

HM Inspectorate of Court Administration

# Meeting defendants' needs

An overview of the quality of service for defendants in the  
criminal courts in England and Wales

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**HMICA**  
HM Inspectorate of Court Administration



# Foreword

This report is the end of a programme of inspections that has looked at the quality of service provided by Her Majesty's Courts Service (HMCS) to defendants in the criminal courts in England and Wales. Such a topic may seem out of step with the current political and public mood, as in recent years attention has shifted increasingly over to the needs of victims and witnesses. However, to dismiss the needs of defendants as less important than those of others would be wrong, from a variety of viewpoints. Around 2.5 million cases passed through the Crown and magistrates' courts last year, each of which involved at least one defendant. Not everyone who appears in court as a defendant is found guilty. In the Crown Court, which handles the more serious cases and around 5% of the total caseload, over 16,000 people were found not guilty of all the charges against them. Additionally, whether guilty or innocent, many defendants may go on to be victims or witnesses in the future. Their experiences as a defendant may affect their confidence in the criminal justice system and any future decisions to report a crime or give evidence.

I am pleased to report that the staff of HMCS look after defendants well and their needs are generally met. Defendants are treated with respect and most courthouses provide a suitable environment for them.

One of the biggest challenges HMCS is currently facing is to continue to meet the needs of court users in an increasingly difficult financial climate. In 2006/07, court services are being provided with significantly less money than was available in the previous year and there seems little prospect of a reversal of this trend for next year. As well as service delivery, HMCS is continuing with an ambitious programme of structural and cultural change and playing a full part in the government's reform of the criminal justice system. Despite all these challenges and constraints HMCS has commendably continued to deliver, and in many cases improve, the overall quality of its services.

I have a concern, however, in relation to the broader reform agenda and its focus on other groups within the criminal justice system. In some circumstances this means that the needs of defendants are a lower priority for HMCS than some other groups of court users. At times, key decisions are being made, or policies developed, without specific consideration of the impact of planned changes on defendants. Without appropriate consideration and articulation of the needs and interests of defendants – as opposed to incidental benefits that might arise – the quality of service provided to them may deteriorate. The recommendations in the report seek to ensure the needs of all participants in the criminal process are given appropriate attention.

I would like to thank all the HMCS staff, and other stakeholders within the criminal justice system, who have contributed to this inspection. I welcome the positive response from HMCS to our findings and look forward to continuing improvements to the quality of service provided to defendants by HMCS.



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January 2007



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# 1 Executive summary

## Overall assessment

- 1.1 The quality of service Her Majesty's Courts Service (HMCS) provides to defendants ranges from excellent to less than satisfactory, with most of the ten Areas inspected providing satisfactory service. Most court buildings are adequate or better. Several are excellent, although a few fall short of what we consider to be an acceptable standard. A significant number of courthouses fails to provide suitable levels of privacy for defendants.
- 1.2 Arrangements for the safety and security of defendants are inconsistent and the management of related contracts is weak. There are some serious risks affecting defendants in custody.
- 1.3 Defendants are treated with respect and courtesy by frontline HMCS staff, who show impressive commitment to looking after people well. Administrative help is generally available on the day, although this is rarely provided proactively. Waiting times for defendants can be lengthy and at some courts unrepresented defendants are disadvantaged by having to wait longer. The management and reduction of waiting times is not a priority across HMCS, although there are some Areas that demonstrate good practice.
- 1.4 Defendants are not always enabled through administrative processes to participate fully in proceedings. Provision of written information to defendants who cannot read English is generally poor. However, plans are in place to address this and have the potential to deliver improvements to information generally. Arrangements for providing interpreters are effective. Prison video-links are widely available and their use can improve prisoner welfare. However links are not always expertly operated, which can reduce defendants' ability to follow and participate in proceedings.
- 1.5 Corporately, defendants' needs and interests are not often specifically considered and articulated and appear to be a low priority. Locally, some positive and effective leadership and performance management is delivering improvements that benefit defendants, although in some situations a poorer service can result. Feedback and complaints received from defendants are taken seriously, dealt with appropriately and lead to improvements. However, feedback is not always actively encouraged and defendants in custody may face additional obstacles when trying to complain.
- 1.6 Four recommendations are made where we consider change is essential. An outline of HMCS's plans in response to the recommendations is included in Annex A.

## Recommendations

### Recommendation 1 (paragraph 4.28)

That HMCS ensure that safety and security risks are adequately identified, assessed and managed, including in relation to:

- shared occupancy buildings
- confiscation policy and practice
- escorting prisoners in public
- defendants taken into custody off bail
- smoking policy.

### Recommendation 2 (paragraph 5.15)

That HMCS take administrative steps to reduce the time all defendants (represented and unrepresented) wait on the day, including measuring waiting times and setting, and reporting on, appropriate standards.

### Recommendation 3 (paragraph 6.27)

That HMCS take administrative steps to ensure defendants are able to participate fully in proceedings.

### Recommendation 4 (paragraph 7.7)

That HMCS put in place measures that ensure the needs of defendants are understood and effectively considered at all levels, and that:

- specific groups of defendants are not disadvantaged
- there is specific consideration of the impact of key decisions and initiatives on defendants.

## Suggestions for further action

- HMCS should take account of the needs of all court users with a reason to visit custody when developing managed solutions to restricted access to custody facilities (3.15).
- HMCS should take steps to identify where privacy for defendants cannot be guaranteed and ensure defendants and other court users are aware that their conversations could be overheard when these facilities are used (3.21).
- HMCS should ensure that PECS provide it with data on waiting times for defendants in custody on a regular basis (5.14).
- Inspectors suggest that HMCS develop a strategy for working with partners to ensure high quality mental health provision is available in all Areas (5.18).
- HMCS should ensure that its strategy for providing information to defendants meets the needs of those with literacy problems (6.13).
- HMCS should provide clear directions on when non-professional interpreters can be used and assure itself that these are adhered to (6.20).



## 2 Introduction

### Background – 18 months of HMCS

- 2.1 Her Majesty's Courts Service (HMCS) was created in April 2005 out of 42 Magistrates' Courts Committees and the former Court Service, which administered the Crown and County courts for England and Wales. The first of the Area based inspections for this Overview took place in November 2005, eight months after HMCS came into being, and inspection activity continued until May 2006.
- 2.2 Change within HMCS has been rapid and far reaching and has involved both structural and cultural reform. HMCS has also been operating within the dynamic environment of the criminal justice system, which is continuing to develop and change the way justice is administered. The findings of this inspection should be seen in the context of this wider programme of change and the recommendations are intended to be compatible with it, including the most recent raft of developments contained within the Simple, Speedy, Summary Justice<sup>1</sup> initiative.
- 2.3 HMCS has been affected by a significant cut in its budget for 2006/07. This financial constraint will not have impacted on the Area inspections and has not affected the way we have reached our judgements. The Area inspections were conducted either before the start of this financial year, or during the first two months of 2006/07, before the financial situation will have taken full effect. More significantly, HMCS's financial position is likely to impact on its capacity to invest significant sums of money in response to our recommendations. In recognition of this, we have made recommendations that we consider can be delivered largely through management action.

### Defendants in the criminal courts

- 2.4 In 2005/06 there were approximately 2.5m criminal cases in the Crown and magistrates' courts of England and Wales. Out of these, 2.4m were dealt with in the magistrates' court and approximately 0.1m in the Crown Court. In the Crown Court alone, 16,176 defendants were found not guilty of all the charges laid against them.
- 2.5 This inspection has examined the quality of service for defendants that attended court on at least one occasion, although for many, a number of visits to one or more court was required before their case was resolved. Included within the inspection was an assessment of:
- The facilities provided at court and their availability, accessibility and suitability for all defendants
  - The actions of HMCS to ensure the safety and security of defendants
  - The treatment of defendants by HMCS staff
  - The administrative arrangements in place to enable all defendants to understand and effectively participate in proceedings

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<sup>1</sup> *Achieving Simple, Speedy, Summary Justice*. Home Office, DCA and Attorney General's Office. 2006.

- The quality of leadership demonstrated by HMCS managers in connection with the service provided to defendants
- The management of performance in connection with the service provided to defendants
- The arrangements for dealing with feedback and complaints from defendants.<sup>2</sup>

2.6 The inspection is only concerned with the administrative functions of HMCS and, in keeping with all HMICA inspections, no judicial decisions or individuals undertaking judicial functions have been examined. The outcomes of individual cases have not been considered, although examples of individual experiences are included in this report to illustrate some of the findings.

## Methodology

2.7 HMICA uses an inspection framework to ensure all its inspections are carried out to consistent standards and that the same subjects were examined in each of the Area level inspections. The framework provides a detailed breakdown of what is to be covered and is consulted upon and agreed with HMCS, DCA and the judiciary prior to the inspection. The framework used here can be summarised as follows and incorporates the seven areas listed above. A fuller version of the agreed framework can be found at Annex B:

*The provision of effective and efficient, high quality administrative services for all defendants – represented and unrepresented – including children and young adults, vulnerable defendants, and those in custody, which do not compromise fairness and build public confidence in the justice system.*

2.8 Our findings are based on the inspection of ten HMCS Areas<sup>3</sup> and meetings with senior officials. We visited courthouses and court offices, observed trials and interviewed many defendants and defence solicitors, members of the judiciary, court staff, senior HMCS and DCA officials and other stakeholders in the wider criminal justice community.

## Report structure

2.9 The detailed findings are divided into five parts:

- The physical facilities available to and used by defendants
- The measures taken to ensure defendants' safety and security
- The treatment of defendants by HMCS staff
- The steps taken to enable defendants to participate in proceedings
- Leadership, performance management and feedback from defendants.

<sup>2</sup> The inspection has looked at the local implementation and operation of arrangements for dealing with feedback and complaints from defendants. A more in depth inspection of the handling feedback and complaints by HMCS is the subject of a thematic inspection in 2006, which will be published in early 2007.

<sup>3</sup> Cheshire, Cumbria, Derbyshire, Durham, Essex, Kent, South West London, West Midlands, West Yorkshire, Wiltshire.

## 3 Physical resources

- 3.1 The provision of physical resources affects the quality of service received by defendants in many different ways. Getting to court in the first place, gaining access to the building and then using the facilities available are all examined. Overall, we found that most court buildings are adequate or better. Several are excellent, although a few fall short of what we consider to be an acceptable standard. A significant number of courthouses fails to provide suitable levels of privacy for defendants when consulting their legal representative.

### Getting to court

- 3.2 Defendants on bail have to make their own way to court and failure to attend when on bail is a criminal offence. Despite the serious consequences of not attending court many defendants still fail to do so. Some useful initiatives have been introduced to increase the chances of defendants attending court, including providing text message reminders to defendants shortly before a hearing date.
- 3.3 One factor, which may contribute to defendants failing to appear at court, is the ease with which they can travel to the court at which their case is listed. In rural areas, some defendants face lengthy journeys to court – either because of the distances involved, or because of poor public transport links. In one Area, Inspectors heard a number of reports of very long journeys to court. Courts indicate that if they are made aware, lengthy journey times would be taken into account when setting hearings. However, defendants may not always tell the court if a particularly difficult journey is likely and so a more proactive approach may be required in some Areas.
- 3.4 In some cases defendants may live closer to a courthouse in a different HMCS Area. So far, little advantage is being taken of the removal of restrictions on hearing cases in different HMCS Areas. This would allow cases to be heard out of Area if it were more convenient and cost effective for the defendant (and other parties, including witnesses and the police) involved in the case.
- 3.5 A new court estate modelling tool has been introduced to provide useful background information in relation to such decisions. The model emphasises the efficient use of the court estate, but does not take account of journey times for defendants. However, a protocol which must be followed when considering the closure of a courthouse, does ensure this factor is taken into account as part of the decision making process. It is important that HMCS takes account of journeys to court when taking decisions on the closure of existing court buildings and the location of any new ones. See Section 7 and Recommendation 4 for more on considering defendants' needs when taking key decisions.

3.6 At present, there is no indication of what constitutes a reasonable journey to court for a defendant on bail. Such an indication, if set at Area level to reflect local conditions, could be used when taking decisions relating to the court estate. Monitoring journey times to court, against an agreed level, would make it easier to identify situations where journeys are particularly onerous. Monitoring journey times would also help Areas assess the impacts of changes to the court estate and scheduling practices.



In Essex, a multi-agency annual scheduling cycle is used to determine the scheduling arrangements for the following 12 months. The geographical distribution of offenders is taken into account when deciding where particular types of case will be heard.

3.7 The length of journeys to court for defendants in custody has not been looked at in detail as part of this inspection. However, a joint inspection conducted by HMICA's predecessor (MCSI Inspection of Court Services) and Her Majesty's Inspectorate of Prisons found that many defendants in custody experience long journeys to court, especially women and children.<sup>4</sup> That inspection report included a recommendation to the agencies involved that the distances travelled by defendants in custody should be minimised.

3.8 HMCS is currently developing two initiatives that are likely to bring courts closer to some groups of defendants. These initiatives involve the introduction of temporary courts in public buildings such as village halls and the introduction of a mobile court that can be driven from location to location in remote rural areas. Both these initiatives appear to provide a potential solution to some of the difficulties raised here. However, HMCS will need to balance potential improvements to journey times with some of the concerns relating to facilities, privacy, safety and security, discussed later in this report, during the continuing development of these initiatives. The standards for journey times suggested at paragraph 3.6 would help determine the need for, and potential benefits of, these initiatives.

## Court buildings – quality and maintenance

3.9 Most courthouses visited during the Area inspections are adequate or better. A wide variation in the quality of facilities was experienced ranging from excellent through to a small number we consider not fit for purpose. In one case, Inspectors recommended to an Area that, unless the courthouse could be brought up to acceptable standards by the end of 2006, it should close.

3.10 Typically, the highest quality facilities are provided by modern, purpose-built courts, of which there are increasing numbers across England and Wales. Older, less suitable buildings still provide good quality facilities in many cases, thanks to effective maintenance and clever, flexible use of the available space.

3.11 Many of the poorest quality facilities are not owned by HMCS. Instead, HMCS is a tenant in a building, which may be shared with other users. In these situations HMCS has much less control over the management, maintenance and improvement of facilities.

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<sup>4</sup> The joint inspection of prisoner escort and court custody in England and Wales. A thematic review by MCSI Inspection of Court Services (HMMCSI) and HM Inspectorate of Prisons (HMI Prisons) – June 2005.

- 3.12 We were particularly pleased to see some of the improvements made to court custody facilities. In the West Midlands, substantial investment had transformed two custody facilities and, in Essex, investment had ensured defendants could continue to receive visits from family members without compromising safety or security.
- 3.13 Most court buildings visited were clean, although a small but significant number were not kept clean to an acceptable standard. Litter was evident in these courts, which in some cases included cigarette butts, indicating a failure to enforce no-smoking policies.

## Access

- 3.14 Once at the courthouse, most buildings are accessible to all defendants on bail. Where there are problems, plans are generally in place to enable access. For defendants in custody, access is often more difficult as HMCS, in conjunction with the National Offender Management Service (NOMS), has decided that managed solutions<sup>5</sup> are adequate. As a consequence, little or no investment has been made in making existing custody facilities fully accessible. Custody facilities built in accordance with the Court Design Guide are accessible but, as yet, only represent a small proportion of the facilities in use.
- 3.15 Managed solutions are acceptable under the Disability Discrimination Act and are generally adequate in terms of ensuring defendants in custody are able to get to and from the courtroom. However, we consider the focus of the managed solutions is often too narrow as they do not take account of the needs of other court users, such as legal representatives and probation officers, who may also need to gain access to custody facilities. HMCS should take account of the needs of all court users with a reason to visit custody suites when developing managed solutions to custody facilities with restricted access. We are also concerned that managed solutions frequently involve escorting defendants through public areas, which should also be taken into account – and kept to a minimum – as part of any solution (see also Recommendation 1).

## Privacy

- 3.16 Once inside the courthouse, one of the most important facilities defendants need is somewhere to meet with their legal representative in private. Most of the 99 courts visited during the ten Area inspections have adequate numbers of rooms for use by defendants, although defendants and their advisers do not always take advantage of them. However, in all of the Areas inspected, at least one courthouse does not provide adequate facilities to enable defendants to conduct their business in private. In eight of the ten Areas inspected, a lack of privacy for defendants was identified as a key weakness.
- 3.17 There are a number of reasons why privacy cannot be assured. In some cases it is due to a shortage or absence of interview rooms available to defendants. Each courthouse contains a finite amount of space, which in recent years has become increasingly in demand for uses such as waiting areas for witnesses, video-link rooms and accommodation for other professional and voluntary agencies. Interview rooms for use by defendants are frequently candidates for conversion when needs such as these arise.

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<sup>5</sup> A change to a working practice or operating procedure that facilitates access, without the need for a change to the structure of a building.

- 3.18 A shortage of interview rooms does not just have implications for the rights of defendants, but can also have an impact on the smooth running of the court – cases may not be ready to proceed in a timely fashion, as solicitors wait to consult with their clients. Shortages of interview rooms are also a problem in some custody facilities, which again can impact on the management of court business on the day. Where present, interview rooms in custody are generally of a good standard, with fixed furniture and other appropriate safety and security measures in place.
- 3.19 As an alternative to meeting their clients in an interview room designed for the purpose, legal representatives may meet with their clients in a cell, or in a small number of cases conduct an interview through the cell door hatch or wicket. These alternative practices address some difficulties associated with a shortfall in the provision of interview rooms in custody facilities, such as delays to court business similar to those described in the previous paragraph. However, they compromise the safety, security and privacy of those taking part and may reduce the effectiveness of such meetings. Inspectors consider that these practices should be avoided wherever possible.
- 3.20 The practice of conducting interviews and meetings in cells is permitted in some Areas but not in others, and practice depends on the local policy of the custody and escort contractor and the willingness of legal representatives to take part. The Prisoner Escort and Custody Service (PECS), which oversees the operation of the custody contracts, does not object in principle to this practice. Although the responsibility for the health and safety of the defendants and other court users rests with the custody contractor in such cases, HMCS should assure itself that it is aware of any practices that increase risks to safety and security within its facility to ensure proper account is taken of these when taking decisions about the provision of facilities, for which it does have responsibility.
- 3.21 Where consultation rooms are available these are not always adequately soundproof. At one court visited, Inspectors were able to carry on a conversation through the partition wall separating two interview rooms, without any need for raised voices. Soundproofing for interview rooms is not a design guide requirement and is considered technically difficult and prohibitively expensive – although this argument is not used for video-link rooms, which have similar requirements. Where improvements to soundproofing are not possible, HMCS should take steps to identify where privacy for defendants cannot be guaranteed and ensure that defendants and other court users are aware that their conversations could be overheard when these facilities are used.
- 3.22 Defendants appearing by prison video-link are probably the best catered for group in terms of guaranteeing privacy. Defendants and their advocates are able to use soundproof consultation rooms before and after a hearing, and also have access to a confidential telephone link during a hearing.

## Refreshments

3.23 Defendants may be required to wait at court for long periods of time (see paragraphs 5.10 to 5.15) and should therefore have access to suitable refreshments. As a minimum, defendants should be able to obtain drinking water free of charge but, if long waits are a possibility, then food and hot and cold drinks should also be available. The range of refreshments available varied from good quality, pleasant cafés, through to no provision at all in some courts. Vending machines were commonly provided, either as the sole source of refreshments or as a supplement to on-site cafés outside of their opening hours.



At one court, the security policy required all drinks to be confiscated at the entrance to the courthouse. Once inside, defendants and other court users only had access to a small number of vending machines. There was no provision of drinking water free of charge.

3.24 We are pleased to note that the new court estate modelling tool assumes that all newly built courts will have catering facilities, rather than relying solely on vending machines.



## 4 Safety and security

- 4.1 Concerns about safety and security were identified in all ten Area-based inspections, each of which made at least one recommendation aimed at addressing these concerns. HMCS introduced Safe and Secure, its new safety and security policy, shortly before the Area inspections were conducted. Few changes to procedures were observed during the period of the inspections. Two key themes are evident within a wide range of issues identified:
- Inconsistent application of security procedures
  - Risk to safety and security affecting defendants in custody.
- 4.2 Although our inspection highlights some serious shortfalls in the provision of measures to ensure the safety and security of defendants, the positive contribution frontline security staff often make to the operation of courts and the treatment of defendants was also clearly evident during our inspections and will be discussed further in the section on treatment.

### Physical security

- 4.3 The physical layout of court buildings is an important factor influencing the ability of HMCS and contract staff to maintain security. Many older court buildings have lots of corridors and corners, which are difficult to supervise effectively. The open plan, light and airy design favoured for modern court buildings provides a much easier environment in which to manage security.
- 4.4 As part of measures to enhance safety and security, separate entrances have been introduced for different categories of court users. At some courts with multiple entrances, we have found that the main entrance is covered by a permanent security presence but that other points of entry are unsupervised, potentially undermining the original reason for introducing additional entrances. Alternative entrances, such as those for youth courts, may only be in use occasionally, at which time security is provided. It is essential at these other times that such entrances cannot be used by other members of the public.
- 4.5 Court buildings owned by a third party, in particular those shared with other occupants, are often more difficult to keep secure. In some cases, HMCS is prevented from installing security equipment, or cannot control access to part of a building outside court hours – or even when the court is sitting. In these situations, additional security provision may be required and greater care taken to identify and manage risks. Unfortunately, during the Area inspections we found that this was often not the case, and more needs to be done to manage safety and security in these environments (see Recommendation 1).



One court visited was held in a building owned by the local authority and used by the public when the court was not sitting. Security equipment had to be packed away at the end of each day, at which time the public could freely access the building apart from the actual courtrooms. The only toilets available to court users were in a part of the building outside an area covered by security and were in regular use by members of the public.

Despite these additional risks, security was lax and an Inspector was able to enter an office used by a member of court staff unchallenged. The security risk assessments were generic and did not reflect the particular challenges clearly evident at this court.

Since the inspection we are pleased to note that security provision and the assessment and management of risks have been improved considerably at this location.

## Searching and confiscation

- 4.6 An important way of maintaining courthouse security is by preventing dangerous items such as knives – and other banned articles such as cameras – being brought into the courthouse. Application of this policy is through physical checks of bags at the entrances to courts and the detection of metal items using metal detecting arches and/or hand held wands.
- 4.7 HMCS has invested significant sums to ensure appropriate security equipment is readily available. However we found the operation of equipment and the application of searches of both bags and people to be inconsistent. Examples of poor practice observed during the inspection included:
- Not searching individuals who had triggered metal detecting equipment
  - Allowing some court users to bypass security equipment
  - Only checking people on their first entry into the court building
  - Apparently selecting people for security checks on the basis of their appearance.
- 4.8 Although these problems were widespread we also observed many examples of rigorous, professional and courteous application of search procedures.



At one court, everyone was subject to the same thorough checks every time they entered the court building through the public entrance. HMCS staff welcomed the assurances it provided them.

- 4.9 During one Area Inspection, Inspectors noticed that when travelling to different courts they triggered security arches on some occasions but not others, despite apparently wearing the same clothes and carrying the same items in pockets. Further investigation revealed that there was no standard setting for the sensitivity of arches, and at one site the court manager and security staff were continually adjusting the sensitivity of the equipment. Security arches should be tested daily. Arrangements are in place for this to be carried out using a standard test item, but HMCS cannot assure itself that is done (see Recommendation 1).

4.10 Security staff can come under pressure at certain times when high numbers of court users are trying to gain entry to the court building at the same time. At such times there may be greater pressure on security staff to take shortcuts rather than adhere to security procedures. HMCS needs to ensure that security provision is adequate for all times of the day, and that entrances have the capacity to deal with the high volumes of people during peak periods.

4.11 A further matter for concern at some courts is the arrangement for handling items retained by security staff. Banned items fall into one of two categories:

- Items that can be legitimately held but which cannot be brought into a court, such as cameras
- Those items that cannot be legally held, such as lock knives.

4.12 Items falling into the first category need to be retained by security staff until the court user is able to reclaim them on leaving the court. Items from the second category should be passed onto the police for further investigation or safe disposal. Procedural weaknesses were evident in connection with both ensuring items that can be legitimately held were returned to the right person and ensuring prohibited items are not returned, but disposed of appropriately.



4.13 Some security staff interviewed during inspections acknowledged that they returned prohibited items because they did not know what else to do with them. As with searching procedures, pockets of good practice were also evident, with effective arrangements in place to deal with all types of banned items, including protocols with the police to promptly collect prohibited items. Good and poor practices were sometimes evident within the same HMCS Area. However, overall, the arrangements for managing the confiscation of prohibited items and the return of legitimately held ones are weak. HMCS may be exposing itself to unnecessary costs through claims made against lost items and may also be allowing prohibited items to re-enter public circulation (see Recommendation 1).

4.14 Court security staff are either directly employed by HMCS or provided through a series of contracts managed at Area level. Court managers do not therefore always have direct, line management control over the contract staff undertaking security functions. In some Areas, HMCS managers were aware of poor practice at some locations but had not successfully addressed it, indicating that the management of security contracts is not always effective.

## Risks affecting defendants in custody

4.15 Several risks to safety and security of defendants in custody were identified during the Area inspections. These included:

- Ligature points in custody facilities
- Escorting prisoners through public areas
- Detaining defendants in the absence of custody contract staff.

4.16 Defendants in custody can be at particular risk when transferring between escort vehicles and the courthouse. Ideally, transfers will always take place within a secure van dock, which enables risks of escape to be minimised and threats to the defendant's safety from members of the public to be greatly reduced. Where van docks are not available, other environments, such as yards and car parks away from public view, also provide acceptable locations for prisoner transfers, provided the additional risks associated with these environments are properly identified and managed.

4.17 It is particularly disappointing when a van dock has been provided but is not in use or is misused in some way, resulting in the exposure of defendants, custody staff and members of the public to unnecessary risk. Where provided HMCS should assure itself that van docks are being used fully and properly. Some van docks are under utilised because they are too small to accommodate the larger vehicles operated by the custody contractors. In these instances the courts should ensure that PECS and the custody contractors are taking all reasonable steps to use vehicles of an appropriate size to service the particular court in question. This is particularly important when transferring children and young people.



At one court the benefits of a modern, purpose built van dock were undermined by the court using it to store a lawn mower and petrol.

4.18 The least acceptable arrangement for transferring prisoners between vehicles and court buildings is in a public place. There are still a significant number of courts where this practice takes place. Defendants are at much greater risk of attack by members of the public and also have their decency compromised by being seen in public in handcuffs.

4.19 At some courts, prisoners are also escorted through public areas to get from the custody facility to a courtroom. Again, these practices are detrimental to the defendants' safety and decency, and should be avoided where possible. We are particularly concerned when these practices involve children and young people.



At one court a member of the inspection team witnessed a defendant from the youth court being taken through a busy area in a very distressed state, having just being giving a custodial sentence

4.20 Once inside the courtroom, secure docks are widely available in magistrates' courts, but are much less common in Crown Court Centres. Great care is taken to ensure defendants do not appear in court wearing handcuffs. Where certain risk factors are identified, the custody contractor can apply for handcuffs to be retained during a hearing. Effective and widely understood arrangements are in place to enable applications to be made to the court in such cases.

- 4.21 HMCS and PECS are conducting trials of an alternative type of restraint for use in court. The restraint is not visible from outside the dock and, if it proves successful, should enhance security while protecting the defendant's dignity.
- 4.22 At least three of the ten Areas inspected include courthouses that do not routinely hear custody cases, or at which the custody contractors are only present on certain days. Situations can arise where a defendant, previously on bail, is unexpectedly remanded or sentenced to a period in custody. When this happens the custody contractors are required to respond within one hour to come and collect the prisoner from the court. However, as the one hour response time is in addition to any travelling time for the contractor to arrive, defendants may not be taken into custody by the contractor for some time after sentence or remand.
- 4.23 In these situations there is an increased risk of escape, and increased levels of risk to the safety and security of the defendant and any member of staff required to supervise them. Neither HMCS staff nor security contractors have been trained as custody staff. They are not equipped to undertake this role and associated risks have not been adequately assessed.
- 4.24 HMCS needs to work with PECS to determine the frequency and severity of the risks involved in this procedure before deciding how risk can be managed (see Recommendation 1 below).



At one court the lone security guard has to leave his post at the entrance to the court if a defendant is taken into custody off bail. The member of security staff then has to sit with the defendant in an available room until the custody contractors arrive.

- 4.25 HMCS buildings are already predominantly no smoking facilities. A complete ban on smoking is likely to be introduced throughout HMCS buildings, including custody facilities from January 2007. Such a policy is seen as inevitable given the forthcoming ban on smoking in enclosed public places in England and Wales.
- 4.26 Strong concerns have been expressed by custody staff as to the risks to them and others resulting from the introduction of a smoking ban. Although there are safety and security implications connected to a no-smoking policy, such as the risk of a violent incident if a prisoner is told he cannot smoke, the HMCS Security Officer has not been fully involved with the working group looking at this. HMCS should ensure that all relevant risks have been fully considered with partners and that violent incidents in court custody, thought to relate to the smoking ban, are closely monitored and considered as part of any review of the policy (see Recommendation 1).

## Assessing and managing risk

- 4.27 HMCS introduced a new security policy in 2006 – *Safe and Secure* – which now applies throughout HMCS. The policy has the potential to improve the standard of risk assessments, which were found to be poor during many of the Area inspections.
- 4.28 Although *Safe and Secure* identifies a number of risks associated with defendants, the emphasis is on the risks to HMCS staff and other court users posed by defendants. *Safe and Secure* does not adequately reflect the safety and security risks to which defendants may be exposed at court. For example, the risk of assault by another party in the case or by members of the public if the case has attracted public notoriety. Without this latter category of risks, *Safe and Secure* is incomplete.

### Recommendation 1

That HMCS ensure that safety and security risks are adequately identified, assessed and managed, including in relation to:

- Shared occupancy buildings
- Confiscation policy and practice
- Escorting prisoners in public
- Defendants taken into custody off bail
- Smoking policy.

# 5 Treatment

## 5.1 This section looks at:

- how well defendants are treated by HMCS staff
- what help is provided to them
- how long defendants wait
- what administrative steps are taken to help defendants during waiting periods.

Overall, defendants are treated with respect and courtesy by frontline HMCS staff, who show impressive commitment to looking after people well. Administrative help is generally available on the day, although this is rarely provided pro-actively. Waiting times for defendants can be lengthy, and at some courts unrepresented defendants are disadvantaged by having to wait longer. The management and reduction of waiting times is not a priority across HMCS, although there are some Areas that demonstrate good practice.

## Treatment and assistance

5.2 During the Area inspections, we were impressed by the treatment of defendants by HMCS staff. We witnessed the vast majority of HMCS staff dealing with most defendants with courtesy and respect when providing help and information. This finding replicates the results of earlier research for the Department for Constitutional Affairs' (DCA), which found that: *"Most defendants are happy with the treatment they receive from court staff, who they see as helpful and respectful."*<sup>6</sup>



At one court, the legal adviser explained to a defendant in custody that there would be a slight delay to the proceedings as his solicitor was dealing with a case in another courtroom. At another, the legal adviser moved and sat next to an unrepresented defendant in order to explain some paperwork.

5.3 Generally, help is available on the day for defendants. If notified in advance, either by other agencies such as the police, or at a previous hearing, courts will endeavour to meet the needs of defendants. Otherwise, HMCS staff respond positively to needs identified on the day, although additional requirements are less likely to be met without prior warning. Problems meeting defendants' needs, such as a requirement for an interpreter, typically occur at a first hearing and may result in cases being adjourned (see paragraphs 6.15 – 6.20). Case management arrangements consider defendants' needs and are generally effective at identifying these.



At one court, an usher was seen giving additional support and attention to an unrepresented defendant, including explaining what the procedures were in the courtroom and what might happen afterwards.

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<sup>6</sup> Consumer Experience of the Criminal Justice System.

5.4 Most courts have a reception desk or enquiries counter where defendants can seek information and register their arrival at court. Particularly in large magistrates' courts, this function can become very busy at the start of the morning and afternoon court sessions and not all courts had the capacity to cope with demand during the busiest periods.

5.5 Ushers are an important source of information for defendants. Typically, ushers are readily identifiable by their gowns, although in large courthouses it can be difficult to identify the particular usher defendants should report to.

✓ At Feltham (South West London) and Solihull (West Midlands) magistrates' courts, ushers wear badges, which identify the number of the court they are working in. This enables defendants and other court users to easily identify the particular usher they need to make contact with when they arrive at court, especially in busy courts where waiting areas may be used for several courtrooms.

5.6 Security is often the first point of contact for a defendant arriving at court and defendants told us they regularly seek help from security staff on arrival. Security staff, although not always employed directly by HMCS, make an important contribution to the way defendants are treated and the help provided to them. Security staff are required to balance this secondary role, of providing help to defendants and other court users, with their primary function of maintaining court security. In most cases an appropriate balance is struck, although on some occasions efforts to provide help were to the detriment of court security.

✗ At one court a security officer left his post for several minutes, whilst seeking help for a court user. During the period of absence several court users entered the building without undergoing security checks. Help should have been available from a member of HMCS staff in an office next to the court reception. However, this was poorly marked and the member of staff concerned was absent for most of the period observed.

5.7 Written information in the form of leaflets and posters is another source of information available at the court (see also paragraphs 6.9 – 6.14). Information displays in courthouses range from comprehensive and well presented through to virtually non-existent, with the majority providing adequate or better levels of information. However, defendants we spoke to at court showed little interest in this form of information and had rarely looked at it. Information displayed electronically attracted more interest as both a source of information and as a distraction during long waits. Some new courts built under the PFI scheme report restrictions on their ability to display information on the walls of their building, resulting in very limited displays of information to the public.

✓ In South West London, public display screens are used to show a series of slides providing information useful to defendants. At other times the screens show news bulletins and other sources of information. Similarly, at some courthouses in Kent and West Yorkshire, televisions are provided in waiting areas. Feedback from defendants indicates they are greatly appreciated during what can be long waits for a case to be heard.

- 5.8 In the Crown Court the new computer system, Xhibit, provides a useful source of information to defendants. Television screens outside each courtroom provide real time information on the progress of each case. Defendants can use Xhibit displays to track when their case is likely to be called and in which courtroom their case will be heard. Xhibit generally works well, although in large, busy courthouses, it can be difficult for defendants to find their names, unless the system has been set up to display names in alphabetical order.


X At one courthouse, the Xhibit displays had been set up so that defendants' names were listed in an order determined by the particular courtroom their case had been allocated to, rather than alphabetically. As a result, defendants had to carefully read a series of scrolling screens in order to find their name and so find out which courtroom their case was in. If the display had been set up to show names alphabetically defendants would have been able to gain this information much more easily. Ushers reported that enquiries from defendants had increased since the introduction of Xhibit. Local staff were unaware that the Xhibit displays could be changed to show names alphabetically.

- 5.9 The DCA's consumer experience research indicates that first-time defendants are generally more nervous, less familiar with the court and may need more help and support. We saw many instances where HMCS staff took time to explain to a defendant what was going to happen during the hearing. A small number of courts say they would allow defendants to visit the courthouse prior to their appearance in the same way a witness can. However, there was no evidence of systematic arrangements in place to identify first-time defendants and offer additional help and support to them.




## Waiting times

- 5.10 The length of time defendants have to wait at court before their case is heard is a major source of dissatisfaction about court administration amongst defendants. In magistrates' courts the practice of allocating all cases either to a morning or afternoon session is common and can result in defendants waiting for several hours at court. First-time defendants, in particular, often think that if their case is listed for 09:45, that is when it will be heard. They are surprised to find that everyone else at the court has the same appointment time. Bottlenecks at security checkpoints and reception desks were often observed during the Area inspections, as large numbers of defendants arrived at court within a short period of time. In the Crown Court, there are fewer defendants so bottlenecks do not occur to the same extent. At some courts, a slot-based system is employed, in which cases are allocated to hourly slots rather than a half-day session. This approach spreads demand over a longer period but some managers in HMCS are concerned that it increases the likelihood the court may be left idle at times.
- 5.11 Different categories of defendants can wait for different periods of time. We were concerned to hear reports that, in some Areas, defendants without a solicitor consistently have their cases heard after their represented counterparts. In one Area this practice was openly acknowledged. We also received regular reports that defendants in custody wait longer than those on bail – although those appearing by prison video-link (PVL) are able to avoid long waits, as they are allocated specific time slots for their hearings and can remain in their cells until shortly before the hearing is due to commence (see paragraphs 6.21 – 6.27 for more about PVLs).

 At one court a defendant arrived at the courthouse before 09:00 and was ready for court from the start as he was unrepresented and so did not need to meet with his representative. However, his case was not heard until after midday as all the cases involving represented defendants were heard first.

- 5.12 A clever system developed in Wiltshire can ensure all defendants, including those in custody and those without representation, have a fair chance of having their case heard without unnecessary delay. The system also enables defendants to gain a clearer picture of how long they are likely to have to wait (see Recommendation 3). If asked, HMCS staff in all Areas are willing to provide updates on likely waiting times. However, such updates are rarely given proactively and defendants reported to us that they had not been kept informed. Legal representatives are relied on much of the time to keep defendants informed. Legal representatives can provide information to their clients but HMCS should not assume all defendants are kept fully informed this way, especially as some defendants lack representation. HMCS is also unable assure the quality of information provided by third parties.

 In Wiltshire, defendants (or their representatives) are given a card to complete when arriving at court. Defendants answer a small number of questions about their case and return the card to HMCS staff when they are ready to proceed. This approach helps minimise waiting times for all defendants, including those in custody or who are unrepresented. HMCS staff are also able to tell defendants about likely waiting times when the card is returned.

5.13 The results of waiting time surveys in magistrates' courts show that most defendants do not wait an unreasonable length of time, a level of performance which has been maintained for the last three years. Just under two-thirds of defendants wait for one hour or less and the average waiting time is just under 70 minutes. What these figures do not indicate is how long some defendants have to wait. We often encountered defendants who had waited at court for several hours. There is no equivalent survey in the Crown Court, so HMCS is unable to assess waiting times there.

Figure 1 Percentage of defendants waiting one hour or less (magistrates' courts)

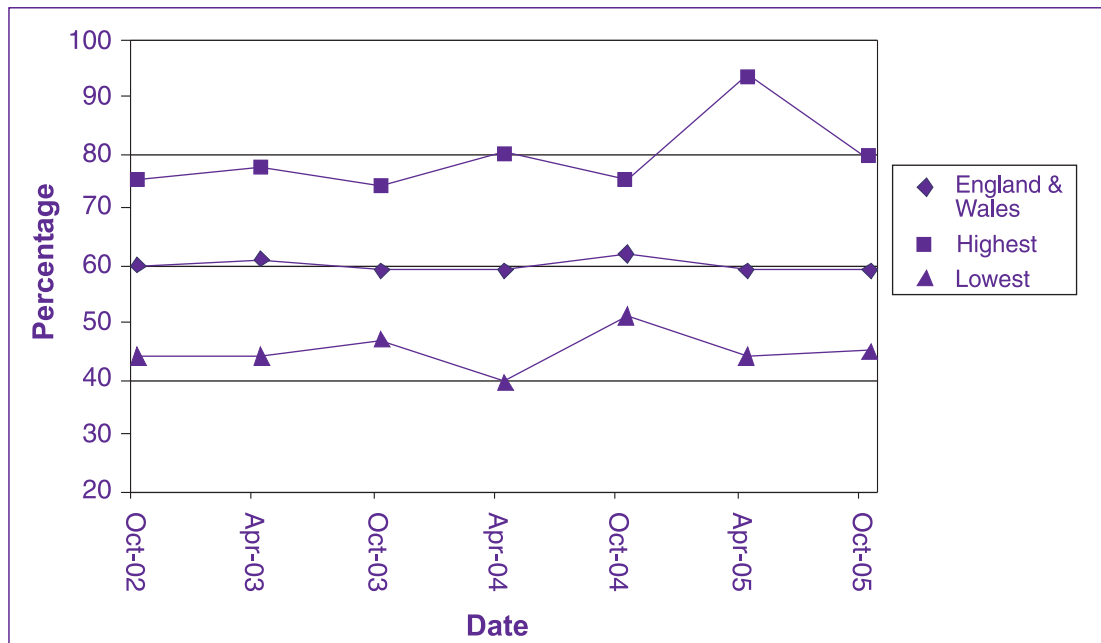
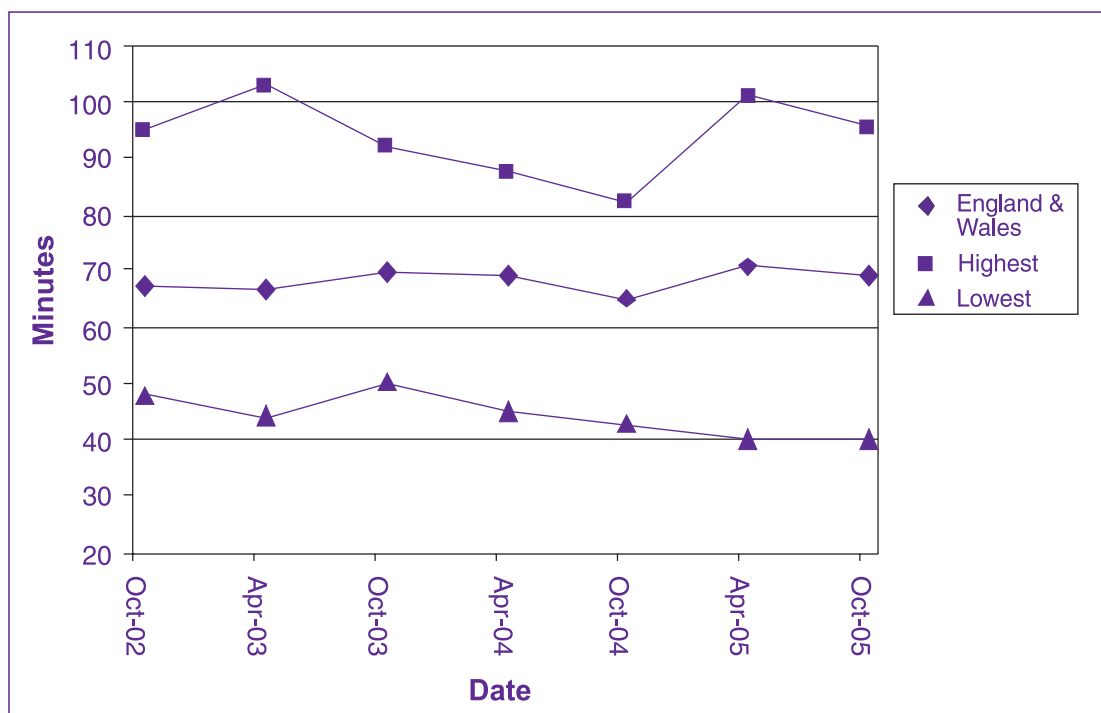


Figure 2 Defendants average waiting times (magistrates' courts)



- 5.14 Until April 2006, defendant waiting times surveys were conducted every six months. This has now ended and will be replaced by an exit survey to be conducted with all court users. We have been assured that the new survey will include questions on waiting times. HMCS will need to ensure that the new arrangements for assessing court user satisfaction will provide robust data on waiting times for defendants that is statistically valid down to at least Area level (see Recommendation 3). The custody and escort contractors collect robust data on waiting times for defendants in custody, but this is not routinely supplied to HMCS. HMCS should ensure that PECS provides data on waiting times on a regular basis.
- 5.15 Reducing waiting times for defendants is not a priority for HMCS. One of the reasons given for ending the waiting time survey was that the data was not widely used. There are no standards for how long defendants should have to wait and little evidence of performance management. Despite waiting times being a source of dissatisfaction amongst defendants and also connected to the operational problems described earlier, there is little prospect of improvement without further action.

### Recommendation 2

That HMCS take administrative steps to reduce the time all defendants (represented and unrepresented) wait on the day, including measuring waiting times and setting, and reporting on, appropriate standards.

## Mental health provision

- 5.16 Estimates suggest that a high proportion of defendants is likely to have a mental disorder. For example, research indicates that 90% of prisoners aged 15-20 years have a diagnosable mental disorder and 10% will have a severe psychotic illness – 50 times higher than in the population as a whole<sup>7</sup>.
- 5.17 All magistrates' court custody facilities inspected had access to mental health services in some form. However, the quality and extent of provision varies from access to an on-call community psychiatric nurse, through to teams of mental health professionals based at courts who proactively screen defendants in custody. HMCS does not hold the responsibility for providing mental health services to defendants. However, in the best example of provision examined during this inspection, the former Magistrates' Courts Committee had taken an active role in setting up the service that enabled vulnerable defendants to receive expert intervention at court. The courts benefit through the provision of prompt assessments and reports and HMCS staff work closely with mental health professionals and PECS contractors to ensure best use is made of the services available.

✓ In Essex, an excellent scheme is operating, which enables defendants to see a mental health professional whilst they are at court. The scheme operates from the court custody facilities but will also see defendants on bail who are referred to them. Referrals to the scheme are made by solicitors, HMCS staff and custody staff.

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<sup>7</sup> Office for National Statistics.

- 5.18 Although focused primarily on defendants in custody, schemes such as the one operating in Essex will also see defendants on bail. The Essex scheme is able to carry out on the spot assessments and provide a brief report to the court on the same day. This means that progress can be made on the day without the need for a further adjournment and, where appropriate, help can be provided to the defendant without unnecessary delay. In Areas with less effective provision, cases may be subject to additional adjournments while defendants are assessed and opportunities to divert mentally ill defendants away from the criminal justice system could be missed. Inspectors suggest that HMCS develop a strategy for working with partners to ensure high quality mental health provision is available in all Areas.
- 5.19 In the Crown Court there is no similar provision to that found in the magistrates' courts, although there is also less need. Defendants in custody have already passed through a magistrates' court and should also have had an opportunity to be assessed by mental health teams while in prison.



## 6 Understanding and participating in proceedings

- 6.1 Defendants are subject to what can be a complex and confusing legal process at court. Observations by Inspectors indicate that some defendants can struggle to understand what is happening during this process. The DCA's research into consumer's experience of the criminal justice system revealed that some defendants could not understand what was happening during a hearing<sup>8</sup>. Interviews and discussions with stakeholders in the criminal justice system indicate this view is one that is widely held.
- 6.2 Explanations provided to defendants about individual cases are a matter for the judiciary and not a subject of this inspection. However, HMCS can help ensure defendants are best placed to understand their hearings by providing appropriate administrative support, both before and after hearings (see also Recommendation 3). This next section examines some of the areas in which HMCS plays an important role.
- 6.3 Overall, defendants are not always enabled through administrative processes to participate fully in proceedings. Provision of written information to defendants who cannot read English is generally poor. Plans are in place to address this which have the potential to deliver improvements to information generally. Arrangements for providing interpreters are effective. Prison video-links are widely available and their use can improve prisoner welfare. However, links are not always expertly operated, which can reduce defendants' ability to follow and participate in proceedings.



<sup>8</sup> Consumer Experience of the Criminal Justice System. DCA, 2005.

## Oaths and affirmations

- 6.4 Variable practices in the administration of oaths and affirmations have been addressed at length in two recent HMICA inspection reports looking at the service provided to victims, witnesses and jurors.<sup>9</sup> Similar issues were observed in Area inspections with respect to defendants.
- 6.5 Some Areas have adopted what HMICA considers the good practice of asking defendants taking an oath to “repeat after me”. Others offer a choice of reading from a card or repeating. A drawback with offering a choice is that it relies on sensitive and skilful questioning by a member of staff, preferably before entering the courtroom, in order to ascertain the defendant’s preferences without causing embarrassment. This is made more difficult in the case of defendants as, unlike other witnesses, they are already in the courtroom before being called to give evidence. All too often we observed such issues being handled awkwardly. Similar problems are associated with determining which holy book should be provided for the oath, or whether the defendant wishes to affirm.
- 6.6 Poor practice in connection with administering oaths and affirmations is not due to a lack of attention or effort by HMCS staff. When asked, ushers generally demonstrated good knowledge of procedures and awareness of the needs of different faiths. In one case, ushers had made commendable efforts to ensure the wording of particular oaths was correct.
- ✓ In the West Midlands a group of ushers had approached a local Sikh temple to confirm the wording of an oath after a member of the public had challenged its appropriateness.
- 6.7 We have not repeated the recommendation about oath taking made in the two inspections referred to earlier, as we anticipate HMCS will already be working to address these. However, HMCS should consider these issues, in particular those primarily affecting defendants, when responding to Recommendation 3 below.

## Statutory declarations

- 6.8 We also witnessed a defendant making a statutory declaration in connection with a case. Statutory declarations can be made either inside or outside a courtroom in a magistrates’ court and are often related to cases where defendants do not have legal representation. The language of the declaration was complex and the defendant struggled to read some of the legal language, with an apparently high potential for not understanding what was being said. Although unable to amend the language of the declaration, HMCS should ensure that, where complexity exists, there is a mechanism for providing suitable assistance to defendants in all cases. We suggest that HMCS may wish to work with the judiciary and DCA to explore opportunities to simplify the language used in statutory declarations.

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<sup>9</sup> Valuing victims and witnesses: an overview of inspections undertaken during 2005. HMICA, 2006. A thematic review of the quality of service provided by HMCS for jurors in the criminal courts. HMICA, 2006.

## Leaflets

6.9 Information leaflets are one of the main ways by which HMCS conveys information to defendants and other court users. A broad range of leaflets is available on a wide variety of topics, including how to get to the court and what facilities will be available there. Leaflets are sent or given to defendants before the first hearing and are also available at the courthouse. Although arrangements are in place to ensure leaflets are sent out with summons or given to the defendant at the police station following a charge, most defendants we spoke to during the Area inspections stated they had not received any information prior to their first hearing, especially when the defendant had been charged.

✓ In some Areas, court information is printed on the back of the charge sheet given to defendants at the police station. This practice is likely to increase the chances defendants will receive information from the court prior to the first hearing and also retain it.

6.10 The 43 organisations that combined to make up HMCS all produced their own information leaflets prior to amalgamation. The challenge for HMCS has been to establish a corporate image and introduce consistency throughout the information it provides to defendants and other court users. The quality of leaflets available at court varied across the ten Areas we inspected, with some very good leaflets available. There is some confusion over what should be done with old stocks of leaflets. HMCS HQ considers that, as long as the information is correct, Areas should continue to use existing stocks of leaflets before purchasing new stocks when they become available from the centre. In some Areas, leaflets have been withdrawn from use in anticipation of replacement leaflets produced by HMCS HQ, leaving a vacuum.

✓ In Cumbria, a well presented leaflet provided defendants with helpful information before attending court.

6.11 There is little provision of written information in other languages. With the exception of Welsh and Braille, only locally devised leaflets are available in other languages. HMCS has recognised this shortfall and is currently considering how best it can be addressed. There are concerns over the cost of producing information in a large number of languages. HMCS's first step towards providing information in other languages is going to be the production of a leaflet providing information about local courthouses. This will contain the phrase "*If English is not your first language and you have difficulty understanding the information in this leaflet, please take advice from a friend, the Citizens' Advice Bureau, or the Community Legal Service*" for which contact details will be provided. The phrase will be printed in the five most common community languages for each HMCS Area. We consider this to be a step in the right direction and an improvement on the current situation. However, it falls short of making essential information readily available to all court users. HMCS should set out what further steps it intends to take as part of its response to Recommendation 3.

6.12 Appropriate mechanisms have now been established to improve the provision of written information generally, including for those who cannot read English. A management group has been set up to co-ordinate the production of public information, with appropriate terms of reference and membership. HMCS has rightly identified defendants as one of its key consumer groups for written information.

- 6.13 DCA research indicates that court users who suffer from dyslexia have trouble reading the literature provided for them. Our own contact with defendants identified a number who had had difficulty reading the information provided to them. HMCS currently produces information in what it considers plain English, intended for someone with a reading age of 13-14 years. However, research indicates that many defendants are likely to have lower levels of literacy than that of 13-14 year olds. Therefore, we consider the current approach is unlikely to be sufficient to make the information accessible to everyone. HMCS should ensure that its strategy for providing information to defendants meets the needs of those with literacy problems.
- 6.14 HMCS is starting to think about alternatives to the written word, including the use of audio CDs. This is a welcome development. So far, little use has been made of formats other than printed leaflets. The HMCS website provides information on courthouse locations but does not provide much on what might happen at court, which is something first-time defendants, in particular, are concerned about.

## Interpreting

- 6.15 Many defendants are unable to speak English sufficiently well to be able to participate fully in the court process. In such cases, HMCS provides an interpreter in the appropriate language. Sign language interpreters are provided for defendants who are deaf or hearing impaired. The demand for court interpreters for defendants is increasing, the cost of which is paid for out of legal aid. The budget for interpreters in 2000 was £2.5m, which had risen to £10.4m by 2004. In 2005, the Metropolitan Police Service provided interpreters in 106 different languages. It is likely that a similar range of languages is needed in the courts.
- 6.16 The management and provision of interpreters is generally effective, both at national and local levels. A national register of interpreters has been established, which includes interpreters able to interpret in the criminal justice system. This register is widely used by Areas, although unregistered interpreters are occasionally used when no one is available from the register. The register can be accessed in a number of ways, including online or on CD. Areas have adopted a variety of methods for checking the register and these vary in their effectiveness and the frequency with which the information is updated.



In the West Midlands we found a number of innovative and sensible approaches to managing interpreters. These included a system by which a diary of interpreter bookings is maintained and checked each time a further need for an interpreter is identified. This means that if an interpreter of the same language is already scheduled to be working at the court in the future, the court has the option to hear the new case on the same day, potentially saving money and reducing waiting times.

- 6.17 Areas generally rely on the national register as an assurance of the quality of interpreters. It is difficult for Areas to carry out their own checks into the quality of interpretation as they do not possess an understanding of the languages involved. If Areas receive complaints about the quality of an interpreter they will generally take appropriate action, including ensuring that interpreter is not used again.

- 6.18 The same interpreter should not be used for the court hearing as was used for interviews at the police station. Courts are aware of this restriction but formal checks are rare. Instead, courts generally rely on the parties in the case, including the defence and the interpreters themselves, to ensure this situation does not arise.
- 6.19 Failures to provide an interpreter are most likely at the first hearing. Where a defendant is summoned, the first hearing may be the first opportunity the courts have had to identify such a need. Where the defendant has been charged, protocols are in place to ensure an interpreter is provided. These protocols appear generally effective although awareness of them amongst court staff is not universal. If an interpreter is not available, perhaps at a first hearing, or if a defendant or other court user has attended court unexpectedly, some Areas provide access to instant telephone based interpreting services, which can provide an effective back-up to a court interpreter for administrative activities outside the courtroom. The contracts for the provision of telephone based interpreters are arranged locally. HMCS may find economies of scale are available if a national contract were put in place.

✓ In Kent, effective use is made of a service providing immediate access to interpreters by telephone. This service can provide a useful back-up outside the courtroom, and when the need for interpretation could not have been predicted, but does not replace the need for interpreters to be present in person for court hearings.

- 6.20 We are concerned that HMCS staff, relatives or friends are sometimes used to interpret during court hearings. This was typically during a first hearing and never during a trial. There may be situations when such informal interpretation may be appropriate – for example, to explain to a defendant that their case is being adjourned until a professional interpreter can be arranged. However, there can be no assurances about the quality of the interpreters used or what involvement they may have previously had in the case. HMCS should provide clear directions on when non-professional interpreters can be used and assure itself that these are adhered to.

✗ At one court, a multi-lingual security guard was regularly called into court to interpret for defendants.

## Prison video-links

- 6.21 Defendants remanded in custody can sometimes use a prison video-link as an alternative to an appearance at court in person. Decisions on which individual hearings should take place by PVL are judicial, but HMCS is responsible for arranging the links and for operating the equipment at the court end. HMICA and HMI Prisons have commented previously on the need to improve the arrangements for setting up PVL hearings and recommended that HMCS and NOMS work together to improve arrangements<sup>10</sup>. This inspection has not looked at this aspect of PVL usage again, instead focusing on the experience of appearing by PVL from a defendant's perspective.

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<sup>10</sup> The joint inspection of prisoner escort and court custody in England and Wales. A thematic review by MCSI Inspection of Court Services (HM MCSI) and HM Inspectorate of Prisons (HMI Prisons) – June 2005.

6.22 The most obvious difference for defendants who appear by PVL is that they are not required to travel to court for their hearing. Instead of getting up at around 6 am, passing through the prison reception and having to pack up all their belongings in case they do not return to the same prison, they walk to the PVL unit, face a short wait ahead of their scheduled PVL slot before returning to their own cell after the hearing.

6.23 Below is an illustration of how a defendant's day may proceed if scheduled to appear in court in person or by video-link.

Appearance in person	Appearance by PVL
06:00 Get up and eat breakfast in cell	
06:30 Pack up all belongings	
07:00 Transfer to prison reception	07:00 Get up and eat breakfast
08:00 Board escort vehicle	
	08:30 Transfer to video link unit for short introduction to PVL hearings
	09:00 Return to cell or wait in secure waiting room
09:30 Arrive at court	
09:45 Enter cell in court custody unit	
	10:15 Speak with legal representative before hearing
	10:45 Enter virtual courtroom for court appearance
11:00 Meet with legal representative	11:00 Discuss hearing with legal representative
	11:15 Return to the same cell, which was left earlier
12:30 Transfer to courtroom	12:30 Eat lunch back on prison wing
12:45 Return to court cells	
13:00 Eat lunch in cells	
17:00 Board prison van	
18:30 Arrive back at prison	
18:45 Enter prison reception	
19:30 Eat meal in prison reception as regular evening meal has been missed	
20:30 Return to a different cell from the one left that morning and meet new cellmate	

- 6.24 The timetables presented here may not reflect the experiences of every defendant in custody. However, they provide an illustration of the potential difference to a defendant between the two types of court hearing.
- 6.25 Surveys by HMI Prisons indicate that, generally, defendants in custody much prefer to use the PVL rather than travel to court for their appearance. Defendants can also be released on bail from prison in the same way they can be released from court.
- 6.26 There can be difficulties with the use of this technology. The extent and ease with which a defendant can understand what is happening in the courtroom and participate in proceedings may be less by PVL compared with an appearance in person. The defendant's level of participation by PVL is dependent in part on the skill with which the equipment is operated in the courtroom. The defendant sits in front of a television screen, which can show the image captured by a series of cameras within the courtroom. These include the bench/judge, prosecution lawyer, defence lawyer and witness box. A member of court staff, who is typically the legal adviser or court clerk, switches between the cameras depending on who is speaking so that the speaker is always in view to the defendant. Skilled and experienced PVL operators are able to switch efficiently between cameras, ensuring that the image of who ever may be speaking is transmitted to the screen watched by the defendant. However, prison staff within a video-link unit visited as part of this inspection reported that, with less experienced operators, the camera more frequently fails to consistently track the speaker, with the consequence that the defendant is left listening to a voice that does not belong to the person they can see on the screen in front of them.
- 6.27 Another common problem, that is only obvious when PVL hearings are viewed from the defendant's perspective, is a failure by the court to signal clearly that the hearing is at an end. Done well, a clear explanation is given by the court to the defendant, informing them that the hearing is now at an end and that the defendant can leave the virtual courtroom. However, on some occasions the court fails to provide such a clear direction and the defendant and prison officer can be left unsure as to whether the hearing has concluded. On some occasions, the prison officer has to intervene and ask the court if the hearing has finished. HMCS should ensure that staff operating PVL equipment have been suitably trained to do so (see Recommendation 3).

✓ In some Areas, prison video-links are made available for use by other criminal justice professionals, when not needed by the court. Probation officers are one of the groups able to make use of this facility, saving valuable travelling time to and from a prison. The time saved can be used to carry out other court related activities such as producing pre-sentence reports or interviewing offenders, with consequent benefits in reduced waiting times for the court and defendants.

### Recommendation 3

That HMCS take administrative steps to ensure defendants are able to participate fully in proceedings.



# 7 Leadership and performance management

- 7.1 This final section looks at how leadership and the management of performance in HMCS affects and contributes to the provision of services to defendants. Overall we found that, corporately, defendants' needs and interests are not often specifically considered and articulated and are a lower priority than for some other categories of court user. Locally, some positive and effective leadership and performance management is delivering improvements that benefit defendants, although in some situations a poorer service can result. Feedback and complaints received from defendants are taken seriously, dealt with appropriately and lead to improvements. However feedback is not always actively encouraged and defendants in custody may face additional obstacles when trying to complain.
- 7.2 The importance of ensuring that defendants' needs and rights are protected and met is recognised by HMCS at the highest level. In the HMCS Business Plan 2006-07, the Chief Executive states:

*“At the heart of the design for the new organisation is the principle that court services should be organised for the benefit of the people they are there to serve. These could, for example, be the victims, and people accused of crime.....”*

- 7.3 The Area inspections identified many examples of positive and effective leadership that are benefiting defendants and other court users, some of which are highlighted earlier in this report. Part of the cultural change ongoing in HMCS is a shift in focus away from an organisation that saw its primary function as supporting the judiciary, to one that is much more focused on the needs of court users, with defendants seen as part of this group.
- 7.4 Section 2 of this report briefly described the broader environment in which HMCS is operating. A dynamic programme of reform is under way throughout the criminal justice system, driven and co-ordinated by the Office for Criminal Justice Reform (OCJR). The OCJR reforms include steps to improve the effectiveness of the prosecution process, through the Effective Trial Management and No Witness, No Justice Programmes. Improving the quality of service provided to defendants is not directly part of this programme, although defendants will benefit from improvements to case management arrangements and reductions in ineffective trials.
- 7.5 The OCJR reform agenda influences much of HMCS's own business strategy and plans. As a consequence, HMCS's activity and priorities include a raft of initiatives aimed at improving the quality of service to victims and witnesses and improving the case management process. All this activity is welcomed and was recognised by a previous HMICA report.<sup>11</sup> However, as a consequence, there is little time and resource left to direct towards defendants and their needs.

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<sup>11</sup> Valuing victims and witnesses: An overview of inspections undertaken during 2005. HMICA, March 2006.

- 7.6 We have been left in no doubt, both during Area inspections and our interviews with senior officials as part of this overview, that the needs and rights of defendants are seen by HMCS as important – but they are not currently given as high a priority as victims, witnesses and jurors. There are currently no national initiatives directly aimed at benefiting defendants and improving services to them. We are concerned that defendants are not routinely considered when existing policies and strategies undergo regular reviews. There is also little evidence of consideration of the impacts on defendants’ rights and needs, of major initiatives being developed and implemented. For example, no one from within HMCS takes a defendant’s perspective during the regular reviews of the court design guide.
- 7.7 HMCS is currently building on the useful insights provided by the DCA research into consumers’ experiences of the criminal justice system. This work entails detailed investigation of the pathways key court users follow through the CJS and is producing valuable intelligence that can be used to improve services and address inefficiencies. Although the earlier work included defendants, pathways have not yet been generated for defendants and there are no substantive plans to do so. This is a disappointing decision, which is likely to reduce opportunities to understand the needs of defendants better and improve the quality of service provided to them.

#### Recommendation 4

That HMCS put in place measures that ensure the needs of defendants are understood and effectively considered at all levels, and that:

- specific groups of defendants are not disadvantaged
- there is specific consideration of the impact of key decisions and initiatives on defendants.

## Performance management

- 7.8 The management of performance is an increasingly significant aspect of the management of the courts in England and Wales. Strong arrangements for managing performance were found in three of the ten Areas, compared with weak or developing arrangements in four Areas. Performance management impacts on many parts of court business. Here we consider those parts that impact on defendants.
- 7.9 An aspect of performance management that can have a significant impact on the defendant is the movement of cases between courthouses. This can occur at any point between first listing and the day of the trial and can happen for a variety of reasons. A trial may be moved in order to reduce the wait before a trial can be listed – or even on the day of the trial, if courtroom availability prevents the hearing going ahead at the original location. Arrangements are generally in place to take account of the needs of all the parties in the case when a trial needs to be moved. However, we have some concerns that the impacts on defendants are not always fully considered when moving cases to ensure an effective hearing.

X At one court, a trial had been moved on the day from a court several miles away as there was no courtroom available at the original location. No one had considered how the defendant would travel between the courts and how much this might cost him.

7.10 The ETMP initiative has increased contact between the courts and other agencies involved. Meetings are commonly held at which the progress of cases is discussed as part of efforts to reduce the number of ineffective hearings. Such meetings have obvious benefits connected with trial effectiveness and the needs of victims and witnesses. We were pleased to note that these arrangements are also used to improve the quality of service provided to defendants.



In Essex, the listing officer and the case progression officer meet with staff from the CPS to discuss forthcoming cases. This meeting is used as an opportunity to check on any special needs defendants may have. We were particularly impressed that a case involving a defendant whose welfare was giving cause for concern was given particular attention.

7.11 In some Areas, other initiatives intended to manage performance and increase trial effectiveness were having a potentially detrimental effect on defendants. In one Area, changes to the arrangements for warning defendants that their trial was imminent, brought in to increase trial effectiveness, had increased uncertainty for them about when the trial would take place. In another Area, the ETMP arrangements had significantly increased the time before a case comes to trial. DCA research indicates that, generally, defendants just want to get things over and done with.

## Feedback from defendants

7.12 Feedback and complaints are taken seriously by HMCS Areas, are generally considered at an appropriate management level and are used to improve services for defendants and other court users. A new system for managing feedback in HMCS has, in the main, been introduced successfully, although confusion around the definition of a complaint, in particular those reported orally, is widespread and may be leading to under reporting.<sup>12</sup>



In Cheshire, there is a useful form for helping staff record oral complaints, a source that is often under represented.

7.13 Feedback and complaints are not always actively encouraged, although it is often easier to provide feedback in Areas or courts that have achieved, or are working towards the Chartermark standard for customer service. Defendants wishing to complain from custody can face additional obstacles as there are no formal arrangements to ensure feedback or complaints made to an agency outside HMCS are captured and fed back into the HMCS system. Likewise, there are no formal arrangements to ensure feedback or complaints made to HMCS, which actually relate to a partner agency, are routinely and systematically passed on.

7.14 Displays providing court users with information on how Areas respond to complaints are rare and, where present, are often poorly displayed. The recent identification of defendants as a category of complainant within the feedback and complaint system is welcomed.

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<sup>12</sup> Wider aspects of the way feedback is handled is the subject of a current thematic review by HMICA, due to be published in early 2007.



In Sutton Coldfield, defendants have been interviewed to expand upon responses to court user surveys. At Derby Crown Court, surveys are conducted twice each year, seeking views on issues including facilities and smoking policies.

## Concluding remarks

- 7.15 We have found many good things during this programme of inspections, and we hope that by highlighting some of them we will help spread this good practice more widely. HMCS and its staff are justifiably proud of their role within the courts system and the way defendants are treated and protected within that. There is a strong operational base from which further improvements to the services provided to defendants can be delivered and the needs of this group recognised and protected, now and in the future.
- 7.16 We have found areas where improvements are needed and, where these are most significant, we have made recommendations to help bring these about. It is an indication of the overall quality of the service provided by HMCS that there are only four recommendations. The next section presents a summary of the actions HMCS will be taking to ensure our recommendations are addressed. We look forward to returning over the next 18 months to assess progress against the Action plan and to measure the further improvement to services that will be delivered as a consequence.

# Annex A HMCS Action Plan

## HMCS responses to HMICA recommendations

### HMICA Recommendation 1

That HMCS ensure that safety and security risks are adequately identified, assessed and managed, including in relation to:

- shared occupancy buildings
- confiscation policy and practice
- escorting prisoners in public
- defendants taken into custody off bail
- smoking policy.

#### HMCS response

- HMCS recognises the importance of identifying and minimising safety and security risks. We will continue to monitor and assess risks and, within the financial and operational constraints of the business, act to reduce or eliminate those risks.

**Overall improvement target:** Full implementation, in all courts, of the requirements of *Safe & Secure*.

**By:** 31 December 2007.

### HMICA Recommendation 2

That HMCS take administrative steps to reduce the time all defendants (represented and unrepresented) wait on the day, including measuring waiting times and setting and reporting on appropriate standards.

#### HMCS response

- We are pleased that inspectors have noted that most defendants in magistrates' courts are treated well. HMCS recognises the importance of providing a high quality of service to all court users and, in doing so, will seek to sustain and improve current levels of service to defendants whilst maintaining our commitment to improving our service to other users.
- We believe that performance in relation to defendant waiting times is generally acceptable, and it would not currently be appropriate to allocate scarce resources to comprehensively measure defendant waiting times. Instead, we will analyse defendants' levels of satisfaction with waiting times and report them to Area Directors and to the national Board. We will address any issues revealed by this analysis.

**Overall improvement target:** After determining defendants' satisfaction with current waiting times, we will decide whether it is appropriate to set a target.

## HMICA Recommendation 3

That HMCS take administrative steps to ensure defendants are able to participate fully in proceedings.

### HMCS response

HMCS has noted inspectors' suggestions for improvement and will task a project group with researching solutions to the problems identified in the report. Their brief will include:

- providing guidance on the content of information leaflets and other printed information, including information to be provided in minority languages
- considering the role of additional media, as well as the printed word, in communicating with court users
- providing guidance on the circumstances under which non-professional interpreters can be used
- considering whether action is needed to alter the wording of Statutory Declarations and, if so, to propose a programme of action.

**Overall improvement target:** Improvements to be researched and fully implemented by December 2007.

## HMICA Recommendation 4

That HMCS put in place measures that ensure the needs of defendants are understood and effectively considered at all levels, and that:

- specific groups of defendants are not disadvantaged
- there is specific consideration of the impact of key decisions and initiatives on defendants.

### HMCS response

HMCS recognises the importance of ensuring that systems and procedures do not disadvantage specific groups of defendants. The work of the project group, which will be set up as described in our response to recommendation 3, will ensure that we are achieving this aim. Additionally, the group will be tasked with:

- reviewing the extent to which the interests of defendants are reflected in current programmes of service improvement (including the ETMP and NWNJP), advising on changes to these programmes as necessary, and formulating proposals for communicating these changes
- providing good practice guidance to courts on displaying information about responses to complaints from court users.

**Overall improvement target:** Agreed actions to be completed by 31 December 2007.

# Annex B Inspection framework

## Quality of service for defendants in criminal courts

*The provision of effective and efficient, high quality administrative services for all defendants – (represented and un-represented), including children and young adults, vulnerable defendants and those in custody, which do not compromise fairness and build public confidence in the justice system.*

- 1. Resources are provided to ensure that the diverse needs of all defendants within courthouses are met in a safe and secure manner**
  - 1.1 Buildings are accessible and offer adequate comfort and facilities, and appropriate privacy to defendants, including children & young adults and those in custody
  - 1.2 Appropriate levels of safety and security are in place, meeting the needs of all defendants and complying with statutory obligations
  
- 2. Defendants experience a high quality service from court staff, which takes into account their diverse needs**
  - 2.1 Defendants are treated with courtesy, offered appropriate help and enquiries are dealt with promptly by HMCS staff
  - 2.2 Administrative arrangements are in place to enable all defendants to understand and effectively participate in court proceedings
  
- 3. Leadership, management and planning ensure a pro-active approach to improving the service provided to defendants**
  - 3.1 Leadership for the provision of high quality administrative services for defendants is clear and visible throughout HMCS, and this is effectively communicated internally and externally
  - 3.2 There is a robust performance management system which is used to support a culture of improvement in service delivery for defendants
  - 3.3 Feedback and complaints about the administration of courts are encouraged from defendants, are dealt with fully and promptly and used to inform improvements in practices and performance.

