

Annex

NAO Examination of charging at the Crown Prosecution Service

1. In 2008, the [REDACTED] forwarded correspondence to the National Audit Office (NAO) which he had received in respect of the Crown Prosecution Service's (CPS) statutory charging initiative. The correspondent questioned the effectiveness of the 'statutory charging' process in the light of the Director of Public Prosecutions' (DPP's) comments during the PAC Session on the C&AG's Report *Crown Prosecution Service: Effective use of Magistrates' Court Hearings*, (Sixty First Report, Session 2005-2006), and highlighting recent declining trends in the number of prosecutions. 8.40(z)
2. The NAO undertook to investigate and our examination, which is now complete, has been based on CPS' reported performance and on the Criminal Justice Joint Inspection (Joint Inspection) report, *The joint thematic review of the new charging arrangements*, carried out by HM Crown Prosecution Service Inspectorate (HMCPSI) and HM Inspectorate of Constabulary, which was published in November 2008. We have also drawn heavily on HMCPSI's *Inspection of CPS Direct* report, also published in November 2008 and *HMCPSI Thematic Review of the Decision Making and Management in Discontinued Cases and Discharged Committals*¹, published in December 2007. We have also used the British Crime Survey and Police recorded crime figures for 2004-05 to 2007-08.
3. Our examination focused on three main issues:
 - The extent to which the Joint Inspection found that the new charging initiative had delivered the anticipated improvements in casework outcomes, working practices and value for money;
 - whether there is an adequate system for measuring and reporting on the effectiveness of the statutory charging system; and
 - looking at the bigger picture, how the trends for the number of cases prosecuted compare with crime statistics for the same period.
4. The Joint Inspection and the CPS Direct report identify positive benefits achieved by the introduction of the scheme, including the improved working relationship between the police service and the CPS. The presence of duty prosecutors in police stations has helped develop the 'prosecution team' ethos and is leading to a better understanding of their respective roles. The Joint Inspection was least critical on the quality of the prosecutor's decision on whether or not a subject should be charged, and on the appropriateness of the charge. The aspects of the scheme that the Joint Inspection was most critical of did not fall within the scope of our work as these related mainly to the early stages of the police enquiry and included the time taken to get a decision and the amount of work the police investigator has to undertake before the decision is taken.

¹ A discharged committal is one where no evidence is offered because the prosecution is not ready to proceed and an adjournment is refused, or the prosecution consider no adjournment will be granted and therefore do not apply.

5. On the basis of the limited work we have undertaken, the National Audit Office considers that the implementation of the statutory charging system has delivered benefits to the criminal justice practice which concurs with the findings of the Joint Inspection. The positive benefits include improving criminal case management and reducing delay in the court.
6. Nevertheless, some aspects of the scheme need to be refined further in order to be fully effective. The Joint Inspection found police and CPS processes were too often inconsistent, overly complex and inefficient, leading to avoidable delays and frustration. The Joint Inspection concluded that on balance, progress had been slower than desirable, although gradual improvements had been made.

Background

7. In 1981, the Royal Commission on Criminal Procedure recommended that prosecution decisions should rest with independent, legally qualified prosecutors. The CPS was established under the Prosecution of Offences Act 1985 and became operational in 1986. From inception, it took over responsibility for prosecuting all cases except the more minor traffic offences, but the police retained the right to decide whether a prosecution should commence, either by way of charge or through the laying of an information and the issue of a summons.
8. Lord Justice Auld's Review of the criminal courts in England and Wales in 2001 recommended that the CPS should determine the charge to be brought against a suspect in all but minor routine cases, to ensure the charge was correct from the outset, to weed out non-viable cases at an early stage and to ensure that cases were ready for trial at the point of charge. Following the Auld review, new legislative arrangements for statutory charging were introduced by the Criminal Justice Act 2003, which shifted the responsibility for key charging decisions from the police to the CPS by amending the Police and Criminal Evidence Act 1984 (the Act).
9. Under the amended Act, the police and Crown Prosecutors are to have regard to the Director of Public Prosecutions' guidance in determining whether the suspect should be charged or whether the case should be referred to the CPS for the charging decision. The police continue to be responsible for charging those cases which the custody officer considers suitable for early disposal in the magistrates' court as straightforward guilty pleas, but the charging decision (known as the 'pre-charging decision') for more serious offences has been transferred to CPS. The guidance promotes earlier CPS involvement, advice and charging decisions.
10. Structured pilot charging initiative schemes began on a voluntary ("shadow") basis during 2002 in Bath and Bristol, Essex, Chatham, Wrexham and Halifax and the results were evaluated independently. More than 300 sites provided non-legally binding guidance under the shadow scheme. The CPS carried out a programme of Post Implementation Reviews; and a National Charging Team was established, comprising experienced members of the CPS and the Association of Chief Police Officers, which carried out its own reviews. The first of fourteen priority areas migrated from the shadow scheme to the statutory scheme in May 2004. Prior to migration of an area to the statutory scheme, each area was reviewed for readiness and statutory charging was fully rolled out by CPS and the police on 3 April 2006. Protocols were signed and formally adopted by local CPS areas and the police, broadly outlining the expected levels of service in respect of statutory charging. As mentioned above, the DPP's

Guidance for statutory charging sets out the statutory requirements of the police and the CPS in the operation of charging.

11. Initial CPS evaluations of early pilot and shadow schemes identified significant potential benefits from the charging initiative for the criminal justice system. The CPS's primary objective for the statutory charging scheme was to improve the level of offences brought to justice and obtain an estimated 30,000 additional convictions². The introduction of statutory charging was also expected to achieve:
 - a reduction in unsuccessful prosecutions³;
 - fewer ineffective hearings;
 - fewer changes of charge; and
 - CPS making the charging decision in all but the most minor criminal cases⁴.
12. Post-implementation reviews were completed across all areas by December 2006 to ensure that the arrangements in place were robust, effective and were realising the expected benefits. CPS carried out a series of reviews in 2006 -07 to identify areas of good practice for internal dissemination. The CPS also undertook a review in 2007 of cases that had received a pre-charge decision but later resulted in post charge discontinuance, to review performance against discontinuance rate targets and make recommendations for improvements. The CPS has also undertaken equality impact assessments covering 2004-05 and 2005-06, which confirmed that there were few significant differences in lawyers charging decisions by ethnicity and gender. The CPS plans to complete impact assessments for 2006-07 and 2007-08 by January 2009.

The joint HMCPsi and HM Inspectorate of Constabulary Inspection Review

13. In November 2008, HMCPsi and HM Inspectorate of Constabulary published their joint report into the effectiveness of the operation of the statutory charging scheme. Their joint review was undertaken in parallel with an HMCPsi review of CPS Direct, which provides out-of-hours charging decisions across England and Wales. Taken together, the two reports provide a full analysis of how the charging scheme is operating.
14. The Joint Inspection and CPS Direct reviews were based on case review, observation, interview and questionnaire. During the Joint Inspection, HMCPsi inspectors examined 170 finalised cases drawn from the seven criminal justice areas (Avon and Somerset; Gwent; Humberside; Lincolnshire; London; Nottinghamshire and Thames Valley) visited by the review team. Members of the joint HMCPsi and HM Inspectorate of Constabulary review team observed 148 appointments between the CPS duty prosecutors and the police at 25 charging centres.
15. The cases the review team examined included bail and custody cases and ranged from theft by shoplifting to robbery and rape. Outcomes ranged from the prosecutor directing that no further action should be taken to a decision being deferred pending more evidence or information; or authorisation of charge.

² 2004 and 2006 press releases http://www.cps.gov.uk/news/pressreleases/archive/2006/118_06.html and http://www.cps.gov.uk/news/pressreleases/archive/2004/129_04.html

³ 2003-04 Business Plan page 3

⁴ 2006-07 annual report (pg 14)

16. The HMCPSI and HM Inspectorate of Constabulary joint review confirmed that implementation of the statutory charging scheme had delivered benefits to the criminal justice process. The review concluded that some progress has been made against most of the anticipated benefits in terms of casework outcomes and delivery of Public Service Agreement targets. In particular discontinuance and overall successful outcome rates were better under statutory charging and guilty plea rates have improved. The team noted close partnership working between the CPS and the police at senior and operational level.

Comparison of actual performance with the CPS' statutory charging scheme business case

17. The CPS recognised from the outset that measuring the impact of the move to statutory charging on the level of offences brought to justice would not be straightforward. The impact of the charging initiative could not be isolated from other factors that could affect the level of convictions. Using the findings of the pilot as a baseline, the CPS established a set of proxy targets (the level of guilty pleas, discontinuances and unsuccessful outcomes) to measure the impact of the statutory charging initiative. The CPS also identified other potential positive indicators (reduction in the number of cracked and ineffective trials and reductions in the number of charges changed subsequently) but these were not translated into formal targets and not all have been monitored by the CPS.
18. Before considering how the statutory charging initiative has performed against these proxy targets, we considered whether the assumptions made at the pilot stage were still valid. Based on the HMCPSI joint inspection report, we noted that:
 - the business case had been built on the assumption that CPS would handle approximately 240,000 pre-charging decisions a year. For the past three years CPS prosecutors have handles around 565,000 decisions a year. This volume had implications for caseloads and response times. CPS Direct provides a alternative means of making decisions, with the charging decision being given over the telephone, using a bank of CPS staff working shifts and overseen by an experienced lawyer as manager.
 - the business case had been built on the assumption the level of offences being brought to justice has increased, but so has the use of alternatives to court to deal with them. External factors, such as policing policies and priorities resulted in increased use of diversionary disposals, such as police use of cautions and fixed penalty notices for disorder. Of the 1,448,609 crimes brought to justice in 2007-08, 50.2 per cent resulted in a conviction and 7.4 per cent were taken into consideration by the court in connection with other offences, compared with 26 per cent dealt with by a caution, 9.4 per cent by fixed penalty notice and 7 per cent by a formal warning for drugs.
 - The extent to which the statutory charging scheme has resulted in more defendants being found guilty is measured by comparing the number of cases referred now to a prosecutor for a decision with the number of cases referred to a prosecutor for a decision during the pilot (and hence in the business case). During the pilot, only cases referred to the prosecutor where a not guilty plea was entered were counted but now all cases that go to a prosecutor are counted. The Joint Inspection notes that the effect of this change is to

overstate the improvement in performance, as a significant number of cases that now go to the prosecutor because of the nature of the case are those where the defendant would have pleaded guilty anyway.

19. The Joint Inspection review was of the view that widening the ambit of the statutory charging scheme after the pilot to include a significant number of cases where a guilty plea is likely has had a strong impact on current outcomes. This is because the types of cases now being referred for pre-charging decisions result in better outcomes than the narrower range of cases referred during the pilot period.

Achievement of CPS performance targets

20. Comparing CPS's performance against its six proxy performance targets gives an insight into whether the statutory charging scheme has achieved the potential benefits identified during the pilot scheme. Rather than use the published data in CPS' Annual Reports against these measures, which includes cases where the charging decision was not taken under the statutory charging initiative, we asked the CPS to extract data relating only to cases that had a pre-charging decision. As the Table below shows, there has been a slow but steady improvement in performance against these indicators. By 2007-08, four of the six targets had been achieved.

National progress against the six charging initiative performance targets

Measure	Target	Target achieved/not achieved		
		2005-06	2006-07	2007-08
Magistrates' Courts attrition¹	Reduce attrition to 31%	Achieved (23.5%)	Achieved (22%)	Achieved (21%)
Magistrates' Courts discontinuance²	Reduce discontinuance to 11%	Not achieved (16.7%)	Not achieved (15.7%)	Not achieved (14.7%)
Magistrates' Courts guilty plea rate	Increase guilty plea rate to 52%	Achieved (67.5%)	Achieved (69.2%)	Achieved (72.3%)
Crown Court attrition	Reduce attrition to 23%	Not achieved (23.3%)	Achieved (22.2%)	Achieved (20.8%)
Crown Court discontinuance	Reduce discontinuance to 11%	Not achieved (14%)	Not achieved (13.1%)	Not achieved (12.9%)
Crown Court guilty plea rate	Increase guilty plea rate to 68%	Not achieved (65%)	Not achieved (66.5%)	Achieved (71.2%)
Targets achieved	-	2	3	4

Notes:

1. The attrition rate measures the proportion of cases that do not result in a conviction, for example because the CPS drops the charge, or where the defendant is acquitted after trial. For attrition rates, lower is better.

2. Discontinuance is where a case must be halted, for example because of new evidence or because a witness fails to attend court. For discontinuance rates, lower is better.

3. There are differences between the figures in the Table above and those included in CPS' Annual Report:

- The figures in the Table above refer to cases handled by the CPS in which the CPS made a pre-charge decision (around 36% of the total), whereas the figures quoted in the CPS Annual Report represent overall casework handled by the CPS and include cases charged by the police;
- The figures in the Table above represent the most serious and challenging cases prosecuted by the CPS, whereas the CPS Annual Report also includes a number of lesser offences; and
- The counting rules for charging methods result in double counting of cases involving a mix of pleas. For example, where a defendant pleads guilty to one or more charges and other charges proceed to a contested hearing, both the guilty plea and the outcome of the contested hearing are counted as separate outcomes.

Source: Performance Indicator Universe, CPS Compass Management Information System

21. The targets for reducing discontinuance in Magistrates' and Crown Court cases have proved the most difficult to achieve. From a national perspective, the discontinuance targets have never been met. This shortfall is due to a range of factors (see paragraphs 22 to 27 below), not all of which are within the scope of the CPS to influence. The CPS decided in late 2008 to set all three Magistrates' Courts' targets at rates it considered to be more achievable and realistic. The targets for 2008-09 are: 13 per cent for the magistrates' courts discontinuance rate; 70 per cent for the magistrates' courts guilty plea rate; and 23 per cent for the magistrates' courts attrition rate.

The extent to which the charging initiative has achieved the expected targets at Area level

22. The pilot evaluation report concluded that, while results varied by CPS Area, discontinuance rates could be reduced from 36 per cent to 11 per cent. In practice, the Magistrates' Court discontinuance target was only achieved by one area during the first two years of operation (see overleaf). During the last two years, there has only been a slight improvement with between three and six of the CPS's 42 areas achieving the target. Less than half of all areas have met the Crown Court discontinuance target.

Criminal justice areas not achieving the six charging initiative performance targets

Measure	Target	Areas not achieving the target		
		2005-06	2006-07	2007-08
Magistrates' Courts attrition¹	Reduce attrition to 31%	1	All achieved	All achieved
Magistrates' Courts discontinuance²	Reduce discontinuance to 11%	41	39	36
Magistrates' Courts guilty plea rate	Increase guilty plea rate to 52%	All achieved	All achieved	All achieved
Crown Court attrition	Reduce attrition to 23%	22	14	5
Crown Court discontinuance	Reduce discontinuance to 11%	31	25	24
Crown Court guilty plea rate	Increase guilty plea rate to 68%	24	22	6

For Notes, see previous Table

Source: NAO using Joint HMCPSI/ACPO data

Why the discontinuance target may not be being met in relation to pre-charging decisions

23. Discontinuance decisions can occur throughout the life of a case, as evidence and other relevant information for and against the prosecution often comes to light after a charging decision has been made. Stopping a case does not necessarily mean that a charging decision was incorrect, especially in cases where a Threshold Test had been applied. The Threshold Test is applied in cases where it is determined that it would not be appropriate for public protection purposes for the person to be released on bail after charge, and where the information required for a full Code Test is not available at the time the charging decision has to be taken. The Threshold Test is set at the lower standard - whether in all the circumstances of the case there is at least a reasonable suspicion against the person of having committed an offence, and that at that stage it is in the public interest to proceed. When a Full Code Test is applied after the conclusion of the investigation, some of these cases will be discontinued where an analysis of the new information concludes that the Full Code test cannot be met. The discontinuance of these cases does not mean that the Code Test was incorrectly applied at the charging stage.

24. In December 2007, HMCPSI published *HMCPSI Thematic Review of the Decision-Making and Management in Discontinued Cases and Discharged Cases*. The Discontinuance Review was based on discontinued cases and discharged cases in eight CPS areas. Discontinued cases include:

- cases which have been formally discontinued under section 23 of the Prosecution of Offences Act 1985 in the Magistrates' Courts;
 - cases which are withdrawn or in which no evidence is offered in the Magistrates' Courts;
 - cases sent to the Crown Court, but which the prosecution discontinue before service of the prosecution case;
 - Judge ordered acquittals (cases dropped by the prosecution before a jury is empanelled).
25. The HMCPSI Discontinuance Review found that there had been a small but significant reduction in the level of cases discontinued in the Magistrates' Court. In the eight CPS Areas visited by the CPS Discontinuance Review, 1,956 cases out of 20,358 cases were discontinued and dropped. Of these 1,956, over 26 per cent were motoring cases charged or summonsed by the police, where CPS had no influence over the charging decisions. Of the 1,956 cases, fewer than 50 per cent (867 cases) had been subject to a pre-charge decision by the CPS, of which the Discontinuance Team sampled 281 cases. Of the 281 pre-charge decision discontinued cases sampled, the Discontinuance Team concluded that in each case observed, the appropriate code test was applied correctly and the decision to prosecute was correct
26. The Discontinuance Review noted that cases with a pre-charge decision tended to be the more serious and contentious cases. Some were the type of case in which victims or witnesses subsequently do not wish to give evidence or have the prosecution proceed, for example domestic violence cases. This is a significant factor and we acknowledge that in these cases, the prosecution team faces difficult decisions as to whether to enforce the attendance of the victim or witness by means of a summons, or to place the witness or victim in contempt of court by their refusal to give evidence.

Whether there is an adequate system for monitoring and reporting on the effectiveness of the statutory charging system

27. In reaching a conclusion on the adequacy of the system(s) for monitoring and reporting on the effectiveness of the statutory charging system, we have relied to a large extent on the work already undertaken by HMCPSI and its Joint Inspection report. We have also made use of the outcomes reported by the CPS in its annual reports against the six proxy targets used to assess the effectiveness of the statutory charging initiative. These include cases not subject to pre-charging decisions and at our request, the CPS provided us with the outcomes against the six proxy key indicators for just pre-charging decision cases, which we used to compile the table at paragraph 20 above. We found the information CPS extracted for us to be useful and consider that there would be merit in the CPS publishing it as part of its annual report.
28. The Joint Inspection indicates that CPS makes a quarterly return to HM Treasury on the efficiencies achieved from the move to statutory charging. The Joint Inspection calls into question the value of this return as the number and types of cases requiring

a pre-charge decision now are different than they were when the business case was made for the move to statutory charging (see paragraph 17 above).

29. The Joint Inspection concluded that it was difficult in purely financial terms to gauge the value for money of the statutory charging scheme, as there is limited reliable data on the cost of providing statutory charging and the application of the scheme has changed since the pilot. It concluded that the processes for monitoring the sums spent by the CPS implementing the statutory charging scheme (estimated by the Joint inspection as over £150 million) were not sufficiently robust to monitor the benefit derived.
30. Mention is also made in the Joint Inspection report of all CPS Areas having a significant amount of performance data for statutory charging cases handled by the CPS. Only Lincolnshire had a systematic approach to monitoring cases as they moved through the police system from arrest to conclusion, enabling the prosecution team to assess the outcome of each case at every stage of the process. The Joint Review has recommended a formal review of the prosecution team performance management data reports to ensure that they meet the current needs of the users.
31. The Joint Inspection found that all CPS areas have systems to monitor the quality of pre-charge decision making by prosecutors. The level and effectiveness of the monitoring varies by area but is done as part of the CPS' national casework quality assurance scheme, whereby files are selected on a sample basis.
32. The CPS and the police are working together to follow up each of the recommendations of the joint HMCPSI/HM Inspectorate of Constabulary inspection report. For example, a joint project is underway in a number of pilot Areas to explore the use of modern call centre technology coupled with IT support to improve access for investigators to duty prosecutors to obtain advice and timely charging decisions. Work is also proceeding on improving joint performance management arrangements by reinvigorating the Prosecution Team Performance Management process.

Comparison of crime statistic trends and prosecution performance

33. The number of successful prosecutions (convictions at court) decreased year on year from 1,015,618 in 2004-05 to 905,482 in 2007-08 (10.08 per cent over the period) (see Table below). This decrease was at a greater rate than the decrease in crime (6.5 per cent) over the period, according to the British Crime Survey, although less than the decrease recorded in the Police Recorded crime (12.2 per cent).

Statistics on crime and prosecutions

	British Crime Survey	Police recorded crimes	Offenders brought to justice¹	Prosecution cases completed	Convictions at court	% Successful prosecution	Unsuccessful prosecutions
	(million cases)	(million cases)	(million)	(million)	(million)	(per cent)	(cases)
2004-05	10.850	5.638	1.131	1.263	1.016	80.4	247,197
2005-06	10.912	5.428	1.271	1.176	0.969	82.4	207,540
2006-07	11.287	5.555	1.399	1.091	0.914	83.7	177,421
2007-08	10.143	4.951	1.449	1.064	0.905	85.1	158,136

1. Reported performance against Public Service Agreement Target

Source: Home Office website and CPS annual reports.

34. The increase in the number of offenders brought to justice and decrease in convictions at court are not incompatible with the increase in successful prosecutions. The apparent discrepancy is explained by a move away from prosecuting some offences in court, in favour of fixed penalty fines, cautions and other means of bringing offenders to justice without attending court. As the Table shows, there has been a slow but steady increase in successful prosecutions, with a corresponding fall in unsuccessful prosecutions.

Conclusion

35. Overall, the National Audit Office considers that the implementation of the statutory charging system has delivered benefits to the criminal justice practice. Positive benefits include improving criminal case management and reducing delays in the court. Gradual improvements have been made in the number of successful prosecutions and in the use of alternative means of bringing offenders to justice, although on balance, progress has been slower than might have been desirable.