

Evaluation of the Virtual Plea and Directions Hearing Pilot

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EXECUTIVE SUMMARY

1. This is the report of an evaluation of a Virtual Plea and Directions Hearing (VPDH) pilot at Manchester Minshull Street Crown Court. The pilot began in September 2002. The evaluation was conducted during April and May 2003.
2. The pilot objectives were as follows:
 - to build a portal to link local defence solicitors and barristers with the CPS to transfer PDH information to the Crown Court by use of internet technology
 - to assess the potential business benefits and cost saving derived from the portal
 - to evaluate the potential to roll out VPDHs on a national scale.
3. The purpose of the evaluation was to inform a decision by the LCD on whether the pilot should be extended and whether it should be rolled-out to other court centres.
4. The evaluation methodology was based on a mixture of quantitative and qualitative techniques. Qualitative information was obtained through interviews and surveys of participating groups while quantitative data about pilot cases was extracted from court records and from the VPDH system itself.
5. By April 2003, total of 34 cases had been identified as meeting the criteria for inclusion in the pilot. This represented around 18 per cent of cases prosecuted by CPS and committed or sent from Stockport magistrates' court since the start of the pilot.
6. Cases were included in the pilot if at least one defendant was represented by one of four firms of defence solicitors. In addition, trial advocates briefed by both the CPS and the defence had to come from nine sets of participating chambers.
7. The VPDH application was hosted by EDS on a secure website. Court staff accessed the system using two workstations connecting to the Internet by means of an ISDN line. The two participating judges accessed the system using their office computers or LCD laptops. Defence solicitors and advocates used their own PCs.
8. To log on to the VPDH system, users needed:
 - access to the Internet using Internet Explorer, preferably version 6
 - a point-and-click device such as a mouse
 - an account name and email address
 - a 4-digit pin number specified the first time the user logged on
 - a six-digit number displayed on a physical security token, designed to fit on a keyring (on which the number changes every 60 seconds).
9. The heart of the system was the VPDH Questionnaire which contained case information divided into seven sections.
10. Deadlines for submitting information were set out in the VPDH timetable. On the scheduled VPDH date, a judge reviewed the information input by the parties, made directions and, where appropriate, set a date for trial. The reviewing judge made case management orders in all but three of 16 VPDH cases listed for trial.

11. Of the 34 pilot cases, 19 (56%) proceeded as a VPDH and 14 (41%) were converted to an oral PDH. The CPS discontinued the remaining case.
12. Seven of 16 cases listed for trial cracked. A VPDH had been held in three.
13. Both the judges conducting pilot cases found the system easy to use, as did all four solicitors and ten out of 14 advocates. Impressions of system performance were linked to the speed of their connection to the Internet.
14. Both judges, seven of the 14 barristers and all four solicitors felt that, under the pilot procedures, the parties addressed issues at an earlier stage than usual.
15. Nine counsel said plea discussions were harder, three that they were easier and two that they were unaffected. Six barristers, including three who found plea discussions easier under the pilot, used discussion rooms to conduct plea discussions.
16. None of the legal practitioners or judges participating in the pilot had quality of justice concerns about the VPDH procedures.
17. Both judges, all four solicitors and six of the 14 barristers supported wider implementation of the system.
18. The conclusions of the evaluation were:
 - **in its current state of development, the pilot system is not suitable to be rolled out nationally**
 - **with some changes, use of the VPDH system at Manchester Minshull Street should be continued and extended to a larger pool of cases**
 - **in parallel with further piloting, investigations are needed into how VPDH functionality can be delivered on a national basis in a compliant and cost-effective way**
 - **opportunities for data-sharing and avoiding overlaps in functionality with other court systems should be investigated**
 - **coordination is needed to avoid duplication of effort and capitalise on opportunities for data-sharing with the systems of other criminal justice agencies.**
19. Factors supporting extended pilot operation included:
 - the pilot showed some cases can be managed in a virtual environment
 - trial-related information was provided by trial counsel rather than a replacement, as often happens at an oral PDH
 - the information was prepared and made available earlier
 - at least some practitioners were able to use electronic discussion rooms to communicate with others and to discuss a possible plea
 - the system can assist practitioners in managing their caseload by bringing together on their home screen all cases in which they are involved
 - the system gained the approval of participating judges and a significant proportion of participating members of the legal profession.

20. The pilot system is not suitable for national roll-out in its current form because:
 - shortcomings of the system design limited its effectiveness
 - the small scale of the pilot did not provide conclusive evidence of the impact of VPDHs on preparations for trial
 - the CPS were unable to participate fully in the pilot because of Internet access issues that are now being overcome
 - information needs of some justice system participants were not addressed
 - the pilot system was not compliant with Court Service strategic criteria or criminal justice system plans for IT.

21. These shortcomings can be addressed in further piloting of an enhanced system. For the purpose of statistical comparison, a minimum sample of 200 completed pilot cases that come to trial is desirable. The pilot court suggests an extension to three of the six committing PSDs. Based on this and figures for annual throughput and waiting times, a pilot running for a year would yield the required number of completed cases.

22. An extended pilot would provide an opportunity to involve and test the views of a greater number of legal professionals and members of the judiciary. If it proves successful, further piloting in other court centres may be advisable before a final decision is made on national roll-out.

23. The Case Preparation Project will be responsible for any further piloting of the VPDH system to ensure that the business requirements and business case for a national system are established. As part of its work, it should examine:
 - opportunities for sharing data and functionality with other systems used by the Court Service
 - how to ensure that the system design is compatible with the requirements of CJS Exchange
 - how to capitalise on opportunities provided by CJS Exchange for sharing data between the VPDH system and the systems of other agencies
 - the outcome of discussions between system suppliers and the Court Service Technical Design Authority on providing VPDH functionality in a strategically compliant way.

1 INTRODUCTION

1.1 Introduction

1.1.1 This report describes the evaluation of the Virtual Plea and Directions Hearing (VPDH) pilot conducted between March and May 2003 by independent consultants Joyce Plotnikoff and Richard Woolfson.

1.1.2 The pilot objectives were stated as follows in the Project Initiation Document:

- to build a portal to link local defence solicitors and barristers with the CPS to transfer PDH information to the Crown Court by use of internet technology
- to assess the potential business benefits and cost saving derived from the portal
- to evaluate the potential to roll out VPDHs on a national scale.

1.2 Background

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

1.2.2 PDHs were introduced with three stated objectives:³

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

1.2.3 In 1997, a Home Office report recommended that the need for PDHs in all cases be re-examined 'since in straightforward cases they may involve an additional and unnecessary burden'.⁴ In 1999, a National Audit Office report recommended consideration of a more flexible PDH system, allowing some cases to be dealt with on paper.⁵

1.2.4 In 2001, Lord Justice Auld identified a number of factors which caused the intended benefits of PDHs not to be fully realised:⁶

- PDH lists were often too full to allow judges time to prepare and hear cases in any detail
- the PDH timetable was often too tight, particularly in relation to disclosure

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

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

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

⁴ 'Review of Delay in the Criminal Justice System'.

⁵ 'Criminal Justice: Working Together'.

⁶ Paras. 204-220, 'Review of the Criminal Courts of England and Wales'.

- advocates at the PDH were rarely those briefed for the trial
- the fee for PDH attendance was not an incentive to prepare for trial
- the PDH was often the first time that the defence advocate saw the defendant to take instructions
- when PDHs for defendants in custody were ineffective, production costs were wasted.

1.2.5 Lord Justice Auld recommended that:⁷

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

1.2.6 In 2001, the Court Service piloted flexible PDHs in which some oral hearings were replaced by a paper procedure.⁸ The pilots were conducted at Crown Court centres in Preston (Northern Circuit), Middlesex Guildhall (South Eastern Circuit) and Newcastle upon Tyne (North Eastern Circuit). The scheme ran for nine months⁹ and was evaluated using both statistical analysis of case data and feedback from users of the scheme. The final evaluation report was accepted by the Court Service in January 2003.¹⁰

1.2.7 The evaluation of the flexible PDH pilots highlighted a number of problems associated with operation of the procedures. Areas of particular concern included the onerous task of monitoring deadlines for submission, cross-serving of information by the parties and the poor quality of communication between the parties in preparing their submissions.

1.2.8 The potential for an automated system to address such problems and provide greater user flexibility led to the concept of a VPDH system. The IBIS Unit within the Home Office Work began work on specifying the system in 2001.

1.2.9 In January 2002 responsibility for the VPDH Project was transferred to the eDelivery Group within the Lord Chancellor’s Department where it was managed as part of the Courts and Tribunals Modernisation Programme.

1.2.10 Following the transfer, the technical specification of the system was finalised and the design and development of the system was completed. After detailed preparation, the pilot began at Manchester Minshull Street Crown Court in September 2002.

1.2.11 The pilot tested whether a PDH was required in every case, using a secure website to allow parties to supply information to the court and each other electronically. It also provided electronic discussion facilities to allow the parties and the court administration to discuss the case.

⁷ Para. 235, ‘Criminal Courts Review’ (2001).

⁸ The pilot followed paper PDH procedures first adopted by Derby Crown Court in 1999.

⁹ Only Preston continued operating any of the pilot procedures after the pilot period ended.

¹⁰ Joyce Plotnikoff and Richard Woolfson ‘Evaluation of Flexible Plea and Directions Pilots’ 2003 (unpublished).

1.3 Evaluation objectives

1.3.1 The purpose of the VPDH evaluation was to inform a decision by the LCD on whether the pilot should be extended, whether it should be rolled-out to other court centres or whether use of the VPDH system in any form should be terminated. To achieve this, the evaluation investigated the impact of the pilot on the community of users and to gauge the effectiveness of VPDHs as a model for efficient case progression.

1.3.2 More specifically, the evaluation considered:

- whether the pilot procedures lead to early identification and addressing of issues in eligible cases
- whether the information provided by the parties is adequate to support effective judicial decisions on case progression
- the role of court staff in supporting the use of the system
- any perceived limitations on the types of cases suitable for inclusion in the VPDH regime
- any quality of justice concerns
- usage of the facilities provided by the system to enable the parties to consult electronically and the perceived effectiveness of such consultation
- the ease of use of the system as judged by the participants
- the adequacy of training provided in the use of the pilot system and the training implications of implementation on a wider scale
- the costs associated with development and use of the system, including the additional resource burden on the judiciary, court staff, advocates, defence solicitors and the Crown Prosecution Service (CPS)
- the potential benefits of providing other agencies (police, probation, prisons, the Witness Service etc.) with access to certain case data stored on the system
- possible improvements in system design and functionality, including the extension of the system to cover the entire case lifecycle
- system security features and security issues associated with large-scale implementation of the system.

1.3.3 Although it would have been desirable to compare data on pilot cases (such as waiting times, guilty plea rates, numbers of hearings to disposal, cracked and ineffective trials and trial length) with similar data for Minshull Street cases processed in the conventional way, the number of pilot cases was too small to provide statistically significant results. Nevertheless, the evaluation gathered and analysed case progression data and considered what pointers they provide for the effectiveness of the system.

1.4 Acknowledgements

1.4.1 Taking part in pilot projects always imposes a significant additional burden on the normal operation of the criminal justice process. The evaluation team is therefore grateful to all those involved in the pilot at Manchester Minshull Street Crown Court, in particular His Honour Judge Woodward (resident judge), His Honour Judge Lyon, Ian Jordan (Court Manager), Nicki Ryan, Melanie Graham

and other court staff. Their views on the design and experience of the operation of the VPDH scheme were of vital importance in carrying out the evaluation.

- 1.4.2 Brian Stubbington of EDS team was most helpful in answering our many questions about the development and functionality of the VPDH system.
- 1.4.3 Thanks are also due to the CPS personnel, barristers, solicitors and representatives of the police, probation, magistrates' court, Witness Service and barristers' clerks who provided valuable feedback about the operation of the VPDH procedures. Members of the Technical Design Authority within the Court Service were helpful in explaining the technical requirements of the departmental systems' strategy.
- 1.4.4 Finally, we would like to thank Jocelyn Green who managed the evaluation contract on behalf of the Lord Chancellor's Department. Her support throughout in responding to questions, reviewing documents and arranging meetings was a key factor in the successful completion of the evaluation within the project's tight timescale.

2 METHODOLOGY

2.1 Introduction

2.1.1 The evaluation methodology was based on a mixture of quantitative and qualitative techniques. Qualitative information was obtained through interviews and surveys of participating groups while quantitative data about pilot cases was extracted from court records and from the VPDH system itself.

2.2 Interviews and surveys

2.2.1 The two judges involved in pilot cases at Manchester Minshull Street Crown Court were interviewed about the operation of the VPDH system and its impact on judicial work. They provided an assessment of the completeness and accuracy of the information provided by the parties; the impact of the system on the timing of preparation and consultation; system security features; and the criteria to be used in deciding which cases are suitable for inclusion in the scheme. Judges' views were also sought on the overall impact of the VPDH system on the prevailing case management culture.

2.2.2 Additional interviews were held with two judges who sit on the Judicial Advisory Group dealing with criminal matters.

2.2.3 Interviews with court staff covered the tasks involved in operating the VPDH system and the effectiveness of measures to ensure that the parties provided information in a timely manner.

2.2.4 Other interviews were conducted with four bar clerks and with representatives of the CPS, police, magistrates' court, Probation Service and Witness Service. These covered the impact of the pilot on each organisation. Views were sought on whether criminal justice system agencies and others should have direct access through the Internet to at least some of the case information on the VPDH system.

2.2.5 A meeting was held with members of the Technical Design Authority within the Court Service's eDelivery Group who advised on the extent to which the VPDH system complied with the departmental information systems' strategy.

2.2.6 The views of all defence solicitors and advocates participating in the pilot were invited through a survey. Initially, questionnaires were distributed by email with a request for electronic completion and return. This method resulted in a poor rate of response and questionnaires were re-distributed by post, enclosing a stamped address envelope.

2.2.7 In the end, responses were received from four of the ten solicitors approached, a response rate of 40 per cent, and from 14 out of 34 barristers, a response rate of 41 per cent.

2.2.8 Survey questions explored ease of system use and the time taken to retrieve data; the on-line help facilities and the training provided; the time involved in complying with the VPDH as against the standard procedures; use of discussion

rooms and the nature and quality of consultation with the other side that takes place prior to the submission of information to the court; and whether the time allowed for achieving the milestones in the VPDH timetable was adequate. The survey asked respondents whether they had concerns about the operation of the scheme, for instance any adverse impact on the rights of the defendant to a fair trial, and invited views on whether the scheme should be extended.

2.2.9 As developers of the system, EDS were consulted about development, implementation and training costs in relation both to the pilot and to any wider implementation. In considering other aspects of cost, for instance the savings in court time through avoiding oral PDHs, we drew on information collected during the evaluation of the flexible PDH pilots.

2.3 Data on pilot cases

2.3.1 At the time the evaluation began in April 2003, a total of 34 cases had been identified as meeting the criteria for inclusion in the pilot. Figures supplied by CPS suggest that this represented approximately 18 per cent of Crown Court cases prosecuted by the Stockport office during the relevant period.

2.3.2 Data was collected in relation to all pilot cases. The VPDH system yielded information on:

- key case characteristics (number of defendants, custodial status, names of participants)
- case progression (dates of key events, anticipated plea, whether the PDH was oral or virtual, judge's orders prior to the PDH, estimated trial length, witnesses required at trial, availability information)
- information on the electronic questionnaires submitted to the court by the parties and input by the reviewing judge.

2.3.3 The court file in each pilot case was examined to determine:

- the nature and class of offence
- the method of receipt at the Crown Court
- the number, types and dates of oral hearings
- trials that cracked or were ineffective
- final plea and verdict
- whether the trial advocate had completed the VPDH form.

2.3.4 Case data were entered to computer for analysis using a purpose-designed SPSS database.

2.4 Comparison with cases not subject to pilot procedures

2.4.1 A proper assessment of the effectiveness of the case progression model used in the pilot requires comparison with cases processed in the standard way. Factors to compare include case processing times, numbers of oral hearings or cracked and ineffective trial rates. The pilot sample comprised only 34 cases of which only 12 (35%) had reached disposition by the time evaluation fieldwork ended. This was too few cases to allow statistically significant comparisons to be made.

The analysis of pilot case data presented in this report is useful in understanding the impact of pilot procedures but a definitive demonstration of their effect on case progression would require implementation on a wider scale.

3 THE PILOT COURT AND ITS PROCEDURES

3.1 Introduction

3.1.1 This chapter describes the characteristics of the pilot court, its general approach to case management, the VPDH system and the procedures applied to cases within the VPDH pilot.

3.2 Profile of the pilot court

3.2.1 The following table describes the workload, throughput and resources of Manchester Minshull Street Crown Court for the year ending March 2003.

Table 1: Court profile

Class of case	Proportion of work
1 and 2	4%
3	9%
4	87%
Number of committing PSDs	6
Full-time judges (crime)	10
Crime courtrooms	10 plus 2 in Stockport
Weeks from:	
committal to PDH	
- bail cases	6
- custody cases	4
preliminary hearing to PDH	10 ¹¹
Sitting days	2,686
Receipts	2,921
Disposals	2,978
Outstanding at year end	1,208

3.3 PDH procedures in cases not included in the VPDH pilot

3.3.1 Oral PDHs were scheduled on Mondays and Fridays, with at least two PDH courts on each of these days.¹² Although the aim was to give each judge no more than 12 PDHs, in practice this was often exceeded.

3.3.2 The listing office described PDHs as generally being around five minutes in length. Most judges routinely issued case management orders. The onus was on the parties to note the details and due dates of orders issued at these hearings; in more complex PDHs, however, at least one judge required the parties to draft, agree and sign orders before leaving court. The court had no case progression officer and orders were not recorded in detail or monitored by court personnel.

¹¹ This was the maximum period. The actual time was sometimes shorter.

¹² If more judge time was available on Fridays, PDH lists were allocated more widely.

- 3.3.3 The pilot court was generally able to list trials within 16 weeks of the PDH, warning cases for a fixed date though not necessarily to a named judge.
- 3.3.4 In addition to the standard Judge's Questionnaire completed jointly by the advocates for each PDH, the court had developed its own checklists for judicial use at preliminary hearings and PDHs, though not all judges used them.
- 3.3.5 The Crown Court centres at Manchester Minshull Street, Manchester Crown Square and Bolton planned to adopt a new PDH questionnaire for oral hearings. It was the intention of the resident judge at Minshull Street eventually to make the VPDH and oral PDH questionnaires the same. The new questionnaire for oral PDHs had separate sections for the prosecution, defence and the judge's orders, including compliance dates.¹³

3.4 Cases eligible for the VPDH pilot

- 3.4.1 All cases prosecuted by Stockport CPS and originating in Stockport Magistrates' Court were eligible for inclusion in the pilot, with the exception of those involving Persistent Young Offenders (for whom the timetable is shorter than VPDH milestones) and cases involving more than three defendants.
- 3.4.2 Cases involving a child witness were not specifically excluded from the pilot but none of the pilot cases actually involved a child witness.¹⁴
- 3.4.3 Inclusion of cases in the pilot was confirmed only if:
- at least one defendant was represented by one of the four participating firms of defence solicitors
 - the trial advocates briefed by both the CPS and the defence were pilot participants.
- 3.4.4 It was disappointing that so few cases that met the eligibility criteria. While the CPS wished to support the pilot, there were a number of reasons why it was unable to allocate briefs in potential pilot cases solely to advocates who were members of the VPDH scheme:
- it was generally expected to spread prosecution briefs across the local Bar
 - more serious cases required more experienced Category 4 counsel, not all of whom were in the VPDH scheme
 - of two preferred advocates for 'street crime' cases, only one was in the scheme.
- 3.4.5 Towards the end of fieldwork, a CPS log showed that participating barristers had been briefed in 117 of 191 Stockport cases (61%). Thirty-one of these were subsequently included in the pilot, 67 were excluded and the position in respect of the other 19 had not been resolved when the log was examined.

¹³ Use of the new questionnaire was being monitored by the inter-agency Case Preparation Project team based at Minshull Street.

¹⁴ In one pilot case, the existence of a child witness emerged during the passage of the case through the court but he was not called by the Crown.

3.4.6 Records kept by court staff showed that by the end of March 2003, 87 out of 176 potential pilot cases (49%) had been excluded because the firm of defence solicitors involved was not in the pilot (other cases were excluded for other reasons).

3.5 The VPDH system

3.5.1 The VPDH application was hosted by EDS on a secure website with URL <https://www.hearingsonline.gov.uk/eroom/minshullstreet>. As the court's IT infrastructure did not provide Internet access, EDS supplied court staff with an ISP and two workstations connecting to the Internet by means of an ISDN line.

3.5.2 Defence solicitors and advocates participated in the pilot using their own PCs. At the start of the pilot, EDS provided a PC with dial-up modem in the robing room. The two judges already had laptops provided under the Judicial Technology initiative. These were upgraded to allow connection to the Internet by ISDN lines which were provided to the judges' chambers. Judges also used their laptops (and their own PCs) to access the VPDH system away from the court building.¹⁵

3.5.3 Although the CPS Connect 42 infrastructure project supports Internet access, the Manchester CPS office had difficulty in obtaining a reliable connection. We were unable to establish the underlying cause of the connection problems.¹⁶ In order that CPS might have read-access to information on pilot cases, EDS provided two PCs equipped with dial-up modems at its own expense. Only one of these was used because of limited availability of phone points (the problems encountered by CPS during the pilot are described in more detail in 6.3 below).

3.5.4 To log on to the VPDH system, users needed:

- access to the Internet using Internet Explorer, preferably version 6
- a point-and-click device such as a mouse
- an account name and email address
- a 4-digit pin number specified the first time the user logged on
- a six-digit number displayed on a physical security token, designed to fit on a keyring (on which the number changes every 60 seconds).

3.5.5 Access to individual cases was controlled by the system in the following ways:

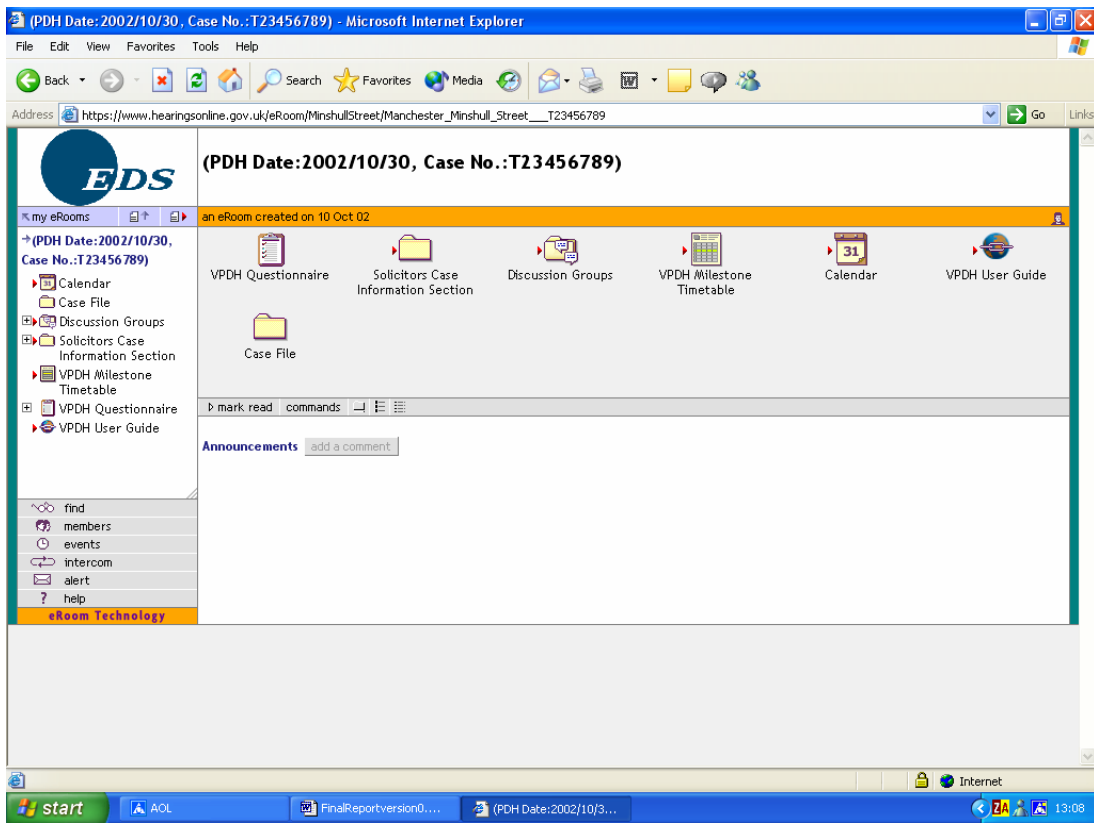
- users could only access cases to which they had been made a party
- barristers' access was determined by whether they prosecuted or defended in the case in question
- in multi-defendant cases, the solicitor and advocate for the defence were separately identified and restricted to information concerning their own defendant.¹⁷

¹⁵ The use by the resident judge of his laptop to review a pilot case from Spain was widely reported in the press.

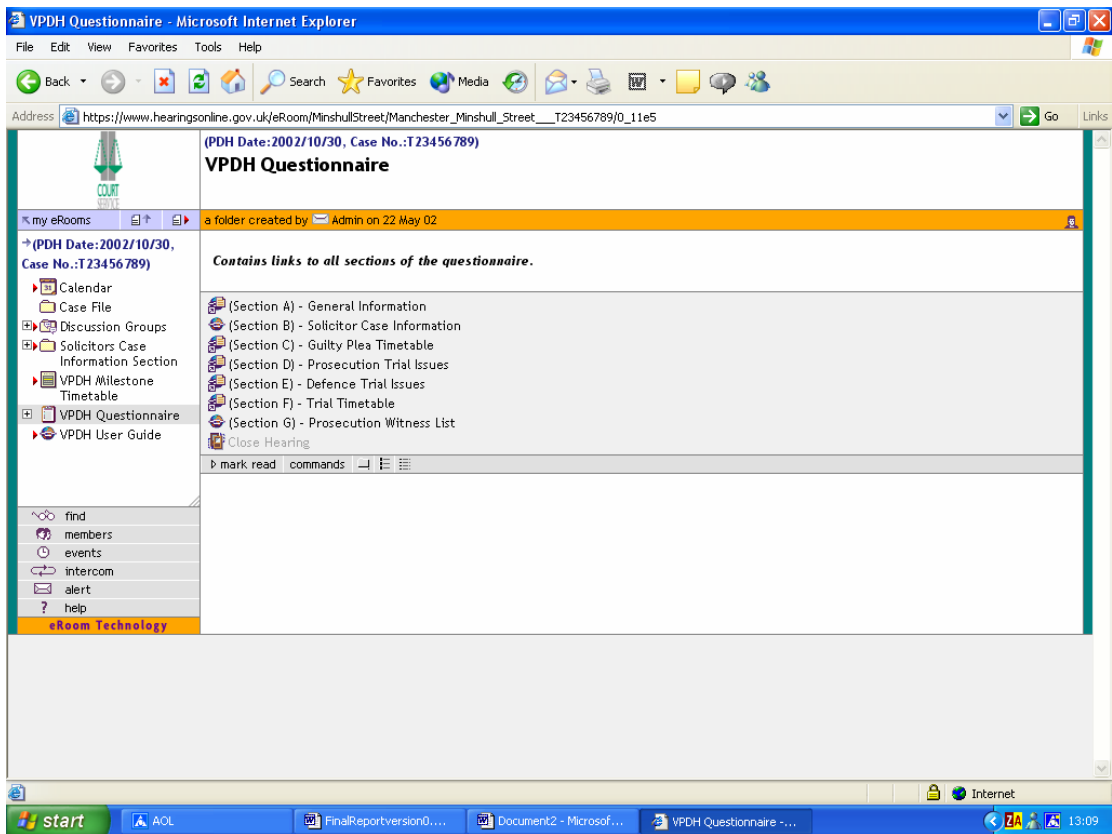
¹⁶ As this report was being written, we were informed that CPS staff had been able to access the system for the first time using the Connect 42 terminals on their desks.

¹⁷ The restriction did not operate correctly in the pilot system and was being addressed by EDS.

3.5.6 On selecting a case to which they had access, users were presented with the following screen:



3.5.7 Each of the icons provided a link to further screens. The VPDH Questionnaire was the heart of the system. When its icon was selected, a list of the constituent sections appeared as displayed below:



3.5.8 Each section could be opened in a new window by a click of the mouse. The content of each section was broadly as follows:

- General Information, completed by court staff, contained identifying information about the case including the names of legal representatives and the assigned judge
- Solicitor Case Information allowed the defence solicitor to indicate the anticipated plea, to certify that instructions had been taken and, where appropriate, to apply for the date of the VPDH to be delayed
- Guilty Plea Timetable contained questions to be answered by each defence counsel representing a defendant who intended to plead guilty
- Prosecution and Defence Trial Issues contained questions for trial advocates on preparations for trial in not guilty plea cases
- Trial Timetable asked advocates to estimate trial length and allowed advocates and the court to indicate three preferred trial dates. Counsel could also give special reasons why they should conduct the trial
- Prosecution Witness List in which court staff entered the names of prosecution witnesses obtained from the CPS. The defence solicitor could then choose names from this list to compile a provisional list of witnesses. A similar facility allowed the advocate to compile the list of those required for trial.

3.5.9 The Solicitor Case Information icon on main case screen simply opened a folder containing Sections A, B and G of the VPDH Questionnaire.

3.5.10 The other icons leading to case-specific information were the VPDH Timetable (discussed in 3.6.1 below), Discussion Groups and the Case File.

3.5.11 The Discussion Groups opened to reveal five further icons, each of which provided access to an electronic discussion room where participants could contribute comments and read the comments of others. Access controls ensured that entry to each room was limited to users authorised to participate in that discussion.

3.5.12 The Case File was simply a folder in which electronic versions of case-related documents could be entered by court staff and viewed by all users with access to the case.

3.6 VPDH procedures

3.6.1 When the pilot was launched in 2002, the resident judge set out the framework and procedures to be followed in a ‘Description and Protocol’ document. This was circulated to participants. Further procedural guidance was contained in help screens attached to Sections B to G of the VPDH Questionnaire.

3.6.2 The VPDH Timetable presented a schedule for events in pilot cases as illustrated below:

id	Milestone	Due Date	Notes
1	Case committed/transferred/551 prelim hearing	23 Sep 2002	
2	Court Admin creates case and enters defence solicitor names	10 Oct 2002	Creation date (X)
3	CPS & Defence solicitors provide Counsel names to court	16 Nov 2002	X + 2 days
4	CPS provide court with prosecution witness list	18 Nov 2002	X + 4 days
5	Defence solicitors provide provisional plea and required witness list	20 Nov 2002	PDH - 14 days
6	Defence solicitors certify to court that instructions have been taken	25 Nov 2002	PDH - 9 days
7	CPS provide court with witness availability details	30 Nov 2002	PDH - 4 days
8	Counsel complete VPDH form by 10 a.m on PDH day	4 Dec 2002	PDH - 0 days

3.6.3 The problems that arose in adhering to the dates in the timetable are discussed in 6.3.8, 7.2.3 and 7.2.4 below.

3.6.4 The VPDH application automatically dispatched emails to each party when a case was created on the system, to let them know that a new case had been added to their webpage. Participants who had accessed the case details on the system subsequently received emails:

- whenever changes were made to the case information on the system
- when a milestone date on the VPDH Timetable was imminent
- on a daily basis when a milestone date had been missed.

3.6.5 The reminders of missed milestones continued until court staff marked on the system that the required action had been taken. Some of the difficulties associated with the issuing of reminders are discussed in 7.2.5.

3.7 Listing the VPDH

3.7.1 VPDH dates were set by the magistrates' court or at a preliminary hearing within the same maximum time periods as regular PDHs (see Table 1 above).

3.7.2 Using an agreed form of words, Stockport magistrates informed defendants of the date of the PDH and advised that, provided timely instructions were given to the solicitor, the defendant need not attend court if the case was conducted as a VPDH. They did this in all Stockport cases even though many would prove to be ineligible for inclusion in the pilot.

3.7.3 In section 51 cases, judges gave similar advice to defendants at the preliminary hearing.

3.7.4 Where one side had completed the VPDH Questionnaire and the other had not, the protocol envisaged that only the defaulting party would attend an oral PDH. However, this situation did not arise during the evaluation period.

3.8 Listing the trial

3.8.1 The protocol stated that every attempt would be made to fix a trial date convenient to briefed counsel. The three preferred trial availability dates in the Trial Timetable section of the VPDH Questionnaire could be altered up until 10 a.m. on the day of the VPDH.

3.8.2 The protocol intended that, 24 hours before the PDH, court personnel would enter court availability dates on the system. This would encourage counsel to update information about their availability if necessary. In practice, court availability was not entered onto the system until the morning of the VPDH, following the listing officer's review of witness availability information (faxed from CPS the afternoon before) together with the preferred trial dates put forward by the advocates. Trial dates entered on the system took account of 'gaps' in the court diary i.e. court dates that had been vacated and were therefore available, and also an 'ongoing' date i.e. the first clear date for which no court business had previously been listed.¹⁸ The judge conducting the VPDH then selected the trial date, the court staff put it onto CREST and included the date in the court's warned and fixed lists.

¹⁸ 'Gaps' were therefore earlier than 'ongoing' dates.

3.9 Training and user support

- 3.9.1 Potential users were invited to ‘roadshows’ before the pilot started, where an overview and demonstration of the system was provided by the resident judge, an EDS representative and court personnel. The presentation included an explanation of the on-line help facilities.
- 3.9.2 Those who agreed to participate in the pilot were invited to come into the court office for a ‘hands on’ practice session on the system with a designated member of staff. This person was also available to answer queries by phone during the pilot. EDS provided a helpdesk which dealt with queries in relation to loss of tokens and forgotten pin numbers.

4 ANALYSIS OF PILOT CASES

4.1 Introduction

4.1.1 At the time fieldwork ended, 34 cases had met the criteria for inclusion in the pilot although some of these cases were subsequently excluded for various reasons. This chapter describes these cases and the information provided to the court to assist in listing for trial.

4.2 Characteristics of pilot cases

4.2.1 Twenty-eight of the 34 eligible cases (82%) involved a single defendant. In the five cases involving two defendants, only one had both defendants on the system. There was a single case with three defendants but only one of these was on the VPDH system.

4.2.2 Nineteen cases (56%) involved either-way offences and had been committed to the Crown Court for trial. The other 15 cases (44%) related to indictable-only offences and had been sent for trial under Section 51 of the Crime and Disorder Act 1998.

4.2.3 Cases were sent or committed between 28 August 2002 and 4 March 2003. All had passed the PDH stage (whether virtual or oral) but 22 of the 34 cases (65%) had not been finally disposed of by the end of the fieldwork period.

4.2.4 Two judges were involved in the pilot; one acted in 21 cases (62%) and the other acted in the remaining 13 cases (38%).

4.2.5 A total of 10 solicitors from four firms acted in pilot cases. One represented clients in nine cases, one in eight and the rest acted in three or fewer cases.

4.2.6 Advocates from nine chambers (but not all members of these chambers) were involved in pilot cases. Each of the 19 defence barristers acted in five or fewer cases. The Crown briefed 15 advocates. Two were briefed in seven pilot cases while the rest acted in three or fewer cases. No advocate acted for both the prosecution and defence in pilot cases.

4.2.7 Five of the 34 pilot cases (15%) involved a defendant who was remanded in custody at the time the case was received in the Crown Court.

4.3 Cases converted to an oral PDH

4.3.1 Of the 34 cases, 19 (56%) proceeded as a VPDH and 14 (41%) were converted to an oral PDH. The CPS discontinued the remaining case before the date scheduled for the PDH.

4.3.2 There was no clear link between the 14 cases in which an oral PDH was held. An anticipated plea was indicated on the VPDH Questionnaire in seven of these cases: one was a guilty plea and the rest were not guilty pleas.

4.3.3 The reasons why an oral PDH was held included:

- the appointment of new counsel not within the pilot scheme
- late briefing of counsel by CPS
- the need to take instructions from a client who was difficult to contact
- the existence of co-defendants whose cases did not fall within the pilot
- a change to the charges requiring the question of venue to be reconsidered
- difficulty experienced by counsel in accessing the VPDH system (see 5.2.4 below).

4.4 Completion of the VPDH Questionnaire

- 4.4.1 Court staff completed the General Details section of the VPDH Questionnaire and the Prosecution Witness List in every pilot case.
- 4.4.2 The extent to which parties completed their sections of the Questionnaire was more variable. An anticipated plea was indicated in the Solicitor Case Information section for 27 out of 34 defendants¹⁹: four were guilty pleas and 23 were not guilty pleas.
- 4.4.3 Table 2 indicates the extent to which information was provided by the parties. Defendants are distinguished according to the anticipated plea as this often dictated which parts of the VPDH Questionnaire were completed.
- 4.4.4 Provision of trial information in not guilty plea cases was generally good. Defence Trial Issues were provided for 20 of the 23 defendants with an anticipated not guilty plea. The case against 17 of these defendants (including the case with co-defendants on the system) proceeded as a VPDH; in the case against one of these defendants no Prosecution Trial Issues were submitted.

¹⁹ This number excludes the defendant in the case that was discontinued by the CPS prior to the PDH.

Table 2: Number of defendants for whom information was provided on the VPDH Questionnaire by anticipated plea

Section of the VPDH Questionnaire that was completed	Anticipated plea			
	Guilty	Not Guilty	None	Total
Solicitor Case Information	4	23	4	31
Guilty Plea Timetable	3	1	0	4
Prosecution Trial Issues	1	18	0	19
Defence Trial Issues	1	20	0	21
Prosecution counsel's availability	1	16	0	17
Defence counsel's availability	0	19	0	19
Defence solicitor's witness list	1	21	0	22
Defence counsel's witness list	0	19	0	19

4.4.5 It was not possible to establish from the VPDH system the time at which information had been supplied and so the degree to which parties complied with the deadlines set out in the VPDH timetable is not known.²⁰

4.5 Role of the reviewing judge

4.5.1 The judge reviewing the information submitted by the parties on the VPDH system could make orders in response to applications, or of his own volition, to ensure appropriate action is taken and to fix the date of sentence and trial. The orders were entered on the system and the parties are notified by email that the case had been reviewed.

4.5.2 Judges normally reviewed cases on the scheduled VPDH date. However, if there was a request to delay the VPDH or to hold an oral PDH, this was immediately drawn to the judge's attention by court staff in order that a decision could be made and the parties informed.

4.5.3 Where an oral PDH was considered necessary, judges often did not make orders on the system, preferring to deal with matters at the oral hearing. In the 16 VPDH cases listed for trial, judges made 25 orders on the VPDH Questionnaire requiring the prosecution to take action by a specified date and 32 orders requiring the defence to do so. The greatest number of prosecution actions ordered in a single case was five. For defence actions, the greatest number ordered in one case was six. The greatest total in one case was ten orders. There

²⁰ The timing of the creation of cases by the Court on the VPDH system is discussed in Chapter 3.

were only three cases in which the reviewing judge made no case management order.

4.6 Guilty pleas and plea discussions

4.6.1 The defence indicated an anticipated guilty plea in four pilot cases. We were not able to tell in individual pilot cases whether the electronic discussion facilities provided as part of the VPDH system were used to negotiate an acceptable plea. The content of such discussions was private and accessible only to those involved.

4.6.2 EDS was able to provide some figures on the extent to which electronic discussion facilities were used. These showed contributions to discussions from 14 legal representatives in 16 pilot cases. The views of legal practitioners on the usefulness of the discussion facilities are presented in the next chapter.

4.7 Outcome of pilot cases

4.7.1 Twelve pilot cases had reached completion by the time fieldwork ended; a further three cases were awaiting sentence. The progress and outcome of these cases were as follows:

- one case was discontinued by the CPS prior to the PDH
- in one VPDH case the defendant was due to appear in court for the first time for sentence
- one case ended at the oral PDH when the defendant accepted a bind-over
- one case was brought into court for plea following a guilty plea indication at VPDH and adjourned for sentence
- two cases involved negotiation of an acceptable plea of guilty after the virtual PDH
- two cases, one of which was dealt with by VPDH, came to trial and the defendant was acquitted
- the remaining seven cases were cracked trials.

4.7.2 In the seven trials that cracked, the CPS offered no evidence in four and in the other three the defendant entered a late guilty plea acceptable to the CPS. Three of the cases where no evidence was offered and one of the late guilty pleas had an oral PDH. The other three cracked trials had a VPDH.

5 VIEWS OF PROFESSIONAL PARTICIPANTS

5.1 Introduction

5.1.1 This chapter presents the views of the two judges, four solicitors and 14 counsel who responded to surveys or participated in interviews about their experience of using the VPDH system in pilot cases. The 14 responding barristers were all junior counsel with between four and 20 years of call. All but one acted for both prosecution and defence; the remaining barrister acted only for the defence.

5.2 Ease of use of the VPDH system

5.2.1 The four solicitors who responded to our survey described the VPDH system as very easy or quite easy to use. One commented that ‘although it appears daunting at first, after being guided through the system with instructions it was then easily used without guidance’.

5.2.2 A judge agreed: ‘It is a very simple system to use. Almost all my colleagues could use it.’

5.2.3 Opinions among the 14 counsel who responded were more divided: four said the system was very easy to use (one wrote ‘staggeringly easy’), six that it was quite easy, two found it quite hard and two found it very hard.

5.2.4 For two of those who had experienced difficulty, the problems related to connecting to the system. One described this as ‘a real problem’ while a colleague commented that it was ‘very difficult to connect from anywhere except the computer at Minshull Street’.²¹

5.2.5 The on-line help facility provided with the system had been used regularly by only one respondent. Only two solicitors and two counsel had found the facility useful. Most had never used it. One remarked that ‘when I needed help, it was because I could not get online so the help facility was not available’.

5.2.6 Several respondents praised the assistance provided by court staff and by the EDS project manager.

5.3 Training

5.3.1 All responding solicitors and 12 of the barristers had received training in the use of the system. The quality of the training provided was considered quite good or very good by everyone except for three barristers who described the training as ‘quite poor’. One of those critical of the training commented: ‘Training was provided before the system went live and before system was completed. Having said that, I found the system quite easy to use so training was not really needed’.

²¹ At the start of the pilot period, a terminal providing access to the VPDH system was available in the robing room.

5.4 System performance

- 5.4.1 We asked about the speed of the VPDH system in retrieving information. All four solicitors described the speed as quite good or very good. Counsel were again more divided. Ten thought performance was quite good or very good while four said it was quite poor or very poor.
- 5.4.2 The impression of system performance was clearly linked to the speed of the connection to the Internet used by respondents. All those with broadband connections were satisfied with the speed of system response. Complaints about performance came from those using an ISDN line or a 56.6K modem to connect. Two in the latter group complained particularly that switching between different screens and forms was slow and cumbersome. A judge also found it irritating to have to open and close different parts of the questionnaire.
- 5.4.3 A judge emphasised the importance of a fast connection. ‘The system is too slow. It is acceptable for the purposes of the pilot but any roll-out will need to use broadband. Access is much faster on my broadband ADSL connection at home than using the ISDN connection we have at court.’

5.5 The VPDH Questionnaire

- 5.5.1 Barristers did not agree on how the quality of information provided on the VPDH Questionnaire compared with that on the standard Judge’s Questionnaire: five said information was better on the VPDH Questionnaire, three that it was better on the Judge’s Questionnaire and six that quality was the same on both. The VPDH Questionnaire took longer to complete in the opinion of 11 barristers including the three who said the VPDH information was poorer in quality.

5.6 Use of the electronic Case File

- 5.6.1 The pilot did not provide an effective test of the electronic Case File facility provided with the VPDH system.²² The facility was used by the case administrator only to scan in witness statements relating to the case and this was not done in all cases because of pressures on court staff time. The long time required to upload the scanned images was a further disincentive. The Case File contained scanned material in only 12 pilot cases.
- 5.6.2 Despite these limitations, defence solicitors responding to our survey liked this facility. All four said they accessed the Case File frequently and all described it as ‘very useful’. Five out of 14 barristers had used the Case File. One did not consider it useful but the other four described it as very useful. One commented ‘the electronic Case File is extremely useful as the work required can be undertaken at any time and does not require the brief to be accessible’.
- 5.6.3 A participating judge also saw potential benefits: ‘At present, I do not use the electronic Case File on the system but I can conceive of doing so in the future’.

²² The judicial requirements for an electronic file in the Crown Court are set out in the paper ‘Modernising the criminal courts – the electronic file’ produced by the Judicial Advisory Group 2 – Criminal.

5.7 Use of discussion rooms

- 5.7.1 One solicitor had never used discussion rooms. Three had used the discussion room for communicating with the case administrator, one for discussion with CPS and two with the defence advocate. One solicitor communicated frequently with the defence advocate using the discussion room. The other two had used the facility only occasionally.
- 5.7.2 Among the 14 barristers, three had used the discussion room for communicating with the case administrator, four with the CPS and eight (prosecution counsel) with the defence advocate. Only one barrister had used the facility frequently.
- 5.7.3 The three solicitors and four of the barristers found the discussion rooms quite useful or very useful. The other seven barristers who had used discussion rooms found them to be of little or no use. One of the latter group commented that discussion rooms ‘are no substitute to picking up the telephone’. However, a colleague disagreed: ‘it is very difficult to contact people by phone, especially if they are at court. These discussion group sites mean that your message is clearly left for the other person and you tend to get a quick reply’. Another barrister who described himself as ‘ecstatic’ about the system in general was particularly enthusiastic about the discussion rooms: ‘It’s marvellous to talk to the organ grinder not the monkey’.
- 5.7.4 A participating judge raised a potential concern associated with discussion rooms: ‘I do not mind if the parties don’t use the chat rooms. A discussion in the coffee room which goes unrecorded might be better than the Court of Appeal being able to access the contents of a discussion room on the system’.²³

5.8 Impact on the work of solicitors

- 5.8.1 None of the four responding solicitors felt that the pilot procedures had required them to undertake extra tasks. One felt that ‘If anything, it requires less time and effort to prepare a case’.
- 5.8.2 All four solicitors felt that under the VPDH system, the parties addressed the issues at an earlier stage than under the standard procedure. One commented that the automatic reminders generated by the system ensured that preparation was always kept up to date.
- 5.8.3 The responding solicitors also agreed that the pilot procedures had resulted in more efficient use of their time. One explained that ‘Fridays are the busiest days at Minshull Street Crown Court for PDHs. The VPDH system is more efficient as it allows defence solicitors valuable time in the office preparing cases instead of waiting at court for a PDH to be called on’.
- 5.8.4 The right milestones were identified in the VPDH timetable in the view of all four solicitors and adequate time was allowed for the necessary information to be gathered.

²³ A High Court judge considered that this was not an issue; the Court of Appeal does not seek access to confidential written discussions between counsel.

- 5.8.5 Three solicitors felt that the amount of consultation they had with the CPS had not changed as a result of the pilot procedures; the fourth felt it had decreased. Two felt that consultation with the defence advocate was unaffected; one said consultation had increased and the other that it had decreased.

5.9 Impact on the work of counsel

- 5.9.1 Three barristers considered that the pilot had resulted in extra work for them. One referred to 'spending more time filling in the form with more detail than usually finds its way on to the judge's form'. A second complained that his involvement had meant 'trying to become an expert computer engineer just to use the system and store/recall information'. The third barrister described the extra work as 'only keeping abreast of the inbox, but I was doing that anyway'.
- 5.9.2 The other responding advocates felt that, on balance, the amount of work had not changed. However, one commented that advocacy work had decreased to be replaced by non-advocacy tasks.
- 5.9.3 Seven of the 14 barristers felt that, under the pilot procedures, the parties addressed issues at an earlier stage than usual. Two felt that issues were addressed at a later stage and five considered that the timing was unaffected.
- 5.9.4 With regard to efficient use of counsel's time, six felt this had improved under the pilot while eight said efficiency was degraded. Those who said efficiency had improved referred to the ability to address issues at an early stage, less time spent at court and the freedom to complete the electronic form at one's convenience. These benefits were acknowledged even by those who complained of a reduction in efficiency because of increased response times.
- 5.9.5 Three barristers were not sure that the right milestones had been identified in the VPDH timetable. One wanted more flexibility but none could suggest how the milestones might be changed.
- 5.9.6 The same three barristers who were unhappy about the milestones felt that the milestone timetable did not allow sufficient time for information to be gathered. Even those who felt the time allowed was sufficient stressed the importance of briefing counsel early in the process. A judge felt that the pilot had improved practice in this respect: 'the parties are addressing issues earlier and getting instructions earlier'.
- 5.9.7 A majority of respondents felt that the VPDH system had not affected the amount of consultation with either their professional client or the advocate for the other side.

5.10 Client conferences

- 5.10.1 Under the pilot procedures, solicitors were required to certify that instructions had been taken before the case could proceed as a VPDH. Defence barristers were asked whether they usually held a client conference before completing the VPDH Questionnaire. None said they did so routinely and only three would

automatically ask for an oral PDH if a conference had not been held (see also 5.12.4 below).

5.11 Impact on plea discussions

- 5.11.1 Those who oppose dispensing with an oral PDH in some cases often refer to the loss of an opportunity to negotiate a plea. Respondents' views differed on the impact of VPDH procedures on plea discussions. Two solicitors felt discussions were unaffected, one that they were easier and one that they were more difficult. That solicitor blamed the Crown for failing to indicate what pleas would be acceptable.
- 5.11.2 Among counsel, nine said plea discussions were harder, three that they were easier and two that they were unaffected. Six barristers, including the three who found plea discussions easier under the pilot, used discussion rooms for plea discussions.
- 5.11.3 Counsel referred to greater flexibility when plea discussions take place at court. One complained that, under the VPDH system, 'plea discussions are impossible and do not seem to happen at all'. On the other hand, a colleague felt that plea discussions were made easier through knowing the identity of one's opponent at an early stage. Another agreed: 'I have been so impressed by the pilot. Discussions which would normally occur only on the morning of trial now take place well in advance'.
- 5.11.4 A participating judge took the view that the VPDH system had not been a disincentive to plea discussions but favoured radical change with open judicial involvement in such negotiations: 'I would prefer a fully open plea bargaining system. The present system is necessary but dangerous. Often now I am happy to have discussions in chambers on tape and to allow the Court of Appeal to hear it. Too often defendants are not told what they would have got had they pleaded guilty'.

5.12 Cases suitable for VPDH procedures

- 5.12.1 Cases involving young defendants and those with more than three co-defendants were excluded from the VPDH pilot. Participants were asked whether any kinds of case were not suitable for the VPDH procedures. Two solicitors saw no reason for exclusions: 'with co-operation from all parties, all cases can be dealt with'. One solicitor was not sure and one felt cases where the defendant is in custody should be excluded in order to facilitate a client conference: 'if clients are in custody, it is difficult to arrange conferences at short notice. The first conference is therefore on the morning of the PDH'.
- 5.12.2 Nine of the 14 barristers felt some cases were unsuitable, two disagreed and two were unsure.. One felt an oral PDH was always necessary: 'Most defendants will not confront issues until at court. Most solicitors do not seriously confront clients with the evidence. Any form of PDH that is not at court with counsel will result in more not guilty pleas and cracked trials.' Another went nearly as far: 'exclude all not guilty pleas (because of difficulty in getting trial dates and availability) and child witness cases.' Others suggested exclusions were:

- serious cases
- complex cases
- multi-handed cases
- anything that requires ‘proper advocacy’ in court
- those which require flexibility and discussion between counsel
- those which may well ‘crack’ at the PDH stage
- those with potential for plea bargaining.

5.12.3 Both judges involved in the pilot took a robust view of suitability. One did not think that complex cases should be excluded: ‘It is nonsense not to be able to deal with complex cases [in the VPDH system]; 95 per cent of cases fit into a standard pattern’. This judge was also sceptical of claims that robust judges get more pleas at oral hearings, particularly as trial counsel were seldom present: ‘the judge can’t push the defendant into a guilty plea, and can’t bully a barrister at PDH into taking decisions if it is not his case’.

5.12.4 Nor was the need for a client conference a good reason to schedule an oral hearing: ‘Barristers do not expect to get a good conference with the client at the PDH because it is too rushed, and in any case it is rarely the trial counsel for the defence’.

5.12.5 Another judge was unsure whether the Crown Court was an appropriate venue for cases involving young defendants but saw no reason to exclude them from the VPDH system. The same applied to cases involving vulnerable witnesses: ‘Special Measures applications now go through on the nod. The criteria are easily met and they are not contested. There is no good reason to exclude these from the VPDH system’.

5.12.6 However, this judge conceded that some cases may have to be excluded: ‘Sometimes there are good reasons. There might be things the parties want to tell you in court and do not want to put on the system’.

5.13 Quality of justice

5.13.1 None of the legal practitioners or judges participating in the pilot had quality of justice concerns about the VPDH procedures. One barrister pointed out that ‘any potential difficulty in an individual case can be avoided by a request for an oral PDH’. However, another observed that the VPDH procedures ‘reduce the defendant’s familiarisation with court and the client’s opportunity to discuss the case when the client’s mind is more focussed’.

5.14 Improving and extending the VPDH system

5.14.1 Respondents were asked how the VPDH system might be improved and whether it should be extended. All four solicitors and six of the 14 barristers supported wider implementation of the system. Six barristers said the system should not be extended and two were unsure. One of the opponents was particularly pessimistic about the consequences: ‘If extended, it will inevitably lead to many more not guilty pleas and cracked trials’.

- 5.14.2 One of those in favour of wider implementation added a note of caution: ‘only if the advocates filling in the questionnaire are the proposed trial advocates. If for financial reasons others hijack the system, it will break down’.
- 5.14.3 Both judges involved in the pilot wanted to see the use of the system extended, in the first instance to all cases sent or committed for trial to Manchester Minshull Street.
- 5.14.4 Suggested improvements to the system included:
- having the court enter available trial dates on the system before counsel had to complete the VPDH Questionnaire
 - improved training to address the concerns of those who dislike the system, as their opposition may be due to fear of the technology or unwillingness to change
 - extending the system to cover the period from VPDH through to the eve of trial
 - a facility to bring together and print out judicial orders
 - giving chambers’ clerks access to judges’ orders and reminders about deadlines
 - sending reminders only after the court has checked whether actions have been completed.

6 THE IMPLICATIONS OF VPDHs FOR OTHER ORGANISATIONS

6.1 Introduction

- 6.1.1 This chapter describes implications of the VPDH system for the work of the magistrates' court, CPS, police witness liaison clerk, Witness Service, Probation Service and barristers' clerks.
- 6.1.2 Of these groups, only the CPS had access to the VPDH system during the pilot.

6.2 Magistrates' Court

- 6.2.1 As noted above, the protocol anticipated that Stockport cases would be entered on the VPDH system five days following committal. Although the magistrates' court faxed the committal notice to the Crown Court promptly, in several cases receipt of the representation order identifying the defence solicitor and other committal papers was significantly delayed. This in turn delayed the identification of cases eligible for the pilot because the Crown Court did not know whether the defence solicitor was a participant.
- 6.2.2 The magistrates' court used an agreed form of words to inform the defendant that, if full instructions had been given to his legal representative and the case proceeded as a VPDH, the defendant would not have to attend court. The magistrates' court doubted whether the defendant appreciated the force of this announcement which was only one of several delivered.

6.3 Crown Prosecution Service

- 6.3.1 As explained in 3.5.3, the only CPS access to the pilot system was through a stand-alone PC supplied by EDS. This was situated in a room adjacent to an open-plan office and not near anyone's desk. The computer was not attached to a printer. Court staff sent VPDH case print-outs to CPS on request but not as a matter of routine. At the time of the evaluation, the court was unaware that the CPS did not have a printer.
- 6.3.2 The CPS had read-only access to the VPDH system. Over 20 CPS staff members (the majority of whom were caseworkers) were trained to use it and many were provided with security tags at the start of the project but all but one of the tags were subsequently de-activated because of non-use.
- 6.3.3 The CPS acknowledged the potential of VPDHs but felt they would not be able to test the contribution of the system to their operations until it was available through the Connect 42 infrastructure.
- 6.3.4 A nominated caseworker, the only CPS user on the system at the time of the evaluation, monitored pilot cases on behalf of colleagues. Some of this work involved liaison with the court rather than accessing information directly from the system.

- 6.3.5 The CPS relied on the daily list faxed by the Crown Court the night before for notice as to whether a case would proceed as an oral PDH or VPDH. All PDH case files were sent to the Crown Court in case there was an oral hearing.
- 6.3.6 The CPS needs prompt notice of judicial orders and defence requirements for witnesses to attend trial. At an oral PDH, the CPS representative makes a note of decisions taken. In VPDH cases, there was often a delay in CPS receipt of such key decisions. The VPDH system was not checked by CPS on a regular basis for this information and it was acknowledged that some orders made by the judge in VPDH cases could be missed.
- 6.3.7 The CPS highlighted a conflict between the VPDH timetable and practice in briefing counsel in section 51 indictable-only cases, which accounted for a high proportion of potential pilot cases. This arose when the prosecution barrister was not briefed until just before or even after VPDH pilot milestone timetable had started to run. The evaluation could not distinguish how often this occurred because the dates of data entry on the VPDH system were not accessible.
- 6.3.8 CPS lawyers conducted preliminary hearings in indictable-only cases in the Crown Court. At such hearings, judges usually gave six weeks for service of the prosecution case on the defence and fixed the PDH from two to four weeks thereafter. However, the CPS briefing process only began after receipt and review of the full file from the police and a decision that the case would proceed. In most section 51 cases, this occurred around two weeks before the PDH.
- 6.3.9 The CPS therefore considered that the timetable for section 51 indictable-only cases in potential pilot cases should be extended to accommodate the briefing of the prosecution advocate following service of the prosecution case.

6.4 The police witness liaison clerk

- 6.4.1 In oral PDHs, witness availability information is provided to the court at the hearing. The VPDH protocol required witness availability information to be provided to the court four days in advance of the PDH date although there was no facility to do this using the VPDH system itself. In practice, the police clerk was usually unaware whether a case was designated as a VPDH and followed the same procedures as for oral PDHs. She faxed the availability of individual witnesses to the CPS on the afternoon before the hearing, along with a calendar compiled manually which synthesised the information and indicated suitable dates for trial.
- 6.4.2 The quality of information provided to the court by the police clerk was dependent on the timely receipt of lists of witnesses to attend court (LWACs) from the CPS. Police letters requesting witness availability information were supposed to be sent out two weeks before the PDH, giving adequate time for responses to be received and the calendar of available dates to be created before the hearing. In practice, the police clerk often received LWACs just a few days

before the PDH date²⁴, leaving insufficient time to request availability information from civilian witnesses in particular.

- 6.4.3 The potential of the VPDH system to improve the timeliness and accuracy of witness availability information and to reduce the effort involved is discussed in 7.3.8 below.

6.5 Probation Service

- 6.5.1 In non-pilot cases, probation sometimes missed cases where reports were ordered because it was unable to staff all courts. When a judge ordered a pre-sentence report in a VPDH, the order was printed out and photocopied for the Probation Service.
- 6.5.2 It was up to solicitors in all cases to notify probation of an intended guilty plea; where this happened, hearings were usually rescheduled in order to give probation enough time to prepare a report.²⁵
- 6.5.3 The Probation Service considered that it would be helpful to have read-only access to the VPDH system to enable its staff to check when reports had been ordered, thus improving information flow and relieving court personnel of the task of informing probation.

6.6 Witness Service

- 6.6.1 The Witness Service Coordinator highlighted an information flow problem arising from PDHs in general. In order to arrange pre-trial visits for vulnerable and intimidated witnesses, the Service needed adequate notice of Special Measures applications and related decisions at PDH. (The court witness liaison officer said that sometimes PDHs omitted to deal with Special Measures applications on file. The structured procedures of the VPDH system would make such omissions less likely.)
- 6.6.2 Information relating to vulnerable witnesses and Special Measures applications and orders came to the Witness Service through different routes: referral from the police witness liaison clerk; from the court listing office the day before the trial; from the police officer responsible for the case; from the court's witness liaison officer; and witness self-referral.
- 6.6.3 Even so, the Witness Service sometimes did not receive advance notice of vulnerable witnesses and wanted to receive information in a more systematic way. If the VPDH scheme was extended, the Witness Service said it would benefit from 'read only' access.
- 6.6.4 The Coordinator said that witnesses rarely wish to observe oral PDHs and she was not aware of any complaints or feedback from witnesses in VPDH cases about being unable to attend court. If witnesses ask about PDH decisions, the

²⁴ Further delays were caused where LWACs lacked contact details for witnesses or insufficiently identified police officer witnesses and the CPS had to be contacted for this information.

²⁵ Unlike some courts in the flexible PDH pilot, it was not practice at Minshull Street to bring such cases into court in order to take a plea before ordering reports.

Service contacts the CPS clerk covering the hearing. However, it was more usual for witnesses to ask the police for feedback on PDH decisions.

6.7 Barristers' clerks

- 6.7.1 Senior clerks in four participating chambers confirmed that as they did not have access to the VPDH system, they could not check whether chambers' cases were to be dealt with by VPDH or at an oral hearing. Nor could they track when milestones were due, what judge's orders were made or trial dates set. Instead, they often called the court or asked the barrister involved for this information.
- 6.7.2 Within the VPDH system, many barristers used their personal email address which their clerks could not access. One suggested that reminders should be routinely copied to the chambers' email address. Another disagreed: 'copying us into reminders to barristers would just create more administration for us'.
- 6.7.3 One clerk claimed he could not identify the case from system emails sent to the barrister at the chambers' email address.
- 6.7.4 A clerk whose barristers usually defended noted that some VPDHs were cancelled the day before the due date because the CPS had briefed trial counsel too late to complete the forms. On one occasion when a barrister in his chambers was prosecuting, the VPDH was cancelled because the brief had not been received by the previous day.
- 6.7.5 One clerk said that greater use of the VPDH system would mean relocating computers in chambers to allow barristers' access; if clerks were familiar with the system they would be better able to support barristers who were not computer-literate.
- 6.7.6 Three of the four senior clerks to whom we spoke would welcome extension of the VPDH system, provided they could have read-only access to its data which would be very useful in organising chambers work. Without access, one said that 'chasing information on more VPDH cases would be a nightmare'. Another described it as 'a first-class system' but said that getting some barristers to use it would be like 'dragging Rip Van Winkle into the 21st century'. He saw even greater potential for the system to be used in family cases for appointments in front of district judges. However, one clerk described the system as 'a complete non-starter for criminal cases, where the only time anything happens is when you go to court'.

7 CRITIQUE OF THE PILOT SYSTEM

7.1 Introduction

- 7.1.1 This chapter considers the VPDH system and the associated procedures as they operated during the pilot. Suggestions for improvements are highlighted in italics. These draw on comments made in interviews, surveys, discussions and observation of the operation of the system.
- 7.1.2 The implications of extending the system and the associated costs are also examined.

7.2 System functionality and performance

- 7.2.1 In general, the range of functions performed by the VPDH system worked well. At the heart of the system was the VPDH Questionnaire, divided into various sections. Write access was restricted to those participants responsible for inputting information to each section (although the information could also be passed by fax or email to the case administrator at the court who would input the data for participants who had difficulty accessing the system). Once the information had been provided, the reviewing judge could make orders on the system and assign dates by which actions must be completed.
- 7.2.2 The system description and protocol produced by the resident judge was distributed in hard copy. The on-line User Guide provided as part of the system described individual system functions but not the overall VPDH process. Procedural aspects were covered in the help screens associated with sections of the VPDH Questionnaire but these complemented rather than duplicated the guidance in the protocol.

Recommendation: The VPDH protocol should be made available to users on-line as part of the VPDH system.

- 7.2.3 According to the protocol, the case administrator should have created a case on the VPDH system as soon as case papers were received for committals and five days after the preliminary hearing for indictable-only cases. In practice, a case was only created when it was known that both sides had briefed counsel within the scheme. There was therefore a 'limbo' period where cases that were candidates for inclusion in the pilot had been received but counsel had yet to be appointed. To keep track, a separate spreadsheet of these cases was maintained by the case administrator. Where a case was subsequently created on the VPDH system, the details from the spreadsheet were re-keyed. This meant that, including the CREST system, the court entered case information for pilot cases three times in all.

Recommendation: The VPDH system should include a 'holding area' for cases waiting to be confirmed as meeting the criteria for inclusion. Parties should be able to enter the names of counsel briefed in cases in the holding area. An automated facility should allow conversion of cases in the holding area to the full system. Any major redevelopment of the system should support data interchange with CREST to avoid data re-keying.

- 7.2.4 The VPDH milestone timetable set down and monitored dates for key actions to be completed. These dates were calculated in relation to the date the case was created on the system and the scheduled PDH date. The delay in case creation referred to above meant that milestones were sometimes overdue as soon as a case was entered on the system. The problems were particularly acute in indictable-only cases where CPS began the briefing process only after service of the prosecution case. The resident judge had no objection to court staff changing the VPDH date in appropriate circumstances.

Recommendation: When a case is created on the system, the case administrator should be able to adjust the date of the VPDH to ensure parties have a reasonable time in which to achieve milestones.

- 7.2.5 As described in chapter 3, daily reminders were automatically emailed by the system to all case participants when a milestone was overdue. Court staff could terminate reminders by electronically ticking a box to confirm the necessary action had been completed. In practice, it was not possible continuously to monitor and record completed actions. Instead the case administrator checked whether a milestone had been achieved only on receipt of a reminder that it was overdue. This meant that parties received reminders in relation to completed actions. This was irritating to those concerned and diluted the impact of genuine reminders.

Recommendation: When the date for achieving a milestone becomes due, a reminder should be sent to the case administrator to check whether it has been achieved. A reminder should be sent to the defaulting party only when the case administrator has checked and confirmed that the milestone has not been achieved. Case participants should receive reminders only about those actions for which they are responsible.

- 7.2.6 One other aspect of the operation of reminders needs attention. Receipt of reminders was only triggered if the participant had accessed the case information on the system. Otherwise, no reminder was sent even when a milestone was missed.

Recommendation: Defaulting parties should receive reminders about missed milestones irrespective of whether they have accessed the case details on the system.

- 7.2.7 The VPDH system did not record in an easily accessible form the date and time when information was input. For this reason, we could not establish the extent to which milestone dates were complied with or the order in which parties submitted trial-related information.

Recommendation: For monitoring purposes, it would be useful if the court could access information on the time when information was input to the VPDH system.

- 7.2.8 One of the features of the system is the recording of judicial orders made in each case. In order to reap the full benefit of this, the system should be able to produce a list of these orders, including the associated deadlines. This would be of use both to the parties and to the court in its case management function.

Recommendation: The system should be able automatically to generate a list of judicial orders and associated dates for individual cases.

7.2.9 The modular design of the VPDH system made it easy to navigate to the desired section. However, users without a broadband connection found the system to be slow in retrieving information. Using a 56.6K dial-up modem, our experience was that each of the seven sections of the VPDH Questionnaire took around 30 seconds to load in a particular case. Each section opened in a new window and there was no facility to access or print out all sections at once.

7.2.10 When we accessed the individual parts of the VPDH Questionnaire, a dialogue box appeared asking whether the user wanted to download both secure and non-secure items. This was irritating and slowed down retrieval even more. The problem could be avoided by changing the browser's security setting²⁶ but this was not referred to in the guidance.

Recommendation: Ways of speeding up access to the information stored on the VPDH system should be investigated. Guidance on browser settings should be provided. There should be an option to bring up all sections of the VPDH Questionnaire in a single window. This would also allow the entire questionnaire to be printed out with a single command.

7.2.11 Most questions on the VPDH Questionnaire required a 'yes or no' response. Answers were indicated in the standard manner for Internet forms by clicking on a small circle which became black on selection. The circle corresponding to the answer 'no' was selected as a default, making it difficult to distinguish a genuine answer of 'no' from an unanswered question.

Recommendation: On the VPDH Questionnaire, no question should have a 'yes' or 'no' option selected as a default.

7.2.12 A printed copy of the sections of the VPDH Questionnaire was included in the paper case file maintained by the court. These were often photocopies on which it was not possible to tell whether 'yes' or 'no' had been selected as the circles for both appeared to be filled in.

Recommendation: The design of the VPDH Questionnaire should ensure that selected options can be identified on photocopies of printouts. This may exclude using filled circles.

7.2.13 Case administrators cannot at present generate reports from the VPDH system containing aggregate information about the cases on the system, for instance on the manner and date of receipt, the number of defendants, numbers and types of applications and judicial orders made and the range of responses received to questions. The figures presented in chapter 4 of this report were compiled by examining each pilot case individually. This was only possible because of the small number of cases concerned.

²⁶ This facility is not available in releases of Internet Explorer earlier than 6.0.

Recommendation: A facility should be provided to allow the court to generate reports containing aggregate information about the cases on the VPDH system.

7.3 Content of the VPDH Questionnaire

- 7.3.1 The term ‘Solicitor Case Information section’ was the title of both a section of the VPDH Questionnaire and a system folder that held three sections of the questionnaire of direct interest to the defence solicitor. This duplicate use may have caused some confusion.

Recommendation: System nomenclature should avoid duplication.

- 7.3.2 If the defence had not taken full instructions, the reviewing judge ordered an oral hearing. However, solicitors sometimes wanted to request an oral hearing for reasons other than a failure to obtain instructions. As a means of discouragement, no explicit provision was made for such an application. A defence application for an oral PDH nevertheless featured in five pilot cases.

Recommendation: The VPDH Questionnaire should allow the parties to apply, with grounds, for an oral PDH. The protocol should make clear that such applications will not be granted as a matter of course.

- 7.3.3 The system’s on-line help facility indicates that the Guilty Plea Timetable section should be completed by each defence counsel representing a defendant who is intending to enter a guilty plea. The first question asks whether the defendant has been advised of section 152 of the Power of the Criminal Courts (Sentencing) Act 2000 which deals with the sentencing discount for an early guilty plea. This question is equally relevant for a defendant intending to plead not guilty.

Recommendation: The question about informing the defendant of the discount for an early guilty plea should be included in the Trial Timetable as well as the Guilty Plea Timetable sections of the VPDH Questionnaire.

- 7.3.4 The second and third questions on the Guilty Plea Timetable asked for confirmation that proposed guilty pleas had been put before and were acceptable to the prosecution. Where this had not happened, it was obviously possible that a trial would be necessary. The system help screens did not cater for this possibility.

Recommendation: The guidance on system procedures should stipulate that where a proposed guilty plea did not cover all counts on the indictment and had not been agreed with the prosecution, the sections of the VPDH Questionnaire dealing with preparations for trial should be completed as well as the Guilty Plea timetable.

- 7.3.5 We commented on drafts of new forms being designed for use at both oral and virtual PDHs (see 3.3.5 above). Suggested changes to the existing VPDH Questionnaire included a facility to note the existence of linked cases and coverage of issues in the Court Service supplementary pre-trial checklist for cases involving child witnesses used at oral PDHs.

- 7.3.6 The VPDH Questionnaire did not give the reviewing judge scope to pose questions to the parties as is possible at an oral PDH, and this is likely to be seen as a weakness by those judges who feel that judicial case management is conducted most effectively when face-to-face. For example, a judge at an oral hearing may well scrutinise the list of prosecution witnesses required by the defence and query whether the evidence of specific witnesses will really be contested at trial. Such questions are not easily put within the VPDH system used in the pilot.²⁷

Recommendation: The VPDH Questionnaire should allow judges to question the parties on the information provided. This would put the managerial role of the reviewing judge more on a par with the judge at an oral hearing.

- 7.3.7 The standard Judge's Questionnaire is now out of date and many Crown Court centres have introduced their own updated versions to reflect recent changes in law and practice. Local Case Preparation teams are adding to this diversity. Electronic submission of forms will only be realistic if the various versions can be rationalised into an agreed standard format.

Recommendation: The LCD should initiate discussions with the judiciary to identify good practice in relation to PDH forms. This exercise should work towards agreement on standard forms, regularly reviewed and updated, which can be completed and submitted electronically.

- 7.3.8 The inability to enter witness availability on the Prosecution Witness List is a significant omission which it is planned to remedy if further development is approved. If the police had the ability to enter such information directly onto the system, it would be possible to produce automatically a calendar of dates on which witnesses and advocates were available.

- 7.3.9 There are various initiatives underway that relate to witness availability information. Computerising the police case file, including a capability to transmit witness availability information electronically, is part of the National Strategy for Police Information Systems (NSPIS) programme currently being piloted in Warwickshire. National roll-out is scheduled for 2005/6. The Case Preparation pilot currently running in Essex includes a similar facility.

- 7.3.10 There is a clear need to coordinate these initiative in order to avoid duplication of effort, particularly in relation to software development.

Recommendation: Before enhancing the VPDH system to include witness availability features, there should be consultation with other initiatives developing similar automated facilities. The possibility of these systems exchanging availability data electronically should be investigated.

²⁷ During the preparation of this report, the resident judge indicated that a section would be added to the new questionnaire to allow judges to query the parties about, for example, the evidential value of witnesses and the form of the indictment.

7.4 Discussion rooms

- 7.4.1 We cannot comment on what matters were discussed electronically on the VPDH system as we had no access to the content of discussion rooms. Feedback from surveys suggested that at least some practitioners used the rooms to conduct meaningful discussions about the case and to negotiate acceptable pleas.
- 7.4.2 One aspect seems to have caused users some confusion. Some contributions to discussion rooms were added as ‘comments’ which are posted ‘outside’ the room where everyone with access to the case can read them. These ‘comments’ included plea discussions between counsel which were clearly intended to be private.

Recommendation: The ‘add a comment’ button should be removed from discussion rooms to ensure privacy.

7.5 The Case File

- 7.5.1 The Case File folder within the VPDH system provided a possible location for making court case files available electronically to authorised users. A suggested schedule of contents for such a file is set out in the paper ‘Modernising the criminal courts – the electronic file’ produced by the Judicial Advisory Group 2 – Criminal. During the pilot, the Case File folder was used in a limited number of cases and only for witness statements relating to the case which were scanned in by court staff. Despite its limited content, the Case File folder was greatly appreciated by some practitioners involved in the pilot. However, the scanning process was slow and time-consuming and would not be suitable for any larger-scale implementation of the VPDH system.

Recommendation: Future developments of the VPDH system should provide for electronic transfer of the documents in the Judicial Advisory Group schedule to the Case File folder.

7.6 Extending the system to the entire pre-trial period

- 7.6.1 The purpose of PDHs is effective preparation for trial. Parties are required to comply with judicial orders aimed at ensuring trials proceed as quickly as possible and on the scheduled date. The VPDH pilot system contributed to this aim by stimulating preparation to begin at the earliest opportunity and monitoring actions up to the PDH date. After that time, the usual unmonitored regime was re-established.
- 7.6.2 The number of pilot cases was too small to draw definitive conclusions about the impact of the VPDH system on the effectiveness of trials. In fact, there were three cracks in the four cases with a VPDH that came to trial before the end of fieldwork.

- 7.6.3 Any benefits for trials of the VPDH approach will only become apparent if compliance with judicial orders and responses to judicial questioning (see 7.3.6 above) are tracked throughout the pre-trial period.²⁸

Recommendation: In any continued operation or extension of the VPDH pilot, the actions of parties, including compliance with orders and responding to judicial questions, should be monitored by the court throughout the pre-trial period.

7.7 Opportunities for judicial continuity

- 7.7.1 As described above, the VPDH system ensured that, unlike the position in many oral PDHs, pre-trial issues received the attention of trial counsel. The two participating judges pointed out that the system also made feasible continuity of judicial involvement from PDH to trial: ‘The VPDH system could make it easier to keep cases with specific judges. I could manage my cases in a way that is not feasible at present. I could reserve more cases to myself. I could require leading counsel to be in court’.

Recommendation: In any further use of the VPDH system, attempts should be made to list cases for trial before the same judge who conducted the VPDH.

7.8 Judicial sitting time

- 7.8.1 The pilot involved a shift in judicial work from the courtroom to out-of-court review. The time involved in the reviewing process was not reflected in judicial sitting hours because so few cases were involved. However, implementation of pilot procedures on a larger scale would require this issue to be addressed.

Recommendation: The Court Service, in consultation with the judiciary, should develop ways of accounting for judicial time spent electronically reviewing VPDH cases.

7.9 Fees

- 7.9.1 A single fee of £100, equal to the usual fee for attending an oral PDH, was paid for completing the relevant sections of the VPDH Questionnaire. No further fee was paid if an oral hearing was subsequently required. There was therefore no financial incentive for advocates to press for an oral hearing. None of the responding advocates raised any concerns about the fee structure which represented a shift towards payment for preparation by trial counsel, a principle advocated by Lord Justice Auld.
- 7.9.2 The fee arrangement contrasted with that in the flexible PDH pilots where the advocate completing the PDH forms received £30. This was subtracted from the £100 appearance fee in those cases where an oral PDH was necessary.

²⁸ The extension of VPDH monitoring to the entire pre-trial period is integral to the vision for future development of the system contained in the EDS document VPDH Phase 2 Scope Definition, February 2003.

7.10 Sanctions for non-compliance

- 7.10.1 In not guilty plea pilot cases, the parties generally provided the required information in time for a VPDH to proceed (see 4.4 above). Valid reasons were usually produced if the relevant sections of the VPDH Questionnaire were not completed. This contrasts with experience in the flexible PDH pilots where information from the parties was often missing or of inadequate quality.
- 7.10.2 Nevertheless, judges using the VPDH system are bound to encounter instances where parties fail to supply information without good reason and the question arises as to what sanctions should apply in such circumstances. Judges in the pilot were sceptical of the effectiveness of wasted costs orders. They preferred requiring the defaulting party to explain their behaviour at their own expense at an oral hearing which a compliant party need not attend: ‘This system allows you to hold individuals to account. There will need to be a system of disallowing fees, not wasted costs orders’.²⁹

Recommendation: The protocol for the operation of the VPDH system should specify the sanctions that will apply if a party fails without good reason to comply with the timetable for providing information.

7.11 Costs

- 7.11.1 It is only possible to give a broad indication of the costs of the pilot. The total cost was around £900,000 with software development accounting for about half of this figure.
- 7.11.2 Some of the constituent costs of operating the system can be quantified. The application is based on a package called eRoom which is owned and licensed by Documentum. The eRoom server that hosts the application costs around £8,500 plus a 20 per cent annual maintenance charge. A system with greater geographical coverage would require extra servers. Each user of the system requires an end user licence costing £170 plus 20 per cent annual maintenance.
- 7.11.3 The tokens used to access the system cost £50 each. The server that manages the tokens cost £14,000 plus 20 per cent annual maintenance. The life span of the tokens is around three years, which is also the period for which they are guaranteed.
- 7.11.4 Pilot costs were met by the LCD. The possibility of cost sharing among participants was not explored during the evaluation.
- 7.11.5 In addition to system costs, there are resources needed at the court to administer the system. During the pilot, this amounted to only about 20 per cent of the time of one staff member but the requirement would rise if the number of cases increased or the system was extended to cover the entire pre-trial period.
- 7.11.6 Because of the difficulties in providing CPS personnel with access to the system, their involvement in the pilot was limited. The only new tasks for them were

²⁹ The resident judge indicated that the Case Preparation Project was investigating ways in which this principle could be extended to the CPS.

maintaining a log of whom they briefed in Stockport cases and liaising with the court. This accounted for between one and two hours of effort per day. The resource implications for CPS may be greater if there are changes in its level of involvement and interaction with the VPDH system.

- 7.11.7 As explained above, the pilot was cost neutral as far as payments to advocates were concerned.
- 7.11.8 The VPDH system also has the potential to deliver potential savings when oral hearings are avoided. The scale of the pilot was too small to quantify the sums involved but if implemented on a large scale, VPDHs could generate savings not only for the court but also for the CPS and Prison Service by reducing prisoner escorting costs. Potential savings are particularly high in respect of prisoners with a high security classification.
- 7.11.9 Any extension of the pilot system will entail further software development costs. The limitation on the number of eRooms that can be used means that the assignment used in the pilot of one case to an eRoom is not a viable approach. EDS have ideas for alternative approaches but could not provide cost estimates. Achieving better compliance with government IT standards (for instance XML) would involve migrating the system to more recent releases of eRoom and this would also have cost implications.
- 7.11.10 It may be possible to deliver the same functionality as the VPDH system in another way, using different proprietary products or developing a new system from scratch. It was not possible to investigate the feasibility of this approach or the cost implications within the scope of the evaluation.

7.12 Compliance with the Court Service's Systems Strategy

- 7.12.1 The VPDH system used in the pilot did not comply with the Court Service's strategic guidelines for information systems and technology.³⁰ The purpose of these guidelines are to ensure that the choice of suppliers of hardware and software is kept as open as possible. To this end, procurements which tie the Court Service to a particular hardware manufacturer or proprietary software are avoided if at all possible. It is nevertheless acknowledged that there may be situations where the business benefits provided by a system outweigh the importance of strategic compliance.
- 7.12.2 The Technical Design Authority (TDA) within the LCD is the guardian of the strategy and engages with suppliers to ensure that procured systems comply with conformance criteria.
- 7.12.3 The TDA had not formally assessed the pilot VPDH system although it drew attention to the proprietary nature of the software at the time of the initial proposal. As a result of looking at system documentation, it identified a number of potential areas of concern or non-compliance:

³⁰ The relevant documents can be found at www.courtservice.gov.uk/docs/about_us/our_performance/is_strategy.pdf and www.courtservice.gov.uk/docs/about_us/our_performance/ict_strategy.pdf

- the VPDH application is based on the eRoom product which is only available on Microsoft platforms. It must be hosted on servers running Microsoft Windows Server rather than using an open operating systems as is the case with other Court Service applications
- by depending on Microsoft database engine, SQL Server, VPDH is not platform independent and cannot share the expertise or any licensing opportunities with the rest of the Departmental databases which utilise Oracle
- the VPDH system does not use XML-based data standards which allow electronic data interchange between criminal justice agencies.³¹ This makes it difficult to see how the VPDH system can be integrated with other Court Service and Criminal Justice Organisation systems without major bespoke work being undertaken
- the security mechanism based on tokens used by VPDH is expensive and unsuitable for implementation across a large user population
- as currently implemented, the VPDH system is insufficiently flexible; in particular, Internet Explorer is the only browser supported and it cannot be scaled to handle large caseloads.

7.12.4 Some of these concerns may be addressed by migrating the VPDH system, currently implemented using version 5.4, to a later release of eRoom. An existing release (version 6.0) would provide compliance with XML data standards and a release scheduled for the end of 2003 would allow the system to run on top of a different database engine such as Oracle.

7.12.5 EDS has indicated that the issue of scalability can be addressed but only through a fundamental re-design of the application.

7.12.6 Discussions have begun between EDS and the TDA aimed at improving the strategic compliance of future developments of the VPDH system. These are currently at an early stage.

Recommendation: Ways to improve the strategic compliance of the VPDH system should be investigated. This exercise should evaluate different methods of achieving an acceptable level of compliance and integration, including alternative ways of delivering the same functionality as a system based on eRoom.

7.13 System access controls and security

7.13.1 The security requirements for the VPDH system were developed by Communications Electronic Security Group (CESG) at the time the project was under the control of the Home Office. In light of the sensitivity of the information held, CESG concluded that identification and authentication of users should be at least 'two factor', for example by means of password plus a security token.

7.13.2 The pilot system incorporated the recommended controls, using access by PIN and a security token number which changed every 60 seconds. Apart from providing the desired protection against unauthorised access, the security system

³¹ XML is a standard that applies to government systems in general.

made it difficult for trial counsel to delegate the completion of a VPDH Questionnaire to anyone else.

- 7.13.3 Nevertheless, there were problems. Around 10 per cent of tokens were faulty and had to be replaced. Tokens were sometimes lost or damaged. Difficulties with tokens may have been the cause of some of the connection problems experienced by users and referred to in survey responses.
- 7.13.4 A security system based on tokens becomes less viable and more expensive (see 7.11.3 above) as the number of users grows. Those consulted during the course of the evaluation confirmed that a token-based system would not be feasible for a system implemented on a wide scale.
- 7.13.5 Judges to whom we spoke, both pilot participants and others, agreed that the level of security provided in the pilot was higher than necessary. They pointed out that much of the information on the system was in the public domain. The most serious threat was unauthorised changes to information on the system.
- 7.13.6 A range of techniques offering different levels of data protection is available. The associated costs can vary dramatically. A detailed assessment of the sensitivity of VPDH data is needed to inform decisions on future development.

Recommendation: The Case Preparation Project will be responsible for the future of the VPDH system. As part of its work, it should undertake an assessment of the sensitivity of the data held, distinguishing data according to the level of protection required.

7.14 Providing other agencies with access to the VPDH system

- 7.14.1 To obtain the full business benefit of the investment in developing the VPDH system, it will be necessary to provide access to others within the criminal justice system.
- 7.14.2 We referred in 7.3.8 above to the issue of witness availability. Even without availability data, the pilot system has the potential to assist the work of the police witness liaison clerk. Read-only access would allow her to limit the task of obtaining availability information to the witnesses that the defence required at trial, provided these were identified in accordance with the VPDH timetable.
- 7.14.3 Others also require access to the information on the system to ensure efficient working:
- the Probation Service needs to know when a pre-sentence report has been ordered
 - the Witness Service needs early notification of the involvement of a vulnerable witness
 - bar clerks need to be aware of milestones, judicial orders and trial dates.
- 7.14.4 At present, much court staff time is spent responding to enquiries about information on the VPDH system from these groups. Extending system access would reduce or eliminate these demands on court staff time.

Recommendation: Any sanctioning of the continued use of the VPDH system should be contingent on the provision of read-only access to the police witness liaison clerk; the Probation Service; the Witness Service; and clerks of barristers within the scheme.

8 CONCLUSIONS

8.1 Summary

8.1.1 **In its current state of development, the pilot system is not suitable to be rolled out nationally.** The pilot revealed a range of ways in which the design of the software and the associated procedures could be improved. Moreover, the small scale of the pilot left unanswered questions about the impact of VPDHs on factors such as ineffective and cracked trial rates. An extended pilot will provide more comprehensive information.

8.1.2 The pilot strongly suggested that the VPDH system can deliver business benefits by enabling pre-trial case management to be conducted over the Internet rather than at an oral hearing. **With some changes, its use should be continued and extended to a larger pool of cases.** An extended pilot incorporating the suggested enhancements would bring four benefits:³²

- a) it would allow the software and procedural changes recommended in this report to be implemented and tested
- b) a larger sample of pilot cases would allow the business benefits of VPDHs to be verified and quantified
- c) the involvement of more practitioners would provide more information on the acceptability and cultural impact of the system
- d) it would allow the information needs of other groups to be met by providing them with read-only access.

8.1.3 The pilot system did not comply with strategic criteria for Court Service technology. **In parallel with further piloting, investigations are needed into how VPDH functionality can be delivered on a national basis in a compliant and cost-effective way.**

8.1.4 The pilot VPDH system had no links to other systems operated by the Court Service. **Opportunities for data-sharing and avoiding overlaps in functionality with such systems should be investigated.**

8.1.5 IT projects of other agencies within the criminal justice system have data requirements that overlap with those of the VPDH system. **Coordination is needed to avoid duplication of effort and capitalise on opportunities for data-sharing.**

8.2 Why is the pilot system not suitable for national roll-out?

8.2.1 The reasons for not rolling out the VPDH system without further development and piloting are:

- the evaluation exposed various shortcomings of the system design which limited its effectiveness

³² The pilot court wishes to extend the current system to cases from two further magistrates' courts; a definition of the scope of an enhanced pilot system has been produced by EDS.

- because of the small scale of the pilot, it did not provide conclusive evidence of the impact of VPDHs on preparations for trial
- the CPS were unable to participate fully in the pilot because of Internet access issues that are now being overcome
- the scope of the pilot did not include the information needs of some key justice system participants
- the pilot system was not compliant with Court Service strategic criteria or criminal justice system plans for IT.

8.3 Why should the pilot system be extended?

8.3.1 The pilot strongly suggested that business benefits can flow from VPDHs: the demands on court resources are reduced through avoiding an oral PDH and the parties are stimulated into early preparation of the case. Specific factors that support extended use of the pilot system are as follows:

- the pilot demonstrated that it is possible to manage some cases in a virtual environment
- trial-related information was provided by trial counsel rather than a replacement, as often happens at an oral PDH
- the information was prepared and made available earlier
- at least some practitioners were able to use electronic discussion rooms to communicate with others and to discuss a possible plea
- the system can assist practitioners in managing their caseload by bringing together on their home screen all cases in which they are involved
- unlike previous pilots of flexible PDHs, the system gained the approval of the two participating judges and a significant proportion of participating members of the legal profession.

8.3.2 It was not possible to quantify the benefits the pilot procedures can bring due to the small number of pilot cases. The real test of the effectiveness of a VPDH is what happens during the subsequent pre-trial period and at the trial itself. Only four cases with a VPDH came to trial during the period of the evaluation. Definitive evidence of the impact of VPDHs on factors such as the total number of oral hearings required, cracked and ineffective trial rates and the time to disposal will require a larger case sample. Moreover, the full impact of the VPDH system on trials will only be apparent if the process of monitoring compliance with directions issued by the court is extended to the entire pre-trial period.

8.3.3 For the purpose of statistical comparison, a minimum sample of 200 completed pilot cases that come to trial is desirable. The pilot court suggests an extension to three of the six committing PSDs. Based on this and figures for annual throughput and waiting times, a pilot running for a year would yield the required number of completed cases. This assumes that nearly all cases originating in these PSDs involve solicitors and advocates who are pilot participants.

8.3.4 The attitude of the legal profession and the judiciary is an important factor in deciding whether VPDHs are viable. The two judges and four solicitors in our

survey approved of the VPDH system and expressed support for its extended use, whereas opinions among the 14 responding barristers were divided.

- 8.3.5 The support for the system expressed by a proportion of participants is encouraging and contrasts with experience in the flexible PDH pilot. In that evaluation, with the exception of one solicitor who thought the pilot procedures should be adopted more widely, all participants favoured returning to the system of oral PDHs.
- 8.3.6 Some of the critics of the VPDH system were practitioners wary of the technology and the skills needed to use it effectively. Their concerns can largely be met through improved training, support and system design. However, at the heart of the criticism was the conviction that cases can only be progressed at oral hearings where all participants meet face-to-face. This was also the view of a judge from another court who examined the pilot system. Similar concerns were expressed by members of the Bar in the piloting of flexible PDHs and the use of videolinks with prisons to conduct pre-trial hearings involving defendants in custody.³³
- 8.3.7 In the VPDH pilot, access controls ensured that trial-related information was provided by trial counsel rather than a replacement, as often happens at an oral PDH; the information was prepared and made available earlier; and at least some practitioners were able to use electronic discussion rooms to communicate with others and to discuss a possible plea.
- 8.3.8 The proportion of cases that are suited to the VPDH approach was hard to assess due to the small scale of the pilot. However, it was significant that not only simple cases or those involving less serious offences had a VPDH. Indictable-only offences such as robbery, wounding with intent and perverting the course of justice were dealt by VPDH, even where the defendant was in custody. Up to ten case management orders were made by a reviewing judge at a single VPDH.
- 8.3.9 The pilot experience therefore challenges the view that oral hearings at the PDH stage are indispensable or avoidable only in simple and straightforward cases.
- 8.3.10 An extended pilot would provide an opportunity to involve and test the views of a greater number of legal professionals and members of the judiciary.
- 8.3.11 The effectiveness of VPDHs may vary according to local factors. An extended Minshull Street pilot will not yield information on the acceptability of the VPDH approach in other areas. If an extended pilot proves successful, further piloting in other court centres may be advisable before a final decision is made on national roll-out.

8.4 Changes needed before further piloting

- 8.4.1 Although the pilot showed VPDHs are viable, it also revealed weaknesses in implementation and procedure. These were described in detail in chapter 7 of

³³ Joyce Plotnikoff and Richard Woolfson 'Video Link Pilot Evaluation' (1999) Prison Service; 'Evaluation of Video Link Pilot Project at Manchester Crown Court' (2001) Court Service and Prison Service.

this report. Many should prove straightforward to address and test in any extension of the pilot.

8.4.2 Changes to the VPDH application that should be incorporated prior to a second pilot phase include:

- addition of a ‘holding area’ for cases whose inclusion in the pilot is awaiting confirmation
- making the VPDH protocol available on-line
- issuing of reminders only to defaulting parties and irrespective of whether they have accessed case details on the system
- avoiding the use of default options to ‘yes’ or ‘no’ questions
- ensuring that chosen options remain clear when on-line forms are printed and photocopied
- access for the case administrator to the times at which data are entered on the system
- a facility to allow judges to question the parties on the information provided
- a facility to generate a list of judicial orders and associated dates for each case on the system
- a facility to bring up all sections of the VPDH Questionnaire in a single window
- a facility to allow the court to generate reports containing aggregate information about the cases on the system
- a facility to allow the parties to apply, with grounds, for an oral PDH
- removal of the ‘add a comment’ button from discussion rooms
- re-naming of system icons to avoid duplication.

8.4.3 An extended pilot should also test the following adjustments to VPDH arrangements and procedures.³⁴

- the pool of eligible cases should be increased by extending eligibility to other magistrates’ courts that commit to the pilot court
- all CPS lawyers and caseworkers involved in pilot cases should have access to the VPDH system from their Connect 42 terminals
- at case creation, the case administrator should be able to adjust the VPDH date if necessary to ensure parties have a reasonable time in which to achieve milestones³⁵
- solicitors in all cases (not only those where a guilty plea is expected) should be asked whether the defendant has been informed of the discount for a guilty plea
- the court should check whether actions have been completed prior to the automatic issuing of reminders
- the parties should be required to provide trial information in pilot cases unless:
 - a) the defendant is pleading guilty to the entire indictment; or

³⁴ Some of these may also require changes to the system software.

³⁵ This would only be to remedy the situation where, because of late briefing, milestone dates had already passed on the date of case creation.

- b) a proposed guilty plea has been agreed with the prosecution
 - the court should monitor compliance with directions throughout the pre-trial period
 - the protocol should specify the sanctions for failing to comply with pilot procedures
 - wherever possible, cases should be listed for trial before the judge who conducted the VPDH
 - credit should be given for judicial time spent reviewing VPDH cases.
- 8.4.4 The pilot system focused on the needs of those most actively involved at oral PDHs namely judges, court staff, the prosecution and the defence. It did not provide for the information needs of the police, Probation Service, Witness Service and bar clerks. For a small cost, read-only access to the system could be provided to these groups in an extension to the pilot. This would help them do their jobs more effectively and allow the implications of such access to be evaluated.

8.5 Relationship with the vision of IT for the Court Service and the criminal justice system

- 8.5.1 For the reasons explained above, there is value in extending the VPDH pilot based on the existing system. However, any plans for introducing a VPDH system as a standard case management tool must take account of other systems used by the courts and the overall vision for criminal justice IT. A system suitable for national implementation should also comply with Court Service strategic guidelines unless a business case for exemption can be made.
- 8.5.2 At present, there is no link between the VPDH system and CREST, even though both contain information on the listing of cases. There may also be benefits in integration with other systems in development such as XHIBIT. Such links could create opportunities for data sharing and avoiding overlaps in functionality.
- 8.5.3 The CJS Exchange project is the lead service development from the Criminal Justice Information Technology initiative. It is intended to interface with case management systems within each criminal justice organisation and enable professionals within agencies and others such as defence lawyers and barristers to share electronically and securely case file information in the form of case-specific documents.³⁶
- 8.5.4 Systems linking to CJS Exchange must conform to XML standards and incorporate a common reference number in the record structure of data elements. The pilot VPDH system met neither of these requirements.
- 8.5.5 Through CJS Exchange, government agencies and other authorised personnel will have secure access to case data. If the VPDH system was in the family of systems linked by CJS Exchange, this would solve the security problem posed by a stand-alone system.

³⁶ An overview of CJS Exchange can be found at <http://www.cjit.gov.uk/access/exchange.html>.

- 8.5.6 A number of criminal justice IT projects under development by other agencies³⁷ may have some data needs in common with VPDHs. One example is information relating to witness availability. A VPDH system linked to CJS Exchange could draw on witness information on police computer systems thus improving accuracy and avoiding re-keying of data.
- 8.5.7 The Case Preparation Project will be responsible for any further piloting of the VPDH system to ensure that the business requirements and business case for a national system are established.³⁸ As part of its work, it should examine:
- a) opportunities for sharing data and functionality with other systems used by the Court Service
 - b) how to ensure that the system design is compatible with the requirements of CJS Exchange
 - c) how to capitalise on opportunities provided by CJS Exchange for sharing data between the VPDH system and the systems of other agencies
 - d) the outcome of discussions between system suppliers and the TDA on providing VPDH functionality in a strategically compliant way.

³⁷Among these are the CPS case management system and the police NSPIS Case Preparation programme.

³⁸Once these are approved, the responsibility for national implementation of the system will rest with the eDelivery Group.