



National Audit Office

Report

by the Comptroller
and Auditor General

Ministry of Justice

Efficiency in the criminal justice system

Our vision is to help the nation spend wisely.

Our public audit perspective helps Parliament hold government to account and improve public services.

The National Audit Office scrutinises public spending for Parliament and is independent of government. The Comptroller and Auditor General (C&AG), Sir Amyas Morse KCB, is an Officer of the House of Commons and leads the NAO, which employs some 810 people. The C&AG certifies the accounts of all government departments and many other public sector bodies. He has statutory authority to examine and report to Parliament on whether departments and the bodies they fund have used their resources efficiently, effectively, and with economy. Our studies evaluate the value for money of public spending, nationally and locally. Our recommendations and reports on good practice help government improve public services, and our work led to audited savings of £1.15 billion in 2014.



National Audit Office

Ministry of Justice

Efficiency in the criminal justice system

Report by the Comptroller and Auditor General

Ordered by the House of Commons
to be printed on 29 February 2016

This report has been prepared under Section 6 of the
National Audit Act 1983 for presentation to the House of
Commons in accordance with Section 9 of the Act

Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

26 February 2016

This report examines what the opportunities are to improve the efficiency of proceedings in the criminal justice system in England and Wales.

© National Audit Office 2016

The material featured in this document is subject to National Audit Office (NAO) copyright. The material may be copied or reproduced for non-commercial purposes only, namely reproduction for research, private study or for limited internal circulation within an organisation for the purpose of review.

Copying for non-commercial purposes is subject to the material being accompanied by a sufficient acknowledgement, reproduced accurately, and not being used in a misleading context. To reproduce NAO copyright material for any other use, you must contact copyright@nao.gsi.gov.uk. Please tell us who you are, the organisation you represent (if any) and how and why you wish to use our material. Please include your full contact details: name, address, telephone number and email.

Please note that the material featured in this document may not be reproduced for commercial gain without the NAO's express and direct permission and that the NAO reserves its right to pursue copyright infringement proceedings against individuals or companies who reproduce material for commercial gain without our permission.

Links to external websites were valid at the time of publication of this report. The National Audit Office is not responsible for the future validity of the links.

Contents

Key facts 4

Summary 5

Part One

The criminal justice system 10

Part Two

Inefficiencies in case progression 21

Part Three

Regional variation 28

Part Four

Reform of the system 37

Appendix One

Our audit approach 41

Appendix Two

Our evidence base 43

Appendix Three

Case progression from charge
to disposal 45

The National Audit Office study team consisted of:
Lauren Harris, Adam Hughes,
Alex Kaiser, Eleanor Murray,
Annie Murthi and Alison Taylor
under the direction of Oliver Lodge.

This report can be found on the
National Audit Office website at
www.nao.org.uk

For further information about the
National Audit Office please contact:

National Audit Office
Press Office
157–197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7400

Enquiries: www.nao.org.uk/contact-us

Website: www.nao.org.uk

Twitter: @NAOorguk

Key facts

33%

percentage of **effective** trials in the Crown Court in 2014-15 (those that go ahead as planned on the day they were due to start)

£21.5m

estimated cost to the Crown Prosecution Service for cases that do not go on to trial, for example due to late guilty pleas. It is not possible to calculate the cost of these trials to other parts of the system

34%

increase in the backlog of cases in the Crown Court since March 2013

£2 billion

total amount spent per year by central government on the criminal justice system (excluding police, prisons and other bodies who prosecute cases)

24,481

reduction in the number of trials heard in the England and Wales criminal justice system in 2014-15 compared with 2010-11 (11% fewer trials)

£44 million

additional costs due to the increasing length of Crown Court trials (year ending September 2015 over 2010-11)

£36.1 million

minimum additional cost of cases that could be heard in either court going to the Crown Court rather than the magistrates' court in 2014-15

£4 million

amount the Crown Prosecution Service could save if the level of 'cracked' trials (those that collapse on the first day) in the bottom two quartiles of Local Criminal Justice Board areas reduced to the level of the top quartile

9,489

more cases heard on time in magistrates' courts in the year to September 2015, compared with 4 years earlier

Summary

1 The criminal justice system (the system) in England and Wales investigates, tries, punishes and rehabilitates people who are convicted or suspected of committing a crime. In the year to September 2015, 1.7 million offences were dealt with through the courts. The system is made up of police forces, the Crown Prosecution Service (CPS) and other bodies who can bring prosecutions, HM Courts & Tribunals Service (HMCTS), alleged victims, witnesses, victims and witness services, prisons, probation services, the judiciary and lawyers. Defendants and convicted offenders are key participants.

2 The system has evolved over time, has no single 'owner' and has been subject to regular change and reform. It incorporates a wide range of bodies with different functions and accountabilities. For it to work as efficiently as possible, each part must complete its work on time and get it right first time. There are many factors that make it difficult for the system to work efficiently. These include:

- **independence:** organisations need a degree of independence from each other to ensure that the system is just, but each part depends on the others to allow it to function. There is a national Criminal Justice Board, which oversees the system as a whole;
- **discretion:** the defendant and the witnesses can make choices about pleas or giving evidence, and can change their mind at short notice;
- **demand:** although overall levels of crime are falling, the number of more complex court cases (for example, sex offences, complex fraud and terrorism) has increased; and
- **working practices:** some parts of the system are still heavily paper-based, and all parts are operating under reduced budgets.

3 Measuring whether the criminal justice system is achieving its many objectives is not always straightforward. Some objectives may conflict (for example, possible tension between punishing and rehabilitating offenders). Even when an objective is clear, for example ensuring that people who are guilty of an offence are convicted and innocent people are not, there is no simple way to know whether the system is achieving it. There are some elements of performance that can be measured more easily, including whether the different parts of the system are getting it right first time, whether cases are starting when they are supposed to and whether cases are being progressed reasonably quickly.

Scope

4 This report looks at efficiency throughout the criminal justice system in England and Wales, from the point at which a defendant is charged, to the point at which a court case concludes. The systems in Scotland and Northern Ireland are devolved and fall under the remit of the Scottish Parliament and Audit Scotland, and the Northern Ireland Assembly and the Northern Ireland Audit Office.

5 The report considers the extent and impact of inefficiencies in the system, including cost, time and the quality of the justice system, and victims and witnesses' experience. The Committee of Public Accounts reported on the criminal justice system in May 2014. Our report returns to some of the issues it raised, in particular the extent to which interdependencies between organisations are understood and good practice is identified and disseminated.

6 There are a number of initiatives, led by the judiciary, HMCTS and the CPS, to make the system more efficient. These include changes to working practices, digital infrastructure and the courts estate. We do not comment on the likely success or otherwise of these programmes as many of them are still at an early stage.

7 The report is structured as follows:

- **Part One** covers the overall performance of the system from charge to disposal, and why it is important for the Ministry of Justice (the Ministry) to lead efforts to reduce the inefficiencies in the system.
- **Part Two** examines the main causes of inefficiency.
- **Part Three** looks in more detail at the differences in reported performance across the country.
- **Part Four** outlines the programme of reforms the government has put in place to tackle inefficiency in the system, and highlights some general risks that will need to be managed.

Key findings

Performance

8 **Delays are getting worse against a backdrop of continuing financial pressure.** Spending on the system has fallen by 26% in real terms since 2010-11 and this is set to continue. There are slightly fewer cases entering the system, but the complexity of cases has increased. Backlogs in the Crown Court increased by 34% between March 2013 and September 2015, and waiting time for a Crown Court hearing has increased by 35% (from 99 days to 134) since September 2013 (paragraphs 1.5 to 1.10).

9 There have been some improvements in the management of cases since 2010-11. The proportion of effective trials (those that go ahead as planned) in the magistrates' court has increased from 34% in the year ending September 2011 to 39% in the year ending September 2015. In the Crown Court, although the proportion of effective trials is relatively stable, the proportion of cases that collapse on the day of trial (termed 'cracked') has fallen from 30% in the year ending September 2011 to 24% in the year to September 2015 (paragraphs 1.12 to 1.16).

10 Two-thirds of cases still do not progress as planned, creating unnecessary costs. Trials that collapse or are delayed create costs for all the participants, including the CPS, witnesses and HMCTS. In 2014-15, the CPS spent £21.5 million on preparing cases that were not heard in court. Of this, £5.5 million related to cases that collapsed due to 'prosecution reasons', including non-attendance of prosecution witnesses and incomplete case files. The Legal Aid Agency (LAA) funded defence counsel to the tune of £93.3 million for cases that were not heard in court (paragraphs 1.12, 1.17 to 1.19).

11 Delays and collapsed trials also damage the public's confidence in the system. Giving evidence in court as a witness or victim can be a difficult and stressful process. The uncertainty caused by delays and collapsed trials exacerbates this. Only 55% of people who have been a witness or victim in court would be prepared to do so again. Those who have experienced the system as a victim are less likely to believe it is effective than those who have not (paragraphs 1.20 and 1.21).

Addressing the causes of inefficiency

12 The Ministry and CPS are leading an ambitious reform programme but this will not address all the causes of inefficiency. The court reform programme's scope is far-reaching. It includes rationalising and modernising the estate to enable more efficient digital working and the roll-out of a single digital case management system accessible by all parties. Better IT infrastructure and a modernised estate would provide the tools for a more efficient, less paper-based system, but are not sufficient to address all the causes of inefficiency in the system (paragraphs 4.2 to 4.10)

13 Inefficiencies are created where individuals and organisations do not get things right first time, and problems are compounded because mistakes often occur early in the life of a case and are not corrected. There can be multiple points of failure as cases progress through the system but these are often not identified until it is too late. A 2015 inspection found that 18.2% of police charging decisions were incorrect. Incorrect charging decisions should be picked up by the CPS before court, but 38.4% of cases were not reviewed before reaching court. The system's reliance on paper also builds in inefficiency (paragraphs 2.2 to 2.6, Figures 8 and 9).

14 The system as a whole is inefficient because its individual parts have strong incentives to work in ways that create cost elsewhere. As there is no common view of what success looks like, organisations may not act in the best interests of the whole system. For example, courts staff seek, under judicial direction, to ensure they are in use as much as possible by scheduling more trials than can be heard so that there are back-ups when one trial cannot proceed. This is both a cause and a result of the inefficiencies in the system, and leads to costs for other parts of the system, for example witnesses who spend a day waiting to give evidence for a trial that is not then heard, and who may then be more likely to disengage from the process (paragraphs 2.7 to 2.13).

15 There is significant regional variation in the performance of the system, suggesting that there is scope for efficiency gains. A victim of crime in North Wales has a 7 in 10 chance that the trial will go ahead at Crown Court on the day it is scheduled, whereas in Greater Manchester the figure is only 2 in 10. The large variation in performance across the country means that victims and witnesses will experience very different levels of service. If the performance in those Local Criminal Justice Board areas with the highest rate of cracked trials was equivalent to the best-performing quartile, 15% more cases would proceed as planned, saving a minimum of £4 million in CPS costs, as well as those costs incurred by other organisations (paragraphs 3.2 to 3.5).

16 There are some mechanisms to identify and share good practice, but awareness and use of these varies. Our case study visits identified a range of innovative approaches that made a positive impact on the system. These included implementing an appointment system for the approval of search warrants, which saved a significant amount of police time, and creating a dedicated videoconferencing court. But there is varied awareness and use of mechanisms to identify and disseminate learning from these initiatives (paragraphs 3.6 to 3.18).

Conclusion on value for money

17 Reducing inefficiency in the justice system is essential if the increasing demand and reducing funding are not to lead to slower, less accessible justice. Although the bodies involved have improved the management of cases, around two-thirds of criminal trials still do not proceed as planned on the day they are originally scheduled. Delays and aborted hearings create extra work, waste scarce resources and undermine confidence in the system. Notwithstanding the challenges of improving the efficiency of a system designed to maintain independence of the constituent parts, there are many areas where improvements must be made. Large parts of the system are paper-based and parties are not always doing what they are supposed to do in a timely manner. The system is not currently delivering value for money.

18 The ambitious reforms led by the Ministry, HMCTS, CPS and judiciary are designed to tackle many of these issues by reducing reliance on paper records and enabling more flexible digital working. They have the potential to improve value for money but will not address all of the causes of inefficiency. More also needs to be done to explore and address the wide regional variations in performance, and to create incentives that encourage all parties to operate in the best interests of the system as a whole.

Recommendations

19 Improving the efficiency of the criminal justice system is challenging. While the current reform programme will tackle many areas of inefficiency, it will not remove the underlying reasons for inefficiency that we explore in this report. Our recommendations aim to create a shared understanding of effectiveness and improve cross-system working.

- a** **The Criminal Justice Board should agree what ‘good’ looks like for the system as a whole, and the levels of performance that each part of the system can commit to deliver to achieve this.** It should report publicly on whether these levels of performance are being met. While it is important that the different parts of the system are not able to unduly influence individual cases, this cannot preclude agreement over the level of service that each element of the system should provide. Whenever possible, these measures should focus on quality and align with the system’s overarching aims.
- b** **The Criminal Justice Board should regularly review performance at a level sufficient to identify good practice.** Unlike many other areas of government, there is granular performance data available for many aspects of the system. Identifying and exploring regional variations in performance will highlight innovative practice, as well as giving organisations across the system incentives to improve.
- c** **The Criminal Justice Board should establish mechanisms to increase transparency and encourage feedback through the system.** This is particularly important where one element of the system has a direct but discretionary impact on another. For example, when magistrates’ courts refer ‘either way’ cases to Crown Court they should be able to find out how many of these cases were ultimately sentenced within magistrates’ court powers. This would allow them to judge whether they are sending the right cases.

Part One

The criminal justice system

1.1 This part of the report examines why it is important for the government to improve the efficiency of the criminal justice system (the system). It looks at current performance, and at the consequences where cases do not progress efficiently.

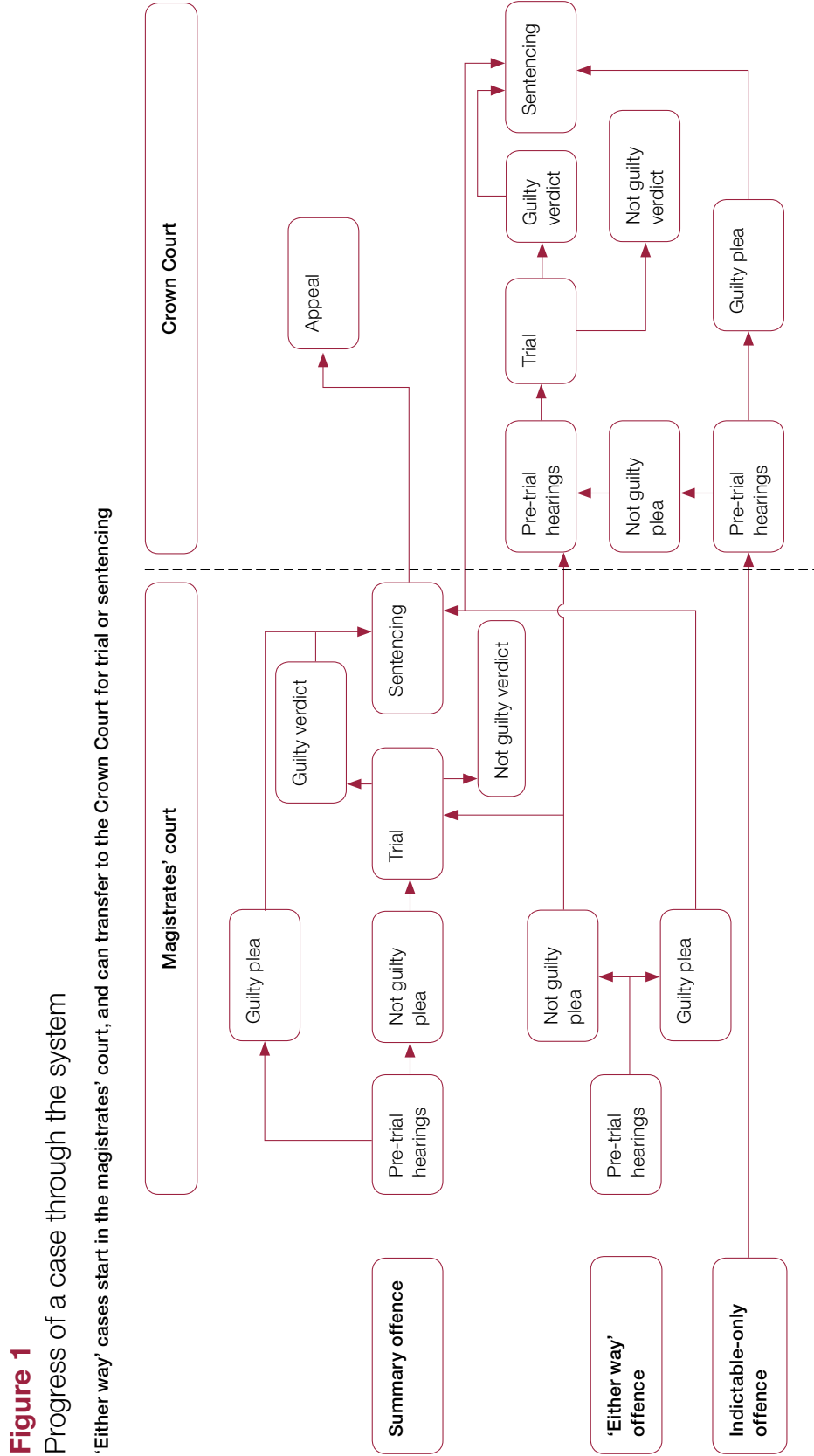
1.2 The system in England and Wales operates to reduce crime and reoffending; to punish offenders; to protect the public; to provide victims with reparation; to increase public confidence, including victims and witnesses; and to ensure the system is fair and just.

1.3 The system is overseen by the national Criminal Justice Board, a cross-governmental group chaired by the Justice Secretary. Membership of the board includes ministers and officials from the Ministry of Justice (the Ministry), its executive agency HM Courts & Tribunals Service (HMCTS), the Home Office, the Attorney General's Office and the Crown Prosecution Service (CPS). It also includes representatives of police forces, police and crime commissioners and senior members of the judiciary.

1.4 It is important for the effective running of the system that there is a degree of operational independence between the different parts: the prosecution, defence and judiciary must not be able to unduly influence each other. Government and Parliament affect the system, for example in creating new criminal offences and allocating funding, but they cannot interfere in the progress of an individual case. The judiciary is constitutionally independent of the executive branches of government.

1.5 Cases enter the system when the defendant is charged with an offence by the police or the CPS, or by other non-police agencies. They progress according to the nature of the offence. Cases are allocated a court date through a process called 'listing', which is a judicial function. HMCTS staff assist in this, taking into account the needs of the witnesses, the parties and court capacity. The most serious (indictable) offences are always tried in the Crown Court in front of a judge and a jury. Summary offences, which incur lower sanctions, are always tried in the magistrates' courts. 'Either way' offences fall under both magistrates and Crown Court sentencing powers. They can be heard in the magistrates' courts, or transferred to the Crown Court for all or part of the proceedings at the request of either the defendant or the magistrate (**Figure 1**). Crown Court cases are more expensive. They cost an average of £1,900 per day for staff, judicial and juror costs, compared with £1,150 in a magistrates' court. The Sentencing Council issued revised allocation guidance in December 2015, which set out the limited circumstances in which an 'either way' case should be committed to the Crown Court for trial.¹

¹ The Sentencing Council, *Allocation guideline: Determining whether cases should be dealt with by a magistrates' court or the Crown Court*, December 2015.



Notes

- 1 'Either way' offences to which the defendant pleads guilty can be heard in the magistrates' court, or can transfer to the Crown Court at the request of the magistrates or the defendant.
- 2 'Either way' offences for which the defendant is convicted in a magistrates' court can transfer to the Crown Court for sentencing if the magistrate considers their sentencing powers are insufficient.

Changing demand on the system

1.6 The Ministry is under pressure to make financial savings. Central government spending on the system, excluding police, prisons and other bodies who prosecute cases, is around £2 billion (**Figure 2**). This figure has fallen by 26% in real terms since 2010-11, and the Ministry has agreed to reduce its total spending by 15% by 2019-20. CPS and the police expect their budgets to remain broadly the same over the next five years. HMCTS resources have fallen by 35% in real terms since 2010-11.

1.7 The number of cases entering the system is reducing, but they are becoming more complex and resource-intensive. There has been a 6% fall in cases going to the Crown Court in the last year compared to the previous 12 months, and the number of cases going to the magistrates' court has held steady with a 0.3% reduction. However, there has been a 12% rise in sex offence cases in the Crown Court in the last five years (from 9,178 in 2010-11 to 10,309 in 2014-15) and CPS expects a further rise in 2015-16. This includes historic sex abuse and child sex abuse cases, involving vulnerable victims and witnesses. In magistrates' courts, the number of domestic violence cases is increasing, and these cases require significant victim support. Prosecutions for other serious offences are also increasing, including terrorism, organised crime, drugs and fraud. These cases can involve complex evidence, and trials with multiple defendants. The average length of a Crown Court trial increased from 11.5 hours in 2010-11 to 14.6 hours in the year to September 2015 (27%). The increase in trial length means that it would cost £44 million more to hear the same number of cases in the year to September 2015 as in 2010-11.

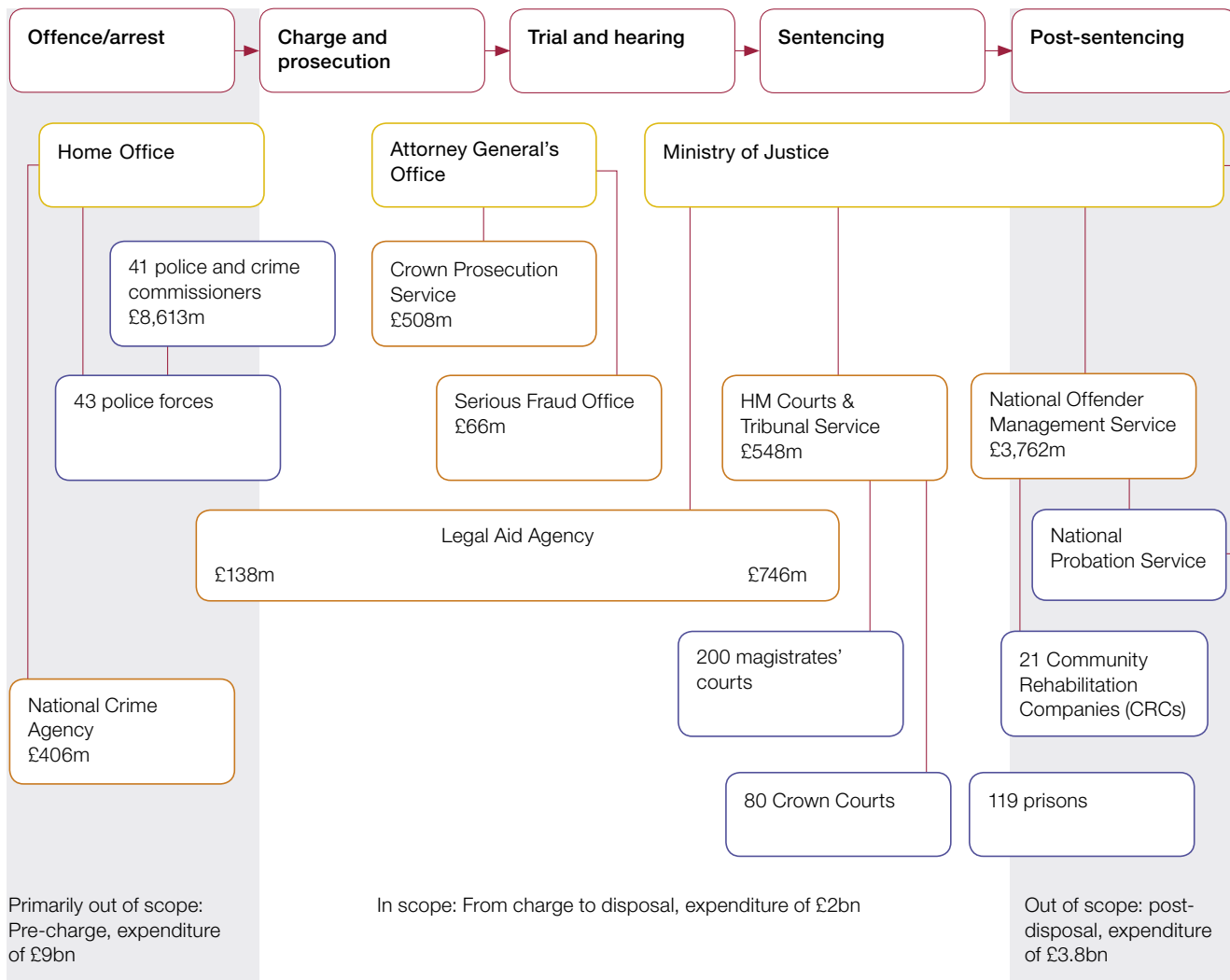
Performance in the courts

Timeliness

1.8 The changes described above have affected how quickly cases are progressed. There will always be cases outstanding in the system as there are minimum timescales before cases sent to the Crown Court can be heard, but the number of cases outstanding in Crown Court has increased by 34% since March 2013 (51,117 cases outstanding as at September 2015). The backlog has fallen since the end of 2014, but there was a small rise in the most recent quarter (**Figure 3** on page 14). Magistrates' courts have seen an increase of 4%, but the backlog has been falling since mid-2015, and is now lower than in 2012.

Figure 2
Scope of study

From charge to disposal: Central government expenditure across the criminal justice system



- Stage of the process
- Government department
- National Agency
- Frontline organisation

Notes

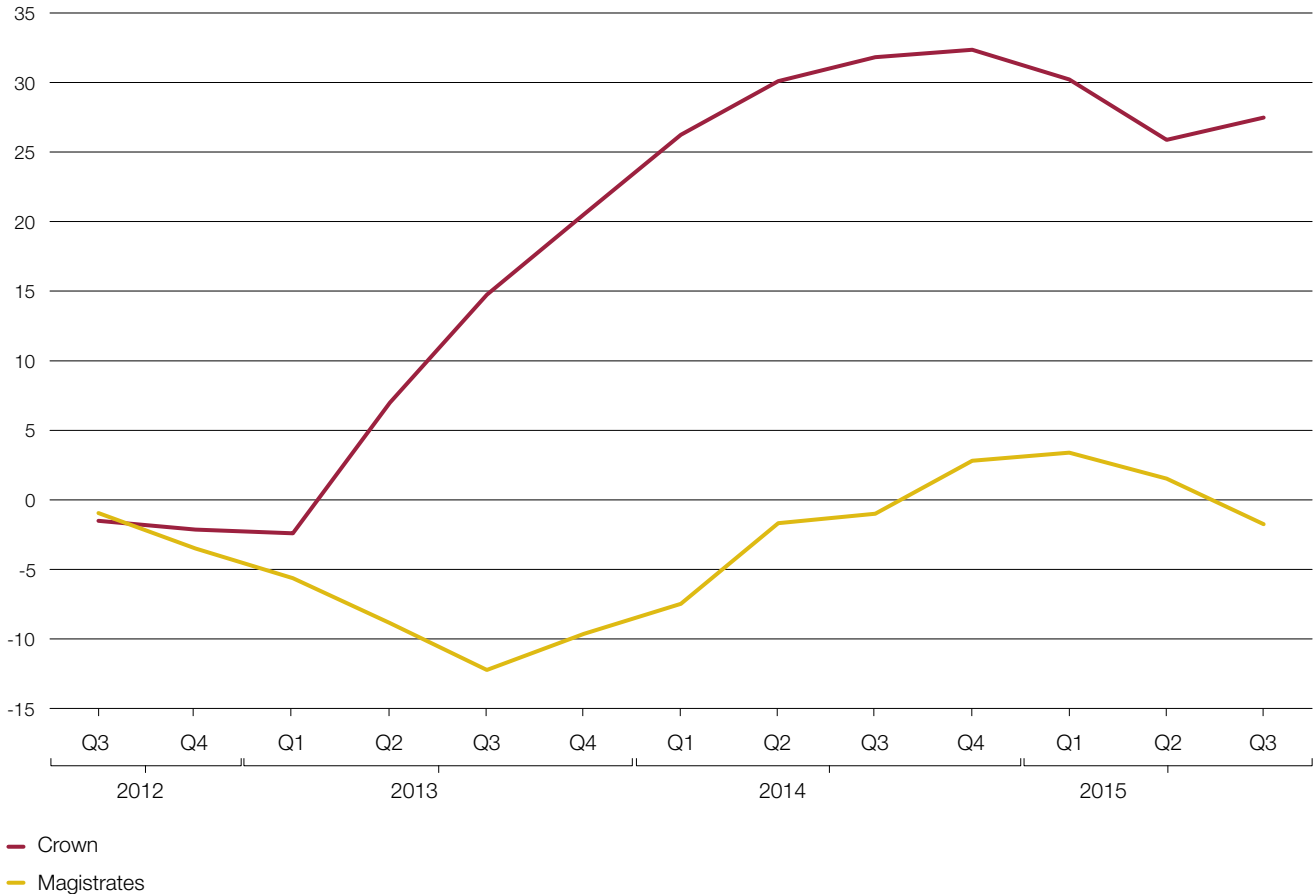
- 1 HMCTS figure of £548 million is minimum direct spend on criminal justice. There is also additional indirect spend on the system that jointly benefits civil and criminal justice and cannot be easily separated.
- 2 Other bodies can charge defendants, and these cases are dealt with in the courts. Bodies with charging powers include Department for Work & Pensions, HM Revenue & Customs and the Driving and Vehicle Licensing Agency.
- 3 Police expenditure includes some spend related to investigating and prosecuting criminal cases, but this is not separately identifiable.

Source: National Audit Office analysis

Figure 3
Increase in cases outstanding between 2012 and 2015

There has been a significant increase in cases outstanding at Crown Court, but not at magistrates' courts

Cumulative percentage change since April 2012

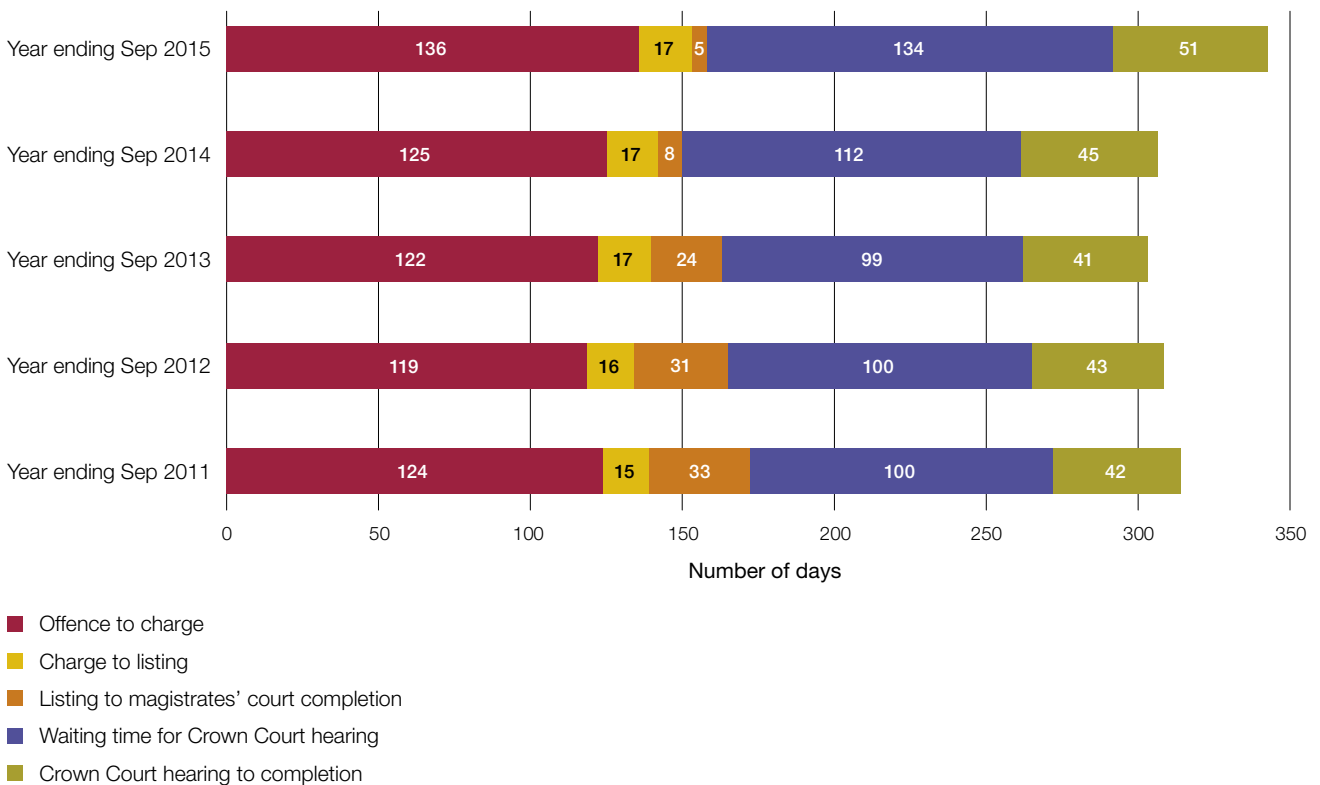


Source: National Audit Office analysis of Ministry of Justice data

1.9 In addition to the growing backlogs, Crown Court cases are taking longer overall to progress through the system, with particular pressure points at the pre-trial stage (**Figure 4**). The waiting time for a Crown Court hearing has increased from 99 days in the year ending September 2013 to 134 days in the year ending September 2015 (35%).

Figure 4

Waiting times (days) from offence to completion, Crown Courts 2011–2015

Crown Court cases are taking longer to progress through the system**Note**

1 This figure includes historical sex offences. This may have a significant impact on the length of time between offence and charge as victims may not report crimes for some years after they occurred.

Source: National Audit Office analysis of Ministry of Justice data

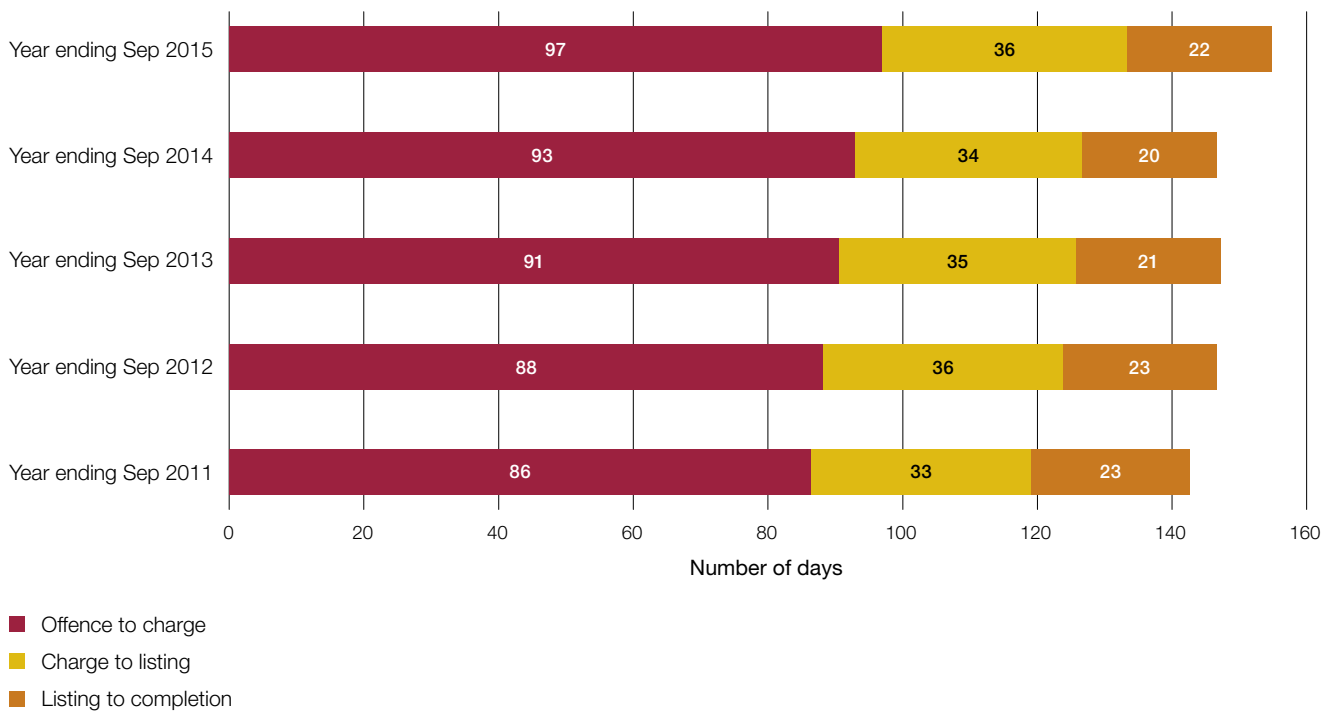
1.10 The increase in duration of Crown Court cases is likely to be caused in part by the abolition of committal hearings in May 2013. Committal hearings were purely administrative hearings in magistrates' courts, held to send 'either way' offences (paragraph 1.5) to the Crown Court. Before committal hearings were abolished, in the year to September 2012, cases spent an average of 31 days in magistrates' courts, and a further 100 days waiting to be heard in Crown Court. In the year ending September 2015, cases spent just 5 days in the magistrates' court on average, but then waited a further 134 days for a Crown Court hearing. While the abolition of committal hearings has reduced waste in the system by getting rid of a hearing that added little value, it increased pressure on the Crown Courts as cases now arrive more quickly, adding to the existing backlog. HMCTS and CPS did not have any additional resource to accommodate the increase in cases.

1.11 Although the overall length of magistrates’ court cases has increased slightly, there have been some improvements at the end of the process (**Figure 5**). The length of time spent preparing for magistrates’ court cases increased from 119 to 133 days (10%) between the year ending September 2011 and the year ending September 2015. But the amount of time spent in court, including waiting for a court date, reduced from 23 to 22 days. This may be because more effort is being invested up-front to ensure cases are ready for court. The result of this is more cases are being resolved on the first hearing (71% in the year ending September 2015 compared with 62% in the year ending September 2011) and on average cases are taking slightly fewer hearings to be resolved (1.8 hearings per case in the year ending September 2011 to 1.6 in the year ending September 2015).

Figure 5

Waiting time (days) from offence to completion, magistrates’ courts 2011–2015

The total duration of magistrates’ court cases (days) has increased slightly



Source: National Audit Office analysis of Ministry of Justice data

Effectiveness

1.12 It is difficult to measure the quality of outcomes in the criminal justice system. The system has a number of objectives, which can be in tension, and it is not possible to know for certain whether a case has produced the ‘right’ result in terms of convicting all those who are guilty and no one who is innocent. The Ministry monitors the rate of guilty pleas, but setting a target rate could discourage prosecution of hard-to-prosecute cases or encourage unreasonable pressure on defendants to plead guilty early.

1.13 The Ministry’s primary measures of the effectiveness of the system are the proportion of cases that go ahead as scheduled, and the time it takes for cases to progress through the system.² There are four possible outcomes for a case that is listed to go to court:

- **Effective.** The case goes ahead as planned on the day it was due to start.
- **Ineffective.** The case is not ready on the day it is due to start, and is relisted for a later date.
- **‘Cracked’.** A trial is withdrawn on the day it is due to start, and it is not relisted. This is most commonly because the defendant pleads guilty (as in 80% of ‘cracked’ cases).
- **Vacated.** Before the day it is due to start, it becomes clear that the case is unlikely to go ahead as scheduled, and it is removed from the list. The further ahead this happens, the more likely it is that court time will be used productively, and that effort will not be wasted preparing for a case that does not go ahead.

Crown Courts

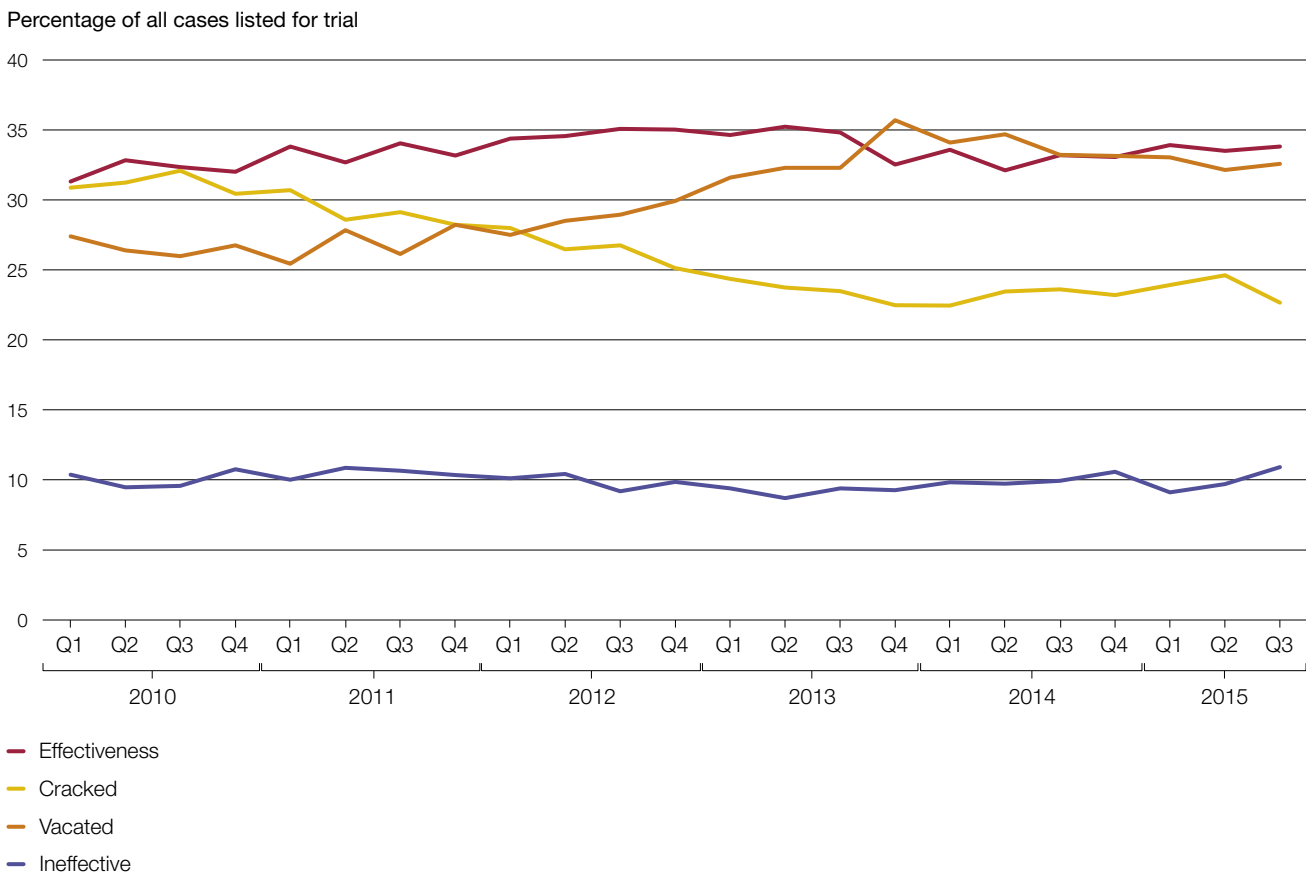
1.14 Around a third of trials listed to start in the Crown Court in the year to September 2015 were **effective**, meaning they went ahead as planned on the day they were originally scheduled, and around 10% were **ineffective** (**Figure 6** overleaf). This level of performance has remained relatively consistent since 2010-11.

1.15 There has, however, been an improvement in the rate of **‘cracked’** trials. In the year to September 2011 30% of cases cracked and 26% of cases were **vacated**. Four years later, 24% of cases cracked and 33% of cases were vacated. This suggests that the system is getting better at identifying where cases are likely to crack and removing them from the list before trial. There has been a small decline in this performance since the end of 2013, at which point the number of vacated trials hit 36% and the number of ‘cracked’ trials was 23%.

² We have calculated these figures in a different way from the Ministry’s published statistics. The Ministry’s analysis does not include vacated trials, our analysis does. We have included vacated trials, because this approach provides an indication of whether the system is getting better at identifying, and removing before the first day of the trial, cases that will not proceed.

Figure 6
Effectiveness of Crown Court trials 2010 to 2015

There has been an improvement in the rates for ‘cracked’ and vacated trials since early 2012



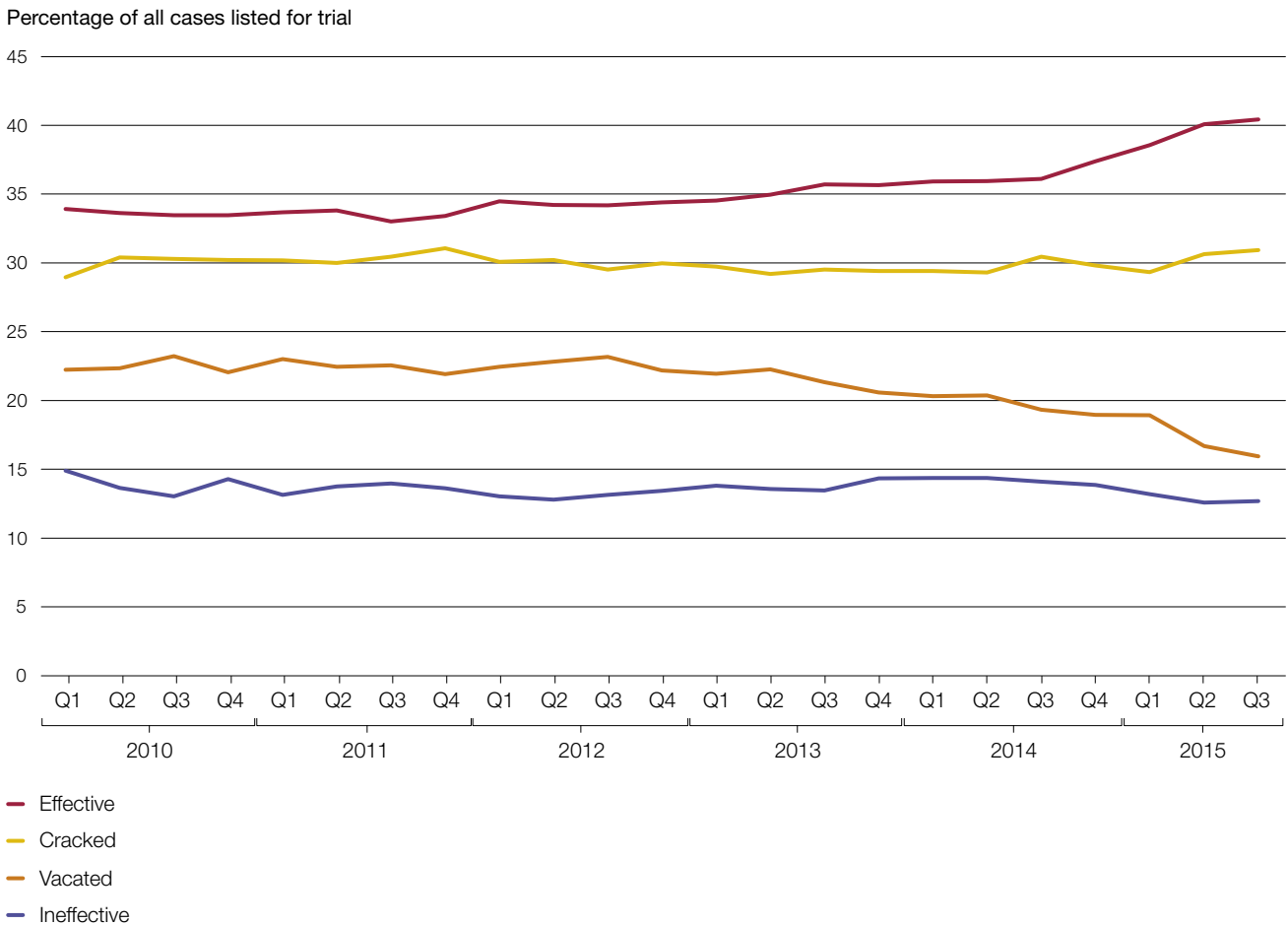
Source: National Audit Office analysis of Ministry of Justice data

Magistrates’ courts

1.16 There has been an improvement in the **effective** trial rate in the magistrates’ court (**Figure 7**). Of cases listed in the year ending September 2015, 39% were effective compared with 34% in 2010-11, representing an additional 9,489 cases heard on time. The number of ‘**cracked**’ trials has remained consistent, but the number of vacated trials has fallen from 23% to 18%. This suggests that some of the improvement in effective trials is due to better preparation of cases, meaning fewer cases need to be removed from the schedules. More cases are also now thrown out if the prosecution is not ready (‘cracked’) rather than being adjourned to a future date (ineffective). In 2014-15, 6% of ‘cracked’ trials were because an adjournment was refused, compared with around 2% in 2010-11. This creates an incentive for the prosecution to ensure it is properly prepared.

Figure 7
Effectiveness of magistrates' court trials 2010 to 2015

There has been an improvement in effective trial rates at magistrates' courts since mid-2014



Note

Source: National Audit Office analysis of Ministry of Justice data

Impact of ineffective and ‘cracked’ trials

1.17 Increasing the proportion of effective trials is important because collapsed cases waste resources. We estimate that in 2014-15 the CPS spent £21.5 million preparing cases that were not heard in court. The cost of preparing a case varies depending on the case, but the average direct cost to the CPS associated with progressing a single case to the point of trial is £975 in the Crown Court. The Legal Aid Agency (LAA) spent £93.3 million during 2014-15 on defence counsels to represent defendants whose cases never went to trial, excluding guilty pleas.

1.18 Cases collapse for a variety of reasons, not all of which are related to the CPS. Of the estimated £21.5 million spent in 2014-15, around £5.5 million relates to cases that cracked due to 'prosecution reasons', including non-attendance of prosecution witnesses and incomplete case files. The remaining £16 million relates to cases where the prosecution was not directly responsible for the case not proceeding as planned, for example where the defendant changed their plea to guilty either on the same or a reduced charge. We have not been able to calculate the cost to other agencies as data were not available. A certain number of cases will always crack on the day of the trial, as it is neither possible nor desirable to prevent defendants from changing their plea to guilty at this stage. In addition, some preparatory work may be necessary to persuade a guilty defendant of the strength of the case against them.

1.19 Delayed trials also increase costs for other parties, although there is limited data to assess the extent of this. For example, to manage the risk of court rooms sitting empty, courts' staff, under judicial direction, have a strong incentive to list more cases than can be heard, which increases administrative costs for HMCTS. Further costs are incurred by other parties. For example, in London police officers who spend a day waiting to give evidence cost £139 per day. If an officer attends every case that cracks this could amount to £10.6 million in wasted police time. No data are available on how often police attend court. In addition, expert witnesses may still be paid for their time if a case does not proceed as planned. The legal aid hourly rates for expert witnesses vary between £40 and £200.

1.20 The impact of delays and collapsed trials on victims and witnesses can be significant and undermine confidence in the system. Preparing to give evidence can be a difficult and stressful process and frequent delays are one of the biggest sources of concern for victims. Witnesses can wait on average around 2 hours to give evidence in the Crown Court, and 1 in 5 witnesses wait for 4 hours or more. They may not be able to recover all the costs they have incurred, such as childcare costs. Extended waits and uncertainty about whether a case will go ahead can be distressing and create a disincentive for witnesses to attend court in future. This may affect the likelihood of the trial being effective. Only 55% of people who have been a witness or victim would be prepared to act as a witness again, and those who have experienced the system as a victim are less likely to believe that it is effective (43%) than those who have not (49%).^{3,4}

1.21 Birmingham Crown Court and magistrates' courts are developing an online video that shows witnesses the route into the court building, through the building and round the court, where they should go, what facilities are available and who is available if they need information. This local initiative will complement the 'Going to Court' DVD which is available nationally in 10 languages. The witness service in all of the courts we visited offer witnesses a pre-trial visit, including a physical walk-through of where they will be on the day of trial, but this is not always compatible with a full-time job and childcare arrangements. An online option could help witnesses to feel more comfortable with the process, which may encourage them to attend court and give effective and compelling evidence.

³ Crown Prosecution Service, *Victim and Witness Satisfaction Survey*, September 2015, appendix, page 80. This figure is an average of all victims and witnesses consulted by case experience, who stated that they would be likely to re-engage.

⁴ Ministry of Justice, *Public Confidence in the Criminal Justice System – findings from the Crime Survey of England and Wales (2013-14)*, July 2015, page 5.

Part Two

Inefficiencies in case progression

2.1 This part of the report examines the main causes of inefficiency in the criminal justice system (the system). These include problems that occur as cases flow through the system, and underlying systemic factors that contribute to inefficient ways of working.

2.2 There can be many points of failure as cases move through the system and organisations are not always given incentives to prevent these. Inefficiencies in the system can be created where parties do not discharge their responsibilities to the required quality standards, or in a timely manner. More detail on the process is in Appendix Three. Problems occur as cases enter and progress through the system, including at crucial handover points between organisations, such as where information passes between police and the Crown Prosecution Service (CPS). This builds inefficiency into the process from the start. The impact, however, is not felt until towards the end of the process and is primarily seen in terms of delayed or cancelled trials. This means that costs are shunted between different parts of the system, and the organisations and individuals that bear the cost of inefficiencies may not be the same as those in which the problem first arose.

2.3 Our analysis suggests inefficiencies are caused in three main areas (**Figure 8** on pages 22 and 23):

- incorrect or poorly informed charging decisions;
- inadequate preparation of cases in advance of the trial; and
- inefficiencies which arise when a case comes to court.

Figure 8

Examples of inefficiencies across the system

Incorrect or poorly informed charging decisions

Inefficiency	Detail
Charging decisions are not always correct	Errors made at charging stage have knock-on effects as cases move through the system. If a defendant is charged with too severe an offence, they may be less likely to plead guilty, which will extend the case. But if defendants are charged with too lenient an offence, then justice may not be served. In 2014-15, a Criminal Justice Joint Inspectorates review found that 9.2% of CPS and 18.2% of police charging decisions sampled were incorrect. ¹
Police and CPS do not always exchange good-quality, timely advice	Lack of good-quality and timely advice can lead parties to make poor decisions. This can result in cases either failing to progress or progressing further than they should. The CPS struggles to provide timely advice to police. The Criminal Justice Joint Inspectorates have found that only 82.5% of cases met the target of 21 to 28 days to provide advice for the most serious offences. ² A Criminal Justice Joint Inspectorates report also found that only 68% of the additional information sections of case files, which includes sensitive areas such as special measures for victims, were classified as adequate. ³

Inadequate preparation of cases before the trial

Inefficiency	Detail
Police do not prepare a file of evidence to the required quality	<p>The Committee of Public Accounts' report in May 2014 highlighted that the quality of files received by the CPS from the police had been a longstanding problem. It recommended that the Criminal Justice Board develop metrics to monitor performance and achieve consistent standards.</p> <p>In their report on the provision of charging decisions, the Criminal Justice Joint Inspectorates found that around 89.8% of initial police files sampled complied with the National File Standard,⁴ and in a November 2015 review, the summary of evidence submitted by the police was classed as adequate in only 72% of files.⁵ Evidence guidelines state that the file should be proportionate to the complexity of the case and the way the defendant is expected to plead. CPS told us that there is significant regional variation in the quality of police case files, and that poor-quality files require significant remedial work by CPS staff.</p>
CPS does not always meet requirements to disclose evidence	The CPS must produce schedules before a trial to disclose all relevant evidence to the defence so that they can prepare their case. If not, valuable court time will be taken up resolving problems that should have been addressed earlier. Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSP's) internal casework information shows that in 2014-15 the prosecution did not comply adequately with their initial disclosure obligations in 51% of sampled files.
Parties do not communicate effectively with witnesses	Giving evidence in court can be intimidating and witnesses need to be kept informed about the process and their role in it. Some witnesses also require special measures, such as screens in court. Police are responsible for providing the initial information about special measures requirements to the CPS, who then tell the court about these before the trial. In 2016 HMCPSP found that policy guidance on the treatment of witnesses, which includes the requirement of the Victims' Code to assess whether special measures are required, was fully met in around half of cases (51%), and there was timely communication with witnesses in around half of cases sampled (57%). ⁶ In 2015, 2% of Crown Court (800 cases), and 7% of magistrates' court trials (10,922 cases) collapsed because witnesses did not come to court, and 3% of Crown Court trials (1,200 cases) were rescheduled for the same reason.

Figure 8 *continued*

Examples of inefficiencies across the system

Inefficiencies which arise when a case comes to court

Inefficiency	Detail
Cases may not be heard in the most appropriate setting	Some cases, known as 'either way' cases, may be heard in either the Crown Court or magistrates' court. Between 2013-14 and 2014-15 the proportion of these cases allocated to the Crown Courts increased, from 12% to 14%, at a cost of £5.5 million. If all of the 61,473 'either way' cases heard in the Crown Court in 2014-15 had been held in the magistrates' court, court running costs would have reduced by £45.1 million. 'Either way' cases can be referred to the Crown Court for sentencing after the hearing if the sentence falls outside the magistrates' powers. But there is no mechanism for the Crown Court to return a case to the magistrates' court if they feel it should be dealt with there. There is currently no routine feedback to magistrates to communicate whether the cases they send to Crown Court eventually receive sentences that could have been issued by the magistrates' court.
Defendants may not appear in court	The Ministry of Justice (the Ministry) has a series of contracts with private providers to escort defendants from custody to court. The contractor must meet a target of 90% of prisoners arriving on time. Contractors told us that one reason for delays is defendants not being ready when they arrived to collect them from prisons. However, there are no data to confirm how widespread this problem is. In 2014-15, around 3% of Crown Court cases (1,200 cases) had to be rescheduled because the defendant was not present.
More cases are listed than courts have capacity to hear	Judges direct court staff to list more trials than they can hear, because many will crack or be ineffective. Getting the balance right is challenging. If more cases are ready to proceed than anticipated, some will be postponed (ineffective trials). If too few cases are ready, this could lead to empty court rooms. Court listing was the single most common reason that a case had to be rescheduled last year, accounting for 21% of ineffective trials in the Crown Court and 30% in magistrates' courts.
Technology and facilities may not function as intended	Screens or video links are required to communicate with some witnesses or defendants in custody. Such equipment may not always be available in the court or may break down, although this happens in only a very small percentage of cases – in 2014, only 13 cases in the Crown Court and 275 in the magistrates' court (0.2%) were postponed because of problems with technology. On one of our case study visits we witnessed a trial where the police had so little faith in the court's equipment that they told us they hired their own at a cost of £500 a day.

Notes

- 1 Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, *Joint Inspection of the provision of charging decisions*, pages 47 and 51, May 2015.
- 2 Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, *Joint Inspection of the provision of charging decisions*, page 48, May 2015.
- 3 Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, *Witness for the Prosecution: Identifying victim and witness vulnerability in criminal case files*, page 32, table 4, November 2015.
- 4 Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, *Joint Inspection of the provision of charging decisions*, page 47, May 2015.
- 5 Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary, *Witness for the Prosecution: Identifying victim and witness vulnerability in criminal case files*, page 32, table 4, November 2015.
- 6 Her Majesty's Crown Prosecution Service Inspectorate, *Communicating with victims*, pages 14 and 27, January 2016.

Source: National Audit Office analysis

Quality assurance and enforcement mechanisms

2.4 There are quality assurance mechanisms built into the system, but these do not always identify errors, or they pick them up too late in the process (**Figure 9**). For example, a CPS review of the case before the first hearing should identify an incorrect charging decision and stop cases progressing that have no prospect of success. But HMCPSP's 2015 review found that 38.4% of police-charged cases sampled had not been reviewed before getting to court. In other areas, there is no process in place that will identify problems between the point at which they occur, and the point at which their impact is felt. For example, where the prosecution does not properly disclose all the evidence to the defence, this may not be picked up until the day of the trial itself.

2.5 Enforcement mechanisms to encourage parties to comply with procedures, for example where the defence or prosecution fail to file papers with the court on time, are limited. In civil courts, cases are routinely thrown out if they are not properly prepared. Judges in criminal courts are reluctant to take the same approach, as this would result in potential criminals going unpunished. The system is already operating under constrained resources so the judges we spoke to felt that fining non-compliant lawyers was unlikely to improve the situation.

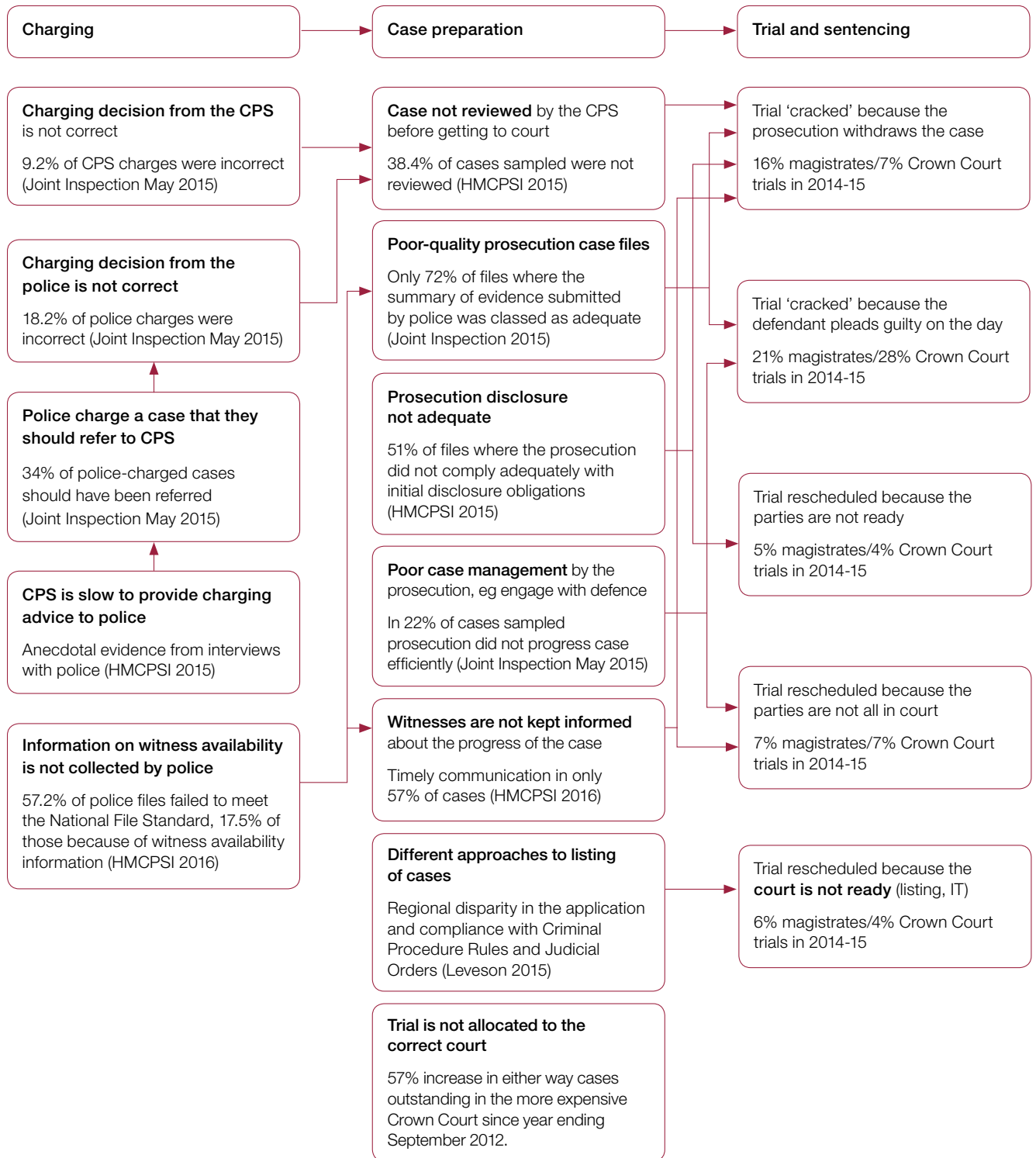
2.6 Some courts, such as Southwark, have introduced 'compliance courts' where advocates will appear before a judge if they have not complied with requirements. They think this has had a positive impact on overall performance. Similarly, Kingston Crown Court requires the CPS and defence to return a trial readiness questionnaire one week before the trial. Court staff told us that while they had had to chase these forms up when they were first introduced, they are now routinely returned on time, and fewer cases are postponed as a result. This approach is now being introduced more widely as part of the Better Case Management initiative.

Barriers to more efficient working

2.7 There have been various attempts to reform the system. Improving efficiency in the system has been the subject of various reviews, most recently by Sir Brian Leveson in his January 2015 report *Review of Efficiency in Criminal Proceedings*. While some progress has been made, many of the systemic issues identified by these reviews remain. These create a number of barriers to more efficient working.

Figure 9

Problems that occur early in the process are not always identified



Source: National Audit Office analysis of Criminal Justice Joint Inspectorate reports and Ministry of Justice data

2.8 The nature of the system presents several barriers that prevent the different organisations within the system from collaborating:

- The system is adversarial by design, and it is important that parties maintain a degree of independence from one another.
- Victims and witnesses are central to the process, but many will have had no prior contact with the system. It may take time to persuade them to engage, which conflicts with the desire for swift justice.
- Defendants may wish the process to take as long as possible, especially if they think that delays may increase the likelihood of their case collapsing.

2.9 To improve efficiency, organisations need to work together for the benefit of the system as a whole. Our March 2013 report *Integration across government* outlined four elements for successful integrated working:⁵

- leadership;
- a shared vision;
- incentives; and
- implementation capability.

Leadership

2.10 Effective leadership is necessary to develop and articulate a clear vision to all stakeholders, oversee progress and overcome obstacles as they arise.

The Committee of Public Accounts' 2014 report on the system highlighted that the Ministry's ability to persuade local participants to act in the wider interests of the system as a whole was constrained by the emphasis placed on the independence and separateness of the other bodies.⁶ The terms of reference for the Criminal Justice Board state that it will "protect judicial, prosecutorial and operational independence of the judiciary, CPS and police; and the constitutional difference of locally elected and accountable police and crime commissioners". The need to respect operational independence may make it more difficult to offer incentives to improve where one part of the system is causing problems for another.

5 Comptroller and Auditor General, *Integration across government*, Session 2012-13, HC 1041, National Audit Office, March 2013.

6 HC Committee of Public Accounts, *The Criminal Justice System*, Fifty-ninth Report of Session 2013-14, HC 1115, May 2014.

A shared vision

2.11 Organisations need to be committed to a shared vision for integrated

working. Each participant in the justice system has their own obligations, priorities and financial constraints, and performance measures are not aligned. Initiatives to improve efficiency in one area may have unforeseen consequences. For example, abolishing committal hearings, which reduced pressures in magistrates' courts, was followed by a significant increase in delays in the Crown Court, which did not have the resources to absorb the increase (Part One).

Incentives

2.12 Inadequate incentives for organisations to work together can prevent the system from achieving wider benefits, such as savings to the public purse.

There are currently no incentives to encourage organisations to take the best course of action for the whole system. The solution to a particular cause of inefficiency, and the investment required, may lie with a different organisation to that in which the problem arises and the costs are incurred. All parts of the system are under pressure to reduce costs. This creates a strong incentive to reduce work, even if it causes problems for others. Costs are therefore shunted from one part of the system to another, rather than being removed from the system altogether. For example, the police may choose not to request expensive forensic evidence to reduce their costs, but this can make it harder for the prosecution to prepare a strong case to persuade a defendant to plead guilty rather than go to court. Incentives could include commitments made by different parts of the system in discussion at the Criminal Justice Board, or making performance information more transparent to acknowledge high-performing areas. The Leveson Review also highlighted that the structure of legal aid payments could create perverse incentives for efficiency by encouraging firms to retain cases for as long as possible.

Implementation capability

2.13 Organisations need to be able to work together in an integrated way, and there are criteria to assess collaborative working. Different organisational structures and approaches among the main organisations in the system mean it is difficult for them to work together effectively at a local level. The police and victims services are seeking to devolve authority to local level. Other parts of the system, such as the CPS, have a more centralised structure, with national performance measures. In addition, regional boundaries overlap in some areas. This means there is no common level of the system (local, regional or national) where parties have autonomy to agree how to tackle inefficiencies.

Part Three

Regional variation

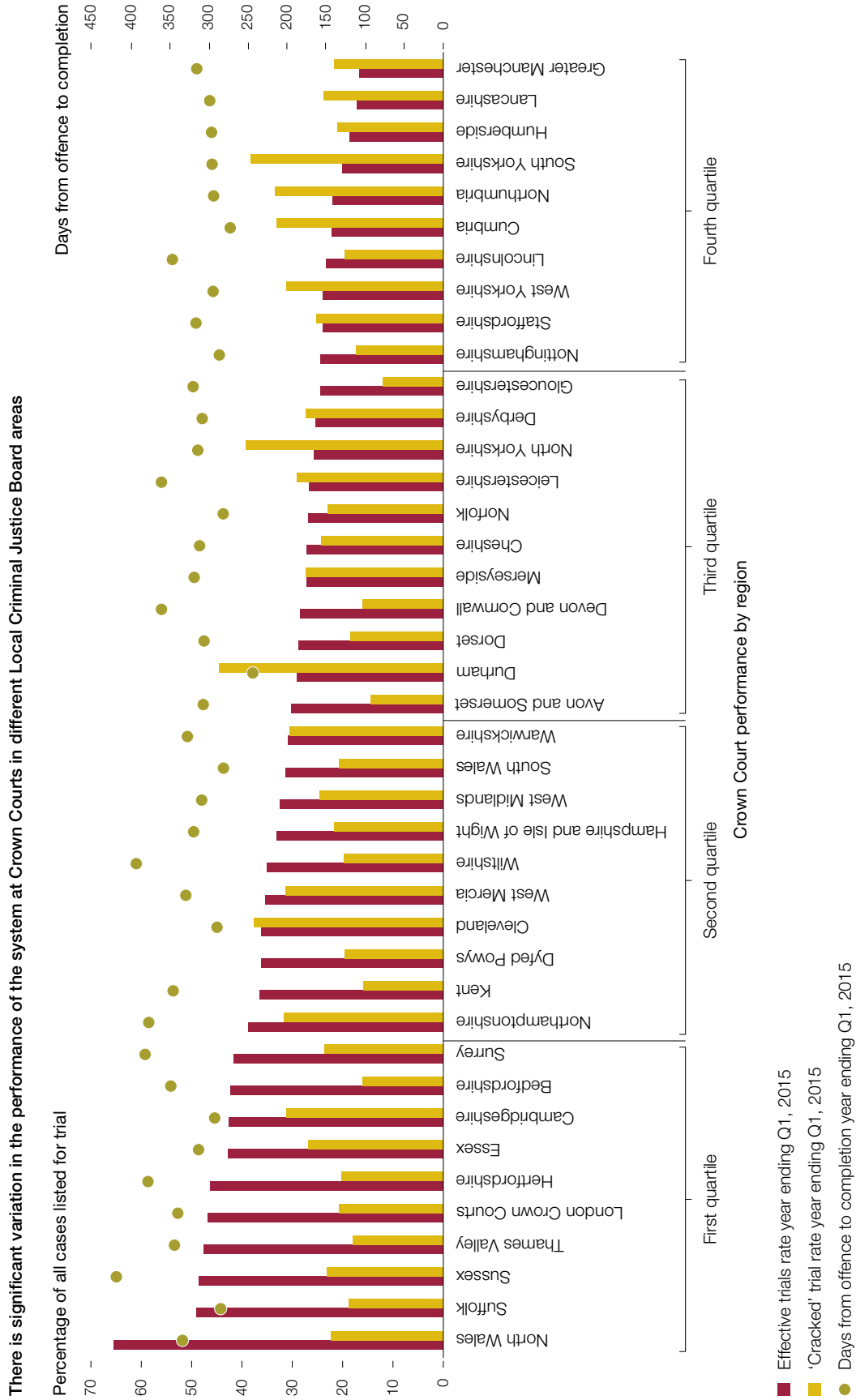
3.1 This part of the report explores the regional variations in reported performance of the criminal justice system (the system).

3.2 There are significant variations in performance across England and Wales. This means victims, witnesses and defendants may have very different experiences. The Ministry of Justice (the Ministry) tracks performance for each of the 42 Local Criminal Justice Board areas that make up the system. In 2014-15 Crown Court trial effectiveness rates range from around 20% to around 70%, meaning a victim of crime giving evidence at a trial in the best-performing region (North Wales) has a 7 in 10 chance that their case will go ahead, but in the worst performing (Greater Manchester), there is only a 2 in 10 chance that it will (**Figure 10**). Around 4 out of 10 of cases in the worst-performing areas crack, compared with less than 1 in 5 in the highest-performing. The variance in Crown Court effective trial rates has remained relatively consistent over time and some regions are consistently in the bottom quartile.

3.3 Cases also take much longer to progress through the system in some regions. In 2014-15, the length of time between the offence and completion of the case ranged from 243 days in Durham to 418 days in Sussex – a difference of 175 days (Figure 10).

3.4 In the magistrates' courts, regional variations in performance are smaller, but becoming wider. In 2014-15, trial effectiveness rates in the magistrates' courts ranged from 50% in the best-performing area to around 24% in the worst. 'Cracked' trial rates ranged from 20% to 40%. The time between the offence and completion of the case ranged from 111 to 184 days. But the most recent data suggest that the difference between worst and best performers is increasing, due to worsening performance in the weaker areas (**Figure 11** on page 30).

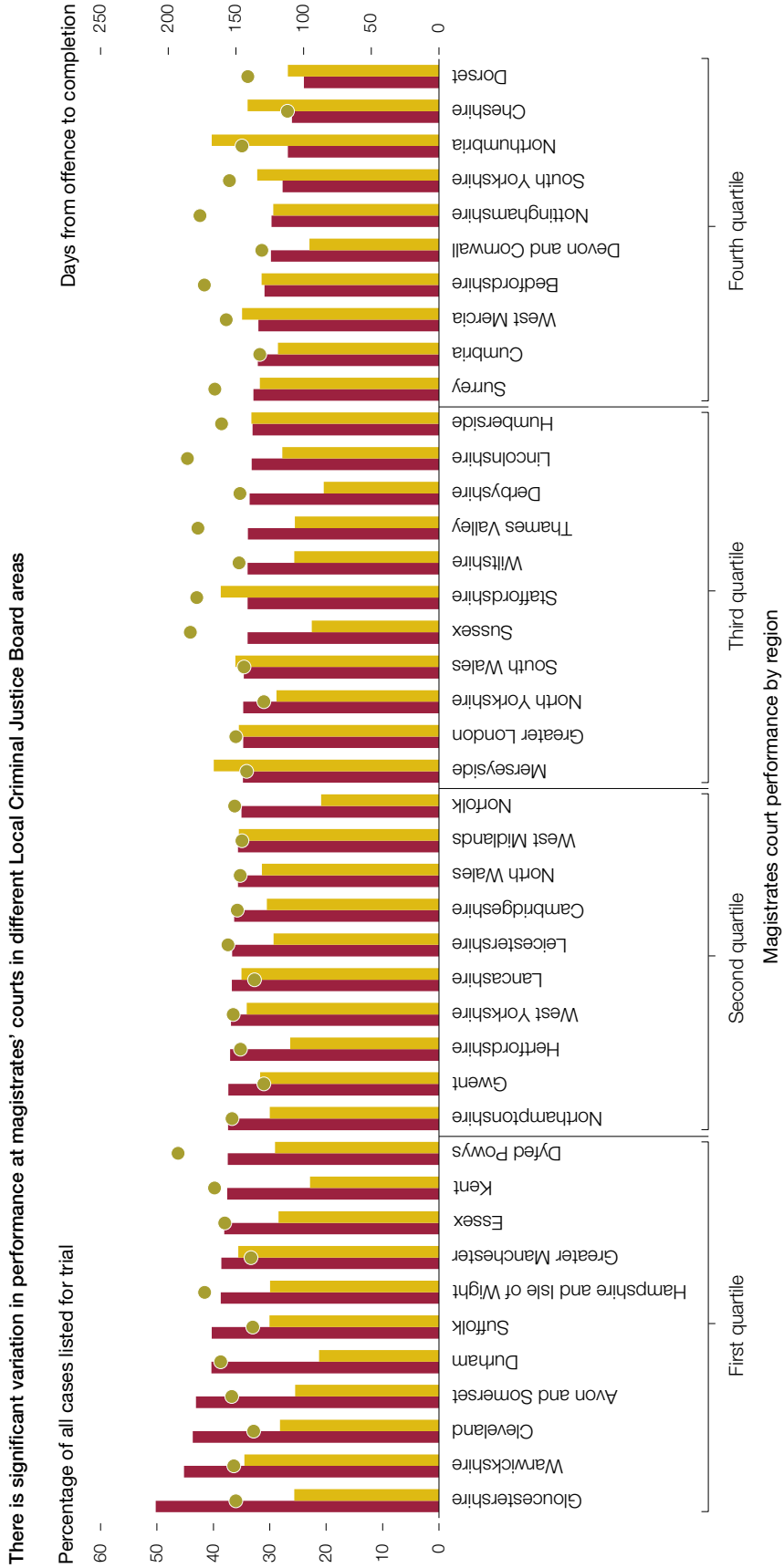
Figure 10
System performance at Crown Courts by Local Criminal Justice Board area (ordered by trial effectiveness rate)



Note

1 Quartile ranking based on the Effective trial rate.

Figure 11 System performance at magistrates' courts by Local Criminal Justice Board area (ordered by trial effectiveness rate)



- Effectiveness rate year ending Q2, 2015
- 'Cracked' rate year ending Q2, 2015
- Days from offence to completion year ending Q2, 2015

Note
1 Quartile ranking based on the Effective trial rate.

Source: National Audit Office analysis of Ministry of Justice data

3.5 If the bottom two quartiles of all local areas could achieve as few ‘cracked’ cases as the top quartile, 15% more cases would be heard in court on the day they were supposed to. This improvement would save the Crown Prosecution Service (CPS) alone £4 million each year, and also free up valuable court time. It is not possible to calculate savings for other organisations, as data are not available.

Factors affecting performance

3.6 There are many reasons for the variation in system performance but limited sharing of good practice. We visited a selection of courts throughout the country to explore the reasons for the variations in performance. We identified a number of factors that both individually, and in combination, can influence performance. Although some of these cannot be controlled by individual courts, others can. There are some formal mechanisms for identifying and sharing good practice across the system as a whole, but awareness and use of these varies.

Factors outside a court’s control

3.7 The **mix of cases being tried** in a given area can affect performance, because some offences typically take longer to prosecute than others, or may be more likely to crack. Some courts specialise in certain offences: Southwark is the designated court for fraud and money laundering cases, which are typically complex and long-running compared with other types of crime. The geography of an area can affect the mix of cases, for example areas with ports or airports may see more smuggling and border offences.

3.8 **The mix of cases can also change over time:** Birmingham Crown Court, which is one of the largest urban court centres, has seen a significant increase in fraud, drugs and complex homicide cases, which can involve lengthy trials and multiple defendants. The average length of cases at Birmingham Crown Court has nearly doubled from 13.3 hours during April to August 2014 to 24.5 hours for the same period in 2015.

3.9 **Court size, age and facilities** can have an impact on how cases are managed. Bigger court centres can make it easier to list multiple cases, or to introduce initiatives such as holding dedicated courts for particular offences. Birmingham has the largest Crown Court with 16 courtrooms as well as access to two jury-compatible courts in the adjacent magistrates’ court. This gives court staff extra flexibility to move cases between courts if needed, which reduces the risk that cases will need rescheduling because of a lack of court rooms.

3.10 Some areas have newer, more flexible courts, in which it is relatively easy to install technology, or to provide more suitable facilities for victims and witnesses. In other areas, staff are constrained by operating in older, sometimes listed buildings. At Kent magistrates' court we were told that the introduction of the dedicated videoconferencing court had given an incentive for Kent police to invest in their own video equipment at police stations. When the case allows, police officers now give evidence from their police station, saving travel time but also allowing officers to work in a secure environment while they wait to give evidence. Expert witnesses based in different parts of the country are also using the video links to give evidence in Kent courts, saving on travel costs.

3.11 Available **capacity in the courts** also has an impact on performance. Capacity does not necessarily correspond with the areas of high demand. In many of the areas we visited, magistrates' courts, which tried 10% fewer cases in 2014-15 than in 2010-11, had spare capacity but Crown Courts did not have enough. When Crown Courts are full it puts pressure on custody cells and interview rooms and the court operates less efficiently. There is limited flexibility for the Crown Courts to make use of spare capacity in the magistrates' courts, because the courtrooms do not always have facilities for juries or secure docks.

Factors within the control of courts

3.12 There are areas over which courts have more control, in particular their **working practices**, which vary between courts. For example, Swansea magistrates' court has a strong focus on improving efficiency. It holds weekly meetings with CPS and the police to look ahead and identify special requirements for upcoming trials. It also reviews why parts of the process did not run smoothly. Other courts told us they used to do this but no longer had the resources.

3.13 We saw one example of a small but impactful change to working practices at Birmingham Crown Court, where police officers can now request appointments to obtain search warrants from judges. Previously, officers had to come to court and wait for an available judge, which could take a long time. Now, police officers phone ahead for an appointment slot, come into the court and speak directly to the judge. The whole process takes 10 minutes. The police estimate this will save the equivalent of 2 full-time police officer positions over a year. The change was easy to implement as court staff know judges' availability and needed no additional funding.

3.14 Some courts also make greater **use of technology** than others, although the current reform programme should address this (Part Four). In Manchester magistrates' court, staff told us that they had automated administrative tasks, saving the equivalent of 2 full-time staff posts.

3.15 Courts we visited take different views on what constitutes a ‘good’ result.

Some courts consider that cracking a case is good because it spares the full cost of a trial and finishes the case. Other courts focus on improving effectiveness and identifying cases that are likely to crack (for example, because the defendant pleads guilty or because the charge is withdrawn) before the case gets to trial, resulting in lower ‘cracked’ rates. There is no agreement across the system about which approach is better.

3.16 Courts also have **different approaches to listing cases**, partly as a result of the constraints they face in terms of capacity and flexibility of the court facilities (paragraphs 3.7 to 3.11). Listing is carried out by courts’ staff, under judicial direction. All courts list more cases than can be heard, because a significant proportion will not go ahead. Cases may be listed with different degrees of certainty. Cases on a ‘fixed list’ are generally expected to go ahead on the specified date. Other cases may be given a ‘floating’ date, where those involved are told the week the case is likely to be heard, but the exact day is not confirmed until the day before. Cases may be listed as ‘warned’, meaning those involved should prepare for the case to be heard but there is no guarantee that it will be. We saw different practice around the country in terms of how fixed the list is, and how likely it is that cases in the ‘warned’ lists will be heard. Some courts told us that if a case has been listed as ‘floating’ and is not heard, they will be given a fixed date on the next occasion. Other courts will list a case as ‘floating’ several times.

3.17 Opinions vary on which is the best approach to take. Some court staff we spoke to felt that victims and witnesses prefer the certainty of a fixed listing, even if it takes longer for the case to reach court. Others felt some victims would prefer swifter justice, even at the risk of rescheduling. Fixed lists give the CPS, police, witnesses and defence lawyers certainty and make it easier for them to manage their time. This may reduce costs associated with wasted court time, delays and rework of cases, and travel expenses. Defence barristers we spoke to singled out this practice as being particularly useful. Fixed lists are, however, less flexible and increase the risk of empty court rooms, which is a particular concern given the backlog of cases in the Crown Court.

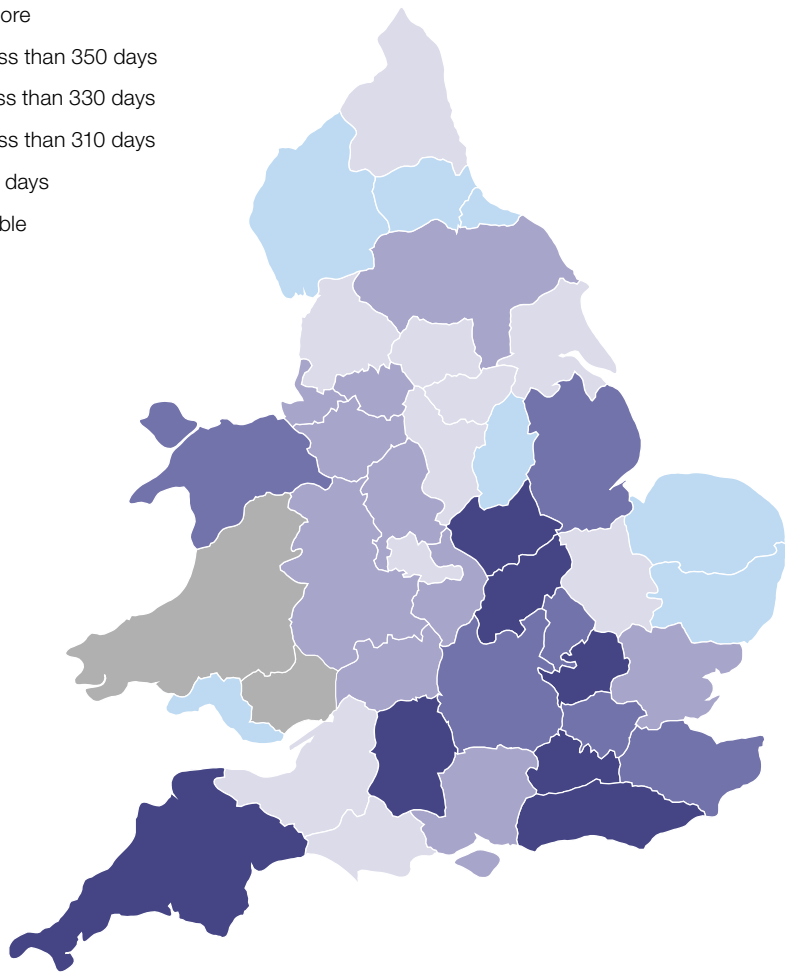
3.18 There is often a presumption that if cases are listed sooner then they are less likely to be effective (because there is less time to prepare) but if they are listed later they are more likely to be effective but would score poorly on timeliness figures. This is not always the case: some areas with the highest effectiveness rates are also among those with the shortest delays (**Figure 12** overleaf, **Figure 13** on page 35 and **Figure 14** on page 36).

Figure 12

Regional variation – timeliness in the Crown Court

Offence to completion 2014-15

- 350 days or more
- 330 days to less than 350 days
- 310 days to less than 330 days
- 290 days to less than 310 days
- Less than 290 days
- No data available



Note

1 Mean timeliness data may be skewed by a small minority of very long cases.

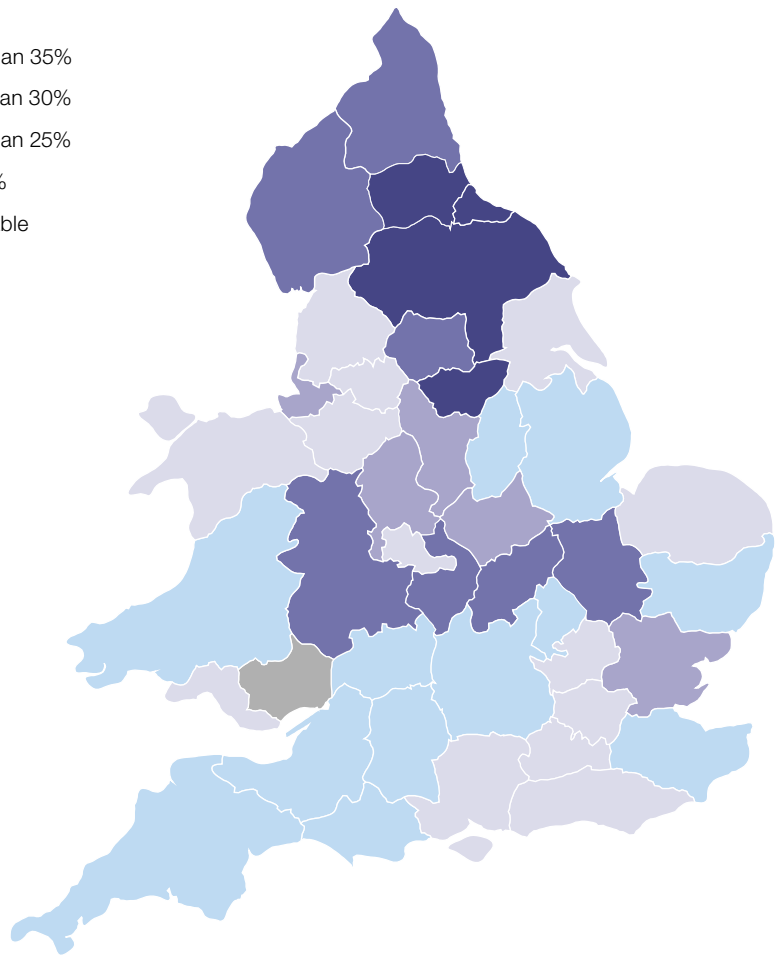
Source: National Audit Office analysis of the published Ministry of Justice *Criminal Court Statistics*

Figure 13

Regional variation – ‘cracked’ trial rate at the Crown Court

‘Cracked’ trial rate (%), 2014-15

- 35% or more
- 30% to less than 35%
- 25% to less than 30%
- 20% to less than 25%
- Less than 20%
- No data available



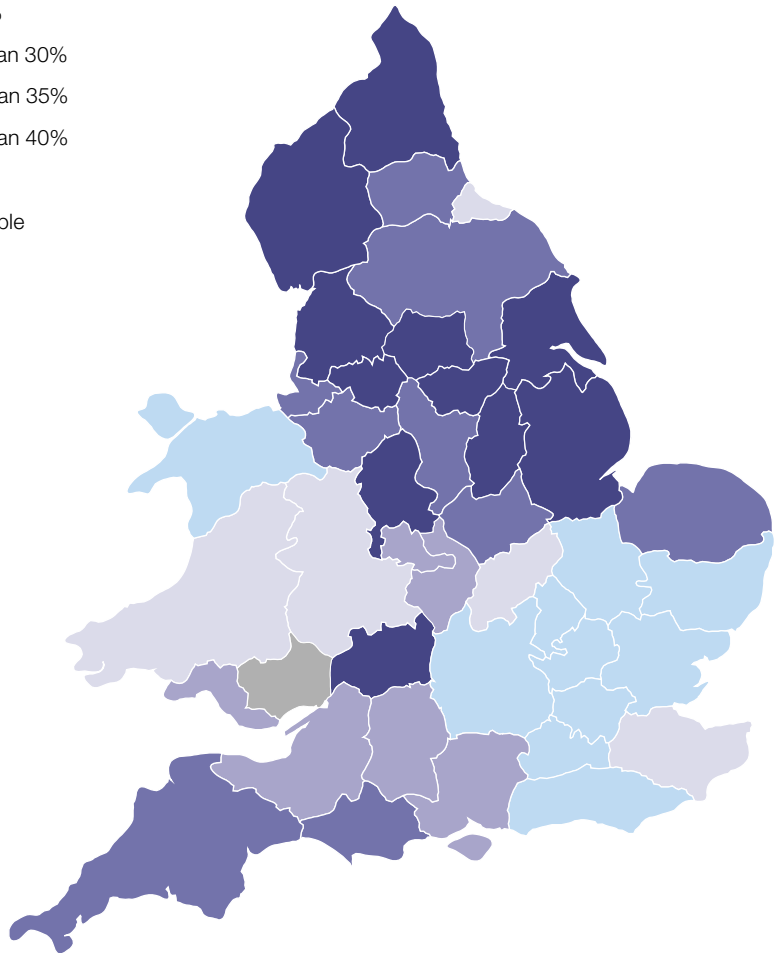
Source: National Audit Office analysis of the published Ministry of Justice *Criminal Court Statistics*

Figure 14

Regional variation – effective trial rate at the Crown Court

Effective trial rate (%), 2014-15

- Less than 25%
- 25% to less than 30%
- 30% to less than 35%
- 35% to less than 40%
- 40% or more
- No data available



Source: National Audit Office analysis of the published Ministry of Justice *Criminal Court Statistics*

Part Four

Reform of the system

4.1 This part of the report describes the initiatives that the Ministry of Justice (the Ministry), Crown Prosecution Service (CPS) and the judiciary have put in place to tackle inefficiencies and improve the progression of cases through the criminal justice system (the system). It is too early to assess the likely success of these measures, however we have identified a number of risks that these bodies must manage if they are to deliver the intended benefits.

4.2 There have been many attempts to improve the efficiency and effectiveness of the system: the 1993 Royal Commission on Criminal Justice, Lord Justice Auld's 2001 review of the criminal courts and, more recently, Sir Brian Leveson's 2015 Review of Efficiency in Criminal Proceedings. Repeated reviews are necessary, partly because the system continues to evolve (for example, jurisprudence changes, technology facilitates different ways of working and changes to the responsibilities of government departments reconfigure parts of the system) and partly because reforming it is difficult.

4.3 The Ministry, the CPS and the judiciary have instigated a number of different programmes to reduce costs and improve quality. The Ministry expects to save over £200 million a year by 2019-20 as a result of improvements (**Figure 15** overleaf).

Improving the flow of cases through the system

4.4 There are two initiatives to reduce unnecessary delays and improve case progression: Transforming Summary Justice was implemented in magistrates' courts in 2015. Better Case Management is being introduced to Crown Courts in 2016. Both aim to improve preparation for court so that more hearings will then go ahead successfully.

Improving technology and digitisation of courts

4.5 The Ministry is investing £700 million in modernising the courts, both to reduce the costs of the estate and to transform the way in which justice is administered using technology and deliver an improved service at lower cost (courts reform programme). The CPS and HM Courts & Tribunals Service (HMCTS) are jointly leading an initiative to introduce a single online case management system (the Common Platform) covering the entire process from pre-charge to disposal, with all parties having access to one digital case file (Figure 15).

Figure 15
The reform programmes

Reform programme	Lead agency	Detail	Costs	Expected benefits
Transforming Summary Justice	HMCTS and CPS	A joint criminal justice system initiative, aimed at simplifying the process for summary cases in the magistrates' courts. Since May 2015, organisations across the system are working towards implementing 10 characteristics of the Transforming Summary Justice programme. These fall under three themes – simplifying cases and streamlining the system; identifying cases for early guilty pleas and securing these pleas earlier on; and ensuring smoother case progression.	Not specified	Fewer delays and aborted hearings, and earlier guilty pleas.
Better Case Management (Crown Court)	Judiciary	The Better Case Management initiative aims to improve case management in the Crown Court. It forms part of the response to Sir Brian Leveson's report <i>Efficiency in Criminal Proceedings</i> , and is based on the overarching principles identified in that review. Better Case Management introduces two case management initiatives – a renewed emphasis on a uniform national early guilty plea scheme, and Crown Court disclosure in document-heavy cases. It will also shorten timescales, and reduce the number of interim hearings.	Not specified	Improved case progression, which should lead to fewer delayed and aborted trials, and earlier guilty pleas.
Court reform programme	HMCTS	Modernisation of the court estate to include WiFi in all courts, new equipment for presenting digital evidence in court and the roll-out of video link systems. An online self-service court system that will allow defendants to enter a plea, complete forms and pay fines. Court closure programme aimed at improving utilisation of court rooms and reducing the cost of running the estate.	£75 million each year for five years from 2015-16	£200 million each year by 2019-20.
Common Platform	CPS and HMCTS	To develop a single case management system for the CPS and HMCTS. The Common Platform includes an integrated digital case file, which will reduce the amount of paper used in the system, and move as much as possible of the process online, with the aim of achieving a fully digital system. Case file starts when the police gather evidence, and all parties (CPS, judiciary, defence and courts) will have access as needed.	£381 million	£425 million across 10 years (£318 million for HMCTS and £107 million for CPS).

Source: National Audit Office review of Ministry of Justice documents

Risks to delivery

4.6 Transforming Summary Justice was first introduced in some areas in May 2015, and early signs are that it is beginning to have an impact on performance of the magistrates' courts. There has been a slight rise in the number of effective trials, and a corresponding fall in ineffective trials during the last nine months of 2015 (Part One). The Better Case Management initiative has not been fully introduced so it is too early to say whether it is having an impact on reported performance. Staff at the courts we visited were hopeful that it would lead to improvements; however, courts' staff and the judiciary have limited formal powers to influence the behaviour of lawyers who do not comply, and the schemes do not include any new powers, although more cases are now being thrown out for not being ready (paragraph 1.16). There are already guidelines on managing cases, which are not always followed, and these new approaches do not contain any new formal mechanisms to enforce compliance.

4.7 The Ministry's reform plans to transform the system depend on introducing new information technology, and embedding a culture of digital working within different organisations. This will address one of the long-standing problems with the system highlighted by the Committee of Public Accounts in its May 2014 report: that there had been slow progress in improving IT, and there were still too many disparate systems, which failed to operate together.⁷ We have examined many IT-enabled change projects. Our experience suggests that these are very difficult to deliver well, and the government does not have a good track record in this area. The Ministry must learn from the challenges encountered on other programmes if it is to deliver these change programmes successfully. Some of the risks it will need to overcome include:

- delays to delivering the IT elements;
- failure to understand the needs of users;
- failure to ensure buy-in among users of the new system; and
- optimism bias in estimating costs and benefits.

4.8 One of the most common challenges in delivering IT-enabled change is to focus all of the attention on the technology, and not enough on the users. On one of our case study visits, we were told that the judiciary were keen to support and prepare for digital working, but that they were unable to secure the necessary training: some members would like to be able to learn how to touch type, and had identified a course, but were unable to find funding to pay for it. We cannot say whether this is a widespread concern across the system, but it is illustrative of the problems that can arise for these types of programmes.

⁷ HC Committee of Public Accounts, *The Criminal Justice System*, Fifty-ninth Report of Session 2013-14, HC 1115, May 2014.

4.9 The Ministry is constrained in introducing new technology in some areas by the nature of the court estate, with particular challenges in adapting historic or listed buildings. Moving to a predominantly digital way of working represents significant cultural change for many areas of the system, which are very paper-based and rely on manual entry onto ageing IT systems. The programme will only work if all parties can be persuaded of the benefits, so it is important to ensure the participation of other criminal justice partners such as the defence community.

4.10 As outlined in Part Two, there is currently a lack of effective sanctions where parties are not following established procedures, and a lack of whole-system governance and oversight. The Ministry's reforms will not be successful unless all parties see the benefit of the planned changes, and are given incentives to follow the new ways of working. Without an effective mechanism through which one part of the system can hold another to account for poor performance, it is not clear what incentives the reforms will provide for organisations to use the new systems as intended.

Appendix One

Our audit approach

1 This study examined what the opportunities are to improve the efficiency of proceedings in the criminal justice system (the system) in England and Wales. The study builds on findings of the *Review of Efficiency in Criminal Proceedings* published by Sir Brian Leveson in January 2015, to provide an evidence-based assessment of the areas of inefficiency and to try to quantify these where possible. We have also looked across the system as a whole, to understand the effect actions in one area of the system can have on another. We defined efficiency in terms of whether things could be done more quickly or for less money, getting things right first time and delivering the right outcomes.

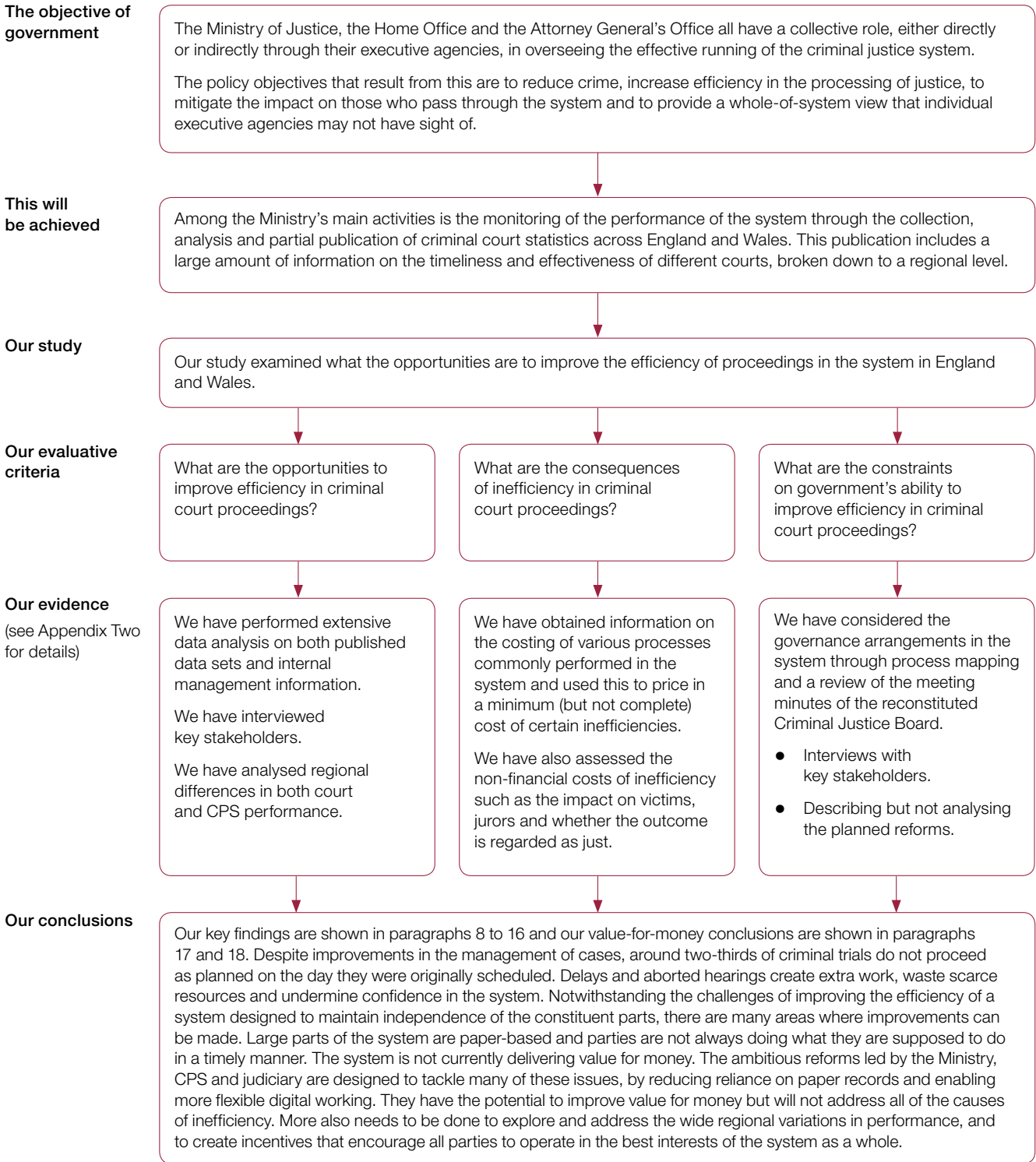
2 We assessed:

- the overall performance of the system, and the context for improving inefficiency;
- the main causes of inefficiency in the criminal justice system;
- regional variation in the performance of courts across the country; and
- the programme of reforms the government has in place to address inefficiency in the system, and how the Ministry of Justice (the Ministry) is addressing the main issues – we did not assess the effectiveness of the Ministry’s planned reforms as it is too early to do so.

3 The scope of the study is from the charging decision until sentencing. Included in this scope is the examination of the file prepared by the police, the case prosecuted by the Crown Prosecution Service (CPS), the administration, management and organisation of that case by HM Courts & Tribunals Service, the role of the judiciary and how the decision-making and overall effectiveness of each of these bodies can impact on the overall system.

4 Our audit approach is shown in **Figure 16** overleaf and evidence base is detailed in Appendix Two.

Figure 16
Our audit approach



Appendix Two

Our evidence base

1 We performed an in-depth analysis of the published quarterly criminal court statistics from the first quarter of 2010 up to the third quarter of 2015. This included analysing the statistics for effective, ineffective, ‘cracked’ and vacated trial rates at a national level (Part One), alongside a regional analysis based on the 42 Local Criminal Justice Board areas (Part Three). We also analysed the links with the timeliness data produced by each region. We have included vacated trials in our overall calculation of the percentage of effective trials, as we consider it gives a more complete picture of activity. The Ministry of Justice (the Ministry) does not include vacated trials when calculating the effective trial rate, meaning that figures in this report will differ from published statistics.

2 We obtained internal management information from the Crown Prosecution Service (CPS) that allowed us to estimate the cost of certain processes that it performs on various cases in magistrates’ and Crown Courts respectively. It should be noted that this information is to be treated cautiously as it was made for internal use; however, it is the best information available and is what the CPS uses to manage its own business. We therefore consider that it is reasonable to use it to develop estimates.

3 We obtained internal information from the reform unit of HM Courts & Tribunals Service (HMCTS). This was based on the management accounts produced for internal use. It allowed us to put a minimum, but not complete, variable cost of a court day in the Crown Courts and magistrate’ courts respectively. This included staff costs, judicial costs and juror costs.

4 We visited courts around the country. These courts were chosen to include a wide spread of relevant characteristics including geography, size, culture, high- and low-level performance and whether they were introducing any novel local projects such as new digital services. These visits allowed us to engage with many of the local stakeholders who oversee the implementation of the system on the front line. These included, but were not limited to, senior HMCTS staff, resident judges, operations managers, listings officers, defence counsel and victims and witness representatives. The courts we visited were:

- Manchester magistrates' court.
- Kingston Crown Court.
- Chatham magistrates' court and Maidstone Crown Court.
- Southwark Crown Court.
- Birmingham magistrates' court and Crown Court.
- Sunderland magistrates' court and Newcastle Crown Court.
- Sheffield magistrates' court and Crown Court.
- Swansea magistrates' court and Crown Court.

5 We consulted with major stakeholders within the system, including interviewing Ministry staff; senior members of the judiciary; Sir Brian Leveson, author of the *Review of Efficiency in Criminal Proceedings* (January 2015); the CPS; HM Courts & Tribunals Service; victims and witness representatives from the Witness Service; and the Ministry to ensure we collected a wide range of opinions from all those involved.

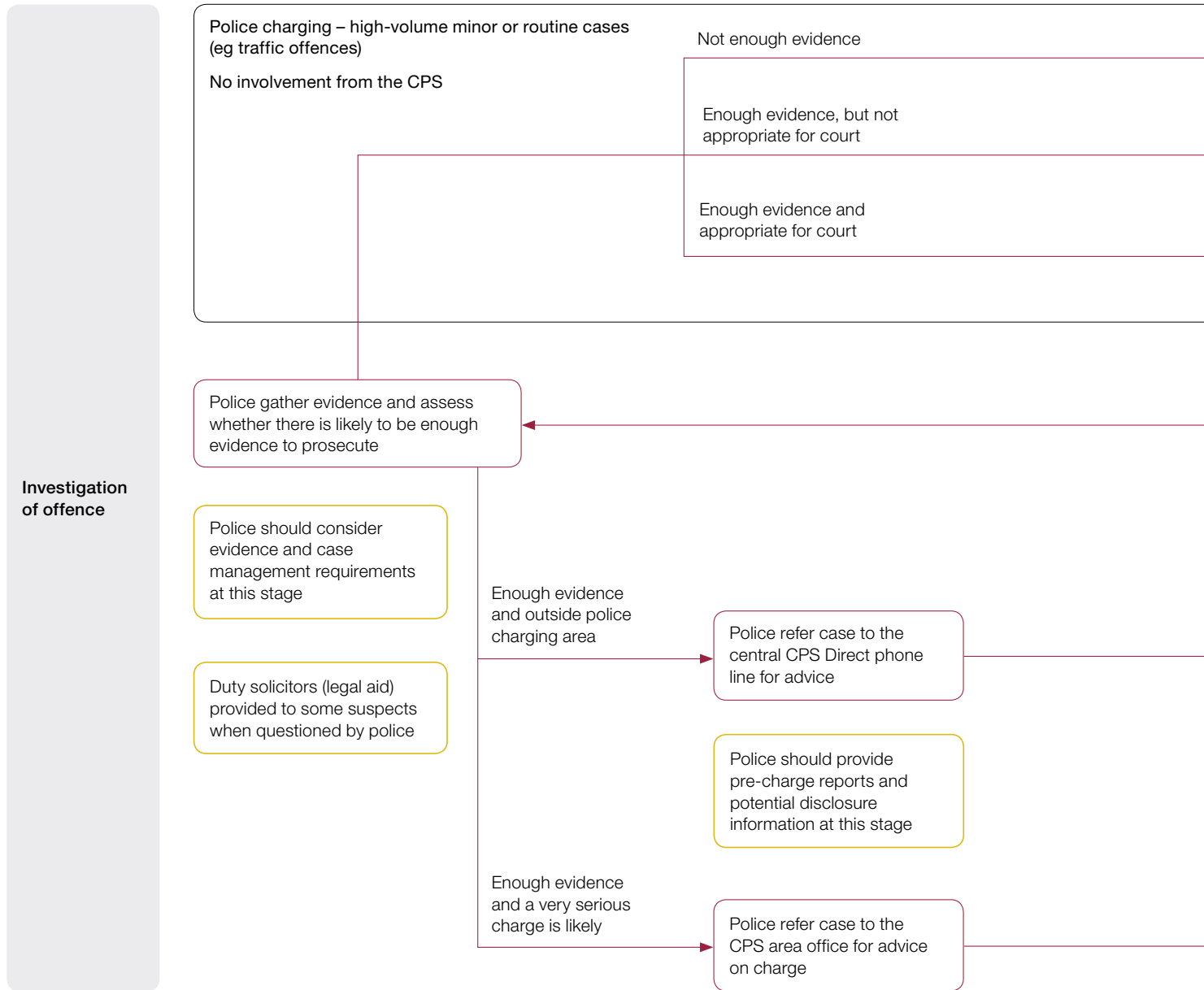
6 We consulted with our internal experts from the Operational Delivery and Process Management Community of Practice.

Appendix Three

Case progression from charge to disposal

See **Figures 17 to 19** on pages 46 to 51.

Figure 17
Case progression process – charging decisions



- Process step
- Key actions and responsibilities

Source: National Audit Office analysis

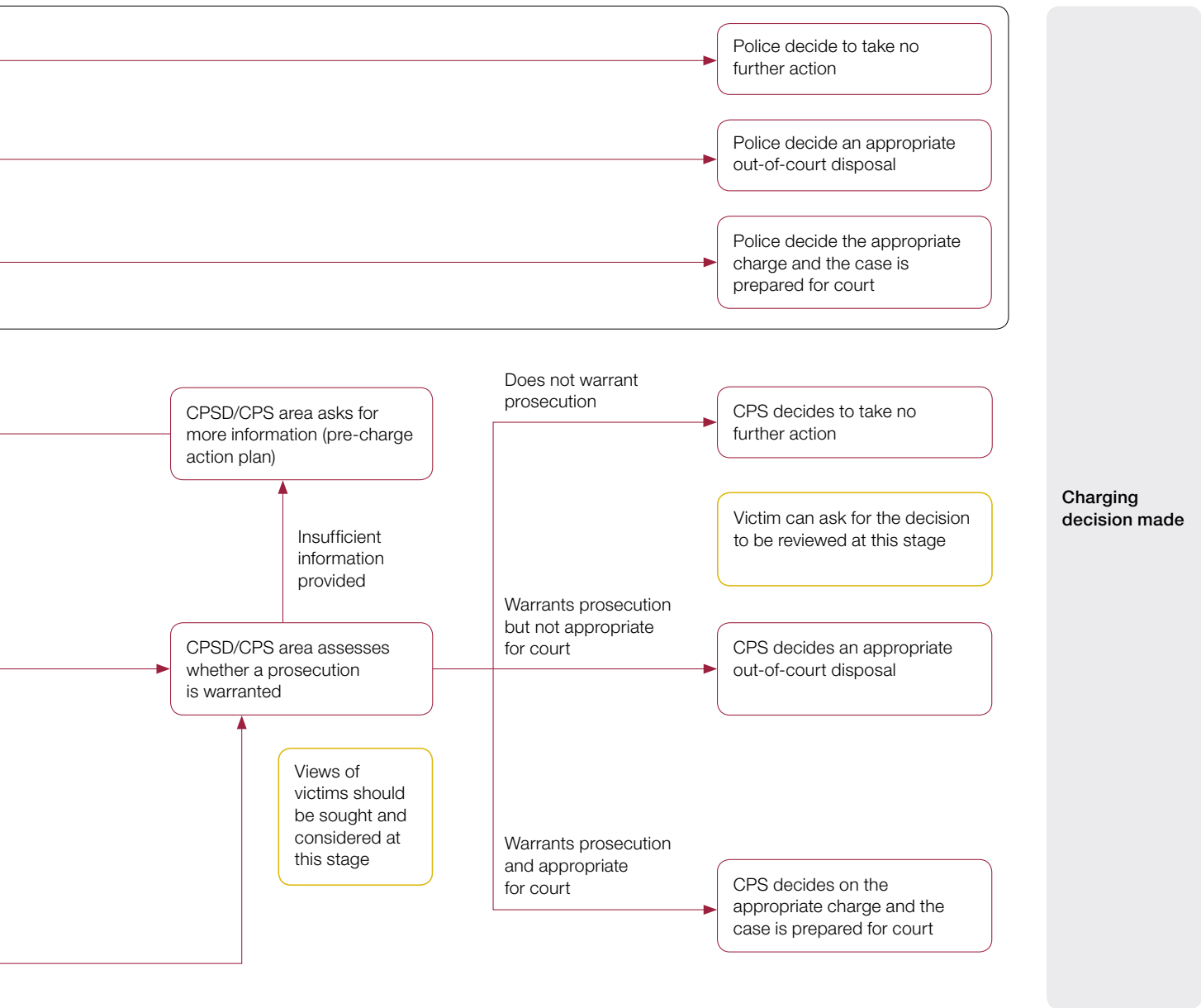
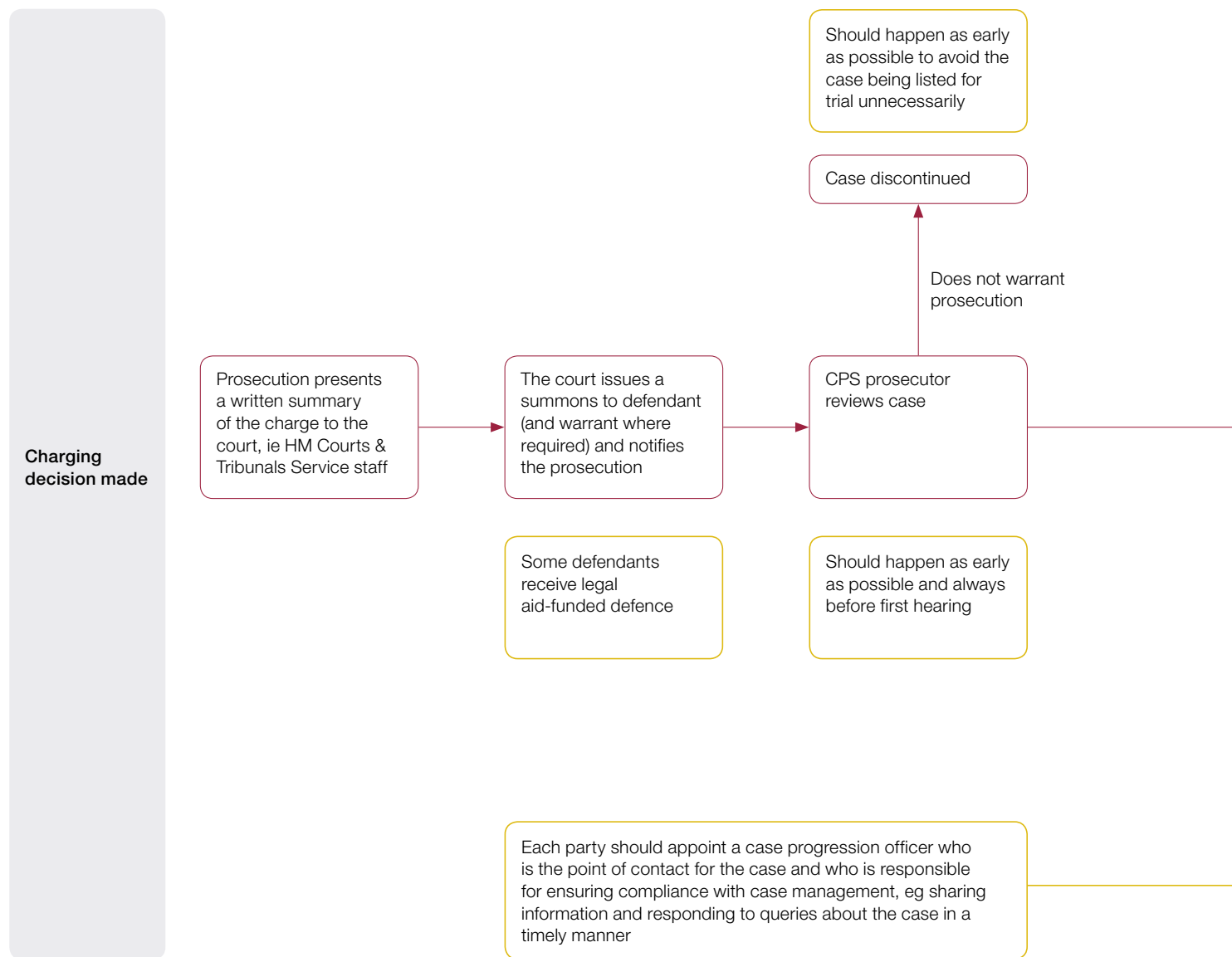


Figure 18
Case progression process – preparation for court



- Process step
- Key actions and responsibilities

Source: National Audit Office analysis

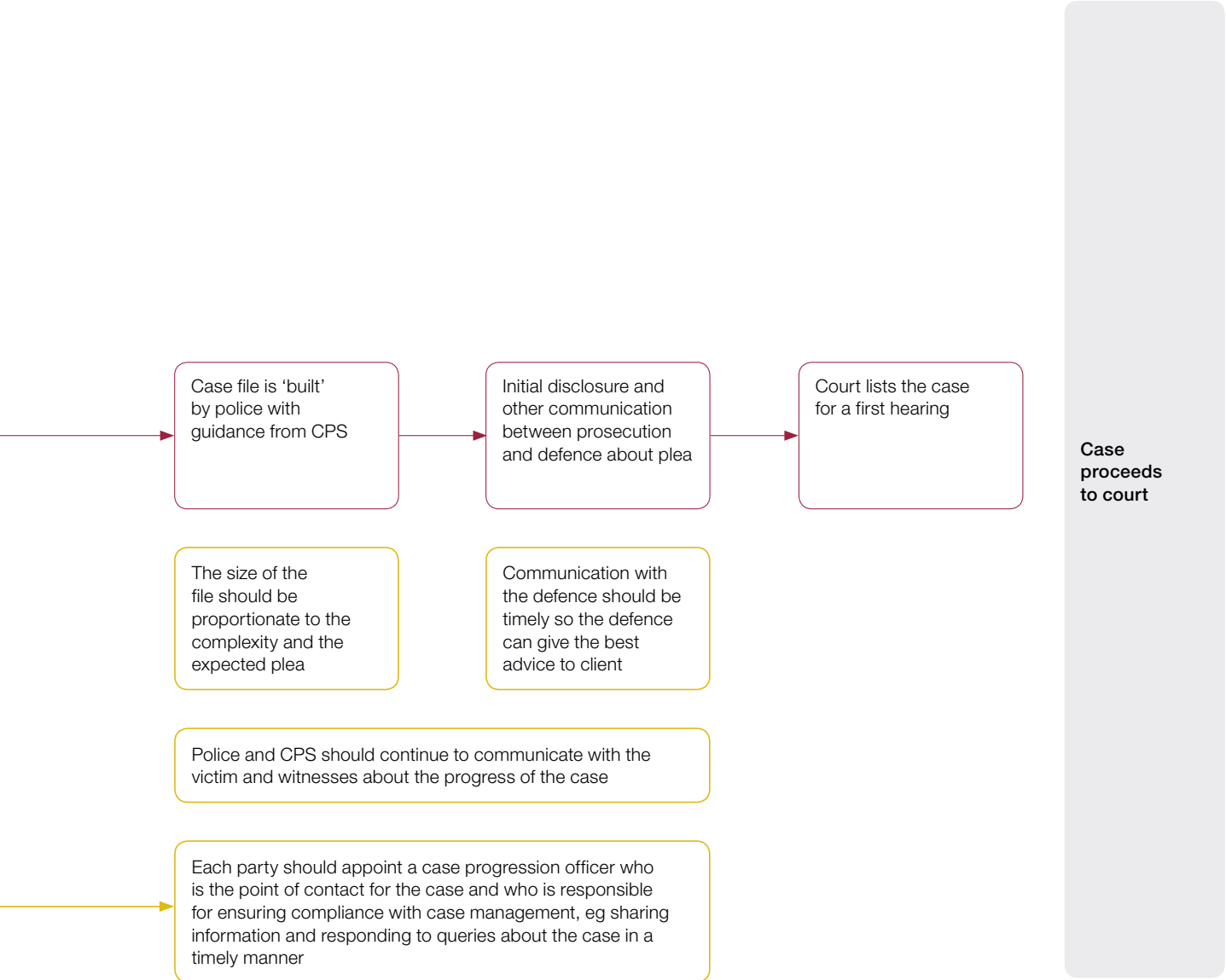
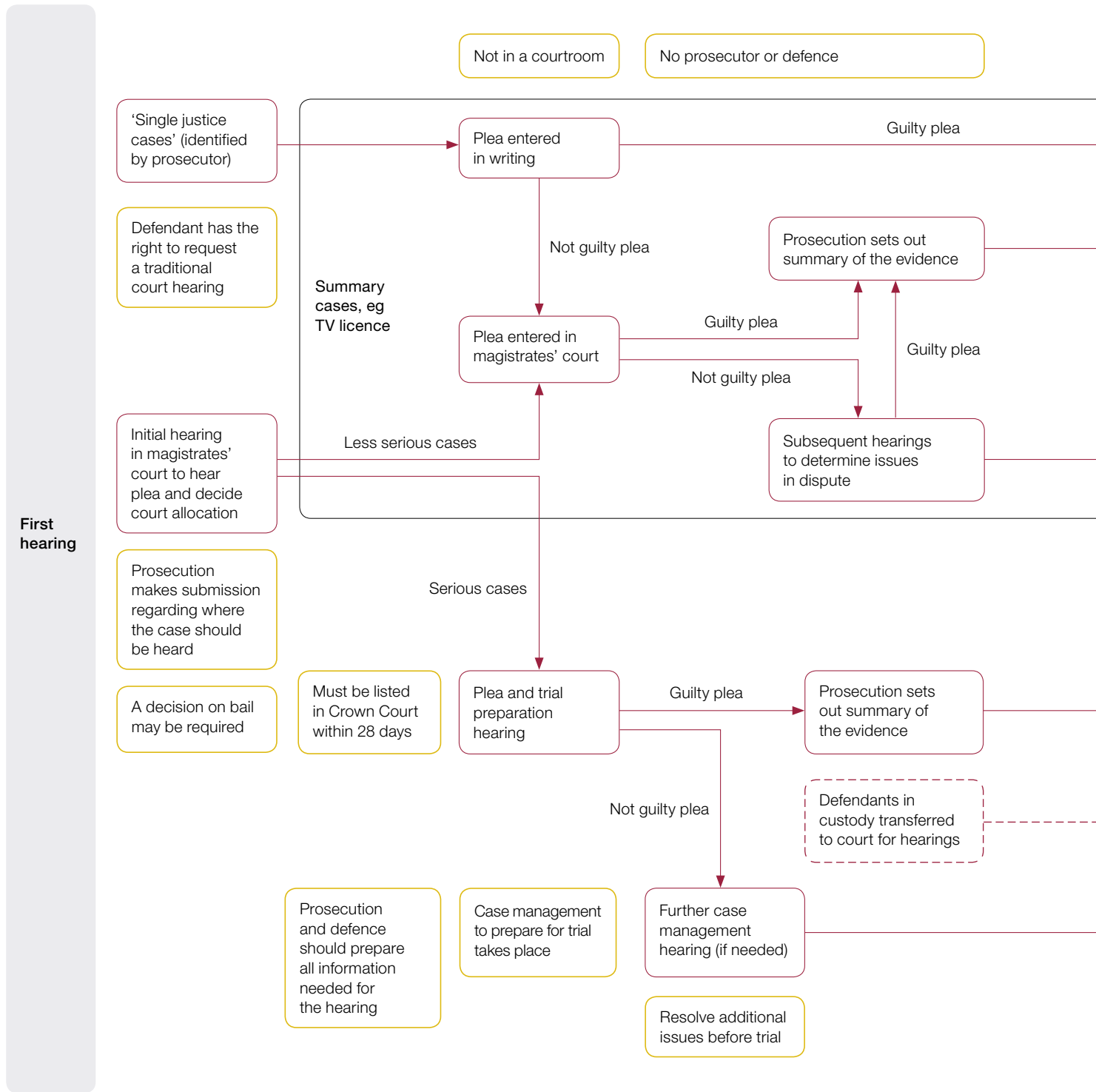
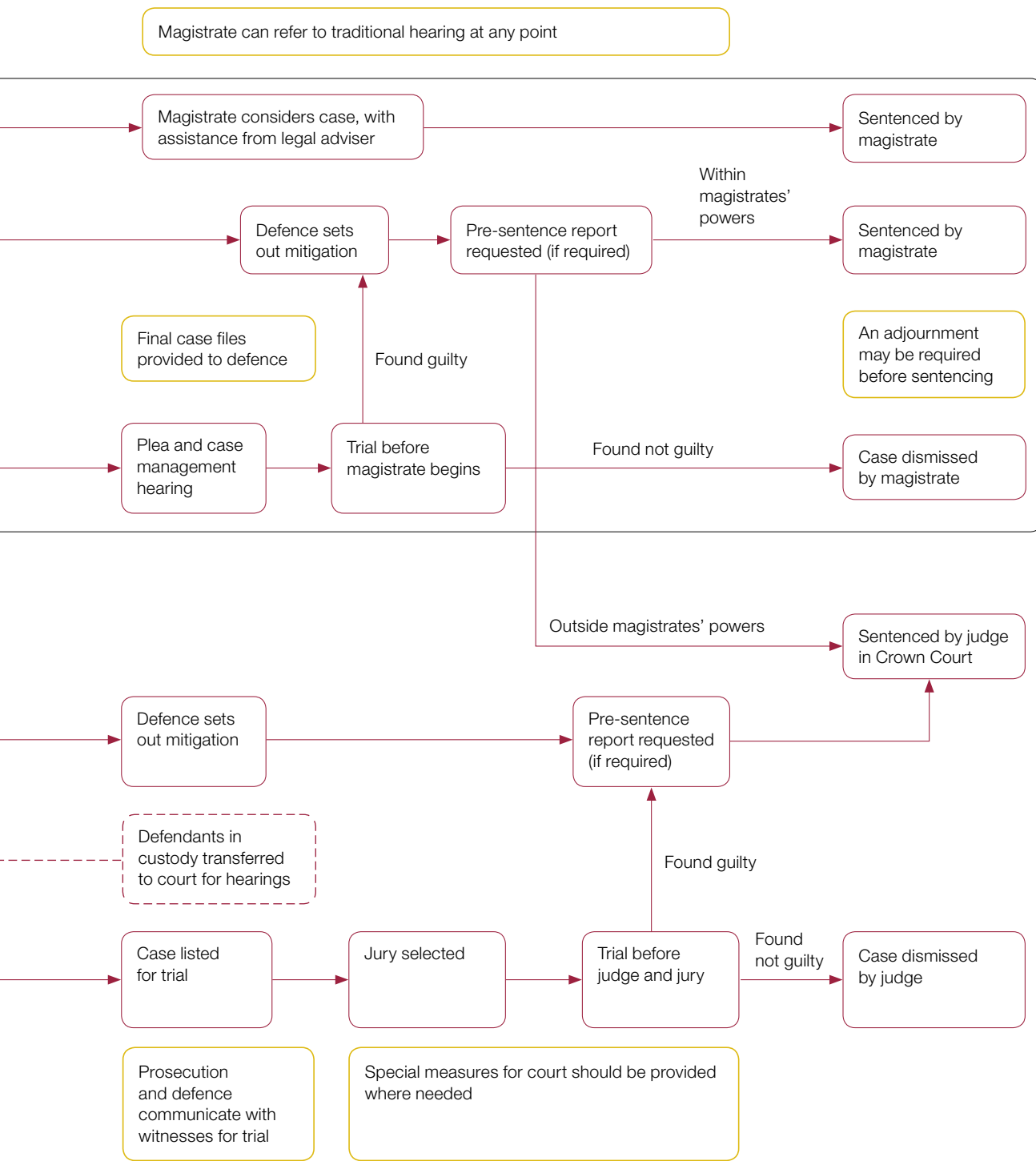


Figure 19
Case progression process – in court



□ Process step □ Key actions and responsibilities



Case disposed

This report has been printed on Evolution Digital Satin and contains material sourced from responsibly managed and sustainable forests certified in accordance with the FSC (Forest Stewardship Council).

The wood pulp is totally recyclable and acid-free. Our printers also have full ISO 14001 environmental accreditation, which ensures that they have effective procedures in place to manage waste and practices that may affect the environment.



National Audit Office

Design and Production by NAO Communications
DP Ref: 10991-001

£10.00

ISBN 978-1-78604-034-3



9 781786 040343
