

Evaluation of Flexible Plea and Directions Hearing Pilots

Final Report

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*Joyce Plotnikoff and Richard Woolfson
Consultants in Management, ICT and the Law
Cheldene
Church Lane
Preston
Hitchin
Herts SG4 7TP
Tel: 01462 457555
Fax: 01462 457229
E-mail: woolfsonr@aol.com*

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EXECUTIVE SUMMARY

1. This is the report of an evaluation of flexible Plea and Directions Hearing (PDH) pilots which form part of the Court Service's Courts and Tribunals Modernisation Programme. The pilots started towards the end of 2001 and ran for nine months in three Crown Court centres.
2. PDHs were introduced nationally in 1995. The system involves the parties jointly completing a questionnaire and appearing before a judge in open court for the defendant to enter a plea and for directions to be given in the event of a trial. In practice, the advocates for each side usually complete the questionnaire at court on the day of the hearing. In many instances, this is also the first occasion on which the defence advocate has a conference with the defendant. Previous studies and reviews suggested that the system was too excessive for simpler cases and was not always effective. The flexible PDH pilots sought to address these concerns by investigating whether, in appropriate cases, there could be progress to trial or other disposal without the need for an intervening court hearing.
3. The project team examined existing initiatives to dispense with oral PDHs and decided to base the procedures for the pilots on those in a scheme devised by the Resident Judge at Derby Crown Court.
4. In the pilots, the standard PDH Judge's Questionnaire was replaced by separate prosecution and defence forms which the parties were required to submit and cross-serve five days before the due PDH date. Forms in cases meeting eligibility criteria were then put before a judge who reviewed the case. If an oral PDH was not required, directions could be issued and the case listed for trial without the need for the parties to attend court. Advocates were allowed £30 for completing the forms, to be deducted from the attendance fee if the oral PDH was held.
5. Each court designated a Case Progression Officer (CPO) to support administration of the pilot, monitor submission of forms, put them before a judge for review, list for mention cases in which forms were not submitted and communicate outcomes of the judge's review to the parties. The CPO role did not extend to the post-PDH period.
6. Pilot procedures and forms to be completed by the parties were not identical in all respects across the three courts. The Court Service provided a framework of core procedures which Pilot Working Groups at each site adapted to reflect local practice.
7. The objectives of the evaluation were to assess:
 - the impact of flexible PDHs on court performance from receipt to disposal
 - the impact of flexible PDHs on users, agencies and the quality of justice
 - the supporting role of the CPO and case progression processes relating to PDHs
 - opportunities for improving practice and procedure relating to PDHs in general
 - good practice to inform any programme implementing flexible PDHs on a wider scale.

8. The evaluation also considered the advisability of extending the scheme to other courts.
9. A range of criteria were identified against which success could be measured, including whether an alternative to an oral PDH was chosen in a sufficient proportion of cases to make the flexible procedure viable in terms of costs and the views of court users. Quantitative criteria included assessing the flexible PDH procedures during the pilot against pre-pilot procedures to identify whether there has been any reduction in:
 - the number of hearings in the Crown Court between receipt and disposal
 - the rate of cracked and ineffective trials
 - the time taken between receipt and disposal
 - the time between receipt and sentence for defendants who plead guilty at a PDH
 - overall cost
 - the length of trials.
10. A further quantitative success criterion was whether the pilot procedures produce an increase in the proportion of defendants pleading guilty at the first PDH.
11. Qualitative success criteria included whether the flexible PDH procedures provided, in the view of professional participants, an acceptable quality of justice and whether they improved:
 - the quality of information available to the court at the PDH stage
 - the quality and timing of communication between the parties
 - commitment to case management.

Methodology

12. The evaluation methodology used a wide range of quantitative and qualitative techniques. Comparative aspects of the methodology required a baseline against which to measure the impact of the pilot procedures. Baseline information was drawn from pilot court records and from CREST data for pilot court cases received during the 18 months that preceded the pilot.
13. The data on pilot cases from CREST, case logs maintained by CPOs and pilot forms submitted by the parties and reviewing judge were merged into a single database for analysis, the first time that standard court data and research data have been combined in this way. In order to assist in distinguishing differences in case progression attributable to the pilot procedures from more general changes affecting the system as a whole, CREST data was obtained for all courts in the same circuits as the pilot courts. It was therefore possible to explore whether changes in the parameters used to measure success occurred throughout the circuit or were unique to the pilot courts.
14. Costs were looked at in relation to the individual agencies affected and to the system as a whole.

Evaluation findings

Submission of pilot forms

15. In all three pilot courts, forms were received on time in less than half the cases. The defence were less likely than the prosecution to submit forms on time.
16. Most judges and other participants thought that the pilot timetable meant that forms could not be completed satisfactorily. Most thought that the pilot procedures had not made the parties address the issues earlier.
17. Courts made different use of listing for mention for parties whose forms were not submitted by the deadline, with one court only adopting the procedure some way into the pilot period. Most judges thought that listing for mention had encouraged compliance.
18. In general, the pilot forms requested more information than the standard PDH Judge's Questionnaire. Despite this, most judges, lawyers and CPS personnel did not consider that pilot forms had produced better information than that provided on the standard questionnaire. Questions were often left blank or marked 'counsel to advise'; the lack of a conference with the defendant was cited as a major reason why defence information was poor.
19. The CPS in all pilot areas reported that the defence often failed to cross-serve its form when it was sent to the court, an omission for which there was no sanction. The defence form was particularly important to the CPS in relation to information needed in warning witnesses.

Guilty pleas

20. The defence forms indicated that in many cases they were not informing the prosecution and probation service of the intended guilty plea. This made it less likely that pleas could be agreed and pre-sentence reports prepared before the day of the PDH. However, judges in one of the pilot courts preferred oral PDHs to proceed where there was an indication of a guilty plea, rather than taking such cases out of the list and adjourning for reports.
21. The rate of guilty pleas at the first opportunity for pilot cases at two of the three pilot courts was higher than for the pre-pilot period while the corresponding rate for the circuit showed little change during the same period. However, most judges and a minority of lawyers thought that the pilot had made plea discussions between the parties more difficult.
22. There was no evidence that defendants in pilot cases pleading guilty at the first opportunity were more likely to be sentenced immediately.

Paper and oral PDHs

23. Paper PDHs were used sparingly: throughout the pilot period, 33 paper PDHs were ordered at Middlesex Guildhall, 75 at Newcastle and 93 at Preston. This amounts to

less than 10 per cent of eligible cases at each pilot court, even excluding cases where a guilty plea was indicated. The failure of some parties to submit forms on time or at all may have partly contributed to the low rate.

24. While judges thought that, in principle, paper review was satisfactory for the most straightforward cases, many were willing to order an oral PDH without pressing for reasons. The Newcastle CPO had authority to leave a case in the oral PDH list without referring the forms to a judge if either party requested an oral PDH.
25. The only criterion for ordering an oral PDH which was used to a significant extent at all pilot courts was the possibility of an acceptable guilty plea being entered.
26. Before the pilots, none of the three courts appeared to make extensive use of directions. During the pilots, judges at Preston made the greatest use of directions when reviewing the pilot forms. The use of directions at oral PDHs was not significantly greater than in pre-pilot cases or at paper PDHs, although the average length of oral PDHs in pilot cases showed a slight increase.
27. It was considered desirable for oral PDHs in pilot cases to be listed before the same judge who reviewed the forms submitted by the parties. However, court staff and judges said it would be problematic from a listing standpoint to achieve continuity of reviewing judge and PDH judge in most cases. In practice, the reviewing judge presided at the oral PDH in so few cases that it was not possible to measure any impact such continuity may have had on the conduct of oral PDHs.

Measurements relating to closed cases

28. The average number of hearings per defendant at the pilot courts fell during the pilot period compared with the pre-pilot period. There was a slightly smaller reduction in the average number of hearings throughout the circuit. However, both pilot court and circuit figures for the pilot period are likely to increase once ongoing cases reach completion.
29. At pilot courts, the median time from receipt to sentence for defendants pleading guilty at the first opportunity was higher during the pilot period than previously, in contrast to a downward trend for the circuits. For other defendants, the median time to disposal was shorter during the pilot both for pilot cases and for the circuit. These median times will inevitably increase as more cases from the pilot period reach completion.
30. There was no evidence that the length of trials in pilot cases was shorter because of the pilot procedures.
31. CREST data offer two methods for calculating cracked and ineffective trial rates. These give slightly differing figures for the rates. For the most part, neither method yields figures that suggest cracked or ineffective trial rates fell – or rose less than at other courts within the circuit – as a result of the pilot procedures. The single exception was a seven per cent fall in the ineffective trial rate at Newcastle when measured using one method. This compares with a three per cent fall for the circuit as a whole. However, the rate calculated by the other method shows no reduction for this court or circuit.

32. There was little discernible difference in the pattern of reasons why trials cracked or were ineffective in pilot cases as compared with the pre-pilot period. The exceptions were at Middlesex and Preston where the proportion of ineffective trials caused by non-attendance of prosecution witnesses became noticeably worse during the pilot.

Other views

33. Judges generally did not think the pilot had resulted in a more case-management oriented approach on the part of their colleagues or of the legal community.

34. None of the participants surveyed had concerns that pilot procedures infringed defendants' rights or adversely affected the quality of justice.

35. A few participants endorsed aspects of the procedures but, in the main, there was little support for continuing with or extending their use to other courts. The majority of judges and all barristers favoured reverting to the pre-pilot arrangements. CPS offices in all the pilot areas agreed that the pilot had resulted in significant additional work which had not produced equivalent benefits. They did not feel that the pilot should be rolled out.

36. Judges generally thought the CPO role was valuable and worth retaining but, in contrast to the pilot arrangements, thought that it should cover the life of the case including the period following the PDH, and in particular, the weeks before the scheduled trial date. Court staff also favoured an extended role for the CPO but had concerns about the resource and support implications.

37. Judges, barristers, solicitors, court staff and CPS lawyers described the remuneration system as an obstacle to successful implementation of the pilot. Nearly all barristers commented that assembling the information and completing of the forms took longer than for the Judge's Questionnaire.

Costs

38. Apart from funding the CPO position, there were no other significant costs or savings for pilot courts in operating the flexible PDH procedures.

39. There was a net saving of £70 per defendant to the legal aid fund whenever an oral PDH was avoided and no extra cost when it proceeded. This gives rise to a saving attributable to paper PDHs of around £2,500 at Middlesex Guildhall, £6,000 at Newcastle and £7,500 at Preston.

40. Judges spent additional time out of court reviewing forms and in court hearing listings for mention where one or both parties had not complied with the requirements of the pilot. In-court time was saved where an oral PDH was avoided. Overall, the pilot procedures resulted in a small net increase in judicial time needed to dispose of cases, amounting to about 24 hours at Middlesex Guildhall, 37 hours at Newcastle and 204 hours at Preston over the nine months of the pilot.

41. CPS managers complained of additional work for CPS lawyers in completing pilot forms and an increased administrative burden, for instance in form distribution and matching up incoming forms with the file.
42. One CPS area estimated the extra administrative effort needed at 2½ days per week for one administrative staff member in each of the three branches concerned. This equates to an annual cost of around £6,000 per CPS branch. This had been partly offset in the case of paper PDHs by avoiding the preparation work and time spent at court for an oral PDH. Any saving in fees to counsel could not be quantified.
43. Only 28 of the 228 defendants involved in pilot cases deemed suitable for a paper PDH were in custody and any savings in the cost of transporting prisoners to and from court were negligible. Prison Service representatives confirmed that the pilots had had no detectable impact on their work.

Conclusions

44. Of the success criteria set for the pilot, only those relating to the rate of guilty pleas at the first opportunity and to the quality of justice were met. On that basis, the evidence does not support the introduction nationally of the flexible PDH procedures used in the pilots.
45. The success criteria described benefits that it was hoped would follow from early preparation and communication between the parties stimulated by the pilot procedures. In reality, the procedures did not produce the kind of pre-PDH activity envisaged and the intended benefits did not follow.
46. There were a number of reasons for the limited impact of the procedures. The pilots sought to change many of the usual features of pre-trial behaviour. These included: timing of despatch of briefs; the time available to prepare for a PDH; taking instructions and holding plea discussions at an oral PDH; basing payments to advocates on court appearance rather than preparation work; completion of PDH questionnaires at court on the day of the PDH; and preparation of pre-sentence reports. Moreover, the pilot procedures operated in parallel with the standard approach which continued to apply to a significant proportion of the caseload at all three pilot courts. This ambitious agenda proved difficult to achieve in practice.
47. The pilots also called for a greater commitment to case management, particularly on the part of the judiciary. Judges in a previous study acknowledged that case management skills do not come automatically and their development through training was essential to effective judging. At present, such training is not included in the criminal seminars provided by the Judicial Studies Board.
48. None of the pilot courts had a CPO in place before the scheme began, and they discontinued the position when the project ended. Although it was intended that the pilot CPO positions would be ring-fenced and that back-up would be provided by trained deputies, procedures sometimes had to be suspended because CPOs or their deputies were unavailable. Case progression was not accorded high priority when there was a shortage of staff to carry out other functions considered essential.

49. The obstacles to the success of the pilot procedures should be addressed in the context of the programme of fundamental change being developed by the LCD's Case Preparation Project (Reform of the Criminal Courts). Key features of such a programme should include:

- ▷ restructuring legal aid payments to ensure preparation work is properly funded enabling early decision-making by legal representatives
- ▷ case management for the life of the case beginning at the magistrates' court level, irrespective of final venue
- ▷ ensuring that where a paper review reveals the need for a case management hearing, it is the norm that the judge presiding at the hearing is the judge who conducted the paper review
- ▷ producing a written record of all judicial directions as a matter of course and distributing this record to the parties
- ▷ recognition in performance measurement that monitoring case progression throughout the lifetime of the case is a key court function. This should also be reflected in the status of the of CPO role. CPOs should be drawn from the most experienced and IT literate court staff and the status of the role should reflect the key importance of case progression as a court function.
- ▷ guidance on pre-sentence report preparation for a defendant intending to plead guilty, and the mechanisms needed to bring this about
- ▷ implementation of IT systems to automate the exchange of information and ease the administrative burden associated with operating the new procedures
- ▷ a comprehensive programme of training in the skills needed
- ▷ the provision of adequate resources to enable all agencies involved to meet the demands of such a regime.

1 INTRODUCTION

1.1 Background

1.1.1 This is the report of an evaluation of flexible Plea and Directions Hearing (PDH) pilots which form part of the Court Service's Courts and Tribunals Modernisation Programme. The evaluation team was composed of Court Service personnel and independent consultants Joyce Plotnikoff and Richard Woolfson.

1.1.2 After pilot evaluation, PDHs were phased in nationally in 1995. With the exception of serious fraud and other complex or long cases for which statutory preparatory hearings are more appropriate, all cases appearing in the Crown Court¹ must be listed for a PDH.² PDHs are scheduled according to a standard timetable, generally six weeks after committal in bail cases and four weeks after committal in cases where the defendant is remanded in custody.

1.1.3 PDHs were introduced with three stated objectives:³

- to reduce the number of cases listed for trial which then crack
- to ensure that when a case is listed for trial it is ready to be tried without delay
- to prevent the unnecessary attendance of witnesses.

1.1.4 In 2001, Lord Justice Auld identified a number of factors which have meant that the intended benefits of PDHs have not been fully realised:⁴

- PDH lists often include too many cases to allow the judge time to prepare and hear the cases in any detail
- the timing of the PDH timetable is too tight for some cases, particularly in relation to the completion of mutual disclosure
- advocates attending the PDH hearing are rarely those briefed for the trial
- the fee for PDH attendance is not an incentive to prepare for the trial
- the PDH is often the first time that the defence advocate sees the defendant to take instructions
- when PDHs for defendants in custody are ineffective, production costs are wasted and disruption is caused for the defendant.

1.1.5 The Home Office report 'Review of Delay in the Criminal Justice System' (1997) recommended that the need for PDHs in all cases be re-examined 'since in straightforward cases they may involve an additional and unnecessary burden'. In 1999, the National Audit Office report 'Criminal Justice: Working Together' recommended that the Court Service consider using a more flexible PDH system, with some cases dealt with on paper.

¹ The scheme includes indictable only cases transferred to the Crown Court under section 51 Crime and Disorder Act 1998.

² Lord Chief Justice's Practice Rules, Plea and Directions in the Crown Court (25 July 1995).

³ Guidance for Judges from the Senior Presiding Judge (November 1994).

⁴ Paras. 204-220, 'Criminal Courts Review' (2001).

- 1.1.6 Derby Crown Court introduced a scheme in 1999 in which parties were required to submit separate PDH questionnaires five days before the due PDH date. (A similar scheme was adopted in Luton Crown Court, confined to Class 4 cases with 20 or fewer pages of statements, excluding Class 4 indecent assaults.)
- 1.1.7 The Derby questionnaires were then put before a judge who reviewed the case. If an oral PDH was not required, directions could be issued and the case listed for trial without the need for the parties to attend court. Prosecution and defence advocates were allowed £30 for completing the questionnaires, to be deducted from the fee if the oral PDH was held.
- 1.1.8 The judge was supported by the Case Progression Officer (CPO), a member of court staff who ensured that the forms were received and put before the judge in good time and that the outcomes of the review were communicated to the parties.
- 1.1.9 Although no independent evaluation of the Derby and Luton systems was conducted, judges in both courts considered the scheme successful. In 2001, Derby estimated that 15-20 per cent of its cases were dealt with on paper (down from around 50 per cent initially) and that the number of cases disposed of in one oral hearing had risen from 18 per cent to 56 per cent; Luton reported that 34 per cent of its total caseload was dealt with on paper and that the court saved approximately 0.5 days per month.⁵ However, Derby's ineffective trial rate actually increased slightly (from 24.3 per cent for the 12 months preceding the start of the scheme to 25.7 per cent for the first 19 months of its operation), although this could have been due to other factors impacting performance.
- 1.1.10 In 2001, the Court Service set up the case progression project described in this report, drawing on the Derby model. The project aimed to pilot changes to the business processes relating to PDHs and to conduct a full evaluation using both statistical analysis of case data and feedback from users of the scheme.
- 1.1.11 The Senior Presiding Judge, Lord Justice Judge, selected two Crown Court centres (Preston on the Northern Circuit and Middlesex Guildhall on the South Eastern Circuit) to participate in the project. A third site, Newcastle upon Tyne on the North Eastern Circuit, was added to increase the diversity of pilot sites. The pilots ran for nine months beginning on the following dates:
- | | |
|---------------------|-------------------|
| Preston | 22 October 2001 |
| Newcastle | 19 November 2001 |
| Middlesex Guildhall | 26 November 2001. |
- 1.1.12 Only Preston continued operating any of the pilot procedures after the pilot period ended.

⁵ Information provided to the Court Service in interviews with judges and court personnel in Derby and Luton.

1.2 Evaluation objectives

1.2.1 The pilots and the evaluation methodology were set out in the project evaluation plan which was developed in consultation between the Court Service project team and the Pilot Working Groups. The objectives of the evaluation set out in the plan were to assess:

- the impact of flexible PDHs on court performance from receipt to disposal
- the impact of flexible PDH on users, agencies and the quality of justice
- the supporting role of the CPO and case progression processes relating to PDHs
- opportunities for improving practice and procedure relating to PDHs in general
- good practice to inform any programme implementing flexible PDHs on a wider scale.

1.2.2 The plan also stipulated that the evaluation report should address the advisability of extending the scheme to other courts.

1.3 Success criteria

1.3.1 The evaluation plan identified a range of criteria against which success could be measured, including whether an alternative to an oral PDH is chosen in a sufficient proportion of cases to make the flexible procedure viable in terms of costs and the views of court users.

1.3.2 Quantitative criteria included assessing the flexible PDH procedures during the pilot against pre-pilot procedures to identify whether there has been any reduction in:

- the number of hearings between receipt in the Crown Court and trial, guilty plea or other disposal
- the rate of cracked and ineffective trials
- the time taken between receipt in the Crown Court and start of trial, guilty plea or other disposal
- the time between receipt in the Crown Court and sentence for those defendants who plead guilty at a PDH
- overall cost, taking into account costs to the court (including the CPO role), the judiciary, the prosecution, the legal aid budget and the Prison Escorting And Custody Service
- the length of trials.

1.3.3 A further quantitative success criterion was whether the pilot procedures produce an increase in the proportion of defendants pleading guilty at the first PDH.

1.3.4 Qualitative success criteria included whether the flexible PDH procedures provided, in the view of professional participants, an acceptable quality of justice and whether they improved:

- the quality of information available to the court at the PDH stage
- the quality and timing of communication between the parties
- commitment to case management.

1.4 Relationships with other parts of the Crown Court Programme

1.4.1 In January 2002, the Virtual Plea and Directions Project transferred to the Court Service and is being managed under what is now the Courts and Tribunals Modernisation Programme. This pilot is also testing whether a PDH is required in every case but uses a secure website to allow parties to supply the information to the court and each other electronically. It also provides a 'chat room' facility to allow the parties and the judge to discuss the case out of court. The system is currently being piloted at Manchester Minshull Street Crown Court and is due to be evaluated by the Court Service in March 2003.

1.4.2 In 2001, the government published Lord Justice Auld's 'Review of the Criminal Courts of England and Wales'.⁶ He recommended that:⁷

'in the preparation for trial in all criminal courts, there should be a move away from plea and directions hearings and other forms of pre-trial hearings to co-operation between the parties according to standard time-tables, wherever necessary, seeking written directions from the court.'

1.4.3 The project team has liaised with the Case Preparation Project Team which is developing proposals to take forward the government's response to Lord Justice Auld's recommendations.

1.5 Structure of the report

1.5.1 The evaluation methodology and various issues concerning data quality are described in chapter 2. Chapter 3 gives a profile of the three courts involved in the pilots, including a comparison of how each implemented the pilot procedures, and chapter 4 deals with the role of the CPO.

1.5.2 Chapter 5 examines key issues relating to the operation of the pilot procedures up to the PDH stage while success criteria relating to the period between receipt and disposal of pilot cases are considered in chapter 6. The views of participants on rolling out the pilot procedures are covered in chapter 7 and the costs of operating the pilot procedures are examined in chapter 8. Chapter 9 brings together the findings of the evaluation and presents conclusions based on these findings, including a discussion of whether to implement the pilot procedures more widely.

⁶ The government's response to Auld, the White Paper 'Justice for All', was published in July 2002.

⁷ Para. 235, 'Criminal Courts Review' (2001).

1.6 Terminology

- 1.6.1 The pilot courts used different names for the locally developed pilot forms completed by the parties which replaced the standard Judge's Questionnaire. For the purpose of consistency, these are referred to throughout the report as 'pilot forms'. The 'judge's referral form' refers to a face sheet completed by the judge who reviewed the pilot case on paper.

1.7 Acknowledgements

- 1.7.1 Taking part in pilot projects always imposes a significant additional burden on the normal operation of the criminal justice process. The evaluation team is therefore grateful to the Resident Judges of the pilot courts, their judicial colleagues, members of the Pilot Working Groups and Court Service personnel, including the court managers, case progression officers and listing officers, for their cooperation. Their views on the design and operation of the flexible PDH scheme were crucial. Thanks are due in particular to the case progression officers. They participated in workshops which helped shape the project, recorded case data for analysis by the evaluation team and were always available to answer the team's questions.
- 1.7.2 The EDS team was most helpful in extracting two sets of data from CREST and in interpreting how codes are applied.
- 1.7.3 Thanks are also due to the CPS personnel, barristers, solicitors, police officers, probation officers, justices' clerks, Witness Service coordinators and barristers' clerks who provided valuable feedback about the operation of the project.

2 METHODOLOGY

2.1 Introduction

2.1.1 The evaluation methodology was based on a mixture of quantitative and qualitative techniques. These included:

- examination of a small sample of files in each pilot area relating to pre-pilot cases
- surveys of judges and court staff prior to the start of the pilot to indicate the pre-existing case management culture in each pilot area
- obtaining statistical reports from the Court Service IMAGE team on cracked and ineffective trials, hearing and waiting times
- conversion and analysis of data on pre-pilot and pilot cases extracted by EDS from the CREST database
- analysis of pilot case data on a purpose-designed spreadsheet maintained by CPOs
- analysis of purpose-designed spreadsheets containing data selected from the flexible PDH forms completed by the prosecution, defence and reviewing judge in pilot cases
- drawing on data on use of court staff time compiled by the Court Service Crown Court Costs and Performance Modelling Team
- analysis of issue logs maintained by CPOs throughout the pilot
- comparison of written procedures and forms produced by each pilot area
- surveys of advocates and defence solicitors in pilot areas
- requests for information from participants in the pilot including police, prison, probation and CPS representatives on Pilot Working Groups; judges; barristers and barristers' clerks; defence solicitors; CPOs and other court staff; justices' clerks and Witness Service coordinators
- observation and participation at Pilot Working Group meetings and at open evenings in Preston and Newcastle to publicise the pilots.

2.1.2 This chapter describes how these techniques were used to obtain the information needed to check whether the success criteria identified in the previous chapter had been met.

2.2 Data collection and success criteria

2.2.1 The following table sets out data items relevant to the pilots, the success criteria to which they relate and the method chosen to capture the data:

Table 1: Data collection strategy and success criteria

Data item	Relevant success criterion	Collection strategy
The number/proportion of cases during the pilot in which an oral PDH was avoided	Whether an alternative to an oral PDH is chosen in a sufficient proportion of cases to make the flexible procedure viable in terms of costs and the views of court users Reducing the overall cost	Purpose-designed forms completed by reviewing judges (the judge's referral form) and electronic logs maintained by CPOs.
Reasons for ordering an oral PDH	Reducing the number of hearings	Judge's referral form.
Ineffective trial rate	Reducing the ineffective trial rate	CREST data supplied by EDS.
Reasons why trials were ineffective	Reducing the ineffective trial rate	CREST data supplied by EDS.
Guilty plea rate at the first PDH	Increasing the rate of defendants pleading guilty at the first PDH	CREST data supplied by EDS.
Time in weeks from committal/ transfer/ send up to start of trial, guilty plea or other disposal	Reducing the time to start of trial, guilty plea, or other disposal	IMAGe aggregate figures and CREST data supplied by EDS.
Time in weeks from oral or paper PDH to start of trial, guilty plea or other disposal	Reducing the time to start of trial, guilty plea, or other disposal	CREST data supplied by EDS.
Time from committal to sentence in the case of defendants pleading guilty at a PDH	Reducing the time between committal, transfer or send up and sentence for those defendants who plead guilty at a PDH	CREST data supplied by EDS.
Number of hearings between committal, transfer or send up and trial or other disposal	Reducing the number of hearings between committal, transfer or send up and trial or other disposal	CREST data supplied by EDS.
Length of trials	Reducing the length of trials	CREST data supplied by EDS.
Cracked trial rate, expressed as a % of cases listed for trial that cracked	Reducing the cracked trial rate	CREST data supplied by EDS.

Table 1: Data collection strategy and success criteria

Data item	Relevant success criterion	Collection strategy
Number of cases listed for trial that cracked, by cause (late guilty plea, ONE etc.)	Reducing the cracked trial rate	CREST data supplied by EDS.
Time spent by parties at PDH stage	Reducing the overall cost	Surveys of participants' views and figures provided on pilot forms completed by the parties.
Additional workload of judiciary outside hearings in deciding whether oral PDHs are necessary	Reducing the overall cost	Judicial interviews and figures recorded on the judge's referral form.
Whether the judge deciding that an oral PDH is required also presides at the PDH	Reducing the overall cost	CPO logs.
Staffing resources of CPO, listing, court clerk time re PDHs	Reducing the overall cost	Information on utilisation from pilot courts and data provided by the Crown Court Costs and Performance Modelling Team.
Proportion of court time spent on PDHs	Reducing the overall cost	Length of oral PDHs from CREST data supplied by EDS. Court sitting hours routinely recorded by Court Service.
Reduction in prisoner movements	Reducing the overall cost	CREST data included the custodial status of defendants in pilot cases while CPO logs recorded whether an oral PDH was avoided.

2.3 Establishing a baseline

2.3.1 The comparative aspects of the methodology required a baseline against which to measure the impact of the pilot procedures. An important constituent of the baseline was the pre-pilot case management environment in each pilot area. This was explored in a data collection exercise in which 20 files were examined at each pilot court in cases adjourned for trial following the entry of a not guilty plea at the PDH. Factors recorded included the length of the PDH and the

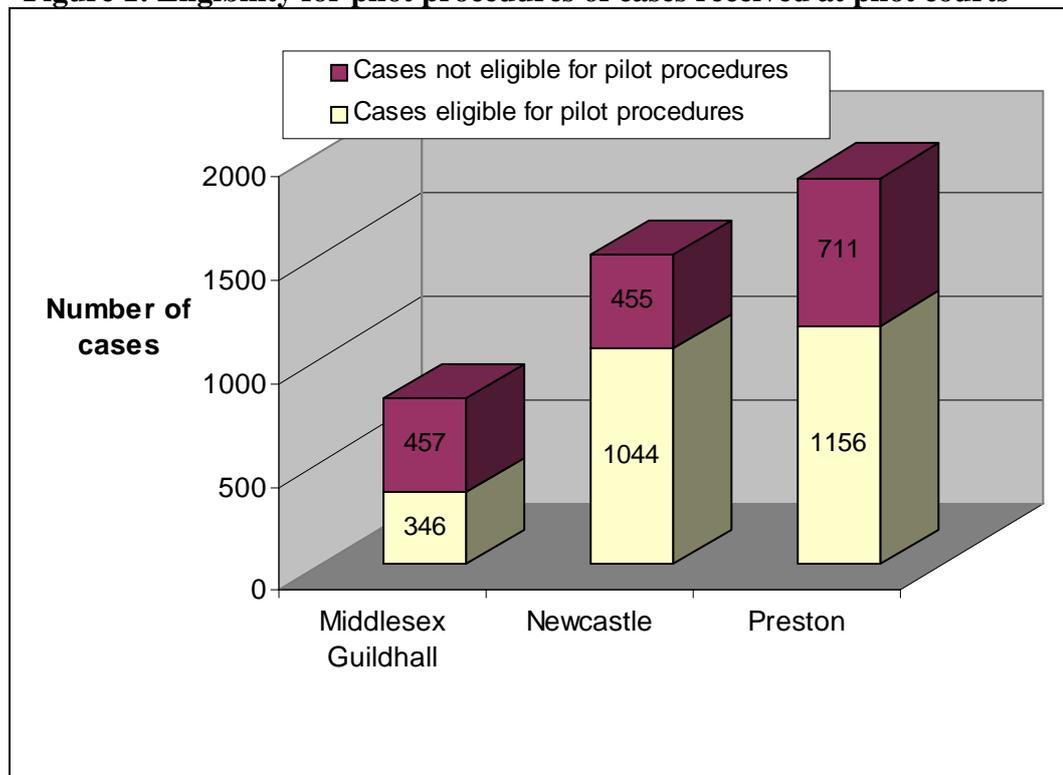
number of judicial directions made. To complement this exercise, judges and court staff in the pilot areas were asked to describe their court’s approach to listing and to PDHs.

2.3.2 A baseline was also needed in respect of other factors upon which the success of the pilot would be judged, for instance cracked and ineffective trial rates, numbers of hearings, trial length and the average time to complete key stages in case progress. To establish such a baseline, CREST and IMAGE data was requested not only for pilot cases but also for cases received and processed at the pilot courts during the 18 months that preceded the pilot.

2.4 Data on pilot procedures

2.4.1 CREST has no facility to record information about the specific procedures used in the pilot. It was therefore necessary to supplement CREST data with an electronic log of pilot cases maintained by CPOs using a purpose-designed spreadsheet. This included the date when completed questionnaires were received; judicial decisions on whether an oral PDH was considered necessary; the use of directions; and whether the same judge reviewed the papers and presided at an oral PDH. The logs allowed CPOs to track receipt of information from the parties and case progress during the pre-PDH period.

Figure 1: Eligibility for pilot procedures of cases received at pilot courts



2.4.2 The number of eligible cases from Middlesex Guildhall is particularly low, partly because of the high rate of transfers in and out experienced by London courts and partly due to the loss of data from a handwritten log which is discussed further below.

- 2.4.3 Further data on pilot cases was provided by the forms completed by the parties prior to the scheduled PDH date and the form completed by the reviewing judge when deciding whether an oral PDH was necessary. The information extracted included whether the parties requested an oral PDH, whether the defendant was expected to enter a plea to some or all counts that was acceptable to the prosecution, the reviewing judge's decision on whether to hold an oral PDH and the time taken to complete the pilot forms.
- 2.4.4 The data on pilot cases from all three sources – CREST, the CPO logs and the pilot forms – were merged into a single database for analysis. This is the first time, to the project team's knowledge, that standard court data and research data have been combined in this way and should prove a useful model for future studies.
- 2.4.5 In addition to information about specific cases, CPOs were asked to maintain a log of problems or examples of good practice encountered during the pilot.

2.5 Estimating costs

- 2.5.1 Costs were looked at in relation to the individual agencies affected and to the system as a whole. Contacts were made with:
- the Court Service Crown Court Costs and Performance Model team, which provided a breakdown of the time spent by court staff of tasks related to oral PDHs
 - the Court Service Resources and Planning Division, which provided data on staff costs by Span
 - the Prison Escort and Custody Service (PECS), which provided data about the movement of prisoners to and from pilot centres
 - the CPS Activity Based Costing team, which provided advice on calculating the costs to CPS of operating pilot procedures
 - the LCD Legal Aid Division, which discussed the impact of pilot procedures on legal aid bills.
- 2.5.2 PECS statistics on prisoner movements could not distinguish those relating to PDHs. The greatest savings are associated with avoiding movements of Category A prisoners⁸, but PECS could not provide figures for prisoners escorted by the Prison Service rather than contractors, which includes all those with Category A status. It was therefore decided to calculate the number of prisoner movements avoided during the pilots by counting paper PDHs involving defendants in custody. It was not possible to distinguish the movements of Category A prisoners in pilot cases, because courts do not generally know the security classification of defendants remanded in custody and it was not feasible to ask the prisons concerned to scan lists of names in order to identify Category A prisoners.
- 2.5.3 The LCD's Legal Aid Division could not assist this project because there is usually a delay of many months before its information becomes available and, in

⁸ Where this designation is used for remand prisoners, they are 'provisional' Category A.

any case, work relating to PDHs is not identified separately. Instead, costs saved were calculated from number of oral PDHs avoided and the reduced fee payable.

- 2.5.4 Estimating CPS costs associated with operating pilot procedures also posed difficulties. The CPS Activity Based Costing Team provided estimates of the time and costs involved in preparing and conducting PDHs in the usual way. The pilot procedures imposed additional work on CPS lawyers and administrative personnel to which CPS staff referred in interview.

2.6 Data quality issues

CREST data

- 2.6.1 The CREST data provided by EDS covered two periods: the 18 months preceding the start of the pilot⁹ and the nine months of operating the pilot procedures. Both datasets underwent format conversion and were input to the statistical package SPSS for analysis. However, there were issues concerning the completeness and accuracy of the data.
- 2.6.2 Complete data were naturally only available for those cases that had concluded at the time the data were extracted from CREST.¹⁰ The average pre-pilot waiting times at pilot courts were around five to six months for Preston¹¹ and three to four months at the other two courts. In the pre-pilot dataset, 96.8 per cent of cases at all courts in the same circuits as the pilot courts were closed and 3.2 per cent were open. For pilot courts and all courts in the pilot circuits, the figures were as follows:

Table 2: Unfinished cases in baseline pre-pilot data

	Pilot court	All courts in the circuit
Middlesex Guildhall	1.7%	2.3%
Newcastle	2.2%	2.1%
Preston	9.7%	5.4%

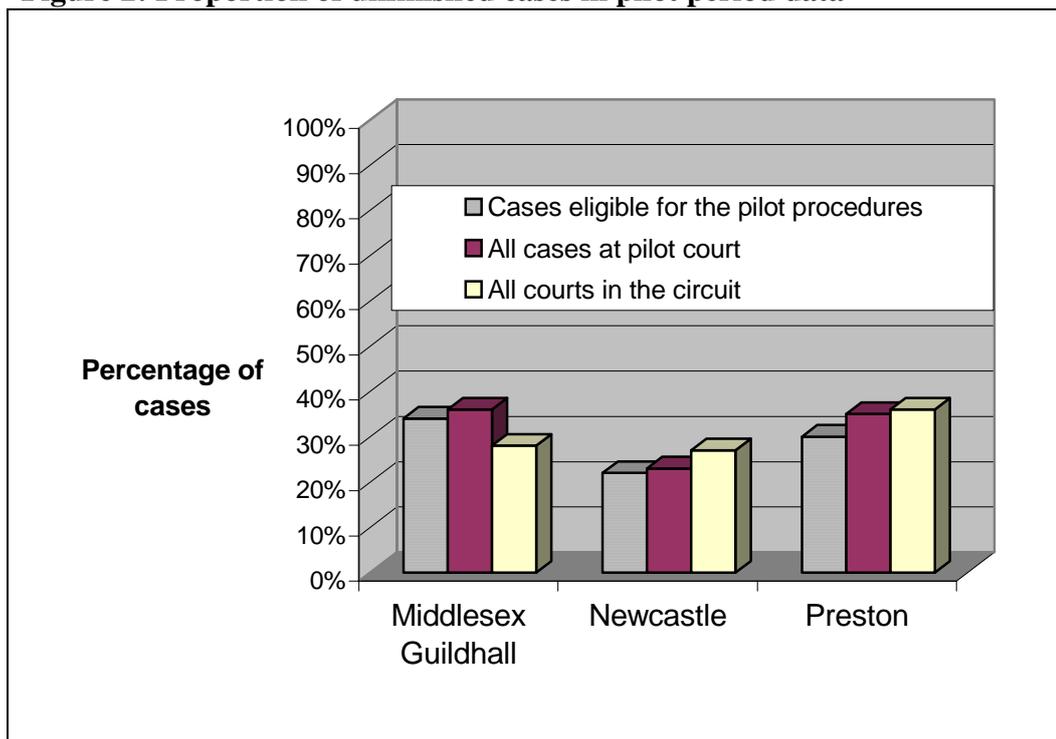
- 2.6.3 Even for closed cases, the completeness of data was variable. In 15 cases only the case number and the number of defendants had been entered into CREST.
- 2.6.4 Data for cases received during the pilot period were extracted two months after the pilot ended. It was hoped that this would allow an adequate number of cases to reach completion while still making it possible to deliver the study report within an acceptable timescale. The following figure draws on data for cases received during the pilot period. Cases eligible for the pilot procedures were identified from the log of such cases maintained by CPOs.

⁹ For most centres, cases in the pre-pilot dataset were received between January 2000 and June 2001; cases at three centres, two of which were pilot centres, included some received outside these dates; Preston cases included some dating from 25/10/99 and Newcastle cases dated from 9/8/1999.

¹⁰ The pre-pilot data was extracted during March 2002 and the pilot data at the end of October 2002.

¹¹ Preston also had a large backlog of bail cases waiting to be heard. It reported that only 40% of these were disposed of within 16 weeks.

Figure 2: Proportion of unfinished cases in pilot period data



- 2.6.5 The high proportion of unfinished cases affects the reliability of some of the analysis relating to success criteria. In particular, disposal times based on closed cases are likely to underestimate the true figure.
- 2.6.6 The extensive use of coding and the large number of possible values for certain variables produces opportunities for erroneous data input to CREST. Some of these have a direct bearing on the pilot evaluation. For example, courts assign post-hearing codes inconsistently. The code 'MAP' (mention and application) is sometimes used for PDHs rather than 'PLE' (plea) or 'PAD' (plea and directions). 'MAP' is also frequently used as the post-hearing code for preliminary hearings in indictable only cases. The assumptions made about how codes have been used are stated in the data analysis elsewhere in the report. Validity checks were run on the CREST dataset provided by EDS using the functionality of SPSS but only some data errors could be identified in this way.
- 2.6.7 Inaccuracies can also arise from the restricted choice of reasons that can be entered for a cracked or ineffective trial. The CREST database (and the IMAGE data generated from it) allows only a single reason to be recorded. In practice, there are often many contributing factors. Because of this, the information available from CREST on cracked and ineffective trials may be incomplete.

CPO logs and data from pilot forms

- 2.6.8 CPOs were asked to enter on their computerised log details of every eligible case received during the pilot period, including the dates on which the forms which replaced the Judge's Questionnaire were received from the parties. These forms together with those completed by a reviewing judge were to be copied and forwarded to Court Service headquarters where specific information was

extracted and input to spreadsheets. An analysis of the logs and spreadsheets at the end of the pilot revealed a wide range of errors, omissions and discrepancies. Efforts made to remedy these were only partially successful due to the work involved in tracing the paperwork that was the source of the data.

2.6.9 The CPO logs provided the most complete list of pilot cases. At Preston and Newcastle, forms were received in a few cases that did not appear on the log but the numbers were too small to affect the analysis. At Middlesex Guildhall, forms were received in relation to 60 cases that did not appear on the CPO log. These related to cases received before the CPO was provided with a computer and electronic log.

2.6.10 There were also discrepancies in the numbers of forms which were received according to the CPO log and the numbers input to the spreadsheets. The most significant differences were in the record of forms received from the parties.¹² The position is illustrated in the following table.

Table 3: Cases with discrepancies between CPO logs and forms spreadsheets

	Number with a prosecution form on the log but not on the spreadsheet	Number with more defence forms on the log than on the spreadsheet
Middlesex Guildhall	10	15
Newcastle	141	129
Preston	535	448

2.6.11 There were also cases where forms entered on the spreadsheet had not been recorded as received on the CPO log but these were less significant for the analysis.

2.6.12 Despite the large number of forms whose details were not recorded, the sample for which data is available is sufficiently large to support the evaluation analysis.

Table 4: Numbers of forms input to forms spreadsheets

	Number of judges' referral forms	Number of prosecution forms	Number of defence forms
Middlesex Guildhall	300	336	278
Newcastle	242	592	420
Preston	242	445	444

2.7 The impact of other factors

2.7.1 Other changes during the pre-pilot and pilot periods make it hard to be confident that changes in performance are due solely to the pilot procedures. For example,

¹² In Newcastle, the CPO did not refer to a reviewing judge those cases in which a guilty plea was indicated or where one party explicitly requested an oral PDH. No judge's referral form was produced in such cases.

the transfer of indictable only cases directly to the Crown Court was introduced at Middlesex Guildhall during the period covered by pre-pilot data. The problem did not arise at Preston or Newcastle where indictable only transfers had been in place longer.

- 2.7.2 During the course of the pilot, individual courts made changes to forms; the use of listing for mention as a sanction for failing to return forms on time; arrangements for receiving information on witness availability; and the treatment of 'floating' cases. These shifts in practice made the evaluation process more complex.
- 2.7.3 In order to assist in distinguishing differences in case progression attributable to the pilot procedures from more general changes affecting the system as a whole, CREST data was obtained for all courts in the same circuits as the pilot courts. This amounted to 49 centres in total, four of which were satellite courts. It was therefore possible to explore whether changes in the parameters used to measure success occurred throughout the circuit or were unique to the pilot courts.

2.8 Participants' views of pilot procedures

- 2.8.1 Before the pilots started, interviews were conducted with the Resident Judges, court managers, listing officers and CPOs at each site. Additional information was obtained from a survey of judges to which 19 replies were received.
- 2.8.2 At the start of the pilots, members of the legal profession attended open evenings for court users at Newcastle and Preston Crown Court centres. (Such an event was not feasible for Middlesex Guildhall due to the large number of solicitors' firms and barristers' chambers serving the court). Responses were provided at these meetings to questions about the pilot and the evaluation procedures. The views expressed were used in designing interview schedules and survey questionnaires administered during the evaluation.
- 2.8.3 During the course of the pilot, the evaluation team organised two workshops bringing together CPOs and court managers or listing officers from each pilot centre. These helped identify problems and good practice issues associated with operating the pilot procedures. Regular discussions were conducted with CPOs as the pilots progressed.
- 2.8.4 A questionnaire for lawyers was sent with a reply paid envelope to ten solicitors and ten barristers in each of the three pilot areas. Recipients were identified with the help of court staff and all regularly had cases at the pilot courts. The responses were coded and input to computer for analysis. Responses rates were disappointing but fairly typical for postal surveys of this kind.

Table 5: Responses to lawyers' surveys

	Solicitors' questionnaire		Barristers' questionnaire	
	Sent out	Responses	Sent out	Responses
Middlesex Guildhall	10	1	10	2
Newcastle	10	2	10	2
Preston	10	4	10	7
Total	30	7	30	11

2.8.5 The views of Pilot Working Group representatives were sought throughout the project. Members of the evaluation team attended and responded to questions at Pilot Working Groups meetings. Groups were consulted, for example, in relation to the design of the evaluation plan, emerging issues and questions to be put to individuals and organisations at the close of the pilots.

2.8.6 At the end of the pilot period, 11 participating judges were interviewed and Pilot Working Group members, court personnel and Witness Service coordinators provided views of the impact of the pilots on their work. In addition, telephone and in-person interviews were conducted with 13 representatives of the CPS and telephone interviews were conducted with eight barristers' clerks.

3 PILOT COURTS AND PROCEDURES

3.1 The pre-pilot profile of participating courts

3.1.1 The following table compares the characteristics and workload of each court prior to the start of the pilots.

Table 6: Pre-pilot profile of pilot courts

	Preston	Newcastle	Middlesex
Tier of court	1 st	1 st	3 rd
% of work by class:			
1 or 2	5%	7%	2%
3	7%	14%	3%
4	88%	79%	95%
Committing PSDs	13	15	1
Full-time judges	10	11	6
Year ending 3/02:			
sitting days	2,569	2,167	1,571
receipts	1,793	2,108	875
disposals	1,824	2,107	846
outstanding	974	602	290
Crime courtrooms	12	12	7
Bar	Most from Manchester/Liverpool with satellite chambers in Preston (only one strictly local)	Most local; a few from Leeds	London chambers
Bar clerk liaison	Weekly meeting	Weekly meeting plus daily contact through a 'link' clerk	No meetings
Weeks from committal to PDH:			
- bail cases	6	6	5
- custody cases	4	4	5
prelim. hearing to PDH	6	10	5
Part-time judiciary also take PDHs	Yes	No	No
PDHs scheduled	Daily	Daily	Fridays
Average number of PDHs per sitting	No ceiling	13	12-14

Table 6: Pre-pilot profile of pilot courts

	Preston	Newcastle	Middlesex
How PDHs are listed	Included in mixed lists for several judges	Assigned to one judge per day	Assigned to one judge before other court business
CPS produces summary for PDH	Yes	Yes	Not usually
Judges use standard directions	No	No	No
Case progression role	None	None	None

3.2 Pilot Working Groups

3.2.1 At each of the sites, local users were involved at an early stage in the process in designing the procedures to be tested and publicising the new system. Judges and local groups nominated representatives from the following organisations to form Pilot Working Groups:

- CPS
- probation
- police
- defence solicitors
- barristers
- prison / escort services.

3.2.2 At each court, the Resident Judge chaired the meetings and the court manager, listing officer and CPO also attended. Monthly meetings were held in the pre-pilot stage while the procedures were being agreed and the project documentation prepared. Meetings were then held every two months during the pilot. These provided a useful forum for feedback and encouraged continued participation in the scheme. They also allowed problems to be raised and addressed.

3.3 Comparison of procedures at pilot courts

3.3.1 In early discussions with the Pilot Working Groups, it became clear that due to differences in local circumstances, it was not feasible for pilot procedures to be identical in all respects. However, in order to compare the benefits and disadvantages of the procedures across pilot sites, it was important to ensure that they were as consistent as possible.

3.3.2 The Court Service project team therefore drew up a framework of core procedures which Pilot Working Groups at each site adapted to reflect local practice.

- 3.3.3 The framework and the detailed procedures and forms used at each pilot court can be found in the Pilot Definition Document. Differences in procedure are described in the following sections.

Cases eligible for a paper PDH

- 3.3.4 All three pilot courts excluded certain types of case from eligibility for a paper PDH. Excluded cases proceeded automatically to an oral PDH. The following table summarises the exclusions.

Table 7: Eligibility for a paper PDH (✓ = eligible, × = not eligible)

Type of case	Middlesex Guildhall	Newcastle	Preston
Class 1 offence*	×	×	×
Class 2 offence*	×	✓	×
Defendants representing themselves	×	×	×
Cases transferred from other Crown Courts	×	×	×
Cases in which at least one defendant is a youth	×	×	×
Transfer certificate cases ¹³	✓	×	×
Fast-track child witness cases ¹⁴	×	×	✓
All other child witness cases	×	✓	✓

* Middlesex Guildhall does not take Class 1 or 2 offences on direct committal

Form design

- 3.3.5 The forms completed and submitted to the court by the prosecution and defence at each pilot site were designed by the respective Resident Judges in consultation with the Pilot Working Groups. They differed in length, content and wording. At Middlesex Guildhall and Newcastle the forms were entitled ‘Certificate of Readiness’ while the Preston forms were simply headed ‘Questions to be answered by the Prosecution (or Defence)’.
- 3.3.6 The lengths of the forms¹⁵ measured in A4 pages were as follows:

Table 8: Length of forms used at pilot courts

Court	Prosecution form	Defence form
Middlesex Guildhall	6 pages	7 pages
Newcastle	3 pages	4 pages
Preston	7 pages	8 pages

¹³ These involve sexual, violent or cruelty offences where a child witness was a victim or eye-witness. The transfer procedure was introduced by the Criminal Justice Act 1991 but the underlying 1988 legislative provision was repealed by the Youth Justice and Criminal Evidence Act 1999.

¹⁴ Only the Newcastle procedures referred specifically to ‘fast-track child witness cases’. No definition was given of such cases.

¹⁵ Forms used at Preston and Middlesex Guildhall were amended slightly during the course of the pilot.

- 3.3.7 Newcastle and Middlesex Guildhall had a separate two-page addendum to the form (not included in the above figures) dealing with arrangements for young witnesses.¹⁶ Some questions concerning young or vulnerable witnesses were incorporated in the body of the prosecution form used in Preston.
- 3.3.8 In general, the pilot forms requested more information than the standard PDH Judge's Questionnaire which, for instance, does not address the disclosure of unused material. However, there were differences in the level of detail required, particularly in the case of the Preston forms. The main points of difference were as follows.
- 3.3.9 Matters dealt with in the prosecution form used in Preston and Middlesex Guildhall but not addressed in the Newcastle form included:
- a request for an estimate of trial length
 - a list of issues, including human rights issues, likely to arise at trial
 - admissions or agreed facts
 - the need for a jury bundle
 - a timetable for the attendance of witnesses.
- 3.3.10 Middlesex Guildhall did not ask explicitly about:
- third party disclosure
 - the mental state or medical condition of the defendant or any witness
 - whether the defendant or any witness had a disability requiring special provision to be made at the trial.
- 3.3.11 The following matters were raised only on the Preston form:
- the reasons in support of a request for an oral PDH
 - whether the defendant was on licence from an earlier custodial sentence at the time the alleged offences were committed
 - applications to change the defendant's bail conditions
 - ensuring that an agreed bundle is available at the trial
 - whether prosecution maps, sketches and photographs had been served on the defence.
- 3.3.12 On the defence form, Newcastle did not enquire whether either the defendant or witnesses would require an interpreter at the trial. The following matters were raised only on the Preston form:
- the reasons in support of a request for an oral PDH
 - whether the advocate completing the form had discussed the case with the trial advocate (where this was different)
 - the defendant's means, legal aid order and whether there was an application for a litigator to attend the trial

¹⁶ These were modelled on the PDH: Supplementary Pre-trial Checklist for Cases Involving Young Witnesses issued by the Court Service in 1999 and endorsed by the Lord Chief Justice.

- whether the defendant was on licence from an earlier custodial sentence at the time the alleged offences were committed
- applications to change the defendant's bail conditions
- whether the defence wished to take up any point on the indictment
- details of the steps taken in pursuit of a possible plea
- the need for a jury bundle
- whether prosecution maps, sketches and photographs had been served on the defence
- whether the defendant or any witness had a disability requiring special provision to be made at the trial.

3.3.13 Each site also used the judge's referral form on which the results of the review of the forms submitted by the parties were recorded, including whether an oral PDH was required. These forms were all one page long and identical in all significant respects.

Completion of pilot prosecution and defence forms

3.3.14 There was general agreement at all pilot sites that the forms were best completed by the trial advocate on each side. However, while Preston required that the person completing the form must have rights of audience in the Crown Court, the other two courts accepted forms completed by any lawyer.

Timing of submission

3.3.15 Middlesex Guildhall and Newcastle procedures stipulated that completed forms must be returned at least five working days before the PDH date; only Preston required the forms by a specific time during the fifth working day (the precise time changed during the pilot).

Serving and cross-serving

3.3.16 In all areas, the procedures required that completed forms were served on opponents at the same time as they were provided to the court. However, only the pilot forms used at Middlesex Guildhall and Newcastle asked for a signed undertaking that the completed form had been served on the other side and on the court.

3.3.17 Preston procedures also required the defence to serve on co-defendants' solicitors. The other two areas' procedures said such service was 'desirable'.

3.3.18 Only the Middlesex Guildhall procedures stated explicitly that 'a separate certificate must be completed for each defendant in each case'. The defence form used at that court asked for the following undertakings:

For completion at the Defence Solicitor's office

A copy of this certificate has been served on the Prosecution and the Court.

date.....

Although there is no mandatory requirement for defence solicitors to serve a copy of this certificate on co-defending solicitors please confirm whether this has been done

Copy served on date.....

- 3.3.19 The Newcastle defence form contained only the first part of the above box relating to service on the prosecution and the court.

Allocation of dates

- 3.3.20 At Preston and Newcastle, PDH dates in either-way pilot cases were set, as usual, four weeks from committal in custody cases and six weeks in bail cases. The Middlesex Guildhall procedures called for a PDH date in either-way cases to be set six weeks from committal, without distinguishing bail and custody cases.

- 3.3.21 Magistrates' courts distributed the pilot forms and associated guidance at the committal hearing. In indictable-only cases sent to the Crown Court under section 51 of the Crime and Disorder Act 1998, PDH dates were set and forms and guidance distributed at the preliminary hearing in the Crown Court.

Sitting hours

- 3.3.22 At Middlesex Guildhall the time spent by judges in reviewing forms was counted as judicial sitting hours. This practice was not adopted at the other pilot sites.

Case progression officers

- 3.3.23 CPOs at all three pilot courts undertook similar tasks although their approaches differed in detail. The role of the CPO is described in the next chapter.

Listing for mention

- 3.3.24 Listing for mention was not used initially by Middlesex Guildhall as a sanction for failing to return forms. It adopted the practice part way through the pilot because of the large number of forms that did not appear by the court's deadline. The other pilot courts used listing for mention throughout the pilot.

4 ROLE OF THE CPO IN THE FLEXIBLE PFH PILOTS

4.1 Introduction

4.1.1 The use of CPOs in the Crown Court pre-dates the flexible PDH pilots. However, no CPO was in place in the three pilot courts when the flexible PDH scheme was introduced. As a result of the additional administrative duties involved, the Court Service agreed to provide funding to enable each court to appoint a dedicated CPO focusing on pre-PDH pilot procedures. This was intended to 'ring fence' the role of the CPO, to ensure that flexible PDH procedures were carried out consistently during the pilot.

4.2 The duties of the CPO

4.2.1 The scope of the CPO role in the pilots was restricted to the pre-PDH period and did not include post-PDH monitoring of court directions. The main responsibilities were to:

- identify all new cases received by the court and add those eligible for pilot procedures to their log¹⁷
- note on the log when completed forms were received from the parties
- check the log to monitor which forms had not been received by the due date
- list for mention those cases where forms had not been received by the due time
- remove from the list for mention if outstanding forms were then received
- send the completed forms and judge's referral form for review to an appropriate judge
- inform the parties and the listing office of the judge's decision
- send out any directions made by the reviewing judge to the parties.

4.2.2 The evaluation team devised an Excel spreadsheet to allow the CPOs to monitor the questionnaires and to record information regarding the cases for evaluation purposes. Spreadsheets were forwarded to the team periodically.

4.2.3 CPOs were also requested to provide the team with copies of the prosecution and defence pilot forms and the judge's referral form, and to note on the CPO log any issues to be raised at the Pilot Working Group meetings.

4.2.4 There were minor differences in the approach to the role at the three pilot courts. The CPO at Middlesex Guildhall routinely contacted parties to remind them that the deadline for form submission was imminent. At Preston, this was done only when time allowed. Newcastle did not contact parties about forms except to notify those who failed to submit on time that they had been listed for mention.

4.3 Grading

4.3.1 Each pilot site was asked to identify a member of staff with a good understanding of pre-trial and listing procedures, communication skills and,

¹⁷ The nature of this log is explained in the Methodology chapter.

preferably, 'in court' experience. These criteria were based in part on the experience of Derby Crown Court's flexible PDH project which used as a CPO a Span 4 (Executive Officer) member of staff with both an administrative and court clerk background. She was required to liaise with solicitors, barristers, the listing officer and the Resident Judge, taking a firm line with parties where necessary to ensure that work was received within the timetables set.

4.3.2 Preston and Middlesex Guildhall Crown Courts selected members of staff who were Span 4 to fulfil the CPO role. Newcastle Crown Court appointed a CPO who was a Span 6 (Higher Executive Officer). The agreed tasks (listed above) involved a large amount of administrative work such as paper chasing, photocopying and updating CPO and listing records. However, the role also involved exercise of skill and judgment through:

- managing time effectively and understanding the impact of decisions on the time of others
- providing effective customer service by building good working relationships with local practitioners
- monitoring cases assigned to judges and liaising with the judiciary regarding problems and queries
- taking action on non-compliant cases where necessary
- remaining focussed under pressure and ensuring that problems were tackled at an early stage.

4.3.3 Two workshops were held for the three CPOs. The first workshop, also attended by listing officers from Preston and Newcastle and the court manager from Middlesex Guildhall, discussed how the new processes should be implemented and agreed the duties of the CPOs. At the second workshop, participants identified the competences relevant to the role and gave examples of the activities and behaviour required. Attendees at the workshop agreed that the pilot CPO position mostly indicated level 2 competences, although some areas such as 'communicating and influencing' included some level 3 duties. Level 2 competences indicated a Span 4 role. The position would have to be fully evaluated before any decision on the appropriate grade can be finalised.

4.4 CPO related problems encountered during the pilot

4.4.1 Administration of the flexible PDH scheme required CPOs to have basic information technology (IT) skills. Only one of the CPOs had experience of Excel and Word. Training courses for those requiring them took longer than anticipated to organise. This had a knock-on effect on the CPOs' ability to log and track the incoming information and affected the quality of the data recorded.

4.4.2 Pilot courts were also asked to identify and train a deputy CPO to provide cover during annual or sick leave or when the CPO was called upon to perform other duties. The Newcastle CPO spent about two-thirds of his time on the role. He was also Change Agent for the Court Group which took him away from the Crown Court for part of these duties. Two people were trained as his deputy. The CPO at Middlesex Guildhall also performed listing and court clerk functions. The deputy was familiar with only the basic details of the process. In Preston, the

CPO's deputy was more actively involved, but pilot procedures had to be suspended for short intervals when both were away.

- 4.4.3 Because the system of deputising for the CPO was not always effective, some eligible cases were not forwarded to a judge for review. Moreover, the inconsistent monitoring of form due dates that resulted may have sent mixed messages to practitioners, as non-compliance with pilot procedures sometimes went unchallenged.

4.5 Views of the CPO role

- 4.5.1 Judges and court staff, including CPOs, were asked for their views about the usefulness of the CPO role as it operated in the pilot. Judges generally thought the CPO role was valuable and worth retaining but, in contrast to the pilot arrangements, thought that it should cover the life of the case including the period following the PDH, and in particular, the weeks before the scheduled trial date. Newcastle judges noted that alongside an expanded CPO role there needed to be appropriate sanctions for non-compliance with directions; however, one of them stressed that this was not an area in which the CPO should become involved:

‘The CPO must not get into confrontation with the parties. If a problem arises it should be referred to the judge’.

- 4.5.2 Court staff across the pilot areas also favoured an extended role for the CPO:

‘There should be a fully committed case progression system covering the lifetime of the case. This would produce fewer ineffective trials because of problems not being sorted out beforehand (e.g. interviews not edited or compatibility of equipment not checked). The paper PDH should be the start of a process aimed at ensuring an effective trial. The court should follow through meticulously, checking and double-checking along the way. The time involved would be offset by avoiding the current wasted time at the start of trials. It is common for half of the trials listed to start on a Monday not to get underway until lunchtime. This loss of judicial time does not show up in statistics. The cost of another AO could produce large savings’

‘There is definitely a case for an expanded CPO role covering the entire lifetime of the case in the Crown Court. This would involve monitoring compliance with directions. At present there is not even a record of the directions that have been made’

‘There should also be procedures in place to follow up orders and directions made. At present, we have gone through all this only for directions to go into the “wide blue yonder”’.

- 4.5.3 The concerns of court staff about an expanded CPO role focused on the resource and support implications.

‘If the CPO role was extended, there would be a need for administrative support to undertake photocopying and data input’

‘Extending the CPO role would involve setting up a diary system. Although judges do not make many directions, it would involve a lot of work to monitor compliance and staffing levels would need to be looked at’

‘Post-PDH monitoring of compliance with directions would require extra staff. In some of his cases, the Resident Judge announces “CPO to monitor directions”. We would like to monitor all orders but this would need several extra staff’

‘If the CPO role was full-time the most important task would be chasing compliance with judicial directions post-PDH. This would require an executive officer with administrative support. It would also need access to a computer with an automated diary system’.

5 THE PDH DECISION

5.1 Introduction

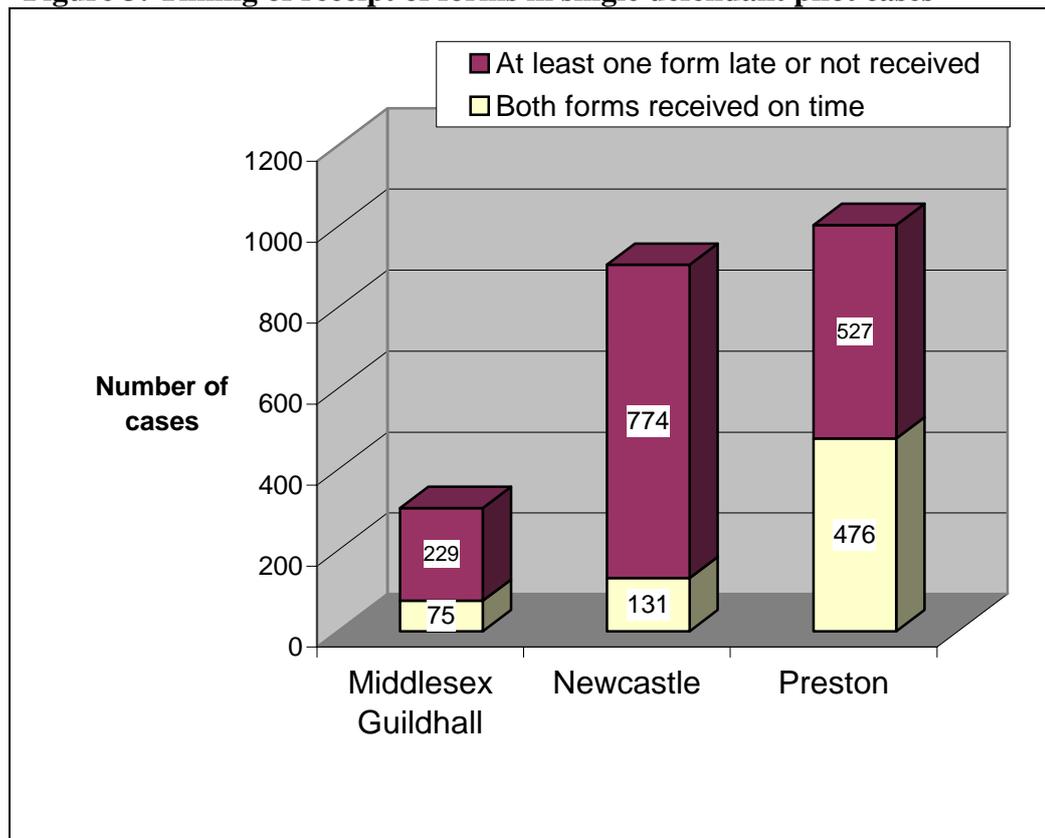
5.1.1 In this chapter, key aspects of the operation of the pilot procedures are discussed. Data collected during the pilot is used to analyse the success of the procedures by comparison with pre-pilot operation and with other courts. The analysis of quantitative data is compared and contrasted with the views of participants.

5.2 Timing of submission of forms

5.2.1 The effective operation of the pilot procedures depended crucially on both prosecution and defence completing and submitting the pilot forms by the deadline of five days before the scheduled oral PDH. This was necessary to allow sufficient time for a judge to review the forms and decide whether an oral PDH was necessary or not.

5.2.2 The date of receipt of forms was recorded on CPO logs. The figure below indicates which forms were received by the due date in cases involving a single defendant.

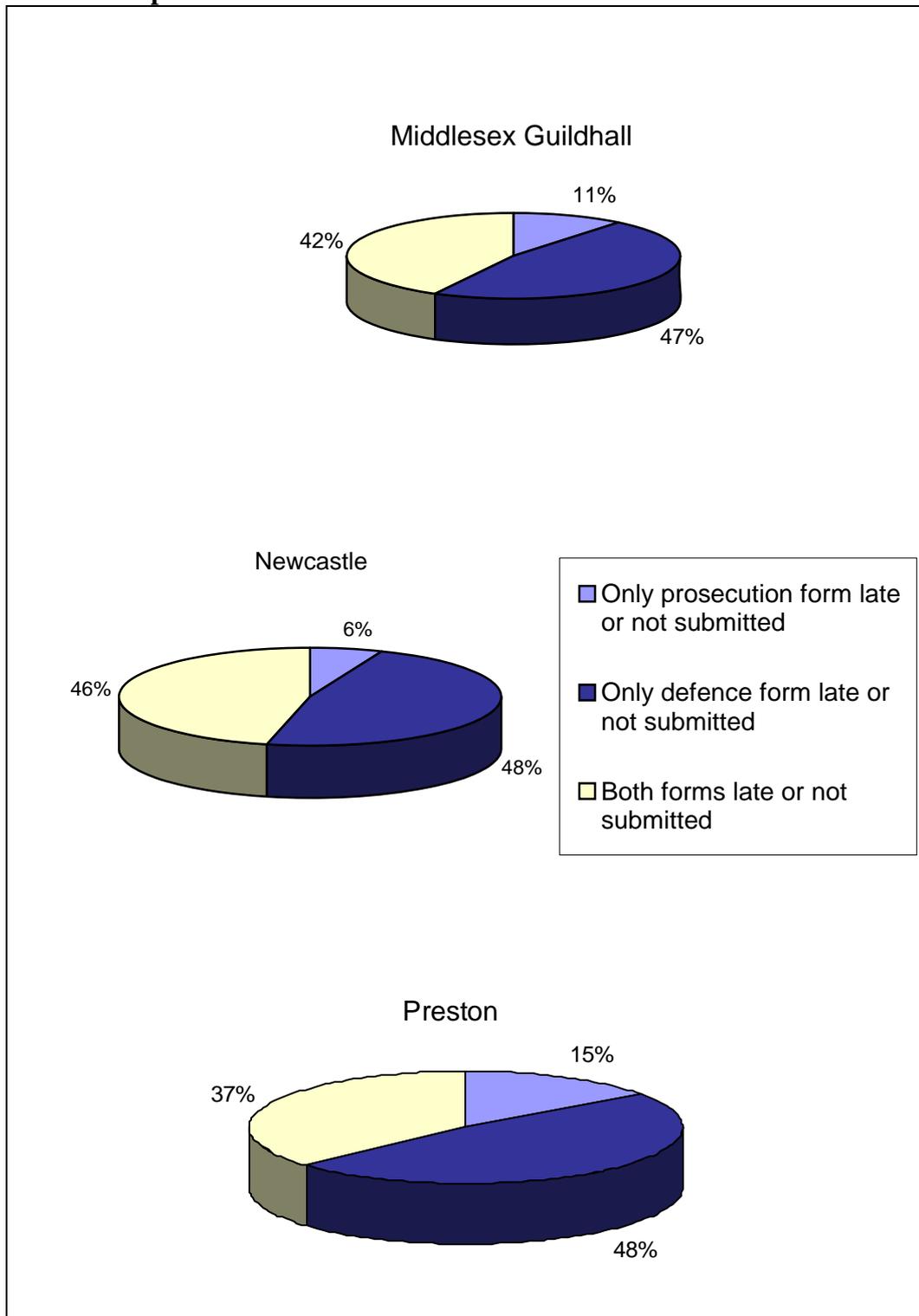
Figure 3: Timing of receipt of forms in single defendant pilot cases



5.2.3 In all three pilot courts, forms were received on time in less than half the cases.

5.2.4 Responsibility for the lateness or non-arrival of forms was as follows (percentages are of all cases where at least one form was late or not submitted):

Figure 4: Parties failing to submit a form by the deadline in single defendant pilot cases



5.2.5 Overall, the defence were less likely than the prosecution to submit forms on time. The picture in multi-defendant cases was similar.

5.2.6 Participants were asked about the requirement to submit forms five days before the scheduled PDH date. Two Newcastle judges saw an advantage to obtaining even limited information at an earlier stage. However, most judges felt that the pilot timetable meant that forms could not be completed satisfactorily:

‘We are asking for the answers too early’ (Middlesex Guildhall)

‘The problem is that there is not enough time for the defence to focus on which witnesses they really require’ (Newcastle).

5.2.7 All but one of the 11 responding barristers saw problems with the time limits for completion of forms. Seven barristers complained of prosecution and defence case papers that arrived late and were often incomplete. For Preston advocates expected to complete forms themselves, timely submission was made more difficult if they were in ‘out of town’ courts when the forms were received. One barrister complained that his case was listed for mention before he had received the brief and form from the CPS.

5.2.8 The following comment was typical of CPS views about the pilot timetable for form submission:

‘We are being asked to address issues too early which do not in practice emerge until much closer to trial.’ (Middlesex Guildhall).

5.2.9 Most of the seven responding solicitors also felt that there was too little time between committal and due dates for completion of the forms:

‘There should be twice the amount of time before the completed questionnaires should be lodged. Particularly where defendants are in custody, it is all but impossible to provide the detailed information required. When further time has been asked for it has not been given. The forms are completed as best we can to avoid the “naughty boys’ court” but are often useless’ (Preston).

5.2.10 Solicitors said that delay in receipt of CPS case papers and in service of primary disclosure in turn delayed scheduling a conference with the defendant. They also attributed other delays to the CPS:

‘The defence is disadvantaged because the CPS normally serves its case by the due date but it is usually provided without important exhibits such as videos and photographs. It can take many weeks to get these items which can be a crucial part of the case’ (Newcastle).

5.2.11 A Newcastle solicitor emphasised that pilot timescales were too tight in cases where the defence might wish to use an expert witness:

‘In this situation, taking instructions and discussions with counsel can take 3-4 weeks. Getting an estimate from an expert can take 1-2 weeks. Once this is

obtained, applying to the Legal Services Commission for prior authority can take anything between 2-4 weeks’.

- 5.2.12 With the exception of two barristers and four solicitors, most participants concluded that the pilot procedures had not made the parties address the issues earlier.

5.3 Listing for mention

- 5.3.1 Pilot timetables attempted to balance the time allocated to parties to complete the forms with the time needed by CPOs to set up paper reviews. Non-compliant parties would be listed for mention, usually on the day following the due date. Papers provided to the mention judge were supposed to include the form completed by the other side if this had been submitted on time.¹⁸

- 5.3.2 Because Middlesex Guildhall chose at the start of the pilot not to list cases for mention, the CPO log for that court was not designed to record such listings. Part of the way through the pilot period, Middlesex Guildhall decided to introduce listing for mention although no record was made of when or how often it was used. The following table therefore relates only to pilot cases at Preston and Newcastle. It shows the number of cases listed for mention and the number where the mention hearing actually took place. If the threat of the mention resulted in submission of the missing forms, the mention hearing was usually vacated. Percentages in brackets are of the total number of pilot cases at that court.

Table 9: Cases listed for mention due to non-receipt of forms

	Number listed for mention	Number in which the mention proceeded
Newcastle	216 (21%)	63 (6%)
Preston	565 (49%)	459 (40%)

- 5.3.3 Preston made by far the greater use of listing for mention. The mention hearing also proceeded much more frequently than at Newcastle, suggesting that the threat of the mention at Preston was less effective in producing missing forms.
- 5.3.4 CPOs reported that timeliness of form submission improved over the course of the pilot but was still problematic by the time the pilot ended. They observed that some defence solicitors routinely submitted forms on time but a hard core, in particular sole practitioners, ignored the forms until they either received a call from the CPO or the case was listed for mention.¹⁹ The majority of mentions were vacated but the list office had difficulties dealing with extra administrative work this entailed.
- 5.3.5 Judges interviewed before the pilot began indicated little enthusiasm for the use of sanctions in general, partly because they thought they were thought to be

¹⁸ However, this did not happen at mention hearings observed during the pilots.

¹⁹ Some firms which sent agents to the committal complained that they had not been given the pilot form distributed by the magistrates’ court. Bar clerks said that defence solicitors sometimes failed to forward a form with the brief.

ineffective but also because judges said that failure to comply with directions was usually not brought to judicial attention. However, most judges thought that listing for mention during the pilot had encouraged compliance with deadlines for submission of forms:

‘It has been very effective. There have been very few mention hearings - the threat was enough’ (Middlesex Guildhall)

‘Mentions are proving effective at getting the forms in. CPS compliance has improved greatly, the defence less so. Most mentions relate to the failure of the defence to submit a certificate’ (Newcastle)

‘Mentions are working OK. They are certainly unpopular with the Bar but the message is getting through. It is an educational process and there is a need for flexibility, especially as non-local barristers appear here’ (Preston)

‘They are certainly effective – and a nuisance for everyone’ (Preston).

5.3.6 However, not all judges agreed:

‘Listing for mention is futile and embarrassing. The Bar does not like the public seeing them treated like schoolchildren. It is usually junior counsel that attend. It would be better to dock the fee at the oral PDH if a form has not been submitted unless a good explanation is offered’ (Preston).

5.3.7 Court staff voiced a number of concerns about mentions hearings. The party attending was often not the person responsible for failure to comply, but a representative whom judges were reluctant to question or reprimand. Sometimes a party appearing at a mention hearing told the judge that the form had been submitted when it had not yet been received by the court office. Judges complained of receiving papers for cases listed for mention late in the day before a hearing the following morning. Most significantly, court staff noted that if the judge did not say that costs were disallowed²⁰ so that it was noted on the file, the defaulting party could be paid for attending the mention hearing (contrary to the intention of the pilot).

5.3.8 Late submission of forms sometimes meant that there was not enough time for a paper review. If the form was submitted at the mention hearing, or the judge at the mention put the deadline for form submission back to the end of the day, then it was often still possible to review the forms and decide on a paper PDH. However, if the judge granted the defaulting party more time to submit the form, this did not leave enough time for review unless the PDH date was put back. Middlesex Guildhall reported that most cases in which forms were late were the ones with problems and therefore remained scheduled for an oral PDH.

5.3.9 Barristers were divided as to whether listing for mention was an effective way of ensuring forms were completed on time; three solicitors thought that listing for mention was an effective mechanism.

²⁰ No such ruling was made at mentions observed during fieldwork visits.

5.3.10 Barristers and bar clerks in Preston and Newcastle said that barristers were sometimes held accountable for late submission of forms when in fact the prosecution brief had been delivered late, occasionally even on the day the forms were due:

‘We have complained about this to CPS. The result is barristers attending mentions instead of fee-paying hearings. Chambers is made the scapegoat. We get late phone calls asking us to do these hearings and we don’t get thanked for it. On the defence side, we had a case where we could not get instructions from the client and explained this to the court but we still had to come to the mention’ (Preston bar clerk)

‘If the brief is on time we can get something down on the form but there is a problem where the brief is late. We often pick them up on the morning at court. We get a rollicking if the form is not completed on time and it is not our fault’ (Preston barrister)

‘We are finding this increasingly difficult because solicitors do not instruct counsel until the last minute. Yesterday, solicitors had forgotten to tell us that two cases were in for mention. We had no-one there to explain and had to ask a solicitor to go who had nothing to do with the cases’ (Newcastle bar clerk).

5.4 Quality of information on pilot forms

5.4.1 The pilot forms requested more detail than the standard Judge’s Questionnaire. CPOs were asked to record on their logs when the reviewing judge asked the prosecution or defence for more information. There were fewer than five cases in which this happened at any pilot site, probably because of the lack of time available before the scheduled PDH date.

5.4.2 An indication of the quality of information on defence forms is available from the spreadsheets of data extracted from the forms. These recorded whether certain categories of information had been provided. Notification of which witnesses would be required to attend a trial was generally good while identification of issues that would arise at trial was poor.

Table 10: Information on defence forms

	Number of forms examined	Number (%) naming witnesses to attend trial	Number (%) indicating issues of law or fact
Middlesex Guildhall	304	252 (83%)	41 (13%)
Newcastle	458	321 (70%)	33 (7%)
Preston	481	392 (81%)	271 (56%)

5.4.3 A CPS business manager in one pilot area confirmed that identification of issues by the defence was a problem:

‘Questionnaires are often impossible to complete due to the defence failing to indicate what the issues are likely to be’.

5.4.4 Before the pilot began, nearly all judges surveyed agreed that information provided on the standard Judge’s Questionnaire was often incomplete and most thought it was also inaccurate.

5.4.5 Following the pilot, one Preston judge described the quality of information as ‘definitely better’. However, other judges did not consider that pilot forms had produced better information from either the prosecution or the defence:

‘Quality and accuracy are both worse’ (Middlesex Guildhall)

‘The forms submitted were very inadequate’ (Middlesex Guildhall)

‘The information is generally inferior to that on the Judge’s Questionnaire’ (Newcastle)

‘The information provided is often very limited’ (Preston)

‘As far as the issues are concerned, the quality of information on the forms is similar to that on the standard Judge’s Questionnaire. They may use a few more words but that is not telling you more than you would get from reading the interview or the papers’ (Preston).

5.4.6 At Middlesex Guildhall, a judge observed that when the sanction of listing for mention was introduced part of the way through the pilot period, it had the desired effect of producing forms. However, the quality of information provided on the forms was generally poor.

5.4.7 Seven barristers and five solicitors thought that the quality of information entered on pilot forms was poorer than on the Judge’s Questionnaire. The lack of a conference with the defendant was seen as a major factor. Failure to obtain instructions before the PDH is supposed to result in the defence asking the court to list the case for mention.²¹ In practice, the advocate’s first conference with the defendant often occurs on the day of the PDH.

5.4.8 Almost all barristers and solicitors reported that there was usually no conference with the defendant before defence forms had to be submitted to the court. A bar clerk said that forms were often incomplete due to the lack of instructions: ‘We have nothing to say’.

5.4.9 Nearly all solicitors but only one advocate said that they routinely asked for an oral PDH where there had been no conference with the client. One solicitor said:

‘You can’t generalise as to whether a conference between counsel and client is necessary before the form can be completed. If the solicitor is certain about the instructions, perhaps no conference is needed. But it may need counsel to tell the client the reality of the position, or there may be evidential issues to be discussed. There are cases where the client is hard to contact and it may be hard

²¹ Para. 14, Lord Chief Justice’s Practice Rules, Plea and Directions in the Crown Court (25 July 1995).

administratively to get them to a conference with counsel in another city. There are also problems of access to clients in custody but I am not aware that oral PDHs are asked for in order to hold a consultation with counsel: if they are, should we mind? I don't know if it is an abuse of the system. It should be up to counsel, not the court, to decide whether an oral PDH is necessary' (Preston solicitor).

- 5.4.10 Most judges acknowledged that pilot timescales made a prior conference between the defendant and his legal representatives unlikely:

'I ask at mentions if there has been a conference with the defendant. If not, I stand the case down or adjourn for 14 days. Otherwise a not guilty plea is inevitable, leading to a possible crack' (Preston)

'It is hard to arrange a conference between counsel and client before the PDH. We could extend the time allowed but "last-minutism" is the problem' (Newcastle)

'Paper PDHs don't help. There is no time for the defence to get useful information to put on the forms. There is the problem of getting a conference with the client, especially those in custody. There are difficulties with legal visiting hours at the prison' (Newcastle)

'The focus is on the trial advocate completing the form and often he has not had a conference with his client. Restrictions on legal visiting hours at prison pose practical problems. The answers on the form are therefore provisional' (Preston).

- 5.4.11 CPS offices generally thought that the pilot had not improved the quality of information:

'We now get less information that we did with the submission of the joint questionnaire on the day of the oral PDH' (Newcastle)

'The information provided by CPS to court is poorer than necessary because it relies on poor information provided by the police. We are actually finding out at a later stage that unmeritorious cases are in the system longer than necessary' (Newcastle)

'The quality of information is not any better than before and may be worse' (Preston).

- 5.4.12 As noted earlier, incomplete pilot forms were seldom returned to the party submitting them, although judges sometimes criticised incomplete forms in court. Some participants felt this was counter-productive:

'If the judge is critical of gaps, you feel forced to make it up or leave it blank. You would not have put in an answer on the basis of information' (CPS Newcastle)

‘The objectives of the form cannot be achieved without quality information. It seems that there is more emphasis on completion than on quality of information and so the exercise is useless’ (Preston barrister)

‘Many of the questions can’t be filled in until after the PDH e.g. about estimates of trial length (we don’t know who the defence will call)’ (CPS Middlesex Guildhall).

- 5.4.13 At Middlesex Guildhall, judges said that many questions were marked ‘trial counsel to advise’ and answers to others were inaccurate. Newcastle court staff thought that defence solicitors completed the forms themselves in order to meet the deadline (though they may have done so after consulting counsel); some firms were thought to provide consistently more information than others. Better quality information was also associated with particular types of case, for instance where there was a possible alternative plea, such as a section 18 reduced to a section 20, and where use of an expert was planned.
- 5.4.14 In Preston, court staff noted that even though forms had to be filled in by advocates, questions were also often left blank.

5.5 Responsibility for completing prosecution and defence forms

- 5.5.1 Judges agreed that, ideally, pilot forms should be completed by the trial advocate on each side. In practice, Preston required forms to be completed by someone with rights of audience in the Crown Court while the other two courts accepted forms from any lawyer. The Preston forms were completed by CPS Higher Court Advocates and briefed advocates, although barristers’ clerks reported asking members of chambers to fill in forms for one another. In the other two courts forms were completed by solicitors, CPS lawyers (but not necessarily Higher Court Advocates) as well as briefed advocates.
- 5.5.2 Judges were concerned that the forms were often not completed by the appropriate person:

‘Questionnaires are completed by a junior person at an early stage going through the pro-forma without dealing with the issues. This is a problem on both the defence and the prosecution side’ (Middlesex Guildhall)

‘We wanted it to be the trial advocate but this proved impossible because the trial advocate is not briefed at this stage in the process. Briefs used to be sent out immediately after committal but now the CPS has to review the case. It is inundated with work. A prepared case does not reach the advocate early enough’ (Middlesex Guildhall)

‘I am not happy with who is currently completing the forms, especially in respect of the defence. I am more comfortable with the CPS forms’ (Newcastle)

‘It should be trial counsel. It is better to force those responsible for the trial to do the work earlier’ (Preston).

5.5.3 Another Preston judge acknowledged the difficulty with requiring the trial advocate to complete the form:

‘Perhaps it would be better to tell the solicitor to get useful information, irrespective of where it comes from. There is need for more flexibility’.

5.5.4 In Newcastle, the prosecution form was normally completed by a CPS Higher Court Advocate or other lawyer; a caseworker copied it to counsel before forwarding it to the court. CPS described as ‘hit or miss’ whether counsel commented on the form and signed it²² (no records were kept to identify the proportion of cases in which this happened). In the Preston pilot area, forms could be submitted by CPS Higher Court Advocates or counsel. Forms completed by the CPS were forwarded to counsel prior to the PDH but after submission to the court. In London a CPS lawyer, but not necessarily a Higher Court Advocate, completed almost all forms. These were distributed to trial unit reviewing lawyers first, but if they were unavailable any other lawyer could complete the form:

‘Very often, the lawyer is seeing the file for the first time. The forms ask about matters to be agreed with the defence. We can’t do this with defence solicitors as neither of us have conduct of the case. It often feels like a cosmetic exercise’.

5.5.5 Some CPS personnel in offices completing forms for Newcastle and Middlesex Guildhall saw disadvantages in form completion without input from prosecution counsel:

‘Our lawyers’ experience is in the magistrates’ court. They tend to over-estimate witness requirements and trials are therefore being listed later than necessary through avoiding dates for witnesses who are not actually needed. Even if the forms go forward to an oral PDH, I do not think the witness requirements are being actively reviewed’

‘Our form completion is satisfactory in respect of legal issues but has limitations in respect of other matters which are the personal preference of the trial advocate. When it gets to the PDH, what we put on the form goes out the window’.

‘Faced with the question of which witnesses are needed, the answer is to say “all of them”. The difference is in us filling in the form rather than counsel. Higher Court Advocates are more in tune with this but CPS lawyers with no Crown Court experience tend to respond as one would in the magistrates’ court. This has not really improved during the pilot. We have too much work to specialise and can’t really afford to have lawyers who are not Higher Court Advocates hanging round the Crown Court to pick up this kind of thing’.

²² A CPS lawyer advised that the prosecution advocate could claim the fee for completing the form simply by signing it.

- 5.5.6 Forms for the Preston pilot could be completed by CPS Higher Court Advocates and CPS in this area did not think that its lawyers over-estimated witness requirements.
- 5.5.7 Towards the end of the pilot, London CPS said that it had improved its timely submission of forms and was compliant more frequently than the defence, ‘but at a cost. Pressure to complete forms (and in the process stop doing other pressing work) has caused a lot of resentment’.
- 5.5.8 CPS Preston noted that distribution of forms to counsel necessitated briefs being sent out within a few days of committal, compared to the CPS Standard agreed with the Bar (namely 14 days for a standard brief and 21 days if the brief is pre-marked.) CPS London generally sent briefs out in the middle of the four to six week period before the PDH (no brief was sent out where the PDH was to be conducted by an HCA).
- 5.5.9 Seven barristers (all serving Preston Crown Court, which required forms to be completed by an advocate) said they always completed forms in pilot cases, although not always as trial advocate:
- “‘Trial advocate’ is an impossible concept. Listing officers pay no attention to counsel’s availability. The pilot scheme is most useful for cases suitable to ‘float’. The ‘trial advocate’ then becomes anyone who is available’
- ‘Forms are given to anyone in chambers to fill in. We may have to say we require all witnesses’.
- 5.5.10 The difficulty in getting the trial advocate to complete the form was confirmed by Preston bar clerks who reported that they asked other barristers in chambers to fill in forms for one another. One thought that the defence solicitor should be permitted to submit the form:
- ‘After all, a Higher Court Advocate can do the forms even though they don’t do trials. A “stand-in” barrister is less informed than a solicitor’.
- 5.5.11 One barrister serving Middlesex Guildhall completed forms in fewer than half of his cases while another had never submitted a form. Three (two serving Newcastle and one serving Preston) had completed forms in half or more of their cases.
- 5.5.12 Three solicitors (from Newcastle and Middlesex Guildhall) said that they always completed forms in their pilot cases and two (from Preston) said they did so in more than half.

5.6 Cross-service and communication

- 5.6.1 In standard PDH procedures, ‘a single copy of the [Judge’s] Questionnaire, completed as far as possible with the agreement of both advocates, is to be

handed in to the court prior to the commencement of the PDH²³. Many courts photocopy the questionnaire (on which the judge may have noted directions) for the parties after the PDH. In the pilot separate forms were completed by both sides although it was intended that completed forms be cross-served. Six solicitors said that they received prosecution forms before the date of the PDH, whereas seven barristers said they received the other side's form only on or after the date of the PDH; a further three (from Newcastle and Preston) said they did not receive these forms at all.

5.6.2 A combined question on the pilot forms used at Middlesex Guildhall and Newcastle asked if a copy had been served on the court and the other side.²⁴ The CPS in all pilot areas reported that copies were often sent to the court but not to the CPS²⁵, an omission for which there was no sanction. The defence form was particularly important in relation to information needed in warning witnesses.

5.6.3 In some instances, CPS staff called defence solicitors requesting a copy of the defence form not received by the due date but the problem was so pervasive that Newcastle Crown Court agreed routinely to copy defence forms to the CPS on receipt. Preston Crown Court was unable to take on this additional task but, towards the end of the pilot, where either the defence or prosecution was listed for mention and counsel handed in the form at the hearing, it was agreed that usher would make a copy for the other side. In some Preston cases the CPS asked the court to list the case for mention where the defence form had not been served on the CPS. London CPS reported asking the court office for copies of missing defence forms.

5.6.4 Complaints about poor communication were not confined to cross-service of forms between the parties. Preston court staff had been asked to photocopy forms for solicitors who had not received a copy from their own defence barrister. Bar clerks in Newcastle confirmed that, in order to avoid delayed forms being listed for mention, chambers often faxed the form direct to the court to save time, even though completed forms were supposed to be returned to the instructing solicitor or CPS for forwarding on to the court. This also happened in Preston:

‘Solicitors think it is our responsibility to lodge the completed forms. Even when we return the forms to them, they sometimes don't forward them to the court on time and then the case gets listed for mention and they don't tell us. It's hard to complain to the court because we don't like getting instructing solicitors into trouble. We send forms directly to the court if it is our fault they are late but if you do it every time, it is expected of you’ (bar clerk).

5.6.5 Bar clerks in the Preston and Newcastle pilot areas complained about poor communication from their instructing solicitors of the decision that an oral PDH had been taken out of the list following a judicial decision that a paper PDH

²³ Para. 13, Lord Chief Justice's Practice Rules, Plea and Directions in the Crown Court (25 July 1995).

²⁴ Such cross-service was a requirement in the procedures at all three pilot courts but the Preston forms did not ask for an undertaking that cross-service had taken place.

²⁵ CPS London estimated that they received defence forms in fewer than 10 per cent of cases.

would suffice. In order to address this problem, the Preston CPO agreed to fax the judge's order to chambers.

5.7 Suggested improvements to the forms

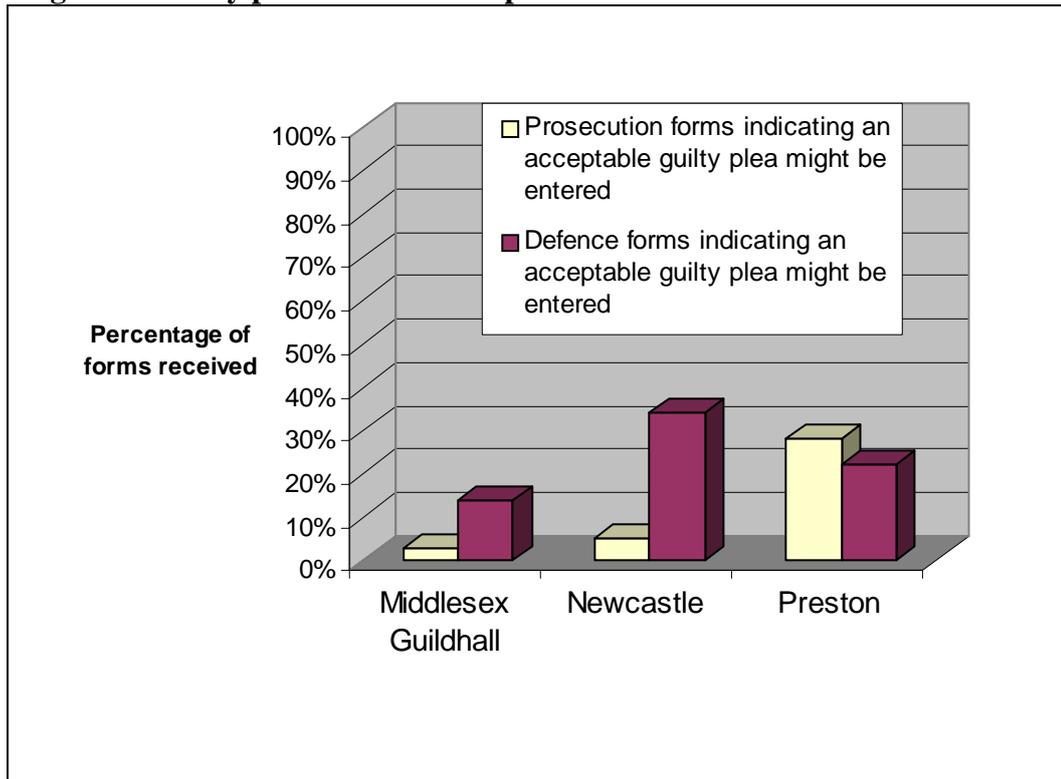
- 5.7.1 Printing the initial run of pilot forms on coloured paper was conceded to be unnecessary. Most completed forms were faxed and some were harder to read because of the colour of the original, particularly where answers were handwritten. Delays were caused where the fax was poor and the court had to wait for the original form to be received.
- 5.7.2 Judges suggested various improvements to the forms, most agreeing that they should be shorter and simpler. One suggested that there should be a separate form for complex cases: 'Simple cases should have simple forms'. There was support for returning to a composite form, rather than a separate defence and prosecution form, because this might encourage the parties to communicate. Some judges also favoured having a 'tick-box pro forma' for orders.
- 5.7.3 Seven barristers and three solicitors preferred the layout and contents of the Judge's Questionnaire. One Preston barrister wished to retain the pilot forms but to return to oral PDHs in all cases.
- 5.7.4 CPS lawyers' comments about the form question on which prosecution witnesses were required are discussed elsewhere. One Newcastle lawyer thought that it was tempting to answer 'yes' to the question whether the case was suitable as a floater in order not to have to give reasons why it should be fixed; and if reasons were given, why did they need to be repeated in the following question requesting a fixed trial? He also noted that the person filling in the form had to repeat their personal details at the start and the end, which was irritating.
- 5.7.5 Other comments relevant to the content of forms are contained in section 5.9 below.

5.8 Guilty pleas and plea discussions

- 5.8.1 Plea before venue in the magistrates' courts provides an opportunity in either-way cases for defendants to enter an early guilty plea. Submission of a pilot form gave the defence another chance to indicate a guilty plea prior to an oral PDH. In some instances, the judge's referral form noted that the defence had not submitted a form but simply notified the court by telephone that a guilty plea would be submitted at an oral PDH.
- 5.8.2 Both prosecution and defence forms asked about acceptable pleas²⁶. Percentages in the following figure are of the total number of prosecution and defence forms received respectively.

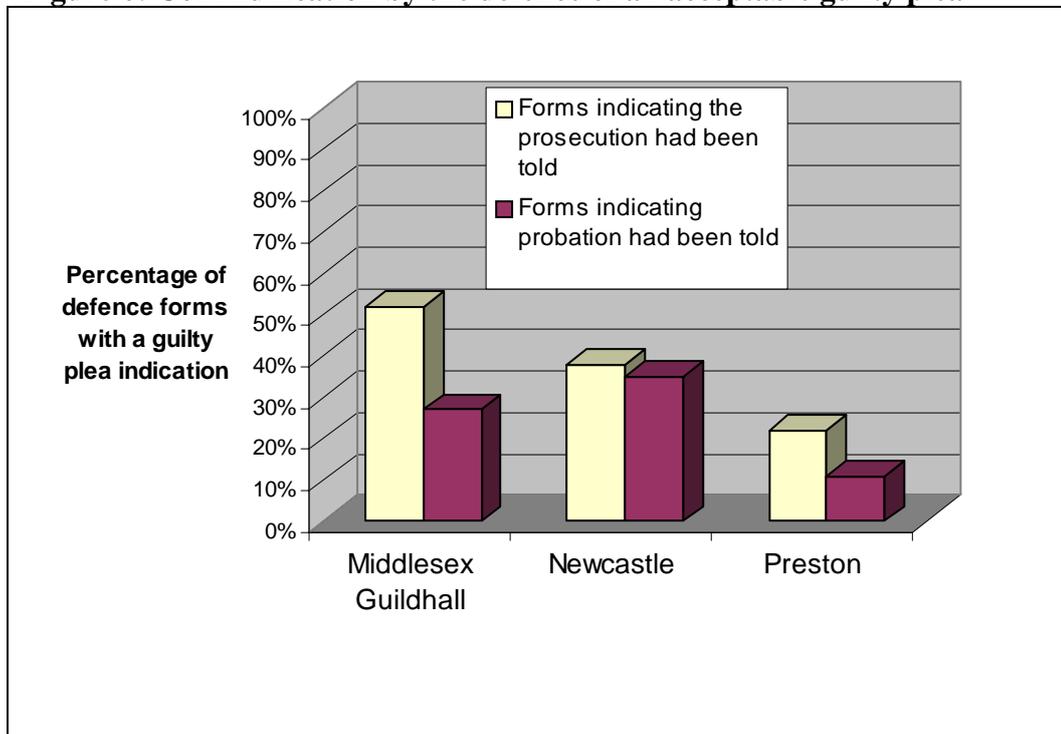
²⁶ The wording on acceptable pleas used on the Preston defence form was changed part of the way through the pilot to make it more explicit.

Figure 5: Guilty plea indication on prosecution and defence forms



5.8.3 Where a guilty plea was contemplated, the defence form asked whether the prosecution and the probation service had been informed.

Figure 6: Communication by the defence of an acceptable guilty plea



- 5.8.4 The poor level of communication that the figures indicate would make it less likely that pleas could be agreed and pre-sentence reports prepared before the day of the PDH where this was accepted practice.
- 5.8.5 The CREST data yields information on which defendants entered a guilty plea and the stage the plea was entered can be deduced from the codes used to categorise hearings. For defendants involved in pilot cases (i.e. cases entered on the CPO log) about whom the CREST data included hearing information, the figures for those pleading guilty at the first opportunity²⁷ were as follows.

Table 11: Defendants in pilot cases pleading guilty at the first opportunity

	Number of defendants involved in pilot cases	Number (%) pleading guilty at the first opportunity
Middlesex Guildhall	330	52 (16%)
Newcastle	1225	307 (25%)
Preston	1325	211 (16%)

- 5.8.6 A comparison can be made with guilty plea rates at the first hearing for the pre-pilot period and the rates for all courts in the same circuit as the pilot courts. To improve the validity of these and subsequent comparisons, cases involving class 1 offences are excluded from consideration for courts in the North Eastern circuit and both class 1 and class 2 offence cases are excluded for courts in the Northern circuit. This is because these cases were not eligible for the pilot procedures at the pilot courts in these circuits.²⁸

²⁷ Of course, this refers to the first opportunity in the Crown Court. The identification of these cases from CREST is made difficult because of inconsistent use of hearing codes. To minimise the effect of such inconsistencies, the count includes, for those defendants whose cases were committed or transferred, instances where a guilty plea was entered and either:

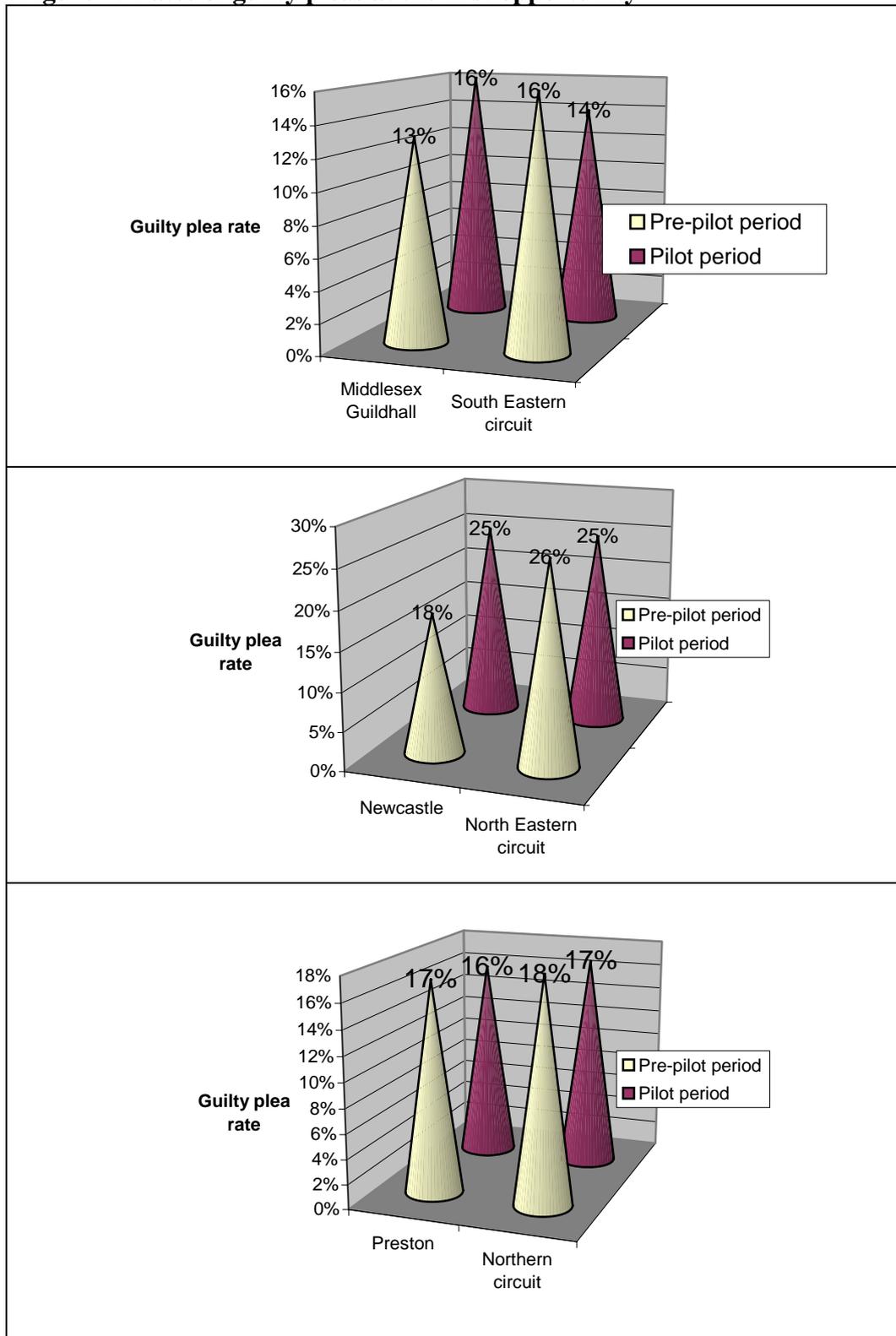
- a) sentencing took place or was deferred or a Newton hearing was held at the first hearing or at the second hearing if the first was not a trial; or
- b) there was only one hearing which was not a trial.

For defendants charged with indictable only offences, the count includes also instances where a guilty plea was entered and either:

- a) sentencing took place or was deferred or a Newton hearing was held at the third hearing if the first two were not trials; or
- b) there were only two hearings, neither of which was a trial.

²⁸ The full list of excluded cases is set out in para. 3.3.4. Other categories of excluded cases cannot be easily identified from CREST data or excluded from the comparison.

Figure 7: Rates of guilty pleas at the first opportunity



5.8.7 The guilty plea rates for pilot cases at two of the three pilot courts were higher than for the pre-pilot period while the corresponding rates for all courts in the same circuit showed little change during the same period. This is encouraging but it is not possible on the basis of these figures to draw definitive conclusions.

In fact, most judges thought that the pilot had had an adverse effect on plea discussions between the parties:

‘The pilot may have “entrenched” positions, that is it has worked against getting an acceptable plea. Flexibility is inhibited. Timing is the issue. The requirement for information may be premature and it needs the trial advocate. The same problem arises with oral PDHs where the trial advocate is not present. The solicitor cannot do it. The defendant takes the view that “you are not supporting me - I want a new solicitor”’ (Middlesex Guildhall).

- 5.8.8 One Preston judge thought that guilty plea discussions should not be inhibited if the pilot procedures were followed:

‘If there is a possibility of a guilty plea, the parties should be able to persuade us to list for an oral PDH’.

- 5.8.9 Four barristers and one solicitor thought that the pilot had made plea discussions more difficult:

‘The pilot encouraged more not guilty pleas and led to more trials being listed unnecessarily. The first time that both sides are present in court (which may resolve the case) becomes the day of trial rather than the PDH. The defence will not know whether a case is likely to be resolved until a conference has taken place and often this cannot be arranged prior to the PDH’ (Preston barrister).

- 5.8.10 One Preston solicitor thought that, where the case had been reviewed on paper and no oral PDH was held, there was a stronger argument in favour of granting legal aid for the solicitor to attend the first day of trial, especially if the defendant lived a long way away. If the solicitor did not attend the trial, he felt that discussion of an acceptable plea could be hindered where no instructions had been obtained from the defendant before the day of trial. A Newcastle solicitor said:

‘The defence are quite willing to plea bargain with the prosecution. However, the problem is that unless the prosecution barrister who is to deal with the trial is engaged at an early stage, then such plea bargains are not usually considered until the day of trial. Once counsel are instructed for the prosecution and defence, they should be made to attend each hearing and not allow substitutes to deal with PDHs or mentions’.

- 5.8.11 The early notice of a guilty plea which the pilot procedures were intended to facilitate opens the possibility that a pre-sentence report can be prepared by the probation service and the plea hearing delayed, if necessary, until the report is available. This means that the defendant can be sentenced at the same hearing at which a guilty plea is entered. The figures for defendants pleading guilty and sentenced at the first opportunity²⁹ are as follows:

²⁹ A similar approach was adopted to identifying these defendants as for those pleading guilty at the first opportunity. For committed or transferred cases, the count includes defendants with a guilty plea and only one hearing, provided this hearing was not a trial. For sent-up cases, the count also includes defendants who plead guilty and have two hearings neither of which was a trial.

Table 12: Defendants in pilot cases pleading guilty and sentenced at the first opportunity

	Number of defendants involved in pilot cases	Number (%) sentenced at the first opportunity
Middlesex Guildhall	332	13 (4%)
Newcastle	1226	124 (10%)
Preston	1325	56 (4%)

Figure 8: Rates of pleading guilty and being sentenced at the first opportunity

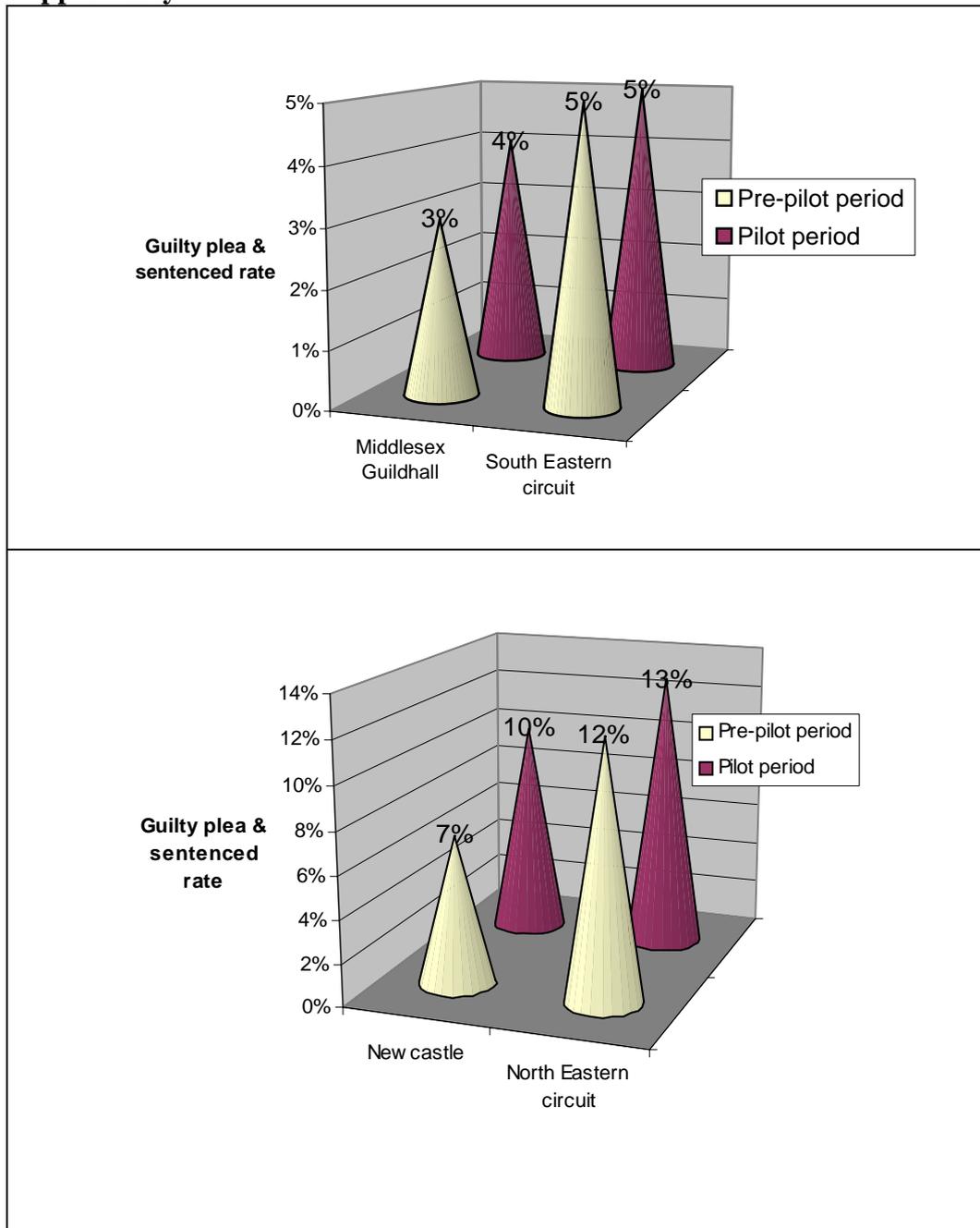
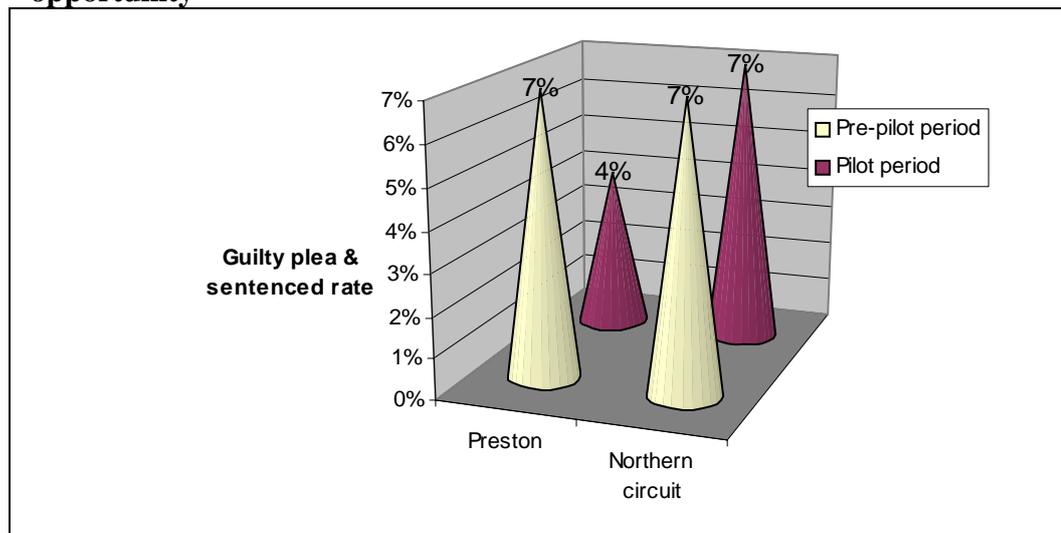


Figure 8: Rates of pleading guilty and being sentenced at the first opportunity



- 5.8.12 There is no evidence from these figures that defendants in pilot cases who plead guilty at the first opportunity were more likely to be sentenced immediately.
- 5.8.13 The picture revealed by the figures above was borne out by the comments of participants. Court staff at Newcastle and Middlesex Guildhall thought that the pilot had increased the number of cases in which an advance indication of a guilty plea was given. None of the probation offices thought that the pilot had significantly affected their way of working. Reports were seldom ready for the original PDH date because at least three weeks were required to prepare a report and indications of a guilty plea rarely came in sufficiently far in advance.
- 5.8.14 Prior to the pilot, it was probation practice at Newcastle Crown Court to write to the defence to ask if a guilty plea would be entered. This resulted in advance notice of a guilty plea being given in a small number of cases. However, there was sometimes poor communication between the court and probation about the plea indication and the need for a change of PDH date to accommodate report preparation.
- 5.8.15 During the course of the pilot, the Newcastle CPO did not put cases forward for paper review where a guilty plea was notified on the form, but rescheduled the PDH to a date when a probation report would be available. Nevertheless, communication problems between the court and probation about re-scheduled PDH dates still occurred. These were addressed towards the end of the pilot when it was informally agreed that where probation received advance notice of a guilty plea from the defence, field teams would start the report and ask the court for a new PDH date. Where the court received notification of a guilty plea on the defence form, it agreed to consult probation about a change of hearing date. The court also agreed to copy all defence forms to probation.
- 5.8.16 Even where a pre-sentence report was available, adjournments on the day scheduled for sentence were described by probation as a regular occurrence. Reasons included referral for psychiatric reports and assessments for treatment of the defendant for drugs, sex offences, domestic violence etc.; multi-defendant

and linked cases; and the need for a Newton hearing. This helps to explain why only 124 of the 307 defendants who pleaded guilty at the first opportunity could be sentenced immediately.

5.8.17 Before the Middlesex Guildhall pilot began, probation had discontinued writing to the defence asking to be notified in advance about guilty pleas because this had been ineffective. Unlike Newcastle, cases in which there was an indication of a guilty plea were referred to a judge for review. Judicial practice was to vacate the PDH and adjourn the case to a date when a pre-sentence report would be available if the plea of guilty was indicated on all counts. During the pilot, the CPO and Crown Court liaison probation officer told one another of any forthcoming guilty pleas notified by the defence. Despite this, the figures above suggest that at this court only a quarter of defendants pleading guilty on the first occasion were sentenced at that hearing.

5.8.18 Preston probation thought that the pilot had not affected the proportion of cases in which an early guilty plea was notified or changed how such cases were dealt with. Because of the wording used on the defence form used at the start of the pilot, there was difficulty in identifying whether an acceptable guilty plea was being offered. Cases therefore proceeded to an oral PDH after review on paper. The form was then amended to clarify whether a plea was being offered but the old forms remained in circulation and continued to be used.

5.8.19 Unlike judges in Newcastle and Middlesex Guildhall, Preston judges preferred oral PDHs to proceed where there was an indication of a guilty plea, rather than taking such cases out of the list and adjourning for reports:

‘If a guilty plea is likely, I leave in the oral PDH regardless of whether a pre-sentence report will be available. A report may not be necessary – the solicitor should not decide if there is to be a probation report. I may want to deliver a message to the defendant and others when ordering a report, for instance that custody is an option. It is important to get that across. There may be issues that you want probation to investigate. Also, you do not always get full antecedents. If it always goes off for reports it may dilute the exercise – I want them in for hearing’.

5.8.20 Probation in Preston thought that there was no local culture of solicitors notifying probation in advance of a likely guilty plea. Prior to the pilot, a letter from probation asking for advance notice of a guilty plea had been included in the prosecution’s advance disclosure package. When notified, probation faxed the defence letter to the CPS but was not obliged to tell the court. The procedure resulted in preparation of probation reports for the PDH in only a handful of cases (typically burglary, where the basis of the plea was clear). Where there was any question about the basis of the plea, probation did not start the report until the plea was confirmed at the hearing.

5.8.21 If the Preston CPO notified probation of a possible guilty plea, probation did not start work on a report because the notification had to come from the defence. For this reason, probation did not feel it would be useful to receive a copy of the defence form from the court: even if it indicated a guilty plea, probation would

not action it unless it heard from the defence directly and ‘We have not got enough staff to chase them’.

5.8.22 The general reluctance at Preston to prepare a pre-sentence report prior to a guilty plea being entered explains why only around a quarter of defendants pleading guilty at the first opportunity in that court could be sentenced immediately.

5.9 Witness issues

5.9.1 Guidance for standard PDHs requires the defence to supply the court and the prosecution with a full list of prosecution witnesses required to attend the trial at least 14 days before the PDH.³⁰ This is often honoured in the breach.

5.9.2 The pilots offered the potential to deal with witnesses more effectively, for example on issues of:

- availability
- which witnesses were really needed
- vulnerability and the need for special facilities
- whether attendance could be staggered or witnesses could be on standby.

5.9.3 Police officers and Witness Service coordinators did not feel that the pilot had produced any benefits in respect of these witness issues.³¹ Dame Helen Reeves, Chief Executive of Victim Support, has expressed concern about discontinuance of oral PDHs in some cases: ‘This will only be acceptable to us if it is quite clear that all vulnerable witnesses will be identified at that point’.³²

5.9.4 Coordinators had not had any feedback from witnesses about PDHs dealt with on paper rather than in court. However, one coordinator observed that decisions affecting witnesses in pilot cases, such as the admissibility of medical records and the editing of videotaped interviews, were still being deferred until trial rather than being resolved at PDH.

5.9.5 Middlesex Guildhall and Newcastle had annexed to their pilot forms a version of the PDH Supplementary Pre-trial Checklist for Cases Involving Young Witnesses. Preston had not done so, although the prosecution pilot form addressed some of the issues covered in the checklist.

5.9.6 Towards the end of the pilot, Special Measures for vulnerable and intimidated witnesses were introduced under Part II of the Youth Justice and Criminal Evidence Act 1999. These require detailed application forms to be submitted to the court. A number of CPS lawyers and police officers thought that the pilot should have accommodated the parties flagging up the needs of vulnerable and

³⁰ Or within three working days if the PDH is fixed less than 17 days ahead: para. 5, Lord Chief Justice’s Practice Rules, Plea and Directions in the Crown Court (25 July 1995).

³¹ In a recent survey of Preston police witnesses, officers reported waiting an average of five hours before being told they would be released because the case was not starting.

³² British Academy of Forensic Sciences Seminar, Review of Lord Justice Auld’s Proposals held at the Law Society on 29 October 2001.

intimidated witnesses at an earlier stage. They wanted standard PDH forms and the PDH Supplementary Pre-trial Checklist for Cases Involving Young Witnesses to be revisited in light of Special Measures applications:

‘There should be a supplementary checklist for vulnerable and intimidated witnesses, including children. The application for Special Measures does not go far enough. The young witness checklist addresses memory refreshing, preparation for court, conduct at trial etc. i.e. much more than just Special Measures’ (police officer).

- 5.9.7 A police representative on one of the Pilot Working Groups felt that the questions on the pilot forms demonstrated ‘visibly more interest’ in court-related issues and that witness matters were not properly or comprehensively addressed:

‘Unless you ask for clear direct information, you get minimal feedback and this means that listing is not effective’.

- 5.9.8 The police enter witness availability on a consolidated MG 10 form. Information covers a six-month period but this is often inadequate for courts with a listing backlog or where trials are re-listed taking them beyond the six month period. This was the case at Preston Crown Court prior to the pilot where listing was often ‘blind’ i.e. cases were put into a provisional list and fixed at a meeting with bar clerks for which no current witness availability information was available.³³

- 5.9.9 There were difficulties in getting witness availability information in time for inclusion on pilot forms. At Preston, towards the end of the pilot a scheme for direct communication between the police and court was introduced in which the listing office sent out a list of forthcoming PDHs and the police sent back updated witness availability information. However, the police were unable to comply with the court’s request for a synthesis of the information providing three preferred listing periods because they did not know which witnesses were really needed – ‘if five officers are on the list but in fact four can be agreed, the listing “windows” to be identified will be very different’. The police observed that if direct communication resulted in earlier issuance of the fixed list, it would lessen disruption to police witnesses because even a week’s additional notice helped in revising rosters.³⁴

5.10 Assignment of cases to a judge for paper review

- 5.10.1 Middlesex Guildhall was the only pilot court that counted judicial time spent reviewing as sitting hours. This practice was commended by judges in the other courts, for example:

³³ The police had given the CPS witness availability information on the MG 10 but this was generally not provided to the court because, by the time cases were listed, the MG10 information was out of date.

³⁴ Where an officer receives less than eight days notice of being required to give evidence, and the court date is a rest day, the administration has to pay the officer and give another rest day. Those receiving 8-15 days are re-rostered and paid but are not given a compensatory rest day. Officers receiving at least 15 days notice receive no compensation.

‘The work of reviewing forms needs proper status. Dumping files on desks is not good enough – there needs to be sitting time assigned or else the work will always be a poor relation to be “fitted in” with other responsibilities’ (Preston)

‘It is just an extra task. We can shoulder it for a short time but in the longer term it needs to be taken into account’ (Preston).

5.10.2 Judges at Middlesex Guildhall were usually given four cases for review at one time although this could rise to seven. Preston gave judges around three cases to review at one time. Judges sometimes swapped cases for review among themselves. In Newcastle, at the start of the pilot two or three cases daily were sent to a judge for review. By the end this had fallen to only a handful per week because cases in which there was an indication of a guilty plea or a request for an oral PDH were not submitted to a judge.

5.10.3 For the purpose of the pilots, review work was confined to a small group of judges in two of the three pilot courts, but judges generally thought that review work should be spread among all judges. In Newcastle, most paper reviews were conducted by three judges; one in particular undertook the majority. In Middlesex Guildhall most were performed by four judges. Preston had originally considered restricting reviews to a small number of judges but by the end of the project, reviews were spread among all full-time judges on the court. This was thought by the CPS to have produced a less consistent approach.

5.10.4 One judge favoured having reviews conducted by a district judge who was also a Recorder of the Crown Court and who ‘would be in greater contact with the Resident Judge’ (Middlesex Guildhall).

5.11 Use of paper PDHs

5.11.1 Paper PDHs were used only to a limited extent during the pilot. The numbers are small both in absolute terms and as a proportion of the total number of eligible cases. CPO logs recorded that a guilty plea was indicated in only 255 cases. These have been excluded from the rate calculations in the following table.

Table 13: Cases in which a paper PDH was ordered

	Number of paper PDHs ordered	Rate (excluding guilty plea cases)
Middlesex Guildhall	33	9%
Newcastle	75	8%
Preston	93	8%

5.11.2 The failure of some parties to submit forms may have partly contributed to the low rate. Such failure effectively excluded the case from consideration for a paper PDH. Focusing only on cases where the CPO log indicates that a form was received from both sides, the rates of use of paper PDHs were as follows:

Table 14: Rate of paper PDHs where both sides submitted forms

	Rate
Middlesex Guildhall	14%
Newcastle	23%
Preston	14%

5.12 Reasons for requiring an oral PDH

5.12.1 The Newcastle CPO did not refer the case to a judge if a guilty plea was indicated or if either party requested an oral PDH on the pilot form. He simply allowed the case to remain in the list for an oral PDH to be held. At the other pilot courts, all cases in which forms were received were forwarded to a judge.

5.12.2 Reviewing judges were asked to record on the referral form the reasons for ordering an oral PDH. Among the referral forms forwarded to the Court Service, 550 indicated that an oral PDH was required and ten that some other kind of hearing was needed. Reasons were given on 523 of these forms, either by choosing from three specified reasons or by describing another reason. The choice of specified reasons was follows:

Table 15: Specified reasons for ordering an oral PDH

	Seriousness of case	Complexity of case	Multi-defendant case
Middlesex Guildhall	3	43	3
Newcastle	3	1	2
Preston	9	7	7

5.12.3 Other reasons why a paper PDH was not appropriate was given on 480 referral forms (213 from Middlesex Guildhall, 173 from Newcastle and 94 from Preston). These are listed in the following table (some judges gave more than one reason):

Table 16: Other reasons for ordering an oral PDH

Reason	Middlesex Guildhall	Newcastle	Preston
Oral PDH requested by:			
Defence	13	87	9
Prosecution	0	40	1
both parties	13	15	6
Possible acceptable guilty plea	33	13	61
Late/ no form submitted by:			
Defence	33	0	0
Prosecution	9	1	0
Unspecified	5	0	0
Inadequate form submitted by:			
defence	3	1	0
Prosecution	4	0	0
Witness issues	17	1	1
Concerns about disclosure/ PII	20	4	2
Defendant concerns:			
mental health etc.	5	0	2
other matters pending	5	0	1
in custody	1	0	5
Video/ CCTV	14	0	1
No available judge	4	0	0
No CPO	7	0	0
Problems with indictment	10	1	1
Change of defence representative	4	0	0
No instructions	5	0	1
Other issues	8	10	3
Total	213	173	94

5.12.4 The only criterion used to a significant extent at all pilot courts was the possibility of an acceptable guilty plea being entered at an oral PDH. While judges thought that, in principle, paper review was satisfactory for the most straightforward cases, many were willing to order for an oral PDH without pressing for reasons:

‘In a short simple case with a single issue and few witnesses I always opted for a paper PDH. However, the parties almost always asked for an oral PDH and if they asked, they got it. I think this was right. It is too early for witness requirements to be determined. It may work better in the provinces where people know each other. There are many factors which are special to London’ (Middlesex Guildhall)

‘If either side asks for an oral PDH, they get it. The judge should make a comment if, at the oral PDH, there is nothing raised to justify holding it’ (Newcastle)

‘It may be counter-productive to ask why an oral PDH is requested as it may inhibit plea discussions. Gut feeling is important’ (Newcastle)

‘There are no criteria – it is just “feel”’ (Newcastle)

‘A paper PDH is only appropriate for the least serious cases that would be suitable to list as floating trials’ (Newcastle)

‘An oral PDH can be a way of getting a client to attend court, otherwise you can end up issuing a bench warrant at the trial’ (Newcastle)

‘Oral PDHs achieve a lot that is not visible [in relation to plea discussions]. They would be more effective if the police officer responsible for the case turned up at the PDH to be consulted on the acceptability of a possible plea’ (Newcastle)

‘The court file is not always complete at the time of reviewing forms, for instance there may be no bundle of statements and it is not always clear what charge the defendant was committed on. There needs to be a reliable case summary, schedule of offences and committal file’ (Preston)

‘We often get faxed documents in which the handwriting is difficult to read. It often makes you put it in for an oral PDH’ (Preston).

5.12.5 One Middlesex Guildhall judge expressed frustration on the referral form:

‘The prosecution have not answered the question asking why they need an oral PDH. There is no point in continuing this pilot unless the prosecution undertake to fill in the forms correctly. I am tired of spending valuable time having to check these forms. Please bring this to their attention yet again’.

5.12.6 Judges sometimes identified a need for an oral PDH even where this was not requested:

‘Sometimes I see the need for an oral hearing even if the parties do not, for instance if the information on the forms is contradictory’ (Middlesex Guildhall)

‘Where the defendant has not indicated a guilty plea and there appears to be a very strong case on paper, I want the defendant arraigned as soon as possible’ (Middlesex Guildhall)

‘If either side thinks that the case will crack, or if I see that there is an admission, I put it in for an oral PDH. I also put it in for an oral PDH if I have a query of any kind about the case indicating a need for a discussion with the prosecution – it is better to err on the side of caution. It is not fair to the defendant if there is no opportunity to enter an early guilty plea’ (Preston)

5.12.7 Court staff in each of the pilot areas observed that the criteria used in deciding whether an oral PDH was necessary depended on the individual judge and some were more ready than others to accede to a request for an oral PDH, whether or not it was supported by reasons.

5.13 Use of directions at paper PDHs

5.13.1 Before the pilots began, court personnel across the pilot sites reported that directions were not routinely issued at PDHs. Five of 13 responding judges reported issuing directions in less than half the PDHs at which they presided. In 2000, the CPS Inspectorate noted ‘an unusual lack of directions’ at Preston Crown Court PDHs.³⁵ The Inspectorate was told that ‘the hearing was often ineffective except in the most serious cases. It was frequently little more than a date-fixing exercise rather than an examination of the issues’.

5.13.2 Files in around 20 recently closed pre-pilot cases were examined at each pilot court. Among the points examined was the issuing of directions at oral PDHs, although it was not clear how accurately this was recorded in case files. The number of directions made gives some indication of judicial case management activity. None of the three courts appeared to make extensive use of directions:

- at Middlesex Guildhall, no directions were made at PDHs in 11 cases in which a not guilty plea was entered
- at Newcastle, no directions were made at PDHs in nine cases in which a not guilty plea was entered
- at Preston, no directions were made at PDHs in 11 cases in which a not guilty plea was entered. In this court, the majority of PDHs in the cases examined were conducted by part-time judiciary.

5.13.3 During the pilot, CPOs were asked to record on their logs the number of directions made by reviewing judges and by the judge presiding at any subsequent oral PDH. Based on data in the logs, judges at Preston made by far the greatest use of directions when reviewing the pilot forms.

Table 17: Number of directions made at a paper review

	None	1-3	More than 3
Middlesex Guildhall	12 cases	22 cases	0 cases
Newcastle	267 cases	60 cases	3 cases
Preston	210 cases	58 cases	61 cases

5.13.4 The greatest number of directions made at a paper review in a single case was 13, by a judge at Preston. This case was considered suitable for a paper PDH. For most judges, the need to make directions did not automatically mean that an oral PDH was necessary:

‘You can give directions and still let it go on paper’ (Newcastle).

³⁵ Para. 4.56, Report on CPS Lancashire (11/2000).

5.13.5 However, in those cases that required an oral PDH there was some reluctance to make directions at the paper review:

‘There is no point in making directions when reviewing the forms in cases that need an oral PDH’ (Preston)

‘If it is a small case with one thing to serve, then a paper PDH is appropriate. But if it is a bigger case with more to serve, one gets into speculation in making paper directions’ (Preston)

5.14 The effectiveness of oral PDHs

5.14.1 In pilot cases, the use of directions at oral PDHs was not significantly greater than in pre-pilot cases or at paper PDHs.

Table 18: Number of directions made at oral PDHs

	None	1-3	More than 3
Middlesex Guildhall	85 cases	43 cases	13 cases
Newcastle	127 cases	4 cases	1 case
Preston	37 cases	55 cases	9 cases

5.14.2 The greatest number of directions made at an oral PDH was seven by a Preston judge.

5.14.3 Another crude indicator of the amount of business transacted at an oral PDH is its length. In the examination of pre-pilot case files, the lengths of PDHs were as follows:

- at Middlesex Guildhall, the first PDH in nine out of 21 cases lasted for five minutes or less; a further seven lasted 10 minutes or less
- At Preston, the first PDH in seven out of 21 cases lasted for five minutes or less; a further nine lasted 10 minutes or less
- At Newcastle, the first PDH in eight out of 20 cases lasted for five minutes or less; a further three last for 10 minutes or less.

5.14.4 The length of oral PDHs was available from the CREST data. The following table compares the average length of the (first) oral PDH for single defendant cases in the pre-pilot period with that for pilot cases in which an oral PDH was considered necessary. As previously, only Class 3 and 4 pre-pilot cases are included.

Table 19: Average length in minutes of the first oral PDH in single defendant cases

	Pre-pilot cases	Pilot cases
Middlesex Guildhall	11	12
Newcastle	7	8
Preston	8	10

- 5.14.5 The average length of oral PDHs in pilot cases shows a slight increase over pre-pilot PDHs.
- 5.14.6 One Preston judge expressed the aim of the pilot as achieving more efficient and effective oral PDHs. Judges did not consider that this objective had been achieved. A number of potential advantages of the pilot procedures – continuity of judges for the paper review and oral PDH (see following section), or at least the reviewing judge noting any observations for the PDH judge, and an increased amount of time to devote to oral PDHs and the making of directions - had not been realised.
- 5.14.7 Another judge commented:
- ‘Oral PDHs may have suffered because it is more difficult to flick through multiple pages of pilot forms than to deal with the standard PDH questionnaire’ (Preston).
- 5.14.8 None of the barristers who responded thought that oral PDHs were more efficient during the pilot; three thought the hearings had become less effective. Two solicitors (Newcastle and Middlesex Guildhall) thought that pilot oral PDHs were more efficient.
- 5.14.9 In Preston, a barrister who favoured oral PDHs ‘save in the most straightforward cases’, wanted judges to be more thorough and not to be given ‘the typical huge list’. A judge agreed:
- ‘It is wrong to mix PDH lists with heavy sentencing lists. Case management needs time assignment. It should not be an “also ran” as far as its listing status is concerned. A greater return will be obtained if time is assigned to focus on case management without other distractions such as bail hearings’.
- 5.14.10 A Preston CPS lawyer voiced a similar view:
- ‘Effectiveness depends on the individual judge. A judge in a recent PDH set a proper timetable but it took 20 minutes. This has obvious implications for a normal PDH list of 20 plus cases’.
- 5.14.11 Across the pilot courts, CPS personnel did not think that there had been a noticeable difference in the number of directions made at oral PDHs, ‘except for those judges who always made them’. One CPS area noted that the Resident Judge had queried at a hearing in a pilot case why directions had not been made earlier.
- 5.14.12 Some judges and CPS lawyers favoured the introduction of standard directions. It was thought this would provide a structure for applying the rules on disclosure which were sometimes disregarded.

5.15 Judge continuity

- 5.15.1 It was considered desirable for oral PDHs in pilot cases to be listed before the same judge who reviewed the forms submitted by the parties. This would capitalise on the familiarity with the case gained by the judge in conducting the review.³⁶ However, court staff and judges said it was too difficult from a listing standpoint to achieve continuity of reviewing judge and PDH judge in most cases.
- 5.15.2 A Middlesex Guildhall judge agreed that where the reviewing judge also takes the oral PDH, this could be dealt with more quickly. At this court, the reviewing judge flagged up topics of concern on the reviewing form and this proved helpful at a subsequent oral PDH, even where this was listed before a different judge.
- 5.15.3 A Preston judge also favoured greater continuity of judicial involvement, at least for serious cases:
- ‘There needs to be a fundamental review of case allocation. If High Court judges are to stop going on circuit, there is a stronger case to allocate serious cases from start to finish to senior judges. We should use teleconferencing, as in the civil jurisdiction, to case manage pre-trial’ (Preston).
- 5.15.4 Although one Preston judge thought that, if there was time, the expectations for the oral PDH should be spelled out in the paper review, most said that they would not spend time on a paper review once it was clear that the case would go for an oral PDH. They saw no point in taking time to deliberate on possible directions for another judge at the PDH.
- 5.15.5 CPOs were asked to record when judge continuity occurred. They indicated that the reviewing judge also presided at the oral PDH in 60 out of 513 cases (32 at Middlesex Guildhall, 12 at Newcastle and 16 at Preston). The numbers are too small to measure any impact such continuity may have had on the conduct of oral PDHs.

³⁶ A Newcastle judge commented that because judges can never be sure that they will do the PDH, they will not pre-read case papers before the hearing.

6 SUCCESS CRITERIA

6.1 Introduction

- 6.1.1 The previous chapter considered the impact of the pilot procedures up to the stage of the PDH, whether oral or on paper. This included discussion of some matters identified as success criteria in the Evaluation Plan, namely the proportion of defendants pleading guilty at the first PDH and the quality of communication between the parties and information available to the court prior to the PDH.
- 6.1.2 This chapter considers the other success criteria set for the pilots which involve consideration of the progress of cases after the PDH. These include factors susceptible to quantitative analysis, such as disposal times and cracked and ineffective trial rates, and qualitative issues such as the impact of the pilot procedures on the case management culture and the quality of justice. The question of costs is addressed in the next chapter.
- 6.1.3 The analysis described in this chapter relates mainly to closed cases but the accuracy of the results are affected by the proportion of ongoing cases in the dataset.

6.2 Average numbers of hearings per defendant

- 6.2.1 In comparing pre-pilot and pilot cases to determine whether the pilot procedures produced a reduction in the total number of Crown Court hearings required to dispose of cases:
- only closed cases involving classes of offence eligible for the pilot are included
 - up to ten hearings per case, including sentencing hearings, are counted
 - the pilot period figures for the pilot courts only include cases eligible for the pilot
 - figures are given both including and excluding defendants who plead guilty at the first opportunity in the Crown Court.

Table 20: Average number of hearings per defendant

	Pre-pilot period	Pilot period
Middlesex Guildhall	3.7	3.3
South Eastern circuit	3.7	3.3
Newcastle	3.8	3.0
North Eastern circuit	3.1	2.8
Preston	3.6	3.2
Northern circuit	3.5	3.2

Table 21: Average number of hearings excluding defendants pleading guilty at the first opportunity

	Pre-pilot period	Pilot period
Middlesex Guildhall	4.0	3.3
South Eastern circuit	4.0	3.6
Newcastle	4.2	3.4
North Eastern circuit	3.6	3.3
Preston	4.0	3.5
Northern circuit	3.9	3.6

6.2.2 Both sets of figures show a downward trend in the number of hearings at pilot courts during the pilot period as compared with the pre-pilot period. There is a slightly smaller reduction in the figures for all courts in the circuit, particularly in the second table. Pilot period figures are likely to increase once all pilot cases reach completion. Because of this and the size of the differences, it is hard to say with confidence that the pilot procedures have produced fewer average hearings per case.

6.3 Time to disposal

6.3.1 It was hoped that the pilot procedures would result in a shorter average time between receipt and disposal of cases in the Crown Court. The tables below treat separately those defendants pleading guilty at their first appearance and others. As before, only cases involving classes of offences eligible for the pilot have been included in the calculations.

6.3.2 The median rather than the mean average time is used throughout to avoid the distorting effect of a few anomalous cases where the database indicates very long time intervals (possibly due to defendants absconding) or negative time intervals resulting from errors in inputting dates.³⁷

Table 22: Average (median) time in days between receipt and sentence for defendants pleading guilty at the first opportunity

	Pre-pilot period	Pilot period
Middlesex Guildhall	57	65
South Eastern circuit	55	52
Newcastle	51	58
North Eastern circuit	43	28
Preston	50	68
Northern circuit	49	49

³⁷ Some of the mean processing times calculated from CREST were actually negative, casting doubt on the reliability of the data and the robustness of conclusions based on its analysis.

Table 23: Average (median) time in days between receipt and disposal for defendants not pleading guilty at the first opportunity

	Pre-pilot period	Pilot period
Middlesex Guildhall	117	97
South Eastern circuit	129	99
Newcastle	137	105
North Eastern circuit	144	94
Preston	211	129
Northern circuit	176	105

6.3.3 The figures provide little evidence that the pilot procedures resulted in shorter case processing times. For guilty pleas at the first hearing, times at the pilot courts actually increased in contrast to a downward trend for the circuit. The second table shows a reduction in processing time at pilot courts compared with the pre-pilot period but this is no greater than the reduction achieved throughout the circuit. As before, the inclusion of cases ongoing at the time data were extracted will increase average times for the pilot period.

6.4 Trial length

6.4.1 It was hoped that trials in pilot cases would be shorter as a result of earlier preparation and identification of issues. Although the IMAGE team within the Court Service produces figures for the average length of trials on a monthly basis, these do not distinguish by class of offence or identify separately pilot cases and hence are of limited use for evaluating the impact of the pilot procedures. However, the CREST data provided by EDS also contains information on the length of hearings and was therefore used to produce the tables that follow. In multi-defendant cases, each defendant being tried is counted once in arriving at the average.

Table 24: Average (mean) length of trials in minutes

	Pre-pilot period	Pilot period
Middlesex Guildhall	802	491
South Eastern circuit	943	721
Newcastle	697	469
North Eastern circuit	707	498
Preston	547	561
Northern circuit	640	509

6.4.2 Again, any downward trend appears to be circuit-wide rather than the result of the pilot procedures.

6.5 Cracked and ineffective trials

6.5.1 CREST data provide two ways of calculating rates of cracked and effective trials which lead to slightly different answers. The first method focuses on the post-hearing codes which include the code TCR for a cracked trial and codes TSA (trial / floater stood out - on application), TSJ (trial / floater stood out – by judge), TSO (Trial / floater stood out – other reason) and BWT (listed for trial, bench warrant issued) which denote an ineffective trial listing. The rates are then

calculated by counting instances of these codes and dividing by the total number of trial listings³⁸, determined from listed hearing codes.

- 6.5.2 The second method uses separate post-hearing codes on CREST relating specifically to hearings that were listed for trial. These record whether listed trials were effective, cracked or were ineffective using codes that distinguish six possible reasons for cracking and 24 for ineffectiveness. Information is available on up to ten trial listings per case. The cracked or ineffective trial rate is then the number of cracked or ineffective trial codes divided by the total number of trial codes.
- 6.5.3 In theory, the rates calculated from the two approaches should be identical. However, inconsistencies in the CREST data³⁹ mean that this is not the case. In general, the first method identifies many more cases for inclusion in the calculations. For completeness, we include the rates calculated by both methods in the following tables, which are for classes of offences eligible for the pilot only. The calculation based on post-hearing codes is referred to as Method 1 and that using trial listings is Method 2.

Table 25: Cracked trial rates

	Method 1		Method 2	
	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period
Middlesex Guildhall	27%	27%	25%	30%
South Eastern circuit	27%	27%	26%	29%
Newcastle	53%	52%	51%	58%
North Eastern circuit	49%	48%	48%	51%
Preston	49%	54%	47%	50%
Northern circuit	46%	48%	45%	48%

Table 26: Ineffective trial rates

	Method 1		Method 2	
	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period
Middlesex Guildhall	17%	16%	29%	27%
South Eastern circuit	19%	19%	29%	27%
Newcastle	18%	18%	23%	16%
North Eastern circuit	17%	17%	24%	21%
Preston	21%	20%	31%	28%
Northern circuit	18%	17%	27%	26%

- 6.5.4 These figures provide no evidence that cracked or ineffective trial rates fell – or rose less than at other courts within the circuit – as a result of the pilot procedures. The single exception was the seven per cent fall in the ineffective

³⁸ This is sometimes referred to as the ‘narrow’ rate. The ‘broad’ rate is the percentage of all disposals which crack or are ineffective on the day of trial.

³⁹ As an example of such inconsistency, out of around 23,000 cases in the pre-pilot database with a post-hearing cracked trial code, 5,400 had no hearing listed as a trial. The calculations have been adjusted to take account of this.

trial rate at Newcastle measured using Method 2. This compares with a three per cent fall for the circuit as a whole. However, the rate calculated using Method 1 shows no reduction for this court or circuit.

- 6.5.5 Using Method 2, it is possible to identify the reasons why trials cracked or were ineffective.⁴⁰ Rounding means rows may not add to exactly 100 per cent.

Table 27: Reasons for cracked trials

	Middlesex Guildhall		Newcastle		Preston	
	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period
Defendant pleaded or changed plea to guilty	62%	60%	65%	75%	62%	69%
Prosecution accepted guilty plea to lesser charge	4%	5%	21%	18%	21%	17%
Prosecution offered no evidence	30%	32%	9%	7%	14%	14%
Prosecution accepted bind over without trial	3%	3%	4%	0%	2%	0%

- 6.5.6 There was no measurable percentage of cracks due to defendants dying or being unfit to plead.

Table 28: Reasons for ineffective trials

	Middlesex Guildhall		Newcastle		Preston	
	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period
Prosecution witness failed to attend	36%	51%	29%	23%	36%	51%
Defence advocate failed to attend	17%	21%	10%	23%	17%	21%
Defence advocate asked additional prosecution witness to attend	11%	18%	15%	23%	11%	18%
No judge available	9%	7%	14%	15%	9%	7%

⁴⁰ However, this provides only a single reason why a trial cracks or is ineffective even though there may actually be a number of reasons why this happens in a given trial.

Table 28: Reasons for ineffective trials

	Middlesex Guildhall		Newcastle		Preston	
	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period	Pre-pilot period	Pilot period
Prosecution failed to disclose unused evidence	7%	6%	5%	0%	7%	6%
Defence not ready for trial - further preparation needed	6%	0%	2%	0%	6%	0%
Prosecution not ready for trial - further preparation needed	3%	6%	8%	0%	3%	6%
Insufficient jurors available	3%	0%	2%	0%	3%	0%
Floater/backer not reached	2%	4%	5%	8%	2%	4%
Trial stood out for lack of time no other judge available	2%	4%	2%	0%	2%	4%
Prosecution served late notice of additional evidence so defence not ready	1%	3%	3%	0%	1%	3%
Prosecution advocate failed to attend	0%	3%	1%	0%	0%	3%
Prosecution increased time estimate insufficient time for trial to start	0%	1%	0%	8%	0%	1%
Other reasons	1%	0%	6%	0%	1%	0%

6.5.7 In Middlesex and Preston, problems with non-attendance of prosecution witnesses became noticeably worse during the pilot. Otherwise, there was little discernible change to the pattern of reasons for cracked or ineffective trials.

6.6 Commitment to case management

6.6.1 Before the pilots began, judges were asked to describe their court's approach to case management and to assess the response of the local legal community to case management initiatives. Some judges in each court thought that, as one put it, case management was 'effective within current limitations'. Common concerns included:

- minimal case management in crime compared to other jurisdictions
- lack of continuity because most PDH judges do not stay with the case
- lack of case management resources, in particular for following up directions
- lack of effective sanctions
- differences in approach of individual judges.

6.6.2 The last point was mentioned by several judges, for example:

'Some judges are better at it than others. Some ask more probing questions and are able to foresee difficulties better than others. I place emphasis on doing PDHs thoroughly' (Middlesex Guildhall).

6.6.3 At the start of the pilot, judges in Preston felt that there had recently been a change of culture attributable to the appointment of new judges.

6.6.4 Judges generally did not think the pilot had resulted in a more case-management oriented approach on the part of their colleagues, and some felt it had actually set things back in this respect:

'Some judges have tried very hard to make this work and have become very frustrated. All efforts to pre-read were in vain and this had a disheartening effect' (Middlesex Guildhall).

6.6.5 Newcastle judges were generally complimentary about the pre-pilot attitude of the legal community to case management, using terms such as 'quite enthusiastic'; 'reluctant but improving'; and 'good in most cases'. Judges in Preston and Middlesex Guildhall were more circumspect. Preston judges described the response of its local lawyers as: 'unenthusiastic – initiatives usually involve more work with no increase in remuneration'; 'lukewarm'; and said that 'There is a culture of doing nothing until the case is listed for trial except in the most serious cases'. A comment by a Middlesex Guildhall judge exemplified the views of judges at that court:

'They loyally and responsibly co-operate but it has to be borne in mind that they have had so many schemes and changes thrust upon them that any new one is bound to cause a great deal of extra work and disruption to everyday working practices and can have a detrimental effect on their practices as a whole'.

6.6.6 Judges did not consider that the pilot had produced a more case-management oriented approach by the legal community. Judges in Middlesex Guildhall and Newcastle commented that some lawyers were irritated because of the extra work involved.

6.6.7 A Preston judge thought the pilot had resulted in an earlier focus on decisions concerning disclosure of unused material.⁴¹ However, most judges did not think pilot procedures had affected how and when disclosure was ordered. Where disclosure problems were indicated or suspected, an oral PDH was held.

6.6.8 Almost all barristers and solicitors thought that the pilot had not resulted in more consultation with the other side before completion of forms. The views of one Newcastle barrister were typical:

‘The form is completed in a vacuum, whereas under the old system the form would usually be filled in after discussion between counsel, allowing witnesses to be more readily identified’.

6.6.9 A prosecution barrister said:

‘Prior to the PDH, there is usually little contact between the prosecution and defence. The form asks the prosecution to confirm witnesses. How can we do so, when the defence solicitor has not even instructed counsel?’ (Middlesex Guildhall).

6.7 Quality of justice

6.7.1 None of the participants surveyed had concerns that pilot procedures infringed defendants’ rights or adversely affected the quality of justice. However, one judge raised a question as to whether a defendant who had a paper PDH and subsequently pleaded guilty at the trial would be entitled to the full guilty plea discount, on the grounds that a plea could have been agreed earlier had an oral PDH taken place:

‘I am expecting someone to complain that they were not given the opportunity to enter a guilty plea at the earliest opportunity. Under these procedures, most counsel will not have had a conference when filling in the form’.

6.7.2 One barrister expressed ‘quality of justice’ reservations on the grounds that cases were listed for trial with little reference to counsel’s availability. A solicitor commented that:

‘Speedier justice does not necessarily equal fairness. There is a danger of issues being overlooked, of not enough care being taken, of a rush to judgment’.

⁴¹ Disclosure is not mentioned in the standard Judge’s Questionnaire used at PDHs but was explicitly addresses in the pilot forms used at all three courts.

7 VIEWS ON ROLL-OUT

7.1 National adoption of flexible PDHs

7.1.1 Towards the end of the pilot, Preston judges concluded that, with provisos, the benefits of the pilot procedures outweighed the additional work involved because they encouraged ‘a more “whip cracking” role for the judiciary’. There was also some support for the pilot in Newcastle, and in particular the role of the CPO. Overall, however, judges in Middlesex Guildhall and Newcastle did not think the pilot had justified the additional work involved.

7.1.2 The Middlesex Guildhall judges thought the procedures were inappropriate for London. It had been particularly difficult to disseminate information about the pilot to the large numbers of barristers and solicitors using the court (it had not been feasible to hold a pilot launch event for this reason). Additional problems were caused for London CPS because the start of the pilot coincided with the reorganisation of teams in accordance with the Glidewell report.⁴² At the close of the pilot, Middlesex Guildhall Crown Court planned to adopt a procedure used at Croydon Crown Court in which a case progression questionnaire is sent out 14 days before the trial (or the trial window). If the parties indicate that the case is not ready for trial, it is brought to court. The aim of this new process is to reduce the number of cracked and ineffective trials and reduce unnecessary witness attendance.⁴³

7.1.3 A minority of judges and other participants endorsed the pilot or aspects of the procedures:

‘There are no problems with the pilot procedures. We don’t want surprises such as no prior notice of abuse of process arguments. The pilot procedures are helping in getting legal arguments up front’ (Preston judge)

‘The system should be kept but there should be an obligation on counsel to fill in the certificates’ (Newcastle judge)

‘The CPO role is quite useful and would be even more so if the role were expanded to the entire life of the case. But there would need to be appropriate sanctions available for non-compliance with directions’ (Newcastle judge)

‘The new forms are meant to make practitioners apply their minds to the issues earlier, and I think this will work here but we have had a big backlog of cases to work through. There should not now be an excuse to enter a plea on the morning

⁴² The relevant CPS London Branch ‘had difficulties in maintaining a stable working environment, with four different BCPs within a year and changes in other crucial management posts, and with the loss of staff during the same period... this has led to concerns about a number of perceived failures relating to the quality of case management in the Branch’: para. 12.13, CPS Inspectorate’s Report on CPS London, Volume 2 (19/2000).

⁴³ A similar system is used in Cardiff. Cases which the judge thinks might crack (e.g. public disorder offences) are brought in seven days before the trial. The judge tells the defendant that this is the last chance to plead. If a plea is forthcoming, counsel gets the cracked trial fee and the attendance of witnesses has been avoided. The aim is to produce greater certainty that listed trials will proceed and to reduce the number of cases in the warned list.

of trial but when it does happen, there is a better opportunity for the judge to ask why. There will always be a hard core of defendants who wait till the last minute but this can't account for a 30 per cent crack rate' (Preston solicitor)

'I think that cracked trials have reduced, which makes life more difficult for clerks as they cannot 'double book' to the same extent' (Preston bar clerk)

'The scheme was valuable in improving communication among those who participated. An enormous amount of work went into it. The pilot enabled us to look at procedures in a detailed way and to examine what we do or don't do without a "blame culture"' (London probation).

7.1.4 The majority of judges did not wish to continue with the pilot, for example:

'I don't think it is worth the candle. There has been little noticeable difference. Nor can it be mended by tweaking the procedures' (Newcastle)

'I would leave PDHs as oral across the board. There is a different culture here from down South. We avoid unnecessary trials and we communicate at PDHs. I fear that the pilot will produce more aborted trials' (Newcastle).

7.1.5 Some judges acknowledged the difficulty of obtaining good quality information before or even at an oral PDH:

'The parties will not always be able to give complete information because of the timing. I doubt if this process has any merits' (Newcastle)

'The advocates tend not do the work till they have to do the case. The PDH is an excuse for people to do nothing. There is no urgency to prepare until after the PDH' (Middlesex Guildhall).

7.1.6 Only one solicitor thought the pilot procedures should be adopted nationally. All barristers favoured returning to the former system of oral PDHs:

'Forms are not completed on time due to the lack of information available from the client, solicitors or opponents. The "threat" of a mention makes no difference' (Preston barrister)

'The pilot system has fundamental problems: submission of incomplete papers to counsel; forms completed on an "educated guess" basis; counsel now often never see the defendant until the trial; and nobody looks at the papers again' (Preston barrister)

'As prosecuting counsel I am rarely sent papers in advance of the flexible PDH. As a result, any advice I give on evidence is usually after a trial date has been fixed (often for a period very soon after the PDH). This makes trial dates almost impossible to adhere to and leads to matters being listed for mention or applications to break. It is my strong view that the pilot leads to inefficiency' (Middlesex Guildhall barrister)

‘The oral PDH is the most effective way of managing cases. The paper PDH comes too early to be of any use’ (Preston barrister)

‘PDHs are the time when the defendant usually has to accept the position he is in and tends to concentrate the mind. It is very useful to have a conference at court at the PDH when the defendant has to attend rather than in chambers when he often does not attend. If any hearing has to be on paper, it should be the preliminary hearing (Preston barrister).

- 7.1.7 CPS offices in all the pilot areas agreed that the pilot had resulted in significant additional work for them which had not produced equivalent benefits. They did not feel that the pilot should be rolled out:

‘The project is not meeting its aim to reduce cracked trials – there has been no improvement in effectiveness’ (Middlesex Guildhall)

‘Overall, the pilot is no more effective than the previous system and there is less likelihood of defence counsel forcing the prosecution advocate to consider a plea at PDH. Communication at the courtroom door has not been replaced by advocates phoning each other up to discuss the case ahead of time’ (Newcastle)

‘We have tried to pull together to make it work. The pilot has resulted in a significant improvement in our brief delivery in excess of the national target but there is no positive feedback from the trials unit. There has been no improvement in our statistics and it is a lot of extra work for little gain. We were surprised that so few have gone through on paper and there is a fear that some of those would have cracked if they had been in court for an oral PDH’ (Preston)

‘It is hard to think of any benefits and the administration is very time-consuming. It has been a lot of extra work to no benefit for the CPS. The small percentage going to paper PDH have not benefited’ (Fylde)

‘The pilot has meant a lot of running around for little result’ (Burnley).

- 7.1.8 Judges, barristers, solicitors, court staff and CPS lawyers described the remuneration system as an obstacle to successful implementation of the pilot. Nearly all barristers commented that assembling the information and completing of the forms took longer than for the Judge’s Questionnaire. Judges generally supported a re-distribution of the fee to reward preparation, for example:

‘The present “culture” for many advocates tends to be that real preparation of the case takes place the night before the trial is listed. This will not change unless and until payment of advocates focuses on pre-trial work and affords proper remuneration for him. Until then, co-operation with case management will be given only grudgingly’ (Preston).

- 7.1.9 A police officer commented that the pilot courts had had too much local discretion in developing the pilot, and that more central direction was needed in case management initiatives:

“Joined up-ness” has not happened. We are given the outline and then told how we achieve it is up to us’.

8 COSTS

8.1 Introduction

8.1.1 Among the success criteria for the flexible PDH procedures operated during the pilot was a reduction in overall cost, taking into account costs to the court (including the CPO role), the judiciary, the prosecution, the legal aid budget and the Prison Escorting And Custody Service (PECS). This chapter examines each of these cost factors in turn.

8.2 Court costs

8.2.1 Funding the CPO role was the most significant addition to staff costs in operating the pilot procedures. The precise tasks carried out by the CPO varied between pilot sites (see chapter 4). Although the role was funded for the duration of the pilot on a full-time basis, CPOs in at least two pilot courts had other duties in addition. One CPO estimated that other responsibilities accounted for around one third of his time.

8.2.2 CPOs complained that deputising arrangements during the pilot were inadequate:

‘In this court it is a full-time role and there would need to be a deputy. For the pilot, we have had someone acting as a deputy but we have still had to suspend the pilot on two occasions when both were away’.

8.2.3 In another pilot court, the CPO also referred to a nominated deputy being diverted to other court duties.

8.2.4 There was general agreement among court staff to whom we spoke that the CPO role should be full-time and the appointment should be made at the Span 3 or Span 4 level:

‘the CPO role should be undertaken by an Executive Officer, at least for those tasks that involve interaction with the judges, although an Administrative Officer could do the photocopying and administrative support. Familiarity with listing is a prerequisite. A court clerk with some listing experience would be ideal. It is a full-time role’

‘the CPO is a Span 3 role because it is mostly administrative and does not involve making judgments. It fits under the umbrella of the listing office because of the need for consultation. Many court clerks are Span 3 and they should not find the judicial contact involved in the role too daunting’

‘the CPO should be an Executive Officer grade. There are many decisions to be made, for instance where a guilty plea is indicated and what warned list to put the case in if there are gaps in the availability information’.

8.2.5 Figures provided by the Court Service Resources and Planning Division show that the gross average costs of employing Span 3 and Span 4 staff in August 2001 were £17,266 and £22,451 respectively.⁴⁴

8.2.6 Apart from CPO costs, there was no evidence of other significant costs or savings for pilot courts in operating the flexible PDH procedures:

‘There has been little impact on other staff. The mentions are another “hearing” so papers must be prepared for the judge and there is some, but not much, extra work for court clerks. There is no impact on CREST input’

‘There is very little impact as far as listing is concerned, because mentions are heard at 10:00 a.m. The PDH list is correspondingly shorter’

‘The impact on listing is minimal. Three or four PDHs lost each week is hardly noticeable when the average PDH list has around 15 cases. There is no disruption to judge availability as far as listing is concerned’.

8.2.7 This picture was confirmed by figures on the time taken for key tasks provided by the team working on the Crown Court Costs and Performance Model. These show that time spent by court staff on work specifically related to PDHs is small in relation to overall workload. Typically, the average in-court time for a single PDH is around five minutes. Against the savings resulting from paper PDHs must be set the additional time arising from listings for mention for failure to submit forms. Overall, any cost impact is too small to quantify.

8.3 Judicial time

8.3.1 Before the pilot began, judges at Preston and Middlesex Guildhall were more concerned than those at Newcastle about the possible impact of pilot procedures on the use of judge time, for example:

‘If it is to be effective there will need to be a considerable investment of time by the judiciary who will need to co-ordinate approaches and give consistent directions. The up side is that judicial time should be saved’ (Preston)

‘The pilot will have serious implications. Forms will take a long time to review’ (Preston)

‘The pilot requires considerable input by judges. When to do the work is a problem as no daytime arrangements are made – it has to be fitted in around other cases’ (Preston)

‘Marginal’ (Newcastle)

‘Little at this centre’ (Newcastle)

⁴⁴ The gross figure takes account of basic salary, pension and national insurance costs. Figures vary according to geographical location and the figures shown are an overall average.

‘Not much’ (Newcastle)

‘Judges will have to spend extra time on forms’ (Newcastle)

‘The reviews in chambers if done properly, will be time consuming and will have to occur, partially at any rate, in court hours. Judges with the experience to deal with the reviews need time out of court hours to complete work on cases they are trying. Against this, the reduction of cases that require oral hearings should prevent grave daily disruption to trials upon which we are currently engaged. The shortest of hearings eat into the day, generally because parties are not ready or a defendant is not present and a reduction in their number would have a beneficial effect’ (Middlesex Guildhall)

‘Very little’ (Middlesex Guildhall).

8.3.2 Following the pilot, Newcastle judges thought that the pilot had not created particular problems for judges’ working routines but judges elsewhere commented that it had caused difficulties:

‘The pilot procedures have involved much more work on the part of the judge’ (Middlesex Guildhall)

‘Work has increased and we have tried to make time for it. The judge trying the case needs time around the case to prepare properly. Having five or six cases to review is disruptive and it has been done here at the expense of other work for the sake of the pilot. Trials work cannot be postponed and so there is a need to work out of court with the risk of the work being done inadequately. It bites into other work. We did not allow the pilot procedures to disrupt trials in progress’ (Middlesex Guildhall)

‘Finding time to review forms is an aggravation. I often do it in my lunchtime or at the end of the day’ (Preston)

‘The pilot procedures were intended to produce more time for judicial management of cases that merit an oral PDH. However, enough time also needs to be devoted to paper PDHs which will otherwise will end up as cracked trials’ (Preston).

8.3.3 Judges were asked to record how long they took to review forms in pilot cases. Here, and in the tables below for prosecution and defence forms, the longer times at Preston are probably due to the length of the forms used at that pilot court.

Table 29: Time in minutes taken by judges to review pilot cases

	Cases with data	Minimum	Maximum	Mean
Middlesex Guildhall	272	1	25	8.66
Newcastle	77	2	25	8.08
Preston	166	2	45	15.22

- 8.3.4 Using these averages, the total judicial time spent reviewing cases over the nine month period of the pilot should have been 50 hours at Middlesex Guildhall, 141 hours at Newcastle and 293 hours at Preston. However, the actual figures are considerably less because of cases where forms were not submitted in time for a review. In addition, the Newcastle CPO did not refer for review cases where the defence indicated a plea of guilty. Taking only cases where the CPO log shows forms were received from both parties and, excluding Newcastle cases where a guilty plea was indicated, leads to a judicial time commitment of 31 hours, 43 hours and 182 hours for the three pilot courts respectively.
- 8.3.5 Additional judicial time was spent in mention hearings called when one or both parties failed to return a form. There were 63 such hearings in Newcastle and 459 at Preston (as explained in section 5.3, no figures were available for mentions held at Middlesex Guildhall but the number was reported to be in single figures). On the basis of CREST hearing data⁴⁵, the average length of these mentions was four minutes at Newcastle and five minutes at Preston. The total times involved in mentions were therefore around four hours and 38 hours respectively.
- 8.3.6 Section 5.11 records the number of paper PDHs ordered at each pilot court and the section 5.14 gives the average length of oral PDHs held. Using these figures, the total time saved by avoidance of oral PDHs was approximately seven hours at Middlesex Guildhall, 10 hours at Newcastle and 16 hours at Preston.
- 8.3.7 The analysis in previous chapters suggests little judicial time was saved during the pilots due to reduction in the average numbers of hearings needed to dispose of a case, the cracked or ineffective trial rate or the length of trials.
- 8.3.8 Taking all this into account suggests that the pilot procedures resulted in a small net increase in judicial time needed to dispose of cases, amounting to about 24 hours at Middlesex Guildhall, 37 hours at Newcastle and 204 hours at Preston over the nine months of the pilot.

8.4 Prosecution costs

- 8.4.1 The CPS was asked about the cost impact of operating the pilot procedures which had resulted in additional work for lawyers and administrative staff. CPS managers complained that these were extra tasks for which no additional resources were provided.
- 8.4.2 In all three pilot areas many forms were completed by CPS lawyers, either reviewing lawyers or Higher Court Advocates (HCAs). In one, forms completed by a CPS lawyer were given to counsel for signature. A caseworker manager in this area told us:

‘The pilot has created a significant extra administrative burden for the CPS. The time actually spent filling in the form is the tip of the iceberg’.

⁴⁵ This is based on 30 mentions at Newcastle and 84 at Preston.

- 8.4.3 She reported that the pilot had resulted in an increase in the amount of post to be handled, with forms coming in from advocates for the prosecution and the defence which then had to be matched up with the file. Defence forms had also to be forwarded to prosecution advocates. She did not feel that there were compensating savings through avoiding some oral PDHs because these were only in simple cases where the hearings would have been short.
- 8.4.4 CPS representatives in the other two areas told a similar story. One reported that a CPS reviewing lawyer completed every pilot prosecution form and each took around an hour. There was also additional administrative work but this could not be quantified. Because the majority of cases still required an oral PDH, there was no reduction in the time spent at court either by HCAs or advocates briefed by the CPS.
- 8.4.5 The CPS Area Business Manager for the Preston area provided the most detailed information about the cost impact of the pilots. He reported that there had been some increased CPS work in relation to completion of the forms. This had been partly offset in the case of paper PDHs by avoiding the preparation work and time spent at court for an oral PDH. There had also been an increase in CPS administrative work due to chasing the forms. This was estimated to be 2½ days per week for one administrative staff member in each of the three branches concerned. This had again been offset by savings in lawyer time which was more expensive. Any saving in fees to counsel could not be quantified.
- 8.4.6 The times to complete prosecution forms⁴⁶ as recorded on the forms themselves were as follows:

Table 30: Time in minutes taken to complete prosecution forms

	Cases with data	Minimum	Maximum	Mean
Middlesex Guildhall	149	3	90	14.95
Newcastle	154	2	90	15.79
Preston	330	5	180	35.01

- 8.4.7 The picture that emerges is additional work for the CPS amounting to about one-half of an administrative staff member of A1 grade. Using figures provided by the CPS Activity Based Costing Team, this amounts to an annual cost of around £6,000 per CPS branch.
- 8.4.8 The additional cost of completing forms is hard to quantify. The calculation depends on whether the task is undertaken by counsel briefed by the CPS or an in-house lawyer. In the latter instance, the cost will be greater if the form is completed by an HCA rather than a reviewing lawyer. The times recorded on the forms themselves were less than the time estimated by some CPS interviewees. Moreover, some of the cost was offset by savings in cases where an oral PDH was avoided. Some of the information gathering would be required irrespective of the PDH regime. Nevertheless, there is likely to be a net cost to the CPS of completing the forms although we are unable to put a precise figure on this.

⁴⁶ These include time spent in gathering the information needed.

8.5 Defence costs

8.5.1 Advocates were paid £30 for completing the defence form.⁴⁷ However, if there was subsequently an oral PDH, the £30 was deducted from the usual £100 fee payable. This meant there was a net saving of £70 per defendant to the legal aid fund whenever an oral PDH was avoided and no extra cost when it proceeded. This gives rise to a saving attributable to paper PDHs of around £2,500 at Middlesex Guildhall, £6,000 at Newcastle and £7,500 at Preston.

8.5.2 Participants felt that the £30 fee was inadequate for the work involved:

‘There is no incentive to fully prepare and identify the issues in a trial at an early stage i.e. edit interviews, watch and edit videos, because unless you are doing the trial you are not paid properly for the time spent’ (Newcastle barrister)

‘There will be no change until counsel are paid appropriately for pre-trial preparation as opposed to late cracked trials’ (Preston CPS)

‘To read the papers properly to complete the form can take as much as 90 minutes. For £30? You must be joking’ (Preston solicitor).

8.5.3 The actual times taken as recorded by those filling in defence forms were as follows:

Table 31: Time in minutes taken to complete defence forms

	Cases with data	Minimum	Maximum	Mean
Middlesex Guildhall	213	5	120	23.82
Newcastle	214	1	480	20.53
Preston	382	2	210	36.80

8.5.4 All but one of the 11 advocates who responded to our survey had experience of completing pilot forms. Eight said the pilot forms took longer to complete than the standard Judge’s Questionnaire. The other two thought that the pilot forms took the same time to complete as the Judge’s Questionnaire.

8.5.5 There were complaints about the additional work involved. One bar clerk told us:

‘The problem with the forms is that they represent extra work and there is not the manpower or time to complete them. Barristers complain that there is not enough time to complete the forms. They are asking to be kept out of court in order to fill the forms in and this is costing a lot of money’.

8.5.6 But a solicitor disagreed:

⁴⁷ Solicitors who completed the defence form did not receive any specific payment although the time spent could be counted in submitting a bill under the graduated fee scheme.

‘In my firm, we send counsel a blank form - our brief to counsel helps him fill it out. Ideally trial counsel should complete it. The forms should not have created extra work for lawyers though they may have to do it earlier’.

- 8.5.7 There were some concerns during the pilot about costs relating to listings for mention called because of failure to submit a form. It was intended that a defaulting party should bear its own costs of attending such a hearing. One CPO told us:

‘If the judge does not say court “costs disallowed” so that it is noted on the file, they get paid for attending the mention even though the system raises an error. So the mention system is actually a means of earning fees’.

- 8.5.8 No such ruling was made at mentions observed during our visits to pilot courts. However, a court clerk told us although judges were not disallowing the costs of attending a mention hearing, he had never received a claim for payment.

8.6 Prison escorting costs

- 8.6.1 Where a paper PDH was ordered in a case involving a defendant in custody, the cost of transporting that defendant to and from court was theoretically avoided. Only 28 of the 228 defendants involved in pilot cases deemed suitable for a paper PDH were in custody and any cost savings were negligible. Prison Service representatives confirmed that the pilots had had no detectable impact on their work.
- 8.6.2 Even if significant number of prisoner movements could be avoided by using paper PDHs, there would not be immediate savings to the public purse in terms of transportation costs because of the terms of prison escorting contracts.⁴⁸
- 8.6.3 The Prison Service is currently designing a new prisoner escorting contract to succeed the existing contracts in August 2004. The new contractual framework will provide more flexibility than at present and this will make it possible to realise financially the benefits of reduced prisoner movements arising either from flexible PDHs or other factors.

⁴⁸ A discussion of the issues can be found in Chapter 5, Joyce Plotnikoff and Richard Woolfson, ‘Video Link Pilot Evaluation’ HM Prison Service (1999).

9 FINDINGS AND CONCLUSIONS

9.1 Introduction

- 9.1.1 This chapter reviews those aspects of pilot operation that the evaluation was designed to assess. It brings together the success criteria measurements to provide an overview of the impact of the pilot procedures. The implications for national roll-out are considered.
- 9.1.2 This is followed by an examination of factors relating to the achievement of pilot objectives. The final section sets out key components of a programme of reform aimed at overcoming some of the obstacles to success encountered during the pilot.

9.2 Success criteria measurements

- 9.2.1 The following table lists the success criteria specified in the Evaluation Plan and the corresponding evaluation results. Numbers in brackets refer to relevant parts of the report.

Table 32: Performance against success criteria

Criterion	Evaluation result
An oral PDH should be avoided in a sufficient proportion of cases to make the flexible procedure viable in terms of costs and the views of court users.	<p>Even excluding cases where a guilty plea was indicated, an oral PDH was avoided in less than 10% of cases at each pilot court (5.11).</p> <p>The cost savings associated with avoiding oral PDHs were correspondingly small and more than offset by other costs associated with operating the pilot procedures (chapter 8).</p> <p>Some practitioners in all participant groups endorsed aspects of the pilot procedures but the majority considered that the defects outweighed the benefits (chapter 7).</p>
The proportion of defendants pleading guilty at the first PDH should increase.	The rates of guilty pleas at the first opportunity for pilot cases at two of the three pilot courts rose slightly compared with the pre-pilot period (from 13% to 16% and from 18% to 25%) while the corresponding rates for all courts in the same circuit showed little change during the same periods (5.8).
The time between committal, transfer or send up and sentence for those defendants who plead guilty at a PDH should reduce.	Times for pilot cases increased (from 57 to 65 days at Middlesex Guildhall, 51 to 58 days at Newcastle and 50 to 68 days at Preston) while times for the circuit as a whole stayed the same or fell (6.3).

Table 32: Performance against success criteria

Criterion	Evaluation result
The number of hearings needed between committal, transfer or send up and trial, guilty plea or other disposal should reduce.	The drop in the number of hearings required to dispose of pilot cases as compared with pre-pilot cases was slightly greater than the drop experienced by other courts in the circuit (6.2). The high proportion of unfinished pilot cases means that no great significance can be attached to this reduction.
The rate of cracked and ineffective trials should reduce.	Any change was in line with circuit trends (6.5).
The time between committal, transfer or send up and start of trial, guilty plea or other disposal should reduce.	Any change was in line with circuit trends (6.3).
The length of trials should reduce.	Any change was in line with circuit trends (6.4).
Overall cost should reduce, taking into account costs to the court (including the CPO role), the judiciary, the prosecution, the legal aid budget and the Prison Escorting And Custody Service.	Overall costs increased slightly (chapter 8).
The quality of information available to the court at the PDH stage should improve.	In the view of most practitioners, the quality of information on pilot forms was the same as or worse than that provided on the standard Judge's Questionnaire (5.4).
The quality and timing of communication between the parties should improve.	Both prosecution and defence complained about poor communication, including the failure of the other side to cross-serve completed pilot forms (5.6). The defence communicated with the prosecution about a likely guilty plea in less than half the relevant cases (5.8).
Commitment to case management should improve.	Judges generally did not think the pilot had resulted in a more case-management oriented approach on the part of their colleagues or the local legal community, and some felt it had actually set things back in this respect (6.6).
The pilot procedures should provide an acceptable quality of justice.	Quality of justice was generally thought acceptable but there were some concerns about paper PDHs resulting in the loss of an opportunity to enter an early guilty plea and listing for trial without reference to counsel's availability (6.7).

9.3 Implications for rolling out the pilot procedures

- 9.3.1 The pilot procedures clearly did not have the beneficial impact envisaged when the success criteria were formulated. On that basis, the evidence does not support the introduction nationally of the flexible PDH procedures used in the pilots.
- 9.3.2 The following sections examine the reasons why the pilot procedures were not successful and the implications of the findings for future developments in pre-trial practice, particularly in light of Lord Justice Auld's recommendations.

9.4 Early preparation and communication

- 9.4.1 The pilot procedures were based on the principle that cases proceed more speedily and efficiently if issues are addressed and information exchanged between the parties well before the day of the PDH. The results of this activity would then be used to inform a judicial decision on the need for an oral hearing. The early identification of issues would lead to more productive oral hearings where these were considered necessary and avoid the late emergence of the problems that lead to cracked and ineffective trials.
- 9.4.2 In reality, the pilot procedures did not produce the kind of pre-PDH activity envisaged and the intended benefits did not follow. It might be questioned to what impact even preparation of a high quality would have on the factors in the success criteria. That is not something that the results of these pilots can resolve. The discussion that follows is based on the assumption that promoting early activity to address issues is a desirable objective and likely to promote efficient passage of cases through the courts.
- 9.4.3 Lord Justice Auld anticipated the obstacles to be overcome in achieving the pilot objectives. Although he 'warmly commended' the pilot scheme, he expressed 'caution as to its use as a marker for general use unless it is supported by the other mechanisms and resources... necessary to improve the parties' performance in preparing for trial'.⁴⁹ These mechanisms would involve tailoring mutual disclosure and pre-trial involvement of the court according to the needs of the individual case as well as front-loading the fee structure. The Auld model would culminate in a 'pre-trial assessment', based in most cases on out of court communication between the parties and the court about readiness of the case for trial. Where outstanding matters could not be resolved by written directions, a pre-trial hearing would be held. After the pre-trial assessment or pre-trial hearing, the parties would be required to certify their readiness for trial according to a standard timetable or as directed by the trial court.⁵⁰
- 9.4.4 The government's White Paper responding to Lord Justice Auld does not address this proposal in detail, although the Paper's objectives include encouraging early guilty pleas, extending the use of preparatory hearings in which the judge can make binding rulings to serious (as well as complex and lengthy) cases and delivering 'a trial system that works'.⁵¹

⁴⁹ Para. 223.

⁵⁰ Paras. 221-224, 235.

⁵¹ The White Paper 'Justice for All' Cm 5563 (2002).

- 9.4.5 The use of IT could help to overcome at least some of the communication problems encountered during the pilot. The virtual version of flexible PDHs being piloted at Manchester Minshull Street Crown Court automates the distribution of electronic forms and service (and cross-service) of the completed forms. This should overcome the distribution problems encountered in the current pilots and ease the associated administrative burden.
- 9.4.6 Other technology projects also have a role to play. The development of e-mail facilities between the police and CPS should help to speed the provision of case-related information while videolinks with prisons allow conferences with legal representatives and probation interviews to take place remotely.

9.5 Changing the norms of PDH practice

9.5.1 The introduction of PDHs for all Crown Court cases was not universally welcomed. For example, in a 1996 survey of over 50 respondents conducted on behalf of the Home Office 'Review of Delay in the Criminal Justice System', the majority of judicial and practitioner respondents 'questioned whether the additional cost and effort of PDHs were justified in all cases'.⁵²

9.5.2 Lord Justice Auld was the Senior Presiding Judge when PDHs were introduced and chaired a series of Lord Chancellor's Department judicial seminars to discuss their operation. In his 2001 Review, he concluded that that in many cases PDHs were:

'an unnecessary and expensive intrusion... oral hearings should become the exception rather than the rule in the majority of cases, taking place only in complex or particularly difficult cases'.⁵³

9.5.3 Despite such reservations, oral PDHs have come to shape the norms of current pre-trial practice. Many key activities are deferred until the oral PDH, including consultation between defence advocates and the defendant, communication between the parties, provision of information to the court, discussions about plea, judicial directions and listing decisions. Oral PDHs have become such a standard feature of the criminal justice landscape that the prospect of their loss in some cases has roused vocal opposition in some quarters. One judge responding to the Auld Review⁵⁴ argued that to dispense with the standard PDH would:

'have a seriously adverse effect on the efficient administration of justice and it would prove wholly counter-productive. The idea that we should move away from oral hearings at the pre-trial stage illustrates to me that the hearings are not being properly conducted... It is quite impossible to conduct a worthwhile exercise without having read the case papers. If sufficient reading time is

⁵² Joyce Plotnikoff and Richard Woolfson 'A Critique of Plea and Directions Hearings in the Crown Court' (unpublished). For another example, see Judge Anthony Balston 'PDHs The case for, and against' JSB Journal (1997) Issue 1, p.12.

⁵³ Paras. 212, 218, 219.

⁵⁴ Lord Chancellor's Department 'Auld Review Comments Received' (18 March 2002) <http://www.lcd.gov.uk/criminal/auldcom/jud/jud4.htm>.

available and a list is constructed so as to allow meaningful discussion then these hearings are absolutely essential. A paper hearing will achieve nothing. There will be no guarantee that issues are properly identified, or that witness requirements are seen to be sensible and not blanket requirements, or that interview records are properly summarised or facts agreed where appropriate. Some paper assurance that the issues have been properly considered is no substitute for a judge ensuring that they have been by conducting a rigorous and comprehensive pre-trial hearing... Experience shows that one cannot rely on the profession to deal with these issues effectively without rigorous judicial intervention. Every case requires such consideration - not least in order that the judge may in the future avert pointless trials by timely and appropriate indications on sentence’.

9.5.4 The success of the procedures depended on overcoming such opposition and bringing about a fundamental change in working patterns. However, those involved saw few incentives being offered (financial or otherwise) to alter their practices. The situation was made even more difficult because the pilot procedures applied to only part of each court’s workload. This required the new approach to coexist with, rather than replace, the existing culture for the duration of the pilot. In such an environment, it is perhaps not surprising that the level of compliance with pilot procedures was disappointing.

9.5.5 Features of the existing environment which the pilot sought to change included:

a) The timing of briefing advocates

Distribution of pilot forms to advocates necessitated briefs being sent out within a few days of committal. This is earlier than the CPS Standard agreed with the Bar for delivery of the prosecution brief. In at least one pilot area the implementation of pilot procedures resulted in an improvement in timely dispatch of briefs. However, it was also reported that some prosecution and defence advocates were not briefed until shortly before pilot forms were due for submission to the court. Advocates complained that brief papers were often incomplete and so key decisions were still deferred to an oral PDH.

b) The time available for preparation

The pilot called for completion of the preparatory work needed to fill in forms five days before the scheduled oral hearing. This compressed the normal timetable which many already felt was too short. Lord Justice Auld had some sympathy with this view. He considered that, even in those cases for which a PDH is appropriate, the existing timetable is ‘rigid’ and ‘often too tight’, generating cracked and ineffective trials because the timetable of disclosure and for hearings was not sufficiently flexible to meet the different circumstances of individual cases.⁵⁵

⁵⁵ Para. 212.

c) Use of the PDH hearing as the opportunity for a client conference

The oral PDH is regularly used for the first conference between client and advocate. This is a key event, especially in relation to plea decisions. To be effective, the pilot procedures required such conferences to take place well before the day of the PDH. Defence lawyers complain that clients on bail sometimes fail to appear for appointments arranged at times other than court hearings. Conferences with clients in custody are difficult because of restricted legal visiting hours at prisons. In graduated fee cases, there is little financial incentive for advocates to attend such meetings. Combining a client conference with attendance at court for a PDH hearing makes better practical and economic sense from the point of view of defence lawyers.

Auld recognised that defence practitioners' convenience in having defendants in custody brought to court for a conference was frequently the most important factor in holding a PDH. He nevertheless considered this was too late to hold such a conference:

'It should be a fundamental entitlement of every defendant, whether in custody or on bail, to meet at least one of his defence lawyers in order to give him instructions and to receive advice at an early stage of the preparation of his case for trial, and certainly before a pre-trial hearing'.⁵⁶

d) Use of the PDH hearing for plea discussions between the parties

The prosecution and defence seldom enter into plea discussions before the day of the PDH. The importance of negotiations on the day is illustrated by practice in one pilot court where a senior CPS lawyer is present when PDHs are held:

'His presence at court was particularly helpful in that many cases were disposed of at PDH when they might otherwise have been adjourned for a decision'.⁵⁷

The success of the pilot was predicated on earlier exchange of information between the parties but the procedures did little to promote such contact. Separate prosecution and defence forms were used, in contrast to the standard Judge's Questionnaire which is completed jointly by both sides on the day of the PDH. It was intended that forms should be cross-served but compliance with this requirement was poor.

e) Remuneration under the legal aid scheme is based on attendance at court

The Criminal Bar Association notes that the appearance fee (currently £100) for the PDH under the Graduated Fee scheme is payable:

⁵⁶ Para. 214.

⁵⁷ CPS Inspectorate report on CPS Northumbria, 5/2000, para 4.58.

‘irrespective of the amount of preparation required for the hearing ... When the trial date is warned or fixed for a date unsuitable to trial counsel, no fee is payable for any of the preparation conducted prior to the PDH, nor any conference with the client undertaken, unless (and only in a restricted category of more complex cases) wasted preparation is in excess of eight hours’.⁵⁸

In the pilot, a £30 payment was made for completing forms. If an oral PDH was deemed necessary, the £30 was deducted from the oral PDH fee. This was widely considered by participants to be an inadequate reward for completing forms. The Bar Council suggested to Auld that ‘paper’ plea and directions hearings should be coupled with front-loading of fees to cover preparatory work.⁵⁹

f) *The CPS is generally not involved in completing PDH forms*

Except where the CPS is represented by a Higher Court Advocate, CPS personnel have no involvement in the completion of the standard Judge’s Questionnaire. Under the pilot arrangements, completion of the prosecution form was often undertaken by CPS lawyers. Some CPS personnel and judges saw disadvantages in form completion without input from prosecution counsel. There was also significant administration involved in the distribution, monitoring and submission of forms. CPS managers complained that these were extra tasks for which no additional resources were provided.

g) *Most hearings, including PDHs, are listed before any available judge qualified to hear the case*

Under normal listing practice, there is little attempt to achieve judicial continuity between hearings in the same case. During the pilot, the greatest benefit would have been obtained if a reviewing judge also presided at any subsequent oral PDH. Although this occurred by chance in some pilot cases, building it in to the pilot was considered impractical by listing offices reluctant to accept any constraint of the flexible use of judicial resources. As a result, most judges said they would not spend time on a paper review once it was clear that the case would go for an oral PDH. They saw no point in taking time to deliberate on possible directions for another judge at the PDH

Lord Justice Auld observed that it is ‘a waste of resources for more than one judge to have to read and familiarise himself with issues and matters for pre-trial resolution’.⁶⁰ He proposed that any cases requiring an oral pre-trial hearing or ‘substantial’ paper directions should be allocated to the trial judge.⁶¹

⁵⁸ ‘Graduated Fees for Criminal Defence Work: a note on current proposals’ Criminal Bar Association (September 2000).

⁵⁹ Para. 222.

⁶⁰ Para. 238.

⁶¹ Para. 224.

h) Practice differs in relation to indicated guilty pleas

It was hoped that the pilot procedures would expedite cases where a guilty plea was indicated on the defence form. In such circumstances, probation would prepare a pre-sentence report and the oral hearing would be rescheduled to a date when the report would be available. In this way sentencing could follow immediately after the guilty plea was entered. However, the acceptability of this practice varied between pilot courts. Preston judges preferred oral PDHs to proceed where there was an indication of a guilty plea, rather than taking such cases out of the list and adjourning for reports.

Even where probation reports were available at the oral hearing, there were a range of reasons why it was often not possible for sentencing to proceed at that hearing.

9.6 Developing the commitment to case management

9.6.1 Judges across all three courts considered that the introduction of the flexible PDH scheme *per se* had not resulted in a greater commitment to case management on the part of judges or the legal community.

9.6.2 Judges saw their primary function as presiding over hearings. The pilots required additional time to be spent on out of court paper review, a move that was not generally welcomed. The fact that two of the three pilot courts did not credit judicial time spent reviewing pilot forms as sitting time underlined the greater recognition given to in court work.

9.6.3 Lord Justice Auld recognised that despite the increasing complexity of their judicial work and the case management demands' on all judges, the move towards greater case management had taken place with 'patchy administrative assistance' and 'little concession... to the time they need out of court to prepare efficiently for what they do in court'.⁶² He anticipated that out of court responsibilities would increase if his model of pre-trial preparation was implemented. He recommended that adequate time be given to judges to enable them to manage and prepare cases assigned to them, and that administrative help be provided to meet those needs.⁶³

9.6.4 The CPS, defence solicitors, the bar and court managers also emphasised the additional demands that a case management regime placed on them. They stressed the need for a realistic assessment of the additional work involved and the provision of adequate resources to carry it out.

9.6.5 Although PDHs were the subject of LCD seminars when they were first introduced, their management has not been integrated into Judicial Studies Board seminars. Judges in a study published in 2002⁶⁴ differed in the extent to which

⁶² Paras. 58-59.

⁶³ Para.59.

⁶⁴ Joyce Plotnikoff and Richard Woolfson 'Judges' Case Management Perspectives: the views of opinion formers and case managers' Lord Chancellor's Department Research Series 3/02, April 2002.

they felt able or prepared to apply these principles in relation to PDHs: the ‘team’ approach to PDHs envisaged on their introduction⁶⁵ had failed to produce collective responsibility for the caseload. Resident Judges were finding it difficult to promote a consistent case management approach among their colleagues.⁶⁶

- 9.6.6 Most judicial interviewees in the 2002 study acknowledged that case management skills do not come automatically and their development through training was essential to effective judging. Training would assist, as one put it, in ‘harnessing judicial independence to a more corporate approach’. That study suggested that case management training provided by the Judicial Studies Board should be extended to the conduct of criminal cases, and that consideration be given to joint meetings of court teams consisting of judges, court managers and court staff to discuss case management initiatives. No such meetings took place during the flexible PDH pilots.

9.7 The supporting role of the Case Progression Officer

- 9.7.1 The use of CPOs in the Crown Court pre-dates the flexible PDH pilots. In 1996, as part of the ‘Costs and Performance in the Crown Court Trial Process’ initiative, the Trials Issues Group conducted a pilot project at a London Crown Court to examine ways of making PDHs more effective. The techniques tested included the use of a CPO who contributed to effective listing by monitoring compliance with the court’s directions and providing a level of liaison with the parties that was beyond the normal scope of the listing office. A 1998 study recommended that the Court Service investigate the role of case progression both before and after the PDH⁶⁷, and a Court Service report later that year recommended that the use of a ‘nominated court officer responsible for ensuring that all required action is taken’.⁶⁸

- 9.7.2 In 2001, the government report ‘Criminal Justice: The Way Ahead’ stated that CPOs had been appointed in all Crown Court centres, as did Lord Justice Auld’s 2001 ‘Review of the Criminal Courts’.⁶⁹

‘... all courts now have ‘case progression officers’ whose function is to remind the parties of imminent deadlines in the timetable of preparation and to initiate action by the court when they fail to meet them. Depending on the size of the centre and the relationship that the officer can build up with local prosecutors and defence solicitors, this can be a valuable additional spur to efficient and timely case preparation’.⁷⁰

⁶⁵ ‘PDHs will normally be listed before a judge who... [is] part of the Resident Judge’s “team” for this purpose’: Lord Justice Auld ‘Guidance for Judges from the Senior Presiding Judge’ (1995).

⁶⁶ The White Paper ‘Justice for All’ recognised that ‘the Resident Judge can encourage best practice and consistency in case management’: para. 4.8.

⁶⁷ ‘Review of the Effectiveness of Plea and Directions Hearings in the Crown Court’ (January 1998).

⁶⁸ ‘The Crown Court Costs and Performance Model’ Project Report (March 1998).

⁶⁹ Para. 210.

⁷⁰ Auld envisaged a broader role for CPOs in his pre-trial model, depending on the size or complexity of the case: paras. 210, 221.

- 9.7.3 In fact, none of the pilot courts had a CPO in place before the scheme began, and they discontinued the position when the project ended. Although it was intended that the pilot CPO positions would be ring-fenced and that back-up would be provided by trained deputies, procedures sometimes had to be suspended because CPOs or their deputies were unavailable. Case progression was not accorded high priority when there was a shortage of staff to carry out other functions considered essential.
- 9.7.4 The pilot CPO role was confined to the PDH stage. Judges and court staff thought its extension post-PDH would be beneficial, so that CPOs could check on compliance with court directions and trial readiness.
- 9.7.5 A positive aspect of the pilot was that CPOs forwarded judicial directions to the parties where these were made as a result of a paper review. The Crown Court does not generally issue written directions to the parties following an oral PDH.⁷¹ Mr Justice Crane has pointed out that although the standard Judge's Questionnaire is endorsed by the judge with his directions, neither the clerk's court log or the Questionnaire itself 'will necessarily set out concisely or comprehensively the precise orders made or directions given by the judge'.⁷² He observed that court logs are not always provided to the next judge hearing the case. A judge may record orders in his own notebook but:

'if another judge takes over the case, he will not usually see the first judge's note. It is not uncommon for counsel and the judge to have to piece together what directions were given by a comparison between the endorsements on counsel's briefs and the other sources available. Is it surprising that directions are often not complied with, indeed rapidly forgotten even if understood at the time?'

- 9.7.6 Lord Justice Auld noted that, as a result, judges and magistrates:

'cannot readily tell from the file what orders were made on the last occasion the matter was before the court for directions, the reasons given for earlier adjournments or relevant comments made from the bench. In the Crown Court it is not uncommon for there to be dispute between the parties as to what was directed on a previous occasion and for a debate to take place with the judge or his clerk in which the latter's record conflicts with what counsel have recorded on their briefs. Such a casual culture of recording and disseminating courts' directions does not encourage proper respect for or compliance with them'.⁷³

- 9.7.7 Lord Justice Auld recommended that all rulings, orders and directions at pre-trial hearings, whatever their form, 'should be routinely recorded and, immediately or within a short time, issued to the parties in writing'.⁷⁴

⁷¹ There are exceptions: Lord Justice Auld commended Norwich Crown Court which routinely issues to the parties a computer print-out of the judge's order: para. 228.

⁷² British Academy of Forensic Sciences seminar on the Auld Review, held at the Law Society, London 29/10/01.

⁷³ Para. 227.

⁷⁴ Para. 228.

9.8 The way forward

9.8.1 The findings of the evaluation suggest that there is little point in implementing the pilot procedures in the current environment. The obstacles to success described above can only be overcome in the context of the programme of fundamental change being developed by the LCD's Case Preparation Project (Reform of the Criminal Courts). Key features of such a programme should include:

- restructuring legal aid payments to ensure preparation work is properly funded. The new structure should encourage early involvement of trial advocates and client conferences
- enabling early decision-making by legal representatives. This has implications for the division of the legal profession and the deferral of decisions until a Crown Court advocate is briefed. The proposed integration of levels of court should be mirrored by greater integration of legal representation
- case management for the life of the case beginning at the magistrates' court level, irrespective of final venue. District judges could cover much of the PDH agenda, either on paper or at a hearing, and take active steps to ensure trial readiness⁷⁵
- where a paper review reveals the need for a case management hearing, it should be the norm that the judge presiding at the hearing is the judge who conducted the paper review
- producing a written record of all judicial directions as a matter of course and distributing this record to the parties
- monitoring case progression throughout the lifetime of the case should be recognised as a key court function. This should be reflected in the indicators, such as ineffective trial rates, used to measure court performance and in the status of the of CPO role. CPOs should be drawn from the most experienced and IT literate court staff and the status of the role should reflect the key importance of case progression as a court function.
- guidance on pre-sentence report preparation for a defendant intending to plead guilty, and the mechanisms needed to bring this about
- implementation of IT systems to automate the exchange of information and ease the administrative burden associated with operating the new procedures
- a comprehensive programme of training in the skills needed
- the provision of adequate resources to enable all agencies involved to meet the demands of such a regime.

9.8.2 It is not clear whether the current PDH will survive the reform process but the success criteria used for the pilot will still provide a key test of whatever case progression model emerges.

⁷⁵ Paragraph 3.21 of 'Justice for All' sets out the government's intention of 'putting a judge or magistrate in control of pre-trial case management once a charge is made'.