



HM Crown Prosecution
Service Inspectorate

Thematic review of youth offender casework

November 2011



Contents

Chief Inspector's foreword	1
1 Inspection context	3
Contextual factors and scope.....	3
The methodology and nature of the inspection.....	4
2 Executive summary	5
Key findings.....	5
Conclusion.....	6
Good practice.....	6
Priority recommendations.....	6
Other recommendations.....	7
3 The role of the Area Youth Justice Co-ordinator	9
4 The use of pre-court disposals	11
The quality of CPS decision-making in pre-court disposal cases.....	12
Decision-making in cases involving looked after children.....	15
5 Determining venue	17
The quality of grave crime representations.....	17
The quality of remand applications.....	19
6 Youths and adults	21
Indictable only cases.....	21
Either way offences.....	22
The Crown Court.....	22
7 Improving performance	23
The record of the charging decision (MG3).....	23
Monitoring performance.....	23
The provision of training.....	24
8 The prevention of re-offending	25
9 Conclusion	27

Annexes	29
A Methodology	29
B Local representatives of criminal justice agencies and organisations who assisted the inspection	30
C Analysis of Youth Court observations	32
D Key findings from the analysis of the pre-court disposal file sample	34
E Key findings from the analysis of the finalised file sample	35
F Key findings from the survey of Youth Offending Team Managers and CPS Area Youth Justice Co-ordinators	37
G Glossary	41

Chief Inspector's foreword

Many aspects of Youth Court law and procedure (including pre-court disposals) are significantly more complex than those which relate to adults, and some, for example the grave crime determination are unique to the Youth Court. This review has focussed on the contribution the CPS makes to the effective application of these aspects and whether it is making a positive contribution to the principal aim of the Youth Court, namely to prevent offending by children and young persons.

It is encouraging that the findings of the review show that the contribution is positive. The correct application of the Code for Crown Prosecutors in pre-court disposal cases; correctly determining whether or not to represent that the more serious allegations should be dealt with at the Crown Court; and rightly deciding whether to apply to restrict the liberty of young suspects all support the achievement of the aim.

However, I am concerned that in terms of quality, some aspects of youth offender casework fall short of what is expected. Many of the concerns can be addressed by prosecutors getting it right first time: at the charging stage. Improving the quality of the record of the charging decision in respect of the key aspects that relate to youth offenders is essential. The increasing demand on resources means that advocates have less time to prepare and need to be confident that they are getting high quality guidance.

The landscape of youth casework is also changing. Most of the large metropolitan court centres my inspection team visited said that they had reduced the overall number of Youth Court sessions as a result of falling caseloads. Although outside the scope of this review, it was apparent that the extensive use of community resolutions in some police force areas was a major contributory factor. The criminal justice inspectorates jointly are undertaking further work around this aspect.

Whilst the fieldwork for this review was carried out before the large scale public disorder in August 2011 there is no evidence to suggest that this long term decline in workload will be reversed.

One of the consequences of the reduction in Youth Court sessions is an increased risk that youth offenders will be appearing initially in the magistrates' court where prosecutors may not currently have received the specialist CPS youth training. I am therefore of a view that for this reason and because of the change in CPS charging arrangements all prosecutors should meet a minimum standard of knowledge of Youth Court law and procedure.

The removal of the Persistent Young Offender pledge has reduced the strategic focus on youth issues. This review makes recommendations to address this and to reinforce the need for there to be a more structured approach to the assessment of the quality of casework involving young offenders.



1 Inspection context

Contextual factors and scope

1.1 Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi) has previously undertaken inspection activity in respect of the handling of youth offender casework. The focus of that activity, much of which was jointly carried out with other criminal justice inspectorates, was on the criminal justice agencies performance in reducing delay and achieving the then Government's pledge to reduce the time taken to deal with Persistent Young Offenders from 142 days to 71 days from arrest to sentence.

1.2 Assessments of the effectiveness of youth offender casework preparation and progression are also included as part of HMCPsi Area inspections, but the need was identified for a more specific focus on this specialised area of casework.

1.3 The focus of the thematic review was on those aspects of casework which are unique to youth offenders or are particularly problematic. These included:

- the quality of youth offender charging decisions including pre-court disposals;
- the application of the 'grave crime' provisions and other related provisions under S51 Crime and Disorder Act 1998 as amended;
- the quality of remand applications in respect of youth offenders; and
- the role of the Crown Prosecution Service (CPS) in preventing offending.

1.4 The review was undertaken against a background of overall reducing caseload in the Youth Court, including first time entrants.¹ Most of the court centres visited had reduced the number of Youth Court sessions as a consequence of the downturn in work. Additionally there had been concerns expressed about the inappropriate use of pre-court disposals for serious offences. This review therefore considered whether CPS prosecutors were correctly diverting offenders away from court by way of appropriate decision-making at the pre-charge stage and the extent of their involvement in local community resolution schemes.²

1.5 Concerns had also been expressed about the appropriateness of young people being dealt with at the Crown Court, particularly in respect of allegations involving sexual activity where the victims were also young. This review therefore considered whether CPS prosecutors were providing the Youth Court with the appropriate information to enable them to decide when the most serious cases should be tried in the Crown Court. Consideration was also given to whether youths jointly charged with adults were being dealt with appropriately.

1.6 The review did not consider cases involving allegations of homicide which must by law be dealt with at the Crown Court.

¹ In 2009-10 there were 198,499 proven offences committed by young people aged 10-17. This was a decline of 19% from 2008-09 and 33% from 2006-07 and there was also a similar decline in first time entrants. Youth Justice Statistics 2009-10 published by the Ministry of Justice: www.justice.gov.uk/publications/youth-justice-statistics.htm

² We use this term in the review to cover all local schemes where the principal aim was to deal with the offender informally within the community.

1.7 Inspectors also assessed the quality of remand applications made by prosecutors. This is a particularly complex area of law with different provisions applying depending on the age and sex of the offender, the nature of the offence and the offender's previous convictions. As part of this aspect the quality of the exchange of information at court between prosecutors and the Youth Offending Team (YOT) was assessed.

1.8 Overall, there are a number of aspects of the law relating to young people that do not apply to adult offenders. Youth Court prosecutors need to have sufficient expertise to deal effectively with these aspects. The review therefore assessed whether this was the case, and the level of training received.

1.9 The fieldwork for this thematic review took place in July 2011, and therefore pre-dated the serious outbreak of public disorder that took place in England in August 2011. Much of that disorder occurred in some of the metropolitan areas covered by the court centres we visited. Our observations were therefore more representative of what may be called 'normal patterns of youth offending'. However, some of our findings for example in respect of the quality of remand applications will be applicable to the types of offending which occurred during that disorder.

The methodology and nature of the inspection

1.10 The methodology used in this inspection comprised: a mix of court observations; interviews with the members of the judiciary and representatives of the CPS and other criminal justice agencies; an examination of finalised CPS files; and a survey of Youth Offending Team managers or their equivalents and CPS Area Youth Justice Co-ordinators. The detailed aspects of the methodology are set out at Annex A.

1.11 Inspectors visited six court centres between 4 and 22 July 2011, namely Birmingham, City of Manchester, Liverpool, Newcastle upon Tyne, Nottingham and West London. The inspection team would like to extend their thanks to CPS staff at these sites, and the representatives of other agencies (listed at Annex B), who contributed to the thematic review, together with those who responded to our survey request.

1.12 Data from the file examination and the results of the surveys are set out in subsequent annexes.

1.13 In this review we make recommendations, some of which are priorities, to improve the quality of youth offender casework. Action to implement priority recommendations should be taken straightaway.

1.14 We also identify good practice which if adopted across the CPS should improve the quality of youth offender casework.

2 Executive summary

2.1 Section 37 (1) of the Crime and Disorder Act 1998 states that:

“It shall be the principal aim of the youth justice system to prevent offending by children and young persons.”

In this review inspectors assessed the effectiveness of the CPS contribution to this aim in the context of those aspects of the system which, through its decision-making, it can influence.

Key findings

2.2 Overall, at the highest level, the key findings are encouraging.

2.3 Prosecutors are supporting the aim of the youth justice system by correctly diverting young people from court or determining that there is insufficient evidence for any sanction, and they are alert to cases where the police may have inappropriately charged youths who should have been given a pre-court disposal.

2.4 However, there needs to be more rigorous compliance with aspects of CPS policy on the administering of final warnings.

2.5 Prosecutors are properly circumspect when deciding whether an application should be made before conviction to restrict the liberty of young people, particularly where this would involve confinement in secure accommodation. This was reinforced by the good working relationship with Youth Offending Team staff in court.

2.6 In the most serious cases prosecutors are representing correctly whether the youth should remain in the Youth Court or go to the Crown Court because the likely punishment is greater

than that which the Youth Court can impose. But, the quality of the guidance they are given in the instructions on the record of charging decision needs to improve substantially.

2.7 In the most serious cases prosecutors are representing correctly whether the youth should remain in the Youth Court or go to the Crown Court because the likely punishment is greater than that which the Youth Court can impose. But, the quality of the guidance they are given in the instructions on the record of charging decision needs to improve substantially.

Overall, more thought must be given at the charging stage to the quality of the information given to the prosecutor at court to enable them to do their job to a good standard. The increasing pressure on CPS resources and the reduction in the time that prosecutors have to prepare their courts reinforces this need.

2.8 More thought also needs to be given to the venue at which youths should be dealt with in those cases where they are jointly charged with adults. Decisions are not assisted by a failure to link the adult and youth offender at the first hearing.

2.9 There needs to be a greater focus on monitoring performance in Youth Court cases and a reappraisal of the level and method of learning for prosecutors. There is no assurance that Core Quality Standards Monitoring, conducted in CPS Areas to assess the quality of casework, provides sufficient oversight of Youth Court casework.

2.10 The requirement to improve quality assurance should be supported by a review of the role of the Area Youth Justice Co-ordinator in the light of the restructuring of the CPS.

Conclusion

2.11 We concluded that to maintain and improve, where necessary, the handling of cases involving youth offenders, the CPS needs to ensure as a minimum that **all** prosecutors receive at least a basic grounding in Youth Court law and procedure and that the records of charging decisions involving youths provide the prosecutor at court with high quality information and guidance.

2.12 Inspectors identified two aspects of good practice, and made nine recommendations, six of which are a priority and should be addressed straightaway.

Good practice

1 In CPS North East a pro-forma is used in cases involving allegations of sexual offending which requires all the relevant factors to be set out, including pertinent case law, to assist the prosecutor at court (paragraph 5.10).

2 Use by prosecutors in Liverpool Youth Court of the CPS remand flow chart guidance (paragraph 5.21).

Priority recommendations

We recommend that:

1 In the light of its restructuring, the CPS reviews the role of Area Youth Justice Co-ordinator and develops a role which enables the original scope of the post to be delivered locally (paragraph 3.7).

2 The CPS should reinforce to prosecutors that the legal guidance on administering a reprimand or final warning should be applied consistently (paragraph 4.21).

3 The CPS should, in consultation with its stakeholders, review its policy guidance on looked after children to consider whether those in foster care should be included; and reinforce the need to ensure the current guidance is followed at the pre-charge decision stage (paragraph 4.27).

4 The MG3 (record of charging decision) should, in every case where a grave crime determination must be made, set out clearly all the relevant factors to enable the prosecutor at court to make effective representations (paragraph 5.7).

5 The CPS develop a series of prompts to ensure charging lawyers address correctly all relevant youth issues (paragraph 7.4).

6 The CPS ensures all prosecutors have a basic understanding of Youth Court law and procedure (paragraph 7.10).

Other recommendations

We recommend that:

1 The CPS should agree procedures with the Association of Chief Police Officers which ensure prosecutors are notified whether a youth has been subject to a community resolution for previous offending (paragraph 4.6).

2 The CPS file should be endorsed with the prosecution and defence representations and the court's determination at the grave crime hearing, particularly in cases involving allegations of sexual offending (paragraph 5.11).

3 Youth offender casework is included by CPS Areas as part of their Core Quality Standards Monitoring either as a continuing part of the monthly selection of cases or on an ad hoc basis (paragraph 7.6).



3 The role of the Area Youth Justice Co-ordinator

3.1 The CPS developed the role of Area Youth Justice Co-ordinator (AYJC) because of the specialist nature of many aspects of Youth Court work. When the role was developed there were 42 CPS Areas, with each one having an AYJC. The structure of the CPS has changed considerably since their inception and there are now only 13 geographical Areas which incorporate one or more of the previous 42 Areas. Those AYJCs who are still in post are based on the old structure.

3.2 Historically AYJCs had acted as points of reference for staff in relation to Youth Court issues, ensured changes in law and procedure were disseminated and, under the auspices of the CPS Policy lead on youth justice, met regularly to exchange information and share good practice. They had a particularly high profile and strategic role when the criminal justice agencies were working together to achieve the Persistent Young Offender (PYO) pledge. Within the cadre were very experienced prosecutors who nationally provided legal guidance and delivered training.

3.3 We found that the effectiveness of the role has now diminished due to a number of factors including the restructuring of the CPS, as well as the increasing demand on diminishing resources and the departure of a number of long standing AYJCs. In two of the sites visited the AYJC had only recently been appointed and there was a lack of clarity around the expectations of the role.

3.4 However, where the AYJCs were long standing they still made a significant contribution, for example in Merseyside where the AYJC chairs the Youth Performance Improvement Group (a sub-group of the Local Criminal Justice Board) and is actively involved in evaluating local community resolution schemes. This Group was regarded as the main strategic and policy making forum. Where the Local Criminal Justice Boards had retained the performance structure set up to monitor progress in achieving the PYO pledge there was a greater focus on youth justice.

3.5 The AYJCs play a limited role in evaluating performance in youth offender casework, with over 70% of those who responded to our survey saying that the only formal qualitative assessment was the Area's Core Quality Standards Monitoring scheme. There is no requirement under the scheme to include youth offender casework and therefore whether or not it is formally included depends on the selection criteria of individual Areas. We discuss this further in the section on improving performance.

3.6 The restructuring of the CPS requires the AYJC role to be reviewed as the span of responsibility as originally determined is too extensive for there to be only one Youth Justice Co-ordinator for each enlarged Area. We are aware that the CPS is considering how the functions of the post can be delivered effectively under the new structure. Our findings indicate clearly that at the local level there remains a need for there to be a role similar to that undertaken by the AYJC, although at the Area level it may be appropriate for there to be a policy lead with strategic oversight.

3.7 In addition to the AYJC there were originally prosecutors who were designated as youth champions in individual units. The AYJC survey responses indicated that only 50.0% of Areas still have youth champions in every unit, with 38.9% having none. This role could be reinvigorated and expanded to cover the functions of the AYJC under the previous structure.

Priority recommendation

In the light of its restructuring, the CPS reviews the role of Area Youth Justice Co-ordinator and develops a role which enables the original scope of the post to be delivered locally.

4 The use of pre-court disposals

4.1 The pre-court disposal selected must be proportionate to the offending as well as effective in reducing further offending.

4.2 In 2009-10, 41% of young offenders³ received a formal pre-court disposal⁴ for the offence(s) they committed. The figure would be higher if local community resolutions⁵ are included.

4.3 At the time of our review proposals were being made to simplify the use of pre-court disposals, increasing the use of restorative justice and empowering the police to make decisions in respect of youth conditional cautions without the need for obtaining authority from the CPS.⁶ At the court centres we visited all the local police forces used community resolutions, although they varied considerably in scope. CPS prosecutors had limited awareness of the extent of these schemes or the impact they were having on the volume of cases coming into the court system and there was only limited sharing of performance information.⁷ Merseyside was the exception, where the local CPS office played a significant role in the monitoring and evaluation of these schemes.

4.4 There was greater awareness of the more formal ‘triage’ schemes⁸ used to assess whether there should be an informal disposal but these only applied when the youth was arrested and taken into custody. However these schemes did not operate at all the sites visited.

4.5 Only three of the 21 CPS Area Youth Justice Co-ordinators who responded to our survey said they had any role in designing, monitoring or evaluating local diversionary schemes.

4.6 Community resolutions are not recorded on the Police National Computer and therefore prosecutors are reliant on being told by their local police force if a youth has been subject to this type of disposal. The systems for notification were ad hoc and there was no assurance that they would always be included on the file. This information is important as it assists in determining the correct disposal if the youth re-offends and the CPS are asked to provide pre-charge advice.

Recommendation

The CPS should agree procedures with the Association of Chief Police Officers which ensure prosecutors are notified whether a youth has been subject to a community resolution for previous offending.

3 Young persons aged 10 to 17.

4 Comprising a reprimand, final warning or youth conditional caution.

5 Administered by the police, normally ‘on the street’ and not entered on the Police National Computer.

6 Ministry of Justice Green Paper “Breaking the cycle”.

7 The Greater Manchester Police shared data but it was not separated out into adults and youths.

8 Based in police stations and involving YOT staff in early interventions with youths.

The quality of CPS decision-making in pre-court disposal cases

4.7 Our assessment included those cases where the CPS had directed a pre-court disposal at the charging stage (including cases where no further action had been decided) and those which had initially commenced by way of charge, either directed by the CPS or charged by the police.

Pre-court disposals where there was no initial charge

4.8 The evidential stage of the Code for Crown Prosecutors (the Code) was applied correctly in 55 of the 57 cases (96.5%) where the decision was to reprimand, administer a final warning or direct no further action. In the other two cases the defendants should have been charged. The public interest test was applied correctly in all but one of the relevant cases. This is a substantially higher rate of compliance than found in recent inspections of CPS Areas, where the cases examined involve mostly adult offenders. The MG3 (record of charging decision) referred specifically to the Association of Chief Police Officers (ACPO) gravity matrix⁹ in four of the five relevant cases, and was applied correctly in all. Two thirds of the YOT managers who responded to our survey assessed the use by the CPS of pre-court disposals at the charging stage as good or excellent.

⁹ The ACPO gravity matrix sets out generic and specific aggravating and mitigating factors for a wide range of offences to assist police officers and prosecutors in deciding whether the youth is eligible for a pre-court disposal, and if so what type.

4.9 Prosecutors at the charging stage need to exercise care in cases involving multiple suspects to ensure that they identify correctly those who are youths. There was one case in our file sample which was submitted for charging advice on four occasions, and it was only on the third submission that the prosecutor recognised that one of the suspects was a youth. In another the prosecutor wrongly directed a conditional caution without realising the defendant was a youth and could not receive that disposal for the offence alleged. Fortunately the error was spotted by the police. Our examination of the MG3s during our court observation identified other examples.

4.10 Prosecutors need to be alert to when the status of the suspect changes before the final charging decision is made. Only 49 of the 57 pre-court disposal files (86.0%) were flagged correctly on the CPS case management system to indicate the involvement of a youth. Overall, 91.7% of cases in our file sample recorded correctly the suspect's status. Recurring errors included: failing to note when the status of the suspect changed from youth to adult during the time taken to consider the case at the pre-charge stage; recording the date of birth incorrectly; and in joint adult/youth cases failing to note that one of the defendants was a youth.

4.11 A further 19 cases were considered where the suspect was offered a youth conditional caution (YCC)¹⁰ at the pre-charge stage. In each case the evidential assessment was correct but in three an alternative pre-court disposal was more appropriate and in one a YCC was offered for a category of offence (domestic violence) that was not within the scheme.

¹⁰ Youth conditional cautions are being piloted as a pre-court disposal in five CPS Areas.

4.12 Prosecutors did not evaluate whether the interventions associated with a final warning could have dealt more appropriately with the mischief of the offending as opposed to the more serious penalty of a YCC. It was usual for the prosecutor to adopt the conditions proposed by the Youth Offending Team, although in one case examined the conditions were not relevant to the offending and in two they were not proportionate. The ACPO gravity matrix was not referred to, nor applied correctly as consistently as in other types of pre-court disposals. The consideration of the mitigating and aggravating factors set out in the matrix should assist prosecutors, where there is sufficient evidence to prove the offence, in determining whether the youth should receive a pre-court disposal or be charged.

4.13 There is a tension between the evidential requirements for a final warning and a YCC. The Crime and Disorder Act 1998¹¹ as amended requires the offender to have admitted the offence to a constable before they are eligible for a final warning. There is judicial authority which confirms that the police have no obligation to offer a youth a final warning once they are charged following a no comment interview. The Director of Public Prosecution's Guidance on Youth Conditional Cautions (January 2010) states that a YCC can be offered if there is a realistic prospect of conviction and does not preclude that disposal if the defendant is either not interviewed or makes no comment in interview.¹²

4.14 We are aware that the Youth Justice Board is proposing that the current menu of pre-court disposals is revised although suggesting that YCCs will be retained. To ensure consistency the evidential requirements for formal pre-court disposals should be the same throughout. We discuss the difficulties the current system creates in charged cases in the next section.

Pre-court disposals where there was an initial charge

4.15 There were ten cases in our file sample where the defendant was dealt with by way of a YCC after being charged, nine of which were initially charged by the police. This suggests that not all appropriate cases are being referred to the CPS at the pre-charge stage and there is a risk that youths who should be offered a YCC are being prosecuted. This was confirmed by a YOT manager in an Area which is piloting the scheme. However, once the decision to offer a YCC was made the process was dealt with promptly in all but one of the cases. There were also three cases where a YCC was offered after a CPS charging decision.

4.16 During our court observations we noted 11 cases where either the defence made representations that the defendant should receive a pre-court disposal or the prosecutor determined that it was appropriate at the initial review stage. Four were agreed and one refused on the spot, and six adjourned for consideration. Nine of the ten cases where a pre-court disposal was agreed or adjourned for consideration were police charged. Over 80% of YOT manager respondents said the arrangements were effective in these circumstances, although their comments indicated that the frequency with which this happens varies across the country.

¹¹ S65 (1) (c) and see Re F 2003 EWHC 3266.

¹² But the youth must admit the offence to an *authorised* person, which can be done at the time the YCC is issued: S65 (as amended) and 66 Crime and Disorder Act 1998.

4.17 In some police charged low level disorder cases observed (for example begging) the youth was never interviewed, had no opportunity to admit the offence and could not therefore be considered for a reprimand or final warning at the charging stage. Interviewees at some court centres confirmed that this was a common occurrence and where the youth indicated they admitted the offence cases would often be adjourned for a pre-court disposal.

4.18 The more problematic scenario was where the youth had been interviewed but made no comment and then indicated at court that they admitted the offence. Defence representatives said that youths may make no comment for many reasons, not necessarily to frustrate the investigation of the offence. The CPS policy guidance,¹³ which follows the judgment in the leading case authority,¹⁴ indicates that where this occurs only in exceptional circumstances should a reprimand or final warning be offered.

4.19 Our observations indicated the policy was not being consistently applied by prosecutors. Some prosecutors were willing to offer a reprimand or final warning and police representatives at some court centres confirmed that they would look objectively at what was in the best interest of the youth.

4.20 Much can depend on the approach taken by the local police YOT officer, some decline to administer a pre-court disposal saying that the defendant has missed their chance (an approach validated by the Administrative Court) whilst others will exercise their discretion and administer a reprimand or final warning.

4.21 CPS policy guidance reflects accurately the law as it currently stands and therefore compliance with that policy should be reinforced until such time as the structure of pre-court disposals for youths is amended by Parliament.

Priority recommendation

The CPS should reinforce to prosecutors that the legal guidance on administering a reprimand or final warning should be applied consistently.

4.22 We recognise that this will result in a change in local practices at some court centres and therefore the requirement to follow this guidance, which flows from the “no comment” interview, should be communicated to local defence representatives and HM Courts and Tribunals Service. However, the reinforcement of the need for consistency should reduce the number of ineffective hearings and enable more cases to be dealt with at the first hearing.

¹³ www.cps.gov.uk/legal/v_to_z/youth_offenders/#a10

¹⁴ Re F 2003 EWHC 3266.

Decision-making in cases involving looked after children

4.23 The CPS has specific policy guidance on the factors to be considered when deciding the appropriate disposal for a looked after child.¹⁵ This guidance is comprehensive setting down the background information that should be sought and the additional issues that should be considered by any prosecutor reviewing a case involving a youth suspected of committing an offence within a children's home. This is to ensure that looked after children are not criminalised unnecessarily for behaviour which would not be subject to formal intervention if it took place in a familial context.

4.24 A number of interviewees expressed concern at the number of cases involving looked after children that were being brought inappropriately before the court. It was not possible to identify whether these were police or CPS charged cases.

4.25 Our overall file sample included nine cases where we could determine with certainty that the child was looked after. The CPS policy was applied correctly in four of the six (66.7%) where there was sufficient information on the file to enable us to make an assessment. Although only a small sample it provides some support for the comments we received. Additionally, CPS Area Youth Justice Co-ordinators identified the failure to follow the guidance as an issue at the charging stage. At one court centre we visited the Co-ordinator had concerns about whether the policy was being applied correctly at the charging stage. They

had introduced a local practice requiring that all cases that came within the looked after children policy were referred to them at that stage to quality assure the pre-charge decision.

4.26 The policy does not currently apply to children who commit offences in foster care homes. Many of the issues identified in the guidance are also pertinent to children in this position. There was one such case in our file sample and YOT representatives considered that children in foster care were also being inappropriately dealt with through the court system.

4.27 In this context there is a potential tension between the looked after children guidance and the CPS domestic violence policy. Most offences committed by a youth in a foster care home will meet the criteria of the CPS domestic violence policy which states that there will almost always be a prosecution if there is sufficient evidence. However, a requirement to consider the looked after children guidance as part of the decision-making process would ensure the welfare interests of the child were considered without fettering the application of the domestic violence policy.

Priority recommendation

The CPS should, in consultation with its stakeholders, review its policy guidance on looked after children to consider whether those in foster care should be included; and reinforce the need to ensure the current guidance is followed at the pre-charge decision stage.

¹⁵ The guidance relates specifically to offences committed by children in the children's home in which they live although the principles can apply to other offending outside this context.



5 Determining venue

5.1 In the most serious cases the Youth Court must determine whether the youth should remain there or be dealt with at the Crown Court.¹⁶ This is known as the grave crime determination and is based on whether, taking the prosecution case at its highest, a sentence substantially in excess of that which could be imposed by the Youth Court is a realistic possibility.¹⁷

5.2 Whilst the grave crime determination is a judicial function, it is essential that the court is aware of all the relevant factors to enable them to make a fully informed decision. If they are not fully informed the youth might be committed unnecessarily to the Crown Court which could cause unnecessary delay or be kept in the Youth Court where the sentencing powers might be inadequate. There are only very limited circumstances where a youth can be subsequently committed to the Crown Court for sentence.

The quality of grave crime representations

5.3 The quality of the representations made by prosecutors to the court was assessed together with the guidance provided to them on the MG3.

5.4 We observed prosecutors making grave crime representations in respect of 21 youths for a range of offences including rape and robbery. In all but one the court agreed with the prosecutor's representations as to what was the most appropriate venue.

5.5 Two representations, which were assessed as excellent, set out all of the relevant factors, referred the court to the relevant Sentencing Council Guidelines and relevant case law. Three were assessed as good, 14 as fair and two as poor. Almost all prosecutors referred to the aggravating features of the case, but less than half referred to relevant previous convictions. This may reflect a lack of Youth Court experience as previous convictions are not a relevant factor for adult defendants at the similar stage. Fewer than half the representations referred to the relevant Guidelines and magistrates confirmed they looked to the court legal adviser to guide them on this aspect.

5.6 Only 41.2% of the Area Youth Justice Co-ordinators who responded to the survey question indicated that there had been any local training on how to make grave crime representations, although some commented that prosecutors would have received training as part of the youth specialist course.

5.7 At all the court centres visited prosecutors said that they frequently have very little time in which to prepare their cases and often received inadequate assistance from the guidance provided on the MG3.¹⁸ None of the MG3s examined during our court observations was assessed as good, and just under half were poor. We were shown examples by prosecutors, and found similar in our file sample, where the only endorsement was "NSST",¹⁹ which suggests strongly that the charging lawyer had no understanding of Youth Court procedures.

16 This includes all cases which would have to be dealt with at the Crown Court if the defendant was an adult and the more serious either way offences, for example sexual assaults and dwelling house burglaries.

17 There are slight variations in the test to be applied for 10 and 11 year olds and 12-14 year old non-persistent offenders in respect of whom a custodial sentence would not normally be imposed.

18 Only nine of the 34 advocates we observed were able to prepare their cases the day before the hearing.

19 This means "Not suitable for summary trial" and is shorthand used in adult cases.

Overall, only 21 of the 79 relevant MG3s (26.6%) in our file sample referred correctly to all the relevant grave crime criteria.

Priority recommendation

The MG3 (record of charging decision) should, in every case where a grave crime determination must be made, set out clearly all the relevant factors to enable the prosecutor at court to make effective representations.

5.8 The importance of correctly determining venue in cases of rape or other serious sexual assaults is emphasised by the protocol on sexual offences in the Youth Court issued in March 2010 by the Senior Presiding Judge for England and Wales. The protocol gives guidance on the arrangements for authorised District Judges to determine venue and where jurisdiction is retained to try cases that fall within the terms of the protocol.

5.9 Some authorised District Judges were critical of the quality of grave crime representations in cases involving this type of allegation, saying that some prosecutors appeared unprepared and unaware of relevant case law.²⁰ The reduction in Youth Court sessions is likely to increase the risk that these cases will appear in the magistrates' court where prosecutors may not have the appropriate training.

5.10 Whilst we saw some very good representations in these types of case, we also observed one where the court disagreed with the prosecutor's representations.

Good practice

In CPS North East a pro-forma is used in cases involving allegations of sexual offending which requires all the relevant factors to be set out, including pertinent case law, to assist the prosecutor at court.

5.11 The grave crime determination is susceptible to judicial review²¹ and it is therefore important that a full record is made of the factors that the court takes into account when making its decision (particularly in cases involving allegations of sexual offending). This aspect needs to improve substantially; only 28.6% of relevant files contained an adequate endorsement of the prosecutor's representations, falling to 7.1% which recorded the defence representations. Only a third contained any reference to what the court said when making its determination.

Recommendation

The CPS file should be endorsed with the prosecution and defence representations and the court's determination at the grave crime hearing, particularly in cases involving allegations of sexual offending.

5.12 Overall only three of the youths who went to the Crown Court received a sentence in excess of what could have been given by the Youth Court. However, this does not suggest that prosecutors are making incorrect representations as the Youth Court has to consider the case, from the prosecution perspective, at its highest.

²⁰ These District Judge also heard cases at other court centres and their comments were of a general nature.

²¹ See, for example CPS and Newcastle upon Tyne Youth Court 2010 EWHC 2773.

The quality of remand applications

5.13 The deprivation of the liberty of an un-convicted defendant must be considered carefully in all cases, but particularly so when the defendant is a child and may be particularly vulnerable. We considered whether prosecutors were making applications only in appropriate cases, the quality of those applications and the effectiveness of the exchange of information at court between prosecutors and YOT staff.

5.14 We observed 12 applications to remand youths aged 10 to 16 into the care of the local authority, all of which included consideration of whether there should be a security requirement. We also observed a further 22 applications to remand youths aged 17 into custody.

5.15 Overall our findings from these observations are encouraging, and are supported by the comments we received from representatives of other criminal justice agencies who considered applications were almost always appropriate and reflected a good and realistic working relationship between prosecutors and YOT staff. Prosecutors are having proper regard to the welfare principles of the youth justice system, while ensuring that applications are made properly when required by the nature and circumstances of the offending or the offender.

5.16 The law relating to youths under 17 is complex and the courts' powers vary depending on the age and sex of the youth and the nature of the offence. Youths aged 17 are dealt with under the same provisions of the Bail Act 1976 that apply to adults.

5.17 Thirty three of the 34 remand applications (97.1%) observed were correct having regard to these factors and the

provisions of the Bail Act 1976. However, in only half the applications for youths under 17 did the prosecutor assist the court in respect of the factors to be considered in making a security requirement. Assessing whether there is a requirement to remand a youth into secure accommodation, as opposed to general local authority care, is necessary in appropriate cases for the protection of the youth and the public.

5.18 Prosecutors considered that in some cases (particularly where the threshold test was applied at the charging stage) the MG3 should give instructions to apply to remand the youth into custody when the relevant legal criteria for a remand application were not met.

5.19 Just over half of the MG3s we examined at court provided the prosecutor with some guidance about the factors to be considered in the particular case when making the remand application. Overall we assessed 42.9% as good, and the remainder as fair or poor.

5.20 The prosecutor's application was assessed as good or better in 52.7% of the cases observed where the youth was under 17, but only a third of cases in relation to youths aged 17 met this standard. Prosecutors gave better care and attention to the more complex applications.

5.21 The CPS national training package includes useful flow chart guidance to prosecutors, which sets out clearly the relevant steps to be followed in remand applications. At Liverpool Youth Court prosecutors always had these charts to hand.

Good practice

Use by prosecutors in Liverpool Youth Court of the CPS remand flow chart guidance.

5.22 Often YOT staff at court will have background information on offenders and can provide bail support packages which can assist the prosecutor in determining the nature of the application. YOT staff indicated that prosecutors were receptive to these packages and that there was a constructive relationship between them on this aspect. Over two thirds of YOT managers in our survey indicated that prosecutors sought relevant information from YOT staff all or most of the time, but comments indicated that this process was not as effective when the youth had to appear in an adult court because there was no Youth Court sitting.

5.23 One YOT manager said: *“This works well as a partnership as YOT court officers actively seek out the CPS lawyer to discuss the case before seeing the young person in the cells.”*

5.24 There were 18 cases in our finalised file sample where the youth was remanded at some stage during the proceedings.²² Whilst all of the applications were made correctly having regard to the criteria relevant to the age and sex of the youth and the nature of the offence, only half of the files recorded adequately the detail of the first and any subsequent remand hearings (including in relevant cases whether the security requirement was met) and only just over a quarter recorded whether information had been received from the YOT. However some of the other cases did contain detail of the YOT bail support package.

²² Five related to cases where the youth was remanded after breaching the conditions of their bail.

6 Youths and adults

6.1 It is important that cases involving youths are dealt with as quickly as possible. Where they are jointly charged with an adult the proceedings can unavoidably take longer, but prosecutors can contribute to mitigating this by ensuring the court has sufficient information to determine the correct approach.

6.2 As set out in the previous chapter it is only in the most serious cases that a Youth Court will determine that a youth charged alone or with other youths should be dealt with at the Crown Court. However, the position is very different if the youth is jointly charged with an adult. In those circumstances the case must be dealt with initially by the magistrates' court²³ regardless of the seriousness.

6.3 If the offence is one which, for the adult, must be dealt with in the Crown Court (indictable only) or can be (an either way offence), the magistrates' court must decide how the youth should be dealt with. In each scenario if a youth is charged jointly with an adult then the magistrates' court must decide if it is in the interests of justice for the youth also to be dealt with at the Crown Court.²⁴

6.4 The review considered how prosecutors approached these scenarios and the representations they made to enable the court to make an informed decision on the appropriate venue for the youth having regard to the welfare of the child and the interests of justice.

6.5 We examined 62 cases where one or more youths were jointly charged with an adult. In 11 of those cases we found that the case against the youth was delayed because of the link to the adult for example, to sort out the adult's Legal Aid, or because the adult had been bailed to a different date. In only four was there any evidence that the case was expedited at any stage because a youth was involved.

Indictable only cases

6.6 In 20% of the cases the youth and adult were not linked correctly at the first hearing. Prosecutors told us that they had encountered instances when the youth had been charged and wrongly placed before a Youth Court causing difficulty linking them with the adult. Whilst we did not encounter any such cases in our file sample or during our site visit, the fact that instances were reported to us by prosecutors emphasises the importance of clear guidance being given by the charging lawyer to the police in respect of the issue of the appropriate court for the first appearance.

6.7 Our examination of MG3s during our court observations and as part of our file examination showed a very mixed picture. Some MG3s indicated that prosecutors were getting little guidance on the representations to make to the court about the approach to be considered in respect of the youth. One example stated merely "NSST Powers insufficient", with no guidance on whether the youth could be severed from the adult if they indicated that they were admitting the offence. However, others provided clear guidance.

²³ The position is different if the youth is not jointly charged but faces an allegation arising out of the same circumstances; in that case it is not mandatory for the youth to be dealt with in the magistrates' court.

²⁴ S51(5) Crime and Disorder Act 1998.

6.8 In 22 of the 29 cases (75.9%) the court directed that the youth should go to the Crown Court with the adult. Only nine of the files were endorsed to indicate whether there had been any consideration of the interests of justice in directing that the youth should also go to the Crown Court. In five cases the proceedings were discontinued at the Crown Court, but of the remaining 17 only two of the youths received a sentence that was outside the Youth Court's powers.

Either way offences

6.9 In 42 cases the youth was in the magistrates' court because of involvement with an adult in an indictable offence. In the majority of these cases there was a joint charge. In 18 of the 42 cases the youth was committed to the Crown Court for trial with the adult, either because the magistrates' court declined jurisdiction or the adult elected trial at the Crown Court. In two of the 18 cases inspectors considered, on the information available, that the interests of justice were not best met by the youth going to the Crown Court.

6.10 A primary reason for directing that youths should go to the Crown Court with the adult is to avoid two trials and the necessity for witnesses to give evidence twice. However we found that practices varied considerably at the sites we visited. This ranged from a perception by prosecutors that the magistrates' court would always direct that the youth follow the adult to the Crown Court to a belief that the court would always sever the youth and remit them to the Youth Court regardless of the likely plea. Our observations indicated that where the youth indicated a guilty plea it was likely that the magistrates' court would sever and remit them to the Youth Court.

The Crown Court

6.11 Once the youth is at the Crown Court there can be delay if they admit their guilt but have to await sentence pending the trial of the adult. Defence representatives indicated that this was a common occurrence. The position is also problematic where the adult admits the offence (or the proceedings against them are discontinued) but the youth denies the offence. In these circumstances recent judicial authority has confirmed that the Crown Court has no power to remit the youth to the Youth Court for trial.²⁵ Therefore, without a change in legislation, the youth must be tried in the Crown Court even though the reason for them being there no longer exists.²⁶

6.12 In 14 of the 40 cases in our file sample where the youth went to the Crown Court (either as a result of a grave crime determination or because they were jointly charged with an adult), the youth was remitted to the Youth Court by the Crown Court. In 11 of the cases the remittal was for sentence and in three purportedly for trial (the cases examined pre-dated the relevant judicial decision). Any remittal will increase the time taken to finalise the case, which is not necessarily in the best welfare interests of the youth.

6.13 YOT officers considered that the Crown Court was reluctant to sentence youths because they were not sufficiently informed of their sentencing powers. At one site the YOT had assigned someone permanently to the Crown Court which appeared to be contributing to a reduction in the number of remittals. Prosecutors in the Crown Court can also assist the court by setting out clearly the sentencing options.

²⁵ R (W a minor) v Leeds Crown Court 2011 EWHC 2326 (Admin).

²⁶ Unless the offence would have been a grave crime if the youth alone had been charged.

7 Improving performance

7.1 In this section we consider how the CPS can address the issues we have identified during the course of this thematic review. Whilst the quality of decision-making at the key stages is satisfactory, and in some aspects good, there are underlying quality issues, for example prosecutors identify correctly the appropriate venue as part of the grave crime determination, but do not provide the court with adequate information to justify the initial assertion.

The record of the charging decision (MG3)

7.2 A common finding throughout this report is that whilst decision-making is generally correct, it is not supported by sufficient information on the MG3 which contributes to the view expressed by a number of interviewees that prosecutors appeared unprepared. Many of the MG3s we saw during our court observations and file examinations demonstrated clearly that charging lawyers were either not putting their minds to the relevant factors in respect of youths or were simply unaware of what needed to be considered.

7.3 The MG3 as currently designed provides insufficient youth prompts for prosecutors, for example the section headed “Mode of trial” contains no prompts to the charging lawyer to assist in setting out the relevant grave crime criteria, nor does the “Public interest” section prompt any reference to the ACPO gravity matrix. The CPS Direct standard Sentencing Council Guideline paragraph provides only limited assistance to the prosecutor at court.

7.4 We considered whether this issue would be best addressed by a bespoke MG3 for youth cases, but recognised that this could cause difficulty, especially when the case involves youths and adults. The practical approach, which should lead to improvement, is to provide all charging lawyers with a series of appropriate youth prompts to ensure they correctly address all relevant youth issues. This will assist prosecutors at court in dealing effectively with key aspects at the first hearing, thereby reducing the number of unnecessary hearings.

Priority recommendation

The CPS develop a series of prompts to ensure charging lawyers address correctly all relevant youth issues.

Monitoring performance

7.5 We comment in the section on AYJCs that they undertake very little monitoring of the quality of youth offender casework. Over 70% of the Co-ordinators who responded to our survey indicated that any assessment of quality was carried out through the Core Quality Standards Monitoring (CQSM) process.²⁷ This process has no requirement that youth cases are included and other work²⁸ currently being undertaken by HMCPSI suggests that only approximately 14% of cases selected under the CQSM process include a youth offender, ranging from 0% to 27% in the files reviewed from 25 CPS units.

²⁷ At the time of this review HMCPSI were carrying out an inspection of the effectiveness of this process to monitor the quality of casework, the findings from which will be published.

²⁸ Data provided from an ongoing assessment of the robustness of CPS CQSM processes.

7.6 Areas have considerable discretion in the cases they select to be included in the CQSM process, and it can be targeted on an ad hoc basis on specific case types, for example domestic violence, to enable an assessment of performance in respect of a particular aspect of casework. However we found that there is very limited structured assessment of the quality of youth offender casework.

Recommendation

Youth offender casework is included by CPS Areas as part of their Core Quality Standards Monitoring either as a continuing part of the monthly selection of cases or on an ad hoc basis.

7.7 Less than 20% of AYJCs indicated that they carried out any analysis of youth cases which go to the Crown Court under the grave crime procedure.

The provision of training

7.8 At each of the sites visited there was a concern that the provision of training had reduced. Difficulties in arranging courses or finding time to release prosecutors were identified as key reasons. Bench Chairs and HM Courts and Tribunals Service's representatives expressed a view that some prosecutors were very competent but others did not appear to have the necessary experience to deal with Youth Court law and procedure. This was attributed in part to the disbanding of specialist youth teams.

7.9 The CPS provides very detailed guidance on Youth Court law and procedure and it was apparent from our observations that regular Youth Court prosecutors kept this reference material. However, the reduction in Youth Courts generally will result in more youths appearing initially in the magistrates' courts, which increases the risk that the prosecutor will not have the necessary experience.

7.10 The CPS Prosecution College²⁹ does not have any youth specific modules which would enable all prosecutors to obtain a general knowledge of Youth Court law and procedure. We also recognise that it is difficult for Areas to release staff for significant periods of time to receive face to face training, but in the light of our findings we consider that all prosecutors should be expected to have a basic understanding of Youth Court law and procedure.

Priority recommendation

The CPS ensures all prosecutors have a basic understanding of Youth Court law and procedure.

²⁹ The College is an online tool which provides training to prosecutors and other CPS staff on a range of topics.

8 The prevention of re-offending

8.1 Section 37 (1) of the Crime and Disorder Act 1998 states that:

“It shall be the principal aim of the youth justice system to prevent offending by children and young persons.”

In the course of this review we have assessed the effectiveness of the CPS contribution to this aim in the context of those aspects of the system which, through its decision-making, it can influence.

8.2 Overall, at the highest level, the findings are encouraging. Prosecutors are correctly diverting young people from court or determining that there is insufficient evidence for any sanction. In our pre-court disposal file sample the evidential stage of the Code was applied correctly in 96.5% of cases and the public interest test in 95.5%. Performance dropped slightly in respect of cases where the direction was to charge, but was higher than found in recent Area inspections (where most files involve adult offenders). Our court observations also indicated that prosecutors are alert to cases where the police may have inappropriately charged youths who should have been given a pre-court disposal.

8.3 Prosecutors are circumspect when deciding whether an application should be made before conviction to restrict the liberty of young people, particularly where this would involve confinement in secure accommodation. There was only one case observed where inspectors considered a remand application was made inappropriately. This was reinforced by the good working relationship with Youth Offending Team staff in court, and a willingness to be guided by the support that the YOT could

give to the youth to prevent the need for them to be deprived of their liberty. However, where it was clear that there was no other option but to apply to remand the youth for either their welfare or the protection of the public we found that applications were made appropriately.

8.4 In the most serious cases prosecutors are representing correctly whether the youth should remain in the Youth Court or go to the Crown Court because the likely punishment is greater than that which the Youth Court can impose. There were only two cases in the course of our observations and our file examination where we considered the representation was incorrect. However, more thought needs to be given to where the youth should be dealt with in those cases where they are jointly charged with adults.

8.5 Whilst the high level findings are encouraging, the quality of the aspects we considered needs to improve substantially. In particular far more thought must be given at the charging stage to the quality of the information given to the prosecutor at court to enable them to do their job to a good standard. The increasing pressure on CPS resources and the reduction in the time that prosecutors have to prepare their courts reinforces this need. Nearly three quarters of the prosecutors observed were only able to prepare their files on the day of court. This gives them scant time to research key issues and reinforces the need for good quality MG3s.

8.6 The required improvement in quality at the charging stage needs to be supported by a greater focus on monitoring performance in Youth Court cases and a reappraisal of the level and method of learning for prosecutors. There is no assurance that Core Quality Standards Monitoring (which is the principal mechanism) provides sufficient oversight of Youth Court casework.



9 Conclusion

9.1 The Crown Prosecution Service's contribution to the aim of the youth justice system includes ensuring that young offenders (many of whom are vulnerable children) are only put before the court where an alternative pre-court disposal is inappropriate. Our findings concluded that this is happening correctly in almost all cases, although more care needs to be given in determining the appropriate type of pre-court disposal.

9.2 Care is also being taken to ensure that only where no other option was appropriate are prosecutors applying to deprive young people of their liberty, enhanced by good working relationships with other youth justice partners. Overall, we also concluded that prosecutors were determining correctly the representations to be made when youths were alleged to have committed grave crimes.

9.3 However, in our consideration of all these aspects we found that there were shortfalls in the quality of the work being carried out, both at the time of charge and in court. The CPS has, through a number of factors, lost a lot of its experienced Youth Court prosecutors. Whilst some were clearly very competent, there was a general view expressed at each of the court centres that, although variable, the overall experience levels were declining. This was coupled with more youths now appearing in the magistrates' courts due to a reduction in Youth Court sittings.

9.4 Looking forward, to maintain the quality of Youth Court prosecutions, the CPS needs to ensure as a minimum that **all** prosecutors receive at least a basic grounding in Youth Court law and procedure and that the records of charging decisions involving youths provide the prosecutor at court with high quality information and guidance.



Annexes

A Methodology

The methodology used in this inspection comprised a mix of court observations; interviews with the members of the judiciary and representatives of the CPS and other criminal justice agencies; an examination of finalised CPS files; and a survey of Youth Offending Team managers or their equivalents and CPS Area Youth Justice Co-ordinators. Data from the file examination and the results of the surveys are set out in subsequent annexes.

Court observations

Inspectors visited six metropolitan court centres between 4 and 22 July 2011, namely Liverpool, City of Manchester, Birmingham, Nottingham, Newcastle upon Tyne and West London. Thirty four Youth Court sessions were attended and a limited number of magistrates' court sessions where youths were jointly charged with adults. A total of 79 cases were observed which met one or more aspects of the scope of the review.

Interviews

During the on-site phase formal interviews took place with District Judges; Chairs or Deputy Chairs of Youth Benches; Deputy Justices Clerks; Senior Legal Advisers; managers of Youth Offending Services or Youth Offending Teams; police officers; defence representatives; CPS Area Youth Justice Co-ordinators and CPS prosecutors with responsibility for youth casework. The inspection team also spoke informally with court users during the course of their observations.

Additionally, interviews took place with the Association of Chief Police Officers portfolio holder for Children and Young People Youth Justice, the CPS Policy lead and the lead Chief Crown Prosecutor for youth justice matters.

File examination

A total of 76 finalised files involving youth suspects were examined where the CPS charging advice was either that no further action should be taken or a pre-court disposal was directed.

A further 142 finalised files (where the CPS had directed a charge or the defendant had been charged by the police) were examined, comprising a mix of cases involving youths and youths jointly charged with adults. The sample included cases where the Youth Court directed that the defendant should be tried at the Crown Court, because they made a determination that the alleged offence was a grave crime and magistrates' court cases where the youth was jointly charged with an adult including those sent or committed for trial to the Crown Court with the adult defendant.

Surveys

Youth Offending Team managers or their equivalent and CPS Area Youth Justice Co-ordinators were asked to complete electronic questionnaires on key aspects of the review.³⁰ Responses were received from 71 YOT managers and 21 CPS AYJCS.

³⁰ Excluding those who were seen during the on-site phase.

B Local representatives of criminal justice agencies and organisations who assisted the inspection

Birmingham

Magistrates' courts

District Judge McGarva
Mr K Duce JP, Chair of Youth Panel
Ms S Vaughan JP

Youth Offending Service

Ms A Ballantyne, Court Team Manager
Ms L Fox, Deputy Court Team Manager
Ms D Keight, Deputy Manager, North YOT

Police

Inspector J Hobday,
Prosecutions Policy and Partnerships Lead

City of Manchester

Magistrates' courts

District Judge Hadfield
Mrs C Greene JP, Vice Chair of Youth Panel

Youth Offending Service

Ms M McLaughlin, Deputy Head of Service
Ms D Johnson

Police

Superintendent S Barton

Liverpool

Magistrates' courts

District Judge Abelson
Mrs D Morton JP, Chair of Youth Panel

Youth Offending Service

Ms C Griffiths, Manager - Head of Service

Police

Inspector K Foulkes, Youth Portfolio
Ms S McTaggart, Policy & Reform Manager
Mr J McDermott, Business Manager

Newcastle

Magistrates' courts

District Judge Earl
Mrs S Noutch JP, Chair of Youth Panel
Mr C Robinson JP, Deputy Chair of Youth Panel

Youth Offending Service

Mr P Brownlee, YOS Manager
Mr D Parks, YOT Team Manager

Police

Mr D Heslop, Criminal Justice Department

Nottingham

Magistrates' courts

District Judge Cooper
District Judge Devas
District Judge Stobart
Ms S Summers JP, Chair of Youth Panel
Mr R Pickard, Deputy Justices Clerk
Ms G Young, Legal Adviser

Youth Offending Team

Ms S Nicholls, Head of YOT

Police

Chief Superintendent S Nickless
Ms J Dean

Defence solicitors

Mr M Best

West London

Magistrates' courts

District Judge Miller

District Judge Simpson

Ms A Featherstone-Haugh JP,

Chair of Youth Panel

Youth Offending Service

Ms J Hunt, Westminster

Ms E Weldon, Kensington and Chelsea

Mr L Wright, Hammersmith and Fulham

Police

Acting Chief Inspector R Williams

Chief Inspector D Tait

Chief Inspector M Tate

British Transport Police

Temporary Detective Chief Inspector K Forsyth

Ms S Yeom-Jones

Association of Chief Police Officers

Assistant Chief Constable K Wilkins

The inspection team also spoke informally at court with HM Courts and Tribunals Service staff, YOT staff and defence representatives.

Questionnaire responses were received from 71 YOT managers.

C Analysis of Youth Court observations

General questions³¹				
		Same day	Day before	More than one day before
When the advocate first got to see and prepare the list (excluding overnight files)		73.5%	26.5%	0.0%
	More than 45 mins	45 to 30 mins	30 to 15 mins	Less than 15 mins
How long before the start of court the advocate was available for discussions with other court users	8.8%	20.6%	35.3%	35.3%
	Extensive	Adequate	Reactive only	Poor or none
The quality of the advocate's liaison with YOT staff	6.1%	51.5%	36.4%	6.1%
Grave crime				
The aggravating features of the case were set out clearly by the prosecutor	19 out of 21 (90.5%)			
There was sufficient reference to the defendant's age	12 out of 24 (50.0%)			
The prosecutor made appropriate reference to previous convictions	9 out of 21 (42.9%)			
The prosecutor referred to any sentencing guidelines	7 out of 23 (30.4%)			
In the case of a defendant aged 12-14, there was reference to his/her persistence	0 out of 1 (0.0%)			
There was guidance on the MG3 to assist the advocate with the grave crime application	19 out of 27 (70.4%)			
	Excellent	Good	Fair	Poor
Assessment of the quality of the guidance given on the MG3	0.0%	0.0%	60.9%	39.1%
Assessment of the overall quality of the grave crime representations made by the prosecutor	9.5%	14.3%	66.7%	9.5%

³¹ Based on the observation of 34 court sessions - not all aspects were present in every case observed.

Remands				
The correct remand application was made	33 out of 34 (97.1%)			
The prosecutor assisted the court on the secure accommodation requirements	6 out of 12 (50.0%)			
There was appropriate liaison with the YOT before the remand applications	21 out of 36 (58.3%)			
The YOT provided information to the prosecutor which assisted with the application	14 out of 31 (45.2%)			
There was guidance on the MG3 to assist the prosecutor with the remand application	13 out of 25 (52.0%)			
	Excellent	Good	Fair	Poor
Assessment of the quality of the guidance given on the MG3	0.0%	42.9%	50.0%	7.1%
Assessment of the quality of the remand application (defendants aged under 17)	5.3%	47.4%	31.6%	15.7%
Assessment of the quality of the remand application (defendants aged 17)	0.0%	33.3%	66.7%	0.0%
Representations for out of court disposal³²				
Number of defendants where representation made for a pre-court disposal	10 out of 79 (12.7%)			
	Agreed representations	Refused representations	Adjourned to consider	
The prosecutors response to defence representations	40.0%	10.0%	50.0%	
	Police	CPS Daytime Direct	CPS Direct	CPS (face to face)
Original charging decision made by	90.0%	0.0%	10.0%	0.0%
Number of cases observed which adjourned at any stage for an out of court disposal to be administered	7	N/A	-	-
	1	2	3	4+
Number of adjournments in cases previously adjourned for an out of court disposal	75.0%	0.0%	25.0%	0.0%

³² Ten cases.

D Key findings from the analysis of the pre-court disposal file sample

The age of the youth at the charging stage		
Age	No of cases	%
10	0	0.0
11	0	0.0
12	3	5.3
13	5	8.8
14	13	22.8
15	10	17.5
16	10	17.5
17	16	28.1
The final charging decision		
	No of cases	%
Reprimand	8	14.0
Final warning	11	19.3
Conditional caution	0	0.0
No further action	38	66.7
Did the police provide sufficient material for a properly informed decision to be made	56 out of 57	98.2
Was the evidential stage of the full Code test applied correctly at the pre-charge decision stage	55 out of 57	96.5
Was the public interest stage of the full Code test applied correctly at the pre-charge decision stage	21 out of 22	95.5
Did the MG ₃ refer to the ACPO gravity matrix	4 out of 5	80.0
Was the ACPO gravity matrix applied correctly	5 out of 5	100
Did the action plan meet the required standard	2 out of 3	66.7
Was the youth looked after	2 out of 46	4.3
Were the CPS policy guidelines on looked after children followed	2 out of 2	100

E Key findings from the analysis of the finalised file sample

	No of cases	%
General		
The youth was jointly charged with an adult	62 out of 132 ³³	47.0
<i>The age of the youth at first appearance</i>		
10	0	0.0
11	0	0.0
12	3	1.9
13	5	3.1
14	17	10.6
15	16	10.0
16	54	33.8
17	65	40.6
The youth was a looked after child	7 out of 150 ³⁴	4.7
Charging decision		
<i>The final charging decision</i>		
Final warning	1	0.7
Charge	127	86.4
Conditional caution	19	12.9
At the pre-charge decision stage, the evidential stage of the full Code test was applied correctly	127 out of 135	94.1
At the pre-charge decision stage, the public interest stage of the full Code test was applied correctly	120 out of 128	93.8
The CPS policy guidelines on looked after children were followed	2 out of 4	50.0
The ACPO gravity matrix was applied correctly ³⁵	64 out of 71	90.1
The relevant grave crime criteria were referred to in the MG3	21 out of 79	26.6
The relevant remand criteria were set out in the MG3	23 out of 42	54.8
The necessary instructions to the prosecutor at court were set out clearly on the record of charging decision	61 out of 110	55.5

33 Excludes cases dealt with by way of pre-court disposal.

34 Excludes ten cases where the information could not be determined.

35 Whether or not referred to specifically.

	No of cases	%
Youth conditional caution³⁶		
The conditions were relevant to the offending	23 out of 24	95.8%
The conditions were proportionate to the offending	23 out of 25	92.0%
There was compliance with the conditions	17 out of 18	94.4%
Initial review decision (police charge cases)		
The evidential stage of the Code test was applied correctly at initial review	13 out of 14	92.9%
At the initial review, the public interest stage of the Code test was applied correctly	13 out of 13	100%
Post-charge pre-court disposal³⁷		
There were unnecessary hearings awaiting the pre-court disposal	3 out of 10	30.0%
Proceedings were discontinued promptly following pre-court disposal	9 out of 10	90.0%
Grave crime		
The grave crime determination was recorded fully on the CPS file	14 out of 40	35.0%
The file endorsement indicates there was reference to Sentencing Council Guidelines	5 out of 40	12.5%
<i>The grave crime determination was (where ascertainable) at</i>		
First hearing	18	52.9%
Second hearing	13	38.2%
Third or subsequent hearing	3	8.8%
The Crown Court sentence was within the Youth Court range	11 out of 14	78.6%
Remand decisions		
The correct type of remand was requested (youths under 17)	18 out of 18	100%
The detail of the first remand application (including unsuccessful) was endorsed clearly on the file	15 out of 31	48.4%
The detail of subsequent remand hearings was endorsed clearly on the file	14 out of 28	50.0%
The file indicated that the prosecutor had received information from YOT staff	8 out of 27	29.6%
Adult/youth cases		
The adult and youth were linked from the first hearing	33 out of 41	80.5%
The file indicated there was consideration of the provisions of S51 (5) CDA 1998 or S24 MCA 1980	25 out of 28	89.3%
The case proceeded throughout at the Crown Court on indictable only charge(s)	15 out of 22	68.2%
The Crown Court sentence was greater than could be imposed by the Youth Court	2 out of 29	6.9%
The defendant was remitted to the Youth Court	14 out of 34	41.2%

³⁶ Where the information was reliably endorsed on the electronic file.

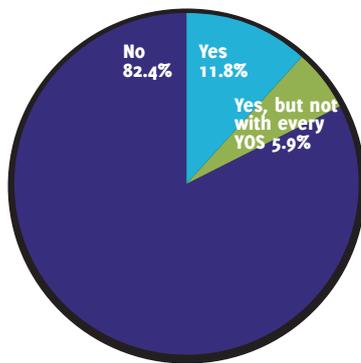
³⁷ All were youth conditional cautions.

F Key findings from the survey of Youth Offending Team Managers and CPS Area Youth Justice Co-ordinators

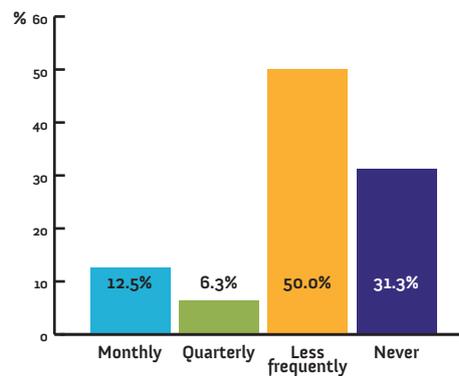
Area Youth Justice Co-ordinators' responses

Liaison

Do you have a formal liaison role with YOS?

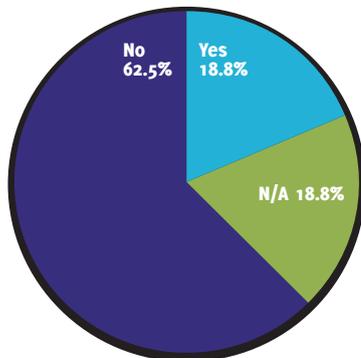


How often do you meet with YOS managers?

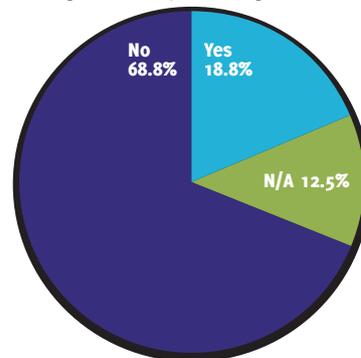


Local community resolution schemes

Did the CPS play any role in designing the scheme?

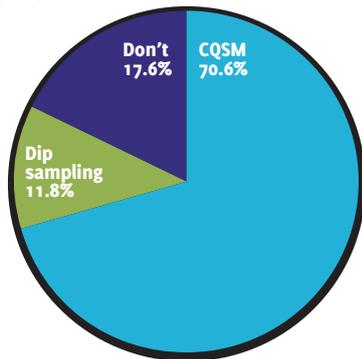


Does the CPS play any role in monitoring/evaluating the scheme (eg sit on any steering committee)?

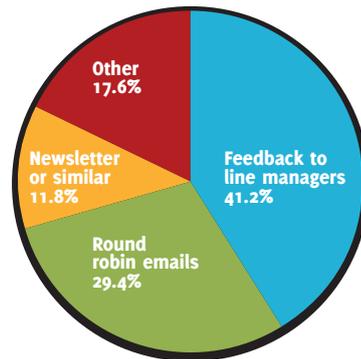


Performance improvement

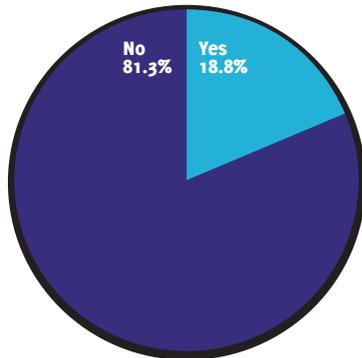
How do you assure youth offender casework handling in your Area/unit?



How are specific lessons to be learned disseminated?

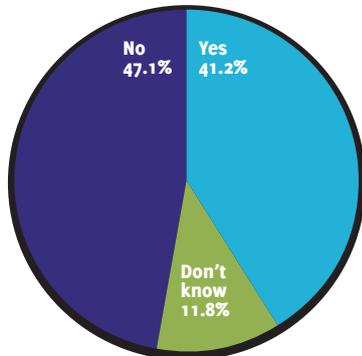


Do you carry out any analysis of youth cases which go to the Crown Court under the grave crime provision?

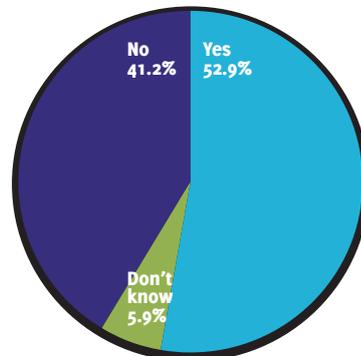


Training

Have prosecutors received any local training on making grave crime representations?



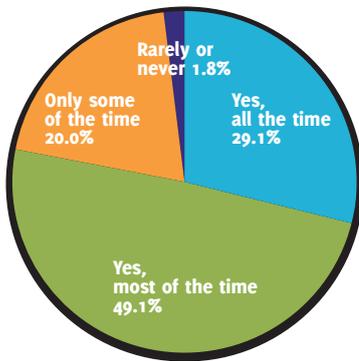
Have prosecutors received any local training on making remand applications for youths?



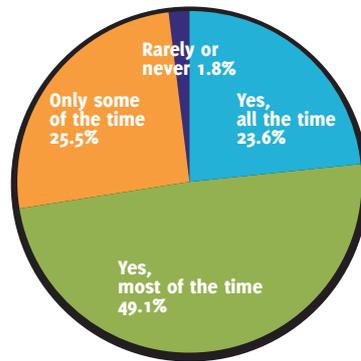
Youth Offending Team managers' responses

Liaison

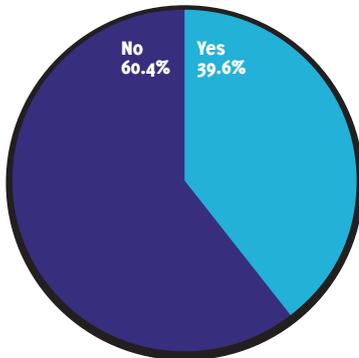
Are prosecution advocates at court in sufficient time for effective liaison with YOS officers and other court users?



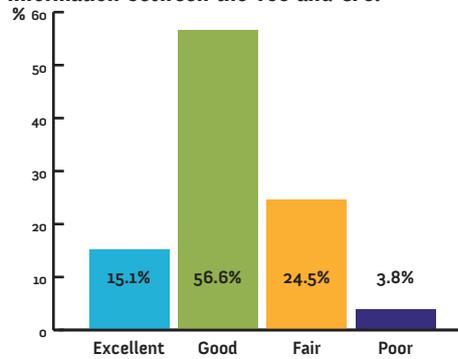
Do prosecutors actively seek information from YOS officers to inform remand applications?



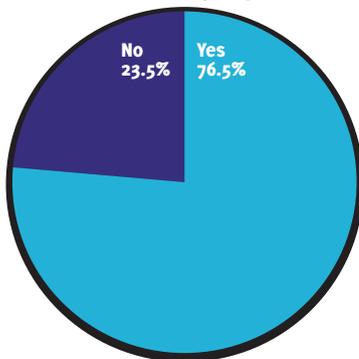
Do you have a single point of contact within the CPS with whom you can liaise?



How effective are the arrangements for the exchange of information between the YOS and CPS?

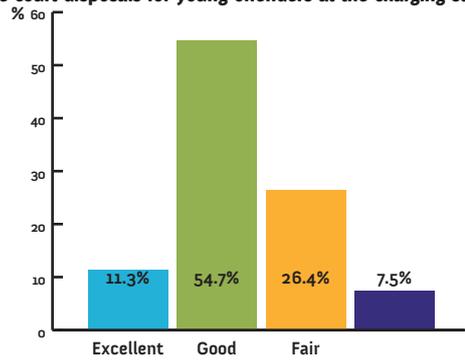


Do you feel that overall liaison arrangements are effective and have lead to any improvement?

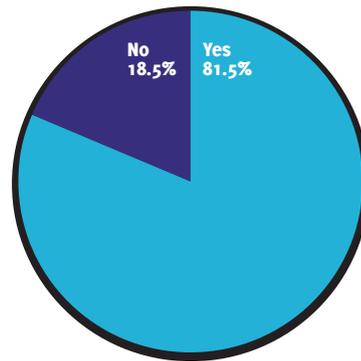


Pre-court disposals

How effective is the use by prosecutors of the full range of pre-court disposals for young offenders at the charging stage?

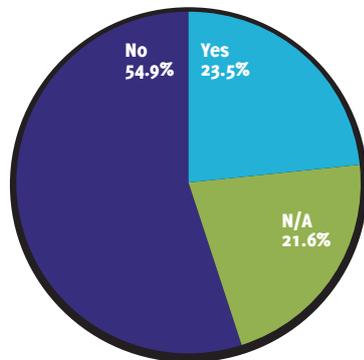


Are there effective arrangements in place for the diversion from court where an out of court disposal would be appropriate?

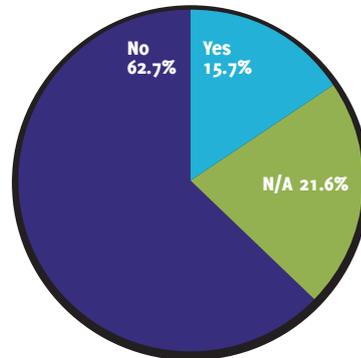


Community resolution schemes

Did the CPS play any role in designing the scheme?



Does the CPS play any role in monitoring/evaluating the scheme (eg sit on any steering committee)?



G Glossary

ACPO

Association of Chief Police Officers.

ACPO gravity matrix

The ACPO gravity matrix sets out generic and specific aggravating and mitigating factors for a wide range of offences to assist police officers and prosecutors in deciding whether a youth is eligible for a pre-court disposal, and if so what type.

Code for Crown Prosecutors (the Code)

The public document that sets out the framework for prosecution decision-making. Crown prosecutors have the Director of Public Prosecutions (DPP's) power to determine cases delegated, but must exercise them in accordance with the Code and its two stage test – the *evidential stage* and the *public interest stage*. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest (see also *threshold test*).

Community resolution

Also referred to as community justice, where the offending is dealt with in the community, with no formal sanction.

Conditional caution

A caution which is given in respect of an offence committed by the offender and which has conditions attached to it (Criminal Justice Act 2003).

CPS Core Quality Standards (CQS)

Standards which set out the quality of service that the public are entitled to expect. The standards reflect legal and professional obligations.

CPS Core Quality Standards Monitoring (CQSM)

A system of monitoring where each Area undertakes an examination of a sample of completed cases to assess compliance against standards.

CPS Direct (CPSD)

This is a scheme to supplement the advice given in Areas to the police and the decision-making as to charge under the charging scheme. Lawyers are available on a single national telephone number out of normal office hours so that advice can be obtained at any time. It is available to all Areas.

Either way offence

An offence which can be dealt with in the magistrates' court or the Crown Court.

Evidential stage

The initial stage under *the Code* test – is there sufficient evidence to provide a realistic prospect of conviction on the evidence?

Final warning

A pre-court disposal which can be given to youths if certain conditions are met. It is only available if the youth has no previous court appearances.

Grave crime

Any indictable only offence and some either way offences where the Youth Court determines that the defendant is likely to receive a custodial sentence substantially in excess of two years and therefore determines the case should be dealt with at the Crown Court.

Indictable only, indictment

Cases which for adults can be heard only at the Crown Court (for example rape, murder, serious assaults). The details of the charge(s) are set out in a formal document called the indictment.

Judicial review

An application to the Administrative Court to challenge the a judicial decision.

Local Criminal Justice Board

The chief officers of police, probation, the courts, and the CPS, a local prison governor and the Youth Offending Team manager in each criminal justice area who are accountable to the National Criminal Justice Board.

Looked after child

A child in the care of the local authority. The CPS looked after children policy relates specifically to children in care homes as opposed to foster care.

MG3

Record of the charging advice given by the CPS.

Mode of trial

The process whereby the magistrates' court determines whether the offence is should dealt with in the magistrates' court or the Crown Court.

NSST

Not suitable for summary trial.

PYO

Persistent Young Offender.

Pre-court disposal

A sanction for offending which does not result in a charge.

Public interest stage

The second stage under *the Code* test - is it in the public interest to prosecute this defendant on this charge?

Remand application

Where the prosecution apply to remand (keep) the youth in custody. Those under 17 must be remanded into the care of the local authority.

Reprimand

An out of court disposal in which the youth is spoken to by the police officer about the offence they have committed and is warned about the consequences of any future offending behaviour.

Restorative Justice

" ...processes which bring those harmed by crime or conflict, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward." (Restorative Justice Council website.)

Review, initial, continuing, summary trial etc

The process whereby a crown prosecutor determines that a case received from the police satisfies and continues to satisfy the legal test for prosecution in *the Code*. One of the most important functions of the CPS.

Section 51 Crime and Disorder Act 1998

A procedure for fast-tracking indictable only cases to the Crown Court, which now deals with such cases from a very early stage – the defendant is sent to the Crown Court by the magistrates.

SST

Suitable for summary trial.

Summary offences

Those triable only in the magistrates' courts, eg most motoring offences, minor public order offences, common assault etc.

Threshold test

The Code for Crown Prosecutors provides that where it is not appropriate to release a defendant on bail after charge, but the evidence to apply the full Code test is not yet available, the threshold test should be applied.

YCC

Youth conditional caution.

Youth Offending Team (YOT)

A multi-agency team which works with youths aged between 10 and 17 years who have offended or are at risk of offending. The team consists of workers seconded from, amongst others, children's services, police, probation and health.

If you ask us, we can provide a synopsis or complete version of this booklet in Braille, large print or in languages other than English.

For information or for more copies of this booklet, please contact our publications team on 020 7210 1197, or go to our website: www.hmcpai.gov.uk

HMCPAI Publication No. CP001:1112

HM Crown Prosecution Service Inspectorate

London Office:

One Kemble Street

London WC2B 4TS

Tel. 020 7210 1187

Fax. 020 7210 1186

York Office:

United House, Piccadilly

York, North Yorkshire, YO1 9PQ

Tel. 01904 54 5490

Fax. 01904 54 5492

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the

Information Policy Team, The National Archives, Kew, London TW9 4DU, or
e-mail: psi@nationalarchives.gsi.gov.uk

This document/publication is also available on our website at www.hmcpsi.gov.uk