



House of Commons  
Committee of Public Accounts

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# Crown Prosecution Service: Effective use of magistrates' courts hearings

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**Sixty-first Report of  
Session 2005–06**

*Report, together with formal minutes,  
oral and written evidence*

*Ordered by The House of Commons  
to be printed 12 July 2006*

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## The Committee of Public Accounts

The Committee of Public Accounts is appointed by the House of Commons to examine “the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit” (Standing Order No 148).

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The following were also Members of the committee during the period of the enquiry:

Angela Browning MP (*Conservative, Tiverton and Honiton*)  
Mr Alistair Carmichael MP (*Liberal Democrat, Orkney and Shetland*)  
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### Powers

Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

### Committee staff

The current staff of the Committee is Mark Etherton (Clerk), Christine Randall (Committee Assistant), Emma Sawyer (Committee Assistant), Pam Morris (Secretary), and Luke Robinson (Media Officer).

### Contacts

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## Summary

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Over 90% of the Crown Prosecution Service's cases are conducted in magistrates' courts. In 2004–05, there were 190,466 magistrates' courts trials and over 2.8 million pre-trial hearings but just under two thirds of trials (117,922) and over a quarter of pre-trial hearings (784,000) did not go ahead as planned. Delays in these proceedings cost the taxpayer over £173 million, of which £24 million was attributable to the Crown Prosecution Service.

In just over half of the cases where the trial did not go ahead, the defence was responsible, most frequently because the defendant pleaded guilty on the trial date. Of the remainder, 38% (45,366) did not proceed because the prosecution case was not ready or the Crown Prosecution Service dropped the charges on the day of the trial. In addition, between 150,000 and 180,000 ineffective pre-trial hearings were due to prosecution failings. In part, delays are a product of the increasing complexity and more stringent evidential requirements, which have eroded the distinction between magistrates' court and Crown court case preparation, undermining the effectiveness of magistrates' courts as a system of summary justice. Nevertheless, the Crown Prosecution Service could do more to progress cases promptly and efficiently.

Most delays caused by the Crown Prosecution Service are avoidable: files are mislaid or not updated due to poor case tracking, insufficient time is allowed for the preparation of cases; and inadequate prioritisation of cases means that urgent action is not completed before the next hearing. Some delays result from the actions of other criminal justice agencies. For example, court staff may move cases between courtrooms, necessitating a last minute change of prosecutor, or the police may not provide essential evidence in time.

The Crown Prosecution Service is, effectively, the largest law firm in the country and needs to learn from the most successful private practices if it is to discharge its responsibilities in bringing the guilty to justice swiftly. On the basis of a Report from the Comptroller and Auditor General,<sup>1</sup> the Committee examined the extent to which the Crown Prosecution Service makes best use of its resources, the measures needed to modernise and reform its working practices and overcome cultural barriers, and how the Crown Prosecution Service could work more effectively with Her Majesty's Court Service, the police and other parties to reduce the number of ineffective trials and hearings.

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1 C&AG's Report, *Crown Prosecution Service: Effective use of magistrates' court hearings* (HC 798, Session 2005–06)

## Conclusions and recommendations

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The handling of cases in magistrates' courts has in recent years become complex and protracted to the extent that it no longer amounts to summary justice. 55% of the £173 million cost of delay in the magistrates' courts is attributable to the defence, but the police and the Crown Prosecution Service account for another 14% (£24 million) each. The Crown Prosecution Service needs to review its organisational structure, revise its system for preparing for magistrates' court cases by adopting current best practice, and address the cultural resistance within the organisation to more modern working practices.

### On managing cases

The Crown Prosecution Service should:

- a) develop and implement nationally the good local practice operating in Cardiff, so that small teams of lawyers and administrative staff are responsible for progressing all cases from a specific police command unit;
- b) nominate a member of each team to be available during working hours to respond to queries on the team's caseload;
- c) introduce and develop a time recording system to identify whether the Crown Prosecution Service has the right mix of legal, caseworker and administrative staff, and to effectively manage its resources;
- d) make full use of the Crown Prosecution Service's electronic case management system (COMPASS) capabilities by requiring all Crown Prosecution Service staff to update the system when moving files; and
- e) work with Her Majesty's Courts Service to establish 24 hour courts as "one stop shops" in city areas, where those arrested for minor offences could be dealt with immediately.

In addition, the Department for Constitutional Affairs should:

- f) following their endorsement of the effectiveness of District Judges, consult further with the Head of the Judiciary, on the case for a significant increase in their number, particularly in city areas, in order to speed up the delivery of summary justice;

### On managing risk

The Crown Prosecution Service should:

- g) mark cases requiring medical or CCTV evidence as high risk, and review them weekly to obtain the necessary evidence in time for the hearing;
- h) examine the reasons for dropping cases on the day of the trial as part of its regular review of area performance to identify ways in which its processes might be improved;
- i) take a risk based approach to quality assurance, focussing on cases that are more likely to experience delays, and periodically disseminate lessons learned.

## On using technology to improve processes

The Crown Prosecution Service should:

- j) provide electronic equipment which allows legal staff across the Crown Prosecution Service to record case information at court and automatically transfer it to the COMPASS system;
- k) provide Crown Prosecution Service lawyers during the 2006–07 financial year with technology such as pagers to enable them to be contacted more easily when away from the office;
- l) equip each Crown Prosecution Service office with a DVD player on which to review evidence;
- m) encourage Local Criminal Justice Boards to seek greater availability of DVD players in courts;
- n) take the lead in initiating discussions with the police, the Courts Service, manufacturers, trade associations, and other interested parties, to explore the scope for a national CCTV standard to provide consistency across the industry.

**Over 20% of trials do not take place as planned because the defendant waits until the day of the trial to plead guilty.** By improving its own processes and working more co-operatively with the other criminal justice agencies, the Crown Prosecution Service should bring about an increase in the number of early guilty pleas made by defendants in the expectation of a successful prosecution. In its work with other criminal justice agencies, the Crown Prosecution Service should:

- a) seek co-operation from Her Majesty's Courts Service to list each Crown Prosecution Service team's cases together so that lawyers can present more of their own cases in court;
- b) pursue with Her Majesty's Courts Service the grouping of straightforward cases in court listings, setting and monitoring joint monthly targets for the number of court sessions covered by designated caseworkers, thereby releasing lawyers to manage more complex cases; and
- c) set up a national protocol with local NHS trusts to improve the timeliness of medical reports.



# 1 Improving the Crown Prosecution Service's internal organisation

1. In 2004–05, 190,466 trials were listed in magistrates' courts, along with 2.8 million non-trial hearings but just under two thirds of trials (117,922) and over a quarter of pre-trial hearings (784,000) did not ahead as planned. **Figure 1** shows that delays in these proceedings cost the taxpayer £173 million in 2004–05, of which £24 million was attributable to the Crown Prosecution Service. Such delays also undermine the effective administration of justice, causing suffering to the innocent and delaying, or failing to bring justice to the guilty.<sup>2</sup>

**Figure 1: Delays in magistrates' courts' proceedings cost the taxpayer £173 million**

| Responsibility for ineffective trials and pre-trial hearings |        |                                |                                     |               |                    |                           |               |                     |
|--|--------|--------------------------------|-------------------------------------|---------------|--------------------|---------------------------|---------------|---------------------|
|  |        | Ineffective and cracked trials |                                     |               | Pre-trial hearings |                           |               |                     |
|  |        | Number                         | % of ineffective and cracked trials | Cost £million | Number             | % of ineffective hearings | Cost £million | Total Cost £million |
| <b>Prosecution</b>   |        | <b>45366</b>                   | <b>38%</b>                          | <b>41.27</b>  | <b>164,640</b>     | <b>21%</b>                | <b>14.6</b>   | <b>55.43</b>        |
| <b>of which</b>  | CPS    | 19500                          | 17%                                 | 17.74         | 70,795             | 9%                        | 6.09          | 23.83               |
|  | Police | 19500                          | 17%                                 | 17.74         | 70,795             | 9%                        | 6.09          | 23.83               |
|  | Both   | 6351                           | 5%                                  | 5.78          | 23,100             | 2.9%                      | 1.98          | 7.76                |
| <b>Defence</b>   |        | <b>59,394</b>                  | <b>50%</b>                          | <b>54.8</b>   | <b>478,240</b>     | <b>61%</b>                | <b>41.02</b>  | <b>95.82</b>        |
| <b>Courts/other</b>  |        | <b>13,162</b>                  | <b>11%</b>                          | <b>9.73</b>   | <b>133,280</b>     | <b>17%</b>                | <b>11.41</b>  | <b>21.14</b>        |
| <b>More than one reason</b>                                  |        |                                |                                     |               | <b>7,800</b>       |                           | <b>0.67</b>   | <b>0.67</b>         |
| <b>Total</b>   |        | <b>117,922</b>                 |                                     | <b>105.8</b>  | <b>784,000</b>     |                           | <b>67.26</b>  | <b>173.06</b>       |

Source: National Audit Office

2. In recent years, proceedings in magistrates' court have become so complex that there is little difference between the evidential requirements for magistrates' courts cases and Crown Court cases, such that there is arguably no longer a system of summary justice. Consequently, it is all the more important that the Crown Prosecution Service prepares and presents robust, well argued and well-evidenced cases. The Crown Prosecution Service, unlike commercial law firms, is still comparatively unmodernised and has been hampered by resistance to change from within the organisation. In order to reduce the number of ineffective trials and hearings, the Crown Prosecution Service needs to

modernise its working practices, develop more effective internal processes and introduce cultural change in the organisation.<sup>3</sup>

3. Not all parties involved in a trial have an interest in seeing justice administered quickly. It has often been perceived to be in the interests of the defendant to delay proceedings in the hope that witnesses would not turn up or the case would collapse before it went to trial. Only by improving its own processes and working more co-operatively with the other criminal justice agencies, can the Crown Prosecution Service counter this perception. As the number of successful prosecutions increases, so should the number of defendants pleading guilty earlier in the process in the expectation of a successful prosecution.<sup>4</sup>

4. Operating two separate and distinct work streams – administrative and legal – has created a barrier within the Crown Prosecution Service to effective oversight of cases and can result in highly paid legal staff performing basic administrative tasks. Examples of good local practice already exist, for example in Cardiff, where lawyers have been organised into small teams responsible for the caseload of a specific police unit, resulting in the collective responsibility not to postpone decision making. The Crown Prosecution Service has now also come to the conclusion that it should extend the practice of grouping lawyers into small teams across the organisation. Including designated case workers and administrative staff in these teams would help to break down the barriers between administrative and legal staff.

5. Lack of ownership and oversight of the case has been a root cause of delay by the Crown Prosecution Service. Lawyers have to deal with large volumes of magistrates' court cases, making robust case management essential for efficient working. With lawyers absent from the office for extended periods giving charging advice at police stations, or presenting other cases in court, as well as absence due to attending courses and annual leave, there may be nobody available to respond to a query surrounding a specific case.<sup>5</sup>

6. Nor are cases adequately prioritised and managed between hearings to identify and progress those which need close attention to be made ready for court, resulting in requests for adjournments, unnecessary hearings, dismissal of the case or the case being discharged.<sup>6</sup> Delays are particularly common for cases requiring evidence such as closed circuit television footage, medical evidence, or forensic material.<sup>7</sup>

7. The Crown Prosecution Service was of the view that criminal justice agencies are on track to meet the target of reducing ineffective trials to 23% in quarter four of 2005–06 and to 19% in quarter four of 2007–08. Figure 2 shows that performance varies between regions in both cracked and ineffective trials. Durham was responsible for 3.5% of cracked trials in its area compared with 14.5% in North Yorkshire. Likewise for ineffective trials, performance varied from 1.1% in Warwickshire to 7.1% in London. The Crown Prosecution Service currently monitors data on ineffective trials but an examination of the

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3 Q 156

4 Q 4

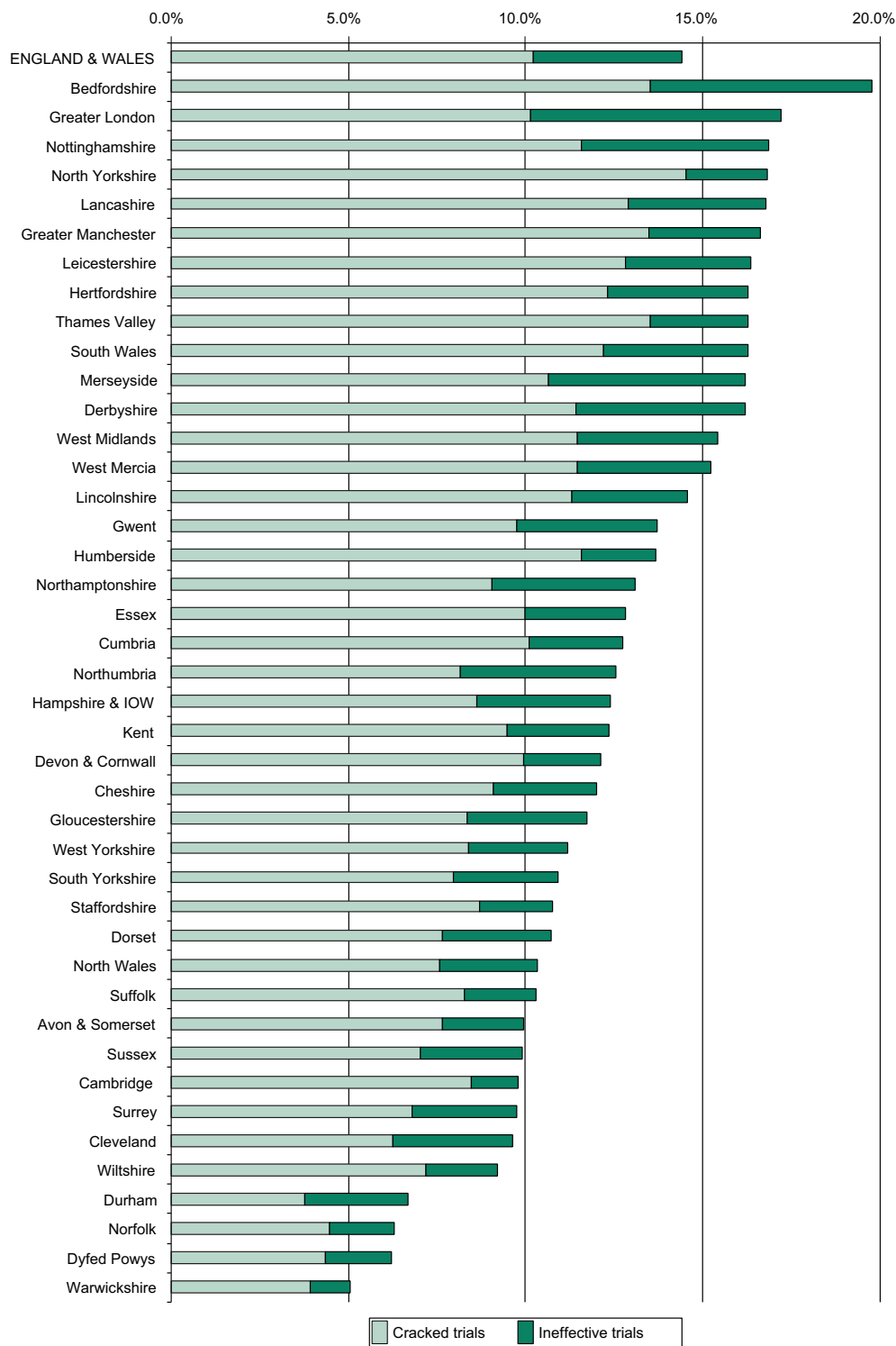
5 C&AG's Report, para 3.20

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

7 C&AG's Report, para 2.21

reasons for cracked trials would highlight differences in areas' approaches, which might improve performance nationally.<sup>8</sup>

**Figure 2: The percentage of cracked and ineffective trials varied by criminal justice area**



Source: Crown Prosecution Service

## 2 Modernising the Crown Prosecution Service

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8. The Crown Prosecution Service lacks a time recording system and relies instead on a system of activity based costing, which is used primarily to allocate funding to its area offices according to the number of cases processed and the amount of work undertaken in previous years. In the absence of a time recording system, the Crown Prosecution Service cannot be sure that it has the right mix of legal, caseworker and administrative staff. Such systems are commonplace in commercial firms and their absence makes it difficult to monitor the flexible working systems the Crown Prosecution Service has in place. The development and introduction of an appropriate time recording system for Crown Prosecution Service staff, in line with those operated in the private sector, is long overdue.<sup>9</sup>

9. Having procured and implemented an electronic case management system (COMPASS) at a cost of £300 million over ten years, the Crown Prosecution Service has yet to make full use of the system's capabilities. Staff failure to update the information held in the system on file location results in files being mislaid, and correspondence being misfiled or sent to the wrong address. Difficulties with the introduction of the magistrates' courts computer system (LIBRA) have meant that the Crown Prosecution Service will not be able to integrate COMPASS with LIBRA for at least another year, reducing its usage and effectiveness.

10. Duplication of work and transcription errors result from lawyers making hand-written file notes at court, which are subsequently entered into COMPASS by administrative staff. The Crown Prosecution Service agreed that it still had an old-fashioned culture and is lagging behind the Procurator Fiscal's office in Scotland, who issue their lawyers with handheld mobile devices, combining mobile telephone, e-mail and organiser in one unit, so that they can maintain contact with their offices.<sup>10</sup> Deployment of similar technology by the Crown Prosecution Service would eliminate duplication and realise financial savings.<sup>11</sup>

11. Equipment in use at Crown Prosecution Service offices and at courts for viewing closed circuit television evidence is outdated. This is being addressed gradually in magistrates' courts and by March 2007, seven in ten courts will be equipped with DVD facilities. But the current lack of facilities in the Crown Prosecution Service and in the courts causes difficulty in reviewing evidence prior to hearings and exhibiting the evidence at trial. Delays could be reduced by making greater use of DVD technology, which is relatively inexpensive, for example by equipping each Crown Prosecution Service office and magistrates' court with a DVD player on which to review and present evidence.<sup>12</sup>

12. An additional problem with viewing closed circuit television evidence has been the wide range of formats in which it is recorded, which causes problems in transferring the

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9 Qq 11, 154

10 Qq 88-90

11 C&AG's Report, para 2.20

12 Qq 107-110

information to court. Translating this evidence onto a DVD that can be played in court is expensive, which may preclude its use in minor cases such as a punch-up outside a pub caught on closed circuit television, where the cost and added value of playing the evidence in court may not be justified. Engaging with the industry and other users to discuss the scope for adopting a national standard for closed circuit television formats would help the Crown Prosecution Service and the police develop more effective use of closed circuit television footage in court.<sup>13</sup>

13. Since the introduction of casework review in April 2003, there has been no mandatory requirement for Crown Prosecution Service offices to carry out monthly reviews. As a result, casework quality review is patchy and the Crown Prosecution Service is discussing with Her Majesty's Crown Prosecution Service Inspectorate how it might operate a more comprehensive scheme. Casework review is an essential aspect of delivering a consistent, equitable and professional service, particularly if a risk based approach to quality assurance were adopted, focussing on cases that were more likely to experience delays, and identifying lessons learned for periodical dissemination to staff.<sup>14</sup>

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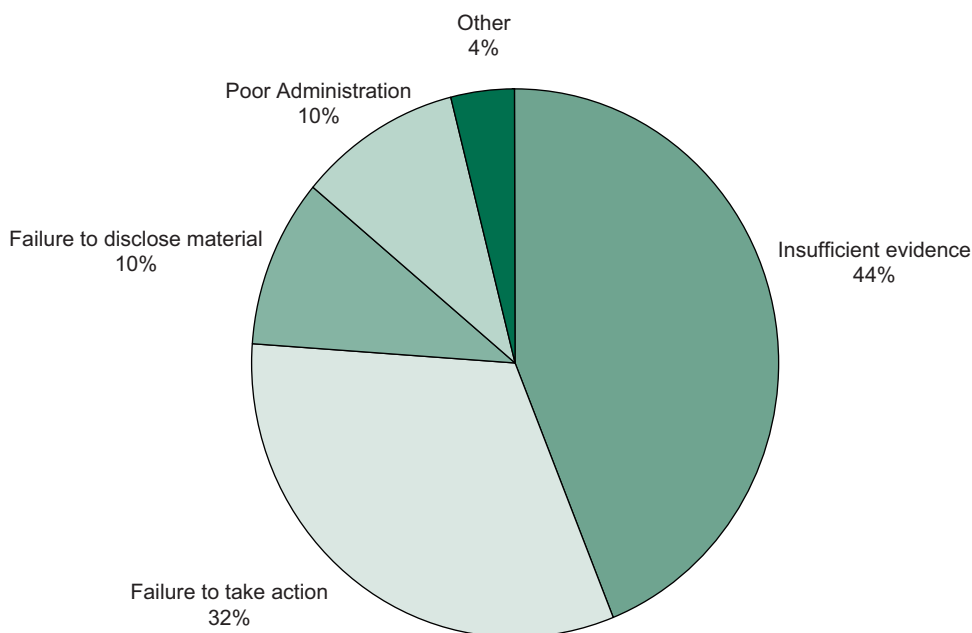
13 Q 111

14 Q 12

## 3 Joint working within the criminal justice system

14. Under the charging initiative, Crown Prosecution Service lawyers now have early contact with the police and are responsible for deciding what charge should be brought, so that there is sufficient evidence to support the prosecution. Since the initiative was introduced, the number of discontinuances has declined. The effectiveness of the initiative will be hindered, however, if the Crown Prosecution Service does not work with the police to improve evidence gathering so that those cases charged have the necessary evidence when they reach court. **Figure 3** shows that 44% of prosecution delays were caused by the Crown Prosecution Service not having the evidence to proceed with a hearing. These difficulties need to be addressed as a matter of urgency if the charging initiative, rolled out nationally from April 2006, is to deliver better communication and evidence collection.<sup>15</sup>

**Figure 3: Insufficient evidence is the most common cause of prosecution delays**



Source: National Audit Office

15. Greater co-operation is needed between the Crown Prosecution Service and Her Majesty's Courts Service to reduce the number of ineffective hearings and to make better use of court and prosecutors' time. Switching cases between courts at short notice results in a last-minute change of prosecutor, reducing the effectiveness of the Crown Prosecution Service's case preparation and increasing the risk of an ineffective hearing. Greater co-operation between the Crown Prosecution Service and Her Majesty's Courts Service on courts listings would help mitigate these risks. In addition, the Crown Prosecution Service has increased the number of specially trained designated caseworkers available to review and present straightforward cases requiring no legal input in the magistrates' courts. More

effective grouping of such cases through improved joint working with Her Majesty's Courts Service would deliver financial efficiencies and release lawyers to manage the more complex cases. Twenty four hour courts, where those arrested for minor offences could be dealt with quickly, would make better use of court and prosecutors' time.<sup>16</sup>

16. In areas where a Crown Prosecution Service case progression officer has been appointed to work closely with the court's case progression officer, there have been fewer ineffective hearings and improved communication, bringing benefits to both organisations. At Trafford Court in Sale, co-operation and joint working by the case progression officers identified cases requiring more work up to fourteen days before a trial was due to start, reducing the number of trials delayed by incomplete evidence. A review of District Judges and magistrates in 2001 has already established that District Judges have a particular suitability for dealing with pre-trial reviews and case management. Increased use of District Judges, particularly in city areas, could also speed up the delivery of summary justice.<sup>17</sup>

17. Earlier discussion between prosecutors and the defence about the readiness of cases for hearings and trials would help to reduce the number of unnecessary hearings by encouraging early guilty pleas. The Crown Prosecution Service was of the view that the current Legal Aid fee structure does not encourage early guilty pleas and pointed to the experience in Scotland of increasing the number of early guilty pleas by introducing a fixed fee irrespective of whether there was a trial or the defendant pleaded guilty.<sup>18</sup> Nor is it known how many defendants are unrepresented at magistrates' courts or the effect that this has on case progression.

18. Lawyers spend a significant proportion of time at court, and it can be very difficult for the police, courts and defence solicitors to contact the lawyer responsible for a case. Crown Prosecution Service lawyers are not issued with pagers, and more use could be made of everyday technology to maintain contact, such as answering machines and email. Allocating cases to smaller teams and nominating a member of the team to deal with queries would help to improve communications.

19. Obtaining medical statements from hospitals is a difficult and time-consuming process. To reduce delays, some Crown Prosecution Service areas have entered into protocols with local hospitals, which have helped reduce delays. This practice should be extended by negotiation of a national protocol with the National Health Service.<sup>19</sup>

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16 Q 21

17 Qq 174; Treasury response to the 22<sup>nd</sup> Report from the Committee of Public Accounts, *Facing Justice: tackling defendants' non-attendance at court* (HC 103, Session 2004–05); C&AG's Report, Table 27

18 Qq 68, 127

19 Q 35

## Formal minutes

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**Wednesday 12 July 2006**

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Annette Brooke

Mr Greg Clark

Mr Ian Davidson

Helen Goodman

Sarah McCarthy-Fry

Mr Austin Mitchell

Mr Don Touhig

A draft Report (Crown Prosecution Service: Effective use of magistrates' courts hearings), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 19 read and agreed to.

Summary read and agreed to.

Conclusions and recommendations read and agreed to.

*Resolved*, That the Report be the Sixty-first Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Wednesday 11 October at 3.30 pm.]

## Witnesses

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**Wednesday 8 March 2006**

*Page*

**Mr Ken Macdonald QC**, Director of Public Prosecutions and **Mr Richard Foster**,  
Crown Prosecution Service

Ev 1

## List of written evidence

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Crown Prosecution Service

Ev 18

## List of Reports from the Committee of Public Accounts Session 2005–06

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| First Report          | Managing National Lottery Distribution Fund balances   | HC 408 ( <i>Cm 6712</i> ) |
| Second Report         | The regeneration of the Millennium Dome and associated land  | HC 409 ( <i>Cm 6689</i> ) |
| Third Report          | Ministry of Defence: Major Projects Report 2004  | HC 410 ( <i>Cm 6712</i> ) |
| Fourth Report         | Fraud and error in benefit expenditure   | HC 411 ( <i>Cm 6728</i> ) |
| Fifth Report          | Inland Revenue: Tax Credits and deleted tax cases  | HC 412 ( <i>Cm 6689</i> ) |
| Sixth Report          | Department of Trade and Industry: Renewable energy   | HC 413 ( <i>Cm 6689</i> ) |
| Seventh Report        | The use of operating theatres in the Northern Ireland Health and Personal Social Services                              | HC 414 ( <i>Cm 6699</i> ) |
| Eighth Report         | Navan Centre   | HC 415 ( <i>Cm 6699</i> ) |
| Ninth Report          | Foot and Mouth Disease: applying the lessons   | HC 563 ( <i>Cm 6728</i> ) |
| Tenth Report          | Jobskills  | HC 564 ( <i>Cm 6724</i> ) |
| Eleventh Report       | Local Management of Schools  | HC 565 ( <i>Cm 6724</i> ) |
| Twelfth Report        | Helping those in financial hardship: the running of the Social Fund  | HC 601 ( <i>Cm 6728</i> ) |
| Thirteenth Report     | The Office of the Deputy Prime Minister: Tackling homelessness   | HC 653 ( <i>Cm 6743</i> ) |
| Fourteenth Report     | Energywatch and Postwatch  | HC 654 ( <i>Cm 6743</i> ) |
| Fifteenth Report      | HM Customs and Excise Standard Report 2003–04  | HC 695 ( <i>Cm 6743</i> ) |
| Sixteenth Report      | Home Office: Reducing vehicle crime  | HC 696 ( <i>Cm 6743</i> ) |
| Seventeenth Report    | Achieving value for money in the delivery of public services   | HC 742 ( <i>Cm 6743</i> ) |
| First Special Report  | The BBC's investment in Freeview: The response of the BBC Governors to the Committee's Third Report of Session 2004–05 | HC 750 ( <i>N/A</i> )     |
| Eighteenth Report     | Department for Education and Skills: Improving school attendance in England  | HC 789 ( <i>Cm 6766</i> ) |
| Nineteenth Report     | Department of Health: Tackling cancer: improving the patient journey   | HC 790 ( <i>Cm 6766</i> ) |
| Twentieth Report      | The NHS Cancer Plan: a progress report   | HC 791 ( <i>Cm 6766</i> ) |
| Twenty-first Report   | Skills for Life: Improving adult literacy and numeracy   | HC 792 ( <i>Cm 6766</i> ) |
| Twenty-second Report  | Maintaining and improving Britain's railway stations   | HC 535 ( <i>Cm 6775</i> ) |
| Twenty-third Report   | Filing of income tax self assessment returns   | HC 681 ( <i>Cm 6775</i> ) |
| Twenty-fourth Report  | The BBC's White City 2 development   | HC 652                    |
| Twenty-fifth Report   | Securing strategic leadership in the learning and skills sector  | HC 602 ( <i>Cm 6775</i> ) |
| Twenty-sixth Report   | Assessing and reporting military readiness   | HC 667 ( <i>Cm 6775</i> ) |
| Twenty-seventh Report | Lost in translation? Responding to the challenges of European law  | HC 590 ( <i>Cm 6775</i> ) |
| Twenty-eighth Report  | Extending access to learning through technology: Ufi and the learndirect service                                       | HC 706 ( <i>Cm 6775</i> ) |
| Twenty-ninth Report   | Excess Votes 2004–05   | HC 916 ( <i>N/A</i> )     |

|                       |  |                  |
|-----------------------|--|------------------|
| Thirtieth Report      | Excess Votes (Northern Ireland) 2004–05  | HC 917 (N/A)     |
| Thirty-first Report   | Northern Ireland's Waste Management Strategy   | HC 741 (Cm 6843) |
| Thirty-second Report  | Working with the voluntary sector  | HC 717 (Cm 6789) |
| Thirty-third Report   | The Royal Parks and the Diana, Princess of Wales Memorial Fountain   | HC 644 (Cm 6789) |
| Thirty-fourth Report  | Returning failed asylum applicants   | HC 620 (Cm 6863) |
| Thirty-fifth Report   | The refinancing of the Norfolk and Norwich PFI Hospital  | HC 694           |
| Thirty-sixth Report   | Tackling the complexity of the benefits system   | HC 765 (Cm 6863) |
| Thirty-seventh Report | Inland Revenue Standard Report: New Tax Credits  | HC 782 (Cm 6863) |
| Thirty-eighth Report  | Channel Tunnel Rail Link   | HC 727 (Cm 6863) |
| Thirty-ninth Report   | Consular services to British nationals   | HC 813 (Cm 6863) |
| Fortieth Report       | Environment Agency: Efficiency in water resource management  | HC 749 (Cm 6884) |
| Forty-first Report    | The South Eastern Passenger Rail Franchise   | HC 770 (Cm 6884) |
| Forty-second Report   | Enforcing competition in markets   | HC 841 (Cm 6884) |
| Forty-third Report    | Delivery chain analysis for bus services in England  | HC 851 (Cm 6900) |
| Forty-fourth Report   | National Offender Management Service: dealing with increased numbers in custody  | HC 788 (Cm 6900) |
| Forty-fifth Report    | Employers' perspectives on improving skills for employment   | HC 862 (Cm 6900) |
| Forty-sixth Report    | Governance issues in the Department of Enterprise, Trade and Investment's former Local Enterprise Development Unit               | HC 918           |
| Second Special Report | The BBC's White City 2 development: The response of the BBC Governors to the Committee's Twenty-fourth Report of Session 2005–06 | HC 1139 (N/A)    |
| Forty-seventh Report  | NHS Local Improvement Finance Trusts   | HC 562           |
| Forty-eighth Report   | HM Customs and Excise: Standard Report 2004–05   | HC 874           |
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| Sixty-first Report | Crown Prosecution Service: Effective use of magistrates' courts hearings | HC 982 |
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The reference number of the Treasury Minute to each Report is printed in brackets after the HC printing number

# Oral evidence

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## Taken before the Committee of Public Accounts

on Wednesday 8 March 2006

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon  
Greg Clark  
Mr Ian Davidson

Mr Sadiq Khan  
Mr Austin Mitchell

**Sir John Bourn KCB**, Comptroller and Auditor General, National Audit Office, was in attendance and gave oral evidence.

**Ms Paula Diggle**, Treasury Officer of Accounts, HM Treasury, was in attendance.

### REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

#### CROWN PROSECUTION SERVICE:

#### EFFECTIVE USE OF MAGISTRATES' COURTS HEARINGS (HC 798)

*Witnesses:* **Mr Ken Macdonald QC**, Director of Public Prosecutions and **Mr Richard Foster**, Chief Executive, Crown Prosecution Service, gave evidence.

**Q1 Chairman:** Good afternoon, welcome to the Committee of Public Accounts where today we are looking at the Comptroller and Auditor General's Report *Crown Prosecution Service: Effective use of magistrates' courts hearings*. We welcome to the Committee Mr Ken Macdonald, who is the Director of Public Prosecutions, and Mr Richard Foster, who is Chief Executive of the Crown Prosecution Service. You are very welcome. I should declare an interest in that I am a practising barrister or have been for most of my working life, but not at present because I am too busy doing this job and a lot poorer for it. I have a lot of experience of dealing with magistrates' courts, but a lot of it many years ago I am afraid, so I am a bit out of date. You will have to forgive me. Can you please look at the Executive Summary, page 2 paragraph 7, where it tells us "There is insufficient oversight of cases; lawyers often do not have enough time to prepare for hearings; there could be more effective systems for prioritising and progressing urgent or high-risk cases; evidence is sometimes incomplete; and files are mislaid". It is lucky for you that so many people plead guilty, is it not?

**Mr Macdonald:** As you know, the vast majority of people who are charged with criminal offences do plead guilty and the overall conviction rate for all cases charged throughout England and Wales is about 82%<sup>1</sup>, which is probably about right. However, it is obviously taking us too long to get to the end result and there are far too many ineffective hearings and too many ineffective trials. We are responsible, on this Report, for about one in ten of

those ineffective hearings and about the same number of ineffective trials. Although we are not at fault in 90%, 10% is too high and I accept the assessment in the Executive Summary that we need to reorganise the way that we manage our lawyers who are involved in the summary process. That is one side of it and I can tell you in a moment what we are doing about that to try to re-order the way we conduct that work. We also need closer co-operation, which we are achieving with the other two important agencies in this, that is to say the courts and the police. In the parts of the country where the NAO found good practice—I am thinking of Northumbria and Cardiff—that good practice really results from the close working relationships which have been developed between the agencies, but it also results, particularly in Cardiff, from the way we organise our own work. The recommendation in the Report is that we organise ourselves so that groups of lawyers supported by caseworkers assigned to a particular team are dealing with all of the work which comes out of a particular police division and going into particular courts. We took part in a review of the magistrates' courts which was led by Lord Justice Thomas, the senior Presider for England and Wales in November and December looking at the way magistrates' courts actually work and we looked at courts in Cardiff, Bradford, Birmingham and Camberwell Green over a two-month period and sampled a number of cases. The conclusions that we have come to are very close to the conclusions which the NAO has come to, in other words that we should group lawyers in that way and use caseworkers and administrators broadly in the way that is recommended by the Report. I can go into detail when Members ask particular questions.

<sup>1</sup> *Note by witness:* The figure should be 80%. The conviction rate in the magistrates' courts is 81% (page 10 of the NAO Report). The conviction rate in the Crown Court is 76% and number of cases in the Crown Court is relatively small.

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**Q2 Chairman:** You told me in answer to this that obviously the vast majority of ineffective hearings are down to the defence, is that right?

**Mr Macdonald:** Yes, it is.

**Q3 Chairman:** That is their job. As a defence lawyer myself, my whole job was to upset the whole system on behalf of my clients. So that is no defence, is it, as far as you are concerned?

**Mr Macdonald:** It is certainly true that, to an extent, the defence are disengaged from the process and one of the difficulties about—

**Q4 Chairman:** Of course they are disengaged; they do not want the process to complete, do they?

**Mr Macdonald:** One of the difficulties with having an entirely smooth system in criminal justice is that one of the main players does not want to be there and, as you have said, has an interest in ensuring that the system does not work. What we have to do, much more clearly than we have in the past, is to incentivise appropriate behaviour. I am a member of the Sentencing Guidelines Council and one thing that we have done recently is to publish a guideline which indicates that defendants who plead guilty early in the process should get higher discounts in sentence than defendants who plead on the day of the trial. If that guideline were followed more rigorously by the judiciary, we might see some result. We can expect defendants to co-operate more than they are the moment. There is a very important aspect to this. If a defendant thinks that there is a good chance that his case will collapse before it gets to trial, he has no interest in pleading guilty. There has been an element in the past of defendants feeling that, because so many cases go wrong, if they just hang on, either it will collapse or the witnesses will not turn up. We need to get better.

**Q5 Chairman:** That is right is it not? Historically that is right.

**Mr Macdonald:** Yes, that is what this is about. It is right.

**Q6 Chairman:** You said that so many defendants do not want to be here, but you do not want to be here either so perhaps if you want to get away early you should just plead guilty at the beginning of the hearing.

**Mr Macdonald:** I have to say that you are wrong. I am very happy to be here.

**Q7 Chairman:** Good; I am delighted.

**Mr Macdonald:** May I just say that I am not a professional civil servant, as you know; I have been in this job for two years so this is all somewhat foreign to me. I do think the process of going through this investigation with the NAO has been extraordinarily useful for us, has helped to shape our thinking and, contrary to what you said, I am very happy to be here to try to tell you what we have done and to try to answer some of the criticisms which I am sure you are going to make of our procedures.

**Q8 Chairman:** I am delighted; thank you very much for that. Would you look now again at the summary, paragraph 12? Why do so many cases get to court? It details all the things: lack of ownership of cases, lack of preparation before hearings, inadequate prioritisation, which we all know about. Why do so many cases get to court Mr Macdonald before the evidence is complete?

**Mr Macdonald:** The charging initiative is designed to prevent this. The whole purpose of the charging reform, whereby the CPS takes over from the police the responsibility for deciding who shall be charged and what the charge shall be, is to ensure that when a case gets to court it is a case which is prosecutable, the evidence is in place and it is not going to collapse. We can see, not just from the OGC analysis of the charging initiative but from the figures that we are able to extrapolate from our case management system, that the number of discontinuances, the number of cases collapsing in cases where we have made the charging decision, is declining quite dramatically. This is a new reform. We undertook to roll it out across the country by March 2007 and we are going to do it a year early: we are going to roll it out in the final area in April 2006. I have no doubt at all that giving prosecutors the responsibility for deciding what charges shall be is going to introduce efficiencies across the whole system. As you will know, in the past CPS lawyers spent a lot of their time reviewing cases that should not have been charged, changing charges, having to tell disappointed victims that the cases which had been charged were now going to be abandoned and it is a terrible waste of time and money and it is deeply undermining of public confidence. The charging initiative will go some way to dealing with the issue.

**Q9 Chairman:** The charging initiative is not just an excuse to strip out cases which are weaker.

**Mr Macdonald:** No; no. If you look at the trajectories, what happens when the charging initiative is introduced is that there is initially a dip in the number of cases prosecuted, but they are soon replaced by cases in which we have encouraged the police to go and obtain appropriate evidence so that a case which was otherwise unchargeable becomes chargeable.

**Q10 Chairman:** If you now look at paragraph 16 on page 4, it says there “. . . there appears to be an imbalance in the staffing mix”. Do you have the right mix between lawyers and administrative staff?

**Mr Macdonald:** I am not sure that we have and this is something that we need to look into and are looking into. I know the Report indicates that we should have more lawyers and fewer administrative staff. That is a part of the Report that we need to look at very carefully. If it is right that some of our administrative staff are under-used, we need to identify that and deal with it. We need to have as many lawyers and skilled legal workers, paralegals, as we can get for our money.

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**Q11 Chairman:** We see further on in that paragraph “Without a system of time recording, however, it is not possible to determine whether resources for magistrates’ court work are being diverted to Crown Court cases”. Why do your staff not complete time records? This is common in private firms, as you well know?

**Mr Macdonald:** We have a system of ABC activity-based costing, which is supposed to ensure that areas receive funding according to the amount of work which they do and the number of cases they are processing. I am assured that local Chief Crown Prosecutors and area business managers are aware of how much is being spent on magistrates’ courts as opposed to Crown Courts. I am not saying at all that I am opposed to the idea of time-keeping; there are some areas where it would be very useful. For example, as part of our desire to offer flexible working conditions, we have quite a few lawyers and others who are now on compressed hours. These are quite difficult to police. This is people working their five hours on a four-hour day and I sometimes feel myself that without some system of control, it is difficult to know whether you are getting value for money when you move to that system. I am not, myself necessarily against time-keeping.

**Q12 Chairman:** Thank you; that is helpful. Look now at paragraph 2.29 on page 28 headed “Monitoring of case work quality is patchy”. How can you manage a service when you do not know what your staff are doing and you are not monitoring their work?

**Mr Macdonald:** What we are required to do is to monitor monthly and the idea is that we look at a case for each lawyer once a month; we do casework quality assurance. We have a system and an agreement with HMCPSI that when lawyers are consistently doing good work we can monitor their work less frequently than that, but last year we looked at 19,000 files on the basis of this scheme. We do operate the quality assurance scheme; we are talking to HMCPSI about how we can do that in a more comprehensive way. I completely agree with you, that we need to performance-manage lawyers better. I think that when lawyers make some of the mistakes which are highlighted in this Report, there needs to be more of a downside to that. People in our organisation work extremely hard and sometimes the way that we have organised them does not always make it as easy for them to do their jobs as it might be, but we do need to performance-manage all of our staff in particular and lawyers a little more.

**Q13 Chairman:** Let me now ask you a basic thing about your people actually talking to policemen. This is mentioned in paragraph 2.16 “. . . difficulties resolving problems between hearings as the police and defence lawyers are unable to discuss the case with the allocated lawyer”. This is pretty basic stuff, is it not? Why do you not make it easier for the lawyers to speak to the police?

**Mr Macdonald:** As a result of the work in November and December that I told you about, we are going to be moving towards teams of lawyers working with particular police divisions and that structural reform will go a long way to dealing with that problem. It means that relatively small numbers of police officers will be dealing with the same lawyers over the whole range of their work. That will significantly ease these communication problems which at the moment are undoubtedly significant.

**Q14 Chairman:** Mr Foster, just to give you a chance to say something, as you have turned up, please look at paragraph 17. You have introduced this electronic case management system, have you not?

**Mr Foster:** Yes

**Q15 Chairman:** But you still cannot find files, is that right?

**Mr Foster:** We have difficulty finding files, particularly when cases move at short notice between courts.

**Q16 Chairman:** So what is the point of the new system then?

**Mr Foster:** The new system enables us to have an electronic case file system which means that when you are working in the office you have all of the data in front of you in the office and both lawyers and their managers can track exactly what is happening. At the moment, because there is not the technology available in courts, we cannot use the system as extensively as we should like in courts. Once we can do that, which we hope to be able to do in about a year’s time, then that problem will be addressed.

**Mr Macdonald:** We need an electronic system which goes across the whole of criminal justice; there is no doubt about that. We need a system which enables us to talk to the police, the police to talk to us and us all to talk to the courts electronically. At the moment we have introduced, again in time and in budget, an electronic case management system which also enables us to drive management information in our organisation and we are piloting in Humberside an interface between our system and NSPIS, which is the main police system. We do need as a whole criminal justice system to work towards us all being able to communicate. We should be working on electronic files.

**Q17 Chairman:** I seem to remember when I was appearing in Bow Street Magistrates’ Court that the policeman turned up with a pocket notebook: there was no difficulty; there was no bureaucracy; no files were ever lost; the system seemed to work. You have created a monster of a system which results in delays, files being lost, lawyers not talking to police. What was wrong? You probably remember this as well.

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**Mr Macdonald:** I often ask myself what has changed. I have looked at files which we used in the early days of the CPS compared with files for the same cases now. The difference is huge. The real difficulty here, if you want my honest opinion about this—

**Q18 Chairman:** I do want your honest opinion. It is rare in this room but it would be very nice.

**Mr Macdonald:** My honest opinion is that you could certainly make an argument that we no longer have a system of summary justice in this country and the magistrates' courts have become so complex and proceedings have become so convoluted that there is little difference between magistrates' courts' evidential requirements and procedures and Crown Courts' requirements and procedures. You will remember that they used to be completely different and it would be quite interesting to analyse exactly what that has meant. I suspect one of the things it has meant is that everyone is having to work a lot harder to achieve the same results and that does not seem to me to be very clever.

**Q19 Chairman:** Who joins the CPS by the way? You do not become a lawyer to join the CPS. Some of the best people will not go into your organisation.

**Mr Macdonald:** May I just say that one of the benchmarks that I set myself when I started this job was that we should become an employer of choice. Two years ago, we could not get lawyers to join us in London or around the country and you will remember that at one time it was extraordinarily difficult to recruit them. This was not the CPS's fault. The CPS was set up by Parliament, underfunded and it was deliberately given low status. One minister at the time described its work in the House of Commons as "low-grade legal work". You are not exactly going to get lawyers queuing up to join. We have changed all of that. We now have a much bigger role, we pay better salaries and we are moving into advocacy. We recently advertised 25 places for a new national graduate legal trainee scheme. We got 2,000 applications. We have waiting lists of lawyers in some parts of the country wanting to join us. We do not recruit now from people who cannot get jobs elsewhere, we recruit direct from private practice. I have met partners from defence firms in CPS offices who have joined us. The reality is that the criminal law community understands that the CPS is changing: first of all in its role—it is becoming much more influential, the job is becoming much more exciting—but also in its performance. If I may say so, your view that nobody becomes a lawyer to join the CPS now is becoming outdated. We need to get to the situation that exists in other countries.

**Q20 Chairman:** In America, where you can build a political career on it.

**Mr Macdonald:** People want to join the state prosecuting authority. They learn their trade, if they are really good they go off into private

practice. We have just recruited into our Organised Crime Division, five senior barristers to work as in-house senior Crown advocates. We are recruiting from the Bar to put advocates into the Snaresbrook Crown Court as in-house advocates. We are dramatically increasing the extent to which we do our own advocacy and this is having a big impact on people's view of whether we are a desirable place to work. Most criminal lawyers want to do advocacy. If you have an organisation which tells them they cannot do advocacy, they will not join it, and we are changing that.

**Q21 Mr Mitchell:** You said that it started off underfunded and under-staffed and that is certainly true, but from what you are saying many of these problems must in fact remain, because it all bespeaks a situation where staff levels are not adequate and you do not have enough people to do the job.

**Mr Macdonald:** You would not expect me to sit here and say I should not like to recruit more lawyers. With the charging initiative, we were allowed to recruit an extra 480 and we now have 2,800. Of course I should like more lawyers. We were given more funding, we do have a lot of lawyers and the question is whether we have them doing the right jobs. We still have too many lawyers doing quite low-grade work which does not require legal input. The Report refers to some lawyers doing admin-type tasks. They should not be doing that. Lawyers should not be doing routine magistrates' court hearings; we should be using our DCWs to do that, our paralegals. We can only do that if the Courts Service lists courts just to do DCW work, otherwise we have to have a DCW and a lawyer in court. With inter-agency cooperation, we can get our lawyers away from the less-skilled work and have them concentrating on what they should be doing. They are expensive. We pay them well. They should not be doing low-grade work; they should be doing work at the top end of the market and we are actively moving into a new system where they do that. I have just increased the remit of DCWs, so they can cover a wider range of work in the magistrates' court. I have already said something about HCAs. We are determined that our lawyers, who are well paid, have job security and good working conditions by and large, should concentrate on work which genuinely requires their expensive input. We should be able to provide a good service with what we have. We should obviously like more resources; we should obviously like more lawyers.

**Q22 Mr Mitchell:** The Report says that there is inadequate prioritisation of cases which require urgent action and even cases which are being delayed are not then sufficiently prioritised to put them forward next time. Why is that?

**Mr Macdonald:** It is a fair criticism and it is partly because we have been overrun by the sort of procedural and evidential requirements that the Chairman was hinting at a moment ago, that everything in the magistrates' court has become

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more complex. Partly it is because we still do not have a sufficiently close relationship with the Courts Service, so too many cases are still being swapped from one courtroom to another and it is difficult for us to know at the end of the day which lawyer is going to be presenting the case in court. It is partly because we have not organised ourselves well enough internally.

**Q23 Mr Mitchell:** Who puts the priorities on internally in your Service?

**Mr Macdonald:** The unit head. We have groups of lawyers and the head of a group of lawyers is called a unit head; he is what we call a level D lawyer usually, which is a senior lawyer. He or she is supposed to do that, but until you have a system closer to the system being recommended by the NAO of dedicated teams of lawyers working with dedicated teams of officers in a particular court, it would be difficult to manage that. One thing that we need to get across is that this is a bulk area of work. We prosecute 1.3 million cases a year. Quite a lot of that is obviously traffic, which may not need a lawyer involvement, but there is a vast amount of work in the magistrates' court and this is a huge job of organisation. In recent years following the Glidewell Report we have split ourselves into two groups as far as lawyers are concerned: lawyers who deal with the magistrates' court, who are called the Criminal Justice Units and lawyers who deal with the Crown Courts, who are called the Trial Units. I am not sure that was ever a good model because lawyers became de-skilled, but now that we are doing charging and now that we are doing advocacy and now that we want to have a cradle-to-grave service from the beginning of the process right through to the end, I am quite sure that is not the right model. What we are moving to is a model of the sort that appealed to the NAO: combined units of lawyers who do all of that work, with different skills and different responsibilities but working within a group of lawyers with a group of police officers at a particular court. Prioritisation will be a lot easier to achieve under that model. The model we have at the moment was always going to make prioritisation difficult. Incidentally, the new model that we are talking about, we could not really have moved to until we were given these new responsibilities and new roles, by which I mean charging, responsibility for witness care and an increasing role in advocacy. All of these things have led us to the position where this sort of reorganisation makes sense for us across the whole range of our business.

**Q24 Mr Mitchell:** You are talking about teams. Why can you not have a system where one lawyer is responsible for one case and all the consequences fall on his or her head if that case is not pursued?

**Mr Macdonald:** The ideal for us is that the lawyer who prefers the charge builds the case and argues it in court. The barristers we have recruited to do some of our advocacy at Snaresbrook will do exactly that. They are going to rotate between the

charging centre and the Crown Court and that is the best model. Because of the vagaries of listing, it is going to be impossible to follow that model consistently.

**Q25 Mr Mitchell:** Why?

**Mr Macdonald:** Because cases get swapped at very short notice. Sometimes a case is switched from one courtroom to another. So you might have a lawyer turning up at court who has five of his own cases to do, he arrives at court and suddenly he is told that two of those cases are going to be in court number three. So they get handed to the lawyer who is covering court number three and he or she has to read it at short notice and present it. This is not ideal, but it is difficult to arrange.

**Q26 Mr Mitchell:** Is that the decision of the court?

**Mr Macdonald:** Yes.

**Q27 Mr Mitchell:** You are vulnerable there; you are totally vulnerable.

**Mr Macdonald:** We are always going to be vulnerable and I am not criticising the Courts Service; they have difficult logistical problems too, but we should see less of that. We should be moving to a system where there is a lot less of that and that is obviously about cooperation between us.

**Q28 Mr Mitchell:** You win 81% of the cases.

**Mr Macdonald:** It is 81% across magistrates' court and Crown Court; 81% in the magistrates' court.

**Q29 Mr Mitchell:** Very high. That means that you are dealing with the cream of the cases, the most winnable cases. Since you are taking the sure-fire winners it is difficult to see why it cannot all be made tickety-boo in terms of witness appearance, in terms of all the information that is necessary in terms of gathering all the evidence and putting it in the right compartments in the file, why it cannot all be done because these are such straightforward cases. You have chosen them as winners.

**Mr Macdonald:** No, they are not. We do not only prosecute the winners.

**Q30 Mr Mitchell:** But you do concentrate on the most winnable cases.

**Mr Macdonald:** No, we do not actually. The test which we have for prosecution is that in the view of the lawyer there has to be a realistic prospect of conviction, which simply means over 50%. We would prosecute a case if we thought there were a 51% chance of winning it and it was in the public interest to prosecute it. The figure that you cited of 81% includes guilty pleas. We win about 73% of contested cases, not-guilty pleas, in the magistrates' court and probably a bit less than that in the Crown Court. Those figures are probably about right. If we wanted to bring only the more winnable cases, I would adjust the guidance and tell prosecutors that from now on, we would only prosecute cases where there was a strong prospect of a conviction. I do not want to give long answers but I do want to say one other thing about this

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because we, responding to public confidence concerns, are concentrating particularly hard on prosecuting some types of cases which are almost bound to involve the problems which you see in this Report. I am thinking of sex cases and domestic violence. There is a huge attrition rate in domestic violence cases. They collapse to a very high extent because the victims often withdraw. In responding to public concerns and prosecuting more of these cases, and we were praised this morning by the refuge organisation on television for our approach in this area, by doing that we are making a rod for our own backs because we are increasing the discontinuance figures. We accept that; that is going to happen. It is very far from accurate to say that we only prosecute sure-fire winners. We prosecute lots of very, very challenging cases and I sometimes have to make decisions on them myself and sometimes the decision is very finely balanced. We do not expect to win all of our cases; we expect to lose a significant number.

**Q31 Mr Mitchell:** You expect to win the majority.  
**Mr Macdonald:** Yes.

**Q32 Mr Mitchell:** In any case the point is that the degree of preparation is disconcerting, given the fact that you need to be prepared and that the Courts Service has some means of shifting things around and the prosecution always has to be as dodgy as it can, as our Chairman has just told us.  
**Mr Macdonald:** I am not sure I would accept that description. I think he was talking about the defence.

**Q33 Mr Mitchell:** You manipulate the system in a way most favourable to the client, put it that way. It is still disconcerting to read that the prosecution was not ready in 9% of the cases and that in 15% the charges were dropped on the day of the trial. How on earth can that happen?

**Mr Macdonald:** I am not sure whether that figure includes the situation where defendants quite often plead guilty on the day of the trial. The reason is that they are waiting to see whether the witnesses turn up. If the witnesses turn up, they plead guilty. It is quite difficult to deal with. This is very bad, because first of all it is stressful for the witnesses, particularly the victim. Secondly, it means that everyone has spent time and money getting the case ready and the defendant always intended to plead guilty. One of the ways we are trying to address this is to make it more and more likely that the witnesses will turn up. We have opened witness care units, 195 around the country staffed by police and CPS staff whose sole job is to keep in touch with witnesses, to encourage them to court, to address their concerns and to help them with any difficulties they have. In the areas where we have opened these units, we have seen a significant increase in witness attendance. The message will get through and if magistrates made it plain that defendants who pleaded guilty on the day of the trial were getting stiffer sentences than defendants who pleaded guilty at the first appearance, then if that message

gets through, I would hope to see some movement. This extent to which under our culture—and this is not true in other countries—defendants tend to plead guilty at the last minute is very damaging to the whole system actually.

**Q34 Mr Mitchell:** It is. I have come across the problem with witnesses in cases in Grimsby. Nevertheless, failure to obtain sufficient evidence accounted for one third of the figure. It is not just witnesses.

**Mr Macdonald:** We do not collect the evidence, the police collect the evidence. We can advise the police.

**Q35 Mr Mitchell:** You know what it is and know whether it is adequate and can insist that more be gathered if necessary.

**Mr Macdonald:** Yes, but if it does not come, it does not come. If we say that there is a CCTV tape and we need it or if we say that some medical evidence is needed, if it does not come, it does not come. There are quite a lot of discrete issues here that we could make progress on. For example, getting medical statements out of hospitals is a terribly difficult and time-consuming process. In some parts of the country we have entered into protocols with local hospitals and that helps. It may be something we would want to take up with the National Health Service on a national level. CCTV is a big problem. I think I am right in saying that there are 800 different formats out there on CCTV cameras, depending whether it is a local authority or a shop or what kind of shop and the playback equipment cannot deal with them all. Around the collecting of evidence, whether it is forensic evidence, medical evidence or CCTV evidence, there are all sorts of issues completely beyond our control actually. We do not gather the evidence. We can say what evidence we need and hopefully it is obtained.

**Q36 Mr Davidson:** When you were speaking earlier on, you indicated that you found the NAO approach very useful.

**Mr Macdonald:** Yes.

**Q37 Mr Davidson:** Does your system have no internal re-examination process that would have led you to have examined a lot of these things yourselves anyway? Surely the NAO coming in should not have been a blinding flash of light?

**Mr Macdonald:** No, I accept that. The point is that over the last two years—I shall just talk about the last two years because that is the period that I have been here—we have been pushing through a very radical reform programme actually to make us much more—

**Q38 Mr Davidson:** Time is short. Still, there must have been a number of things. I got the impression from what you said that the NAO were revealing a whole number of things that you had not previously been examining. Why is your system insufficiently rigorous?

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**Mr Macdonald:** That is not right. We were in a structure which we had adopted because of the Glidewell Report in 1999.

**Q39 Mr Davidson:** Was there nothing new then really in what the NAO was drawing to your attention? Were you aware of all of it and dealing with all of it?

**Mr Macdonald:** One of the things that the NAO referred to in particular was what is happening in Cardiff, which is something that we did off our own bat and they reviewed that as best practice which we ought to pursue. We were looking into how we could move from Glidewell into a combined unit system and that would undoubtedly have involved some of the things the NAO was talking about.

**Q40 Mr Davidson:** In terms of the NAO Report, are you saying to me then that you were already covering all of the things that are in there, all of the areas that were examined?

**Mr Macdonald:** No.

**Q41 Mr Davidson:** No. If not, why was your system not sufficiently rigorous to have been doing so already?

**Mr Macdonald:** I was going to go on to say that as we were moving from the split units to the combined units, I am sure we would have done this. I am sure this is what we would have done.

**Q42 Mr Davidson:** You would have got there eventually.

**Mr Macdonald:** We would have got there pretty quickly.

**Q43 Mr Davidson:** Many people who come in front of us tell us that not all that much is new and they would have got there eventually or they were just getting there, or between the date of the NAO visiting them and the people involved appearing in front of the PAC they have actually introduced these changes. Can you understand why we find that a bit surprising?

**Mr Macdonald:** Of course I can understand that, but what I am trying to explain is that we were in the process of moving from split units to combined units. What was happening in Cardiff was being replicated in Northumbria. We have sort of delayed that reform because we need to wait to see what shape the new police areas are going to take. I am not suggesting that the NAO has not been absolutely clear about what we need to do.

**Q44 Mr Davidson:** May I come on to the question of how modern and up to date you are, because you do still strike me as being one of the few unreformed and unmodernised public services. In terms of paragraph 3.20, it says "... office phones do not record messages or they are not answered in their absence". The use of answering machines is not cutting edge technology and I would have thought that any service that did claim to be modern and up to date at all would have availed itself of answering machines. Can you just clarify?

**Mr Macdonald:** We do use answering machines.

**Q45 Mr Davidson:** So the Report is wrong.

**Mr Macdonald:** No, it says the "More extensive use of answering machines and e-mail, combined with a team-based approach".

**Q46 Mr Davidson:** It says "Most lawyers are out of the office and either their office phones do not record messages or they are not answered in their absence".

**Mr Macdonald:** As I understand it, we do have use of answering machines. I agreed that it ought to be more extensive and the team-working point would help that.

**Q47 Mr Davidson:** Have you seen this Report? You have agreed it?

**Mr Macdonald:** Yes, of course.

**Q48 Mr Davidson:** You have agreed to the sentence which says "Most lawyers are out of the office and either their office phones do not record messages or they are not answered in their absence". So let us not dispute what is said here.

**Mr Macdonald:** I am not disputing it Mr Davidson. What I am highlighting is the sentence which says at the beginning of paragraph 3.20 "More extensive use of answering machines and e-mail" *et cetera*. Of course that is right; I accept that.

**Q49 Mr Davidson:** "It can be very difficult for the police, courts or defence solicitors to contact the Crown Prosecution Service".

**Mr Macdonald:** I have no doubt at all that that is an issue.

**Q50 Mr Davidson:** Why have you not sorted that?

**Mr Macdonald:** We are sorting it.

**Q51 Mr Davidson:** Why have you not sorted it already?

**Mr Macdonald:** You asked me about whether we are a modernised public service. What we have been doing over the last two or three years involves a huge modernisation of the CPS from a very low base: the computer system, the new roles, all of the things that I have mentioned.

**Q52 Mr Davidson:** This only began two years ago then?

**Mr Macdonald:** No, it began in earnest probably around 2001–02. In 2001 we did not even have a computer on every desk and Compass was commissioned as a computer system about 2002.

**Q53 Mr Davidson:** Do you think that culture has been removed from the service then?

**Mr Macdonald:** No, I do not. We are battling it, we are making some progress against it, but we still do have an old-fashioned culture. I accept that.

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**Q54 Mr Davidson:** That is one of the key issues for me in all of that. I am not clear, in terms of either the Report or what you have said so far, how vigorously you are approaching this question of cultural change.

**Mr Macdonald:** I can only say to you that our major theme at present in the CPS is cultural change and performance management. We are addressing it very vigorously with the new roles we have, the new powers; it is the key thing for us to address.

**Q55 Mr Davidson:** May I just come back to this question of successes, about the conviction rate of 81% in magistrates' courts? This relates back to the point which was made earlier on about only picking winners. I want to clarify just how good that 81% figures is, given that 61% pleaded guilty, so in a sense you could almost take that away, then 15% failed to attend court and it was proved in their absence. If you cannot find somebody guilty in their absence, then I would not have thought you could find them guilty anywhere.

**Mr Macdonald:** I do not want to interrupt, but when you say that you can take away the guilty pleas, people plead guilty because an unanswerable case is assailed against them. That is not to be taken away, that is us doing our job properly, getting pleas of guilty in the face of strong cases. I am not happy to take that away.

**Q56 Mr Davidson:** I was taking your observation about 50/50. Presumably people would reckon by and large they had a 50/50 chance of being found guilty or not.

**Mr Macdonald:** No, not at all. Some cases we prosecute we think it is maybe a low 50s; some cases will be absolute certainties. It depends where you are in the range.

**Q57 Mr Davidson:** You only actually get 5% guilty after a trial as compared with 2% that are acquitted on the trial date. Out of the 100% that actually go to trial, it is only 5% and 2% really that are being acquitted.

**Mr Macdonald:** The figure is about 73%.

**Q58 Mr Davidson:** Only 2% are being acquitted.

**Mr Macdonald:** The overall figure is about 73%.

**Q59 Mr Davidson:** On the basis of the figures that I have in front of me here, and you have seen the Report, 13% were discontinued by yourselves. To what extent can we be convinced that you are not letting a lot of cases go simply because you are over-burdened?

**Mr Macdonald:** We are certainly not doing that and, if you are suggesting this, there is certainly no sort of policy to that. We are not doing that. If the conviction rate of contested cases is of that order, given that our test of prosecution is anything over 50% that is about the right figure. It should not be much higher or much lower. It is about right.

**Q60 Mr Davidson:** But if you are getting five wins to two defeats as it were in cases that actually get to court, I should draw from that, given that you started off with 100 and only two are actually being acquitted, that the bar has perhaps been set too high.

**Mr Macdonald:** As you said, a large number of these cases are cases where the plea of guilty is a sure-fire thing. When you are looking at whether we are applying the right test of just over 50%, what you need to look at is the acquittal rate in contested trials, because those are the cases at the margins.

**Q61 Mr Davidson:** The marginal rate, as it were, the marginal balance that you are doing, is 50%.

**Mr Macdonald:** Yes. In the cases at the margins, that is where people are pleading not guilty because they think they have a chance. If the conviction rate were in the mid-50s or as high as 70%, that would be about right. I should not look at the overall rate because, as you say, there are too many people pleading guilty who do not have a defence, but if the contested trial rate is where it is, that is about right.

**Q62 Mr Davidson:** May I just look at the chart on page 45 which shows "Cracked and ineffective trials as a percentage of all trials by criminal justice area"? I am struck by the difference between Warwickshire at one extreme and Bedfordshire at the other. Do you have a target figure that areas ought to be satisfied with or dissatisfied if they go above?

**Mr Macdonald:** We have a target figure for reducing ineffective trials and they are reducing since 2002.

**Q63 Mr Davidson:** What is the target?

**Mr Macdonald:** They have gone down from 31%.

**Q64 Mr Davidson:** No; what is the target?

**Mr Macdonald:** We are doing better than the target at the moment. The target is about 23% and we are down at 21% and it has reduced from 31%.

**Q65 Mr Davidson:** Sorry; we need to be clear. The target is 21% in cracked and ineffective trials?

**Mr Macdonald:** Ineffective trials.

**Q66 Mr Davidson:** I am looking at the chart on page 45 where the average is actually below 15% and there is none above 20%.

**Mr Macdonald:** This is cracked and ineffective; there is no target for those as a combination because they cover too many variations. I should never lump cracked trials and ineffective trials together. The cracked trial is a trial where you get a result, someone pleads guilty; an ineffective trial is just a trial that does not happen. We are ahead of trajectory on ineffective trials; the rate has come down from 31% to below 20% in the last three years.

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**Q67 Mr Davidson:** How wide a variation is there?

**Mr Macdonald:** Across the areas? It is not huge; the variations across any of our areas are not huge. As you know, we have put our national conviction rate on our website now and if you strip out the top two and the bottom two, which are both small areas where there are going to be variations, our conviction rate varies from about 81% to 88% across the whole of England and Wales.

**Q68 Mr Davidson:** It was not the conviction rate as much as the trials which are aborted as a result of difficulties at your end; that was what I was really looking for.

**Mr Macdonald:** We are ahead of trajectory. The target for ineffective trials was 23% in quarter four of 2005–06 and it is 19% in quarter four of 2007–08. I am quite sure we are going to meet that, we are almost there already.

**Q69 Mr Davidson:** And the variation?

**Mr Macdonald:** I am not sure what the variation is. I imagine there would be a variation, but I am not sure whether I have the figures. I am not sure whether we keep those figures actually.

**Q70 Mr Davidson:** Surely you must have the figures for variation.

**Mr Macdonald:** We can certainly get the figures off our system for you. I do not have them immediately to hand. You want to know the variation in ineffective trial rates across our different areas?

**Q71 Mr Davidson:** That is right. I am astonished actually that you cannot tell me which areas are worst and I was going to follow that by asking what precisely you are doing about those ones.

**Mr Macdonald:** I am sure I can tell you: I just do not have the figures to hand. We can certainly extract them from the system. These are DCA figures incidentally not our figures. These are court figures which will be kept by the DCA. I am sure they have them and I am sure we can have them supplied to you.<sup>2</sup>

**Q72 Mr Davidson:** Let me just be clear about this though. Ineffective trials would be trials which collapsed because of difficulties on your side.

**Mr Macdonald:** No, they are trials which do not take place on the date that they were due to take place.

**Q73 Mr Davidson:** Remind me of the category of those that collapsed because of difficulties on your side?

**Mr Macdonald:** It is about one in 10.

**Q74 Mr Davidson:** One in ten. Comparing those then for which you could be held accountable, is there a variation between areas?

**Mr Macdonald:** I am sure there will be a variation, but we should have to get those figures. I am sure we can get those figures for you.

**Q75 Mr Davidson:** Can you understand why I am slightly surprised, since you are in charge of the Service, that you are not aware which of your areas are the worst in terms of the figures for trials collapsing because of factors under your control?

**Mr Macdonald:** We have area performance reviews with all of our areas every four months or so, and they come with all of their figures. We look at the performance; I sit down with Mr Foster, the Chief Crown Prosecutor and the area business manager for each of our areas and go through all of their figures for ineffective trials, for all of the HCA usage, delays, all that sort of thing. We go through all of their performance figures with them regularly and there is no sense in which we are not on top of what is happening in different parts of the country. We have quite rigorous performance management.

**Q76 Mr Davidson:** But you cannot tell me who is worst.

**Mr Macdonald:** I cannot tell you off the top of my head which is the worst and which is the best.

**Q77 Chairman:** It is not quite clear why Lincolnshire is poorly performing. It is not the most difficult of counties to police; it is a rural county not a big inner city area but they are poorly performing.

**Mr Macdonald:** Sometimes, in smaller areas, particularly when you are talking about cracked trials, these figures can be affected disproportionately by quite small numbers of cases. We found in the conviction figures that the top two and the bottom two were both very small areas, so that a few cases, one way or another, can affect things.

**Mr Foster:** In the case of Lincolnshire it is because there is a very high number of magistrates' courts.

**Q78 Chairman:** We do not want to talk about that, because we want to keep them, thank you.

**Mr Macdonald:** Of course that is an issue Chairman.

**Q79 Chairman:** No, it is not. I do not want you closing any more thank you very much, for spurious reasons of inefficiency when your own organisation is responsible for a lot of this, not having small local magistrates' courts in touch with the people.

**Mr Macdonald:** But it makes it even more likely that cases will be switched between courts and you will have lawyers who have not had a chance to prepare those cases arguing them.

**Q80 Chairman:** But you recognise the role of small local magistrates' courts, particularly in rural communities.

**Mr Macdonald:** Of course I do.

**Chairman:** Mr Bacon, another rural member.

**Q81 Mr Bacon:** Yes; indeed. I am pleased to see that Norfolk is way down towards the bottom of this chart.

<sup>2</sup> Ev 21–23

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**Mr Macdonald:** I live in Norfolk as well and I am glad to see that too.

**Q82 Mr Bacon:** Excellent. I am glad you do. I still do not understand the previous exchanges. Accepting the point you made about particularly cases skewing the figures, the difference between Warwickshire and Dyfed at the bottom and Bedfordshire at the top is a factor of four—this is four times worse. Now I simply do not believe it is due to the upstanding nature of the people in Warwickshire and Dyfed and Norfolk and the bucolic stupidity of those elsewhere such as in Bedfordshire. The only possible explanation surely, when you have this kind of selection including rural counties like Bedfordshire and Lincolnshire, is what is being done by your offices on the ground differently in Warwickshire compared with Bedfordshire.

**Mr Macdonald:** Warwickshire is our smallest area; it probably does not have many magistrates' courts. I am not sure. I have to say I do not find the lumping together of cracked trials and ineffective trials at all useful. Cases crack largely for reasons which are outside our control. They crack because a defendant decides to plead guilty to all or a part of the charge on the day of the trial. That is something over which we have very little control. An ineffective trial may be someone else's fault or it may be completely our fault, but cracked cases are almost never our fault.

**Q83 Mr Bacon:** Could you write to the Committee setting out a breakdown of cracked cases and separately of ineffective cases, the same chart but done separately?<sup>3</sup>

**Mr Macdonald:** I am sure we can, yes. As to variations, I actually agree with you, a variation from 5% to 20% is larger than one would like to see. We are supposed to be a national service and there should not be too much variation.

**Q84 Mr Bacon:** It must be down to local factors of local offices to a considerable if not a total extent, must it not?

**Mr Macdonald:** And to the organisation of local courts and police services as well.

**Q85 Mr Bacon:** You mentioned the business about the judiciary and the fact that you would like to see an incentive system to encourage people to plead guilty earlier. At the same time we have the independence of the judiciary which obviously is very important. Was I right in detecting in your comments that there has been resistance on the part of the judiciary to this, that the notion in a sort of "Rumpolesque" sort of way that the defendant can change his mind at the last minute is something to which judges themselves are attached? Is that right?

**Mr Macdonald:** There is not resistance. We have always had this system, as the Chairman will remember, that if you plead guilty you get a shorter sentence. We have not really had a system which

has rigorously enforced that you only get the full discount if you plead guilty at the beginning. The Sentencing Guidelines Council has urged the judiciary to do that and we shall have to see. That guideline only came out last year and we shall have to see whether it happens. From my point of view, if it was rigorously enforced that would have some impact in terms of persuading people to plead guilty earlier in the process.

**Q86 Mr Bacon:** Like Mr Davidson, I was struck by paragraph 3.20 and particularly the sentence "It can be very difficult for the police, courts or defence solicitors to contact the Crown Prosecution Service lawyer responsible for a particular case". Why is it difficult to contact the relevant CPS lawyer?

**Mr Macdonald:** Because we shift files too frequently between lawyers. The NAO are right that we do that.

**Q87 Mr Bacon:** Surely at any one moment at which the file has been shifted to another lawyer, there must be somebody who knows who that other lawyer is? This is what I find so extraordinary about this. Do you have these things among your lawyers? They are pagers; they do not cost very much and we all have them. Do you have them?

**Mr Macdonald:** No, we do not.

**Q88 Mr Bacon:** Do you have Blackberries?

**Mr Macdonald:** That is a sore point. I am negotiating with our business information system people to try to get Blackberries.

**Q89 Mr Bacon:** You just have to go down to Car Phone Warehouse and buy one. They cost £49.99.

**Mr Macdonald:** Mr Bacon, the e-mails that we deal with are on a secure government intranet. We cannot simply have people extracting e-mails from our system and walking around with them on machines. I cannot do it and certainly an ordinary Crown Prosecutor cannot do it.

**Q90 Mr Bacon:** They seem to manage it in the White House and in Congress without much trouble. The GSI problem is an excuse I have heard many times and it is a problem that does not seem to have been encountered in the United States where Blackberry is much, much bigger.

**Mr Macdonald:** I have had that exact conversation with the people who are giving me that answer and I am pursuing it. We obviously should be using that form of technology and indeed the Fiscals in Scotland use it and they are on GSI.

**Q91 Mr Bacon:** Good; excellent. Perhaps you could update us if you hear anything more.

**Mr Foster:** I was only going to say that the issue on contacting the lawyers is not so much around the technology and the voice mail and so on, though there are problems around that from time to time. The real problem is that the lawyer you are trying to contact, usually to give a view on a case—should we plead, should we accept, should we do

<sup>3</sup> Ev 21

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this that and the other—is himself or herself already in court. The actual problem is not that we do not receive the message back in the CPS office; the problem is that it is literally impossible to speak to the lawyer because they are on their feet in court and that is the problem in about eight out of ten cases.

**Q92 Mr Bacon:** When was the original contract for a uniform electronic case management system for the magistrates' court let?

**Mr Foster:** The Compass contract was—

**Q93 Mr Bacon:** No, that was not my question. When was the original contract for a uniform case management system let?

**Mr Foster:** Are you talking about Compass?

**Q94 Mr Bacon:** No. My question was: when was the original contract for a case management system let? I am surprised that you are not aware of this. Mr Macdonald has already referred to it in passing *sotto voce*. We have looked at it on this Committee. I take it you are familiar with the Libra project?

**Mr Foster:** Yes, I am.

**Q95 Mr Bacon:** When was it let?

**Mr Foster:** I do not know.

**Q96 Mr Bacon:** It was 1989, 17 years ago. Am I to understand from your earlier answers that you still are rolling out this new iteration?

**Mr Foster:** Libra is a DCA IT programme; it is not a CPS programme and I can only talk about—

**Q97 Mr Bacon:** It is for the magistrates' courts, is it not?

**Mr Foster:** Yes, it is for the magistrates' court.

**Q98 Mr Bacon:** When will Compass actually be rolled out?

**Mr Foster:** It is fully rolled out.

**Q99 Mr Bacon:** I understood you to say earlier that you did not yet have the capability that you needed, but when it was rolled out, you would have. To what were you referring?

**Mr Foster:** Let me clarify. We signed the contract for our system in December 2001 and we completed the roll-out in 2003. The system has been fully operational across the country for several years; it was on time, to spec and to budget.

**Q100 Mr Bacon:** In each magistrates' court?

**Mr Foster:** No, not in magistrates' court. It is operational in our offices.

**Q101 Mr Bacon:** In CPS offices?

**Mr Foster:** That is right. At the moment there is no IT in the magistrates' court as you rightly say, because of the difficulties there have been with Libra. Once that system is in place in the magistrates' court, we can connect our system to theirs, but in the meantime we cannot because there is just no docking station.

**Q102 Mr Bacon:** How much is the value of the Compass contract?

**Mr Foster:** The total value of the Compass contract, a PFI contract over ten years, is £300 million and in the first three years we spent about £80 million.

**Q103 Mr Bacon:** Who is the supplier?

**Mr Foster:** Logica CMG.

**Q104 Mr Bacon:** Mr Macdonald, one of the things you said earlier struck me as quite extraordinary: "We no longer have a system of summary justice in this country". We are talking about an entire system of justice, an entire layer of the judiciary. It could hardly be a more serious comment. I had a meeting the other day with someone from the Criminal Justice Advocacy Organisation, it was a sort of opinion poll type interview, and she asked me what was good about our criminal justice system. I said first, trial by jury and second, that we have a lay magistracy and that that has huge strengths. You are basically saying the summary system of justice has gone.

**Mr Macdonald:** What I mean is that the procedures have become too complex. The amount of work that goes into cases which are—all cases are serious for the victims—comparatively not serious is too much. You can see some examples in this Report, of cases that go through very complex procedures to get to a conditional discharge or a fine and we have lost sight of what the "summary" in justice means, which is swift, simple, relatively cheap and relatively easy to manage. Just comparing the way things were when I started practice in 1978 to the way they look now, we have had—

**Q105 Mr Bacon:** When you were a criminal barrister?

**Mr Macdonald:** Yes. I started in the magistrates' court as all criminal barristers do and I would go to court and the case would be prosecuted by a police officer usually. We did not get advanced disclosure. Sometimes the police officer would show you his notebook, sometimes he would not. This was not a perfect system and I would not want to go back to that, but I wonder whether we have lost sight of the fact that a summary system should be simple and straightforward.

**Q106 Mr Bacon:** To me this is a profoundly important comment. The question I have is what can you, as the Director of Public Prosecutions, do about it?

**Mr Macdonald:** We contribute to discussions in Government about what we think is going right and what we think is going wrong and we have done our work that I have told you about, the review led by Lord Justice Thomas, but we obviously contribute to policy discussions about this. I agree with you about the value of the magistracy.

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**Q107 Mr Bacon:** Mr Foster, Mr Macdonald mentioned earlier the different systems for recording CCTV and that there were 800 different systems. Presumably it is relatively simple to transfer onto the uniform system, namely a DVD, whereas most of the courts have videos. I have upstairs in my office a machine that has both VHS video and DVD. You can buy a DVD player for £100; in fact you can buy one in the supermarket for £30, but I daresay you might want a slightly more robust one for a magistrates' court. Nonetheless, there are something like 440 magistrates' courts, so for, let us say it costs £100, £44,000, or if it costs £200, then £88,000, the cost of one lawyer, you could equip every court with a DVD player, could you not?

**Mr Foster:** Yes.

**Q108 Mr Bacon:** But you have not done.

**Mr Foster:** The DCA have a plan to put either laptops or DVDs or videos into all courts. That is not completed yet.

**Q109 Mr Bacon:** They have a plan. Has the plan been promulgated? Has it been started? Is there a target date for finishing it?

**Mr Foster:** My understanding is that they are hoping to get 70% of courts equipped by the end of 2006–07 and the remainder the following year.

**Q110 Mr Bacon:** By the end of the financial year 2006–07, in other words by March next year, there will only be three in ten that do not have it?

**Mr Foster:** Yes, that is my understanding.

**Q111 Mr Bacon:** What is the difficulty when it is a relatively cheap, simple, commonly available item?

**Mr Foster:** You would have to ask the DCA that.

**Mr Macdonald:** I am not a technician or an expert in this area, but I think there is some issue around the number of formats and complexity of having a machine that can translate that number of formats onto a DVD which can be played in court. The Metropolitan Police are looking at this. It is very frustrating for us when we have clear evidence of someone committing a crime. In serious cases, in the happy-slapping cases at the Old Bailey, we find ways of doing it, but it is the small cases, the punch-up in the street outside the pub which is caught on CCTV, where we have sometimes to ask ourselves whether the expense involved is justified.

**Q112 Mr Bacon:** So basically there are loads and loads of vendors of CCTV systems out there selling their own different systems?

**Mr Macdonald:** Yes, people buy them off the internet and they are all different.

**Q113 Mr Bacon:** It would be sensible then to have a national standard to which people were obliged to conform.

**Mr Macdonald:** It would and certainly for the local authorities; the problem is when we get into shops and private premises. A lot of those CCTVs outside nightclubs are run by the nightclub and they are free to buy anything they like.

**Q114 Mr Bacon:** For who knows for what purposes?

**Mr Macdonald:** No comment.

**Chairman:** Mr Khan, you should actually declare your interest. You are a lawyer, are you not?

**Mr Khan:** I am a solicitor and no longer practising.

**Chairman:** We should do that. Do you mind?

**Q115 Mr Khan:** Not at all; it is done. We also get reduced sentences from the Chairman for declaring that. May I just begin by saying it is quite clear from the NAO that the criterion they use for success/effectiveness is cases where charges are dropped. Is that the criterion you use?

**Mr Macdonald:** Sometimes cases are dropped for good reason. Sometimes we need to drop a case because a piece of evidence is not forthcoming.

**Q116 Mr Khan:** Is the criterion for how effective the CPS is the same for you as it is for the NAO?

**Mr Macdonald:** We have a number of criteria. We have public service agreement targets which we are supposed to meet. I have myself a number of benchmarks which I would want to use. I have already mentioned some of them. We want to have a reasonable conviction rate, we want public confidence and we want to be an employer of choice.

**Q117 Mr Khan:** I thought so. I was hoping that would be the case. Are you doing better on those things than you are on these things?

**Mr Macdonald:** We measure public confidence. It is a slow business; it is improving. We are certainly becoming an employer of choice. We have strong employment policies, we attract people from all communities to work for us, which is something we are—

**Q118 Mr Khan:** Experiences of victims and witnesses?

**Mr Macdonald:** That is obviously hugely important.

**Q119 Mr Khan:** Is that improving?

**Mr Macdonald:** It is. The public confidence work which is done includes work with them and the new witness care units are having an impact.

**Q120 Mr Khan:** So it would be unfair for us to judge you just on the basis of how effective you are vis-à-vis delays.

**Mr Macdonald:** I think so. It is a public service and it is constitutionally important but there is a wide range of measures. This is one aspect of our work.

**Q121 Mr Khan:** The experience of you and the Chairman in magistrates' courts is probably even longer ago than mine; it is not for me to say. As

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far as the criteria of delay and charges being dropped are concerned, how are we doing compared with when the CPS was first set up 20 years ago? Are we better than we were then or worse or have there been peaks and troughs?

**Mr Macdonald:** All the figures, all the measures about ineffective trials and all that sort of thing are all improving. I am quite clear that we are in a much better position than we were five years ago. We still have a long way to go but we are improving as an organisation, I am quite confident about that.

**Q122 Mr Khan:** What about the Chairman's point: 10, 15, 20 years ago?

**Mr Macdonald:** The late 1980s. There are people in this room who have worked for the CPS since then; the ones who stayed were pretty brave individuals. I remember the view of the bar about the CPS in the late 1980s, I remember the view that the legal profession generally took of the CPS—it was unprintable.

**Q123 Mr Khan:** So the direction of travel is going the right way.

**Mr Macdonald:** I think so.

**Q124 Mr Khan:** May I just say that my overriding memory of magistrates' courts seems to be of waiting around. I spent a lot of time just waiting around. It is quite clear that some of the cases being moved from one court to another are to do with DCA problems, but what discussions do you have with the DCA about timetabling of cases, location of cases *et cetera*?

**Mr Macdonald:** One of the advantages we had was the creation of Her Majesty's Courts Service which means there is now a unified organisation running the magistrates' courts and the Crown Courts across the country. We regularly meet with the DCA to talk about ways in which they can do things which would help us: courts for DCWs; moves not to switch cases between courts so often; cooperation on listing—

**Q125 Mr Khan:** How fruitful are your discussions?

**Mr Macdonald:** It is early days for HMCS. We work together in a co-operative spirit. I am sure there is more we can do.

**Q126 Mr Khan:** For example, if we were to make a recommendation for greater co-operation might that help?

**Mr Macdonald:** We should all welcome that.

**Q127 Mr Khan:** You talked about summary justice and Mr Bacon pursued this. In your experience, it is not really touched upon in the NAO Report, how many defendants are unrepresented?

**Mr Macdonald:** I cannot answer that question, but I suspect in the simple guilty pleas it would be quite high. We probably can provide a sort of answer;<sup>4</sup> I do not know exactly how accurate it would be.

**Q128 Mr Khan:** Could you drop us a note on that?

**Mr Macdonald:** We shall try to find out.

**Mr Khan:** The Chairman slandered defence lawyers for trying to make the system not work.

**Chairman:** I take that back: a fine outstanding body of people.

**Q129 Mr Khan:** I should be interested to know how many defendants are unrepresented.

**Mr Macdonald:** I remember from my time and you probably remember the same, that the first large batch of people being processed through the magistrates' court tends not to be represented.

**Q130 Mr Khan:** My suspicion would be poor duty solicitors would be equally as ill-prepared to represent unrepresented defendants on the day of hearing as your poor colleagues at the CPS. That is already talked about in the NAO Report, which would seem to me to be an additional reason for problems with delay and other things like that.

**Mr Macdonald:** Could be.

**Q131 Mr Khan:** May I also ask the NAO to look into that issue of the defence side? You use the word "defence" which I think is a generalisation for defendants who are represented and those who are not. There are issues around this which are worthy of investigation.

**Sir John Bourn:** Yes; we will.

**Q132 Mr Khan:** The next area I want to explore is that the Report talks about the fact that many of your lawyers, those who present the prosecution, get given the case papers less than 24 hours before a hearing and if it is a trial, less than two days before a trial. Why is that?

**Mr Macdonald:** It is because of the way we are organised internally and partly it is because cases move between court rooms. We do need to have more continuity and more ownership of cases and the new sort of organisation, when we move to it, ought to provide that, in other words lawyers working in much tighter teams. We are asking lawyers to go to court more than they used to. We are trying to move out from behind our desks, so that we do not just review cases, but we argue them as well and that is important for us as an organisation. It does mean that lawyers have less time in the office and we are still feeling our way through this to be quite frank about it.

**Q133 Mr Khan:** Do you think that is the most effective use of a prosecution lawyer's time for the lawyer who prepares the case and does the work to be the lawyer who prosecutes it?

**Mr Macdonald:** That form of accountability is essential. If you are making a charging decision, there is no better discipline than knowing you are the one who is going to have to go to court and argue it. If you are farming the case out to an agent, whether it is a solicitor or a barrister, there is always someone else who can take the blame if you have not done a piece of work. You are not the one

<sup>4</sup> Ev 21–23

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who gets it in the neck. Presenting our own cases exposes us in a way which will be very, very helpful to performance management.

**Q134 Mr Khan:** Would that deal with some of the problems you have in your relationship with evidence gathering, with witnesses, how reliable they will be and whether they will turn up?

**Mr Macdonald:** I think so. The other reform which is helpful to us here of course is the new right we have to interview witnesses before trials start. It is very important in sex cases in particular, but in all other sorts of cases actually, many other sorts of cases.

**Q135 Mr Khan:** You talked about the police and CPS working more together now than they have done for the last 20 years, because although they are still separate, they work together more. What has your experience been of the working relationships inside police stations? As I understand it, police officers, before they charge, liaise with the CPS. What is your experience of that?

**Mr Macdonald:** We have duty prosecutors in the police stations and the officer will come with the evidence and they will have a conversation. The duty prosecutor will make his or her decision. We also have lawyers co-located; we have teams of lawyers working in police stations side by side with the police and this is a model which is familiar in other jurisdictions and it is clearly building up very constructive relationships. There are obviously rubbing points here. Some of our people did not want to go into police stations, some police officers resent the charging initiative, but by and large there is a very constructive relationship between prosecutors and investigators. We have to maintain our independence; there is no point just giving the police the advice they want to hear. However, with that standpoint, working together, we can achieve a lot more.

**Q136 Mr Khan:** If we were to see, for example, fewer people being charged in years to come, it might not be because you are going soft, it might be because the police are receiving better advice from you.

**Mr Macdonald:** I hope we shall just find more people charged with sustainable cases, rather than fewer people charged.

**Q137 Mr Khan:** Do you have a comparison internationally as to how your overseas partners are doing and whether there are lessons to be learned?

**Mr Macdonald:** The extraordinary thing about this is that I do travel quite a lot because we are moving to do things the way they do in the States and Canada and Australia. The truth is that our foreign partners do not keep these kinds of figures; it is quite extraordinary. They are not bothered in America about how long it takes a case to get to trial or ineffective hearings; they have a completely different approach. For example, in America they do not want the right charge first time: they want

a higher charge than is right first time so they can then negotiate it down. It is a completely different culture. They do not tend to keep the sort of figures that we do, so it is quite difficult to make international comparisons.

**Q138 Mr Khan:** How long should we wait to invite you back and expect to see improvements in the figures we have seen today?

**Mr Macdonald:** I do not know how often you have people back.

**Q139 Mr Khan:** We can have you back next week, in three months or a year.

**Mr Macdonald:** That might be a little optimistic.

**Q140 Mr Khan:** How much time do you want?

**Mr Macdonald:** I would hope that within a couple of years, once we see the picture of police reform, once we have our new structures, we should see significant changes. I would hope so.

**Q141 Chairman:** Sir John, I think we should do this more often within the life of a Parliament: have short hearing towards the end of the Parliament. When we are given all these promises by permanent secretaries, we should have them back before the end of the Parliament.

**Sir John Bourn:** Right.

**Q142 Greg Clark:** I have been impressed by your evidence. Your assessment of the situation and your plans going forward seem obviously right, but the question that hangs over the hearing is one that Sadiq Khan has alluded to: why has it not happened and how can we be confident that it will happen? We should like to think that it would. You mentioned the police reforms and some things being the responsibility of the DCA, but quite a few of these recommendations are within your own grasp. Take the question that Mr Bacon was pursuing about the video recorders, VHS versus DVD. It is certainly a matter for the courts, but it is also clear from the NAO Report that your officers are still relying on VHS, so that is something you can do something about. The technology is quite cheap and even if it did not cover every DVD/CCTV recording, it would cover a fair few. Why have you not, in the two and a half years since you have been in post, managed to make some progress on these points?

**Mr Macdonald:** You are right, we can look at some of these recommendations and ask why this was not done before and I accept that criticism. I can only say that we have been doing an awful lot and the reforms that we have been driving through have taken a huge amount of energy and focus. We are changing very much for the better. We are modernising the CPS and I can only say we cannot do everything at once. That is not a very satisfactory answer and you will say this is a very simple thing to do, but we are concentrating on some very complex and very radical reforms at the

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moment and we have taken on as much as a management team in terms of reform as we possibly could take on over the last couple of years.

**Q143 Greg Clark:** In my brief period on this Committee I have found that what has been impressive and given me cause for hope is permanent secretaries and chief executives appearing who seem to be able to cut through the tortuous tangle of obstacles which delays progress and yet there are always reviews going on; every part of Government is constantly being re-shuffled around and I hope that you will not waiting for the police restructuring to take place.

**Mr Macdonald:** No; no.

**Q144 Greg Clark:** I just hope that some of these caveats—

**Mr Macdonald:** I do not want to be misunderstood. No, no, no. Having done the work in November and December, we are piloting these new structures in April across four areas, West Cumbria, Coventry, Thames and Camberwell Green, and thereafter across the whole country.

**Q145 Greg Clark:** You have already had a pilot in Manchester, in Sale.

**Mr Macdonald:** No, these were systems which they developed which are working well.

**Q146 Greg Clark:** If they are working well, is that not a pilot if you have seen it working in a certain place? It is written up very interestingly in the NAO Report which contrasts the City of Manchester with Sale, so you have a pilot there. Why do you need to have another one?

**Mr Macdonald:** We want to see it in more extensive areas. I am really not trying to delay this.

**Q147 Greg Clark:** Why is it, when you have evidence here that the NAO have at great expense gone out to gather and we know that it works and it is obviously going to work because it is common sense, we are delaying all the time?

**Mr Macdonald:** I do not think we are. We are talking about looking at what we learned in November and December, adding that to the experience of Cardiff and Manchester and road-testing it. So far as the police reform programme is concerned, the only thing that interests us about that is that the BCU structures may change and these new structures that we are developing have to be allied to BCUs. That is the only hesitation that we have. We are not dragging our heels about this, this is something which we can only do now that we have all of the new roles in place, but we shall make pretty swift progress on it.

**Q148 Greg Clark:** Okay, but I should have hoped that Manchester and Cardiff might have been pilots. Is there something about the model that you operate under? We have Mr Foster here as well as yourself. My understanding is that the fact that we have a chief executive of the CPS came out of an inquiry which suggested that there should be

two roles, so that the DPP would concentrate entirely on legal questions, whereas during the evidence today actually you have fielded most of the questions of process perfectly satisfactorily. Was the original recommendation a wrong recommendation?

**Mr Macdonald:** It is a slight simplification. The way the system works is that I am head of the prosecuting authority and the Chief Crown Prosecutors account to me directly for all legal issues and legal policy and so on. They also account to me, but through the chief executive, for management issues. I take final responsibility. Mr Foster could just as easily have answered those questions.

**Q149 Greg Clark:** I understand you have final responsibility, but clearly in your head is a large concern for the process of this sort of thing, whereas the reforms that set up the structure, I cannot remember which inquiry it was . . .

**Mr Macdonald:** Glidewell.

**Q150 Greg Clark:** That recommended precisely that you should be free from troubling yourself with some of these administrative things and you should just be concentrating entirely on the legal things. Clearly that has not worked in practice: you are thinking a lot about administration.

**Mr Macdonald:** No, it has; it has actually. I know about all of this because I feel I need to know about it, but Mr Foster is responsible for these day-to-day management issues. I could not feel at all comfortable, as head of the CPS, not understanding these issues and not understanding how it is working and having a view about it, but he is responsible. As we move to this restructuring he will be responsible with our director of business development for pushing these reforms through and will Report to me about how it is going. There is a pretty clear division.

**Q151 Greg Clark:** Is it not the case that the legal members of staff report directly to you, whereas the administrative members of staff report to the Chief Executive?

**Mr Macdonald:** It is not quite that clear-cut. Some performance management of lawyers is a purely managerial function. Putting these lawyers into new combined units is not really a legal issue, although it is dealing with lawyers and the way they work. I am responsible for all the legal decisions which are made.

**Q152 Greg Clark:** But what we hear in practice is that actually, in terms of joint working between the administrative side and the legal side, there are two quite distinct streams and it is difficult to combine them and at various points in the Report, on page 34 for example paragraph 3.11, it says "In some offices this can be a significant barrier to the development of close working relationships between legal and non-legal staff". Given that you need to work well with outside organisations, it slightly concerns me that your internal structure

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does not promote close working. I wonder whether this should not be part of your review as to whether this dual-stream structure is the right one to have.

**Mr Macdonald:** Mr Clark, you have identified something which is important, which is that there is far too much of a division inside the CPS between administrators and lawyers and part of this new unit structure would be that administrators, caseworkers and lawyers would work more closely together. This is a legacy from the early days of the CPS when the lawyers saw themselves as being a completely different animal to everybody else. We are struggling quite hard to break that down. You are right: it is not a helpful form of apartheid actually.

**Q153 Greg Clark:** So you will look at that.

**Mr Macdonald:** We have been actively looking at it for some time.

**Q154 Greg Clark:** There are cultural aspects to that. As I understand it, the keeping of time sheets, time records, is something which is resisted by lawyers whereas it is something that is broadly accepted by other industries.

**Mr Macdonald:** Lawyers are peculiarly difficult people to manage. It is very challenging to manage lawyers. They feel that they ought to be in control of their own time and their own space and make decisions in their own good time and should not be told what to do by anybody.

**Q155 Chairman:** Not like other people.

**Mr Macdonald:** Not like other people. I am making a serious point here that it is quite challenging to manage lawyers.

**Q156 Greg Clark:** Yet in commercial practice that also happens between professional and administrative staff and the private sector firms have now almost universally found ways to make that work. It does echo a bit of the point that Mr Davidson made: perhaps the CPS is still, relatively speaking at least, unreformed compared with some of the other organisations.

**Mr Macdonald:** We are the biggest law firm in the country and we need to be run as a law practice; I agreed that point. We are addressing these cultural issues with our staff.

**Q157 Greg Clark:** Is the report not because of a concern for the quality of justice? It is not just an efficiency issue. If a crime has been committed and someone has been charged with it and actually they get away scot-free, then for the victims, for society and probably even for the defendants themselves if they think that they can commit these things with impunity, that is a disaster. It is very important that all of these individual parts of the system that are not working are put right quite apart from the value for money.

**Mr Macdonald:** I could not agree with you more. It is a constitutional position. One thing I should add to that is that not everybody who is charged with a criminal offence is guilty, so it is absolutely

important to factor in the defendant's rights in all of this. We acknowledge that not everyone we prosecute is guilty.

**Q158 Greg Clark:** So when it is the case that only 15% of prosecutions have the same prosecutor throughout the case that is actually very worrying for the quality of justice. You want the same defence lawyer.

**Mr Macdonald:** Yes; I agree.

**Q159 Greg Clark:** May I just ask a final question since this is about value for money and organisation? You have signed up to savings under the Gershon Review of £34 million by 2007–08, is that correct?

**Mr Macdonald:** Yes; I think so.

**Q160 Greg Clark:** Are you on track to meet that?

**Mr Foster:** Yes. It is £20, £27 and £34 million and we shall hit those targets.

**Q161 Greg Clark:** Are you going to exceed them or are you going to come in at or about that?

**Mr Foster:** We shall certainly hit them.

**Q162 Greg Clark:** What is your best guess now? We look at these things as a Committee, and it is helpful if you are giving evidence to know whether you are going to go beyond that or not?

**Mr Foster:** We shall certainly be looking to go beyond that if we can.

**Q163 Greg Clark:** Is it your expectation that you will do better?

**Mr Foster:** Yes

**Q164 Greg Clark:** In terms of the proportion which is cashable . . . Do you understand the distinction between cashable and non-cashable?

**Mr Foster:** Yes; efficiency and effectiveness.

**Q165 Greg Clark:** How would it split in the CPS?

**Mr Foster:** About half of the savings which are scored are savings which we intend to reinvest in the business, so they will be cashable. Roughly the other half will be effectiveness gains. May I just add a point to what Ken was saying a moment ago which is around accountability? If you worked in the CPS you would be under no doubt as to the extent of the cultural change which has taken place and is being driven forward. One of the biggest changes we are making is that we are expecting all of our staff and particularly the lawyers not just to account upwards to Ken and I—and I have performance reviews with all of the CCPs on a regular basis—but also to account outwards. Getting our lawyers to understand that is a very big shift indeed. Whatever the outcome of a case, win, lose, draw, attrition, whatever it is, we now expect them to account publicly to the victims, to the community, whatever, for what they have done. That is an enormous shift and that is changing behaviour very radically indeed.

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**Q166 Mr Mitchell:** First of all I want to observe, in this argument about whether you should have VCR, VHS or DVD equipment, that I can get you the very latest equipment for about £20 in a pub in Grimsby, if you are interested. We can talk about it afterwards. The questions are these. You mentioned cases where the defendant suddenly pleads guilty on the day. Is there research to tell us why that happens? Is it that he sees that you produce a witness he had not expected? Is it that CPS actually gets there with the case and they thought they might mess it up and not appear? What do we know about why these sudden pleas of guilty come?

**Mr Macdonald:** There is no research that I am aware of. We cannot ask defendants. It will certainly be those.

**Q167 Mr Mitchell:** What is your impression?

**Mr Macdonald:** It is both of those. It is hope for the best, that the case might collapse, which would be encouraged if they do regularly or hope that the witnesses do not turn up, which would be encouraged if they regularly do not. There is another issue which is that if people are in custody, when they plead guilty they lose their remand privileges and they are convicted prisoners, so they do not get their visits and so on and so forth. If you are in custody on a not-guilty plea, you are serving your sentence but you have remand privileges. I have long thought that something ought to be done about that because if people who plead guilty were able to keep their remand privileges until the date they were actually sentenced, we might encourage earlier pleas. We have been round the houses on that one repeatedly and I do not know of any proposals to make that change.

**Q168 Mr Mitchell:** The other point was that from the figures 28% of pre-trial hearings are delayed. The prosecution only causes about 21% of these, but 60% of these are produced by the defence presumably using the kind of manoeuvres our Chairman illustrated. Your act is getting better and we can expect it to get better still, so that proportion can be reduced and it is subject to improvement. Are we just to assume that the defence's proportion will remain as high, that nothing can be done about that? What could be done about that?

**Mr Macdonald:** If we get better at keeping our cases on the road so that we do it more than nine times out of ten and if we are better at discounts for pleas of guilty reducing the closer you get to trial, that will encourage people to plead guilty earlier. There is another very important component here that we have not mentioned, and Lord Carter has been looking at this, and that is the fee structure. If you have a fee structure which encourages early pleas, that could change behaviour. They have done this in Scotland, where they have a fixed fee for a magistrates' court case, whether it is a trial or a guilty plea. I am not suggesting for one moment that lawyers delay pleas for financial reasons—I really am not suggesting that—but it is noticeable in Scotland that when they introduced this reform, the number of early guilty pleas increased quite

dramatically. Lord Carter is looking at this, but we shall see. Legal aid fees generally do not encourage early preparation and early resolution of issues and we ought to have a structure which does both of those things.

**Q169 Mr Mitchell:** Work is going on to reduce that proportion as well as the work that you have been telling us about today.

**Mr Macdonald:** As we improve, that proportion should reduce. New fee structures would help. Finally, as I said earlier and the Chairman was implying this, the defendant does not want to be there and often he has no interest in seeing the system works smoothly. This is not like selling something or manufacturing something: this is an essential party to the engagement who does not want to be there and does not want to help it run smoothly. That is always going to be a feature of adversarial trial and it is just something we have to live with I am afraid. We cannot force defendants to do things; that would not be consistent with due process and we should not want to do it.

**Chairman:** That is a very interesting comment about the fee structure. As you mentioned it in the testimony we might return to it in our Report.

**Q170 Mr Khan:** Is not one of the common complaints made by defence lawyers as the reason for requesting adjournments, the inability or failure of the CPS to provide disclosure?

**Mr Macdonald:** Yes; disclosure.

**Q171 Mr Khan:** Is it not open to magistrates' court to refuse requests for adjournments if they are unreasonable?

**Mr Macdonald:** Yes.

**Q172 Mr Khan:** Thirdly, is there any incentive for the CPS to make changes to reduce, for example, the £173 million that is wasted by delay and aborted trials similar to defence lawyers being incentivised by Lord Carter's proposals?

**Mr Macdonald:** We get a sum from the Treasury which we have to manage within. We do not have a fee structure because our people, apart from the agents we use, are employed by us. We just have to get the processes right. Change in the fee structure would not have any effect on us because this is the structure of fees for defence lawyers.

**Q173 Mr Khan:** Maybe you could reduce your budget next year if you do what you are doing to defence lawyers.

**Mr Macdonald:** That is a very controversial proposal.

**Mr Khan:** It is something we can look into when we look at Lord Carter's proposals; now we have your testimony we can look at it.

**Q174 Chairman:** I am a great enthusiast for stipendiary magistrates, who I think are far quicker, particularly in the city areas. I have always wondered why we could not have one-stop shops: if you are a small-time defendant, you could be

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arrested, brought in, plead guilty and be dealt with immediately by 24-hour courts. If you are not, you are actually remanded not for days or weeks, but dealt with by an in-house lawyer, defended, prosecuted within hours. If you get fined, you can produce the money straightaway; if not, seven days in prison, whatever you like. Why do we not move down this route in the inner city areas of more “stipes”, more full-time courts?

**Mr Macdonald:** I do not want to get into trouble with the magistracy. What you are suggesting has obvious merits and it sounds quite rational.

**Mr Foster:** It is interesting just to note that in some places, like Kent for example or Surrey, there are no DJs and in other places of a similar size there might be four or five.

**Q175 Chairman:** Why is that?

**Mr Foster:** I do not know.

**Q176 Chairman:** Good answer. We do not often get that answer. Mr Bacon has passed me a note. “I hope you will congratulate Mr Macdonald on being one of the best, clearest and frankest witnesses we have had in a long time”.

**Mr Macdonald:** Thank you very much. He is only saying that because I live in Norfolk.

**Q177 Chairman:** I suppose it shows that if you want to have a good witness, hire a good lawyer, does it not? Seriously Sir John, we might pass, or you might with your contacts with permanent secretaries, this testimony around Whitehall. It does no harm for permanent secretaries to be honest with us and frank and not view this as just a device to try to say as little as possible, but try to exchange useful information, do you not agree?

**Sir John Bourn:** I do and I agree entirely with the way in which Mr Macdonald responded to the Report that we had done with great care. It had been designed to put forward proposals for improvement and I was encouraged by the way in which he and his colleagues had recognised the contribution that we had made. So I take your point and shall discuss it further.

**Chairman:** Thank you very much. Having said that, in this Committee we cannot finish on a happy note. The fact is that £24 million is wasted thanks to poor case management and, as my colleague Mr Clark said, the innocent suffer and the guilty get away scot-free, so we expect you to do better.

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 Supplementary memorandum submitted by the Crown Prosecution Service
 

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*Question 83 (Mr Richard Bacon): Cracked and ineffective trials*

The Committee sought additional information on cracked and separately on ineffective trials on the same basis as that used in Appendix 3 of the NAO Report.

A cracked trial is one which ends on the day of the trial listing, without the trial going ahead, that is where the prosecution offers no evidence or where the defendant pleads guilty. An ineffective trial is one which has to be adjourned to another day. The three tables overleaf which provide information on cracked trials and separately information on ineffective trials on the same basis as that used in Appendix 3 of the NAO Report.

COMMENTS ON THE DATA

In 2004–05, 10.2% of all trials were cracked under the cracked trial reasons identified by NAO. Individual CJS Area figures ranged from 3.8% in Durham to 14.5% in North Yorkshire.

In 2004–05, 4.2% of all trials were ineffective under the ineffective trial reasons identified by NAO. Individual CJS Area figures ranged from 1.1% in Warwickshire to 7.1% in Greater London.

All Areas have received a common set of guidance on the cracked and ineffective trial monitoring process and that guidance was developed jointly between HM Courts Service and CPS. The guidance is amended and improved from time to time; the latest version of the guidance was issued in September 2005. The cracked and ineffective trial reasons were also amended in September 2005.

Despite the provision of common guidance, local interpretation or practices could have skewed results in some Areas leading to local variances.

Data integrity could be an issue. The data is captured by HM Courts Service staff and care has to be taken to ensure data is recorded accurately. Local pressure on staff could impact on the accuracy of data recording.

Ineffective trials are the responsibility for all members of local criminal justice agencies and often the action of one part of the system can help or hinder other parts eg listing cases very quickly or at short notice can put undue pressure on the prosecution to be ready.

When the prosecution is “not ready” for trial, the underlying reason is not captured as part of the monitoring in a structured way (although it may be by way of free-text comment). These underlying reasons can be variable, such as forensic or doctors evidence not available, investigating late service of alibi, CCTV tape not produced at court. Repeated failings need to be negotiated at Area level.

Prosecution reasons for variances in cracked and ineffective trial rates include:

- witness warning issues, particularly where English is not a first language and interpreters are required;
- defence practitioners intent on delaying proceedings;
- local listing issues, where cases are double listed or transferred to other courts;
- high agent use, where agents do not understand the monitoring arrangements;
- relatively high incidence of police officer witnesses failing to attend court;
- approaches to having defendants “bound over” at court;
- difficulties in prosecution being ready for trial causing ineffective trial performance prompting further local investigation.

Data is reviewed at regular meetings locally between interested parties and performance officers and strategies should be developed to ensure the data is reliable and that performance improves.

In CPS, ineffective trial data is used as part of an established Area performance review process. This is a process where senior Area managers have to account for their performance at a series of quarterly meetings with the senior headquarters personnel.

#### IMPROVING PERFORMANCE

The CPS is working with other agencies to improve performance and these steps include:

- applying more scrutiny to “prosecution” failings causing cracked and ineffective trials at the Area performance review process (using the NAO selected categories). This involves written Reporting followed by periodic face to face interviews;
- encouraging local monitoring of high level data results to prompt more detailed analysis of individual cases;
- increasing the proportion of CPS in-house advocates undertaking magistrates’ court sessions and decreasing the reliance on agents;
- working with HM Courts Service colleagues to review and improve the quality of guidance;
- continuing to develop Witness Care Units to improve the communication with witnesses and improve court attendance levels;
- embedding charging arrangements to ensure that more charges are right at the outset and there is less opportunity for late plea or bind over discussions;
- greater use of case progression officers, as and when resources allow, to ensure timely trial readiness is achieved;
- closer working between CPS and courts to improve listing arrangements, and
- continuing the work of local implementation teams to support the Effective Trial Management Programme process.

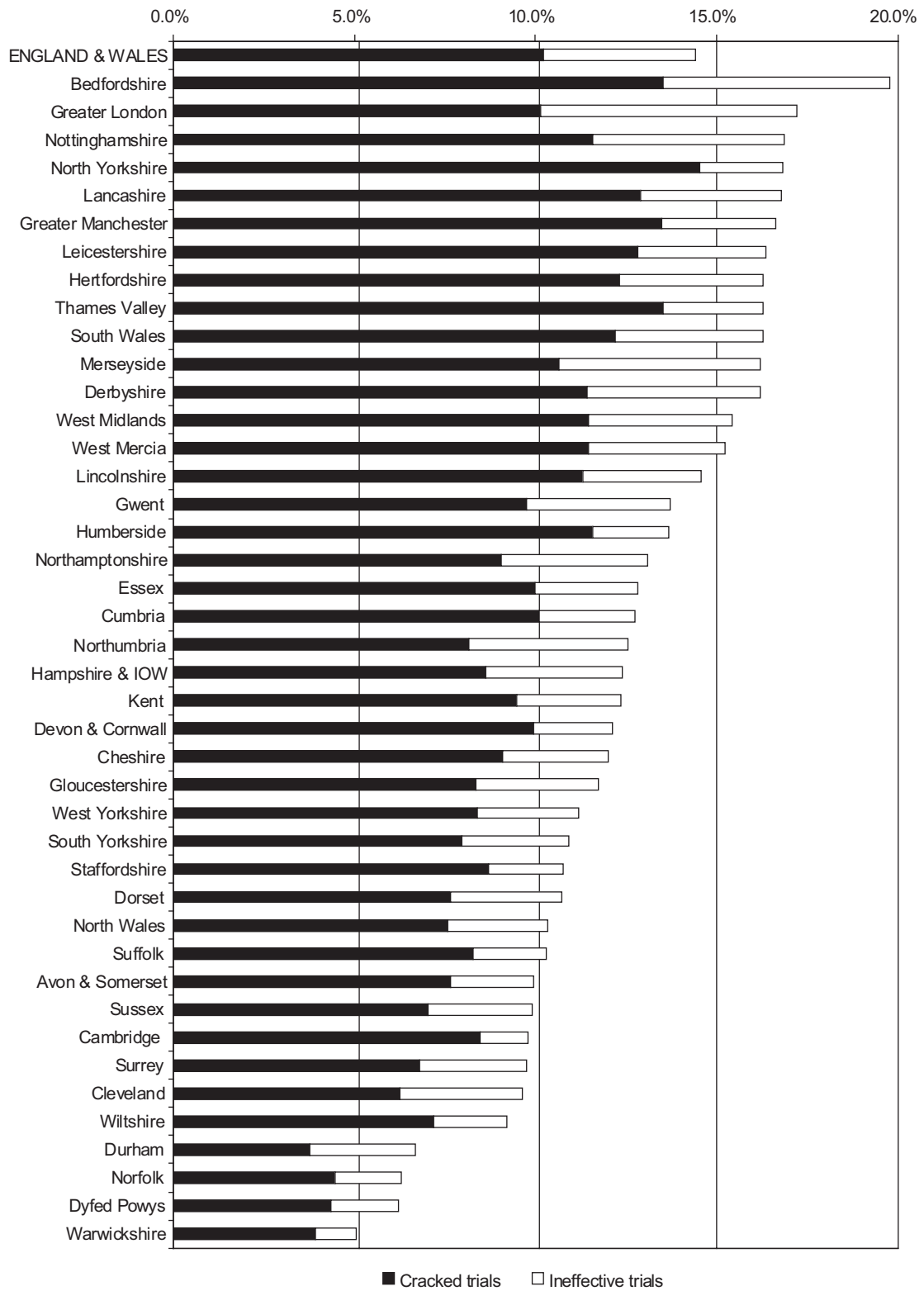
#### EXAMPLES OF THE CRIMINAL JUSTICE AGENCIES WORKING TOGETHER

Some examples of good practice in promoting more effective trials are outlined below:

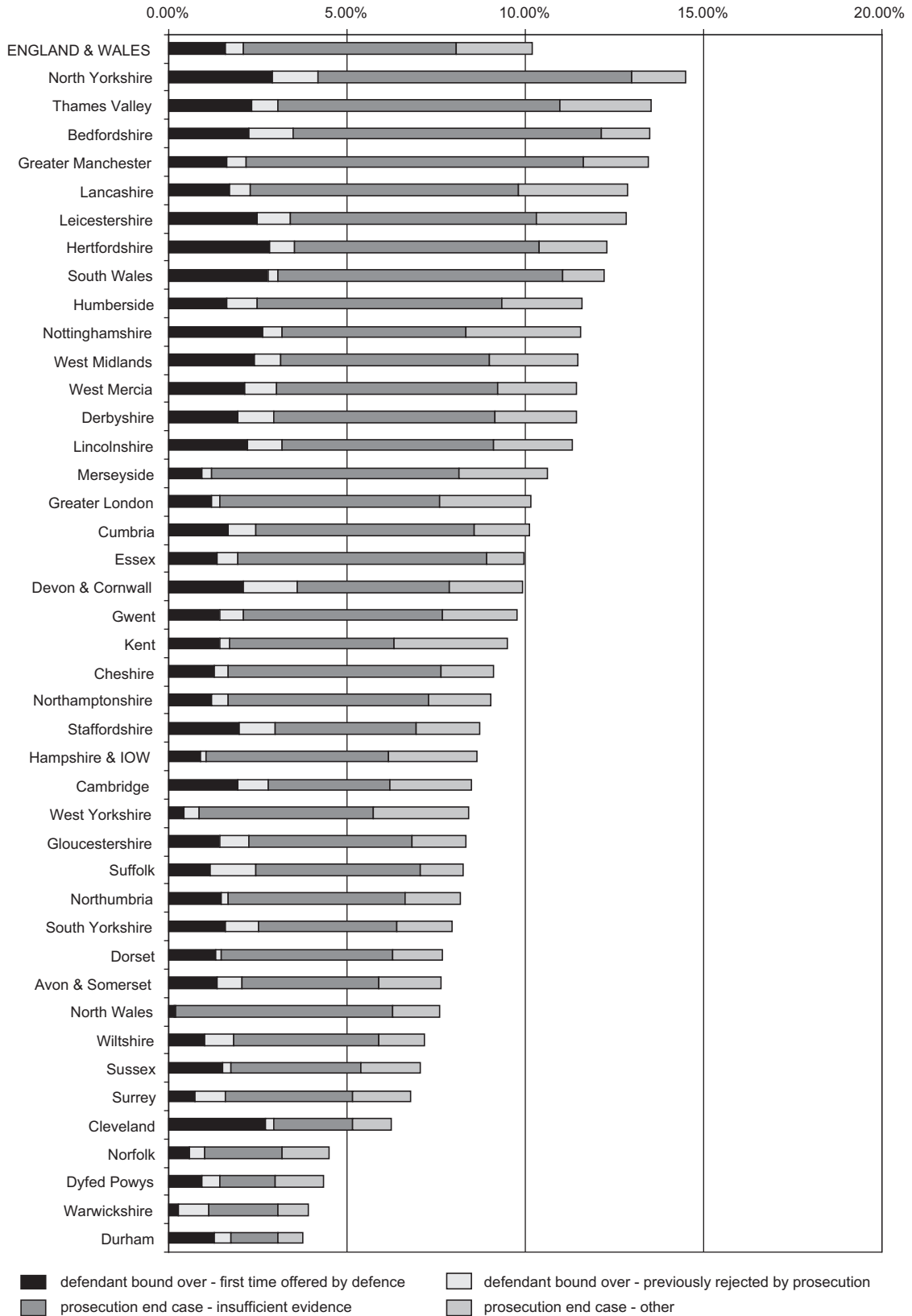
- in Area A, Trial Readiness Assessment Meetings are held twice weekly. These are used to review each case that has been listed for trial in the coming three weeks to ensure that there are no difficulties with the trial proceeding on time. Monthly inter-agency meetings are also held where each ineffective trial is reviewed and analysed;
- in Area B, meetings are held between project teams, area co-ordinators, and colleagues from across the CJS. This is an opportunity to identify areas of good practice and to share them with others. The area is also making use of Citizens panels, asking the public their opinions on appropriate standards of care for victims and witnesses and how they would like Witness Care Units to operate;

- in Area C, case progression officers are working in partnership with cross agency colleagues to prevent cases becoming ineffective prior to the event. In conjunction with this, the local delivery board has allowed the area to review their targets and tackle poor performance more effectively. The Board identifies and examines the reasons behind ineffective and cracked trials and takes remedial action;
- analysis of the reasons for ineffective trials is part of the interagency performance management arrangements within each criminal justice Area and is part of their regular self assessment.

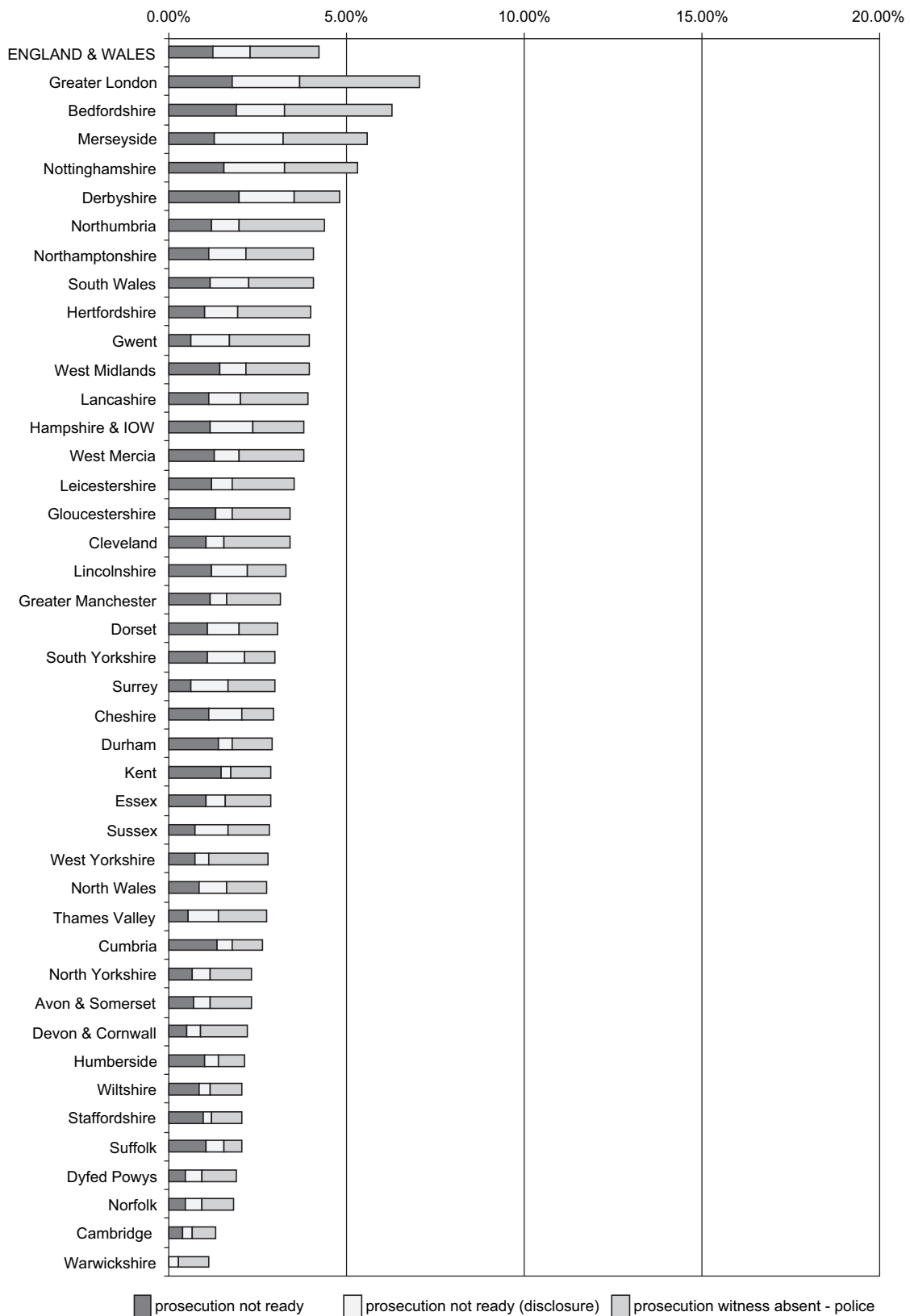
**GRAPH 1: Shows the NAO Appendix 3 presentation amended by identifying cracked trials (black) and ineffective trials (white).**



**GRAPH 2: Shows the NAO Appendix 3 presentation amended by separating out cracked trials only and listing Area performance in descending order and identifying reason categories.**



**GRAPH 3: Shows the NAO Appendix 3 presentation amended by separating out ineffective trials only and listing Area performance in descending order and identifying reason categories.**



*Question 127 (Mr Sadiq Khan): Information on the number of unrepresented defendants*

The DCA, the LSC, the CPS and the other prosecuting agencies do not collect information on how many defendants pay for their own defence, which makes it impossible to correctly calculate the number of unrepresented defendants in the Crown Court and the Magistrates' courts. There is therefore no hard data on unrepresented defendants in either the Crown Court or the Magistrates' court.

In the Magistrates' court in 2004–05, 573,473 defendants were granted representation under a representation order.

In 2004, 121,345 defendants or appellants were represented under Legal Aid in the Crown Court.

There is no hard data on the consequences of defendants being unrepresented and this is a subject which would require original research to produce results.

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