

A scoping study adopting a 'whole-systems' approach to the processing of cases in the Youth Courts

A report by
Vicky Kemp

Legal Services Research Centre

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Youth Court Research Project

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Dr Vicky Kemp

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Study completed in August 2007

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Executive Summary

Introduction

Little is known about the impact of recent changes in the youth justice system on the processing of cases at court, or about the causes of delay and cost increase in the Youth Court. To investigate these issues, the Legal Services Research Centre (LSRC) has collaborated with the University of Cambridge Institute of Criminology in a scoping study of Youth Court cases dealt with in a county in England and Wales, referred to as 'the County'. The purpose of the study has been to provide a 'whole-systems' overview of the operation and efficiency of the County's Youth Courts and to report back to the county's agencies. The study has also enabled researchers to consider the feasibility of a comprehensive, multi-agency follow-up of the processing of Youth Court cases.

It is important to note that the findings in this report are based on empirical research which was undertaken some time ago. The sample of 166 Youth Court cases, for instance, involved cases completed at court during October and November 2005. The county's Youth Courts were observed with the final observations taking place in December 2006. It is recognised that there have been a number of developments since this research was undertaken, particularly implementation of arrangements under the Criminal Justice – 'Simple, Speedy, Summary' initiative. While these new arrangements are to be implemented across all Youth Courts by December 2008, it is nevertheless considered important to publish these findings, not least because of the dearth of research presently available about this key element of the criminal justice process.

This research study also raises a number of issues having implications for inefficiency and delay at a local level. A number of these issues have subsequently been addressed and reference to such changes is made in this report. While this report is critical of some of the processes involved in managing Youth Court cases, it is important to emphasise that practitioners in the Youth Court were seen to be hard-working in what was a particularly challenging environment. The intention of this report is not to criticise those individual efforts but to examine the problems which can arise

within the multi-agency processing of cases, which was seen to be exacerbated through the unintended consequences of some national performance targets.

Reform of the youth justice system in England and Wales has been a Government priority. Delays at court have been reduced, and the Government has succeeded in meeting its pledge to halve the time taken from arrest to sentence for persistent young offenders (PYOs), from 142 to 71 days.¹ This is a national average and a number of areas still take 71 days or longer. More general concerns have been raised about the extent to which minor offences are brought unnecessarily to court. Professor Rod Morgan, the former Chairman of the Youth Justice Board, for example, has been critical of the fact that too many minor offences, which would previously have been dealt with informally or out of court, have instead been, ‘pushed into an overstretched criminal justice system’.² A number of issues arose following the reforms, apart from the speed of processing cases, and these include: the role of the prosecution, the involvement of defence solicitors, the causes of delay, the nature of adjournments, the type of case brought to court and the impact of the reforms on charging practices and managing cases at court.

A ‘whole-systems’ approach was adopted in order to investigate inter-agency interactions. At first a sample of 166 cases concluded in the County’s Youth Courts during late 2005 were systematically analysed using multilevel modelling. The study also included observations in two Youth Courts, an analysis of Youth Offending Team files relating to 120 observed cases, and a series of 16 in-depth interviews with court clerks, Crown Prosecution Service (CPS) staff, and defence solicitors. In addition, we convened two focus groups, each involving three magistrates. These data were analysed using a specialist computer software programme.

The report sets out the main quantitative findings arising out of the 2005 sample of cases. The main causes of inefficiencies and delays are then highlighted. Finally, the implications for policy-makers are explored.

¹ A PYO is defined as a young person aged 10-17 years who has been sentenced by any criminal court on three or more occasions and is subsequently arrested within three years of the previous sentence.

² Such practices have increased the number of children and young people drawn into the youth justice system, with Morgan citing a 26 per cent rise over the past three years (BBC, 2007).

Findings from the 2005 sample of cases

The scoping study included a systematic file review of a sample of 166 Youth Court cases concluded at court in late 2005, using data drawn from police, CPS, HM Courts Service and defence solicitors' files. This is the first time a co-ordinated multi-agency file review has been conducted. Of the 166 cases, 54 per cent concluded in a sentence, 22 per cent were diverted for a reprimand or warning, 15 per cent were discontinued, 5 per cent were committed to the Crown Court and 4 per cent resulted in findings of 'not guilty'. Ninety-two per cent of the sample had legal aid, and 21 different solicitors firms' were involved.³

The main causes of inefficiencies and delay

The findings arising out of the 2005 sample were considered further through observation in court, interviews with practitioners, and an examination of a 2006 sample of cases. Arising from this analysis, the main causes of inefficiencies and delays in the County's Youth Courts were:

- **An adjournment culture.** The vast majority of cases were adjourned at the first hearing. While cases could be adjourned because the CPS had failed to provide some or all of the Advance Information, defence solicitors seemed to make routine applications for adjournments in order to take instructions, implying problems with defence readiness to proceed at the first hearing.
- **Bringing minor offences into court unnecessarily.** The performance target to bring more offences to justice encourages the prosecution to proceed with minor and weak cases. Such practices can increase the criminalisation of children and young people engaged in borderline criminal activity and also the number of offenders who are prosecuted.⁴ Minor offences brought to court can also involve child protection, mental health and/or other welfare issues, even though there seemed to be weak public interest grounds for prosecution. In addition, almost a quarter of cases

³ Of those who were unrepresented in court, most were being dealt with for minor offences which did not meet the 'interests of justice' test.

⁴ With strict limits on the number of pre-court disposals, it is likely that more young people are prosecuted, since adult offenders can receive multiple cautions. Rod Morgan has also criticised this performance target for having particularly perverse consequences by increasing the number of young offenders who are prosecuted and swelling prisoner numbers unnecessarily (BBC, 2007).

prosecuted in the 2005 sample were subsequently withdrawn (i.e. diverted) for either a reprimand or warning.

- **Late production of evidence by the CPS.** If the CPS fail to prove their case by providing the evidence, then defence solicitors are likely to advise defendants to plead 'not guilty' and the case will proceed to trial. There were some cases where the evidence was not produced until the day of the trial and a guilty plea was then entered, and other cases where no evidence was produced and the case was then dismissed at the trial.
- **Delays in plea-negotiations between the CPS and defence solicitors.** Many cases proceed to trial even though 'guilty' pleas to reduced or alternative charges are later accepted by the CPS. With plea and case-management hearings now replacing the PTR, it seems that plea-negotiations between the CPS and defence solicitors often take place at the trial. Such practices have been identified elsewhere.⁵
- **Management of caseloads by defence solicitors.** When at court, defence solicitors had a tendency to represent a number of clients who appeared in both the Adult and Youth Courts. This limits the time available for defence solicitors to take instructions and to consider the prosecution evidence. Such practices not only create the need for adjournments, but can also lead to delays in court if magistrates are kept waiting for solicitors who are dealing with cases in other courts.
- **Changes in the processing of cases at court.** While the performance target to reduce delays has been effective in cases involving PYOs, an emphasis on dealing with cases quickly has had unforeseen outcomes. For example, in cases involving a number of different offences the courts have dealt with offences separately instead of adjourning matters to tie into a single sentencing hearing; thus, shorter case durations are recorded. Separate case reporting nevertheless increases the number of recorded convictions and leads to a rise in the number of young offenders designated

⁵ The plea and case-management hearing is said to involve little more than the fixing of a trial date. Shapland et al.'s (2003) evaluation of the Statutory Time-Limits pilot schemes in the Youth Court also found long delays in the CPS reviewing the evidence. Even in areas with a pre-trial review, 'a real problem' with a late review of files was found, and the most common outcome in 'not guilty' plea cases with a fixed trial date was the CPS offering no evidence.

as PYOs, whose subsequent court appearances tend to be more complicated and expensive. This effect of ‘case-splitting’ can also increase the number of legal aid representation orders granted.

Addressing the main causes of delay and inefficiency

The findings indicate a need for change in the organisational culture of the County’s Youth Courts. The ‘adjournment culture’ needs to be challenged. Where all the evidence relied upon by the CPS is served on the defence at the first hearing, it seems more cases could be dealt with as straightforward guilty pleas. A critical issue concerning delays, however, involves the late delivery of evidence by the CPS, which can lead to offences being contested and then long delays and multiple hearings as the case proceeds to trial. When making decisions to prosecute therefore, it is important for the CPS to be in a position to serve the evidence on the defence solicitors and to meet with them early on in the proceedings to review the evidence and if appropriate, to negotiate pleas in order to avoid the need for trial. With almost 40 per cent of the 2005 cases being diverted or discontinued, a review prior to the first hearing might help to reduce the number of cases brought unnecessarily into court.

Next Steps – wider implications for policy

This research study has identified two key issues. First, it has demonstrated that there are a number of inefficiencies within the youth justice system. The second key issue is the very limited extent to which children and young people drawn into the youth justice system are engaged in the processes, which are intended to prevent offending.

In relation to inefficiency and delay, the findings from this scoping study highlight both numerous systemic inefficiencies within the youth justice system and multiple upward pressures on case volume. Many of the issues have been found in related research.⁶ In addition, a District Judge at a London Youth Court commented in the media on the significant inefficiency he saw across the youth justice system (Hill, 2006). While millions of pounds are being spent within the system, the District Judge argues that it is slow and inefficient and the opportunities for changing it are limited. Certainly, reforms seeking to reduce inefficiency and delay have the potential to achieve

⁶ See Brown (2000), Shapland et al. (2003) and Whittaker et al. (1997).

substantial cost savings, with the National Audit Office (2006) estimating that £173 million a year is wasted on unproductive hearings in magistrates' courts.

This scoping study suggests the need for a comprehensive, multi-agency follow-up investigation to assist policy-makers in undertaking a major review of the youth justice system. A wide-ranging study, adopting a 'whole-systems' approach would require the co-operation of all agencies and practitioners involved in the youth justice system. With the current pressures and demands on agencies and practitioners, however, it is unlikely that such support would easily be forthcoming. A wide-ranging study would also be time-consuming and costly. An alternative to conducting such an investigation was to examine the processing of cases in other courts to see if the issues identified in the County are to be found elsewhere. The LSRC is currently in the process of observing adult magistrates' courts where new arrangements to speed up the processing of cases have been implemented.

In respect to the second issue raised in the scoping study, while the processing of cases at court is complex and bureaucratic, it is still not known whether children and young people appearing at court understand what is happening to them. With the principal aim of the youth justice system being to prevent offending, it is clearly intended that children and young people drawn into the youth justice system should be centrally involved.⁷ With the complex and bureaucratic processes involved in an adversarial system of justice, however, the role of the 'child' is marginalised. Listening to the voices of children and young people, therefore, could be extremely useful for policy-makers when deciding on reform of the youth justice system. It could also help to assess the extent to which non-criminal justice agencies become involved in dealing with factors underlying the offending behaviour, i.e. mental health, child protection and/or other welfare issues. Gaining the perspective of the child would not only help to drive efficiencies, because dealing with offences quickly is important in establishing a link between the offence and the sentence of the court, but it would also help to improve the system's effectiveness in delivering justice and changes in offending behaviour.

⁷ Enacted in Section 37 of the Crime and Disorder Act 1998, the principal aim of the youth justice system is to prevent offending and all agencies are required to have regard to that aim in carrying out their duties.

1. Introduction and Methodology

1.1 Background

This report is a scoping study of the multi-agency processing of Youth Court cases in a county identified here only as ‘the County’. The purpose of the study is to provide a first ‘whole-systems’ overview of the operation of the Youth Courts. Following reforms to the youth justice system, there has been a new emphasis on managerialism, which aims to maximise both effectiveness and efficiency within the criminal justice system and to drive down costs (Audit Commission, 1996). With increasing pressure on Youth Court agencies to deal with cases speedily, the study also examines the balance at court between speed and ‘due process’, which seeks to maintain legal protections for defendants within an adversarial system of justice.

The proposals for reform were strongly influenced by the Audit Commission’s report *Misspent Youth* (1996), which had criticised the youth justice system for being inefficient and ineffective. The Commission suggested too much money was being spent on procedural matters such as repeated court appearances before a final disposal, and that too little was being spent on effective interventions to reduce future re-offending. Its recommendations included the adoption of a more interventionist approach when working with young offenders and greater co-operation between youth justice agencies to enhance effectiveness.

The Government’s approach to the Youth Courts was set out in the Crime and Disorder Act 1998. The Act created a new organisational framework, which is presided over nationally by the Youth Justice Board, with each local authority required to co-ordinate the delivery of youth justice services through the setting up of local multi-agency Youth Offending Teams (YOTs).⁸ Under the old system of cautioning for juveniles, multiple cautions could be recorded against an individual, but that scheme was replaced by a new Final Warning scheme, which normally limits the number of pre-court disposals to two. The 1998 Act also includes provisions to reduce delays at court. Although the time limits proposed under the 1998 Act have not been

⁸ Replacing the former Youth Justice Teams, which mainly comprised social workers, Section 39 of the 1998 Act requires each local authority to set up a YOT which includes a probation officer, police officer, social worker, persons nominated by the Health Authority and Education Authority and any other persons whom the local authority deems to be appropriate.

implemented, the Government remains committed to dealing with cases more quickly.⁹ Indeed, in a recent report entitled, 'Delivering Simple, Speedy, Summary Justice', the Government set out its proposals to deal speedily and effectively with low-level crime, while at the same time enhancing the management of more complex serious cases (DCA, 2006).

Other major changes within the criminal justice system have also had implications for Youth Court cases. The Crown Prosecution Service's Statutory Charging initiative, for example, is intended to improve prosecution decision-making by requiring the police and prosecutors to liaise at a much earlier stage of the investigation. The initiative seeks to bring about the most significant change to the way the prosecution handles cases since the inception of the CPS itself. In addition, performance targets, particularly those seeking to bring more offences to justice and to reduce delays at court have implications for prosecution decision-making and case-management decisions. With the reform of the youth justice system and a number of different initiatives impacting on the work of the Youth Courts, the aim of the present study was to take a 'whole-systems' approach in order to better understand how the various changes have impacted on the work of Youth Court practitioners and on the efficiency and effectiveness of the process.

Although recent studies have investigated particular aspects of the youth justice system, there has been little empirical research examining the implications of these changes on the system as a whole.¹⁰ A recent report by the National Audit Office (2006), for instance, addressed the issue of ineffective hearings by focusing specifically on the role of the Crown Prosecution Service (CPS). The report estimated that of £173m wasted in ineffective hearings, the defence were responsible for over £95m and the prosecution for over £55m. The estimate was made without examining defence practices in detail, and so the context within which prosecutors and defence solicitors

⁹ Proposals for reducing delays at court were first presented in the Home Office (1996) 'Narey' report, named after its author.

¹⁰ The exception to this is Shapland et al.'s (2003) evaluation of the statutory time limits pilot operating within the Youth Courts. However, that evaluation did not consider in detail the basis on which prosecution decisions were made neither did it investigate the interactions between the police and the CPS, or between the CPS and the defence solicitors.

work together in processing criminal cases was not taken into account.¹¹ Additionally, Professor Rod Morgan, the former Chairman of the Youth Justice Board, has been critical of the fact that many minor offences, which would previously have been dealt with informally or out of court, have instead been, ‘pushed into an overstretched criminal justice system’.¹²

The scoping study included a review of a sample of case files, observation in the Youth Courts, and interviews with practitioners. The ‘whole-system’ approach of the study was able to examine systemic inefficiencies within the youth justice system, only because all the agencies involved in the Youth Court process agreed to participate in this study.¹³ In trying to understand the multi-agency processing of cases, however, it is important not to set out to apportion ‘blame’ to any of these agencies but instead to understand how various factors can influence the efficient processing of cases. The issue of ‘blame’ can be counter-productive, as all kinds of practitioners were observed to be working extremely hard. It can also be demoralising, particularly for those representatives at court, to be reprimanded for delays when inefficiencies lie across the system as a whole. Prosecutors, for instance, were seen to bear the brunt of magistrates’ frustration when there were delays in producing the evidence, but such evidence had not been passed on to them from the police. Indeed, as one defence solicitor put it, ‘The CPS here are under a good deal of pressure and they come in for a great deal of criticism, but I tend to find them a very good bunch of people to deal with.’ She added, ‘The reason the system hasn’t fallen apart completely here is because of the unusually high level of co-operation which exists between the defence, the prosecution and court clerks’ (DX4).¹⁴

The fieldwork for this study was completed in January 2007 and the report was submitted to the Legal Services Commission’s Criminal Defence Service in August 2007. The Commissioners agreed that the report should be published in November

¹¹ The NAO report acknowledges, however, that one of the main causes of defence-related problems was the failure of the defendant to attend court.

¹² Such practices have increased the number of children and young people drawn into the youth justice system, with Morgan citing a 26 per cent rise over the past three years (BBC, 2007).

¹³ This is an important indication of the level of co-operation which exists between the agencies within this county.

¹⁴ Both male and female practitioners were interviewed but for the purpose of anonymity all respondents are referred to as ‘she’ and the interviews have been coded for the purpose of anonymity.

2007 but requested that prior to publication the author should circulate the report, on a confidential basis, to relevant Government departments for comment. The author has taken this opportunity to update the report to include a short summary of further observational studies currently being undertaken in adult magistrates' courts.

1.2 Methods

Multiple strategies and methods were adopted in this project to enable all perspectives on the Youth Court process to be investigated. These included three different elements to the fieldwork, which took place at the County's two Youth Courts, beginning in February 2006 and ending in January 2007. First, a review of individual case files held by the different agencies operating within the Youth Courts.¹⁵ Secondly, observations of hearings held in the Youth Courts. Third, interviews with magistrates, court clerks, Crown Prosecutors and defence solicitors.

Police, HM Courts Service, CPS and defence solicitors' case files concerning a sample of 166 cases concluded in 2005, were examined in June 2006. The two County's Youth Courts were observed during July/August and November/ December 2006. Interviews took place from October to December 2006. Finally, Youth Offending Team case files relating to the cases observed in the Youth Courts were examined in January 2007.

1.2.1 File review of 2005 cases

A systematic file review was undertaken on a sample of 166 Youth Court cases. The Courts Service selected these cases by identifying all those concluded during October and November 2005: 94 cases from Court One and 71 from Court Two. Including data drawn from police, CPS, HM Courts Service and defence solicitors' files, this was the first time a co-ordinated multi-agency file review had been conducted.¹⁶ During June 2006, information extracted from case files was entered onto a database and the more complex statistical analysis was conducted using MLwiN.¹⁷ Duration (in days) was

¹⁵ Access to case files were first negotiated locally with chief officers and senior defence solicitors. The University of Cambridge was responsible for negotiating access to police and CPS files and the LSRC for court and defence solicitors' files. A privileged-access agreement was obtained from the DCA, allowing for access to specific court files.

¹⁶ See Appendix A for details of the information held on case files belonging to the different agencies.

¹⁷ MLwiN is a statistical software package for fitting multilevel models.

examined using a multilevel Poisson model,¹⁸ assessing factors that impacted upon duration, while controlling for solicitors firm as a random effect. Predictor variables in the model included cases where the offence was denied at the first hearing, cases where there were delays due to CCTV, forensic, medical or other evidence, and cases where more than one set of offences was involved. By investigating the random effect of the variable ‘solicitors’ firm’, it was possible to determine whether variation in delay was a function of some firms but not others.

1.2.2 Court observation and file review of 2006 cases

Court observation took place over a five-week period at Court One during July and August 2006 and a four-week period at Court Two during November and December 2006.¹⁹ Only the morning’s list was observed (although these cases could continue into the afternoon), as cases listed for the afternoon court, tended to deal with sentencing hearings and Bail Act offences. Observational details of these cases were entered into a fieldwork diary and additional case details on 120 defendants observed were obtained from Youth Offending Team records. These records comprise a card index, based on the defendant, rather than the offence, on which are noted the date of hearings, the offence(s) dealt with, the reasons for adjournments, and the case outcome.²⁰ The 120 defendants observed at court formed the basis of a second sample of cases, referred to as the ‘2006 sample’.

1.2.3 Interviews

A total of 16 in-depth interviews were undertaken with practitioners from October to December 2006. These included 4 interviews with court clerks and 5 with prosecutors lasting an average of thirty minutes, and 7 interviews with defence solicitors taking an average of forty-five minutes. The interviews were tape-recorded and fully transcribed. In addition, two focus groups with magistrates were held, involving three magistrates in

¹⁸ Poisson models are frequently used when the dependent variable is counted (e.g. number of days in this model). A multilevel model was used, since delays were nested within solicitors’ firms. In this context, ‘nested’ means delays were not independent but clustered (or nested) within solicitors firms. That is, each delay belonged to a specific firm. It is important to account for this clustering to see if certain firms are generally more likely to have longer/shorter duration.

¹⁹ Court One sat for two days a week and Court Two for one day a week.

²⁰ Details of previous reprimands, warnings or sentences were also noted. Of the 120 cases, there were 79 from Court One and 41 from Court Two.

each focus group, with sessions lasting twenty minutes. A detailed note of the interview was made and written-up immediately after the interviews.

The multiple strategies adopted in this study are intended to be complementary, so research questions can be approached from different angles and their intellectual puzzles analysed in a rounded and multi-faceted way. The qualitative data sources comprised fieldwork notes taken during observation of the Youth Courts, a note of the 120 cases observed, together with details extracted from YOT records and interview notes. To assist in the interpretation of the data, these notes and interviews were entered into the statistical software package NVivo.²¹ In interpreting the data, a grounded theory approach was adopted which requires coding of the data and critical analysis of the emerging themes.

1.3 Structure of the Report

The report begins by describing the set-up of the County's Youth Courts. It next summarises quantitative findings from the review of 166 Youth Court cases. Then, drawing on observations, interviews and file reviews, it examines the main causes of delay and inefficiencies, including implications for the Statutory Charging initiative, prosecution decision-making and case handling, practices of defence solicitors in managing cases, the operation of means-testing for Legal Aid and the influence of performance targets. Limitations on agencies working effectively together are next considered, along with the impact of managerialism and the role of defence solicitors within the youth court system. As the Crime and Disorder Act instituted the new statutory principal aim of preventing offending, there are reflections on the experience of children and young people who appear before the courts and a consideration of what impact this might have on changing their offending behaviour. Finally, a brief update has been added commenting on further work the LSRC has undertaken in examining the processing of cases in adult magistrates' courts.

²¹ NVivo is a computer analysis tool which provides a non-numerical approach to structuring data. The software has been developed to meet the needs of sociologists carrying out a grounded theory approach. In particular, when analysing the data and allowing for substantive concepts to emerge, the data is clustered and hierarchies of related concepts are created so 'sub-sets' can be manipulated and analysed at any one time.

2. Setting the scene: The County's Youth Courts

The set-up of the County's Youth Courts is almost the same as that of the Adult Courts. Magistrates sit on a dais and the court clerk sits at a desk in front of them. The prosecutor and defence solicitor sit at a table facing the magistrates, and representatives of the YOT sit at a table behind the advocates. The defendant and his appropriate adult sit in chairs to the side of the advocates.²² The magistrates usually seek to put a defendant at ease if he is making a first appearance at court by introducing the various representatives in court, and they often invite the defendant to address them before considering the appropriate sentence. One difference in the Youth Courts is the advocates would sit when addressing magistrates whereas they would stand in the Adult Courts. Proceedings in this study were presided over by lay magistrates, so it has not been possible in the context of this project to consider differences between cases heard by a District Judge and cases heard by lay magistrates.²³

So far as the practitioners at court are concerned, there are CPS officers who specialise in Youth Court cases. While some prosecutors attend the Youth Courts regularly, there are usually different prosecutors dealing with the morning and afternoon cases. Court clerks are not required to specialise in Youth Court work, but can be allocated to any of the courts within the county. YOT officers tend to be the only practitioners who experience the continuity of cases through the County's Youth Courts, as they are based full-time in the courts.

Once cases are brought to court they are managed through the court process. This means that magistrates will often deal with administrative matters, such as allowing for adjournments while files are prepared, for evidence to be produced, or for additional witness statements to be taken. The process leads to a significant proportion of listed cases being adjourned. The morning sessions of the two County's Youth Courts were observed over two periods in 2006. It was noticeable how many cases were adjourned at each hearing. However, the observed cases did not comprise all cases appearing in the Youth Court's list, as a number were determined in the defendant's absence. Drawn from YOT records therefore, and set out in Table One is the total

²² Usually the defendant's mother or father attend court, but if the defendants are on their own a YOT officer sits next to them in court.

²³ Cases in the 2005 sample were also heard before lay magistrates.

number of cases listed during the morning sessions and dealt with (i.e. concluded) over a five-week period at the two courts during the two periods of observation.

Table One *The number of cases listed at court and the percentage dealt with*

	Court One: Summer		Court Two: Winter	
	<i>Number of cases heard</i>	<i>% of cases dealt with</i>	<i>Number of cases heard</i>	<i>% of cases dealt with</i>
<i>Week 1</i>	43	12	31	13
<i>Week 2</i>	38	24	29	38
<i>Week 3</i>	25	24	40	10
<i>Week 4</i>	30	20	32	19
<i>Week 5</i>	31	29	20	0
Total	167	25	152	16

It is clear from Table One that a higher proportion of cases were dealt with at Court One compared to Court Two. Cumulatively, for instance, 25 per cent of cases were dealt with at Court One over a five-week period compared to 16 per cent at Court Two. However, the two courts were observed at different times, Court One during the summer and Court Two during the winter of 2006. An important difference between the two periods of observation was the re-introduction of Legal Aid means-testing in Youth Court cases in October 2006, which added at least one additional hearing to Youth Court cases, and this was then reflected in the proportion of cases dealt with at the two courts. There has subsequently been a review of means-testing and young defendants are now ‘passported’ so that they are no longer subject to means-testing.

3. Profile of the sample of 2005 cases: a quantitative analysis

Statistical analysis of the 2005 sample of 166 cases addressed issues of case duration and the number of hearings. Within a managerial framework most agencies working in the Youth Courts are public bodies required to comply with national standards and targets that are monitored through inspections and regular data-reporting. Defence solicitors are predominantly in private practice and while they are not linked into this managerial framework, they are subject to professional and practice standards. Those who receive public funds are also subject to the quality requirements included in the contracting arrangements with the Legal Services Commission. Because solicitors are not tied directly into performance targets they are often blamed for causing delays at court. Accordingly, additional information was gathered in this study in order to assess what impact defence solicitors might have on duration within the Youth Courts.

The demographic profile of young people included in the 2005 sample was similar to the Home Office official statistics, with 89 per cent being male and 11 per cent female. Of the cases in which ethnicity was known (i.e. 141 cases out of 166), 88 per cent were white, 8 per cent black, and 4 per cent Asian.²⁴ Two-thirds were aged 16 or 17 years, and one-third were aged 15 years or below. The youngest were two defendants aged 12 years. Within the sample, 28 per cent of defendants were of previous good character,²⁵ 30 per cent had either a reprimand or warning and 42 per cent had one or more convictions, of which 28 per cent were persistent young offenders (PYOs). A breakdown of the type of offences included in the 2005 sample is set out in the Figure below.²⁶

Of the 166 cases, 54 per cent were sentenced, 22 per cent were ‘diverted’ (i.e. withdrawn from court for either a reprimand or a warning to be recorded), 15 per cent were discontinued, 5 per cent committed to the Crown Court, and 4 per cent found not guilty. In the vast majority of cases (153), a lawyer funded by legal aid represented

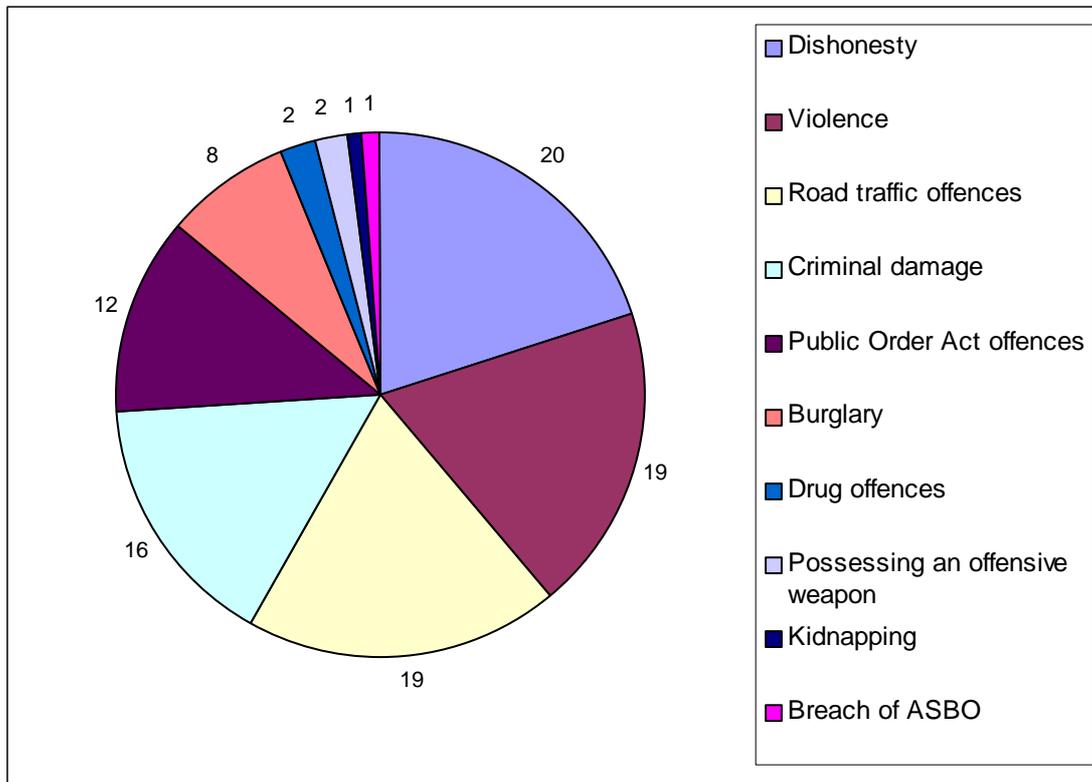
²⁴ Eighty-five per cent of young offenders sentenced in 2005 were male (Home Office, 2007). In 2004/05, of all 287,013 offences dealt with by YOTs 85% were White, 6% Black, 3% Asian, 2% Mixed and 1% Chinese and Other (Home Office, 2006).

²⁵ i.e. there was no reprimand, warning or conviction.

²⁶ These were the lead offences, and other offences could also have been charged. Within the category of dishonesty offences; 13% included theft, 4% robbery and 3% handling stolen goods. For violence, 11% involved common assault, 5% ABH and 2% GBH and for road traffic offences, 12% involved minor motoring offences and 7% TWOC. Bail Act offences were not included in this study.

defendants and 21 different solicitors' firms in all were involved. Of the thirteen young defendants who were unrepresented, most were being dealt with for minor offences which would not have met the 'interests of justice' test.

Figure *Types of offence included in the 2005 sample of cases*²⁷



In the statistical analysis of the 166 cases, the 'case' is actually the offence(s), which were determined at court during the sample period. Within the 2005 sample, therefore, there are defendants who have two or more separate cases, which concluded during October and November 2005, the period of time from which the sample was drawn.²⁸ However, by dealing with cases separately it is not known from the CPS and court files to what extent prolific offenders might also have other offences before the court. If details of offences being pursued against an individual defendant could be linked, then the duration and number of hearings in relation to prolific offenders would be much higher. There was one case in the 2005 sample, which involved 44 hearings over an eighteen-month period. This case appeared to be exceptional and so was not

²⁷ Of dishonesty offences

²⁸ Within the sample of 166 cases, thirty defendants had two cases concluded during the sample period, four defendants had three separate cases concluded, two had four cases and one defendant had five and another defendant six cases. There were other defendants who had other proceedings also being dealt with at court, which did not conclude during October and November 2005.

included in the statistical analysis. Having inspected defence solicitors' files, other prolific offenders were identified who were also being dealt with for a number of different offences. These defendants were also subject to a number of proceedings, with numerous hearings over a long period of time. While it would have been useful to bring together details of the different hearings being held simultaneously in relation to prolific offenders, this was not possible from the information available in the case files.²⁹

3.1 Case duration

A reduction in delay has been one of the main aims of the Government reforms of the criminal justice system. In relation to PYO cases, the Government successfully met its target to halve the time between arrest and sentence from 142 to 71 days.³⁰ This is a national average and in 2005 a number of police force areas had an average duration for PYOs in excess of 80 days (Pandya, 2007). The mean duration from arrest to sentence for the thirty-six PYOs in this study was 83 days, but this does not include the time spent in two PYO cases, which were committed to the Crown Court.³¹ The mean durations according to case outcome are set out in Table Two below, together with the differences in duration between PYOs and non-PYOs.³²

Particular features of cases would lead to longer durations. For example, the case duration would increase significantly in cases where the prosecution charged more serious offences, the defence then challenging the evidence by pleading 'not guilty' and the prosecution later accepting through plea-negotiation a guilty plea to amended charge(s).³³ Accordingly, the mean duration from arrest to sentence for those cases that appear to have been dealt with as originally charged was 74 days, compared to sentenced cases in which some charges were initially denied and subsequently reduced

²⁹ The effect of dealing with cases separately is considered later on in this report.

³⁰ The official statistics confirm that the duration of all PYO cases, from arrest to sentence, was 68 days nationally in 2005 but this has further reduced to 65 days in 2007 (Pandya, 2007 and 2008).

³¹ The cases identified in the sample were those closed in late 2005, but this included eight cases (two PYOs) committed to the Crown Court. While these cases had been concluded in the Youth Court at the time of the file review, they were still to be dealt with at the Crown Court. The duration and number of hearings, therefore, relate to the time spent within the Youth Court only. In the official statistics 94% of PYOs are dealt with in the magistrates' court, with an average in 2005 of 60 days, compared to 191 days in the Crown Court (see Pandya, 2007).

³² The arrest date was not known in 24 cases. In addition, as explained above, one case was also excluded because it appeared to be exceptional and it would have adversely affected the mean.

³³ 'Plea-negotiation' is when the prosecutor might agree to a plea of guilty to a lesser charge and/or accept pleas of guilty to some offences while agreeing to offer no evidence against others in order to avoid a trial.

or withdrawn, where the mean duration was 150 days. Similarly, where a ‘not guilty’ plea was indicated at the first hearing, the mean duration of cases was 177 days, compared to 74 days in other cases where the offence charged was admitted.

Table Two *Mean duration in days from arrest to final outcome*

<i>Outcome</i>	<i>Duration</i>			<i>Number of cases</i>		
	PYOs	Non-PYOs	All	PYOs	Non-PYOs	All
Sentenced	83	116	102	36	46	82
Committed	-	83	83	-	6	6
Not guilty	52	205	175	1	4	5
Diverted	-	73	73	-	33	33
Discontinued	107	128	121	6	11	17
Average duration/ total number	86	105	99	43	100	143

Also shown is the number of cases included in each outcome category, because the arrest date was not known in all cases.

Cases with a pre-trial review (PTR) lasted the longest.³⁴ This is to be expected, because it is only when offences are denied and a trial date is fixed that a PTR can be held. Somewhat surprisingly, 41 per cent of all sentenced cases initially involved denials and proceeded to trial. A trial was avoided in these cases because of subsequent plea-negotiations between the CPS and the defence solicitors either at the PTR or the trial. Accordingly, sentenced cases with a PTR had a significantly longer duration than those without. While the mean duration of all sentenced cases was 102 days, it was 43 days for PYO cases without a PTR and 139 days for those with a PTR. For non-PYOs without a PTR the mean duration was 60 days, but this increased to 190 days with a PTR.³⁵ Not only is there a much greater duration in cases where the offences are denied, but the emphasis on reducing delays in PYO cases seems to be having a detrimental impact on the greater case duration experienced by non-PYOs. However,

³⁴ A PTR is a hearing listed prior to the trial date at which the CPS and the defence solicitor are able to discuss the relative strengths and weaknesses of cases. If appropriate, plea-negotiation might take place. As noted later on in this section, when modelling the 2005 sample of cases, PTRs came out as one of the most significant determinants of delays.

³⁵ A note of caution is needed here because with 45 sentenced cases with a PTR, in all there are relatively few cases included in the PYO and non-PYO categories. The fast-tracking of PYO cases, however, means that such differences in duration are to be expected.

expedition could benefit some non-PYO cases, such as those involving mental health problems, child protection issues and/or sexual offences.³⁶

3.2 *Number of hearings*

The mean number of hearings in the sample of 165 cases was four, although as noted in Table Three, the mean varied depending on case outcome.

Table Three *Mean number of hearings by case outcome*

<i>Outcome</i>	<i>Total Cases</i>	<i>Mean Hearings</i>
Sentenced	90	5
Committed	8	4
Not guilty	7	4
Diverted	36	3
Discontinued	24	5
All	165	4

The mean number of hearings also varied depending on whether offence(s) were initially denied or not. For instance, while the average number of hearings for all sentenced cases was 5, this reduced to 3 when there was no PTR and rose to 7 when there was. There were also variations in disputed cases involving non-PYOs and PYOs. For non-PYOs, for instance, there was also a mean of 7 hearings in sentenced cases with a PTR, but the figure was 8 for PYOs.³⁷

So far as the actual number of hearings within which cases were concluded is concerned, only 19 were completed at the first hearing, and 8 of these involved unrepresented defendants. This means that only 7 per cent of all publicly funded cases were concluded at the first hearing.³⁸ In addition, 38 cases were concluded at the

³⁶ PYO cases are fast-tracked, with shorter timescales allowed between adjournments. Trial dates are also prioritised for PYO cases within two or three months, whereas non-PYO trials could be fixed some six months in advance.

³⁷ The higher mean number of hearings for PYOs suggests that while tighter timescales are imposed, this could lead to further adjournments if insufficient time is available to carry out the work required.

³⁸ This is lower than the national average, with the Audit Commission (2004) finding that around 20% of cases were concluded at the first hearing.

second hearing, 27 at the third and 27 at the fourth hearing. It is perhaps surprising, however, that a third of the sample (55 cases), concluded after 5 or more hearings.³⁹

3.3 *Defence solicitors*

This section examines the extent to which case duration and the number of hearings varied by defence solicitors' firm.

Of the 21 firms of solicitors handling cases in the 2005 sample, eight firms handled 1 case each, one handled 2, one handled 3, two handled 4, and two handled 6 cases each. The remaining seven firms dealt with 12 or more cases from the sample.

The number of cases represented by the firms with a volume of 12 or more cases, the mean and median duration of cases, and the mean number of hearings is set out in Table Four below.⁴⁰ With claims that some defence solicitors were also drivers of case duration, it might seem that some firms take longer in dealing with cases than others, and have more hearings, but the mix of cases could have a significant impact on the mean.

Table Four *Mean and median duration and mean number of hearings from arrest to final outcome for cases managed by seven firms of solicitors*

	<i>Total number of cases</i>	<i>Mean duration (in days)</i>	<i>Median duration (in days)</i>	<i>Mean number of hearings</i>
<i>Firm 1</i>	21	136	105	5
<i>Firm 2</i>	11	63	37	3
<i>Firm 3</i>	10	62	63	4
<i>Firm 4</i>	10	131	78	5
<i>Firm 5</i>	31	98	100	4
<i>Firm 6</i>	12	85	67	5
<i>Firm 7</i>	12	104	112	6

Only cases where the arrest date is known are included.

³⁹ Eighteen cases were dealt with at the fifth hearing, 22 cases involved 6 to 9 hearings, and 15 cases involved 10 or more hearings.

⁴⁰ Both mean and median duration are included to highlight the wide differences which can occur when dealing with such a small volume of cases.

The database of 166 cases allowed various potential drivers of duration to be modelled, including solicitors firm as a random effect.⁴¹ Important variables predicting duration were found to include cases in which a ‘not guilty’ plea was entered at the first hearing, cases where there were delays in producing evidence such as CCTV, forensic and/or medical reports; and/or cases where the CPS or the defence required additional information.⁴² Cases that included one or more of these predictor variables were categorised as ‘complex’ cases within the model and cases with increasing complexity (i.e. those cases with two or more predictor variables) were found to take longer.

The mix of cases handled by solicitors’ firms, therefore, was likely to impact on the mean case duration and the number of hearings. Set out in Table Five are the total numbers of cases dealt with by the 7 firms, together with the numbers of ‘complex’ cases and those involving a PTR, two of the main factors found to drive case duration.

Table Five *Number of cases, complexity and number of pre-trial reviews (PTRs) included in cases managed by different firms of solicitors*

	<i>Total number of cases</i>	<i>Number of complex cases</i>	<i>Number of PTRs</i>
<i>Firm 1</i>	24	11	12
<i>Firm 2</i>	12	4	1
<i>Firm 3</i>	12	5	2
<i>Firm 4</i>	12	9	6
<i>Firm 5</i>	35	17	14
<i>Firm 6</i>	12	5	5
<i>Firm 7</i>	13	5	7

All cases managed by each firm are included

When the variable ‘solicitors’ firms’ was included in the multilevel Poisson model, its role as a random effect was statistically non-significant. This suggests that there was negligible variation in duration between solicitors after taking other drivers of duration into account. While defence solicitors are instrumental in seeking

⁴¹ Using a multilevel Poisson regression model, with cases nested within solicitors’ firm.

⁴² There were particularly long delays in some cases involving CCTV, forensic and medical evidence.

adjournments to take instructions, examine the evidence, and initially advise on a 'not guilty' plea, for instance, there is no evidence from this study indicating that the practices of particular firms contribute to delay.

The 2005 sample highlights inefficiencies in the processing of cases at court. In particular, 37 per cent of the cases prosecuted were subsequently discontinued or withdrawn from court for either a reprimand or warning. This suggests there are inefficiencies in prosecution decision-making, with significant cost implications for the youth justice system. In addition, as detailed above, 41 per cent of all sentenced cases initially involved denials and proceeded to trial. There were also 'complex' cases, involving CCTV, forensic and/or medical evidence, which involved delays because of late service of evidence.

4. The main causes of inefficiencies and delay

While the quantitative analysis of the 2005 sample of cases helped to identify a number of issues having implications for inefficiency and delay, the Statutory Charging initiative was intended to address many of those issues. Accordingly, it was important for the present study to consider the impact of this initiative on the processing of cases at court. Therefore, the causes of inefficiencies and delays were further investigated, both when observing the Youth Courts and in interviews with court clerks, prosecutors, defence solicitors and magistrates. In addition, 120 cases were observed at court and these provided a sample of the 2006 cases, which could be used to compare whether some of the issues identified in the 2005 cases were persistent.

Within the multi-agency processing of cases at court, it is extremely difficult to disentangle the factors bearing on inefficiency and delay. NVivo assisted in the analysis of the data and in theory-building, through the creation of a large number of tentative coding categories, which helped to identify substantive concepts. A number of categories - prosecution decision-making, defence management of cases and legal aid, for instance - were then brought into the analysis, and sub-categories were related to each theme. In relation to prosecution decision-making, for example, sub-categories included reprimands and warnings, sufficient evidence, public interest and reviewing cases. The computer software programme helped to methodically explore a number of themes through a multi-layered analysis.

Set out in the following five sections are the key factors found to drive inefficiencies and delays. First, there is a description of prosecution practices and the influence of the Statutory Charging initiative, the Code for Crown Prosecutors and the Final Warning scheme on prosecution decision-making and the processing of cases at court. The practice of defence solicitors in managing cases at court is next considered followed by the re-introduction of means-testing of Legal Aid in the Youth Courts. Finally, the unintended consequences of performance targets on the processing of cases at court and on prosecution decision-making are examined.

4.1 Prosecution practices and the Statutory Charging initiative

The Statutory Charging scheme was implemented in the County in early 2006. The scheme is intended to have a significant impact, by improving both prosecution decision-making and case management. It seeks to bring together the police and CPS as a 'Prosecution Team' at a much earlier stage of the investigation in order to build 'robust cases', to ensure the correct charge from the outset, to weed out non-viable cases and to ensure that the remaining cases are trial-ready at the point of charge (CPS, 2006). Analysis of the cases from the 2005 sample identified these as appropriate aims to pursue in seeking to improve the effectiveness and efficiency of the youth court process, although problems identified in the 2005 cases were also found in the 2006 sample.

4.1.1 Bringing offences to court

The Statutory Charging initiative requires the prosecution to prepare cases that are ready for trial once charged by either the police or the CPS. This early case preparation clearly anticipates delays in cases coming to court because of work required on identity procedures, CCTV evidence, forensic evidence, medical evidence, preparing witness statements and/or other evidence production. Once at court cases are expected to be dealt with more quickly, as the evidence will be available from the first hearing. The new scheme also requires the police and CPS to work more closely together in building robust cases for court, which involves the CPS providing 'pre-charge advice' such as setting out what actions are required in preparing cases ready for trial. While such evidence is gathered, suspects may be 'delay charge bailed'. This means they are bailed to return back to the police station when a decision to charge will be considered. When returning, suspects may be 'delay charge bailed' to a later date if additional evidence is still required. With the new initiative, defence solicitors expressed concern that there had been an increase in the use of 'delay charge bail', leading in many cases to long delays between arrest and charge.

The analysis of the 2005 sample had not identified delays in bringing offences to court as a particular problem. In the 2006 sample, however, there were a number of cases with long delays before first being brought to court.⁴³ In one exceptional case, for instance, a suspect had been arrested shortly after an alleged incident of ABH in March

⁴³ Cases with the longest delays were first brought into the prosecution system prior to the Statutory Charging initiative, but the decision to charge or summons was made generally under that scheme.

2005, but the case did not come to court until the end of June 2006 (L10).⁴⁴ There were also four separate cases where the suspects were arrested for ABH, alleged to have occurred in October 2005. The first two cases were first in court on 26 July 2006, the third case on 23 August 2006 and the fourth on 29 September 2006. In the first case, the defendant pleaded 'not guilty' and the trial was fixed for 7 February 2007, some sixteen months after the alleged offence (L18). More generally, long delays were noted in a number of cases between arrest and the first hearing.

With the pressure to reduce delays, two solicitors commented that the police might issue a summons in cases where there had been extremely long delays in gathering the evidence, as this could circumvent the CPS and the time limits operating within the charging scheme. In the four cases mentioned above, where the offences were committed during October 2005, for instance, three were summonsed to court. One solicitor explained the more frequent use of summonses: 'The police are trying to "pass the buck". If they can't satisfy the CPS with the evidence and they don't want to be slated for the long delays, they put cases through to court on a summons instead' (DM1).⁴⁵

The effect of such long delays means some cases result in a conviction, which might otherwise have been avoided. In one case, for instance, the offence had been committed nine months before it was first brought to court, and once admitted it was adjourned for the police to consider diversion. Diversion was rejected because for a later offence a final warning had been recorded a few weeks earlier (L20). The defendant was convicted for the earlier offence, but if the police had checked to see if there were any outstanding matters it might have been possible to have brought the two offences together into a single pre-court disposal. Court clerks also noted that since the introduction of the Statutory Charging initiative, there were long delays in bringing

⁴⁴ The 2006 sample of cases were split up into different categories and the code used for these cases includes the first letter of the category the case is listed under and number at which that case appears within that category.

⁴⁵ Subsequent initiatives such as the 'CJSSS' scheme, and new arrangements currently being piloted by the CPS in some areas under a streamline process which is intended to reduce the amount of papers which make up the prosecution file, are meant to address such delays and ensure that cases are dealt with quickly and efficiently (see the National Criminal Justice Board website at <http://lcjb.cjsonline.gov.uk/ncjb/14.html> for details of these initiatives.

some cases to court. Indeed, one clerk complained that a number of cases had exceeded the 71-day target for dealing with PYOs from arrest to sentence by the first hearing.

4.1.2 Delays in producing the evidence

As noted in the above statistical analysis of the 2005 sample of cases, cases proceeding to trial and those involving CCTV, forensic and /or medical evidence, were found to have the longest duration. Within the 2005 sample, the reasons why cases were adjourned at the first hearing were noted. Fifty-eight cases were adjourned at the first hearing because offences were denied; of those, 19 involved CCTV, forensic or medical evidence. In addition, 24 cases were adjourned because the CPS had failed to serve the Advance Information;⁴⁶ 6 of these cases also involved CCTV or medical evidence which had not been produced.⁴⁷ The Statutory Charging initiative was intended to address the late service of evidence by the CPS, but in interview all respondents said this remained a major cause of delay. Cases included in the 2005 and 2006 samples were examined to see whether the delays identified were to continue.

When comparing the 2005 and 2006 sample of cases, there were cases within both where there were long delays in the CPS producing the evidence. The following cases are illustrative of such delays occurring both before and following implementation of the Statutory Charging initiative. In the 2005 sample, for instance, there was a case of aggravated criminal damage and a breach of the peace (under Section 5 of the Public Order Act 1986 (POA)), with the case first listed on 23 November 2004. There were long delays before the CPS provided the correct CCTV tapes to the defence, with 11 hearings in all. At the trial, the CPS offered no evidence on the charge of aggravated criminal damage; the defendant was found guilty of the Section 5 offence, and a Reparation Order was imposed on 11 November 2005 (Case 84).⁴⁸ In the 2006 sample, a defendant was charged with an offence of burglary. He was first in court on 5 May 2006 and there were six hearings before the CCTV evidence was produced on 9 August

⁴⁶ The CPS is required to serve on the defendant or his/her solicitor 'Advance Information', which is the evidence upon which the prosecution proposes to rely or a summary of it.

⁴⁷ Other cases were adjourned for defence solicitors to take instruction (18 cases), non-attendance of the defendant or appropriate adult (11 cases), for the police to consider diversion (21 cases) and adjourned for a pre-sentence report (18 cases) .

⁴⁸ Set out in Appendix B are examples of other 2005 and 2006 cases where there were long delays in the CPS producing the evidence.

2006. The magistrates then declined jurisdiction and the case was committed to the Crown Court (E3).

The late production of evidence can also lead to ‘cracked’ trials.⁴⁹ In one case in the 2006 sample, for instance, the defendant first appeared in court on 30 June 2006, charged with burglary. There were long delays while the CPS sought to produce the fingerprint evidence. This led to the defendant pleading ‘not guilty’, and a trial date was fixed. When the evidence was eventually served on the defence at the trial, the defendant changed his plea to ‘guilty’ (L2). In another case, on a charge of taking a car without the owner’s consent, the defendant was first in court on 28 June 2006. While the defence indicated that the offence was admitted, a ‘not guilty’ plea was entered after the CPS failed to serve the fingerprint evidence on which the prosecution was relying. The evidence was not produced at the trial on 9 November 2006, when the case was discontinued (E4).⁵⁰

4.1.3 Delays in reviewing the evidence

Within the current scheme, the first opportunity defence solicitors have to liaise with the CPS is at the first hearing. While this opportunity can be useful in identifying cases suitable for diversion and discussing pleas to alternative charges, there are limitations to such early discussions. When managing a high volume of cases at court, for instance, there is insufficient time for prosecutors to discuss details of individual cases with defence solicitors. The potential for prosecutors to make decisions at court is also limited because cases are allocated to individual prosecutors who are then responsible for all decisions made in the case. Thus, unless it is indicated on the file that alternative charges would be accepted, or a senior prosecutor is prepared to make decisions in a colleague’s case at court, solicitors are invited to make representations to the CPS in writing. Solicitors complain though that their written representations often go unanswered, and in many cases they are able to enter into detailed discussion with the CPS until the trial.

⁴⁹ A ‘cracked’ trial is when a trial is due to go ahead but fails to do so, either because the defendant offers acceptable pleas and/or the CPS offers no evidence, and no further trial is arranged.

⁵⁰ Two prosecutors commented that there were particular difficulties in sorting out CCTV and fingerprint evidence, which could lead to long delays.

Delays in the CPS reviewing cases and negotiating pleas with defence solicitors, means that many cases proceed unnecessarily to trial. Indeed, as noted earlier in this report, 41 per cent of the 90 ‘sentenced’ cases in the 2005 sample involved a PTR. Following the PTR, a trial was avoided in these cases with the CPS and defence solicitors agreeing to a plea-bargain, with the defendant pleading ‘guilty’ either to the offence(s) as charged, or to more minor offences and/or with other offences being discontinued. The PTR was not always effective, and there were cases where the reviewing prosecutor would not accept a plea-bargain while the prosecutor at trial later accepted it.⁵¹ In addition, a number of defence solicitors said they would not be willing to plea-bargain in some cases, particularly where there was an indication that prosecution witnesses might not attend at trial. While all practitioners commented that PTRs were extremely useful in resolving cases prior to trial, these reviews have now been replaced by ‘plea and case-management hearings’ (PCMH). All defence solicitors complained that the new hearings involved little more than ticking boxes on a case progression form, supplying basic information, and fixing the trial date.⁵² A number of prosecutors also bemoaned the passing of the PTR. As one prosecutor put it, ‘There is no meaningful pre-trial discussion any more. You used to have ten or fifteen minutes to sit down with the defence, prosecution and court clerk to plea-bargain. At the PTR stage now, nothing gets discussed; it is really just about fixing a date, and plea discussions tend to take place at the trial’ (PF1).⁵³

Without a PTR, defence solicitors in the County complain there is little pressure on the CPS to carry out an early detailed review of the case or to produce the evidence in advance of the trial.⁵⁴ There was one case, for instance, where the evidence produced early on in the proceedings was challenged by the defence, but the CPS did not respond to written representations and the case proceeded to trial. This case was a PYO who was first in court on 28 June 2006, for an offence of taking a vehicle without the

⁵¹ See Appendix B for details of 2005 cases dealt with following the PTR, thereby avoiding trial, and other cases where there were delays in reviewing the evidence.

⁵² These hearings are held in court. Because the magistrates are present, solicitors report there is no opportunity to discuss the offence(s) with the CPS.

⁵³ Shapland et al. (2003) also highlighted delays in the CPS carrying out a detailed review of the evidence. Even in areas with a PTR, there was noted to be ‘a real problem’ with a late review of files by the prosecution and that the most common outcome in ‘not guilty’ plea cases for which a trial date was set was that the CPS offered no evidence.

⁵⁴ In principle, solicitors could request a hearing at which they could apply to the court for the outstanding evidence to be produced, but this was not seen to happen even though this could presumably help to avoid ‘cracked’ trials.

owner's consent (T4). The researcher observed the photographic evidence of the person driving the car being served by the CPS on the defence at court on 4 August 2006. The quality of the image was so poor that the court clerk informally asked the prosecutor if she was really going to proceed with the case. The prosecutor said this was not her case and the defence should write in to the CPS. Another practitioner at court who examined the photograph gave their opinion that the driver was not the defendant. The defence solicitor later reported that the practitioner had signed a witness statement to this effect which was then served on the CPS with representations for the case to be dismissed. On 31 August 2006 the trial went ahead, but after the CPS presented its case the defence solicitor reported that the magistrates halted proceedings as there was no case to answer. With 12 hearings in this case, the solicitor said:

We kept telling the CPS it wasn't him. ... The CPS wouldn't get hold of this case and no one would make a decision. In [the neighbouring county] there's a senior prosecutor and he would have taken one look at it and said 'We are not going to waste our time.' I know the police don't like it. They will tell the CPS to run it. But in [that area] he won't run it when the chances are they are going to lose. They won't waste the resources (DI7).

Despite the aim of the Statutory Charging initiative to have cases dealt with quickly at court, there were delays in some cases being brought to court, or delays in producing and reviewing the evidence. While the Statutory Charging scheme is intended to increase the involvement of the CPS in the early investigation, some solicitors commented that the police continued to be influential in prosecution decision-making, by exaggerating the strength of the evidence and pushing through weak cases.

Prosecutors tended to be more positive than defence solicitors about the Statutory Charging initiative. In general, they felt it had helped to improve prosecution decision-making and the management of cases at court. As one prosecutor put it, 'I know that the Statutory Charging scheme has helped to reduce our discontinuance levels and I would hope that cases are no longer being discontinued purely because of legal points we have missed' (PF1). Two other prosecutors were slightly more cautious, commenting that 'in theory' cases were supposed to be better prepared. One added, 'While the Statutory Charging scheme has helped to make things run a bit better, we

still have problems in producing the evidence and this can be a major cause of delay' (PU3).

The Statutory Charging initiative does not operate in isolation. Other factors, such as the Director of Public Prosecution's (DPP's) Guidance on Charging, the Code for Crown Prosecutors and the Final Warning scheme, are also intended to influence prosecution decisions and the handling of cases at court.⁵⁵

4.2 Prosecution decision-making

When deciding whether or not to prosecute, the CPS have a key role as gatekeepers of the criminal justice system. Prosecution decisions are guided by the DPP's Guidance on Charging (DPP, 2007), the Statutory Charging initiative (CPS, 2006) and the Code for Crown Prosecutors (2004). In relation to decisions whether or not to prosecute, the Code for Crown Prosecutors has two stages, the first of which is to consider the strength of the evidence. If there is insufficient evidence to obtain a conviction, the case must not proceed. If there is sufficient evidence, then the second stage requires prosecutors to decide if it is in the public interest to proceed. With no definition of what the 'public interest' means the CPS have wide discretionary powers when deciding whether or not to take formal action in relation to criminal offences. In particular, there have been criticisms that too many minor offences are brought unnecessarily into court (see Audit Commission, 2004).⁵⁶ Also impacting on prosecution decisions in relation to young offenders is the Final Warning scheme, which imposes strict limits on the number of pre-court disposals, i.e. either a reprimand or warning, after which there is a presumption in favour of prosecution.⁵⁷

⁵⁵ In addition, as noted above, the CJSSS initiative and the piloting of new arrangements by the CPS under a streamline process are further intended to improve efficiencies within the criminal justice system which will have implications for prosecution decision-making and managing cases at court.

⁵⁶ The Statutory Charging initiative is intended to strengthen the CPS influence in prosecution decision-making. Prosecutors are now based with police officers when making decisions, and they are expected to determine charges in all but the most minor routine cases. The police, however, continue to be responsible for pre-court decisions to reprimand, warn or charge young offenders.

⁵⁷ There is an exception when a second final warning is allowed if the subsequent offence is committed two years or more after the previous final warning. Once there has been a conviction, any subsequent offence is to be charged.

4.2.1 Prosecution decision-making and minor offences

The first Code for Crown Prosecutors, in 1986, encouraged non-prosecution decisions. Paragraph 16 states, ‘The objective should be to divert juveniles from court wherever possible. Prosecution should always be regarded as a severe step’ (CPS, 1986). There has subsequently been a change of emphasis, with the latest Code now stating, ‘Crown Prosecutors should not avoid prosecuting simply because of the defendant’s age’ (CPS, 2004: para. 8). Indeed, reflecting a more punitive approach, the Code states that if youth cases are referred to the CPS then this usually means there has already been a reprimand or warning, and with the commission of a further offence the public interest would usually require a prosecution, ‘unless there are clear public interest factors against prosecution’ (CPS, 2004: para. 9).

In interview, all defence solicitors in the County believed that too many minor offences committed by young offenders were being prosecuted. They gave as an example the fact that juveniles were prosecuted under the Public Order Act 1986 for swearing at police officers. One defence solicitor reported they would sometimes successfully challenge such cases on the basis that police officers were unlikely to be, ‘harassed, alarmed or distressed’ by swearing in a public place (DI6). Another defence solicitor commented that while some incidents might previously have been considered as an *accident*, they were now more likely to be described as *reckless* and then prosecuted. Accordingly, she stated, ‘We now have criminal damage for a kid kicking a ball and damaging a neighbour’s window, even though in the past they would have said ‘Sorry’ and paid for the window. The police now get involved and the kid ends up in court’ (DN2). Incidents at school, such as fights between pupils and school playground bullying are prosecuted, even though such incidents often occur and the police are seldom involved.⁵⁸

Within the 2006 sample, many cases could be used to illustrate the minor nature of some offences brought to court, so the examples have been restricted to those arising out of family disputes. In one case for example, a 14-year-old girl was prosecuted for an offence of criminal damage. The incident occurred late one evening after she had returned home but had not been able to gain entry because her father was dead drunk.

⁵⁸ Details of minor cases pursued against two PYOs are included in Appendix B.

After she managed to break into the house she had an argument with her father, during which she admitted to breaking a window in a fit of temper. Her mother was not at home at the time, but when she returned she insisted the police take action and prosecute her daughter (M5). It is interesting to reflect on how influential parents can be in encouraging the prosecution of their children. One prosecutor for instance, said she had prosecuted cases, which she considered to be trivial but the parents had insisted that nothing less than a conviction would change their children's behaviour. In two separate incidents, she said that parents had called the police after their child had taken small amounts of money from them. In acquiescing to the parents' demands, the prosecutor said she thought it important not to alienate them and compliance with their wishes could also help to increase their confidence in the criminal justice system.⁵⁹

There were also cases involving family disputes where mental health, child protection and/or other welfare issues indicated it might not be in the public interest to prosecute, but prosecution nevertheless went ahead. In one case, for instance, a 15-year-old girl was charged with offences of possessing a bladed instrument and criminal damage. It was accepted by the CPS that these offences were a cry for help because she had telephoned the police to tell them where she was and that she had a knife, and she then waited to be arrested. There were serious child protection issues in this case. The girl had previously been placed in care for her own protection following allegations of physical, emotional and sexual abuse within the family. She was once again placed in care following this incident. While this was initially extremely distressing for her and she self-harmed, the YOT subsequently reported that she had settled well into the Care Home and she was given a Supervision Order. There were two other outstanding offences which the girl denied. Although they were minor matters, predating those for which she was sentenced, the CPS were proceeding to trial. More worryingly, the girl was likely to come into contact with her family at the trial because her sister was a co-accused (M6).⁶⁰

Most of these cases highlight problems which can commonly occur within families but seldom come to the attention of the police. The involvement of the police,

⁵⁹ A key performance target is to increase public confidence in the criminal justice system. See the National Criminal Justice Board website at <http://lcjb.cjsonline.gov.uk/ncjb/14.html> for details of this and other performance targets.

⁶⁰ Other similar 2006 cases involving child protection issues are included in Appendix B.

either at the request of a parent or because child protection issues are involved, can then lead to the child being prosecuted. When asked whether minor cases were brought unnecessarily to court, all the court clerks said they felt too many children living in care were prosecuted for minor offences arising out of incidents within the Care Home. Such cases were also observed at court. For instance, when dealing with a 14-year-old who was in care for an offence of criminal damage, the magistrates gave him an extended Referral Order but commented that it was a pity he had been prosecuted for such a minor matter (M3). This case had been prosecuted, even though a local protocol recommended young people in care should not be prosecuted for minor offences. All the prosecutors acknowledged that such cases continued to be problematic. As one prosecutor noted:

We continue to take kids in care into court and I think it's wrong. They are in care because they come from a troubled background and they then get labelled with a number of convictions. We do need to hold back, but I still think we prosecute too many (PF1).

4.2.2 Diversion and the Final Warning scheme

Diversionary policies and practices are intended to assist the police and the CPS in avoiding prosecution for minor offences, although under the Final Warning scheme there are now strict limitations on the permitted number of pre-court disposals. In the 2005 sample, 22 per cent of those prosecuted were subsequently diverted from court because they were found to be eligible for a reprimand or warning. The police are responsible for making decisions under the Final Warning Scheme but it seems that their screening practices are not always effective in identifying cases suitable for diversion early on in the process.

Three cases were observed which were prosecuted because the police mistakenly believed a final warning or conviction had already been recorded. Once the error had been discovered, these cases were subsequently diverted. It also seems that when defendants are charged with more serious offences, diversion is not always considered appropriate; nevertheless, if the CPS later agree to a plea of 'guilty' to a reduced offence, the case can then be adjourned for the police to consider a reprimand or warning. In the 2005 sample, a female was arrested on suspicion of GBH; she was

charged with ABH, but the CPS later accepted a plea of common assault and she was diverted from court with a reprimand (Case 36). In another case a male was charged with a Section 4 POA and an offence of criminal damage. The offences were admitted but it was noted on the CPS file that he was charged because he was in possession of Class C drugs, even though he had not been charged with a drug offence. He had one previous reprimand, and the new offences were then diverted for a warning (Case 117).

In accepting either a reprimand or warning, a defendant has to admit guilt. One of the main reasons why offences seemingly eligible for diversion are instead prosecuted is that the offence is denied. In this study, there were 107 cases in which it was known whether or not the suspect had received legal advice at the police station either over the telephone or face-to-face. Just over half of the suspects (59) had received such advice. The custody records noted two main reasons why a suspect refused legal advice: because he had, 'not done anything wrong' and because he did not want to wait for a solicitor. Without legal representation, young suspects would usually have their mother or father sitting in on the police interview as the 'appropriate adult'⁶¹ but, as practitioners noted, some suspects might be inhibited from admitting certain offences in front of their parents, particularly those involving drugs and violence.⁶² Once at court, and having received legal advice, the defendant might then admit the offence and the case is adjourned for the police to consider a reprimand or warning.

There were also cases where suspects denied having committed an offence on the basis that they did not believe their actions to be criminal. If, on having received legal advice, they were advised that on their version of events they did not have a defence, then they would change their plea to 'guilty' and, if eligible, diversion could then be considered. There is also an issue, however, concerning suspects who do not receive legal advice and go on to admit an offence inappropriately, whether because they have a defence and/or because the prosecution does not have sufficient evidence, and a reprimand or warning is recorded. Increasing access to legal advice in the police station, therefore, could help to ensure that cases suitable for diversion are not

⁶¹ YOT officers can also act as an appropriate adult within the police station but it was usually a parent who was present.

⁶² The role of an appropriate adult is to, 'advise, assist and befriend' young suspects and not to provide legal advice. The issue of guilt within an adversarial system, however, is clearly a legal rather than moral issue. Having examined the role of appropriate adults, Pierpoint (2006) suggests that further consideration should be given to making legal advice mandatory for young suspects at the police station.

inappropriately brought to court. It could also help to ensure that a reprimand or warning is recorded only in suitable cases.⁶³

It seems inappropriate that a decision to prosecute is made in cases where the offence is denied but the suspect has not received legal advice. The legal elements involved in many types of offences are complex; without legal expertise, a young suspect is unlikely to know whether his actions amount to a criminal offence. On the other hand, it is also important that suspects who admit offences receive legal advice, in order to confirm that they are guilty of the offence for which a reprimand or warning is imposed.

The issue of whether a defendant is 'guilty' or 'not guilty' is not always straightforward. Indeed, in one case observed at court, a defence solicitor asked the prosecutor why the defendant had not been reprimanded or warned and she was told this was because denials had been recorded in the CPS pre-charge advice. When the defence solicitor read out a section from the police interview in which there were full admissions, the offence was then diverted and a reprimand imposed (D1). This case is interesting, because it tends to suggest that the prosecutor reviewing the case file did not read the record of the interview, but instead accepted the note on the file that the offence was denied. With a strict limit on the number of pre-court disposals, therefore, it seems that the Final Warning scheme could encourage prosecutors to adopt a more perfunctory approach when reviewing youth case files. This seemed to be the perception of one prosecutor, who said that the Final Warning scheme helped in adopting a, 'far more consistent approach than under the old caution scheme, because if a final warning had been recorded the offender would simply be prosecuted' (PF1).

While the CPS could adjourn cases for diversion early in the proceedings, it seemed less likely that diversion would be considered later on.⁶⁴ In one case, for instance, one young offender had admitted to assaulting another but claimed the injuries amounted to a common assault and not the ABH, which was charged. At the trial, the

⁶³ The Final Warning scheme requires that there is an admission to the offence as charged and there is sufficient evidence to prosecute before recording a reprimand or warning. Research evidence suggests that this is not always the case (see Holdaway et al., 2001).

⁶⁴ This was not the case in the 2005 sample, where cases were diverted following plea-negotiation after the PTR.

CPS accepted a plea of guilty to common assault but diversion was not considered and the offender was convicted (T7). In the opinion of one solicitor, this was not now unusual and diversion was seldom considered after the evidence had been challenged by the defence, because of the costs that the prosecution had been put to in preparing the case for trial.

When the researcher was observing cases at court in the summer of 2006, a prosecutor remarked that CPS policy nationally now required them to continue to prosecute cases which had initially been denied but were later admitted at court.⁶⁵ This was because young offenders were said to be ‘playing the system’ by denying offences at the police station in order to encourage no further action but subsequently admitting guilt if the offence was prosecuted to try and get it diverted. The policy applied to all defendants whether or not they had received legal advice at the police station, even though, as the prosecutor acknowledged, it was difficult for young people to cope with the complexity of the criminal law and rules of evidence at the pre-court stage. Despite the new CPS policy prosecutors were still seen to be amenable to defence requests for adjournments to consider diversion in a number of cases.

There are not only inefficiencies and cost implications in bringing cases unnecessarily to court when a reprimand or warning is appropriate, but the defendant and his family also experience the avoidable stress of being brought into the court system.⁶⁶ Early liaison between the CPS and defence solicitors prior to the first court hearing might help to avoid such inefficiencies by reviewing cases and identifying those eligible for a reprimand or warning.

4.3 Defence practices

All defence solicitors complained about being frequently and unfairly blamed for delays at court.⁶⁷ The late service of evidence by the CPS was cited as the main problem

⁶⁵ The prosecutor said that this was internal CPS policy which was not available because it had not been published.

⁶⁶ In the profile of cases, there was an average of 3 hearings for cases diverted from court. This is because the police have to agree to a reprimand or warning being imposed and the case is adjourned to enable them to make enquiries and to report back to the court. It is anticipated that such delays may be reduced once the CPS are able to impose conditional cautions on young offenders brought into court.

⁶⁷ Indeed, the main reason why some defence solicitors said they were prepared to participate in this study, by making case files available and being interviewed, was that they welcomed the opportunity for a research study to examine the underlying causes of inefficiencies and delays.

leading to inefficiency and delay. Without the evidence being produced, defence solicitors confirmed they would request an adjournment so the evidence could be produced. Defence solicitors stressed their first duty was to protect the legal rights of their client.⁶⁸ Within an adversarial system therefore, it was not sufficient for their client simply to accept 'guilt'; defence solicitors also needed to ensure the CPS had the evidence needed to prove the case in court.⁶⁹ Defence solicitors recognised the need to reduce delay at court and reported their requests for adjournments increased the tension in court; in that magistrates could sometimes put pressure on the defence to deal with cases quickly by asking them to waive their right to consider the evidence.

However, defence solicitors' case management at court can lead to inefficiencies and delays. Twenty-one different firms of solicitors were involved in the 153 publicly-funded cases in the 2005 sample. Some firms had two or more representatives regularly at court, and 35 solicitors in all represented the defendants at court. When observing cases in the Youth Courts it was also noted that many defence solicitors tend to represent a number of clients, in both the Adult and Youth Courts. Managing cases in different courts can lead to delays for the Youth Court magistrates while they wait for solicitors to become available after representing clients in other courts. With the Youth Court dealing with many cases defence solicitors could also be kept waiting for long periods of time before their case was heard.

As noted in the statistical analysis of the 2005 sample of cases, just 7 per cent of represented cases were dealt with at the first hearing. More frequent than the non-attendance of the defendant, or the request for a pre-sentence report after a finding of 'guilt' at the first hearing, were defence solicitors' requests for an adjournment so they could examine the prosecution evidence and take their clients' instructions. The Courts Service had made tape machines and video recorders available to assist defence solicitors in examining the evidence at court and thereby encourage more cases to be

⁶⁸ Principle 21.01 of The Law Society's Guide to the Professional Conduct of Solicitors states that solicitors who act in litigation are under a duty to do the best for their client, although they must not deceive or mislead the court (see The Law Society, 2003).

⁶⁹ Indeed, this is in accordance with the Legal Service Commission's Code of Conduct for the Public Defender Service. At paragraph 2.2, for instance, it states that, 'A professional employee shall not put a client under pressure to plead guilty and in particular shall not advise a client that it is in his or her interests to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof' (Legal Services Commission, 2005).

concluded at the first hearing. Where the Advance Information had been served in full at the first hearing, however, defence solicitors managing a high volume of cases complained about insufficient time for them to take instructions at court. Although representing a number of clients at court is a cost-effective way for solicitors to manage cases, the limited time available to take instructions means many cases are adjourned, in turn leading to inefficiencies and delays.

4.4 *Legal aid in the Youth Courts*

In October 2006, during the fieldwork period, Legal Aid means-testing was re-introduced. This was found to have a profound effect on the processing of cases, leading to at least one additional hearing and a minimum seven-day adjournment. In response to concerns raised following the re-introduction of means-testing, the DCA Minister, Vera Baird QC, required that a review of the new arrangements be carried out during May 2007. The outcome of the review was that from 1 November 2007 young defendants (i.e. those aged under eighteen years facing charges in the magistrates' courts) are now 'passported' so that they are no longer subject to means-testing.

4.5 *Youth Courts and the influence of performance targets*

In addition to the Code for Crown Prosecutors, the Statutory Charging initiative and the Final Warning scheme, performance targets were a major influence both on the way that cases were managed through the court process and on prosecution decision-making. Two key performance targets were particularly influential: reducing delays in PYO cases and 'narrowing the Justice Gap', the latter requiring more offences to be brought to justice. Although these targets have been met, there have also been adverse effects.⁷⁰

4.5.1 *Reducing delays in PYO cases*

The Government has honoured its pledge to reduce delays from arrest to sentence for PYOs from 142 to 71 days. Indeed, the national average in 2007 was 65 days (Pandya, 2008). Pressure to meet this target has led to offences being dealt with separately at court because this reduces case duration. One solicitor described how in the past, clients with a number of different offences at court would often have the sentencing hearing delayed until all matters were ready to be dealt with. However, adjourning

⁷⁰ For progress against Government targets in the criminal justice system see the Criminal Justice Board's website at <http://lcjb.cjsonline.gov.uk>.

offences to a single sentencing hearing can lead to long delays, particularly for prolific offenders, and sentencing each offence(s) following a finding of guilt, records a shorter case duration.⁷¹ As noted earlier in this report, this appears to have led to a change in the definition of a ‘case’, which perhaps previously referred to the individual before the court, but now tends to refer more to each separate set of offences. CPS and court files are now based on this new definition of a ‘case’, with the result that it often became impossible to identify from the records what other matters relating to a particular defendant were also being dealt with in the court system. Although dealing with ‘cases’ separately leads to a shorter average period from arrest to sentence, it can also augment criminalisation, with an increase in the number of convictions recorded against an individual offender. This effect of ‘case-splitting’ can also increase the number of legal aid representation orders granted.

The effect of dealing with cases separately was not easily identified in the 2005 sample, as it was not always possible to identify defendants with more than one set of offences, particularly if these had not concluded during October and November 2005, the period from which the sample of cases was drawn. During the examination of defence solicitors’ file a number of cases were identified in which other offences were also being dealt with at court at the same time as the offence(s) included in the 2005 sample of cases. Without examining defence solicitors’ files or YOT records, therefore, the totality of ‘officially-recorded’ offending behaviour against an individual defendant is not usually ascertainable from court or CPS files.⁷²

From the defence solicitors’ perspective, dealing with cases separately meant the proceedings often made little sense to prolific offenders and so might discourage them from becoming engaged in the court process. Indeed, when asked what impact the system had on persistent and prolific offenders, one solicitor replied, ‘They don’t give a damn about the Youth Courts. They come into court and want to plead not guilty to everything; they just want to screw up the whole system’ (DD3). Such attitudes have important implications for the Youth Court system as they can lead to long delays,

⁷¹ There were some cases where the case was adjourned after a plea or finding of guilt to tie in with a sentencing hearing, but usually cases were dealt with separately.

⁷² Not all defence solicitors kept a single file for a client and some would open a new file for each set of offences.

multiple hearings, and numerous trials.⁷³ The way in which cases are processed chronologically once they enter the court system, however, is likely to cause confusion and encourage a lack of engagement by young defendants, because minor matters can proceed to trial while more serious offences remain outstanding. In one case, for example, a PYO was facing several charges, including both minor and serious offences. He was first in court for two minor breaches of a Criminal Anti-Social Behaviour Order (CRASBO), and these were listed for trial (Case 143). While waiting for the two trials he was charged with a domestic burglary. Despite the seriousness of this offence, the trials on the breaches of CRASBO took priority and he was found not guilty. He was later found guilty of burglary and received a custodial sentence. By prioritising the listing of trials which relate to more serious offences, a finding of guilt is likely to avoid the need for further trials in relation to minor offences, as these tend to be resolved through subsequent plea-negotiations.

For a number of offenders who were dealt with separately at court for different sets of offences, there was a similar pattern in relation to pleas. These tended to involve a 'guilty' plea to one or two minor offences but 'not guilty' pleas in relation to most offences, which then proceeded to trial.⁷⁴ After trial, or a number of trials, if convicted of some or all of the offences, it was not then unusual for plea-bargaining to take place in which the CPS might agree to discontinue some offences and the defence agree to plead guilty to others or to reduced charges. The plea-bargain takes place on the basis of the lawyers recognising the likely sentence expected and what difference other offences might make to this. However, there seemed to be no prioritisation of offences by the CPS. Those first brought into the court are the first to be listed for trial, even though they may relate to minor offences. This can be wasteful of resources, because a finding of guilt in relation to more serious offences could avoid the need for trial in relation to lesser offences. The lesser offences tend to be resolved between the CPS and defence solicitors through plea-bargaining.

⁷³ Credit is given for an early guilty plea, which then reduces the sentence of the court, but while this was said to be useful in the Adult Court it did not have the same impact in the Youth Court, where magistrates tended to be more lenient. Indeed, defence solicitors commented that in some cases where the victim was not found to be blameless, a more lenient sentence could be imposed after a trial than was likely to be forthcoming following a 'guilty' plea.

⁷⁴ Guilty pleas could sometimes be entered to more serious offences if the evidence was overwhelming.

The separate processing of cases means offenders are dealt with in a fragmented way and a range of different sentences can fail to take into account the totality of the offending behaviour. The following case study of a PYO illustrates this fragmentation. The young offender in question was in both the 2005 and 2006 samples. Indeed, apart from a three-week break he has been continuously in the system since June 2005.

Case study

John was a 14-year-old PYO when he was first brought into court on 24 June 2005.⁷⁵ Since then there were 14 different sets of offences, which have involved 51 hearings to date. The original offences brought into court ranged from theft and criminal damage to robbery and Section 18 GBH. John pleaded not guilty to all charges, apart from the criminal damage. Ten of these charges were later dropped, including the GBH and some robbery charges. He was found guilty of some offences and changed his plea to 'guilty' on others. For offences including robbery he was first given a 24-month Supervision Order and Reparation Order in November 2005. For another robbery offence, he was given a new 24-month Supervision Order and an Intensive Supervision and Surveillance Package in March 2006. For an admitted offence of theft, he received a Conditional Discharge in June 2006. New offences of witness intimidation were brought into court on 19 April 2006, and while these were initially denied John subsequently changed his plea and received a Conditional Discharge in July 2006. Five other sets of offences were then brought into court, including two charges of robbery, which were denied and subsequently withdrawn. For admitted offences of ABH and theft, John was given an 18-month Supervision Order in September 2006, to run concurrently with the previous order. A Section 5 POA offence was listed for trial in February 2007, and sentencing for an offence of theft was due to take place on 22 January 2007.

There were other cases in which court proceedings involving prolific offenders were dealt with over multiple hearings and various trials. In one case, for example, a 14-year-old with no previous convictions was first in court on 19 April 2006. After being charged with eight different sets of offences, he was eventually dealt with on 22 December 2006 after 33 hearings and six trials. In another case, a 15-year-old with one previous conviction was first in court on 22 March 2006 with nine sets of offences. He was finally dealt with on 13 December 2006 after 40 hearings and five trials. Both defendants were sentenced at the conclusion of each offending episode where there was a finding of guilt. This mainly involved new, concurrent and/or consecutive

⁷⁵ 'John' is a pseudonym.

Supervision Orders, the later inclusion of an Intensive Supervision and Surveillance Package, and Conditional Discharges for lesser offences.

As cases were dealt with separately, it was not always clear whether prosecutors were aware if the defendant had other matters pending at court. Prosecutors said they could always check on the CPS computer or ask YOT officers if there were other matters, but defence solicitors did not feel that they did so. As one solicitor said, 'I don't think they care what else is in the system. I guess they might see certain names keep coming up. I can only think of one prosecutor who will research their case and make enquiries. The others don't seem to bother' (DN2).

Another consequence of fast-tracking cases under the PYO initiative is the greater duration of non-PYO cases. When listing trials, PYOs can be fixed in two to three months compared to five or six months for non-PYOs. Although long delays are inappropriate when dealing with young offenders, they are of particular concern when dealing with non-PYOs for sexual offences, which could benefit from being fast-tracked. For example, there was one case where a non-PYO first appeared in court on 31 May 2006 charged with two offences of sexual touching; one alleged to have occurred in December 2005 and the other in February 2006. The first trial was listed in November 2006, but this did not proceed because the victim failed to attend and it was re-listed in January 2007, the same month in which the other trial had been fixed (T3). Another case, involving unlawful sexual intercourse which took place in December 2005, was first in court on 28 April 2006. The offence was denied and after long delays and numerous hearings, the trial went ahead and the defendant was found guilty on 19 December 2006 (T6).

4.5.2 *Narrowing the Justice Gap*

The Government's initiative to 'narrow the justice gap' puts the prosecution under pressure to bring more offences to justice.⁷⁶ Indeed, through the Statutory Charging initiative it is intended to bring an additional 30,000 offences to justice each year. Pressure on the CPS to meet this performance target could help to explain not only why minor cases are prosecuted, but also why it is that some minor offences are pursued

⁷⁶ This means increasing the number of offences dealt with formally by way of either a reprimand or warning, by a conviction, or by offences being taken into consideration by the court when sentencing.

following a sentencing hearing for more serious offences. It is also likely this performance target has disproportionately increased the number of young offenders who are prosecuted, because there is a strict limit on pre-court disposals for youths, whereas adult offenders can receive multiple cautions.

The target to bring more offences to justice is likely to encourage the prosecution to proceed with some offences that might not previously have been pursued. This seemed to be the situation in one case, where a 16-year-old was first in court on 12 July 2006 for offences of robbery committed in January 2006. He was anxious for all matters to be dealt with quickly and pleaded guilty at the next hearing. While the magistrates retired to consider the sentence, a police officer came into court with a new offence of non-domestic burglary, alleged to have occurred in October 2005. Although the police officer wanted the offence to be taken into consideration, this was not possible as it was denied. When the magistrates returned, they adjourned the robbery case for a pre-sentence report and the defendant later received a Referral Order. The burglary offence was not more serious than the robberies and it also predated those offences, so it was unlikely that a more punitive sentence would be handed down, but the CPS were proceeding and the case was listed for trial in February 2007 (T2).

The pressure to bring more offences to justice might also encourage the prosecution to proceed with minor offences even if the offender had recently been sentenced for more serious offences. Certainly, defence solicitors have warned that the CPS will, in some cases, continue to prosecute minor offences even after their clients have received a Detention and Training Order (DTO) and no additional punishment was to be expected and despite the additional costs in producing the defendant from custody. In one case where a young offender had received a 12-month DTO, subsequent decisions illustrate the pressure the prosecution are under to bring more offences to justice. In this case, following the imposition of the DTO, the CPS indicated its intention to proceed to trial with two outstanding offences of criminal damage. Following a police visit to the offender these offences were discontinued but instead he was charged with two new matters. He later admitted those offences, and asked the court to take a further 31 other offences into consideration when sentencing him. The new matters were not more serious than those for which he had recently been sentenced, so accordingly he received a concurrent 6-month DTO. While the prosecution had

brought an additional 33 offences to justice in this case, with the potential benefit of resolution for victims, the proceedings involved three additional hearings and the additional cost of producing the defendant from custody without adding to the burden of punishment or rehabilitation.

There have been others who have criticised this target to bring more offences to justice. Indeed, in his review of policing, Sir Ronnie Flanagan (2007) argued that it unnecessarily limited police discretion when dealing with children for minor matters and led to increased criminalisation for minor offences and borderline criminal activity. Taking into account such criticisms, the target has now been re-focussed on serious offences rather than minor ones (HM Treasury, 2007).

5. Multi-agency functioning and the Youth Court system

5.1 *Targets, interests and ideologies*

The processing of cases within the Youth Court relies on a number of agencies working together effectively. However, it has been noted in this study that various initiatives and performance targets can pull agencies in different directions. One Youth Justice Board (YJB) performance target, for instance, is a 5 per cent reduction in the number of first-time entrants to the Youth Justice System by March 2008. With the Final Warning scheme strictly limiting the number of pre-court disposals, and with the Government's performance target to bring more offences to justice it is not surprising that the YJB target is at risk. Indeed, between the first nine months of 2004/05 and the corresponding period in 2005/06 there was an 8 per cent increase in the number of first-time entrants (YJB, 2006).

The impact of the performance target to bring more offences to justice is also likely to increase tensions between the police and CPS, particularly in cases presented for prosecution by the police but not pursued by the CPS. As one prosecutor observed, 'While I get on well with the police, I know that behind the scenes they have lots of quibbles. They don't like it when we want a "delay charge bail" because they think there's enough evidence to prosecute. We're seen as pernickety lawyers asking for more than we need' (PF1). It is also important to consider the extent to which performance targets are expected to influence the work of different agencies involved in the Youth Court. Defence solicitors were adamant that it was not their role to assist the prosecution in bringing more offences to justice. Their primary role was clearly understood as being to protect legal rights, a role which can evidently pull in the opposite direction.

Thus, there are also tensions within an adversarial system of justice, with agencies working under different operational ideologies and managing within limited and sometimes competing budgets.

Efficiency may be perceived differently from different perspectives. In seeking to reduce delays, for instance, as noted above, the Courts Service has provided tape machines and video recorders to assist defence solicitors to listen to interviews and

CCTV tapes whilst at court, in order to increase the number of cases dealt with at the first hearing. Court clerks recognise the pressures on defence solicitors at the first hearing and they are generally sympathetic to their applications for adjournments. Each action is reasonable from the perspective of the actor, but the actions are far from being mutually supporting.

In order to reduce delays, the Courts Service now double-lists trials so if one trial collapses another is ready to take its place. Another initiative is to identify ‘potential PYOs’ and to fast-track them as PYOs through the court system. This initiative seeks to avoid the longer duration of cases managed as non-PYOs, but because of subsequent conviction(s) in relation to other offences at court, the non-PYOs can become a PYO when convicted, and the longer duration is then reported in the county’s PYO performance figures recording the time from arrest to sentence. With an assumption of guilt prior to a conviction, however, some defence solicitors were seen to object strongly to this definition.

The effects of such initiatives nevertheless have implications for the other agencies. For example, when double-listing trials, a prosecutor is allocated to deal with both trials although there can be a lot of work involved when preparing two cases for trial. In addition, if both trials are ready to proceed, the second case on the list will be adjourned, having needlessly brought the defendant and witnesses to court.⁷⁷ In relation to the fast-tracking of ‘potential PYOs’, the effect of this initiative is to further increase the volume of cases managed quickly through the system. This puts pressure on the police in particular, as it means that a higher volume of cases requires full-files to be prepared within a short timescale.⁷⁸ Prosecutors had already complained about case-preparation problems that were due to resource constraints within the police. As one prosecutor explained, the police used to have a full-time member of staff copying CCTV tapes, but this was now a part-time position, resulting in a backlog of tapes and concomitant delays in court.⁷⁹ In addition, a number of practitioners commented that the CPS was insufficiently resourced to carry out its tasks. One court clerk, for

⁷⁷ Nevertheless, court clerks commented on how the ‘double-listing’ of cases had helped to list trials more quickly.

⁷⁸ Preparation includes typing copies of the interviews and witness statements and obtaining witness availability for a trial date.

⁷⁹ Prosecutors also commented on long delays while waiting for forensic experts to provide statements confirming fingerprint evidence.

instance, warned that while more could be done to reduce delays there were limitations, particularly because, ‘the CPS are so under-funded’ (CN3). Another court clerk pointed out the limited advantage in the Court Service making additional courts available to deal with cases more quickly, as there was a shortage of prosecutors in the County.

Inefficiencies within the prosecution process have been noted as the main cause of delay in the County, particularly with the late production of evidence in some cases. With more cases proceeding to trial, such practices also increase the administrative burden on the prosecution. With pressure on the court to deal with cases more speedily, some defence solicitors have complained that the issue of guilt is increasingly being scrutinised from a moral rather than legal standpoint. In seeking adjournments in order to examine the prosecution case, one solicitor said she was annoyed that, ‘the view from the bench, and even a District Judge recently, is that the young offenders know whether they have done it or not’ (DD3). Within an adversarial system, therefore, there are tensions between the agencies when seeking to deal with cases quickly but at the same time seeking to ensure that legal protections are maintained.

5.2 A ‘Whole-Systems’ Approach

In adopting a ‘whole-systems’ approach, it is important to examine how agencies work together and what impediments there may be to achieving ‘whole system efficiencies’. It is also important to recognise that while certain agencies may be perceived as responsible for delays at one point in time, the many interactions between different agencies makes it difficult to identify an ultimate cause of particular inefficient practices. The perception can also alter in response to changes in resources and staff numbers. The court process is dynamic and while the impact of performance targets is monitored centrally, there needs to be a better understanding, locally, of factors found to influence the processing of cases and how these change over time.

Research into delays at court have found the main causes of delay to include: the non-attendance of the defendant, late disclosure or service of evidence by the CPS, missing CPS files, defence solicitors needing to take instructions, lack of information from the prosecution or defence (such as witness availability), and failure of prosecution witnesses to attend at trial (see Brown, 2000, HM Chief Inspector of Police, 1999 and Whittaker et. al., 1997). Within the Youth Courts the failure of the mother or father to

attend as the appropriate adult was also a reason why cases might be adjourned. More recently, the re-introduction of means-testing in publicly-funded cases had led to delays while legal aid was considered but this is no longer the case as young defendants are now ‘passport’ so they are no longer subject to means-testing.

Earlier research studies have also identified how factors impacting on delays vary between areas. In one Home Office study, for instance, areas were found to vary considerably on whether disclosure was served in time, whether the defence were ready to proceed, and to what extent courts were seeking to discourage adjournments (Whittaker et al., 1997). Another Home Office study found variations between courts in granting avoidable adjournments, which meant an ‘adjournment culture’ was still in evidence in some courts (Brown, 2000).⁸⁰ In the evaluation of the statutory time limits pilot, Shapland et al. (2003) found the main reason for delays varied between the six pilot Youth Courts. Reasons included: delays in the CPS providing disclosure to the defence, delays in obtaining forensic evidence, court availability, witness problems, and the infrequency of court sittings. Overall, the organisational culture of courts is critical in influencing more efficient procedures and working practices (Whittaker et al., 1997). There are limitations in effecting change, however, unless all the agencies work together in identifying the main barriers to more efficient case-processing and deciding how they can be overcome.

The role of the YOT within the multi-agency Youth Court system is also interesting to consider, as YOT officers often tend to be the only representatives regularly appearing at court. YOT case files were also the only record available at court to include details of all offences currently being dealt with, together with up-to-date offending histories. An intervention by the YOT officer had led to some cases being diverted after the police had mistakenly believed there was a previous conviction. There were also cases where details recorded on the police national computer were not up-to-date and the court would look to the YOT as having more reliable records. The role of the YOT can also be contradictory and confusing, as it is required to assist in the rehabilitation of young offenders while also providing an enforcement role. In pre-

⁸⁰ There are likely to be differences between magistrates’ courts and courts managed by District Judges, as the judges’ detailed legal knowledge and experience of the criminal courts is likely to assist them when deciding if an adjournment is necessary.

sentence reports, for instance, YOT officers are required to discuss 'risk factors' in relation to further offending and this might include comment on drug use, even if the offence does not involve drugs, and comment on other offences, even if these had not been prosecuted.

6. Managerialism and the role of defence solicitors

In dealing with cases in court, defence solicitors are required to uphold legal protection against the powers of the State for those suspected of committing offences.

Accordingly, academics examining ethics and the role of criminal defence lawyers consider that lawyers are responsible not only for representing clients but simultaneously, 'for maintaining fundamental guarantees central to the justice system'. This means that ethically, while defence solicitors are not permitted to act in a way that is disrespectful to the court, they should be accorded, 'a certain flexibility in tactical decision-making' (see Blake and Ashworth, 2004:168). At the same time, as 'officers of the court', the defence solicitors' professional standards also require them to deal with cases efficiently.

In a detailed study of the organisation and practices of defence solicitors in England and Wales in the early 1990s, McConville et. al. (1994) were critical of defence solicitors' routine preparation and representation of clients at court. They drew attention to a commonplace assumption of clients' guilt, which led to a lack of adversarialism. Since then, following the introduction of the accreditation scheme for legal representatives and duty solicitors and also the incorporation by the Legal Services Commission of quality targets into the General Criminal Contract, the quality of legal defence services has improved (see Bridges and Choongh, 1998 and Cape and Hickman, 2002).

In this scoping study, it seemed that some defence solicitors were more disposed than others to challenge the evidence. Furthermore, while some defence solicitors raised the possibility of a reprimand or a warning for clients who were eligible for diversion, others did not. In cases where prosecutors were not prepared to consider diversion, this seemed to be accepted by defence solicitors and no solicitors were seen to make representations to the magistrates for an adjournment so that a reprimand or warning could be considered. Many defence solicitors are frequently at court and they are likely to be aware of the limitations within which they can successfully make representations to the court. Such familiarity and routine may also diminish their adversarial role. There was one case, for instance, where a 14-year-old was being sentenced for a single offence of criminal damage at a Children's Home. He had recently received a Referral Order arising out of a similar incident, and the defence

solicitor argued that a Conditional Discharge was appropriate in the case. The magistrates seemed to agree this was the correct disposal but they then considered a YOT report updating the Referral Order. This report contained details of another assault on a member of staff, even though this incident had not been reported to the police. Commenting on the seriousness of this assault, however, the magistrates said they would adjourn for a pre-sentence report (PSR) in order to consider imposing a community penalty (M8). The defence solicitor failed to point out that the offence of assault was not before the court, and so the case was adjourned for a PSR.

As already noted, increasing managerialism and the pressure to deal with cases quickly can put pressure on the court agencies to consider guilt from a moral rather than a legal perspective. While the first duty of defence solicitors is to their clients, it is interesting that with the increasing dominance of managerialism their role is being re-defined. As Cape (2006:57) puts it, we are, 'currently in the midst of a paradigm shift that has significant consequences for all participants ... particularly the accused and their lawyer'.

Within our study, modelling the predictors of duration did not identify defence solicitors as a main cause of variation in case duration. Nevertheless, the structure of legal aid remuneration can influence the way in which defence solicitors manage cases in order to maximise profits. When legal aid in the magistrates' court was paid at hourly rates, for instance, there had been criticisms that the legal aid scheme encouraged delays in order to increase profits, a phenomenon known as 'supplier-induced demand'.⁸¹ The introduction of standard fees in criminal magistrates' court work in 1993 was intended to increase efficiency by encouraging solicitors to maximise profits by dealing with cases quickly. While the payment under standard fees was found to change solicitors' management of cases, it was also argued that 'supplier-induced' demand continued, with solicitors undertaking more work on some cases than was necessary.⁸² When Gray et al. (1999) examined solicitors' billing behaviour both before and after the introduction of standard fees, they argued that solicitors did less work on those cases which clearly fell into the lower standard fee category while doing more

⁸¹ For further details see Bevan (1996), Bowles et al. (1992), and Wall (1996).

⁸² The fees are paid under a 'lower', 'higher', and 'non-standard' fee. The bulk of the work is paid under the lower standard fee, and the complex and costly cases are paid as a 'non-standard' fee.

work on borderline cases so as to move the payment threshold into the higher standard fee category. However, Bridges disputes Gray et al.'s findings, pointing out that the billing data analysed in the study covered the period between 1988 to 1994, which included only one year of bills paid under the new scheme. Having examined the payment of criminal legal aid over a longer period of time, Bridges points to what he describes as, 'the remarkable cost stability' of criminal legal aid from the introduction of standard fees for magistrates' court work from 1993 up to shortly after the turn of the century (cited in Cape and Moorhead, 2005).

In the present study, every one of the defence solicitors disputed the supplier-induced demand thesis. They said that payments under the standard fee regime meant their profit margins increased when dealing with a high volume of cases quickly under the lower standard fee.⁸³ When they ask for an adjournment at the first hearing, therefore, it seems that solicitors are effectively reducing their profit margins in lower standard fees, but solicitors said it was more important that they had time to take instructions and advise their client properly, which was seldom possible when they were dealing with a number of different cases at court.⁸⁴ While the structure of legal aid remuneration can influence the way in which solicitors manage cases and case outcomes, it is not the only factor impacting on their behaviour. Indeed, when asked what the main influence on their case management decisions was, a number of solicitors said it was, 'acting in their client's best interest', which suggests the client/lawyer relationship is the most important factor.

The complexity of the criminal justice process means, many factors both economic and structural, can influence case costs and management decisions. The difficulty of determining exactly what is behind those management decisions came to the fore recently in a study by Cape and Moorhead (2005), which found that suggestions

⁸³ In an unpublished study of the impact of standard fees, Bridges found that there were many more standard fees paid at the 'lower' rate than were expected (cited in Cape and Moorhead, 2005).

⁸⁴ Whereas in borderline cases an adjournment at the first hearing might help to bring a claim under a higher or non-standard fee the vast majority of claims (around 80%) are paid at the lower rate (see Cape and Moorhead, 2005). Prior to the introduction of means testing, defence solicitors would ask for an adjournment at the first hearing. It is now usually at the second hearing that such a request is made, following the grant of a Legal Aid Representation Order.

of supplier-induced demand attributable to changes in the manner of legal aid payments have not always taken into account the wider changes in the criminal justice system.

7. Children and young people

Research on managerial influences upon effectiveness and efficiency within the youth justice system may focus only on the technicalities of the processing of cases.

However, it is important to reflect on what these processes mean subjectively to children and young people appearing in court and what impact that experience has on changing their offending behaviour. This is particularly important since the principal aim of the youth justice system is to *prevent* offending and those working within the system are required to have regard to that aim in carrying out their duties.⁸⁵ In order to influence changes in offending behaviour it is important that those brought before the Youth Courts are central to the prosecution process. Nevertheless, solicitors complain that owing to the complex and bureaucratic processing of cases, the children and young people appearing at court tend to be marginalised. Moreover, they appear to those who act on their behalf to have little or no understanding of what is happening to their case. As one defence solicitor put it:

The youth court is too complicated. Not just the processes and procedures, but everything. You are dealing with the most inexperienced and vulnerable sector of society ... I don't know how some of these kids cope at a very young age with no education, no stability, and often coming from a background of abuse and neglect (DK6).

It would be useful to consider, therefore, the impact of court processes from the perspective of children and young people, and to compare the perspectives of first-time offenders and prolific and persistent young offenders. As the courts deal with different sets of proceedings separately, it would also be interesting to ask prolific offenders what they understand to be happening when they attend court on numerous occasions and what impact different, overlapping, sentences have on changing their offending behaviour. Certainly, with almost weekly appearances for some prolific offenders, the Youth Court can become a familiar place. Instead of reflecting the gravitas and authority of the justice system, it provides a regular meeting place not only for defendants but also their friends. For example, when commenting on the social interactions of those within the Youth Court waiting room, one practitioner said that it was like a local youth club. Such familiarity is unlikely to have the desired effect of

⁸⁵ This principal aim is enacted in Section 37 of the Crime and Disorder Act 1998.

preventing offending, particularly if the social standing of those appearing regularly at court is enhanced within their peer group.

Listening to young people who are dealt with in court, therefore, may be critical to our understanding of whether or not the youth justice system is able to meet its principal aim of preventing offending. In a framework document, the Government emphasised the importance of dealing with cases quickly so that action can be taken to prevent further offending if the young person is found guilty (Home Office, 1998). However, the youth justice system not only needs to deal with cases quickly, but also where relevant, to address the underlying causes of the offence or offending behaviour. There were some cases, for instance, where the underlying problems were related to recent changes in a young person's life, such as bereavement or homelessness (or where the family had recently been re-housed in temporary accommodation). There were also cases where mental health, drug and/or alcohol addiction, or child protection and/or welfare issues were associated with the offending behaviour, but such issues were seldom addressed until after sentence, if at all. While it can be difficult to address underlying problems within an adversarial system prior to a finding of guilt, there can be long delays before contested cases are concluded. During these delays, the problems can become exacerbated and the failure to address the issues through an appropriate intervention can put at risk not only the young offender but also members of the public.

An extreme example is provided by the case of one young offender from the 2005 sample, who was being dealt with for a number of different offences but who then committed a very serious offence. From the outset, the defence solicitor was concerned that serious mental health problems meant the defendant was, 'unfit to plead'.⁸⁶ The defendant was first brought to court for offences in June 2004. Altogether, five different sets of offences were brought to court, and after 44 hearings all these matters were discharged in November 2005 (Case 5). There were long delays in obtaining psychological and psychiatric reports. When the defendant was assessed, the mental health professionals concentrated exclusively on the issue of whether or not he was fit to plead, so there was no mental health intervention to address his problems. The reports eventually established that while the defendant had serious mental health

⁸⁶ An accused person can be 'unfit to plead' if as a result of serious mental health problems he is unable to understand the evidence or to give instructions to defence solicitors.

problems he was fit to plead and so various trial dates were arranged. Prior to the first trial the defendant kidnapped and raped a stranger, for which he received a life sentence. After that, all matters before the Youth Court were discontinued.

In making prosecution decisions, it was not always clear that the Crown Prosecutor was aware of any mental health, child protection and/or other welfare issues underlying the offence or the offending behaviour. If they were aware of any issues, it was not clear to what extent those issues influenced their decisions. In a 2005 case, for example, after an incident at a care home when three members of staff were assaulted, the CPS advised the police to charge a 15-year-old resident with three offences of common assault (Case 124). It was noted on the CPS file that their advice to the police was to charge because the resident was a PYO who had previously committed violent offences. There was no indication on the CPS file at that stage, of any welfare issues relating to the case. In the defence file, there was a psychiatric report which stated there were serious welfare problems including physical, sexual and emotional abuse from her father, following which she had been placed in a secure unit for her own protection. The psychiatric report confirmed that she was not suffering from a mental illness as such, but that she was, 'clearly distressed, very sad, lonely', and that her placement in the secure unit had led to a further deterioration in her behaviour. The report continued: 'Most alarmingly she has carried out dozens of self-harm incidents, and made both suicide attempts and threats of suicide'. Once at court, the CPS were aware of the child protection issues involved but nevertheless noted that it was still in the public interest to prosecute because the accused could not control her temper. Nevertheless, the welfare issues in this case led the magistrates to grant an Absolute Discharge.

Where child protection and/or mental health issues were involved, social workers might already be engaged in cases. But some solicitors complained that it was extremely difficult to engage the Social Services Department in cases when the welfare needs emerged at court. This was so in one case where a YOT officer reported that an 11-year-old had been brought before the court for breach of his bail after he had left his foster home. It was learned that both parents had died as a result of drug abuse when the boy was very young, since when he had been in care. Although he had nowhere to live, the YOT officer reported that Social Services had refused to become involved

because he was not considered a priority. The only option available to the court was to bail him to a local Bail Support hostel, from which he later absconded.

Similar concerns were raised in another research study, when Phoenix and Fleming (2006) examined cases dealt with at a local YOT. They reported that social workers were 'remarkably absent' in either the local YOT or Youth Court. Most of the young offenders Phoenix and Fleming examined came from areas of deprivation, and poverty created general difficulties for the young person at home, at school, and in leisure activities. Phoenix and Fleming also noted that youth justice practitioners regularly commented that many of the problems of young people were not being addressed by the youth justice system. The main stories that young people told them were stories of family conflict, abuse, their parents' or their own alcoholism or drug problems, community and urban decline, informal and formal exclusion from school, local authority 'care' in which no-one really cared, and lack of employment or purposeful activities. While such factors might be the underlying cause of criminal behaviour, it appears that there is no effective mechanism within the youth justice system to bring together, as required, criminal, civil and welfare interventions. There is therefore a paradox within the youth justice reforms: they have brought together different agencies, promising an imaginative multi-agency partnership approach to youth offending, but a sharp divide between youth justice and child welfare nevertheless persists.⁸⁷

⁸⁷ See Bottoms and Kemp (2006) for further discussion of the separation between youth justice and child welfare issues.

8. Discussion and proposals for future research

The scoping study has examined the processing of Youth Court cases based in one county. It has identified a number of issues with implications for delays and other inefficiencies within the youth justice system.

8.1 Inefficiencies in the Youth Courts

An evident inefficiency within the County's Youth Court system is the high percentage of cases adjourned at the first hearing. Indeed, an adjournment culture is implicit, with only 7 per cent of the 2005 sample of publicly-funded cases being dealt with at the first hearing. Some cases are delayed because the CPS fails to produce the evidence at the first hearing. However, even in cases where the evidence is served, the great majority are then adjourned because defence solicitors are not ready to proceed. This is sometimes because defence solicitors represent several clients in both the Adult and Youth Courts, which then limits the time available at the first hearing to take instructions and consider prosecution evidence.

Two key questions raised by this study concern the effectiveness of police and prosecution decision-making and the efficiency of evidence production. An inefficient use of resources is indicated, for instance, by the finding that almost 40 per cent of the cases in the 2005 sample were either discontinued or diverted for a reprimand or warning. In addition, of the 90 sentenced cases, 41 per cent involved a pre-trial review, either because defendants pleaded 'not guilty' when the CPS delayed in producing the evidence or because the CPS pursued more serious offences before accepting reduced charges. Long delays were also observed in bringing the CPS and defence together to review the strength of evidence in contested cases. Indeed, as pre-trial reviews no longer provide an opportunity for the CPS and defence solicitors to discuss cases in advance, it seems that such a review now frequently takes place at the time of trial.

Thus, a critical issue is the way in which the CPS and defence solicitors collaborate. At present, their first engagement is at the first hearing, but there are limitations in discussing cases in detail, both because of time constraints and also when decisions need to be made by CPS officials who are not in court.

A number of defence solicitors have complained that they are forbidden to discuss case details with the CPS prior to a court appearance. Nevertheless, the involvement of defence solicitors, either at the pre-charge stage or prior to the first court hearing could help to reduce the number of cases brought unnecessarily to court. In particular, this involvement could help to identify cases eligible for a reprimand or warning, encourage non-prosecution decisions where the offence is trivial, where the evidence is weak, or where there are child protection, mental health, or other welfare issues which suggest weak public-interest grounds for prosecution. Early liaison between the CPS and defence solicitors could also enable cases to be dealt with more quickly once in court, through the early identification and discussion of issues in dispute.

In commenting on their frustration that so many cases were adjourned at court, magistrates have suggested that it might be appropriate to have a requirement for the CPS and defence solicitors to meet and review cases prior to the first court appearance, as this could help to avoid subsequent delays and additional hearings. All defence solicitors agreed that it was inappropriate for detailed discussions with the CPS to take place at a late stage in proceedings. However, while some felt it was critically important for the defence to be involved in reviewing the evidence and discussing the case with the CPS prior to a charge decision, others thought that this was too early in the process and it would be moving too far in the direction of an inquisitorial system. Most prosecutors considered it inappropriate for defence solicitors to be involved at the pre-charge stage. When asked if defence solicitors could make a useful contribution at that stage, one prosecutor said, 'No, I think we have to make our decision independently and solicitors then have the opportunity to approach us if there is a court hearing' (PL2). With some reservation, one prosecutor thought it was a good idea which could be cost-effective: 'It could help to speed things up, particularly if we got an indication that there would be a guilty plea' (CU2).

Beyond the managerial aspects of inefficiency, this study has also demonstrated the importance of congruent and balanced performance targets. In the County, for instance, targets to reduce delays were seen to have encouraged courts to deal separately with different sets of offences, which can lead to inefficiencies if minor offences

proceed to trial first, while more serious offences remain outstanding.⁸⁸ Dealing with cases separately can lead to fragmentation in sentencing and it can also increase criminalisation by recording more than one conviction. We found that changes in the processing of cases rather than a general increase in the crime rate not only increased the number of recorded convictions but also led to an increase in the number of young people designated as PYOs. This is reflected in the official statistics, with PYOs having increased in Youth Courts from 16,010 in 1997 to 30,683 in 2007 (Pandya, 2008). A higher number of PYOs will increase both the complexity and the cost of cases, with the CPS making more applications to remand in custody and the magistrates considering more punitive sentencing options. The fragmented way in which offences committed by prolific young offenders are prosecuted and processed also fails to take into account the totality of their offending behaviour. Defence solicitors complain that such fragmentation encourages prolific offenders to become disengaged from proceedings and thus more likely to plead 'not guilty' to all matters.

The performance target to bring more offences to justice is also likely to encourage the prosecution to proceed with minor matters and other non-viable cases. That was the view of the former Chair of the Youth Justice Board, Professor Rod Morgan, who was critical that this performance target had particularly 'perverse consequences' in increasing the number of young offenders prosecuted and swelling prisoner numbers unnecessarily (BBC, 2007).⁸⁹ Because centrally-defined targets, guidance and other initiatives have had unintended consequences, in terms of inefficiency and delay, a review of the youth justice system is urgently required. In the meantime, while there is a limit to what local agencies can do to improve procedures, the adoption of a whole-system approach has highlighted a number of issues that can be addressed by the local agencies. Accordingly, it might be sensible for inter-agency meetings to be held, during which problems are fully discussed and likely outcomes identified and, where possible, agreed. The late service of evidence, for instance, is clearly an important issue which needs to be addressed by both the police and CPS. In

⁸⁸ In their study of CPS decision-making, Gelsthorpe and Giller (1990) noted how the CPS would not proceed with some offences when the offender was already being dealt with for more serious matters or when he had recently received a sentence if a conviction on a new offence would not lead to a more punitive disposal.

⁸⁹ Morgan also drew attention to a 26 per cent increase in the number of children and young people drawn into the formal youth justice system over the previous three years. Re-focusing the target to bring more offences to justice on serious offences should help to alleviate this problem.

addition, the adjournment culture needs to be challenged, with defence solicitors prepared to deal with straightforward cases at the first hearing. Another important issue that could be addressed locally is the lengthy delay in contested cases before the CPS and defence solicitors review the strength of the evidence and to negotiate pleas.

Detailed discussions at inter-agency meetings would seem to be key to removing inefficiencies hindering effective decision-making. Such meetings, often tend not to involve Youth Court practitioners but agency managers. Nevertheless, it is important that these meetings include practitioners regularly appearing before the Youth Courts because it is practitioners who will best understand the complexities and nuances involved in the processing of cases and the tensions which contribute to inefficiencies and delays. In particular, it is important for the agencies to reflect that they are operating in an adversarial system. Such a system can lead to tensions, as there needs to be a balance between the efficient functioning of the court and the maintenance of due process, in order to ensure the procedural safeguards necessary to protect the legal rights of the individuals appearing before the courts.

8.2 *Future Research*

This study has focused on the processing of cases once at court, but it is important that any future research examines prosecution decision-making and the handling of cases at the police station. To date, the only detailed study of CPS decision-making in juvenile cases was carried out shortly after the inception of the CPS in 1986 (Gelsthorpe and Giller, 1990). Since then there have been major reforms of the youth justice system, the Code for Crown Prosecutors has been changed, cautioning for young offenders has been replaced with the new Final Warning scheme, and the Statutory Charging initiative has been introduced to make significant changes in the way the prosecution makes decisions and handles cases. It is important to consider how these changes influence prosecution decisions to take no further action, to reprimand, to warn or to prosecute young offenders.

There have also been major changes in police practice, particularly with restrictions on the suspect's right to silence. These changes have occurred in a context of the recent introduction of many new offences, and increasing evidential complexity linked to CCTV, forensics, identification and other matters. As around half of young

suspects do not receive legal advice at the police station, future research should investigate the underlying reasons for this situation; the research could also investigate the experience and outcomes of legally-advised and not legally-advised suspects at the police station.⁹⁰

In terms of case management through the criminal justice system, it would be helpful to explore the extent to which early liaison and examination of the evidence could help to reduce delays and improve case management.

In connection with case management, it would be useful when comparing practices between administrative regions to consider what factors influence an organisational culture that encourages agencies to work together and deal with cases more effectively and efficiently. In a study of magistrates' courts, for instance, Raine and Wilson found that the most influential factor increasing efficiency in the courts was the extent to which the court was prepared to take the lead in organising court business. For the researchers, the organisational culture is thus likely to be, 'the key determinant of performance with regard to delay, convenience to parties and use of court resources' (1992:60). There are likely to be differences between magistrates' courts and courts presided over by District Judges, because professional judges have a detailed knowledge of the criminal law and procedure, which means that they can pose more formidable challenges to applications for adjournments. Within the County, only lay magistrates dealt with the 2005 sample of cases and the cases observed in court. All of the magistrates who were interviewed said they were extremely frustrated that so many cases were adjourned. While they attempted to deal with cases as quickly as possible, they were reluctant to deny an application for an adjournment if it could prove detrimental to the defendant. An important area for further research, therefore, would be to explore variations in organisational culture between different Youth Courts and consider whether there are differences between the duration, the number of hearings and the outcome of cases managed by District Judges and lay magistrates.

⁹⁰ Research suggests that the percentage of suspects receiving legal advice has been steadily increasing, and that in the mid-1990s around 40% of suspects requested advice while around one in three actually received advice (Bucke and Brown, 1997).

In addition, a study of the perspective of children and young people appearing before the Youth Courts would enhance our understanding of their wider needs and the extent to which these needs can be addressed when the Government seeks to improve young people's quality of life and thereby prevent them offending.

8.3 Next Steps – wider implications for policy

This scoping study has identified two key issues. First, is the limited extent to which children and young people drawn into the youth justice system are engaged in the processes which are intended to prevent offending. Second, it has demonstrated that there are a number of inefficiencies within the youth justice system.

An important question which arises from this study is the extent to which children and young people at court understand what is happening to them. As the principal aim of the youth justice system is to prevent offending, it is clearly intended that children and young people drawn into the system should be engaged in the processes which aims to change their offending behaviour. Given the complex and bureaucratic process involved in an adversarial system of justice the role of 'child' is marginalised. Observing the Youth Courts was similar to watching a drama unfold. In 'setting the scene', at the beginning of this report, the actors were introduced and their stage directions outlined. Within such a drama it is striking that the child or young person appearing at court is not at the centre of the proceedings, on the contrary, he or she has little more than a walk-on part.

Listening to the voices of children and young people, therefore, could be extremely useful for policy-makers when deciding on reform of the youth justice system. Interviews with young suspects arrested by the police, for instance, could seek to establish why some request legal advice while others do not. It would also be interesting to consider whether there are differences in outcome between the two groups. With those appearing at court, it would be useful to know what they understand to be happening during the court proceedings. Interviews with children and young people could also help to assess the extent to which non-criminal justice agencies become involved in dealing with factors underlying the offending behaviour, i.e. mental health, child protection and/or other welfare issues. Such a research study would not only help to drive efficiencies, because dealing with offences quickly is important in

establishing a link between the offence and the sentence of the court, but it would also help to improve the system's effectiveness in delivering justice and changes in offending behaviour.

The second key issues relates to inefficiency and delay. The findings from this scoping study highlight both numerous systemic inefficiencies within the youth justice system and multiple upward pressures on case volume. Late service of evidence by the CPS, for instance, issues concerning defence preparedness to proceed at the first hearing and long delays before CPS and defence solicitors liaise with a view to negotiating pleas. There is some potential for improving efficiencies and making significant cost savings within the Youth Courts. The National Audit Office's (2006) estimate that £173 million per annum is currently wasted in ineffective hearings in magistrates' courts testifies to this. Moreover, a District Judge has commented on inefficiencies within the youth justice system. In suggesting the need for a radical review of the youth justice system, he argues that: 'It's not financially bankrupt - millions of pounds are being poured into it - but it is slow and inefficient. It doesn't inspire confidence in anyone who comes into contact with it' (Hill, 2006).

In undertaking a major review of the youth justice system, one option for policy-makers would be to require a comprehensive, multi-agency follow-up investigation of the processing of Youth Court case. However, this study has shown how obtaining multi-agency co-operation can be difficult and time-consuming. Agencies already under tremendous work pressures are also likely to find that the burden of a research study will exacerbate those pressures. A wide-ranging study is likely to be expensive and will require a long time horizon for completion. Having demonstrated certain inefficiencies within Youth Courts in one county area, however, it is important to understand to what extent such problems are endemic within the wider criminal justice system.

8.4 Update

There have been delays in publishing this report and subsequently a number of changes have been made which are intended to address inefficiencies and delay. These include the 'passporting' of young defendants under the Legal Aid scheme and the re-focus on serious rather than minor offences under the target to bring more offences to justice.

In addition, a major development has been the implementation of the new ‘Simple, Speedy and Summary’ justice arrangements in all adult magistrates’ courts in England and Wales. These new arrangements were tested in four magistrates’ courts serving West Cumbria, Coventry, and Thames and Camberwell in London and were found to have led to an increase in the number of guilty pleas at the first hearing, and to over two-thirds of the contested cases being concluded after just two hearings, which helped to halve the average time taken between charge and the conclusion of cases (DCA, 2007). The arrangements were rolled out across all magistrates’ courts by April 2008. Subsequently, Ministers and the Senior Judiciary have agreed that similar arrangements, which seek to address a number of problems outlined in this report, should be introduced across all Youth Courts in England and Wales. Local Criminal Justice Boards for each of the 42 Areas have committed to implement the CJSSS Youth Court arrangements by 31 December 2008.

As an alternative to undertaking a wide-ranging study examining the multi-agency processing of Youth Court cases in different geographical locations during the spring and summer of 2007, the LSRC observed five Adult Courts that had implemented the new CJSSS arrangements. From those early observations, the LSRC noted that a critical factor helping to improve the quick and efficient processing of cases at court is the early service by the CPS of the Advance Information. The LSRC identified additional factors which resonated with those arising out of the Youth Court study. With an emphasis on dealing with cases quickly, for instance, there were occasions where ‘speed’ seemed to undermine due process. There were also cases where it seemed that a ‘moral’ rather than ‘legal’ decision was being made by the court in declining defence solicitors’ request for an adjournment if the CPS had failed to produce the evidence relied on because, the court indicated, solicitors knew whether their client was guilty or not. With the complexity and bureaucracy of the court process, the role of the defendant was often seen to be marginalised. The organisation between the CPS and defence solicitors was also seen to militate against early negotiations. The organisational culture of magistrates’ courts is a key determinant in improving performance by reducing delay and the LSRC is aware that its observations took place at an early stage following implementation of the new CJSSS arrangements. Accordingly, the LSRC will carry out further observations at two of the courts studied

during the summer of 2008. The LSRC would also like to include observations at a Youth Court which is currently operating the CJSSS arrangements.

Further observation of the CJSSS courts, therefore, would assist by identifying new processes and behaviours helping to improve efficiency and reduce delay. It would also enable an examination of whether the issues identified in this research study, having implications for inefficiency and delay within the County's Youth Courts, are being fully addressed by the CJSSS changes.

Appendix A

Case file information

One of the reasons for the scoping study was to examine both the detail and the quality of information recorded on case files managed by different agencies. Using a detailed data-collection instrument, information was extracted from files held by four different agencies on 166 cases. It was extremely difficult within CPS case files to ascertain which details the prosecutors would take into account when reviewing and managing cases. The 2005 sample of cases was dealt with under Director's Guidance, which was intended to shadow the new Statutory Charging initiative by requiring the CPS to provide pre-charge advice to the police. Although the police form, which requested this advice, was available on 116 case files, it was not always clear whether the CPS had responded.⁹¹ Prosecutors' notes on case files might sometimes give an indication of the key issues taken into account when carrying out a review, but the indication was often limited to a note that there was 'sufficient evidence' to prosecute or that it was in the public interest to do so. The present study, however, examined only those cases in which a decision to prosecute had been taken. To gain a better understanding of CPS decision-making, it would be necessary to consider police preparation of cases and how decisions - whether to take no action, to reprimand, to warn, or to charge - are then made.

CPS case files also tend to deal with different sets of offences separately, so when reviewing one file it was often not known whether other offences were also within the court system. In one case, for instance, when the researcher was examining implications for performance targets, there were three separate minor offences being dealt with at court and from the CPS, and court files, there was no indication of another, more serious matter also being dealt with at court. When sentenced to a Detention and Training Order, this seemed wholly disproportionate to the offences dealt with. Only on inspecting the defence solicitor's file did it become clear that an offence of domestic burglary had also been dealt with at court but in separate proceedings (Case 143).

⁹¹ There were 80 cases with a police request for advice on the file where it seemed that the recommendation to charge had been accepted by the CPS. In 13 cases, the CPS did not agree and alternative charges were suggested.

The police Criminal Justice Unit (CJU) made available the case files included in the 2005 sample. As the CJU was responsible for preparing Youth Court files there was a lot of duplication between the police and CPS files. Nevertheless, the police files were useful, because they tended to include a copy of the custody record (which indicated whether or not legal advice at the police station had been received), and the arrest date could often be found in the police files if this was not available from CPS files. It is envisaged that gaining access to custody records would be an easier way of extracting this information than requesting the police CJU to provide case files in addition to CPS files.

In accordance with a DCA privileged-access agreement, HM Court Service files were made available for the sample of cases. These were generally short files and it was relatively easy to extract information concerning the number of hearings and case duration. Court files, too, are based on separate offences and, like those kept by the CPS, they seldom contain any indication of other offences currently within the system for an individual offender.

A request was made to each of the solicitors' firms involved for access to case files included in this sample of cases. Although it involves extra work for defence solicitors in identifying files and making them available, every one of the firms agreed to participate in the study. Defence solicitors' files in the 2005 sample were the most useful in identifying defendants who had more than one set of offences being dealt with at court. With prolific offenders, in particular, such files could be large and cumbersome, and it was time-consuming to extract the relevant data.⁹² Additionally, it was not easy to follow the progress of cases from defence files, although some files had useful colour coding of attendances on clients and attendances at court. As in the CPS files, defence solicitors also tended not to record details of conversations at court, even though these could form the basis of representations to deal with cases by way of plea-bargain. There are time-constraints when looking through defence files, therefore, particularly if basic information concerning the general processing of cases can be found in electronic data sources.

⁹² Interestingly, not all defence solicitors kept all offences currently being dealt with at court in one file; some opened a separate file for each offence.

In relation to the 2006 sample, YOT records were examined to provide additional details for a number of the cases that were observed. These records were noted on a card index, based on the individual, on which were recorded details of all offences brought to court, including the number of hearings and the case outcomes. While the information recorded in this way is limited, it provides the most comprehensive record of how a young person's offending has been dealt with at court.

Such limitations on the availability and quality of information held in all agencies' case-files suggest that a large-scale database, such as that held by HMCS, could more easily provide basic information, which would then be available on a national basis permitting regional comparisons. As required, a case file review could be undertaken on a much smaller scale when considering specific research questions relating to single-agency issues such as CPS decision-making and/or the role of defence solicitors.

Appendix B

Case examples included in the 2005 and 2006 samples of cases

CPS delays in producing the evidence – cases from 2005

(Cases 18 and 57) - There were two co-accused charged with an offence of ABH which was first in court on 6 July 2005. The CPS failed to provide the crucial CCTV evidence. Nevertheless, the case proceeded to trial but at the trial the CCTV tape produced by the CPS covered the wrong day. The CPS then indicated that if the offence was admitted they would be willing to divert and subsequently a warning was imposed.

(Case 21) This was an offence of Affray which was first in court on 9 March 2005 and dealt with on 15 November 2005 after 13 hearings. The CPS relied upon identification evidence, which was challenged by the defence. At the trial, following discussion with the prosecution witnesses the CPS offered no evidence and the case was dismissed.

(Case 134) The offence of aggravated motor vehicle taking without the owner's consent was first in court on 11 May 2005 and dealt with on 25 November 2005 after 5 hearings. At the PTR the defence argued the CPS case was unsustainable without producing fingerprint evidence, but this was not available at the trial and the case was then discontinued.

CPS delays in producing the evidence – cases from 2006

(T5) The defendant was arrested on 31 March 2006 for an offence of Affray alleged to have occurred on 1 January 2006. He was first in court on 10 August 2006 and the CCTV evidence was produced at the ninth hearing on 10 November 2006. With prosecution witnesses including serving soldiers in Iraq, the trial has been listed for 23 July 2007.

(L9) This defendant was of previous good character. He was first in court on 10 July 2006 for possessing an offensive weapon, namely a bottle which the prosecution alleged to have contained ammonia. The CPS had not provided the forensic evidence

confirming the presence of ammonia and accordingly the defendant pleaded not guilty on 23 August 2006. The trial was fixed for 23 February 2007.

The effectiveness of the PTR - cases from 2005

(Case 19) Charges of TWOC and criminal damage were first brought to court on 17 June 2005. The defendant pleaded not guilty to the offences, and it was agreed at the PTR that there were admissions in the police interview to a joint enterprise for the offence of criminal damage. The CPS then agreed to discontinue the offence of TWOC and diverted the criminal damage for a warning instead. Thus, two trials were avoided in this case, but only after 8 hearings was the case diverted on 30 September 2005.

(Case 66) Two offences of common assault were first in court on 11 May 2005. The offences were denied and listed for trial. At the PTR, the CPS accepted there was insufficient evidence to proceed and subsequently the case was discontinued.

(Case 77) A case of common assault was first in court on 19 August 2005 and concluded on 21 October 2005 after 4 hearings. The defendant was initially arrested for an offence of ABH against his father but was later charged with a common assault, which he denied. At the PTR, the CPS acknowledged that the father wanted to withdraw the complaint and the police domestic violence officer agreed with this course of action. Accordingly, the trial was vacated and the case discontinued.

(Cases 78, 79 and 80) An offence of criminal damage was first in court for three co-accused defendants on 8 April 2005. One defendant had received a formal reprimand, but the other two were of good character. The incident involved minor damage after the three girls had gone to a party and had drunk too much alcohol. At the PTR, the defence made representations about the minor nature of this case and the CPS agreed to discontinue the offence on 18 November 2005 after three hearings.

Delays in reviewing the evidence – cases from 2005

(Case 73) This case involved a male of previous good character charged with racially-aggravated ABH, a Section 5 POA offence, and ABH. He was first in court on 22 March and dealt with on 21 October 2005 after 10 hearings. This was a complicated case involving 3 PTRs. On 9 September 2005, the defence wrote to the CPS advising

them that prosecution witnesses appeared to have gone missing and that, 'the overall position in this case was highly unsatisfactory'. With a three-day trial set down for 7 October 2005, the defence wrote to the CPS making representations in order to avoid a trial, but it was noted on the defence file that the CPS were not prepared to accept anything other than a guilty plea on all matters. When the prosecution witnesses failed to attend court the trial did not proceed and the CPS dismissed the racially-aggravated ABH and accepted a 'guilty' plea to two Section 5 offences and the defendant was given a Conditional Discharge.

(Case 103) This case involved a male of good character who was charged with two sets of offences involving criminal damage and common assault. He was first in court on 26 April and dealt with on 18 November 2005 after four hearings. On first reviewing the file, the CPS noted that more action was needed on preparing the case for trial, including further enquiries in relation to the identification evidence. In relation to one set of offences, the victim wrote to the police on 19 July 2005 stating that she no longer wanted to give evidence and her mother also emphasised to the police that she would not allow her daughter to attend court even if they summoned her. The trial proceeded but the victim did not attend and the defendant was found not guilty. In relation to the second set of offences there was a note of a telephone call from the victim to the police saying she did not want to attend court. Nevertheless, she did attend the trial and stated that the defendant was not involved and he was again found 'not guilty'.

Minor offences – cases from 2005

(Case 143) This case involved a PYO who was facing several charges. He was first in court for two minor offences, breaches of a Criminal Anti-Social Behaviour Order (CRASBO) on the 27 June and 16 July 2005 and the cases were dealt with on 4 November 2005. One of the breaches of a CRASBO involved allegations that he had thrown a bicycle to the floor, which was in breach of a requirement that he did not throw property around. The case went to trial and he was found not guilty because the prosecution witness accepted that the defendant had assisted him in retrieving his bicycle after someone else had placed it on the roof of a car. The other breach of a CRASBO involved a fight the defendant had had with his 'best friend'. There was apparently a heated argument followed by a fight in which both sustained cuts and bruises. The police were called to the fight and charged the defendant with a breach of

another CRASBO which had a requirement not to breach the peace. This case also proceeded to trial but the defendant was found 'not guilty'. He also had other matters at court, including a domestic burglary for which he later received a 12-month DTO.

(Case 110) This case involved a PYO who was charged with a Section 5 POA offence and obstructing a police officer. In this case, a football was apparently kicked over a police car and a police officer retrieved the ball but refused to hand it over and the offender then swore at the police. The police then arrested her for a breach of the peace but she struggled and continued to swear at the police. The case was first in court on 6 September and then discontinued on 25 October 2005 after four hearings.

Minor offences and child protection – cases from 2006

(M7) A 15-year-old girl was charged with two separate offences, namely criminal damage and common assault, which both occurred at home and involved an argument with her mother. The case was complicated because the defendant suffered from mental health problems and Social Services were involved in providing support to the family. The offences arose out of tensions within the family, but these have since been resolved as the defendant now lives with her grandparents. Nevertheless, she received a conviction for one offence and the other offence was listed for trial.

(M9) A 14-year-old boy was charged with common assault and criminal damage, following two separate incidents at his mother's home. His mother is an alcoholic and she had been unable to care properly for her children, who were placed on the Child Protection Register. The defendant's parents then separated and he was living with his father. It was when visiting his mother that there were heated arguments, during which he admitted causing damage and slightly injuring his mother. With Social Services already involved, they assessed the boy as vulnerable and he was placed in care. Despite the severity of the child protection issues involved, he received a conviction arising out of these incidents.

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