

Better Case Management: A Snapshot

November 2016

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Foreword

As this report is published the justice system is undergoing a process of reform unmatched in scope in the last 100 years or more. Over the next six years, the Courts and Tribunals Service and the senior judiciary are leading a programme that will provide a justice system based on three core principles:

- Just
- Proportionate
- Accessible.

In September 2016 the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals issued a joint statement *Transforming our Justice System*¹ setting out the principles and broad details of this ambitious programme of reform. The reforms are not only to the way in which we access justice but also about new methods of working by those involved in the process. Digitisation, Transforming Summary Justice in the magistrates' court, and Better Case Management and the Digital Case System in the Crown Court, are all key elements of this reform.

In essence, Transforming Summary Justice and Better Case Management are all about making every hearing count – reducing or eliminating wasted hearings and wasted time, thereby ensuring that victims, witnesses, defendants and jurors' experience of the criminal justice system is as positive as possible. In the last 12 months we have published reports on digitisation² and Transforming Summary Justice.³ This report looks at the Better Case Management process employed in the Crown Court.

It is right to recognise that this inspection took place at an early stage in the implementation of these processes and against a background of considerable change. The judiciary and courts are being asked to adopt new forms of electronic and digital working that many will not have been used to or familiar with. Both prosecution and defence also have to adapt to digital working and, with the police, maintain a high quality of service against a background of increasingly complex casework and limited resource. Our aim was to identify any potential issues at an early stage, before they became embedded in the process.

1 *Transforming our Justice System*; Ministry of Justice and HM Courts and Tribunals Service; September 2016. www.gov.uk/government/publications/transforming-our-justice-system-joint-statement

2 *Delivering justice in a digital age: A joint inspection of digital case preparation and presentation in the criminal justice system*; CJI; April 2016. www.justiceinspectorates.gov.uk/cji/inspections/delivering-justice-in-a-digital-age/

3 *Transforming Summary Justice: An early perspective of the CPS contribution*; HMCPSI; February 2016. www.justiceinspectorates.gov.uk/hmcpsi/inspections/transforming-summary-justice/

It is in the nature of an inspection that areas where improvements can be made feature, as well as examples of things working well. This inspection is no different and the report that follows provides examples of both. I want to stress that this is very much a 'snapshot' in time, in a rapidly evolving environment. I am sure that since we were on-site, changes will have been made and I am confident that further improvements will be made following our report. But I think it right to set out that, despite the very challenging conditions under which Better Case Management and the Digital Case System are being operated, the results are positive. There have been a number of attempts to increase the efficiency of the justice system over the years but what appears to be different this time is the very real commitment to making this work by all those involved. This commitment and the support in the form of funding, training, laptops and greatly improved digital court working means there are good reasons to believe that these initiatives will succeed where earlier efforts failed.



Kevin McGinty CBE
HM Chief Inspector of the Crown Prosecution Service

1 Executive summary

Overview

1.1 This report details the findings of a casework-based assessment undertaken by Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi) of the Crown Prosecution Service (CPS) compliance with the Crown Court Better Case Management (BCM) initiative.

1.2 BCM is a judicially led initiative superintended by the Senior Presiding Judge and delivered through Crown Court Circuit-based Local Implementation Teams (LITs). BCM introduces two major case management initiatives: a uniform national Early Guilty Plea scheme (EGP); and Crown Court Disclosure in document-heavy cases. The scope of this inspection is focused on the first, the EGP scheme, and compliance with the overarching aims and key principles of BCM.

1.3 This snapshot review has taken place at an early stage of the implementation to assist the CPS in identifying what was working well and those aspects which need improvement or more detailed scrutiny. We do not make recommendations, but detail the compliance issues that need to be addressed to help embed the initiative and complement the work that is already being done.

1.4 Inspectors visited five of the early adopter courts and the court observations in July 2016 took place within seven months of national roll out of BCM at the other 25 court centres visited during the fieldwork.⁴ Inspectors considered only what is happening up to and including the Plea and Trial Preparation Hearing (PTPH) in the Crown Court and did not follow contested cases through to trial. Inspectors assessed progress against the ten key principles of BCM and the CPS Casework Standard Operating Practice (SOP).

1.5 We intend to examine the BCM process as part of our Annual Assurance Programme of CPS Areas to assess how effective it is in achieving the aims of the initiative and supporting the overarching principles that flow from the Review of Efficiency in Criminal Proceedings⁵ conducted by The Rt Hon Sir Brian Leveson.

4 The first Plea and Trial Preparation Hearings were listed in February 2016 following the January roll out and the roll out of the Digital Case File which commenced in spring 2016 and was completed that May.

5 *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.
www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf

Key findings

1.6 The objective for the CPS under BCM is to ensure that the right cases are charged, case files comply with the National File Standard⁶ and there is case 'ownership' by an allocated lawyer for the duration of the case after charge. In turn, this should facilitate active engagement with the defence, enable hearings to be effective and cases to progress with the support of robust judicial oversight. The initiative is supported by an electronic file, the Digital Case System, which is available to all parties.

1.7 The general engagement by all parties with the process is positive. The CPS is fully engaged and committed to BCM at both a national and local level and there is a good deal of 'buy in' by staff, particularly in relation to the use of Her Majesty's Courts and Tribunals Service (HMCTS) Digital Case System (DCS). In addition, there are some positive indications from the early data. It is also recognised that Transforming Summary Justice (TSJ), the CPS Casework SOP, case review, police readiness in file preparation and defence engagement need to be embedded and working well to properly support the BCM process. This is a promising start but there now needs to be far greater compliance with the various stages of the process and steps taken to change the mind set of staff in terms of the rationale behind effective engagement, and thereby ensure the intended outcomes are delivered.

1.8 The outcomes for BCM, and ultimately the measure of success, should be increased efficiency, a reduction in the number of hearings and the resources expended, improved effectiveness and improved quality of service to victims and witnesses.

1.9 The CPS has been involved in the planning and implementation of the initiative at both national and local level; there are sound governance arrangements in place. In addition, significant resource materials are available for CPS staff and training has been delivered nationally, although this snapshot has identified some training needs in relation to the DCS, such as the ability to amend an indictment at court. The CPS has also introduced a Casework SOP to ensure a single national approach for the Service; this aligns to the expectations for BCM and the DCS, although compliance remains an issue.

1.10 The CPS has an assurance mechanism in place to measure progress by its Areas in delivering the necessary elements that contribute to the success of BCM. The first self-assessment was undertaken at the time of national roll out and was generally a realistic assessment of where Areas were in terms of being ready to deliver their contribution to the scheme. The results of the later assurance show a positive 'direction of travel' against all measures, although some challenges remain, particularly in relation to engagement with the defence.

⁶ *National File Standard*; CPS; May 2015.
www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5_annex_c.pdf

1.11 At roll out there were no agreed measures of success, but there appears to now be agreement as to measures that are suitable, although the source of the data, which is collected by the CPS and HMCTS, has yet to be agreed. Data has already been collected by HMCTS on the number of PTPHs per case. The aim is to achieve one PTPH and move to an effective trial hearing. Data for the four months up to April 2016 indicates a current average of 2.5 PTPHs per case. As already stated in relation to other indicative measures, it is too early to assess levels of success from the data currently available.

1.12 In terms of the CPS contribution to BCM, the quality of high level legal decision-making in relation to the application of the Code for Crown Prosecutors was excellent. The detail, however, was less good in relation to the case analysis and strategy, with fewer than 50% of cases in the file sample having addressed this properly. This impedes the ability of the CPS to 'get it right first time'. More work is required at the outset with greater attention paid to the detail of a case to ensure it can progress. The intention is that the police should supply a file of sufficient quality from the outset. Many files were not of the required standard and this was compounded by the CPS not drawing the failings to the attention of the police force on the individual files concerned. There was also very little direct engagement with the defence prior to the first hearing in the magistrates' court; this took place in fewer than 10% of cases. There needs to be better compliance at the outset in order to progress to a position of getting it right first time.

1.13 Proper instructions need to be given to the advocate to provide a clear direction about the case and ensure the first hearing, which is always in the magistrates' court, is as effective as it can be; this was only apparent in two thirds of cases. This absence of instructions may explain why fewer than two thirds of the magistrates' court BCM questionnaires were completed at the first hearing, missing the opportunity to capture the issues in the case. There was also a failure to capture details of the defence, hindering the ability to engage after that stage.

1.14 Following the first hearing the case should be reviewed within 72 hours; 56.5% of cases received a proper and proportionate case review with a further 28.8% having received some sort of review, but only 13.7% were within the prescribed time. The request for a bespoke prosecution file, identifying what further material was required, to be sent to the police has the same timeliness targets; under half of the cases examined contained such a request, with fewer than 10% within the timescale.

1.15 BCM requires steps to be taken to progress a case prior to the PTPH. There should be timely service of the prosecution bundle of evidence, the indictment and the PTPH form by uploading them onto the DCS. All of these aspects need to be completed more expeditiously than they presently are for the PTPH to be effective. Engagement with the defence continued to be inconsistent and not very effective prior to the hearing; this particular aspect of BCM needs significant improvement for the initiative to succeed. Neither the prosecution nor the defence have yet made the cultural shift required. The lack of engagement by either or both parties needs to be challenged at the PTPH if it is to be fully effective. If this does not happen it is a missed opportunity to emphasise the importance of engagement with the defence.

1.16 We found that most of the work required to progress a case was undertaken at the PTPH when all parties were present, but even then more could have been done at this stage to reduce the number of hearings and progress contested cases to trial. There were a number of guilty pleas that should have been identified earlier by the prosecutor to allow for an effective sentence hearing, but were adjourned instead. Equally there were many cases adjourned for trial without the issues being fully explored. The focus appeared to be on timetabling the case and the stages for compliance with various aspects, for example the disclosure of unused material and the ability to complete the PTPH form on the DCS. Of the 182 cases observed at PTPH, 129 were effective (70.9%).

1.17 The current approach puts an emphasis on the process as opposed to what the process is meant to achieve, making the BCM, SOP and DCS processes an end in themselves. Where there are issues in terms of compliance with the process, such as completion of the PTPH form, effort is expended remedying this instead of ensuring there is effective case progression, and falling some way short of being able to deliver the required improvements in efficiency and effectiveness.

1.18 The success of BCM against the ten key principles identified by the CPS can be summarised as follows:

A single national process: there is a single process for BCM and the DCS which is supported by the SOP. Overall the outline of the system is being followed but there are issues. Levels of compliance for some aspects were found to be as low as less than 10%. Until compliance levels improve, the single national process is not operating in practice.

Getting it right first time: although high-level decision-making is sound the detail needs improvement in terms of case strategy and analysis. Cases are then not always reviewed properly, either before the first hearing in the magistrates' court or after sending to the Crown Court. The cases we examined and observed at court indicate that the police are charging serious cases in breach of the Director's Guidance on Charging⁷ with little evidence that the CPS are addressing this issue. The quality of the police file also hinders the ability to get it right first time.

Identifiable person responsible for the case: lawyers are allocated to cases and in many this occurs at an early stage, but there is limited evidence of true file ownership. The early allocation has also not resulted in early review within the timescales, and in some cases the allocated lawyer changed during the early life of the case. One of the main benefits from file ownership should be the ability to engage with the defence and this was not apparent from the file sample.

Serving material on a proportionate basis: generally sufficient material is uploaded to the DCS, but this is not always within the BCM and SOP timescales. Some of the bundles were deficient, for example, evidence from CCTV recordings cannot be uploaded on to the DCS and so is not always available at the hearing.

Duty of direct engagement: there is little evidence of active engagement prior to the first hearing, at the first hearing or prior to the PTPH. Engagement tends to be effective on the day of the PTPH, which means that cases are adjourned to another hearing for issues to be resolved that should have been addressed earlier. Generally, we did not observe the defence and prosecution being challenged at the PTPH about deficiencies in engagement.

Fewer hearings: the absence of effective engagement means that some cases result in further hearings, for example guilty pleas that should have been ready for sentence on the day, or cases adjourned to consider acceptability of the plea offered. With more 'grip' at an early stage there are opportunities to reduce the number of hearings in individual cases.

Hearings will be effective: as well as the issues highlighted above in relation to guilty plea hearings not proceeding to sentence, many of the contested cases gave the appearance of being a timetabling exercise rather than an informed discussion of the issues. The test will be further down the line whether the cases result in effective trials without a further hearing.

⁷ *The Director's Guidance On Charging* - fifth edition; CPS; May 2013.
www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html

Consistent judicial case management: HMCSI has no remit to assess the exercise of judicial authority, and this report does not seek to comment on judicial performance, but it is clear that robust judicial case management ensured the hearings were more effective. There is a danger that the challenge of completing the PTPH form properly on the DCS becomes the purpose of the hearing. Robust case management ensured this did not happen with a greater focus on the true issues, more challenge on the absence of engagement between parties and the failure to prepare appropriate applications in advance of the hearing.

Compliance: there are significant issues in relation to complying with the various elements of BCM and the SOP; some need significant improvement if the CPS is to contribute to the success of the initiative.

Digital working: the DCS is a positive contribution to BCM. All the cases observed were prepared digitally, however, there are certain challenges in terms of training gaps for some users and poor Wi-Fi at some court centres.

Conclusion

1.19 BCM is one of many new initiatives for the CPS. The implementation of TSJ, the new Casework SOP and introduction of the Digital Case File have all coincided and are integral to the success of BCM. The need for a co-ordinated roll out of these various complex projects has been particularly challenging for the CPS and it has risen to this challenge. There are a number of aspects to be commended from the contribution to planning and implementation at both national and local levels, current governance arrangements and the training and resource materials that have been made available to staff.

1.20 It is clear that the CPS is fully engaged and committed and has introduced mechanisms that complement BCM, such as the Casework SOP and assurance tools which have resulted in some positive indications from the early data available to the CPS. It also needs to be emphasised that this snapshot took place at a very early stage of national implementation.

1.21 New initiatives take time to embed and even longer for the expected benefits to become apparent in tangible outcomes and improvements that can be measured. Having said that, in many courts it was difficult to discern any changes from the previous regime and the various compliance failures were marked.

1.22 BCM requires a real cultural shift by the prosecution and defence, particularly in terms of engagement; this has not yet been achieved and needs to be addressed as a priority. The starting point for the CPS is to maintain a focus on the initiative to ensure any momentum is not lost and drive improvement in terms of compliance with the SOP and the BCM expectations. Only then can the scheme be embedded. In turn, a properly rooted scheme with high levels of compliance should result in improved effectiveness, measurable positive outcomes and also 'softer' benefits for users of the criminal justice system, from which efficiency savings will follow.

1.23 We detail the key compliance issues to be addressed below:

1 There needs to be improvement in the quality of the case analysis and strategy to support early case progression and management (paragraph 4.10).

2 There needs to be more effective engagement with the police through the new file quality review mechanism to deliver against the National File Standard (paragraph 4.17).

3 Managers need to allocate files early, maintain file ownership and allow sufficient time to undertake early review, identification of the issues and facilitate the duty of direct engagement (paragraph 4.23).

4 There needs to be improved identification of issues in the magistrates' court, ensuring this is recorded and uploaded to the CPS case management system to enable real case progression and proper engagement (paragraph 5.9).

5 There needs to be early review and case preparation prior to the Plea and Trial Preparation Hearing (PTPH) to deliver the quality and timeliness standards for the prosecution bundle, the indictment and PTPH form, and upload it to the Digital Case System (paragraph 6.10).

6 There needs to be improved engagement with the defence from the outset and throughout the life of the case, including:

- managers embedding the rationale to bring the necessary cultural shift
- engagement with the police to ensure any defence details are captured on the police file
- realistic attempts at contact with the defence when availability is more likely
- proper discussion of the issues, which is recorded and captured on the case management system (paragraph 6.12).

7 There needs to be improved proactivity at the Plea and Trial Preparation Hearing in order to canvass the true issues, challenge where orders are or are not required and to progress the case in order to deliver an effective trial at the next listing (paragraph 7.9).



2 Introduction

Context

2.1 Better Case Management forms part of the implementation of the Review of Efficiency in Criminal Proceedings, and is based on the overarching themes of the Review: getting it right first time; case ownership; the duty of direct engagement; and consistent judicial case management.

2.2 The project has four overarching aims which in turn support the magistrates' courts-based Transforming Summary Justice agenda, these aims are:

- robust case management
- reduced number of hearings
- maximum participation and engagement from every participant within the system; and
- efficient compliance with the Criminal Procedure Rules and Court Directions.

2.3 The initiative, under the leadership of the then Senior Presiding Judge, Lord Justice Gross, commenced in early adopter⁸ Crown Court centres between 5 October and 9 November 2015, it was fully implemented in all courts nationally by 5 January 2016. It aims to change how cases proceed through the Crown Court process.

2.4 The rationale behind BCM is to introduce a consistent approach to Crown Court business, helping cases to be progressed through the system more efficiently by eliciting early guilty pleas, reducing the number of hearings, maximising participation and engagement from every criminal justice system agency and ensuring compliance with the Criminal Procedure Rules. The CPS has identified ten principles that underpin BCM:

- 1 A single national process
- 2 Getting it right first time
- 3 Identifiable person responsible for the case
- 4 Serving material on a proportionate basis
- 5 Duty of direct engagement
- 6 Fewer hearings
- 7 Hearings will be effective
- 8 Consistent judicial case management
- 9 Compliance
- 10 Digital working

This reflects the approach taken by the CPS in TSJ, which also has ten defining characteristics.⁹

⁸ 5 October 2015: Leicester, Merthyr Tydfil, Portsmouth, Reading, Woolwich, Isleworth; 26 October 2015: Liverpool; 9 November 2015: Leeds.

⁹ See *Transforming Summary Justice: An early perspective of the CPS contribution*; HMCPsi; February 2016. www.justiceinspectorates.gov.uk/hmcp/inspections/transforming-summary-justice/

The Better Case Management process

2.5 The aim of the initiative is to have fewer and more effective hearings. In cases where the defendant is bailed after charge the first hearing in the magistrates' court takes place within 28 days of charge. The prosecution are required to serve the initial details of the prosecution case (IDPC) in advance of that hearing. Details of what is to be served are contained in the Criminal Practice Direction and, to help monitor compliance, also listed in the PTPH form.

2.6 To complement this provision is the formal duty of engagement¹⁰ whereby the prosecution and defence are required to engage before and at the hearing. The timing is different for custody cases where the defendant must be put before the magistrates' court without delay and on more limited paperwork. If a custody case is sent to the Crown Court then the deadline for the CPS to provide its material is seven days before the PTPH, so the defence can plan accordingly.

2.7 BCM creates a new first hearing in the Crown Court, namely the Plea and Trial Preparation Hearing which replaces the preliminary hearing and the plea and case management hearing (PCMH). This will generally take place within 28 days of sending although the National Implementation Team¹¹ has made provision for longer periods to be agreed Circuit-wide, up to 35 days, with individual timetables for cases involving murder, terrorism, witnesses under the age of ten or section 28 pre-trial cross-examination. The hearing is supported by a new PTPH form.

2.8 There is an expectation that a plea will be taken at the PTPH and directions given to carry the matter through to a trial, so that in straightforward cases no further oral hearing should be required. It is anticipated that anything that is required should be achievable by way of administrative ruling on practicalities where no legal decision-making is required or even a telephone hearing. In more complex cases a Further Case Management Hearing (FCMH) may be needed; the Criminal Practice Direction¹² indicates those cases where a FCMH will generally be required. The parties have to certify readiness for trial, which will be 28 days before trial unless otherwise ordered.

2.9 The PTPH takes place between two and four weeks later than the previous preliminary hearing. This should allow time to resolve any issues in relation to legal aid as well as service and consideration of prosecution material before the PTPH. It is intended that in many straightforward cases the PTPH will consider the full prosecution case and allow for clear notification of witness requirements. It should be noted that the PTPH takes place before the date when the prosecution is required under statute to serve its case; 50 days after sending for custody cases and 70 days after sending for bail cases.¹³

¹⁰ Criminal Procedure Rules 3.3.

¹¹ Led by the Senior Presiding Judge and includes senior management from both HMCTS and the CPS.

¹² Criminal Procedure Rules 3A.21.

¹³ Crime and Disorder Act (Service of Prosecution Evidence) Regulations 2005.

2.10 The national PTPH form provides a structure for case preparation in four stages. Stage one is for the prosecution and includes the completion of service of the prosecution case. Stage two is for the defence and requires the service of the defence statement and final witness requirements using a new standard witness table. Stages three and four continue the process. The four stage structure seeks to provide a rationalisation because it groups together elements of case preparation for compliance on a single date, so in most cases the judge will set those four dates.

2.11 For the PTPH to be effective, all parties need to be well prepared so cases can be disposed of by way of a guilty plea or, where contested, case management undertaken for a timely trial listing.

2.12 To achieve a timely listing it is helpful to ensure that any backlogs are removed. The CPS ran an Expedited Case Management Initiative to review existing cases set down for trial to ascertain the potential for early resolution. The aim of doing this, in anticipation of BCM, was to reduce the large volume of outstanding cases under the old system in the Crown Court.

The Digital Case System

2.13 There are other initiatives that support BCM including the DCS, a court-led initiative which enables all parties to access the same electronic case file. DCS is now intrinsic to the working of BCM and in most cases the courts will only accept evidence if it is served on DCS. It replaces the paper file, making the case papers available online so all parties can work from the same full set of papers, providing clarity over what has and has not been served.

2.14 DCS was piloted at Crown Court centres in West Yorkshire and Southwark in 2015. Other centres started using the DCS between October 2015 and March 2016. The most important functions for the CPS that DCS is used for are:

- uploading IDPC material in advance of the PTPH
- uploading PTPH forms which can then be edited by the defence and the judge
- uploading indictments
- serving evidence
- serving additional evidence; and
- making applications – such as hearsay, bad character and special measures.

Casework Standard Operating Practice

2.15 The CPS uses a Standard Operating Practice for Crown Court casework. The SOP was launched in February 2016 as a single process applicable to all Areas to ensure consistency across the organisation and links into the BCM principle of a ‘single national process’. The new Casework SOP incorporates both BCM and the DCS.

2.16 The SOP is extensive but the parts relevant to this snapshot review of BCM include the expectation that the review after the first hearing in the magistrates' court will be completed within 72 hours. Where this is a not guilty anticipated plea (NGAP) case a proportionate file request to the police should be generated and for guilty anticipated plea (GAP) cases a request for material that would elicit a guilty plea. Following this, any additional material received is uploaded to the DCS along with the indictment, no later than seven days before the PTPH. The prosecution part of the PTPH form should also be completed as far as possible and put on DCS under the same timescale.

2.17 The duty of direct engagement (DDE) between the prosecution and the defence representatives is pivotal to BCM, engagement should be recorded on a DDE log kept on the CPS case management system (CMS) and any contact with the defence should then be followed up by an email. A summary of the engagement should be prepared for the hearing because there is an expectation that the judge will enquire about the engagement that has taken place. The level of compliance with these elements has been captured from the files examined ahead of the observed PTPHs.

Methodology

2.18 We visited all 13 CPS Areas in July 2016 and observed Plea and Trial Preparation Hearings in 30 Crown Court centres. Inspectors observed hearings in two courts in each CPS Area except CPS London, where observations were undertaken at six court centres.

2.19 Inspectors did not undertake any formal interviews but spoke to representatives for the prosecution, defence and the Crown Court on an informal basis during court visits to gain insight about the progress of implementation and effectiveness of the initiative. Inspectors are grateful to those who engaged on this informal basis.

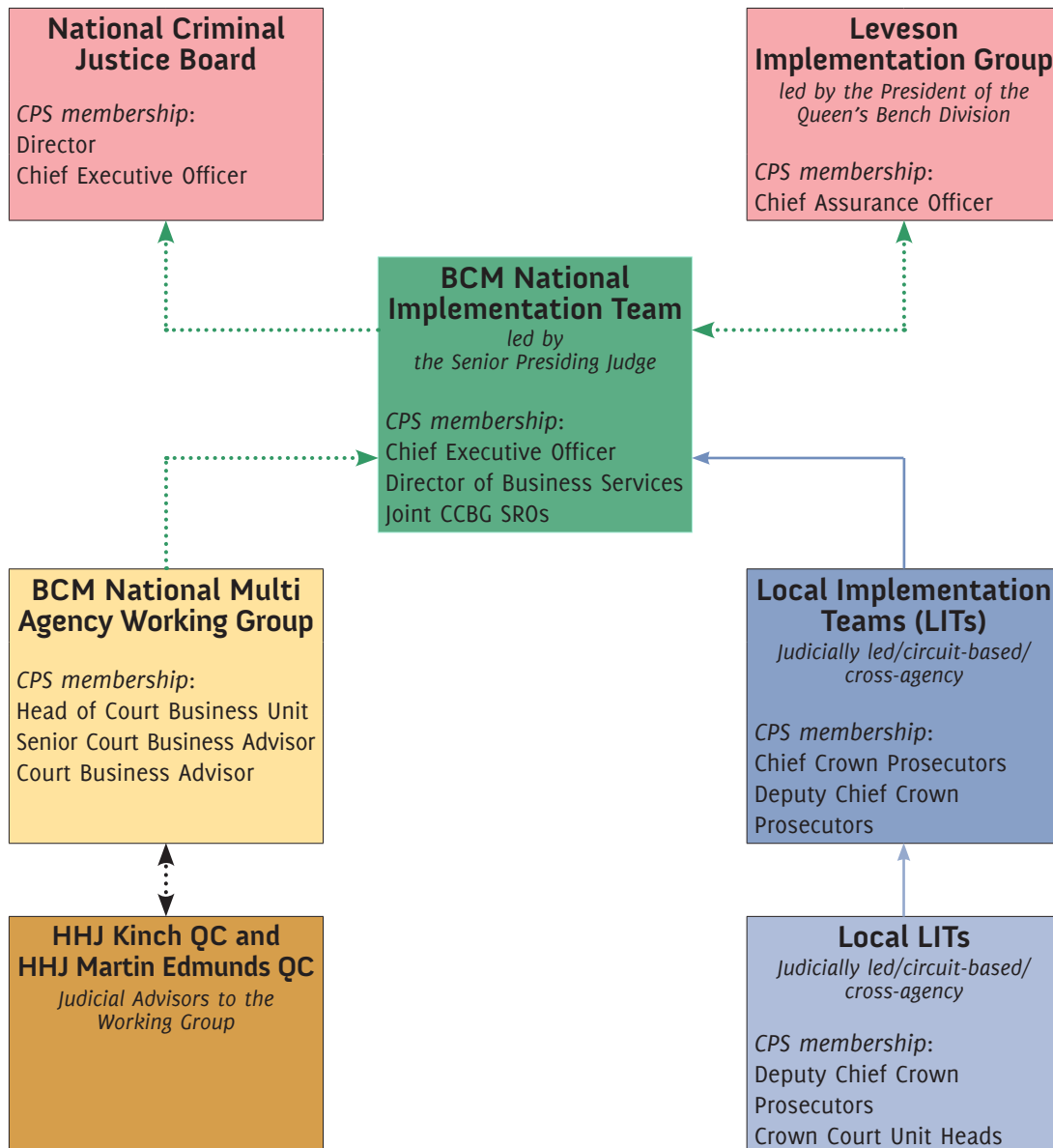
2.20 Across the 30 court centres we examined a total of 186 cases listed for PTPH to assess compliance with the ten key principles and the relevant elements of the SOP. The digital cases were examined on CMS DCS in the days immediately prior to the hearing and then observed at the PTPH. Of the 186 cases in the sample, six were only assessed against the pre-court part of the questionnaire; inspectors were unable to observe these cases at the hearing due to listing of the PTPHs in different court rooms simultaneously, a practice that was common at many court centres. In one court centre an inspector observed and collected data on the effectiveness of the hearing in two cases which had not been examined in advance; this was due to movement of cases between court rooms on the day of the hearing. These eight files are included in the overall total of 186.

2.21 The scope of this snapshot review can be found at annex A. The findings from the file reviews and court observations are referred to in relevant sections of the report and are set out in detail in annex B. The bulletins issued by the CPS of best practice to be adopted are included at annex D and the glossary can be found at annex E.

3 Governance

Overview

3.1 BCM is a judicially led initiative superintended by the Senior Presiding Judge and delivered through Circuit-based Local Implementation Teams (LITs). There is a National Implementation Team (NIT) and each Circuit has its own LIT, in addition, most Crown Court centres have their own implementation teams to bring together the various court users. The CPS has been involved in the planning and implementation of BCM. The chart below sets out the governance structure and CPS representation at each level.



National governance

3.2 The CPS Crown Court Business Group (formerly the Crown Court Business Board) was formed in February 2015 to provide oversight, support and direction to the CPS Crown Court Strategy Programme which oversees the implementation of four key strands of work:

- the Crown Court Strategy
- the Casework Standard Operating Practice
- the Senior Presiding Judge's Better Case Management initiative; and
- the Review into Efficiency in Criminal Proceedings.

3.3 The Group co-ordinates the work of the internal delivery strands: training, communications, internal processes, stakeholder engagement and manages the interface between the internal and joint agency strands. The Business Group meets monthly and reports to the Executive Group. The Group was and continues to be responsible for preparing the CPS for the introduction of the new arrangements for BCM, alongside other responsibilities such as supporting TSJ and incorporating the Casework SOP.

3.4 The CPS has joint chairs of the programme; both are Chief Crown Prosecutors (CCPs) who are also the responsible leads in the CPS for the delivery of BCM. They sit on the National Implementation Team alongside the Chief Executive Officer and the Director of Business Services. The NIT is responsible for monitoring performance and making any necessary amendments to the processes that underpin BCM.

Local governance

3.5 Beneath the NIT sit the Circuit-based Local Implementation Teams which are attended by CCPs and Deputy Chief Crown Prosecutors (DCCPs) and also court-based local LITs attended by DCCPs and Crown Court Unit Heads.

3.6 A protocol has been agreed for regular liaison meetings between Resident Judges and CCPs; this was published in January 2016. The protocol provides the approach to dealing with performance issues, including those that arise in individual cases, and an escalation process for systematic issues which may be causing compliance problems, which should reduce the need for compliance courts.

Assurance

3.7 As part of the CPS implementation arrangements for BCM at the eight early adopter courts the Crown Court Business Group initiated an assurance process. CCPs were asked to make an evidence-based assessment of readiness by reference to a file sample of a minimum of 30 files where a PTPH had been set. They were required to report readiness on the following key elements:

- files submitted by the police are complying with the National File Standard
- charging decisions are timely
- cases are being allocated to a lawyer before the NGAP hearing
- cases are being reviewed prior to the NGAP hearing
- police are being notified within 72 hours that a case has been adjourned for a PTPH and with necessary further clarification or instruction
- there is effective defence engagement prior to PTPH
- the PTPH form is being properly completed and sent to the defence/court seven days prior to the PTPH
- there is a process in place to maintain effective defence engagement when the allocated lawyer is unavailable
- the Area has adequate systems in place to comply with the SOP following the PTPH.

3.8 A similar process was adopted in respect of national implementation with CCPs asked to make an evidence-based assessment of readiness by either: reviewing a minimum of six files per court centre (where at least four courtrooms sit routinely) where a PTPH has been set; or reviewing a minimum of 30 files per Crown Court Preparation Unit where a PTPH has been set. Phase 1 of the assurance testing in respect of national implementation was conducted in January 2016; the results are captured in short form below. This self-assessment process appears to be effective with fairly realistic assessments by Areas of progress.

3.9 Phase 2 of the national assurance testing for BCM commenced during the first quarter of 2016-17. The results show that there has been an improvement against all measures in terms of the increasing figures for “fully met” and a reduction in the number for “not met” in all bar one measure, which has remained static. The data shows that the four main challenges are effective engagement with the defence, quality of police files, notification to the police within 72 hours and proper completion of the PTPH form in the time frame.

CPS Better Case Management CCP assurance: national implementation		
Standard	Outcome* Phase 1 [^] Jan 2016	Phase 2 ⁺ 1st quarter 2016-17
Files submitted by the police are complying with the National File Standard	1 unit FULLY MET but not the Area 1 Area NOT MET	5 units FULLY MET 2 Areas FULLY MET
Charging decisions are timely i.e. not premature	9 Areas FULLY MET	13 units FULLY MET (inc. all units across 4 Areas) 6 Areas FULLY MET (10 Areas in total)
Cases are being allocated to a lawyer before the NGAP hearing	3 Areas FULLY MET 1 unit NOT MET but not the Area	12 units FULLY MET (inc. all units across 3 Areas) 4 Areas FULLY MET (7 Areas in total)
Cases are being reviewed prior to the NGAP hearing	4 Areas FULLY MET 1 unit NOT MET but not the Area	9 units FULLY MET 4 Areas FULLY MET
Police are being notified within 72 hours that a case has been adjourned for a PTPH and with necessary further clarification or instruction	2 Areas FULLY MET 5 units NOT MET – 1 unit in one Area and 4 units another Area	6 units FULLY MET 2 Areas FULLY MET
There is effective defence engagement prior to PTPH	No Areas FULLY MET 2 units NOT MET – both units in 1 Area	2 Areas FULLY MET 1 unit NOT MET 1 Area NOT MET
The PTPH form is being properly completed and sent to the defence/ court 7 days prior to the PTPH	2 Areas FULLY MET	4 units FULLY MET 5 Areas FULLY MET
There is a process in place to maintain effective defence engagement when the allocated lawyer is unavailable	4 Areas FULLY MET	14 units FULLY MET (inc. all units across 5 Areas) 4 Areas FULLY MET (9 Areas in total)
The Area has adequate systems in place to comply with the SOP following the PTPH	5 Areas FULLY MET	10 units FULLY MET (inc. all units across 3 Areas) 3 Areas FULLY MET (6 Areas in total)

* Ratings: Fully met; Substantial; Partial; Not met. Fully met = 95% or more, no issues identified and Area managing this effectively. Not met = 25% or less, severe issues and Area in a critical condition

[^] Measured by 9 Areas, with 4 Areas having 2, 2, 3 and 4 units as their composition

⁺ Measured by 8 Areas, with 5 Areas having 2, 2, 3, 3 and 4 units as their composition

Performance data

3.10 As part of the BCM project the Senior Presiding Judge commissioned HMCTS to provide performance data. Two performance reports were developed and discussed at the National Implementation Team meetings prior to sign off at the end of July 2016. The reports identify performance at the PTPH and at trial, although few BCM cases have yet reached trial. The data is available by court centre, HMCTS region and national levels.

3.11 The CPS has developed its own BCM dashboard to monitor performance internally at both Area and national level. Data is available by CPS Area, HMCTS region and Local Criminal Justice Board/police force area. At present the CPS data is not the same as HMCTS data and work is required to validate the two different performance reports.

3.12 Four key measures have been agreed with the Senior Presiding Judge, namely:

- early guilty pleas as a proportion of all guilty pleas
- Crown Court hearings per case guilty pleas
- Crown Court hearings per case in contests; and
- the Effective Trial Rate.

BCM performance data is considered at the Joint National Improvement Board.

Measure no.	Data source	Measure description	2nd quarter 2015-16	3rd quarter 2015-16	4th quarter 2015-16	1st quarter 2016-17
1	CPS	Guilty Pleas at First Hearing as a proportion of all Guilty Pleas	30.8%	29.5%	35.4%	38.9%
2	CPS	Guilty Pleas – Hearings per Case	4.00	4.08	3.81	3.74
3	CPS	Contests – Hearings per Case	5.59	5.75	5.59	5.47
4	HMCTS	Effective Trial Rate	50.2%	49.4%	51.2%	44.4%

CPS data from the CPS Area Performance Review Databank (not published)

HMCTS data from the Ministry of Justice Courts Statistics April-June 2016 (published)

3.13 It is still early days in terms of implementation of BCM, therefore there is not a full year of data to make meaningful comparisons or an assessment of any trends. The trends in CPS performance data for the last for the last four years are captured below and the full data set can be found at annex C.

Caseload

3.14 Crown Court caseload change between 2014-15 and the 12 months to June 2016 has seen a reduction in overall completed cases nationally of 3.8%. However, over the same period there has been coincidentally an increase of 3.8% in the level of contested cases, which has a higher impact on prosecutor time. The reduction in completed cases has not been reflected in the same magnitude across all the CPS Areas and the spread of contested cases also varied. Between 2014-15 and the 12 months to June 2016 lawyer numbers fell by 6.2% nationally.

Trial effectiveness

3.15 In the 12 months to June 2016 nationally 12.9% of cracked and ineffective trials (CITs) were due to prosecution reasons. Only two Areas were at or better than the target of 10% set by the CPS in its 2020 Priorities document. Two Areas had CIT trials significantly worse than the national average at 14.6% and 14.1%.

3.16 Nationally in the 12 months to June 2016 only half of Crown Court trials were effective (50.4%). There are significant variations in performance across the Areas. The CPS 'level of ambition'¹⁴ of a 55% trial effectiveness rate has been exceeded by only four Areas, while three have consistently had poor levels of trial effectiveness at only 35.5%, 37.0% and 38.9%.

Hearings per case

3.17 In contested trials the CPS has set a level of ambition of 5.3 hearings or fewer. In the 12 months to June 2016 seven of the 13 Areas performed at a level better than this. All of these Areas had a lower number of hearings per case in their contested cases in all of the last periods since 2013-14. The best of these Areas was 4.6 hearings per case on average. This was one hearing fewer than the national average for every contested trial in this 12 month period. The worst performing Area, with the highest number, had on average 6.5 hearings per case (0.9 hearings more than the national average and 1.2 hearings per case more than the CPS level of ambition).

3.18 In guilty plea cases the CPS has set a level of ambition of 3.6 hearings or fewer. In the 12 months to June 2016 five Areas nationally had a level better (lower) than this. The Area with the lowest number had 3.2 hearings compared with the national average of 3.9. The worst Area had the highest number at 4.6. It is also noteworthy that most Areas have a deteriorating trend, with the number of hearings per case increasing over the years since 2012-13. It is too early to determine what positive impact BCM will have on these particular indicators of performance.

¹⁴ Levels of ambition are aspirational targets for CPS Area performance.

Guilty pleas at first hearing in the Crown Court

3.19 The CPS has set a level of ambition target of 37.5% of guilty pleas taking place at the first hearing. In the 12 months to June 2016 only three CPS Areas were better than this. Since 2012-13 these Areas have had levels of guilty pleas at the first hearing that were significantly better than the level of ambition. In the 12 months to 2016 the worst four performing Areas were performing at the “red” level of ambition.

Knowledge management and training

3.20 The approach to knowledge management and training has been positive. The CPS Infonet has pages specifically allocated to BCM on its Casework Hub, enabling all staff to access links to guidance, information packs, best practice and newsletters. We include what has been identified by the CPS as best practice in their bulletins at annex D. In addition, the CPS online Prosecution College has a dedicated BCM page, featuring links to the training materials, an animation outlining BCM and interviews with the Director of Public Prosecutions (DPP), Senior Presiding Judge and the Senior Legal Advisor to the DPP.

3.21 CPS staff can also access the BCM National Bank of Training Materials, which contains four modules. BCM Area leads provided updates in June 2016 on delivery of local training to staff; there was assurance from all Areas that training had been delivered or would be completed in all Areas and CPS Headquarters Casework Divisions by the end of June 2016. One of the Headquarters Divisions had also provided training to all stakeholders nationally.

3.22 The evidence suggests that training has been comprehensive; however, it is apparent from observations during the fieldwork and talking to staff that there are some training needs in relation to the Digital Case System.



4 Preparation for the first hearing

Overview

4.1 Getting it right first time is one of the overarching principles of the Review of Efficiency in Criminal Proceedings. This means both getting the charging decision correct and also ensuring the approach to the case and prosecution strategy is clear and well-reasoned at the outset. This is underpinned by the requirement that there is sufficient material served to progress cases and for the defence to take proper instructions.

“Thus, the first overarching principle must be Getting it Right First Time. This is particularly important for the police and the CPS who are the gatekeepers of the entry into the criminal justice process. If they make appropriate charging decisions, based on fair appraisal of sufficient evidence, with proportionate disclosure of material to the defence, considerable delay can be eradicated.getting it right first time is the absolute priority of any improvement to efficiency and it must be recognised that this will impose additional burdens on the police and CPS” [paragraph 25]

Pre-charge decision-making

4.2 In the file sample the Code for Crown Prosecutors (the Code)¹⁵ was applied correctly at the charging stage by the CPS lawyer in 162 of the 163 relevant cases (99.4%). Twenty one cases were police charged and two were not considered at this stage. The quality of high level decision-making is excellent. There was only one Code test failure in a rape and serious sexual offences (RASSO) case, which contained a number of charges. The failure was not identified despite further reviews and two hearings and at the PTPH it was listed by the defence for an application to dismiss all the allegations charged.

4.3 Of the 163 cases where a pre-charge decision was made, the full or threshold test was applied correctly in 159 (97.5%), there were four cases where the incorrect test was applied. The most appropriate charges were advised at the charging stage in 147 cases (90.2%).

4.4 The quality of the detailed decision-making recorded on the MG3 was less impressive. In 79 cases (48.5%) the MG3 included a proper case analysis and strategy; this standard was partially met in 72 cases (44.2%) and not met in 12 (7.4%). This means that the strategy is not clear at the outset and in effect puts the prosecution on the back foot, undermining the ability to get it right first time.

¹⁵ *The Code for Crown Prosecutors*; CPS; January 2013.
www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

4.5 In one case examined poor charge selection and case strategy meant it had to be dealt with in the Crown Court when other more appropriate charges would have allowed it to be kept in the magistrates' court. There was no review at the first hearing and no plea indicated, and there was a failure to get a grip on the case which was sent to the Crown Court unnecessarily; it was resolved at the PTPH where the defendant pleaded guilty and was sentenced on the charges which should have been selected at the outset.

4.6 Consideration of issues to progress the case effectively was better. The MG3 made full reference to all relevant applications and ancillary matters that were appropriate to meet the needs of the case strategy in 107 cases (69.5%), partly in 39 (25.3%) and not at all in eight (5.2%). The CPS has also identified in recent guidance circulated to staff that failing to give early notice of any applications for bad character evidence to be adduced, hearsay evidence to be admitted, special measures, compensation and Proceeds of Crime Act considerations are common issues and need improvement.

4.7 The action plan met a satisfactory standard in 99 applicable cases (66.9%), partially in 40 (27.0%) and not at all in nine (6.1%). This means there was a significant number of cases where more work should have been undertaken at the outset to ensure effective case progression.

4.8 The CPS has issued guidance as part of BCM resource materials circulated to staff. This states that in order to build Crown Court cases at the outset, as well as the Code test, the charging review needs to consider: what the case is about and the key aspects; whether the charges are correct; the prosecution case strategy needs to take account of the participation of the victim, use of witness summons, reliance upon admissions and hearsay; and whether the prosecution relies on visual media. In addition, it emphasises that absolute clarity is needed that the case is not suitable for summary (magistrates' court) trial and a strong enforcement of the National File Standard needs to be applied to ensure that the police provide the evidence that is persuasive to charging and needs to be served.

4.9 An aide memoire has also been circulated which provides clarity on the expectations at charge:

- the review of the evidence justifies the charge, including any undermining material
- the review details how the case would be proved at trial (case strategy)
- the review includes the basis upon which it is believed that the case should proceed in the Crown Court by reference to the statutory provision, sentencing and allocation guidelines; and
- there is a clear direction and timescale to the police in relation to any further evidential and unused material.

4.10 It is clear from the circulation of these materials that the CPS is aware of where improvement is needed, which is confirmed by our file examination. The CPS needs to monitor quality and continue to drive progress in order to achieve the ethos of BCM.

Compliance issue

There needs to be improvement in the quality of the case analysis and strategy to support early case progression and management.

Police charged cases

4.11 There were 21 police charged cases, one of which did not apply the Code correctly in relation to possession of an offensive weapon, where there was insufficient evidence. Despite the file being reviewed by the CPS before the first hearing and again reviewed prior to the PTPH, this was not spotted. It was subsequently identified by the Crown Advocate and an appropriate indictment prepared on the day of the PTPH; this should have been identified and rectified earlier.

4.12 Of the 20 police charged cases 11 (55.0%) were not compliant with the Director's Guidance on Charging and the police did not have the authority to charge. This is a significant proportion of the police charged cases and is compounded by the fact that in none of these cases was the breach raised by the CPS with the police.

Police file quality

4.13 A new National File Standard (NFS) was introduced in May 2015. This determines the minimum requirements for the content of police files submitted to the CPS. At the charging stage, it is vital that the police provide the right material to allow the CPS to make an informed charging decision and formulate a case strategy, enabling every element of the case to be proved. It is also essential that police files comply with the standards to ensure guilty pleas are dealt with properly and not guilty cases can be managed effectively from the outset.

4.14 The police had correctly categorised cases as GAP or NGAP in 87.1% of relevant files examined.

4.15 In the sample of cases examined the initial police file submission complied fully with the NFS in only 92 cases (52.0%), partially in 62 (35.0%) and not at all in 12 (6.8%). The remaining 18 cases were either not applicable or not known because, for example, they were custody cases. This is slightly better performance than found in our TSJ inspection but shows significant improvement is still necessary and it falls a long way short of the expectation that 90% of the files would comply with the NFS. This poor level of service is exacerbated by the CPS's failure to address this with police in relation to the files considered.

4.16 In contrast, in one court the sample included four files which were all overnight cases whereby the defendant appeared in custody at the first hearing, no review was recorded on the system in any of the cases. The early guilty plea review was conducted about two weeks after sending when more papers had arrived and the lawyer had to write to the police in each case because the file was deficient.

4.17 There are escalation processes which should be utilised in individual cases and also where the police routinely fail to comply with the necessary material required for a charging decision. CPS managers should be alive to any failings in police file quality in charging. In practice the process is not as effective as it might be from the standard of files we examined. A new file quality review mechanism is being piloted which provides a standard national methodology for assessing and improving police file quality; this will be rolled out during the course of mid-2016. Performance needs to be kept under review both locally and nationally by the CPS Compliance and Assurance Team.

Compliance issue

There needs to be more effective engagement with the police through the new file quality review mechanism to deliver against the National File Standard.

Initial case review and case ownership

4.18 The Review of Efficiency in Criminal Proceedings defines case ownership as the second overarching principle which is allied to getting it right first time, allowing parties to maximise the opportunities for case management. One of the key principles of BCM is file ownership and the need for the file owner to grip, control and progress the case; engaging effectively with the defence is integral to that role. The most recent BCM newsletter issued in August 2016¹⁶ emphasises the importance of file ownership and an identifiable person for both the prosecution and the defence.

4.19 In the sample of files examined a lawyer was allocated to the case at the outset in 123 relevant cases (66.8%). In comparison to some of the data this figure is relatively positive; however, if the early allocation is not accompanied by an early review there is little to be gained from compliance with this element of the process. It was noted in the file sample that although a number of cases were allocated from an early stage there were then many changes to the allocated lawyer; in these cases there was little evidence of staff overseeing cases from start to finish.

¹⁶ BCM newsletter Issue 10 August 2016; issued by the Senior Presiding Judge Lord Justice Fulford on behalf of the Judiciary of England and Wales.

4.20 It is expected that an early review will be undertaken prior to the first hearing. This provides an opportunity to consider the charging decision, review the case strategy and identify outstanding material. It also provides an opportunity to consider whether the defence have been provided with sufficient good quality material to progress the case and to ensure timely and bespoke requests are submitted to the police in order to try and obtain such material before the hearing. This especially applies where the police have not complied with the tasks set out in the action plan. The CPS aide memoire circulated to staff includes reminders to review CPS Direct (CPSD) decisions, and any action plans; engage with the defence; and updated instructions for the first hearing advocate as part of the pre-hearing local review. The CPS has emphasised to Areas that there is a significant management role in ensuring that staff have sufficient opportunity to undertake thorough reviews.

4.21 In the file sample there was a proper and proportionate initial case review in 77 relevant cases (41.8%), a partial one in 22 (12.0%) and a wholly inadequate one in 13 (7.1%), additionally in a further 72 cases (39.1%) there was no review. There tended to be reliance on the charging review with the next review being undertaken after the first hearing, which was not always within the prescribed 72 hour timescale. This undermines the early allocation of a lawyer to the case; the CPS needs to reinforce the messages already circulated to staff.

4.22 In a case examined the review on the case management system was recorded as follows *“No EGP anticipated for the defendants included in this review. I am doing this to get rid of the task.”* An example of where the process becomes the outcome.

4.23 The Code was applied correctly post-charge in all but three cases (98.4%). One was a police charged case which was not remedied at two subsequent reviews, one a CPS pre-charge decision where the PTPH was adjourned to list for a defence application to dismiss and in the third case charges were wrongly discontinued. Overall, however, the compliance rate with the Code was excellent.

Compliance issue

Managers need to allocate files early, maintain file ownership and allow sufficient time to undertake early review, identification of the issues and facilitate the duty of direct engagement.

Engagement with the defence before the first hearing

4.24 The principles of the duty of direct engagement have been incorporated into the Criminal Practice Direction:

“The parties will be expected to have prepared in accordance with CrimPR 3.3(1) to avoid unnecessary and wasted hearings. They will be expected to have communicated with each other by the time of the first hearing; to report to the court on that communication at the first hearing; and to continue thereafter to communicate with each other and with the court officer, in accordance with CrimPR 3.3(2)”.

4.25 Engagement with the defence is crucial to driving the success of BCM. In our sample, of the 134 relevant files there were attempts at engagement with the defence prior to the first hearing in 16 (11.9%). Of these 16 there were only 13 cases (9.7%) where the prosecution actually engaged effectively with the defence. Where any engagement occurred it was primarily recorded in the DDE log. In addition, of the 151 relevant files adequate contact details of the prosecutor were provided to the court and defence in only 28 cases (18.5%). This level of engagement needs to be improved significantly; the CPS needs to be more proactive in its approach but equally so does the defence.

4.26 There is an expectation in every Crown Court case that the CPS will serve the evidence that supported the charging decision as quickly as possible; this is seen as likely to be the single biggest facilitator of early engagement and resolution of cases. The poor level of engagement observed may in part be due to the inadequacy of material served on the defence. The BCM newsletter issued in August 2016 continues to encourage direct engagement at the earliest opportunity and throughout proceedings; it is key to the success of BCM.

4.27 There were 50 cases where there was a complete absence of defence contact details. The police need to be encouraged to capture this information, where it is available, on the MG5 (police case summary) to ensure that the CPS are best placed to contact the defence. A case in contrast to this was where the police provided full contact details for the defence representative on the MG5, including a telephone number, and there was no attempt at any engagement.

Service

4.28 In order to ensure that the first hearing is as effective as possible, the defence need to be in a position to make progress, therefore the initial details of the prosecution case have to be served on the defence in sufficient time to prepare. The principles governing the IDPC have been incorporated into the Criminal Procedure Rules (Rule 8) and are also reflected in the Criminal Practice Direction. There is prescription about the content and timing of service. HMCTS is responsible for uploading the IDPC onto the DCS.

4.29 Where possible it should be served electronically on the court and defence a minimum of five days before the first hearing. The underlying purpose is multi-layered and includes:

- fully explaining the case against the defendant and allowing proper instructions to be taken
- assisting case progression
- reducing the number of hearings because the issues and witnesses are identified at an early stage
- narrowing the issues in contested cases
- agreeing outstanding evidence prior to the PTPH to improve the effectiveness of hearings
- agreeing pleas; and
- improving the rate of committals for sentence by ensuring that the defence are able to take instructions from their client prior to, or at, the NGAP hearing.

4.30 The BCM newsletter published in July 2016 highlights concerns expressed by defence practitioners regarding the adequacy of the IDPC, leading to difficulties in providing advice to the defendant and, on occasion, the consequential inability to make progress at the first hearing or PTPH. We also noted issues with the late review and despatch of the IDPC package (even where the defence representative was known) in our file sample.

4.31 Areas are encouraged to identify and serve any outstanding material, which may be served in addition to the prescribed list that would aid a guilty plea or case progression. The CPS has also identified aspects of good practice which have been circulated to Areas to improve the provision of IDPC, as well as an aide memoire with an outline of the key elements and expectations for every prosecutor in respect of any case likely to proceed in the Crown Court.

4.32 The August 2016 edition of the BCM newsletter also deals with concerns raised about the content of the IDPC. It referenced a clear agreement by senior members of the criminal justice system that the prosecution should not refer to the contents of witness statements not served on the defence; an amendment to Part 8 of the Criminal Procedure Rules has been requested to reflect this. Further guidance will be issued by the Senior Presiding Judge, Lord Justice Fulford, in the autumn of 2016.



5 The first hearing

5.1 An effective first hearing in the magistrates' court provides the opportunity for early pleas and committals for sentence, as well as being able to identify the issues for the PTPH and gather and serve any further material between the NGAP hearing and PTPH, thereby reaping the benefits in terms of effective case management.

5.2 The CPS expectation is that, where applicable, the advocate will be able to demonstrate:

- a clear understanding and articulation of the Crown's position on court venue
- a summary of the issues in the case
- clarity on the extent of the material that has been served
- firm timescales for any further service
- probing of the defence position on the issues; and
- readiness to proceed with detailed case management if summary jurisdiction in the magistrates' court is accepted.

5.3 In addition, there should be proactive engagement with the defence and completion of the BCM questionnaire, which then helps with the further review ahead of the PTPH. Issues that prevent the hearing being as effective as it might include where a defendant fails to arrange representation until their appearance at court and legal aid applications being made on or after the first hearing, both of which have been observed in other inspections; neither of these are within the gift of the CPS to resolve.

5.4 The starting point to influence the effectiveness of any hearing is the quality of instructions to the advocate in court. The MG3 included appropriate instructions and guidance to the court prosecutor in 109 cases (66.9%), partially in 45 (27.6%) and were wholly inadequate in nine (5.5%). The CPS has already identified that there is a lack of direction to the prosecution advocate at court as to acceptable pleas and in our file sample a third of instructions were not completely adequate, which prevents the advocate being as fully prepared as they might.

5.5 There was an indication of acceptable pleas in only 81 of the 184 applicable cases (44.0%). The issues in the case were identified in 75 of the 181 relevant cases (41.4%), partially in 38 (21.0%) and wholly inadequately in 21 (11.6%). It was not done at all in a further 47 cases (26.0%).

5.6 The BCM questionnaire (which also makes enquiry of legal aid status) can be an important mechanism to facilitate defence communication. In the file sample, however, the BCM questionnaire was fully completed in only 109 cases (59.6%), there were six cases (3.3%) where it was not completed fully and a further 68 (37.2%) where it was not done at all. In addition, there were many cases where the BCM questionnaire was completed but it was only to be found on the DCS and not on the CPS case management system (CMS) because

it was not sent across from the magistrates' court to upload to the system. The August 2016 edition of the BCM newsletter emphasises the need to ensure as much information as possible is included on the BCM questionnaire to assist the parties in their discussions prior to the PTPH and ensure the PTPH form is completed comprehensively, thereby ensuring that the hearing is truly effective. The CPS also needs to ensure it is uploaded to CMS.

Case study

In a case involving indecent images where admissions were made during interview, no plea was entered at the first hearing in the magistrates' court. There was no change in the evidence from the first hearing in the magistrates' court. The defendant was represented and the BCM form was completed but under the section headed real issues it was recorded "*dispute over dates and interview summary*". This should have been challenged, because the defendant had accepted downloading and sharing the images and the dates were immaterial. More proactive case management could have resulted in a guilty plea in the magistrates' court rather than the Crown Court.

5.7 There are also risks for cases where the defendant appears in custody at the weekend. In a case where the defendant appeared before a Saturday morning remand court, there was no BCM questionnaire and no police material until five days before the PTPH.

5.8 There were many cases where the real issues were not identified or recorded. There were some instances where it appeared that as soon as it was identified as a Crown Court case, there was less incentive to get a grip of the case and issues. These deficiencies prevent the hearing being as effective as it might. In contrast, at the first hearing the case was listed for PTPH within the BCM timescales of 35 days¹⁷ in 98.8% of cases.

5.9 Despite the first hearing being a key opportunity to engage with the defence, contact details were not always recorded on the CPS hearing record sheet or the court sending sheet in the cases examined.

Compliance issue

There needs to be improved identification of issues in the magistrates' court, ensuring this is recorded and uploaded to the CPS case management system to enable real case progression and proper engagement.

¹⁷ The initial timescale is 28 days but can be extended to 35 days. The Guidance on Exceptions to National Processes contained in the LIT Guidance (updated in January 2016) provides that one of the reasons to allow the PTPH to be listed up to 35 days from sending is to enable the trial advocate to attend, to ensure the PTPH is effective.

6 Preparation for the Plea and Trial Preparation Hearing

Continuing review

6.1 In the file sample, after the case was sent to the Crown Court the prosecutor carried out a proper and proportionate case review where appropriate in 100 (56.5%) of the 177 relevant cases, partially in 51 (28.8%), and wholly inadequately in 23 (13.0%). There were three cases where no review was carried out. Some lawyer reviews in the Crown Court incorporate the principles of BCM and are of good quality, but there were many cases where the review was cursory with no real analysis of the evidence or how to secure a conviction or plea. We highlight at paragraph 4.2 where there were Code test failures that were not picked up at subsequent review. Post-sending reviews are of variable quality and also often did not meet the prescribed timescale.

6.2 The Casework SOP specifies that the review should be completed within 72 hours: there were only 24 cases (13.7%) where this was done, which is a poor level of compliance. As part of the review a request should be submitted to the police to provide a bespoke file, again within 72 hours. There were only 74 cases (45.1%) where the request for a bespoke file was submitted and of these in only 16 (9.8%) of the applicable cases was this done within 72 hours. There is a template for requesting a bespoke file from the police which comprises a checklist of what is required, but this is not always used. In practice there were many instances where the CPS paralegal officer was routinely asking for an 'upgrade file' with no customisation.

Case progression

6.3 Case progression is central to ensuring there is an effective PTPH, thereby reducing the number of hearings before trial. Ultimately it should secure an effective trial and in turn reduce the number of ineffective and late vacated and cracked trials. The indictment should be uploaded to the DCS seven days ahead of the PTPH, along with the prosecution aspects of the PTPH form and any additional PTPH material.

6.4 The prosecutor prepared any relevant applications where they had not already been prepared in only 16 cases (14.3%), partially dealt with this aspect in a further seven (6.3%) and not at all in the majority of cases 89 (79.5%). This work was being left until after the PTPH which does not support the notion of effective case progression at the PTPH.

6.5 The new digital PTPH form is the primary record of the orders made; it provides a menu of common written orders as well as the opportunity to make bespoke orders. The completed form should be distributed to the parties and the police officer in the case.

6.6 The PTPH form was completed fully and accurately by the prosecution in advance of the hearing in 61 of the relevant 183 cases (33.3%). In 22 cases (12.0%) it was not completed at all and in 100 (54.6%) it was not completed fully, where it needed to be, by the prosecution in advance of the hearing. The form was served in accordance with timescales, seven days in advance of the hearing, in 139 cases (76.4%), whereby it was uploaded to the DCS, to enable the defence and court to access it in a timely manner ahead of the PTPH.

6.7 There have been complaints from a number of users that the PTPH form is long and unnecessarily complex and there have been many suggested changes. As a consequence, at the time of writing this report a review has commenced to consider the suggestions received to improve the form.

6.8 The indictment was lodged seven days ahead of the hearing in 140 cases in the file sample (77.3%). There were 41 cases where the indictment was not uploaded to the DCS in a timely manner and also three cases where no indictment was prepared for the PTPH.

6.9 The prosecution bundle for the PTPH contained sufficient information to enable the advocate to present and progress the case effectively in 116 cases (63.7%), partially in 52 (28.6%) and was wholly insufficient in 14 (7.7%). There were two further cases where there was no prosecution bundle for the hearing. This level of compliance needs improvement if the PTPH is to be effective and deliver the efficiencies expected.

6.10 The bundle was put onto the DCS late in 63 cases, of these 29 (46.0%) were due to late receipt of material from the police, 18 (28.6%) due to the fact there was a late or no review, eight (12.7%) were due to late bundling of the material held by the CPS and a further eight (12.7%) for various other reasons. Bundles not only need to be complete but served in a timely manner so the defence can take instructions and contribute to the effectiveness of the PTPH. More can be done to prepare cases to make the PTPH effective.

Compliance issue

There needs to be early review and case preparation prior to the Plea and Trial Preparation Hearing (PTPH) to deliver the quality and timeliness standards for the prosecution bundle, the indictment and PTPH form, and upload it to the Digital Case System.

Direct engagement with the defence before the Plea and Trial Preparation Hearing

6.11 Defence engagement between the first hearing and PTPH is inconsistent and generally not very effective. There were problems attempting to contact the defence even where accurate information was available, for example prosecutors queried who the defence representative was, showing they were unaware it was on the hearing record sheet from the appearance in the magistrates' court. The quality of engagement does not seem to get to the heart of the rationale for undertaking the exercise, for example in a case where the DDE log recorded a call to solicitors who indicated their client "*maintains his not guilty plea*", there was no effort to go beyond this regarding the issues in the case. Where the DDE logs were on file the information contained therein was inconsistent and often contained little of relevance, the approach was often akin to a 'tick box' exercise. Examples of effective engagement with the defence by way of a telephone call were then followed up with an engagement letter confirming the discussions and a record of all events that occurred appeared in the DDE log; this was not a common occurrence.

6.12 In cases where it had not already taken place, the prosecutor engaged with the defence to identify the issues that were contested in only a third of relevant cases, 55 out of 164 (33.5%), no engagement took place in 66 cases (40.2%) and was only partially undertaken in terms of attempting to make contact or not engaging effectively on the issues in 43 (26.2%). Where engagement had occurred or attempts were made to engage it was recorded in the DDE log in 82 instances (78.8%) and captured elsewhere in the remaining 22 cases. It is clear that the change of culture required has not yet fully materialised.

Case study

The BCM questionnaire was completed in the magistrates' court but the issue was recorded as "*factual*" when it should have been self-defence. The case was allocated to a lawyer and a brief review was conducted the following day. There was no request to the police for a bespoke file recorded on CMS. It appears that the CPS simply waited for the police to send a file. Engagement with the defence consisted of an email to the defence with no attempt to follow it up. There was no effective engagement between the parties. There was a basis of plea from the defence but due to the lack of engagement this had not been discussed prior to the PTPH, as a result the case was adjourned to a further PTPH.

Compliance issue

There needs to be improved engagement with the defence from the outset and throughout the life of the case, including:

- managers embedding the rationale to bring the necessary cultural shift
- engagement with the police to ensure any defence details are captured on the police file
- realistic attempts at contact with the defence when availability is more likely
- proper discussion of the issues, which is recorded and captured on the case management system.

7 The Plea and Trial Preparation Hearing

Effectiveness

7.1 The reduction in the number of Crown Court hearings is a measure of the success of BCM. In most cases, there will be no further scheduled case management or pre-trial review hearings immediately prior to trial. It is therefore vital that the PTPH is as effective as practicable. However, if it is listed too early in the process there is a risk to effective case progression in the period between PTPH and trial. This may be the reason why in many cases the PTPH observed was not fully effective (which requires more than just the defendant entering their plea) because the CPS and/or police had not been able to prepare the file to the required standard in the time between the first hearing and the PTPH.

7.2 At the PTPH a plea was taken in 140 (78.2%) of the 179 relevant cases. Of the 39 cases where no plea was taken the main cause was due to the defence, which included a few where the defendant failed to attend. There were also cases where the CPS, police or court was the primary cause. In two cases in the same court room no plea was taken because there was also no indictment to enter a plea to in either case.

7.3 Where there was a not guilty plea or a basis of plea, the issues in the case were discussed and agreed in fewer than half, 34 (46.6%) of applicable cases. In 28 cases (38.4%) there was no discussion and in a further 11 (15.1%) it was only partially effective.

7.4 The outcome for guilty pleas entered at the PTPH was variable. The effectiveness could have been improved if the plea was identified earlier and there had been direct engagement with the defence prior to the PTPH. There also was an issue of available resource at certain court centres, for example not having access to a probation officer at court, which was apparent at two of the courts visited.

7.5 Inspectors received some feedback that suggested BCM had made a difference because the attitude of the defence was changing and guilty pleas were being encouraged due to the reduction in sentence that might be granted. In some courts observed all guilty pleas moved to an effective sentencing hearing whereas in another none of the three guilty pleas were effective sentence hearings; this flows from the failure to probe issues properly earlier in the process, prior to the PTPH. In none of these three cases had any particularly significant evidence come to light since the first hearing in the magistrates' court but an indication of full credit was given by the judge. One could have been sentenced but for the failure by the CPS to provide CCTV in a viewable form. The other two were adjourned for a pre-sentence report which could have been ordered in advance had the issue of plea been grasped in the lower (magistrates) court. There were also several cases that were adjourned to canvas the acceptability of pleas with the prosecution.

Case studies

One case involved a potential set of pleas that would be acceptable to the Crown. This was discussed but the defence did not get back to the prosecutor. On the day of the PTPH the defence tried to resurrect the proposed plea, but the Crown Advocate did not know about it.

One PTPH was adjourned for views to be sought in relation to a plea to section 20¹⁸ (wounding) rather than the section 18 offence (causing grievous bodily harm) that was originally charged. This should have been resolved in advance of the PTPH. In the same court another PTPH was adjourned because the defence were not ready. That outcome might have been avoided by challenging the defence through robust case management.

7.6 In 53 of the 180 cases observed at court the PTPH was not effective (29.4%). The primary defect was the responsibility of the prosecution in 20 cases, the defence in 25 cases and other causes in eight.

7.7 At a number of courts we observed there was limited evidence that CPS advocates were proactive in encouraging robust case management. We emphasise the danger of allowing the PTPH to be no more than timetabling exercise similar to the pre-BCM preliminary hearing, with the court setting a timetable for disclosure and service of case papers. Parties need to be fully prepared and to expect challenge if they are not ready.

7.8 In one very busy court, with over 12 PTPHs listed and poor service of material by the parties, we observed good case progression with a proactive judge exercising robust case management; this is central to the effectiveness of the PTPH and ultimately the BCM initiative.

Case study

Two linked cases of a conspiracy and a substantive offence involving five defendants were listed in separate court rooms so one case had to be moved. There were no papers on the DCS for any of the defendants and no indictments. There was also a possible sixth defendant yet to be charged so no-one yet knew how the prosecution might look or be presented. Prosecution counsel asked defence counsel for a time estimate for the length of the trial, who seemed a little surprised by the request in the absence of any papers. The PTPH progressed by timetabling the four stages and fixing a trial date, there was no discussion of any of the issues. It was noted there was no need for a further hearing.

18 Offences Against The Person Act 1861.

7.9 Seventy eight cases (77.2%) were listed for trial with no further listing required, but the remaining 23, nearly a quarter, required a further PTPH because matters were not addressed before the hearing. Inspectors did not continue to follow the cases after the PTPH so we are unable to comment on whether all 78 cases proceeded to trial without the requirement to be listed again.

Compliance issue

There needs to be improved proactivity at the Plea and Trial Preparation Hearing in order to canvass the true issues, challenge where orders are or are not required and to progress the case in order to deliver an effective trial at the next listing.

Judges' orders and directions

7.10 A key element of BCM is the engagement that occurs between the parties prior to the PTPH. In order to emphasise its importance and try to embed a cultural shift it is helpful if the court specifically enquires about this engagement at the PTPH. If parties are not held to account it is unlikely they will comply with a change that is unfamiliar and perhaps uncomfortable. It may prompt the parties to engage prior to the hearing if they were made to account publicly for any lack of engagement.

7.11 Brigading PTPHs in single court rooms appeared to be beneficial in terms of providing better consistency for all parties. There were examples where the system worked well with cases listed in one court before a single proactive judge; the hearings were effective and parties held to account. It was reported to inspectors that this was also apparent if the judge was actively involved with the court Local Implementation Team.

Case studies

In one of the courts observed cases were progressed robustly, there was considerable proactivity in trying to elicit pleas and ensuring the PTPH form was properly completed, with consideration of every point rather than just the four stages.

Elsewhere we observed a judge challenge the parties based on what was entered on the PTPH form, query what material was outstanding and make orders accordingly.

7.12 Another positive example included the judge timetabling the filing of the certificate of readiness; this serves to focus all minds on compliance with timescales.

7.13 At the end of the process the PTPH form was not completed fully and accurately by all parties in 62 (62.6%) of the 99 relevant cases. Of those 62 cases, 16 were defective due to a lack of contact information and the remaining 46 were defective due to more substantial reasons. There tended to be very few directions specific to the circumstances of the case, for the most part there were the standard four staged directions. The impact of this for the CPS is that the directions that flow from the four stages need to be entered on the CPS case management system (CMS) even if the applications are not required; this raises unnecessary electronic tasks and wastes limited resource. Prosecution advocates should challenge if directions are not required or the work has already been completed.

7.14 We observed that where there is consistent judicial case management and a proactive judge the effectiveness of the PTPH, and therefore the BCM initiative, increases exponentially.

Case study

The Crown Advocate followed instructions from the reviewing lawyer to seek an adjournment to allow the indictment to be drafted. The judge required the advocate to draft the indictment at court with the opportunity to amend at a later stage so progress could be made that day.

7.15 The outcome of the PTPH is likely to be better where the judge is very proactive. For example in the same court as above the judge held the CPS advocates to account when they were not ready, questioning the length of time needed for standard directions when much of the work had already been carried out prior to the PTPH and having a good command of the DCS, so was able to deal with issues of cases with multiple defendants being uploaded to the wrong place on DCS. Also in this court cases proceeded to sentence on the day of the PTPH if possible.

7.16 The August 2016 edition of the BCM newsletter highlights the importance of the PTPHs being more focussed and interrogative than the old preliminary hearings and also ensuring there is sufficient time rather than 'packing the list' with cases thereby leaving little time for informed discussion and case progression. The newsletter also re-states the expectation that *"...judges will exercise leadership in the courtroom, actively and robustly managing each and every case, identifying guilty pleas (where that is the true position) or establishing the extant trial issues. In the latter situation, the judge needs to ensure that uncontested evidence is summarised and agreed, to avoid the unnecessary attendance of witnesses and to reduce the length of the trial..."*.

Support at court

7.17 There was a CPS paralegal officer at court to provide support to the prosecutor in 128 cases (71.1%) with a further eight cases where this information was not known (4.4%). Feedback from court visits suggested that the introduction of the CPS Speaking To Witnesses At Court initiative,¹⁹ which was rolled out nationally on 27 June 2016, has led to more paralegal support at court to engage with victims and witnesses. An additional benefit is increased support for advocates. It was also reported that, although there is more support at court, the logistics of covering a number of court rooms where PTPHs are listed can sometimes pose a challenge.

7.18 There were also different systems operating across the CPS Areas meaning some advocates had limited or no paralegal support in court. For example at one court, although there were paralegals in the building, where the case was undertaken by a Crown Advocate no support was expected to be provided. At another counsel were not provided with any support because paralegal support was expected to cover trial courts only. We found that there is no single national approach.

The Digital Case System

7.19 Feedback about the DCS was positive in terms of removing many arguments about what had and had not been served; however, the court observations revealed that there were a number of issues that still need to be addressed.

7.20 Common problems include:

- the misapprehension by some that this is a CPS system and it is the CPS at fault if the system is not working effectively, when in fact it is owned by HMCTS
- knowing how to access and amend an indictment on the DCS at the PTPH, which was particularly common
- the time to upload onto the DCS any amendments done on CMS
- uploading material to the DCS if the details are not identical to those on CMS, for example when first and surnames are reversed
- the difficulties uploading material on to the correct cases where there is more than one defendant
- the difficulties in filling the PTPH form where a defendant has two completely unrelated cases but HMCTS had created only one digital file

19 There were four early adopter sites in Sheffield, Ipswich, Liverpool and Teesside.

-
- the difficulties caused where there is a physical exhibit, such as CCTV. This is not in the scope of DCS but prevents some cases progressing because there is no file to attach the physical exhibit to. The solution is to create a 'dummy' file but this has drawbacks in that the CPS at the Crown Court do not have a system to ensure they know to expect such a file
 - Court assistants completing the PTPH form, which occurred in some instances, led to delays in the completion of the form online and access to it by the parties once completed.

Case study

There was a guilty plea to a serious allegation of assault. The CCTV which was key evidence had not been served or uploaded and there was no dummy paper file at court to work round this. The prosecution advocate managed to obtain a copy from the police station in an attempt to make the hearing effective; this was only possible because it was adjacent to the court building. However, it was not possible to view the CCTV in the format provided and because it was essential to sentencing the hearing was adjourned.

7.21 It is expected that at the hearing all parties will have access and view the live version of DCS which will be updated with orders. The indictment is editable and should be able to be readily amended at court. The issues that arose during observations primarily related to instances of insufficient familiarity with the system by users. With greater experience, practice and training this should be addressed. In the meantime these knowledge gaps meant that proceedings could be very slow.

7.22 At one court centre the defence were noting comments on the DCS, such as no indictment or bail application to be made, but there was no process for the CPS to check the DCS for such notes and therefore the allocated lawyer did not know these matters had been raised. The defence also claimed to have issues in terms of being invited in to the case on the DCS. In one case, which was a CPS prosecution, the hearing was wholly ineffective because the Immigration Service had not served any papers, it appeared that the UK Visas and Immigration department in this case were not aware of the BCM initiative.

7.23 However, where the parties are familiar with the DCS it facilitates more effective hearings.

Case study

Whilst in court the defendant faced one charge for possession of drugs with intent to supply them. As the case was being called on the Crown Advocate received an email from the police officer in the case stating that another batch of drugs had now been analysed and confirmed as a controlled drug. Before the indictment was put to the defendant the advocate asked to amend the indictment. This was done expeditiously and both matters were put to the defendant allowing the PTPH to progress.

Wi-Fi

7.24 At a number of court centres inspectors were told of problems with the speed of the Wi-Fi available and also experienced this themselves when trying to access the listed cases on the DCS. In a process that is totally reliant on digital files this can cause disruption, which at times can be significant.

Case study

Prosecution counsel during mid-speech lost the Wi-Fi connection and had to revert to hard copy with the assistance of the court.

7.25 All parties in the Crown Court are also reliant on magistrates' courts to send relevant material across; there are instances where this does not happen. Inspectors discovered one case where, due to material not being sent over from the magistrates' court, the PTPH was administratively adjourned until a later date.



Annexes

A Scoping document

Objective

To assess the effectiveness of the CPS contribution, via its casework, to achieving the aims of the Better Case Management initiative, up to and including the Plea and Trial Preparation Hearing in the Crown Court.

Inspection criteria

Overall

- casework is reviewed and managed in accordance with the aims and principles of BCM
- there is early identification of those cases that are likely to have guilty pleas and early engagement with the defence to identify issues in contested cases
- prosecutors and administrators comply with standard operating practices for BCM cases
- the relevant CPS data and key performance indicators for BCM demonstrate a positive direction of travel.

Before the first hearing

- police files meet the National File Standard and are supplied in accordance with Transforming Summary Justice timescales
- prosecutors review files within TSJ timescales and in accordance with the Code for Crown Prosecutors and the CPS Not Guilty Anticipated Plea best practice guidance. Those likely to result in a guilty plea are identified
- any necessary remedial work is undertaken before the first hearing, and additional material and/or an upgraded file are requested in accordance with the CPS Standard Operating Procedure
- the handling of unused material by the police and CPS complies with the National Police Chiefs' Council (NPCC)/College of Policing/CPS flowchart on disclosure in BCM cases
- the initial details of the prosecution case package is despatched in accordance with TSJ time guidelines
- there is early engagement with the defence.

The first hearing

- the case is sent to the Crown Court
- the hearing record sheet gives a clear picture of what happened at the first hearing, including engagement with the defence and what issues were identified, and any actions required.

After the first hearing and before the Plea and Trial Preparation Hearing

- the police supply additional material and unused material schedules in accordance with the NFS and the NPCC/College of Policing/CPS flowchart on disclosure in BCM cases
- prosecutors review files that were not reviewed before the first hearing, identify those likely to have guilty pleas and engage in early discussion with the defence to identify the issues in contested cases
- further reviews in cases which\ require it are undertaken in a timely manner and recorded properly
- there is bespoke and proportionate case build by the prosecution of cases going to trial
- there is compliance with the Criminal Procedure Rules; Practice Directions and Court Directions
- the PTPH form is completed fully and accurately and served in compliance with BCM timescales.

At the Plea and Trial Preparation Hearing

- guilty pleas are sentenced and finalised at the PTPH wherever possible
- contested cases are listed for trial with the issues identified and directions given.

Methodology

There will be four main strands to the methodology:

- file examination
- Crown Court observations
- informal interviews with prosecutors, counsel and court staff during court observations
- data examination to include consideration of:
 - whether, at this early stage, the relevant CPS high weighted measures demonstrate performance improvement
 - any other indications from performance data of direction of travel.

One or more Crown Court centres in each of the 13 CPS Areas will be chosen for court observations. The observations will be of a full PTPH list in the court. Before attending court, the inspector will examine the cases listed on the CPS case management system and complete a questionnaire. At and after the hearing, the questionnaire will be updated.

B File reading data

Question	Answer	All file results	
		Number	Percentage
Case type			
1 How did the defendant appear for the first hearing	Custody	85	46.2%
	Bail	87	47.3%
	Other	12	6.5%
2 The police categorised the case as	GAP	44	23.9%
	NGAP	133	72.3%
	Neither	7	3.8%
3 That categorisation was correct	Yes	155	87.1%
	No	23	12.9%
	Not applicable	6	–
Police service			
4 The police decision to charge was compliant with the Code test	Yes	20	95.2%
	No	1	4.8%
	Not applicable	163	–
5 The police decision to charge was compliant with the Director's Guidance on Charging	Yes	9	45.0%
	No	11	55.0%
	Not applicable	164	–
6 Aside from disclosure, the police initial file submission complied with the National File Standard for the type of case	Fully met	92	52.0%
	Partially met	62	35.0%
	Not met	12	6.8%
	Not applicable	7	–
	Not known	11	6.2%
Pre-charge decision by CPS			
7 The CPS decision to charge was compliant with the Code test	Yes	162	99.4%
	No	1	0.6%
	Not applicable	21	–
8 The pre-charge decision applied the correct test: full or threshold	Yes	159	97.5%
	No	4	2.5%
	Not applicable	21	–

Question	Answer	All file results	
		Number	Percentage
9 The MG3 included proper case analysis and case strategy	Fully met	79	48.5%
	Partially met	72	44.2%
	Not met	12	7.4%
	Not applicable	21	–
10 The MG3 made reference to all relevant applications and ancillary matters	Fully met	107	69.5%
	Partially met	39	25.3%
	Not met	8	5.2%
	Not applicable	30	–
11 The MG3 included appropriate instructions and guidance to the court prosecutor	Fully met	109	66.9%
	Partially met	45	27.6%
	Not met	9	5.5%
	Not applicable	21	–
12 All factors relevant to venue/allocation were considered at the pre-charge decision (PCD)	Fully met	92	76.0%
	Partially met	21	17.4%
	Not met	8	6.6%
	Not applicable	63	–
13 The most appropriate charge(s) were advised at PCD	Yes	147	90.2%
	No	16	9.8%
	Not applicable	21	–
14 The action plan met a satisfactory standard	Fully met	99	66.9%
	Partially met	40	27.0%
	Not met	9	6.1%
	Not applicable	36	–
Code compliance after charge			
15 All Code decisions after charge complied with the Code	Yes	181	98.4%
	No	3	1.6%
	Not applicable	0	–

Question	Answer	All file results	
		Number	Percentage
Initial case review and preparation for first hearing			
16 A lawyer was allocated to the case from the outset	Yes	123	66.8%
	No	61	33.2%
17 The court and defence were provided with adequate contact details	Yes	28	18.5%
	No	123	81.5%
	Not applicable	33	–
18 The case received a proper and proportionate initial case review	Fully met	77	41.8%
	Partially met	22	12.0%
	Not met	13	7.1%
	Not done	72	39.1%
19 The prosecution engaged effectively with the defence	Yes	13	9.7%
	No	121	90.3%
	Not applicable	50	–
20 How was engagement recorded	DDE log	15	93.8%
	Other	1	6.3%
	Not applicable	168	–
First hearing			
21 Were the issues in the case identified	Fully met	75	41.4%
	Partially met	38	21.0%
	Not met	21	11.6%
	Not done	47	26.0%
	Not applicable	3	–
22 Was an indication of plea taken	Yes	81	44.0%
	No	103	56.0%
23 The BCM questionnaire was fully completed	Yes	109	59.6%
	No	6	3.3%
	Not done	68	37.2%
	Not applicable	1	–
24 Was the case listed for PTPH within BCM timescales	Yes	166	98.8%
	No	2	1.2%
	Not applicable	16	–

Question	Answer	All file results	
		Number	Percentage
Case progression			
25 After sending the prosecutor carried out a proper and proportionate case review where appropriate	Fully met	100	56.5%
	Partially met	51	28.8%
	Not met	23	13.0%
	Not done	3	1.7%
	Not applicable	7	–
26 The post-sending review was completed within 72 hours	Yes	24	13.7%
	No	151	86.3%
	Not applicable	9	–
27 The police were requested to provide a bespoke file	Yes: within 72 hrs	16	9.8%
	Yes: outside 72 hrs	58	35.4%
	No	90	54.9%
	Not applicable	20	–
28 In cases where it had not already taken place, the prosecutor engaged with the defence to identify the issues in contested cases	Fully met	55	33.5%
	Partially met	43	26.2%
	Not met	66	40.2%
	Not applicable	20	–
29 How was engagement recorded	DDE log	82	78.8%
	Other	22	21.2%
	Not applicable	80	–
30 Where not already prepared, the prosecutor prepared any relevant applications (bad character evidence, hearsay, special measures) and section 10 admissions	Fully met	16	14.3%
	Partially met	7	6.3%
	Not met	89	79.5%
	Not applicable	72	–
31 Did the police provide disclosure schedules before the PTPH	Yes	128	69.6%
	No	56	30.4%
32 Prior to the PTPH, the prosecutor complied with their duties of disclosure	Fully met	47	41.6%
	Partially met	15	13.3%
	Not met	51	45.1%
	Not applicable	71	–

Question	Answer	All file results	
		Number	Percentage
33 The PTPH form was completed fully and accurately	Fully met	61	33.3%
	Partially met	100	54.6%
	Not met	22	12.0%
	Not applicable	1	–
34 The PTPH form was served in accordance with BCM timescales	Yes	139	76.4%
	No	43	23.6%
	Not applicable	2	–
35 The indictment was lodged in accordance with BCM timescales	Yes	140	77.3%
	No	41	22.7%
	Not applicable	3	–
36 The prosecution bundle for the PTPH contained sufficient information to enable the advocate to present and progress the case effectively	Fully met	116	63.7%
	Partially met	52	28.6%
	Not met	14	7.7%
	Not applicable	2	–
37 Late service of material was primarily occasioned by	Late police material	29	46.0%
	Late or no review	18	28.6%
	Late bundling	8	12.7%
	Other	8	12.7%
	Not applicable	121	–
At the PTPH			
38 The judge asked for details of what engagement had taken place	Yes	5	3.7%
	No	131	96.3%
	Not applicable	44	–
39 A plea was taken	Yes	140	78.2%
	No	39	21.8%
	Not applicable	1	–
40 The primary cause of no plea being taken was	Police	4	10.3%
	CPS	7	17.9%
	Court	4	10.3%
	Defendant did not attend	6	15.4%
	Defendant other	18	46.2%
	Not applicable	141	–

Question	Answer	All file results	
		Number	Percentage
41 In the case of a not guilty plea or a basis of plea, the issues in the case were discussed and agreed	Fully met	34	46.6%
	Partially met	11	15.1%
	Not met	28	38.4%
	Not applicable	107	–
42 The PTPH form was completed fully and accurately by all parties	Yes	37	37.4%
	No	62	62.6%
	Not applicable	81	–
43 The only defect in the PTPH form was lack of adequate contact information	Yes	16	25.8%
	No	46	74.2%
	Not applicable	118	–
44 The primary defect in the PTPH was the responsibility of the	Prosecution	20	37.7%
	Defence	25	47.2%
	Court	8	15.1%
	Not applicable	127	–
45 The case was listed for trial with no further listing required	Yes	78	77.2%
	No	23	22.8%
	Not applicable	79	–
46 There was a paralegal officer at court to provide support	Yes	128	71.1%
	No	44	24.4%
	Not known	8	4.4%

C CPS performance data

The data is provided from the CPS Area Performance Review Databank. This is not the official BCM dashboard. The data for the 12 months to June 2016 also includes cases which pre-date the introduction of BCM.

Area	2013-14	2014-15	2015-16
Crown Court cracked and ineffective trial rate due to prosecution reasons*			
National	12.8%	13.5%	13.1%
North East	10.9%	15.5%	15.9%
Yorkshire and Humberside	13.2%	14.5%	14.0%
London	14.2%	14.2%	13.7%
East Midlands	11.6%	13.1%	14.5%
North West	14.2%	15.6%	13.8%
Cymru-Wales	9.7%	10.9%	12.4%
West Midlands	14.0%	15.0%	13.5%
East of England	11.0%	13.3%	11.9%
Mersey-Cheshire	11.4%	10.1%	13.9%
South East	10.7%	11.0%	12.5%
South West	9.1%	9.8%	10.2%
Thames and Chiltern	10.7%	9.9%	9.9%
Wessex	9.3%	12.6%	9.7%
2020 Priorities	10% or less than		10.5 or greater than
Crown Court effective trial rate*			
National	51.2%	49.8%	50.0%
North East	32.9%	36.0%	35.6%
North West	38.2%	35.8%	35.5%
Yorkshire and Humberside	35.9%	34.7%	38.0%
East Midlands	45.7%	43.5%	44.9%
Mersey-Cheshire	47.7%	43.9%	46.0%
West Midlands	50.8%	48.0%	48.8%
East of England	55.3%	52.0%	52.2%
South East	56.8%	54.4%	51.9%
South West	61.4%	55.4%	51.3%
Wessex	59.6%	53.0%	56.7%
Cymru-Wales	57.0%	58.2%	56.0%
Thames and Chiltern	57.2%	59.5%	55.6%
London	60.1%	59.7%	59.6%
Level of ambition	55.0% or above	44.0% to 54.9%	43.9% or lower

* data for the 12 months to June 2016 by CPS Area not yet available

Area	2013-14	2014-15	2015-16	12 months to June 2016
Hearings per case: contested				
National	5.36	5.64	5.65	5.60
London	6.16	6.69	6.56	6.47
North West	5.45	5.69	6.03	6.01
Thames and Chiltern	5.14	5.57	5.55	5.71
South West	5.75	5.56	5.71	5.64
North East	5.47	5.57	5.28	5.34
South East	4.89	5.38	5.42	5.32
East Midlands	5.05	4.98	5.24	5.20
Yorkshire and Humberside	4.80	5.12	5.19	5.20
Wessex	4.38	4.98	5.21	5.05
Cymru-Wales	5.01	5.25	5.00	4.92
East of England	4.72	4.72	4.80	4.87
Mersey-Cheshire	4.88	5.06	5.02	4.85
West Midlands	4.55	4.51	4.58	4.59
Level of ambition	5.30 or below	5.31 to 5.89	5.90 or above	
Hearings per case: guilty pleas				
National	3.58	3.84	3.97	3.91
London	4.02	4.47	4.67	4.61
North West	4.08	4.35	4.51	4.44
North East	3.92	4.24	4.32	4.25
South East	3.21	3.71	3.94	3.98
South West	3.71	3.91	4.02	3.95
Yorkshire and Humberside	3.50	3.88	4.00	3.93
Thames and Chiltern	3.68	3.84	3.94	3.83
East Midlands	3.18	3.38	3.66	3.64
Wessex	3.36	3.68	3.66	3.59
East of England	3.03	3.38	3.53	3.50
Mersey-Cheshire	3.45	3.46	3.54	3.45
Cymru-Wales	3.42	3.59	3.58	3.40
West Midlands	3.14	3.15	3.15	3.17
Level of ambition	3.60 or below	3.61 to 4.19	4.20 or above	

Area	2013-14	2014-15	2015-16	12 months to June 2016
Guilty pleas at first hearing				
National	35.8%	33.1%	31.8%	33.6%
London	28.4%	22.3%	19.7%	22.6%
North East	29.1%	24.7%	24.8%	27.0%
Yorkshire and Humberside	34.2%	29.2%	29.3%	30.7%
North West	32.7%	31.6%	31.2%	32.3%
South West	35.0%	34.7%	31.7%	32.7%
Thames and Chiltern	31.9%	30.1%	30.5%	32.7%
South East	39.8%	31.7%	31.8%	33.4%
East Midlands	41.1%	40.0%	33.1%	34.2%
East of England	44.4%	40.6%	35.0%	36.0%
Cymru-Wales	34.9%	30.6%	32.7%	37.2%
Wessex	36.1%	36.3%	37.0%	38.0%
Mersey-Cheshire	38.6%	39.9%	42.1%	44.5%
West Midlands	47.9%	49.2%	48.0%	48.2%
Level of ambition	37.5% or above	32.6% to 37.4%	32.5% or lower	



D Best Practice Bulletins issued by the CPS

Bulletin 1: Engaging with the defence Defence engagement

- 1 The duty of direct engagement is one of the fundamental principles of Sir Brian Leveson's Review of Efficiency in Criminal Proceedings.
- 2 The principles have been incorporated into the Criminal Practice Direction:

"The parties will be expected to have prepared in accordance with CrimPR 3.3(1) to avoid unnecessary and wasted hearings. They will be expected to have communicated with each other by the time of the first hearing; to report to the court on that communication at the first hearing; and to continue thereafter to communicate with each other and with the court officer, in accordance with CrimPR 3.3(2)".
- 3 One of the fundamental aspects of better case management is file ownership and that provides a burden on the file owner to grip, control and progress their cases. Engaging effectively with the defence is part of that role.
- 4 There are a number of specific benefits of early engagement with the defence – certainty of issues, identifying and narrowing the issues between the parties, identification of potential pleas, service of material to facilitate the plea and reduction in file build or earlier disposal of the case. Undertaken effectively it will significantly reduce workload for CPS colleagues, improve outcome performance and provide a better service to victims and witnesses. Too often, this conversation occurs at a late stage in the proceedings, often leading to drift, a late plea or cracked trial.
- 5 In view of the percentages of Crown Court guilty pleas, late pleas, and cracked and ineffective trials, effort to resolve issues as early as possible through effective defence engagement has clear advantages. It is also a fundamental reason why a 28 day bail period was adopted in BCM. The frequency of late defence instruction, applying and processing legal aid and notification of legal representatives, especially pre-NGAP, mean that identifying and communicating with the representative can be demanding.
- 6 CPS Areas have identified some aspects of good practice which have proved successful in tackling this important element of the process. These include:
 - i **Enquiry at police interview**

Some Areas encourage the police to identify the defence representative at police interview. Accepting that the suspect may not be represented, have telephone advice or a duty representative, enquiries are being made at police interviews as to whether the representative is likely to represent the defendant at court. This is then endorsed on the MG5 and gives early indicators to the CPS as to the possible point of contact.

ii **Using effective communications systems**

For engagement to work well it is imperative that CPS processes accommodate efficient and timely responses to defence enquiries and indications of representation. These include:

- a manned central telephone/group email exchange systems that can triage calls and identify and deal with defence enquiries. These also include defence representatives requesting invitation onto the DCS where the court has not yet been informed
- b publication of main telephone/email contact details e.g. through BCM Local Implementation Teams, Court User Groups or Area Internet
- c Employing effective systems to accommodate advocates or reviewing lawyers' leave or absences.

iii **At court**

Although the NGAP court is a busy environment, the proactive noting of representatives' details, use of the BCM questionnaire (which also makes enquiry of legal aid status) and face to face enquiry with defence as to the issues are important avenues for defence communication. Allowing time for such communications, arriving in good time, making representations regarding listing to the LITs and court and ensuring that the BCM questionnaire is addressed are useful mechanisms to advance this process.

iv **Communication regarding the DCS**

A number of Areas re-enforce the communication message and contact details, together with the importance of continued communication, when notifying the defence of material uploaded onto the DCS. The process of individual case ownership can greatly assist in directed communication. Senior managers should ensure that systems are in place to capture calls and triage as appropriate.

v **Advocates' responsibilities**

The CPS has sought a commitment from all members of the self-employed Bar as part of the refresh of the Advocate Panel – in particular it sets out at paragraph 6 responsibilities of prosecution counsel:

To comply with duties requiring action or compliance from the prosecution advocate, in particular:

- a judges' orders
- b Criminal Procedure Rules
- c case management requirements, including engagement with advocates representing the defence
- d timescales in relation to appeals or potential appeals.

Areas are encouraged to consider how to ensure the prosecuting advocate keeps lawyers and paralegal officers up to date with details of communication between advocates.

Bulletin 2: Serving material for the NGAP hearing

Serving available material at NGAP

- 1 'Getting it right first time' is one of the fundamental principles of Sir Brian Leveson's Review of Efficiency in Criminal Proceedings. This means both getting the charging decision correct and also ensuring our approach to the case is clear and well-reasoned at the outset. Allied to this principle is the requirement that there is sufficient material served to progress cases and for the defence to take proper instructions.
- 2 The benefits of an effective NGAP are clear. Earlier pleas and committals for sentence, identification of the issues for PTPH and the gathering and serving of any further material between the NGAP and PTPH – and the subsequent advantages for effective case management.
- 3 At charging stage, it is imperative that the police provide the right material to allow us to formulate a case strategy and make an informed charging decision which proves every element of the case. Escalation processes are available and should be utilised in individual cases and also where the police routinely fail to comply with the necessary material submitted for a charging decision. Management should be alert to any systematic failings in police file quality in CPSD or Area Based Charging.
- 4 The principles governing IDPC have also been incorporated into the Criminal Procedure Rules (Rule 8) and are also reflected in the Criminal Practice Direction:

The Criminal Procedure Rules – Providing initial details of the prosecution case

8.2.–

- (1) The prosecutor must serve initial details of the prosecution case on the court officer—
 - (a) as soon as practicable; and
 - (b) in any event, no later than the beginning of the day of the first hearing.
- (2) Where a defendant requests those details, the prosecutor must serve them on the defendant—
 - (a) as soon as practicable; and
 - (b) in any event, no later than the beginning of the day of the first hearing.
- (3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

Content of initial details

- 8.3. Initial details of the prosecution case must include—
- (a) where, immediately before the first hearing in the magistrates' court, the defendant was in police custody for the offence charged—
 - (i) a summary of the circumstances of the offence, and
 - (ii) the defendant's criminal record, if any;
 - (b) where paragraph (a) does not apply—
 - (i) a summary of the circumstances of the offence,
 - (ii) any account given by the defendant in interview, whether contained in that summary or in another document,
 - (iii) any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence,
 - (iv) the defendant's criminal record, if any, and
 - (v) any available statement of the effect of the offence on a victim, a victim's family or others.

- 5 This process is designed to:
- i further the overriding objective
 - ii fully explain the case against the defendant and allow proper instructions to be taken
 - iii encourage and assist case progression
 - iv reduce the number of hearings because the issues and witnesses are identified at an early stage
 - v narrow the issues in contested cases, thereby reducing trial length
 - vi promote agreement of the issues and outstanding evidence prior to the PTPH to improve the effectiveness of hearings
 - vii agree acceptable pleas/basis of plea
 - viii improve the rate of committals for sentence by ensuring that the defence are able to take instructions from their client prior to, or at, NGAP.
- 6 **The effective provision of IDPC is more than simple compliance with the list of specified items** and we should seek to identify and serve any outstanding material which may be served, in addition to the prescribed list, that would aid a guilty plea or case progression. In particular, non-police MG11S, additional forensic, medical and CCTV should be considered for their key evidential value.

7 Areas have identified aspects of good practice which have proved successful in tackling this important element. These include:

i Enquiry at charging stage

Ensuring that adequate material is available to make an informed charging decision is vital, including key witness statements, key material evidence (CCTV, medical, forensics), ex parte Lee disclosure (and full disclosure if available) and a good MG5 summary presenting a balanced and fair account.

The most common issues regarding the provision of IDPC are:

- a key statements missing, which inhibit the taking of full instructions and, where appropriate, advising on an early guilty plea
- b inadequate summary of interview
- c absence of available CCTV
- d lack of direction to the prosecution advocate at court as to acceptable pleas
- e early notice of any applications for bad character, hearsay, special measures, compensation, POCA
- f insufficient material served when there are additional aspects to prove the offence, which have not been included within the IDPC
- g overnight cases and receiving the summary and PNC only.

For Crown Court cases, which need to be built at the outset, as well as the Code test, the charging review needs to consider:

- h what is the case about and what are the key aspects?
- i are the charges correct?
- j the prosecution case strategy. Issues to consider include participation of the victim, witness summons, reliance upon admissions and hearsay
- k does the prosecution rely upon visual media, CCTV, BWV, photographs?

In charging cases, absolute clarity is needed that the case is NSST and a strong enforcement of the National File Standard needs to be applied. This will ensure that the police provide the evidence that is persuasive to charging and which needs to be served.

It also needs to be recognised that, particularly in Area Based Charging, the IDPC may only contain the material which was supplied at the charging stage. If additional material is then available, it needs to be served – e.g. expert evidence, collision reports, medical and forensic. It is important that this is proactively addressed and not left to fall between the responsibilities assigned to the Magistrates' and Crown Court teams. Material needs to be served as soon as practicable – so those handling the case at every stage have a responsibility to ensure service at that point. This will negate the defence assertion that material is delayed.

ii **Effective review**

The early NGAP review provides an opportunity to consider the charging decision, review/re-affirm the case strategy, identify outstanding material and re-evaluate the factors, as set out at h to k above. The consideration is whether the defence have been provided with sufficient good quality material to progress the case. Timely and bespoke requests to the police should be submitted within this period up to NGAP to try and obtain such material before the hearing. This especially applies to chasing incomplete police action plans. There is also a significant management role in ensuring that staff have sufficient opportunity to undertake thorough reviews.

In overnight cases, whilst CPR 8.3(a) provides only for a summary and PNC, if there are statements which would assist progress, consideration should be given to what evidence in addition to the requirements of CPR 8 can also be served at the outset.

iii **At court**

Accepting that the NGAP court is a busy environment, the proactive use of the BCM questionnaire and, where time permits, the face to face enquiry with the defence as to the issues and identifying possible outstanding material are important avenues for progress. Allowing time for discussions with the defence as to outstanding material and ensuring that the BCM questionnaire is addressed are useful mechanisms to advance this process.

iv **IDPC to the court DCS**

Timely provision of the material to the court and the eventual early opening of the case and invitation to the defence on the DCS are also critical factors in supplying sufficient information for case progression. Managers should ensure oversight of the process, timeliness and raise issues regarding HMCTS case opening or invitation delays at their Local Implementation Team meetings.

v **The DDE log**

It is important to maintain and update the Direct Duty of Engagement log (DDE log). Not only is it a SOP requirement, but it provides a clear audit trail of engagement, which allows the prosecuting advocate to explain to the court what communication has occurred. This is also a key process in identifying outstanding or persuasive case material that the defence may cite as being relevant for the purposes of taking proper instructions. If such material can be provided at an early point it may lead to early disposal or narrowing the case issues, thereby reducing further work.

Bulletin 3: Reviewing and serving evidence

Reviewing and serving evidence

The key expectation in every Crown Court case is that we will serve the evidence that supported the charging decision as quickly as possible. It is likely to be the single biggest facilitator of early engagement and resolution of cases.

There are practical difficulties for the police (IT) and the CPS (IT and bundling capability) in custody cases, but there is no separate standard for custody case file content in the National File Standard (NFS).

The NFS requirement is to be distinguished from the SOP (which informs what we do with the material) and the IDPC requirements in the CPR (designed to reflect a minimum standard and avoid sterile argument about non-compliance).

More progress can be made, based on the material that we actually have.

The following aide memoire provides an outline of the key elements and expectations from every prosecutor in respect of any case likely to proceed in the Crown Court:

Charging stage (CPSD/Area Based Charging)

- review of the evidence that justifies the charge, and any undermining material
- how the case would be proved at trial (case strategy)
- the basis upon which it is believed that the case should proceed in the Crown Court by reference to the statutory provision, sentencing and allocation guidelines
- clear direction and timescale to the police in relation to any further evidential and unused material.

Pre-hearing local review

- review of CPSD decisions, and any action plans
- engagement with the defence
- any updated instructions for the first hearing advocate.

Service

In addition to the case summary and any previous convictions

- the evidence upon which the charging decision was based
- the disclosure schedules and any unused material, as soon as possible
- any other material that would be likely to assist with the resolution of plea or issues
- as much of that material (evidence and unused) as is practically possible in custody cases.

First hearing advocate

- a clear understanding and articulation of the Crown's position on venue
- a summary of the issues in the case
- clarity on the extent of the material that has been served
- firm timescales for any further service
- probing of the defence position on the issues
- a readiness to proceed with detailed case management if summary jurisdiction is accepted.

There should be evidence of each of these elements in every case, where they apply. Proactivity and engagement with defence at the first hearing in the magistrates' court can be particularly effective. Completion of the BCM questionnaire and the magistrates' enquiry as to plea and issues helps considerably at further review and when the case arrives at the PTPH.

Recent feedback suggests that these cases are, also, frequently in non-NGAP courts for a variety of reasons. Therefore, the same essential principles of active case management – identification of the evidential, trial and plea issues, together with defence engagement – apply equally to Crown Court cases in non-NGAP courts.

Bulletin 4: Case progression – PTPH to trial

- 1 Case progression is one of the fundamental principles of BCM and is at the root of the effective PTPH and the reduction in the number of hearings to trial. For those cases that are set down for trial, case progression will help to make sure they stay on track for an effective trial and will avoid ineffective and late cracked trials.

- 2 Whilst the reduction to the number of hearings under BCM is a positive step, listing of the PTPH early in the process creates a risk in relation to effective case progression in the period between the PTPH and trial with, in the vast majority of cases, no further scheduled case management hearings or PTRs immediately prior to trial.

- 3 In order to address this, it is imperative that cases do not stall, stagnate or drift and that we apply the ongoing processes to ensure readiness for trial. These will include:
 - i ensuring that there are efficient methods of monitoring compliance with judges' orders – some Areas have adopted a very close daily monitoring system – whilst acknowledging that this requires effort it is extremely effective
 - ii management oversight and use of IQA to ensure that adequate processes are in place and are being adhered to
 - iii ensuring timely compliance with the Certificate of Readiness and through review of the case to ensure readiness
 - iv compliance with the SOP and CMS flag alerting the Certificate of Readiness timeline (35 days)
 - v ensuring that the Certificate is uploaded to the DCS expeditiously
 - vi ensuring at service of the case that the s.51 letter reminds the defence that they must use the standard witness form to notify any other witness requirements. The form must be served on the prosecution and the court no later than the date set for the provision of the defence statement as ordered at the PTPH – whether they provide a defence statement or not
 - vii in relation to v, above making sure that defence compliance with witness requirements is completed and/or taking positive action if not
 - viii preparing for the FCMH in applicable cases.

- 4 An agreed protocol for regular liaison meetings between Presiding/Resident Judges and Chief Crown Prosecutors was published in January 2016. The protocol provides a practical and productive approach to dealing with performance issues, including those that arise in individual cases. The process seeks to reduce any recurrent problems and the necessity for compliance courts, and provides a process for escalation of systematic issues which may be causing compliance problems.

-
- 5 BCM envisages out of court case progression and use of technology, where available. Colleagues are strongly encouraged to advance these procedures with their BCM Local Implementation Team and HMCTS to ascertain if there are procedures which can be agreed to ensure good communication with those responsible for case progression in HMCTS, locally, and make effective use of mentions and telephone/video conference facilities to progress cases or resolve issues.
 - 6 Effective case progression will minimise ineffective trials and late cracked trials. Not only are these inefficient and will impact adversely on performance, but ineffective and late cracked trials fail to provide the standard of service we need to provide to victims and witnesses. Close monitoring of the effective, ineffective and cracked trials rates, particularly in respect of prosecution reasons, will provide a useful reference for the effectiveness of the case progression function.

E Glossary

Action plan

If the prosecutor considers that they are unable to make a charging decision at the first or any subsequent appointment with the police because they lack essential evidence or information, they should draw up a pre-charge action plan which is recorded on the MG3. The action plan sets out what evidence or information is required and by what date specific tasks and the overall action plan should be completed. The prosecutor may also draw up a plan at the time that they authorise the charging of the suspect. The post-charge authorisation action plan may address further evidence or information that will be needed for the case to be successfully prosecuted or, in threshold test cases, to satisfy a subsequent full Code test review.

Annual Assurance Programme (AAP)

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 2015.²⁰

Application to dismiss offence sent for Crown Court trial

On an application by the defendant the Crown Court must dismiss an offence charged if it appears to the court that the evidence would not be sufficient for the applicant to be properly convicted.

Basis of plea

When the defendant pleads guilty to the charge, but does not agree the full facts as set out by the prosecution. The prosecution must then decide whether to accept the basis on which the defendant is pleading guilty.

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.

Central Casework Divisions

CPS Headquarters Divisions dealing with specialised work such as counter-terrorism and fraud.

²⁰ HMCPSI Five Year Review and Annual Report 2015; HMCPSI; March 2015.
www.justiceinspectors.gov.uk/hmcpsi/inspections/hmcpsi-five-year-review-and-annual-report-2014-15/

Charging decision

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.

Chief Crown Prosecutor (CCP)

The most senior legal manager at CPS Area level and the person who is held to account for its assurance controls and performance.

Code for Crown Prosecutors (the Code)

The public document that sets out the framework for prosecution decision-making. Crown prosecutors have the Director of Public Prosecutions' power to determine cases delegated to them, but must exercise them in accordance with the Code and its two stage test – the evidential and the public interest stages. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest. *See also threshold test*

Court orders/directions

An order or direction made by the court at a case progression hearing requiring the prosecution to comply with a timetable of preparatory work for a trial. These orders are often made under the Criminal Procedure Rules.

CPS Direct (CPSD)

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.

Crown Advocate

In-house CPS lawyer who, by qualification and CPS designation, has a right of audience in the higher courts.

Defence statement

In proceedings before the Crown Court, where the prosecutor has provided initial disclosure, or purported to, the accused must serve a defence statement on the prosecutor and the court. This assists in the management of the trial by helping to identify the issues in dispute; provides information that the prosecutor needs to identify any material that should be disclosed; and prompts reasonable lines of enquiry whether they point to or away from the accused.

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. Initial (formerly known as “primary”) disclosure is supplied routinely in all contested cases. Continuing (formerly “secondary”) disclosure is supplied after service of a defence statement. Timeliness of the provision of disclosure is covered in the Criminal Procedure Rules.

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.

Independent Bar

The professional body for self-employed barristers (counsel).

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)

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).

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.

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.

Paralegal officer/assistant

A member of CPS staff who deals with, or manages, day-to-day conduct of a prosecution case under the supervision of a Crown Prosecutor and, in the Crown Court, attends court to assist the advocate.

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.

Section 10 admission

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.

Section 28 Youth Justice and Criminal Evidence Act 1999

For witnesses aged under 16 or witnesses suffering from a mental disorder, have a significant impairment or have a physical disability. The objectives behind the introduction of section 28 are: to facilitate improvement in the experience of witnesses by enabling them to give evidence at an earlier stage in proceedings, when their recollection of events is likely to be fresher; and to maximise the potential for earlier resolution of hearings as cross-examination might strengthen the prosecution case, thus encouraging the entering of a guilty plea, or it may result in the conclusion that there is no longer a realistic prospect of conviction.

Special measures

The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. Special measures include: screening in court; giving evidence via 'live' link; evidence given in private; removal of wigs and gowns; examination through an intermediary; aids to communication; pre-recorded evidence-in-chief; and, currently being piloted, video recorded cross-examination and re-examination.

Standard Operating Practices (SOPs)

National CPS processes that apply consistency to business practices. They provide a set procedure for all Areas to adhere to. Examples of SOPs are those for Transforming Summary Justice, Better Case Management, and custody time limits.

Threshold test

The threshold test is applied where a suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.

Transforming Summary Justice (TSJ)

A cross-criminal justice agency initiative which aims 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.

Wi-Fi

Wireless technology that allows an electronic device to exchange data with other devices locally or connect to the internet.

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.



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