

HM Inspectorate of Probation HM Inspectorate of Courts Administration HM Inspectorate of Constabulary



THEMATIC INSPECTION REPORT



A Summary of Findings on the Enforcement of Community Penalties from three Joint Area Inspections



2007

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Having offenders comply with the requirements of their community penalties is a high priority – failure to achieve this reduces public confidence in the criminal justice system. Enforcing community penalties swiftly and effectively therefore becomes a key performance issue for all the agencies involved in it. It is one of the Prime Minister's top priorities for the criminal justice system as a whole.

Accordingly, Local Criminal Justice Boards were made responsible for multi-agency targets for the enforcement of community penalties, set by the Government, that came into force in October 2005. A performance measurement system, *Comet*, provides reports on progress against the two key quantitative targets. Although there have been improvements, early results have not been encouraging in terms of swift completion of the enforcement process.

This inspection sought to go beyond the quantitative measures by analysing a sample of adult and youth cases (184) in three criminal justice areas, and tracking them from start to end through the enforcement process. This enabled us first to compare our findings with the *Comet* data and secondly, and more importantly, to identify why and where delays occur.

A complex picture emerges. Different factors apply in different cases in different combinations, although the largest single factor in causing delays to the process was simply the offender failing to attend their scheduled court hearing. We also identified a detailed issue with *Comet*, in the way it was 'counting' withdrawn cases, so that it was sometimes giving misleading performance results – this is now being rectified.

Improving performance in the future is possible, but not through any specific sweeping innovations. As is often the case with criminal justice system processes, improvement will be achieved through patient incremental improvement in detailed processes year on year. This path to improvement can and should be diligently followed by Probation, Youth Offending Teams, Courts, Police and others, working together.

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Acknowledgements

This thematic inspection report draws on the findings of fieldwork into the enforcement of community penalties by probation areas and youth offending teams undertaken as part of the three Joint Area Inspections conducted in 2006/2007.

We would like to express our thanks to the Chairs of the Cleveland, Devon and Cornwall and West Midlands Local Criminal Justice Boards and the staff from the Youth Offending Teams, Probation Areas, Courts and Police Services who assisted in the inspections.

We would also like to acknowledge the contributions of all inspection staff involved in the Joint Area Inspections.

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March 2007

Glossary of abbreviations

CJS Criminal justice system

Comet Community penalty enforcement tracker

CPS Crown Prosecution Service

CPEG Community Penalty Enforcement Group

HMCS HM Court Service

HMIC HM Inspectorate of Constabulary

HMICA HM Inspectorate of Courts Administration

HMI Probation HM Inspectorate of Probation

LCJB Local Criminal Justice Board

OCJR Office for Criminal Justice Reform

PSR Pre-sentence report

YJB Youth Justice Board

YOT Youth Offending Team

1. EXECUTIVE SUMMARY

PROMOTING COMPLIANCE

- 1.1 Although some YOTs were good at setting appointments in accordance with the national standard, practice was inconsistent. Where appointments were set, there were generally good efforts to promote compliance; however, when it came to monitoring compliance by recording judgements of whether or not missed appointments were for acceptable or unacceptable reasons, overall performance was poor.
- 1.2 Two probation areas were very good at setting appointments in accordance with the national standard and at monitoring compliance. The third probation area was not so good at either.

ACHIEVING ENFORCEMENT

Starting the breach action

- 1.3 YOTs: The decision making about returning someone to court was inconsistent, but once a decision to breach had been made the performance on carrying it out was usually good.
- 1.4 Probation: Decision making within probation areas was generally reliable and consistent. There were good systems for starting the breach process.

Reaching the first hearing

1.5 YOTs, probation and courts were all paying attention to the need to schedule a first hearing promptly, and were achieving this on average in about 20 working days. In our view, it would be difficult for them to improve significantly on this average figure within the rules governing the existing procedures.

At the first hearing

1.6 60% of YOT cases were resolved at the first hearing, compared with only 43% of probation cases. Within a complex picture, the biggest single factor in preventing completion of the process at this point was the offender's failure to attend the hearing.

Subsequent hearings and overall completion

- 1.7 Although the picture continued to be complex with the cases we tracked from start to end of the process, the biggest single factor in preventing completion at each of any subsequent hearings was the offender's failure to attend.
- 1.8 Overall, there are many reasons for delay, which combine differently in different individual cases. Addressing each of these will make a small but important difference to improving the speed of the enforcement process, but there is no single panacea. What is required is steady incremental improvement, with attention to detail, rather than expecting any single or major innovation to be the main means of achieving change.
- 1.9 Although performance against the two end-to-end targets has improved significantly since the previous joint inspection on enforcement, there remains considerable room for improvement, which could be achieved using the incremental approach outlined above.

Comet data

- 1.10 The inspection found a significant issue about how performance is 'counted' by *Comet*, which is now being rectified in response to our finding.
- 1.11 Comet is also being amended to ensure that more detailed local and national outcome data are available.
- 1.12 No information is gathered on the characteristics of those in breach, which remains a shortcoming. In particular, monitoring the race and gender of those in breach would enable the relevant authorities to check whether certain groups of people were being treated disproportionately.

2. **RECOMMENDATIONS**

The CPEG should ensure that:

- the new counting rules, with regard to the withdrawal of cases following an acceptable reason for absence, are adhered to
- it monitors the number of cases that are withdrawn and analyses the reasons for these withdrawals
- consideration is given to the inclusion of information on *Comet* that would allow data to be gathered on key characteristics of those in breach.

LCJBs should ensure that:

- local data are analysed to enable detailed troubleshooting of the reasons for delay
- local performance improvement plans are developed.

The YJB should ensure that:

- the role of the regional manager, as a link between the LCJB and the YOTs within areas, is considered
- YOTs improve the consistency with which they record whether absences are acceptable or unacceptable.

Probation areas should ensure that:

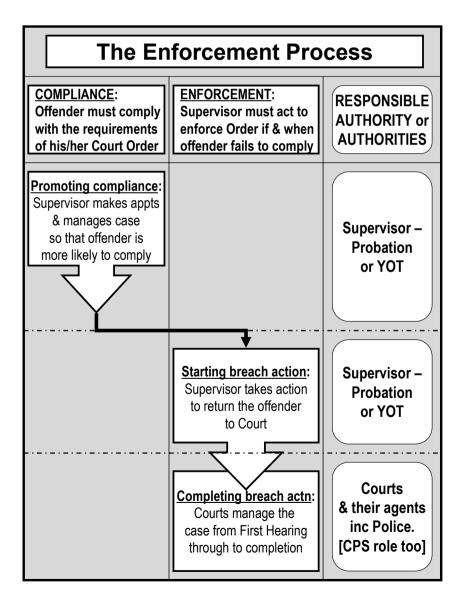
- greater effort is made to promote compliance with community penalties
- cases are not withdrawn from the prosecution process where there is a prima facie case of breach, simply because the file is not ready.

3. INTRODUCTION AND BACKGROUND

- 3.1 The enforcement of community penalties was given a greater priority under the Government's Strategic Plan for Criminal Justice 2004-2008 than ever before. As part of the effort to re-balance the criminal justice system in favour of the law-abiding majority and improve public confidence, it was thought essential to ensure that the conditions of community penalties were fully adhered to and that (where necessary) enforcement action swiftly followed non-compliance. An anticipated effect of the improvements in enforcement was that rates of compliance would be driven up, ultimately reducing the number of cases where enforcement action would be required.
- 3.2 The CJS Business Plan 2005/2006 set the framework for LCJBs and identified enforcement as one of five priority areas. For the first time, there were clear multi-agency targets for the enforcement of community penalties. Until this time there had been a series of single agency national standards and targets, although no overarching performance framework.
- 3.3 The two targets set by the business plan were:
 - the average time from the (relevant) unacceptable breach to resolution of the case of less than 35 working days and
 - 50% of community penalty breaches to be resolved within 25 working days of the (relevant) unacceptable breach.
- 3.4 Centrally, the OCJR established an Enforcement Delivery Board, which in turn established the CPEG. This group has provided workshops for the sharing of good practice and has developed policy.
- 3.5 It was acknowledged that no mechanism for monitoring performance against these targets existed. *Comet*, a bespoke system of measuring performance against the targets, was devised and released to HMCS during the first half of 2005, with the targets coming into force in October 2005. The targets were to be met by the final quarter of the year 2005/2006.
- A previous Joint Inspection of the Enforcement of Community Penalties published in June 2005 provided the only baseline data available at the time. Based on small samples in six areas, the average end-to-end time for enforcement was 60 working days, with 20% of cases resolved within 25 working days.

4. AN OVERVIEW OF THE ENFORCEMENT PROCESS

- 4.1 The primary aim of a community penalty is the engagement of the offender to achieve the objectives of the order of the court. It is therefore necessary to start any inspection of enforcement by assessing the efforts made by YOTs and probation to **promote compliance**. Where the offender fails to comply with the order, there must be an efficient process to return the offender to court to **achieve enforcement**. The responsibility for starting this process lies with YOTs and probation. The completion of the process is a multi-agency task also involving the courts, their agents and the police.
- 4.2 The enforcement of community penalties is thus a complex process. The actions of the offender manager and courts are bound by national standards and the requirements of the relevant legislation. Delays or inefficiencies at any stage in the process can render the achievement of the targets very difficult. The figure below sets out a schematic view of the stages of the process and the responsible agencies.



5. OVERALL INSPECTION FINDINGS

The inspection sample

- We analysed a total of 184 cases from three LCJBs. As probation areas are co-terminous with LCJBs, the probation sample was from three probation areas. The YOT cases in the sample were drawn from the 14 YOTs within the three LCJBs. All cases in the sample had been convicted of the breach of a community penalty in the period leading up to the inspection fieldwork. The inspection sample did not include any cases where the responsible authority was not the probation area or YOT.
- 5.2 The sample was 85% male, with 80% being identified as white British. Less than 5% of the sample had been assessed as presenting a high or very high Risk of Harm. No comparable data from *Comet* are available.
- 5.3 Within the sample, two-thirds of the cases were adult cases and one-third youths. This is a much higher proportion of youth cases as compared to *Comet*, where approximately 12% of cases involve youths, but it was necessary for us to include a higher proportion of YOT cases to ensure that the sample included cases from each of the YOTs in the three areas.
- The findings from the inspection were significantly different for youth and adult cases. For this reason, the findings for youths and adults are largely reported separately. The table below shows performance data from the inspection in aggregate and for YOTs and probation separately. Information from *Comet* is also included for comparative purposes.

	YOT N=61	Probation N = 123	Overall N = 184	Comet comparison youths and adults (April-October 2006)
Average working days to first hearing	17	21	20	
% of cases concluded at first hearing	60%	43%	49%	
% of cases concluded in 25 working days or less	68%	49%	55%	47% (target > 50%)
Average end-to-end time (working days)	24	53	43	44 (target < 35)

5.5 The overall inspection findings were broadly consistent with *Comet* data. The average 'end-to-end' time was slightly better than indicated by *Comet*. A greater proportion of cases were also concluded within 25 working days. It is probable that these 'better' figures in the inspection were largely a consequence of the increased ratio of youth to adult cases in the sample.

The measurement of performance

- Progress against the end-to-end targets was measured by a bespoke HMCS system known as *Comet*. Each magistrates' court contributes data towards a local *Comet* database. This in turn was aggregated to provide an LCJB wide data set. National performance was the sum of the local *Comet* reports.
- 5.7 Comet was not linked directly to other CJS information systems. Although there was the capacity within the system to generate a number of performance reports, there were clearly significant gaps in both what it was able to provide, and what could be easily extracted. Comet is currently subject to review, which may address some of these issues.
- 5.8 The quality of the data recorded on *Comet* was variable from court to court. Insufficient attention was dedicated to ensuring the accuracy of data entry in some of the courts we visited.
- 5.9 The most obvious weakness in the data provided was the inability to analyse any aspect of diversity. *Comet* did not collect information on the race, age or gender of offenders subject to breach proceedings. Although this information could be generated by cross-referencing other systems, it would rely on a great deal of manual data entry and in practice this was rarely done.
- 5.10 Comet also did not record the outcome of breach action. Within Comet it was not possible to distinguish between cases that were withdrawn or those ending in conviction, the reasons for withdrawal or the sentence passed for the breach. There are now plans to address some of these issues in a new version of Comet.
- 5.11 The definition used by the inspection process of a breach case was different from that used by *Comet*. The *Comet* counting rules required that once a prosecution had been started by the issuing of a summons, the case had to be counted regardless of the outcome. Cases that were withdrawn, or where the offender was found not guilty, were included. The inspection sample only included cases where a breach was proven or admitted in court. *Comet* counting rules are being amended to address this issue.
- 5.12 In two of the three areas visited, this difference in methodology had very little effect on the measured performance, as the vast majority of cases that were started had concluded with a conviction.
- 5.13 In one area inspected, the West Midlands, there was significant difference between the *Comet* data and the inspection findings. This was caused by the area policy on the withdrawal of cases. In this area, more than 50% of cases were withdrawn at the first hearing. This had had the effect of reducing the average time to conclusion and increasing the percentage of cases resolved in 25 working days. This will be further explored below.

Local Criminal Justice Boards

5.14 Although some LCJBs had not focused on performance data detailing progress towards the end-to-end targets as early as they might, all were using at least outline data. All

- LCJBs inspected were starting to analyse performance data broken down between youth and adult cases to understand better where performance problems were located.
- 5.15 All LCJBs visited had established multi-agency subgroups to improve enforcement policies and processes. Where senior managers were identified as 'champions' for enforcement, there was a visibly enhanced focus on performance.
- 5.16 There were examples of strong partnerships, particularly between the probation areas and courts. YOTs' links to the LCJBs were more problematic. The number of separate YOTs within the LCJB areas made communications more difficult.
- 5.17 In all areas visited, one YOT manager was nominated as the link to the LCJB. Although these managers did generally engage well with the LCJBs, they were unable to commit their YOT manager colleagues to action or hold them to account. The ability of small YOTs to link with the LCJB at both a strategic and operational level was limited. These difficulties manifested themselves as an inability to contribute towards policy development and a lack of engagement with the LCJB targets.
- One area was considering the option of the YJB regional manager representing YOTs on the LCJB. Although the regional manager would still not be able to commit resources, they would be in a better position to communicate with all YOT managers and incorporate LCJB targets within their overall role in performance monitoring.

6. PROMOTING COMPLIANCE

Promoting compliance in youth cases

- 6.1 In almost 80% of YOT cases, the child or young person had signed a copy of the current order or contract setting out the expectations of the sentence. There was evidence in nearly all cases that sufficient steps had been taken to ensure that the child or young person understood the requirements placed on them.
- 6.2 Most YOTs attempted to establish a regular pattern of reporting to help children and young people maintain contact. In the majority of cases, YOTs went to considerable efforts to encourage compliance. There were many examples of practitioners using family members to encourage attendance, the sending of text and telephone reminders and the use of mentors early on in the order to encourage and facilitate supervision sessions.
- 6.3 Overall, 84% of YOT cases were offered the number of appointments required under the relevant national standard. The performance of individual YOTs varied considerably in this respect.
- The recording of the acceptability or otherwise of the child or young person's reason for non-attendance was a weakness in most YOTs. Overall, in only 65% of cases were all absences properly recorded as either acceptable or unacceptable. This lack of consistent recording and subsequent action indicated that in some instances YOTs appeared to place a greater emphasis on allowing the order to continue, without the required breach action, rather than enforcing the order as required.
- 6.5 Some YOTs had made good use of pre-breach meetings, Children or young people, their parents/carers, YOT staff and significant others came together to spell out the consequences of further failures and put in place a plan to improve compliance.

Promoting compliance in adult cases

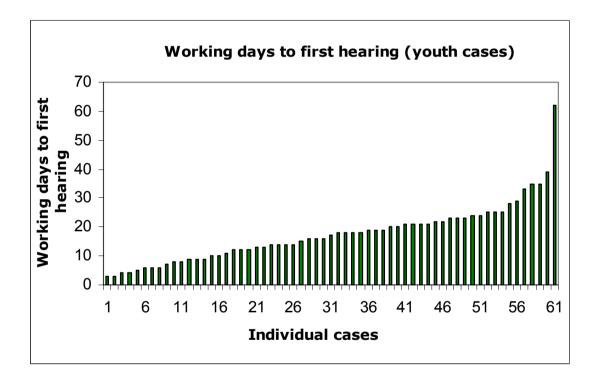
- 6.6 In 77% of cases the offender had signed a copy of the current order or contract setting out the expectations of the sentence. In over 80% of cases there was evidence that sufficient steps had been taken to ensure that the offender understood the requirements of the order.
- 6.7 Although most offender managers did attempt to establish a regular pattern of reporting to assist the offender in keeping appointments, this was not universal. Furthermore, in less than half of cases inspected had the offender been given sufficient opportunity to participate actively and fully in the sentence planning process.
- In one probation area the frequency of appointments arranged conformed to the national standard in 96% of cases; this figure was much lower (only 70%) in another area.

- 6.9 Two of the three areas visited had high standards of recording, and all or nearly all absences were properly recorded as being either acceptable or unacceptable. This was not the case in the third area where only 70% of absences were appropriately recorded.
- 6.10 A small minority of probation staff interviewed in two areas inspected had misunderstood the national standard in connection with the requirement to start breach proceedings against the offender within ten working days. Having understood that there was a 'tenday target' that managers were very interested in, they incorrectly concluded that if the ten-day period had elapsed it was then not permissible at that point to start breach proceedings at all.
- 6.11 The effect of this misunderstanding was that some staff took no action against some offenders even though there was clear evidence of unacceptable absences.

7. ACHIEVING ENFORCEMENT

Achieving enforcement in youth cases

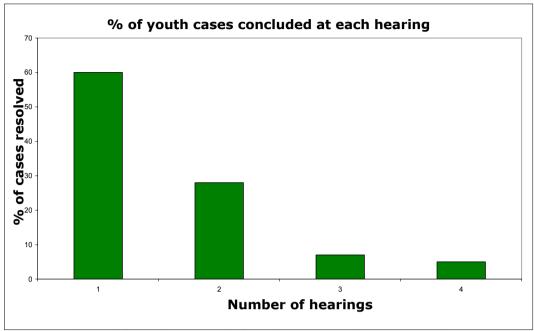
- 7.1 Within most YOTs the offender manager retained responsibility for the breach process, though all YOTs had agreed processes to follow. Breach was a relatively infrequent occurrence for individual officers and so they would usually manage the case through to a conclusion.
- 7.2 The details of the arrangements for returning offenders to court varied between YOTs but, once the decision to do so had been taken, performance was good in nearly all cases. The figure below shows the number of working days between the relevant unacceptable absence and the first court hearing.



- 7.3 The average number of working days from the relevant unacceptable absence to the first hearing was 17.
- 7.4 In 89% of all youth cases the first court hearing was within 25 working days. The seven cases that were outside this time were the result of isolated instances of poor practice and oversights in individual cases.

The court process

7.5 The majority of youth cases were resolved on the first hearing. The chart below shows the percentage of cases resolved at each of the first four hearings.

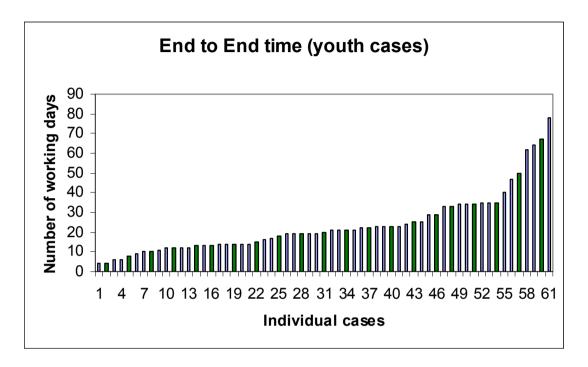


- 7.6 60% of all youth breaches were dealt with on the first hearing, a further 28% were dealt with at the second hearing. Very few cases took three or more hearings to resolve.
- 7.7 There were multiple reasons for cases not being resolved. The inspection was able to analyse 26 inconclusive hearings in the first three court dates where the reasons were recorded. The information is contained in the table below.

Reasons for an inconclusive hearing

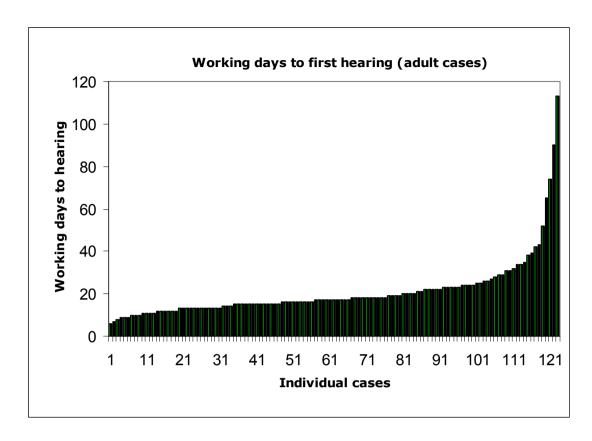
	First hearing	Second hearing	Third hearing	Total
Warrant no bail due to non- attendance	4		1	5
Warrant with bail	1			1
Defence request		2		2
Following a plea of not guilty/pre-trial review	4			4
PSR request	1	1		2
To test motivation	5		1	6
To tie in with other matters	2	1		3
Committed to the Crown Court	1	1	1	3
Total	18	5	3	26

- 7.8 As can be seen, the two most common reasons for an inconclusive hearing were that the offender failed to attend court (and a warrant was issued) and to test the motivation of the offender.
- 7.9 The average end-to-end enforcement time for youth cases in the sample was 24 working days. 68% of youth cases were concluded in 25 working days or less. The end-to-end enforcement time for all the youth cases is shown below.

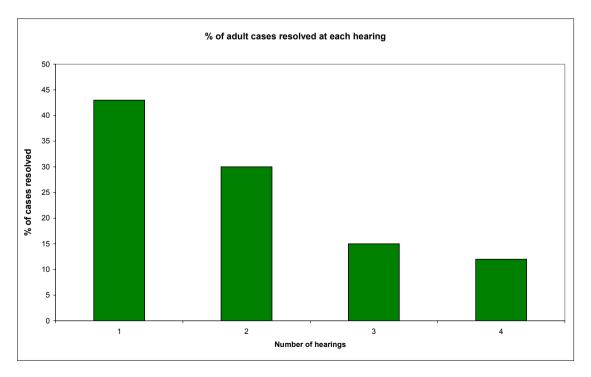


Achieving enforcement in adult cases

7.10 The precise mechanisms for arranging for the offender to be returned to court varied in different locations. Each of the areas we visited had arranged for a dedicated breach team or individual court officers to manage the breach process. In two of the three areas probation breach staff had established local databases in addition to *Comet*, to enable detailed troubleshooting of problems and the testing of hypotheses as to the reasons for delay. All areas had satisfactory arrangements for the issuing of summonses, and relationships between the probation area and the courts were good.



- 7.11 Overall 83% of adult cases had had the first hearing within 25 working days. Only one of the three areas inspected had had some problems in securing early listings. This was the first of the three areas inspected and new arrangements had not had as much time to bed in. Where there were delays in first hearings, this tended to be cases with earlier breach dates (reflecting previous practice), or were the result of individual lapses in practice.
- 7.12 The chart below shows the percentages of cases resolved at each of the first four hearings; 43% of adult cases were resolved at the first hearing.



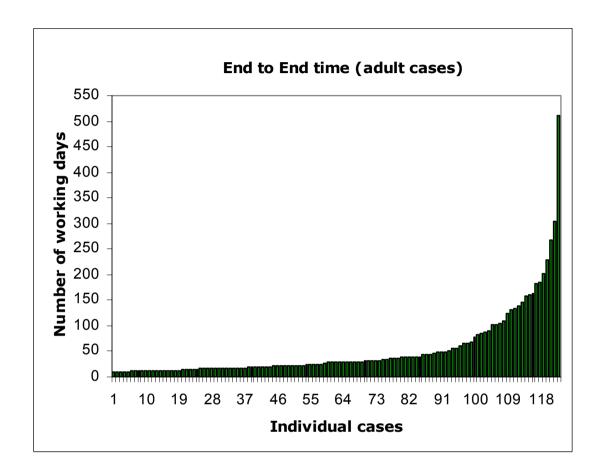
- 7.13 Over a quarter of cases took three or more hearings to resolve.
- 7.14 There were multiple reasons for cases not being resolved. The inspection was able to analyse 98 inconclusive hearings in the first three court dates where reasons were recorded. The information is contained in the table below.

Reason for inconclusive hearing

	First hearing	Second hearing	Third hearing	Total
Warrant no bail due to non- attendance	34	14	3	51
Warrant with bail	3	1		4
Defence request	6	1	2	9
Following a plea of not guilty/pre-trial review	4	2	2	8
Breach file unavailable or probation request	2	1		3
PSR request	2	5	1	8
To test motivation	4	3	1	8
To tie in with other matters	2	2	2	6
Committed to the Crown Court		1		1
Total	57	30	11	98

- 7.15 As can be seen, the most common reason for an inconclusive hearing was that the offender failed to attend court and a warrant without bail was issued. This held true for the first, second and third court hearings and was the reason for over half of all inconclusive hearings. The tracing of offenders subject to warrants was then often hindered by incomplete knowledge of their whereabouts. 4% of inconclusive hearings were as a result of a warrant with bail. A further 9% of adjournments were at the request of the defence. In total, these first three reasons in the table above accounted for 64% of all inconclusive hearings.
- 7.16 Although the number of cases that were adjourned for a pre-trial review or not guilty plea was relatively low in the sample (8%), there was some evidence that the number of contested cases was increasing. Where defendants proceeded with a not guilty plea, there were very significant costs for the probation area in terms of staff time. The inspection process included some court observation of cases where a not guilty plea had been entered. In one case, three staff were required to attend court for half a day as witnesses. The case remained unresolved due to the defendant failing to attend.
- 7.17 11% of cases were adjourned to allow for the preparation of a PSR or as the result of a probation request.

- 7.18 A further 15% of adjournments were at the court's discretion, namely to tie in with other matters, to test the motivation of the offender or to commit to the Crown Court.
- 7.19 The time from the relevant unacceptable absence to the conclusion of breach proceedings for adult cases is shown below.



7.20 The average end-to-end enforcement time for adult cases in the sample was 53 working days. The table shows that approximately half of all adult cases are dealt with within 25 working days. Unfortunately, 15% of cases took in excess of 100 working days, including 4% that took over 200 working days.

The West Midlands expedited breach process

- 7.21 West Midlands had developed a particular policy for the prompt issuing of summonses. Following locally agreed procedures, offender managers were required to contact the courts and arrange for a summons to be issued within two working days of the apparently unacceptable absence. The court arranged for a summons to be issued with a return date of 15 working days. This policy had the desired effect of ensuring that in almost all cases the first hearing date was within 15-20 working days of the absence.
- 7.22 There were however consequences to the policy. Following such a prompt start to the breach process, there were cases where the offender produced evidence of an

- acceptable explanation for the missed appointment within the timescale allowed by the national standard. In these circumstances, the breach allegation had to be withdrawn.
- 7.23 Because the breach process was time consuming, considerable administrative resources had to be deployed to ensure that the probation service was ready to proceed at the hearing. This involved the collation of a breach prosecution pack. Much of the work that was done at this stage was in effect wasted. As soon as the offender supplied an acceptable reason for the absence, there was no need for the breach pack.
- 7.24 In practice, as the time available to produce the breach pack was relatively short, and it was not possible to differentiate between the cases where packs would be needed and the ones that would not, the deadline for the packs was often missed, including for some cases where the offender had NOT supplied an acceptable reason for the original absence. The area policy in these circumstances was that the breach should be withdrawn.
- 7.25 Within the counting rules of *Comet*, all cases that were withdrawn were included in the performance monitoring. The higher the proportion of early withdrawn cases, the better the performance appears.
- 7.26 Had the area's policy been to request an adjournment to allow more time for the paperwork to be prepared, performance as measured by *Comet* would have been considerably worse.
- 7.27 No data were available from West Midlands Probation Area, either from its own internal monitoring or *Comet*, as to the overall number of cases withdrawn, or the reasons for those withdrawals. Information from the inspection suggests that between half and two-thirds of all cases were withdrawn at the first hearing. The most common reason for the withdrawal of cases was the absence of a breach pack that would enable a successful prosecution.
- 7.28 Subsequent to our inspection, CPEG had issued amendments to the *Comet* counting rules. From April 2007 cases that are withdrawn, due an acceptable reason for the absence being produced, will not be counted. Some additional data fields will also be added to provide outcome data, although full reasons for the withdrawal of cases will not be collected.

8. SOME HYPOTHESES ON PERFORMANCE

- 8.1 Despite the extensive nature of the inspection, it is difficult to be conclusive about what factors might impact on performance most effectively at a local level. Improvement is possible, but not through any specific sweeping innovations. As is often the case with CJS processes, improvement will be achieved through patient, incremental improvements in local processes year on year.
- 8.2 Achieving compliance, through engaging the offender in the supervision process, setting shared objectives and offering regular appointments with an offender manager who is committed to working with the offender, is likely to reduce the need for enforcement.
- 8.3 An overly bureaucratic approach to compliance may reduce the personal contact between the offender manager and offender. If the offender does not feel that the offender manager is holding them to account personally, this may lead to an increase in enforcement activity and a greater number of contested cases.
- 8.4 Smaller caseloads within YOTs may have helped to lead to better working relationships between the individual child or young person and the offender manager; this may be one of the factors determining the likelihood of a contested breach.
- 8.5 The major determinant of performance is the number of hearings to conclusion, which in turn is heavily influenced by the proportions of offenders who turn up and plead guilty. Local patterns of practice and behaviour affect the extent to which offenders do this.
- 8.6 Youths are more likely to attend court as directed than adults; when they do fail to attend, they can more usually be located swiftly.
- 8.7 Where breach processes are not robust, there is an incentive for offenders to drag out proceedings hoping the prosecution will fail.
- 8.8 When warrants are issued, they are usually only prioritised if they meet other criteria such as dangerousness or other local priority offenders. If warrants remain outstanding for significant periods, the opportunity to achieve the average end-to-end target is lost.