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# Witness for the prosecution: Identifying victim and witness vulnerability in criminal case files

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## Foreword

Criminal courts in England and Wales date back to the 13th century. Today, virtually all criminal court cases start in a magistrates' court, and more than 90 percent will be completed there. More serious criminal cases are transferred to the Crown Court. The police and the Crown Prosecution Service are two of the principal participants in the criminal justice system. They have complementary roles: the police investigate crime and the Crown Prosecution Service prepares the cases and presents them in court. The two agencies must work together, in partnership, to achieve their common goal, namely to ensure that the guilty are convicted and the innocent are protected. This requires a shared understanding of what constitutes a good criminal case file prepared by the police for presentation by the prosecutor to the court and an unambiguous focus on 'getting it right first time'.

The criminal justice joint inspectorates reviewed the quality of criminal case files in previous inspections, with reports published in 2011, and June and July 2013. These reviews focused on the quality of the police report (called MG5) within criminal case files and involved the examination of criminal cases across a number of police forces and Crown Prosecution Areas. The results were disappointing: inspectors found the quality of criminal case files to be lacking, attention to detail was poor, particularly in cases involving vulnerable and intimidated victims and witnesses.

This inspection was designed with vulnerable and intimidated witnesses in mind. In total, 459 case files were selected for examination from all forces in England and Wales. Of these, vulnerable or intimidated witnesses were identified in 195 cases. We were concerned to find that the quality of case files prepared for prosecution was no different whether a vulnerable victim or witness was involved in the case or not.

Our findings should provide food for thought for both the police and the Crown Prosecution Service. Both agencies must improve their understanding of vulnerability and, in particular, how the vulnerability of a victim or witness can change as cases progress through the criminal justice system. Further, the police and the Crown Prosecution Service must achieve a better understanding of each of their respective contributions to the criminal justice process and eliminate the 'tick-box' culture highlighted again by this inspection. This result will improve both the efficiency of the criminal justice system and the quality of service provided to vulnerable victims and witnesses.

# Executive summary

## Introduction and context

The police are the gatekeepers of the criminal justice system. When an offence occurs, the police investigate and, when the circumstances of the case justify a prosecution, are responsible either for charging the defendant in certain cases, or for submitting case files to the Crown Prosecution Service (CPS). The CPS is then responsible for determining whether there is sufficient evidence for there to be a realistic prospect of conviction and whether a prosecution is in the public interest, and then for presenting the evidence in court. As such, the CPS is the principal gatekeeper to the criminal courts.

If victims or witnesses are vulnerable this may affect their ability to attend court and give evidence. It is therefore essential that officers identify accurately the vulnerability of victims and witnesses in the case papers they submit to the CPS, so that prosecutors can ensure that:

- the court is given accurate information of the circumstances of the case, particularly when determining guilt and sentence;
- risks to victims and witnesses are identified to the court; and
- victims and witnesses are able to give their best evidence.

The quality of criminal case files has been the subject of review by the criminal justice joint inspectorates in three earlier reports – one in 2011 and two in 2013. The reports identified a number of deficiencies in the quality of case files prepared by the police and found little improvement. As a consequence, this inspection was included in the Criminal Justice Joint Inspection Business Plan for 2014-16.<sup>1</sup>

This inspection examined the effectiveness of police in: providing accurate information of the circumstances of the case; identifying the vulnerability<sup>2</sup> of victims and witnesses; and assessing and managing risks so that their needs are met.

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<sup>1</sup> *Joint Inspection Business Plan 2014-16*, HMCPSI, 2014. Available from: [www.justiceinspectors.gov.uk/cjji/wp-content/uploads/sites/2/2014/02/CJJI\\_BusinessPlan\\_2014-16.pdf](http://www.justiceinspectors.gov.uk/cjji/wp-content/uploads/sites/2/2014/02/CJJI_BusinessPlan_2014-16.pdf)

<sup>2</sup> For the purpose of this inspection, vulnerability applies to the following categories of victim or witness: young (under 18) ; elderly; disabled; suffer from mental health issues; have learning difficulties; have another form of vulnerability (e.g. in fear of intimidation); or a mix of these.

We also examined how well prosecutors used this information to ensure that cases were presented effectively, and what they did when the necessary information had not been included by the police.

## Findings

### Case file quality

The nature and volume of material required for the first court hearing is determined by the anticipated plea of the defendant. The officer in the case must decide whether they think that the defendant will plead guilty or not guilty. In this inspection we found that the police had correctly anticipated that the defendant would plead guilty in 120 of the 192 relevant cases (63 percent). As a result, in 72 of these cases, because insufficient information was provided to the prosecutor in the 'anticipated guilty' case file, the case file was returned to the police after the first hearing to undertake additional work in advance of the trial. This puts the prosecution team on the back foot and increases the risk to individual cases, and the service to victims and witnesses.

### Summaries of evidence

The quality of the case summaries varied, although in most instances we found that they provided a reasonable narrative of the incident, included the elements of the relevant alleged offence(s), and contained enough information to enable the prosecutor to determine whether the charge against the defendant was made out. We found them to be adequate in 332 of the 458<sup>3</sup> (72 percent) cases. However, some summaries of evidence were lengthy and repetitive, while others included inappropriate information and factual inaccuracies.

### Summaries of interview

Summaries of interview were found to be adequate in 328 of the 436<sup>4</sup> (75 percent) applicable police cases reviewed. The style, quality and detail of the interview summaries varied considerably: some were too long and others did not contain any details of the questions that were put to the defendant in a 'no comment' interview.

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<sup>3</sup> One police file was not applicable.

<sup>4</sup> Due to the nature of the offence, not all defendants are interviewed prior to being charged. For example, persons charged with drunk and disorderly conduct are not normally interviewed by the police. As a result, 436 defendants were interviewed in the police case file sample reviewed.

### Additional information

The 'additional information' part of the police report comprises nine further sections which provide further information about the case to the prosecutor. Depending upon the nature of the offence, not all of these sections will be relevant in every case.

Additional information provided in the police reports was found to be adequate in 324 of the 454 (71 percent)<sup>5</sup> applicable police cases reviewed. In some cases, sections were left blank that were clearly relevant to the case.

### Supervision and proportionality

The National File Standard (NFS)<sup>6</sup> requires that, upon completion, the police report must be signed by a supervisor. We found that 308 of the 450 (68 percent) police case files reviewed were certified properly by a supervisor. However, our findings suggest that, even in cases where supervisor certification was recorded, this did not provide sufficient assurance that a file met the required standard. The role of the supervisor (and the value added by their involvement) therefore requires further attention.

We found that the time spent by the police building case files was proportionate in 396 of the 460<sup>7</sup> (86 percent) case files reviewed. In the cases where the case file build was considered disproportionate, statements from witnesses were included which contained no relevant evidence, whereas other statements with important evidence which should have been included were not. In 58 case files (13 percent), the file was considered to be 'under-built'. This means that the prosecutor did not have sufficient information to proceed in court at the first hearing.

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<sup>5</sup> In four cases the additional information was not applicable, in one case HMIC inspectors could not establish if it had been completed.

<sup>6</sup> The NFS sets out a staged and proportionate approach to the preparation of case files. It specifies the material required for the first hearing and identifies how the file is to be developed at appropriate stages throughout the life of the case. The NFS was first published in July 2011 and was revised in May 2015.

<sup>7</sup> The one case file that was not available in force for examination by HMIC inspectors was examined remotely by HMCPSI on the case management system. Therefore, it is included here in relation to the proportionality of case file preparation.

## File quality of cases involving vulnerable victims or witnesses

HMIC identified 195 cases which involved vulnerable or intimidated victims and witnesses. It would be reasonable to expect that cases involving vulnerable people would receive greater attention from the officer in the case, as well as more rigorous quality assurance. This should result in a higher proportion of cases that met the required standard being submitted to the CPS for the first hearing. This was not the case.

### **Witness care information**

When investigating an offence, a police officer will usually ask a witness to make a written statement about what happened. The witness statement has a dual purpose: it is used to record the witness's evidence about the offence and to provide witness care information. In respect of the latter, the police officer dealing with the case must complete the 'initial needs assessment' which is made up of three sections: witness contact details, witness care, and witness consent. It is here that important information relating to the vulnerability and needs of witnesses is usually recorded for the first time.

The witness statement template (as well as the witness care template) is included in the NFS. The NFS requires all 43 forces in England and Wales to use specific templates to prepare case papers. These templates must not be altered or adapted.<sup>8</sup>

We found the authorised template for witness care information in use in only eight forces and substantially the same official template used in a further 16 forces. In the remaining forces, many of the adaptations and amendments to the witness care information sections appeared to be aimed at capturing performance management information or to provide a single location for recording any and all witness information.

In 76 of 337 applicable files (23 percent), the officer had not recorded whether the witness had any particular needs that would require support, should they be required to give evidence in court. In many cases the record was left blank. Failure to identify vulnerable or intimidated witnesses at the evidence-gathering stage of an investigation may prevent a witness having access to the support they need, and the range of 'special measures'<sup>9</sup> available, to help them to give their best evidence.

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<sup>8</sup> A national process exists in order to agree any amendments to template forms that may be required as a result of changes within the criminal justice system. The templates are included in the Manual of Guidance (MoG) as part of the National File Standard.

<sup>9</sup> Special measures were introduced in section 18 of the Youth Justice and Criminal Evidence Act 1999 and comprise a series of aids (for example, the use of screens, a live link from outside the court, or the use of an intermediary) that help vulnerable and intimidated witnesses to give their best evidence in court and relieve some of the anxiety associated with giving

Of 425 case files examined, we considered that 168 should have included a witness assessment for special measures, but an assessment was completed in only 80. A third of the 80 cases where the witness assessment for special measures had been completed were assessed as inadequate by inspectors. The reports often did not provide sufficient detail about the vulnerability of the victim or witness, or which special measures would be suitable for them and why they were needed.

We could not be confident that witness care information was being transferred effectively between the police and the CPS. The interrogation of the CPS case management system revealed that, in over half of the 460 police case files reviewed, the witness care information was often either not included on the electronic case file or could not be read by inspectors.

In many case files, HMCPSI inspectors were unable to assess the witness care information at all. There seems little point in the police assessing and recording witness needs if this information is not then available to prosecutors.

### **Identifying and managing risks to vulnerable victims and witnesses**

Victims and witnesses with particular characteristics are not automatically vulnerable. However, if for example a black or minority ethnic victim or a disabled victim is subjected to a hate crime they may become vulnerable as their case progresses through the criminal justice system. Understanding the nature and context of vulnerability is important for ensuring that victims and witnesses are properly supported.

We examined a total of 460 case files from across England and Wales and identified 195 cases that involved vulnerable or intimidated victims and witnesses. In these 195 case files, we found 120 cases (62 percent) where the police correctly identified to the prosecutor that the victim or witness was vulnerable and took action to manage the associated risk through the court process.

However, we found an inconsistent service to victims and witnesses who, due to the circumstances of the offence, should always be considered potentially vulnerable (particularly victims of domestic violence).

In 25 of the 195 case files (13 percent) where vulnerable victims and witnesses were involved, the police correctly identified vulnerability but measures to manage the risk to the victim or witnesses during the criminal justice process were not put in place.

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evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant.

In 55 cases, the CPS correctly identified risk but took no action to manage it. Many of these cases involved victims and witnesses who were in fear of the defendant.

In 9 of the 195 case files (5 percent) where vulnerable victims and witnesses were involved, the police did not initially identify their vulnerability. Often it was the prosecutor who identified that a vulnerable victim or witness was involved and requested that the police take action. As a result, measures were put in place to manage the risk to the victim or witness.

There were 50 cases where initially the risk was not identified by the CPS, but steps were taken subsequently to manage the risk as the case progressed.

We were concerned to note that in 41 of the 195 case files (21 percent) where vulnerable victims and witnesses were involved, the police did not identify their vulnerability and did not manage the associated risk through the court process. There were 5 cases where the CPS neither identified nor managed the risk.

We examined a number of cases where special measures had been considered for the victim but not for other vulnerable witnesses in the case. The police and prosecution responsibility to identify vulnerability is no less important when a vulnerable witness is involved. In a number of these cases, the witnesses involved were children.

## **Conclusions**

We were pleased to find that the quality of police reports had improved since our previous reviews in 2011 and 2013. We were, none the less, concerned at the number of summaries of evidence in the police reports that were assessed as inadequate, where the underlying issues had not changed. This was no different when a vulnerable or intimidated victim or witness was involved in the case and, in some instances, it was slightly worse.

It is increasingly the case that many police officers will not have been inside a courtroom or given evidence. As such, they are increasingly distant from the wider criminal justice system for which they are the gatekeepers. It is clearly essential that officers have an understanding of their role in the criminal justice process, both to ensure that justice is done and to provide vulnerable victims and witnesses with the support they require to give their best evidence.

We welcome the work of the National File Quality Working Group (NFQWG) and the development of self-assessment of quality in police case files which has raised awareness of these issues in forces. However, we note that vulnerability is not included in the terms of reference of the group.

We found little regard within forces for the NFS requirement to use only authorised templates. We were concerned to find that some templates had been amended for multiple purposes. We appreciate that forces may see this as a way of capturing management information easily, but we do not consider this to be appropriate. Witness information will only be of value if it is effectively transferred to witness care units and the CPS. We examined many cases where this information was either not available, or could not be found.

In an environment where police officers may be unfamiliar with the court process, the current approach does nothing to reinforce to officers the purpose and importance of recording accurate information about the victim or witness.

We were concerned to note that in one third of the case files that we examined risks to vulnerable and intimidated witnesses were not properly dealt with either by the police or prosecutors. We conclude therefore that the identification of vulnerability and the management of associated risks to victims and witnesses by both the police service and the CPS needs to improve.

The nature of vulnerability, in the context of a case progressing through the criminal justice system, is not understood clearly by the police and prosecutors. We consider that this is an opportune time to look in greater depth at the nature of vulnerability, and identify what can be done to assist police and prosecutors to assess vulnerability in different contexts, and provide the support that vulnerable victims and witnesses require.

## **Summary of recommendations**

In light of these findings we make the following recommendations:

- The College of Policing should evaluate the learning standards provided to student officers to ensure that case file preparation training focuses on improving police understanding of the purpose of case papers and getting it right the first time, and discourages a tick box culture. Similarly, chief constables should evaluate their local training arrangements.
- The Crown Prosecution Service and National Police Chiefs' Council lead for file quality should ensure that an effective system is put in place to make sure that case file information on vulnerable and intimidated witnesses is improved.
- The National Police Chiefs' Council lead for file quality and the College of Policing should review the case file templates that have been amended by forces and consider which, if any, would improve the existing authorised templates.

- Chief constables should review the templates in use in their force to ensure officers and staff are using the authorised versions which have not been amended or adapted.
- The National Police Chiefs' Council lead for file quality and the College of Policing should review the use of the current witness statement template (MG11) to determine whether it is fit for purpose and whether a separate record of witness care information should be introduced.
- The National Police Chiefs' Council lead for file quality and the College of Policing should evaluate the effectiveness of the methods used by forces to record witness care information and transfer this information to witness care units and the CPS, to identify and share good practice.
- The findings from this inspection echo the findings from the joint review 'Stop the Drift 2 - A Continuing Focus on 21st Century Criminal Justice, a joint review by HMIC and HMCPSI'. The recommendation from that review remains valid and we repeat it here.

“The College of Policing should urgently review and improve the quality of police training in matters such as the substantive criminal law and criminal procedure, including the rules of evidence and the role of police officers and police work in the criminal justice system. Insofar as police officers lack sufficient training in and experience of the workings of criminal courts, that deficit should be remedied, so that police officers have a sound appreciation of what happens when cases proceed to court, and how evidence is presented and tested. That way, they will have a far better understanding of the critical importance of the work they do in the earliest stages of the criminal justice process. The quality of supervision of police officers should be materially improved, so that mistakes are rectified promptly, time and effort is saved in the preparation of cases and the interests of justice are served.”<sup>10</sup>

- The College of Policing should develop guidance that will assist officers to understand the complex nature of vulnerability and how it may change in different contexts.

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<sup>10</sup> *Stop the Drift 2 – A Continuing Focus on 21st Century Criminal Justice, a joint review by HMIC and HMCPSI*, HMIC, 2013. Available from: [www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf](http://www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf)

- The College of Policing should evaluate the police training that is provided to student officers to ensure that case file preparation training emphasises and promotes an understanding of the police role in the criminal justice process, and the importance of identifying the support required by vulnerable and intimidated victims and witnesses. Similarly chief constables should undertake an evaluation of their local training arrangements.
- The National Police Chiefs' Council's lead for file quality and the College of Policing should take steps to highlight to officers the particular needs of witnesses who are vulnerable because they are in fear of intimidation from defendants.

# 1. Introduction

The police are the gatekeepers of the criminal justice system. When an offence occurs, the police investigate and, when the circumstances of the case justify a prosecution, are responsible either for charging the defendant in certain cases or for submitting case files to the Crown Prosecution Service (CPS). The CPS is responsible for determining whether there is sufficient evidence for there to be a realistic prospect of conviction and whether a prosecution is in the public interest, and then presenting the evidence in court. As such, the CPS is the gatekeeper to the criminal courts.<sup>11</sup> Clear and timely communication between the police and the CPS is essential to ensure the fair and efficient flow of criminal justice. In this inspection, we considered the effectiveness of this communication, with a particular focus on the identification of vulnerable and intimidated witnesses by both agencies.

The vast majority of cases dealt with by the criminal courts are investigated by frontline<sup>12</sup> police officers. Dealing with victims and witnesses is an important part of their work. If victims or witnesses are vulnerable this may affect their ability to attend court and give evidence. The principal means that the police use to communicate the circumstances and evidence in a criminal investigation to the CPS is through the preparation of a criminal case file. It is therefore essential that officers identify accurately the vulnerability of victims and witnesses in the case files they submit to the CPS, so that the CPS is in a position to ensure:

- the court is given accurate information of the circumstances of the case, particularly when determining guilt and sentence;
- risks to victims and witnesses are identified to the court; and
- victims and witnesses are able to give their best evidence.

When investigating an offence, a police officer will usually ask a witness to make a written statement about what happened. All witness statements include a section entitled 'witness care'. It is here that the officer is required to record information about the needs of vulnerable and intimidated witnesses. In this inspection, we have examined whether officers recorded this information correctly and what action prosecutors took when the information was missing.

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<sup>11</sup> The majority of criminal trials are dealt with by the CPS.

<sup>12</sup> HMIC defines frontline police officers as those members of police forces who are in everyday contact with the public and who directly intervene to keep people safe and enforce the law.

In appropriate cases, the CPS will make an application for special measures<sup>13</sup> to help victims and witnesses give their best evidence (for example, a child victim may give their evidence through a 'live link',<sup>14</sup> so that they do not need to attend court in person). Other arrangements may also be agreed (for example, the need to take breaks while a witness gives evidence because they are unable to focus for lengthy periods, or the need to assist a witness who has literacy issues).

In April 2012, the CPS published research on how prosecutors made decisions about use of special measures for vulnerable and intimidated witnesses. This report found recurrent themes that included:

- vulnerable and intimidated witnesses were not always identified at the earliest opportunity;
- victim and witness needs were not always considered by the CPS at the charging stage; and
- where a vulnerable or intimidated witness was identified in a case:
  - the police and the CPS rarely held an 'early special measures discussion' to assist case progression;
  - prosecutors infrequently held 'special measures meetings' with vulnerable or intimidated witnesses to discuss matters; and
  - applications for special measures were often made late.<sup>15</sup>

In this inspection we examined these issues in depth, using the NFS as a basis for identifying whether police officers and CPS had adequately assessed the needs of victims and witnesses.

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<sup>13</sup> 'Special measures' are a series of provisions (for example the use of screens, a live link from outside the court, or use of an intermediary) that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence witnesses, but not to the defendant. Special measures were introduced in Youth Justice and Criminal Evidence Act 1999 (section 18).

<sup>14</sup> A 'live link' enables the witness to give evidence during the trial from outside the court through a televised link to the courtroom.

<sup>15</sup> *Special measures for vulnerable and intimidated witnesses: research exploring the decisions and actions taken by prosecutors in a sample of CPS case files*, Corrine Charles Research Team, Strategy and Policy Directorate, Crown Prosecution Service, April 2012, [www.cps.gov.uk/publications/research/cps\\_research\\_on\\_special\\_measures.pdf](http://www.cps.gov.uk/publications/research/cps_research_on_special_measures.pdf)

The NFS<sup>16</sup> sets out the standard required for case file preparation to ensure that the right information is incorporated into the files at the right time.

This inspection examined the effectiveness of the police in: providing accurate information of the circumstances of the case; identifying the vulnerability of victims and witnesses; and assessing and managing risks so that their needs are met effectively. We examined how prosecutors used this information to ensure that cases were well presented, and what action they took when the necessary information had not been included by the police.

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<sup>16</sup> The NFS sets out a staged and proportionate approach to the preparation of case files. It specifies the material required for the first hearing and identifies how the file is to be developed at appropriate stages throughout the life of the case. The NFS was first published in July 2011 and was revised in May 2015.

## 2. Background

In October 2010, Her Majesty's Inspectorate of Constabulary (HMIC) published *Stop the Drift: A Focus on 21st Century Criminal Justice*,<sup>17</sup> which identified a number of concerns about the detrimental effect of some police systems and practices on the efficiency of the criminal justice system (CJS) as a whole. Issues included:

- lack of clarity about what types of cases should enter the CJS;
- lack of systematic control of costs and regulation of the criminal justice process;
- excessive bureaucracy and waste; and
- an historical, piecemeal approach to reform.

To demonstrate the complexities associated with the CJS, HMIC conducted an end-to-end analysis of cases from arrest to disposal, identifying the many activities required and/or undertaken when a suspect is arrested and enters the CJS as a defendant. This exercise identified multiple obstacles, barriers to, and pinch points in, the efficient delivery of justice. We established that from arrest to disposal at the Crown Court, a single case could entail 1,107 steps.

Subsequently, three further joint reviews which focused on of the quality of criminal case files were conducted.

In 2011, the National Audit Office (NAO), in partnership with HMIC and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI), published a report examining the implementation of the introduction of the Streamlined Process<sup>18</sup> (an initiative to reduce the paperwork and police time spent preparing prosecution files). This involved a review of 100 police case files across six police forces and CPS Areas.<sup>19</sup>

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<sup>17</sup> *Stop the Drift: A Focus on 21st Century Criminal Justice*, HMIC, October 2010. Available from: [www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-20101102.pdf](http://www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-20101102.pdf)

<sup>18</sup> *The introduction of the Streamlined Process. Report by the Comptroller and Auditor General*, NAO, November 2011. Available from: [www.nao.org.uk/wp-content/uploads/2011/11/10121584es.pdf](http://www.nao.org.uk/wp-content/uploads/2011/11/10121584es.pdf)

<sup>19</sup> There are 43 police forces in England and Wales and 13 Crown Prosecution Service Areas. Each CPS area covers multiple police force areas.

The associated guidance<sup>20</sup> was intended to reduce police bureaucracy by allowing for a more streamlined approach to case file preparation. The report identified: a failure to implement the guidance effectively; an inconsistent approach by individual police forces which resulted in case files of variable quality; and police officers wasting time needlessly providing unnecessary material, often of little evidential value, to the CPS.

In June 2013, HMIC and HMCPSP published *Stop the Drift 2: A Continuing Focus on 21st Century Criminal Justice*.<sup>21</sup> This report built on earlier work and included an examination of 40 case files across five police forces and CPS areas which were dealt with in the magistrates' courts. This review found little evidence of any improvement in the quality of police case files since the publication of the NAO report.

The most recent joint review, *Getting Cases Ready for Court: a joint review of prosecution case files by HMIC and HMCPSP, HMIC and HMCPSP*,<sup>22</sup> was published in July 2013. This review highlighted that the case files prepared for court were too often treated as a 'tick-box' exercise, with files containing irrelevant or incomplete information. This review examined 180 case files across a further six police forces and CPS areas that were dealt with in either the magistrates' courts or the Crown Court.

In the reviews conducted in 2013, inspectors found a number of cases where attention to detail was poor, especially in relation to vulnerable people. In these cases, the police had not included important information in the police report which prosecutors rely upon to provide the evidence of the offence(s) which they present to the court.

All three reviews used similar approaches to the assessment of a total of 320 case files across 15 police forces<sup>23</sup> and associated CPS areas. The latest review concluded:

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<sup>20</sup> In 2011, the guidance was incorporated into *The Director's Guidance on Charging 2011*, 4th edition, Guidance to Police Officers and Crown Prosecutors, issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984, the Crown Prosecution Service. Available from: [www.cps.gov.uk/publications/docs/dpp\\_guidance\\_4.pdf](http://www.cps.gov.uk/publications/docs/dpp_guidance_4.pdf)

<sup>21</sup> *Stop the Drift 2 – A Continuing Focus on 21st Century Criminal Justice, a joint review by HMIC and HMCPSP*, HMIC, 2013. Available from: [www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf](http://www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf)

<sup>22</sup> *Getting Cases Ready for Court: a joint review of prosecution case files by HMIC and HMCPSP, HMIC and HMCPSP*, July 2013. Available from: [www.justiceinspectors.gov.uk/hmic/media/getting-cases-ready-for-court.pdf](http://www.justiceinspectors.gov.uk/hmic/media/getting-cases-ready-for-court.pdf)

<sup>23</sup> The 15 police forces visited were: Metropolitan, Greater Manchester, North Wales, Sussex, Leicestershire, Wiltshire, South Wales, Avon and Somerset, Merseyside, Norfolk, Suffolk, Staffordshire, Hertfordshire, Dyfed-Powys and Hampshire.

“On the basis of three pieces of work (the NAO report, Stop the Drift 2 and this current review), we conclude that there is a considerable lack of understanding amongst frontline officers of the importance and relevance of the information they are providing to the prosecution. Without this understanding, the poor practice identified in the more straightforward cases (where the defendant pleads guilty) is repeated in contested cases. As a result, with the increased demands of disclosure and other additional evidence that may be required for case files going to court, the unnecessary burden on both the police and the CPS is even greater. This is only exacerbated by the inefficiencies in the IT systems.

"There is a clear need for monitoring of these issues to assess where improvements are being made and where poor practice continues to impact on the quality of service to victims and witnesses."<sup>24</sup>

Subsequently, HMIC and HMCPsi agreed to conduct a further review of police case files to focus on the agencies' response to previous recommendations, as well as how vulnerability is identified and prioritised within case files and approaches to risk assessment and management.<sup>25</sup>

## A changing landscape

The Transforming Summary Justice (TSJ) programme<sup>26</sup> aims to reduce delays in the magistrates' courts, with fewer hearings per case and an increase in the number of trials that go ahead the first time they are listed. The TSJ programme was implemented in May 2015 and included the publication of a revised National File Standard. The revised NFS states that, in simple straightforward cases, where the officer can see no obvious challenges to the evidence, a case summary<sup>27</sup> will be sufficient for the first hearing, provided that it contains the

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<sup>24</sup> *Getting Cases Ready for Court - A joint review of the quality of prosecution case files by HMIC and HMCPsi*, HMIC, HMCPsi, p37, [www.justiceinspectorates.gov.uk/hmic/media/getting-cases-ready-for-court.pdf](http://www.justiceinspectorates.gov.uk/hmic/media/getting-cases-ready-for-court.pdf)

<sup>25</sup> *Criminal Justice Joint Inspection Business Plan 2014-2016*, HMIC, HMCPsi, HMI Probation, HMI Prisons, March 2015. Available from: [www.justiceinspectorates.gov.uk/hmic/publications/criminal-justice-joint-inspection-business-plan-2015-16](http://www.justiceinspectorates.gov.uk/hmic/publications/criminal-justice-joint-inspection-business-plan-2015-16)

<sup>26</sup> The TSJ programme has been agreed between the following parties involved in the process, namely: The Crown Prosecution Service, police forces, Her Majesty's Courts and Tribunal Service, The Justices' Clerks' Society, the Senior Presiding Judge and the Judiciary, the Chief Magistrate and the Magistrates' Association, the National Probation Service, and the Law Society.

<sup>27</sup> This relates to cases where the defendant is expected to plead guilty at the first hearing and the case summary would normally be provided to CPS in the form of the police report. If a vulnerable or intimidated witness is involved a witness assessment for special measures may also be required.

details of what the defendant said when interviewed by the police and the effect of the offence on the victim.

We note, however, that the changes to the NFS are partly intended to avoid unnecessary bureaucracy by reducing the number of forms that an officer must complete and submit to the CPS, where the defendant is expected to plead guilty. The prosecutor has to rely on the information provided in the police report with few supporting statements from the victim or witnesses. As a result, the accuracy of the evidence in the case summary, and the inclusion of information about vulnerable victims and witnesses, will become essential factors in ensuring that justice is done for both the victim and the defendant.

The fieldwork for this inspection was completed on 30 April 2015. The revised NFS had not been implemented at that time. We consider the implications of these changes later in the report.

This inspection is the second of three linked joint thematic inspections. The first of these: *Working in step? A joint inspection of local criminal justice partnerships by HMIC, HMCPSI and HMI Probation*<sup>28</sup> reported in October 2015. It examined how local criminal justice inter-agency work is led, managed and supported and the effectiveness of partnerships in bringing about change and innovation to reduce costs and improve outcomes for the public. A third inspection focusing on digitisation in the criminal justice system, which examines the interfaces and information sharing between criminal justice agencies, will report in early 2016. The findings from this report should be considered alongside the findings from these two related inspections.

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<sup>28</sup> *Working in step? A joint inspection of local criminal justice partnerships by HMIC, HMCPSI and HMI Probation*, HMIC, October 2015. Available from: [www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/local-criminal-justice-partnerships.pdf](http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/local-criminal-justice-partnerships.pdf)

### 3. Inspection approach

This inspection examines the effectiveness of the police in: providing accurate information of the circumstances of the case; identifying the vulnerability of victims and witnesses; and assessing and managing risks so that their needs are met. We examined how well prosecutors used this information to ensure that cases were presented effectively and what they did when the necessary information had not been included by the police.

HMIC and HMCPSI examined ten completed criminal cases from every police force<sup>29</sup> in England and Wales together with the related CPS file completed in the magistrates' courts or the Crown Court between June and August 2014. In total we examined jointly 459 case files. In one force, HMCPSI had access to the CPS digital file but the police digital or paper copy file could not be located for HMIC inspectors. The inability to locate a case file is concerning: it can cause delay and result in a case being discontinued. Furthermore, it can affect adversely the treatment of victims and witnesses.

Five of the ten cases selected for examination in each police force involved offences where the victim or witness may have been vulnerable because of the circumstances of the offence:

- two cases of domestic abuse/sexual offences;
- two cases of racially and/or religiously aggravated offences; and
- one case involving a homophobic offence.

The other five cases were selected solely on the basis of offence type where it was not necessarily expected that the case would involve vulnerable victims or witnesses.

These offences include, for example:

- assaults;
- burglary;
- robbery; and
- public order.<sup>30</sup>

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<sup>29</sup> Inspectors examined 40 finalised police case files for the Metropolitan Police Service.

<sup>30</sup> There are a number of offences included in the Public Order Act 1996. The most common of these offences, dealt with by police include: section 3 – affray, section 4 – causing fear or provocation of violence, and section 5 – disorderly conduct.

Our findings are set out in three sections as follows:

- criminal case file quality;
- witness care information; and
- identifying and managing risks to vulnerable victims and witnesses.

During the fieldwork, inspectors obtained details of each force's arrangements for training their staff in case file preparation.

The detailed methodology for this inspection is set out at Annex A.

## 4. Findings: Case file quality

In this section, we set out our findings in relation to the quality of criminal case files.

### Anticipated plea

We explained in the previous section that the NFS<sup>31</sup> sets out a staged and proportionate approach to preparing case files. The nature and volume of material required for the first hearing is determined by the anticipated plea of the defendant. The officer in the case must decide whether they think that the defendant will plead guilty or not guilty. Clear guidance is provided to officers to assist them in them in making this judgment.

A guilty plea may be anticipated where either:

- the suspect has made a clear and unambiguous admission to the offence and has said nothing that could be used as a defence; or
- the suspect has made no admission but has not denied the offence or otherwise indicated it will be contested, and the commission of the offence and identification of the offender can be established by reliable evidence, or the suspect can be seen clearly committing the offence on a good quality visual recording.<sup>32</sup>

The correct anticipation of plea is an important first step in the criminal justice process.

The NFS specifies the material that is required for the first hearing based on the defendant's anticipated plea. Thus, a straightforward case of criminal damage to a car where no vulnerable or intimidated witnesses are involved, and where the police expect that the defendant will plead guilty, could proceed to the first hearing with just a police report and a charge sheet (this document explains the details of the offence with which the defendant has been charged).

It is vitally important that where the defendant pleads guilty, the police report accurately reflects the facts of the case. If the police report is inaccurate, in the absence of other information on the case file, the prosecutor may inadvertently mislead the court. In addition, the gravity of the offending may not be properly

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<sup>31</sup> The NFS was first published in July 2011. The revised NFS was published in May 2015 but was not in effect at the time of the fieldwork for this inspection.

<sup>32</sup> *The Director's Guidance on Charging*, Guidance to Police Officers, Crown Prosecutors issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984, Crown Prosecution service, 4th edition, 2011. Available from: [www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_5.html#a17](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a17)

reflected in the sentence, and ancillary orders (such as a restraining order)<sup>33</sup> that protect a victim may be overlooked.

If the officer anticipates that the defendant will plead guilty at the first hearing, but is incorrect and a not guilty plea is entered, the prosecutor must be provided with sufficient information to conduct an effective case management hearing. A case management hearing considers the elements of the case that are contested, which witnesses will be required to give evidence and also sets a date for the trial. In the example used above, the police report and charge sheet would not provide sufficient information and the case would have to be adjourned, thereby delaying the case progressing to trial and requiring more work to be done by the police.<sup>34</sup>

In this inspection, we found that the police anticipated a guilty plea in 192 of the 459 case files reviewed. In some of these cases, the police anticipated a guilty plea despite the defendant making 'no comment' during his or her interview or in other cases where it was clear that the defendant had denied the offence. The police had correctly anticipated that the defendant would plead guilty in 120 of the 192 cases (63 percent). As a result, in 72 of these cases the case file was returned to the police after the first hearing for staff to undertake additional work prior to the trial because there was insufficient information provided to the prosecutor in the 'anticipated guilty' case file.

Under the TSJ programme, where the police anticipate that the defendant will plead not guilty, additional information<sup>35</sup> should to be included in the case file for the CPS. After the first hearing, when a trial date has been set, there should be no need to return the file to the police for additional work.

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<sup>33</sup> Protection from Harassment Act 1997, section 5. Restraining orders may be made on conviction or acquittal for any criminal offence. These orders are intended to be preventative and protective. The guiding principle is that there must be a need for the order to protect a person or persons.

<sup>34</sup> Under the TSJ programme, the trial date would still be set at the first hearing even if the plea entered by the defendant was not guilty. The police would still be required to complete other work.

<sup>35</sup> This will include: the further report to the prosecutor (MG3), case file and confidential information report (MG6), list of witnesses and their availability for court (MG9 and MG10), and all key witness statements. Depending upon the circumstances of the case other information is also required (such as evidence of bad character). Further information is available at: [www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_5\\_annex\\_c.pdf](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5_annex_c.pdf)

## The police report

As outlined above, the police report is an important element of the case papers. The police report includes:

- a summary of the key evidence in the case;
- a summary of the interview with the defendant;<sup>36</sup> and
- Additional information (for example; forensic and CCTV evidence, injuries to the victim as well as applications for compensation).

In some cases, the vulnerability of victims or witnesses may be key evidence if it was relevant to, or an aggravating factor, in the offence. The NFS states that key evidence is:

"that evidence which either alone (the evidence of one witness) or taken together with other evidence (further witnesses or exhibits) establishes the elements of the offence to be proved and that the person to be charged committed the offence with any necessary criminal intent."

To fulfil the requirements of the NFS, every case file prepared by the police must include a report setting out the details of the case. This is known as the police report. We examined the police reports to determine whether there was sufficient information for the prosecutor to inform the court of the circumstances of the case. The police report must accurately record the circumstances of the case. Without the correct information, the prosecutor may inadvertently mislead the court or the sentence may not reflect the severity of the case. Equally, and possibly more importantly, where a vulnerable or intimidated witness is concerned, an order (such as a restraining order) to protect the victim after the court case has come to an end, may not be considered.

The NFS also requires, in all cases, that a supervisor certifies that the information in the police report is an accurate summary of the available evidence in the case and that the report has been prepared in accordance with the required standard.

A copy of the police report is set out in Annex B.

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<sup>36</sup> A defendant may not always be interviewed. For example, if a police officer witnesses an offence of disorderly conduct the defendant is not routinely interviewed regarding his/her conduct.

## Summary of evidence

In our previous work, the quality of the summary of evidence varied. These findings are set out below.

**Table 1: Quality of the summary of evidence set out in previous reports**

	<b>NAO report (2011)</b>	<b>Stop the Drift 2 (2013)</b>	<b>Getting Cases Ready for Court (2013)</b>
<b>Sample size</b>	100 case files from 5 forces	40 case files from 5 forces	180 case files from 6 forces
<b>Percentage of cases assessed as adequate</b>	47% (47 files)	7.5% (3 files)	37% (66 files)

In this inspection we found the police summaries of evidence to be adequate in 332 of the 458<sup>37</sup> (72 percent) cases. We note that in 10 cases, HMCPSI inspectors were unable to find the relevant information on the CPS IT system and were, therefore, reliant on HMIC inspectors to retrieve and share the details with them. If this is replicated in the day-to-day progress of criminal cases between the police and CPS, there is a systemic risk that important information will not be available to prosecutors.

The quality of the case summaries varied both within and between police forces. In most instances, we found that they provided a reasonable narrative of the incident, included the elements of the relevant offence(s) and contained enough information to enable the prosecutor to determine whether the charge against the defendant was made out.

However, in 126 of the 458 police case files reviewed the summaries of evidence were inadequate. There were a variety of reasons for this which included:

- the summaries of evidence were too long; they were presented as narratives of events with separate accounts of the evidence of each key witness involving significant repetition;
- sections were copied from statements (or other documents) and pasted into the summaries, often in full, rather than providing a précis of the evidence and inappropriate information was included (such as dates of birth) ;

<sup>37</sup> One police file was not applicable.

- the facts were set out from the police perspective, in that the narratives started with the police arrival at the incident and worked backwards;
- summaries of the interview with the defendant were included incorrectly in this section. In most instances the interview sections were left blank;
- some summaries were factually incorrect. This posed real risks that a plea may have been taken based on inaccurate facts, with the consequences that flowed from this;<sup>38</sup> and
- identification of key witnesses was poor and summaries of the evidence against the defendant were incomplete.

## Summary of interview

In our previous work, the quality of the interview summaries was assessed as better than the evidence summaries. These findings are set out below.

**Table 2: Quality of interview summaries in previous reports**

	<b>NAO report (2011)</b>	<b>Stop the Drift 2 (2013)</b>	<b>Getting Cases Ready for Court (2013)</b>
<b>Sample size</b>	100 case files from 5 forces	40 case files from 5 forces	180 case files from 6 forces
<b>Percentage of cases assessed as adequate</b>	80% (80 files)	48% (19 files)	51% (88 of 173 files)

In this inspection we found the summaries of interview to be adequate in 328 of the 436<sup>39</sup> (75 percent) applicable police cases reviewed. We note that in 11 cases, HMCPSI inspectors were unable to find the relevant information on the CPS IT system and were, therefore, reliant on HMIC inspectors to retrieve and share the details with them.

<sup>38</sup> In some case files reviewed, the summaries of evidence were inconsistent with the witness statements. This has implications for the implementation of the Transforming Summary Justice programme. The revised NFS (May 2015) requires the police report only to be completed for the first hearing where it is a straightforward case and the defendant is expected to plead guilty.

<sup>39</sup> Due to the nature of the offence, not all defendants are interviewed prior to being charged. For example, persons charged with drunk and disorderly conduct are not normally interviewed by the police. As a result, 436 defendants were interviewed in the police case file sample reviewed.

The style, quality and detail of the interview summaries varied considerably. Where the summaries of interview were assessed as inadequate, the main reasons were:

- a “no comment” interview should contain some details of the questions that were put to the defendant; many did not;
- summaries of interviews were too long; often large sections of the full interview, which included irrelevant information, had been copied and pasted into the summary; and
- summaries of interviews did not include questions put to the defendant in relation to the available forensic or CCTV evidence.

## **Additional information**

The ‘additional information’ part of the police report is made up of nine further sections which provide further information about the case to the prosecutor.

This includes: the names of non-key witnesses;<sup>40</sup> the nature of any visually-recorded evidence<sup>41</sup> (VRE); details of any injuries to the victim; any forensic evidence; results from any drug testing of the defendant; applications for orders upon conviction (for example a sexual offences prevention order or restraining order);<sup>42</sup> applications for compensation; and whether the defendant has any previous convictions.

Clearly, depending on the nature of the offence, not all of these sections will be relevant to every case. It is important, therefore, that the police include the information that is relevant to each. It is just as important, however, that the police indicate where the section is not relevant and if so, why that is the case. Without this information, the prosecutor is faced with an incomplete picture of the case and there is a risk that important information may not be brought to the attention of the court.

The findings from our previous work varied considerably and are set out below in Table 3

**Table 3: Quality of additional information found in previous reports**

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<sup>40</sup> Evidence from non-key witnesses is considered to be corroborative or involve procedural statements or continuity evidence. For example, a police officer who attended the scene of an incident and arrested a defendant but did not witness the offence would be considered a non-key witness.

<sup>41</sup> Visually recorded evidence will include CCTV, video taken on a mobile phone, body worn video as well as any other sources of evidence which is recorded on video.

<sup>42</sup> Other orders include: disqualification from working with children; forfeiture orders, exclusion orders, as well as discretionary driving disqualification.

	<b>NAO report (2011)</b>	<b>Stop the Drift 2 (2013)</b>	<b>Getting Cases Ready for Court (2013)</b>
<b>Sample size</b>	100 case files from 5 forces	40 case files from 5 forces	180 case files from 6 forces
<b>Percentage of cases assessed as adequate</b>	77% (77 files)	31% (11 of 36 files)	56% (96 of 172 files)

In this inspection, we found the additional information provided in the police reports to be adequate in 324 of the 454<sup>43</sup> (71 percent) applicable police cases reviewed. In 10 cases, HMCPSI inspectors were unable to find the relevant information on the CPS IT system and were, therefore, reliant on HMIC inspectors to retrieve and share the details with them.

Where the ‘additional information’ was assessed as inadequate, the main reasons were because:

- in many instances, where the section was not relevant to the particular case, the section was marked ‘N/A’ or not applicable. Although the forms provide space for the officer to enter free text, for the most part there was little additional information included which would assist the prosecutor to understand why this was the case. For example, in one case the application for compensation was marked N/A even though the victim had suffered financial loss;
- sections were left blank when they were clearly relevant to the case. For example, non-key witness statements were included in the file, but their names and roles in the case were not listed in the non-key witness section. Such omissions can mislead the prosecutor and the court or result in a failure to act with the possibility that a vulnerable victim may disengage from the process;
- the VRE sections were left blank, although other documents in the case file made reference to CCTV or body-worn video as being available in the case but no information was provided to explain the evidence that it contained;
- the ‘applications on conviction’ section was left blank. It is here that the officer can ask the CPS to seek an order from the court to protect the victim after the case is concluded; and

<sup>43</sup> In four cases the additional information was not applicable; in one case HMIC inspectors could not establish if it had been completed.

- there was lack of detail about the injuries suffered by the victim, for example, whether they had attended hospital and whether any pictures had been taken of their injuries.<sup>44</sup>

In the police reports examined, we found that there was often more information available to the HMIC inspectors who examined the case files within police forces using police IT systems. The HMCPSI inspectors reviewed the case files remotely via the CPS case management system (CMS). There were a number of cases examined where HMCPSI inspectors could not find the relevant electronic documents or, where they were available, they were unable to evaluate them properly (for example due to a hand-written form not being properly scanned into the electronic system).<sup>45</sup>

## Supervision

As we have stated previously, when the police report is completed, the NFS requires that it must be signed by a supervisor to certify that: it provides an accurate summary of the available evidence; complies with guidance; and is of the required standard of file build.<sup>46</sup>

In this inspection, we found that 308 of the 450<sup>47</sup> (68 percent) police case files reviewed were certified properly by a supervisor. However, our findings suggest that, even in cases where supervisor certification is recorded, this does not provide sufficient assurance that a file meets the required standard. (We were unable to establish whether a number of these cases had been reviewed at all because a 'wet' or hard copy signature had been replaced and defaulted to the electronic name of the supervisor).

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<sup>44</sup> Inspectors found information on victim's injuries, history of abuse and the victim's fear of the defendant contained in the 'confidential report to the prosecutor' (MG6). However the substance of this information was not included in the police report which is presented to the court.

<sup>45</sup> In ten cases, HMCPSI inspectors recorded an assessment of 'not known' whereas HMIC inspectors were able to make an assessment of the case file. As a result some of the data differed between HMCPSI and HMIC inspectors. However, the proportion of cases assessed as adequate by both inspectorates were broadly the same.

<sup>46</sup> The NFS specifies that an investigator must gather together the documents (for example witness statements or the pre-charge report to the prosecutor) acquired during the investigation of an offence from the outset. The case file is built from those documents, whether they contain evidence or not (NFS published May 2015 paragraph 1.5.1). This is known as 'file build'.

<sup>47</sup> In nine cases the certification by a supervisor could not be established.

The role of the supervisor should be considered therefore, to ensure that value is added to the process, and that officers receive constructive feedback about their work which improves standards and potentially plays a vital role in keeping vulnerable victims and witnesses safe.

## **Proportionality**

In our earlier work, we found that the police wasted time taking too many unnecessary statements. In this inspection, we also considered this and found that the time spent by the police building case files was proportionate in 396 of the 460<sup>48</sup> (86 percent) case files reviewed. Six cases were considered to have been 'overbuilt' and contained too much information. In the cases where the case file build was considered disproportionate, the issues remained the same as those we identified in our previous reviews. For example, statements from witnesses were included which contained no relevant evidence, whereas other statements with important evidence which should have been included were not.

In 58 case files (13 percent) the file was considered to be 'under-built'. This means that the prosecutor did not have sufficient information to proceed in court at the first hearing. This may be linked to the police incorrectly anticipating the plea of the defendant at the first hearing, referred to earlier, which resulted in important information for the prosecutor not being available in the case file. It could also reflect a lack of understanding of the evidence needed to prove that an offence had been committed.

## **File quality of cases involving vulnerable victims or witnesses**

HMIC identified 195 cases which involved vulnerable or intimidated victims and witnesses. Of these, there were 20 files where vulnerability was recorded by HMCPsi as 'unknown' because the information on the digital file was insufficient to make an informed assessment. In such circumstances, there is a risk that the needs of vulnerable victims and witnesses may not be communicated adequately to prosecutors. We have set out our detailed findings in relation to vulnerability in chapter 6.

In these 195 cases, we considered the quality of the police report that was submitted to the prosecutor. It would be reasonable to expect that cases involving vulnerable people would receive greater attention from the officer in the case, as well as more rigorous quality assurance from the supervisor which should result in a higher proportion of cases that met the required standard

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<sup>48</sup> The one case file that was not available in force for examination by HMIC inspectors was examined remotely by HMCPsi on the CMS. It is therefore included here in relation to the proportionality of case file preparation.

being submitted to the CPS for the first hearing. This was not the case. In cases involving vulnerable and intimidated witnesses, we found the standard of the summaries of evidence, summaries of interview, additional information and supervisor certification to be broadly similar to the findings for the total sample, or marginally worse.

We compare this data in Table 4.

**Table 4: Comparison between all cases examined and cases involving vulnerable and intimidated witnesses in summaries of evidence and summaries of interviews**

	<b>All cases examined (459 case files in sample)</b>	<b>Cases involving vulnerable and intimidated witnesses</b>
<b>Summary of evidence: percentage assessed as adequate?</b>	72% (332 of 458 files)	72% (141 of 195 files)
<b>Summary of interview: percentage assessed as adequate?</b>	75% (328 of 436 files)	68% (133 of 193 files)
<b>Additional information sections: percentage assessed as adequate?</b>	71% (324 of 454 files)	68% (132 of 194 files)
<b>Percentage certified by a supervisor?</b>	67% (308 of 457 files)	70% (134 of 192 files)

We note that a lower proportion of the interview summaries and additional information sections of the police reports in cases involving vulnerable and intimidated witnesses were found to be adequate compared to the whole sample. As mentioned above, including information (such as nature of victim's injuries, availability of CCTV, applications for compensation and orders on conviction) in the additional information section can be vital to ensure that the court is made aware of the full circumstances of the case, and can dispense justice to the victim and the defendant.

This is of real concern. It indicates that the quality of the information provided to the prosecutor for presentation to the court was no different when a victim of domestic or elder abuse was involved than it would be for a case of minor criminal damage or shoplifting where there were no vulnerable witnesses.

## 5. Findings: Witness care information

Witness Care Units (WCU) were established across England and Wales in 2005<sup>49</sup> to provide information and support to victims and witnesses in cases progressing through the criminal justice system. A WCU manages the care of victims and witnesses during a case, from the point at which a defendant is charged through to the conclusion of the case. For the most part, the units are staffed by the police but in some CPS areas they are staffed by both police and the CPS.

The Code of Practice for Victims of Crime<sup>50</sup> (victims' code) obliges the police, the CPS and a number of other agencies<sup>51</sup> to provide services to victims. This includes WCUs whose role it is to inform victims and witnesses whether they are required to give evidence, and, if they are, to provide them with information about the process, the dates of court hearings and court results. They must also explain to the victim or witness any sentence that is passed within one day of receiving the outcome from the court.

It is essential that the needs of victims and witnesses are recorded accurately to ensure that WCUs have the information they require to provide victims and witnesses with the right support throughout the criminal justice process. In this chapter, we consider the exchange of witness care information between the police, WCUs and the prosecution.

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<sup>49</sup> Witness Care Units were established as part of Government's 'No Witness, No Justice' Initiative to improve services provided to victims and witnesses of crime within the Criminal Justice System.

<sup>50</sup> The code of practice came into force on 3 April 2006. The most recent code of practice for victims of crime was published in October 2013 and is available from [www.cps.gov.uk/publications/docs/victims\\_code\\_2013.pdf](http://www.cps.gov.uk/publications/docs/victims_code_2013.pdf)

<sup>51</sup> Other agencies include: Her Majesty's Courts and Tribunals Service, Her Majesty's Prison Service, National Offender Management Service, the Parole Board, police and crime commissioners, youth offending teams, and others.

## National File Standard and the Manual of Guidance

The preparation of a criminal case file is the means by which the police discharge their responsibility for communicating to the prosecutor the circumstances of offences and the evidence against defendant(s). The NFS, which sets out the standards for case file preparation, is underpinned by a manual of guidance.<sup>52</sup> This guidance specifies the requirements of the NFS and includes template documents (known as MG forms) that must be completed in the preparation of a case file. The NFS requires all 43 forces in England and Wales to use these templates without altering or adapting them.<sup>53</sup>

The latest version of the guidance includes 30 different template forms<sup>54</sup> for use in preparing a case file. A number of these templates are intended to provide an opportunity to record information about the vulnerability and related needs of victims and witnesses. This information can then be considered, and support provided throughout the court process.

These are the:

- witness statement (MG11);
- witness assessment for special measures (MG2);
- report to the prosecutor (MG3);
- police report (MG5); and
- confidential report to the prosecutor (MG6).

We asked each force<sup>55</sup> to provide copies of the template forms that they use to prepare police case files. We compared these forms against the current

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<sup>52</sup> The Prosecution Team Manual of Guidance (MoG) for the preparation, processing and submission of prosecution files 2011 (incorporating the National File Standard 2015) is a joint publication developed by the Crown Prosecution Service, Association of Chief Police Officers [now National Police Chiefs' Council] and the National Police Improvement Agency now College of Policing.

<sup>53</sup> A national process exists to agree any amendments to MG forms that may be required as a result of changes within the criminal justice system.

<sup>54</sup> These documents have a variety of purposes. For example: the charge sheet (MG4), application for a remand in custody (MG7); record of interview (MG15), evidence of bad character (MG16), application for compensation (MG19). More information and a list of templates is available from:

[www.app.college.police.uk/app-content/prosecution-and-case-management/charging-and-case-preparation/](http://www.app.college.police.uk/app-content/prosecution-and-case-management/charging-and-case-preparation/)

<sup>55</sup> Norfolk and Suffolk Constabularies as well as West Mercia Police and Warwickshire Constabulary have joint collaborative criminal justice arrangements and therefore submitted only one set of MG forms for each pair of these forces.

authorised templates to assess the extent to which the forms in use in each force complied with the NFS.

In particular, we considered whether any variation between the authorised template and the versions being used by individual police forces could adversely affect the assessment of, or provision of services to, a vulnerable or intimidated victim or witness.

The witness statement (MG11) and the witness assessment for special measures (MG2) are the principal documents in the case papers where information about witness care is first recorded. The remaining three reports may include information about a vulnerable victim or witness but are primarily used by the police and prosecutor to exchange information regarding the evidential strengths and weaknesses of the case. Our findings in relation to these reports (MG3, MG5 and MG6) are set out in Annex C.

## **The witness statement (MG11)**

When investigating an offence, a police officer will usually ask a witness to make a written statement about what happened. The statement must cover all matters on which the witness may be required to give evidence. In accordance with criminal procedures, the statement must include the name and occupation of the witness and be signed and dated by them.<sup>56</sup> This information is contained on the first page of the statement.

The addresses and personal details of victims and witnesses are confidential and are not to be released to the defence<sup>57</sup> as this may place the victim and/or the witness at risk of intimidation.

We found the authorised witness statement template (version dated 2010/11) was being used in 17 forces. We found that 24 forces had amended the template slightly to enable the officer completing the template to record whether the evidence in the statement had been visually recorded (for example witness evidence may be recorded on video or via a body-worn camera). One force provided a space on the form for the signature of an appropriate adult.<sup>58</sup> One

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<sup>56</sup> Sections 9 and 10 of the Criminal Justice Act 1967 provide for evidence to be tendered by way of written statement or formal admission. Part 27 of the Criminal Procedure Rules 2010 governs the use of sections 9 and 10.

<sup>57</sup> Witnesses' addresses are not normally disclosed. However, there may be cases where the address of a witness will be needed as material for evidential purposes, for example: a witness whose house has been burgled; a witness who sees an assault from a window overlooking a street. In such cases it will be difficult to conceal a witness's address, but care must be exercised where the safety of the witness is believed to be at risk.

<sup>58</sup> An appropriate adult is required to support a child or vulnerable adult while in police custody. Their role is explained in Code C of the Police and Criminal Evidence Act 1984.

force did not supply a copy of the witness statement in use by its staff. A copy of the witness statement template is included at Annex D.

## Witness care information

It is important to note that the witness statement has a dual purpose. First, as outlined above, it is used to record the witness's evidence about the offence. Second, the witness statement includes one page dedicated to witness care information. On this page the police officer must complete the 'initial needs assessment' which is made up of three sections: witness contact details, witness care and witness consent. It is on this page that important information relating to the vulnerability and needs of witnesses is normally recorded for the first time. It is the aim of the initial needs assessment to: identify any particular victim and witness needs at the earliest stage; trigger relevant support; assess the willingness of the witness to attend court; and assist the charging prosecutor or the prosecutor reviewing the file.

The use of witness statements to record witness care information was variable across forces. We found the following:

- in only eight forces was the correct witness statement template in use;
- in 16 forces the form in use was substantially the same as the template, but a question about child witnesses had been added to the witness consent section;
- in two forces two different versions of the witness statement were being used. One version, used in both forces, required the officer to confirm whether the witness had any additional needs to enable them to attend court, while the other version, also in use in both forces, did not include this question at all;
- in one force a local version of the witness statement form was used. It included an assessment of vulnerability and an application for a restraining order,<sup>59</sup> but did not include witness care needs;
- in one force the form in use was substantially different from the template. The witness care questions had been reworded<sup>60</sup> and another question added requiring the officer to record whether the crime involved domestic abuse, hate crime, child abuse or 'street crime' (a loose term that

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<sup>59</sup> Protection from Harassment Act 1997, section 5. Restraining orders may be made on conviction or acquittal for any criminal offence. These orders are intended to be preventative and protective. The guiding principle is that there must be a need for the order to protect a person or persons.

<sup>60</sup> The question asked if the witness has any 'protection' needs rather than 'particular' needs.

includes criminal offences that take place in a public place, such as ‘mugging’). The witness consent section required the officer to record whether the victim or witness would consent to their information being disclosed to domestic abuse support agencies as well as the WCU.

In 15 forces the form in use contained a variety of amendments. These included:

- a requirement to record the nationality and religion of the witness;
- a requirement to record whether the person making the statement was considered a victim under the victims’ code;
- an additional question added to the witness consent section that required the officer to advise the victim or witness that the WCU would be informed and tick a box if the WCU service was declined; and
- an additional question added to the witness consent section asking the officer whether an intermediary had been involved in taking the statement and, if so, prompting the officer to include the details on the confidential report to the prosecutor (MG6).

Three forces provided copies of the witness statement templates that were in use. However, in practice, these forces used different approaches to process witness care information which had been locally agreed with the relevant CPS Area. These working practices were intended to improve the communication of victim and witness needs between the police and CPS but were not assessed as part of this inspection.

Many of the adaptations and amendments to the witness care information sections appeared to be aimed at capturing performance management information, or to provide the single location for recording any and all witness information. The former is inappropriate and detracts from the purpose of the witness statement. The latter may provide further and important witness information, but in a number of cases examined, we found that the witness care information that should have been included in the witness statement was either not available to the prosecutor or could not be found in the case file.

Nor could we be confident that witness care information was being transferred effectively between the police and the CPS. The interrogation of the CPS case management system revealed that, in over half of the 460 police case files reviewed, the witness care information page was often either not included on the electronic case file or could not be read by inspectors. Where it was scanned into the system it was regularly saved as a generic document, making it difficult to locate.

As part of this inspection, we examined compliance with the NFS requirement to complete sections of the witness care information that specifically relate to vulnerability and witness needs. Our findings are set out below in Table 5.

**Table 5: Results of witness care section that relate to vulnerability and witness needs**

<b>Witness care section</b>	
Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? <sup>61</sup> (youth under 18, witness with mental disorder, learning or physical disability or witness in fear of giving evidence or witness is a complainant in a sexual offence case)	This question was completed in <b>83%</b> of applicable <sup>62</sup> cases.
Does the witness have any particular needs? If Yes, what are they? (Disability, healthcare, childcare, transport, disability, learning difficulties, language difficulties, visually impaired, restricted mobility, or other concerns.	This question was completed in <b>77%</b> of applicable <sup>63</sup> cases.
<b>Witness consent section</b>	
The victim personal statement scheme <sup>64</sup> (victims only) has been explained to me.	This question was completed in <b>87%</b> of applicable <sup>65</sup> cases.

In 302 of 346 (87 percent) of files examined, officers had recorded that the victim personal statement scheme had been explained to the victim. Moreover, in 289 out of 349 (83 percent) of files examined, officers had recorded whether a witness assessment for special measures was required.

<sup>61</sup> If the answer to this question is 'yes' officers are required to complete a special needs assessment form (MG2).

<sup>62</sup> This question was completed in 289 out of 349 police cases files. In 86 police case files this question was considered to be not applicable and in 22 cases inspectors were unable to establish if this question had been completed.

<sup>63</sup> This question was completed in 261 out of 337 police cases files. In 99 police case files this question was considered not to be applicable and in 22 cases inspectors were unable to establish if this question had been completed.

<sup>64</sup> The Victim Personal Statement (VPS) gives victims an opportunity to describe the wider effects of the crime upon them, express their concerns and indicate whether or not they require any support. Provisions relating to the making of a VPS and its use in criminal proceedings are included in the Code of Practice for Victims of Crime (victims' code) which was published on 29 October 2013 and came into force on 10 December 2013.

<sup>65</sup> This question was completed in 302 out of 346 police cases files. In 89 police case files this question was considered not to be applicable and in 22 cases inspectors were unable to establish if this question had been completed.

While this degree of compliance is positive, it does not indicate whether the officer's judgment about whether a witness assessment for special measures was, or was not, required; and if completed whether the information provided to the prosecutor was adequate. We consider these issues in more detail in the next section.

In 76 of 337 applicable files (23 percent), the officer had not recorded whether the witness had any particular needs that would require support, should they be required to give evidence in court. In many cases the record was left blank. It is here that the officer should record issues that may affect the victim or witness's ability to give their best evidence. For example, by highlighting that a witness has mobility issues to ensure that the case is listed at a court building with disability access. It is extremely important to identify early on that witnesses may be vulnerable or intimidated or have other particular needs. Failure to identify vulnerable or intimidated witnesses at the evidence-gathering stage of an investigation may prevent a witness having access to the support they need and the range of special measures available to help them to give their best evidence in court.

This information must be recorded so that suitable arrangements can be considered in advance, rather than brought to the attention of the witness service on the day of the trial. We saw a number of examples where age, infirmity, disability or other issues were mentioned in the case papers but were not included in the witness care section of the witness statement.

We examined a number of cases involving children and young victims and witnesses where video interviews were conducted. In these cases we were not always able to establish where the witness care information had been recorded.

The current guidance<sup>66</sup> on conducting video recorded interviews with vulnerable witnesses, which includes children, states:

“Police officers should have undertaken an initial needs assessment for every witness and recorded relevant information on the rear of the MG11 statement form. Information relevant to vulnerability and intimidation could then be recorded in a Victim Personal Statement, if the victim has chosen to make one, or on the MG2, MG3 or MG6 for consideration by the CPS. The initial witness assessment form MG2, case file information form MG6 and the back of witness statement form MG11 are confidential documents that are completed to inform the prosecutor of relevant background information so that there can be an effective case review.”

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<sup>66</sup> *Achieving Best Evidence in Criminal Proceedings, Guidance on interviewing victims and witnesses, and guidance on using special measures*, Ministry of Justice, March 2011. Available from: [www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf](http://www.justice.gov.uk/downloads/victims-and-witnesses/vulnerable-witnesses/achieving-best-evidence-criminal-proceedings.pdf)

Other joint inspection reports have highlighted concerns about the effective recording of witness care information in relation to children and young people and other vulnerable witnesses.

For example:

- the joint inspection report, *The experience of young victims and witnesses in the criminal justice system*<sup>67</sup> published in February 2012 found that the needs of young victims and witnesses and the appropriate special measures they need to enable them to give their best evidence are not always identified;
- the joint inspection report, *Achieving best evidence in child sexual abuse cases – a joint inspection*<sup>68</sup> published in December 2014 found that there were only 10 police interviews in a sample of 69 where the specific needs of the child (physical, sexual, social, cognitive or linguistic) were recorded as being considered; and
- the joint inspection review, *Joint review of disability hate crime follow up*<sup>69</sup> published in May 2015 found failures by the police to identify disability hate crimes to the CPS when seeking charging advice and a lack of provision of appropriate information to the CPS by police.

In this latest inspection, we also found that we could not be confident that witness care information was being effectively transferred between the police and the CPS; in many of the case files reviewed, the witness care information page had not been properly scanned or recorded on the system in the first place. As a result, in many case files, HMCPSP inspectors were unable to assess the witness care information at all. There seems little point in the police assessing and recording witness needs if this information is not then available to prosecutors.

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<sup>67</sup> *The experience of young victims and witnesses in the criminal justice system*, HMIC and HMCPSP, February 2012. Available from: [www.justiceinspectorates.gov.uk/cji/inspections/joint-inspection-report-on-the-experience-of-young-victims-and-witnesses-in-the-criminal-justice-system/](http://www.justiceinspectorates.gov.uk/cji/inspections/joint-inspection-report-on-the-experience-of-young-victims-and-witnesses-in-the-criminal-justice-system/)

<sup>68</sup> *Achieving best evidence in child sexual abuse cases – a joint inspection*, HMCPSP, December 2014. Available from: [www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2014/04/CJJI\\_YVW\\_Jan12\\_rpt.pdf](http://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2014/04/CJJI_YVW_Jan12_rpt.pdf)

<sup>69</sup> *Joint review of disability hate crime follow up*, HMCPSP, HMIC, HMI Probation, HMCPSP, May 2015, [www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/joint-review-of-disability-hate-crime-review.pdf](http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/joint-review-of-disability-hate-crime-review.pdf)

## Witness assessment for special measures (MG2)

As mentioned above, when the case involves a vulnerable victim or witness an officer should consider whether ‘special measures’<sup>70</sup> are required. Once a vulnerable or intimidated witness has been identified in a case, although they might be eligible for special measures, the measures will not automatically be available at the trial. The prosecutor is responsible for applying to the court for special measures on behalf of victims and witnesses.

Special measures are a series of aids (for example the use of screens, a live link from outside the court, or use of an intermediary) that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the anxiety associated with giving evidence.

The witness assessment for special measures report (known as the MG2) should set out the support victims and witnesses require. It is provided to the prosecutor who must make an application to the court for special measures to be granted.<sup>71</sup>

The MG2 template (version dated 2010/11) was being used in 35 forces. Of the remaining eight forces, we found examples of use as set out below:

- one force used a version (dated 2006/07) which was substantially different in layout and content from the one contained in the manual of guidance. In particular the definition of special measures was incorrect;
- three forces used a version (dated 2006/07) which defined a child as someone under the age of 17. The Children Act 1989 defines a child as someone under the age of 18. This is an important distinction as a child is automatically entitled to special measures. In addition, while broadly similar to the 2010/11 template, it is set out as a series of steps for completion. One step asks the officer to explain why any witness statement from a child was not obtained by use of a video interview;<sup>72</sup> and

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<sup>70</sup> Special measures apply to prosecution and defence witnesses, but not to the defendant. Special measures were introduced in the Youth Justice and Criminal Evidence Act 1999, Section 18.

<sup>71</sup> Prosecutors also hold special measures meetings in certain cases before the application is made in order to reassure witnesses that their needs will be taken into account. In certain courts the special measures are automatic and therefore no application is required, provided the victim meets the automatic entitlement.

<sup>72</sup> A video interview is an option available to record a witness statement. A video could then be played to the court so that the victim would not be subject to the added pressure of a court appearance. This is one of a number of measures available to allow vulnerable victims or witnesses to give their best evidence.

- another force provided a version (undated) which provided specific guidance as to when a child witness should be interviewed on video.

Of 425 police case files<sup>73</sup> examined, we considered that 168 should have included a witness assessment for special measures, but an assessment was completed in only 80. Therefore, in 88 of the cases (52 percent) examined, a witness assessment for special measures was not completed when it should have been.

Where witness assessments for special measures were included in case files they were often completed poorly. A third of the 80 cases where the witness assessment for special measures had been completed were assessed as inadequate by inspectors. The reports often did not provide sufficient detail about the vulnerability of the victim or witness, or which special measures would be suitable for them and why that was the case.

We also noted that, of the 80 case files reviewed by HMIC inspectors where a witness assessment for special measures was included on case files, 66 of these assessments had been properly transferred to the CPS case management system. As a result, HMCPSI inspectors were only able to assess 66 witness assessments for special measures. In these cases, HMCPSI inspectors also found that a third of the assessments were inadequate because they lacked sufficient detail.

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<sup>73</sup> In 29 case files the witness assessment for special measures was considered not to be applicable and in five case files inspectors were unable to establish if an assessment had been completed.

## 6. Identifying and managing risks to vulnerable victims and witnesses

In this section, we focus on the journey of victims and witnesses through the criminal justice system. Officers must accurately identify the vulnerability of victims and witnesses to the prosecutor so that the court is given accurate information of the circumstances of the case. For example, if an elderly woman is targeted and robbed because of her age or a disability, it is essential that this information is included in the case file.

The HMIC report, *The welfare of vulnerable people in police custody*<sup>74</sup> published in March 2015 identified that vulnerability cannot always be easily categorised. It says that:

“People may come to the attention of the police service with a combination of different vulnerabilities – some apparent and some not. For example, a child may be mentally ill and/or have substance misuse problems. Vulnerability may be linked to age, a health condition, or disability.

“In many cases people are not inherently vulnerable, but may be made vulnerable by their circumstances. Individuals may be vulnerable in a given context and not in another.”<sup>75</sup>

The same report also highlighted the “key role the police play in protecting and respecting individuals’ rights, especially as regards persons considered to be in situations of vulnerability because of the interplay between their status in a particular society and the social context in which they find themselves”.

Victims and witnesses with particular characteristics are not automatically vulnerable. However, if for example, a black or minority ethnic victim or a disabled victim is subjected to a hate crime they may become vulnerable as their case progresses through the criminal justice system. Understanding the nature and context of vulnerability is important for ensuring that victims and witnesses are properly supported.

Similarly, risks to victims and witnesses must be identified to the court and these risks must be managed to ensure victims and witnesses are able to give their best evidence. It is not enough for the police or prosecutor to identify a

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<sup>74</sup> *The welfare of vulnerable people in police custody*, HMIC, March 2015. Available from: [www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf](http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf)

<sup>75</sup> *Ibid*, page 52

vulnerable victim or witness; risks to them must be managed until the case is concluded, and arguably beyond.

For example, a rape victim who is afraid of the defendant may need special measures, such as giving evidence from behind a screen or via 'live link' in order to maintain their anonymity.

Prior to the defendant being charged, the police may manage the risk to the victim or witness by imposing conditions to restrict the movements of the defendant in order to reduce the risk to the victim. This may be in the form of a curfew or other conditions (such as not to contact the victim or frequent a particular area) on the defendant.

Following charge, and prior to the trial, the police may ask the CPS to request that the court imposes the same or other conditions or, if convicted, restraining or other such orders (for example a sexual offences prevention order<sup>76</sup>). The important point is that it is the role of the CPS to request any conditions on, or orders against, the defendant. If the police do not communicate effectively the specific and present risks to victims and witnesses, the CPS cannot make appropriate requests to the court to reduce and manage those risks.

We examined the effectiveness of police and the CPS in identifying the vulnerability of, and reducing the risks to, victims and witnesses. We looked at a sample of case files where we expected vulnerable victims and witnesses to be involved (namely those which involved domestic abuse, racially or religiously aggravated offences and homophobic crimes).<sup>77</sup> We also considered cases where the vulnerability of victims and witnesses might be less evident.

We examined a total of 460<sup>78</sup> case files from across England and Wales and identified 195 cases that involved vulnerable or intimidated victims and witnesses. A breakdown of the vulnerabilities of these victims/witnesses is set out below.

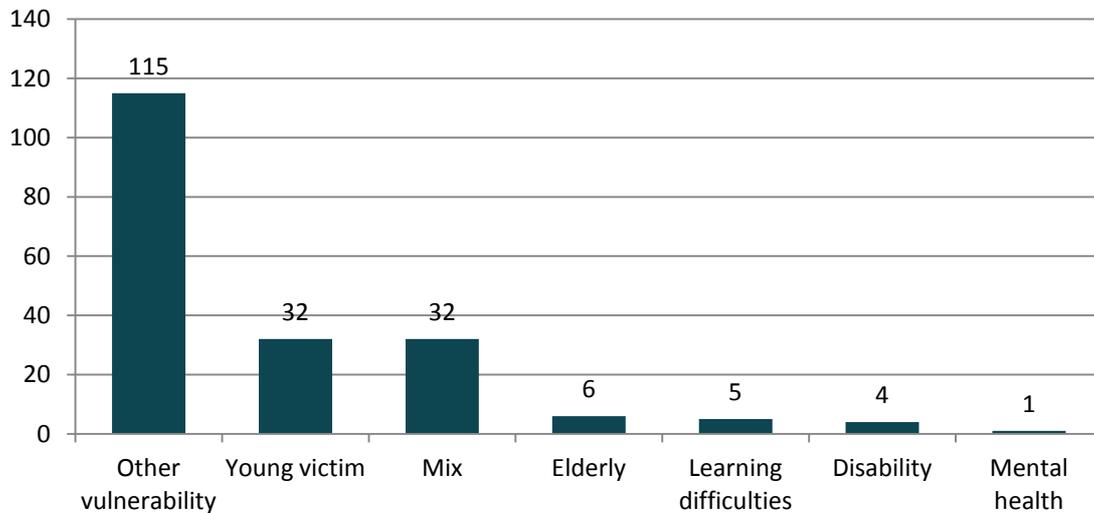
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<sup>76</sup> Sexual offences prevention orders replace restraining orders under section 5A of the Sex Offenders Act 1997 and sex offender orders under section 2 of the Crime and Disorder Act. Before making an order the court must be satisfied that it is necessary to protect the public or any particular member of the public from serious sexual, physical or psychological harm.

<sup>77</sup> These were cases which were 'flagged' on the CPS case management system as involving victims or witnesses from these sensitive case categories. These were 101 cases of domestic violence; 97 cases of racially or religiously aggravated offences; 30 cases involving homophobic abuse; 17 cases of child abuse; 13 cases of sexual offences (other than rape); 11 cases of rape; 4 cases involving disabled victims or witnesses; 2 cases of elder abuse; and 185 cases did not fall into any sensitive case category.

<sup>78</sup> One case file could not be examined by HMIC inspectors. It was available to HMCPIS inspectors on the CPS system and did not involve a vulnerable witness.

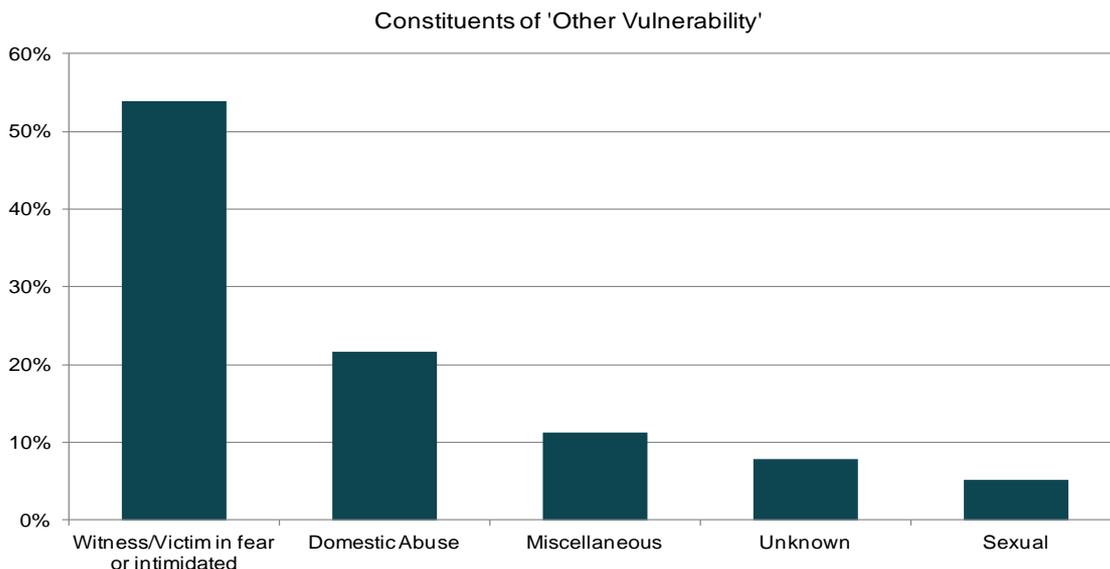
**Figure 1: Breakdown of the different vulnerabilities of victims or witnesses of 195 cases in England and Wales**



In the graph above, where more than one vulnerability was identified, it was recorded as 'mix'.

Of these 195 case files involving vulnerable victims or witnesses, we assessed 115 as being vulnerable for 'other' reasons. The breakdown of 'other' vulnerability is set out below:

**Figure 2: Breakdown of 'other vulnerability' in 195 cases involving vulnerable victims or witnesses**



In these 195 case files we found 120 cases (62 percent) where the police correctly identified the vulnerability of the victim or witness to the prosecutor and took action to manage that risk through the court process. However, by the time the case was progressed at court there were only 96 cases where the risk was both identified and managed properly by the CPS.

In addition, in many cases we found that the vulnerabilities of victims and witnesses were not clearly established and recorded from the outset. We found an inconsistent service to victims and witnesses who, due to the circumstances of the offence, should always be considered potentially vulnerable (particularly victims of domestic violence). Routinely, we saw cases where vulnerability was identified at a later stage,<sup>79</sup> as the case progressed to trial.

In addition, in 85 cases (44 percent) we found that the information provided by the police was not adequate enough to be able to inform the prosecutor and the court of the vulnerability of the victim or witness. Without such detailed information, there is a risk that the prosecutor will not seek the appropriate measures needed to support victims and witnesses in court.

In 36 cases we found:

- 25 cases where the police identified correctly the vulnerability of the victim or witness to the prosecutor but this did not result subsequently in sufficient action to manage the risk through the court process; and
- 9 cases where the police did not identify the vulnerability of the victim or witness in the case file but the risk was identified elsewhere (usually by the prosecutor) and subsequently managed through the court process. We were concerned to note that in 41 cases (21 percent) the police did not identify the vulnerability of the victim or witness, nor were their vulnerabilities picked up by the prosecutor. As a result the risks to them were not managed through the court process.

We consider these matters in more detail below.

## **Case files where vulnerability was identified and risk was managed**

As stated previously, in 120 of the 195 case files (62 percent) where vulnerable victims and witnesses were involved the police correctly identified and subsequently managed the risk to them. However, by the time the case progressed to court there were only 96 cases where the risk was both identified and managed properly by the CPS.

We saw many case files where the police had identified the vulnerability of the victim, worked effectively with the prosecutor to establish the elements of the offence, and highlighted and assessed the vulnerability of the victim to minimise any risk to them and enable them to be able to give their best evidence in court.

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<sup>79</sup> In 42 cases the prosecutor raised the victim and witness issues with the police.

For example:

- In one case, a nine-year-old girl reported to her foster carer that she had been raped by her father between the ages of two and five years old. The case file submitted by the police to the prosecutor was detailed and clearly set out that the girl was vulnerable due to her age and the nature of the offence. All requests to the police from the prosecutor were dealt with fully and in a timely manner. The police identified her need for special measures at an early stage of the investigation and completed a comprehensive assessment of the measures needed to support the child when she gave her evidence in court.
- In another case of burglary, the defendant stole a handbag from the home of a 71-year-old woman who lived alone. The police identified from the outset that she was vulnerable and this was reflected in the file submitted to the CPS. The police requested that the prosecutor make an application to the court for the defendant to be remanded in custody so the woman was not at risk of reprisals from him prior to the trial. Although the police expected that the defendant would plead guilty,<sup>80</sup> they completed a comprehensive witness assessment for special measures in case it was required, and ensured that staff from the Victim Support charity made contact with the woman.
- In a further case, a man slashed the tyres of, and scratched offensive words on, a car belonging to the father of his ex-partner. Both the father and his daughter suspected the defendant. She telephoned him and confronted him about the damage and he admitted that he was responsible. At the time of the offence, there was already a restraining order against the defendant. The police identified from the outset that both the victim and his daughter were in fear of the defendant and requested that the prosecutor make an application to the court for the defendant to be remanded in custody. The case file contained a good outline of the history of the relationships involved, and the witness assessment for special measures clearly explained why the victim required the use of screens in court.

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<sup>80</sup> If the police anticipate that the defendant will plead guilty at the first hearing they are not required to complete a special measures assessment (MG2) as part of the case file submission to CPS.

## Case files where vulnerability was identified but risk was not managed

In 25 of the 195 case files (13 percent) where vulnerable victims and witnesses were involved, the police correctly identified vulnerability but measures to manage the risk to the victim or witnesses during the criminal justice process were not put in place. There were 55 cases where the CPS correctly identified risk but took no action to manage it.

Many of these cases involved victims and witnesses who were 'in fear' of the defendant. In this inspection, 62 out of 195 (32 percent) cases where vulnerable victims and witnesses were involved, they were considered vulnerable because of their fear of intimidation from the defendant(s).

For example:

- In one case of burglary, the defendant was the ex-partner of the victim. The police recorded from the outset that the victim was reluctant to attend court and give evidence because she was afraid of him. Although the initial police response was good, the officer did not complete a witness assessment for special measures to determine the victim's needs, despite a request to do so from the prosecutor.
- In another case, a man suffered an unprovoked attack in the street by two men. The victim tried to run away and hid in a nearby garden but the men followed and kicked and beat him while he was on the ground. A 16-year-old girl in the house overheard the disturbance and came out to help the man, at which point the two defendants left the area, smashing a window and damaging a car as they left. One defendant was in possession of a knife. The victim did not speak English and told police that he was frightened to walk home from work by the same route again. Initially the police imposed pre-charge bail conditions on the defendants (not to go to the offence location), but when the defendants were charged some weeks later they were released without condition. Despite the fear expressed by the victim and the young age of the witness, already identified in their statements, the police did not consider that any special measures were required and the prosecutor made little effort to challenge the police.
- In a case of robbery, a 20-year-old man was forced off his bike by a man who then stole the bike from him. The victim knew the man as they had previously shared a flat together. He was very much in fear of his attacker, describing the defendant as 'aggressive' and 'able to beat me up if he wanted'. As a condition of his bail, the defendant was not allowed to contact the victim. However, in the seven months between the defendant being charged and the trial starting at the Crown Court, there

was no record of any contact being made with the victim. No consideration was given to special measures for him and there was no mention of his vulnerability in any of the exchanges between the police and the prosecutor.

- Another case involved a 68-year-old woman suffering from Parkinson's disease who was robbed of her handbag. She was very frightened after the robbery occurred, as she lived alone and the bag contained her house keys. The victim was not assessed for special measures, despite the CPS requesting such an assessment.

## **Case files where vulnerability was not initially identified but risk was managed**

In nine of the 195 case files (5 percent) where vulnerable victims and witnesses were involved, the police did not initially identify their vulnerability. Often it was the prosecutor who identified that a vulnerable victim or witness was involved and requested that the police take action. As a result measures were put in place to manage the risk to the victim or witness.

There were 50 cases where the risk was not initially identified by the CPS, but subsequently steps were taken to manage the risk as the case progressed.

For example:

- In one case of robbery, four men forced their way into a private home and forcibly stole money from the three people in the house. The case papers adequately described the harrowing circumstances of the robbery which also involved a firearm, but made no mention of any vulnerability of any of the three victims involved. The case was reviewed by the prosecutor who requested that police consider the potential vulnerability of the victims and conduct witness assessments for special measures. It was identified subsequently that the three victims were terrified of the defendants and wanted to give their evidence in court behind screens.
- In another case, a shop owner and his wife were robbed at gunpoint by a man wearing a balaclava who demanded cash. The case papers provided detailed information about the circumstances of the robbery but the police did not identify that either of the victims were vulnerable. The female victim told police that she was frightened and had difficulty sleeping. It was the prosecutor who noted the vulnerability of the victims and indicated that special measures, such as screens would be necessary should they be required to give evidence in court.

## Case files where vulnerability was not identified or managed

We were concerned to note that in 41 of the 195 case files (21 percent) where vulnerable victims and witnesses were involved, the police did not identify vulnerability and did not manage the risk through the court process. There were five cases where the CPS neither identified nor managed the risk. In other cases inspectors were unable to make an assessment because there was limited information available on the electronic case file or because decisions had not been recorded.

There were a number of cases where the correct forms had been included but were left blank or marked 'not applicable', even where the information was required by the prosecutor. In these cases the prosecutor also failed to recognise the vulnerability of the victims and witnesses involved.

For example:

- An Asian taxi driver took two men and two women home. During the journey one of the men became verbally abusive to the driver and used racially offensive language. The taxi driver was afraid of the man and drove to a nearby police station where the passengers got out and ran off. The racially offensive nature of the abuse suffered by the victim was not outlined on the file. Although the victim made it clear from the outset that he was afraid of the defendant, there was no record that a victim assessment for special measures had been conducted. The CPS added a 'racially aggravated' charge but did not ask the police to conduct any further enquiries.
- In another case involving a disturbance in a pub, a man hit another man with a bar stool. Door staff unsuccessfully tried to eject the man and a fight ensued between a number of men in the pub which was captured on CCTV. One witness to the disturbance was a 17-year-old boy. Despite the violent nature of the incident, there was no record of any consideration of the vulnerability of this young witness or his automatic entitlement for special measures.

We examined a number of cases where special measures had been considered for the victim but not for other vulnerable witnesses in the case. The responsibility of the police and the prosecution to identify vulnerability is no less important when a vulnerable witness is involved. In a number of these cases the witnesses involved were children. For example:

- A 13-year-old girl was pushed and hit by her 15-year-old former boyfriend. This happened three times over a two-day period and one of the assaults was witnessed by a 14-year-old friend of the girl. A witness assessment for special measures was completed for the victim but it was wholly inadequate. There was no assessment for special measures considered for the 14-year-old witness.
- A woman had been racially harassed by her female neighbour for a long period. The latest incident was witnessed by the victim's 13-year-old daughter when the defendant verbally and racially abused the victim and threatened to burn her house down. Both the victim and her daughter were in fear of reprisals from the defendant. There was no record that the vulnerability of the victim or witness was considered in the early stages of the case. A witness assessment for special measures was conducted two months after the defendant was charged but only for the victim and not her 13-year-old daughter.
- A woman was out walking with her two daughters one aged 18 and the other aged 11. A man with mental health problems intentionally bumped into the woman, repeatedly asked for money and grabbed her shoulder bag. There was a comprehensive case file and the police and prosecutor worked well together to prepare the case for court. The police report and the victim personal statement clearly indicated that this had been a traumatic incident which had a long term effect on the woman and her daughters. Despite this, there was no record that any of the victims were considered as potentially vulnerable witnesses.

## 7. National and local approach to file quality

### College of Policing

The College of Policing sets standards of professional practice for the police service. This includes designing the national syllabus for the Initial Police Learning and Development Programme<sup>81</sup> (IPLDP) for new recruits. Each force is required to provide the two-year programme which normally includes 35 weeks of classroom learning and practical on-the-job training. One module of the syllabus relates to case file preparation to be carried out in the classroom and, during the on-the-job phase of the training programme, new recruits prepare a case for court. The IPLDP has not been evaluated since its introduction in 2006.

In addition, the college has produced a 70-minute interactive e-learning training course on case file preparation. This course is available to all police officers and police staff via the National Centre for Applied Learning Technologies (NCALT).

The college also maintains the authorised professional practice for case file preparation which is available on its website.<sup>82</sup> This includes a link to copies of the authorised versions of templates which should be used by police when preparing case papers.

### National oversight

The National Police Chiefs' Council (NPCC)<sup>83</sup> is supported by 12 co-ordination committees, each led by a chief constable and covering issues such as crime operations, finance and criminal justice. The national policing lead for criminal justice chairs the criminal justice co-ordination committee. He has responsibility for a variety of criminal justice issues<sup>84</sup> which together form the criminal justice business area (CJBA). In early 2014, a national policing lead was appointed to a new role as the lead for file quality responsible for improving the quality of police case files, and accountable to the CJBA.

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<sup>81</sup> HMIC reviewed the content and provision of police training in 2002. Following this review the Initial Police Learning and Development programme (IPLDP) was developed, piloted and implemented across England and Wales in 2006.

<sup>82</sup> *Prosecution and case management – charging and case preparation*, College of Policing Authorised Professional Practice, 2015, [www.app.college.police.uk/app-content/prosecution-and-case-management/charging-and-case-preparation/](http://www.app.college.police.uk/app-content/prosecution-and-case-management/charging-and-case-preparation/)

<sup>83</sup> The National Police Chiefs' Council (NPCC) was formed on 1 April 2015. It replaced the Association of Chief Police Officers (ACPO) which previously provided national police co-ordination and leadership.

<sup>84</sup> These include: custody, restorative justice, out of court disposals, disclosure, digitisation, and others.

The National File Quality Working Group (NFQWG) was established by the national policing lead for criminal justice in autumn 2013 and is now chaired by the national policing lead for file quality. This group, which involves senior police officers, College of Policing staff and the CPS, seeks to improve the quality of case files. The NFQWG has developed a self-assessment (SA) matrix for forces to use to rate the quality of their case files. The SA covers 13 different areas such as: leadership, structure, knowledge, relationships, quality and victims and witnesses. It allows forces to rate themselves on a scale of 1 to 5. The first SA was completed by forces in summer of 2014. At the time of this inspection the second SA had been completed. The results indicated an improvement in overall file quality in police forces, although this has not been evaluated independently.

In order to support the SA and improve consistency of practice across the police service, a national standard is being developed by the national policing lead for file quality and the college. This standard has yet to be approved by the NPCC but it includes a set of 15 questions which forces can use to assess the quality of a sample of police case files.

We acknowledge the commitment to improving case file quality in recent years from national leads within both the police and CPS. However, there was limited evidence from this inspection to demonstrate that the needs of vulnerable and intimidated victims and witnesses had been prioritised.

We note that the national lead is working with CPS to improve case file quality specifically in relation to cases of rape and serious sexual offences. At the time of this inspection, a trial was underway in six forces<sup>85</sup> and an academic evaluation of the results had been commissioned.

## **Local training provision**

As part of this inspection, HMIC sought information about training provided by forces for their staff that was over and above the training required by the college. A number of forces indicated that they had developed refresher training programmes in response to the HMIC report *Stop the Drift 2 - A Continuing Focus on 21st Century Criminal Justice*, a joint review by HMIC and HMCPSI published in 2013.<sup>86</sup>

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<sup>85</sup> Norfolk, Nottinghamshire, South Yorkshire, Suffolk, Humberside and Leicestershire.

<sup>86</sup> *Stop the Drift 2 – A Continuing Focus on 21st Century Criminal Justice*, a joint review by HMIC and HMCPSI, June 2013. Available from: [www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf](http://www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf)

Twenty three forces had developed and carried out classroom training to supervisors as part of their leadership development programme. This training varied from three hours in one force to three days in another. The training provision also varied. Two forces carried out training jointly with the CPS. Eight forces used the expertise of staff from their criminal justice units to provide training. A number of forces have established collaborative arrangements. These include Norfolk and Suffolk; Devon and Cornwall, Avon and Somerset and Gloucestershire; Nottinghamshire, Northamptonshire, Derbyshire and Leicestershire; and Warwickshire and West Mercia Police. These forces work together to develop and provide training to their staff.

As well as refresher training for supervisors, nine forces had developed and provided training to frontline officers on case file preparation. Again, the duration of the training varied, from three hours in one force to three days in two other forces. In the remaining six forces the training was provided in one day. In one force, all frontline uniformed officers spend one day with the criminal investigation unit where they receive guidance on case file preparation.

Five forces had introduced 'champions' to offer advice, guidance and support to officers in relation to case file preparation. These members of staff had experience of working in case file preparation units or had received an enhanced level of training.

At the time of the inspection, 13 forces relied on e-learning packages for refresher training on case file preparation for their staff. These forces used existing NCALT training materials or had developed their own training packages.

Seven forces circulated regular updates on case file preparation to officers and staff via their force intranet.

## 8. Conclusions and recommendations

### File quality

We were pleased to find that the quality of police reports had improved since our previous reviews in 2011 and 2013. Nevertheless, we were concerned at the number of summaries of evidence in police reports that were assessed by inspectors as inadequate and that the underlying issues for this had not changed. The remaining sections of the police reports examined were only slightly better. This was no different when a vulnerable or intimidated victim or witness was involved in the case and, in some instances, it was slightly worse.

The Transforming Summary Justice (TSJ) programme<sup>87</sup> is aimed at reducing delays in the magistrates' courts, holding fewer hearings per case and increasing the number of trials that go ahead the first time that they are listed. A principal element of this is 'getting it right the first time'.

The new TSJ 'guilty anticipated plea' case files require limited information. The file standard requires the police report but not key witness statements. If the quality of these reports reflects that found in this inspection, there is the risk that a plea may be taken based on inaccurate facts, the sentencing may be undertaken on an incomplete understanding of the case (and may not reflect the gravity of offending), and ancillary orders (such as restraining orders) may be missed.

The ambition to reduce bureaucracy and free up officers' time at the front end of policing has resulted in a generation of police officers who are likely never to have been inside a courtroom. This has had the unintended consequence of police officers being increasingly distanced from the criminal justice system for which they are the gatekeepers. It is essential, therefore, that the police have a real understanding of their role in the criminal justice process, both to ensure that justice is done and to provide vulnerable victims and witnesses with the support they require to give their best evidence.

Our findings suggest that all too often the requirement to complete a particular set of forms in preparing case files encourages a 'tick box' culture. In its current form, the national guidance does little to improve understanding of the police role or of the presentation of evidence in prosecution cases.

We therefore welcome the work of the National File Quality Working Group (NFQWG) and the development of self-assessment of the quality in police case

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<sup>87</sup> *Transforming the Criminal Justice System Strategy and Action Plan – Implementation Update*, Ministry of Justice, July 2014. Available from: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330690/cjs-strategy-action-plan.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330690/cjs-strategy-action-plan.pdf)

files which has raised awareness of these issues in forces. We consider that the development of nationally agreed standards for police case file quality, intended to improve consistency across forces, is a positive step. We acknowledge, however, that it is too soon to judge the impact of this work on policing practice. We note that vulnerability did not feature in the terms of reference of the NFQWG.

## **Recommendations**

The College of Policing should evaluate the learning standards provided to student officers to ensure that case file preparation training focuses on improving police understanding of the purpose of case papers and getting it right the first time, and discourages a tick box culture. Similarly, chief constables should evaluate their local training arrangements.

The Crown Prosecution Service and National Police Chiefs' Council lead for file quality should ensure that an effective system is put in place to make sure that case file information on vulnerable and intimidated witnesses is improved.

## **Witness care information**

We found a confused landscape of amended authorised report templates which had been adapted by forces for multiple uses, with varying version control, and which were processed inconsistently between the police and the CPS. Despite the NFS requirement to use authorised templates, we found little regard for this within forces. Many forces did not have robust systems in place to ensure that the correct version of each form was being used by their staff.

We were concerned to find that some templates had been amended for multiple purposes (for example, as a record of compliance with the victims' code or as a prompt to complete domestic abuse or hate crime records). We appreciate that forces may see this as a method by which they can capture management information easily but we do not consider this to be appropriate. Including additional questions about the needs of witnesses and their consent to giving evidence may, in principle, allow officers to record important witness information in one place. However, any witness information will only be of value if it is transferred effectively to witness care units and the CPS. We examined many cases where this information was either not available or could not be established.

The templates are the building blocks with which officers construct the case file for the prosecutor and which underpin the subsequent presentation of the case at court. At the time of the inspection, we found the quality of this infrastructure to be haphazard and inconsistent. The risk that vital information relating to vulnerable or intimidated witnesses may not be captured by the police or, if

captured, not effectively communicated to the CPS, is inherent in the current approach.

## **Recommendations**

The National Police Chiefs' Council lead for file quality and the College of Policing should review the case file templates that have been amended by forces and consider which, if any, would improve the existing authorised templates.

Chief constables should review the templates in use in their force to ensure officers and staff are using the authorised versions which have not been amended or adapted.

We consider that the use of the witness statement as both a record of evidence and witness care information is no longer appropriate.

Including witness details, care, and consent on the reverse, or second page, of the witness statement may have been intended originally to ensure that officers recorded important witness information in a convenient location at the time the statement was taken. In the 21st century this is problematic. In this digital age, witness statements are scanned routinely into electronic systems. Unless the witness care information is retained as a separate document there will continue to be a risk that confidential information about a victim or witness may be disclosed inadvertently to the defence.

In the cases that inspectors examined, we found a lack of compliance with the national standard to be a regular occurrence and witness care information was often not available in the CPS case management system. Where the information was available, it was often incomplete.

In particular, in relation to vulnerable and intimidated victims and witnesses, we were concerned to find so many cases (88 out of 168) where a witness assessment for special measures was required but had not been completed. We were equally concerned to find that, where an assessment had been completed, the information provided was often inadequate or incomplete. Consequently, in order to make an application to the court for special measures, the prosecutor would have had to search through other documents in the case papers to locate the necessary information, or request further information from the police.

In an environment where police officers may already be unfamiliar with the court process, this current approach does nothing to reinforce to officers the purpose and importance of recording accurate information about the victim or witness.

## Recommendations

The National Police Chiefs' Council lead for file quality and the College of Policing should review the use of the current witness statement template (MG11) to determine whether it is fit for purpose and whether a separate record of witness care information should be introduced.

The National Police Chiefs' Council lead for file quality and the College of Policing should evaluate the effectiveness of the methods used by forces to record witness care information and transfer this information to witness care units and the CPS, to identify and share good practice.

## Identifying and managing risks to vulnerable victims and witnesses

In 120 case files (61 percent) of the 195 we examined, that involved at least one victim or witness, the police both identified and managed the risk to the vulnerable victims and witnesses involved. In another nine cases (5 percent) where vulnerable victims were not identified by the police but the risks to them were managed. This was usually because the prosecutor subsequently identified the vulnerability of the victim or witness. Overall, in 129 of the 195 cases examined, the risks to vulnerable victims and witnesses were dealt with, but even in these cases the extent to which the risk was managed effectively varied considerably across forces.

We were concerned to note that in one third (66 out of 195) of the case files examined involving vulnerable victims or witnesses, risks to them were not properly dealt with either by the police or prosecutors. We conclude therefore that identifying vulnerability and managing associated risks to victims and witnesses by both the police service and the CPS needs to improve.

Where vulnerability was identified, the police and CPS tended to focus on the victim rather than other vulnerable witnesses in the case. In many of the police case files we examined where the victim was in fear of the defendant, the management of risk to that victim was often inadequate. The witness assessment for special measures required for the prosecutor to apply to the court for special measures was frequently not completed by the police. When the application was completed, the information provided was often insufficiently detailed or incorrect.

As police officers are increasingly removed from the work of criminal courts, and their understanding of the process diminishes, it is all the more important that they see their involvement at the early stages of a criminal case as more than a series of boxes that must be ticked. In this respect, the findings from this inspection echo the findings from the joint review *Stop the Drift 2: A Continuing Focus on 21st Century Criminal Justice*. The recommendation from that review remains valid and for that reason we repeat it here.

“The College of Policing should urgently review and improve the quality of police training in matters such as the substantive criminal law and criminal procedure, including the rules of evidence and the role of police officers and police work in the criminal justice system. Insofar as police officers lack sufficient training in and experience of the workings of criminal courts, that deficit should be remedied, so that police officers have a sound appreciation of what happens when cases proceed to court, and how evidence is presented and tested. That way, they will have a far better understanding of the critical importance of the work they do in the earliest stages of the criminal justice process. The quality of supervision of police officers should be materially improved, so that mistakes are rectified promptly, time and effort is saved in the preparation of cases, and the interests of justice are served.”<sup>88</sup>

The nature of vulnerability, in the context of a case progressing through the criminal justice system, is not clearly understood by police and prosecutors. Cases may be ‘flagged’ as involving domestic abuse, or hate crime, but that does not necessarily make the victims of such crimes vulnerable.

Similarly, an elderly or disabled person may not be vulnerable per se, but when they are required to give evidence in court with the defendant present they may become vulnerable. In much the same way that equality impact assessments were introduced to help public bodies to fulfil their duties under the Equality Act 2010, we consider that this is an opportune time to look in greater depth at the nature of vulnerability, and identify what can be done to assist police and prosecutors to assess vulnerability in different contexts, and provide the support that vulnerable victims and witnesses require.

## **Recommendations**

The College of Policing should develop guidance that will assist officers to understand the complex nature of vulnerability and how it may change in different contexts.

The College of Policing should evaluate the police training that is provided to student officers to ensure that case file preparation training emphasises and promotes an understanding of the police role in the criminal justice process, and the importance of identifying the support required by vulnerable and intimidated victims and witnesses. Similarly chief constables should undertake an evaluation of their local training arrangements.

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<sup>88</sup> *Stop the Drift 2: A Continuing Focus on 21st Century Criminal Justice*, HMIC, HMCPSI, June 2013, page 24. Available from: [www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf](http://www.justiceinspectors.gov.uk/hmic/media/stop-the-drift-2-03062013.pdf)

The National Police Chiefs' Council lead for file quality and the College of Policing should take steps to highlight to officers the particular needs of witnesses who are vulnerable because they are in fear of intimidation from defendants.

In an age of austerity with increasing public scrutiny, it is more important than ever that the police 'get it right' the first time. This is particularly crucial when a vulnerable or intimidated victim or witness is involved. The police role does not stop once a defendant is charged and a trial date is set. Arguably, it is just beginning.

## Glossary

Code of Practice for Victims of Crime	places obligations on organisations providing services within the criminal justice system (including the police) to provide a minimum level of service to victims of criminal conduct; established under the Domestic Violence, Crime and Victims Act 2004
CPS	Crown Prosecution Service
Crown Prosecution Service	principal prosecuting authority in England and Wales responsible for prosecuting criminal cases investigated by the police and other investigating bodies, advising the police on cases for possible prosecution, reviewing cases submitted by the police, determining any charges in more serious or complex cases, preparing cases for court, and presenting cases at court
National Police Chiefs' Council	organisation which brings together 43 operationally independent and locally accountable chief constables and their chief officer teams to co-ordinate national operational policing; works closely with the College of Policing, which is responsible for developing professional standards, to develop national approaches on issues such as finance, technology and human resources; replaced the Association of Chief Police Officers on 1 April 2015
special measures	series of provisions (for example the use of screens, a live link from outside the court, or use of an intermediary) that help vulnerable and intimidated witnesses give their best evidence in court and help to relieve some of the stress associated with giving evidence; introduced in the Youth Justice and Criminal Evidence Act 1999 (section 18)
transforming summary justice	criminal justice system-wide initiative to reduce delays in the magistrates' courts, hold fewer hearings per case and increase the number of trials that go ahead the first time that they are listed
vulnerability	for the purpose of this inspection, vulnerability applies to the following categories of victim or witness: young (under

18); elderly; disabled; suffer from mental health issues; have learning difficulties; have another form of vulnerability (e.g. in fear of intimidation); or a mix of these

## Annex A - Methodology

### Aim of the inspection

This inspection examined the effectiveness of the police identification of vulnerability of victims and witnesses and how risk to them as subsequently assessed and managed in the course of the investigation. The inspection also considered the action taken by CPS prosecutors when police did not identify in case files that victims and witnesses were vulnerable.

### Structure of the inspection

This inspection was structured in two phases: in phase one HMCPSP inspectors conducted a review of selected case files between November 2014 and February 2015. Phase two involved HMIC inspectors conducting a review of the same case files.

Inspectors assessed a minimum sample of ten prosecution case files in each force (40 case files from the Metropolitan Police Service). This inspection was restricted to the assessment of prosecution case files, focusing on the police report (manual of guidance form 5 – known as MG5). No interviews were conducted.

HMIC inspectors conducted their case file review in the force area, using force IT systems. HMCPSP inspectors reviewed the case files remotely via the CPS case management system.

### Case file sample

The sample size of ten case files per force prohibited drawing a case from every potential offence category where a vulnerable and intimidated witness might be expected to be involved. The sample included at least one sexual offence.

Five files per force area were chosen based on a 'flag' on the CPS system identifying a likelihood that a vulnerable and intimidated victim or witness may be involved. The five investigations were comprised of:

- two involving domestic violence;
- two racially and/or religiously aggravated incidents; and
- one homophobic incident.

The other five cases were ones which were not flagged by the CPS as involving a vulnerable and intimidated witness. This enabled the file sampling to

determine how effective CPS and police were in identifying vulnerable victims and witnesses in less obvious cases.

The offence categories included assaults, public order offences and burglary. The aim was to look at cases which were more likely to have been investigated by frontline officers rather than CID or specialist squads.

The sample of ten included a mix of CPS and police-charged cases. The sample was taken from the last three months of completed cases (June, July and August 2014). HMCPSI identified the relevant cases and HMIC inspectors assessed the same case files.

The vulnerability of the victim or witness was recorded by an inspector on the file record sheet (FRS). The relevant categories, agreed with HMCPSI, in relation to the victim or witness were: young, elderly, having a disability, suffering from mental health issues, having a learning difficulty, other vulnerability, or a mix of these.

## **Question set**

The question set for this inspection built on that used in the earlier inspections. It was reviewed for this inspection and agreed with HMCPSI to ensure a clear focus on vulnerability.

The answer to each question was designed to be selected from one of: yes, no, not known (n/k) or not applicable (n/a). Where an inspector assessed the judgment to be 'no' a narrative answer was required to be recorded on the file record sheet (FRS). HMCPSI inspectors also entered a narrative answer when they judged a response to be 'no'. HMIC inspectors then compared their judgments to those of the HMCPSI inspectors. Where there was a difference in the judgments reached by inspectors, these questions were reviewed with HMCPSI in order to achieve a consensus.

## **Graded judgments**

A standard of file quality was agreed with HMCPSI to be used for the assessment in the prosecution case file review for the inspection report *Stop the Drift 2*. This was based on the guidance on the streamlining process. Due to the small sample size there were no graded judgments for this inspection.

# Annex B - Police Report template

RESTRICTED (when complete)

MG5

<b>POLICE REPORT</b>					
URN <table border="1" style="display: inline-table; vertical-align: middle;"> <tr> <td style="width: 20px; height: 20px;"></td> </tr> </table>					
Defendant 1:	Anticipated plea: - select -				
Defendant 2:	Anticipated plea: - select -				
<p><b>1. Summary of the Key Evidence</b> - 'Key evidence' establishes every element of the offence and that the defendant committed the offence with the necessary criminal intent.</p> <ul style="list-style-type: none"> <li>◆ Set out the facts in chronological order, telling the story and covering the 'points to prove'</li> <li>◆ The summary must be balanced and fair</li> <li>◆ Record address and contact details of civilian witnesses on MG9 (and <i>all dates to avoid on MG10</i>).</li> </ul> <p>Key evidence:                      Key witness(es) and their role (e.g. eye witness, person providing identity).:                      State value of property stolen or damaged (or recovered). See Sec 9 for recording compensation details):</p>					
<p><b>2. Defendant Interview</b></p> <ul style="list-style-type: none"> <li>◆ Set out the explanation given by defendant as to <b>how/why offence happened</b>: include any <b>mitigation/remorse</b> put forward.</li> <li>◆ Note any <b>Special Warnings</b> given.</li> <li>◆ State if no comment made.</li> <li>◆ Attach copy of CCTV if shown in the interview (<b>to file</b>).</li> </ul> <p>Defendant:                      Date of interview:                      Interviewing officer(s):                      Other person(s) present:                      Summary of defendant explanation:                      Defendant's response/reaction to CCTV (if 'key evidence' and shown in I/V):                      Relevant admissions and their start/finish counter reference times:</p>					
<p><b>3. Non Key Evidence</b> – list witnesses present but not 'key'. State what evidence they contribute e.g. additional eye witness, arresting officer, charging officer; officer seizing CCTV. Record contact details of civilian witnesses on MG9 and dates to avoid on MG10.</p> <p>Name of non-key witness(es) and their role:</p>					
<p><b>4. Visually Recorded Evidence</b> – CCTV, photos, mobile phone(s). Attach a copy (<i>identify playback format</i>). Custody suite CCTV should be included as unused material unless 'key evidence'.</p> <p>Is there VRE? - select -    If 'Yes', does it provide 'key evidence'? - select -</p>					

2010/11

RESTRICTED (once complete)

RESTRICTED (when complete)

MG5

Give details of what it shows (whether 'key' or not) and include tape counter reference times for relevant key sections (i.e. defendant punching victim/kicking window)

**5. Injuries** – a medical statement is **NOT** required unless needed to interpret x-rays or describe injuries not visible to the naked eye. Victim(s)/eye witness/police officer should **describe any visible injuries**, photos should be taken and attached (if not taken, attached, state why).  
Description of injuries:

**6. Forensic Evidence** – fingerprints, drugs evidence (weight, number of wraps, etc.). Include details such as street value and purity as this is essential for sentencing information. State if drugs field tested and by whom. State timescales for a full forensic statement (if required).

**7. DIP testing** – attach DT2 for prosecutor.  
Def. 1: Tested?  Trigger off.:  Result: (pos/neg) - select - Drug: - select -  
Def. 2: Tested?  Trigger off.:  Result: (pos/neg) - select - Drug: - select -

**8. Application for Order(s) on Conviction** – consider applying for an order on conviction, e.g compensation, forfeiture/destruction (see order list).  
Defendant:  
Order(s) applied for: - select -

**9. Application for Compensation** – state if an estimate. Attach quotes/receipts if available. An address for compensation **must** be provided on MG6. (If more than one victim/defendant, list one after the other and give details in the description box).  
Defendant:                      Victim:  
Description of injury/loss and or damage:  
Amount of compensation applied for:                      Has an MG19 been sent to victim?:

**10. Other:** MG18 (TICs)?  Pre-cons/cautions attached ?  MG6?

**11. Officer's certification:** I certify that to the best of my knowledge and belief, I have not withheld any material that might reasonably be expected to undermine the prosecution or might reasonably assist the defence in early preparation of their case, including the making of a bail application. I further certify that relevant material has been recorded and retained in accordance with the CPIA 1996, Code of Practice, as amended.  
Name & rank/job title:  
Date:

**12. Supervisor's certification:** The information in parts 1 – 9 is an accurate summary of the available evidence and complies with the DPP's guidance for a Streamlined Process. The file has been built to the required standard.  
Name & rank/job title:  
Signature: ..... Date:

2010/11

RESTRICTED (once complete)

RESTRICTED (when complete)

MG5

**YOU MUST ALWAYS COMPLETE CONDITIONAL CAUTIONING SECTION BELOW.**

**Defendant:** *(if more than one defendant, use additional page)*

**Not suitable for conditional caution because  
Re-offending risk - not reduced by conditions**

**OR**

**Suitable for conditional caution because custody officer is satisfied:**

- ◆ There is sufficient evidence to charge the offence and defendant has not denied the offence or raised a defence, and
- ◆ Conditions are capable of rehabilitating the offender or for making reparations for the offence, and
- ◆ Both the circumstances of the offence and the offender make it appropriate to offer a conditional caution, and
- ◆ The offence is one for which a conditional caution can be offered (see Annex A, DPP's Guidance)

**Proposed conditions**

Condition	Compliance requirements including completion/progress check dates	Supporting evidence
1.		
2.		
3.		
4.		

2010/11

RESTRICTED (once complete)

## **Annex C - Manual of guidance templates and compliance with National File Standard**

### **A report prepared for the prosecutor (MG3)**

This report is prepared by the police for consideration by the prosecutor prior to a suspect being charged. It should set out the strengths and weaknesses of the evidence so that they can decide on the most appropriate charge.

Currently, the Manual of Guidance does not include a template for the report that goes to the prosecutor, however, the latest available version we obtained was dated 2010/11. In 11 forces we found that this version was either correctly in use or had only minor amendments that did not change the substance of the template.

However, we found that in 30 forces the template had been amended in a number of different ways. Importantly, the requirement to indicate whether the case involved a hate crime, domestic abuse or was racially or religiously motivated had been removed. This information highlights to the prosecutor that the victim is potentially vulnerable and acts as a prompt to ensure their needs are taken into consideration.

Another force had two versions of the report in use. One version included whether the case involved domestic abuse, a hate crime or was racially or religiously motivated and the other omitted this information.

### **The police report (MG5)**

The police report is also known as the case file summary. It is the report prepared by the police setting out the circumstances of the offence(s) and the evidence that is relied upon in the case.

The MoG template (version dated 2010/11) was in use in 23 forces. We noted that some forces used different dated versions but the content of the form was the same. The remaining 20 forces used versions that contained slight amendments to the standard template but these did not substantially change the layout or content of the report.

In two of these forces, the document included tick boxes to indicate whether the offence was one of domestic abuse or a hate crime. In another force the format of the report prompted the officer to indicate whether the case was one of domestic abuse/violence. These adaptations highlighted that the case may involve a vulnerable or intimidated witness. Many of these versions were dated between 2012 and 2015 – later than the templates included in the MoG.

## **Confidential report to the prosecutor (MG6)**

This report is prepared by the police and provides additional information about the case that is not disclosed to the defence. This might include details of the bad character of a defendant or greater background to the case that it is important information for the prosecutor to consider.

The MoG template report (version dated 2010/11) was in use in 21 forces. In a further 21 forces we found reports in use that contained adaptations to the MoG template. For example:

- one force had added a section to the report where an officer was to record – in cases of domestic violence – if the victim had withdrawn their statement in any previous cases;
- four forces used a report template dated 2006/07 which had substantial variations compared to the MoG version;
- six forces required information to be recorded in the report which demonstrated compliance with the victim code; and
- a number of forces had amended the report to prompt officers to include specific information in relation to: details of child witnesses; use of preventive orders against a defendant to protect a victim; and additional information in relation to repeat victims of crime.

# Annex D - Witness statement template

RESTRICTED (when complete)

MG11

<b>WITNESS STATEMENT</b>					
<b>Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B</b>					
	URN <table border="1" style="display: inline-table;"><tr><td style="width: 20px; height: 15px;"></td><td style="width: 20px; height: 15px;"></td><td style="width: 20px; height: 15px;"></td><td style="width: 20px; height: 15px;"></td></tr></table>				
Statement of:					
Age if under 18:	<i>(if over 18 insert 'over 18')</i>				
Occupation:					
This statement (consisting of _____ page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.					
Signature:	(witness)				
Date:					

Signature:

Signature witnessed by:

<b><u>Witness contact details</u></b>	URN			
Name of witness:				
Home Address:	Postcode:			
E-mail address:	Mobile:			
Home Telephone Number:	Work Telephone Number:			
Preferred means of contact ( <i>specify details for vulnerable/intimidated victims and witnesses only</i> ):				
Gender:	Date and place of birth:			
Former name:	Ethnicity Code (16 + 1):			
<b><u>DATES OF WITNESS NON-AVAILABILITY:</u></b>				
<b><u>Witness care</u></b>				
a)	Is the witness willing to attend court?	If 'No', include reason(s) on form <b>MG6</b> .		
b)	What can be done to ensure attendance?			
c)	Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? ( <i>youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case</i> )	If 'Yes' submit <b>MG2</b> with file in anticipated not guilty, contested or indictable only cases.		
d)	Does the witness have any particular needs?	If 'Yes' what are they? ( <i>Disability, healthcare, childcare, transport, disability, language difficulties, visually impaired, restricted mobility or other concerns?</i> ).		
<b><u>Witness Consent (for witness completion)</u></b>				
a)	The Victim Personal Statement scheme (victims only) has been explained to me	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
b)	I have been given the Victim Personal Statement leaflet	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
c)	I have been given the leaflet "Giving a witness statement to the police..."	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
d)	I consent to police having access to my medical record(s) in relation to this matter ( <i>obtained in accordance with local practice</i> )	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
e)	I consent to my medical record in relation to this matter being disclosed to the defence	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
f)	I consent to the statement being disclosed for the purposes of civil, or other proceedings if applicable, e.g. child care proceedings, CICA	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
g)	<b>Child witness cases only.</b> I have had the provision regarding reporting restrictions explained to me.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
	I would like CPS to apply for reporting restrictions on my behalf.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
<i>'I understand that the information recorded above will be passed on to the Witness Service, which offers help and support to witnesses pre-trial and at court.'</i>				
Signature of witness:		PRINT NAME:		
Signature of parent/guardian/appropriate adult:		PRINT NAME:		
Address and telephone number (of parent etc.), if different from above:				

Statement taken by:

Station:

Time and place statement taken:

## Annex E - Findings outside of scope

### Police decision-making

Although the scope of this inspection did not cover specifically police decision-making in relation to charging offenders, inspectors were able to evaluate the quality of decision making. The police did not apply the code test<sup>89</sup> correctly in 17 cases (10 percent) of the 171 cases where the police took the decision to charge. Where relevant, the police charge adequately reflected issues of vulnerability in 36 cases; in a further three cases it was not known if vulnerability was considered from the information available on electronic case management system.

Additionally, we found evidence of police consistently taking the decision to charge an offender without reference to prosecutors, in breach of the Director's Guidance on Charging.<sup>90</sup> Police must comply with this guidance to ensure that charging decisions are fair and consistent and fully comply with codes of practice.<sup>91</sup>

The guidance states that the police may charge:

- (a) any 'Summary Only' offence (including criminal damage where the value of the loss or damage is less than £5,000) irrespective of plea;
- (b) any offence of retail theft (shoplifting) or attempted retail theft irrespective of plea provided it is suitable for sentence in the magistrates' courts; and
- (c) any either way offence anticipated as a guilty plea and suitable for sentence in a magistrates' courts; provided that this is not:

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<sup>89</sup> The Code for Crown Prosecutors states that it is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions must be taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with. More information is available at:

[www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

<sup>90</sup> *The Director's Guidance on Charging*, Guidance to Police Officers, Crown Prosecutors issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984, Crown Prosecution Service, 4th edition, 2011,

[www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_5.html#a17](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a17)

<sup>91</sup> The code of practice for crown prosecutors and the police codes of practice under the Police and Criminal Evidence Act 1984.

- a case requiring the consent to prosecute of the Director of Public Prosecutions or Law Officer;
- a case involving a death;
- connected with terrorist activity or official secrets;
- classified as Hate Crime or Domestic Violence under CPS Policies;
- an offence of Violent Disorder or Affray;
- causing Grievous Bodily Harm or Wounding, or Actual Bodily Harm;
- a Sexual Offences Act offence committed by or upon a person under 18; or
- an offence under the Licensing Act 2003.

In this inspection, we were concerned to find that the practice of police taking decisions to charge offenders without advice from the CPS was widespread. We found examples in nearly two thirds of forces where the police had incorrectly charged offenders. We examined ten case files in each force<sup>92</sup> and found at least one breach of the guidance in twenty-three forces, two breaches in four forces; and three breaches in another force.

In total we found that in 49 of the 459 case files (11 percent) reviewed, the police should have taken advice from the CPS before deciding on the charge but did not.

A recent joint thematic inspection, *Joint inspection of the provision of charging decisions* published in May 2015,<sup>93</sup> found that in just over a third of the cases<sup>94</sup> examined the police had taken charging decisions when they should have taken advice from CPS.

That report found:

“The decision whether to charge someone with a criminal offence is a fundamental stage in the criminal justice process. Getting it right from the outset means that those who are innocent do not face the trauma of trial and there are just outcomes for the guilty and their victims.

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<sup>92</sup> 40 case files were examined in the MPS.

<sup>93</sup> *Joint inspection of the provision of charging decisions*, HMCPSI and HMIC, HMCPSI, May 2015, [www.justiceinspectors.gov.uk/cjji/wp-content/uploads/sites/2/2015/05/CJJI\\_PSC\\_May15.pdf](http://www.justiceinspectors.gov.uk/cjji/wp-content/uploads/sites/2/2015/05/CJJI_PSC_May15.pdf)

<sup>94</sup> 650 cases were examined across six forces (and four associated CPS areas)

"It is imperative that charging decisions (whether taken by the police or CPS prosecutors) are both timely and of a high quality. This inspection found that both those aspects need to improve."<sup>95</sup>

Of the 49 cases where the police did not obtain CPS advice on the charge, 24 involved domestic abuse or violence and 14 involved racially or religiously aggravated offences. Nineteen of these cases involved vulnerable or intimidated witnesses (39 percent).

For example:

- one case involved a woman who was being harassed by her former boyfriend. He had sent her unwanted pictures, let the air out of the tyres on her car and ripped plants from her garden. He had a history of domestic violence and she was afraid of him. Also, he had harassed a previous girlfriend. The police warned the man not to contact the woman but subsequently he sent her a long letter. The police decided to summons the defendant to attend court and cautioned him for interference with the victim's car. At no point was the case treated as one of domestic violence nor did the police take advice from prosecutors who are required to consider the full circumstances of the case;
- in another case the defendant, armed with a baseball bat and accompanied by three friends, went to the home of his ex-partner. There he smashed up a car belonging to her new partner and made numerous threats to them both. The victim was heavily pregnant at the time and a young child was also present at the address. A wheelchair-bound neighbour witnessed the incident taking place. The victim and her new boyfriend were afraid of the defendant and the neighbour was terrified of him. The case was not treated as one of domestic violence and the police charged the defendant only with causing criminal damage to the car, with no reference to CPS. Although the victim and witnesses were clearly in fear, none of the case papers indicated that any special measures were required.

We also found cases where the police failed to identify that the case was one of domestic abuse because the parties involved were family members rather than intimate partners.

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<sup>95</sup> *Ibid*, page 3.

Domestic abuse is defined as any incident or pattern of incidents of controlling, coercive, 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. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial and emotional.<sup>96</sup>

For example, one case involved an adult dyslexic man living with his uncle who had been assaulted by him with a cricket bat twice in one day. The police did not identify this as a case of domestic abuse, nor did they seek CPS advice. The prosecution identified at court that this was domestic abuse, but this did not lead to any consideration of how the evidence could be improved or support provided for the victim.

We also found eight cases that involved racially aggravated offences, four of which involved police officers as the principal victims. As hate crimes, these should have been referred to, and considered by, the CPS but were not. In three cases, the police charged the defendants with racially aggravated offences without reference to CPS. In the fourth case, the police charge made no reference to the racial element of the defendant's disorderly conduct and subsequent assault on the police officer, which also involved the defendant resisting arrest. The police charged the defendant only with common assault. We note previous case law that considered the issue of whether a police officer can be 'alarmed, harassed, or distressed' by offensive behaviour and language:

"It has long been the case that police officers are supposed to be experienced and sensible men and women who will have heard offensive words before and therefore are expected to have a higher tolerance to the distress such language might have on members of the public."

The stated case relating to disorderly conduct (section 5, Public Order Act 1984), DPP v Orum [1988] Crim L R 848 concluded:

"There must be a person within the sight or hearing of the suspect who is likely to be caused harassment, alarm or distress by the conduct in question. A police officer may be such a person, but remember that this is a question of fact to be decided in each case by the magistrates. In determining this, the magistrates may take into account the familiarity which police officers have with the words and conduct typically seen in Incidents of disorderly conduct."<sup>97</sup>

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<sup>96</sup> Home Office circular 003/2013 published February 2013. Available from: [www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition](http://www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition)

<sup>97</sup> "Insulting words or behaviour": Section 5 of the Public Order Act 1986, House of Commons Library Standard Note, January 2013, Available from: <http://researchbriefings.files.parliament.uk/documents/SN05760/SN05760.pdf>

It is arguable, however, whether this level of tolerance should extend to police officers who are victims of racially or religiously aggravated offences. These cases should have been referred to the CPS for consideration.

It may be the case that police officers lack adequate understanding or training on circumstances in which they can take charging decisions. Nevertheless, this trend is a matter of real concern, particularly when it involves vulnerable and intimidated witnesses.

## **CPS decision-making**

During the course of the inspection, we were able to evaluate the quality of CPS decision-making. Prosecutors' charging decisions were not compliant with the Code for Crown Prosecutors in 11 of the 284 relevant cases (4 percent). Although this is a better standard than in other assessments undertaken by HMCPSI, it should be noted that many of the files involved the least complex casework and, therefore, more straightforward decision making. There were also two additional code test failures at the subsequent full file review in relation to the decision to discontinue the case. The CPS charges reflected issues of vulnerability adequately in 138 cases but failed to do so in a further 26 cases (16 percent).

We analysed the quality and rationale of the decision making by prosecutors as recorded in the reports to the Crown Prosecutor for charging decisions (known as the MG3). Vulnerability issues were clearly set out in the document in 127 cases, but were overlooked in 79 cases (38 percent). Failure to address vulnerability at the outset can have an impact on the case strategy and the case management, ultimately having an impact on the outcome. In many cases vulnerability was disregarded until it became an issue at trial. The MG3 was not being used to record the discussions between the charging lawyer and the officer and frequently there was no record of action being taken.

Of the 460 files assessed by HMCPSI, the overall quality of the charging decision was:

- 2 decisions were assessed as excellent (0 percent);
- 212 decisions were assessed as good (46 percent);
- 94 decisions were assessed as fair (20 percent); and
- 152 decisions were assessed as poor (33 percent).

## **Flagging of vulnerability**

The CMS uses a system of 'flags' to highlight cases involving vulnerable and intimidated witnesses. Not only does this enable cases to be identified for analysis and for trends to be identified, it highlights the cases where specific policies need to be applied to meet the needs of victims and witnesses and provide them with better support.

In the file sample, 183 cases were flagged on the CMS. In 57 of these cases (31 percent) the criteria for flagging were not met. There were also a further 65 cases where there were identifiable vulnerable and intimidated witnesses but no flag was placed on the file. Overall, of the 191 cases that should have been flagged, 65 cases were not (34 percent). The flagging was prompt in 150 of the 183 flagged cases (82 percent), in the remainder the case was either not flagged promptly or we were not able to establish from the information available on CMS whether the case had been flagged at all.

It appeared that the system of flagging cases on the CMS had little significance; it did not seem to prompt any action. Homophobic, racially and religiously aggravated cases and domestic abuse cases were flagged as vulnerable, and intimidated witness cases as a matter of routine, even where it was obvious the victim was not vulnerable. In addition, it was clearly noticeable from the case files that there was a tendency to focus on the victim without looking at other witnesses. In view of the approach taken, the CPS may wish to review the purpose of the flag and the consequence of flagging a case.

## **Overall assessment of file quality**

The overall quality of police files needs to be improved. In addition to assessing the quality of the file relating to the vulnerability of victims and witnesses for this review, HMCPSI went on to assess the quality of the whole file submitted to the CPS. This review of overall file quality found that:

- 10 case files were assessed as excellent;
- 162 case files were assessed as good;
- 161 case files were assessed as fair; and
- 127 case files were assessed as poor.

With a quarter of files assessed found to be poor, it is clear there are real risks to the efficiency and effectiveness of the criminal justice system and the ability to meet the needs of victims and witnesses.

The data highlights both a gap in training but equally important is the need to enhance awareness and understanding of why file quality needs improvement: to achieve better outcomes for victims and witnesses, minimise risks and eliminate adverse consequences. It is not about conforming to a process.

In light of these observations in relation to police and CPS decision making, and in particular where vulnerable or intimidated witnesses are involved, we will consider a further piece of work which will examine these issues in more detail.