



**HMCPSI**

HM Crown Prosecution  
Service Inspectorate

**Crown  
Prosecution  
Service handling  
of custody time  
limits  
A follow-up  
inspection**

**November 2023**

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## Who we are

HMCPPI inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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# 1. Summary

## Context

1.1 HMCPSP conducted an inspection into the Crown Prosecution Service's (CPS) handling of custody time limits (CTLs) in 2021. The report was published in December 2021.<sup>1</sup> The focus of the inspection was on the management of CTLs by the CPS during the Covid 19 pandemic period.

1.2 During the Covid 19 period the imposition of social distancing restrictions and other measures put in place to protect court users, led to the Crown Court in England and Wales reducing the number of jury trials it could hear and jury trials were completely suspended for a two-month period.

1.3 In order to allow for the reduction in court business, in September 2020 the CTL regulations were amended to extend the length of time a defendant could be kept in custody while awaiting trial.

1.4 The aims of the 2021 inspection were to establish if:

- The CPS was calculating the CTL expiry dates accurately and monitoring those dates effectively.
- The CPS was making good-quality decisions in relation to applications to remand defendants in custody throughout the course of the case.
- The CTL guidance issued, and support offered during the pandemic had been effective in ensuring that staff were informed of changes and that any new guidance had been applied.

1.5 The inspection report<sup>2</sup>, among other things, found that:

- The CPS handled the changes that had to be made to the monitoring systems well.
- Miscalculations in CTL expiry dates were picked up by double checks and amended to the correct expiry date.
- Despite the increase in the volume of extension applications that had to be made, given case delays caused by the reduction in trials, applications were generally of good quality and submitted in good time.
- Staff made good use of templates when making CTL extension applications.

## Custody time limits follow up

1.6 The report made three recommendations for the CPS:

- Use of the CTL case progression log was inconsistent and there was scope to make better use of this document.
- Details of the action taken on the case at the 28-day review date should be noted on the case in CMS<sup>3</sup> and not just in the weekly assurance report.
- The CPS should ensure that all agents and counsel representing the prosecution at court complete and return the template hearing record sheet in all cases.

1.7 The CPS have confirmed that they have addressed these recommendations and accordingly they have been closed.

1.8 HMCPSI decided that it was appropriate to conduct a short follow up inspection to ascertain how successfully the recommendations made in 2021 have been implemented by the CPS.

1.9 The scope of this follow-up inspection is limited to an assessment of has the CPS implemented the three recommendations made in HMCPSI's report "*Crown Prosecution Service handling of custody time limits*" published in December 2021.

## Ongoing challenges in managing CTLs

1.10 The measures introduced in the Crown Court during the pandemic and the resulting reduction in capacity to hear cases led to a backlog of cases in the system.

1.11 The backlog of cases has not reduced but has continued to increase and remains far above pre covid levels.

1.12 Along with this the number of cases where the defendant is in custody and subject to custody time limits has been increasing since mid-2022 and now stands at more than 10,000 cases, an increase of 2,689 cases compared to the pre pandemic level.

1.13 The CPS treat CTLs as a priority, but it is proving challenging to manage the volume and there has been an increase in cases where applications to extend the CTL have been made.

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<sup>1</sup> Crown Prosecution Service handling of custody time limits 16 December 2021 [CPS handling of custody time limits \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/cps/handling-of-custody-time-limits/)

<sup>2</sup> Case management system (CMS) is the IT system for case management used by the CPS.

## Custody time limits follow up

1.14 The current number of CTLs exposes the CPS to risk and there has been a recent increase in the number of CTL failures. It is highly important that CTLs are monitored and progressed efficiently.

## Headlines

1.15 Assessing performance against the three recommendations made in 2021 we found:

- There is a CTL case progression log opened in the majority of applicable cases but performance in the rate of completion is poor with only 15% of logs being kept up to date.
- The CPS do not routinely record details of the action taken at the 28-day review date on the case in CMS.
- Agents and counsel representing the prosecution at court do complete and return the template hearing record sheet in most cases.

1.16 Given that the number of cases with CTLs continues to grow and the recent rise in CTL failures it is extremely important that CTLs are monitored and progressed efficiently.

1.17 Our findings in this follow up inspection are disappointing. It shows that two of the risks we identified in 2021 have not been fully embedded into the CPS systems.

1.18 We therefore make a recommendation combining the two we made in our 2021 full report.

Recommendation
By 31 December 2023, the Crown Prosecution Service must embed the consistent use and updating of the CTL case progression log, (including recording the weekly assurance review on the case management system (CMS) in all cases, and by 31 March 2024, develop a system of assurance to evidence improvement and monitor compliance with CTL policies (see paragraph 2.21).



## Methodology

1.19 We replicated in part the methodology we adopted in the 2021 inspection, assessing 20 live cases in which a CTL applied and drew our file sample from the four CPS Areas we visited in the 2021 inspection. The Areas are East Midlands, London South, North East and Wessex. We examined the cases against a concise questionnaire focussed on the three recommendations. For the purposes of consistency, we utilised specific questions from the 2021 inspection which related directly to the recommendations.

1.20 In this inspection we examined three Crown Court files and two magistrates court files from each of the four Areas. Each case had been listed for trial or had gone to trial and each were live at the time they were selected.

1.21 We also examined the current CTL guidance available to staff on the CPS intranet. We comment upon the guidance where appropriate.

## **2. Progress against the recommendations**

## Custody time limit case progression logs

2.1 The law imposes limits on the length of time an unconvicted defendant can be kept in custody before their trial starts. This is to ensure that they are not deprived of their liberty for excessive periods of time, that cases are progressed effectively and that the public is protected from those who should not be released from custody.

2.2 The time periods termed the custody time limit (CTL) are determined by law and vary depending on the case. For summary-only cases dealt with in magistrates courts the CTL is 56 days. For either-way offences dealt with in the magistrates courts the CTL is 70 days though in practice the CPS monitor them as 56 days. The CTL for cases dealt with in the Crown Court is 182 days. These are the most common time periods but there are others.

2.3 The CTL must be accurately calculated and carefully monitored to make certain that the above requirements are complied with and to avoid CTL failures occurring. The burden of monitoring CTLs rests with the Crown Prosecution Service (CPS) as the prosecuting authority.

2.4 All CTLs must be managed in accordance with the CPS's National Standard<sup>4</sup>.

2.5 CPS operational guidance confirms that the CTL case progression log on the case management system (CMS) must be used in all cases where CTLs apply as part of the electronic monitoring of the CTL. The National Standard states that efforts to expedite case progression should be clearly recorded on the CTL log.

2.6 During our 2021 inspection inspectors found that completion of the CTL logs was inconsistent. Given the emphasis that the CPS place on completion of the logs we highlighted this in our report and recommended that there was scope to make better use of the document.

2.7 In this follow up inspection we found that the CPS opened a CTL log on CMS in the majority of cases (90%), this is an improvement over 2021 when we found logs opened in 82.5% of cases.

2.8 All cases in our Crown Court sample contained a CTL log, which is positive. Typically, these cases are more serious and complicated making them more likely to require an application to extend the CTL.

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<sup>4</sup> National Standard For the Effective Management of Prosecution Cases Involving Custody Time Limits (Revised February 2020).

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2.9 However, with regard to the completion of the logs it is disappointing to note that our file examination highlights that performance has deteriorated compared to the 2021 inspection. In 2021 we found 16 out of 40 cases (40%) contained logs that had been kept fully up to date from commencement to expiry of the CTL.

2.10 This inspection revealed that only three out of 20 cases (15%) had CTL logs that had been kept fully up to date, including details of reviews and relevant management checks, we rated these logs as fully meeting the standard. Of particular concern is the fact that only one of these cases was a Crown Court case.

2.11 We rated a further 15 cases (75%) as partially meeting the standard as the logs were not fully completed and were often sparsely populated. We saw some logs which only contained the CTL start date and a record of when the case had been in court for hearings. In one Crown Court case the CTL log only had one entry which was simply the date of first hearing when the defendant was first remanded into custody. These logs did not provide an effective audit trail as they did not contain a record of decisions made and actions taken to expedite the case.

2.12 We saw two cases where there had been no CTL log opened at all and there was no explanation for this. They were both from the same Area (East Midlands) and were magistrates' court cases.

2.13 Given our findings we have assessed the 2021 recommendation as not being met and make the recommendation again in combination with our recommendation regarding the 28-day review (see paragraph 2.21).

## The 28-day review

2.14 A weekly CTL assurance report must be completed by all casework units in the CPS. The report provides assurance to senior management that all live CTL cases are being properly monitored and cases are being progressed expeditiously.

2.15 The report lists all cases in which the CTL expires and all cases subject to a CTL which are listed for trial within the next 28 days. At this point the case should be fully reviewed.

2.16 The 28-day review allows managers to satisfy themselves that cases are trial ready and that all cases approaching the CTL expiry date are considered for an extension application. At the review stage managers will be able to check that

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all appropriate action has been taken on case progression and the prosecution can show they have acted with all due diligence and expedition.

2.17 The CPS have an aide memoire<sup>5</sup> which sets out suggested questions that managers might wish to consider when conducting the 28-day review. This is a helpful document, and states that the list of questions is not exhaustive and the person checking a CTL case must assure themselves that it is managed proactively.

2.18 In the 2021 inspection we found that the weekly assurance report which contained the 28-day review and the action taken was a document which had no direct link to CMS. Given that it contains important information which could help a prosecutor at court in making a successful application to extend the CTL we recommended that the details of the action taken at the 28-day review should be recorded on CMS.

2.19 We did not examine if the review had been completed but whether it was recorded on CMS in line with our recommendation. In this inspection we found that the CPS did not routinely record details of the action taken at the 28-day review, details were recorded on CMS in only seven out of 20 cases (35%).

2.20 Performance in magistrates court cases was stronger where we found that action was recorded in five out of eight cases (62.5%), while in Crown Court cases action was recorded in only two out of 12 cases (16.7%).

2.21 Of the seven cases which had a record of action taken at the 28-day review, six of them included this on the CTL log and not in CMS as we had recommended. In only one case the action taken was recorded in a comprehensive review on CMS.

2.22 Based on our findings, we have determined that the 2021 recommendation has not been met. Consequently, we are reiterating the recommendation, along with our suggestion concerning the CTL case progression log (as mentioned in the earlier paragraph 2.13).

### Recommendation

By 31 December 2023, the Crown Prosecution Service must embed the consistent use and updating of the CTL case progression log, (including recording the weekly assurance review on the case management system (CMS) in all cases, and by 31 March 2024, develop a system of assurance to evidence improvement and monitor compliance with CTL policies.

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<sup>5</sup> Aide Memoire for CTL Casework Quality Monitoring.

## Hearing record sheets

2.23 CPS operational guidance clearly states that the prosecution advocate at court must ensure that the hearing record sheet<sup>6</sup> (HRS) is updated at each court hearing to show the CTL expiry date and to confirm that it was announced in court.

2.24 The CPS has a standard template HRS which directs the prosecutor to complete details regarding the custody or bail status of the defendant(s) and provide a full note of the hearing. Consistent use of the template HRS is a means of ensuring that all relevant information is recorded and prompts the prosecutor to note any change in the custody status of a defendant.

2.25 It is important that the CPS provides a template HRS to all prosecutors including agents<sup>7</sup> in the magistrates' court and counsel<sup>8</sup> in the Crown Court. They should complete it by providing a full record of the hearing.

2.26 In 2021 inspectors found that the standard HRS had been used in all magistrates' court cases. But in Crown Court cases the template HRS was not consistently used by counsel who would often send attendance notes with a record of the hearing.

2.27 In some instances, vital information was missing from these attendance notes. We recommended the CPS ensure that agents and counsel representing the prosecution at court completed and returned the template HRS in all cases.

2.28 In this inspection we found that electronic HRS were provided and completed in all magistrates' court cases, including where agents appeared for the CPS.

2.29 In eight of 12 cases in our Crown Court sample counsel fully completed the HRS and returned it after each hearing. In three cases we could not tell whether the CPS had sent a template HRS to counsel as there was no HRS stored on CMS. In one case counsel appeared at court on three occasions but only

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<sup>6</sup> A CPS electronic record of events at court. If completed correctly, it acts as a continual log of court proceedings and court orders.

<sup>7</sup> Agents are lawyers who are not employed by the CPS but who are booked to prosecute cases on its behalf. They are not empowered to take decisions under the Code for Crown Prosecutors and have to take instructions from CPS lawyers in this regard.

<sup>8</sup> A lawyer with the necessary qualifications to appear in the Crown Court and other criminal courts. They are paid by the CPS to prosecute cases at court, or by the representative of someone accused of a crime to defend them.

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returned the HRS after one of those hearings, however it wasn't clear whether the CPS had sent a template HRS to counsel on each occasion.

2.30 We considered whether agents and counsel returned a full note of the hearing including the custody or bail status of the defendant(s). This was a relevant consideration in 18 cases because two cases in our file sample were prosecuted entirely by CPS advocates.

2.31 A full note of the court hearing was returned in 15 out of the 18 cases (83.3%). Counsel had failed to return a full note in the remaining three cases. The three cases were from our Crown Court sample where counsel did not use a template HRS.

2.32 There has been significant improvement in the Crown Court and performance remains strong in the magistrates' court. Therefore, we assess progress against the 2021 report recommendation as being met.

# **Annex A**

## **File examination data**



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Question	Answer	Total	%
<b>01. Was it clear that the expiry date had been agreed with the court at the first hearing?</b>	No	3	15.0%
	Yes	17	85.0%
<b>02. Was a template HRS was sent to an agent, counsel?</b>	NA	2	10.0%
	NK	3	15.0%
	Yes	15	75.0%
<b>03. Did the agent, counsel complete the template HRS?</b>	NA	5	25.0%
	No	1	5.0%
	Yes	14	70.0%
<b>04. Was there evidence that the expiry date had been confirmed at court at hearings?</b>	FM	9	45.0%
	NA	6	30.0%
	NM	2	10.0%
	PM	3	15.0%
<b>05. Did the agent, counsel provide a full note of the hearing including the custody or bail status of the defendant?</b>	NA	2	10.0%

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	No	3	15.0%
	Yes	15	75.0%
<b>06. Was the HRS from subsequent hearings uploaded to CMS within 24 hours of the hearing?</b>	FM	10	50.0%
	NA	2	10.0%
	NM	5	25.0%
	PM	3	15.0%
<b>07. Was the start date recorded on the CTL log?</b>	NA	2	10.0%
	No	2	10.0%
	Yes	16	80.0%
<b>08. Was it noted on CMS which expiry date had been applied i.e. 56, 70, 112 or 182?</b>	No	1	5.0%
	Yes	19	95.0%
<b>09. Was there a review on CMS within 2 weeks, Mags Court, or 4 weeks, Crown Court, prior to the CTL expiry date?</b>	NA	3	15.0%
	No	8	40.0%
	Yes	9	45.0%
<b>10. If Yes to Q9 was the review recorded on the CTL log?</b>	NA	11	55.0%

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	No	4	20.0%
	Yes	5	25.0%
<b>11. Was the CTL reviewed and action taken within 24 hours of the review date?</b>	NA	3	15.0%
	NK	4	20.0%
	No	6	30.0%
	Yes	7	35.0%
<b>12. If Q11 is answered yes was the action recorded on the CTL log?</b>	NA	13	65.0%
	No	1	5.0%
	Yes	6	30.0%
<b>13. Were the details of the action taken at the 28-day review, weekly assurance review, noted on CMS?</b>	No	13	65.0%
	Yes	7	35.0%
<b>14. Were the subsequent weekly assurance reviews completed at 21 days, 14 days and 7 days recorded on CMS.</b>	No	15	75.0%
	Yes	5	25.0%
<b>15. There is one CTL Log properly completed with actions and decisions taken in relation to the CTL.</b>	FM	3	15.0%

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	NM	2	10.0%
	PM	15	75.0%
<b>16. The CTL log contained endorsements to show that management checks had taken place on the file?</b>	NA	2	10.0%
	No	10	50.0%
	Yes	8	40.0%

## **HM Crown Prosecution Service Inspectorate**

### **London Office**

7th Floor, Tower  
102 Petty France  
London SW1H 9GL  
Tel. 020 4574 3218

### **York Office**

Foss House, Kings Pool  
1-2 Peasholme Green  
York, North Yorkshire, YO1 7PX  
Tel. 01904 54 5490

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