

JOINT INSPECTION OF THE PROVISION OF CHARGING DECISIONS

MAY 2015

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CHIEF INSPECTORS' FOREWORD

The decision whether or not to charge someone with a criminal offence is a fundamental stage in the criminal justice process. As The Rt Hon Sir Brian Leveson states in his *Review of Efficiency in Criminal Proceedings*,¹ getting the charge right is the first pre-requisite of a more efficient system. Equally important is to ensure that those who are innocent are not wrongly brought into the criminal justice system.

This joint inspection has closely scrutinised how well the police and the CPS ensure that quality charging decisions are made. There have been improvements since our 2008 joint inspection, pre-charge bail is now better managed by the police and digital transfer of information has speeded up some parts of the process.

However, police officers often still have to wait too long for CPS charging decisions, whether waiting to get through on the telephone to CPS Direct or when they submit a file for written advice to a CPS Area. The former is not an effective use of operational police resources and the latter increases unnecessarily the anxiety of victims and suspects. We welcome the steps CPS Direct are taking to implement a digital charging process, but the success of this relies heavily on good quality police files. In too many cases the CPS has to ask for more before an informed charging decision can be made.

Greater attention needs to be given to training police decision-makers to ensure they know not only how to consider evidential criteria correctly, but also in which cases they are authorised to make decisions. Overall, there needs to be more emphasis on the importance of the role, including the sufficiency of resources, to ensure that timely high quality decisions are made.

This inspection has highlighted that not only are the police charging cases which should go to the CPS, but conversely are submitting cases where they should be making the decision. We have particular concerns around where charging responsibility lies in domestic abuse cases. This needs to be clarified as a matter of urgency.

The quality of police and CPS charging decisions needs to improve. In police charged cases there is a lack of a clear decision-making audit trail, and too many CPS charging decisions fail to address all the necessary issues. This has an adverse impact further down the line in not guilty cases. The Transforming Summary Justice initiative relies on the agencies getting it right first time.

The CPS needs to ensure that police charged cases are reviewed effectively before the first hearing. In a time of diminishing resources it is essential that weak cases are weeded out at the start. This is not yet happening.

These improvements need to be led from the top and the recently reformed Charging Delivery Board has a key role to play. At the local level more needs to be done to inform joint prosecution performance management teams about the quality of all aspects of the charging process.

Addressing the issues raised in this report must be the starting point for a wider debate on whether the current balance of charging responsibilities between the police and CPS is correct.



Kevin McGinty
HM Chief Inspector of the CPS



Drusilla Sharpling CBE
HM Inspector of Constabulary

¹ *Review of Efficiency in Criminal Proceedings*; The Rt Hon Sir Brian Leveson; President of the Queen's Bench Division; January 2015. www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/

Joint inspection of the provision of charging decisions

1 EXECUTIVE SUMMARY

Overview

- 1.1 This report details the findings of a joint inspection undertaken by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) on the provision of charging decisions by the police and the Crown Prosecution Service (CPS). This topic has previously been subject to a joint inspection report in 2008 by HMIC and HMCPSI.²
- 1.2 The statutory charging scheme requires the CPS to provide charging decisions 24 hours a day, 365 days of the year. In 2008 the majority of charging decisions were made during normal office hours by prosecutors based in police stations, in face to face meetings with the investigator.
- 1.3 Out of office hours provision was covered by a new national service known as CPS Direct (CPSD). The role of CPSD was primarily to provide charging decisions for defendants in custody, whether or not they would be granted bail by the custody sergeant after charge. They would also offer a similar service for suspects on bail if the investigator had not, for some good reason, been able to obtain a charging decision from a local CPS Area lawyer. CPSD lawyers worked from home and relied on fax transmission of the police file.
- 1.4 Since the initial introduction and operation of the statutory charging scheme there have been fundamental changes to how it works, including a gradual return to the police of categories of cases which they can now charge. Other changes can be summarised as follows:
 - prosecutors (except in some very limited circumstances) no longer work in police stations;
 - there is no longer a face to face meeting between the prosecutor and investigator (except in some of the most serious cases);
 - CPSD now operates a 24 hour service and provides the majority of CPS charging decisions;
 - local prosecutors only provide charging advice in a limited category of cases; and
 - case papers for charging advice are now provided digitally by the police to the CPS in almost all cases.
- 1.5 The charging landscape is now very different from that which existed at the time of the 2008 report.
- 1.6 The decision whether to charge someone with a criminal offence is a fundamental stage in the criminal justice process. Getting it right from the outset means that those who are innocent do not face the trauma of trial and there are just outcomes for the guilty and their victims. It is imperative that charging decisions (whether taken by the police or CPS prosecutors) are both timely and of a high quality. This inspection found that both those aspects need to improve.

² *Joint thematic review of the new charging arrangements*; CJI; November 2008. www.justiceinspectors.gov.uk/cji/inspections/joint-thematic-review-of-the-new-charging-arrangements/

Key findings

- 1.7 Until recently the required renewed joint national focus on charging has been absent, although recent developments are encouraging. The Chief Crown Prosecutor for CPSD is now the national CPS strategic lead on charging. In conjunction with their Association of Chief Police Officers (ACPO) counterpart they have restarted the Charging Delivery Board. It is apparent that there is a renewed emphasis on the strategic oversight of charging delivery.
- 1.8 At the local level, prosecution team performance management meetings give very little consideration to performance data relating to the charging stage, which is crucial to the continuing effective progress of the case through the criminal justice system. There should be a greater focus on key performance issues. Inspectors also found that there were variable levels of engagement with local CPSD liaison managers, which is being addressed by CPSD senior managers.
- 1.9 CPSD has a rigorous performance management regime, with strong individual accountability, that includes throughput targets on the number of MG3s (records of charging decisions) completed on each shift.
- 1.10 Whilst the overall number of defendants entering the criminal justice system has declined year on year since 2009-10, inspectors were not assured that the proportion of cases recorded as CPS pre-charge decisions is being recorded accurately. Errors in the way charging decisions are uploaded onto the CPS case management system are leading to under recording.
- 1.11 Each of the police forces visited had processes in place to supervise the building of case files before the decision-maker determined how they should be dealt with.³ However, merging the supervisory and decision-making role could be problematic, especially if the supervisor asked to take the decision was not actively involved in the case. There were significant issues in respect of the lack of training supervisors had received on what to consider as part of the decision-making process.
- 1.12 Inspectors examined a sample of cases where the decision to charge the defendant had been made by police. In a high proportion of those cases (91.9%), the decision to charge the suspect was, applying the Code for Crown Prosecutors (the Code),⁴ correct. However in just over a third the case should have been referred to the CPS in accordance with the Director's Guidance on Charging 5th Edition.⁵ Conversely in 9.6% of our sample of cases where CPSD directed no further action or an out of court disposal, the police should have made the decision.
- 1.13 There was an inconsistent approach by police decision-makers as to when cases of domestic abuse should be referred to the CPS, which was confirmed by what we were told by both CPS and police staff. Over a third of cases which should have been referred to the CPS were charged by the police.

3 In the context of this inspection, the decision would be to i) refer the case to the CPS ii) direct no further action, or iii) determine that an out of court disposal was appropriate.

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

5 Extracts of the Guidance are set out at Annex B. *Director's Guidance on Charging 5th Edition*; CPS; May 2013. www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html

- 1.14 Conversely, we found that cases where the police should have taken no further action because there was insufficient evidence were referred incorrectly to the CPS for the charging decision. Inspectors found that 66 of the 112 cases (58.9%) where no further action was directed by CPSD met the definition of domestic abuse. There is an urgent need for the correct approach to be clarified, as there are inconsistencies between the Director's Guidance and the recently issued CPS guidelines on domestic abuse.⁶
- 1.15 Effective pre-charge bail management by the police had improved since our 2008 inspection. This is a contributory factor in the timeliness of decision-making. In our sample of police charged cases those forces with a dedicated bail management role make prompter charging decisions. Cases which required forensic analysis understandably had the longest pre-charge bail periods, particularly if computer equipment needed to be examined. Similarly, cases involving indecent images of children involved extensive delays, which could be compounded by the time it took the CPS Area to provide a written advice.
- 1.16 Police officers consistently raised concerns about the time it took to get through on the telephone to CPS Direct. Not only did this restrict their ability to do other operational duties, but it resulted in delays in investigations and suspects spending longer in custody than was necessary. CPSD acknowledged police concerns and the impact this quality of service issue may have on victims. We saw clear evidence that this was a primary focus for the CPSD Senior Management Team and that efforts were being made to ensure this area of business was effectively resourced. At the time of our inspection the digital file initiative was also being rolled out. This, together with appropriate CPSD resourcing, has the potential to alleviate the problems and free up police officer time. It will, however, still require a substantial improvement in police file quality and the resulting reduction in the proportion of cases where the CPS need to request further evidence or information before they can make the charging decision.
- 1.17 The Code was applied correctly in 90.8% of cases where the CPS decision was to charge and 97.8% of cases where the decision was either that there should be no further action or an out of court disposal. The overall quality of the MG3 needs to improve, with 40.3% in the sample of charged cases being good or better.⁷ This rose to 57.5% where decision was either that there should be no further action or an out of court disposal.
- 1.18 CPSD is undertaking a review of the structure of MG3s and developing bespoke versions for some categories of offence, for example hate crime cases. This should assist in ensuring prosecutors consider all the relevant criteria when deciding whether there is sufficient evidence to charge a suspect.
- 1.19 The resource available to CPSD to enable them to meet the demand for charging advice was significantly less than that which they calculated they need. Existing salary structures for out of hours work are unsustainable. Savings made from revising this structure are needed to increase the overall prosecutor resource available. Additionally, a reduction in the volume of cases referred inappropriately by the police would assist, although this is likely to be offset in part if the police comply fully with the Director's Guidance.

⁶ *Domestic Abuse Guidelines for Prosecutors*; CPS. www.cps.gov.uk/legal/d_to_g/domestic_abuse_guidelines_for_prosecutors/
⁷ The HMCPSI Annual Casework Examination Programme assesses the quality of charging decisions having regard to a number of factors. Overall assessments range from excellent to poor.

1.20 In this context it is appropriate for the CPS and police to consider whether the current balance between cases which the police can charge and those which must be referred to the CPS is correct. Although we only visited a small number of police forces and CPS Areas, our findings are relevant to all forces in England and Wales and the CPS as a whole.

Recommendations

1 CPS Area managers ensure all appropriate administrative staff are trained effectively to ensure CPS Direct records of charging decisions are uploaded correctly onto the CPS case management system (paragraph 3.4).

2 The criminal justice business area committee of the National Police Chiefs' Council and the CPS revise the performance data used as part of the prosecution team performance management process to ensure they capture essential charging information (paragraph 4.8).

3 Police forces ensure that there are sufficient trained decision-makers available to ensure that timely high quality decisions are made in accordance with the Code for Crown Prosecutors and the Director's Guidance on Charging (paragraph 5.7).

4 The College of Policing, in conjunction with the CPS, produces a set of national learning standards, for local delivery, which as a minimum includes:

- the operation of the Director's Guidance on Charging;
- the Code for Crown Prosecutors; and
- the content of Charging Reports and the National File Standard (paragraph 5.15).

5 All police forces have effective processes for the supervision and management of pre-charge bail in accordance with Authorised Professional Practice (paragraph 5.30).

6 CPS Areas, in consultation with their aligned police forces, set out clearly the arrangements for the provision of early investigative advice (paragraph 6.8).

7 The criminal justice business area committee of the National Police Chiefs' Council and the CPS review the Director's Guidance on Charging to assess whether the range of offences the police can charge needs to be amended (paragraph 7.6).

8 The rationale for police decisions to take no further action or proceed by way of an out of court disposal be recorded with the following information:

- the decision-maker's application of the full Code for Crown Prosecutors test; and
- in relevant cases, consideration of the gravity matrix.

and, that wherever possible, that record is included on the MG3 form (paragraph 7.16).

9 CPS Direct, in conjunction with the criminal justice business area committee of the National Police Chiefs' Council, ensures that the functionality of using the call back system to police officers' secure mobile phones is clarified (paragraph 8.31).

10 The CPS reviews the Director's Guidance on Charging Fifth Edition and its domestic abuse guidelines to ensure consistency between these documents (paragraph 9.16).

Good practice

1.21 Inspectors also noted two aspects of good practice:

1 The provision by CPS Direct to one police force of detailed feedback on their performance in respect of the charging requirements, which was then fed back to local operational police leads (CPS Direct and the Metropolitan Police Service) (paragraph 4.4).

2 The process of the CPS fixing the next advice slot at the time the action plan was given to the police (CPS London) (paragraph 8.39).

Joint inspection of the provision of charging decisions

2 OVERVIEW

2.1 This report details the findings of a joint inspection undertaken by HMIC and HMCPSI on the provision of charging decisions by the police and CPS. The objective and aims of the inspection are set out in detail at Annex A.

The development of charging arrangements

2.2 This topic has previously been subject to a joint inspection report in 2008 by HMIC and HMCPSI. That report sets out in detail the history of the arrangements for charging suspects in criminal cases.

2.3 The pertinent developments can be summarised briefly:

- in July 2002 the Government issued the White Paper *Justice for All*⁸ which stated that the CPS should assume responsibility “for determining the charge in cases other than for routine offences”;
- Schedule 2 of the Criminal Justice Act 2003 is implemented (16 November 2003) which puts the power of the CPS to direct the charge on a statutory footing;
- in 2003 the CPS, in conjunction with ACPO, set up ‘shadow’ charging schemes; and
- from early 2004 to April 2006 there was a migration by CPS Areas from the shadow scheme to what was termed ‘statutory charging’.

2.4 Aligned to this statutory power was the Director’s Guidance on Charging. Issued under S37(A) Police and Criminal Evidence Act 1984 as amended, the first edition was issued in February 2004. Since that time there have been four further editions. We refer to the guidance in the current fifth edition (May 2013) in the relevant sections of this report (as DG5). Annex B sets out the relevant paragraphs of DG5 in detail.

2.5 Various editions of the Director’s Guidance have amended the range of case types in which the police can charge suspects without first referring the file to the CPS. Overall, there has been a gradual return of charging powers to the police and the current scope is set out in paragraph 15 of DG5.

2.6 The statutory charging scheme requires the CPS to provide charging decisions 24 hours a day, 365 days of the year. When introduced it was decided that during normal CPS office hours (weekdays from 9am to 5pm) charging decisions would be made by local CPS Area prosecutors. Out of office hours provision would be covered by a new national service known as CPS Direct. The role of CPSD was primarily to provide charging decisions for defendants in custody, whether or not they would be granted bail by the custody sergeant after charge. They would also offer a similar service for suspects on bail if the investigator had not, for some good reason, been able to obtain a charging decision from a local Area lawyer.

⁸ *Justice for All*; Home Office, Lord Chancellor’s Department, Law Officers Department; July 2002. www.cps.gov.uk/publications/docs/jfawhitepaper.pdf

- 2.7 The majority of local charging decisions were made by prosecutors based in police stations, in face to face meetings with the investigator. CPSD lawyers worked from home and relied on fax transmission of the police file.
- 2.8 Since the initial introduction and operation of the scheme there have been fundamental changes to how it works. These can be summarised as follows:
- prosecutors (except in some very limited circumstances) no longer work in police stations;
 - there is no longer a face to face meeting between the prosecutor and investigator (except in some of the most serious cases);
 - CPSD now operates a 24 hour service and provides the majority of CPS charging decisions;
 - local prosecutors only provide charging advice in a limited category of cases; and
 - case papers for charging advice are now provided digitally by the police to the CPS in almost all cases.
- 2.9 Overall, there has been a considerable change in the charging landscape since publication of the 2008 report.

Report structure

- 2.10 The report sets out our findings in respect of the various stages a case will go through before a charging decision is made. We comment first on aspects of the governance arrangements for the successful delivery of charging and then look in depth at police investigation, supervision and decision-making processes in cases. Subsequent chapters consider the quality of police and CPS decision-making. Inspectors found that the charging process for offences committed in a domestic abuse context were problematic and raised a variety of issues. These are drawn together and discussed in a separate chapter.

Methodology

- 2.11 This inspection involved an examination of a range of cases charged by the police and CPS. Those charged by the CPS included a mix of local Area based decisions and those taken by CPSD. Additional samples of cases where the police or CPS directed no further action or an out of court disposal were also considered. The findings from those file examinations are referred to in the relevant parts of the report and set out in detail at Annex C, together with a fuller explanation of this aspect of the methodology. Cases where the offender was dealt with by way of a community resolution were not included in the scope of this inspection.
- 2.12 The report also draws on the relevant findings from a separate examination of 650⁹ police and CPS charged cases which were examined as part of the HMCPSI Annual Casework Examination Programme (ACEP). These files were drawn from across the CPS, including three of the Areas that were visited in the course of this inspection.

9 As of January 2015.

- 2.13 Fieldwork was carried out in six police force areas and the aligned CPS Areas. The police force areas were Cheshire, Merseyside (CPS Mersey-Cheshire); Devon and Cornwall, Gloucestershire (CPS South West); the Metropolitan Police Service (CPS London); and South Wales (CPS Cymru-Wales). Although we only visited a small number of police forces and CPS Areas, our findings are relevant to all forces in England and Wales and the CPS as a whole.
- 2.14 Inspectors spoke to a range of police investigators, supervisors and decision-makers, including the strategic heads of criminal justice units. In each CPS Area we interviewed lawyers who provided charging advice and their managers. We also spoke to a range of CPSD charging lawyers and managers, including the Senior Management Team. Although our file sample did not include casework dealt with by CPS Headquarters Divisions,¹⁰ we spoke with managers within those units to compare how they dealt with aspects of the provision of charging decisions.
- 2.15 The inspection team is grateful to all those who gave their time whether in interviews, focus groups or assisting with our fieldwork examination of police files.

¹⁰ For example those which deal with serious fraud, counter terrorism and National Crime Agency investigations.

Joint inspection of the provision of charging decisions

3 KEY PERFORMANCE INFORMATION

- 3.1 In this chapter we set out key contextual performance information relating to charging caseloads and the overall caseload of CPSD, together with an evaluation of the accuracy of that data. We also comment on the overall resourcing of CPSD.
- 3.2 When the statutory charging scheme was implemented the CPS made the charging decision in almost all non-motoring cases. A range of charging powers has been returned to the police since the introduction of the scheme. At the same time there has been a steady decline in overall caseload going through the courts. Additionally, CPSD now has responsibility for taking the charging decision in the substantial majority of cases where the CPS makes the charging decision. The following table illustrates the changes:

	2009-10		2010-11		2011-12		2012-13		2013-14	
	Number	%	Number	%	Number	%	Number	%	Number	%
CPS Direct	128,301	13.1	230,245	24.0	230,090	25.7	186,601	23.4	186,131	25.6
CPS Areas	197,750	20.1	102,241	10.7	51,853	5.8	40,390	5.1	33,002	4.5
Police	656,681	66.8	625,395	65.3	612,848	68.5	569,294	71.5	507,619	69.9
Total	982,732	100	957,881	100	894,791	100	796,285	100	726,752	100

The data in this table is taken from the CPS management information system and only refers to cases where the decision was to charge.

- 3.3 We cannot give an assurance that this data, which is drawn from the CPS management information system (MIS), reflects accurately the balance of cases charged by the police and CPS. During our file selection process we identified a proportion of cases which, based on MIS data, were police charged cases. However, on examination we found that they had been subject to a CPS charging decision. For example an issue arises when CPSD prosecutors cannot access the CPS case management system (CMS) due to technical issues known as 'outages'. When these outages occur they are reliant on the local CPS Area to upload later the MG3 correctly onto CMS. If it is not done correctly the necessary monitoring flag is not activated and the case does not show as a CPS charging decision.
- 3.4 These errors can then have a knock on effect on the accuracy of the comparative successful outcome rates between police and CPS charged cases, and other performance data.

RECOMMENDATION

CPS Area managers ensure all appropriate administrative staff are trained effectively to ensure CPS Direct records of charging decisions are uploaded correctly onto the CPS case management system.

- 3.5 The overall CPSD workload includes not only cases where the decision is to direct a charge, but also those where no further action or an out of court disposal is directed. In the period April-October 2014 CPSD prosecutors generated 168,101 MG3s, with an anticipated overall total for 2014-15 of approximately 285,000, which is 5,000 more than predicted at the start of the year.
- 3.6 To maintain the required level of service to the police, CPSD has calculated that it needs approximately 235 prosecutors, which was unaffordable against its 2014-15 budget. As at August 2014 it had 220 prosecutors in post. Increases in workload since July 2014 have been covered by additional shifts or overtime work, an approach which is not sustainable in the long term. Furthermore, the increase in anticipated workload will require a further resource of four prosecutors in addition to the existing shortfall of 15. CPSD is working to identify more efficiency savings in the light of further budget reductions for 2015-16.
- 3.7 An aspect that CPSD has to address is its current shift remuneration structure, with the potential to allocate savings to additional resources. The issue is an historical one from when it was created and only provided charging advice out of hours. All prosecutors who undertake out of hours shifts receive premium payments which vary according to the day and time of the shift, for example from 25.0% for working weekdays from 5pm to 11pm to 100% for Sunday working. These premium payments cost CPSD between £150,000 and £200,000 a month, which equates to over 9% of its staffing budget.
- 3.8 Senior managers acknowledge the problems and pressure that this is putting on the budget, and the current payment structure is the subject of negotiations between management and the unions. A wide range of options is being considered and discussed such as a longer range of standard hours and different levels of premiums or uplifts being applied at different times.

Successful outcome rates

- 3.9 In the period 2009-10 to 2013-14 there has been a slight improvement in the proportion of cases charged by the CPS which are subsequently discontinued.¹¹ In respect of cases charged by CPSD the rate has fallen from 15.0% to 14.2%, and in cases charged by CPS Areas it has fallen from 12.9% to 12.5%. Performance in police charged cases has declined from 7.2% to 8.3%. As we discuss in Chapter 9 CPSD deals with a high volume of domestic abuse cases, which are more problematic than most in respect of victim and witness issues.
- 3.10 The position is different with regard to overall successful outcome rates. In CPSD cases, for the same period, these have improved slightly from 79.2% to 79.7%, whereas those charged by CPS Areas have declined from 79.6% to 78.0%. There has also been a decline in successful outcome rates in police charged cases from 89.4% to 87.5%. Although the performance in respect of police charged cases is on the face of it much better, these also include almost all motoring offences (almost all of which are guilty pleas).
- 3.11 Further detailed performance information relating to successful outcome rates is set out at Annex E.

¹¹ These are cases which are dropped by the prosecution either by a formal notice of discontinuance or by offering no evidence at court.

4 GOVERNANCE ARRANGEMENTS AND PERFORMANCE MANAGEMENT

- 4.1 At the time of our 2008 inspection national governance of charging arrangements was carried out by a Charging Operations Board (COB), overseen by a Courts Improvement Board. The COB included representatives of the then National Policing Improvement Agency, the ACPO criminal justice portfolio holder and the CPS Business Development Directorate. Internal CPS performance was driven by their National Prosecution Team.
- 4.2 The 2008 report commented that although there was good collaboration in the early stages of development of the statutory charging scheme, there was then an indication that it needed to improve. Until recently that renewed joint national focus has been absent. However, recent developments are encouraging. The Chief Crown Prosecutor for CPSD is now the national CPS strategic lead on charging. In conjunction with the ACPO lead on charging they restarted the national Charging Delivery Board in 2014 and it is apparent that there is a renewed emphasis on the strategic oversight of charging delivery.
- 4.3 At the local level each of the police force areas had a strategic lead who liaises with their CPS Area in respect of performance issues relating to charging. The primary forum for this is the prosecution team performance management (PTPM) meeting, although some had good day to day contact.
- 4.4 There was a substantial variation in the level of engagement between each force and their liaison manager from CPSD. The Metropolitan Police Service had a very constructive working relationship which included detailed feedback on police performance that was then fed back to local operational police leads. We consider this to be **good practice**. However, in others there was very limited engagement either directly or through local PTPM.

Prosecution team performance management

- 4.5 Five of the six police forces visited during our fieldwork had arrangements with their aligned CPS Area to meet to discuss prosecution team performance, although the frequency and structure varied. Some of the variation was attributable to the restructuring of the CPS which had led to the individual force meetings being merged.
- 4.6 The focus of the meetings was primarily on outcomes and why cases had not been successful. There was very little consideration of any performance data relating to the charging stage. This stage is crucial to the continuing effective progress of the case through the criminal justice process and there should be a greater focus on the key performance issues.
- 4.7 As a minimum, based on the findings of this inspection, we consider the following should be routinely considered:
- CPSD rejection rates for charging requests;
 - the reasons for rejecting charging requests;
 - the proportion of cases where a pre or post-charge action plan was issued and the proportion of these which were necessary;

- no further action to charge ratios;
- police compliance with DG5;
- police compliance with the Code for Crown Prosecutors;
- the timeliness of local CPS advice; and
- the volume of early investigative advice.

4.8 We recognise that liaison managers from CPSD do not have the resource to attend every local PTPM meeting, but they have a key role in supporting local performance improvement. CPSD is working with local Areas to ensure the most effective arrangements are in place. Some of the performance data we have suggested should be included is already routinely generated by CPSD and is the basis for developing a dialogue on performance issues.

RECOMMENDATION

The criminal justice business area committee of the National Police Chiefs' Council¹² and the CPS revise the performance data used as part of the prosecution team performance management process to ensure they capture essential charging information.

CPS Direct and local CPS Area joint performance management

4.9 CPSD has put in place a process whereby local Areas can enter on an issues log the details of cases in respect of which they have concerns about the charging decision. These issues are then considered by CPSD's liaison manager for the Area who provides a commentary setting out whether they agree with the Area and identifying any learning issues.

4.10 We found, and CPSD senior managers agreed, that this was not yet working fully effectively, although this was being addressed at the time of the inspection. One Area we visited was utilising the process extensively; we were impressed with the level of detail they provided and similarly the response from CPSD. Another was still in discussion with CPSD over the level of authority needed to input cases onto the log and others were not using it consistently.

4.11 Used appropriately the issues log has the capacity to enable local Areas and CPSD to engage in a constructive dialogue over the quality of charging decisions.

CPS Individual Performance Management

4.12 At the time of our inspection the CPS had recently moved to a new approach to monitoring the quality of its prosecutors' casework delivery. This is known as Individual Quality Assessment (IQA). Because of the nature of CPSD work, which is exclusively focussed on providing charging advice, they have adapted the process to ensure that managers carry out monthly assurance checks on the quality of charging decisions made by prosecutors.

12 The National Police Chiefs' Council was established on 1 April 2015, with overall responsibility for the co-ordination and leadership of operational policing at a national level and replaces ACPO. www.npcc.police.uk/

- 4.13 CPSD has carried out extensive training of managers in the operation of IQA and set challenging quality targets for prosecutors. There is also a renewed focus on the overall quality of the charging decision, with less emphasis on whether all the necessary aspects have been formally referenced. We welcome this revised approach which should lead to an improvement in quality.
- 4.14 Data provided by CPSD indicates that as of December 2014 they had carried out over 1,000 IQAs of charging decisions, with about 96.0% meeting the required standard.¹³ It considers performance is improving and there are robust processes in place to ensure managers are marking consistently.
- 4.15 Additional quality assessments are carried out in respect of every case which is subject to a police appeal against the charging decision and those where the victim exercises their right to request a review.¹⁴
- 4.16 Shift managers also carry out real time checks on other aspects of performance including the length of charging consultations and whether the screening process to ensure it is appropriate for the police to ask for a charging decision has been carried out correctly. Overall CPSD has a rigorous performance management regime, with strong individual accountability, that includes throughput targets on the number of MG3s completed on each shift. Prosecutors had mixed views on the level of performance management. Some viewed it as effective in maintaining and driving up standards, although others perceived there to be an unnecessary element of ‘micro-management’.
- 4.17 In the local CPS Areas the quality of charging decisions is also considered as part of IQA, but the extent to which it is included will depend on a number of factors, including what work the prosecutor is assigned on the day they are subject to an IQA. We found that there was less emphasis on assessing the quality of charging decisions at the Area level compared with CPSD.

13 HMCPSI does not currently have a comparable data set.

14 These are processes by which the police and the victim can ask for a review of the decision not to charge a suspect.

Joint inspection of the provision of charging decisions

5 POLICE INVESTIGATION, SUPERVISION AND DECISION-MAKING PROCESSES

- 5.1 In this chapter we consider the effectiveness of processes for supervising the investigation of cases before a charging decision is made, including the management of pre-charge bail. The availability and quality of training is also evaluated.
- 5.2 Each of the police forces we visited had processes in place to supervise the building of case files before the decision-maker determined how it should be dealt with.¹⁵ One force already had a clear demarcation between the supervisory and decision-making role and another had decided recently to separate the functions. At the time of the inspection this force was undertaking a substantial training programme to ensure that supervisors and decision-makers had the necessary skills to ensure files were prepared to the required standard and decisions taken complied with the Code for Crown Prosecutors and the Director's Guidance on Charging. We discuss our specific findings in respect of the provision of training later in this chapter.
- 5.3 Investigators and supervisors told us that a merged supervisory and decision-making role could be problematic, especially if the supervisor asked to take the decision was not actively involved in the case. There were significant issues in respect of the lack of training supervisors had received on what to consider as part of the decision-making process, for example inconsistent application of DG5.
- 5.4 Finding a supervisor could be difficult, particularly during the night. Supervisors told inspectors that the demands of other operational duties meant that they were not always able to give the case the care and attention that was required. Both investigators and supervisors indicated that this sometimes resulted in the supervisor instructing the investigator to send the file to the CPS without due consideration as to whether this was an appropriate course of action. Some investigators also considered that the lack of time some supervisors had resulted in them placing an over reliance on the view of the investigator as to the appropriate disposal of the case.
- 5.5 When it was difficult to find an operational supervisor, investigators in five of the six forces we inspected relied on the custody sergeant to take the decision. Whilst they were likely to have had more relevant training than other supervisors most considered that, especially at busy times, case decision-making tasks impinged on their primary role of ensuring the proper treatment and welfare of suspects.
- 5.6 We also concluded that the pressure on supervisors whose job did not routinely include decision-making, and custody sergeants, contributed to the lack of a clear audit trail of the decision reached in many of the cases we examined. We discuss this further in Chapter 7.

15 In the context of this inspection, the decision would be to i) refer the case to the CPS ii) direct no further action, or iii) determine that an out of court disposal was appropriate.

- 5.7 In order for there to be timely high quality decision-making (whether or not this also involves a file building supervisory role) it is essential that forces have in place sufficient accredited resources. Whilst enabling all supervisors to be decision-makers had the potential to increase the resource available for that function, we consider that a smaller pool of dedicated resource would improve the quality and consistency of decision-making. This would mitigate the risks we have identified where all supervisors are required to undertake the role. It is a specialist skill, and staff need not only to be trained thoroughly but also need to apply their knowledge regularly. The recommendation which follows is made in this context.

RECOMMENDATION

Police forces ensure that there are sufficient trained decision-makers available to ensure that timely high quality decisions are made in accordance with the Code for Crown Prosecutors and the Director's Guidance on Charging.

Training

- 5.8 Police officers in the six forces we visited were aware of the e-learning course on file preparation available from the National Centre for Applied Learning Technologies (NCALT).¹⁶ However, they considered that this did not deal adequately with key aspects, such as the application of DG5. Inspectors reviewed the training material and consider that it should be updated to take account of current developments in file preparation, including the new streamlined digital file standard. Inspectors were frequently told that training was 'on the job' and knowledge was principally gained from peers who were already performing the relevant functions.
- 5.9 Lack of time to complete the NCALT courses was an issue raised consistently by officers. Some forces had developed their own bespoke guidance for officers on specific subjects, for example the approach to determining when an out of court disposal was appropriate. We found that this guidance was useful, but we were told that its existence had not always been communicated effectively. As a consequence it was not being used routinely by operational staff.
- 5.10 There was very little CPS involvement in local police training. Where it was provided, police officers considered it very beneficial. In particular, interviewees stated they would welcome input from the CPS on how to draft the case summary. Whilst we recognise the strain on CPS resources, this is a missed opportunity.
- 5.11 Ensuring that the police file is built to the required standard for either a police or CPS charging decision prevents delay as the case progresses. It will also be essential if the Transforming Summary Justice initiative in the magistrates' courts is to be successful.¹⁷

¹⁶ Designed and run by the College of Policing.

¹⁷ *Transforming the CJS: A Strategy and Action Plan to Reform the Criminal Justice System* (Cm8658), Ministry of Justice, June 2013. www.gov.uk/government/uploads/system/uploads/attachment_data/file/209659/transforming-cjs-2013.pdf

- 5.12 Inspectors were pleased to see that two of the forces visited were investing in training for relevant staff on file quality standards and decision-making criteria and taking steps to drive up performance. One force had seen an improvement in file quality; the other was in the process of rolling out the training and it was too early to assess the impact.
- 5.13 However, overall there was no uniformity in how training was provided locally. Forces used a variety of methods, including on the job peer learning, online training and bespoke local training packages. We found that those officers who had performed, or were performing, the role of custody sergeant were more likely to have received the most relevant training. In one force they had received training on DG5 whereas other supervisors, who were also required to be decision-makers, had not. There was also a disparity in the level of training they had received on building files to the required standard.
- 5.14 Inspectors considered the quality of training supervisors and decision-makers had received on the operation of DG5 to be inadequate. This can have significant consequences, including charging cases which should be referred to the CPS and, conversely, sending cases to the CPS for a charging decision which should be taken by the police. The lack of understanding of DG5 in relation to how cases which met the definition of domestic abuse should be handled caused the most difficulty.
- 5.15 In the light of our findings we have concluded that there is a need for a revised national training package for supervisors and decision-makers (whether or not those roles are combined). We are also firmly of the view that this package should be delivered locally. As a minimum it should cover the operation of the Director's Guidance on Charging (updated as and when new guidance is issued), the Code for Crown Prosecutors, and the content of Charging Reports and the National File Standard (including the digital case file).

RECOMMENDATION

The College of Policing, in conjunction with the CPS, produces a set of national learning standards, for local delivery, which as a minimum includes:

- the operation of the Director's Guidance on Charging;
 - the Code for Crown Prosecutors; and
 - the content of Charging Reports and the National File Standard.
-

Bail management

- 5.16 Our 2008 report recommended that the police and CPS should routinely monitor the impact of bail management on the effectiveness of local charging schemes and implement local improvements where appropriate. The report identified concerns over the lack of supervision of bail periods and limited management information on how many suspects were on bail. It also recognised that the CPS, as well as the police, has a role to play in keeping pre-charge bail periods to a minimum.
- 5.17 Since then the process for obtaining charging decisions has changed considerably and the ability of the police to obtain telephone charging advice from CPSD while suspects are still in custody (even though they will be bailed after charge) has reduced the need for pre-charge bail.

- 5.18 We found that bail management now has a much higher profile and the supervision of requests for pre-charge bail or extensions of existing bail was more effective.
- 5.19 In October 2013 the College of Policing issued guidance, known as Authorised Professional Practice (APP) on the management of bail. An extract from that guidance is set out at Annex D. In a speech to the College of Policing in October 2014, the Home Secretary announced that there would be consultation¹⁸ on imposing statutory time limits to bail periods.
- 5.20 We found that there was a lack of awareness of the APP in the forces we visited, although all complied with one or more elements. All custody sergeants scrutinised the need to bail suspects for further enquires before a charging decision could be made. Investigators would be challenged as to why enquiries could not be made during the initial period of detention.
- 5.21 Once the decision to bail had been taken, the period imposed varied considerably. Some forces' approach was to only bail suspects for as long as it would reasonably take to complete enquires, which could be a matter of days. Others would bail to fit in with the investigators' shift patterns or by reference to the volume of defendants answering bail. In these cases the bail period could be for a number of weeks. Only one force had prescribed bail periods based on the nature of the outstanding enquiry.
- 5.22 Delays in obtaining forensic or technical evidence, particularly where computer hard drives had to be examined, generated the more lengthy pre-charge bail periods. These create a period of uncertainty for both the victim and suspect. There were cases in our file sample involving the possession of indecent images of children stored on computers, where the suspect had been on bail for 12 months before the case was ready for a charging decision. This delay was then compounded by the time it took for the local CPS Area to provide the charging advice. We examined one case where there was a delay of three months between the digital submission of the file by police to the CPS and the evidence being considered by a prosecutor. We discuss the process for local CPS Area pre-charge advice in Chapter 8.
- 5.23 The majority of the six forces had effective escalation processes, in accordance with the APP guidance, when an investigator wanted a suspect further bailed because enquiries were not complete. These processes required the authority of an officer of at least the rank of inspector to authorise a further bail period. Investigators told us that this requirement acted as an impetus to ensure enquiries were completed. However, we found that where the case was being handled by a specialist unit, for example one that dealt with child abuse or fraud, there was likely to be less challenge to the investigator's request for extended bail periods.
- 5.24 Delays also occurred when the investigator could not get through in time on the telephone to CPSD during the period of time the police were allowed to keep the defendant in custody. In these circumstances the defendant then had to be bailed to enable the charging decision to be made.
- 5.25 Under paragraph 20 of DG5 a police inspector may authorise the charging of an offence referable to prosecutors, but only where the continued detention of the suspect after charge is justified and where it will not be possible to obtain a prosecutor's authority to charge before the expiry of any relevant time limit. If the defendant would have been bailed after charge these emergency provisions are not applicable.

¹⁸ The consultation period ran from 17 December 2014 to 8 February 2015.

- 5.26 Whilst overall bail management in pre-charge cases is now better regulated than at the time of our 2008 inspection, there remain some aspects which need to be improved further. A recurring issue was the failure of processes where the CPS had directed no further action. Whilst the investigator might notify the suspect that their bail was cancelled, this did not sometimes work its way into the overall management of bail. As a consequence, custody sergeants would not know with accuracy who was due to answer bail. We also found it difficult, when examining the various file samples, to determine how often a suspect was re-bailed pending the charging decision. This information was not apparent on custody logs or associated documents.
- 5.27 Two of the police forces had a dedicated bail management role. In these forces we found that fewer defendants were bailed before any police charging decision. In one of the two far fewer defendants had to be re-bailed before the CPS charging decision.
- 5.28 In our file sample of 99 police charged cases we found that 20.2% of suspects were bailed before the charging decision was taken. We could determine with certainty that in 12.9% the defendant was re-bailed. However, in 54.8% we were unable to find the relevant information.
- 5.29 In 95 of the 196 CPS charged cases (48.5%), the defendant was released on bail before the charging decision was made. Of these, in 12.6% the suspect was re-bailed, but again in 44.2% we could not ascertain whether there was a re-bail. In 96 of the 135 CPSD cases (71.1%) where no further action or an out of court disposal was directed the defendant was bailed initially. In 3.1% the suspect was re-bailed, but in 50.0% we could not tell.
- 5.30 The high proportion of suspects bailed against whom it was decided there was insufficient evidence to prosecute, or that a prosecution was not in the public interest, is of concern. In 8.1% of the cases submitted to CPSD the decisions should have been taken by the police in accordance with DG5, which would have reduced the need for pre-charge bail. We discuss this aspect in more detail in Chapter 8.

RECOMMENDATION

All police forces have effective processes for the supervision and management of pre-charge bail in accordance with Authorised Professional Practice.

Joint inspection of the provision of charging decisions

6 THE PROVISION OF EARLY INVESTIGATIVE ADVICE

- 6.1 The Director’s Guidance on Charging makes provision for the CPS to provide the police with early investigative advice at a stage before a case is ready for a charging decision.
- 6.2 Paragraph 7 of DG5 states: “*Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.*”
- 6.3 Police officers in all the forces we visited stressed the benefit to them of access to early investigative advice (EIA). They welcomed the input of the CPS on lines of investigation and, in appropriate cases, an early indication that a prosecution was not sustainable.
- 6.4 We found that in the CPS Headquarters units which dealt with the most complex cases, for example those relating to counter terrorism or investigated by the National Crime Agency, the provision of EIA was a core part of their function. Resources were available to provide EIA as and when required, including out of core office hours. There was also continuity of prosecutor from the point of providing the EIA.
- 6.5 The position was less satisfactory in the local CPS Areas. There was a lack of clarity as to when the police could request EIA and the resources that the CPS made available for its provision. In one Area the police believed that there was no resource available, but the CPS said they provided advice surgeries which were not being utilised fully by the police.
- 6.6 Paragraph 7 goes on to state that cases involving death, rape or other serious sexual offence should always be referred for EIA once a suspect had been identified and “*it appears that continuing investigation will provide evidence upon which a charging decision may be made.*”
- 6.7 There were 13 cases in our file sample of CPS charged cases where the primary offence was one of rape. We could only find a record of EIA in two (15.4%). There were an additional 21 cases involving a serious sexual offence other than rape, only one of which had EIA recorded (4.8%). Overall there were only eight cases in our file sample where we could find a record of EIA. Prosecutors told us that EIA was not always married up on the case management system (CMS) when a file was resubmitted for the charging decision. A number of reasons for this were put forward, including the EIA not being done on CMS but in a standalone document, or the case being resubmitted by police with a different unique reference number.
- 6.8 Furthermore unless the alleged offence involved an allegation of rape or other serious sexual offence it was unlikely that there would be a continuity of prosecutor if the case proceeded to the charging stage.

RECOMMENDATION

CPS Areas, in consultation with their aligned police forces, set out clearly the arrangements for the provision of early investigative advice.

- 6.9 The take up of EIA by the police should be monitored through joint performance meetings to ensure that the resource is being used effectively.

7 THE QUALITY OF THE POLICE CHARGING DECISION

- 7.1 In this chapter we discuss the quality of charging decisions made by the police and CPS, including compliance with the Code for Crown Prosecutors (the Code) and DG5. We also consider the use of CPS action plans and the timeliness of charging decisions.

Police charging decisions

- 7.2 Regardless of whether or not the police should have taken the charging decision, we found that the Code was complied with in 91.9% of cases.¹⁹ This level of performance is comparable with that of CPS decision-makers in the charged cases in our file sample although we recognise that the categories of case which the police can charge will usually be less complex than those dealt with by the CPS.
- 7.3 However the findings from the HMCPSI Annual Casework Examination Programme (ACEP) file sample of 128 police charged cases found that the Code was complied with in only 84.4% of cases. This means that suspects were charged in 15.6% of cases where there was insufficient evidence or it was not in the public interest to prosecute.
- 7.4 In 34 of the 99 cases in our sample (34.3%) where the decision to charge the defendant was taken by the police it should have been referred to the CPS in accordance with DG5.²⁰ Eleven of these involved allegations of domestic abuse. Others included racially aggravated crimes, disability hate crimes and offences motivated by homophobia. We were concerned to note that in one case two youths were charged by the police with rape after the CPS had advised that further information was required before a charging decision could be made.
- 7.5 This reinforces our conclusion in Chapter 5 that there is a need for better training of police decision-makers on the operation of DG5. There are also resource implications for the CPS if police compliance improves as this will lead to an increase in the number of cases referred correctly to them for a charging decision. However, this is likely to be offset by a reduction in the number of domestic abuse cases referred if DG5 is applied correctly to that category.
- 7.6 Whilst the range of cases the police can charge has been extended since the introduction of the statutory charging scheme, police officers we spoke to considered that there is scope to return more. The example that was most commonly raised was summary only²¹ racially aggravated cases where there was an anticipated guilty plea. We do not comment on specific offences, but there is substantial merit in DG5 being reviewed to determine whether the range of cases in which the police can decide the charge needs to be amended. This has to be considered in the context of the CPS targeting their resources on where they can add most value.

RECOMMENDATION

The criminal justice business area committee of the National Police Chiefs' Council and the CPS review the Director's Guidance on Charging to assess whether the range of offences the police can charge needs to be amended.

¹⁹ It is important to note that each charge is assessed to determine whether it complies with the Code. Therefore in some cases there were charges which complied with the Code, but others did not.

²⁰ On the ACEP file sample the DG5 non-compliance rate was 30.5%.

²¹ These are cases which can only be dealt with in the magistrates' courts.

- 7.7 There was very limited evidence that police non-compliance was being drawn to the attention of senior police managers by the CPS. Only two of the 34 cases (5.9%) contained a specific note to the police identifying the issue.
- 7.8 We analysed CPS data on the reasons why police charged cases nationally are subsequently dropped by the CPS where the relevant issue should have been apparent at the charging stage. In 2013-14, 27.2% of police charged cases dropped were in these categories (conflict of evidence, legal element missing, caution more suitable, and inadmissible evidence). Of these the highest was in the category of conflict of evidence (47.1%).
- 7.9 Only two cases were charged by the police using their emergency provisions from DG5 when they could not get a CPS charging decision before the expiry of the time they were permitted to keep the defendant in custody. In one case the power was used incorrectly as the suspect was bailed by police after charge and therefore could have been bailed for a CPS decision. The infrequent use of the emergency charging provisions was confirmed during our fieldwork interviews.
- 7.10 Paragraph 21 of DG5 states: *“The CPS will review all police charged cases prior to the first hearing in accordance with their duty under the Code for Crown Prosecutors.”*

This requirement is also reinforced in the CPS magistrates’ courts Standard Operating Practice.

- 7.11 Only 61.6% of the police charged cases had a proportionate CPS initial review.²² The CPS has struggled to resource this function effectively and consistently, but it is essential that it is carried out, not only to comply with DG5 but also to ensure that the Transforming Summary Justice initiative is successful.

Police no further action and out of court decisions

- 7.12 We examined 138 cases where the police had made the decision to take no further action or deal with the case by way of an out of court disposal. As with charged cases, these decisions must comply with the Code for Crown Prosecutors. Overall, the evidential stage of the Code was complied with in 90.6% of cases, but the public interest stage in only 82.2%.
- 7.13 The lower rate of compliance with the public interest stage of the Code arose primarily from a failure to apply the ACPO gravity matrix²³ correctly in cases where there was an out of court disposal. Police decision-makers were under assessing the gravity of the offence and deciding an out of court disposal was appropriate in cases which they should have charged or referred to the CPS for a charging decision.

22 The proportionality of the CPS initial review will depend on the nature of the case, for example an admitted offence of handling stolen goods may require only a limited review endorsement compared with a denied offence of assault.

23 The gravity matrix sets out the aggravating and mitigating factors across a range of offences and provides guidance as to what type of disposal is appropriate if there is sufficient evidence.

- 7.14 In 76.8% of the cases there was an endorsement on the police computer systems that the decision had been signed off by a supervisor, although the audit trail was not always clear. In addition to the case management system we found that decision-making was also regularly recorded on other force systems, for example the custody log and the crime system. Where decisions were made by operational staff, they were more likely to be recorded on the crime system, but if the decision-maker was a custody sergeant they were customarily recorded on the custody log. In some cases, only a hearsay endorsement was recorded by the investigator indicating that a decision-maker had approved the proposed outcome.
- 7.15 In one force, the policy was that all police decisions should be recorded on an MG3. This is the form the police must use when submitting a case to the CPS for a charging decision. We found that this was being complied with in all cases where the decision was to proceed by way of an out of court disposal, although not in all cases where the decision was to take no further action.
- 7.16 We consider that police decision-making across forces should be recorded consistently. This cannot be achieved by using different police crime recording systems. The MG3 is a national document and one with which the police are already familiar.

RECOMMENDATION

The rationale for police decisions to take no further action or proceed by way of an out of court disposal be recorded with the following information:

- the decision-maker's application of the full Code for Crown Prosecutors test; and
- in relevant cases, consideration of the gravity matrix.

and, that wherever possible, that record is included on the MG3 form.

Joint inspection of the provision of charging decisions

8 THE QUALITY OF THE CPS CHARGING DECISION

8.1 Inspectors examined 196 cases where the decision to charge was taken by the CPS. In 46 the decision was taken by a local CPS Area and 150 by CPS Direct. In only two of the cases should the charging decision have been taken by the police in accordance with DG5 (both of which were charged by CPSD). This suggests strongly that the screening processes operated by CPSD are working effectively to ensure that prosecutors only provide charging decisions when required.

8.2 The following table illustrates CPS and police compliance with the Code at the charging stage:

<i>Was the decision to charge Code compliant</i>	Joint inspection file sample		ACEP file sample	
	Yes	No	Yes	No
	CPS Direct	90.7%	9.3%	91.9%
CPS Areas	91.3%	8.7%	88.0%	12.0%
Total CPS	90.8%	9.2%	91.2%	8.8%
Police	91.9%	8.1%	84.4%	15.6%

8.3 There is a much smaller variation in the findings between the two file samples in relation to CPS charged cases, compared with those charged by the police. CPSD prosecutors make charging decisions from across all police force areas and we would therefore have expected the findings to be similar.

8.4 Cases involving allegations of sexual offending or those which were said to be religiously or racially aggravated were the most problematic. In two cases of alleged attempted rape the prosecutors had failed to assess correctly whether the acts of the defendant were more than merely preparatory and in two of indecent exposure had not assessed correctly whether the suspect had the necessary intent.

8.5 Police officers whom we spoke to during our fieldwork thought that the overall quality of CPS decision-making was good. Only three cases in our file sample (1.5%) were subject to a police appeal against the initial decision not to charge the defendant. Each of the appeals was dealt with promptly by the CPS. Some officers, particularly those who had a substantial decision-making function, felt that there could be a lack of consistency in approach. There was an example of this in our file sample where two almost identical cases were dealt with differently. Both involved the possession of indecent images of children, both had been investigated by the same officer who had produced a very good charging report in each including a detailed description of what was shown on the photographs. In one case advice was given promptly by CPSD. In the other a different CPSD prosecutor told the police the case had to be referred to the local Area as the images had to be viewed. There was then a further delay of over three months.

8.6 We also analysed the reasons why CPS charged cases are subsequently dropped where the relevant issue should have been apparent at the charging stage. In 2013-14, 28.1% of dropped local Area charged cases and 17.5% of CPSD charged cases were in these categories. As with police charged cases, a conflict of evidence was the primary reason for dropping the case, with 65.5% of locally charged and 64.0% of CPSD ones falling within this category.

- 8.7 Prosecutors determined correctly whether the full Code test or the threshold test should be applied in 97.4% of cases.²⁴ There were 24 cases where the prosecutor determined that the threshold test was applicable, namely that there were grounds to remand the defendant in custody, but insufficient evidence at that stage to apply the full Code test. In 18 (75.0%) the court agreed with the prosecutor’s representations and the defendant was remanded in custody at the first hearing.
- 8.8 Cases which are charged under the threshold test must be subject to a full Code test review as soon as is reasonably practicable and in any event before any contested hearing (paragraph 13 of DG5). Only nine of the 24 (37.5%) threshold test cases had the required full Code test review. The CPS must improve considerably compliance with this aspect of performance.
- 8.9 Inspectors assessed the quality of the CPS MG3. Factors taken into account included whether there was a proper case analysis and strategy, whether the case against each defendant was set out clearly, whether all relevant CPS policies were applied and all appropriate applications were referenced. The findings are set out in the following table:

<i>The overall quality of the MG3</i>				
	Excellent	Good	Fair	Poor
CPS Direct	0.0%	43.3%	41.3%	15.4%
CPS Areas	2.2%	28.3%	50.0%	19.5%
Total	0.5%	39.8%	43.4%	16.3%

The descriptors used by HMCPSI to assess whether a charging advice is overall excellent, good, fair or poor are set out at Annex C.

- 8.10 The quality of CPSD charging decisions was significantly better than those made by the local Areas, although all need to improve substantially. CPSD charging decisions were much better at setting out the case against each defendant clearly and making appropriate reference to applications and ancillary matters. The requirement for CPSD prosecutors to set out the evidential strengths and weaknesses against each defendant clearly assists, but this needs to be accompanied by a better analysis of how they contribute or detract from proving the elements of the proposed offences to be charged.
- 8.11 CPSD prosecutors also routinely referenced the relevant CPS policies that were applicable to the case, but their analysis did not always reflect that they had been considered. CPS Area prosecutors were slightly better at applying policies correctly (76.2% of cases compared with 75.7%).
- 8.12 CPSD is undertaking a review of the structure of the MG3 and developing bespoke versions for some categories of offence, for example hate crime cases. This should assist in ensuring prosecutors consider all the relevant criteria when deciding whether there is sufficient evidence to charge a suspect.

²⁴ 98.3% in the ACEP file sample.

CPS Direct no further action and out of court disposal decisions

- 8.13 Inspectors examined 112 cases where CPSD prosecutors had directed no further action and 23 where an out of court disposal was appropriate. Unlike the sample of charged cases, there was a much higher proportion (9.6% compared with 1.5%) of cases referred by the police where they should have taken the decision. This supports the view of CPSD prosecutors and some of the police officers to whom we spoke that in some instances the CPS are being asked to ‘rubber stamp’ a police decision that there is insufficient evidence for a case to proceed.
- 8.14 It is of note that 66 of the 112 cases (58.9%) where no further action was directed met the definition of domestic abuse. This supports our other findings that police are more likely to refer inappropriately cases of this type, as opposed to making the decision themselves.
- 8.15 The level of Code compliance was good. Inspectors found that 132 of the 135 cases (97.8%) complied with the Code test. The quality of the MG3s was also much better, with 57.5% assessed as good, compared with 43.3% in the CPSD charged file sample.

The Victims’ Right to Review

- 8.16 The Victims’ Right to Review scheme²⁵ came into force in June 2013 and relates to qualifying decisions made after that date. This scheme makes it easier for victims to seek a review of a CPS decision not to bring charges or to terminate all proceedings. In the context of this inspection the relevant criteria is where the CPS decision is not to charge. This does not include cases where the decision is to deal with the case by way of an out of court disposal. There is currently no similar provision in respect of cases where the police decide that no further action should be taken.
- 8.17 In our file sample of CPSD cases where the decision was to take no further action there was appropriate reference to the right to review in 77.5% of cases. In a further 19.8% we were unable to determine from the information on the digital file whether there had been the appropriate notification.
- 8.18 The right to review will be notified to the victim by the police when they inform them of the CPS decision to take no further action. Not all police officers with whom we spoke demonstrated a clear understanding of how the scheme operated and their responsibilities in terms of communication with the victim. We cannot therefore be certain how effectively the right to review was communicated to the victim. In two cases the victim exercised their right to review, but in each the original outcome was upheld.
- 8.19 There were two files in our sample of charged cases where the initial decision to direct no further action had been overturned following the victim’s right to review. In one of these we considered that the original decision was correct and the judge directed an acquittal at the end of the prosecution case. The case also demonstrated a lack of awareness by the local CPS Area as to their authority to drop a case where proceedings had been commenced following a victim’s right to review.

25 Victims’ Right to Review Scheme; CPS. www.cps.gov.uk/victims_witnesses/victims_right_to_review/index.html

Action plans

Pre-charge

- 8.20 Pre-charge action plans are set by CPS prosecutors when they consider they have insufficient evidence or information from the police to apply the full Code test. The plans should identify what further evidence or information they require and the timescale in which the material should be provided.
- 8.21 Action plans should be proportionate to what is required to apply the full Code test, with realistic timescales. Once the police have completed the action plan a prosecutor will reconsider the case and make the charging decision.
- 8.22 Police investigators raised concerns about the necessity or value, in some cases, of the material requested and impractical timescales. This is supported by examples in our file review when prosecutors asked the police to undertake detailed further work which was clearly unachievable in the timescales set. In 165 out of 194 relevant cases (85.1%) the police provided sufficient material for a full Code test decision to be made on the initial submission of the file. This is a significant improvement from the findings in the 2008 inspection when only 42.4% of files were sufficient at first submission. In the remaining 29 cases there was a pre-charge action plan of which inspectors considered that 25 (86.2%) were necessary to make an informed decision. In four cases (2.1%) in our file sample there were multiple action plans. Investigators confirmed that this was more likely to happen when a different prosecutor considered the re-submitted file.
- 8.23 Overall, 75.9% of pre-charge actions plans were fully satisfactory.²⁶ Those which were not included standard ‘shopping lists’ which did not specify clearly the additional material required, for example a request for “key witness statements” without clarifying which were regarded as key. Another unsatisfactory practice was to put a single target date for delivery of the material, when it was apparent that tasks could be completed to different timescales. Whilst we understand that it is not practicable for the police to drip feed material to the CPS, or for the prosecutor to receive it piecemeal, the setting of specific timescales helps the investigator manage the work required.
- 8.24 CPSD has undertaken an internal review of the quality of its action plans and identified recurring themes in the type of material requested. These findings are being used to drive up both internal performance and the quality of police files. This takes on increasing importance with the digital file initiative which we discuss later in this chapter.
- 8.25 As at the time of our 2008 report we found that effective police processes for supervising the completion of pre-charge action plans were not always in place. This is still not satisfactory although we found that now they are better managed in the specialist units, for example those which dealt with public protection and vulnerable victims. There was a reliance on the investigator putting the action plan onto the police crime management system. Unless this happened the supervisor would not be aware of what was required. Even if the decision-maker who authorised submission of the file to the CPS was copied in by the prosecutor, they may not have had any direct involvement in the case nor might they be the investigator’s line

26 The comparative ACEP finding was that only 52.0% were fully satisfactory, but this data does not distinguish between pre and post-charge action plans, which may account for the discrepancy.

manager.²⁷ The first management involvement could be when the investigator was seeking to re-bail the defendant because not all the actions had been completed. Our file sample findings support the need for more effective supervision with only 53.3% of action plans completed fully within the overall timescale.

Post-charge

- 8.26 A prosecutor will set a post-charge action plan if they consider that they have sufficient evidence and information to apply the full Code test, but require further material in order to have a fully sufficient trial file or clarify matters required for sentence, for example a victim personal statement or compensation details.
- 8.27 In our file sample, 66.7% of cases had a post-charge action plan (some of which also had pre-charge action plans). Of these we considered that 68.0% met a fully satisfactory standard.

The timeliness of charging decisions

CPS Direct

- 8.28 In each of the police forces visited significant concerns were raised about the time it took for investigators to get through on the telephone to CPSD. In some examples given the delay ran into hours, although amongst some there was a perception that performance had improved recently, which is supported by CPSD data. Unreasonable delay has a substantial impact on operational policing as it ties up officers, particularly during night shifts, and prevents them from carrying out front-line policing. It can also mean that defendants are kept in custody longer than necessary. CPSD senior managers shared police concerns and frustrations. They recognised that particularly in the summer months of 2014 waiting times were unacceptable. This was due to a number of reasons, including an unexpected increase in demand for charging decisions and repeated CPS IT failures.
- 8.29 CPSD has a service level target of 75% of police calls being answered within three minutes. In July-September 2014 only 29.5% of calls were meeting this target, although performance improved in the next quarter to 48.0%. It was evident from interviews that improving the service was a primary focus for the CPSD Senior Management Team and their efforts were being directed towards ensuring this area of business was more efficient and effective.
- 8.30 On an individual performance level, prosecutors are expected to average 60 minutes for a charging decision over a three month period with a maximum time of 67 minutes for each decision. On average there is an expectation they will complete six charging decisions in each 7.5 hour shift. Levels of performance were very closely monitored by managers.
- 8.31 CPSD operates a call back system, but this was only considered beneficial by those investigators and decision-makers who were office based. We were told consistently that the system did not allow for call back contact to be made to the officer's mobile phone. CPSD senior managers did not identify any technical reason why this should not happen if a secure police mobile phone was used, although it was recognised that it might be impracticable to answer some queries when the officer was on the street. However the facility to call back the officer's secure mobile phone was not known by the officers with whom we spoke and would clearly enable them to resume front-line duties more promptly.

²⁷ For example the authorising decision-maker could be a custody sergeant.

RECOMMENDATION

CPS Direct, in conjunction with the criminal justice business area committee of the National Police Chiefs' Council, ensures that the functionality of using the call back system to police officers' secure mobile phones is clarified.

- 8.32 At the time of the inspection CPSD was implementing a major initiative to reduce the operational burden on police officers of obtaining charging decisions for defendants on pre-charge bail, and give itself much greater flexibility in the allocation of its resources. This initiative, known as the "digital file system" allows the police to submit digitally the file for a charging decision to a central depository.²⁸ This takes away the need for the investigator to telephone CPSD and also reduces the waiting time for officers who need to obtain charging advice over the telephone. Files are looked at in the order submitted. Some of the police forces visited during our fieldwork were involved in the pilot and welcomed the benefits of the initiative.
- 8.33 CPSD managers were working closely with police force areas to implement the processes and we found that it was well managed. On some days, spot checks showed there were no digital files awaiting a charging decision.
- 8.34 The process can only be fully effective if the police file is of the required standard. The downside to the process is that the investigator is not on the end of the phone to deal with straightforward queries, for example whether a witness has previous convictions. CPSD were therefore monitoring the proportion of digitally submitted files that required a pre-charge action plan.
- 8.35 Data supplied by CPSD for the period April to November 2014 shows that 18,854 digital files had been submitted from ten pilot sites, of which 4,879 were rejected at initial screening because, for example, there was no supervisor's endorsement. Of those accepted, 33.0% required a pre-charge action plan, compared with 14.0% of telephone charging advices. This causes additional consultation time when the file is returned, which we have calculated to be the resource equivalent of 3.5 prosecutors. CPSD managers were working closely with the pilot forces to address these issues.
- 8.36 A further advantage of the digital file initiative is that it will make it easier for any file which is re-submitted to be allocated to the prosecutor who gave the original charging advice. This will avoid unnecessary re-reading and should improve consistency of decision-making. The current process is very 'hit and miss' and relies on the original prosecutor being on shift and available when the investigator telephones in for further charging advice.
- 8.37 Both the police and CPS recognise that improvements in performance are dependent upon a joint approach which recognises the interdependencies between police file quality, digitisation and CPSD resourcing and is a focus for the Charging Delivery Board.

28 It was anticipated it would be fully rolled out by April 2015; a similar system has been in place for the Metropolitan Police Service for some time.

CPS Area advice

- 8.38 Each of the CPS Areas visited had processes in place for providing written charging advice in those categories of case which fell outside the remit of CPSD.²⁹ However, in each Area there were backlogs of cases awaiting advice which could lead to delays of at least six weeks. This meant that Areas were not meeting local timeliness targets for the provision of advice which varied between 21 and 28 days. In our file sample only 63.9% of local Area charging decisions were timely. Unnecessary delay at either the investigative or charging stage can have a number of consequences, including unreasonably raising the expectations of the victim, or keeping the possibility of a prosecution hanging over the head of a suspect in respect of which no further action may be directed. Conversely it delays the entry into the criminal justice system of those against whom there is a realistic prospect of conviction.
- 8.39 Investigators raised delay as a matter of concern, particularly if the prosecutor required more work to be done as the case would then have to re-join the queue when resubmitted. CPS London had developed a process of fixing the next advice slot at the time the action plan was given, which we consider to be **good practice**.
- 8.40 Some CPS Areas had sought to reduce the backlog of cases awaiting advice by instructing counsel to advise pre-charge. This approach had been adopted primarily in cases involving allegations of sexual abuse. Although this could reduce delay, it increased the Area's spend and a Crown Prosecutor was still required to formally direct the charge, or decide to take no further action against the suspect. As a minimum counsel's advice and the key evidence needed to be considered to ensure that it accorded with the Code. There was a case in our file sample which had been sent to counsel for advice where we considered that the advice that the defendant should be charged did not comply with the Code. We were also not assured that the advice had been properly considered before the police were directed to charge the suspect. If Areas adopt this approach they must still ensure they comply with their statutory responsibilities to satisfy themselves that the case passes the evidential and public interest stages of the Code.
- 8.41 Each Area had introduced, or was in the process of introducing, a form of 'triage' when the file was initially submitted. This was to improve the proportion of cases where the charging decision could be taken without the need for further information. The form of triage varied, in some Areas it was an administrative function which involved checking that material such as CCTV recordings or video recorded evidence of witnesses was on the file. In others there was a more developed screening of the case by a prosecutor to identify whether all key evidential material had been supplied.
- 8.42 Whilst the latter approach requires the use of prosecutor resources, it has the potential to reduce overall delay. This approach should be monitored by CPS Areas and police forces to assess its effectiveness in reducing the number of cases where a pre-charge action plan is required.

29 CPS Areas will deal with, for example, most rape and serious sexual offences, those involving a fatality, complex frauds and those involving extensive CCTV evidence.

Joint inspection of the provision of charging decisions

9 THE APPLICATION OF THE CHARGING PROVISIONS TO CASES OF DOMESTIC ABUSE

9.1 During the course of the inspection it became apparent that cases where the alleged offence met the definition of domestic abuse (previously referred to as domestic violence) were, in the context of the charging arrangements, dealt with inconsistently across the police forces visited. The volume of cases in this category is such that when the incorrect approach is used it can have a significant impact on CPSD's resources. We have therefore drawn together the issues in a separate chapter.

9.2 The Government definition of domestic abuse, which is used by the CPS, is: "*Any incident or pattern of incidents of controlling coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality.*" This can encompass, but is not limited to, the following types of abuse:

- 1 psychological;
- 2 physical;
- 3 sexual;
- 4 financial;
- 5 emotional.

9.3 CPS legal guidance also states that this is the definition which should be used by the police to "*identify cases of domestic abuse to be referred to the CPS under the Director's Guidance on Charging.*"

9.4 Paragraph 15 of DG5 sets out the types of case which can be charged by the police, and those which should be referred to the CPS: "*The police may charge:*

(i) *any Summary Only offence (including criminal damage where the value of the loss or damage is less than £5000) irrespective of plea;*

(ii) *any offence of retail theft (shoplifting) or attempted retail theft irrespective of plea provided it is suitable for sentence in the magistrates' court; and*

(iii) *any either way offence anticipated as a guilty plea and suitable for sentence in a magistrates' court;*

provided that this is not:

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

- 9.5 Some police decision-makers were unclear as to whether the proviso related to each of the case types at (i), (ii) and (iii) or only (iii). Inspectors also found, importantly, that not all police decision-makers recognised that paragraph 15 had to be read in conjunction with paragraph 8 which states: “*Police decision makers have an important role in identifying and stopping cases where the Full Code Test (set out in the Code for Crown Prosecutors) cannot be met. Cases should not be charged by the police or referred to prosecutors unless this standard can be met or unless the making of a charging decision in accordance with the Threshold Test is justified.*”
- 9.6 When the two paragraphs are read correctly in conjunction it follows that the police should only refer cases which meet the definition of domestic abuse if they consider (whether correctly or not) that the evidential stage of the full Code test is met. If the evidential stage is not met then the police should take no further action. If they consider there is sufficient evidence but think it is not in the public interest to prosecute then the case must still be referred to the CPS. The only exception to this is if the relevant evidential criteria are met but it is not in the public interest to prosecute, the police may proceed by way of caution. Revised CPS guidelines on domestic abuse, published after our fieldwork, confirmed that the police can caution suspects for offences committed within a domestic abuse context but state that this will “*rarely be appropriate*”.
- 9.7 The only exception to this approach is if the case meets the requirements for applying the threshold test. This test has two requirements, first the custody sergeant must be intending to keep the suspect in custody post-charge and secondly, not all the evidence to make the full Code test decision is available at that time, but can reasonably be expected to come available.
- 9.8 Some police decision-makers told us that they would refer all domestic abuse cases to the CPS if they met the ‘threshold test’. However it was apparent that this was a reference only to the evidential part of the test, with no reference to whether it was proposed to keep the suspect in custody post-charge. Therefore any case in which there was some evidence would be sent. In one force area we were told that unless the victim had stated the allegation was false all cases involving domestic abuse would be referred, regardless of the strength of the case.
- 9.9 The issue is compounded by the wording of the CPS domestic abuse guidelines and DG5. The guidelines state: “*This section should be read in conjunction with the Director’s Guidance on Charging.*
- Charging decisions in domestic abuse cases are made by the CPS and not the police. The police may make the decision to offer a simple caution for a domestic abuse case if it involves a summary or either way offence but they must refer any indictable only offence to the CPS for further advice.*”
- 9.10 The guidelines do not make explicit the proviso that, in accordance with DG5, the police should only refer a case to the CPS for a charging decision if they consider there is a realistic prospect of conviction. We consider that there is still cause for confusion amongst police officers as to when they should refer a case to the CPS in this context. This is heightened by our finding that some police decision-makers had not been trained adequately on the operation of DG5.

9.11 The issue is significant because domestic abuse cases make up a large proportion of CPSD’s workload as illustrated by the following table:

<i>Proportion of charged domestic abuse cases in CPS Direct finalisations</i>							
	2013-14			2014-15			
	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
Magistrates’ court	45.6%	47.7%	50.6%	52.3%	55.2%	57.4%	58.9%
Crown Court	12.7%	12.8%	14.3%	14.5%	15.7%	16.1%	15.3%
All courts	35.4%	36.3%	39.4%	40.6%	43.1%	44.5%	45.1%

9.12 In addition, CPSD has estimated that in 2013-14 domestic abuse cases accounted for 52.7% of all cases where no further action was directed and 42.8% of all cases where a caution was considered the appropriate disposal. In the first quarter of 2014-15 this had increased to 60.2% and 50.4% respectively. Inspectors were told by CPSD senior managers and a range of police officers that the increase was due in part to forces responding to the findings from HMIC’s report *Everyone’s business: Improving the police response to domestic abuse*.³⁰

9.13 CPSD managers and prosecutors confirmed that too many cases, particularly those involving domestic abuse, were being referred to them for charging decisions which should have been halted by a police decision-maker due to a lack of evidence. We were told that it was common for an officer requesting a telephone charging decision to be aware that there was insufficient evidence but to tell the CPSD lawyer answering the call that their supervisor had required that the CPS should make the decision. Investigators confirmed that this happened and considered that some decision-makers had become more risk averse. Not only does this create an unnecessary burden on CPSD resources, and an adverse impact on service levels, it also means that suspects, against whom it is decided there is insufficient evidence, are kept in custody longer than is necessary.

9.14 There were other issues that concerned inspectors in relation to the CPS domestic abuse guidelines in the context of the charging process. The first involves the reference to early consultation between the police and CPS in domestic abuse cases which is strongly recommended and “*should take place when the prosecutor can add value*”.

9.15 There were few cases in our file sample which met the domestic abuse definition where there had been early consultation; nor would we have expected there to have been many. Almost all domestic abuse charging decisions are taken by CPSD who are not resourced to routinely provide early consultations, and the nature of most of the offences referred would not have necessitated that process. We have commented in Chapter 6 on the ineffectiveness of the early consultation process in the most serious and complex cases dealt with by CPS Areas. It is unclear how the CPS would resource an upsurge in demand for early consultation in domestic abuse cases.

9.16 Under the revised guidelines a CPS decision to direct no further action (NFA) must be taken by a prosecutor suitably experienced in domestic abuse cases. The previous policy required any decision to NFA to be agreed by a senior lawyer. Our file sample, which was taken when the old policy was in place, suggests that there was never any adherence to this requirement. The change is therefore appropriate although there needs to be clarity as to how a prosecutor is assessed as suitably experienced.

30 *Everyone’s business: Improving the police response to domestic abuse*; HMIC; March 2014. www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf

RECOMMENDATION

The CPS reviews the Director's Guidance on Charging 5th Edition and its domestic abuse guidelines to ensure consistency between these documents.

The file sample findings

- 9.17 Of the 295 charged cases in our file sample, 75 were classified as meeting the domestic abuse definition (25.4%).³¹ In 11 of the 75 cases (14.7%) the decision to charge had been taken by the police in breach of DG5. There were two further cases charged by the police that had been inappropriately categorised as domestic abuse by CPS and therefore we considered that the police were authorised to take the charging decision.
- 9.18 The 11 cases that should not have been charged by the police included alleged breaches of non-molestation orders, offences of criminal damage and a burglary of the defendant's grandmother's home. Inspectors felt that a lack of knowledge and understanding of the Government definition of domestic abuse was a major reason for the failure to refer the cases to CPS, which was confirmed by some police investigators, supervisors and managers.
- 9.19 In 57 of the 62 cases (91.9%) charged by the CPS, the Code for Crown Prosecutors was applied correctly. This compares with an overall Code compliance rate in respect of CPS charged cases of 90.8%. In the HMCPSI ACEP file sample there was a Code compliance rate of 93.9% for cases that met the definition of domestic abuse.
- 9.20 We also found that the overall quality of the CPS MG3 was better in our sample of charged cases which met the domestic abuse definition, although there was only a marginal difference in the ACEP file sample. In our sample we assessed the quality of the CPS charging decision as good in 46.8% of domestic abuse cases compared with 39.8% overall. In the ACEP files the respective percentages were 38.7% and 37.9%.
- 9.21 In our sample of 135 cases where CPSD had determined that either no further action should be taken or an out of court disposal was appropriate the overall standard of MG3 was better, with 57.5% assessed as good. However, it was slightly lower (55.0%) for domestic abuse cases, although still substantially better than in those where the decision was to charge.
- 9.22 Another aspect which inspectors encountered both in the file sample and during fieldwork was the use of the ancient common law breach of the peace procedure and the power of the magistrates' courts to bind over defendants under s.115 of the Magistrates' Courts Act 1980. One (and only one) of the forces regularly used the procedure for cases which fell within the domestic abuse definition but lacked sufficient admissible evidence for a prosecution. Whilst there may be exceptional circumstances when a domestic incident might fit the criteria for a binding over order, we felt that more consideration should have been given to the use of Domestic Violence Protection Notices. These would ordinarily provide greater protection for victims of domestic abuse when the evidence was insufficient to justify a criminal charge.

31 In addition there were 20 cases categorised as "Child abuse", 15 cases as "Rape" and 29 as "Sexual offences other than rape"; a proportion of these cases would also have been categorised as domestic abuse which would increase the overall number of domestic abuse cases.

ANNEX A - THE OBJECTIVE AND AIMS OF THE JOINT INSPECTION OF THE PROVISION OF CHARGING DECISIONS

Objective

To provide assurance that the provision of charging decisions is effective and to a high quality.

Aims

- To assess the quality of police and CPS charging decisions, including those where the CPS or police determine no further action or an out of court disposal.
- To assess compliance with the Code for Crown Prosecutors; the Director's Guidance on Charging and the Director's Guidance on Adult and Youth Conditional Cautions.
- To assess the quality of the supervision of police charging decisions and the submission of files to the CPS for charging decisions.
- To evaluate the effectiveness and consistency of CPS Area and national arrangements for the provision of the charging advice including those considered serious and complex, and the use of face to face meetings.
- To determine whether the threshold and full Code tests are being applied correctly.
- To evaluate whether police emergency charging provisions are being used appropriately.
- To determine the extent and effectiveness of early investigative advice by the CPS as part of the charging process.
- To evaluate the quality of pre and post-charge action plans, including police supervision and compliance with plans.
- To assess the impact of timeliness of charging requests by the police to the CPS and timeliness of their provision on the bail status of suspects.
- To consider whether joint performance management arrangements ensure continuous improvement in charging arrangements, including the provision of performance information.
- To consider the effectiveness of liaison arrangements between CPS Direct and CPS local Areas on the quality of charging decisions.
- To evaluate the effectiveness and proportionality of the digital provision of information between the police and the CPS.
- To consider whether CPS arrangements for the review of police charged cases are effective.
- To consider whether the current CPS charging arrangements provide value for money.
- To consider progress made in implementing the recommendations made in the previous joint inspection report on statutory charging which are still relevant.

Joint inspection of the provision of charging decisions

ANNEX B - EXTRACTS FROM THE CPS'S DIRECTOR'S GUIDANCE ON CHARGING 2013 5TH EDITION MAY 2013 (REVISED ARRANGEMENTS)

Paragraph 4 (part):

Police duty to assess evidence before charging or referral

Where a police decision maker considers there may be sufficient evidence to charge they will assess the key evidence to ensure the appropriate Test can be met before proceeding to charge or referring the case to a prosecutor. If the Test is not met and the case cannot be strengthened by further investigation the police will take no further action unless the decision requires the assessment of complex evidence or legal issues.

Paragraph 7 (part):

Early investigative advice

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.

Specific cases involving a death, rape or other serious sexual offence should always be referred to an Area prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail.

Paragraph 8:

Requirement in all cases to meet the Full Code Test

Police decision makers have an important role in identifying and stopping cases where the Full Code Test (set out in the Code for Crown Prosecutors) cannot be met. Cases should not be charged by the police or referred to prosecutors unless this standard can be met or unless the making of a charging decision in accordance with the Threshold Test is justified. This means the case must be capable, through the gathering of further evidence of meeting the Full Code Test realistic prospect of conviction evidential standard.

The police should take decisions to no further action cases before referral unless the decision requires the assessment of complex evidence or legal issues.

Once the evidential stage is met, the Public Interest must be considered before any decision to charge is taken.

Where the police make the charging decision, they should also consider the Public Interest in the case. Where the case is to be referred to the CPS for a charge decision, the Public Interest judgement must be made by a prosecutor.

Paragraph 15:

Police Charging Decisions

The police may charge:

- (i) any Summary Only offence (including criminal damage where the value of the loss or damage is less than £5000) irrespective of plea;
- (ii) any offence of retail theft (shoplifting) or attempted retail theft irrespective of plea provided it is suitable for sentence in the magistrates' court; and
- (iii) any either way offence anticipated as a guilty plea and suitable for sentence in a magistrates' court; provided that this is not:

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

Paragraph 21:

Prosecutor's review of police charged cases

The CPS will review all police charged cases prior to the first hearing in accordance with their duty under the Code for Crown Prosecutors.

Where it appears that the police have charged a case not permitted by this Guidance, the reviewing prosecutor must consider whether the evidence and material available at that time fully meets the Threshold Test or Full Code Test relevant to the circumstances of the case. Where it does the prosecutor will continue with the prosecution and record the reason with the case review.

Where it does not meet the appropriate Test, the prosecutor should immediately enquire if there is any other material available which has not been provided which may allow the case to continue. Where that is not the case, the prosecution should be discontinued pending the gathering of further evidence and the referral of the case to a prosecutor to make a charging decision.

Where the police have charged a suspect but a prosecutor, acting under Section 10 of the Prosecution of Offences Act 1985 or Section 37B PACE, notifies a custody officer that it is more appropriate to proceed by way of an out of court disposal the custody officer will ensure that the suspect is issued with the appropriate disposal.

ANNEX C - FILE EXAMINATION FINDINGS AND METHODOLOGY

The file sample

Inspectors examined a total of 295 cases where the defendant had been charged with one or more offences. This sample was taken from the six police force areas included in the fieldwork, and comprised 99 cases charged by the police, 150 where the charge had been directed by CPS Direct and 46 where the charge was directed by the relevant CPS Area.

In addition, 135 files were examined where CPSD lawyers had directed either no further action or an out of court disposal at the pre-charge stage. These cases were drawn from a variety of police force areas, including some which were not part of the fieldwork. A further 138 cases were examined during the fieldwork where the police had made the decision to take no further action or proceed by way of an out of court disposal.

The following tables set out the key findings from the file samples. The percentages expressed refer to the findings from each file examined. In files where a question was not applicable, the proportion of those answers has been excluded in calculating the overall substantive answers.

<i>CPS charged cases</i>			
Question	CPS Area	CPS Direct	Overall
Early investigative advice			
The early investigative advice (EIA) was timely	83.3%	100%	87.5%
The police request for EIA was in accordance with S26 of DG5	100%	100%	100%
The EIA contributed to the investigation reaching a proper and timely outcome	100%	100%	100%
The quality of the charging decision			
The police charging request complied with DG5	100%	98.0%	98.5%
The initial police file complied with the National File Standard	89.1%	90.0%	89.8%
The CPS decision to charge was compliant with the Code test	91.3%	90.7%	90.8%
The CPS pre-charge decision applied the correct test: full or threshold (TT)	100%	96.7%	97.4%
In TT cases, the reasons for applying that test were set out fully	100%	68.4%	75.0%
In TT cases the defendant was remanded in custody at the first hearing	80.0%	73.7%	75.0%
In TT cases there was a subsequent full Code test review in accordance with DG5	40.0%	35.0%	36.0%
The MG3 included a full proper case analysis and case strategy	41.3%	49.0%	47.2%
The case against each defendant was set out clearly	70.6%	89.2%	84.6%
Youth defendants were identified clearly in the MG3	75.0%	91.7%	87.5%
All relevant CPS policies were applied at the pre-charge stage	76.2%	75.7%	75.8%
The MG3 made full reference to all relevant applications and ancillary matters	22.2%	51.3%	44.6%
The MG3 included appropriate instructions/guidance to the prosecutor at court	37.0%	57.7%	52.8%
The grounds for a remand in custody/bail conditions were set out clearly	50.0%	69.2%	64.7%

<i>CPS charged cases</i>				
Question		CPS Area	CPS Direct	Overall
Consideration of a Bail Amendment Act appeal was set out clearly		45.5%	73.9%	68.4%
All factors relevant to plea before venue were considered at the pre-charge stage		58.5%	52.3%	54.1%
Charge selection was appropriate and proportionate		84.8%	78.0%	79.6%
The overall quality of the MG3	Excellent	2.2%	0.0%	0.5%
	Good	28.3%	43.3%	39.8%
	Fair	50.0%	41.3%	43.4%
	Poor	19.5%	15.4%	16.3%
Action plans				
There was a pre-charge action plan		30.4%	10.1%	14.9%
There were multiple pre-charge action plans		21.1%	0.0%	6.7%
Each pre-charge action plan was required		85.7%	100%	93.1%
Each pre-charge action plan was proportionate		92.9%	80.0%	86.2%
Overall, each pre-charge action plan met a satisfactory standard		78.6%	73.3%	75.9%
Police compliance with the action plan was timely		57.1%	50.0%	53.3%
There was a post-charge action plan		47.8%	72.5%	66.7%
The post-charge action plan was proportionate		95.5%	84.1%	86.0%
Overall, the post-charge action plan met a satisfactory standard		81.8%	65.1%	68.0%
Timeliness of charging decisions				
The request for charging advice was timely (non-custody only)		42.9%	63.3%	57.0%
The charging advice was timely (non-custody only)		63.9%	91.0%	82.5%
The final charging decision was delayed unnecessarily		36.6%	8.5%	15.7%
Did the police have to extend the bail period (non-custody only)		26.7%	6.2%	12.6%
There was timely discontinuance of non-Code compliant charges		50.0%	47.6%	48.0%
Police appeals				
The charging decision was subject to police appeal		3.1%	2.0%	2.3%
The appeal was dealt with promptly		100%	100%	100%
The appeal was	Upheld	0.0%	100%	66.7%
	Upheld in part	100%	0.0%	33.3%
	Rejected	0.0%	0.0%	0.0%
Victim and witness issues				
The victim was notified of the Victims' Right to Review (VRR)		57.1%	25.0%*	34.8%
The decision was subject to VRR		16.7%	5.9%	8.7%
There was 'local' resolution		0.0%	50.0%	25.0%
It was timely		100%	100%	100%
The outcome was	Upheld	0.0%	0.0%	0.0%
	Upheld in part	0.0%	0.0%	0.0%
	Rejected	100%	100%	100%

* In a further 19.8% we were unable to determine from the information on the digital file whether there had been the appropriate notification

<i>CPS charged cases</i>				
Question		CPS Area	CPS Direct	Overall
The VRR was escalated to the Appeals Unit		100%	0.0%	50.0%
The outcome was	Upheld	100%	Not applicable	100%
	Upheld in part	0.0%	Not applicable	0.0%
	Rejected	0.0%	Not applicable	0.0%
The VRR decision was Code compliant		0.0% (1 case)	100%	50.0%
It was timely		0.0% (1 case)	100%	33.3%
There was timely communication with the victim		100%	57.1%	63.6%
Communication was of a high standard		40.0%	10.5%	16.7%

The following descriptors are used by HMCPSI to assess whether overall a charging advice is excellent, good, fair or poor:

Excellent: In a complex or unusually sensitive case, the MG3 addressed all of the relevant evidential considerations, did so succinctly with the right charges being selected. All facts and evidence were analysed clearly and the prosecutor set out a case theory or strategy in order to achieve a successful outcome. The use of hearsay/bad character applications/special measures were all identified clearly and correctly. Any action plan set out distinctly each task (all of which were necessary), and there is a reasonable/realistic timescale for delivery. It contained clear instructions for the advocate at court and dealt with mode of trial, acceptable pleas and remand/bail. In relevant youth cases the grave crime application criteria were set out and where necessary with relevant case law and Sentencing Council Guidelines.

Good: Overall it addressed all or most of the relevant evidential considerations and did so succinctly, with the right charges being selected. The prosecutor’s analysis of the case was logical and accurate. Any action plan sets out clearly most necessary tasks and the timescale for delivery. There are no unnecessary tasks. It contained clear instructions for the advocate at court, but may not have addressed all relevant issues.

Fair: Overall it addressed the relevant (or most important) evidential considerations but was not well structured or did not necessarily select the most appropriate charges. Case analysis or strategy was not set out clearly or was lacking some important factors. Any action plan did not set out clearly the required tasks (some of which may not be necessary) and the timescale for delivery may not be endorsed. Where relevant it did not contain clear instructions for the advocate at court.

Poor: Overall it addressed none (or only a few) of the relevant considerations, or overlooked an important consideration, made an error in law, made an unjustified assumption in relation to a fact, selected the wrong charge, or was missing a vital element, for example an action plan. Either there was no case analysis at all or the prosecutor failed to grasp the real issues. It is likely (but not certain) that any MG3 will be poor if the Code is not applied correctly.

<i>CPS Direct sample of no further action (NFA) and out of court disposal (OCD) cases</i>		
Question	File sample	
The quality of the charging decision		
The police charging request complied with DG5		90.4%
The initial police file complied with the National File Standard		91.1%
The CPS decision to NFA or direct an OCD complied with the Code test		97.8%
The MG3 included a proper case analysis and case strategy		51.5%
The case against each defendant was set out clearly		77.8%
Youth defendants were identified clearly in the MG3		91.7%
All relevant CPS policies were applied at the pre-charge stage		95.9%
The overall quality of the MG3	Excellent	0.0%
	Good	57.5%
	Fair	34.3%
	Poor	8.2%
Action plans		
There was a pre-charge action plan		26.7%
There were multiple pre-charge action plans		8.6%
Each pre-charge action plan was required		89.2%
Each pre-charge action plan was proportionate		94.3%
Overall, each pre-charge action plan meet a satisfactory standard		85.3%
Police compliance was timely		71.1%
Timeliness of charging decisions		
The request for charging advice was timely (non-custody only)		58.0%
The charging advice was timely (non-custody only)		95.5%
The final charging decision was delayed unnecessarily		22.6%
Police appeals		
The charging decision was subject to police appeal		1.5%
The appeal was dealt with promptly		100%
The appeal was	Upheld	50.0%
	Upheld in part	0.0%
	Rejected	50.0%
Victim and witness issues		
The victim was notified of the Victims' Right to Review (VRR)		77.5%
The decision was subject to VRR		1.8%
There was 'local' resolution		50.0%
Was it timely		50.0%
Was the outcome	Upheld	0.0%
	Upheld in part	0.0%
	Rejected	100%

<i>Police charged cases</i>	
Question	File sample
The police decision to charge was compliant with DG5	65.7%
The prosecutor raised non-DG5 compliance with the police	26.5%
The police decision to charge applied the correct test: full or threshold	81.8%
In threshold test cases the defendant was remanded in custody at the first hearing	50.0%
The police decision to charge complied with the Code test	91.9%
The prosecutor raised non-Code compliance with the police	50.0%
The case was charged under emergency provisions	2.0%
The reasons for using emergency provisions were endorsed	100%
The exercise of emergency provisions was necessary	50.0%
The CPS reviewed any offence(s) charged under emergency provisions in accordance with section 21 DG5	100%
All the police charges were appropriate	81.8%
The file supervisor's views were endorsed on the police file	58.6%
The decision-maker's views were endorsed on the police file	58.6%
The suspect was bailed pending the charging decision	20.2%
The bail date was extended	12.9%*
There was a proportionate initial review by a prosecutor, available for the advocate at the first hearing	61.6%
The initial CPS review was compliant with the Code test	92.9%
Proceedings were discontinued promptly	57.1%
Inappropriate charges were withdrawn promptly	50.0%
The case proceeded to first hearing on the correct charges	92.4%

* In 54.8% of cases we were unable to determine whether bail was extended before the charging decision

<i>Police sample of no further action (NFA) and out of court disposal (OCD) cases</i>	
Question	File sample
<i>Applicable to all case categories</i>	
The decision to take no further action or give an OCD complied with the evidential stage of the full Code test	90.6%
The decision to take no further action or give an OCD complied with the public interest stage of the full Code test	82.2%
The decision-making rationale was formally recorded	74.6%
The decision was approved and signed off by a supervisor	76.8%
The ACPO gravity matrix was applied correctly	78.8%
<i>Applicable to adult conditional cautions</i>	
The conditions imposed were an appropriate and proportionate response	60.0%
The conditional caution was for an excluded offence (hate crime or domestic abuse)	5.0%
The decision to offer a conditional caution for an indictable only offence was authorised by a Deputy Chief Crown Prosecutor	0.0%
<i>Applicable to youth conditional cautions</i>	
The conditions imposed were an appropriate and proportionate response	80.0%

ANNEX D - COLLEGE OF POLICING'S AUTHORISED PROFESSIONAL PRACTICE ON BAIL MANAGEMENT

First period of detention

Forces must strive to finalise investigations during the first period of detention. Any reason for initial bail (or subsequent re-bail) should be noted explicitly in the custody record. Those making bail decisions must consider proportionality, legality and necessity, and their decisions must be able to withstand scrutiny.

Reason for bail

Unless seeking advice or a charging decision from the Crown Prosecution Service (CPS), pre-charge bail should be used only to assist officers to carry out a thorough investigation. Officers should consider what the key evidence is at the earliest opportunity and make every effort to gather it in the first period of detention.

Bail periods

Bail periods must be proportionate to the enquiries that are necessary to finalise the investigation.

In the first instance, unless there are exceptional circumstances, the bail period should be no more than 28 days, and in many instances it should be less than that. Any time in excess of this should be justified and recorded in the custody record.

Bail for CPS charge decisions

Bail for Crown Prosecution Service Direct (CPSD) charge decisions should be for no longer than 72 hours and used only when necessary, and not routinely. Bail in serious offence cases (such as sexual offences) should be monitored regularly by the police and CPS staff to ensure that it is not excessive and is in accordance with national guidance.

Advice files

Forces should agree locally a reasonable time period for CPS decisions on advice files.* These should be managed to avoid multiple re-bails or prolonged periods of bail. As a guideline, six weeks should be the maximum.

Re-bail authority

Decisions to re-bail suspects should be escalated to a supervising officer for review. Justification for any re-bail should be recorded in the custody record. A second re-bail should be escalated to a more senior officer and so on. The reasons for re-bail should be detailed in the custody record and endorsed by the supervising officer. If the police or the person on bail wishes to amend the bail date, a police supervisor, usually a sergeant, must be satisfied that the enquiry is being conducted diligently and expeditiously.

Bail management

All forces should have a single point of contact who has responsibility and accountability for force-wide issues relating to bail. They oversee the use of bail and ensure that progress is being made on enquiries that resulted in the need for bail.

* Advice files are compiled in the more complex cases so that the CPS can assess whether there is sufficient evidence to charge a suspect.

Bail data

All forces should evidence, monitor and ensure that information and data on bail on such matters as numbers on bail, numbers of people rebailed, numbers failing to answer bail etc is transparent.

Active management

Bail should be actively managed internally, and in conjunction with external partners e.g. at relevant performance or cross-agency meetings.

Alternatives to custody

Forces should consider alternatives to custody, particularly in view of changes to PACE Code G regarding the necessity to arrest, and the appropriate use of out-of-court disposals.

The application of these principles have been the subject of a consultation that took place during March to July 2014 (**Use of Pre-Charge Bail – Improving Standards for the Police Forces of England and Wales, published on 27 March 2014**³²) which resulted in the **College of Policing Response to the Consultation on the Use of Pre-Charge Bail** issued in December 2014.³³

32 *Use of Pre-Charge Bail – Improving Standards for the Police Forces of England and Wales*; College of Policing; March 2014. www.college.police.uk/News/archive/2014may/Documents/Pre_charge_bail_consultation_Jul_2014.pdf

33 *Response to the Consultation on the Use of Pre-Charge Bail*; College of Policing; December 2014. www.college.police.uk/News/archive/2014may/Documents/Pre_charge_bail_consultation.pdf#search=Response%20to%20the%20Consultation%20on%20the%20Use%20of%20Pre-Charge%20Bail%20December%202014

ANNEX E - CASEWORK OUTCOMES

	2009-10	2010-11	2011-12	2012-13	2013-14
Outcomes					
<i>Overall discontinuance rates</i>					
CPS Direct	15.0%	15.4%	15.0%	14.6%	14.2%
Areas	12.9%	14.2%	13.1%	13.4%	12.5%
Police	7.2%	7.3%	7.7%	8.1%	8.3%
<i>Overall attrition rates</i>					
CPS Direct	20.8%	20.7%	20.9%	20.7%	20.7%
Areas	20.4%	23.1%	21.5%	22.4%	22.0%
Police	10.6%	10.6%	10.8%	11.9%	12.5%
<i>Overall charging volumes (numbers)</i>					
CPS Direct	128,301	230,245	230,090	186,601	186,131
Areas	197,750	102,241	51,853	40,390	33,002
Police	656,681	625,395	612,848	569,294	507,619
<i>Overall charging volumes (proportion)</i>					
CPS Direct	13.1%	24.0%	25.7%	23.5%	25.6%
Areas	20.1%	10.7%	5.8%	5.1%	4.5%
Police	66.8%	65.3%	68.5%	71.5%	69.8%
Charging volumes					
<i>Pre-charge decisions including where no further action is directed</i>					
Total	477,204	466,591	367,058	299,348	298,079
<i>Pre-charge decisions</i>					
Magistrates' court guilty plea	70.3%	71.8%	71.2%	71.7%	71.8%
Magistrates' court attrition	21.0%	21.8%	21.8%	22.0%	21.6%
Crown Court guilty plea	70.8%	72.3%	72.4%	71.8%	72.8%
Crown Court attrition	19.5%	20.5%	19.4%	19.3%	18.8%

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