

HMCPST INSPECTION OF CPS DIRECT

SCOPING PAPER

A. Introduction

This scoping paper sets out the proposals for an inspection of CPS Direct (CPSD).

A joint HMCPSI/HMIC inspection of the provision of charging decisions was published in May 2015,¹ five years after the previous report on this topic.

At the time of that inspection, most CPS charging decisions were made by CPSD, which had taken over from CPS Areas the responsibility for charging decisions sought by the police between 9am and 5pm on weekdays. CPSD also retained its responsibility for handling police requests for charging decisions between 5pm and 9am on weekdays and throughout the weekends. In short, it had become the 24 hour CPS charging service for the police.

The 2015 inspection scrutinised how well the police and the CPS ensured that quality decisions were made under the system that existed at the time. It concluded that the timeliness and quality of charging decisions needed to improve.

Since then, there have been significant changes to the operation of charging, most notably the staged return of daytime charging (9am to 5pm) to local CPS Areas, with CPSD retaining responsibility for out of hours charging.

As part of the return of daytime charging to Area, a new charging model was introduced. The model introduced a two-tier prioritisation method. Between 9am and 5pm on weekdays, CPS Areas became responsible for handling cases where the suspects were in custody and which required an immediate decision (termed “red” cases) and cases where a suspect was on police bail (termed “green” cases). Outside those hours CPSD has responsibility for red cases.

The 2020 charging inspection

In 2019/20, in the light of the return of daytime charging responsibilities to CPS Areas, HMCPSI carried out an inspection of charging decisions made by prosecutors in the 14 geographical CPS Areas and CPSD. The overriding inspection question asked what level of confidence the public could have in the CPS to deliver high quality, effective, fair and timely charging decisions. In answering this question, HMCPSI looked at a number of aspects of the charging process including:

- Legal decision making
- The level of added legal value and grip
- The standard of case analysis and strategy (including how bad character and hearsay provisions were applied)
- Compliance with CPS policies
- The quality of action plans to the police

¹ HMCPSI and HMIC Joint Inspection of the Provision of Charging Decisions (May 2015)

- The quality of instructions given to CPS court advocates where a case was to be charged.
- The consideration given to issues that related to the service given to complainants, witnesses and the public more generally.

In 2020, HMCPSI published its report. Its high level findings were as follows:

- The public could have confidence that the CPS was making Code compliant decisions to charge or to take no further action.
- The public could have less confidence that those decisions were being adequately thought through, that prosecutors were taking a firm grip of a case at an early stage and that they were adding the necessary legal value.
- There was much room for improvement in respect of the quality of prosecutors' legal analysis, timeliness of decision making and familiarity with both the CPS's own policies and the Director's Guidance on Charging.

Although HMCPSI found variation in levels of performance across the 14 CPS geographical Areas, it also found that the overall quality and timeliness of charging decisions made by CPSD was higher, sometimes significantly so, than those made on Area.

In particular, the report concluded that CPSD prosecutors generally took a more analytical and structured approach to pre-charge decision making. In other words, they were generally adding more legal value than their Area counterparts. HMCPSI commented that this finding reflected not only CPSD prosecutors' specialisation in this type of work but also the CPSD performance management regime, which, unlike those in Areas, was able to focus almost exclusively on the quality and timeliness of pre-charge casework. The inspection also found that CPSD prosecutors were more often correctly applying CPS policies, such as those on domestic abuse and youth offenders, than Area prosecutors. CPSD also performed better than Areas in meeting the requirement to consider and assess the unused material position before charge.

Nevertheless, the report noted that there remained room for improvement in the quality of CPSD charging as well as within Areas.

Area inspection programme

Since the 2020 report was published, HMCPSI has carried out a two phased inspection of each of the 14 geographical CPS Areas. This Area inspection programme was focused on pre- and post-charge casework quality under the twin headings of added value and grip.

The first phase reports for each of the 14 Areas were published on a staged basis in 2021 and 2022, with the second phase report published on 28th January 2025. Therefore, there is much recent evidence on pre-charge (as well as post-charge) casework quality being delivered by CPS Areas, which has enabled HMCPSI to make judgments and findings to identify progress or otherwise since the 2020 charging report.

HMCPSI did not examine CPSD casework as part of the Area inspection programme. There are therefore no recent data or findings to assess how well CPSD is currently performing in respect of its core function, namely the delivery of good quality and timely charging decisions.

Value for money

There are also a number of value for money aspects relevant to casework quality, including:

- failures to apply the Code correctly can result in cases wrongly or prematurely entering the criminal justice system which has a cost and resource implication for the police, the CPS and HMCTS, as well as unnecessarily increasing already large court backlogs.
- failures to apply the Code correctly can result in suspects incorrectly not being charged and, on occasions, there being a duplication of work because of the VRR being invoked by the complainant.
- requests by prosecutors for material which is not necessary to inform the charging decision can build in delay and require unnecessary work by the police.

The proposed inspection

Given all of this, those HMCPSI consulted before drawing up its 2024/5 inspection programme thought that an inspection of the operation of CPS Direct would be timely particularly given the changes that have been made to the operation of CPSD since 2020 and the publication in 2021 of the 6th edition of the DPP's guidance on charging (DG6).

HMCPSI therefore considers it the right time to carry out an inspection to assess the current quality and timeliness of CPSD charging decisions, as well as the internal assurance processes CPSD management has in place to monitor and assess the quality and timeliness of charging decisions.

CPSD's current remit

Notwithstanding the staged return of daytime charging to CPS Areas, some prosecutors who come under the CPSD management umbrella (and who comprise what is known as the Central Prosecution Team - CPT) provide assistance to the Areas in dealing with red and green cases between 9am and 5pm on weekdays. In addition, there are arrangements in place for CPSD out of hours' prosecutors to deal with green charging cases from Areas at times when they have spare capacity.

We understand that these dual arrangements provide the CPS with greater resilience in respect of the delivery of its national charging responsibilities and assist in reducing backlogs on Area.

However, this inspection will focus solely on charging decisions that CPSD has made on cases referred to it by police between 5pm and 9am on weekdays and at any time during the weekend (i.e. red cases). In the light of the recent in-depth inspections carried out in respect of Area casework, this inspection will not examine charging decisions made by the CPT or by CPSD prosecutors assisting Areas with charging backlogs.

B. Inspection Questions

The overarching inspection question is:

Is CPS Direct delivering good quality and timely charging decisions?

Underpinning the overarching question are three sub-questions, namely:

- i. Is CPSD delivering charging decisions that meet the CPS's own expected standards
- ii. Is CPSD's quality assurance regime effective in driving improvement?
- iii. Is CPSD providing timely charging decisions?

C. Objective and aims of the inspection

To provide assurance that CPSD provides police with good quality and timely out of hours charging decisions.

We will also assess the effectiveness of CPSD in respect of its quality assurance processes and its police appeals process, given the changes to the charging model, and revisions to the CPS's case quality standards and charging guidance since the 2020 inspection.

The inspection aims are:

- To assess the quality of CPSD charging decisions (including the extent and effectiveness of action plans and whether the FCT and TT are being applied correctly) against the CPS's case quality standards, including those where CPSD determined no further action.
- To assess the quality and effectiveness of CPSD casework quality assurance processes and its induction and development regime in driving casework quality and timeliness.
- To consider the timeliness of the provision of charging decisions against the joint police/CPS agreed standard.
- To assess the effectiveness of the process by which police can appeal a decision made by a CPSD prosecutor whilst the suspect remains in custody.
- To consider whether CPSD joint performance management arrangements are effective in identifying and feeding back any police non-compliance with the Director's Guidance on Charging and National File Standards to promote continuous improvement in charging arrangements.

D. Methodology

This inspection will focus on the performance of the Crown Prosecution Service and will therefore not involve any other criminal justice inspectorate. The inspection will include several modes of evidence gathering.

It is proposed that a sample of CPSD cases will be examined. The majority will be cases where CPSD has authorised the police to charge a suspect as this is the most common outcome, but the sample will also include cases where CPSD has declined to charge but has instead set the police an action plan to carry out further investigation, and cases where it has directed no further action. It is anticipated that the cases will be examined wholly electronically.

The inspection will also include a review of documentation relevant to the operation of CPSD, its quality assurance processes and the process by which police can appeal a decision whilst

a suspect remains in custody. HMCPSI will also analyse CPSD performance data on quality assurance, timeliness for red cases (including dealing with police appeals) and the Victims' Right to Review scheme.

Interviews and focus groups will also be held with relevant staff from CPSD and National CPS.

The document reading and interviews/focus groups will assist HMCPSI in gathering evidence to answer the inspection question. HMCPSI will use the emerging findings from its file examination and document reading to inform its approach during the interviews and focus groups.

For practical reasons, it is not proposed to carry out any observations of prosecutors delivering charging decisions.

At the end of the inspection activity, a report will be published that sets out HMCPSI's findings and judgments and, if necessary, makes appropriate recommendations designed to identify best or good practice and improve the provision of CPSD charging decisions.

E. File Examination

The file sample will comprise 150 files where the charging decision was made after 1 September 2024.

The sample will be broken down as follows:

- 100 cases where CPSD has made the decision to charge
- 25 cases where CPSD has declined to charge but has set an action plan for police to carry out further investigation.
- 25 cases where CPSD has decided that no further action should be taken.

The CPSD charged file sample will cover casework concluded, or destined to be concluded, in the magistrates' courts and Crown Court. The files selected will cover the full range of criminal offences, including rape and sexual offences.

Relevant questions from the core question set used as the basis for HMCPSI's charging inspection published in 2020 will be used (streamlined and combined where necessary), as well as any additional bespoke questions that are necessary to achieve the aims and objectives of the inspection. The question set is designed to enable HMCPSI to make a meaningful assessment of the current quality and timeliness of CPSD charging decisions.

An external consistency exercise will be held in the early stages of the file examination phase to ensure that inspectors are interpreting the questions in the same way. CPSD will be given the opportunity to attend and participate in this exercise. The lead inspector and an inspector appointed as quality assurance lead will carry out dip sampling during the file examination phase. The dip sample will comprise a minimum of 15 files (10% of the total) in accordance with HMCPSI's inspection methodology.

F. Interviews/focus groups

Subject to availability and overall timetable commitments, it is proposed to conduct CPSD and national interviews in the one-week period beginning Monday 31 March 2025. If it is not practicable to complete all of these within that week, then they can be undertaken shortly before or immediately after this fieldwork phase. HMCPSI will liaise with CPSD to establish the best times to hold the focus groups bearing in mind the working patterns of CPSD

prosecutors, legal managers and business managers. The proposed interviews/focus groups are:

- Interview with DLS lead for CPS charging
- Interview with NPCC charging lead
- Interview with CCP for CPSD
- Interview with ABM for CPSD
- Interview with CPSD performance manager
- Focus group of CPSD legal managers
- Focus group of CPSD charging prosecutors
- Focus group of CPSD business managers
- Interview with the CPS national lead for charging policy

G. Documentation to be requested from CPSD

The following documentation relating to the operation of the CPSD quality assurance will be requested from CPSD for HMCPSI's consideration before the file examination stage of the inspection and before interviews and focus groups with CPSD staff are held.

- The most recent charging aide memoire available to CPSD prosecutors.
- The police/CPSD service level agreement on charging.
- The CPSD/police memorandum of understanding or other document setting out the existing process for police appeals against a decision by CPSD not to charge a suspect
- The charging handbook
- CPSD performance data on timeliness of 'red' charging decisions, timeliness of dealing with police appeals and casework quality assurance for the four preceding quarters.
- The minutes of the last three CPSD casework quality board meetings.
- The minutes of the last three CPSD Area Strategic Board meetings.
- CPSD management reports recording monthly IQA performance since June 2024, including the number of IQAs carried out against the national target.
- The CPSD induction package for prosecutors.
- CPSD data relating to police file quality and police compliance with DG6 for the four preceding quarters; and any associated documents that relate to identifying/addressing police delays or non-compliance with DG6, the Code for Crown Prosecutors, the NFS or CPS action plans.

- Documents relating to the last police ten appeals against a CPSD charging decision in out of hours 'red' cases (the URNs will suffice if CMS contains the relevant documents).

H. Proposed timescales

- 24 January 2025 – Final scope finalised and shared with CPS
- 29 January 2025 – Commissioning letters to CPSD and DLS
- 10 February 2025 – Inspection commences
- Summer 2025 – Publication of report

I. Risks to the project

We appreciate the ongoing burdens on the CPS at the present time and have designed this inspection to be tight and focused. We will endeavour to ensure the impact is mitigated as best as we can.

J. Wellbeing

This inspection may include the review of casework that contains distressing content. Most inspectors involved in this inspection will have previous prosecutorial and/or inspection experience dealing with cases of this nature. All inspectors will be supported throughout the inspection, and we will comply with the HMCPSI internal well-being programme.

K. Equality impact assessment

We will carry out an equality impact assessment in accordance with our methodology before finalising the scope.

L. Future CPSD inspection activity

Once we have published our inspection report, we will consider whether a follow up inspection at some point in the future would be useful for public assurance.