



HM CPSI

HM Crown Prosecution
Service Inspectorate

Area Inspection Programme

CPS South East

Baseline assessment

October 2021

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HMCPsi Publication No. CP001: 1288

Who we are

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

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

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.

Contents

1. Summary	6
Added value and grip	8
Casework themes.....	9
2. Context and background.....	18
Background to the inspection.....	19
The current landscape and the Covid-19 pandemic.....	20
Performance data	24
3. Framework and methodology	25
Inspection framework	26
Methodology	26
4. Added value and grip.....	30
What are added value and grip?	31
Added value and grip scoring.....	33
5. Casework quality: magistrates' courts casework themes	40
Introduction to magistrates' courts casework.....	41
Pre-charge decision-making and review.....	43
Post charge decision-making and reviews	52
Does the Area fully comply with its duty of disclosure?.....	56
Does the Area address victim and witness issues appropriately?	59
6. Casework quality: Crown Court casework themes	63
Introduction to Crown Court casework.....	64
Pre-charge decision-making and reviews.....	66
Post-charge decision-making and reviews	72
Preparation for the plea and trial preparation hearing in the Crown Court	80
Does the Area fully comply with its duty of disclosure?.....	82
Does the Area address victim and witness issues appropriately?	87
7. Casework quality: rape and serious sexual offences casework themes	92
Introduction to rape and serious sexual offences casework	93
Pre-charge decision-making and reviews.....	95
Post-charge decision-making and reviews	103
Preparation of RASSO cases for the plea and trial preparation hearing in the Crown Court	108

Does the Area fully comply with its duty of disclosure?	111
Does the Area address victim and witness issues appropriately?	116
8. Public confidence.....	121
Correspondence with victims	122
Victims' Code and Witness Charter	126
9. CPS people.....	129
Recruitment and induction, staff moves and succession planning.....	130
Learning and development.....	134
Quality assurance.....	136
10. Digital capability	139
Data analysis	140
Digital tools and skills	141
11. Strategic partnerships	143
Strategic partnerships with the police	144
Strategic partnerships with the criminal justice system	146

Annexes

Inspection framework.....	148
File examination findings.....	157
Glossary.....	176
File examination question set	190
File sample composition	197
Scoring methodology	201
Casework themes	207

1. Summary

1.1. HM Crown Prosecution Service Inspectorate (HMCPSI) last inspected all 14 Crown Prosecution Service (CPS) Areas between 2016 and 2019. Since then we have carried out a number of thematic inspections across the CPS, including the CPS response to Covid-19, the handling of serious youth crime, charging decisions, disclosure of unused material, dealing with correspondence on witness care, and the standard of communications with victims of crime.

1.2. A common theme from the 2016-19 Area inspection programme and from more recent thematic inspections is the need for the CPS to improve aspects of casework quality. We have therefore developed a new inspection framework which is based wholly on assessing casework quality, and which we will deploy across all 14 Areas over the next two years. Our findings from the 90 cases we examine for each Area forms a baseline against which the Area will be assessed again in 24 months' time in a follow-up inspection.

1.3. The CPS aspires to deliver high-quality casework that, taking account of the impact of others within the criminal justice system, provides justice for victims, witnesses, and defendants, and represents an effective and efficient use of public funds. The function of the CPS is to present each case fairly and robustly at court, but theirs is not the only input. The involvement of criminal justice partners and the defence inevitably impacts on what happens in criminal proceedings and, in contested cases, the outcome is determined by juries or the judiciary. It follows that good-quality casework can result in an acquittal, and a conviction may ensue even if the case handling has not been of the standard the CPS would wish.

1.4. This report sets out our findings for CPS South East.

1.5. This baseline assessment was carried out during the Covid-19 pandemic. The files we examined involved work carried out by the CPS both before and after the pandemic struck.

1.6. For various reasons, the pandemic has meant that, from within a few weeks of the first lockdown in March 2020, the Area was faced with not only a significant increase in live caseloads because of court closures, but an actual rise in the number of cases that its three police forces were referring to it for a pre-charge decision.

1.7. The scale of these dual increases was such that, inevitably, the Area's focus was on ensuring that tasks were carried out and the casework progressed. In those circumstances, it is not surprising that, overall, this has had an impact on casework quality.

Added value and grip

1.8. We have focused our evaluation of casework quality on two key measures: added value and grip. We define added value as the CPS making good, proactive prosecution decisions by applying its legal expertise to each case, and grip as the CPS proactively progressing its cases efficiently and effectively.

1.9. Our baseline assessment of the value added and grip of casework by CPS South East is set out in Table 1.

Table 1: Baseline assessment of CPS South East

CPS South East	Added value	Grip
Magistrates' courts casework	67.4%	66.8%
Crown Court casework	61.2%	74.1%
Rape and serious sexual offences casework	70.7%	80.7%

1.10. Overall, our file examination showed that the Area is making the right decisions when charging cases, and that prosecutors and operational delivery staff are following established Area processes to progress cases effectively.

1.11. We found that Area prosecutors make a high level of Code-compliant decisions which contributes to our overall assessment of added value as detailed in the table above.

1.12. We found that the Area handles correspondence from the courts, defence and police in a timely way. It is also timely in its requests of the police for additional material after charge and of its reviews of new material received from the police after charge. The warning of witnesses for trial, addressing correspondence from the witness care units, compliance with Judges' orders or directions at the Crown Court and the compliance with its disclosure obligations were also generally dealt with in a timely manner, contributing to public confidence. The effective and timely management of these tasks contribute to our overall assessment of the grip the Area demonstrates in its casework.

1.13. The Area has effective stakeholder relationships, and these have improved with closer working on delivery during the pandemic. Internally the senior leaders have a clear grasp of the challenges to be addressed to improve casework quality, however some aspects highlighted in the report show that the Area has room to make some improvement.

1.14. Notably, the Area needs to improve the quality and clarity of prosecutors' reviews at both the pre-charge and post-charge stages. This includes the need to improve consideration of trial strategy, bad character and hearsay

applications, and applications and ancillary matters to support victims and witnesses. Linked to this, there is also room for improvement in the recording of disclosure decision-making, and the quality of guidance given to the police when defence case statements are sent. More focus is also needed to improve the quality of pre-charge action plans given to police to carry out further enquiries or provide additional material.

1.15. We found that the quality of instructions given by charging prosecutors to advocates conducting the first court hearing after charge, or those given to counsel appearing for the prosecution at the Crown Court plea and trial preparation hearing (PTPH), including instructions on the acceptability of pleas, requires improvement. The effectiveness of the preparation for the first hearing in those cases likely to go to trial in the magistrates' courts could also be improved, as sometimes the provision of hard media to the defence was delayed and instructions on the acceptability of pleas was not provided.

1.16. Some of these aspects for improvement could be seen simply as a matter of improving record keeping. We do not share this view. A consistently high standard of recorded case analysis and disclosure decisions promotes legal rigour and is more likely to identify flaws in reasoning before a decision is made, or to identify weaknesses or other issues in the case that need addressing. A good standard of reviews also reduces the need for later reworking by others and allows legal managers to understand how those they manage are arriving at their legal decisions and, thus, identify development or training needs.

1.17. We found that the Area has carried out a significant amount of work aimed at improving casework quality and case progression in the recent past, and we saw evidence that it has already identified most of the aspects for improvement that we have highlighted above. We are confident that, as the pressures brought by the pandemic ease, the Area is in a good position to allow it to act on our findings and to deliver improvements, adding greater value in its casework.

Casework themes

1.18. We examined the cases in accordance with five casework themes to allow us to set out our findings in greater detail. The themes fed into the scores for added value and grip¹. The themes were pre-charge decisions and reviews, post-charge reviews, preparation for the plea and trial preparation hearing (Crown Court and RASSO only), disclosure, and victims and witnesses.

¹ See annex F for scoring methodology.

Pre-charge decisions and reviews

1.19. Compliance with the Code for Crown Prosecutors requires charging lawyers to assess the material supplied by the police and to apply the two-stage test. The first stage is deciding whether there is sufficient evidence for a realistic prospect of conviction and the second is whether a prosecution is required in the public interest. Only if both stages are met should the lawyer decide to charge. We describe as wholly unreasonable any decision that is not compliant with the Code for Crown Prosecutors, and where it is one which no reasonable prosecutor could have made in the circumstances in which it was made, and at the time it was made or ought to have been made.

1.20. In our file sample, we found that 95% of the Area's 80 charging decisions² complied with the Code for Crown Prosecutors at the pre-charge stage. Within the different teams, the Code compliance rates were:

- magistrates' court cases 100%
- Crown Court cases 88.6%
- rape and serious sexual offences (RASSO) cases 100%.

1.21. While getting the initial charging decision correct is essential, clear analysis of the material and setting out a thoughtful case strategy are fundamental to the efficiency and effectiveness of the subsequent stages to support the initial application of the Code for Crown Prosecutors and selection of charges as the case moves through the criminal justice system. A case strategy should encompass what the case is about or 'tell the story' and should set out how potentially undermining material, such as material impugning the credibility of a victim or witness, can be addressed.

1.22. Overall, we rated 17.5% of the Area's charging reviews as fully meeting the standard for a proper case analysis and strategy, 60% as partially meeting the standard, and 22.5% of cases examined as not meeting the standard. Our findings show that there is room for improvement, as fewer than one in five cases were rated as fully meeting the standard. To improve, the Area needs to ensure that cases contain a careful legal analysis, as well as evidence that prosecutors are addressing strengths and weaknesses when making pre-charge decisions. Cases should have a clear consideration of any undermining material and set out the factual basis on which the prosecutor has decided to charge.

² At the pre-charge stage we assessed only the cases charged by Area prosecutors and excluded those charged by the police and CPS Direct, the out-of-hours national service.

1.23. Generally, prosecutors selected appropriate charges but there were two further aspects of the pre-charge stage that require improvement. The first is in the quality of the instructions and guidance given by the charging prosecutor to the advocate conducting the first hearing at the magistrates' courts. And the second is in the quality of action plans given to the investigator before a charging decision is made.

1.24. Not setting out a clear case strategy or analysis of the strengths and weaknesses of the case does not add value. It can result in duplication and unnecessary use of resources as prosecutors return to cases multiple times to address issues as they are raised rather than addressing them clearly from the outset. A failure to address key issues – including outstanding reasonable lines of enquiry, likely issues that may be raised by the defence, and victim and witness issues – at this early stage can impact on the overall quality of the prosecution.

Post-charge reviews

1.25. As with pre-charge reviews, the quality of ongoing reviews and strategy is of critical importance to the effective and efficient progress of cases through the criminal justice system.

1.26. In our file sample, we found that 94.4% of the Area's 90 post-charge decisions complied with the Code for Crown Prosecutors. Within the different teams, the Code compliance rates were:

- magistrates' court cases 96.7%
- Crown Court cases 90%
- RASSO cases 100%.

1.27. Overall, we assessed that a third of the Area's initial post-charge reviews contained a proper case analysis and case strategy. We rated a third as partially meeting the standard and another third as not meeting the standard. Although a higher proportion of these reviews fully met the standard compared to those at the pre-charge stage, our findings again show that there is room for improvement in the legal rigour required at this important stage of the proceedings.

1.28. Breaking this down, cases charged by the CPS that are identified as likely to attract not guilty pleas and be heard at the magistrates' courts require a further review before the first hearing, unless certain criteria are met. These include that the charging prosecutor has dealt with unused material and completed an effective trial form containing all the necessary information for

there to be an effective first hearing. We assessed 13 of these reviews (43.3%) as fully meeting the standard, eight (26.7%) as partially meeting it, and nine (30%) as not meeting it.

1.29. For Crown Court cases, including RASSO, a review should be carried out after the case has been sent from the magistrates' courts and before the PTPH in the Crown Court. This review should address various aspects including checking the pre-charge review and updating the analysis and strategy, considering or chasing further material received from the police, and responding to any correspondence received after charge. The CPS requires its prosecutors to carry out a review at this stage as it ensures the case is proactively managed and that the CPS is fully prepared for the PTPH.

1.30. For Crown Court (non-RASSO) cases, we assessed nine of these reviews (22.5%) as fully meeting the standard, 15 (37.5%) as partially meeting the standard, and 16 (40%) as not meeting it. For RASSO cases, we assessed eight of these reviews (40%) as fully meeting the standard, seven (35%) as partially meeting it, and five (25%) as not meeting it.

1.31. Post-charge reviews should also be carried out at other stages during the case: in Crown Court cases (including RASSO cases listed before the Crown Court) a review should be conducted when the prosecution is required to serve the full evidence upon which the prosecution is to be based. This is also the deadline for service of initial disclosure (the unused material that, at that stage, is deemed capable of either undermining the prosecution case or assisting the case of the accused). Also, by this point, additional material should have been submitted by the police to allow the prosecution to review it before being served on the defence.

1.32. We assessed 22.9% of these service reviews as fully meeting the standard in Crown Court cases, and 40% as not meeting it. For RASSO cases, the findings were 35.3% and 23.5% respectively. The rest of the cases were assessed as partially meeting the standard.

1.33. As cases progress, things can change that impact on whether or how a prosecution should be brought. If there is a fundamental change due to the receipt of additional information then a prosecutor should review the case again to ensure that it still complies with the Code for Crown Prosecutors, that the charges remain appropriate, that the change does not require additional lines of enquiry to be raised, and that the case strategy does not require revision. An effective review at this stage can add real value.

1.34. A higher percentage of Crown Court and RASSO significant development reviews were rated as fully meeting the standard than those at the

service stage. We assessed 14.3% of service reviews in RASSO cases as not meeting the standard, and almost half of the Crown Court reviews as not meeting the standard.

1.35. Our findings on the quality of reviews do need to be seen in the context of the huge increase in live caseloads that the Area has had to handle since March 2020. Inevitably this has meant that prosecutors have less time to dedicate to individual tasks, and that Area has had to move some resource across its teams, as well as induct newly recruited prosecutors, which inevitably has implications in terms of training and development.

Our findings on the quality of reviews do need to be seen in the context of the huge increase in live caseloads that the Area has had to handle since March 2020

1.36. But our findings highlight an inconsistent approach to post-sending reviews with insufficient value being added in many cases. This was most prevalent in the Crown Court cases we examined. Sometimes this was because there was no review, and sometimes this was because the review consisted simply of an adoption of an earlier review, where there were matters that either had not been previously addressed adequately or where

there was additional material or information that needed to be considered. These represent lost opportunities for the prosecutor to have added value to these cases.

1.37. Throughout the life of the case, the prosecution should consider what application to make to the court about a defendant's bail or custody status, when to seek bail conditions and what conditions are appropriate. While ultimately a matter for the court, these considerations are an extremely important part of keeping victims, witnesses and the public safe.

1.38. In this respect, we rated half of cases as fully meeting the standard and 40% as partially meeting it. Analysing the cases in detail, we noted that charging prosecutors often failed to consider the bail position at all, or to address the merits of an application for a remand in custody or a bail appeal, should that become necessary. This meant that no clear prosecution position was established at the start of the prosecution and that inadequate instructions were provided for the prosecutor who would conduct the first hearing.

1.39. An analysis of the cases we examined does not suggest that those appearing for the prosecution in court are routinely making inappropriate bail decisions. However, the failure to actively consider the position at the pre-charge stage, when the evidence and background information is being reviewed in

detail, increases the risk that the interests of victims and witnesses may be compromised, and errors made.

1.40. Across the Area's casework we found that prosecutors accepted appropriate pleas, including a clear basis of plea, in seven (53.8%) out of 13 cases. We assessed four cases (30.8%) as partially meeting the standard, and two cases (15.4%) as not meeting it. For cases in the latter two categories, inspectors found it difficult to understand the rationale behind the decision as this had either not been recorded or the explanation was inadequate.

1.41. We examined 37 cases where bad character or hearsay applications were required to strengthen the prosecution case. We rated 16 of these (43.2%) as fully meeting the required standard, 15 (40.5%) as partially meeting it, and six (16.2%) as not meeting it. Five of the six cases rated as not meeting the standard were Crown Court (non-RASSO) cases and the prosecution failed to make a required bad character or hearsay application.

Preparation of cases for the plea and trial preparation hearing in the Crown Court³

1.42. There are key tasks that the prosecution should perform before the plea and trial preparation hearing (PTPH), including preparing the indictment, uploading the prosecution case papers to the Crown Court digital case system (DCS), engaging with the defence and instructing the advocate properly. Completion of the PTPH form is a fundamental aspect of preparation for the hearing. Full and accurate information from the prosecution and defence allows the court to manage the case effectively and make the relevant orders required to progress the case to trial.

1.43. PTPH forms were completed for all the Crown Court cases we examined, including RASSO. We assessed about half as fully meeting the standard, with the remainder partially meeting it. The most common reason for inspectors finding that the standard was only partially met was a failure to address the issue of acceptable pleas.

1.44. We found that the draft indictment and key evidence were served in a timely manner before the PTPH in most of the Crown Court and RASSO cases we examined. While indictments were served in a timely manner, our assessment of indictment quality found that 65% of indictments were fully meeting the standard and 6.7% were not meeting the standard. The remaining cases (28.3%), which we rated as partially meeting the standard, involved some

³ This theme only relates to Crown Court cases and RASSO cases listed before the Crown Court.

remedial work being carried out at the PTPH or later. The Area should tighten this aspect of case preparation to avoid unnecessary duplication of effort.

1.45. In the majority of cases, prosecutors made some effort to engage with the defence before the PTPH, which is a central pillar of the better case management scheme. However, despite their efforts, we found very few examples where the defence had responded in any way before the hearing itself. This may be as a result of many defence firms furloughing staff during the pandemic.

1.46. Although almost half of RASSO cases included a 'bespoke instruction to counsel' document, only one out of seven of these were rated as fully meeting the standard. For the Crown Court cases, two out of 26 contained such a document, and neither of these was rated as fully meeting the standard. As pressures ease, the Area may wish to focus on improving the timeliness of briefing counsel and re-establishing the requirement to provide counsel with specific instructions for the PTPH to accompany the case papers.

1.47. Finally, we found that there was variable performance when it came to providing the defence with all relevant hard media (CCTV, officers' body worn footage, and video recorded interviews) before the PTPH. In more than a quarter of Crown Court cases, and half of RASSO cases, this was not done effectively.

Disclosure of unused material

1.48. For justice to be served, it is vital that the police and CPS comply with their duties in relation to material that does not form part of the prosecution case (called unused material). There are specific processes, rules, and a wealth of guidance for disclosure, including for handling sensitive and third-party unused material. The police have duties to retain, record and reveal material to the CPS, which then must decide what unused material meets the test for disclosure to the defence. The test is whether the unused material is something "which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused". If it is, it is disclosable. The defence is told about all non-sensitive unused material and is given copies of or access to material that meets the test for disclosure. This is initial disclosure.

1.49. The defence may in the magistrates' courts, and must in the Crown Court, serve a statement setting out the defendant's case. This should be reviewed by the CPS and police, and any additional non-sensitive unused material that meets the test must be disclosed, as continuing disclosure.

1.50. Sensitive material that meets the disclosure test can be subject to an application to the court to withhold it and, if this is granted, the prosecution need not disclose it.

1.51. CPS South East is generally performing well in respect of its timeliness in complying with its disclosure obligations at the initial stage across the range of casework we examined. Although this performance was not as consistently high when it came to continuing disclosure, for most of those cases where disclosure was later than it should have been, there was no adverse impact on the case.

1.52. We acknowledge that prosecutors are sometimes hampered by the quality of the disclosure schedules they receive from the police, with 42.4% of these being rated as fully meeting the required standard across the three casework strands. However, we found that there is some room for improvement in respect of the quality of decision-making about disclosure by prosecutors. The percentage of cases where we assessed that prosecutors were not meeting the standard for compliance with their disclosure duties was relatively small (16% at the initial stage and 9.1% for continuous disclosure), but we rated 49.4% of cases as partially meeting the standard for initial disclosure and 40.9% as partially meeting the standard for continuous disclosure.

1.53. The most common reasons inspectors found that disclosure of unused material was not fully meeting the standard were a failure to identify that obvious items of unused material did not appear on the schedules, a failure to identify reasonable lines of enquiry, using the wrong endorsements (for example using CND⁴ when it was not possible to make this assessment from the description), and assessing material as not disclosable when it clearly met the test.

1.54. We also found that sensitive schedules were not always being given the attention that they required.

Victims and witnesses

1.55. The CPS's commitment to support victims and witnesses sets out that the "fundamental role of the Crown Prosecution Service (CPS) is to protect the public, support victims and witnesses, and deliver justice. The CPS will enable, encourage and support the effective participation of victims and witnesses at all stages in the criminal justice process". It is a new framework that provides prosecutors with easy access to all the key considerations that they should reflect in their dealings with victims and witnesses.

1.56. Early focus on relevant applications and ancillary matters to support victims and witnesses is important. The measures available can support victims

⁴ Clearly not disclosable.

and witnesses from the outset, providing certainty about the trial process and reducing the anxiety of the unknown in being called to give evidence

1.57. Overall, we found that the Area is performing well in respect of the service it gives to victims and witnesses, although improvement is required when it comes to the active pre-charge consideration of applications and ancillary matters to support them, including consideration of special measures. We also found that some opportunities were missed in the Crown Court to provide reassurance to some victims and witnesses by making a special measures application at the PTPH rather than later in the case. Early applications can provide reassurance to victims.

1.58. There is good performance in respect of the timely warning of witnesses, efficient handling of correspondence from the witness care units, prosecutors seeking appropriate orders on sentencing, and consultation with victims and witnesses.

1.59. The timeliness of the Area's letters to victims where the case had been dropped, or the charge substantially altered, was variable, with almost 40% of letters being late. In terms of quality of the letters sent to victims, while only three out of 22 were rated as not meeting the standard, we rated ten as partially meeting the standard. We know that the Area has carried out a lot of work recently on the timeliness and standard of its letters to victims and we will be interested to compare our findings when we return in two years' time.

2. Context and background

Background to the inspection

2.1. HMCPsi last inspected Crown Prosecution Service (CPS) Areas in the Area Assurance Programme (AAP) between 2016 and 2019. At that stage, although good performance was identified in some aspects, such as leadership and financial management, the assessments highlighted that the core elements of the CPS's business – legal decision-making and case management – needed more attention to achieve compliance with the CPS's quality aspirations and what the public ought reasonably to expect.

2.2. Since 2019, the thematic inspections we have carried out – notably the charging inspection⁵, serious youth crime⁶, and our disclosure follow-up⁷ – have reached similar findings, suggesting that more remains to be done to improve aspects of casework quality. We therefore decided to focus our geographical inspections of the CPS on casework quality. Other aspects of Areas' work, such as strategic partnerships and digital capability, will be addressed only to the extent that they impact on casework quality.

2.3. On 12 August 2019, the Government announced that the CPS would be allocated £85 million in additional funding over a two-year period. To determine if the additional resources have had a material impact on casework quality, we are inspecting all 14 Areas to provide a baseline, and will follow up in each Area at least once, no earlier than 24 months after their baseline inspection. This will enable us to report on the use made of the additional resources, as well as other improvements made through training and casework quality measures.

2.4. This report sets out the findings of the initial baseline inspection of CPS South East, assessing current performance against the inspection framework and deriving scores from the judgements on the added value and grip displayed by the Area in their casework. The scoring mechanism is set out in more detail in Chapter 3 and annex F.

2.5. A complicating factor in establishing a baseline and assessing current performance is the very real and ongoing pressures on the CPS as a result of the global Covid-19 pandemic. We were mindful of potentially adding to the burden faced by the CPS, but it is the role of HMCPsi, as a criminal justice

⁵ *Charging inspection 2020*; HMCPsi; September 2020.

www.justiceinspectorates.gov.uk/hmcpsi/inspections/charging-inspection-2020/

⁶ *Serious youth crime*; HMCPsi; March 2020.

www.justiceinspectorates.gov.uk/hmcpsi/inspections/serious-youth-crime/

⁷ *Disclosure of unused material in the Crown Court – a follow-up*; HMCPsi; December 2020.

www.justiceinspectorates.gov.uk/hmcpsi/inspections/disclosure-of-unused-material-in-the-crown-court-a-follow-up/

inspectorate, to report on the effectiveness and efficiency of the agencies it inspects. This inspection programme needs to reflect the pressures and burdens being faced by the CPS, but equally has to weigh compliance with the requirements for high-quality legal decision-making and case management. This is what the public deserves. Our findings and scores will therefore be based on existing expectations and standards. But where the pressures of the pandemic have had a material impact, we will set out relevant and clear context to enable better understanding of the Area's performance.

The current landscape and the Covid-19 pandemic

2.6. The global pandemic has had a significant impact on the CPS and the wider criminal justice system. Court closures during the first UK-wide lockdown from March to May 2020 resulted in significant backlogs in cases awaiting hearings and an increase in caseloads for all case types within the CPS. Since the initial lockdown, there have been more national and local lockdowns across the UK.

2.7. In June 2020, we published a report (CPS response to COVID-19: 16 March to 8 May 2020⁸) on the response of the CPS to the first lockdown. We reported how the CPS had been able, with a high degree of efficiency and success, to move most office-based activities to remote digital working. The report also highlighted that some police forces had taken the opportunity of the first UK lockdown and the consequent reduction in the level of crime to work on long-running cases and clear case backlogs. These cases came into the system as pre-charge receipts and increased the number of cases in Areas, and court backlogs.

2.8. From June 2020, prosecutors attended many magistrates' courts hearings in person to prosecute cases, including trials, as well as using the cloud video platform (CVP), Her Majesty's Courts and Tribunals Service video application, to facilitate remote hearings. There has been a drive to reduce the backlogs in the magistrates' courts, which has been successful but has brought with it added pressures for the CPS to deal with an increased number of cases within a short period of time with the same resources.

2.9. In the Crown Court, at the early stage of the pandemic, most hearings were confined to administrative hearings using CVP, with trials only starting to be listed in nine Crown Court centres. By September 2020, jury trials were being

⁸ *CPS response to COVID-19: 16 March to 8 May 2020*; HMCPSI; June 2020. www.justiceinspectorates.gov.uk/hmcpsi/inspections/cps-reponse-to-covid-19-16-march-to-8-may-2020/

heard in 68 of the 81 Crown Court centres. Nightingale courts⁹ were also set up as one of the measures to address the growing backlogs of Crown Court cases. Twenty-seven such courts have been set up to date (at time of writing), with a further four existing court venues being redeployed to hear Crown Court cases, totalling an additional 63 court rooms across England and Wales. In CPS South East, Nightingale courts sat in the former Chichester Crown Court and in Mercure Maidstone, Great Danes Hotel, taking work from the Crown Court at Lewes and Maidstone.

2.10. In March 2021, we published a report¹⁰ looking at the CPS's response to the continuing pandemic, with a focus on how it was coping with increased caseloads and backlogs. All Areas saw an increase in their caseloads, although not all were equally affected. For charging, for example, one Area's caseload increased by 13.6% between April and June 2020, while another Area saw an increase of 30.3%. Although in September 2020, for the first time in the pandemic, more magistrates' court cases were finalised than were being received, by December 2020 the number of magistrates' court cases in the CPS nationally was still 70% higher than pre-pandemic. In the Crown Court, caseloads were increasing pre-pandemic, and Covid-19 exacerbated that. Caseloads nationally rose from 37,700 in April 2019 to 45,300 by March 2020, and as at December 2020, stood at 64,500 cases.

Impact on the Area

2.11. CPS South East was affected, as were most other Areas, with significant backlogs in both magistrates' and Crown Court cases as a result of the closure of courts and increase in caseloads during the initial UK-wide lockdown. As an illustration of this, in February 2020, the Area's magistrates' live caseload was just over 3,000. By August, this had more than doubled to around 7,500. In the Crown Court, the live caseload increased from around 2,500 in February 2020 to around 4,000 in December 2020.

2.12. We heard from the Area that the volume of cases sent to the CPS for pre-charge decisions from its three police forces, Kent, Surrey, and Sussex, significantly increased after the first lockdown.

⁹ Nightingale courts were set up in venues other than traditional court centres to provide temporary extra courtroom capacity to help deal with the impact of the pandemic.

¹⁰ *CPS response to COVID-19: dealing with backlogs*; HMCPsi; March 2021. www.justiceinspectorates.gov.uk/hmcp/inspections/cps-response-to-covid-19-dealing-with-backlogs/

2.13. Table 2 illustrates this point by comparing the recorded magistrates' and Crown Court receipts for the three months immediately before the first national lockdown with the corresponding data for the three months afterwards.

Table 2: Receipts before and after the first national lockdown

	December 2019 to February 2020	March to May 2020
Area receipts	2,596	3,225

2.14. It is apparent from the charging data we have seen that these increased levels of pre-charge casework receipts continued until November 2020. However, since then receipts have levelled off and are moving back towards pre-pandemic levels.

2.15. This upward trend of casework receipts during 2020 applied equally to rape and serious sexual offences (RASSO) cases referred to the Area after the first national lockdown. In the three months up to that point, 99 cases were referred by police to the Area for a pre-charge decision. In the three months following, there were 162 cases referred, an increase of almost 40.0%. This significant increase in RASSO casework has continued since then, with 292 cases being received by the CPS for the three-month period February to April 2021. This is almost three times the number received in the immediate pre-pandemic three-month period.

2.16. In relation to the magistrates' and Crown Court work, the Area responded to this increase in a number of ways. This included instructing counsel to provide some pre-charge advices; increased use of agents to prosecute in the magistrates' courts; redeploying its crown advocates to deliver pre-charge advice and review work; recruiting secondees; and offering overtime opportunities to staff.

2.17. During the post-lockdown period, the Area has used tools to work remotely to ensure that it could continue operational delivery. For example, it is using the cloud video platform (CVP) – which is an HM Courts & Tribunals Service (HMCTS) application to facilitate remote hearings – and Microsoft Teams for such things as conference calls.

2.18. From the strategic partnership documents that we have seen, the Area has clearly worked closely and effectively with partners to cope with the added pressure that increased caseloads and court backlogs have brought, as well as to preserve the safety of its staff when attending courts and, in the longer term, to recover from the effects of the pandemic.

2.19. On inspection we heard that the magistrates' court backlogs were reducing, although they remain higher than before the pandemic. By the end of

March 2021, the Area was finalising more magistrates' court cases than it was receiving. This downward trajectory partially reflects the work that the Area has carried out with its strategic partners to tackle the challenges of the pandemic.

2.20. Crown Court backlogs¹¹ however remain considerably higher than pre-pandemic levels, owing to the increased numbers of cases entering the system and those cases taking significantly longer to conclude. Unlike in the magistrates' courts, at the end of March 2021, the Area was still receiving more cases than it was finalising (1.49 cases being received for each one being finalised).

2.21. Although the number of Crown Court cases awaiting trial remains a significant issue, the Area continues to work closely with strategic partners to reduce the backlogs through the use of the CVP and measures being put into place to facilitate longer, multi-handed trials.

2.22. The cumulative effect of the increased caseload in real terms, plus cases taking longer to conclude, is illustrated by data showing that at the end of March 2021, the Area's existing live magistrates' and Crown Court caseload involved 10,619 defendants. The equivalent figure for the end of March 2020, just after the first national lockdown, was 5,638. This represents an 88% increase in live caseload over the year.

2.23. This data also needs to be seen in the wider context of the personal effect that the pandemic has had, and the additional external pressures that some Area staff will have faced. It is also evident that the longer a contested Crown Court case remains live the more work is required. This is because of the additional work involved in monitoring custody time limits and making applications to extend where it has not been possible to hold the trial within the statutory period, or because of prosecutors' duty of continuous review.

2.24. While we consider that the Area's approach to dealing with the backlogs has been impressive, we recognise that a court backlog is not simply something that can be worked through and cleared by increasing resources. Of course, it helps to have more resources, but increasing the numbers of courts also brings extra pressures. Additional court sittings require prosecutors and paralegals to be available, and more work in advance of the listing to ensure that cases are ready to progress or for trial. This means more work by a finite number of staff,

¹¹ The workload carried over figure in the Crown Court remained relatively steady until June 2020 when it started to climb, peaking in November 2020 at 2,700 and maintaining a level above 2,500 thereafter. For context, the average for the preceding 12 months was 1,750.

against a backdrop of the pandemic pressures on staff, such as illness, isolation, home-schooling and other child and family caring responsibilities.

Performance data

2.25. The CPS has a suite of internal performance measures, some designated as high weighted, against which each Area is measured. While we have considered the performance data available, our assessment of the quality of CPS South East's casework is based on our file examination. This focused on the effectiveness of the CPS's actions against their own standards around the quality of legal decision-making and case management, which is solely within the control of the CPS. It is from this alone that the inspection scores have been awarded.

2.26. While outcomes, often reported as performance measures, are of course important, this inspection programme focuses on how the CPS can increase the value it adds and improve their grip on casework.

2.27. Outcomes reflected in internal performance measures can be affected positively or negatively by external factors, such as the impact of police file quality, listing practices, local defence culture and other aspects that can influence the operation of the criminal justice system. It is also important to bear in mind that a conviction does not necessarily mean that the prosecution has handled the case well, or achieved the successful outcome that it could have if it added more value or gripped the case better. Conversely, an acquittal or discontinuance can arise in cases that have been handled properly and effectively, both from a legal and case-progression perspective.

3. Framework and methodology

Inspection framework

3.1. The Area inspection programme (AIP) framework has been designed to focus on the CPS's delivery of quality casework, which is its core function and one of the five strands of the CPS 2025 strategy¹². To do this, we are examining 90 cases from each Area, which will form the basis of our findings, judgements, and scoring. The inspection will include an assessment of the other four strands of CPS 2025 (people, digital capability, strategic partnerships, and public confidence) only in so far as they impact on, support, and promote casework quality.

3.2. The inspection framework is set out in full in annex A.

Methodology

File examination

3.3. The primary evidence for our findings and judgements comes from the examination of 90 cases from CPS South East. We looked at 30 magistrates' court cases, 40 Crown Court cases, and 20 cases involving rape and serious sexual offences (RASSO). We recognise that 90 files is not statistically significant in relation to the Area's caseload, but long experience shows us that it is sufficient to identify what is working well, and what the themes or issues are when the need for improvement is indicated.

3.4. The file sample composition is set out in annex E. We selected the cases according to these criteria to ensure the same balance for each Area of successful and unsuccessful outcomes, and of sensitive and non-sensitive case types. We chose live cases for 10% of the file sample, to enable us to examine cases that were impacted by pandemic pressures, particularly pressures in listing practices. The remaining 90% were cases finalised between 1 January 2021 and 30 March 2021, except for four files that were finalised during the previous quarter. Within these criteria, cases were chosen at random.

3.5. Each case was examined by an experienced legal inspector against a set of 60 questions, with guidance to ensure a common understanding of how to apply the questions to the cases. The work was assessed as fully meeting the expected standard, partially meeting the standard or not meeting the standard.

¹² CPS 2025 is the CPS's strategy and vision for where it wants to be in 2025. www.cps.gov.uk/sites/default/files/documents/publications/CPS-2025-strategy.pdf

3.6. HMCPsi house style is to round figures to a single decimal point, so where percentages are cited, they may not total 100%.

Other inspection activity

3.7. We asked CPS South East to send us a range of documents across all aspects of the framework. We reviewed these with a focus on the evidence that shed light on the Area's delivery of high-quality casework.

3.8. We also attended (virtually) the Area's casework quality committee (CQC) meeting on 14 June 2021 to better understand both how the Area itself views its casework quality and the work it is doing to ensure continuous improvement.

3.9. After examining the files, we produced a summary of our preliminary findings, mainly from the files, but supplemented by evidence from the documents and attendance at the CQC. We sent this assessment document to the Area in advance of a meeting to discuss its contents with senior managers. At the meeting, the Area was able to put findings in context, explain more about the pandemic and other pressures they were dealing with, and supply further evidence where necessary.

Quality assurance

3.10. This programme of inspections has been developed in consultation with the CPS, including three Chief Crown Prosecutors who provided helpful feedback on the framework, methodology and context.

3.11. In line with our methodology¹³, we held consistency exercises for our inspectors on the question set and guidance, and we invited staff from several Areas, including CPS South East, to these sessions. Our file examination assessments were then subject to internal quality assurance, which included data checks and dip-sampling. Dip samples were then checked to ensure consistency of approach.

3.12. As set out in detail in our methodology, we follow a robust process for quality assurance of cases where we reach a provisional conclusion that a decision to charge, proceed to trial, accept pleas, or discontinue was not in compliance with the Code for Crown Prosecutors. The process involves two stages of internal review and at least one, and up to three, stages of consultation with the CPS on our provisional finding. The number of external stages depends on whether the Area agrees with our provisional finding and, where we cannot

¹³ *Inspection handbook*; HMCPsi; January 2021.
www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2021/02/HMCPsi-Inspection-handbook.docx

agree, how many stages the Area wishes to invoke. Ultimately, the decision is ours.

3.13. The Area assessment document, containing our preliminary findings, was reviewed by the Deputy Chief Inspector (Inspections) (DCI(I)). A 'check and challenge' session was held between the DCI(I) and the team prior to us attending the meeting with the Area's senior managers to discuss the findings.

Scoring

3.14. Historically, HMCPSI has awarded a single score to a CPS Area at the conclusion of an Area inspection: excellent, good, fair, or poor. While this provided an overall score, which was easily accessible to those reading the report, it did not always reflect the variety of findings we found in each Area, and across the Areas.

3.15. In this inspection, with the focus on casework quality, we have assessed whether the Area has added value to the prosecution through good, proactive prosecution decision-making and whether the Area has gripped case management. These two aspects of the Area's casework handling are scored as percentages for each of the three types of casework examined within this inspection: magistrates' courts casework, Crown Court casework and rape and serious sexual offences (RASSO) casework. The scores are derived solely from our file examination.

3.16. We assessed how well CPS South East met the standards against a question set comprising 60 questions¹⁴ covering all stages of the case, from pre-charge to case conclusion. Inspectors applied ratings of fully meeting the standard, partially meeting the standard or not meeting the standard to the questions for each case, applying the CPS's own casework standards. The exceptions were the questions on pre-charge and post-charge Code compliance, and police file quality, where the inspector had the choice of answering 'fully meeting' or 'not meeting'; and two questions relating to the reasons for 'partially meeting' or 'not meeting' ratings for handling of initial and continuing disclosure.

3.17. In reaching our assessments around added value and grip, we examined Area cases against a set of questions that we brigaded into casework themes. These are examined in detail within the report to provide a fair and transparent assessment of the work of the Areas across the three types of volume casework assessed. Each theme attracted a score, recorded as a percentage, and calculated in the same way as for added value and grip, which then translated

¹⁴ See annex D for the full question set.

into an assessment of how well the Area met the standard for that specific theme¹⁵.

3.18. By presenting our findings in this way, the CPS, the public and the Attorney General, as the superintending officer for the CPS, will have clarity about Area performance.

¹⁵ See annex F for the scoring methodology and annex G for the questions that contributed to each of the casework themes.

4. Added value and grip

What are added value and grip?

4.1. The Crown Prosecution Service (CPS) is one of a number of key organisations within the criminal justice system. Others include: the police who take reports of and investigate alleged criminal offences; the magistrates' courts and the Crown Court which hear cases and deal with pleas, trials, and sentence; and the defence, who represent defendants.

4.2. The CPS, in many cases, provides advice to the police at the pre-charge stage based on the material gathered by the police during the course of the investigation, and makes the decision whether to prosecute. If the decision is to prosecute, the CPS then reviews the case and prepares it for court, whether that is for a plea, trial, other hearing, or sentence.

4.3. There is a requirement for all parties to work together effectively in the Criminal Procedure Rules 2020 (CPR 2020), which set out the framework within which cases should be progressed post-charge in the criminal courts. The overriding objective of the CPR 2020 is that criminal cases be dealt with justly, which includes cases being dealt with efficiently and expeditiously.

4.4. The CPS sets its own standards for the delivery of high-quality casework to ensure effective and efficient prosecution; it is these standards that we applied when assessing the quality of casework within the Area.

4.5. We broke down casework quality into two key measures, which are first, whether the Area added value with its casework decisions and second, whether the Area gripped its casework. We supported these with five casework themes: charging advice and decision-making; post-charge reviews; preparation for the plea and trial preparation hearing (PTPH) in the Crown Court; disclosure of unused material; and victims and witnesses.

Added value

4.6. We defined added value as the difference made by prosecutors throughout the life of a case through good and proactive prosecution decision-making in accordance with the legal framework at both pre- and post-charge, and throughout the case. We drew on the relevant questions in our file examination that most show added value (these are set out in full at annex G):

- the decision to charge and with what offence
- decisions about admissibility and credibility of evidence

- choosing and drafting clearly and correctly the counts to be faced by defendants on indictment in cases to be heard at the Crown Court
- good quality reviews including, at all stages, a cogent and clear analysis of the case. This includes whether in each case the prosecutor has: analysed the material; identified additional lines of enquiry, including those that might point away from a prosecution, and asked the police to investigate further; considered any defence raised, identified ways to strengthen the case and also addressed how any weaknesses might be overcome; and has devised a clear strategy for trial in contested cases – by this we mean how the case will be presented at trial;
- appropriate handling and decision-making around unused material throughout the case
- effective consideration and decision-making around victim and prosecution witness issues, including seeking appropriate orders to protect the victim, witnesses and the public
- robust and fair decisions about custody and bail
- sound use of applications to strengthen the prosecution case, such as evidence of bad character of the defendant or hearsay evidence¹⁶.

Grip

4.7. When we assessed grip, we considered the effectiveness and efficiency of case progression or management of cases by the Area. We looked at whether the Area demonstrated grip by ensuring that cases have been effectively progressed at each relevant stage, whether required processes have been adhered to, and whether any timescales or deadlines have been met.

4.8. We assessed grip by identifying the questions that had significant impact in terms of case management. The questions that contributed to our overall score and findings for grip (set out in full in annex G) included:

- timeliness of reviews including timeliness of any decisions to discontinue cases
- effective preparation for first hearing, including the sharing of hard media
- compliance with court orders

¹⁶ A statement not made in oral evidence that is evidence of any matter stated s114(1) Criminal Justice Act 2003.

- conferences, where mandatory in rape and penetrative sexual offence cases
- appropriate and timely handling of correspondence from the court and defence
- timely and effective handling of additional police material, including requests for editing or additional material and escalation of outstanding material where required
- timely and effective handling of witness care unit correspondence
- clear audit trails of all aspects of casework on the CPS's case management system.

Added value and grip scoring

4.9. The scores for added value and grip are set out as percentages. They were obtained by taking the questions that feed into the aspect (added value or grip) and allocating two points for each question in each case that was marked as fully meeting the expected standard. We allocated one point where a question was marked as partially meeting the standard, and no points for answers of not meeting the standard. We then expressed the total points awarded as a percentage of the maximum possible points. Not-applicable answers were excluded.

4.10. Applying this mechanism, we have scored CPS South East as follows:

Table 3: Added value and grip scoring

CPS South East	Added value	Grip
Magistrates' courts casework	67.4%	66.8%
Crown Court casework	61.2%	74.1%
Rape and serious sexual offences	70.7%	80.7%

Magistrates' courts casework added value and grip

4.11. The pandemic has led to a significant rise in the Area's magistrates' courts caseload owing to an increase in the volume of cases referred by the police for a charging decision. Like the Crown Court, the detrimental effects on the courts' capacity to list cases has meant that cases are also staying in the system longer before being concluded.

4.12. Our findings should be seen in the context of prosecutors carrying significantly heavier magistrates' courts caseloads than before the first national lockdown. Prosecutors and operational delivery staff therefore have had

significantly more tasks to perform, which inevitably will have reduced the average time they had to dedicate to each one.

4.13. We heard that there had been a transfer of experienced legal resource from the magistrates' courts team to deal with the Crown Court casework. At the same time, the Area has had to induct and train new prosecutors and operational delivery staff over the past 18 months, and for prosecutors this induction and training has generally been within the magistrates' courts team.

4.14. We found that in all magistrates' court cases charged by Area prosecutors, the Code for Crown Prosecutors was correctly applied and, for the most part, appropriate charges were selected. Only one post-charge review was not compliant with the Code, which led to a burglary charge against a youth defendant being wrongly discontinued on evidential grounds.

4.15. While the pre-charge and post-charge reviews are usually timely, there is room for improvement in their quality, including when making disclosure decisions.

4.16. Without understanding clearly from a contemporaneous record how prosecutors have made their legal decisions, it is not possible to know whether they have taken into account all relevant factors and demonstrated sound reasoning in reaching their conclusion, including anticipating issues that may cause difficulties or delay at a later date, and taking action or devising a strategy to overcome them. In our view, the CPS must have a proper understanding of how all its prosecutors arrive at their decisions to achieve its 2025 strategy aim of high-quality casework.

4.17. While some cases we examined contained a detailed analysis and strategy that promoted an effective and efficient prosecution, others did not. This sometimes led to reparative work having to be carried out at a later stage, or issues that needed addressing not being identified until very late in the proceedings if at all.

4.18. At the time of our inspection the CPS Central Legal Training team was rolling out a training programme on case review standards to improve performance nationally. This training has begun for CPS South East's prosecutors. However, from the Area documents we have seen and from our discussions with the senior management team, it is clear that it identified the need for prosecutors to improve case analyses some time ago and has made considerable efforts to improve the overall quality of legal reviews. We will be better able to assess the success of the Area's efforts when live caseloads fall back to or near to pre-pandemic levels and it will not have to contend with the unique pressures the pandemic has brought.

4.19. Improvements in the rigour of pre-charge and pre-first hearing reviews should contribute towards the effectiveness of the first hearing at the magistrates' courts, where a not guilty plea is anticipated. Although we found that more than half the cases we reviewed were prepared effectively for that first hearing, when the issues in the case should be clearly identified and a trial date set, almost a quarter were rated as not meeting the standard.

4.20. The grip the Area demonstrated for its handling of magistrates' courts casework scored similarly to our assessment of the value added by the Area. It has in place effective systems to ensure timely completion of tasks at specific stages, such as reviews and initial disclosure. However, as well as improving the overall quality of case reviews, the Area needs to address the linked issue of inconsistent compliance with the requirement for the meaningful completion of pre-first hearing preparation for effective trial (PET) forms by the charging lawyer, as well as the timely and effective sharing of hard media before the first hearing. We recognise that the Area is not always in a position to serve hard media before the first magistrates' court hearing as it does not always know which solicitors represent a defendant until the actual court appearance. Nevertheless, we did identify some room for improvement. We looked at 20 cases involving hard media and in seven of those it was not provided to the defence before the first hearing, when it would have been practicable to do so.

4.21. Ensuring these tasks are completed properly before the first hearing will increase the likelihood of an early plea and better promote effective and more timely management of contested cases from the outset. It will also mean that there will be fewer cases where a further review is required after charge but before the first hearing, thus avoiding duplication of effort.

4.22. Compliance with court directions and handling of correspondence was generally good, although there is still some room for improvement.

4.23. As pressures ease and experience grows within the lawyer and operational delivery cadre, the Area will have the opportunity to improve its grip on these aspects of magistrates' courts casework.

Crown Court casework added value and grip

4.24. The Area told us that the pressures created by the pandemic – notably the increase in Crown Court pre-charge and post-charge live caseloads and the increased number of defendants subject to custody time limits – required them to move experience from the magistrates' courts team, recruit secondees and use crown advocates as an additional resource for charging decisions, trial review and preparation work.

4.25. We were told that the scale of the increase in work and the increased length of time that cases were taking before concluding meant that the Area's focus was on ensuring that tasks were completed. Furthermore, there was simply not the resource available to record full reviews at each of the required post-charge stages (that is, before the preparation for the plea and trial preparation hearing [PTPH]), at the service stage, and where significant further material was submitted by the police.

4.26. While this goes some way to explain why added value in Crown Court cases lags behind that in the magistrates' courts and rape and serious sexual offences (RASSO) casework, the Area acknowledged that the pressures caused by the pandemic are not the sole reason. For example, we rated the prosecutor's pre-charge case analysis and trial strategy as fully meeting the required standard in five out of 35 Area-charged cases. This can create additional work and delays when cases have to be reviewed again to deal with issues that should already have been properly addressed.

4.27. Overall, the quality of case analysis and strategy at both pre- and post-charge stages was rated as not meeting the required standard. This demonstrates the need for development of some prosecutors' legal skills.

4.28. Our discussions with the senior management team and our examination of documents provided to us by the Area, show that it has a clear understanding of this issue and has been proactive in addressing it, as far as the pressures caused by the pandemic have allowed. For example, the following paragraph is taken from the Casework Matters bulletin issued to all its prosecutors following the Area's casework quality committee in April 2021:

'The Casework Quality Committee looked at themes from recent Individual Quality Assessments (IQAs) and a number of these assessments highlighted that, while prosecutors have a good grip of their cases, this is not always evidenced on CMS. As public prosecutors, we need to ensure that we are capturing the reasoning for any significant decisions made on cases, so that we can capture the good work we are doing. Not only will this provide you with an immediate reminder about your rationale for previous decisions, but if there are unexpected absences and anyone else needs to work on the case, they will be able to see what you have considered. Equally, if the case requires further scrutiny or audit, it is vital that decision-making and the reasons for it are recorded clearly.'

4.29. Our findings on added value in the Crown Court suggest that there is a more fundamental issue here than simply a failure by some prosecutors to produce a clear audit trail of their decision-making. However, from what we have heard from the senior management team and read in the documents provided,

we are confident that the Area is in a good position to improve consistency in the level of legal value being added to Crown Court cases once pressures ease and its prosecutors have received the national case review training.

4.30. Improvement in the quality of case reviews should naturally drive improvements in other aspects of casework, such as the quality of instructions to advocates, timeliness of requests to the police for further evidence, and consideration of victim and witness issues.

4.31. We found that the Area has in place clear systems and processes around timely delivery of tasks. This strength is reflected in our assessment that the Area fully meets the standard for its grip on Crown Court casework. This aligns with what the Area told us had to be its focus during the pandemic, namely keeping on top of the rapidly increasing number of casework tasks to maintain the integrity of the operation.

4.32. Decisions were generally made on time, or if not on time then not so late as to adversely affect the effective management of the case. Correspondence from the court, defence and witness care units, and new material from the police, were handled appropriately and effectively overall. There was also timely compliance with court directions and Judges' orders.

4.33. One area for improvement relates to sharing hard media with all parties before the PTPH at the Crown Court. This was not shared in eight of the 28 cases where it was required, which is 28.6% of the total.

Rape and serious sexual offences casework added value and grip

4.34. The Area's rape and serious sexual offences (RASSO) work is dealt with by an experienced team. While it may have been less affected by staff rotation and moves than the magistrates' and Crown Court teams, it has nevertheless had to contend with a large increase in cases being referred to it by its three police forces since early 2020, as well as the increase in live caseload caused by the reduction in court sittings. Notwithstanding the challenge this increase has posed, we rated the Area as fully meeting the standard for its RASSO casework in respect of both the value added and grip it has on its casework.

4.35. In reaching our overall assessment of added value we found evidence of good decision-making under the Code for Crown Prosecutors, that appropriate charges were brought in most cases and prosecutors generally complied with their disclosure obligations.

4.36. However, while we saw some very good examples of good-quality reviews, this was not always the case either at the pre-charge or post-charge

stage. As in other Crown Court work, the reviews sometimes did not contain a clear and well-reasoned analysis of the case and/or a trial strategy. As with the Crown Court team, we found that meaningful post-sending reviews were not always carried out when required. This again may reflect the reality of the Area having to absorb an unprecedented increase of casework in a short space of time, but is an aspect that we will examine closely when we follow up this baseline assessment, by which time it is hoped that the pressures caused by the pandemic will have eased.

4.37. We found the Area gripped its RASSO casework very well, with timely decision-making, timely compliance with court directions or Judges' orders, and effective preparation for the plea and trial preparation hearing (PTPH). We also found good performance in relation to the appropriate and timely handling of correspondence.

The Area's confidence in respect of how well it is gripping its RASSO casework is consistent with our assessment.

4.38. In respect of the timely and appropriate handling of new material from the police, we assessed 15 cases (83.3%) as fully meeting the standard, with the remaining three (16.7%) partially meeting it.

4.39. Correspondence from the court and defence was handled equally well, with 14 out of 17 cases fully meeting the standard and the

other three partially meeting it.

4.40. Requests to the police for additional material, for editing or escalation, were also handled very well, with 17 (94.4%) cases being assessed as fully meeting the standard and the other one partially meeting it.

4.41. There is some room for improvement in two aspects associated with grip. The first is in ensuring that hard media, including video recorded interviews with victims, is served on the defence before the PTPH to drive effective case management (in 50% of cases this was not done). The second is in ensuring that a conference is held with the counsel and the officer in all rape cases at a time when any necessary additional enquiries could be completed in time for the trial. This opportunity to grip rape prosecutions is referenced in the CPS's RASSO policy. In five out of nine rape cases heading towards trial that we examined, no conference was held. The Area told us that the pandemic had made this difficult, but that it was taking steps to improve compliance with this aspect of the policy. We were told that the Area is confident that it nevertheless has a good grip on its RASSO work, as shown by its better-than-average conviction rate. The Area's confidence in respect of how well it is gripping its RASSO casework is consistent with our assessment.

4.42. The duty of direct engagement with the defence (DDE) applies in all cases listed before the Crown Court. We found that this did not happen in about a third of RASSO cases, although the Area explained that there have been issues with defence solicitors being furloughed during parts of the pandemic, making meaningful engagement before the PTPH even more difficult than usual.

5. Casework quality: magistrates' courts casework themes

Introduction to magistrates' courts casework

Does the Area deliver excellence in magistrates' court prosecutions by ensuring the right person is prosecuted for the right offences, cases are progressed in a timely manner and cases are dealt with effectively?

5.1. We examined 30 magistrates' court cases for casework quality, assessing added value and grip, and analysing the cases in the four relevant casework themes.

5.2. We used the same scoring mechanism as for added value and grip (set out more fully in chapter 4 above and in annex F). This uses two points per 'fully meeting the standard' answer to the relevant questions, one point for each relevant question marked as partially meeting the standard and no points for not meeting the standard. These were expressed as a percentage for each casework theme (annex G). We translated the percentage into an overall marking of fully, partially, or not meeting the required standard, based on the ranges set out in annex F.

5.3. We have scored CPS South East for its magistrates' courts casework as follows:

Table 4: Scoring for magistrates' courts casework

Question	Rating	%
Pre-charge decision-making and review		
The Area complies with the Code for Crown Prosecutors ¹⁷ at pre-charge decision stage	Fully meeting the standard	100%
The Area selects the most appropriate charge(s) at pre-charge decision	Fully meeting the standard	85.2%
The Area's pre-charge decisions contain a clear analysis of the case and sets out a cogent case strategy	Not meeting the standard	51%
The quality of post-charge reviews and decision-making		
The Area complies with the Code for Crown Prosecutors post-charge	Fully meeting the standard	96.7%
The Area's post-charge reviews contain a clear analysis of the case and set out a cogent case strategy, including custody and/or bail	Partially meeting the standard	60.8%
Disclosure		
	Partially meeting the standard	62.9%
Victims and witnesses		
	Fully meeting the standard	76%

5.4. Our assessment of magistrates' courts casework is that there were aspects of casework that were done well, including its overall decision-making and care for victims and witnesses. Other aspects require more focus, specifically in respect of the legal value that prosecutors add in their reviews at both pre-charge and post-charge stages, including when considering unused material in a case.

¹⁷ *Code for Crown Prosecutors, 8th edition*; CPS; October 2018.
www.cps.gov.uk/publication/code-crown-prosecutors

Pre-charge decision-making and review

5.5. In order to assess Area performance at pre-charge decision-making, the inspection assessment has been split into three sub-themes. These reflect the different aspects that contribute to effective decision-making at the pre-charge stage namely: compliance with the Code for Crown Prosecutors; selection of the most suitable charges; and the quality of the analysis and case strategy set out within the prosecutor's review.

Complying with the Code for Crown Prosecutors in pre-charge decisions

5.6. We rated CPS South East as **fully meeting the standard** for this aspect of pre-charge decision-making with all the Area pre-charged magistrates' court cases being compliant with the Code for Crown Prosecutors:

Table 5: Pre-charge Code compliance in magistrates' court cases

Rating	Number of cases	Percentage
Fully meeting the required standard	27	100%
Not meeting the required standard	0	0%

5.7. Compliance with the Code for Crown Prosecutors requires prosecutors to assess the material supplied by the police and to apply the two-stage test. The first stage is deciding whether there is sufficient evidence for a realistic prospect of conviction and the second is whether a prosecution is required in the public interest.

5.8. The first, or evidential stage, is an objective test that the prosecutor must consider. It means that a bench of magistrates, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. This is a different test to the one the criminal courts must apply – whether that is a bench of magistrates, a District Judge, or a jury – which is that they should only convict if they are sure of a defendant's guilt.

5.9. Prosecutors must be fair and objective, considering each case on its merits, and it is the duty of the prosecutor to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Prosecutors must ensure that the law is properly applied, that relevant evidence is put before the court and that any unused material that may reasonably be considered capable of undermining the prosecution case or assisting the defence case is disclosed.

5.10. The second, or public interest, stage will only be considered if the prosecutor concludes that the evidential test has been met. If there is insufficient evidence for a realistic prospect of conviction, irrespective of the seriousness of the offence or the impact on an alleged victim or the public, the prosecutor cannot go on to consider the public interest.

5.11. Where there is sufficient evidence for a realistic prospect of conviction, a prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In reaching this decision, prosecutors must have regard to the paragraphs set out in the Code for Crown Prosecutors at 4.14(a) to 4.14 (g).

5.12. A decision that is not compliant with the Code for Crown Prosecutors is said to be a wholly unreasonable decision, that is to say it is a decision which no reasonable prosecutor could have made in the circumstances in which it was made, and at the time it was made or ought to have been made.

5.13. In each of the 27 cases we assessed, the Area prosecutor¹⁸ correctly applied the evidential and public interest stages as required.

Selecting the most appropriate charges

5.14. The facts and circumstances of each case are different and there are often a number of charges that can be considered and selected by the prosecutor. Prosecutors should select charges which:

- reflect the seriousness and extent of the offending
- give the court adequate powers to sentence and impose appropriate post-conviction orders
- allow a confiscation order to be made in appropriate cases, where a defendant has benefited from criminal conduct
- enable the case to be presented in a clear and simple way.

5.15. This means that prosecutors may not always choose or continue with the most serious charge where there is a choice and the interests of justice are met by selecting the lesser charge.

5.16. Prosecutors should not select more charges than are necessary to encourage the defendant to plead to some of the charges, nor should a

¹⁸ As this is an Area inspection, where the charging decision was not made by an Area prosecutor but by the police or CPS Direct, the CPS's out-of-hours pre charge team, the answer was marked not applicable.

prosecutor charge a more serious offence with a view to encourage a defendant to plead to a less serious one.

5.17. Prosecutors are also assisted with the selection of charges in some types of offending by charging standards that are set by the CPS. An example is the charging standard for offences against the person. These help to achieve consistency of approach across CPS Areas in England and Wales in instances where the circumstances of an assault would fit either a charge of common assault by beating – an offence that can be tried only in the magistrates’ courts – or as an assault occasioning actual bodily harm, an offence that can be tried either in the magistrates’ courts or the Crown Court and which attracts a greater maximum sentence.

5.18. We assessed the Area as **fully meeting the standard** for this aspect of pre charge decision making, with 20 (74.1%) of cases fully meeting the required standard, six (22.2%) partially meeting it, and one (3.7%) not meeting the standard. Reasons for not fully meeting the standard for this question included a manual of guidance form 3 (MG3) that advised charging theft of a motor vehicle when none had been stolen, and a failure to charge fraud in addition to theft to reflect the defendant selling the items that had been stolen to a second-hand exchange store.

Quality of the pre-charge decision review including analysis and case strategy

5.19. While getting the initial charging decision correct is essential, a clear analysis of the material and setting out a clear strategy are fundamental to the efficiency and effectiveness of the subsequent stages to support the initial application of the Code for Crown Prosecutors and selection of charges as the case moves through the criminal justice system.

5.20. The prosecutor’s review – which should be recorded on an MG3, or 3A for any subsequent reviews after the first review – should set out a clear and cogent analysis of the material, identifying how the evidential test is met, and setting out a clear case strategy. A case strategy should encompass what the case is about or ‘tell the story’, and should set out how potentially undermining material, such as material damaging to the credibility of a victim or witness, can be addressed.

5.21. A good review that meets the standard will include the following.

- A clear trial strategy. In particular, where there were two suspects or more, the prosecutor considered the case of each one separately and applied the Code individually to all charges, including where joint enterprise is alleged.
- Reasonable lines of enquiry were identified. These can be different from case to case, but often include, for example, the need for scientific evidence or examination of communications, and should also identify those lines of enquiry that may point away from a prosecution. There was a proportionate action plan identifying those reasonable lines of enquiry and setting a realistic target date for completion.
- Issues or defences that could reasonably arise were addressed and the prosecutor articulated how they could be countered.
- Relevant issues of admissibility were addressed, including identification or the significance of hard media.
- The credibility and/or reliability of key witnesses was considered, including previous convictions and past reports to the police. Where a video recorded interview took place, it was properly assessed.
- Relevant CPS policies were followed, for example the domestic abuse policy.
- The charging prosecutor rationally assessed the strengths and weaknesses of the case and any impact they might have, and identified a strategy for how to address any weaknesses.
- Consideration of any ancillary applications that may strengthen the case, such as bad character evidence of the defendant.
- The prosecutor was clear as to the factual basis on which they have decided to charge (rather than simply referring to the police summary that may or may not be an accurate reflection of the evidence).
- Victim and witness issues were considered.
- The competing public interest factors that have been considered, and the rationale for the decision that a prosecution is, or is not, in the public interest.
- Instructions to the court prosecutor were set out clearly.

5.22. Our assessment for this aspect of the casework theme in magistrates' court cases is that the Area is **not meeting the standard**. Overall, the score for the quality of pre-charge reviews, analysis and case strategy is 51%¹⁹.

5.23. We found that the quality of legal analyses and case strategies at the pre-charge decision stage was variable. While the decisions to charge were ones that a reasonable prosecutor could have made, as described above, the responsibilities of the prosecutor providing pre-charge advice to the police and making charging decisions are much wider than that.

5.24. In reaching our overall assessment on pre-charge decision case analysis and strategy, we have taken into account not only our findings from the specific question on the quality of these, but also our findings from the questions relating to several aspects that should naturally form part of a careful legal analysis.

5.25. These include: assessing the effect of any undermining unused material on the prospects of conviction; consideration of victim and witness issues; instructions to the court prosecutor to ensure an effective first hearing and to avoid duplication by the advocate having to read the full case and make decisions about how to proceed; consideration of any ancillary applications that may strengthen the case, such as bad character evidence of the defendant or hearsay; and, where required, a proportionate action plan identifying further reasonable lines of enquiry.

5.26. Our assessment of whether the prosecutor had set out a proper case analysis and strategy was that in five out of 27 cases²⁰ (18.5%) the Area was fully meeting the standard, a further 15 (55.6%) were partially meeting the standard and the remaining seven cases (25.9%) were not meeting the standard.

5.27. Cases often lacked a clear case strategy that was proportionate to the case and the material provided. Reviews did not include or address how any defences raised might be countered. We saw examples of strategy confined to which witnesses to call without addressing how any weaknesses or other issues would be addressed.

5.28. We identified examples of pre-charge decisions that were timely and of good quality. An example is set out overleaf:

¹⁹ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

²⁰ Three of the cases were charged either by the police or CPS Direct and so did not form part of our file examination for the quality of pre-charge decisions by the Area.

Case study

The victim and defendant were neighbours. The victim alleged that the defendant had sexually assaulted her by kissing her on the lips and touching her breast (over clothing). She immediately disclosed details of the incident to a friend and several relatives and then contacted the police.

During interview, the defendant denied the offence, claiming to have kissed the victim's cheek and to have hugged her in a friendly way when saying goodbye. He denied touching her breast intentionally.

The prosecutor set out a clear trial strategy in the pre-charge advice and considered the strengths and weaknesses of the case. The trial issue was correctly identified as one of factual dispute rather than consent, the witnesses required for trial were identified and thought was given as to how the case would proceed if the victim withdrew her support. Acceptability of lesser pleas was considered but the prosecutor rightly concluded that the case should proceed on the charge of sexual touching, as this reflected the criminality involved and provided the court with appropriate sentencing powers.

Ancillary orders, such as special measures and bad character, were considered in the pre-charge advice, and material that was capable of undermining the prosecution case was identified – that is, the fact that the victim had a matter on police record which could have affected her credibility.

The prosecutor had also given thought as to how the victim could be protected from any further incidents and had tasked the police with providing draft terms for a restraining order.

A few days prior to trial, an issue arose with the witnesses, two of whom could not attend the trial due to lack of childcare. The prosecutor conducted a further review and decided that the witnesses could be dispensed with and the case would proceed with the victim and other available witnesses. This course of action was agreed with the defence.

The defendant pleaded guilty on the day of trial and submitted a basis of plea in which he accepted that he had kissed the victim on the lips, but claimed that the touching of her breast was 'inadvertent'. The basis was not accepted, and the prosecutor correctly concluded that 'it clearly conflicts with the Crown's case and the evidence of the complainant who is at court.' The court however determined that the basis of plea did not make a material difference to sentence.

The defendant was sentenced to a community order with a curfew requirement and a restraining order was imposed for 12 months.

The prosecutor's proactive and thinking approach resulted in the case being concluded effectively and efficiently. The good case analysis and strategy was core to the issues in the case being dealt with robustly, while ensuring there was effective victim care.

5.29. Conversely, inspectors identified that some pre-charge reviews did not contain a proper case analysis and case strategy, including some cases where the prosecutor had considered some but not all relevant factors. While we make it clear that this does not necessarily mean that, had prosecutors considered all relevant factors, they would have come to a different decision, failures to do so are inconsistent with high-quality casework.

Case study

The suspect was the victim's son and was accused of assaulting her and stealing her cigarettes by forcefully grabbing her hand and snatching the packet (technically a robbery). The incident was witnessed by a shop assistant and was captured on CCTV footage.

The victim provided an initial statement in which she described the defendant as grabbing her hand and forcefully taking the cigarettes, causing a minor injury. The file contained body-worn video footage from officers who visited the victim at her home shortly after the incident. This revealed that she was still distressed, had long-standing problems with her son, and was afraid that he would assault her again or damage her property. Before the charging decision was made, the victim made another statement in which she retracted her earlier statement on the basis that she did not want to give evidence against her son. She did not say that the original allegation was false.

The prosecutor decided to dispense with the victim's evidence and charge common assault on the basis of the shop assistant's evidence and the CCTV footage. The prosecutor concluded that there was insufficient evidence to charge theft of the cigarettes because, in the absence of the victim, the prosecution could not prove an essential element of the offence, namely, that the property (the cigarettes) belonged to another, that is, the victim.

The prosecutor's analysis did not address the circumstantial evidence from which a court would have been entitled to infer that the cigarettes belonged to the mother, even if she did not give evidence. The shop assistant had made a statement and clearly described the victim buying the cigarettes and then leaving the shop. She then described seeing the suspect take them from her by force and the victim then returning to the shop in a distressed state to buy another packet. The CCTV clearly showed an aggressive act, and this rebutted the suspect's account in interview that his mother had handed him the cigarettes

voluntarily. In any event, the suspect admitted in interview that the cigarettes were his mother's.

In addition, no consideration was given to relying on the victim's evidence as part of the prosecution, despite her wishes, and seeking a summons to compel her to attend court if it became necessary.

The prosecutor also concluded that the victim's evidence would not be admitted under the hearsay provisions.

Our assessment was that in the circumstances of the case, an application for a witness summons should at least have been explored at the pre-charge stage, bearing in mind the victim's fears and her vulnerability. A request could have been made of the police to carry out a risk assessment so that an informed decision could be made. In the event, the victim indicated after charge that she wished the prosecution to apply for a restraining order against her son, which suggested that she remained in fear of him.

We also considered that more thought should at least have been given to applying to adduce her evidence under the hearsay provisions on the ground of fear of testifying (s116(2)(e) Criminal Justice Act 2003). We accept that the victim had not mentioned fear in her retraction statement, but officers had witnessed her distress and could have provided statements, supported by what the body-worn footage revealed. In addition, consideration could have been given to applying to adduce the evidence under s114(1)(d), on the basis that it was in the interests of justice for it to be admitted.

In the event, the defendant pleaded guilty to assault after appearing on warrant at the magistrates' courts, having failed to appear on the appointed day. This illustrates the point that a successful outcome does not necessarily denote a high-quality case analysis and strategy.

5.30. Another important function of a pre-charge decision review is to provide instructions to a court prosecutor, who may have many cases to deal with in a court list and little time to review them prior to the hearing. Inadequate instructions can limit the progress that can be made at the first hearing, or require the advocate to duplicate the review and make fresh decisions about aspects of the case, including whether there should be any change in bail status or acceptability of pleas. Clear instructions improve effectiveness and efficiency and reduce the risk of something being overlooked at court.

5.31. Instructions will vary depending on the relevant factors in each individual case, but may include:

- the approach to be taken to bail and/or custody for all suspects, including threshold test conditions, objections to bail, any appropriate conditions of bail and whether or not an appeal against bail being granted is necessary
- which applications and/or ancillary orders are to be made at first hearing or notice given to the court and defence
- advice on representations to the court as to venue, including sentencing guidelines where appropriate
- what possible pleas may be acceptable and the rationale for the approach to be taken
- details of any material that either assists the defence case as it is known at that stage, or undermines the prosecution case that needs to be disclosed to the defence at the first hearing under the prosecution's common law duties
- what should be included within the initial details of the prosecution case (IDPC). This is the bundle of material that is served on the defendant or their legal representative prior to the first hearing in the magistrates' courts²¹

5.32. In respect of the instructions and guidance to the court prosecutor, seven cases (25.9%) were rated as fully meeting the standard, 14 (51.9%) as partially meeting it and six (22.2%) as not meeting it.

5.33. For those cases not fully meeting the standard, inspectors commonly found that the defendant's bail status was not addressed at all, that acceptability of pleas was not addressed, or that the prosecutor's instructions on venue did not contain the rationale for the conclusion. For example, simply saying that the magistrates' sentencing powers are sufficient to deal with an either-way matter is of little use to the court prosecutor who must persuade the court by reasoned argument rather than assertion.

5.34. Where prosecutors at the pre-charge stage identify further reasonable lines of enquiry, they should set these out in an action plan, which is a specific section of the police manual of guidance form 3 (MG3). This allows for actions to be prioritised and timescales set for the police to ensure that all appropriate

²¹ The contents of the IDPC are regulated by [Part 8 of the Criminal Procedure Rules \(CrimPR\)](#) and the [Criminal Practice Directions \(CPD\) 2015 Division 1, at Part 3A](#).

avenues of investigation have been completed, including those that may point away from a prosecution.

5.35. We found the Area action plans to be of variable quality with six (24%) fully meeting a satisfactory standard, 12 (48%) partially meeting it and seven (28%) not meeting it.

5.36. One case that we rated as fully meeting the standard involved a robbery carried out on a takeaway driver by a youth. The first pre-charge consultation resulted in a detailed and proportionate nine-point action plan being given to the investigator with a realistic action date of a month being set by the prosecutor. This meant that the case was ready to be charged at its next consideration.

5.37. For those cases assessed as partially or not meeting the standard, issues identified included, failing to set an action plan when one was required and setting an action plan that unnecessarily delayed charge.

5.38. Sometimes, actions were included within the body of the MG3 rather than being clearly set out in a structured way with target dates in the specific action plan section. Failing to use this section of the charging document can mean that it is not clear to officers what further work is being requested, the order of priority and the deadline for completion. It can also make it difficult for CPS operational staff to assess whether the police resubmission should be accepted and passed to the prosecutor.

Post charge decision-making and reviews

Complying with the Code for Crown Prosecutors in post-charge decisions

5.39. We rated the Area as **fully meeting the standard** for this aspect of magistrates' court post-charge decision-making, with all except one case being compliant with the Code for Crown Prosecutors: that is, the evidential and public interest limbs had been properly applied. These cases included reviews of cases that were originally charged by either the police or CPS Direct (CPSD).

Table 6: Post-charge Code compliance in magistrates' court cases

Rating	Number of cases	Percentage
Fully meeting the required standard	29	96.7%
Not meeting the required standard	1	3.3%

5.40. A decision that is not compliant with the Code for Crown Prosecutors is said to be a wholly unreasonable decision, that is to say it is a decision which no

reasonable prosecutor could have made in the circumstances in which it was made, and at the time it was made or ought to have been made.

5.41. Twenty-nine of the 30 post-charge reviews complied with the Code for Crown Prosecutors. The evidential and public interest tests had been properly applied and the decision to prosecute was reasonable. These cases included Area reviews of cases that were originally charged by either the police or CPSD.

Quality of post-charge reviews, analysis, and case strategy

5.42. Our assessment for this aspect of the casework theme in magistrates' court cases is that the Area is **partially meeting the standard**. Overall, the score for the quality of post-charge reviews, analysis and case strategy is 60.8%²².

5.43. While magistrates' courts prosecutors are applying the Code well when reviewing cases, the quality of the reviews conducted at the post-charge stage varied in quality. However, overall we found that quality at post-charge was better than at the pre-charge stage.

5.44. In reaching our assessment we considered a number of factors around the quality of these reviews:

- whether the post-charge review included a proper case analysis and case strategy
- whether any pleas accepted (other than to all offences) were appropriate, with a clear basis of plea
- where a significant development occurred in the case, which represented a major change in the case strategy, there was a quality review dealing with the significant development, applying the Code for Crown Prosecutors as to whether there remained a realistic prospect of conviction and whether it remained in the public interest to prosecute, but also how any new evidence or weaknesses would be addressed
- whether decisions about bail and/or custody were timely and appropriate
- whether appropriate applications, such as bad character, were used effectively to strengthen the prosecution case.

²² See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

5.45. The quality of ongoing reviews and strategy is of critical importance to the effective and efficient progress of cases through the criminal justice system. Making a decision in compliance with the Code without supporting analysis of the case material and a clear strategy addressing matters such as undermining material, special measures and applications diminishes the value added by the CPS and results in a reactive – as opposed to a proactive – approach to the case. This can lead to key issues being missed, cracked and/or ineffective trials, duplication of effort, waste of resources and delays in decision-making and case progression that can impact on victims, witnesses and defendants, especially where they are in custody.

A theme running through those reviews rated as fully meeting the standard was a meaningful re-assessment of the case post-charge

5.46. In certain circumstances, the Area is required to carry out a post-charge review before the first hearing, where a not guilty plea is anticipated. Those circumstances are either because CPSD or the police had charged the case; or the pre-charge Area prosecutor had not provided instructions on the bundle of papers to be provided to the defence or had not completed the ‘preparation for effective trial’ (PET) form; or where additional information had

been received since the charging decision; or where the streamlined disclosure certificate had not been completed.

5.47. We rated 13 of the 30 cases (43.3%) as fully meeting the standard, eight (26.7%) partially meeting standard and nine (30%) not meeting the standard for cases when assessing whether the initial review was proportionate and included a proper case analysis and strategy.

5.48. Inspectors identified some similar issues to those cases that did not fully meet the standard at the pre-charge stage. This included a lack of depth to the case analysis which added little or nothing to a previous review, or a review that did not adequately address a change in circumstances, new evidence or information that had emerged after the charging decision had been made. A theme running through those reviews rated as fully meeting the standard was a meaningful re-assessment of the case post-charge.

5.49. We found several examples of Area-charged cases where no post-charge initial review took place when it should have. From our discussions with the Area, we understand that it has recently identified and addressed a systemic issue that contributed to our finding, which should reduce the risk of this occurring in the future.

5.50. As cases progress after the first hearing, circumstances can change which materially impact on the prosecution case. At this stage a review should take place to address whether there remains a realistic prospect of conviction and, if so, how the case strategy should be adapted. We call this a significant event review.

5.51. We found that significant event reviews were completed when required in three quarters of magistrates' court cases. Five out of 16 cases (31.3%) were assessed as fully meeting the standard in terms of there being a clear review and action being taken to stop the case if necessary, accept pleas or revise the trial strategy. We found that in a further seven cases (43.8%) consideration had been given to the significant event by way of a review, but that it did not clearly explain the decision taken, or identify and set in train all required actions.

5.52. In the four cases (25%) rated as not meeting the standard, there were significant developments or events, but there was no review on CMS addressing these or setting out the reasons for continuing or ending the case.

5.53. Appropriate applications were used to strengthen the prosecution case in 40% of cases (four out of 10), therefore fully meeting standard. In 50% (five) of cases the standard was assessed as partially meeting the standard. There was one case (10%) that we rated as not meeting the standard. Those cases where prosecutors had not only identified all appropriate applications, but also prepared a well-argued application were assessed highest. Cases were rated as partially meeting the standard where some but not all potential applications had been made or considered, or where the application itself lacked detail. The 'not meeting' assessment related to a prosecution for an assault on an emergency worker where a potentially relevant bad character application was not considered at any stage of the proceedings.

5.54. The CPS is required to make appropriate and timely decisions about custody and bail throughout the life of a case. Our file examination assessed 14 (46.7%) of the 30 magistrates' court cases as fully meeting the required standard, 12 (40%) as partially meeting it, and four of the cases (13.3%) as not meeting the standard, primarily because there was no evidence that prosecutors had turned their mind to the defendant's remand status at any stage. In one case, while the lawyer making the decision at the pre-charge stage had not addressed their mind to bail, the prosecutor reviewing the case for the subsequent not guilty plea hearing did and, having done so, instructed the court advocate to apply for a non-contact condition. This shows how a lack of proactive thinking at the earliest stage can be a cause for more work later. Although this issue was picked up in the case referred to, it also increases the risk that poor initial decisions are further compounded.

5.55. Within our file examination two thirds of the files submitted by the police to the CPS met the requirements of the agreed National File Standard. The National File Standard is a document setting out the material and information that the police must send to the CPS at different stages of criminal cases and for different case types. It lists what is required when a case is submitted for a pre-charge decision, for an anticipated guilty or not-guilty plea case in the magistrates' courts, and for a more complex matter listed before the Crown Court. It seeks to achieve consistency and proportionality across all CPS Areas and police forces throughout England and Wales. The CPS case management system includes a facility to report on whether the police file submission complied with the National File Standard. This national file quality (NFQ) data is collated and considered at local prosecution team performance meetings held between CPS local legal managers and their police counterparts as a method to improve police file quality.

5.56. For the 10 (33.3%) submitted magistrates' court files that did not meet the standard, the Area's use of the NFQ tool within the CPS case management system (CMS) to feed back the deficiencies was inconsistent. Feedback was given in three of the 10 cases. We are aware that nationally one of the measures introduced to ease pressure on CPS Areas resulting from the pandemic was to suspend the requirement to use the NFQ feedback system. However, the Area has told us that it sees the benefit of continuing to use this tool, bearing in mind the difficulties that poor files from the police cause its prosecutors and operational delivery staff.

Does the Area fully comply with its duty of disclosure?

5.57. Our assessment for this aspect of the casework theme in magistrates' court cases is that the Area is **partially meeting the standard**. Overall, the score for compliance with the duty of disclosure in the magistrates' courts is 62.9%²³.

5.58. We assessed the performance of the Area across a range of different aspects pertaining to disclosure. We looked at whether there was timely compliance with the duties of initial and continuing disclosure, incorporating an assessment of whether prosecutors were correctly endorsing the unused material schedules provided by the police. We also assessed the quality of prosecutors' entries, explaining their decision-making on the disclosure record in the CPS's case management system, the quality of guidance they gave to the

²³ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

police when forwarding defence case statements, and how proactive they were being when the police had failed fully to comply with their disclosure obligations.

5.59. It is a crucial element of the prosecution's role to ensure that unused material is properly considered, applying the tests set out in section 3 of the Criminal Procedure and Investigations Act 1996, that any material that might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused is disclosed to the defence. This underpins and ensures the fairness of the trial process.

5.60. In magistrates' court cases, all unused material that is non-sensitive must be scheduled by the police disclosure officer, who is often the investigating officer in the case, on a streamlined disclosure certificate (SDC). This should contain sufficient description of each item to enable the prosecutor and defence to understand what the material is and its relevance to the case and apply the tests.

5.61. The disclosure officer should identify material on the schedule that in their opinion satisfies the tests, and should supply copies of any such material to the prosecutor. Prosecutors should assure themselves that all material that should be listed is included on the schedule. The prosecution must disclose a copy of the schedule to the defence along with any material satisfying either of the tests, and there is provision in the template disclosure letter to add any items not listed on the schedule that are disclosable.

5.62. All sensitive material must be scheduled on a separate schedule, which the prosecutor must consider, applying the same tests. If the prosecutor concludes that there is sensitive material that meets the tests, they should either disclose this in some form or make an application to the court to withhold the material on the grounds of public interest immunity.

5.63. Leaving aside timeliness, we found that the Area fully complied with the duty of initial disclosure, which includes the correct endorsement of schedules, in 44.4% of cases (12 out of 27). The remaining cases were rated as either partially meeting the standard (10 cases, or 37%), or as not meeting the standard (five cases, or 18.5%). Overall, our assessment shows that there is room for improvement.

5.64. The most common reasons for a 'partially meeting' or 'not meeting' rating were that the prosecutor concluded that unused material that met the tests was not disclosable, used the wrong endorsements, or failed to identify that obvious items of unused material were not scheduled (by the officer in the case).

5.65. We therefore saw examples of the defence not being made aware that relevant unused material existed and the prosecution failing to comply with its legal obligation to disclose material that may assist the defence or undermine the prosecution case. An example of the latter was where a scientific report that was received revealed that no fingerprints had been recovered from a cheque book from which the defendant had allegedly stolen a blank cheque. It was not apparent from the schedule that the examination had been negative, and the document was assessed as not disclosable by the prosecutor.

5.66. In all cases, prosecutors should complete a disclosure record on the CPS case management system. This provides an audit trail for the receipt and service of the streamlined disclosure certificate and any sensitive unused material schedules, and the disclosure decisions and actions made, including the legal reasons for the disclosure or withholding of unused material.

5.67. Completion of the disclosure record was assessed as fully meeting the standard in 50% of cases (13 out of 26), with the record being fully completed throughout the life of the case and clearly documenting the decisions made around unused material. A further nine (34.6%) were assessed as partially meeting the standard and four cases (15.4%) were found to be not meeting the standard.

5.68. There were two cases in the magistrates' courts file sample that involved sensitive material. In one case the material was not dealt with appropriately as there was no record of the sensitive schedule containing two items having been considered by the prosecutor.

Despite the pressures on the CPS, feedback to the police in relation to disclosure failings remains central

5.69. Where the police do not comply with their disclosure obligations, the prosecutor has to request relevant information or ask for further enquiries to be made, often resulting in delay to the case while the matter is addressed. Police compliance with their disclosure obligations was assessed as fully meeting the standard in 16 out of 28 cases (57.1%) and partially meeting it in a further seven (25%). There were five cases (17.9%) where police compliance was assessed as not meeting the standard.

5.70. In respect of identifying and feeding back failings on disclosure performance to the police, we rated 33.3% of cases (four out of 12) as fully meeting the standard, 16.7% (two) as partially meeting it, and 50% of cases (six) as not meeting it. We saw several examples where instances of poor completion of schedules by disclosure officers or failures to identify disclosable unused material were not fed back.

5.71. We understand that the pressure and time constraints caused by the increase in live caseload may have contributed to failures to feed back disclosure deficiencies to officers, although Area management does remind prosecutors to do so. Despite the pressures on the CPS, feedback to the police in relation to disclosure failings remains central if the joint national disclosure improvement plans are to be effective in driving up quality in the handling of unused material.

5.72. Nevertheless, we should also highlight that in some cases we examined there was no evidence to show that the prosecutor had identified that items were missing from the schedules and that, therefore, they needed to raise this. This goes back to a recurring theme, which is the need for there to be a thinking approach by all prosecutors to their casework.

Does the Area address victim and witness issues appropriately?

5.73. Our assessment for this aspect of the casework theme in magistrates' court cases is that the Area is **fully meeting the standard**. Overall, the score for providing a fair experience for victims and witnesses is 76%²⁴.

5.74. The Area is therefore performing well in this aspect of its work, although there are one or two aspects of weaker performance within the overall theme that Area will wish to address.

5.75. We assessed a range of aspects to victim and witness issues at both pre- and post-charge stages, including consideration of relevant and ancillary matters at charging to support victims and witnesses, timely and accurate witness warning, consideration of special measures, addressing witness issues, consultation with victims and witnesses, victim personal statements (where a victim makes a statement explaining the impact of the offending behaviour on them) and victim communication letters explaining the reasons for decisions to drop or substantially alter a charge.

5.76. At pre-charge we examined whether, in cases involving victims and witnesses, appropriate consideration was given to the relevant issues including special measures to support vulnerable or intimidated victims and witnesses to give their best evidence, appointment of an intermediary to facilitate communication with a victim or witness, whether the victim wanted to make a victim personal statement about how the offence has impacted on them as well

²⁴ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

as consideration of orders such as restraining orders preventing the defendant from doing things, usually contacting the victim, and compensation.

5.77. It is at the pre-charge stage where there is the greatest room for improvement in respect of the victim and witness theme in the magistrates' courts work. We rated 11 out of 24 cases (45.8%) as fully meeting the standard, with five (20.8%) partially meeting it, and eight (33.3%) not meeting it.

5.78. At the post-charge stage, we assessed a number of aspects of casework including: witness warning, handling of witness care unit correspondence, consultation with victims and witnesses – including speaking to witnesses at court, victim personal statements, orders on sentence or acquittal, and victim communication letters.

5.79. The correct and timely witness warning was rated as fully meeting the standard in 82.6% of cases, with three rated as partially meeting the standard. We assessed only one case as not meeting the standard at all. This demonstrates that the Area has effective processes in place to ensure that the correct witnesses are warned for trial and that it is done in a timely way.

5.80. Witness care units (WCUs) are separate from the CPS. They manage the care of victims and witnesses throughout the post-charge phase of a case, including updating victims and witnesses on the progress of the case. Where required, they obtain information to assist in the making of a special measures application to support the victim or witness to give their best evidence. They also arrange pre-trial witness visits to court to reduce anxiety about the surroundings or offer practical support to get the victim or witness to attend court, such as making travel arrangements.

5.81. As witness care officers are in regular contact with victims and witnesses, where issues arise that may impact on the victim or witness's ability to attend court as required, the WCU will send information to the CPS. It is important that this information is dealt with in a timely manner with effective actions put in place to minimise any impact on the effectiveness of the trial. Such information may be that witnesses are no longer able to attend court on the date that the trial is listed.

5.82. We found that the Area's handling of correspondence from the witness care units was generally good with inspectors rating 68.4% (13 out of 19 cases) as fully meeting the required standard for timely and effective actions, with a further two (10.5%) partially meeting it. However, we did find that in four cases (21.1%) the standard was not met. The reasons for partially or not meeting the standard were either delay in responding to information received from the unit, or not responding at all.

5.83. In 92.9% of cases (13 out of 14 cases) the Area sought appropriate orders on sentencing to protect the victim, witnesses and the public, including compensation and restraining orders to protect victims of assault or harassment. This is a strength.

5.84. Victims are entitled, if they wish, to provide a victim personal statement (VPS). The VPS sets out the impact that the offence has had on them and helps inform the court's decision on sentencing. The police should tell the CPS, and the CPS should give effect to the victim's preferences for how the VPS is presented to the court, such as the victim reading the statement in court, having the prosecution advocate read it for them, or the Judge or magistrates being given the VPS to read.

5.85. The Area performed well in this aspect of its casework. In 19 cases (76%), we rated the CPS as fully meeting the standard in respect of its obligations, and as partially meeting the standard in a further six (24%).

5.86. Victim communication and liaison letters (VCLs) should be sent to victims whenever a charge relating to them is either dropped or substantially altered. The letter should be sent within one working day where the victim is deemed to be vulnerable or intimidated, is a victim of serious crime (which includes domestic abuse), or has been targeted repeatedly over a period of time. The timescale in all other cases is five working days. The letter should include a clear and understandable explanation of the decision, a referral to the victims' right to review scheme, if applicable (this is a scheme where a victim can ask the prosecution to reconsider a decision to drop or substantially alter a case), and the offer of a meeting in certain types of case.

In another case we found that a letter was sent in error, wrongly informing the victim that the case had been dropped

5.87. We examined eight magistrates' court cases which required a VCL letter. Three were sent on time and one was sent late but with minimal delay. Four did not meet the standard for timeliness, three of which because a letter was not sent at all.

5.88. We assessed two of the five required letters sent as fully meeting the standard for quality, two as partially meeting it and one as not meeting the standard. This letter failed to meet the standard because whilst it explained the decision to accept a plea to theft from a defendant originally facing a burglary charge, it failed to address and explain the decision to discontinue the case against a co-defendant.

5.89. In another case we found that a letter was sent in error, wrongly informing the victim that the case had been dropped. This is, therefore, also included in the VCL data as not meeting the standard.

5.90. The Area told us that they had recognised issues around timeliness and quality of VCL letters and put together a recovery plan, which is addressing these issues. This includes daily checks being carried out by the Area Victim Liaison Unit (VLU) to better capture all cases requiring urgent letters or where the five-day deadline is approaching; and the relaunch of VLU quality assurance panel meetings to be held monthly.

5.91. In respect of the requirement for the CPS to consult with victims and witnesses (both out of court and at court) where appropriate, we assessed 61.5% of cases (eight out of 13) as fully meeting the standard, with 30.8% (four cases) partially meeting it, and one case (7.7%) not meeting the standard.

5.92. The most common issue we found for not fully meeting the standard was insufficient detail being recorded on the court hearing record sheet to confirm that the speaking to witnesses at court guidance had been followed.

5.93. We were told by Area that these conversations are taking place and that the issue is likely to be one of record keeping. Although the Area is generally performing well in respect of its consultation with victims and witnesses, the failure to make a contemporaneous record of conversations at court echoes similar failures to record the reasoning for some decisions to drop cases or accept pleas. For reasons we have already set out, we do not see this as simply a failure of record keeping. Clear contemporaneous records are the best way of assessing whether prosecutors or counsel properly understand and are applying the CPS's own policies and guidance.

6. Casework quality: Crown Court casework themes

Introduction to Crown Court casework

Does the Area deliver excellence in Crown Court prosecutions by ensuring the right person is prosecuted for the right offences, cases are progressed in a timely manner and cases are dealt with effectively?

6.1. We examined 40 Crown Court cases for casework quality. We assessed added value and grip, and analysed the cases in the five casework themes or, for some of the themes, scored two or more sub-themes.

6.2. We used the same scoring mechanism as for added value and grip (set out more fully in chapter 4 above and in annex F), which was using two points per fully meeting the standard answer to the relevant questions, one point for each relevant question marked as partially meeting the standard and no points for not meeting the standard. These were expressed as a total of the fully, partially, and not meeting answers to derive a percentage of the scores awarded for each casework theme (annex G). We translated the percentage into an overall marking of fully, partially, or not meeting the required standard, based on the ranges set out in annex F.

6.3. We have scored CPS South East for its Crown Court casework as follows:

Table 7: Scoring for Crown Court casework

Question	Rating	%
Pre-charge decision-making and review		
The Area complies with the Code for Crown Prosecutors ²⁵ at pre-charge decision stage	Fully meeting the standard	88.6%
The Area selects the most appropriate charge(s) at pre-charge decision	Fully meeting the standard	82.9%
The Area's pre-charge decisions contain a clear analysis of the case and set out a cogent case strategy	Not meeting the standard	47.2%
The quality of post-charge reviews and decision-making		
The Area complies with the Code for Crown Prosecutors post-charge	Fully meeting the standard	90%
The Area's post-charge reviews contain a clear analysis of the case and set out a cogent case strategy	Not meeting the standard	51.6%
Preparation for the plea and trial preparation hearing		
	Fully meeting the standard	72.8%
Disclosure		
	Partially meeting the standard	64.5%
Victims and witnesses		
	Fully meeting the standard	74%

6.4. Our assessment of Crown Court casework is that there were aspects of casework that were done well, including making Code-compliant decisions, selecting the right charges, preparing for the plea and trial preparation hearing (PTPH), and providing a fair experience for victims and witnesses. We also found that other aspects required more focus, specifically, the legal quality of reviews and trial strategies, including consideration of applications to strengthen the case, and the handling of unused material.

²⁵ *Code for Crown Prosecutors, 8th edition*; CPS; October 2018.
www.cps.gov.uk/publication/code-crown-prosecutors

Pre-charge decision-making and reviews

6.5. In order to assess Area performance at pre-charge decision-making, the inspection assessment has been split into three sub-themes. These reflect the different aspects that contribute to effective decision-making at the pre-charge stage namely: compliance with the Code for Crown Prosecutors; selection of the most suitable charges; and the quality of the analysis and case strategy set out within the prosecutor's review.

Complying with the Code for Crown Prosecutors in pre-charge decisions

6.6. While we examined 40 Crown Court cases in total, we are assessing the Area's performance and so, five pre-charge decisions were marked as not applicable as they were charged by CPS Direct.

6.7. We rated the Area as **fully meeting the standard** for this aspect of pre-charge decision-making, with 31 out of the 35 Area pre-charged Crown Court cases being compliant with the Code for Crown Prosecutors²⁶:

Table 8: Pre-charge Code compliance in Crown Court cases

Rating	Number of cases	Percentage
Fully meeting the required standard	31	88.6%
Not meeting the required standard	4	11.4%

6.8. There were four charging decisions that were wholly unreasonable. None of these incorrect decisions were picked up at the post-sending pre-PTPH review stage and were wrongly allowed to progress further. In three of the cases, a more careful case analysis would have revealed the fundamental evidential weaknesses that made a prosecution untenable. In the fourth case, a decision to charge causing grievous bodily harm with intent, it would have become apparent that there was insufficient evidence to show an intention to cause really serious harm and that the correct charge was a lesser one.

²⁶ See chapter 5, paragraphs 5.7 to 5.12, regarding application of the Code by prosecutors.

Selecting the most appropriate charges

6.9. The facts and circumstances of each case are different and there are often a number of charges that can be considered and selected by the prosecutor²⁷.

6.10. We rated the Area as **fully meeting the standard** when it came to selecting the most appropriate charges when charging its Crown Court cases. We assessed 77.1% of cases as fully meeting the standard and a further 11.4% partially meeting the standard.

6.11. In one of the cases that we rated as not meeting the standard, causing grievous bodily harm with intent was charged when there was insufficient evidence of an intent to cause really serious harm. In another case, the wrong limb of handling stolen goods was charged.

Quality of the pre-charge decision review including analysis and case strategy

6.12. Our assessment for this aspect of the casework theme in Crown Court cases is that the Area is **not meeting the standard**. Overall, the score for the quality of the pre-charge decision reviews is 47.2%²⁸.

6.13. While getting the initial charging decision correct is essential, a clear analysis of the material and setting out a clear strategy is fundamental to the efficiency and effectiveness of the subsequent stages to support the initial application of the Code for Crown Prosecutors and selection of charges as the case moves through the criminal justice system²⁹.

6.14. We assessed 35 cases on whether the prosecutor had set out a proper case analysis and strategy and rated five (14.3%) as fully meeting the standard; a further 21 (60%) were rated as partially meeting the standard and the remaining nine cases (25.7%) were rated as not meeting the standard.

6.15. Inspectors found that prosecutors, while generally correctly applying the Code and selecting appropriate charges, sometimes did not go on to clearly analyse the evidence and set out on what basis the case would be prosecuted by way of a cogent case strategy. There were several recurring issues in the cases we examined including those set out below.

²⁷ See chapter 5, paragraphs 5.14 to 5.17, for the principles that prosecutors should apply when selecting appropriate charges.

²⁸ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

²⁹ See chapter 5, paragraphs 5.22 and 5.23, for an explanation for what should be included in a good-quality pre-charge review.

- Some cases were not analysed in any depth: we saw examples of a prosecutor review decision where the strengths and weaknesses of the evidence were not properly identified and then applied to a strategy for the case.
- The separate elements of the offence that were to be proved were sometimes not carefully considered. For example, the necessary intent and knowledge required for joint enterprise in a case involving more than one offender, or the required intent for a section 18 grievous bodily harm.
- Some cases lacked a clear strategy: the extent of the strategy was sometimes confined to which witnesses to call, but did not address other issues, for example: further lines of enquiry to strengthen the prosecution case; whether and how the prosecution would proceed in the event that a complainant retracted their original account; or how the prosecution would disprove a defence advanced in interview.

6.16. Inspectors found that unused material was often not addressed adequately in the review or, where there was obvious unused material, it was not referred to and not identified as meeting the disclosure test. Seven of 35 cases (20%) were rated as fully meeting the standard, 13 cases (37.1%) were rated as partially meeting the standard, and 15 cases (42.9%), were rated as not meeting the required standard.

6.17. Examples of weaknesses included, not addressing the unused material position at all, failing to address further reasonable lines of enquiry, and a failure to adequately consider the impact of undermining material when assessing the evidential strength of the case.

Case study

This case involved allegations of robbery and witness intimidation.

The complainant lived in supported housing and was visited by the two defendants, M and C, who also lived in the same housing block. The complainant said that they had tried to sell drugs to him and when he refused their offer the defendants assaulted him, entered his room uninvited and stole various items, including a PlayStation, a mobile phone and money.

CCTV footage showed both defendants in the housing block entering the address at the relevant time and leaving carrying a large bag that they did not have when entering. A witness attended the address when the defendants were inside and was told by them to come back later.

M was arrested and denied the allegation. He was found with a PlayStation, a mobile phone and money (all of which the prosecution alleged belonged to the complainant), but claimed they were his. The complainant subsequently attended an identification procedure and identified M as one of the men who had robbed him.

C was not arrested initially. In the interim, the complainant reported to police that he had been approached by C in the street and threatened with violence if he pursued the allegation of robbery. C made no comment during interview. The complainant identified him as the second perpetrator during an identification procedure.

Both M and C were charged with robbery and C was also charged with witness intimidation.

We agreed that there was clearly evidence to support the prosecutor's conclusion that there was a realistic prospect of conviction, but found that the likely issues in the case required a more strategic approach to have been taken at the pre-charge stage; for example, in relation to the inability of the victim to identify his stolen property or describe it sufficiently. M had asserted during interview that the property and money found belonged to him. In relation to the PlayStation, he said he had the box with the matching serial number and that if police had searched his room thoroughly, they would have found it. In relation to the money, he gave an account of how he came to have it, which was supported by his mother when she spoke to police.

Our assessment was that reasonable lines of enquiry should have been identified at the pre-charge stage to clarify the question of ownership of the items. The trial strategy was simply recorded as 'witnesses/CCTV', and there was no action plan to the police. Likewise, no disclosure strategy was addressed

in the pre-charge advice. As well as scientific reports that revealed that the victim's fingerprints had not been found on the items seized from M, he had convictions for dishonesty which, arguably, could have been relevant to his credibility. In our assessment, both of these aspects of the case should have formed part of a case strategy at an early stage.

At the initial disclosure stage, the victim's previous convictions were disclosed but all items on the police manual of guidance form 6C (MG6C) schedules were marked as clearly not disclosable (CND). Our assessment was that there were items on the schedule that met the test for disclosure, namely the negative scientific reports and notes of the telephone call with M's mother, which were capable of supporting his account as to how he had come into possession of the money found by police. Although the defence would have seen from the descriptions on the MG6C that the scientific analysis of the items was negative, this was material that was capable of assisting the defence and therefore should not have been assessed as clearly not disclosable.

6.18. In a third of cases (11 out of 32), inspectors found that the prosecutor had not referred to relevant applications and ancillary matters – including forfeiture, bad character, and hearsay applications – or, if they had, there was no meaningful rationale or action recorded. Fourteen cases (43.8%) were assessed as fully meeting the standard, with a further seven (21.9%) partially meeting it. In the cases where the lawyer had partially considered the need for applications, the prosecutor review generally lacked detail or actions to progress them post-charge.

6.19. Where prosecutors identify further reasonable lines of enquiry, they should set these out in an action plan which is a specific section of the police manual of guidance form 3 (MG3). This allows for actions to be prioritised and timescales set to ensure that all appropriate avenues of investigation have been completed, including those that may point away from a prosecution. In our file sample we found that the action plan met a satisfactory standard in under a third of Crown Court cases examined (nine out of 33 files or 27.3%). We rated a further 18 files (54.5%) as partially meeting the standard, and six (18.2%) as not meeting it.

6.20. For those action plans that did not fully meet the standard, common issues we identified included no action plan being set when it would have been appropriate to do so, action plans not covering all necessary reasonable lines of enquiry and no action dates being set for the investigating officer.

6.21. Another issue was that plans were sometimes contained within the narrative of the MG3 rather than clearly laid out in the custom-made section of the template. Failing to use the specific action plan section of the charging

document can mean that it is not clear to officers what further work is being requested, the order of priority and the deadline for completion. It can also make it difficult for CPS operational staff to assess whether the police resubmission should be accepted and passed to the prosecutor. If this operational assessment cannot be carried out effectively it can lead to piecemeal submission of material from the police and multiple referrals for review to prosecutors, which is not an effective or efficient use of resources.

6.22. Another important function of a pre-charge decision review is to provide instructions to a court prosecutor, who may have many cases to deal with in a court list and little time to review cases prior to the hearing. Inadequate instructions can limit the progress that can be made at the first hearing, or require the advocate to duplicate the review process and make fresh decisions about aspects of the case, including whether there should be any change in bail status or acceptability of pleas. Clear instructions improve effectiveness and efficiency, and reduce the risk of something being overlooked at court³⁰.

6.23. We found four (11.4%) out of the 35 cases to be fully meeting the standard for instructions to the court prosecutor, with a further 23 (65.7%) partially meeting the standard and eight (22.9%) not meeting it.

6.24. Where cases were rated as partially meeting the standard, we found that the pre-charge prosecutor had made reference to some or all of the key issues, but had not provided sufficient detail for the court prosecutor to be able to properly progress the case without having to consider the matter afresh. In one example there was no consideration of acceptability of pleas in a robbery case where three youths had been charged and it was likely that a plea of guilty to assault would be offered by one or more of the defendants. In another case the MG3 was silent as to potential conditions of bail in a domestic abuse case. There was one case where the instructions consisted of a request to consider an oral bad character application at the first appearance if the magistrates accepted jurisdiction, without the relevant bad character being identified or any supporting argument being provided. And, finally, we examined a theft case where the charging prosecutor's instructions on venue were simply that the matter was suitable for summary trial with the court having the option to commit for sentence on conviction. This was of little meaningful assistance and would have necessitated the advocate considering the issue afresh during preparation for court.

6.25. It is clear that the Area has processes in place to ensure that cases are reviewed, advice provided, and charging decisions made in a timely manner.

³⁰ See chapter 5, paragraph 5.32, which sets out the instructions that should be included by the charging prosecutor in the MG3.

However, the Area should focus on the quality of the pre-charge reviews in Crown Court casework to ensure that they more consistently add legal value by including a clear analysis of the material in the case, both evidential and unused, and that there is a greater awareness of what a good trial strategy looks like.

6.26. The Area told us about the real pressure they have been under as a result of the increase in live caseload since the start of the pandemic. We do not underestimate the significant effect that this, and the need to move existing resource around to cope, has had on the time that prosecutors have to dedicate to individual tasks if the work was to be done.

6.27. We attended the Area's casework quality board and read previous minutes. From our observation and document examination, it is clear to us that the senior legal leadership has a good grasp of the casework quality issues we have highlighted and has identified and taken steps to address them.

6.28. The Area told us that it recognises that, while the pandemic has had a significant impact on the quality of casework review, it is not the sole factor, and that some prosecutors require further development when it comes to case analysis and devising trial strategies. The Area's concern is that realistically it will take some time for pressures to ease to the extent that it will be able to focus more effectively on improving casework quality, although the national case review training that has begun will assist that process.

Post-charge decision-making and reviews

Complying with the Code for Crown Prosecutors in post-charge decisions

6.29. We rated the Area as **fully meeting the standard** for this aspect of post-charge decision-making, with all but four of the Area post-charge review decisions being compliant with the Code for Crown Prosecutors. That is, the evidential and public interest limbs had been properly applied. These cases included Area reviews of cases that were originally charged by either the police or CPS Direct (CPSD).

Table 9: Post-charge Code compliance in Crown Court cases

Rating	Number of cases	Percentage
Fully meeting the required standard	36	90%
Not meeting the required standard	4	10%

6.30. A decision that is not compliant with the Code for Crown Prosecutors is said to be a wholly unreasonable decision, that is to say it is a decision which no reasonable prosecutor could have made in the circumstances in which it was made, and at the time it was made or ought to have been made.

6.31. We found that prosecutors mainly applied the Code correctly, but the four wholly unreasonable Crown Court decisions we found at the pre-charge stage were not identified at the post-sending review stage. Three of these cases were eventually dropped completely, while the prosecution accepted a plea to a lesser offence on the other.

6.32. The remaining 36 cases all had post charge-decisions that were compliant with the Code for Crown Prosecutors, applying the evidential and public interest test appropriately, meaning that they were cases that were right to prosecute.

Quality of post-charge reviews, analysis, and case strategy

6.33. Our assessment for this aspect of the casework theme is that the Area is **not meeting the standard**. Overall, the score for the quality of the post-charge reviews is 51.6%.³¹

6.34. A Crown Court case is expected to receive a proportionate post-sending review that:

- checks the pre-charge decision review and updates the case analysis and strategy, including referencing appropriate applications to be made and orders sought
- considers the police response to the pre-charge action plan
- in threshold test cases, records whether it is yet possible to apply the full Code test
- where there has been a significant change in the case, considers whether the Code test is still satisfied, and if so, how any new evidence or weaknesses will be addressed
- pursues outstanding action plan requests with police
- responds to any correspondence from the police or defence

³¹ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

- ensures that the case is proactively managed so that sufficient evidence and other material can be served as the initial details of the prosecution case (IDPC) before the pre-trial preparation hearing (PTPH)
- assesses whether any pleas accepted (other than to all offences) were appropriate, with a clear basis of plea.

6.35. The quality of ongoing reviews and strategy is of critical importance to the effective and efficient progress of cases through the criminal justice system. Making a decision in compliance with the Code – without supporting analysis of the case material and a clear strategy addressing matters such as undermining material, special measures and applications – diminishes the value added by the CPS and results in a reactive as opposed to a proactive approach to the case. This can lead to key issues being missed, cracked and/or ineffective trials, duplication of effort, waste of resources and delays in decision-making and case progression that can impact on victims, witnesses and defendants, especially where they are in custody.

6.36. Our assessment as to whether the Crown Court case received a proportionate post sending review incorporating a proper case analysis and strategy before the PTPH, was that nine out of 40 cases (22.5%) were rated as fully meeting the standard. We assessed 15 cases (37.5%) as partially meeting the standard, and 16 cases (40%) as not meeting the standard.

6.37. We took a realistic and proportionate approach when answering this question. We did not assess a case as partially or not meeting the standard if the previous review or reviews had addressed the case comprehensively and there was nothing of value to be added, provided there was no new material or information that required attention.

6.38. The expectation is that the post-sending review will add value to the case through a proportionate review and we did find cases where prosecutors had carefully considered the case afresh after sending and addressed relevant issues, clearly adding value. However, we also found that sometimes the Area's post-sending reviews lacked depth and were simply an adoption of the pre-charge decision review with little or nothing further added. All cases will require at least some consideration if the prosecutor is to establish that there is little or nothing of value to add to what has been said previously. Our findings suggest that this assessment is sometimes not being carried out as thoroughly as it should be, leading to issues that were not adequately addressed at the pre-charge stage being overlooked, and further evidence or information received subsequently not being addressed adequately.

6.39. For example, the four incorrect charging decisions that we identified were wrongly found to meet the full Code test at the post-sending review stage. It was only later in the proceedings that the evidential weaknesses that had been present since the pre-charge stage were properly identified and addressed.

6.40. Conversely, we found examples of cases where prosecutors had clearly added substantial value through careful analysis of the case at the post-sending review stage and addressed relevant considerations for the individual case.

Case study

The defendant was prosecuted for assaulting an emergency worker and criminal damage after police attended his home address following reports that he had been wielding a stick and had caused damage to a vehicle. Upon arrival, police saw through the window of the defendant's address that he was taking a large quantity of tablets and forced entry. The defendant resisted officers and threw items, thereby causing minor injury to one officer. The incident was witnessed by the defendant's elderly neighbour.

Owing to the defendant's erratic behaviour, he was taken to hospital for assessment. He was deemed fit to be detained and interviewed.

Prior to charge, the prosecutor considered the evidence and the information concerning the defendant's mental health assessment. At that time, the information provided to the prosecutor was that the defendant did not have a history of mental health issues and had not been diagnosed with any current issue. Our assessment is that the prosecutor therefore correctly concluded that it was in the public interest to charge the case.

Following charge, there were two significant developments in the case. First, the elderly witness died. The prosecutor conducted a review in which they considered whether a hearsay application under s.116 of the Criminal Justice Act 2003 was required.

Secondly, the defence made representations about the defendant's mental health and commissioned a psychiatric report. Upon receipt of the first psychiatric report, the prosecutor conducted a thorough review in which they referred to the CPS policy on Prosecuting Mentally Disordered Defendants and correctly applied the policy to the facts of the case. The prosecutor highlighted a concern that there was no long-term care plan in place for the defendant which meant that there remained a high risk of repeat offending. An addendum to the defence psychiatric report was then submitted, which addressed the earlier omission, together with a report from the defendant's care worker.

The prosecutor conducted another review and concluded that, considering all the circumstances of the case, and the fact that the defendant was being treated and monitored appropriately in the community, it was no longer in the public interest to pursue the case.

The case was discontinued. Timely and empathetic letters were sent to the police officers involved in the incident explaining clearly why the decision had been taken to discontinue the case against the defendant.

The prosecutor's timely reviews not only provided a clear record to show that they had properly applied their mind to the case and to all relevant factors when making decisions, but they also ensured that the case was ended at the appropriate stage, thereby saving any unnecessary court hearings and further public expense.

6.41. Despite seeing real value added in some cases, our overall assessment is that the post-sending review stage is not consistently being used to proactively manage the case, consider, or chase responses to action plans, update (or create) the case analysis and strategy (including acceptability of pleas), or identify where the pre-charge prosecutor has missed something important or fallen into error. This is partly down to the very real pressures on prosecutors' time caused by the pandemic, but the Area has acknowledged that this is not the sole factor and that it has previously identified the same issues that we raise. This is confirmed by the minutes of the Area's casework quality committee meetings and its internal assurance documents that we have seen.

6.42. In 33 out of 40 cases (82.5%), the Area carried out the post-sending review in a timely manner. In a further six cases (15%), the review was carried out less than seven days before the PTPH, but these were assessed as partially meeting the standard as there was no material impact on the effectiveness or otherwise of the hearing. We only assessed one case (2.5%) as not meeting the standard for timeliness at all. This good performance, however, should be viewed in context; timeliness may be at the expense of the quality of the reviews being carried out.

6.43. There was similarly variable performance in respect of the quality of prosecutors' reviews at the stage when the prosecution case and initial disclosure were being formally served on the defence and court.

6.44. In Crown Court contested cases, a number of orders to manage the case will be made at the first hearing in the Crown Court, the PTPH. In most cases, the court will set four dates for the parties to complete their pre-trial preparation. The four stages are:

- Stage one – for the service of the bulk of prosecution materials. This date will ordinarily be 50 days (custody cases) or 70 days (bail cases) after sending. This is in line with the timetable for the service of the prosecution case provided in the Crime and Disorder Act (Service of Prosecution Evidence) Regulations 2005. The court does not have power to abridge this time (without consent), but does have power to extend it.
- Stage two – for the service of the defence response including the Defence Statement and Standard Witness Table. This date will ordinarily be 28 days after Stage one, reflecting the time provided for the service of a defence statement.
- Stage three – for the prosecution response to the defence statement and other defence requests. This date will ordinarily be 14 or 28 days after stage two, depending on the anticipated date of trial.
- Stage four - for the defence to provide final materials or make applications that will commonly arise out of prosecution disclosure.

6.45. Following a plea of not guilty and the stage dates being set at the PTPH, the prosecution will ask the police to supply the additional material required to prove the case to the criminal standard of proof, that being so that the jury is sure of the defendant's guilt. This will require more information than the key evidence served on the defence for the PTPH. At the point that material is supplied, the prosecutor should review the case again in accordance with the Code, analysing all the material and confirming the case strategy, compiling the bundle of evidence upon which the prosecution will rely at trial, and, if not already served, completing initial disclosure by serving any material that may be considered to be capable of undermining the prosecution case or assisting the defendant's case together with the schedules of all non-sensitive unused material. This is a central point in the preparation of the prosecution.

6.46. Overall, we rated eight out of 35 cases (22.9%) as meeting the required standard for service-stage reviews, 13 (37.1%) as partially meeting it, and 14 cases (40%) as not meeting the standard.

6.47. The issues here were similar to those we found with the initial post-sending reviews, namely that a number lacked depth or were an adoption of the previous review with little proactive management of the case or attempt to

address issues missed previously. There were also cases where new information or material was not addressed. For example, in one case, further significant material had been received post-sending in the form of cell site analysis and phone attribution evidence, but neither the pre-PTPH nor later service review adequately considered it.

6.48. As cases progress after formal service of the prosecution case, things can change which materially impact on the case and require a proactive response by way of a further review. These developments can include additional evidence being received that may weaken or strengthen the case; the defence being set out in detail in a defence case statement; a prosecution witness indicating that they no longer wish to attend court; information being received about other alleged offending by the defendant; a decision to accept a plea to a lesser offence; or prosecution counsel providing an advice on the evidence or the merits of the case that requires active consideration. At this stage a review should take place to address whether there remains a realistic prospect of conviction and, if so, how the case strategy should be adapted. We call this a significant event review. To meet the standard, the review should add value by clearly detailing the change or development in the case and the action proposed to respond to it. It should also explain the rationale for any decisions made together with any consultation with the police or counsel if instructed.

6.49. We found the significant event review to be fully meeting the standard in nine cases (36%); partially meeting the standard in four cases (16%); and in 12 out of 25 (48%) there was no CMS review. While again these findings will have been influenced by pressures caused by the pandemic, this is an issue that the Area should address during the recovery phase.

6.50. Examples where inspectors assessed this significant event review question as not meeting the standard included; lesser pleas being accepted without a clear reasoning for the decisions being recorded (on the case management system), and a defence statement being received that set out its case, but which did not result in a further CPS review.

6.51. In contrast, we also saw examples of good reviews being carried out in response to a significant event. The reviews assessed as fully meeting the standard sometimes addressed issues that should have been identified at the pre-charge decision stage or earlier in the case. In one case involving county lines drug supply, a review was completed by the prosecutor on receipt of the defence statement. The review added significant value in identifying missing evidence and reasonable lines of enquiry.

6.52. We examined six Crown Court cases where pleas had been accepted to lesser offences than appeared on the original indictment, where the defendant

had pleaded only to some of the counts on the indictment, and/or where a basis of plea had been put forward by the defendant. We assessed the prosecution as fully meeting the required standard for acceptability of pleas in three of these cases (50%), partially meeting the standard in another two cases (33.3%), and not meeting the standard in one (16.7%). In the cases assessed as partially or not meeting the standard, there were inadequate records to demonstrate the rationale for the decisions and the factors that had been considered when reaching them.

6.53. In 57.5% (23 out of 40) of the cases, we found the CPS to be fully meeting the standard for appropriate and timely decisions about custody and bail throughout the life of the case. We rated 15 cases (37.5%) as partially meeting the standard, and two cases (5%) as not meeting it. In the cases rated as not fully meeting the required standard, the rationale for decisions relating to bail or custody was often insufficiently recorded, or not recorded at all. It does not necessarily follow in these cases that the wrong determinations on bail or custody were made in court.

6.54. In relation to whether appropriate applications (for example bad character or hearsay) were being used effectively to strengthen the prosecution case, we assessed three out of 15 cases (20%) as fully meeting the standard, with seven (46.7%) partially meeting it and five (33.3%) not meeting it. Where correct applications were being made, some lacked quality and, in particular, some bad character applications lacked a sufficiently reasoned argument for why the evidence should be admitted.

6.55. The Area is performing well when it comes to compliance with Judges' orders and we found no instances of non-compliance. In terms of timeliness, there was full compliance in 23 cases and partial compliance in 11 of the 34 cases (67.6% and 32.4% respectively). Where compliance was not timely, we did not find that this had a significant impact on the case.

Preparation for the plea and trial preparation hearing in the Crown Court

6.56. Our assessment for this aspect of the casework theme is the Area is **fully meeting the standard**. Overall, the score for the preparation for the plea and trial preparation (PTPH) hearing in the Crown Court cases was 72.8%³².

6.57. In assessing the Area's performance, we considered the key tasks the prosecution is required to complete in preparation for the PTPH. This includes completion of the PTPH form for use by the Judge presiding at the hearing, carrying out direct engagement with the defence, drafting the indictment, ensuring the relevant material is uploaded to the Crown Court Digital Case System (CCDCS) prior to the hearing, and that an advocate is instructed prior to the hearing to ensure that they are prepared.

6.58. Inspectors rated 17 (42.5%) cases as fully meeting the standard for effective preparation of the case to ensure progress at the PTPH. The remaining 23 files (57.5%) were assessed as partially meeting the standard. No cases failed to meet the standard at all. For those cases assessed as partially meeting the standard, a recurring theme was a failure to address the issue of alternative acceptable pleas where this was appropriate, or to have identified or chased outstanding items awaited from the police.

6.59. The indictment is the document that contains the charge(s) to be faced by the defendant at trial in the Crown Court. It is the responsibility of the prosecutor to prepare the draft indictment and it is important that it is legally correct, and the number and nature of the counts are appropriate. The draft indictment and key evidence must be served in a timely manner before the PTPH to allow for an effective hearing.

6.60. We found that the indictment was properly drafted in most cases, 26 out of 40 (65%). Twelve indictments (30%) were rated as partially meeting the standard and two (5%) as not meeting the required standard. The reasons for not fully meeting the standard included incorrect dates being included, appropriate additional counts not being added and, in one case, the wrong limb of handling being used.

6.61. In most cases (31 out of 40, or 77.5%), the draft indictment and key evidence were served at least seven days before the PTPH (this does not include the hard media referred to previously). We assessed a further seven cases (17.5%) as partially meeting the standard, with only two (5%) assessed as

³² See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

not meeting the standard. In those two cases, the documents were not served until very close to the hearing.

6.62. For the 26 cases where the PTPH was conducted by counsel rather than by a crown advocate, we assessed none as fully meeting the standard for the preparation of a clear instruction to advocate document, two (7.7%) as partially meeting the standard, and 24 cases (92.3%) as not meeting it. The Area told us that, ideally, a bespoke instruction document should be provided to counsel but that owing to the large increase in casework it has been handling since March 2020, the current expectation is that counsel will rely on reading the papers provided, including the case reviews. We understand that in the midst of the pandemic, the Area has had to be pragmatic in respect of what to prioritise, but we highlight the risk to effective case progression where counsel is asked to rely on case reviews, that may or may not contain a good standard of review and/or adequate instructions, when preparing for the PTPH.

6.63. In respect of the timeliness of instructing counsel or the crown advocate – which is a separate consideration to whether counsel had a clear instruction document to accompany the case papers – 25 out of 40 cases (62.5%) were rated as fully meeting the standard of doing so at least seven days before the PTPH. Six cases (15.0%) were rated as partially meeting the standard and we assessed nine cases (22.5%) as not meeting the required standard.

6.64. The principles of better case management apply in the Crown Court³³, one of which is the duty of direct engagement: rule 3.3 of the Criminal Procedure Rules requires parties to engage with each other about the issues in the case from the earliest opportunity and throughout the proceedings. The parties are required to establish whether the defendant is likely to plead guilty or not guilty; what is agreed and what is likely to be disputed; what information, or other material, is required by one party or another and why; and what is to be done by whom and when. The parties are required to report on that communication to the Judge at the PTPH.

6.65. Although the duty is placed on all parties, in practice the prosecution tends to take the lead in contacting the defence and providing the information to the court. The CPS case management system includes a duty of direct engagement log. This should be completed by the prosecutor and then uploaded to the CCDCS where it can be viewed by the Judge and the defence. Good conversations with the defence at an early stage can lead to resolution of the case without the need to list and prepare for trial which impacts positively on resources and also provides certainty for victims, witnesses and defendants.

³³ Better Case Management; Courts and Tribunals Judiciary; September 2015. www.judiciary.uk/publications/better-case-management/

6.66. We assessed the duty of direct engagement as fully meeting the required standard in 22 of the 38 cases (57.9%), partially meeting it in four cases (10.5%), and not meeting it in 12 cases (31.6%). We found that in those cases marked as fully or partially meeting the standard, engagement was normally via a letter or telephone call to the defence. On those files where a letter had been sent giving prosecutors' contact details and asking for a response, there was very little evidence of any reply from the defence. The lack of response in those cases may partly explain the number of cases that were rated as 'not meeting' as prosecutors may become frustrated with a process that does not seem to elicit a response from defence solicitors. We were told that pre-PTPH engagement had become more complicated by the furloughing of solicitors by firms during the pandemic.

6.67. Where the direct defence engagement log had been created by the prosecutor, it was not consistently uploaded to the CCDCS for the Judge to view in accordance with the requirements of the Criminal Procedure Rules. It was uploaded in 16 of the 26 cases (61.5%). In 10 cases (38.5%) we did not find evidence that the log had been uploaded.

6.68. The Area indicated that the expectation is that the log is uploaded. It is understandable, given the pressures on the Crown Court casework teams, that performance in respect of direct engagement may have dipped during the pandemic when many defence firms furloughed staff, making it more difficult than before to make contact. However, the Area should consider re-setting the expectations around this central aspect of better case management as the pressures ease.

Does the Area fully comply with its duty of disclosure?

6.69. Our assessment for this casework theme is that the Area is **partially meeting the standard**. We rated the Area compliance with disclosure for Crown Court cases at 64.5%³⁴.

6.70. We assessed the performance of the Area across a range of different aspects relevant to disclosure, including compliance with the duty of initial disclosure and continuing disclosure, handling of sensitive and third-party material, the correct endorsement of the schedules, timeliness, recording of the decisions on the disclosure record in the CPS's case management system, and feeding back to the police where necessary.

³⁴ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

6.71. It is a crucial element of the prosecution's role to ensure that unused material is properly considered, applying the tests set out in section 3 of the Criminal Procedure and Investigations Act (CPIA) 1996, and that any material that might reasonably be considered capable of undermining the case for the prosecution, or of assisting the case for the accused, is disclosed to the defence. This underpins and ensures the fairness of the trial process.

6.72. The police are required to accurately record all material, retain it, and reveal it to the prosecutor. In Crown Court cases the police are required to schedule all relevant non-sensitive unused material on a police manual of guidance form 6C (MG6C) and any sensitive material on a police manual of guidance form 6D (MG6D). These are sent to the prosecutor who in turn applies the test in the CPIA 1996; any material that meets the test must be disclosed to the defence.

6.73. The police disclosure officer, who in many cases will be the investigating officer, is required to review the material and provide a clear and adequate description of all documents on the schedules so that the prosecutor understands what the documents are and their significance. Where the descriptions are inadequate the prosecutor must ask for copies of the documents to be supplied so that they can discharge their duty. The prosecutor should assure themselves that all material that should be listed is included on the schedules.

6.74. The police are required to supply a manual of guidance form 6E (MG6E) in which the disclosure officer should identify any material that they have assessed as capable of meeting the test in section 3 CPIA 1996 and why. They must also supply a copy of those items to the prosecutor.

6.75. The prosecutor makes an initial assessment and confirms the position to the defence, either by sending any documents that meet the test or confirming that no material meets the test, but in both cases supplying the form MG6C so that the defence has sight of the list of non-sensitive documents. There is provision in the template disclosure letter to add any disclosable items not listed on the MG6C by the police. The MG6C and letter must be served by stage one, one of the stage dates set by the court at the plea and trial preparation hearing (PTPH). This is called initial disclosure.

6.76. The defence is required to respond to that initial disclosure by serving a defence statement that sets out the details of the defence case. This is set as stage two. If a defence statement is not served in a case an inference may be drawn from that failure at trial. Upon receipt of the defence statement, the prosecutor should review it and send it to the disclosure officer in a timely manner. The prosecutor should draw the attention of the disclosure officer to any

key issues raised within the defence statement, and actions that should be taken. The prosecutor should give advice to the disclosure officer as to the sort of material to look for, particularly in relation to legal issues raised by the defence.

6.77. The police should then carry out a further review of the unused material and advise the prosecutor (on a further MG6E) of any material (not previously disclosed) that now meets the disclosure test in the light of the defence statement. At that point, the prosecutor must reconsider the unused material and disclose any further material satisfying the disclosure test or confirm that no other material falls to be disclosed. This is called continuing disclosure and is stage three.

The most common reason for not fully meeting the standard required for initial disclosure was a failure to identify obvious items of unused material that were not scheduled

6.78. Any other material that is provided after that date must also be considered by the prosecutor and either served as evidence or dealt with as unused material. If it falls to be disclosed it should be served on the defence, but if it does not, it should be added to the MG6C schedule which should be re-served so that the defence are aware of the existence of the additional material.

6.79. It should be emphasised that although the disclosure officer is required to bring an open-minded approach and apply the

correct principles when making their assessment of what material meets the test for disclosure, it is the prosecutor's responsibility to bring their legal experience and expertise to bear and make their own independent assessment of what is and is not disclosable, and act accordingly.

6.80. We found that decisions around the initial disclosure of unused material could sometimes have been better thought out or recorded. In our file examination, we rated eight out of 36 cases (22.2%) as fully meeting the required standard, 22 cases (61.1%) as partially meeting it, and six cases (16.7%) as not meeting the required standard. Inspectors noted the inadequate quality of some schedules provided by the police, which clearly does not assist prosecutors in complying with their disclosure obligations.

6.81. The most common reason for not fully meeting the standard required for initial disclosure was a failure to identify obvious items of unused material that were not scheduled. For example, a defendant was prosecuted for being concerned in the supply of drugs. His mobile phone was analysed, and his address was searched, although nothing incriminating was recovered. The

relevant material was not listed on the disclosure schedules and this was not identified or challenged by the prosecutor at the initial disclosure stage. We also found six examples of prosecutors concluding that disclosable material did not in fact meet the test, and six examples of prosecutors using the wrong endorsements on the disclosure schedules; most commonly by recording that an item was clearly not disclosable (CND) when no such conclusion could have been properly reached from the description on the schedule.

6.82. For the cases assessed as partially or not meeting the standard we also sometimes found that it was unclear from the schedules and the disclosure record why prosecutors had decided that an item did, or did not, meet the test for disclosure.

6.83. We assessed 33 out of 36 cases (91.7%) as fully meeting the standard for timeliness of initial disclosure. While the Area is performing very well in its timely service of initial disclosure, our findings indicate that this may sometimes be achieved at the expense of the quality of decision-making.

6.84. In respect of continuing disclosure, we assessed the Area as fully meeting the standard in 10 out of the 25 relevant cases (40%), partially meeting the standard in 12 cases (48%), and not meeting the standard in three cases (12%).

6.85. Where there was a rating of partially or not meeting the standard, the main failings were where the prosecutor did not identify reasonable lines of enquiry from the defence statement or recorded the wrong test for disclosure.

6.86. Again, timeliness was good for continuing disclosure. The prosecution was timely in 80% of cases (20 out of 25), was rated as partially meeting the standard in four others (16%) and was not meeting the standard in only one case (4%).

6.87. All sensitive material must be scheduled on a separate schedule, which the prosecutor must consider, applying the same tests. If the prosecutor concludes that there is sensitive material that meets the tests, they should either disclose anything relevant in a form that does not compromise the public interest, or make an application to the court to withhold the material on the grounds of public interest immunity.

6.88. Twelve of the Crown Court cases we examined contained material that the disclosure officer deemed to be sensitive and had placed on the MG6D form. The prosecution dealt with this material appropriately in five of these 12 cases (41.7%), but did not meet the standard in the other seven (58.3%), mostly because prosecutors had not endorsed and signed the MG6Ds provided by the

police. The Area will wish to address this to ensure that all MG6Ds are reviewed to ensure that the integrity of the disclosure process is maintained.

6.89. The Area's handling of third-party material in its Crown Court casework is reasonably good, although with room for improvement. Of the eight cases with third-party material, inspectors rated four (50%) as fully meeting the standard in respect of appropriate handling, three (37.5%) as partially meeting the standard and one case (12.5%) as not meeting the required standard.

6.90. We assessed whether defence statements are being reviewed by prosecutors leading, where necessary, to reasonable lines of enquiry and directions being given to the police. Of the 25 cases where a defence statement was served, we assessed the prosecutor as fully meeting the standard in ten (40%), partially meeting the standard in 12 (48%), and not meeting it in three (12%).

6.91. Most of the cases partially meeting the standard were rated as such because of inadequate instructions to the disclosure officer, which lacked sufficient consideration or guidance on the issues raised. The three cases assessed as not meeting the standard were because there was no evidence that a prosecutor had considered the defence statement, although in each case it had been forwarded to the police by a paralegal officer. The Area may want to consider reminding its prosecutors and operational delivery staff of the requirement for there to be legal consideration of a defence statement and that prosecutors should provide case-specific guidance and instructions to disclosure officers when it is sent to them.

Most of the cases partially meeting the standard were rated as such because of inadequate instructions to the disclosure officer

6.92. Where the police do not comply with their disclosure obligations it will result in the prosecutor requesting re-work on inadequate schedules, more relevant information or for further enquiries to be made, often resulting in delay to the case while the matter is addressed. Of the 37 cases where disclosure schedules had been provided to the CPS, 40.5% were rated as not meeting the required standard, with a further 29.7% only partially meeting it. In 11 cases (29.7%) the schedules were rated as fully meeting the required standard.

6.93. These findings give an indication of the additional work that the CPS must carry out to feed back to the police. However, we found that in some cases there was a lack of challenge when there were failings by the police in their disclosure obligations. In terms of CPS feedback, we assessed four out of 26

cases (15.4%) as fully meeting the standard, 13 (50%) as partially meeting it, and nine (34.6%) as not meeting it.

6.94. Despite the pressures on CPS Areas, feedback to the police in relation to disclosure failings remains central if the joint national disclosure improvement plans are to be effective in driving up quality in the handling of unused material. In fairness, we saw substantial evidence that the Area has been proactive and energetic in working with police at a strategic level on improving case file quality, including the quality of disclosure schedules being provided by officers. But feedback to the police by casework prosecutors remains an important strand of efforts to achieve long-term improvement.

6.95. In all cases, prosecutors should complete a disclosure record on the CPS case management system. This provides an audit trail for the receipt and service of the disclosure schedules, and the decisions and actions taken by prosecutors, including their reasons for the disclosure or withholding of unused material.

6.96. The data in respect of proper completion of the disclosure record presented a mixed picture. We rated 12 cases (33.3%) as fully meeting the standard and 19 (52.8%) as partially meeting it. Five cases (13.9%) were assessed as not meeting the standard.

6.97. We found a recurring issue; namely key decisions not being recorded on the disclosure record. Inspectors examined some that recorded the receipt and dispatch of items, but were silent as to the rationale behind the decisions made at the initial and continuing disclosure stages. The Area may want to consider further internal assurance to ensure compliance around this aspect of disclosure.

Does the Area address victim and witness issues appropriately?

6.98. Our assessment for this casework theme is that the Area is **fully meeting the standard**. We rated the Area compliance with addressing victim and witness issues appropriately in Crown Court cases at 74%³⁵.

6.99. While the overall aggregated score was fully meeting the standard and there were aspects of victim and witness handling that were dealt with well, there is room for improvement in some respects.

³⁵ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

6.100. We assessed a range of aspects to victim and witness issues at both the pre- and post-charge stages. This included consideration of relevant and ancillary matters at charging to support victims and witnesses; timely and accurate witness warning; consideration of special measures; addressing witness issues; consultation with victims and witnesses; victim personal statements (VPS), where a victim makes a statement explaining the impact of the offending behaviour on them; and Victim Communication and Liaison scheme (VCL) letters, explaining the reasons for decisions to drop or substantially alter a charge.

6.101. At pre-charge we examined whether, in cases involving victims and witnesses, appropriate consideration was given to the relevant issues. This included special measures to support vulnerable or intimidated victims and witnesses to give their best evidence; appointment of an intermediary to facilitate communication with a victim or witness; and whether the victim wanted to make a VPS about how the offence has impacted on them; as well as consideration of orders such as restraining orders preventing the defendant from doing things, usually contacting the victim, and compensation.

6.102. In respect of actively considering relevant applications and ancillary matters at the pre-charge stage to support victims and witnesses, we assessed seven out of 20 cases (24.1%) as fully meeting the standard, with another 14 cases (48.3%) partially meeting it. Eight cases (27.6%) were assessed as not meeting the standard. The pre-charge stage is the opportunity to grasp issues that contribute towards providing victims and witnesses with a high-quality service at an early stage. We found that this opportunity was not always being taken and the Area may wish to focus on improving overall compliance amongst its charging prosecutors.

6.103. At the post-charge stage, we assessed a number of aspects of casework including special measures applications, witness warning, handling of witness care unit (WCU) correspondence, consultation with victims and witnesses including speaking to witnesses at court (STWAC), VPSs, orders on sentence or acquittal and VCLs.

6.104. In 55% of cases (11 out of 20) the need for special measures was identified and they were applied for correctly and in a timely way. We rated a further four cases (20%) as partially meeting the standard. In five cases (25%) no steps were taken to achieve best evidence by making an appropriate application for special measures, or the lapse of time between the prosecution having the necessary information and making the application was inordinately long.

6.105. We saw instances of information being available at the time of the plea and trial preparation hearing (PTPH) that would have enabled special measures applications to be made, but this was not done until later on in the proceedings. Earlier applications in those cases would have provided earlier assurance to victims and witnesses. However, most applications were made in good time. We saw one example where the need for special measures only arose shortly before trial because of a witness's ill-health. The prosecution was proactive when receiving this information and immediately made the necessary arrangements for a live link, which enabled a successful application to be made for the witness to give evidence from his home.

6.106. The timely warning of witnesses is a strength with 94.1% of cases (32 out of 34) fully meeting the required standard and no cases being rated as not meeting the standard.

The Area's performance is good in relation to seeking orders to protect victims themselves

6.107. Victims are entitled, if they wish, to provide a VPS. The VPS sets out the impact that the offence has had on them and helps inform the court's decision on sentencing. The police should tell the CPS, and the CPS should give effect to the victim's preferences for how the VPS is presented to the court, such as the victim reading the statement in court, having the

prosecution advocate read it for them, or the Judge or magistrates being given the VPS to read.

6.108. In respect of victims' wishes regarding VPS, inspectors rated 13 cases (48.1%) as fully meeting the standard, 12 (44.4%) as partially meeting it, and two (7.4%) as not meeting it. The most common reason for an inspector assessing a case as partially meeting the standard was because there was no record of the VPS being read out at the sentencing hearing. In neither of the two cases assessed as not meeting the standard, both of which had victims, was there any mention of a VPS or of one being chased.

6.109. Of the 12 applicable cases where the Area sought the appropriate orders to protect the victim, witnesses and public, 10 (83.3%) were assessed as fully meeting the standard. The two (16.7%) assessed as not meeting it was because there was no record of the prosecution applying for forfeiture of weapons at sentence, an order designed to protect the public in general. The Area's performance is good in relation to seeking orders to protect victims themselves.

6.110. VCLs should be sent to victims whenever a charge relating to them is either dropped or substantially altered. The letter should be sent within one working day where the victim is deemed to be vulnerable or intimidated, is a

victim of serious crime (which includes domestic abuse), or has been targeted repeatedly over a period of time. The timescale in all other cases is five working days. The letter should include a clear and understandable explanation of the decision, a referral to the victims' right to review (VRR) scheme if applicable (this is a scheme where a victim can ask the prosecution to reconsider a decision to drop or substantially alter a case), and the offer of a meeting in certain types of case.

6.111. Fourteen cases required VCLs in the overall Crown Court sample. Nine (64.3%) were sent out within the relevant timescale, one (7.1%) was sent out with minimal delay, and four (28.6%) were either sent out more than 48 hours late or not at all.

6.112. In relation to the standard of the quality of the letter, performance was reasonable, although the quality of the letters still required improvement in half of the relevant cases we examined. Six of the 12 letters (50%) sent were rated as fully meeting the standard, five (41.7%) as partially meeting it, and one (8.3%) as not meeting the standard. Elsewhere in this report we address the recent work that the Area has carried out on improving its letters to victims.

6.113. WCUs are separate from the CPS. They manage the care of victims and witnesses throughout the post-charge phase of a case, including updating victims and witnesses on the progress of the case. Where required, they obtain information to assist in the making of a special measures application to support the victim or witness to give their best evidence. They also arrange pre-trial witness visits to court to reduce anxiety about the surroundings, or offer practical support to encourage the victim or witness to attend court, such as making travel arrangements.

6.114. As witness care officers are in regular contact with victims and witnesses, where issues arise that may impact on the victim or witness's ability to attend court as required, the WCU will send information to the CPS. It is important that this information is dealt with in a timely manner with effective actions put in place to minimise any impact on the effectiveness of the trial. Such information may be that witnesses are no longer able to attend court on the date that the trial is listed

6.115. Dealing with WCU correspondence is an Area strength, with witness issues being addressed promptly and proactively. We rated 19 out of 25 cases (76%) as fully meeting the standard for timeliness and effectiveness, and one case as not meeting it. The other five cases were rated as partially meeting the standard.

6.116. There was reasonable compliance with the duty to consult victims and witnesses where appropriate and with the STWAC scheme in Crown Court cases. Eleven out of 21 cases (52.4%) were rated as fully meeting the standard, with a further eight (38.1%) partially meeting it. We rated two cases (9.5%) as not meeting the standard. A common theme in those cases assessed as partially or not meeting the standard was the lack of a clear record of conversations that have taken place.

6.117. We were told that the Area considers this to be more a record-keeping issue than a non-compliance one, but it may wish to consider carrying out some further assurance to ensure that the guidance is widely understood and to improve the recording of consultations and discussions with victims and witnesses.

7. Casework quality: rape and serious sexual offences casework themes

Introduction to rape and serious sexual offences casework

Does the Area deliver excellence in rape and serious sexual offences (RASSO) prosecutions by ensuring the right person is prosecuted for the right offences, cases are progressed in a timely manner and cases are dealt with effectively?

7.1. We examined 20 rape and serious sexual offences (RASSO) cases for casework quality. We assessed added value and grip and analysed the cases in the five casework themes or, for some of the themes, scored two or more sub-themes.

7.2. We used the same scoring mechanism as for added value and grip (set out more fully in chapter 4 above and in annex F), which was using two points per fully meeting the standard answer to the relevant question, one point for each relevant question marked as partially meeting the standard and no points for not meeting the standard. These were expressed as a total of the fully, partially, and not meeting answers to derive a percentage of the scores awarded for each casework theme (annex G). We translated the percentage into an overall marking of fully, partially, or not meeting the required standard, based on the ranges set out in annex F.

7.3. Most RASSO cases are heard in the Crown Court, but a small number of RASSO cases may be heard in the lower courts, usually in the youth court (for a defendant aged 10 to 17). Some of the questions in our file examination, especially those relating to preparation for Crown Court hearings, will not be applicable in youth court cases.

7.4. We have scored CPS South East for its RASSO casework as follows:

Table 10: Scoring for RASSO casework

Question	Rating	%
Pre-charge decision-making and review		
The Area complies with the Code for Crown Prosecutors ³⁶ at pre-charge decision stage	Fully meeting the standard	100%
The Area selects the most appropriate charge(s) at pre-charge decision	Fully meeting the standard	86.1%
The Area's pre-charge decisions contain a clear analysis of the case and set out a cogent case strategy	Not meeting the standard	50%
The quality of post-charge reviews and decision-making		
The Area complies with the Code for Crown Prosecutors post-charge	Fully meeting the standard	100%
The Area's post-charge reviews contain a clear analysis of the case and set out a cogent case strategy	Partially meeting the standard	64.2%
Preparation for the plea and trial preparation hearing		
	Partially meeting the standard	67.1%
Disclosure		
	Fully meeting the standard	75.9%
Victims and witnesses		
	Fully meeting the standard	74.2%

7.5. Our assessment of RASSO casework was that overall, it is handled well, especially in respect of Code compliance, selection of charges, disclosure, and victim and witness care. We found that some aspects would benefit from more focus, specifically in connection with the value that prosecutors add in their reviews, particularly at the pre-charge stage but also at the post-charge stage and when preparing for the plea and trial preparation hearing (PTPH). We found that in those cases not meeting the standard there was a lack of case strategy and a failure to articulate how issues relating to disclosure or the defence case could be addressed.

³⁶ *Code for Crown Prosecutors, 8th edition*; CPS; October 2018.
www.cps.gov.uk/publication/code-crown-prosecutors

Pre-charge decision-making and reviews

7.6. In order to assess Area performance at pre-charge decision-making the inspection assessment has been split into three sub-themes. These reflect the different aspects that contribute to effective decision-making at the pre-charge stage, namely: compliance with the Code for Crown Prosecutors; selection of the most suitable charges; and the quality of the analysis and case strategy set out within the prosecutor's review

Complying with the Code for Crown Prosecutors in pre-charge decisions

7.7. We rated the Area as **fully meeting the standard** for this aspect of pre-charge decision-making with all the Area-charged RASSO cases being compliant with the Code for Crown Prosecutors.

Table 11: Pre-charge Code compliance in RASSO cases

Rating	Number of cases	Percentage
Fully meeting the required standard	18	100%
Not meeting the required standard	0	0%

7.8. Compliance with the Code for Crown Prosecutors requires prosecutors to assess the material supplied by the police and to apply the two-stage test. The first stage is deciding whether there is sufficient evidence for a realistic prospect of conviction and, if so, the second is whether a prosecution is required in the public interest³⁷.

7.9. In every case we assessed, the Area prosecutor³⁸ correctly applied the evidential and public interest stages as required.

Selecting the most appropriate charges

7.10. The facts and circumstances of each case are different and there are often a number of charges that can be considered and selected by the prosecutor³⁹.

³⁷ See chapter 5, paragraphs 5.7 to 5.12, regarding application of the Code by prosecutors.

³⁸ As this is an Area inspection, where the charging decision was made outside of the Area, either by the police or CPS Direct – the CPS's out-of-hours pre-charge team that operates 24 hours a day, 365 days a year – the answer was marked not applicable.

³⁹ See chapter 5, paragraphs 5.14 to 5.17, for the principles that prosecutors should apply when selecting appropriate charges.

7.11. In RASSO cases the selection of charges can be complicated, with different offences being relevant depending on the date of the offence(s) or the age of the victim. Non-recent allegations can require particular care if they span the transitional provisions in, and the changes to, offences brought about by the Sexual Offences Act 2003.

7.12. We assessed the Area as **fully meeting the standard** for the selection of charges aspect of pre-charge decision-making. Fourteen of 18 cases were rated by inspectors as fully meeting the standard, three partially meeting it, and one not meeting the standard:

7.13. The case rated as not meeting the standard for the selection of the most appropriate charges related to an historical child sexual abuse case in which the complainant alleged that he had been forced to perform oral sex on the offender, but this activity was not reflected either in the charges or initial indictment. The indictment was redrafted by counsel prior to the PTPH and the omission corrected. This could have adversely impacted the ultimate sentence in accordance with the sentencing guidelines.

Quality of the pre-charge decision review, including analysis and case strategy

7.14. While there were examples of good reviews that clearly added considerable legal value, this was not consistent and, overall, our assessment for this aspect of the casework theme in RASSO cases is that the Area is **not meeting the standard**. Overall, the score for the quality of pre-charge review, analysis, and case strategy in RASSO cases was 50%⁴⁰.

7.15. While getting the initial charging decision correct is essential, a clear analysis of the material and setting out a clear strategy is fundamental to the efficiency and effectiveness of the subsequent stages to support the initial application of the Code for Crown Prosecutors and selection of charges as the case moves through the criminal justice system.

7.16. The prosecutor's review⁴¹, which should be recorded on a police manual of guidance form 3 (MG3) – or 3A for any subsequent reviews after the first review – should set out a clear and cogent analysis of the material, identifying how the evidential test is met, and setting out a clear case strategy. A case strategy should encompass what the case is about or 'tell the story' and should

⁴⁰ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

⁴¹ See chapter 5, paragraphs 5.22 and 5.23, for what should be included in a good-quality pre-charge review.

set out how potentially undermining material, such as material questioning the credibility of a victim or witness, can be addressed.

Case study

This was an allegation of historical sexual abuse on two children by their uncle, almost 40 years earlier.

There were striking similarities in the accounts of the two complainants, that the suspect had taken them into a particular room of the house with the offer to play a game before indecently assaulting them.

Though the allegations were said to have occurred a significant time ago, at the pre-charge stage the prosecutor correctly observed that this was not a weakness in the case but a strength. The children had maintained their accounts into adulthood with a depth of feeling, which had persisted, about the alleged abuse, such that they wished to report it years later. There was consistency in the accounts.

The prosecutor addressed how the delay could be presented as a strength to the jury in that if the complainants were lying why would they maintain such an elaborate story for so many years.

There was careful consideration of bad character with an instruction that a bad character notice should be served in the case to apply to make the allegations cross admissible. The evidence of each complainant was admissible to support the other as it was relevant to an important matter in issue, a propensity to commit offences of the kind with which the suspect was eventually charged, namely, indecently assaulting young children in a very similar manner.

In our assessment, the prosecutor added value in carefully considering the relative strengths and weaknesses of the case and ensuring that there was a clear case strategy for trial.

7.17. When assessing the quality of the pre-charge review we examined: how the prosecutor dealt with and assessed the effect of any undermining unused material on the prospects of conviction; the consideration of victim and witness issues; the quality of the instructions to the court prosecutor to ensure an effective first hearing and to avoid duplication by the advocate having to re-review the case; the consideration of any ancillary applications that may strengthen the case, such as bad character evidence of the defendant or hearsay; and whether there was a proportionate action plan identifying further reasonable lines of enquiry.

7.18. Inspectors found that prosecutors, while correctly applying the Code and selecting appropriate charges, sometimes did not go on to clearly analyse the evidence and set out on what basis the case would be prosecuted by way of a cogent case strategy.

7.19. Of the 18 applicable cases inspectors rated four cases (22.2%) as fully meeting the standard, 12 (66.7%) as partially meeting the standard and two (11.1%) as not meeting the standard.

7.20. There were some examples of good case analysis. One involved an allegation of rape by two defendants on a complainant, who had been drinking, which was charged under the threshold test⁴². There was a good detailed analysis in the prosecutor's review – clearly identifying the evidence, reasonable lines of enquiry, and strengths and weaknesses – with a clear action plan setting out the actions to be completed to enable the application of the full Code test at a later stage.

7.21. The reasons that cases were assessed as partially or not meeting the standard varied, but some themes are highlighted below.

- Cases that were not analysed in sufficient depth: we saw examples of the prosecutor review where the strengths and weaknesses were set out, but the strategy was not dealt with, nor were there any details of how the issues could be addressed and overcome.
- There were several cases where there was a lack of clarity as to what the case strategy was.
- Cases where undermining material was not addressed in relation to case strategy: there were examples where neutral or negative forensic evidence, or undermining witness accounts were not addressed and no strategy for dealing with this evidence was recorded.

7.22. In respect of appropriate handling of unused material at the pre-charge stage, we assessed eight out of 18 RASSO cases (44.4%) as fully meeting the standard and nine cases (50%) as partially meeting it. In one case (5.6%) we assessed the prosecutor as not meeting the required standard. In this case, the prosecutor had simply recorded that reasonable lines of enquiry for a disclosure management document would be required. There was no other assessment regarding available or potential unused material in relation to the rape allegation.

⁴² There are two tests for determining whether a suspect should be charged, as set out in the Code for Crown Prosecutors. The full code test should be applied where the suspect is not in police custody. In limited circumstances, the threshold test is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge. There are five conditions which must be met before the threshold test can be applied. Details of the conditions are contained in the [Code for Crown Prosecutors, 8th edition](#).

7.23. The themes for the 'partially meeting' assessments varied. For example, in some cases the schedules or material had been provided for review and review decisions had been made, but there was no recorded rationale for the decision. In another case there was a lack of direction to the police about further enquiries to be made relating to additional potentially disclosable unused material. There were also cases where the prosecutor failed to address obviously missing material, for example, negative or neutral scientific documents. Sometimes these oversights were not picked up as the case progressed, which highlights the importance of a through approach to pre-charge reviews.

7.24. In four out of 18 cases (22.2%), inspectors found the pre-charge prosecutor to be fully meeting the standard for considering relevant applications and ancillary matters including bad character or hearsay applications. Eight cases (44.4%) were rated as partially meeting the standard, and this was generally where the application was identified but no further information was given. For example, not indicating which previous convictions were relevant for a bad character application and under which gateway they should be admitted. Six cases (33.3%) were rated as not meeting the standard. Cases with 'not meeting' assessments were mainly as a result of potentially relevant applications not being considered at all.

7.25. We found that although in most RASSO cases victims are automatically eligible for special measures, prosecutors did not always seek further information from the police so that the most appropriate special measures could be secured, and the views of the victim obtained. We rated half of cases as not meeting the standard for relevant applications and ancillary matters to support victims and witnesses. While this can of course be addressed post-charge, a proactive approach at the pre-charge stage is important to ensure that victims and witnesses have reassurance and certainty as to special measures at an early stage of the proceedings. This can reduce anxiety about giving evidence, which can promote engagement and reduce the rate of retraction or non-attendance later on.

7.26. Where prosecutors identify further reasonable lines of enquiry, they should set these out in an action plan which is a specific section of the MG3. This allows for actions to be prioritised and timescales set to ensure that all appropriate avenues of investigation have been completed, including those that may point away from a prosecution.

7.27. In five of the 17 cases (29.4%) we rated the MG3 action plan as fully meeting the appropriate standard. Nine cases (52.9%) were rated as partially meeting the standard and three cases (17.6%) as not meeting it. We found that action plans were sometimes incorrectly placed in the body of the review and not

in the relevant section at the end of the document, which gave rise to the possibility of actions being missed by the police. Often individual actions were not prioritised, and single dates were given for all actions to be completed. While this was appropriate in most cases, there were instances when it may have been helpful for officers to have been given some guidance on which actions to prioritise. Prosecutors not being specific or including clear direction for the police is unhelpful and can lead to delay.

7.28. Another important function of a pre-charge decision review is to provide instructions to the court prosecutor⁴³, who may have many cases to deal with in a court list and little time to review cases prior to the hearing. Inadequate instructions can limit the progress that can be made at the first hearing, or require the advocate to duplicate the review and make fresh decisions about aspects of the case, including whether there should be any change in bail status or acceptability of pleas. Clear instructions improve effectiveness and efficiency, and reduce the risk of something being overlooked at court.

7.29. Inspectors identified considerable room for improvement in respect of the quality of the instructions and guidance to the court prosecutor in RASSO cases. One out of 18 cases (5.6%) was assessed as fully meeting the standard, nine cases (50%) were assessed as partially meeting the standard, and eight cases (44.4%) were rated as not meeting the standard. The themes we identified included:

- no instructions being provided to court advocates at all, in some cases
- the question of bail conditions not being addressed
- instructions in relation to sentencing not always being recorded, for example in relation to Sexual Harm Prevention Orders
- the acceptability of pleas rarely being addressed, even where there was a significant possibility that alternative pleas, or pleas to some offences only, might be offered.

7.30. The quality of the pre- and post-charge reviews and strategies is of critical importance to the effective and efficient progress of cases through the criminal justice system. Code-compliant decisions need to be underpinned with the supporting analysis of the case material and a clear strategy in a review. The reviews must address matters such as undermining material, special measures and applications in order to add value. This promotes a proactive – as opposed to a reactive – approach to the case, avoiding key issues being missed, cracked

⁴³ See chapter 5, paragraph 5.32, which sets out the instructions that should be included by the charging prosecutor in the MG3.

and/or ineffective trials, duplication of effort, and delays in decision-making and case progression that can impact on victims, witnesses and defendants, especially where they are in custody.

Case study

The case involved an allegation of rape between a young male and female who had been in a relationship for a short time. The issue was consent, the complainant asserting that she had told the suspect that she “didn’t want this” whereas the suspect said that the complainant had willingly consented to sexual intercourse with him.

During the investigation, officers seized the suspect’s iPad and mobile phones and downloaded the content for disclosure purposes. The police discovered extreme pornography on the suspect’s device depicting non-consensual penetration and visiting of websites such as “rapefilms.net”.

This information was disclosed to the prosecutor by the police in the police MG3 and, although further information was requested by and provided to the prosecutor in relation to this, it was not further addressed in the prosecutor’s charging advice.

No consideration was given to whether further charges could be considered in relation to the extreme pornography and no instructions were given regarding whether a notice to adduce bad character evidence should be served to adduce the evidence as relevant to an important matter in issue in the case.

We found that this important issue was not addressed in the post-sending review or prior to service of the case either.

If proved and admitted, the fact that the defendant had been visiting such websites could have been argued to be suggestive of his interest in forced sex and watching people being raped. The omission was noticed by prosecution counsel who drafted the bad character notice for service on the court, albeit out of time.

7.31. The Area clearly makes Code-compliant decisions in its RASSO cases, generally selects the most appropriate charges and is good at identifying third-party reasonable lines of enquiry. As pressures ease, however, the quality of its RASSO pre-charge reviews does require some attention.

Post-charge decision-making and reviews

Complying with the Code for Crown Prosecutors in post-charge decisions

7.32. We rated the Area as **fully meeting the standard** for this aspect of post-charge decision-making with all RASSO cases being compliant with the Code for Crown Prosecutors – that is, the evidential and public interest limbs had been properly applied. These cases included reviews of cases that were originally charged by CPS Direct (CPSD).

Table 12: Post-charge Code compliance in RASSO cases

Rating	Number of cases	Percentage
Fully meeting the required standard	20	100%
Not meeting the required standard	0	0%

7.33. In every case we assessed, the Area prosecutor correctly applied the evidential and public interest stages as required.

Quality of post-charge reviews, analysis, and case strategy

7.34. We found that the overall quality of the post-charge reviews in RASSO cases was noticeably better than at the pre-charge stage, and our assessment is that the Area is **partially meeting the standard**. Overall, the score for the quality of post-charge review, analysis, and case strategy in RASSO cases was 64.2%⁴⁴.

7.35. The quality of ongoing reviews and strategy⁴⁵ is of critical importance to the effective and efficient progress of cases through the criminal justice system. Making a decision in compliance with the Code – without supporting analysis of the case material and a clear strategy addressing matters such as undermining material, special measures and applications – diminishes the value added by the CPS and results in a reactive as opposed to a proactive approach to the case. This can lead to key issues being missed, cracked and/or ineffective trials, duplication of effort, waste of resources and delays in decision-making and case progression that can impact on victims, witnesses and defendants, especially where they are in custody.

⁴⁴ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

⁴⁵ See chapter 6, paragraph 6.35 for what should be included in a good-quality post-sending review.

7.36. Our assessment of whether the RASSO cases examined received a proportionate post-sending review, incorporating a proper case analysis and strategy before the plea and trial preparation hearing (PTPH), was that eight out of 20 cases (40%) were fully meeting the standard, seven cases (35%) were partially meeting the standard, and five cases (25%) were rated as not meeting the standard.

7.37. The expectation is that the post-sending review will add value to the case. When assessing the quality of post-sending reviews, we took a proportionate approach so we did not expect to see a review where this would have added no additional value to the case. Where the pre-charge review is of good quality and addresses all issues, it would be deemed to be fully meeting the standard if the prosecutor adopted that review at post-sending and confirmed that there was no material change or additional material that required review. However, where the pre-charge review was rated as not fully meeting the required standard, or there was fresh material or information that required consideration, a blanket adoption of the earlier review at the post-sending stage did not suffice.

7.38. We saw cases where the post-sending review had carefully considered the case and addressed relevant issues, clearly adding considerable value. But we also found that some post-sending reviews lacked depth, and sometimes consisted of a simple adoption of the pre-charge decision with nothing further added, where a more meaningful approach was required. These reviews were not being used to proactively manage the case, consider or chase responses to action plans, or update the case analysis and strategy so that sufficient evidence and other material could be served before the PTPH in order to progress the case.

7.39. The post-sending review was timely in 17 out of 19 cases (89.5%). We assessed two cases as partially meeting the standard. In one case, a custody time limit was running and the review was not completed within 72 hours of sending. And in the other, the review was only completed three days prior to PTPH, although in the event there was no material impact on that hearing.

7.40. In contested RASSO cases, a number of orders to manage the case will be made at the first hearing in the Crown Court, which is the PTPH. In most cases, the court will be able to set just four dates for the parties to complete their pre-trial preparation although where the case requires it, individual dates can be set⁴⁶.

⁴⁶ See chapter 6, paragraph 6.45, for detail of the four stages that comprise the pre-trial case timetable.

**in some cases
evidential and
disclosure issues are
not being considered
together when
weighing the evidence**

7.41. Following a plea of not guilty and the stage dates being set, the prosecution will ask the police to supply the additional material required to prove the case to the criminal standard of proof, that being so that the jury is sure of the defendant's guilt. This will require more information than the key evidence served on the defence for the PTPH. At the point that material is supplied the prosecutor should review the case again in accordance with the Code, analysing all the material and confirming the case strategy, compiling the bundle of evidence upon which the prosecution will rely at trial, and, if not already served, completing initial disclosure serving any material that may reasonably be considered to be capable of undermining the prosecution case or assisting the defendant's case, together with the schedules of all non-sensitive unused material. This is a central point in the preparation of the prosecution.

7.42. The quality of the reviews coinciding with the service of the prosecution case, was mixed. Overall, six cases (35.3%) were rated as fully meeting the standard, seven (41.2%) as partially meeting it, and four cases (23.5%) as not meeting the standard.

7.43. The four cases rated as not meeting the standard were rated as such because there was either a one-line review or a 'cut and paste' review. Opportunities to address the issues raised by the defence at the PTPH were missed. In one case this created further pressure later in the case when dealing with matters of continuing disclosure. There is a concern that in some cases evidential and disclosure issues are not being considered together when weighing the evidence.

7.44. Other issues resulting in 'partially meeting' findings occurred where a prosecutor completed the review dealing with pleas and evidence, but not with disclosure. And, in another case, the review was simply copied from the pre-charge decision and where further issues were identified and addressed in a memo to the police but not in the review.

7.45. As cases progress, things can change which materially impact on the prosecution case. These developments can include: additional evidence being received that may weaken or strengthen the case; the defence being set out in detail in a case statement; a prosecution witness indicating that they no longer wish to attend court; information being received about other alleged offending by the defendant; a decision to accept a plea to a lesser offence; or prosecution counsel providing an advice on the evidence or the merits of the case that requires active consideration.

7.46. At this stage, a review should take place to address whether there remains a realistic prospect of conviction and, if so, how the case strategy should be adapted. We call this a significant event review.

7.47. We found that performance was stronger in relation to these significant event reviews with six out of 14 applicable cases (42.9%) fully meeting the standard, another six partially meeting it, and two cases (14.3%) not meeting it.

7.48. We saw examples of proactive recording of significant event reviews, particularly where a decision had been taken to offer no evidence in the case. There were also cases where pleas to different or fewer offences were offered and there was a clear review detailing why these should be accepted or rejected.

7.49. Where cases were rated as partially or not meeting the standard for significant event reviews this was because, for example, the rationale for accepting alternative pleas was not recorded at all, or other decisions taken and the reasoning behind them was not clear in the review.

7.50. We examined five RASSO cases where pleas had been accepted to lesser offences, where the defendant had pleaded only to some of the counts on the indictment, and/or where a basis of plea had been put forward by the defendant.

7.51. We assessed the prosecution as fully meeting the required standard for acceptability of pleas in three of these cases (60%), partially meeting the standard in one case (20%), and not meeting the standard in one (20%).

7.52. In the cases assessed as partially or not meeting the standard, there were inadequate records to enable an inspector to establish the rationale for the decision to accept pleas to lesser offences and the factors that had been considered when reaching them. In both cases, the implications in respect of the Judges' powers under the sexual offences sentencing guidelines were profound in that the starting point was inevitably significantly reduced by the acceptance of the pleas.

7.53. Decision-making in cases is at the core of the CPS's function and it is important that there is a clear record of the rationale for decisions made as cases change. This provides an assurance that prosecutors are reaching reasoned decisions in accordance with the Code and the CPS's own policies and guidance. This is a safeguard for prosecutors should the process of recording their decision reveal any flaws in their approach, allows managers to identify development needs, and allows complaints or victim requests to review a decision to be handled in an efficient and transparent manner.

Case study

We assessed a case involving serious child abuse of a ten-year-old child.

Before the trial and cross examination of the victim, the defendant offered pleas to all the non-penetrative sexual offences. This offer was carefully considered by the prosecutor who conducted a full review and correctly identified that it did not adequately reflect the criminality involved and provide the court with sufficient sentencing powers.

On the first day of trial, the defendant offered acceptable pleas to the more serious penetrative offences on the indictment.

The case demonstrated sound application of the CPS policy on acceptance of pleas and that the prosecutor had taken into consideration not only the sentencing options available to the court but also the welfare of the witnesses.

The defendant was sentenced to a term of seven years and five months' imprisonment.

7.54. In 40% (8 out of 20) of the cases, the CPS was rated as fully meeting the standard for appropriate and timely decisions about custody and bail throughout the life of the case. We assessed nine cases (45%) as partially meeting the standard, and three cases (15%) as not meeting the standard. The primary reason for cases not meeting the required standard was because the rationale for decisions relating to bail or custody was insufficiently recorded, or not recorded at all. It does not necessarily follow in these cases that the wrong determinations were made. However, our findings demonstrate that this is an aspect of casework where prosecutors need to ensure they are actively considering the bail position when reviewing cases at the pre-charge stage, and when an event occurs after charge that requires the bail position to be revisited.

7.55. We found that appropriate applications, such as those relating to adducing bad character evidence, were generally used effectively to strengthen the prosecution case. We assessed nine of the 12 cases (75%) as fully meeting the standard, and the other three (25%) as partially meeting it. In one rape case, the lawyer did not ask for more information about arguably relevant bad character evidence, relating to the viewing by the defendant of potentially extreme pornography depicting non-consensual penetration, which was found on his mobile phone.

7.56. The Area is performing well when it comes to compliance with Judges' orders and we found no instances of non-compliance. In terms of timeliness, there was full compliance in 14 cases (82.4%) and partial compliance in the

other three (17.6%). Where compliance was not timely, we did not find that this had a significant impact on the case.

7.57. There were six RASSO cases where a decision to discontinue was made. All were assessed as fully meeting the standard as the decisions were made and put into effect in a timely manner. There was one particularly good example of a timely and correct decision to discontinue. In that case, a further video-recorded interview was completed with the complainant after charge, which the police provided to the CPS on the same day. A conference was held within a week and views of all parties were sought before the decision to discontinue was taken.

7.58. An opportunity to grip and further review rape prosecutions is the conference with trial counsel that is mandated within the Association of Chief Police Officers CPS Rape Protocol, and referenced within the CPS's RASSO policy. We found that a conference took place in four out of nine contested cases that have now concluded. We are conscious of the huge amount of work that is being carried out by the Area and nationally with a view to improving the way that rape cases are prosecuted, and this is doubtless an issue that Area will wish to look at over the coming months.

Preparation of RASSO cases for the plea and trial preparation hearing in the Crown Court

7.59. Our assessment for this casework theme is that the Area is **partially meeting the standard**. Overall, the score for the quality of preparation of RASSO cases for the plea and trial preparation hearing (PTPH) is 67.1%⁴⁷.

7.60. In assessing the Area's performance we considered the key tasks the prosecution is required to complete in preparation for the PTPH, including completion of the PTPH form for use by the Judge presiding at the hearing; carrying out direct engagement with the defence; drafting the indictment; ensuring the relevant material is uploaded to the Crown Court Digital Case System (CCDCS) prior to the hearing; and that an advocate is instructed prior to the hearing to ensure they are prepared.

7.61. In respect of cases being effectively prepared for PTPH by completion of the PTPH form and consideration of whether any pleas were acceptable, inspectors rated ten cases (50%) as fully meeting the standard, and the other ten (50%) as partially meeting it. No cases were assessed as not meeting the

⁴⁷ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

standard. In the cases rated as partially meeting the standard, the reasons included not fully completing the PTPH form with the appropriate detail regarding applications, and not recording any guidance on acceptable pleas. There is a sense that preparation for PTPH on some cases can be seen as a tick-box exercise and some tasks appeared to be rushed. This is perhaps unsurprising given our earlier comments about the significant increase in Area live caseloads, including RASSO cases.

7.62. The indictment is the document that contains the charge(s) or “counts” to be faced by the defendant at trial in the Crown Court. It is the responsibility of the prosecutor to prepare the draft indictment and it is important that it is legally correct, and the number and nature of the counts are appropriate. The draft indictment and key evidence must be served in a timely manner before the PTPH to allow for an effective hearing. As at the pre-charge stage (see paragraph 7.11 above), RASSO cases require particular care in the selection of counts for the indictment, especially in the case of non-recent allegations.

7.63. We assessed most indictments as fully meeting the required standard, with 13 cases (65%) doing so. We assessed five cases (25%) as partially meeting the standard, and two cases (10%) as not meeting it. Reasons for our ‘not meeting’ or ‘partially meeting’ standard assessment included not providing sufficient particulars, failing to state the age of the complainant, overloading the indictment⁴⁸, and including the incorrect court details. In relation to an historical child abuse case the indictment did not include the ages of the children in the particulars of an indecency with a child offence as required, and there was duplication in relation to the number of occasions in a multiple incident count.

7.64. In respect of serving the draft indictment and key evidence in a timely way prior to the PTPH, the Area performs well. Seventeen out of the 20 cases (85%) were assessed as fully meeting the standard. The remaining three were rated as partially meeting the standard.

7.65. It is critical at this stage that an advocate is instructed prior to the hearing to ensure that they are prepared. In nine out of 16 cases (56.3%), no clear instructions for counsel were prepared. We rated six cases (37.5%) as partially meeting the standard and one as fully meeting the standard. Where instructions were prepared, they often lacked sufficient detail or signposts to the case theory

⁴⁸ Where a large number of offences are alleged, including so many counts on the indictment that it can make the case unmanageable or confusing for the jury, this is referred to as overloading the indictment. Indictments can include multiple incident counts in which the prosecution can include several different incidents of the same offence, rather than having to include a separate count for each incident. In the event of a conviction for a multiple incident count, the sentencing Judge can reflect the full extent of the criminality contained within that count when sentencing.

and casework decisions made. There was rarely any instruction regarding acceptable pleas or detailing the requirements of counsel specific to RASSO offences,

7.66. Looking at the timeliness of counsel being instructed (a separate consideration to whether counsel had a clear instruction document to accompany the case papers), ten cases (55.6%) were rated as fully meeting the standard in that counsel was instructed at least seven days before the PTPH. We assessed two further cases (11.1%) as partially meeting the standard; although the seven-day target was missed, the advocate briefed was likely to have been able to prepare the case adequately for PTPH. We assessed six cases (33.3%) as not meeting the standard. In most cases where instructions were late, these were only provided the day prior to the hearing. In one case the advocate was simply provided with the hearing record sheet from the magistrates' courts, the MG3A (the prosecutor's review) and the defendant's previous convictions.

7.67. In the Crown Court⁴⁹, the principles of better case management apply, one of which is the duty of direct engagement. Based on rule 3.3 of the Criminal Procedure Rules, it requires parties to engage with each other about the issues in the case from the earliest opportunity and throughout the proceedings. The parties are required to establish whether the defendant is likely to plead guilty or not guilty; what is agreed and what is likely to be disputed; what information, or other material, is required by one party or another and why; and what is to be done by whom and when. The parties are required to report on that communication to the court at the first hearing.

7.68. Although the duty is placed on all parties, in practice the prosecution tends to take the lead in contacting the defence and providing the information to the court. The CPS case management system includes a duty of direct engagement log. This should be completed by the prosecutor and then uploaded to the CCDCS where it can be viewed by the Judge and the defence. Good conversations with the defence at an early stage can lead to resolution of the case without the need to list and prepare for trial, impacting positively on resources but also providing certainty for victims, witnesses, and defendants.

7.69. The duty of direct engagement with the defence was carried out to the required standard in 50% of the cases (10 out of 20). A further three cases (15%) were rated as partially meeting the standard. Seven cases (35%) were rated as not meeting the standard. We found that in those cases marked as fully meeting the required standard most communication was via standard letter. In

⁴⁹ Better Case Management; Courts and Tribunals Judiciary; September 2015. www.judiciary.uk/publications/better-case-management/

cases where the standard pro forma letter was sent to the defence, there was rarely a response received prior to the PTPH. Where the duty was fulfilled, the log was not routinely uploaded to the CCDCS and therefore not shared with the Judge.

7.70. The Area indicated that its expectation is that the log is uploaded. It is understandable, given the pressures on the casework teams, that performance in respect of direct engagement may have dipped during the pandemic when many defence firms furloughed staff making it more difficult than before to make contact. However, as pressures start to ease, the Area should consider re-setting the expectations around this central aspect of better case management.

Does the Area fully comply with its duty of disclosure?

7.71. Our assessment for this casework theme is that the Area is **fully meeting the standard**. Overall, the score for disclosure in rape and serious sexual offences (RASSO) cases is 75.9%⁵⁰.

7.72. Our assessment of disclosure includes compliance with the duty of initial disclosure and continuing disclosure, handling of sensitive and third-party material, the correct endorsement of the disclosure schedules, timeliness of disclosure handling, the recording of the decisions on the disclosure record in the CPS's case management system and feeding back to the police where necessary⁵¹.

7.73. It should be emphasised that although the disclosure officer is required to bring an open-minded approach to the disclosure exercise and apply the correct principles when making their assessment of what material meets the test for disclosure, it is the prosecutor's responsibility to bring their legal experience and expertise to bear and make their own independent assessment of what is and isn't disclosable, and act accordingly

7.74. Although the RASSO team's handling of disclosure is good overall, we found that decisions around initial disclosure could sometimes have been better thought out or recorded. We assessed eight out of 18 cases (44.4%) as fully meeting the required standard, with another eight rated as partially meeting it. Two cases (11.1%) were rated as not meeting the standard.

⁵⁰ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

⁵¹ See chapter 6, paragraphs 6.72 to 6.79 setting out disclosure obligations in cases heard at the Crown Court (which includes the vast majority of RASSO cases).

7.75. The most common reason for not fully meeting the standard was a failure to identify reasonable lines of enquiry. For example, in one case it was clear that the defence line would be that the two complainants had colluded when making their allegations but there was no request made of the disclosure officer by the prosecutor to consider enquiries relating to the communications between the parties and the timings of the reports. There were also cases where the forensic science opportunities, or the lack of such evidence, was not addressed.

7.76. Timeliness of initial disclosure was very good. In 17 of the 18 cases (94.4%), it was carried out on time, with the other case being rated as partially meeting the standard.

7.77. We assessed continuing disclosure as fully meeting the standard in ten (62.5%) out of the 16 relevant cases, partially meeting the standard in five (31.3%), and not meeting the standard in one case (6.3%).

7.78. The main theme in those cases rated as partially or not meeting the required standard related to a failure to identify reasonable lines of enquiry. Where the issues are not fully gripped at an early stage of the case, omissions are sometimes not picked up at this later stage.

7.79. Again, timeliness was very good for continuing disclosure. We rated most cases involving continuing disclosure (13 out of 15) as fully meeting the standard for timeliness. One case (6.7%) was assessed as not meeting the required standard because the defence statement was received in May, but no response was sent to the defence until August.

7.80. All sensitive material must be scheduled on a separate schedule, which the prosecutor must consider, applying the same tests. If the prosecutor concludes that there is sensitive material that meets the tests, they should either disclose this in some form or make an application to the court to withhold the material on the grounds of public interest immunity.

7.81. Fourteen RASSO cases we examined contained sensitive material. This material was handled appropriately in eight cases (57.1%). Inspectors assessed the Area as partially meeting the standard in a further four cases (28.6%), and not meeting it in two cases (14.3%). The reasons for the 'not meeting' or 'partially meeting' ratings included one case in which the MG6D did not appear to have been reviewed at all, despite containing 13 items, some of which were unlikely to be considered sensitive. In another case, given the circumstances, there was clearly sensitive material missing from the schedule.

7.82. Performance in relation to the handling of third-party material⁵² was variable. We assessed ten of 15 cases (66.7%) as fully meeting the required standard, one case (6.7%) as partially meeting the standard and four cases (26.7%) as not meeting it. In cases assessed as not meeting the standard, we found that in some cases the third-party material was treated as material in possession of the prosecution, with no evidence on the file that consent to disclose had been provided by the third party.

Two cases had inadequate defence statements. In one, the prosecution correctly challenged it

7.83. Eight RASSO cases included late defence statements. The prosecution chased these in four of the cases (we rated these as fully meeting the standard). Four cases were assessed as partially meeting the standard as, although not chased, the lateness of the defence statement when finally received was not significant in the context of the case. There

were no cases where a defence statement was significantly late without any action being taken by the CPS.

7.84. Two cases had inadequate defence statements. In one, the prosecution correctly challenged it (and therefore we rated it as fully meeting the standard). In the other, there was no challenge and this case was rated as not meeting the standard. The defence statement was vague and confusing and contained a long list of disclosure requests which were not justified. Although the prosecutor generally dealt with disclosure well and the requests robustly, our assessment was that they should have rejected the statement as inadequate.

7.85. We found reasonably good performance in respect of defence statements being reviewed by prosecutors and direction (on such things as reasonable lines of enquiry) being given to the investigating officer when it was sent to them. Of the 16 cases, 11 (68.8%) were rated as fully meeting the required standard, four (25%) as partially meeting the standard and one (6.3%) as not meeting the standard. The cases rated as partially meeting the required standard were assessed as such because the defence statement was simply sent to the police with a covering letter containing no, or incomplete, guidance.

7.86. Disclosure management documents (DMDs) were required in the RASSO cases we examined. These documents are completed in partnership with the police disclosure officer assigned to the case and set out the lines of investigation and how the material obtained from them is being handled. Examples of lines of enquiry include CCTV, phones, social media, and third-party material. The document should set out what parameters the prosecution

⁵² Material held by another agency such as social services or school records.

team, comprising the police and prosecution, are applying. For example, a rape case where the defendant and victim are known to each other and the defence is that the victim consented may involve an investigation into messages and calls between the parties and a review of social media; depending on the circumstances of the case, the parameters of the searches may relate to before and after the offence. The DMD should be started at the outset of the case, served on the defence and court prior to the PTPH, and regularly reviewed and updated thereafter in accordance with developments in the approach to the case.

7.87. The DMD is a proactive and transparent approach to assuring all parties that the prosecution is complying with its disclosure obligations and to engaging the defence in the process. Proper completion and service of the DMD allows the defence to identify other lines of investigation or suggest wider parameters that might lead to material that points away from the defendant having committed the offence. It is preferable for this to be identified at an early stage to ensure decisions about whether the case should proceed can be taken as soon as possible, if such material exists.

7.88. Of the 20 cases where the completion of a DMD was required, two (10%) did not include a DMD. In 14 (70%) cases, a full DMD was completed with police and CPS contributions, with a further four cases (20%) being rated by inspectors as partially meeting the standard. The main reason for 'partially meeting' ratings was because the DMD had not been updated with events post-charge.

7.89. The figures were similar for the accuracy of the DMD, where 12 of 19 cases (63.2%) were rated as fully meeting the standard and seven (36.8%) were rated as partially meeting the standard. Of those cases rated as partially meeting the standard, there were examples where the DMD contained insufficient detail, no rationale, and some key or peripheral issues were missed relating to phone downloads where the parameters used for review were not detailed. In some cases, it was not clear on the DMD if items had been reviewed in accordance with the disclosure test; clarifying this could reduce later 'shopping lists' in the defence statement. There appeared to be little direct input from the police in relation to some DMDs and in some cases the prosecutor had to request relevant information to complete the document.

7.90. In all cases, prosecutors must complete a disclosure record on the CPS case management system. This provides an audit trail for the receipt and service of the non-sensitive disclosure schedules and the receipt of any sensitive schedules. It is also where prosecutors should record their disclosure decisions and actions taken, including reasons for the disclosure or withholding of unused material from the defence

7.91. Completion of disclosure records was inconsistent with some prosecutors not fully recording their decision-making. Four cases (21.1%) were rated as fully meeting the standard, 14 cases (73.7%) as partially meeting the standard and one case (5.3%) as not meeting the standard.

7.92. In those cases that we rated as not fully meeting the required standard, inspectors found that there was an issue with the recording of key reasons for disclosure decisions. There were several cases where the receipt and dispatch of items were recorded (an automatic record on the case management system) but, while the MG6C may have been endorsed appropriately, the disclosure record was silent as to why all or some decisions had been made. Others, while detailing initial disclosure and why certain decisions had been made, failed to record the decisions in respect of continuing disclosure. In the case rated as not meeting the standard there were no disclosure decisions recorded. The record was sometimes incomplete even where other work on disclosure had been of a high standard.

7.93. The Area may want to consider internal assurance to ensure a more consistent compliance around this aspect of disclosure.

7.94. Where the police do not comply with their disclosure obligations, it will result in the prosecutor requesting re-work on inadequate schedules, including asking for more relevant information or for further enquiries to be made, often resulting in delay to the case while the matter is addressed.

7.95. In respect of feedback to police on failings in their disclosure obligations, four out of 11 cases (36.4%) were assessed as fully meeting the standard. Five cases (45.5%) were assessed as partially meeting it, and two cases (18.2%) were rated as not meeting the standard.

7.96. As we have said earlier in this report, we recognise the Area's efforts to work with its local forces to improve the quality of disclosure schedules at a strategic level. However, feedback to the police in relation to disclosure failings remains central if the joint national disclosure improvement plans are to be effective in driving up quality in the handling of unused material. As the Area enters the pandemic recovery stage and pressures ease, it may wish to revisit its approach to feedback with a view to increasing compliance.

Does the Area address victim and witness issues appropriately?

7.97. Our assessment for this casework theme is that the Area is **fully meeting the standard**. Overall, the score for addressing victim and witness issues appropriately in rape and serious sexual offence (RASSO) cases is 74.2%⁵³.

7.98. We assessed a range of aspects to victim and witness issues at both pre- and post-charge stages. They included consideration of relevant applications and ancillary matters at charging to support victims and witnesses; timely and accurate witness warning; consideration of special measures; addressing witness issues; consultation with victims and witnesses; victim personal statements (VPS), where a victim makes a statement explaining the impact of the offending behaviour on them; and Victim Communication and Liaison scheme (VCL) letters explaining the reasons for decisions to drop or substantially alter a charge:

7.99. At pre-charge we examined whether, in cases involving victims and witnesses, appropriate consideration was given to the relevant issues. These included special measures to support vulnerable or intimidated victims and witnesses to give their best evidence; appointment of an intermediary to facilitate communication with a victim or witness; and whether the victim wanted to make a VPS about how the offence had impacted on them; as well as consideration of orders such as restraining orders preventing the defendant from doing things, usually contacting the victim, and compensation.

7.100. Our findings were that more careful consideration of relevant applications and ancillary matters to support victims and witnesses could be given by charging prosecutors. This ties in with our overall findings regarding the quality of case analyses and trial strategies at the charging stage. We rated 37.5% of cases as fully meeting the standard and 12.5% as partially meeting it. Half of the cases were rated as not meeting the standard. Although our post-charge findings suggest that these issues are generally picked up and addressed later in the process, the charging prosecutor is in the best position to ensure that issues are gripped at an early stage. This in turn provides reassurance for victims and witnesses early in the criminal proceedings, which is a hallmark of good victim care and can reduce the risk of retraction of evidence or an unwillingness to attend court.

⁵³ See annex F for scoring methodology and annex G for details of the questions that contributed to each casework theme.

7.101. At the post charge stage, we assessed a number of aspects of casework including witness warning; handling of witness care unit (WCU) correspondence; consultation with victims and witnesses, including speaking to witnesses at court (STWAC); VPSs; orders on sentence or acquittal; and VCLs.

7.102. Overall, we found evidence of a strong approach to victim and witness issues after charge in the RASSO cases we examined.

7.103. There were 11 cases where the prosecution should have sought appropriate orders to protect the victim, witness and public. In nine cases (81.8%) the Area sought orders and we rated these cases as fully meeting the standard. In the other two cases (18.2%), we found the Area to be not meeting the standard. The reasons being that, in both cases, the police had requested restraining orders and provided details of the suggested prohibitions, but neither order was made. It was not clear if the applications were made at all because the hearing record sheets were silent on the issue.

7.104. The Area also performs well in respect of timely warning of witnesses, with 17 cases (94.4%) being rated as fully meeting the required standard and one case rated as partially meeting the standard. No cases were rated as not meeting the standard.

7.105. We found that in most cases the need for special measures was identified and they were applied for correctly. Of the 16 applicable cases, eight cases (50%) were rated as fully meeting the standard, and seven cases (43.8%) were rated as partially meeting the standard. One case (6.3%) was rated as not meeting the standard. In some of the cases that did not fully meet the standard, there was information available at the time of plea and trial preparation hearing (PTPH) for special measures applications to be made, but those applications were not made until sometime later. Earlier applications may have provided assurance to the victims and witnesses. It was also noted that the PTPH form was not always used effectively to record special measures requirements, with the relevant section simply being marked yes or no and, in one case, incorrectly. If more detail was entered on the PTPH form this could increase the number of applications made at the hearing itself and prevent later written applications having to be made.

7.106. Inspectors found good examples of a proactive approach to victim care by the Area. In a case involving a ten-year-old complainant, the paralegal officer requested an intermediary assessment for the child and pre-recorded cross examination. Subsequently, the applications were granted, and the intermediary report was of great assistance in ensuring that the questions to the witness were appropriate. Though the defendant ultimately entered acceptable pleas, this proactive casework demonstrated care for the young witness. The question of

an intermediary had not been addressed prior to this. On a more general note, inspectors noted that there was a proactive approach to casework by paralegal officers across the casework teams.

7.107. WCUs are separate from the CPS. They manage the care of victims and witnesses throughout the post-charge phase of a case, including updating victims and witnesses on the progress of the case. Where required, they obtain information to assist in the making of a special measures application to support the victim or witness to give their best evidence. They also arrange pre-trial witness visits to court to reduce anxiety about the surroundings, or offer practical support to get the victim or witness to attend court, such as making travel arrangements.

Dealing with correspondence from WCUs was an Area strength in RASSO cases

7.108. As witness care officers are in regular contact with victims and witnesses, where issues arise that may impact on the victim or witness's ability to attend court, as required, the WCU will send information to the CPS. It is important that this information is dealt with in a timely manner with effective actions put in place to minimise any impact on the

effectiveness of the trial. Such information may be that witnesses are no longer able to attend court on the date that the trial is listed.

7.109. Dealing with correspondence from WCUs was an Area strength in RASSO cases, with correspondence being dealt with in a timely and effective way in 16 of 17 (94.1%) cases. In the other case, we assessed it as partially meeting the standard. No cases failed to meet the standard. The evidence shows that the Area is addressing and resolving witness issues and that it has effective processes in place to ensure that this happens.

7.110. We found generally good compliance with the policy around consulting victims and witnesses. We rated eight cases (57.1%) as fully meeting the standard, with the other six cases (42.9%) being rated as partially meeting the standard.

7.111. Where there was a reference to STWAC discussions, there was sometimes only a brief note on the hearing record sheet of the conversation and no separate note kept. There was also rarely any confirmation of whether anything said by a witness met the test for disclosure. In some cases, there was no hearing record sheet for the trial, and it could not be ascertained if the STWAC policy had been followed. This is an aspect of victim and witness care that the Area may wish to address to ensure that better records are kept.

7.112. Victims are entitled, if they wish, to provide a victim personal statement (VPS). The VPS sets out the impact that the offence has had on them and helps inform the court's decision on sentencing. The police should tell the CPS who should give effect to the victim's preferences for how the VPS is presented to the court, such as the victim reading the statement in court, having the prosecution advocate read it for them, or the Judge or magistrates being given the VPS to read.

7.113. We found that victim personal statements were sought in most cases, whether victims wished to read the statement personally in court or for the prosecution advocate to read them. In respect of compliance with victims' wishes regarding VPSs, we assessed eight out of 17 cases (47.1%) as fully meeting the standard. Four cases (23.5%) were assessed as partially meeting the standard because there was no record of the VPS being read to the court on the hearing record sheet and, therefore, it was not known if this had taken place, or because the victim's views about reading the VPS to the court were not known and this was not chased. Five cases (29.4%) were assessed as not meeting the required standard, and these were because it appeared that a VPS had never been taken from the victim and it was not chased. This is an aspect of victim care where the Area may wish to tighten its processes.

Case study

We assessed a sexual abuse case which involved a victim who had moved to America during the proceedings.

The sentencing took place during the pandemic and the victim indicated that they wished to read their VPS to the court in accordance with the Victims' Code.

This was facilitated by arranging a video link from their home, which provided the victim with the opportunity of personally addressing the court in relation to the impact of the case on them.

Despite the pressures and difficulties of the pandemic, there was a real effort by all involved to ensure the victim's wishes were met.

7.114. VCLs should be sent to victims whenever a charge relating to them is either dropped or substantially altered. The letter should be sent within one working day where the victim is deemed to be vulnerable or intimidated, is a victim of serious crime (which includes domestic abuse), or has been targeted repeatedly over a period of time. The timescale in all other cases is five working days. The letter should include a clear and understandable explanation of the decision, a referral to the victims' right to review scheme if applicable (this is a scheme where a victim can ask the prosecution to reconsider a decision to drop

or substantially alter a charge), and the offer of a meeting in certain types of case.

7.115. Seven cases required VCLs because the case was dropped, or charges significantly altered. Four (57.1%) were sent on time. The other three cases (42.9%) were rated as not meeting the standard because no letter was sent when one should have been. These were all cases where pleas were accepted at a late stage in the case. In one case, there was a note on the review and an e-mail reminder in the case management system that a letter was required, but this was not actioned.

7.116. In relation to the standard of the VCLs, we rated one of the four letters sent as fully meeting the required standard, and three as partially meeting the standard. The reasons for the 'partially meeting' rating related to a lack of empathy or clear explanation being set out in the letter. An example of a letter lacking empathy was one which was sent to the mother of a sexual assault victim, who was very young (in these cases letters must be sent to the parent or guardian). The descriptions used in the letter were too graphic, it was insensitive and there was insufficient regard to how the letter would be received.

7.117. The Area has carried out a lot of recent work on improving the timeliness and quality of VCLs and we will be interested to see the impact of this, and future development activity on this aspect of its work, when we revisit at the second stage of the inspection.

8. Public confidence

8.1. One of the five aims of the CPS 2025 strategy is to improve public confidence by “[working] with partners to serve victims and witnesses and uphold the rights of defendants in a way that is fair and understood by all communities”. In this inspection, we used our file examination, supplemented by the documents requested from the Area and our assessment visit, to consider aspects of Area performance relating to public confidence, with a specific focus on the impact on casework quality.

Correspondence with victims

Expectations

8.2. The CPS is obliged to write to a victim of crime whenever a charge relating to them is either dropped or substantially altered; these are called Victim Communication and Liaison scheme letters (VCLs). The letter should be sent within one working day where the victim is deemed to be vulnerable or intimidated, is a victim of serious crime (which includes domestic abuse), or has been targeted repeatedly over a period of time. The timescale in all other cases is five working days.

8.3. A VCL should include a referral to the victims’ right to review (VRR) scheme if applicable. This is a scheme where a victim can ask the prosecution to reconsider a decision to drop or substantially alter a case. In certain circumstances, the VCL should also offer a meeting.

8.4. The CPS may also communicate with someone who has made a complaint about the service they have received, or with bereaved families after an unlawful killing.

8.5. All communications in writing with victims, complainants and bereaved families should use plain English, be translated where necessary, be grammatically correct, and avoid the use of legal jargon. They should include a clear, understandable, and accurate explanation of the decision or action being discussed. Where appropriate, empathy should be expressed, and the recipient directed to sources of support and other help.

Sending Victim Communication and Liaison scheme letters

8.6. Our findings from the examination of 90 Area cases in this inspection across magistrates' courts, Crown Court and rape and serious sexual offences (RASSO) casework were that, overall, 22 letters were sent by CPS South East; six in magistrates' court cases, twelve in Crown Court cases and four in RASSO cases. Our findings showed variable performance in respect both of timeliness and quality.

Quality and timeliness of Victim Communication and Liaison scheme letters

8.7. During this inspection we examined files that were, for the most part, finalised in the first three months of 2021.

8.8. We assessed 40.9% of letters sent (nine out of 22) as fully meeting the standard, 45.5% (10) as partially meeting it and three (13.6%) as not meeting the standard.

8.9. The quality of VCL letters is something that the Area has identified as requiring improvement and has taken steps to address. For example, we were told that a new victim liaison unit (VLU) manager was appointed during the third quarter of 2020/21, and that the manager has subsequently received recognition for their efforts to improve quality and timeliness. The Area has also recently relaunched its monthly VLU internal quality assurance panel, which had been in abeyance for some time.

8.10. The VLU prepares monthly reports for the Area's operational teams, including useful tips and guidance for improvement. A VLU, complaints and VRR assurance document is prepared and sent to CPS Headquarters monthly and includes comments regarding the quality of VCLs. We saw evidence of discussions at the Crown Court and magistrates' courts Operations Group meetings in November 2020 regarding issues that the VLU wished to highlight, including that some prosecutors were providing a poor standard of explanation for VCL letters. This ties in with our wider findings elsewhere relating to the clarity and standard of some prosecutors' case analyses.

8.11. The Area has developed an aide-memoire for its staff to assist in drafting VCL letters, which includes links to the Victims' Code and CPS national guidance on the VCL scheme. The local guidance, which has been placed on the Area's intranet hub, makes clear the prosecutors' responsibilities and those of the VLU. A further document available to staff sets out the house style requirements for VCL letters and key points to remember; this should be helpful in promoting a consistent approach.

8.12. We saw some evidence that external assurance around the quality of letters is carried out during discussions at local scrutiny and involvement panels. Members of local support groups are invited to comment on the wording of VCLs and suggest improvements. This amounts to good practice as it shows interaction with the community to improve confidence. Our examination of the minutes from these meetings indicated that the recommendations made by the panel members were constructive and had the potential to be useful in improving the quality of letters to victims, particularly in relation to the degree of empathy shown.

8.13. It is positive that the Area has recognised the issues in respect of the standard of some of its VCLs, and it will doubtless wish to continue its proactive approach in this aspect of casework, bearing in mind that more than half the letters we examined were rated as not fully meeting the required standard. Our assessment is that the overall standard of legal analysis carried out by Area prosecutors, which is addressed in the wider report, is inextricably linked with this issue. If that is improved, the standard of explanations to victims for casework decisions is also likely to improve.

8.14. Our file examination across magistrates' courts, Crown Court and RASSO casework resulted in 55% of letters sent being rated as fully meeting the standard for timeliness. It was noted that in most cases where the timeliness target did not meet the standard, no letter was sent at all. These findings are supported by the South East Area assurance framework documents for Q1 and Q2 2020/21, which indicate that the Area, at that time, was failing to comply with their obligations under the Victims' Code in a number of cases.

8.15. For context, we note that the Area had significant difficulty in recruiting and retaining staff on the VLU team in 2020. New staff were recruited in the autumn of 2020 and in Q3 the timeliness of VCLs improved and continues to improve. Because of the staffing difficulties in the VLU in 2020, we were told that the resilience of the smaller teams in the Area has been reassessed.

8.16. The Area has a monitoring system around timeliness of VCL cases in the form of the monthly reports compiled by the VLU manager. Issues such as overdue letters and incorrect use of victim flags are identified by the VLU manager on the VCL issue escalation log. This data is used to populate a report which is cascaded to the operational teams and provides a useful update for operational staff, with useful tips and guidance for improvement.

8.17. We found evidence of a failure by some prosecutors to consistently follow the standard operating procedure by notifying the VLU that a letter is required and providing quality explanatory paragraphs for inclusion in the letters.

This issue needs to be addressed for the Area to see further improvements in the quality and timeliness of letters.

8.18. The Area confirmed that a clearer escalation process for prosecutor non-compliance had recently been formulated with clearer expectations and its view is that this has improved the robustness of the process. Once the pressures of the pandemic have eased further, the Area may wish to consider afresh how repeat non-compliance by individuals is managed.

8.19. VCL timeliness and quality is not listed as an agenda item for the casework quality committee (CQC) meeting, although VRR and complaints timeliness are considered. While it is considered in other meetings, the Area may wish to consider adding VCL quality and timeliness as a standing agenda item.

8.20. The documents provided by the Area indicated that case management system checks for cases requiring letters were completed on a twice-weekly basis relating to trials, first hearings and pleas. It was confirmed that checks are now completed daily for cases that might require a letter (adverse outcomes) and twice weekly for all trials.

8.21. Data quality checks for cases where charges have been substantially altered are conducted and recorded to ensure that the necessary flags are being correctly marked on the case management system and letters are sent. When considering the substantial alteration data quality checks from March 2021, it was not clear to us that the policy relating to substantial alternations to charge was being applied correctly. Prosecutors were being told by the VLU to disapply the flag where the alteration of offences did not appear in the annex A list in the VCL guidance. This was not intended to be an exhaustive list, and prosecutors should retain discretion in relation to what amounts to a substantial change and when to apply flags and send letters. The guidance indicates that if a prosecutor is uncertain as to whether a communication is required, they should exercise discretion in favour of communicating the decision. Further assurance and/or training of VLU staff in relation to this process may be required.

Timeliness of complaint and Victims' Right to Review responses

8.22. The Area has clear systems and processes in place to manage the timeliness of responses to complaints and Victims' Right to Review (VRRs). Acknowledgements of requests for VRR and complaints are generally timely. Final responses are also, in the main, timely with explanations for any delays exceeding the deadline clearly provided and justified.

Quality assurance of communications

8.23. As set out above, the Area produces monthly assurance reports for Headquarters, setting out the Area's performance and results of internal quality assurance around communications with victims in relation to VCL letters, VRRs and the Area's handling of complaints. The Area has a clearly defined approach to internal assurance for VRRs and complaints, which is reported on to the Area's senior leaders in the casework quality committee.

8.24. The Area holds VCL scheme assurance panel meetings that provide oversight of the quality and timeliness of VCLs. These meetings are attended by the Chief Crown Prosecutor and the Inclusion and Community Engagement Manager. Prosecutors and paralegal officers are also invited to attend as a development exercise to give them an overview of the common errors made when drafting letters, with the aim of driving up quality. These meetings have not taken place for some months due to the pandemic, but the Area has begun to schedule the meetings again.

Victims' Code and Witness Charter

Expectations

8.25. The expectation is that the Area complies with its responsibilities defined in the Code of Practice for Victims of Crime and the Witness Charter in respect of victim personal statements (VPS), Victim Communication and Liaison scheme letters (VCL), discussed above, offering meetings, and compliance with the speaking to witnesses at court protocol (STWAC).

8.26. Victims are entitled, if they wish, to provide a VPS. The VPS sets out the impact that the offence has had on them and helps inform the court's decision on sentencing. The police should tell the CPS, and the CPS should give effect to the victim's preferences for how the VPS is presented to the court after conviction and before sentence is passed. Under the Victims' Code, the victim has the choice of reading the statement to the court themselves, the prosecution advocate reading it to the court on their behalf, or the Judge or magistrates being given the VPS to read. The hearing record sheet (HRS) completed by the prosecution at court should make it clear whether the victim's wishes were complied with at the sentencing hearing.

8.27. Prosecutors at trials are tasked with STWAC to explain what will happen when they give evidence. The CPS STWAC guidance emphasises the need to ensure that witnesses are properly assisted and know more about what to expect before they give their evidence. The guidance also reminds prosecutors of their important role in reducing a witness's apprehension about going to court,

familiarising them with the processes and procedures – which may seem alien and intimidating – and managing their expectations on what will happen while they are at court. The advocate should make a note on the hearing record sheet that they have had this discussion with witnesses.

Victim personal statements

8.28. The Area was rated as fully meeting the standard in relation to the victim personal statement (VPS) scheme in 58% of cases we examined across the three casework types. This meant that a statement was prepared where a victim wanted to make one, and that the statement was presented to the sentencing court in the way that the victim preferred.

8.29. We assessed a further 31.9% of cases as partially meeting the standard and 10.1% of cases as not meeting it. While there were some instances where there was no VPS throughout the case – and no indication that the victim had ever been asked to make one – it was apparent from the file examination that, generally, prosecutors in the Area are aware of the requirements under the Victims' Code.

8.30. It was noted, however, that where a VPS was available the victim's views about reading the statement to the court were not always requested, chased and escalated to ensure the information was received in time for trial or the sentencing hearing. In those cases where the victim's views were known, and the VPS was available, the hearing record sheets were not always endorsed with whether the VPS was read out and by whom. We saw some cases where hearing record sheets were not provided at all. The Area may want to consider carrying out some assurance work to assess awareness and compliance in this respect.

8.31. In those cases where the victim's views about how the VPS should be presented to the court had been established, this was not always included in the instructions to advocates. Addressing these omissions may achieve greater adherence to the Victims' Code in ensuring that the victim's wishes are known and complied with.

Offering meetings in all appropriate cases

8.32. The Area's victim liaison unit (VLU) letter template is available to all staff as a useful aide memoire for issues to consider when drafting letters to victims, and includes a reminder to consider if a meeting should be offered. The documents provided did not demonstrate evidence to suggest that internal assurance processes are in place specifically to ensure that meetings are offered in appropriate cases. However, this does not mean that assurance is not completed as part of the assurance to Headquarters and the VCL panel

meetings when required. There was no evidence from our file examination to suggest that meetings were not offered in appropriate cases where a letter had been sent.

Speaking to witnesses at court

8.33. From our file examinations, we found an inconsistent approach to the recording of discussions held with victims and witnesses at court. We accept that the failure to record information on hearing record sheets does not necessarily mean that discussions complying with the guidance are not taking place, but it is difficult to see how the Area can satisfy itself that the guidance is widely understood and being complied with if there is no record, or an inadequate record, that it can refer to. Our finding from the records we found on CMS is that the Area was fully meeting the standard of consulting with victims and witnesses in 56.3% of the cases we examined, where consultation was required.

8.34. Efforts to comply with the speaking to witnesses at court (STWAC) protocol using Teams during the pandemic, demonstrated that the Area was looking at ways to ensure this important process in ensuring witness confidence could continue. There was a suggestion that prosecution counsel do not always ensure that paralegal officers are present to record the discussions with witnesses at court and this is something the Area may wish to address.

9. CPS people

9.1. One of the five aims of the of the CPS 2025 strategy⁵⁴ is to support the success and well-being of its people, to enable everyone to thrive. In this inspection, we used our file examination, supplemented by the documents requested from the Area and our assessment visit to the Area, to consider aspects of Area performance relating to CPS people, with a specific focus on the impact on casework quality.

Recruitment and induction, staff moves and succession planning

Expectations

9.2. CPS Areas should have a clear strategy for recruitment, induction, succession planning, development, and retention. We looked at whether:

- the Area has effective bespoke induction plans for new prosecutors, for when prosecutors move between teams and for when new lawyer managers are appointed, to support their development
- the Area has effective bespoke induction plans for new paralegal and operational delivery staff, for when paralegal and operational delivery staff move between teams, and for when operational delivery and paralegal managers are appointed to support their development
- the Area has an awareness of the legal cadre, including their current strengths and weaknesses and future capability (particularly around specialisms and capacity to deal with complex or sensitive casework), and this awareness informs recruitment, succession planning and development
- staff allocation and movement between teams is based on clearly documented rationales for decisions, which include the impact on the Area's casework quality in terms of capacity, capability, and succession planning.

Legal induction

9.3. The Area has seen an increase in its legal resource – mainly within its cadre of crown prosecutors and senior crown prosecutors – from 2019 to April 2021, and further recruitment continues.

9.4. Even with the increase in the number of legal staff in post, the Area remains under-resourced against the national resource model (NRM). We were

⁵⁴ CPS 2025 is the CPS's strategy and vision for where it wants to be in 2025. www.cps.gov.uk/sites/default/files/documents/publications/CPS-2025-strategy.pdf

told that, due to the proximity of the Area to London, where pay is higher and other posts are available, and the number of staff deciding they would like to have a better work/life balance or retire, there have been difficulties recruiting and retaining staff.

9.5. Table 13 shows the increase in staff since March 2019 when the additional funding for prosecutors was announced.

Table 13: Legal staff in post (full-time equivalent)

	LM1	LM2	SCP	CP	Total
At 31 March 2019	3.00	11.19	70.53	2.55	103.55
At 31 December 2020	1.00	11.80	81.49	9.00	119.89

9.6. In terms of its overall resource, the Area ambition for 2020/21 was to have 95% headcount against the national resource model (NRM). From the documents provided, we understand that, as of March 2021, the Area had a total of 278.35 full time equivalent (FTE) staff, which is 16.95 FTE (5.7%) under the NRM, so around the 95% headcount target the Area had hoped to achieve.

9.7. From the Workforce Planning and Staff in Post document that we have been provided with, the Area's forecast for 2022 is for there to be 286.31 FTE, against the NRM figure of 295.30. This is within the 5%, but still under the overall resource level available to the Area. The Area told us that it does have a strategic plan to try to tackle legal recruitment issues identified above, with a view to filling all vacant legal posts.

9.8. In its Area Engagement, Wellbeing and People Strategy, the Area highlights its commitment to providing training and development for managers to enable them to support staff and ensure performance is managed effectively.

9.9. The Area uses a standard new starter induction checklist template and has customised this for specific roles. We saw examples for the roles of Senior Crown Prosecutor and Crown Prosecutor. This provides a legal manager and individual members of staff with a clear and structured approach to induction over a 12-week period, is used alongside the probation policy and is, in essence, the staff member's first development plan. This is evidence of an appreciation of the need to absorb and train new staff without compromising operational effectiveness.

9.10. The induction checklists differ depending on the role, but they include presentations, e-learning requirements, mandatory training delivered by the CPS's Central Legal Training team (CLTT), introductions to CPS policies, values and processes, and a requirement for regular reviews of progress. A 'buddy

system' was also mentioned as a useful tool used by the Area for induction. It was clear that the induction process was tailored to the experience of the new staff member.

9.11. We were told that the feedback from the induction process had been very positive. Due to the number of staff inducted over the previous 18 months, the induction package has been continuously updated and improved.

Other staff induction

9.12. The Area also uses customised new starter induction checklists for the roles of paralegal business manager, paralegal officer, and paralegal assistant. These provide operational delivery staff and their managers with a similarly structured approach to induction over a three-month period, as well as incorporating a development plan for the individual.

9.13. We were told that the feedback that the Area has received from its staff was positive and that the induction strategy is continuously updated in the light of this feedback.

Recruitment, succession planning and development

9.14. Recruitment is an ongoing process and a substantial number of staff have been recruited. The Area mentioned that it has had 80 new starters in 18 months; for example, in the Crown Court Operations Group minutes of November 2020, there is reference to ten new staff starting. It is clear from the national performance review meetings held with the Area in November 2020 that it is aware of the need to retain sufficient experienced staff to allow for effective training and mentoring of new recruits. It is also clear that the Area has a focus on succession planning to allow appropriate arrangements to be made to maintain staff numbers in future.

9.15. There have been a number of vacancies for the role of District Crown Prosecutor (DCP), which is the first level of legal manager, in the Area in the past year. The Area is looking at supporting lawyers who would like to be promoted to this role. As this is the first level in the management structure for legal staff the Area is providing development opportunities for these staff to gain experience in the role before applying for substantive DCP positions.

9.16. Monthly meetings involving the area business manager (ABM), head of the business centre, and the Area finance manager review staffing numbers in each of the units. From the documents provided, during 2020/21, the Area judged that capacity had been reached for existing staff and had therefore requested assistance from the Surge and Rapid Response Team and another Area. It also agreed overtime for its own staff and offered some fixed term

contracts, including for bar secondees. Managers were given support to assist in balancing their staff's workloads, and there were also various wellbeing activities used to help staff manage their workloads.

9.17. We were told that the struggles to recruit in the Area related to legal staff only. The use of the apprenticeship scheme, assistance from the North East Area and a greater pool of people to recruit from resulted in fewer issues with operational delivery staff recruitment.

9.18. In view of the difficulties the Area has had in recruiting legal staff locally, they have arranged drop-in sessions for potential applicants to dial in to hear more about the Civil Service behaviours framework. The Area also agreed to train and mentor nine legal trainees last year in the hope that they will progress and become Crown Prosecutors in the Area in the near future.

9.19. We found ample evidence that the Area understands the strengths and weaknesses of its current legal cadre. We note that the casework quality committee (CQC) has an understanding at a strategic level of the strengths and weaknesses within the Area's casework, much of which align with our casework findings. The Area disseminates necessary messages from its monthly CQC meetings to its staff via Casework Matters bulletins. This is consistent both with the need to have a strategic approach to continuous improvement and the obligations on each member of staff to take a large degree of responsibility for their own development.

9.20. The invitations to lawyers to attend monthly staff panels that scrutinise the quality of Victim Communication and Liaison scheme letters (VCLs), and to learn more about the VCL and victim liaison unit (VLU) by giving them the opportunity to shadow the team, is also evidence of awareness of the legal cadre's strengths and those that need development.

9.21. We have been provided with examples of senior recognition of high-quality casework being carried out by Area staff in relation to topics such as decision-making under pressure, witness care, trial preparation, the setting up of the Rape Improvement Group, and the preparation of an evidence-led prosecution. Managers carry out one-to-ones with staff and there were plans to maintain a record of these meetings.

9.22. There is also clear evidence of the use of case management panels as an internal assurance to improve casework quality. They are held between the reviewing lawyer and senior managers as appropriate and follow a consistent structure with clear actions resulting from them.

Staff allocation and movement between teams

9.23. As a consequence of the pandemic, the Area indicated that a number of experienced staff were moved from the magistrates' courts team to the Crown Court team to deal with the volume of work. Seconded staff were recruited and crown advocates were also used to deal with the backlogs. This movement of experience from the magistrates' courts team had an impact as the remaining staff on that team were required to train the new recruits coming into the unit. We were told that to alleviate some of these issues, the frequency of one-to-one meetings with staff by managers was increased to ensure that all staff had the appropriate support to deal with the changes and to assist them with development.

9.24. When issues were identified relating to resilience on the VLU, work was commissioned to establish all of the business-critical tasks of the VLU and general A2 administrative cadre within the Area business centre. The decision was taken to upskill all A2 and B1 staff within the Area business centre using the wider training matrix to ensure that these business-critical tasks could still be completed in the event of staff absence or unavailability. The Area told us that upskilled A2 and B1 staff within the Area business centre can now be allocated between the generic administrative team and VLU to assist where they are required to provide resilience.

Learning and development

Expectations

9.25. The Area should have a continuous learning approach that is effective in improving casework outcomes. We looked at whether:

- the Area has a clear and effective training plan around improvement of casework
- coaching and mentoring take place in the Area to improve casework skills and experience of lawyers and lawyer managers.

Training plans

9.26. We were told that by July 2021, 98% of legal staff had completed the mandatory national training on the sixth edition of the Director's Guidance on Charging. Area prosecutors have also started undertaking the Central Legal Training Team (CLTT) case review training.

9.27. An analysis of the 2020 people survey carried out by the Area, showed that some staff felt that they did not have the right tools to do the job, although

the analysis did not show whether this applied to a specific role (or roles) or more widely. We were told that the concerns mainly surrounded the issues with the two-way interface (TWIF), the means by which messages are transferred between the police and CPS, and also the new surface pro laptops being used by staff.

9.28. By contrast, people were more positive about the learning and development available to them, which is a positive reflection on the way that the Area supports its people, bearing in mind the huge impact that the pandemic has had on the Area live caseloads.

9.29. The Area maintains a detailed Area-wide training plan, covering legal, operational delivery and other training requirements. This document records details of what training has been delivered, and to whom, and enables management, including the Learning and Development manager, to identify gaps and rectify the position.

Coaching and mentoring

9.30. From the CQC minutes that we read, along with our observation of the CQC meeting in June 2021 and individual quality assessment (IQA) documentation, it is clear that there are regular one-to-one meetings between lawyers and their managers to discuss performance and development.

9.31. The CQC minutes from the November 2020 meeting referred to a comprehensive report on IQAs prepared within the Area, which showed good evidence of coaching and providing feedback.

Quality assurance

Expectations

9.32. The Area should have robust quality assurance in place to identify aspects of casework that are working well and those that require improvement. We looked at whether:

- the Area uses IQAs and internal assurance effectively to identify individual and wider good practice or performance, and weaknesses in casework quality, and to drive improvement
- the Area uses the analysis of IQA effectively to identify specific training and interventions and implements them to drive an improvement in casework quality
- the Area's casework quality committee (CQC) drives actions and improvements in casework quality, including wider assurance work, in accordance with the CPS's quality standards for charging, case progression, disclosure, and advocacy. We are not assessing advocacy in this inspection programme, but we will include how the Area develops advocates to improve casework quality.

Individual quality assessments

During the pandemic, the CPS nationally determined that Areas could reduce the number of IQAs they carried out or cease IQA entirely, if the pressures the Area faced made that necessary. CPS South East has continued to carry out monthly assessments, although, understandably, on a reduced basis because of the significantly increased pressure on legal and operational staff and their managers, caused by the huge increase in live caseloads. For example, the time that those managing Crown and Senior Crown Prosecutors have to spend on scrutinising casework involving defendants in custody has increased significantly because of the increase in the number of defendants subject to custody time limits.

Analysis of individual quality assessments

9.33. Improving casework quality is a standing item on the CQC agenda, and findings from IQA assessments are used to inform the discussions and to identify issues to be included in the Casework Matters bulletins that are sent to all staff following each monthly meeting.

9.34. From the CQC minutes that we have seen, and from attending the committee on 14 June 2021, issues arising from the IQA process are clearly

considered in detail, and necessary actions recorded and monitored. However, the Area acknowledged that it had reduced the number of IQAs carried out for the reasons given above.

9.35. For example, from the CQC minutes that we have seen, the following issues identified through the IQA process, which are consistent with our file examination findings, have been raised and discussed during 2020 and 2021.

- Disclosure management documents are not being uploaded to the Crown Court digital case system (CCDCS) for plea and trial preparation hearings (PTPH).
- In relation to one county police force, prosecutors are not challenging deficient police manual of guidance form 6C (MG6C) schedules.
- Issues surrounding the quality of letters sent to victims, which resulted in a request being made to the Central Legal Training team to develop a training module on drafting skills for such letters.
- The recording of decision-making on disclosure record sheets.
- There is a need to devise a strategy for victimless prosecutions in domestic abuse cases in anticipation that the victim may retract their evidence.

9.36. The documentary evidence that we have seen shows that the areas for improvement identified during the IQA process, and discussed at CQC, result in actions, such as managers being asked to ensure that they are raised and discussed during team meetings and at the Crown Court and magistrates' courts operational group meetings.

Casework quality committee

9.37. The Area's casework quality committee (CQC) meets once a month and discusses cases and legal issues and ways to share good practice and continuously improve. After each meeting a bulletin titled Casework Matters is distributed to all staff as an update from these meetings. We have read the minutes of several of the Area's CQC meetings, and we observed its June 2021 meeting.

9.38. Standing items on the agenda include the Area's serious and sensitive casework, improving casework quality (including consideration of IQA assessments and disclosure), legal rulings, adverse outcomes, data integrity, and the victims' right to review scheme (VRR) and complaints. We noted both a focus on recognising and celebrating success, and analysing performance so that issues could be identified, and lessons learned for the future.

9.39. Our examination of the minutes of the Area's CQC, the Casework Matters bulletins arising out of the CQC, and our observation of the June meeting, demonstrate that senior managers are aware of the Area's strengths and those aspects of casework quality identified in this report as requiring improvement. Further, the minutes and our observations show that, where necessary over and above the individual feedback given to prosecutors, actions have been identified to address aspects requiring improvement. For example:

- Quality of reviews – the November 2020 meeting included a discussion on decisions being taken to drop cases without a clear review being recorded on CMS to show the rationale, usually where a decision was taken at court. Legal managers were tasked to raise this at the Crown Court and magistrates' courts operations group the following week. April's edition of Casework Matters highlighted that IQAs had identified that, while prosecutors had a good grip of their cases, they were not always capturing the reasoning behind their decisions.
- MG3 quality – during the June 2021 meeting, proportionality of action plans in rape and serious sexual offence (RASSO) cases was discussed. Although the IQA process suggested that RASSO prosecutors were generally being proportionate in their requests to the police, an issue was identified in relation to the parameters sometimes set when making requests for examination of digital data. The committee set an action for the Area communications manager to work with legal managers to enhance awareness of the CPS's legal guidance on parameters for digital data examination.
- Disclosure – the November 2020 meeting discussed implementation of the revised Director's Guidance on Charging, the Attorney General's Guidelines on Disclosure 2020, and the revised Code of Practice. It identified training requirements for disclosure management documents, to be delivered in one-hour sessions at team meetings. The April 2021 edition of Casework Matters highlighted that defence case statements were not always fully reviewed when received and that insufficient guidance was sometimes given to disclosure officers. It also reminded prosecutors that disclosure management documents should be kept up to date, and that inadequate disclosure schedules should be rejected.

10. Digital capability

10.1. One of the five aims of the of the CPS 2025 strategy is to ensure that “our investment in digital capability helps us adapt to the rapidly changing nature of crime and improve the way justice is done”. In this inspection, we used our file examination – supplemented by the documents requested from the Area and our assessment visit to the Area – to consider aspects of Area performance relating to digital capability, with a specific focus on the impact on casework quality

Data analysis

Expectations

10.2. The Area collects and analyses data to deliver improvement in casework quality. Performance in key aspects including CPS high-weighted measures, National File Standard compliance rates and the charging dashboard is analysed effectively, shared with staff, and used by managers to drive improvements within the CPS and externally with stakeholders.

Our findings

10.3. We were provided with extensive evidence of performance data being used as the basis of discussions at the external stakeholder meetings we refer to at section E below, with a focus on improving aspects of work such as case file quality and disclosure. Data is broken down to police force areas so that issues with specific forces could be identified and raised at prosecution team performance management (PTPM) meetings.

10.4. Internally, we saw evidence that casework issues were discussed at the regular Area performance review meetings with Headquarters, with the Area providing reports on aspects of work that are of concern and the actions taken to address them.

10.5. From the minutes of the three Area performance review (APR) meetings we have seen, performance was viewed as generally positive across the three quarters. The notes of the APR meetings demonstrate that aspects of weaker performance, such as victim liaison unit (VLU) issues, were discussed. We noted that the Area had sought help from the CPS London VLU to assist in clearing its backlog, leading to an improvement in timeliness, although performance was still lower than the national average. We also noted that the Area had acknowledged it had been struggling to cope with increased workloads and asked for and received help from CPS Direct (CPSD) and CPS North West. Headquarters commended the Area for asking for help before things worsened. There was a heavy focus on volumes, timeliness, and outcomes in these meetings.

10.6. Performance data is discussed at a strategic and operational level within the Area. It is a regular item on the Area scrutiny board (ASB) and Crown Court and magistrates' courts Operations Group agendas. Items discussed include, conviction rates (including domestic abuse), compliance with court directions, charging timeliness and guilty pleas at first hearing. Trends identified from the data are discussed and actions required to address issues identified. Charging data was explored and issues such as the continuing high-rejection rate at triage were identified and discussed internally and with the police. This is good practice and it is noted that training was offered to one force in light of the data.

10.7. All managers in the Area are sent an email from the Area performance manager attaching a monthly performance report so managers are kept up to date with relevant data. Detailed performance data is also provided to all managers, via weekly e-mails from the Area performance manager. Performance is discussed in team meetings and one-to-one meetings.

10.8. The Area issues the national Team Talk documents to staff, but adds further information specific to the Area. Details of staff starting, moving, or leaving are included. A 'red, amber, green' (RAG) rated table with the 19 high-weighted measures is attached, and performance that has improved or is rated green is highlighted.

10.9. We have been provided with evidence that teams discuss issues arising from resourcing and performance data and analysis of adverse outcomes. It is clear there are separate performance meetings for the Complex Casework Unit and RASSO unit, the Crown Court unit and the magistrates' courts unit and these meetings, attended by relevant managers, follow a consistent agenda. Key points are then disseminated by managers to all staff.

Digital tools and skills

Expectations

10.10. The Area ensures that its people have the tools and skills they need to operate effectively in an increasingly digital environment. The Area includes digital skills audits within the training plan and delivers general and bespoke training to staff to enable them to effectively use the CPS case management system (CMS), Egress, digital case lines, court store and cloud video platform⁵⁵.

⁵⁵ Egress, digital case lines, court store and cloud video platform are digital tools to store case material or host remote hearings..

Our findings

10.11. As mentioned earlier, the People Survey for 2020 revealed some concerns from staff that they did not have the tools for the job, although we were told these concerns related primarily to the use of the two-way interface with the police, and the use of laptops.

10.12. In respect of ensuring that people do have the tools and skills they need to operate effectively in an increasingly digital environment, the South East Action Plan 2020-21 set out an aim to ensure that staff are kept up to date with appropriate digital training and guidance. The intention was also to support staff in view of the launch of the digital case file, further development of the case management system and the HM Courts & Tribunals Service (HMCTS)/CPS Common Platform pilot.

10.13. We noted the following from the plan:

- The Crown Court Operations Group meetings discussed encouraging staff to prepare for implementation of the two-way interface (TWIF) with police through workshops and guidance, and that all staff should book Modern CMS training.
- IT courses are included in the induction training for new staff – CMS Classic and Modern and other relevant IT training with Area staff.
- Cloud video platform (CVP) training had been delivered and legal managers were to encourage their teams to use it.
- The Common Platform was due to be introduced into the Area in February 2021. Managers were to be trained and to cascade training to staff.
- The Area is keen to reinvigorate the Digital Transformation lead role, having asked for new volunteers. Terms of reference have been developed for the role.

10.14. The criminal justice system has had to adapt rapidly to new digital technology as a method to continue working throughout the pandemic. This includes using Microsoft Teams to hold meetings, one-to-ones and conferences, and the use of the CVP to conduct virtual or remote hearings.

10.15. The Area deserves credit for rising to the challenge of adapting quickly to this new approach alongside coping with the significant increase in live caseloads.

11. Strategic partnerships

11.1. One of the five aims of the of the CPS 2025 strategy is to ensure that “the CPS is a leading voice in cross-government strategies and international cooperation to transform the criminal justice system”. In this inspection, we used our file examination – supplemented by the documents requested from the Area and our assessment visit to the Area – to consider aspects of Area performance relating to strategic partnerships, with a specific focus on the impact on casework quality.

Strategic partnerships with the police

Expectations

11.2. The Area influences change through trusted partnerships with the police at all levels to improve casework quality. The Area has trusted and mature relationships with the police at all levels and influences change through negotiation, persuasion, and compromise to improve casework quality, particularly in relation to compliance with the following:

- National File Standard (NFS)
- The Director’s Guidance on Charging, 6th Edition (DG6)
- The Disclosure Manual, Criminal Procedure and Investigations Act 1996 (CPIA) and relevant Codes of Practice.

Our findings

11.3. The documents provided demonstrate that CPS South East has trusted and mature relationships at senior level with the police.

11.4. Strategic prosecution team management meetings (PTPMs) are held with Kent, Surrey, and Sussex police forces, which are well attended. There are several standing items at each of the meetings, including performance (supported by data), case file quality and disclosure. There are separate action logs for each separate PTPM, which are updated for the next meeting.

11.5. There is also a regional strategic PTPM, attended by Deputy Chief Crown Prosecutors (DCCP) and Senior District Crown Prosecutors (SDCPs), which discusses issues such as the effect of the pandemic on the criminal justice system (CJS), case file quality and timeliness (including pre-charge), performance and issues escalated from the local PTPMs.

11.6. There is also a separate joint CPS/Surrey police working group, and a Sussex Police case file quality ‘Gold Group’ (attended by CPS representatives),

which focus specifically on case file quality issues and ways to achieve improvements.

11.7. From the minutes and action logs we have seen, there has clearly been a great deal of activity and effort around assessing and improving various areas of joint performance, such as:

- the quality of pre-charge files submitted by police and the rates of triage rejection
- quality of, and compliance with, CPS action plans
- compliance with DG6
- data breaches and redaction processes
- charging backlogs
- the quality of disclosure schedules
- magistrates' courts and Crown Court performance
- victim and witness issues.

11.8. Since 2018, the Area has also been implementing the joint CPS South East/police action plan on disclosure, supported by a joint working group, with regional disclosure meetings held every few months. This plan has been regularly updated since 2018 and is evidence of significant work undertaken jointly at a senior level to improve the handling of unused material. From the documents we have seen, the meetings appear suitably detailed and focused on operational implementation of disclosure requirements. The minutes we have seen suggest that the Area has open and frank discussions with its three forces that result in decisions being made and actions agreed.

11.9. Rape and serious sexual offences (RASSO) meetings are held jointly with representatives from the three force areas. These meetings sit beneath a joint Rape Improvement Plan (September 2020), commissioned by the Chief Crown Prosecutor and the three chief constables in order to conduct an end-to-end review of how rape cases are progressed through the criminal justice system. The aim of the plan is to increase the number of Code-compliant police referrals to the CPS for a charging decision, and to improve investigative and prosecutorial timeliness, thereby improving public confidence. It aims to improve performance by the introduction of an early advice rape pilot, pre-charge case progression clinics, scrutiny panels looking at decisions not to charge rape cases, and reviews of prosecutors' action plans. The latest minutes of the Rape

Improvement Plan meetings we have seen (March 2021) suggest that the various initiatives are already leading to improvements, including better communication between investigator and prosecutor, weaker cases being identified at an earlier stage and more concise police manual of guidance form 3s (MG3s) being provided by police.

Strategic partnerships with the criminal justice system

Expectations

11.10. The Area influences change through trusted partnerships with the criminal justice system (CJS) at all levels to improve casework quality. The Area has trusted and mature relationships with the CJS at all levels and influences change through negotiation, persuasion, and compromise to improve casework quality.

Our findings

11.11. With the aim of improving casework quality, the Area has relationships with the CJS at all levels. Local Criminal Justice Boards (LCJBs) are in place for Kent, Sussex, and Surrey. These boards appear to have consistent representation covering the main partner organisations. Performance in general is discussed, and the impact of the pandemic and how this is being dealt with has been a prominent feature of the discussions recorded in the minutes we have seen. These minutes of the LCJBs, and accompanying papers, provide further evidence of the huge impact that the increase in caseloads (especially in Kent) and court backlogs has had since the start of the pandemic

11.12. We were also provided with minutes of Police Core Performance Group meetings for Kent, and Surrey and Sussex combined. Attendees include the police, CPS, the Surrey & Sussex Criminal Justice Partnership (of which the Surrey PC is chair), probation, HM Courts & Tribunals Service (HMCTS), Youth Offending Services (YOS), the Legal Aid Agency, and defence solicitors.

11.13. We saw limited evidence in relation to the work the Area has carried out with the local judiciary on Crown Court issues during the pandemic, but the evidence that we did see suggests a constructive and effective approach at a senior level. We also noted that the frequency of the LCJB meetings increased after the pandemic struck, and that the main focus of these has been to ensure a collaborative approach by key stakeholders towards meeting the unique challenges faced since March 2020.

11.14. In respect of liaison with the bar, this is currently carried out on a chambers-by-chambers basis. The Area indicated that communication with its most regularly used sets of chambers to address specific issues identified from our case file examination would be advantageous, especially in relation to the provision of advice in Crown Court cases.

11.15. We saw some examples of counsel adding real value to cases after being instructed, including at the pre-charge stage. However, we also found evidence that in most Crown Cases (excluding RASSO) counsel were failing to provide advice within 28 days of the trial date, and that these were generally not being chased. The Area accepted that this was an issue, and that it intends to address this, as counsel have got out of the habit of providing formal advice as a matter of routine unless chased.

11.16. We accept that addressing service issues from some counsel is, like addressing poor file quality from the police, an unwelcome additional task, especially when having to cope with the pandemic-related pressures. We will be interested to see in two years' time, when pressures will hopefully have eased, the performance levels both in relation to the quality of instructions provided to counsel and the frequency of advice provided in return.

Annex A

Inspection framework

Area Inspection Programme Framework 2021-22

Section A casework quality will be scored. The remaining sections B – E will be assessed and inspected but will not be formally scored. A report will be prepared covering all sections of the framework.

A. Quality casework

Does the Area deliver excellence in prosecution by ensuring the right person is prosecuted for the right offence, cases are progressed in a timely manner and cases are dealt with effectively?

Magistrates' courts casework

- The Area exercises sound judgement and adds value in its pre-charge decision-making in magistrates' court cases.
- The Area's reviews and other magistrates' courts casework decisions are timely and of good quality.
- The Area fully complies with its duty of disclosure throughout its magistrates' courts casework.
- The Area addresses victim and witness issues appropriately throughout its magistrates' courts casework.
- The Area progresses its magistrates' courts casework effectively and efficiently.
- The Area exercises sound judgement and adds value in its magistrates' courts casework.
- The Area has a clear grip of its magistrates' courts casework.

Crown Court casework

- The Area exercises sound judgement and adds value in its pre-charge decision-making in Crown Court cases.
- The Area's reviews and other Crown Court casework decisions are timely and of good quality.
- The Area fully complies with its duty of disclosure throughout its Crown Court casework.

- The Area addresses victim and witness issues appropriately throughout its Crown Court casework.
- The Area prepares its Crown Court cases effectively for the plea and trial preparation hearing in the Crown Court to ensure progress is made.
- The Area progresses its Crown Court casework effectively and efficiently.
- The Area exercises sound judgement and adds value in its Crown Court casework.
- The Area has a clear grip of its Crown Court casework.

Rape and serious sexual offence (RASSO) casework

- The Area exercises sound judgement and adds value in its pre-charge decision-making in RASSO cases.
- The Area's reviews and other RASSO casework decisions are timely and of good quality.
- The Area fully complies with its duty of disclosure throughout its RASSO casework.
- The Area addresses victim and witness issues appropriately throughout its RASSO casework.
- The Area prepares its RASSO cases effectively for the plea and trial preparation hearing in the Crown Court, or first hearing in the youth court, to ensure progress is made.
- The Area progresses its RASSO casework effectively and efficiently.
- The Area exercises sound judgement and adds value in its RASSO casework.
- The Area has a clear grip of its RASSO casework.

Evidence will be drawn from:

- Baseline file examination
- Charging dashboard (timeliness)
- Adverse outcome reports
- Disclosure Board minutes

- Local Case Management Panel minutes (volume casework)
- Self-assessment meeting with Area CPS

B. Public confidence

Does the CPS provide a fair experience for victims and witnesses?

All correspondence with victims is accurate, timely and empathetic.

- Communications in writing with victims use plain English (translated where necessary), are grammatically correct, have clear explanations and avoid the use of legal jargon.
- The Area complies with the timescales for Victim Correspondence and Liaison (VCL) letters.
- The Area complies with the timescales for complaints and Victims' Right to Review (VRRs).
- The Area conducts internal quality assurance of all victim communication (VCL, BFS complaints and VRR).

The Area complies with its responsibilities defined in the Code of Practice for Victims of Crime and The Witness Charter in respect of Victim Personal Statements, VCLs, meetings and compliance with the speaking to witnesses at court protocol.

- VPS are chased, and the victim's wishes sought around the reading of any VPS in court. Those wishes are adhered to at sentence, whether at first hearing or following trial.
- The Area conducts assurance internally to ensure that VCLs are sent on all appropriate cases pre- and post-charge.
- Meetings are offered to victims in all appropriate cases.
- The Area complies with the speaking to witnesses at court protocol.

Evidence will be drawn from:

- Baseline file examination – specific questions include STWAC and VCL
- Victim and Witness CJB subgroup minutes
- Third sector meeting minutes (where they encompass casework quality learning and actions)

- Quality assurance reports internally – monthly or one-off – in relation to the Code of Practice for Victims of Crime/Witness Charter, VCL, VPS, BFS, complaints and VRRs
- VCL performance data
- Advocacy Individual Quality Assessment (IQA) data for STWAC compliance
- Complaints and VRR performance data
- Witness Care Unit meeting minutes
- Scrutiny Panel minutes, actions and any associated learning
- Complaints log
- VRR log, including volume and detail of any overturned decisions
- Self-assessment meeting with Area CPS

C. CPS people

Does the Area support their people with the skills and tools they need to succeed and develop?

The Area has a clear strategy for recruitment, induction, succession planning, development and retention.

- The Area has effective bespoke induction plans for new prosecutors, for when prosecutors move between teams and for when new lawyer managers are appointed to support their development.
- The Area has effective bespoke induction plans for new paralegal and operational delivery staff, for when paralegal and operational delivery staff move between teams and for when operational delivery and paralegal managers are appointed to support their development.
- The Area has an awareness of the legal cadre, including their current strengths and weaknesses and future capability (particularly around specialisms and capacity to deal with complex or sensitive casework) and this awareness informs recruitment, succession planning and development.
- Staff allocation and movement between teams is based on clearly documented rationales for decisions, which include the impact on the Area's casework quality in terms of capacity, capability and succession planning.

The Area has a continuous learning approach that is effective in improving casework outcomes.

- The Area has a clear and effective training plan around improving casework.
- Coaching and mentoring take place in the Area to improve casework skills and experience of lawyers and lawyer managers.

The Area uses internal assurance to improve casework quality.

- The Area uses internal assurance (including IQA where applicable) effectively to identify individual and wider good practice/performance and weaknesses in casework quality to drive improvement.
- The Area uses the analysis of IQA (where applicable) or other internal findings effectively to identify specific training and interventions, and implements them to improve casework quality.
- The Area's casework quality assurance board (CQAB) drives actions and improvements in casework quality, including wider assurance work, in accordance with CPS quality standards around the following:
 - Charging
 - Case progression
 - Disclosure
 - Advocacy (we are not assessing advocacy in this inspection programme, but we will include how the Area develops advocates to improve casework quality)

Evidence will be drawn from:

- Area business plan
- Workforce planning models
- Staff in post figures, current and at 1 April 2019
- People strategy/area succession planning documents
- Minutes of meetings to discuss team composition and resources
- Casework Quality Assurance Board (CQAB) minutes
- Training plan

- Induction plans – new starters, movement between teams and new managers
- Minutes or other notes of coaching and/or development conversations
- Civil Service People Survey results at Area and team level
- CQAB observation
- IQA assurance records including numbers, timeliness, dip checks and any resulting management reports,
- Internal assurance reports on charging, case progression or disclosure
- Recent examples of 'Simply Thanks' or other acknowledgements of good work in the field of casework or victim and witness (V&W) care by individuals or teams (suitably anonymised)
- Any commendations or other recognition by stakeholders of excellent casework or V&W care
- Minutes of Area meetings of magistrates' courts, Crown Court or RASSO boards, or any other business board addressing casework quality issues (joint board minutes are requested under section E below).
- Self-assessment meeting with Area CPS

D. Digital capability

Does the CPS use data to drive change to improve casework quality?

The Area collects and analyses data to deliver improvement in casework quality.

- Performance in key aspects including CPS high-weighted measures. National File Standard compliance rates and the charging dashboard are analysed effectively, shared with staff and used by managers to drive improvements within the CPS and externally with stakeholders.

The Area ensures that their people have the tools and skills they need to operate effectively in an increasingly digital environment.

- The Area includes a digital skills audit in the training plan and delivers general and bespoke training to staff to enable them to effectively use CMS, Egress, digital case lines, court store and the cloud video platform.

Evidence will be drawn from:

- Area performance reports and analysis

- Baseline file examination
- Training plan – digital tools and skills
- Performance meeting minutes – team and Area level
- Communications to staff about performance
- PTPM Minutes
- TSJ/BCM meetings
- LCJB and subgroup meeting minutes.
- Self-assessment meeting with Area CPS

E. Strategic partnerships

Does the CPS influence change through trusted partnerships to improve casework quality across the criminal justice system?

The Area influences change through trusted partnerships with the police at all levels to improve casework quality.

- The Area has trusted and mature relationships with the police at all levels and influences change through negotiation, persuasion and compromise to improve casework quality, particularly in relation to compliance with the following:
 - National File Standard (NFS)
 - The Director’s Guidance on Charging 6th Edition (DG6)
 - The Disclosure Manual, CPIA and relevant Codes of Practice.

The Area influences change through trusted partnerships within the criminal justice system at all levels to improve casework quality.

- The Area has trusted and mature relationships with the criminal justice system at all levels, and influences change through negotiation, persuasion and compromise to improve casework quality.

Evidence will be drawn from:

- NFS data
- PTPM minutes (operational and strategic)
- Regional disclosure working group minutes

- NDIP reports
- CJB minutes
- PTPM performance reports
- Joint TSJ / BCM board meeting minutes
- TSJ/BCM performance reports
- Minutes of meetings with CCs/PCCs/RJ/Presider/HMCTS/Chambers
- Letters/emails demonstrating escalation at strategic level – to presider or CC/PCC, for example
- Joint performance plans or strategy documents
- Self-assessment meeting with Area CPS

Annex B

File examination findings

The tables in this annex exclude 'not applicable' results.

Magistrates' courts

No.	Question	Answers	Result
Pre-charge decision			
1	The CPS decision to charge was compliant with the Code Test.	Fully met Partially met Not met	100%
2	The CPS decision to charge was timely.	Fully met Partially met Not met	25.9% 55.6% 18.5%
3	The most appropriate charges were selected on the information available to the prosecutor at the time.	Fully met Partially met Not met	74.1% 22.2% 3.7%
4	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met	18.5% 55.6% 25.9%
5	The CPS MG3 dealt appropriately with unused material.	Fully met Partially met Not met	25.9% 51.9% 22.2%
6	The CPS MG3 referred to relevant applications and ancillary matters.	Fully met Partially met Not met	35.0% 35.0% 30.0%
7	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the PET/PTPH form created with the MG3.	Fully met Partially met Not met	25.9% 51.9% 22.2%
8	The action plan was proportionate and met a satisfactory standard.	Fully met Partially met Not met	24.0% 48.0% 28.0%
Police initial file submission post-charge			
9	The police file submission complied with National File Standard for the type of case.	Fully met Not met	66.7% 33.3%
10	Police file submission was timely.	Fully met Not met	100%
11	The CPS used the NFQ Assessment tool in the review document to identify and feed back to the police on any failings in the file submission.	Fully met Partially met Not met	10.0% 20.0% 70.0%

No.	Question	Answers	Result
Post-charge reviews and decisions			
12	All review decisions post-charge applied the Code correctly.	Fully met Not met	96.7% 3.3%
13	The case received a proportionate initial or post-charge review including a proper case analysis and case strategy.	Fully met Partially met Not met	43.3% 26.7% 30.0%
14	The initial or post-charge review was carried out in a timely manner.	Fully met Partially met Not met	80.8% 7.7% 11.5%
15	Any decision to discontinue was made and put into effect in a timely manner.	Fully met Partially met Not met	70.0% 30.0%
16	Any pleas accepted were appropriate, with a clear basis of plea.	Fully met Partially met Not met	50.0% 50.0%
17	Steps were taken to achieve best evidence by making appropriate applications for special measures (including drafting where a written application was required).	Fully met Partially met Not met	78.6% 7.1% 14.3%
19	In all cases (MC, CC and RASSO) any reviews addressing significant developments that represent a major change in case strategy (and which are additional to those reviews considered in Qs 13 and 18) were of high-quality and dealt appropriately with the significant development(s) in the case.	Fully met Partially met Not met	31.3% 43.8% 25.0%
20	The CPS made appropriate and timely decisions about custody and bail throughout the life of the case.	Fully met Partially met Not met	46.7% 40.0% 13.3%
Post-charge case progression			
21	The prosecutor prepared the case effectively to ensure progress at court at the first hearing(s), which in the MC is the NGAP hearing for bail cases and the second hearing in custody cases and in the CC the PTPH, to include, as a minimum, any acceptable pleas or that there are no acceptable pleas, completion of PET/PTPH forms.	Fully met Partially met Not met	55.2% 20.7% 24.1%

No.	Question	Answers	Result
22	Any hard media was shared via Egress with all parties prior to the NGAP hearing or PTPH.	Fully met Partially met Not met	27.3% 9.1% 63.6%
31	There was timely compliance with court directions or Judges' Orders.	Fully met Partially met Not met	41.2% 35.3% 23.5%
32	Appropriate applications (e.g. BCE, hearsay) were used effectively to strengthen the prosecution case.	Fully met Partially met Not met	40.0% 50.0% 10.0%
33	Steps were taken to secure best evidence by correct and timely warning of witnesses.	Fully met Partially met Not met	82.6% 13.0% 4.3%
34	Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions.	Fully met Partially met Not met	68.4% 10.5% 21.1%
35	New material received from the police was reviewed appropriately and sufficiently promptly with timely and effective actions taken in response.	Fully met Partially met Not met	52.4% 38.1% 9.5%
36	Correspondence from the court and defence was reviewed appropriately and sufficiently promptly with timely and effective actions undertaken in response.	Fully met Partially met Not met	60.9% 13.0% 26.1%
37	Requests to the police for additional material or editing of material were timely and escalated where appropriate.	Fully met Partially met Not met	56.5% 34.8% 8.7%
38	There was a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met	63.3% 23.3% 13.3%
Disclosure of unused material			
41	The police complied with their disclosure obligations.	Fully met Partially met Not met	57.1% 25.0% 17.9%
42	The prosecutor complied with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure).	Fully met Partially met Not met	44.4% 37.0% 18.5%

No.	Question	Answers	Result
43	If PM or NM, the most significant failing was: see list of options in drop-down box	Did not carry out initial disclosure at all Did not endorse any decisions on a non-blank MG6D Did not endorse any decisions on the MG6C Did not identify reasonable lines of enquiry Failed to identify that other obvious items of unused material were not scheduled Other Said DUM was not disclosable Used the wrong endorsements	6.7% 6.7% 6.7% 6.7% 20.0% 6.7% 20.0% 26.7%
44	The prosecution complied with its duty of initial disclosure in a timely manner.	Fully met Partially met Not met	57.7% 15.4% 26.9%
45	The prosecutor complied with the duty of continuous disclosure (but not including timeliness of disclosure).	Fully met Partially met Not met	66.7% 33.3%
46	If PM or NM, the most significant failing was	Did not endorse any decisions on newly revealed items	100%
47	The prosecution complied with its duty of continuous disclosure in a timely manner	Fully met Partially met Not met	66.7% 33.3%
48	Sensitive unused material was dealt with appropriately.	Fully met Partially met Not met	50.0% 50.0%
52	The defence statement was reviewed by the prosecutor and direction given to the police about further reasonable lines of enquiry	Fully met Partially met Not met	50.0% 50.0%

No.	Question	Answers	Result
53	The disclosure record on modern CMS was properly completed with actions and decisions taken on disclosure.	Fully met Partially met Not met	50.0% 34.6% 15.4%
54	The CPS fed back to the police where there were failings in the police service regarding disclosure.	Fully met Partially met Not met	33.3% 16.7% 50.0%

Victims and witnesses

55	The prosecutor consulted victims and witnesses where appropriate (includes STWAC).	Fully met Partially met Not met	61.5% 30.8% 7.7%
56	The victim's wishes regarding VPS were complied with.	Fully met Partially met Not met	76.0% 24.0%
57	The prosecution sought appropriate orders to protect the victim, witnesses and the public.	Fully met Partially met Not met	92.9% 7.1%
58	There was a timely VCL when required.	Fully met Partially met Not met	37.5% 12.5% 50.0%
59	The VCL was of a high standard.	Fully met Partially met Not met	33.3% 33.3% 33.3%
60	The CPS MG3 actively considered relevant applications and ancillary matters to support victims and witnesses.	Fully met Partially met Not met	45.8% 20.8% 33.3%

Crown Court

No.	Question	Answers	Result
Pre-charge decision			
1	The CPS decision to charge was compliant with the Code Test.	Fully met Partially met Not met	88.6% 11.4%
2	The CPS decision to charge was timely.	Fully met Partially met Not met	45.7% 31.4% 22.9%
3	The most appropriate charges were selected on the information available to the prosecutor at the time.	Fully met Partially met Not met	77.1% 11.4% 11.4%
4	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met	14.3% 60.0% 25.7%
5	The CPS MG3 dealt appropriately with unused material.	Fully met Partially met Not met	20.0% 37.1% 42.9%
6	The CPS MG3 referred to relevant applications and ancillary matters.	Fully met Partially met Not met	43.8% 21.9% 34.4%
7	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the PET/PTPH form created with the MG3.	Fully met Partially met Not met	11.4% 65.7% 22.9%
8	The action plan was proportionate and met a satisfactory standard.	Fully met Partially met Not met	27.3% 54.5% 18.2%
Police initial file submission post-charge			
9	The police file submission complied with National File Standard for the type of case.	Fully met Not met	75.0% 25.0%
10	Police file submission was timely.	Fully met Not met	90.0% 10.0%
11	The CPS used the NFQ Assessment tool in the review document to identify and feed back to the police on any failings in the file submission.	Fully met Partially met Not met	40.0% 10.0% 50.0%
Post-charge reviews and decisions			
12	All review decisions post-charge applied the Code correctly.	Fully met Not met	90.0% 10.0%

No.	Question	Answers	Result
13	The case received a proportionate initial or post-charge review including a proper case analysis and case strategy.	Fully met Partially met Not met	22.5% 37.5% 40.0%
14	The initial or post-charge review was carried out in a timely manner.	Fully met Partially met Not met	82.5% 15.0% 2.5%
15	Any decision to discontinue was made and put into effect in a timely manner.	Fully met Partially met Not met	40.0% 20.0% 40.0%
16	Any pleas accepted were appropriate, with a clear basis of plea.	Fully met Partially met Not met	50.0% 33.3% 16.7%
17	Steps were taken to achieve best evidence by making appropriate applications for special measures (including drafting where a written application was required).	Fully met Partially met Not met	55.0% 20.0% 25.0%
18	In CC (including RASSO cases before the CC) cases, there was a high-quality review to coincide with the service of the prosecution case and initial disclosure (at stage 1 set at PTPH).	Fully met Partially met Not met	22.9% 37.1% 40.0%
19	In all cases (MC, CC and RASSO) any reviews addressing significant developments that represent a major change in case strategy (and which are additional to those reviews considered in Qs 13 and 18) were of high-quality and dealt appropriately with the significant development(s) in the case.	Fully met Partially met Not met	36.0% 16.0% 48.0%
20	The CPS made appropriate and timely decisions about custody and bail throughout the life of the case.	Fully met Partially met Not met	57.5% 37.5% 5.0%
Post-charge case progression			
21	The prosecutor prepared the case effectively to ensure progress at court at the first hearing(s), which in the MC is the NGAP hearing for bail cases and the second hearing in custody cases and in the CC the PTPH, to include, as a minimum, any acceptable pleas or that there are no acceptable pleas, completion of PET/PTPH forms.	Fully met Partially met Not met	42.5% 57.5%

No.	Question	Answers	Result
22	Any hard media was shared via Egress with all parties prior to the NGAP hearing or PTPH.	Fully met Partially met Not met	50.0% 21.4% 28.6%
23	In CC (including RASSO cases before the CC) cases, a properly drafted indictment was prepared.	Fully met Partially met Not met	65.0% 30.0% 5.0%
24	In CC (including RASSO cases before the CC) cases, the draft indictment and key evidence was served in a timely manner for PTPH.	Fully met Partially met Not met	77.5% 17.5% 5.0%
25	In CC and RASSO cases a clear instruction to advocate document was prepared.	Fully met Partially met Not met	7.7% 92.3%
26	In CC (including RASSO cases before the CC) cases, the advocate was instructed at least seven days before PTPH.	Fully met Partially met Not met	62.5% 15.0% 22.5%
27	In CC (including RASSO cases before the CC) cases, the duty of direct engagement was carried out.	Fully met Partially met Not met	57.9% 10.5% 31.6%
28	In CC (including RASSO cases before the CC) cases, the DDE was uploaded to CCDCS.	Fully met Partially met Not met	61.5% 38.5%
29	In CC (including RASSO cases before the CC and the youth court where counsel is instructed), if there was no advice on evidence covering all necessary issues, this was chased.	Fully met Partially met Not met	4.5% 4.5% 90.9%
31	There was timely compliance with court directions or Judges' Orders.	Fully met Partially met Not met	67.6% 32.4%
32	Appropriate applications (e.g. BCE, hearsay) were used effectively to strengthen the prosecution case.	Fully met Partially met Not met	20.0% 46.7% 33.3%
33	Steps were taken to secure best evidence by correct and timely warning of witnesses.	Fully met Partially met Not met	94.1% 5.9%
34	Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions.	Fully met Partially met Not met	76.0% 20.0% 4.0%

No.	Question	Answers	Result
35	New material received from the police was reviewed appropriately and sufficiently promptly with timely and effective actions taken in response.	Fully met Partially met Not met	82.4% 14.7% 2.9%
36	Correspondence from the court and defence was reviewed appropriately and sufficiently promptly with timely and effective actions undertaken in response.	Fully met Partially met Not met	71.0% 22.6% 6.5%
37	Requests to the police for additional material or editing of material were timely and escalated where appropriate.	Fully met Partially met Not met	72.7% 27.3%
38	There was a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met	52.5% 35.0% 12.5%
Disclosure of unused material			
41	The police complied with their disclosure obligations.	Fully met Partially met Not met	29.7% 29.7% 40.5%
42	The prosecutor complied with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure).	Fully met Partially met Not met	22.2% 61.1% 16.7%

No.	Question	Answers	Result
43	If PM or NM, the most significant failing was: see list of options in drop-down box	Did not endorse any decisions on the MG6C	3.6%
		Did not identify reasonable lines of enquiry	14.3%
		Failed to endorse or sign a blank MG6D	7.1%
		Failed to identify that other obvious items of unused material were not scheduled	25.0%
		Said DUM was not disclosable	21.4%
		Said NDUM was disclosable	3.6%
		Set out the wrong test for disclosure (e.g. courtesy disclosure)	3.6%
		Used the wrong endorsements	21.4%
44	The prosecution complied with its duty of initial disclosure in a timely manner.	Fully met	91.7%
		Partially met	5.6%
		Not met	2.8%
45	The prosecutor complied with the duty of continuing disclosure, (but not including timeliness of disclosure).	Fully met	40.0%
		Partially met	48.0%
		Not met	12.0%

No.	Question	Answers	Result
46	If PM or NM, the most significant failing was: see list of options in drop-down box	Did not carry out continuous disclosure at all Did not endorse any decisions on newly revealed items Did not identify reasonable lines of enquiry Failed to identify that other obvious items of unused material were not scheduled Said NDUM was disclosable Set out the wrong test for disclosure (e.g. courtesy disclosure) Used the wrong endorsements	6.7% 13.3% 40.0% 6.7% 6.7% 20.0% 6.7%
47	The prosecution complied with its duty of continuing disclosure in a timely manner.	Fully met Partially met Not met	80.0% 16.0% 4.0%
48	Sensitive unused material was dealt with appropriately.	Fully met Partially met Not met	41.7% 58.3%
49	Third-party material was dealt with appropriately.	Fully met Partially met Not met	50.0% 37.5% 12.5%
50	In CC (including RASSO cases before the CC) cases, late defence statements were chased.	Fully met Partially met Not met	43.8% 18.8% 37.5%
52	The defence statement was reviewed by the prosecutor and direction given to the police about further reasonable lines of enquiry.	Fully met Partially met Not met	40.0% 48.0% 12.0%
53	The disclosure record on modern CMS was properly completed with actions and decisions taken on disclosure.	Fully met Partially met Not met	33.3% 52.8% 13.9%

No.	Question	Answers	Result
54	The CPS fed back to the police where there were failings in the police service regarding disclosure.	Fully met Partially met Not met	15.4% 50.0% 34.6%
Victims and witnesses			
55	The prosecutor consulted victims and witnesses where appropriate (includes STWAC).	Fully met Partially met Not met	52.4% 38.1% 9.5%
56	The victim's wishes regarding VPS were complied with.	Fully met Partially met Not met	48.1% 44.4% 7.4%
57	The prosecution sought appropriate orders to protect the victim, witnesses and the public.	Fully met Partially met Not met	83.3% 16.7%
58	There was a timely VCL when required.	Fully met Partially met Not met	64.3% 7.1% 28.6%
59	The VCL was of a high standard.	Fully met Partially met Not met	50.0% 41.7% 8.3%
60	The CPS MG3 actively considered relevant applications and ancillary matters to support victims and witnesses.	Fully met Partially met Not met	24.1% 48.3% 27.6%

RASSO

No.	Question	Answers	Result
Pre-charge decision			
1	The CPS decision to charge was compliant with the Code Test.	Fully met Partially met Not met	100%
2	The CPS decision to charge was timely.	Fully met Partially met Not met	55.6% 33.3% 11.1%
3	The most appropriate charges were selected on the information available to the prosecutor at the time.	Fully met Partially met Not met	77.8% 16.7% 5.6%
4	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met	22.2% 66.7% 11.1%

No.	Question	Answers	Result
5	The CPS MG3 dealt appropriately with unused material.	Fully met Partially met Not met	44.4% 50.0% 5.6%
6	The CPS MG3 referred to relevant applications and ancillary matters.	Fully met Partially met Not met	22.2% 44.4% 33.3%
7	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the PET/PTPH form created with the MG3.	Fully met Partially met Not met	5.6% 50.0% 44.4%
8	The action plan was proportionate and met a satisfactory standard.	Fully met Partially met Not met	29.4% 52.9% 17.6%
Police initial file submission post-charge			
9	The police file submission complied with National File Standard for the type of case.	Fully met Not met	75.0% 25.0%
10	Police file submission was timely.	Fully met Not met	85.0% 15.0%
11	The CPS used the NFQ Assessment tool in the review document to identify and feed back to the police on any failings in the file submission.	Fully met Partially met Not met	20.0% 40.0% 40.0%
Post-charge reviews and decisions			
12	All review decisions post-charge applied the Code correctly.	Fully met Not met	100%
13	The case received a proportionate initial or post-charge review including a proper case analysis and case strategy.	Fully met Partially met Not met	40.0% 35.0% 25.0%
14	The initial or post-charge review was carried out in a timely manner.	Fully met Partially met Not met	89.5% 10.5%
15	Any decision to discontinue was made and put into effect in a timely manner.	Fully met Partially met Not met	100%
16	Any pleas accepted were appropriate, with a clear basis of plea.	Fully met Partially met Not met	60.0% 20.0% 20.0%
17	Steps were taken to achieve best evidence by making appropriate applications for special measures (including drafting where a written application was required).	Fully met Partially met Not met	50.0% 43.8% 6.3%

No.	Question	Answers	Result
18	In CC (including RASSO cases before the CC) cases, there was a high-quality review to coincide with the service of the prosecution case and initial disclosure (at stage 1 set at PTPH).	Fully met Partially met Not met	35.3% 41.2% 23.5%
19	In all cases (MC, CC and RASSO) any reviews addressing significant developments that represent a major change in case strategy (and which are additional to those reviews considered in Qs 13 and 18) were of high-quality and dealt appropriately with the significant development(s) in the case.	Fully met Partially met Not met	42.9% 42.9% 14.3%
20	The CPS made appropriate and timely decisions about custody and bail throughout the life of the case.	Fully met Partially met Not met	40.0% 45.0% 15.0%
Post-charge case progression			
21	The prosecutor prepared the case effectively to ensure progress at court at the first hearing(s), which in the MC is the NGAP hearing for bail cases and the second hearing in custody cases and in the CC the PTPH, to include, as a minimum, any acceptable pleas or that there are no acceptable pleas, completion of PET/PTPH forms.	Fully met Partially met Not met	50.0% 50.0%
22	Any hard media was shared via Egress with all parties prior to the NGAP hearing or PTPH.	Fully met Partially met Not met	38.9% 11.1% 50.0%
23	In CC (including RASSO cases before the CC) cases, a properly drafted indictment was prepared.	Fully met Partially met Not met	65.0% 25.0% 10.0%
24	In CC (including RASSO cases before the CC) cases, the draft indictment and key evidence was served in a timely manner for PTPH.	Fully met Partially met Not met	85.0% 15.0%
25	In CC and RASSO cases a clear instruction to advocate document was prepared.	Fully met Partially met Not met	6.3% 37.5% 56.3%
26	In CC (including RASSO cases before the CC) cases, the advocate was instructed at least seven days before PTPH.	Fully met Partially met Not met	55.6% 11.1% 33.3%

No.	Question	Answers	Result
27	In CC (including RASSO cases before the CC) cases, the duty of direct engagement was carried out.	Fully met Partially met Not met	50.0% 15.0% 35.0%
28	In CC (including RASSO cases before the CC) cases, the DDE was uploaded to CCDCS.	Fully met Partially met Not met	23.1% 76.9%
29	In CC (including RASSO cases before the CC and the youth court where counsel is instructed), if there was no advice on evidence covering all necessary issues, this was chased.	Fully met Partially met Not met	54.5% 45.5%
30	In RASSO cases, a conference with the trial advocate, OIC and any expert witnesses took place.	Fully met Partially met Not met	44.4% 55.6%
31	There was timely compliance with court directions or Judges' Orders.	Fully met Partially met Not met	82.4% 17.6%
32	Appropriate applications (e.g. BCE, hearsay) were used effectively to strengthen the prosecution case.	Fully met Partially met Not met	75.0% 25.0%
33	Steps were taken to secure best evidence by correct and timely warning of witnesses.	Fully met Partially met Not met	94.4% 5.6%
34	Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions.	Fully met Partially met Not met	94.1% 5.9%
35	New material received from the police was reviewed appropriately and sufficiently promptly with timely and effective actions taken in response.	Fully met Partially met Not met	83.3% 16.7%
36	Correspondence from the court and defence was reviewed appropriately and sufficiently promptly with timely and effective actions undertaken in response.	Fully met Partially met Not met	82.4% 17.6%
37	Requests to the police for additional material or editing of material were timely and escalated where appropriate.	Fully met Partially met Not met	94.4% 5.6%
38	There was a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met	50.0% 40.0% 10.0%

No.	Question	Answers	Result
Disclosure of unused material			
39	In relevant cases, a DMD was completed.	Fully met Partially met Not met	70.0% 20.0% 10.0%
40	The DMD was completed accurately and fully in accordance with the guidance.	Fully met Partially met Not met	63.2% 36.8%
41	The police complied with their disclosure obligations.	Fully met Partially met Not met	45.0% 45.0% 10.0%
42	The prosecutor complied with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure).	Fully met Partially met Not met	44.4% 44.4% 11.1%
43	If PM or NM, the most significant failing was: see list of options in drop-down box	Did not endorse any decisions on a non-blank MG6D Did not identify reasonable lines of enquiry Other Said DUM was not disclosable Said NDUM was disclosable Set out the wrong test for disclosure (e.g. courtesy disclosure)	10.0% 40.0% 10.0% 10.0% 20.0% 10.0%
44	The prosecution complied with its duty of initial disclosure in a timely manner.	Fully met Partially met Not met	94.4% 5.6%
45	The prosecutor complied with the duty of continuing disclosure, (but not including timeliness of disclosure).	Fully met Partially met Not met	62.5% 31.3% 6.3%

No.	Question	Answers	Result
46	If PM or NM, the most significant failing was: see list of options in drop-down box	Did not carry out continuous disclosure at all Did not endorse any decisions on newly revealed items Did not identify reasonable lines of enquiry Said NDUM was disclosable Set out the wrong test for disclosure (e.g. courtesy disclosure)	16.7% 16.7% 33.3% 16.7% 16.7%
47	The prosecution complied with its duty of continuing disclosure in a timely manner.	Fully met Partially met Not met	86.7% 6.7% 6.7%
48	Sensitive unused material was dealt with appropriately.	Fully met Partially met Not met	57.1% 28.6% 14.3%
49	Third-party material was dealt with appropriately.	Fully met Partially met Not met	66.7% 6.7% 26.7%
50	In CC (including RASSO cases before the CC) cases, late defence statements were chased.	Fully met Partially met Not met	50.0% 50.0% 0.0%
51	Inadequate defence statements were challenged.	Fully met Partially met Not met	50.0% 50.0% 0.0%
52	The defence statement was reviewed by the prosecutor and direction given to the police about further reasonable lines of enquiry.	Fully met Partially met Not met	68.8% 25.0% 6.3%
53	The disclosure record on modern CMS was properly completed with actions and decisions taken on disclosure.	Fully met Partially met Not met	21.1% 73.7% 5.3%
54	The CPS fed back to the police where there were failings in the police service regarding disclosure.	Fully met Partially met Not met	36.4% 45.5% 18.2%

No.	Question	Answers	Result
Victims and witnesses			
55	The prosecutor consulted victims and witnesses where appropriate (includes STWAC).	Fully met Partially met Not met	57.1% 42.9%
56	The victim's wishes regarding VPS were complied with.	Fully met Partially met Not met	47.1% 23.5% 29.4%
57	The prosecution sought appropriate orders to protect the victim, witnesses and the public.	Fully met Partially met Not met	81.8% 18.2%
58	There was a timely VCL when required.	Fully met Partially met Not met	57.1% 42.9%
59	The VCL was of a high standard.	Fully met Partially met Not met	25.0% 75.0%
60	The CPS MG3 actively considered relevant applications and ancillary matters to support victims and witnesses.	Fully met Partially met Not met	37.5% 12.5% 50.0%

Annex C

Glossary

Achieving Best Evidence (ABE)

The police video-record the account of the victim or a witness rather than taking a written statement from them. The recording is played at trial instead of the victim or witness giving evidence if permission is granted by the court; this is one of a range of special measures (see below). The recording is known as an 'achieving best evidence' recording, or "an ABE", after the guidance of the same name from the Ministry of Justice on interviewing victims and witnesses and using special measures.

Agent

A lawyer from outside the CPS who is employed when required to prosecute cases at court on behalf of the CPS. They cannot make decisions about cases under the Code for Crown Prosecutors and must take instructions from the CPS.

Ancillary orders

As well as imposing a sentence, the Judge or magistrates may also impose orders on a defendant, such as a compensation order requiring a defendant to pay a sum of money to the victim. These are known as 'ancillary orders.'

Area Business Manager (ABM)

The most senior non-legal manager at CPS Area level. They are responsible for the business aspects in an Area, such as managing the budget, and work with the Chief Crown Prosecutor (see below) to run the Area effectively and efficiently.

Area Champion

A CPS lawyer with specialist knowledge or expertise in a legal area, such as disclosure. They act as a source of information and support for colleagues and deliver training.

Associate Prosecutor (AP)

A non-lawyer employed by the CPS who conducts uncontested (guilty plea) cases at the magistrates' courts on behalf of the prosecution. With additional training, APs can undertake contested (not guilty) hearings.

Attorney General (AG)

The main legal advisor to the Government and superintends the Crown Prosecution Service.

Bad character/bad character application

Evidence of previous bad behaviour, including convictions for earlier criminal offences. Normally, bad character cannot be included as part of the evidence in

a criminal trial. To be allowed, either the prosecution and defence must agree it can be used, or an application must be made to the court, based on specific reasons set out by law.

Barrister/Counsel

A lawyer with the necessary qualifications to appear in the Crown Court and other criminal courts, who is paid by the CPS to prosecute cases at court, or by the representative of someone accused of a crime to defend them.

Basis of plea

Sets out the basis upon which a defendant pleads guilty to an offence.

Better Case Management (BCM)

The national process for case management in the Crown Court to improve the way cases are processed through the system, for the benefit of all concerned in the criminal justice system.

Case management system (CMS)

The IT system used by the CPS for case management.

Casework Quality Standards (CQS)

Issued by the Director of Public Prosecutions. They set out the benchmarks of quality that the CPS strives to deliver in prosecuting crime on behalf of the public. They include the CPS's responsibilities to victims, witnesses and communities, legal decision-making and the preparation and presentation of cases.

Charging decision

A decision by the CPS (or the police in certain circumstances) whether there is sufficient evidence and it is in the public interest to charge a suspect with a particular offence. The process is governed by the Director's Guidance on Charging.

Chief Crown Prosecutor (CCP)

Each of the 14 CPS Areas has a CCP who, with the Area Business Manager (see above), runs the Area. The CCP is responsible for the legal aspects in the Area, such as the quality of legal decision-making, case progression, and working with stakeholders, communities, and the public to deliver quality casework.

Cloud video platform (CVP)

A video communication system that enables court hearings to be carried out remotely and securely.

Code for Crown Prosecutors (the Code)

A public document, issued by the Director of Public Prosecutions, that sets out the general principles CPS lawyers should follow when they make decisions on cases. Cases should proceed only if there is sufficient evidence against a defendant to provide a realistic prospect of conviction and it is in the public interest to prosecute.

Common platform

A digital case management system which allows all parties involved in criminal cases to access case information.

Complex Casework Units (CCUs)

Units responsible for some of the most serious and complicated casework the CPS prosecutes, such as large-scale international cases.

Contested case

Where a defendant pleads not guilty or declines to enter any plea at all, and the case proceeds to trial.

Court order/direction

An instruction from the court requiring the prosecution or defence to carry out an action (such as sending a particular document or some information to the other party or the court) in preparation for trial.

CPS Direct (CPSD)

A service operated by CPS lawyers which provides charging decisions. It deals with many priority cases and much of its work is out of hours, enabling the CPS to provide a charging decision 24 hours a day, 365 days a year.

Cracked trial

A case which ends on the day of trial either because of a guilty plea by the defendant or because the prosecution decides to stop the case.

Criminal Procedure Rules (CPR)

Rules about criminal procedure which give criminal courts powers to manage effectively criminal cases waiting to be heard. The main aim of the CPR is to progress cases fairly and quickly.

Crown advocate (CA)

A lawyer employed by the CPS who is qualified to appear in the Crown Court.

Crown Court

The court which deals with graver allegations of criminal offences, such as murder, rape, and serious assaults. Some allegations can be heard at either the Crown Court or the magistrates court (see 'either-way offence').

Crown Prosecutor (CP)

A lawyer employed by the CPS whose role includes reviewing and preparing cases for court and prosecuting cases at the magistrates' courts. CPs can progress to become senior crown prosecutors.

Custody time limit (CTL)

The length of time that a defendant can be kept in custody awaiting trial. It can be extended by the court in certain circumstances.

Custody time limit failure

A custody time limit failure occurs when the court refuses to extend a CTL on the grounds that the prosecution has not acted with the necessary due diligence and expedition, or when no valid application is made to extend the CTL before its expiry date.

Defendant

Someone accused of and charged with a criminal offence.

Defence statement (DS)

A written statement setting out the nature of the accused's defence. Service of the defence statement is part of the process of preparing for trial, and is meant to help the prosecution understand the defence case better so they can decide if there is any more unused material than ought to be disclosed (see 'disclosure' above).

Deputy Chief Crown Prosecutor (DCCP)

Second-in-command after the Chief Crown Prosecutor (see above) for legal aspects of managing the Area.

Digital Case System (DCS)

A digital/computerised system for storing and managing cases in the Crown Court, to which the defence, prosecution, court staff and the Judge all have access.

Direct Defence Engagement Logs (DDE)

Written record of discussions with the defence about a case. The prosecution and defence are obliged by the Criminal Procedure Rules to engage and identify

the issues for trial so that court time is not wasted hearing live evidence about matters that can be agreed.

Director's Guidance on Charging

Issued by the Director of Public Prosecutions in relation to charging decisions (see above). It sets out guidance for the police and CPS about how to prepare a file so that it is ready for charging, who can make the charging decision, and what factors should influence the decision. It also sets out the requirements for a suspect whom the police will ask the court to keep in custody to be charged before all the evidence is available, which is called the threshold test. The latest edition (the sixth, also called 'DG6') came into effect on 31 December 2020.

Director of Public Prosecutions (DPP)

The head of the CPS with responsibility for its staff and the prosecutions it undertakes every year. In certain cases the personal consent of the DPP is required for prosecutions to proceed.

Disclosure/unused material

The police have a duty to record, retain and review material collected during an investigation which is relevant but is not being used as prosecution evidence and reveal it to the prosecutor. The prosecutor has a duty to provide the defence with copies of, or access to, all material that is capable of undermining the prosecution case and/or assisting the defendant's case.

Disclosure management document (DMD)

Used for rape and other Crown Court cases, the DMD sets out the approach of the police and CPS to the disclosure of unused material in a case. It may, for example, explain the parameters used by the police to search data held on a mobile phone or other digital device (such as the dates used, or key words) or what action the police are and are not taking in relation to possible avenues of investigation. The DMD is shared with the defence and court so that everyone is aware of the approach being taken. This enables the defence to make representations if they do not agree with that approach (for example, if they think different search terms should be used). It also helps ensure that disclosure is undertaken efficiently and fairly.

Disclosure record sheet (DRS)

Sets out the chronology of all disclosure actions and decisions, and the reasons for those decisions. It is an internal CPS document that is not shared with the defence or court.

Discontinuance

Where the prosecution stops the case because there is not sufficient evidence to carry on, or it is not in the public interest to do so.

District Crown Prosecutor (DCP)

A lawyer who leads and manages the day to day activities of prosecutors and advocates.

Domestic abuse (DA)

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members, regardless of gender or sexuality.

Effective trial

Where a case proceeds to a full trial on the date that it is meant to.

Either-way offence

An offence that can be prosecuted in the magistrates' courts or the Crown Court. The prosecution makes representations to the court on where the case should be heard. The magistrates or a District Judge (who sits alone in the magistrates' courts) can decide the allegation is serious enough that it must go to the Crown Court. If they decide it can be heard in the magistrates' courts, the defendant can choose to have the case sent to the Crown Court, where it will be heard by a jury. If the defendant agrees. The trial will be heard in the magistrates' courts.

Full Code test (FCT)

A decision where the prosecutor applies the Code for Crown Prosecutors. A prosecution must only start or continue when the case has passed both stages of the Full Code Test: the evidential stage, followed by the public interest stage. The Full Code Test should be applied when all outstanding reasonable lines of inquiry have been pursued, or prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.

Graduated fee scheme (GFS)

The scheme by which lawyers are paid for Crown Court cases. For Counsel appearing on behalf of defendants who qualify for assistance (called 'Legal Aid'), the GFS is set and managed by the Legal Aid Agency. For Counsel appearing for the prosecution, the rates are determined by the CPS GFS, and the CPS pays Counsel.

Guilty anticipated plea (GAP)

Where the defendant is expected to admit the offence at court, based on an assessment of the available evidence and any admissions made during interview.

Hate crime

The law recognises offences as hate crime any offence where the defendant has been motivated by or demonstrated hostility towards the victim based on what the defendant thinks is their race, disability, gender identity or sexual orientation. Targeting older people is not (at the time of writing) recognised in law as a hate crime, but the CPS monitors crimes against older people in a similar way.

Hearing record sheet (HRS)

A CPS electronic record of what has happened in the case during the course of a court hearing, and any actions that need to be carried out afterwards.

Her Majesty's Courts and Tribunal Service (HMCTS)

Responsible for the administration of criminal, civil and family courts and tribunals in England and Wales.

Honour based violence (HBV)

A collection of practices which are used to control behaviour within families or other social groups to protect perceived cultural and religious beliefs and/or honour. It can take the form of domestic abuse and/or sexual violence.

Inclusion and community engagement strategy

Sets out the CPS's commitment to promoting fairness, equality, diversity and inclusion across the criminal justice system by engaging with community groups and those at risk of exclusion.

Indictable-only offence

An offence triable only in the Crown Court.

Indictment

The document that contains the charge or charges faced by the defendant at trial in the Crown Court.

Individual Learning Account (ILA)

CPS employees can access an allowance of £350 per person, per year, for professional development.

Individual quality assessment (IQA)

An assessment of a piece of work done by a CPS member of staff, usually a prosecutor, but some Areas also carry out IQAs for some operational delivery staff. The assessment will be carried out by a manager, and feedback on the assessment given to the member of staff. Areas also use IQAs to identify areas for improvement and training needs across a team or the whole Area.

Ineffective trial

A case that does not proceed to trial on the date that it is meant to. This can be owing to a variety of possible reasons, including non-attendance of witnesses, non-compliance with a court order by the prosecution or defence, or lack of court time.

Initial details of the prosecution case (IDPC)

The material to be provided before the first hearing at the magistrates' courts to enable the defendant and the court to take an informed view on plea, where the case should be heard, case management and sentencing. The IDPC must include a summary of the circumstances of the offence and the defendant's charge sheet. Where the defendant is expected to plead not guilty, key statements and exhibits (such as CCTV evidence) must be included.

Intermediary

A professional who facilitates communication between, on the one hand, a victim or witness, and on the other hand, the police, prosecution, defence, and/or the court. Their role is to ensure that the witness understands what they are being asked, can give an answer, and can have that answer understood. To do this, they will assess what is needed, provide a detailed report on how to achieve that, and aid the witness in court. An intermediary may be available at trial, subject to the court agreeing it is appropriate, for defence or prosecution witnesses who are eligible for special measures on the grounds of age or incapacity, or for a vulnerable defendant

Key stakeholders

The organisations and people with whom the CPS engages, such as the police, courts, the judiciary, and victim and witness services.

Local Criminal Justice Boards (LCJBs)

Made up of representatives of the CPS, police, HMCTS and others. LCJBs were originally set up in all 43 Force areas by central government and received central funding. They now operate as a voluntary partnership in most counties in England. The Boards' purpose is to work in partnership to improve the efficiency and effectiveness of the criminal justice system and to improve the experience of the victims and witnesses.

Local Scrutiny Involvement Panels (LSIPs)

Made up of representatives of the local community and voluntary sector, especially those representing minority, marginalised or at-risk groups. They meet regularly with their local CPS Area to discuss issues of local concern and provide feedback on the service the Area provides, with a view to improving the delivery of justice at a local level and to better supporting victims and witnesses.

Manual of Guidance Form 3 (MG3)

One of a number of template forms contained in a manual of guidance for the police and CPS on putting together prosecution files. The MG3 is where the police set out a summary of the evidence and other information when asking the CPS to decide whether a suspect should be charged with a criminal offence, and the CPS then record their decision.

National File Standard (NFS)

A national system that sets out how the police should prepare criminal case files. It allows investigators to build only as much of the file as is needed at any given stage – whether that is for advice from the CPS, the first appearance at court or the trial. The latest version was published in December 2020.

Newton hearing

A hearing in criminal proceedings required when a defendant pleads guilty to an offence but there is disagreement with the prosecution as to the facts of the offence.

Not guilty anticipated plea (NGAP)

Where the defendant is expected to plead not guilty at court, based on an assessment of the available evidence and any defence(s) put forward during interview.

Offer no evidence (ONE)

Where the prosecution stops the case, after the defendant has pleaded not guilty, by offering no evidence. A finding of 'not guilty' is then recorded by the court.

Paralegal officer (PO)

Provides support and casework assistance to CPS lawyers and attends court to take notes of hearings and assist advocates.

Personal Development Review (PDR)

Twice yearly review of a CPS employee's performance against a set of objectives specific to their role.

Plea and Trial Preparation Hearing (PTPH)

The first hearing at the Crown Court after the case has been sent from the magistrates' courts. The defendant is expected to enter a plea to the offence(s) with which they have been charged. If the defendant pleads guilty, the court may be able to sentence them immediately, but if not, or if the defendant has pleaded not guilty, the court will set the next hearing date, and for trials, will also set out a timetable for management of the case.

Postal requisition

A legal document notifying a person that they are to be prosecuted for a criminal offence, and are required to attend the magistrates' courts to answer the allegation

Rape and serious sexual offences (RASSO)

Allegations of rape and other serious sexual offences perpetrated against men, women or children. In the CPS, the prosecution of RASSO cases is undertaken separately from other cases, in RASSO units or teams.

Restraining order (RO)

A type of court order made as part of the sentencing procedure to protect the person(s) named in it from harassment or conduct that will put them in fear of violence. They are often made in cases involving domestic abuse, harassment, stalking or sexual assault. The order is intended to be preventative and protective, and usually includes restrictions on contact by the defendant towards the victim; it may also include an exclusion zone around the victim's home or workplace. A restraining order can also be made after a defendant has been acquitted if the court thinks it is necessary to protect the person from harassment.

Review

The process whereby a CPS prosecutor determines that a case received from the police satisfies, or continues to satisfy, the legal test for prosecution in the Code for Crown Prosecutors. This is one of the most important functions of the CPS.

Section 28 Youth Justice and Criminal Evidence Act 1999

Provides the option to pre-record the cross-examination evidence in advance of a trial for vulnerable victims and witnesses.

Senior Crown Prosecutor (SCP)

A lawyer employed by the CPS with the necessary skills and experience to progress to a more senior legal role that includes the functions set out above for

crown prosecutors but also includes advising the police on charge. It is not a role that includes managing staff.

Sensitive material

Any unused material (see disclosure/unused material) which it would not be in the public interest to disclose during the criminal proceedings. If it meets the test for disclosure, the prosecution must either stop the case or apply to the court for an order allowing them to withhold the sensitive material.

Speaking to witnesses at court initiative (STWAC)

The prosecutor should speak to witnesses at or before court to ensure that they are properly assisted and know what to expect before they give their evidence.

Special measures applications (SMA)

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 most accurate and complete account of what happened. Measures include giving evidence via a live TV link to the court, giving evidence from behind screens in the courtroom and the use of intermediaries. A special measures application is made to the court within set time limits and can be made by the prosecution or defence.

Standard Operating Practice (SOP)

The CPS has a range of standard operating practices which set out how to complete a particular task or action and cover legal and business aspects of the running of the CPS. They are standard across the organisation and seek to apply consistency to business practices and key steps needed in all prosecutions. Examples include: how to register a new charging request from the police on the case management system; how to record charging advice; how to prepare for the first hearing; and how to deal with incoming communications.

Summary offence

An offence that is normally dealt with in the magistrates' courts. In certain circumstances, and when there is a connected case that will be heard by the Crown Court, it may deal with a summary offence as well.

Third party material

Material held by someone other than the investigator and/or prosecutor, such as medical or school records, or documents held by Social Services departments.

Threshold test

See Director's Guidance on Charging.

Transforming Summary Justice (TSJ)

An initiative led by HMCTS and involving the CPS and the police, designed to deliver justice in summary cases in the most efficient way by reducing the number of court hearings and the volume of case papers. The process involves designating bail cases coming into the magistrates' courts for their first hearing as guilty-anticipated plea (GAP) cases or not guilty-anticipated plea (NGAP) cases. GAP and NGAP are explained above. GAP and NGAP cases are listed in separate courtrooms, so that each can be dealt with more efficiently.

Uncontested case

Where a defendant pleads guilty and the case proceeds to sentence.

Unsuccessful outcome

A prosecution which does not result in a conviction is recorded in CPS data as an unsuccessful outcome. If the outcome is unsuccessful because the prosecution has been dropped (discontinued, withdrawn or no evidence offered) or the court has ordered that it cannot proceed, it is also known as an adverse outcome. Acquittals are not adverse outcomes.

Victim Communication and Liaison scheme (VCL)

A CPS scheme to inform victims of crime of a decision to stop or alter substantially any of the charges in a case. Vulnerable or intimidated victims must be notified within one working day and all other victims within five working days. In certain cases, victims will be offered a meeting to explain the decision and/or the right to ask for the decision to be reviewed.

Victim Liaison Unit (VLU)

The VLU is the team of CPS staff in an Area. It is responsible for communication with victims under the Victim Communication and Liaison scheme (see above), the Victims' Right to Review (see below), and for responding to complaints, and overseeing the service to bereaved families.

Victim Personal Statement (VPS)

Gives victims the opportunity of explaining to the court how a crime has affected them. If a defendant is found guilty, the court will take the VPS into account, along with all the other evidence, when deciding on an appropriate sentence.

Victims' Code

Sets out a victim's rights and the minimum standards of service that organisations must provide to victims of crime. Its aim is to improve victims' experience of the criminal justice system by providing them with the support and information they need. It was published in October 2013 and last updated on 21 April 2021.

Victims' Right to Review (VRR)

This scheme provides victims of crime with a specifically designed process to exercise the right to review certain CPS decisions not to start a prosecution or to stop a prosecution. If a new decision is required, it may be appropriate to institute or reinstitute criminal proceedings. The right to request a review of a decision not to prosecute under the VRR scheme applies to decisions that have the effect of being final made by every Crown Prosecutor, regardless of their grade or position in the organisation. It is important to note that the "right" referred to in the context of the VRR scheme is the right to request a review of a final decision. It is not a guarantee that proceedings will be instituted or reinstituted.

Violence Against Women and Girls (VAWG)/VAWG Strategy (VAWGS)

VAWG includes boys and men as victims but reflects the gendered nature of the majority of VAWG offending. It covers a wide range of criminal conduct, including domestic abuse, controlling and coercive behaviour, sexual offences, harassment, forced marriage, so-called honour-based violence, and slavery and trafficking. The aim of the Government's VAWGS is to increase support for victims and survivors, increase the number of perpetrators brought to justice, and reduce the prevalence of violence against women and girls in the long term.

Vulnerable and/or intimidated witnesses

Those witnesses who require particular help to give evidence in court such as children, victims of sexual offences and the most serious crimes, persistently targeted victims, and those with communication difficulties.

Witness Care Unit (WCU)

A unit responsible for managing the care of victims and prosecution witnesses from when a case is charged to the conclusion of the case. It is staffed by witness care officers and other support workers whose role is to keep witnesses informed of the progress of their case. Almost all WCUs are police-staffed and managed teams.

Witness summons

A legal document compelling a reluctant or unwilling witness to attend court.

Annex D

File examination question set

No.	Question	Possible answers
Pre-charge decision		
1	The CPS decision to charge was compliant with the Code Test.	Fully met Partially met Not met Not applicable (NA)
2	The CPS decision to charge was timely.	Fully met Partially met Not met NA
3	The most appropriate charges were selected on the information available to the prosecutor at the time.	Fully met Partially met Not met NA
4	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met NA
5	The CPS MG3 dealt appropriately with unused material.	Fully met Partially met Not met NA
6	The CPS MG3 referred to relevant applications and ancillary matters.	Fully met Partially met Not met NA
7	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the PET/PTPH form created with the MG3.	Fully met Partially met Not met NA
8	The action plan was proportionate and met a satisfactory standard.	Fully met Partially met Not met NA
Police initial file submission post-charge		
9	The police file submission complied with National File Standard for the type of case.	Fully met Not met
10	Police file submission was timely.	Fully met Not met
11	The CPS used the NFQ Assessment tool in the review document to identify and feed back to the police on any failings in the file submission.	Fully met Partially met Not met NA

No.	Question	Possible answers
Post-charge reviews and decisions		
12	All review decisions post-charge applied the Code correctly.	Fully met Not met
13	The case received a proportionate initial or post-charge review including a proper case analysis and case strategy.	Fully met Partially met Not met
14	The initial or post-charge review was carried out in a timely manner.	Fully met Partially met Not met NA
15	Any decision to discontinue was made and put into effect in a timely manner.	Fully met Partially met Not met NA
16	Any pleas accepted were appropriate, with a clear basis of plea.	Fully met Partially met Not met NA
17	Steps were taken to achieve best evidence by making appropriate applications for special measures (including drafting where a written application was required).	Fully met Partially met Not met NA
18	In CC (including RASSO cases before the CC) cases, there was a high-quality review to coincide with the service of the prosecution case and initial disclosure (at stage 1 set at PTPH).	Fully met Partially met Not met NA
19	In all cases (MC, CC and RASSO) any reviews addressing significant developments that represent a major change in case strategy (and which are additional to those reviews considered in Qs 13 and 18) were of high-quality and dealt appropriately with the significant development(s) in the case.	Fully met Partially met Not met NA
20	The CPS made appropriate and timely decisions about custody and bail throughout the life of the case.	Fully met Partially met Not met

No.	Question	Possible answers
Post-charge case progression		
21	The prosecutor prepared the case effectively to ensure progress at court at the first hearing(s), which in the MC is the NGAP hearing for bail cases and the second hearing in custody cases and in the CC the PTPH, to include, as a minimum, any acceptable pleas or that there are no acceptable pleas, completion of PET/PTPH forms.	Fully met Partially met Not met NA
22	Any hard media was shared via Egress with all parties prior to the NGAP hearing or PTPH.	Fully met Partially met Not met NA
23	In CC (including RASSO cases before the CC) cases, a properly drafted indictment was prepared.	Fully met Partially met Not met NA
24	In CC (including RASSO cases before the CC) cases, the draft indictment and key evidence was served in a timely manner for PTPH.	Fully met Partially met Not met NA
25	In CC and RASSO cases a clear instruction to advocate document was prepared.	Fully met Partially met Not met NA
26	In CC (including RASSO cases before the CC) cases, the advocate was instructed at least seven days before PTPH.	Fully met Partially met Not met NA
27	In CC (including RASSO cases before the CC) cases, the duty of direct engagement was carried out.	Fully met Partially met Not met NA
28	In CC (including RASSO cases before the CC) cases, the DDE was uploaded to CCDCS.	Fully met Partially met Not met NA
29	In CC (including RASSO cases before the CC and the youth court where counsel is instructed), if there was no advice on evidence covering all necessary issues, this was chased.	Fully met Partially met Not met NA

No.	Question	Possible answers
30	In RASSO cases, a conference with the trial advocate, OIC and any expert witnesses took place.	Fully met Partially met Not met NA
31	There was timely compliance with court directions or Judges' Orders.	Fully met Partially met Not met NA
32	Appropriate applications (e.g. BCE, hearsay) were used effectively to strengthen the prosecution case.	Fully met Partially met Not met NA
33	Steps were taken to secure best evidence by correct and timely warning of witnesses.	Fully met Partially met Not met NA
34	Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions.	Fully met Partially met Not met NA
35	New material received from the police was reviewed appropriately and sufficiently promptly with timely and effective actions taken in response.	Fully met Partially met Not met NA
36	Correspondence from the court and defence was reviewed appropriately and sufficiently promptly with timely and effective actions undertaken in response.	Fully met Partially met Not met NA
37	Requests to the police for additional material or editing of material were timely and escalated where appropriate.	Fully met Partially met Not met NA
38	There was a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met
Disclosure of unused material		
39	In relevant cases, a DMD was completed.	Fully met Partially met Not met NA

No.	Question	Possible answers
40	The DMD was completed accurately and fully in accordance with the guidance.	Fully met Partially met Not met NA
41	The police complied with their disclosure obligations.	Fully met Partially met Not met NA
42	The prosecutor complied with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure).	Fully met Partially met Not met NA
43	If PM or NM, the most significant failing was: see list of options in drop-down box	
44	The prosecution complied with its duty of initial disclosure in a timely manner.	Fully met Partially met Not met NA
45	The prosecutor complied with the duty of continuing disclosure, (but not including timeliness of disclosure).	Fully met Partially met Not met NA
46	If PM or NM, the most significant failing was: see list of options in drop-down box	
47	The prosecution complied with its duty of continuing disclosure in a timely manner.	Fully met Partially met Not met NA
48	Sensitive unused material was dealt with appropriately.	Fully met Partially met Not met NA
49	Third-party material was dealt with appropriately.	Fully met Partially met Not met NA
50	In CC (including RASSO cases before the CC) cases, late defence statements were chased.	Fully met Partially met Not met NA

No.	Question	Possible answers
51	Inadequate defence statements were challenged.	Fully met Partially met Not met NA
52	The defence statement was reviewed by the prosecutor and direction given to the police about further reasonable lines of enquiry.	Fully met Partially met Not met NA
53	The disclosure record on modern CMS was properly completed with actions and decisions taken on disclosure.	Fully met Partially met Not met NA
54	The CPS fed back to the police where there were failings in the police service regarding disclosure.	Fully met Partially met Not met NA
Victims and witnesses		
55	The prosecutor consulted victims and witnesses where appropriate (includes STWAC).	Fully met Partially met Not met NA
56	The victim's wishes regarding VPS were complied with.	Fully met Partially met Not met NA
57	The prosecution sought appropriate orders to protect the victim, witnesses and the public.	Fully met Partially met Not met NA
58	There was a timely VCL when required.	Fully met Partially met Not met NA
59	The VCL was of a high standard.	Fully met Partially met Not met NA
60	The CPS MG3 actively considered relevant applications and ancillary matters to support victims and witnesses.	Fully met Partially met Not met NA

Annex E

File sample composition

Breakdown of the standard file sample

The number of files examined from each Area was determined, in consultation with the CPS, as 90. There were 30 magistrates' court cases, 40 Crown Court cases and 20 rape and serious sexual offence cases.

The files were randomly selected within certain parameters (set out below) from cases finalised in the quarter before the on-site phase for that Area and from live cases. This allowed the Covid-19 context from the on-site Area visits to be aligned with the current casework.

Finalised cases included those concluded at either the not-guilty anticipated plea (NGAP) hearing in the magistrates' courts or the plea and trial preparation hearing (PTPH) in the Crown Court in order to be able to properly assess decision-making and case progression. The sample also included cracked trials, and a mix of successful and unsuccessful cases.

All magistrates' court (MC) files were drawn from NGAP cases to capture the review and preparation required prior to the NGAP hearing. The MC sample included three youth cases; the remainder were adult cases. Minor motoring cases were excluded from the MC file sample.

All Crown Court (CC) files were chosen from those set down for trial or that had had a PTPH to capture the post-sending review and pre-PTPH preparation, save for discontinuances where the decision to discontinue may have been made prior to PTPH. Homicide cases were excluded for two reasons: firstly, because they are frequently investigated by specialist police teams so are not representative of an Area's volume work; secondly, because they are harder for HMCPSI to assess, as some of the information in the case is often stored off the CMS and not accessible to inspectors. Fatal road traffic collision cases were not excluded.

RASSO files included offences involving child victims, but all domestic abuse RASSO cases had adult victims. No more than two cases were possession of indecent images, and no more than two cases were ones involving non-police decoy or child sex abuse vigilante in child-grooming or meeting cases.

Table 14: File sample structure

Outcome	Magistrates' courts	Crown Court	RASSO	Total
Late guilty plea	6 (20%)	10 (25%)	5 (25%)	21
Guilty plea at NGAP hearing	3 (10%)	4 (10%)	2 (10%)	9
Conviction after trial	7 (23%)	8 (20%)	4 (20%)	19
Discontinued/JOA	6 (20%)	7 (17%)	3 (15%)	16
No case to answer/Judge directed acquittal	1 (3%)	2 (5%)	1 (5%)	4
Acquittal after trial	4 (13%)	5 (12%)	3 (15%)	12
Live cases	3 (10%)	4 (10%)	2 (10%)	9
Total	30	40	20	90
<i>Police charged</i>	2 (max)	0	0	
<i>CPS Direct charged</i>	4 (max)	6 (max)	2 (max)	
<i>Youth cases</i>	3			

The categories in italics in Table 14 were not additional files but contributed to the total volume of cases. Where there were no JDA or NCTA outcomes finalised during the quarter preceding the file examination, acquittals after trial were substituted in order to maintain the balance between successful and unsuccessful cases.

Occasionally, it may have been necessary to exceed the maximum numbers of CPSD charged cases to avoid selecting older cases, but this was at the discretion of the lead inspector.

Sensitive/non-sensitive split

Of the standard MC and CC file samples, 20% were sensitive cases and half of these were domestic abuse allegations.

Table 15 sets out the mandatory minimum number of sensitive case types included in our MC and CC samples. As far as possible, they were evenly split between successful and unsuccessful outcomes. Occasionally, it may have been necessary to exceed the minimum numbers in certain categories of sensitive casework in order to avoid selecting older cases, but this was at the discretion of the lead inspector.

Table 15: Minimum sensitive case types in sample

Case type	Magistrates' courts (30)	Crown Court (40)	RASSO (20)	Total (90)
Domestic abuse	3	4	2	9
Racially or religiously aggravated (RARA)	1	1	0	2
Homophobic/elder/disability	1	1	0	2
Sexual offence (non-RASSO)	1	2	0	3
Total	6 (20%)	8 (20%)	2 (10%)	16 (17%)

If there was no RARA case available, another hate crime category file was substituted.

Annex F

Scoring methodology

Scoring methodology

The scores in this inspection are derived solely from our examination of the casework quality of 90 Area files: 30 magistrates' court cases, 40 Crown Court cases and 20 rape and serious sexual offences (RASSO) cases.

We based our evaluation of casework quality on two key measures: added value and grip. We define added value as the CPS making good, proactive prosecution decisions by applying its legal expertise to each case, and grip as the CPS proactively progressing its cases efficiently and effectively.

We used our file examination data to give scores for added value and grip, which are set out as percentages. They were obtained by taking the questions that feed into the aspect (added value or grip as set out in annex G) and allocating two points for each answer that was assessed as fully meeting the expected standard. We allocated one point for a rating of partially meeting the expected standard, and no points for a rating of not meeting the expected standard. We then expressed the total points awarded as a percentage of the maximum possible points. Not applicable answers were excluded.

To help evaluate added value and grip, we also scored the five casework themes and sub-themes in each of the three casework types (magistrates' court cases, Crown Court cases, and RASSO cases):

- Pre-charge decisions and reviews:
 - Compliance with the Code at pre-charge
 - Selection of charge(s)
 - Case analysis and strategy
- Post-charge decisions and reviews:
 - Compliance with the Code post charge
 - Case analysis and strategy
- Preparation for the plea and trial preparation hearing in the Crown Court
- Disclosure
- Victims and witnesses.

The scores for these themes were obtained by taking the answers for the questions that feed into the aspect (as set out in annex G). We allocated two points for each rating of fully meeting the expected standard, and one point for a rating of partially meeting the standard. There were no points for ratings of not meeting the standard, and not applicable answers were excluded. We then expressed the total points awarded as a percentage of the maximum possible points.

For the casework theme or sub-themes, we have reported on the percentages, but have also used a range of percentages (see Table 16) to convert the percentage into a finding of fully, partially, or not meeting the expected standard for the theme or sub-theme overall.

Table 16: Conversion of percentages into ratings

Rating	Range
Fully meeting the standard	70% or more
Partially meeting the standard	60% to 69.99%
Not meeting the standard	59.99% or less

A worked example

Relevant questions

For the victims and witnesses aspect of casework in the magistrates' courts, we took the answers from the following nine questions (see annex G):

- Q17: Steps were taken to achieve best evidence by making appropriate applications for special measures (including drafting where a written application is required).
- Q33: Steps were taken to secure best evidence by correct and timely warning of witnesses.
- Q34: Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions.
- Q55: The prosecutor consulted victims and witnesses where appropriate (includes STWAC).
- Q56: The victim's wishes regarding VPS were complied with.
- Q57: The prosecution sought appropriate orders to protect the victim, witnesses and the public.
- Q58: There was a timely VCL when required.
- Q59: The VCL was of a high standard.
- Q60: The CPS MG3 actively considered relevant applications and ancillary matters designed to support victims and/or witnesses.

File examination results

This data is fictitious and used only to demonstrate the scoring mechanism. For the 30 magistrates' court files, we scored the relevant questions as set out in Table 17.

Table 17: Worked example scores

Question	Answer	All cases
Q17: Steps were taken to achieve best evidence by making appropriate applications for special measures	Fully meeting	13
	Partially meeting	7
	Not meeting	5
	Not applicable	5
Q33: Steps were taken to secure best evidence by correct and timely warning of witnesses	Fully meeting	23
	Partially meeting	5
	Not meeting	1
	Not applicable	1
Q34: Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions	Fully meeting	8
	Partially meeting	10
	Not meeting	9
	Not applicable	3
Q55: The prosecutor consulted victims and witnesses where appropriate (includes STWAC)	Fully meeting	3
	Partially meeting	4
	Not meeting	3
	Not applicable	20
Q56: The victim's wishes regarding VPS were complied with	Fully meeting	17
	Partially meeting	3
	Not meeting	4
	Not applicable	6
Q57: The prosecution sought appropriate orders to protect the victim, witnesses, and the public	Fully meeting	16
	Partially meeting	5
	Not meeting	4
	Not applicable	5
Q58: There was a timely VCL when required	Fully meeting	5
	Partially meeting	4
	Not meeting	4
	Not applicable	17
Q59: The VCL was of a high standard	Fully meeting	3
	Partially meeting	3
	Not meeting	3
	Not applicable	21
Q60: The CPS MG3 actively considered relevant applications and ancillary matters designed to support victims and/or witnesses	Fully meeting	11
	Partially meeting	7
	Not meeting	5
	Not applicable	7
Total for all above questions	Fully meeting	99
	Partially meeting	48
	Not meeting	38
	Not applicable	85

Excluding the not applicable answers leaves 185 answers. The maximum score possible would therefore be 370 points if all answers were 'fully meeting the standard'.

The score for this fictitious Area is calculated as follows:

- Two points for each fully meeting answer = 198 points
- One point for each partially meeting answer = 48 points
- Total $(198 + 48) = 246$ points.

Expressed as a percentage of 370 available points, this gives the score as 66.5%. When the ranges are applied, 66.5% (60% to 69.99%) gives an overall rating of partially meeting the required standard.

Annex G

Casework themes

Table 18: Casework themes

No.	Question	Casework theme	Included in added value or grip?
1	The CPS decision to charge was compliant with the Code test.	PCD Code compliance	Added value
2	The CPS decision to charge was timely.	NA	Grip
3	The most appropriate charges were selected on the information available to the prosecutor at the time.	Selection of appropriate charges	Added value
4	The CPS MG3 included proper case analysis and case strategy.	PCD	Added value
5	The CPS MG3 dealt appropriately with unused material.	PCD	Added value
6	The CPS MG3 referred to relevant applications and ancillary matters.	PCD	Added value
7	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the PET/PTPH form created with the MG3.	PCD	NA
8	The action plan was proportionate and met a satisfactory standard.	PCD	Added value
9	The police file submission complied with National File Standard for the type of case.	NA	NA
10	Police file submission was timely.	NA	NA
11	The CPS used the NFQ assessment tool in the review document to identify and feed back to the police on any failings in the file submission.	NA	NA
12	All review decisions post-charge applied the Code correctly.	Code compliance post-charge	Added value

No.	Question	Casework theme	Included in added value or grip?
13	The case received a proportionate initial or post-sending review including a proper case analysis and case strategy.	Reviews	Added value
14	The initial or post-sending review was carried out in a timely manner.	NA	Grip
15	Any decision to discontinue was made and put into effect in a timely manner.	NA	Grip
16	Any pleas accepted were appropriate, with a clear basis of plea.	Reviews	Added value
17	Steps were taken to achieve best evidence by making appropriate applications for special measures (including drafting where a written application was required).	V&W	Added value
18	In CC (including RASSO cases before the CC) cases, there was a high-quality review to coincide with the service of the prosecution case and initial disclosure (at stage one set at PTPH).	Reviews (CC and RASSO only)	Added value
19	In all cases (MC, CC and RASSO), any reviews addressing significant developments that represented a major change in case strategy (and additional to those reviews considered in Qs 13 and 18) were of high quality and dealt appropriately with the significant development(s) in the case.	Reviews	Added value
20	The CPS made appropriate and timely decisions about custody and bail throughout the life of the case.	Reviews	Added value

No.	Question	Casework theme	Included in added value or grip?
21	The prosecutor prepared the case effectively to ensure progress at court at the first hearing(s), which in the MC is the NGAP hearing for bail cases and the second hearing in custody cases and in the CC the PTPH, to include as a minimum any acceptable pleas or no acceptable pleas, completion of PET/PTPH forms.	Preparation for first hearing – CC and RASSO Case management - NA	Grip
22	Any hard media was shared via Egress with all parties prior to the NGAP hearing or PTPH.	NA	Grip
23	In CC (including RASSO cases before the CC) cases, a properly drafted indictment was prepared.	Preparation for first hearing – CC and RASSO only	Added value
24	In CC (including RASSO cases before the CC) cases, the draft indictment and key evidence was served in a timely manner for PTPH.	Preparation for first hearing – CC and RASSO only	Grip
25	In CC and RASSO cases a clear instruction to advocate document was prepared.	NA – not able to differentiate between CA and counsel in many cases.	No
26	In CC (including RASSO cases before the CC) cases, the advocate was instructed at least seven days before PTPH.	Preparation for first hearing – CC and RASSO only	No
27	In CC (including RASSO cases before the CC) cases, the duty of direct engagement was carried out.	Preparation for first hearing – CC and RASSO only	No
28	In CC (including RASSO cases before the CC), the DDE was uploaded to CCDCS.	Preparation for first hearing – CC and RASSO only	No

No.	Question	Casework theme	Included in added value or grip?
29	In CC (including RASSO cases before the CC and the youth court where counsel is instructed) cases, if there was no advice on evidence covering all necessary issues, this was chased.	NA	Grip
30	In RASSO cases, a conference with the trial advocate, OIC and any expert witnesses took place.	NA	Grip
31	There was timely compliance with court directions or Judges' Orders.	NA	Grip
32	Appropriate applications (e.g. BCE, hearsay) were used effectively to strengthen the prosecution case.	Review	Added value
33	Steps were taken to secure best evidence by correct and timely warning of witnesses.	V&W	No
34	Steps were taken to secure best evidence by addressing correspondence from the WCU and any witness issues in a timely manner with effective actions.	V&W	Grip
35	New material received from the police was reviewed appropriately and sufficiently promptly with timely and effective actions taken in response.	NA	Grip
36	Correspondence from the court and defence was reviewed appropriately and sufficiently promptly with timely and effective actions undertaken in response.	NA	Grip
37	Requests to the police for additional material or editing of material were timely, and were escalated where appropriate.	NA	Grip

No.	Question	Casework theme	Included in added value or grip?
38	There was a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	NA	Grip
39	In relevant cases, a DMD was completed.	Disclosure (where applicable)	No
40	The DMD was completed accurately and fully in accordance with the guidance.	Disclosure (where applicable)	AV (RASSO only as applicable to RASSO cases only for tranche 1 and to ensure consistency across the baseline and follow up)
41	The police complied with their disclosure obligations.	NA	NA
42	The prosecutor complied with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure).	Disclosure	Added value
43	If PM or NM, the most significant failing was: see list of options in drop-down box.	NA	No
44	The prosecution complied with its duty of initial disclosure in a timely manner.	Disclosure	No
45	The prosecutor complied with the duty of continuing disclosure (but not including timeliness of disclosure).	Disclosure	Added value
46	If PM or NM, the most significant failing was: see list of options in drop-down box.	NA	No
47	The prosecution complied with its duty of continuing disclosure in a timely manner.	Disclosure	No

No.	Question	Casework theme	Included in added value or grip?
48	Sensitive unused material was dealt with appropriately.	Disclosure	Added value
49	Third-party material was dealt with appropriately.	Disclosure	Added value
50	In CC (including RASSO cases before the CC) cases, late defence statements were chased.	Disclosure - CC/RASSO only	No
51	Inadequate defence statements were challenged.	Disclosure	Added value
52	The defence statement was reviewed by the prosecutor and direction given to the police about further reasonable lines of enquiry.	Disclosure	Added value
53	The disclosure record on modern CMS was properly completed with actions and decisions taken on disclosure.	Disclosure	No
54	The CPS fed back to the police where there were failings in the police service regarding disclosure.	Disclosure	No
55	The prosecutor consulted victims and witnesses where appropriate (includes STWAC).	V&W	No
56	The victim's wishes regarding VPS were complied with.	V&W	No
57	The prosecution sought appropriate orders to protect the victim, witnesses and the public.	V&W	Added value
58	There was a timely VCL when required.	V&W	No
59	The VCL was of a high standard.	V&W	Added value
60	The CPS MG3 actively considered relevant applications and ancillary matters designed to support victims and/or witnesses.	V&W AND PCD	Added value

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