



National Audit Office

CROWN PROSECUTION SERVICE

Effective use of magistrates' courts hearings

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Comptroller and Auditor General
National Audit Office

10 February 2006

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EXECUTIVE SUMMARY



1 The Crown Prosecution Service is the principal prosecution authority in England and Wales. It works closely with the police and the courts to bring offences to justice in the magistrates' courts. The Crown Prosecution Service has an annual expenditure of £568 million, employs over 7,800 staff and, in 2004-05, prosecuted about 1.25 million people for criminal offences. The vast majority (92 per cent) in terms of numbers of cases were in the magistrates' courts.

2 This study considers the performance of the Crown Prosecution Service in making effective use of magistrates' court trials and hearings. It estimates the number of ineffective hearings in the magistrates' courts, in particular those due to the Crown Prosecution Service (as opposed to the police) although most ineffective trials and hearings are to do with defence-related problems.¹ With the help of Her Majesty's Courts Service, we recorded the outcome of over 6,000 hearings and reviewed case files relating to over 1,300 hearings to produce a statistical sample on which to base our conclusions and recommendations. As a result we have estimated that ineffective trials and hearings cost the criminal justice system £173 million, of which the Crown Prosecution Service is responsible for about £24 million. The study identified examples of good practice, recommends changes to the Crown Prosecution Service's working practices and recognises that the criminal justice agencies need to work together more closely to improve the efficiency of the prosecution of magistrates' courts cases.

3 The Crown Prosecution Service is currently undertaking a business change programme to improve its performance and enhance its contribution to the performance of the criminal justice system. It is playing a key role in delivering the Government's objectives for the criminal justice system through the criminal case management programme. This includes the charging programme, which means prosecutors now decide the charge, and the No Witness, No Justice initiative, which is designed to improve witness attendance at court. Reducing the proportion of ineffective trials is a criminal justice system Public Service Agreement target towards which the police, the Crown Prosecution Service and the courts have made good progress. Better value for money across the criminal justice system could nevertheless be achieved in relation to magistrates' courts hearings if the Crown Prosecution Service were to implement the recommendations outlined in paragraph 20.

Overall conclusions

4 The cost of prosecutions includes both case preparation and time at court, including that of other criminal justice agencies. Pre-trial hearings, for example, require the attendance of prosecution and defence lawyers, magistrates and courts staff. Trials additionally involve witnesses, including the police, and sometimes probation staff and prison escorts. Adequate preparation for hearings and trials is, therefore, important, to avoid unnecessary adjournments or the dropping of charges, once the case reaches court.

¹ The National Audit Office reported on this in *Facing Justice: Tackling defendants' non-attendance at court* (HC 1162 Session 2003-04).

5 In this report we consider the Crown Prosecution Service's role in the effective use of magistrates' hearings, specifically whether it:

- plans and prepares cases to make effective use of hearings;
- uses court time for the purposes of the hearings listed; and
- is taking action to improve its performance in magistrates' courts.

6 From our examination we estimate that 28 per cent of all pre-trial hearings (784,000 annually) are ineffective. The defence is responsible for just over 478,000 of these, often where the defendant fails to attend, and the prosecution (that is the Crown Prosecution Service or the police or both)² for about 165,000, of which we estimate that about 71,000 can be attributed to the Crown Prosecution Service. In addition, published statistics show that 62 per cent of magistrates' courts trials were ineffective³ or 'cracked'⁴ in 2004-05. Similarly, the defence was responsible for the majority of failed trials but nearly 17 per cent (19,500) were attributable to the Crown Prosecution Service. Together, we calculate that ineffective hearings and cracked and ineffective trials cost the taxpayer £173 million each year, of which just under £24 million was attributable to the Crown Prosecution Service.

7 Individual prosecutors deal with a large volume of cases, often at very short notice. Nevertheless, we found that problems with the Crown Prosecution Service's planning and preparation for magistrates' courts hearings contribute to ineffective hearings. There is insufficient oversight of cases; lawyers often do not have enough time to prepare for hearings; there could be more effective systems for prioritising and progressing urgent or high-risk cases; evidence is sometimes incomplete; and files are mislaid. The police and the courts contribute further to the inefficiencies that result in prosecution delays: often the police do not provide the evidence in time for the hearing; and Her Majesty's Courts' Service staff move cases between courtrooms, so that prosecuting lawyers have to present cases they have not prepared.

8 Nationally, the Crown Prosecution Service is seeking to improve its performance through initiatives such as No Witness, No Justice, which aims to support prosecution witnesses through the courts process, and the Charging Initiative which passes responsibility for determining charges from the police to the Crown Prosecution Service. Also, it is playing a key part in Local Criminal Justice Boards to promote joint working with the other criminal justice agencies. We found good examples of local action by Crown Prosecution Service offices to improve performance at magistrates' court hearings, but generally the Crown Prosecution Service needs to do more to re-organise and modernise its management of magistrates' court casework.

Main Findings

9 Statistics published by the Department for Constitutional Affairs show that in 2004-05 there were 190,466 trials, of which 117,922 (62 per cent) did not go ahead as planned. The defence was responsible for just over half, most frequently because the defendant pleaded guilty on the trial date. In addition 38 per cent (45,366) of the trials that did not go ahead, fell either because the prosecution case was not ready or the Crown Prosecution Service dropped the charges on the day of the trial. The Crown Prosecution Service was responsible directly for just under 17 per cent of the 117,922 trials which did not go ahead.

10 In addition, there were over 2.8 million other hearings in magistrates' courts relating to Crown Prosecution Service cases.⁵ These hearings are where the defendant pleads guilty (uncontested cases), or preliminary hearings that precede a trial. There are no statistics on the number of ineffective hearings. We therefore conducted a statistical exercise which showed that 28 per cent (784,000) of all hearings were ineffective and that they can occur at any stage. For example, 24 per cent of first hearings and 33 per cent of committal hearings were ineffective. As with trials, the defence (specifically the failure of the defendant to attend court) was the most frequent cause of ineffective hearings (at least 61 per cent); but the prosecution⁶ was responsible for at least 21 per cent, and caused more delays at committal hearings than the defence. This means that, in addition to the 45,366 trials, we can have 95 per cent confidence that annually between 150,000 and 180,000 ineffective hearings are due to the prosecution.

² Throughout the report 'the prosecution' refers to the Crown Prosecution Service and the police, if not otherwise specified.

³ Ineffective hearings are those that do not proceed on the scheduled day and are adjourned to a later date.

⁴ Cracked trials are concluded on the day without the case being heard for example because the defendant pleads guilty or the prosecution offers no evidence.

⁵ National Audit Office analysis of Crown Prosecution Service management information.

⁶ The Crown Prosecution Service and the police.

Common reasons for the prosecution problems	Example
Insufficient evidence (44 per cent), for example CCTV footage, a medical report or forensic evidence was not available	A defendant was charged with assaulting an adult and child in October 2004. Despite repeated requests from the Crown Prosecution Service, the police delivered the forensic evidence (a comparison of blood on the defendant's clothes with that of the victim), only on the day of the trial in April 2005, which showed that the blood did not match. The prosecution witness was also considered unreliable.
The Crown Prosecution Service had failed to make a legal decision or to take action (32 per cent), such as to amend the charges or to discontinue the case	The police had lost contact with the complainant, but the Crown Prosecution Service allowed the case to continue for another three months until the trial date, when the case was finally dismissed after ten hearings.
Material had not been disclosed to the defence in time for the hearing (10 per cent)	The prosecution had not disclosed to the defence the schedule of unused material in a driving without due care case, despite three letters of request from the defence solicitor.
Poor administration (10 per cent) where files or correspondence had been mislaid	A Crown Prosecutor took a file to court for the wrong hearing date and then took it home. When the case was actually scheduled for hearing it was unavailable, resulting in an unnecessary adjournment.

Source: National Audit Office analysis

11 To understand the reasons for prosecution problems, we carried out court observation and file review for 1,300 hearings including a sample of cases where the outcome had been unsuccessful. From this we obtained information on 622 ineffective hearings. We found that 26 per cent of these failed hearings were attributable to the prosecution (a higher proportion than the 21 per cent recorded in the statistical exercise referred to in paragraph ten above). Of the failed hearings caused by the prosecution; 43 per cent were caused by the Crown Prosecution Service, 43 per cent by the police; and the remaining 14 per cent were due to both organisations. The table above shows the most common reasons for prosecution problems.

12 Each prosecutor has to deal with a large volume of cases, many of which may be received just prior to presenting the case at court, for example, because defendants were taken into custody overnight. Even when there is sufficient time to prepare cases, courts staff may move cases between courts with the result that the prosecutor has to present new, unseen cases. Against this background, we found that further avoidable problems within the Crown Prosecution Service arose for the following reasons:

- **a lack of ownership of cases:** there is a lack of continuity in presenting cases. We found that in a sample of 234 cases with more than one hearing, 54 per cent had been presented by a different

advocate at each hearing, and only 15 per cent of cases had been presented by the same prosecutor throughout;

- **a lack of preparation before hearings:** lawyers receive the files less than 24 hours before hearings and may not have time to prepare fully for the hearing if they are already in court. The problem is exacerbated when court staff move cases between courts during the day to use spare capacity elsewhere so that cases are given to other lawyers at the last minute;
- **inadequate prioritisation of cases which require urgent action:** urgent cases, for example, those given a short adjournment are not prioritised sufficiently. As a result, the necessary action may not be taken in time for the next hearing;
- **poor case tracking results in files being mislaid:** details of location may not be updated on the file information system, a lawyer may have taken a file home, or it may have been misfiled; and
- **incomplete evidence is on the file:** in 35 per cent of ineffective hearings caused by the prosecution, delays had arisen because the police had not provided the Crown Prosecution Service with the evidence. The Crown Prosecution Service cannot direct the police to follow up a line of investigation or to collect evidence.

13 We calculate that ineffective hearings cost the taxpayer £173 million, of which just under £24 million is due to failings in preparation, and delays in decision making, by the Crown Prosecution Service, taking into account both the costs of the criminal justice agencies in bringing the prosecution, and increased criminal legal aid payments to defence solicitors. If the Crown Prosecution Service were to reduce the number of ineffective hearings and cracked and ineffective trials for which it is responsible, this would release savings of around £2.4 million for every ten per cent by which these hearings were reduced.

14 Some Crown Prosecution Service areas are trying to address these problems. For example, the Cardiff office is re-organising its teams so that lawyers assigned to discrete police divisions jointly monitor and present cases in specified court rooms. This increases continuity of presentation, reduces delays in decision-making and assists with file-tracking. There would be merit in developing this approach elsewhere so that:

- administrative staff are located and work closely with lawyers to help monitor and action cases. At present, administrative staff in most of the offices we visited are managed in separate teams carrying out routine clerical support such as filing and post opening, but failing to provide the proactive support lawyers require; and
- administrative staff are trained to carry out more complex administrative tasks such as liaising with the police, defence solicitors and courts, to free up the time of lawyers for review and preparation of cases.

15 The Crown Prosecution Service is making efforts to release lawyer resources by using designated case workers to present more straightforward cases in magistrates' courts. In 2004-05, magistrates' courts scheduled only enough cases to occupy designated case workers for 60 per cent of their time; increasing this to 80 per cent would release the equivalent of 33 lawyers for other work and achieve savings of £2.3 million.⁷ To achieve this will require the co-operation of Her Majesty's Courts Service.

16 More generally, not enough use is made of the information about the use of resources. No reconciliation is made of the funds provided for magistrates' court work with the resources allocated to it. From our interviews with Chief Crown Prosecutors and our observations at the area offices, there appears to be an imbalance in the staffing mix, with fewer lawyers and more administrative staff than needed. Without a system of time recording, however, it is not possible to determine whether resources for magistrates' court work are being diverted to Crown Court cases.

17 The Crown Prosecution Service is seeking to improve case management and tracking of files by the introduction of its electronic case management system, Compass. Further improvements could be made by providing lawyers with the means to record information electronically at court. At present, details recorded manually at court are later transcribed onto Compass by administrative staff. Eliminating this duplication would both speed up the processing of files and save the equivalent of around 60 full-time administrative staff, giving a net saving of £5.5 million over five years.

⁷ Crown Prosecution Service report on Higher Courts Advocates and Designated Case Workers.

18 A number of the improvements necessary to prevent ineffective hearings require the co-operation of the police and the courts. In Greater Manchester, case progression officers have proven to be effective in reducing the number of ineffective trials, but while the Crown Prosecution Service has established successful joint working between itself and the Courts in Trafford, this has not been possible in other areas, such as Manchester City, where the court appointed a case progression officer only recently. Increasing continuity of presentation will also require the co-operation of Her Majesty's Courts Service to list cases from particular police divisions together in designated court rooms.

19 We found examples where local Crown Prosecution Service offices were working successfully with the other criminal justice agencies to resolve problems across their organisational boundaries. For example, Manchester Crown Prosecution Service has persuaded Her Majesty's Courts Service to arrange for District Judges to conduct pre-trial reviews. For its part the Crown Prosecution Service has enabled its lawyers to spend more time preparing for committal hearings, and thus reduce the number of adjournments requested. Both the Association of Chief Police Officers and the Crown Prosecution Service told us that the Charging Initiative was increasing co-operation between them and reducing the number of non-viable cases going to court. The Crown Prosecution Service, together with the Local Criminal Justice Boards, should take the lead in setting up more of these mutually beneficial arrangements.



RECOMMENDATIONS

20 The Crown Prosecution Service should:

Improve joint working with other criminal justice agencies

- a** Chief Crown Prosecutors should continue to take the lead at a local area level in setting up arrangements with the police and courts to improve the efficiency of prosecution of magistrates' court cases, including:
 - appointing case progression officers;
 - listing contested cases according to the originating police division;
 - brigading cases that can be presented by a designated case worker without the support of a crown prosecutor;
 - extending the use of designated caseworkers; and
 - establishing a Crown Prosecution Service contact point notified to police, courts and defence lawyers for all magistrates' court cases (paragraph 3.20).

Maintain proper oversight of the cases

- b** establish case management teams in each area responsible for reviewing, and presenting, a tranche of cases from a single police division where possible in a discrete magistrates' court (paragraphs 3.4–3.7). The size of the teams should be determined by the size of the police unit with which they are aligned, but typically would be no more than 10–12 lawyers;
- c** assign to the case management teams a designated case worker and administrative staff who would be located and work closely with the lawyers (paragraphs 3.10–3.13);
- d** extend the training programme to all lawyers to equip them for their new role either as casework team managers or members (paragraphs 3.11 and 3.13); and
- e** conduct case work review in all areas to ensure the quality and efficiency of decision making is satisfactory (paragraphs 2.29–2.30).



Make more prosecutor time available for review and preparation

- f** provide training for caseworkers on magistrates' court procedures and their roles and responsibilities in the case management team (paragraphs 3.11 and 3.13);
- g** introduce time recording for legal and administrative staff to establish the current resources engaged on magistrates' court cases (paragraphs 3.16–3.18); and
- h** compare the Crown Prosecution Service's Activity Based Costing model with the actual resources engaged on magistrates' court cases to ensure there is the correct mix of staff (paragraphs 3.16–3.18).

Prioritise cases to ensure that they are ready when they come to court

- i** develop procedures to identify and prioritise urgent and high-risk cases such as those with short adjournment dates or requiring medical evidence, to ensure the evidence is obtained in time for the next hearing (paragraphs 2.27, 2.28, 3.8–3.9).

Remove duplication and release resources

- j** provide Crown Prosecutors with electronic equipment to enable them to update the case management system at court (paragraphs 3.19–3.20).

PART ONE

Introduction



Most criminal prosecutions are dealt with in a magistrates' court

1.1 All criminal prosecutions begin with a magistrates' court hearing. In 2004-05, the Crown Prosecution Service prosecuted about 1.25 million people for criminal offences, ranging from minor offences such as "using abusive language" to the most serious and complex crimes such as murder. Only some eight per cent of cases were transferred for trial to the Crown Court so the vast majority of prosecutions were also decided in the magistrates' courts (**Figure 1**).

1.2 The most common offences tried in magistrates' courts are road traffic offences; other typical cases are disorderly behaviour, drug offences and theft. In 2004-05, 61 per cent of defendants in magistrates' courts pleaded guilty. A further 15 per cent of defendants (mainly in motoring offences) failed to attend court, and the case was proved in their absence. An additional five per cent were found guilty after a trial. This contributed to an overall conviction rate by the Crown Prosecution Service of 81 per cent (**Figure 2 overleaf**).

1 Categories of criminal offence

Summary cases (for example, motoring offences and disorderly behaviour) are the least serious offences and are tried only in magistrates' courts.

Either-way cases (for example, theft and some categories of assault) are more serious cases and may be tried either by magistrates or in the Crown Court. They are committed to the Crown Court if the defendant elects for trial by jury, or if the gravity of the case is likely to warrant a more severe sentence than magistrates' powers allow.

Indictable-only cases (for example, murder, rape and robbery) are the most serious cases and are always sent from magistrates' courts to the Crown Court, which has greater sentencing powers.

Source: National Audit Office

2 Most Crown Prosecution Service cases are conducted in magistrates' courts

Key facts on prosecutions in magistrates' courts in 2004-05

- 1,168,000 of the Crown Prosecution's cases were conducted in magistrates' courts. (A further 94,000 started in magistrates' courts but were transferred to the Crown Court for trial)
- **81 per cent of magistrates' courts prosecutions resulted in a conviction:**
 - 716,000 defendants (61 per cent) pleaded guilty (of whom 37,000 did not plead guilty until the day of the trial)
 - 170,000 defendants (15 per cent) failed to attend court and the case was proved in their absence
 - 58,000 defendants (5 per cent) were found guilty after a trial
- **19 per cent of magistrates' courts prosecutions did not result in a conviction:**
 - 146,000 cases (13 per cent) were discontinued by the Crown Prosecution Service
 - 53,000 cases (4 per cent) could not be completed because the defendant absconded
 - 22,000 cases (2 per cent) were acquitted by magistrates on the trial date
 - 3,000 cases (less than 1 per cent) due to be committed to the Crown Court were discharged by magistrates due to insufficient evidence

Source: Crown Prosecution Service Annual Report 2004-05 and Magistrates' Courts Business Returns 2004-05

Organisation and role of the Crown Prosecution Service

1.3 The Crown Prosecution Service is the principal prosecuting authority in England and Wales employing some 7,800⁸ people with an annual expenditure of £568 million. It is organised into 42 areas, each headed by a Chief Crown Prosecutor, who is responsible for prosecuting both magistrates' and Crown Court cases. In most areas structure and staffing is split between magistrates' and Crown Court work, with separate management of administrative and legal staff (**Figure 3**). The Chief Crown Prosecutors report to the Director of Public Prosecutions on prosecution and legal issues, and to a Chief Executive on the management of day-to-day business.

1.4 At case level, responsibility for progressing cases is split between legal and administrative staff. The Crown Prosecution Service employs about 2,700 Crown Prosecutors, who are qualified solicitors or barristers. They advise the police on the appropriate charges to bring, are responsible for taking decisions on whether there is sufficient evidence, and present cases at court. The Crown Prosecution Service also supplements its resources by using agents (private sector lawyers) to

present cases in magistrates' courts.⁹ Non-legally qualified staff include 233 designated caseworkers who prepare and present non-contentious cases in magistrates' courts (mainly motoring offences) and who cover nine per cent of magistrates' courts sessions¹⁰; and some 4,800 caseworkers and administrative staff¹¹ who prepare files for court, liaise with the police and others, and maintain the Compass¹² case management system.

Contested cases involve a number of hearings

1.5 The process of prosecuting cases can be long and complicated, and may involve a number of hearings. Defendants who plead not guilty will appear first at an "early administrative hearing", where they will enter their plea. Subsequently they will attend a trial, once both the prosecution and defence have been given time to prepare their case. In addition, a pre-trial review may be set to deal with specific issues ahead of the trial; and a sentencing hearing may be necessary where a defendant has pleaded guilty or has been convicted at a trial but magistrates need additional information, such as a probation report, before passing sentence (**Figure 4**).

8 Crown Prosecution Service annual report and accounts for 2004-05.

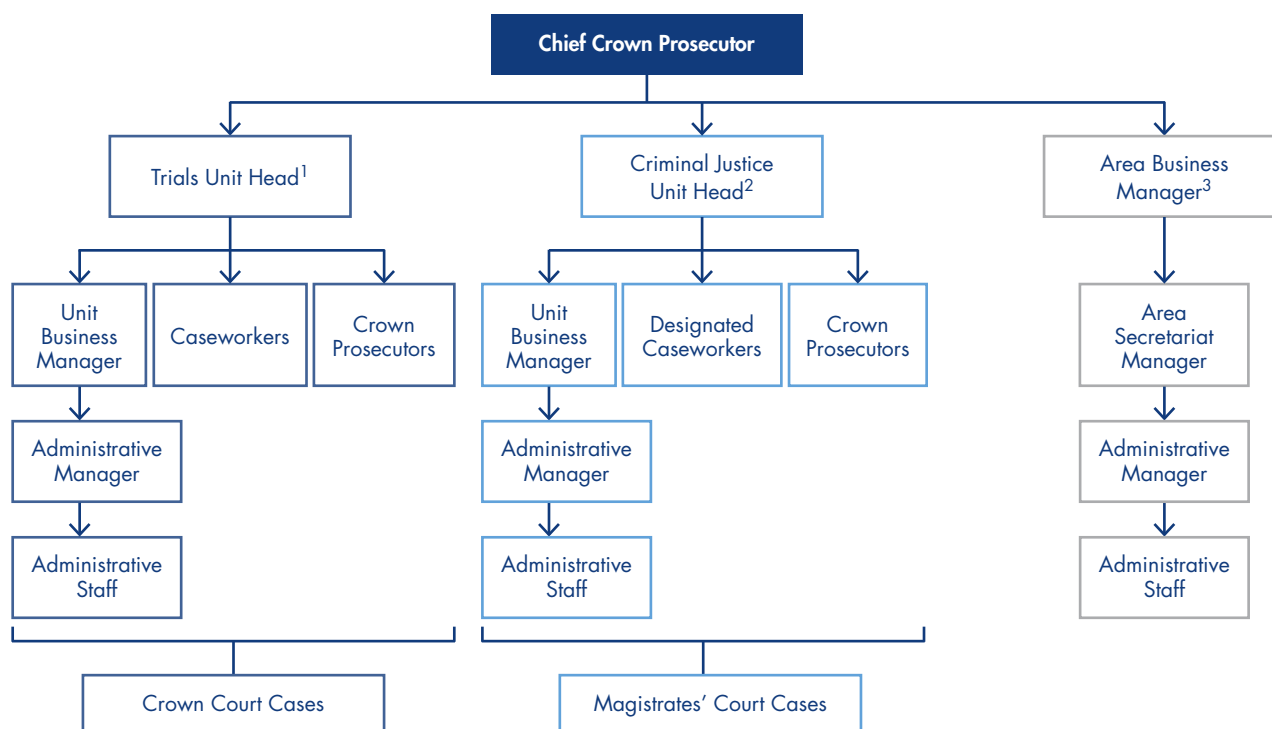
9 The Crown Prosecution Service does not record the number of full-time equivalent agents employed annually.

10 January – March 2005 (Crown Prosecution Service Resources and Performance Report).

11 Crown Prosecution Service annual report and accounts for 2004-05.

12 Compass is a national case management information system designed to track and assist the management of cases handled by the Crown Prosecution Service.

3 The Crown Prosecution Service's organisation at local level is usually split between magistrates' and Crown Court work



Source: National Audit Office

NOTES

- 1 Trials Units deal with Crown Court cases.
- 2 Criminal Justice Units deal with magistrates' courts cases.
- 3 Area Business Managers provide business management support to Chief Crown Prosecutors.

4 Types of magistrates' court hearings

Early First Hearing

The preliminary court hearing for all cases where the defendant is expected to plead guilty (because, for example, they have made admissions in their police interview). The Crown Prosecution Service prepares only brief information on the offence.

Early Administrative Hearing

The preliminary court hearing for all cases where the defendant is likely to enter a not guilty plea. Issues, such as legal aid and advance information, can be dealt with at the earliest opportunity after a person has been charged to expedite progress of the case.

Pre-trial Review

This may be conducted in advance of a trial. The aim is to anticipate problems that might prevent the trial going ahead and to ensure everything is in place for the trial date.

Source: National Audit Office

Trial

At the trial, the evidence for the charges is presented in court and the case is decided by the magistrates.

Committal Hearing

A short hearing is held at which the case is transferred to the Crown Court. This arises where the charges are sufficiently serious to be outside the scope of the magistrates' courts, or where the defendant elects for trial by jury.

Sentencing Hearing

A separate sentencing hearing takes place where there is insufficient information, such as a probation report, on the defendant to enable a decision to be made at the trial.

Successful prosecution depends on the Crown Prosecution Service working well with the police and the courts

1.6 The police, the Crown Prosecution Service and the courts are all independent of each other, but close co-operation between them is essential to the successful prosecution of offenders. **Figure 5** shows the main parties in the process of bringing offenders to justice, and their respective roles. These may be summarised as follows:

- **The police** are primarily responsible for investigating offences, interviewing witnesses, arresting suspects, bringing charges, collecting evidence and attending court as witnesses;
- **The Crown Prosecution Service** reviews the cases submitted by the police for prosecution. Before proceeding with a case, Crown Prosecutors must be satisfied that there is enough evidence to provide a realistic prospect of conviction against the defendant and that such a prosecution is in the public interest;

5

The Crown Prosecution Service works with a variety of stakeholders in progressing magistrates' court hearings from charge decision to trial



Crown Prosecution Service:

- Decides the correct charge and advises the police on the evidence required
- Provides information to the defence solicitor or defendant in the form of disclosure material
- Represents prosecution at court and reviews cases as they progress from first hearing to trial

Police:

- Arrests and interviews the suspect and any witnesses
- Provides the Crown Prosecution Service with detailed information about the defendant and the case against them
- Monitors bail conditions and arrests the defendant if they break a condition or fail to attend a magistrates' court hearing

Her Majesty's Courts Service:

- Administers flow of work through the magistrates' courts

Defence Lawyer:

- Makes representations to the magistrates' court on behalf of the defendant (dependent upon a plea of guilty or not guilty) on the basis of information supplied by the defendant, Crown Prosecution Service, Her Majesty's Prison Service and/or National Probation Service

National Probation Service:

- Verifies information about the defendant and prepares sentencing reports

Witnesses:

- Both civilian and police witnesses attend the magistrates' court to give evidence at the trial

Magistrates:

- The three lay magistrates, or a single professional District Judge, in a magistrates' court hearing decide the outcome of a case and pass sentence accordingly

Defendant:

- The defendant's primary responsibility is to attend the magistrates' court on the date and at the time set for them

Witness Care Unit:

- The Crown Prosecution Service and the police work together to manage the needs and care of victims and witnesses from the charging of a defendant to the conclusion of a case

Her Majesty's Prison Service and the National Offender Management Service:

- Arrange for the transport of prisoners to the magistrates' court or arrange for a video link jointly with the courts

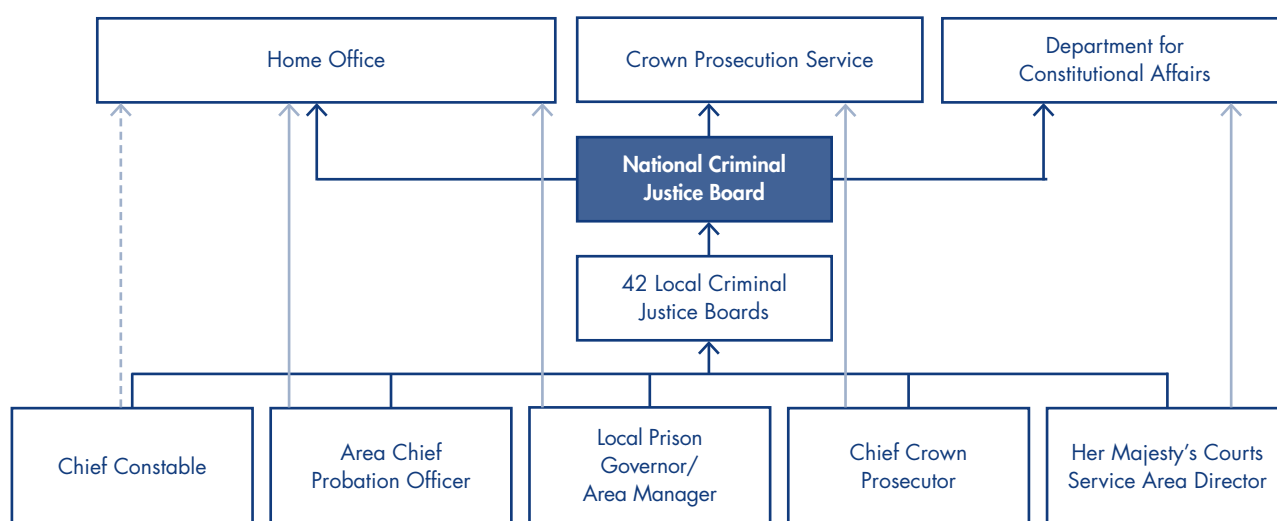
Source: National Audit Office

- **Her Majesty's Courts Service**¹³ provides facilities and support to magistrates and District Judges and is independent of both the police and the Crown Prosecution Service. Its focus is on managing cases to identify early guilty pleas and to ensure trials are properly prepared; to maximise use of courtroom availability and to manage magistrates' workloads;
- **Defence lawyers** advise the defendant and, in the event of a not guilty plea, prepare the defence case by evaluating all the prosecution evidence against the defendant. They will also ascertain if there are any witnesses that can support the defence case in court.

The Government's criminal justice strategy aims to improve joint working between the criminal justice agencies

1.7 Figure 6 shows the lines of accountability for the main bodies in the criminal justice system. The Government has recognised the need for closer co-operation between the criminal justice agencies to ensure there is no conflict of interest between the respective parties in carrying out their responsibilities, and to secure improvements in the delivery of justice. To this end, 42 Local Criminal Justice Boards were established in April 2003 to improve joint working between the criminal justice agencies and to focus on delivery of joint Criminal Justice Systems targets. The Local Criminal Justice Boards agree delivery plans with the National Criminal Justice Board, to whom they are accountable, and are held responsible for achieving targets set by Ministers. These include increasing the number of offences brought to justice each year and reducing the number of ineffective trials (i.e. those unable to proceed on the day they were scheduled, and re-listed for another day).

6 Accountability of main bodies in the criminal justice system



→ Departmental lines of accountability

--> Local accountability with oversight by the department

→ New lines of accountability through Criminal Justice Boards

Source: National Audit Office

13 Her Majesty's Courts Service is an agency of the Department for Constitutional Affairs.

1.8 In July 2004, the criminal justice departments published their Strategic Plan for Criminal Justice¹⁴ which includes the Criminal Case Management Programme, the main aims of which are to:

- increase the number of offences brought to justice;
- reduce the number of hearings;
- increase the number of early guilty pleas;
- reduce the number of cracked¹⁵ and ineffective trials; and
- reduce defendants' failure to attend, and increase attendance by witnesses.

They aim to achieve these objectives primarily through three initiatives:

"The Charging Initiative" which passes responsibility for deciding which charges to bring, in all but the most straightforward cases, from the police to the Crown Prosecution Service;

"No Witness, No Justice" which introduces joint police and Crown Prosecution Service witness care units to improve communication with, and support for, prosecution witnesses; and

"The Effective Trial Management Programme" which imposes greater court oversight of all parties, with the aim of increasing the proportion of trials, which proceed as planned on the set date.

The Crown Prosecution Service is in the process of implementing the Government's criminal justice strategy

1.9 The Crown Prosecution Service has played a key part in establishing and implementing these initiatives. Chief Crown Prosecutors have been appointed as the Chair of the Local Criminal Justice Board in over a quarter of all Areas. In addition, the Service has:

- established the full, 24 hour, seven days a week, charging scheme in 15 priority areas by locating some of its lawyers at police stations to provide face to face advice between 9 to 5, and for the remaining time the Service has set up a telephone service "CPS Direct" to advise the police after hours and at weekends. As a result, they are on hand to make decisions on how to deal with cases: for example, whether to caution the offender or issue a fixed penalty or, if a prosecution is appropriate, which charges to bring.¹⁶ At the end of November 2005, the statutory charging scheme had been implemented in 26 areas. Elsewhere the Crown Prosecution Service has established an "office hours" ('shadow' charging) scheme pending implementation of the full statutory scheme by March 2007;
- set up, in collaboration with the police, 81 witness care units with at least one unit in each of the 42 areas¹⁷ with a view to establishing 165 units across all areas by the end of December 2005; and
- taken part in the Effective Trial Management Programme in six pilot areas, evidence from which indicates that improvements to the management of the trial process reduce the number of ineffective trials. The programme has succeeded in reducing the number of ineffective magistrates courts' trials from 31 per cent in 2002 to just under 25 per cent in 2004-05. The pilot areas established full-time case progression officers to work with counterparts, particularly within the magistrates' courts, to resolve particular problems with cases that are due for trial. Elsewhere, no specific action has been taken, as the areas consider that they have adequate systems in place to manage case progression.

¹⁴ Cutting Crime, Delivering Justice – A Strategic Plan for Criminal Justice, published by the Office for Criminal Justice Reform in July 2004.

¹⁵ Cracked trials are concluded on the day without the case being heard for example because the defendant pleads guilty or the prosecution offers no evidence.

¹⁶ The police will continue to make these decisions in respect of summary only cases such as being drunk and disorderly, and straightforward either way cases, which are unlikely to be contested because, for example, the defendant has admitted guilt when interviewed.

¹⁷ Crown Prosecution Service annual report and accounts for 2004-05.

The study's scope and methodology

1.10 A previous report by the National Audit Office examined the financial impact of the failure of defendants to attend court hearings.¹⁸ In this report we consider whether the prosecution is making effective use of magistrates' courts hearings. In particular, we assess whether the Crown Prosecution Service:

- plans and prepares cases to make effective use of hearings;
- uses court time for the purposes of the hearings listed; and
- is taking action to improve its performance in magistrates' courts.

In part two we focus on aspects of the prosecution's performance that hinder the effectiveness of magistrates' court hearings. These include both the actions of the Crown Prosecution Service and those of other criminal justice agencies, including the police, that may impact on the Crown Prosecution Service's ability to deliver effectively.

In part three we identify changes in working practices by the Crown Prosecution Service that would help to reduce the number of ineffective hearings; and quantify the financial benefits arising from such changes.

1.11 The methods we used to carry out the study are summarised in **Figure 7** and described in more detail in Appendix 1. A glossary of terms is at Appendix 2.

7 Study methods

- Observed 553 cases at magistrates' courts and reviewed case files relating to 1,376 hearings
- Conducted a data collection exercise of all cases heard in one week in magistrates' courts in six areas (6,743 cases)
- Analysed the Crown Prosecution Service's national statistics, performance information and activity based costing data
- Interviewed magistrates' courts staff, police officers and members of police civilian staff
- Held focus groups of magistrates and their legal advisers
- Interviewed staff in nine of the 42 Crown Prosecution Service areas
- Conducted a survey of all Chief Constables

Source: National Audit Office

¹⁸ *Facing Justice: Tackling defendants' non-attendance at court* (HC 1162 Session 2003-04). Following this report the Committee of Public Accounts made a number of recommendations to tighten management of defendants while on bail and to clarify communications. The Department for Constitutional Affairs, Office for Criminal Justice Reform, Crown Prosecution Service and the police have taken steps to implement many of the Committee's recommendations and to develop existing initiatives with some success. Since our report, the number of ineffective trials caused by defendants failing to attend court has dropped in magistrates' courts from 4.8 per cent to 2.8 per cent and in Crown Courts from 3.1 per cent to 2.3 per cent.

PART TWO

Problems in the prosecution process result in unnecessary court hearings



62 per cent of magistrates' courts trials in 2004-05 did not go ahead as planned

2.1 The Department for Constitutional Affairs publishes annual statistics on the number of trials in magistrates' courts that do not proceed on the day they were scheduled. These include trials where lawyers (prosecution or defence) request an adjournment: "ineffective trials", and those where on the trial date the defendant decides to plead guilty, or the prosecution offers no evidence: "cracked trials". Appendix 3 summarises performance in respect of cracked and ineffective trials for each of the 42 areas. In 2004-05, only 72,544 (38 per cent) out of a total of 190,466 trials went ahead as planned. Of the trials that did not proceed, 38 per cent were due to the prosecution (that is the police, the Crown Prosecution Service or the prosecution witnesses): in just under one in 11 trials (16,546), the prosecution was not ready, and in a further 15 per cent of cases (28,820), it dropped the charges on the day of the trial (**Figure 8 overleaf**).

2.2 **Figure 9 overleaf** shows that, of the 45,366 trials that did not proceed for reasons attributable to the prosecution, just under half (48 per cent) were due to the failure of the prosecution witness to attend court. A failure to obtain sufficient evidence for the case to proceed accounted for 34 per cent.

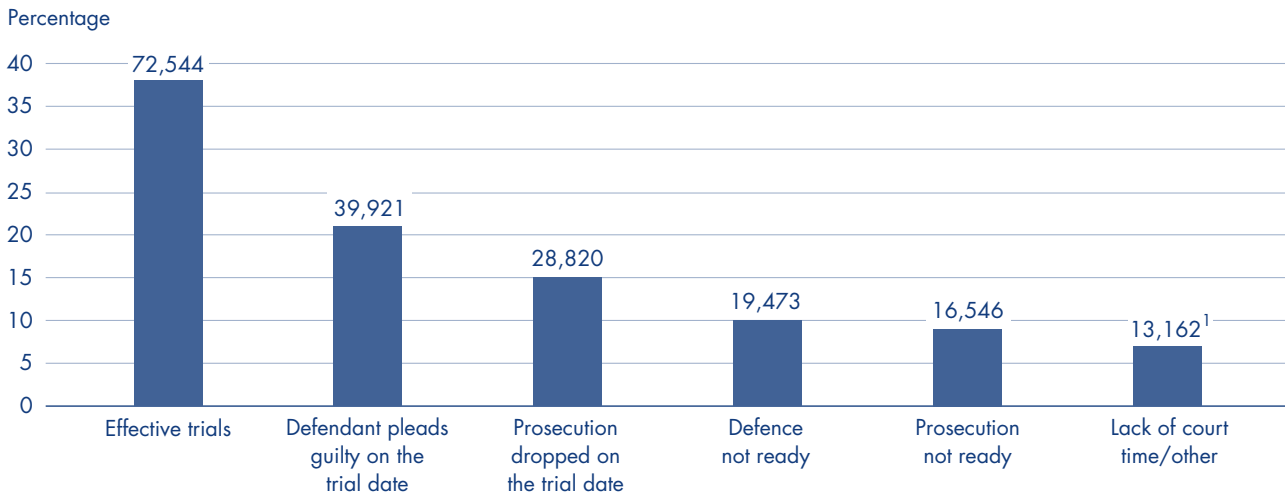
28 per cent of magistrates' court hearings, other than trials, are ineffective

2.3 In addition to the 190,466 trials in 2004-05, there were over 2.8 million other hearings in magistrates' courts relating to Crown Prosecution Service cases.¹⁹ This is because in the majority of cases the defendant pleads guilty, and therefore no trial is necessary, although an additional "sentencing hearing" may be required if insufficient information is available at the first hearing (Figure 4). For contested cases, there are at least two hearings: the first where the defendant enters his plea, followed by the trial itself. In addition, except for summary motoring offences, there is a pre-trial review to ensure all necessary evidence will be ready for the trial. In practice, cases that go to trial often have more than three hearings.

2.4 Whereas statistics are published on the number of trials that are ineffective, no such figures are available for the 2.8 million non-trial hearings. In order to ascertain their number, therefore, we collected data, with the assistance of Her Majesty's Courts Service, on 566 half-day court sessions in six Crown Prosecution Service areas for one week, 6,743 hearings in all. In four per cent of cases, no outcome was noted but of those hearings where the outcome was recorded, 28 per cent (1,818) were ineffective.

¹⁹ National Audit Office analysis of Crown Prosecution Service management information.

8 62 per cent of magistrates' courts trials in 2004-05 were 'ineffective' or 'cracked'

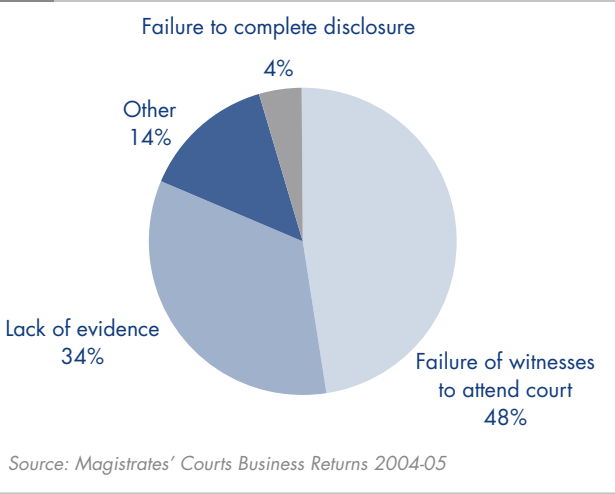


Source: National Audit Office analysis of Magistrates' Courts Business Returns 2004-05

NOTE

¹ There were 11,211 ineffective trials and 1,951 cracked trials caused by lack of court time or other reasons.

9 Failure of the prosecution witness to attend and lack of evidence are the main reasons for the prosecution requesting adjournments or dropping charges on the day of the trial



Source: Magistrates' Courts Business Returns 2004-05

2.5 For these cases, we asked Her Majesty's Courts Service to record additionally the reason for the hearing being postponed or the case finishing. In six per cent of cases, no reason was recorded but of the remainder, a high proportion, some 61 per cent of hearings, were due to problems with the defence, mainly where the defendant needed time to obtain legal advice or failed to attend court; 21 per cent of failed hearings were attributable to the prosecution²⁰; and 17 per cent were due to other parties, such as the National Probation Service or Her Majesty's Courts Service. In one per cent of cases the failure of the hearing was attributed to more than one party.

2.6 These findings indicate that approximately 784,000 magistrates' courts hearings were not effective, of which we estimate that 478,240 were caused by the defence. Statistically, we can have 95 per cent confidence that between 150,000 and 180,000 were due to the prosecution (the Crown Prosecution Service and the police) (Figure 10). This is in addition to the 117,922 trials that were "ineffective" or "cracked", of which 45,366 were attributable to the prosecution (paragraph 2.1).

²⁰ The Crown Prosecution Service and the police.

10 Over 750,000 of magistrates' court hearings are estimated to be ineffective

	Sample (6,743 hearings) %	Extrapolated to 2.8 million hearings
Total number of ineffective magistrates' courts hearings of which:	28	784,000
■ Ineffective for a defence reason	61	478,240
■ Ineffective for a prosecution reason	21	164,640
■ Ineffective for a court/probation/other reason	17	133,280
■ Ineffective for more than one reason	1	7,840
	100	784,000

Source: National Audit Office data

2.7 The data collected by Her Majesty's Courts Service showed further that such hearings were a problem at each stage of the court process, with 24 per cent at first hearings and 33 per cent of committal hearings ineffective (**Figure 11 overleaf**). The defence is more often responsible for delays than the prosecution, particularly in the early stages, but the prosecution causes nearly as many delays to pre-trial reviews as the defence, and the prosecution causes more delays at committal hearings (**Figure 12 overleaf**). Both these types of hearings are at stages in the court process where the prosecution²¹ must ensure that it has all the evidence needed and has complied with disclosure requirements, before proceeding to trial.

Prosecution delays arise for a variety of reasons

2.8 In order to corroborate this evidence, and to gain a greater understanding of the reasons for prosecution delays, we observed at court, and reviewed the case files of a sample of hearings across six Crown Prosecution Service areas. In a further two areas, we conducted a file review of cases that had ended unsuccessfully for the prosecution. In all, we obtained information on 1,248 hearings (excluding trials), of which 623 were not effective. Of these ineffective hearings, 164 hearings (26 per cent) were attributable to the prosecution.²¹ From our review we identified that 43 per cent of prosecution delays were due to the Crown Prosecution Service, 43 per cent to the police and the remaining 14 per cent to problems caused by both organisations.

2.9 The most common causes of delays by the prosecution²¹ are given below, together with examples in **Figure 13 overleaf**:

- **insufficient evidence** (44 per cent): the Crown Prosecution Service did not have the evidence it needed to proceed with a hearing; for example, CCTV footage, medical reports or forensic material had not been collected;
- **failure to take action** (including legal decisions) (32 per cent): for example, whether to amend the charges or to discontinue the case;
- **failure to disclose material** (ten per cent) in time for the next hearing²². Typically this included advance disclosure at the beginning of cases and specific types of evidence such as records of taped interviews with the defendant and witness statements; and
- **poor administration** (ten per cent): files or correspondence had been mislaid, or sent to an incorrect address, or in relation to the wrong case.

²¹ The Crown Prosecution Service and the police.

²² The Crown Prosecution Service is required to give details of the prosecution evidence to all defendants charged with either-way offences. This is known as advance information and may help a defendant to decide whether or not to ask for the case to be committed to the Crown Court. The Crown Prosecution Service must also disclose to the defence, schedules of, and access to, any other material that may undermine the prosecution case.

11 Ineffective hearings occur at each stage of the judicial process

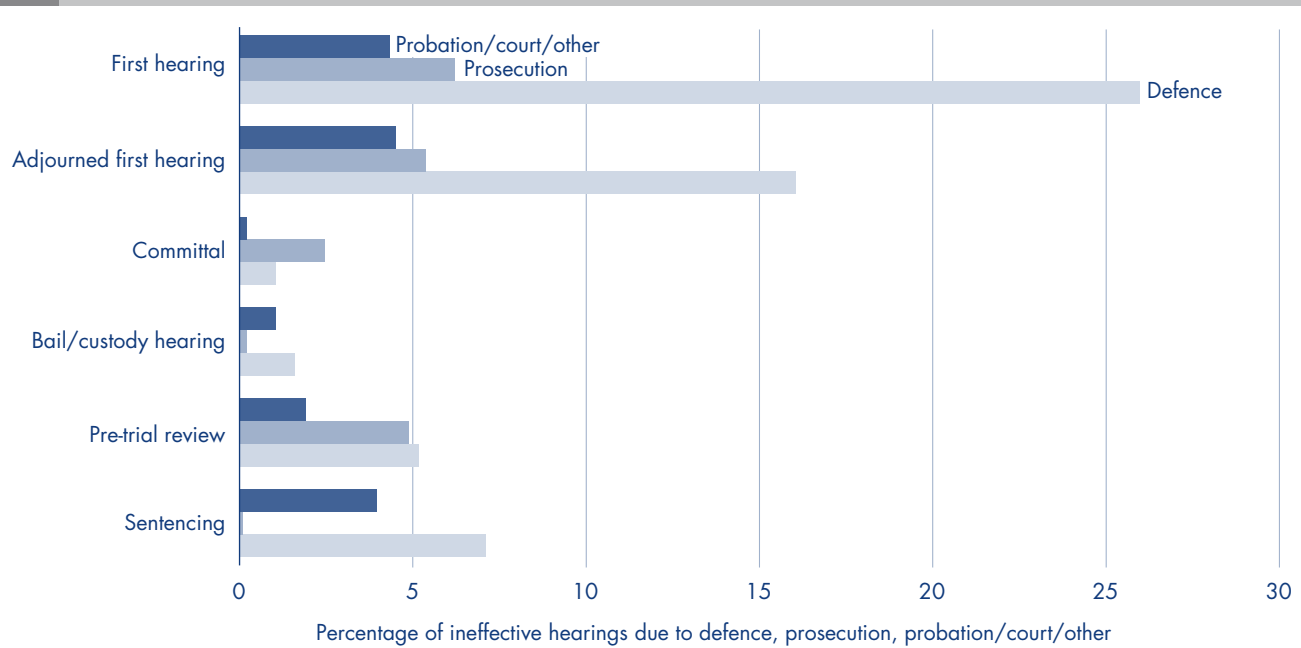
	First hearing %	Adjourned first hearing %	Committal %	Pre-trial review %	Bail/custody hearings ¹ %	Sentence %	All hearings %
Did not progress	24	32	33	26	34	23	27 ²
Progressed	26	34	18	61	7	44	30
Concluded	48	32	48	7	57	32	39
Outcome not recorded clearly	2	2	1	6	2	1	4

Source: National Audit Office data

NOTE

- 1 Magistrates' courts may remand defendants in custody for a maximum of four weeks. If the case is not due back in court within that period a further hearing must be held to renew the remand, although the case will not progress.
- 2 This equates to 28% of all hearings where the outcome was recorded as stated in paragraph 2.4.

12 The defence causes most delays overall but prosecution delays are a significant factor in the later stages of cases



Source: National Audit Office data

13 Mistakes by the police, the Crown Prosecution Service or both may lead to ineffective hearings or the dropping of cases

Insufficient evidence

- The defendant was charged with throwing a missile at a football match. In its statement, the police said the incident was recorded on CCTV footage but the tape could not be found. Without this there was insufficient evidence so the case was discontinued. It took a year for the police and the Crown Prosecution Service to ascertain that there was no tape.

Failure to make a decision or take action to discontinue a case

- The Crown Prosecution Service failed to establish that the police had lost contact with the complainant and allowed the case to continue for another three months until the trial date, when the case was finally dismissed after ten hearings.

Failure to disclose evidence to the defence

- The prosecution failed to disclose to the defence the schedule of unused material in a driving without due care case, despite three letters of request from the defence solicitor.

Poor administration

- The Crown Prosecutor took a file to court for the wrong hearing date and then took it home. When the case was actually scheduled for hearing it was unavailable, resulting in an unnecessary adjournment.

Source: National Audit Office file review

2.10 In order to identify why these problems occurred, we interviewed and work shadowed Crown Prosecution Service staff in the nine areas we visited. Appendix 4 shows the current processes for managing magistrates' court cases. Individual prosecutors have to deal with a large number of cases, many of which they may receive just before the hearing either because defendants were taken into custody overnight or because courts have moved cases between court rooms with the result that prosecutors do not present the cases they have prepared (**Figure 14 on pages 22 and 23**). We found that where problems occurred it was due usually to one of the following factors:

- lack of ownership and oversight of the case;
- lack of preparation by the presenting lawyer before the hearing;

- failure to progress cases where urgent action was required;
- poor case tracking; and
- incomplete evidence on file.

Problems occur when there is no effective ownership of a case

2.11 Continuity of advocacy leads to greater familiarity with cases, in particular the actions required in readiness for a hearing. We therefore examined the Crown Prosecution Service's processes for allocating cases to lawyers, especially in relation to contested cases where several hearings may be expected before the case is concluded.

2.12 On receipt from the police, case files are split into "guilty" and "not guilty" pleas. Those where a "not guilty" plea has been entered are assigned by the Criminal Justice Head of Unit to an "allocated" lawyer, who is responsible for that case. His role is to advise the police on any further evidence that needs to be gathered and to take any legal decisions on, for example, whether to change or to drop a charge. The Criminal Justice Head of Unit also draws up a rota for the following week, allocating prosecutors to court sessions.

2.13 In order to assess how well the process worked in practice, we reviewed a sample of 234 cases where there had been more than one hearing. We found that in 126 cases (54 per cent) there had been a different advocate at each hearing, and only 35 cases (15 per cent) had been allocated to the same presenting prosecutor throughout all hearings. **Figure 15 on page 24** gives the average number of advocates for the cases we examined. This situation occurs as the courts' procedures for listing cases in a court room do not take any account of continuity of advocacy but seek to maximise use of courtrooms and magistrates' time.

"Problems occur when the Crown Prosecution lawyer is not dealing with their own file and prohibited from making active decisions. This often results in the case having to be adjourned for the reviewing lawyer to look at the file."

Source: National Audit Office focus group of magistrates and legal advisers

14 A day in the life of a prosecutor



Source: National Audit Office

- 09:00** **Arrived at Court** and went to the small Crown Prosecution Service room that I share with four other prosecutors. Sorted through the files for the 20 cases that I am dealing with today. They're all first hearings, so I hand out copies of the key witness statements to the defence lawyers and discuss with them whether their clients will be contesting the cases.
- 09:30** **Into Court** – went through my cases with the court clerk to check I had files for all the cases on the list. Nipped next door to another courtroom to ask a colleague for a file for a case which the Court has now decided should be heard in my courtroom. I have one file still missing so the court clerk photocopies the charge sheet from the court file for me. I phone the police to get them to fax through the rest of the paperwork.
- 10:00–12:00** **Court session** – I explain each case to the magistrates. If the defendant pleads guilty I make representations on appropriate sentence. In cases where the defendant pleads not guilty I explain to the Court what the Crown Prosecution Service view is on whether the case should be tried in the Crown Court, whether the defendant should be granted bail and when we will be ready for a trial.
- As each case is heard, I note the result on the file and any action that needs to be done before the next hearing.
- Three new cases turn up at court during the morning of people who were arrested last night. The police bring the files directly to court. I get a few minutes to read the police summary of the cases while the magistrates retire to make a decision about sentence in another case.
- 13:00–14:00** **Magistrates break for lunch** and I grab a sandwich at a local café and have another look at this afternoon's files.
- 14:00–16:00** **Court session again** – I have nearly finished all my cases by 15.00, but the courtroom next door is struggling so they transfer five cases into my court room. The magistrates go and have a cup of coffee for 10 minutes while I look through the files. After ten minutes, it's on with the session as before and we finish at 16.15.
- 16:15–16:45** **Drive back** to Crown Prosecution Service office.
- 16:45–17:10** Before I can start preparing tomorrow's cases I finish actioning today's including checking a legal point. I pass the files to the administrative staff to do the other actions such as asking the police for the full evidence.
- 17:10–17:55** **Preparing for Court tomorrow** – first, I check with the most recent hearing list (faxed through from the Court this afternoon) that I have files for all the cases on the list. The Court have added another couple of cases today and the administrative staff are still trying to find the files. The police say they delivered them by hand yesterday but they can't be found. I'm the allocated lawyer for about five of tomorrow's cases which means that I advised on and/or reviewed the initial charge. I haven't seen the other cases before. I read them all to check for any difficulties. I ask one of the administrative staff to ring the police to see if they have details of the compensation claimed by one of the victims that can be faxed over to Court first thing tomorrow.
- 17:55–18:00** I put the 25 files on to my trolley and head home. I'm not in Court the day after tomorrow – charge advice instead.

15 Average number of advocates for a sample of cases with two or more hearings

Number of hearings per case	Average number of advocates per case
Two hearings	1.7
Three hearings	2.5
Four hearings	3.0
Five hearings	3.6
Six hearings	4.4
More than six hearings	5.4

Source: National Audit Office

2.14 In addition, we examined the reasons for delays in actioning cases in time for their scheduled hearing. As paragraph 2.9 illustrated, problems arise where the allocated lawyer has not reviewed a file or reached a decision about, for example, changing the charges. Our court observations, work shadowing and interviews with Crown Prosecution Service staff indicated that in most cases this was due to the unavailability of the allocated lawyer, who was on annual leave, a training course or providing charging advice to the police. In other instances the prosecutor was in court engaged on other cases. In such circumstances, work on allocated cases was not reassigned to someone else to carry out the necessary preparatory work.

2.15 Under the current system, files needing the attention of allocated lawyers are placed on their desks, together with files for their next court hearing. Administrative staff do not identify and retrieve the files that need attention, as they are engaged on clerical tasks, such as inputting data into Compass and linking post to files. In some areas, however, we found examples of more experienced administrative staff using their initiative to progress cases in the absence of lawyers.

2.16 Where there has been inadequate review the consequences can be:

- **requests for adjournments**, as decisions or actions are not taken in time for the hearing. This may lead to dismissal of the case or, more often, to the case being discharged²³ instead of being committed to the Crown Court for trial (**Figure 16**);

- **unnecessary hearings**, as decisions to drop cases are not taken, even though presenting lawyers have noted on file that there was a lack of evidence (**Figure 17**); and
- **difficulties resolving problems between hearings** as the police and defence lawyers are unable to discuss the case with the allocated lawyer, which may lead to further delays.

16 Repeated requests for adjournments may lead to the case being discharged

Case observed at Horseferry Road Magistrates' Court on 6 July 2005

The defendant was originally charged with possessing an article with a blade or sharp point in a public place; destroying or damaging property and motor vehicle interference. At the first hearing the charge of destroying or damaging property was withdrawn and a committal hearing was set for 6 July. Due to the late arrival of the police file from the Criminal Justice Unit, the Crown Prosecutor had insufficient time to review the case, and requested a one-week adjournment. Magistrates agreed, setting the hearing for 13 July on condition that the prosecution would be ready by that date. The Crown Prosecutor noted on the file that committal papers should be prepared in time. However, the file was not checked until 12 July 2005, too late for effective action.

A further adjournment application was refused and the case was discharged on 13 July 2005.

In our follow-up examination of the file on 2 September 2005, we found a note dated 9 August 2005 that the Crown Prosecution Service had authorised the police to re-charge the defendant. However, there was no evidence either on the file or on Compass that an authorisation to re-charge had been sent to the police. The Crown Prosecution Service confirmed that the reviewing lawyer had failed to notify the police.

Source: National Audit Office court observations

17 Failure to make timely decisions may result in unnecessary hearings

A common assault and theft case was witnessed by German tourists on 20 March 2005. The Crown Prosecution Service was told on 20 April 2005 that the German witnesses were not prepared to come back to England to give evidence at the trial, which was set for 10 May 2005. However, the Crown Prosecution Service failed to discontinue the case, resulting in an unnecessary trial at which no prosecution evidence was presented.

Source: National Audit Office file review

²³ If magistrates discharge a case at committal stage, the Crown Prosecution Service can restart the case from the beginning by arranging for the police to charge the defendant again.

Lack of preparation can lead to mistakes in court

2.17 Our file review showed that on average, presenting lawyers received their files less than 24 hours before a hearing, except for trials, where the average was two days. This poses particular problems for lawyers who are unfamiliar with the case, as it is not always easy to grasp from the file, the case history or action required. Also, if they are already presenting cases in court, there is little time for prosecutors to review or action the following day's cases. In practice, we saw a number of prosecutors make strenuous efforts to collect evidence and to contact witnesses while presenting other cases at court but the lack of time available to them to prepare their cases can give rise to mistakes.

2.18 The problem is exacerbated when court staff move cases between courts to use spare capacity elsewhere to ensure that cases are dealt with as quickly as possible. As a result, cases which prosecutors have reviewed and prepared may be replaced with unfamiliar ones. This may lead to the impression that the Crown Prosecutor has not prepared for court as illustrated by the comment below. In reality the prosecutor may not be adequately prepared for the hearing but for reasons outside the Crown Prosecution Service's control. **Figure 18** gives an example of errors which may arise due to a lack of preparation.

"I have the impression that the Crown Prosecution Service advocate is often reading the file as he presents it and that he is not prepared."

Source: National Audit Office focus group of magistrates and legal advisers

18 Insufficient time for preparation can lead to confusion and errors at court

The defendant was charged with:

- 1 interfering with a motor vehicle
- 2 criminal damage to the same motor vehicle
- 3 possession of a class C drug

21 May 2004

The defendant pleaded guilty to charges 2 and 3 (criminal damage and possession of drugs). However, the guilty plea to the criminal damage charge was not recorded on the Crown Prosecution Service file.

4 June 2004

The defendant's solicitors wrote to the Crown Prosecution Service requesting that charge 1 (motor vehicle interference) be dropped, as the defendant had already pleaded guilty to the more serious charge of damaging the vehicle and to the drugs charge.

It was then noted on the Crown Prosecution Service file that the motor vehicle interference charge should be discontinued.

30 June 2004

The Crown Prosecution Service prepared letters to the defence and the court discontinuing the motor vehicle interference charge but not in time for the next hearing to be cancelled.

2 July 2004

At Court the Crown Prosecution Service agent mistakenly asked the Court to discontinue the wrong charge (criminal damage rather than motor vehicle interference), which they did. The prosecutor had misread the file and the problem was exacerbated by the fact that the guilty plea to the criminal damage charge had not been recorded on the file.

Source: National Audit Office file review

There is inadequate prioritisation of cases which require urgent action

2.19 Some cases need to be dealt with urgently, either because they have been adjourned for a short time, or because additional work is required before their next hearing. We found that often these cases were not prioritised. In addition to the delays caused where the allocated lawyer is unavailable to make decisions, other factors may delay the preparation of a case for a hearing:

- **administrative bottlenecks:** after each hearing the case file is brought back from court; administrative staff record on Compass the outcome of the hearing and any further action required; redistribute the file to the lawyer and, where necessary, contact the police to request any action arising from the hearing. In all, this can take up to 48 hours. At one hearing we observed the case had been adjourned the day before to allow the defendant to obtain legal advice. When the case was heard the following day, the Crown Prosecution Service advocate did not have the file as it was still in transit after the previous day's hearing;
- **distribution of post:** the post goes to administrators to be sorted and placed on the appropriate file before it is passed to the allocated lawyer to action. However, there is no system for identifying and prioritising correspondence which requires urgent attention.

Poor case tracking results in files being mislaid

2.20 Some adjournments are requested by the Crown Prosecution Service when they cannot locate the case file in time for the hearing. We found that case files are mislaid for a number of reasons:

- lawyers have not updated the case management system, Compass, to show that they have passed the file to another lawyer or back to the administrative staff for filing. As a result administrative staff cannot locate the file to give to the presenting lawyer;
- even when Compass correctly records the name of the lawyer to whom the file has been passed, it is not always easy to locate: the file may be on the lawyer's desk, at court or at home. In one case the lawyer had

taken the file to court on the wrong day (Friday) and not returned it to the office, so it was unavailable for the correct date (the following Monday);

- in the period immediately after a court hearing, files must be collected from the courtroom, returned to the Crown Prosecution Service office, updated on Compass and then either filed or passed to the appropriate person for review. During this process it can be difficult to find files; and
- if no more work is required on a case before the next hearing it will be stored centrally in drawers under the next hearing date. If it is placed accidentally under the wrong date, it can be located only by manually searching all the drawers.

The majority of prosecution delays are the result of incomplete evidence on file

2.21 Our review of cases shows that most prosecution delays were the result of incomplete evidence on files (paragraph 2.9). The Crown Prosecution Service advises the police on the evidence needed for a hearing but the police are responsible for gathering it, and presenting the file to the Crown Prosecution Service. In so doing they may have to liaise with others, for example, doctors, forensic scientists and providers of CCTV footage, such as shopping centres and local authorities. Full files with all the evidence required to prove the charge are usually prepared only after the first hearing, once it is confirmed that the defendant will contest the charge.²⁴ The type of evidence required will depend on the nature of the offence being tried, but typically a file for a contested case will contain:

- typed copies of all relevant witness statements, including those of any police witnesses and of any medical or scientific experts;
- a record of taped interview with the defendant;
- copies of all relevant evidence such as CCTV tapes and photographs;
- up to date details of witnesses' availability to attend trial; and
- a schedule of all the material collected during the investigation that is not being used as evidence that must be disclosed to the defence.

²⁴ The police provide files for the first hearing which contain a case summary written by the officer responsible for the case, the main witness statement(s), a short descriptive note of the defendant's interview and a record of any previous convictions of the defendant. As a result of statutory charging, in a small number of cases a full file is being prepared before charge.

Problems arise when the police do not provide the Crown Prosecution Service with the evidence they need in time for the hearing

2.22 Ineffective hearings may arise because the Crown Prosecution Service has failed to advise the police of all the evidence needed for a hearing but in 35 per cent of the hearings we examined where there had been police or Crown Prosecution Service errors, delays had arisen because the police had failed to provide one or more items of evidence in time for the hearing (**Figure 19**).

“There seems to be a lack of co-ordination, especially with the police who have their own targets. These two agencies do not seem to be working together.”

Source: National Audit Office focus groups with magistrates and Legal Advisers

2.23 We found that in eight per cent of the unsuccessful cases we reviewed, the case had collapsed because key witnesses had not been advised of the trial date, or had been told the wrong date; or the trial had been set for a date when they could not attend. Once the trial date has been set, the Crown Prosecution Service must inform the police, who in turn advise the witnesses when they will need to attend. Problems arise when the court is given inaccurate information by the police on the dates witnesses are available to attend, or because the Crown Prosecution Service has not passed the trial date to the police, or because the police have not warned the witness. In one case we reviewed, the British Transport Police had failed to record the witnesses’ addresses and contact details when they were first interviewed. This went unnoticed until the day of the trial when the witness did not attend court. The Crown Prosecution Service and the police are seeking to address problems with witness attendance through the No Witness, No Justice project.

2.24 The main causes of delays in police case preparation that we observed were:

- operational difficulties;
- police training; and
- technical difficulties (especially with CCTV footage).

19 The police may not provide the evidence requested by the Crown Prosecution Service in time for the hearing

This case concerned an assault against an adult and child that took place in October 2004. The police charged the defendant in January 2005 and the trial took place in April 2005.

Despite repeated requests from the Crown Prosecution Service, the police took more than six months to get the forensic evidence, which was a comparison of the blood on the defendant’s clothes with the victim’s blood. The police delivered the forensic evidence on the day of the trial, which showed that the blood did not match. In addition, prosecution witnesses were considered unreliable by the magistrates and the case was dismissed.

Source: National Audit Office file review

While most police divisions have a civilian unit that liaises with the Crown Prosecution Service and is responsible for ‘file building’, operational police officers do most of the evidence gathering. For example, operational police officers provide their own statements where they are witnesses, take statements from civilian witnesses, and send evidence for forensic analysis.²⁵ There are barriers to front-line police officers performing these tasks efficiently:

- evidence-gathering may not take priority over other tasks, such as responding to calls from members of the public and investigating unsolved crimes; and
- shift work and intermittent access to telephones make it difficult to liaise with the Crown Prosecution Service and those from whom the police are seeking evidence, such as doctors. Also, secure email between the Crown Prosecution Service and the police exists in most areas but is not always used.

In Newcastle, we found that there was a pilot scheme to provide front line officers with civilian support staff who would carry out some of the evidence gathering tasks. It is too early to assess the benefits of the pilot but it has an obvious advantage in that civilian support staff work similar office hours to the Crown Prosecution Service.

²⁵ This makes it easier to prove that the material tested is the material that was seized by the police.

2.25 We also found that further training may be needed by the police on the amount of evidence required. Our file review showed that in some cases the Crown Prosecution Service had to request further evidence after the police had provided what they considered to be a full evidential file. Examples of further evidence include CCTV footage, mobile phones, and forensic tests, such as blood matches and drug analysis. Prosecutors and police officers told us that the Charging Initiative, whereby Crown Prosecution Service lawyers based in police stations discuss evidence requirements with police officers, is increasing police awareness of the evidence required to prove cases in court.

2.26 In six of the 167 unsuccessful cases we reviewed, the lack of CCTV evidence in the correct format led to the Crown Prosecution Service dropping the case or its dismissal²⁶. Problems arise because the courts, most Crown Prosecution Service offices and the defence solicitors use standard VHS video equipment, whereas most CCTV footage is now on DVD. In order for a case to progress the police have to obtain the evidence, arrange for it to be reformatted and provide copies for the Crown Prosecution Service and the defence. This evidence needs to be available with the full file as it is often conclusive, leading either to early guilty pleas or to early dismissals, thus avoiding the additional costs of a trial.

Medical reports from Accident and Emergency departments are not always provided promptly

2.27 Similarly, the police may experience difficulty in obtaining evidence from other agencies. In ten cases, we found that medical evidence had to be requested after the 'full' file of evidence had been received from the police. Medical reports are not generally required for minor assaults but may be critical in determining the gravity of the charge in more serious assault cases. Providing statements for court proceedings is not part of doctors' National Health Service duties and consequently the police pay doctors a fee for each statement. However, some areas found that the delays occurred with National Health Service administrative staff, who in practice prepared the statement from patients' clinical notes for the doctor to sign. It was not clear whether the administrative staff were paid for this work by doctors from the police fees. 66 per cent of the 35 Chief Constables²⁷ who responded to our survey said that obtaining medical/forensic evidence contributed to delays at magistrates' courts in their areas.

2.28 While some failings in evidence preparation may seem minor, they are responsible solely, or in combination with others, for some cases being delayed and finally dismissed by magistrates after a long period in preparation.

Figure 20 illustrates a series of procedural and evidence-gathering failings that led to one such dismissal.

Monitoring of casework quality is patchy

2.29 The Crown Prosecution Service has a national system of "casework quality assurance". Under current guidance, Unit Heads or team leaders are advised to carry out a monthly review of one file for each of their lawyers and designated caseworkers to ensure professional standards are being maintained. This procedure was introduced in April 2003 but it is not mandatory, as it was considered too burdensome for some areas. We found from our fieldwork that, while some managers are examining files regularly and providing feedback to staff, this does not apply throughout. In Greater Manchester, for example, casework monitoring was suspended for three months, with the agreement of headquarters because of other pressures on staff, including the introduction of the Charging Initiative. Similarly, in one short-staffed London office senior lawyers were engaged on prosecuting cases at court and did not have time to monitor casework. In Cardiff we were told that in practice, casework quality assurance lacks substance, as managers were concerned more with whether a review had been recorded on Compass, than with the quality or outcome of the review.

2.30 Our findings reflect those of the Crown Prosecution Service's Inspectorate who recently reported on the scheme as follows:²⁸

"The Casework Quality Assurance Scheme should be the cornerstone of Crown Prosecution Service casework performance monitoring. It is particularly important, in the wake of the introduction of statutory charging, that the Crown Prosecution Service is able to demonstrate that the quality of decision-making is good, that casework is being handled as efficiently as possible and that, where deficiencies or failures are identified, immediate action is taken to effect improvements. However, the scheme as it currently operates cannot provide this assurance."

²⁶ In one of the six cases the police had additionally failed to warn witnesses to attend court.

²⁷ There are 43 Chief Officers of police in England and Wales.

²⁸ Her Majesty's Crown Prosecution Service Inspectorate "Review of the Crown Prosecution Service Casework Quality Assurance Scheme" August 2005.

20 Failings by different parties in the prosecution process cause cases to collapse

The defendant was charged with:

- 1 having an offensive weapon in a public place
- 2 possessing cannabis
- 3 fraudulently allowing another person to use his vehicle tax disc

15 August 2003

First hearing – adjourned for the defendant to obtain legal advice.

26 August 2003

Defendant fails to attend court

11 February 2005

The defendant is arrested and brought back to court 18 months after he fails to attend. The Crown Prosecution Service cannot find the original file but assembles enough information from the police and the court to create a 'dummy' file. The case is adjourned for the Crown Prosecution Service to update the evidence.

25 February 2005

Charge 3 is withdrawn but a trial date is set for charges 1 and 2 for 6 May 2005.

4 May 2005

The Crown Prosecution Service decides to discontinue charge 2 (possession of cannabis) as the police have failed to carry out the forensic test to ascertain whether the material seized is in fact cannabis. The decision to discontinue the drugs charge is taken only two days before the trial.

6 May 2005

Police officers in the case fail to attend court. No evidence was offered at the trial and the case was dismissed by the magistrates.

Source: National Audit Office file review

PART THREE

Changes in the Crown Prosecution Service's working practices would reduce the number of ineffective hearings and bring financial savings



Failed hearings cost the taxpayer £173 million a year

3.1 In part two, we estimated that there are 784,000 failed hearings each year. Together with the waste caused by ineffective and cracked trials, we calculate that this costs the taxpayer some £173 million a year, taking into account expenditure within the criminal justice agencies in bringing the prosecution, and increased criminal legal aid payments to defence solicitors. While the defence is responsible for over £95 million of this figure, we calculate that some £55 million is attributable to the prosecution. The Crown Prosecution Service accounts for 43 per cent of this (just under £24 million) (**Figure 21 overleaf**). For every ten per cent by which the Crown Prosecution Service were to reduce the number of ineffective hearings there would be savings of around £2.4 million.

3.2 From our court observations, work shadowing of Crown Prosecutors and file review, we established that the five main causes of problems were:

- a lack of oversight and ownership of cases;
- a failure to prioritise cases which required urgent or special action;
- insufficient time for prosecutors to prepare before presenting cases in court;
- poor tracking of case files; and
- incomplete evidence on file.

3.3 In this part of the report we consider how the Crown Prosecution Service might overcome these difficulties by addressing the following:

- allocating cases to discrete teams, rather than to individuals, to oversee and action cases;
- adapting procedures to cope with urgent or more complex cases;
- making more lawyer time available for review and preparation by:
 - improving the training and management of administrative staff;
 - making more use of designated case workers; and
 - assessing the time spent by lawyers on magistrates' court cases;
- using improved technology to remove duplication within existing processes and to improve communications; and
- by improving joint working with the police and the courts.

21 Failed hearings cost the taxpayer £173 million a year

	Ineffective hearings ²⁹	Ineffective hearings cost ³⁰ £ millions	Ineffective trials ³¹	Ineffective trials cost ³² £ millions	Cracked trials ³¹	Cracked trials cost ³³ £ millions	Total cost £ millions
Defence	478,000	41.02	19,473	13.39	39,921	41.41	95.82
Prosecution, of which:	165,000	14.16	16,546	11.38	28,820	29.89	55.42
■ Crown Prosecution Service ³⁴	70,950	6.09	7,115	4.89	12,393	12.85	23.83
■ Police	70,950	6.09	7,115	4.89	12,393	12.85	23.83
■ Crown Prosecution Service/Police	23,100	1.98	2,316	1.59	4,035	4.19	7.76
Court/other	133,000	11.41	11,211	7.71	1,951	2.02	21.14
More than one reason ³⁵	7,800	0.67	–	–	–	–	0.67
Total							173.05

Source: National Audit Office

Cases should be allocated to small discrete teams that can maintain proper oversight of them

3.4 In paragraphs 2.11–2.16, we described the problems that occur when there is no effective ownership of cases. This manifests itself in a lack of continuity of advocacy at court, and limited review of cases by allocated lawyers between hearings. This in turn leads to ineffective hearings and trials, and to cases being dropped. These problems are made worse by the lack of proactive administrative support in the management of cases.

3.5 From our area visits we observed that the organisation and allocation of cases, which varied even within areas, was a significant influence on performance. For example, in the Greater Manchester area, we found a marked difference in performance between the City of Manchester Court, which had an ineffective hearing rate of 35 per cent in our survey and that of the Trafford Court in Sale, which had a rate of nine per cent.

As **Figure 22** shows, there is a sharp contrast in the way in which staff are organised and cases allocated between the two teams, which we believe contributes to the difference in performance. In the City of Manchester Branch there are 50 lawyers split into five teams each of which corresponds to a single police charging centre. Between them they cover 35,000 cases. Because the courts do not schedule each team's cases in a separate court room, each of the 50 lawyers has to present at court any of the 35,000 cases, not just those of his or her own team. In contrast, the Trafford office team of ten lawyers and 11 administrative staff deal with 6,000 cases from one police division, which are heard in five courts. Also Trafford has established successful joint working between the Court's and the Crown Prosecution Service's case progression officers. This has not been possible in Manchester as the Courts did not appoint case progression officers to work with the Crown Prosecution Service until recently. The Trafford office model allows greater continuity in review and presentation, and better working relations with the police and the court.

29 Numbers of ineffective hearings are extrapolated from the data collection exercise carried out by Her Majesty's Courts Service for the National Audit Office (Figure 10) and rounded down. The number of hearings caused by the prosecution is taken as the mid point between 150,000 and 180,000 (see paragraph 2.6).

30 The unit cost of an ineffective hearing is £85.81. See appendix 5 for details of the cost calculation.

31 Magistrates' Courts Business Returns 2004-05.

32 The unit cost of an ineffective trial is £687.79. See appendix 5 for details of the cost calculation.

33 The unit cost of a cracked trial is £1,037.22. See appendix 5 for details of the cost calculation.

34 Numbers determined by apportioning 43 per cent of delays at hearings and trials to the Crown Prosecution Service, 43 per cent to the police and 14 per cent to either, or both, agencies.

35 Magistrates' Courts Business Returns do not attribute ineffective and cracked trials to more than one reason.

22 Crown Prosecution Service units covering larger courts have more ineffective hearings

The City of Manchester Crown Prosecution Service branch prosecutes 35,000 cases each year, around 6,000 of which are live at any one time. The cases emanate from three police divisions and may be heard in any of the 15 courtrooms at the City's Magistrates' Court.

There are 50 lawyers in the branch divided into five teams. Each unit has about ten lawyers and one designated caseworker, who is managed by a lawyer. Cases are allocated to the units but all five teams may present a case originating from any of the three police divisions in any of the 15 courts. There are 41 administrative staff who are located and managed separately from the lawyers. These staff are split into two teams, one for the north of the city supporting three teams of lawyers and two for the south, supporting two teams of lawyers. The courts appointed case progression officers only recently.

The courts schedule first hearings on the basis of the police division where the defendant was charged but other court sessions, such as pre-trial reviews, will include cases from all over the City. Lawyers scheduled to cover that court will therefore have to deal with cases from anywhere in the City, not just those from their unit.

By contrast Sale Crown Prosecution Service Unit (also within the Greater Manchester area) prosecutes 6,000 Crown Prosecution Service cases each year, of which around 1,000 are live at any one time. All the cases originate from Trafford police division and are heard in one of five courts at Trafford Magistrates' Court.

The Unit has one team of ten lawyers and 11 administrative staff, a designated caseworker and a case progression officer.

The Unit head has developed good working relationships with Trafford Magistrates' Court staff and has successfully established joint working between the Court's and the Crown Prosecution Service's case progression officers. The Unit head also meets regularly with the police divisional commander.

Source: National Audit Office

23 The Crown Prosecution Service in South Wales is seeking to gain the organisational advantages of smaller units

The Crown Prosecution Service's Cardiff unit serves three police divisions and on average prosecutes cases in ten magistrates' courtrooms each day. The unit is a multifunctional one, covering Crown Court cases as well as magistrates' courts cases. It is staffed by 30 general lawyers (including four youth specialists), three designated caseworkers and is led by a Criminal Justice Unit head, who is also responsible for the smaller neighbouring team for the Court at Barry. Barry's team, which comprises three lawyers, a designated caseworker, and three supporting administrative staff, is located in the police station near to the Court. It deals with all the cases from Barry police division, all of which are dealt with at Barry Magistrates' Court.

The Criminal Justice Unit head believed that there would be advantages in following the model in Barry to organise case preparation and presentation in Cardiff. He has therefore grouped the lawyers into teams each assigned to the caseload of one of the three Cardiff police divisions. Cardiff Magistrates' Court schedules each police division's cases in separate courtrooms so that each team can present all the cases from their own division.

Within each team the caseload is further split so that two lawyers deal with defendants' surnames beginning with A–K, and others with surnames L–Z. The Crown Prosecution Service issues the names of the lawyers allocated to each half of the alphabet to each police division so that defence lawyers, the courts and the police know immediately whom to contact about a particular case. File-tracking is also easier as only members of one of the teams will be in possession of the papers.

The Chief Crown Prosecutor told us that the creation of the teams has led to the development of a collective sense of responsibility by lawyers in the team not to postpone decision-making at court, as this will only add to their workload at a later date.

Source: National Audit Office analysis

3.6 We found that other areas are seeking to establish more effective ownership by grouping lawyers into small discrete teams who have collective responsibility for reviewing and presenting cases allocated to the team. For example, the Crown Prosecution Service in South Wales is reorganising its team, and allocating its cases in Cardiff to resemble more closely that of its smaller office in Barry (Figure 23). Apart from increasing ownership of cases, this re-organisation is making it easier to keep track of files and to liaise with the police and courts.

3.7 In our view, extending this approach to other Crown Prosecution Service teams would:

- increase collective responsibility for progressing prosecutions promptly and successfully by a small group of people who know each other;
- provide greater continuity in presenting cases; and
- improve communication between the Crown Prosecution Service, courts, police and defence lawyers, which in turn improves efficiency in the prosecution of cases.

Some cases need prioritising to ensure that they are ready when they come to court

3.8 As we identified in paragraph 2.21, failure to gather all the necessary evidence on time is the most frequent reason why the Crown Prosecution Service is not ready to present cases at court. Evidential requirements that cause particular problems are medical reports; typed records of interviews with defendants; CCTV footage and forensic evidence. We found that in most of the areas we visited, the systems for dealing with such cases are the same as for straightforward cases that need no further evidence.

3.9 Problems could be avoided if cases that require evidence that can be difficult to obtain, such as CCTV footage or medical evidence, were prioritised after the first hearing, with a system of monitoring to ensure that the evidence is ready for the next hearing. For example, making a priority of securing and viewing CCTV footage, and liaising with the courts before a hearing to ensure that viewing equipment is available, would reduce the number of dropped cases (where the footage does not provide the anticipated evidence) and ineffective hearings (because of technical problems in viewing the footage). This could potentially prevent waste of over £300,000.³⁶ Better liaison with defence solicitors might also lead to more guilty pleas earlier in the process, if defendants realised that conclusive footage was available.

Making more lawyer time available for review and preparation

Administrative staff need better training and management

3.10 Crown Prosecution Service lawyers do not always have sufficient time to review cases between hearings and to prepare for the presentation of cases (paragraphs 2.17–2.18). We found, however, that many lawyers were taking on administrative duties such as:

- monitoring receipt of evidence from the police, and chasing the police where necessary;
- completing checklists on case progress;
- liaising with defence lawyers and the courts in-between hearings; and

- monitoring time limits for cases where the defendant is remanded in custody.

3.11 Many administrative staff do not currently have the experience or training to carry out these more complex administrative tasks, which require judgement and initiative. They receive little training apart from introductory courses to Compass and basic office software packages. Generally, they are not conversant with the magistrates' courts process: many of those we spoke to had not observed a magistrates' court session. Administrative staff are also managed separately from lawyers and may be organised differently. For example, in City of Manchester the lawyers are split into five teams but the administrative staff are split into two teams, one covering two teams of lawyers and the other three teams. In some offices this can be a significant barrier to the development of close working relationships between legal and non-legal staff.

3.12 Where problems occurred with the quality of administrative work, we found that lawyers took on these tasks themselves to ensure that work was complete, rather than manage or train staff to improve their performance. For example, in the Westminster Crown Prosecution Service area, we were informed that administrative staff had not followed witness warning instructions and therefore lawyers now write and send the memos themselves whilst at court. This further reduces the time that lawyers have to review and prepare cases.

Trained and well-managed administrative staff would make a significant contribution to effective case management

3.13 Northumbria Crown Prosecution Service has established a dedicated team of administrative staff to prepare contested cases for trial in ten courtrooms at Newcastle City magistrates' court. We found that the ineffective hearing rate caused by the prosecution³⁷ in this location was only nine per cent, compared with an average of 21 per cent. Administrative staff, including designated caseworkers, could contribute more, and reduce the workload of lawyers, if they were located with lawyers in the magistrates' court case management teams, as suggested in paragraph 3.7. This would mean developing the model in operation in Cardiff by allocating administrative staff and designated case workers to each team of two lawyers, to undertake the duties outlined

³⁶ This figure is included in the £24 million quoted in paragraph 3.1.

³⁷ The Crown Prosecution Service, the police or both.

in **Figure 24**, under the management and direction of lawyers. Lawyers would require additional management training to take on their new role either as casework team managers or members. This could be provided through the Crown Prosecution Service's management training programme (Transform), which is being rolled out to all staff with management responsibilities. Likewise, administrative staff would require training in the prosecution process and case management tasks.

Making more use of designated case workers would free up lawyer resources

3.14 We found that the Crown Prosecution Service is taking steps to release lawyer resources by using designated caseworkers to present more straightforward cases in magistrates' courts (**Figure 25**). Magistrates in our focus groups were generally very impressed by the standard of advocacy of designated caseworkers:

24 Case management teams would ensure that lawyers perform only those tasks that require their expertise

Lawyers' tasks:

- decide whether the charges are correct; specify the evidence needed to successfully prove the charges in court; and decide whether prosecutions are in the public interest;
- make decisions on whether to oppose bail and on whether cases are suitable for trial in the magistrates' courts;
- review new evidence and decide whether charges should be changed or cases discontinued as a result;
- decide which material should be disclosed to the defence;
- prepare for Crown Court committals by checking the evidence and preparing indictments;³⁸
- present contested cases at court at pre-trial reviews and trials; and
- explain the reasons to victims where cases have concluded unsuccessfully.

Designated caseworkers' tasks:

- present uncontested cases at court and proofs in absence;
- prepare, as necessary, for uncontested cases (such as obtaining details of compensation claims from victims); and
- present contested cases at court at first hearings.

Administrative staff's tasks:

- monitor and chase evidence from the police;
- respond to straightforward correspondence from the defence, such as requests for interview transcripts;
- liaise with the courts (for example to check that the courts have arranged special measures for vulnerable witnesses); and
- complete checklists on case preparation progress, and prepare summaries of case progress for the lawyers attending court.

Source: National Audit Office

25 Many magistrates' courts hearings can be presented by designated caseworkers

Within designated caseworkers' remit

- Proofs in absence in summary cases
- First hearings whether or not the defendant pleads guilty
- Hearings to decide whether the case should be tried in the Crown Court
- Sentence hearings (including youth cases)
- Cases where the defendant seeks to avoid disqualification through additional points on their licence on the grounds of exceptional hardship

Outside designated caseworkers' remit

- Proofs in absence in either-way cases
- Contested bail applications
- Committals
- Pre-trial reviews
- Trials

Source: National Audit Office

38 Legal documents specifying the alleged offences which are required to begin Crown Court proceedings.

“Lay presenters are generally very good, in fact better than the lawyers. Some are better than the defence solicitors. They now have the confidence to ‘get up there and whack it’, although that was not the case at the beginning”

Source: National Audit Office focus group of magistrates and legal advisers

There are, however, barriers to their use. A lawyer must attend the session, if there are any cases listed which are outside a designated caseworker’s remit. To make best use of designated caseworkers, therefore, and to minimise lawyers’ time at court shadowing them, the Crown Prosecution Service requires the co-operation of the court in scheduling en bloc the types of hearings they can cover.

3.15 In 2004-05 magistrates’ courts scheduled only enough cases for designated caseworkers to spend around 60 per cent of their time on case presentation, including preparation. The Crown Prosecution Service has calculated that more cases could be scheduled so that designated caseworkers spend 80 per cent of their time presenting cases.³⁹ This would release the equivalent of 33 lawyers for other work, equivalent to £2.3 million.⁴⁰ To achieve this will require the co-operation of Her Majesty’s Courts Service, which we consider in paragraphs 3.21–3.22.

The Crown Prosecution Service needs to review the time spent by lawyers on magistrates’ court cases

3.16 Some Chief Crown Prosecutors in the areas we visited told us that their current staffing mix was not appropriate to their needs, with too many staff at the lower administrative grades and not enough lawyers. We observed that lawyers had insufficient time to review and prepare cases and that administrative staff appeared under loaded, yet lawyers were carrying out some administrative tasks (see paragraphs 3.10 – 3.12). Similar observations have been made by the Crown Prosecution’s own inspectorate on the areas we visited about the need to deploy staff at several levels effectively and efficiently.⁴¹

3.17 We looked for information on the Crown Prosecution Service’s staffing requirements to determine whether there is an imbalance in the staffing mix. The Crown Prosecution Service’s Activity Based Costing model calculates the resources needed depending on workload and is used to allocate the total budget for staff and private sector lawyers (£447 million⁴²) among the areas. However, it does not determine how the budget is spent in respect of the number and grade of staff and agents, nor how resources are split between magistrates’ and Crown Court work. These decisions are made at area level. This information is not readily available as staff do not record how they spend their time, and there are different organisational structures in each area: some have separate units for magistrates’ and Crown Court cases; others have joint units, whilst yet others have a separate team for uncontested hearings, and group contested magistrates’ court cases with Crown Court cases. In both of the latter cases, staff may work on both magistrates’ and Crown Court cases.

3.18 To ensure that adequate resources are devoted to magistrates’ court work and to manage these resources effectively, Chief Crown Prosecutors need to know:

- the volume of work in magistrates’ courts;
- the number and grade of staff (including agents) working on magistrates’ or Crown Court cases; and
- the amount of travelling time to court for staff and agents.

At present, some Chief Crown Prosecutors know only the volume of work in magistrates and Crown Courts, and the number of staff in post, but not the total resources devoted to magistrates’ court cases. The introduction of a time recording system for all staff would provide this information.

39 Crown Prosecution Service: Higher Courts Advocates and Designated Case Workers.

40 The weighted average national cost of a C2 lawyer is £68,817 including overheads.

41 Crown Prosecution Service Inspectorate Regional Reports on Northumbria and Humberside.

42 This figure covers all of the Crown Prosecution Service’s activity as the service was not able to provide separate figures from Crown Court and magistrates’ courts work.

Improved technology will remove duplication and release resources

3.19 In our view more extensive use of technology would also lead to value for money gains, as well as contributing to greater efficiency. We observed at court that lawyers record in manuscript the outcome of a hearing, and the action needed, on the cover of the paper file. This is then typed by administrative staff onto the Compass system when the file is returned to the office. We calculate that if lawyers were able to record the information electronically at court it would save the equivalent of around 60 full time staff at a saving of some £2 million.⁴³ The net saving after investing in hardware, software, initial training and support⁴⁴ would be in the region of £5.5 million over five years. There would be improvements also in the quality and tracking of case files as the time taken to pass files on for action would decrease, and there would be no errors due to transcription.

3.20 More extensive use of answering machines and e-mail, combined with a team-based approach to case management, would also improve communications. It can be very difficult for the police, courts or defence solicitors to contact the Crown Prosecution Service lawyer responsible for a particular case (**Figure 26**). Most lawyers are out of the office, and either their office phones do not record messages or they are not answered in their absence. Although most units designate one of the lawyers as the duty prosecutor for the day they can be difficult to contact, and are unlikely to know the detail of a case. Provision of contact numbers for the allocated team described in paragraph 3.7 and better use of answering machines and e-mail would enable the Crown Prosecution Service to deal with urgent matters more promptly and would speed up the case preparation process.

26 Crown Prosecution Service communication difficulties

A court listing officer whom we interviewed during our fieldwork told us that because of the difficulties in contacting the Crown Prosecution Service he finds it easier to list the case for a hearing to resolve the matter in court than to speak with someone at the Crown Prosecution Service.

Source: National Audit Office

There is a need to improve joint working with other criminal justice agencies

In some areas, the Crown Prosecution Service is working successfully with its criminal justice partners to improve co-operation

3.21 Many of the improvements necessary to prevent ineffective hearings by the prosecution require the co-operation of the other criminal justice agencies. For example, to give more continuity in presentation will require the co-operation of Her Majesty's Courts Service in listing cases from particular police divisions in designated courtrooms. During our fieldwork we found examples where the courts, police and Crown Prosecution Service were already finding ways to improve co-operation. For example, in Manchester, the Crown Prosecution Service and Her Majesty's Courts Service identified that they were causing problems for each other:

- the Crown Prosecution Service was often late in preparing cases that were due to be committed to the Crown Court for trial. As a result two or more committal hearings would have to be held; and
- the courts agreed with the Crown Prosecution Service's request for pre-trial reviews to be conducted by District Judges to overcome problems.

Both the Association of Chief Police Officers and the Crown Prosecution Service told us that statutory charging arrangements are increasing co-operation between them and reducing the number of non-viable cases that would otherwise go to court. Other examples of arrangements that would be of mutual benefit to the court, the police and the Crown Prosecution Service are given in **Figures 27 and 28 overleaf**.

43 1.9 minutes at 35p per minute (full cost of A2 grade staff) for each of 2.99 million hearings (including trials) making a total saving of £1.988 million.

44 Costs of implementation per year: hardware £437,500 (2,500 palmtops at £350 each written off over two years), training and support £100,000 (£40 each for 2,500 users); and £250,000 annually for security software licences x 5 years plus software development £500,000 = £4.4 million.

27 Co-operation between the courts and the Crown Prosecution Service brings benefits to both parties

Case example – case progression officers

Sale Crown Prosecution Service and Trafford Magistrates’ Court have each appointed full time case progression officers, who work as a team identifying cases that require more work before they are ready for trial. The court case progression officer checks all cases 14 days before the trial date and telephones her Crown Prosecution Service colleague if there are actions outstanding. The latter, in turn, reminds the lawyers and the administrative staff of any necessary actions. The court case progression officer also liaises with defence solicitors. If the defence case preparation is being held up because, for example, the Crown Prosecution Service has failed to provide something to the court, the case progression officer will email her counterpart in the Crown Prosecution Service who will ensure it is actioned. This bypasses the potential delays related to post opening, matching correspondence to files and then bringing the case to the attention of the allocated lawyer. The case progression officers also meet regularly to identify underlying causes of late case preparation and possible improvements.

Source: National Audit Office

Case example – pre-trial reviews

The North Wales Crown Prosecution Service has agreed with the Wrexham Magistrates’ Court that experienced court clerks and experienced prosecutors should conduct pre-trial reviews. Both the Court and the Crown Prosecution Service are committed to using pre-trial reviews to:

- establish any issues in dispute;
- decide which witnesses need to attend court to give evidence in person;
- check that the Crown Prosecution Service and the defence have all the evidence they require;
- check that the Crown Prosecution Service is definitely going ahead on the current charges and that any decisions to accept pleas to alternative charges or to discontinue the case have been made; and
- check that the defendant’s solicitor has had an opportunity to discuss the evidence with the defendant who will have a last opportunity to plead guilty.

28 An example of the Crown Prosecution Service working with Her Majesty’s Courts Service and the police to improve working practices

The Crown Prosecution Service in Hertfordshire and the Watford West Court area realised that many police officers had never visited a court, or acted as a witness in court. Common problems were occurring that impacted on the progression of cases, for example, the failure to date charge sheets. The Crown Prosecution Service and the courts organised a training day with the police that included mock trials. The intention of the day was to explain how to avoid errors that impact on case progression, but that are easy to resolve.

Source: National Audit Office

3.22 The Crown Prosecution Service could take the lead in setting up mutually beneficial arrangements by initiating discussions with the police and courts at a local level. These arrangements are best negotiated at very local levels as the Crown Prosecution Service needs to build trust and develop good working relationships with individual police divisional commanders and court managers to prosecute well in the magistrates’ courts. **Figure 29** shows some issues we identified which might form the basis for such discussions. We would see the local Criminal Justice Boards, which were established in April 2003 to improve joint working between the criminal justice agencies, as having an active role in taking this forward.

29 Areas where changes in working practices might be to the mutual benefit of all criminal justice agencies

What the Crown Prosecution Service could do to assist the other criminal justice agencies:

- tell the police and the courts which team is dealing with a contested case, and provide a contact number for queries;
- list the specific requirements for a full file;
- increase the proportion of committals that are ready on time;
- comply with disclosure timetables in more cases;
- offer training to the police more widely so that they know what evidence is needed to prove a case.

In return the other criminal justice agencies could ensure that:

- the courts schedule more sessions for designated caseworkers;
- the courts keep more cases in the courtroom where they were listed;
- the courts issue complete final lists of court hearings earlier;
- the police alert the Crown Prosecution Service and courts to initiatives that will lead to increases in numbers of prosecutions (for example, police raids);
- police provide full files on time;
- defence lawyers have discussed cases fully with defendants before pre-trial reviews and are ready to offer pleas or to define issues in dispute.

Source: National Audit Office

APPENDIX 1

Our methodology

1 We used a variety of methods during the course of our examination of the Crown Prosecution Service as follows:

Analysis of existing data

2 Compass is a national database that has been fully operational since April 2004 containing information on all Crown Prosecution Service prosecutions by area. We analysed this data to calculate the number and type of hearings in Crown Prosecution Service magistrates' courts cases.

3 The Department for Constitutional Affairs (and from April 2004 Her Majesty's Courts Service) has collected data on cracked and ineffective trials since April 2002. We used this data to identify the number of trials that do not proceed as planned, and the reasons for this.

Data Collection Exercise

4 A statistical data collection exercise was undertaken, with the assistance of Her Majesty's Courts Service, capturing information relating to adult hearings (excluding trials) for all cases in six Crown Prosecution areas (see paragraph 5 below) for one week.⁴⁵ This exercise produced information on 6,743 hearings, specifically: whether the case went ahead for the purpose for which it was listed and, if not, whether this was due to the defence, prosecution, court or another party. The data generated has been used to determine the number of failed hearings across England and Wales in a year and in particular, those for which the prosecution are responsible.

Court observation and review of the Crown Prosecution Service's case files

5 In order to gain a greater understanding of reasons for prosecution delays we visited nine Crown Prosecution Service areas:

- Cambridgeshire
- Humberside
- Lancashire
- Greater Manchester
- North Wales
- Northumbria
- Devon and Cornwall
- London (Westminster and Barnet teams)
- South Wales

In six areas (Cambridgeshire, Humberside, Lancashire, Greater Manchester, North Wales and Northumbria) we observed 553 hearings, and reviewed the files relating to the observed cases. This gave us information on 842 hearings (including 23 trials). We selected the six areas initially to include a range of performance and operating conditions, such as size of annual caseload and whether the area was rural or urban. We also ensured that we visited some areas that had taken part in pilots for the effective trial management programme and "No Witness, No Justice" and areas that had introduced the full 'round the clock' charging scheme.

London was selected for the second round of case work because 14 per cent of the Crown Prosecution Services' magistrate's courts caseload is heard in London. Devon and Cornwall was chosen because it has a particularly low usage of designated caseworkers.

⁴⁵ The data was collected in the week commencing 27th June 2005 except at the City of Manchester Magistrates' Court where it was completed in the week commencing 8th August due to circumstances outside Her Majesty's Courts Service's control.

6 For each case observed, we recorded details of the offence, charge and all hearings up to and including the present hearing. From the file review we obtained information on the number of adjournments, problems with case preparation and the number of advocates presenting cases with more than one hearing.

7 We carried out a further review of 171 case files specifically targeting unsuccessful prosecutions in Devon and Cornwall and London (Westminster team and Barnet team). From this we gathered more information on the administrative causes of unsuccessful outcomes, and on how the police and the Crown Prosecution Service work together to ensure evidence is available on time.

Work shadowing, interviews with staff and systems mapping

8 In all nine areas that we visited, we work shadowed prosecutors and designated case workers, mapped administrative systems and interviewed key personnel from the Crown Prosecution Service; police; magistrates' courts; and local defence solicitors.

Focus groups of magistrates and courts staff

9 Focus groups were undertaken by specialist external contractors at each of the six Crown Prosecution Service areas listed in paragraph 5. Attendees at the focus groups included lay magistrates, legal advisers and in one case a court case progression officer. Each group was asked to address a series of questions based around the themes of preparation, liaison and advocacy with a particular emphasis on how effectively the Crown Prosecution Service uses magistrates' court hearings.

Survey of Chief Constables

10 We contracted MORI to conduct a postal survey of all 43 Chief Constables in England and Wales with a response rate of 81 per cent. The survey contained four questions relating to this study, three requiring closed responses and one requiring an open response. The questions focused on:

- the effectiveness of working relations between the Crown Prosecution Service and the police in respect of magistrates' court cases;
- factors affecting the working relations between the Crown Prosecution Service and the police in respect of magistrates' court cases; and
- factors contributing to ineffective use of magistrates' court hearings.

Expert reference partners

11 Her Majesty's Crown Prosecution Service Inspectorate has acted as reference partner, reviewing our methodology and providing expert opinion during our fieldwork visits.

30 Summary of file review

	Number of cases	Number of hearings including trials	Number of hearings excluding trials	Number of hearings which were ineffective due to the prosecution ⁴⁶
First round of file review	553	842	819	76
Second round of file review	171	534	429	88
Totals	724	1,376	1,248	164

Source: National Audit Office

46 The Crown Prosecution Service, the police or both.

APPENDIX 2

Glossary

Agent	A private sector lawyer presenting magistrates' courts cases on behalf of the Crown Prosecution Service on a contractual basis.
Advanced information	The defence is entitled to see the prosecution evidence in cases involving either-way offences before the defendant decides whether he or she wishes to be tried in the magistrates' courts or in the Crown Court.
Bail	A court can remand a defendant in custody or grant bail, with or without conditions attached. The police can also grant bail before the first court hearing, with or without conditions attached.
Charging initiative	The transfer of responsibility for deciding the correct charge from the police to the Crown Prosecution Service. The police will continue to decide the charge in most cases where the defendant is expected to plead guilty at the early first hearing. In the remainder, they will ask for a decision from the Crown Prosecution Service.
Committal file	A full file containing all the prosecution evidence and disclosure schedules which must be provided to the defence and to the court before the magistrates can commit the case to the Crown Court for trial.
Committal for sentence	Procedure whereby a person convicted in a magistrates' court is sent to the Crown Court for sentencing, when the magistrates consider their sentencing powers are insufficient.
CPS Direct	A national out-of-hours telephone service that allows Crown Prosecutors to work from their own home to provide the police with charging decisions through the night and at weekends.
Cracked trial	A case that concludes on the day a trial was scheduled to take place without the trial taking place. This includes cases where the defendant pleads guilty on the trial date (thus removing the need for a trial) and cases where the prosecution offers no evidence, for example, because a witness refuses to attend court.
Criminal Justice Unit	Operational units in the Crown Prosecution Service areas that handle the preparation and presentation of magistrates' court cases, as opposed to Trials Units which handle Crown Court cases.
Crown Prosecutor	Crown Prosecutors are lawyers employed by the Crown Prosecution Service. They provide advice to the police on possible charges. They review files from the police, applying the test set out in the <i>Code for Crown Prosecutors</i> , and present prosecution cases at court.

Designated caseworkers	Non-legal Crown Prosecution staff who have been specially trained and designated by the Director of Public Prosecutions to review and present straightforward cases in the magistrates' courts.
Disclosure	Provision to the defence of schedules of, and access to, any material which might reasonably be considered capable of undermining the case for the prosecution against the accused and which has not previously been disclosed. Provision of advanced information is also sometimes described as disclosure.
Discontinuance	Magistrates' court cases terminated by the Crown Prosecution Service before evidence is offered, including those withdrawn at court.
Early First Hearing	The first court hearing for cases where defendants are expected to plead guilty. The court is geared to deal with such defendants swiftly and to sentence them immediately, unless a pre-sentence report or other information is required.
Effective trial	A trial that goes ahead on the expected day, witnesses give evidence and the magistrates reach a conclusion on whether the prosecution case has been proved.
Effective Trial Management Programme	A cross agency programme designed to reduce the number of ineffective and cracked trials.
Expedited file	A file in straightforward cases where the defendant is expected to plead guilty which contains only the key witness statements and a case summary prepared by the police.
Either-way offences	Offences which are more serious than summary offences and which can be tried in the magistrates' court or in the Crown Court. Magistrates decide in cases involving either-way offences whether their sentencing powers are likely to be adequate. If not, they decline jurisdiction and the case is committed to the Crown Court. If they accept jurisdiction, the defendant has the choice of whether to remain in the magistrates' courts or to be tried by a judge and jury in the Crown Court.
Full file	A complete evidence file, containing all statements, exhibits, records of taped interviews with the defendant and schedules of unused material for disclosure to the defence. These are required for cases which are being tried in the magistrates' courts and for cases which are being committed to the Crown Court for trial.
Indictable offences	Offences which can be tried in the Crown Court (either-way offences or indictable only offences).

Indictable only offences	Offences which are so serious that they cannot be tried by magistrates but must be dealt with in the Crown Court, for example robbery. These cases are sent to the Crown Court at their first magistrates' court hearing. A committal file is not required before this can happen.
Ineffective trial	A trial that is unable to proceed on the day that it was scheduled to start, and is adjourned to another date. Common reasons are missing evidence or the non attendance of witnesses or the defendant.
List	The list of cases to be heard on a particular date at a particular court. The list is often only finalised the day before.
Local Criminal Justice Board	Boards in each of the 42 criminal justice areas bringing together the chief officers of the police, Crown Prosecution Service, Magistrates' and Crown Courts, Youth Offending Teams, Probation and Prison Service to improve joint working.
No Witness, No Justice	The 'No Witness, No Justice' initiative is designed to improve the services, information and support provided to victims and witnesses of crime. The Crown Prosecution Service is working with the police and Witness Support in Witness Care Units across England and Wales, to meet jointly the individual needs of victims and witnesses in criminal court cases.
Office for Criminal Justice Reform	Supports the Criminal Justice System in England and Wales with the aim of bringing more offenders to justice and improving services to victims and the public. 42 Local Criminal Justice Boards lead local action, and the Home Office, Department for Constitutional Affairs and Law Officers' Departments lead the reform process jointly at national level, through the National Criminal Justice Board.
Pre-trial review	A hearing that is intended to reduce delays by checking that cases are ready for trial. A copy of all of the evidence should be served on the defence before the pre-trial review.
Remand hearing	A four weekly court hearing to review cases where defendants are remanded in custody. These are often conducted using video links.
Summary trial	Trial by magistrates, without a jury. Summary trials are for summary offences and either-way offences (summary or indictable). Indictable offences are more serious and are tried by jury in the Crown Court.
Summary offences	Less serious offences which can only be tried in the magistrates' courts.
Trials Unit	Responsible for all prosecutions in the Crown Court. These units often take over responsibility for either-way cases as soon as it has been decided that they are not suitable for trial in the magistrates' courts and so cover committal hearings in the magistrates' courts.
Video link	Video links installed between prisons and magistrates' courts so that prisoners do not have to be brought to court for remand hearings.

APPENDIX 3

Cracked and ineffective trials by area

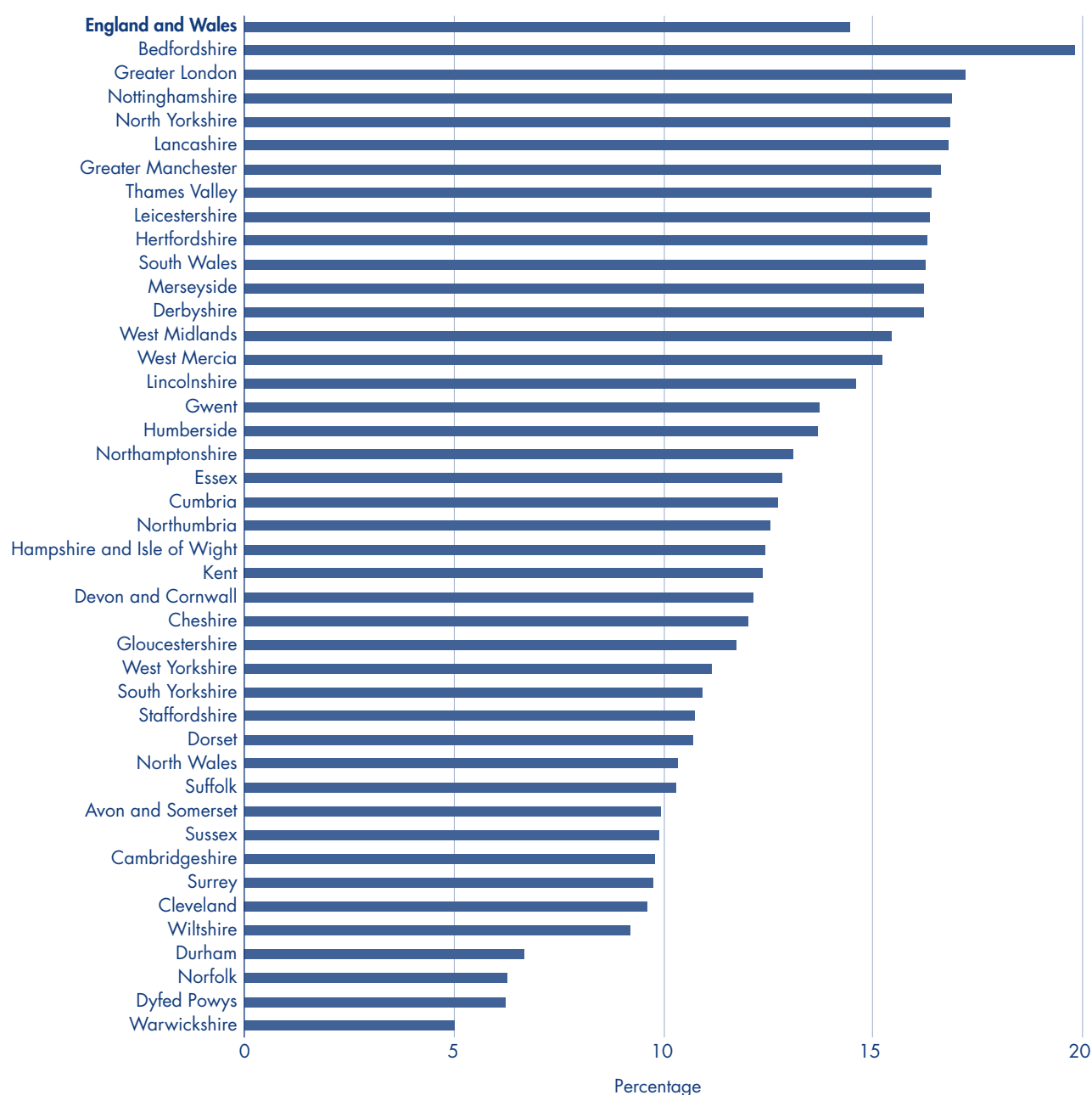
Fourteen per cent of trials in England and Wales in 2004-05 did not go ahead because either:

- the prosecution (the Crown Prosecution Service, the police or both) was not ready; or

- the prosecution was dropped on the trial date.

This does not include trials which did not go ahead because of problems with civilian witnesses.

31 Cracked and ineffective trials as a percentage of all trials by criminal justice area

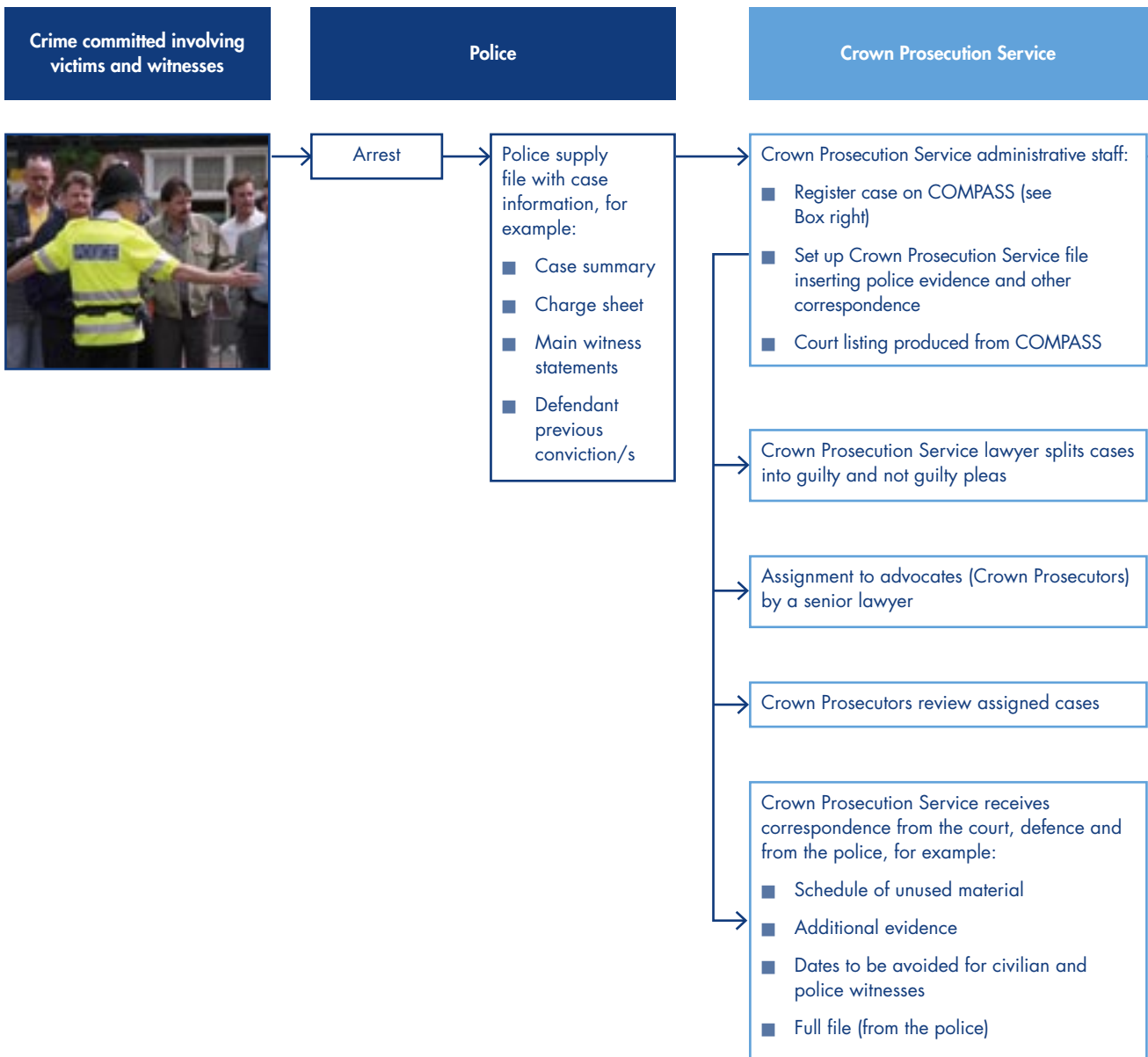


Source: National Audit Office analysis of Magistrates' Courts Business Returns 2004-05

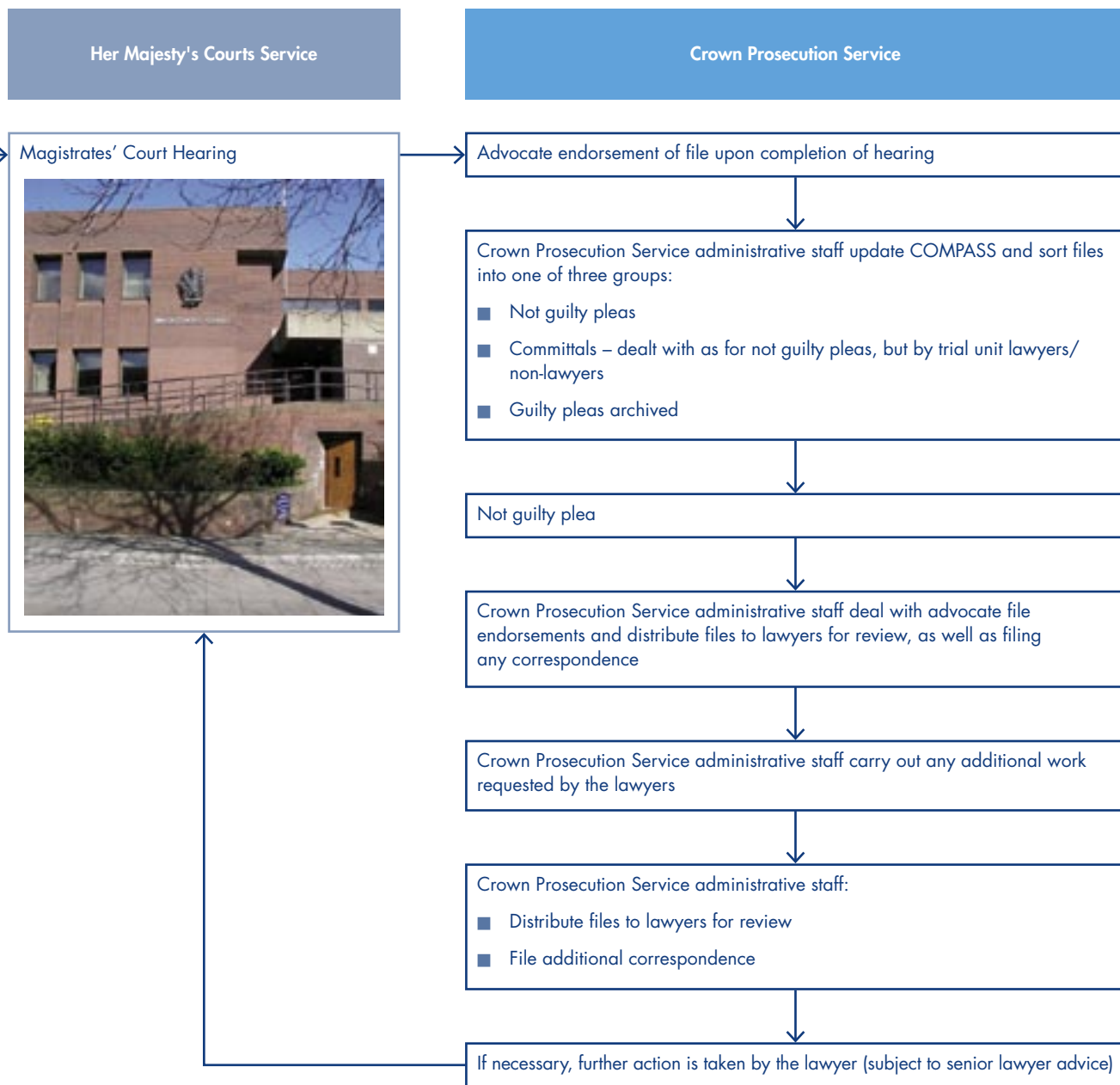
APPENDIX 4

The Crown Prosecution Service’s administrative processes for bringing a case to the magistrates’ court

32 The Crown Prosecution Service’s administrative process for bringing a case to the magistrates’ court



Source: National Audit Office



APPENDIX 5

Calculation of unit costs of hearings

33 Unit costs

Type of hearing	Crown Prosecution Service costs £	Defence costs £	Her Majesty's Courts Service costs £	Her Majesty's Prison Service costs £	Unit cost per hearing or trial £
Ineffective hearing	20.80 ¹	25.30 ²	7.16 ³	32.55 ⁴	85.81
Ineffective trial (trial postponed)			687.79 ⁵		687.79
Cracked trial (case ends on the trial date without trial)			1,037.22 ⁵		1,037.22

Source: National Audit Office

NOTES

- 1 The Crown Prosecution Service's costs are calculated using its own Activity Costing model which calculates that the Crown Prosecution Service spends 21.39 minutes on preparing for each ineffective hearing, multiplied by an average rate of pay for the staff involved.
- 2 Defence costs are calculated by multiplying 21.39 minutes by the rate paid under legal aid, plus £3.90 for an extra reminder letter about the next hearing from the solicitor to the defendant.
- 3 The cost of a magistrate's court sitting is £3.58 per minute. From our observations we estimate an ineffective hearing takes two minutes. Court costs are taken from the Effective Trial Management Programme which agreed costs with all three criminal justice agencies.
- 4 The Effective Trial Management Programme has calculated the cost of a day in remand as £94.35. The average adjournment between hearings is 23 days. Only three per cent of defendants in magistrates' courts are on remand. Only half of remand prisoners receive a custodial sentence. Additional costs arising from ineffective hearings are therefore calculated as £94.35 x 3% x 23 days ÷ 2, which equals £32.55.
- 5 Based on information from the Crown Prosecution Service Activity Based Costing model and the Effective Trial Management Programme uprated for inflation. Defence legal aid costs are estimates based on Legal Services Commission fees rates and payment structures.

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		Publication date
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