

Business as usual?

A follow-up review of the effectiveness of the
Crown Prosecution Service contribution to the
Transforming Summary Justice initiative

June 2017

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Contents

1	Introduction and background	1
	Headlines	2
	Issues to address	5
	Good practice	6
2	Methodology	9
	The team	9
	The fieldwork	9
	File examination	9
3	Governance and performance	11
	External governance	11
	Internal governance	13
	Performance	14
	Sharing best practice	20
4	Preparation for the first hearing	21
	The charging decision	21
	The police file	22
	Hard copy media	23
	Getting the defendant before the court	24
	The initial review by the CPS	25
	Disclosure	26
	Domestic abuse, youth and custody cases	27
	Defence engagement	28
	Service of papers	30
	Training	33
5	The first hearing	35
	Getting the right cases into the right courts	35
	The right personnel at the hearing	37
	Effectiveness of case progression at the first hearing	38
	The Preparation for Effective Trial form	41
	Police support for anticipated not guilty hearings	42
	Connectivity for each agency	43
6	Case progression after the first hearing	45

Annexes	51
A The ten TSJ characteristics	51
B File examination findings	53
C Performance data	57
D Summary of court observations	59
E Survey results for administrative staff in the CPS Areas visited	75
F Update on suggested steps from TSJ: An early perspective of the CPS contribution ..	77
G Glossary	81

1 Introduction and background

1.1 This report details the findings of an inspection undertaken by Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi) of the Crown Prosecution Service (CPS) contribution to the magistrates' courts Transforming Summary Justice (TSJ) initiative, which was implemented across England and Wales on 1 June 2015. The inspection follows up on an earlier report¹ that we published in February 2016, which reflected on the CPS position at that early stage.

1.2 We indicated in that report our intention to follow-up on this topic. Due to the passage of time since implementation we decided that it was opportune to re-visit the CPS and assess its current contribution to this important initiative. In our earlier report we considered the process up to the first hearing, whereas in this report we assess how magistrates' court cases are handled by the CPS until they are finalised.

1.3 TSJ is a cross-agency criminal justice scheme which aims to reform the way in which criminal casework is dealt with in the magistrates' courts by reducing delay, having fewer hearings and more effective trials. Swifter justice will improve the victim and witness experience and will enable all criminal justice partners to work more efficiently.

1.4 Based on the ten characteristics which are set out in annex A (these are also highlighted at relevant parts in the report), TSJ requires commitment from each of the criminal justice agencies to deliver in their own particular field. Whilst this report focuses on the role of the CPS, it is clear that the effective contribution of all the agencies taken as a whole has the greatest potential to deliver significant improvement.

1.5 We found that TSJ is firmly embedded across England and Wales and all of the criminal justice agencies accept the need for it to work and are working together to achieve success. Although there is a high level of commitment, at this stage TSJ cannot yet be viewed as 'business as usual'. Only limited improvements in performance have been realised since its introduction. Whilst it is encouraging to note that significant good work has been done by the CPS, there is still much to do. This report shows the inconsistency in performance across England and Wales, which is not satisfactory for a national initiative when one considers the impact that this has on the service that is ultimately delivered to the public.

1.6 Whilst we found internal governance arrangements to be strong, the need for effective external governance arrangements at national and local level cannot be overestimated and the CPS must ensure that focus is maintained or re-energised as appropriate. The future strategy of the CPS is predicated on the assumption that TSJ is fully operational so it cannot be allowed to evaporate, as has happened to previous initiatives.

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

1.7 In our earlier report we suggested a few preliminary steps which are referenced at annex F. In this report we detail a number of issues to be addressed to support the continuous improvement required.

1.8 We would like to thank all those who gave their time to assist us in gathering the evidence required for the compilation of this report.

Headlines

1.9 The significance of high level strategic oversight cannot be underestimated in order to deliver the desired reforms and we found that there is currently some uncertainty around the arrangements in place to ensure that national change can be driven effectively when necessary.

1.10 A national operational cross-agency TSJ Group has been in place since 2013. The group still meets regularly to ensure that the focus on TSJ is maintained by all the partner agencies. These meetings are well led, and open and honest debate takes place about the obstacles to delivering the aims of TSJ.

1.11 At an Area level there is regular liaison between the CPS, Her Majesty's Courts and Tribunals Service (HMCTS) and the police. We found a consensus amongst the criminal justice partners that the cross-agency nature of TSJ has improved working relationships. However, frustrations were expressed about the fact that TSJ could not yet be considered business as usual, with meetings still dominated by compliance issues rather than focussing on improving performance.

1.12 A joint 'dashboard' is used to monitor performance. Analysis of the outcomes over the four quarters to December 2016 reveals that performance is mixed. The anticipated improvement in overall performance has not yet been achieved.

1.13 We found a striking difference in the performance ranges across the CPS Areas. As a consequence, the resources needed by the CPS and its criminal justice partners to fulfil their obligations and the experience of victims and witnesses can differ significantly across England and Wales.

1.14 The current dashboard of measures was established at the implementation phase of TSJ and the focus is currently on the front end of the process. The time is now right for these measures to be reviewed, to give consideration to what is happening throughout the life of the case.

1.15 Our review of the TSJ dashboard highlighted an issue with the measurement and understanding of the hearings per case performance measures. If a defendant fails to attend for the first hearing and a warrant is issued, that hearing is not included in the computation of the total number of hearings. This was not widely understood across the CPS or amongst its criminal justice partners. The measure's description is misleading.

1.16 The defendant's failure to attend is the biggest single reason why first hearings are ineffective. We found that 68.4% of the cases in our file sample had an effective first hearing. The CPS was responsible for ineffective hearings in 15.4% of relevant cases, which is an improvement on the findings in our earlier report. In some CPS Areas work is being undertaken with the police to devise processes by which the prosecution can seek to prove the case in absence where a defendant fails to attend the first hearing.

1.17 The ability of the CPS to manage and progress cases effectively is hampered by the quality of the police file. Only 39.6% of the files that we examined complied with the National File Standard for the type of case. The police rely on the CPS to give good cogent feedback on the quality of police files, but we found that this was provided in only 26.3% of relevant cases. In September 2016 a National Police File Quality Assessment scheme was introduced and the CPS needs to ensure that this monitoring process is followed by its staff and that the work with police partners drives improvement.

1.18 There is still an inability to properly deal with hard copy media; this is a long-standing and much documented issue, which impacts on effective case progression.

1.19 The model and structure of the CPS magistrates' courts units and the volume of work allocated to each prosecutor varies from Area to Area. Often the message we received was that there is an unachievable level of expectation regarding workload for prosecutors and it is of concern that crucial tasks after the first hearing are not being dealt with effectively, or at all.

1.20 Domestic abuse, youth and custody cases comprise a considerable body of work which is not consistently handled across England and Wales in accordance with the principles of TSJ.

1.21 Examples of defence engagement before the first hearing were very rare. The expectation that the prosecutor will attempt to engage with the defence before the first hearing date in every contested magistrates' court case appears in practice to be unrealistic. Defence engagement should be proportionate to the circumstances of the individual case.

1.22 The timeliness of service of the Initial Details of the Prosecution Case (IDPC) remains weak, with only 60.1% of papers served by the CPS in accordance with TSJ timescales. With the advent of digital service further problems arise about how to provide unrepresented defendants with their papers. There is a lack of consistency of approach by prosecutors and uncertainty about the role of HMCTS in this regard.

1.23 The importance of appropriate brigading of cases in courts cannot be overestimated and remains a challenge for the CPS. We observed a total of 48 half day court sessions, during which 431 cases were handled, to assess what was happening at the first hearing. Our findings support the performance data; there is much inconsistency across England and Wales around how cases are dealt with in court in terms of the numbers and types of cases allocated. There is still much work to be done at a local, and potentially national, level by way of partnership working to ensure the proper brigading of TSJ cases to facilitate best use of the CPS and HMCTS's resources.

1.24 In most of the courts we observed the prosecutor was of the appropriate grade for the court, but frustration was expressed by stakeholders at the inability or unwillingness of some prosecutors to make decisions. It was apparent from our court observations and interviews that the quality of CPS case management is enhanced considerably where a robust approach is taken by the court. There are still instances in the prosecution process of duplication of effort and the potential for things to be missed. This is most evident in the completion of the Preparation for Effective Trial forms which are still being dealt with in differing ways; this should be addressed urgently.

1.25 There are different interpretations about what amounts to adequate police support at court and very mixed views within the police about the usefulness or otherwise of having officers or civilian staff sited in court throughout the proceedings.

1.26 The availability of secure court Wi-Fi for CPS prosecutors has vastly improved since our last inspection bringing many benefits to facilitate case progression, including live access to the CPS case management system and use of the CPS Prosecutor App.

1.27 The focus on the first hearing has resulted in the initial review being prioritised at the expense of the reviews required after the first hearing. We found that 77.4% of cases were further reviewed where necessary, but only 52.4% of those reviews were timely, with significant variations in performance across the CPS. The lack of a timely effective review by the CPS after the first hearing is a source of frustration to all involved in the criminal justice process and impacts on the efficient running of the court, the service delivered to victims and witnesses, and whether the outcome is successful or not.

1.28 If the aims of TSJ are to be fully achieved then the CPS must have an effective process for timely review of cases after the first hearing, with actions undertaken promptly. CPS managers must ensure that there are sufficient resources allocated to enable the necessary work to be done.

Issues to address

- 1 The CPS should seek to influence its criminal justice partners and the senior judiciary to refine and improve the arrangements for the high level governance of the TSJ initiative (paragraph 3.6).

 - 2 The CPS should engage with HMCTS and the senior judiciary to review the effectiveness of the current TSJ performance measures and identify those which will best drive efficiency in the magistrates' courts and improve the service to victims and witnesses (paragraph 3.23)

 - 3 All guidance documents defining the counting mechanism for computation of the performance measures should be checked to ensure that the descriptions accurately reflect what they record by a member of the CPS Core Quality Management Performance Unit, revised if appropriate and re-circulated to CPS TSJ Area leads for onward distribution to CPS staff and relevant criminal justice partners (paragraph 3.40).

 - 4 CPS Areas need to ensure that National Police File Quality Assessment monitoring is conducted consistently by their staff, and that their work with partners drives performance improvement (paragraph 4.12).

 - 5 The CPS request the appropriate governing body with responsibility for national oversight of TSJ to clarify the scope of TSJ and issue a statement detailing expectations around the application of the TSJ principles to cover all magistrates' courts cases. This should include cases involving domestic abuse, youths and defendants brought to court in custody for the first hearing (paragraph 4.36).

 - 6 The CPS should review the current arrangements for engagement between the parties and, if necessary, seek clarification or change from the Criminal Procedure Rule Committee. Following revision guidance should be issued to prosecutors about what is expected in particular cases (paragraph 4.40).

 - 7 The CPS TSJ Area leads should work with the police and HMCTS to ensure that:
 - cases are listed in the correct courts
 - there is compliance with the guidance on the number of cases to schedule
 - non-TSJ work is kept to an absolute minimum to facilitate best case progression (paragraph 5.9).
-

8 The CPS Area TSJ leads should ensure that all prosecutors are clear about the level of authority that they have to make casework decisions at court and that this authority is appropriate to grade and experience and is regularly reviewed (paragraph 5.13).

9 The CPS should ensure that a Preparation for Effective Trial form is completed by the reviewing lawyer and that it encourages the use of that form by the defence and the Legal Advisor at the first hearing (paragraph 5.36).

10 The CPS should review with its police counterparts the current local arrangements to provide police support at court and should ensure that all advocates are aware of how they can access and use this support (paragraph 5.41).

11 The CPS should ensure delivery of mandatory training for prosecutors on case management system (CMS) task management. The effectiveness of this training should be evaluated (paragraph 6.7).

12 The CPS should review the management of the magistrates' courts review teams to ensure that there is timely review of contested cases and effective case progression after the first hearing and that sufficient resources are allocated to enable tasks to be dealt with promptly (paragraph 6.18).

Good practice

1 In CPS East of England work has been done to analyse and check the accuracy of data compiled by HMCTS to record the reasons for cracked and ineffective trials (paragraph 3.33).

2 In the North East HMCTS region a cross-agency TSJ conference took place to re-invigorate TSJ and drive up performance (paragraph 3.42).

3 Monthly telephone conferences take place involving all CPS TSJ Area leads, facilitated by Headquarters staff, to share concerns and find solutions to problems (paragraph 3.48).

4 In CPS London the police embedded their body-worn video recordings in the summary of evidence (MG5) so that it was available for review by CPS prosecutors and to the defence when the document was served. CPS Areas should encourage their local police forces to follow this good practice (paragraph 4.15).

5 Communicating with defence representatives by:

- inserting information within the digital Initial Details of the Prosecution Case served upon the defence (CPS London)
- obtaining a contact list from the legal aid agency of all criminal defence firms and using it to inform them of changes (CPS Cymru-Wales)
- preparing and circulating defence newsletters (CPS London and CPS East of England) (paragraph 4.41).

6 In CPS Mersey-Cheshire a comprehensive set of desktop instructions had been developed for use by administrative staff to assist them in carrying out their TSJ roles (paragraph 4.61).

7 Providing a designated point of contact for agents to obtain instructions in real time (paragraph 5.13).

8 Carrying out joint court observations with HMCTS managers. This collaborative work enables the identification of joint and separate issues to address (paragraph 5.31).



2 Methodology

The team

2.1 The inspection team comprised the lead and two other legal inspectors and one business management inspector. The team was also assisted by an administrative officer and a data analyst.

The fieldwork

2.2 The team visited five CPS Areas (South East, London, Mersey-Cheshire, Cymru-Wales and East of England) during February and March 2017. In each of these Areas we interviewed the CPS TSJ leads and legal managers with responsibility for magistrates' court work. Focus groups were held with prosecutors based in the magistrates' courts teams. The views of the administrative grades were sought by way of an electronic questionnaire which was forwarded to those based in the Areas visited.

2.3 At a national level our interviewees included the CPS national lead for TSJ, members of the national cross-agency TSJ Group and members of the CPS Compliance and Assurance Team.

2.4 The CPS provided us with an amount of documentation to evidence its position at a local and national level.

2.5 External interviews were held with TSJ police leads, TSJ leads within HMCTS, a Probation representative, members of the defence community, the Senior District Judge, District Judges, magistrates and other interested stakeholders. Some interviews were held face to face whilst others were conducted on the telephone. We also considered relevant documentation provided by stakeholders.

2.6 We observed 48 magistrates' courts sittings and spoke with prosecutors and defence representatives during these observations. All the courts observed were in the Areas referred to above, save for three sittings in CPS Yorkshire and Humberside. Our findings are referred to in relevant parts of this report and summarised at annex D.

File examination

2.7 Before we visited the Areas a total of 420 files were assessed using a bespoke question set to assess compliance with the TSJ ten characteristics and file quality. The file sample was comprised of 30 files from each of the 13 CPS Areas save for London, for which we assessed 60 files. Each sample consisted of 20 not guilty anticipated plea (NGAP) cases and ten guilty anticipated plea (GAP) cases (40 NGAP and 20 GAP for London). Our findings are referred to in relevant parts of this report and summarised at annex B.



3 Governance and performance

<p>Characteristic 8: Clear expectations of effectiveness</p>

External governance

3.1 It is accepted by the CPS that previous initiatives to reform summary justice met with limited success due, in some part, to inadequate governance arrangements. As a cross-agency criminal justice initiative TSJ was given a governance structure designed to bring together the different agencies to deliver the desired reforms.

3.2 The external governance structure is split between the operational and judicial aspects. The former overall reporting authority was the National Criminal Justice Board (NCJB), led by the Home Secretary and the Minister of State for Policing and Criminal Justice, but this has now been replaced by the Criminal Business Authority. The Judicial Oversight Group (JOG) headed by the Senior Presiding Judge plays a leading role in external governance. The significance of high level oversight and drive should not be underestimated, but we found that there is currently uncertainty around the linkage between the operational and judicial governance structure.

3.3 Whilst this inspection focussed on operational delivery, the importance of the influence of the JOG was recognised in interviews with senior CPS managers and there have been significant issues for the JOG to deal with recently. These include the implementation and delivery of the judicially led Crown Court Better Case Management (BCM) scheme and rationalisation of the court estate. Concerns were raised with us by the CPS about the capacity of this group to have sufficient focus on TSJ with these other pressing demands.

3.4 Although the NCJB commissioned the original TSJ work as part of the criminal justice strategy and action plan,² the Joint National Improvement Board (JNIB) is designed to give a more 'hands on' level of overview with responsibility for oversight of TSJ performance. Inspectors were informed of a perceived uncertainty and lack of clarity around the role of the JNIB, making decisions about national change difficult. Meetings are not as frequent as previously - the last two meetings had been cancelled at the time of the inspection.

3.5 A recent review of governance arrangements has resulted in the creation of a judicially led Criminal Business Authority (CBA). Inspectors were informed that there had been an expectation that representation on the CBA would include senior members of the CPS, but this had not happened at the time of our inspection. It had been anticipated

² *Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System*; Ministry of Justice; June 2013.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/209659/transforming-cjs-2013.pdf

that all groups would feed into the CBA, but we found a lack of clarity around the current status of these governance arrangements and the CBA had only met once, back in 2016. It was acknowledged by the CPS that because of the numerous governance groups in place some were not as effective as they could be and there was much overlap in their remit.

3.6 At the time of the inspection we were informed that the role of the JNIB was under review to seek to align it better to TSJ and BCM. The aim was that the JNIB would be more able to examine issues and take actions forward. There was acknowledgement at a senior level of the need to link more closely these two initiatives; these are central to the way in which all criminal cases are handled.

Issue to address

The CPS should seek to influence its criminal justice partners and the senior judiciary to refine and improve the arrangements for the high level governance of the TSJ initiative.

3.7 A national cross-agency TSJ Group has been in place, beneath the JNIB, since 2013. This has been chaired since inception by the Chief Crown Prosecutor for CPS South West, who has provided drive and taken a lead in the design, national roll out and post-implementation work to ensure compliance with the programme. Made up of key representatives from all the relevant agencies, the group has monitored progress of the implementation of TSJ in a variety of ways, including regular reporting against local implementation plans and monitoring performance against the dashboard of TSJ measures.

3.8 The group still meets regularly to ensure that a focus on TSJ is maintained by all partner agencies. Stakeholders stated that these meetings were well led, and open and honest debate takes place about the obstacles to delivering the aims of TSJ, but it is apparent that the commitment at the group does not routinely translate into performance improvement of service delivery.

3.9 There is also a TSJ National Implementation Team (NIT) comprising representatives from the CPS, police and HMCTS, which supports the work of the national TSJ Group. The NIT has conducted a series of detailed visits to a number of CPS Areas and courts to assess how TSJ is working and to seek best practice. It identified that TSJ cannot yet be regarded as successfully delivered, with wide variations in performance across England and Wales. Similar visits undertaken by the CPS Compliance and Assurance Team (CAT) reached similar conclusions. As a result of these visits recommendations were made to the Areas visited to assist improvement.

Internal governance

3.10 Internal governance within the CPS presents a clearer picture. The CPS Executive Group oversees operational delivery, receiving updates from the Magistrates' Court Business Group (MCBG) which has primary oversight of CPS business in the magistrates' courts.

3.11 The MCBG was previously known as the TSJ Implementation Group but the name was changed following roll out of TSJ and the group now has a wider and more permanent role. Chaired by the Chief Crown Prosecutor for South West, the MCBG comprises a mix of senior legal and business managers and meets every six weeks to review magistrates' court performance.

3.12 The MCBG receives reports from the CAT on Area compliance and thematic issues. The work of the CAT also feeds into the quarterly Area Performance Reviews. Accountability at this level demonstrates the importance that the CPS has given to implementing TSJ in the magistrates' courts successfully.

3.13 Key performance issues are monitored and followed up as part of MCBG accountability. For example, the slow decline in the rate of guilty pleas at first hearing is being monitored by the group and there is an action to obtain further information to establish the reasons for the decline. The group has also identified that local variances in performance are affecting overall national performance. Liaison is ongoing with the JNIB and the JOG about the disparity in performance in relation to this issue and non-compliance with the TSJ characteristic of brigading cases.

3.14 The last inspection found that at Area level implementation commenced with the establishment of a cross-agency local implementation team under the auspices of one or more of the 42 Local Criminal Justice Boards. We now find that there is no uniform approach to the way that TSJ is governed locally. The governance models currently deployed include an overarching Regional Criminal Justice Board, specific subgroups and police force specific groups. There are also differences in how these groups are chaired with CPS, police and HMCTS representatives variously taking responsibility.

3.15 Despite the variety of local governance boards and groups there is a uniform desire to make TSJ work. At an Area level it is clear that regular liaison arrangements between the CPS, HMCTS and the police are in place. There is a consensus amongst the criminal justice partners that the cross-agency nature of TSJ has improved working relationships.

3.16 We noted disquiet from certain interviewees about the effectiveness of some groups to make the necessary changes and improve delivery. Frustrations were also expressed about the fact that TSJ could not yet be considered business as usual, with meetings still dominated by compliance issues rather than performance improvement. Concerns included long-standing issues such as police file quality, appropriate brigading of cases, late service of papers and the lack of timely reviews by the CPS. Many of the same problems were being raised due to the differing pressures on each of the partner organisations. Such matters are covered in more detail later in this report.

Performance

3.17 One innovative feature of TSJ is the agreement between all the criminal justice agencies that there should be a joint performance dashboard to monitor performance. A set of specific measures was agreed by the JNIB shortly after the TSJ implementation date.

3.18 The dashboard is intended to record progress towards establishing greater efficiency in the magistrates' courts through fewer hearings, more effective trials, and improved overall timeliness. It does not feature case outcomes or measure compliance with TSJ processes. The dashboard comprises 16 measures based on data sourced from both the CPS and HMCTS. The measures are weighted so that an overall scorecard is produced at local, Area and regional level.

3.19 We have produced a table at annex C that illustrates some of the performance data included within the TSJ dashboard, which also reflects the year to date position. When the measures are reviewed on a 12 month rolling year to date it levels out quarterly fluctuations and long term trends are more readily identified. Due to the length of time that has now passed since the TSJ implementation date this is now possible for the 12 month periods to June, September and December 2016.

3.20 At the time of this inspection performance data was available up to the end of the third quarter of 2016-17 (October-December 2016) and our analysis of the outcomes over the four quarters to December 2016 reveals that performance is mixed. The anticipated improvement in overall performance has not yet been achieved. Whilst some measures demonstrate slight improvement, others have worsened slightly and the rest have remained fairly constant.

3.21 The current dashboard of measures was established at the implementation phase of TSJ and for that reason the measures understandably focus on the front end of the process. In interviews with CPS and HMCTS staff it was acknowledged that there is now an opportunity to give consideration to measures later in the process and that was the consensus view of the way forward. Some suggestions included looking at the time between a not guilty plea and the trial, the overall conviction rates (which would not be an HMCTS measures of performance), and ineffective trials and the reasons behind these.

3.22 Another view expressed was that there were too many measures at present and that focus on two or three measures such as the effective trial rate, the proportion of guilty pleas at first hearing and the percentage of contested cases resulting in conviction (again not a HMCTS measure), would be better going forward.

3.23 A renewed focus would provide the CPS TSJ leads with a more comprehensive view of the impact of TSJ overall and, in particular, what is happening after the first hearing. However, whilst opinion was consistent about the need to develop the performance measures to drive improvement, there was equal concern that TSJ was still not yet embedded as business as usual.

Issue to address

The CPS should engage with HMCTS and the senior judiciary to review the effectiveness of the current TSJ performance measures and identify those which will best drive efficiency in the magistrates' courts and improve the service to victims and witnesses.

3.24 The clearest improvement can be seen in the time taken from the first hearing to completion of the case. This is illustrated by the average number of days that cases are in the criminal justice system. Comparison of the quarters between the fourth quarter of 2015-16 (January-March 2016) and third quarter of 2016-17 (October-December 2016) show that the average number of days from first listing to completion has reduced by 9.4 days for all cases and 17.9 days for contested cases. The data reveals a consistent improving trend in this measure since implementation of TSJ, although it should also be noted that the average number of days from charge to first listing has increased slightly, by just over three days over the same period.

3.25 An important aim of TSJ is to obtain more guilty pleas earlier in the process. Not only does this save the limited resources of the criminal justice agencies, it also lessens the impact on victims and witnesses and can assist the defendant in the credit given for an early guilty plea. A comparison of the 12 months to June 2016 with the 12 months to December 2016 reveals that the proportion of guilty pleas at first hearing has slightly worsened from 70.1% to 69.3%. We would also point out that there has been an increase in the non-attendance of defendants with a resultant increase in the number of warrants issued at the first hearing, the impact of which cannot be explored further in this report. However, as a consequence we understand that the CPS is to introduce some changes around the computation of this measure which will lead to a substantial data improvement of around 5% and so will be raising its internal target by 6% for this measure.

3.26 TSJ also seeks to reduce the number of hearings per case in the magistrates' court, both for those resulting in a guilty plea and those which proceed to a contested hearing. The aspiration is that there should only be one magistrates' court hearing in guilty plea cases and two where the offence is denied. There can be a number of reasons why a case generates more than one or two hearings, which we discuss later in the report. Some reasons for adjournments are entirely outside the control of the CPS, including the need to adjourn to another date for pre-sentence reports or the defendant failing to appear.

3.27 Improvements have been made in the average number of hearings it takes to deal with both guilty plea and contested cases. For the 12 months to December 2016, nationally there were on average 1.8 hearings in guilty plea cases and 3.51 in contested cases. In our file sample of finalised cases we found that overall 65.9% of cases were dealt with in one or two hearings, regardless of the outcome.

3.28 Although at first glance the improvements may not appear significant, when taking into consideration the size of the national caseload this can have a material impact on reducing the workload of both HMCTS and the CPS. If improvements delivered in 2016 had not been made and hearings per case had remained unchanged from 2015 there would have been almost 39,000 additional hearings (34,000 hearings in guilty plea cases and over 4,600 in contested cases).

3.29 Despite this improvement there is no room for complacency, ineffective hearings impact not only on resources but also on the service provided to victims and witnesses. The case study below demonstrates that there is still much work to be done.

Case study

In a case involving allegations of theft and assault on a police officer, the theft was admitted but the assault was initially denied. The case took nine hearings before a guilty plea to the assault was entered and the defendant was sentenced at that same hearing. Whilst some of the delay was caused due to the defendant's failure to answer his bail, more could have been done by all the parties to get the case dealt with at an earlier stage. The matter was eventually concluded the day before the date fixed for trial. Although the witness's attendance had been cancelled this had only happened five days earlier.

3.30 If cases are to be dealt with in the optimum number of hearings, the CPS has to stop those which have no realistic prospect of success at the earliest possible stage. Nationally there has been no improvement in this regard; the proportion of cases dropped at first hearing has actually fallen from 29.4% for the 12 months to June 2016 to 28.6% for the 12 months to December 2016. The number of cases dropped later in the process (at the third hearing or later) has seen no change. However, the levels of discontinuance have improved over this period for cases charged both by the CPS and by the police. For the 12 months to June 2016 the discontinuance figure was 14.7% for CPS charged cases compared with 14.2% for the 12 months to December 2016 and the police discontinuance rate improved from 8.6% to 8.2% over the same period.

3.31 Another aspect which benefits victims and witnesses and the criminal justice system is an improving effective trial rate, which is the proportion of cases that proceed to trial on the day set down. This is indicative of how well the parties are either prepared for the contested hearing or weeding out weak cases at the earliest possible opportunity, although some defendants will not admit guilt until the last possible moment.

3.32 Comparison of performance for the 12 months to June 2016 with the 12 months to December 2016 reveals that the effective trial rate has declined slightly from 47.6% to 47.1%; this is disappointing.

3.33 Almost all CPS managers queried the accuracy of the raw data, which is compiled by HMCTS from forms filled out in court when a cracked or ineffective trial occurs. However, CPS East of England had done some analysis and found that this data was more accurate than it had anticipated. This is **good practice**. This is important data (which has always been collected in a paper based format) and the CPS may consider it appropriate to seek a digital solution to its provision with its HMCTS partners.

3.34 Subject to the caveat about concerns over the accuracy of the data, it is worth noting that the proportion of cracked trials attributable to the prosecution increased from 18.1% in the 12 months to June 2016 to 18.5% for the 12 months to December 2016. Approximately 40.0% of the cases where the cracked trial was attributable to the prosecution arose because proceedings were dropped on the day of trial as a consequence of either the evidential or the public interest limb of the Code for Crown Prosecutors (the Code)³ not being met.

3.35 This performance reinforces our findings (in chapter 6) that cases are not being reviewed promptly when significant material arrives after the first hearing.

³ *Code for Crown Prosecutors*; CPS; January 2013.
www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html

3.36 We also analysed whether those cases which did proceed to trial were resulting in more convictions. Nationally, the proportion had risen from 63.0% for the 12 months to June 2016 to 64.0% for the 12 months to December 2016. Each of the Areas visited as part of our fieldwork was also showing an increase in successful trial outcomes. Whilst it may not be proper for this to be a measure owned by other agencies, as the CPS already captures this information, this is something that they may wish to consider adding to their own internal suite of TSJ performance measures.

3.37 We are encouraged to note that there is now more discussion about effective trial performance in cross-agency meetings than at the time of our first inspection of TSJ. However, we were informed that some meetings continue to be dominated by compliance issues, such as timeliness of service of the Initial Details of the Prosecution Case, which ought to have been resolved by this stage.

3.38 The Areas visited included the better and poorer performers in terms of the TSJ measures. Whilst the national trends were generally reflected, there was a striking difference in the ranges of performance. For instance, the average number of days taken from first listing to completion for not guilty or no plea cases ranged from 35.2 days to 89.3 days for the third quarter of 2016-17. For the same quarter, the effective trial rate ranged between 34.2% and 49.3% and the level of guilty pleas at the first hearing between 60.9% and 74.6%.

3.39 A review of the TSJ dashboard highlighted an issue with the measurement and understanding of the hearings per case performance measures. This measure only records “hearings” where an “adjournment” is recorded. If a warrant is issued then the hearing is counted as a “warrant” rather than an “adjournment”. Therefore if a defendant fails to attend at the first hearing and a warrant is issued this is not recorded in the computation of the “hearings per case” measure.

3.40 The CPS accepts that whilst the TSJ measure is named “average number of hearings per case” it is actually counting the average number of adjournments per defendant (plus one additional hearing to account for the final hearing). This is in line with the CPS definition document. However, during interviews with CPS TSJ Area leads and HMCTS partners this nuance was, understandably, not understood or appreciated. The title given to the measure almost inevitably has generated the general understanding that it reflected all hearings set for defendants, irrespective of whether these are adjourned or not. As a consequence, the true impact of all hearings on the courts and the CPS in the Areas is not fully recognised or accounted for by this measure.

Issue to address

All guidance documents defining the counting mechanism for computation of the performance measures should be checked to ensure that the descriptions accurately reflect what they record by a member of the CPS Core Quality Management Performance Unit, revised if appropriate and re-circulated to CPS TSJ Area leads for onward distribution to CPS staff and relevant criminal justice partners.

3.41 This issue could become more acute if the police continue to increase their use of postal requisitions to direct defendants to court. This brings the potential for an increase in defendants failing to attend at the first hearing, which in turn could reduce the accuracy of the hearings per case measure further, if more warrants are issued as a consequence.

3.42 During the course of the inspection, we observed a conference on TSJ hosted by HMCTS in the North East region intended to re-invigorate TSJ and drive up performance. Delegates at operational and strategic levels attended from all the relevant agencies. A localised set of measures had been developed and used to assess TSJ performance across all magistrates' courts in the region. These included a combination of some of the national key measures and other locally agreed ones which enabled delegates to analyse local court performance and thus increase understanding and accountability. Small multi-agency groups based around specific court centres then worked together to agree cross-agency action plans. Whilst it is too early to measure improvement as a consequence, the close cross-agency working demonstrated is an example of **good practice**.

3.43 We found that there was a reasonable level of awareness around TSJ performance amongst CPS staff in interviews and focus groups in the Areas visited. Differing methods of communicating performance information were used. Some Areas prepare updates which are delivered verbally in team meetings or via email, whilst others direct staff to performance information on local intranets, and often a combination of means are utilised. Some Areas identify TSJ performance in isolation while others pass information on as part of general performance.

3.44 The responses to our survey of administrative staff across the Areas visited were encouraging, with 85.4% of administrative staff stating that they were reasonably or completely aware of how well their team was delivering TSJ. Staff also showed good awareness of their TSJ performance compared to that of others, with a quarter stating that they felt completely aware and a further 47.9% reasonably aware.

Sharing best practice

3.45 In our original report we suggested that consideration be given to the setting up of a national forum for the CPS Area TSJ leads and national project team representatives to facilitate best use of resources by sharing good practice, building engagement and maintaining momentum.

3.46 As a result a national conference for Area TSJ leads was held on 7 July 2016 to launch the forum. This was led by the TSJ Project Team and focussed on sharing Area good practice around key issues and emphasised the need for compliance. The feedback given by delegates enabled CPS Headquarters to provide targeted support, which has included Area visits and circulation of best practice documentation to be shared with criminal justice partners, to facilitate and inform local negotiations.

3.47 The feedback that we received from delegates was very positive. One delegate stated that the speeches from national leads were motivational and the importance of this should not be underestimated at a time when managers are working under increased pressure.

3.48 Monthly telephone conference 'dial-ins' of TSJ leads commenced in January 2017 and participants told us that these provide a good opportunity to discuss how to deal with problems and share best practice. We understand that several of the challenging issues that we raise later in this report have been discussed, including different processes to prove cases in the absence of the defendant and how to ensure that the unrepresented defendant receives the correct paperwork. We find this engagement to be **good practice** and hope that the dial-ins continue to be held, to enable the TSJ leads to share concerns and find solutions.

4 Preparation for the first hearing

The charging decision

4.1 The most important decision in the prosecution process is the decision to charge a suspect or not. It is essential that quality charging decisions are made by the police or the CPS, as appropriate, for the criminal justice system to work most efficiently.

4.2 The Director's Guidance on Charging⁴ provides guidance to police officers and Crown Prosecutors as to their differing powers to charge offences. In our file sample we found that the CPS applied the Code correctly at the charging stage in 94.9% of cases, which was a slight improvement on the 94.1% recorded in our earlier report. Police charging decisions were correct in fewer cases (91.4%) and also less often than in our previous file sample (95.3%). These figures are broadly in line with the findings from our annual assurance programme where we look at casework in specific CPS Areas.

4.3 The police took the decision to charge when they should have referred the matter to the CPS for authorisation in 9.5% of cases, which is marginally worse than that recorded in our previous sample (8.9%). However, they correctly identified the likely plea in 91.0% of cases, an improvement on the already good finding from last time. The CPS charging advice identified the anticipated plea correctly in 90.9% of cases; very slightly less than the police. Wrongly anticipating a plea or incorrect advice on allocation can have significant impact on the work that is needed.

4.4 CPS charging advices were weak on case analysis and strategy, with only 54.6% fully meeting all the required elements, an aspect that has been criticised in thematic and Area-based reports consistently for a number of years. It was a similar position in regard to the standard of instructions to the court prosecutor (50.5% fully met).

4.5 Staff in CPS Areas expressed concerns about whether CPS Direct (CPSD) lawyers were correctly identifying cases as suitable for trial in the magistrates' court and the anticipated plea. Area lawyers were being urged to ensure that cases appropriate for summary trial were charged in a way that facilitated this and perhaps the same message was not reaching CPSD lawyers. Charging either way offences when a summary only offence would provide adequate sentencing powers in the magistrates' courts can impact negatively on the work in the Crown Court. It is interesting to note a frequent complaint from the judiciary was the opposite; that the CPS sometimes undercharged cases, particularly those involving assaults.

⁴ *The Director's Guidance on Charging fifth edition*; CPS; May 2013.
www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html

Characteristic 1: Quality assured police files

The police file

4.6 The ability of the CPS to manage and progress cases effectively is hampered by the quality of the police file. Only 39.6% of the files that we examined complied with the National File Standard (NFS)⁵ for the type of case. This is a decline in performance since we reported in 2016, when compliance with the NFS was 42.8%. There were significant geographical variations; the CPS Area receiving the worst service was assessed at only 16.9% compliant and the best was a creditable 81.5%. NGAP case files were slightly better than GAP ones.

4.7 We found that the main reason the police file failed to meet the NFS was by overbuilding the file (27.5%) and this was understandably much more often the reason in GAP cases (63.9%) rather than in NGAP ones (7.8%). The overbuild in some Areas was partly a consequence of pilots running to prove cases in absence when a defendant fails to attend the first hearing (we refer to one such pilot in Yorkshire and Humberside at paragraph 4.20). Lack of a Victim Personal Statement was also a significant failing (22.0%) as it was when we last reported. Police compliance with their disclosure obligations is also in need of improvement, 14.0% of files failed for this reason, which is discussed later in the report.

4.8 In a number of court observations the police file did not include more than the first page of the charge sheet, so prosecutors were unable to tell the court what bail conditions had been imposed nor prove the defendant had signed it, which could impact on the court's willingness to issue a warrant if there is no attendance.

4.9 Police files were timely in 78.2% of the cases we examined, with GAP files being submitted on time more often than NGAPs. Timeliness has improved since we last reported (67.0%).

4.10 These findings were supported by what we were told by prosecutors and defence practitioners and there was also an acceptance by police stakeholders that work needed to be done on the quality of their files. However, the police depend on the CPS providing good quality feedback and there was even less evidence of that during this inspection than the last one (26.3% compared with 32.1% previously).

⁵ *National File Standard*; CPS; May 2015.
www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5_annex_c.pdf

4.11 In September 2016 a National Police File Quality Assessment process was introduced. There have been some snags with the electronic recording of file quality assessments. Both prosecutors and managers raised concerns about the process involved and the additional time it takes to complete the assessments, which have to be done outside the CPS case management system (CMS). In one Area the monitoring had produced positive results in police file quality which were then lost when the CPS became complacent, although they have since improved following reinvigoration of the scheme. However, other Areas have struggled to maintain adequate levels of compliance by prosecutors, which may contribute to the lack of significant improvement in the standard of police files.

4.12 The process for formal feedback is clearly necessary but the system needs to be more user friendly and less time-consuming; we understand the CPS expects improvement in July 2017.

Issue to address

CPS Areas need to ensure that National Police File Quality Assessment monitoring is conducted consistently by their staff, and that their work with partners drives performance improvement.

Hard copy media

4.13 There is still an inability to properly deal with hard copy media, such as CCTV evidence, body-worn video (BWV) footage, 999 tapes and video interviews with vulnerable victims and witnesses. This is a long-standing and much documented issue. Comments were made in the joint HMCPSI and Her Majesty's Inspectorate of Constabulary (HMIC) report *Delivering justice in a digital age*⁶ published in April 2016, which considered the digitisation of the criminal justice process. That report stated "*recommendations have been made in previous inspection reports focussing on the need for a reliable digital sharing solution for CCTV, interview and 999 recordings, photographs and body-worn video footage. Again it was a disappointment to find that this has yet to be established.*" We re-iterate these comments over 12 months later.

4.14 Inspectors were told by CPS prosecutors about delays or difficulties in review caused by the media not being provided by the police in advance of the first hearing. Where the material is to be relied on by the prosecution it should be supplied with the other key evidence in accordance with TSJ timescales. In practice, the media was often not available for the first hearing and several District Judges advised us that this was a real problem, which prevented cases from progressing and guilty pleas being entered at the earliest opportunity.

⁶ *Delivering justice in a digital age: A joint inspection of digital case preparation and presentation in the criminal justice system*; CJI; April 2016.
www.justiceinspectorates.gov.uk/cji/inspections/delivering-justice-in-a-digital-age/

4.15 In London we noted instances where the police embedded the BWV into the summary of evidence (MG5) so that it was available for review when needed and was also available to the defence when the MG5 was served on them. This is **good practice** and CPS Areas should encourage their local police forces to follow this.

Characteristic 4: Optimum bailing patterns

Getting the defendant before the court

4.16 In 21.2% of the cases in our file sample postal requisitions (PRs) were used to bring the defendant to court and a further 3.3% were commenced by way of summons. Charge and bail accounted for 62.6% of cases and in the remaining 12.9% the defendant was brought to court in custody. Summonses and PRs were used in similar proportions in GAP and NGAP cases. Since we reported on TSJ in February 2016 there has been a slight increase in the use of PRs and a small decrease in the use of summonses. The use of custody was much less common in our 2015 file sample, with bail commensurately more frequent.

4.17 The defendant's failure to attend was the biggest single reason why first hearings were ineffective (34.6%). In 2015, defendants attended the first hearing more often in PR cases than when bailed to the court. This time, however, the opposite was the case: there was a failure to attend in response to a PR in 45.2% of cases, compared to 35.3% of bail cases.

4.18 During interviews stakeholders and CPS senior managers were alive to the possibility of higher non-attendance in PR cases and the likelihood of the increased use of PRs given recent legislative changes to the bail provisions. Concerns were expressed about the impact on TSJ effectiveness. We were informed that some stakeholders had done their own research and found little difference in attendance rates for PRs. We refer at paragraph 3.40 to our concern that the recording mechanism around hearings per case does not reflect the true position when defendants do not attend court for the first hearing and a warrant is issued.

4.19 In some Areas work is being undertaken with the police to devise processes by which the prosecution can seek to prove the case in absence where a defendant fails to attend the first hearing. These usually involve adjourning to serve the necessary evidence on the defendant, but where their whereabouts are unknown, this may be problematic.

4.20 In CPS Yorkshire and Humberside a pilot exercise is underway whereby, in cases involving a non-imprisonable offence or minor shop theft, evidence is served on the defendant at the point of charge. The charge sheet has been amended, in consultation with the District Judge, to prove the service and list the documents that have been served. With the agreement of the court the prosecution can then seek to prove the allegation at the first hearing if the defendant fails to appear. We did not visit CPS Yorkshire and Humberside as part of our fieldwork, so have not seen the pilot in operation, but commend the joint work done to improve the effectiveness of the first hearing. Although, not all police forces may be willing to provide the additional evidence required to prove an offence at this early stage.

The initial review by the CPS

4.21 There has been a significant increase in the quality of the initial review. In 83.3% of cases in the file sample a review was conducted before the first hearing and 60.6% of these fully met our expectations for the type of case. Although there is clearly room for improvement, these results compare very favourably with the findings in our last report when 37.7% of cases had no review and only 38.8% of those done fully met the required standard.

4.22 Allocation of NGAP cases to a specific lawyer has increased markedly since our last report, from 54.7% to 89.6%, and feedback indicated that this may be a significant contributory factor in the improvement in the standard of the initial file review.

4.23 Preparation of the case at initial review was fully effective in 56.9% of cases and partially effective in a further 28.5%. Issues with the proper completion of the Preparation for Effective Trial form (PET) accounted for nearly half the failings (43.3%); either the reviewing lawyer failed to complete the form properly or there was no form completed at all (we discuss the PET form in more detail below). Failure to prepare admissions as to agreed facts or a bad character application each accounted for a further 8.7% of deficiencies.

4.24 Area structures, such as a split between advocacy and review, or prosecutors reviewing then presenting their own cases, and the volume of work allocated to each prosecutor for first review varied. More consistent was the message from prosecutors that there is an unachievable level of expectation regarding workload. We were told that some prosecutors are either working in their own time over and above their contracted hours, for instance reading cases for court the next day, or in some of the Areas visited during the fieldwork there is overtime being undertaken at weekends to deal with backlogs of initial reviews. Even with these measures, some Areas are struggling to carry out reviews in time. In our file sample, the initial review was timely in 65.9% of cases; this is a percentage of the reviews done, so does not include the 16.7% of cases in which there was no review at all.

4.25 Despite the increase in the quality of review, there is still plenty to be done to improve both the initial review and case preparation. Assessment of quality is mandated under the CPS national Individual Quality Assessment programme (IQA) and some Areas are using this to address individual weaknesses and identify themes.

4.26 The IQA programme however is restricted, consisting of four half days of assessment per prosecutor per year, with the expectation that four activities will be assessed each year, only one of which is initial review. It gives managers limited scope to assess the quality and timeliness of review and it was evident that managers were struggling to complete assessments for all their staff, with numbers recorded fewer than the volumes estimated. In one Area only half the numbers which had been estimated had been done. These findings suggest that IQA is not currently impacting significantly on performance. A more detailed piece of work on IQA is planned by HMCPSI in our 2017-18 programme.

Characteristic 7: Streamlined disclosure

Disclosure

4.27 We assessed that the duty of disclosure of unused material was complied with fully by prosecutors in 56.9% of applicable cases within the file sample. This was an improvement on the previous inspection when only 34.8% of cases met expectations, although there is still significant room for improvement.

4.28 CPS disclosure was hampered by the standard of police compliance with their disclosure requirements, which has been a long-standing issue. In this inspection it fell below the required standard in 40.7% of cases, a slightly worse result than last time (38.5%). In 19.5% of those cases the police did not supply a schedule, in 18.3% the items were poorly described, and in 15.4% they were wrongly listed. At the time of writing a national thematic inspection on disclosure is nearing conclusion, it was jointly undertaken by HMCPSI and HMIC and will report and reflect on this topic in greater detail, although its focus is on Crown Court cases.

4.29 In one CPS Area a lack of understanding on the part of police disclosure officers as to how to deal with unused material (in conjunction with the operating mechanisms of the police IT system) resulted in no Streamlined Disclosure Certificate (SDC) being produced as required, or a blank one being produced in error. This highlights the need for the CPS to provide feedback on disclosure failings and to work more effectively with the police to drive up performance, both by disclosure officers and their supervisors. We have already made reference to the need for the CPS to ensure that the National Police File Quality Assessment monitoring is used consistently as a tool to drive up poor performance and re-iterate that necessity.

4.30 The disclosure record sheet (DRS) was completed fully and accurately in only 45.6% of cases. The CPS has revised its guidance and it is now no longer necessary for prosecutors to complete a DRS where the case is straightforward, provided a note of the rationale is added to the file. In the very rare cases where we saw such an appropriate endorsement we marked this as fully meeting expectations.

Domestic abuse, youth and custody cases

4.31 We found that domestic abuse, youth and custody cases still comprise a considerable body of work, but this is not handled consistently across England and Wales in accordance with the principles of TSJ and is a concern that we raised in our original report. There is no national mandate as to how these types of cases fit into the TSJ model and, whilst instructions were sent out to the senior reporting officers for TSJ in September 2015 stating that the key principles of TSJ still apply, we found that differing practices have developed.

4.32 Domestic abuse cases account for a large proportion of the most sensitive casework which the CPS deals with and over one in five of all magistrates' courts cases fall within this category. In some Areas we were told that domestic abuse was dealt with in accordance with TSJ whilst in others there was a lack of clarity and cases were not dealt with in accordance with the same principles, often running to shorter timescales. We also observed that where Areas have Specialist Domestic Violence Courts the cases are not necessarily brigaded into GAP and NGAP courts.

4.33 There were very few youth cases in our file sample (five in a sample of 420 cases) and we did not observe any Youth Courts during the fieldwork. In these circumstances we do not comment further in this report on these particular types of cases, other than to raise the question as to how they fit into the TSJ model.

4.34 Custody cases do not come within the structure of the National File Standard and at the first hearing the prosecution file may be missing significant evidence or information, for example disclosure schedules and material, or witness availability. There is an expectation that custody cases will be case managed at the first hearing and in most Areas we noted that when a defendant appears in custody and pleads not guilty, attempts are made to case manage the denied matter and a date for trial is fixed. At this stage the content and quality of the remand file, coupled with the limited time available for the advocate to review the file, impacts on the effectiveness of case management. This often results in an inability to properly deal with all the issues at that first hearing. As a result a further review is required after the first hearing, which impacts on resources and may result in additional hearings.

4.35 Concerns were expressed in one Area that too many defendants are taken to court in custody and are then bailed by the court at the first hearing. We appreciate that the statutory criteria applied by the police are not the same as those used by the court, but there were instances cited to us where the court simply had no power to remand the defendant in custody and the defendant should have been bailed to attend court in accordance with TSJ timescales. We have not examined this aspect as part of the inspection, but given the significant impact on the defendant and the resource implications for the criminal justice agencies, CPS managers may feel that further work is merited to assess the nature and extent of the problem.

4.36 We were told of particular problems when dealing with prisoners in ‘virtual’ remand courts when often the defendant, prosecutor and the defence representative are all located in different places. In these types of court we observed that there was limited, if any, opportunity for the prosecutor to engage with the defence representative, which made effective case management at the first hearing very difficult. This often resulted in such cases being adjourned for an additional case management hearing.

Issue to address

The CPS request the appropriate governing body with responsibility for national oversight of TSJ to clarify the scope of TSJ and issue a statement detailing expectations around the application of the TSJ principles to cover all magistrates’ courts cases. This should include cases involving domestic abuse, youths and defendants brought to court in custody for the first hearing.

Defence engagement

4.37 We found engagement with the defence before the first hearing to be very rare, with no record of this in 87.6% of the cases in our file sample. Whilst this is an improvement on the 1.8% level of engagement found in our initial inspection, it demonstrates that there has not been the change in culture required to embrace this expectation.

4.38 In interviews and focus groups both prosecutors and managers admitted that they rarely attempted to contact the defence representative before the first hearing. They spoke of the barriers to engagement before a case reaches court, which included:

- not knowing which firm of solicitors represents the defendant
- defence solicitors not having seen the defendant to take instructions, or not having legal aid
- demands on defence practitioners’ time, which takes them out of their office and makes them harder to contact
- the time available to prosecutors to conduct reviews for first hearings.

4.39 Some police forces now identify on the summary of the offence which legal representative attended at the police station and this can assist, although it is not a failsafe as the defendant may choose to instruct a different solicitor before the first hearing or to be unrepresented, especially if legal aid is refused.

4.40 The Criminal Procedure Rules 2015⁷ 3.3(2) impose an obligation on the prosecution and the defence to communicate “*at the first available opportunity and in any event no later than the beginning of the day of the first hearing*”. Against this background the CPS cannot abandon the principle of defence engagement, but the current expectation that this takes place in every contested magistrates’ court case before the first hearing date appears in practice to be unrealistic.

Issue to address

The CPS should review the current arrangements for engagement between the parties and, if necessary, seek clarification or change from the Criminal Procedure Rule Committee. Following revision guidance should be issued to prosecutors about what is expected in particular cases.

4.41 More generally we were informed of different ways in which Areas communicate with the wider defence community, these included:

- inserting information within the digital IDPC bundle served upon the defence (CPS London)
- obtaining a contact list from the legal aid agency of all firms conducting criminal work, which is used to contact and inform the defence community of changes (CPS Cymru-Wales)
- preparing and circulating defence newsletters (CPS London and CPS East of England).

We consider that these are all examples of **good practice**.

⁷ *Criminal Procedure Rules*; Ministry of Justice.
www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015

Characteristic 5: Early receipt of IDPC

Service of papers

4.42 We found that compliance checks on the CPS Standard Operating Procedures (SOPs) are heavily focused on the provision of the Initial Details of the Prosecution Case to assess how well the five day target for service is being met. There are repeated checks and reminders to staff, with some Areas chasing any that are close to the five day target to make sure that they will be served on time.

4.43 Other aspects, such as task management, receive some attention, but it is clear in SOP terms that what gets measured is prioritised. We deal with task management and case progression later in the report at chapter 6.

4.44 The file sample revealed that the timeliness of service of the IDPC bundle remains weak with only 60.1% of papers served by the CPS in accordance with TSJ timescales. The bundles were of a better standard and served in a timelier manner in GAP cases, largely because the NGAP cases need lawyer input and delay in the initial review caused a knock-on delay in service of the bundle. Any problem with content or timeliness causes problems for the court in preparing cases in advance and for defence practitioners in advising their clients effectively.

4.45 The CPS has moved to serving all papers digitally in bail cases, which is clearly efficient and welcome where it works smoothly and the bundle contains the right information. However, we were told by CPS staff and stakeholders that there are issues with both.

4.46 We observed that there were particular difficulties for duty solicitors who are likely to have a number of bundles to request and no advance warning of who their clients will be. This in turn had an impact on wasted court time as documents took time to arrive and instructions then had to be taken. Areas had different processes to deal with service on the day of court: some defence firms were required to phone a dedicated number, others had to email a mailbox, paper copies were still prepared in one Area and another had administrative staff based at court to facilitate service at this stage.

4.47 On the technological aspect, we were told of delays of an hour or two between a bundle being sent by the CPS and the defence practitioner receiving it and we saw examples of this during court observations, which meant delays in dealing with cases.

4.48 The IDPC bundle contained sufficient information to enable all parties to conduct effective case management in 83.5% of cases, up from 66.4% in the previous file sample. Discussions with prosecutors and stakeholders and observations at court confirmed concerns in some cases that essential material is missing. Where NGAP files do not receive a review (12.3% in our file sample), the bundle may contain no more than a GAP case. This was noted during court observations and it hampered smooth case progression. We also observed cases where, despite the file having been properly reviewed, the bundle was not updated, so key evidence and applications were not served on the defence. In one such case the defence were unable to deal with a bad character application as a result of lack of service and the case was adjourned for the application to be made at a later date.

4.49 In one Area we were told that there were instances when defendants had indicated that they were unrepresented in order to obtain a printed bundle, which their solicitors used instead of requesting a digital bundle. This wholly undermines the principles of TSJ and is very poor practice, but could perhaps be prevented if timeliness issues were addressed effectively.

4.50 Prosecutors expressed concern that they were unable to ascertain whether a bundle had been served. In at least one court we noted that the prosecutor had printed bundles for all their cases and served them on the solicitor or the defendant personally, to provide certainty around what had been served. Agents in court do not have access to the CPS CMS and so they cannot tell what has been served and when, which hampers them in proving service where it is disputed by the defence.

4.51 Where the defendant appears for the first time in custody we found that papers are served at the first hearing in most cases (87.0% in our file sample). Some police forces are making digital papers available to the prosecutor, but the court observations revealed that in some Areas this is in PDF format without 'bookmarks' which can make navigating a bundle difficult when papers are not always in order or scanned properly. In other forces the police still supply paper files for remands, this can assist progress at the first hearing but this does require that the papers are re-served digitally after the hearing.

4.52 A further issue that arises in relation to digital remand files is when a member of HMCTS or an administrator prints the papers for the defendant. This brings with it a risk of serving material that ought to be redacted, for example the need to remove witnesses' addresses, which can cause delay whilst the prosecutor checks the printed bundle. In busy remand courts, this can have a real impact on efficiency.

4.53 Where the defendant is unrepresented further problems arise. There is no recent official published data quantifying the proportion of unrepresented defendants appearing in the magistrates' courts. The consensus is that the numbers are increasing, due in part to the changes in eligibility for legal aid. The unrepresented defendant faces a number of challenges in the criminal process, most of which are outside the scope of this report. (The Transform Justice charity's report *Justice denied? The experience of unrepresented defendants in the criminal courts*,⁸ published in April 2016, is referenced below for further information.) However, the problems occasioned in the service of papers on those who are unrepresented was a common theme raised by prosecutors and District Judges.

4.54 The CPS cannot send out a digital bundle to unrepresented defendants in the absence of a secure email address, so papers have to be served in hard copy. We found a mixed picture as to how papers were printed for unrepresented defendants, including some instances when they were dealt with without any papers. The concerns are two-fold: one of delay caused in the court room whilst papers are printed and ensuring that the unrepresented defendant is not prejudiced in any way due to the lack of representation.

4.55 Where there is no administrative support at court, prosecutors and stakeholders reported delays occurring whilst the prosecutor printed a set of papers. There is some confusion as to the official position of HMCTS in these cases, despite attempts by the CPS to reach agreement in this regard. We were told variously that: HMCTS staff would not print bundles; that they would to assist; that they would, but only if the alternative was a delay to the court; and that the Legal Advisor would assist by showing the defendant documents on screen. Our court observations evidenced all these differing approaches.

4.56 There needs to be a more consistent message as to the national stance of both the CPS and HMCTS and national delivery of the agreed process. This is not a new problem and was raised in the joint HMCPsi and HMIC report *Delivering justice in a digital age*. That report recommended that "*The Crown Prosecution Service should co-ordinate a national strategy for providing Initial Details of the Prosecution Case and other case material to unrepresented defendants and those remanded in custody.*" This inspection found no evidence that this recommendation had been completed and our evidence supports its validity.

⁸ *Justice denied? The experience of unrepresented defendants in the criminal courts*; Transform Justice; April 2016. www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf

Training

4.57 Overall there is suitable training for CPS staff in the delivery of TSJ, although managers must not lose focus on the need to ensure that the members of their teams are kept up to date. This is particularly important in the light of the new entrants to the Service at all grades.

4.58 When TSJ was implemented a two day national training package was delivered to frontline prosecutors, which was detailed and classroom-based. This training package is supported by a recently updated NGAP hearing and costs toolkit, which is available for download by prosecutors through the Prosecution College.

4.59 Our initial report raised some concern that the training of administrative staff was not so comprehensive and suggested that consideration be given at a national level to ensure that administrative teams are best equipped to carry out their roles. The CPS assessed the digital learning needs of its operational staff in autumn 2016-17 and over 80% of the cadre completed a questionnaire to self-score their ability. Analysis of the results informed a Digital Learning Live fortnight and feedback was then used to develop video-based training to support future CMS releases.

4.60 Our survey of all the administrative grades working in the CPS Areas that we visited showed that when asked about the adequacy of their TSJ training, 71.1% of respondents felt that they were either thoroughly trained or trained enough to carry out their role. 66.8% stated that they had received TSJ training within the last 12 months and, of these, nearly half had received this within the previous three months. 28.9% stated that their training was not adequate or that they had not had any.

4.61 As part of this inspection CPS Mersey-Cheshire supplied us with a comprehensive set of desktop instructions which have been developed within the Area and are used by their administrative staff to carry out their roles. This is **good practice**.

4.62 Concerns were raised about the ability of some prosecutors to best manage their task lists. This is critical to ensure effective case progression, particularly since the Case Progression Manager role has ceased to exist. Managers must ensure that task management training is delivered as necessary, which is discussed in more detail in chapter 6.



5 The first hearing

Characteristic 2: Anticipated plea hearings

Characteristic 3: Brigading cases

Getting the right cases into the right courts

5.1 The first step to ensure that the courts run efficiently is for the right cases to be put in the right courts and the optimum number of cases to be listed at each sitting. Cases where a guilty plea is expected should be heard in a dedicated guilty anticipated plea court and those which are expected to be contested should be put in a dedicated not guilty anticipated plea court. When TSJ was first implemented it was anticipated that GAP courts should have a maximum of 30 cases listed and NGAP courts no more than 15, to allow sufficient time to fully consider each case.

5.2 We assessed that the police identification of the anticipated plea was correct in 91.0% of the cases in our file sample. However, the court observations revealed that correct identification did not necessarily mean that cases reached the right court. We observed many cases where defendants were bailed to the wrong court, even where identification of the likely plea was correct.

5.3 The 9.0% of cases where the anticipated plea is wrong have a real impact on the efficient running of the court, especially where the plea is said to be guilty but the matter is then denied at court. In that scenario, the papers served are very limited and delay may be occasioned to allow for service of the correct papers and for the prosecutor to prepare for case management. If a trial is fixed and case managed at that first hearing there will be matters which cannot be dealt with to conclusion, such as the service of unused material. Further work will be required after that first hearing. The impact is particularly great if the case has been moved to the NGAP court and the prosecutor has not seen it before.

5.4 Where the plea is wrongly anticipated as not guilty and is actually guilty, work is wasted by the police and the CPS in preparing the case for trial unnecessarily.

5.5 We observed a total of 48 half day court sessions, which included the handling of 431 cases, to assess what was happening at the first hearing. The table at annex D summarises the court observations. Our findings support the performance data, that there are wide variances across England and Wales in how cases are dealt with in court.

5.6 All but four courts were shown in the listing patterns sent to us in advance as being either an NGAP or GAP court, but 25 (52.1%) had non-TSJ cases listed. These included cases which involved the CPS such as overnight remands, pre-sentence reports in NGAP courts, defence mentions and bad character applications, and also non-CPS matters such as warrant applications, breach proceedings or applications for statutory declarations.

5.7 We observed 15 GAP courts, which had an average of 11.5 cases listed, and 29 NGAP courts, with an average of 8.7 cases listed. Two of the courts exceeded the maximum of 15 NGAP cases listed, and one reached the maximum, but all the other courts (including all the GAP courts) had fewer cases than the number originally envisaged by TSJ.

5.8 The smaller court centres may not have the volume of work to sustain dedicated GAP and NGAP courts, but it was not just smaller court centres that listed other matters in TSJ courts or had fewer than the anticipated number of cases. In addition, many of the smaller lists took the full session to complete due to inefficiencies by all the parties, including delays in papers being available and defence representatives not being ready.

5.9 Our findings in relation to brigading are consistent with those of the CPS Compliance and Assurance Team. They indicate that there is still much work to be done at a local, and potentially national, level by way of partnership working to ensure proper brigading of TSJ cases.

Issue to address

The CPS TSJ Area leads should work with the police and HMCTS to ensure that:

- cases are listed in the correct courts
- there is compliance with the guidance on the number of cases to schedule
- non-TSJ work is kept to an absolute minimum to facilitate best case progression.

Characteristic 6: The right personnel at the hearing

The right personnel at the hearing

5.10 All the Areas we visited avoided or minimised the use of agents in GAP and NGAP courts, which is sensible due to their lack of authority to make decisions. Agents have to seek instructions from a Crown Prosecutor before adding to, altering or dropping charges at court. There were occasions in the file sample where it was apparent an agent had been used and the judiciary also complained that this happened. There were mixed practices in the use of Associate Prosecutors (APs) with most Areas using them for remand courts, which often included some not guilty plea cases. Some APs were being used just in GAP courts, whilst in at least one Area they conducted advocacy in NGAP courts as well.

5.11 In our court observations the prosecutor was usually available to the defence in sufficient time in advance of the hearing and this was most apparent in the highest performing Area. Often the defence did not avail themselves of this opportunity and much of the engagement was done either just before or after the court had started.

5.12 In most of the courts observed the prosecutor was of the appropriate grade for the court. Some CPS Areas have taken on new lawyers who have yet to build up experience and confidence.

5.13 Frustration was expressed by the some members of the judiciary and defence practitioners at the inability or unwillingness of particular prosecutors to make decisions. This view was substantiated in a case we observed when a trial was fixed for a drunk and disorderly charge. The Crown Prosecutor stated that they had no authority to drop the matter despite the indication from the District Judge, which was appropriate, that the public interest was not met. Similarly, concerns were expressed about delays caused when agents could not get instructions and District Judges provided us with examples of cases which proceeded to trial when they should have been dropped, but the agent prosecutor had no authority to do so. In one court, a CPS legal manager was often available at the courtroom. In another Area, the CPS had provided a designated point of contact for agents, which is **good practice**.

Issue to address

The CPS Area TSJ leads should ensure that all prosecutors are clear about the level of authority that they have to make casework decisions at court and that this authority is appropriate to grade and experience and is regularly reviewed.

5.14 We found differences across the CPS in the time allowed for preparation by the advocates for the first hearings. Some prosecutors were covering back-to-back courts with no formal preparation time, whilst others had a full day in the office in advance of one or two days in court. The latter was rarer than the former.

5.15 It was apparent that prosecutors were routinely preparing cases for court in their own time in the evenings and at weekends and that case progression would suffer were it not for this dedication and readiness to work the extra hours. Clearly, it is not a long term solution and the CPS needs to consider how best to enable effective preparation without out-of-hours work becoming the norm. We note that the CPS 2020 Advocacy Strategy,⁹ published in March 2017, gave an assurance that managers would “*ensure effective allocation of cases, people to courts and time for case preparation.*”

5.16 We found that contributory factors to effective preparation by the right advocate included timely notice to the advocates of which court they are to cover and the correct brigading of cases by the courts. The latter enables the CPS to allocate the right resource to the court and helps minimise the occasions when a case is moved from the advocate who has prepared it to one who has not. Where the court list and bundles for the next day are not finalised until 15.30pm, or where even later changes are common, this hampers effective preparation.

5.17 Prosecutors were sufficiently skilled in case presentation more often than they were in managing case progression and when prosecutors were not prepared, this severely impacted on their performance. The standard of advocacy was criticised by some of the judiciary, although it was reported that the CPS usually took action when concerns were fed back.

Effectiveness of case progression at the first hearing

5.18 In the GAP courts the defendant pleaded guilty and was sentenced in 62.9% of the cases observed and pleaded not guilty and was set down for trial in 6.9%. The remaining 30.2% included cases where the defendant did not attend, the case was adjourned, or the defendant was committed for sentence. In the NGAP courts observed, 19.6% of defendants pleaded guilty and were sentenced, 4.7% pleaded guilty and were adjourned for a pre-sentence report, 27.7% pleaded not guilty and were set down for trial, 3.1% were adjourned to a case management hearing, and 33.2% were sent to the Crown Court, usually for trial, but some for sentence. The remaining 11.7% were where the defendant did not attend.

⁹ CPS 2020 Advocacy Strategy; CPS; March 2017.
www.cps.gov.uk/publications/docs/cps-2020-advocacy-strategy.pdf

5.19 The file examination revealed that the first hearing was effective in 68.4% of cases. This is slightly fewer than in 2016 when it was reported that first hearings were effective in 69.5% of the files examined. This slight decline in performance was largely down to the defence, most usually the defendant's failure to attend, which accounted for 34.6% of the ineffective first hearings. The rate of failure to attend during court observations was lower, at 12.1%. The difference may be partly explained by the practice of leaving non-attendances to the end of the list, which may have been after we had ceased our court observations.

5.20 The file examination revealed that the CPS was responsible for the hearing being ineffective in 15.4% of cases, which is a substantially improved position from the findings in our previous report (22.2%). The other reasons recorded were due to the police or court-related (12.3% and 11.6% respectively) or related to the ability to provide a stand down Probation report in 6.9%. In the court observations, the police failed to warn an interpreter in two separate cases, both of which caused considerable delay and documents supplied from the CPS illustrate that these are not isolated incidents.

5.21 The court observations showed good working relationships between the court, defence and prosecution in almost all cases. In rare instances these lapsed into undue informality, but most were professional engagements.

5.22 It was apparent from observations and interviews that the quality of case management is enhanced considerably where a robust approach is taken. In many of the courts observed a positive tone was set and expectations of both the prosecution and defence were made clear by a proactive District Judge or lay bench and Legal Advisor. However, we also observed that some courts lacked this robustness and focus, and noted that cases should have been better managed and the issues narrowed down. In this situation it was much harder and less common for the prosecutor to challenge the defence. As one stakeholder observed, the first hearing must be treated as a case management hearing rather than just a hearing to fix a trial.

5.23 The case study overleaf demonstrates what is possible if all the parties have a positive attitude.

Case study

A case was listed for a first hearing on 23 March 2017, the defendant having been charged on 20 February 2017 with an alleged shop theft, which he denied. As a result of a misunderstanding the police had instructed the main witness, a store security officer, to attend court for the first hearing. At the first hearing, rather than send the witness away for a trial on another day, the parties worked together to enable the trial to take place on that day. The defence solicitor agreed the record of interview with one edit and the prosecutor agreed an admission of fact as to medication that the defendant was taking. The Legal Adviser facilitated the trial being heard that morning and it proceeded at the conclusion of the morning list. The defendant was convicted and sentenced, the proceedings taking some 90 minutes in total.

5.24 Where leadership was less apparent it was less common for the prosecutor to be robust and to challenge the defence about the disputed issues. However, where the District Judge or lay bench were proactive and clear about expectations, there were still instances where the prosecutor and the defence representative did not anticipate what would be required and were reactive rather than proactive.

5.25 Where prosecutors are less experienced, they may be less confident in challenging the defence. To deal with this CPS London, which has recruited a number of new lawyers recently, has trained them on this aspect specifically.

5.26 Defence engagement in the courtroom and effective input into case progression has increased since we last reported, for example in the number of instances we observed or were told that defence representatives were willing to deal with oral applications and to agree evidence at the first hearing.

5.27 Where the information was available we found that special measures were usually granted at the first hearing. However, the position is more mixed with regards to bad character applications and we observed cases being adjourned to a specific hearing for formal applications to be considered. This normally occurred where the defence only requested the IDPC on the day of the first hearing.

5.28 We also observed the defence tackling the prosecution appropriately on matters that needed to be resolved, such as missing material and disclosure of unused material. However, this is not consistent and some Areas' efforts to engage the defence to a greater degree are hampered by the many demands on defence practitioners' resources and time.

5.29 We saw few examples of a robust approach to early case management of cases going to the Crown Court, as required under the Better Case Management (BCM) initiative. In most, the BCM form was handed in without comment or further enquiry into the issues. In one Area we observed that it was no longer completed. Although outside the scope of this inspection our observations suggest that CPS managers should consider whether this aspect would benefit from reinvigoration with HMCTS partners.

5.30 We were informed that there is quality assurance work being undertaken by the court in different parts of England and Wales. In one court observations by managers are a regular feature, in another the bench completes analysis of each court session which is compiled into themes for the Judicial Business Board, and in a third court staff complete analysis of all adjourned trials.

5.31 CPS managers have carried out joint court observations with HMCTS managers in more than one Area. Such collaborative work enables identification of joint and separate issues to address and this is **good practice**.

5.32 We referred to the IQA programme at paragraph 4.26 and this is used by CPS managers as a tool to observe each advocate twice a year. However, its focus is on individual advocacy performance rather than the effectiveness of case progression by all the parties and this alone will not produce sufficient information to inform and enable effective joint performance improvement.

The Preparation for Effective Trial form

5.33 There are still instances in the prosecution process of duplication of effort and the potential for things to be overlooked. This was most evident in the completion of the PET form, which was raised as a concern in our initial report. It was disappointing to note that these forms were still being dealt with in different ways across the CPS and there is a lack of confidence as to how these should be handled amongst CPS managers. Whilst the form is owned by HMCTS the current process requires that the CPS completes relevant sections before the first hearing.

5.34 In most NGAP cases (where the CPS usually advises charge) the CPSD charging lawyer will draft the PET form electronically and then the Area lawyer will often draft a second PET form rather than amend the original version. This is then included in the bundle for the court and the defence. At court, the defence often collect a blank hard copy form from the courtroom and complete a third version of the form. The prosecutor then has to transfer information from the electronic version to the handwritten form whilst the case is being dealt with. The Legal Adviser completes the court section and the form is later scanned by the court and emailed to the parties. This is more time-consuming than

it needs to be and is frustrating for the initial reviewing lawyer to note that their form is not utilised and matters are sometimes missed, because the court prosecutor is under pressure to complete the form.

5.35 In one Area there were two completely different processes in place: one completely digital and the other by way of the paper form in the courtroom with no PET form prepared in any format before the first hearing by the allocated lawyer.

5.36 Saving and sending the PET form separately from the bundle as a word document makes electronic completion easier, however we saw very few examples of this in operation. The easy availability of blank PET forms at court does not encourage the use of the electronic version and the CPS may wish to address this with its HMCTS partners.

Issue to address

The CPS should ensure that a Preparation for Effective Trial form is completed by the reviewing lawyer and that it encourages the use of that form by the defence and the Legal Advisor at the first hearing.

Characteristic 9: Police support for anticipated not guilty hearings

Police support for anticipated not guilty hearings

5.37 There have been different interpretations about what amounts to adequate support at court by the police and some resistance to supplying in-court support. At the time when TSJ was introduced it could not be mandated that the police would provide 'live' cover. This inspection revealed that there were very mixed views within the police about the usefulness or otherwise of having officers or police civilian staff sited in court throughout the proceedings.

5.38 We found that in some magistrates' courts a police liaison officer (PLO) is present in the building, though not necessarily in the courtroom dealing with the NGAP list. We were given mixed feedback as to which tasks the PLOs considered within their remit and some clarification of their role would be helpful.

5.39 In other places the support varied from an Inspector of the relevant Criminal Justice Unit being physically present in the courtroom, to the provision of a contact phone number or an email address which the prosecutor could use. In some Areas there was no police support.

5.40 There are obvious disadvantages to a phone number which can go unanswered, or cause delay to the court whilst the prosecutor makes the call. In one of the court observations the prosecutor in court made an enquiry about a bail address by email and the response enabled progress to be made in a case which would otherwise have been adjourned. In another Area a police stakeholder told us the contact list was probably out of date as it had been so infrequently used by CPS advocates.

5.41 Whilst physical support at court commits an expensive resource, it may well pay dividends in ensuring that cases can progress and also ultimately improving the quality of police files. At least one of the forces deploying a senior officer in such a role had undertaken some cost analysis and believed that the strategy would actually save money in the longer term.

Issue to address

The CPS should review with its police counterparts the current local arrangements to provide police support at court and should ensure that all advocates are aware of how they can access and use this support.

Characteristic 10: Connectivity for each agency at court

Connectivity for each agency

5.42 It is very good to note the improvement in the availability of secure court Wi-Fi since our original inspection. Of the 48 court sessions observed Wi-Fi worked reliably in 46 (96%). At one court centre we were told that the signal could be weaker in one of the courtrooms but we experienced no difficulty during our observations.

5.43 This improvement has brought many benefits including an ability to email directly from the courtroom and thus raise and deal with live queries. We observed examples of prosecutors accessing CMS whilst in court and obtaining information about other cases to assist the court and defence. There were several instances when prosecutors obtained details of historic offences from CMS which were used in sentencing the defendant immediately rather than adjourning the case for the information to be obtained, which would have happened in the past.

5.44 Another benefit is the ability to transfer cases digitally between courtrooms when necessary to facilitate progress if cases are not correctly listed, although there were some complaints from District Judges that this still could take too long and wasted court time.

5.45 Improved Wi-Fi has also facilitated the use of the CPS Prosecutor App, which has enabled better access to court lists and made it much easier for prosecutors to complete hearing record sheets and speed up the process of getting information back to the office and the police. We observed one instance where the app failed to work, which caused considerable difficulties, but this was an isolated incident and in all other cases we observed there were no technical issues with the use of the app.

5.46 At the time of writing a national roll out of the use of the Court Store for magistrates' court material is underway, which should facilitate quicker and easier service of case material by the CPS on HMCTS and Probation. We received frequent complaints from the judiciary that the necessary documentation was not uploaded onto the store in good time, although this is not necessarily the fault of the CPS. There are no plans at present for the defence to be able to access this system, which is one way in which it is differentiated from the Digital Case System (DCS) used in the Crown Court. The DCS has been a success in the Crown Court providing the case papers online so all parties can work from them, providing clarity over what has and has not been served. A similar system would be of benefit in the magistrates' courts.

6 Case progression after the first hearing

6.1 We refer above to the significant increase in the numbers of not guilty cases allocated to specific lawyers since our initial report (89.6% in 2017 compared with 54.7% in 2016). However, we found that whilst the majority of files are now allocated to specific prosecutors, this does not always mean that the named lawyer deals with the case from initial review until finalisation. Differing models across the CPS have different expectations of the allocated lawyer role.

6.2 Senior CPS managers informed us that file ownership is designed to bring about greater ownership and accountability whilst reducing duplication, but that this is a struggle in the magistrates' courts teams due to staffing resources. We found that the mere fact of allocation does not ensure effective case progression.

6.3 It is a key element of TSJ that in contested cases all the issues which need to be addressed to ensure an effective trial are dealt with at the first hearing. This should only leave the police to warn the witnesses. In theory no-one within the CPS needs to look at the case again until the trial advocate prepares for the contested hearing.

6.4 We saw cases in our file sample where this is what happened in practice. However, the reality is that there are a number of factors which often prevent this scenario:

- *where the defendant is brought before the court for the first hearing in custody.* As referred to earlier these cases do not come within the structure of the National File Standard and the remand file may be missing significant evidence or information which is only available after the first hearing. This occurred in 12.9% of cases in our file sample, although we were told that in some parts of the country the proportion was much higher
- *cases which do not comply with the NFS at the time of their submission to the CPS and remedial action is not completed by the first hearing.* For example, the police failed to supply key statements in 10.2% of the cases within the file sample which did not fully comply with the NFS. We also found wide variations across the 43 police forces: in some Areas the key statements were always included, but in one Area the absence of key statements was the primary reason why the file did not comply with the NFS in 40.0% of those examined. If there is not a timely initial review by the CPS (34.1% of reviews were not timely) there is an increased risk that this key evidence is not received until after the first hearing
- *cases which have been anticipated as a guilty plea until the defendant attends court and pleads not guilty at the first hearing.* The police will only have prepared a simple GAP file for use at court lacking specific disclosure documentation and key statements and none of the preparation, such as applications or agreed facts, will have been carried out.

6.5 It is also significant that where the police file was deficient this was only drawn to the attention of the police in 26.3% of the relevant cases. Whilst not all the failures to refer issues back to the police would have impacted on case progression, there is an increased risk that it will be adversely impacted. There is also a missed opportunity to drive improvement. Further factors include:

- *defence actions*. If the defence make representations, serve a defence statement or an expert witness statement these require consideration by a prosecutor. Action must be taken at the time of receipt to ensure that the trial can proceed on the date fixed or that other remedial steps are taken. Continuing disclosure is generally an issue for the CPS. We found that the prosecution only complied fully with obligations in 41.9% of relevant cases, but again there is wide variation across the Areas ranging from 14.3% to 80.0%, which is symptomatic of a lack of proactive case management post the first hearing
- *cases when the court accepted jurisdiction, contrary to what the parties believed would happen and the defendant entered a not guilty plea*. We observed cases where there had been insufficient preparation for this scenario which led to cases being adjourned to a specific case management hearing. This was also happening in the more problematic driving with excess alcohol cases where the defence were challenging every aspect of the procedure
- *intervening events*. Examples of these could include a retraction statement by a victim, or a witness indicating they cannot attend court on the date set down for trial.

6.6 In each of the above scenarios the file needs to be reviewed again to assess what action is required. The CPS has a duty of continuous review. The Code for Crown Prosecutors specifically states: “*Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops, including what becomes known of the defence case*”. The majority of cases will require some action to be taken upon review. Some cases will require discontinuance should the evidential or the public interest elements in the Code test no longer be met.

6.7 In CMS all these events generate tasks which are flagged for the attention of the allocated lawyer (or team if the cases are not specifically allocated to an individual). All the prosecutors that we spoke with understood how the system flagged the cases on CMS, but it was apparent that not all are able to manage these tasks effectively. This could be due to a lack of training on task management or insufficient time to carry out the tasks due to an excessive workload. Some managers have undertaken one to one training.

Issue to address

The CPS should ensure delivery of mandatory training for prosecutors on case management system (CMS) task management. The effectiveness of this training should be evaluated.

6.8 We were often told by prosecutors that they had to prioritise their initial reviews to ensure that cases were ready for the first hearing and due to the quantity of these, which had to be done daily, they were then unable to clear their other tasks, including those that were flagged as “escalated”. Some prosecutors were prioritising communications from Witness Care Units but accepted that they could not deal with other tasks such as “check new police information”.

6.9 In the file sample we found that 77.4% of relevant cases were further reviewed where necessary, but only 52.4% of those reviews were timely. There were significant variations in performance across the CPS with the further review range varying from 61.9% to 95.0% and significant disparity in timeliness from 10.5% to 85.7%.

6.10 One example noted from the file read included a defence solicitor who had written to the CPS three times to ask that consideration be given to a non-conviction restraining order to conclude a case. It took a month before the CPS responded to the offer and when the matter was referred to a manager for a decision the defence were blamed for the lateness of the ‘offer’.

6.11 It was accepted in interviews with prosecutors and managers that cases were often being looked at just a couple of days before the trial date, which was too late to take effective action. Both prosecution and defence advocates indicated that sorting things out at the last minute was still a common occurrence. The case study overleaf is an example of unacceptable delay in dealing with correspondence.

Case study

On 18 May 2016 (on CPSD advice) the defendant was charged with stealing a purse and its contents that same day. He attended court for the first hearing on 16 June 2016 and pleaded not guilty. The defence solicitor stated at that first hearing that the complainant had contacted the defendant to apologise as she had made a mistake and her children had taken the purse. A trial date was fixed for 20 October 2016. The next day witnesses were warned and an enquiry was made of the police about the defence comments.

On 22 June 2016 the police sent a memo to CPS confirming that a mistake had been made, the purse had been found and a statement had been taken from the complainant to confirm this. The matter was not reviewed by a lawyer until 8 October 2016 when it was discontinued. It took the CPS over three and a half months to deal with this simple matter causing undue stress and anxiety to the defendant and the witness, in addition to the ancillary work done by the CPS administrative team in the interim.

6.12 The current operating model requires that every contested case is allocated to a specific lawyer, who is then responsible for managing and completing the tasks on that case. When the necessary work cannot be completed the allocated lawyer should liaise with their manager who has an overview of the unit and is best placed to make alternative arrangements for the work to be completed if necessary.

6.13 The previous model included Case Progression Managers who had an overview of all the work in the unit and allocated tasks on a daily basis, re-allocating them when necessary due to prosecutor commitments and absences. They could also deal with straightforward matters themselves, thus making better use of prosecutor time. We were told that the removal of the Case Progression Manager role has had a negative effect on the ability to manage the work, particularly between the first hearing and the trial date.

6.14 Some Areas still have a trial review process embedded in their case management systems, which means that every case will be reviewed before the date set down for trial. The time gap between that review and the trial date varied significantly across the Areas.

6.15 We noted that the lack of a timely review post-first hearing often led to formal court directions not being complied with and a failure to adhere to time limits under the Criminal Procedure Rules. In the file sample performance was not good: in only 15 out of 83 relevant cases did the CPS fully comply within the time set down (18.1%). Again performance varied across the CPS with some Areas having no cases which complied and the best Area having 66.7% compliance.

6.16 In some Areas this is leading to formal compliance hearings, which impacts adversely on one of the main TSJ success measures: the average number of hearings in contested cases.

6.17 In the course of the inspection we encountered much frustration from the judiciary and defence practitioners at the lateness or complete lack of review after the first hearing by the CPS. One District Judge stated that this was the most serious issue impacting on the work of the magistrates' courts. Police managers spoke of the problems that late requests from the CPS caused their teams and the impact that this can have on defendants, victims and witnesses. The exasperation was summed up during a court observation when a District Judge said to the prosecutor in open court: *"All cases go into a black hole until the day before trial, don't they?"*

6.18 If the aims of TSJ are to be fully achieved then the CPS should have an effective process for timely further reviews of cases after the first hearing. We share the concerns expressed by many that the design of TSJ significantly underestimated the work which would be required after the first hearing and that this has impacted significantly on the effectiveness of case preparation, with successful outcomes being threatened as a result.

Issue to address

The CPS should review the management of the magistrates' courts review teams to ensure that there is timely review of contested cases and effective case progression after the first hearing and that sufficient resources are allocated to enable tasks to be dealt with promptly.



Annexes

A The ten TSJ characteristics

- 1 **Quality assured police files**
 - strict timelines for file submission
 - an effective chase up system
 - consequences for non-compliance

A dedicated team to

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

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

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

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

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

- 6 The right personnel at the hearing**
 - to ensure that the NGAP court is conducted by knowledgeable and proficient people
 - with strong case management skills and decision making ability
 - with a suitably experienced and proficient bench or District Judge, a robust Legal Adviser, dedicated, trained prosecutors and practised, reasonable defence solicitors

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

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

- 9 Police support for anticipated not guilty hearings**
 - availability of an experienced member of police staff (in person or virtually)
 - to assist the prosecutor in the NGAP court
 - to enable arising issues to be dealt with in real time, rather than adjourning cases

- 10 Connectivity for each agency at court**
 - dedicated facilities including Wi-Fi and internet connectivity
 - enabling material held elsewhere to be received immediately by the parties in court
 - prosecutor, police support, Legal Advisor, Probation and defence to work digitally on Wi-Fi enabled laptops in court and their offices
 - forms completed and transferred between parties digitally

B File examination findings

Question	Answer	2017	2015
The police decision to charge was compliant with Code	Yes	91.4%	95.3%
The police decision to charge was compliant with DG5	Yes	90.5%	91.1%
The CPS decision to charge was compliant with Code	Yes	94.9%	94.1%
The CPS MG3 included proper case analysis and case strategy	Fully met	54.6%	–
	Partially met	31.8%	–
	Not met	13.6%	–
For CPS charged cases rate the overall quality of the MG3 including action plan	Excellent	0.0%	–
	Good	54.0%	–
	Fair	33.4%	–
	Poor	12.6%	–
The police file submission complied with NFS for the type of case	Yes	39.6%	42.8%
	No	60.4%	57.2%
The main failing in the police file was in relation to	Victim Personal Statement	22.0%	–
	MG5	6.8%	–
	Def's previous convictions	0.9%	2.6%
	MG11	10.2%	17.5%
	Overbuild	27.5%	–
	Disclosure	14.0%	33.8%
	Other	18.6%	46.1%
All review decisions after charge applied Code correctly	Yes	94.3%	95.7%
The case received a proper and proportionate initial case review	Fully met	60.6%	38.8%
	Partially met	13.9%	20.9%
	Not met	8.8%	2.6%
	Not done	16.7%	37.7%

Question	Answer	2017	2015
The initial review was carried out in a timely manner	Yes	65.9%	–
	No	34.1%	–
The prosecutor prepared the case effectively in accordance with TSJ to ensure progress in court at the initial hearing(s)	Fully met	56.9%	–
	Partially met	28.5%	–
	Not met	14.6%	–
The main failing in the preparation of the case at initial review was in relation to	Section 10 admission	8.7%	–
	PET form	43.3%	–
	Special measures application	3.9%	–
	Bad character application	8.7%	–
	Other	35.4%	–
The prosecutor identified and raised with the police any lack of compliance with TSJ	Yes	26.3%	32.1%
	No	73.7%	67.9%
The first hearing was effective, TSJ compliant (where applicable) and resolved outstanding issues	Yes	68.4%	69.5%
	No	31.6%	30.5%
Any issues with the effectiveness of the first hearing were primarily occasioned by whom	Police	12.3%	24.7%
	CPS	15.4%	22.2%
	Court	11.6%	3.7%
	Defence	19.2%	6.2%
	Warrant	34.6%	43.2%
	Probation	6.9%	–
After the first hearing the case was further reviewed as necessary	Yes	77.4%	–
	No	22.6%	–
There was timely compliance with court directions	Fully met	18.1%	–
	Partially met	10.8%	–
	Not met	71.1%	–

Question	Answer	2017	2015
Did the reviewing lawyer engage effectively with the defence prior to the first hearing	Fully met	8.3%	0.9%
	Partially met	4.1%	0.9%
	Not met	87.6%	98.1%
Did the reviewing prosecutor engage effectively with the defence after the first hearing	Fully met	19.2%	–
	Partially met	24.2%	–
	Not met	56.6%	–
The lawyer or team exercised sound judgement and grip on the case	Fully met	38.2%	–
	Partially met	38.8%	–
	Not met	23.0%	–
Was the first trial hearing effective	Yes	66.7%	–
	No	33.3%	–
Any issues with the effectiveness of the first trial hearing were primarily occasioned by whom	Police	5.2%	–
	CPS	22.4%	–
	Court	17.2%	–
	Defence	27.6%	–
	Witness non-attendance	24.1%	–
	Warrant	3.5%	–
How many hearings did it take to conclude the case	1	29.8%	–
	2	36.1%	–
	3	18.5%	–
	More than 3	15.6%	–
The police complied with their disclosure obligations	Fully met	59.3%	61.5%
	Partially met	23.6%	14.0%
	Not met	17.1%	24.5%

Question	Answer	2017	2015
The main failing in the police disclosure was in relation to	Listing items wrongly	15.4%	–
	Poor description	18.3%	–
	Lack of schedules	19.5%	–
	Wrong schedules	16.6%	–
	Witness previous convictions	10.1%	–
	Other	20.1%	–
Prior to the first hearing did the prosecutor comply with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure)	Fully met	56.9%	34.8%
	Partially met	18.1%	22.5%
	Not met	25.0%	42.7%
The prosecutor complied with the duty of continuing disclosure (but not including timeliness of disclosure)	Fully met	41.9%	–
	Partially met	29.7%	–
	Not met	28.4%	–
Rate the overall quality of handling of unused material by the CPS	Excellent	0.4%	–
	Good	41.8%	–
	Fair	33.3%	–
	Poor	24.5%	–
The prosecutor took account of the rights, interests and needs of victims and witnesses including consulting with them where appropriate	Fully met	59.9%	–
	Partially met	27.4%	–
	Not met	12.7%	–
Rate the overall quality of the service from the police	Excellent	0.2%	–
	Good	53.1%	–
	Fair	31.0%	–
	Poor	15.7%	–

C Performance data

National TSJ measure	2015-16			2016-17			12 mths to June 16			12 mths to Dec 16		
	Q2 Sep 15	Q3 Dec 15	Q4 Mar 16	Q1 Jun 16	Q2 Sep 16	Q3 Dec 16	to June 16	to Sep 16	to Dec 16	to June 16	to Sep 16	to Dec 16
Average days from charge to 1st listing	17.1	17.8	18.3	18.3	21.8	21.4	-	-	-	-	-	-
Average days from 1st listing to completion	45.4	43.2	44.1	39.3	35.7	34.7	-	-	-	-	-	-
Average days from 1st listing to completion - not guilty or no plea only	-	88.5	88.1	82.9	68.2	70.2	-	-	-	-	-	-
Guilty plea at 1st hearing	70.3%	70.2%	69.6%	70.1%	69.4%	68.0%	70.1%	69.9%	69.9%	70.1%	69.9%	69.3%
Dropped at 1st hearing	29.5%	29.3%	29.8%	29.1%	27.8%	27.5%	29.4%	29.4%	29.0%	29.4%	29.0%	28.6%
Dropped at 3rd or subsequent hearing	33.9%	33.7%	33.3%	33.2%	33.9%	33.6%	33.5%	33.5%	33.5%	33.5%	33.5%	33.5%
Finalised at 1st hearing	43.1%	43.9%	45.7%	46.8%	46.8%	47.7%	44.7%	44.7%	45.7%	44.7%	45.7%	46.6%
Overall discontinuance	10.9%	10.8%	10.6%	10.2%	10.4%	9.9%	10.6%	10.6%	10.5%	10.6%	10.5%	10.3%
CPS charged discontinuance	15.2%	14.6%	14.7%	14.1%	14.2%	13.8%	14.7%	14.7%	14.4%	14.7%	14.4%	14.2%
Police charged discontinuance	8.7%	8.9%	8.5%	8.1%	8.3%	7.7%	8.6%	8.6%	8.5%	8.6%	8.5%	8.2%
Either way retained in magistrates' court	82.7%	82.0%	82.3%	83.1%	83.2%	84.1%	82.5%	82.5%	82.6%	82.5%	82.6%	83.2%
Guilty pleas: hearings per case	1.90	1.88	1.83	1.80	1.78	1.77	1.85	1.85	1.82	1.85	1.82	1.80
Contests: hearings per case	3.63	3.61	3.54	3.53	3.49	3.46	3.58	3.58	3.54	3.58	3.54	3.51
Domestic abuse as a proportion of magistrates' court caseload	20.5%	20.5%	20.7%	20.6%	20.6%	20.7%	20.6%	20.6%	20.6%	20.6%	20.6%	20.7%
Overall effective trials	42.1%	42.2%	42.7%	43.1%	42.5%	43.0%	47.6%	47.6%	47.2%	47.6%	47.2%	47.1%
Overall vacated trials	21.5%	19.9%	19.4%	19.4%	18.6%	17.7%	-	-	-	-	-	-
Overall cracked trials	41.5%	42.4%	41.2%	40.8%	41.4%	41.3%	37.4%	37.4%	37.8%	37.4%	37.8%	-
Overall ineffective trials	16.4%	15.5%	16.1%	16.0%	16.2%	15.8%	14.9%	14.9%	15.0%	14.9%	15.0%	-



D Summary of court observations

1 NGAP 9.2.17

- 13 NGAP cases were listed for this morning court with two overnight remands added later.
- one case was moved to another court where the defendant was due to appear for trial. He planned to enter a guilty plea to the NGAP case
 - two cases were sent to the Crown Court
 - one case was adjourned to link with a co-defendant's first appearance and to allow for service of the CCTV evidence, which was not available
 - two defendants failed to attend on time and warrants were issued. They appeared late but were unable to surrender as the court had not yet sent the warrants to the police. Four defendants pleaded guilty (three were sentenced) and four pleaded not guilty and had their trials fixed
 - there was limited discussion of the PET form, but the District Judge (DJ) had read all the cases before the hearing and knew the details very well. The experienced Senior Crown Prosecutor (SCP) appeared somewhat reactive by comparison
 - the court finished at 12.50 and took a case from another court before lunch
 - the acoustics in the courtroom were poor in places, notably the dock
 - the DJ was not working digitally.

2 NGAP 22.2.17

This mixed list contained one GAP, three NGAPs and two other cases (a Proceeds of Crime Act (POCA) matter and an application to vacate a trial, which was refused).

- the GAP and two of the NGAPs pleaded guilty, two were sentenced and one was adjourned for a report
- the final NGAP, a violent disorder with four defendants prosecuted by a specialist CPS division, was sent to the Crown Court
- there were short periods where nothing was ready and the list was concluded by 12.40
- the court offered help to others but was unable to assist as the duty solicitor was occupied taking instructions.

3 NGAP 27.2.17

This morning list, in front of a lay bench, contained two GAP cases, six NGAPs, a case management hearing and a non-CPS matter. Nine CPS cases in total which concluded at 13.30.

- there was a lot of time when the court was unable to proceed (some 90 minutes) because of a backlog of requests for digital IDPC, or because defence solicitors were not yet there or were taking instructions
- the prosecutor was an experienced AP, it was their fourth day in court back-to-back and they had been unable to prepare some of the cases in advance
- two cases were sent to the Crown Court (with no exploration of the issues) and four NGAPs and the two GAPs were sentenced after guilty pleas, one with a stand down report
- the case management hearing was set down for trial after some confusion as to whether it was listed for trial today.

4 GAP 27.2.17

The full day list contained 21 GAP cases, of which 13 were dealt with in the morning. We observed the morning list.

- there were some delays while legal representatives obtained papers and took instructions, but otherwise the court proceeded smoothly with a capable prosecutor and a lay bench working digitally
- the court prioritised the case with an interpreter
- ten defendants pleaded guilty; nine were sentenced and the tenth was put back to the afternoon for a report to be prepared by the Probation Service. In the other three cases, the defendant did not attend.

5 Remand and GAP 1.3.17

The court was described as a remand/GAP court, with three GAP cases and three overnights. There were also non-CPS matters: applications for warrants and statutory declarations.

- the prosecutor was an experienced and capable AP. In the course of the morning, only five of the six CPS matters listed were dealt with
- one case was sent to the Crown Court, with no discussion of the BCM form, another committed for sentence
- two cases were sentenced following guilty pleas and the final case was adjourned for a pre-sentence report and for a CPS lawyer to attend to deal with a contested application to amend a criminal behaviour order
- the prosecutor showed us a difficulty with digital file for remands, which do not have bookmarks, so navigating through the various documents is slower
- the lay bench was not working digitally.

6 NGAP 1.3.17

An NGAP court with nine NGAPs and one GAP listed.

- five of the NGAP cases pleaded guilty, one case was sent to the Crown Court, and two defendants did not appear
- in the other two cases, not guilty pleas were entered and trial dates set, both were case managed robustly by the DJ and prosecutor
- in several of the NGAP cases where guilty pleas were entered, we considered that the anticipated plea was wrong and that the cases should have been prepared and listed as GAP cases.

7 NGAP 28.2.17

The list contained nine NGAP cases and a GAP case was moved into the court. The DJ also dealt with two NGAP cases in the morning that had been listed for mention in the afternoon.

- the court worked digitally
- the prosecutor, an SCP, was sometimes a little reactive, but otherwise capable
- nothing was ready at 10.00, partly because the duty solicitor was taking instructions

-
- the DJ started at 10.30 and finished at 13.35, having completed both morning and afternoon lists
 - the GAP case was transferred after the prosecutor in the GAP court said it was an NGAP. After some robust discussions, the prosecutor amended the charge and the defendant pleaded guilty and was sentenced
 - of the nine morning NGAPs, four were sent to the Crown Court for trial (after full discussion of the contents of the BCM form), one was committed for sentence, three defendants pleaded guilty and were dealt with, and one matter for set down for trial, with detailed directions
 - one of the two afternoon cases was withdrawn and the other, a mention for trial the following day, was left listed for trial. In that case, the DJ was clearly concerned at the lack of case progression by the prosecution since the first hearing.

8 GAP 1.3.17

The list contained 25 cases, of which only ten were GAPs, the other cases were non-CPS matters. The bench (two lay magistrates working digitally) did not sit until 11.00 as the Chair was delayed.

- the CPS was represented ably by an experienced AP. There was some confusion about the new phone number for IDPC, which was still on an answering machine at 9.15, but the issues with service of papers were resolved before the court sat
- the Legal Adviser dealt administratively with several matters before the court sat including two CPS cases, adjourning one for a caution and taking a plea in the other, directing the defendant to speak to a Probation Officer in case the bench wished to consider his fitness for unpaid work. (The case was later dealt with more speedily for that option having already been explored)
- the bench dealt with three cases: one was set down for trial (with a case management hearing as expert evidence was involved) and two were sentenced, including the one where a plea had been taken earlier. The rest of the list, including three non-attendances, was put over to the afternoon.

9 NGAP 2.3.17

Initially eight NGAP cases were in this morning list and later a GAP and two custody cases were added. The list began at 10.00 and we observed it until 15.45, at which point, one case was awaiting a stand down report and two had yet to be dealt with.

- of the eight cases we observed two defendants failed to attend, one was sent to the Crown Court for trial, two were sentenced, and three were set down for trial (one of which was a complicated four defendant case)
- the lack of focus and robustness by the prosecutor contributed to the somewhat haphazard way that some of the cases was dealt with. The court was also not assisted by the police sending only the first page of charge sheets (without the bail conditions) and out-of-date previous convictions, which the support at court had to rectify.

10 NGAP 28.2.17

The list contained nine NGAPs, one pre-trial review, one matter listed for proof in absence and two non-CPS matters (both arguments against disqualification from driving).

- the prosecutor, an experienced SCP, could have challenged the defence more as to the issues in the NGAP cases, but otherwise was a capable advocate
- the lay bench worked digitally and the Chair was clearly au fait with the details of the cases. The Legal Adviser was not particularly robust and few directions were given in open court
- there was no police support in court, so the prosecutor had to ask the bench to rise at one point so they could make a phone call
- two NGAP cases pleaded guilty and were sentenced
- the pre-trial review and four NGAPs were set down for trial. In one of those, where mixed pleas were entered, we considered the pleas were acceptable
- in two cases warrants were issued when the defendant failed to attend
- there was no discussion of the BCM form in the two cases sent to the Crown Court.

11 NGAP 1.3.17

The full day list contained 20 NGAPs and three other matters. We observed the ten cases completed in the morning and the court rose at 13.00.

- in four cases, charges needed amending
- three defendants pleaded guilty and were sentenced (which was time-consuming) and three were sent to the Crown Court, with some discussion of the BCM form, albeit not robust
- in the other four cases, not guilty pleas were entered. Trial dates were set in three and the fourth was adjourned to tie up with a co-defendant, who had been remanded in custody by another court. We considered that additional and more detailed directions ought to have been made and that the prosecutor could have been more robust on probing denials
- there was confusion about the process brought in recently for digital service of papers. We observed delays while defence representatives tried to get through to the IDPC request line and while the prosecutor collected IDPC bundles sent to the printer in the CPS room.

12 Specialist Domestic Violence Court 7.3.17

This was a mixed specialist domestic abuse court with three NGAP cases, five other CPS matters and a non-CPS case. Nothing was ready immediately, so the DJ did not sit until 10.17.

- one of the NGAP cases was a non-attender, one was set down for trial and one was adjourned for a pre-sentence report. The Probation Officer was occupied preparing stand down reports for three other cases which were sentenced that morning
- one case was sent to the Crown Court with diligent completion of the BCM form
- the inexperienced prosecutor lacked focus on what was relevant and case progression was firmly led by the DJ.

13 NGAP 7.3.17

The court, with 15 NGAP cases listed, sat from 14.00 to 15.40.

- the lack of any real engagement by the defence with the prosecutor or any challenge by the lay bench or Legal Advisor to identify issues undoubtedly helped deal with the list so speedily. In only one case did the defence outline their case
- one case was adjourned for additional enquiries by the police and possible further charges, one was a guilty plea and was sentenced, and three were warrants for non-attendance
- in the six cases sent to the Crown Court there was no indication of plea in four
- four cases were set down for magistrates' court trial.

14 GAP 7.3.17

The list contained 18 GAP cases, all of which were guilty pleas. The court ended at 12.55.

- one was transferred into another court and 15 were sentenced
- the remaining two were adjourned for pre-sentence reports, as by then the Probation Officers were fully engaged preparing stand down reports for other cases in the list.

15 NGAP 8.3.17

The court sat from 14.00 to 16.00 dealing with ten NGAP cases, but could have taken less time with sentencing exercises.

- effective collaboration between the Legal Adviser, prosecutor and defence meant that most issues were resolved and few directions were needed in the three cases set down for trial
- there was less robustness in dealing with issues in the three cases sent to the Crown Court. Two cases were sentenced following guilty pleas, and warrants were issued in the remaining two cases.

16 Mixed 8.3.17

This was a community justice centre court, dealt with robustly by the DJ. A number of the defendants had mental health issues and the court was assisted by representatives from the local mental health services.

- the CPS IT server was not working, so the prosecutor printed IDPC where necessary. Liaison between defence and prosecution was effective
- the list included four GAP cases, all of which pleaded guilty. Three were sentenced and one was adjourned for a pre-sentence report
- there were also two NGAP cases listed, one was adjourned for the CPS to get medical evidence to ensure the charging level was appropriate and one was a warrant after non-attendance.

17 Remand and GAP 8.3.17

This GAP list (six cases) also contained three remand cases. All nine were guilty pleas and were sentenced

- the lay bench retired for some time on most cases, which contributed to the short list taking from 10.00 to 13.25
- there was only one case with a stand down report.

18 NGAP 8.3.17

This afternoon list contained 13 NGAP cases, two of which we considered should have been GAPs; both entered guilty pleas and were sentenced. There was also a private prosecution listed.

- two cases were moved to another court, four were sent to the Crown Court (one for sentence and three for trial) and five were set down for trial with appropriate case management and directions
- there was no police support in court, but an email hotline was used twice with no difficulties.

19 GAP plus sentence 7.3.17

The morning list contained a total of 12 cases, ten of which were dealt with between 9.50 and 13.15. There were eight GAPs, three matters for sentence and a mention to re-fix a trial date.

- one of the sentencing matters was adjourned to a video link court as the defendant had not been produced from custody
- all eight GAPs pleaded guilty; one was adjourned for a report, five were sentenced in the morning, and two were put over to the afternoon list because the Probation Service was unable to supply stand down reports in the morning.

20 NGAP 8.3.17

This NGAP court contained eight NGAP cases, one indictable only case and one matter adjourned from an earlier proof in absence for sentence.

- of the eight NGAPs, four were set down for trial, two were sent to the Crown Court, one pleaded guilty and was sentenced and one did not attend (a warrant was issued)
- the prosecutor attempted to tackle the defence robustly but could have been better supported by the court.

21 NGAP 14.3.17

The list contained 16 cases including some non-CPS matters. Eight CPS cases were observed between 10.05 and 12.45.

- an application to vary a probation order was transferred into the court during the morning and one matter was transferred out
- there were delays providing papers
- the lay bench worked digitally, but the Legal Adviser did not
- four cases were sent to the Crown Court for trial (with discussion of the issues) and one was committed for sentence

-
- three entered guilty pleas and two were sentenced. One was adjourned for a pre-sentence report but as a result of staff sicknesses, Probation could not prepare a report on the day
 - there was some uncertainty amongst defence representatives as to how to get electronic IDPCs and the CPS printer was broken, so the court had to print the IDPC for an unrepresented defendant
 - the prosecutor appeared unprepared in some cases.

22 NGAP but mixed 14.3.17

This was shown on court listing patterns as an NGAP court but contained two new NGAP cases and a “general adult list” and two overnight remands were added later. We were told the court usually had a mixed list and that brigading was rare.

- the duty solicitor appeared to have limited understanding of TSJ processes and how to obtain papers digitally
- tardiness in delivery of IDPC sent from CMS electronically caused delays and the prosecutor was hampered by two cases not having been uploaded to the Prosecutor App
- the two new NGAPs were progressed, one being sent to the Crown Court for trial and one set down for magistrates’ court trial with full exploration of the issues by the robust Legal Adviser
- In the other cases, two were adjourned for defence reasons, one went over to a pre-arranged trial date and one was sentenced.

23 NGAP but mixed 13.3.17

The list contained eight NGAP cases and two non-CPS matters (cash forfeiture applications).

- the prosecutor, a relatively new Crown Prosecutor (CP), did not have the authority to make decisions on cases, which caused some frustration. They were also lacked robustness in case management
- one case was put over to the afternoon list but the rest of the NGAPs were dealt with in the morning, despite delays in papers being received by the court and defence
- three cases were set down for trial, one defendant did not attend, and three pleaded guilty. Of those three, two were sentenced and one was adjourned to tie in with another case for which a pre-sentence report had already been sought.

24 GAP but mixed 14.3.17

This afternoon court contained five GAP cases, four NGAPs and two cases adjourned for sentence. The court finished at 17.40.

- in all but one case defendants pleaded guilty and were sentenced. One defendant, who had child care commitments, pleaded guilty and was put over to the next day to see a Probation Officer
- the court was competently prosecuted by a new CP.

25 GAP 15.3.17

The court, listed as a GAP, also contained two NGAP cases and we were told brigading issues were common. The court did not start until 10.45.

- IDPC was served in hard copy
- in one case the more serious charge was withdrawn and the defendant pleaded guilty to the less serious charge and was sentenced
- one case had to be adjourned because no interpreter had been warned and another, after a guilty plea, for a pre-sentence report (there was insufficient court time in the afternoon to deal with a stand down report)
- two defendants were sentenced and another was sent to the Crown Court for trial (the BCM form was not discussed), while two defendants failed to appear.

26 NGAP 15.3.17

This NGAP list contained at least 14 cases for the morning including eight NGAPs and one GAP, two case management hearings, at least two probation breaches and a fines case.

- five NGAP cases were sent to the Crown Court for trial, with limited exploration of the issues. One of these featured a postal requisition to bring the defendant to court on a rape allegation. One defendant did not attend
- of the two case management hearings (CMHs), one had a change of plea and was sentenced and the other was dealt with administratively by the Legal Adviser and listed for trial
- in one NGAP case the prosecutor represented the case was not suitable for summary trial but the court accepted jurisdiction for which the prosecutor was not prepared and the case was adjourned to a case management hearing
- the IDPC was served in hard copy
- the bench but not the Legal Adviser worked digitally.

27 NGAP 15.3.17

The court list originally contained six NGAP cases. Another NGAP, mistakenly listed in the GAP court, and a GAP case were moved into the court during the morning.

- the GAP case was sentenced, one NGAP withdrawn and the other six were set down for trial with robust case management in most cases
- the trial setting was hampered by police and CPS errors in identifying the likely plea and preparing the case accordingly. In one case, the defence requested NGAP IDPC in advance and were told, wrongly, it was a GAP. When they persisted, a lawyer checked and sent more evidence, but failed to update the flagging or prepare it for an NGAP hearing, and did not tell the court it ought to be in the NGAP court
- failure to bundle a bad character application in another case meant that it had to be listed on a later date when, had the application been served in advance, it could have been dealt with
- there were delays occasioned by late receipt of digital IDPC and three periods where nothing was ready (partly because of a bailing to 11.00), totalling 50 minutes of court time wasted.

28 NGAP 16.3.17

The list of 23 cases included a GAP case, 15 NGAPs, case management hearings, an application to vacate a trial and an application for a witness summons (which was later moved to another court).

- there was lack of clarity amongst defence representatives as to how to access digital IDPC, which the prosecutor assisted with, but delays were experienced in receiving it once requested
- the DJ was very proactive, but the prosecutor appeared somewhat reactive
- we observed 19 cases, of which six were sent to the Crown Court, half with no indication of plea and all but one with no discussion of the BCM form
- one defendant did not attend and one was not produced from custody. The GAP case pleaded not guilty and was set down for trial, as were two NGAP cases. Conversely, two NGAPs pleaded guilty and were sentenced
- one case for mention regarding legal aid was adjourned to the pre-fixed trial date
- the four CMHs went over to their trial dates, one with a direction to serve CCTV. In two of the others, the reason for the listing (IDPC not having been served) no longer existed as papers had been served, and in one the prosecution application to vacate was unnecessary (an officer was ill and unable to attend the trial, but the prosecution was able to proceed without them in any event)
- in the final case the lack of proper IDPC (the CCTV on which the case largely rested) meant that the court, who only had the summary of evidence, was unable to deal with the case and the case against an 83-year-old defendant had to be adjourned to a CMH.

29 NGAP 16.3.17

The court list contained nine NGAPs and one where there was no plea indicated. A further NGAP, listed for the afternoon, was dealt with because the defendant attended in the morning. One case was moved into another court so ten cases were observed.

- in several cases the digital IDPC did not contain key statements, applications and initial disclosure so the prosecutor had to update the bundles and re-serve them. This prevented two bad character applications being dealt with
- in one case, the lay bench were minded to adjourn for a pre-sentence report, but the Probation Officer said they could do it that day and so the case was stood down
- of the remaining nine cases, four were sent to the Crown Court for trial, with no consideration of the BCM form or issues, and five were set down for trial after not guilty pleas, with suitable directions made but little discussion of the PET form contents
- the prosecutor was robust if a little brusque.

30 NGAP 17.3.17

The court list contained two NGAP cases at the start and another NGAP was moved in from the GAP court. There were also two POCA applications listed, which we did not observe. The three cases observed (a sending to the Crown Court, an adjournment for a pre-sentence report and one set down for trial) took from 10.00 to 11.15.

31 Virtual court remand 15.3.17

We observed the virtual remand court for an hour and found that the technology, linking the court to two police stations, worked well, but that communication was not so straightforward, particularly discussion of issues when trial setting. It is for this reason that, we were told, defence representatives do not like virtual courts.

- the prosecutor could have appeared virtually from the office, and has done in the past, but prefers to be in the courtroom (as do the bench, we were told)
- the difficulty caused by lack of bookmarking in digital remand files was apparent again.

32 NGAP 17.3.17

This NGAP court contained six NGAPs, a GAP that had been adjourned from a previous hearing after a not guilty plea, a sentencing matter and an overnight remand. Two further cases were due to be added, but no papers had been supplied to the court or prosecutor by the time our observations concluded at 13.20.

- there were delays occasioned by the lack of a Probation Officer in court, late receipt of digital IDPC, the duty solicitor being occupied taking instructions, waiting for an interpreter to attend, and the prosecutor having to fill in PET forms from scratch, as the ones supplied digitally were not used. In total 77 minutes were lost
- three courts offered assistance during the morning, but only one case was moved as nothing else was ready. In all, five cases were set down for trial, and one was sent to the Crown Court
- there was no discussion of the BCM form or issues. In one case, incorrect identification of plea by the police meant that the IDPC contained only the summary and this hampered trial preparation by all parties
- the prosecutor, a new CP, had not read all the papers thoroughly so had missed key information on three cases, but these were corrected during the proceedings.

33 NGAP 13.3.17

The original list contained one GAP case and five NGAPs and a further two NGAPs were added from the morning's list as they had not been completed.

- one case was flagged as NGAP but appeared to be a GAP and the defendant pleaded guilty
- there was one case (a youth) that ought to have been transferred to the DJ's court, but this was not done until after the DJ had left, leading to an avoidable adjournment
- the GAP and three NGAP cases were guilty pleas and all but one were sentenced on the day, with one case being adjourned for medical evidence for the defendant

-
- one case was sent to the Crown Court and one was set down for magistrates' court trial, with appropriate directions made. The final defendant did not attend.

34 GAP 14.3.17

The list contained nine GAPs and one NGAP, which was case managed and set down for trial. The court sat from 10.10 to 13.10 and dealt with nine cases, with one case put over to the afternoon list.

- delays were caused due to some of the papers not being on Court Store (this was for unidentified reasons, but we were told was not uncommon) and because the duty solicitor was not ready on two occasions during the morning
- in another case there was a delay as the defence solicitor had gone to the wrong court and papers had to be printed for the defendant, who agreed to represent himself
- of the nine GAP cases, two were sent to the Crown Court after indications of not guilty pleas, one was adjourned for the police to consider a caution, four were sentenced, one defendant failed to appear, and one was put over to the afternoon for case management after not guilty pleas were entered.

35 GAP 15.3.17

A morning list of 21 GAPs and one NGAP. The court did not start until 10.30 as no DJ had been booked and a lay bench had to be assembled at short notice. There were also delays because the duty solicitor had to take instructions from eight clients, which took much of the morning. One case was adjourned to the afternoon.

- of the 22 cases listed 11 were dealt with, one was transferred to the NGAP court after a not guilty plea was indicated, one was put back to the afternoon to enable the defendant to see the duty solicitor, and nine were transferred to another court after help was offered at 11.20
- of the 11 cases dealt with, eight were sentenced (including the NGAP case), one was discontinued, one defendant failed to attend, and one was set down for magistrates' court trial
- the prosecutor, who was experienced and able, did not have access to a printer, so used their laptop to show an unrepresented defendant the papers.

36 GAP 17.3.17

An inexperienced CP struggled to deal efficiently and robustly with this list of seven GAPs, one NGAP, three custody cases and three cases put over from earlier hearings.

- one case was adjourned for a pre-sentence report, five were sentenced on the day, two were set down for trial, one adjourned to a pre-arranged trial date, four were sent to the Crown Court for trial, and one case was put back for the defendant to see the duty solicitor
- the Legal Advisor was not able to access papers for the three remand cases on the Court Store and the lay bench worked from a mixture of iPad and hard copy papers.

37 NGAP 22.3.17

The initial morning list had five NGAP cases and two cases (one GAP and one NGAP) were later moved into the court. The court did not sit until 10.44 and finished at 12.40, but with gaps in sitting during those two hours.

- four of the five NGAPs were non-attenders and one was sent to the Crown Court for trial
- one GAP case was sentenced and the other was set down for trial
- the GAP case for sentence was moved into the court because nothing was ready
- the experienced SCP assisted a colleague in another court by reviewing offers of pleas
- the Legal Adviser did not have all the cases digitally and worked from paper files in some cases.

38 GAP 22.3.17

The court sat from 10.00 to 12.55 and dealt with 11 GAP cases from its original list of 17, of which one was withdrawn, three did not attend, one was adjourned to a domestic abuse court for sentence and one was adjourned for information from Probation.

- five cases were sentenced and the remaining six were moved to other courts during the morning when help was offered
- there were several cases where charges had been amended in advance of the hearing, but the changes had not made it into the lay bench's papers.

39 NGAP 22.3.17 (am)

The court began with a list of ten NGAP cases and an application for special measures. Three GAP cases were transferred in during the course of the morning, of which one was listed for proof in absence: the offence was proved and a warrant issued. The list, including additions, was finished at 12.50.

- there was very helpful police support in the courtroom which was called upon on a number of occasions
- there were a further five non-attendances, in four of which warrants were issued
- of the remaining eight cases, five pleaded guilty, one was sent to the Crown Court and two were put over for trial
- of the five sentences two were dealt with there and then, two were put over to the afternoon for a report to be prepared by the Probation Service, and one was committed to the Crown Court for sentence
- in three cases, the anticipated plea was not the same as the plea that was entered
- the DJ and the prosecutor, an SCP, both actively drove the cases forward, engaging fully with TSJ principles
- the DJ was not working digitally.

40 NGAP 22.3.17 (pm)

The afternoon list for the same court as above, with the same personnel. The court dealt with two sentences put over from the morning and the five NGAPs listed for the afternoon.

- one defendant pleaded guilty: his sentence was deferred to see what progress he made with a recently imposed community order
- two cases were set down for trial, one was sent to the Crown Court and one defendant failed to attend
- in one case there was no police availability on the file, so the trial date was set with liberty to apply to move it within 14 days
- in another case, the court had been told there was to be a special measures application, but the prosecutor was not sure why. Directions were made for any such application and agreement of section 10 admissions within 28 days.

41 NGAP and mixed 23.3.17

This NGAP court contained six NGAP cases, four GAP cases and two other matters (a new custody case and an application to vary bail).

- three of the GAP cases were sentenced, as were two of the NGAP cases
- Probation provided a good service with three stand down reports in the morning
- one GAP case was a not guilty plea and was adjourned for the prosecution to serve papers to enable case management at the next hearing
- two cases were sent to the Crown Court with no plea indication
- one NGAP and the new custody case were set down for trial. As the court was able to list trials within three or four weeks, there were no issues with custody time limits
- in one of the cases set down for trial and both sent to the Crown Court, there was very little consideration of the issues. That aside, there was good engagement between the defence and prosecution.

42 NGAP 23.3.17

This NGAP court started with a list of three NGAP cases, one of which had been discontinued. Two further discontinued matters had been removed from the list. The court finished its list of attenders at 10.30 and thereafter dealt with cases moved in from the GAP court.

- one NGAP was sent to the Crown Court for trial, but with no discussion of the BCM form or issues and the other NGAP was set down for magistrates' trial three weeks hence
- of the GAP cases, four were taken and sentenced in the course of the rest of the morning
- in one case, the prosecutor accessed the CPS CMS to obtain details of other matters listed for the defendant, which assisted the court.

43 NGAP and mixed 23.3.17

This NGAP court had six NGAPs listed, plus five GAPs and a non-CPS matter (an application to vary a restraining order).

- in one case listed for the first time today, the police had incorrectly told the witness that they needed to attend for a trial. Rather than adjourn and require the witness to come back another day, the defence, prosecution and court all agreed that the trial could proceed today. After some work to agree undisputed evidence and admissions and edit the interview record, the trial went ahead and the defendant was convicted and sentenced
- two GAPs were sentenced after guilty pleas, as was one of the NGAPs. One GAP and three NGAPs were sent to the Crown Court and one NGAP was set down for trial. In that case and one of the cases sent to the Crown Court, the Legal Adviser was robust in identifying the issues with the parties
- one case was a non-attendance and the remaining two cases were transferred to the DJ's court
- at one point the Chair's digital device failed to work, but the bench was able to proceed. There were good working relationships between the court, prosecution and defence, which were clearly evidenced in the trial. The court sat until 14.05 to complete the trial
- in the absence of an afternoon list, all parties preferred to continue than to rise and restart after lunch
- the prosecutor had been on leave for over a week until today, so prepared the list in their own time the evening before.

44 GAP 23.3.17

This GAP list contained 12 GAP cases and two other matters (an application to vary a restraining order and an adjournment to determine fitness to plead). The latter was adjourned again and the former dealt with.

- the experienced AP was capable and effective and the DJ dealt robustly with the cases
- two cases had trial dates set with appropriate directions made, two cases went to the Crown Court (one for trial and one for sentence), two warrants were issued for non-attenders, and six cases were sentenced
- late service of digital IDPC in one case was resolved by the prosecutor showing the defence representative the papers on their laptop and no delay was occasioned.

45 NGAP 24.3.17

The morning NGAP court contained two GAP cases (both of which were sentenced) and 11 NGAPs. Another case (an exceptional hardship argument) was transferred in from another court.

- the Prosecutor App froze on several occasions, causing difficulty, but the prosecutor nevertheless dealt effectively with the cases

-
- the parties liaised well and the DJ was efficient and robust
 - of the 11 NGAP cases, one was a warrant, three were guilty pleas and sentenced, and three were set down for trial with full case management
 - the final four cases were sent to the Crown Court for trial, in each the DJ enquired into the matters raised by the BCM form.

46 Remand court 24.3.17

The remand court benefited from CPS administrative support at court who prepared digital bundles for defence representatives. This was put in place after complaints from the defence that papers for remand cases were taking up to two hours to arrive and delaying the court. We were told that the revised arrangements were a great improvement. The list included two cases adjourned from previous dates, a new bail NGAP and six custody cases. There were also three non-CPS matters (two statutory declarations and a Probation breach allegation).

- from 10.00 to 12.00 the lay bench dealt with five CPS cases: one of these was put back for a stand down report, two were sentenced, one was remanded in absence to the trial date already set, and one was withdrawn
- in one case the police had not warned an interpreter. The court booked one but they could not attend before 14.00
- in another, delay was occasioned because the defendant had been taken to the wrong court by the prisoner transport services.

47 GAP 23.3.17

There were 21 GAP cases listed; by the time the court rose at 13.00, ten cases had been heard, one of which was a non-attendance and one of which was put off to the afternoon for a stand down report. The remaining eight cases were sentenced. The rest of the list (11 cases) were moved into other courts in the morning when help was offered or put over to the afternoon.

- the prosecutor was hampered by a problem with the Wi-Fi partway through the list
- there was no police support in court and the hotline was not answered when the prosecutor rang for information about damage to a mobile phone for a compensation application, so the court was unable to make an order. The efforts to resolve this took up some 30 minutes of court time.

48 GAP 24.3.17

The GAP list contained 13 cases; six did not attend, two were discontinued, four were sentenced and one was adjourned for a pre-sentence report due to mental health issues.

- there was only one case listed in the afternoon GAP list so it would have been possible, within the TSJ brigading limits, to list that in the morning instead
- the prosecutor was capable and clearly well-prepared.



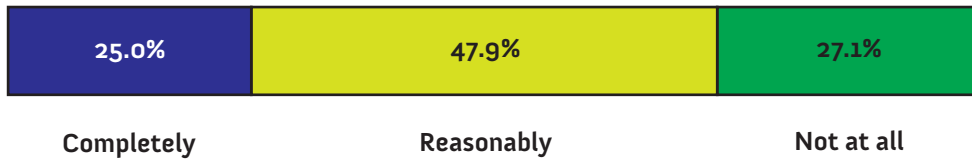
E Survey results for administrative staff in the CPS Areas visited

Awareness of performance

Are you aware of how well your team is delivering TSJ?

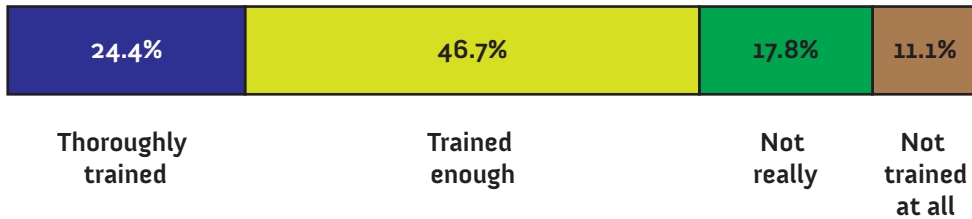


Are clear on how your Area's TSJ performance compares to other Areas?

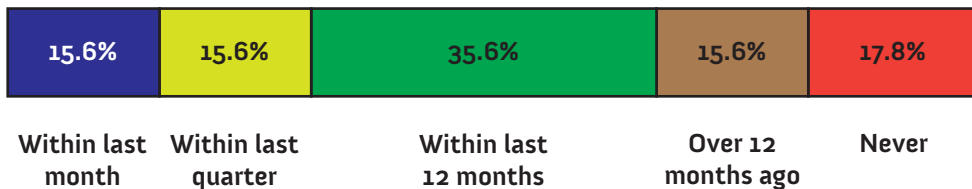


Training

Do you feel that you have had adequate TSJ training for your role?



When was the last time you received training on TSJ?



Digital Learning initiative

Are you aware of the Digital Learning Live initiative which took place in September 2016?

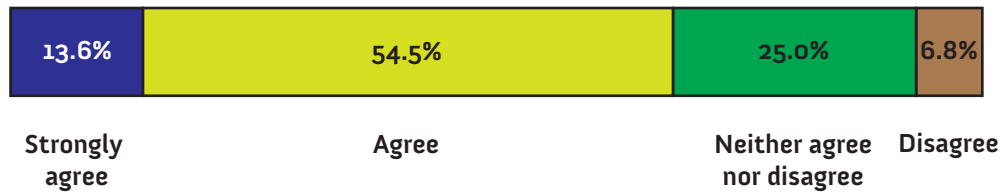


If yes, did you participate in this initiative?



Workload

Do you feel you have an acceptable workload?



Do you think you have adequate time to complete your daily tasks?



F Update on suggested steps from TSJ: An early perspective of the CPS contribution

1	<p><i>Consideration is given to a national forum comprising the CPS Area TSJ leads and national project team representatives. Inspectors understand that this already happens in respect of the Rape and Serious Sexual Offences work and that feedback is positive. This has the potential to save resources by sharing good practice, build engagement and maintain momentum.</i></p>
CPS action/ response	<p>A national workshop/conference for Area TSJ leads was held on 7 July 2016 to formally launch the forum. This was led by the TSJ Project Team and focussed on sharing Area good practice, how to address key issues and emphasised the need for compliance. Feedback given by delegates has enabled the TSJ project team to provide targeted support.</p> <p>In addition, monthly conference calls have taken place with Area leads (facilitated by the Court Business Unit) so that issues and best practice can be shared.</p>
HMCP comment	<p>Our findings in this regard are referred to in chapter 3, paragraphs 3.45-48. These include reference to positive feedback from Area TSJ leads and a finding of good practice in relation to the monthly conference calls.</p>
2	<p><i>Consideration is given at a national level to the training of administrative staff to ensure that they are best equipped to carry out their roles. This is particularly important with the advent of Better Case Management which is an initiative being piloted to improve the way in which cases are managed in the Crown Court. A national package would be the best tool to assist in this regard and would save duplication across the different CPS Areas.</i></p>
CPS action/ response	<p>The CPS believes that TSJ processes are now embedded within the Casework SOP and CMS was aligned in September and November 2016. CPS staff self-assessed their ability re: digital learning which was used to inform the Digital Learning Live fortnight in September 2016. Feedback was used to develop the video-based training commissioned to support the November CMS release.</p>
HMCP comment	<p>Our findings in this regard are referred to in chapter 4, paragraphs 4.59-61. These include encouraging responses to a survey of administrative grades working in Areas that we visited and a finding of good practice in relation to the provision of comprehensive desktop instructions in CPS Mersey-Cheshire.</p>

3	<i>We suggest that the national Transforming Summary Justice Group (TSJG) re-examines the disclosure forms, and considers simplification, so that the police fill out the same form whether the particular case is destined for the Crown Court or the magistrates.</i>
CPS action/ response	<p>The CPS partially reject this recommendation.</p> <p>There are no plans to amend the SDC forms. The Compliance and Assurance Team continue to monitor the submission of the SDC from police partners, together with an assessment of the disclosure duties undertaken by the prosecutor.</p> <p>If forces were to include the SDC with the charging file, the charging lawyer could deal with disclosure at an earlier stage. Nationally, the police have agreed to encourage forces to do this where possible. In addition the College of Policing are working to update and revise the learning materials available to police officers in relation to disclosure.</p>
HMCP comment	<p>Our findings in this regard are referred to in chapter 4, paragraphs 4.27-30.</p> <p>Compliance with disclosure obligations continues to be a challenge for both the police and the CPS.</p>
4	<i>We find that inclusion of the MGDDA documentation in guilty anticipated plea drink drive cases improves the chances of an early guilty plea being entered at the first hearing. Consideration should be given to seeking an agreement with the police to include this documentation.</i>
CPS action/ response	<p>The CPS reject this recommendation and state that there is no Area data of falling numbers of guilty pleas in drink drive cases and evidence is anecdotal. The CPS has held the line on the National File Standard and the MGDD forms are not provided in GAP cases. There is no evidential basis for including the MGDD forms and the CPS will not be taking this suggestion forward unless this is produced.</p>
HMCP comment	<p>We note the CPS response to this suggestion and would re-iterate that it was based upon evidence that we gathered at the time of our initial inspection.</p>

5	<i>Consideration should be given to revisiting the optimum number of cases to be listed in the NGAP and GAP courts in the light of operational experience at the national TSJG.</i>
CPS action/ response	The CPS have accepted this recommendation and continues to work with courts to get effective brigading of hearings. Accepted that this is yet not universally in place.
HMCSI comment	Our findings in this regard are referred to in chapter 5, paragraphs 5.1-9. This is still a significant issue. As a consequence we highlight this as an issue to address.



G Glossary

Agent

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

Associate prosecutor (AP)

A CPS employee who is trained to present cases in the magistrates' court on pleas of guilty, to prove them where the defendant does not attend, or to conduct trials of non-imprisonable offences.

Case management system (CMS)

IT system for case management used by the CPS. Through links with the police systems CMS receives electronic case material.

Charging decision

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

Code for Crown Prosecutors (the Code)

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

CPS Direct (CPSD)

The CPS Area which takes the majority of CPS decisions as to charge under the charging scheme. Lawyers are available on a single national telephone number so that advice can be obtained at any time.

Cracked trial

A case listed for a contested trial which does not proceed, either because the defendant changes his plea to guilty, or pleads to an alternative charge, or because the prosecution offer no evidence.

Director of Public Prosecutions (DPP)

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

Disclosure

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

Effective trial

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

Guilty anticipated plea (GAP)

A case whereby the defendant is expected to admit the offence at court following an assessment of the available evidence.

Hearing record sheet (HRS)

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

Individual Quality Assessment (IQA)

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

Ineffective trial

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

Initial Details of the Prosecution Case (IDPC)

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

Local Criminal Justice Board (LCJB)

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

MG3

Form used to record the charging decision.

MG5

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

MG6 forms

Forms MG6C, D and E (frequently referred to as the MG6 series) are used to schedule the unused material in a case and are endorsed with decisions as to whether the material should be disclosed:

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

MGDDA

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

National Criminal Justice Board

Was the primary forum for setting direction for the criminal justice system.

National File Standard (NFS)

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

Not guilty anticipated plea (NGAP)

A case whereby the defendant is expected to deny the offence at court following an assessment of the available evidence.

Postal requisition

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

Section 10 (s.10) admission

Formal admissions made between the parties in criminal trials under section 10 of the Criminal Justice Act 1967. These contain conclusive evidence of the facts and can be used to avoid unnecessary witnesses attending court to give evidence and shorten the length of trials.

Streamlined disclosure

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

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

(see also *disclosure* and *MG6 forms*)

Unsuccessful outcome

Cases which result in an acquittal or are discontinued.

Vacated trial

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

Victim Personal Statement (VPS)

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

HM Crown Prosecution Service Inspectorate

London Office:

One Kemble Street

London WC2B 4TS

Tel. 020 7210 1187

Fax. 020 7210 1186

York Office:

Foss House, Kings Pool

1-2 Peasholme Green

York, North Yorkshire, YO1 7PX

Tel. 01904 54 5490

Fax. 01904 54 5492

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

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