

**MANAGING THE BUSINESS OF THE CROWN COURT:
LISTING AND CASE MANAGEMENT IN THE CROWN COURT**

EXECUTIVE SUMMARY

1. Listing and case management in the Crown Court is central to the operation of the criminal justice system. The way in which cases are listed is one of the key factors in determining the effectiveness of hearings, the timeliness with which cases are dealt with and the quality of the experience which victims and witnesses have in the criminal justice system. All these are vital to achieving just outcomes. Listing itself is dependent upon effective case management by all parties to the process, not just the court.
2. The challenges for listing and case management have been made significantly greater by the introduction of the new Public Service Agreement (PSA) for the criminal justice system in April 2003.
3. As well as identifying the need for value for money within the criminal justice system, the new PSA also focuses on:
 - a. increasing the number of crimes brought to justice and reducing ineffective trials; and
 - b. increasing public confidence including witnesses and victims whilst maintaining the rights of defendants.
4. This necessitates a change of focus for most practitioners in the criminal justice system, as well as the Court Service.
5. Prior to April 2003, although the Court Service had targets in the Crown Court relating to jurors' waiting time and witness waiting time, in practice its principal targets related to the timely disposal of cases and utilisation of courtrooms. These priorities led to a listing culture that, broadly, sought to deal with as many cases as quickly as possible. Court utilisation and timeliness of case disposal remain important, but the PSA has now set new priorities and targets to reduce ineffective trials and increase victim and witness satisfaction.
6. This review has taken place at the very early stages of a wide-ranging change programme intended to ensure delivery of the PSA targets. A number of initiatives are being piloted. These extend beyond the Crown Court to include the prosecution and the defence. The aim of this review is to examine the way cases are managed and listed through the system before the change programme has been implemented, and to identify key aspects of practice and procedure that, if improved, would have a significant impact on the achievement of the overall aims and objectives of the criminal justice system as set out by the PSA. In doing so it was necessary to examine not just the role of the Crown Court and the judiciary, but also that of all the criminal justice agencies and other court users as well as the defendant.
7. The independence of the judiciary is a very important safeguard towards ensuring fair hearings and just outcomes. It also has a number of practical consequences for the

way cases are managed and listed. Although there is one Crown Court for England and Wales, it sits at ninety-one courthouses, including satellite courts. Each court centre (excluding the satellite courts) has a resident judge who has his or her own views as to how cases should be managed and listed. As a consequence, there are a variety of different listing and case management strategies in place. Court centres within the same Local Criminal Justice Board (LCJB) area can have radically different listing and case management strategies.

Resources in the Crown Court

8. The provision of courtrooms and judges does not fully meet the current business needs in a number of ways:
 - Courts are often historically based and no longer fully match the volume or type of cases so that some metropolitan court centres are overloaded whilst some smaller courthouses are under utilised;
 - Succession planning for judges and recorders, including the availability of sufficient judges authorised or “ticketed” to deal with cases such as rape or murder, is weak;
 - Judicial sitting patterns are too inflexible so that judges are not always sitting where they are most needed;
 - The tiering of courts unnecessarily restricts where cases can be heard.
9. As a result cases may be delayed or transferred to other court centres less convenient to witnesses and other court users. The transfer of cases at short notice is common, and more needs to be done to take account of witness needs before making such transfers.
10. The role of the resident judge is a key one but it has not been defined. There is no competence framework against which appointments are made, and the extent to which the resident judge can lead or manage fellow judges is unclear.
11. The creation of the Unified Court Administration presents an opportunity to review the use of the whole court estate, including county and magistrates’ courts. Improved systems for workload projections and distribution of resources amongst the court centres would also assist in ensuring best use of current resources.

List building

12. Listing is seen as a wholly judicial function in the Crown Court. As a consequence the resident judge has overall responsibility for listing policy at each court centre.
13. The high proportion of not guilty pleas in the Crown Court (66% of defendants committed or sent for trial in 2002 were set down for trial) makes listing a complex and difficult process.
14. Listing practices vary considerably from court to court, as does the meaning of terms such as “fixture”. All courts have “warned” and “firm” or “fixed” lists, but the length of those lists varies significantly. Some courts additionally have a “reserve” list. The proportion of “fixtures” and floaters also vary from court to court.

15. These differences are a consequence not just of the different volume and mix of cases at a particular court centre, but also factors such as the views of the resident judge and the way listing has been done historically at that court.
16. Until recently there was a listing culture aimed at achieving timeliness targets and keeping judges busy in court. Timeliness will remain important, for both defendants and victims and witnesses, but it can no longer be the prime focus for listing. There is now an over-arching target to reduce ineffective trials.
17. In addition, greater account must be taken of witness needs by:
 - reducing the length of warned periods;
 - ending the use of reserve lists;
 - reducing the number of late transfers to other courts; and
 - increasing the proportion of fixed hearings.
18. These improvements in listing are reliant upon improvements in case management to reduce the high cracked and ineffective trial rate. In 2002/2003 only 40% of cases listed for trial actually proceeded as trials. The use of “floating” trials and “reserve” lists and long warned periods developed because of the need to ensure there was a regular flow of business in court if cases listed for trial were ineffective or cracked.
19. Inspectors believe that there should be a review of the listing practices at each court centre in light of the changing priorities. Such reviews would need to be firmly based on an objective evaluation of available management information and the wider business needs of the local cjs, and not just the historical factors that led to the current listing process. Inspectors also think there is value in having consistency in listing practices across court centres, although this must be balanced against the need for each court centre to be able to address any particular local listing issues.
20. The allocation of responsibilities between resident judge and the list officer is a key one, but lacks transparency for court users because it is not usually reduced to writing.
21. Inspectors think there should be greater flexibility over the length of the sitting day, and greater use of time marking for cases and for witness attendance at court. Time estimates for trials are often inaccurate and greater attention should be paid to the accuracy of estimates when setting cases down for trial.
22. The timely delivery of prisoners to court is a long-standing problem that makes the efficient running of the court list much harder to achieve. Inspectors believe more can be done at a local level to identify solutions to this problem.

Case management by the Court

23. Inspectors found two contrary views on case management amongst the judiciary: one pro active and interventionist and the other non-interventionist. On one view it is vital for the judge to get hold of the case and challenge the parties about issues such as witness requirements, acceptable pleas and length of trial. The contrary view is that the judge should not “enter the arena”. Instead it is for the parties to prepare the

case properly, albeit the judge may need to rule in the event of a dispute between them.

24. These divergent views are reflected in the way in which directions hearings are conducted. Some judges are noted for a willingness to challenge the parties over issues such as which witnesses are required to give evidence, the appropriateness of alternative pleas or the length of the trial. Others accept the completed PHD form as presented by the parties and make no further enquiry.
25. Inspectors agree with the view held by some of the judiciary that a pro-active approach to pre-trial hearings is more likely to ensure cases are well managed and the inconvenience to witnesses of unnecessary court attendances kept to a minimum. Inspectors also thought that, in recognition of the importance of case management, listing should ensure that judges had sufficient time to prepare for PDH courts.
26. The management of cases once not guilty pleas have been entered is complex because of the courts dependency on case preparation by the prosecution and defence, and the attitude of the defendant to the proceedings. Both the prosecution and the defence have a critical role to play in contributing to the effective listing of trials. This has led to the development of the case progression role within the Crown Court to check on the trial readiness of the parties. The role needs to be further developed – both in the CPS as well as the Crown Court.
27. Inspectors found a range of different pre-trial strategies, even amongst those judges with a pro-active view of case management. The most appropriate listing and case management strategy for a court centre will depend upon its size and mix and volume of casework, but local strategies have tended to develop without drawing on the experience of the Crown Court as a whole and without being fully evaluated.
28. Inspectors also identified benefits in developing training for the judiciary in case management.

Witnesses

29. Witnesses (and these will include victims) are often poorly treated. The responsibility for this rests with the prosecution (for prosecution witnesses) as well as listing practices in the Crown Court:
 - Prosecution often fails to get accurate information as to when non-police witnesses are available for court;
 - Prosecution witnesses are often only told about a likely trial date shortly before the hearing;
 - Trials are given fixed dates of hearing in limited types of cases only;
 - Trials that are not given fixed hearing dates will appear in warned lists that may cover anything up to a four week period, and trials will only be finally allocated a hearing date the day before;
 - Even when witnesses have been notified the day before that the case is due to be heard the next day, they may find that the case is a floater or backer, which means it will not proceed unless another case is either ineffective or cracks;

- Trials are frequently moved from one court centre to another with limited regard for witness needs.
30. There is much greater awareness of the importance of the witness within the Crown Court, not least through the efforts of the Witness Service. Although the Witness Service plays a very useful role in helping witnesses at court, Inspectors found that too often insufficient regard was being paid to the needs of prosecution witnesses prior to the day of trial. Witnesses still often do not have the information or certainty they should have as to where and when the case they are giving evidence in will be heard.

Case management outside the Crown Court

31. The successful management of cases, particularly trials, relies not just on the case management strategies of the court. It also depends to a very large degree on the parties to the proceedings. The police, CPS, Bar, defence solicitors, the defendant, Forensic Science Service and probation all have a critical role in ensuring that cases proceed in a timely way for the purpose for which they are listed.

Prosecution

32. The onus is on the prosecution in criminal proceedings to prove its case. As a consequence, the quality and timeliness of the case preparation by the prosecution is fundamental to the pre-trial process. The police, the CPS and prosecuting counsel all have a role to play in this. Steps to be taken include:
- more effective systems for joint performance management by the CPS and police to improve the quality and timeliness of police files;
 - earlier preparation by prosecuting counsel;
 - increased use of Higher Court Advocates by the CPS to achieve continuity of case ownership;
 - better witness care, including ensuring the court has accurate information of availability for trial when it sets the trial date, identifying which witnesses would benefit from special measures, keeping the witness informed of the progress in listing the case for trial, and ensuring the witness has the means to attend court.

Defendants

33. Defendant behaviours are difficult to influence. Indeed the defendant is fully entitled to put the prosecution to proof. There are sentence discounts for early guilty pleas. However, in 2002/2003 of the 57% of defendants who pleaded guilty, 24% pleaded guilty on the day of trial and only 33% pleaded guilty at an earlier stage.

The Bar

34. The Inspectors found three features of the way in which the bar operates that potentially have an adverse effect on efficient and timely case management. All three are related. One is a culture of late case preparation; the second is the frequency with

which counsel originally instructed does not attend the pre-trial hearings; and the third is the frequency with which instructions are returned prior to trial.

35. The culture of late preparation arises from a number of factors:
- counsel are self-employed and rely on having as many cases as possible to maximise their earnings;
 - the listing process at present is such that there is often uncertainty about when a trial will be listed;
 - the high cracked and ineffective trial rate means there is uncertainty about whether it will proceed as a trial even when listed; and
 - the current fee structure rewards court attendance rather than case preparation.
36. The Inspectors offer the following suggestions for addressing this culture of late preparation:
- a. quality and timeliness of preparation by the CPS and by defence solicitors are important in reducing the reliance of either party on preparation by counsel;
 - b. a higher proportion of fixed trials which proceed as effective trials will give counsel greater certainty as to which cases counsel can deal with at an earlier stage;
 - c. counsel needs to have much greater ownership of the cases he or she accepts so that, for example, counsel completes and signs the PDH form even when not attending the hearing;
 - d. if counsel is busy, he or she should be prepared to decline a brief; and
 - e. the fee structure should be re-balanced to give weight to case preparation rather than linking payment to court appearances.

Other points

37. Many of the features current performance in the Crown Court are long standing:
- High percentage of trials ineffective because witnesses do not attend;
 - the high proportion of defendants pleading guilty on the day of trial;
 - the culture of late preparation at the bar;
 - weaknesses in prosecution case preparation;
 - late delivery of prisoners to court;
 - use of floaters and backers;
 - late transfer of cases to other courts.

38. When taken together the problems were often seen as intractable by practitioners within the criminal justice system. The working practices and performance of each criminal justice agency, the Bar and the courts will have an impact on the efficiency and effectiveness of each other, and on the overall effectiveness of case management and listing. It is easy to blame poor performance on others, and to resist change on the basis that it will make no difference. What is needed is a holistic approach to improving case management and listing. The police, CPS, Bar, defence solicitors, prisons, prisoner escort agencies, court administration and the judiciary all have a role to play.
39. Inspectors have identified 16 recommendations for improving listing and case management in the Crown Court. The recommendations are directed at a number of different agencies and post holders, and are listed below. The inspectors have also identified a number of suggestions and good practices that might be appropriate for inclusion in a revised set of listing guidelines for the Crown Court.

Overview

1. The Department for Constitutional Affairs consider whether Unified Court Boards should be required to publish an annual report for all the criminal courts within a LCJB area (paragraph 2.16).

Resourcing

2. The Department for Constitutional Affairs and the Court Service (as part of planning for the Unified Court);
 - Identify minimum standards for courthouses in consultation with court users;
and
 - Plan the court estate taking into account current and projected workloads and the Local Criminal Justice Board areas (paragraph 3.20).
3. The Department for Constitutional Affairs, Court Service and the judiciary review the current arrangements for the provision of recorders and circuit judges, including the provision of tickets, to ensure that business needs are being consistently met (paragraph 3.28).
4. The Lord Chancellor, in consultation with the Senior Presiding Judge, to consider and issue guidelines on settling and changing judicial itineraries so that the business needs of the courts within each circuit are met (paragraph 3.32).
5. The Department of Constitutional Affairs should abolish tiers within the Crown Court and, in consultation with the judiciary and LCJBs, review the catchment areas of court centres for dealing with class 1, 2 and 3 cases (paragraph 3.44).
6. The Senior Presiding Judge, in consultation with the Department for Constitutional Affairs, develops a national job description for the role of resident judge and reviews any training needs arising from it;

The Department for Constitutional Affairs, in consultation with the judiciary:

Develop a competence framework against which appointments can be made;
and

Reviews the remuneration for the additional responsibilities of the role
(paragraph 3.58).

7. The Department of Constitutional Affairs take a lead in developing national guidelines for the transfer of cases between Crown Court centres; and

Local Criminal Justice Boards agree and implement a local protocol governing the transfer of cases between Crown Court centres taking into account the national guidelines (paragraph 3.73).

List building

8. Court Service ceases to hold bar clerk meetings (paragraph 4.61).
9. The Department for Constitutional Affairs work with the judiciary to revise the national guidelines on listing to promulgate good practice in light of the current aims of the criminal justice system, and in particular to:
 - Increase the proportion of fixed trial hearings to an optimum level;
 - End the use of reserve lists;
 - Ensure warned/firm/finalist do not extend beyond one week;
 - Provide consistent terminology (paragraph 4.65).
10. Local Criminal Justice Boards audit access to prisoners and the delivery of prisoners, and sufficiency of conference facilities at Crown Court centres, and identify and implement strategies for local improvement (paragraph 4.77).

Case management by Crown Court

11. Court Service and the judiciary work together to develop best practice strategies for case management and listing drawing upon experience through out the Crown Court, including that of the ETMP pilots (paragraph 5.29).
12. The Senior Presiding Judge, in consultation with the JSB, review the availability of judicial training in the management of criminal cases (paragraph 5.36).
13. The Department for Constitutional Affairs to develop the case progression role by issuing guidelines on best practice and a job description and competence framework;
 - Chief Crown Prosecutors should appoint case progression liaison officers to take responsibility for ensuring timely and accurate information on trials is sent to the case progression officer in the Crown Court (paragraph 5.52).

Witnesses

14. Local Criminal Justice Boards carry out a self audit on accuracy and timeliness of civilian witness availability and witness warning and take the necessary steps, including re-allocation of resources, to ensure accurate civilian availability when trials

are set and regular updates to the witnesses of progress of the case after PDH (paragraph 6.16).

Case management outside the Crown Court

15. The Association of Chief Police Officers and the Crown Prosecution Service to review and redesign JPM of police file quality and timeliness in order to focus on lessons to be learnt from acquittals and cracked/ineffective trials by police and CPS (paragraph 7.14).
16. Legal Services Commission to consider setting quality standards for chambers and members of chambers to be met before payment of legal aid to members of chambers (paragraph 7.69).

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INTRODUCTION, BACKGROUND AND METHODOLOGY

- 1.1 This inspection was conducted jointly by Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI), Her Majesty's Court Service Inspectorate (HMMCSI) and Her Majesty's Inspectorate of Constabulary (HMIC). They were assisted by an experienced member of the Court Service who was seconded to the HMMCSI. Its purpose was to promote the most efficient and effective listing of criminal cases in the Crown Court, consistent with a high quality of justice and in line with the objectives set by the Government for the criminal justice system. The review therefore sought to identify the current priorities in listing and case management, assess current performance and determine whether those priorities and that performance was likely to lead to those objectives being met.
- 1.2 Specific aspects of the review, within that overarching purpose, were to:
- a. identify key areas within the criminal justice system where there might be obstacles to effective listing, particularly in relation to case management;
 - b. examine and evaluate the effect of the introduction of recent listing and case management initiatives;
 - c. examine and build on existing analyses of the efficacy of current listing practices;
 - d. identify and disseminate examples of good practice in listing and case management; and
 - e. where appropriate, make recommendations aimed at achieving improvements in the way cases are listed and managed.
- 1.3 The criteria against which all evidence and potential recommendations were assessed were:
- the interest of justice;
 - the optimisation of resources taking into account all court users;
 - the interests of victims and witnesses; and
 - the reduction of delay

Terms of reference

- 1.4 The formal terms of reference of the inspection team are set out in Annex A.

Background

- 1.5 This review of listing and case management in the Crown Court is the second part of a scrutiny of those issues across the criminal courts. The Joint Thematic Review of Listing and Case Management in the Magistrates' Courts was published in October 2002. Listing in the Crown Court, as it is in the magistrates' courts, is central to the operation of the criminal justice system. The way in which cases are listed is one of the key factors in determining the effectiveness of hearings, the timeliness with which cases are dealt with and the quality of the experience which victims and witnesses have in the criminal justice system.
- 1.6 Because listing in both the magistrates' courts and the Crown Court touches so many people – criminal practitioners, members of the public and those in public service – it is frequently contentious. The task of the listing officer in any court is probably one of the most thankless. Moreover, the role has developed more by reference to convention, tradition and the experienced passed on between list officers than according to embedded principles or training.
- 1.7 Despite these similar characteristics, listing and case management in the Crown Court raise some very different issues. This is in part because, in the Crown Court, both listing and case management are recognised as being judicial. This contrasts with the position in the magistrates' courts where the term “listing” is used differently to include a range of administrative as well as judicial functions.¹
- 1.8 The practical problems found in the Crown Court are also very different from those found in the magistrates' courts. In 2002 the Crown Prosecution Service (CPS), which prosecutes the great bulk of cases heard by the Crown Court, dealt with 1,252,812 cases in the magistrates' court compared to 123,753 in the Crown Court. The proportion of cases that result in trial hearings is much higher in the Crown Court.²
- 1.9 The management and listing of those trials is a complex and difficult process. It depends upon the performance of, amongst others, the police, Crown Prosecution Service (CPS), defence solicitors and the Bar as well as the court itself. The challenges for listing and case management have been made significantly greater by the introduction of the new Public Service Agreement (PSA) for the criminal justice system in April 2003.
- 1.10 As well as identifying the need for value for money within the criminal justice system, the new PSA also focuses on:
- a. increasing the number of crimes brought to justice and reducing ineffective trials; and
 - b. increasing public confidence including witnesses and victims whilst maintaining the rights of defendants.

¹ Paragraphs 1.5 to 1.7 of the Joint Thematic Review of Listing and Case Management in the Magistrates' Courts.

² In 2002 there were 20,521 full trials in the Crown Court (16.6% of cases) compared to 56,696 full trials in the magistrates' court (4.5% of cases). The proportion of cases which cracked on the trial date is broadly similar in the Crown Court and the magistrates' court.

This necessitates a change of focus for most practitioners in the criminal justice system, including the Court Service. Some would go further and describe it as a change of culture.

- 1.11 Prior to April 2003, although the Court Service had targets in the Crown Court relating to jurors' waiting time and witness waiting time, its principal targets related to the timely disposal of cases and utilisation of courtrooms. These priorities led to a listing culture that, broadly, sought to deal with as many cases as quickly as possible. Although court utilisation is no longer a target, the Court Service will still need to ensure that it uses its resources as efficiently as possible. The timeliness of case disposal will always be important, both from a victim and witness, and a defendant perspective. Indeed, it remains a key target for the Court Service. However, the PSA has also set new priorities to reduce ineffective trials and increase victim and witness satisfaction. The business planning for the Crown Court will need to take into account both the pre-existing and new priorities in identifying its overall priorities and business needs.
- 1.12 The new priorities will mean a different emphasis in the listing of trials. Instead of listing sufficient trials to ensure that court time is fully utilised and timeliness targets for cases are met, it will become just as important to ensure that trials proceed when listed and that victim and witness needs are more fully met. The case management strategies used by the court will be very important in achieving this, but the court cannot manage cases in isolation from the parties in the case. The delivery of improvements in the proportion of cracked and ineffective trials is reliant upon improvements within the local criminal justice system as a whole.
- 1.13 The achievement of the objectives set by the PSA depends upon successful interagency working. This has already been recognised at the highest levels within the criminal justice system. A new interagency framework has been put in place in order to deliver real and sustained improvement in the performance of the CJS as a whole. A National Criminal Justice Board has been put in place to oversee delivery of improvement at a local level. It is supported by the Criminal Justice Performance Directorate. A major change programme is now under way to address performance throughout the whole of the CJS. It includes initiatives directed at improving listing and case management in the Crown Court as well as all the other aspects of the criminal process. Different strands are being carried forward by the Narrowing the Justice Gap Task Force,³ the Effective Trial Management Programme (ETMP formerly known as the Case Preparation Project)⁴, the CPS/Police Charging Project⁵, the CPS/OPS (Office of Public Service Reform) Witness Project⁶, and the Criminal Justice Information Technology Project.⁷ The aim is to provide a holistic approach to handling cases within the CJS from the point of charge to trial by linking all the strands of the change programme together.

³ For example strategies to reduce ineffective trials, track persistent offenders, and deal with outstanding warrants.

⁴ For example case management strategies such as "honoured appointments", "paper" PDHs and "automatic" directions for preliminary hearings.

⁵ Implementation of provisions in Criminal Justice Bill to transfer responsibility for charging from police to CPS.

⁶ Piloting of witness support strategies in five areas from point at which statement is taken to trial. Evaluation due March 2004.

⁷ Delivery of IT to ensure all CJS organisations can exchange secure e-mails and case file information.

- 1.14 From April 2003 each of the 42 local criminal justice areas has a Local Criminal Justice Board (LCJB) comprising the chief officers of the principal local criminal justice agencies. The Court Service will be represented at group manager or circuit administrator level. The LCJBs are accountable (albeit on a non-statutory basis) to the National Criminal Justice Board. The LCJB have their own cross-cutting local targets and delivery plans based on the PSA objectives. The LCJBs present a real opportunity to develop and improve the quality and timeliness of local criminal justice on the basis of jointly owned targets.
- 1.15 In responding to this changing environment, the Crown Court will need to have in mind the words of Sir Robin Auld in his Review of the Criminal Courts⁸ “Although the efficiency of the criminal justice process is an important end in its own right, it has a greater importance in its contribution to the overriding consideration in every case – a fair hearing leading to a just outcome”.
- 1.16 This review of the Crown Court has taken place at the very early stages of the change programme. A number of initiatives are still being piloted in a limited number of LCJBs at the time of writing. The aim of this review is to examine the way cases are managed and listed through the system before the change programme has been implemented⁹, and to identify key aspects of practice and procedure that, if improved, would have a significant impact on the achievement of the overall aims and objectives of the criminal justice system as set by the PSA. In doing so it was necessary to examine not just the role of the Crown Court administrators and the judiciary, but also that of all the criminal justice agencies and other court users as well as the defendant.
- 1.17 The review also considered the resources available to the Crown Court, both in terms of court accommodation and judiciary. This was to ascertain whether they are sufficient for the current business needs and whether good use is being made of them.

Prosecuting Agencies

- 1.18 The great majority of cases in the Crown Court are prosecuted by the Crown Prosecution Service, but there are a wide range of other prosecuting agencies that also appear in the Crown Court – for example the Department of Trade and Industry, HM Customs and Excise, Department of Works and Pensions, and the Health and Safety Executive. References within the report to the CPS or the prosecution should also be taken as including the other prosecuting agencies when relating to the listing of cases.

Methodology

- 1.19 The purpose of a thematic review is to paint a picture about how a given topic is dealt with throughout England and Wales.
- 1.20 The inspection team comprised representatives of HMCPSP, HMMCSI, HMIC and the Court Service. The methodology used drew on:
- a. Management information: All available relevant management information and performance data compiled or used by the Court Service was analysed. Police, CPS and court files were scrutinised.

⁸ Ch 10 paragraph 3.

⁹ Reference is made to current initiatives under the change programme in the body of the report.

- b. Literature review: The team examined all available existing reports into Crown Court listing and case management.¹⁰
- c. Direct research: The inspection team carried out its own research into the accuracy of information about witness availability, unnecessary witness attendance at trials, and the accuracy of trial and other hearing time estimates.
- d. Seminars: Two seminars were held for list officers and for court managers to identify key issues in relation to effective listing.
- e. Interviews and court observations: These were based on nine Crown Court locations – Cardiff, Durham, York, Mold, Wolverhampton, Birmingham, Snaresbrook, Winchester and Southampton. In addition to court observations, inspectors carried out interviews with members of the Crown Court staff and the judiciary. They also interviewed or sought views in writing from key members of the local criminal justice system serving seven of the court centres visited, including prisoner escort services and prisons, and court users such as counsel and solicitors.

1.21 The emerging findings were discussed with senior representatives of the Court Service and the judiciary. The draft report was subject to consultation through a reference group of stakeholders including the senior judiciary [and representatives of the council of circuit judges].

Governance

1.22 This was a joint inspection albeit HMCPSI took the lead. It was overseen by a steering group that drew together a cross section of individuals who were able to contribute relevant experience and expertise. Their role was not to represent the interests of any particular group. The steering group comprised:

Stephen Wooler (Chief Inspector, HMCPSI: Chair)

Kit Chivers¹¹ (Chief Inspector, HMMCSI)

Kate Flannery (HM Inspector of Constabulary)

His Honour Judge Gregory Stone QC (Inner London Crown Court)

Keith Budgen (Court Service)

Professor Andrew Sanders (Head of the Department of Law: University of Manchester)

Peter Gray (Director, National Audit Office)

¹⁰ Including the Review of Effectiveness of PDHs January 1998 LCD; Review of the Criminal Courts Sir Robin Auld October 2001; Judge's Case Management Perspectives Plotnikoff and Woolfson April 2002 LCD research series; Internal Audit Review of Criminal Case Handling June 2002 Court Service; Evaluation of Flexible PDHs Plotnikoff and Woolfson January 2003; Witness availability and witness warning process July 2003 Home Office.

¹¹ Dr Stella Dixon replaced Kit Chivers on her appointment as HM Chief Inspector of the Magistrates' Court Service with effect from July 2003.

Acknowledgements

- 1.23 The Chief Inspectors and the inspection team are grateful for the co-operation and support of all those with whom they came into contact during the inspection – either in the preparation of material for the team’s consideration, or in interview.
- 1.24 The Chief Inspectors wish to record their special appreciation to Lord Justice Judge (Deputy Lord Chief Justice) and Lord Justice Thomas (Senior Presiding Judge). This is the first external and independent review of its nature to have included the activity of the Crown Court and to have touched on judicial functions. [It was undertaken with their full approval and co-operation]. The Chief Inspectors particularly appreciate the guidance and assistance so readily given during the course of the inspection as well as their generosity with their valuable time.

Structure of the report

- 1.25 An overview of the findings of the inspection team together with the recommendations are contained in Chapter 2. The balance of this report is structured as follows:

Resources in the Crown Court (Chapter 3)

Building the list (Chapter 4)

Case management by the Crown Court (Chapter 5)

Witnesses (Chapter 6)

Case management outside the Crown Court (ie, the responsibilities of other agencies) (Chapter 7)

OVERVIEW AND RECOMMENDATIONS

General

- 2.1 The Court Service has responsibility for the running of the administration of court system within England and Wales except for the magistrates' courts.¹ It administers the civil and family courts, along with a number of tribunals, as well as the Crown Court. However, both listing and case management in the Crown Court – the only body with which this review is concerned – are judicial functions.
- 2.2 The judicial nature of listing in the Crown Court does not mean that judges make all listing decisions. The list officer will make many listing decisions on a day-to-day basis, such as whether to list a trial as a floater or reserve, or whether to transfer a trial to another court. However, these decisions will be taken within parameters or policies, often unwritten, set by individual resident judges.
- 2.3 The independence of the judiciary is a very important safeguard towards ensuring fair hearings and just outcomes. It also has a number of practical consequences for the way cases are managed and listed. Although there is one Crown Court for England and Wales, it sits at ninety-one ? courthouses, including satellite courts. Each court centre (excluding the satellite courts) has a resident judge who has his or her own views as to how cases should be managed and listed. There is a broad division in the judiciary between those who adopt a pro active, interventionist approach to case management, and those who consider their role is only to become involved to resolve disputes between the parties. As a consequence, there are a variety of different listing and case management strategies in place. Court centres within the same LCJB area can have radically different case management strategies.
- 2.4 The Court Service and the Department for Constitutional Affairs (DCA) have a role in advising on these strategies as well as supporting and implementing them. The Effective Trial Management Programme (ETMP-formerly known as the Case Preparation Project)² is leading and evaluating pilots for a number of listing and case management strategies such as “honoured appointments”. The Inspectors also think that the Court Service has a role in identifying and promulgating good practice within the Crown Court as a whole. This would mean the development of a stronger performance management culture in which listing and case management strategies at individual court centres were evaluated against the proportion of cracked³ and ineffective trials, the service provided to victims and witnesses and the performance of similar courts. Until now the management focus has been on the achievement of the timeliness target at group, circuit and national levels.
- 2.5 It is also important that the judiciary develops a more consistently proactive approach to case management.⁴ The Inspectors agree with the view expressed by the majority of the judiciary interviewed during the review that a proactive approach at the pre-

¹ Magistrates' Courts are administered by Magistrates' Courts Committees

² The ETMP team is an inter-departmental CJS group accountable to the DCA. It consults regularly with the judiciary.

³ A “cracked” trial is a trial where the prosecution offer no evidence or the defendant pleads guilty to some or all of the charges on the day of trial. A trial is “ineffective” when it is adjourned on the day of trial to another trial date because the case cannot proceed. This may be due to the prosecution, the defence, or the court.

⁴ This is one of the aims of the ETMP.

trial stage is the best way to reduce unnecessary witness attendance, obtain accurate time estimates and ensure alternative pleas are explored before the trial date.

Resources

- 2.6 Inspectors found a mismatch between location of court centres, number of courtrooms, and workloads. This is not surprising because it is difficult to predict long-term changes in workload and expensive to provide permanent courtrooms. However the consequence is some very overloaded courts, and other courthouses, typically small historically based courthouses, which are not fully utilised. The imbalance in resources in some areas leads to regular transfers of cases where the interests of witnesses are not always taken into account. There were also some shortages of circuit judges, with the right tickets, and of recorders, particularly for longer than a week.
- 2.7 A more flexible approach to the court estate, improved succession planning for the judiciary and greater flexibility in judges' itineraries could assist in matching the resources more closely to business needs, as well as the provision of new accommodation.

Case management and listing

- 2.8 Changes in listing practice to reduce the length of warned periods and increase the proportion of fixed hearings are reliant upon improvements in case management to reduce the high cracked and ineffective trial rate. In 2002/2003 only 40% of cases listed for trial actually proceeded as trials.
- 2.9 A reduction in the cracked and ineffective trial rate is dependent upon improvements in the performance of all the parties to the proceedings, police, CPS, defence solicitors and the bar and not just the strategies used by the court. All parties to the proceedings need to do their jobs in a timely and efficient way if the effectiveness of trial listing is to improve. The Inspectors have made a number of recommendations aimed at bringing about change. Many of the issues are long standing. Improvements in overall performance are likely to be slow and incremental. However, the Inspectors believe there are significant gains to be made and worthwhile progress can be made.
- 2.10 Although the PSA target refers only to ineffective trials, the Inspectors think that it is important to address cracked trials as well because of the impact on public confidence of unnecessary witness attendance and the wasted resources these hearings represent. There is a view that a cracked trial is a good result because it is preferable to an ineffective trial or one which might prove unnecessary or unsuccessful. A high proportion of trials "crack" because the defendant only pleads guilty to some or all the charges on the day of trial. There is only limited scope for influencing the timing of guilty pleas, and in that sense the entry of a plea even at a late stage can be seen as better than requiring witnesses to be called in a trial. However, the Inspectors do not accept this view in relation to a significant proportion of cases that should have been completed before the date set for the trial without the need for the parties and the witnesses to attend court in anticipation of a trial. One LCJB had included a reduction in the cracked trial rate in its targets for that very reason.

Witnesses

- 2.11 Although the Witness Service in the Crown Court plays a very useful role in helping witnesses at court, Inspectors found that too often insufficient regard was being paid to the needs of prosecution witnesses prior to the day of trial. The prosecution often fails to get accurate information as to the availability of non police witnesses when trial dates are being set. It is not unusual for non police witnesses only to be told about the trial date a matter of days before the trial date, partly because of the way cases are listed and partly because of witness warning practices. The level of service provided by family protection officers in serious and sensitive cases is high. Victims and witnesses in such cases are kept fully informed of the progress of the case. However, these cases are in the minority and for most witnesses the contact with the prosecution prior to the trial is wholly inadequate.
- 2.12 Listing practices can also have a detrimental effect on witnesses. The use of floaters, backers and reserve lists all lead to uncertainty as to when a trial will start, and cases can be transferred to other courthouses at very short notice with little or no consultation about witness convenience. The current approach to fixtures is to grant them only when essential. Inspectors think that it is impractical to list all trials as fixtures, at least for the foreseeable future, because of the inevitability that some trials will crack or be ineffective. The cost of empty courtrooms, and the resulting delay in dealing with other cases, would be too great. The one court centre that fixes all its trials at present also has one of the highest ineffective trial rates nationally. However, inspectors think that the proportion of fixed hearings can be increased and courts should seek to maximise the number of fixtures. Indeed this is one of the goals of the ETMP. The handling of transfers can also be improved to ensure witness needs are fully taken into account.

List building

- 2.13 The resident judge has overall responsibility for listing policy at each court centre, and his or her relationship with the list officer is very important for the local listing policy. Listing practices such as the length of the warned and firm lists vary considerably from court to court. This is a consequence not just of the different volume and mix of cases at a particular court centre, but also factors such as the views of the resident judge and the way listing has been done historically at that court. The time is now right for listing practices at each court centre to be reviewed in light of the changing priorities being set for the criminal justice system.

Local accountability

- 2.14 The Court Service publishes an Annual Report on its performance and accounts. The report deals with performance in relation to the civil courts and tribunals it has responsibility for as well as the Crown Court. Although the report provides key performance details in relation to each Crown Court centre, the focus of the report is, not surprisingly, on overall national performance. Crown Court centres do not publish annual reports dealing with their own performance.⁵ This contrasts with the practice of other local criminal justice agencies such as the CPS, police and the Magistrates' Court Committees. These agencies publish local reports annually, even where, as in the case of the CPS, a national report is also produced.

⁵ Annual Reports for internal use only are prepared for each court centre.

2.15 The publication of local reports is recognised as providing a valuable contribution to the development of public confidence in the criminal justice system. The establishment of LCJBs (on which the Crown Court is represented) also emphasises the importance of local delivery and accountability. The Crown Court has an important role in the delivery of justice at a local level. The review team believe that there are considerable advantages in bringing the same degree of scrutiny and accountability to local Crown Court centres as its criminal justice partners, including the magistrates' court, currently have. The creation of the Unified Court⁶ presents the opportunity to extend annual reporting to cover all the criminal courts taking work from a particular LCJB area.

2.16 **Recommend:**

The Department for Constitutional Affairs consider whether Unified Court Boards should be required to publish an annual report for all the criminal courts within a LCJB area.

Recommendations

2.17 The review is wide ranging and has examined performance by the other criminal justice agencies and court users as well as the Crown Court. As a result, the recommendations are directed at a number of different agencies. The recommendations are listed below under section headings. The review team have also identified a number of suggestions and good practices that might be appropriate for inclusion in a revised set of listing guidelines for the Crown Court.⁷ These are set out in Annex B.

Overview

1. The Department for Constitutional Affairs consider whether Unified Court Boards should be required to publish an annual report for all the criminal courts within a LCJB area (paragraph 2.16).

Resourcing

2. The Department for Constitutional Affairs and the Court Service (as part of planning for the Unified Court):

identify minimum standards for courthouses in consultation with court users; and

plan the court estate taking into account current and projected workloads and the Local Criminal Justice Board areas (paragraph 3.20).

3. The Department for Constitutional Affairs, Court Service and the judiciary review the current arrangements for the provision of recorders and circuit judges, including the provision of ticket authorisations, to ensure that business needs are being consistently met (paragraph 3.28).

4. The Lord Chancellor, in consultation with the Senior Presiding Judge, to consider and issue guidelines on settling and changing judicial itineraries so that the business needs of the courts within each circuit are met (paragraph 3.32).

⁶ Provision is made in the Courts Bill. Shadow Unified Court Boards are planned to be in place by April 2004.

⁷ The ETMP has taken responsibility for revising the national listing guidelines.

5. The Department for Constitutional Affairs should abolish tiers within the Crown Court and, in consultation with the judiciary and LCJBs, review the catchment areas of court centres for dealing with class 1, 2 and 3 cases (paragraph 3.44).
6. The Senior Presiding Judge, in consultation with the Department for Constitutional Affairs, develops a national job description for the role of resident judge and reviews any training needs arising from it;

The Department for Constitutional Affairs, in consultation with the judiciary:

develop a competence framework against which appointments can be made; and

reviews the remuneration for the additional responsibilities of the role (paragraph 3.58).

7. The Department for Constitutional Affairs take a lead in developing national guidelines for the transfer of cases between Crown Court centres; and

Local Criminal Justice Boards agree and implement a local protocol governing the transfer of cases between Crown Court centres taking into account the national guidelines (paragraph 3.73).

List building

8. Court Service ceases to hold bar clerk meetings (paragraph 4.61).
9. The Department for Constitutional Affairs work with the judiciary to revise the national guidelines on listing to promulgate good practice in light of the current aims of the criminal justice system, and in particular to:
 - Increase the proportion of fixed trial hearings to an optimum level;
 - End the use of reserve lists;
 - Ensure warned/firm/finalist do not extend beyond one week;
 - Provide consistent terminology (paragraph 4.65).
10. Local Criminal Justice Boards audit access to prisoners and the delivery of prisoners, and sufficiency of conference facilities at Crown Court centres, and identify and implement strategies for local improvement (paragraph 4.77).

Case management by Crown Court

11. Court Service and the judiciary work together to develop best practice strategies for case management and listing drawing upon experience throughout the Crown Court, including that of the ETMP pilots (paragraph 5.29).
12. The Senior Presiding Judge, in consultation with the JSB, review the availability of judicial training in the management of criminal cases (paragraph 5.36).
13. The Department for Constitutional Affairs to develop the case progression role by issuing guidelines on best practice and a job description and competence framework;

Chief Crown Prosecutors should appoint case progression liaison officers to take responsibility for ensuring timely and accurate information on trials is sent to the case progression officer in the Crown Court (paragraph 5.52).

Witnesses

16. Local Criminal Justice Boards carry out a self audit on accuracy and timeliness of civilian witness availability and witness warning and take the necessary steps, including re-allocation of resources, to ensure accurate civilian availability when trials are set and regular updates to the witnesses of progress of the case after PDH (paragraph 6.16).

Case management outside the Crown Court

17. The Association of Chief Police Officers and the Crown Prosecution Service to review and redesign JPM of police file quality and timeliness in order to focus on lessons to be learnt from acquittals and cracked/ineffective trials by police and CPS (paragraph 7.14).
18. Legal Services Commission to consider setting quality standards for chambers and members of chambers to be met before payment of legal aid to members of chambers (paragraph 7.69).

Resources in the Crown Court

Provision of courtrooms and judiciary

Introduction

- 3.1 In the year ending January 2003 the Crown Court received 66,710 cases committed or sent for trial, 19,433 cases committed for sentence and 9,906 appeals from decisions by magistrates on sentence or appeals against conviction after trial in the magistrates' court. In order to deal with these cases the courts needed to sit for over 83,814 days. This work was divided amongst High Court judges, circuit judges and recorders spread across 78 court centres, which comprise 91 courthouses when 'satellite' courts are included. These courthouses vary in size from small, little used, courthouses with one or two courtrooms to large, busy metropolitan courthouses with 10 or more courtrooms. The business of the judiciary and the Court Service is to ensure that cases are dealt with "as expeditiously as is compatible with the interests of justice".¹
- 3.2 In planning and allocating its resources across England and Wales, the Court Service has no control over the number of cases it receives. This is determined by a range of factors such as the patterns of offending, policing strategies, and the approach of magistrates (when they decline jurisdiction or commit cases for sentence) and defendants (when they elect in either way cases for jury trial). The Crown Court has to deal with the cases that it receives and process them in a manner that takes into account the interests of all parties as well as making proper use of its resources, including the judiciary and court rooms.
- 3.3 The volume of cases dealt with by the Crown Court fluctuates at a local as well as national level. The flexibility with which the Court Service can respond to these imbalances and fluctuations is an important factor in determining the timeliness with which cases can be dealt with and the location at which they are heard. Inspectors found that the Court Service response to changes in workload, particularly at court centre level, tends to be reactive and inflexible. The projected sitting days for court centres are calculated on past performance and workload projections provided by the Home Office in relation to legislative and other policy changes. There is limited input from a local level about workload fluctuations. Although the current nature, size and location of the courthouse estate are obvious constraints on the degree to which the Court Service can be flexible, the creation of the Unified Court Administration (UCA) will present the opportunity to review the whole of the court estate and the use to which it is put.
- 3.4 The numbers, availability and experience of the judiciary are just as vital to the efficient and timely handling of cases as the provision of courtrooms. The inspectors found that there were some shortages of judges, particularly with the necessary "ticket"² to do certain types of cases, and of recorders, particularly those prepared to sit for longer than a week. As a consequence trials may be delayed, or, indeed, courtrooms left empty. The shortages were by no means universal, but it was an issue for a number of the judges and court staff inspectors spoke with.

¹ Para 2.1, Guidelines for Crown Court Listing, Criminal Policy Branch, LCD, 1993.

² The use of "tickets" is intended to ensure that only judges of the right calibre and with the appropriate training deal with sensitive or high profile casework such as child abuse, rape or murder.

Nature, Size and Location of Crown Court Centres

Provision of court centres

- 3.5 Inspectors found that the size, location and facilities of court centres do not fully match the volume and distribution of the Crown Court caseload across England and Wales. There is an imbalance in court capacity across England and Wales compared to caseloads. As one senior member of the Court Service told inspectors “the amount of work exceeds the sitting days available nationally, although some circuits cannot use up all their sitting days”. Indeed the Court Service has systems in place to ensure that sitting days are transferred between circuits to ensure that the national allocation of sitting days is fully utilised by the end of each financial year.
- 3.6 In many cases history, rather than the business need, determines the location, capacity and facilities of court centres. There remain some courthouses, generally in the old Assize towns, which are too small with inadequate facilities or else located where there is no longer a substantial need. Conversely, in some areas an increase in caseload has not been matched by an increase in courtroom capacity. So, for example, in the West Midlands court centres such as those at Birmingham or Wolverhampton have more work than they can cope with, while other court centres, such as Coventry and Warwick, have to seek out additional work “to keep their judges busy”.
- 3.7 The imbalances in workloads are evened out by transfers between court centres. Inspectors found that transfers were a significant feature of listing in most of the courts they visited. Such transfers may adversely affect victims and witnesses, as well as agencies such as CPS. We deal with transfers later at **paragraph 3.59**.

Combined court centres and use of magistrates’ courts

- 3.8 Inspectors found that Combined Court Centres (court centres that hear both criminal and civil cases) do not lend themselves to as much flexibility in listing cases as their title might suggest. This is because civil courtrooms do not generally have jury accommodation and secure docks. However, a large proportion of Crown Court hearings do not require a jury. These are short hearings such as directions hearings or sentence hearings. The bulk of court time is devoted to trials, but there are nevertheless opportunities to use civil courtrooms when not being used for civil hearings.
- 3.9 Prior to the proposed UCA, the Lord Chancellors Department (LCD)³ encouraged Crown Court centres to work with magistrates’ courts to use spare capacity more effectively and to smooth out workload fluctuations. However, with some notable exceptions, this initiative did not make much progress. Often this was because of the inability of magistrates’ courts to accommodate juries. However, the culture of the Court Service also played a part. There is reluctance by judges and court staff to use courthouses designated to dispense summary (ie lower tier) justice.
- 3.10 Inspectors have no doubt that the creation of the UCA will lead to closer and more effective collaboration. A start could be made even at this stage by Crown Court centres liaising with their local Magistrates Courts Committees (MCCs) to ascertain whether appeals from magistrates’ decisions and committals for sentence can be heard

³ Now renamed the Department of Constitutional Affairs (DCA).

in the magistrates' courts from which they originated. This would have the advantage of exposing magistrates more frequently to professional judges and creating increased opportunities for feedback on issues such as sentencing.

Good practice

In one large and busy inner city Crown Court centre, which has a large backlog of 1600 cases, the nearby magistrates' courts had made available for use by the Crown Court a courtroom, which could accommodate jurors and was suitable for defendants on remand.

In one medium sized Combined Court Centre a civil court was used regularly for appeals from the magistrates' courts when the defendant was not in custody.

Poor practice

CPS in one area reported that a suggestion that some cases be transferred to the nearby, under used, magistrates' court, "wend down like a lead balloon".

In another area it was reported by another cj agency "judges are attached to historic buildings that are not fit for purpose".

Small court centres

3.11 There are 33 courthouses, which have only one or two criminal courtrooms⁴. They represent over one-third of all the courthouses in England and Wales. In these 33 courthouses there are 55 courtrooms⁵, which account for less than 12% of all courtrooms used for criminal cases. These smaller courthouses do not have the flexibility or throughput of work to facilitate efficient listing. They are mostly in rural areas and there is an expectation that they will not be used so regularly as courtrooms in urban areas⁶.

The Crown Court Annual Report for 2001/2002 said of various small courts:

"X is a small court centre that does not have flexibility ..."

"The centre has just one courtroom available, which means that when a case goes short, for whatever reasons, jury attendance times and sitting times both suffer"

"It is only a two-court centre, and this has a direct impact on waiting times"

3.12 These smaller courthouses cannot cope with complex or multi defendant cases, which block a courtroom for a long period. Many are situated in historic court buildings which do not have the facilities expected of modern courtrooms which are designed

⁴ Information supplied by Finance & Estates Information Branch, Lord Chancellor's Department. 12 of these are Combined Court centres.

⁵ There are in total 471 criminal courtrooms in the Crown Court estate.

⁶ Until April 2003 the courtroom utilisation target, set by LCD, was 1200 hours a year for urban courts and 1000 hours for rural courts.

for ease of access, facilities for the disabled, security and protection of witnesses. The result is that some cases have to be transferred to other locations (see paragraph 3.60 onwards).

At a two court centre the listing officer said that any trial estimated to last ten days or more is automatically transferred out to a larger, modern courthouse.

At the same court centre local barristers said that if trials listed on a particular day went ahead, the rest of the week's list was "in chaos" – listing relied on cracked and ineffective trials. CPS staff said it would be more convenient for victims, witnesses and defendants if cases were heard at a closer, more modern, well equipped court centre which is in the adjacent local CJS area.

One small historic courthouse could not cope with long cases, or wheelchair users, so cases were regularly transferred out of the CJS area.

Development of court estates

3.13 The Court Service has no nationally agreed minimum standards for their courthouses. As a result standards vary considerably from one courthouse to the next. The wide variations in the size and quality of the estate have a major impact on listing of cases. Some Magistrates' Courts Committees (MCCs) have consulted upon and drawn up courthouse criteria that set minimum standards and facilities required for a courthouse in their area. The Court Service should similarly consult with court users on the minimum standards required for a viable Crown Court to include:

Witness separation (one entry to and within the courthouse).

Witness care (especially for vulnerable witnesses).

Ease of access, safety and layout of the building (including compliance with current health and safety and disability discrimination legislation).

Jury accommodation (including segregation from other court users).

Security (in the public areas and the docks and custody suites).

Public transport links and parking.

Office space.

Suitability for IT.

3.14 Once agreed, the courthouse criteria can be used to assess whether current courthouses comply with the minimum standards and, if not, whether refurbishment or replacement is required. The inspectors recognise that estate budget available for such work has been restricted to emergency work only over the past two years. Nonetheless, planning can still take place pending the provision of sufficient

resources. The agreed minimum standards should also be the starting point for new courthouse building projects.

- 3.15 Planning for the future estate should review the location and size of courthouses in relation to current and projected business needs, as well as ensuring that courthouses meet minimum criteria. Progress to an estate that will comply with minimum criteria and serve the business needs will take time and be subject to limits on resources. However UCA provides a propitious opportunity to develop a robust and flexible strategy for the estate.
- 3.16 Indeed, as part of the work leading up to the UCA, a Joint Estates Strategy Committee (JESC) and a Joint Estates Strategy Working Group have been set up “to develop an integrated approach to managing the Court Service and magistrates’ courts estates. These will be extremely useful in developing a long term estate strategy for the new agency”⁷. Inspectors are sure that the JESC will be taking into account in its decisions any impact that they will have on listing of cases.
- 3.17 This strategic review needs to not only look at the current estate, but also at future likely workload to ensure that the estate has well equipped, accessible courts, in appropriate locations, that can handle current and projected business needs. In particular, the strategic review should seek wherever possible to match court availability and capacity with Local Criminal Justice Board areas so that cases from an area can be dealt with at a court centre within that area. The focus for the delivery of criminal justice locally is the LCJB. An alignment of courts to those LCJBs would support this overall strategy by facilitating liaison between the court centre and the cj agencies serving it.
- 3.18 The strategic review should also take account of the current, and planned, provision of prisons so that the transfer of defendants in custody between prison and court can be facilitated as far as possible. The late delivery of prisoners to court is a persistent problem. We discuss it in more detail at **paragraph 4.69**.
- 3.19 As part of the strategic review, inspectors believe the Court Service are best placed to take a lead in the following projects:-

Propose changes, where necessary, to Crown Court centre catchment areas to balance out current workload.

Crown Courts and their local magistrates’ courts explore greater joint use of the estate, in consultation with court users, particularly to hear appeals and committals for sentence, or pre-trial hearings.

Develop and publish minimum courthouse and courtroom standards, which will be consulted upon with the wider CJS community.

Ensure, in terms of location, size, layout and flexibility, that new/refurbished combined court centres will be able to cope with current and projected business and victim and witness needs.

⁷ Unified Administration News, page 6, Issue 3, April 2003, LCD.

3.20 **Recommendation:**

The Department for Constitutional Affairs and the Court Service (as part of planning for the Unified Court):

Identify minimum standards for courthouses in consultation with court users; and

Plan the court estate taking into account current and projected workloads and the Local Criminal Justice Board areas.

The Judiciary

3.21 Sir Robin Auld in the Review of the Criminal Courts identified a number of vertical and horizontal “constraints” on the provision of judges to try criminal cases. These include:

four levels of judge sitting in the Crown Court⁸;

four classifications of offence (according to the worst type of offences rather than the complexity) which are related to the level of Judge who can hear them;

ticketing of judges to hear certain types of case;

the break up of the year into legal terms and vacations for High Court Judges.

3.22 This complexity reflects the development of the Crown Court over a long period. It no longer meets the business needs of a busy court system that has as one of its priorities a focus on victims and witnesses’ needs. We agree with the comment by Sir Robin Auld: “What is needed is less complexity and a more flexible system”.⁹

Current provision of judiciary

3.23 In the same way that Inspectors found court accommodation does not fully meet the business needs of the Crown Court across England and Wales, the numbers and location of circuit judges and recorders do not always match the workload. There are some very busy courts that do not have enough circuit judges or recorders for the workload and there are other courts which do not have enough work to keep the judiciary busy. This problem appeared greater on some circuits than others. Inspectors were told by senior Court Service staff that the North Eastern Circuit has a plentiful supply of circuit judges and had little difficulty with ensuring court centres within the circuit had sufficient circuit judges. On the other hand inspectors found major court centres within the South Eastern and Midland and Wales Circuits where there was a shortage of circuit judges. Where there is a shortage, this has an adverse impact on the timeliness with which cases can be heard.

3.24 It is the responsibility of the Circuit Administrators to assess judicial needs. The Court Service works on the basis that there should usually be a split in the judiciary of broadly 80% circuit judges and 20% recorders at any particular court centre to ensure there is the right level of experience available to deal with the normal business, and

⁸ High Court Judge, circuit judges with ticket authorisations, circuit judges without ticket authorisations, and recorders.

⁹ P236.

provide flexibility in listing. The circuit assessments are made for a national recruitment exercise for circuit judges that start every April¹⁰. There is a separate rolling programme of recruitment for recorders based on the circuits. The assessments of need are passed from the Court Service to the Judicial Appointments Directorate (JAD formerly the Judicial Appointments Group) at DCA to carry out the recruitment process¹¹.

- 3.25 The projections at circuit level take into account workload forecasts; the number of courtrooms; estimated number of judges and recorders required for the business; and anticipated retirements from the judiciary. The range of different factors to be considered mean that such projections are often difficult to make, as number of different factors must be considered. One potential difficulty is that circuit judges, although they cannot sit beyond the age of 70 as circuit judges, do not have to give a set period of notice if they wish to leave the bench earlier. Indeed, even if a judge has given notice, he or she cannot be held to it.
- 3.26 Provided there is a suitable candidate, it takes an average of three months for the DCA to carry out appropriate checks and for a new judge to be appointed. There may be a further delay before the new judge can be in post because he or she will need to disengage from their practice. The period may also be extended because of a lack of suitable candidates. The recruitment process is annual, and vacancies can arise at any time during the year. Accordingly there is a reserve list of successful candidates to draw upon during the year for any candidates not appointed at the time of notification. However, the Presiding Judge of the circuit may decide it is preferable to wait until the next selection exercise. All these factors mean that it can sometimes take up to 12 months to fill a vacancy.

“At present the group is a Circuit Judge short – it can take up to 12 months to get a replacement” (Group Manager).

The timing of the notification to the successful candidates for circuit judgeships has been changed this year to allow for a rolling programme of appointments based on circuits, rather than waiting for all candidates to be interviewed before notifying the successful candidates. This should increase the numbers of suitable candidates on the reserve list and thereby ease some of the delays.

- 3.27 There is greater flexibility in the recruitment of recorders, which has always been based on a rolling programme for circuits. We discuss these issues later at paragraph 3.49. We also discuss problems in relation to the provision of “tickets”¹² for judges at paragraph 3.35.

- 3.28 **Recommend:**

The Department for Constitutional Affairs, Court Service and the judiciary review the current arrangements for the provision of recorders and circuit

¹⁰ As at 1st August 2003, there were 604 Circuit Judges in post, and 21 vacancies.

¹¹ At the time of the review work was starting on proposals for a new Judicial Appointments Commission that would be likely to take over much of the work of JAG.

¹² Authorisations for judges to deal with certain types of offence eg rape eg child abuse eg murder.

judges, including the provision of tickets, to ensure that business needs are being consistently met.

Judges itineraries

- 3.29 There is common view in the Court Service that the itinerary of courts at which judges sit is too inflexible. The service recognise that the only point at which it has a sufficient influence on the courts at which a judge sits is when his or her itinerary is negotiated on appointment. For example, Inspectors were told that a newly appointed judge may agree to sit at an unpopular court on condition that he or she will be moved to a more “congenial” courthouse after a couple of years. Some candidates who have been successful in a recruitment exercise refuse appointment until they can have the itinerary they wish. There appears to be no mechanism to compel a change to a judge’s itinerary should the business need change. Although this review deals only with the Crown Court, a further complexity is that some circuit judges also sit in the county court.
- 3.30 One consequence of judicial itineraries at present is that court centres can find themselves with either an inappropriate mix of circuit judges and recorders, or else a courtroom that is empty. Another consequence is that witnesses may have to travel to where the judge will hear the case rather than the nearest and most convenient court centre. We discuss a similar issue in relation to High Court Judges at paragraph 3.38.
- 3.31 The responsibility for the terms and conditions under which circuit judges are appointed rests with the DCA, and it is likely to remain so when the new Judicial Appointments Commission (JAC) is established. Although the JAC may well have a view on the impact of the existing terms and conditions on the appointments process, the Inspectors think progress can be made now by the DCA, in consultation with the Senior Presiding Judge, issuing guidelines on the operation of judicial itineraries to ensure each court centre has the right balance of circuit judges and recorders for its business needs.

“Judges live and work in particular areas, and they cannot be uprooted”. A senior judge

“The Circuit Administrator cannot direct [established] judges where to sit, not least because the Lord Chancellor has issued a directive that judges should not travel more than 1 hour to a court centre. The system relies on negotiating with newly appointed judges, because they are in a weaker position”. A Circuit Administrator

“The Circuit Administrator will negotiate a tougher deal which requires all new judges to sit at [my courthouse] for a certain length of time. However they all want to move on as soon as possible, partly because of the distances they have to travel The court at which you spend 40% or more of your time is deemed your home court and you do not receive travel costs, even though it may be miles from your home”. A senior judge

3.32 **Recommend:**

The Department for Constitutional Affairs, in consultation with the Senior Presiding Judge to consider and issue guidelines on settling and changing judicial itineraries so that the business needs of the courts within each circuit are met.

Authorisations or “Ticketing”

- 3.33 The problem with the availability of judges is compounded by the need for judges with particular experience or training to be authorised to try the more serious cases known as the “ticketing” system. The purpose of the “ticketing” process is to ensure that sensitive and difficult cases are heard by appropriate judges. High Court judges do not require tickets and can try any case, although the Lord Chancellor and the Lord Chief Justice have agreed that cases involving rape or serious sexual offences should only be tried by those judges who have undergone the appropriate training. More serious cases¹³ can only be released to circuit judges if they have the necessary ticket. It is the responsibility of the Group Manager to identify the number and types of “tickets” required within the group. Once the business need has been established, suitable judges are then identified by the Presiding Judge for the circuit and a recommendation made to the Senior Presiding Judge.
- 3.34 The “ticketing” process is discussed in Sir Robin Auld’s Review of the Criminal Courts¹⁴. Auld LJ notes that the tickets are, “given primarily, not as a badge or advancement, but to relieve High Court judges from having to try certain cases of a particular class or category where there are too many for them to try”. Auld LJ also expressed concern at the way tickets are awarded. He recommended¹⁵ that the present system be relaxed and the Resident Judge be given wider responsibility to allocate cases.
- 3.35 There is strong evidence that the allocation of tickets is still impeding efficient listing of cases. In some courts listing officers were content with the number of ticketed judges available for the workload. However, at other courts the mismatch between ticketed judges and the type of cases was causing delay. Despite the efforts of senior Court Service managers, tickets are not fully matched to the business needs of the service.

At one small, ‘congenial’ courthouse there were no problems with the availability of suitably ticketed judges for the type of cases handled.

“It is accepted there is a shortage of murder tickets on [this] circuit” Senior judge.

“There is a clear argument that the Crown Court business should be aligned to the number of cases. For example I have 25 murder cases in preparation – a number are ready to proceed, but there are no courts or [ticketed] judges available”. A Chief Crown Prosecutor

- 3.36 If Auld LJ’s recommendation about relaxing the rigidities of the ticketing system is not adopted, the current system should be made more transparent and effective. It needs to be properly structured, supported by adequate training, appraisal and perhaps enhancement remuneration. “Ticketing” has the potential of becoming part of the judicial career path. Judges who apply for tickets could be assessed against nationally agreed competences. Once awarded tickets should be subject to peer appraisal and, if necessary, withdrawn.

¹³ For example murder, attempted murder, rape and serious fraud cases.

¹⁴ Ibid, p234 and ff.

¹⁵ Ibid, p237 recommendation 63.

“An attempt murder ticketed judge has recently retired and, although I hope he will be replaced shortly, realistically I expect it will take months. It took me a long time to get a murder ticket. By the time I got it, because I was already booked up with fixtures for six months, I was not able to try my first murder case until the end of that period” A Resident Judge.

High Court Judges

- 3.37 High Court Judges, who deal with the most serious criminal cases, routinely spend about 40% of their time outside London on circuit duty.¹⁶ The rules governing the cases a High Court Judge should hear and at which court lead to further constraints on effective scheduling of cases. When available, they usually only sit for periods of six weeks, which means that listing officers may not be able to use their time efficiently. Some court centres have such large backlogs that they had no difficulty allocating suitable cases to High Court Judges. However, other court centres that can list trials promptly may not be able to predict accurately in advance whether or not they will require a High Court Judge. So they make a ‘blind’ bid in the hope that by the time the High Court judge arrives, they will have suitable work.
- 3.38 Most list officers did not perceive scheduling cases for High Court Judges to be a major problem, but the need to list for the High Court Judge may impact detrimentally on other parties. Thus cases that are allocated to High Court Judges can be delayed, awaiting the judges to come on circuit, or cases can be transferred – at short notice (**see paragraph 3.67 onwards**) if a High Court Judge’s list is not full. High Court Judges, when they go onto circuit, will usually only sit at tier one or two courts within easy travelling of their lodgings. This can mean that serious cases have to move to where the High Court Judge sits. One LCJB area only has a tier three court centre. Despite that centre having modern facilities, all class 1 cases therefore have to go to a tier one court in another LCJB area some distance away.
- 3.39 Auld LJ¹⁷ said that, “we should face reality by treating all work within the jurisdiction of the Crown Court as triable by circuit judges unless, on referral to the Presiding Judges, they specifically reserve it for trial by a High Court Judge”. Such an approach would go some way to removing one of the constraints on efficient listing. Some judges and senior court managers are of the view that certain circuit benches already have sufficient strength and experience to deal with all classes of cases, save for the most exceptional cases.

The Circuits

- 3.40 The management structure of the Court Service and of the Bar, are based on six circuits. Each has a Circuit Administrator and Presiding Judge. At the time of writing the Courts Bill is going through Parliament and the structure of the Unified Courts Administration (UCA) is not yet clear. However, it is possible that the operational units will map on to the 42 LCJB areas more closely than the current circuits. Inspectors found that the Court Service was generally represented on the LCJB by the Group Manager for the court centres within that LCJB area. One Circuit

¹⁶ Review of the Criminal Courts p238.

¹⁷ Ibid, p248.

Administrator interviewed felt that with the establishment of LCJBs based on the 42 CJS areas and with the advent of the UCA, his role was “in limbo”.

- 3.41 The barristers we interviewed found the circuit (especially outside London) to be useful and effective in providing support to the profession. However, neither the barristers nor bar clerks interviewed had any difficulty going off circuit for work – some did not even see it as necessary to contact the circuit leader. Unlike Auld LJ¹⁸, the Inspectors see no continuing useful purpose of the current circuits as an administrative unit within the UCA. The focus of the National Criminal Justice Board is on the delivery of improvements in the CJS through the LCJB areas that are not based on circuits. We have already referred earlier at paragraph 3.17 to the value in aligning court centres to LCJB areas. However, there is no reason why circuits cannot continue as the basis for administration for the Bar.

Tiers

- 3.42 Courts are divided into three tiers. Court Service staffs were hard pressed to explain the reason for tiers, except in so far as they define where High Court judges sit¹⁹. Auld LJ in his Review of the Criminal Courts recommended both a shift away from using High Court Judges²⁰ and the abolition of formal tiering of courts²¹.

“Can’t see any merit in retaining tiers ... the most important criteria for serious cases are these: are secure docks and other facilities available?” Counsel

“Tiers are traditional and do not necessarily reflect business needs. A court is only a first tier court because a High Court Judge goes there, and this does not necessarily reflect the size of the court or the nature of the offences in the area”. Group Manager

“The problem with doing away with tier one courts is that the Judge’s Lodgings are in close proximity. Therefore there would be resistance from the High Court bench in doing away with the tier [one] and moving judges to where the work is. So far as other tiers are concerned, the distinction is often meaningless”. Group Manager

- 3.43 Inspectors agree with Auld LJ²² that there is no longer any justification in having tiers within the Crown Court. It seems clear that the resources and facilities for court centres should be business driven. Likewise the relative experience and seniority of the judges required at the court should derive from those business needs and not vice versa.

- 3.44 **Recommend:**

Department of Constitutional Affairs should abolish tiers within the Crown Court and, in consultation with the judiciary and LCJBs, review the catchment areas of court centres for dealing with class 1, 2 and 3 cases.

¹⁸ Ibid, p287, Recommendation 96.

¹⁹ High Court Judges normally sit at tier 1 court centres, and may sit at tier 2 centres.

²⁰ Recommendation 68.

²¹ Recommendation 69.

²² Ibid recommendation 69.

Use of judicial time

- 3.45 Auld LJ found that “Despite the increasing complexity of their judicial work and the case management demands made on [circuit judges], little concession is made to the time they need out of court to prepare efficiently for what they do in court”²³. Inspectors found a continuing reluctance by court staff to schedule reading time into the judicial day. The removal of the court utilisation average as a target from April 2003 presents an opportunity to change the culture of keeping the judge busy in court, but it will require leadership at a senior level to change that culture in the operational environment of court list officers.

“Judges are an expensive resource. I will use them as much as I can. I am their task master and I will get out of them as much as I can”. List Officer

“The purpose of listing is to keep judges sitting on the bench for the required number of hours”. List Officer

“The aim of listing is generally to ensure that the court is busy, so that you can achieve your timeliness target”. Group Manager

One Resident Judge complained, “Judges rarely have time to read the papers because they are struggling to cope with the workload. If they had more time to read the papers they would be able to make more appropriate directions”.

- 3.46 Over the years, it has been impressed on staff that judges are an expensive resource. To have a judge available, but not in court, is considered a poor use of public funds. This focus on waiting times²⁴ and judges’ sitting hours has led to a culture within the court service which, in crude terms, still seeks “to keep the judges occupied”.

“You can only achieve the 4.37 sitting hours target if a judge is hearing trials all the time”
Court Manager.

This culture explains why judges are allowed so little time out of court by list officers. However, it is also true to say that the delays and interruptions that are a feature of the way daily lists proceed at present often allow a judge time during the day to read at least some of the following day’s list. We deal with this further at paragraph 5.31.

- 3.47 Nonetheless, Inspectors agree with Auld LJ that judges need to have reading time for PDHs, and to prepare for complex trials. There should be a proper recognition of the importance of this in the way the weekly and daily lists are drawn up. The early provision of the following days cases to the judge may facilitate the best use of his or her time out of court during the day. However, it appears unsatisfactory to rely solely upon unscheduled breaks and finishes in a daily list to ensure that there is the time to prepare those cases. Indeed, as listing and case management processes become more efficient, there should be fewer such breaks and early finishes. Each court needs to

²³ Ibid, p249.

²⁴ The time taken to complete a case, not the time for example a witness waits outside the courtroom before giving evidence.

assess whether it is currently providing sufficient time for preparation, and to keep this under review. As case management within the CJS improves, consideration will need to be given to whether there is adequate judicial provision to allow the proper degree of case preparation.

Recorders

3.48 Recorders are practising barristers and solicitors who are also part time judges. They sit for between 15-30 days a year. Auld LJ observed that it is difficult to list work before recorders, who only sit for two weeks or less at a time. List officers confirmed that recorders, who are only available for one week, reduce flexibility even more. Auld LJ²⁵ recommended that a condition of their appointment should be to sit for a minimum period of three weeks in a block. Inspectors agree that three weeks is the optimum period, and think that recorders should sit for two weeks consecutively whenever possible.

3.49 Inspectors found a shortage of recorders available when required in a number of court centres. Most courts know in advance when there will be a gap, when judges are on holiday for example, but can still find it difficult to obtain recorders.

At one court centre it was not unusual on a Friday to have to ring round counsels' chambers to find a recorder available for the following week.

3.50 Uncertainty over which recorder will be available also presents difficulty for the list officer who cannot prepare the list without knowing the experience and abilities of the recorder.

3.51 It is not considered good practice that recorders hear PDHs because they may not have the same level of experience as a circuit judge. However, inspectors saw a recorder (from a civil background) on his first day in a busy criminal court handling a long list of pre-trial and sentencing matters. This was a consequence of a shortage of circuit judges at that court centre. If a recorder, or indeed any judge, is to deal with a pre-trial list it is important that he or she has the appropriate skills and experience. We discuss the skills and experience required for effective case management at paragraph 4.33 onwards. Recorders have a range of experience and backgrounds, but inspectors do not think that the general approach outlined above should be a complete bar to an appropriately trained recorder dealing with pre-trial hearings.

Resident Judges

3.52 Every court centre, whatever its size, has a resident judge.

“A well run court centre is dependent upon a good and effective Resident Judge”. A senior judge

All those interviewed agreed with the above statement. Resident Judges are crucial in setting listing and case management strategies, and providing leadership within the

²⁵ Ibid, p232.

court. However, it is surprising to find that, for such an important role, there is no national job description²⁶ or competence framework.

“There is no written job description for the Resident Judge – you have to make of the job what you will ... I have to lead by example, as I have no authority over the other judges”.
Resident Judge

Another Resident Judge said “I have never seen anything in writing with regard to the Resident Judge’s role”. He said that there was no discussion, when appointed, about his role and he relied on the example of his predecessors. He added that it would be useful to define the extent of the Resident Judge’s role.

- 3.53 While some vacant Resident Judge posts are now advertised nationally, there is no agreed job description and no formal competence framework against which candidates can be assessed for their suitability. Nevertheless, Inspectors found there was recognition within the Crown Court that Resident Judges were no longer being chosen on the basis of seniority or status. As one Circuit Administrator put it “Now Resident Judges are being chosen on the basis of their management and liaison skills”. The development of a competence framework would remain of value in bringing greater transparency, and confidence, to the appointments’ process.
- 3.54 We have already commented at **3.26** on delays in replacing circuit judges. Inspectors were told that delays could extend to replacement of resident judges, despite the importance of the role.
- 3.55 Some Resident Judges “manage” large, busy courts, whilst others are responsible for small one or two court centres. At the smaller court centres the resident judges may spend a significant proportion of time at another, larger court. There may be some merit in drawing a number of smaller court centres under one Resident Judgeship.
- 3.56 Particularly at larger, busy courts, the Resident Judge’s role can be both time consuming and demanding. There is limited guidance as the role of the Resident Judge and each has to create the job afresh. Inspectors consider that the role should be properly defined for the range of court centres and deal with the following issues:

That the extent to which the Resident Judge is the leader or manager of the local judiciary should be agreed (for example whether the Resident Judge should take part in appraising fellow judges, disseminate good practice guidance, allocate cases to other judges, or direct fellow judges to use particular case management strategies).

That all applicants for the role of Resident Judge should be assessed against an agreed and published competence framework.

That the remuneration of Resident Judges be reviewed to take account of their additional responsibilities.

²⁶ Although Inspectors were shown a draft job description in two circuits, it had not been widely disseminated.

3.57 Once a competence framework and job description has been agreed, consideration should be given to any training needs for the role. Such training need to be confined to formal training courses or seminars, but could be extended to peer review and mentoring.

3.58 **Recommend:**

The Senior Presiding Judge, in consultation with the Department for Constitutional Affairs, develops a national job description for the role of resident judge and reviews any training needs arising from it; and

The Department for Constitutional Affairs, in consultation with the judiciary:

develop a competence framework against which appointments can be made; and

reviews the remuneration for the additional responsibilities of the role.

Transfer of Cases

3.59 Cases may be transferred for a number of reasons:

In the interests of justice (eg because it is felt local publicity/notoriety may impinge on the chances of a fair trial).

Lack of suitable facilities in the local Crown Court (eg wheelchair access, not enough accommodation for a very large case or one requiring electronic evidence).

Large backlog of cases (ie where the Crown Court is so busy it is decided that the case will be heard sooner if it is moved to a neighbouring Crown Court).

A neighbouring court has court time available.

3.60 The most common reason for transferring a case is to deal with a backlog of cases or to make best use of judicial time at another court. A case can be transferred at any time prior to trial. In general, however, it usually happens at one of two points in the court process:

as part of a planned process at the hearing in the magistrates' courts or the PDH in the Crown Court; or

ad hoc, shortly before the trial date.

Planned transfers

3.61 Virtually all Crown Court cases start in the magistrates' courts. Each magistrates' court has a designated Crown Court centre to which it commits or sends its cases. Sometimes it will have a different court centre depending on the class of offence. The alignment to Crown Court centre may, with the agreement of the Presiding Judge for the circuit and the magistrates' court, be altered. Such realignments of catchment areas may be short term, for a matter of months, or may be more permanent.

- 3.62 Transfers also sometimes take place at either the preliminary or plea and directions hearing, either because of the nature of the case or as part of an agreement with a neighbouring court centre to deal with imbalances in workloads.
- 3.63 Inspectors consider that court centres should be proactive in identifying when cases need to be transferred, and arranging for “transfer” at the earliest opportunity. Thus, if a court centre has a backlog of work, it should approach the magistrates’ court and the other cj agencies to agree a change of catchment area so cases are committed or sent direct to the other court centre. This provides certainty to all parties, including the witnesses.
- 3.64 If cases are transferred in order to manage a court’s resources, as distinct from a transfer in the interests of justice or because of a lack of suitable facilities, inspectors think there should be full consultation with all the agencies affected and steps taken to identify unsuitable or problematic cases. In particular consideration should be given to the impact on witnesses. For example how good public transport links are, whether the receiving court has adequate facilities for witnesses and whether a witness has had the benefit of a court familiarisation visit.

Good practice

In one area a combined court centre was overloaded with criminal business and it was agreed with CPS to transfer, for a limited period, certain suitable cases to a nearby court centre (linked by good bus, road and rail connections) as soon as the cases were received from the magistrates’ courts.

One Crown Court centre investigated the possibility of moving work from one petty sessional area to another Crown Court centre, but decided against this change because the only feasible public transport link was a local train, which could result in the victim and prosecution witnesses having to travel in the same carriage as the defendant, his family and friends.

In another area the courts’ administration took a longer term view and gained the support of the Resident Judges and the Presiding Judge to implement changes in the catchment areas of three Crown Court centres (so that the workload was evened out), at the same time taking into account the convenience of victims, witnesses and defendants. The police and CPS were consulted throughout the process.

One CPS Trial Unit Head confirmed that transfers to the neighbouring court, if necessary, were usually agreed at PDH without causing problems.

Poor practice

One court bid for and obtained extra sitting days at a court in a neighbouring CPS area, to assist in addressing its backlog. However, CPS was not consulted in advance, even though this potentially had a considerable affect on their resources.

A national manager in the CPS said, “Transfer of cases is a real problem for witnesses”. He gave an example of one murder trial in London that was transferred between three Crown Court centres.

Transfers shortly before trial date

- 3.65 One of the issues that most concerned Inspectors during this review was the frequency with which court users complained of the transfer of trials between courthouses at short notice and the adverse impact this has, principally, on victims and witnesses, but also on other agencies and court users.
- 3.66 At almost every site Inspectors visited they heard complaints from court users about cases that are moved late on the day before the trial was due to start, or from the reserve list, to another court centre. This practice, which gives the impression to the public that the court cannot properly schedule cases, undermines public confidence in the criminal justice system.

Poor practice

A Group Manager said after describing an agreement to transfer cases at the committal stage “[However], we will still want to move cases between courts ... to equalise the work ... such transfers may often be at 3 or 4 o’clock in the afternoon [on the day before the trial date]”. A list officer at a court within the same circuit confirmed they receive notice of transfers the day before.

A list officer in a busy metropolitan court said “Cases are transferred out on a daily basis. [Our] work has increased while (work at) other courts has decreased. There is a need to address the imbalance. For example four trials might be sent on a Friday evening to start at another court on the Monday morning”. The list officer added “It makes my life easier if I have less information about a case, because each piece of information provides another restriction on flexible listing”.

Better practice

In one of the courts mentioned above, CPS were finally able to arrange a meeting with Crown Court staff to address the problems they were facing as a result of last minute transfers. The resulting agreement (to identify cases to be moved on the warned list, giving CPS on average nine days prior notice to object) had just been put in place, at the time of the review.

One listing officer in a busy combined court said she had some basic criteria for moving a case. Ideally cases to be transferred would have a maximum number of witnesses, none of whom are young, elderly, etc. However, she did admit that if it were a choice between getting a case on or not, she would probably transfer the case, even if the witness criteria for transfers was not met.

In one metropolitan court there is an agreement not to transfer at short notice youth or child witness cases.

- 3.67 Police, CPS and Witness Service staff gave many examples of the adverse effect that transfers at short notice can have on witnesses.

Some examples of the impact of poor practice upon victims and witnesses:

Police witness warning staff described how a case, involving an 80 year old witness who uses

a wheelchair, was moved at the last minute from a modern court with good access to an overflow courtroom in a neighbouring town that did not have disabled access. The witness had to be carried up the stairs. This was despite prior information about the witness' needs being given to the court.

One child abuse case, with five teenage witnesses, was transferred at short notice to a court with no facilities to care for vulnerable witnesses. One of the witnesses and her parents were very distressed. (CPS caseworker manager)

A Witness Service co-ordinator estimated during the last month 20 cases had been transferred to a neighbouring court and in roughly half that number either the witnesses or defendant did not attend.

One CPS caseworker reported that a floater (ie a case with a fixed date) was moved during the morning to a different courthouse, significantly further away from the area where the 4 witnesses (2 civilian and 2 police) lived. They travelled to the new court, but the matter only proceeded as far as swearing in the jury and they all had to return the following day.

CPS staff cited, as an example of a series of late transfers, a child abuse case that was transferred to a court in another CPS area. "Witnesses get angry, they get nervous and especially children get upset".

Witness Service volunteers described a case involving a 13 year old witness. The child and mother were put up in a hotel near the court. On the morning of the trial they were told the trial had been moved to a courthouse about 50 miles away. They had no money for such a long journey and were 'distracted'.

"When we have done a pre-court visit and then the trial is transferred the night before to a different court it unsettles the witness and stretches us" Witness Service, Co-ordinator.

3.68 The Witness Service representatives often made the point that the impact on witnesses of transfers at short notice is much greater if they are nervous or if they have prepared to attend a particular court paid an advance visit, identified the nearest car park, been taken on a tour of the court and had the process explained to them only to find themselves in a different building entirely. Indeed there is little point in such familiarisation visits if the trial takes place at another court.

3.69 The longer term answer to the problem of transfers at short notice is to make resources available to ensure there are sufficient judges and courtrooms in the right locations with adequate facilities to cope with the current and projected future workload (**see recommendations at paragraphs 3.20 and 3.28**).

3.70 In the meantime, list officers often have to make difficult choices. If they know a case in the next day's list is unlikely to be reached (for example, because an earlier case has overrun), they have the option either:

to adjourn it to another date (which may be some months away) or

to move it to another courthouse, which has spare capacity, on the date fixed for the case.

- 3.71 Both solutions have drawbacks. There are considerable advantages in dealing with cases as expeditiously as possible. However, the Inspectors think that the list officer's decision (and it is usually the list officer and not the resident judge who makes the decision) should not be driven solely by the need to achieve a timeliness target or make best use of court resources. These no longer fully reflect the PSA objectives. Instead the decision should be guided by agreed criteria and sufficiently far enough in advance of the hearing so that the most affected parties (victims, witnesses and the defendant) can be consulted as to their needs. Some witnesses may wish to get their ordeal over regardless of the venue, whilst others may prefer to attend at the court where they have paid a familiarisation visit.
- 3.72 Inspectors consider that national guidelines²⁷ on transferring cases should be developed, so that victims and witnesses can expect the same standards across the country. These guidelines should ensure the interests of victims, witnesses and defendants are fully taken into account, as well as court utilisation or the age of a case, before any decision is made to transfer cases at short notice. For example, it is suggested that no case should be moved, save in exceptional circumstances:

Without the prior agreement of the CPS and defence.

Where a judge (who is free) can travel to the courthouse where the case is fixed for trial.

If any witnesses have been on a familiarisation to the court.

If, as part of the pre-trial case management process, a direction has been made that the case is not suitable to be moved.

If there are children, vulnerable, elderly or multiple witnesses.

Unless the receiving courthouse has facilities for all parties at least as good as the allocated courthouse.

The distance and public transport links are reasonable.

There is a minimum period of notice to parties.

3.73 **Recommend:**

Department for Constitutional Affairs take a lead in developing national guidelines for the transfer of cases between Crown Court centres;

Local Criminal Justice Boards agree and implement a local protocol governing the transfer of cases between Crown Court centres taking into account the national guidelines.

- 3.74 Inspectors also found examples of regular transfers between courthouses in close proximity. Inspectors suggest that the Court Service consider the benefits of developing joint listing in such circumstances so that transfers can be avoided or planned well in advance.

²⁷ Such work falls within the remit of the ETMP team which reports to the DCA.

Allocation of resources and projection of future workload

- 3.75 Court Service HQ allocates resources in the form of sitting days to circuits on the basis of past performance and projected workload for the following year. The aim is to achieve the overall timeliness target of 78%. The circuit administrator and group managers then allocate the sitting days between the court centres in the same way with the aim of achieving the 78% timeliness target overall for the circuit.
- 3.76 Workload projections are done at a national level with no contribution from circuit level or below. They are based on historical data for each circuit, together with the projected impact of changes brought about by legislation or other policy factors²⁸. Such projections may well prove wrong. For example, the predictions from the Home Office about the impact of the Human Rights Act on increased length and number of hearings were an overestimate. Conversely, the increased number of indictable only cases following the implementation of section 51 Crime and Disorder Act 1998 was not predicted.
- 3.77 Nonetheless, Inspectors were told, “the workload projections for sitting allocations are accurate to +/- 5% annually”. The system is seen to work well at a national level. One senior Court Service manager said, “We think we get the allocation of resources (sitting days) about right – the more vexed issue is one of accommodation”. Inspectors agree that the available accommodation is an important element in the efficiency of performance at a local level. To put it simply, there is no point in allocating sitting days to a court centre if it does not have enough courtrooms, or indeed judges, to use them, no matter how great a backlog the court has. We have already discussed the provision of courtrooms and judges.
- 3.78 Inspectors have concerns about two aspects of the allocation system, both of which relate to the impact at a court centre level.
- 3.79 The first is the absence of a local element to the workload projections. The workload for a court centre will be affected by local factors, such as policing strategies or changes in socio-economic mix, as much as by national factors. Inspectors agree with one Circuit Administrator who said: “Caseload projections are all done at headquarters, but this is not a robust enough process ... There needs to be two-pronged approach with CSHQ making workload projections based on national trends and changes in legislation, complemented by local workload projections, probably based around the Local Criminal Justice Boards. This should ensure that increases in local workloads ... are picked up”. The point was also made that currently court managers can only react to allocations and workload changes after they have happened. The Court Service had previously included local workload projections in its overall projections, but had ended the practice because of the unreliability of the local projections. The development of LCJBs creates the opportunity to provide a firmer base for local workload projections.
- 3.80 The 42 Local Criminal Justice Boards have set targets for narrowing the justice gap. These seek to bring more cases to justice through a variety of strategies. This may increase the number of cases going to the Crown Court. The Crown Court is represented on the LCJBs. There is the opportunity for the LCJBs to assess likely impact on the Crown Court of its local strategies, and provide the local information to

²⁸ In due course estimates will be made of the likely impact of the extension of magistrates’ sentencing powers on Crown Court caseloads.

inform workload projections. The review team recognises that the burden of work on the LCJBs at present may mean that this is difficult to do this in the short term, but planning for the efficient and effective running of the local cjs is essential and well worth the investment of time and resources.

- 3.81 Our second concern is more fundamental. It is that the current basis for allocation does not assist in driving up performance by each court centre. A sitting day in itself is an artificial concept. It can last for as little as half an hour or last for five hours. However, what matters is how efficiently the court disposes of its business. An efficient court that has reduced its backlog may well get fewer sitting days than a court centre that has allowed a backlog to develop without properly addressing it, because the backlog will form part of the workload projection. The higher the workload projection, the more sitting days will be required to meet the timeliness target.

B [a busy inner city] Crown Court performed well with the result that they got a cut in their number of sitting days, so that less well performing courts had increased resources to reduce their backlogs. This caused problems when the workload at B Crown Court increased.

“The way in which courts are resourced means that efficient courts will get penalised in the following year’s allocation”. Court Manager

- 3.82 Each court centre now produces an annual report in which the Resident Judge and the Court Manager account for the court’s performance against target. Inspectors believe that the allocation of resources should build on this and be linked to an evaluation of the efficiency of case management and listing of each court centre. Benchmarks for performance should be set for courts of similar sizes and workloads so that poor performance can be identified and addressed. In this way the overall performance of a group and circuit could be driven upwards. At present the allocation is made to ensure an overall timeliness target by the group and circuit is met. This provides little incentive for poor performing courts to address their efficiency problems, and does not support efforts by senior managers to improve performance. It does not reward efficiency or good practice. If a proactive Resident Judge and court introduce an effective initiative to enhance case management and, as a result the disposal rate gets better, the court may not benefit from the improvement as the higher disposal rate could reduce resource for the following year.
- 3.83 We have referred to the importance of allowing judicial reading time at **paragraph 3.47**. It follows that in our view any allocation of resources should in addition take account of judicial reading time, and not simply workloads.

Impact of video links to prisons on listing

- 3.84 While most major magistrates’ courts have at least one video link to the prisons, the systems are only just being rolled out in the Crown Court. At the time of this review this initiative was too new to form any firm conclusions about its impact on listing.
- 3.85 It was also apparent that the attitude of the judiciary, particularly the Resident Judge, is likely to be critical as to whether use is made of the video facility even when available. One court centre had a video link that was not being used because the Resident Judge thought that pre-trial hearings in the presence of the defendant were

more likely to be productive. On the other hand, at another court centre, the Resident Judge was a strong supporter of the use of the video link and had done his best to bring it into operation as soon as possible.

- 3.86 The lessons learned from magistrates' court are that the process is generally beneficial, especially for the defendant and the escort agencies.

Jurors

- 3.87 This review has found no evidence that the number and availability of jurors is significantly affecting the ability of listing officers to list trials. One listing officer commented that they lose the occasional trial slot through a lack of jurors, but it is not considered a serious problem.

- 3.88 However, there is a difficulty in courts in some rural areas of obtaining juries who do not know the witnesses or defendants. This is another issue that makes full utilisation of small rural courthouses more problematic (**see paragraph 3.11**).

The Crown Court Annual Report for 2001/2002 said of one small court:

“The court is only a single court-centre, and has had several trials that have required larger than average jury panels, as there was a possibility that one of the jurors would know a witness or defendant”.

Building the List

List building – the process by which cases are placed before the courts for hearing

Introduction

- 4.1 List building in the Crown Court differs from that in magistrates' courts because of the different balance of types of hearing and the complexity (and therefore length) of cases. In particular there are a far greater proportion of cases listed for trial in the Crown Court. The Resident Judge has overall responsibility for listing for each court centre but, in order to manage the administrative aspects of listing, all courts have appointed dedicated listing officers (administrative staff) who are responsible for the bulk of routine listing work once judicial decisions have been made in individual cases.
- 4.2 Although the Crown Court is a single court sitting at different centres around England and Wales, the way cases are listed at individual court centres is not uniform. There are National Guidelines for Crown Court Listing¹ that describe the different listing practices in use at the time they were issued in 1993. However, within the broad framework set by the national guidelines, each court centre has developed its own listing system in response to local factors such as workloads. The process is seen as an evolutionary, and often reactionary, with changes usually instigated by the Resident Judge.
- 4.3 Although the Court Service is a national organisation, there is no centralised training for the role of listing. Although some circuits have court manager or list officer meetings at which good practice can be shared, there are no effective systems nationally for disseminating good practice between list officers. The lack of effective processes, either within the judiciary or the Court Service to evaluate initiatives systematically and then spread good practice leads to inefficiency. Effort is duplicated and good practice is not replicated.
- 4.4 Almost all list officers learn the job from their predecessor. This ensures that there is continuity in a particular court centre. However, without a mechanism for sharing approaches with other list officers opportunities for innovation are lost. This leads to maintenance of systems which are ineffective or inefficient or which do not take into account the interests of other participants in the court process. Inspectors found that most changes to listing systems were initiated as a result of difficulties, for example rising backlogs of cases. Also, where a new Resident Judge, or occasionally a new list officer or court manager was appointed, that in itself could stimulate a fresh look at local listing practice.
- 4.5 Inspectors believe that the time is right for a review of the listing practices at each court centre in light of the changing priorities being set for the criminal justice system by the PSA introduced in April 2003. Such reviews would need to be firmly based on an objective evaluation of available management information and the wider business needs of the local cjs, and not just the historical factors that led to the current listing process. Inspectors also think there is value in having consistency in listing practices across court centres, although this must be balanced against the need for each court centre to be able to address any particular local listing issues.

¹ Published by the Lord Chancellor's Department in 1993 with the approval of the Lord Chief Justice and the Presiding Judges.

Relationship of Resident Judge and List Officer

- 4.6 The relationship between the Resident Judge and the list officer is a crucial one at each Court Centre. It is the Resident Judge who has overall charge of the listing of cases and in that sense listing is a judicial function. However, as Auld LJ noted in his report² ‘... A better description is that it is a judicial responsibility. In the nature of things a listing officer has a better grasp both of the long term, ‘strategic’ shape and needs of the list and the day to day programming and contingencies. The Resident Judge should maintain a general oversight of the listing at his court, but should not bury himself in the detail’.

There are so many priorities (in listing cases) that they all compete with one another. I will change the status of a case from reserve to floater or even to a fixture, if I think it appropriate. The only time I would go back to the judge would be if a floater needed to be moved to another week. (List officer)

- 4.7 Resident Judges vary in the extent with which they become involved with the day to day listing – some meeting their list officer on a daily or weekly basis and some relying on informal contact when necessary. Whatever the nature or frequency of contact, Inspectors found that list officers were generally very clear about their responsibilities and when cases should be referred for decision, either by listing for ‘mention’ or by direct contact with the Resident Judge. As a consequence, most Resident Judges and list officers interviewed did not see the need for formal delegated powers (as given to list officers in the magistrates’ courts). However, the boundaries of the list officer’s authority is not always so clear to others involved in the listing process. Some Resident Judges have clarified the division of responsibility in written protocols but this is not invariably the case. Where such documents exist they can assist both the list officer and other court users to determine how a decision can be reached. They also provide a measure of assurance that the list officer is not exceeding his authority.
- 4.8 Inspectors found an example of a list officer moving a trial without consulting either the Resident Judge or the case notes, in contravention of assurances given by the judge to the victim on a previous occasion. That particular list officer believed that once a date had been given at the PDH, everything else was the responsibility of the list officer. Inspectors consider that the production of guidelines containing the extent and limits of delegated authority given to list officers by the Resident Judge would give more clarity for the benefit of all. It should be possible to produce a generic document that can be adapted to local circumstance.

Types of Hearing

- 4.9 Cases reach the Crown Court either from the magistrates’ courts through the ‘sending’ or ‘committal’ processes³ or, in cases of serious fraud or cases with child witnesses, by the prosecution transferring the case direct to the Crown Court. The Crown Court

² Review of the Criminal Courts of England and Wales 2001.

³ Indictable only cases are sent under section 51 Crime and Disorder Act 1998; either way cases may be committed for trial under section 6 Magistrates Court Act 1980 or committed for sentence under section 38 Magistrates Court Act 1980.

also acts as the court of appeal for defendants against conviction or sentence in the magistrates' court.

- 4.10 Cases that are sent will be listed for a preliminary hearing in the Crown Court within eight days of being sent. A plea of guilty may be indicated, or even entered at this stage, but more commonly a timetable is set for service of the prosecution papers and a PDH. Where cases are committed for trial, they are committed by the magistrates' court to a specific PDH date at the appropriate court centre for that class of case. At the PDH the defendant will enter a plea, and if that is a not guilty plea, a trial date or period within which trial will take place is set at or shortly after the PDH. If a guilty plea is entered there may well be an adjournment to a sentence hearing, and the sentence itself may give rise to ancillary hearings such as breach of community order or a Drug Testing and Treatment Order supervisory hearing.
- 4.11 The list officer will notify the parties of the date on which a committal for sentence or an appeal against conviction or sentence will be heard, once notice has been received from the magistrates' court. In general inspectors found that both committals for sentence and appeals were dealt with expeditiously. Most list officers confirmed that it was relatively straightforward to include these in lists and to meet the shorter target timescales⁴. Indeed, because the Key Performance Indicator Target for timeliness is an aggregate one relating to all types of cases, it is advantageous to list officers to meet the relatively easy time targets for appeals and committals for sentence. The aggregating effect of the KPI means that weaker performance in other cases can be masked.
- 4.12 Trials occupy the vast majority of sitting time at all court centres but a significant amount of time is now spent on pre-trial hearings, as well as preliminary hearings and PDHs. List officers and judges often commented that there had been an increase in mention hearings following on from the PDH, for instance where directions had not been complied with. Some courts have attempted to place most pre-trial matters in a separately listed courtroom. The benefit of separating out this pre-trial work from trials is explored later at paragraph 4.22.

The sitting day

- 4.13 Historically, all cases tended to be listed for the same time, usually 10.30 with the expectation that the court would sit until around 4.00 pm. In some courts this is still the case but it is becoming common to begin some court sittings with short matters at 10.00 or even 09.30 in order to deal with these before a trial at 10.30. Inspectors were told the increase in pre-trial hearings is a major reason for this change.

At one Crown Court centre an agreement was reached to list non trial hearings of street crime cases before any other type of cases in a list, in order to ensure that these were processed speedily.

- 4.14 Some interviewees commented upon the apparently short sitting days, particularly when delays in starting the morning list were taken into account. The target for the sitting day was 4.37 hours. However, it should be recognised that effective hearings

⁴ Target for completion of committals for sentence is 10 weeks and for appeals 14 weeks compared to 16 weeks for committals for trial and 26 weeks for "sent" cases.

are largely a product of other agencies' and court users having time outside the courtroom to undertake necessary preparatory work. Judges also need time to prepare for future cases. Any extension to the sitting day should take this issue into account. Inspectors think that rather than just seeking to extend the sitting day, it would be more productive to review how the business of the day might be best conducted.

- 4.15 Very long and complex trials can have an impact on the sitting day. In these patterns of hearing, as in the "Guinness" type cases, the judge sits with the jury to hear the case from around 09.30 to 13.30 with a short break mid morning. The jury, and witnesses, are then released until the following day, leaving the afternoon available for legal argument, providing current transcripts of the case to date and further case preparation. Although such cases are rare, Inspectors think they point towards a different way of organising the daily business that may be more efficient, at least for other court users. We return to this at paragraph 4.22.

Pre-trial hearings

- 4.16 The views of the Resident Judge will determine how pre-trial hearings are listed at a particular court centre, although the numbers of cases put in a list will usually be left to the list officer.
- 4.17 The importance attached to PDHs by some Resident Judges has led to setting up of separate courts for those hearings so that they can be listed in front of particular judges committed to taking a robust case management approach. Such an approach requires careful preparation by the judge taking the court, and may limit the number of cases that can be listed.

<p>The resident judge in one Crown Court Centre has restricted the number of PDH cases listed in the separate PDH court to 10 so that the judge taking the court can prepare thoroughly in advance.</p>

- 4.18 However, in other courts, particularly where there is a high volume of trial work and pressure from backlogs, dedicated pre-trial courts are seen as an inefficient use of court time. As a result, pre-trial hearings may be spread out between all the courts and listed before trials. This has the drawback of introducing a greater risk of inconsistency in approach to case management because of the wider body of judges, or indeed recorders, dealing with the work.
- 4.19 List Officers rely on experience in determining how many pre-trial matters can be listed ahead of trials or in dedicated pre-trial courts. Many list officers told inspectors that the most important factor in listing of such cases was the judge sitting in the courtroom and his approach to case management. Inspector's observations in court supported list officers' views that the different approaches taken by individual judges to preliminary hearings and PDHs required a different time allocation depending on whether a judge typically spent 2–3 minutes on these hearings or 15 minutes. Not all judges consider that they should be undertaking a proactive case management role (see paragraph 5.20).
- 4.20 Another response to listing pre-trial work is to try and remove pre-trial hearings from the courtroom, unless a hearing before a judge is essential. Consequently there are initiatives such as "paper PDHs" and "virtual PDHs" designed to free up the

courtroom by dealing with PDHs without the need always for a hearing in person before the judge. At one metropolitan court centre a system of administrative PDHs had been introduced in which the parties sought to agree the directions at court but without hearing before the judge.

- 4.21 Listing all matters that do not require a jury in a single courtroom can allow flexibility to move hearings to other venues such as magistrates' courtrooms or County Court courtrooms. We discussed the additional flexibility this could bring to listing in releasing courtrooms with jury facilities for trials at paragraph **3.8 to 3.10**. There is, of course, the proviso that there would need to be sufficient judicial resources available to make use of the additional courtrooms.
- 4.22 Inspectors consider that there is scope to review the way that pre-trial matters are listed in order to improve the effectiveness of these hearings, make better use of courtrooms and improve service to users. The Case Preparation Project (CPP) provides a vehicle for looking at and evaluating different approaches. Inspectors offer several suggestions that would appear to be worth testing and evaluating:
- a. One proposal would be to reverse the current approach of listing trials after pre-trial hearings. With this variation of "Guinness" type hearings, trials would be expected to start promptly at 9.30 or 10.00am and continue until, say 3.00pm when the jury would be released and short matters dealt with for the next hour. The benefits of this approach would be that the jury members would not be kept waiting before sitting on a trial and waiting times for witnesses should be reduced. It would mean that counsel for both defence and prosecution would have to ensure that they were ready before the trial is due to start. They would not have the leeway that the listing of "short" matters before trial sometimes gives, but inspectors do not think listing should be predicated on an expectation of late preparation by the bar. Defendants in pre-trial matters could be bailed to attend at 1.00pm, giving time for conferences and allowing better resource management of custody cases. However, the availability of counsel for such hearings would need to be taken into account and this may limit the court centres where this was a realistic option. The implications for other agencies such as CPS, Prisons, and prisoner escort contractors would also need to be taken into account.
 - b. A more radical approach is that outlined at paragraphs **5.37 to 5.42** for the creation of a dedicated case management role within the Crown Court. This would lead to separate listing for pre-trial hearings and to free up courtrooms with jury facilities to hear trials.
 - c. Other options, which would require legislation, would be to remove preliminary hearings under section 51 of the Crime and Disorder Act 1998 from the Crown Court altogether and make legal advisers in the magistrates' courts responsible for issuing the timetables up to PDH. The PDH would become the first hearing in the Crown Court unless there was a dispute amongst the parties, in which there would need to be provision for the case to be listed for the issues to be resolved. Alternatively, preliminary hearings could remain solely within the jurisdiction of the Crown Court, but only be held when the court deems it necessary. Observation, and interviews, confirms that most of these hearings take only 2-3 minutes and generally set a standard timetable to PDH. Many people interviewed regard these hearings as

unnecessary and, providing there is the opportunity to list the case for mention in case of dispute, moving directions hearings to the magistrates' court would free up Crown Court time.

Time marking or block listing

- 4.23 It used to be the practice to list all cases for the same time at the start of the daily list and require the attendance of all parties at that time. However, there is an increasing recognition of the needs of court users including witnesses. Inspectors agree that requiring everyone to attend at 10 or 10.30, principally to ensure that there will always be a case ready to go ahead, does not provide good service to users of the courts, whether professional or non-professional.
- 4.24 It is becoming much more common to give cases specific time markings, for example at noon or 14.00 – generally to accommodate counsel or victims and witnesses in cases such as child abuse. Nonetheless, practice from court to court does vary. Many court users, including witnesses and defendants will still be expected to be in the courthouse at the start of the list even though their cases may not be heard until later in the day. Unlike the magistrates' courts, the Court Service does not measure waiting times for defendants, and has no targets in relation to them.
- 4.25 There is a target for witnesses of waiting no longer than two hours before they are called. This has placed a greater focus on the time at which trials are listed or the first witnesses are required.

At one Crown Court Centre, the listing practice had been changed so that trials were not scheduled to start until 12 noon on the days when PDH cases were placed in the list at 10.30am so that jurors and witnesses were not kept waiting while short matters were dealt with. This later scheduling also allowed the judge hearing the PDHs to devote sufficient time to each case.

At another Crown Court centre, trials involving child witnesses were scheduled to begin at 2.00pm in order to empanel the jury and hear opening statements, witnesses not being called until the following day.

- 4.26 The introduction of special measures for vulnerable witnesses has moved list officers towards time marking where there is more than one such case listed for trial on the same day in order to ensure video facilities are available. The use of witness phasing or stand by arrangements is limited at present, but an increased focus on witness satisfaction may lead list officers towards time marking within trials.
- 4.27 Changes being introduced as part of the provision of video links to prisons will also require list officers to give more attention to timescales because use of the video link will demand specific time slots. In the court centres where these have been installed each case has a 20 minute slot allocated (10 minutes for consultation and 10 minutes courtroom time). This limitation on time requires a change of approach by listing staff and counsel in order for the benefits of these virtual hearings to be maximised. Counsel in particular needs to be ready at the allotted time.
- 4.28 Where problems are predictable, such as late delivery of prisoners because the Crown Court centre is at a considerable distance from, say, a women's prison or young

offender institution, inspectors found no allowance was being made in listing, for example at 2pm. Time marking hearings to accommodate known problems would allow more effective use of courtrooms.

Listing for trials

4.29 The list officer will take a large number of factors into account when deciding which cases to list for trial in a particular week or day:

- i. Type of case – whether it is a priority case because of custody time limits or PYO time targets;
- ii. Whether it requires a fixed hearing, such as child abuse or rape cases, or whether it is suitable to list as a “floater”;
- iii. Availability of an appropriate judge or recorder with the right ticket or experience;
- iv. Availability of a courtroom with appropriate resources such as custody facilities or tv link;
- v. Length of time the case has been in the Crown Court – cases committed for trial have a target of being dealt with within 16 weeks, and cases that have been “sent” within 26 weeks;
- vi. Witness availability;
- vii. Trial readiness of the prosecution and defence;
- viii. Estimates of length of trial.

4.30 This is no easy task. We have already discussed the provision of courtrooms and judiciary in chapter two, and the different strategies of case management and case progression in chapter four. One further factor that underpins the decision of when to list a case for trial is the time estimate for the length of the trial.

Trial time estimates

4.31 Generally, the time estimate is determined at the PDH based on information given by the prosecution and defence counsel. As part of the review inspectors asked court clerks in seven Crown Court centres to record the actual time taken for each effective trial. This time was then compared with the original (and any revised) trial time estimate.⁵ The following chart shows that, in general, trial lengths are over estimated.

TOTALS	Category Totals	Total Number of Responses Received	%
Number of cases where trial exceeded original estimate by	6	80	8%

⁵ Trial time recording started with the empanelling of the jury up to the time the jury retires to consider its verdict.

more than 2 hours			
Number of cases where original estimate exceeded trial by more than 2 hours	61	80	76%
Number of cases where trial exceeded revised estimate by more than 2 hours	0	7	0%
Number of cases where revised estimate exceeded trial by more than 2 hours	6	7	86%

4.32 The results show significant unreliability in the information available to list officers which impacts on their decisions as to how many cases need to be kept in reserve in case of short running of trials. List officers confirmed that original time estimates are only rarely changed. The evidence from the survey is that, even when timings were changed, the vast majority remained over estimated. This supports the anecdotal evidence from list officers who observed that this is generally the case and confirmed they have to compensate for over estimation by increasing the number of cases that are floaters or backers, or appear in the reserve list. If more accurate time estimates were provided, this would be a considerable help for list officers who were trying to increase the numbers of fixtures.

4.33 There is an opportunity at PDH for time estimates to be challenged for accuracy but this can only be done if the judge and counsel are all prepared fully for the PDH. They can then draw on their collective experiences of similar cases. Time estimates are always going to present difficulties not least because of the variables that are unknown at PDH. For example some trial judges and some counsel are quicker than others. Yet the trial judge is usually not identified until after PDH and the high level of returns means that there is no certainty as to who trial counsel will be. Unforeseen evidential issues may arise. Nonetheless, inspectors think that greater care could be taken with the trial estimates provided at PDH.

Examples of good practice:

At one Crown Court Centre the Resident Judge has initiated a system of reports that judges complete whenever a case over runs to look for any repeated difficulties.

In an area where there are a high number of fixed trials, barristers confirmed that the robust approach by judges at PDHs had focussed on ensuring that accurate timescales were provided.

4.34 Although the average length of cases is reported on the regular CREST statistics sent to courts, the figures are unhelpful as they contain cracked trials also and are not analysed by type of case. As part of the review, inspectors obtained two years' data for actual average trial times by type of case for each court centre for trials that proceeded. This appeared to the inspectors to be essential management information for each court centre. These figures can be found in Annex D. The national average for each type of case is shown below:

Average Length of Effective Hearings (days)					
	Class of Case				
	1	2	3	4	All Cases
2001-02 National	8.44	3.57	4.51	2.57	2.98
Range across Crown Court Centres	0.94-19.39	0.89-6.79	1.44-16.62	1.49-8.05	1.58-10.53
2002-03 National	7.85	3.86	3.51	2.5	2.88
Range across Crown Court Centres	1.90-12.88	2.14-21.75	0.54-7.5.6	1.57-6.59	1.66-8.93

4.35 The breakdown of the figures by court centre highlights considerable variations and should provide useful information to assist managers to assess whether resources, particularly the balance of circuit judges and recorders and the size of courthouses, are adequately matched to workload. Equally importantly, it also provides useful information to assist in evaluating the different case management strategies at those court centres.

4.36 Although the case classification is not directly related to the complexity, or indeed the other factors that affect the length of the trial, the data should nonetheless provides a useful benchmark for judges in assessing how long should be allocated to a particular case and in challenging any unrealistic estimates provides by counsel.

Court lists

4.37 A case in the Crown Court will appear on several different kinds of court lists during its lifetime. The extracts from the Guidelines for Crown Court Listing set out at Annex E describe a number of methods of giving advance notice of listing for a week or longer:

- i. warned lists;

- ii. main lists⁶;
- iii. reserve lists.

- 4.38 As well as the advance lists, each court centre will also issue a daily list for the following day. Trials are listed as fixtures, floaters or backers, or may appear on a separate reserve list. The different status to a trial reflects the priority given to ensuring that the case is heard on a particular date.
- 4.39 The workloads and listing priorities for the court centre will be reflected in the length and composition of the advance lists. Almost all the list officers interviewed thought that the overriding priorities set for listing were ensuring that the overall timeliness target for completion of cases was met and that judges were kept fully occupied. Although most list officers also tried to take account of witness needs, and inspectors were given examples where this had been done, there was a consensus that in the event of any conflict, the timely disposal of a case and the full utilisation of courtroom resources were likely to take precedence. A further consequence is that list officers try to keep a reservoir of trials from which to draw if the trials that have been listed for hearing do not proceed.

Length and size of the advance lists

- 4.40 Many court centres operate on a two list advance warning system – the first list (generally called the ‘warned’ list) gives a schedule of cases that it is proposed to list for a specific period. This list is faxed (not emailed) to the prosecution, defence and probation service. They are responsible for alerting the list officer if any case on the list is not ready to proceed. A final “main” or “firm” list is then produced and circulated.
- 4.41 The period covered by the warned or firm list, and the length of advance notice, varies from court to court. Inspectors have collated the different time periods, as well as use of reserve lists and floaters/backers, at ten court centres at Annex F. The length of the advance list varied from four weeks to one week, and the period of advance notice varied from five weeks to one week. In some instances, courts have dispensed with the warned list altogether and just issue the main/firm list.
- 4.42 The use of the four and three week advance lists at two metropolitan courts was a response to an imbalance between the caseload and the court resources available to deal. This had led to a very large backlog of cases that put pressure on the timeliness with which cases could be completed. These advance lists are produced on a weekly basis so that there was a rolling four or three week warned and firm list. Both those court centres also had a reserve list as well as the firm list. The advantage with a longer warned or firm list period is that it increases the flexibility for the list officer because of the large number of cases within it, particularly when there is a reserve list. However, it increases uncertainty for witnesses who, unless their case is fixed, need to hold themselves available over a three or four week period.
- 4.43 The reserve list is a reservoir of trials from which the list officer can draw at very short notice (like the afternoon before) to ensure court time is fully utilised. Many of the courts visited had a reserve list, but the numbers of cases within the list varied considerably. Inspectors noted that by putting cases on a reserve list, rather than

⁶ Now commonly known as “firm” lists.

listing them as floaters or backers, means that these cases do not appear in management information as ineffective trials if the case is not reached, even though the witnesses have had the inconvenience of being held on short notice to attend court.

- 4.44 Long advance and reserve lists containing a large number of cases can lead to a less challenging attitude to requests for removing cases from the list which in turn results in delay in those cases. Equally it can lead to decision-making not based on the merits of the case because there are too many cases for the list officer to be able to take priorities into account. However, in some court centres, list officers have achieved shorter advanced lists that provide sufficient flexibility to list even for a busy courthouse and yet keep uncertainty to a minimum for court users. Where lists have reduced in size list officers can also be more proactive about looking at individual cases and making risk-based decisions about the likely progress of each case.
- 4.45 Most of the courts visited had sought to reduce the warned and firm list periods to one or two weeks and to load the lists only with sufficient cases to proceed during that period. The uncertainty for witnesses and court users is reduced to not knowing which day of the fixed period the case will be heard, rather than whether it will be reached at all. This approach to listing relies upon the list officer to have a good knowledge of the cases within the list. This can come from the prosecution or defence, but the court has the case papers and the list officer, or another member of the court staff such as the case progression officer, can use their experience to judge whether a case is likely to crack or take as long as the original trial estimate. Inspectors think that it is essential that the listing and case progression roles be sufficiently resourced to enable list officers to be fully conversant with all the cases awaiting trial.

The most important factor that would assist effective listing is certainty of information. I would be better able to judge the resources needed in order to provide a good service. (Crown Court Manager)

Building the list

- 4.46 List officers build the advance and daily lists around those trials that are marked as fixtures by the judge when the trial is fixed, usually at PDH, or by the list officer subsequently in line with criteria set down by the resident judge. They will also take into account PDH dates set at committal, and any sentence or other hearings reserved to a particular judge.
- 4.47 The criteria of cases suitable for a fixture will vary from court to court, but in general includes:
- Cases lasting longer than five days;
 - Class 1 or 2 cases, often allocated to a High Court judge; class 2 cases very few and very few tried by HCJ;
 - Child abuse cases;

- Rape cases;
- Custody cases approaching the custody time limit;
- Cases requiring special measures for vulnerable or intimidated witnesses;
- Robberies⁷;
- PYO cases.

4.48 The list officer will then have the task of fitting the other trials around those fixtures. In doing so, some cases may be allocated dates and courtrooms, but some will be listed as floaters or backers. Again the list officer will be working within guidelines set by the resident judge, but will also be using his own experience about which trials are likely to crack and any other information from the prosecution or the defence. As well as the trial readiness of cases in the list, the list officer needs to take account of the age of the case, custody time limits and any agreed priorities for hearing cases such as street crimes or domestic violence. Most list officers had in mind types of cases that they thought suitable as floaters or backers, and a number of courts had gone further and produced written guidelines.

At one court centre a floater was defined as a “date only allocated in advance”, and the following criteria were identified as suitable for floating:

Less than four defendants;

Less than 10 witnesses;

Mid-range offences;

Time estimate 3 to 5 days.

Cases suitable for fixtures were also defined as including, inter alia:

Custody cases;

Serious/complex cases;

Cases with vulnerable witnesses or defendants;

Any floater not reached because of lack of court time.

Cases suitable for a reserve list were defined as:

One or two defendants;

Less than five witnesses who all live locally;

Less serious allegations such as ABH.

4.49 There is a great deal for the list officer to take account of. It is rightly seen as a very pressured job. The ideal from the point of view of court users, especially witnesses, is for trials to be listed for a fixed date with the certainty that the case will begin on the day stated. However, the high proportion of trials that crack or are ineffective and the

⁷ Street crimes in areas which are part of the street crime initiative.

very unpredictability of the lengths of trials means that this is unlikely ever to be achieved. Listing all trials as fixtures and leaving sufficient spare courtroom and judicial capacity to cope with overruns would be impossibly costly in resources and would introduce significant further delay to the listing of cases.

- 4.50 The numbers of fixtures have increased over recent years, as the categories of cases where it is recognised fixtures are appropriate also increased. Long, complex cases have always demanded a fixed date, but it is now accepted that a much wider category of cases should have the certainty of fixed hearings. These cases include child abuse, rape, PYOs, custody time limit cases, and more recently cases with vulnerable or intimidated witnesses where special measures have been ordered.
- 4.51 Inspectors believe more can be done to increase the proportion of fixtures through improved case management by the prosecution, defence and the court. The CPP are trying to increase the proportion of fixed hearings in a series of pilots for “honoured appointments”. The work of the CPS/Police Charging Project, the Ineffective Trials Delivery Group, and the CPS/OPSR Witness Project will also form an integral part of the holistic approach to case management and listing. It will be interesting to see how far the proportion of fixed hearings can be increased.
- 4.52 Inspectors found different definitions of what amounted to a “fixture” at different court centres. A fixture could be a case that had a fixed date in a set courtroom, perhaps before a specified judge. Alternatively it could mean only that it had been given a fixed date but with no courtroom or judge allocated, and would have to float on the day of the hearing. Such confusion of terms makes it harder to understand exactly how listing works in a particular court.
- 4.53 One list office that served a number of small courthouses had taken the view that certainty of hearing date is more important than actual venue. Accordingly it commonly listed trials for hearing by date but with no guarantee as to venue. Provided the needs of witnesses and defendants as far as, for example, travel or pre-court visits are taken into account, this may be an appropriate listing strategy. The strategy could be extended to larger courthouses that are close together but currently maintain separate list offices (see paragraph 3.74).
- 4.54 Inspectors recognise that floaters or backers are essential to the timeliness of case disposal and sensible use of judicial resources. Indeed, some list officers prefer to give priority cases, such as those reaching custody time limits or which are becoming stale, places in the list as floaters rather than the certainty of a fixture at a long date ahead, because their judgement is that the case will be heard even though a floater. However, Inspectors consider that where floaters or backers are not reached, for whatever reason, the case should be given priority for listing as a fixed hearing so that witnesses and defendants are not faced by repeated ineffective trials with the adverse impact on public confidence this brings. Over the period from April 2002 to February 2003 50,706 trials were listed of which 11,759 trial hearings were ineffective (23.2%). The table below shows the number of completed cases that have had previously ineffective hearings in England and Wales for the same period:

Total ineffective trial hearings for completed cases	Number of trials with one previous ineffective hearing	Number of trials with two previous ineffective hearings	Number of trials with more than two previous ineffective
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			hearings
9,814	8,193	1,358	263

Production of daily lists

- 4.55 In addition to the advanced lists, all court centres produce daily lists showing which cases are listed for the following day. The list officer will be told which courtrooms have become free (or not) as the sitting day progresses and will fill the following days list with trials which have already been identified on the firm list, or which may be drawn from the reserve list. It is at this point that some court centres will transfer to or accept cases from other court centres.
- 4.56 Where the number of courtrooms is small, the production of this list is relatively easy once information is provided from the court clerk in each courtroom as to the progress of the day’s case(s). However, the task is more difficult when there are large numbers of courtrooms and the numbers in the advanced list are heavy. Some courts have split the work involved in this task between several members of the list office.
- 4.57 The final daily list is produced at many court centres by 3.30pm. This is the deadline set by the National Listing Guidelines. At the same time the list is placed on the Court Service Website. However, inspectors found much variation in practice, with some courts issuing several lists during the day, each of which is marked ‘final’ and others only issuing one at 3.30pm. Inspectors also found that lists are not always made available to other agencies at 3.30pm. Late final lists, and unexpected changes to the “final” list cause real difficulties for witness warning staff in their attempts to contact witnesses, as well as problems for the prosecution and defence in ensuring that the appropriate counsel is briefed to attend. Indeed inspectors consider changes to what is described as the “final list” to be unacceptable because of the impact on the other agencies and court users.

Early notification of the daily list is very important. The final daily list generally arrives around 4.00pm, although it should be 3.30pm and there will be several versions of the daily list. In one case [we] had two daily lists faxed through at 17.24 and 17.25, and the 17.25 list had a new trial listed for [an overflow court centre] which is difficult for witnesses to get to. The Crown Court don’t tend to answer their phones after around 5.30 if CPS want to query the list. (CPS caseworker)

Bar clerk meetings

- 4.58 List officers receive a lot of information about the state of readiness of cases from the prosecution, the defence and probation of YOTs in sentence cases. They are also regularly contacted by bar clerks who are trying to ensure that the counsel in their chambers is able to do particular cases. This is sometimes because the case is such that a particular counsel ought to deal with it, for instance a murder or a child abuse case, or it may simply be in order to ensure the best deployment of counsel from chambers’ point of view.
- 4.59 Many list officers maintain this relationship via telephone contact, but in some areas more formal meeting structures are in place to exchange information. Such meetings

are known as bar clerk meetings and are a feature of circuits in the midlands and north of England. These meetings vary in their frequency and the personnel who are invited to attend. In one area the list officer chairs a daily and weekly meeting. Bar clerks and CPS managers attend the meeting and the aim is to list cases in both the weekly and daily list so that, so far as possible within the other listing priorities, prosecution and defence counsel of choice can deal with the case. However, in other areas the meetings consist solely of bar clerks with no representative of the list office attending. At one such meeting a request by the CPS to attend has been refused. Although inspectors were told that these meetings could only provide listing proposals for the list officer, inspectors have concerns about the transparency and indeed probity of the process. Other court users shared those concerns.

The purpose of the meeting is to agree the order in which cases should be heard at each of the Crown Courts with a view to ensuring that counsel of choice can attend as many cases as possible eg if have cases in both [Crown Court Centres] I will try to synchronise the hearings so that counsel can attend both of them ... The bar clerk meeting does ensure in **75% of cases chambers get the counsel they want to do the case** (*our emphasis*) in the list (although this may not be the counsel originally instructed). (Bar Clerk)

The Crown Court appears to have abrogated all responsibility in relation to listing with the bar clerk listing meetings both the warned list and for the daily list at [the local Crown Court Centre]. CPS have asked to attend the meeting, but have been refused. CPS would like to be there at the meeting to ensure that victim/witness interests are put to the fore when the final order of the list is decided, ie whether special measures are likely, and whether witnesses have any other particular needs. The sense is that the bar clerk listing meeting is there to organise the list for the benefit of counsel only. (Head of CPS Trials Unit)

The Bar have a big influence on list building When dealing with the weekly list the Bar Clerks will know which judges are sitting in which court and when, and it would be possible to seek to put a particular case in front of a particular judge who might be thought to be favourable. Bar Clerks also tend to put a 2 day case for trial on a Thursday, knowing that it is more likely either to be ineffective or to crack, so that their counsel can attend the Friday PDH courts. There is a perception that trials listed at the end of the week have a tendency to either be ineffective or collapse, and this is to counsel's financial advantage if he or she is then available to cover a number of PDHs on the Friday. (Crown Court Manager)

“... by all working together everybody gets a good result – you can bargain with the listing officer to get a convenient listing – ie you can say if this can be listed this way we can crack the case – this means everybody wins because there is a good throughput”. (Bar Clerk)

4.60 It was striking that a number of list officers and court managers were not prepared to have bar clerk meetings at all because they thought they gave inappropriate weight to the commercial interests of the bar clerks. Court Service HQ has previously issued guidance that bar clerk meetings on one circuit should cease. Inspectors agree that such meetings are inconsistent with good governance and appropriate transparency, and carry too high a risk that the interests of the Bar are put above those of the other court users. Although some of these concerns could be met if list officers chaired such meetings and representatives of all agencies were allowed to attend, Inspectors have concluded that dispensing with bar clerk meetings is the most satisfactory solution.

4.61 **Recommendation:**

Court Service ceases to hold bar clerk meetings.

Listing guidelines

4.62 The national Guidelines for Crown Court Listing were published in 1993 and have not been updated since then, despite some significant changes in court procedures and the increasing use of fixed trial dates in response to victim and witness needs. In January 2001 section 51 Crime and Disorder Act 1998 came into operation so that all indictable only cases were sent to a preliminary hearing in the Crown Court. Child abuse cases, rape cases, Persistent Young Offender cases (PYOs), cases where “special measures” are ordered for witnesses, “long cases” of five days or more, are all commonly expected to receive and in practice given fixed hearings. Although court centres do not routinely monitor the proportion of fixed hearings, there was a consensus amongst list officers that the proportion of fixtures had greatly increased over the past decade. As has already been noted, the drive to increase the number of fixed hearings is likely to continue.

4.63 Listing is also likely to be affected by the creation of the unified court and any consequential changes to court rules and procedure. This may take some time to work through. Nonetheless, the changes that have already happened as well as the implementation of recommendations within this report, make this an appropriate moment to review the national guidance to give greater clarity to the role of the list officer and the case progression officer, and firmer guidance on best practice in listing. The ETMP⁸ currently has responsibility for carrying forward all these issues.

4.64 Any revised guidelines should also provide an agreed glossary of terms for use across all court centres so that listing practices are fully transparent and comparisons between court centres can be easily made. The terms currently used can be confusing and misleading (see paragraph 4.52).

4.65 **Recommendation:**

Department for Constitutional Affairs work with the judiciary to revise the national guidelines on listing to promulgate good practice in light of the current aims of the criminal justice system, and in particular to:

- **Increase the proportion of fixed trial hearings to an optimum level;**
- **End the use of reserve lists;**
- **Ensure warned/firm/final list do not extend beyond one week;**
- **Provide consistent terminology.**

Management of list on the day

4.66 Inspectors were told that frequently cases are not ready to proceed at the time listed by the court. This was supported by the inspectors’ own observations in court. Delays to the start, and the running of lists, were common. What happens to the case on the day it is listed is the point at which the success or otherwise of the case

⁸ The ETMP team reports to the DCA.

management and listing process becomes most apparent. There are a whole host of reasons for delays in the running of the list. They include:

- a. Late attendance by witnesses.
 - b. Late attendance by the defendant.
 - c. Discussions at the door of the court between counsel over pleas or evidential issues.
 - d. Counsel reading his instructions.
 - e. Counsel dealing with cases listed in more than one courtroom.
 - f. Counsel taking instructions from defendant.
 - g. Inadequate conference facilities for defendants in custody.
 - h. Late delivery of defendants in custody.
- 4.67 Observations by inspectors confirmed that there are many occasions when judges are not adjudicating because there are no cases ready to call on. Inspectors often found a general acceptance that cases would not be ready and, correspondingly, little sense of urgency to ensure that courts start on time. Such delays are not fully quantified because the sitting time of a courtroom is measured from time to time the judge and courtroom are available and not when they are used. The court clerk will usually record the court as sitting from the time the judge enters the court, whether or not any case is ready to proceed, and, except for the lunch break, the court is recorded as sitting until the judge retires for the day. As a consequence the extent of the problem is not measured.
- 4.68 The improvements to case management and witness care which are discussed in the case management chapters, along with increased use of time marking, will all assist in making better use of court time and reducing delay on the day.

Prisoner delivery

- 4.69 The time of delivery of prisoners to a courthouse affects the progression of cases through the daily list. Although the prisoner escort providers operate under a contract that specifies arrival at a courthouse thirty minutes prior to the time the court starts, in practice this does not always happen for a variety of reasons.
- 4.70 The limited resources of the escort provider (in terms of numbers of staff and vans) can lead to round trips to several courthouses to drop off prisoners. Late deliveries occur even though almost all providers treat Crown Court centres as their first priority and deliver to them first, ahead of magistrates' courts with an earlier start time. The escort providers are also limited by the time that prisons are willing to release prisoners for court. This is sometimes insufficiently early to enable timely deliveries.
- 4.71 The difficulties are exacerbated by problems over prison overcrowding and the smaller number of prison establishments for youths and females. The current problems with prison overcrowding mean that prisoners are moved around the country to where space is available, and this may be some considerable distance from the court centre they are due to appear at. This means longer journeys to court, and an

increased risk of delay. Inspectors were told that the lack of trust in the accuracy of information sent to prisons about prisoners required for production has meant that often no action is taken to move prisoners to prisons close to the court centre where the case will be heard until the final daily list is produced. This is because there is no certainty that cases listed on the warned or firm lists will actually proceed on the day indicated. If Crown Court centres had a listing system that gave greater certainty of cases proceeding as scheduled, this would support earlier movement of prisoners. On the other hand, the small number of custody facilities for youths and females is always likely to mean long journeys to court.

The Prison Service has a responsibility of identifying where a prisoner is, and then using the inter prison transfer contract to move that prisoner to the nearest local prison to the Crown Court. Because the early warning lists for courts are often very inaccurate the Prison Service does not act upon them until they get a firmed list. Although some areas produce a firm list within 7 days of the hearing, others do not, and final confirmation of the hearing can be too late for lodging the prisoner the day before. In such cases we would rely on the ordinary court contractor to get the prisoner to the Crown Court, and this may well be problematic with long distance deliveries. Youth and female estates are fewer than ordinary adult estates, and as a consequence have regular out of area deliveries. (PECS) senior manager)

4.72 The Prisoner Escort and Custody Service (PECS) receives data from the prisoner escort contractors covering the timeliness of deliveries to court. The tables in Annex G show the return for 2001/2002 and 2002/2003 for both the Crown Court and the magistrates' court. The following table extracts the data relevant to the Crown Court.

Prisoners delivered from within the escort contractor's area

	Contractually on time (ie 30 minutes before court due to start)	% of prisoners	Before court starts	% of prisoners	After court starts	% of prisoners
2001/2002	97,144	73.39%	121,235	91.59%	11,131	8.41%
2002/2003	117,346	76.16%	140,596	91.25%	13,483	8.75%

Prisoners delivered from outside the escort contractor's area

	Contractually on time (ie 30 minutes before court due to start)	% of prisoners	Before court starts	% of prisoners	After court starts	% of prisoners
2001/2002	3,703	23.89%	9,264	59.77%	6,236	40.23%
2002/2003	3,229	19.70%	8,465	51.64%	7,927	48.36%

- 4.73 The delays in some parts of the country are more acute than others. Generally inspectors found that Crown Court centres were better served than magistrates' courts. However, the problems caused by late prisoner arrival persist in all the criminal courts.⁹
- 4.74 Inspectors found indications that progress was being made at a local level in dealing with the problems of late prisoner delivery. One escort contractor in a metropolitan area had, with the agreement of the magistrates' and Crown Court centres it served, revised its delivery schedule so that overnight prisoners were delivered from the police station to magistrates' court first, followed by collections from prison and delivery to Crown Court centres and then magistrates' courts. This new schedule was still being evaluated at the time of the review, but initial results suggested that it had improved the service to the magistrates' court without any adverse impact on the Crown Court centres.
- 4.75 PECS have recently set up multi agency for a based on the current escort contractor areas to discuss problems over prisoner delivery. Inspectors think more can be done at a court centre level to take account of likely delivery problems by listing such cases later in the day (see paragraph 4.22).

Prisoners are not listed for arrival in the afternoon. It would help if they were staged, particularly on a heavy day when a number of prisoners are arriving at the same time and all have to be dealt with and possibly then sit in cells waiting for a call to court. Under cramped conditions in the cell block some prisoners can become disruptive and cause difficulties for staff. This could be alleviated by having prisoners delivered in the afternoon as opposed to in the morning. Friday afternoons are a slack time in the cell block and if PDHs were held after 2 o'clock on a Friday afternoon with prisoners being delivered at lunch time, it would make a more economic use of the court cell area. When it is known that a prisoner is going to be delivered from [a prison several hundred miles away] requests have been made for that defendant to be listed for a later hearing but it has never been met with agreement from the list officer. (Custody office for prisoner escort contractor)

- 4.76 The effective use of video links should also reduce the need to produce prisoners to court. Inspectors consider there are operational steps that can be taken locally to improve the quality of service for the delivery of prisoners to court.

4.77 **Recommend:**

LCJBs audit access to prisoners and the delivery of prisoners, and sufficiency of conference facilities at Crown Court centres, and identify and implement strategies for local improvement.

- 4.78 Inspectors found a practice at some court centres of listing cases for mention so that prisoners can be interviewed. This is done to try to get around the difficulties of interviewing prisoners at the prison because of limited access times or distance of the prison. Whilst this practice is born out of frustration with interviewing arrangements

⁹ These problems were identified in the review of Listing and Case Management in the Magistrates' Court 2002 at paragraphs 3.57 and 5.10.

in prisons, it is really an abuse of the production system for prisoners that could well create more problems than it solves.

Delivery of prisoners into the dock

- 4.79 The time it takes to deliver prisoners into the dock once a case had been called on depends upon the proximity of the cells to the courtroom. This is a practical accommodation problem list officers have to deal with. It can mean delays of up to five minutes in delivering a prisoner to court. This disrupts the daily list. Indeed at one busy metropolitan court centre the delay in producing prisoners into the dock had been monitored and found to take on average six minutes. This particular court often handled forty prisoners a day. The overall delay was almost the equivalent of a judge's sitting day. As with many accommodation problems, there is usually no easy answer other than calling custody and bail cases alternately, unless the attendance of the prisoner can be avoided, for example in directions hearings by use of a video link to prison (see paragraph 3.84) or by use of paper PDHs or virtual PDHs (see paragraph 5.13).
- 4.80 The most significant listing problem for escort contractors is when multi-handed custody cases are not clearly identified on the list. In multi-handed custody cases each prisoner requires a separate custody officer. This has an impact on the number of custody officers required to keep the whole of the court, including use of conference facilities, running smoothly. Inspectors found that most courts had sufficiently good liaison between the list office and the custody staff to allow such arrangements as were possible to be made. It is clearly important that there is such liaison.

In multi-handed cases you need one escort officer to one prisoner and you can spot the multi-handed cases from the court list. In the really big cases the list officer will sometimes give advance notice – eg on one occasion there were 12 in custody in one court, but that courtroom did not have a secure enough dock, and you needed to take prisoners through the public area, and so the judge had to accept batches of 4 prisoners at a time instead of all 12 as he originally wanted in court. Premier Escort Services also needed to ensure that there were 2 officers per prisoner because they were going through a public area. Once the final list has been published it is very difficult to get a case moved from one court to another – even where there are problems in producing prisoners into the dock (custody officer for prisoner escort contractor).

Management of cases by the Crown Court

Role of the Crown Court

Introduction

- 5.1 The management of those cases where guilty pleas are entered at an early stage without being listed for trial do not present significant problems to listing. Even in those courts where there are delays in the provision of SSRs or PSRs, the shortness of the time required for sentence means that any variation to the original sentencing timetable appears relatively easy to accommodate. By contrast, the management of contested cases is much more complex and difficult. This is reflected in the low proportion of cases listed for trial that actually proceed to trial on the trial date.
- 5.2 In the year ending January 2003, out of 28,232 cases listed for trial, only 39.89% were effective trials, 36.84% cracked and 23.27% were ineffective. The high proportion of cracked and ineffective trials represents a significant wasted resource for the court and other criminal justice agencies, as well as undermining the confidence in the criminal justice system of victims and witnesses whose attendance turned out to be unnecessary.
- 5.3 The way in which a not guilty case is managed and listed by the court is very important. It is likely to affect whether the case does proceed to trial on the date listed, and how far victim and witness needs, as well as those of the defendant, are met.
- 5.4 The management of cases once not guilty pleas have been entered is complex because of the courts dependency on case preparation by the prosecution and defence, and the attitude of the defendant to the proceedings. Both the prosecution and the defence have a critical role to play in contributing to the effective listing of trials. The level of compliance by the prosecution and the defence with directions issued by the court is a cause for concern within the Crown Court. This has led to the development of the case progression role within the Crown Court to check on the trial readiness of the parties. We deal with the role of the prosecution and the defence in chapter seven.
- 5.5 Inspectors found that, just as listing practices varied from court to court, there is no standard method of case management in the Crown Court. Each Resident Judge has his own approach to case management. This leads to different practices in neighbouring courts served by the same CJS agencies, almost to the extent of having “post code PDHs”.
- 5.6 However, the broad aim of case management in not guilty pleas is to ensure that the case is ready to proceed to trial when listed. The courts seek to manage this process in two ways:
- by court hearings in front of a judge; and
 - by case progression led by the court administration but supported as necessary by short hearings in front of a judge.
- 5.7 There are a number of different hearings prior to the trial. We deal with these below. Some are mandatory whatever the judicial approach to case management –

preliminary hearings and plea and directions hearings – and others are discretionary – pre-trial review hearings and preparatory hearings.

Hearings prior to trial

Preliminary hearings

- 5.8 Each “sent” case is remanded by magistrates to a preliminary hearing in the Crown Court¹. The preliminary hearing will usually take place within eight days. The defendant has the opportunity of indicating, and sometimes entering, a guilty plea. Although Inspectors were told of cases where guilty pleas had been entered at this early stage, they were also told that in the great majority of cases no plea is taken. Instead a timetable is set, often for a standard period, for service of prosecution papers and then a PDH. There are different views amongst the judiciary, court staff and court users as to the value and purpose of such hearings.
- 5.9 One view is that cases benefit from early judicial involvement. Even if guilty pleas are relatively rare, the preliminary hearing is still valued by some judges as an opportunity to raise issues with the parties, particularly to challenge the prosecution over the level of charge or likely strength of the prosecution case.
- 5.10 A contrary view is that the directions are nearly always standard and could be made administratively, or at the point of sending by the magistrates’ court. If such an approach were adopted it was still thought an essential safeguard for either party to be able to apply to a judge in the event of disagreement over, or difficulty with, the directions.

“Section 51 cases are sucked through the system too quickly. Preliminary hearings can be useful –for guilty pleas – and in some areas good use is made of them in case planning However in many parts of the country the preliminary hearing is just a formality and a waste of time”. Senior manager in CPS

“Preliminary hearings in my view are a waste of time. There is no value in them. You could go straight to a PDH”. CPS Trial Unit Head

“Preliminary hearings are largely simply administrative, and could be done by correspondence ... very often there is no pressure by the judge to get an early guilty plea, in fact the opposite often happens when the judge says that this really is just too early in the day for the defence to take proper instructions”. CPS Trial Unit Head

“Preliminary hearings are a complete waste of time. The legal adviser in the magistrates’ courts could fix the timetable when they send the case up to the Crown Court and it would save a wasted hearing”. Court Manager

- 5.11 The ETMP team are piloting “automatic directions” hearings at a number of court centres. The evaluation of those pilots will assist in assessing the benefits of the current system of preliminary hearings. Although preliminary hearings are often short, there are obvious benefits for the court and all court users in reducing the number of unproductive hearings.

¹ Section 51 Crime and Disorder Act 1998.
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Plea and Directions Hearings (PDHs)

- 5.12 These hearings were established by Practice Rules made by Lord Chief Justice Taylor dated 25 July 1995. The intention was to strengthen case management by the court. The direction made it mandatory to have a plea and directions hearing in all cases, except serious fraud, committed or transferred to the Crown Court. It set rules for the form and conduct of the hearing including the completion of a standard directions form by counsel. Serious fraud cases already had separate provisions for preparatory hearings.
- 5.13 Although PDHs generally take the form of a hearing in person, a small number of courts have piloted PDHs that take place in the absence of the defendant and counsel. One pilot related to the use of paper PDHs where the forms and directions were sent by post. Another pilot at the Crown Court sitting at Manchester Minshull Street uses the internet for “virtual PDHs”. These pilots have been supported, and are being evaluated, through the ETMP to test whether all pre-trial hearings need the attendance of counsel and the defendant regardless of the length or complexity of the case. The flexible use of the internet or paper PDHs may assist in developing ownership of a case by counsel originally instructed and thereby improving the case preparation.
- 5.14 Some Resident Judges have also developed independently their own practices and procedures for PDHs, building on the original Practice Direction. This has included creating additional PDH forms to supplement the national PDH form and take account of developments since the original Practice Direction, such as video recorded interviews of witnesses. This can cause confusion for counsel unfamiliar with the practice at that particular court centre. Inspectors consider that a review of the national PDH form to bring it up-to-date, and include good practice developed at a local level, would be very beneficial.
- 5.15 Although the directions hearings seek to deal with a number of issues, the key ones in relation to witness care and listing are these:
- identification of which witnesses are required for trial, and which can be agreed under section 9 Criminal Justice Act 1967 or agreed by way of admissions;
 - accurate trial time estimates; and
 - acceptability of alternative pleas.

The Inspectors were told that PDHs are most likely to be effective if:

- counsel has been instructed well in advance;
- counsel for both sides is fully prepared, either counsel originally instructed or a substitute, and is able to identify all the issues in dispute in the case;
- trial counsel for defence attends so that the issue of pleas can be fully discussed with the defendant;
- CPS is able to deal with alternative pleas either in the instructions to counsel or in person;

the judge is prepared to probe and challenge counsel.

- 5.16 There was strong support for the view that it is important for the judge to be proactive in compelling counsel and the CPS to fully accept their responsibilities to make the PDH an effective hearing. However, as discussed further at paragraph 5.20, Inspectors also found a contrary view amongst judges, equally strongly held, that the role of the judge should be more limited.

Pre-trial review hearings (PTRs)

- 5.17 At some courts certain categories of cases are listed for mention a week before the trial to check whether the case will indeed proceed as a trial.

One court had identified cases of violence as prone to either cracking or being ineffective. Accordingly all such cases are listed for mention, and a form completed by counsel as to trial readiness. This has been found to be effective in reducing the incidence of cracked/ineffective trials in that type of case.

Another court found child abuse cases presented particular difficulties over the readiness of parties to proceed, particularly in relation to the use of special measures. Such cases are now routinely listed for mention in order to avoid the worry or distress of unnecessary court appearances.

Preparatory hearings

- 5.18 The Criminal Procedure and Investigation Act 1996 (CPIA) in section 28-38 and the Criminal Justice Act 1987 in sections 7-10 make provision for pre-trial hearings with binding rulings in complex or lengthy² cases. Under sections 39-43 of the CPIA a judge also has power to make binding pre-trial rulings without restriction on the type of case. A full evaluation of the frequency or usefulness of these provisions was beyond the scope of this review, although the review team found that binding rulings were only used exceptionally as part of judicial case management. A greater use of binding rulings may well go hand in hand with, and support, earlier case preparation by the parties.

Judicial approach

- 5.19 The approach to all the hearings prior to trial, and their effectiveness, is strongly influenced by the views of the Resident Judge. This can lead to different practices in neighbouring courts that in turn can lead to confusion and to inefficiency within local cj agencies and amongst other court users. Indeed, inspectors also found that the approach and practices of individual judges may differ from those of the Resident Judge.

In one group of courts covering several cj areas all agencies agreed similar service level agreements (SLAs) for procedures for sent cases across all the court centres in the group.

In another area, a CCP complained he had to agree three different SLAs for sent case

² The Criminal Justice Bill includes provision at section 254 to extend preparatory hearings to serious cases.

procedures with the three Crown Court centres within his area. When his prosecutors moved from court to court they had to be aware of the idiosyncrasies of each court centre.

In two neighbouring Crown Courts (little more than 10 miles apart) the Resident Judges took opposing views on case management. In one court there was a “hands on” approach, while in the other the approach was not to interfere unless necessary.

- 5.20 As already mentioned, inspectors found two contrary views on case management amongst the judiciary: one proactive and interventionist and the other non interventionist. On one view it is vital for the judge to get hold of the case and challenge the parties about issues such as witness requirements, acceptable pleas and length of trial. The contrary view is that the judge should not “enter the arena” Instead it is for the parties to prepare the case properly, albeit the judge may need to rule in the event of a dispute between them.
- 5.21 These divergent views are reflected in the way in which directions hearings are conducted. Some judges are noted for a willingness to challenge the parties over issues such as which witnesses required to give evidence, the appropriateness of alternative pleas or the length of the trial. Others accept the completed PDH form as presented by the parties and make no further enquiry.
- 5.22 Inspectors found that a proactive approach to pre-trial hearings is more likely to ensure cases are well managed and the inconvenience to witnesses of unnecessary court attendances kept to a minimum. Lord Justice Judge has endorsed such an approach in the case of *R v Chaaban*³. In this case Judge LJ made it clear that a judge has responsibility for managing the time a trial should take, and not simply accede to the wishes of both or either of the parties in the case.
- 5.23 All the Resident Judges interviewed had firm views on the way in which cases should be managed and the degree of involvement of the judge in the process. This was reflected in the different strategies and listing policies within those courts. However, the Resident Judge has no power to direct fellow judges and has no formal management role over them. As a result, although the Resident Judge can determine the listing and case management policy, he or she can only gain the support of his or her fellow judges to a particular case management policy by a process of discussion and persuasion.

At one court centre the Resident Judge held meetings every three months with his fellow judges to discuss any issues of interest, including case management and listing. The approach was described as “collegiate”.

At another court centre the Resident Judge, who was strongly in favour of the proactive approach to case management, found it necessary to restrict PDHs to those judges whom he could rely upon to be proactive.

In another court the Resident Judge tried to deal with as many PDHs himself as possible in order to ensure the hearings were conducted as thoroughly as possible.

³ Court of Appeal Criminal Division 20/3/03.
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- 5.24 The development of local strategies, which reflect local listing problems and the views of the Resident Judge, have led to a range of different case management and listing strategies.

One very busy metropolitan court had identified victims of offences of violence as likely to fail to attend the trial or not wish to proceed. It had introduced the personal attendance of victims of offences of violence at the PDH. After the effect of this was monitored against the cracked/ineffective trial rate the scheme was modified to include only victims of domestic violence.

At two Crown Court centres weaknesses in the PDH form introduced by the 1995 Practice Direction had led to the introduction of supplementary directions forms. At one court this extended to detailed pro forma directions to ensure each party was clear as to its responsibilities.

At another busy metropolitan court a system of administrative hearings had been introduced following a six-month consultation exercise with court users. PDHs would usually be listed in one court with a court clerk but no judge. The parties would seek to agree the directions, witness requirements and trial estimate. If they did not agree the court clerk was then able to issue the appropriate directions. If the parties were unable to agree, or the case was particularly complex or sensitive, the case would then be placed before a judge. The aim was to free up courts that had previously been heavily weighted with PDHs in order to concentrate on reducing a backlog of trials.

At one court the Resident Judge took the view that it was the responsibility primarily of the parties to ensure they made themselves trial ready, and accordingly he made as few directions as possible.

- 5.25 The above are all examples of initiatives led by the Resident Judge. There are benefits to developing listing and case management in this way because the most efficient and effective strategies are likely to depend on the size of the court, the mix and volume of casework, the extent of any backlogs in work and the support of court users.

- 5.26 However, there are also likely to be benefits in drawing on the experience of the Crown Court as a whole, and particularly court centres with a similar profile, to identify the most effective and least wasteful strategies. Although there are opportunities for circuit judges to discuss and explore good practice within the circuit, for example at annual seminars, Resident Judges are often left to work out their own local strategies of listing and case management. This can easily lead to judges having to “re-invent the wheel” in their own court which is a time consuming process.

- 5.27 The evaluations being done through ETMP in relation to the paper PDH and virtual PDH pilots have been mentioned already. The ETMP is exploring other case management strategies as well. Inspectors think there is merit in the Court Service also evaluating the effectiveness of the case management strategies currently in operation at all court centres. This would mean the Court Service developing its performance management from a focus on timeliness of disposals at group and circuit level to an evaluation of a much broader basket of measures of the effectiveness of case management against the new PSA objectives. Such a basket of measures might include:

- the cracked and ineffective trial rate and reasons (although at paragraph 5.56 we suggest the cracked/ineffective data can be made more useful);
- % of trials with more than one ineffective trial hearing;
- % of fixed trials and % of floaters/backers/reserve trials;
- % of trials per disposal.

5.28 The development of different case management and listing strategies at different courts is a reflection of the fact that both listing and case management are recognised as judicial. However, the Court Service can have an improvement role in developing local case management and listing strategies by providing good quality management information on which are the most effective strategies for particular court centres.

5.29 **Recommend:**

Court Service and the judiciary work together to develop best practice strategies for case management and listing drawing upon experience through out the Crown Court, including that of the ETMP pilots.

Criminal Procedure Rule Committee

5.30 The Courts Act Bill⁴ makes provision for a Criminal Procedure Rule Committee to ensure that the criminal justice system is accessible, fair and efficient. At the time of writing the committee was being set up under the chairmanship of Kay LJ. The committee will be able to review the current rules framework within which cases are managed in the Crown Court. It will be in a position to strengthen the case management powers of the judiciary in relation, for example, to determining which witnesses can be called at trial. The committee may wish to consider the extent to which the present arrangements may be capable of tactical use simply to test whether a witness is willing to attend court. We refer later at **paragraph 6.18** to another issue we think suitable for consideration by the committee, namely the re-introduction of witness orders.

Reading time for judiciary

5.31 At proactive approach to case management at pre-trial hearings necessitates preparation by the judge so that he or she is familiar with the case. Although the prosecution provide case summaries, and indeed in some courts court clerks do as well, these may not be sufficient to allow the judge to probe issues such as whether certain witnesses are required or whether alternative pleas have been fully canvassed. List officers make little allowance at present for reading time by judges, except perhaps in the major cases with a large volume of evidence. Instead judges are left to find the time to prepare as best they can. Often a judge can find time during the court day to read cases for the next day's list, not least because of the interruptions that can occur during the daily list.

5.32 Some pre-trial lists will be easier to prepare than others, and there is sense in limiting the number of pre-trial hearings in a list to a manageable number of the judge. It is also important for the court administration to ensure that the cases for the next day are

⁴ Courts Bill Part 7.
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available to the judge early the day before. Nonetheless, inspectors think that reading time should be taken into account when the weekly or daily list is prepared so that the judge can be fully prepared before a pre-trial hearing. We deal further with this issue at **paragraph 3.47**.

Judicial training in case management

5.33 There was recognition in the courts visited that some judges found the case management role easier than others. Indeed some judges seem to have an aptitude for case management that other judges do not share. Conversely some judges are regarded as much better trial judges than others. The skills required for managing cases through the court process are not the same as those needed to hear trials, appeals and to sentence. Several members of the judiciary told Inspectors that they thought that training in case management would be valuable. For instance, how a judge can be challenging of counsel without appearing to favour one side or the other.

5.34 The benefits of training have already been recognised by Sir Robin Auld in the Review of the Criminal Courts. Auld LJ described the training of our professional judiciary as “modest”⁵ in comparison with other jurisdictions. He recommended⁶ that, “*the Judicial Studies Board be adequately resourced to meet the increased training needs of the judiciary, including those in respect of ... case management ...*”. The Inspectors agree with this view. Overall responsibility for judicial training rests with the Senior Presiding Judge. Judicial training for recorders and circuit judges is provided by the Judicial Studies Board (JSB) but does not at present deal specifically with developing case management skills in relation to criminal cases.

5.35 Furthermore, judicial appraisal as proposed by Sir Robin Auld⁷ would assist in developing case management skills. In interviews with the judiciary there was little opposition to the idea of appraisal provided the appraisers were fellow judges. It was generally agreed that the judicial role is a lonely one and the opportunity to observe other judges in court and provide feedback would be of benefit to both appraised and appraiser.

5.36 **Recommend:**

The Senior Presiding Judge, in consultation with the JSB, reviews the availability of judicial training in the management of criminal cases.

An alternative approach: designated judges for case management.

5.37 Pre-trial case management through preliminary hearings, PDHs and PTRs requires significant preparation time and has a major impact on the daily list (see paragraph **4.66**). At present circuit judges usually conduct these hearings, although in some courts a shortage of circuit judges means that recorders conduct them from time to time. There are several factors in favour of the pre-trial hearings being carried out by a circuit judge. A circuit judge will have the experience of having conducted criminal trials, and there may be an opportunity of listing pre-trial hearings before the judge who will hear the case, particularly in the smaller court centres.

⁵ Ibid p265.

⁶ Ibid p266 recommendation 79.

⁷ Ibid p268 recommendation 80-82.

- 5.38 However, as has already been indicated, Resident Judges and Court Managers informed Inspectors that some circuit judges do not enjoy case management and give it only superficial attention. Another way to achieve consistency in case management within the Crown Court might be the creation of dedicated case managers, who have an interest in case management and display the necessary competences. For example, many District Judges in the magistrates' courts are recognised as being good at case management. After the UCA comes into existence there may be opportunities for the creation of a post (perhaps called "criminal registrar" or "Crown Court master") to handle case management of all Crown Court cases not allocated to a trial judge at an early stage.
- 5.39 A similar proposal is discussed in *Judges' Case Management perspectives: the views of opinion formers and case managers*, a report written for LCD by Joyce Plotnikoff and Richard Woolfson:

"On the criminal side ... most judges took the view that 'case management judges should be senior and authoritative'. Circuit judges routinely conducted PDHs for cases to be tried by High Court Judges, who were only rarely available to conduct the PDHs themselves. Recorders were only assigned to PDHs when otherwise the court would not get through the list. However, a few judges thought that there was a need for a new tier of judge to address pre-trial matters. One Circuit Judge suggested a 'criminal District Judge' (*they already exist in the magistrates' courts*) and a High Court Judge suggested that we should 'not confine case management to the most senior judges'"⁸.

A recorder said to Inspectors "There is room for a criminal registrar, who can deal with short cases, on a par with [District Judges in the magistrates' court]. They could do all mentions, preliminary hearings, PDHs and bail applications It would provide continuity and consistency and stop disruption in other courtrooms". He said these administrative hearings are a "waste of judges' time".

- 5.40 If this role were to be developed it would need an agreed competence framework, which recognised the skills necessary in managing criminal cases, and be supported by appropriate training. A cadre of judges, who have training and experience in effective and consistent methods of case management and who can move on to higher judicial office, would answer in part the need for greater consistency in case management. Such a role may only be viable in the larger court centres, where currently preliminary hearings, PDHs and mentions take up a significant amount of court time that could otherwise be used for trials.
- 5.41 Some of those interviewed felt that a dedicated case management role would not attract lawyers of a sufficiently high calibre or the right experience. However, Inspectors see no reason why such concerns could not be addressed by making the post a part of a career progression within the judiciary towards circuit judgeship and by drawing on the professional judiciary within the magistrates' court. Such a body of dedicated case managers would be able to develop and disseminate good practice and promulgate consistent approaches to the handling of, for example, PDHs and increasing the number of effective trials.

⁸ Plotnikoff and Woolfson, p15, LCD, 2002, ISBN 1 84099 038 4.
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- 5.42 The creation of such a post would free recorders⁹ and circuit judges to deal with pleas, sentences and trials, and allow trials listed to start as scheduled without being delayed by over running pre-trial hearings. There are other reasons why trials do not start as scheduled, such as counsel needing time to prepare or late delivery of prisoners, but at least one common cause of delay would have been removed. It may facilitate a better use of the combined UCA court estate by allowing non trial hearings at courthouses currently used by magistrates. As already indicated, it may also be possible to draw on the time of the District Judges who currently sit in the magistrates' court.

Trial judge

- 5.43 Inspectors found that trial judges were only identified at an early stage when necessary because of the nature of the case, for example if a "ticketed" judge was required. Even where a case was allocated for a particular judge, it would usually be after the PDH stage. In the great majority of cases the trial judge is only finally identified when the firm list comes out, or in the case of floaters or reserve cases, when the daily list is finalised the day before. As a consequence, there is little continuity between the judge dealing with the pre-trial hearings and the trial, except perhaps in the very small one or two court centres.
- 5.44 There are obvious benefits in a judge retaining control of a case through out its life in the Crown Court. However, the Inspectors accept that it is impractical to do so without the current listing practices because it would introduce too much inflexibility into an already complex process. A move to a greater use of fixtures may assist to enable judges to retain control of a case in some instances.

Case progression

- 5.45 Sir Robin Auld in his Review of the Criminal Courts identified a fundamental weakness in case management prior to trial in that "cases only progress at hearings and insufficient work is done between hearings by parties". One response to this weakness has been attempts to develop a case progression role within the Court Service.
- 5.46 Reports in 1998¹⁰ and 2002¹¹ have already identified the potential benefits from such a post. The case progression officer can act as both a progress chaser of the prosecution and defence, and gather the accurate and up-to-date information about plea and trial readiness that is essential if list officers are to minimise the number of cracked and ineffective trials.
- 5.47 Inspectors found considerable variations in the way and degree to which the case progression role had developed in the different court centres. Indeed, not all courts had dedicated case progression officers.

At one court centre case progression was based upon the submission of certificates of readiness from the defence, CPS and the police a specified number of days before the trial. The defence and CPS were required to deal with alternative pleas and trial readiness, and the

⁹ Although there are problems with finding appropriate trial work for recorders because of the restricted periods for which they sit: see paragraph 3.48.

¹⁰ Review of the Effectiveness of PDHs in the Crown Court – January 1998 LCD.

¹¹ Court Service Internal Audit Report into Criminal Case Handling – June 2002.

police to deal with whether the prosecution witnesses had been contacted and were prepared to attend the trial. A failure to return the certificate would be followed up with a phone call from the list office. The same court was also in process of starting a weekly meeting to build on the certificates of readiness between the list officer and the CPS to identify which cases within the warned or fixed list were likely to be ready to proceed. As one CPS caseworker said “it has made us manage our files properly”.

At another court centre the parties in each case listed for trial are telephoned by the case progression officer, as the trial date approached, to check on the likelihood of the case cracking and the state of trial readiness. This court had a significantly lower ineffective trial rate than the national average.

At a third court centre a case progression form was being revised with the assistance of the CPS to make it a more effective tool along with the introduction of weekly meetings with the CPS to deal with the trial readiness of cases within the warned or fixed list.

- 5.48 The initiatives in relation to case progression were, in the main, at an early stage and had not been fully evaluated in relation to the cracked or ineffective trial rate. However, inspectors were told anecdotally of cases where ineffective hearings had been avoided by the improved information flow to the list officer. The Inspectors feel sure that development of case progression is an important step towards the reduction of cracked and ineffective trials. The ETMP¹² could facilitate this development in a number of ways.
- 5.49 Case progression officers occupy a wide range of grades, from Administrative Officer to Higher Executive Officer, and have correspondingly different roles. Some case progression officers did no more than chase the return of certificates of readiness from the parties, and pass the information on to the list officer. Another case progression officer would familiarise herself with the case file, contact the parties direct and explore the likelihood of the case cracking. The contents of the certificates of readiness differed from court to court, and at one court were criticised as being too vague. The introduction of weekly meetings between the list officer or case progression officer and the CPS had been successful at some courts, but not others.
- 5.50 Although the success of case progression will depend upon the efforts of court staff at a local level, and the responsiveness of the prosecution and defence, the ETMP can assist in successfully developing the role in these ways by providing guidance and promulgating good practice. The introduction of a specimen job description, supported by a competence framework and grading guidelines, and the issue of good practice guidelines based upon an evaluation of existing case progression schemes would both provide a good foundation for the development of case progression.
- 5.51 Case progression by the court is reliant on an accurate and timely response from the prosecution and the defence. Case progression officers told inspectors that they often had difficulty in contacting the defence solicitor or CPS caseworker dealing with a particular case. As far as the prosecution are concerned, inspectors believe that the CPS Areas should be able to identify a case progression liaison officer who can ensure that accurate and timely responses are sent. This had been done in some, but not all of the CPS offices visited.

¹² The ETMP, which reports to DCA, has responsibility for developing the case progression role.

5.52 **Recommend:**

The Department for Constitutional Affairs to develop the case progression role by issuing guidelines on best practice and a job description and competence framework;

CCPs should appoint case progression liaison officers to take responsibility for ensuring timely and accurately information on trials is sent to the case progression officer in the Crown Court.

Interagency working to improve case management of trials

5.53 Prior to April 2003 the Court Service did not have any cracked or ineffective trial targets. However, the new PSA targets of reducing ineffective trials and increasing victim and witness satisfaction, as well as respecting the rights of defendants, have made the reduction of ineffective trials a priority. Although no national target has been set for reducing cracked trials, the inconvenience to witnesses of cracked trials and the likely impact on levels of satisfaction has led at least one LCJB to include the reduction of cracked trials as a local target. Any improvement in the cracked and ineffective trial rate is reliant on the prosecution, defence and the court delivering improvements in performance that in turn enable each other to improve performance. The quality of the cracked and ineffective trial data, and the use to which it is put, have now become central to the criminal justice system.

5.54 Each court centre produces data on cracked and ineffective trials that identifies the reasons for that outcome. We set out the national statistics at Annex 1. The cracked/ineffective trial data is usually discussed at court user groups, and is often considered by a separate inter agency group comprising a court administrator, usually a court manager, CPS and the police. However, the effectiveness of the processes for examining and using the data vary from court to court and depends, in particular, on the responsiveness of the prosecution agencies, the police and CPS.

At one court centre the Resident Judge has set in place regular performance meetings that included court administrators, police and the CPS. He chairs the meetings, and amongst the issues discussed are cracked and ineffective trials. As a result, offences of violence were identified as being prone to crack, and for a pilot period victims were asked to attend the PDH in order to establish to the defence their willingness to attend the trial.

At another court centre weekly meetings were held between the court manager, police and the CPS Business manager at which cracked and ineffective trials are reviewed. There is also a quarterly meeting that includes the Group Manager and the CCP to support this process. The meetings have identified late service of medical evidence as a problem and the police are piloting a possible solution.

At another court centre the Resident Judge regularly meets the CPS to discuss, amongst other issues, some arising from the cracked/ineffective trial data about the quality of the CPS review. He also meets with the police in order to try and address problems over witness warning and has visited police administration units to see the problems for himself.

5.55 The LCJBs will no doubt want to review the effectiveness of these processes to ensure they are sufficiently robust to reduce the cracked and ineffective trial rate in the area.

The Inspectors are firmly of the view that the whole of the case preparation process by the prosecution should be examined as part of the cracked and ineffective trial joint performance management. It follows that joint performance management of police file quality and timeliness and of cracked and ineffective trials should form part of the same process with police, CPS and the Crown Court taking part. This is already happening in some areas.

- 5.56 The cracked/ineffective trial data produced by CREST is useful, but has some limitations. The reasons for cracked trials are not as detailed as those allocated in relation to cracked trials in the magistrates' court. Although the reasons for cracked trials in the magistrates' courts have problems of definition¹³, there are benefits in having a fuller list of reasons for the Crown Court. In particular, it would be very useful to know the proportion of cases where the defendant offered an alternative plea at an earlier stage but which was only accepted by the prosecution at trial, or where conversely the prosecution offered to accept alternative pleas at an earlier stage. The current reason – “prosecution accepts guilty plea to a lesser charge” – does not assist in identifying responsibility. There is scope to review the current cracked and ineffective trial codes to identify how many are of value, and whether they can be improved. For example the codes for defendant deceased and found unfit to plead are very little used and may perhaps be combined under an “other reasons” head thereby releasing a code for re-allocation. Similarly, several of the codes for ineffective trials due to court or administration would also appear capable of being combined.
- 5.57 The standard data print-outs produced from CREST identifies numbers and reasons for cases cracking or being ineffective, but do not identify which cases they are. The Inspectors found that some courts had taken steps to customise the print-outs so that the case references were also available. This made the tracking of the individual cases much easier. However, the police, CPS and the court need more detailed information than the cracked and ineffective print-outs can provide. Often it is only by examining the case in detail that the necessary steps can be identified to avoid a repetition in future. This further level of detail can be obtained by reading the case file, or by more detail being recorded in court for the reasons for the case cracking or being ineffective.

At one court centre the importance of easily identifying each cracked and ineffective trial had been recognised, and, with the assistance of the IT section at Court Service HQ, adjustments were made to CREST locally to enable that information to be extracted.

At another court the judge hearing a case that cracked or was ineffective will complete a synopsis of the reasons apparent from the explanations given by counsel. This synopsis is then copied to the CPS and police.

However an attempt by the Resident Judge at another court to introduce a similar system has had only partial success because not all judges completed the analysis form.

- 5.58 A further difficulty with the data currently produced by CREST has been that it related to cases dealt with at each court centre, and did not provide data from that court centre in relation to each LCJB area from which it takes cases. This was a problem because a court centre is likely to take cases from more than one LCJB area.

¹³ Review of Listing and Case Management in the Crown Court paragraph 4.45.

The Court Service is now able to produce data related to each LCJB area. This is a welcome development that should be particularly helpful in assessing the impact of transferring or sending of cases from one LCJB area to a court centre in another LCJB area.

- 5.59 Although the judge determines the reasons for the cracked/ineffective trial in some courts, in the majority of the courts visited it was the court clerk who identified the reasons on the basis of what was said in open court without consultation with the parties or indeed the judge. One court clerk told inspectors that he would not be prepared to consult with counsel because they would not be objective about the reasons. This contrasts with the operation of cracked and ineffective trial monitoring in the magistrates' court¹⁴ where the court clerk seeks the views of the defence and prosecution and indeed there is space for them to endorse their views on the monitoring form.
- 5.60 The accuracy of the reason recorded is very important. Other agencies and court users must have confidence in its accuracy before they will be prepared to act upon it. Managers in several CPS Areas said that they had doubts over the accuracy of the data after they received details of the cases concerned. One way to establish the integrity of the data would be for the allocation of reasons to be done by the judge hearing the case once he or she had heard the reasons for the case cracking or being adjourned. Another way would be to gain the agreement of the prosecution and defence at the time the reason is recorded in court. There are, no doubt, other ways of ensuring the data is accepted by the different agencies. This is an issue the LCJBs need to address along with the systems for ensuring that full use is made of the data created. The revised operational instructions to the Court Service and the CPS already mentioned seek to address both these issues.

Appeals against conviction in the magistrates' Court

- 5.61 The Defendant has the right to appeal to the Crown Court against conviction in the magistrates' court on any grounds. The appeal hearing in the Crown Court will take the form of a re-hearing, with each side calling its evidence again. This presents the prosecution with particular problems over witness warning. Although the appellant should give notice to the prosecution of the appeal¹⁵ as well as notifying the magistrates' court, this does not always happen. The prosecution may then only find out that the case is listed a matter of weeks before the hearing and then have difficulty contacting the witnesses.
- 5.62 Once the appeal has been received by the Crown Court, it will be listed for hearing. Inspectors found that a number of list officers would list the hearing without the benefit of any witness availability. Although list officers told Inspectors that if the witness was not available for the hearing they would be prepared to adjourn the case, it seems to the Inspectors to be far better for the prosecution to check on witness availability, and willingness to give evidence again, before a date is set.

¹⁴ Revised operational guidance has been issued by the Court Service and CPS to take effect from 1st September. It provides for prosecution and defence to comment on the reasons for a case being ineffective or cracking, and suggests monthly interagency meetings to identify actions from the CIT data.

¹⁵ Rule 7 Crown Court Rules 2002.

- 5.63 Although it is quite common for defendants to withdraw the appeal very shortly before the hearing, it is an appeal against a judicial decision and would benefit from a more structured approach than Inspectors generally found.

At one court user group a problem was identified by CPS that delay in learning of appeal cases caused problems in witness warning. Arrangements have been made with local magistrates' courts for copies of appeal papers to be sent to CPS at the same time as the papers are sent to the Crown Court. This has facilitated early retrieval of paperwork and warning of witnesses.

Liaison with magistrates

- 5.64 Magistrates need to assess the likely sentence when deciding on venue for trial or whether to commit for sentence¹⁶ under the CPIA 1996. The proportion of cases where magistrates have declined jurisdiction or have committed for sentence is high. According to CPS data for the year 2002, 39,515 either way cases were committed for trial in the Crown Court because the magistrates' declined jurisdiction. This amounts to 73% of all either way cases committed for trial to the Crown Court. The remaining 27% were committed for trial following the defendant's own election of trial by jury.
- 5.65 In over half the either way cases that were committed for trial in 2000 and resulted in a guilty plea or a conviction after trial, the defendant received a sentence within the powers of the magistrates' court.¹⁷ A further 19,940 either way cases were committed for sentence by magistrates to the Crown Court after a guilty plea had been entered in the magistrates' court. It is essential that magistrates have a clear understanding of the sentencing practices of the court to which they are committing, particularly if the magistrates' sentencing powers are increased in line with the provisions of the Courts Bill.
- 5.66 Inspectors found that the degree and sufficiency of the feedback provided by the Crown Court to the magistracy was variable.

Any guidance tends to be ad hoc and given at magistrates' training events and the like by the liaison judge. (Justice's Clerk)

There is no liaison or feedback. (Justices' Clerk)

Very little feedback is given even on appeals but court user groups provide opportunity for informal contact with the Resident Judge for general feedback. (Justices' Chief Executive)

The Resident Judge provides information at liaison meetings if he feels it is appropriate and that is passed on to Benches. This mechanism is adequate. (Justices' Clerk)

- 5.67 The Inspectors consider that a joint review between court centres and the relevant Justices' Chief Executive or Justices' Clerk over the provision of information on

¹⁶ Committals for sentence will be abolished within the Unified Court structure, but there will still be an allocation process between summary and indictable courts and sentencing information will still be needed.

¹⁷ "Justice for All" TSO July 2002 paragraph 4.20.

sentencing to the local magistracy would be useful to ensure that the magistrates' needs are being fully met.

Information Technology

- 5.68 The provision of IT links between the Crown Court and court users has an obvious potential to improve case management by improving the flow of information. Although the Court Service has its own intranet, the provision of terminals is often restricted to the court manager, and little use was made of the internet links to other agencies even where they met security standards.
- 5.69 Inspectors found that links to outside agencies were very limited and the result of local bi-lateral initiatives. The virtual PDH pilot at the Crown Court sitting at Manchester Minshull Street has already been mentioned at paragraph **5.13**.

<p>At one court centre the police had established a direct link to the list office for the purpose of sending witness availability direct to the court.</p>

- 5.70 The Court Service is in the process of rolling out a LINK project that will extend the provision of desktop PCs to all court staff. At the same time links to other court users are being piloted through the Exhibit/Exchange pilot and a secure email pilot. These pilots, if successful, will enable the courts to communicate electronically with other court users and should assist in making case management a more efficient process as well as expediting the dissemination of the court lists.

Witnesses in the Crown Court

Witness care in listing and case management

Introduction

- 6.1 The importance of good witness care is difficult to over emphasise. As HHJ Fabyan Evans¹ said, “Without witnesses there would be no criminal justice system”.
- 6.2 Attending the Crown Court can be a stressful experience for all parties involved whether they are victims, defendants, police officers, jurors, civilian or expert witnesses. The images portrayed of what occurs there by the media are often the only knowledge of the Crown Court that the general public have. Court attendance for victims and witnesses is particularly difficult. For the victim or witness to a crime, the subsequent court case can often mean the reliving of that traumatic experience, facing the alleged offender and his family and friends, and being cross examined by an unsympathetic barrister.
- 6.3 The Witness Service was established in the Crown Court in order to increase victim and witness confidence in the CJS. It provides a very good and highly valued service. However, there remains much more that can be done to meet witness needs. In particular:
- a. Ensuring witness needs for special measures² are properly assessed;
 - b. Obtaining accurate information on civilian witness availability before the trial is set down;
 - c. Giving witnesses early notice of when a trial is likely to be heard;
 - d. Ensuring a witness can get to the court where the case is listed, particularly if the case has been transferred;
 - e. Increasing the number of trials fixed at or shortly after the PDH to give the witness greater certainty as to when a trial will be heard;
 - f. Ensuring appropriate witness accommodation separate from the defendant and defence witnesses to deal with the real and understandable concern of witnesses that they may find themselves confronted and intimidated by the defendant or his friends and family.
- 6.4 The issues around reducing the numbers of trials listed as floaters, backers or reserves are addressed elsewhere in this report. This section deals with the practical operational steps that can be taken to improve witness care³, principally of prosecution witnesses. Failures in witness care are most obvious with prosecution witnesses. If the prosecution witnesses do not attend court then the case cannot

¹ Improving Witness and Victim Care in London, 18.12.02.

² Special measures include giving evidence by CCTV link or the use of screens between the witness and the defendant in court.

³ The CPS/ACPO/OPSR Victim and Witness Project has established five pilot sites since July 2003 with the remit of “identifying the changes required in the provision of service to victims and witnesses throughout the life of the case to increase victim/witness satisfaction, enable more witnesses to give evidence and reduce the rate of ineffective trials”. An evaluation is due in March 2004.

proceed, regardless of whether the defence witnesses were able or willing to attend. This is reflected in the reasons for ineffective trials. In 2002/03, 22% of ineffective trials were due to the prosecution witnesses failing to attend, and only 3% were ineffective because of the absence of defence witnesses.

- 6.5 The use of CCTV links for witnesses to give evidence at trials without being present in the courtroom was introduced for some child witnesses by the Criminal Justice Act 1988. The use of CCTV links, and other special measures, has been extended to all vulnerable and intimidated witnesses by the Youth Justice and Criminal Evidence Act 1999. However, for the majority of witnesses the alternatives are either that they give evidence live or have their evidence agreed and read out in their absence at the trial. The desirability of a more fundamental departure from reliance on direct testimony in favour of increased use of pre-recorded video evidence is beyond the scope of a review of this nature.

Witness availability for non-police witnesses

- 6.6 The accuracy and timeliness of witness availability is essential to effective listing of trials. The collection and supply of accurate witness availability for both civilian and police witnesses to the Crown Court is the responsibility of the police.
- 6.7 When a police officer records a statement of evidence from a victim or witness he or she should also record contact details and dates that the witness cannot come to court over the next six months. It is important that both are as full as possible. If, as sometimes happens, the only point of contact is a mobile phone, this can frustrate attempts to get further information from the witness or inform him or her of the trial date. However, it can be difficult for witnesses to predict accurately their availability for many months in advance. For this reason, it is unusual to find any dates to avoid recorded on the back of the statement.
- 6.8 After initial contact the police officer in the case rarely keep in touch with the witnesses. The exception is the more serious cases such as rape or homicide where family liaison officers are appointed. Once the case is committed or sent for trial, the civil staff in the police criminal justice or administration of justice unit should contact witnesses to ascertain their current availability. The Inspectors found that this was nearly always done by way of a letter informing them that the case has been listed for PDH and requesting that they update their availability by return post. No account was being taken of the witness's literacy or understanding of English. If a witness does not reply to a written request for availability before PDH, the police do not routinely chase this up.
- 6.9 The trial date or warned period is usually set at the PDH. The review team asked a number of court centres to carry out a survey of the timeliness and completeness of the witness information they received before PDH. Administration of justice units in five police forces were also asked to carry out a separate survey of the timeliness and completeness of the submission of witness information to the court.⁴
- 6.10 In relation to the Crown Court survey, some witness availability was received in 82% of cases before PDH. However, the availability supplied covered all the prosecution witnesses required to give evidence in only 49% of cases. Furthermore, 80% of the missing witness availabilities were for non-police witnesses.

⁴ These related to different cases and a different set of courts.

- 6.11 The police survey showed that witness availability for at least some witnesses was sent before PDH in 94% of cases. However, 28% of those cases had incomplete non-police witness availability. This compared to 4% which had incomplete police witness availability.
- 6.12 Both surveys show the inadequacy of many of the current systems for obtaining accurate availability for non-police witnesses at the time it is needed.

Warning non-police witnesses of trial date

- 6.13 The police are currently responsible for warning witnesses. The Inspectors found that it was not unusual for witnesses only to be warned about a hearing date a matter of days beforehand, and sometimes the afternoon before. This was in part a reflection of the uncertainty over when and indeed whether trials will proceed. However, Inspectors were also told of cases where, even though the case was a fixture, the witness warning took place shortly before the trial. Furthermore, although trials may be brought into the daily list from a reserve list without any prior notice, the main or firm list for the week will include floaters and backers. Most of the courts the Inspectors visited published the final main or firm list around two weeks in advance. Inspectors consider that, at the very least, witnesses should be notified when the final firm list is produced. It would also assist if, at that stage, any difficulties over travel arrangements could be identified.
- 6.14 It is not unusual for problems over the availability of a non-police witness for a hearing only to come to light very shortly before the trial when it may be too late to do anything about it. This compounds the difficulties already described over the timeliness and accuracy of the non-police witness availability when the trial date or period is set. It is not surprising that, in 2002/2003, 22% of ineffective trials were due to the failure of prosecution witnesses to attend. It is symptomatic of a failure by police to keep in proper contact with witnesses between the taking of the statement and the day of trial. The Inspectors believe that not keeping witnesses and victims up to date with anticipated trial dates is a significant cause of witness dissatisfaction and non-appearance at trials. The handling of non-police witnesses from the point at which availability is taken from them to the warning to attend trial needs to be radically improved.

Good Practice:

One police force considered it necessary that police officers in their Administration of Justice Unit maintain contact with victims and witnesses to increase their confidence and to detect the possibility of witness intimidation or the witness failing to appear.

Poor Practice:

In another police force it was the practice to send a letter to a witness notifying them that the case was in the warned list, but advising them not to attend court unless they heard further from them. That further notice was often only given at 5 or 6pm the evening before the trial was due to take place, even if the case had been a fixture.

- 6.15 The Inspectors are aware of a number of pilots to improve witness care in different cj areas. In one cj area visited Inspectors saw one such pilot. A CPS caseworker had

been given a dedicated role of assisting the police witness warning unit where a witness had failed to reply to initial requests for availability or may be reluctant to attend court. This particular pilot was at a very early stage, but the Inspectors are greatly encouraged that pilots are taking place to try and improve the quality of contact with witnesses. There is scope for significant improvements to be made. The Home Office have recognised this and published a good practice guidance⁵ entitled “Witness availability and the witness warning process”. This is a document that LCJBs will wish to draw upon, although the review team has reservations about the use of letters as a reliable or sole means of communication (see paragraph 6.7).

6.16 Recommend:

Local Criminal Justice Boards carry out a self audit on accuracy and timeliness of civilian witness availability and witness warning, and take the necessary steps, including reallocation of resources, to ensure accurate civilian availability when trials are set, and regular updates to the witnesses of progress of the case after PDH.

6.17 The reasons for witness non-attendance are varied. In some cases the witness may not be available for the hearing or indeed did not receive a notification in time. Some witnesses may suffer intimidation from the defendant or feel the court process to be intimidating. Others may have lost interest in the case, particularly if they are not the victims or where there is a long delay between the offence and the trial.

6.18 A suggestion was made several times to inspectors that the issuing of a witness order summoning the witness to attend court would assist in improving witness attendance. The witness order would ensure that the witness understood the civic duty of attending court, even if he or she was reluctant to do so. The service of the order in person would provide the opportunity to keep closer contact with the witness. It may help a witness in getting time off work to give evidence. It would also allow the court to issue a witness warrant at an earlier stage than at present in those cases where the witness had to be compelled to attend the hearing.

6.19 The issuing of witness orders at the committal stage had been a feature of committals before the power to do so was repealed by the Criminal Procedure and Investigation Act 1996. There had been a number of drawbacks with the issuing of witness orders at committal stage. One was that the witnesses required for the trial were not properly identified so that many witnesses received inappropriate witness orders. We have already mentioned the Criminal Procedure Rule Committee at **paragraph 4.30**. Inspectors think that the re-introduction of witness orders would bear consideration by the committee once it has been set up⁶.

Police Witness Attendance

6.20 The police do not consider police witness attendance at the Crown Court as a significant drain on resources, unlike police witness attendance at the magistrates’ courts. Detectives are more likely to be attending the Crown Court than their uniform colleagues and both CID managers and detectives view attendance at the Crown Court as a necessary part of their job. The numbers of uniformed officers attending court

⁵ Published July 2003.

⁶ The Narrowing the Justice Gap Task Force is due to issue a consultation paper in September on proposals for the re-introduction of witness orders.

are relatively small compared to the magistrates' court and the pressure on frontline service delivery much lower.

- 6.21 It was apparent that, in a number of the areas, the officer in the case was being requested to attend the Crown Court as a matter of routine. There are practical benefits with the officer in the case being present at the start of a trial to deal with any late issues raised by counsel or any witness problems. Nevertheless, a number of officers complained to Inspectors that they were called to attend court only to find that they were required to read out an interview record and no more.
- 6.22 Police officers told Inspectors that they could be called to court on inconvenient dates even where they knew that the inconvenient date had been sent to the court before the trial was fixed. List officers told Inspectors that the numbers of inconvenient dates for police officers were often so great that they would only take account of annual leave. It is not surprising that, as a result, officers may find they are required to attend court after night duties, or whilst on a rest day or a course.
- 6.23 Although court attendance at the Crown Court is not as significant a resourcing issue as attendance at the magistrates' court, inspectors still consider that the attendance of officers at the Crown Court may be worth examination at a local level.

Special Measures

- 6.24 The introduction of special measures has the potential to make a significant difference to the confidence of witnesses. However, the CPS relies on the police identifying suitable cases in order to make applications. The identification of such witnesses by the police is very variable. The identification of child witnesses is relatively easy, but the legislation has a much wider application. A failure to identify suitable cases until the trial date means the witness either does not get the benefit of the protection available or the start of the trial is delayed whilst the application is made.
- 6.25 Inspectors found that training for police on the provision of special measures was often no more than "awareness" training. This is inadequate.

<p>"The only training in special measures we got was a note on our payslips" (Police Officer).</p>
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- 6.26 There needs to be training on how to identify potential beneficiaries as well as the procedures thereafter, including, in some circumstances, meetings between the police, the CPS and the witness. The training should also allow officers to explore the most appropriate form of special measures with the witness before contacting the CPS. The attitude and views of the witness are material. Inspectors found that the CPS were making applications for use of the video link for a witness identified as being suitable for special measures, when the use of screens would have been the preferred option for the witness. The drawback of the video link is that the defendant can see the witness, and inspectors were told of a number of occasions where, once a witness realised this, they asked for the use of screens.

Witness Waiting

- 6.27 The benefits of reducing the waiting time for witnesses, and thereby increasing their satisfaction in the court process, have long been recognised. The average waiting

time⁷ for all witnesses in the Crown Court before they are either released or give evidence was 2.44 hours in June 2002 and 2.47 hours in November 2002⁸. As a result, the phasing of witness attendance and witnesses being on standby are recognised as good practice. The form used by the court to deal with trial matters at PDH addresses these issues. However, the Inspectors found only limited use of either phasing or stand by arrangements.

- 6.28 Stand by or phasing arrangements are commonly used for the victims in child abuse and rape cases, and for expert witnesses, but not otherwise unless the case had large numbers of witnesses. In many “run of the mill” cases prosecution and the defence, as well as the trial judge, want to know that the prosecution witnesses are at court before starting the trial. This is reasonable given the numbers of prosecution witnesses who fail to attend, but improved contact with witnesses before the hearing should make it possible to have a greater assurance of witness attendance without requiring physical presence at court. The recommendation at paragraph **6.16** is intended to provide better information as to likely witness attendance, and once this has been achieved, the Inspectors think that the use of stand by and witness phasing should be reviewed.

⁷ The Court Service carries out a bi-annual survey for a two week period every June and November.

⁸ In June 2002 45.5% of the witnesses were released without giving evidence. In November 2002 it was 47.4%.

Case Management outside the Crown Court

Role of prosecution, defence and other court users

Introduction

7.1 The successful management of cases, particularly trials, relies not just on the case management strategies of the court. It also depends to a very large degree on the parties to the proceedings. The police, CPS, Bar, defence solicitors, the defendant, Forensic Science Service and probation all have a critical role in ensuring that cases proceed in a timely way for the purpose for which they are listed. In this section we examine the roles played by all these parties to the proceedings.

Case preparation by the prosecution

7.2 The onus is on the prosecution in criminal proceedings to prove its case. As a consequence, the quality and timeliness of the case preparation by the prosecution is fundamental to the pre-trial process. The police, the CPS and prosecuting counsel all have a role to play in this.

Police

7.3 At present the police will usually investigate and charge before submitting a file of evidence to CPS. Under the current Criminal Justice Bill the responsibility for charging will pass from the police to the CPS, except in those cases where a holding charge is necessary. The implementation of this¹ will change the relationship between police and CPS. In many cases the police will be required to seek advice from the CPS as to whether charges should be brought and, if so, what the charge should be.

7.4 Nonetheless, the quality of the evidence gathering prior to charge, and of the additional work invariably necessary to make a case trial ready, will still be critical to the effective preparation of a case. As one CCP said “If the investigation is good and the file is sound, even an average caseworker and a poor advocate will get a result ... but if the case is weak, no amount of good legal input will secure a conviction”.

7.5 During the review of listing and case management in the magistrates’ court Inspectors found a consensus that the quality of witness statement taking was weak². The Inspectors found that the same concerns persisted during this review, not least among police officers themselves. A training need in relation to witness statement taking had already been made subject of a recommendation directed towards probationer officers in the HMIC thematic inspection *Training Matters*³ and was included as part of a wider recommendation directed to CENTREX (Central Police Training and Development Authority) within the report on listing and case management in the magistrates’ court.

7.6 The recommendations in both reports are still to be carried forward and taken up within local police training. Inspectors emphasise again the importance of addressing these basic skills that are particularly important in a Crown Court trial where every aspect of the prosecution case is likely to be subjected to close scrutiny.

¹ Implementation date still to be set at time of review.

² Paragraphs 4.52 to 4.56 and recommendation 35 of the report refer.

³ HMIC thematic inspection report on police training 2002.

7.7 The quality and timeliness of police file submissions as the foundation for a well-conducted case has long been recognised. A joint CPS/Association of Chief Police Officers (ACPO) strategy to improve the quality and timeliness of police files through joint performance management (JPM) was launched in 1995. It remains in place to the present. However, it has had only limited success as demonstrated in the table below.

Period	Fully satisfactory	Timely	Fully satisfactory and timely
Q4 1999	56%	70%	42%
Q4 2001	54%	73%	43%
Q4 2002	53%	76%	45%

7.8 The data itself does not distinguish between magistrates' and Crown Court cases even though the CPS has now restructured to Trial Units (TUs) and Criminal Justice Units (CJUs). However, at least one police force visited was looking for a software solution to this.

7.9 The Inspectors found only limited evidence of the use of JPM to improve Crown Court case preparation.

In one police force changes to file building processes were being introduced to try and raise standards.

In another police force a pilot had been introduced to deal with problems over late delivery of medical evidence.

However, in another police force JPM was seen by CPS as ineffective because of other policing priorities such as visibility on the streets leading to a reduction in supervision of police file building.

7.10 As well as measuring the quality and timeliness of police file submissions, CPS should also be giving feedback to the police on the reasons for acquittals. CPS response rates on police file submissions were variable, as was the extent of feedback on acquittals. Nonetheless all the areas we visited were making some use of it as a performance management tool, usually at police divisional level.

7.11 Despite the shortcomings of the JPM strategy, Inspectors found a reluctance on the part of the police and CPS to abandon JPM altogether. There was a general recognition that police file submissions can be improved and that JPM was the only strategy currently available for doing so. The implementation of the new charging arrangements following the transfer of responsibility for charging will lead to more advice by the CPS to the police before charge. However, the responsibility for investigation and file submission will remain with the police. It will continue to be very important that evidence gathering and file submissions are done as efficiently and effectively as possible.

- 7.12 The Inspectors believe that the JPM scheme, as it operates at present, can be made more effective. No link is being made between the quality and timeliness of the police file and the outcome at court. The Inspectors think the emphasis needs to shift from just measuring the quality and timeliness of the police file submission to include the impact of that file submission on the final outcome, particularly acquittals and cracked and ineffective trials. The introduction of new IT⁴ within the CPS will facilitate this. By doing this, it will be easier to identify learning points which will have an impact on the key targets of increasing offences brought to justice and reducing ineffective trials.
- 7.13 The development of JPM at a local level should also be linked to the development of joint performance management of cracked and ineffective trials. Inspectors are sure that police file quality and timeliness, and the reasons for cracked and ineffective trials, should be examined together by the agencies concerned – police, CPS and the Court Service – in order to improve overall performance. The LCJBs have a key role in ensuring that performance management is full integrated within their areas. We deal with cracked and ineffective trials at **paragraph 5.53** onwards.
- 7.14 **Recommend:**

The Association of Chief Police Officers and the Crown Prosecution Service to review and redesign JPM of police file quality and timeliness in order to focus on lessons to be learnt from acquittals and cracked/ineffective trials by police and CPS.

Crown Prosecution Service

- 7.15 The Review of the Crown Prosecution Service by Sir Iain Glidewell in 1998 made a number of recommendations and proposals aimed at improving the handling of Crown Court casework by the CPS. In particular, the review proposed the establishment of Trial Units (TUs) to be responsible for all prosecutions in the Crown Court. The intention was that “these changes will lead to a shift in the centre of gravity of the CPS towards the Crown Court”.
- 7.16 The CPS Areas have reorganised into TUs, dealing with Crown Court casework, and Criminal Justice Units (CJUs), dealing with magistrates’ court casework. The restructuring started at the end of 1999 and is now almost completed. Some TUs have incorporated a police presence, but the majority have not. The Inspectors found that all the CPS Areas visited, except for one, reported a significant improvement in the quality of casework following the creation of the TU. The one exception was an Area where there were considerable difficulties in staffing the TU with sufficient experienced staff. The perception of an improvement in quality and timeliness of CPS casework was generally supported by the other members of the local cjs and court users. However, the case results and performance data over the period covering the introduction of TUs presents a mixed picture.
- 7.17 The case outcomes and case committed or sent for trial as measured by the CPS over the period 1999 to 2002 are set out in the following table:

⁴ The Compass Integrated Case Management System that is currently being rolled out through the whole of the CPS.

	1999	2000	2001	2002
Cases committed or sent for trial	87,068	84,402	82,410	92,050
Guilty pleas	55,705	53,449	50,597	57,024
Conviction after trial	11,647	10,959	10,803	12,677
Acquittals after trial	8,807	8,518	8,125	7,844
Not proceeded with or bound over	10,828	11,529	12,744	14,339

7.18 The proportion of acquittals after trial and cases not proceeded with or bound over, as against the cases committed or sent for trial, is set out in the following table:

	1999	2000	2001	2002
Acquittals after trial	10.1%	10.1%	9.8%	8.5%
Cases not proceeded with or bound over	12.4%	13.6%	15.5%	15.6%
Total	22.5%	23.7%	25.3%	24.1%

7.19 The reduction in the proportion of acquittals is more than balanced by the rise in the proportion of cases not proceeded with or bound over. This increase can be linked to the introduction nationally of the new procedure under section 51 of the Crime and Disorder Act 1998 in January 2001. This procedure means that indictable only cases are “sent” to the Crown Court either at the first or second appearance in the magistrates’ court. Indeed it is generally on the first appearance. There is therefore limited opportunity to discontinue those cases before they are “sent” to the Crown Court.

7.20 The case outcome is, of course, not necessarily a reflection of the quality or timeliness of CPS casework. In the absence of reliable and systematic quality assurance data from CPS, HM CPSI carried out its own examination of the quality and timeliness of casework during the first cycle of CPS Area inspections from 2000 to 2002.

7.21 In the general file sample comprising guilty pleas, convictions and acquittals, inspectors found that the decision to proceed was correct in 99.3% of cases. The handling of those cases once committed to the Crown Court was good in those cases where a full record of prosecution actions was kept⁵. Additional evidence was requested from the police in a timely way in 94% of cases, and once received served on defence in a timely way in 95% of cases. Inspectors also found that CPS took reasonable steps to comply with directions from the court in 93% of cases.

⁵ However, the quality and completeness of file endorsements and contents was a CPS weakness.

- 7.22 However, the examination of Judge Ordered Acquittals (JOAs) and Judge Directed Acquittals (JDAs) raised concerns over the quality of review and preparation in the more difficult cases. Inspectors found that in 23.8% of JOAs and 24.7% of JDAs more could have been done to avoid the final outcome. An even greater concern was that the CPS own self-assessment only disclosed CPS “failure” in a very small proportion of cases⁶. This indicates unwillingness on the part of the CPS to examine its own performance critically and tackle poor performance.
- 7.23 The performance of the prosecution is also captured through cracked and ineffective trial monitoring by the Crown Court. The nationally collected data for the years 1999/2000 to 2002/2003 are set out in Annex 1. This shows that ineffective trials due to prosecution failure⁷ rose from 13.1% in 1999/2000 to 16% in 2002/3. Although the proportion of cracked trials due to the prosecution offering no evidence dropped by 2% over the same period, this was against a background of an overall increase in cracked trials. The data does not differentiate between police and CPS, and there are some shortcomings that we discuss further at paragraph 5.56. Nevertheless, it indicates that the creation of TUs has not in itself led to a step change in performance. More needs to be done to improve the quality of case preparation by the prosecution.
- 7.24 The CPS is currently developing systems for providing early advice pre-charge in anticipation of the responsibility for charging passing to it. The expectation is that increased involvement pre-charge should feed through into improved performance both in the magistrates’ court and the Crown Court.

Disclosure

- 7.25 The handling of disclosure by the prosecution in the Crown Court has been a longstanding weakness. During the first inspection cycle HM CPSI found that the quality and timeliness of disclosure had started to improve. However, the Crown Court’s measurement of prosecution failure to disclose unused material as a reason for ineffective trials has remained broadly the same from 1999/2000 to 2002/2003, and HM CPSI inspectors found an overall compliance rate on secondary disclosure of only 65% during the first cycle of inspections. This indicates more work need to be done by the police and the CPS to improve performance.
- 7.26 This has been recognised by both ACPO and the CPS who have drawn on the reviews carried out by HM CPSI and the Home Office into the disclosure of unused material, and issued a revised set of guidelines in April 2003. The revised guidelines, known as the Joint Operational Instructions (JOPI), are to be supported by further training of both CPS and the police.

CPS and the Bar

- 7.27 Although the CPS has developed its own body of High Court Advocates (HCAs), it still instructs counsel in the great majority of its Crown Court casework. The relationship between the CPS and the Bar is important. The CPS has sought to ensure high standards of case preparation and presentation by counsel in a number of ways.
- 7.28 It has negotiated a set of standards with the Bar over the timeliness of instructions to counsel, the provision of early advice by counsel if additional work was required and

⁶ Typically around 2% - para 2.10 HM Chief Inspectors Annual Report 2001-2002, HM CPSI.

⁷ Failure to disclose unused material, late service of evidence or prosecution not ready.

the handling of returns. The CPS liaises with the Bar on a regular basis, at both national and local level, in order to discuss the level of service provided by those chambers it regularly instructs. The CPS is also represented on Circuit Selection Committees that grade counsel according to their level of experience and competence.

- 7.29 However, the level of compliance with the Bar standards is variable. The CPS has an obligation to send instructions to counsel in sufficient time to allow counsel to consider the case fully before the PDH, and provide the early advice. Indeed, it is not enough for the instructions to be timely. They should also deal fully with the issues in the case and identify any acceptably pleas. During the first cycle of inspections HM CPSI found that although 82% of instructions were timely, only 57.6% properly addressed the issue in the case.
- 7.30 The early provision of advice by counsel on receipt of the instructions is not supported by a specific payment under the graduated fees scheme. Inspectors found that the level of response varied according to individual counsel.
- 7.31 The level of returns by counsel was high. CPS Areas often estimated the return rate at over 70%. Chambers have a responsibility to monitor returns and provide statistics to CPS but Inspectors found compliance depended on the attitude of the CPS Area and the use it made of that data.

One chambers dealing with cases from two CPS Areas sent in the returns data to one Area because it was used and referred to at their regular liaison meetings, but did not for a second Area because that Area did nothing with the data. (Bar clerk)

- 7.32 The gathering of data for its own sake is rightly seen as a waste of resources. However, returns are a concern to CPS because of the risks attached to them. These are that counsel may not be fully prepared because he or she has only just received the instructions and that counsel less suitable than the one originally instructed might end up dealing with the case in court. The Inspectors think that, as with police file quality JPM, the monitoring of returns linked to the outcome in court would be a more useful exercise. In other words the monitoring needs to identify whether the return contributed to an ineffective hearing or a cracked trial or poor presentation of the case. Such monitoring would provide management information that could then be used more constructively to improve the quality of service from chambers.

One CPS area, as part of its quality assurance of Crown Court casework, posed the question “Did the trial proceed without difficulty despite the change of counsel?”

- 7.33 The Bar standard for returns requires CPS to identify cases as “A”, “B” or “C”, and sets out the basis on which cases in those categories can be returned. This is a potentially very useful tool given the inevitability of returns under current listing practices and current working practices of the Bar. However, several of the CPS offices visited had stopped operating the standard. There appeared to be two reasons for this. On the one hand the use of preferred sets⁸ was thought to reduce the value of doing so because most returns would be kept within those chambers. There was also

⁸ Chambers which CPS instruct on a regular basis.

a view that chambers would deal with returns as they saw fit whatever CPS did. In other CPS Areas the standard was still being applied. The attitude towards the acceptance of alternative counsel on returns also differed from office to office.

‘Barristers in general seem to believe that they have a right to be briefed by CPS and that CPS should share out the work no matter what kind of service they provide’. CPS caseworker manager

In one office the caseworkers were robust in refusing alternative counsel they thought unsuitable, but in another office within the same area, the alternative counsel offered was always accepted because it was felt there was no choice.

- 7.34 The Inspectors found that, generally, CPS felt itself constrained in the service it could expect from chambers. Although there are preferred sets of chambers, and clear standards have been set, Inspectors found only one example of chambers being dropped because of poor performance. Similarly the Circuit Selection Committees had only ever up-graded counsel, and never down-graded them. This lack of assertiveness appears attributable to a number of factors: limited choice of chambers; similar standards between chambers that were suitable for prosecution work; and insufficiently robust information to deal with the challenges which would result from a decision to withdraw work from a particular counsel or chambers.
- 7.35 The Inspectors consider CPS should be more assertive in its dealings with chambers in order to get the best service. In April 2002 the graduated fees scheme which had been introduced for defence counsel, and which had led to higher fees for defence counsel, was extended to the prosecution. There is no longer a disparity in fees. There should be a level playing field as far standards of service from chambers are concerned.
- 7.36 The basis of an effective relationship with the Bar must be good quality information about its performance. This means regular monitoring of counsels’ advocacy performance in court, and monitoring of the impact of returns on case preparation. At present counsel is generally monitored only when he or she applies to be re-graded or when some serious cause for concern arises. The CPS have introduced a one to one ratio of case-workers to courtrooms in most Areas, and are now in a position to gather such information in the systematic way that is necessary.

Use of Higher Court Advocates (HCA)

- 7.37 The CPS has developed a cadre of HCAs with rights of audience in the Crown Court. This forms part of its strategy to improve its performance in the Crown Court. However, Inspectors found that their deployment was limited for a number of reasons. Some CPS managers considered that their HCAs were more usefully employed reviewing files in the office, and that the lack of time markings or block listing for PDHs meant that an HCA could be waiting at court for a long period before the defence and the court were ready to proceed. This was seen as unproductive.
- 7.38 The Inspectors also found that when HCAs did go to Crown Court they usually only dealt with preliminary hearings or with guilty pleas, even where court listing facilitated use of HCAs by listing all their cases in the one court. The HCAs were not conducting trials on a regular basis and CPS managers thought that it was better for

trial counsel to deal with the PDH wherever possible. The benefits of continuity of counsel between PDH and trial are dealt with later at paragraph 7.62. The Inspectors think that, whatever the short term difficulties over the fuller deployment of HCAs to deal with PDHs and trials, there are clear benefits in the longer term in developing the HCA role to cover PDHs and some trials as a way of bringing continuity to the handling of the prosecution case. However, trial advocacy demands a much higher level of skill than required by the interlocutory hearings or guilty pleas that HCAs generally cover at present. Any policy to increase the level of HCA representation in trials would need to ensure that advocates of the right calibre were being deployed.

Case preparation by the defence

- 7.39 The defence legal team usually comprises the defence solicitor or clerk, and counsel. They will advise the defendant, take instructions from him and act on those instructions. This is a process that starts from the point at which the defendant seeks legal advice, which may well be at the time of arrest, and continues to the conclusion of the case. Counsel will usually become involved once the case is before the Crown Court, although in some more complex cases he or she may be instructed earlier.
- 7.40 The prosecution has the burden of proving its case beyond reasonable doubt and must serve its evidence on the defence before the defence are called on to respond. Accordingly, the quality and timeliness of the prosecution case preparation is a key driver in the overall efficiency of the trial process. As one judge told Inspectors “poor CPS performance masks slackness in the defence”. For example, a lack of confidence by the judiciary in the effectiveness of disclosure by the prosecution was identified as one reason for the continuing practice at some courts of making blanket orders for secondary disclosure without regard to the quality of the defence statement.
- 7.41 Nonetheless, the Cracked and Ineffective (CIT) data produced by the Crown Court does raise questions about the quality and timeliness of defence case preparation. IN 2002/2003, 63.8% of cracked trials arose because the defendant pleaded guilty to the charges on the indictment, and 15.13% cracked because the prosecution accepted pleas to lesser offence. There are limitations to the value of the data because it does not identify whether the late guilty pleas were attributable to late service of evidence by the prosecution, or whether the defence offered pleas at an earlier stage. The ineffective trial data is more specific, and does identify 14.9% of trials as ineffective because the defence were not ready.
- 7.42 We deal at paragraphs 5.56 to 5.60 with the ways in which CIT data may be improved to provide more useful management information. However, even if the data were more specific, there still remains the question of how to influence defence preparation so as to avoid ineffective hearings and ensure guilty pleas to the appropriate offences are entered at the earliest opportunity. Although the rights of the defendant must never be lost sight of, the avoidance of unnecessary court attendances by witnesses and wasted court resources are also important considerations.
- 7.43 The sanction of wasted costs for late preparation is seen by the judiciary as too blunt an instrument, and too time consuming, to be effective in dealing with inefficiency, except in the worst cases. Inspectors were told that unless a party to the proceedings was prepared to admit culpability without prompting, it was a long, tortuous and often unproductive business to establish responsibility sufficiently clearly to justify an award of costs.

- 7.44 The Criminal Defence Service (CDS) now franchises all criminal work in the magistrates' court to firms of defence solicitors. Under the terms of the franchise the CDS specifies standards of work. In the report on listing and case management in the magistrates' court Inspectors recommended⁹ that the CDS carry out audits of those firms which appeared to have less efficient working practices than others. Such franchising does not extend to the work of defence solicitors in the Crown Court, although the CDS is considering the feasibility of doing so.
- 7.45 An extension of franchising to cover Crown Court casework would create the opportunity to review the working practices of solicitors who have a significantly higher number of cracked trials or ineffective trials due to late preparation. It would also provide the opportunity to review the relationship between the defence solicitor and the bar in relation to case preparation. See paragraph 7.49 below.
- 7.46 The defence can only act on the instructions of the defendant. There should be relatively little difficulty in arranging conferences for defendants on bail, although some defendants will be more reliable than others at keeping appointments. The Inspectors found continuing difficulties in arranging conferences with defendants in custody at a time when counsel could also attend. As a result, PDHs were often the best opportunity for instructions to be taken from the client, even though trial counsel may not be able to attend and even though conference facilities at court may be very poor.

At one court centre mention hearings were arranged simply to ensure production of prisoners so that counsel could then take instructions.

- 7.47 The introduction of video links for pre-trial hearings may assist with listing, but has real drawbacks as a means of taking instructions. Both defence solicitors and counsel think it is vital to have a face-to-face meeting to deliver what may be unpalatable advice and get the best instructions from some one whose liberty, after all, may be at stake.
- 7.48 We have made a recommendation at paragraph 4.77 that deals with, amongst other things, taking instructions from defendants in custody.

Defence solicitor and counsel

- 7.49 There are different practices as far as case preparation by defence solicitors are concerned. Some firms prepare the case in detail in much the same way as the CPS seeks to do for the prosecution, and look to counsel to provide the advocacy. Other firms simply pass the case papers to counsel once the case has been committed or sent and instruct counsel to do the preparation of the case.
- 7.50 As indicated later at paragraph 7.61, there is a culture of late preparation at the Bar. The practice of leaving the case preparation to counsel can only compound the problem. Whilst there will always be occasions when trial counsel takes a different view of the case from either the defence solicitor or earlier counsel, Inspectors think there are potential benefits to be had from the defence solicitor taking responsibility for preparing a case at an early stage. The extension of franchising to Crown Court

⁹ Paragraph 4.94.
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casework would provide the opportunity to review the amount of preparation expected from the defence solicitor.

Defence solicitors as Higher Court Advocates

- 7.51 The Inspectors found that defence solicitors appeared as Higher Court Advocates (HCAs) relatively infrequently. There were a number of reasons. It is more beneficial financially to deal with a number of cases in the magistrates' court than only one or two pre-trial hearings in the Crown Court. In particular, defence solicitors are able to keep contact with the majority of their clients by regularly appearing in the magistrates' court. The absence of time marking or block listing for pre-trial hearings together with the uncertainties about listing and length of trials makes it very difficult, if not impossible, to meet commitments in the magistrates' court as well as being available to deal with advocacy in the Crown Court.
- 7.52 However, continuity of representation from magistrates' court to Crown Court hearings might be one way of ensuring earlier case preparation and fuller advice to a defendant at the PDH stage. The CDS may wish to explore how to encourage more defence HCA attendances in the Crown Court through the fee structure when considering the extension of franchising into Crown Court casework. An increased involvement of defence HCAs in the Crown Court would also be assisted by greater certainty as to dates and timings of pre-trial hearings and trials.

Defendants

- 7.53 The high proportion of defendants who delay entering a plea to the offences when they are charged until the trial date is a major cause for concern. In 2002/2003, 23.5% of all trials resulted in a guilty plea by the defendant to the original charges. This may be seen as a successful conclusion to a case because witnesses have not been required to give evidence, but it means that victims and witnesses will have had the worry and inconvenience of attending court. It is also wasteful of resources. Court time will have been allocated which could have been better used. Indeed the high proportion of cracked and ineffective trials is an underlying reason behind the current use of floaters, backers and reserve lists, and undermines efforts to introduce a higher proportion of fixed trials.
- 7.54 Criminal practitioners often told Inspectors that defendants are likely to deny the strength of the case against them until the trial date, for a number of reasons. Some defendants might calculate that the possibility of prosecution witnesses not attending or the prosecution not being ready makes it worth waiting to see whether the prosecution can proceed on the trial date. Even where the prosecution case seems very strong, defendants who live from day to day will try and put off the day of reckoning for as long as possible. Defendants in custody, for example, may wish to retain their privileges¹⁰ as unconvicted prisoners for as long as possible.

“Discounts for early guilty pleas sometimes influence defendants, although it very much depends on their personal circumstances and sometimes the time of year – it is unusual to plead guilty just before Christmas” (Defence solicitor).

¹⁰ Mainly improved visiting rights.

- 7.55 The courts have recognised the need to provide an incentive to defendants who enter early guilty pleas. Inspectors found the judiciary alert to the need to both give credit and make clear in open court that credit is being given.

One Resident Judge told Inspectors that he always gives a discount for an early guilty plea and tells the defendant exactly how much discount is being given. He would apply the discount exactly even if that meant an unusual sentence such as 3 years 7 months – “this way the defendants know exactly where they are and what the value of the discount really was”.

- 7.56 However the operation of credit for early guilty pleas is not always clear cut. Inspectors were told that, on occasion, full credit is still given even at a cracked trial. Some judges have reputations as being stricter on sentence than others so that the benefit of credit for plea before such a judge is much reduced.

In one court centre defence counsel told the list officer that if a case were listed before Judge X it would be a guilty plea, but if it were before Judge Y it would be a not guilty and have to be adjourned to trial. (Senior Court Service Manager)

- 7.57 The White Paper “Justice for All” identified the value in introducing a clearer tariff of sentence discount for those pleading guilty, and statutory provision has been made for sentence discounts in the Criminal Justice Bill¹¹. The Inspectors agree that greater consistency and clarity in the stage at which credit is given, and the amount of the credit, can help to make credit for an early guilty plea more effective. However, the Inspectors believe that the extent to which defendant behaviour can be influenced by these means will remain limited.

Failing to surrender to bail

- 7.58 The failure of defendants to answer bail is also a problem. In 2002/2003, 15% of trials were ineffective because a defendant on bail did not attend. The rate of non-attendance has been at approximately the same level since 2000. Inspectors were told that defendants expected to be remanded into custody if they failed to attend the Crown Court. Nevertheless, a remand in custody alone following a failure to attend a trial does not appear sufficient deterrent.
- 7.59 The seriousness of the offence was recognised recently by the Court of Appeal¹² which held that a failure to answer bail should result in a consecutive sentence if found to be a contempt of court. There may be practical problems in establishing whether a defendant did indeed know of the trial date if he or she was not in court when the date was set. Nevertheless, Inspectors believe that it is worth setting aside court time to deal with non-attendances. At the very least the recording of failures to attend court on a defendant’s record of previous convictions is helpful in assessing the risk of absconding in future when bail is considered.

¹¹ Section 128.

¹² R v McKinnon and R v White AC 5 December 2002.

Counsel

- 7.60 The majority of advocates, prosecuting or defending, in the Crown Court are drawn from the Bar. The conduct of counsel is governed by the Bar Council Rules of Professional Conduct and, in the case of prosecuting counsel, by the Farquharson Guidelines¹³. However, even with clear codes of conduct, Inspectors found shortcomings in the service provided by the Bar as a whole in criminal cases.
- 7.61 Whatever the quality of individual counsel, the Inspectors found three features of the way in which the bar operates that potentially have an adverse effect on efficient and timely case management. All three are related. One is a culture of late case preparation; the second is the frequency with which counsel originally instructed does not attend the pre-trial hearings; and the third is the frequency with which instructions are returned prior to trial.
- 7.62 Although Inspectors were unable to quantify how much of an impact late preparation by counsel has on trial readiness, either in terms of trials starting on time or trial hearings being effective, there is a consensus amongst court users and court staff that it is significant. The culture of late preparation arises from a number of factors. Counsel are self-employed and rely having as many cases as possible to maximise their earnings. As one very experienced counsel said: “I never refuse a brief”.

“Busy counsel have around 100 cases, but other less experienced counsel will have only 10 or 20. It is therefore impossible for the busy counsel to deal with all their trials At present much of the work at (the local Crown Court centres) is in the reserve list, and there is therefore no guarantee that clients will get the counsel they requested, but of course counsel is kept fully employed”. (Bar clerk)

- 7.63 The listing process at present is such that there is often uncertainty about when a trial will be listed. Indeed the high cracked and ineffective trial rate means there is uncertainty about whether it will proceed as a trial even when listed. The current fee structure rewards court attendance rather than case preparation. Counsel is paid a fee on the basis of the type of hearing or length of trial. There is very limited opportunity to claim payment for written advice or conferences. If counsel has prepared for a trial, but then is not able to appear as an advocate, he or she can only claim a fee if the preparation time exceeded eight hours – something which is unlikely in the majority of cases. There is accordingly little incentive for counsel to prepare fully for a trial until counsel knows that he or she can do it, and that it is likely to be effective as a trial. In the case of a “floater” or “backer” this will only be on the day of the hearing, and Inspectors were told of occasions where the start of “floaters” had to be delayed whilst counsel familiarised themselves with the case.

One counsel put it particularly strongly:

“Barristers get no pay for preparation. Unless they are involved in the trial any work barristers do pre-trial is a waste of time. Because of this, certain chambers will not look at matters from the word go, because they know that they will not get paid unless they actually appear in court. This has led to counsel opening DX in the robing room in the mornings and

¹³ Originally drawn up in 1986 and republished with clarification in February 2002.

‘divvying out’ cases an hour before trials commence. Counsel then go into court unprepared having only read their papers may be half an hour or so beforehand which is not providing a good service. If there were set fees – say for example - £50 to read files or you prepared on a piece-work basis – that would be more productive’.

7.64 Against this background, it is not surprising that there is a lack of continuity of counsel between PDH and trial, and between counsel originally briefed and trial.

“The presence of trial counsel at PDH does help in resolving issues about the trial, and indeed predicting the length of trial. However you very often find that weak counsel attends PDHs, and they do not have the weight to crack cases properly. The Bar are paid insufficient for PDHs, and the authorities need to pay a proper rate for PDHs if they are to get trial counsel to attend. But even in those circumstances, if fees were re-balanced towards PDHs and it meant a lesser fee for trial, you would end up with all the good counsel doing PDHs, but not actually doing the trials, because counsel follow the highest fees. (Resident Judge).

7.65 The lack of continuity between PDH and trial, and between counsel originally instructed and counsel appearing at trial, would not be a concern in itself if cases were fully prepared by counsel who originally accepted the brief, whether or not counsel was able to attend the PDH or trial. It is the culture of late preparation, and the impact this may have on efforts to reduce cracked and ineffective hearings, which is the underlying cause for concern.

7.66 The Inspectors offer the following suggestions, some of which may require practice directions or changes to the Bar Code of Conduct, for addressing this culture of late preparation:

- a. quality and timeliness of preparation by the CPS and by defence solicitors are important in reducing the reliance of either party on preparation by counsel;
- b. a higher proportion of fixed trials which proceed as effective trials will give counsel greater certainty as to which cases counsel can deal with at an earlier stage;
- c. counsel needs to have much greater ownership of the cases he or she accepts so that, for example, counsel completes and signs the PDH form even when not attending the hearing;
- d. if counsel is busy, he or she should be prepared to decline a brief; and
- e. the fee structure should be re-balanced to give weight to case preparation rather than linking payment to court appearances. Work is being undertaken at present by the CPP to evaluate the options for doing this. Counsel were quite clear during interviews with Inspectors that they will “follow the fee”.

7.67 The Inspectors received comments from several members of the judiciary to the effect that counsel cannot be expected to do much work for PDHs because they are paid a ‘pittance’. However, Inspectors observed PDH courts in which it was apparent that counsel had done little preparation for the several cases they had. Yet counsel would have received £100 for each case. The Inspectors understand that there are counsel

who make a good living by just appearing at PDHs and other short hearings. The Inspectors support moves to link payment to effective preparation work done prior to the trial, perhaps by way of stage payments so counsel does not have to wait until another counsel completes the case.

7.68 The quality of service of the Bar also depends on the level of service accepted by its clients. In the case of the CPS, we have already said at **7.35** that it should be much more assertive in its dealings with chambers. The Inspectors also think there is a role for the Legal Services Commission to develop standards for the Bar when it is dealing with defence work, in the same way it has when franchising defence solicitors for magistrates' court work. Some steps have already been taken with the Quality Mark initiative for chambers. This was introduced in 2002, and is a voluntary scheme by which chambers apply for accreditation to the Criminal Defence Service (CDS). The CDS could develop standards for case handling that place case preparation by counsel who accepted the brief at its heart. Such standards would deal with issues such as those referred to at paragraph 7.66 c and d. Further, the Inspectors consider any such standards should be mandatory if legal aid payments are to be made to members of the chambers.

7.69 **Recommend:**

Legal Services Commission to consider setting quality standards for chambers and members of chambers to be met before payment of legal aid to members of chambers.

Forensic Science Service (FSS)

7.70 Forensic evidence is a frequent element of the prosecution case, and whilst some police forces make use of a number of different laboratories, the majority of the analysis is done by the FSS. The point at which the items for analysis are sent to the laboratory, and the time taken to complete the analysis, are both critical to the progression of the case.

7.71 These issues were examined in relation to case progression in the review of listing and case management in the magistrates' court¹⁴. A number of recommendations were made dealing with the early despatch by the police of items for analysis for forensic analysis and the communication of the target dates for delivery of the results by the police to CPS. These were intended to ensure items were sent without delay and that the CPS had accurate information to give to the court when setting trial dates. The FSS itself has been subject to a Review undertaken by Robert McFarland¹⁵ that has recommended that the FSS be reorganised into a Public Private Partnership.

7.72 The FSS monitors its own performance in relation to agreed protocols with the police on the time taken for providing results. The following table shows the performance of the FSS for the quarter January, February and March 2003¹⁶:

	Urgent	Critical	PYO	Standard
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¹⁴ Paragraphs 4.21 to 4.33.

¹⁵ The Executive Summary was published on the 17th July 2003.

¹⁶ Data on the time taken for submission of items by the police from date of arrest is not available.

Violent crime	92.58%	93.78%	95.45%	91.99%
Volume crime	97.28%	96.87%	100%	97.43%
Drug crime	99.51%	97.23%	100%	97.12%

- 7.73 The above table relates to all submissions by the police, and not specifically those for Crown Court cases. The delivery times are not related directly to the date the evidence is required for court.
- 7.74 In the context of Crown Court cases, Inspectors were told anecdotally that delays in forensic evidence in some cases had led to ineffective or cracked trials, but there was no statistical data available to assess the extent of the problem. The Inspectors also found that, in several areas, the provision of forensic evidence did not appear to be causing significant difficulties in listing for trial.
- 7.75 This may be the result of a number of factors. Crown Court cases may be more likely than magistrates' court cases to attract an urgent classification, which means the return date is more likely to be related to court deadlines, because of the seriousness of the offence. Crown Court listing is more flexible than magistrates' court listing and can accommodate delays in the supply of forensic evidence more easily. Inspectors also found a greater awareness amongst the police of the importance of not delaying the submission of items than they found at the time of the review into listing and case management in the magistrates' court twelve months earlier.

Probation

- 7.76 Each Crown Court centre has a dedicated probation officer based in it. The probation service is responsible for a number of services to the court, in particular the provision of SSRs, PSRs, and progress reports on Drug Treatment and Testing Orders (DTTOs). It will also prosecute breaches of community orders.
- 7.77 The Inspectors found some delays in the provision of reports, partly due to staffing shortages within the probation service and partly due to difficulties with interviewing defendants in custody. However, this was not true of all court centres visited, and even where there were delays they did not appear to cause many difficulties in listing, particularly if advance notice had been given. This was attributed to the fact that most sentence cases did not require a lengthy hearing.
- 7.78 The Inspectors were told on occasion that listing did not always take account of probation resources so that breach cases and DTTO reviews may be listed in different courtrooms at the same time even though there was only one probation officer available to deal with them. Some probation officers also had a sense that their needs were either not fully understood by the list officer or were only a low priority. In such cases there is clearly scope for better liaison between the probation service and the court. However, at other courts there was a good relationship between probation and the list office, and any resourcing or information issues were discussed constructively. Much depends on the relationship between the list officer and the probation officer assigned to the court centre.