totally office based. A senior manager told inspectors that he would like to introduce six monthly rotations to develop and maintain both review and advocacy skills but there were too many operational risks in implementing this at the current time. Having consulted with staff a third Area had introduced a hybrid system with some lawyers office based and others having a mix of review and advocacy work.

5.38 The fourth Area operated a model which consisted of one team in which the NGAP cases were reviewed two weeks in advance of the hearing by a lawyer, who would then prosecute the cases at the first hearing. This ensured that there was a direct link between the NGAP review and the prosecution of cases in court, but was resource intensive. Each lawyer was allocated two days for review and preparation of their court list when the files first came in, but defects in the police file meant that the two days were not as effective as they might have been and an additional half day was needed before the hearing to review the material supplied later.

5.39 In all of the Areas visited, the NGAP cases were reviewed and prosecuted in court by lawyers. The GAP cases were generally prosecuted by associate prosecutors who undertook reviews on the GAP cases as part of their preparation for court. Invariably, where there was some evidence of a GAP review being done it had been completed just prior to the court hearing and was recorded on the hearing record sheet. Many of the NGAP cases also received reviews the day before the hearing and the lateness and workload prevented applications and other case preparation being undertaken in advance.

5.40 Inspectors received feedback from some advocates that they could not always rely on reviews completed by office based lawyers due to concerns about the review quality or because they felt that it was their responsibility as the prosecutor in court to decide how a case should proceed. Such work has to be completed in the lawyers' own time and clearly involves duplication. It is questionable how long such a system of regularly working unpaid overtime is defensible or can be sustained. Some office based lawyers expressed concerns about the amount of time they had to produce a quality review and the pressure that they were under from their managers to complete a set number of cases each day.

5.41 Administrators also voiced concerns about workload pressures; in one Area the work allocated to each administrator was based on what needed to be done that day and the number of staff available, which takes no account of how long a task takes or what is a reasonable expectation. These demands, coupled with the lack of structured training on the new SOP for administrators, strict management controls, and the potential for performance management sanctions, were causing some disquiet and anxiety. This is unlikely to lead to either individual job satisfaction or increased productivity.

5.42 At this stage it is too early to assess the most effective model for dealing with NGAP cases. The most positive attitudes amongst lawyers were to be found in the team who reviewed the cases and then prosecuted them two weeks later, with an extra half day where required. One of these described themselves as a convert to TSJ and another stated that the initiative had the “*potential to be brilliant*”. At the time of the inspection these lawyers felt they were given the right amount of time to undertake the reviews, although it remains to be seen whether this level of resourcing can be maintained in the longer term.

Our findings

5.43 CPS charging decisions were found to be good.

5.44 There is a lack of clarity around what file allocation means in practice and national guidance should be introduced to ensure consistency of approach.

5.45 In far too many cases the CPS are not reviewing the files before the first hearing.

5.46 The quality and timeliness of the initial review needs to be improved.

5.47 For GAP cases we found that some Areas were using a standard hearing record sheet with a review box which prompted the advocate to evidence their review, which inspectors found to be good practice and a proportionate way of complying with the review.

5.48 For review of NGAP cases we found that in some parts of CPS Eastern a template had been introduced which reminded the reviewing lawyer to consider the relevant issues. This is good practice and a useful tool for managers to introduce when necessary to drive up the quality of the work of their team.

5.49 CPS lawyers are failing to include contact details on the PET form, which undermines engagement with the defence.

5.50 There is duplication in the work done by the CPSD charging lawyer, the Area lawyer undertaking the initial review, and the court prosecutor in relation the PET form and, more widely, in respect of the review for trial preparation.

5.51 Compliance with disclosure obligations continue to pose problems for the CPS and the police and this needs to be addressed.

5.52 When defence representatives are known before the first hearing the CPS are poor at ensuring that IDPC is served on them in advance of that hearing.

5.53 Information around timeliness of service of IDPC is important for the CPS and HMCTS. There is some indication that service on the court is improving but the CPS needs to know why it does not meet the targets so that it can address the cause.

5.54 Inspectors used an excel programme to calculate service dates and one Area had developed an IDPC Service Calculator to assist them - this may be of value to other Areas.

5.55 At this stage it is too early to assess the most effective model for dealing with NGAP cases. It is essential when considering the model that managers do not under estimate the importance of staff buy-in or forget the need to maintain and develop the skills of their lawyers and other staff, their most valuable resource.

5.56 Lawyers working in the unit where they conducted the NGAP review then prosecuted the case in court were the most positive.



6 Engagement with the defence

6.1 Within the fourth characteristic there is a requirement for early constructive engagement with the defence. This is one of the features of TSJ which distinguishes it from its predecessors such as CJSSS.

6.2 The requirement for parties to enter into discussions at an early stage is something which is being driven forward in the Criminal Procedure Rules and which also features in the judicially-led Better Case Management initiative currently being implemented in the Crown Court. In recent years, there has been little engagement between the prosecution and defence in the magistrates' courts until the parties meet in the court room. This resulted in significant periods of court time being spent discussing the issues in a case and reaching, or failing to reach, agreement with regard to evidential and ancillary matters.

6.3 The principle is that by adhering to the optimum bailing patterns there will be sufficient time for the police to build files and for the CPS to review them. It will also allow the CPS time to contact the defence, where known, in advance of the first hearing and to start the discussion about how to take the case forward. It is the mechanism to establish the defendant's plea and ensure issues are resolved as far as possible prior to the first hearing, thereby maximising its effectiveness.

6.4 All the Areas visited during our fieldwork had organised some promotional events for the defence community to attend to provide information and establish buy-in. Inspectors were informed that the response rate was mixed, with some events cancelled due to lack of interest. This is reflected in some of the views expressed by defence solicitors that inspectors spoke with at court. Whilst some were aware of the initiative and the fact it was a national programme, others knew little of it and expressed little interest. We sent out questionnaires to 22 defence firms based in the fieldwork Areas and only four responded.

6.5 The CPS Chief Operating Officer agreed that defence engagement was a major challenge for the CPS and that cultural change was needed. CPS staff had to be prepared to pick up the phone and call the defence. Each Chief Crown Prosecutor had been required by Headquarters to lead on defence engagement and we were told that work was ongoing to establish a proper business approach to letters and communications in an attempt to improve relationships.

6.6 Some good practice was found in our fieldwork. In one Area a Communications and Engagement Team was being piloted, with 15 staff tasked to deal with all calls and correspondence in the first instance. This was introduced, in part, to seek to address complaints by the defence. Inspectors believe that this demonstrates commitment to better engagement, but the pilot must be carefully evaluated to assess whether it is cost effective and can evidence improvement.

6.7 In other Areas letters had been sent to firms of defence solicitors containing information about TSJ and in some instances a specific email address was provided to enable the defence to request the IDPC before the first hearing.

6.8 However, in respect of the work done by the CPS lawyers in the office at first review, the inspection team found that there was very little evidence of any engagement with the defence prior to the first hearing.

6.9 The details of a defence representative were noted in 75.3% of the applicable cases we examined and in 59.1% of those this information was available before the initial hearing. However in only 1.8% of these cases had the reviewing lawyer made attempts at early engagement with the defence. Discussions with both prosecutors and defence lawyers at various courts supported the view that for the most part, where necessary, engagement is not taking place before the first hearing.

6.10 There are several issues which can affect the ability to engage with the defence at an early stage, including a lack of sufficient contact details and the unavailability of the defence solicitor during normal office hours. Also, the police file does not consistently identify who the defence representative was, if known, or the firm from which they came, and a standard place on the MG3 for this information would improve the early identification of defence representation. However, save in one or two exceptional cases, we did not find that lawyers were even trying to engage.

6.11 Inspectors found that there were mixed messages at the operational level about what should be done. We were informed by some managers that lawyers were expected to make a telephone call if the defence was known at the review stage. Another admitted that he would not expect his staff to make any attempt at contact in a standard case and saw no purpose in it. In one Area, a document was sent to defence firms indicating that engagement should take place before or at the hearing, which is different from what is envisaged, and in another Area the material supplied to defence practitioners did not mention engagement at all.

6.12 There is a need for a clear message to be communicated to staff and the defence about the importance of changing attitudes and clarity around expectations. Whilst the advent of the new criminal legal aid defence contracts may assist in dealing with some of the barriers to effective engagement, the CPS cannot delay. We found that the CPS is currently failing to engage effectively with the defence prior to the first hearing.

Our findings

6.13 CPS lawyers are failing to engage effectively with the defence prior to the first hearing.

6.14 A clear message is needed from CPS managers to staff and defence practitioners about what is expected with regard to defence engagement.

6.15 The aspects of TSJ or the CPS SOP which assist in increasing engagement, such as timely service of the IDPC and proper contact information on the PET form, should be robustly monitored and enforced.

6.16 Whilst there are obstacles to constructive and early engagement they are not such that the concept should be abandoned and much more effort needs to be made to bring about the required culture change at an operational level.



7 The first hearing

Characteristic number 2

Anticipated plea hearings

- GAP cases in GAP courts and NGAP cases in NGAP courts
- decision where the case is to be listed made at point of charge
- GAP courts characterised by high volume and swift turnover, as many cases as possible sentenced at first hearing
- NGAP courts requiring advanced preparation by prosecution, police and defence, and sufficient time to allow every case to be meaningfully progressed
- GAP and NGAP court sitting in parallel where possible, so incorrectly anticipated cases can be transferred to the correct court

Characteristic number 3

Brigading cases

- an optimum number of cases listed in each type of court session
- sufficient time to fully consider each case
- e.g. a maximum number of 30 slots in GAP court (mix of first hearing guilty pleas, pre-sentence reports and breach cases)
- e.g. a maximum number of 15 slots in NGAP court giving time for a full case management hearing

Characteristic number 6

The right personnel at the hearing

- to ensure that the NGAP court is conducted by knowledgeable and proficient people
- with strong case management skills and decision making ability
- with a suitably experienced and proficient Bench or District Judge, a robust legal adviser, dedicated, trained prosecutors and practised, reasonable defence solicitors

Characteristic number 9

Police support for anticipated not guilty hearings

- availability of an experienced member of police staff (in person or virtually)
- to assist the prosecutor in the NGAP court
- to enable arising issues to be dealt with in real time, rather than adjourning cases

Characteristic number 10

Connectivity for each agency at court

- dedicated facilities including Wi-Fi and internet connectivity
- enabling material held elsewhere to be received immediately by the parties in court
- prosecutor, police support, legal advisor, probation and defence to work digitally on Wi-Fi enabled laptops in court and their offices
- forms completed and transferred between parties digitally

Anticipated plea hearings and the brigading of cases

7.1 During the fieldwork phase inspectors conducted court observations in all four Areas visited. In total there were 19 court observations completed and these included 11 courts listed as not guilty plea courts (NGAP), five as guilty plea courts (GAP) and three that were a mixture of the two types of case. The table at annex D summarises inspectors' findings in respect of the individual courts.

7.2 TSJ requires that cases are listed appropriately as a foundation for effective hearings. It is expected that cases should be brigaded together based on the anticipated plea with dedicated GAP courts and NGAP courts.

7.3 GAP courts should have a maximum of 30 cases listed in them and comprise a mix of first hearing guilty pleas, pre-sentence report cases and breach cases.¹⁰ The concept is that these courts are characterised by "*high volume and swift turnover*" and ideally the cases will be dealt with to conclusion in one hearing.

¹⁰ Breach cases involve a defendant being charged with failing to comply with a previous court order.

7.4 NGAP courts should have a maximum of 15 cases listed in them to allow sufficient time to fully consider each case. Inspectors found that there were differences in interpretation with some courts listing 15 cases in a morning or afternoon session and some listing 15 for a full day. The expectation is that the cases will be effectively case managed at that first hearing and listed for trial with an aim that they will be concluded at that second hearing.

7.5 It is of some concern that despite nationally agreed figures there were significant differences across the country as to how many cases are actually listed. During court observations, we noted that in many instances courts which were ostensibly dedicated GAP or NGAP courts were in fact a mixture of GAP, NGAP and other hearings. We also found examples of courts which were both over and under listed. One court was observed with only eight cases listed in it, of which only four involved the CPS. The court was described as an NGAP court yet only two of the CPS cases fitted the criteria. At the other extreme we observed an NGAP court which had 24 cases listed in it, of which nine were NGAP cases, but ten were GAP cases and there were five others; the court was listed for a morning only with a separate afternoon list. The morning cases still had not been concluded by 4pm despite being well managed by the District Judge and a robust prosecutor. In that court, the police had bailed many of the cases specifically to the NGAP court despite identifying them as GAP cases. In many other cases observed, it was unclear whether the choice of court had been determined by the police or court.

7.6 Inspectors were told that significant over-listing of NGAP cases was taking place in some court centres (up to 30 NGAP cases in one instance); conversely, in one court centre we were advised that the agencies had agreed a lesser number of cases per session as it was felt the nationally agreed optimum was too many for the court to deal with.

7.7 The figures of 30 GAP cases and 15 NGAP cases were reached following national consultation between the agencies. Consideration should be given to raising the issue at the national TSJG to revisit the optimum number of cases to be listed in each of the courts in the light of operational experience.

Suggested step

Consideration should be given to revisiting the optimum number of cases to be listed in the NGAP and GAP courts in the light of operational experience at the national TSJG.

7.8 The police are responsible for bailing cases to the correct court date. We commented earlier that we found that police were very good at assessing the anticipated plea. However in only 10% of cases of the cases examined had the police bailed the defendant to the correct court date and when the data is broken down regionally it shows that 16 individual forces had not, applying the TSJ timescales, bailed any of their cases to the correct date.

7.9 In one court, discussed above, it was apparent that police bailing to the wrong type of court had caused some of the over-listing in the NGAP court. In many other cases observed, it was unclear whether the choice of court had been determined by the police or court. In one Area, where the CPS and courts had reported significant problems in respect of the police bailing cases to the wrong type of court, the matter had been escalated to the Strategic Local Implementation Team. It was clear that the police had taken the matter seriously and we were told that a senior detention officer had been tasked with finding a solution as a result. It is very hard to foresee effective brigading of cases if this lack of compliance continues.

7.10 Some police forces were using significant numbers of postal requisitions to bring cases to court which was contributing to listing problems. In our file examination, 20.3% of cases were brought to court in this way. In one Area the cases commenced by postal requisition were not listed in the specific court slots allocated for TSJ cases and this resulted in significant delays in their first hearing date. It was also suggested to inspectors that the systems for postal requisitions and bailing defendants do not 'talk to each other' which could result in the total number of cases listed into any one court not being checked.

7.11 A number of stakeholders made comments about the inappropriate use of postal requisitions for the most serious charges. During one court session we observed an alleged rapist appearing by way of postal requisition and yet the police also attended the court to request the prosecutor give consideration to applying to remand the defendant in custody. Although outside the scope of this report it is suggested that a review be considered into the practices used in relation to postal requisitions to ensure appropriate and consistent use.

7.12 Where possible court centres should arrange for GAP and NGAP courts to run concurrently to facilitate movement of cases from one to another if a case is listed in the wrong type of court, or a plea entered which is different from that anticipated. Inspectors found that larger court centres tended to have separate GAP and NGAP courts though they did not always run at the same time, whereas the smaller court centres were more likely to have mixed courts. However as stated we found that even in the larger court centres a court designated as an NGAP court often contained GAP and other cases.

7.13 If cases are not brigaded into the right courts it impacts on the courts' ability to function at maximum efficiency. It also affects the ability of the CPS to utilise fully its own resources. GAP courts can be prosecuted by associate prosecutors (APs) and NGAP courts require a crown prosecutor. Thus where courts are mixed a crown prosecutor is required to deal with cases which could have been dealt with by an AP.

7.14 There was a lack of consistency with regard to whether cases which were subject to unexpected pleas remained in the same court or were moved. The indication was that much depended on the available resources and individual preferences. One Justices' Clerk advised inspectors that these decisions were made on a case by case basis. There are drawbacks to both approaches: moving cases requires a fresh prosecutor to read the case, and for a case being set down for trial, this may hamper effective progression, especially if the initial review has not been conducted properly or at all. On the other hand, leaving cases in the wrong court can slow the effective progress of other cases, or leave an AP dealing with case progression on a case that ought to be handled by a lawyer.

The right personnel at the hearing

Prosecution

7.15 Characteristic 6 requires that the first hearing is prosecuted by "*knowledgeable and proficient*" people with sufficient experience, skill and authority to allow cases to be dealt with effectively. The CPS has agreed that the NGAP courts will be staffed by prosecutors with sufficient experience to make decisions on aspects such as acceptability of pleas.

7.16 In general the NGAP courts observed were prosecuted by senior crown prosecutors (SCPs) and the GAP courts were prosecuted by APs. However there was one court which had a mixture of NGAP and GAP cases which was prosecuted by an agent, a GAP court that was prosecuted by a crown prosecutor and two GAP courts that were prosecuted by a SCP; one was a domestic abuse court and the other was covered at short notice due to sickness. The agent had to phone the CPS for instructions in a few cases but otherwise those prosecuting had sufficient decision-making powers.

7.17 In the East Midlands CPS Area a few agents were being used, all of whom had received TSJ training. Whilst using agents was not ideal in practice all Areas were using them to a greater or lesser extent. Inspectors believe that it is good practice for the agents who are to be deployed in the magistrates' courts to be required to undertake relevant TSJ training.

7.18 It is good to note that in court observations inspectors found that most prosecutors were robust and well prepared. In all but two of the hearings, the prosecutors were assessed as being well prepared.

7.19 However, despite encouraging findings, there is still room for improvement in specific aspects as indicated in our findings below:

Did the prosecutor deal appropriately with any applications e.g. bad character/special measures	Yes	60.0%
	No	40.0%
Did the prosecutor deal robustly with defence disclosure requests	Yes	66.7%
	No	33.3%
Did the prosecutor deal robustly with defence witness requests	Yes	72.7%
	No	27.3%

7.20 It is obvious that appropriate preparation by the advocate is essential to enable the court to run smoothly and in some Areas concerns were raised in interviews about the time that prosecutors had to properly prepare. In one Area, the prosecutors told us that they were unable to download their court files until 3.30pm the day before the hearing and that frequent changes to the CPS rota affected the ability of prosecutors to prepare as they would like.

7.21 There was one court observed which was particularly poor with the prosecutor having to ask for time to read the files, despite there being only six cases listed. Trials were fixed without witness availability and disclosure was not available for service. There was very little sign that TSJ had had any impact in that particular court.

7.22 The initial hearing was assessed as being fully or partially effective in 81.0% of the cases assessed by inspectors. Responsibility for ineffectiveness was broken down as follows:

- CPS 22.2%
- Defendant failure to attend 43.2%
- Defence 6.2%
- Court 3.7%
- Police 24.7%.

7.23 We believe that further work should be done to assist in understanding the reasons why not all first hearings are as effective as they should be. In some of the Areas visited managers told us that they had undertaken reviews at court to assess what was happening. In the South West CPS Area, such visits had been arranged jointly with the CPS and court managers conducting reviews of both prosecutors and legal advisors. Managers from both agencies advised us that these were particularly useful and that their staff appreciated the feedback. In the East Midlands CPS Area we were informed that there was some reluctance

by HMCTS to engage in this way, although there had been some limited joint observations involving both agencies. We find that this joint work is good practice and an effective way of working together across the agencies to encourage improvements.

7.24 We were advised that the CPS Individual Quality Assessment (IQA) was also used by legal managers as a tool to monitor performance and that feedback was given to advocates as necessary.

Court

7.25 The characteristic also requires that the legal adviser and District Judges or magistrates should also be suitably “*experienced and proficient*” and in the course of our observations we found that the court was proactive in 89.2% of cases.

7.26 Inspectors learnt that systems were in place for assessing internally the work done by the District Judges and the magistrates, and for feedback to be given. We were also advised that the Senior Presiding Judge required a self-assessment form to be completed after every GAP and NGAP case in order to assess its effectiveness. In one court centre we were provided with a copy of a Post Sitting Review form which is completed by the magistrates after every hearing. This reviews the contribution of the CPS, defence, HMCTS staff and the probation service to ensuring that cases are dealt with effectively. A quarterly report is compiled to identify key issues and trends and these are taken forward by the Deputy Justices’ Clerk, although neither the forms nor the reports are provided to the CPS.

7.27 In general, although we found that there was an openness and desire to look at how improvements could be achieved, there may be further opportunities to share performance information across the agencies, for example an agreement with HMCTS to share its Post Sitting Review Forms, edited as necessary to maintain judicial independence.

Defence

7.28 The characteristic envisages that defence solicitors will be “*reasonable*” and that there will be early engagement between the defence and prosecution. We discussed in chapter 6 the lack of engagement before the first hearing. In practice substantive engagement between the parties only takes place at court. In almost all cases the defence solicitor will collect the IDPC in paper form on the day of the first hearing, and thereafter discussions will take place before the case is called. This is not the most effective use of court time.

7.29 Defence lawyers at court reported a mixed picture. We found that a significant number were engaged in the process and some feedback from the judiciary also suggested that there was a good level of positive engagement from the defence at court. However there were also some examples given of an 'old school' mind-set with inappropriate applications to adjourn cases being made.

7.30 Defence representatives spoken to at court raised various concerns, including failure to serve CCTV, inadequate disclosure and inaccurate MG5 summaries. Concerns were also raised over the lack of statements in GAP cases to enable them better to advise their clients. However, a number of defence lawyers told inspectors that the principles of TSJ were sound and that they supported the concept of front loading cases.

7.31 The defendant's failure to attend was the reason the first hearing was ineffective in 43.2% of applicable cases. It cannot be ignored that the defendants themselves are also key stakeholders whose often chaotic life styles will impact on the efficiencies of the court process. Whilst it is hard to see what influence the CPS can have in this regard, proper engagement with defence representatives may provide some answers, such as dealing with more cases in absence when the prosecutor is better informed.

7.32 Unrepresented defendants can raise particular issues for both the prosecution and courts in relation to both TSJ and the digitalisation of the court process. These remain unresolved at this time and can only be considered on a case by case basis.

Police support for anticipated not guilty hearings

7.33 Characteristic 9 requires that the police provide support for the NGAP courts to assist the prosecutor and avoid unnecessary adjournments.

7.34 In three of the four Areas visited the only access to police liaison was by phone, and even this was not necessarily to a dedicated TSJ support officer. In the fourth Area, where an officer was available in person it was in the capacity of police liaison officer at court and not as a dedicated TSJ liaison officer. Invariably, the prosecutors stated that they found the presence of a police liaison officer in court of significant benefit.

7.35 We found that prosecutor awareness of the police support available was variable, which will inevitably impact on how effectively they are used. Some Areas had given more publicity to this service than others. In the courts which were observed there was no evidence that it was used and some prosecutors that we spoke with at court did not know whether it was available.

7.36 We assessed that when the first hearing was ineffective the responsibility rested with the police in 24.7% of cases, police support at court does provides an opportunity to resolve any issues which are still outstanding at the first hearing to better progress the case. However, the value of police support is not limited to ineffective hearings and we observed instances when this could have provided better information to the court to assist with sentencing, for example in relation to compensation details. We also observed a number of instances when trials were fixed without witness availability; police support may have provided up-to-date information with the potential to avoid further ineffective hearings but as the trial was in the future, we could not make a definite finding.

7.37 Prosecutors should be aware of and use the police service if it is needed. Ideally a timely and quality file review should minimise the need for the prosecutor at court to contact police at the hearing, but the CPS are not yet at that stage.

Connectivity for each agency at court

7.38 To promote the efficient progression of cases, the last characteristic requires that all parties including the probation service and the defence can use secure court Wi-Fi. This will allow material held elsewhere to be accessed immediately in court and forms to be completed and transferred between the parties digitally. There is also an expectation that all parties will work digitally in court and in their offices.

7.39 The CPS has made great progress in recent years in driving the digitalisation of the prosecution process. All CPS prosecutors now work from laptops or tablet computers with Wi-Fi capability. The prosecution file is now substantially digital and CPS prosecutors present the cases in the magistrates' courts without paper copies.

7.40 We observed that CPS staff were able to receive and serve documentation digitally in the office and download the digital case files. In court prosecutors presented cases digitally and, subject to the availability of Wi-Fi, they were able to access the CPS case management system. There is no doubt that the ability of the prosecutor to access this information in real time can be of real benefit and it does contribute to more effective hearings; for example statements may be accessible if a defendant unexpectedly enters a not guilty plea, or witness availability may be available. We observed examples of case progression being made more effective by the prosecutor's use of Wi-Fi to access material or exchange information with the court or defence.

7.41 A significant number of the courts we visited did have Wi-Fi but we were informed that there are a number of issues to be resolved before it is available in all courts and is being used by all parties to maximum effectiveness. These and other issues relating to the agencies' digital processes are being considered in depth in a separate joint inspection by HMIC and HMCPSI.

Our findings

7.42 Despite nationally agreed optimum numbers inspectors found that there were significant differences in the courts observed as to how many cases are actually listed. Consideration should be given to the national TSJG looking again at the optimum numbers of cases for effective listing.

7.43 Our court observations revealed many instances of cases not being brigaded together as anticipated by the initiative.

7.44 The use of postal requisitions was inconsistent across the country and contributed to listing issues. Although outside the scope of this report it is suggested that a review be considered into the practices used in relation to postal requisitions to ensure appropriate and consistent use.

7.45 In general the right personnel are at the first hearings with CPS prosecutors being well prepared, robust and able to make decisions.

7.46 Eighty one percent of first hearings were assessed as effective.

7.47 Joint court observations by CPS and court managers to review the performance of both prosecutors and legal advisors were found to be particularly good practice and an effective way of working together across the agencies to encourage improvements.

7.48 Inspectors found that it is good practice for CPS agents deployed in the magistrates' courts to be required to undertake relevant TSJ training.

7.49 There was a lack of awareness of the police support available at the NGAP hearing amongst CPS prosecutors. Prosecutors should use the police support at court if needed and managers should ensure that systems are in place.

7.50 The defence presented a mixed picture with most, but not all, supporting TSJ.

7.51 Wi-Fi needs to be installed in all suitable courts to support the initiative.

Annexes

A Scoping document

Introduction

Following discussions with stakeholders (including the Law Officers and the CPS), HMCPSI has decided to review the role of the CPS and its contribution to the Transforming Summary Justice (TSJ) initiative.

Whilst much of the effectiveness of the CPS contribution is influenced by the police contribution to TSJ, those factors can be addressed by HMCPSI without the necessity of a joint inspection with HMIC. HMCPSI did consult with HMIC to determine whether they wished to join this inspection but HMIC stated that they had no capacity for adding to their inspection timetable for the rest of their reporting year. HMCPSI considers that it is appropriate for the inspection to proceed at this time due to the importance of the TSJ initiative, which aims to deliver a more efficient and effective approach to summary justice.

Scope

It is proposed that the scope of the inspection covers actions up to and including the first hearing in the magistrates' court.

Objective

To assess the effectiveness of the CPS contribution to achieving the ten characteristics of the TSJ initiative.

Inspection criteria

Overall

- prosecutors and administrators comply with the magistrates' court Standard Operating Practice for TSJ cases
- CPS staff have been trained in the delivery of TSJ
- the relevant CPS high weighted measures demonstrate performance improvement.

Pre-first hearing

- police files are submitted within the TSJ time guidelines and meet the National File Standard for the anticipated plea
- the police identify correctly the anticipated plea
- prosecutors review files in accordance with the Code for Crown Prosecutors within the time guidelines, including Early Crown Court review in applicable cases
- in NGAP cases the Preparation for Effective Trial (PET) form is created and updated correctly
- in NGAP cases all necessary applications are drafted correctly
- any necessary remedial work is undertaken before the first hearing
- in NGAP cases, all necessary work to ensure an effective trial is undertaken before the first hearing
- the disclosure of unused material complies with the TSJ Summary Disclosure Guidance

- the initial details of the prosecution case (IDPC) package is despatched in accordance with TSJ time guidelines
- there is early engagement with the defence before the first hearing.

The first hearing

- the prosecution have the right personnel at the hearing
- in GAP cases the prosecutor is able to provide appropriate information to the sentencing Bench
- in NGAP cases they have access to appropriate police support
- in NGAP cases the case management issues are agreed with the defence and HMCTS and the PET form is completed fully
- prosecutors endorse accurately and fully the hearing record sheet.

Methodology

There will be four main strands to the methodology:

- file examination
- magistrates' court observations
- interviews with key CPS staff and stakeholders; and
- data examination to include consideration of whether the relevant CPS high weighted measures demonstrate performance improvement and any actions taken to capture CPS and police compliance with the TSJ SOP.

Site selection

Four CPS Areas (with a minimum of six court centres) have been selected - these are London, South West, West Midlands and East Midlands. The Areas have been chosen in consultation with the CPS. File examination, court observations and interviews will be conducted in each of these Areas.

File examination

In relation to the four Areas to be visited it is proposed that the file examination is in 'real time', this would involve examining live files while on-site which are listed for first hearing on or about the day they are examined. Court lists should identify easily the relevant cases and which category is applicable. A bespoke question set will be developed.

Prior to the Area visits it is proposed that there be an examination of a sample of GAP and NGAP cases from the nine Areas which are not to be visited. This will provide a wider picture of performance nationally.

Court observations

Magistrates' court observations of GAP and NGAP courts will be undertaken. It is recognised that in some smaller court locations both categories of case will be listed.

Interviews

Interviews will be held with Headquarters and Area leads in respect of TSJ, prosecutors who review and present TSJ cases, Level D managers with responsibility for TSJ, District Judges, Chairs of Benches, operational police leads for TSJ and HMCTS legal advisers. It is proposed that a survey will be conducted to ascertain the views of the defence community.

Report

The report would be published.



B The ten characteristics

1. Quality assured police files

- strict timelines for file submission
- an effective chase up system
- consequences for non-compliance

A dedicated team to

- review police charged files pre-charge
- assist with submission of files and liaison with the prosecution
- compulsory training on file preparation for offices and supervisors.

2. Anticipated plea hearings

- GAP cases in GAP courts and NGAP cases in NGAP courts
- decision where the case is to be listed made at point of charge
- GAP courts characterised by high volume and swift turnover, as many cases as possible sentenced at first hearing
- NGAP courts requiring advanced preparation by prosecution, police and defence, and sufficient time to allow every case to be meaningfully progressed
- GAP and NGAP court sitting in parallel where possible, so incorrectly anticipated cases can be transferred to the correct court.

3. Brigading cases

- an optimum number of cases listed in each type of court session
- sufficient time to fully consider each case
- e.g. a maximum number of 30 slots in GAP court (mix of first hearing guilty pleas, pre-sentence reports and breach cases)
- e.g. a maximum number of 15 slots in NGAP court giving time for a full case management hearing.

4. Optimum bailing patterns

- to allow full preparation of cases by police, CPS and defence
- dependent on the type of case
- a suggested timescale of 14 days between charge and first hearing for GAP cases
- a suggested timescale of 28 days between charge and first hearing for NGAP cases
- to allow time to construct the case file, carry out a full review, prepare applications and engage constructively with the defence.

5. Early receipt of IDPC

- to allow defence solicitors sufficient time to prepare the case
- ideally sent by electronic service (secure e-mail) a minimum of 5 days before the first hearing
- ideally sent as soon as the representative firm is known to the prosecution.

6. The right personnel at the hearing

- to ensure that the NGAP court is conducted by knowledgeable and proficient people
- with strong case management skills and decision making ability
- with a suitably experienced and proficient Bench or District Judge, a robust legal adviser, dedicated, trained prosecutors and practised, reasonable defence solicitors.

7. Streamlined disclosure

- an unused material report available to the defence at first hearing
- a standardised form of written confirmation provided to defence in GAP cases that confirms that the prosecution understand their common law duties (*ex parte Lee*), but not requiring a schedule
- early provision of unused material in NGAP cases
- an unused material report with a list of items given to the CPS before the hearing
- report served on defence immediately in event of not guilty plea
- National File Standard amended by police and CPS to reflect the requirements of the Code for Crown Prosecutors regarding provision of unused schedule and disclosure officer's report.

8. Clear expectations of effectiveness

- strong local governance to ensure that Areas deliver to a high level of performance
- effective communications between each criminal justice agency at an operational and strategic level
- accountability for any lack of sustained improvement
- joint performance measures from each criminal justice agency
- distinct local arrangements for measuring effectiveness.

9. Police support for anticipated not guilty hearings

- availability of an experienced member of police staff (in person or virtually)
- to assist the prosecutor in the NGAP court
- to enable arising issues to be dealt with in real time, rather than adjourning cases.

10. Connectivity for each agency at court

- dedicated facilities including Wi-Fi and internet connectivity
- enabling material held elsewhere to be received immediately by the parties in court
- prosecutor, police support, legal advisor, probation and defence to work digitally on Wi-Fi enabled laptops in court and their offices
- forms completed and transferred between parties digitally.

C File reading data

1	How is the case categorised by the police	GAP	28.6%
		NGAP	70.6%
		Crown Court	0.7%
2	How does the defendant appear	Custody	4.1%
		Bail	72.0%
		Summons	3.7%
		Postal requisition	20.3%
3	Did the police correctly categorise the case	Yes	90.0%
		No	10.0%
4	Does the police file content comply with the National File Standard	Yes	42.8%
		No	57.2%
5	If the police file did not comply with National File Standard what was the main issue	MG11S	17.5%
		Disclosure	33.8%
		Witness previous convictions	6.5%
		Defendant previous convictions	2.6%
		Other	39.6%
6	Did the file include a Victim Personal Statement where applicable	Yes	32.8%
		No	67.2%
7	Was the police submission of the file timely and in accordance with the TSJ time guidelines	Yes	67.0%
		No	33.0%
8	Did the police bail use optimum bail dates	Yes	10.0%
		No	90.0%
9	Does the MG5 adequately reflect the key facts and issues in the case	Fully met	82.7%
		Partially met	14.4%
		Not met	3.0%
10	Did the police decision to charge comply with the Code test	Yes	95.3%
		No	4.7%

11	Did the police decision to charge comply with DG5	Yes	91.1%
		No	8.9%
12	Is there an adequate summary of the interview in the light of the issues in the case	Yes	96.8%
		No	3.2%
13	Was relevant hard copy media (in particular CCTV) made available to the prosecutor	Yes	49.4%
		No	50.6%
14	Was the content of the file sufficient to enable the prosecutor to adequately review the evidence in accordance with the Code	Fully met	75.6%
		Partially met	21.1%
		Not met	3.3%
15	Did the prosecutor's decision to charge comply with the Code	Yes	94.1%
		No	5.9%
16	Did all post-charge Code decisions comply with the Code	Yes	95.7%
		No	4.3%
17	Did the case receive a proper and proportionate initial case review	Fully met	38.8%
		Partially met	20.9%
		Not met	2.6%
		Not done	37.7%
18	Did the CPS identify and raise with the police any lack of compliance with TSJ	Fully met	16.0%
		Partially met	16.0%
		Not met	67.9%
19	Additional material was requested from the police where appropriate	Yes	52.4%
		No	47.6%
20	Does the review clearly set out the strategy for the case in a manner that enables the case to be effectively case managed at the first hearing	Fully met	44.9%
		Partially met	22.4%
		Not met	32.7%
21	Have all issues of plea been adequately considered	Fully met	47.4%
		Partially met	7.0%
		Not met	45.6%

22	Has the prosecutor correctly considered venue	Fully met	60.6%
		Partially met	5.1%
		Not met	34.3%
23	Was any decision to discontinue made and put into effect in a timely manner	Yes	70.6%
		No	29.4%
24	Were the original charges the most appropriate	Yes	88.8%
		No	11.2%
25	If not has the prosecutor taken steps to amend the charges and include the amended charges in the IDPC bundle	Yes	46.7%
		No	53.3%
26	Did the IDPC bundle contain sufficient information to enable effective pre-hearing case management to take place	Fully met	68.4%
		Partially met	25.7%
		Not met	5.9%
27	The IDPC bundle was served on the court in accordance with TSJ timescales	Yes	50.0%
		No	50.0%
28	If the answer to Q27 is "no", give the reason	Late police file	10.0%
		Late review	43.8%
		Late bundling	26.9%
		Mixed	19.2%
29	Have any relevant victim and witness issues been addressed	Fully met	50.0%
		Partially met	25.0%
		Not met	19.4%
30	Where appropriate have s.10 admissions been drafted	Yes	45.9%
		No	54.1%
31	Has the prosecutor prepared any relevant applications (e.g. bad character evidence, hearsay, special measures)	Yes	41.3%
		No	58.7%
32	Were actions recorded clearly and fully on the case management system	Fully met	89.7%
		Partially met	7.3%
		Not met	3.0%

33	Was the PET form completed adequately by the prosecutor prior to the first hearing	Fully met	8.9%
		Partially met	62.5%
		Not met	28.6%
34	Was the only defect a failure to provide adequate contact information for the prosecution	Yes	58.8%
		No	41.2%
35	In NGAP cases was a lawyer allocated to the case	Yes	54.7%
		No	45.3%
36	Was the file bundled properly for the prosecution advocate	Yes	76.4%
		No	23.6%
37	The bundle prepared for the prosecution advocate contained sufficient information to enable progress to be made at the first hearing	Fully met	66.4%
		Partially met	29.8%
		Not met	3.8%
38	Have the police complied with their disclosure obligations	Fully met	61.5%
		Partially met	14.0%
		Not met	24.5%
39	Did the reviewing prosecutor identify and raise with the police any lack of compliance with TSJ streamlined disclosure for initial file submission	Fully met	33.7%
		Partially met	2.0%
		Not met	64.4%
40	Additional material was requested from the police where appropriate	Yes	39.3%
		No	60.7%
41	Prior to the first hearing did the prosecutor comply with his/her duties of disclosure	Fully met	34.8%
		Partially met	22.5%
		Not met	42.7%
42	Non-compliance was a complete failure to disclose undermining or assisting material (late disclosure is not a complete failure)	Yes	2.5%
		No	97.5%
43	Has a disclosure record sheet been completed appropriately	Fully met	35.8%
		Partially met	2.3%
		Not met	61.8%

44	Does the digital file indicate who the defence solicitor/advocate is	Yes	75.3%
		No	24.7%
45	If the answer to Q44 is “yes”, was this information known before the first hearing	Yes	59.1%
		No	40.9%
46	If the answer to Q45 is “yes”, was the IDPC bundle served on the defence before the first hearing	Yes	16.7%
		No	83.3%
47	Did the reviewing prosecutor engage effectively with the defence	Fully met	0.9%
		Partially met	0.9%
		Not met	98.1%
48	Was engagement with the defence noted on the file	Yes	100%
		No	0%
49	Was the plea in accordance with what was anticipated by the police	Yes	60.6%
		No	31.5%
		No plea	8.0%
50	Was the initial hearing effective	Fully met	69.5%
		Partially met	11.5%
		Not met	19.0%
51	If the case was not effective with whom did responsibility lie	CPS	22.2%
		Defendant did not attend	43.2%
		Defence	6.2%
		Court	3.7%
		Police	24.7%
52	Was any adjournment (from an ineffective hearing) necessary	Yes	68.1%
		No	31.9%
53	Who was primarily responsible for any adjournment	CPS	12.1%
		Defence	51.5%
		Court	9.1%
		Police	27.3%

54	Did the prosecutor endorse fully and accurately the hearing record sheet and note any actions required	Yes	87.5%
		No	12.5%
55	Was the PET form completed in full at the first hearing	Yes	32.7%
		No	67.3%
56	Did the defence raise issues regarding the IDPC	Yes	5.6%
		No	94.4%
57	Did the prosecutor proactively manage the case (e.g. liaising with the court or police liaison officer, engaging with the defence) in order to deal with matters as efficiently as possible and to progress the case	Yes	88.1%
		No	11.9%
58	Did the prosecutor deal appropriately with any applications e.g. bad character/special measures	Yes	60.0%
		No	40.0%
59	Did the prosecutor deal robustly with defence disclosure requests	Yes	66.7%
		No	33.3%
60	Did the prosecutor deal robustly with defence witness requests	Yes	72.7%
		No	27.3%
61	Was the court proactive in moving the case forward	Yes	89.2%
		No	10.8%
62	What access did the prosecutor have to police liaison in court	In court in person	13.3%
		By phone	86.7%
63	Did the prosecutor use the police support appropriately	Yes	0%
		No	100%
64	Was the police support effective	Yes	0%
		No	100%

D Court observations

Date of court	How was the court listed	Comments
9.9.15	GAP	<p>This was a full day GAP court with a reasonable number of cases listed. Most had been dealt with in the morning. The court was prosecuted by an associate prosecutor in front of a lay bench and cases were dealt with well. One case involved a no comment interview that the police felt would be a not guilty plea, however it was still listed in a GAP court as a co-defendant had made admissions. There was Wi-Fi in court.</p>
10.9.15	NGAP	<p>This court had a senior crown prosecutor prosecuting before a District Judge. The prosecutor was for the most part robust and dealt with matters well. He was prepared. There was one case missing witness availability and the prosecutor made no attempt to obtain this. Section 10 admissions were agreed and PET forms completed. The District Judge moved guilty pleas into the adjoining GAP court which resulted in one case going over to the next day as that GAP court had finished. Cases to be sent to the Crown Court were also transferred out. One GAP case was moved into the court and the matter listed for trial as the judge refused an adjournment and took a not guilty plea. Of note was a rape case in which the defendant had been served with a postal requisition to attend - the police attended seeking a remand in custody.</p>
16.9.15	NGAP	<p>There were ten cases listed in this morning NGAP court. Two of these cases were destined for the Crown Court, one was a GAP case and one was a youth sentencing case. The prosecutor advised that normally there would be 15 NGAP cases in the morning court. The prosecutor was generally robust but not so with regard to a defence request for a record of interview. CCTV was missing in two cases and bad character evidence was not there in one case. There was Wi-Fi in court. There was no police presence in court.</p>

Date of court	How was the court listed	Comments
17.9.15	NGAP	A morning court with a lay bench and a senior crown prosecutor. Ten cases were listed, seven of these were genuine NGAP cases. The prosecutor was robust and thorough. Unrepresented defendants caused delay and there were a number of charges that needed amending by the prosecutor. It took the full morning session to deal with the cases. We were told that there were usually ten to 13 cases listed in that court. There was no police presence in court but there was Wi-Fi.
16.9.15	Mixed	An all day court with NGAP, GAP and other cases listed. We were advised this was usual. The court was prosecuted by an agent appearing before a District Judge. The court was efficient. Wi-Fi was not available and the agent had to ring the CPS office in a few cases for information, including compensation details and whether a restraining order was required in a domestic abuse case.
16.9.15	GAP (domestic violence court)	A senior crown prosecutor appeared before a lay bench in this court. Some of the brigading was open to question and one case was clearly an NGAP. One case was missing a police summary (MG5) and one lacked an initial TSJ review. The prosecutor made an unwarranted application for special measures then withdrew it. The prosecutor was not as robust as they should have been in dealing with matters.
17.9.15	GAP	All cases were reviewed on the day. A senior crown prosecutor prosecuted at short notice due to sickness and the court was run by a District Judge. Nine cases were observed and there were more on the list. The prosecutor dealt with cases efficiently and robustly. One case required an amendment to the charge and the prosecutor picked this up and dealt with it. There was Wi-Fi in court.

Date of court	How was the court listed	Comments
22.9.15	Mixed	This court had three NGAP, two GAP and one sentencing cases. There was a senior crown prosecutor and a lay bench. The prosecutor had to ask for time whilst the court was sitting to read the files with which he was dealing. In two cases the prosecutor did not have availability for civilian witnesses and trials were listed without this information, with requests made for liberty to apply to vacate the trial date. There was a general problem of no civilian availability being provided and no attempt was made to obtain the information via the police. Witness requirements were case managed better than the process which operated pre-TSJ - other than this little or no sign of the impact of the initiative. Disclosure was not provided at the initial hearing. The prosecutor did not show 'ownership' of cases and appeared to be reading files for the first time whilst the court was sitting.
23.9.15	NGAP	There were 16 cases listed, some of which were destined for the Crown Court. The list was finished by lunchtime and work was transferred in from other courts. Of the seven cases for which there were initial details of the prosecution case material, the witness statements and previous conviction print were missing in six so there was nothing to hand to the defence. Also the CPS printer was broken so the prosecutor could not copy his papers and hand them to the defence.
22.9.15	NGAP	There were 24 cases listed in this NGAP court which had a District Judge. Of 24 cases, nine were genuine NGAPs, ten were GAPs and five were other types of cases (adjourned first hearings, youths and sentencing hearings). Listed for a morning, they had only concluded 11 cases by lunch. One case was done after lunch then other courts offered help, taking all but one of the afternoon court list and some of the morning list. The prosecutor was robust and well prepared. The court was well run. Wi-Fi worked but could be patchy in that court. There was no police presence in court. The inspector noted that the PET forms were being completed by hand in court which meant a duplication of work. The court computer system slowed things up as it added a few minutes to the time each case took to complete.

Date of court	How was the court listed	Comments
23.9.15	NGAP	<p>This was an NGAP court with a lay bench and a senior crown prosecutor. There were eight cases listed and only four involved the CPS. Of those four one had been listed before and one was a GAP case. The legal advisor suggested that despite TSJ it was 'business as usual'. The inspector was advised that NGAP cases that went guilty or GAP cases that went not guilty stayed in the same court. The prosecutor engaged with the defence solicitors and was well prepared.</p>
24.9.15	Mixed	<p>A light mixed list prosecuted by a senior crown prosecutor with a lay bench. There was no Wi-Fi in the courtroom.</p>
24.9.15	NGAP - morning GAP - afternoon	<p>In the NGAP court there was a senior crown prosecutor with 14 cases listed in front of the District Judge. Most cases were dealt with by about half past 12. Lack of interpreters was a real problem and the inspector was told that the police do not arrange them for the first hearing in many cases. There was a police liaison officer at court (which both prosecutors found to be helpful). The prosecutor was well prepared and robust. Both the prosecutor and legal advisor took the view that a significant number of cases were incorrectly brigaded. In four out of 14 cases the disclosure had not been provided by the police.</p> <p>The GAP court had nine matters listed but the inspector was advised it was usually heavier. Three of these were clear NGAP cases and went not guilty. The prosecutor was well prepared and able and the court well managed.</p>
29.9.15	NGAP	<p>A senior crown prosecutor appearing before a lay bench in this all day court. There were seven cases listed in the morning and six in the afternoon. Three cases in the morning list were destined for the Crown Court. The prosecutor was well prepared and dealt with cases well. Witness availability was missing on one case. There was Wi-Fi in court. The court dealt easily with the cases and there was time spent waiting though this was in part due to solicitors taking instructions from clients they had not known about. No police liaison presence. In some cases CCTV was handed over which in one case resulted in a guilty plea.</p>

Date of court	How was the court listed	Comments
30.9.15	GAP - morning NGAP - afternoon	<p>This was a GAP court in the morning with 16 cases listed and an NGAP court with eight cases in the afternoon. The GAP court was prosecuted by a crown prosecutor and the NGAP court by a senior crown prosecutor.</p> <p>Of the eight NGAP cases only one was adjourned to a trial date and one resulted in a guilty plea. There were two warrants issued when defendants failed to attend, two cases discontinued (one before court and one in court), one adjournment due to the lack of an interpreter (the police had not warned one to attend). Another case was adjourned because the defendant did not attend and the certificate of service had not been signed, so it could not be proved that he was aware of the hearing. The prosecutor dealt with matters robustly and was well prepared, though did miss a time barred summary only offence.</p>
30.9.15	NGAP	<p>13 cases were listed in this morning list and six were dealt with, the remainder had either been discontinued or the defendants did not attend. The prosecutor dealt with cases well. Section 10 admissions had been prepared or were drafted by the prosecutor at court. There were two cases which did not have any review recorded including a £10,000 fraud which was sent to the Crown Court.</p>
1.10.15	NGAP	<p>This court had 11 cases listed and five were set down for trial. Of the remaining six cases some were sent to the Crown Court, one had to be adjourned as the defendant failed to attend and service of the postal requisition could not be proved, and one pleaded guilty. The prosecutor was prepared and dealt with the cases well. There was Wi-Fi in court. CCTV was handed over in appropriate cases.</p>



E Glossary

Annual Casework Examination Programme (ACEP)

This involves examination and assessment of a number of CPS files undertaken annually by HMCPSI. Files are taken from across the CPS and cover a range of serious and less serious casework. Further details of the data can be found in the HMCPSI Five Year Review and Annual Report 2015.

Agent

Agents are lawyers who are not employed by the CPS but who are booked, usually on a daily basis, to prosecute cases in court on its behalf. They are not empowered to take decisions under the Code for Crown Prosecutors and have to take instructions from CPS lawyers in this regard.

Associate prosecutor

In-house CPS associate prosecutors (formerly known as designated caseworkers) are not qualified solicitors or barristers but have received training to enable them to present cases within their rights of audience in the magistrates' courts.

Case management system (CMS)

IT system for case management used by the CPS. Through links with police systems CMS receives electronic case material. Such material is intended to progressively replace paper files.

Charging decision

This is the process by which the police and the CPS decide whether there is sufficient evidence for a suspect to be prosecuted. The process is governed by the Director's Guidance on Charging fifth Edition which came into effect in May 2013.

Code for Crown Prosecutors (the Code)

This public document sets out the framework for prosecution decision-making. It provides the authority for crown prosecutors to decide how cases are dealt with and what needs to be considered. Cases should only proceed if there is sufficient evidence to provide a realistic prospect of conviction and if the prosecution is required in the public interest.

CPS Direct (CPSD)

This is the CPS Area which takes the majority of CPS decisions as to charge. Lawyers are available on a single national telephone number at all times so that advice can be obtained at any time.

Cracked trial

On the trial date, the defendant offers acceptable pleas or the prosecution offers no evidence. A cracked trial requires no further trial time, but as a consequence the time allocated has been wasted, and witnesses have been unnecessarily inconvenienced thus impacting confidence in the system.

Disclosure

The prosecution has a duty to disclose to the defence material gathered during the investigation of a criminal offence, which is not intended to be used as evidence against the defendant, but which may undermine the prosecution case or assist the defence case.

Director of Public Prosecutions (DPP)

A Senior Civil Servant who is the head of the CPS.

Effective trial

The trial goes ahead as a contested hearing on the date that it is listed.

Guilty anticipated plea (GAP)

A guilty anticipated plea involves a case whereby the defendant is expected to admit the offence at court following an assessment of the available evidence.

Hearing record sheet (HRS)

A CPS electronic record of events at court. If completed correctly it acts as a continual log of court proceedings and court orders.

Ineffective trial

The trial does not go ahead on the trial date due to action or inaction by one or more of the prosecution, defence or the court and a further listing for trial is required.

Initial details of the prosecution case (IDPC)

This is the material which the prosecution is obliged to serve on the court and the defendant before the first hearing. The documents to be included vary dependent upon the type of case and anticipated plea but always include the charge sheet and the police report (MG5).

Individual Quality Assessment (IQA)

The CPS scheme to assess the performance of individuals and compliance with the CPS's Casework Quality Standards.

Local Criminal Justice Board

There are a number of Local Criminal Justice Boards in England and Wales, which bring together the chief officers of all the criminal justice agencies and partnerships in order to co-ordinate delivery of the criminal justice system.

MG3

The form used to record the charging decision.

MG5

The form used to detail the police report – a case file summary setting out the circumstances of the offence(s) and the evidence that is relied upon in the case.

MG6C, MG6D, MG6E

These forms (frequently referred to as the MG6 series) are used to schedule the unused material in a case and are endorsed with decisions as to whether the material should be disclosed:

- MG6C covers non-sensitive material and is served on the defence
- MG6D covers sensitive material and is not served on the defence
- MG6E is the disclosure officer's report which details their view as to what should be disclosed

MGDDA

The form that is completed contemporaneously by the police when dealing with a suspect in custody under the drink drive procedure. The form evidences the actions taken in the police station and any readings obtained in respect of samples analysed at that stage.

National Criminal Justice Board

The National Criminal Justice Board is the primary forum for setting direction for the criminal justice system.

National File Standard (NFS)

This document details what must be included in the police file for particular types of cases. The latest version was published in May 2015.

Not guilty anticipated plea (NGAP)

A not guilty anticipated plea involves a case whereby the defendant is expected to deny the offence at court following an assessment of the available evidence.

Postal requisitions

A postal requisition is a criminal charge which requires a suspect to attend a magistrates' court on a particular date to answer the charge. Unlike proceedings commenced by summons, it is the prosecutor rather than the court who is responsible for notifying the accused of the requirement to attend court. It allows a relevant prosecutor to commence proceedings without reference to the court.

Pre-charge decision (PCD)

The process by which the police and CPS decide whether there is sufficient evidence for a suspect to be prosecuted. The process is governed by the Director's Guidance on Charging.

S.10 (section 10) admission

This is a document which sets out formal admissions in criminal trials and which is conclusive evidence of the facts contained therein pursuant to section 10 Criminal Justice Act 1967.

Senior detention officer

This role involves supervising and assisting with the daily operation of the secure detention, care and welfare of detained persons and their property. It is usually a civilian post.

Streamlined disclosure

The new streamlined disclosure process was introduced as part of TSJ. The main principle is that an unused material report is to be available for the defence at the first hearing in magistrates' courts cases:

- in GAP cases, a standardised form of written confirmation is to be provided to the defence, which confirms that the prosecution understand their common law duties
- in NGAP cases, there is to be early provision of unused material. An unused material report (the Streamlined Disclosure Certificate) replaces the MG6 series and is served as soon as a not guilty plea is entered.

Streamlined Disclosure Certificate (SDC)

This certificate replaces the MG6 disclosure forms for anticipated not guilty plea cases which are dealt with in the magistrates' courts.

The Code of Practice for Victims of Crime (the Victims' Code)

A statutory code of practice for the treatment of victims of crime, with which all criminal justice agencies must comply. Its aim is to improve victim contact with the criminal justice agencies by providing them with the support and information they need.

Unsuccessful outcome

Cases which result in an acquittal or are discontinued.

Vacated trial

A trial that has been given a date for hearing and, following a successful application by the prosecution, defence or the court, it is taken out of the list before the date of trial. The key factor is that the trial will not go ahead on that day. All parties are notified that the trial will not go ahead as planned and witnesses are de-warned. The trial time is available to be reused. A further listing for the vacated trial may or may not be required.

Victim Personal Statement (VPS)

This gives victims a voice in the criminal justice process by helping others to understand how a crime has affected the victim. If a defendant is found guilty the court will take the VPS into account, along with all the other evidence, when deciding upon an appropriate sentence.

HM Crown Prosecution Service Inspectorate

London Office:

One Kemble Street

London WC2B 4TS

Tel. 020 7210 1187

Fax. 020 7210 1186

York Office:

Foss House, Kings Pool

1-2 Peasholme Green

York, North Yorkshire, YO1 7PX

Tel. 01904 54 5490

Fax. 01904 54 5492

© Crown copyright 2016

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU,

or e-mail: psi@nationalarchives.gsi.gov.uk

This document/publication is also available on our website at www.justiceinspectors.gov.uk/hmcpsi