



HMCPSI

HM Crown Prosecution
Service Inspectorate

2020 charging inspection

**A thematic review of the quality
and timeliness of charging
decisions**

September 2020

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Who we are

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

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

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

Contents

Chief Inspector's foreword	6
1. Summary	9
What this report is about	10
Key findings	12
Recommendations, strengths, issues to address and good practice.....	21
2. Context and background.....	23
Background to the inspection.....	24
The changed landscape.....	25
Performance data.....	26
CPS policy and guidance	27
Caseloads and resourcing	29
3. Framework and methodology.....	30
Inspection framework	31
Methodology	31
4. The management of the return of charging to Areas.....	34
The business case	35
Governance structure.....	35
The planning stage.....	36
Resourcing	37
Implementation by Areas	37
Sharing learning and experience	38
Assessment of the change.....	39
5. Casework quality	42
Police file quality.....	43
Legal decision making.....	45
The standard of charging advice.....	53
Standard of MG3s	70
Quality assurance and performance management.....	75
6. The service to complainants, witnesses and the public	79
Quality benchmarks.....	80
Timeliness of decision making	80
Making correct decisions.....	82

2020 charging inspection

Compliance with policies	83
Special measures	84
Custody and bail considerations	84
Effective communication	85

Annexes

Inspection framework and methodology	87
File examination question set	93
File outputs – all cases	102
CPS performance data	113
Glossary.....	117

Chief Inspector's foreword

2020 charging inspection

A fair and effective criminal justice system relies on a number of principles. One of the overriding principles must be that those brought before the court are properly charged; that is, there is evidence to support, and it is in the public interest to bring, a prosecution. The core function of the Crown Prosecution Service (CPS) is to decide, according to principles in the Code for Crown Prosecutors, whether a suspect should be charged and be brought before the court.

In 2010 and 2015, HM Crown Prosecution Service Inspectorate (HMCPsi) examined the standard of legal decision making at the charging stage. We reported that there was some way to go for the CPS to fulfil its core role well.

In the 2015 report we found that about one in ten charging decisions made by the CPS (9.1%) were Code test failures (that is, no reasonable prosecutor would have made the same decision). In 2010 the failure rate was 11.4%.

There have been significant developments since 2010 across the criminal justice system. Much has changed, and a sustained period of austerity for public services means that resources have been reduced. In our general programme of inspection, we had seen some improvement in the quality and standard of CPS decision making at the charging stage. I was keen to look again in detail at this aspect of the CPS's performance, as we all know that getting it right first time is an effective mantra of efficiency.

Since the 2015 inspection report the CPS had also made some substantial changes to how it delivered charging, such as a return to a more local system of CPS Areas working with local police forces. Again, this inspection would allow us to examine whether these changes were working and standards had improved.

This report sets out mixed results. There has been a marked improvement in the quality of the legal decision making at charge. From the position of 2015, when my inspectors found that about one in ten decisions made were wrong, this inspection finds an error rate of less than 3%. Given that we examined 1,400 cases, one of the largest file samples ever examined by the Inspectorate, there is evidence that the CPS's focus on getting it right first time is paying off – and that the quality of legal decision making across the full range of casework types has markedly improved in the last five years.

However, whilst there is no doubt about the findings in relation to cases being charged correctly at the outset, many of the other findings in this inspection do raise serious questions about how well CPS lawyers understand what casework quality really means.

2020 charging inspection

Our inspection activity often comments on the lack of grip on casework; some of my inspectors talk about how it seems that some CPS lawyers do not demonstrate a level of 'trade craft' or a 'thinking approach' that would support effective case management and handling. Our assessment of the value added and grip on cases in this inspection highlights this weakness. My inspectors found that in 22.2% of cases the CPS added little or no value and in 19.2% of cases there was poor grip, although in many cases it was the same files failing both elements.

There is also an obvious weakness in the level of analysis and case strategy set out in many of the cases we examined. Getting the initial charging decision correct is essential if the case is to proceed effectively, but setting out a clear rationale or strategy for how the case should be handled is fundamental to the efficiency and effectiveness of the subsequent stages as the case moves through the system. My inspectors rated the case strategy as fully meeting expectations in less than half the cases they examined, which represents deteriorating performance since the 2015 inspection.

This report also highlights that work by lawyers that work for CPS Direct (the out of hours charging service), whose only role is to provide charging advice, is often much better quality than their colleagues based in CPS Areas, who have to carry out a wide range of tasks. The difference in findings across a range of measures between decisions made by lawyers in CPS Direct and those in CPS Areas is stark.

However, this does not mean that we think the CPS should reconsider its position. What it does highlight is that doing something frequently and having an effective quality assurance regime in place can make a real difference in outcomes. There is much that can be learned from how CPS Direct trains and supports its staff in terms of driving quality. Areas should look to CPS Direct to see if they could use similar techniques to improve their outcomes.

Many of the skills needed when making good, well reasoned charging decisions remain the same – and remain equally necessary – as cases proceed through the system. In a number of cases that my inspectors rated as 'fair', there was an evident lack of a clear rationale or of the level of skill or trade craft that one would expect to see from a prosecutor. This highlights that there is a skills gap for some lawyers and the CPS needs to support and train its staff to ensure that they have the necessary skills to provide an effective service throughout the life of a case.

1. Summary

What this report is about

- 1.1.** A core function of the Crown Prosecution Service (CPS) is to decide whether to bring a criminal prosecution by applying the principles set out in the Code for Crown Prosecutors (the Code)¹. A prosecution should only be brought where there is a realistic prospect of conviction and it is in the public interest to do so.
- 1.2.** A prosecutor should apply the Full Code Test when all outstanding lines of inquiry have been pursued, or they are satisfied that any further evidence or material is unlikely to affect the decision to either charge or take no further action (NFA).
- 1.3.** Where the police seek a charging decision whilst a suspect remains in custody following arrest, a prosecutor may apply the Threshold Test if certain conditions are met. These conditions include there being reasonable grounds for suspecting that the suspect has committed the offence, that further evidence can be obtained to provide a realistic prospect of conviction, and there being substantial grounds to object to bail.
- 1.4.** If a decision is made to charge, the prosecutor must ensure that the charges chosen adequately reflect the alleged criminality and would provide the courts with sufficient sentencing powers in the event of a conviction.
- 1.5.** At the time of the 2015 Criminal Justice Joint Inspectorate (CJJI) report on charging², responsibility for most Full Code and Threshold Test decisions lay with prosecutors working within the 24 hour a day national service known as CPS Direct (CPSD).
- 1.6.** In 2016 the CPS decided to change the system through which it delivered charging. It did so by returning the responsibility for charging in cases where the suspect is on bail or can be released on bail (or has been released under investigation) to prosecutors in its 13 (now 14) geographical Areas. This was done on a staged basis so that, for example, CPS North West took charging responsibility back in September 2016, whereas CPS London North and South did not do so until 2019.

¹ *The Code for Crown Prosecutors*; CPS; October 2018
www.cps.gov.uk/publication/code-crown-prosecutors

² *HMCPSI and HMIC joint inspection of the provision of charging decisions*; CJJI; May 2015
www.justiceinspectors.gov.uk/cjji/inspections/joint-inspection-of-the-provision-of-statutory-charging/

1.7. CPSD has retained 24-hour responsibility for making decisions where suspects are in police custody and it is not appropriate to bail them pending a charging decision. The exception to this is where a police force is piloting the new charging model (see paragraphs 2.9 to 2.13). Where this is the case, the relevant CPS Area is responsible for making a custody charging decision between 9am and 5pm.

1.8. CPSD does, however, continue to assist Areas with some daytime bail charging decisions to relieve pressure, where its resources allow.

1.9. As a result of the changes, the ratio of CPSD charging decisions compared to Area decision has changed incrementally over the past six years. In the year 2013/14, CPSD dealt with 186,131 cases, whilst Areas dealt with 33,002. By contrast, in 2019/20 CPSD made 82,201 charging decisions, with Area prosecutors making 140,588.

1.10. To reflect this shift in balance we examined 980 Area and 280 CPSD charging decisions. All but three of the Area decisions were made applying the Full Code Test, whereas 66 of the CPSD decisions were made applying the Threshold Test. However, this still means that 76% of the CPSD decisions were made applying the Full Code Test.

1.11. In light of these significant changes, the overriding question for this inspection is the level of confidence the public can have in the CPS to deliver high quality, effective, fair and timely charging decisions and to comply with the Director's Guidance on Charging³ in respect of police-charged cases.

1.12. In considering this question we have, where possible, compared our findings with the outcomes recorded in the 2015 charging inspection and the composite data from our Area Assurance Programme of inspections of the 14 CPS Areas, which we carried out between 2016 and 2019⁴.

1.13. Our findings highlight themes and issues to assist the CPS in working towards its 2025 strategic aims of improving casework quality and building public confidence.

³ *Charging (the Director's guidance) 2013 – fifth edition*; CPS; May 2013
www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements

⁴ *Area Assurance Programme composite report*; HMCPSI; October 2019
www.justiceinspectors.gov.uk/hmcpsi/hmcpsi-area-assurance-programme-composite-report-oct-19/

Key findings

Casework quality

1.14. Since 2015, there has been an improvement in the proportion of pre-charge decisions that comply with the Code for Crown Prosecutors. In 2015 we found 90.9% of CPS charging decisions to be Code compliant; that is, decisions that a reasonable prosecutor could have made. In the present file sample, this has risen to 97.1% of decisions.

1.15. Where the Threshold Test had been applied, there was a Full Code Test review by the Area as soon as practicable after charge in 64.6% of cases. This is an improvement since 2015, where there was a Full Code Test review as soon as practicable in 37.5% of cases.

1.16. We also found that performance has improved since 2015 in the charges being selected by prosecutors. In 82.4% of cases where the CPS decided to charge, we assessed the prosecutor as fully meeting the requirement to select offences that were appropriate and proportionate, compared to 79.7% in 2015. Although we found that only 4% of cases did not meet the standard at all in this respect, 13.6% only partially met the standard, so there does remain some room for improvement.

1.17. In 85% of cases, our file examination was made possible by a clear audit trail of key events, decisions and actions on the CPS's case management system (CMS), with a further 13% partially meeting this requirement.

1.18. In 85% of cases where there was a decision to take NFA and the case qualified for the Victims' Right to Review scheme, the prosecutor provided enough information to enable the police to explain the decision to the complainant.

1.19. Whilst these findings demonstrate improved performance in certain aspects of pre-charge work over the past five years, we found that since 2015 there has been a drop in the overall standard of prosecutors' legal analysis. In coming to our findings, we have assessed legal quality with reference to what a prosecutor has included on the document used to record their charging decision (the Manual of Guidance Form 3, or MG3).

1.20. Here we found a significant difference in quality between CPSD and Areas, with evidence that CPSD prosecutors generally take a more analytical and structured approach to pre-charge decision making. This finding reflects not only their specialisation in this type of work but also the CPSD performance

management regime which, unlike those in Areas, is able to focus almost exclusively on the quality and timeliness of pre-charge casework.

1.21. Whilst we assessed the quality of almost 50% of CPSD's MG3s as good, which is a slight improvement from five years ago, the standard of Areas' MG3s has fallen, with 28.1% rated as good, 49.3% as fair and more than one in five (22.7%) as poor.

1.22. To put these ratings into context, we used the 'fair' rating where the decision to charge or take NFA was correct but either:

- the MG3 did not cover all necessary aspects of the case or contained insufficient explanation for the decision; or
- there were failings or omissions that had the potential to materially affect the effectiveness or timeliness of the prosecution, or the quality of service to victims and witnesses.

1.23. Not only were the CPSD results better overall than those found in Areas, the range of differences in performance levels between individual Areas in several key respects was stark. Given the large file sample we examined, these results are likely to be representative of general Area performance.

1.24. A common thread running through many of the poor quality MG3s that we examined, and many that we assessed as fair, was a failure by the prosecutor to justify a conclusion.

1.25. This applies not only to the fundamental decision whether to charge or take NFA, but also to the various other conclusions that a prosecutor must come to when dealing with a case before charge – including where the case should be heard, applications to be made if the case goes to trial, and bail considerations.

1.26. To make the most effective use of finite resources, it is important for a prosecutor to apply their mind to all relevant considerations at the pre-charge stage. This ensures that sound charging decisions are made, that the prosecution case is clear from the outset, and that a trial strategy is set where a suspect is to be charged. It also avoids duplication of effort after charge. Before this can be done, a prosecutor requires a case file provided by the police that meets the National File Standard (NFS).

1.27. We assessed fewer than half (44.9%) of the CPS charging decisions we examined as fully meeting expectations for case analysis and – where the decision was to charge – trial strategy. Another 39.5% partially met the standard and 15.6% did not meet it at all. This performance was slightly below that in the 2015 report. Again we found CPSD to be performing significantly better than

CPS Areas in this respect, with 55.7% of its MG3s fully meeting the standard, compared with 41.8% of Areas' MG3s.

1.28. Common flaws included a lack of:

- meaningful analysis of how each element of an offence was to be proved on the evidence (or why the case could not be proved to the required standard)
- strategy for countering the anticipated defence case or for dealing with weaknesses in the prosecution case.

1.29. In cases that contained a weak analysis, we also commonly found that prosecutors were not setting out clearly and concisely the factual basis upon which they had made the decision to charge.

1.30. Performance related to proper application of the CPS's own policies has also declined since 2015 overall, although there was better application of policy in CPSD cases than in 2015. Where there was partial or no compliance, the policies that were most often not applied properly were those related to domestic abuse and youth offenders.

1.31. We examined 380 charging decisions related to allegations of domestic abuse. The CPS's domestic abuse charging policy had been fully or partially applied in 81% of those cases. In the vast majority of these cases (97.1%), the prosecutor came to a charging decision that we found to be compliant with the Code for Crown Prosecutors. Our finding does, however, show that a significant number of prosecutors responsible for charging need to improve their knowledge of this important policy.

1.32. We examined 84 youth cases involving youth suspects. The CPS's youth charging policy was fully or partially applied in 68% of these, and not applied at all in 32%. Again, this shows the need for increased awareness of an important CPS policy among some prosecutors.

1.33. Overall, just under half of relevant cases fully met the expected standard for consideration of hearsay, bad character and special measures applications, and for preventative orders. CPSD's MG3s were better than Areas' in this respect, especially when dealing with hearsay and preventative orders.

1.34. Proceeds of crime applications were fully considered in about a quarter of relevant cases, and not at all in nearly two thirds.

1.35. For those cases charged, the standard of written instructions to the court prosecutor has worsened since the 2015 charging inspection. Whilst 82.1% of CPSD MG3s met the required standard, 44% of Areas' did.

1.36. Areas' MG3s were particularly weak in setting out the prosecution's position on bail and, for either way offences, the arguments for where the case should be heard.

1.37. The police are responsible for criminal investigations. However, the Code for Crown Prosecutors requires prosecutors to identify and, where possible, seek to rectify evidential weaknesses and to advise police on reasonable lines of inquiry. In doing so, prosecutors should ensure that action plans only require the gathering of key evidence and contain agreed timescales for the completion of any work.

1.38. Whilst we found that action plans were usually in the right format, or at least were clearly flagged for the police within the body of the MG3, and prosecutors were setting realistic timescales for a response in 4 out of 5 cases, the content of a third of action plans was assessed as unsatisfactory. The most common reason was the prosecutor failing to ask for items that ought to have been requested, which ties in with our findings about the quality of case analysis. CPSD action plans were stronger in all respects than those set by Areas, although in terms of the reasonableness of the timescales set for the police, the difference was very slight.

1.39. CPSD also performed much better than Areas in meeting its responsibility to consider the unused material position before charge, even if having done so, no action was required. In this respect, youth cases fared worse than those involving an adult suspect, and sensitive⁵ cases were dealt with better than non-sensitive ones. There were, again, significant variations in performance between individual Areas.

1.40. The most common failing in Area cases that partially met or did not meet expectations was there being no record on the MG3 charging document that the prosecutor had considered disclosure at all. The second most common was not addressing the impact of unused material on the case.

1.41. Our findings in those cases are not that there was unused material that would have affected the prospects of conviction, necessitated further inquiries before charge, or required early disclosure to the defence. They do, however, demonstrate that there is work to be done, particularly in Areas, to ensure that all charging prosecutors get into the habit of turning their mind to unused

⁵ For this inspection, a sensitive case is one that involved an allegation of child abuse, sexual offending or domestic abuse; or which arose out of a fatal road traffic collision; or where the complainant was targeted because of their race, religion, sexuality, disability or age.

material and, having done so, recording the reasoning for their conclusion, whatever that may be.

1.42. Since publishing the 2015 report, HMCPSI has amended its methodology. We now assess the prosecutor's judgment and grip on a case and the value they have added.

1.43. Overall, grip was assessed as good or fair in eight out of ten cases at the pre-charge stage, and poor in one in five. In the 'poor' category, however, there was a significant difference between the performance of CPSD prosecutors (grip rated poor in 8.9% of cases) and Area prosecutors (grip rated poor in 22.1% of cases).

1.44. This pattern is repeated in our findings related to the overall value added by the CPS. Prosecutors are expected to bring legal expertise to a case and to show a proactive approach. They can do this in a variety of ways: for example, by properly assessing the reliability and admissibility of evidence, by plugging evidential gaps before charge or by developing a trial strategy to counter likely lines of defence or weaknesses in the prosecution case. In a quarter of cases, Area prosecutors were assessed as adding little or no value, against one in ten cases handled by a CPSD prosecutor.

1.45. The ability to record a clear and reasoned argument to justify a conclusion is an essential legal skill. But a theme running through several of our findings is that, in too many cases, this skill is not being demonstrated. Whilst we saw many examples of Area prosecutors analysing volume cases well, we have concluded that much needs to be done by the CPS to raise the overall standard of legal analysis in its volume caseload if it is to fully meet its commitment to high quality casework.

1.46. As part of the file sample we examined, we selected 140 cases where the police had made the charging decision. Our purpose in selecting these was to assess prosecutors' compliance with their responsibilities under the Director's Guidance on Charging in respect of such cases.

1.47. In those cases where the police made the decision to charge, we found that 97% of the time, they had complied with the Code test and had therefore made a reasonable decision.

1.48. In each of the four cases where the police had not complied with the Code, the CPS identified this and took the appropriate action to rectify the decision. There was, however, no indication on the CMS that the prosecutor had flagged the police's failure to a manager so it could be raised with the police at a performance meeting.

1.49. Although police performance is outside the scope of this report, their decision to charge rather than refer the matter to the CPS was compliant with their powers under the Director's Guidance in 76.4% of the applicable cases we examined (107 out of 140). We selected the sample of police-charged files with reference to offence types that commonly, although not always, require a CPS charging decision. Therefore, the police's non-compliance rate should not be regarded as indicative of overall non-compliance with their powers to charge under the Director's Guidance.

1.50. Of the 33 cases where the police ought to have sought charging advice, five featured homophobic offending, four were allegations of racially or religiously aggravated offending and four were domestic abuse cases.

1.51. The CMS indicated that the CPS Areas fed back to their local police forces about breaches of the Director's Guidance in three of those cases, and identified the breach but did not feed back (at least, not in a way that was apparent from the case file) in another five. This left 25 cases (76%) where there was no evidence on the CMS that the prosecutor had identified the breach or fed back on it.

1.52. From this finding, and from our interviews with prosecutors and their managers, we have concluded that action needs to be taken to improve awareness of the content of the Director's Guidance on Charging and the feedback processes to be applied.

Timeliness of decision making

1.53. Depending on the Area and the complexity of the case, the CPS aims to make charging decisions within five, 21 or 28 days of receiving an adequate case file. Assessed against these timeframes, charging decisions where the suspect was on bail were timely in just under half (47.8%) of the Area-charged files that we examined. The corresponding figure for Area bail cases in 2015 was 63.9%. At that time, Areas were responsible for far fewer charging decisions and the set timeframes were 21 or 28 days.

1.54. Overall, we found that CPSD and Area charging decisions (including custody cases) were timely in 56.1% of cases. Charged cases tended to feature timely decisions more often than NFA cases (58.6% compared to 48.1%), although we also found that there was a significant difference in performance between Areas. One Area made a timely charging decision in 70 (81.4%) of the cases we looked at, whilst another's decisions were timely in 19 (27.1%) of its cases.

1.55. Sensitive cases and those with a youth suspect were a little more timely than non-sensitive or adult cases, but not by very much. Domestic abuse cases,

however, did receive a timely charging decision 64.6% of the time, which was higher than the overall average and for sensitive cases generally.

1.56. The quality of pre-charge case files submitted by the police continues to be a major frustration across all Areas and is perceived to be a significant factor in delays in case progression. Our finding that fewer than half of initial police file submissions complied with the jointly agreed National File Standard supports this view. However, we should stress that we have assessed the timeliness of bail charging decisions from the date when the CPS concluded that it had sufficient evidence to apply the Full Code Test, and not from the date when the initial case file was submitted by the police.

1.57. During our on-site interviews it was clear that many CPS legal and business managers are proactive in addressing file quality issues with the police. Although police performance is outside the scope of this report, we noted that there was frustration both at resources being diverted to address police performance issues, which could have been utilised to improve the CPS's performance, and at the factors that remain outside CPS managers' control.

The management of change

1.58. The decision in 2016 to return daytime charging to the Areas on a phased basis arose out of the need to address the backlog of cases that had built up in CPSD, which was causing tension in the working relationship between CPSD and the police. This backlog of cases awaiting a charging decision was attributable to staff shortages, IT system outages and poor quality file submissions from the police.

1.59. The expected benefits of returning charging to Areas included greater efficiency, fewer backlogs, more control over casework entering the system, and increased end to end file ownership. Another potential benefit included efficiency savings from combining the pre-charge decision review and the pre-first hearing review into one.

1.60. Whilst work did take place to identify the key benefits and challenges of various ways to address the backlog before the choice was made to return daytime charging to Areas, the CPS could not provide us with a formal finalised business case for this change.

1.61. CPS Headquarters worked with Areas to produce a high-level project delivery plan for the phased return of daytime charging. This included piloting a new charging model in several Areas, the success of which is outside the scope of this inspection.

1.62. The timetable for the phased return was set by CPS Headquarters, although Areas were given a significant degree of autonomy in how to implement and manage the return of charging. Areas set up local implementation teams to oversee the return of daytime charging. We found that these were generally effective, although we found evidence that the resources returned to Areas were not always commensurate with the volume of work they took back, which put significant pressure on managers and prosecutors. However, resource issues were addressed as the project developed.

1.63. Whilst there was no standard model for Areas to follow when taking back daytime volume charging for suspects on bail, they generally welcomed the autonomy they had in implementing the change. They felt they were in the best position to make meaningful judgments on what would work, taking into account their knowledge of local issues and forces, as well as their existing experience of handling this work. This autonomy also included how Areas adopted the approach to local training.

1.64. We saw examples of Areas and CPSD developing their own bespoke training for staff to supplement relevant national training courses and modules that were available.

1.65. The general approach to work allocation across Areas is to share the volume charging work between lawyers on teams in the magistrates' court and Crown Court departments. Allocation is based on where the case is likely to be concluded if charged. Prosecutors are expected to deliver charging alongside their post-charge casework.

1.66. Where practicable, Areas adopt a cradle to grave approach, although this has proved to be more viable in the Crown Court units.

1.67. The phased introduction presented an opportunity to collate and disseminate lessons learned by Areas who took back charging early on. This opportunity was not embraced as fully as it could have been. Some Area interviewees would have welcomed more information about lessons learned in other Areas and some sort of toolkit.

1.68. Potential benefits identified at the planning stage included:

- increased satisfaction and motivation
- a better service for the police
- more efficient and timely processes
- increased staff effectiveness

- better case preparation, leading to more effective hearings.

1.69. The benefits tracker provided to us by the CPS was in draft form and had been neither finalised nor used to record whether the benefits had been achieved. Although it appears that the intention was to use this tracker to measure efficiency, performance and quality, and therefore the success of the project, it does not appear to have been maintained as the project evolved.

1.70. We were told that the pilot of the new charging model would not have been possible if the return of charging to Areas was not a success. However, there was little evidence of how the potential benefits and efficiency/cost savings of the change have been systematically monitored and measured over time.

1.71. A charging dashboard has been developed to provide robust data on the timeliness and process of pre-charge decision making. There are established performance measures, such as those related to case file quality and successful pre-charge decision outcomes, to assess charging performance on an ongoing basis.

1.72. There has, however, been no formal CPS evaluation of the overall success of the return of charging to Areas. None of the Areas we visited told us that they had been asked to provide specific feedback or evaluation to contribute to such a study.

1.73. Moving a significant proportion of daytime charging back to the Areas has freed up resources in CPSD. CPSD can now provide some resilience for Areas that are under pressure, although this was not identified as an expected benefit at the beginning of the project.

Our judgment

1.74. The main inspection question is:

Following the return of charging to Areas, what level of confidence can the public have in the CPS to deliver high quality, effective, fair and timely charging decisions, and to comply with the Director's Guidance on Charging in respect of police-charged cases?

1.75. In our judgment, the public can have confidence that the CPS is making correct decisions to charge or to take no further action.

1.76. The public can have less confidence at present that those decisions are being adequately thought through, that prosecutors are taking a firm grip of a case at an early stage and that they are adding the necessary legal value.

1.77. There is, therefore, significant room for improvement in respect of the quality of prosecutors' legal analysis, timeliness of decision making and familiarity with both the CPS's own policies and the Director's Guidance on Charging.

Recommendations, strengths, issues to address and good practice

Recommendations

To assist prosecutors' development, the Crown Prosecution Service should develop a nationally agreed standard of what a good Manual of Guidance Form 3 looks like (paragraph 5.181).

The Crown Prosecution Service should devise and deliver mandatory classroom training for all Area prosecutors delivering volume charging, which focuses on proactive case analysis, clearly setting out the prosecution case (where a charge is authorised) and devising a trial strategy (paragraph 5.181).

Crown Prosecution Service Headquarters should consult with Crown Prosecution Service Direct's senior management and devise a more regular and robust Area quality assurance regime that focuses on the legal quality of charging decisions and the value being added by charging prosecutors (paragraph 5.181).

The Crown Prosecution Service should review, rationalise and simplify the policies and associated guidance that are commonly applied at the pre-charge stage, to provide greater clarity and direction for prosecutors (paragraph 6.31).

Strengths

Prosecutors are applying the correct Code test in 99 cases out of 100, which is a 1.6% improvement from the 2015 charging inspection (paragraph 5.16).

Areas and Crown Prosecution Service Direct have both showed improved performance since 2015 in respect of selecting charges that are appropriate and proportionate (paragraph 5.23).

Prosecutors are demonstrating better application of the Code for Crown Prosecutors and improved judgment, in that fewer wholly unreasonable charging decisions are being made than in 2015 (paragraph 5.30).

The Crown Prosecution Service identified each of the four wholly unreasonable charging decisions made by the police in a timely way and took appropriate remedial action (paragraph 5.36).

Issues to address

Crown Prosecution Service Headquarters and Area managers should make sure there is a proper focus on the quality of the pre-first appearance review in police-charged cases (paragraph 5.59).

Awareness of the content of the Director's Guidance on Charging varies significantly between Area prosecutors delivering charging. As this is a key document for any charging prosecutor, levels of awareness need to be raised (paragraph 5.60).

The overall standard of Areas' Manual of Guidance Form 3s requires improvement (paragraph 5.181).

Crown Prosecution Service Headquarters should consider whether the five-day deadline for charging decisions in standard cases is realistic and achievable with the resources available (paragraph 6.16).

1.78. Whilst the impact of these issues is not as great as that of our recommendations, the CPS will need to consider what measures it can take to address our concerns.

1.79. We define good practice as an aspect of performance or activity that demonstrates an innovative or creative approach and that leads to a positive change, improved quality or better performance, or represents value for money.

Good practice

A pan-London Service Level Agreement is currently being agreed between the Chief Crown Prosecutors for London North and London South and the Metropolitan Police to address the issue of cases being administratively finalised by the Crown Prosecution Service because of a lack of response to an action plan (paragraph 5.100).

In some Areas, legal managers dip sample action plans to make sure they are being used appropriately. In another Area, prosecutors are required to discuss a second action plan on a case with a legal manager before it is sent to police (paragraphs 5.101–5.102).

Crown Prosecution Service Direct has developed an Area Issues Liaison Application for Areas to use when feeding back issues with Crown Prosecution Service Direct's charging decisions, or when providing positive feedback (5.173–5.174).

2. Context and background

Background to the inspection

1.80. A Criminal Justice Joint Inspection report on the provision of charging decisions was published in May 2015, five years after the previous report on this topic. The 2015 inspection review was prompted by the substantial change in the charging landscape since 2010, as well as by performance issues identified by HMCPSI during its inspection activity over that period.

1.81. These changes and issues included the following.

- Charging authority had been returned to the police in a number of case categories.
- Crown Prosecution Service Direct (CPSD) now operated around the clock and took the majority of CPS charging decisions. Local CPS Area prosecutors only provided charging advice in a limited category of cases.
- There had been a substantial reduction in the volume of CPS charging decisions and, aligned to this, an overall reduction in caseload in both the magistrates' courts and the Crown Court.
- The way police forces supervised their part of the process had changed; Evidence Review Officers had been removed and their functions returned to front line supervisors.
- There were advancements in digital working and related processes.
- The Victims' Right to Review scheme (VRR) was introduced.
- HMCPSI identified a decline in the quality of charging decisions by both the CPS and the police.
- HMCPSI identified issues of police compliance with the Director's Guidance on Charging. Cases were being charged by police (whether correctly applying the Code for Crown Prosecutors or not) which should have been referred to the CPS.

1.82. The 2015 inspection scrutinised how well the police and the CPS ensured that quality decisions were made under the system that existed at the time. It concluded that timeliness and quality of charging decisions needed to improve.

The changed landscape

1.83. In summer 2016, it became clear that the Service Level Agreement between the police and CPS for the timely provision of digital charging advice (set at five days) was not being met. In June 2016, Chief Crown Prosecutors and Heads of Specialist Divisions agreed on a temporary return of digital charging to Areas to eradicate the digital charging backlog. By the end of August 2016, the backlog had been cleared.

1.84. Since then, there have again been significant changes to the way that the CPS delivers charging, most notably the staged return of daytime charging in bail cases to local CPS Areas between September 2016 and March 2019. CPSD retains responsibility for out of hours charging, and for daytime decisions on priority cases where a suspect is in police custody, except in Areas piloting the new charging model.

1.85. The process started in September and October 2016, with digital daytime charging returning to six CPS Areas.

1.86. At the same time, CPS Wales entered into a separate pilot arrangement with the South Wales Police, and the Joint (CPS/Police) National Charging Review Working Group (JNCRWG) began designing a future charging model.

1.87. Since then, digital daytime charging has returned to all remaining Areas. CPS London North and South were the last Areas to fully take charging back, in March 2019.

1.88. As part of the return of the majority of charging decisions to Areas, the new JNCRWG charging model has been piloted in six police force areas: Hampshire, South Wales, Gwent, South Yorkshire, Norfolk and Suffolk. It is also now being piloted in the West Midlands police force area.

1.89. The new charging model seeks to:

- provide one digital way into the CPS for pre-charge decision files
- reduce the demand for decisions out of hours
- strengthen the partnership between local police and CPS
- move away from on-demand telephone advice
- make sure that, as far as practicable, the same prosecutor is allocated to the case from charge to conclusion.

1.90. The model envisages a two-tier prioritisation method. Cases in custody requiring an immediate decision are termed “red” cases, and cases which require either a five-day or a 21-day decision are termed “green” cases. CPS Areas will deal with both red and green cases between 9am and 5pm. Outside those hours, CPSD will deal with red cases.

1.91. For charging decisions in non-pilot cases, the applicable timelines are five and 28 days.

1.92. A draft pilot evaluation report is scheduled for later in 2020, which will be followed by a National Charging Board sign off report to the National Police Chiefs’ Council and the CPS Board. A decision will then be made about whether to implement the new charging model nationally.

1.93. It should also be noted that the sixth edition of the Director’s Guidance on Charging is currently being prepared and is expected to be published some time in 2021. The revisions to the guidance are primarily intended to bring it into line with the changes to the Code for Crown Prosecutors introduced in October 2018.

1.94. Regardless of what the decision on the pilot ultimately will be, it has been the right time to carry out an inspection to assess the current quality and timeliness of CPS charging decisions. The aim of this inspection is to assess whether the return of most charging responsibilities to CPS Areas has enhanced the service provided and improved the quality of decision making since the findings of the 2015 report.

1.95. An evaluation of the pilot model is not within the scope of this inspection, which focuses on the timeliness and quality of charging decisions (assessing timeliness against the timescale relevant to the specific case being inspected), as well as on the arrangements for the staged return of charging to Areas and how this has been supported.

Performance data

1.96. The CPS gathers performance data from various sources, including its case management system (CMS), management information system, and quality assurance checks carried out by managers. It also has access to performance data from the police and HM Courts and Tribunals Service.

1.97. The CPS uses this data at a national level to hold Area managers to account for their performance, and at a local level to identify good practice and areas for improvement.

1.98. The CPS places greater weight on certain aspects of performance revealed by the data. These are known as high weighted measures. The CPS monitors and assesses both Area and national performance against these high weighted measures.

1.99. In this report, we discuss 37 cases where we have determined that the CPS's decision to charge or take no further action (NFA) was not in accordance with the Code for Crown Prosecutors. These cases have to be seen in the context of the size of our file sample; we examined 1,260 CPS charging decisions, so the percentage we found not to be compliant with the Code is 2.9%. This represents a significant improvement since the 2015 report.

CPS policy and guidance

1.100. The fifth edition of the Director's Guidance on Charging was published in May 2013. This sets out the arrangements prescribed by the Director of Public Prosecutions for joint working between police officers and prosecutors during the investigation and prosecution of criminal cases.

1.101. Prosecutors make charging decisions in accordance with the Code for Crown Prosecutors, the Director's Guidance and any relevant CPS legal guidance or policy.

1.102. The police apply the same principles to decide whether to start criminal proceedings in cases they are responsible for.

1.103. Among other things, the Director's Guidance sets out the offences that can be charged by the police and those where the decision must be made by a prosecutor. Police officers and prosecutors must comply with the guidance to make sure that charging and prosecution decisions are fair, consistent and fully compliant with both the Police and Criminal Evidence Act 1984 and the Code for Crown Prosecutors.

1.104. The eighth edition of the Code for Crown Prosecutors (the Code) was published in October 2018. The Code describes the general principles prosecutors apply when making decisions about prosecutions. It is the duty of the prosecutor to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible.

1.105. With one exception, prosecutors must only start a prosecution when the Full Code Test is satisfied. This means they have concluded that there is a realistic prospect of conviction and it is in the public interest.

1.106. To apply the Full Code Test, prosecutors must be satisfied that that all reasonable lines of inquiry have been pursued or, before the investigation is

completed, that any new evidence or material is unlikely to affect the application of that test.

1.107. The exception to this is where the prosecutor cannot yet apply the Full Code Test but five conditions are met, namely:

- there are reasonable grounds to suspect that the person to be charged has committed the offence
- more evidence can be obtained to provide a realistic prospect of conviction
- the seriousness or the circumstances of the case justify making an immediate charging decision
- there are continuing substantial grounds to object to bail and it is proper to do so
- it is in the public interest to charge the suspect.

1.108. If these five conditions are met, the case meets what is known as the Threshold Test, and the prosecutor can charge a suspect. In such cases, the Full Code Test must be applied after charge as soon as the anticipated further evidence or material is received.

1.109. The CPS also publishes legal and policy guidance on specific offences and for some types of offending, such as hate crime and youth offending. Prosecutors should apply any relevant policy when making charging decisions – although, as with any offence, the appropriate Code test still needs to be satisfied before a prosecution can take place.

1.110. The Director of Public Prosecutions has also issued Casework Quality Standards (CQS). These are the benchmark of quality that the CPS strives to deliver when prosecuting crime on behalf of the public, and by which it judges the quality of its service.

1.111. Compliance with these standards is monitored through individual quality assessments (IQAs), through which managers assess cases focusing on individual performance. Through this process, performance is monitored, feedback is given and individual development needs are addressed.

1.112. CQS and IQAs are an integral part of the CPS's performance management framework.

Caseloads and resourcing

1.113. CPS charging volumes have fallen year on year since 2013/14, from 298,079 to 222,789 in 2019/20.

1.114. According to prosecutors and CPS managers we spoke to, the general expectation is that a pre-charge decision in a case handled by the magistrates' court team should take between 60 and 90 minutes, and work is allocated with this in mind. We did find evidence that those responsible for allocating work showed some flexibility in respect of this expectation when it came to the more complex volume cases, or where the need to review audio or video media made it impracticable.

1.115. As pre-charge decisions made by the Crown Court team will usually (but not always) take longer, prosecutors there are generally allocated fewer cases per week.

1.116. All the Areas we visited aimed to adopt a cradle to grave approach wherever possible. We were told this was more widely achievable in the Crown Court and rape and serious sexual offences teams than in the magistrates' court teams.

1.117. Some prosecutors we spoke to were concerned that charging caseloads were too heavy for the resources available, and that this led to them feeling pressured. Others felt that, whilst they were busy, the number of pre-charge decisions they were asked to make per week was achievable. A common refrain was that urgent work required on their post-charge cases would often have to take precedence over a pre-charge decision with a suspect on bail.

1.118. Some prosecutors on magistrates' court teams told us that their managers were flexible and would adjust allocation numbers if they explained why a particular charging decision was going to take considerably longer than 90 minutes. Others told us that there were sometimes unrealistic expectations about how many charging decisions can be made in a day.

1.119. For the most part, we found that prosecutors felt they had been given the right training and mentoring to deliver charging. We also found a high level of commitment to self-development and the delivery of a high standard of charging decisions. As we say elsewhere in the report, this has not yet translated into a consistently high quality of legal analysis at the pre-charge stage.

3. Framework and methodology

Inspection framework

1.120. The framework for this inspection consisted of an overarching question and seven sub-questions.

1.121. The overarching question was: “Following the return of charging to Areas, what level of confidence can the public have in the CPS to deliver high quality, effective, fair and timely charging decisions, and to comply with the Director’s Guidance on Charging in respect of police-charged cases?”

1.122. The seven sub-questions and a fuller explanation of the methodology can be found in annex A.

Methodology

1.123. The inspection comprised a file examination stage and a fieldwork stage.

File examination

1.124. HMCPSI inspectors examined 1,400 files nationally, 100 from each of the 14 Crown Prosecution Service (CPS) Areas. The file examination was carried out wholly electronically.

1.125. The question set our inspectors used was designed to enable HMCPSI to make a meaningful assessment of the current quality and timeliness of CPS charging decisions and to allow comparisons with some of the findings of the 2015 joint inspection report.

1.126. For each Area, we examined 70 charging decisions made by Area prosecutors. These included decisions to charge and to take no further action.

1.127. Where practicable, we selected half of an Area’s sample from between 6 and 12 months after it took daytime charging back from CPS Direct (CPSD) and half to reflect decisions taken during the summer and autumn of 2019.

1.128. The files chosen reflected volume work in the magistrates’ courts and Crown Court. Two categories of offences, namely murder and rape, were excluded from the sample.

1.129. For each Area, we also examined 20 files where the decision to charge had been made by a CPSD prosecutor.

1.130. We also examined 10 cases per Area where the police had made the charging decision. We did this to assess the CPS’s compliance with the Director’s Guidance on Charging in respect of police-charged cases.

1.131. The focus of this inspection is on the pre-charge decision stage and not on events after charge. There are two exceptions to this.

- In police-charged cases, we have considered whether the CPS has carried out a proportionate initial review, which is compliant with the Code for Crown Prosecutors (the Code), before the first court appearance, as it is required to do under the Director's Guidance.
- For cases charged applying the Threshold Test, we have also assessed whether a prosecutor has conducted a Full Code Test review as soon as reasonably practicable, which is also required under the Director's Guidance.

1.132. To safeguard independence and objectivity in our findings, the work of all the inspectors carrying out file examination was subject to quality assurance by way of dip sampling. We also held consistency exercises at the beginning and middle of this stage, where all inspectors examined and discussed the same files.

Fieldwork

1.133. We carried out the fieldwork stage of the inspection in June 2020. During this phase we held a series of interviews with legal and business managers, including the Area Business Manager, in the following five Areas:

- Mersey Cheshire
- East of England
- Yorkshire & Humberside
- South East
- London North.

1.134. In each Area, we also interviewed a focus group of four prosecutors who make charging decisions.

1.135. We also interviewed the Chief Crown Prosecutor and Area Business Manager for CPSD and, from CPS Headquarters, the Head of Legal Services, Head of Operations and the Senior Legal and Policy Adviser on charging.

1.136. Before carrying out interviews, we examined documentation related to the return of charging. This was provided to us by the five inspected Areas and CPS Headquarters.

1.137. Finally, we also interviewed a senior legal charging manager from each of the remaining nine CPS Areas.

4. The management of the return of charging to Areas

The business case

1.138. The decision to return daytime charging to the 13 (now 14) Areas in 2016 arose out of the need to address the backlog of cases that had built up in Crown Prosecution Service Direct (CPSD), which was causing tension in the working relationship between the police and CPSD. This backlog was attributable to staff shortages, IT outages and poor quality file submissions from the police.

1.139. In July 2016 it was announced that digital charging in bail cases would return to Areas on a phased basis from September that year, accompanied by a proportionate return of CPSD resources to Areas, while the CPS worked with police colleagues to agree and pilot a new joint charging model in several force areas for the longer term.

1.140. The expected benefits of returning charging to Areas included greater efficiency, fewer backlogs, giving Areas ownership of cases from cradle to grave, and giving them more control over casework entering the system. Combining the pre-charge decision review and the pre-first hearing review into one was also identified as a potential efficiency saving.

1.141. Whilst work did take place to identify the key benefits and challenges of various ways to address the backlog before the choice was made to return charging to Areas, the CPS could not provide us with a formal finalised business case for this change.

Governance structure

1.142. At the national level, a National Charging Working Group reported to a Charging Board comprising high level police and CPS representatives. The return of charging project was owned by the CPS Change Team and progress reports were provided to the Chief Executive and the Director of Public Prosecutions.

1.143. At the Area level, local implementation groups were formed to deliver the project. These reported to the Area Business Manager, and updates on progress were provided at Area senior management team meetings.

1.144. Meetings between CPS Headquarters and relevant Area Business Managers began as weekly dial-ins with the project lead. These meetings became fortnightly and then monthly later in the programme.

1.145. We were provided with very limited evidence of what was discussed during these calls, and saw no minutes, although we were informed that they

were a source of lessons learned and provided a forum where issues could be resolved.

1.146. Within CPS Headquarters and Areas, there were clear lines of authority, although the governance structure between the Areas and CPS Headquarters was less defined as time went on. Staff involved in the project at CPS Headquarters changed over time (given the staged process took over three years) and the lines of authority became less clear towards the end of the project.

1.147. However, Areas we spoke to generally felt the level of support from CPS Headquarters was adequate. There was always a single point of contact to which they could refer if they had problems that required assistance or a decision.

The planning stage

1.148. CPS Headquarters worked with Areas to produce a high-level project delivery plan for both the phased return of daytime charging to the Areas and the pilot of the new charging model. The decision was made to adopt a phased approach because of the risk involved if the change happened everywhere at the same time. For example, CPS Headquarters recognised that there was a major risk to the delivery of digital charging with there being a two-way digital interface capability with some police forces and not others.

1.149. The timetable was set by CPS Headquarters and there was regular contact with the Areas in the early part of the project.

1.150. A Standard Operating Procedure for local digital charging was designed to facilitate the process and to make sure Areas could merge charging as efficiently as possible with their existing tasks.

Resourcing

1.151. We found that there were issues around the resourcing calculated for the Areas to enable them to take back charging. Evidence from our on-site interviews was that Areas felt the resources returned did not match the volume of charging work taken back.

1.152. At the start of the project, the CPS did not have the option to recruit more staff because of the public sector recruitment freeze and reductions related to austerity measures.

1.153. In working out the net transfer of resources from CPSD to Areas, CPS Headquarters used the current required resources in CPSD minus the anticipated efficiency savings from moving much of the pre-charge work to Areas. As a contingency, until the efficiency savings were verified, it was stipulated that another 20% more resources could be transferred to the Area if necessary, with CPS Headquarters' agreement.

1.154. Whilst the resources returned were based on a formula, CPS Headquarters told us that there were some issues surrounding the quality of the data used and the resource actually returned. They told us that, in hindsight, they may not initially have got the balance right between the risk to CPSD and risk to Areas. We found that this was recognised over time and steps were taken to increase resilience for Areas; for example, by providing CPSD support for daytime bail charging where possible and providing Areas with more resources.

Implementation by Areas

1.155. Some Areas successfully negotiated for a delay in the return of charging. Staff in other Areas said they had felt under pressure because of the timescale given to them, and that the process had been rushed.

1.156. Project plans were used in all the Areas we visited, but in some Areas it was clear that these had not been fully completed and used to drive the project. Where a project plan had been used, there was usually a risk register for the project.

1.157. There were issues around the lack of project management expertise or experience of some Area staff involved in the project. The use of project controls was not obvious in the documentation we received from Areas, which may be related to this lack of project management knowledge.

1.158. There was no standard model for Areas to follow when taking back charging. Generally, however, Areas welcomed the autonomy they had to implement the change. They felt that they were in the best position to make

meaningful judgments about what would work best, taking into account their knowledge of local issues and police forces.

1.159. The general approach across Areas is to share the volume charging work between Senior Crown Prosecutors in the magistrates' court and Crown Court departments. The work is allocated based on where the case is likely to be concluded if charged. Prosecutors are expected to deliver charging alongside their post-charge casework.

1.160. Areas adopt a cradle to grave approach where practicable, although we found that this is more viable in the Crown Court units.

Sharing learning and experience

1.161. There was an opportunity to benefit from the phased introduction by collating and disseminating lessons learned by Areas who took back charging early on, but this opportunity was not embraced as fully as it could have been. Some Area interviewees would have welcomed more information about the lessons learned in other Areas, as well as some sort of toolkit.

1.162. There was a pilot site evaluation and then a lessons learned workshop in October 2017 to disseminate such information. It was attended by about 50 staff from the Areas. Information from those Areas that had already taken back charging was passed onto those yet to do so. There is only evidence of this one workshop and no evidence of any notes distributed nationally.

1.163. Dissemination of lessons learned did happen between some Areas; not through a centralised system but, for example, because staff moved from an Area that had implemented the change to one which had not, or through interaction with staff on remote teams.

1.164. CPS Headquarters regarded the weekly dial-in calls with Area Business Managers as the way to learn lessons and solve issues. Examples of such issues included changes to the administrative triage of case files received from the police and issues around the working profiles of the Areas and their staff.

1.165. One Area used the learning from a staged roll-out to its police forces to inform the process with forces that came later.

1.166. There was some evidence that the Area Business Manager for CPSD visited Areas to pass on learning.

1.167. There was no directive from CPS Headquarters about a training programme or checklist for Area lawyers dealing with the return of charging. We saw examples of Areas developing their own bespoke training to be used in

conjunction with the legal training courses and modules available through the online Prosecution College or delivered by the CPS Central Legal Training Team.

1.168. Most Areas that we spoke to trained new prosecutors in charging skills by using mentors and managerial oversight to supplement the induction training course which all new prosecutors have to take.

Assessment of the change

1.169. It appears there was an intention to measure the success of the project using a benefits tracker to show improved efficiency, performance and quality. The potential benefits identified at the planning stage, were:

- increased satisfaction and motivation
- a better service for the police
- more efficient and timely processes
- increased staff effectiveness
- better case preparation, leading to more effective hearings
- better charging decisions
- improved file quality submissions.

1.170. The copy of the tracker we received did provide for a baseline measure for each of the potential benefits, as well as for reviews, trends and whether the benefit was being achieved. However, the tracker does not appear to have been maintained as the project evolved.

1.171. CPS Headquarters felt that the development of the charging performance dashboard has provided much improved data regarding process and timeliness, but this was not directly related to the project to return charging to Areas.

1.172. In reality, the performance measures in the dashboard are used alongside other established performance measures, such as those related to police file quality and successful pre-charge decision outcomes, to assess Areas' charging performance, including timeliness. The individual quality assessment process is also used to assess prosecutors' performance, some of which is relevant to charging.

1.173. There has, however, been no formal CPS evaluation of the overall success of the return of volume charging to Areas. None of the Areas we visited

told us they had been asked to provide specific feedback or evaluation to contribute to such a study.

1.174. An assessment of another change to local charging arrangements, the new charging model, which is being piloted in several forces, is outside the scope of this inspection.

1.175. The CPS triages police work administratively to check compliance with the jointly agreed National File Standard and rejects the file if it does not contain evidence or other material that is required under that standard. If the file passes the triage stage, it is then allocated to a prosecutor, who may also identify deficiencies that were not picked up administratively.

1.176. Our findings suggest that there remain deep-rooted problems with a lack of effective police gatekeeping and delayed police responses to the CPS's action plans.

1.177. Moving a significant proportion of daytime charging back to the Areas has freed up resources in CPSD, which can now provide some resilience for Areas that are under pressure – although this was not identified as an expected benefit.

Our judgment

1.178. Regarding the effectiveness of the management of the return of digital charging to Areas, we found that there were sound arguments for the change and that these were identified during the planning stage. Areas generally welcomed taking back ownership of bail charging decisions, although we found evidence that the resources returned from CPSD were not commensurate with the volume of work that accompanied them.

1.179. We consider the autonomy given to Areas to implement the change to have been the right approach, because they were in a better position to assess and take into account local conditions and factors when managing the change.

1.180. Although the CPS could not provide us with the final business plan for the change option chosen, or a benefits tracker that had been maintained throughout the life of the project, we found evidence that continuing and meaningful performance data and processes are available, by which Area and national charging performance is monitored locally and by CPS Headquarters.

1.181. It would, however, have been good practice to finalise a formal business case before charging was returned to the first Areas, which set out clearly what the baselines were and how success was going to be measured. It would also

have been good practice to maintain a benefits tracker over the life of the project.

1.182. Our findings elsewhere in this report, on the quality of legal analysis and Manual of Guidance Form 3s, demonstrate the risk of moving the bulk of volume charging work away from prosecutors and legal managers whose entire focus is on developing the skills to handle pre-charge work effectively.

1.183. This has led to a significant difference in the overall quality of charging decisions between CPSD and Areas, which needs to be addressed.

5. Casework quality

Police file quality

1.184. During our interviews with Crown Prosecution Service (CPS) staff, we heard frequent concerns about the quality of case files provided by the police. The concerns related to missing items that were required under the agreed National File Standard (NFS) or investigations that had not exhausted all reasonable lines of enquiry.

1.185. These concerns are supported by our file examination findings.

1.186. We found that under half (43.6%) of the police file submissions complied with the NFS. The most common failings were missing key statements (19%) and missing exhibits (17%). In many cases, the missing exhibits were CCTV or body worn video footage.

1.187. We note, however, that the quality of case files submitted by the police has improved since our Area Assurance Programme (AAP) – from 39.5% compliance to 44.1% – although it is not possible to make a comparison with the 2015 charging data because that report pre-dated the NFS.

Table 1: Case file quality

Police compliance with NFS	Answer	All cases
All cases	Yes	44.1%
	No	55.9%
Areas	Yes	38.5%
	No	61.5%
CPSD (all cases)	Yes	68.6%
	No	31.4%
CPSD (custody)	Yes	81.3%
	No	18.8%
CPSD (bail)	Yes	51.6%
	No	48.4%

1.188. CPS Direct (CPSD) received a much better standard of files than Areas, driven to a large extent by the much better standard in custody cases, where less is required under NFS. This is not the only factor, though, as files delivered to CPSD for bail charging decisions were still better on average than those delivered to Areas (51.6% compliant compared to 38.5%).

1.189. Cases that ended in no further action (NFA) had poorer file submissions (34.4% NFS compliant, compared to 47.3% for charged cases). The average file quality for sensitive case submissions was better than for non-sensitive cases (48.3% compliant compared to 39.9%).

1.190. There were variations between Areas, but the common deficiencies were the standard of police Manual of Guidance Form 3s (MG3s) and missing key statements or exhibits.

1.191. Overall, the CPS identified and fed back to the police on NFS compliance 83.6% of the time, and slightly more often in non-sensitive cases (84.5%) than in sensitive cases (82.5%). No Area identified and fed back a lack of compliance with the NFS all the time; the Area that came closest did so in 97.1% of applicable cases, whilst the poorest performer did so in 72.7% of applicable cases.

1.192. CPSD identified non-compliance with the NFS and fed back to the police about it 76.1% of the time in bail cases and 47.8% of the time in custody cases, before making a decision. In 19.6% of bail cases and 47.8% of custody cases, CPSD did not identify the deficiency before making a decision.

1.193. From the CPS's perspective, we were told that poor file quality leads to delays in making decisions and a waste of valuable time and resources to rectify deficiencies – when this should be the responsibility of police supervisors before the digital file is sent.

1.194. This is not a joint report with HM Inspectorate of Constabulary and Fire & Rescue Services, but our findings strongly suggest that the long-standing issue of file quality remains unresolved and continues to have a significant impact on the CPS's performance.

1.195. From our on-site interviews and document reading, it was clear that many CPS legal and business managers are taking proactive and constructive approaches to liaising with their local forces at a senior level to address this issue. Approaches include sharing the charging dashboard data and addressing file quality issues at prosecution team performance management meetings. However, we found a general frustration at the CPS resources required to address police performance issues and the factors that remain outside CPS managers' control. The fundamental problem remains that, however much feedback the CPS provide, the main responsibility for resolving file quality lies with the police.

1.196. We are aware that a number of current high-level initiatives are seeking to improve the overall quality of case files submitted to the CPS.

1.197. For example, the Home Office, the National Police Chiefs' Council, the CPS and the Attorney General's Office have recently established a cross-Government project team to jointly review the police's and CPS's approach to case progression, understand the problems and identify potential solutions. We

understand that the team will look at case file quality and the handover process between the police and CPS before and after charge, to highlight challenges and set out recommendations to improve processes. The team plans to publish its interim report in autumn 2020.

1.198. Separately, the National Police Chiefs' Council is also carrying out work on case progression. It aims to identify best practice by looking at the different gatekeeping models that police forces use to quality assure case files sent to the CPS.

Legal decision making

Application of the correct Code test

1.199. The correct test under the Code for Crown Prosecutors (the Code) – that is, either the Full Code Test or the Threshold Test – was applied 99.1% of the time. This is better than in the 2015 charging inspection (97.5%).

Strength

Prosecutors are applying the correct Code test in 99 cases out of 100, which is a 1.6% improvement from the 2015 charging inspection.

1.200. We examined 69 cases where a decision to charge was made by a prosecutor applying the Threshold Test. 66 of those decisions were made by CPSD and three by Areas. The reasons for applying the Threshold Test were set out fully in 63 of these cases (91.3%). This finding is virtually the same as in the 2015 inspection (91.7%).

1.201. The defendant was remanded in custody after a Threshold Test decision 82.6% of the time. A Full Code Test review was carried out as soon as practicable by the Area in 64.6% of cases.

1.202. By comparison, in the 2015 file sample, 75.0% of defendants were remanded in custody after being charged on the Threshold Test and there was a Full Code Test review as soon as practicable 37.5% of the time.

1.203. Our finding is that overall, the CPS has improved its judgment at the pre-charge stage on whether an application to remand in custody is merited and therefore whether it can properly apply the Threshold Test.

1.204. It has also shown a marked improvement in performance in respect of its obligation to apply the Full Code Test as soon as practicable after a case has been charged on the Threshold Test.

Charge selection

1.205. We also looked at whether prosecutors had chosen appropriate and proportionate charges when deciding to prosecute.

1.206. Our findings demonstrate improved CPS performance, with 82.4% of cases fully meeting the required standard compared to 79.7% in 2015 – although individual Areas' performance varied from 75% to 89.6%.

Table 2: Charge selection

Charge selection	All cases	Areas	CPSD	2015 charging inspection
Standard fully met	82.4%	81.4%	85.4%	79.7%
Standard partially met	13.6%	14.3%	11.8%	9.6%
Standard not met	4.0%	4.3%	2.9%	10.7%

Strength

Areas and Crown Prosecution Service Direct have both shown improved performance since 2015 in respect of selecting charges that are appropriate and proportionate.

1.207. Whilst performance has improved to a higher level, and the standard was not met at all in only 4% of charged cases, compared to 10.7% in 2015, there remains some room for improvement. Prosecutors are still not fully considering all appropriate charges or selecting the correct ones in nearly two out of ten cases.

Wholly unreasonable decisions

1.208. For decisions made on or after 24 October 2018, prosecutors applied the eighth edition of the Code⁶. For cases we examined that involved charging decisions made before that date, prosecutors applied the seventh edition of the Code⁷.

1.209. As part of our file examination, we assessed whether the Code for Crown Prosecutors was correctly applied, whether the decision was to charge or to take NFA.

⁶ *The Code for Crown Prosecutors*; CPS; October 2018
www.cps.gov.uk/publication/code-crown-prosecutors

⁷ *The Code for Crown Prosecutors*; CPS; January 2013

1.210. If the Code was not correctly applied, then we deemed the decision to be wholly unreasonable: that is, a decision which no reasonable prosecutor could have made in the circumstances and at the time it was made, or ought to have been made. We also made the same assessment for police decisions to charge.

1.211. We do not consider the following to be wholly unreasonable decisions:

- a decision that differs from the one the inspector examining the file would have made
- a weak decision, if it is within a range of decisions that a reasonable prosecutor could have made
- a decision based on information provided at the time which subsequently proves not to be reliable, where the decision maker had no reason to doubt its veracity
- a decision that is not supported by a strong review or by any review at all; the quality of the review is not relevant to whether the decision complies with the Code
- actions or omissions that do not involve applying the Code, unless they impact significantly on the evidence or public interest.

1.212. We examined 1,260 cases where the CPS had decided to charge or take NFA. 980 of these decisions were made in Areas, and 280 by CPSD prosecutors. Of these, we found 37 (2.9%) to have involved wholly unreasonable decisions.

1.213. This overall performance (97.1% Code compliance) is better than in our AAP, which we carried out between 2016 and 2019⁸ (95.1%), and shows marked improvement from the findings in the 2015 charging inspection (90.9%).

Strength

Prosecutors are demonstrating better application of the Code for Crown Prosecutors and improved judgment, in that fewer wholly unreasonable charging decisions are being made than in 2015.

⁸ *Area Assurance Programme composite report*; HMCPsi; October 2019
www.justiceinspectorates.gov.uk/hmcpai/hmcpai-area-assurance-programme-composite-report-oct-19/

1.214. Out of 980 files examined, we found 33 Area decisions to have been wholly unreasonable (3.4%), so Areas' Code compliance was 96.6%.

1.215. Out of 280 files examined, we found four CPSD decisions to have been wholly unreasonable (1.4%), so CPSD's Code compliance was 98.6%.

1.216. Of the 37 wholly unreasonable decisions, 21 were NFA cases and 16 were charged.

Case study

The suspect (S) was alleged to have attacked the complainant (V) in a gym by delivering a karate kick to his head, breaking his jaw.

V had known S for about two years, having trained with him at another gym, and named him in full in his statement. V's friend also gave the suspect's first name, as he knew him from training at a leisure centre over the past four years.

Another witness, the gym manager, also named the suspect using his full name and said he did not know him personally but that he was well known in the area. The complainant and the two witnesses all described a distinctive tattoo on the assailant's hand, which the police later confirmed corresponded with a tattoo on S's hand.

All three witnesses also recognised one of the people with S as P, the owner of a particular gym.

When interviewed, S largely made no comment, although he did accept knowing P. At one point he did say:

"No, I didn't do this. I'm going no comment, not saying I did, not saying I didn't ... I do have a story to tell. I want to see the allegation written in paper and see whose names have been involved on his side."

The prosecutor decided to take NFA in the case on the basis that there was insufficient evidence to establish that the suspect was the assailant.

However, this was a recognition case that rested on the credibility of the prosecution witnesses, rather than a case that required formal identification procedures. Whilst there was some work still to do before charge to make the case trial ready, the decision to take NFA in the case on the basis that there was insufficient evidence to prove the assailant's identity was clearly wrong.

Police-charged cases

1.217. We examined 140 cases where the police had made the charging decision. The police's decision complied with the Code for Crown Prosecutors in 97.1% of cases, which is better than our composite finding during the AAP (93.1%).

1.218. None of the four cases where the police decision did not comply with the Code was sensitive or involved a youth suspect.

1.219. The CPS identified all four Code breaches and fed back to the police about three of these. In each of the four cases, the CPS reviewed the case in a timely way and took appropriate remedial action.

Strength

The Crown Prosecution Service identified each of the four wholly unreasonable charging decisions made by the police in a timely way and took appropriate remedial action.

1.220. The police's charging decision was compliant with their powers under the Director's Guidance on Charging in 76.4% of cases (107 cases out of 140), which is worse than in the AAP (94%) and the 2015 charging inspection (99%).

1.221. However, for this inspection, we selected police-charged files involving either way offences (ones that can be tried in the magistrates' courts or the Crown Court) falling into six categories. Two of these categories, domestic abuse and hate crime, invariably require a CPS charging decision. Any comparison with police non-compliance with the Director's Guidance in the AAP and the 2015 charging inspection should therefore be treated with caution. Given the sample selection, it is unsurprising that police compliance in this inspection is worse than in these previous inspections.

1.222. Of the 33 cases where the police ought to have passed the case to the CPS for a charging decision, five featured alleged homophobic offending, four involved allegations of racially or religiously aggravated offending and four were allegations of domestic abuse.

1.223. The CPS fed back to police forces about breaches of the Director's Guidance in 9.1% of applicable cases. It identified the breach but did not feed back in a way that was apparent on the case file in 15.2% of applicable cases.

1.224. This left 75.8% of cases where there was no evidence on the CPS's case management system (CMS) that the CPS had identified the breach.

1.225. Some prosecutors that we spoke to during our fieldwork stage told us that they do identify breaches, but see a CPS review before the first hearing as the way to address this without needing to specifically feed back to the police.

1.226. By contrast, some legal managers told us that they rely on police non-compliance being flagged to them if they are to raise this with their local forces.

1.227. From our examination of the CMS, CPS Areas were better at identifying breaches of the Director's Guidance in cases that fell within a sensitive category than in those that were not sensitive, whether or not this was fed back to the police.

1.228. This suggests a greater awareness among prosecutors of the 'headline' criteria within the Director's Guidance, such as the need for a CPS decision in domestic abuse cases, and less awareness of the criteria that require a more nuanced interpretation, such as whether a non-sensitive either way offence likely to be admitted is suitable for sentencing in the magistrates' courts.

1.229. By interviewing prosecutors and legal managers during our fieldwork stage, we found evidence of varying levels of awareness of the provisions of the Director's Guidance. This is supported by the outcomes of our file examinations.

1.230. Currently the CPS is working on a revision of the Director's Guidance on Charging. The next edition is likely to be significantly different from the current, fifth edition. The intention is for the revised guidance to adopt a more structured and coherent approach and to be more comprehensive, with extensive sections on the thematic areas that have proved most problematic in the past.

1.231. In light of this, it is essential that the present knowledge gap among some prosecutors is taken into account when the sixth edition of the Director's Guidance on Charging is introduced. We were reassured during our CPS Headquarters interviews that it had already identified this as an issue.

1.232. The CPS reviewed a police-charged case before the first hearing, as the Director's Guidance requires, 88.6% of the time. A proportionate review was available to the court prosecutor in 72.1% of these cases.

1.233. All the sensitive cases were reviewed before the first hearing, but youth cases fared worse than those with adult suspects (80.0% and 89.2% respectively).

1.234. Four CPS Areas reviewed all ten of their police-charged cases before the first hearing. By contrast, two other Areas recorded a review in seven of their ten police-charged cases.

1.235. Most cases (87.1%) proceeded to the first hearing on the right charges and in three Areas there was 100% compliance. All youth cases proceeded on the right charges, but sensitive cases were less likely to do so than non-sensitive cases (84.2% against 87.5%).

1.236. The importance of compliance with the Director's Guidance, including ensuring that the CPS reviews police-charged cases before the first hearing, is shown by this case study.

Case study

The defendant was travelling on a road with a 50 mile per hour (mph) speed limit and single carriageways in each direction. He overtook a heavy goods vehicle and met a car travelling in the opposite direction. Both drivers tried to take evasive action by driving towards the grass verge but there was a head on collision.

The defendant was uninjured in the collision, but the other driver sustained extremely serious injuries that required lengthy hospitalisation.

The defendant had been driving at 60mph and had ignored a sign warning of a hidden dip in the road 250 metres before the collision site. He had also disregarded unbroken white lines prohibiting overtaking.

Police summonsed the defendant for driving without due care and attention.

The CPS reviewed the case before the first hearing, where a plea to driving without due care and attention was likely, and correctly decided that the appropriate charge was the more serious offence of dangerous driving causing serious injury. This charge was laid at the first hearing and the defendant pleaded guilty.

The defendant was committed to the Crown Court for sentence and was sentenced to 12 months' imprisonment, suspended for 18 months with an unpaid work requirement. He was also disqualified from driving for two years and until an extended driving test was passed.

Our judgment

1.237. Two of our inspection questions ask whether there is compliance with the Code for Crown Prosecutors and the Director's Guidance on Charging, and whether there are effective processes for reviewing the police's decisions to charge and for feeding back to the police if the Director's Guidance or the Code were not properly applied.

1.238. We found that, objectively, the CPS is showing good judgment when applying the Code and deciding to charge or take NFA. It is making fewer unreasonable decisions than five years ago and has also improved performance when it comes to selecting charges. This judgment should be read in conjunction with the one regarding the legal quality of pre-charge decisions (paragraph 5.178).

1.239. The CPS also identified the four police-charged cases that we found not to have been Code compliant.

1.240. In respect of the Director's Guidance on Charging, we found that the CPS is performing reasonably well in terms of making sure they review a case charged by the police before the court hearing. This is a requirement of the Director's Guidance. A review was carried out in 88.6% of police-charged cases.

1.241. We are satisfied that there are effective processes for reviewing police-charged cases and that these are widely understood by prosecutors.

1.242. However, the data shows that around one in ten cases is still proceeding to the first hearing without a CPS review. We also found that 72.1% of the CPS's pre-court reviews in police-charged cases were proportionate, taking into account the nature of the case. Whilst this does show an improvement from our AAP findings, the CPS should take steps to improve performance further, bearing in mind the potential consequences of a CPS prosecution going ahead at the first hearing without a prosecutor having turned their mind to application of the Code.

1.243. We have also concluded that more work needs to be done to make sure that all prosecutors clearly understand the police's powers to charge under the Director's Guidance. The data from our file examination, and the evidence from our Area visits, show that there are still prosecutors who are unclear about the criteria that allow police to charge certain cases, or are unaware of the importance of feeding back to the police about non-compliance to improve performance.

Issues to address

Crown Prosecution Service Headquarters and Area managers should make sure there is a proper focus on the quality of the pre-first appearance review in police-charged cases.

Awareness of the content of the Director's Guidance on Charging varies significantly between Area prosecutors delivering charging. As this is a key document for any charging prosecutor, levels of awareness need to be raised.

The standard of charging advice

1.244. When assessing the quality of pre-charge casework carried out by prosecutors, we have referred to the standards set out in the CPS's Casework Quality Standards (CQS).

1.245. CQS 2 covers legal decision making and identifies the following benchmarks of quality.

Performance expectation

Giving advice which contributes to the investigation reaching a proper and timely outcome.

Giving timely and effective advice.

Correctly applying the law and the Code for Crown Prosecutors in each case.

Making timely decisions as to whether to prosecute, including whether to continue to prosecute.

Making decisions which are properly informed, reasoned and take account of key evidence, unused material and the likely issues.

Formulating a prosecution strategy and ensuring that decisions taken in accordance with the strategy contribute to the effective conduct of the case through to a just outcome.

Considering and recording decisions digitally in a way which is accurate and proportionate so that our position is clear, can be understood by others, and is capable of withstanding challenge.

Identifying cases involving a Proceeds of Crime 'benefit' and setting a strategy to prevent criminals from retaining a financial advantage from crime.

Compliance with CPS policy

1.246. We considered whether relevant CPS policies were applied at the pre-charge stage. Relevant policies include domestic abuse, hate crime, youth offenders, and victims and witnesses with mental health issues and/or learning disabilities.

1.247. Overall, prosecutors' compliance with relevant policies at the pre-charge decision stage has declined since the 2015 inspection. In nearly a quarter of cases covered by a specific policy, the policy was not applied.

1.248. CPSD performed significantly better than Areas in this respect, with similar results to those found in 2015.

1.249. There was also significant variation between some Areas' performance. Two Areas fully complied with relevant policies in over 60% of cases, whereas another fully complied in under 30%.

Table 3: Compliance with policy

Compliance with policy	All cases	Areas	CPSD	2015 charging inspection
Standard fully met	56.3%	49.6%	75.7%	75.4%
Standard partially met	19.6%	21.8%	13.3%	18.4%
Standard not met	24.1%	28.6%	11.0%	6.1%

1.250. Where there was partial or no compliance, the applicable policy was most often domestic abuse (46.8%), youth offenders (12.9%) or hate crime (12.5%).

1.251. In youth cases, the largest cause of non-compliance by far (83.7%) was a failure to apply youth policies (this was the case for both NFA decisions and charged cases). In around a third of the youth cases we examined, there was no evidence that the prosecutor had considered and applied the youth offenders' policy at all.

1.252. In March 2020, we published a report into the CPS's handling of serious youth crime. The finding in paragraph 5.68 (and other findings related to youth casework in this report) is consistent with the conclusions of our earlier report. That report made various recommendations to assist the CPS in improving its performance in this area of work. As the cases we examined pre-date those recommendations, we cannot comment on whether they have yet had a positive impact on performance.

Case study

A police officer came across three 17 year old youths sitting at a picnic table in a park. On the table were drugs paraphernalia and the bottom half of a box with a small amount of herbal cannabis inside. Next to where L was sitting the officer found the other half of the box, which contained 10 wraps of cannabis.

In interview, E said that the cannabis was already there when he got to the table and that he had bought one wrap from B for £10 and had smoked it at the table. He admitted that a small amount of cannabis found in a grinder on the table was the remains of what he had bought from B.

L was interviewed a week later and said that he had gone to the park to chill and had smoked two joints before the officer got there. He also said that the cannabis found in the box belonged to B. L volunteered texts that he had exchanged with B, which corroborated his account that the wraps belonged to B.

B was interviewed a few days later and denied the cannabis was his, saying that E and L had brought it to smoke, although he did smoke one joint himself.

Fingerprint analysis from the wraps seized revealed only B's prints.

B had previous convictions, but L and E did not.

The case file submitted by the police contained no background information on the youths, and neither had the views of a youth offending team been sought.

The prosecutor charged B with possession of cannabis with intent to supply and charged L and E with simple possession of cannabis. He did not identify which cannabis he was alleging L and E each possessed.

Leaving aside whether it could be proved evidentially that L was in possession of cannabis (and the prosecutor did not provide a rationale for his conclusion that the evidential stage was passed in respect of L), the prosecutor made no mention of the youth offenders policy or the public interest factors taken into account when deciding to prosecute L and E.

Had the prosecutor turned their mind to the policy, with its focus on diverting youths away from the criminal justice system where possible, they could only have reasonably concluded that it was not in the public interest to prosecute either E or L. They were 17, had no previous convictions or cautions and were facing allegations of simple possession of tiny quantities of cannabis about which both had made admissions in interview.

Case analysis and strategy

1.253. Whilst it is important to make a charging decision that, looked at objectively, is one that a reasonable prosecutor could have made, the responsibilities of a lawyer providing pre-charge advice to the police and making charging decisions are much wider than that.

1.254. Prosecutors are expected to provide a clear, structured and coherent written record on an MG3 form that demonstrates:

- the factual basis on which the case is to be prosecuted if the decision is to charge
- that they have made a properly informed and reasoned decision, taking into account all relevant material and identifying evidential strengths and weaknesses
- what the prosecution trial strategy will be, if the decision is to charge.

1.255. Fewer than half the cases (44.9%) that we examined fully met expectations for case analysis and strategy.

1.256. Another 39.5% partially met the standard expected, and 15.6% did not meet it at all.

1.257. The proportion of cases that fully met the standard was better than in the AAP but slightly less than in the 2015 charging inspection.

Table 4: Case analysis and strategy

Proper case analysis and strategy	Answer	All cases
All cases	Fully met	44.9%
	Partially met	39.5%
	Not met	15.6%
Areas	Fully met	41.8%
	Partially met	40.3%
	Not met	17.9%
CPSD	Fully met	55.7%
	Partially met	36.8%
	Not met	7.5%
AAP (previous inspections)	Fully met	40.9%
	Partially met	44.5%
	Not met	14.7%
2015 charging inspection	Fully met	46.9%
	Partially met	39.3%
	Not met	13.8%

1.258. Overall, the standard of CPSD case analyses and strategies was higher than those produced by Area prosecutors. CPSD's case analyses and strategies fully met the expected standard in 55.7% of cases, compared to 41.8% for Area charging decisions.

1.259. Similarly, we assessed 7.5% of CPSD's MG3s as not meeting the required standard for analysis and strategy, compared to 17.9% of Areas' MG3s.

1.260. Again, there were variations between Areas, with the best fully meeting the required standard in 51.4% of cases and another fully meeting the standard in 34.3% of cases.

1.261. There was very little difference in the quality of case analysis and strategy between sensitive and non-sensitive cases (45.4% compared to 44.4%).

1.262. Youth cases were particularly weak on strategy and analysis (38.8% fully met the standard). For NFA decisions where the suspect was a youth, a third (33.3%) of MG3s contained a proper case analysis. For cases where a youth suspect was charged, the figure was 40.7%.

1.263. During our interviews with legal managers, we found cross-Area recognition that some prosecutors' case analysis skills require development. We found that many Areas are actively addressing this using a variety of methods to supplement established performance management tools. These include:

- peer reviews
- increasing the number of individual quality assessments (IQAs) or dip sampling for individual prosecutors
- devising and delivering bespoke Area training
- identifying key issues and lessons learned from previous decisions and feeding these back to all prosecutors delivering charging.

Case study

Police submitted a file related to an allegation of domestic abuse. It was alleged that the suspect, who had a previous conviction for domestic related assault, had pushed his former partner and her mother into furniture during an argument, causing no visible injuries. As well as the original statements containing the allegations, the file contained statements from both complainants in which they said they did not wish to pursue the allegations.

The prosecutor's analysis and reasoning for the decision not to prosecute was simply to say that they had reviewed the evidence and noted that there were two retraction statements from the two injured parties and no other witnesses; the suspect had made no comment in interview and in the circumstances the prosecutor advised NFA.

Although the decision not to prosecute was one that a reasonable prosecutor could have made had they applied their mind properly to the case, the review contained no meaningful analysis to show how the prosecutor had applied the domestic abuse policy in reaching their conclusion. Neither did it make it clear whether the decision was made on evidential or public interest grounds.

Case study

A case which demonstrated a coherent and high quality case analysis involved an attempted street robbery of a vulnerable victim by a 17 year old, during which a knife was produced and used to cause injury.

The prosecutor adopted a proactive approach by setting out a clear action plan to ensure that the police had provided all relevant material before a charging decision was made.

In deciding to charge attempted robbery and possession of a bladed article, the prosecutor recorded a thorough and well-reasoned case analysis, which contained a coherent case theory and a clear trial strategy. The CPS's policies on disability hate crime and youth offenders were referred to and correctly applied. The issues of special measures, unused material, compensation and disclosure were also properly considered and addressed in the MG3.

Consideration of unused material

1.264. The statutory duty to disclose any material that may undermine the prosecution case or assist the defence does not arise until a not guilty plea is entered by a defendant after charge. We took this into account when assessing how unused material was dealt with before charge.

1.265. However, the CPS's disclosure guidance states that disclosure issues, including reasonable lines of enquiry, must be considered at the pre-charge stage. This ensures that any undermining material or material that may assist or potentially assist the defence is considered when deciding whether there is a realistic prospect of conviction and, in the event of a decision to charge, is considered as part of the trial strategy. It also ensures that anything that may require early disclosure after charge, such as material that may assist a defendant in making a bail application, is properly handled.

1.266. We therefore looked for evidence that the charging prosecutor had turned their mind to the issue of unused material even where they concluded, or would have concluded, that there was no undermining or assisting material at that stage.

1.267. We found CPSD to be significantly stronger than Areas in actively considering disclosure before charge. In 83.3% of CPSD's decisions to charge, we found that the prosecutor had fully met the requirements regarding unused material. For Area-charged cases, the standard was fully met in fewer than half of the decisions to charge (45.5%) and not met in well over a third of cases (41.3%).

Table 5: Disclosure

Appropriately dealing with unused material	Answer	All cases
All cases	Fully met	56.6%
	Partially met	12.7%
	Not met	30.8%
Areas	Fully met	45.5%
	Partially met	13.1%
	Not met	41.3%
CPSD	Fully met	83.3%
	Partially met	11.6%
	Not met	5.1%

1.268. Overall, cases where the suspect was a youth fared worse than those involving an adult (47.4% fully met expectations compared to 57.1%); and sensitive cases were dealt with better than non-sensitive ones (58.5% and 54.7% respectively).

1.269. The best performing Area for considering disclosure before charge fully met the standard in 72% of its cases, whereas two other Areas fully met the standard in 34.7% of their cases.

1.270. The most common failing in Area cases that partially met or did not meet the standard was not considering disclosure at all (59.5%). The second most common was not addressing the impact of unused material on the case (16.7%).

1.271. In CPSD cases, not addressing the impact on the case was the most common reason for not fully meeting the standard (37%), followed by not identifying material that was disclosable under common law (19.6%). In 4.3% of the CPSD cases that did not fully meet the standard, disclosure was not considered at all.

1.272. These findings suggest that the requirement to consider the issue of unused material at the pre-charge stage is a more ingrained habit for a greater percentage of CPSD prosecutors than in Areas. They also point to a greater awareness of pre-charge disclosure obligations.

Pre-charge action plans

1.273. The standard of action plans has fallen since the AAP and the 2015 charging inspection, although we found that they were almost always in the right format (91.8%) and timescales were realistic 78.3% of the time.

1.274. Overall, we assessed action plans as reaching a satisfactory standard in two thirds of cases – although when broken down, CPSD's performance exceeded Areas' by over 10%. There was variation between Areas once again. In two Areas, over 78% of action plans were assessed as satisfactory, which was above the CPSD average.

1.275. Overall, the findings for sensitive and non-sensitive cases were very similar, although we found that action plans in cases involving youth suspects were satisfactory 61% of the time, compared to 66% of the time for adults.

Table 6: Standard of action plans

Action plan was satisfactory	Answer	All cases
All cases	Yes	66.0%
	No	34.0%
Areas	Yes	63.1%
	No	36.9%
CPSD	Yes	73.9%
	No	26.1%
AAP (previous inspections)	Yes	85.5%
	No	14.5%
2015 charging inspection	Yes	86.2%
	No	13.8%

1.276. The most common issue in weaker action plans was not asking for items that ought to have been requested, followed by requesting items that were not needed.

Table 7: Action plan requests

Were requests necessary and proportionate?	Answer	All cases
All cases	Yes, correct request made re: other items	64.4%
	No, requested items that were not needed	8.8%
	No, did not request items that were needed	20.0%
Areas	Yes, correct request made re: other items	61.9%
	No, requested items that were not needed	9.7%
	No, did not request items that were needed	21.7%
CPSD	Yes, correct request made re: other items	71.4%
	No, requested items that were not needed	6.4%
	No, did not request items that were needed	15.4%

1.277. Although CPSD's action plans were generally stronger than those set by Areas, the difference, in terms of setting a realistic timescale for the police, was very slight.

1.278. The police complied with action plans in a timely way in 49.2% of cases, although these findings varied between 67.6% and 37.1% across different Areas.

1.279. Compliance was slightly better in sensitive cases than non-sensitive cases, and slightly better with actions set by Areas than those in CPSD action plans.

1.280. Where the police did not comply with an action plan by the specified date, there was feedback to the police in 44.3% of cases. The CPS identified the lack of timely compliance but did not feed back about it 3.5% of the time, and did not identify it or feed back in the remaining 52.2% of cases.

1.281. There was much better feedback for cases where the ultimate pre-charge decision was to take NFA.

1.282. In one focus group of prosecutors that we spoke to, we were told that they did not consider themselves to own a pre-charge case in the same way as a case allocated to them after charge. Whilst they would raise police non-compliance after charge, they did not feel that it was their responsibility before charge.

1.283. A senior legal manager in CPS London South told us that a pan-London Service Level Agreement is currently being agreed between the Chief Crown Prosecutors and the Metropolitan Police, with a view to reducing the number of cases being finalised by the CPS because of a lack of response to an action plan. We consider this to be an example of good practice.

1.284. We were also told in some Areas that managers dip sample action plans to satisfy themselves that prosecutors are not unnecessarily delaying making decisions, and that they are being proportionate in what they request from the police. The information gathered is also used to inform discussions about the NFS and the quality of investigations at prosecution team performance management meetings with the police.

1.285. In another Area, it is the practice to require prosecutors to speak to a legal manager before sending a second action plan at the pre-charge stage.

Good practice

A pan-London Service Level Agreement is currently being agreed between the Chief Crown Prosecutors for London North and London South and the Metropolitan Police to address the issue of cases being administratively finalised by the Crown Prosecution Service because of a lack of response to an action plan.

In some Areas, legal managers dip sample action plans to make sure they are being used appropriately. In another Area, prosecutors are required to discuss a second action plan on a case with a legal manager before it is sent to police.

Trial applications

1.286. When assessing decisions to charge, we looked at how well prosecutors considered applications for special measures to assist witnesses to give evidence, for defendants' bad character to be admitted in evidence and for hearsay evidence to be admitted.

1.287. We marked these questions as not applicable where the prosecutor had decided to take no further action against a suspect. However, where we would have expected a prosecutor to consider these issues as part of their review before reaching an NFA decision, we took this into account when assessing the quality of the case analysis and the MG3 as a whole.

1.288. For charged cases, we assessed whether an application should have been actively considered on the evidence and information available to the prosecutor, regardless of whether an application was merited in the end. For example, if a suspect had a long list of previous convictions, we expected the prosecutor to have considered whether a bad character application ought to be made, and to have provided an argument for their conclusion.

1.289. Overall, under half the cases fully met the expected standard for hearsay (46.1%), bad character (46.2%) and special measures applications (44.8%).

Table 8: Hearsay applications

Hearsay	All cases	Areas	CPSD
Standard fully met	46.1%	28.8%	77.8%
Standard partially met	21.6%	24.2%	16.7%
Standard not met	32.4%	47.0%	5.6%

Table 9: Bad character applications

Bad character	All cases	Areas	CPSD
Standard fully met	46.2%	38.3%	59.0%
Standard partially met	26.1%	27.0%	24.6%
Standard not met	27.7%	34.7%	16.4%

Table 10: Special measures applications

Special measures	All cases	Areas	CPSD
Standard fully met	44.8%	40.6%	52.4%
Standard partially met	18.6%	20.5%	15.2%
Standard not met	36.6%	38.9%	32.3%

1.290. The most common failing with special measures, whatever the source of the charging advice, was not considering the application at all (60.9% of all cases that partially met or did not meet the standard), followed by failure to consider screens (28.3%) and live links (9.3%).

1.291. Overall, CPSD's performance was better than Areas' for pre-charge consideration of trial applications: significantly so in respect of hearsay and bad character but less so for special measures.

1.292. Where special measures should at least have been considered before charge (467 cases), regardless of what the conclusion was or would have been, we found that a third (33.6%) of Area and CPSD MG3s did not contain any indication that the prosecutor had turned their mind to the issue.

Ancillary matters

Preventative orders

1.293. We also looked at how well prosecutors in charged cases addressed orders to be applied for after conviction (or after acquittal) to protect the victim or the wider public.

1.294. In doing so, we assessed whether the nature of the case meant that a prosecutor should have considered whether an application should be made and, if so, identified the order and set out the argument to support any future application.

1.295. Overall, just under half the cases fully met the expected standard for preventative orders (44.2%). CPSD prosecutors were significantly more consistent in considering preventative orders before charge.

Table 11: Preventative orders

Preventative orders – where applicable	All cases	Areas	CPSD
Standard fully met	44.2%	31.0%	67.5%
Standard partially met	20.8%	23.5%	15.9%
Standard not met	35.1%	45.5%	16.6%

1.296. Where a preventative order was not considered properly, most often the order in question was a restraining order (73.9% of the cases that partially met or did not meet the standard) or a sexual harm prevention order (20.9%).

1.297. Our findings show that these applications and orders were dealt with markedly better in sensitive cases than in non-sensitive ones.

Proceeds of crime

1.298. Charging prosecutors are required to identify cases involving a proceeds of crime benefit and to set out a strategy to prevent criminals from retaining a financial advantage.

1.299. In its legal guidance on the topic, the CPS says that it is committed to ensuring that all prosecutors are competent and confident in handling asset recovery casework.

1.300. The guidance states that prosecutors should consider asset recovery in every case in which a defendant has benefited from criminal conduct and that, when confiscation is not appropriate and/or cost effective, alternative asset recovery outcomes should be considered. Prosecutors are expected to adopt a proportionate but proactive approach and should not assume that confiscation is inappropriate just because there is no indication from the police that a financial investigation has been requested.

1.301. Our approach was to focus on cases where the suspect had benefited from the alleged offending in more than a minor way. Where this was not the case, or where the prosecutor decided to take no further action against the suspect, we marked this question as not applicable.

1.302. We found that proceeds of crime applications should have been considered in 133 out of the 1,260 CPS charging decisions we examined. The issue was fully considered in 24.8% of these cases, and not at all in 61.7%.

1.303. There was a stark difference between CPSD and Area performance. Area prosecutors did not give any indication that they had turned their mind to proceeds of crime issues in 70.5% of applicable cases. For example, in one case where the suspects appeared to have benefited financially from drug

smuggling and had access to significant sums of money, proceeds of crime were not mentioned.

1.304. By contrast, CPSD prosecutors fully considered proceeds of crime issues in 60.7% of applicable cases.

Table 12: Proceeds of crime

Proceeds of crime	All cases	Areas	CPSD
Standard fully met	24.8%	15.2%	60.7%
Standard partially met	13.5%	14.3%	10.7%
Standard not met	61.7%	70.5%	28.6%

Instructions to prosecutors

1.305. We considered various factors when assessing the standard of overall instructions and guidance for the court prosecutor in an MG3. These included:

- the suspect's bail status
- where the case was to be heard, if there was a choice of venue
- matters relevant to effective trial management in cases to be heard in the magistrates' courts
- relevant applications to be made in the event of a guilty plea.

1.306. We found that the standard of instructions has fallen since our AAP and the 2015 charging inspection.

Table 13: Instructions to prosecutors

Appropriate instructions and guidance to the court prosecutor	Answer	All cases
All cases	Yes	55.2%
	No	44.8%
Areas	Yes	44.0%
	No	56.0%
CPSD	Yes	82.1%
	No	17.9%
AAP (previous inspections)	Yes	91.3%
	No	8.7%
2015 charging inspection	Yes	86.2%
	No	13.8%

1.307. The best performing Area, in terms of the quality of instructions and guidance, met the standard in 61.7% of its cases; the Area with the lowest assessment achieved the standard in 31.3%.

1.308. Instructions to the court prosecutor were stronger in sensitive cases (59.9% fully met the standard) than non-sensitive (50.7%).

Bail and custody

1.309. Here we wished to see a clearly reasoned steer for the court prosecutor, whether this was to apply for a remand in custody, apply for conditions to be placed on the suspect's bail, or not oppose unconditional bail.

1.310. For example, even if a suspect had not been on bail before charge but had been released under investigation, we expected the prosecutor to refer to this in their MG3 and briefly explain why unconditional bail was (or was not) appropriate.

1.311. MG3s in this inspection were particularly weak in considering remand and bail conditions (35.1% set out conditions clearly in this inspection, compared to 80.7% in 2015). To put this into perspective, 617 out of 951 MG3s where the decision was to charge contained no clear consideration of the bail position to assist the prosecutor at the first hearing.

Table 14: Custody/bail position

Grounds for custody or bail conditions were set out clearly	All cases	Areas	CPSD	2015 charging inspection
Yes	35.1%	15.9%	81.7%	80.7%
No	64.9%	84.1%	18.3%	19.3%

1.312. CPSD's strong performance in this respect was a major contributor to its significantly better performance in terms of overall instructions to the court prosecutor.

1.313. Areas gave proper consideration and guidance on bail in 15.9% of their cases, whereas CPSD met the required standard in 73.4% of bail cases and 85.9% of custody cases.

1.314. In contrast, the highest performing Area for remand or bail instructions met the standard in 35.4% of its cases, whereas the lowest scoring Area achieved the standard in 5.9% of its cases.

1.315. We found that youth cases also fared worse for remand or bail information, despite the need to provide clear instructions in these cases where

remand provisions are the most complicated. We also found very little difference in standards between sensitive and non-sensitive cases.

1.316. We have concluded that many Area prosecutors do not see it as necessary to consider the bail position and provide guidance to the court prosecutor when completing an MG3.

Venue

1.317. We assessed whether all factors relevant to venue were considered at the pre-charge stage. In doing so we focused on youth cases and, where the person charged was an adult, either way offences. The latter category included offences that are usually either way but were, in the particular circumstances of the case, indictable only; for example, where violence was used or threatened during the burglary of a dwelling.

1.318. We did not assess a case as meeting the required standard if the charging prosecutor simply asserted that a case was suitable for a particular venue without proving a clear rationale for their conclusion. For example, we did not find the standard met if the prosecutor simply stated that the matter was suitable for trial in the magistrates' court because the defendant would not receive a sentence of more than six months. We considered that to be simply an assertion, with no supporting argument to assist the prosecutor in court.

1.319. Overall performance was better than in respect of bail instructions. Again, CPSD's overall performance was better than Areas', albeit by a smaller margin than in some other aspects of charging (79.3% and 65.2% met the standard respectively). More than a third of Areas' MG3s where venue would fall to be argued at the first court hearing did not adequately address all relevant factors.

Table 15: Venue

All factors relevant to venue were considered	All cases	Areas	CPSD	2015 charging inspection
Yes	69.3%	65.2%	79.3%	83.2%
No	30.7%	34.8%	20.7%	16.8%

1.320. We found that in 64.4% of all youth cases, all factors relevant to venue were considered before charge. In over a third of youth cases (35.6%), not all factors were considered.

Grip and added value

1.321. When assessing 'grip', we asked an overarching question drawing together several factors to assess how proactive, efficient and effective the CPS was at handling a case before charge and whether the prosecutor exercised sound judgment.

1.322. We assessed the CPS as having a good grip in 37.9% of the 1,260 cases we examined, a fair grip in 42.9% and a poor grip in 19.2%. There was little difference between the grip shown in sensitive and non-sensitive casework.

Table 16: Grip

The exercise of sound judgment and grip	All cases	Areas	CPSD	AAP
Good	37.9%	33.0%	55.4%	41.2%
Fair	42.9%	44.9%	35.7%	43.0%
Poor	19.2%	22.1%	8.9%	15.8%

1.323. We did not ask a grip question in the 2015 inspection, but during our AAP we assessed 41.2% of cases as good or excellent for all aspects of case management.

1.324. We rated 8.9% of CPSD's pre-charge cases as being poorly gripped, but that figure was higher for Areas overall at 22.1%.

1.325. Overall, there was very little difference in grip between sensitive and non-sensitive cases.

1.326. We also rated the overall value added by prosecutors before charge. We did not ask this or a similar question in 2015 or during the AAP.

1.327. Our assessment included looking at the quality and timeliness of reviews, advice provided to the police, victim and witness care, decision making and case progression. Our assessment was designed to assess the extent to which the CPS is adding value at the pre-charge stage rather than simply processing cases.

1.328. We assessed the CPS as adding good value in just over a third of the cases we looked at (34.1%), fair value in 43.7%, and little or no value in 22.2%.

Table 17: Added value

Overall value added by the CPS	All cases	Areas	CPSD
Good	34.1%	29.1%	51.8%
Fair	43.7%	45.4%	37.5%
Poor	22.2%	25.5%	10.7%

1.329. Overall, prosecutors demonstrated slightly better added value in sensitive cases than in non-sensitive ones.

1.330. CPSD showed a better grip and added more value in the cases that we looked at.

1.331. There was a range of performance between Areas. For example, we rated five Areas as adding poor value in 30% or more of their cases, whilst we assessed another Area as adding poor value in 12.9% of its cases. This Area, CPS South East, was also the best performing when it came to the grip question, with 10% of its cases being assessed as gripped poorly compared to the national Area average of 25.5%.

Standard of MG3s

1.332. The overall standard of MG3s has declined since the AAP and the 2015 charging inspection, although CPSD's performance is slightly better than the findings from those previous inspections. We assessed the majority of Areas' MG3s as fair – although in two areas, more than a third of their MG3s were assessed as good (both at 35.7%) – and the majority of CPSD's as good.

Table 18: MG3 standard

Overall standard of MG3s	Answer	All cases
All cases	Good	32.9%
	Fair	47.1%
	Poor	20.0%
Areas	Good	28.1%
	Fair	49.3%
	Poor	22.7%
CPSD	Good	49.6%
	Fair	39.6%
	Poor	10.7%
AAP (previous inspections)	Good	41.6%
	Fair	40.5%
	Poor	17.9%
2015 charging inspection	Good	40.1%
	Fair	43.1%
	Poor	16.8%

1.333. As with case analysis and strategy, there is little difference in the results between sensitive and non-sensitive cases, with the former being assessed as slightly better. Overall, the quality of MG3s in cases involving adult suspects was higher than those where the suspect was a youth.

1.334. A fall in the standard of case analysis and strategy since 2015 has contributed to our present findings on MG3 quality, although other factors, including our findings regarding action plans and instructions to the court prosecutor, have also contributed.

1.335. Speaking to prosecutors and CPS managers, we found that there are a number of different templates in use around the country to assist in the structure and content of MG3s.

1.336. We do not consider the use of templates to be bad practice as long as they are combined with a thinking approach. However, in the poorer MG3s we encountered, there was commonly an over-reliance on standard sentences or paragraphs which added little or nothing to the document and amounted to unnecessary padding.

1.337. Other common factors that contributed to our assessing an MG3 as poor were a lack of a clear and logical structure, a failure to provide the reasoning behind a conclusion, and chunks of police summaries being included in the MG3, sometimes in duplicate.

1.338. In a large number of MG3s we rated as fair or poor, the prosecutor also failed to set out concisely and clearly the factual basis on which they were charging the case.

1.339. We have seen that the CPS has now introduced prompts on its CMS to help prosecutors create a well-structured, coherent and readable MG3 that will assist the advocate in court and other prosecutors or counsel who deal with the case after charge. We consider this to be good practice provided, again, that prosecutors adopt a thinking approach when using these.

Case study

Police stopped a van with two occupants. X was the driver and owner of the van; Y was his passenger.

A small axe was discovered in the passenger side door pocket and a sheathed samurai sword was found between the seats in the cab. The officers also found a Stanley knife with a locking mechanism in the driver's door pocket and a large axe located in the rear of the van.

X made no comment in interview.

Y stated that the items were always kept in the vehicle and they were used to strip scrap metal. He stated that the sword was blunt and that he needed it for his job, and that all the items were usually kept in the rear of the van. He said he was not aware that it was an offence to be in possession of axes and a sword in a vehicle, and stated that he did not consider this to be a public place. He accepted that the items were accessible to him and he had used them.

The prosecutor's MG3 stated that there was no reason for them to have a sword as part of their job and that "he" (presumably Y) would have to justify why he had "the lock knife".

In making the decision to charge both suspects jointly with two offences of possession of a bladed article, the MG3 did not cover:

- the law on what amounts to possession of an item
- the law surrounding what may amount to a reasonable excuse for possession of a bladed article in a public place, in light of what Y had said, and the evidence of an officer that the rear of the van was full of scrap metal and a combi boiler

- identification of further lines of enquiry to test Y's claim that the items were used as part of his and X's work
- potential bad character evidence, despite the list of previous convictions provided by the police for both suspects.

In the MG3 the prosecutor marked trial strategy as not applicable. There was therefore no rationale for how the prosecution would prove the case at trial if either defendant denied possession or claimed that they had a reasonable excuse for possession of the items. There was also no explanation for why the appropriate charge relating to the samurai sword was not possession of offensive weapon, bearing in mind it is designed to cause injury.

The prosecutor specified two charges of possession of a bladed article against each suspect but did not make it clear which articles were to be the subject of the charges and why there was no realistic prospect of conviction in relation to the other two items. (The police in fact named the large axe and the sword when charging the suspects, which seemed at odds with the prosecutor's comment that Y would have to justify why "he" had "the lock knife", and the effective trial form prepared by the CPS before the first hearing which referred to the charges as relating to the sword and Stanley knife.)

The public interest consideration was simply "to proceed", and the consideration of venue read simply "SST" (suitable for summary trial), without any rationale for that conclusion.

Disclosure actions and issues were recorded as "N/A" (not applicable), suggesting that the prosecutor had not turned their mind to disclosure at all.

Instructions to the court prosecutor were also marked as N/A, and there was no mention of the bail position.

Case study

The complainant (C) had the benefit of a restraining order to protect her from her former husband (S), which prohibited him from contacting her. She alleged that he had telephoned her twice in breach of the order. She also said she had seen the suspect in town in between the two calls.

When interviewed, S provided a prepared statement which stated he had no recollection of seeing the victim in town. The statement made no reference to the telephone calls and he made no comment when questioned by police.

The MG3 advice was clear, thorough and well-structured, making it easy to follow. The case analysis was good, setting out a concise summary of the evidence in the prosecutor's own words and how she had concluded that there was a realistic prospect of conviction. The following is an extract from the MG3:

"There is a RPOC in this case for the offence charged. The IP has provided a timely and credible account in a statement of complaint and is willing to attend court and give evidence, she is corroborated by her father who was present for the first phone call and by the voicemail which have been preserved. The suspect has provided a prepared statement which does not deal with the breaches alleged and he has a record for the same offence. I see no reason why the IP and the witness would not be believed in this case, they have nothing to gain from making the allegation."

There was a coherent case strategy, and issues such as bad character and whether the case could proceed were C to withdraw her support were all covered. The decision to charge the two breaches in a single roll up charge was correct and justified by the prosecutor.

The prosecutor adopted a thinking approach to disclosure, and material that required early disclosure under common law was correctly identified and accompanied by meaningful instructions on bail and venue for the prosecutor at the first hearing.

The MG3 was of considerable assistance to both the advocate in court and to any subsequent lawyer preparing the case for trial.

Comparison between tranche 1 and 2 cases

1.340. We reviewed two tranches of Area pre-charge decisions: one tranche from between 6 and 12 months after each Area took daytime charging back from CPS Direct (CPSD), and one tranche to reflect decisions taken during the summer and autumn of 2019.

1.341. The period between cases in the first tranche of 490 Area pre-charge decisions and the second tranche varied depending on when charging was fully returned to the Area in question.

1.342. For example, the difference for London South and London North amounted to a few months, whereas for Areas where charging was fully returned in late 2016, the difference was almost three years.

1.343. With that caveat, we found no significant difference overall in the quality of charging decisions between the two tranches.

1.344. For example, in the most recent cases, we rated 29.2% of MG3s as good and 44.7% as fair; in the earlier cases, we rated 29% as good and 46.1% as fair.

1.345. Our findings were also similar when it came to the case analysis and added value questions.

1.346. However, we did find that timeliness fell from 54.9% in the earlier tranche to 39.6% in the most recent one.

Quality assurance and performance management

1.347. As can be seen from the CPS's own data in annex D, the number of CPS pre-charge decisions fell from 287,919 in 2016/17 – the year that the return of daytime volume charging to Areas began – to 222,789 in 2019/20; a 23% decrease in casework.

1.348. Since the return of charging to Areas began, the CPS has developed a charging dashboard which provides valuable data about the timeliness of charging decision making across the Areas and CPSD, as well as case file quality. The timeliness data, which can also be found in annex D, shows the average timeliness of pre-charge decisions nationally between the first quarter of 2019/20 and the first quarter of 2020/21. The data shows the proportion of charging decisions made within the relevant timescale (5 or 28 days).

1.349. Whilst the data for 2019/20 is roughly consistent with our findings on timeliness, it is striking that in the first quarter of this year, which coincided with

the lockdown caused by the pandemic and the resulting closure of courts, timeliness improved noticeably.

1.350. The CPS uses performance data from various sources to assess its performance nationally and locally and hold its Areas and specialist divisions to account for their performance. This also enables it to identify good practice and areas for improvement.

1.351. Amongst the suite of data it uses, the CPS places greater importance on certain aspects of performance, which are known as high weighted measures. The current high weighted measures that are relevant to charging performance include, for example, the number of guilty pleas at first hearing and average hearings per case in both the magistrates' courts and the Crown Court.

1.352. Compliance with the CPS's Casework Quality Standards (CQS) is monitored by managers through individual quality assessments (IQAs). Using these assessments, managers analyse their prosecutors' individual performance and use the information gathered to provide feedback to individuals and identify development needs.

1.353. CQS and IQAs are an integral part of the CPS's overarching performance management framework. We were told that Area legal managers are required to carry out at least four IQAs per year on each of their prosecutors, although some carry out more than this. IQAs cover the pre-charge and post-charge stages of a case, so not every Area IQA will involve a charging decision made by the prosecutor being assessed.

1.354. As CPSD's remit does not involve handling post-charge casework, its managers can focus entirely on pre-charge work when carrying out their IQAs. We were told that their aim is to carry out two IQAs per prosecutor every month.

1.355. CPSD prosecutors therefore receive more performance assessments per year than prosecutors in Areas, and all of them are focused on charging quality and timeliness.

1.356. We also were given access to the Area Issues Liaison Application, which CPSD has made available to Areas so that they can confidentially feed back any issues they encounter with CPSD's charging decisions. It also enables Areas to provide positive feedback when appropriate.

1.357. CPSD delivered interactive training to Areas on the use of the Area Issues Liaison Application. Its managers consider it to be an invaluable management tool to provide individual feedback to its prosecutors, identify wider trends and learn lessons. The data is collated and discussed at CPSD's monthly performance management meetings and, in our view, represents good practice.

Good practice

Crown Prosecution Service Direct has developed an Area Issues Liaison Application for Areas to use when feeding back issues with Crown Prosecution Service Direct's charging decisions, or when providing positive feedback.

1.358. All of this has to be seen in the context of our overall findings that the standard of CPSD's charging decisions is significantly higher than those Areas.

1.359. A summary of relevant CPS IQA data for 2018/19, 2019/20 and the first quarter of 2020/21 can be found in annex D.

1.360. As CPS managers only have a choice of "met" and "not met" when carrying out an IQA, whereas we can often use a "partially met" option, it is difficult to reconcile much of the IQA data in annex D with our overall findings on the quality of pre-charge decision making.

Our judgment

1.361. Two of our inspection questions are whether the return of daytime charging to Areas has resulted in high quality charging decisions, and whether action plans are necessary, proportionate and clear.

1.362. Our finding is that prosecutors are generally making reasonable decisions about whether to charge a suspect, applying the Code for Crown Prosecutors. We found that overall performance has improved in respect of Code compliance, selection of charges and application of the correct Code test.

1.363. However, we also found that there has been a fall in the standard of prosecutors' MG3s produced at the charging decision stage. The factors that have contributed to this include:

- the quality of case analysis and trial strategy
- non-compliance with CPS's own policies
- the quality of action plans
- the consideration given to ancillary applications, preventative orders and bail
- the standard of instructions to the court prosecutor
- the extent to which prosecutors are adding value to a case.

1.364. Making a charging decision and creating a concise and meaningful MG3 is a specialist skill that requires a clear-headed and structured approach. Our

judgment is that it cannot yet be said that the return of charging to Areas has resulted in high quality charging decisions. The CPS needs to narrow the gap between the overall standard of Area's MG3s and those of CPSD in order to achieve its strategic aim of high quality casework in volume crime.

Recommendations

The Crown Prosecution Service should devise and deliver mandatory classroom training for all Area prosecutors delivering volume charging, which focuses on proactive case analysis, clearly setting out the prosecution case (where a charge is authorised) and devising a trial strategy.

To assist prosecutors' development, the CPS should develop a nationally agreed standard of what a good Manual of Guidance Form 3 looks like.

Crown Prosecution Service Headquarters should consult with Crown Prosecution Service Direct's senior management and devise a more regular and robust Area quality assurance regime that focuses on the legal quality of charging decisions and the value being added by charging prosecutors.

Issue to address

The overall standard of Areas' Manual of Guidance Form 3s requires improvement.

1.365. We also asked whether the new arrangements have ensured that all CPSD decisions are uploaded correctly onto the CPS CMS, as this was identified as an issue in 2015.

1.366. We found no instances in our file sample of CPSD MG3 decisions not being uploaded onto the CMS. In those CPSD cases where we found that there was not a clear audit trail (4.7%), or the standard was only partially met (13%), the main issue was that not all evidence or other information that had been seen by the charging prosecutor had been uploaded onto the CMS.

6. The service to complainants, witnesses and the public

Quality benchmarks

1.367. Standard 1 of the Crown Prosecution Service's (CPS) Casework Quality Standards (CQS) covers its responsibilities in respect of complainants, witnesses and communities.

1.368. The standard sets out the benchmarks of quality, which apply to both the pre-charge and post-charge casework stages, including the following.

Performance expectation

Giving advice which contributes to the investigation reaching a proper and timely outcome.

Treating victims and witnesses with respect and understanding.

Prosecuting in a way that is fair to all and reflects the wider public interest.

Taking account of the rights, interests and needs of victims and witnesses.

Taking necessary steps to secure victim participation, where appropriate, and protecting their rights in the court process.

Making correct, properly reasoned decisions which can be explained to and understood by those affected.

Communicating effectively so that victims, witnesses and communities are given the right information at the right time.

Timeliness of decision making

1.369. For charging decisions where the suspect is on bail, the CPS applies two timeframes within which to make a decision. The timeframe selected depends on whether the case is regarded as standard or not.

1.370. Paragraph 29 of the Director's Guidance on Charging defines when the case is to be regarded as non-standard. This includes where a prosecutor is likely to take more than 90 minutes to consider the evidence and other material before making a decision.

1.371. Provided that the file meets the National File Standard (NFS), the CPS's administrative support staff assess the case and decide on the appropriate timeframe before it is allocated to a prosecutor.

1.372. For standard cases, the timeframe for a decision is five days from receipt of the digital file from the police. If it is non-standard, the timeframe is 28 days (or 21 days in the new charging model being piloted in some Areas).

1.373. When assessing the timeliness of decision making, we have taken the date on which the clock starts ticking as the day on which the police submitted a file that the CPS deemed to satisfy the NFS.

1.374. Overall, 87% of charging decisions, custody and bail, were found to be timely in 2015. The corresponding figure in this inspection is 56.1%.

1.375. Charging decisions were timely in 47.8% of the Area-charged cases we examined. This represents a fall since the 2015 inspection, which found charging decisions to be timely in 63.9% non-custody Area-charged cases.

1.376. Crown Prosecution Service Direct (CPSD) made timely decisions in non-custody cases in 65.6% of bail cases.

1.377. We found that charged cases tended to feature timely decisions more often (58.6%) than cases where a decision was made to take no further action (48.1%).

1.378. Sensitive cases and those with a youth suspect were a little timelier than non-sensitive or adult cases, but not by a significant margin (no more than 3.2%).

1.379. A higher proportion of domestic abuse cases (64.6%) did, however, receive timely charging decisions,

1.380. In our file sample, there was a wide variation between Areas; timeliness varied from 81.4% in one Area to 27.1% in another.

Our judgment

1.381. One of our high-level inspection questions is whether the return to Areas of daytime charging for volume casework has ensured that timely decisions are taken by the CPS.

1.382. In 2015, 87% of charging decisions were made within the set timeframes. This was a composite figure relating to both CPSD and Area decisions. For bail cases dealt with by Areas in 2015, 63.9% resulted in a decision within the 21 or 28 day timescales applicable then. As the corresponding figure from our current inspection is 47.8%, we have concluded that the change has not yet ensured that timely pre-charge decisions are being made.

Issue to address

Crown Prosecution Service Headquarters should consider whether the five-day deadline for charging decisions in standard cases is realistic and achievable with the resources available.

Making correct decisions

1.383. The CPS is making fewer unreasonable charging decisions than it did five years ago.

1.384. We read 1,260 CPS charging decisions and found 37 of those (2.9%) to be ones that no reasonable prosecutor could have made. This percentage compares favourably with overall Code compliance in our Area Assurance Programme (95.1%) and is significantly better than our findings in 2015 (90.9%).

1.385. The rate of CPSD's compliance with the Code is 98.6%, whilst the Area rate is 96.6%.

1.386. The CPS has also improved its performance in respect of applying the correct Code test (Threshold or Full Code Test). In this inspection we found that this was applied correctly 99.0% of the time, which is an improvement from five years ago (97.5%).

1.387. Where the Threshold Test had been applied, there was a Full Code Test review by an Area prosecutor as soon as practicable in 64.6% of applicable cases. In this respect, compliance with the Director's Guidance on Charging has improved since 2015, where there was a Full Code Test review as soon as practicable in 37.5% of cases.

1.388. We also found improved performance in the charges being selected by prosecutors compared to 2015. In 82.4% of cases where the CPS decided to charge, the prosecutor selected appropriate and proportionate offences,

compared to 79.7% in 2015. Areas' decisions were fully compliant in 81.4% of cases, with CPSD decisions scoring slightly higher at 85.4%.

1.389. Although there remains some room for improvement, our view is that complainants, witnesses and the public can have a relatively high degree of confidence that the CPS is prosecuting the right cases and choosing the correct charges, as well as reflecting the wider public interest when doing so.

Compliance with policies

1.390. The Code for Crown Prosecutors requires prosecutors to comply with the CPS's guidance and policies, unless it is determined that there are any exceptional circumstances.

1.391. One common link between the policies we focused on – such as hate crime, crimes against the elderly and domestic abuse – is the requirement to ensure that the interests of complainants and the wider public are properly considered and safeguarded when making decisions and progressing cases.

1.392. As discussed in chapter 5, Area prosecutors properly applied an applicable CPS policy in about half of relevant cases. They partially met the standard in 21.8% and did not meet the standard at all in 28.6% of those cases.

1.393. In contrast, CPSD applied policies properly in three quarters of its cases and failed to meet the standard at all in 11% of relevant cases.

1.394. Where there was partial or no compliance with a policy, 46.8% of the cases involved domestic abuse.

1.395. In our file sample, there were 84 cases involving youth suspects. In 38 of those cases (42%), the youth offenders policy was not properly applied. In 25 of those 84 cases the prosecutor made no reference in the Manual of Guidance Form 3 (MG3) to the existence of a youth suspect.

1.396. From these findings, we have concluded that a significant number of prosecutors have an incomplete knowledge of key policies that are integral to their daily work.

1.397. Our view is that the CPS must address this knowledge gap in order to meet its benchmark quality standards of prosecuting in a way that is fair to all, reflects the wider public interest and takes account of the rights, interests and needs of victims and witnesses.

Recommendation

The Crown Prosecution Service should review, rationalise and simplify the policies and associated guidance that are commonly applied at the pre-charge stage, to provide greater clarity and direction for prosecutors.

Special measures

1.398. The Youth Justice and Criminal Evidence Act 1999 introduced a series of measures a prosecutor (or the defence) can apply for in order to help vulnerable and intimidated witnesses give their best evidence in court.

1.399. These measures are also designed to relieve some of the anxiety and stress that these witnesses may be particularly prone to when giving evidence. They are therefore a key component in the CPS's approach to meeting its responsibilities to complainants, witnesses and wider communities.

1.400. When assessing how a charging prosecutor has dealt with special measures applications, we only assessed cases in the file sample where the decision was to charge.

1.401. From those, we identified cases where we would have expected to see the charging lawyer actively considering special measures, whatever the result of that consideration. Where the prosecutor considered special measures and recorded their conclusion, we have only assessed this as fully meeting the required standard if they have also recorded their rationale, including the argument in support of the proposed application.

1.402. Special measures were fully considered in 44.8% of relevant cases and partially considered in 18.6%. In over a third of cases where they should have been actively considered, the standard was not met at all. In 60.9% of cases that did not fully meet the standard, the prosecutor failed to consider special measures at all.

1.403. Unless performance improves, the CPS will not fully meet its responsibilities to take proper account of the rights, interests and needs of victims and witnesses, or to take the necessary steps to secure victims' participation where appropriate, and protect their rights in the court process.

Custody and bail considerations

1.404. We found a huge difference in performance between CPSD and Area prosecutors when it came to considering what position the CPS should take in respect of bail or custody at the first hearing. There has also been a steep decline in performance since 2015.

1.405. Where the decision was to charge, we found that 35.1 % of MG3s clearly set out the prosecution's position on bail, compared to 80.7% in 2015.

1.406. Areas gave proper remand/bail guidance in 15.9% of their cases, whereas CPSD achieved 73.4% for bail cases and 85.9% for custody cases. The highest scoring Area scored 29.4%, with the lowest scoring 5.9%.

1.407. Whilst in many charged cases unconditional bail for the defendant may well be appropriate, this is another area where we have found that CPSD prosecutors have developed a much more consistent approach to what needs to be covered in an MG3.

1.408. Given our findings, the CPS needs to improve its performance in this area in order to meet its benchmark standard in respect of taking account of the rights, interests and needs of victims, and taking necessary steps to secure victim participation and protecting their rights in the court process.

Effective communication

1.409. The Victim Communication and Liaison (VCL) scheme fulfils the CPS's obligations under the Victims' Code to inform victims of a decision to end a case. Decisions not to charge fall within the scheme. Complainants are referred to as victims for the purposes of this section.

1.410. The scheme reflects the CPS's responsibilities to treat all victims and witnesses with respect and understanding throughout the justice process. Most victims are entitled to be told about a decision not to charge within five working days.

1.411. Certain victims are entitled to an enhanced service, which means that they should be told about the decision within one working day. Those entitled to the enhanced service include victims of domestic abuse and vulnerable or intimidated victims, based on the criteria in sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999.

1.412. At the pre-charge stage, it is the police's responsibility to inform the victim of a decision not to prosecute, although it is CPS policy to send a VCL letter in homicide cases. It is also good practice to send a letter in a case involving an allegation of rape or serious sexual offending (RASSO) or in other cases where a prosecutor deems it appropriate.

1.413. The Victims' Right to Review (VRR) scheme has been in place since June 2013. Under this scheme, victims who have suffered physical, mental or emotional harm, or economic loss, are entitled to ask for a review of a decision not to prosecute.

1.414. In 84.7% of cases where there was a decision to take no further action that qualified for the VRR scheme, we found that there was enough information for the police to explain the decision to the victim.

1.415. There were 18 cases where it was apparent the victim had invoked their right to a review. In 12 of those cases, the original decision was upheld. The decision was overturned in five cases. We were unable to tell what the outcome of the review had been in the other case.

1.416. There were 24 cases in the sample we examined where the VCL scheme was applicable before charge and where the obligation to send a letter fell on or was fulfilled by the Area.

1.417. In 21 of those cases (87.5%), the CPS sent a VCL letter to the victim. 18 of these letters were sent within the required timescale.

1.418. In three cases where the CPS should have sent a VCL letter it failed to do so.

Table 19: Victim care letters

Timely VCL letter	All cases	AAP	2015 charging inspection
Yes	75.0%	63.7%	63.6%
No, not done	12.5%	10.9%	36.4%
No, not done on time	12.5%	25.4%	

1.419. The compliance rate is better now than it was in our Area Assurance Programme (AAP) and the 2015 charging inspection.

1.420. Two of the three cases where VCL letters were not done were sensitive, one involving a RASSO allegation and one involving a domestic abuse allegation. The three letters that were not done on time were also sensitive: two were RASSO cases and one involved a fatal road traffic collision.

1.421. We assessed nine of the 21 letters sent (42.9%) as meeting a high standard. For those that did not do so, the most common failings were a lack of clarity in the explanation (four cases), insufficient information being provided (three cases) and a lack of empathy (two cases).

1.422. HMCPSI will soon publish the report of an inspection into the VCL scheme. As part of this, the timeliness and standard of letters will be considered in more detail.

Annex A

Inspection framework and methodology

Inspection framework

The framework for this inspection consisted of an overarching inspection question and seven sub-questions.

Inspection question

Following the return of charging to Areas, what level of confidence can the public have in the CPS to deliver high quality, effective, fair and timely charging decisions, and to comply with the Director's Guidance on Charging in respect of police-charged cases?

Sub-questions

1. Is there compliance with the Code for Crown Prosecutors (the Code) and the Director's Guidance on Charging, fifth Edition?
2. Has the return to daytime Area charging ensured that timely decisions are taken by the CPS?
3. Has the return to daytime Area charging resulted in high quality CPS charging decisions?
4. Have the new arrangements ensured that all CPSD charging decisions are uploaded correctly on to the CPS case management system?
5. Are there effective CPS processes for the review of police decisions to charge and for provision of feedback to the police where the Director's Guidance or Code for Crown Prosecutors were not applied correctly?
6. In cases where an action plan has been set prior to charge, was that plan necessary, proportionate and clear?
7. How effectively was the return of digital charging to Areas between 2016 and 2019 managed?

Inspection methodology

File examination

HMCPSP has direct access to the Crown Prosecution Service's (CPS) electronic case management system (CMS) when carrying out its legal file examination. Each case was examined against a set of questions specifically formulated for this inspection, to make sure that all aspects set out in the inspection framework were covered.

We ensure that our findings are independent and objective in a number of ways. The work of each inspector is subject to dip sampling and quality assurance. Our established methodology also includes the use of consistency exercises, during which all inspectors examine the same files against the file examination guidance. In a meeting, every inspector involved in the inspection then sets out their judgment and answers in respect of each file examined. In this way, we can make sure the approach and the standards being applied are consistent, and we can discuss any misinterpretation of the inspection question or the associated guidance.

If, as a result of the quality assurance, any inspector is identified as being regularly inconsistent, that inspector can be more closely supervised. In line with our inspection methodology, we carry out consistency exercises throughout the period of the file examination.

File examination

In this inspection, we chose to examine a cross-section of volume casework across the 14 CPS Areas. We examined 1,400 files covering casework concluded, or destined to be concluded, in the magistrates' courts and the Crown Court, as well as Area decisions to take no further action (NFA). We selected 100 files per Area, split as follows:

- 70 charging decisions (including NFA) per Area
 - 50% made between 6 and 12 months after charging was fully returned to the Area in question (where this was practicable)
 - 50% made between July and October 2019
- 20 Crown Prosecution Service Direct (CPSD) charging decisions made between October and November 2019
- 10 police charging decisions made in October or November 2019, chosen to assess the CPS's compliance with the requirements of the Director's

Guidance on Charging in respect of such cases. These files were chosen from the following offence categories:

- hate crime
- burglary
- offences against the person
- theft/fraud
- Public Order Act.

On-site activity

Owing to the pandemic, we could not visit the CPS's offices in person. We therefore carried out virtual on-site activity instead.

We visited five CPS Areas (Mersey Cheshire, East of England, Yorkshire and Humberside, South East, and London North) where we interviewed legal and business managers and conducted focus groups of charging lawyers. We also interviewed a senior legal manager from each of the other nine Areas, and the Chief Crown Prosecutor and Area Business Manager for CPS Direct.

In CPS Headquarters, we interviewed the Heads of Operations and Change, the charging policy lead and the Head of Legal Services.

During interviews and focus groups, we explored issues relevant to the framework, and staff were also offered the opportunity to cover any matter they considered pertinent.

Other evidence-gathering

Data and documents

CPS Areas and CPS Headquarters provided us with relevant material, and we accessed and analysed CPS and police performance data. The information we sought from CPS Areas was:

- any action plan, project plan, resource planning, training package, guidance, risk register or other material prepared to facilitate the return of charging
- details of any amendments to the risk register during the return of charging
- any minutes or meeting notes held in relation to the planning and implementation of the return of charging

2020 charging inspection

- minutes or meeting notes of discussions with the police over the past 12 months regarding charging performance measures (such as non-compliance with Director's Guidance on Charging and/or Code for Crown Prosecutors, file quality, delays, or responses to action plans)
- minutes or meeting notes for any Area reviews of charging performance measures over the past 12 months
- details of how regularly charging-related individual quality assessments (IQAs) are carried out in the Area
- any themes identified by IQAs, Victims' Right to Review scheme (VRR) outcomes and case management panels related to:
 - the timeliness of charging
 - the quality of charging advice
 - the proportionality of action plans
 - feedback to police about the quality of police service
- action plan(s) or other improvement measures put in place to tackle any charging-related themes identified by IQAs, VRR outcomes and case management panels, and details of how often the plan/measure is reviewed
- information about any charging-related training or refresher training that has been carried out in the Area since charging returned (including the course outline and/or agenda if it was not a national training package)
- if the Area is piloting the new charging model in one or more of its police forces, any documentation that falls within the criteria above.

The information we sought from CPS Headquarters was:

- any minutes or meetings notes held in relation to planning the return of charging to Areas, including:
 - identification of the drivers behind the return of charging to Areas
 - decisions made regarding the process of returning charging to Areas, resource planning and the staggering of the return, both operationally and nationally

2020 charging inspection

- any action plan(s) or other measures put in place for the return of charging and details of how often the plan/measure is/was reviewed, to include baseline data and proposals for measuring success
- any documents related to reviews of these action plan(s)
- copies of the risk register related to the return of charging to Areas
- details of any amendments to the risk register during the process of returning charging to Areas
- any documents showing the sharing of good practice and feedback across Areas
- copies of any communication/guidance from CPSD to Areas regarding the return of charging
- details of any national training prepared for the return of charging to Areas
- details of any changes to structure for Areas upon the return of charging
- copies of any national guidance provided to Areas for the return of charging
- details of any arrangements put in place to support and liaise with Areas during the handover
- documents corresponding to the criteria above that relate to the pilot of the new charging model in seven police force areas
- management information system access to charging reports.

Annex B

File examination question set

Charged/no further action (NFA) file examination question set

#	Question	Answers	Question type
Police charging decisions			
1	The police's decision to charge was compliant with their powers under the Director's Guidance.	Yes No NA	P
2	If no to Q1, there is evidence on the file that the CPS identified this and raised it with the police.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back NA	CPS
3	The police's decision to charge complied with the Code test.	Yes No NA	P
4	If no to Q3, there is evidence on the file that the CPS identified this and raised it with the police.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back NA	CPS
5	The CPS reviewed the police-charged case prior to the first hearing.	Yes No NA	CPS
6	There was a proportionate initial review by a prosecutor available for the advocate at the first hearing.	Yes No NA	CPS
7	The initial CPS review was compliant with the Code test.	Yes No NA	CPS
8	The case proceeded to first hearing on the correct charges.	Yes No NA	CPS

#	Question	Answers	Question type
CPS charging decisions			
9	The police file submission complied with the National File Standard for the type of case.	Yes No, poor MG3 or MG3a No, missing D preconcs No, missing MG11s No, missing any material that undermines the prosecution case or assists the defence No, missing VPS No, missing exhibit No, overbuilt No, other NA	P
10	The CPS identified and fed back to the police (either on the national file quality assessment in the initial review or by other means) on any failings in the police file submission.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back NA	CPS
11	The CPS pre-charge decision applied the correct Code test: Full or Threshold.	Yes No NA	CPS
12	The CPS decision to charge was compliant with the Code test.	Yes No NA	CPS
13	Was the CPS charging decision completed within the set timeframes?	Yes No NA	CPS
14	In Threshold Test cases, were the reasons for applying that test set out fully?	Yes No NA	CPS
15	In Threshold Test cases, was the defendant remanded in custody at the first hearing?	Yes No NA	F

#	Question	Answers	Question type
16	In Threshold Test cases, there was a subsequent Full Code Test review as soon as reasonably practicable in accordance with the Director's Guidance.	Yes No NA	CPS
17	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met NA	CPS
18	The CPS MG3 dealt appropriately with unused material.	Fully met Partially met Not met NA	CPS
19	If Q18 is PM or NM, the most significant failing was:	Did not address disclosure at all Did not ask to see items that ought to have been sent by the police Failed to identify and tackle failings in the police disclosure submission Did not identify RLE relating to potential unused material Did not identify unused material that was disclosable under common law Did not address impact on case of UM Other NA	CPS
20	The case against each defendant was set out clearly.	Yes No NA	CPS
21	Youth defendants were identified clearly in the CPS MG3.	Yes No NA	CPS

#	Question	Answers	Question type
22	All relevant CPS policies were applied at the pre-charge stage.	Fully met Partially met Not met NA	CPS
23	If answer to Q22 is PM/NM, which was the most significant policy not applied?	Hate crime Domestic abuse Youth offenders Young witness Victims and witnesses with mental health issues and/or learning disabilities Suspects or defendants with mental health conditions or disorders Disclosure management document RASSO FRT incidents Other NA	CPS
24	The CPS MG3 considered, where applicable, relevant hearsay applications.	Fully met Partially met Not met NA	CPS
25	The CPS MG3 considered, where applicable, relevant bad character applications.	Fully met Partially met Not met NA	CPS
26	The CPS MG3 considered, where applicable, relevant special measures applications.	Fully met Partially met Not met NA	CPS

#	Question	Answers	Question type
27	If Q26 is PM or NM, what was the most significant special measures application not considered or fully considered?	Screens Live link Evidence given in private Removal of wigs and gowns S28 pre-recorded cross-examination Use of intermediary Other aids to communication Special measures not addressed at all NA	CPS
28	The CPS MG3 considered, where applicable, relevant Proceeds of Crime Act applications.	Fully met Partially met Not met NA	CPS
29	The CPS MG3 considered, where applicable, relevant preventative orders.	Fully met Partially met Not met NA	CPS
30	If Q29 is PM or NM, what was the most significant preventative order application not considered or fully considered?	Restraining order Sexual harm prevention order Football banning order Other banning order NA	CPS
31	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the preparation for effective trial form or plea and trial preparation hearing form created with the MG3.	Yes No NA	CPS
32	The grounds for a remand in custody/bail conditions were set out clearly.	Yes No NA	CPS
33	Consideration of a bail appeal included all relevant factors and was set out clearly.	Yes No NA	CPS

#	Question	Answers	Question type
34	All factors relevant to venue were considered at the pre-charge stage.	Yes No NA	CPS
35	Charge selection was appropriate and proportionate.	Fully met Partially met Not met NA	CPS
36	The action plan met a satisfactory standard.	Yes No NA	CPS
37	Was the action plan set out in the correct format?	Yes No NA	CPS
38	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes, correct request made re other items Yes, request correctly not made re other items No, requested items that were not needed No, did not request items that were needed No, requested at charge material that should have been requested pre-charge No, did not set proper parameters for the material requested No, other (please note) NA	CPS
39	Did the lawyer set realistic timescales for material and further enquiries?	Yes No NA	CPS
40	Police compliance with each action plan was timely.	Yes No NA	Police

#	Question	Answers	Question type
41	If no to Q40, the CPS identified this and fed back to the police.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back NA	CPS
42	Rate the overall quality of the MG3, including action plans.	Good Fair Poor NA	CPS
43	Was there evidence on the file that showed the police had appealed any aspect of the charging decision?	Yes No NA	F
44	Was the appeal dealt with promptly?	Yes No NA	CPS
45	Was the original decision upheld?	Upheld Upheld in part Rejected NA	F
46	If the CPS decision was NFA in respect of a qualifying offence, was there sufficient information in the MG3 to enable the police to clearly explain the reasoning to the victim for the purpose of VRR?	Yes No NA	CPS
47	There was a timely VCL letter when required.	Yes No, not done No, not done on time NA	CPS

#	Question	Answers	Question type
48	The VCL letter was of a high standard.	Yes No, inaccurate No, lack of empathy No, lack of clarity in explanation No, insufficient information No, used jargon No, spelling or grammar errors No, other NA	CPS
49	Was there evidence on CMS to show that the victim or family asked for VRR?	Yes No NA	F
50	Was the original decision not to charge upheld?	Yes No NA	F
51	The lawyer exercised sound judgment and grip throughout the case.	Good Fair Poor NA	CPS
52	Rate the overall value added by CPS.	Good Fair Poor NA	CPS
53	The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met NA	CPS

Annex C

File outputs – all cases

2020 charging inspection

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
1	The police's decision to charge was compliant with their powers under the Director's Guidance.	Yes No	76.4% 23.6%	NA	NA
2	If no to Q1, there is evidence on the file that the CPS identified this and raised it with the police.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back	9.1% 15.2% 75.8%		
3	The police's decision to charge complied with the Code test.	Yes No	97.1% 2.9%	NA	NA
4	If no to Q3, there is evidence on the file that the CPS identified this and raised it with the police.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back	80% 20% 0.0%		
5	The CPS reviewed the police-charged case prior to the first hearing.	Yes No	88.6% 11.4%		
6	There was a proportionate initial review by a prosecutor available for the advocate at the first hearing.	Yes No	72.1% 27.9%		
7	The initial CPS review was compliant with the Code test.	Yes No NA	100% 0.0%		
8	The case proceeded to first hearing on the correct charges.	Yes No NA	87.1% 12.9%		

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
9	The police file submission complied with the National File Standard for the type of case.	Yes No, poor MG3 or MG3a No, missing D precons No, missing MG11s No, missing any material that undermines the prosecution case or assists the defence No, missing VPS No, missing exhibit No, overbuilt No, other NA	44.1% 5.1% 2.1% 18.7% 0.8% 2.9% 16.9% 0.3% 9.0%	38.5% 5.8% 2.2% 21.4% 0.9% 2.2% 19.1% 0.4% 9.5%	68.6% 1.8% 1.8% 7.2% 0.0% 6.3% 7.6% 0.0% 6.7%
10	The CPS identified and fed back to the police (either on the national file quality assessment in the initial review or by other means) on any failings in the police file submission.	Yes, identified and fed back No, identified but not fed back No, not identified or fed back NA	83.6% 1.8% 14.6%	85.5% 1.5% 13.0%	66.7% 4.3% 29.0%
11	The CPS pre-charge decision applied the correct Code test: Full or Threshold.	Yes No NA	99.1% 0.9%	99.9% 0.1%	96.4% 3.6%
12	The CPS decision to charge was compliant with the Code test.	Yes No NA	97.1% 2.9%	96.6% 3.4%	98.6% 1.4%
13	Was the CPS charging decision completed within the set timeframes?	Yes No NA	56.1% 43.9%	47.8% 52.2%	86.6% 13.4%
14	In Threshold Test cases, were the reasons for applying that test set out fully?	Yes No NA	91.3% 8.7%	66.7% 33.3%	92.4% 7.6%

2020 charging inspection

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
15	In Threshold Test cases, was the defendant remanded in custody at the first hearing?	Yes No NA	82.6% 17.4%	100.0%	81.8% 18.2%
16	In Threshold Test cases, there was a subsequent Full Code Test review as soon as reasonably practicable in accordance with the Director's Guidance.	Yes No NA	64.6% 35.4%	50.0% 50.0%	65.6% 34.4%
17	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met NA	44.9% 39.5% 15.6%	41.8% 40.3% 17.9%	55.7% 36.8% 7.5%
18	The CPS MG3 dealt appropriately with unused material.	Fully met Partially met Not met NA	56.6% 12.7% 30.8%	45.5% 13.1% 41.3%	83.3% 11.6% 5.1%

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
19	If Q18 is PM or NM, the most significant failing was:	Did not address disclosure at all	53.3%	59.5%	4.3%
		Did not ask to see items that ought to have been sent by the police	3.2%	2.7%	6.5%
		Failed to identify and tackle failings in the police disclosure submission	0.5%	0.5%	0.0%
		Did not identify RLE relating to potential unused material	5.8%	4.7%	15.2%
		Did not identify unused material that was disclosable under common law	10.0%	8.8%	19.6%
		Did not address impact on case of UM	19.0%	16.7%	37.0%
		Other	8.3%	7.1%	17.4%
20	The case against each defendant was set out clearly.	Yes	71.9%	72.4%	68.4%
		No	28.1%	27.6%	31.6%
		NA			
21	Youth defendants were identified clearly in the CPS MG3.	Yes	70.2%	68.1%	83.3%
		No	29.8%	31.9%	16.7%
		NA			
22	All relevant CPS policies were applied at the pre-charge stage.	Fully met	56.3%	49.6%	75.7%
		Partially met	19.6%	21.8%	13.3%
		Not met	24.1%	28.6%	11.0%
		NA			

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
23	If answer to Q22 is PM/NM, which was the most significant policy not applied?	Hate crime	12.5%	13.0%	9.5%
		Domestic abuse	46.8%	44.3%	61.9%
		Youth offenders	12.9%	13.0%	11.9%
		Young witness	2.4%	2.8%	0.0%
		Victims and witnesses with mental health issues and/or learning disabilities	3.4%	3.6%	2.4%
		Suspects or defendants with mental health conditions or disorders	6.1%	5.9%	7.1%
		Disclosure management document	0.7%	0.8%	0.0%
		RASSO	6.1%	6.7%	2.4%
		FRT incidents	0.7%	0.8%	0.0%
		Other NA	8.5%	9.1%	4.8%
24	The CPS MG3 considered, where applicable, relevant hearsay applications.	Fully met	46.1%	28.8%	77.8%
		Partially met	21.6%	24.2%	16.7%
		Not met	32.4%	47.0%	5.6%
		NA			
25	The CPS MG3 considered, where applicable, relevant bad character applications.	Fully met	46.2%	38.3%	59.0%
		Partially met	26.1%	27.0%	24.6%
		Not met	27.7%	34.7%	16.4%
		NA			
26	The CPS MG3 considered, where applicable, relevant special measures applications.	Fully met	44.8%	40.6%	52.4%
		Partially met	18.6%	20.5%	15.2%
		Not met	36.6%	38.9%	32.3%
		NA			

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
27	If Q26 is PM or NM, what was the most significant special measures application not considered or fully considered?	Screens Live link Evidence given in private Removal of wigs and gowns S28 pre-recorded cross-examination Use of intermediary Other aids to communication Special measures not addressed at all NA	28.3% 9.3% 0.0% 0.0% 0.8% 0.4% 0.4% 60.9%	27.2% 10.0% 0.0% 0.0% 1.1% 0.6% 0.6% 60.6%	30.8% 7.7% 0.0% 0.0% 1.1% 0.6% 0.6% 61.5%
28	The CPS MG3 considered, where applicable, relevant Proceeds of Crime Act applications.	Fully met Partially met Not met NA	24.8% 13.5% 61.7%	15.2% 14.3% 70.5%	60.7% 10.7% 28.6%
29	The CPS MG3 considered, where applicable, relevant preventative orders.	Fully met Partially met Not met NA	44.2% 20.8% 35.1%	31.0% 23.5% 45.5%	67.5% 15.9% 16.6%
30	If Q29 is PM or NM, what was the most significant preventative order application not considered or fully considered?	Restraining order Sexual harm prevention order Football banning order Other banning order NA	73.9% 20.9% 0.0% 5.1%	69.7% 23.8% 0.0% 6.5%	89.8% 10.2% 0.0% 0.0%
31	There were appropriate instructions and guidance to the court prosecutor contained in either the MG3 or the preparation for effective trial form or plea and trial preparations hearing form created with the MG3.	Yes No NA	55.2% 44.8%	44.0% 56.0%	82.1% 17.9%

2020 charging inspection

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
32	The grounds for a remand in custody/bail conditions were set out clearly.	Yes No NA	35.1% 64.9%	15.9% 84.1%	81.7% 18.3%
33	Consideration of a bail appeal included all relevant factors and was set out clearly.	Yes No NA	63.5% 36.5%	13.3% 86.7%	68.4% 31.6%
34	All factors relevant to venue were considered at the pre-charge stage.	Yes No NA	69.3% 30.7%	65.2% 34.8%	79.3% 20.7%
35	Charge selection was appropriate and proportionate.	Fully met Partially met Not met NA	82.4% 13.6% 4.0%	81.4% 14.3% 4.3%	85.4% 11.8% 2.9%
36	The action plan met a satisfactory standard.	Yes No NA	66.0% 34.0%	63.1% 36.9%	73.9% 26.1%
37	Was the action plan set out in the correct format?	Yes No NA	91.8% 8.2%	89.9% 10.1%	96.9% 3.1%

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
38	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes, correct request made re other items	64.4%	61.9%	71.4%
		Yes, request correctly not made re other items	0.1%	0.2%	0.0%
		No, requested items that were not needed	8.8%	9.7%	6.4%
		No, did not request items that were needed	20.0%	21.7%	15.4%
		No, requested at charge material that should have been requested pre-charge	2.9%	3.0%	2.6%
		No, did not set proper parameters for the material requested	1.6%	1.2%	2.6%
		No, other (please note)	2.1%	2.3%	1.7%
		NA			
39	Did the lawyer set realistic timescales for material and further enquiries?	Yes	78.3%	78.2%	78.6%
		No	21.7%	21.8%	21.4%
		NA			
40	Police compliance with each action plan was timely.	Yes	49.2%	50.1%	46.4%
		No	50.8%	49.9%	53.6%
		NA			
41	If no to Q40, the CPS identified this and fed back to the police.	Yes, identified and fed back	44.3%	48.1%	33.7%
		No, identified but not fed back	3.5%	4.5%	1.0%
		No, not identified or fed back	52.2%	47.4%	65.4%
		NA			
42	Rate the overall quality of the MG3, including action plans.	Good	32.9%	28.1%	49.6%
		Fair	47.1%	49.3%	39.6%
		Poor	20.0%	22.7%	10.7%
		NA			

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
43	Was there evidence on the file that showed the police had appealed any aspect of the charging decision?	Yes No NA	1.3% 98.7%	1.4% 98.6%	0.7% 99.3%
44	Was the appeal dealt with promptly?	Yes No NA	56.3% 43.8%	50.0% 50.0%	100.0%
45	Was the original decision upheld?	Upheld Upheld in part Rejected NA	50.0% 0.0% 50.0%	50.0% 0.0% 50%	50.0% 0.0% 50.0%
46	If the CPS decision was NFA in respect of a qualifying offence, was there sufficient information in the MG3 to enable the police to clearly explain the reasoning to the victim for the purpose of VRR?	Yes No NA	84.7% 15.3%	84.8% 15.2%	80.0% 20.0%
47	There was a timely VCL letter when required.	Yes No, not done No, not done on time NA	75.0% 12.5% 12.5%	77.3% 9.1% 13.6%	50.0% 50.0% 0.0%
48	The VCL letter was of a high standard.	Yes No, inaccurate No, lack of empathy No, lack of clarity in explanation No, insufficient information No, used jargon No, spelling or grammar errors No, other NA	42.9% 0.0% 9.5% 19.0% 14.3% 4.8% 4.8% 4.8%	40.0% 0.0% 10.0% 20.0% 15.0% 5.0% 5.0% 5.0%	100.0% 0.0% 0.0% 0.0% 0.0% 0.0% 0.0% 0.0%
49	Was there evidence on CMS to show that the victim or family asked for VRR?	Yes No NA	7.8% 92.2%	8.0% 92.0%	0.0% 100.0%

2020 charging inspection

#	Question	Answers	Result (all cases)	Result (Areas)	Result (CPSD)
50	Was the original decision not to charge upheld?	Yes No NA	70.6% 29.4%	70.6% 29.4%	
51	The lawyer exercised sound judgment and grip throughout the case.	Good Fair Poor NA	37.9% 42.9% 19.2%	33.0% 44.9% 22.1%	55.4% 35.7% 8.9%
52	Rate the overall value added by CPS.	Good Fair Poor NA	34.1% 43.7% 22.2%	29.1% 45.4% 25.5%	51.8% 37.5% 10.7%
53	The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met NA	85.0% 12.8% 2.2%	85.6% 12.7% 1.7%	82.5% 12.9% 4.6%

Annex D

CPS performance data

England and Wales, referrals to CPS for charging decision

	2016/17	2017/18	2018/19	2019/20
Pre-charge decisions	264,425	262,652	240,968	222,789
Area pre-charge decisions	103,270	100,694	125,815	140,588
CPSD pre-charge decisions	161,155	161,958	115,153	82,201
Overall charge rate	72.67%	69.00%	65.97%	66.61%
Area charge rate	60.44%	51.25%	49.73%	54.45%
CPSD charge rate	80.51%	80.04%	83.70%	87.40%
Overall NFA rate	19.97%	17.96%	19.83%	20.76%
Area NFA rate	23.53%	18.97%	24.72%	25.90%
CPSD NFA rate	17.68%	17.33%	14.48%	11.95%

Timeliness of charging decisions

Timeliness	19/20-Q2	19/20-Q3	19/20-Q4
5 day consultations			
Proportion completed within 5 days	22.2%	22.7%	21.6%
28 day consultations			
Proportion completed within 28 days	51.2%	66.9%	64.4%
Custody consultations			
Proportion completed within 3 hours	96.3%	97.0%	96.0%

England and Wales, magistrates' court performance data (for cases charged by the CPS)

	2016/17	2017/18	2018/19	2019/20
Conviction rate PCD	79.5%	80.0%	80.1%	81.2%
Attrition rate PCD	20.5%	20.0%	19.9%	18.8%
Discontinuance rate	9.6%	9.4%	9.9%	9.6%
Dropped at first hearing rate	28.4%	33.4%	37.4%	39.7%
Guilty plea rate PCD	72.5%	72.9%	73.9%	75.5%
Guilty plea at first hearing rate	70.0%	76.7%	76.9%	77.7%

England and Wales, Crown Court performance data (for cases charged by the CPS)

	2016/17	2017/18	2018/19	2019/20
Conviction PCD rate	79.0%	79.9%	80.0%	82.1%
Attrition PCD	21.0%	20.1%	20.0%	17.9%
PCD discontinuance rate	11.3%	10.8%	11.6%	10.6%
Judge ordered acquittal	11.6%	11.0%	11.8%	11.2%
Judge directed acquittal rate	4.0%	3.4%	3.1%	2.7%
Guilty plea rate PCD	70.2%	70.7%	70.7%	73.7%
Guilty plea at first hearing rate	39.9%	41.1%	40.2%	44.1%

Individual quality assessment (IQA) data⁹

	2018-19			2019-20		2020-21		
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
Did the prosecutor make the right charging or review decision in accordance with the Code for Crown Prosecutors?								
Fully met	92.15%	91.61%	89.90%	89.50%	84.77%	90.71%	91.71%	92.86%
Not met	6.99%	8.15%	9.56%	10.01%	14.45%	8.77%	7.87%	6.58%
Not met (other)	0.86%	0.24%	0.54%	0.50%	0.78%	0.52%	0.42%	0.56%
Was any decision as to whether or not to prosecute, including whether to continue to prosecute, timely?								
Fully met	92.04%	89.76%	86.75%	88.07%	81.11%	86.07%	89.20%	88.98%
Not met	5.92%	6.53%	8.62%	6.40%	10.69%	7.94%	7.47%	7.09%
Not met (other)	2.04%	3.71%	4.63%	5.53%	8.19%	5.99%	3.33%	3.93%
Was any decision properly informed and reasoned, taking account of key evidence, unused material, and the likely issues?								
Fully met	88.57%	84.01%	83.70%	85.36%	76.11%	85.21%	85.90%	86.66%
Not met	10.47%	15.19%	15.68%	13.89%	22.45%	13.98%	13.46%	12.16%
Not met (other)	0.96%	0.81%	0.62%	0.75%	1.44%	0.81%	0.63%	1.18%

⁹ IQA percentage figures exclude all not applicable responses. The CPS Delete IQA data after two years.

	2018-19		2019-20			2020-21		
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
Did the prosecutor identify and deal with any disclosure issues appropriately?								
Fully met	88.54%	84.99%	80.14%	82.26%	78.57%	86.73%	88.32%	89.00%
Not met	9.19%	11.60%	16.58%	15.85%	18.73%	11.33%	10.18%	9.10%
Not met (other)	2.27%	3.41%	3.28%	1.89%	2.70%	1.95%	1.50%	1.90%
Did the prosecutor identify cases involving a Proceeds of Crime 'benefit' and set a strategy to prevent criminals from retaining a financial advantage from crime?								
Fully met	68.75%	82.81%	69.29%	78.89%	78.38%	68.82%	80.17%	78.40%
Not met	25.00%	14.06%	28.57%	20.00%	18.92%	29.03%	18.10%	17.28%
Not met (other)	6.25%	3.12%	2.14%	1.11%	2.70%	2.15%	1.72%	4.32%
NA								
Did the prosecutor take all appropriate steps to ensure that charging advice or review contained the right information for the advocate, so that progress is made at the initial hearing?								
Fully met	88.92%	85.05%	82.91%	81.04%	77.18%	83.50%	87.54%	87.07%
Not met	9.10%	13.37%	16.43%	17.97%	21.83%	15.15%	11.69%	12.45%
Not met (other)	1.98%	1.58%	0.66%	0.99%	0.99%	1.35%	0.77%	0.48%
Did the prosecutor record decisions digitally in a way which is accurate and proportionate so that our position is clear, can be understood by others and is capable of withstanding challenge?								
Fully met	90.89%	85.56%	87.91%	86.67%	83.49%	88.41%	89.08%	89.55%
Not met	7.95%	13.05%	11.69%	13.33%	15.72%	10.46%	10.07%	9.60%
Not met (other)	1.16%	1.39%	0.39%	0.00%	0.79%	1.13%	0.85%	0.85%

Annex E

Glossary

Action plan

A list of actions that the CPS lawyer has asked the police to complete before the lawyer can make a decision about whether to advise charging the suspect.

Examples of frequently occurring actions include obtaining a statement from a witness, obtaining medical records, or providing a list of previous convictions for a witness.

Admin finalised

Describes cases that have had an administrative step taken to put them into abeyance on the CPS's case management system. This is a misleading term because it suggests the cases have been concluded. Many cases that have been admin finalised are, in fact, still under investigation but awaiting some further evidence or information from the police, or for something else to happen, such as the suspect being located and arrested. Admin finalised cases would be better described as 'police awaiting further action'.

Applications or ancillary matters

Matters about which the prosecution can ask the court to make orders – for example, to admit a piece of evidence that would otherwise not be allowed, to allow a witness to give their evidence from a different venue by video-link, or to make orders at sentencing preventing the defendant from contacting the victim.

Area Assurance Programme (AAP)

A series of inspections of all 14 Areas of the CPS, which HMCPSI carried out between 2016 and 2019. The reports are available from the HMCPSI website¹⁰.

Attorney General

The chief legal advisor to the Government, who also oversees the Crown Prosecution Service, the Serious Fraud Office, HMCPSI and the Government Legal Department.

Attrition

The number of cases that fall out of the system between two set points in the process, such as between a report being made to the police and the police referring a case to the CPS, or between charge and conviction.

Case management panel (CMP)

A discussion held between the lawyer and their manager(s), or between managers, to discuss progress on a case and determine what other work needs to be done. The panel may review whether the decision to charge was correct

¹⁰ www.justiceinspectrates.gov.uk/hmcpsi/

or, if there has been a significant change in the case, whether it still ought to proceed.

Case management system (CMS)

An IT system for case management used by the CPS, which records most of the details of cases and provides management information and data. Through links with police systems, the case management system receives electronic case material. Such material is intended to progressively replace paper files.

Charge

The process by which the allegation is put to a suspect by the police at the police station, and also the formal record of the allegation. The charge is then sent to the court, which sets the first hearing date for the case. Another common way of notifying the defendant that they are being accused of a criminal offence is by a summons, which is usually sent through the post.

Chief Crown Prosecutor (CCP), Deputy Chief Crown Prosecutor (DCCP), Senior District Crown Prosecutor (SDCP), District Crown Prosecutor (DCP)

Management roles in the CPS in descending order of seniority. The Chief Crown Prosecutor is the legal head of a CPS Area.

Code for Crown Prosecutors

A public document, issued by the Director of Public Prosecutions, which sets out the general principles CPS lawyers should follow when they make decisions on cases. It contains a test for establishing whether a prosecution should take place, which has two stages: evidential and public interest. This means that a case should only proceed where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to prosecute the suspect.

Consultation

When the police ask the CPS to give advice about whether there is enough evidence to prosecute and whether a prosecution is in the public interest. Consultations may be by phone, in person or by the police sending the papers electronically and the CPS lawyer reviewing them.

Conviction rate

The proportion of the cases charged by the CPS resulting in the defendant pleading or being found guilty.

Counsel

A barrister who has been asked to advise on a case and/or present it at court.

Crown Prosecution Service (CPS)

The main public agency for conducting criminal cases in England and Wales, responsible for: prosecuting criminal cases investigated by the police and other investigating bodies; advising the police on cases for possible prosecution; reviewing cases submitted by the police; determining any charges in more serious or complex cases; preparing cases for court; and presenting cases at court. It has been operating since 1998 and is headed by the Director of Public Prosecutions.

Crown Prosecution Service Direct (CPSD)

The CPS Area that provides charging decisions on priority cases, mostly out of office hours. It enables the CPS to provide charging decisions at any time of the day or night, all year round.

Director of Public Prosecutions (DPP)

The head of the CPS, with personal responsibility for its staff and the prosecutions it undertakes every year. The role was created in 1879, and the current holder is Max Hill QC.

Director's Guidance on Charging

Guidance issued by the Director of Public Prosecutions to the CPS and police. It sets out the arrangements for joint working between police officers and prosecutors during the investigation and prosecution of criminal cases.

Disclosure

The criminal law (Criminal Procedure and Investigations Act 1996) lays down specific steps the police must take to retain and record information, documents or other materials that are relevant to an investigation but which are not going to be part of the prosecution case (which is collectively called the 'unused material'). The police must reveal relevant unused material to the CPS, who then have to disclose to the defence anything that undermines the prosecution case or assists the defence.

Domestic abuse and domestic violence

Domestic abuse is abuse that occurs in relationships or between family members. Domestic violence is one type of domestic abuse, but domestic abuse also includes other types, such as emotional abuse (like controlling behaviour, isolating and belittling) or threats and intimidation.

Full Code Test and Threshold Test

Two types of test for determining whether a case should proceed, as set out in the Code for Crown Prosecutors. The Full Code Test should be applied where

the suspect is not in police custody. The Threshold Test is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge.

Gatekeeper

Someone in a police force who checks the documents prepared by the case officer to make sure they are all there and meet the standard required to be submitted to the CPS. Not all police forces have gatekeepers.

Grip

What needs to happen on a case for it to be managed effectively and efficiently. It includes, but is not limited to:

- making sound decisions at the right stages in the case
- building a strong case by working with the police to get the right evidence
- weighing up the impact of any unused material (see *Disclosure*)
- taking account of victims' and witnesses' needs
- preparing the prosecution case and sending it to the court and defence in good time for them to play their part.

Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi)

Set up in 2000, HMCPsi inspects the work carried out by the CPS and other prosecuting agencies. The purpose of our work is to enhance the quality of justice and make an assessment of prosecution services that enables or leads to improvement in their efficiency, effectiveness and fairness.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)

Established in 1856, HMIC (as it was then) oversees, inspects and reports upon the efficiency and effectiveness of all Home Office police forces, as well as other forces and agencies by invitation. From 2017, it extended its responsibility to the inspection of fire and rescue services in England, and became HMICFRS.

High weighted measures

The data the CPS thinks is most important when analysing its own performance. The high weighted measures currently in use include, for example, the number of cases dropped at third or subsequent hearings and the number of guilty pleas at first hearing.

Individual quality assessment (IQA)

The process the CPS uses to assess casework done by a prosecutor on a case or the advocate at court. This is a set of questions, which the manager goes through, covering the full range of work that might need to be done. The process calls for feedback to be provided to the prosecutor or advocate, and for themes identified by managers to feed into improvement work across the Area.

Manual of Guidance Forms (MG3, MG6)

Standard forms included in the police and CPS manual of guidance for how the police should build a file to send to the CPS. The MG3 is for the police to summarise the case, and for the CPS to record its charging decision. The MG6 series of forms relates to unused material (see *Disclosure*).

No further action (NFA)

When a criminal allegation has been reported to the police, the police may decide at any stage during an investigation that there is insufficient evidence to proceed, so they will take no further action. Alternatively, they may refer a case to the CPS who may advise the police that no further action should be taken, either because there is not enough evidence or because a prosecution is not in the public interest.

Police file submission

When the police send a set of papers to the CPS to consider charge, or after charge, for the trial.

Rape and serious sexual offences (RASSO) units

Units composed of specialist rape prosecutors and other members of the team, organised by the CPS to build and share experience.

Reasonable lines of enquiry

When conducting an investigation, the Code of Practice on disclosure says that the police investigator “should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances”. The CPS has issued guidance on reasonable lines of enquiry and communications evidence¹¹.

Threshold Test

See *Full Code Test*.

¹¹ *A guide to “reasonable lines of enquiry” and communications evidence*; CPS; July 2018
www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence

Triage

In the context of this report, triage is a check carried out by a member of CPS staff, usually an administrator, to make sure that what the police have sent to the CPS includes the right documents and other items. In this context, it is a check for the presence of the required material, not the quality of their contents.

Unused material

See *Disclosure*.

Victim Communication and Liaison scheme (VCL) and enhanced service

A CPS scheme under which victims are informed of decisions to discontinue or alter substantially any charges¹². The CPS must notify the victim of a decision to drop or substantially alter a charge within one working day for vulnerable or intimidated victims (the enhanced service) and within five working days for all other victims. In some case categories, the victim will be offered a meeting to explain these decisions. Formerly known as Direct Communication with Victims (DCV).

Victims' Right to Review scheme (VRR)

Under this scheme, victims can seek a review of CPS decisions: not to charge; to discontinue (or withdraw in the magistrates' courts) all charges, thereby ending all proceedings; and to offer no evidence in all proceedings.

¹² *Victim Communication and Liaison (VCL) scheme*; CPS; December 2019
www.cps.gov.uk/legal-guidance/victim-communication-and-liaison-vcl-scheme

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