



HMCPSI

HM Crown Prosecution
Service Inspectorate

Crown Prosecution Service handling of custody time limits

**Management of custody time
limit cases by the CPS during the
Covid-19 period**

December 2021

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HMCPsi Publication No. CP001: 1290

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HM Crown Prosecution Service Inspectorate inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

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We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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1. Summary

Context

1.1. Custody time limits (CTLs) are set out in the Prosecution of Offences Act 1985 to ensure that accused persons are not deprived of their liberty for longer than is reasonable. The Crown Prosecution Service (CPS) is expected to make an application to extend the CTL expiry date in good time if there is an expectation that the case will not be finalised within the period of the initial expiry.

1.2. The Covid-19 pandemic reached the United Kingdom in late January 2020. On 23 March 2020, the Prime Minister announced a national lockdown that took effect on 26 March 2020. The imposition of social distancing restrictions and measures to protect the safety of court users, led to the Crown Court in England and Wales being able to hear a greatly reduced number of jury trials; indeed jury trials were suspended for a two-month period.

the CPS has had to deal with a substantial increase in the number of cases which required an extension application

1.3. In September 2020 the CTL regulations were amended to extend the length of time a defendant with a case to be heard in the Crown Court could be kept in custody from 112 days to 168 days and from 182 days to 238 days. The maximum time limit in the magistrates' court of 56 days remained the same.

1.4. As a result of the increase in cases not being heard in the Crown Court due to restrictions on business, the CPS has had to deal with a substantial increase in the number of cases which required an extension application. By October 2021, there were 1,400 more live CTL cases being dealt with by the CPS than before the start of the pandemic.

1.5. Where it is likely that the case against a defendant in custody is not going to be finalised within the expiry date of the CTL, the CPS is required to submit an application to extend the CTL. In order to satisfy the court for the need for an extension, the application must set out a good reason for the extension and be able to demonstrate that the case has been handled with all due diligence and expedition. In the majority of cases pre-pandemic, particularly in the CTL cases in the magistrates' court, the case was almost always finalised within the initial CTL expiry date.

1.6. The CPS has monitoring systems that allow them to make an application for a CTL extension in good time. The primary system is

computer based, within the case management system (CMS), and a secondary system, which in most CPS Areas was paper based. Paper-based systems did not pose any particular problems until the Covid-19 crisis during the national lockdowns when access to these systems was necessarily restricted.

Challenges

1.7. The first challenge faced by many CPS Areas was in relation to the monitoring of CTL cases when the first national lockdown was imposed in March 2020. The CPS CTL national standard requires that a secondary monitoring system is in place as a back-up to the primary system which is on the computerised CMS. Many Areas had to transfer details of all cases with a live CTL from the paper system to an electronic-based system, which would allow access to staff who were now working from home as a result of national restrictions.

1.8. The second challenge was the large increase in caseload as cases were not being finalised because courts closed and throughput of cases to finalisation significantly reduced. This increase in caseload was also accompanied by an increase in cases that had an active CTL. This increased the pressure of work on CPS staff and the numbers of live CTL cases they had to deal with.

1.9. Thirdly, the delays in bringing cases to trial led to a significant increase in the number of cases in which an application to extend the CTL expiry date was required. This further increased the workload on CPS staff.

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1.10. A further challenge was the change to the expiry dates applied in September 2020 to new cases in the Crown Court. This required the CPS to make amendments to the CMS to allow the system to monitor the longer expiry date. New CTL calculators had to be produced to give prosecutors in court the resource to quickly and accurately provide the new

expiry date, new guidance was developed to support the change, and there was a need for Areas to provide training to ensure that staff understood the changes.

Headlines

1.11. The CPS handled the changes that had to be made to the monitoring systems well.

1.12. Whilst we found some cases in our file sample where expiry dates had been initially miscalculated, these had been picked up by a later double-check and amended to the correct expiry date.

1.13. Despite the increase in the volume of extension applications that had to be made, we found that they were generally of good quality and submitted in good time.

1.14. Good use is made of templates when making CTL extension applications.

Recommendations and good practice

1.15. Use of the CTL case progression log is inconsistent and there is scope to make better use of this document.

1.16. Details of the action taken on the case at the 28-day review date should be noted on the case in CMS and not just on the weekly assurance report.

1.17. The CPS ensures that all agents and counsel representing the prosecution at court complete and return the template hearing record sheet in all cases.

Methodology

1.18. The aims of the inspection were to establish if:

- the CPS was calculating the CTL expiry dates accurately and monitoring those dates effectively
- the CPS was making good-quality decisions in relation to applications to remand defendants in custody throughout the course of the case
- the CTL guidance issue and support offered during the pandemic had been effective in ensuring that staff were informed of changes and that any new guidance had been applied.

1.19. The high-level inspection question and criteria used are in Annex A.

1.20. The team assessed 40 live cases¹ in which a CTL applied. A detailed questionnaire was used to examine the way in which the case had been handled when calculating and monitoring the expiry date, and the quality of legal reviews and legal decision-making around the bail status of defendants and applications to extend CTLs.

1.21. We examined the communications that had been sent out to the Areas from CPS Headquarters informing staff of the changes regarding CTL regulations and processes.

1.22. The team inspected four CPS Areas – North East, London South, Wessex and East Midlands. We requested documents from those Areas that related to CTL management and assurance systems, and we spoke to a number of Area staff.

1.23. We also spoke with staff in CPS Headquarters who were involved in keeping the Areas up to date with the changes to the regulations and developing tools for the Areas to use, which would allow for accurate calculation and monitoring of CTL cases throughout this period.

¹ Ten cases were selected from each of the four CPS Areas we visited and consisted of six Crown Court and four magistrates' courts cases from each Area.

2. Changes to custody time limits

Calculation of custody time limit expiry dates

Changes to the length of the custody time limit

2.1. During the course of the pandemic, following the initial reduction in court sittings and the increasing delays in bringing cases to court, temporary changes were made to the custody time limit (CTL) regulations. They stipulated that, from 28 September 2020, all new cases sent to the Crown Court would attract an extended expiry date of 238 days rather than the normal 182 days and the few cases that would normally have a 112-day limit would have an extended limit of 168 days. This applied to all cases with defendants who were remanded in custody to the Crown Court after the above date, including those involving youth defendants.

2.2. To support this change, the CPS produced amended versions of the tools supplied to staff to allow them to accurately calculate CTL expiry dates. A new 'ready reckoner'² was prepared and a version of the electronic calculator, which is used to automatically calculate the correct expiry date, was tailored for cases in which the defendant was remanded prior to 28 September 2020 and a version for remands in custody after that date. These documents were circulated nationally four days prior to the implementation of the change.

2.3. An amended electronic calculator was produced which allowed the 238-day expiry date to be calculated only in those cases with a new remand between 28 September 2020 and 28 June 2021. Staff told us that the fact that the calculator did not allow them to enter new remand dates outside this timeframe was a helpful feature in preventing the wrong expiry date being calculated and applied. The electronic calculator can be used by the prosecutor in court to accurately calculate the expiry date and by the operational delivery staff to double check that the correct expiry date has been agreed in court.

2.4. When a new remand in custody is recorded on the CPS case management system (CMS), the system automatically calculates the expiry date. CMS is the primary system used to monitor the expiry date to ensure that an extension application is made in good time if it is decided that this is appropriate. The CPS was unable to have CMS updated in

² The ready reckoner is a standalone document which shows all the expiry dates that may apply for each day of the current year.

time for the change to allow the system to calculate the longer expiry dates. Changes to CMS are governed by a change-management process and, in line with many complex case systems, immediate and reactive changes are not possible. Therefore, as no immediate system change could be made, a communication was sent out to all CPS staff on 28 September 2020. This set out detailed steps that would have to be applied in CMS for Crown Court cases to override the 182-day expiry date that would automatically be system calculated. Staff were asked to continue to do this until notified that CMS had been updated, which was done on 7 October 2020 (the closest system release date that the CPS could make any reactive change). Whilst the delay was not ideal, CPS Headquarters ensured that CPS Areas were aware of the issue and provided comprehensive instructions on how to deal with it. We did not find any cases in our sample that showed an incorrect expiry date had been applied in CMS during the time that the system was awaiting the update.

Changes to the length of the custody time limit for youth defendants

2.5. A further change occurred around the application of the 238-day expiry date to youth defendants remanded in the Crown Court. From 28 September 2020, the 238-day date was applied to all cases remanded in custody to the Crown Court, regardless of whether the defendant was an adult or a youth. However, this decision was reversed in regard to youth defendants in early 2021. This required the CPS to identify all cases involving a youth defendant in which the 238-day expiry date had been applied and change it to a 182-day expiry date.

2.6. CPS Areas were given five weeks' notice of this change. CPS Headquarters provided the Areas with a new electronic calculator to be used in cases in which youth defendants had been remanded in custody. This was accompanied by detailed instructions on how to identify youth cases on CMS, and how to override the 238-day expiry date that CMS had automatically calculated in youth cases since September 2020.

2.7. It was important that Areas made these changes as soon as possible to ensure that youths were not held in custody beyond the amended expiry date. Prompt action would also allow the CPS to make applications to extend in good time, where appropriate, and to contact the court to arrange to bring forward the trial date if it was beyond the new revised expiry date.

2.8. The guidance issued by CPS Headquarters contained a process to be followed by operational delivery managers who carry out checks on these cases to ensure that the correct expiry date had been applied. In two of the four Areas inspected, we found evidence of the Chief Crown Prosecutor (CCP) requiring confirmation that the appropriate action had been taken. In another Area, we found that the CTL champion had looked at all youth cases subject to a CTL to ensure that the correct expiry date was being monitored.

2.9. In our file sample we found two youth cases in which the 238-day expiry date had initially applied. In both cases the expiry date had been correctly amended to 182 days, in one case within 24 hours of the change in the CTL regulations which applied from 19 February 2021. In the other case, CMS did not appear to have been updated until almost three weeks after the change, though correspondence on the file showed that the CPS staff were aware that the expiry date had changed and required the monitoring systems to be updated.

2.10. CPS Headquarters also provided the Areas with template documents to assist in communicating the change to youth case expiry dates to other parties. CPS Areas were provided with template letters to inform the defence, the police, prosecution advocates and the court of the new expiry date.

2.11. In the two youth cases in which the expiry date had been changed to 182 days, the parties had been informed of the change in one and in the other, the court and the defence solicitors were notified at a court hearing a few days prior to the amended regulation coming into force.

Accurate calculation of the expiry date

2.12. We found three cases in our sample of 40 files in which an incorrect expiry date had been calculated by the prosecutor in court. All were youth cases. In one, the prosecutor had noted that the 182-day expiry applied, but the date shown on the hearing record sheet³ was 238 days. The operational delivery staff carrying out the double-check on this case repeated the same mistake and it was at a check a week later that the error was spotted and corrected. In the second case, the youth was to be sent to the Crown Court but the case was initially adjourned to the youth court. The 182-day expiry date had been applied rather than the 56-day date. This issue was resolved when the defendant was sent to the Crown Court. In the third case, the expiry date had been calculated to a

³ A CPS electronic record of events at court. If completed correctly, it acts as a continual log of court proceedings and court orders.

day earlier than the correct day and this had been corrected following a check on the expiry date by operational delivery staff.

2.13. Clearly, recording the start date when custody commences on the hearing record sheet (HRS) is important as it allows those checking the CTL calculation to be clear as to when the CTL began. In our file sample, 28 of the 40 files had a clear start date recorded on the HRS. In eight cases, this information was not recorded on the HRS and in a further four cases, we could not locate the HRS for the first remand hearing on CMS.

Double-checking the accuracy of expiry dates

2.14. There was evidence of a double-check on the accuracy of the expiry date calculated at court in 39 of the 40 files we examined. In the file with no check evident, the fact that the defendant had been remanded was not discovered until more than six months later.

2.15. The double-check was usually evidenced by a copy of the electronic calculator created by the operational delivery staff being saved onto the case on CMS. However, we found that in five cases the calculator used was not the correct one. For example, we found that in four youth cases the calculator that applied only in adult cases had been used, rather than the one designed for youth defendants with the 182-day maximum expiry date. In the final case, the calculator was not added to CMS until several months after the defendant had been remanded. We mention this in paragraph 2.16 below.

2.16. We found that the standard electronic HRS had been used in all of the magistrates' court cases and youth cases examined. In the cases sent to the Crown Court, a CPS template HRS was used in most cases in three of the four Areas. In one Area (London South), there is a practice in which counsel often completes an attendance note. The endorsement on the attendance note is usually copied onto the CPS HRS template, but in the case referred to above, in which the CTL had remained unmonitored for several months, the attendance note failed to clearly record that the defendant had been remanded in custody. The template Crown Court HRS directs the prosecutor to add details regarding the custody or bail status of the defendant(s). It is usually sent out to external counsel prior to the hearing, providing a full note of all hearings so far. Consistent use of the template HRS is a means of ensuring that all relevant information is recorded and prompts the prosecutor to note any change in the custody status of a defendant.

Monitoring systems

Recording expiry dates on CMS

2.17. The CPS has a national standard⁴ for the handling of CTL cases. This standard requires that the CTL should be entered onto CMS within 24 hours of the remand hearing. The move to remote working by CPS staff had the potential to adversely impact on this timescale. However, we found that the HRS had been uploaded to CMS within 24 hours of the hearing in 35 of the 40 cases examined. In the remaining five cases, the HRS did not appear on CMS until two days after the hearing date in two magistrates' court cases. In the other three cases, it was over a month before the relevant HRS appeared on CMS, although it was clear that the cases had been updated within a few days of the hearing at the Crown Court.

2.18. In fifteen cases in our sample, in which the initial CTL expiry date still applied at the time we examined them, we found that the correct date was being monitored in all cases on CMS. In the remaining 25 cases, we were not able to determine if the correct initial expiry date had been monitored on CMS as the expiry date had been changed, either because the expiry had been extended or because the defendant had been bailed and the expiry date had been correctly deactivated on CMS.

Secondary monitoring system

2.19. Whilst CMS is the primary system used by the CPS to monitor CTL expiry dates, the CTL national standard requires that Areas have a secondary monitoring system to provide a back-up, should there be no access to CMS. Prior to the pandemic, many Areas had secondary systems that were paper based. When the first national lockdown was imposed in March 2020, access to these paper-based systems was difficult and Areas moved swiftly to transfer records to a computer-based system which allowed it to be accessed without the need for staff to be in the office. In three of the four Areas we inspected, staff had transferred details of the review and expiry dates from the paper-based system to either a Microsoft Excel spreadsheet or to Microsoft Outlook calendars. In the remaining Area, Excel was already being used as the secondary monitoring system.

2.20. During the pandemic, a new digital diary for national use was being developed at a national level. The new diary was rolled out to CPS Areas

⁴ National Standard For the Effective Management of Prosecution Cases Involving Custody Time Limits (Revised February 2020).

in February 2021. The need to move to a new secondary system twice in under a year was unavoidable for many CPS Areas given the unique circumstances created by the pandemic.

2.21. The new system had been implemented in the Areas we inspected and it provides a standard and accessible secondary monitoring system. In the Areas we inspected, different approaches had been adopted to moving to the new system. Some transferred all existing and new CTL cases to the new diary, whereas other Areas had taken the decision to only record new CTL case details in the digital diary, leaving those cases already registered in the existing secondary system to be monitored in that system only. This was a pragmatic approach to reduce the work involved in moving the case details to another monitoring system, but required two secondary systems to be monitored until all older cases had been dealt with.

2.22. Training for the digital diary was consistent across the four Areas we inspected. Staff were shown how to use the diary and written instructions were also available. We were told that the online videos created by CPS Headquarters, which are available through the diary itself, were very helpful. One Area (Wessex) created its own training session, which was recorded and available to those using the diary.

Double-checks on the secondary monitoring system

2.23. In the Areas that we inspected, we were told that operational delivery staff were responsible for entering the details of the CTL review and expiry dates into the secondary monitoring system. These entries would be checked by the member of staff responsible for monitoring CTL expiry dates – often a case progression manager or operational delivery manager. The CTL national standard states that the ‘Check CTL case’ task on CMS must have a note in the comments for this task confirming that the monitoring systems have been checked to ensure that the expiry and review dates are correctly recorded.

2.24. In our file sample, we found that 14 of the 24 Crown Court files had a note recorded in this task confirming that checks on the monitoring systems had taken place. One Area (North East) had recorded this confirmation for all the Crown Court cases examined and, in another (London South), this information had not been recorded in the task on any of the Crown Court files we examined. In the magistrates’ court files examined we found that five of the 16 files had an appropriate note under the task. Two Areas (East Midlands and North East) had recorded this information in two of the four files examined. Another Area (Wessex) had

confirmed this check in one out of four cases and in the final Area (London South), this information did not appear on CMS in any of the four cases. However, we found a record of double-checks carried out on systems in a number of places, including on the CTL case progression log and in the new digital diary. Areas need to ensure compliance with the requirement to record confirmation of these checks on the monitoring systems in the 'Check CTL case' task.

2.25. We found that 27 cases had the expiry dates correctly entered into the secondary monitoring system. In 13 cases, we were unable to determine this as we did not have access to the relevant secondary monitoring systems. We found evidence in 13 of the 27 cases that the secondary monitoring system entry had been double-checked. The new digital diary system has the facility for notes to be added, but we found little evidence of this being used to record that a double-check had taken place on the system. Evidence of the double-check was found either in the CTL case progression log or the 'Check CTL case' task on CMS.

Changes to the expiry date

2.26. There were 25 cases in the file sample in which the CTL expiry date had been changed due to the defendant having been given bail, or because the expiry date had been extended.

2.27. The changes had been highlighted by the prosecution advocate as required in the CTL national standard in 17 of the cases examined. In 24 of the 25 cases, we found that CMS had been updated to show the new expiry date, or that the defendant had been bailed. In 20 of these cases, the secondary monitoring system had also been updated to reflect the change.

Assurance systems

The Assurance app

2.28. The CPS uses an application called the assurance app, which is designed to capture all issues regarding the accuracy of the CTL calculation, the monitoring and case progression in CTL cases. Staff are expected to log issues arising from court endorsements that are unclear as to the custody status of each defendant in a CTL case, or that could impact on the accurate calculation and on-going monitoring of a defendant's CTL. It is also designed to capture instances where trial dates have been fixed outside the CTL expiry date.

2.29. This type of assurance system has been in place in the CPS for several years. An updated version was being developed prior to the pandemic and it was launched in December 2020. It is designed to capture issues that can be dealt with, often via individuals' line managers, and data can be analysed to identify recurring issues that may be improved by targeted training or reminders being sent to staff across the Area. We saw evidence of this data being used by one unit in a particular Area inspected (London South). A report had been produced for senior managers that listed the type of issues recorded in the assurance app and set out the action to be taken.

2.30. The CPS Headquarters Compliance and Assurance team (CAT) delivered training on the reporting function of the assurance app to a nominated member of staff in each CPS Area. The new tool was also demonstrated to CTL champions at a CTL forum. More use of this data should be encouraged in Areas as it is a means of identifying issues and improving performance, and this may assist Areas in avoiding failures in CTL cases.

2.31. We found that training for the assurance app was not consistent across the Areas we visited. Some Areas delivered formal training while others adopted a more ad hoc approach, with the CTL champion demonstrating the app to some staff in one Area. In another Area, we were told that training was passed on informally between colleagues.

Staff we spoke to who used the app found it easy to use.

More use of this data should be encouraged in Areas as it is a means of identifying issues and improving performance

2.32. The process by which information is recorded on the app varied. In some of the Areas we inspected, operational delivery staff who updated the cases on CMS after court would immediately register on the app details of any issues they found. In other Areas, we were told that the operational delivery staff

would speak to their manager who would deal with issue and decide whether to input it into the app. The CTL national standard sets out that managers must carry out checks on CTL cases and record any examples of endorsements that are not clear and accurate, or do not conform to national or local instructions. Further clarification in the CTL national standards might help to achieve some consistency in what is entered into the app.

2.33. Where issues had been reported regarding the quality of court endorsements, we were told that the line manager addressed them with the individuals concerned or, in the case of external counsel, issues were fed back to individuals by a legal manager in order to secure improved performance.

2.34. Of the 40 cases we examined, 11 (27.5%) cases had issues with the quality of the endorsement. In two cases, there was an entry on the assurance app. In one further case, there was no record of the issues being recorded. In the remaining eight cases, we could not make an assessment because we were unable to access the records as they predated the introduction of the current app.

2.35. From our interviews with Area staff, there is some uncertainty as to whether the assurance app is being used consistently. CPS Headquarters is aware of this and is planning to raise awareness amongst staff to ensure that the app is used in a more consistent manner, providing the opportunity to target training and improve performance.

Weekly assurance reports

2.36. A weekly assurance report must be completed by all units in the CPS Areas. The report lists all cases in which the CTL expires, or CTL cases which are listed for trial within the next 28 days. The report may also monitor CTL cases regarded as high risk, those cases charged on the threshold test and transferred to the Crown Court in the previous seven days, and an update on cases included in the previous week's report but which are no longer being monitored.

2.37. The purpose of the report is to ensure that all cases approaching the CTL expiry date are considered for an extension application. It also allows Area managers to be aware of and confirm action taken on case progression in cases listed for trial within the next 28 days.

2.38. Due to the backlog in cases for trial in the Crown Court in particular, the number of cases on these reports has increased during the pandemic. The amount of detail contained in the reports we saw in the four Areas inspected varied significantly. In one Area, detail in the report was minimal whilst in another Area, ongoing case progression and management was set out in full, with one of the reports we saw for a Crown Court unit reaching 65 pages. Whilst this is important information to record, allowing legal managers to understand where issues were arising and be aware of the action that has been taken, we have concerns as to whether it is appropriate to record it on a form that has no link to the

case details in CMS. The prosecutor in court would not have access to this information, which may be key to securing an extension to the CTL, and it could mean the record of action taken in the case is incomplete on CMS.

2.39. The weekly assurance reports process allows senior legal managers in the Area to be assured that appropriate action is being taken to ensure that CTL cases are ready for trial and that, if an extension to the expiry date is necessary, appropriate action has been taken. The reports have signature boxes which confirm they have been seen by senior legal managers, often including the Area's CTL strategic champion whose role includes oversight of this process.

2.40. We found some inconsistencies in the forms being signed off by all the managers. In most Areas we inspected, an operational delivery manager or case progression manager was responsible for completing the report and it was signed by them. It was with the various levels of legal managers that inconsistencies arose. This leads to concerns as to whether some reports had received the required level of oversight.

Audits and dip-sampling CTL cases

2.41. During the period of the pandemic, we saw some evidence of audits or dip-sampling of CTL cases carried out in the Areas we inspected. This would normally be regarded as good practice to ensure that particular aspects of the work were compliant with requirements or to pick up any issues where improvements could be targeted.

2.42. In one Area (East Midlands), we were told that this type of activity had been paused due to the increase in workload, particularly in the Crown Court, due to the backlog in cases awaiting a hearing. However, it was noted that this Area provided additional scrutiny by choosing to include in its weekly assurance reports cases from the magistrates' court and rape and serious sexual offences units, where the CTL expired or the trial listed in the next 42 days. This allowed more time to take action on a wider range of cases.

2.43. In another Area (London South), audits had been carried out on the new digital diary to ensure it was being used correctly. A dip sample of 30% of CTL cases was undertaken to review CTL expiry date calculations following a CTL failure in the Area. The findings from this work were fed back to staff.

2.44. In a third Area (North East), we saw a report completed in early 2021 which listed a number of actions to be implemented following a peer

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review of CTL cases. However, some of the staff we spoke to were not aware of the results of this review. In the fourth Area (Wessex), a dip sample of the case progression logs took place in early 2021.

Expectations regarding the use of the log had been sent out to staff and it was felt by those we spoke to that it had resulted in improvements in the way this document was completed.

3. Legal decision-making

Review and decision-making

3.1. Before a person is charged with a criminal offence, the police will often contact the CPS to seek advice on evidential requirements, the appropriate level of charge and the authority to charge. There are many types of cases where the police must seek charging advice from the CPS and are not able to charge offenders without this authority. The division of charging responsibilities between the police and CPS is set out in the Directors Guidance on Charging (DG6).

3.2. In these cases, a CPS prosecutor will review the evidence in accordance with the Code for Crown Prosecutors and DG6. The prosecutor will provide the police with a decision on whether to charge the defendant, or give the police an agreed action plan to obtain further evidential material, or advise that no further action is to be taken.

3.3. In our file sample, 33 cases were subject to a pre-charge decision (PCD) by the CPS. Inspectors considered the quality of the overall decision-making, including case analysis, case strategy, the quality of action plans and the sufficiency of instructions around bail. In all cases, it is important that the prosecution gets things right from the outset in order to effectively progress cases and maximise successful outcomes.

3.4. We found that the quality of the PCD met a fully satisfactory standard in two out of the 33 cases and partially met a satisfactory standard in a further three cases. We found that often there is simply a rehearsal of the facts of the case without a proper analysis of the evidence. There was little thought given to how the prosecution will put the case, with either a very sparse trial strategy set out – which will simply consist of a list of witnesses to call to give evidence at trial – or no strategy at all. We saw one case where the prosecutor simply stated, “As this case is to be directed to the Crown Court, it is for the Crown Court lawyer to consider strategy.”

3.5. Action plans were a relevant consideration in all 33 cases which received a PCD. Inspectors assessed whether action plans were proportionate and had considered all reasonable lines of enquiry. Inspectors found that eight of the action plans were fully satisfactory, contained actions which were necessary, and the police were given realistic timescales in which to comply. Nineteen action plans were partially satisfactory and six were inadequate due to obvious realistic lines of enquiry missing, unrealistic timescales being set, or there was not an action plan and there ought to have been one.

3.6. Well-drafted action plans are important so that cases can be effectively progressed, and they are essential in those cases which are subject to the tight timescales that CTLs impose. However, less than 25% of action plans in our file sample were sufficiently adequate to underpin effective case progression.

Decisions to apply for a remand in custody

3.7. As set out above in paragraph 3.2, when providing a PCD the prosecutor should consider the defendant's bail position and whether it is appropriate to oppose bail at court, or whether a package of bail conditions will suffice. In doing so, the prosecutor must carefully consider the risk the defendant poses to victims, witnesses, the public and the course of justice.

3.8. The prosecutor should set out their views on bail in the Manual of Guidance Form (MG3) to offer guidance to the advocate at court. The prosecutor should also provide advice to the advocate on whether to appeal the magistrate's decision in the event they admit the defendant to bail despite prosecution objections.

3.9. Inspectors found that in all cases in our sample which were charged by the CPS advice provided on bail was appropriate. In each case, the CPS prosecutor clearly outlined the grounds for opposing bail and provided appropriate instructions to advocates around appealing bail.

3.10. In the Areas we visited, we found that there were systems in place to quality assure decisions around bail and to ensure that applications to remand defendants in custody are made in appropriate cases. In one Area (London South), legal managers quality assure prosecution applications to remand defendants in custody at the first court appearance when they conduct court observations. In another Area (East Midlands), legal managers will conduct checks on new cases with a CTL when completing the weekly CTL assurance report (see paragraph 2.36 above) to satisfy themselves that remands into custody are appropriate.

3.11. Inspectors found that prosecution advocates made appropriate applications to remand defendants into custody at the first court hearing in all cases examined. Prosecution remand applications were successful in all but one case in our file sample. That case was charged by the police without any advice from the CPS and, at court, the defendant was granted conditional bail.

Review of the decision to remand a defendant in custody

3.12. A prosecutor's responsibility to keep cases under review is continuous and applies throughout the life of a case. Where a defendant is remanded in custody, the reviewing lawyer must satisfy themselves that the opposition to bail continues to be justified under the Bail Act 1976 throughout the life of the proceedings. Where custody can no longer be justified, consideration must be given to withdrawing objections to bail and agreeing bail with conditions.

3.13. In the Areas that we visited we were informed by legal managers that prosecutors are required to ensure the decision to oppose a defendant's bail is kept under review. The managers we spoke to expressed no concerns around this and were satisfied that prosecutors discharge their duty properly.

3.14. In the file examination, inspectors found some evidence of reviews which included a consideration of the defendant's bail status. However, most reviews were silent and did not include a rationale for opposing bail. In the Areas visited, we found that there was no expectation that prosecutors would record their views around bail in a CMS review. In one Area, we were informed that this would be recorded on the CMS CTL log.

3.15. Twenty-nine of the cases in our file sample had been given a charging decision by CPS Direct (CPSD), some on the threshold test where the evidence provided by the police is incomplete and the police have been given an action plan to provide outstanding material. However, we found that in ten of these cases the Area prosecutors had conducted prompt reviews to check that matters were progressing as anticipated.

3.16. Despite the lack of recorded reviews, inspectors found that all decisions to oppose bail were appropriate. Inspectors found examples of reviewing lawyers considering applications to extend CTLs with reference to the CPS Headquarters guidance on the sentence the defendant was likely to receive.

3.17. We saw one case where a defendant charged with numerous offences of shoplifting was due for trial four days before the expiry of the CTL. The prosecutor completed a CMS review and concluded that on conviction the defendant would not receive a sentence in excess of the time already spent in custody and that it was not appropriate to apply to extend the CTL.

Decisions to extend the custody time limit

3.18. We found that making an application to extend a CTL was an appropriate consideration in 35 cases in our file sample. In all cases the decision about whether to make an application was made by a lawyer.

3.19. However, it is not always readily apparent from CMS why the application to extend the CTL was being made. This is because there were few examples of reviews which recorded the rationale behind the applications. There were 27 cases in our file sample where applications to extend a CTL were prepared in advance of a court hearing, but only seven of them had reviews to explain why the application was being made. Of those seven cases, only three of the reviews were of sufficient quality to provide a clear justification and reasoning for the application. In the other four cases, the reviews were of limited value and merely confirmed that there was to be an application.

to emphasise the urgency in cases with a CTL, all correspondence with the police must highlight the correct CTL expiry date

3.20. Notwithstanding the lack of a recorded rationale, inspectors found that all decisions to prepare an application to extend the CTL were appropriate.

3.21. Having the right material available at the time that decisions are made is key to making well-informed decisions around applications to extend

CTLs. That requires effective case progression, cases subject to CTLs should be prioritised by the prosecution and the police, with actions and tasks completed promptly.

3.22. Requests for further work from the police should be given realistic target dates for completion, so that actions can be monitored and follow-up action taken whenever necessary. In order to emphasise the urgency in cases with a CTL, all correspondence with the police must highlight the correct CTL expiry date. The police must be made aware of any changes to the CTL expiry date or the custody status of the defendant.

3.23. In our file sample, there were 39 cases where there was correspondence from the CPS to the police requesting and chasing further actions. We found that in 19 of those cases, all correspondence contained the correct CTL expiry date, 13 cases had the correct expiry date on some but not all correspondence, and in the remaining seven cases the police were not made aware of the expiry date at all.

3.24. Good examples included a Crown Court case involving a serious assault where the CTL was extended three times and after each extension correspondence with the police was updated to ensure it contained the correct expiry date. This is in contrast to a burglary case where an email was sent to police to escalate outstanding actions. Although the email referred to the case being subject to a CTL, it did not include the expiry date.

3.25. In all but one case in our sample, the CPS complied with court orders and directions. Compliance was both full and timely in 32 out of the 40 cases, including cases where the prosecution made successful applications to have the date for compliance extended and then complied with the new date. Compliance was either full but not timely, or timely but not full, in seven cases and unsatisfactory in one case.

3.26. Inspectors found that the CPS had fully prepared its case and was trial ready in all cases where a CTL extension application was served. There were 23 cases in our file sample where one of the parties was primarily responsible for the need to apply to extend the CTL. In only one of those cases the primary responsibility lay with the CPS and this was due to the victim self-isolating, which led the court to vacate the trial date.

Quality of custody time limit extension applications

Legal framework

3.27. The authority to apply for an extension of a CTL is contained in section 22(3) Prosecution of Offences Act 1985 and Prosecution of Offences (Custody Time Limits) Regulations 1987, reg7.

3.28. S22(3) provides that the appropriate court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit, but the court may not do so unless it is satisfied

- that the need for an extension is due to –
 - the illness or absence of the accused, a necessary witness, a judge or a magistrate;
 - a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences;

- or
 - some other good and sufficient cause; and
 - that the prosecution has acted with all due diligence and expedition.

The prosecution must satisfy the court, on the balance of probabilities, that both conditions (a) and (b) are met.

3.29. Regulation 7 confirms that an application to extend, or further extend, a custody time limit may be made orally or in writing and sets out the notice period that the prosecution is required to give when making an application.

3.30. Notice must be given not less than five days before when making an application in the Crown Court and not less than two days in the magistrate's court.

3.31. In certain circumstances, the period of notice can be reduced or may not even be required at all. Regulation 7(4) permits the court to dispense with or to reduce the notice period if it is satisfied that it was not practicable in all the circumstances for the prosecution to comply.

3.32. The requirement to give notice is not mandatory, it is guidance and failure to give notice is not fatal to an application to extend a CTL. However, failure to give notice may be a factor in persuading the judge that the prosecution had not acted with all due diligence and expedition. CPS guidance is that every effort should be made to prepare and serve notice of an extension application in accordance with the relevant time limit.

3.33. Although, as regulation 7 confirms, applications can be made orally as well as in writing, the Senior Presiding Judge expects applications to be properly pleaded in writing to reduce oral submissions and the length of application hearings.

Timeliness of applications

3.34. We found that the CPS served notice of application to extend the CTL in a timely manner. In our file sample, the CPS served applications to extend the CTL upon the defence and court in advance of the court hearing in 24 cases. Notice was given within the relevant statutory time limit in 23 cases and was late in one. In the one case where notice was late, the reviewing lawyer did serve the notice in a timely manner on an unrepresented defendant and well in advance of a court hearing, but only served notice on the court on the day of the hearing.

Use of templates

3.35. In order to assist prosecutors to make good-quality extension applications, there are accessible template applications on the CPS Infonet, the national standards (see paragraph 2.17) stipulates that the templates should be used when making extension applications. Following the onset of the pandemic, a template application was produced nationally which contained the Covid-19 related reasons commonly leading to the need to have a CTL extended during the pandemic.

3.36. We were informed that CPS Headquarters had concerns around the increase in the volume of extension applications and, as a result, produced the template containing relevant information to reduce the burden on prosecutors drafting the applications. It was also considered to be more efficient to use a template which cited the relevant case law developed during the pandemic.

3.37. We found that CPS prosecutors made good use of the templates provided. All of the written extension applications in our file sample were drafted on one of the templates and in all but one of the cases the prosecutors had chosen the correct template. In that one case where the incorrect template had been used, the need for an extension was due to the defendant failing to cooperate with his representing solicitors. This impeded the defence in preparing their case, leading to a number of defence applications to adjourn hearings, which in turn impacted upon the CTL. Whilst the incorrect template had been used, the prosecutor did clearly set out the correct reasons in the extension applications and had dealt with the case expeditiously as a priority matter.

Quality of the extension application

3.38. Generally, the quality of the extension applications in our sample was of a good standard, but there are some areas for improvement.

3.39. The national standards emphasise that an application to extend the CTL is a legal submission to the court and should be well drafted in a way that is easy to read and must be checked to ensure it does not contain any spelling errors. The national standards set out what is required in a properly drafted extension application. They remind prosecutors of the need to satisfy the court that there is a good and sufficient cause to extend an unconvicted defendant's detention before trial.

3.40. Section 22(3) Prosecution of Offences Act (paragraph 3.27) provides statutory reasons as to what can amount to good and sufficient cause. However, apart from those reasons, there is no definition of what is meant by good and sufficient cause. It is for the courts to determine on the facts of the case. Case law has led to some principles emerging that are capable of establishing good and sufficient cause and those that will not. So, for example, it has been established that the seriousness of the charge or the shortness of the extension sought will not in themselves establish good and sufficient cause, but they may be factors for the court to take into account in its deliberations.

3.41. In our file examination, we considered whether the prosecution had provided sufficient detail in order to establish that there was good and sufficient cause for the extension. We found that this was an aspect that was dealt with well by the CPS. All but one of the extension applications examined clearly outlined the reasons applicable to the circumstances of each case, which could amount to good and sufficient cause. The one case that was not rated by inspectors as fully satisfactory referred to the statutory reasons which were applicable in that case, but there were other reasons that could have been relied upon and were not.

3.42. The prosecution must also establish that it has acted with all due diligence and expedition (paragraph 3.28). Again, there is no definition as to what is meant by this and principles have developed from case law. The national standards state that when drafting an extension application, the prosecution must demonstrate how they have acted with all due diligence and expedition; it is not sufficient to simply say they have.

3.43. The extension application should include a clear chronology of the relevant key dates, outlining progress made and compliance with court orders.

3.44. In our file sample, the quality of the chronology was a relevant consideration in 25 cases. In 23 of those cases, the chronology was fully satisfactory and in two cases the chronology was partly satisfactory, due to errors with dates rather than a lack of sufficient detail.

3.45. We found that in all cases where there was an application to extend the CTL, the prosecution was able to satisfactorily explain how they had acted with all due diligence and expedition.

3.46. In 19 of the cases we examined, there was some delay in progress which required explanation. In all 19 cases the prosecutor clearly outlined the reasons for delay and, where applicable, also confirmed that the delay in itself was not the reason for the extension application.

Custody time limit logs

3.47. The national standards stipulates that all efforts to expedite case progression should be clearly recorded on the CMS CTL Log. Inspectors found that completion of the logs was extremely inconsistent.

3.48. One Area (East Midlands) we visited had taken the decision not to chase lawyers to complete the logs due to the increase in workload and the resulting pressures. They will record the rationale for an extension application in the weekly assurance report (see 2.36) and also record steps taken to progress cases. This, of course, means that there will be an incomplete record of action to expedite matters on CMS and could lead to difficulties for advocates at court who will not be able to access this information when making extension applications.

3.49. The CPS Compliance and Assurance Team (CAT) circulated a model CTL log to the Areas as a guide to promoting greater consistency.

3.50. In our file sample, 16 cases (40%) contained a CMS CTL log which had been opened and kept up to date throughout the life of the case. A further 17 cases had a CTL log which had been opened but not kept updated and was sparsely populated. We saw one case in which the CTL log contained two entries, the first entry was when the defendant was remanded in custody and the second entry was made 12 months later. Another case contained a CMS CTL log which was opened three days before the expiry date of the CTL. In seven cases there was no log opened and no explanation why there was not one.

3.51. We recommend that the CPS should consider the purpose of the CMS CTL Log and, if they are to be completed, the level of detail that is required to be included.

Quality assuring extension applications

3.52. As outlined in paragraph 3.39, applications to extend a CTL must be carefully drafted and be properly spell-checked to ensure that any errors are corrected and there are none in the submission to court. In our file sample, there were five extension applications which contained some typographical errors and one which contained a spelling mistake.

3.53. The extension applications must be checked by a legal manager before they are submitted to court and the manager must endorse the application to confirm this.

3.54. In the Areas we visited, we were informed that all applications to extend CTLs were checked and approved by a district crown prosecutor (DCP) prior to submission.

3.55. In one Area (Wessex), we were informed that prior to the pandemic all applications were quality assured by the CTL legal champion before being submitted to court. However, with the increase in extension applications, all DCPs in the Area took responsibility for approving the draft applications. In another Area (East Midlands), the Deputy Chief Crown Prosecutor who is the Area's CTL strategic champion conducts dip samples of extension applications for quality assurance purposes.

3.56. Inspectors found that all of the extension applications in our file sample had been endorsed by a legal manager. However, despite being checked, we found that there were still some errors present in three of the endorsed copies.

Submitting the extension application

3.57. The national standards stipulate that when serving the application to extend the CTL on the defence, the CPS should enquire in a covering letter whether the defence intends to oppose the application and, if so, on what grounds.

3.58. Inspectors found that the CPS does not routinely comply with this requirement. In our file sample, there were 23 cases where the CPS should have made this enquiry but only did so in seven cases.

3.59. CPS national guidance is that CTL extension applications must be detailed enough for an advocate who is new to the case to make a good quality application to the court. Extension applications must be supported by instructions which provide a full picture of the case and the difficulties encountered and managed.

3.60. This was an appropriate consideration in 25 of the cases we examined. In 12 of the cases, there were no additional instructions prepared for the advocate. In one Area (Wessex), we were informed that the expectation is that the extension application itself will be sufficiently detailed and contain relevant instructions for the advocate without the need to prepare an additional document.

3.61. Generally, inspectors found that the applications did include adequate details to make a good application at court despite the lack of specific instructions. However, in the magistrates' court none of the applications included instructions around whether to appeal if the magistrate refused the application.

3.62. In our file sample, all of the extension applications made by the prosecution were successful, with some cases having multiple extensions granted. Two of the cases each had five successful extension applications.

3.63. We are aware that during the period of the pandemic there were a number of CTL failures and we were provided with details of failures that were reported by Areas to CPS Headquarters. Such reports are provided only when there has been some failing on the part of the prosecution (the police or the CPS). We examined these reports to assess what impact the Covid-19 pandemic had on these cases. We found that none of the failures were directly attributable to the pandemic, but were due to the prosecution failing to demonstrate all due diligence and expedition, or failing to make an extension application. It is not possible to assess whether or not the pandemic had any indirect affect which contributed to these failures, and whether there are other cases where CTLs were not extended for reasons that had nothing to do with the prosecution.

4. Communications

Communications from CPS Headquarters

4.1. During the course of 2020 and 2021 there were a number of significant temporary changes to the custody time limit (CTL) regulations. These included the introduction of longer CTLs in Crown Court cases, the reversal of that decision in regards to youth defendants in the Crown Court, and the temporary protocol for CTL cases in the magistrates' court and the Crown Court, which allowed the exceptional circumstances created by the pandemic to be used as a valid reason for applying for an extension to a CTL. It was vital that such information be communicated clearly to staff in CPS Areas and in good time for those handling CTL cases to implement the changes.

4.2. The changes were communicated to staff across the CPS via the organisation's internal "gateway" notices which are emailed to all members of staff. These notices summarise the information and provide links to further information, enabling staff to understand quickly and follow up as necessary. Area staff told us that essential information regarding changes had been communicated to them in a way that was easy to understand and had been sent out in time to allow them to prepare for or implement the changes.

4.3. The gateway notices gave contact details for CPS Headquarters staff if there were any queries that Areas needed to raise. We were told that a query raised by one of the Areas we inspected was dealt with in an effective and timely manner.

4.4. CPS Headquarters kept Area staff informed, via gateway notices, about relevant case law that had emerged during the pandemic and had an impact upon the handling of CTL cases.

Area custody time limit champions

4.5. CPS Headquarters staff regarded the Area CTL champions as an effective resource in disseminating key information regarding CTLs to Area staff. Each Area is expected to have a strategic CTL champion (often a Deputy Chief Crown Prosecutor or a Senior District Crown Prosecutor). Additionally, Areas have operational CTL champions, representing the legal staff and the operational delivery staff. We were informed that Areas may have as many operational champions as they wish. CTL champions form a link with CPS Headquarters and between the CPS Areas via a national forum of CTL champions.

4.6. The CTL champion forum meets regularly and is seen as a means by which staff from the Areas can raise issues at a national level, seek advice and share good practice. From the beginning of the pandemic, CPS Headquarters staff found the forum to be a useful mechanism for ensuring that information was being communicated back to Area staff and also for receiving feedback from the forum members on issues that were being encountered in relation to CTL management.

4.7. The CTL champion forum has a Microsoft Teams channel that staff from different Areas can use to share experiences and seek advice. The channel is also used to announce important messages; CPS Headquarters aims to respond to any queries sent via the channel within three working days. In addition, the CPS Headquarters compliance and assurance team receives enquiries, which it aims to respond to within a similar period of time.

Communication within CPS Areas

4.8. CPS Area managers were responsible for ensuring that all relevant staff were aware of the gateway notices discussed above.

4.9. We saw evidence that Area managers were raising awareness of key changes at team meetings held on Microsoft Teams, via legal forums and by directly emailing the staff they managed. We saw examples of senior legal managers summarising new guidance and emailing this to relevant staff. In one Area, regular meetings on Microsoft Teams led by the Chief Crown Prosecutor were used to highlight important developments, ensuring that staff attending were aware of the changes.

4.10. Other practices we were told about included holding a local monthly CTL forum with representatives from all grades in the unit attending (London South); quarterly updates issued to staff, which included details of upcoming changes to CTLs (East Midlands); and staff bulletins issued which contained relevant information on CTL changes.

4.11. Staff in all four Areas we inspected told us that they were satisfied that they were kept up to date with key changes, which usually came by a number of means. They also confirmed that they were happy to seek advice from managers regarding CTLs.

4.12. Area staff told us that if they had any queries about CTLs, they would speak to their line manager first. Any queries that could not be addressed by the line manager would be referred to one of the CTL champions in the Area. Some Areas had a CTL champion in each unit, in addition to the strategic and operational champions for the Area, who could deal with issues raised.

Communication with courts and external counsel

4.13. The CPS has been producing data on the number of defendants in custody throughout the period of the pandemic. This was in response to a request from the Ministry of Justice. The data was shared on a weekly basis to begin with but, as this is a resource-intensive process, it was agreed that the data would be supplied every two weeks. This data allows the CPS to monitor the number of cases involving a CTL and the courts to manage court capacity to deal with priority cases.

4.14. Creating this data has also allowed the CPS to be alerted to an increase in the number of extensions expected at the start of 2021 when cases with the longer expiry date and cases which have attracted the reintroduced shorter expiry date will simultaneously require extension applications.

4.15. As well as CPS staff, external counsel and agents acting for the CPS in the Crown Court and the magistrates' courts needed to be kept up to date with the changes and developments in the CTL regulations and processes.

4.16. We found that the standard of communication with agents and counsel varied across the Areas inspected. The responsibility for communication falls to the Areas. This is because agents and counsel are locally based and it would be difficult for CPS Headquarters to achieve this form of contact in an efficient and effective manner.

4.17. We were told that agents and counsel were kept informed of the relevant changes and we saw a number of different means of communication. In one Area (North East), we saw a very useful update provided to counsel which contained the revised CTL national standards and clear instructions on how CTL cases were to be handled at court, including in the context of the Covid-19 pandemic. The document also included a section on frequently asked questions, which gave examples

CPS handling of custody time limits

of complex CTL scenarios and advice on how to deal with them. This guidance had been sent out to Areas by CPS Headquarters.

In the other Areas we were told that information had been sent out to counsel's chambers and it was expected that it would be sent out to all relevant counsel from there. It may have been beneficial for CPS Headquarters to send out a template pack of information for use by agents and external counsel containing all the necessary information. This would have ensured that the information reaching these parties was consistent.

Annex A

The inspection framework

Did the CPS adapt its processes and systems to manage custody time limits (CTLs) and ensure that defendants have not been held in custody beyond the custody time limit expiry date?

A. Does the CPS calculate CTL expiry dates accurately and monitor those dates effectively?

- A1. Has the CPS applied the correct expiry dates in line with current guidance?
- A2. Have CTL expiry dates been correctly entered into appropriate monitoring systems and actioned effectively at the review dates?
- A3. Are there effective assurance systems in place in the Areas to ensure that cases are being monitored effectively?

B. Is the CPS making good-quality decisions in relation to applications to remand defendants in custody throughout the course of the case?

- B1. Are decisions to request the court remand a defendant in custody initially appropriate, or should bail have been considered?
- B2. Do prosecutors review the decision to remand a defendant throughout the case?
- B3. Are well-informed, quality decisions being made to extend CTLs based on the information available to the prosecutor at the time the decision was made?
- B4. Are applications to extend a CTL of good quality?
- B5. Are applications to extend a CTL approved in line with current guidance?

C. Has CTL guidance issued and support offered during the pandemic been effective in ensuring that staff are informed of changes and that any new guidance has been applied?

- C1. Were any changes in the CTL regulations issued to staff in good time, clear and effective, and ensured that staff were made aware of the changes?
- C2. Was any support offered to Areas in implementing new guidance and handling CTL cases sufficient and effective?
- C3. Is the CTL guidance accessible and up to date?

Recommendations

Recommendations
Use of the CMS CTL case progression log is inconsistent and there is scope to make better use of this document.
Details of the action taken on the case at the 28-day review date should be noted on the case in CMS and not just on the weekly assurance report.
The CPS ensures that all agents and counsel representing the prosecution at court complete and return the template hearing record sheet (HRS) in all cases.

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