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HM Crown Prosecution  
Service Inspectorate

# Stop the Drift 2

**A Continuing Focus on 21<sup>st</sup> Century Criminal Justice**

**(a joint review by HMIC and HMCPSI)**

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## Foreword

Much of the debate in recent times has centred on the bureaucracy surrounding the criminal justice system. Our review in *Stop the Drift: A Focus on 21<sup>st</sup> Century Criminal Justice* (October 2010) revealed a number of bureaucratic processes that kept officers in police stations longer than necessary, especially when dealing with people detained at police stations and processing case files for prosecutions.

Unnecessary bureaucracy should not be confused with effective management and good quality record keeping. The former has the effect of tying police officers down when they should be out, protecting the public from harm: the latter enables the police service to demonstrate compliance with the law, where the rights and interests of vulnerable people, suspects, victims and witnesses are protected and upheld.

Effective management and good quality record keeping generate good quality assessments of risk, particularly when suspects are detained at police stations. The interests of justice are better served when good quality information is conveyed to other agencies in the criminal justice system so that decisions can be made about bringing criminal proceedings, supporting victims and witnesses throughout the trial, and ensuring that victims are compensated for injury and loss.

Much can be done, for example, to streamline the process from arrest or detention to release from the police station or disposal at court, particularly in the area of IT, where, despite many years of effort, a citizen in possession of a smart phone is likely to have more functions at his disposal than a police officer equipped to patrol the streets.

Having said that, there is no getting away from the fact that good quality policing depends on the effective management of the police contribution to the criminal justice process and good quality record keeping. Getting the right information to the right person at the right time is therefore a vital function. Enabling police officers and staff to carry out that function efficiently and effectively, however, requires more than a review of the number of forms required. A more fundamental approach must be taken if blockages are to be removed to pave the way for a more streamlined approach that removes purposeless activity but promotes the production of good quality information.

This review provides, we hope, some insights on how police officer time might be freed up while improving performance within the criminal justice system. We believe the time has come to act decisively, with renewed focus and determination to streamline the process and banish the spectre of unnecessary bureaucracy that has been, for far too long, an impediment to progress.

# 1. Introduction

- 1.1. For many years, changes to policing practice have focussed on the relationship between the police and the public they serve. Neighbourhood policing teams were designed to improve the service and accountability of the police to local communities. Many police functions, however, are much less visible to the public eye. For example, police officers and staff are gatekeepers of, and suppliers of case files to, the criminal justice system (CJS).
- 1.2. The preparation of cases for court takes place behind the scenes in offices around the country, but that does not make that activity any less important just because it takes place out of the public eye. At the end of the day, what is produced in the confines of an office must be presented in a court so that decisions can be made about the guilt or innocence of a defendant and the treatment of a victim or witness, some or all of whom may require help. That help may take many forms – the assistance of an interpreter, the introduction of special measures to help a witness give evidence in court, or an award of compensation to recompense the victim for an injury or loss. Good quality, well-presented information helps those involved in taking decisions in the criminal trial process to make timely decisions that improve the efficiency of the system and, above all, enable the interests of justice to be served.
- 1.3. The quality of information supplied by the police to health care professionals, prosecutors, defendants and courts must not only comply with legal requirements but support the interests of justice, so the right decisions can be taken at the right times. Good quality case preparation is not a bureaucratic exercise of limited benefit. It is essential. When a case enters the CJS, the process can be life changing for defendants and victims alike, and the police have a uniquely important role in getting case preparation right from the outset.
- 1.4. The activities that support the preparation of good quality information have developed in a fragmented way, generating a considerable amount of paperwork at the expense of a slicker, more streamlined operation. The process of arrest to final disposal at court can be time consuming and complex to manage, with many agencies and professionals involved. The object of this review was not, however, to resist or stop the flow of information to those who need it, but to consider how the quality of that information could be improved and then communicated efficiently throughout the life of a case without keeping police officers tied to the police station for prolonged periods of time or delaying the progress of the case through the courts.
- 1.5. There clearly needs to be a change in mindset to move from compliance with a set of forms to a greater understanding of the importance of good quality information and the fundamental role of the police as gatekeepers to the criminal justice system system.

## 2. Background

- 2.1. In October 2010, Her Majesty's Inspectorate of Constabulary (HMIC) published *Stop the Drift: A Focus on 21<sup>st</sup> Century Criminal Justice*,<sup>1</sup> which identified a number of concerns about the detrimental effect of some police systems and practices on the efficiency of the CJS as a whole. Issues included:
- a lack of clarity about what type of cases should enter the CJS;
  - a lack of systematic control of costs and regulation of the criminal justice process;
  - excessive bureaucracy and waste; and
  - an historical, piecemeal approach to reform.
- 2.2. To demonstrate the complexities associated with the CJS, we conducted an end-to-end analysis of cases from arrest to disposal, identifying the many activities required and/or undertaken when a suspect is arrested and enters the CJS as a defendant. This exercise identified multiple obstacles, barriers to and **pinch points** in the efficient delivery of justice. We established that from arrest to disposal at Crown Court, a single case could entail **1,107 steps**.
- 2.3. We also considered '**submerged activity**': the time and energy that police officers put into activity that is not measured, often not valued, but is required of policing nonetheless. For example, the detention of a person at a police station under section 136 of the Mental Health Act 1983 triggers many actions relating to their care and custody. These actions may be time-consuming for those involved and, in certain circumstances, may prevent police officers from returning to their duties on the streets protecting the public. This time is not regarded as a productive use of police resources, although the police often perform a vital role in dealing with people with mental health problems.
- 2.4. In 2011, the National Audit Office (NAO), in partnership with HMIC and Her Majesty's Crown Prosecution Service Inspectorate (HMCPIS), published a report examining the implementation of the Director's Guidance on the Streamlined Process (DGSP).<sup>2</sup> The guidance was intended to reduce police bureaucracy by allowing for a more streamlined approach to case file preparation: but the report identified a failure to implement DGSP effectively. In addition, the police's lack of confidence in their ability to anticipate pleas correctly generated **significant** amounts of unnecessary material in case files, often of little evidential value, which was then needlessly sent to the CPS just in case that information was ever required.

<sup>1</sup> Available from [www.hmic.gov.uk](http://www.hmic.gov.uk).

<sup>2</sup> National Audit Office (2011) *The Crown Prosecution Service: The Introduction of the Streamlined Process*. Available from [www.nao.gov.uk](http://www.nao.gov.uk)

- 2.5. Since then, CJS agencies have tried to tackle some of these issues, especially those relating to bureaucracy and waste. Greater co-operation, increased collaboration and improved IT systems provide some evidence that improvements in the exchange of information across systems have been made.
- 2.6. In this apparently improving but austere landscape of criminal justice, what is less clear is whether the changes in recent years have resulted in any **unintended consequences**. We know that in the past, changes to one part of the CJS have resulted in an unintended increased burden on other agencies, thus negating the attempt to improve its overall efficiency. For example, the introduction by the Prison Service of the 'Prisoner Escort Form' (PER) was intended to reduce the risk of harm to prisoners by ensuring that the PER accompanies all prisoner movements so that all staff could be aware of that person's risk factors. This record is regularly generated in police stations by police staff. However, the PER is only available in hard copy and contains multiple carbon copies. In a recent compliance check of these documents, we found that they were often incomplete or illegible, and were not properly monitored by supervisors.
- 2.7. In the light of the renewed emphasis on reducing bureaucracy and freeing up police time, we decided to re-examine some of the issues described in *Stop the Drift*. We concentrated on the pinch points highlighted in our first report and described in the arrest-disposal chart.
- 2.8. In view of the cross-agency implications, this was a joint review with HMCPSI.

## 3. Methodology

3.1. We undertook fieldwork in the following five police forces and associated CPS units in February 2013: South Wales, Avon and Somerset, Merseyside, Norfolk, and Suffolk. Norfolk and Suffolk police forces work collaboratively on criminal justice issues and therefore the fieldwork in these forces was conducted at a joint criminal justice unit at Bury St. Edmunds. As a result, the data from the review is presented as having come from four locations.

3.2. The review comprised:

- focus groups with police and custody staff (including medical staff), case progression officers, and managers, during which they were asked to review an initial updated version of the arrest-disposal chart to determine whether there were any other variations from the original 2010 chart that needed to be included in the update;
- a quality and compliance review of ten randomly selected case files<sup>3</sup> from each location (a total of 40 files), which were submitted in accordance with DGSP. This light-touch review was intended to provide an insight into whether there have been any changes to the quality of police files since the 2011 NAO review;
- an identification of paperwork in each force area; and
- court observations to assess the impact of the quality of case files on the efficiency of the magistrates' court.

<sup>3</sup> Case files were required to have been submitted within three months of the review.

## 4. Findings

### The arrest–disposal process

- 4.1 Those arrested for an offence are taken to a police custody unit, where certain actions must be completed before they are released and the matter is finalised. We refer to this as the ‘arrest–disposal’ process, and it is summarised in Annex A.
- 4.2 There has undoubtedly been a significant effort made in recent years to improve efficiency in both the custody and criminal justice process. This effort was reflected at every area visited where police custody facilities were being adapted to reduce costs and better meet the demands of the force.
- 4.3 In all the areas visited, the police processes for arrest and detention (commonly referred to as police custody) and subsequent case progression were centralised functions within a criminal justice (CJ) command. A dedicated CJ command has greater flexibility when using their specialist resources to meet demand and improve working practices.
- 4.4 A move towards modern, purpose-built custody suites with increased cell capacity has resulted in better facilities for detainees, staff and other users (such as medical staff and defence solicitors). Three of the four force areas visited were already using purpose-built ‘super-suites’, bringing together staff from smaller units. The fourth area was in the process of moving to three new ‘super suites’ across the force.
- 4.5 This centralisation of resources within ‘super suites’ has resulted in a number of improvements. For example:
- increased numbers of female staff ensures that female police officers are not recalled from street duties to search female detainees;
  - a greater concentration of staff reduces risk from violent detainees;
  - purpose built DNA storage facilities, resulting in better samples being supplied to the local forensic science service provider;
  - the use of ‘live’ identification parades – a time-consuming process which is often repeatedly cancelled due to difficulties with arranging sufficient volunteers – has reduced significantly. Instead, trained custody staff use Promat/Viper<sup>4</sup> computer systems to take photographs of suspects while they are still in police custody, which can then be shown to victims at their convenience. This has reduced the need for additional bail dates<sup>5</sup> for suspects, streamlined the identification process and improved the service to victims;

<sup>4</sup> Promat and VIPER are computer systems used by police to make an image of a suspect which can then be used in a digital identification parade.

<sup>5</sup> Where there are further enquiries to be made in an investigation which do not warrant the continued detention of suspects, the police may grant them police bail. The suspect is then required to return to the police station at a specified time and date to answer his or her bail and be informed of any further action that



- there are fewer delays in PACE<sup>6</sup> reviews, due to the availability of dedicated custody inspectors;
- the increased use of dedicated bail managers has markedly improved bail management. Previously, there was limited monitoring of the use of police bail, which often resulted in excessive multiple bail dates for suspects. Those failing to answer police bail, an offence in itself, often went unchallenged. This unnecessarily extended the investigation for many weeks, leaving both the victim and the suspect in limbo as they awaited the outcome of the investigation;
- the increased availability of nurses and doctors for custody (provided by dedicated contract staff who are required to attend within a specified timeframe) has improved medical services to detainees;
- the improved availability of interpreters to explain the rights of detainees upon arrival at the custody desk; and
- greater use of investigation teams to deal with arrests and progress case files enables officers to return to duty on the front line sooner than had previously been possible.

4.6 We found, however, that a number of issues identified in *Stop the Drift* continue to generate delays. For example:

- there are still too many people detained in police custody under section 136 of the Mental Health Act 1983. In two of the areas visited, trials were underway to reduce these numbers, by improved partnership with Local Authority (LA) providers who should provide suitable accommodation for assessment;
- vulnerable detainees (such as those detained under section 136) often required one-to-one monitoring by police officers who can intervene should the person attempt to hurt him or herself in any way. Although important, this is clearly very time-consuming. Some areas had reduced the impact on police time by using a split-screen input from multiple CCTV cameras, so that one officer could directly monitor several cells. But this approach was not consistent, and in one area officers continue to conduct one-to-one observations even though such CCTV systems are available;
- children and young people denied bail following charge continue to be detained in police cells rather than transferred to local authority accommodation;
- following an arrest, a person is conveyed to a police custody unit and placed in a holding cell. When a custody officer is available, the circumstances of arrest are then explained to the detainee, and a decision made whether to authorise the detention of that person.

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may be required. For example, a person may be granted police bail for a number of weeks pending forensic analysis of drugs found on them for which they were arrested and detained. The analysis will determine the type and weight of the drugs and therefore inform the charge against the suspect.

<sup>6</sup> The Police and Criminal Evidence Act 1984 (commonly referred to as PACE) requires that a person held in police detention shall be reviewed by a police inspector at specific times during their detention. This review is to ensure that the investigation is being conducted with efficiency and due diligence and also to remind the detainee of their legal rights.

In some areas, there was evidence that a lack of holding cells and custody officers was resulting in excessive waiting times to book in prisoners. While this has improved since our first report, evidence from one area suggested that the wait could be up to three hours during busy periods;

- obtaining results of forensic science analyses can take a long time. This may result in the police imposing multiple or extended bail dates for the suspect, thereby lengthening the period before charge;
- mandatory drug testing<sup>7</sup> for persons arrested for particular offences (such as theft and burglary, which are known as trigger offences) is a routine duty for custody staff. There was evidence that prolific offenders who are regularly in police detention and known already to be on a treatment programme are nonetheless tested again, with the staff required repeatedly to fill out the associated forms;
- police officers are still being used for escort duties when detainees are taken to hospital;
- one area had extended the court working day to 5pm to allow for more court slots – but this was not the case across all areas visited. This was confirmed by the variation in the delay in bail dates between charge and first hearing: from 3.1 weeks in one area up to 4.2 weeks in another;
- arrangements for the transfer of detainees to court by private companies are not always effective and often result in police officers transporting detainees to court themselves. In one area, this lack of flexibility meant that any person brought into police custody outside the private company's contracted hours would have to be transported to court by police officers; and
- we found occasions where early cut-off times for detainees to arrive at magistrates' courts resulted in them being returned to police custody until the next day. For example, in one area we were told that if detainees from police custody did not arrive in court before 2pm then they would not be accepted. This meant that they were returned to the police station to await court the next day.

4.7 These and other issues are included in the updated arrest–disposal chart at Annex A.

<sup>7</sup> The Drug Intervention Programme (DIP) is an initiative aimed at engaging substance misusing offenders in drug treatment. As part of this, mandatory drug testing for detained persons arrested for trigger offences was introduced under the Drugs Act 2005. These trigger offences were first set out in the Criminal Justice and Court Services Act 2000. A positive test would result in the detained person being required to see a drug worker for an appointment. Failure to attend the appointment is an offence.

## Prisoner Handling Teams

- 4.8 The review team found good progress in the development of Prisoner Handling Teams<sup>8</sup> (PHTs). In the areas visited, these units tended to comprise both police officers and civilian investigators engaged in following up investigations. Models varied across areas: in one force, the PHT assisted the arresting officer with enquiries and interviews but the responsibility for the completion and submission of the case file remained with that officer, while in two of the other areas, the entire investigation was taken on by the PHT.
- 4.9 Responsibility for the investigation was found to vary across areas, and this had different impacts on how the investigation progressed while a detainee was in police custody. In one area, the pressure on officers to return to their colleagues on the front line had resulted in a culture that local officers referred to as 'dump and run'. This meant that when an officer made an arrest outside the PHT operating hours (for example in the early hours of the morning), the detainee would be put into a rest period<sup>9</sup> to be dealt with on the next PHT shift. We found evidence that this was happening even when the detainee was fit to be dealt with immediately.
- 4.10 There was some evidence, however, that this culture (which we referred to in *Stop the Drift* as 'bedding down') has improved. In two areas, we found that officers did deal with detainees arrested in the early hours, and where appropriate conducted interviews, obtained charging advice and prepared the file of evidence.
- 4.11 Performance measures for PHTs tended to be based on sanction detections<sup>10</sup> rather than the outcome at court. This traditional measure of police performance does not provide incentives for officers to prepare a quality file of evidence suitable for presentation at court. Rather, the emphasis is on finalising the crime and moving on to the next one. Our file reviews (page 12 following) supported this finding.

## The digital world of criminal justice

- 4.12 Changes to the interface between police and CPS systems have shown improvements in the transfer of data between agencies, most notably a reduction in the need for double-keying of information. There continues, however, to be day-to-day problems in the exchange of information between the police, CPS and magistrates' courts.

<sup>8</sup> The terminology for these teams varied across forces. They were referred to as the Criminal Investigation Unit (CIU) in one area and Investigation Support Team (IST) in another area; however, the role is essentially the same.

<sup>9</sup> PACE requires that detainees are given eight hours of rest in a 24 hour period of detention, normally at night, but depending upon when the detainee last slept. This period must be uninterrupted unless it would unnecessarily delay the person's release from custody (PACE, Code C, para 12.2)

<sup>10</sup> A sanction detection occurs when a notifiable offence (crime) is recorded and a suspect is charged, reported for summons, cautioned, or issued with a penalty notice for disorder for that offence. In other words, the crime has been solved, but the defendant has not yet appeared in court to answer the charge.

- 4.13 Two of the forces visited currently use the National Strategy for Police Information System (NSPIS) for custody and case preparation. They are, however, moving to a newer system known as Project ATHENA<sup>11</sup>, an IT project led by Essex Police for use in ten forces. In the forces where ATHENA has not yet been launched, there is an expectation that the current 'work arounds'<sup>12</sup> will no longer be necessary when the new system is introduced.
- 4.14 The other two forces visited used a police record management system known as NICHE, which has an interface with the Crown Prosecution Service (CPS) case management system. We did note, in one area using NICHE, the Criminal Justice Support teams required officers to submit their case files of evidence a full day in advance of the date they were due to the CPS, in order to deal with any glitches in the transfer of data between the police and CPS systems.
- 4.15 In all the areas visited, focus groups agreed that file timeliness had improved and the electronic communication between agencies was more effective.
- 4.16 The most recent guidance on charging<sup>13</sup> from CPS was issued in May 2013 and prescribes arrangements for the joint working of police officers and prosecutors during the investigation and prosecution of criminal offences. It also includes guidance on the National File Standard<sup>14</sup> (NFS), and sets out the particular forms required for prosecutions. The guidance does not, however, include any digital versions of the forms, and this has resulted in forces developing their own variations of the national forms. Both the NICHE and NSPIS systems use electronic template versions of the paper forms previously completed by officers when building a case. We discuss the impact of this approach later.
- 4.17 In one of the areas visited, the CPS magistrates' court case work was fully digital (all case work was dealt with electronically); other areas were taking a phased approach. As a result, we found evidence of some paper case files being used in court, especially in relation to summons cases. However, few of the defence solicitors in the areas visited used secure email. This meant that paper case files and documents had to be produced in order to meet their needs.

<sup>11</sup> Project Athena is a new 'one-stop' IT system procured by the former Essex Police Authority. Athena is intended to be a single IT system managing police investigations, intelligence and defendants (both custody and case preparation) across all member forces; Essex Police will be the first to go online in August 2013.

<sup>12</sup> We define a 'work around' as an improvised local practice employed by staff to get an IT system to perform functions that were unforeseen at the IT design stage.

<sup>13</sup> Crown Prosecution Service (2013) *The Director's Guidance on Charging 2013 – 5th edition, May 2013 (revised arrangements)*. Available from [http://www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_5.html](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html)

<sup>14</sup> The National File Standard (NFS) provides a staged and proportionate approach to the preparation of cases. It specifies the material required for the first hearing and specifies how the file is to be developed at appropriate stages throughout the life of the case.

## Files of evidence

- 4.18 In the drive to increase the amount of time the police spend on the front line, efforts have been made to reduce the unnecessary attendance of officers at court (this issue was highlighted in *Stop the Drift*). Consequently, it is all the more important that the case files which go into the CJS are of good quality, proportionate, and are presented in a timely manner so that cases are managed effectively.
- 4.19 The findings from this part of the review supports the conclusions in our earlier work with the NAO<sup>15</sup> regarding the implementation of the streamlined process. Many of the issues identified at that time continue to be an issue for the police service today.

## The Police Report

- 4.20 The Police Report (also known as an MG5<sup>16</sup>) is an important document for the prosecutor. It should contain the full information that the prosecutor needs in order to present the evidence to the court, with relevant background information in relation to the offence. An example of a police report template is included at Annex B. It is separated into three distinct areas: the summary of evidence; the summary of the interview; and additional information.
- 4.21 As part of the review, we assessed 40 case files in four locations, and judged whether they were of adequate quality to advance a successful prosecution. The results are shown below:

	<b>Summary of Evidence</b>	<b>Summary of Interview</b>	<b>Additional Information</b>
Percentage of case files assessed as of <b>ADEQUATE</b> quality	7.5%	48%	31%

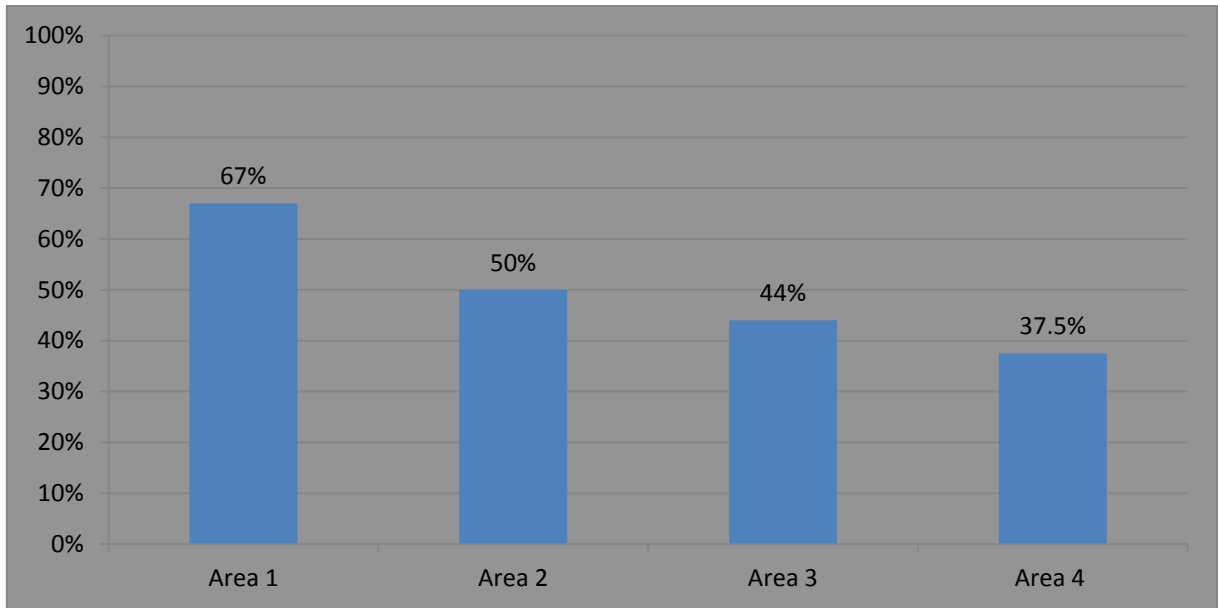
- 4.22 These results are a marked decline from the findings in our earlier work with the NAO, where we reviewed 100 case files across five areas in May 2011. Fifty-six of the 100 case files were anticipated guilty plea files. The results of the NAO findings are shown on the next page.

<sup>15</sup> See footnote 1.

<sup>16</sup> MG forms are listed in the CPS Manual of Guidance and specify the content required on each form. More details on MG forms can be found on the CPS website, <http://www.cps.gov.uk/>







**Figure 2: Summary of interview in Police Reports (MG 5) assessed as adequate by area**

4.26 Where the summary of interview was assessed as inadequate, the main reasons were:

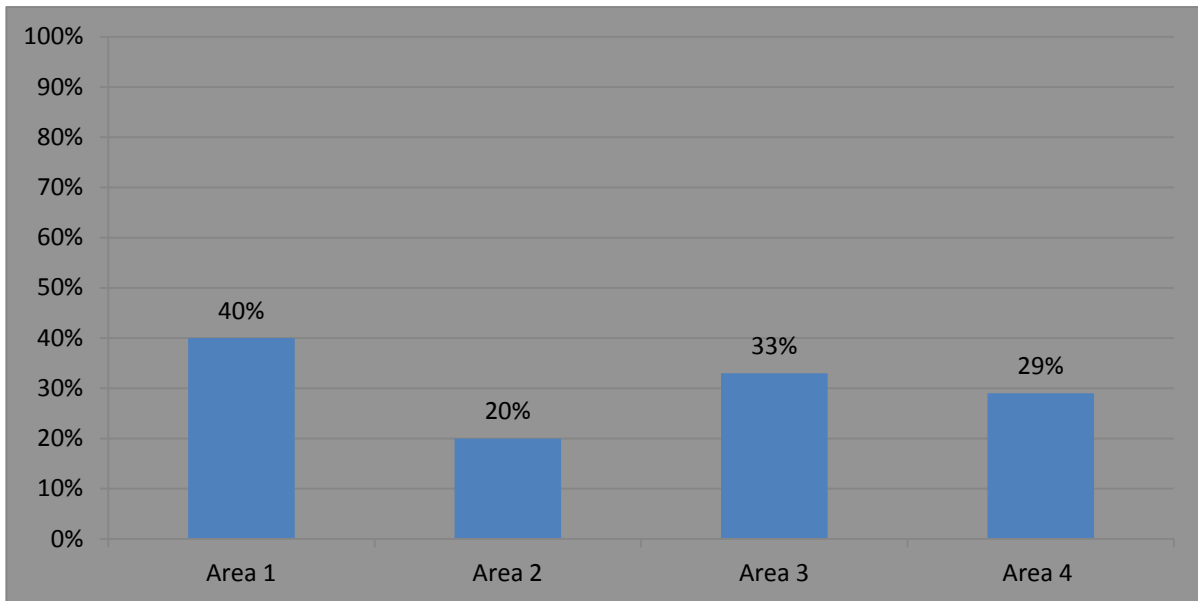
- the **summary was excessively long**, often more than a page, and commonly included a transcript of questions and answers put to the defendant, rather than a summary of the interview;
- interview start and finish times were not completed, and details of those present were often omitted; and
- the **use of CCTV evidence in interview was often unclear**, as many of the template police report forms in use had default settings which were not being over-written if the case required it. As a result, we saw cases where CCTV was unlikely to have been available (for example a domestic violence incident within a private flat), but the summary of interview indicated that the defendant had been 'shown CCTV and gave no response'. This was further contradicted in the CCTV section of the 'Additional Information', which indicated that no CCTV evidence was available.

## Additional Information

4.27 The 'Additional Information' includes details such as non-key witnesses, Visually Recorded Evidence (VRE), and forensic analysis. In total, nearly 31% of these sections of police reports were judged as being of sufficient quality.<sup>20</sup> The breakdown of this by area is shown in the figure on the next page.

<sup>20</sup> Due to the nature of the offence, additional information was not required for all cases. As a result, 36 of the 40 case files included relevant additional information.





**Figure 3: Additional information in Police Reports (MG 5) assessed as adequate by area**

4.28 Where the 'Additional Information' was assessed as inadequate, the main reasons were:

- **the section on Visually Recorded Evidence (VRE) including CCTV, body worn cameras and any other such evidence lacked sufficient detail.** We routinely found that although CCTV evidence existed and was recorded on the case files, there was no proper description of its content, or what format was required for onward transmission. As a result, cases might not be managed efficiently upon reaching court because there was insufficient information available to the prosecutor to assess relevance and importance.
- **non-key witnesses were routinely incorrectly listed.** Where non-key witnesses were listed, there was a lack of detail on their roles in the case. For example, an arresting officer who attended the incident but did not witness the offence would be considered a non-key witness, but these officers were routinely included as a key witness solely by virtue of having made the arrest. In one case, we found two officers named as key witnesses in one section, and also as non-key witnesses in the additional information section; and
- **non-key witnesses were omitted altogether.** We routinely found witness lists (MG9) with names of police and civilian witnesses who were not included in the police report.

4.29 Such errors/omissions can be problematic for case progression and management as prosecutors will not have the required information at hand at court should the defendant plead not guilty. We observed a case in court where the defendant was charged with disorderly conduct and failure to wear a seat belt. Despite an anticipated guilty plea, he pleaded not guilty. During the subsequent discussion regarding trial arrangements, the defence asked for three additional police officers to be called to the trial, in addition to the arresting officer. These three police officers had been present at the time of the incident but

omitted from the police report and witness list. As a result, the prosecutor could not advise the court if they were key or non-key witnesses, whether their evidence might be accepted by written statement, or what their availability would be for the trial date. The court ordered all four officers to attend the trial.

## **File overbuild and unused material**

4.30 It is clear from the file review that the police have an appreciation of one of the key underlying principles of the streamlined process, namely the proper identification of anticipated guilty and not guilty plea cases. This is important because the amount of information required by the prosecution and the court differs according to the plea entered by the defendant.

4.31 For example, under DGSP, Anticipated Guilty Plea (AGP) case files (as described at Annex C) require a minimum of documentation. Dependant upon the type of offence, the defendant may be charged by the police or CPS. A police-charged AGP file with no vulnerable witnesses need only contain the following:

- the charge and bail sheet (MG4/4A);
- the police report (MG5);
- the witness list (MG9);
- witness availability (MG10); and
- previous convictions.

4.32 In two of the areas, the plea was correctly anticipated in 70% of the cases. In the third area, the plea was as anticipated in 90% of cases, and in the fourth area 80% of cases were correctly anticipated. Overall, the police correctly anticipated the plea in 78% of the cases, and this is consistent with the findings from our earlier work with the NAO.

4.33 Despite this, and despite their success at anticipating defendants' pleas, the police continue to overbuild<sup>21</sup> AGP case files. All case files reviewed contained unnecessary key and non-key witness statements. For example, we routinely found statements from officers who attended the scene but did not witness anything of evidential value; officers who interviewed the defendant while in custody; police staff who prepared records of taped interview (ROTI) unnecessarily; and statements from officers who downloaded CCTV when the CCTV itself was the evidence. This culture of overbuilding case files does not improve the case, is time consuming for the police, and often adds to the burden on the prosecutor who must review all the papers received from the police to determine their relevance.

4.34 The process of scanning documents onto police systems is commonplace, and to some extent is always likely to be necessary. However, in the areas visited the amount of

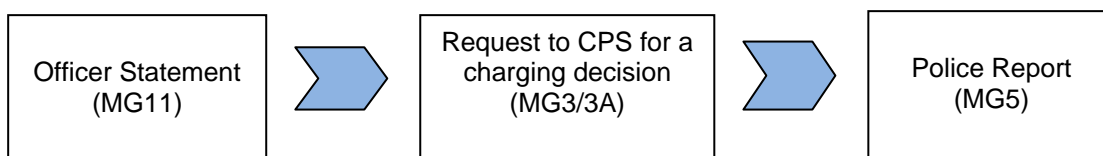
<sup>21</sup> 'Overbuild' is the inclusion in the case file of material or evidence that is not required by the prosecution.

unnecessary material scanned onto the police systems was excessive. In one area, we found multiple examples of a single PDF document on a number of case files which was found to contain between 50 and 90 pages of unused material, each page of which had been scanned into the system. These included: copies of officers' pocket note books; copies of premises searched records; crime records; command and control logs; forensic science submission requests; and custody records. None of these is required for an AGP file, and all could be obtained at a later date should the defendant plead not guilty.

- 4.35 Much of this unused material made its way onto the CPS's Case Management System (CMS), thus causing unnecessary administrative activity due to the limitations of the digital file transfer.
- 4.36 Conversely, documents which are required for AGP, such as forms outlining the availability of witnesses to attend court, were often not on the file. Where they were, they did not always include any dates to avoid for civilian witnesses. Occasionally they included the names of officers who had not been referred to in the police report at all, raising the question about their role in the case.
- 4.37 VRE, and CCTV in particular, raised issues in all areas visited. Common points included: the variation in formats used; the lack of available equipment to convert the CCTV evidence into a compatible format for use by police, CPS and courts; the lack of suitable equipment to play the CCTV back, were consistently raised by forces; and the inability to send a CCTV clip across the CPS/police interface, because the clip file size was too big. In one area visited, we were told of a case where officers were unable to send a CCTV clip of a police officer being assaulted to CPS electronically. As a result, 15 still photos from the CCTV evidence were downloaded, scanned, and emailed to the prosecutor in order to obtain a charging decision.
- 4.38 In addition, as the use of electronic case files becomes more routine, and in the absence of an electronic solution, a CCTV disc will still have to be delivered to CPS and the court separately. It will often be the only hard copy material sent by police. This increases the risk of delay if, for any reason, the CCTV footage does not arrive or is lost.

## CPS-charged cases

- 4.39 In more complex cases, such as burglaries and assaults, the decision to charge must be made by the CPS. Additional forms must be provided to the prosecutor in order to obtain charging advice. Officers are required to get a charging decision from the CPS, and must complete a form (MG 3/3A); however, a different form is used if the charging decision is made by the police. The flow of this information can be represented in the diagram below.



- 4.40 There is an overlap in the information required on each form which arguably contributes to the 'copy and paste' culture.
- 4.41 Confidential information for the prosecutor is also provided, if appropriate, on MG6<sup>22</sup> forms. Where these were included in the file, we found that they were often not completed properly, if at all. The MG6s that there were on the file did not always include any evidential analysis (strengths and weaknesses) or consideration of whether it was in the public interest to prosecute (as opposed to dealing with the offender by way of an out-of-court disposal). The MG6s did not contain any confidential information that you would expect, for example in relation to any previous convictions of the victim or outstanding enquiries which need to be considered by the prosecutor.
- 4.42 In one area, MG6 forms were included unnecessarily on AGP case files but a number of them only had the header completed. More often than not the text boxes were not completed, even to indicate 'not applicable'.
- 4.43 In one area, the addition of the MG6 forms to the file submission was a response to the view held by police officers that the CPS consistently requested more paperwork than was deemed necessary. As a result, police in that area provided all the MG6 forms, because "the CPS said they want it". Such a perception may explain why many of the forms included the defendant's details but little else.

## Outcomes

- 4.44 Most of the court cases observed involved guilty pleas at first hearing or at first opportunity. This was also reflected in the file sample where, as previously mentioned, 78% were correctly anticipated pleas. The not guilty plea cases in the file sample resulted in a guilty plea or conviction on the day of trial.
- 4.45 Where a not guilty plea was entered by the defendant, we observed case management hearings. However, approaches varied across areas. In one area, the case management focused primarily on the length of time that the trial would take, while in another area the emphasis was on identifying the issues in dispute between the prosecution and defence, and seeking agreement on the other points of evidence.
- 4.46 There was no evidence of cases being adjourned for further material to be obtained. Where necessary, cases were put back in the list. This was done, for example, for the prosecutor to make a phone call regarding witness availability, or another query, in order to complete the case management process.

<sup>22</sup> There are 4 forms which make up the MG6 series. MG6 – confidential information to the prosecutor; MG6B – Police Officers' disciplinary record ; MG6C - Schedule of relevant Non-sensitive unused material; MG6D Schedule of relevant sensitive material; MG6E - Disclosure Officer's report.

4.47 In three of the areas, when a pre-sentence report (PSR) was required (in both guilty and not guilty plea cases), the probation service prepared a report which enabled the court to sentence without the need for a further adjournment.

## 5. Conclusions

- 5.1 In all areas visited, providing VRE in a format which was usable by the police, CPS and the court remains a persistent, chronic problem. The wide variety of formats for CCTV across local authority areas, and restrictions on file size transfer between agencies, poses similar problems for the CJS. The increased use of VRE in modern society and the opportunities this offers to resolve evidential issues of contention at an early stage should be recognised and exploited wherever possible.
- 5.2 Much of the 'submerged activity' of the police continues, and this is in part due to the fact that non-notifiable offences (such as drunk and incapable, drunk and disorderly, and section 136 of the Mental Health Act 1983) are not included in national arrest figures. As a result, the public do not have a full picture of how much police time is spent dealing with vulnerable and potentially dangerous detainees.
- 5.3 The introduction of 'super suites' with centralised custody management and dedicated prisoner handling teams has brought with it significant improvements to the custody process. However, variations in the models used have resulted in unintended consequences, such as cultures of 'arrest and dump' and 'bedding down'. Existing performance measures contribute to this problem. Internal custody processes should be reviewed to ensure that competing demands, where possible, are reduced and streamlined.
- 5.4 There was evidence of good relationships and regular communication between the police and CPS at strategic level, but this was not always reflected in practice on the ground. Police in all areas visited expressed concern that the CPS consistently required too much information: but the lack of quality police reports suggests that the police themselves do not fully understand their role in progressing cases through to court.
- 5.5 Moreover, the materially low levels of compliance with well-known and long-established minimum standards in case preparation present a disturbing picture. The consequence of ill-prepared case files is that further police work is often required, which is inefficient and wasteful of scarce resources.
- 5.6 Although it is clear that progress has been made across the CJS, this review indicates that the police, CPS and the courts continue to operate as distinct entities. Both the victim and justice would be better served if criminal justice agencies improved their understanding of each other's roles, and of what each needs to do to improve efficiency and outcomes.
- 5.7 At the time of writing this report, another joint review is being concluded by HMIC and HMCPSI. The focus of this review is on police trial file quality. The issues raised in these two reviews when considered with the NAO report demonstrate that there has been no noticeable and consistent improvement in the quality of police case files submitted to the CPS.

## 6. Recommendations

### Short term

1. The College of Policing should urgently review and improve the quality of police training in matters such as the substantive criminal law and criminal procedure, including the rules of evidence and the role of police officers and police work in the criminal justice system. Insofar as police officers lack sufficient training in and experience of the workings of criminal courts, that deficit should be remedied, so that police officers have a sound appreciation of what happens when cases proceed to court, and how evidence is presented and tested. That way, they will have a far better understanding of the critical importance of the work they do in the earliest stages of the criminal justice process. The quality of supervision of police officers should be materially improved, so that mistakes are rectified promptly, time and effort is saved in the preparation of cases, and the interests of justice are served.
2. ACPO should review existing guidance on the use of split-screen CCTV in custody areas to monitor vulnerable detainees in their cells, to ensure that risk is being assessed properly and custody staff are empowered and required to use this facility where appropriate (thereby reducing the need for one-one monitoring by officers).
3. Forces should review their arrangements with local authorities to ensure that vulnerable adults and children are appropriately accommodated (this relates to the use of section 136 of the Mental Health Act 1983, and to cases where children/young people are denied bail and continue to be detained in police cells after charge).
4. ACPO and the CPS should consider amending the MG 3/5/6 forms, and if possible amalgamate one or more of them, in order to reduce the tendency to copy and paste from one form to another.

### Longer term

5. In order to improve file quality, forces should consider further training for police supervisors, perhaps delivered jointly with the CPS. This training should focus on the critical points raised in this report, with specific emphasis on ensuring that police officers accurately differentiate between key and non-key witnesses; understand how case papers need to be prepared and presented to improve the effectiveness of the prosecution; and limit file build to the required information.
6. The ACPO Criminal Justice Business Area<sup>23</sup> should prioritise the move from the current digitisation of a paper process to a system where data are only entered once by police

<sup>23</sup> The ACPO Criminal Justice business area leads the development on policing practice and professionalism in criminal justice matters on behalf of all forces.

officers, and then transferred to the CPS/courts as needed. Forces should place greater emphasis on the quality of information contained in case files.

7. The Criminal Justice Efficiency Board should urgently review arrangements for the electronic transfer of visually recorded evidence between police and the CPS, to ensure the use of hard copies and downloaded still pictures are minimised.

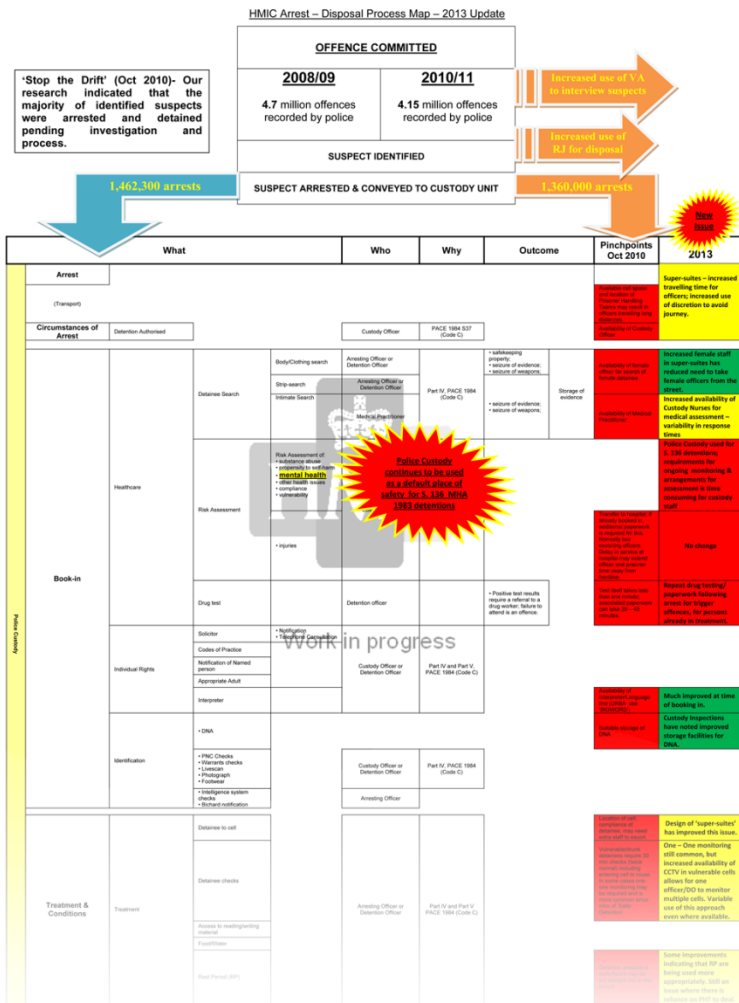


## 7. Issues outside the scope of the review

- 7.1 This review did not specifically examine the use of or any correlation between the increase in Voluntary Attendance (VA) and Summons to magistrates' court. However, in all areas visited the police indicated an increase in both. VA is where a suspect attends a police station to be dealt with by an officer investigating an offence, normally by appointment and without being arrested. Under these circumstances, a person does not have the same rights and entitlements under PACE as an arrested person.
- 7.2 VA was managed differently across the forces. In two areas, people attending voluntarily were booked in through the custody unit in the same way as arrested people. In another area, there was no formal process in place. Recent HMIC custody inspections have noted similar increases in voluntary attendance and there has been some discussion about whether this is possibly due to changes in the police code of practice<sup>24</sup> relating to the 'necessity test' for arrest, as well as resulting from a greater use of discretion and out of court disposals.
- 7.3 A summons is a notice issued to a person to advise them that legal proceedings have been started against them and to advise of the date that they must appear in court. It is another option rather than formally charging a person with an offence, which normally occurs when a person is in police custody. In our court observations, we noted that in one area all summons cases were still presented in paper files.
- 7.4 During this review, we were also advised that Criminal Justice Units were seeing an increase in the use of summons to progress matters to court. It is arguable that resolving an investigation using a summons is an efficient method to deal with someone who voluntarily attends the police station, without having to process them formally through police custody.
- 7.5 It is important that there is transparency in the way the police deal with persons by way of voluntarily attendance to ensure that both the individual and the investigation are dealt with appropriately.
- 7.6 We will consider a further piece of work to consider: the arrangements in place for voluntary attendees to ensure appropriate levels of accountability; the links (if any) to increases in summons files; the supervision of summons files; and how it fits into the digital case file approach.

<sup>24</sup> Changes to Code G of PACE 1984 require the police to consider arrest only when voluntary attendance is not considered a practical alternative and came into effect on 12 November 2012.

# Annex A: Arrest–disposal chart



The full chart is available from [www.hmic.gov.uk/media/arrest-to-disposal-chart-052013.pdf](http://www.hmic.gov.uk/media/arrest-to-disposal-chart-052013.pdf)

## Annex B: Sample MG5 – Police Report

Please note that the police report is a locally produced form by police forces. This is a sample only and there is variation between forces.

	<b>Restricted (when complete)</b>	<b>MG5</b>
<b>POLICE REPORT</b>		
<b>URN (unique reference number)</b>		
<b>Defendant</b>	<b>DOB</b>	<b>Anticipated Plea</b>
		Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/>
<p><b>1. Summary of the Key Evidence-</b> 'Key evidence' establishes every element of the offence and that the defendant committed the offence with the necessary criminal intent.</p> <ul style="list-style-type: none"> <li>➤ Set out the facts in chronological order, telling the story and covering the 'points to prove'</li> <li>➤ The summary must be balanced and fair</li> <li>➤ Record address and contact details of civilian witnesses on MG9 (and <i>all</i> dates to avoid on MG10)</li> </ul>		
<p><b><u>Names of Key Witnesses and their role in the case:</u></b></p> <p><b><u>Summary of the Key Evidence:</u></b></p> <p><b><u>State value of property stolen or damaged (or recovered).</u></b></p>		

<p><b>2. Defendant Interview</b></p> <ul style="list-style-type: none"> <li>➤ Set out the explanation given by the defendant as to <b>how/why offence happened:</b> include any <b>mitigation/remorse</b> put forward.</li> <li>➤ Note any <b>Special Warnings</b> given.</li> <li>➤ State if no comment made.</li> <li>➤ Attach copy of CCTV if shown in the interview (<b>to file</b>)</li> </ul>	
Defendant:	Date:
Interviewing Officer(s):	Other persons Present:
<p>Summary of defendant explanation:</p> <p>Defendants response/reaction to CCTV (if 'key evidence' and shown in interview)</p>	

Relevant admissions and their start/finish counter reference times:							
<b>3. Non Key Evidence-</b> List witnesses present but not 'key'. State what evidence their contribute e.g. additional eye witness, arresting officer, charging officer; officer seizing CCTV. Record contact details of civilian witnesses on MG9 and dates to avoid on MG10.							
Names of Non Key Witness(es) and their role:							
<b>4. Visually Recorded Evidence</b> – CCTV, photos, mobile phone(s). Attach a copy ( <i>identify playback format</i> ). Custody suite CCTV should be included as unused material unless 'key evidence'							
Is there VRE Yes <input type="checkbox"/> No <input type="checkbox"/>							
If 'YES' does it provide 'key evidence' Yes <input type="checkbox"/> No <input type="checkbox"/>							
Give details of what it shows (whether 'key' or not) and include tape counter reference times for relevant key sections (i.e. defendant punching victim/kicking window)							
<b>5. Injuries.</b> A medical statement is <b>not</b> required unless needed to interpret x-rays or describe injuries not visible to the naked eye. Victim/eye-witness/ police officer should <b>describe any visible injuries</b> ; photos should be taken and attached (if not taken, state why).							
Description of Injuries:							
<b>6. Forensic Evidence</b> – fingerprint, drugs evidence (weight, number of wraps, etc.). Include details such as street value and purity as this is essential for sentencing information. State if drugs field-tested and by whom. State timescales for a full forensic statement (if required).							
<b>7. DIP testing.</b> Attach DT2 for prosecutor							
Defendant	Tested		Trigger Offence?		Result		Drug
	Yes	No	Yes	No	Pos	Neg	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>8. Application For Order(s) On Conviction</b> - Consider applying for an order on conviction, e.g. compensation, forfeiture/destruction (see order list).							
Order(s) applied for:							

**9. Application for compensation** – state if an estimate. Attach quotes/receipts if available. An address for compensation **must** be provided on MG6. *(If more than one victim/defendant, list one after the other and give details in the description box.)*

Defendant                  Victim

Description of injury/loss and or damage

Amount of compensation applied for                  Has MG19 been sent to the victim? Yes  
 No

10. Other:	Pre-cons/cautions attached YES	Pre-cons/cautions attached NO	MG6	MG18 TICS
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**11. Officer's Certification** – I certify that to the best of my knowledge and belief I have not withheld any material that might reasonably be expected to undermine the prosecution or might reasonably assist the defence in early preparation of their case, including the making of a bail application. I further certify that relevant material has been recorded and retained in accordance with the CPIA 1996 Code of Practice, as amended.

Name of Officer:			
Signature:		Date:	
E-mail:			

**12. Supervisor's Certification** – The information in parts 1 to 8 is an accurate summary of the available evidence in this case and complies with the DPP's Guidance for a Streamlined Process. The file has been built to the required standard.

Name of Supervisor:		PIN:	
Signature:		Date:	

**YOU MUST ALWAYS COMPLETE CONDITIONAL CAUTIONING SECTION BELOW.**

**Defendant:**

**Not suitable for conditional caution because**  
**OR**  
**Suitable for conditional caution because custody officer is satisfied:**

- There is sufficient evidence to charge the offence and the defendant has not denied the offence or raised a defence, and
- Conditions are capable of rehabilitating the offender or for making reparations for the offence, and
- Both the circumstances of the offence and the offender make it appropriate to offer a conditional caution, and
- The offence is one for which a conditional caution can be offered (see Annex A, DPP's Guidance)

<b>Proposed conditions</b>		
<b>Condition</b>	<b>Compliance requirements including completion/progress check dates</b>	<b>Supporting evidence</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		

## Annex C: Criteria for the streamlined process (file for first court hearing)

CORE INFORMATION	Anticipated Guilty plea (Category 1)	Anticipated Not Guilty plea (Category 2)	S. 4 - 7 RTA offences (Category 3)	CPS Charged (Category 4)
MG4 (charge sheet)	√	√		√
MG4A (bail sheet)	√	√		√
Police Report (Amended MG5)	√	√	√	√
MG7 (remand in custody)	√	√		√
MG9 (witness list)	√	√		√
MG10 (witness availability)	√	√		√
Victim Personal Statement (if taken)	√	√		√
Key MG 11s	√ - more complex cases only	√		√
MG2 (special measures)				√
MG3/3A (Report to Crown Prosecutor & further report to Crown Prosecutor)				√
MG6 (Case File Information)				√
Where appropriate:				
CCTV	√	√		√
MG18 (offences taken into consideration)	√	√		√
Previous convictions/cautions	√	√		√
PNB entries		√		
MG DD A & B (Drink/drive forms)			√	
Record of Taped Interview (ROTI) to negate defence			√	

Note: highlighted forms are provided to the defence as advance disclosure.

## Categories 1, 2 or 3, in accordance with the following criteria

- (i) the suspect admits the offence, **or**
- (ii) there is no admission in interview, but identification of the offender is by an officer or other reliable witness, or there is good quality CCTV evidence of the offender committing the offence **and** the case is:
  - (i) loss or damage less than £5000
  - (ii) likely to be < 6 months imprisonment
  - (iii) not committed when subject of a Crown Court Order
  - (iv) summary offences, with less than 3 months imprisonment



## Annex D: Glossary of terms

ACPO	Association of Chief Police Officers
ATHENA	The name of the IT system being developed and implemented by a consortium of forces made up of: Essex, Bedfordshire, Cambridgeshire, Hertfordshire, Kent, Norfolk and Suffolk.
CCTV	Closed circuit television
CMS	Case Management System
CPS	Crown Prosecution Service
DGSP	Director's Guidance on Streamlined Process
DPP	Director of Public Prosecutions
FSS	Forensic Science Service
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary
LA	Local Authority
NAO	National Audit Office
NICHE	The name of the IT system used by some forces.
NSPIS	The name of the IT system used by some forces.
ROTI	Record of Tape Recorded Interview
PACE	Police and Criminal evidence Act 1984
PHT	Prisoner Handling Teams
VA	Voluntary Attendance
VRE	Visually Recorded Evidence